



**State Medical Board of Ohio Meeting Minutes
October 14, 2020**

Michael Schottenstein, M.D., President, called the video conference meeting to order at 10:34 a.m. with the following members present: Mark A. Bechtel, M.D., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Betty Montgomery; Sherry Johnson, D.O.; Jonathan Feibel, M.D.; and Harish Kakarala, M.D.

MINUTES REVIEW

Motion to approve the minutes of the September 9, 2020 Board meeting, as drafted:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	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: Shivangi Amin, M.D.; John Kavlich, M.D.; Mitchell Edward Simons, M.D.; and Gary Nicholas Spirtos, M.D. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	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
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	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
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	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 the matters of Dr. Kavlich and Dr. Simons.

During these proceedings, no oral motions were allowed by either party. No respondent on today's agenda have requested to address the Board during this video conference meeting. The respondents and their attorneys are still viewing the meeting remotely and have a number to call in the event of an emergency or procedural concern.

Shivangi Amin, M.D

Dr. Schottenstein directed the Board's attention to the matter of Shivangi Amin, 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 made on behalf of Dr. Amin. Five minutes will be allowed for that address.

Dr. Amin was represented by her attorney, Todd Newkirk

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Mr. Newkirk stated that in August 2019, Dr. Amin entered into a consent agreement with the Maryland Board of Physicians which required completion of courses in prescribing and documentation. Dr. Amin has completed those courses in the PACE program at the University of San Diego and she is in compliance with all other aspects of the Maryland agreement.

Mr. Newkirk stated that the Hearing Examiner has recommended a reprimand, a fine, and probationary terms. Mr. Newkirk did not object to these provisions, with the exception of the fine. Mr. Newkirk stated that this is purely a bootstrap action based on action taken by the Maryland Board, noting that Dr. Amin has never practiced in Ohio. Since Dr. Amin is in full compliance with her Maryland agreement, Mr. Newkirk felt that the proposed fine in this matter seems punitive. Mr. Newkirk asked the Board to reject the proposed fine.

Dr. Amin stated that she regrets the six months she spent in that clinic early in her career. Dr. Amin stated that she has renewed her Maryland medical license and she has been in full compliance with the agreement in her home state. Even though she holds an Ohio medical license, Dr. Amin has never practiced in Ohio and does not intend to do so in the near future. Dr. Amin asked the Board to take this into consideration and remove the proposed \$3,500 fine from the Order.

Dr. Schottenstein asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he did not wish to respond.

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

Motion	Dr. Johnson
2 nd	Dr. Soin

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

Dr. Schottenstein appreciated the defense counsel's concern regarding the proposed fine. Dr. Schottenstein opined that the Proposed Order is rather light on Dr. Amin given the nature of the prescribing that is alleged, but added that a case could be made that the Proposed Order is justified due to multiple mitigating circumstances:

- Dr. Amin is a young physician.
- Dr. Amin has no prior disciplinary record.
- There was no selfish or dishonest motive.
- This situation is isolated and unlikely to recur.
- Dr. Amin has made full and free disclosure to the Board.
- Dr. Amin has taken interim remedial measures and multiple continuing medical education (CME) courses to better understand the needs of her patients.
- There was no adverse impact of Dr. Amin's conduct on others of which the Board aware.
- Dr. Amin's conduct was not willful or reckless.
- Dr. Amin attempted to correct her misconduct by threatening to quit the clinic when she realized she was in over her head.
- Dr. Amin contacted the patients' psychiatrist about weaning them off benzodiazepines.
- Dr. Amin did not initiate the patient's opioids, but inherited them from other practices.
- Dr. Amin never increased a patient's opioid regimen.

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- Dr. Amin has never practiced in Ohio and has no plans to come to this state.
- Dr. Amin is not currently prescribing any controlled substances and has no plans to do so.

Based on the preceding, Dr. Schottenstein felt that the Proposed Order was fair and he supported it. Dr. Schottenstein stated that he is ambivalent on the issue of the fine.

Ms. Montgomery, also ambivalent about the fine, asked what the Board is trying to accomplish by placing Dr. Amin on a three-year probation, as stipulated in the Proposed Order. Dr. Schottenstein replied that the probation will ensure that Dr. Amin is compliant with her Maryland Consent Order and will also require her to check in with the Ohio Board periodically. Dr. Schottenstein commented that the prescribing in this case was substantially concerning and he was not opposed to the probation. Dr. Schottenstein also appreciated the requirement of a practice plan should Dr. Amin ever practice in Ohio.

Dr. Feibel stated that though this is a bootstrap action based on her discipline in Maryland, it still required resources of the Ohio Board to investigate her actions and there were costs associated with that. Dr. Feibel was uncertain if the \$3,500 fine in the Proposed Order is appropriate, but stated that some level of fine would be proper.

Dr. Feibel appreciated that Dr. Amin has been forthright with the Board and is not planning to practice in Ohio. However, should she choose to practice in Ohio, Dr. Feibel felt that Dr. Amin should not be able to prescribe controlled substances during her probationary term, similar to what had been outlined in her Maryland Order. Dr. Feibel wished to hear the opinions of other Board members before offering a motion to amend.

Dr. Bechtel agreed that probation is appropriate in Dr. Amin's situation, opining that the most critical part is the practice plan. Dr. Bechtel observed that after two years of family practice residency, Dr. Amin elected to leave and focus on business. Dr. Bechtel stated that Dr. Amin had obviously gotten in over her head with the opioid situation. Dr. Bechtel was also ambivalent on the matter of the fine.

Dr. Soin supported the Proposed Order and the proposed fine of \$3,500. Dr. Soin understood that Dr. Amin was young, this was one of her first jobs, and she had been fresh out of her residency. However, Dr. Soin stated that being young and naïve is not an excuse for not meeting the standard of care. Dr. Soin noted that Medicare pays the same fee schedule whether the physician is one day out of fellowship or has 30 years of experience, and regardless of where the physician attended medical school. The reason for this is that Medicare assumes the physician is meeting the standard of care.

Dr. Soin noted that Dr. Amin is not board-certified in any specialty. Dr. Amin is a family physician who had elected to take a job in a pain management clinic in which she was the only physician present at times and was prescribing high doses of opioids. Dr. Soin questioned the decision-making process that led to that situation.

Dr. Soin noted several findings in the Maryland Board Order, such as Dr. Amin's failure to obtain updated imaging studies or other clinical indications of a patient's pain. Dr. Soin commented that it is common for chronic pain patients to have long periods of time with no symptomatic changes; Dr. Soin was uncertain why an update would be needed if there had been no change in the patient's situation. Another Maryland finding stated that Dr. Amin had failed to taper or wean a patient from excessive dosages of opioids in spite of a lack of functional improvement or pain control over extended periods of time. Dr. Soin found this to be an odd thing to complain about in a chronic pain patient because there is a mountain of clinical data showing there is very little functional improvement or pain control improvement over time because of the way the body equilibrates the opioid.

Dr. Soin observed another finding of the Maryland Board about guidelines from the Centers for Disease Control (CDC) which indicate that as a family physician, Dr. Amin should not prescribe more than 50 milliequivalents of morphine for a new patient. Dr. Soin pointed out that those are guidelines, not hard and fast rules, and there is a lot of room for physician discretion.

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Dr. Soin opined that the Proposed Order is fair and he supported the fine of \$3,500. Dr. Soin also supported the practice plan requirement. Dr. Soin noted that as a family physician, Dr. Amin may need to prescribe controlled substances in some situations because any new medication that is a central nervous system (CNS) depressant ends up as a Schedule V medication. Consequently, a family physician treating a pediatric patient with a seizure disorder would need to prescribe a scheduled controlled substance. Dr. Soin did not recommend that Dr. Amin prescribe controlled substances for the treatment of pain. Dr. Soin further noted that such practice would be prevented in Ohio by Ohio's pain rules and guidelines.

Dr. Soin agreed that there was no criminal intent in Dr. Amin's actions, though some of the practice patterns were not acceptable. Dr. Soin supported the Proposed Order.

Mr. Giacalone stated that in 2016 and 2017 the opioid crisis was in full bloom. Mr. Giacalone expressed concern that Dr. Amin prescribed large amounts of opiates during that time and he questioned how she could have been unaware of what was happening in the community. Mr. Giacalone stated that Dr. Amin has a responsibility when she walks into a practice, and he opined that the Maryland Board Order was light. Mr. Giacalone questioned Dr. Amin's expertise in general if she can walk into a situation like the opioid crisis and continue the process without knowing that people outside are dying and becoming addicted.

Mr. Giacalone supported Dr. Feibel's suggestion to temporarily limit Dr. Amin's ability to prescribe controlled substances if she chooses to practice in Ohio.

Upon reflection, Dr. Feibel recommended a practice restriction on prescribing controlled substances for two years, commencing when and if Dr. Amin begins practice in Ohio. This would mimic the Maryland Board's two-year prescribing prohibition.

Motion to amend the Proposed Order to include a practice restriction on prescribing controlled substances for two years, commencing when and if Dr. Amin begins practice in Ohio:

Motion	Dr. Feibel
2 nd	Mr. Giacalone

Dr. Soin appreciated the spirit of Dr. Feibel's motion to amend, but he did not support the motion because it seemed somewhat heavy-handed. Dr. Soin was concerned that the proposed practice limitation may impact Dr. Amin's ability to practice family medicine and treat conditions that require non-opioid controlled substances. Dr. Feibel asked if restricting Dr. Amin's ability to prescribe Schedule II and Schedule III controlled substances, instead of all controlled substances, would address Dr. Soin's concerns. Dr. Soin agreed that that would solve the problem.

Dr. Feibel wished to change his motion to amend so that Dr. Amin is restricted from prescribing Schedule II and Schedule III controlled substances for two years following the beginning of practice in Ohio. No Board member objected to the change in the motion. The change in the motion to amend was accepted.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	N
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	N

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Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

the motion to amend carried.

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

Motion	Dr. Kakarala
2 nd	Dr. Bechtel
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	N
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

John Kavlich, M.D.

Dr. Schottenstein directed the Board's attention to the matter of John Kavlich, M.D. No objections were filed. Ms. Lee was the Hearing Examiner.

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

Dr. Kavlich expressed remorse for not complying with his original Consent Agreement which he signed in October 2018. At his July 2020 hearing, he did his best to explain recent steps he has taken, as well as the circumstances of why he had not completely complied with his Consent Agreement. Dr. Kavlich stated that due to financial circumstances, his email, office phone, and cell phone were turned off. Any notices the Board sent to Dr. Kavlich went to his office email, which was turned off two months after his license was suspended.

While Dr. Kavlich hoped that the Board would adopt the Hearing Examiner's Proposed Order, he asked the Board to consider waiving the proposed \$1,000 fine. Dr. Kavlich stated that his current financial situation is extreme, his house is in foreclosure, and he is currently living at his parents' house. Dr. Kavlich would prefer to apply that \$1,000 to his treatment, as stipulated in his Consent Agreement.

Dr. Kavlich stated that he would respect and honor any decision the Board makes and he will continue to meet the conditions for reinstatement of his medical license.

Dr. Schottenstein asked if the Assistant Attorney General wished to respond. Ms. Snyder stated that she supports the Hearing Examiner's Report and Recommendation.

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

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Motion	Dr. Soin
2 nd	Dr. Johnson

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

Ms. Montgomery commented that, from what she can discern from the documentation, a number of years passed before the Board's Compliance Section took any action on Dr. Kavlich's non-compliance. Ms. Montgomery stated that this is an issue the Board will be addressing soon. Ms. Montgomery supported the Hearing Examiner's Report and Recommendation.

Dr. Schottenstein felt that when Dr. Kavlich was put into his Step I Consent Agreement, his mental health issues were such that was not ready to comply with the terms of the Agreement. It now appears that Dr. Kavlich has found a psychiatrist with whom he is comfortable. Dr. Kavlich has started psychotropic medication and is doing better. Dr. Schottenstein was glad to take Dr. Kavlich at his word that he is ready to work through the conditions to reinstate his license.

Dr. Schottenstein opined that the Proposed Order is fair. Dr. Schottenstein further opined that the proposed fine of \$1,000 was fair given the fact that Dr. Kavlich violated his Agreement, but he was open to having a conversation about the fine if other Board members felt differently.

Vote on Dr. Soin's motion to approve:

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

The motion carried.

Mitchell Edward Simons, M.D.

Dr. Schottenstein directed the Board's attention to the matter of Mitchell Edward Simons, 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 made on behalf of Dr. Simons. Five minutes will be allowed for that address.

Dr. Simons was represented by his attorney, Greg Tapocsi.

Mr. Tapocsi stated that, as indicated by the Report and Recommendation, this matter does not involved a pill mill. Instead, Dr. Simons was a physician who worked to reduce his patients' reliance on opioids and used a multi-disciplinary approach utilizing multiple modalities of treatment. Dr. Simons prescribed controlled and non-controlled substances and adjusted those medications over time. Dr. Simons also adjusted the frequency of visits, referred patients to MRI's and x-rays, and communicated with specialists.

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Mr. Tapocsi stated that it is important to look at the context of Dr. Simons' actions and the timeframe, between 2008 and 2012. Mr. Tapocsi noted that House Bill 93 was not effective until June 2011, so Dr. Simons was meeting those requirements before he was mandated by law to do so. Mr. Tapocsi's primary objections with regard to the State's expert witness, Dr. McIntyre, is that he applied portions of the 2020 standard of care to cases that occurred ten years before that. Mr. Tapocsi added that Dr. McIntyre also applied his own standard of care which was unfounded and without regard to the Board's rules. Mr. Tapocsi stated that Dr. McIntyre did not work in a practice similar to Dr. Simons', noting that Dr. McIntyre only does procedures in a practice owned by chiropractors. Dr. McIntyre also did not know about the Board of Pharmacy's Terminal Distributor of Dangerous Drugs (TDDD) regulations and did not know about how the Medical Board has codified its approach to red flags.

Dr. Simons stated that for the past 30 years his philosophy in practicing pain management has been to utilize a multi-disciplinary approach in which he considers the medical, psychiatric, and physical therapy modalities necessary to treat the most difficult pain management cases. As a result, his practice was one of the first in the nation to receive accreditation by the Commission for Accreditation of Rehabilitation Facilities in 1990. Dr. Simons stated that he continues to make these principles the bedrock of his practice today. Dr. Simons stated that morphine equivalency is "in my DNA" and he did not believe opioids are perfect for all patients.

Dr. Simons continued that because most private pain management practices have been purchased by health systems and do not take outside referrals, the most difficult cases are typically referred to his practice. Almost all these patients have been prescribed opioids by other physicians who merely write the prescription every three days and move the patient along without the proper work up. Dr. Simons stated that that is not his practice. Rather, Dr. Simons stated that he constantly strives to reduce his patients' reliance on opioids and to work out the pathologies that are causing the pain.

Dr. Simons stated that the patients involved in this case today are some of the most challenging patients he has treated; these patients' conditions were chronic and there were numerous behavioral or psychiatric problems involved as well. Dr. Simons stated that he worked to reduce these patients' reliance on pain medications, adjusted the doses if clinically indicated, and constantly incorporated non-narcotic modalities.

Dr. Simons stated that he has seen tremendous change in the pain management field in the past three decades, and he felt it was his duty to change his practice to correspond with these ever-evolving standards of care. Consequently, Dr. Simons respectfully disagreed with the State's expert witness, Dr. McIntyre, who applied 2019 and 2020 standards to Dr. Simons' 2008 to 2012 patients. Also, Dr. McIntyre does not have experience working with difficult chronic pain patients in a solo practice setting such as Dr. Simons'. Dr. Simons stated that 10 years ago he did not always order urine screens for patients on the first visit because he found that patients prepare to be screened at first visit. Since that time, Dr. Simons' practice has changed and he now orders urine screens on the first visit unless there is a documented clinical reason to do otherwise.

Dr. Simons stressed the importance of monitoring patients for red flags. Dr. Simons stated that he understands the need for accurate documentation in patient records. Dr. Simons stated that while he does not specifically document that he addressed the risks and benefits of opioids, he has utilized an opioid agreement with his patients that discusses these risks and benefits since 2005. Dr. Simons assured the Board that he has always discussed and evaluated such risks and benefits at every visit. Dr. Simons agreed that physicians, including himself, can always document better. Dr. Simons informed the Board that he has changed his documentation practices over the past ten years to be more thorough and he always follows up on red flags.

Dr. Simons stated that one of the biggest criticisms in this case is that some of these patients should not have received opioids because they had been terminated from other practices. However, Dr. Simons stated that these patients came to him dependent on opioids, often without the proper diagnostics and work-up that is needed to reduce reliance of opioids. Dr. Simons stated that he treats the patients who are referred to him because he truly loves his practice and taking care of his patients. Dr. Simons looked forward to providing the maximum level of care as the standard of care continues to evolve.

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Dr. Schottenstein asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he wished to respond.

Mr. Wilcox stated that this is a serious case, noting that a majority, if not all, of these 10 patients demonstrated numerous red flag behaviors. These behaviors included making claims that they had lost their drugs, their drugs had been stolen, they had accidentally taken a relative's drugs, or they had run out of medication early. Some patients also had aberrant screens for drugs in their system. Mr. Wilcox did not feel that Dr. Simons had been held to some unreasonable standard for not acting on these red flags.

Mr. Wilcox stated that the State's witness, Dr. McIntyre, is clearly qualified, noting that he is a board-certified anesthesiologist, has earned specialty certification in pain medicine, and has completed a two-year fellowship in pain medicine at the Cleveland Clinic.

Mr. Wilcox opined that this case can be summarized very well by looking closely at two of the patients. Patient 5 came to Dr. Simons' practice in June 2011 when he was 59 years old. In his initial visit paperwork, Patient 5 admitted to having 12 alcoholic drinks per day. Dr. Simons prescribed Patient 5 Opana at the outset of treatment. In October 2011, Dr. Simons added Percocet to Patient 5's regimen. However, when Patient 5's neurosurgeon noted in the record that Patient 5 was over-medicated, Dr. Simons' response was to comment in the chart that that was ridiculous.

Mr. Wilcox stated that any physician, certainly one who claims to be an expert in pain management, would know that a patient with that degree of alcoholism is not a candidate for powerful opioid medications, yet Dr. Simons gave Patient 5 drugs. Patient 5 later tested positive for cocaine, but was still given limited narcotic prescriptions after that.

Mr. Wilcox continued to Patient 2, who presented to Dr. Simons' practice briefly between September and November 2013. Dr. Simons was aware that Patient 2 had been arrested in his primary care physician's parking lot for snorting Xanax. Patient 2 also admitted to drinking 10 to 12 beers and passing out at night.

Mr. Wilcox observed that Dr. Simons defended his decisions to prescribe narcotics and benzodiazepines to Patient 5 and Patient 2 with seemingly no reflection on how dangerous this was and no admission that this was below the standards of care. Mr. Wilcox stated that whether it is 2000 or 2020, individuals with these types of red flags should never receive opioid medications.

Mr. Wilcox did not agree with the Hearing Examiner's Proposed Order. Mr. Wilcox felt that at a minimum, Dr. Simons should have a permanent restriction on his ability to prescribe narcotics and benzodiazepines. Mr. Wilcox also opined that the Board should consider revoking Dr. Simons' medical license.

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

Motion	Dr. Kakarala
2 nd	Dr. Johnson

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

Dr. Soin stated that he had a lot to say about this matter because there are many nuances that are important to understand. Dr. Soin commented that this is not a standard pill mill case of high prescribing, in which templated notes and similar medications for every patient are typically seen. Instead, Dr. Simons' case shows individualized practice plans with diagnostic work-ups.

Dr. Soin stated the State's expert witness, Patrick McIntyre, M.D., J.D., would seem on the surface to be a good choice for an expert in this case. However, Dr. McIntyre's practice is mostly interventional pain management doing injections, nerve blocks, and similar procedures. Consequently, Dr. McIntyre's ability to

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comment or opine on medication management or patients who are high opioid users may be lacking. Dr. Soin noted the following quote in the Report and Recommendation from Dr. McIntyre:

[Not all] the patients in this set fall into this category, but they have displayed signs of addiction, abuse, misuse of medications, I think the decision-making is actually easy.

Dr. Soin further quoted from Dr. McIntyre:

The standard of care dictates that these patients are not candidates for opioid treatment and that was the case -- that is the case today and that was the case ten years ago and that was the case 30 years ago. If patients can't follow the directions and take the medications as prescribed, they should not be taking these medications. They should not be given access to very dangerous, potentially deadly medications.

Dr. Soin stated that he probably disagrees with everything that was said in that testimony. As a result, Dr. Soin had a difficult time accepting Dr. McIntyre's testimony as credible. Dr. Soin opined that the statement, "I think the decision-making is actually easy" is very irresponsible and that, in fact, it is the hardest decision pain management physicians have to make. Dr. Soin stated that there is nothing easy about these patients and to characterize it as an easy decision-making scenario is fundamentally wrong.

Dr. Soin disagreed with Dr. McIntyre's contention that such patients should not be given access to very dangerous, potentially deadly medications, as well as the Assistant Attorneys General opinion that patients with red flags should never be given these medications. Dr. Soin stated that those with an impairment or addiction problem or red flags should not be banned from access to these medications, and they should have the same rights to get care that other people have. Dr. Soin stated that with appropriate documentation, guardrails, and monitoring, it is fine and appropriate to prescribe dangerous medications in these situations. Dr. Soin commented that red flags are tools to help physicians make decisions; they do not mean physicians can never prescribe opioids or take care of these patients. Dr. Soin noted that the Board's rules do not say opioids cannot be prescribed in these situations. Dr. Soin stated that if the Board or the State of Ohio wishes to prohibit such prescriptions, then steps should be taken to change the rules accordingly.

Dr. Soin continued that much of the care in question occurred years ago, as far back as 2008. Dr. Soin stated that the standard of care in pain management has been a moving target and what is considered the standard of care today is not the same as it was when he joined the Medical Board in 2013. Dr. Soin stated that Dr. Simons checked the Ohio Automated Rx Reporting System (OARRS) on all his patients before prescribing opioids, which is exactly what the Board wanted him to do. Dr. Simons also documented histories and physical examinations for all his patients. Dr. Soin stated that the reason the Board knows about the red flags in Dr. Simons' patients is because Dr. Simons documented them in the patient charts.

Dr. Soin stated that some of Dr. Simons' decision-making in response to red flags are debatable and objective physicians could have made other decisions in those circumstances. However, it is important to note that Dr. Simons did make an effort to make adjustments. For example, one patient had red flags come up and Dr. Simons switched the patient to a fentanyl patch in an effort to prevent abuse. Dr. Soin stated that that was not necessarily the decision that he or many of his colleagues would have made, but he could understand why Dr. Simons took that action.

Dr. Soin opined that Dr. Simons did not have criminal intent and that he had been trying to advocate for his patients. Dr. Simons' practice was not a pill mill and each patient had an individualized practice plan with different medications and diagnostic tests. Dr. Soin understood the controversy with prescribing opioids and benzodiazepines, noting that most pain physicians for the last several years do not typically prescribe those together for new patients. Dr. Soin stated that one of the legacies of the opioid crisis is that benzodiazepines had been prescribed commonly with opioids. As a consequence, weaning patients that one has inherited from other physicians, as happened in some of Dr. Simons' cases, can be extremely difficult. Dr. Soin pointed out that weaning a patient from an opioid can cause the patient to feel terrible but will not be deadly, but weaning a

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patient from a benzodiazepine can actually be a threat to life due to the physiologic addiction and the risk of cardiovascular collapse.

Dr. Soin continued that the Board also wants physicians to order urine drug screens, which could result in a red flag. Dr. Soin reiterated that the Board's rules do not require all patients with red flags to be weaned off opioids, and if that is the expectation then it should be included in the rules. Dr. Soin stated that it is difficult to punish someone who followed a rule or guideline, such as ordering urine drug screens, and then did not do exactly what the Board intended if the rule does not spell that out.

Taking all of his previous comments into consideration, Dr. Soin opined that it was irresponsible for Dr. Simons to ignore all the red flags in this case. Dr. Soin stated he could not defend some of Dr. Simons' decision-making processes and he opined that the Board should take some action. Dr. Soin was pleased that the Hearing Examiner has proposed an order that takes into account the mitigating factors, rather than proposing to simply revoke or permanently revoke Dr. Simons' medical license. Dr. Soin stated that the Board can debate whether the proposed six-month suspension is too harsh or if there is an opportunity to stay or lessen that penalty, especially in light of a case earlier today in which the Board approved a lesser penalty for a physician who prescribed excessively high doses of opioids without doing any of the documentation the Board asks and did not go to the levels that Dr. Simons did in taking care of patients.

Dr. Soin reiterated that it was irresponsible for Dr. Simons to ignore red flags and continue prescribing opioids for patients with these significant issues with a high likelihood that the behavior will repeat itself. Dr. Soin stated that that is dangerous for Ohio's citizens and the Board must do something to send that message.

Ms. Montgomery thanked Dr. Soin for his thorough comments and agreed with his observations about the State's expert witness. Ms. Montgomery asked if it is asking too much for a physician to take the extra step and reach out to a patient, especially a patient who reported drinking 12 beers per night and demonstrated significant substance abuse. Dr. Soin stated that this is one of the aspects of this case that he could not defend and which warrants action by the Board. Dr. Soin stated that Dr. Simons should have done more to protect that patient from themselves and protect the public at large.

Dr. Soin commented that if the patient with an alcohol problem and a substance abuse problem had a legitimate pain issue, there may have been a way to provide opioids in a controlled manner with close monitoring. For example, Dr. Simons could have considered abuse deterrent medications, a pain pump which would deny the patient access to the medication, transdermal patches that have abuse deterrents, or dispensing one-day or three-day supplies of medication. Dr. Soin stated that the presence of a red flag does not necessarily mean prescribing an opioid is the wrong choice. However, Dr. Soin opined that the decision-making in this case warranted Board action.

Dr. Feibel appreciated Dr. Soin's comments, especially with his perspective as a pain management physician. Dr. Feibel stated that he made many of his determinations based on the record, not on the State's expert witness testimony. Dr. Feibel expressed concern that red flags were missed in this matter. Dr. Feibel suggested that Dr. Simons be restricted from prescribing Schedule II and Schedule III controlled substances for two years, to be consistent with a Board decision earlier in the meeting. Mr. Giacalone stated that he would second Dr. Feibel's proposed amendment for purposes of discussion.

Motion to amend the Proposed Order so that Dr. Simons is restricted from prescribing Schedule II and Schedule III medications for two years:

Motion	Dr. Feibel
2 nd	Mr. Giacalone

Mr. Giacalone stated that Dr. Soin has made a compelling argument and that Dr. Simons seemed to have very complex patients. Mr. Giacalone opined that Dr. Simons seemed to feel that "physician discretion" means "anything goes" and there seemed to be a sense of arrogance associated with that attitude. Mr. Giacalone

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further opined that Dr. Simons appeared to be “stuck in time” and had never progressed with the evolution of the pain management model. Mr. Giacalone was not confident that Dr. Simons was now on the right track, and he struggled with how to place guardrails on Dr. Simons’ practice to ensure he does not repeat these mistakes. Dr. Soin agreed, noting that some of these cases are after 2013 and Dr. Simons should have updated his practices by that point.

Regarding the proposed amendment to limit Dr. Simons’ prescribing authority, Dr. Soin stated that this case is somewhat different from the case that involved a family practitioner. Since Dr. Simons’ practice primarily involves prescribing controlled substances, the proposed limitation would severely impair his ability to practice for two years. Dr. Soin stated that, given the fact pattern, one would be justified in supporting Dr. Feibel’s proposed amendment. However, Dr. Soin wondered if there is a way, perhaps through probationary terms, to monitor Dr. Simons’ practice closely without virtually ending his practice.

Dr. Schottenstein opined that the primary issue in this matter is addiction. Dr. Schottenstein suspected that if the Board reviewed 10 random charts from Dr. Simon’s practice for patients not prone to addictive disease, the Board would probably find that Dr. Simons is managing those patients in a responsible way. However, the problem before the Board today is Dr. Simons’ approach to patients who have addictive disease.

Dr. Schottenstein opined that it is below the minimal standard of care to prescribe chronic opioid analgesic therapy for treatment of chronic non-malignant pain for a patient with addictive disease, and this has been true for some time. Dr. Schottenstein stated that patients with addictive disease are at high risk of a bad outcome with chronic opioid analgesic therapy because of the substantial potential for diversion or abuse in that population.

Dr. Schottenstein stated that a high-risk patient such as an addict should be treated without chronic opioid analgesic therapy. If such a patient comes to a physician and is already on opioids from another physician, that patient should be educated about the risks of opioids and arguably those opioids should be tapered. Dr. Schottenstein stated that current or past addiction to opioids is arguably an absolute contraindication to chronic opioid therapy. Also, cocaine use is arguably an absolute contraindication to chronic opioid therapy. In addition, current or past addiction not involving opioids is arguably at least a relative contraindication to chronic opioid therapy. Dr. Schottenstein continued that patients with addictive disease and chronic non-malignant pain are not denied opioids in order to punish them, discriminate against them, or because the physician does not want to help them. Rather, prescribing opioids to that patient population would do them harm and harm to society because the opioids could be diverted and new addicts could be created.

Dr. Schottenstein opined that Dr. Simons turned a blind eye to the obvious addiction in his patients and just focused on treating their pain. Dr. Schottenstein opined that in his genuine efforts to help these patients, Dr. Simons lost sight of the fact that physicians’ first admonition is to do no harm. Because of the clear red flags for addictive disease, these were patients for whom prescribing opioids was inevitably and foreseeably harmful.

Dr. Schottenstein noted that at his first office visit, Patient 5 indicated that he was taking Percocet, Ambien, and Vicodin, as well as consuming 12 alcoholic drinks per day. According to Dr. Simons’ testimony, Patient 5 reported that if he had something to help with his pain, he would not drink so much. It appears that it seemed reasonable to Dr. Simons to prescribe opioid medications with the thought that as Patient 5’s pain level reduced, so would his alcohol use. Dr. Schottenstein stated that the problem with this reasoning is that that is not how addiction works. Patient 5 arguably had an addictive brain, and in addictive brains each potentially habit-forming substance increases the overall craving for and dependency on every other habit-forming substance. So the effect of providing opiate medication to someone with an alcohol dependency is that the patient is going to drink more, not less. Dr. Schottenstein stated that, while it pains him to say this, he did not believe that Dr. Simons understands addiction. Dr. Schottenstein opined that Dr. Simons prioritized pain control over prevention of addiction as a focus of treatment for his patients, and in doing so he did a disservice to his patients with addictive disease.

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Dr. Schottenstein agreed that permanent revocation is not warranted in this matter. Dr. Schottenstein further stated that restricting Dr. Simons from prescribing controlled substances would essentially be the same as taking him out of practice. Dr. Schottenstein opined that it would be appropriate to require additional remediation for Dr. Simons beyond the controlled substance prescribing course required in the Proposed Order. Dr. Schottenstein stated that if the Board wants Dr. Simons to be more substantially remediated, there is the option of a physician reentry program such as the Center for Personalized Education for Physicians (CPEP) or Physician Assessment and Clinical Education (PACE).

Dr. Schottenstein agreed with Dr. Soin's point that there may be times when someone with addiction legitimately needs medications of this nature. Dr. Schottenstein also agreed that in such instances, the treatment needs to occur in a much more controlled setting, akin to a methadone treatment program in which patients go to the center daily and receive a one-day prescription. Dr. Schottenstein observed that Dr. Simons prescribed a lot of methadone. In 2009, according to the Centers for Disease Control (CDC), methadone accounted for 2% of pain prescriptions in the United States but was involved in over 30% of prescription painkiller overdose deaths. So, of all the opioids to prescribe to an addict, methadone is arguably the most dangerous.

Dr. Soin stated that he generally agrees with Dr. Schottenstein's comments. Dr. Soin commented that one challenge facing pain physicians today is treating patients who have legitimate chronic pain and also have an addiction disorder and are taking addictive drugs such as heroin. In such situations, treatment is usually conducted through a multi-disciplinary team. In almost all cases of patients who have a severe addiction, treatment is provided in such a way that the patient does not have access to opioids, such as dispensing the medication in an abuse-deterrent way or with an implantable pump. Dr. Soin reiterated that there can be situations where there is a red flag for addiction and chronic opioids can be prescribed in a very controlled environment.

Regarding methadone, Dr. Soin stated the oftentimes people with addictive disorders end up on Medicaid because their addiction has led to financial hardship. Until as recently as 2016, the number one preferred drug on the Medicaid formulary was methadone because it is very inexpensive. As a result, methadone was one of the only options for patients who needed pain medication. Dr. Soin stated that methadone is an incredibly unsafe drug due to respiratory depression, dose stacking, and prolonged QT intervals which can affect the heart, which is why methadone is responsible for so many accidental overdose deaths. Fortunately, the State has recognized this and has changed the formulary, but prior to that change many patients were prescribed methadone for these reasons.

Mr. Giacalone agreed that the proposed limitation restricting Dr. Simons' ability to prescribe Schedule II and Schedule III medications would effectively end his practice. Mr. Giacalone did not wish to end Dr. Simons' practice, but he struggled with developing a way to update Dr. Simons' practice habits. Dr. Soin agreed, stating the effective remediation is the Board's ultimate goal. Dr. Schottenstein reiterated that physician reentry programs such as CPEP or PACE can provide a more intense level of remediation. Dr. Feibel asked if prescribing controlled substances is the entirety of Dr. Simons' practice. Dr. Soin was uncertain about Dr. Simons' practice, but stated that there are other modalities for pain management. For example, Dr. Soin estimated that about 95% of the practice of the State's expert witness, Dr. McIntyre, was use of non-opioids.

Dr. Feibel opined that his proposed amendment sends the appropriate message that Dr. Simons needs to take this seriously once he resumes opioid prescribing. Dr. Feibel noted that the proposed amendment does not completely take away Dr. Simons' ability to practice medicine like a suspension would. Dr. Feibel appreciated the mitigating circumstances in this case, but noted that Dr. Simons ignored many dangerous things that are, in his opinion, unjustifiable. Dr. Feibel stated that he is not a pain management physician, but as an orthopedic surgeon he prescribes a lot of pain medicine; Dr. Feibel stated that he would not have prescribed pain medicine to a patient with a positive toxicology or generally someone who drank 12 beers per day. Dr. Feibel stated that Dr. Simons fell far below the minimal standard of care and, while he did not believe permanent revocation was necessary, the Board needed to send a very serious message that this is not acceptable.

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Ms. Anderson noted that the Proposed Order does not include a practice plan, though there is a requirement for a monitoring physician. Ms. Anderson asked if Dr. Feibel’s proposed restriction should be part of a practice plan. Dr. Feibel agreed. Ms. Anderson also clarified that Dr. Simons has a permanent restriction from 2006 Board Order requiring a chaperone in his practice, and that permanent restriction will continue unchanged. Dr. Feibel agreed and commented that the 2006 permanent restriction is a red flag regarding how Dr. Simons practiced medicine and strengthens his opinion that the two-year prescribing restriction is necessary.

Dr. Feibel wished to change his motion to amend to make the two-year restriction from prescribing Schedule II and Schedule III controlled substances part of a practice plan to be included in the Order, and to clarify that the 2006 permanent restriction requiring a chaperone will continue unchanged. No Board member objected to the change in the motion. The change in the motion was accepted.

Vote on Dr. Feibel’s motion to amend:

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

The motion did not carry.

Mr. Giacalone agreed with Dr. Schottenstein’s suggestion to require a physician reentry program. Dr. Schottenstein commented that such a program would substantially address remediation in the area of addiction. Dr. Soin suggested including a practice plan requirement and continuing the chaperone requirement from the 2006 Board Order. Mr. Giacalone agreed.

Motion to amend the Proposed Order to require completion of a physician reentry program as a condition for reinstatement; require compliance with the recommendations of the physician reentry program; require a practice plan; and specify that the chaperone requirement from the 2006 Board Order will continue:

Motion	Mr. Giacalone
2 nd	Dr. Johnson

Dr. Feibel opined that this is a very light punishment for the egregious behavior that occurred, and he worried about the precedent that the Board would set with this Order. Dr. Feibel recognized the mitigating circumstances in this case and agreed that permanent revocation is not necessary, but he felt that the issues in this case warrant a higher level of discipline, especially given the prior action that led to a permanent chaperone requirement. Dr. Feibel commented that several years ago, this Board suspended one of his partners for six months for a much less egregious issue.

Dr. Soin stated that Dr. Feibel’s point is well-taken. Dr. Soin stressed that this Board takes matters involving prescribing very seriously, especially opioid prescribing, and will continue to do so going forward. Dr. Soin stated that this was a very significant case and many aspects of this case made it difficult, particularly the State’s expert witness. Dr. Soin also noted that earlier in the meeting the Board imposed only a reprimand and probation on a practitioner for egregious prescribing to 10 patients. Dr. Soin stated that the Board considers each matter on a case-by-case basis, and he agreed that Dr. Simons’ case warrants significant action. Dr.

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Soin stated that he did not want to set a precedent with this case and that every fact pattern will be taken into consideration when the Board deliberates future cases.

Vote on Mr. Giacalone's motion to amend:

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

The motion carried.

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

Motion	Dr. Johnson
2 nd	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	N
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Gary Nicholas Spirtos, M.D.

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

Dr. Schottenstein stated that there has been a last-minute request for continuance of this case. Ms. Anderson stated that this morning, Dr. Spirtos' counsel, Todd Newkirk, requested in an email to move consideration of this R&R to the December Board meeting. The Assistant Attorney General, Ms. Snyder, has written an email in response to this request. Ms. Anderson suggested that Mr. Newkirk and Ms. Snyder address the Board regarding this request. Dr. Schottenstein agreed.

Mr. Newkirk stated that, as shown in the record, Dr. Spirtos has had a number of health issues over last few years. The one remaining health issue that Dr. Spirtos has not yet addressed is his back issues. While Dr. Spirtos was unable to attend his hearing, he felt it was important to appear in person before the Board in today's teleconference meeting. One of Dr. Spirtos' relatives was to pick him up and drive him to Mr. Newkirk's

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office so they could both appear via teleconference. However, Dr. Spirtos was unable to make the trip due to his back problems. While Mr. Newkirk advised Dr. Spirtos that he would need to appear before the Board on his behalf, Dr. Spirtos was of the strong opinion that the matter should be moved to December.

Mr. Newkirk stated that it would be beneficial for the Board to see Dr. Spirtos in person. Mr. Newkirk stated that Dr. Spirtos poses no risk to the public since his is not able to practice.

Ms. Snyder noted that Dr. Spirtos has already been granted three continuances during the hearing process, and his citation has been pending since July 2019. It appeared to Ms. Snyder that Dr. Spirtos was using his health as a shield to prevent the Board from reviewing the other state's actions. Ms. Snyder stated there is no indication that Dr. Spirtos' health will improve so that he can appear personally before the Board in the near future. Ms. Snyder added that Dr. Spirtos knew his health has been an issue and could have arranged for his counsel to drive to his house so that they could appear together via teleconference.

Ms. Snyder stood by her objection to the further continuance of this matter.

Ms. Anderson briefly read the emails from both Mr. Newkirk and Ms. Snyder for the Board's benefit.

Motion to grant a continuance of consideration of Dr. Spirtos' Report and Recommendation to the Board's December 2020 meeting:

Motion	Dr. Kakarala
2 nd	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	N
Dr. Johnson	N
Dr. Kakarala	N
Mr. Gonidakis	N
Ms. Montgomery	N
Dr. Feibel	N
Dr. Bechtel	N
Dr. Schottenstein	Y

The motion did not carry.

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

Mr. Newkirk thanked the Board for its consideration of the motion to continue.

Mr. Newkirk stated that Dr. Spirtos was originally licensed to practice medicine in 1989 and he has practiced in a number of states without incident for nearly 30 years, until the allegations against him in Arizona in 2017. Mr. Newkirk stated that the allegations in Arizona are strongly disputed, but Dr. Spirtos was unable to travel to Arizona to resolve the matter due to his health condition. Because of that, Mr. Newkirk was required to sign an interim consent agreement which suspended his Arizona medical license until the matter can be fully adjudicated. Consequently, the allegations have never been tested in the administrative hearing process.

Mr. Newkirk continued that the Proposed Order would suspend Dr. Spirtos' Ohio medical license until he has full and unrestricted licensure in Arizona. Mr. Newkirk submitted that such an arrangement could potentially result in an unfair outcome because the Arizona matter may be resolved in such a way that he would only have minor probationary terms. If that happens, Dr. Spirtos may be able to practice in Arizona but still be

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suspended in Ohio because his licensure is not unrestricted, which Mr. Newkirk felt did not make sense from a fairness standpoint.

Mr. Newkirk opined that the only fair thing the Board can do is either defer action until the Arizona matter is resolved or leave the door open for reconsideration or reinstatement when the Arizona matter is resolved. Mr. Newkirk argued that in this way, the Board can base its action on how Arizona saw the situation and Arizona is in the best position to fully evaluate the allegations. Mr. Newkirk felt that at the worst, the Board should make the suspension temporary and reconsider the matter after the Arizona issue is resolved.

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

Ms. Snyder stated that the Ohio Board knows very little about the underlying facts of the Arizona case. What is known is that the Arizona Medical Board indefinitely suspended Dr. Spirtos' license in that state in 2017, and the California Medical Board issued a default order revoking his license in that state based on the action of the Arizona Medical Board. It is also known that Dr. Spirtos' only active medical license at this time is his Ohio medical license and he is currently living in Ohio. Although much has been said about Dr. Spirtos' health, the Board does not truly know the state of Dr. Spirtos' health and he could theoretically begin practicing at any time.

Ms. Snyder stated that in cases such as this, the Board typically waits for the other state to work through the facts and come to a conclusion. Ms. Snyder stated that the Board can take action today and then take action on any new order issued by the Arizona Medical Board. If the Arizona Medical Board dismisses its case, the suspension of Dr. Spirtos' Ohio license will automatically lift because it is conditioned on any restrictions on his Arizona license.

Ms. Snyder supported the Report and Recommendation as the most appropriate course to protect public safety in Ohio.

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

Motion	Dr. Bechtel
2 nd	Dr. Johnson

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

Dr. Schottenstein agreed with the Assistant Attorney General and opined that the Proposed Order is fair. Dr. Schottenstein appreciated defense counsel's suggestion about making active licensure in Arizona, as opposed to unrestricted licensure, a condition for reinstatement. However, Dr. Schottenstein stated that being on probation in another state is not insignificant and he would want to be satisfied as to Dr. Spirtos' behavior while being monitored in another state.

Vote on Dr. Bechtel's motion to approve:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y

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Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

Dr. Schottenstein stated that in the following matters, the Board issued Notices of Opportunity for Hearing, and documentation of Service was received for each. There were no timely requests for hearing filed, and more than 30 days have elapsed since the mailing of the Notices. These matters are therefore before the Board for final disposition. These matters are non-disciplinary in nature, and therefore all Board members may vote.

Andrienne Rene Baeza, M.T.

Dr. Schottenstein stated that on March 16, 2020, the Board issued a Notice of Opportunity for Hearing to Andrienne Rene Baeza, M.T., informing her that the State Medical Board of Ohio proposed to deny her application for a certificate to practice massage therapy because she does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board's required course of instruction, and hasn't held a current license, registration or certificate of good standing for massage therapy in another state for at least the preceding five years.

Motion to find that the facts set forth in the March 16, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Baeza's application:

Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Samantha Michelle Bedel, M.T.

Dr. Schottenstein stated that on August 12, 2020, the Board issued a Notice of Opportunity for Hearing to Samantha Michelle Bedel, M.T., informing her that the State Medical Board of Ohio proposed to approve his application for restoration of her license to practice massage therapy provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Bedel has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the August 12, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective

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immediately upon mailing, approving Ms. Bedel’s application, provided that she takes and passes the MBLEx within 12 months of the date of mailing of the Order:

Motion	Dr. Saferin
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Christopher D. Boggs

Dr. Schottenstein stated that on July 15, 2020, the Board issued a Notice of Opportunity for Hearing to Christopher D. Boggs informing him that the State Medical Board of Ohio proposed to deny his application for a limited permit to practice respiratory care because applications for a limited permit must be submitted within one year following the date of graduation from a respiratory care educational program. Because Mr. Boggs graduated on or about May 5, 2018, but submitted his application for a limited permit on February 27, 2020, he is not an eligible recipient for a limited permit.

Motion to find that the facts set forth in the July 15, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Mr. Boggs’ application:

Motion	Dr. Johnson
2 nd	Dr. Bechtel

Mr. Giacalone noted that Mr. Boggs graduated from his educational program in 2018, but seems to be ineligible for licensure because it has been more than a year since his graduation. Mr. Giacalone asked if Mr. Boggs could take a clinical simulation examination and become eligible, or if he is forever ineligible because he missed the timeframe to apply for licensure following graduation. Ms. Anderson opined that Mr. Turek, Deputy Director for Licensure, may be able to answer these questions, though he is not present in the meeting at this time. Mr. Giacalone suggested tabling this matter.

Dr. Soin agreed with Mr. Giacalone’s comments and added that it is uncertain how simulation examinations are occurring during the COVID-19 pandemic.

Motion to table:

Motion	Mr. Giacalone
2 nd	Dr. Soin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y

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

The motion to table carried.

Erin Kelly Burrell, M.T.

Dr. Schottenstein stated that on July 8, 2020, the Board issued a Notice of Opportunity for Hearing to Erin Kelly Burrell, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Burrell has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the July 8, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Burrell’s application, provided that she takes and passes the MBLEx within 12 months of the date of mailing of this order:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Hope E. Carrington, R.C.P.

Dr. Schottenstein stated that on March 11, 2020, the Board issued a Notice of Opportunity for Hearing to Hope E. Carrington, R.C.P., informing her that the State Medical Board of Ohio proposed to approve her application for a license to practice respiratory care, provided she take and pass the Clinical Simulation Examination (CSE) due to the fact that Ms. Carrington has not engaged in the active practice of respiratory care for more than two years.

Motion to find that the facts set forth in the March 11, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Carrington’s application, provided that she takes and passes the CSE within 12 months of the date of mailing of this order:

Motion	Dr. Saferin
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2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Andreia N. Jones, M.T.

Dr. Schottenstein stated that on July 8, 2020, the Board issued a Notice of Opportunity for Hearing to Andreia N. Jones, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Jones has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the July 8, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Jones' application, provided that she takes and passes the MBLEx within 12 months of the date of mailing of this order:

Motion	Dr. Saferin
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Hayley Mason, M.T.

Dr. Schottenstein stated that on April 27, 2020, the Board issued a Notice of Opportunity for Hearing to Hayley Mason, M.T., informing her that the State Medical Board of Ohio proposed to deny her application to practice massage therapy because she does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board's required course of instruction, and hasn't held a current license, registration, or certificate of good standing for massage therapy in another state for at least the preceding five years.

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Motion to find that the facts set forth in the April 27, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Mason's application:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Brianna Lee Maria Rivera, M.T.

Dr. Schottenstein stated that on April 27, 2020, the Board issued a Notice of Opportunity for Hearing to Brianna Lee Maria Rivera, M.T., informing her that the State Medical Board of Ohio proposed to deny her application to practice massage therapy because she does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board's required course of instruction, and hasn't held a current license, registration or certificate of good standing for massage therapy in another state for at least the preceding five years.

Motion to find that the facts set forth in the April 27, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Rivera's application:

Motion	Dr. Saferin
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Brian G. Rubenstein, M.T.

Dr. Schottenstein stated that on November 13, 2019, the Board issued a Notice of Opportunity for Hearing to Brian G. Rubenstein, M.T., informing him that the State Medical Board of Ohio proposed to approve his

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application for restoration of his license to practice massage therapy, provided he take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Mr. Rubenstein has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the November 13, 2019 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Mr. Rubenstein’s application, provided that he takes and passes the MBLEx within 12 months of the date of mailing of this order:

Motion	Dr. Saferin
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Erin Lee Ruskiewicz-Soltis, M.T.

Dr. Schottenstein stated that on May 13, 2020, the Board issued a Notice of Opportunity for Hearing to Erin Lee Ruskiewicz-Soltis, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Ruskiewicz-Soltis has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the May 13, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Ruskiewicz-Soltis’ application, provided that she takes and passes the MBLEx within 12 months of the date of mailing of this order:

Motion	Dr. Bechtel
2 nd	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

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Christopher D. Boggs

Motion to remove the matter of Mr. Boggs from the table:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Mr. Turek explained that Mr. Boggs has applied for a limited permit to practice respiratory care. Pursuant to statute, one can only hold a limited permit if one is enrolled in a respiratory care educational program or if one has graduated from such a program within one year. Since Mr. Boggs graduated in May 2018, he is ineligible to hold a limited permit. Mr. Turek stated that Mr. Boggs could apply for a full respiratory care license, assuming he has a Registered Respiratory Therapist (RRT) credential from the National Board for Respiratory Care (NBRC). Mr. Turek stated that the staff has had some difficulty contacting Mr. Boggs, but he will attempt to inform Mr. Boggs that he is eligible for full licensing if he holds a RRT.

A vote was taken on Dr. Johnson's motion denying Mr. Boggs' application:

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

The motion carried.

The Board meeting was recessed at 12:39 p.m. The meeting resumed at 1:00.

EXECUTIVE SESSION

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; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official:

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Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

The Board went into Executive Session at 1:02 p.m. and returned to public session at 2:13 p.m.

EXECUTIVE DIRECTOR STEPHANIE LOUCKA

Dr. Schottenstein stated that he wished to set aside some time to provide feedback on Ms. Loucka's performance as Executive Director.

Dr. Schottenstein stated that he has been nothing but impressed and grateful for the hard work he has seen from Ms. Loucka. Dr. Schottenstein was appreciative that Ms. Loucka joined the Board during a difficult time, having to manage the Dr. Strauss matter, the COVID-19 pandemic, and shifting all Board employees to working remotely, and was still able to hit the ground running and bring a depth of knowledge to the position. Dr. Schottenstein complimented Ms. Loucka's communication skills with Board members, as well as the Governor's office. Dr. Schottenstein stated that Ms. Loucka has done a terrific job hiring new staff who are the right people for the right positions. Dr. Schottenstein stated that Ms. Loucka is a pleasure to work with.

Dr. Bechtel whole-heartedly agreed with Dr. Schottenstein's comments. Dr. Bechtel stated that Ms. Loucka has created a great culture at the Board, asks for feedback from employees, sets good work expectations, and has accomplished much. Dr. Bechtel stated that the Board is fortunate to have Ms. Loucka's leadership.

Ms. Montgomery stated that the Board is blessed to have found a leader like Ms. Loucka, who can give quality criticism without being critical, knows how to prioritize, and understands how to treat people. Ms. Montgomery stated that Ms. Loucka is organized, articulate, and one of the quickest studies she has encountered. Ms. Montgomery stated that Ms. Loucka is the ideal of what she thinks a public servant is.

Dr. Rothermel stated that she could not agree more with the previous comments.

Dr. Saferin stated that Ms. Loucka has been a pleasure to work with and be around. Dr. Saferin stated that Ms. Loucka's people skills are extraordinary and she is able to get the best out of people.

Mr. Giacalone thanked Ms. Loucka for the great job she has done and state that she is truly appreciated.

Dr. Soin commented that the Policy Committee has long struggled with the legislative tracker, which is now greatly improved thanks to Ms. Loucka's leadership. Dr. Soin also commented that he has worked with Ms. Loucka at the Medical Marijuana Commission, where she represents the Medical Board very well in a difficult, emotionally-charged environment. Dr. Soin stated that Ms. Loucka still has many challenges to work through in the future.

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Dr. Schottenstein thanked Ms. Loucka on behalf of the entire Board.

Ms. Loucka thanked the Board members and agreed that there is much work to do. Ms. Loucka stated that there will always be a lot of work to do and there will always be room for improvement. Ms. Loucka was grateful to be with the Board and she has never had a government position that allowed her to be so directly involved and to see the impact of government action.

SETTLEMENT AGREEMENTS

Colin Stuart Moorhead, M.D.

Motion to ratify the proposed Consent Agreement with Colin Stuart Moorhead, M.D.:

Motion	Mr. Giacalone
2 nd	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	N
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Hollie Michelle Aneshansley, L.M.T.

Motion to ratify the proposed Step I Consent Agreement with Hollie Michelle Aneshansley, L.M.T.:

Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Jennifer D. Bahner, M.D.

Motion to ratify the proposed Step I Consent Agreement with Jennifer D. Bahner, M.D.:

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Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

James David Megargel, M.D.,

Motion to ratify the proposed Permanent Surrender with James David Megargel, M.D.:

Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Julie Christina Williams, P.A.

Motion to ratify the proposed Consent Agreement with Julie Christina Williams, P.A.:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

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Dr. Schottenstein	Y
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The motion carried.

Mitchell Kohl, M.D.

Motion to ratify the proposed Permanent Surrender of Certificate to Recommend Medical Marijuana with Mitchell Kohl, M.D.:

Motion	Dr. Johnson
2 nd	Dr. Bechtel
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	N
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Matthew S. Schoen , M.D.

Motion to ratify the proposed Permanent Surrender with Matthew S. Schoen, M.D.:

Motion	Dr. Johnson
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Roman Michael Dale, M.D.

Motion to ratify the proposed Permanent Surrender with Roman Michael Dale, M.D.:

Motion	Dr. Kakarala
2 nd	Dr. Bechtel
Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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

The motion carried.

Samer Mattar, M.D.

Motion to ratify the proposed Permanent Withdrawal of Application with Samer Mattar, M.D.:

Motion	Dr. Johnson
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Stephen Craig Shy, Sr., D.O.

Motion to ratify the proposed Permanent Surrender with Stephen Craig Shy, Sr., D.O.:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

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Stephen T. House, M.D.

Motion to ratify the proposed Consent Agreement with Stephen T. House, M.D.:

Motion	Dr. Johnson
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Thomas Bailey, M.D.

Motion to ratify the proposed Consent Agreement with Thomas Bailey, M.D.:

Motion	Dr. Kakarala
2 nd	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Timothy John Heyd, M.D.

Motion to ratify the proposed Permanent Surrender with Timothy John Heyd, M.D.:

Motion	Mr. Giacalone
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y

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Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	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. Duane Boomershine, L.M.T.: An Automatic Suspension, based on a rape conviction.
2. Fitzgerald Hudson, M.D.: A proposed denial to be issued to a licensure applicant, based on a 2013 felony for health care fraud, actions taken by medical boards in New York and Michigan, and failure to disclose on his Ohio licensure application that in June 2020 he was indicted for conspiracy to possess with intent to distribute controlled substances.
3. Harold Jones, D.P.M.: A proposed denial of application, based on a prior action by the Board in 2010 revoking his license for mail fraud and health care fraud.
4. Vincent J. Malkovits, D.O.: Based on minimal standards of care in relation to prescribing to 11 patients from 2011 to 2018.
5. Theodore E. Okechuku, M.D.: Based on multiple felony convictions, including conspiracy to distribute controlled substances, and firearms used in furtherance of drug trafficking crimes. Ms. Marshall noted that this physician's Ohio medical license is lapsed.
6. Sherman Washington, M.D.: Based on action taken by Washington Medical Board regarding his failure to respond to their investigation about prescribing.
7. Christopher R. Suntala, M.D.: Based on minimal standards of care involving prescribing to six patients from 2014 to 2018.

Motion to approve and issue citation # 1, an Automatic Suspension:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Motion to approve and issue proposed Citations #2 through #6:

Motion	Dr. Kakarala
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2 nd	Dr. Bechtel
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Motion to approve and issue proposed Citation #7:

Motion	Dr. Kakarala
2 nd	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

OPERATIONS REPORT

Ms. Loucka stated that the Board of Pharmacy often passes resolutions for its employees when they retire. One Board of Pharmacy employee, Gregory McGlone, is retiring. Mr. McGlone also spent time with the State Medical Board as an investigator.

Ms. Loucka read the following proposed resolution regarding Mr. McGlone:

Whereas the administrative and investigative efforts of Gregory A. McGlone as an enforcement investigator with the State Medical Board of Ohio and as an agent with the State of Ohio Board of Pharmacy have directly led to the successful and thoughtful enforcement of the drug laws of Ohio, and whereas these efforts have contributed to the ongoing protection and safety of the citizens of Ohio,

Therefore be it resolved that the State Medical Board of Ohio and State of Ohio Board of Pharmacy hereby commend Gregory A. McGlone for a combined 21 years of exemplary service in performance to the boards and to the people of Ohio in carrying out the responsibilities of his positions.

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And be it also resolved that we, the members of the State Medical Board of Ohio and the State of Ohio Board of Pharmacy, so express our profound appreciation to Mr. McGlone for his dedication and service to the boards and the citizens of Ohio.

And be it further resolved that this resolution be spread upon the permanent minutes of the State Medical Board of Ohio and the State of Ohio Board of Pharmacy.

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Motion to approve the resolution:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Human Resources: Ms. Loucka stated that the Board is in the process of hiring an investigator for the Northeast region. Approval for this hire was obtained due to the public safety nature of the position and the impact it has on regulating the current pandemic. The position is open to state employees only.

Budget: Ms. Loucka stated that Dr. Schottenstein will give a more thorough budget report during the Finance Committee report. Ms. Loucka wished to point out that the Board's revenue continues to lag due to the legislature's decision in March to extend all license renewal deadlines to December 1. According to Mr. Turek, there are still about 16,800 Board licensees who normally would have renewed this year but has not yet renewed. To avoid having people inadvertently fail to renew by December 1 and practice unlicensed, the Board has launched a focused communications campaign directed to those licensees who have not yet renewed.

Operations: Ms. Loucka stated that all units continue to be productive while working remotely. The Board continues to receive many public records requests. Ms. Loucka opined that the Board's Legal team has the fastest turnaround time for public record requests in state government.

Licensure: Ms. Loucka stated that when an applicant provides everything that is required, the median number of days to license that applicant is 10 days. More specifically, Ms. Loucka stated that 75% of applicants are licensed in less than 30 days, 50% are licensed in less than 14 days, and 25% are licensed in less than five days. Ms. Loucka stated that there continues to be some delays with background checks.

Compliance: Ms. Loucka stated that she has started to include basic information on Compliance in the Operations Report, and she is still working on how best to present that data. In this month's Operations Report, the number of probationers being monitored by Compliance is compared to the number from January 2020. Ms. Loucka stated that in the future, she would also like to include data on how many new complaints the Board receives during the same time period.

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Ms. Montgomery noted that, according to the data, it appears that only three of the Board's 215 probationers are not in compliance with the terms of their agreements or orders. Ms. Montgomery asked if that is an accurate number, stating that she would have expected that number to be higher. Ms. Loucka replied that that figure is legitimate, though she would like better assurance of how the Board determines what non-compliance is. Ms. Loucka stated that her gut feeling is that there are more than three probationers who are not in compliance. Ms. Loucka intends to work on how to arrive at a true number in the near future.

Complaints: Ms. Loucka was concerned that there are currently almost 2,000 open complaints, but noted that the Board has been in the media lately and that tends to drive up complaint activity. Ms. Loucka also observed a small decrease in the number of closed complaints this year due to the inability of investigators to go out and investigate at the height of the pandemic.

Communications: Ms. Loucka stated that Communications has been busy preparing for the October Board Retreat and implementing the targeted email strategy for license renewals.

eLicense Costs: Ms. Loucka stated that at the November Board meeting, she plans to speak to the Board about eLicensure costs.

Cultural Competency Guide

Ms. Pollock stated that the Cultural Competency Guide was first approved by the Board in February 2019 in the hopes that it would be useful to those who provide health care in Ohio. Ms. Pollock also stated that cultural competency is always an ongoing process.

Ms. Pollock stated that the Board was contacted by Equitas Health Institute with a request to expand some sections of the Guide. Though the Guide talked about certain aspects of gender identity, it lacked in other areas. Equitas Health Institute helped build out that portion of the Guide. If the changes are approved, the cultural competency video will be updated accordingly.

Responding to questions from Mr. Gonidakis, Ms. Pollock stated the changes to the guide are in digital form only, and since there was not printing there was no additional expense. Ms. Pollock also stated that in the beginning, some support for the Guide came from the Multicultural Association, which was recommended by Senator Tavares.

Ms. Montgomery commented that, while she may have some issues with some things in the Guide, it is a very well-done document.

Motion to approve the updated version of the cultural competency guide:

Motion	Dr. Bechtel
2 nd	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

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The motion carried.

RULES & POLICIES

4761-9-04, Respiratory Care Rules Hearing

Ms. Anderson stated that this proposed rule is actually an amendment to a rule. However, because more than 50% of the rule was amended, a rescission and filing of a new rule is required. No comments were received at the public rules hearing. The hearing report has been provide to Board members for their review.

Ms. Anderson anticipated bringing this proposed rule to the Board in November for final adoption.

Adoption of Rules

Ms. Anderson stated that a public rules hearing was held on July 23, 2020. No comments were received on Rules 4730-4-01, 4731-11-14, 4731-33-01. The jurisdiction of the Joint Commission on Agency Rule Review (JCARR) ended on August 23, 2020.

Comments were received and the Board approved changes which were made on August 14, 2020 for rules 4730-4-02, 4731-33-02, 4731-11-01, 4731-35-01 and 4731-35-02. JCARR jurisdiction ended on September 13, 2020. Ms. Anderson noted that these rules include the consult agreement rules, the detoxification rules for withdraw management for physicians and physician assistants, and corrections to the subacute and chronic pain rules.

Motion to adopt, amend, and rescind the rules as described in the September 21, 2020 memorandum from Ms. Anderson and to assign each rule action the effective date of October 31, 2020:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Medical Marijuana Petitions for 2021

Dr. Schottenstein stated that the Board is being asked to consider and approve next year's window during which the Board will accept petitions requesting additional conditions be added to Ohio's Medical Marijuana Control Program. Dr. Schottenstein noted that the petition window for 2020 has already been approved for November 1, 2020 to December 31, 2020.

Motion to accept petitions for new qualifying conditions for treatment with medical marijuana for 2021 from November 1, 2021 to December 31, 2021:

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Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Abstain
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

COMMITTEE BUSINESS

Ad Hoc Telehealth Committee Report

Dr. Feibel stated that the Telehealth Committee met last month following the Board meeting. The Committee was informed that the Department of Medicaid filed a rule with the Joint Committee on Agency Rule Review (JCARR) regarding telehealth services for their beneficiaries. It was noted the rule requires healthcare providers to conform to the rules of their respective boards. Since there are many health care providers not covered by our board, it was the Committee's hope that the other boards will adopt the same guardrails as the Medical Board. The Committee reaffirmed the need for guardrails to protect patients from fraud and abuse, and make sure quality health care in Ohio is maintained.

The Committee also modified the proposed language regarding when initial patient visits can be done via telehealth; specifically, it can be done only if necessary to avoid significant compromise to the patient's health or due to the patient's lack of mobility.

Dr. Feibel stated that the Telehealth Committee will meet again following this Board meeting. Dr. Feibel invited all interested Board members to attend.

Compliance Committee Report

Dr. Schottenstein stated that the Compliance Committee met last month following the Board meeting. Ms. Murray updated the Committee on the development of dashboards that will help track data for the Compliance Section. The Committee provided feedback on what data it would find most helpful.

The Committee also reviewed staff research showing that many other states permit out-of-state applicants to confidentially transfer from the other state's physician health program into its own. The Committee discussed the possibility to pursuing a similar policy for Ohio. Following discussion, the Committee determined that there should be continued conversations with Kelley Long, Executive Director of the Ohio Physicians Health Program, regarding the Committee's concerns.

Since Compliance Committee is not meeting today, Dr. Schottenstein asked for a motion to approve the draft minutes of last month's Committee meeting.

Motion to approve the draft minutes of the Committee's September 2020 meeting:

Motion	Dr. Kakarala
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2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Physician Assistant Policy Committee Report

Ms. Reardon stated that the Physician Assistant Policy Committee (PAPC) met on October 9, 2020. A legislative update was given. The Chief Legal Counsel gave an update on administrative rules. Ms. Lynch provided data from 2018 to 2020 identifying the number of physician assistants by county.

Ms. Reardon stated that Dr. Schottenstein has appointed Karen Conger to the PAPC as a consumer member. Ms. Reardon stated that Ms. Conger has an impressive resumé and experience in the medical arena, and will be an asset to the PAPC.

Sexual Misconduct Committee Report

Dr. Schottenstein stated that the Sexual Misconduct Committee met this morning and discussed the packet of legislative proposals. Dr. Schottenstein was grateful for the comments that had been received from interested parties. The Committee discussed the following topics:

- Adding massage therapists to the legislation due to the unfortunate fact that there are a fair number of sexual misconduct complaints associated with that profession.
- Defining sexual misconduct as a fifth-degree felony.
- Prosecutors and courts notifying the Board when a licensee is subject to an indictment or a conviction.
- Reporting statutes and peer review processes.

In addition, the Board discussed proposed legislation that would be very reminiscent of California's Patient's Right to Know Act. The legislation would require a licensee on probation to inform to his or her patients that he or she is on probation. This requirement would only be effective if the probation is due to a violation that could result in patient harm, such as sexual misconduct, alcohol or drug issues, criminal convictions that involve patient harm, or inappropriate prescribing. The Medical Board would also have an obligation to post that information in its website. The staff will do research to see if there have been any unintended consequences of Patient's Right to Know Act in California that the Board should be aware of.

Dr. Schottenstein opined that the Board should embrace this legislation. Dr. Schottenstein felt that it would be the culmination of all the work the Board has done since the Governor proposed the Strauss Working Group and it would substantially aid the Board's efforts to protect the public. Dr. Schottenstein stated that this legislation would arguably be as impactful or more impactful than anything the Board has done so far, and it would demonstrate to the public that the Board has responded to the Strauss matter in a serious way.

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Regarding the historical case review, Dr. Schottenstein stated that the reviews have been completed. In 80% of the cases, the recommendation of the external reviewer was to close the complaint. In 9.5%, the reviewer stated that the Board could reopen the complaint but it would be very difficult because the victims may not be available. In 6.5% of the cases, the reviewer recommended reopening the complaint, in some cases due to duty-to-report issues and/or law enforcement notification issues.

Policy Committee Report

Dr. Soin stated that the Policy Committee met this morning. The Committee received a rule review update. The Committee also discussed rules to be filed with the Common Sense Initiative (CSI), specifically the hearing rules, the exposure prone invasive procedure rules, and the radiologist assistant rules. The committee tabled discussion of the licensure eligibility rules.

Motion to approve the hearing rules, exposure-prone invasive procedure rules, and radiologist assistant rules, as amended by the Policy Committee, for filing with CSI:

Motion	Dr. Bechtel
2 nd	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Regarding the tabled licensure eligibility rules, the staff was asked to review key points, including the possibility of granting equivalency for examinations, limiting acceptable examinations to those in the United States due to the inability of confirming tests in other countries, and monitoring the legislature for possible passage of legislation which may supersede the Board's efforts in this matter.

Proposed Rules from the Department of Developmental Disabilities

Dr. Soin stated that the Policy Committee has recommended approval of proposed rules from the Ohio Department of Developmental Disabilities (DODD). DODD had been required to consult the Medical Board on these rules.

Motion to approve the proposed rules from DODD:

Motion	Dr. Bechtel
2 nd	Dr. Kakara.a
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y

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Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Legislative Update

Dr. Soin commented that the staff has done an excellent job on the legislative tracker.

Senate Bill 249, Occupational Licensing Reciprocity: The Committee is waiting for adoption of a sub-bill that addresses fitness to practice. Ms. Montgomery had hoped that language from a similar bill, House Bill 263, could be mirrored in Senate Bill 249 to allow for unlimited lookback for applicants for violent or sexual crimes.

Senate Bill 364, Interstate Medical Licensure Compact: This legislation would require the Board to join the Interstate Medical Licensure Compact (IMLC). Board staff met with representative from IMLC and state stakeholders. This will be presented in more detail to the Committee next month.

House Bill 492, Physician Assistants: This bill would allow physician assistants to perform some sedation and rapid sequence intubation. The Board staff has expressed the Committee's opinions to the Governor's office and the Ohio Association of Physician Assistants. The Committee is strongly opposed to this bill.

House Bill 679, Telehealth: Dr. Soin stated that this bill is moving forward in the legislature. There is an amendment package that the Board wanted to include in the legislation. Dr. Soin commented that the bill's sponsors seems responsive to the Board's feedback.

Senate Bill 239, Music Therapists: This legislation would require the Board to license and regulate music therapists. Mr. Giacalone had pointed out that the Board already has stretched resources and questioned if music therapists were a good fit for the Board.

House Bill 747, Off-Label Medication Prescribing: Dr. Soin noted that this bill was introduced the day after the hydroxychloroquine issue at the Board of Pharmacy was reported. Dr. Soin noted that currently, physicians can prescribe medications off-label if they follow appropriate guidelines and standards.

Medical Marijuana Legislation: Dr. Soin stated that the two bills in the legislation that relate to medical marijuana do not seem to be moving forward.

Finance Committee Report

Dr. Schottenstein stated that the Finance Committee will not be meeting in October. Dr. Schottenstein asked for a motion to approve the draft minutes of the Committee's last meeting

Motion to approve the draft minutes of the Finance Committee's September 2020 meeting?

Motion	Dr. Saferin
2 nd	Mr. Gonidakis
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y

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Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Fiscal Update

Dr. Schottenstein reported that for August 2020, the Board's revenue was \$490,821 and the Board's cash balance was \$4,571,540. Those number are substantially down from last month, which appears to be a function of the delay in the license renewal deadline. Looking ahead to the September 2020 numbers, the cash balance will be over \$5,000,000 and revenue will only be about \$8,000 behind projections.

Dr. Schottenstein stated that since March 2020 the license renewal period was moved back to December 1, the Board has accumulated about 17,000 licensees who normally would have renewed by now but have not. There is a communication plan to send about seven or eight messages to these licensees over the next two months reminding them of the December 1 deadline to renew. Dr. Schottenstein commented that the December 1 deadline applies to all licensing boards, so there is a fear that the State's eLicense system could be flooded with renewals as that date approaches.

Dr. Schottenstein stated that the Board's expenditures have increased by 6.5% year-to-date. Almost all of this increase is due to payroll and the fact that the Board only has about four to five positions vacant instead of the usual eight to nine vacant positions.

For the historical case review, the Board spent a total of \$164,903 in Fiscal Years 2020 and 2021.

In August 2020, the Board received \$11,500 in disciplinary fines, \$82.17 from collections, and levied \$34,000 in fines.

Ms. Montgomery exited the meeting at this time.

Licensure Committee Report

Licensure Application Reviews

Motion to grant Jad Dughayli, M.D.'s request for graduate medical education equivalence, as outlined in 4731.09(A)(4)(b), and to grant a license to Dr. Dughayli:

Motion	Dr. Rothermel
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

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The motion carried.

Motion to approve Jessica Collins, Kristie Fry, Sophat Lort, and Margaret Paparella’s applications for restoration of their Ohio licenses, contingent on passing of the MBLEx within 12 months of the date of mailing of the Notices of Opportunity for a Hearing:

Motion	Dr. Kakarala
2 nd	Dr. Rothermel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Motion to approve applications and issue licenses to Holly Craig, Jovon Harris and Lauren Marlow:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

COMPLIANCE

Office Conference Review

Motion to approve the Compliance staff’s Reports of Conferences for September 8 and 10, 2020:

Motion	Mr. Giacalone
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y

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Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Probationary Requests

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

- a) Michael A. Alexander, D.O.: Request for release from the terms of the April 10, 2019 Consent Agreement.
- b) Asad S. Ali, M.D.: Request for approval of the previously completed *Intensive Course in Controlled Substance Prescribing: Pain, Anxiety and Insomnia*, offered by Case Western Reserve University, to fulfill the controlled substance prescribing course requirement.
- c) Thomas M. Bender, A.A.: Request for approval of Celebrate Recovery, in addition to AA recovery meetings, to meet the required weekly 12-Step recovery meeting attendance, for one meeting per week towards the-two-meetings-per-week requirement.
- d) William R. Danko, M.D.: Request for approval of Anthony W. Alvarez, M.D. to complete the psychiatric assessment.
- e) Ryan L. Gerritsen, M.D.: Request for approval of the individual and group counseling required by the Pennsylvania Physicians Health Program contract to complete the aftercare requirement.
- f) Gerry V. Hsu, P.A.: Request for approval of Kenneth Washington, Ph.D., to serve as the new treating psychologist.
- g) Brenden P. Jenks, M.D.: Request for reduction in 12-Step meetings to two per week with a minimum of 10 per month and reduction in appearances to every six months.
- h) Vincent Lombardi, M.D.: Request for approval of the course *Intensive Course in Controlled Substance Prescribing: Pain, Anxiety, Insomnia*, offered by Case Western Reserve University, to fulfill the controlled substance prescribing course requirement, or approval of the course *PBI Prescribing Course: Opioids, Pain Management and Addiction*, offered by the University of California, Irvine School of Medicine, to fulfill the controlled substance prescribing course requirement.
- i) Maneesh L. Mehra, M.D.: Request for release from the terms of the May 13, 2020 Addendum to the July 8, 2015 Step II Consent Agreement, pending continued compliance.
- j) Timothy J. Morley, D.O.: Request for approval of Louis DeMicco, D.O. to serve as the monitoring physician; and determination of the number and frequency of charts at 10 charts per week.
- k) Nicholas L. Pesa, M.D.: Request for release from the terms of the April 9, 2014 Board Order.
- l) Vernon E. Proctor, M.D.: Request for approval of *Prescribing Controlled Drugs*, offered by Vanderbilt University Medical Center, to fulfill the controlled substance prescribing course requirement; and approval of *PBI Medical Record Keeping Course*, offered by the University of California, Irvine School of Medicine, to fulfill the medical records course requirement.
- m) Jon B. Silk, Jr., M.D.: Request for approval of Marcia Kaplan, M.D. to serve as the treating psychiatrist.
- n) Brittney T. Stone, D.P.M.: Request for approval of the ethics course tailored by Donna Homenko, Ph.D., to fulfill the professional ethics course requirement.
- o) Melissa L. Verchio, M.D.: Request for reduction in appearances from every three months to every six .months; and discontinuance of the chart review requirement.

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- p) Rodney J. Williams, M.D.: Request for approval of the previously completed course *UC San Diego PACE Program*, offered by the University of California San Diego School of Medicine, to fulfill the controlled substance prescribing course requirement.

Motion	Dr. Johnson
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

ADJOURN

Motion to adjourn:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

The meeting adjourned at 3:26 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on October 14, 2020, as approved on November 10, 2020.

(SEAL)



SEXUAL MISCONDUCT COMMITTEE MEETING
October 14, 2020 – via video conference

<p>Committee Members Present: Michael Schottenstein, MD, Chair Michael Gonidakis, Esq. Robert P. Giacalone, JD, PhD Betty Montgomery</p> <p>Other Board Members Present: Mark A. Bechtel, MD Kim Rothermel, MD Bruce R. Saferin, DPM Jonathan Feibel, MD</p>	<p>Staff Present: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Angela Canepa, Deputy Director of Investigations, Enforcement, and Compliance Nathan Smith, Senior Legal Counsel Tessie Pollock, Chief of Communications Benton Taylor, Board Parliamentarian</p>
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Dr. Schottenstein called the meeting to order at 8:34 a.m.

MINUTES REVIEW

Mr. Gonidakis moved to approve the draft minutes of the Committee’s September 9, 2020 meeting. Mr. Giacalone seconded the motion. The motion carried.

LEGISLATIVE UPDATE

Mr. Smith reviewed the latest draft legislative language, based on the recommendations of the Governor’s Working Group and previous discussions by this Committee. The draft legislative proposals have also been sent to outside groups for comments, which have been provided to Committee members. The staff was pleased with the level of detail in the comments, particularly those from the Ohio Prosecuting Attorneys Association (OPAA) and from Kelly Heile of the Butler County Prosecutor’s Office, as well as the Board’s more traditional stakeholders such as the Ohio State Medical Association (OSMA) and the Ohio Hospital Association (OHA). Those comments, along with the experience of Angela Canepa, the Board’s Deputy Director of Investigations, Enforcement, and Compliance, were very helpful in developing language that is responsive to the concerns of all parties.

Statutes on Criminal Conduct

Mr. Smith stated that based on previous comments by the Board, the staff considered whether licensees besides physicians and physician assistants should be covered by the statutes on criminal conduct. The recommended change in this regard is to add massage therapists, based on data on the total number of complaints involving massage therapists over the last 26 years. Holder of physician training certificates are also include in this language.

Mr. Smith stated that at least two of the comments received from prosecutors indicated concerns that it would be inadequate for sexual contact, defined as touching of the erogenous zones, to be criminalized as only misdemeanor sexual imposition, especially if the victim is a minor. The recommended change is to criminalize sexual contact as felony sexual battery and would be a felony of the fifth degree, or a felony of the fourth degree if the victim is a minor. Mr. Smith noted that this would be less than the charges for sexual conduct, which would be a felony of the third degree or a felony of the second degree if the victim is a minor. If these

changes are accepted, there would no longer be a need for the sexual imposition section of 2906.06, ORC.

Comments were also received regarding the need to define “medical treatment.” The staff drew on the definition of “health care services” in Rule 4731-26-01, incorporated that it must be in person, and used that to define “medical treatment” in 2907.02(C)(5). Mr. Smith stated that this will put everyone on notice as to what is covered under this relationship-based offense.

Prosecutor Notification of Indictment/Conviction and Court Notification of Conviction

Mr. Smith stated that in the course of research, it was discovered that prosecutors are required by 2907.17, Ohio Revised Code, to notify the appropriate licensing boards when a mental health professional is indicted for sexual battery or sexual imposition. In addition, under 2907.18, Ohio Revised Code, the court is required to send notification and documentation to licensing boards when a mental health professional is convicted of those offenses. The Board staff felt it would be appropriate to recommend amending those statutes to include licensed medical professionals for those offenses.

Mr. Smith continued that 2929.42, Ohio Revised Code, currently requires prosecutors to notify licensing boards when a licensee is convicted for any of a long list of offenses detailed in the statute. The Board’s staff recommends updating the statute to account for all the Medical Board’s licensees, not only physicians and physician assistants.

Mr. Smith stated that the proposed changes in this area will ensure prompt and comprehensive notification from prosecutors on the indictment or conviction of any Board licensee. Mr. Smith stated that this language will enable the Board to access its ability to automatically suspend the practitioner’s license in cases of conviction and will dovetail with other efforts to approve proposed section 4731.22(P) involving emergency suspension of a license based on an indictment.

Reporting Statutes

Mr. Smith stated that many of the comments asked for clarification of the proposed language for the reporting statutes. In response, the phrase “key third party” was defined in 2921.22, Ohio Revised Code. Also, because there was some confusion on the exception language in 4731.22(F)(2), a timeliness requirement was added specifying that the report should be made within seven days of obtaining the knowledge or belief that there had been a violation. Anyone making a timely report will be immune from civil or criminal penalty “with the exception of a self-report or participation in the violation of law being reported.”

Mr. Smith stated that there were several comments about the need to clarify that a subpoena for peer review would be an investigative subpoena and not a subpoena from the Chapter 119 hearing process.

Language was clarified in Division G of Section 4731.224, Ohio Revised Code, to ensure the reports of sexual or criminal misconduct, which traditionally lead to the opening of a complaint, would not be subject to disclosure to the licensee. Mr. Smith stated that this will prevent compromise of a Medical Board investigation by immediately notifying the licensee.

Some minor changes were made to 4731.22(F)(3), Ohio Revised Code, to clarify the subpoena language. In addition, 4731.22(P) is a new proposal for an emergency suspension based on an

indictment. In 4731.909, Ohio Revised Code, the staff recommended differentiating the penalties for failure to report sexual misconduct and/or criminal misconduct from the failure to report other violations under 4731.224, Ohio Revised Code. Lastly, the penalty provision previously approved by the Committee criminalizing disclosure is added under 4731.22(F)(5).

Disciplinary and Patient Notification Statutes 4731.22, 4731.99, and 4731.991

Mr. Smith stated that a new statutory proposal for 4731.991, Ohio Revised Code, is directed at providing valuable information to patients about licensees who have been placed on probation for specific types of offenses that involve harm to patients. This idea came from a Federation of State Medical Boards (FSMB) webinar in which a similar statute in California was discussed. It applies to sexual misconduct, drug or alcohol abuse that results in patient harm or impairs the ability of the licensee to practice safely, a criminal conviction involving harm to a patient, or inappropriate prescribing resulting in harm to the patient. The licensee would be required to provide written disclosure to the patient and obtain a signed copy from the patient confirming that disclosure. Also, the Medical Board would be required to provide current information about the probation on its website.

Discussion of the Proposals

The Committee discussed these matters thoroughly. Ms. Montgomery asked why the penalties for sexual conduct and sexual contact were not simply increased, rather than going through the more complex process of redefining these terms. Mr. Smith responded that sexual battery includes relationship-based offenses that are occurring when a physician is taking care of a patient or when a teacher is involved with a student. The proposed language preserves in the statutory structure that these relationship offenses result in differing levels of felony based on the specific behavior involved. Mr. Smith stated that this fits more within the way the statute is constructed as relationship-based offenses than for sexual imposition.

Dr. Schottenstein stated that he was pleased and impressed with the thoughtful and thorough comments the Board received. Dr. Schottenstein also appreciated the efforts of Mr. Smith and the rest of the staff in putting this legislative package together. Dr. Schottenstein applauded the efforts to duplicate California's Patients' Right to Know Act and opined that the Board should embrace that legislation. Dr. Schottenstein stated that that would be a tangible piece of legislation and would arguably be as impactful or more impactful than anything the Board has done in these matters. It would also demonstrate to the public that the Board has responded to the Dr. Strauss matter in a serious way.

Mr. Giacalone asked if there was been any unintended consequences of the Patients' Right to Know Act in California. Ms. Smith replied that he is unaware of any unintended consequences, but he can contact authorities on California for more information.

Mr. Giacalone asked if this proposed language holds health care facilities accountable if they do not report. Mr. Smith replied there have been situations in which a medical director of a facility failed to report, in which case the Board has authority over the medical director as a licensee and not over the facility.

Ms. Anderson noted that under 4731.9, Ohio Revised Code, there is a criminal component which states, "Whoever violates divisions A, B, C, or D of section 224 is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense, except that an individual guilty of a subsequent offense shall not be subject to

imprisonment, but to a fine alone of up to \$1,000 for each offense.” Mr. Smith stated that there is also a proposed provision that a health care facility shall report criminal conduct or sexual misconduct to the State Medical Board within 30 days of commencement of an investigation.

Dr. Rothermel asked if there has been any coordination with the Board of Nursing, considering that nurse practitioners also provide primary care to patients. Mr. Smith stated that the legislation has been structured to include a definition section for a licensed medical professional. Ms. Loucka commented that she has heard from other executive directors about this legislative package and there seems to be interest in reviewing what the Medical Board is doing in this regard. Though the Nursing Board has not reached out yet, she would encourage that board to join in that definition.

Ms. Montgomery commented on the reporting requirements for prosecutors and courts when licensees are indicted or convicted. Ms. Montgomery stated that, as a former prosecutor, she was aware of these requirements. Ms. Montgomery opined that clerks of court may be more reliable reporters of indictments and convictions than prosecutors or courts. Mr. Smith, a former assistant prosecutor, agreed with Ms. Montgomery. Mr. Smith stated that the Board is starting to forge valuable partnerships with the OPAA. Ms. Montgomery stated that she had great regard for prosecutors, but stated that many smaller counties have part-time prosecutors who are extremely busy and understaffed. Ms. Montgomery therefore felt that the reporting requirement should be embedded with the clerk of courts where there is more stability and more staff.

Ms. Loucka noted that the Sexual Misconduct Committee will be winding down as it completes more of the Working Group’s tasks. Ms. Loucka stated that if any Committee member has comments on the large amount of material sent out for this meeting, they are welcome to contact her for discussion. The Committee can also be called back together if anyone feels there should be substantive changes. Dr. Schottenstein stated that comments can also be brought to the Policy Committee.

HISTORICAL CASE REVIEW UPDATE

Ms. Loucka stated that all the external reviews of the historical cases have been completed, which involved review of approximately 1,260 licensees, though the data will not be considered completely final until the last internal review is done. Ms. Loucka presented slides showing the complaints over time in five-year increments and comparing single-complaint licensees to multiple-complaint licensees.

Ms. Loucka stated that a review of this data shows that the vast majority of complaints were against licensees who had no other complaints. For example, between 1994 and 1999 there were 178 single complaints and 45 multiple complaints. Broken down by multi-year spans, there were 114 licensees with multiple complaints. Dr. Bechtel asked if the Secretary and Supervising Member of the Board would have been aware that these licensees had multiple complaints over time. Ms. Loucka replied that the assumption is that they were made aware at the time and that will certainly be true going forward.

Dr. Feibel asked if in the future the Board members, when considering settlement agreements and citations, will be able to know that a license has had multiple complaints even if only one has been investigated. Ms. Loucka answered that the staff wants to look at that to see if those things can be brought forward while also ensuring that licensees have the proper protections.

Ms. Loucka continued to the next slide, which compared complaints on which the Board took action and complaints that resulted in no formal action. Ms. Loucka noted that complaints with no formal action may have involved sending the licensee a caution letter or inviting them to office conferences, which are not considered formal action. Ms. Loucka commented that those receiving a caution letter usually involved unprofessional conduct.

In the next slide, Ms. Loucka noted that the vast majority of the external reviews, about 80%, resulted in a recommendation of no further action and that the original closing of the complaint was appropriate. In about 9.5% of cases, the reviewer stated that the Board could try to reopen the complaint but that it would probably be difficult. About 6.5% of reviews resulted in a recommendation to reopen the complaint. Some of the recommended reopens were due to duty-to-report and law enforcement notifications.

Ms. Loucka stated that all the reviews, even the ones with recommended close, are being re-reviewed internally. Ms. Loucka added that for some of the recommended reopens, there are some situations such as the victim being unwilling to speak with the Board, the victim being unable to speak to the Board due to a legal settlement, or the victim being deceased. Also, some of the cases were recommended for reopen due to missing data, and that data has been found in the Medical Board offices in old systems. Those complaints that are reopened will be worked like any other investigation and enforcement activity, though with a sense of urgency due to the timing.

Ms. Loucka stated that there is a great internal team working on this project, with much of the activity being coordinated by Investigator Supervisor Shawn McCafferty. Thanks to the staff's dedication, the project which many thought would take multiple years will be nearing completion of even the internal review by the end of 2020.

Ms. Montgomery agreed that the staff has done remarkable work. Ms. Montgomery asked if the Board will be able to flag the system if a respondent has prior complaints that had been closed due to evidentiary or other reasons. Ms. Loucka replied that the staff is working on a way to keep better track of previous closed complaints. Ms. Loucka stated that going forward, thanks to the well-organized nature of the files created in this project, any practitioner with a sexual misconduct complaint in their history now has a sexual misconduct file, even if nothing was found during that initial investigation. Ms. Loucka stated that that file will raise red flags if there are more complaints in the future.

Dr. Feibel stated that even one instance of a closed complaint without appropriate referral to law enforcement is one too many. Dr. Feibel stated that this is part of what worries him as the Board considers proposed citations and settlement agreements. Ms. Loucka agreed and stated that law enforcement notification needs to be embedded in the Board's culture.

ADJOURN

Mr. Giacalone moved to adjourn. Ms. Montgomery seconded the motion. All members voted aye. The motion carried.

The meeting adjourned at 9:31 a.m.

Michael Schottenstein, MD
Chair

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DRAFT



State Medical Board of Ohio

POLICY COMMITTEE MEETING

October 14, 2020

via live-streamed video conference

<p>Members: Amol Soin, M.D., Chair Robert Giacalone, R.Ph., J.D. Mark Bechtel, M.D. Betty Montgomery Sherry Johnson, D.O.</p> <p>Other Board Members present: Michael Schottenstein, M.D. Kim Rothermel, M.D. Bruce Saferin, D.P.M. Jonathan Feibel, M.D. Harish Kakarala, M.D.</p>	<p>Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Director of External Affairs Chelsea Wonski, Legislative Director Joseph Turek, Deputy Director for Licensure Cierra Lynch, Stakeholder Liaison Tessie Pollock, Chief Communications Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Soin called the meeting to order at 9:36 a.m.

Minutes Review

Dr. Bechtel moved to approve the draft minutes of the September 9, 2020 meeting of the Policy Committee. Mr. Giacalone seconded the motion. The motion carried.

Rule Review Update

Ms. Anderson reported that the Board proposed rules for controlled substance prescribing, which include the weight loss medication prescribing rules, as well as the personal information systems rules have been filed with the Common Sense Initiative (CSI). The rules are currently in their comment period with CSI and those comments should be available for review by the Committee at its November meeting.

Rules to File with the Common Sense Initiative

Hearing Rules and Exposure Prone Invasive Procedure Rules: Ms. Anderson stated that the proposed hearing rules were circulated to interested parties for initial comments and two comments were received. One comment, received internally from Board staff, requested a change to extend the time period for respondents to request to address the Board when it deliberates a report and recommendation. The Board will still retain the authority to grant a request to address that is filed late. Ms. Anderson recommended approval of this request.

Ms. Anderson stated that one comment on the exposure prone invasive procedure rules was received from the Ohio Society of Respiratory Care about refining the types of procedures that respiratory care professional perform. The proposed change clarifies which respiratory care procedures are covered by the rule. Ms. Anderson recommended approval of the amended language.

Dr. Bechtel moved to approve the recommended changes to the proposed hearing rules and the proposed exposure prone invasive procedure rules. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

Licensure Eligibility Rule: Ms. Anderson stated that this proposed rule allows for some additional discretion in licensure eligibility for allopathic and osteopathic physicians. The comments received generally raised concerns about this proposed change. Ms. Anderson noted that two individuals wished to know why the Board was considering this change, and those individuals were provided with the Policy Committee meeting minutes from November 2019.

Dr. Schottenstein questioned whether the proposed rule addresses the concerns the Board had had in the matter of José Vargas, M.D. Dr. Schottenstein recalled that Dr. Vargas was an otherwise well-qualified physician who had taken the Federation Licensing Examination (FLEX) approximately 35 years prior and had scored a 74, whereas a passing score was 75. When Dr. Vargas applied for Ohio licensure, it was noted that under current rules the Board did not have discretion with regard to a score on a test. Despite this, the Board approved Dr. Vargas' application but also directed the staff to explore the possibility of amending the rule so that the Board would have more flexibility in similar cases. Dr. Schottenstein stated that the proposed new language is phrased so that any other examination would be acceptable. Dr. Schottenstein stated that the issue in Dr. Vargas' case is that he did not pass the FLEX examination, so he was uncertain if this new language would have addressed the Board's concerns in the Dr. Vargas matter.

Dr. Soin asked if Dr. Schottenstein had any suggestions for the proposed rule. Dr. Schottenstein replied that potentially the rule could state that the Board requires passing scores on examinations barring extenuating circumstances, or similar verbiage. Dr. Schottenstein commented that the proposed language in its current form seems vague and does not specify another examination that the Board would accept. Ms. Anderson opined that the proposed language addresses the issue by granting the Board discretion.

Mr. Turek stated that the issue in Dr. Vargas' case is that he did not pass a single three-day FLEX examination as required by the Board's rules. Dr. Vargas had initially taken a single three-day FLEX examination and did not pass, but another state had allowed Dr. Vargas to retake two of the three parts of the FLEX, which brought his cumulative score on the FLEX to a passing level and he was allowed licensure in that state. Although Dr. Vargas ultimately ended up with a passing score on the FLEX, it did not meet Ohio's requirements because he did not pass a single three-day FLEX.

Mr. Turek agreed that the proposed language was broad, as was pointed out in some of the public comments. Mr. Turek opined that under the proposed language the Board could be asked to accept examinations from other countries, which is not the intent of the rule.

In response to a question from Mr. Giacalone, Dr. Schottenstein stated that since becoming licensed by another state, Dr. Vargas had had a very distinguished, ethical career, and the Board decided to grant his request for licensure on that basis. Mr. Giacalone suggested that since the Board's decision in that matter had been driven by Dr. Vargas' experience and career, then perhaps the new language

should focus on the applicant's experience rather than an examination. Mr. Turek stated that the statutory requirement that an applicant must pass an examination cannot be waived.

In response to a question from Dr. Soin, Ms. Anderson stated that a physician may be granted Conceded Eminence if they meet certain requirements, such as having had a certain number of journal articles published. Physicians practicing under Conceded Eminence are limited to practicing in a specific health care system or facility. Dr. Bechtel agreed and added that Conceded Eminence was designed for physicians who have outstanding credentials and an exceptional record of research or clinical skills in a foreign country, but do not meet the regular licensure requirements in Ohio. Physicians with conceded eminence are limited to a specific academic institution and the dean of that institution has oversight of that physician.

Ms. Anderson noted that there are current legislative proposals involving licensure reciprocity which may resolve this issue if they are passed into law. Ms. Anderson stated that the Committee may wish to wait on this proposed rule until the issue of licensure reciprocity is decided in the legislature.

Dr. Saferin asked if a rule could be crafted to allow the Board to grant equivalency based on the applicant's career and skill, in much the same way the Board is able to grant equivalency in other licensure-based matters. Ms. Anderson stated that there may be issues with the ability to grant equivalency for an examination, but the matter can be reviewed again. Mr. Turek stated that statute requires applicants to have passed an examination prescribed in rules, so the Board is not able to pass a rule to say that having excellent experience is the same as passing an examination.

Dr. Soin suggested that this topic be tabled so that the staff can do more research based on the Committee's feedback. Dr. Soin stated that there seem to be four pathways that have been discussed:

- Dr. Saferin's concept of crafting language for granting equivalency, in line with statute.
- Addressing the fact that the Board has no way to police or understand foreign examinations.
- Making certain there is a mechanism, if possible, to address cases similar to Dr. Vargas'.
- Monitoring the legislature, where the passage of new proposals may resolve the issue.

Dr. Bechtel moved to table this topic. Dr. Johnson seconded the motion. All members voted aye. The motion to table carried.

Radiologist Assistant Rules: Ms. Anderson stated that radiologist assistant rules had been circulated to interested parties for public comment and no comments were received. The Policy Committee approved filing the rules with the Common Sense Initiative (CSI). In preparing the filing, it was discovered that modifications were needed to align the rules with statute. Ms. Anderson stated that the Committee can approve filing the proposed rules with CSI as amended because there will be a two-week comment period with CSI.

Specifically, Rule 4774-1-02 is being amended to align the radiologist assistant licensure rules with other license types. Also, Rule 4774-1-03, which deals with license renewal, had originally been proposed for rescission. However, in re-reviewing Section 4774.11, Ohio Revised Code, it was decided to keep the rule and include the standards and procedures for issuing and renewing licenses, including applications fees for initial licensure and license renewal. Ms. Anderson noted that whereas

application fees for other license types are set by statute, the Board is required by statute to set radiologist assistant application fees by rule.

Dr. Bechtel moved to recommend approval filing the radiologist assistant rules, as amended, with CSI. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

Consultation on Rule 5123:2-6-06, Department of Developmental Disabilities

Ms. Reardon stated that this proposed rule from the Ohio Department of Developmental Disabilities (DODD) requires approval from the Medical Board as part of the rule promulgation process. The proposed rule would approve DODD to conduct some of its education of new DODD personnel virtually. Ms. Reardon noted that the educational curriculum remains unchanged.

Dr. Bechtel moved to approve the proposed DODD rule. Dr. Johnson seconded the motion. All member voted aye. The motion carried.

Legislative Update

Dr. Soin stated that he, Ms. Wonski, and Ms. Loucka continue to work on the layout of the legislative tracker. One key change this month is that a delineated Board position is clearly listed for each bill. Examples of Board positions include “interested party,” “support,” and “strongly oppose.” Dr. Soin invited Board members to offer any further feedback for changes to the legislative tracker. Dr. Soin commented that Ms. Wonski and Ms. Loucka have expanded and improved the scope of how the Board is tracking bills to a level he has never seen.

Senate Bill 246, Occupational Licensing Reciprocity: Ms. Wonski stated that this bill is still awaiting adoption by the Senate committee, and no committee meeting is currently scheduled. The sub-bill addressed some of the original concerns the Board’s staff had brought to the sponsors, but the Board’s requested amendments were not included in their entirety. The staff went back to the bill sponsor and requested that the original amendments be added, especially those concerning fitness to practice. The Board’s staff continues to advocate for an unlimited historic lookback period for licensure applicants.

Senate Bill 364, Interstate Medical Licensing Compact: Ms. Wonski stated that this bill, introduced on September 16, would require Ohio to join the Interstate Medical Licensure Compact (IMLC). The Board’s policy team has met with the Executive Director of the IMLC and representatives of several member states. The issue was also briefly discussed with the Ohio State Medical Association (OSMA). Ms. Wonski noted that the compact language cannot be amended and, if it is adopted, must be adopted as written.

The bill’s sponsor is hosting an interested parties meeting next week and Board staff will be in attendance. A more comprehensive presentation of this issue will be provided at the next Policy Committee meeting.

House Bill 263, Occupational Licensing: Ms. Wonski stated that this bill would require the Board to provide a comprehensive list of criminal offenses that would prevent someone from being licensed in Ohio. Since the last Board meeting, the Board’s staff has been in contact with the bill’s sponsor and the Governor’s office to express the Board’s concerns.

Responding to a question from Ms. Montgomery, Ms. Wonski stated that House bill 263 allows for unlimited look-back for applicants with offences of a violent or sexual nature. Though Senate Bill 246 does not address that issue, Ms. Wonski can ask the sponsor of that bill to consider a similar provision.

House Bill 492, Physician Assistants: Ms. Wonski stated that this bill would expand the ability of physician assistants to perform procedural sedation and for purposes of rapid intubation. Ms. Wonski has sent a memo of the Board's opposition to this bill to the bill's sponsor, the Governor's office, and the Ohio Association of Physician Assistants.

Ms. Montgomery, noting that this legislation decouples national accreditation from licensure, asked if the bill is moving through the legislature. Ms. Wonski answered that the bill has not yet had its first hearing and it does not seem that there will be enough time for it to get through the legislative process. Ms. Wonski stated that she will continue to monitor that bill, noting that anything could happen in the lame duck session.

House Bill 679, Telehealth: Ms. Wonski stated that the telehealth bill continues to progress through the legislature. A package of the Board's proposed amendments has been submitted to the Chair and Vice Chair of the Senate Insurance Committee, to which the bill has been assigned. Ms. Wonski stated that she and other staff met with the Chair and Vice Chair and they seemed receptive to the Board's requests, though there was no official confirmation that the amendments would be added to the bill. The Chair and Vice Chair requested that the Board send them any feedback it receives from stakeholders.

Other Legislation: Ms. Wonski stated that several other bills have been added to the legislative tracker. Ms. Wonski commented that Senate Bill 238 would place the licensing of music therapists under the purview of the Medical Board. Also, House Bill 580 is another bill that seeks to expand telemedicine. Both of these bills are being analyzed by the Board's policy and legal teams and more information should be ready for next month's Committee meeting if it is believed that these bills will move forward.

Ms. Wonski stated that a memo has been provided to Board members outlining changes to the pharmacy consultation agreement language in House Bill 203. The Committee discussed the issue of consultation agreements between pharmacists and mid-level providers such as physician assistants and nurse practitioners. Of particular concern was the ability of pharmacists to prescribe opioids and whether those pharmacists would be required to have additional education in that regard. Dr. Bechtel stated that while pharmacists know a great deal about drugs and drug interactions, they are dealing with patients that may have co-morbidities that must be taken into account. With pharmacists consulting with physician assistants and nurse practitioners, Dr. Bechtel had concerns about the level of physician oversight. Dr. Bechtel was also concerned that pharmacists may order laboratory tests, but they cannot make a diagnosis. Dr. Bechtel questioned how confident the Board can be that physicians will have access to those test result and how those results will be acted on.

Ms. Wonski stated that the Medical Board will have the opportunity to create rules on these matters. Mr. Smith added that Section (C)(2) of the bill specifies that the diagnosis for which each patient has been prescribed drug therapy must be within the scope of the practitioner's practice. Also, Section (C)(3) requires that each pharmacist must have training and experience related to the particular diagnosis for which drug therapy is to be prescribed.

Dr. Soin questioned what would happen if a pharmacist orders a test and the physician has no access to the results. Dr. Soin stated that physicians are ultimately responsible for such things and he would hate to see a physician be subject to discipline or a malpractice complaint because of a test they did not order or have access to

Responding to a question from Mr. Giacalone, Ms. Wonski stated that a consultation agreement between a pharmacist and physician assistant or nurse practitioner is an extension of the physician assistant's or nurse practitioner's agreement with a physician. Mr. Giacalone stated that the physician, if he or she so desires, can ensure that any consultation agreement between a pharmacist and a physician assistant or nurse practitioner includes provisions such as barring the pharmacist from prescribing opioids or ordering imaging studies. Dr. Soin and Dr. Bechtel agreed with Mr. Giacalone's comments.

Mr. Giacalone asked about House Bill 747, which concerns prescribing or dispensing drugs for off-label use. Ms. Wonski stated that that legislation has not seen much movement, but she can look into it more closely and report back to the Committee. Dr. Soin commented that physicians regularly prescribe medications for off-label use. Dr. Soin noted that, for example, aspirin is not approved by the Food and Drug Administration (FDA) to treat acute myocardial infarction (MI), but it is commonly used for that purpose. Ms. Loucka noted that this bill was introduced the same day that the hydroxychloroquine issue occurred at the Board of Pharmacy, so it appears to be a response to that issue.

Dr. Schottenstein asked about Senate Bill 238, which would require the Medical Board to license and regular music therapists. Dr. Schottenstein was not opposed to the bill, but he was curious as to why the Medical Board was chosen to license that profession and not the Psychology Board. Ms. Wonski was uncertain why the music therapists chose the Medical Board, but in testimony the music therapists expressed all the benefits that music therapy has in conjunction with medical therapies. Ms. Loucka noted that the same bill would also require the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to license and regulate art therapists.

Mr. Giacalone asked about the chances of Senate Bill 238 being passed. Ms. Wonski stated that the bill has had its second hearing and would only need one more hearing to be passed onto the Senate floor, but it would have to move through very quickly to be passed in this legislative session. Mr. Giacalone questioned whether the Medical Board is the right place for music therapists and wondered if the profession is better situated in another board, particularly since the Medical Board's resources are already stressed.

Ms. Loucka stated that the music therapist licensing bill has been introduced in previous years, so she and Ms. Wonski can research that history and the Board's conversations at those times. Ms. Loucka wondered, since art therapists are also part of the bill, if those two professionals should be coupled together at the same board. Ms. Loucka also commented that the way music therapists are licensed is very different from the Medical Board's current licensure processes and there may be boards that are more similarly-situated for music therapists from a licensure standpoint.

Dr. Soin asked for a brief update on the bills that would authorize the use of medical marijuana to treat autism spectrum and opioid use disorder. Ms. Wonski replied that those bills are not expected to move through the legislative process.

Board of Pharmacy Updates

Ms. Anderson stated that there are no Board of Pharmacy items to discuss at this time.

Adjourn

Ms. Montgomery moved to adjourn the meeting. Dr. Bechtel seconded the motion. All Committee members voted aye. The motion carried.

The meeting adjourned at 10:23 a.m.

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