

February 8, 2017

MINUTES**THE STATE MEDICAL BOARD OF OHIO****February 8, 2017**

Amol Soin, M.D., President, called the meeting to order at 10:03 a.m. in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Robert P. Giacalone, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Anita M. Steinbergh, D.O.; Donald R. Kenney, Sr.; Michael L. Gonidakis; Andrew P. Schachat, M.D.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; Ronan M. Factora, M.D.; and Mark A. Bechtel, M.D.

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; Joseph Turek, Deputy Director for Licensure; Susan Loe, Director of Human Resources and Fiscal; Sallie J. Debolt, Senior Counsel; Teresa Pollock, Deputy Director for Communications; Joan K. Wehrle, Education and Outreach Program Manager; Gary Holben, Operations Manager; Rebecca Marshall, Chief Enforcement Attorney; Marcie Pastrick, Mark Blackmer, Angela McNair, Cheryl Pokorny, James Roach, and Kimberly Lee, Enforcement Attorneys; Kyle Wilcox, Melinda Snyder, and Emily Pelphrey, Assistant Attorneys General; R. Gregory Porter, Chief Hearing Examiner; Danielle Blue, Hearing Examiner; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; Annette Jones and Angela Moore, Compliance Officers; Mitchell Alderson, Administrative Officer; Chantel Scott, Chief of Renewal; Julie Williams, Public Information Officer; Judy Rodriguez, Public Services Manager; Colin DePew, Legal and Policy Staff Attorney; Jacqueline A. Moore, Legal/Public Affairs Assistant; Robyn Daughtry, Communications Assistant; and Benton Taylor, Board Parliamentarian.

MINUTES REVIEW

Dr. Saferin moved to approve the draft minutes of the January 11, 2017, Board meeting, as written. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- abstain
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

APPLICANTS FOR LICENSURE

Dr. Schottenstein moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the acupuncturist applications listed in Exhibit "A," the anesthesiologist assistant applicants listed in Exhibit "B," the genetic counselor applicants listed in Exhibit "C," the massage therapist applicants listed in Exhibit "D," the physician assistant applicants listed in Exhibit "E," and the physician applicants listed in Exhibit "F," as listed in the Agenda Supplement and handouts. Dr. Steinbergh seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

REPORTS AND RECOMMENDATIONS

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

Dr. Soin asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Elizabeth J. Gross, P.A.; Dallas A. Smith, Jr., M.D.; and Marwan Massouh, M.D. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

Dr. Soin 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:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

Dr. Soin noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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 any disciplinary matters. In the matters before the Board today, Dr. Rothermel served as Secretary, Dr. Saferin served as Supervising Member, and Dr. Bechtel served as Secretary and/or Supervising Member.

Dr. Soin reminded all parties that no oral motions may be made during these proceedings.

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

ELIZABETH J. GROSS, P.A.

Dr. Soin directed the Board's attention to the matter of Elizabeth J. Gross, P.A. No objections have been filed. Mr. Porter was the Hearing Examiner.

Dr. Soin stated that a request to address the Board has been timely filed on behalf of the State. Five minutes will be allowed for that address.

Assistant Attorney General Emily Pelphrey stated that no facts were contested at Ms. Gross' hearing and that Ms. Gross has admitted to having battled addiction issues. Ms. Pelphrey opined that a revocation of Ms. Gross' license would be appropriate and would give her an opportunity to apply for another license when she feels that her life is in order. Ms. Pelphrey stated that a revocation would be consistent with other actions taken by the Board in similar cases.

Dr. Soin asked if Ms. Gross or her counsel wished to respond. Eric Plinke, attorney for Ms. Gross, stated that he and Ms. Gross wished to respond.

Mr. Plinke encouraged the Board to adopt the Hearing Examiner's Proposed Order, calling it a reasonable accommodation and a reflection of the unique facts of this case. Mr. Plinke stated that, based on a primary diagnosis, it is probably a mental health issue that is driving Ms. Gross' non-compliance with her

January 2016 Consent Agreement. Mr. Plinke opined that the indefinite suspension outlined in the Proposed Order is the correct remedy in this case and would provide a structure that would be beneficial to Ms. Gross. Mr. Plinke reminded the Board that under the Proposed Order, any request for reinstatement or restoration of Ms. Gross' license would require her to enter into a Step I Consent Agreement at that time.

Mr. Plinke stated that, as reflected in the hearing record, some aspects of Ms. Gross' Consent Agreement were actually triggers for her medical condition and did not contribute to her efforts to comply. Mr. Plinke reiterated that the Proposed Order would be an appropriate remedy for Ms. Gross' unique situation.

Ms. Gross stated that she is not attempting to avoid testing or accountability. Rather, Ms. Gross stated that she is only doing what she knows she must do to stay sober today. Ms. Gross stated that she has decided to place her sobriety above everything else in her life and, in order to do that, she must focus on her recovery by attending meetings and working with her sponsor. Ms. Gross stated that she is currently taking medication for her depression and generalized anxiety disorder, as well as working with a therapist. Ms. Gross stated that she takes Antabuse, uses a facial-recognition breathalyzer four times per day, attends six to eight Alcoholics Anonymous meetings per week, and meets with her sponsor every Tuesday. Ms. Gross also stated that she will continue to attend continuing care at Cornerstone every Wednesday for 18 months.

Regarding her future, Ms. Gross stated that she is taking things one day at a time and is re-acclimatizing to being home after 11 months in treatment. Ms. Gross stated that she has no intention of returning to practice as a physician assistant in the near future and that her current priority, besides her sobriety, is her family and her two young children. Ms. Gross stated that she values her skills as a physician assistant, a title she worked hard to obtain, and she did not wish to have that title taken away. Ms. Gross could not guarantee that she would not someday want to return to practice as a physician assistant and she asked for time to focus on her sobriety and her family before making such decisions about her future. Ms. Gross stated that if she decides to return to practice, she would agree to the Board's instructions for daily monitoring and check-ins under a Consent Agreement.

Mr. Plinke again encouraged the Board to adopt the Proposed Order. Mr. Plinke opined that revoking Ms. Gross' license, as suggested by Ms. Pelphrey, would not send an appropriate message or provide an appropriate structure.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Elizabeth J. Gross, P.A. Mr. Giacalone seconded the motion.

Dr. Soin stated that he will now entertain discussion in the above matter.

Mr. Giacalone stated that Mr. Gross' physician assistant license is currently inactive due to a January 13, 2016 Step I Consent Agreement with the Board. The basis of Ms. Gross' 2016 Consent Agreement was a relapse due to chemical dependency. Mr. Giacalone noted that Ms. Gross had also been subject to a prior Consent Agreement, from which she was released in January 2014.

Mr. Giacalone continued that Ms. Gross relapsed in August 2015 after she became deeply depressed and had increased anxiety following the death of two close family members. Ms. Gross admitted that as a result of these events, her use of alcohol and marijuana escalated and she self-reported her relapse to the Board in March 2016. Medical records from the Betty Ford Center in Rancho Mirage, California,

indicate that Ms. Gross entered into inpatient treatment in February 2016 and was discharged in May 2016.

Mr. Giacalone stated that Ms. Gross has claimed that numerous hardships and other factors contributed to her relapse, including the suicide death of her sister-in-law in 2014 due to a gun-shot wound related to drug abuse; development of panic attacks and being diagnosed with post-traumatic stress disorder; responsibility for helping to care for her 6-year-old nephew in addition to her 4 and 6-year-old sons; and the death of her mother-in-law, who had been the primary care giver of her children.

Mr. Giacalone stated that Ms. Gross plans to enroll in the aftercare program at Cornerstone Treatment Center, attend Alcoholics Anonymous meetings, maintain a relationship with her sponsor, work with a psychologist, attend weekly caduceus meetings, and use a facial-recognition breathalyzer. Ms. Gross has stated that she has no plans to return to practice as a physician assistant in the near future and that her current priorities are her sobriety and her family. Ms. Gross has also stated that she is not ready to comply with a consent agreement at this time. However, Ms. Gross has requested that, in the event that she decides to return to practice as a physician assistant, that the Board enter into a consent agreement with her at that time so that she can be monitored.

Mr. Giacalone stated that, based upon the evidence and testimony provided, he supports the Hearing Examiner's analysis, Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Ms. Gross. Mr. Giacalone based his rationale on Ms. Gross' history of being honest with the Board regarding her impairment and that she appears to be someone the Board can work with in the future. Mr. Giacalone noted that Ms. Gross admits that she is not currently able to comply with a Board Order or Consent Agreement, but that she would like the opportunity to re-enter practice at some point in the future.

Dr. Steinbergh agreed with Mr. Giacalone. Dr. Steinbergh stated that under most circumstances involving a licensee who cannot or will not comply with a consent agreement, she agrees with revocation to allow the licensee to step away and come back when they are able and willing to comply. However, Dr. Steinbergh stated that the circumstances of this case are different and she agreed that the more structured Proposed Order should be adopted.

Dr. Schottenstein also supported the Proposed Order, stating that it essentially accomplishes the same thing as a revocation and gives Ms. Gross additional peace of mind and structure.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to approve carried.

DALLAS A. SMITH, JR., M.D.

Dr. Soin directed the Board's attention to the matter of Dallas A. Smith, Jr., M.D. No objections were filed. Ms. Blue was the Hearing Examiner.

Dr. Soin stated that a request to address the Board has been filed on behalf of Dr. Smith. Five minutes will be allowed for that address.

Dr. Smith was represented by his attorney, Elizabeth Collis.

Ms. Collis stated that Dr. Smith is a board-certified radiologist who holds medical licenses in several states. Ms. Collis stated that Dr. Smith is before the Board today due to a reprimand issued to him from the Virginia Board of Medicine, based on Dr. Smith's failure to detect malignancy in mammography or breast ultrasounds for five patients between 2007 and 2011.

Ms. Collis continued that Dr. Smith has attended an assessment with the Center for Personalized Education for Physicians (CPEP). As part of that assessment, CPEP reviewed 25 of Dr. Smith's patient records and developed an educational plan for him. CPEP determined that Dr. Smith was appropriate to continue with mammography reading. Ms. Collis noted that Dr. Smith has fully complied with all the conditions of his Virginia Order and he currently holds an unrestricted medical license in Virginia. Ms. Collis further noted that five other states have reviewed this case based on the Virginia action and each of those states issued either a reprimand or a letter of concern. Ms. Collis emphasized that no limitations or restrictions have been placed on any of Dr. Smith's medical licenses.

Ms. Collis stated that similar cases of radiologists misreading results have been heard by the State Medical Board of Ohio. In two of those cases, namely Ramanadham Kilaru, M.D., and Donald Lanese, D.O., the Board has chosen to take No Further Action because of extensive remediation that had taken place in other states. Ms. Collis asked the Board to either take No Further Action, which she felt would be appropriate given the Board's actions in similar cases, or to adopt the Hearing Examiner's Proposed Order of Reprimand.

Dr. Smith stated that he has practiced as a board-certified radiologist for more than 30 years and has interpreted several hundred thousand mammograms. Dr. Smith stated that he had provided the Virginia Board of Medicine with information annually regarding his malpractice actions and the Virginia Board took no action based on those individual malpractice actions. However, in 2015 the Virginia Board opened an investigation based on the fact that Dr. Smith had had a few malpractice actions in the previous renewal period. Dr. Smith stated that the Virginia Board reviewed a few of his mammography cases and determined that his practice had been below the standard of care in five cases. As a result, the Virginia Board issued a reprimand and recommended that Dr. Smith attend an assessment with CPEP. Through CPEP Dr. Smith completed a clinical skills test and a personal educational program was designed for him. Dr. Smith stated that he has complied with all of CPEP's recommendations and the Virginia Board has closed the case.

Dr. Smith stated that he works to be 100% accurate in his reviews of radiological studies. However, as noted by Stephen J. Pomeranz, M.D., who testified on Dr. Smith's behalf, mammography readings are

only accurate 70% of the time, and for women with dense breasts the accuracy is closer to 50%. Dr. Smith stated that, given the several hundred thousand mammograms he has reviewed, it is not unexpected that there would be some misreads. Dr. Smith stated that he continued to read mammograms for many years when many of his colleagues chose not to because it exposes physicians to liability. Dr. Smith stated that without being required to do so, he asked a colleague and professional competitor, Margaret Bertrand, M.D., a highly-respected breast mammography, to review the five cases in question as well as 100 additional randomly-selected cases. Dr. Smith stated that Dr. Bertrand found him to be totally competent to provide mammography readings.

Dr. Smith stated that his medical licenses have been subjected to either reprimand or letters of concern in several states, but no state has limited or restricted his license. Dr. Smith asked the Board to either take No Further Action or to impose the Reprimand recommended by the Hearing Examiner.

Dr. Soin asked if the Assistant Attorney General wished to respond. Ms. Snyder stated that she wished to respond.

Ms. Snyder stated that the Virginia Board of Medicine found that Dr. Smith fell below the minimum standards of care in his interpretation of screening mammographies in five patients, and at least three of those cases resulted in misdiagnoses of cancer. Ms. Snyder read the following excerpt from CPEP's assessment of Dr. Smith:

Dr. Smith demonstrated minimal educational needs, but inconsistency in his interpretation of mammographic images – including identification of breast symmetry and other findings – warrant additional views and/or ultrasound evaluations. Therefore, CPEP recommends that Dr. Smith participate in a brief structured educational intervention to improve his interpretation skills and consistency.

Ms. Snyder stated that CPEP specifically recommended that Dr. Smith establish a relationship with an experienced educational preceptor in diagnostic radiology, which Dr. Smith did.

Ms. Snyder stated that there were two defenses raised at hearing. The first defense was that mammograms are terrible diagnostic tools. Ms. Snyder opined that the Board does not need to discuss the efficacy of mammograms, noting that mammograms are recommended for women over 40 by both the American College of Radiology and the American Cancer Society. The second defense was that everyone who interprets mammograms miss a few diagnoses of cancer. Ms. Snyder stated that she would defer to the Board's expertise on that matter. However, Ms. Snyder stated that the Virginia Board found that Dr. Smith fell below the minimal standards of care in five patients, and therefore has already answered the questions raised by these two defenses.

Ms. Snyder stated that she supports the Proposed Order of a Reprimand. Ms. Snyder acknowledged that the Board has taken No Further Action in other cases, but she pointed out that the patient harm in this case makes a Reprimand appropriate.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dallas A. Smith, Jr., M.D. Dr. Schottenstein seconded the motion.

Dr. Soin stated that he will now entertain discussion in the above matter.

Dr. Schottenstein stated that in October 2015 the Virginia Board of Medicine issued an Amended Order in which it reprimanded Dr. Smith, based on his review and interpretation of mammograms and/or breast ultrasounds for five patients. In each of these cases, Dr. Smith was alleged to have failed to detect findings on mammograms and/or breast ultrasounds that he should have noted, resulting in a failure to perform or recommend additional testing and a delay in diagnosing breast cancer.

Dr. Schottenstein continued that Dr. Smith, at the behest of the Virginia Board, underwent an assessment at CPEP to evaluate his practice of mammography and breast imaging. CPEP's findings showed that Dr. Smith demonstrated appropriate medical knowledge of mammography and breast ultrasound interpretation, but his clinical judgment and reasoning were considered to be variable with some inconsistency in his interpretation of mammographic images. In addition, Dr. Smith's documentation was thought to be appropriate and he was felt to be professional with his peers. CPEP determined that Dr. Smith had minimal educational needs, but a brief structured educational intervention was recommended to improve his interpretation of mammograms. CPEP felt that Dr. Smith should be able to continue practicing while these needs were addressed. Dr. Schottenstein stated that despite CPEP's recommendation, Dr. Smith did not participate in the intervention because he had made the decision to discontinue reviewing mammograms and he therefore felt the additional education intervention was unnecessary.

In testimony, Dr. Smith explained that mammography is very difficult and, depending on the density of the breast, 30% - 50% of breast cancers may be missed due to limitations of the technology. Dr. Smith indicated that mammography is the most difficult procedure that radiologists perform and that 40% - 50% of malpractice cases against radiologists are related to mammograms. Dr. Smith felt that the reason he had practiced for 20 years without incident and then had several malpractice claims over about a four-year period was the law of averages catching up to him. Dr. Smith testified that he had been doing such a high volume of work that he was inevitably putting himself at risk. Dr. Smith had stated that every physician has made errors and that even the most competent radiologist can miss something.

Dr. Schottenstein stated that Stephen Pomeranz, M.D., a radiologist employed in Cincinnati, testified that he had no reservations about supporting Dr. Smith for full licensure in any state without restrictions. Dr. Pomeranz characterized Dr. Smith's work as nothing short of excellent and described Dr. Smith as beloved and respected by his fellow radiologists. Dr. Pomeranz further testified that Dr. Smith was doing the work of God by reading mammograms because so many radiologists did not want to due to the difficulty and the liability. Dr. Pomeranz had felt that the number of malpractice actions against Dr. Smith was not unexpected given the high volume of work.

Dr. Schottenstein stated that Margaret Bertrand, M.D., is a board-certified radiologist who interprets mammograms in her practice in Greensboro, North Carolina. Dr. Smith had asked Dr. Bertrand to perform a random review of 100 of Dr. Smith's cases. Dr. Bertrand opined that Dr. Smith is fully competent to perform mammograms. Dr. Schottenstein noted that since Dr. Bertrand's parent company bought out Dr. Smith's practice, she has had the opportunity to see several thousand of Dr. Smith's interpretations over time. Based on that, Dr. Bertrand opined that Dr. Smith was not missing cancers and she attested to Dr. Smith's skill, competency, and integrity.

Dr. Schottenstein noted that the Hearing Examiner had proposed an Order of Reprimand in this matter and opined that No Further Action would be inappropriate because there was significant patient harm. Dr. Schottenstein stated that there is no dispute that Dr. Smith violated 4731.22(B)(22), Ohio Revised Code,

due to his discipline by the Virginia Board of Medicine. Consequently, the Board only needs to consider possible mitigating factors.

Dr. Schottenstein stated that Dr. Smith's two main explanations are that mammograms are unreliable and that the law of averages caught up with him. With regard the first explanation, Dr. Schottenstein was not persuaded that the unreliability of mammogram technology significantly contributed to these cases. Dr. Schottenstein stated that the Virginia Board's action and the significant malpractices judgments did not occur because the technology did not detect the cancer. Rather, they occurred because the technology did detect the cancer and Dr. Smith allegedly missed it. Dr. Schottenstein stated that if it was purely an issue of faulty technology, there would have been no finding of fault or malpractice on the part of Dr. Smith. Dr. Schottenstein stated that medical malpractice is not based solely on physician error, but when it can be proven that the physician violated applicable standards of care and that injury was caused due to that sub-standard care.

Regarding Dr. Smith's second explanation, Dr. Smith invoked the law of averages and the law of large numbers to explain his malpractice cases. Having interpreted 368,000 mammograms over his career and having gone about 20 years without an incident, Dr. Smith implied that it was statistically inevitable that cases of this nature would eventually occur. Dr. Schottenstein stated that the law of large numbers is a statistical theorem that applies to randomly-generated variables that are independent and identically distributed. Dr. Schottenstein stated that the law of large numbers would apply, for example, to coin flips since each the result of each coin flip is unaffected by the flips that occurred before. However, Dr. Schottenstein stated that mammogram readings are not identically-distributed chance events because the ability to accurately read mammograms is fundamentally influenced by one's level of experience acquired from reading previous mammograms. Therefore, reading mammograms is not an independent random process and the law of averages and the law of large numbers would not apply. Dr. Schottenstein noted Dr. Pomeranz's testimony that to be competent at reading mammograms one must read 50,000 to 150,000 of them. Dr. Schottenstein stated that if one gets better at reading mammograms the more one does it, it cannot be simultaneously true that the more mammograms one reads the greater the risk of a malpractice claim.

Dr. Schottenstein opined that Dr. Smith's use of the law of averages as a defense is self-serving because the argument that his malpractice cases were statistically inevitable absolves Dr. Smith of his responsibility to take a hard look at his role in what went wrong in these cases. Dr. Schottenstein stated that he cannot explain the series of bad outcomes experienced by Dr. Smith, but he did consider the possibility of a decline in Dr. Smith's skill set over time. Dr. Schottenstein acknowledged that Dr. Smith is a board-certified radiologist, but noted that he had received lifetime certification and has not had to recertify. Dr. Schottenstein further noted that CPEP found inconsistencies in Dr. Smith's mammogram interpretations and recommended some educational remediation in that area. Dr. Schottenstein noted that Dr. Smith made a point that Dr. Schottenstein found compelling, namely that mammogram interpretation is very challenging and that it is easier to review a case with hindsight regarding existing findings rather than as a screening examination without pre-conceived notions about results.

Dr. Schottenstein opined that the CPEP assessment and testimony show that Dr. Smith is generally competent, skilled, and professional. Dr. Schottenstein felt that the State Medical Board of Ohio could rely on the Virginia Board's choice of discipline because, unlike the Ohio Board, the Virginia Board had a complete picture of Dr. Smith's cases. Dr. Schottenstein stated that the Virginia Board chose to allow Dr. Smith to continue practicing without any limitations on his license, and other states have generally chosen to do the same. Dr. Schottenstein stated that he supports the Proposed Order of Reprimand.

Dr. Steinbergh agreed with Dr. Schottenstein's comments. Dr. Steinbergh stated that there has clearly been patient harm over a span of about four years and there have been malpractice claims against Dr. Smith. Dr. Steinbergh opined that Dr. Smith has been honest and introspective. Dr. Steinbergh stated that she supports the Proposed Order of Reprimand.

Dr. Soin stated that he appreciates Dr. Schottenstein's thorough review and analysis. Dr. Soin stated that Board members can debate and agree to disagree about the law of averages. Dr. Soin stated, for example, that if he wanted to avoid being sued then he would simply never see any patient. Conversely, Dr. Soin stated that if he saw 2,000,000 patients the statistical likelihood of having a negative outcome certainly exists and would likely happen. Dr. Soin stated that in this matter, Dr. Smith had bad outcomes and he has remediated. Dr. Soin pointed out that Dr. Smith has already been reprimanded and Dr. Soin did not know what would be accomplished by issuing another reprimand. Dr. Soin stated that since remediation has already occurred and Dr. Smith has already been reprimanded, he would support No Further Action in this case.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- nay
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to approve carried.

REMAND IN THE MATTER OF MARWAN MASSOUH, M.D.

Dr. Soin directed the Board's attention to the remanded matter of Marwan Massouh, M.D. Dr. Soin stated that on March 12, 2014, the Medical Board issued a Notice of Opportunity for Hearing to Dr. Massouh, based on allegations that he had pleaded guilty to a one-count Bill of Information concerning violation of the federal statute that prohibits the introduction into interstate commerce of any drug that is misbranded. On March 11, 2015, the Board issued an Order which suspended Dr. Massouh's certificate to practice medicine and surgery for a minimum of 60 days, with conditions for reinstatement or restoration and probationary terms, conditions and limitations for at least two years.

Dr. Soin continued that Dr. Massouh filed an appeal of the Board's Order with the Franklin County Court of Common Pleas. Dr. Massouh argued that the Board's Order was contrary to law and not supported by substantial, reliable, and probative evidence because Dr. Massouh was disciplined based upon charges or reasons that were not included in the Notice of Opportunity for Hearing. Specifically, Dr. Massouh argued that the Board determined that Dr. Massouh's conduct failed to conform to minimal standards of

care when he administered the misbranded medications to his patients. Dr. Soin noted that the Notice issued to Dr. Massouh did not allege a failure to conform to minimal standards of care.

On November 8, 2016, the Court determined that the Board denied Dr. Massouh's procedural due process rights by disciplining him based upon charges or reasons that were not included in the Board's Notice. The Court reversed the Board's March 11, 2015 Order and remanded the matter to the Board for further proceedings consistent with the Court's decision.

Dr. Soin stated that the Board is now asked to issue a new Order in Dr. Massouh's case. Dr. Soin stated that the Board's Order should be based upon its previous Finding and Conclusion related to Dr. Massouh's plea of guilty to a misdemeanor committed in the course of practice, as that clause is used in Section 4731.22(B)(11), Ohio Revised Code. According to the Court's Decision and Judgment Entry, the Board may not consider evidence or argument related to any allegation that Dr. Massouh departed from or failed to conform to minimal standards of care of similar practitioners under the same or similar circumstances as that clause is used in Section 4731.22(B)(6), Ohio Revised Code, including statements that Dr. Massouh did not do any testing on the drugs, that he did not obtain informed consent, or that he put patients at risk.

Dr. Steinbergh moved to approve and confirm the Proposed Findings of Fact, Conclusions, and Proposed Order in the matter of Marwan Massouh, M.D. Mr. Giacalone seconded the motion.

Dr. Soin stated that he will now entertain discussion in the above matter.

Dr. Soin briefly reviewed Dr. Massouh's medical career. Since completing a fellowship in 1991, Dr. Massouh has had a private practice in hematology and oncology. In August 2013 Dr. Massouh was charged in U.S. District Court with having purchased or received oncology drugs, namely Zometa and Gemzar, from a foreign-based distributor located in Canada. Dr. Soin noted that these medications were never approved by the U.S. Food and Drug Administration (FDA) for introduction into the United States. In September 2013 Dr. Massouh pleaded guilty, pursuant to a plea agreement, to one count of introduction of misbranded prescription drugs into interstate commerce, a Class A misdemeanor. Dr. Massouh was sentenced to one year of probation. Dr. Massouh has also paid \$8,000 per month to the U.S. Department of Justice in a separate civil settlement related to his plea.

Dr. Soin continued that Dr. Massouh self-reported his guilty plea and conviction to the Medical Board and described in detail the circumstances that led to his conviction. Dr. Massouh also self-reported a settlement agreement he entered into with the Missouri State Board of Regulation of the Healing Arts which reprimanded his medical license in that state. Mr. Massouh has testified that he will never again use medications that do not have FDA-approved labeling. Dr. Soin noted that Dr. Massouh has provided materials from a course he took at Case Western Reserve University School of Medicine entitled *Intensive Course in Medical Ethics, Boundaries, and Professionalism*. Dr. Massouh also provided letters of support from physician colleagues. Dr. Massouh has testified that his removal from practice would have a devastating effect on his patients, many of whom suffer from life-threatening and terminal conditions and require a continuum of care. Dr. Massouh has expressed remorse for this entire matter and that he would not have gotten involved with it had he known that it was wrong.

Dr. Soin stated that he agrees with the Findings of Fact and Conclusions of Law in the Hearing Examiner's 2015 Report and Recommendation. Dr. Soin agreed with the Hearing Examiner that, while Dr. Massouh clearly violated federal law, he has paid a price for the conduct that was deemed appropriate

by the court, in addition to the expense and stress that result from an encounter with the criminal justice system. Dr. Soin also noted the following mitigating factors:

- Dr. Massouh appeared to have not had a dishonest or selfish motive, and he engaged in the conduct out of his perceived desire to help patients;
- There does not appear to have been any harm or impact that resulted from Dr. Massouh's conduct;
- The likelihood of Dr. Massouh engaging in similar conduct is extremely low;
- Dr. Massouh immediately discontinued this activity upon being informed that it is illegal;
- Dr. Massouh fully disclosed his actions to the Board twice and he was honest and forthright with law enforcement authorities.

Mr. Giacalone opined that the original Order issued by the Board in 2015, including the minimum 60-day suspension of Dr. Massouh's medical license, is still appropriate for the specific reason that Dr. Massouh violated the law with regard to the misbranded medications, as well as his violation of 4731.22(B)(11), Ohio Revised Code. Mr. Giacalone acknowledged that this case does not involve minimal standards of care. Mr. Giacalone stated that the facts of this case have not changed and that the Board should re-issue its original Order.

Mr. Giacalone moved to amend the Proposed Order to mirror the Order issued in the matter of Dr. Massouh in March 2015. Dr. Schottenstein seconded the motion.

Dr. Steinbergh stated that when the Board first discussed this matter in 2015 there was concern about patient harm because Dr. Massouh had given medications that had not been approved by the FDA, and this concern had led to a conversation about minimal standards of care. Dr. Steinbergh also stated, having read the court order and re-reviewed the case, that she understood the judge's decision and remand as well. Dr. Steinbergh stated that she would agree with the original Proposed Order of reprimand.

Mr. Giacalone stated that the only thing that has changed in the matter of Dr. Massouh is the court's determination that the Board had reviewed the case with a different standard. Mr. Giacalone argued that the Board had not used a different standard and that the Board's initial Order was appropriate based on Dr. Massouh's commission of a misdemeanor by importing and administering unapproved products. Mr. Giacalone saw no basis for changing the Board's initial Order to a reprimand.

Dr. Schottenstein asked what precedent exists for similar cases that have come before the Board. Ms. Anderson replied that a listing of the Board's past actions in similar cases is not readily available, but that the Board has the full range of sanctions available in this matter. Mr. Kenney commented that a reprimand seems to be an appropriate resolution in this matter.

Dr. Soin stated that he agrees with Mr. Giacalone's point that a law was clearly broken and that misbranding had occurred. Dr. Soin stated that it is important for the Board to send a message that this is not acceptable. Dr. Soin opined that the Board will send such a message whether it issues a reprimand or suspends Dr. Massouh's medical license.

Dr. Schottenstein stated that he had seconded Mr. Giacalone's proposed amendment for purposes of

discussion. However, Dr. Schottenstein felt comfortable with a reprimand given the mitigating factors and basing the decision solely on the misbranding violation.

A vote was taken on Mr. Giacalone's motion to amend:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- nay
	Dr. Steinbergh	- nay
	Mr. Giacalone	- aye
	Dr. Soin	- nay
	Mr. Gonidakis	- nay
	Mr. Kenney	- nay
	Dr. Schachat	- nay
	Dr. Factora	- nay
	Dr. Edgin	- nay
	Dr. Bechtel	- abstain

The motion to amend did not carry.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- nay
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to approve carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Soin stated that in the following matters, the Board issued Notices of Opportunity for Hearing. No timely request for hearing was received. The matters were reviewed by Hearing Examiners, who prepared Proposed Findings and Proposed Orders for each, and are now before the Board for final disposition. These matters are disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

THOMAS MICHAEL EHLINGER, M.D.

Dr. Steinbergh moved to find that the allegations as set forth in the July 13, 2016 Notice of Opportunity for Hearing in the matter of Dr. Ehlinger have been proven to be true by a preponderance of the evidence and to adopt Ms. Blue's Proposed Findings and Proposed Order. Dr. Schottenstein seconded the motion.

Dr. Soin stated that he will now entertain discussion in the above matter.

Dr. Bechtel stated that Dr. Ehlinger was first licensed to practice medicine in Ohio in 2007 and that license has been inactive since January 2015 due to non-renewal. In February 2016 the State of Washington's Medical Quality Assurance Commission entered into a Stipulation to Informal Disposition with Dr. Ehlinger in which he agreed to not renew, attempt to renew, or apply to reactivate his medical license in that state.

Dr. Bechtel continued that in 2014, approximately one year after moving to Washington, Dr. Ehlinger was hospitalized for a severe psychiatric condition and he required aftercare with a psychiatrist and a psychologist. The Washington Physicians Health Program (WPHP) entered into a behavioral health agreement with Dr. Ehlinger and monitored him following his discharge from the hospital. Although Dr. Ehlinger contacted the WPHP, he failed to attend any appointments. In May 2015 the WPHP reported that Dr. Ehlinger had become noncompliant with his monitoring agreement and that it could not endorse Dr. Ehlinger to practice medicine with reasonable safety to patients.

According to comments that Dr. Ehlinger made to the Washington Commission, he moved to California in January 2015 and he currently has an active medical license in California. Dr. Ehlinger did not feel it was necessary for him to continue with his Washington monitoring agreement since he had no plans to return to Washington. Dr. Bechtel noted that unlike Washington, California has no behavioral monitoring program. Dr. Ehlinger has stated that he was able to obtain clearance to return to work on the basis of a recommendation from a psychiatrist in Bethesda, Maryland, following a one-time evaluation. Dr. Ehlinger is currently being monitored and treated by the Department of Psychiatry at the University of California, Los Angeles. Dr. Bechtel stated that Dr. Ehlinger has failed to provide any record of his medical treatment in California to either the Washington Commission or the State Medical Board of Ohio, and therefore there is no evidence of ongoing treatment in that state.

Dr. Bechtel stated that it is undisputed that Dr. Ehlinger has been noncompliant with the WPHP and he has failed to provide any medical records that he is undergoing treatment in California. Consequently, the state of Dr. Ehlinger's health is unknown. Dr. Bechtel stated that Dr. Ehlinger has not been officially charged with impairment or with practicing below the minimal standards of care. Further, Dr. Ehlinger has not requested a hearing where he could testify under oath about his condition or provide records, nor has any Board-approved expert opined on Dr. Ehlinger's diagnosis or current psychological status. Based on this lack of information, Dr. Bechtel agreed with the Hearing Examiner's Proposed Order to revoke Dr. Ehlinger's Ohio medical license. Dr. Bechtel noted that this revocation would be non-permanent and it is possible that Dr. Ehlinger may be able to provide the Board with appropriate medical records that show that he is compliant with his treatment.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain

Dr. Schottenstein - aye
Dr. Steinbergh - aye
Mr. Giacalone - aye
Dr. Soin - aye
Mr. Gonidakis - aye
Mr. Kenney - aye
Dr. Schachat - aye
Dr. Factora - aye
Dr. Edgin - aye
Dr. Bechtel - aye

The motion to approve carried.

MICHELLE K. ULEE, M.T.

Dr. Steinbergh moved to find that the allegations as set forth in the January 13, 2016 Notice of Opportunity for Hearing in the matter of Ms. Ulee have been proven to be true by a preponderance of the evidence and to adopt Ms. Blue's Proposed Findings and Proposed Order. Dr. Schottenstein seconded the motion.

Dr. Soin stated that he will now entertain discussion in the above matter.

Mr. Gonidakis stated that Ms. Ulee was cited by the Medical Board due to her failure to respond to multiple letters and interrogatories from the Board. Ms. Ulee was first licensed to practice massage therapy in Ohio in July 2010. In September 2011 Ms. Ulee submitted a license renewal application in which she admitted that she had been convicted of a crime and that she suffered from drug dependency. In June 2012 the Board asked Ms. Ulee for further information on these matters, but she did not respond. Ms. Ulee submitted another license renewal application in April 2013. The Board sent Ms. Ulee another letter in December 2014 asking for an explanation of the admissions she had made on her 2011 renewal application, but Ms. Ulee failed to respond to that letter as well.

In June 2015 Ms. Ulee responded to all the previous letters and she disclosed that in 2010 in the city of Akron, Ohio, she had been charged with and convicted of Operating a Vehicle while under the Influence of alcohol or drugs (OVI), with a blood alcohol content (BAC) of 0.144. In 2014 Ms. Ulee was again charged with and convicted of OVI with a BAC of 0.213. The Board staff gave Ms. Ulee until August 21, 2015 to respond to additional follow-up questions from the Board, but Ms. Ulee failed to respond. Multiple copies of interrogatories were sent to Ms. Ulee in September and October 2015, again with no response. Mr. Gonidakis noted that Ms. Ulee's massage therapy license currently remains active.

Mr. Gonidakis stated that Ms. Ulee has clearly violated Ohio law and has been uncooperative with the Board by failing to respond to questions and interrogatories. The Proposed Order would indefinitely suspend Ms. Ulee's license, establish conditions for reinstatement, and fine Ms. Ulee \$500. Mr. Gonidakis commented that he is uncertain whether Ms. Ulee deserves the privilege of holding a massage therapy license after many years of not responding to the Board's questions. Mr. Gonidakis stated that the Board has given Ms. Ulee a great deal of latitude over the years. Mr. Gonidakis remarked that there should be a discussion of why the Board waited such a long time to respond to Ms. Ulee's renewal application or to bring the matter to the Board for possible action.

Mr. Gonidakis moved to amend the Proposed Order to permanently revoke Ms. Ulee's massage therapy license. Dr. Steinbergh seconded the motion.

Dr. Steinbergh asked why Ms. Ulee continues to have an active license in 2017 and why she was allowed to renew her license in the intervening years. Ms. Anderson replied that licensees can renew their licenses automatically unless and until the Board takes action on their license. Ms. Anderson stated that Ms. Ulee's affirmative answers on her 2011 renewal application triggered an investigation, but those answers did not prevent her from renewing her license absent Board action. Mr. Groeber stated that Dr. Steinbergh and Mr. Gonidakis have made fair points and that internal procedures should be reviewed so that similar cases can come to the Board in a more timely manner. Mr. Gonidakis agreed that procedures should be reviewed and opined that such a long timeframe sends a message to the Board's licensees that disclosures on renewal applications will take multiple years to work through the system.

Dr. Steinbergh stated that she agrees with Mr. Gonidakis' proposed amendment to permanently revoke Ms. Ulee's massage therapy license.

A vote was taken on Mr. Gonidakis' motion to amend:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to amend carried.

Ms. Anderson clarified that the Proposed Order included a \$500 fine, but the amendment just approved by the Board does not include the fine and therefore the fine is now removed from the amended Order. Dr. Steinbergh stated that she concurs with the removal of the proposed fine. Mr. Gonidakis agreed.

Dr. Steinbergh moved to find that the allegations as set forth in the January 13, 2016 Notice of Opportunity for Hearing in the matter of Ms. Ulee have been proven to be true by a preponderance of the evidence and to adopt Ms. Blue's Proposed Findings and Proposed Order, as amended. Mr. Gonidakis seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye

Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- abstain

The motion to amend carried.

EXECUTIVE SESSION

Dr. Steinbergh moved to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action, and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

Pursuant to Section 121.22(G)(3), Ohio Revised Code, the Board went into executive session with Mr. Groeber, Ms. Anderson, Mr. Fais, Ms. Loe, Ms. Debolt, Ms. Pollock, Ms. Wehrle, the Enforcement Attorneys, the Assistant Attorneys General, Ms. Murray, Mr. DePew, Ms. Moore, and Mr. Taylor in attendance.

The Board returned to public session.

RATIFICATION OF SETTLEMENT AGREEMENTS

EVAN MARCUS LAVON KILL, L.M.T. – PERMANENT SURRENDER

Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Mr. Kill. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye

Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- aye

The motion to ratify carried.

ABDON ENRIQUE VALLALBA, M.D. – VOLUNTARY PERMANENT RETIREMENT

Dr. Steinbergh moved to ratify the Proposed Voluntary Permanent Retirement with Dr. Vallalba. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

ALEX T. ALAHAKOON, M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Dr. Alahakoon. Dr. Schottenstein seconded the motion.

Dr. Steinbergh stated that she has concerns about this physician and this proposed Consent Agreement. Dr. Steinbergh stated that the physician has been dishonest with his former employer, Genesis. Dr. Steinbergh understood the need for this Consent Agreement, but she would have preferred the Agreement to have included a requirement for a professional ethics course. Dr. Steinbergh did not feel that the definition of “swing shift” is not the same as “on-call status.” Dr. Steinbergh stated that this physician clearly could not be in two hospitals caring for patients at the same time, one in Zanesville and one in Knox County, and he clearly charged both hospitals for his services.

Dr. Schottenstein agreed with Dr. Steinbergh and opined that the physician had been trying to “game the system.” Dr. Schottenstein stated that he would generally support a professional ethics course for a licensee who has the desire to be ethical and falls short. However, Dr. Schottenstein did not feel that an

ethics course would be productive in this case because it does not seem that the licensee has an interest in ethics or is inclined to be a more ethical person. Dr. Schottenstein opined that the education acquired during an ethics course would not be something that the licensee would integrate into his values system.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

CHRISTINA BIEDERMANN, L.M.T. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Ms. Biedermann. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion to ratify carried.

PAUL M. BOLGER, M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Dr. Bolger. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain

Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- aye

The motion to ratify carried.

ROOZBEH BADII, M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Dr. Badii. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion to ratify carried.

S.I.B., M.D. – CONSENT AGREEMENT

Mr. Gonidakis moved to ratify the Proposed Consent Agreement with S.I.B., M.D. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- nay
	Dr. Steinbergh	- nay
	Mr. Giacalone	- nay
	Dr. Soin	- nay
	Mr. Gonidakis	- nay
	Mr. Kenney	- nay
	Dr. Schachat	- nay
	Dr. Factora	- nay

Dr. Edgin - nay
Dr. Bechtel - nay

The motion to ratify did not carry.

SUBBARAO VENKATA DASARI, M.D. – PERMANENT SURRENDER

Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Dr. Dasari. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- abstain

The motion to ratify carried.

ANDREW J. KUNTZMAN, L.M.T. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Mr. Kuntzman. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- aye

The motion to ratify carried.

JAMES G. LAMPHEAR, M.D. – STEP II CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Step II Consent Agreement with Dr. Lamphear. Dr.

Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

JAMES ARTHUR MECHENBIER, M.D. – VOLUNTARY PERMANENT RETIREMENT

Dr. Steinbergh moved to ratify the Proposed Voluntary Permanent Retirement with Dr. Mechenbier.
Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion to ratify carried.

Dr. Steinbergh moved to table the topic of settlement agreements. **Mr. Giacalone seconded the motion.** All members voted aye. The motion carried.

CITATIONS AND ORDERS OF SUMMARY SUSPENSION, IMMEDIATE SUSPENSION, AND AUTOMATIC SUSPENSION

Dr. Steinbergh moved to send the Notice of Opportunity for Hearing to Renato F. dela Cruz, M.D.
Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain

Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- aye

The motion to send carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Charles Michael Misja, M.D.; and Alyssa Vanden Eynden. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to send carried.

At this time the Board read and considered the proposed Notice of Summary Suspension and 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 Justin Aaron Clark, A.A., in accordance with Section 4760.13(G), Ohio Revised Code, and to issue the Notice of Summary Suspension and Opportunity for Hearing. Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye

Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- aye

The motion to approve carried.

RULES AND POLICIES

PROPOSED RULES 4731-11-01 AND 4731-11-09

Ms. Debolt stated that these proposed Rules regard prescribing to a person who the physician has not personally examined. The language was sent to the Joint Committee on Agency Rule Review (JCARR), which has sent the proposed Rules back to the Board with suggested changes based on comments it received from the public. Those changes are now presented to the Board for its consideration.

Dr. Steinbergh stated that she favors the proposed changes, which state that a prescription may only be transmitted to a pharmacy by means that are compliant with the rules of the Ohio Board of Pharmacy.

Dr. Steinbergh moved to approve the suggested changes to proposed Rule 4731-11-09 and be sent back to JCARR. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

The Board meeting recessed at 12:00 p.m. and resumed at 1:33 p.m. Mr. Gonidakis was not present when the meeting resumed.

OPERATIONS REPORT

Human Resources: Mr. Groeber stated that the Board is working to quickly fill some vacancies, including for Peri Vest who works in the Board's Enforcement Section. Mr. Groeber stated that Ms. Vest is retiring at the end of this month. Mr. Groeber stated that Ms. Vest does an excellent job and is a tremendous employee. Mr. Groeber thanked Ms. Vest for her service to the Board.

Mr. Groeber stated that there was another human resources matter that had been brought to the Board's

attention a number of months ago. Mr. Groeber stated that that matter has been initially resolved with no further findings. Mr. Groeber stated that he can provide additional follow-up if needed.

Information Technology: Mr. Groeber stated that the Board recently made a payment of \$1,500,000 for its portion of the e-License 3.0 system. Mr. Groeber stated that the system appears to be everything that the Board and staff has hoped it would be and it is continuing to be refined.

Communications and Outreach: Mr. Groeber stated that video recording of Board meetings began last month and the staff is working through the process of editing that and turning it into a teaching tool for medical students. The Case Western Reserve University School of Medicine will most likely be the first utilizer of this educational program. In response to a question from Dr. Steinbergh, Mr. Groeber stated that the content of the video will be presented to some Board members for their feedback.

Agency Operations: Mr. Groeber stated that there was a minor increase in the number of complaints from month-to-month, mostly likely associated with the failure of some physicians to properly check the Ohio Automated Rx Reporting System (OARRS). Mr. Groeber stated that the number of checks of OARRS continues to increase and is currently averaging 120,000 to 130,000 checks per day, up from 80,000 per day just six months ago. Mr. Groeber credited this increase to the Board's efforts to ensure that physicians are using OARRS appropriately.

Mr. Groeber stated that the Board may be seeing older cases coming forward as the staff works through these cases and either has them closed or moved into investigations as is appropriate.

Mr. Groeber stated that he has discussed the possibility of a Board Retreat. Dr. Soin stated that a Retreat would give the Board an opportunity to discuss issues and to get a general sense of what direction the Board wants to move in. Dr. Soin stated that an email will be sent to Board members in order to determine the best time to hold the retreat.

Mr. Groeber commented that he has out of the office for a couple of days and he thanked the Board staff for ensuring that preparations for this Board meeting went smoothly.

Mr. Gonidakis rejoined the meeting at this time.

REPORTS BY ASSIGNED COMMITTEES

POLICY COMMITTEE

RULE REVIEW

Ms. Anderson stated that the Board is in the process of hiring a new attorney to assist the Legal Section with rules. Ms. Anderson stated that the goal is to finish progress on rule review this year. Ms. Anderson stated that two significant rules for this year are rules are consult agreements with the Board of Pharmacy and light-based medical devices.

LEGISLATIVE UPDATE

Dr. Soin stated that Mr. LaCross has a number of goals and objectives in the legislature that he and the Board will work through in the coming year. Mr. LaCross is currently waiting for the budget bill to be

passed and sent to the Governor.

MEDICAL MARIJUANA UPDATE

Dr. Soin stated that the Policy Committee had a robust discussion about the proposed medical marijuana rules this morning. Ms. Anderson stated that she will make the changes to the proposed language that were requested by the Committee and bring them back next month for further consideration. The Committee also discussed the additional physicians survey on medical marijuana.

Ms. Anderson continued that the Board will need to develop a reporting mechanism so that physicians who will hold a Certificate to Recommend Medical Marijuana can report information to the Board as required by the statute. The Committee reviewed a reporting format that is used in Minnesota with the Board may wish to adapt to its own purposes. Ms. Anderson encouraged the Board members to provide feedback on the Minnesota survey forms.

Dr. Edgin asked if there will be a limit on the number of patients a physician may see for medical marijuana, like the similar limit regarding Suboxone. Ms. Anderson replied that there is no provision in the law for limiting the number of patients. Dr. Soin stated that one reason the law did not include a limit on the number of patients was so that access would not be restricted too much. Dr. Soin noted that there is a limit on the number of Suboxone patients, but not a limit on the number of patients on opioids. Ms. Anderson added that the Board of Pharmacy will soon proposed rules that would limit supplies of medical marijuana to 90 days.

Dr. Steinbergh stated that she emailed a link to Mr. Groeber and Ms. Anderson to an extensive article from the National Academy of Sciences on the health effects of cannabis and cannabinoids, including the current state of evidence and recommendations for research. Dr. Steinbergh requested that the article be forwarded to Board members for review.

CHANGES TO THE COMMITTEE ON PRESCRIPTIVE GOVERNANCE

Ms. Debolt stated that the Committee on Prescriptive Governance (CPG), a committee of the Ohio Board of Pharmacy, has been reconstituted by recent legislation. Ms. Debolt stated that the Board will need to appoint three physician members to the new CPG, one of whom must be a member of the Medical Board. Ms. Debolt stated that Dr. Edgin has indicated his willingness to be appointed and two other physicians will be recommended to the Board at its April meeting.

Dr. Steinbergh stated these changes were instituted by House Bill 216, which was never discussed by the Board. Under this legislation, the Medical Board must appoint one physician from the Medical Board, one physician nominated by the Ohio State Medical Association, and one physician nominated by the Ohio Academy of Family Physicians or a successor organization. Dr. Steinbergh stated that she was disappointed that the Ohio Osteopathic Association (OOA), which had always been include previously, was excluded from this language. Dr. Steinbergh was particularly concerned because it is sometimes difficult to find appropriate members for the CPG and excluding the OOA makes that situation more difficult.

ZOHYDRO

Dr. Soin stated that the company that manufactures the medication Zohydro has asked the Board to

change or update the letter that the Board had posted on its website regarding that medication. Dr. Soin stated that the Policy Committee discussed this matter and determined that the Board's letter can be changed once the Food and Drug Administration approves Zohydro to be labeled as abuse deterrent.

FINANCE COMMITTEE

FISCAL REPORT

Ms. Loe stated that in December 2016 the Board had \$804,000 in revenue and \$915,000 in expenses. Ms. Loe noted that revenue is up about 9% from this time two years ago. Ms. Loe further noted that spending is up about 5%, mostly in the area of personnel. Ms. Loe stated that the Board has spent less than half of its appropriation authority for Fiscal Year 2017. Ms. Loe stated that a one-time cash transfer of \$1,500,000 was taken to pay for the Board's portion of the e-Licensure project.

FINE COLLECTION

Ms. Loe stated that the Board has received payment of all fines included in consent agreements that were ratified last month, a total of \$13,000. The Finance Committee also reviewed what fines are currently in the collections process.

FISCAL YEARS 2018/2019 BIENNIAL BUDGET

Ms. Loe stated that the Governor's office is proposing a budget of \$10,100,000 for the Board in Fiscal Year 2018 and over \$11,000,000 for Fiscal Year 2019. Ms. Loe stated that the reason for the increase is the proposal that the Medical Board merge with the Ohio Board of Dietetics and a portion of the Ohio Respiratory Care Board. Ms. Loe stated that the merger, if approved, would result in approximately eight additional staff members for the Board.

BOARD MEMBER COMPENSATION

Ms. Loe stated that last month the Board considered moving back to a *per diem* formula for Board member compensation. Under the proposal, Board members would be paid for one half-day for work done up to four hours and one full day for work over four hours. Ms. Loe stated that this proposal is an effort to simplify the current system of compensation and tracking Board member time.

Dr. Steinbergh noted that Paragraph A of the proposed policy indicates that "Upon initial appointment, Board members' pay shall be set at the minimum hourly pay rate designated in the pay range set by the Director of the Department of Administrative Services for Board and Commission members." Paragraph B states, "Upon reappointment Board members may receive an increase from the minimum hourly rate as determined by a majority vote of the Board." Dr. Steinbergh stated that she has never seen this language before. Ms. Loe stated that this language has always been part of the Board member compensation policy, but the Board has never voted themselves a raise since she has been at the Board.

Dr. Steinbergh stated that her understanding had been that pay raises for Board members had been automatic and was controlled by the Department of Administrative Services (DAS). Ms. Loe stated that Board member compensation increases must be approved by the Board and then by the Governor. Ms. Loe stated that some appointments occurred during State government pay freezes when no increases were being approved. Dr. Steinbergh stated that per this policy, the Board should be asked to consider

increases for reappointed Board members.

Mr. Kenney moved to approve the revised Board member compensation policy. Dr. Steinbergh seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

FEDERATION OF STATE MASSAGE THERAPY BOARDS

Mr. Kenney moved to approve A.J. Groeber to attend the Executive Directors Summit of the Federation of State Massage Therapy Boards (FSMTB) and that Mr. Groeber's attendance at the Summit is in connection with his responsibilities as Executive Director of the State Medical Board of Ohio. Dr. Saferin seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

DEVELOPMENT OF EDUCATIONAL MATERIALS WITH THE DEPARTMENT OF HEALTH

Mr. Groeber stated that the Board has been asked by the Ohio Department of Health (ODH) to help support education regarding that way that infectious disease and overdose data is reported. ODH has requested approval of up to \$30,000 to support the development of training materials.

Dr. Saferin moved to approve up to \$30,000 to support the Ohio Department of Health's effort into education for reporting infectious diseases and overdose data. Dr. Edgin second the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

The motion carried.

INVESTIGATOR FIREARMS

Mr. Kenney stated that he would like the Board to consider changes to the policy on investigator firearms in the near future. Mr. Kenney opined that the Board's investigators should not be armed and that investigators should ask to be accompanied by a local law enforcement officer if they are going into a situation in which they feel unsafe.

Dr. Steinbergh thanked Mr. Kenney for bringing up this topic. Dr. Steinbergh stated that she has always opposed allowing investigators to carry firearms. Dr. Steinbergh agreed that investigators should request help from local law enforcement if there is potential danger. Mr. Kenney noted that since the current policy was instituted in 2012 there has never been an incidence of an investigator firing a firearm or even pulling it from the holster. Mr. Kenney therefore felt that the policy is unnecessary.

Mr. Groeber recommended that the Board discuss this matter with Bill Schmidt, the Chief of Investigations, who may be able to offer insight. Dr. Soin commented that he can see why the policy was instituted originally. Dr. Soin stated that at that time many pill mills were being investigated and they would often have armed guards and armed people in their waiting area.

Mr. Kenney asked if the Board members could, if they so desire, briefly offer their opinions on this subject in order to gauge interest in changing the policy.

Dr. Rothermel stated that, in general, she disagrees with investigators carrying firearms.

Dr. Saferin stated that he supports the current policy.

Dr. Schottenstein opined that the ability to carry firearms should be at the investigators' discretion.

Dr. Steinbergh had already made her feeling on this matter known.

Mr. Giacalone stated that he is fine with revisiting the policy, but he is ambivalent about whether or not to change it.

Dr. Soin stated that he leans towards changing the policy because investigations can seek assistance from law enforcement if they feel uncomfortable in a situation.

Mr. Gonidakis stated that he also leans toward changing the policy because it does not seem right for the Medical Board to carry firearms.

Mr. Kenney agreed with Mr. Gonidakis and stated that he does not like the thought of a Medical Board investigator entering a physician's office armed.

Dr. Schachat stated that he opposes investigators carrying firearms, but he expressed concern about having investigators seek help from local law enforcement without knowing if that is feasible. Dr. Schachat stated that some areas may have few police and they may not be able to accompany an investigator upon request.

Dr. Factora stated that he would need more information about what investigators may encounter in the field before he can form an appropriate opinion.

Dr. Edgin stated that if he were an investigator he would like to have the discretion to carry a firearm. Dr. Edgin also agreed with Dr. Schachat that it may be difficult to have a policeman accompany you in some situations and locations. Dr. Edgin added that investigators may be put at risk. Mr. Kenney commented that the Board had previously determined that it would not be appropriate to leave the question of whether to carry a firearm to the discretion of the investigator.

Dr. Bechtel opined that it is very important for the Board to hear comments from investigators. Dr. Bechtel stated that the Board should refrain from making judgments until investigators have had a chance to explain the potentially dangerous situations they will be put into and what situations may arise that would warrant carrying a firearm. Dr. Bechtel stated that he leans towards not allowing firearms, but he would reserve judgment until he has heard from investigators.

Mr. Groeber observed that there seems to be enough interest in this topic to have further discussion, perhaps at the Board retreat which may be scheduled for April. Mr. Groeber stated that he can arrange for investigators, includes those who have opted not to have a firearm, to address the Board on this matter. Ms. Loe can also advise the Board of what administrative steps would need to be taken if the Board chooses to change the policy. Mr. Groeber stated that he took an informal poll at last year's Annual Meeting of the Federation of State Medical Boards and found that approximately half of medical boards allow their investigators to carry firearms. However, no one Mr. Groeber spoke to at the meeting recalled any time that an investigator ever pulled the firearm from the holster.

LICENSURE COMMITTEE

CE BROKER UPDATE

Dr. Saferin stated that the company CE Broker offers a way for the Board's licensees to load their continuing education credits into the Board's systems to ensure compliance with continuing medical education (CME) requirements. Dr. Saferin stated that once adopted, the vision is that the program would

be initially voluntary, and then be made mandatory in three to five years and physicians will not be able to renew their licenses unless they have the required CME credits. Dr. Saferin stated that this would be similar to physician assistants, who are not allowed to renew their licenses in the Board's system unless they have current certification from the National Commission on the Certification of Physician Assistants (NCCPA).

In response to questions from Dr. Steinbergh, Dr. Saferin stated that the basic level of service that CE Broker offers to licensees is free. CE Broker makes a profit by offering a high level of service for a fee of \$39.99 per year, plus an even higher level for \$99.99 per year. Dr. Saferin stated that there would be no expense to the Board. Dr. Soin noted that CE Broker is a large, diversified business which makes profit in other areas as well.

Dr. Soin stated that he is supportive of the concept of voluntary uploading of CME credits, but he expressed concern about making it mandatory. Dr. Soin stated that many physicians, such as himself, are already required to upload CME's for their various specialty boards. Dr. Saferin stated that the higher levels of service provided by CE Broker may track and upload credits for a physician's specialty boards, especially if the specialty boards are encouraged to participate in the system.

Mr. Giacalone commented that the National Association of Boards of Pharmacy offers a similar service for pharmacists to track their continuing education. Dr. Steinbergh added that that American Osteopathic Association also tracks and automatically updates CME credits for its members. Dr. Steinbergh noted that smaller CME programs maybe potentially be unable to integrate into the CE Broker system.

COSMETIC THERAPY UNIVERSAL EXAMINATION DISCUSSION

Dr. Saferin stated that the Board currently gives a written examination to license cosmetic therapists. Dr. Saferin stated that the Licensure Committee does not feel that it is advantageous for the Board to continue giving the examination. Therefore, the Committee is exploring the possibility of adopting a universal cosmetic therapy examination that would be given by a certifying entity. The Licensure Committee discussed this matter with some from the cosmetic therapist community this morning.

Dr. Saferin stated that when the Licensure Committee identifies a universal examination that satisfies the Board's rules and statutes, it will be presented to the full Board for further consideration.

COMPLIANCE COMMITTEE

Dr. Steinbergh stated that on January 11, 2017, the Compliance Committee met with Casey D. Darrah, M.D.; Jagprit S. Dhillon, M.D.; Kristen G. Landry, M.D.; William G. Paloski, D.O.; and Frank Welsh, M.D.; and also met with Regis P. Burlas, D.O., via electronic means; and moved to continue them under the terms of their respective Board actions. The Compliance Committee also accepted Compliance staff's report of conferences on December 12 and 13, 2016.

Mr. Gonidakis exited the meeting at this time.

PROBATIONARY REQUESTS

Dr. Soin advised that at this time he would like the Board to consider the probationary requests on today's consent agenda. Dr. Soin asked if any Board member wished to discuss a probationary request

separately.

Dr. Steinbergh stated that Franklin D. Demint, D.O., is requesting approval for a new monitoring physician. Dr. Steinbergh noted that the Board had recently approved another person as Dr. Demint's monitoring physician and asked if there are any concerns that the Board should be aware of. Ms. Murray responded that there are no concerns with Dr. Demint. Ms. Murray explained that Dr. Demint's previous employment opportunity was not a good fit for him and his requirements with the Board, so he sought other employment and this resulted in the request for a new monitoring physician.

Dr. Steinbergh moved to accept the Compliance staff's Reports of Conferences and the Secretary and Supervising Member's recommendations as follows:

- **To grant Stephanie N. Adams, M.T.'s request for approval of the ethics course tailored by Donna Homenko, Ph.D., to fulfill the professional ethics course requirement;**
- **To grant Franklin D. Demint, D.O.'s request for approval of Sherif M. Zihni, M.D., to serve as the new monitoring physician; and approval of the modified practice plan;**
- **To grant Mary Jo-Ellen Erickson, M.D.'s request for reduction in appearances to every six months; and discontinuance of psychiatric treatment with Dr. Songer;**
- **To grant Lana M. Hetzel, M.T.'s request for approval of the course tailored by Donna Homenko, Ph.D., to fulfill the professional ethics and records course requirements;**
- **To grant Nicholas L. Pesa, M.D.'s request for approval of request to discontinue the controlled substances log requirement;**
- **To grant Florencia A. Riel-Guzman, M.D.'s request for approval to reduce personal appearances to annually;**
- **To grant Shannon Lee Swanson, M.D.'s request for approval of *Intensive Course in Medical Ethics Boundaries and Professionalism*, administered by Case Western Reserve University, to fulfill the professional ethics course requirement;**
- **To grant Yi Xiong, D.O.'s request for approval of *Medical Ethics for Physicians* online course, administered by NetCE, to fulfill the professional ethics course requirement; and approval of Pennsylvania CME Requirements Course Collection online modules to fulfill the medical record-keeping course requirement; and**
- **To grant Patrick L. Bruno, M.D.'s request for approval of the updated practice plan.**

Mr. Giacalone seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye

Dr. Soin	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- abstain

The motion carried.

Mr. Gonidakis returned to the meeting at this time.

REINSTATEMENT REQUEST

PHILICIA S. DUNCAN, M.D.

Dr. Steinbergh moved that the request for the reinstatement of the license of Philicia S. Duncan, M.D., be approved, effective immediately, subject to the probationary terms and conditions as outlined in the January 11, 2017 Board Order for a minimum of 5 years. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion carried.

FINAL PROBATIONARY APPEARANCES

ANTHONY V. DALLAS, JR., M.D.

Dr. Dallas was appearing before the Board pursuant to his request for release from the terms of the Board's Order of October 14, 2015. Dr. Soin reviewed Dr. Dallas' history with the Board.

Dr. Steinbergh asked if Dr. Dallas would feel comfortable addressing the medical students in attendance regarding his situation. Dr. Dallas explained that he came to the attention of the Board because he had been involved with a company that operated medical clinics across the country. In the state of Mississippi, one such clinic utilized Dr. Dallas' medical license in that state to get the clinic going. Dr. Dallas was eventually disciplined by the Mississippi State Board of Medical Licensure, which lead to discipline in other states in which he was licensed. Dr. Dallas told the students that a medical license is a privilege

and not a right, and they should therefore guard their license very carefully to ensure that it is protected.

Dr. Schottenstein recalled that one reason that led to Dr. Dallas' problems was that he had been spread rather thin, holding medical licenses in 19 states. Dr. Schottenstein asked if Dr. Dallas still held 19 state medical licenses. Dr. Dallas replied that he has reduced the number of states he is licensed in to 16. Dr. Schottenstein asked if Dr. Dallas plans to continue reducing the number of licenses he holds or if he is comfortable with 16 being licensed in 16 states. Dr. Dallas stated that Tennessee is his primary state in which he practices and his other licenses are used from a business standpoint for limited liability companies to be able to practice medicine in certain states. Dr. Schottenstein asked if Dr. Dallas is in a risky position in other states similar to the position that resulted in his discipline. Dr. Dallas answered that he is no longer in a risky position because the limited liability companies hire physicians in their respective states to do the things that had gotten Dr. Dallas into trouble.

Dr. Schottenstein noted that Dr. Dallas' initial troubles were based on the fact that his Mississippi medical license had been used without his knowledge to prescribe Tramadol, which had become a controlled substance in Mississippi. Dr. Schottenstein asked if Dr. Dallas had had other issues with controlled substances in other states. Dr. Dallas replied that he has not had any similar problems.

Dr. Steinbergh moved to release Dr. Dallas from the terms of the Board's Order of October 14, 2015, effective February 26, 2017. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion carried.

ARTHUR H. SMITH, M.D.

Dr. Smith was appearing before the Board pursuant to his request for release from the terms of the Board's Order of May 11, 2011. Dr. Soin reviewed Dr. Smith's history with the Board.

In response to questions from Dr. Soin, Dr. Smith stated that he currently practices full-time in an emergency department in Youngstown, Ohio, about 14 shifts per month. Dr. Smith added that he also works at a treatment facility prescribing Vivitrol and Suboxone a couple of times per month. Dr. Smith stated that he enjoys working with the patients at the treatment facility because he can relate to them. Dr. Smith stated that practice in an emergency department can be unpredictable, but he has learned to manage his work/life balance and that part of his spirituality is acceptance. Dr. Smith stated that he is not currently sponsoring anyone. Dr. Smith stated that he does not plan to change anything in his recovery

program following his release from probation, with the exception of deleting this FirstLab app from his cell phone.

Dr. Soin asked Dr. Smith to describe what sobriety has given him. Dr. Smith replied that sobriety has given him a lot of self-reflection. Dr. Smith commented that the Partners in Professionalism program, which arranges for medical students to attend Board meetings, is a wonderful program and shows students that the Medical Board is more than simply a place to send money to get a license. Dr. Smith advised the students that a medical license is a privilege, not a right, and that they will be held to a higher standard. Dr. Smith stated that the students' future patients will need them to be professional and even-keeled. Dr. Smith further advised the students to take care of each other and to offer help if one of their colleagues is experiencing difficulties such as depression.

Dr. Steinbergh agreed with Dr. Smith's comments and added that if any student needs help now, for instance with addiction, this is the best time to deal with it. Dr. Steinbergh stated that once post-graduate training begins, the Medical Board will have authority over their license and can take action if necessary. Dr. Steinbergh advised the students to make a pact that such problems will not happen to anyone in their class.

Dr. Schottenstein commented that it can be difficult for students to differentiate between recreational use of alcohol, which is common, and an alcohol abuse problem. Dr. Schottenstein stated that one red flag is unpredictability. Dr. Schottenstein stated that if someone is planning to go out drinking and they do not know if they will ultimately wake up in a strange place or be arrested, that is a red flag that there may be a problem. Dr. Smith agreed that there is a fine line between recreational use of alcohol and abuse/addiction. Dr. Smith stated that if one is drinking but they have to be at work that night or very early the next morning, that person could have a problem. Dr. Smith stated that the students should watch for such behavior in their fellow students.

Dr. Steinbergh moved to release Dr. Smith from the terms of the Board's Order of May 11, 2011, effective immediately. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion carried.

CHRISTINA L. SUMMERS, M.T.

Ms. Summers was appearing before the Board pursuant to her request for release from the terms of the

Board's Order of June 11, 2014. Dr. Soin reviewed Ms. Summer's history with the Board.

Responding to questions from Dr. Steinbergh, Ms. Summers stated that she is working at several jobs but is not currently practicing massage therapy. Ms. Summers plans to move south in the near future. Ms. Summers stated that she does not intend to continue with a career in massage therapy because there have been many problems with it and she no longer has the drive to continue. Ms. Summers stated that she would keep up with her continuing education but she would not pursue it as a regular career at this time, though she may fall back on it later. Ms. Summers commented that she would not practice massage therapy in any state that does not require a massage therapy license, stating that massage can cause significant pain and injury if the therapist is not properly educated. Ms. Summers opined that massage therapists should be required to have at least 700 hours of education in order to obtain a license, but some states require less than that.

Dr. Steinbergh asked what Ms. Summers has learned regarding her responsibilities to licensure. Ms. Summers replied that she takes her responsibilities to licensure very seriously. Ms. Summers stated that the conviction which the Board cited her for in 2013 had actually occurred in 1997. Ms. Summers stated that she had been shocked that she was allowed to go through massage therapy school only to find that she could be disciplined or not licensed due to something that had occurred 15 years earlier.

Dr. Steinbergh stated that Ms. Summers had also been arrested and charged with assault in 2002, which Ms. Summers pleaded guilty to. Ms. Summers stated that that was due to a miscommunication with a neighbor who had attacked her on three different occasions. Ms. Summers stated that she had only held out her hands to defender herself from the neighbor, who was intoxicated and belligerent. Ms. Summers noted that the neighbor was also her father's girlfriend. Ms. Summers stated that she had forgotten about the incident when she applied for her massage therapist license.

Dr. Steinbergh asked if Ms. Summers' ethics course had been meaningful to her. Ms. Summers answered that the course was very meaningful and she opined that all massage therapists should be required to take an ethics course.

Mr. Giacalone moved to release Ms. Summers from the terms of the Board's Order of June 11, 2014, effective immediately. Dr. Steinbergh seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

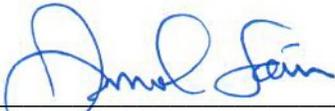
The motion carried.

ADJOURN

Dr. Saferin moved to adjourn the meeting. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Thereupon, at 2:55 p.m., the February 8, 2017 session of the State Medical Board of Ohio was adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on February 8, 2017, as approved on March 8, 2017.



Amol Soin, M.D., President



Kim G. Rothermel, M.D., Secretary

(SEAL)

