

May 14, 2008

MINUTES

THE STATE MEDICAL BOARD OF OHIO

May 14, 2008

Nandlal Varyani, M.D., President, called the meeting to order at 1:15 p.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Dalsukh Madia, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Carol L. Egner, M.D.; Marchelle L. Suppan, D.P.M.; R. Gregory Browning, Ph.D.; W. Frank Hairston; Jack C. Amato, M.D.; Susan E. Stephens, M.D.; and Anita M. Steinbergh, D.O.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Kimberly C. Anderson, Assistant Executive Director; Rebecca J. Marshall, Chief Enforcement Attorney; Mark R. Blackmer, David P. Katko, Angela S. McNair, Karen H. Mortland, Marcie P. Pastrick, Cheryl D. Pokorny, Sheldon Safko and Daniel S. Zinsmaster, Enforcement Attorneys; Barbara J. Pfeiffer, Karen A. Unver, and Kyle C. Wilcox, Assistant Attorneys General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Executive Staff Coordinator; Sallie J. Debolt, Executive Staff Attorney; Michael K. Miller, Public Policy & Government Affairs Officer; Karry Thacker, Executive Staff Assistant; Danielle Bickers, Compliance Supervisor; Jean Gillman, Compliance Officer; Barbara Jacobs, Public Services Administrator; and Jacqueline A. Moore, Disciplinary Information Assistant.

MINUTES REVIEW

DR. STEINBERGH MOVED TO APPROVE THE MINUTES OF APRIL 9, 2008. DR. MADIA SECONDED THE MOTION. A vote was taken

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| VOTE: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

The motion carried.

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EXECUTIVE SESSION

DR. STEINBERGH MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONFER WITH THE ATTORNEY GENERAL'S REPRESENTATIVES ON MATTERS OF PENDING OR IMMINENT COURT ACTION. DR. MADIA SECONDED THE MOTION. A vote was taken

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| VOTE: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

The motion carried.

Pursuant to Section 121.22(G)(3), Revised Code, the Board went into executive session.

The following joined the meeting after the executive session: Patricia A. Davidson, Chief Hearing Examiner; and Gretchen Petrucci, Hearing Examiner.

REPORTS AND RECOMMENDATIONS IN THE MATTERS OF LEO D'SOUZA, M.D., KALIOPE E. VARAKIS, M.D., AND NICO CAPURRO, M.D.; THE REMAND IN THE MATTER OF GERALD BRIAN APPLGATE, M.D., AND THE PROPOSED FINDINGS AND PROPOSED ORDER IN THE MATTER OF PATRICIA ANNETTE FOWLER, M.T.

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Leo D'Souza, M.D., Kalioppe E. Varakis, M.D., and Nico Capurro, M.D.; the remand in the matter of Gerald Brian Applegate, M.D., and the proposed findings and proposed order in the matter of Patricia Annette Fowler, M.T. A roll call was taken:

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| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |

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| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

Dr. Varyani asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

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| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

Dr. Varyani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. He advised that they may, however, participate in the matters of Dr. Varakis, Dr. Boyd-Lawhorn, Ms. Kronenberger, Dr. Robison, and Dr. Eslami-Varzaneh, as those cases are not disciplinary in nature and concern only qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Reports and Recommendations, Remand Findings, Conclusions and Order, and Proposed Findings, Orders and Journal Entries shall be maintained in the exhibits section of this Journal.

LEO D'SOUZA, M.D.

Dr. Varyani directed the Board's attention to the matter of Leo D'Souza, M.D. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

Dr. Varyani continued that a request to address the Board has been filed on behalf of Dr. D'Souza, but was not filed in a timely manner. Dr. Varyani asked whether the Board members wished to allow Dr. D'Souza's request to address.

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DR. STEINBERGH MOVED TO PERMIT DR. D'SOUZA TO ADDRESS THE BOARD.
DR. MADIA SECONDED THE MOTION. A vote was taken:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Dr. Varyani advised Dr. D'Souza that five minutes would be allowed for his address.

Dr. D'Souza was accompanied by his attorney, Bruce B. McIntosh.

Mr. McIntosh thanked the Board for the opportunity to address it. He stated that this case is really about the scope of a medical practice. If a doctor has an expertise, such as Dr. D'Souza, in psychiatry, that practice should not eliminate the ability to practice as a medical doctor. Mr. McIntosh stated that the State's witness, Peter J. Geier, M.D., and three other doctors testifying on behalf of Dr. D'Souza all testified that to ignore medical complaints is below the standards of care; and to the extent that a doctor has the abilities, as does Dr. D'Souza, they should care and treat for the patients, whether it's Fragile X syndrome, the second most profound cause of mental retardation beyond Down's syndrome, or whether it's to try to keep your son out of jail for attacking his stepbrother, or whether it's because of concerns of sexually transmitted diseases. Mr. McIntosh stated that physical examinations were appropriate under these circumstances, if, for no other reason, than to reduce the psychiatric anxiety of these various patients.

Mr. McIntosh stated that concerning these physical examinations by Dr. D'Souza, Hearing Examiner Petrucci specifically found, and specifically concluded as a matter of law, that there was no sexual contact, there was no sexual inducement, and there was no sexual interest. She also went on to say that she really didn't believe either side's testimony in this case, which goes to an issue of preponderance of evidence. Even though she found it below the standard of care to fail to use gloves, they will accept that, but there were no sexual overtures with respect to that one physical examination of the nineteen-and-a-half-year-old patient who weeks before had tried to commit suicide because of despondency over the girlfriend he had had who was having sex with someone else.

Mr. McIntosh stated that Dr. D'Souza practiced for fifteen years in the minefield that is due to the illnesses of these people. They are non-compliant, defer blame, prevaricate, they are emotionally addicted and at

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least four of these have manifest secondary gain motives for being critical of Dr. D'Souza.

Mr. McIntosh stated that Dr. D'Souza sees 150 plus patients a week, which adds up to over 7,000 patient visits a year. He's a lifeline to hundreds of poor Medicaid and Medicare persons in the city. Dr. Khalily, a prominent psychiatrist in Cincinnati recently wrote to the morning paper, saying that there aren't enough psychiatrists in Cincinnati, and that it takes five months to get an initial appointment to see a psychiatrist, unless you're in an emergency room.

Mr. McIntosh stated that he was personally overwhelmed with the outpouring of support by the patients of Dr. D'Souza. They drove for miles to come to testify in his support. There were those whose lives were saved and whose children's lives were saved.

Mr. McIntosh stated that there should be a stay of any penalty imposed upon Dr. D'Souza for the departure of standard of care because that is probably the only finding that Ms. Petrucci had that is a violation of the code of ethics. It would be a loss to the community and to his patients who would be forced to find new care if Dr. D'Souza is not permitted to continue to practice. Indeed, Dr. D'Souza's practice and his love for his patients would be lost and it would be an economic death, as well as an emotional death, for Dr. D'Souza. Mr. McIntosh asked that the Board impose whatever penalty is the minimum penalty and stay whatever suspension the Board may feel appropriate while Dr. D'Souza adheres to any guidance that the Board might wish to impose on Dr. D'Souza.

Dr. Varyani advised that Dr. D'Souza's five minutes are up. He advised Dr. D'Souza that he could have one more minute to personally address the Board.

Dr. D'Souza thanked the Board for allowing him to speak. He stated that since the charges were brought against him in August 2007, he has not touched anyone without gloves. He will not even administer intramuscular injections without protection. He has also made an earnest effort to record every significant fact in the patient chart, medical or psychiatric. In his practice, he has either allowed a chaperone to be present, or a parent to be present during his entire practice, and he will continue to do that to keep up with the high standard to which the Board members are adhering and which they want him to meet.

Dr. D'Souza stated that if he sees a client, he will not do any physical examinations or diagnose any sexually transmitted diseases. Instead, he will refer the patient to the appropriate agencies in the city.

Dr. D'Souza stated that since all this was brought to his attention, he has held the highest standard of care. He respects his patients and will continue to do that. Dr. D'Souza stated that as the Board has held these standards, he will maintain the highest regard to his patients and empathy that he has to the patients. He has done so in the fifteen plus years of his practice, and he will continue to adhere to that. Dr. D'Souza stated that he deeply respects the Board for allowing him to come here and express his thoughts and feelings. He asked that the Board give him consideration in this regard.

Dr. Varyani asked whether the Assistant Attorney General wished to respond.

Ms. Unver stated that she did. Ms. Unver stated that Dr. D'Souza portrays a common theme throughout his

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defense in this case. He wants the Board to believe that as a psychiatrist, not only is he capable of addressing the mental needs of all his patients, but he is also an expert pediatrician, internist and urologist. Dr. D'Souza claims that the patients don't have a family doctor or might not follow up with their family doctor. He declares that he is simply fulfilling his Hippocratic Oath to help all those who come before him – both in mind and body.

Ms. Unver noted, however, that the patient records for Patients 1 through 5 show that each and every one had a family doctor or pediatrician. As pointed out by the Hearing Examiner in the Report and Recommendation, Patients 1 through 5 came back for multiple appointments – there was no reason for Dr. D'Souza to not refer the adolescents' genital exams to their primary care physicians; and there was certainly no emergency situation that required Dr. D'Souza to immediately perform genital exams. She commented that it is shocking to even believe that Dr. D'Souza would actually perform a genital exam of an alleged sexual perpetrator with a child victim in the same room – all because the father asked for it. Dr. D'Souza's defense is a baseless attempt to cover up his sexual misconduct.

Ms. Unver continued that the facts revealed at the hearing show that during his psychiatric treatment of patients 1 through 5, who were between the ages of 12 and 19 years old, Dr. D'Souza had these patients expose their genitals to him, and Dr. D'Souza would touch their genitals with ungloved hands under the guise of an "examination." These examinations took place in Dr. D'Souza's private office, which had no separate examination room, no examination table, no sink –no items associated with a physician who conducts physical examinations of patients. Dr. D'Souza also failed to refer any of the five patients to a primary care physician or pediatrician, and he failed to document significant medical findings. Ms. Unver asked why Dr. D'Souza would think that he could better serve the patient than a primary care physician by performing genital exams in a room that wasn't even equipped for physical exams. Ms. Unver stated that there was simply no medical purpose for these examinations, and Dr. D'Souza's sexual gratification can be inferred from this pattern of conduct.

Ms. Unver stated that the genital examinations performed by Dr. D'Souza were below the standard of care because they violated the boundaries that should be established between the psychiatric physician and the patient. The State's expert witness, Dr. Geier, testified that "if a psychiatrist determined that a patient would benefit from a genital examination, the standard of care would be to refer that patient to a primary care doctor or urologist to perform the examination." Ms. Unver stated that the performance of a genital exam that involves genital touching without using gloves constitutes a sexual relationship with the patient. Dr. D'Souza basically used the power of his licensed position to convince these unwitting patients that it was proper for him to examine their genitalia in the context of a psychiatric outpatient counseling session. She stated that by using this deception, and the continuing pattern with several patients, one can only conclude that Dr. D'Souza was using the guise of his position to fulfill his sexual gratification. The sexual gratification aspect is mostly going to be hidden. That is why individuals like Dr. D'Souza can continually commit these acts without being caught. They use deception, and they are careful to hide their gratification.

Ms. Unver advised that the State respectfully disagrees with the Hearing Examiner's Findings of Fact 2, 4 and 6 and Conclusions of Law 5, 6 and 7 in the Report and Recommendation, which indicate that the

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actions of Dr. D'Souza do not "constitute a misdemeanor in the course of practice, to wit, Sexual Imposition," in violation of Revised Code 2907.06. As such, she asked the Board to conclude that the actions of Dr. D'Souza, with respect to patients 1, 3, and 5, amount to Sexual Imposition, and that this particular finding be made part of the Order issued by this Board.

Ms. Unver continued that the final issue in this case is credibility. At the hearing, Dr. D'Souza was asked if there were any other patients upon whom he had conducted genital exams. He testified that there were not. However, his own witness, A.T., testified at the hearing that Dr. D' Souza had examined his genitals on two or three occasions. A.T. fits the "profile" in that he was an adolescent male patient. This begs the question as to how many more adolescent males had their genitals touched by Dr. D'Souza.

Ms. Unver stated that there is no legitimate reason for a psychiatrist to examine his patients' genitals while they are in his office for psychiatric therapy and medication management. She added that, no matter how Dr. D'Souza spins it, no matter what stories he makes up in an attempt to cover himself, he was not practicing within the standard of care when he conducted these examinations.

Ms. Unver concluded by stating that Dr. D'Souza cannot be trusted to practice medicine given the pattern of behavior he has demonstrated in this case, and the public is at risk. For the protection of the public, Dr. D'Souza should have his license to practice medicine in the State of Ohio permanently revoked.

Dr. Varyani asked for a motion in this matter.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF LEO D'SOUZA, M.D. MR. BROWNING SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Madia commented that Dr. D'Souza mentioned that he now uses gloves. That means that he never used gloves while examining patients before. Dr. Madia stated that that concerns him because if he sees several patients a day and he's not washing his hands or using gloves, he could transmit something from one patient to another.

Dr. Varyani asked what reason there is for a psychiatrist to examine genitalia in the first place.

Dr. Steinbergh stated that, after reviewing the case and listening to the various experts, Dr. D'Souza may have had in his training varied experience in medicine. She added that when he started in medical practice, the practice of psychiatry may have been a bit varied. Dr. Steinbergh indicated that she agrees with the concept that the license physicians receive is to practice medicine and surgery in the state. In most cases, physicians practice according to the specialties in which they have more specific training. The training of Dr. D'Souza is in psychiatry.

Dr. Steinbergh stated that she respects the right of a psychiatrist to do a visual genital examination if, in

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fact, he feels that, for psychiatric reasons, he must do this in order to rule out something that would be consistent with the psychiatric findings. Dr. Steinbergh stated that she disagrees with the concept that he ought to do a genital examination to assess sexually transmitted diseases. She stated that nowhere in the record could she find that Dr. D'Souza had any specialty training in that, or that he had any expertise in that area. She added that, certainly, a genital examination without the use of gloves is abhorrent. Dr. Steinbergh stated that she thinks that Dr. D'Souza's practice standards have fallen way behind current standards of medical practice. Dr. Steinbergh stated that she could not disagree with the concept that Dr. D'Souza wants to deal with patients while they're there, but a more appropriate way of handling those patients would be to contact a primary care physician or another specialist and see that the patients gets an appointment with that other physician. If Dr. D'Souza is overly concerned about these other pieces of medical care, as he should be, it would behoove him to make specialty referrals.

Dr. Steinbergh compared the visual examination that she mentioned with an endocrinologist, who might do a breast examination on a patient to see if that patient has a breast discharge. What has to transpire before you do that is a clear explanation to the patient as to why you're doing it so that there is no question that it is a legitimate piece of practice. Dr. Steinbergh stated that she didn't find evidence that Dr. D'Souza did that in his records. There was no evidence that there was that level of communication or understanding by the patient as to why Dr. D'Souza was doing that examination.

Dr. Steinbergh stated that she was also bothered by the fact that Dr. D'Souza prescribed Trileptal to the younger sister of a patient. Dr. Steinbergh stated that it is a big concern that Dr. D'Souza would recommend to a mother that she give this child half a dose of her brother's medication because he's prescribing for the brother and the girl looks pretty much like the brother. Dr. Steinbergh stated that she finds this to be abhorrent, also. He never examined the patient legitimately, he didn't have a physician/patient relationship with the child.

Dr. Steinbergh continued that the fact that Dr. D'Souza sees 150 patients a week is a huge concern of hers in the area of psychiatry, where the time that he spends with a patient is extremely important.

Dr. Steinbergh stated that, that being said, she disagrees with the Proposed Order of permanent revocation in this case. She stated that she doesn't wish to make a motion for an amendment, but she feels that the Board ought to stay the permanent revocation and suspend Dr. D'Souza's license for twelve months. Before he returns to practice he would need two psychiatric evaluations that indicate that he can practice according to acceptable standards, one of which would be a psychiatric evaluation about sexual misconduct to see if there are any signs of that. He would also need to take courses in professional ethics and recordkeeping, be under probation for two years, and submit a supervised practice plan for the Board's approval prior to his return to practice.

Dr. Egner stated that she looks at this case a little differently. She stated that she feels that this is a case of blatant sexual misconduct. She stated that she is amazed at the argument that he was not only practicing psychiatry, but he was practicing good medicine. He violated his patients. He practiced terrible medicine. Dr. Egner stated that some of these patients were minors, there was no consent, and they had no idea why he was doing the physical examinations. Dr. Egner stated that, even if there was a remote possibility that

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there is a medical indication for these physical examinations, he did totally inadequate physical examinations. He didn't do what you would have to do if you're going to check someone for a sexually transmitted disease. You take a culture, you don't just look. Dr. Egner stated that, as far as she's concerned, these were not medical exams at all. Dr. Egner stated that that fact that now Dr. D'Souza puts a pair of gloves on says to her that there is no amount of training or education that this man could have that would change his practice patterns. This is totally unnecessary.

Dr. Egner stated that she doesn't know whether it was appropriate for a psychiatrist to perform these physical examinations when Dr. D'Souza started practicing psychiatry, adding that it was way before her time. Dr. Egner stated that there is no excuse for it today. She added that the fact that Dr. D'Souza would still be doing these exams only confirms for her that a permanent revocation is truly in order. Dr. Egner commented that the fact that Dr. D'Souza would tell a mother to give medicine to the young sister of a patient, knowing that she's not his patient and there has been no evaluation is also blatantly below minimal standards.

Dr. Egner stated that psychiatrists have such special relationships with their patients, and to violate it the way Dr. D'Souza has done, she cannot imagine that the Medical Board would let him back in his office to see patients.

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

KALIOPE E. VARAKIS, M.D.

Dr. Varyani directed the Board's attention to the matter of Kaliope E. Varakis, M.D. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

Dr. Varyani continued that a request to address the Board has been timely filed on behalf of Dr. Varakis. Five minutes would be allowed for that address.

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Dr. Varakis was represented at the meeting by her attorney, Terri-Lynne B. Smiles.

Ms. Smiles stated that Dr. Varakis is still in Greece and won't come to Ohio until she has a license. Ms. Smiles stated that with her is Gregory A. Christoforidis, M.D., of OSU's Department of Radiology, which, depending on the outcome of this meeting, may become Dr. Varakis' employer.

Ms. Smiles stated that this is a pretty straightforward case. It is a licensure application case. There are really just two issues in this case. The first is whether or not Dr. Varakis has training that is equivalent to at least a PGY-2. Ms. Smiles stated that she thinks that the record is very clear in this case. There's a lot of information about the training that Dr. Varakis received in Greece, as well as the training she received at OSU. OSU, in evaluating her training before her fellowship, placed Dr. Varakis at the level of PGY-6.

Ms. Smiles stated that the second issue in this case is whether or not there is good cause to accept her U.S.M.L.E. examination sequence being completed within ten years rather than seven. Dr. Varakis did complete the sequence within ten years. The delay was due to the change in the U.S.M.L.E. requirements. She had to do the second part of the Step 2, which delayed her taking Step 3, as well as the ongoing demands of her education, including the pursuit of her Ph.D.

Ms. Smiles stated that the bottom line is that Dr. Varakis is a highly trained and highly skilled physician, who would be an asset to practice in Ohio. Ms. Smiles at this time read the following statement from Dr. Varakis.

I wish to thank the members of the Ohio Medical Board for their time and attention in considering my application for an Ohio medical license. My family and professional duties in Greece made it difficult for me to be with you today, but I want to assure you that obtaining a medical license in Ohio is very important to me and I do not take this matter lightly.

I have been offered a position at OSU and wish to provide my services there. This is why I'm seeking an Ohio medical license. I understand that my training and education is not typical for an Ohio licensee, and I appreciate the hard work of this Board and staff in carefully reviewing my education background and my training, both in Greece and at the Ohio State University. Although my background does not fit squarely within the rule for licensure, I believe it demonstrates that I'm a very well trained physician and that it is within this Board's purview to grant me a license. I particularly wish to thank Ms. Petrucci, not only for her recommendation to this Board that I be granted a license, but also for her detailed and thoughtful analysis of hours of testimony and many documents demonstrating the level of my training and its equivalence to the A.C.G.M.E. training beyond PGY-2 year. I believe I can be an asset to the practice of medicine, and look forward to serving patients in Ohio. I respectfully ask this Board that you grant me a license.

Dr. Varyani asked whether the Assistant Attorney General wished to respond.

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Ms. Pfeiffer stated that she did not, but she thanked the Board for the opportunity.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF KALIOPE E. VARAKIS, M.D. DR. MADIA SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Stephens asked what Dr. Christoforidis' relationship to Dr. Varakis is. She added that she would like him to say something about Dr. Varakis.

Dr. Christoforidis stated that currently he is a neuroradiologist at Ohio State University. He's currently residency program director. He stated that the department is interested in having a collaborative relationship with Dr. Varakis. At the time she was here, he was a faculty member and he supervised her. He felt that it would be good to work with her. She is an academic radiologist, or at least has an academic inclination. He noted that Dr. Varakis has pursued a Ph.D. and has done many presentations. OSU is interested in working with people with academic interests.

Dr. Stephens asked whether Dr. Varakis has special expertise in some area.

Dr. Christoforidis stated that she has expertise in neuroradiology.

At this time Ms. Pfeiffer stated that she's not sure that this type of questioning is appropriate at this phase of the deliberations. She urged the Board to end the interchange at this point in time.

Ms. Smiles agreed with Ms. Pfeiffer.

Dr. Varyani asked whether there is further discussion.

Dr. Steinbergh stated that she agrees with the Proposed Order, granting Dr. Varakis a license. She stated that the hearing record is supportive of the fact that there is reason to give a good cause exception, and that the 24 month requirement has been satisfied with Dr. Varakis' educational background.

Dr. Varyani asked whether Dr. Varakis has completed 24 months of graduate medical education in the United States.

Dr. Steinbergh stated that she has not, but she feels that the requirement is fulfilled by the amount of training that Dr. Varakis had both in Greece and in the United States. She didn't rise to the 24 months of classic residency training, but that she has done a fellowship at OSU. Because of her training and board certification in Greece, OSU recognized all of the training.

Dr. Varyani asked for a clarification of her U.S. training.

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Ms. Pfeiffer stated that the Findings of Fact indicate that there were 20 months of postgraduate medical training at OSU. The remainder of the training took place at the University of Patras in Greece.

Dr. Steinbergh stated that Dr. Christoforidis has opined that Dr. Varakis' training has fulfilled at least 24 months of equivalent graduate medical education. Dr. Steinbergh stated that when you review Dr. Varakis' certification in Greece and her U.S.M.L.E. steps being appropriate, she meets the standards.

Dr. Varyani stated that, educationally, Dr. Varakis is fine. He added that the basic stumbling block for her is the 24 months of postgraduate training in the United States. That's one of the basic requirements for which the Board looks. He noted that Dr. Varakis has only 20 months of U.S. training, but he added that he might be willing to accept that since Ohio does need more radiologists.

Ms. Pfeiffer stated that Dr. Varakis needs 24 months of U.S. training "or its equivalent." Dr. Varakis is suggesting that her 20 months of U.S. training and her other experience brings her to the equivalent of 24 months.

Dr. Steinbergh stated that equivalency is determined by the Board's interpretation of the educational background. OSU opined that she met the level of PGY-6 training.

Dr. Stephens stated that, as far as a shortage of radiologists in Ohio, a lot of radiology, particularly neuroradiology, is done by computer. Everything is transmitted from state to state.

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

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| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - nay |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - nay |

The motion carried.

NICO CAPURRO, M.D.

Dr. Varyani directed the Board's attention to the matter of Nico Capurro, M.D. He advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation and were previously distributed

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to Board members.

Dr. Varyani continued that a request to address the Board has been timely filed on behalf of Dr. Capurro. Five minutes would be allowed for that address.

At this time, Dr. Varyani asked whether Dr. Capurro was aware that his attorney, on his behalf, had waived the ten-day time period for filing objections to the Hearing Examiner's Report and Recommendation, and whether he has any objection to the Board considering his case at this time.

Dr. Capurro stated that he has no objection to the Board considering his case at this time.

Dr. Capurro was accompanied by his attorney, Elizabeth Y. Collis. Ms. Collis at this time thanked the Board, Ms. Davidson and Ms. Pfeiffer for granting her request to expedite consideration of this matter. She stated that she has filed her objections to the Report and Recommendation, which she believes have been reviewed. She stated that Dr. Capurro has prepared a statement, but he is uncomfortable, stressed and under a lot of anxiety and he would like her to read his statement. Ms. Collis read the following statement into the record:

Members of the Board, my name is Dr. Nico Capurro. I've practiced medicine in the State of Ohio for nearly 50 years, without incident. For over 40 years I was a surgeon at the Clermont County Hospital, which later was Clermont Mercy Hospital. I was the Clermont County Coroner, and I was on the teaching staff at Good Samaritan Hospital. I have also worked as a track physician at River Downs Racetrack in Cincinnati since 1961. While I retired from a full-time practice of medicine and surgery over ten years ago, I continue to work each summer as the physician at the racetrack.

I am here today after pleading guilty to one felony count of monetary structuring. In 2001 I deposited \$9,000 of my own cash into two different bank accounts, and then I had banks issue to me cashier's checks for \$9,000 each, which I deposited into my retirement account. As many people of my generation, I have always been more comfortable dealing with cash. I've regularly kept large amounts of cash and savings in my home, and I would always try to pay my bills with cash. Often, when I had larger bills to pay, or when facilities would not accept cash, I would go to the bank, I would obtain a cashier's check, and I would pay my bills or purchase things with a cashier's check. At the hearing, I said that I used the two checks for \$9,000 to buy a boat. I did buy a boat, but in hindsight, I did not use those particular checks that were the basis of the conviction to buy a boat. I put that money into my retirement account. I understand now that it is a crime to deposit money into the bank in cash amounts just under \$10,000. At the time I never intended to break the law, and I did not realize at the time that I was breaking the law.

I have suffered a great deal from this mistake, though. Government agents went into my house and confiscated all the cash in my home, which totaled more than \$80,000. They

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took my boat, one of my cars, and most of my savings in my bank accounts. After 40 years of medical practice, I have been ruined financially over this incident. This has also taken a huge toll on my family. When other physicians my age have retired and moved their families to Florida, I am still required to work off to pay my debt and to survive financially.

I understand that, based on the fact that I have a felony conviction, that this Board can take action against my medical license; and I respectfully ask that this Board issue a suspension that will allow me to work in my current job at the racetrack. This job does not require a great deal of medical expertise, but it is a position which I have held for many, many years. I am well liked and trusted in this position, and it allows me to make a modest income to support myself and my wife.

I ask at the end of this otherwise unblemished medical career that this Board allow me to continue to keep my medical license to work at River Downs and to retire with my license and my dignity.

Ms. Collis stated that she has recommended what she thinks is an appropriation sanction in this case, which is a one-year suspension of his license. She asked that, during that suspension time, Dr. Capurro be only permitted to work at the racetrack during the summer months. It is a summer job that only goes from about May to September. Ms. Collis added that if Dr. Capurro is not allowed to go back to practice at this time, he will be terminated, and that this job is his only source of income.

Dr. Varyani asked whether the Assistant Attorney General wished to respond.

Ms. Pfeiffer stated that she wants to focus mostly on what she thinks are the aggravating factors of this case, and she also wants to correct what she thinks is a misstatement from Dr. Capurro's statement. It's not a crime to deposit sums of money under \$10,000. It's a criminal offense to do that if you're doing it for the purpose of evading the bank's requirement to report transactions over \$10,000 to the Internal Revenue Service (IRS). That's determined by a pattern.

Ms. Pfeiffer continued that, with respect to the aggravating factors in the case, the first one is Dr. Capurro's reluctance to acknowledge the wrongfulness of his behavior. He refers to his felony federal conviction as "a little mistake." It's not a little mistake when you go into federal court and plea guilty to a federal criminal offense. Ms. Pfeiffer advised that the particular charge in the count to which Dr. Capurro pled guilty related to the two \$9,000 checks. She referred the Board to State's Exhibit 4, which was an agreed statement of fact that was presented to the court and signed by Dr. Capurro and his defense counsel. Ms. Pfeiffer stated that there are numerous cash transactions listed in that document totaling \$88,000. Most of those transactions ultimately ended with the cash going into investment accounts for Dr. Capurro and his wife, not for daily living expenses or particularly large bills. Ms. Pfeiffer stated that there was one exception, and that was Dr. Capurro's down payment for a Lexus.

Ms. Pfeiffer stated that, with respect to Dr. Capurro's integrity and truthfulness in the hearing process, she

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asked him specifically whether he would agree with her that the source of the cash for a large portion of the cash transactions noted was from his work at the pain clinic. Ms. Pfeiffer read the following excerpts from the hearing transcript of her cross-examination of Dr. Capurro:

Q. Would you agree with me that a large portion of these cash transactions that are noted here, the source of that cash was from your work at the pain clinics in the years 2001 –

A. No, ma'am.

* * *

Q. Is it your testimony today under oath –

A. Yes.

Q. -- that a large portion of the proceeds that are reflected in State's Exhibit 4 were not from your work at the pain clinics in 2001 –

A. My answer is –

Q. -- and 2002?

A. -- a little portion. Some of the money was, yes.

Ms. Pfeiffer stated that when you read the statement of fact that Dr. Capurro signed, that his defense attorney signed, and that was filed with the federal court, he stated that the cash proceeds received from the pain clinics far exceeded the cash proceeds received from the racetrack.

Ms. Pfeiffer stated that there is one last area in the transcript upon which she wants to focus the Board's attention in terms of an aggravating factor, and that is what she would consider Dr. Capurro's reluctance to cooperate fully in the disciplinary process. Dr. Capurro stated that someone told him that if he made a deposit over \$10,000, he would have to fill out a lot of paperwork. Ms. Pfeiffer read this portion of her cross-examination of Dr. Capurro into the record:

Q. Okay. Who told you that if you made a deposit over \$10,000 that you would have to fill out lots of paperwork?

A. It was a friend of mine, which I don't think I should -- You know, that's....

Q. Who is the friend who told you that?

A. He's a friend of mine.

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Q. I'd like to know who that friend is, Dr. Capurro.

A. I'm not going to tell you.

Ms. Pfeiffer stated that when she asked him again to answer the question, his answer was:

A. No. I will not tell you. I can tell you, but I will not tell you. You know, there are 20 people that I spoke to about this.

Ms. Pfeiffer stated that when she asked Dr. Capurro why he was refusing to disclose the name of the person, his answer was:

A. Because he has nothing whatever to do with your case. He's not a doctor. I'm not going to tell you. He's one of my friends. The various people that I say they had done this, you want a list so you can give it to the IRS.

Ms. Pfeiffer stated that she believes that that shows Dr. Capurro's reluctance to cooperate fully with this Board. He was not quite honest with the Board in his testimony, and she thinks that those are aggravating factors that the Board can take into account in structuring its sanction if it so chooses in this case.

Dr. Varyani asked for a motion from the Board.

DR. MADIA MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF NICO CAPURRO, M.D. DR. STEINBERGH SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Mr. Browning stated that he has a question for the Attorney General's office. He asked whether the violation was an attempt to avoid taxes. What's the fundamental problem in structuring the financing in the way that Dr. Capurro did? Are you convicted of this because you are trying to avoid taxation?

Ms. Pfeiffer stated that she doesn't think that you can leap to that conclusion.

Mr. Browning asked what the felony conviction is.

Ms. Pfeiffer stated that the felony conviction is structuring transactions. That means that you are structuring transactions with the bank so that the bank doesn't have to report to the IRS that you deposited \$10,000 or more in a single transaction.

Ms. Collis interrupted, stating that if you read the statute, it only says that you are structuring money in such a way that the financial institution does not have to meet reporting requirements. Nowhere in the

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statute does it say anything about the IRS. It does talk about the requirements of financial institutions, but she thinks that it is an assumption to say that they are reporting to the IRS. She stated that what that is is not known.

Dr. Varyani stated that, as far as his knowledge goes, the only reason the \$10,000 came up was money laundering, and the IRS was secondary. The reason the banks are required to tell the government, usually the IRS, was for identifying possible money laundering that was going on. After September 11, 2001, more of it was going on and there was more attention paid to that because of laundering money to the terrorists.

Dr. Egner stated that she would like to talk a little about Ms. Collis' alternative proposal. She stated that she doesn't think that the Board can suspend someone's license for a year and then allow him to practice at a racetrack.

Dr. Egner added that she has really mixed feelings about this case. If the Board is going to let him practice at the racetrack, the Board ought to reprimand him. That's a far cry from the proposed permanent revocation. Dr. Egner stated that when she's so off the mark from what the Hearing Examiner has recommended, she's concerned that she's not getting it. Dr. Egner stated that she would like to hear from other Board members and what their thoughts are. She indicated that she was going to abstain on this case originally, because when she read it she wasn't really that invested in this case, and she didn't get it. Now, after listening to all of this, she's still not sure that she does, and she added that she thinks that a reprimand might be in order. Dr. Egner stated that she's very hesitant to go against the hearing examiner so much.

Dr. Steinbergh stated that she understands about not getting this case, but she doesn't think that the Board can suspend Dr. Capurro's license and then let him practice at the racetrack during the suspension. She stated that when a physician passes almost 50 years of service to patients in the state of Ohio, he or she should be commended for doing that. Dr. Steinbergh stated that there is no evidence in the record that his service was anything but exemplary service to the state of Ohio.

Dr. Steinbergh noted that Dr. Capurro has retired his surgical practice and is limiting his practice at this point to being a track physician at River Downs racetrack. She stated that she would tend to think that at this stage in his life, this is a wonderful thing for him, and she is not opposed to his doing that. Dr. Steinbergh stated that the Board doesn't know whether or not Dr. Capurro was an unknowing victim of bad advice, but Dr. Capurro was convicted.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER BY SUBSTITUTING AN ALTERNATIVE ORDER THAT WOULD SUSPEND DR. CAPURRO'S LICENSE FOR ONE YEAR, STAY THE SUSPENSION, AND PERMANENTLY RESTRICT DR. CAPURRO TO PRACTICING AS A TRACK PHYSICIAN AT RIVER DOWNS RACETRACK IN CINCINNATI, OHIO.

Dr. Steinbergh stated that the only other option, in her mind, is to simply retire Dr. Capurro's license. If Dr. Capurro chooses to retire his license at this stage of his career, that would be quite acceptable. If he

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wants to continue to practice, she would permanently restrict his license. She added that she supports the Hearing Examiner's Report, she simply doesn't support the recommendation of permanent revocation. Dr Steinbergh noted that Dr. Capurro was convicted of a felony, but she doesn't think that at this stage in his career there is any harm to the public.

MR. BROWNING SECONDED DR. STEINBERGH'S MOTION TO AMEND. A vote was taken:

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|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - abstain |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - nay |

The motion carried.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF NICO CAPURRO, M.D. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - nay |

The motion carried.

Dr. Varyani explained his position, stating that he thinks that any physician who serves the population of Ohio should be commended, and he does commend Dr. Capurro for that. He stated that he knows that Dr. Capurro's been charged and proven guilty of a felony. Dr. Varyani stated that the crime was monetary in nature. At this time he would like to commend Dr. Capurro's service, and he would have liked the Board

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to just reprimand Dr. Capurro. He doesn't want a stayed suspension or anything because then he's really not commending Dr. Capurro's service. He would have reprimanded Dr. Capurro and restricted his practice to River Downs. He stated that he just wished to state this, and that he's not moving to amend anything.

Ms. Pfeiffer noted that when the Board issued its notice of opportunity for hearing, it included an immediate suspension, which is still in place. She stated that the Board needs to address Ms. Collis' motion to lift the immediate suspension.

DR. STEINBERGH MOVED TO LIFT THE IMMEDIATE SUSPENSION PLACED ON DR. CAPURRO'S LICENSE ON APRIL 9, 2008. DR. MADIA SECONDED THE MOTION. A vote was taken:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

GERALD BRIAN APPLGATE, M.D. – REMAND

Dr. Varyani directed the Board's attention to the matter of Gerald Brian Applegate, M.D. He advised that Sharon W. Murphy was the Hearing Examiner in this case. This matter was initially considered by the Board at its meeting of June 14, 2006. Dr. Applegate appealed the Board's order. The 10th District Court of Appeals affirmed in part and reversed in part the judgment of the Franklin County Court of Common Pleas, which had upheld the Board's June 14, 2006 Order, and ordered that the matter be remanded to the Board to determine the appropriate sanction.

Dr. Varyani asked whether there is a motion for reconsideration in this matter.

DR. STEINBERGH MOVED TO RECONSIDER THE MATTER OF GERALD BRIAN APPLGATE, M.D. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |

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|----------------|-----------|
| Dr. Talmage | - abstain |
| Dr. Suppan | - abstain |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

Dr. Steinbergh stated that the Court has directed the Board to not consider Finding of Fact # 2, which found that Dr. Applegate falsified his 1996 renewal application. The Board can still consider the other Findings of Fact that in August 1993 Dr. Applegate did submit to the Board an application for licensure, and that, in completing the application, he falsely denied having ever been a defendant in a legal action involving professional liability or having had a professional liability claim paid on his behalf. Dr. Steinbergh stated that, in fact, on January 31, 1991, he'd been named as the sole defendant in the malpractice action in the Court of Common Pleas in Butler County, Pennsylvania. Subsequently that action was settled on Dr. Applegate's behalf with a total payout of \$598,735. That is part of this Board's consideration.

Dr. Steinbergh continued that on February 24, 2004, the State of Pennsylvania issued a 90-day stayed suspension of Dr. Applegate's Pennsylvania medical license and levied a penalty of \$5,000, based upon admissions to the following: "he had prescribed controlled substances for his wife on eighty-six different occasions from July 7, 1999, to July 20, 2001; those prescriptions had been filled at eight different pharmacies; and Dr. Applegate had failed to maintain medical records pertaining to the prescriptions he issued for his wife."

Dr. Steinbergh referred to Finding of Fact # 4, which states:

On October 25, 2004, the New York State Board for Professional Medical Conduct [New York Board] entered a Consent Agreement and Order based on the action of the Pennsylvania Board. In its Consent Agreement and Order, the New York Board issued a stayed ninety-day suspension of Dr. Applegate's New York medical license and permanently restricted him from prescribing controlled substances for himself and family members.

Dr. Steinbergh stated that she's considered all of these things in crafting her Proposed Order.

DR. STEINBERGH MOVED TO ENTER THE FOLLOWING ORDER IN THE MATTER OF GERALD BRIAN APPLGATE, M.D.:

It is hereby ORDERED that:

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- A. **SUSPENSION OF CERTIFICATE:** The certificate of Gerald Brian Applegate, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for one year from the effective date of the June 14, 2006, Order, which suspension has already been served.
- B. **PROBATIONARY CONDITIONS:** Upon reinstatement, which took effect on June 17, 2007 pursuant to the terms of the June 14, 2006, Order, Dr. Applegate's certificate shall be subject to the following PROBATIONARY terms, conditions and limitations for a period of at least one year:
1. **Obey the Law:** Dr. Applegate shall obey all federal, state, and local laws. Moreover, he shall obey all rules governing the practice of medicine and surgery in the state in which he is practicing.
 2. **Quarterly Declarations:** Dr. Applegate shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Applegate shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Personal/Professional Ethics Course:** Before the end of probation, or as otherwise approved by the Board, Dr. Applegate shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are

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| Dr. Talmage | - abstain |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

PATRICIA ANNETTE FOWLER, M.T. – PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani directed the Board's attention to the matter of Patricia Annette Fowler, M.T. He advised that by letter of February 13, 2008, the Board notified Ms. Fowler that it proposed to deny her application for a certificate to practice massage therapy in the State of Ohio based on allegations contained in the letter. The notice was mailed to Ms. Fowler's address of record and proper service was documented. No hearing request has been received from Ms. Fowler, and more than thirty days have elapsed since the mailing of the notice. The matter was reviewed by Hearing Examiner Davidson, who prepared a Proposed Findings and Proposed Order, and is now before the Board for final disposition.

DR. STEINBERGH MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS AS SET FORTH IN THE FEBRUARY 13, 2008 NOTICE OF OPPORTUNITY FOR HEARING IN THE MATTER OF PATRICIA ANNETTE FOWLER, M.T., AND TO ADOPT THE PROPOSED FINDINGS AND PROPOSED ORDER. MR. BROWNING SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in the above matter.

Dr. Steinbergh stated that Ms. Fowler is a massage therapist who has been convicted of a misdemeanor involving moral turpitude. Dr. Steinbergh stated that she agrees with the Proposed Order of permanent revocation.

A vote was taken:

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|------------|--------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |

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| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

FINDINGS, ORDERS AND JOURNAL ENTRIES

SUSAN R. BOYD-LAWHORN, M.D.

Dr. Varyani advised that the Board issued its Notice of Opportunity for Hearing to Dr. Boyd-Lawhorn on March 20, 2008, and documentation of service was received. Dr. Boyd-Lawhorn did not request a hearing and more than 30 days have elapsed since the mailing of the notice. The matter is therefore before the Board for final disposition.

DR. STEINBERGH MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE MARCH 20, 2008 NOTICE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING DR. BOYD-LAWHORN'S REQUEST FOR ENDORSEMENT LICENSURE, SUBJECT TO HER PASSING THE SPEX OR BOARD RECERTIFICATION EXAMINATION WITHIN SIX MONTHS OF MARCH 20, 2008. MR. BROWNING SECONDED THE MOTION. A vote was taken:

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|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

NANCY ROSE DUKE, M.T.

Dr. Varyani noted that, by letter of September 12, 2007, the Board issued a Notice of Opportunity for Hearing to Nancy Rose Duke, M.T., based upon allegations contained in the letter. The Notice was mailed via certified mail, return receipt requested, to Ms. Duke's address of record. Attempts to perfect delivery

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were not successful, and a legal notice was published in the *Hawaii Tribune Herald* on February 22, February 29 and March 7, 2008. A copy of the proof of publication was mailed to Ms. Duke on March 18, 2008, along with a letter advising Ms. Duke that service was deemed completed on March 7, 2008. Ms. Duke did not request a hearing, and more than 30 days have elapsed since the final date of publication. The matter is therefore before the Board for final disposition.

DR. EGNER MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE SEPTEMBER 12, 2007 NOTICE, AND TO ENTER THE PROPOSED ORDER, EFFECTIVE IMMEDIATELY. DR. STEINBERGH SECONDED THE MOTION.

Dr. Steinbergh stated that the Board has concerns about Ms. Duke's ability to practice, due to chemical dependency. The Proposed Order indefinitely suspends Ms. Duke's license to practice, and sets conditions she must meet for reinstatement of her license.

A vote was taken on Dr. Egner's motion:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

JULIE C. KRONENBERGER, M.T.

Dr. Varyani advised that the Board issued its Notice of Opportunity for Hearing to Ms. Kronenberger on March 20, 2008, and documentation of service was received. Ms. Kronenberger did not request a hearing and more than 30 days have elapsed since the mailing of the notice. The matter is therefore before the Board for final disposition.

MR. HAIRSTON MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE MARCH 20, 2008 NOTICE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING MS. KRONENBERGER'S REQUEST FOR RESTORATION OF HER CERTIFICATE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE

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LIMITED BRANCH PORTION OF THE BOARD'S MASSAGE THERAPY EXAMINATION WITHIN SIX MONTHS OF MARCH 20, 2008. DR. MADIA SECONDED THE MOTION.

Dr. Steinbergh stated that Ms. Kronenberger allowed her license to practice massage therapy to lapse, and she has not practiced for more than two years.

A vote was taken:

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|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

ROBERT M. MOORE, M.T.

Dr. Varyani noted that, by letter of March 12, 2008, the Board issued a Notice of Opportunity for Hearing to Mr. Moore, based upon allegations contained in the letter. The Notice was mailed via certified mail, return receipt requested, to Mr. Moore's address of record, and documentation of service was received. No hearing request has been received from Mr. Moore and more than thirty days have elapsed since the mailing of that notice. The matter was before the Board for final disposition.

DR. STEINBERGH MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE MARCH 12, 2008 NOTICE, AND TO ENTER THE PROPOSED ORDER, EFFECTIVE IMMEDIATELY. DR. MADIA SECONDED THE MOTION. A vote was taken:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |

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Dr. Stephens - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

ROBERT NELSON ROBISON, M.D.

Dr. Varyani advised that the Board issued its Notice of Opportunity for Hearing to Dr. Robison on December 20, 2007, and documentation of service was received. Dr. Robison did request a hearing, but that request was withdrawn on April 24, 2008. The matter is therefore before the Board for final disposition.

DR. MADIA MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE DECEMBER 20, 2007 NOTICE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING DR. ROBISON'S REQUEST FOR ENDORSEMENT LICENSURE, SUBJECT TO HIS PASSING THE SPEX OR BOARD RECERTIFICATION EXAMINATION WITHIN SIX MONTHS OF DECEMBER 20, 2007. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Mr. Albert - aye
Dr. Egner - aye
Dr. Talmage - aye
Dr. Suppan - aye
Dr. Madia - aye
Mr. Browning - aye
Mr. Hairston - aye
Dr. Amato - aye
Dr. Stephens - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

FATIMA ESLAMI-VARZANEH, M.D.

Dr. Varyani noted that, by letter of March 20, 2008, the Board issued a Notice of Opportunity for Hearing to Dr. Eslami-Varzaneh, based upon allegations contained in the letter. The Notice was mailed via certified mail, return receipt requested, to Dr. Eslami-Varzaneh's address of record, and documentation of service was received. No hearing request has been received from Dr. Eslami-Varzaneh and more than thirty days have elapsed since the mailing of that notice. The matter was before the Board for final disposition.

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MR. ALBERT MOVED TO FIND THAT THERE IS RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED IN THE MARCH 20, 2008 NOTICE, AND TO ENTER AN ORDER, DENYING DR. ESLAMI-VARZANEH'S APPLICATION FOR ENDORSEMENT LICENSURE. MR. BROWNING SECONDED THE MOTION.

Dr. Steinbergh explained that Dr. Eslami-Varzaneh did not complete an appropriate exam sequence for licensure.

A vote was taken on Mr. Albert's motion:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

CITATIONS, PROPOSED DENIALS, AND ORDERS OF IMMEDIATE OR SUMMARY SUSPENSION

GLENN ALDEN BOLLARD, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. BOLLARD. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|--------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |

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| | |
|----------------|-------|
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

ANDREW JOHN CASTELLANOS, M.D. – LETTER OF PROPOSED DENIAL

At this time the Board read and considered the letter of proposed denial in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO SEND THE LETTER OF PROPOSED DENIAL TO DR. CASTELLANOS. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

JEFFREY C. CHEN, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. MADIA MOVED TO SEND THE CITATION LETTER TO DR. CHEN. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|--------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |

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| | |
|----------------|-------|
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

GREGORY S. DEW, P.A. - NOTICE OF AUTOMATIC SUSPENSION AND OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Notice Of Automatic Suspension And Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. MADIA MOVED TO SEND THE NOTICE OF AUTOMATIC SUSPENSION AND OPPORTUNITY FOR HEARING TO MR. DEW. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

DAVID CARL ERNST, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. ERNST. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|-------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |

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| | |
|----------------|-------|
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

DAVID L. GREENE, M.D. – LETTER OF PROPOSED DENIAL

At this time the Board read and considered the letter of proposed denial in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO SEND THE LETTER OF PROPOSED DENIAL TO DR. GREENE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

JOHN A. HALPIN, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. MADIA MOVED TO SEND THE CITATION LETTER TO DR. HALPIN. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |

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| | |
|----------------|-----------|
| Dr. Talmage | - abstain |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

WILLIAM BALINT KEREK, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. MADIA MOVED TO SEND THE CITATION LETTER TO DR. KEREK. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

COMPLAINT NO. 080626A – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. MADIA MOVED TO SEND THE CITATION LETTER. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
|------------|------------|-----------|

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| | |
|----------------|-----------|
| Dr. Egner | - aye |
| Dr. Talmage | - abstain |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - nay |

The motion carried.

Dr. Steinbergh stated that she disagrees with sending this citation letter. She noted that this is a question of citing this individual for being short one C.M.E. hour. The licensee is one hour short in his C.M.E. requirement.

Mr. Hairston commented that this physician also made a misleading statement.

Dr. Egner stated that she also has a question. She stated that the Board enters into pre-citation and post-citation consent agreements. She asked whether she can assume that this physician knows that he or she is an hour short and had the opportunity to work something out, and would have had a pre-cite consent agreement.

Dr. Steinbergh stated that she didn't think that she could make that assumption.

Ms. Marshall stated that she doesn't think that the Board can make that assumption. She stated that the Secretary and Supervising Member are the drivers of whether or not something is issued. She added that C.M.E. is pretty much a bright line. You either have the hours you need or you don't. She added that the physician can negotiate an agreement post citation. That's an option.

DR. STEINBERGH MOVED TO RECONSIDER THE VOTE IN THIS MATTER. DR. AMATO SECONDED THE MOTION.

Dr. Varyani stated that he would now entertain discussion in this matter.

Dr. Stephens stated that if the Board can forgive one hour, why can't it forgive two hours; and if it forgives two hours, why can't it forgive ten hours. Why have standards at all?

Dr. Steinbergh stated that she doesn't know whether there has been appropriate discussion about how to make up this one credit. In most instances, the Board doesn't see a case like this, where there's only been one credit lacking. She stated that she doesn't know that this is the appropriate place to have a discussion about where one draws the line.

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Ms. Pfeiffer reminded the Board at this stage that it does have the option to go into executive session to discuss investigative cases.

Dr. Steinbergh suggested tabling discussion on this case and go into executive session.

Dr. Varyani stated that he has a problem with this discussion. The motion to send the citation letter passed. He stated that he doesn't want to table this and wait another month or so until the Board comes up with what is acceptable to the Board. He commented that the worst this person will receive is a fine.

A vote was taken on Dr. Steinbergh's motion to reconsider the vote in this matter:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - nay |
| | Mr. Browning | - aye |
| | Mr. Hairston | - nay |
| | Dr. Amato | - aye |
| | Dr. Stephens | - nay |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - nay |

The motion carried.

A vote on Dr. Madia's motion to send the citation letter was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - nay |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - nay |
| | Dr. Madia | - aye |
| | Mr. Browning | - nay |
| | Mr. Hairston | - aye |
| | Dr. Amato | - nay |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - nay |
| | Dr. Varyani | - aye |

The motion failed.

Dr. Madia stated that this vote establishes the fact that if you're an hour short on your C.M.E. requirement, that's okay.

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Dr. Egner stated that it only means in this case.

Mr. Hairston stated there will be other cases.

Dr. Egner stated that there are other things the Board can do in this case besides send the citation letter.

Dr. Steinbergh stated that there will be further discussions at the level of the Secretary and Supervising Member concerning this physician's C.M.E. and, perhaps, this will stimulate an agreement between this doctor and the Medical Board in regards to his C.M.E..

Dr. Talmage suggested stated that the Board look at the maximum and minimum penalties.

Dr. Varyani stated that the Board just set a precedent that if you have 39 C.M.E hours, you're okay.

Dr. Steinbergh disagreed. She stated that she's simply saying that she doesn't see the purpose of citing the physician for this.

FRANK MURRAY STRASEK, D.P.M. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. STRASEK.
MR. HAIRSTON SECONDED THE MOTION.** A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

JENNIFER MARIE TUCKER – LETTER OF PROPOSED DENIAL

At this time the Board read and considered the letter of proposed denial in the above matter, a copy of

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which shall be maintained in the exhibits section of this Journal.

**DR. VARYANI MOVED TO SEND THE LETTER OF PROPOSED DENIAL TO MS. TUCKER.
DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

DAVID ANTONIO VELASQUEZ, M.D. – CITATION LETTER

At this time the Board read and considered the proposed citation letter in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

**DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO DR. VELASQUEZ.
MR. BROWNING SECONDED THE MOTION.** A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

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BELKIS YUCE, M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF BELKIS YUCE, M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

EXECUTIVE SESSION

MR. HAIRSTON MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONSIDER THE COMPENSATION OF A PUBLIC EMPLOYEE. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

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Dr. Varyani - aye

The motion carried.

Pursuant to Sections 121.22(G)(1), Revised Code, the Board went into executive session.

The Board came out of executive session, with Dr. Talmage absent.

RATIFICATION OF SETTLEMENT AGREEMENTS

Board members were provided with copies of settlement agreements negotiated by Board staff and/or the staff of the Office of the Attorney General, as authorized by the Board's Secretary and Supervising Member, and as appropriate, the Board President, as well as copies of summaries of the agreements. The names and license numbers of the licensee or applicant subjects of such settlement agreements were removed from the documents.

ANDREAS HERBERT SZOKOLOCZY-SYLLABA, D.O. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SZOKOLOCZY-SYLLABA. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

ASIM R. SINGH, M.D. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

DR. MADIA MOVED TO RATIFY THE PROPOSED PERMANENT SURRENDER OF DR. SINGH'S LICENSE TO PRACTICE MEDICINE AND SURGERY. DR. STEINBERGH SECONDED THE MOTION.

Dr. Steinbergh asked for an approximate age for Dr. Singh.

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Ms. Pokorny stated that she believes Dr. Singh is in his 40s.

A vote was taken on Dr. Madia's motion:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

JAMES SORGER, M.D. – PERMANENT WITHDRAWAL OF APPLICATION

DR. STEINBERGH MOVED TO RATIFY THE PERMANENT WITHDRAWAL OF DR. SORGER'S APPLICATION TO PRACTICE MEDICINE AND SURGERY IN OHIO. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

ROSS PUTMAN TURNER, D.O. – STEP II CONSENT AGREEMENT

MR. BROWNING MOVED TO RATIFY THE PROPOSED STEP II CONSENT AGREEMENT WITH DR. TURNER. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |

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| | |
|----------------|-------|
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

Dr. Steinbergh asked for clarification of Dr. Turner's licensure status.

Ms. McNair advised that Dr. Turner held a training certificate at the time he entered into his Step I Consent Agreement. The Step II before the Board today will grant him a full license under probationary terms.

Dr. Steinbergh noted that Dr. Turner was criminally indicted in the Court of Common Pleas in March 2007, related to felonious conduct. She asked whether he was granted treatment in lieu of conviction.

Dr. Steinbergh also referred to paragraph 6 of the agreed conditions, which states, "(f)or the purposes of facilitating Dr. Turner's forthcoming practice of anesthesiology, Dr. Turner shall be permitted to possess controlled substances during work periods at a hospital facility...." Dr. Steinbergh stated that she doesn't see evidence that Dr. Turner has completed a residency training in anesthesiology.

Ms. McNair stated that the Step I agreement contains information about Dr. Turner's residency.

Ms. Marshall stated that Dr. Turner was completing a residency at OSU at the time he entered into a Step I. He's now returning with a full license.

Dr. Steinbergh asked whether he is returning to complete his residency.

Ms. Marshall stated that she believes that that is correct.

HARRY BACCUS, III, M.T. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE
MESSAGE THERAPY

**DR. MADIA MOVED TO RATIFY THE PROPOSED PERMANENT SURRENDER /
REVOCATION OF MR. BACCUS' LICENSE TO PRACTICE MESSAGE THERAPY. MR
HAIRSTON SECONDED THE MOTION.** A vote was taken:

| | | |
|------------|------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Suppan | - aye |

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| | |
|----------------|-------|
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

CHRISTINA MARIE BROWN, M.T. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MASSAGE THERAPY

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED PERMANENT SURRENDER OF MS. BROWN'S LICENSE TO PRACTICE MASSAGE THERAPY. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Dr. Talmage returned to the meeting at this time.

TODD S. CARRAN, M.D. – STEP II CONSENT AGREEMENT

DR. MADIA MOVED TO RATIFY THE PROPOSED STEP II CONSENT AGREEMENT WITH DR. CARRAN. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|------------|-------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |

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| | |
|----------------|-------|
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

IRAJ DERAKHSHAN, M.D. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. DERAKHSHAN. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

BRIAN EDWARD LEVE, M.D. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. LEVE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

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Dr. Varyani - aye

The motion carried.

NANCY JAYNE LISCH, M.D. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. LISCH. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

ZEV R. MAYCON, M.D. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. MAYCON. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Dr. Steinbergh commented that she thought that this was a particularly well crafted consent agreement

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because, even though it's dealing with sexual impropriety, she feels that Dr. Maycon's bad judgment was secondary to his impairment. In terms of public protection, she thinks that the consent agreement is well in line.

IMRAN RAZA NAQVI, M.D. – STEP II CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP II CONSENT AGREEMENT WITH DR. NAQVI. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

NIKESH KIRIT PATEL, M.D. – WITHDRAWAL OF APPLICATION

DR. STEINBERGH MOVED TO RATIFY THE WITHDRAWAL OF DR. PATEL'S APPLICATION TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

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WILLIAM JAMES PLATT, D.O. – STEP II CONSENT AGREEMENT

DR. MADIA MOVED TO RATIFY THE PROPOSED STEP II CONSENT AGREEMENT WITH DR. PLATT. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

PAUL DANIEL REIKOWSKI, JR., L.M.T. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH MR. REIKOWSKI. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

JON BERKELEY SILK, JR. M.D. – CONSENT AGREEMENT

DR. MADIA MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. SILK. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

PROBATIONARY APPEARANCES

JEFFREY A. BRIGGS, M.D.

Dr. Briggs appeared before the Board pursuant to his request for release from the terms of his May 14, 2003 Step II Consent Agreement.

In response to Board members' questions, Dr. Briggs stated that he is doing very well. He's active in his recovery community and spends a lot of time sponsoring young men in the fellowship. He does a lot of service work and volunteering. Dr. Briggs stated that about a year ago he stopped practicing OB/GYN and, basically, he has been on sabbatical for the past year and a half. Dr. Briggs stated that he's considering going back and doing some retraining, possibly a psychiatric residency. He stated that his life is good and that he's in a solid recovery. Dr. Briggs expressed his gratitude to Ms. Bickers and all the people who have helped him over the past five and a half years.

In response to questions about his family situation, Dr. Briggs advised that it is fine. He's divorced now with two children, ages 16 and 14. He and his wife have joint custody of the children. He stated that he and his ex-wife get along very well, and he feels that they're doing a good job in raising their children.

DR. MADIA MOVED TO RELEASE DR. BRIGGS FROM THE TERMS OF HIS MAY 14, 2003 STEP II CONSENT AGREEMENT. DR. VARYANI SECONDED THE MOTION. A vote was taken:

| | | |
|------------|--------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |

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| | |
|----------------|-----------|
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - abstain |
| Dr. Varyani | - aye |

The motion carried.

ROBERT L. BRANDT, JR., M.D.

Dr. Brandt made his initial appearance before the Board, pursuant to the terms of his February 13, 2008 Step II Consent Agreement.

In response to Board members' questions, Dr. Brandt stated that he is doing well. He is in a family practice. He was board-certified in addiction medicine in 1987, but he quit that particular portion of his practice in 1994. He's an HIV/AIDS subspecialist.

Dr. Steinbergh asked Dr. Brandt to tell the Board a little bit about training as an addiction medicine specialist. She asked how he dealt with that and his own addiction issues.

Dr. Brandt stated that the only insight he has is that alcoholism/drug addiction is a disease process. It discriminates against no one and it sneaks up on you. It's a disease of denial. Dr. Brandt stated that the interesting thing is that when he was doing that kind of work, he was primarily involved with detox and with medical management of problems on the inpatient unit. He never really got involved with what happened afterwards, the rehab part. He stated that, had he been more involved with that, he may not have been in the position he is or was. He commented that during the past two and a half years he's learned what it really means to be in a 12-step program and drug recovery. He stated that during his years of training in addiction medicine he used alcohol, but not in a way that he thought was uncontrolled.

Dr. Steinbergh asked what Dr. Brandt is teaching at Wright State University. Dr. Brandt responded that he's not currently teaching. He stated that he's just doing volunteer work at this point. He's not working.

Dr. Varyani asked Dr. Brandt whether there is anything he would like to share with the medical students in the room.

Dr. Brandt stated that, just because you're a physician doesn't make you immune to anything. He stated that physicians shouldn't treat themselves. They shouldn't think that just because they have knowledge of the physiological process and all that, that it's something they can deal with on their own. If you think that way and continue down that road, it will catch up with you. He stated that it will not only catch up with you legally, ethically or anything like that, but it will get you physically. It's a disease process, it's a progressive disease, and it's something that can kill you. He cautioned them against trying to handle it on their own, but to go to another doctor.

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Dr. Egner left the meeting during the previous discussion.

DR. MADIA MOVED TO CONTINUE DR. BRANDT UNDER THE TERMS OF HIS FEBRUARY 13, 2008 STEP II CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

TRACY A. KOTNIK, M.D.

Dr. Kotnik made her initial appearance before the Board, pursuant to the terms of her February 13, 2008 Consent Agreement.

In response to Board members' questions, Dr. Kotnik stated that she hasn't yet scheduled her professional and personal ethics course. She stated that she's just obtaining the information on those courses. She stated that she is doing fine.

DR. STEINBERGH MOVED TO CONTINUE DR. KOTNIK UNDER THE TERMS OF HER FEBRUARY 13, 2008 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. AMATO SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

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Dr. Varyani - aye

The motion carried.

CHRISTOPHER T. LIEDERBACH, M.D.

Although scheduled to appear, Dr. Liederbach's initial appearance before the Board was postponed due to illness in his family.

IMRAN RAZA NAQVI, M.D.

Dr. Naqvi made his initial appearance before the Board, pursuant to the terms of his February 13, 2008 Step I Consent Agreement.

In response to Board members' questions, Dr. Naqvi stated that he's no longer taking Depakote for his bipolar disease. He stated that he saw Elliott M. Friedeman, M.D., a psychiatrist in Cincinnati, and was re-evaluated. Dr. Naqvi stated that Dr. Friedeman does not think that he has Bipolar disorder. He stated that he will be seeing Dr. Friedeman again on Saturday. At this point he's being treated for his cocaine dependency.

Dr. Naqvi advised that he is in training in internal medicine. He stated that he had wanted to do a fellowship in critical care. A lot has changed. He's developed an interest in addiction medicine as well, and he thinks that he can help a greater number of people if he does addiction medicine. He added that he still loves critical care. As far as his own personal issue with cocaine, he'd like to continue to make a recovery and seek the support of some of the people he's met through the program. He stated that a lot of things have changed through this process. He's come closer to his family because of it.

Dr. Naqvi advised that he last used cocaine in early January of this year, before he entered recovery.

In response to questions about his support system, Dr. Naqvi stated that he has excellent support. He is from Connecticut and all of his family is there. He talks to them every day. Dr. Naqvi stated that he had distanced from them for a long time. He commented that it's very difficult to be in treatment and not tell your family where you are. He lied to them. Dr. Naqvi stated that, coming from a very conservative Pakistani background, it's difficult to bring up something like cocaine, let alone other issues. He hid it for several months, but he finally came clean with them. He told them, and initially they were in shock, and there was some disappointment there. They are happy to see that he's okay now and doing well. Dr. Naqvi stated that he'd like to go to Connecticut to visit them. He stated that he hasn't been away from his parents this long in his entire life.

Concerning questions about his consent agreement, Dr. Naqvi stated that there is an issue of his having to see a psychiatrist once every three months. He asked whether, if the psychiatrist has already dismissed the diagnosis made by the psychiatrist at his treatment center, it is possible to not have to see him every three months.

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Dr. Varyani stated that under the terms of the agreement, he's supposed to see the psychiatrist. If something changes, he needs to talk with Ms. Bickers. If the consent agreement allows him to request changes, he may.

Dr. Steinbergh stated that, generally, the consent agreement will say that he cannot request changes within the first year. Dr. Steinbergh added that her personal feeling is that, as he goes through addiction recovery, it's wise to stay the course. She wouldn't dismiss his psychiatric care, even if he doesn't have a diagnosis of Bipolar disorder.

Dr. Egner returned during the previous discussion.

MR. BROWNING MOVED TO CONTINUE DR. NAQVI UNDER THE TERMS OF HIS FEBRUARY 13, 2008 STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

WILLIAM J. PLATT, D.O.

Dr. Platt made his initial appearance before the Board, pursuant to the terms of his February 13, 2008 Step I Consent Agreement.

In response to Board members' questions, Dr. Platt stated that he was drug-free from 1997 until 2008 drug. Concerning what happened to cause the relapse, he stated that all he can say is that his recovery went from three meetings a week to one meeting a week. He got more involved with outside activities. Dr. Platt stated that, with this particular disease, you need to treat it. It has to be treated on a constant basis; however, you can't slack off. Dr. Platt stated that this whole thing taught him a great lesson, and that is that you need to be vigilant and you need to treat your disease in a vigorous way all the time, whether you have one year or 14 and a half years. You need to go to meetings, you need to get a sponsor. Dr. Platt

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stated that he had a sponsor who died, and he had a period of time when he didn't have a sponsor. He does have one now, and he's actually sponsoring a couple of people as well, which is good for him. Dr. Platt stated that he's very active in A.A. and N.A. He also sees recovering people in his community who are other physicians and other health professionals. Dr. Platt stated that the really good thing that has come out of this is that he is back into recovery full-blast again, and that's really good for him.

In response to further questions, Dr. Platt stated that he had depression, and back in his 1993 or 1994 agreement, he did see a psychiatrist every two weeks. He actually went to monthly meetings for an extended period of time, two years or something like that. He doesn't have any depressive symptoms right now. Dr. Platt stated that he has a very supportive, loving family. He has no family issues.

Dr. Steinbergh asked what, after years of sobriety, stimulated Dr. Platt to drink again.

Dr. Platt stated that he didn't.

Ms. Bickers stated that the positive screen was for marijuana.

Dr. Platt stated that he was close to relapse, and he recognized that. He's taken steps to correct that, and the Board has helped him with that. Dr. Platt stated that he thinks that what's happened has been a positive thing for him.

In response to further questions, Dr. Platt stated that he has a private practice in Athens, Ohio. He has another physician coming in to work part time to try to sustain things during the three-month suspension period. Dr. Platt stated that his patients are eager for him to be back, and that's a nice thing to hear.

DR. STEINBERGH MOVED TO CONTINUE DR. PLATT UNDER THE TERMS OF HIS FEBRUARY 13, 2008 STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. VARYANI SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

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TOBY JAMES TIPPIE, P.A.

Mr. Tippie made his initial appearance before the Board, pursuant to the terms of his February 13, 2008 Step II Consent Agreement.

Mr. Albert stated that Mr. Tippie was on a Step I agreement for quite a while. He added that Mr. Tippie has not had an easy time, but he's worked hard on his reinstatement. Mr. Albert asked whether Mr. Tippie is still working at the Lutheran Children's Center.

Mr. Tippie stated that he's left Lutheran Social Services since being reinstated. With his license being current, he was trying to work out a deal where he could continue to work for them, and the individual who was going to be his Supervising Physician wanted him to practice without a supervisory agreement for 90 days. Mr. Tippie stated that he told that physician that he was unwilling to do that and he asked the agency to lay him off as a result. He's just recently accepted a position with the Toledo Hospital.

Mr. Albert stated that he believes Mr. Tippie is finally getting it together, and he thinks that Mr. Tippie will do well. Mr. Albert stated that Mr. Tippie has a nice family.

Dr. Egner noted that Mr. Tippie had a six-month suspension in 2004 but did not get his Step II for four years, rather than the six months. She asked why that was.

Mr. Tippie stated that, initially, the cause was his unwillingness to participate and work with the Board. That lasted approximately 18 months. Then he decided to work on himself a little bit in the course of that time and complete his court-ordered probation. That involved intense probationary services with adult drug court. He completed that, and at that point in time he was able, financially, to enter inpatient treatment. He had not received any inpatient treatment prior to that time. Everything he had received was outpatient treatment. He was not financially able to go into inpatient treatment before that.

In response to further questions, Mr. Tippie stated that he isn't doing anything as a P.A. at this point, but he will be working in the general surgery department at the Toledo Hospital. He will be a first assistant in surgery and will basically be doing hospital rounds. He'll be doing this as an employee of the hospital.

DR. MADIA MOVED TO CONTINUE MR. TIPPIE UNDER THE TERMS OF FEBRUARY 13, 2008 STEP II CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|-------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |

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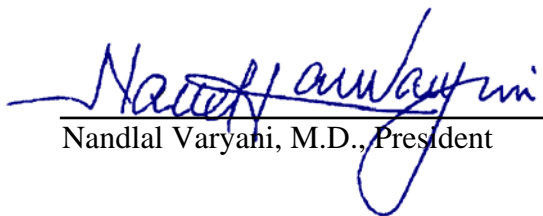
| | |
|----------------|-------|
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

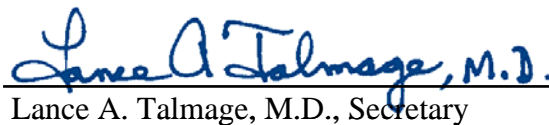
MR. BROWNING MOVED TO ADJOURN. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 4:45 p.m. the May 14, 2008 session of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on May 14, 2008, as approved on June 11, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



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MINUTES**THE STATE MEDICAL BOARD OF OHIO****May 15, 2008**

Nandlal Varyani, M.D., President, called the meeting to order at 8:05 a.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Dalsukh Madia, M.D., Vice-President; Lance A. Talmage, M.D., Secretary; Raymond J. Albert, Supervising Member; Marchelle L. Suppan, D.P.M.; R. Gregory Browning, Ph.D.; W. Frank Hairston; Jack C. Amato, M.D.;-and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: Carol L. Egner, M.D., and Susan E. Stephens, M.D.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Kimberly C. Anderson, Assistant Executive Director; Rebecca J. Marshall, Chief Enforcement Attorney; Karen H. Mortland, Enforcement Attorney; Barbara J. Pfeiffer, Assistant Attorney General; Eileen M. Schmidt, Executive Assistant to the Director; Joan K. Wehrle, Executive Staff Coordinator; Sallie J. Debolt, Executive Staff Attorney; Michael K. Miller, Public Policy & Government Affairs Officer; Karry Thacker, Executive Staff Assistant; Danielle Bickers, Compliance Supervisor; Jean Gillman, Compliance Officer; Barbara Jacobs, Public Services Administrator.

REPORTS OF ASSIGNED COMMITTEES**EXECUTIVE COMMITTEE****Proposed Rules 4730-3-02 and 4731-4-02, Ohio Administrative Code, Regarding Criminal Background Checks**

Ms. Debolt stated that the above-captioned rules each contain a provision in paragraph (D) that talks about the criteria that the Board will be looking at in determining whether or not the applicant should get a license, based on the criminal records. Ms. Debolt stated that she is proposing that the word "shall" in paragraph (D) be changed to "may," so instead of saying that the "Board shall consider," it will say, the "Board may consider." Ms. Debolt stated that this will give the Board more flexibility.

DR. MADIA MOVED TO CHANGE THE WORD "SHALL" TO "MAY" IN PARAGRAPH (D) OF BOTH PROPOSED RULE 4730-3-02 AND PROPOSED RULE 4731-4-02. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|------------|-------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |

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| | |
|----------------|-------|
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

Dr. Egner joined the meeting at this time.

Committee Assignments

At this time Dr. Varyani directed Ms. Wehrle to distribute copies of draft committee assignments for this year. He stated that this material is for informational purposes only.

LICENSURE, PROBATION AND REINSTATEMENT CONSENT AGENDA

Dr. Varyani advised that at this time he would like the Board to consider the probationary reports, the probationary requests, and the licensure applications on today's consent agenda. Dr. Varyani asked whether any Board member wished to consider either an application for licensure or a probationary report or request separately. He noted that all probationers are in compliance.

Dr. Steinbergh asked to discuss the request submitted by Kimberly M. Scherry, P.A.

DR. MADIA MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON APRIL 7-8, 2008, WITH: MARK L. ALLEN, M.D.; MARK E. BLAIR, M.D.; ROBERT R. BRIGHTWELL, D.O.; JOHN D. BROWNLEE, M.D.; RICHARD G. DAY, M.D.; RICHARD J. DEFRANCO, M.D.; PATRICK R. DENNISON, D.O.; JANICE ELECTA GREEN DOUGLAS, M.D.; PAUL E. DUNCAN, M.D.; DANN WILLIAM GANZHORN, M.D.; JONATHAN L. HAIMES, M.D.; RYAN P. HANSON, M.D.; RONALD C. HETMAN, D.P.M.; BYRON C. LEAK, M.D.; FLORENCE B. MATYAS, M.D.; BRUCE JEFFREY MERKIN, M.D.; FRANCINE R. MOSLEY, M.D.; NYKOLAI VASIL PIDHORODECKYJ, M.D.; ROBERT S. REEVES, JR., M.D.; JON P. RYAN, D.O.; SCOTT THOMAS STEWART, P.A.; SUSAN GAIL SWEDA, M.D.; SCOTT R. WELDEN, M.D.; JEFFREY W. WINHOLT, M.D.; BRUCE S. WORRELL, D.O. DR. MADIA FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS FOR BOTH PROBATIONARY REQUESTS AND REINSTATEMENT REQUESTS:

- **TO APPROVE JOSEPH CLAUDE CARVER, M.D.'S REQUESTS FOR ELIMINATION OF THE CHART REVIEW REQUIREMENT AND REDUCTION IN APPEARANCES TO ANNUALLY;**

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- **TO APPROVE ROBERT S. COLEMAN, JR., M.D.'S REQUEST FOR APPROVAL OF A PERSONAL AND PROFESSIONAL ETHICS COURSE TAILORED FOR THE DOCTOR BY DONNA F. HOMENKO, PHD, AS REQUIRED PRIOR TO REINSTATEMENT;**
- **TO GRANT ARLAN MARCUS GUSTILO-ASHBY, M.D.'S REQUEST FOR APPROVAL OF JOHN B. DEVINE, II, M.D., TO SERVE AS MONITORING PHYSICIAN, WITH 10 CHARTS PER MONTH REVIEWED;**
- **TO APPROVE GEORGE V. HASSINK, M.D.'S REQUESTS FOR: A REDUCTION IN COUNSELING SESSIONS TO ONCE EVERY THREE MONTHS; REDUCTION IN PSYCHIATRIC SESSIONS TO ANNUALLY; AND A REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO PER WEEK WITH A MINIMUM OF TEN MEETINGS PER MONTH**
- **TO APPROVE PAUL F. HEYSE, M.D.'S NOMINATION OF MARK P. ANSTADT, M.D., TO SERVE AS THE NEW MONITORING PHYSICIAN;**
- **TO GRANT ALLA MIKHLI, D.P.M.'S REQUEST FOR APPROVAL OF A PERSONAL AND PROFESSIONAL ETHICS COURSE TAILORED FOR THE DOCTOR BY DONNA F. HOMENKO, PHD., REQUIRED PRIOR TO REINSTATEMENT; AND APPROVAL OF *MODIFIERS FOR PHYSICIAN CODING*, OFFERED BY CROSS COUNTRY EDUCATION, ALSO REQUIRED PRIOR TO REINSTATEMENT;**
- **TO GRANT MICHAEL J. O'BRIEN, D.O.'S REQUEST TO ELIMINATE HIS PSYCHIATRIC SESSION REQUIREMENT;**
- **TO GRANT UJWALA PAGEDAR, M.D.'S REQUEST FOR APPROVAL OF A PERSONAL AND PROFESSIONAL ETHICS COURSE TAILORED FOR THE DOCTOR BY DONNA F. HOMENKO, PHD., AS REQUIRED PRIOR TO REINSTATEMENT;**
- **TO APPROVE DAVID A. RATH, M.D.'S REQUEST FOR A REDUCTION IN DRUG SCREENS TO TWICE A MONTH AND A REDUCTION IN APPEARANCES TO EVERY SIX MONTHS;**
- **TO GRANT MARK ALLEN RENZ, M.D.'S REQUEST FOR A REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO PER WEEK WITH A MINIMUM OF 10 PER MONTH;**
- **TO GRANT JOSEPH ALOYSIUS RIDGEWAY, IV., M.D.'S REQUEST FOR APPROVAL OF ALBERT J. COOK, M.D., TO SERVE AS HIS MONITORING PHYSICIAN WITH 10 FILMS PER MONTH REVIEWED;**

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- **TO GRANT KENT ROBINSON, M.D.’S REQUEST FOR DISCONTINUATION OF HIS CONTROLLED SUBSTANCE LOG REQUIREMENT;**
- **TO GRANT JOHN W. SHAW, M.D.’S REQUEST FOR APPROVAL OF NATHAN FOGT, D.O., TO SERVE AS MONITORING PHYSICIAN, WITH 10 CHARTS REVIEWED PER MONTH;**
- **TO GRANT GARY W. WALTZ, M.D.’S REQUESTS FOR A REDUCTION IN PSYCHIATRIC SESSIONS FOR THE MONTHS OF NOVEMBER AND DECEMBER TO ONCE A WEEK, AND A MODIFICATION TO THE PRACTICE PLAN TO ADD ANOTHER PRACTICE LOCATION; AND**
- **TO GRANT RICHARD ALLAN ZINNI, D.O.’S REQUEST FOR APPROVAL OF WALTER J. CLARK, JR., M.D., TO SERVE AS MONITORING PHYSICIAN, WITH TEN CHARTS REVIEWED PER MONTH.**

DR. MADIA FURTHER MOVED TO APPROVE FOR LICENSURE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCEPTANCE WITH LICENSURE PROTOCOLS, THE PHYSICIAN APPLICANTS LISTED IN EXHIBIT “A,” THE P.A. APPLICANTS LISTED IN EXHIBIT “B,” AND THE ACUPUNCTURE APPLICATIONS LISTED IN EXHIBIT “C;” AND TO GRANT CERTIFICATES OF GOOD STANDING TO THE SCHOOLS OF MASSAGE THERAPY, LISTED IN EXHIBIT “D.” DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

KIMBERLY M. (TELMANIK) SCHERRY, P.A.

Dr. Steinbergh noted that Ms. Scherry has asked for approval of Dr. Billowitz to perform the required psychiatric evaluation, and approval of Dr. Collins and Dr. Yu to perform the evaluations of her fitness to return to practice. Dr. Steinbergh stated that she believes that Dr. Yu is Ms. Scherry’s employer, and questioned whether it would be a conflict for Dr. Yu to do the evaluation.

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Ms. Bickers stated that Ms. Scherry is not currently practicing. She added that she doesn't know whether or not Dr. Yu is Ms. Scherry's employer, but can get that information for the Board. She added that Dr. Yu does currently serve as Ms. Scherry's supervising physician.

DR. STEINBERGH MOVED TO TABLE MS. SCHERRY'S PROBATIONARY REQUEST. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Varyani removed the matter from the table later in the afternoon. At that time, Ms. Bickers advised that, prior to her license being suspended, Ms. Scherry did work for Dr. Yu.

Dr. Steinbergh stated that she feels that Dr. Yu would have a conflict in terms of assessing Ms. Scherry's fitness to return to practice.

DR. STEINBERGH MOVED TO ASK MS. SCHERRY TO NOMINATE AN ALTERNATIVE TO DR. YU.

Dr. Steinbergh stated that she is concerned because Ms. Scherry has indicated that Dr. Yu wants her to work for him in a capacity other than as a P.A. Dr. Steinbergh expressed concern that Dr. Yu might put Ms. Scherry in a difficult position.

DR. AMATO SECONDED DR. STEINBERGH'S MOTION.

Ms. Bickers stated that one of the reasons Ms. Scherry nominated Dr. Yu is to save money. Ms. Bickers stated that Ms. Scherry does not make a lot of money at this time.

Dr. Talmage commented that it would not be in Dr. Yu's best interest to bring Ms. Scherry back if she's not fit to practice. As her employer, Dr. Yu would be liable if Ms. Scherry does something that is out of line. Dr. Talmage added that he believes that there have been other cases such as this where the Board has approved the request. He stated that if the Board members feel that the relationship is suspect, he and Mr. Albert will change their recommendations to the Board in the future.

Dr. Steinbergh stated that she doesn't want to change the Secretary and Supervising Member's procedures. She was only making a suggestion about this case.

Addressing Dr. Talmage's statement, Dr. Varyani stated that he would look at this from the other side. Dr. Yu might have more of a reason to find Ms. Scherry capable to work. Dr. Varyani noted that P.A.s are not that easy to find.

Dr. Steinbergh withdrew her motion at this time. Dr. Amato, as second, agreed to the withdrawal.

DR. STEINBERGH MOVED TO GRANT KIMBERLY M. (TELMANIK) SCHERRY, P.A.'S REQUEST FOR APPROVAL OF: AARON BILLOWITZ, M.D., TO PERFORM THE

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PSYCHIATRIC EVALUATION REQUIRED PRIOR TO REINSTATEMENT; GREGORY COLLINS, M.D., TO PERFORM ONE OF THE FITNESS TO RETURN TO PRACTICE EVALUATIONS; AND MASAO S. YU, M.D., TO PERFORM THE SECOND EVALUATION. DR. AMATO SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

EXECUTIVE SESSION

DR. STEINBERGH MOVED THAT THE BOARD DECLARE EXECUTIVE SESSION TO CONSIDER THE DISCIPLINE OF A PUBLIC EMPLOYEE. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Pursuant to Sections 121.22(G)(1), Revised Code, the Board went into executive session.

Dr. Stephens joined the meeting during the executive session.

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PRESENTATION ON MICROWAVE THERMOTHERAPY FOR BENIGN PROSTATIC HYPERPLASIA
BY GEORGE T. HO, M.D.

Dr. Steinbergh stated that, following discussion in March of a P.A. special services plan to perform the above-captioned procedure, the Board tabled the matter to seek further information from an expert on the topic. She stated that following the March meeting, she approached Dr. Ho, who is a highly recommended urologist on staff at both Mt. Carmel Health and Grant Medical Center. Dr. Ho is also Clinical Assistant Professor of Surgery and Urology at Wright State University Medical School.

Dr. Ho stated that he would begin his presentation by giving a short synopsis of the disease entity so that he can address the patients who are candidates for treatment. He will then give a brief description of the technology and the procedures, and the possible complications.

Dr. Ho stated that the modality was originally meant to treat enlarged prostates. He stated that every man, if he grows old enough, will suffer from an enlarged prostate. Up until 1985 this condition was addressed strictly by surgery. He added that even to this date, the gold standard of care is transurethral resection of the prostate (TURP). Dr. Ho commented that the technology for this procedure has improved dramatically over the course of the last 30 years because of fiber optics. Complication rates have dropped significantly. Dr. Ho added that it is thought that the complication rates will start rising again, the reason being the lack of experience of people going through medical school, going through residencies and coming into training. Dr. Ho explained that he performed 142 of these procedures prior to leaving his training. Last year the chief resident graduating from Ohio State performed 23 of them. The numbers have gone down because, since 1985, medical therapy has been developed. Many men can be treated with medications rather than with surgery. There are two medications that are available to keep the prostate from growing, resulting in diminishing number of cases.

Dr. Ho stated that microwave thermotherapy (TUMT) is an attempt to shrink the prostate without the traditional surgery. A catheter is inserted up the urethra, positioning it appropriately so that it only addresses the prostate and does not address the urinary sphincter. Dr. Ho explained that if you accidentally injure the urinary sphincter, the patient will become incontinent of urine. Dr. Ho added that you also do not want the catheter where the thermotherapy is to be applied to be inside the bladder, so as not to injure the bladder.

Dr. Ho stressed that positioning of the catheter is critical. It is typically done by measurement. Before turning on the machine to either freeze or heat the prostate, you place another probe in the patient's rectum. He explained that the distance between the rectum and the prostate is actually less than an eighth of an inch, so if you're going to supercool or superheat the prostate, you'd better superheat or supercool the rectum so that the rectum does not get injured. Placement of the rectal probe is very important. Dr. Ho stated that the first generation of these were actually simply an ice water enema for those people who were having the prostate superheated, microwaved. For those who are having it supercooled with cryotherapy, you would actually insert a heating coil into the rectum. The heating coil has to be faced towards the prostate because, obviously, there are other aspects of the rectum involved that are not facing the prostate, and you don't want to superheat those aspects of the rectum. He again stressed that placement of these two

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catheters is critical. Dr. Ho continued that once the physician is comfortable that both catheters are in the appropriate position, then the machine is ramped up. The procedure takes anywhere from 20 minutes to an hour.

Dr. Ho referred the Board members to materials from the FDA as to patients that shouldn't have these types of procedures. He stated that you would anticipate that most physicians would have covered this with the patient prior to entering the operating suite. The procedure is done in the physician's office; it is not done in an outpatient surgery center, nor is it performed in a hospital setting.

Dr. Ho stated that there are more and more of these procedures being done for two reasons. One is because of financial incentivization. TURP compensation has fallen by over 50% and is now compensated at approximately \$1,000 per procedure. Dr. Ho stated that the procedure is skill dependent inside the operating room. TUMT is perhaps a little less skill dependent since it's not being done in a hospital or an ambulatory surgery center. There is no second bill to Medicare or to an insurance company, so they have incentivized physicians to do this procedure in their offices. The compensation can be upwards of \$2,500 for the TUMT procedure.

Dr. Ho stated that people who typically have this procedure today are those who have failed medical therapy but do not want TURP, or those who cannot afford medical therapy and who have been offered TURP but have declined it. There is a third group, which is a much lower subset, and it consists of patients on blood thinners, who perhaps have significant heart disease or have had prior strokes, requiring them to be on blood thinners. They wouldn't do well with traditional surgery, traditional anesthesia. Dr. Ho stated that, ostensibly, it was for this population that TUMT was invented. The application has been brought into the general population.

Dr. Ho stated that the American Urological Association (AUA) annual meeting is next week. He stated that there will be two new technologies presented at that meeting, but TURP still represents the gold standard and everything is compared to it.

Dr. Ho stated that if there is a complication from this procedure, it likely results from damage to the rectum or the urinary sphincter because of inappropriate placement of the catheter or, potentially, migration of the catheter. If the patient moves a little bit, the physician needs to check the catheters to make sure that they are still in the proper position. If you injure the urinary sphincter, the patient will come out of it incontinent of urine. You could put a hole in the bladder. If you superheat or supercool the rectum inappropriately, you can cause a hole that now connects the bladder to the rectum or the prostate to the rectum, and you could have a fistula and end up urinating stool.

Dr. Ho stated that the potential downsides of the TURP are that it requires anesthesia, typically taking one hour in the operating room, and it does take skill. Dr. Ho stated that, in training programs, they don't advise residents to do it unsupervised until they've done over 100 cases. That's why many of the people leaving training with less than 50 cases will go for the TUMT technology, because they realize that a TURP is a skill-intensive procedure. Dr. Ho stated that TURP done properly still represents the gold standard; if done improperly, you could make somebody incontinent. The risk of fistulization, or punching

a hole through the prostate into the rectum, is extremely low. With the current technology, it's almost non-existent.

Dr. Talmage asked whether the AUA has taken any position on midlevel providers providing this service.

Dr. Ho stated that it has been brought to the AUA governing board, which has taken an arms-length approach at this time. They're unfortunately dealing with the larger issue of physicians getting reimbursed for things done in their offices that potentially violates the "Stark" law. This has been brought repeatedly for the sake of the patient. The AUA has no formal guidelines, but it does have a recommendation that the physician be in the room at all times. In fact, during a similar procedure, using lithotripsy – sound waves to break up kidney stones, physicians would actually walk out. Dr. Ho stated that, again, if the patient moves and the machine is still on, they're blasting all the organs; so there is a requirement now that physicians don't leave the room, that they're in constant vigilance, even though most of the time they're just simply sitting there holding a button and looking at a screen. They sit there until the procedure is completely done. Dr. Ho stated that that procedure is less invasive than the TUMT.

Dr. Stephens asked whether Dr. Ho has any disclosures. She asked whether he's tied to industry or to the maker of the equipment, or doing any research for them.

Dr. Ho stated that he does not. He has no ownership, nor does he do any consulting work for this product.

Dr. Stephens asked whether Dr. Ho is in favor of P.A.s doing this procedure.

Dr. Steinbergh asked whether Dr. Ho works with a P.A.

Dr. Ho stated that he does work with P.A.s who are employed by urological centers. When he has performed this technology in the office, he is there constantly. He places the catheters, he checks with the patient on a routine basis. He stated that it is boring for him, but it's his feeling that he should be there. He added that, first of all, he's charging the patient for the procedure and should be there. If something untoward happens, at least his patient knows he's there, constantly monitoring the procedure. Dr. Ho stated that he would not be in favor of a P.A. performing this procedure.

Dr. Stephens stated that it seems to her that the patients who are indicated for this procedure – patients who have failed medical treatment, patients who can't afford it, and patients who are on blood thinners – need the benefit of the physician. She added that it seems to her that if you're not ready to deal with the complications of the procedure, which include fistula, urinary sphincter damage, bladder positioning, rectal injury, you should not be doing the procedure.

Dr. Ho agreed with Dr. Stephens. He stated that that's why he personally is present throughout these procedures. If something is going wrong, he immediately turns off the machine and he introduces his cystoscope to make sure that there isn't damage. If there has been damage, they're going to the operating room to fix it. He stated that he places the catheters, he turns on the machine, and he monitors the machine. Usually someone from the company is present. Dr. Ho explained that there was a problem with

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the catheters about six months ago where there was a recall by the FDA. There is a representative of the company present for that reason. Dr. Ho stated that he just feels a distinct responsibility to be there.

Dr. Talmage, as Chairman of the P.A. Committee, thanked Dr. Ho very much for his presentation. He stated that he found the information very illuminating.

Mr. Albert commented that, as a consumer member of the Board, it's very refreshing for him to hear a physician say that he inserts the instruments and monitors the procedure because he is the one who is charging for it and should be there.

ADMINISTRATIVE REPORT

Mr. Whitehouse referred the Board to his written report, a copy of which shall be maintained in the exhibits section of this journal.

Mr. Whitehouse introduced Sheldon Safko, recently hired to work as an enforcement attorney for the Medical Board.

Mr. Whitehouse stated that Public Citizen Action has released its ranking of the rate of State Medical Boards' serious disciplinary actions for the period, 2005-2007. He noted that the Ohio Board still ranks number one among the larger medical boards across the country. It went from being the number four board in previous rankings to number three for the time period in question among all medical boards.

Mr. Whitehouse commented that this is particularly noteworthy because 2007, for a variety of reasons, was a difficult year for the Board. Mr. Whitehouse stated that there is a national trend in terms of disciplinary actions taken by Boards, which is declining. This Board has focused energy on and bolstered efforts toward rehabilitation and remediation. With all of that, for the Board to advance in ranking is a substantial accomplishment. Mr. Whitehouse congratulated and complimented all staff involved in this success.

Concerning the "Partners in Professionalism Program," Mr. Whitehouse stated that phase one ended the previous day with the last group of medical students from OU-COM to attend the Board meeting.

Mr. Whitehouse stated that a presentation about this program was made at the Federation meeting. He advised that he was invited to speak to the American Association of Osteopathic Colleges of Medicine in St. Louis on this topic. Mr. Whitehouse stated that there are a lot of folks interested in hearing about this program. He commented that there was an editorial in the *Columbus Dispatch* the previous week, so people are taking notice. Mr. Whitehouse stated that, by all accounts, this has been a successful program for the Board. His plan is to present an assessment of the program to the Board at its June meeting, and to talk about how staff is planning to expand this program to other medical schools.

Mr. Whitehouse stated that Board members received correspondence from a law firm concerning a matter for which they may be called upon to make a decision at some point. He stated that that kind of communication could taint Board members' judgment. As such, if they receive anything like this in the future, they should notify him immediately and send the materials to him. He added that correspondence of this type will be sent to Board members at the Board address. That correspondence will not be forwarded

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to the Board members for the reasons stated. Board members cannot look at correspondence like that because if they do, it could taint their judgment.

Dr. Varyani asked Ms. Wehrle to report on the Federation meeting.

Ms. Wehrle stated that the best news from the meeting was Dr. Talmage's overwhelming election to a three-year term on the Federation Board of Directors.

Ms. Wehrle advised that the poster session presented regarding the "Partners in Professionalism Program" was probably the most popular item in the vendor area and in the poster session section. There were inquiries from several other Boards about the program. She commented that the osteopathic boards, in particular, were quite proud that the pilot project was done with an osteopathic school. Ms. Wehrle advised that a number of attendees from states with fewer than Ohio's seven medical schools felt that the program could be done in their states. Representatives who attended the meeting from a number of universities also expressed interest in the program.

Ms. Wehrle advised that Dr. Madia and Dr. Amato attended the meeting for the first time. Dr. Varyani served as Ohio's House of Delegates representative. She added that Dr. Steinbergh's advocacy for Dr. Talmage with the osteopathic representatives was very strong.

Dr. Steinbergh stated that she was asked to serve on the Program Committee for the 2009 annual meeting, but she will be unable to do that this year. She asked Board members to send any topic suggestions to her, Mr. Whitehouse or Ms. Wehrle so that they can make efforts to influence the Annual Program Committee group. She commented that there are many very basic topics that are still not being covered lately but were covered many years ago that helped her as a new Board member. She stated that she's hoping to continue to stimulate the Committee to cover some very basic topics like sexual boundary issues and minimal standards. These are the types of things with which she thinks other Board members struggle. It is important for larger boards such as Ohio's to continue to educate smaller boards who may not have access to as much information.

Dr. Talmage at this time thanked everyone who has congratulated him. He stated that he would like to especially thank those who attended the meeting from Ohio. The delegation from Ohio was enthusiastic, lobbying and campaigning for him. Dr. Talmage stated that this was a team effort, and he solicited all the Board members' input. Dr. Talmage stated that if he goes to those Board of Directors meetings with the experience and issues the Ohio Board members bring to him, he can be far more effective. Dr. Talmage added that he will bring back everything that is new or different from those Board of Directors meetings so that the Board can determine whether or not it wishes to incorporate them. Dr. Talmage stated that he has the impression that Ohio is probably one of the best Boards in this country, not only as depicted in the Public Citizen Action report, but from the way the Board deliberates, from what it can do, and from the cases that it hears. When he compares it with others, he thinks that, clearly, Ohio has a lot to contribute to the Federation.

Dr. Talmage commended Mr. Whitehouse and Ms. Wehrle for putting together the campaign materials, all

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of which got complimentary comments from the people at the Federation. Dr. Talmage stated that he had an excellent team behind him.

Dr. Amato stated that, as a new Board member at his first Federation meeting, he found it to be interesting. He stated that he doesn't disagree with Dr. Talmage's statements, in that he will be able to bring back information to Ohio. He added that he hopes Dr. Talmage learns some new things to bring back to Ohio. He added, however, that from what he saw, talking to other Board members and staff from other Boards, he got the feeling that the Ohio State Medical Board is the gold standard. Dr. Amato stated that he feels that that needs to be on the record because he feels that the vast majority of that gold is the staff. Dr. Amato stated that, as a Board member, he thanks the staff.

REINSTATEMENT REQUESTS

LOVSHO PHEN, M.D.

Dr. Varyani referred to Ms. Bickers' memorandum of April 30, 2008, which advises that on March 14, 2007, the Board entered an Order staying a permanent revocation of Dr. Phen's license and suspending that license for an indefinite period of time, but not less than one year. The Board Order further set out the conditions that Dr. Phen must meet for the reinstatement of her license, including submission of an application and fee, successful completion of a course in professional ethics, as well as a course in controlled substance prescribing. Pursuant to the March 14, 2007 Board Order, Dr. Phen has submitted an application for the reinstatement of her license. Dr. Phen further provided certification of successful completion of a course in ethics entitled "Medical Ethics, Boundaries and Professionalism," offered by Case Western Reserve University, and a certification of successful completion of "Physician Prescribing Course," a prescribing course offered by the University of California, School of Medicine, Physician Assessment and Clinical Education Program [PACE].

DR. STEINBERGH MOVED THAT THE APPLICATION FOR THE REINSTATEMENT OF THE LICENSE OF LOVSHO PHEN, M.D., TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO BE APPROVED, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS AS OUTLINED IN THE BOARD ORDER OF MARCH 14, 2007. MR. BROWNING SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

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Dr. Varyani - aye

The motion carried.

REPORTS OF ASSIGNED COMMITTEESLEGISLATIVE LIAISON & RULES COMMITTEE

Mr. Browning referred the Board to the Committee's written report, a copy of which shall be maintained in the exhibits section of this journal.

At this time, Mr. Miller reviewed that report with the Board.

Referring to the "Scope of Practice Project" portion of the Report, and the meeting he, Dr. Steinbergh, Mr. Whitehouse and Mr. Miller had attended with the Council of Medical School Deans, Mr. Browning stated that it was a very good meeting. The Council was engaged, and interested in helping the Board. He stated that another meeting has been scheduled for later in May to help the Board put together decision criteria about scope of practice issues, which the Board can discuss, hopefully come to consensus, and then eventually share with policymakers. It was a very positive meeting.

IMPAIRMENT COMMITTEE

Ms. Bickers advised that the Committee reviewed two applications for Certificates of Good Standing as Treatment Providers, and recommends approval of both.

DR. MADIA MOVED TO GRANT CERTIFICATES OF GOOD STANDING AS TREATMENT PROVIDERS TO RESURRECTION BEHAVIORAL HEALTH IN OAK PARK, ILLINOIS, AND TO TALBOTT RECOVERY CAMPUS IN ATLANTA, GEORGIA. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

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LICENSURE COMMITTEE

Dr. Egner noted that the Committee reviewed a number of applications for licensure.

Kenichi Tamama M.D. – Request for Reconsideration

Dr. Egner advised that the Board previously considered the licensure application of Dr. Tamama, who indicated in his application that he had not been engaged in the active practice of medicine for more than two years. Dr. Egner advised that Assistant Attorney General Karen Unver would address this matter.

Ms. Unver began by reviewing Dr. Tamama's educational and professional history. She advised that at its November 15, 2007 meeting, the Board reviewed two requests made by Dr. Tamama. The first request was for a "good cause" waiver of the seven-year rule, as Dr. Tamama was five months over the seven-year time limit in passing all three parts of the U.S.M.L.E. The Board granted this request.

Ms. Unver advised that the second issue before the Board was the fact that, according to his application, Dr. Tamama had not been engaged in the active practice of medicine since July 2005. The Board moved to require Dr. Tamama to pass the SPEX or Board Recertification examination for licensure. Subsequent to receiving the Board's letter of conditional approval, Dr. Tamama submitted letters from two physicians who worked with him during his pathology fellowship at the University of Pittsburgh from July 2005 to July 2007. The first was from Alan Wells, M.D., D.M.S., Thomas J. Gill III Professor and Vice Chair of Pathology of the University of Pittsburgh, and the second was from Jorge Sepulveda, M.D., Ph.D., Former Acting Division Director of Clinical Chemistry at the University of Pittsburgh Medical Center. Both letters outlined clinical duties performed by Dr. Tamama during the two-year period in question.

Dr. Egner advised that this was information that the Board didn't have at the time of its initial discussion. She added that, because the specialty here is pathology, she feels that this case is a little different from other cases the Board has considered.

DR. EGNER MOVED TO REMOVE THE NOVEMBER 15, 2008 EXAMINATION REQUIREMENT AND TO GRANT DR. TAMAMA A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |

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Dr. Varyani - aye

The motion carried.

Vidya Devarajan, M.D.

Dr. Egner advised that Dr. Vidya Devarajan has applied for licensure in Ohio. Dr. Devarajan has indicated that she has not been engaged in the clinical practice of medicine since March 2001. Dr. Devarajan is a May 1990 graduate of the SUNY Stony Brook Health Science Center in Stony Brook, NY. She has requested endorsement of her NBME diplomate status. Dr. Devarajan completed training in Internal Medicine/Pediatrics at New York Hospital from June 1990 until June 1994. She then worked as an attending physician at Veterans Memorial Medical Center in Meriden, CT from July 1994 until July 1998. She worked briefly at Kings-M.D. Medical Services in New York, and then worked as an attending physician at All-Med and Rehabilitation of NY from November 2000 until March 2001.

Dr. Egner stated that Dr. Devarajan has indicated that her activities since April 2001 have been taking care of a family member after illness and surgery. Dr. Devarajan holds licenses in New York and Connecticut, and also holds American Board Certification in Internal Medicine and Pediatrics.

Dr. Egner advised that the Committee recommends approving Dr. Devarajan's request, subject to successful completion of the SPEX or recertification of her boards in internal medicine or pediatrics.

Dr. Steinbergh asked whether the Board knows when Dr. Devarajan's certification took place, and whether Dr. Devarajan has had further recertification.

Dr. Varyani stated that he doesn't know whether she has recertified, but noted that she was certified a long time ago.

Ms. Rieve advised that Dr. Devarajan was board certified in pediatrics in 2000, and in internal medicine in 1998. She has not been recertified in either specialty.

DR. EGNER MOVED TO APPROVE DR. DEVARAJAN'S REQUEST, SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX OR RECERTIFICATION OF HER BOARDS IN INTERNAL MEDICINE OR PEDIATRICS. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:

| | |
|--------------|-------|
| Mr. Albert | - nay |
| Dr. Egner | - aye |
| Dr. Talmage | - aye |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |

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| | |
|----------------|-----------|
| Dr. Amato | - aye |
| Dr. Stephens | - abstain |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

Romeo Enrique, M.D.

Dr. Egner advised that Dr. Enrique has applied for restoration of his license in Ohio, which lapsed in January 2005. Dr. Enrique has indicated that he has not been engaged in the clinical practice of medicine since that time. She further advised that Dr. Enrique is a March 1960 graduate of the University of Santo Tomas in Manila, Philippines. He worked as a Surgeon at St. Alexis/St. Michael Hospital from January 1972 until January 2005, and at both St. Vincent Charity and Deaconess Hospitals in Cleveland from January 1995 until January 2005. Since January 2005, Dr. Enrique listed his activities as "vacation" in the Cleveland area. Dr. Enrique has only held an Ohio license, and is not American Board Certified. He has listed his plans to work in Occupational Health and Family Medicine.

Dr. Egner stated that the Committee recommends approving, subject to his passing the SPEX.

DR. EGNER MOVED TO APPROVE DR. ENRIQUE'S APPLICATION FOR RESTORATION OF HIS LICENSE TO PRACTICE MEDICINE AND SURGERY, SUBJECT TO HIS PASSING THE SPEX. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Joy Ann Kondash, M.D.

Dr. Egner advised that Dr. Kondash has applied for licensure in Ohio. Dr. Kondash has indicated that she has not been engaged in the clinical practice of medicine since July 1988. She graduated from the University of Cincinnati School of Medicine in June 1987. Dr. Kondash has requested endorsement of her

NBME diplomate status. She trained in Family Medicine at St. Elizabeth Family Practice Center in Edgewood, Kentucky from June 1987 until June 1988. Dr. Kondash has not worked since June 1988, and lists her activities as a full-time mother. She held a license in the state of Florida, but does not report any American Board Certification.

Dr. Egner stated that the Committee discussed this case in length, and recommends granting Dr. Kondash a license, subject to her passing the SPEX. She meets the licensure criteria. Dr. Kondash is an American graduate.

Dr. Varyani stated that she doesn't have 24 months of postgraduate training.

Dr. Egner stated that she doesn't need 24 months because she's an American graduate. She needs 12 months. Dr. Egner stated that this is kind of the unfortunate part of medicine. Organized medicine does not have a structured re-entry process for people who have been out of practice for a while. As the rules are now, Dr. Kondash does not have to do anything more than pass the SPEX. Dr. Egner stated that she thinks that all Board members look with concern at cases where physicians have been out for 20 years.

Dr. Steinbergh stated that if the Board denies Dr. Kondash's application, she still has the right to a hearing.

Dr. Varyani expressed concern about giving a physician who is out of school and training for 20 years a license based on passing the SPEX.

Dr. Egner stated that the Board has to follow its rules. Dr. Egner asked Ms. Thompson her opinion on this matter.

Ms. Thompson stated that the statute actually says that the Board has the authority to require testing or additional training before granting a license to someone who has not practiced for more than two years. The Board could devise some sort of plan, if it wants.

Dr. Talmage stated that Ms. Thompson's comment is very appropriate. The Board could advise Dr. Kondash that she has to take the SPEX, which he thinks is minimal, or achieve board eligibility. The latter would require an additional year of residency training. She would then be board-eligible for family practice. He stated that he would be more satisfied with that because the additional year of training would probably allow her to catch up on the last 20 years.

Ms. Thompson stated that, just thinking off the top of her head as to how the Board could do that, it would probably have to issue a provisional approval. Instead of requiring Dr. Kondash to pass the SPEX, the Board could require that she complete one year of approved postgraduate training. The Board could give her a training certificate to do that. After she completes that one year, she could get her license.

Ms. Thompson stated that she has to have a license to get board-certified.

Dr. Steinbergh stated that Dr. Talmage's suggestion is that she become board-eligible. She doesn't have to have a license to take that exam.

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Dr. Stephens stated that most boards don't certify board eligibility. A lot of people say that they're board-eligible, but that just means that they're in that specialty.

Dr. Stephens stated that she needs clarification. The Board is talking about a rule about one year of training and being a U.S. citizen. She asked whether 40 Category 1 C.M.E. requirement and the 24 months of postgraduate education requirement aren't rules. She stated that the Board voted yesterday on two cases that seem to her to be on rules, and the Board went against them. She asked what the difference is with this case.

Ms. Thompson stated that on the C.M.E. case, the statute requires physicians to have 100 hours every two years. The rule says that 40 of those hours must be in category 1 and the rest are category 2. The Board makes the rules and the Legislature makes the statutes. Concerning the 24 months of training requirement, the statute actually says that if you graduate from a school that is not accredited by the Liaison Committee on Medical Education (LCME) or an osteopathic medical school accredited by the American Osteopathic Association (AOA), you have to have 24 months of approved postgraduate training in the United States or its equivalent as determined by the Board. The Legislature has given this Board the flexibility to look at other experience and training to determine that equivalency. Ms. Thompson stated that the Board promulgated a rule that requires the international medical graduates to achieve two years of training through the second year level.

Ms. Thompson stated that the case before the Board today falls under a different statute that says when someone has not actively practiced medicine for two years, the Board can set certain conditions before either granting a license or restoring a license. Ordinarily, the Board is comfortable with requiring the applicant to complete the SPEX, because it is a very general exam that should show that the applicant is current in medical knowledge. She stated that this is an unusual case. This physician has one year of training and 20 subsequent years of not practicing. The statute gives the Board the authority to require additional training.

Dr. Stephens stated that these are all statutes and yesterday the Board voted differently than two statutes. She stated that Dr. Egner stated that this was a rule and the Board couldn't vote against it. She stated that this is just like the previous day and the Board can vote differently.

Ms. Thompson stated that this is within the Board's discretion. The Board can look at the résumé of somebody who hasn't practiced in more than two years, and it can grant that person a license today. The statute says that the Board "may." The Board has the authority to impose conditions or to not impose conditions.

Dr. Stephens stated that twenty years, two decades, is like two centuries in medicine. She stated that she doesn't think passing the SPEX is enough. Dr. Stephens stated that she thinks that Dr. Kondash should be required to do a residency program.

Mr. Albert stated that it has been the consensus of the Board that if it takes a physician's license away for

five years, you might as well revoke the license because the doctor will never be able to return to medicine. Here the Board is looking at somebody who was out twenty years, and by taking the SPEX she can return to medicine. Mr. Albert stated that this shows that something has to be done. Someone out of medicine for seven years or twenty years, it's like a century out of medicine. Mr. Albert stated that the Board needs to address that. He commented that at a past Federation meeting, he took a sample SPEX, and he did pretty good on it, for a farmer.

Dr. Talmage stated that to address the issue of Board eligibility, the American Board of Medical Specialties (ABMS) defines it as someone who has successfully completed an approved residency or is eligible to take the final board exam. Many specialty boards have time limited board eligibility. You're no longer eligible to take that exam after a certain number of years after the completion of residency. Dr. Talmage stated that if the Board would require her to achieve board eligibility, that is sufficiently defined.

Dr. Amato stated that he understands where Dr. Talmage is coming from, but he kind of thinks as Dr. Stephens does. Whether or not she becomes board-eligible because of different criteria of different boards, he likes the idea, and the only way to vote to grant any kind of license is for this person to enter into an accredited residency. Upon completion of the residency, the Board will license, like anybody else.

Dr. Stephens stated that she thinks, at least in the Academy of Orthopaedic Surgeons, this "board eligibility" thing is a Pandora's Box and everybody's different. She stated that the Board can't hang its hat on that. It is very dangerous.

Dr. Varyani asked for clarification from Ms. Thompson on what the Board can do.

Ms. Thompson referred the Board to the statute, which says:

The authority of the board to impose terms and conditions includes the following:

- (A) Requiring the applicant to obtain additional training and to pass an examination upon completion of such training;
- (B) Restricting or limiting the extent, scope, or type of practice of the applicant.

Dr. Varyani stated that he would recommend paragraph (A). Because of the amount of time in which Dr. Kondash was out of practice, the Board would require her to successfully complete an accredited residency program, for which the Board would grant her a training certificate.

DR. AMATO MOVED TO REQUIRE DR. KONDASH TO SUCCESSFULLY COMPLETE AN ACCREDITED RESIDENCY PROGRAM FOR LICENSURE IN OHIO. DR. STEPHENS SECONDED THE MOTION.

Dr. Madia noted that American graduates are required to complete only twelve months of residency for licensure.

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Dr. Egner commented that, under this motion, because Dr. Kondash took time off, the Board would be requiring her to undergo more training than any other American graduate licensee.

Dr. Madia stated that, as far as he's concerned, he believes that she needs that year of training. He noted, however, that the motion requires at least three years of training, and that doesn't make sense to him. He asked whether the Board can do that.

Dr. Varyani stated that it can.

Dr. Egner stated that this will end up in hearing.

Dr. Varyani stated that that's fine. He'd still say the same thing. He added that he's willing to do that.

Dr. Egner stated that, because Dr. Kondash took time off she is going to have to have more training than any other physician that the Board licenses. She stated that that has a bad feel to it.

Dr. Stephens stated that she'll have the same training as a resident coming out today.

Dr. Egner stated that that is not correct. Any physician from an American medical school can get a license after twelve months of training.

Dr. Madia stated that he agrees that Dr. Kondash needs training. How much is needed is the question. He stated that American medical graduates must complete twelve months of training and international medical graduates must complete 24 months of training. The motion is asking that this physician do a minimum of three years of training. He stated that it doesn't make sense to him.

Dr. Varyani stated that it does not make sense. Unfortunately, if you were an American graduate today, you would have to go through three years of rotation. When he did his anesthesia residency it was for two years, but now it's three years. It's three years now because so much has changed, there's so much more knowledge to be gained. Dr. Varyani suggested that it's not the Board's fault that Dr. Kondash didn't practice for 20 years. He expressed concern about allowing an individual who hasn't practiced in 20 years to practice after only passing the SPEX. She has to do some residency, and more time is needed to complete the residency requirement because of the increased amount of needed medical knowledge and the increase in the complexity of medicine.

Dr. Steinbergh stated that, currently, she does meet requirements for licensure. She graduated from an LCME school and had one postgraduate year of training. Dr. Steinbergh stated that she's not disagreeing with Dr. Varyani, but she doesn't think that the Board can require "X" number of years. The Board can require her to enter into a residency program.

Dr. Varyani stated that if the Board gives Dr. Kondash a license to practice medicine today, she can begin to practice tomorrow. The Board knows that it takes three years to do a family practice residency, or to do

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X, Y or Z. The Board is charged with patient safety, and Dr. Kondash should be required to do a residency, just like any new graduate should be required.

Dr. Amato stated that the one thing the Board needs to keep in mind is 20 years. He stated that he personally gave up practicing obstetrics in 1996. He stated that he attends the obstetrical seminars as part of the OB/GYN A.C.O.G. meetings. If his hospital allowed him to go back into obstetrics without going back and doing a residency, after twelve years of not being in a delivery room, that hospital should lose its license. Dr. Amato stated that he cannot believe that the Board is even having this discussion. He commented on the changes in medicine in the last 20 years.

Dr. Talmage stated that the Board is overlooking the fact that Dr. Kondash has a current Florida license, which means that she has had C.M.E. every year of her Florida licensure. She's not been totally away from medicine. Dr. Talmage stated that the Board has consistently granted licenses to American graduates with one year of postgraduate education. He expressed concern that requiring Dr. Kondash to take more than twelve months would be lost on appeal.

DR. TALMAGE MOVED TO AMEND DR. AMATO'S MOTION TO REQUIRE DR. KONDASH TO DO ONE YEAR OF A.C.G.M.E. RESIDENCY TRAINING, AND THEN TO REAPPLY FOR LICENSURE. DR. STEINBERGH SECONDED THE MOTION.

Mr. Browning stated that he is in support of requiring the year of residency, but he is not in favor of dropping the SPEX requirement. If this was any other discussion of someone out this long, the Board would almost automatically require him or her to take the SPEX. It doesn't make sense to him that the Board wouldn't follow that pattern. She should take the SPEX after 20 years.

A vote was taken on Dr. Dr. Talmage's motion:

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|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - nay |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - nay |
| | Mr. Hairston | - nay |
| | Dr. Amato | - nay |
| | Dr. Stephens | - nay |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - nay |

The motion failed.

Dr. Amato stated that his original motion is back on the table. Dr. Amato stated that Dr. Talmage has a great deal more experience with licensure than he has. He noted that present at the meeting are the

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attorneys who would have to handle the appeals. He asked whether the Board could ask them what the possible outcome would be if the Board requires this physician to complete a three-year program. Dr. Amato stated that he thinks that this Board is very hesitant to allow this person to practice with just the education that she has. He stated that he thinks that the Board wants her to get more education.

Dr. Steinbergh stated that it's not necessarily a three-year issue. It's whatever number of years the residency program requires.

Dr. Amato stated that most of those programs are three years now.

Dr. Stephens asked whether there is a one-year residency.

Dr. Egner stated that there isn't, but added that she could get a one-year spot.

Mr. Albert asked to vote on the original motion.

Dr. Steinbergh suggested that the Board talk about how it has dealt with this issue over the years. Many times, when the Board has felt that a person needs some retraining, and has had basic training in the past, the Board has required twelve months of extra training. She stated that Dr. Kondash may or may not be able to get this kind of training. The Board requires a certificate from that training program, saying that she has met their standard after one postgraduate year. The issue has been whether or not a person can actually get a year's additional training. A lot of that has to do with the finances of graduate medical education. We've required it in the past, but she's not certain that she recalls the outcomes. She added that she suspects that Dr. Talmage would know.

Dr. Stephens stated that she thinks that the Board should first and foremost be concerned with patient safety and not the appeal.

Dr. Varyani stated that the Board has been discussing this during the last 20 minutes. There is a motion and there has been 20 minutes of discussion. He asked for a vote on the motion to require her to complete a residency program.

Dr. Egner stated that she thinks that this is so inconsistent with so many other things that the Board has done. The Board has taken anesthesiologists out of practice for ten years because of terrible impairment, and they are required to take the SPEX. Dr. Egner stated that she does understand all of the issues of this case. She suggested tabling this matter, getting in touch with Dr. Kondash, who may already have a plan in mind. Dr. Kondash may not intend to take the SPEX and start practicing right away. Dr. Egner stated that Dr. Kondash might provide the Board with some additional information that would be helpful to the Board, and the letter requesting the information can at least tell her what the Board's issues are.

DR. EGNER MOVED TO TABLE THE APPLICATION FOR REINSTATEMENT OF DR. KONDASH'S LICENSE TO PRACTICE MEDICINE AND SURGERY AND TO ASK DR. KONDASH TO PROVIDE THE BOARD WITH HER PLANS FOR RE-ENTRY INTO

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PRACTICE. DR. MADIA SECONDED THE MOTION. A vote was taken:

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|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - nay |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

George Markakis, M.D.

Dr. Egner stated that Dr. Markakis has requested to take the Computer-based U.S.M.L.E. Step 3 with special accommodations under the Americans with Disabilities Act of 1990 (ADA). He has been diagnosed with bilateral keratoconus. Dr. Markakis has requested extra time (time and a half). Dr. Markakis did request, and was granted, accommodations for Step 1 and Step 2. The National Board of Medicine Examiners agreed that Dr. Markakis should be given accommodations.

DR. EGNER MOVED TO APPROVE DR. MARKAKIS'S ACCOMMODATION REQUESTS DURING THE ADMINISTRATION OF THE STEP 3 OF THE U.S.M.L.E. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

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Ruba Nijmeh, M.D.

Dr. Egner advised that Dr. Nijmeh is over the seven-year time limit by 31 months. She passed Steps 1, 2, and 3 on the first attempt with scores of 79, 77 and 93. Dr. Nijmeh advised that she went over the seven-year limit for U.S.M.L.E. because: (a) she delayed her immigration to the U.S. until June 2005, (b) she began U.S. training in July 2005, and (c) she had to take U.S.M.L.E. Step 2 Clinical Skills before being eligible to take U.S.M.L.E. Step 3. She has also submitted a recommendation letter from Kathleen Senger, M.D., Clinical Associate Professor of Internal Medicine at NEOUCOM.

Dr. Egner stated that Dr. Nijmeh graduated from the University of Jordan in Amman, Jordan in June 1997. Dr. Nijmeh trained in Internal Medicine at the University of Jordan Hospital in Amman from June 1998 until June 2002. She worked as a hospitalist in Jordan from September 2002 until June 2002. Then she immigrated to the United States, and entered the Canton Medical Center Internal Medicine program in July 2005. She will complete that program in June 2008. Dr. Nijmeh has passed the Jordanian Internal Medicine Boards, and has completed over 3 years of U.S. post-graduate training. She holds an Ohio training license.

DR. EGNER MOVED TO DENY DR. NIJMEH'S REQUESTS FOR A WAIVER OF THE SEVEN-YEAR RULE AND ACCEPTANCE OF HER EXAMINATION SEQUENCE. DR. MADIA SECONDED THE MOTION. A vote was taken:

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|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - abstain |

The motion carried.

Hadley E. Smith, M.D.

Dr. Egner advised that Dr. Smith is over the seven-year time limit by eight months. She passed Steps 1, 2, and 3 on the first attempt with scores of 88, 94 and 93. Dr. Smith's letter of explanation states that she went over the seven-year limit for U.S.M.L.E. because she was awarded a Surgical Research Fellowship which extended her training from 5 years to seven-years. Dr. Smith has also enclosed a letter from Keith Lillemoe, M.D., who wrote in her behalf.

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Dr. Egner continued that Dr. Smith graduated from Temple University in Philadelphia, Pennsylvania in May 2001. Dr. Smith trained at Brown University in General Surgery from June 2001 until June 2006. She then transferred to Indiana University School of Medicine as a General Surgery Resident from July 2006 until the present time. Dr. Smith has over six years of continuous post-graduate training, and holds Rhode Island and Indiana training licenses.

DR. EGNER MOVED TO GRANT THE LIMITED EXCEPTION OF THE SEVEN-YEAR RULE AS OUTLINED IN 4731-6-14(C)(3), AND TO ACCEPT DR. SMITH'S EXAMINATION SEQUENCE IN ORDER FOR HER TO BE GRANTED A LICENSE. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Nicole De La Cruz, LMT applicant – ADA request

Dr. Egner advised that Ms. De La Cruz has applied to sit for the June 17, 2008 Massage Therapy examination. She has requested special accommodations under the ADA. She has been diagnosed with a Learning Disability in the areas of reading and writing. Ms. De La Cruz has requested a taped exam, extended testing time (time and a half), and a separate testing area. She is taking both the Basic Science and Limited Branches portions of the exam.

Dr. Egner stated that, in support of her request, Ms. De La Cruz submitted an evaluation from Carol A. Budzenski, PhD., documenting her evaluation in 2003 for BVR, as well as a letter from Columbus State Community College documenting the accommodations she received in her Massage classes.

DR. EGNER MOVED TO APPROVE MS. DE LA CRUZ'S ACCOMMODATION REQUEST FOR A TAPED EXAM, EXTENDED TESTING TIME, (TIME AND A HALF), AND A SEPARATE TESTING AREA. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |

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| | |
|----------------|-------|
| Dr. Talmage | - aye |
| Dr. Suppan | - aye |
| Dr. Madia | - aye |
| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Amato | - aye |
| Dr. Stephens | - aye |
| Dr. Steinbergh | - aye |
| Dr. Varyani | - aye |

The motion carried.

Perdesha Hudson, LMT Applicant – ADA Request

Dr. Egner advised that Ms. Hudson has applied to sit for the June 17, 2008 Massage Therapy examination. She has requested special accommodations under the ADA. She has been diagnosed as Developmentally Handicapped, and received special services through the Euclid City School District. Ms. Hudson has requested a taped exam, extended testing time (time and a half), and a separate testing area. She is taking both the Basic Science and Limited Branch portions of the exam.

Dr. Egner stated that Ms. Hudson has documented her disability by submitting a copy of her IEP from the Euclid City School District. Ms. Hudson has reported that during her education at Sanford Brown, her teacher would allow her extra time on tests if necessary.

DR. EGNER MOVED TO APPROVE MS. HUDSON'S ACCOMMODATION REQUEST FOR A TAPED EXAM, EXTENDED TESTING TIME, (TIME AND A HALF), AND A SEPARATE TESTING AREA. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

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Lucy Rush , LMT Applicant – ADA Request

Dr. Egner advised that Ms. Rush has applied to sit for the June 17, 2008 Massage Therapy examination. She has requested special accommodations under the ADA. She has been diagnosed with a Specific Learning Disability in the areas of reading, math calculation and reasoning. Ms. Rush has requested a taped exam, extended testing time (time and a half), and a separate testing area. She is taking both the Basic Science and Limited Branches portions of the exam.

Dr. Egner continued that Ms. Rush has documented her disability by submitting a copy of her Multifactorial Evaluation from the Akron Public Schools, as well as a letter from Kathy Bernstein, Director of Disability Services, who documents that Stark State College granted her accommodations during her Massage therapy education.

DR. EGNER MOVED TO APPROVE MS. RUSH'S ACCOMMODATION REQUEST FOR A TAPED EXAM, EXTENDED TESTING TIME, (TIME AND A HALF), AND A SEPARATE TESTING AREA. DR. MADIA SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Julio Andres Barcena, M.D. – Waiver for Good Cause

Dr. Egner advised that Dr. Barcena is over the seven-year time limit by six months. He passed Steps 1 and 2 on the first attempt with scores of 81 and 76, and Step 3 on the second attempt with a score of 91. Dr. Barcena's letter of explanation states that he went over the seven-year limit for U.S.M.L.E. because he was not aware of the requirement, and as soon as he was aware, he scheduled the exam and passed it.

Dr. Egner stated that Dr. Barcena graduated from Pontificia University Javeriana in Bogota, Columbia, in December 1999. Dr. Barcena came to the United States in January 2000, and was a Kaplan student in Miami, Florida, from January 2000 until January 2001. Then he obtained an observer position at University Hospitals of Cleveland from February 2001 until April 2001. He returned to Columbia, but returned to the U.S. in February 2002. Dr. Barcena began his Internal Medicine residency at University

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Hospitals of Cleveland in March 2002 until February 2005. Then he began a fellowship in Cardiovascular Medicine at University Hospitals from March 2005 until the present (to be completed 6/08). Dr. Barcena holds an Ohio training certificate, and he obtained his American Board of Internal Medicine certification in 2005. Dr. Barcena has trained in the U.S. for over six consecutive years.

DR. EGNER MOVED TO DENY APPROVAL OF DR. BARCENA'S EXAMINATION SEQUENCE. DR. MADIA SECONDED THE MOTION.

Dr. Varyani stated that Dr. Barcena did not know about the seven-year rule. He added that the fact remains that there is a shortage of physicians in Ohio. Dr. Varyani asked that the Board give this fact some consideration before denying Dr. Barcena's application for licensure.

Dr. Steinbergh stated that she does have some concern with denying this request. She noted that Dr. Barcena achieved excellent scores in his examinations, and he's trained for a long time.

Dr. Egner asked Ms. Rieve how consistent the Board has been in cases of the physicians not knowing about the exam sequence rule. She stated that she believes that the Board usually has not granted this request in the past.

Ms. Rieve stated that the Board has been denying applications filed by physicians whose good cause explanation is that they didn't know about the rule.

Dr. Talmage stated that the Board's stance has been upheld in courts. He added that, in principle, he does not agree with denial of such an application.

A vote was taken on Dr. Egner's motion:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - nay |
| | Dr. Egner | - aye |
| | Dr. Talmage | - nay |
| | Dr. Suppan | - nay |
| | Dr. Madia | - aye |
| | Mr. Browning | - nay |
| | Mr. Hairston | - nay |
| | Dr. Amato | - nay |
| | Dr. Stephens | - nay |
| | Dr. Steinbergh | - nay |
| | Dr. Varyani | - nay |

The motion failed.

DR. TALMAGE MOVED TO GRANT THE LIMITED EXCEPTION OF THE SEVEN-YEAR RULE AS OUTLINED IN RULE 4731-6-14(C)(3), AND TO ACCEPT DR. BARCENA'S

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**EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE.
DR. AMATO SECONDED THE MOTION.** A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Myles Joyce, M.D.

Dr. Egner advised that Dr. Joyce is seeking licensure based on the applicability of ORC Section 4731.14(B)(2), which permits the Board to determine an equivalent to the GME training requirement of two years through the second year level. Dr. Joyce graduated from National University of Ireland in June 1997. He trained and practiced in Ireland from July 1997 until June 2007, and obtained his Certificate of Completion of Specialist Training in General Surgery in June 2007 from the Royal College of Surgeons in Ireland. Dr. Joyce immigrated to the U.S. and trained in the Colorectal fellowship at the Cleveland Clinic from June 2007 until the present. Dr. Joyce holds an Ohio training certificate.

Dr. Egner advised that Dr. Joyce has requested that the Board deem his training and experience in Ireland and his 10 months of clinical fellowship in the United States to be equivalent to the 24 months of graduate medical education through the second-year level of GME so that he may be granted a license. She stated that Dr. Joyce is a well-trained physician and is being asked to stay on at the Cleveland Clinic for a year. He plans to return to Ireland after that year, but needs a license for this additional year at the Cleveland Clinic. Dr. Egner stated that the Committee felt that the Board could give Dr. Joyce an Ohio license to be effective in July.

**DR. EGNER MOVED TO GRANT DR. JOYCE A LICENSE ON JULY 1, 2008, AFTER
COMPLETION OF HIS CURRENT FELLOWSHIP. DR. STEINBERGH SECONDED THE
MOTION.**

Dr. Talmage asked whether the Committee gave any consideration to granting Dr. Joyce a visiting faculty certificate.

Dr. Egner stated that the Committee didn't discuss that. The Committee did discuss whether or not

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Dr. Joyce will really return to Ireland at the end of the year.

Dr. Amato stated that, looking at Dr. Joyce's C.V., he likes the idea of Dr. Joyce getting a license, and maybe Dr. Joyce won't go back to Ireland. He added that that would be Ohio's gain.

A vote was taken on Dr. Egner's motion:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

LIMITED BRANCH COMMITTEE

Ms. Thompson stated that she was asked to talk with the Committee about the criminal background checks and the efforts the Board has made to make massage therapy schools aware of what it is the Board does with this information. She stated that a year ago she and Mr. Whitehouse attended the Annual Massage Therapy Instructors Conference. At that meeting, they had extensive discussions about the criminal backgrounds that the Board was seeing in massage therapy applicants and what it is that the Board does with that information; they also addressed the issue that the Board is looking at this from a different perspective. The schools might see little misdemeanors, while the Board might see a pattern showing possible impairment. She stated that this is an additional concern for the Board that she really thinks the schools are missing, probably because they're not as aware of impairment issues as the Board is.

Ms. Thompson stated that shortly after H.B. 104 passed, requiring background checks, she and Ms. Rieve went to the Council of Massage Therapy Schools conference to talk about fingerprinting, how it will be done, when it will be done, and where it will be done, and then had extensive discussions concerning what it is the Board does with that information. She stated that they explained that there is no bright line and that there is nothing that is an absolute bar to obtaining a license from this Board. It all has to be weighed.

Ms. Thompson stated that the schools don't all have the ability to refuse an applicant. The proprietary schools probably could, but, of course, they have a financial interest in taking in applicants. A lot of the massage therapy schools are with community colleges. Those schools don't have the ability to say that "this person can't take this program." Ms. Thompson stated that Dr. Steinbergh suggested at the

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Committee meeting that the Board should create an information sheet for dissemination to all the approved schools that lays out for them the considerations. When the student enters the program, he or she should understand that the program is leading towards a diploma that will entitle the student to sit for the Board exam and potentially be licensed, but that it is not automatic.

P.A. COMMITTEE

Dr. Talmage advised that the P.A. Policy Committee (PAPC) did not meet this month. That portion of the agenda is deferred until June. He added that the Committee did review the application of Danny Hall, P.A.-C, for a provisional certificate to prescribe. Dr. Talmage stated that Mr. Hall has over 11 years of claimed experience; however, eight years and eight months of that time were with the Federal Bureau of Prisons and the physicians are not available to document his time there. Mr. Hall did submit a letter documenting his employment as a P.A. with the Federal Bureau of Prisons. The Committee recommends that the Board accept this as adequate documentation.

DR. TALMAGE MOVED TO ACCEPT MR. HALL'S DOCUMENTATION OF HIS WORK EXPERIENCE AS A P.A. AND TO GRANT HIM A PROVISIONAL CERTIFICATE TO PRESCRIBE. DR. AMATO SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Dr. Talmage stated that the Committee also reviewed the Special Services Plan of Genito Urinary Surgeons for its P.A. to perform TUMT. That application will be returned to the PAPC.

Dr. Steinbergh stated that she thought that this matter was going to be brought to the Board for final decision.

Ms. Hacker advised that the PAPC recommended approval of the procedure in March. The P.A. Committee tabled the plan, pending Dr. Ho's recommendation. It is before the Board for decision today.

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Dr. Talmage stated that the Board heard Dr. Ho state very clearly that he would not personally approve it, and that is an expert opinion.

Dr. Varyani stated that he thinks that this P.A. was approved to perform this procedure some time ago. He argued against allowing it at a previous Committee meeting, and it was decided to get an expert. He thinks that the Board is ready to vote on this case at this time. He added that he is glad that Dr. Ho felt the same way as he does.

Dr. Steinbergh stated that in 2002, the Committee approved the procedure for Dr. Jim Nelson. The Committee recently discussed the procedure and did not feel comfortable approving it for performance by a P.A. at this time. Dr. Ho was asked to make the presentation today.

DR. TALMAGE MOVED THAT, BASED ON CURRENT INFORMATION PROVIDED TO THE BOARD THROUGH THE PRESENTATION BY DR. HO, THE BOARD PROPOSE TO DENY GENITO URINARY SURGEONS' SPECIAL SERVICES PLAN FOR HIS P.A. TO PERFORM T.U.M.T. DR. TALMAGE FURTHER MOVED TO SEND A LETTER TO DR. NELSON, RESCINDING THE PREVIOUS BOARD APPROVAL. DR. STEPHENS SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - abstain |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

Dr. Egner thanked the Committee for its efforts, adding that this is the way to go about looking at a previously approved procedure that now the Board questions.

SCOPE OF PRACTICE COMMITTEE

Dr. Steinbergh stated that the Committee reviewed an amended draft response, a copy of which shall be maintained in the exhibits section of this journal, concerning the Neurophysiologic Pain Profile and the inquiry from Robert Valdiviez. The amendments were based on the Committee's discussion at its February 2008 meeting.

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**DR. STEINBERGH MOVED TO SEND THE AMENDED LETTER TO DR. VALDIVIEZ.
MR. BROWNING SECONDED THE MOTION.** A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

MINIMAL STANDARDS OF CARE COMMITTEE

Dr. Varyani stated that the Committee reviewed a letter of inquiry from Anodyne Therapy of Tampa, Florida, concerning Rule 4731-18-02, Ohio Administrative Code, the Use of Light-Based Medical Devices rule. Two representatives from the Ohio Board of Nursing (OBN) attended the Committee meeting because any Board response would concern advanced practice nurses (APNs). Dr. Varyani asked Ms. Debolt to clarify the issue for the Board.

Ms. Debolt stated that an article in the OBN newsletter discussed Rule 4731-18-02. Ms. Debolt stated that that rule does not specify lasers. It includes all light-based medical devices. There's a very broad range. The article stated that RNs and LPNs may not use light-based medical devices. Ms. Debolt stated that, because lots of RNs and LPNs in Ohio, are using this Anodyne light-based device in the treatment of patients in nursing homes and other places, and because physical therapists use the device, as do podiatric support people, the maker of the device asked for clarification. Ms. Debolt stated that the device clearly falls within the light-based medical device rule, which states that only a physician, except for very limited circumstances, can apply a light-based medical device to the human body for a therapeutic purpose. The question became whether LPNs, RNs, and PTs should be using this device. Ms. Debolt stated that she also references the APNs in her response because the Nursing Board article indicates that APNs could use the devices. Ms. Debolt referred the Board to Rule 4731-18-02(C). Ms. Debolt stated that the Committee disagreed that APNs are barred from the use of this device.

Dr. Varyani stated that there was a lot of Committee discussion on Medical Board rules and the Nursing Board rules, and the consensus of the Committee was that the anodyne therapy is really not a laser. It basically provides heat to the tissue or affected part. The Committee recommended removing monochromatic light delivery systems, such as this Anodyne Therapy, out of the light-based products rule. He stated that the Committee didn't want to get into the entanglement of the Board rules and the Nursing

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Board rules. It will be easier because everyone is using this very simple device. It's just the delivery of monochromatic heat. That was the consensus of the Committee. Dr. Varyani stated that the Committee has asked Ms. Debolt to redraft the response.

Dr. Egner asked whether there are any complications from using this device, and whether the device does any good.

Dr. Varyani stated that he has not researched this completely, but the limited knowledge he has about this anodyne therapy is that it is supposedly for nursing home patients who will develop pressure sores. All they're doing is turning the patient and turning the light on. In some cases, physical therapists are basically delivering heat to improve the circulation in the muscle. That's all he knows so far. Unless you leave the device on for too long, there are very few complications of which he's aware.

Dr. Egner asked whether it is anything different than what a light bulb would do.

Dr. Varyani stated that it is kind of a different light bulb because it goes more toward the ultraviolet, but it cannot be fully ultraviolet because that is a very hot light. Dr. Varyani expressed concern about getting in complications with the Medical Board rules versus the Nursing Board rules.

Dr. Egner stated that she doesn't want to stir up a pot, but she doesn't want to add legitimacy to a device that may not deserve it. Dr. Egner stated that when the Board addresses something like this, the Board may be doing just that.

Dr. Varyani stated that he has just researched the anodyne system only. He hasn't done research on this device as he should. He did tell his Committee that he would look at the information more carefully.

Dr. Stephens asked whether it is part of the Board's function to decide whether therapies are good or bad. She stated that she agrees with Dr. Egner about giving legitimacy to this procedure.

Dr. Varyani stated that the Board does have the function of regulating medical care in Ohio. That is one of the Board's jobs. The Board has to make the determination as to whether or not a physician can delegate the use of a device to someone else.

PERSONNEL ACTION

Referring to the discussion held in executive session earlier in the meeting, Dr. Varyani asked for a motion.

DR. STEINBERGH MOVED TO ADOPT THE FOLLOWING RESOLUTION:

RESOLVED, the Board authorizes the Executive Director or designee to impose a 23-hour suspension with 1-hour administrative leave in Disciplinary Matter 08-01, and a 23-hour suspension with 1-hour administrative leave in Disciplinary Matter 08-02, as reviewed in Executive Session.

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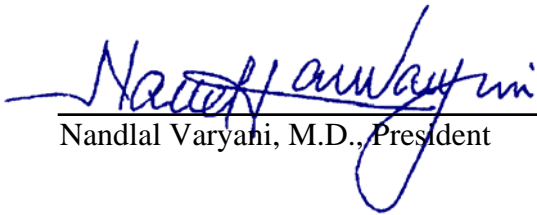
MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Stephens | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |


The motion carried.

Thereupon at 11:03 a.m. on May 15, 2008, the May 14-15, 2008 meeting of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on May 14-15, 2008, as approved on June 11, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

