



November 12, 2008

MINUTES

THE STATE MEDICAL BOARD OF OHIO

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Nandlal Varyani, M.D., President, called the meeting to order at 1:00 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.; W. Frank Hairston; Jack C. Amato, M.D.; Susan E. Stephens, M.D.; Darshan Mahajan, 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; Sallie J. Debolt, General Counsel; William J. Schmidt, Senior Counsel, Enforcement, Compliance & Investigations; 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; 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

MR. HAIRSTON MOVED TO APPROVE THE MINUTES OF OCTOBER 8-9, 2008. DR. AMATO SECONDED THE MOTION. A vote was taken

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

The motion carried.

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EXECUTIVE SESSION

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

VOTE:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- 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; R. Gregory Porter and Gretchen Petrucci, Hearing Examiners.

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations and the Proposed Findings and Proposed Order 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 Maryam Bakhshandeh, M.D.; Brenda Louise Banks, M.D.; Donald E. Higgs, M.D., Ph.D.; Robert Wayne Miller, L.M.T.; Steven Edward Schwartz, P.A.; and Robert Nelson Wachsberger; and the Proposed Findings & Proposed Order in the consolidated matters of Lynda Lee Dean, M.T. A roll call was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye

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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:

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- 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. They may, however, participate in the matters of Dr. Bakhshandeh and Dr. Higgs, as those cases are not disciplinary in nature and concern only the doctors' 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 and the Proposed Findings and Proposed Order shall be maintained in the exhibits section of this Journal.

MARYAM BAKHSHANDEH, M.D.

Dr. Varyani directed the Board's attention to the matter of Maryam Bakhshandeh, M.D. He advised that no objections were filed to Hearing Examiner Davidson's Report and Recommendation.

DR. MADIA MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MARYAM BAKHSHANDEH, M.D. MR. HAIRSTON SECONDED THE MOTION.

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

Dr. Egner stated that Dr. Bakhshandeh is over the seven-year rule by eight months. She noted that Dr. Bakhshandeh wants an Ohio license so that she can read breast pathology specimens sent from Ohio to the lab she works for. Currently they're having to be signed off by someone else. Dr. Egner stated that Dr.

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Bakhshandeh did present additional evidence at hearing that, had it been presented to the Licensure Committee, would have been seen as good cause. Dr. Egner commented that she understands Dr. Bakhshandeh had some really serious family issues, which she was hesitant to bring forward. Dr. Egner stated that she has no hesitancy at all in granting Dr. Bakhshandeh a license.

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

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

The motion carried.

BRENDA LOUISE BANKS, M.D.

Dr. Varyani directed the Board's attention to the matter of Brenda Louise Banks, M.D. He advised that objections were filed to Hearing Examiner Siobhan R. Clovis' Report and Recommendation and were previously distributed to Board members.

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

Dr. Banks was accompanied by her attorney, Elizabeth Y. Collis. Ms. Collis stated that she has filed objections, but she would like to address two points. Dr. Collis stated that, in this case, the Board has only charged Dr. Banks with violating O.R.C. § 4731.22 (B)(24). Ms. Collis stated that that section specifically allows the Board to take action against a licensee if there has been a termination or a suspension of a certificate of registration to prescribe medications by the D.E.A. Ms. Collis stated that, in this case, there has not been a termination or a suspension by the D.E.A. No affirmative action has actually been taken by the D.E.A. against Dr. Banks. Ms. Collis referred to the record, noting that when Dr. Banks first met with the D.E.A. agents and the police, as part of the investigation, she voluntarily surrendered her D.E.A. certificate. In doing that, she did not admit to any type of wrongdoing, and she is not prevented from reapplying. She currently has reapplied for a new D.E.A. number and that is pending at this time.

Ms. Collis continued that, even if the Board finds under (B)(24) that Dr. Banks has violated the Board statute by surrendering her D.E.A., and that the Board does have authority to take action against her, she believes that this case is very similar to a case of identity theft. When your credit is stolen, when you're

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advised that someone unauthorized is using your card, the first thing you do is call your bank. You call your credit card company, you cancel your card. That's what Dr. Banks did in this case. She terminated her D.E.A. number, she completed a police report, which was also included in the record that day, and in that she said that she never authorized anyone to use her D.E.A. number. She never knew that this was going on. She was never advised, either from the pharmacy or any other source, that her number was being illegally used. Ms. Collis stated that Dr. Banks has taken all appropriate steps. She also terminated her position with that clinic at that time. She's no longer working there. Ms. Collis stated that Dr. Banks has taken all remedial steps, based on this unauthorized use.

Ms. Collis stated that Dr. Banks is a victim in this case. Her D.E.A. number was used to purchase drugs that she did not authorize and that she did not condone. Ms. Collis stated that Dr. Banks should not permanently lose her medical license for the unlawful and unauthorized act of another. She added that if the Board does find that Dr. Banks has violated the statute, she believes that the recommendation of Ms. Clovis in this case is wholly inappropriate. Ms. Collis stated that an appropriate response for this Board would be to look to OAC Rule 4731-13-36 (G), which is "no further action." The Board can determine that there has technically been a violation; however, if all remedial measures have been taken, this Board can offer no further remedial action. Ms. Collis stated that all remedial steps have been taken. She has turned in her D.E.A.; she has terminated her relationship with this clinic; and she is not perpetuating, nor allowing anyone else to perpetuate, this unlawful use of her D.E.A.

Dr. Banks stated that this is the first time that she's been the subject of any kind of discipline. She's never lost her privileges at a hospital or a job as a physician, nor has she ever been disciplined by any state licensing board in the past. She's held five licenses. Dr. Banks stated that after serving a term in the military, she completed her internship and went on to do a residency and a fellowship. She worked prior to coming to Ohio. In 2008 she began work as a contract physician for Ohio Medical and Pain Management in Waverly, Ohio. Dr. Banks stated that, although she was not the owner of the clinic, for much of the time she worked there she was the only physician present. In this clinic, they would regularly treat patients for a variety of medical conditions. She would treat patients who suffered from chronic pain. In this clinic she did not distribute medicines to patients, but would write prescriptions that they would have to have filled by their local pharmacies. Dr. Banks advised that, while they did not regularly distribute medicines, she thought that it would be important to keep a small amount of medicine on hand for those people who were unable to purchase, to prevent any type of withdrawals. This amount was less than 500 pills. The pills were maintained in two small bottles that were secured on site in a locked safe. Dr. Banks stated that she instructed her staff and her support staff to document the amount of medication kept on site and the number of pills distributed to any one patient.

Dr. Banks stated that she was never given any indication from her staff or from the company from which the pills were ordered that there were additional pills being ordered under her D.E.A. number; however, on February 19, 2008, the Waverly police and D.E.A. agents came to her office to question her. She was advised by the police on that date that thousands of controlled substances had been ordered, using her D.E.A. number. Dr. Banks stated that she was shocked to learn this information.

Dr. Varyani advised Dr. Banks that she is running out of time. He added that the Board has already read what she is talking about. He asked that she conclude her comments, unless she has something new to say.

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Dr. Banks stated that, in hindsight, she would still do the same thing that she did; i.e., surrender her D.E.A. certificate in order to prevent any other person or patient from being harmed by whomever might have stolen her D.E.A. number and ordered extra medicines. She surrendered her D.E.A. certificate to protect the public. At that time, she also quit her job there. She thought that if she surrendered her D.E.A. certificate and got a new D.E.A., she wouldn't have any more problems with that particular number appearing again in the future.

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

Mr. Wilcox stated that he fully and completely agrees with the Report and Recommendation of the Hearing Examiner in this matter. A review of this record shows a physician who was clearly either clueless about her responsibilities as a physician and a D.E.A. registration holder, or was knowingly turning a blind eye to the staggering amount of drugs being ordered and disbursed in her name. Mr. Wilcox stated that he strongly disagrees with the argument that Dr. Banks' surrender was not an action for which this Board can take action under its disciplinary statute. He stated that he concurs with the Hearing Examiner's analysis that the surrender does fit within the meaning of O.R.C. §4731.22(B)(24). He noted that the voluntary surrender form signed by Dr. Banks states:

I agree and consent that this document shall be authority for the Administration of the Drug Enforcement Administration to terminate and revoke my registration without an order to show cause, a hearing or any other proceedings.

Mr. Wilcox stated that, accordingly, the voluntary surrender effected a termination of Dr. Banks' D.E.A. certificate, and is within the meaning of O.R.C. §4731.22 (B)(24).

Mr. Wilcox stated that, as for the credit card argument that the Board has heard today, he would just state that there is testimony on the record from D.E.A. investigator, Lewis Thomas, who specifically stated in his testimony that there are certain things that you must do as a D.E.A. certificate holder. Those things include keeping a log and knowing exactly what is being ordered under your certificate. Mr. Wilcox stated that that is clear from this record, so for Dr. Banks to argue that somebody else was responsible for this is not within the confines of what Dr. Banks was required to do as a D.E.A. certificate holder. Mr. Wilcox stated that he thinks that the Hearing Examiner summed it up perfectly in the end by stating:

Dr. Banks was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate. Either way, she is unworthy of a license to practice medicine in Ohio.

Mr. Wilcox stated that he concurs with that statement, and he asked that the Board adopt the recommendation before the Board today.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF BRENDA LOUISE BANKS, M.D. DR. MADIA SECONDED THE MOTION.

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

Dr. Stephens stated that she fully and completely disagrees with the recommendation. She stated that something that the Board and medicine is going to have to come to terms with is the culture of pain clinics. Right or wrong, somebody goes to a pain clinic, they have pain, and they are going to get pain medicine. If they've already been through all the different steps for pain, and that hasn't worked, they're going to be on staggering amounts of pain medicine. That's just the way it is.

Dr. Stephens stated that in regards to this case, she agrees that the doctor did not have complete control, or control at all, of her prescriptions and of her license to prescribe, but she really doesn't think that this rises to the level of complete revocation of a license.

Dr. Steinbergh stated that when she approached this case, she tried to take a good look at the total picture of Dr. Banks. Dr. Steinbergh stated that the surrender of Dr. Banks' D.E.A. certificate absolutely constitutes termination of her D.E.A. certificate. When you're approached by the police, you have a right not to surrender. She surrendered and the Board has every reason to believe that that constituted termination. Dr. Steinbergh stated that there is no question in her mind that the Board has the authority to take action.

Dr. Steinbergh stated that she agrees with the concept that Dr. Banks was not in control of her D.E.A. number, but should have been. The concept that for six years a physician would work for a clinic like this and not be aware that there was purchasing of medications and so forth – this is not a case of identity fraud. Dr. Steinbergh stated that she's not going to disagree with the concept that there would be medications on hand in the clinic. She stated that she doesn't know that the Board has an issue with Dr. Banks' prescribing, as such. The Board isn't talking about minimal standards here; there are no charges against minimal standards. This is a physician who was well trained, but who made a decision many years to step away from cardiology and to go and work in an outpatient clinic, prescribing pain medications. By Dr. Banks' own admission, pretty much everybody who came there was coming for pain medication, and that's what they did. Dr. Steinbergh stated that she's sure that they did other medical care there. She noted that the patients paid in cash, and they then got a bill which they could submit to their medical insurance company if they wanted reimbursement. Dr. Steinbergh stated that Dr. Banks also got paid on a weekly basis, which indicates to her that Dr. Banks was quite aware that there were things going on there. Dr. Steinbergh noted that Dr. Banks said so in the record. Dr. Steinbergh stated that she was concerned about the number of patients who were being seen, adding that she disagrees with that. Dr. Steinbergh continued that six years later Dr. Banks is still doing the same thing, so she holds her responsible for that. Dr. Steinbergh stated that things were not real professional there.

Dr. Steinbergh stated that, in the end, when she takes a look at this and she asks whether this physician's license should be permanently revoked, she has to disagree. She agrees that Dr. Banks did these things, that the Board had the right to take action, that Dr. Banks was not in control of her D.E.A., and that she saw volumes of patients everyday who were prescribed pain medications. Dr. Steinbergh stated that she's not going to address the pain issue because that's not what the Board is discussing today. She stated that she's not sure that she can agree with the Hearing Examiner's comment that it's "unacceptable for a physician to

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prescribe or provide control substances to every patient simply because it is expected or requested that she do so.” Dr. Steinbergh again stated that she’s not sure that she can agree with that because the Board doesn’t know that. This is not a case of minimal standards. What the Board is looking at today is Dr. Banks’ voluntary surrender of her D.E.A. certificate, which, in her mind, does constitute a revocation or termination of those privileges.

Dr. Steinbergh stated that she would like to hear further discussion, but she does have an alternative order to propose.

Dr. Varyani stated that two years ago he needed to keep narcotics in his practice. He stated that he has a pain management practice and an office anesthesia practice where you need narcotics. Dr. Varyani stated that he cannot order Schedule II medications by themselves just by his D.E.A. number. He has to personally sign every requisition; otherwise, the drugs are not delivered. Dr. Varyani indicated that he finds it hard to believe that drugs were being ordered without Dr. Banks’ signature. If the D.E.A. license is in the physician’s name, and they’re ordering from a pharmacy, no matter what pharmacy you’re ordering from, they require a specific form where the person whose D.E.A. number the order is going to go through has to sign. Not only the drug, but the quantity must be specified, and then the physician must affix his or her signature. Dr. Varyani stated that he’s having a hard time believing that Dr. Banks was not doing that. If she was not doing that, it’s a different story, but she’s supposed to. Dr. Varyani stated that prior to his getting a license, he had an inspection. You have to maintain logs of every use, may it be pain clinic, may it be office, may it be surgery center, or may it be hospital. Dr. Varyani stated that he finds it very hard to believe that thousands of pills are being ordered for six years and she did not affix a signature on the orders. Dr. Varyani stated that he finds it incredulous, at least for the last two years.

Dr. Varyani stated that he agrees with the Attorney General, and with the recommendation of the Hearing Examiner.

Dr. Stephens stated that they obviously had her D.E.A. number.

Dr. Varyani stated that she would have to personally sign the quantity and the medication.

Dr. Stephens asked Dr. Varyani why he thinks that the nurse couldn’t have signed it.

Dr. Varyani stated that Dr. Banks has to sign the order. He added that if someone was forging Dr. Banks’ signature, that’s a different story. He stated that he has a D.E.A. license being used at three facilities, and he knows exactly what is being ordered and that every month he gets a report as to how it’s being accounted for, and how much is missing. That’s his responsibility, if it’s his D.E.A. license that is being used. He added that if you order under your name, you need to know how it’s being used. That’s the physician’s responsibility. Dr. Varyani again stated that he has to document exactly what is being ordered, and every month there is a huge log with thousands of pages, that he has to review with two witnesses.

Dr. Egner stated that she wants to talk about the case as a whole. She stated that there are multiple areas throughout the case that just don’t make sense. She stated that this is a physician who was a general medical officer in the Army for four years. Quite of bit of experience had to have been gained during that

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four-year period of time. The background states that she was an internal medicine resident for a year, but then went on to do a cardiology fellowship. Dr. Egner stated that she doesn't understand how you do that, and she didn't see documentation that she completed an internal medicine residency. She practiced cardiology in Dayton, Ohio in 2001, but that job was short-lived after 9-11 because they had to downsize and let her go. Dr. Egner stated that she doesn't understand what that means. It is just part of this bigger picture of things that just don't add up. Dr. Banks then went to work in a pain clinic, when this is not her area of expertise at all. She worked for a pain clinic owned by non-medical people. She stated that all patients received controlled substances. She had an unlicensed individual whom she trained to do the neurological exams, which is inappropriate. Dr. Egner stated that she knows that this is not a minimal standards case, but she is looking at the entire picture.

Dr. Egner advised that Dr. Banks stated that she gave Nancy Sadler permission to use her D.E.A. number to order somewhere between 250 and 500 pills a month, but she further advised that she didn't have access to the records or where the drugs were stored and needed some on hand for patients if they ran out of their pain medications, in order that they not go through withdrawal. However, in 2006 and 2007, not 6,000 units were ordered, but over 200,000 units were ordered. That is a huge discrepancy. She stated that it just makes no sense. If you've given someone else the ability to use your D.E.A. number, why wouldn't you ever check on what they're doing. If you didn't give them that authority, you would know because you would have to sign for it.

Dr. Egner continued that Dr. Banks' military background, to her, is one of the most important things in this case. She stated that there is no place that has a more structured environment than the military. It is a hierarchy of rules and regulations that you file from the day you enter until the day that you leave. It makes absolutely no sense to her that Dr. Banks spent four years in the military and came out and totally disregarded all areas that have rules and regulations to them.

Dr. Egner stated that she does agree with the Hearing Examiner that Dr. Banks' voluntary surrender of her D.E.A. certificate under these circumstances did terminate her D.E.A. license and does violate Ohio law. Dr. Egner stated that she also thinks that there are too many inconsistencies and that Dr. Banks was a willing participant in this pain management practice and the total purchasing and misadministration of controlled substances. Dr. Egner stated that she can't think of any other explanation. She therefore agrees with the Proposed Order of permanent revocation.

Dr. Amato asked whether there is any way that the Board can limit its discussion to what the charges were; i.e., whether the voluntary surrender is a termination or not. Dr. Amato stated that he agrees with Dr. Egner that it was and is a termination. Dr. Amato stated that he has seen nothing in the record, however, that rises to a permanent revocation. He agrees with Dr. Stephens that horrendous amounts of medications go through these clinics. Dr. Amato stated that he has the feeling in his heart that Dr. Banks was, perhaps, very stupid with her D.E.A. license. Perhaps she didn't keep track of her signatures. However, seeing 50 to 60 patients a day, how many times a day she signed and moved on to the next patient, and how many times a day other busy practitioners would do so. Dr. Amato commented that seeing 50 to 60 patients a day was way too many, but that's a standards issue. Dr. Amato again stated that he does not believe that this case rises to a revocable offense. He stated that he would like to see Dr. Steinbergh's alternative order.

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Dr. Steinbergh stated that she developed the case pretty much the same as Dr. Egner, looking at the total picture, and she agrees with Dr. Egner's attempts to understand why a physician who has been trained the way Dr. Banks was trained comes to this point. The record doesn't give the Board this information. However, she does get the sense that at some point Dr. Banks was vulnerable because of her educational past. She maybe didn't meet the standard to continue, whether it be in cardiology or internal medicine. Dr. Banks had commented during the hearing that she had been ill at some point and she made the decision to move on. Dr. Steinbergh stated that there isn't a strong development of the record to say anything other than that. At some point, though, she made this decision. Dr. Steinbergh stated that she agrees with Dr. Egner that Dr. Banks probably wasn't necessarily trained to do pain management, but she was doing general medicine as it is known today. She worked in a pain clinic, and the Board sees what occurred. Dr. Steinbergh stated that she absolutely agrees with Dr. Egner in the sense that Dr. Banks hired and trained someone totally uncertified to do neurological exams. She stated that she hated to see that piece in there, but she had to focus on the Board's charges, and of what the Board found her guilty.

Dr. Madia stated that he totally agrees with Dr. Varyani and Dr. Egner that this was a termination. It wasn't a voluntary surrender; it sounds like a termination. Dr. Madia added that when prescribing controlled substances in outpatient clinics, it is a very strict environment. The Pharmacy Board looks over who dispenses the drugs, who signs for it, how the record is kept. If somebody says that "200,000 pills were dispensed but I was not aware of it," it is very hard for him to believe that. Dr. Madia stated that it could happen, but for six years, in the same environment, someone is dispensing all those pills, even if you're seeing 40 to 50 patients, you'd have to know. Dr. Madia stated that Dr. Banks should have known. Dr. Madia stated that he won't repeat what everyone has already said, but in this, he agrees with the Report and Recommendation.

Mr. Hairston asked what happened to the clinic. He asked whether the clinic is still functioning.

Dr. Steinbergh stated that the people who own the business probably hired someone else to do it.

Dr. Varyani stated that that's immaterial. He stated that the Board should discuss what is at hand. He stated that this is a big problem. Narcotics and the diversion of narcotics is not a simple problem. It's the biggest growing problem medicine has. He reminded Board members that two years ago a book on how to prescribe narcotics was given to all pain management people, free of charge, so that they would go by the rules.

Mr. Hairston stated that the reason he asked that question was because he wondered whether anyone was prosecuted in this case. He stated that he didn't read anything about anybody being prosecuted.

Dr. Varyani stated that he has no idea. He added that what the Board has it was it has. He stated that this case is diversion of drugs. He thinks that it's material that this not be allowed in Ohio.

Dr. Stephens indicated that there are different kinds of drug diversion. She stated that this is not diversion of drugs to go get high, or have friends get high or selling prescriptions. This is in the environment of a pain clinic, which is just a crazy environment. There has to be a distinction. She stated that she would like to hear Dr. Steinbergh's amendment.

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Dr. Steinbergh agreed with Dr. Stephens, adding that she doesn't think that this is diversion of drugs. This is a charge involving the purchasing and misadministration of controlled substances. Dr. Steinbergh stated that she doesn't see this as diversion of drugs.

Dr. Varyani stated that there were 6,000 pills ordered. They had to have gone somewhere. If that's not diversion, he doesn't know what diversion is.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF DR. BANKS BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Brenda Louise Banks, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Banks' certificate shall be SUSPENDED for an indefinite period of time, but not less than two years.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Banks' certificate to practice medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Banks shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Controlled Substances Prescribing Course(s):** At the time she submits her application for reinstatement or restoration, Dr. Banks shall provide acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. 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 completed.

In addition, at the time Dr. Banks submits the documentation of successful completion of the course(s) dealing with the prescribing of controlled substances, she shall also submit to the Board a written report describing the course(s), setting forth what she learned from the course(s), and identifying with specificity how she will apply what she has learned to her practice of medicine in the future.

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3. **SPEX**: Prior to submitting her application for reinstatement or restoration, Dr. Banks shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. Banks' clinical competency.
 4. **Evidence of Unrestricted Licensure in Other States**: At the time she submits her application for reinstatement or restoration, Dr. Banks shall provide written documentation acceptable to the Board verifying that Dr. Banks otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which she is licensed at the time of application or has been in the past licensed, or that she would be entitled to such license but for the non-payment of renewal fees.
- C. **PROBATIONARY CONDITIONS**: Upon reinstatement or restoration, Dr. Banks' certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law**: Dr. Banks shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which she is practicing.
 2. **Quarterly Declarations**: Dr. Banks 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 the first day of the third month following the month in which her certificate is restored or reinstated. 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. Banks shall appear in person for an interview before the Board or its designated representative during the third month following the month in which her certificate is restored or reinstated or as otherwise directed by the Board. Subsequent personal appearances must occur every six 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. **Practice Plan**: Prior to Dr. Banks' commencement of practice in Ohio or as otherwise determined by the Board, Dr. Banks shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Banks' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Banks shall obtain the Board's prior approval for any alteration to the practice plan

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approved pursuant to this Order.

At the time Dr. Banks submits her practice plan, she shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Banks and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Banks and her medical practice, and shall review Dr. Banks' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Banks and her medical practice, and on the review of Dr. Banks' patient charts. Dr. Banks shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Banks' quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Banks must immediately so notify the Board in writing. In addition, Dr. Banks shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Banks shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

5. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log:** Dr. Banks shall not prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except for her own personal use as prescribed by her treating physician for legitimate medical purposes) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Banks to prescribe, order, administer or personally furnish controlled substances, based upon Dr. Banks' having successfully reinstated her DEA certificate, Dr. Banks shall keep a log of all controlled substances prescribed, ordered, administered, or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Banks' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make her patient records with

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regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

6. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Banks violates probation in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Banks' certificate will be fully restored.
- E. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**
1. **Required Reporting to Employers and Hospitals:** Within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to all employers or entities with which she is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where she has privileges or appointments. Further, Dr. Banks shall promptly provide a copy of this Board Order to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. In the event that Dr. Banks provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Banks receives from the Board written notification of her successful completion of probation as set forth in paragraph D, above.
 2. **Required Reporting to Other State Licensing Authorities:** Within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, though which she currently holds any license or certificate. Dr. Banks further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license.

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This requirement shall continue until Dr. Banks receives from the Board written notification of her successful completion of probation as set forth in paragraph D, above.

3. **Documentation that the Required Reporting Has Been Performed:** Dr. Banks shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each notification required above: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon mailing of the notification of approval by the Board.

Dr. Stephens stated that she doesn't have a problem with much of this, but she doesn't see why Dr. Banks should have to take the SPEX. Dr. Stephens stated that she didn't have any problems with Dr. Banks' past training. She thinks it would be pretty oppressive for Dr. Banks to have to take SPEX.

Dr. Steinbergh stated that under the amendment, Dr. Banks' license will be suspended for an indefinite period of time, but not less than two years. After two years out of practice, the Board has the right to require re-examination.

DR. AMATO SECONDED THE MOTION.

Dr. Stephens asked for clarification of the probationary period.

Dr. Steinbergh stated that once Dr. Banks gets her license back, she will be in a monitored practice plan that the Board will approve. She'll be monitored for two years. She'll come to the Board in the first three months of her probation and then every six months thereafter until the end of her probation.

Dr. Stephens asked why suspension is being ordered. Why not just place her on probation.

Dr. Steinbergh stated that the findings would allow that the Board suspend her license. She added that there has to be a penalty. The proposed two-year suspension is, for her, far superior to permanent revocation. There has to be an action on Dr. Banks' license.

Dr. Stephens asked whether Dr. Steinbergh means that she would take Dr. Banks out of practice for two years.

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Dr. Steinbergh stated that that's correct.

Dr. Stephens stated that it's incredible to her that she's seen other things go by and then the Board is going to take someone out of practice for two years. The Board has talked about how that just kills somebody's career. She stated that she totally disagrees with this.

Dr. Egner noted that she has spoken in favor of permanent revocation, and she still feels that way; however, if Dr. Banks' license is not going to be permanently revoked, she would accept nothing less than the proposed amendment. She stated that this is a gift for the things that Dr. Banks has done. To be out of practice for two years, to be required to take the SPEX, to be required to take the controlled substance course, and to be monitored after she's back in practice is a minimum of what the Board should be doing.

Dr. Talmage left the room during the previous discussion.

A vote was taken on Dr. Steinbergh's motion to amend:

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

The motion carried.

DR. STEINBERGH MOVED TO MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF BRENDA LOUISE BANKS, M.D. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

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The motion carried.

DONALD E. HIGGS, M.D., PH.D.

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

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

Dr. Higgs was accompanied by his attorney, Terri-Lynne B. Smiles. Ms. Smiles stated that this is a unique, highly unusual case. This is not the basic case of whether or not Dr. Higgs had good cause for being over the time limit by a couple of months. Ms. Smiles stated that there are really unique and compelling circumstances here that both caused Dr. Higgs to be over by two months as well as to barely fail step 2 on his first attempt. Ms. Smiles stated that she thinks that the Hearing Examiner did a good job of outlining the facts and presenting those to the Board. She added that, when you look at the statutes that regulate this Board, the Board clearly has the authority under §4731.29, O.R.C., based on Dr. Higgs' New York license, to grant his application for an Ohio license.

Dr. Higgs thanked the Board for the opportunity to address it. He advised that he took ten years and two months to complete the USMLE sequence. He stated that he was aware that in many states, as in Ohio, there existed an upper limit of ten years to complete this sequence. In an effort to comply with that, he scheduled his Step 2 exam approximately two weeks prior to the due date of his second child. He advised that due to unforeseen and unforeseeable complications, his wife's first pregnancy had ended with the death of their daughter near term. Though similar complications were statistically disfavored in the second pregnancy, late in the course, the obstetrician appropriately chose to induce and deliver early, versus letting his wife deliver naturally. The date that they chose to induce labor was the same day that he had scheduled the Step 2 exam. Dr. Higgs stated that he chose to sit for the exam anyway, but knowing that he needed to take his wife to the hospital after the exam was over, his focus was not on the exam, and he failed. Dr. Higgs stated that he believes that if it were not for the distraction, he would have passed the exam that day. He added that the bottom line is that he took ten years and two months. He had one failure and that by two points.

Dr. Higgs stated that he's presently in a forensic pathology fellowship at the Montgomery County Coroner's office in Dayton, which is under the supervision of Coroner James Davis. He stated that he's chosen to apply for full licensure so that, should he be fortunate enough to be offered a position to stay after the fellowship, he can readily accept.

Dr. Higgs stated that he realizes that his circumstances are somewhat unusual, and he asked for the Board's consideration.

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

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Mr. Wilcox stated that he doesn't usually comment on licensure cases because he feels that it's the Board's call to make. In this case, he'd like to point out a couple of things. Mr. Wilcox stated that, first of all, the Report and Recommendation in this matter does an excellent job of laying out all the issues that occurred in this case. He stated that he concurs with the conclusions of law reached by the hearing examiner in this matter. He believes that Ms. Davidson has correctly and succinctly outlined the legal issues in this case, and he agrees with her analysis of those legal issues.

Mr. Wilcox stated that Dr. Higgs simply does not qualify for an extension beyond ten years under the Board's licensure rules. As such, and it is unfortunate, the Board must deny his application for licensure. Mr. Wilcox stated that he doesn't agree with some of the things he heard argued at the hearing, as well as in the objections, i.e., the Board can just somehow waive the licensure rules. He advised that those rules are designed and define the process of how this Board is to proceed in a consistent manner in licensure cases. They're not something the Board can waive, deciding on a case-by-case issue. Mr. Wilcox added that Dr. Higgs is not without remedy here. His remedy is simply to take step 1 and pass it. If he does that, he'll be eligible and can go forward. Mr. Wilcox stated that the Board isn't permanently hindering this man's career by adopting the Report and Recommendation. Mr. Wilcox again stated that he agrees with the Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF DONALD E. HIGGS, M.D., PH.D. DR. EGNER SECONDED THE MOTION.

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

Dr. Amato stated that the Board is a body that must live by rules, but it is a body charged with protecting the citizens of the State of Ohio. He stated that, after looking at this case thoroughly, he does not look at it as waiving the rules, but interpreting them. Dr. Amato stated that, after looking at the information in the Report and Recommendation concerning Dr. Higgs' failure of Step 2, if that situation isn't a hardship, he doesn't think he's heard one sitting on this Board in the last year and a half; i.e., a man's wife being induced in labor after a previous stillborn. Dr. Amato stated that Dr. Higgs is offering the citizens of this state some unique education, training and background and is offering it in the form of public service to the Montgomery County Coroner's office. Dr. Amato stated that, after listening to comments by other Board members, he believes, that he will recommend an amendment to the Proposed Order.

Dr. Egner stated that, as the Board has heard, Dr. Higgs is over the ten-year limit by two months. His education and training are undisputed. However, under the current rules, an M.D./Ph.D. candidate who passes all three steps within a ten-year period, can have failures, if they are within the ten years. For those candidates who are beyond ten years, the rule is written that you may not have a failure.

Dr. Egner stated that Dr. Higgs presents three arguments for the Board to grant him a license, and she feels that the Hearing Examiner addressed all three arguments in a fair, thoughtful and knowledgeable way. There is no reason for the Board to not defer to the legal advice and interpretation of the Hearing Examiner.

Dr. Egner added that, that being said, Dr. Higgs does present compelling reasons why he did not pass Step

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2 on his first attempt. His wife had an intrauterine fetal demise at term with her first pregnancy. The second pregnancy is justifiably fraught with worry. Induction was scheduled on the day he takes Step 2. Dr. Egner stated that he certainly can understand why Dr. Higgs did not have his full concentration that day. Dr. Egner added, however, that Dr. Higgs didn't retake Step 2 for an entire year, when Step 2 at that time could have been taken anytime after. Dr. Egner stated that she doesn't understand that. She does understand completely why he didn't pass it, but he waited until January 2005 to take it again, and that doesn't make sense to her if the whole reason was just the worry over the induction. She stated that Dr. Higgs could have taken it before a year passed, and he wouldn't be in this position. Dr. Egner stated that Dr. Higgs knew that the ten-year limit existed.

Dr. Egner advised that, being an obstetrician and being aware of the anxiety that patients have when they've suffered an intrauterine fetal demise, she certainly cannot at all understand an obstetrician who would schedule an induction on the same day that Dr. Higgs took Step 2. Dr. Egner stated that Dr. Higgs would like the Board to suspend all of its rules regarding this specific problem over the ten years with a failure. That induction could and should have been scheduled on another day. She stated that she never, ever, would have put someone such as Dr. Higgs in that position. She added that, unfortunately, she doesn't believe that the Board has any recourse right now. The rule does not have an exception. She stated that she's sympathetic to all of the circumstances, but there is recourse for him without the Board disregarding its rules. Dr. Higgs needs to take Step 1. Had he retaken Step 2 without waiting a year to do so, he wouldn't even be here.

Dr. Stephens stated that she can understand why Dr. Higgs waited a year. When she takes a test, it takes her longer to get her head right to take the test than it does to actually study and learn the material. She can understand, after going through a stressful delivery the second time why he might have wanted to wait.

Dr. Stephens stated that, in terms of the delivery being scheduled the day of the test, it could have been scheduled for any day during the month and she would have been distracted the whole pregnancy. Dr. Stephens stated that she really thinks that the Board should give this doctor the benefit of the doubt.

Dr. Mahajan agreed with Dr. Amato that this is a highly motivated and highly qualified person. The Board can bend its rule. Asking him to take Step 1, going back nine years, it's not going to be easy.

Dr. Steinbergh stated that she would disagree with Dr. Mahajan's comment, only because of Dr. Higgs' Ph.D. She stated that ordinarily he couldn't go back and easily pass Step 1, but Dr. Higgs has a Ph.D. in science and she thinks that he can pass Step 1.

Dr. Mahajan asked why, if Dr. Steinbergh is confident that he can pass Step 1, the Board should put him through it.

Dr. Steinbergh stated that he has to pass it to comply with the rules.

DR. AMATO MOVED TO AMEND THE PROPOSED ORDER TO GRANT DR. HIGGS A LICENSE TO PRACTICE MEDICINE AND SURGERY. DR. STEPHENS SECONDED THE MOTION.

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Dr. Egner asked whether the Board can have a legal opinion.

Ms. Debolt stated that there's a difference between a guideline and a rule. The parameters for the discretion you have in the statutes are set in the rules. Ms. Debolt stated that if the Board doesn't follow the rule, one may wonder why the Board has the rule, because it's meaningless.

Dr. Steinbergh stated that the rules are different from guidelines and from some of the interpretive things that the Board does, according to its guidelines.

Ms. Debolt stated that when the Board begins its deliberations of Reports and Recommendations, it acknowledges that the guidelines are only guidelines and that are not required to be applied. If the Board wants to apply those guidelines in every situation, it would have to make it a rule. By having these rules, the Board is saying that it will apply the rules in every situation. The Board has discretion in the rules to determine whether there is good cause. When discretion isn't in the rule, then the Board has to apply the rule.

Dr. Egner stated that that is really her issue here. She stated that, although she is empathetic, the Board has a rule, and there is no "good cause" clause in this particular rule. Dr. Egner stated that she is opposed to setting that rule aside.

Dr. Suppan stated that she feels that there are times when you need to look at the bigger picture and be willing to set aside a rule. Dr. Suppan stated that she likes rules and structure as much as anyone, and 99% of the time she will support the rule. The Board's charge is to do what's best for the citizens of the State of Ohio and to protect the public. In this case she thinks that Dr. Higgs is good for the state of Ohio, with his education and interest in public service, and she wants to support Dr. Amato's position. She stated that the Board has to stand up and go to the higher rule, which is the rule of common sense and, for her, it should be courageous enough to put the rule aside and do the right thing.

A vote was taken on Dr. Amato's motion to amend:

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

The motion carried.

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Ms. Debolt asked whether the Board members wish to amend the Conclusions of Law. She noted that Conclusion of Law number three says:

Dr. Higgs has met each of the requirements listed above in Conclusion of Law 2 except the requirement of not having failed any USMLE step. Because Dr. Higgs failed Step 2 on his first attempt, he is not eligible for licensure based on his current application and examination sequence

Ms. Debolt asked whether the Board wanted to change that Conclusion of Law to say that he is eligible.

Dr. Varyani stated that he would not.

Dr. Egner stated that it's not true.

Dr. Varyani stated that the Board cannot do that.

Dr. Steinbergh stated that the Board can't change the Conclusion of Law because it's a legitimate conclusion.

Dr. Stephens stated that it doesn't change what the Board does. The Board doesn't have to change it.

Dr. Amato stated that the Board is going by the rule of law of common sense.

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

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

The motion carried.

Later in the meeting, Dr. Varyani brought this matter back to the table. He asked Mr. Whitehouse to explain. It was noted that Dr. Amato was no longer present.

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Mr. Whitehouse stated that the Board is sworn to uphold the constitution. It must follow the laws and adhere to the rules that the Board sets. Within that framework, the Board still has an area of discretion. However, in this case, the rule does not provide the Board with any leeway at all. What the Board has done is put itself in a situation where it basically has an illegal Order. There is no way that, with the facts that are present and with the rule that the Board has, that the Board can legally come up with this result.

Mr. Whitehouse stated that he understands that Dr. Higgs works for the Coroner. He asked what would happen if Dr. Higgs is testifying as an expert and then it is learned that the Board didn't appropriately license this individual and that every one of those cases start getting reversed. Mr. Whitehouse stated that this is not something the Board wants to do. The Board needs to reconsider this. He doesn't feel that the Board has a lot of options because of the rule and the facts of the case.

Dr. Varyani stated that he has no problem changing his vote, but he asked for clarification. He indicated that the Board has a rule that says that all three steps of the USMLE must be completed within seven years or within ten years if the physician is in an M.D./Ph.D. program, which Dr. Higgs was. He noted that the Board can make an exception for a physician who took seven years and four months or more to complete the cycle, if that physician can demonstrate good cause. He asked why the Board couldn't make the exception for a physician who took ten years and two months to complete the sequence but has good cause for doing so.

Mr. Whitehouse stated that the rule does not allow a good cause exception for someone who took longer than ten years to complete the sequence and failed one attempt. There's just no provision.

Dr. Mahajan stated that the Board licensed someone who had 18 months of training when the rule requires 24 months through the second year level.

Dr. Steinbergh stated that that's an equivalency issue. It's not an exam sequence.

Dr. Steinbergh stated that the one issue she has is that Dr. Amato is not here for this discussion.

Dr. Varyani stated that Dr. Amato just called him and he is returning to the meeting.

Dr. Suppan stated that this is not the constitution that the Board is talking about. It's a rule and the Board makes the rules. She noted that the Board just changed a rule.

Mr. Whitehouse stated that it really is the Constitution that the Board is talking about because this whole process, the fact that the Board members are appointed and able to do what they do every month, is because there is a Constitution that provides fairness.

Dr. Suppan stated that in her view and her opinion, this has nothing to do with the Constitution. This is the authority of the Medical Board. She would like to get a second opinion on what Mr. Whitehouse just said because she doesn't think that it's accurate.

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Ms. Debolt stated that the Medical Board, like any agency of the state of Ohio, can only do the kind of activities, services and actions that are specified in the Ohio Revised Code. The Ohio Revised Code is adopted under the Ohio Constitution. The Ohio Revised Code says that the Medical Board can issue licenses. Part of what the Code does is to give the Board discretion in some instances on what licenses to issue and what not to issue. It is specified in law that the Board has the authority to promulgate rules. Rules have “general and uniform operation and [are] enforced by the agency.” Ms. Debolt stated that she’s reading that out of the O.R.C. She stated that this isn’t a guideline, it’s a rule. It’s an absolute and the Board must apply it, and it has to apply it uniformly.

Ms. Debolt stated that the rule in question in this case does not give the Board any discretion. The Board didn’t give itself in the rule any discretion. In some rules, there is discretion. Ms. Debolt stated that the rule means that the Board doesn’t have any discretion. The rule says that ten years, no failures, or you’re out. Ms. Debolt stated that if someone comes in, over the ten years by one day, the Board does not have the discretion to waive the rule. She added that if the Board promulgates a rule that doesn’t have any discretion in it, the courts will hold the Board to that rule.

Ms. Debolt stated that the concern is that, if the Board doesn’t follow that rule, what other rule is not going to be followed, and how many times will the Board be challenged by people who have ten years and one day, to say, “you did it for him.”

Dr. Egner stated that the Board has been in this position before where the Board has voted and within the same meeting a motion to reconsider is needed.

Ms. Pfeiffer asked that the Board consider a professional courtesy to Dr. Higgs and his counsel to move to reconsider this matter and table it until the next Board meeting. The Board could at least give them the opportunity to be here. She stated that the Board doesn’t have to do that, but she recommended that they do so.

Dr. Egner agreed.

Dr. Varyani stated that he was very compassionate, and his thought was that, if seven years and four months is okay, why isn’t ten years and two months.

Dr. Amato, who had arrived during the previous discussion, stated that he agrees with tabling this matter until December. Dr. Amato noted that in the objections filed by Dr. Higgs’ attorney, it was suggested that the Board could grant a license via reciprocity because Dr. Higgs has a New York license.

Dr. Varyani stated that he doesn’t think that the Board can grant a license based on reciprocity.

Dr. Steinbergh stated that Dr. Higgs doesn’t meet the licensure requirements.

Dr. Egner agreed, stating that you can only have reciprocity if you fall within the rules. Because Dr. Higgs has a failure, he doesn’t fall within the rule.

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Dr. Steinbergh stated that reciprocity used to be with National Boards. If you took your National Boards and you had a license, there was reciprocity. She stated that much of that has changed.

Ms. Thompson stated that “reciprocity” technically means that if you have a license in another state, we will automatically give you a license, and we don’t ask any questions. She stated that Ohio does not do that, and she added that she doesn’t think that any state does that anymore, because what you end up with is whatever the lowest level is, that’s what you get. She stated that Ohio endorses licenses. She explained that the statute is entitled “Reciprocity,” but that title was not put there by the Board or by the Legislature. Whoever entitled it, “Reciprocity,” doesn’t know what they’re talking about. The Board endorses the status of National Board Diplomate and National Osteopathic Board Diplomate. The statute says that the Board may endorse a license from another state without requiring them to take the Ohio examination. By rule, the Board has said, “when we do that, what we’re going to see is that you have one of these exams we would have accepted, had you come to us.” Actually, if the applicant has a license from another state, the Board allows a few more combinations of exams than it would if the applicant is coming to the Board initially. Now, everyone takes the USMLE, and it’s almost like the Board is endorsing the USMLE sequence because it ends up, whether you have a license in another state or not, you have to have the same USMLE sequence. That’s what the rules say.

Dr. Amato asked whether Ms. Thompson is saying that for Dr. Higgs’ license in New York, he had to have passed the three steps in ten years.

Ms. Thompson stated that she’s not. She stated that New York has its own requirements. New York issues licenses based on its own requirements. When he brings his New York license, and here, Ohio’s statutes and rules say that the Board has to look at what that license is based on, and whether it meets Ohio’s standards. In this case, the Board is saying that it does not meet Ohio’s standards.

DR. STEINBERGH MOVED TO RECONSIDER THE MATTER OF DONALD E. HIGGS, M.D., PH.D., AND TO TABLE THE MATTER UNTIL THE DECEMBER 2008 BOARD MEETING. DR. EGNER SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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ROBERT WAYNE MILLER, L.M.T.

Dr. Varyani directed the Board's attention to the matter of Robert Wayne Miller, L.M.T. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ROBERT WAYNE MILLER, L.M.T. DR. MAHAJAN SECONDED THE MOTION.

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

Dr. Steinbergh stated that Mr. Miller received a massage therapy certificate from the Board in January 2008. On May 28, 2008 he pled guilty to gross sexual imposition, a violation of §2907.05(A)(4), O.R.C., which is a felony of the third degree. Mr. Miller was subsequently sentenced to four years of incarceration, and classified as a Tier II Sex Offender, among other things. The Proposed Order is to permanently revoke Mr. Miller's certificate.

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

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

The motion carried.

STEVEN EDWARD SCHWARTZ, P.A.

Dr. Varyani directed the Board's attention to the matter of Steven Edward Schwartz, P.A. 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 Mr. Schwartz. Five minutes would be allowed for that address.

Mr. Schwartz was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that there have been no objections filed in this matter because Mr. Schwartz and he

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heartily endorse the Hearing Examiner's recommendation. Mr. Byers stated that, subsequent to the hearing, Mr. Schwartz went through a 72-hour evaluation, as originally mandated by the Board. It was with a Board-approved evaluation provider, and it was actually with the provider originally arranged for Mr. Schwartz in March 2008, i.e., Glenbeigh. Mr. Byers stated that Glenbeigh found no cause to alter his current course of recovery in the least and, significantly, did not reject the 28-day program that Mr. Schwartz went through in Florida. Mr. Byers stated that Mr. Schwartz will address the reasons he went to a non-Board-approved program in Florida.

Mr. Byers stated that it's significant to highlight for the Board that Mr. Schwartz has been out of practice for over seven months because of the summary suspension levied by this Board. He also has seven months of documented abstinence and sobriety.

Mr. Schwartz stated that he realizes that he made a mistake when he did not attend the Glenbeigh evaluation. He stated that at that time he was in active alcoholism and in denial. Subsequently, on April 4, he found himself in a position where he reported for work, he started early because they were busy, and he found himself impaired. Realizing that he couldn't do this to his patient or to his employer of the past eleven years, he excused himself from work that day, called the other P.A., and left. After going home and realizing the gravity of the situation, he got on the phone with the only "800" number under alcoholic services in the phone book in Cambridge, OH. He spoke with someone about a treatment center, the Spencer Recovery Group in Florida. There was a two-week waiting period to get into this program. In the meantime, having no funds (he'd recently gotten divorced after 18 years and was living paycheck to paycheck), he cashed in a retirement annuity that he'd had since his senior year of high school. He was placed on the waiting list to go to treatment at Spencer. He paid some bills in advance so that he wouldn't fall further behind in his debts, and he paid for Spencer with those funds. He stated that he went to Spencer, got totally involved in their program and was enthusiastic about it. He did everything that was required and then some elective things. He followed Spencer's recovery program and got with a recovery program when he got out. He's had negative drug test since he left Spencer. He's attended five to eight A.A. meetings per week, and he's attended social events that were A.A. functions. Mr. Schwartz stated that he's trying to keep alive a meeting group in the hospital on Sunday mornings that was faltering. Mr. Schwartz stated that he's been attending church regularly, and he has a study group midweek.

Mr. Schwartz stated that he's totally gotten involved in this recovery and in this new way of looking at life and appreciating the life that he's come to know since April 4, 2008. Mr. Schwartz stated that he realizes that he should have gone to the Board-ordered evaluation, but at the time he wasn't thinking clearly.

Mr. Schwartz stated that he's anxious to get back to work. He stated that he feels that he's come a long way. He's still very much interested in his program, as well as in his church. He again stated that he's anxious to get back to work, adding that it will be a benefit to his patients and his employer, and he knows that it will do him a lot of good to get back to work, as well. He advised that he's been sincere about this from the very start. He's applied himself.

Mr. Schwartz thanked the Board for its time and consideration, and advised that he will answer any questions Board members may have.

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Dr. Steinbergh noted that Mr. Schwartz was ordered to an evaluation at Glenbeigh, and he didn't do that. She stated that she's trying to understand why he didn't have money to do that in regard to this Board and its certified programs, and why, when he decided to cash in his annuity, he didn't enter treatment in Ohio. She asked why he didn't follow the guidance of this Board, who holds his certificate. She asked whether he has a certificate in Florida.

Mr. Schwartz replied that he doesn't.

Dr. Steinbergh asked why, when he realized that he was going to have to do this, he would choose to go to Florida, and not act according to Board recommendations.

Mr. Schwartz stated that, after the realization that he was in deep trouble and that he had a very severe problem, he was thrown a "life ring," the recovery program happened to be in Florida, it was JCAHO-approved, and he grabbed it. In the meantime, he called Mutual of New York, got his money from his retirement annuity, so that he could afford to attend the recovery program.

Dr. Steinbergh commented that he seized the moment.

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

Ms. Unver stated that the main issue of the recent hearing in this case was to determine whether Mr. Schwartz' failure to submit to the Board-ordered evaluation was due to circumstances beyond his control. She stated that it's clear from the testimony at hearing that Mr. Schwartz knew about the 72-hour Board-ordered examination. In fact, he called the Enforcement Attorney when the exam was first scheduled in order to get a rescheduling of the exam, due to the fact that he was going to be out of state during the time. The Secretary and Supervising Member agreed to reschedule that examination, and a new date was set up for Mr. Schwartz to attend the 72-hour evaluation at Glenbeigh.

Ms. Unver stated that Mr. Schwartz did not attend the scheduled exam, he was drinking that day, and it was clear from his testimony that his failure to attend the exam was not due to circumstances beyond his control. Ms. Unver advised that Mr. Schwartz eventually sought treatment, but the problem is that he sought treatment from an out-of-state treatment facility in Florida, which is not Board-approved, as required by O.R.C. §4730.25. Mr. Schwartz went to Glenbeigh for a 72-hour inpatient evaluation, but that occurred after the hearing in this matter. Ms. Unver stated that the Report and Recommendation states that the Board may wish to conclude that Mr. Schwartz has sufficiently submitted to inpatient treatment and successfully completed that treatment, but the State objects to this suggestion because the statute does not allow recognition of a non-Board-approved treatment provider. There are widespread ramifications of allowing a licensee to pick and choose a non-Board-approved treatment provider. The Board just had a case that dealt with this issue, and she urged the Board to look at the statute involved here. In order to comply with the statute, Mr. Schwartz needs to be required to go to a 28-day inpatient treatment provider that is approved by this Board. Ms. Unver commented that, if a licensee is allowed to select their own treatment provider who is not Board-approved, this Board will start to see licensees who will ignore the impairment statutes and create their own treatment plan that suits their own agenda, and the Board will lose control of monitoring the quality of those programs.

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Ms. Unver stated that the statute requires that a license go to a Board-approved treatment provider for a reason. Mr. Schwartz needs to attend a 28-day inpatient treatment program that is Board-approved. The Report and Recommendation states that Mr. Schwartz is in the early stages of recovery for his impairment, and one of the physicians who has opined on Mr. Schwartz' ability to practice according to acceptable and prevailing standards of care, has stated that Mr. Schwartz needs further evaluation prior to any recommendation of reinstatement at this time. Ms. Unver stated that the State agrees that further evaluation is necessary, and added that it should start with the requirement of completing 28 days of treatment with an inpatient treatment provider approved by this Board.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A. DR. MADIA SECONDED THE MOTION.

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

Dr. Steinbergh stated that she does have some concerns about this Board Order. She stated that she doesn't find it to be totally inappropriate, but she is concerned about the treatment program. There is no question that Mr. Schwartz is an impaired individual. When he came into the Medical Board offices to renew his P.A. certificate, he was under the influence of alcohol. Dr. Steinbergh stated that, in her mind, he was out of control and screaming for some help. Dr. Steinbergh stated that she does have some concerns that he made the choice to go to a provider that was not approved by the State of Ohio. He successfully completed that program, but then Dr. Goldberg, who is an approved physician to evaluate Ohio's practitioners, had significant concerns. Mr. Schwartz falsely answered a question on his P.A. renewal application, rejecting the fact that he had a 1997 DUI event. He did not appropriately reapply. Dr. Steinbergh continued that Mr. Schwartz has a history of four DUIs. He neglected to attend the three-day assessment at Glenbeigh.

Dr. Steinbergh noted that Dr. Goldberg has concerns that Mr. Schwartz attended an unapproved treatment provider; and as he reviewed the program, Dr. Goldberg did not feel that it was as structured as the Board requires. He had one drug screening report, but it was not an observed specimen and was not tested for marijuana. When he went into the program in Florida, not only did he test positive for alcohol, but he tested positive for marijuana.

Dr. Steinbergh stated that, after the Glenbeigh 72-hour assessment, the Board still doesn't have a report from the addictionologist, the medical director. A psychiatrist did diagnose alcohol dependence in early remission, anxiety and so forth. There are opinions from Glenbeigh that he would just need to attend an outpatient program, but, again, the Board doesn't have a report from the medical director.

Dr. Steinbergh referred to paragraph C of the Board Order, "Demonstration of Ability to Resume Practice." She directed the Board's attention to subparagraph 4.b, which states:

Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code, or a **consent agreement**. Such evidence shall include, but not be limited to, a copy of the signed aftercare

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contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code. (emphasis added)

Dr. Steinbergh stated that she's not sure that the language, "or a consent agreement," is appropriate in a Board Order. She stated that it seems to her that the language is just boilerplate.

Ms. Debolt stated that that language could be scratched. She stated that reinstatement would be by Board Order.

Ms. Pfeiffer recommended a motion to amend the language.

Dr. Steinbergh referred to paragraph C.4.a, which requires Mr. Schwartz to submit: "Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Mr. Schwartz has successfully completed any required inpatient treatment." She asked whether this would compel him to go to another 28-day inpatient treatment program approved by the Board.

Ms. Debolt stated that that is correct.

Dr. Mahajan left the room during the previous discussion.

DR. STEINBERGH MOVED TO AMEND PARAGRAPH C.4.b. OF THE PROPOSED ORDER TO REMOVE THE LANGUAGE, "OR A CONSENT AGREEMENT." 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. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A. DR. AMATO SECONDED THE MOTION. Dr.

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

Dr. Madia stated that he agrees with the Report and Recommendation.

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Dr. Egner stated that she will say the same thing here as she said in the previous case. It does, perhaps, seem like a waste of Mr. Schwartz' time and money to have to go through a second 28-day program. Dr. Egner added that she's so distraught over, not what's happening today, but what's going to happen six months from now and a year from now, when the Board is just suspending its rules. She stated that this is a government agency. She added that she understands having a heart, but the Board members are here in a bigger picture, on a bigger mission. Dr. Egner stated that she thinks that the Board is doing itself a disservice by not sticking to the rules that are in place today. If the Board doesn't like those rules, the Board has the opportunity to change them so that the next time it can make those exceptions. Dr. Egner stated that, where the Board stands today, these are the rules and she will vote in favor of the Board's rules until they change.

Mr. Whitehouse stated that he completely agrees with Dr. Egner. He stated that when the Board makes decisions here, and someone is appearing before it, it is natural and not inappropriate for the Board members to feel compassion. As a body making decisions as to that individual, the Board has to follow its rules. He advised that with each decision the Board makes, it is setting policy. People who come before will be asking why an exception wasn't made for them. People who follow will ask why the exception can't be made for them. Mr. Whitehouse stated that there will always be exceptions, and there will be a lot of reasons why the Board is going to want to find exceptions; but the rules are not meant to hinder the Board. They're meant to ensure that there is fairness in the Board's process.

Dr. Suppan stated that she understands what Mr. Whitehouse is saying, but if that were true, they wouldn't need the Board members to come in. All he'd have to do is take the rules and apply them. She stated that the Board's job is to analyze all the facts and make the best decision that they can, based on the facts before them. Dr. Suppan commented that each Board member brings something different to the table. Each Board member has a different practice experience, and has a different perspective. The trust was put in the Board to make those decisions. Dr. Suppan stated that for her to act in any way other than what she thinks is the right thing to do would be the wrong thing to do.

Mr. Whitehouse stated that he's not saying that the Board should disregard the human element of the equation. He's only saying that the Board has to keep that in check. He understands that there is a natural inclination towards compassion, but the rules were put in place for a reason. He's not suggesting blind adherence to the rules. He also suggested changing the rules if the Board is not doing the right thing as a result of applying them. Mr. Whitehouse stated that Dr. Suppan is right in that the Board doesn't have a computer making these decisions, and he added that he's not advocating for that.

Ms. Debolt stated that she will backtrack on her previous advice. She stated that the language of paragraph 4.a. does not reference specific rules that talk about doing the 28-day treatment program. What it does say is that "any required impatient treatment." Ms. Debolt stated that that gives discretion to the evaluator.

Dr. Steinbergh stated that she has concerns about this. She stated that Mr. Schwartz did not go to a 28-day program that has been certified in the state of Ohio. The Board does not have good evidence, even after six months, that he is not currently impaired. Dr. Steinbergh again stated that she has great concerns about this. She indicated that she shares the same concerns as does Dr. Goldberg. Dr. Steinbergh stated that the

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Proposed Order does not give her what she wants from this individual. Dr. Steinbergh stated that she thinks that Mr. Schwartz made the wrong decision. She commented that the Board's rules are done for a reason, and added that the Board has spent a good deal of time and money certifying these programs. The Spencer program does not meet the Board's standards. Dr. Steinbergh stated that there are also some outstanding evaluation concerns from her perspective.

A vote was taken on Dr. Steinbergh's motion to approve, as amended, the Hearing Examiner's Findings of Fact, Conclusions of Law and Proposed Order:

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

The motion failed.

Dr. Varyani suggested tabling this matter to draft an alternative order.

DR. STEINBERGH MOVED TO TABLE THE MATTER OF MR. SCHWARTZ. DR. MAHAJAN SECONDED THE MOTION. All members voted aye. The motion carried.

The matter was removed from the table later in the meeting by Dr. Varyani, at the request of Dr. Steinbergh. Dr. Amato was absent from the room when the matter was removed from the table.

Dr. Steinbergh briefly summarized the case and the Board's earlier discussion.

DR. STEINBERGH MOVED TO AMEND PARAGRAPHS C.4.a. AND b. OF THE PROPOSED ORDER IN THE MATTER OF MR. SCHWARTZ BY SUBSTITUTING THE FOLLOWING:

- a. Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Mr. Schwartz has successfully completed any required inpatient treatment, including at least twenty-eight days of inpatient or residential treatment (completed consecutively) for chemical abuse/dependence at a treatment provider approved by the Board.
- b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code. Such evidence shall

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include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.⁵

DR. EGNER 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF STEVEN EDWARD SCHWARTZ, P.A. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

ROBERT NELSON WACHSBERGER

Dr. Varyani directed the Board's attention to the matter of Robert Nelson Wachsberger. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ROBERT NELSON WACHSBERGER. DR. MADIA SECONDED THE MOTION.

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

Dr. Egner advised that Mr. Wachsberger is a graduate of a massage therapy school. At the age of 47, he began an internet relationship with a female whom he knew was in high school at the time. Later he met her in Pennsylvania, had sex with her, and she turned out to be 16 years old. Dr. Egner stated that Mr. Wachsberger tries to justify his actions because he did not know this girl's actual age. She advised that there is no justification that she can up with for this. The Proposed Order is for permanent denial, and she agrees with that.

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

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

The motion carried.

Mr. Albert, Dr. Talmage and Dr. Amato left the meeting at this time.

PROPOSED FINDINGS AND PROPOSED ORDER IN THE CONSOLIDATED MATTERS OF LYNDA LEE DEAN, M.T.

Dr. Varyani directed the Board's attention to the consolidated matters of Lynda Lee Dean, M.T. He advised that on September 11, 2008, the Board issued two notices of opportunity for hearing to Ms. Dean, both dated July 9, 2008. Documentation of service for each was received. There were no requests for hearing filed, and more than 30 days have elapsed since the mailing of the notices. Each matter was reviewed by Hearing Examiner Petrucci, who prepared Proposed Findings and Proposed Order, and is now before the Board for final disposition.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE JULY 9, 2008 NOTICES OF OPPORTUNITY FOR HEARING IN THE CONSOLIDATED MATTERS OF LYNDA LEE DEAN, M.T., HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ADOPT MS. PETRUCCI'S PROPOSED FINDINGS AND PROPOSED ORDER. DR. EGNER SECONDED THE MOTION. A vote was taken:

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ROLL CALL:

Dr. Egner	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Stephens	- abstain
Dr. Mahajan	- aye
Dr. Steinbergh	- aye

The motion carried.

FINDINGS, ORDERS AND JOURNAL ENTRIES

Dr. Varyani advised that in the following matters, the Board issued Notices of Opportunity for Hearing, and documentation of service for each was received. There were no requests for hearing filed, and more than 30 days have elapsed since the mailing of the Notices. The matters are therefore before the Board for final disposition. He added that Dr. Talmage and Mr. Albert may participate in the discussion and vote, as these as cases are not disciplinary in nature and concern only the individuals' qualifications for licensure.

LORA L. CLEAR, M.T.

DR. EGNER MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE SEPTEMBER 11, 2008 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING MS. CLEAR'S REQUEST FOR RESTORATION OF HER CERTIFICATE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE LIMITED BRANCH PORTION OF THE BOARD'S MASSAGE THERAPY EXAMINATION WITHIN SIX MONTHS OF SEPTEMBER 11, 2008. DR. MADIA SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Dr. Egner	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye

The motion carried.

Mr. Albert returned to the meeting at this time. Dr. Steinbergh left the meeting at this time.

SUJANA RANI, M.D.

DR. MADIA MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE

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AUGUST 28, 2008 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING DR. RAYANI'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF OHIO. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye

The motion carried.

Dr. Amato returned to the meeting at this time.

JENNY E. VAN PELT, M.T.

DR. MADIA MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE AUGUST 28, 2008 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING MS. VAN PELT'S REQUEST FOR RESTORATION OF HER CERTIFICATE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE LIMITED BRANCH PORTION OF THE BOARD'S MASSAGE THERAPY EXAMINATION WITHIN SIX MONTHS OF AUGUST 28, 2008. DR. SUPPAN SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- abstain
	Dr. Stephens	- aye
	Dr. Mahajan	- aye

The motion carried.

CITATIONS, PROPOSED DENIALS, ORDERS OF SUMMARY SUSPENSION & NOTICES OF IMMEDIATE SUSPENSION

MODESTO FONTANEZ, M.D. – CITATION LETTER

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

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shall be maintained in the exhibits section of this Journal.

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

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

The motion carried.

KELLEY LYN STINGLEY – 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. STINGLEY. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

JEFFREY E. WHITE, 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. WHITE. DR. SUPPAN SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Dr. Steinbergh returned to the meeting during the previous vote.

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.

WILLIAM L. HOPPES, M.D. – SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

DR. MADIA MOVED TO RATIFY THE PROPOSED PERMANENT SURRENDER OF DR. HOPPES' LICENSE TO PRACTICE MEDICINE AND SURGERY. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

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WILLIAM B. CULLEN, M.D. – STEP I CONSENT AGREEMENT

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

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

The motion carried.

BRETON LEE MORGAN, M.D. – STEP II CONSENT AGREEMENT

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

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

The motion carried.

JOSEPH P. SITARIK, D.O. – STEP I CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED STEP I CONSENT AGREEMENT WITH DR. SITARIK. 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. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

Dr. Egner left the meeting at this time.

RICHARD MARK WEIL, M.D. – STEP I CONSENT AGREEMENT

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

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

The motion carried.

PAUL LEWIS BLANCHARD, M.D. – STEP I CONSENT AGREEMENT

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

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

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The motion carried.

KIMBERLY M. (TELMANIK) SCHERRY, P.A. – STEP I CONSENT AGREEMENT

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

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

The motion carried.

PROBATIONARY APPEARANCES

SHARON JANE JELKOVAC, P.A.

Ms. Jelkovic appeared before the Board pursuant to her request for release from the terms of her November 14, 2005 Consent Agreement. If approved, release from probation would become effective November 14, 2008.

In response to Board members' questions, Ms. Jelkovic said that she is doing well. She advised that she is still employed at South Pointe Hospital, the same place she was at the start of the consent agreement. She works in the surgery department. Her responsibilities there are pre-admission testing, histories and physicals, lab tests, and first assisting in surgery.

Ms. Jelkovic stated that she is clear about the P.A. rules as they apply to her today. She stated that she is absolutely working in a manner that is consistent with those rules. She does understand the importance of always being up-to-date on the rules and not stepping outside of her scope of practice.

Dr. Varyani asked Ms. Jelkovic to explain to the students present what brought her to the Board's attention so that they might benefit from her experiences.

Ms. Jelkovic stated that, when she first graduated from school, the laws were somewhat different. Unfortunately, her employer had some issues with appropriate compliance. They really weren't aware of the fact that P.A.s should have had registration before they were ever hired. Ms. Jelkovic stated that her employers were very misleading when they told her that she didn't need registration. She advised that you

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need to be careful that you actually have everything you need before you even go looking for employment because people are uneducated. Ms. Jelkovic stated that she, unfortunately, was also uneducated. Even though she had the proper qualifications, she really hadn't done all of the necessary steps to be appropriately registered with the State for what she was doing.

DR. STEINBERGH MOVED TO RELEASE MS. JELKOVAC, EFFECTIVE NOVEMBER 14, 2008, FROM THE TERMS OF HER NOVEMBER 14, 2005 CONSENT AGREEMENT. DR. MADIA SECONDED THE MOTION. All members voted aye. The motion carried.

FRED R. MOSS, M.D.

Dr. Moss appeared before the Board pursuant to his request for release from the terms of his November 9, 2006 Consent Agreement.

In response to Board members' questions, Dr. Moss stated that he is in practice in Cincinnati, Ohio. He has an Indiana license, which is still in force, but he's not practicing in Indiana at this time. He has two children with whom he lives and he has an extended family who are very supportive. Dr. Moss stated that he is currently not taking any medications. Dr. Moss advised that he is not doing any inpatient work at this time. He's only doing outpatient work.

Dr. Moss stated that he's doing fabulously, and he thanked the Board for everything that it has done for him. He stated that two years ago he had no idea that really good things would happen in the next two years, and that's exactly what happened, in no small part because of Board action.

Dr. Steinbergh stated that it is good to see Dr. Moss well and successful. She asked what he does in terms of his daily recovery.

Dr. Moss stated that he goes to a meeting every single day. He works with addicts and alcoholics from the first second he wakes up until the second he goes to bed. He's started a Caduceus meeting in Cincinnati. He reads "the book," he has a sponsor, and he has sponsees. Dr. Moss stated that all of his gained humility, of which he could still get more, and every bit of success he has are entirely due to his involvement in the program.

DR. STEINBERGH MOVED TO RELEASE DR. MOSS FROM THE TERMS OF HIS NOVEMBER 9, 2006 CONSENT AGREEMENT. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

ROBERT S. COLEMAN, JR., M.D.

Dr. Coleman made his initial appearance before the Board, pursuant to the terms of the Board's Order of March 12, 2008.

In response to Board Members' questions, Dr. Coleman stated that he is doing well. He advised that he is highly energized right now, and he appreciates the opportunity to meet with the Board today. Dr. Coleman

stated that he works in the emergency department at University Hospital's Veterans Medical Center, and University Hospital's Richmond Medical Center, for which he's the director of the emergency department. Dr. Coleman stated that he's also involved with the emergency medical systems and paramedics within the area, under their medical command. He's also spearheading the sepsis research and sepsis response teams of the emergency department at the hospital, as well as the stroke response teams there and the S.T.E.M.I. teams within the EMS. He stated that he's been quite busy since August. He advised that he would not be able to do this if it wasn't for the Board members agreeing to reinstate his license in August. He stated that he deeply appreciates that. Dr. Coleman stated that he went back to work in August, highly energized and very rested. He stated that they are working the best they can with regard to patient care under these circumstances.

Dr. Steinbergh stated that Dr. Coleman was reinstated in August, and added that he's been at this a long time with the Board and the legal system. She asked whether he would be willing to share his experience and his perceptions at this time.

Dr. Coleman stated that he echoes the sentiments of the last physician who appeared before the Board. He has a deep respect for what the Board members do and for what the Board's responsibilities are. He stated that he highly respects the Medical Board. Dr. Coleman stated that he accepted the Board's placing his license on suspension for two months. He stated that he was wrong in how he answered a question on the renewal application, and he will again admit that he was wrong. He added that he will also state that having a license to practice to medicine in Ohio is not a right, it's a privilege. Under no circumstances will he ever go beyond the rules and regulations set forth by the Board. Dr. Coleman stated that it wasn't something that he had intended to do. It was a mistake that he made, and he's lived up to that mistake. From this point on, he will abide by the Board's rules and regulations with regard to the probation moving forward.

Dr. Coleman stated that from a personal standpoint he deeply respects every single Board member, and he looks forward to working with the Board. He added that he also has a deep respect for Ms. Bickers. He believes that his next meeting with Ms. Bickers is in February 2009. Dr. Coleman stated that he would like to let "bygones be bygones" and move on and carry out the probationary terms as set forth by the Board.

Dr. Steinbergh stated that she appreciates Dr. Coleman's candor. She stated that one of the reasons that medical students are attending Board meetings is to teach them about their responsibility to licensure and to always be honest about things.

Dr. Coleman commented that it's a noble profession, one of the only noble professions left. He stated that he was a paramedic back in the early 1980s, riding on an ambulance at the age of 16, when the rules were different back then. He stated that you're dealing with human lives here, if you cannot be honest with your patients, you must be honest with yourself first. He stated that that's pretty much how he feels about this whole thing.

DR. STEINBERGH MOVED TO CONTINUE DR. COLEMAN UNDER THE TERMS OF THE BOARD'S ORDER OF MARCH 12, 2008, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. MADIA SECONDED THE MOTION. All members

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voted aye. The motion carried.

ALEXIS D. PARKS MYTON, M.D.

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

In response to Board members' questions, Dr. Myton stated that she is doing all right. She explained that she had been in private, solo practice, but decided to close that practice. She stated that she was trying to make a transition to a new position. Her original intention was to work part-time in her practice. During the transition period, which was very short, she did provide notification to her patients that she was leaving her private practice to pursue other opportunities and to retire her private practice. In that short time frame she received a number of requests for records, and she was overwhelmed with the number of requests that she had received. Dr. Myton stated that she thinks that the biggest thing she learned from that, not providing records timely is recognizing when you are overwhelmed and when you need to ask for help. You find yourself in situations that you can't handle by yourself. She stated that she thinks that that's the biggest thing she's learned from this experience.

Dr. Steinbergh asked whether Dr. Myton had ever considered using a service to do that.

Dr. Myton stated that she did, but it was a time when she was experiencing a lot of professional and personal losses in terms of finances and other areas. At the time she just didn't have the funds to do that. She tried to enlist the help of people she knew, as well as herself. She added that she thinks it was just not recognizing, for the most part, that she was in a situation where she was overwhelmed.

In response to further questions, Dr. Myton stated that she's working part-time in a community urgent care, and as a mother full-time. She commented that it is an urgent care, so you see a patient and you're pretty much done with that patient experience after that visit is completed. Also, she noted that charts and the records are not kept in her possession.

DR. STEINBERGH MOVED TO CONTINUE DR. MYTON UNDER THE TERMS OF HER AUGUST 13, 2008 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

DIRK I. RODRIGUEZ, M.D.

Dr. Rodriguez made his initial appearance before the Board, pursuant to the terms of his August 13, 2008 Consent Agreement.

Dr. Steinbergh asked Dr. Rodriguez to share with the Board and the medical students a little bit about disruption and anger management, and the kinds of problems he had in his practice that led to this.

Dr. Rodriguez stated that what led to this problem was just being overwhelmed and, as a surgeon and

former military surgeon, having a tough time saying, “no,” and understanding that you can’t say “yes” to everything and you can’t help everyone who comes to you for help. Dr. Rodriguez stated that that had become an overload and overwhelming to a person in private practice. He added that allowing a toxic home environment to affect your ability to think correctly, you take on the mentality of being a savior for everybody and everything. When all that the nurse has asked is whether you want the IV restarted or not, it’s not the time to deal with all the problems of the world and save all the problems of the world. What happened was that his responses to nursing staff and hospital staff were not the correct or appropriate responses for the job they were trying to do. All they were trying to do was to do their job and help his patients. His responses were angry, and he yelled.

In response to further questions, Dr. Rodriguez stated that he is not taking any medications. Through his agreed order with the Texas Medical Board, his anger management course has to be approved. He’s submitted the course for approval and he’s waiting to hear from the Texas Board regarding that matter. He should have that done within the next 30 to 60 days. He has been under the therapy of a psychologist since May 2008, and he’s had four visits with her. Dr. Rodriguez stated that he’s submitted this psychologist’s information to Ms. Bickers. Dr. Rodriguez stated that he’s awaiting a final approval of a psychiatrist here in Ohio as a monitoring psychiatrist for the agreed order. He stated that that took quite a bit of time because the Texas Medical Board had not dealt with this type of situation, with a physician requesting to undergo monitoring outside of the State of Texas. It took almost six to nine months of discussion with his attorney in Texas to get that approved.

In response to further questions, Dr. Rodriguez stated that he is currently practicing. He’s the director of bariatric surgery at Deaconess Hospital in Cincinnati. He advised that getting rid of a toxic home environment was one big help in controlling his anger. He also understands that all he has to do is take good care of his patients, and that anyone who is trying to help him take care of his patients is helping him. He can’t control everything that happens.

Dr. Steinbergh noted that Dr. Rodriguez’ work hours were overwhelming. She asked whether he’s changed that.

Dr. Rodriguez stated that he has. He stated that, when he was in Texas, he was in a solo private practice. He had no partners, no guaranteed call coverage. Now he’s an employee of Deaconess Hospital, and he has call coverage available to him.

Dr. Varyani advised that the JCAHO list of goals that are going to be monitored nationwide include anger management, not just for physicians for all health care employees in every situation. He added that most hospitals he knows are JCAHO-approved, and JCAHO has made it one of the prime issues. Everyone will have to write policies. Dr. Varyani stated that he’s glad that Dr. Rodriguez has tackled it, that he’s over it, and that he’s changed his lifestyle.

Dr. Stephens stated that she would like the students to realize that no matter what’s going on at home, you have to leave that at home. She noted that Dr. Rodriguez talked about a toxic home environment. She stated that she finds her home environment to be toxic. She has two children under the age of 10. Dr. Stephens stated that you really have to be able to separate your home life from work and know the

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importance of what you do as a physician.

Dr. Rodriguez stated that one other thing is that he was a very busy bariatric surgeon in Dallas. His case load exceeded 400 bariatric surgeries a year, and he was by himself. Dividing that into 52 weeks of the year, that included: initial office visit, supervision of consultations for pre-operative workups, performing surgery, taking care of the patients, writing notes, discharge orders, running the advertising necessary for such a practice, keeping records up to date and in order, and, on top of that, being a national consultant to two different surgical firms that developed surgical products.

Dr. Stephens stated that that's still no excuse; everybody's busy. He should be happy that he was so busy and making money.

Dr. Rodriguez stated that he was happy but, at the same time, he was also human. Besides the fact of being very busy, and thankfully he was busy, he didn't recognize that he was too busy and overwhelmed. There were times he had to learn to say, "no." He didn't do that and just kept piling it on himself. Now he is a lot better about not doing that.

DR. STEINBERGH MOVED TO CONTINUE DR. RODRIGUEZ UNDER THE TERMS OF HIS AUGUST 13, 2008 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. MADIA SECONDED THE MOTION. All members voted aye. The motion carried.

STEVEN H. SUESS, M.D.

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

In response to Board members' questions, Dr. Suess stated he is attending meetings, as required, three times a week. He is also submitting to testing. He added that it took a while for him to get a laboratory in Florence, South Carolina, where he is currently, that's hooked up with Quest Diagnostics, Inc. He stated that he's in compliance and that means that he's passed all the tests. Dr. Suess stated that he stopped practicing in Ohio when the Board's enforcement attorney, Ms. McNair, told him to stop practicing. That was in the middle or end of July. That was about the same time as the papers were served for the consent agreement.

Dr. Steinbergh asked whether Dr. Suess is required to complete a 28-day inpatient program.

Ms. Bickers stated that he is in order to comply with the Board's consent agreement. She stated that, to her knowledge, he has not begun the inpatient treatment at one of the Board's approved facilities.

Dr. Steinbergh noted that the documents in the agenda package indicate that Dr. Suess hasn't begun the inpatient treatment and is waiting to find out if the South Carolina Board was going to require it. She asked him about the requirements of this Board.

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Dr. Suess stated that he is complying with the requirements of this Board and the consent agreement at this time. His license in South Carolina was a reactivation of license which he'd had in the 1980s, when he'd practiced in Myrtle Beach for three years. He'd reactivated that license earlier in the summer. He had signed on and taken a job in Florence, South Carolina, working at an urgent care center. They reactivated his license in June and all systems were "go." He moved there in July, prior to getting all of this news from the Ohio Board about the consent agreement and so forth. Dr. Suess stated that he's spoken with the administrator of the South Carolina Board several times and they are reviewing the Ohio case and the consent agreement, which he provided. They are supposed to let him know what their determination is. They had also expressed an interest that they would like to speak with the Ohio Board. He believes that Ms. Bickers attempted to contact someone from the South Carolina Board to initiate contact to discuss what could be done in Ohio, particularly about the 28-day inpatient treatment requirement. Dr. Suess stated that he was hoping that he might be able to serve the 28-day requirement in South Carolina instead of coming back to Ohio for it.

Dr. Steinbergh stated that it would have to be at an Ohio Board-approved treatment program.

Dr. Suess stated that he understands that that's a stipulation.

Dr. Varyani asked Dr. Suess to keep in mind that, if he doesn't comply with all of the terms of the Ohio consent agreement, including the 28-day inpatient treatment requirement, he could face problems in the future.

Dr. Suess indicated that he understands that.

DR. MADIA MOVED TO CONTINUE DR. SUESS UNDER THE TERMS OF HIS AUGUST 13, 2008 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. MAHAJAN SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Talmage returned to the meeting at some point during the previous discussions.

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. Suppan stated that she would like to consider Dr. Creps' probationary request as a separate item.

Dr. Steinbergh stated that she would like to consider Dr. Moore's probationary request as a separate item.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON OCTOBER 6 & 7, 2008 WITH: MARK L. ALLEN, M.D.; DANIEL H.

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BRUMFIELD, M.D.; JANICE ELECTA GREEN DOUGLAS, M.D.; PAUL E. DUNCAN, M.D.; MATTHEW H. EVENHOUSE, M.D.; JONATHAN L. HAIMES, M.D.; HUSAM E. HAMED, M.D.; SANDRA K. HAREWOOD, M.D.; MARK O. HENSON, M.D.; WILLIAM WAYNE HOLLIFIELD, M.D.; WILLIAM L. HOPPE, M.D.; BYRON C. LEAK, M.D.; BOBBY C. LENOX, JR., D.O.; FLORENCE B. MATYAS, M.D.; BRUCE JEFFREY MERKIN, M.D.; NYKOLAI VASIL PIDHORODECKYJ, M.D.; STEPHEN R. PORTER, M.D.; ROBERT S. REEVES, JR., M.D.; JON P. RYAN, D.O.; FRANK M. STRASEK, D.P.M.; SUSAN GAIL SWEDA, M.D.; BRETT E. TOWARD, M.D.; AND GARY W. WALTZ, M.D. DR. STEINBERGH FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS:

- **TO APPROVE ROBERT R. BRIGHTWELL, D.O.'S REQUEST TO WAIVE HIS APRIL 2009 PROBATIONARY APPEARANCE;**
- **TO APPROVE AMANUEL AMBAYE DANIACHEW, M.D.'S PRACTICE PLAN, ALLOWING HIM TO WORK APPROXIMATELY 40 HOURS A WEEK IN A TEMPORARY CLINICAL PROGRAM SPECIALIZING IN ERECTILE DYSFUNCTION AT CAMBRIDGE CLINIC OF AUSTIN, LLC;**
- **TO APPROVE RICHARD G. DAY, M.D.'S REQUESTS FOR A REDUCTION IN DRUG SCREENS TO TWICE PER MONTH AND A REDUCTION IN APPEARANCES TO EVERY SIX MONTHS;**
- **TO APPROVE LAMBERTO T.R. GALANG, JR., M.D.'S REQUEST FOR APPROVAL OF LESLIE E. MCCLURE, PSYD., TO SERVE AS THE NEW TREATING MENTAL HEALTH PROFESSIONAL;**
- **TO APPROVE DANN WILLIAM GANZHORN, M.D.'S REQUESTS FOR A REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO 10 MEETINGS PER MONTH, AND ELIMINATION OF THE CHART REVIEW REQUIREMENT;**
- **TO APPROVE MARK E. GOLDSMITH, M.D.'S REQUEST FOR APPROVAL OF A PERSONAL AND PROFESSIONAL ETHICS COURSES, TAILORED SPECIFICALLY FOR THE DOCTOR BY DONNA F. HOMENKO, PH.D.;**
- **TO APPROVE DONALD C. MANN, M.D.'S REQUEST FOR A REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO MEETINGS A WEEK WITH A TOTAL OF TEN PER MONTH;**
- **TO APPROVE JAMES M. MCGINNIS, D.O.'S REQUEST FOR APPROVAL OF WILLIAM BASEDOW, D.O., TO SERVE AS THE NEW SUPERVISING PHYSICIAN;**
- **TO APPROVE KEVIN DALE MCKEE, D.O.'S REQUEST FOR APPROVAL OF GARY R.**

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PETERSON, M.D., TO SERVE AS THE NEW MONITORING PHYSICIAN;

- **TO APPROVE DAVID A. RATH, M.D.'S REQUEST FOR REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO MEETINGS A WEEK WITH A TOTAL OF TEN PER MONTH;**
- **TO APPROVE MARK ALLEN RENZ, M.D.'S REQUEST FOR A REDUCTION IN PSYCHIATRIC SESSIONS TO EVERY THREE MONTHS;**
- **TO APPROVE LEROY P. RISE, M.D.'S REQUESTS FOR: DISCONTINUANCE OF THE REQUIRED ADVOCACY CONTRACT WITH THE OHIO PHYSICIANS HEALTH PROGRAM; REDUCTION IN URINE DRUG SCREENS TO TWO TIMES PER MONTH; REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO PER WEEK WITH A TOTAL OF TEN PER MONTH; REDUCTION IN APPEARANCES TO EVERY SIX MONTHS; AND REDUCTION IN PSYCHIATRIC SESSIONS TO EVERY SIX WEEKS;**
- **TO APPROVE JODY LEE NELSON SHORT, D.O.'S REQUEST FOR APPROVAL OF MOUNZER YASSIN-KASSAB, M.D., TO SERVE AS THE NEW MONITORING PHYSICIAN; AND**
- **TO APPROVE RICHARD ALLAN ZINNI, D.O.'S REQUEST FOR DISCONTINUANCE OF THE REQUIRED ADVOCACY CONTRACT WITH THE OHIO PHYSICIANS HEALTH PROGRAM.**

DR. STEINBERGH 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 TO GRANT CERTIFICATES OF GOOD STANDING TO THE SCHOOLS OF MASSAGE THERAPY, LISTED IN EXHIBIT "C." 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. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye

The motion carried.

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PHILIP L. CREPS, D.O.

Dr. Suppan expressed concern with the two ethics courses Dr. Creps has proposed to fulfill the Board's requirements in its Order of March 14, 2007: the professional ethics course offered by the National Association of Health Underwriters, pursuant to paragraph B.3., and the ethics course, *Personal and Professional Ethics for Texas CPAs, Registered with the National Association of State Boards of Accountancy*, pursuant to paragraph B.4. She stated that she would take exception to both courses. She stated that she found that the information about the underwriters' course is only, in part, applicable to the practice of medicine. There are a few things about HIPAA, billing and returning refunds, and paperwork, but it does not even begin to touch on the higher duty of care that a physician has in caring for patients. There are no life and death issues, there's no information about the ethics of the privilege of laying hands on the patient, about physical boundaries, about the trust between physicians and their patients. She stated that she does not find this course to be satisfactory. Dr. Suppan added that, based on the description of the seminar, this appears to be an internet course.

Dr. Suppan stated that it looks like this particular physician is trying to skate through without providing proper information to the Board and from medical schools. He's already exhibited a disregard for trust and the responsibility of reporting of information. Dr. Suppan stated that she doesn't feel that this particular course will fit the bill for him. She added that she doesn't feel that he will learn a thing from it. Dr. Suppan added that it bothers her that Dr. Creps would think that he could fulfill his obligation imposed by the Board in taking a class like this. She stated that, for her, it highlights his fundamental misunderstanding of what he's supposed to be learning.

Dr. Suppan stated that she would like to advocate for not approving this course and for telling Dr. Creps to find a good physician/medical practice ethics course that deals with patient care and responsibility to patients.

Dr. Suppan stated that the other course, which was written for CPAs, did not have the recommendation for approval from the Secretary and Supervising Member, which the underwriters course did have.

Ms. Bickers stated that the third piece to Dr. Creps' request is that he not be required to take the COMVEX-USA, and that the Board accept his recertification.

Dr. Varyani stated that that should be okay.

Dr. Steinbergh stated that, concerning the ethics courses, it's important to look at the reason behind the discipline in determining the appropriateness of courses proposed by doctors on probation. She stated that she doesn't believe that they have to take an ethics course that deals with life and death for this particular issue, but she does not disagree with Dr. Suppan about the proposed courses.

DR. SUPPAN MOVED TO DENY APPROVAL OF THE TWO ETHICS COURSES PROPOSED BY DR. CREPS, AND TO ACCEPT HIS RECERTIFICATION IN PSYCHIATRY BY THE AMERICAN BOARD OF OSTEOPATHIC NEUROLOGY AND PSYCHIATRY IN PLACE OF

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THE COMVEX-USA. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

JOHN PEASE MOORE, III, M.D.

Dr. Steinbergh stated that Dr. Moore has asked for Board approval of an online and home study ethics course, offered by the Texas Medical Association and of a billing and coding course offered by the Society for Pain Practice Management in fulfillment of terms in the Board's Order of May 13, 2003. Dr. Steinbergh stated that Dr. Moore was convicted of felony counts involving false statements related to health care matters. Dr. Steinbergh stated that Dr. Moore does have a good explanation about the billing course that he took. Dr. Steinbergh stated that she would recommend approving the billing course, because she feels that it has covered what he needs and that he has, in fact, demonstrated that he has learned from this course.

Dr. Steinbergh stated that she's concerned about the ethics course, noting that it's an on-line course through the Texas Medical Association. Dr. Steinbergh asked whether other Board members feel that an on-line ethics course is appropriate. If the Board members feel that on-line ethics programs are appropriate, do they feel that this particular course is appropriate. If so, should the Board require a report from him to tell the Board what he's learned and how he'll apply it, as he's commented on the billing course. Dr. Steinbergh stated that there's nothing that says that he has to report to the Board about that.

Dr. Mahajan asked whether those who take the course have to take a test after these courses.

Dr. Steinbergh stated that it doesn't. She stated that they are all Category 1 CME credits, but there's no testing in this course.

Dr. Stephens stated that the concept of ethics and ethical behavior is usually in the context of community. It's in the context of relationships with people. She, personally, doesn't feel that an on-line ethics course cuts it. She thinks that an ethics course needs to have some personal interaction.

Dr. Suppan agreed with Dr. Stephens.

Dr. Talmage stated that a course the Board routinely approves is one at Case Western University, which is a didactic course. The individual sits in an audience, listens to a lecturer, which he would find no different from looking at the lecturer on the screen of a computer. If the Board feels uncomfortable with this course, he would infer that the Board also feels uncomfortable with a didactic classroom course.

Dr. Suppan stated that in a didactic classroom course you have the opportunity to ask questions. She stated that ethics is all about nuances, problem-solving, and working through a situation. The most constructive part of the ethics course is to have the opportunity to ask a question of the instructor and have that exchange.

Dr. Varyani stated that he has attended such courses, and they aren't small audiences. They're big audiences. He indicated that there's no way of really knowing what an individual is getting out of either

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course. Dr. Varyani stated that he tends to agree with Dr. Talmage, that there would be the same effect.

Ms. Bickers stated that the Board has had requests for approval of on-line courses before. If they've been approved, they've been approved in conjunction with a face-to-face ethics course as well. She stated that the reason that this was even considered was the 27 AMA credits that Dr. Moore would have received.

Dr. Steinbergh stated that she wanted to generate this discussion because these kinds of things concern her. Again, she looks to see what the practitioner did. In this case, taking an on-line course may not be such a bad thing; but the Board does, in the end, have to have some understanding that he has learned from this, whether it be a report that the Board accepts, whether it be a face-to-face with the Secretary and/or Supervising Member. Dr. Steinbergh stated that there are times when there are sexual boundary issues and other very personal ethics mal-decisions such that the Board leads them in the direction of some kind of course that has been developed specifically for them. A psychologist in Cincinnati is one who looks to see what the Board has ordered and what the case involved, and then she develops a personal course, which is always very appropriate for the Board.

Mr. Albert stated that several years ago the Board enacted a practice that would require those who take courses to write a summary of what they got out of the course for review by the Board's Secretary.

Ms. Bickers stated that the problem is that this Order is from 2003, before the Board began that requirement.

Dr. Steinbergh stated that the Board could add a requirement that, were the Board to approve this case, he would have to send a report to the Board or he could present in person his responses.

Ms. Bickers stated that the Board could request that, but it can't change the Order and the Order doesn't require it. If Dr. Moore doesn't provide the report, the Board can decide that he's not ready for reinstatement. She added that she doesn't think that this is going to be a problem for Dr. Moore.

Dr. Talmage stated that the other option would be to have Dr. Moore attend an investigatory conference, which are held every fourth Wednesday of the month. He and Mr. Albert sit down with people who have been accused of certain things to try to sort out the case. It would not be inconvenient, nor would it be difficult to add this individual to that format. They spend about 40 minutes per case. They could investigate what he got out of the course and do that in person.

Dr. Steinbergh asked the difference between an investigative conference and an office conference.

Dr. Talmage stated that they're the same thing.

Ms. Bickers explained that probationary conferences are pursuant to a Board action and are public. Investigative conferences are not public, but are part of an investigation. Probationary office conferences are pursuant to a Board action. She added that if Dr. Moore's license is reinstated, he will be making personal appearances before the Board every three months. The Board will continue to talk to Dr. Moore every three months about his ethics and what he's learned. She stated that when she gets the letters

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received after the courses, she does review them with the Secretary and Supervising Member anyway. She will present that to the Board when he requests reinstatement.

Mr. Schmidt stated that, even though he would be brought in on an investigatory conference day, it would still be a probationary conference, unless the Board had a complaint. It would still be a public meeting.

Dr. Stephens stated that unethical behavior is kind of like antisocial behavior. It's not good for society. Taking an ethics course where you're interacting with a machine instead of a person further emphasizes that antisocial aspect of it. Even though you're sitting in a big classroom of people, at least there's that feeling that you are connected in some way with other people in society. This may one day be taken out of the Board's hands because one day they may only have on-line courses.

Dr. Suppan stated that it's the same process that you go through in a twelve-step program. You're with other people and you leverage off your peers in that program to gain, and that's really successful.

Dr. Varyani stated that, unfortunately, when you attend these courses, it's not just the ethics course you're attending, it's multiple things, and ethics is just part of those multiple things.

DR. STEINBERGH MOVED TO GRANT DR. MOORE'S REQUEST FOR APPROVAL OF: THE BILLING AND CODING COURSE OFFERED BY THE SOCIETY FOR PAIN PRACTICE MANAGEMENT. DR. STEINBERGH FURTHER MOVED TO APPROVE THE ONLINE AND HOME STUDY ETHICS COURSE, OFFERED BY THE TEXAS MEDICAL ASSOCIATION, AND TO RECOMMEND TO DR. MOORE THAT HE SUBMIT A REPORT ON WHAT HE HAS LEARNED IN REGARDS TO THIS ON-LINE COURSE. MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Amato left the meeting during the previous discussions.

REINSTATEMENT REQUESTS

BRADLEY R. WOLF, M.D.

Dr. Varyani referred the Board to Dr. Wolfe's request for reinstatement of his license to practice medicine and surgery, which was suspended by Board Order of July 9, 2008. The Board was informed by Ms. Jacob's memorandum of October 29, 2008 that Dr. Wolf has submitted documents of compliance with the terms of the Board's Order.

DR. STEINBERGH MOVED TO REINSTATE DR. WOLF'S LICENSE TO PRACTICE MEDICINE AND SURGERY, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS AS OUTLINED IN THE BOARD ORDER OF JULY 9, 2008. DR. MADIA 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. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

The motion carried.

REPORT OF SEPTEMBER 29, 2008 RULES HEARING

Ms. Debolt stated that there were two hearings on September 29, 2008, and two Reports and Recommendations were filed by the Hearing Examiners. One Report and Recommendation deals with Rule 4731-21-01, the definitions in the intractable pain rules. There were no comments received in that part of the hearing, so that rule will be discussed in the next item of the agenda.

Ms. Debolt referred the Board to the hearing materials on Rule 4731-16, the impairment rules. This Report and Recommendation came from the Hearing Examiners. Ms. Debolt stated that the Board received one letter with comments from the Ohio Physicians Health Program (OPHP). That letter was included in the summary of the Report and Recommendation.

Ms. Debolt stated that the Board could either refer this matter back to the Impairment Committee for the consideration of the comments, or, because the comments are not really complex, the Board could consider them today and make a decision as to whether or not amendments are needed. The staff could then go ahead and get the refiling done and get through the JCARR process.

Ms. Debolt stated that Dr. Sateren, on behalf of OPHP, commented first on the definition of impairment. Ms. Debolt stated that the Board did not propose any amendment to that rule. Dr. Sateren suggested that the definition be amended because of stigma and because it's really not a medical term. Ms. Debolt stated that this is a definition that the Board has had for a number of years. She recommended that the Board not make any amendment to the definition.

Ms. Debolt stated that Dr. Sateren also commented on Rule 4731-16-05, the examination rule. Dr. Sateren noted a typographical error in paragraph (A)(3)(b)(v). Dr. Sateren also advised that the use of the word, "impaired," in rule (A)(3)(c) is not appropriate in that point in time. Ms. Debolt stated that she agrees that that word can be removed, because the rule is talking about somebody that the Board is getting ready to send to an evaluation. In other parts of the rule, it doesn't use the term "impaired." Ms. Debolt recommended adoption of Dr. Sateren's comment.

Ms. Debolt stated that in that same rule, paragraph (D)(1) says that when the Board sends someone to an examination, he or she can also be ordered to undergo a drug screen at that point in time. It says that the results of the drug screen will be shared with the treatment provider who's providing the examination. Dr.

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Sateren asked that the results be shared with OPHP if they have this physician under contract. Ms. Debolt stated that at that point in time, this is an investigation and the drug screen result is investigative and is confidential pursuant to the law. It can't be shared. Ms. Debolt recommended that this comment not be adopted.

Dr. Egner left during the previous discussion.

DR. SUPPAN MOVED TO APPROVE MS. DEBOLT'S RECOMMENDATIONS RELATING TO RULE 4731-16-05; I.E., TO CORRECT THE TYPOGRAPHICAL ERROR IN PARAGRAPH (A)(3)(b)(v); TO STRIKE THE WORD, "IMPAIRED" FROM PARAGRAPH (A)(3)(c), AND TO NOT MAKE THE REQUESTED CHANGE TO PARAGRAPH (D)(1) TO PROVIDE COPIES OF DRUG SCREENS TO OPHP. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

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

The motion carried.

FINDINGS AND ORDER IN THE MATTER OF THE ADOPTION OF RULES 4731-1-11, 4731-21-01 AND 4731-21-02, O.A.C.

Ms. Debolt stated that the above-captioned rules are ready for Board adoption. She stated that Rule 4731-1-11 is for the licensure process for the limited branches. It adds the requirement for a criminal records check before the application is considered to be complete. Also, language is added that the school has to provide proof that the applicant completed the program 30 days before the exam is scheduled.

Ms. Debolt advised that Rule 4731-21-01 has definitions for the intractable pain rules, and 4731-21-02 was amended to provide an additional mechanism for a practitioner who was prescribing for intractable pain when the practitioner believes the patient is suffering from addiction or drug abuse. Ms. Debolt stated that all of these rules were amended after a public hearing. They have gone through the final process of the JCARR hearing without any comment, and they're ready for the Board's adoption.

MR. ALBERT MOVED THAT THE "FINDINGS AND ORDER IN THE MATTER OF THE ADOPTION OF RULES 4731-1-11, 4731-21-01 AND 4731-21-02, O.A.C.," BE ADOPTED AS THE FINDINGS AND ORDER OF THE BOARD IN RELATION TO THE PROPOSED RULES CITED THEREIN, AND THAT THE STAFF PROCEED TO FILE THE FINAL RULES WITH AN EFFECTIVE DATE OF NOVEMBER 30, 2008. MR. HAIRSTON SECONDED THE MOTION. A

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vote was taken:

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

The motion carried.

PROPOSED BOARD MEETING DATES FOR 2010

Dr. Varyani referred the Board to a memorandum from Ms. Schmidt, proposing meeting dates for the year 2010. He noted that the only conflict is with the November meeting, when the Thursday session would fall on November 11, a federal holiday when state offices are closed.

DR. STEINBERGH MOVED TO APPROVE THE FOLLOWING MEETING DATES FOR THE YEAR 2010:

January 13-14	July 14-15
February 10-11	August 11-12
March 10-11	September 8-9
April 14-15	October 13-14
May 12-13	November 10
June 9-10	December 8-9

MR. HAIRSTON SECONDED THE MOTION. All members voted aye. The motion carried.

ADMINISTRATIVE REPORT

Mr. Whitehouse stated that he's met with senior staff to develop key performance measures. He hopes to have the finished product ready in January, which may require a meeting of the Ad Hoc Management Committee in December.

Mr. Whitehouse referred to his written report, a copy of which shall be maintained in the exhibits section of this journal, noting that he, Ms. Loe and Mr. Miller attended the Controlling Board meeting held October 20, 2008. The Controlling Board approved the Board's request for an increase of \$180,000.00 in the Board's FY09 appropriation authority to offset the increase in charges by the Office of the Attorney General. The Controlling Board also approved the Board's request to waive competitive selection in the amount of \$77,616.00 for FY09 to amend the contract for one contract hearing examiner.

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Mr. Whitehouse stated that there has been a lot of success in the hearing unit with regard to the established goal of eliminating the backlog; however, there has been equal success in the enforcement unit in moving things quickly through the system. As the staff has done that, there has been a wave of cases of greater volume and complexity heading toward the Hearing Unit. Mr. Whitehouse stated that the Board needs additional resources. He advised that, through the budget process, the Board has requested a fourth hearing examiner. If that is approved, it will probably be towards the end of the year before the Board has someone on board. He commented that that's the best case scenario. The Board doesn't know with certainty whether it will be able to accomplish that. Mr. Whitehouse stated that he would like to go to the Controlling Board in December with a plan that would allow the Board to use contract examiners. He advised that the plan the Board has now expires in December. He'd like to continue the plan for January and through, at least, the end of the fiscal year, and perhaps beyond.

Mr. Whitehouse also talked about the agenda for the retreat to be held the following day, and the items on the retreat agenda. He stated that the staff has worked very hard to come up with presentations on process, policy and priorities.

Dr. Egner returned during the previous discussion.

REPORTS OF ASSIGNED COMMITTEES

LICENSURE COMMITTEE

Dr. Egner stated that the Committee discussed proposed Rule 4731-6-14, Eligibility for Licensure by Examination. She at this time asked Ms. Thompson to address the Board on this topic.

Ms. Thompson stated that the proposal is for changing the time limit and attempt limit on the USMLE and the COMLEX-USA. They'd both be treated the same way. This proposal would give an absolute ten-year time limit, with no exceptions, no "good cause" waivers. If the applicant doesn't complete the sequence within ten years, you retake a step to bring your sequence into the ten-year time limit.

Ms. Thompson stated that the other part of this is the attempt limits, which is something a little new. The rule as it stands now, the Board doesn't look at attempt limits if the applicant completes the sequence within the seven years. If you're past seven years but under ten years, the Board used to look at attempt limits. The rule says that you can't have failed the exam three or more times. Then you have to show good cause for going over the seven-year limit. Ms. Thompson advised that a while back the Board had a licensure case that went up on appeal, and what the judge said was that looking at attempt limits for just the seven to ten was an unconstitutional sort of thing because if it measures something significant, shouldn't the Board also be considering it for those who complete the sequence under seven years. The proposal would be that all applicants must pass all three steps without failing more than three times. You will get that fourth attempt, but you still have to stay within the ten years.

Ms. Thompson stated that there are remedies for this. If you fail the fourth time, and if you are still interested in licensure in Ohio, this rule would require that you go back and get an extra year of training

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and then retake the entire sequence. Again, that would have to be completed within the time limit and the attempt limit.

Ms. Thompson referred the Board to Mr. Miller's historical overview of the rule contained in the agenda materials. She also urged Board members to review the article *Classification Accuracy for Tests That Allow Retakes*, also contained in the agenda materials. She stated that this article supports the limitation on retakes. She stated that the article is from the NBME and others, and what it says is that the misclassification, classifying someone who's competent as not competent because they failed, and likewise classifying someone who's not competent as competent because they passed, by the time you've gotten to the fourth attempt, every person who should be classified as competent has already passed the exam. If you allow people to continue taking it, the only thing you're achieving is allowing people who are not competent to potentially pass the exam. Eventually, most of them do.

Ms. Thompson stated that the cover memo in the agenda also provides the Board with statistics on the number of people who don't pass the sequence within seven years, and some information on the pass rate for each of the steps for first-time takers. She stated that the people who would be outside the time limit and outside the attempt limits is a very small portion of physicians. She commented that between three and five percent of physicians don't meet this. Ms. Thompson advised that 95 to 97 percent of U.S. and Canadian graduates pass the steps on the first attempt.

DR. STEINBERGH MOVED TO ACCEPT THE PROPOSED CHANGES TO RULE 4731-6-14, ELIGIBILITY FOR LICENSURE BY EXAMINATION, AND INSTRUCT STAFF TO PROCEED WITH THE FORMAL RULE FILING PROCESS. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Egner commented that Ms. Thompson, Ms. Rieve and Mr. Miller have worked hard on this. She stated that the proposed rule will solve a lot of licensure issues.

Dr. Steinbergh thanked Dr. Egner for her hard work on this project.

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Carlos Armando Avellanet, M.D.

Dr. Egner advised that Dr. Avellanet is applying for licensure in Ohio. He has indicated that he has not been engaged in the clinical practice of medicine since December 2004. He is a May 1980 graduate of the University Central Del Caribe in Cayez, Puerto Rico.

Dr. Avellanet has requested endorsement of his Puerto Rico State Board examination. He completed training in OB/Gyn at San Juan City Hospital in San Juan, Puerto Rico from July 1980 to June 1984. Dr. Avellanet then practiced as a Physician in Puerto Rico from July 1984 until December 2004.

Dr. Avellanet is currently serving as the Surgical Instructor at the International Society of Cosmetogynecology, in Bayonne, NJ. Dr. Avellanet has provided the Board with a letter from Doctors Felix Santana and Alejandro Gonzalez from the Integrated Medical Center in Santo Domingo, Dominican Republic that certifies that Dr. Avellanet has been traveling to Santo Domingo monthly to perform aesthetic surgeries. Dr. Avellanet does not report any American Board certification. He holds a license in Puerto Rico.

DR. EGNER MOVED TO APPROVE DR. AVELLANET'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Maria Cristina Cruz Duran, M.D.

Dr. Egner advised that Dr. Duran is applying for licensure in Ohio. Dr. Duran has indicated that she has not been engaged in the clinical practice of medicine since July 2006. She is a graduate of the Medical College of Toledo in June 1998. She has requested endorsement of her USMLE scores. Dr. Duran completed training in Family Medicine at Carolinas Medical Center in Charlotte, North Carolina from June 1998 until June 2001. Dr. Duran then worked as a physician at The Portland Clinic in Beaverton, Oregon from October 2001 until July 2006. She moved to Stockholm, Sweden and obtained a Master's degree in Public Health in Stockholm from August 2006 until June 2007. Dr. Duran served one month as a Locum

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Tenens physician in St. Helens, Oregon in June 2008, but she returned to Sweden in July 2008. Dr. Duran is American Board certified in Family Medicine since 2001. She holds licenses in North Carolina and Oregon.

DR. EGNER MOVED TO APPROVE DR. DURAN'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX OR BOARD RECERTIFICATION EXAM AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Elizabeth S. Hart, M.D.

Dr. Egner advised that Dr. Hart has requested to take the Computer-based USMLE Step 3 with special accommodations under the Americans with Disabilities Act of 1990. She has been diagnosed with a developmental coordination disorder. Dr. Hart has requested extra time and a dry erase board for notes.

Dr. Hart did not request accommodations for Step 1 and Step 2. The above is a very recent diagnosis. However, the National Board of Medicine Examiners expert agreed that Dr. Hart should be given accommodations given her diagnosis.

DR. EGNER MOVED TO APPROVE DR. HART'S ACCOMMODATION REQUESTS DURING THE ADMINISTRATION OF THE STEP 3 OF THE USMLE. 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. Hairston	- aye
	Dr. Stephens	- aye

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Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

Achamma Itticheria, M.D.

Dr. Egner advised that Dr. Itticheria has requested to take the Computer-based USMLE Step 3 with special accommodations under the Americans with Disabilities Act of 1990. She has been diagnosed with Arnold Chiari malformation 1. Dr. Itticheria has requested extra time, additional break time and touch pad.

Dr. Itticheria did not request accommodations for Step 1 and Step 2. The above is a very recent diagnosis. However, the National Board of Medicine Examiners expert agreed that Dr. Itticheria should be given accommodations given her diagnosis.

DR. EGNER MOVED TO APPROVE DR. ITTICHERIA'S ACCOMMODATION REQUESTS FOR SPECIAL ACCOMMODATIONS DURING THE ADMINISTRATION OF THE STEP 3 OF THE USMLE. 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. Hairston - aye
Dr. Stephens - aye
Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Varyani - aye

The motion carried.

Alan E. Kohrt, M.D.

Dr. Egner advised that Dr. Kohrt is applying for licensure in Ohio. Dr. Kohrt has indicated that he has not been engaged in the clinical practice of medicine since November 2005.

Dr. Kohrt is a graduate of the New York Medical College in Valhalla, New York in June 1973. He has requested endorsement of his National Board of Medical Examiners Diplomate status. Dr. Kohrt completed training in Pediatrics at Northwestern University in Chicago from June 1973 until June 1976. He then practiced as a Pediatrician in Pennsylvania from July 1976 until August 1997. Dr. Kohrt then worked as the Medical Director at Aetna in Blue Bell, Pennsylvania from August 1997 until April 2000. He practiced Pediatrics at the Children's Hospital of Philadelphia from May 2000 until November 2005.

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Dr. Kohrt is currently serving as Chief Quality Officer of Children's Healthcare of Atlanta in Atlanta, Georgia. Dr. Kohrt is American Board certified in Pediatrics since 1978. He holds licenses in Illinois, New York, Pennsylvania and Georgia.

DR. EGNER MOVED TO APPROVE DR. KOHRT'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX EXAM OR BOARD RECERTIFICATION, AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS.

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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Maurico F. Hong Lopez, M.D.

Dr. Egner advised that Dr. Hong Lopez is over the 7-year time limit to take the USMLE by 4 months. He passed Step 1 on the third attempt, Step 2 on the second attempt and Step 3 on the second attempt with scores of 75, 76 and 75. Dr. Hong Lopez has sent a letter of explanation asking to waive the requirement because he was only over 4 months, and still within the 7 year "calendar" year.

Dr. Hong Lopez graduated from the University of De La Salle in Mexico City, Mexico in July 1993. He trained and practiced in Mexico from August 1993 until January 1996, when he immigrated to the United States. Dr. Hong Lopez trained at University of Texas Health Science Center in San Antonio in Internal Medicine from July 1996 until June 2002. He entered a Fellowship in Clinical Cardiac Electrophysiology at Case Medical Center from July 2002 until June 2003, and then Dr. Hong Lopez trained as a fellow in Clinical Cardiac Electrophysiology at St. Michael's Hospital at the University of Toronto from July 2003 until February 2005. Dr. Hong Lopez is practicing now at the VA Medical Center in Cleveland from March 2005 to the present, and he also serves as the Assistant Professor in the Medical Electrophysiology program at Case Medical Center in Cleveland from January 2007 until the present. Dr. Hong Lopez holds licenses in Michigan, Texas and Ontario, and he reports he is American Board Certified in Internal Medicine (2004), Cardiovascular Disease (2005) and Clinical Cardiac Electrophysiology (2006).

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE 7-YEAR RULE AS OUTLINED IN 4731-6-14(C) (3), AND TO ACCEPT DR. HONG LOPEZ' EXAMINATION

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SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Rafael M. Nunez, M.D.

Dr. Egner advised that his matter is before the Board pursuant to Rafael Nunez's application for medical licensure. Dr. Nunez is a graduate of the University of Caldas, Manizales, Columbia. He stated on his application that he has completed 38 months of a Pathology Fellowship at the University of Iowa. The program indicated this fellowship as a research fellowship.

Dr. Nunez graduated from the University of Caldas in June 1979. He trained and practiced in Manizales, Columbia from July 1983 until August 1989. He then immigrated to the United States and completed the above mentioned Fellowship in Pathology from the University of Iowa from September 1989 until November 1992. Then he worked as Assistant Scientist in Dermatology at the University of Bern in Switzerland from December 1992 until December 1994. He went to the University of Zurich as an Assistant Scientist-Lecturer from March 1995 until February 2001. Dr. Nunez returned to the U.S., and was employed at Sloan-Kettering Cancer Center as an Associate member of the Immunology program from March 2001 until June 2002. He then went to the University of Illinois as Assistant Professor in Hematology/Oncology from August 2002 until February 2006. He was a physician in Ambulatory Pediatrics-Obesity at Southeastern Pediatrics Foundation in Milwaukee, Wisconsin from March 2006 until February 2008. Since June 2008 to the present, Dr. Nunez has been working at the Kauai Veterans Hospital, and at the Northern Navajo Medical Center serving the Navajo population in New Mexico. Dr. Nunez holds an active license in Hawaii.

Dr. Nunez has requested that the Board deem his 38 month 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.

DR. EGNER MOVED TO PROPOSE TO DENY DR. NUNEZ' REQUEST TO FIND THAT HIS 38 MONTHS OF A RESEARCH FELLOWSHIP IS EQUIVALENT TO 24 MONTHS OF APPROVED

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**GRADUATE MEDICAL EDUCATION THROUGH THE SECOND YEAR LEVEL.
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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Teri P. Saveanu, M.D.

Dr. Egner advised that Dr. Saveanu is applying for licensure in Ohio. Dr. Saveanu has indicated on her application for licensure that she has not actively practiced clinical medicine since March 1993.

Dr. Saveanu is a graduate of Northwestern University Medical School, which is accredited by the Liaison Committee on Medical Education. She has requested endorsement of her NBME diplomate status. Dr. Saveanu completed training in Internal Medicine at St. Vincent's Hospital in Worcester, Massachusetts from July 1981 through June 1982. Dr. Saveanu then entered a Psychiatry residency at Tufts-New England Medical Center in Boston from July 1982 until July 1985. From July 1985 through July 1989, Dr. Saveanu worked at Bay Cove Mental Health Center Hospitals as a psychiatrist, then at Faulkner Hospital from July 1987 until June 1989. Dr. Saveanu took two years off from July 1989 until March 1991, and then worked at Youth and Family Services Clinic in Crystal Lake, Illinois from March 1991 until March 1993. Dr. Saveanu holds licenses in Massachusetts and Illinois (expired) and is American Board Certified in Psychiatry since July 1987.

DR. EGNER MOVED TO APPROVE DR. SAVEANU'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE SPEX EXAM OR AMERICA BOARD OF PSYCHIATRY RECERTIFICATION, AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye

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

The motion carried.

Heather Hassman, LM.T.

Dr. Egner advised that Ms. Hassman is applying for restoration of her LM.T. license in Ohio. Ms. Hassman has indicated on her application for restoration that she has not actively practiced Massage Therapy since 2005.

DR. EGNER MOVED TO APPROVE MS. HASSMAN'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE LIMITED BRANCH PORTION OF THE MESSAGE EXAMINATION AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Lynn Janoch, LM.T.

Dr. Egner advised that Ms. Janoch is applying for restoration of her LM.T. license in Ohio. Ms. Janoch has indicated on her application for restoration that she has not actively practiced Massage Therapy since 2005.

DR. EGNER MOVED TO APPROVE MS. JANOCH'S REQUEST FOR OHIO LICENSURE SUBJECT TO SUCCESSFUL COMPLETION OF THE LIMITED BRANCH PORTION OF THE MESSAGE EXAMINATION AND CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. DR. MAHAJAN SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Humberto Cesar Morales Ramos, M.D.

Dr. Egner advised that this matter is before the Board pursuant to Humberto Cesar Morales Ramos' application for medical licensure. Dr. Morales Ramos is a graduate of the Universidad Nacional Mayor de San Marcos. He stated on his application that he has completed 16 months of an 18 month Neuroradiology Fellowship at the University of Cincinnati.

Dr. Morales Ramos graduated from the Universidad Nacional Mayor de San Marcos in Lima, Peru in April 2000. He trained and practiced in Peru and Spain from May 2000 until June 2007. Dr Morales Ramos did travel to the US in November and December 2003 to participate in a two month Visiting Fellowship at the Medical College of Georgia in Augusta, and also trained as a Clinical Research Fellow in May and June 2006 at the University of North Carolina at Chapel Hill. Dr Morales Ramos then immigrated to the United States and began the Neuroradiology Fellowship at the University of Cincinnati in July 2007 and will complete it in December 2008.

Dr. Morales Ramos has requested that the Board deem his 16 month fellowship in the United States and his training and experience in Peru 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.

DR. EGNER MOVED TO GRANT DR. RAMOS' REQUEST FOR A FINDING OF EQUIVALENCY OF TRAINING, TO BE EFFECTIVE AFTER HIS COMPLETION OF THE FELLOWSHIP IN JANUARY 2009, AND TO GRANT HIM A LICENSE AT THAT TIME, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye

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

The motion carried.

Mahtab Tashakori, M.D.

Dr. Egner advised that Dr. Tashakori is over the 7-year time limit by 2 months. She passed Steps 1, 2, and 3 on the first attempt with scores of 86, 81 and 88. Dr. Tashakori sent a letter of explanation saying she went over the 7 year limit for USMLE because she chose to wait to her third year of residency to take Step 3 so she would obtain a higher score.

Dr. Tashakori graduated from Iran University of Medicine Sciences in Tehran, Iran in June 1996. Dr. Tashakori worked in Iran from July 1996 until December 2000, when she immigrated to the United States. Dr. Tashakori trained at the University of Illinois in Chicago Family Medicine from July 2002 until June 2005. She worked as a Family Medicine physician at the Arnett Health Clinic in Lafayette, Indiana from August 2005 until February 2006. Dr. Tashakori then practiced at the Carle Clinic Association in Champaign, Illinois as a Family Medicine physician from October 2006 until May 2008. She is now in Toledo, Ohio seeking employment .Dr. Tashakori holds licenses in Indiana and Illinois. She is American Board certified in Family Medicine in August 2005.

DR. EGNER MOVED TO APPROVE DR. TASHAKORI'S REQUEST FOR THE LIMITED EXCEPTION OF THE 7-YEAR RULE AS OUTLINED IN 4731-6-14(C) (3), AND TO ACCEPT HER EXAMINATION SEQUENCE IN ORDER FOR HER TO BE GRANTED A LICENSE, CONTINGENT UPON ALL REQUESTED DOCUMENTS BEING RECEIVED AND APPROVED IN ACCORDANCE WITH LICENSURE PROTOCOLS. 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

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James Mackey, LM.T. Applicant

Dr. Egner advised that Mr. Mackey is applying to sit for the December 2, 2008, Massage Therapy examination. He has requested special accommodations under the Americans with Disabilities Act of 1990. He has been diagnosed with a form of dyslexia.

Mr. Mackey has requested a taped exam, extended testing time (time and a half), and a separate testing area. He is taking both the Basic Science and Limited Branch portions of the exam.

Mr. Mackey has documented his disability by submitting a letter from Dr. Amrit L. Chadha which documents his diagnosis of dyslexia.

DR. EGNER MOVED TO APPROVE MR. MACKEY'S ACCOMMODATION REQUEST FOR A TAPED EXAM, EXTENDED TESTING TIME OF 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

IMPAIRMENT COMMITTEE

Mr. Albert referred the Board to Ms. Bickers' memorandum of October 29, 2008, concerning an application for a Certificate of Good Standing as a Treatment Provider for Impaired Practitioners filed by Marworth Treatment Center in Waverly, Pennsylvania. Ms. Bickers advises that Marworth had originally been issued a Certificate of Good Standing in October 2000; however, the Certificate had subsequently expired and Marworth was removed from the Board-approved treatment provider list in December 2007. Following review of the application, the Committee felt that Marworth appears to meet the requirements set forth in rules 4731-16-07 and 4731-16-08, O.A.C.

DR. STEINBERGH MOVED TO GRANT MARWORTH TREATMENT CENTER A CERTIFICATE OF GOOD STANDING AS A TREATMENT PROVIDER FOR IIMPAIRED PRACTITIONERS. DR. MADIA SECONDED THE MOTION. A vote was taken:

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

The motion carried.

LIMITED BRANCH & ALTERNATIVE MEDICINE COMMITTEE

Ms. Debolt advised that recent legislation provides for licensure of radiologist assistants (R.A.) by the Board. It also requires the Board to promulgate rules to set out what the licensure and renewal fees would be, as well as the process for application. Ms. Debolt stated that draft rules, copies of which shall be maintained in the exhibits section of this journal, are contained in the Board agenda.

Ms. Debolt reviewed the proposed rules for the Board members' benefit. Items of note include:

- a.) The fees for both the initial application and renewal application are \$200;
- b.) The R.A. legislation specifically says that if you have your application in, pursuant to Chapter 119 of the Revised Code, you get to go ahead and practice, even if the Board hasn't issued your certificate. Rule 4774-1-03(D) defines when an application is complete.
- c.) The proposed rules concerning criminal records checks are the same as the rules the Board just adopted concerning other licensees the Board regulates. The statute numbers and titles are the only thing changed.

Referring to item b.), Dr. Egner asked why someone would be allowed to practice without having a license.

Ms. Debolt stated that Chapter 119., ORC, has a section that says that if you have applied for renewal and the Board hasn't acted on your application, you can continue to practice. She noted that this is for licensure renewal only.

Ms. Debolt stated that interested parties attended the Committee meeting and did not have anything substantive to offer. Ms. Debolt stated that the Committee voted to recommend the approval of these rules for filing to begin the formal process. Rules dealing with expanding the scope of the R.A. will be presented to the Board in the future.

Dr. Madia asked how the Committee came up with a fee of \$200.

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Ms. Thompson stated that the staff looked at some of the other certificates, and at what these individuals can do, and felt that \$200.00 seemed an appropriate fee.

Dr. Egner stated that this isn't going to change the Board's budget. She added that there are very few of these people. She doesn't foresee that there will be a lot of them.

Ms. Debolt advised that she believes that in the next budget cycle the Board is planning to look at increasing all of the other fees.

Dr. Steinbergh asked how much anesthesiologist assistants and how much physician assistants pay.

Ms. Thompson stated that P.A.s pay a \$200 initial fee for their certificate of registration. There are separate fees for the provisional certificate to prescribe, for the certificate to prescribe and for the supervision agreement. She added that the A.A.s pay \$100.

Board members indicated that they want the A.A. fee to be increased.

Mr. Albert advised that the Board will be looking at all of the licensure fees.

DR. VARYANI MOVED TO APPROVE THE PROPOSED RULES FOR FILING, AND TO PROCEED TO HEARING. DR. EGNER 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. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

P.A. COMMITTEE

Dr. Varyani stated that there is a consumer vacancy on the P.A.P.C. He advised that the Governor's office has recommended the appointment of Eric J. Luckage, an attorney in Columbus.

A number of Board members objected to the appointment of an attorney to this Committee.

After being advised that it is the Board President's responsibility to make the appointment, Dr. Varyani

announced that Mr. Luckage is appointed.

LEGISLATIVE LIAISON & RULES REVIEW COMMITTEE

Mr. Miller stated that the Committee heard a presentation by Dr. Myles of the Pathology Society concerning H.B. 493. He stated that he didn't get the impression that Board members were changing their mind on their stance on this bill.

Mr. Miller stated that, at the Board's pleasure he can still speak with the bill's sponsors or write a letter on the Board's behalf, regarding the Board's position.

Dr. Steinbergh asked what the Board's official position on the legislation was.

Mr. Miller stated that the Board was opposed to the Bill, but it was just going to convey the Board's stance to the sponsors of the legislation.

Dr. Steinbergh stated that the Board needs to oppose this legislation. It could write a letter explaining why it opposes the legislation and perhaps make suggestions regarding this; i.e., they ought to approach the AMA and the Council on Ethical and Judicial Affairs (CEJA) and see if they feel that this kind of thing is within their ethical standards.

Dr. Varyani stated that he would oppose this legislation on the basis that this is a complaint-driven Board, and what business does the Board have monitoring how people are charging.

Mr. Albert stated that he wouldn't spend any chips on this legislation.

Mr. Whitehouse stated that, obviously, the Board is an interested party in this matter. He added that he thinks that this bill has a life of its own and the Board may end up testifying in opposition.

Dr. Steinbergh noted that Mr. Miller is seeking direction on how to proceed, and she thinks that the Board should send a letter on this legislation.

Dr. Stephens stated that the Board should both send a letter and testify against the legislation. She thinks that the Board should spend some capital on this because the Board really doesn't want to do this. She commented that the Board members don't have mild feelings about this; they really don't want to have to do it.

Dr. Varyani instructed Mr. Miller to take the middle road, and to not spend the Board's chips on this.

Mr. Miller advised that S.B. 279, the Medical Board legislation has passed the Senate and in the House. He is working with interested parties and the sponsor on two amendments. One amendment would put in implementation of a staggered renewal for limited branch practitioners, and the other is for an emergency clause on the bill itself in response to concerns from University Hospitals' concerning Visiting Faculty Certificates. Mr. Miller stated that the bill will most likely pass this year.

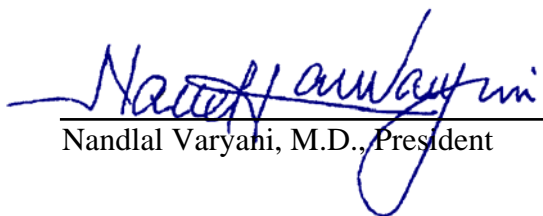
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Mr. Miller stated that there is another issue that has come up as to whether or not CRNAs can write pre- and post-operative orders. The CRNA Association is possibly seeking an amendment, but he has not yet seen it. The amendment would allow for CRNAs to write these orders. Previously there had been a determination by the Nursing Board that this was permitted under what was considered clinical support functions, but the Nursing Board issued a new opinion on that and said that CRNAs could not write the pre- and post-operative orders. Now they're looking for a legislative solution to this problem.

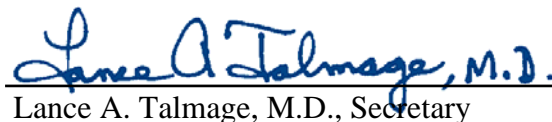
MR. HAIRSTON MOVED TO ADJOURN. DR. STEINBERGH SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 6:10 p.m., the November 12, 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 November 12, 2008, as approved on December 10, 2008.



Nandlal Varyani, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

