

March 11, 2009

MINUTES

THE STATE MEDICAL BOARD OF OHIO

March 11, 2009

Dalsukh Madia, 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: Jack C. Amato, M.D., Vice-President; Raymond J. Albert, Supervising Member; Nandlal Varyani, M.D.; Susan E. Stephens, M.D.; and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: Carol L. Egner, M.D.; Marchelle L. Suppan, D.P.M.; Jeffrey M. Jacobson, Esq.; and Darshan Mahajan, M.D. The following did not attend the meeting: Lance A. Talmage, M.D., Secretary, and W. Frank Hairston.

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; 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. ALBERT MOVED TO APPROVE THE MINUTES OF FEBRUARY 11-12, 2009.
DR. AMATO SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Egner joined the meeting at this time.

EXECUTIVE SESSION

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

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

March 11, 2009

Dr. Steinbergh - aye
Dr. Madia - aye

The motion carried.

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

Dr. Suppan, Dr. Mahajan and Mr. Jacobson joined the meeting during the 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

Dr. Madia announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Madia 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 Joshua Forest Brockman, M.T.; Marjorie Rasilini Ebenezer, M.D.; Gregory Gene Johnson, M.D.; Gerald William Lane, D.O.; Larson Frederick Langschwager, M.D.; and Jay Weldon Martin, M.D.; and the Request for Reconsideration in the Matter of Glenn A. Bollard, M.D. A roll call was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Suppan	- aye
Dr. Varyani	- aye
Mr. Jacobson	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

Dr. Egner advised that she served as Acting Secretary in the case of Dr. Johnson, and would therefore abstain from participating in that case.

Dr. Madia 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. Suppan	- aye

March 11, 2009

Dr. Varyani	- aye
Mr. Jacobson	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

Dr. Madia 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 matter of Dr. Ebenezer, as that case is not disciplinary in nature and concerns only the doctor's qualifications for licensure. In the matters before the Board today, with the exception of Dr. Johnson's case, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

JOSHUA FOREST BROCKMAN, M.T.

Dr. Madia directed the Board's attention to the matter of Joshua Forest Brockman, M.T. He advised that no objections were filed to Hearing Examiner Ronda Shamansky's Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. SHAMANSKY'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF JOSHUA FOREST BROCKMAN, M.T. DR. AMATO SECONDED THE MOTION.

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

Dr. Steinbergh stated Mr. Brockman has applied for a license to practice massage therapy in Ohio. The Hearing Examiner evaluated the numerous criminal convictions Mr. Brockman has had. Dr. Steinbergh commented that, apparently, in the hearing Mr. Brockman was very open and honest about his convictions. She stated that she thinks that he had a rather immature response to many of the questions, and immature behavior, obviously, in terms of these convictions. Dr. Steinbergh stated that she doesn't think that Mr. Brockman has a sense of professional propriety. She stated that sometimes the Board will take a look at the past convictions and think that the person is appropriate at this time. She noted that as late as February 2003, Mr. Brockman was convicted for theft. She added that she thinks, quite frankly, that Mr. Brockman has had so many convictions, he cannot remember how many. Dr. Steinbergh stated that she was very concerned about Mr. Brockman's ability to be mature in his decision-making process.

Dr. Steinbergh stated that she absolutely agrees with the Hearing Examiner's Conclusions of Law, and she believes that the Proposed Order of denial of a license is appropriate. She agrees with the Hearing Examiner's recommendation for a denial, rather than a permanent denial. She stated that if Mr. Brockman does mature and can demonstrate that to the Board, the Orders leaves the opportunity for a license open to

March 11, 2009

Mr. Brockman.

Dr. Egner stated that she's not sure that she agrees with the Proposed Order. She stated that she agrees with everything that Dr. Steinbergh said, especially with the fact that Mr. Brockman doesn't get it. The problem with the non-permanent denial is that it does not establish when he will come back and apply, and what the Board will look for. Is it going to be two years of no arrests? Is it going to be three years? Dr. Egner stated that it has to be something substantial and, yet, when the Board gives a non-permanent denial, it doesn't put into writing what the Board will look for. It becomes kind of arbitrary.

Dr. Egner stated that her other concern is that this involves a massage therapist, and the client is in a very vulnerable position. Dr. Egner stated that she's not sure that Mr. Brockman can be trusted. Even since applying for licensure, Mr. Brockman has had three more court issues. She stated that this wasn't part of the Board's charges, but it did come in as evidence during the hearing. She stated that he was very honest, much to his detriment, to a degree, but he cannot stay out of trouble. Nothing in the record showed that he is moving on the right path.

Dr. Varyani stated that he would add that Mr. Brockman seemed very reckless in all of his prior actions. He does show that he's trying to grow up, but, like Dr. Egner said, he's been very reckless. Dr. Varyani stated that he doesn't know that he would trust Mr. Brockman to come back. Dr. Varyani stated that if there are no strings attached to a non-permanent denial, then he would prefer to go with a permanent denial rather than just denial.

DR. VARYANI MOVED TO AMEND THE PROPOSED ORDER BY SUBSTITUTING AN ORDER OF PERMANENT DENIAL. DR. EGNER SECONDED THE MOTION.

Dr. Madia asked whether there was any further discussion. There was none.

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

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

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. SHAMANSKY'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE

March 11, 2009

MATTER OF JOSHUA FOREST BROCKMAN, M.T. DR. EGNER SECONDED THE MOTION.

A vote was taken:

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

The motion carried.

MARJORIE RASILINI EBENEZER, M.D.

Dr. Madia directed the Board's attention to the matter of Marjorie Rasilini Ebenezer, M.D. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

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

Dr. Ebenezer expressed her gratitude to the Board for permitting her to address it. Dr. Ebenezer reviewed her application history, as well as her explanations of the clinical work she did during the two-year period in question. She expressed concern that not all Board members understand the nature of public health physicians and their important work of preventing epidemic and pandemic diseases, and as a result, the Board had proposed to grant her application, subject to her taking and passing the SPEX. Dr. Ebenezer stated that at hearing she extensively explained the clinical nature of her work in Pennsylvania.

Dr. Ebenezer noted that the Hearing Examiner found that her work in Pennsylvania was clinical, and that, as a matter of law, she should not be required to pass an examination to determine her fitness to practice medicine in Ohio. Dr. Ebenezer also listed the other states in which she is licensed.

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

Ms. Unver advised that she has no response.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MARJORIE RASILINI EBENEZER, M.D. DR. SUPPAN SECONDED THE MOTION.

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

March 11, 2009

Dr. Steinbergh stated that she found the hearing record to be complete, and she agrees that Dr. Ebenezer meets licensure standards.

Dr. Suppan agreed with Dr. Steinbergh.

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

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

The motion carried.

GREGORY GENE JOHNSON, M.D.

Dr. Madia directed the Board's attention to the matter of Gregory Gene Johnson, M.D. He advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation and were previously distributed to Board members.

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

It was at this time noted that Dr. Johnson is not present.

Ms. Jacobs advised that Dr. Johnson has submitted a written statement that he would like read into the record.

Dr. Madia noted that Dr. Johnson was given the opportunity to make an address to the Board, and he did not do so.

DR. SUPPAN MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF GREGORY GENE JOHNSON, M.D. DR. VARYANI SECONDED THE MOTION.

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

Mr. Jacobson asked whether Dr. Johnson's statement had been distributed to Board members.

March 11, 2009

Dr. Steinbergh stated that it has not.

Dr. Steinbergh noted that this is a case of impairment and relapse. She stated that she believes that Dr. Johnson has failed to realize that he's not in control. He needs to work harder with the A.A. program. She also noted that he withheld information from the physicians who were assessing him.

Dr. Varyani agreed with Dr. Steinbergh

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

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

The motion carried.

GERALD WILLIAM LANE, D.O.

Dr. Madia directed the Board's attention to the matter of Gerald William Lane, D.O. He advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

DR. VARYANI MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF GERALD WILLIAM LANE, D.O. DR. SUPPAN SECONDED THE MOTION.

At this time, Dr. Lane's attorney, Aristotle R. Matsa, advised that his client had requested to address the Board. He stated that the request was contained in the same letter in which Dr. Lane requested an extension of time to file objections.

DR. STEINBERGH MOVED TO ALLOW DR. LANE TO ADDRESS THE BOARD. MR. JACOBSON SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Madia advised that Dr. Lane would have five minutes in which to make his address.

Dr. Lane stated that he's not quite sure why it got to this point and why he is here. He stated that he had

March 11, 2009

the audacity to say “no” to an individual who was making advances to him, and there was a ripple effect that went on and on. He stated that he knows that, by law, each of the Board members have read the 1,500 pages of hearing transcript. He stated that the transcript will clearly show his innocence, but what the Board has received from the Hearing examiner is completely differently from what appears in the transcript. He asked that the Board look at the evidence and act in his favor. He has treated patients successfully for over 20 years, and he has never violated a female in his practice. The transcript proves that he has been an honorable, moral and ethical physician. Dr. Lane stated that today is not so much about him, but about the Board’s honor, ethics, and character, and that the Board should look at the evidence as opposed to what has been extrapolated from that.

Mr. Matsa stated that he has represented physicians for many years, and the one thing he’s always feared the most is that an innocent person will be found guilty. He stated that he’s sure that each Board member wants a fair process when deciding someone’s fate. He commented that the process in this case doesn’t seem fair. He noted, for instance, that Witness 2 said in a witness statement that her feet were hanging off the edge of the table, but six years later, at hearing, she testified that she was sitting back at the table. Mr. Matsa stated that the earlier testimony given by the witness to the Board is the most credible and most believable.

Mr. Matsa stated that when Witness 1’s sister testified to her sister’s motives and said that her sister was not telling the truth, he believes that that’s compelling testimony and supported by an affidavit that was proffered, and which should not have been removed.

Mr. Matsa stated that the Hearing Examiner’s recommendation said that there was no relationship between the parties. Mr. Matsa believes that the evidence clearly showed that there were definite relationships between Patients 1, 2 and 3. The parties said that they weren’t related to Patient 4. Mr. Matsa believes that the evidence showed that, in the case of Patient 4, there were clear, documented relationships that were testified to in the evidence in the 1,500 pages that the Board has before it. Mr. Matsa stated that the process doesn’t seem fair when things are hidden.

Mr. Matsa stated that he believes that the Board members want all of this to be known. He asked, “Who is (name kept confidential, pursuant to law)?” He stated that the question was asked. This was a state witness. It’s part of the Board’s record, and yet, that was never responded to. He asked where Patient 4’s statement was, noting that Patients 1, 2 and 3 all made statements. He stated that Patient 4 had to have made a statement. That was asked for in public records requests, in writing and verbally, and was never provided. Mr. Matsa asked why six years went by after there had been a deposition of Dr. Lane with nothing to be brought forward.

Dr. Madia told Mr. Matsa that he has one more minute.

Mr. Matsa stated that the most compelling piece of evidence is the Board’s own exhibits A and B, which is the table. Mr. Matsa stated that he has the utmost respect for the Hearing Examiner, who can say that he wants to ignore the evidence and the testimony and come to a different conclusion, but that’s not fair. He stated that every single witness said that the table was tall, 36 or more inches. The exhibit was measured in the hearing room at 36 to 37 inches. He stated that Dr. Lane’s inseam is at 31 inches. There’s not one

March 11, 2009

shred of evidence that suggests anything other than what's portrayed in this picture. There's only one thing in this picture (which is a piece of medical equipment) that could possibly have been above the table and have had any contact with anybody.

Mr. Matsa stated that he hopes that the Board will come to a fair conclusion. He commented that, obviously, he believes that Dr. Lane is innocent, and that this matter should be dismissed. He stated that if the Board believes that Dr. Lane is guilty, he wanted to advise the Board in terms of recommendations, that Dr. Lane on his own in 2002 stopped seeing any female alone. That was testified to by everyone. He added that Dr. Lane stopped doing any physical manipulations so that he would not be in touching contact with anybody. He did that on his own without being asked by the Board.

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

Ms. Unver read the following statement into the record:

Patients place their full faith and trust in a physician to help them address their medical needs. It is this level of trust that makes patients particularly vulnerable to physicians who engage in inappropriate sexual behavior. It creates the perfect scenario: a doctor who disguises sexual behavior as legitimate medical care, no witness to the situation, and patients who do not discuss it with staff because of embarrassment and disbelief that their doctor would do such a thing. But that is exactly what Dr. Gerald Lane did.

The facts establish that between August 2001 to approximately July 2002, and on or about March 23rd and May 4, 2004, while in the routine course of Dr. Lane's osteopathic medical practice, during office appointments, Dr. Lane rubbed his penis against Patients 1 through 4 under the guise of providing medical care. The State's expert, Dr. Gardner, testified that Dr. Lane's conduct of rubbing his penis against the hands of Patients 1 through 4 while providing manipulation therapy was below the minimal standard of care of similar practitioners under the same or similar circumstances, and it also violated Section 15 of the Code of Ethics of the American Osteopathic Association. Dr. Gardner testified that Patients 1 through 4's decision not to tell any staff member or confront Dr. Lane about his inappropriate sexual behavior was consistent with victims of abuse who often do not discuss inappropriate behavior because of embarrassment, fear or disbelief.

The most compelling evidence in this case came from the four patients that had doctor appointments with Dr. Lane. Three out of the four patients had provided prior written statements regarding Dr. Lane's inappropriate sexual behavior and those statements were consistent with their testimony at the hearing.

The most striking aspect of Patients 1 - 4's testimony is the fact that their encounters with Dr. Lane during their separate office visits were similar, in that they presented to Dr. Lane with legitimate medical concerns ranging from headaches, stomach aches, nervous behavior, and abdominal cramping, and yet Dr. Lane had them position

March 11, 2009

themselves the same way on an exam table, with hands held together behind their backs near their tailbones, palms up, while he rubbed their shoulders and neck area and he rubbed his penis against their hands.

Dr. Lane goes to great lengths to try to attack the credibility of the patients - he tries desperately to cling to something - anything that might be a good theory: such as bias of the witnesses -- maybe they are after money? or mistaken belief - maybe what they really felt was an otoscope or some other medical instrument in the sides of his lab coat? He tries to show a connection between these four patients. But every theory presented by Dr. Lane was nothing more than innuendos and assumptions -- all "smoke and mirrors":

The fact of the matter is:

1. There is no bias - Dr. Lane presented no evidence of lawsuits or collusion by the patients against him for the incidents;
2. There was no mistaken belief -- The Patients are adult women, all in the same age group -- 20s -- 30s and they were descriptive in testimony when they positively identified that what they felt during the manipulation therapy was an erect penis, not an instrument. In fact, any lab coat's pockets are on the side of the jacket - not in front.

Dr. Lane even attempts to create his own innuendos and assumptions by bringing in an unidentified exam table and presenting a letter regarding a pacemaker implantation. But his theories are based on pure conjecture and wholly implausible given all the testimony and evidence that was presented at the hearing.

What is most troubling about the facts of this case is the surreptitious nature in which Dr. Lane engaged in inappropriate sexual contact with his patients, along with the sheer quantity of patients he involved in his inappropriate behavior.

Also, in his objections, Dr. Lane indicates he is willing to engage in whatever counseling, classes, gender sensitivity training, monitoring or probation recommended by the Board, but "Dr. Lane is not willing to admit that he rubbed his penis against a patient" - and it is for these reasons that the State strongly agrees with the recommendation of the Report and Recommendation -- that nothing less than permanent revocation is appropriate here - a perpetrator in complete denial simply cannot be rehabilitated.

It is the safety of the general public that is of the utmost concern here, and it is the duty of this Medical Board to protect the general public. To continue to allow Dr. Lane to practice medicine would continue a pattern of risk to the public that is simply too great given his pervasive pattern of inappropriate sexual behavior.

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

March 11, 2009

Dr. Egner stated that she feels that Mr. Porter did an excellent job on this case. She stated that, looking at the credibility of Patients 1 through 4, their accounts are nearly identical. Dr. Egner stated that she does not believe that the relationship between these patients is one of collusion. She believes that they have similar accounts because they underwent similar sexual misconduct. In fact, even in the testimony of Patient 2, she said that when she read the account of another patient, she thought it was her own statement.

Dr. Egner stated that Mr. Porter made the comment that there was no financial gain sought. In the objections, this became something of dispute. Dr. Egner stated that she thinks that that is important here. These patients have not sought financial gain. There was no reason to have brought this forth, except that it occurred. In fact, Patient 2 was hopeful that Dr. Lane would just get counseling so that it would not happen to other patients. Dr. Egner stated that she doesn't believe that Patient 2 knows Patients 1 or 3. The only connection was that she was seen on the same day, and that means nothing to Dr. Egner.

Concerning the table, Dr. Egner stated that the Board has no idea that that truly was the table that these patients were seen on. She asked whether Board members in practice can recall every room that they see a particular patient in. She stated that she doesn't know the exact height of her tables, and she hasn't for 23 years, and she looks at them every day.

Dr. Steinbergh stated that she does have an osteopathic table and she knows its height. She does not know the heights of her other tables.

Dr. Egner stated that she's pretty sure that a patient is not going to know the exact height of an examination table.

Dr. Egner referred to the question as to whether the patients really felt an otoscope or a stethoscope. She stated that she'd toyed with the idea of bringing in an otoscope or stethoscope today, but felt it was such an obvious thing that she decided against it. She stated that she believes that everyone, blindfolded, can feel an otoscope, a stethoscope and a penis and tell the difference. The patients went in for complaints that had nothing to do with ending up getting a massage. They had sinus infections, GI complaints, stomach pain, and they all ended up getting a massage for tension in their shoulders. Dr. Egner stated that that is a huge red flag. She stated that she also questions the testimony that the assistant was always in the room with Dr. Lane after 2002. When you only have one assistant, it only seems reasonable that she could not possibly be in the room 100% of the time, even if that were the policy. There are phone calls, she might be checking in the next patient, she might leave the room to get a piece of equipment, or she might need to take a message. There are so many reasons why someone might, legitimately, need to leave the room. Dr. Egner stated that she believes that there was also other testimony that said that this policy was not adhered to.

Concerning Patient 2, Dr. Egner noted that her testimony took 98 minutes, 53 minutes of which was devoted to questioning her blog. That was completely non-contributory to this case. It only served to try to discredit her and humiliate her, and it didn't work. Dr. Egner stated that her one regret is that she does wish that the Hearing Examiner had been present for that testimony because she thinks that Patient 2 was done a disservice in not having him there.

March 11, 2009

Dr. Egner stated that she wants to read a couple of things from the objections, relating to Patients 1 through 4 and what their behavior was the day this happened. In the objections it says,

A normal woman would have turned around or gotten off the table. She would not stay around for a prescription, and make no remark whatsoever to the doctor or his female staff. Their lack of desire to question or even look for themselves kept them from seeing the only plausible answer to what they were feeling.

Dr. Egner stated that she will contend that normal women are victims of sexual misconduct, and if that is the criteria to be used, there are many people that the Board should never believe. Victims of priest abuse didn't come forward right away; and people who are abused by family or friends don't come forth right away. Dr. Egner stated that she would not characterize what is normal and what's not.

Dr. Egner referred to the following statement from the objections:

None of the complainants ever complained to Dr. Lane or his office staff, or the police, or the court.

Dr. Egner stated that this is widely known that the behavior of someone who has been the victim of sexual misconduct does not come forth right away in many circumstances for many different reasons.

Dr. Egner stated that she doesn't give any credit to the unseemliness of the reporting. Concerning patients having another visit with Dr. Lane after this misconduct took place, Dr. Egner stated that the Board has seen this before. She stated that even one of the patients said in her testimony that this was so unbelievable, she didn't even know if she should believe herself. Dr. Egner stated that she thinks that that was a very honest statement.

Dr. Egner stated that Mr. Porter is an excellent hearing examiner with many years of experience at this Board. He has the right and the responsibility to make conclusions in this Reports and Recommendations.

Dr. Egner stated that she has no doubt that these incidents took place. She stated that she doesn't care if Dr. Lane took care of a million patients well. He stepped over the line, it is sexual misconduct in practice, and she believes that his license should be permanently revoked.

Dr. Egner stated that she is sorry for the victims that, when they told people, whether it was a mother, friend or supervisor, that they were not met with the support that they deserved. She stated that she believes that society provides very poor protection to children, women, and adults who are victims of sexual misconduct and abuse. She believes that all four of these patients are victims. Dr. Egner apologized, as a member of the medical community, that they had to go through this.

Mr. Jacobson stated that he's not a doctor and there's a lot about his role as a Board member that he has yet to learn, but he does have some questions about how the Board finds itself in the position it's in. He stated that these are very serious charges, and yet, despite the fact that they have been made, they have been publicized, and that they have been made to attorneys who would be required to make sure that they come

March 11, 2009

to the attention of law enforcement, there were no criminal charges here, for whatever reason. The Board isn't dealing with something that is easy to decide, as it would be if there were criminal charges and there was a criminal investigation, and someone was convicted beyond a reasonable doubt. The standard that the Board applies is not that high. That does not mean that it's not existent, but it means that the Board members don't have to hold themselves to the evidentiary standards, to delve into it and be as certain about things as would a judge and a jury. Because of that, the Board can go more on innuendo. The Board can choose to disregard the kind of things that, in a criminal case, would be used to impeach the credibility of the witnesses.

Mr. Jacobson stated that he would like to disagree with one thing that was said. He stated that he thinks that the State's expert did testify that the manipulation was consistent with the appropriate treatment by an osteopathic physician for the cases that were presented.

Dr. Egner disagreed and Dr. Steinbergh stated that that is absolutely not correct.

Mr. Jacobson stated that he does have concerns about the fact that there were further recommendations that the doctor made. He stated that that seems to him to be inconsistent. He added that he understands why people might go back, and might not report. He stated that this is very troubling, but he does think that there were issues here that do not sound to him like they are fully consistent with the conclusions the Board is being asked to come to.

Dr. Steinbergh stated that, truly, the State's expert in this case did not feel that this was an appropriate technique. She stated that she did read the testimony and she appreciates that Dr. Lane expected Board members to do that. She added that she would say that almost every time the Board gets a case, it gets the Report and Recommendation, and it is the job of each Board member to substantiate those things by reading the record. Dr. Steinbergh stated that a very impassioned plea was made for Dr. Lane by witness Earl Butcher, and that plea touched her. Mr. Butcher said,

And I think it's an atrocity to the Medical Board that the -- that the press and the public would be in on this when it's just an investigative hearing, and he's being -- this man is being hung out to dry and tried in the Columbus press. And especially when the press officer of the Medical Board thanked the television station for getting here so quick.

To me, that's just unacceptable. And I think that it sheds a very negative light on the whole proceedings and on the Medical Board as a whole.

Dr. Steinbergh stated that she absolutely agrees with that. She was horrified to see Dr. Lane's picture in the newspaper. She thought that went over the edge, and had she ever participated in something like that, she would be ashamed. She added, however, that there is freedom of the press. She wasn't at the hearing, and the Board members aren't allowed to go to hearings. Dr. Steinbergh stated that she wants to tell Mr. Butcher a little bit about the Medical Board, so that when he walks away today, it's not with a negative thought.

Dr. Steinbergh stated that the Medical Board's mission is public protection. There are twelve Board

March 11, 2009

members, all of whom are appointed by the Governor, to protect the public. She stated that it is not an easy job; it's a very difficult job. She stated that no Board member enjoys passing judgment on a fellow colleague.

Dr. Steinbergh stated that she'd like to comment on the manipulative techniques that Dr. Lane used in this particular case, and comments by the expert. Dr. Steinbergh stated that if she were Dr. Lane, she would have brought an osteopathic physician as an expert. There was only one osteopathic physician as an expert at that hearing, and she represented the State. Dr. Steinbergh stated that she knows the State's expert witness, although she has no connection to her. The witness is well respected in the osteopathic community, and 30% to 35% of the expert witness' practice is in osteopathic manipulation. What the expert witness had to say was very important to Dr. Steinbergh, and should be very important at this meeting today.

Dr. Steinbergh stated that she read these cases. Concerning the case of the patient who came in for a respiratory infection, and Dr. Lane did an osteopathic manipulative treatment (OMT). She stated that she knows that Dr. Lane is offended by the term, massage, because "massage" is something that massage therapists do. Osteopathic physicians have, as part of their armamentarium an ability to do what they call manual or manipulative therapy. It used to be called "osteopathic manipulative therapy." There have been some changes in the title, but the techniques, although always improving, are somewhat standard among osteopathic physicians. They do have to learn to do them in a way that feels comfortable to the physician and comfortable to the patient. She added that treatment is never given to a patient when it's not explained first. Dr. Steinbergh stated that the Board has run into this problem over and over again. She stated that communication is the piece that separates the right from the wrong. In these cases, there was no communication between physician and patient. There was no agreement that this type of procedure would be done.

Dr. Steinbergh stated, in the case of the patient who came in for a respiratory infection, and he wanted to do some OMT, he says in the hearing record that he's using a thoracic pump, and he says that he's using it in relationship to her respirations to help her move mucus out of her chest. Dr. Steinbergh stated that she can't be certain that he said that exactly, but that is what the lymphatic pump does. It was developed to help remove mucus from the chest and help the body to heal itself. Dr. Steinbergh stated that in this case Dr. Lane used the term, "thoracic pump," but he did not do a thoracic pump technique. A thoracic pump technique is in the supine position, that is, lying down on the back, where the physician stands at the head of the table, behind the head of the patient and puts the hands on either side of the thoracic cage, and while the patient breathes in, and when the patient exhales, he applies pressure. This is done in a series of movements to help that mucus move out of the chest. Dr. Steinbergh stated that there is also a procedure that the physician can use at the foot of the patient, to help lymphatic drainage from the lower part of the body, but that is not the case here. What Dr. Lane did in the case of this patient was to ask the patient to sit up, put her arms behind her back with her wrists together and the hands facing Dr. Lane, to lean back, and then they described how the patient leaned her head on the shoulder, and Dr. Lane leaned forward and they could hear him whisper to relax on more than one occasion. There was even one time when the patient attempted to move forward and Dr. Lane pulled her back and asked her to let him try something else.

Dr. Steinbergh stated that there is no osteopathic procedure that allows for the patient to go into this

March 11, 2009

position. There are procedures where the doctor stands behind the patient in a sitting position, and the hands are sometimes like this (demonstrated by Dr. Steinbergh) in order to do some techniques in the upper back, and the hands are sometimes across the chest in order to effect some change with the thoracic spine, but there is no procedure or technique that would require the patient to put her hands behind her back and be able to touch the doctor in that way, or that the doctor could touch or move forward to the patient in that way. Dr. Steinbergh stated that Dr. Gardner, the State's expert, said so. Dr. Steinbergh stated that Dr. Gardner was asked the question in many different ways: "does it look appropriate to you?" "can he do this?" Dr. Steinbergh stated that Dr. Gardner couldn't understand how he could do it, because it's not a comfortable position for the patient. There may be some exposure to the chest wall and so forth, but there's no technique like this.

Dr. Steinbergh stated that she was reading through this, and she went back to her books and looked at all the techniques, because she was never taught that technique. She stated that she doesn't believe anyone in the osteopathic community has been taught that technique. Dr. Steinbergh stated that that concerned her.

Dr. Steinbergh stated that there was a patient with a case of gastroenteritis, and Dr. Lane did the same thing to her. Dr. Steinbergh stated that had Dr. Lane done a sacral technique in order to improve blood flow to the gastrointestinal tract, to try to reduce pain in the gastrointestinal tract, she could understand that, but he didn't use that technique, either.

Dr. Steinbergh stated that in the medical records, themselves, there was never any documentation of an OMT – not once in all the records she reviewed. She stated that she found it very interesting that he has a template for his physical examination and in many cases the musculoskeletal system is checked, "not assessed." In some cases he assessed it and wrote a little note. Dr. Steinbergh stated that, truly, the technique that he used never applied to what he should be doing as an osteopathic physician, so it's important to know that these manipulative techniques are very important to an osteopathic physician and to support his care in the healing process.

Dr. Steinbergh stated that the most basic thing is that, when approaching a patient, examining a patient, and doing whatever, there must be communication – an explanation for what's being done. There never was once in this record. Dr. Steinbergh stated that these cases made her feel very uncomfortable.

Dr. Varyani stated that the first thing that bothered him was this manipulation technique. He stated that he has osteopathic friends, and he talked to them and asked them to explain to him why something would be done for a sinus infection. There was no such technique described to Dr. Varyani. He stated that he'd previously asked Dr. Steinbergh if she knew of anything, and the Board has heard what she's said about that. Dr. Varyani stated that what concerned him most of all was that, as of 2002, Dr. Lane had stopped seeing patients one on one, supposedly. Dr. Varyani stated that he's been on a number of ethics committees, and he believes that since the early 1990s the standard is that, if you are going to examine or manipulate a patient of the opposite sex, you should explain what is being done to the patient, obtain the patient's consent, and definitely you have to have a third person around to witness it. Dr. Varyani stated that he didn't see any such thing in this case. Dr. Varyani stated that after 2000, if any physician comes in direct contact with a patient, that procedure needs to be explained to the patient and permission sought. As of 2004, a third party, an uninterested party must be present, unless the patient refuses it. This all must be

March 11, 2009

documented.

Dr. Varyani stated that he doesn't see any of this done in this case. He also asked how a physician can give the same treatment for different complaints on different patients. And if the treatment has never been taught, why is it being given. Dr. Varyani stated that he's concerned about the consent issue and the documentation. If it's not documented, the patient wasn't given the choices she should have been given. He stated that just that alone should be grounds for licensure revocation. Dr. Varyani stated that it is the law that there should be a third party present, and only the patient can refuse that.

Dr. Egner stated that she doesn't want to disagree with Dr. Varyani, because she agrees that all of those things should be done, but her understanding is that having a third party present is a recommendation, not the law.

Dr. Varyani stated that it's a Board rule.

Dr. Egner stated that it's a recommendation. The Board doesn't have a rule requiring it. She added that it's for the protection of the physician. It is not so much for protection of the patient as it is for the physician to keep the physician from being the victim of a false allegation. Whenever she reads these kinds of cases, she has to give that consideration. Does she think that this was a patient making this up for whatever reason there might be, or does she give credence to what the patients say? In this case, Dr. Egner falls on the side of the patient for all the reasons she's given previously. Dr. Egner stated that there has been no evidence that has shows that they were lying.

Dr. Steinbergh stated that she would like to comment on those people who came to the hearing to testify on behalf of Dr. Lane. She stated that she doesn't think that this particular incident is in any way reflective of the total body of work of this physician. It's unfortunately a case that you would not expect to happen to someone. If you're coming and testifying on the character of a physician, you don't for a minute think that this could have happened. Dr. Steinbergh stated that the Board members read the record and they consider all the aspects of the case, and it's the Board members' responsibility to be very thoughtful and deliberate in this case. She stated that she has been. She's been very deliberate in this case.

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

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

March 11, 2009

The motion carried.

LARSON FREDERICK LANGSCHWAGER, M.D.

Dr. Madia directed the Board's attention to the matter of Larson Frederick Langschwager, M.D. He advised that no objections were filed to Hearing Examiner Petrucci's Report and Recommendation.

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

Dr. Langschwager was accompanied by his attorney, Douglas E. Graff.

Mr. Graff advised that he is here on behalf of Dr. Langschwager. This involves his initial application for licensure and it is a very different case from what the Board was looking at earlier. He stated that Dr. Langschwager had an event that occurred in Michigan. When he applied to Ohio, he fully disclosed that on his initial application. He had a consensual relationship with one patient after he had become licensed. He disclosed this information. Michigan took an action against Dr. Langschwager, put him on a one-year probation, required six months of counseling, and some education. When he was given an opportunity to apply in Ohio (there was a position for him here), he disclosed the information on his application. Mr. Graff advised that Dr. Langschwager lost his employment opportunity in Ohio because of the time it took. Dr. Langschwager subsequently asked to withdraw his application, but he was told that he couldn't withdraw it without admissions or otherwise, so he took the case to hearing.

Mr. Graff stated that the Hearing Examiner was very direct about what she found in the hearing. She said that Dr. Langschwager had fully disclosed on his application in the beginning. He had been frank and honest in his testimony that he was, in fact, sincerely remorseful, and that it was unlikely to reoccur. The Michigan Board addressed Dr. Langschwager's behavior through rehabilitation and remedial measures. Dr. Langschwager fulfilled those requirements, it's been more than a year since he has completed his Michigan probation, and Dr. Langschwager has learned from these matters, although the Hearing Examiner believed that additional education would be appropriate under the circumstances. Mr. Graff stated that no objections were filed.

Dr. Langschwager advised that he appreciates the opportunity to address the Board today. He stated that he's here because about three years ago he made a very grave error. He violated the trust of a patient of his. In the past three years, he's had the opportunity to learn a lot from his mistake. One of the biggest things he's learned is really with respect to the definition of "patient," and not only the importance of it, but the breadth, the depth and length of it as well. The patient is always your patient, not just in the context of the office visit, but in a social or any other context. Dr. Langschwager stated that he realizes that he violated her trust in him, but he can also see how it violates the public's trust in his chosen profession.

Mr. Albert left the meeting at this time.

Dr. Langschwager stated that over this time, as well, he's also been grateful for people who, despite the mistake he made, have faith in him to allow him to continue to practice, and he appreciates that.

March 11, 2009

Dr. Langschwager stated that he is here today to humbly ask the Board to allow him to fulfill their faith in him.

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

Ms. Unver advised that she does not.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF LARSON FREDERICK LANGSCHWAGER, M.D. DR. EGNER SECONDED THE MOTION.

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

Dr. Egner stated that she agrees with Mr. Graff that this is a very different case from what the Board just heard. She stated that the medical students present should consider both of these cases as two of the most important cases they'll probably have the privilege to hear first-hand. On the one hand they seem like they may be somewhat related because they're sexual in nature, and on the other hand they're very different. Dr. Egner stated that the students need to know that a doctor cannot have sex with a patient, no matter what the circumstances.

Dr. Egner stated that she looks at this case and feels that Michigan was very appropriate in their process and in what they have asked the doctor to do. She believes that Dr. Langschwager should be reprimanded. She added that, if she thought that he had not gotten it, needed more education, needed time out of practice, or needed the Board to do something that they haven't done, she would be very much in favor it. She doesn't feel that way. This is a bootstrap case. If Dr. Langschwager were an Ohio practicing physician and Ohio had taken the first action, she would certainly have imposed more than just a reprimand, but at this point in time she doesn't see the need for anything additional.

Dr. Egner stated that she will tell Dr. Langschwager that she believes that he has learned, but added that he does need to get board-certified, and he needs to practice with regard to the patient and himself.

Dr. Steinbergh agreed with Dr. Egner's statements. This is a bootstrap action, the other state has taken action, and Dr. Langschwager does recognize what he did wrong. She stated that she thinks that it's time for him to go on, and she agrees with the Hearing Examiner's Proposed Order.

Dr. Steinbergh addressed Dr. Langschwager, stating that she knows that Dr. Langschwager recognizes the trust that he has broken. He fractured the bonds of his marriage. She stated that for a physician to have a sexual relationship with a patient is abhorrent. For a gynecologist to do this – she indicated that she would probably be a whole lot rougher on Dr. Langschwager today, if he hadn't been disciplined by Michigan first.

Dr. Steinbergh stated that she agrees with the Findings of Fact, the Conclusions of Law and the Proposed Order. Dr. Steinbergh reviewed the details of the Proposed Order at this time. She stated that it's very important for him to understand the language of the Board Order. She suggested that he spread these

March 11, 2009

thoughts to his colleagues. He stated that he can help to educate other physicians.

Mr. Albert returned to the meeting during Dr. Steinbergh's comments.

Dr. Stephens stated that one thing that she would like to say to the students present is that they should avoid any situation that: 1. they feel uncomfortable with, and 2. could compromise what they've worked so hard to achieve. She stated that that's any situation, whether it's being in a room with a patient you feel uncomfortable with or, as a male, being in a room alone with a female patient, or whether it's in a social situation where there's drugs or alcohol, or whether it's in a solo situation where your friends are your patients, or your friends are asking you for medication. She stated that anything that feels bad, is bad, and they should just walk away from it. They should protect their license, their careers, and their investments.

Dr. Madia advised Dr. Langschwager that he is getting one chance and this is it. If he has to face this Board or any other Board a second time for the same thing, it will be much harsher.

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

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

The motion carried.

JAY WELDON MARTIN, M.D.

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

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

Dr. Martin was accompanied by his attorney, Stephen R. Kleinman.

Mr. Kleinman stated that it has been his privilege and his honor to get to know and represent Dr. Martin in this matter. He stated that they respectfully object to the Report and Recommendation, especially the proposed suspension. He stated that the Board Guidelines indicate that the Board will consider this on the

March 11, 2009

individual merits. In so doing, he would respectfully request that the Board look at the entire body of Dr. Martin's 28 years of practice in Lima, Ohio, and recognize that this is truly an isolated incident on an otherwise unblemished 28-year career. There have been no malpractice actions or medical staff proceedings, and, until this incident, no disciplinary proceedings.

Mr. Kleinman stated that there is no evidence in this case of any patient receiving a medication who did not have an actual medical condition. Since the hearing, Dr. Martin has attended and successfully completed the Case Western Reserve University prescribing course and has already made changes to his practice.

Mr. Kleinman stated that the Board is here to protect the public, and he asked the Board to consider whether removing a man who has dedicated his entire life to serving an underserved population, and who, until this case, had an unblemished record, would serve the purpose of public protection; or would the proposed suspension, in fact, actually harm the very people, many of whom testified, who care for Dr. Martin, and who rely on him to provide the high quality of care as he's done the past 28 years.

Dr. Martin read the following statement into the record:

I recognize the fact that despite my intent to prevent harm to my patients, what I did was wrong. My sole motive in taking actions I did was to protect my patients' well-being. The patients involved were established patients and I didn't want them to suffer in my absence. I did try to make other arrangements for coverage, but I was unsuccessful. It was never my standard practice to pre-sign blank prescription forms in the past times when I would be out of the office.

I was almost never out of the office for more than a day or two, so the issue of taking care of patients during a week-long absence was not a consideration. What happened in this case was truly an isolated event, brought about by extraordinary circumstances. Since I received the citation from the Board, I've taken steps to better educate myself concerning prescribing practices, and I attended the *Intensive Course in Controlled Substance Management* at Case Western Reserve, and I've adopted the policies for my office that are consistent with that course, the major policy being that there is no situation so severe as to warrant any action on my part that would jeopardize my license to practice medicine.

I spent 28 years practicing medicine in Lima, Ohio. I'd ask the Board to look at my entire work. At no time have I been the subject of any malpractice or disciplinary actions related to the quality of care that I've provided. I've always done my best to take care of my patients. A lengthy suspension at this point in my career would cause harm to my family and patients and could end my career. Although I made a mistake, I do not believe that anything I did merits suspension that would potentially end my career.

When you consider all the facts, I would respectfully (sic) request that if a suspension is deemed necessary, that it be for a shorter period of time than the nine months that are recommended. Any suspension would cause a significant hardship; if the Board believes

March 11, 2009

a suspension is proper, and I ask for it to be as short a period of time as possible. My greatest desire, though, is that I'm able to continue providing care to my patients without interruption. Thank you.

Dr. Steinbergh noted that Dr. Martin is currently working for St. Rita's Professional Services. She asked whether that is a hospital-owned practice.

Dr. Martin stated that it is.

Dr. Steinbergh asked whether Dr. Martin is physically in the same space as during the time under consideration.

Dr. Martin stated that the office has been moved.

Dr. Steinbergh asked what type of coverage Dr. Martin has at this point.

Dr. Martin stated that he now has a partner.

Dr. Amato asked what the population of Lima is, and the service area he serves.

Dr. Martin stated that the population of Lima is 37,000. The catchment area is a quarter of a million.

Dr. Amato asked how many physicians in Dr. Martin's specialty there are in his area.

Dr. Martin stated that he thinks that there are about 20 family practitioners in the area. He advised that, at the time of the incident, there was the same number. He stated that James Reber, President and Chief Executive Officer [CEO] of St. Rita's, testified that in the last two years that they've attempted to secure further family practice physicians, and they've only been successful in getting one.

Dr. Amato asked how many major insurance carriers there are in his area.

Ms. Debolt at this time interrupted the questioning, stating that Dr. Martin is not under oath at this time. She stated that the kinds of questions that are being asked are questions that may be information that he knows or may be information that he doesn't know. She stated that if the Board wants more testimony along these lines, the Board might properly remand this matter to the Hearing Examiner for further testimony.

Dr. Amato stated that he's not looking for medical information. The Board has judgments to make and he asked how the Board can do that without knowing all the background.

Dr. Amato again asked how many major health insurance carriers there are in Dr. Martin's area.

Dr. Martin stated that, if he had to guess, he would say five or six.

March 11, 2009

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

Mr. Wilcox stated that the reason this case happened is that Dr. Martin wanted to attend his son's wedding in Maryland. He stated that Maryland is a seven to eight hour drive from Ohio. This was a weekend wedding. He disagreed with Dr. Martin's emphasis that he was in this bind where he had no choice.

Mr. Wilcox asked the Board to look at the position in which Dr. Martin put his staff. He put his staff in the position to commit felonies – to write and fill out prescriptions for Schedule II controlled substances when they had no authority to do so. Mr. Wilcox stated that he thinks that that's a key consideration to take in this matter.

Mr. Wilcox stated that he believes, overall that the Report and Recommendation does a pretty good job; but there's one particular Conclusion of Law (number two) with which he disagrees, and he wants to leave a strong impression with the Board as to why he disagrees. He stated that he believes that the final order should be amended to include a finding that Dr. Martin did, indeed, violate Section 4731.22(B)(10), Ohio Revised Code, and that his conduct did amount to Complicity to Aggravated Trafficking. Mr. Wilcox stated that the reasons for this are that the Ohio Supreme Court has determined that the unlawful prescribing of a controlled substance constitutes a sale pursuant to the drug trafficking statutes. Mr. Wilcox stated that, as the Board knows, it is unlawful for anyone, except for a licensed M.D. or D.O., to prescribe a Schedule II medication. Mr. Wilcox stated that, the evidence in this hearing, as it was presented, suggests, once Dr. Martin authorized his script to be written by one of the nurses or the nurse practitioners, he was authorizing them to illegally sell or furnish Schedule II narcotics. He was, therefore, clearly complicit in their aggravated trafficking in drugs. Mr. Wilcox stated that this issue has been decided upon in the Appellate Court in the Tenth District.

Mr. Wilcox stated that Dr. Martin provided these nurses with the instrumentality to commit the trafficking offense. Therefore, he's complicit in that offense. Without the illegal actions of Dr. Martin by presigning the blank prescriptions, there would have been no trafficking. Dr. Martin intended to give this authority to those not legally authorized to exercise it. He had no control over who these nurses wrote the prescriptions for. He was not even in the State of Ohio at the time. Conceivably, the staff could have written the prescriptions for anyone, including themselves.

Mr. Wilcox stated that he thinks that the Hearing Examiner, and, maybe, some of the Board members, picture aggravated trafficking of drugs as someone on a street corner selling marijuana or cocaine; but as Board members should know, the majority of drug abuse that goes on in this country is related to prescription drugs. Therefore, it is even more important that this Board understand and send the message that enabling the illegal transfer or sale of Schedule II drugs is a very serious matter.

Mr. Wilcox again recommended that the Board amend Conclusion of Law number two to say that the actions of Dr. Martin do constitute acts that constitute a felony, that being Complicity to Aggravated Trafficking. As far as the penalty to be imposed, he leaves that up to the Board in this matter.

Mr. Jacobson referred to Mr. Kleinman's suggestion in his written objections that in the case of Leonard K. Smith, M.D., the Board imposed a much lighter sanction for what appears to be a more serious offense. He

March 11, 2009

asked whether Mr. Wilcox has any response to that argument. In that case, blank forms were given to nurses who would, essentially, do the diagnosis and write a drug on the form, as opposed to what happened in Dr. Martin's case, i.e., continuing to treat existing patients according to the doctor's own instructions with no changes. The argument was made that the Smith case, arguably, involved a more serious offense, and yet the suspension that was proposed was lighter.

Mr. Wilcox stated that he's not familiar with that case, specifically. Obviously, each of these cases has to be considered on the individual merits.

Dr. Suppan stated that it's not even the same circumstances. First of all, it was in 1995. She added that, from what she read, it was not a controlled substance. She commented that that's a big difference. She added that they call them "controlled substances" because they have a high abuse potential. It's incumbent upon the physician, when the physician earns the right to prescribe from the DEA with a special prescribing number, to agree to special behaviors if he/she prescribes. It is not a right of practice. It's not even a right of a license. It's a completely higher tier of prescribing.

Mr. Jacobson stated that that's helpful.

Dr. Madia asked whether there's a motion to approve and confirm the Hearing Examiner'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 JAY WELDON MARTIN, M.D. DR. VARYANI SECONDED THE MOTION.

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

Dr. Stephens stated that, as a physician, when you have secretaries and nurses in your office, they typically call in refills for you. They have the physician's DEA number. Although it's not legal, it's really not that much of a stretch to leave signed prescriptions. She stated that she's not saying that it's right, but this is how medicine is conducted.

Dr. Suppan stated that if a nurse or physician calls a prescription in for a Scheduled II drug, it has to be followed within a certain number of hours with a written prescription. She stated that that goes to the Attorney General's comments. This doctor was in the United States. To put that responsibility on the nurse, instead of calling the prescription in himself or taking the responsibility for that was highly inappropriate.

Dr. Stephens stated that she realizes that these were Schedule II drugs, and added that she writes prescriptions for them all the time. Dr. Stephens explained that Dr. Martin was writing a lot of prescriptions and calling in a lot of prescriptions using his DEA number, and it was not that much of a stretch to leave signed prescriptions.

Dr. Stephens stated that her real issue with this is the length of the proposed suspension. She also stated

March 11, 2009

that when she looks at this case and the number of pills, she has a problem with 240 Dilaudids. She stated that the number of pills is a greater problem.

Dr. Mahajan stated that you cannot call in Schedule II prescriptions. He commented that if someone needs a narcotic analgesic, and you tell the patient to go to the emergency room, the patient will have to wait three, four, to five hours. That's a lot of time to impose on that patient or family. He stated that it's sad that Dr. Martin could not get coverage, which would have been the best thing to do. Again, when you have someone covering, covering physicians mostly do not want to write for narcotics. Dr. Mahajan stated that he personally would not have left the signed prescription. If for some reason he did leave it, he would have written for one week, two weeks or a ten-day supply only.

Dr. Mahajan stated that he feels that Dr. Martin realizes his error. He has a partner now and, hopefully, the behavior won't be repeated. Dr. Mahajan stated that a nine-month suspension seems too harsh to him.

Dr. Egner stated that there are a few things about this case that she finds compelling. She disagrees with the Attorney General and does not consider this as a case of trafficking in controlled substances. Dr. Egner stated that the facts of this case were fairly undisputed. Dr. Martin had never taken a week's vacation. She stated that her first thought is that that's not a good way to practice. He needs to take vacations. He deserves a vacation, and he certainly deserved to be at his son's wedding. Whether he took a long weekend or nine days, he should be allowed to take time off when his son gets married. Dr. Egner stated that it does seem that Dr. Martin tried to get coverage and that there was no one who wanted to take responsibility for that part of his practice. That's a sad comment on the medical profession. He tried to have the emergency room be the place for the patients to go, and they also didn't want to. Dr. Egner stated that she understands that; the emergency room is not the place for patients to go for chronic medications.

Dr. Egner stated that, initially, she was appalled at the number of pills that were written, thinking that his staff didn't really follow his instructions. However, as she looked through them, every prescription was for a 30-day supply. One could argue that it should have only been for a two-week supply, but she doesn't think that the 30-day supply is outlandish. She stated that Dr. Martin left very specific instructions. He left 20 pre-signed blank forms, all of which were accounted for when he came back. She agreed that the potential for abuse was there; his staff could have written prescriptions for themselves, but they didn't.

Dr. Egner stated that she's not saying that Dr. Martin should get off scot-free. He put the two nurse practitioners in a terrible position. They should have known better, and he should have known better. Dr. Egner stated that she sees no reason to take Dr. Martin out of practice for nine months. Dr. Egner stated that this is too harsh and does put the patients in this community in a very bad position.

Concerning the proposed ethics course, Dr. Egner stated that she could go with that because he did put his employees in a bad position. She added that Dr. Martin could also use a business course. He had 30 employees and earned \$15,700 a year. Dr. Egner stated that something's wrong with how he made his business decisions. Concerning the proposed required practice plan, Dr. Egner stated that right now Dr. Martin is under the protection of St. Rita's, but the Board doesn't know that he will always be under that protection. She does think that working under a practice plan for a while is a good thing for him. Dr. Egner stated that she also doesn't see anything wrong with the proposed two-year probationary period.

March 11, 2009

Dr. Varyani stated that he would recommend a lighter penalty. He stated that he knows that Dr. Martin did something wrong, but he could not get coverage, although he tried. He recognized that Dr. Martin put his office personnel and the population at risk by pre-signing prescriptions. He noted that Dr. Martin has already taken a course in this, so he knows what he did wrong.

Dr. Varyani agreed with Dr. Egner that Dr. Martin needs a business course, but he's not going to suggest that. He stated that most things have been taken care of. Dr. Varyani stated that he feels that the Board should stay the suspension and that Dr. Martin should be reprimanded.

Dr. Egner asked whether Dr. Varyani is making an amendment.

Dr. Varyani stated that he would like to hear more discussion.

Dr. Amato stated that he's really impressed with the Board's compassion, especially in view of the fact that he doesn't think that many members have been where this physician is. He stated that in his own career and role in Ohio, he's served as president of a medical staff three different times. The toughest problem the president of the medical staff has is the problem this practitioner went through. Usually in a smaller town, you have a buddy and you cover each other. When one of those guys is gone, the other is in a bind. In under-served areas, it is sometimes impossible to get coverage.

Dr. Amato stated that the Board's role is to protect the public. This practitioner has already moved into a position to do that. He noted that the prescriptions were for 30-day supplies. He added that the Board is forgetting a key thing here. Lima is farm country; it's up and down as far as the economy goes. With "micro-mismanaged" care, the patient will pay the same amount of money for a three-day supply as a 30-day supply and a 30-day supply may be denied. He asked what the patient would do if he went to the emergency room and "micro-mismanaged" care denied it as a non-emergency visit. Dr. Amato stated that he feels that Dr. Martin was trying to take care of his patients. He didn't charge for those services. He didn't do this to run a pain pill factory. He was trying to take care of his patients.

Dr. Amato stated that he finds it amazing that the Board would give a 30-day suspension to an impaired physician and the Board doesn't know how many patients that impaired physician hurt before he self-reported, and it's saying that it's going to suspend for nine months the license of a physician who was trying to take care of his patients and put him on probation for one year. Dr. Amato asked whether, when "micro-mismanaged" care takes away Dr. Martin's status, he will still have a job. Dr. Amato stated that there are many unintended consequences when the Board takes action. He again stated that the Board's job is to protect the public, and added that he feels this physician has already taken the major steps to protect the public. The proposed punishment is so far above what this Board has given out for other, similar infractions, and the repercussions could be severe in this rural community.

Dr. Madia stated that Lima is not as rural a community as has been suggested. He stated that Lima is a big town and there are a lot of physicians.

Dr. Amato disagreed, noting that the community has a population of 200,000, with 20 family practitioners.

March 11, 2009

That works out to 10,000 patients per practitioner.

Dr. Steinbergh stated that she's a solo family practitioner, and she can understand where Dr. Martin is coming from. She agreed with Dr. Egner's statement about vacations. She stated that Dr. Martin should have gone on vacation, but he didn't make the right decision in terms of the prescriptive issues that the Board is talking about.

Dr. Steinbergh stated that there was one thing that concerned her, and that is Board members are talking about nurse practitioners, but what she saw in the record was testimony by two LPNs and an RN. She asked whether there were any nurse practitioners in the practice.

Dr. Martin advised that he had two nurse practitioners in his practice.

Dr. Steinbergh stated that she read through the record and there was some indiscretion on pre-signed prescription number twelve. She stated that Dr. Martin had written for Dilaudid at 4 mg, and the prescription by the nurse was Dilaudid 8 mg for 30 days, one every six hours P.R.N. She stated that that works out to four a day, for a total of 120 pills for the 30 days; however, the number dispensed on this prescription was 240. The nurse increased the dose and the number of pills. She noted prescription number fourteen, a prescription for Fentanyl. She noted that the patient had been receiving Fentanyl 25 mg, # 10, one patch every three days. The prescription the nurse wrote was for Fentanyl 50 mg #15, 1 patch every two days, which increased the dose and the frequency. There was another time when a Percocet prescription was increased. There are issues with that type of prescribing.

Dr. Steinbergh stated that, with all of that being said, there was a substantial error in judgment in terms of pre-signing these prescriptions, but she does feel that the Proposed Order was a bit arduous.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JAY WELDON MARTIN, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Jay Weldon Martin, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for a period of nine months. All but three months of the suspension shall be stayed.
- B. **PROBATION:** Upon reinstatement, Dr. Martin's 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. Martin shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio and any other state in which he is practicing.
 2. **Declarations of Compliance:** Dr. Martin shall submit quarterly declarations

March 11, 2009

under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Martin's certificate is reinstated, or as otherwise directed by the Board. 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. Martin shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Martin's certificate is reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur: (a) three months thereafter, (b) at the conclusion of the first year of probation, and (c) upon request for release from probation, and/or (d) 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. **Controlled Substances Prescribing Course(s):** Before the end of the first year of probation or as otherwise approved by the Board, Dr. Martin shall provide acceptable documentation of successful completion of a course or courses dealing with 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. Martin submits the documentation of successful completion of the course or courses dealing with prescribing, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.
5. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Martin shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Martin submits the documentation of successful completion of the course or courses dealing with professional ethics, he shall

March 11, 2009

also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

6. **Monitoring Physician:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Martin shall 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. Martin and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Martin and his medical practice, and shall review Dr. Martin's 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 but must include charts of some patients receiving controlled substances.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Martin and his medical practice, and on the review of Dr. Martin's patient charts to include observations on the prescribing of controlled substances. Dr. Martin 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. Martin's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Martin must immediately so notify the Board in writing. In addition, Dr. Martin shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Martin 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.

7. **Controlled Substances Log:** Dr. Martin shall keep a log of all controlled substances he prescribes, orders, administers, or personally furnishes. Such log shall be submitted in a format approved by the Board no later than the due date for Dr. Martin's quarterly declaration, or as otherwise directed by the Board. Further, Dr. Martin shall make his patient records with regard to such controlled substances available for review by an agent of the Board upon request.
8. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr.

March 11, 2009

Martin is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

9. **Termination of Probation:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Martin's certificate will be fully restored.

C. REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Martin shall provide a copy of this Order to all employers or entities with which he 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 or health-care center where he has privileges or appointments. Further, Dr. Martin shall promptly provide a copy of this Order to all employers or entities with which he contracts to provide health care services (including but not limited to third-party payors), or entities to which Dr. Martin applies for or receives training, and the Chief of Staff at each hospital or health-care center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Martin receives from the Board written notification of the successful completion of the probation.

In the event that Dr. Martin provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Martin receives from the Board written notification of the successful completion of the probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Martin shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Martin shall provide a copy of this Order at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement/restoration of any professional license.

March 11, 2009

3. **Required Documentation of the Reporting Required by Paragraph C:**
Further, Dr. Martin shall provide this Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) -the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

THE MOTION DIED FOR LACK OF A SECOND.

Dr. Egner stated that she doesn't agree with requiring a monitoring physician or a controlled substance log. She stated that there's nothing in the record that says that the Board is concerned with the quality of Dr. Martin's practice or that he's not prescribing correctly. She added that she is in favor of the overall sentiment of Dr. Steinbergh's proposed amendment, but she thinks that most members feel that the infractions were not as serious as the Hearing Examiner interpreted them to be.

Dr. Varyani stated that if the Board suspends a license for one month or three months, the consequences are the same. He suggested that a nine-month stayed suspension is fine with him.

Dr. Steinbergh stated that she feels that Dr. Martin made a very serious error.

Dr. Amato stated that he partially agrees with Dr. Varyani. He suggested an order reprimanding Dr. Martin and ordering him to take an ethics course.

Dr. Steinbergh disagreed, stating that this case goes beyond a reprimand. She stated that there are prices to be paid for one's actions. Dr. Martin's judgment in doing this was inappropriate.

Dr. Mahajan suggested a four-week suspension.

Dr. Madia stated that, knowing Lima, and the facilities and physicians there, he can't understand anyone not having cross coverage for his practice. He stated that Lima is a big enough community that Dr. Martin should have had coverage. He also expressed concern about the differences in dosages that Dr. Steinbergh noted. Dr. Madia stated that there are consequences from the increased doses over a period of days. He stated that he doesn't know why the decisions were made to increase the doses and to shorten the period between doses. Dr. Madia agreed with Dr. Steinbergh that a reprimand is not strong enough.

Dr. Steinbergh commented that standards of care are addressed the same across the state, no matter the size

March 11, 2009

of the community. The Board doesn't say that because a physician practices in a small town that he can practice one way and a physician who practices in a large town can practice another way. All physicians have to meet the same standards.

Dr. Amato agreed with what Dr. Steinbergh is saying concerning practice standards, but there may be differences in timing with those standards. He stated that Dr. Steinbergh cannot sit here and say that there are the same standards across this state when there are hospitals in Columbus with MRI machines available 24/7, and there are some counties in this state that don't even have an MRI machine.

Dr. Madia stated that standards don't apply that way, but if a physician has a patient who needs an MRI, the physician has to send the patient somewhere that has an MRI.

Dr. Amato stated that it's the same standard, but different timing. Dr. Amato stated that he doesn't agree with what Dr. Martin did, but with the number of physicians in rural areas, he can understand why he did it.

Dr. Mahajan stated that there were other physicians in the community and Dr. Martin could have had coverage. He noted that patients did have coverage in medical emergencies. Dr. Mahajan stated that prescribing narcotics is a different animal, and other physicians really do not want to write narcotic prescriptions for patients that they don't know when they're covering another physician's practice. Dr. Mahajan stated that there should be a stayed suspension.

Dr. Stephens stated that she wants to address the coverage issue. She stated that she doesn't think that coverage in today's medical arena is determined by the patient population and the number of family practitioners. She stated that, even in Cleveland, because she deals with people with pain, she has trouble with coverage.

Dr. Madia agreed that covering physicians have trouble writing prescriptions for pain because they don't know whether there is real pain or not.

Dr. Suppan stated that she agrees with Dr. Steinbergh's point of view. She stated that, to the best of her understanding, the laws of the State of Ohio were broken in this case, in particular in regards to how a clinical nurse practitioner functions with her collaborator. She stated that this is a federal issue as well, involving DEA standards. She stated that, as much as she understands the mitigating circumstances, she thinks that the wrong thing to do is to drop this down to a reprimand. This was serious business. There were blank prescriptions that were prescribed.

Dr. Steinbergh referred to her motion and stated that she's willing to delete paragraphs 6 and 7 of her proposed amendment, requiring a monitoring physician and a controlled substance log. She reviewed the rest of her proposed order.

Dr. Egner commented that, although requiring a monitoring physician sounds good, she doesn't believe that the Board has ever disciplined a physician based on something the monitoring physician has reported. She added that, where Dr. Martin is right now, he's in a more structured environment than previously and a monitoring physician is not necessary.

Dr. Steinbergh stated that she'll drop that from her alternative order.

Dr. Amato spoke in support of a proposed 90-day suspension, 80 days of that suspension stayed, and no probation. That way the Board is suspending his license, it is sending a message, it's taking into account unintended consequences, and his rural environment.

Dr. Steinbergh stated that Dr. Martin should at least take a professional ethics course.

Dr. Madia agreed that an ethics course would be appropriate.

Dr. Amato stated that he'll go along with the ethics course, as long as the Board drops probation. The unintended consequences of probation are going to kill Dr. Martin's practice anyway.

Dr. Steinbergh stated that the Board will require a report regarding the ethics course.

Dr. Amato stated that his suggestion is to require Dr. Martin to take the ethics course within six months, or the other 80 days of suspension get implemented.

Dr. Steinbergh stated that when the Board orders a course of some kind, it must be completed either during a suspension period or a probationary period. Unless you have one of those things, you don't have any authority to do what you want to do.

Mr. Jacobson asked whether the Board can have an order that says, here's the sanction today, including the requirement to have something done by a certain date, and without being on probation in the meantime a further sanction is triggered (the other 80 days being imposed) if the requirement isn't met by the deadline. The Board wouldn't call it probation because the licensee isn't on probation in the meantime.

Ms. Debolt stated that there can be such an order. She added that, traditionally, the Board orders a condition to be met for reinstatement, or one is on probation for a period of time to complete the condition, so the Board has some teeth in case the condition isn't met. She stated that the Board will have to give the individual an opportunity for hearing before it can institute that stayed suspension.

Mr. Whitehouse stated that he believes that the probationary period gives the Board members the teeth to ensure that there's compliance. The Board can also give the licensee a choice: he can be out for 90 days, or he can be out for 90 days, the Board will stay 80, and he would be out for 10 days, plus he must take a course.

Mr. Jacobson stated that the Board could also note that he has a certain time in which to determine his choice.

Mr. Whitehouse stated that it depends upon how strongly the Board feels about the need for a course.

Dr. Steinbergh asked to table this discussion to draft another alternative order pursuant to Dr. Amato's

March 11, 2009

suggestion.

DR. STEINBERGH MOVED TO TABLE THE MATTER OF THE REPORT AND RECOMMENDATION IN THE MATTER OF DR. MARTIN. DR. VARYANI SECONDED THE MOTION. All members voted aye. The motion carried.

Later in the meeting, by motion made by Dr. Varyani, seconded by Dr. Amato and unanimously passed, the matter was taken off the table. Mr. Albert and Dr. Stephens had left the meeting by the time the matter was removed from the table.

A copy of Dr. Amato's proposed amended order was distributed for Board member review. Dr. Steinbergh stated that she would like to add, as part of paragraph C, a documentation requirement for the ethics course being ordered.

Dr. Amato agreed to the change.

DR. AMATO MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF JAY WELDON MARTIN, M.D., TO READ AS FOLLOWS:

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE, STAYED IN PART:** The certificate of Jay Weldon Martin, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of 90 days. All but 10 days of this suspension shall be **STAYED**.
- B. **PROFESSIONAL ETHICS COURSE(S) AND PRESCRIBING COURSE(S):** Within 90 days of the effective date of this Order, Dr. Martin shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics, and a course or courses dealing with prescribing. 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. Martin submits the documentation of successful completion of the course or courses dealing with professional ethics and prescribing, he shall **also** submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- C. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

March 11, 2009

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Martin shall provide a copy of this Order to all employers or entities with which he 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 or health-care center where he has privileges or appointments. Further, Dr. Martin shall promptly provide a copy of this Order to all employers or entities with which he contracts to provide health care services (including but not limited to third-party payors), or entities to which Dr. Martin applies for or receives training, and the Chief of Staff at each hospital or health-care center where he applies for or obtains privileges or appointments. This requirement shall continue for six months following the effective date of this Order.

In the event that Dr. Martin provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue for six months following the effective date of this Order.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Martin shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Martin shall provide a copy of this Order at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue for six months following the effective date of this Order.
3. **Required Documentation of the Reporting Required by Paragraph C:** Further, Dr. Martin shall provide this Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 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 Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

March 11, 2009

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

DR. VARYANI SECONDED THE MOTION. A vote was taken:

VOTE:	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- nay
	Dr. Madia	- 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 JAY WELDON MARTIN, M.D. DR. MAHAJAN SECONDED THE MOTION. A vote was taken:

VOTE:	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

GLENN A. BOLLARD, M.D.

Dr. Madia directed the Board's attention to the matter of Glenn A. Bollard, M.D. He advised that at its meeting on January 14, 2009, the Board considered the matter of Dr. Bollard. The Board adopted an order of permanent revocation, stayed the revocation subject to suspension for at least one year, with interim monitoring conditions, conditions for reinstatement, and subsequent probationary terms, conditions, and limitations for at least five years. Dr. Bollard subsequently filed a motion for reconsideration of the Board's Order.

Dr. Madia asked for a motion to either approve or deny Dr. Bollard's motion for reconsideration.

DR. STEINBERGH MOVED TO RECONSIDER THE MATTER OF GLENN A. BOLLARD, M.D.

DR. EGNER SECONDED THE MOTION.

Dr. Egner advised that many of the requirements in the Board's Order are already being carried out in Pennsylvania for Dr. Bollard. She stated that Dr. Bollard does not wish to duplicate any of the monitoring, testing or screening being done there. She commented that, in that regard, this Board has been quite accommodating in the past. Dr. Egner advised that, as far as the requirements dealing with quarterly declarations of compliance and probationary appearances, she does not feel that they are onerous. She noted that Dr. Bollard did give testimony at hearing how improved his neurological syndrome is. Dr. Egner stated that she's not in favor of reconsidering the Board's Order of January 14.

Dr. Varyani agreed with Dr. Egner.

Elizabeth Y. Collis, Dr. Bollard's attorney, stated that she knows that it looks like that there's not much that Dr. Bollard would have to do; but, in fact, this Board will not accept his monitoring from Pennsylvania in terms of his drug screens. He's doing two screening programs right now in Pennsylvania: through the Medical Board in Pennsylvania and through the Physicians Health Program [PHP] program. Their programs are different from Ohio's program. The program in Ohio for urine screens is a daily call-in process. The Pennsylvania process is not like that. Ms. Collis stated that that process has not affirmatively been denied in Ohio, but she believes that it will be denied.

Dr. Egner stated that she needs to know that that's really true.

Ms. Collis stated that Dr. Bollard is not signed up with FirstLab in Pennsylvania.

Ms. Bickers verified that Dr. Bollard hasn't submitted anything to Ohio yet.

Ms. Collis stated that he is doing the monitoring in Pennsylvania that's approved by the Pennsylvania Board, but that is different from Ohio's program. He would have to sign up for a third program in Ohio. In addition to coming back to Ohio, he would have the daily call-in that he would have to do, he would have three A.A. meetings a week (she commented that she's not sure how many A.A. meetings he's doing in Pennsylvania), and he's not practicing. Ms. Collis stated that she knows that he has gotten a lot healthier, and that he's much healthier now than he was many years ago; but he hasn't practiced clinically in five years. He's not released to practice. Ms. Collis stated that she feels that it's a waste of Ohio's resources to monitor someone who is not only not working in Ohio, but is not working anywhere.

Dr. Egner stated that the Board does monitor licensees who are out of state.

Ms. Collis stated that she understands, but added that Dr. Bollard is not practicing.

Dr. Egner stated that her intent is that Dr. Bollard not need to duplicate monitoring. She stated that she has no problem with that. She does think that he should make an appearance on a quarterly basis, and he should do quarterly declarations. She doesn't think that that's onerous. Dr. Egner stated that she will still deny reconsideration because the question about urine screens hasn't been answered yet. She asked that Ms. Bickers bring his request to the Board when he's ready to make it and the Board will decide then.

March 11, 2009

Dr. Steinbergh withdrew her motion. Dr. Egner, as second, agreed.

DR. EGNER MOVED TO DENY THE REQUEST FOR RECONSIDERATION. DR. VARYANI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- nay
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- abstain
	Dr. Madia	- aye

The motion carried.

Dr. Suppan left the meeting at this time.

FINDINGS, ORDERS AND JOURNAL ENTRIES

Dr. Madia 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 Mr. Albert may participate in the discussion and vote, as these cases are not disciplinary in nature and concern only the individuals' qualifications for licensure.

EUGENIA U. ABONYI, M.D.

DR. STEINBERGH MOVED TO FIND THAT THAT THE ALLEGATIONS AS SET FORTH IN THE JANUARY 26, 2009 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING DR. ABONYI'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. DR. AMATO SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

March 11, 2009

Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Madia - aye

The motion carried.

Dr. Suppan returned to the meeting at this time.

MIRELA A. DOBRE, M.D.

DR. STEINBERGH MOVED TO FIND THAT THAT THE ALLEGATIONS AS SET FORTH IN THE DECEMBER 30, 2008 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING DR. DOBRE'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. DR. AMATO SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert	- abstain
Dr. Egner	- aye
Dr. Suppan	- aye
Dr. Varyani	- aye
Mr. Jacobson	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

FATIMA HASHMI, M.D.

DR. STEINBERGH MOVED TO FIND THAT THAT THE ALLEGATIONS AS SET FORTH IN THE DECEMBER 30, 2008 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, DENYING DR. HASHMI'S APPLICATION FOR A LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO. DR. AMATO SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert	- abstain
Dr. Egner	- aye
Dr. Suppan	- aye
Dr. Varyani	- aye
Mr. Jacobson	- aye

March 11, 2009

Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

TABITHA Y. MILLS-HOOVER, M.T.

DR. VARYANI MOVED TO FIND THAT THAT THE ALLEGATIONS AS SET FORTH IN THE JANUARY 26, 2009 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING MS. MILLS-HOOVER'S RESTORATION APPLICATION FOR A LICENSE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE LIMITED BRANCH PORTION OF THE MASSAGE THERAPY EXAMINATION WITHIN SIX MONTHS OF JANUARY 27, 2009. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

LARAHN MICHELLE WILKINSON, M.T.

DR. STEINBERGH MOVED TO FIND THAT THE ALLEGATIONS AS SET FORTH IN THE JANUARY 26, 2009 NOTICE HAVE BEEN PROVEN TO BE TRUE BY A PREPONDERANCE OF THE EVIDENCE AND TO ENTER AN ORDER, EFFECTIVE IMMEDIATELY, APPROVING MS. WILKINSON'S APPLICATION FOR A LICENSE TO PRACTICE MASSAGE THERAPY, SUBJECT TO HER PASSING THE LIMITED BRANCH PORTION OF THE MASSAGE THERAPY EXAMINATION WITHIN SIX MONTHS OF JANUARY 27, 2009. DR. AMATO SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Suppan	- aye

March 11, 2009

Dr. Varyani	- aye
Mr. Jacobson	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

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

DARYL E. CAVIN – LETTER OF PROPOSED DENIAL

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

DR. VARYANI MOVED TO SEND THE LETTER OF PROPOSED DENIAL TO MR. CAVIN. DR. SUPPAN SECONDED THE MOTION. A vote was taken:

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

The motion carried.

SAMUEL FRANCIS CORNICELLI, JR., M.D. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

DR. STEINBERGH MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF SAMUEL FRANCIS CORNICELLI, JR., M.D., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY

March 11, 2009

SUSPENSION AND OPPORTUNITY FOR HEARING. DR. VARYANI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

JULIAN A. GORDON, M.D. – CITATION LETTER

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

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

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

The motion carried.

CHERRY LYNN HIVELY – CITATION LETTER

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

DR. STEINBERGH MOVED TO SEND THE CITATION LETTER TO MS. HIVELY. DR. VARYANI SECONDED THE MOTION. A vote was taken:

March 11, 2009

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

The motion carried.

Dr. Egner left the meeting at this time.

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.

CLAUDIA M. HRIESIK, M.D. – PERMANENT WITHDRAWAL OF APPLICATION

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

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

March 11, 2009

ERIN KAYE BALL, M.T. – CONSENT AGREEMENT

DR. STEINBERGH MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH MS. BALL. DR. VARYANI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

CELESTE DANEEN BREWER-EDWARDS, P.A. – SUPERSEDING STEP I CONSENT AGREEMENT

DR. AMATO MOVED TO RATIFY THE PROPOSED SUPERSEDING STEP I CONSENT AGREEMENT WITH MS. BREWER-EDWARDS. DR. VARYANI SECONDED THE MOTION.

A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

KYLE ELLIOTT HOOGENDOORN, D.P.M. – CONSENT AGREEMENT

DR. AMATO MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. HOOGENDOORN. DR. VARYANI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye

March 11, 2009

Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

THOMAS WILLIAM KASER, M.T. – SURRENDER OF CERTIFICATE TO PRACTICE MASSAGE THERAPY

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

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

AIYAPPAN MENON, M.D. – STEP I CONSENT AGREEMENT

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

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

March 11, 2009

JEFFREY E. SHOOK, D.P.M. – CONSENT AGREEMENT

DR. VARYANI MOVED TO RATIFY THE PROPOSED CONSENT AGREEMENT WITH DR. SHOOK. DR. SUPPAN SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

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

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

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

DEBORAH LYNNE FRANKOWSKI, M.D. – STEP II CONSENT AGREEMENT

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

VOTE:	Mr. Albert	- abstain
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Jacobson	- aye
	Dr. Amato	- aye

March 11, 2009

Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

Dr. Egner returned to the meeting at this time.

MARK ERIK BLAIR, M.D. – STEP II CONSENT AGREEMENT

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

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

The motion carried.

Dr. Stephens left the meeting at this time.

PROBATIONARY APPEARANCES

LYON L. GLEICH, M.D.

Dr. Gleich appeared before the Board pursuant to his request for release from the terms of the Board's Order of November 12, 2003.

Ms. Bickers reviewed Dr. Gleich's history with the Board.

In response to Board members' questions, Dr. Gleich stated that he is doing well. He stated that since his license suspension, he's been working full time for Medpace, a clinical research organization based in Cincinnati. He stated that he's been enjoying what he's doing very much and plans to continue what he's doing. He stated that he's working particularly in the oncology studies section. He commented that this work uses his prior experience very well, and instead of doing ten different things, like he was doing at the university, he's doing one. He commented that it's much better. He stated that he's working in both the

March 11, 2009

clinical and statistical ends of the studies. He helps the sponsors with the writing of the trials, presents them to the FDA, answers questions from the investigators overseeing the data, answers questions from the company's data coordinators, and educates the monitors so that they know what to look for in the data. Dr. Gleich stated that he had done a lot of this work for both the university and for the American College of Surgeons Oncology Group (ACOSOG) before, and he was an active investigator before, so it translated very well.

In response to further questions, Dr. Gleich stated that his therapy is going very well, that he's gotten a lot more insight into himself. There were a lot of things that he'd suppressed, repressed and ignored. The therapy has been very good for him. He sees someone weekly. There's a group he goes to every other week, and then a solo session in the interspersing weeks. He does not take any medications. He gets good support from his parents, and has a great relationship with his children. Dr. Gleich advised that he was divorced three years ago. He stated that it was good being in therapy when he went through that because it helped keep him balanced.

DR. STEINBERGH MOVED TO RELEASE DR. GLEICH FROM THE TERMS OF THE BOARD'S ORDER OF NOVEMBER 12, 2003. DR. MAHAJAN SECONDED THE MOTION. All members voted aye. The motion carried.

JAMES M. ROSSELIT, D.O.

Dr. Rosselit appeared before the Board pursuant to his request for release from the terms of his March 10, 2004 Step II Consent Agreement.

Ms. Bickers reviewed Dr. Rosselit's history with the Board.

In response to Board members' questions, Dr. Rosselit stated that he practices plastic surgery in Dayton. Subsequent to receiving intervention in lieu of conviction, he received a Health and Human Services exclusion, which has kept him from practicing in a hospital. He primarily practiced at a plastic surgery center doing cosmetic work, cash work, and then insurance work. He stated that he has eighteen months to go and, hopefully, he will be reinstated with Medicare and Medicaid at that time.

Mr. Albert stated that Dr. Rosselit has been a very good probationer.

In response to further questions, Dr. Rosselit stated that, as far as his recovery goes, he intends to continue doing all the things he's doing today. He prays and meditates every day, attends four to five meetings a week, he has a sponsor to whom he's very close, and he works with OPHP as far as his monitoring. Dr. Rosselit stated that he's very comfortable in recovery and is very happy and will continue to do the same things.

DR. STEINBERGH MOVED TO RELEASE DR. ROSSELIT FROM THE TERMS OF HIS MARCH 10, 2004 STEP II CONSENT AGREEMENT. DR. SUPPAN SECONDED THE MOTION. All members voted aye. The motion carried.

March 11, 2009

PATRICIA A. SPIESS, M.D.

Dr. Spiess appeared before the Board pursuant to her request for release from the terms of her March 14, 2007 Consent Agreement. If approved, release from probation would become effective March 14, 2009.

Ms. Bickers reviewed Dr. Spiess' history with the Board.

In response to Board members' questions, Dr. Spiess stated that she is doing very well. She hasn't practiced medicine at all for the past two years. She had arranged to start working with the medical director of a freestanding free clinic in Lakewood to treat patients with chronic medical illnesses, such as diabetes and hypertension. She stated he was very excited to have her join him because she could work during the day. Unfortunately, they have a low-risk malpractice policy and they refused her. She did not pursue any other possibilities for practice. She's decided that she's not going to pursue a paying job, like a medical office or working in a nursing home or any other possibilities because she thought that might be too stressful. Stress for her can mean that she will become overwhelmed, and that would lead to more depression. She stated that she's just protecting herself. Dr. Spiess stated that her current license is due to expire in January 2010, and at this time she's planning to not renew it. She stated that the decision is difficult, adding that it's difficult to think about ending her career in medicine, finally. She stated that she does it with some sadness, but she really thinks that, considering many factors, that's the best decision for her. Dr. Spiess stated that she keeps extremely busy all the time.

Dr. Spiess stated that she did learn that a retired physician can apply for the status of "Physician Emeritus." She stated that if that were something she could attain, she could perhaps end her career in medicine with a little bit of dignity and some recognition from her 17 years of dedicated service here in the state of Ohio. She stated that she became very disheartened to learn that any physician who has had a probationary period was not eligible. Dr. Spiess stated that she doesn't know whether the Board has ever considered making exceptions to the rule, but hopes the Board would be willing to take into account her circumstances. She noted that she never harmed a patient or endangered a life during her practice; and, in fact, a psychiatrist has told her that she handled her illness very responsibly and recognized when she was getting into problems and had to stop practicing.

In response to further questions, Dr. Spiess stated that she hasn't worked in a free clinic, and does not have plans to. She had been keeping up with her CME, but since she decided that she isn't going to renew her license, she hasn't. She advised that she does still read her professional journals. She advised that if she should decide to be re-licensed, she will seek out programs to help her catch up with her CME. She was advised that there are consequences if she hasn't practiced for more than two years. She would probably have to take an examination for relicensure.

Dr. Spiess listed for the Board the medications she currently takes.

Board members urged Dr. Spiess to think about working in free clinics, where physicians are needed.

Dr. Steinbergh stated that the Licensure Committee might discuss Dr. Spiess' request.

March 11, 2009

DR. STEINBERGH MOVED TO RELEASE DR. SPIESS FROM THE TERMS OF HER MARCH 14, 2007 CONSENT AGREEMENT, EFFECTIVE MARCH 14, 2009. DR. VARYANI SECONDED THE MOTION. All members voted aye. The motion carried.

Mr. Albert left the meeting at this time.

TIMOTHY A. HEINRICHS, M.D.

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

Ms. Bickers reviewed Dr. Heinrichs' history with the Board.

In response to Board members' questions, Dr. Heinrichs stated that he is doing well. He understands the terms of his Consent Agreement, and has no questions about it. He stated that he's working with Ms. Bickers, and hopes to get his license reinstated in April, noting that the 90 days of suspension will be up this month. His recovery involves attending three A.A. meetings in his home town area. He's also attending Caduceus and aftercare at Shepherd Hill. He works with his sponsor regularly as well. He's on Step 4. Hopefully they'll get through Step 5 the following week. He stated that it's working very well for him.

DR. VARYANI MOVED TO CONTINUE DR. HEINRICHS UNDER THE TERMS OF HIS DECEMBER 13, 2008 STEP I CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. AMATO SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Madia, Dr. Amato and Mr. Whitehouse left the meeting at this time.

JOSEPH FRANCIS LYDON, JR., M.D.

Dr. Lydon made his initial appearance before the Board, pursuant to the terms of his December 11, 2008 Consent Agreement.

Ms. Bickers reviewed Dr. Lydon's history with the Board.

In response to Board Members' questions, Dr. Lydon stated that he hasn't thought about doing something other than anesthesia. He stated that he's not projecting that far into the future. He's simply moving along the path of recovery. When asked what he does on a day-to-day basis, Dr. Lydon advised that his wife works evenings, so he wakes up in the morning to spend time with her. He then goes to his local church to pray and to do a number of volunteer activities for the parish. Then he comes home and takes care of his two children, a girl age 15 and a boy age 12. He commented that it's quite a task to keep them under control.

March 11, 2009

In response to further questions, Dr. Lydon stated that he is currently on Step 4. He has a sponsor. On Mondays he goes to Glenbeigh's aftercare program, and then on Monday night he goes to the Cleveland Clinic's Caduceus program. Then he attends four other A.A. meetings, most of which are discussion groups. He stated that he finds that format to be much more helpful than the more traditional, so-called "lead" meetings. He's been under the continuous care of a psychiatrist for several years because of his underlying disorder. Presently, Dr. Collins at the Cleveland Clinic is his treating psychiatrist.

DR. VARYANI MOVED TO CONTINUE DR. LYDON UNDER THE TERMS OF HIS DECEMBER 11, 2008 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. DR. EGNER SECONDED THE MOTION. All members voted aye. The motion carried.

STEPHEN T. MCCARREN, M.D.

Dr. McCarren made his initial appearance before the Board, pursuant to the terms of his January 15, 2009 Step II Consent Agreement.

Ms. Bickers reviewed Dr. McCarren's history with the Board.

In response to Board members' questions, Dr. McCarren stated that he is doing very well. He will resume work on March 13. His specialty is anesthesia. Dr. McCarren stated that he's a recovering alcoholic, and was a recovering alcoholic before he went into residency. He practiced anesthesia without abusing the substances with which he worked. He stated that his drug of choice was always alcohol, and that's what he relapsed on.

Dr. McCarren stated that he has a very strong program of recovery. He wakes up and prays and meditates first thing in the morning. That morning he had attended an A.A. meeting at 6:45 a.m. He won't be able to do that on Friday because that's when he has to be at work. Dr. McCarren stated that he attends five to six A.A. meetings a week, he sees his sponsor several times a week, and talks to several A.A. friends every day. He has a very good support system. Before he went into treatment, he sat down and explained his illness to his children and advised them that it runs in the family. He's answered their questions about alcoholism. He stated that his children are into sports, and so they spend a lot of time working out and playing basketball. He has good support from his wife. Dr. McCarren stated that he's thoroughly enjoying life. He looks forward to going back to work.

DR. MAHAJAN MOVED TO CONTINUE DR. MCCARREN UNDER THE TERMS OF HIS JANUARY 15, 2009 STEP II CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. HE FURTHER MOVED TO APPROVE FRANK M. KOUSAIE, JR., M.D., TO SERVE AS THE MONITORING PHYSICIAN, WITH 10 CHARTS REVIEWED PER MONTH. DR. VARYANI SECONDED THE MOTION. All members voted aye. The motion carried.

March 11, 2009

STEVEN E. SCHWARTZ, P.A.

Mr. Schwartz made his initial appearance before the Board, pursuant to the terms of the Board's Order of November 12, 2008.

Ms. Bickers reviewed Mr. Schwartz's history with the Board.

Dr. Steinbergh noted that Mr. Schwartz is not currently in compliance with the Board's Order.

Mr. Schwartz stated that he's confused about that. He stated that he's talked with Ms. Gillman when he arrived today, and she does have some negative screens. He commented that he's had negative drug tests since he first went into treatment in April 2008.

Ms. Bickers stated that the Board does have some drug screens, but it does not have all the ones required. She advised that Mr. Schwartz also has to enroll in a drug testing program that requires the daily call-in process.

Mr. Schwartz stated that in reading the Board's Order, he was already in aftercare treatment, and he was already being tested. He just continued to do that. He's with Drug and Alcohol Services of Guernsey County, and has been since June 2008. His screens are random and witnessed. He's submitted those findings and they've all been negative.

Dr. Steinbergh stated that Mr. Schwartz needs to be certain he understands the Board Order, and if he doesn't understand it to the letter, he should speak with Ms. Bickers.

Dr. Steinbergh stated that Mr. Schwartz has a good deal of medical education and it would be a shame to waste it. She noted that he is also a registered nurse.

Mr. Schwartz stated that he's in inactive status with the Nursing Board, and he did notify that Board of the Medical Board's findings. They were sent a copy of the Board's Order.

Dr. Varyani stated that, listening to Mr. Schwartz, he thinks that he is nearly in compliance; however, it is apparent that Mr. Schwartz is not registered with the screening provider required by the Board. He stated that the Board Order is very specific, and he doesn't think that Mr. Schwartz is in compliance with the Board Order. He asked Mr. Schwartz to get into compliance soon.

Ms. Bickers stated that she will work with Mr. Schwartz concerning the drug testing portion of the Board's Order.

In response to further Board member questions, Mr. Schwartz stated that he received a termination letter from his place of employment, so, as of December 31, 2008, he's unemployed.

DR.VARYANI MOVED TO CONTINUE MR. SCHWARTZ UNDER THE TERMS OF THE BOARD'S ORDER OF NOVEMBER 12, 2008, WITH FUTURE APPEARANCES BEFORE THE

March 11, 2009

BOARD SECRETARY OR DESIGNEE. DR. SUPPAN SECONDED THE MOTION. All members voted aye. The motion carried.

WILLIAM E. TIEMANN, M.D.

Dr. Tiemann made his initial appearance before the Board, pursuant to the terms of his December 12, 2008 Consent Agreement.

Ms. Bickers reviewed Dr. Tiemann's history with the Board.

In response to Board members' questions, Dr. Tiemann stated that the reason he is licensed in a number of states is because he's practiced telemedicine. He does not hold a telemedicine license in Ohio, adding that he doesn't know if Ohio issues one. He stated that when he initially applied it didn't. He stated that he works for a teleradiology company out of Texas, but he lives in Louisiana.

Dr. Steinbergh asked how the Board will know that he's not practicing medicine in Ohio.

Dr. Tiemann stated that he doesn't know. He stated that currently he's just practicing diagnostic radiology in a hospital-based group in Houma, Louisiana, but he's not doing telemedicine.

Dr. Steinbergh noted that Dr. Tiemann is being monitored by the Louisiana PHP and he therefore is not scheduled to appear before this Board again until it is time for him to request release. She stated that Dr. Tiemann has indicated that he does not plan to work in Ohio, and she asked whether he intends to let his Ohio lapse after probation.

Dr. Tiemann stated that he will just be practicing in Louisiana. He stated that in diagnostic radiology, his class was the first to have to recertify in ten years. He's up for renewal in 2013, and he's not sure exactly how he'll approach it. What he'll probably do is just let his license lapse, but he may wait to let it lapse after he recertifies.

Concerning his recovery program, Dr. Tiemann stated that he's active in A.A., and he attends A.A. meetings and Caduceus three times a week. As part of his agreement with the Louisiana Physicians Health Foundation, he goes to aftercare once a week. That's a group aftercare run by a psychologist. In addition to that, he does individual therapy with a psychologist once a week. Every three to six months he goes back to his treatment facility in Palmetto, Louisiana and meets with the counselor he had there. He advised that his partners have been understanding about him.

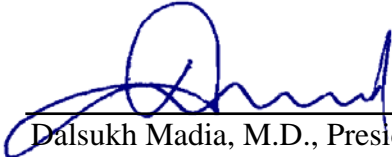
DR. STEINBERGH MOVED TO CONTINUE DR. TIEMANN UNDER THE TERMS OF HIS DECEMBER 12, 2008 CONSENT AGREEMENT, WITH FUTURE APPEARANCES BEFORE THE BOARD SECRETARY OR DESIGNEE. Dr. VARYANI SECONDED THE MOTION. All members voted aye. The motion carried.

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


March 11, 2009

Thereupon at 5:28 p.m. the March 12, 2009 session of the State Medical Board of Ohio was duly adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio, meeting on March 12, 2009, as approved on April 8, 2009.



Dalsukh Madia, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)



March 12, 2009

MINUTES

THE STATE MEDICAL BOARD OF OHIO

March 12, 2009

Dalsukh Madia, M.D., President, called the meeting to order at 8:10 a.m., in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes State Office Tower, 30 E. Broad St., Columbus, Ohio 43215, with the following members present: Jack C. Amato, M.D., Vice-President; Raymond J. Albert, Supervising Member; Marchelle L. Suppan, D.P.M.; Nandlal Varyani, M.D.; Darshan Mahajan, M.D. and Anita M. Steinbergh, D.O. The following joined the meeting at a later time: Carol L. Egner, M.D. The following did not attend the meeting: Lance A. Talmage, M.D., Secretary; Jeffrey M. Jacobson, Esq.; W. Frank Hairston; and Susan E. Stephens, M.D.

Also present were: Richard A. Whitehouse, Executive Director; Diann K. Thompson, Assistant Executive Director; Kimberly C. Anderson, Assistant Executive Director; Sallie J. Debolt, General Counsel; Rebecca J. Marshall, Chief Enforcement Attorney; 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; and Barbara Jacobs, Public Services Administrator.

LICENSURE, PROBATION AND REINSTATEMENT CONSENT AGENDA

Dr. Madia 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. Madia 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.

There were no requests to consider a matter separately.

DR. STEINBERGH MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS OF CONFERENCES ON FEBRUARY 9, 10 & 12, 2008, WITH: DAVID B. AXELSON, M.D.; CELESTE D. BREWER-EDWARDS, P.A.; PATRICK BRIAN CESTONE, JR., M.D.; PAUL CLAASSEN, D.O.; ROBERT S. COLEMAN, JR., M.D.; JANICE ELECTA GREEN DOUGLAS, M.D.; MALCOLM W. HENDERSON, M.D.; RONALD C. HETMAN, D.P.M.; JORDAN E. HOPKINS, M.D.; BRIAN E. LEVE, M.D.; NANCY J. LISCH, M.D.; ZEV R. MAYCON, M.D.; KEVIN DALE MCKEE, D.O.; IMRAN RAZA NAQVI, M.D.; PHILLIP THIELE NORTH, M.D.; WILLIAM J. PLATT, D.O.; DALE PRATT-HARRINGTON, D.O.; ROBERT S. REEVES, JR., M.D.; PAUL D. REIKOWSKI, JR., L.M.T.; JOHN H. ROCKWOOD, P.A.; JON BERKLEY SILK, JR., M.D.; AND GREGORY S. ZINNI, M.D.;

DR. STEINBERGH FURTHER MOVED TO ACCEPT THE COMPLIANCE STAFF'S REPORTS

March 12, 2009

OF CONFERENCES AND THE SECRETARY AND SUPERVISING MEMBER'S RECOMMENDATIONS AS FOLLOWS:

- **TO GRANT ROBERT L. BRANDT, JR., M.D.'S REQUEST FOR A REDUCTION IN SCREENS FROM ONCE A WEEK TO TWICE PER MONTH, AND A REDUCTION IN PSYCHIATRIC SESSIONS TO EVERY FOUR MONTHS, AS RECOMMENDED BY THE PSYCHIATRIST;**
- **TO GRANT BRUCE C. CORSER, M.D.'S REQUEST FOR ELIMINATION OF THE CHART REVIEW REQUIREMENT;**
- **TO GRANT JAMES VINCENT FURICCHIA, M.D.'S REQUESTS FOR REDUCTION IN ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO PER WEEK, WITH A MINIMUM OF 10 PER MONTH, AND ELIMINATION OF THE CHART REVIEW REQUIREMENT;**
- **TO GRANT STEPHEN R. GIORDANO, D.O.'S REQUEST FOR APPROVAL OF HOLLY M. LAYMAN, D.O., TO SERVE AS THE NEW MONITORING PHYSICIAN, WITH 10 CHARTS REVIEWED PER MONTH;**
- **TO GRANT WILLIAM CLARK HARLAN, D.O.'S REQUESTS AS FOLLOWS: A REDUCTION IN SCREENS TO TWICE PER MONTH; A REDUCTION IN MEETINGS TO TWO PER WEEK, WITH A MINIMUM OF 10 PER MONTH; AND A REDUCTION IN APPEARANCES TO EVERY SIX MONTHS**
- **TO GRANT ELIZABETH J. MARTIN, P.A.'S REQUEST FOR APPROVAL OF TROY A. EDWARDS, D.O., TO SERVE AS HER REPORTING PHYSICIAN;**
- **TO GRANT ALADDIN ZAFAR SYED, M.D.'S REQUEST FOR APPROVAL OF ELLIOT M. FRIEDEMANN, M.D., TO SERVE AS THE TREATING PSYCHIATRIST;**
- **TO GRANT TOBY JAMES TIPPIE, P.A.'S REQUESTS FOR: REDUCING SCREENS TO TWICE PER MONTH; AND REDUCING ALCOHOL AND DRUG REHABILITATION MEETINGS TO TWO PER WEEK WITH A MINIMUM OF 10 PER MONTH;**

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," THE ACUPUNCTURE APPLICANTS LISTED IN EXHIBIT "C," THE ANESTHESIOLOGIST ASSISTANT APPLICANTS LISTED IN EXHIBIT "D," AND TO GRANT CERTIFICATES OF GOOD STANDING TO THE SCHOOLS OF MASSAGE THERAPY, LISTED IN EXHIBIT "E."
DR. VARYANI SECONDED THE MOTION. A vote was taken:

March 12, 2009

VOTE:

Mr. Albert	- aye
Dr. Suppan	- aye
Dr. Varyani	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

REINSTATEMENT REQUESTS

PHILIP L. CREPS, D.O.

Dr. Creps request for restoration of his license to practice osteopathic medicine and surgery, which was suspended by Board Order of February 8, 2006, was presented to the Board for consideration at this time.

Dr. Steinbergh noted that Dr. Creps meets all of the restoration requirements listed in the Board's Order.

DR. STEINBERGH MOVED THAT THE APPLICATION FOR THE RESTORATION OF THE LICENSE OF PHILIP L. CREPS, D.O., TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY IN THE STATE OF OHIO BE APPROVED, SUBJECT TO THE PROBATIONARY TERMS AND CONDITIONS AS OUTLINED IN THE FEBRUARY 8, 2006 BOARD ORDER. DR. VARYANI SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert	- aye
Dr. Suppan	- aye
Dr. Varyani	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

Dr. Egner joined the meeting at this time.

REPORT FROM THE AMERICAN ASSOCIATION OF OSTEOPATHIC EXAMINERS SUMMIT MEETING

Dr. Steinbergh advised that she would like to table this matter until the April 2009 meeting.

Dr. Madia agreed to table the topic.

March 12, 2009

ADMINISTRATIVE REPORT

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

Mr. Whitehouse reported on budget meetings that have been held recently. Mr. Whitehouse expressed his appreciation to Board members who have called legislators. He stated that he was well-received when he gave testimony. The comments and questions from the Legislature have been very positive. He stated that he, Dr. Madia, Dr. Amato and Mr. Albert spoke with the Administration the previous evening, and he thinks that the Board has gained some ground and is close to the point where it can come in line with the Administration. Mr. Whitehouse stated that he thinks that the Board is closer to agreements in principle with the Administration as it relates to the consolidation issue. He felt that the Board was given certain assurances the previous evening with regard to the 5C6 Account, in that the integrity of that fund will remain.

Mr. Whitehouse stated that they also got some additional assurances with regard to some other Board concerns with regard to specific language. He stated that there is language in the budget bill relating to a consolidation of hearing examiners. Assurances were along the lines that the Board will be untouched by that.

He stated that the Board will continue working with the Administration. He advised that staff has developed some alternative language, which he feels is reflective of the Board's best interests and the intent of the Administration.

Mr. Albert stated that he thinks that the meeting went very well. The Governor knows that this Board is the top in the country and he doesn't want to do anything to disrupt that. The Governor is willing to work with the Board. Mr. Albert agreed with Mr. Whitehouse that the Board members' contacts with legislators have been very effective. He feels very good about the meeting.

Dr. Amato stated that he thought the meeting went very well. He felt that Dr. Madia's strong leadership really came out in that meeting. He feels that that was extremely helpful in emphasizing the necessity of keeping the independence of this Board and agency.

Dr. Madia stated that he also wants to thank all the Board members for their efforts in contacting legislators, and for everything they have done to help in the budget process. The message has been clear and strong. He stated that he felt pretty good about the meeting. Dr. Madia indicated that he understands that there will be nothing done about the Board's Hearing Examiners, that they will stay as they are. He stated that he thinks the Administration's biggest concern is that if the Medical Board is untouched, they will have to face questions by the other Boards.

Dr. Steinbergh commented that she feels confident that the Board has the support of Ohio's physicians.

Dr. Madia urged that the Medical Board employees not feel demoralized, that the Board is behind its staff,

March 12, 2009

and he urged them to keep up the good work they do.

Mr. Whitehouse reminded Board members that April 15 is the deadline for filing their Financial Disclosure Statements. He stated that if anyone has any questions, they should contact Ms. Schmidt.

Ms. Loe advised that DAS has advised that they will not honor any request for reimbursement that is over 30 days old. She urged Board members to get their papers and receipts in on time.

REPORTS BY ASSIGNED COMMITTEES

EXECUTIVE COMMITTEE

Dr. Madia advised that the *Performance Planning and Evaluation for the Executive Director* forms were distributed to board members the previous day. He asked that members complete the form and turn it in right away. The results will be discussed with Mr. Whitehouse at a future Executive Committee meeting.

EDUCATION, PUBLIC RELATIONS & RISK MANAGEMENT COMMITTEE

Dr. Madia stated that the Committee reviewed the next draft of *Your Report*, made suggestions, and returned the document to Ms. Wehrle for amendment. The aim is to get the newsletter out by the April meeting.

Ms. Wehrle stated that it will be sent out as soon as the revised articles are approved.

LEGISLATIVE LIAISON & RULES COMMITTEE

Mr. Miller stated that there is nothing to report this month.

LICENSURE COMMITTEE

Dr. Egner reviewed the licensure applications considered by the Committee.

Rihab Mohamed, M.D.

Dr. Egner advised that Dr. Mohamed is over the 7-year time limit by 11 months. She passed Step 2 on the second attempt with a 75, Step 1 on the third attempt with a 79, and Step 3 on the second attempt with a score of 86. Dr. Mohamed sent a letter of explanation, claiming she went over the 7-year limit because she was a single mother of four children when she arrived in the United States, and was not able to complete the sequence in 7 years due to work and family issues.

Dr. Mohamed graduated from the University Gezira in the Sudan in March 1989. Dr. Mohamed worked in Khartoum from July 1989 until September 1995, then lived and worked in Saudi Arabia from October 1995 until July 1999. Dr. Mohamed immigrated to the U.S. in August 1999, and then began her residency in Psychiatry at Metro Health Medical Center from July 2003 until July 2007. Dr. Mohamed started a Child

March 12, 2009

and Adolescent Psychiatry program at the Cleveland Clinic in August 2007 and continues to work there to the present time. Dr. Mohamed holds an Ohio training certificate and does not report American Board certification.

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE 7-YEAR RULE AS OUTLINED IN RULE 4731-6-14(C) (3), OHIO ADMINISTRATIVE CODE, AND TO ACCEPT DR. MOHAMED'S EXAMINATION SEQUENCE IN ORDER FOR HER TO BE GRANTED A LICENSE. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Ana A. Rychwalski, M.D.

Dr. Egner advised that Dr. Rychwalski is a graduate of the Universidad Autonoma de Nuevo Leon in Monterrey, Mexico in May 1991. She is requesting endorsement of her USMLE scores. Dr. Rychwalski completed training and also practiced Ophthalmology in Mexico from July 1991 through June 1996. Dr. Rychwalski then immigrated to the U.S. and entered a fellowship at Washington University in St. Louis, Missouri in July 1996 until June 1998. From July 1998 until June 2002, Dr. Rychwalski took some personal time for test preparation and family. From July 2002 until June 2006, she completed one year in Internal Medicine, then three years of an Ophthalmology residency at the University of Louisville School of Medicine. Since June 2006 she has taken specialty Boards and been at home with her family. Dr. Rychwalski holds licenses in Pennsylvania and Kentucky.

Dr. Egner advised that Dr. Rychwalski is over the 7-year time limit by 19 months. She passed Step 1 on the fifth attempt with a 77, Step 2 on the second attempt with a 76, and Step 3 on the seventh attempt with a score of 76.

DR. EGNER MOVED TO PROPOSE TO DENY DR. RYCHWALSKI'S REQUEST FOR A WAIVER OF THE SEVEN-YEAR RULE ON THE BASIS THAT SHE HAS NOT SHOWN GOOD CAUSE FOR BEING OVER THE TIME LIMIT. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Suppan	- aye

March 12, 2009

Dr. Varyani	- aye
Dr. Amato	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Madia	- aye

The motion carried.

Dr. Egner noted that Dr. Rychwalski has not been engaged in the active practice of medicine since June 2006. Should she complete her exam sequence by retaking and passing Step 1 only, she will not have been tested in clinical practice, which is what the SPEX tests.

DR. STEINBERGH MOVED TO REQUIRE DR. RYCHWALSKI, SHOULD SHE RETAKE AND PASS STEP 1 OF THE USMLE IN A TIMELY MANNER, TO PASS THE SPEX FOR A CERTIFICATE TO PRACTICE MEDICINE AND SURGERY. DR. VARYANI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

James Short, MD, PhD.

Dr. Egner advised that Dr. Short is over the 7-year time limit by 11 months. He passed Steps 1, 2 and 3 on the first attempt with scores of 89, 77 and 84. Dr. Short has sent a letter of explanation claiming he went over the 7 year limit because of his status as an MD/PhD student, and that the State of Minnesota, where he was initially licensed, had a ten-year rule.

Dr. Short began his PhD. prior to entering Medical school, and obtained the PhD in October 1998. He entered medical school and then graduated from the University of Illinois in May 2000. Dr. Short completed a transitional year at Hennepin County Medicine from June 2000 until June 2001. He then entered a Diagnostic Radiology program at the University of Minnesota from June 2001 until June 2005. He completed a fellowship at the University of Minnesota in Radiology/Body Imaging from July 2005 until June 2006. Dr. Short holds licenses in Arizona, California, Minnesota, Utah and Virginia, and was American Board-certified in Diagnostic Radiology in June 2004.

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE 7-YEAR RULE AS

March 12, 2009

OUTLINED IN RULE 4731-6-14(C) (3), OHIO ADMINISTRATIVE CODE, AND TO ACCEPT DR. SHORT'S EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE. DR. AMATO SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Kimberly Stewart, M.D.

Dr. Egner advised that Dr. Stewart is applying for restoration of her license in Ohio. Dr. Stewart has indicated that she has not been engaged in the clinical practice of medicine since April 1998. She is a June 1986 graduate of Northeastern Ohio University College of Medicine. She indicates in her application that in 1998 she stopped practicing to raise her family. Dr. Stewart is American Board-certified in Internal Medicine since 1989, and in Rheumatology since 1992. She only reports a license in Ohio.

DR. EGNER MOVED TO APPROVE DR. STEWART'S REQUEST FOR OHIO LICENSURE SUBJECT TO HER SUCCESSFUL COMPLETION OF THE SPEX EXAM OR BOARD RECERTIFICATION. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Clint Paseos, L.M.T.

Dr. Egner advised that Mr. Paseos is applying for restoration of his LMT license in Ohio. Mr. Paseos has indicated on his application that he has not actively practiced Massage Therapy since 2003. According to Section 4731.222, Ohio Revised Code, an applicant who for more than two years has not been engaged in the active practice of his profession, in a postgraduate training program approved by the Board, or as a

March 12, 2009

student in good standing at a medical or osteopathic school or college, the Board may require him to pass an oral or written examination, or both, to determine his present fitness to resume practice. Mr. Paseos is requesting the restoration of his Ohio license originally issued in 1999.

DR. EGNER MOVED TO APPROVE MR. PASEOS' REQUEST FOR RESTORATION OF HIS OHIO LICENSE SUBJECT TO SUCCESSFUL COMPLETION OF THE LIMITED BRANCH PORTION OF THE MASSAGE EXAMINATION. DR. AMATO SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Manish Bansal, M.D.

Dr. Egner advised that Dr. Bansal is requesting a waiver of the 7-year UMLE rule. He is over the 7-year time limit by 20 months. He passed each of Steps 1, 2 and 3 on the first attempt with scores of 89, 85 and 88. Dr. Bansal has sent a letter, explaining that he went over the 7-year limit because he did not arrive in the United States until after 2005, and was not able to complete the sequence in 7 years. He graduated from the Mahatma Gandhi Medical College. Dr. Bansal worked in India from July 1998 until September 2004. Dr. Bansal immigrated to the U.K. in September 2004, and trained in Pediatrics at Maidstone Hospital from September 2004 until May 2005. Dr. Bansal then came to the United States, and started a residency in Pediatrics at Albany Medical Center from July 2005 until June 2007. He then transferred to University Hospitals Case Medical Center in July 2007 and is now a fellow in Pediatric Cardiology from July 2007 to the present time. Dr. Bansal holds an Ohio training certificate, and reports American Board certification in Pediatrics since October 2007.

DR. EGNER MOVED TO APPROVE THE LIMITED EXCEPTION OF THE 7-YEAR RULE AS OUTLINED IN RULE 4731-6-14(C) (3), OHIO ADMINISTRATIVE CODE, AND TO ACCEPT HIS EXAMINATION SEQUENCE IN ORDER FOR HIM TO BE GRANTED A LICENSE. DR. AMATO SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Dr. Amato	- aye

March 12, 2009

Dr. Mahajan - aye
Dr. Steinbergh - aye
Dr. Madia - aye

The motion carried.

Dr. Egner stated that the Committee also reviewed the radiologist assistant draft application and approved the application, subject to any pertinent changes relating to the certification and registration of R.A.s.

At this time Dr. Egner asked permission to address those present, and she asked that staff who are present relay her message to the rest of the staff. Dr. Egner stated that if she is not reappointed to the Board and is not present at the April meeting, she wants the Board and staff to know that her fifteen years on the Board has been a life-changing experience for her. She stated that she has never met a group of such dedicated and service-oriented people. She stated that she didn't even know what public service was before she came to the Board, and she has loved every minute of this job. She likes preparing for the meeting, coming for the meeting, working with everyone, and the interactions. Dr. Egner stated that she loves being on this Board and she will miss it incredibly. She stated that the Board and staff have been such a huge part of her life in a time when her life went through so many changes. This was a really stable factor for her. Dr. Egner stated that she will miss everyone terribly.

Those present recognized Dr. Egner's statement with applause.

Dr. Madia stated that, hopefully, the Board won't have to go that route, but if it does, it will miss her openness and assertiveness, as well as her thorough and analytical review of cases.

Dr. Steinbergh stated that over the years, the Board members have more than appreciated Dr. Egner's dedication to the Board. She stated that she knows that staff appreciates the dedication of Board members. Board members appreciate the time it takes and the commitment of service to the Board. She commented that Dr. Egner has done an exemplary job.

Dr. Amato stated that he thinks right now the Board is well balanced. After two years here, he thinks that the Board needs opposing views. He believes that now there are enough on the right and on the left, and that the Board makes better decisions because of it.

PRESCRIBING COMMITTEE

Dr. Madia advised that the Committee reviewed the Pharmacy Board's draft language on a rule for pharmacist administration of Zoster vaccine. He asked Mr. Miller whether he has new language.

Mr. Miller at this time distributed new language from the Pharmacy Board, pursuant to the Committee's discussion the previous day.

Dr. Steinbergh stated that Dr. Stephens asked her to speak on this issue since she couldn't be here today. She advised that the Pharmacy Board had come forth with a revised rule that was better than the one the

March 12, 2009

Committee reviewed in February. However, the Committee still had some concerns. Dr. Steinbergh reviewed the proposed rule. Dr. Steinbergh stated that her concern had been that pharmacist interns not administer these vaccines, and they will not be doing the injections. She spoke in support of the rule.

Dr. Varyani noted that paragraph 4 of the rule states: "The pharmacist must be able to document meeting the training criteria required by rule 4729-5-36." Dr. Varyani asked why, if there is already criteria required, they're including this paragraph.

Dr. Steinbergh stated that Dr. Stephens wanted it there. She stated that Dr. Stephens was adamant about putting it right up front that they must meet that criteria so that there is no question of it.

DR. STEINBERGH MOVED TO APPROVE THE REVISED LANGUAGE OF PROPOSED RULE 4729-5-38 IMMUNIZATION ADMINISTRATION. DR. MADIA SECONDED THE MOTION. All members voted aye. The motion carried.

Dr. Madia stated that the Committee also reviewed a draft response to an inquiry on titration of range orders. He noted that the Board has received correspondence from a pharmacist from Cincinnati posing the following issue:

When a prescriber writes an order for a range order in an acute care setting, is the nurse administering the medication permitted to "titrate" the dose within the dose frequency?
Please see following example:

- A physician writes an order for Percocet 1-2 tablets PO every 4 hours as needed for pain
- The nurse administers 1 tablet at 1200
- At 1300, the patient complains that his pain is inadequately controlled

Given this scenario, is the nurse permitted to administer another Percocet tablet at 1300? After much discussion with physicians and nurses from various institutions, it is my belief that the nurse is not permitted to administer another tablet at 1300. In the above example, the nurse has two options, 1) wait until 1600 to administer another dose (likely 2 tablets since 1 tablet was inadequate at 1200), or 2) call the prescriber to obtain additional orders. The rationale for this opinion, in part, is there are no parameters written into the above example order that provide guidance to the nurse as to when a second "portion" of the dose may be administered. Therefore, the nurse is left to decide when it is appropriate to administer a second tablet.

Dr. Madia stated that the Committee felt that, because the JCAHO has a guideline by which the hospital must abide, and the hospitals must develop their own policies that satisfy the JCAHO, the Board should not get involved in this.

Several Board members expressed their agreement.

March 12, 2009

IMPAIRMENT COMMITTEE

Ms. Anderson referred the Board to the revised *Treatment Provider Application* (copy in exhibits), which will allow the Board to implement the impairment rules that allow for an outpatient assessment and intensive outpatient treatment for massage therapists and cosmetic therapists. She noted that the changes are in questions, 5, 6, 7 and 8. Ms. Anderson stated that the Committee approved the application with a change where it would also ask the treatment providers to advise the Board of the cost of their assessments and treatments, as well.

Mr. Albert stated that he would also like to know how they would treat indigent patients.

Ms. Anderson stated that a question could be added concerning the institution's policy for handling indigent patients.

Mr. Albert noted that most of these facilities get money from the county, from the state and, depending on the programs they have, from the federal government.

Suggestions were made by various Board members as to how the application could be amended to include a policy for indigent patients.

Ms. Anderson stated that staff can make the changes. She asked whether Board members want to see the document again before it's put into use.

Board members indicated that they didn't.

Dr. Steinbergh stated that, when reviewing modified applications, she would like to see the "before" and the "after" versions.

DR. STEINBERGH MOVED TO APPROVE THE AMENDED APPLICATION WITH THE CHANGES RECOMMENDED DURING THE BOARD MEETING CONCERNING THE QUESTIONS ABOUT A POLICY FOR INDIGENT PATIENTS. DR. SUPPAN SECONDED THE MOTION. All members voted aye. The motion carried.

Mr. Albert advised that Dr. Patricia Spiess' appearance the previous day brought up a question that he's talked with the staff about in the past. He stated that the Board needs to review the physician emeritus rules in cases such as Dr. Spiess, who was diagnosed with a mental illness.

Board members spoke in support of Mr. Albert's suggestion.

P. A. COMMITTEE

Dr. Steinbergh stated that the Committee reviewed the proposed formulary rules changes, as outlined in the agenda materials (copy in exhibits), and recommend approval of the changes. She stated that there was some discussion about the ophthalmic and otic agents, which are topical agents. The Committee felt that

March 12, 2009

the language on page 87 was not consistent with the directions of the Committee. She stated that Ms. Rieve reviewed the formulary rule changes and assured the Committee that they are consistent.

DR. STEINBERGH MOVED TO APPROVE THE PROPOSED FORMULARY RULE CHANGES. DR. AMATO SECONDED THE MOTION. All members voted aye. The motion carried.

Maureen Gwynn, P.A.-C.

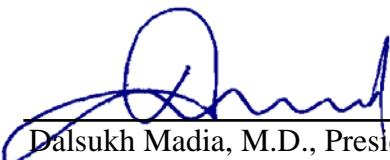
Dr. Steinbergh stated that the Committee also reviewed an application for a provisional certificate to prescribe filed by Ms. Gwynn. Dr. Steinbergh stated that Ms. Gwynn is applying through the "ten years of clinical experience" rule. She needed her previous employer to complete form B of the application. She was unable to get that done, but she did have documentation from the College Student Health Services. This, in conjunction with her other years of P.A. work, makes her eligible under the "ten-year" rule.

DR. STENBERGH MOVED TO ACCEPT THE OBERLIN COLLEGE STUDENT HEALTH SERVICES LETTER IN LIEU OF FORM B, AND TO ALLOW MS. GWYNN TO RECEIVE HER PROVISIONAL CERTIFICATE TO PRESCRIBE. DR. AMATO SECONDED THE MOTION. All members voted aye. The motion carried.

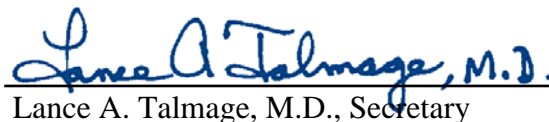
MR. ALBERT MOVED TO ADJOURN. DR. STEINBERGH SECONDED THE MOTION. All members voted aye. The motion carried.

Thereupon at 9:13 a.m. on March 12, 2009, the March 11-12, 2009 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 March 11-12, 2009, as approved on, 2009.



Dalsukh Madia, M.D., President



Lance A. Talmage, M.D., Secretary

(SEAL)

