

**MINUTES****THE STATE MEDICAL BOARD OF OHIO****Retreat Meeting – Thursday, April 13, 2017**

Amol Soin, M.D., President, called the meeting to order at 8:30 a.m. in Room 1858, 18<sup>th</sup> 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.; Andrew P. Schachat, M.D.; Michael Schottenstein, M.D.; and Mark A. Bechtel, M.D. The following members did not attend: Michael L. Gonidakis; Richard A. Edgin, M.D.; and Ronan M. Factora, M.D.

Also present at various times during the meeting were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; William Schmidt, Chief of Investigations; Susan Loe, Director of Human Resources and Fiscal; Joseph Turek, Deputy Director for Licensure; Sallie Debolt, Senior Counsel; Teresa Pollock, Director for Communications; Joan K. Wehrle, Education and Outreach Program Manager; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Rebecca Marshall, Chief Enforcement Attorney; Gary Holben, Operations Manager; Mitchell Alderson, Administrative Officer; Chantel Scott, Chief of Renewal; Nathan Smith, Senior Legal and Policy Counsel; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; Colin DePew, Legal and Policy Staff Attorney; and Benton Taylor, Board Parliamentarian.

**OARRS NON-COMPLIANCE LETTERS**

Mr. Groeber stated that in late 2016 the Board sent a letter to over 12,000 Ohio physicians regarding non-compliance with the requirement to check the Ohio Automated Rx Reporting System (OARRS) for all patients to whom they have prescribed a controlled substance. Mr. Groeber explained the process of obtaining the physicians' names from OARRS data provided by the Board of Pharmacy (the agency which operates OARRS) and the Medical Board's efforts to identify and exclude the following physicians:

- Physicians whose prescriptions were related to inpatient, residential, or hospice care
- Physicians whose prescriptions were related to a diagnosis of terminal illness
- Physicians who are employed by a healthcare entity which pulls OARRS data automatically
- Physicians whose prescriptions were to patients whose OARRS profile had been checked by any other physician in the previous 90 days

Mr. Groeber continued that the letter informed the physicians that they seem to be out of compliance with the requirement to check OARRS, but that they should contact the Board if they think there is an error or if they fall under one of the legal exemptions. Mr. Groeber stated that while the letter brought this issue to the attention of all recipients, only those at the very high end with an approximate average of six or more patients not checked per day were contacted by a Board investigator for a conversation. Mr. Groeber stated that many physicians provided valid reasons for being on the list and those physicians have been exempted from all future lists.

Mr. Groeber stated that as a result of the OARRS non-compliance letters, patterns of behavior are changing. Following the first letter, the average number of patient checks on OARRS increased dramatically to approximately 220,000 per day on average. Mr. Groeber further noted that at the beginning of this process the number of physicians with more than 200 unchecked patients in a single month was 45; that number is now zero. Mr. Groeber credited prescribers with taking appropriate actions in response to the letters.

The Board discussed the nature of the OARRS non-compliance letters. Dr. Steinbergh expressed concern that the tone of the letter was perceived as threatening to the physician, as well as their patients who need appropriate analgesia. Other Board members agreed with Dr. Steinbergh's comments, but viewed the increase in proper OARRS checks, in accordance with state law, as a positive and dramatic result.

Dr. Soin noted that at yesterday's Board meeting, he voted "no" on three proposed citations related to physicians who had not checked OARRS as required. Dr. Soin stated that he voted "no" because he does not feel comfortable citing physicians for this infraction so soon after the beginning of efforts to enforce that law. Dr. Soin opined that this is an opportunity to educate physicians and fix the problem instead of simply citing physicians. Dr. Soin opined that a citation should be based on demonstrable harm to the public rather than just a failure to check data. Dr. Soin also noted that the OARRS data is not optimal at this time. Dr. Soin opined that the Board is not providing physicians with adequate tools to rehabilitate themselves, such as informing them of what patients they have failed to check on OARRS. Dr. Soin further noted that physicians treating patients in hospitals are not required to check OARRS; however, when the patient is discharged with a controlled substance prescription and fills it at an outside pharmacy, that shows up in OARRS data as a non-check. Dr. Soin commented that if this behavior is continuing in 2018 after a year of educational efforts, then citations would be appropriate at that time. Dr. Soin observed that with the number of non-checking decreasing rapidly, the overall picture will look very different six months from now. Ms. Marshall commented that the three citations in question represented the highest number of non-checks and that the physicians had indicated, either in interviews or written statements, that they will not use OARRS or that they know they should be using OARRS. Dr. Steinbergh added that the Board does not have to demonstrate patient harm in order to issue a citation or take an action.

The Board continued to discuss the matter of the OARRS non-compliance letters, as well as the fact that many physicians seem unaware of the positive ways in which they can use OARRS data to improve their patient care. The Board also thoroughly discussed disciplinary guidelines in relation to a failure to check OARRS when required. Following lengthy discussion, the Board gave general guidance to the Secretary and Supervising Member in establishing guidelines for negotiating settlement agreements in these cases. The Board agreed that the Secretary and Supervising Member should have flexibility in sanctions based on the circumstances of each case, but that generally a first offense involving no other violations should be a fine of indeterminate amount and a reprimand and possibly probation. The Board generally agreed that a first-time offender without additional violations should not have a suspension, though that may be an option if there are more violations in the future. The Board also generally agreed that continuing educational courses could be required, such as prescribing courses and patient boundaries courses. Dr. Saferin agreed with Mr. Giacalone's suggestion to have the physicians attend an office conference with the Secretary and Supervising Member at the Medical Board's offices could also have a positive impact on the physicians' behavior.

INVESTIGATOR FIREARMS

Mr. Groeber stated that it has been approximately four years since the Board approved the policy allowing its investigators to carry firearms. Based on comments made recently by some Board members, Mr. Groeber asked the Board to discuss this matter and consider whether it wishes to continue having this policy. Ms. Loe provided historical background on the Board's prior decision, particularly as related to the pill mill situation at that time. Ms. Loe stated that the investigator job description was changed accordingly to specify that the position is dangerous and the protection of a firearm is needed. Ms. Loe stated that investigators are required to pass a firearms proficiency course and to recertify regularly. Ms. Loe noted that one of the Board's 20 investigators has opted out of carrying a firearm.

Mr. Schmidt stated that the Board's investigators are not law enforcement and that, by Board policy, an investigator may only use their firearm if it is necessary to save their life. Mr. Groeber added that Board investigators are only allowed to use their firearm to defend themselves, and not to defend another person. Mr. Schmidt stated that since investigators began carrying firearms there has been only one instance in which an investigator pulled the firearm from the holster, and that occurred when the investigator was participating in a law enforcement raid of a residence and encountered a large dog behind the residence; the firearm was not discharged.

Mr. Schmidt stated that the company Armada was hired by the Board to conduct an assessment of the Board's firearms policy and whether it is still needed. Armada's report concluded the following:

- There have been no changes in circumstances since 2011 that would lead the Board to reconsider their original decision.
- Armada suggested use-of-force continuum training (Mr. Schmidt stated that use-of-force training does not apply here because the Board's policy is for the investigator to immediately remove themselves from dangerous situations and to only use force to save their lives).
- Armada made suggestions on how to improve firearm training (Mr. Schmidt stated that some of Armada's suggestions are already being implemented).
- Armada recommended that the Board move away from its current firearm, the .40 caliber Glock (Mr. Schmidt stated that he plans to move to the Single Stack 9mm Glock, if there are no changes in the Board's policy).

Mr. Groeber stated that he conducted a survey of other medical boards regarding this issue. Of the four states that responded, only one had armed investigators and no investigator had ever discharged their weapon outside of training. In Ohio, Mr. Groeber stated that neither the Board of Nursing nor the Dental Board armed their investigators; the Board of Pharmacy had armed investigators, but that agency has a different classification of investigator than the Medical Board.

Mr. Smith provided data for the Board's consideration regarding law enforcement deaths and assault in Ohio. Mr. Smith stated that there are unfortunately very few reliable studies regarding safety issues of investigators for administrative agencies.

Mr. Groeber briefly displayed and described the different models of body armor that are available to the Board investigators, including one meant to be unseen beneath clothing. Mr. Groeber noted that current Board policy does not require investigators to wear body armor at all times, only at their discretion.

Ms. Loe explained that when the current policy was adopted, the investigator job description was changed

to specify that the job is dangerous and justified allowing firearms. Ms. Loe stated that if the Board wishes to change the policy and not allow firearms, it will need to change the job description so that it does not appear that investigators are being sent into a dangerous job without appropriate means of self-protection. Ms. Loe stated that changing the job description involves conversations with the investigators' union.

The Board discussed this matter thoroughly and asked Mr. Schmidt to describe potentially dangerous situations that have occurred or could occur. Mr. Kenney pointed out that there has never been an incident necessitating a firearm, and therefore the policy should be discontinued. Several Board members agreed. Dr. Schachat acknowledged that there is some level of risk in the position of Board investigator, but questioned whether it was a substantial risk. Dr. Saferin favored keeping the current firearms policy, stating that the investigators are well-trained. Dr. Schottenstein agreed with Dr. Saferin and felt that it was not his place to tell investigators how to conduct themselves in terms of self-protection. Dr. Schottenstein commented that the chances of being in an automobile accident are very slim, but he would feel very uncomfortable if someone told him he could not wear a seatbelt. Dr. Soin replied that automobile accident actually happen, whereas no dangerous situations requiring firearms have happened with Board investigators. Dr. Soin opined that firearms for investigators are not necessary based on the data.

Following discussion, the Board generally indicated that it would like to pursue research and actions to ultimately end the policy allowing investigators to carry firearms. Ms. Anderson asked if the Board wants to continue its 2011 authorization for the firearms while the necessary research is being completed so that investigators can continue to carry firearms until the Board takes an official vote on the matter in the future. The Board indicated that it does want to continue its 2011 authorization.

The Board briefly recess for lunch at 12:00, then resumed at 12:15 during lunch. Mr. Giacalone, Mr. Kenney, and Dr. Bechtel were not present when the meeting resumed.

#### SKYPE FOR BOARD APPEARANCES

Ms. Murray stated that the current standards for allowing a probationer to appear via electronic means such as Skype, rather than appear in person, is that it is allowed at the discretion of the Secretary and Supervising Member if the practitioner does not reside in Ohio.

Mr. Giacalone returned to the meeting at this time.

The Board discussed this matter thoroughly. Following discussion, the consensus of the Board was that all initial probationary appearances before the Compliance Committee, as well as final probationary appearances before the full Board, should be attended by the probationer in person. Personal appearances made by the probationer before the Secretary and Supervising Member, or their designees, may occur electronically at the discretion of the Secretary and Supervising Member.

#### NON-COMPLIANCE OPTIONS FOR SECRETARY AND SUPERVISING MEMBER

Ms. Murray briefly outlined that current system of dealing with minor violations of consent agreements and board orders which do not, in the opinion of the Secretary and Supervising Member, rise to the level of issuing a citation. Ms. Murray stated that currently, such infractions are dealt with by adding additional time to the probationary period ("tolling"). However, this does not apply to licensees who are suspended

under a Step I Consent Agreement because there are no probationary terms to extend.

Ms. Murray proposed that the Board adopt the practice of issuing Addendums, which would allow the Board to fine probationers for non-compliance. Ms. Murray noted that such fines would be reportable to the National Practitioner DataBank. Addendums would be presented to the Board for ratification in the same manner as Consent Agreements. Ms. Murray stated that the use of Addendums would require a change in the Board's current disciplinary guidelines.

The Board discussed the proposal and was generally favorable to it. In response to a question, Dr. Rothermel noted that a fine through addendum would be for a violation of probationary terms and not for any issue underlying the probation, such as impairment. Dr. Rothermel also opined that fining would be more effective than tolling.

**Dr. Steinbergh moved to approve the proposed modifications to the disciplinary guidelines. Dr. Saferin seconded the motion.** All members voted aye. The motion carried.

#### BOARD MATERIAL DELIVERY METHODS

Mr. Taylor briefly reviewed the different options for ensuring that each Board member receives the Agenda Materials for each monthly meeting in a timely manner and in the manner most effective to the Board member.

#### LICENSURE DISCUSSION

##### CME AUDITING PROCESS

Ms. Scott briefly outlined the Board current system for conducting random continuing medical education (CME) audits on approximately 2% of licensees. Ms. Scott noted that the average processing time per audit is 15 to 20 minutes. Mr. Turek stated that there is pending legislation that, if passed, would eliminate licensees' requirements for Category II CME and increase their Category I CME requirements. Mr. Turek stated that House Bill 290, which has already become law, allows licensees to fulfill some of their CME requirements by providing healthcare services to indigent and uninsured people. Mr. Groeber noted that meeting the 2% audit level would be a significant administrative burden under the Board's current system.

##### CE BROKER DEMONSTRATION

Mr. Turek introduced Marcia Mann, a representative of CE Broker. Mr. Turek stated that the Board is considering using CE Broker's services for tracking licensees' CME hours.

Ms. Mann provided a thorough presentation to the Board regarding CE Broker. Ms. Mann explained that CE Broker is a continuing education management and tracking system. Ms. Mann stated that CE Broker currently tracks CE for all healthcare professions in Florida and has expanded into some other states as well. Ms. Mann provided details on the three different levels of service that would be available to licensees. Ms. Mann stated that most licensees would use the free basic services, while the mid-level and high level of service would be available for \$29.00 per year and \$99.00 per year, respectively. Ms. Mann demonstrated that even with the basic free service, licensees would be able to upload their verified CME hours directly into the Board's systems for automatic tracking and will provide the licensee a report

of their progress in each cycle. Other requirements for individual licensees can also be tracking, such as the special CME requirements that must be met by holders of the Certificate to Recommend medical marijuana.

Mr. Groeber asked if the Board was in favor of contracting with CE Broker for these services, noting that there will be no cost to the Board. The Board was generally in favor of this system, but suggested that comments be gathered from the licensee community first.

### PHYSICIAN BURNOUT

Dr. Schottenstein stated that every year about 400 physicians in the United States take their lives. Dr. Schottenstein noted that since any given physician may have 2,000 active patients, nearly 1,000,000 patients could potentially be affected by this. Numerous studies indicate that at any given time one in every three physicians are experiencing burnout.

Dr. Schottenstein continued that the Board's main goal is to protect public, and he opined that the Board indirectly does that if it facilitates physicians getting the help they need when they are suffering in this way. Dr. Schottenstein stated that burnout is not just feeling of stress, it is pathological condition that includes emotional exhaustion, depersonalization, cynicism, and a feeling of low personal accomplishment. Dr. Schottenstein stated that burnout is not unique to the field of medicine, but its prevalence is higher in medicine than in other fields and the consequences to society is substantial.

Dr. Schottenstein noted a 2014 survey by the American Medical Association shows a rate of burnout in physicians of about 49%, compared to about 28% in population as whole. Dr. Schottenstein stated that a few causes of this are heavy workload, debt, financial issues, lack of time, faculty demands, career-family balance, tight funding, and bureaucracy. Burnout can lead to exhaustion, sleep issues, decreased productivity, and errors in performance and judgment that can lead to adverse patient outcomes. Burnout can also lead to increased irritation with patients and staff, divorce, mood disorder, and substance use. Dr. Schottenstein noted that some physicians quit altogether and that burnout is a risk factor for suicide.

Dr. Schottenstein stated that physicians have relatively low rates of treatment. Dr. Schottenstein further noted that female physicians are at highest risk for suicide and about 1.5% of female physicians have attempted it. Barriers to getting proper care include lack of time, concern about lack of confidentiality, stigma, and concerns about licensing, privileges, and advancement. Dr. Schottenstein stated that historically there has been concern that diagnosis alone presumed impairment, which would provoke licensing issue. However, most licensing boards have moved away from questions about diagnosis and treatment and towards questions about impairment itself.

Dr. Schottenstein opined that the State Medical Board of Ohio is making positive changes in facilitating movement in right direction. Dr. Schottenstein commented that the lower the stigma, the more likely physicians will seek help. Dr. Schottenstein stated that if the current proposal for a non-disciplinary track for licensees with mental or physical conditions is adopted, it will also send important message of support for physicians with these issues. Dr. Schottenstein also commented that the pending legislation regarding the one-bite reporting exemption is also very promising in terms of the message to licensees.

Dr. Schottenstein stated that improving physician health indirectly improves the health of the public. Dr. Schottenstein stated that physicians should understand that it is okay to seek help. Dr. Schottenstein stated that the Board can do its part by continuing to make sure its regulations and policies are non-

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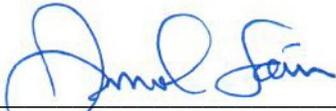
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discriminatory and emphasize disclosure of behavior concerns such as misconduct and malpractice and impairment, rather than mental or physical diagnosis *per se*.

Dr. Schottenstein felt the Board can encourage development of continuing medical education (CME) regarding physician depression and suicide as well as educating the licensee community of risk factors. Dr. Schottenstein added that the Board can also potentially help the situation by highlighting the importance of addressing the mental health of licensees through social outreach and articles in the Board's magazine and newsletter and social media. Dr. Schottenstein also suggested that a link to the Ohio Physicians Health Program (OPHP) can be placed on the Board's website. Dr. Schottenstein commented that the OPHP has many resources to help physicians with these issues.

Thereupon, at 1:55 p.m., the April 13, 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 April 13, 2017, as approved on May 10, 2017.



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Amol Sooin, M.D., President



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Kim G. Rothermel, M.D., Secretary

(SEAL)

