



**State Medical Board of Ohio Meeting Minutes  
November 13, 2019**

Michael Schottenstein, M.D., President, called the meeting to order at 9:57 am in the Administrative Hearing Room, 3rd floor of the Rhodes Office Tower, 30 East Broad Street, Columbus, Ohio 43215 with the following members present: Richard Edgin, M.D., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael Gonidakis, Esq.; Amol Soin, M.D.; Mark A. Bechtel, M.D.; Betty Montgomery; Sherry Johnson, D.O.; Harish Kakarala, M.D.; and Jonathan Feibel, M.D.

**MINUTES REVIEW**

Motion to approve the minutes of the October 16, 2019 Board meeting, as drafted:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

**REPORTS AND RECOMMENDATIONS**

Dr. Schottenstein asked the Board to consider the Reports and Recommendations appearing on the agenda. He asked if each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in the matters of: Thomas Bernard Edel, M.D.; and John Zaino, M.D. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

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Dr. Schottenstein further asked if each member of the Board understands that the Board's 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 or Permanent Denial. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

Dr. Schottenstein further asked if each member of the Board understands that in each matter eligible for a fine, the Board's fining guidelines allow for imposition of the range of civil penalties, from no fine to the statutory maximum amount of \$20,000. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

Dr. Schottenstein stated 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 disciplinary matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member. In addition, Dr. Bechtel served as Secretary and/or Supervising member in each of the two matters.

### **Thomas Bernard Edel, M.D.**

Dr. Schottenstein directed the Board's attention to the matter of Thomas Bernard Edel, M.D. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

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

Dr. Edel was represented by his attorney, Eric Plinke.

Mr. Plinke stated that he has filed written objections and he will reserve the time to address the Board for Dr. Edel.

Dr. Edel stated that he is a cardiac electrophysiologist, cardiologist, and internist at the Cleveland Clinic and he is a highly trained, ethical physician. Dr. Edel stated that he has practiced passionately and he always puts patients first even when they were not his patients. Dr. Edel stated that he instilled a no-excuses accountability

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into everyone he worked with at all levels, having spent more than 12 years on hospital committees enforcing accountability. Dr. Edel stated that he hadn't expected to be here before the Board under the threat of disciplinary action for doing the right thing at the right time for the right reason, and he is still waiting for someone on the Board to do the same. Dr. Edel opined that this entire situation is outrageous and that he does not say that lightly. Dr. Edel stated that he is safe and capable to practice medicine and he wants to practice, yet the result of the Proposed Order is that he will likely never practice again. Dr. Edel opined that the Proposed Order is a disservice and does not protect anyone.

Dr. Edel continued that he is a brain cancer survivor and his oncologist calls his 13.5 years of survival "uncharted waters." Dr. Edel has a chronic disability, namely a mild and well-controlled partial simple seizure disorder that is a result of his cancer treatment. Dr. Edel commented that his seizure condition is a disability because it is often subject to prejudice and ignorance, which is the case today. Dr. Edel stated that he has had two episodes of hand, arm, and face numbness over the last 5.5 years, which is about once every 1,000 days. Dr. Edel added that he has never suffered a significant adverse consequence during those 15-minute episodes. Despite this, the Proposed Order suggests that Dr. Edel should refrain from the practice of all his specialties, even those that are non-invasive, and should entirely give up the practice of medicine even though these are low-risk events. Dr. Edel called this situation ridiculous and stated that this came about because he was originally greeted by the Board's attorney with threats, intimidation, and hostility, and Dr. Edel filed a good-faith complaint with the attorney's supervisor. Dr. Edel stated that since that time, he has been a victim of the attorney's retaliation and the Board has turned a blind eye. Dr. Edel stated that this is why he was cited rather than being offered placement in a confidential monitoring program.

Dr. Edel stated that the State's expert witness, Joseph P. Hanna, M.D., is a vascular neurologist and not a qualified neuro-oncologist. Dr. Edel noted that when asked about the discrepancies between his own conclusions and those of a more qualified specialist, Dr. Hanna simply said, "Well, I disagree." Dr. Edel further stated that Dr. Hanna's testimony contradicted his own consultation note and that Dr. Hanna admitted to being uninformed about the invasive procedures about which he was recommending restrictions. Dr. Edel stated that even Dr. Hanna could find no reason why Dr. Edel should be limited in his non-invasive specialties.

Dr. Edel stated that the arbitrary nature of this Board's enforcement machinery to select one portion of a physician's practice and project an uninformed guess as to the risks it may pose to patients is absurd and unlawful. Dr. Edel stated that the Board must show a direct threat, as defined by the Supreme Court and federal regulations, and it has failed to do that. Dr. Edel asked if a gastroenterologist with 34 years of experience who decides he no longer wants to do endoscopic retrograde cholangiopancreatographies (ERCP) or treat sclerose esophageal varices emergently should be considered impaired or be required to take an examination under 4731.22(B)(2), Ohio Revised Code. Dr. Edel further asked if an orthopedic surgeon who has a 15-minute episode of atrial fibrillation that could pose a future risk to him of stroke or transient ischemic attack (TIA) should have an impairment investigation. Dr. Edel stated that the list of potential impairments that could fall under this precedent are unlimited and include migraine headaches, diabetic hypoglycemia, complicated pregnancies, and breast cancer occurrences.

Dr. Edel opined that the personal character attack on him, the unsubstantiated exaggerations of his disability to preclude all his medical specialties, and the intention to export this prejudice to numerous other organizations via this Proposed Order constitute a violation of his rights under the Americans with Disabilities Act (ADA) and Ohio disability laws. Dr. Edel stated that the Board must decide if it wants to accept the Proposed Order and be on the wrong side of history, or propose some other reasonable and appropriate accommodation for the circumstances. Dr. Edel stated that this case is more than sad, it is shameful.

Dr. Schottenstein asked if the Assistant Attorney General wished to respond. Ms. Pelphey stated that she wished to respond.

Ms. Pelphey stated that contrary to how the respondent has reacted to the R&R and in his presentation this morning, there is no grand conspiracy against Dr. Edel. Ms. Pelphey stated that at Dr. Edel's hearing she had attempted to set a tone in her opening statement. Ms. Pelphey quoted herself from the hearing transcript:

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“We’re not here to bicker about anything other than just to go through the medical history and to determine what is best for both the public and for Dr. Edel in terms of his practicing.” Ms. Pelphrey stated that she had made this statement because she had wanted to diffuse what could have been a very emotional and confrontational hearing. Ms. Pelphrey stated that her job is to present facts and evidence in the hearing in such a way that the Board gets all the information it needs. Consequently, the Board does not have any of the things that are alleged facts or are outside the record. Ms. Pelphrey stated that there are a multitude of discussions that take place outside of hearings and depositions and those conversations are part of the attorneys’ jobs, the Secretary and Supervising Member’s jobs, and the staff members’ jobs. Ms. Pelphrey remarked that each of these individuals, including herself, are here to protect the public and so what is best for the practice of medicine.

Ms. Pelphrey continued that Dr. Edel was certified in cardiac electrophysiology in 1992. Ms. Pelphrey stated that it is evident in the record that Dr. Edel loves and has a passion for practicing medicine, observing that he became emotional while discussing one of his patients. Ms. Pelphrey stated that what is at issue in this case is whether Dr. Edel is capable of safely practicing cardiac electrophysiology. Ms. Pelphrey noted that the State’s expert, Joseph P. Hanna, M.D., has opined that Dr. Edel is capable of practicing general cardiology without restriction. However, Dr. Hanna recommended that Dr. Edel not perform any procedures, including cardiac electrophysiology. Ms. Pelphrey stated that Dr. Hanna is basically saying that Dr. Edel should not be doing invasive procedures, a statement that everyone, including Dr. Edel, seems to agree with; Dr. Edel had agreed with the assertion that, at this time, he should not perform invasive procedures. Ms. Pelphrey had also asked if Dr. Edel could work with the Board so that he could practice medicine, and Dr. Edel answered affirmatively.

Ms. Pelphrey stated that that main issue at this point is the confidential monitoring program. Ms. Pelphrey stated that the Board cannot go back in time and put Dr. Edel into the confidential monitoring program. Ms. Pelphrey stated that the Board may draw any inferences it wishes as to why Dr. Edel was not placed into the program, but the fact is that the decision was made to not put him in the program and the matter is now before the Board.

Ms. Pelphrey stated that dismissal of Dr. Edel’s case cannot be an option, especially because there are agreed-upon conditions on specific restrictions. Therefore, if the case is dismissed then the Board would be left with nothing, which is not the safest thing for the public. Ms. Pelphrey stated that the Board could choose to take No Further Action, but she did not recommend that course either. Ms. Pelphrey asked the Board to adopt the Hearing Examiner’s Findings of Fact, Conclusions of Law, and the Proposed Order with the specific restriction.

Motion to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Edel:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala

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

Ms. Montgomery did not understand why it has taken five years for this case to reach the Board. Ms. Montgomery commented that it is not fair for an investigation to keep a respondent on the hook for five years, and she understands Dr. Edel’s ire at the situation. Ms. Montgomery stated that as a non-physician, she found Dr. Edel’s argument to be persuasive, but she would like to hear the thoughts of the physician members of the Board.

Dr. Edgin asked if there was a reason that Dr. Edel was not offered an opportunity to enter the Board’s confidential monitoring program. Dr. Schottenstein stated that the voting members of the Board are not privy to that information, but that it could have been any of a variety of reasons. Dr. Schottenstein noted that the monitoring program was not technically in effect when Dr. Edel was cited. Ms. Montgomery felt that Dr. Edel’s

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question about the program is legitimate. Ms. Montgomery opined that when this case is resolved, the Board should do a case study on why Dr. Edel could not enter the program.

Dr. Soin, noting Ms. Pelphrey's comments about backdoor discussions and information not available to the Board, stated that he would not be taking those comments into consideration. Dr. Soin was uncertain if the comments were designed to manipulate him into making a certain decision, nor was he certain of the appropriateness of the comments in this setting.

Dr. Schottenstein stated that he had been moved by Dr. Edel's story, observing that he has been through a terrible ordeal navigating his own health issues as well as those of people close to him. Dr. Schottenstein regretted that Dr. Edel's dealings with the Board have been stressful. Dr. Schottenstein hoped that he could be half as brave if he were in a similar situation. Dr. Schottenstein also commended Dr. Edel's veracity and noted that since his seizure activities are experienced subjectively, the reason the Board knows about it is because Dr. Edel reported it. Dr. Schottenstein stated that Dr. Edel has only done the right thing throughout this ordeal.

Dr. Schottenstein wished to address several points brought up by defense counsel. First, Dr. Schottenstein did not find it compelling that Dr. Hanna was not given the standard by which he was to make a determination regarding a possible violation of 4731.22(B)(19), Ohio Revised Code. Dr. Schottenstein stated that Dr. Hanna had been clear in his testimony of being aware that he was asked to perform a physical examination of Dr. Edel as part of a qualification to practice requirement. Dr. Hanna was also clear that any seizure activity due to Dr. Edel's physical illness during an electrophysiology procedure could jeopardize the care of the patient. Dr. Schottenstein stated that even though Dr. Hanna did not use the language of 4731.22(B)(19), he was clear as to his role.

Dr. Schottenstein noted concerns about why Dr. Edel's seizure disorder is concerning since it is a rare phenomenon. Dr. Schottenstein stated that although it is rare, it is extant and there could conceivably be seizure activity during the procedure that could jeopardize the health and life of a patient.

Dr. Schottenstein appreciated the distinction defense counsel makes when he points out the Section 4731.22(B)(19) comes into play if a physician is unable to practice medicine, which is contradictory to the State's expert's opinion that Dr. Edel is capable of practicing general cardiology. However, Dr. Schottenstein felt that the Board is applying Section 4731.22(B)(19) in a way that favors Dr. Edel because the Board is implying that impairment and inability to practice in a certain area of medicine does not disqualify one from the practice of medicine in general. Dr. Schottenstein stated that to take defense counsel's argument to its logical conclusion where the Board could not distinguish one area of medicine from another, the outcome would necessarily find that the doctor is impaired from practicing medicine in general. Dr. Schottenstein did not believe that anyone wanted that outcome.

Regarding Dr. Edel's belief that the specialists on the Medical Board have a limited understanding of the nature of his work and do not understand that Dr. Edel has a type of seizure disorder that would allow him to practice invasive procedures that are not time sensitive, Dr. Schottenstein stated that it is asking a lot of the Board, which is charged with protecting the public, to essentially take Dr. Edel's word for it that there are invasive procedures that he is capable of performing. Dr. Schottenstein stated that this is particularly true when experts that have been evaluating Dr. Edel have indicated this is not the case. Dr. Schottenstein further noted that Dr. Edel does not have objectivity in this situation. Dr. Schottenstein stated that it is more incumbent upon Dr. Edel to make this case, especially in the context of neurologists who are unwavering in their concerns. Dr. Schottenstein stated that during his testimony, Dr. Hanna was asked, "Do you have to have an in-depth knowledge of that particular procedure to say someone shouldn't be doing something if their arm doesn't work correctly?" Dr. Hanna answered, "No, I do not."

Dr. Schottenstein stated that he is sympathetic to Dr. Edel's frustration expressed during his testimony in which he stated that he did not feel he could get the specialists who assessed him or the Board members to understand that there is a difference between a somatosensory seizure and a motor seizure. However, Dr.

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Hanna was clear to address this point in his testimony and indicated that it is a distinction without a difference because a sensory impairment of a limb means that one cannot carry out movement in a controlled way since feedback is necessary from a sensory standpoint for one's motor functions to occur in a coordinated fashion.

Dr. Schottenstein wished this case had proceeded under the confidential non-disciplinary monitoring program. However, it did not and now the Board has to see the case through. Based on his experiences with other cases, Dr. Schottenstein stated that there may have been a variety of different reasons why the Board moved in the direction of a formal hearing rather than the confidential program.

Dr. Schottenstein stated that, regrettably, he is not comfortable with dismissing this case as the defense counsel requested. Dr. Schottenstein opined that the Proposed Order is fair and it gives Dr. Edel the option to remove the limitations if certain criteria are met. The Proposed Order also allows Dr. Edel to practice general cardiology in the meantime.

Dr. Feibel stated that he agrees with most of Dr. Schottenstein's comments. Dr. Feibel stated that as a new member of the Board, he has not been through all the issues that have come up in the past with regard to physical impairment leading to disciplinary action. Dr. Feibel stated that this is a sad situation for Dr. Edel and opined that there should be a way to have a non-disciplinary restriction from practice. Dr. Feibel stated that it is problematic for the Board to be disciplining people for their physical impairment. Unfortunately, Dr. Feibel did not feel that the Board had many options because of what the law states.

Dr. Feibel continued that it pains him to impose discipline in this matter because it discourages practitioners from being honest as Dr. Edel has been. Dr. Feibel hoped that in the future the Board can find a way to refrain from ruining someone's practice over this type of issue. Dr. Feibel noted that insurance companies will often drop practitioners who have been sanctioned by a board, and he did not think that is what the Board wants in this case. Dr. Feibel hoped that the Board can encourage the legislature to provide for a different method to address these situations.

Mr. Gonidakis agreed with Dr. Feibel's comments. Mr. Gonidakis asked if there was a scientific or medical reason for providing a five-year time period after which Dr. Edel can petition the Board for the removal of the restrictions. Dr. Schottenstein replied that after five years, one is essentially considered to have the same risk as the general population.

Dr. Schottenstein echoed Dr. Feibel's comments and opined that everyone supports a non-disciplinary track for situations of this nature. Dr. Schottenstein stated that although it is regrettable, the Board's enforcement attorneys indicate that the Board needs a disciplinary device for those practitioners who either cannot or will not do the right thing in terms of limiting their practice when they are not capable of practicing.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

The motion carried.

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## John Zaino, M.D.

Dr. Schottenstein directed the Board's attention to the matter of John Zaino, M.D. Objections have been filed and were previously distributed to Board members. Ms. Lee was the Hearing Examiner.

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

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

Ms. Collis reminded the Board that it is not bound by its disciplinary guidelines and there is no minimum discipline that the Board must impose. Ms. Collis stated that there have been many instances in which the Board has imposed a shorter suspension than one year for this type of violation, even with facts that are much more aggravating than in this case. Ms. Collis urged the Board to impose a short suspension that will allow Dr. Zaino to return to practice for the Veteran's Administration (VA). Ms. Collis noted that the Board has received exceptionally positive letters from Dr. Zaino's colleagues at both the VA and his prior practice.

Ms. Collis continued that this case involves an adult consensual relationship and there is no evidence that the patient was manipulated or harmed. Ms. Collis stated that the few medical treatments that Dr. Zaino provided to the patient were medically necessary. The evidence is clear that the patient welcomed and encouraged the relationship. However, Ms. Collis acknowledged that since Dr. Zaino provided medical treatment to this patient, the Board does have the authority to bring a disciplinary action.

Ms. Collis suggested that the one-year suspension provided for by the Proposed Order is excessive given Dr. Zaino's full cooperation with the Board and the facts of this case. Ms. Collis respectfully requested that the Board impose a 60-day suspension and that probation be in place only while Dr. Zaino completed the courses and submits the summary of the courses to the Board. Ms. Collis added that while she thanks the Hearing Examiner for including a 30-day winddown period before the suspension begins, she asked that any suspension the Board chooses to hand down begin immediately.

Dr. Zaino apologized to the Board for taking up its time with this case, stating that in more than 20 years of practice he never envisioned himself being called before the Board. Dr. Zaino stated that he takes full responsibility for his conduct. Dr. Zaino stated that while he now recognizes his error in engaging in a relationship with a patient, he simply did not see it that way at the time. The patient had been a patient of Generations Family Medicine where Dr. Zaino had worked with several other physicians. Dr. Zaino has since learned that, even though he was not the patient's primary physician, any patient of the practice is considered to be his patient and providing any treatment establishes a physician/patient relationship.

Dr. Zaino continued that over the years the patient and he became close friends and she would often drop by the office unannounced with food or gifts for Dr. Zaino or the staff. On occasion, Dr. Zaino and the patient would go to lunch together. Dr. Zaino also communicated with the patient by telephone. Dr. Zaino described the great majority of these communications as mundane and the topics included their families, children, and weekend plans. Dr. Zaino stated that he simply saw he and the patient as friends. Dr. Zaino stated that during that time his marriage was falling apart, he became separated from his wife, and he was lonely and fell into a deeper friendship with the patient. Dr. Zaino stated that he should have established clear boundaries with the patient and terminated the physician/patient relationship.

Dr. Zaino stated that he has taken this matter very seriously. Dr. Zaino left private practice in 2017 and has worked for the VA since that time. Dr. Zaino noted that the VA is well aware of this case and has kept him on the schedule throughout the investigation and hearing. Dr. Zaino stated that he is no longer married and he has sought counseling to help him better understand himself. Dr. Zaino has learned that he is a people pleaser and he does not want to say "no" or let others down. Through counseling, Dr. Zaino has learned the skills to set firm boundaries and avoid potential pitfalls in his reasoning and attentiveness to ensure the most

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appropriate decision-making. Dr. Zaino also completed a two-day course at Case Western Reserve University on professionalism and boundaries, and he has taken measures to apply what he has learned.

Dr. Zaino stated that he clearly understands that a physician/patient relationship is created when he provides medical treatment to a patient. Dr. Zaino stated that he has learned from his mistakes and he will never appear before this Board again. Dr. Zaino asked the Board to impose a short sanction that will allow him to return to clinical practice. Dr. Zaino stated that he is honored to be able to work at the VA and a short suspension will allow him to eventually return to work with our veterans.

Dr. Schottenstein asked if the Assistant Attorney General wished to respond. Ms. Pelphrey stated that she wished to respond.

Ms. Pelphrey observed that throughout the hearing transcript it was stated that Dr. Zaino takes responsibility for the relationship. Ms. Pelphrey stated that there is really no need to go any further than that fact. Dr. Zaino has acknowledged his relationship with a patient and it does not matter if he did not think she was a patient or if Dr. Zaino's brother, who is also a physician, had treated the patient more often than Dr. Zaino did. Ms. Pelphrey stated that Dr. Zaino's relationship with the patient was not fair.

Ms. Pelphrey stated that there is a power with a physician treating a friend and then having a relationship ensue. Although Dr. Zaino has undergone therapy to recognize the wrongs of his actions, Ms. Pelphrey stated that the Board must look at what happened at the time of the relationship. Ms. Pelphrey explained that the reason the text messages were presented at the hearing was for cross-examination purposes and to corroborate other statements. Ms. Pelphrey stated that the text messages reflect Dr. Zaino's thought processes at that time.

Ms. Pelphrey asked the Board to adopt the Report and Recommendation, including the indefinite suspension of at least one year.

Motion to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Zaino:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala

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

Dr. Schottenstein stated that because there is general agreement on the facts of this case, it comes down to a question of aggravating and mitigating circumstances. Dr. Zaino acknowledges that he rationalized and minimized his behavior, and he further acknowledges that it had been his responsibility to prevent sexual activity between himself and his patient.

Dr. Schottenstein stated that he struggles with the defense counsel's characterization of the sexual activity as consensual and occurring in the context of a relationship between two adults. Dr. Schottenstein stated that sexual activity between a physician and patient can never truly be consensual because of the imbalance of power that is inherent in the relationship. Dr. Schottenstein stated that a physician/patient relationship that is sexual in nature is inherently exploitative and it is impossible to have sexual relations between a physician and an ongoing patient that does not exploit the relationship. This is reason that such relationships are strictly prohibited.

Dr. Schottenstein continued that he does not consider it mitigating that Dr. Zaino and the patient had a social relationship in addition to the physician/patient relationship. Dr. Schottenstein believed that the physician/patient relationship supersedes all other relationships. Dr. Schottenstein added that it is also irrelevant that Dr. Zaino was not the patient's primary physician.

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Dr. Schottenstein appreciated the multiple mitigating circumstances in this case. Specifically, Dr. Zaino cooperated with the Board, acknowledged his error in judgment, attended boundaries courses, sought out counseling, and has no history of other disciplinary issues. However, Dr. Zaino did engage in activity that reflects bad judgment. Dr. Schottenstein stated that Dr. Zaino's behavior was negligent at best and reckless at worst. Dr. Schottenstein stated that if Dr. Zaino did not know better, he clearly should have. Dr. Schottenstein commented that this is by no means the worst sexual boundaries case that has come before the Board, but he also did not want to minimize it.

Dr. Schottenstein stated that there is a progress note in the exhibits dated May 12, 2017, when the patient was seen by Dr. Zaino's brother, Dr. Robert Zaino. Dr. Schottenstein quoted the patient's statements from the progress note:

I just don't want to live. I want to go away. I want to be [with] [name of deceased husband] he is the only one who understands me. I'm too big a coward to commit suicide.

Dr. Robert Zaino then made his own observations:

She feels she is not suicidal. She does not want to do anything.

Dr. Schottenstein also noted additional comments a few lines down:

Therapist recommend that [patient] talk to John Zaino. [Patient] does not trust therapist so did not identify John. [Patient] wants John to be her friend as he was before. She wants John to be her friend.

Dr. Schottenstein found this progress note to be very revealing. First, it shows that the patient was distraught during the appointment and it was only her supposed cowardice that kept her from engaging in suicidal behavior. The patient was still grieving the loss of her husband at that time, several years after his passing. Dr. Schottenstein noted that the patient's friendship with Dr. Zaino was very meaningful to her and she would like to have rekindled it. Dr. Schottenstein further noted that the patient shielded Dr. Zaino's identity from her therapist because she wanted to protect the doctor.

Dr. Schottenstein stated that Dr. Zaino testified that there was a time when he had a good friendship with the patient and the sexual activity occurred in that context. However, toward the end of the relationship Dr. Zaino was blocking the patient's calls and had completely cut off contact with her. The evidence shows that the patient did not walk away from this relationship unscathed and she suffered due to the rejection she experienced and the loss of the friendship. Dr. Schottenstein stated that, for him, this is an aggravating circumstance because the patient was a victim in this case and she deserves a measure of justice.

Dr. Schottenstein stated that he supports the Proposed Order, but he was also open to suggestions from Board members who may have different thoughts about the minimum length of the suspension. Dr. Schottenstein stated that, regrettably, he cannot support the defense counsel's recommendation of a minimum 60-day suspension because he felt that was inadequate under these circumstances.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Abstain
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y

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Ms. Montgomery	Y
Dr. Feibel	Abstain
Dr. Bechtel	Abstain

The motion carried.

## **PROPOSED FINDINGS AND PROPOSED ORDERS**

Dr. Schottenstein stated that in the following matter, the Board issued a Notice of Opportunity for Hearing. No timely request for hearing was received. The matter was reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and it is now before the Board for final disposition. 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 this matter, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

### **Ronald Grusd, M.D.**

Motion to find that the allegations as set forth in the May 8, 2019 Notice of Opportunity for Hearing in the matter of Dr. Grusd have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Kakarala
2 <sup>nd</sup>	Dr. Johnson

Dr. Schottenstein stated that he will now entertain discussion in the matter of Dr. Grusd. No Board member offered discussion in this matter.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## **EXECUTIVE SESSION I**

Motion 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:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Y

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Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

The Board went into Executive Session at 10:36 a.m. and returned to public session at 10:52 a.m.

## **SETTLEMENT AGREEMENTS**

### **Bradford J. Murphy, D.O.**

Motion to ratify the proposed Permanent Surrender with Bradford J. Murphy, D.O.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

### **Terry D. Madsen, M.D.**

Motion to ratify the proposed Permanent Surrender with Terry D. Madsen, M.D.:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y

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Dr. Bechtel	Y
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The motion carried.

**Crystal L. Contreras**

Motion to ratify the proposed Permanent Withdrawal with Crystal L. Contreras:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

**Luke Simmons, M.D.**

Motion to ratify the proposed Step I Consent Agreement with Luke Simmons, M.D.:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

**Robert D. Rasmussen, D.O.**

Motion to ratify the proposed Consent Agreement with Robert D. Rasmussen, D.O.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Soin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y

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Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

The motion carried.

**Robert James Brauer, D.O.**

Motion to ratify the proposed Consent Agreement with Robert James Brauer, D.O.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

The motion carried.

**Franklin Bruce Price, M.D.**

Motion to ratify the proposed Voluntary Permanent Retirement with Franklin Bruce Price, M.D.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

The motion carried.

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## Chris Bjarke, M.D.

Motion to ratify the proposed Consent Agreement with Chris Bjarke, M.D.:

Motion	Dr. Kakarala
2 <sup>nd</sup>	Dr. Soin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## Jon Patrick Ryan, D.O.

Motion to ratify the proposed Step I Consent Agreement with Jon Patrick Ryan, D.O.:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## **NOTICES OF OPPORTUNITY FOR HEARING, ORDERS OF SUMMARY SUSPENSION, ORDERS OF IMMEDIATE SUSPENSION, AND ORDERS OF AUTOMATIC SUSPENSION**

Ms. Marshall presented the following Citations to the Board for consideration:

1. Mohamad Moutaz Almawaldi, M.D.: Based on action by the California Medical Board and the Virginia Department of Health professions, related to a misdemeanor conviction in California for sexual battery.
2. Shivangi Amin, M.D.: Based on action taken by the Maryland State Board of Physicians related to prescribing.
3. Alan Arnold Godofsky, M.D.: Based on a felony conviction related to practice. This Notice is not an immediate suspension because the physician's Ohio license has lapsed.

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4. Curt Eliot Liebman, M.D.: Based on action taken by the Kentucky Board of Medical Licensure and the California Medical Board, and a false statement on his application for renewal of his Ohio medical license. Ms. Marshall noted that since Kentucky does not report convictions to the Ohio Board, the Ohio Board did not learn of the physician’s conviction until the time of his license renewal.
5. Joseph J. Ring, D.O.: Based on action by the Arizona Board of Osteopathic Examiners in Medicine and Surgery regarding certifying patients for medical marijuana.
6. Rakesh Sharma, M.D.: Based on a felony conviction related to practice.

Motion to approve and issue proposed Citations #1, #3, and #6:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

The motion carried.

Motion to approve and issue proposed Citations #2, #4, and #5:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

### **RULES & POLICIES**

#### **2020 Advisory Council Schedule**

Motion to approve the 2020 Advisory Council Schedule as set forth in the October 31, 2019 memorandum from Ms. Anderson:

Motion	Dr. Saferin
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2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

### **2021 Proposed Board Meeting Dates**

Motion to adopt the proposed 2021 meeting dates for the State Medical Board of Ohio, as listed in the Agenda Materials:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

### **Rules for Adoption**

Ms. Anderson presented the dietetics rules and the concussion rule for the Board's consideration. Ms. Anderson noted that there was testimony before the Joint Committee on Agency Rule Review (JCARR) from a representative of the Ohio Association of Nutrition and Dietetics (OAND), who was opposed to removing the provision for an OAND liaison. The Board had an opportunity to respond to the testimony. JCARR ultimately approve the removal of the provision. Ms. Anderson had informed JCARR that the Board does not expect its relationship with OAND to be harmed and that the Board will continue to have conversations with individuals from OAND.

Motion to adopt and amend and to rescind the rules set forth in the October 31, 2019 memorandum from Ms. Anderson, with an effective date of November 30, 2019:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Y
Dr. Saferin	Y

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Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## **OPERATIONS REPORT**

Dr. Schottenstein stated that the Board currently has ten vacant positions. Three of those positions have been posed and the staff is currently conducting interviews for two of those vacant positions.

Dr. Schottenstein stated that the time to license applicants was slightly longer in October because there were five weeks between the September and October Board meetings. As of October 17, 2019, new regulations became effective that allow for designated authority to approve applicants without a vote of the Board. Consequently, qualified applicants are now receiving licenses in as little as one day. The Board should see this reflected in the December licensure statistics.

## **REPORTS BY ASSIGNED COMMITTEES**

### **Physician Assistant Policy Committee Report**

Ms. Anderson stated that the Physician Assistant Policy Committee (PAPC) last met on October 18, 2019, with Dr. Edgin present as the Board representative. The PAPC reviewed the controlled substance rules and provided comments related to Rule 4731-11-04.1. Comments from the Ohio Association of Physician Assistants regarding the concussion rule were reviewed, but the PAPC did not recommend any changes to that rule.

Motion to approve the minutes of the October 18, 2019 Physician Assistant Policy Committee:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Soin
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

**Respiratory Care Advisory Council Report**

Ms. Anderson stated that due to some members being unable to attend, the Respiratory Care Advisory Council was unable to meet this week due to lack of a quorum. The Council will meet next in March with the same agenda items that were to be discussed this week. Ms. Anderson noted that Mr. LaCross will work in having the legislature approve language to allow the Council to meet via telephone.

**Compliance Committee Report**

Dr. Schottenstein stated that the Compliance Committee last met on October 16, 2019. Because Dr. Soin and Dr. Kakarala had been unable to attend the meeting, Dr. Edgin and Dr. Feibel were appointed as temporary members of the Committee to ensure a quorum.

The Compliance Committee approved the Compliance Staff's Reports of conferences held September 9 and 12, 2019, and also approved the draft minutes of the Committee's September 11, 2019 meeting. There were no initial probationary appearances before the Committee.

**Strauss Committee Report**

Dr. Schottenstein stated that the Strauss Committee met this morning at 7:30 a.m. Ms. Anderson reviewed the November 1 update that was presented to the Governor's working group. The Committee then reviewed the project plan. Ms. Anderson presented the Committee with a copy of the updated Sexual Misconduct Review Checklist and a draft of the Failure to Report policy.

Ms. Pollock and Mr. Nealis then presented a webpage that the Board can use to publicly share progress on the working group's suggestions.

Dr. Schottenstein stated that Board members and staff will continue to work on the recommendations and respond to additional requests from the working group. The Committee will provide another update at the next Board meeting.

**Finance Committee Report**

**Fiscal Update**

Dr. Schottenstein stated that revenue for September 2019 was \$1,003,633. Net fiscal revenue for September 2019 was \$229,265 and the cash balance was \$4,974,534. Dr. Schottenstein commented that these are good numbers for the Board and is roughly the expected level of revenue. The Board's expenditures were down by 5.2% compared to one year ago. Payroll is down due to vacancies, but the Board is in the process of filling those positions. The Board is now through one-quarter of the fiscal year and has 76% of its budget remaining, so it is in good shape in this regard. The Board received no fine payments in the past month.

**Communications Update**

Dr. Schottenstein stated that the Communications team has launched an omni-platform campaign to announce the Board's cultural competency video. The announcement was made through email, a Board magazine article, tweets, letters, flash drives delivered to Ohio medical schools, and hand-delivered letters and flash drives to several Ohio legislators. The cultural competency video is now the Board's most viewed video on YouTube with over 4,000 views.

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## Licensure Committee Report

### Licensure Application Reviews

#### Naomi Caldwell, M.T.

Dr. Saferin stated that Ms. Caldwell has applied for a massage therapy license in Ohio. Ms. Caldwell has not practiced in the last two years. Ms. Caldwell passed the MBLEx on October 16, 2019. The Committee has recommended approving Ms. Caldwell's application as presented.

Motion to approve Ms. Caldwell's application for an Ohio license as presented:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

#### Leah Penrice, M.T.

Dr. Saferin stated that Ms. Penrice has applied for restoration of her Ohio massage therapy license. Ms. Penrice has not practiced massage therapy in the last two years. The Committee has recommended approval of Ms. Penrice's application, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEx).

Motion to approve Ms. Penrice's application for restoration of her Ohio license, contingent on her passing of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing:

Motion	Dr. Edgin
2 <sup>nd</sup>	Dr. Soin
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

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## Brian Rubenstein, M.T.

Dr. Saferin stated that Mr. Rubenstein has applied for restoration of his Ohio massage therapy license. Mr. Rubenstein has not practiced within the last two years. The Committee has recommended approving Mr. Rubenstein's application, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEx).

Motion to approve Mr. Rubenstein's application for restoration of his Ohio license, contingent on his passing of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing:

Motion	Dr. Edgin
2 <sup>nd</sup>	Dr. Soin
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## Lisa Turkovich, M.T.

Dr. Saferin stated that Ms. Turkovich has applied for restoration of her Ohio massage therapy license. Ms. Turkovich has not practiced within the last two years. The Committee has recommending approving Ms. Turkovich's application, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEx).

Motion to approve Ms. Turkovich's application for restoration of her Ohio license, contingent on her passing of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing:

Motion	Dr. Rothermel
2 <sup>nd</sup>	Dr. Soin
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

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## Licensure Equivalency

Dr. Saferin stated that the Licensure staff has proposed that the Board approve protocols to address the fitness to practice of physician and non-physician applicants who have not been engaged in the practice of their profession for more than two years. The Committee has recommended approval of the No Recent Practice protocols for physician and non-physician practitioners.

Motion to approve the proposed amendments to Rule 4731-6-14 for initial circulation to interested parties:

Motion	XXXXXXXXXX
2 <sup>nd</sup>	XXXXXXXXXX
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## Legislative Amendments

Motion to approve Board staff to pursue legislative amendments to Section 4731.19, Ohio Revised Code:

Motion	Ms. Montgomery
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

## Policy Committee Report

Dr. Soin stated that this morning the Committee entertained a rule review update, and Mr. LaCross provided a robust legislative update.

## Controlled Substance Prescribing Rules

Based on input from the Physician Assistant Policy Committee (PAPC), Ms. Anderson recommended an amendment to Rule 4731-11-04.1 to remove references to the physician assistant formulary.

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Motion to approve an amendment to remove references to the physician assistant formulary from 4731-11-04.1, Ohio Administrative Code, and to file with the Common Sense Initiative:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

### **PROBATIONARY REQUESTS**

Motion to approve the Secretary and Supervising Member's recommendations for the following probationary requests:

- a) Malak S. Adib, M.D.: Request for release from the terms of the November 8, 2017 Consent Agreement.
- b) Michael A. Alexander, D.O.: Request for approval of the ethics course created by Donna Homenko, Ph.D., to fulfill the professional ethics course requirement.
- c) Michael T. Bangert, M.D.: Request for approval of Matthew D. Warrick, M.D. to serve as the monitoring physician.
- d) Steven F. Brezny, M.D.: Request for release from the terms of the May 14, 2014 Amended Board Order.
- e) Tina Davis, M.T.: Request for release from the terms of the November 14, 2018 Consent Agreement.
- f) Soaman Dizechi, D.O.: Request for approval of the previously completed course *PBI Medical Ethics and Professionalism: An Ethics Protection, Violation Prevention Course*, offered by PBI and the University of California, Irvine School of Medicine, to fulfill the professional ethic course requirement; and release from the terms of the September 11, 2019 Consent Agreement.
- g) Ryan L. Gerritsen, M.D.: Request for approval of the drug testing and recovery meeting monitoring conducted by Physicians' Health Program, the Foundation of the Pennsylvania Medical Society.
- h) Matthew C. Grothaus, M.D.: Request for release from the terms of the September 11, 2019 Consent Agreement.
- i) Brenden P. Jenks, M.D.: Request for approval of Jes James Sellers, Ph.D. to serve as the treating psychologist.
- j) Laura A. Ringenbach, R.C.P.: Request for approval of the treatment plan from Doctor Stroom.
- k) Christopher R. White, M.D.: Request for release from the terms of the November 8, 2017 Step II Consent Agreement.

Motion	Dr. Edgin
2 <sup>nd</sup>	Dr. Soin

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Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

The motion carried.

### **TREATMENT PROVIDER APPLICATIONS**

Motion to approve the Application for Certificate of Good Standing as a Treatment Provider for Advanced Recovery Systems:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

Motion to approve the Application for Certificate of Good Standing as a One-Bite treatment provider for impaired practitioners and a Continuing Care provider for impaired practitioners for Shepherd Hill:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

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## **EXECUTIVE SESSION II**

Motion to go into Executive Session for the purpose of preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official:

Motion	Dr. Edgin
2 <sup>nd</sup>	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

The Board went into Executive Session at 11:10 a.m. and returned to public session at 11:15 a.m.

## **SELECTION OF EXECUTIVE DIRECTOR**

Motion to hire Stephanie Loucka as Executive Director effective November 14, 2019:

Motion	Dr. Rothermel
2 <sup>nd</sup>	Dr. Edgin
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

Motion that Stephanie Loucka be named Executive Director, effective November 14, 2019, at the rate of \$64.90 per hour; and to authorize the Executive Director to act as the appointing authority as follows:

- For day-to-day operations of the agency, including but not limited to hiring, firing, accepting resignations, imposing employee disciplinary action, and approving or denying leave requests; and for signing any fiscal or administrative documents.

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- Authorize the Executive Director to contract for services as necessary to carry out the Board’s responsibilities, subject to Board policy on obtaining approvals from the Finance Committee and/or the Full Board.
- Designate the Executive Director as the custodian of the Board’s records and to grant the Executive Director the authority to delegate certification of documents to other staff members as the need arises.
- Grant the Executive Director the authority to designate other staff members to sign personnel, fiscal, and administrative documents as the need arises:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

### **ADJOURN**

Motion to adjourn:

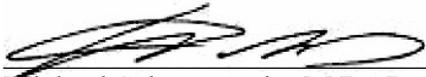
Motion	Mr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Edgin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

The motion carried.

The meeting adjourned at 11:19 a.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on November 13, 2019, as approved on December 11, 2019.

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Michael Schottenstein, M.D., President



Kim G. Rothermel, M.D., Secretary

(SEAL)





**STRAUSS SEXUAL MISCONDUCT CASE REVIEW COMMITTEE MEETING  
November 13, 2019 - Room 345**

<b>Committee Members Present:</b> Michael Schottenstein, MD, Chair Betty Montgomery, JD Michael Gonidakis, JD Mark Bechtel, MD (temporary appointment)	<b>Staff Present:</b> Kimberly Anderson, Interim Director Stuart Nealis, Project Manager Tessie Pollock, Chief Communications Officer
<b>Other Board Members Present:</b> Jonathan Feibel, MD	

Dr. Schottenstein called the meeting to order at 7:33 a.m.

**MINUTES REVIEW**

**Mr. Gonidakis moved to approve the draft minutes of October 16, 2019. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.**

**WORKING GROUP RECOMMENDATIONS PROGRESS REPORT**

Ms. Anderson reviewed the November 1 update that was presented to the governor's working group. She then proceeded with a review of the progress regarding the project plan.

Ms. Montgomery asked for an update on the timeline for the lookback through previous sexual misconduct cases that had been closed. Ms. Anderson stated that the board is in process of pulling the cases from off-site storage. The board has contracted with a company to scan the paper files into electronic files. There is also a meeting scheduled with the prosecuting attorneys association to discuss ways to recruit persecutors to aide in the reviews. The board has at least three contracts with victim coordinators and an additional three were awaiting signatures.

Mr. Gonidakis and Ms. Montgomery offered to provide contact information for attorneys would could help in the search for additional reviewers.

Ms. Pollock and Mr. Nealis then presented a webpage that the board can use to publicly share progress on the working group's suggestions.

Ms. Anderson stated that board members and staff will continue to work on the recommendations respond to additional requests from the working group and we will provide you with another update at the next board meeting.

**ADJOURN**

**Mr. Gonidakis moved to adjourn meeting. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.**

The meeting adjourned at 8:16 a.m.

Michael Schottenstein, MD  
Chair

tp



**LICENSURE COMMITTEE MEETING  
November 13, 2019 - Room 336**

<b>Committee Members Present:</b> Bruce R. Saferin, D.P.M, Chair Kim G. Rothermel, M.D. Richard Edgin, M.D. Jonathan Feibel, M.D.	<b>Staff Present:</b> Joseph Turek, Deputy Director of Licensure & Licensee Services Mitchell Alderson, Chief of Licensure Colin Depew, Assistant Attorney Jerica Stewart, Communication & Outreach Administrator
<b>Other Board Members Present:</b>	

Dr. Saferin called the meeting to order at 8:02 am.

**MINUTES REVIEW**

**Dr. Edgin moved to approve the draft minutes of October 16, 2019. Dr. Rothermel seconded the motion. All members voted aye. The motion carried.**

**LICENSURE APPLICATION REVIEWS**

Naomi Caldwell

Naomi Caldwell has applied for a massage therapy license in Ohio. She has not practiced within the last two years. Ms. Caldwell passed the MBLEx on October 16, 2019.

**Dr. Edgin moved to approve Ms. Caldwell's application for an Ohio license as presented. Dr. Rothermel seconded the motion. All in favor. The motion carried.**

Leah Q. Penrice

Leah Penrice has applied to restore her Ohio massage therapy license. She has not practiced within the last two years.

**Dr. Rothermel moved to approve Ms. Penrice's application for restoration of her Ohio license contingent on her passing of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing. Dr. Edgin seconded the motion. All in favor. The motion carried.**

Brian Rubenstein

Brian Rubenstein has applied to restore his Ohio massage therapy license. He has not practiced within the last two years.

**Dr. Edgin moved to approve Mr. Rubenstein's application for restoration of his Ohio license contingent on his passing of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing. Dr. Feibel seconded the motion. All in favor. The motion carried.**

Lisa M. Turkovich

Lisa M. Turkovich has applied to restore her Ohio massage therapy license. She has not practiced within the last two years.

**Dr. Edgin moved to approve Ms. Turkovich's application for restoration of her Ohio license contingent on her passing of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing. Dr. Feibel seconded. All in favor. The motion carried.**

## **OTHER ITEMS**

Licensure staff proposes that the board approve protocols to address the fitness to practice of physician and non-physician applicants who have not been engaged in the practice of their profession for more than two years.

**Dr. Rothermel moved to approve the 'No Recent Practice' protocols for physician and non-physician practitioners. Dr. Edgin seconded the motion. All in favor. Motion carried.**

Staff has requested that the board consider legislative amendments to section 4731.19 of the Ohio Revised Code

**Dr. Rothermel moved to approve that Board staff pursue legislative amendments to section 4731.19 of the Ohio Revised Code. Dr. Edgin seconded the motion. All in favor. Motion carried.**

Mr. Turek pointed out there were two options presented and the vote was regarding option 1.

All agreed upon option 1.

Dr. Rothermel stated she did not think option 2 was a feasible alternative.

Dr. Feibel asked since it was an amendment to Ohio Revised Code, if the board was able to make the change or if would have to go to legislature.

Mr. Turek responded this vote would authorize the board to go to the legislature and try to get the legislative changes.

Staff proposes an amendment to rule 4731-6-14 of the Ohio Administrative Code.

**Dr. Feibel moved to approve the proposed amendment to rule 4731-6-14 for initial circulation to interested parties. Dr. Rothermel seconded the motion. All in favor. The motion carried.**

Dr. Rothermel stated she understood the purpose of covering their basis so the board would not have to go back to the legislature if something occurred. She asked about the likelihood of it happening.

Mr. Turek stated it did happen in the case of Jose Vargas case. Dr. Vargas did not meet one of the established exam sequences, but the board believed he was qualified and granted the license. This was codifying the decision to look at other exam sequences that may not have been contemplated by the board. He confirmed that the board would have to vote on granting a license to an applicant that fell under the proposed provision.

Dr. Saferin and Mr. Turek stated in the case of Dr. Vargas, the board granted a license after the hearing.

Dr. Saferin stated he did not meet the requirements, but the board determined it wanted to grant him the license. An amendment to the Ohio Administrative Code would give the board the right to make a determination.

Mr. Turek informed Dr. Feibel that this item did not need to go to the legislature as it s a rule, or to the full board as the proposal is only being circulated to interested parties at this time. It will also be discussed in policy committee.

## ADJOURN

**Dr. Edgin moved to adjourn meeting. Dr. Rothermel seconded the motion. All members voted aye. The motion carried.**

The meeting adjourned at 8:11 a.m.

Bruce R. Saferin, D.P.M.  
Chair

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**FINANCE COMMITTEE MEETING MINUTES  
November 13, 2019 - Room 345**

**Members in attendance:**

Michael Schottenstein, MD, Chair  
Bruce R. Saferin, DPM  
Richard A. Edgin, MD  
Michael Gonidakis, J.D.

**Staff in attendance:**

Kim Anderson, Interim Executive Director  
Susan Loe, Director of Fiscal & Human Resources  
Tessie Pollock, Director of Communications  
Jerica Stewart, Communication & Outreach Administrator

Dr. Schottenstein called the meeting to order at 8:32 a.m.

**MINUTES REVIEW**

**Dr. Saferin moved to approve the draft minutes of October 16, 2019. Dr. Edgin seconded the motion. All members voted aye. The motion carried.**

**FISCAL UPDATE**

Dr. Schottenstein provided the following update: Looking at the fiscal update for September 2019, revenue was \$1,003,633. You may notice there's a 76 percent increase YTD when compared to September 2017. That was the time we had the implementation of the elicense system, and we encouraged licensees to renew early in the months of May and June of 2017. So, the September 2017 number is artificially low. We had a net fiscal revenue for September 2019 of a positive \$229,265. We had a cash balance of \$4,975,534. Those are good numbers for us. It's a roughly expected level of revenue. Our expenditures are down 5.2 percent for September 2019 as compared to one year ago.

Dr. Schottenstein continued: Our spending is starting to catch up to where it should be. Payroll is down, there are some vacancies. We had a freeze for a time on hiring, then we received permission to start filling vacancies so we hired four staff members last month and probably will hire another four coming up this month. You may notice that in the row that's labeled Contractors/Temps/Training/Subpoenas, our spending is substantially higher than it was in September 2018. That is substantially a function of the \$45,000 payment we approved in September 2019 for the trauma-informed training for staff. In addition, we are through one-quarter of our fiscal year. We have 76 percent of our budget left and we also over-encumber so we're actually in good shape in that regard. As to our fines, in the past month, we did not receive any fine payments.

**COMMUNICATIONS UPDATE**

Ms. Pollock informed the committee: Communications had several presentations, most recently on Monday, Case Western did their remedial prescribing course. Many licensees attend as part of their probation as well as prescribers from surrounding states. She presented remotely using Zoom and it went well. She may encourage remote presentations more often.

Ms. Pollock pointed the committee to the digital media stats from the month.

Ms. Stewart described how the cultural competency video was distributed:

- Targeted email

- State agencies (ODH, Ohio Department of Aging, Ohio Commission on Minority Health): 10 recipients: 40% open rate
- State agencies w/licenses and attached message to share (Physical Therapy Board, OMHAS, Ohio Department of Nursing): 7 recipients, 85.7% open rate
- Licensees: 86,309 recipients, 40.84% open rate
- Associations w/attached message to share: (FSMB, OOA, OSMA, Ohio Dietetic Association, Ohio Podiatric Medical Association, Ohio Association of Physician Assistants, American Massage Therapy Association, Ohio Society for Respiratory Care): 8 recipients, 37.5% open rate
  - The video was featured in FSMB's enews this week.
- Total: 86,334 email recipients, 40.84% open rate (35,267)

The video has more than 4,000 views.

Ms. Pollock stated there has only been one time that the sex trafficking videos were not the most heavily viewed, that was when the board released the "how to sign up as a medical marijuana patient" video. The cultural competency video now has more views than the human trafficking videos which are linked from the actual license application renewal.

Ms. Stewart added the video was sent to medical schools as well.

Dr. Schottenstein asked if the video will be something that licensees can view when they renew.

Ms. Pollock confirmed.

Dr. Saferin asked for confirmation that it would not be mandated.

Ms. Pollock confirmed. She then stated that email open rates of 40 and 50 percent is outstanding.

## ADJOURN

**Dr. Edgin moved to adjourn meeting. Dr. Saferin seconded the motion. Voice vote- all aye. The motion carried.**

The meeting adjourned at 8:39 a.m.

Michael Schottenstein, M.D.  
Chair

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**POLICY COMMITTEE MEETING**  
**November 13, 2019**  
**30 East Broad Street, Columbus, OH 43215, Room 336**

<p><b>Members:</b> Amol Soin, MD Mark Bechtel, MD Betty Montgomery Harish Kakarala, MD Sherry Johnson, DO</p> <p><b>Other Board Members present:</b> Bruce Saferin, DPM Kim Rothermel, MD Richard Edgin, MD Michael Schottenstein, MD Jonathon Feibel, MD</p>	<p><b>Staff:</b> Kim Anderson Interim Executive Director/Chief Legal Counsel Joan Wehrle, Education &amp; Outreach Program Manager Rebecca Marshall, Chief Enforcement Attorney Joe Turek, Deputy Director David Fais, Deputy Director David Henry, Senior Counsel Tessie Pollock, Chief Communications Officer Jonithon LaCross, Director of Public Policy and Government Affairs Colin De Pew, Assistant Attorney</p>
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Dr. Soin called the meeting to order at 9:03 a.m.

#### **Meeting Minutes Review**

Dr. Soin reported that the draft minutes of the October 16, 2019 meeting had been distributed to the committee and were included in the agenda materials.

**Dr. Bechtel moved to approve the draft minutes of the October 16, 2019 Policy Committee meeting. Ms. Montgomery seconded the motion. Motion carried.**

#### **Rules Review Update**

Ms. Anderson referred to the report included in the agenda materials. Ms. Anderson said we will have a number of rules for the board to adopt during the board meeting. The proposed CME rules are out for initial circulation. The Respiratory Care rules have been filed with CSI and are out for comment. November 22<sup>nd</sup> is the deadline for comments regarding these rules.

#### **Legislative Update**

Mr. LaCross said that a list of potential legislative items for the board to consider is not on today's agenda as staff will discuss these items with the new Executive Director. He indicated that many of the items are operational. He said that yesterday we found another item to include which would allow the Respiratory Care Advisory Council and the Dietetics Advisory Council to meet by teleconference. He reported that the Respiratory Care Advisory Council could not meet yesterday due to lack of a quorum.

**SB7 temporary occupational license for military member and spouse.** This bill requires state occupational licensing agencies, under certain circumstances, to issue temporary licenses or certificates to members of the military (and their spouses) who are licensed in another jurisdiction and are on military duty in Ohio.

He said that recent changes made to the licensure process enable the board to issue a license in real time, so there would not be a need for a temporary license. Mr. LaCross said he has been working with the bill's sponsors to exempt the medical board from the bill. Essentially, licensure fees would be waived for any active military and their spouse for eight years --- no charge for the initial license fee and for three renewal cycles. In turn, the applicant must meet all licensure requirements. The bill is in conference committee for review.

**HB263 revise occupational license restrictions for former criminals.** The bill would require the board to list all of the disqualifying conditions regarding misdemeanor or felony convictions that would prohibit a person from licensure. Ms. LaCross said that he, Ms. Anderson and Mr. Turek met with the house member about the proposed legislation. Mr. LaCross reported that law would also remove the good moral character requirements from the licensure requirements. Ms. Anderson said that there are some convictions would be exempt, such as violent crimes and sexual misconduct, so the board could act based on those convictions. However, prescribing type crimes, such as drug trafficking, are not on the exempt list and it's a big concern for us. These concerns were shared with the legislator. Ms. Anderson reported that the healthcare boards have worked to together and provided a document to the legislator outlining specific concerns.

Dr. Bechtel asked the rationale for the creation of this bill. Mr. LaCross noted that some jobs, such as those spreading pesticides, require an occupational license, but a person with a criminal record can't get a job. It may make sense for some professions but not for healthcare professionals. Ms. Anderson said that the bill is dealing with licensure denials. While the medical board doesn't have specific disqualifying conditions, the board has the authority to deny, approve, or approve with conditions. We want to preserve that discretion.

Dr. Schottenstein asked if other boards have disqualifying conditions for licensure. Mr. LaCross replied that other boards don't have the same processes as the medical board. Mr. LaCross said that we are trying hard to exempt out health professions from the legislation.

**HB341 administration of addiction treatment drugs.** Mr. LaCross reported that this legislation would permit a pharmacist to inject a drug prescribed by physician to treat drug addiction, such as naltrexone. We are working with the pharmacy board on this issue.

**SB178 DPM administer vaccinations – flu shots.** Dr. Schottenstein said that the issue of podiatrists administering flu shots had been reviewed by the scope of practice committee in the past. A letter was written to the Ohio Department of Health supporting the use of this additional resource to provide flu shots. He recalled that the Ohio Department of Health was good with it and we didn't take any further action. Now potential legislation addresses this issue. Ms. Anderson noted that if the legislation is enacted and authorizes podiatrists to administer vaccinations to patients, a rule will not be needed as this service would be added to the podiatric scope of practice.

**New chair of Ohio House Health Committee.** Mr. LaCross reported that Representative R. Scott Lipps was recently named chair of the Ohio House Health Committee.

**Nurse Anesthetists:** Ms. Montgomery asked about the nurse anesthetists bill and if we are monitoring the bill. Mr. LaCross said this is more of a nursing board issue as Certified Registered Nurse Anesthetists (CRNAs) are licensed by that board.

Through discussion, it was thought that the title might be changed to nurse anesthesiologist from nurse anesthetist. Ms. Montgomery said such a title change would be very confusing to patients, as anesthesiologists are physicians. She said it is important for patients to know who is providing their care. Dr. Edgin said it could potentially be even more confusing as Anesthesiologist Assistants, who are licensed by the Medical Board, also provide care to patients.

Dr. Rothermel asked if the medical associations have commented on the bill. Mr. LaCross said the associations are opposed to the bill as written. There are provisions in the current version that may expand the scope of a CRNA to allow a CRNA to be able to select, order, and administer fluids, treatments, and drugs for conditions related to the administration of anesthesia. He reported that the hospital association is neutral.

Following discussion, Mr. LaCross said he will send information to board members about the bill. Dr. Soin asked that Mr. LaCross dig deeper into the proposed legislation and keep the board members apprised.

**Licensure Equivalency Issues – proposed amendments to Section 4731.19(A)(3)(c):  
License to practice a limited branch of medicine**

Mr. Turek proposed amendments to Section 4731.19(A)(3)(c): License to practice a limited branch of medicine. He reported that the current statute results in seemingly qualified massage therapy applicants being denied licensure due to not graduating from a massage program that meets the board's curriculum requirements, and for lack of five years of prior out-of-state licensure required for waiver of the educational requirements.

Mr. Turek said the current statute does not allow the Board discretion to grant licenses to candidates whom, in the Board's opinion, are otherwise qualified based on a combination of work history and education but fail to strictly meet the statutory requirements.

Mr. Turek provided two options for consideration. Option one reduced the number of years an applicant had to be licensed in another state to qualify for an Ohio license from five years to two years. He said this option would decrease the frequency of non-disciplinary denials coming before the Board without potentially diluting the board's curriculum requirements.

The second option retains the licensed for five years in another state requirement but provides the board discretion in issuing a license.

Licensure committee reviewed the options and recommended option 1 as it promotes consistency. Dr. Bechtel voiced his support of option 1 as option 2 is too subjective. Dr. Schottenstein also supported option one.

**Dr. Bechtel moved to bring option 1 to the full board for approval to seek legislative change. This change would amend 4731.19(A)(3)(c) to reduce the number of years an applicant is required to be licensed in another state in lieu of meeting other educational requirements from five years to two years. Ms. Montgomery seconded the motion. Motion carried.**

#### **Licensure Equivalency Issues: Rule 4731-6-14: Eligibility for licensure**

Ms. Anderson provided a proposed amendment to Rule 4731-6-14, Ohio Administrative Code. The amendment in (B)(7) would add a catch-all provision to provide the board with discretion to deem a licensing examination, that may not otherwise be addressed in the rule, acceptable to meet the statutory examination requirement applicable to M.D. and D.O. applicants.

(B)(7) Any other examination that adequately assesses an individual's competence to practice medicine and surgery or osteopathic medicine and surgery, as determined by the board.

Dr. Schottenstein said it seemed rather vague.

Ms. Anderson reviewed elements of the recent case involving Dr. Vargas. Mr. Turek said he believes the proposed option would be used rarely. Dr. Saferin said it would give the board the ability to have discretion for otherwise qualified applicants. Dr. Saferin said licensure committee recommended that we pursue the amendment.

**Dr. Bechtel moved that the proposed amendment to Rule 4731-6-14 be circulated to interested parties. Ms. Montgomery seconded the motion. Motion carried.**

#### **One-bite Letter to OPHP re: Licensure Applicants**

As follow-up from the October 2019 discussion of the Gerritsen case, Ms. Anderson reported that a letter was sent to OPHP notifying the organization that the one-bite reporting exception does not apply to licensure applicants.

Dr. Schottenstein asked how the meeting with OPHP went. Ms. Anderson said staff had recently met with OPHP representatives regarding reporting requirements. She anticipated that other meetings will be held in the future.

#### **Controlled Substance Prescribing Rules/Weight loss rules – 4731-11-04 and 4731-11-041**

Ms. Anderson reported that the PAPC met on October 18, 2019 and discussed the proposed controlled substance prescribing rules which are due for the five-year rule review on December 31, 2020. The PAPC reviewed the initial comments and recommended proceeding with all of the rules as no change rules, except 4731-11-041, OAC.

The suggested changes are as follows:

- **4731-11-041(B)(2)(b): Remove reference to the PA formulary.**

(2) Following the initial visit and two follow-up visits, the treatment may be continued under one of the following means:

(b) The treatment may be provided by a physician assistant in compliance with this rule, the supervisory plan or policies of the healthcare facility., ~~and the physician assistant formulary adopted by the board.~~

**• 4731-11-041(3)(a): Change requirement for supervising physician to personally review the medical records of each patient to require a discussion with the physician assistant regarding each patient.**

(3) when treatment for chronic weight management is provided by a physician assistant, the following requirements apply:

(a) The supervising physician shall ~~personally review the medical records of~~ have a discussion with the physician assistant for each patient to whom the physician assistant has prescribed a controlled substance anorexiant following each visit;

The PAPC members discussed whether the requirement for the supervising physician to personally review the medical records should be changed to mirror the requirement in the quality assurance Rule 4730-1-05 to require the supervising physician to discuss the patient with the physician assistant. There was concern that the discussion or review should occur before the next patient visit.

Dr. Johnson had a problem with the only have a discussion with the PA. She said if she is prescribing weight loss drugs to a patient, she would be reviewing the patient record every time. She said if a doctor is supervising a PA, the doctor should be reviewing the patient's chart as well. Dr. Bechtel said it needs to be more than a discussion between the supervising physician and the PA. He agreed with Dr. Johnson's comments.

Ms. Anderson reported that the PAPC said they wanted to make it more like the QA requirements. She told the committee that they do not have to accept the change recommended by PAPC.

The PAPC members had no other concerns with the controlled substance prescribing rules, 4731-11-02, 4731-11-03, 4731-11-04, 4731-11-07 and 4731-11-11, OAC.

Ms. Anderson also reported that PAPC discussion and the committee agreed that telemedicine is not appropriate for prescribing weight loss drugs under 4731-11-04, OAC.

**Dr. Bechtel moved to approve the proposed amendment to Rule 4731-11-041(B)(2)(b) to remove the reference to the PA formulary. He further moved to make no changes to rule 4731-11-041(3)(a) and to refer the matter to the board for filing with CSI. Ms. Montgomery seconded the motion. Motion carried.**

Mr. LaCross reported that Representative Butler may want to make changes to the 50 hour CME requirement for physicians that went into effect on October 17, 2019. He had concerns with the volunteer hours limited to only 3 hours credit. He may potentially propose a modification to allow more volunteer hours: 5 hours volunteering would equal 1 hour CME credit and a physician could earn up to 10 CME credits each renewal cycle through volunteer work.

Dr. Johnson commented that doctors should be able to complete the required CME hours. She said there are numerous CME activities available online.

Dr. Saferin said the purpose of CME is to learn something, not to incentivize volunteer opportunities. He believed the proposed change is counter to the purpose of the CME requirement and he thought that 3 hours for volunteering is generous. Ohio is in line with other states with 50 hours of Category I CME. He doesn't see the need to change the hours.

Mr. LaCross asked if the CME change is costing doctors more. Dr. Kakarala said that online CME costs less as there are no travel expenses and time out of office. Additionally, many CME programs, such as grand rounds at the hospital, are free.

It was noted that many doctors use UpToDate which is a subscription-based resource designed to provide physicians access to current clinical information and offers CME credit. Committee members agreed that there are ample opportunities to access CME programming and did not support making any changes.

## **Adjourn**

**Dr. Bechtel moved to adjourn the meeting. Motion seconded by Ms. Montgomery. Motion carried.** The meeting adjourned at 9:48 a.m.

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**COMPLIANCE COMMITTEE MEETING**

**November 13, 2019**

**30 East Broad Street, Columbus, OH 43215, Administrative Hearing Room 3<sup>rd</sup> floor**

<b>Members:</b> Michael Schottenstein, MD, Chair Amol Soin, MD Harish Kakarala, MD Richard Edgin, MD	<b>Staff:</b> Alexandra Murray, Managing Attorney Benton Taylor, Board Parliamentarian
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Dr. Schottenstein called the meeting to order at 12:25 p.m.

**Reports of Conferences**

Dr. Schottenstein asked the committee to consider the reports of conferences. He expressed concern regarding Ms. Robosky. Ms. Murray reported that her initial appearance was with Drs. Rothermel and Saferin. Ms. Murray said that Ms. Robosky is struggling. Compliance staff has talked with her about her past relapses and that having a better structure may help her recovery. Mr. Murray reported that Ms. Robosky was very honest and forthright about her current struggles. It is possible that her mental health issues are holding her back in getting the help she needs. Ms. Murray noted that Ms. Robosky has not violated anything, but she is wandering. Compliance staff talked with her about things that she could do to help herself succeed. Ms. Robosky said she would reach out to her sponsor that day.

Dr. Schottenstein asked is Ms. Robosky was in treatment for her mental health issues. Ms. Murray reported that she is in flux. She had a psychiatrist and she has some medications that assist her. She is working to see if she can get on a sliding scale for her care. Currently she is not able to regularly see her psychiatrist. Ms. Murray reported that Ms. Robosky understands that if she doesn't get a handle on her mental health issues, it may lead to another relapse. Compliance staff is providing her with as many resources as possible.

**Dr. Kakarala moved to approve the Compliance staff's reports of office conferences held October 15 and 17, 2019 which were included in the agenda materials. Dr. Soin seconded the motion. Motion carried.**

**Minutes Review**

**Dr. Kakarala moved to approve the draft minutes from October 16, 2019 Compliance Committee meeting which were included in the agenda materials. Dr. Soin seconded the motion. Motion carried.**

**Adjourn**

**Dr. Soin moved to adjourn. Dr. Kakarala seconded the motion. Motion carried.** The meeting adjourned at 12:29 p.m.