



**Medical Board of Ohio Meeting Minutes
January 12, 2022**

Betty Montgomery, President, called the meeting to order at 10:03 a.m. in the Administrative Hearing Room, 3rd floor of the Rhodes Office Tower, 30 East Broad Street, Columbus, Ohio 43215 with the following members present: Sherry Johnson, D.O., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Jonathan Feibel, M.D.; Harish Kakarala, M.D.; Yeshwant Reddy, M.D.; and Mark A. Bechtel, M.D.

MINUTES REVIEW

Dr. Johnson moved to approve the minutes of the December 8, 2021 Board Meeting. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

REPORTS AND RECOMMENDATIONS

Ms. Montgomery asked the Board to consider the Reports and Recommendations appearing on the agenda. Ms. Montgomery 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: Kelley L. Kolberg; Alexander Robert Votruba, M.D.; Harold Jones, D.P.M.; and Jonathan Louis Rosenfield, M.D. A roll call was taken:

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

Ms. Montgomery 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. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y

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Dr. Kakarala	Y
Dr. Feibel	Y
Dr. Reddy	Y
Dr. Bechtel	Y
Ms. Montgomery	Y

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

Ms. Montgomery 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 matter of Dr. Rosenfield.

Kelley L. Kolberg

Ms. Montgomery directed the Board's attention to the matter of Kelley L. Kolberg. No objections have been filed. Ms. Shamansky was the Hearing Examiner. This matter is non-disciplinary in nature, and therefore all Board members may vote.

Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Ms. Kolberg. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Schottenstein stated that it is always unfortunate when a sympathetic applicant comes before the Board and appears qualified to practice massage therapy, but does not meet the requirements for eligibility. Dr. Schottenstein stated that this is not the first such case before the Board, but he guessed that it may happen more often than Board members think; Dr. Schottenstein speculated that most applicants simply withdraw their application when they are informed of this ineligibility rather than request a hearing. Consequently, qualified massage therapists are being turned away from practicing in Ohio.

Dr. Schottenstein stated that Ohio has strict requirements for the practice of massage therapy in both rule and law, and these requirements were even more strict before the passage of House Bill 442 last year. Dr. Schottenstein opined that the requirement of five years of practice in another state as condition of practice in Ohio seems unduly long, and the Board has previously discussed whether to advocate to reduce that time to two or three years.

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Dr. Schottenstein continued that the massage therapy licensure requirements laid out in Section 4731.19, Ohio Revised Code, are also strict. Dr. Schottenstein appreciated the spirit of the law and the Board's rule, which is to ensure that well-qualified applicants are practicing in Ohio. However, Dr. Schottenstein opined that the requirements are so strict that Ohio is arguably an outlier in this regard, noting that other states do not have curriculum requirements nearly as strict, especially in the area of anatomy and physiology. Ohio requires 275 clock hours for anatomy and physiology, whereas most states require 100 to 150 clock hours. The practical effect of this is that well-qualified applicants from other states cannot meet Ohio's curriculum criteria, as is demonstrated by this case. Because of that, virtually every out-of-state applicant is disqualified from obtaining licensure in Ohio based on subject matter requirements. The only other way these applicant can become licensed in Ohio is by having a license in another state for the prior five years or having attended a Board-approved school. The implication of Ohio's strict subject matter requirements is that massage therapy schools in other states are substandard in their educational requirements, but Dr. Schottenstein did not believe that has been shown to be true.

Dr. Schottenstein opined that these requirements are solving a problem that does not exist. Dr. Schottenstein questioned the point of having curriculum requirements that are so onerous that a typical well-qualified out-of-state applicant cannot meet them. Dr. Schottenstein added that the Federation of State Massage Therapy Boards (FSMTB) determines the legitimacy of massage therapy programs and ensures that candidates who take the Massage and Bodywork Licensing Examination (MBLEx) has attended an approved school.

Dr. Schottenstein observed that Rule 4731-1-16 references the fact that prior to 2006 there was a requirement for 600 clock hour requirement without specific curriculum requirements. Dr. Schottenstein opined that that standard was simple, objective, and fair. Dr. Schottenstein questioned what problem the Board is solving by requiring specific subject matter criteria that are prohibitively strict for out-of-state applicants. Dr. Schottenstein did not believe it has been shown that these requirements produce better practitioners, but it keeps applicants such as Ms. Kolberg from practicing in Ohio.

Dr. Schottenstein stated that it is very difficult to determine whether the out-of-state programs meet the curriculum requirements because they categorize subject areas differently and the transcripts are unclear. Dr. Schottenstein stated that the Licensure staff is essentially "winging it" with regard to these determinations, and one need look no further than Ms. Kolberg's case to see an example of that. Dr. Schottenstein stated that massage therapy is the only profession in which the Board requires the staff to make subjective determinations about eligibility. For example, the Board's staff is not asked to assess the curriculum requirements of out-of-state medical school or out-of-state respiratory care schools. Dr. Schottenstein asked the Board members to imagine a graduate of an out-of-state medical school having to justify his or her transcript to the Board.

Dr. Schottenstein speculated that perhaps the legislature and the Board prefers the idea of curriculum eligibility requirements for out-of-state applicants. Dr. Schottenstein stated that this would be fair, noting that other states do so. However, if this is the case then Dr. Schottenstein suggested reducing the number of required hours in the subject matter categories to align more closely with other states. Another option would be to work with the legislature to amend Section 4731.19, ORC, to grant the Board rule-making authority to draft equivalency language so the Board can grant licensure if it feels an applicant as met the equivalent of the requirements. Dr. Schottenstein speculated that if equivalency language existed today, the Board would grant Ms. Kolberg's license.

Dr. Schottenstein opined that it would be a healthy exercise for the Board's Licensure Committee to explore this topic. Dr. Schottenstein would value the input of Licensure staff in such a discussion. The goal of such discussions would be to clarify the Board's position and potentially approach the legislature with its thoughts.

Dr. Schottenstein stated that he will regrettably vote in favor of the Proposed Order to deny Ms. Kolberg's license because the application does not meet the eligibility requirements.

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Dr. Soin appreciated and agreed with Dr. Schottenstein's comments and analysis, including the suggestion that the Licensure Committee discuss the topic. In the case of Ms. Kolberg, Dr. Soin stated that even if equivalency language existed today he would not support the application because her massage therapy license in Iowa lapsed in 2014 and she is not currently licensed to practice massage therapy in any state.

Mr. Giacalone agreed with Dr. Soin and Dr. Schottenstein, stating that this scenario has appeared before the Board many times. Mr. Giacalone opined that a review of these requirements has become more imperative with the pending House Bill 81 which will require all those practicing massage in Ohio, not just massage therapists, to be licensed. Without the possible passage of House Bill 81, massage therapist from out-of-state at least have the option, imperfect as it may be, of working in forms of massage that do not require licensure. Mr. Giacalone also agreed with Dr. Soin that he would not support licensure in Ms. Kolberg's case due to the number of years since her last practice as a massage therapist.

Ms. Montgomery also agreed that this topic deserves further discussion in the Licensure Committee.

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

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

The motion carried.

Alexander Robert Votruba, M.D.

Ms. Montgomery directed the Board's attention to the matter of Alexander Robert Votruba, M.D. No objections have been filed. Mr. Porter was the Hearing Examiner.

Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Votruba. Dr. Reddy seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

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Dr. Feibel	Y
Dr. Reddy	Y
Dr. Bechtel	Y
Ms. Montgomery	Y

The motion carried.

Ms. Montgomery commented that this was a tragic case for a young physician.

Harold Jones, D.P.M.

Ms. Montgomery directed the Board's attention to the matter of Harold Jones, D.P.M. No objections have been filed. Ms. Lee was the Hearing Examiner.

A request to address the Board has been filed on behalf of Dr. Jones. Five minutes will be allowed for that address.

Dr. Jones thanked Ms. Lee and the Hearing Unit for their professionalism, courtesy, and fairness during his hearing. Dr. Jones also apologized to all those affected by the chain of events in his situation, including his family, friends, medical colleagues, and patients. Dr. Jones stated that he should have known better and done things better, and the responsibility lies with him for not paying much attention on the billing in his office.

Dr. Jones continued that he had owned a high-volume podiatric surgical practice in Cleveland for about 20 years. A routine audit by the Centers for Medicare and Medicaid Services (CMS) found that there were billing and coding issues in Dr. Jones' office. This led to a criminal investigation and Dr. Jones was indicted and charged with 48 counts of health care fraud and mail fraud. Following a trial, Dr. Jones was found not guilty of 45 charges and was convicted of the remaining three charges. The court found that there had been a total loss to CMS of \$120.76 based on those three convictions. However, federal sentencing guidelines have a relevant conduct provision that allowed Dr. Jones, because of his three convictions, to be assessed restitution based on the other 45 counts as well. Dr. Jones was sentenced to 18 months in federal prison.

Following his incarceration, Dr. Jones enrolled in several training programs, including a national HIPPA program and a health care fraud program. These programs allowed Dr. Jones to learn what had happened and to acknowledge his mistakes. Dr. Jones learned that he should have paid much more attention to understanding the complexities of medical billing and coding in his office. Dr. Jones stated that the responsibility for that is on him.

Dr. Jones stated that despite his incarceration and the large restitution he had to pay, he still had a desire to practice podiatry because he enjoyed serving underserved communities, saving limbs, and extending lives. Dr. Jones understood that at this point, his clinical competency is a major concern to everyone. Dr. Jones stated that he will accept any model the Board chooses to assess his clinical competency. Dr. Jones stated that he loves podiatry and his patients, and he asked for a second chance to be restored back to the profession.

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

Ms. Snyder stated that Dr. Jones was convicted of a felony about 10 years ago and the Board revoked his podiatric license at that time. Dr. Jones has applied for a new license, and that application is pending.

Ms. Snyder commented that this is one of the few hearings she has attended which was truly a mitigation hearing. Ms. Snyder stated that Dr. Jones seemed to own what had happened in his practice and he discussed what he had been doing for the last 10 years. Ms. Snyder agreed with the Hearing Examiner that the conviction does not disqualify Dr. Jones from licensure at this point. Ms. Snyder opined that the only

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question for the Board is whether Dr. Jones is ready to practice again and whether his medical knowledge is up-to-date.

Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Jones. Mr. Gonidakis seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Johnson appreciated Dr. Jones' honesty and his passion to continue to help his patients. However, Dr. Johnson expressed concern that Dr. Jones has stated he may practice surgically if he obtains a new podiatric license. Dr. Johnson observed that Dr. Jones has not practiced for many years and much has changed in that time.

Ms. Montgomery noted that of the 48 charges that had been filed against Dr. Jones in court, he was found Not Guilty in 45 of them. The three counts on which Dr. Jones was convicted were not crimes of intent, but rather were crimes of negligence. The three convictions involved a "theft" valued at about \$120, but the formula used by the federal government resulted in a fine of over \$200,000. Ms. Montgomery reiterated that the matter before the Board today involved three non-intent crimes.

Dr. Feibel agreed with Dr. Johnson's comments. As a procedural specialist, Dr. Feibel was significantly worried about the thought of Dr. Jones having been out of practice for 12 years. Dr. Feibel favored granting Dr. Jones' application for relicensure, but recommended that he be limited to office-based practice only with no ability to practice surgery. Dr. Feibel stated that he would only feel comfortable with Dr. Jones performing surgery if he completed a residency again. Dr. Feibel opined that given the years out of practice, a proctor would be insufficient to allow Dr. Jones to perform surgery and that retraining would be required. Dr. Feibel wished to hear comments from other Board members before offering a motion to amend the Proposed Order.

Dr. Schottenstein was respectful of Dr. Feibel's thoughts, but opined that the implication is that the Board is setting a standard whereby anyone in a surgical specialty who has been out of practice for long enough is essentially barred from going back into surgery. Dr. Schottenstein struggled with that concept, wondering how many years a person would be out of practice before meeting that threshold and whether it can be mediated with something like a preceptor or a physician reentry program.

Dr. Schottenstein agreed that this is a case of mitigation and the Board's purpose is not to relitigate the matter from 11 years ago. Therefore, Dr. Schottenstein only considered Dr. Jones' conduct subsequent to the Board decision in August 2010. In August 2010, the Board allowed Dr. Jones an opportunity for a second chance by making his license revocation non-permanent, and now the question is whether Dr. Jones deserves that second chance. Dr. Schottenstein opined that Dr. Jones does deserve a second chance, noting that his behavior since the Board action has been mitigating, and he has expressed remorse and taken responsibility for his actions. Dr. Schottenstein questioned whether the proposed limitation on Dr. Jones' ability to practice surgery would only cover procedures in operating rooms or if it also included office-based procedures.

Dr. Reddy agreed that Dr. Jones has done well and he deserves a second chance. Dr. Reddy was also concerned about Dr. Jones returning to full practice since he has not practiced for such a long time. Dr. Reddy stated that if Dr. Jones' specialty was pediatrics or internal medicine, the competency issue could be addressed with proctoring, but he struggled with the question of ensuring competency in a surgical specialty.

Dr. Soin appreciated all the previous comments and was sympathetic to the concern about performing procedures after being out of practice for a number of years. Dr. Soin supported the Proposed Order, which includes requirements for a practice plan and a monitoring physician. The Board will have significant control over the approval of the practice plan and monitoring physician, and Dr. Soin expressed faith in this process that was designed for these situations to protect the public when a physician returns to practice. Dr. Soin stated that the point of the probationary terms in orders such as this is to establish control through chart review

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and a monitoring physician who will oversee the physician's conduct. It was Dr. Soin's hope that with proper execution of the practice plan and monitoring physician, the public would be adequately protected.

Mr. Giacalone was very sympathetic to Dr. Jones and agreed that his application for a new license should be granted. However, Mr. Giacalone pointed out that the Proposed Order was crafted by an attorney. Mr. Giacalone stated that he is also an attorney, and he was uncertain if he was qualified to decide on the proper vehicle for Dr. Jones' return to practice. That being the case, Mr. Giacalone felt compelled to listen to his physician colleagues on the Board. Mr. Giacalone stated that the Board's purpose is to protect the public, and if surgeons are concerned about the granting of licensure under a Proposed Order that was created by attorneys, then he must be concerned as well.

Dr. Kakarala stated that he is not a surgeon, but as a pulmonary critical care physician he performs many procedures. Dr. Kakarala stated that it does not take very long out of practice for one's skills to degrade; within a few months, one becomes significantly worse in doing procedures and surgeries, let alone 10 or 12 years, and it takes a very long time to regain those skills. Dr. Kakarala stated that there is a great deal of data available on this issue. In order to be highly proficient at a procedure one must have done hundreds of them, and the person will have a complication rate that is much higher early in the process. Dr. Kakarala stated that this is a known fact and not an opinion.

Dr. Kakarala continued that the issue of Dr. Jones' return to performing procedures is the only aspect of this case that gave him pause, and it is not an issue of monitoring or proctoring. Depending on the type of procedure, once a mistake is made it may not be correctable even during the same procedure. Dr. Kakarala agreed with Dr. Johnson and Dr. Feibel that Dr. Jones should be able to assess, evaluate, and treat patients, and that he can do much good in that capacity, but he did not advocate that Dr. Jones be allowed to immediately return to the practice of surgery.

Dr. Bechtel stated that when a physician has been out of practice for an extended period, he or she can take the Special Purpose Examination (SPEX) to make sure the medical knowledge is adequate. However, there does not appear to be something equivalent to the SPEX for podiatry. Dr. Bechtel asked if Dr. Feibel is suggesting that Dr. Jones be required to complete a three-year residency in order to perform surgery. Dr. Feibel favored a three-year residency, but after discussion stated that a one-year podiatry fellowship or one year of some other form of post-graduate training that included refreshment of surgical skills would also be acceptable.

Dr. Soin noted that a newly-license person is only required to complete one year of a residency to qualify for a podiatric medical license, and he asked why Dr. Jones should be required to complete a fellowship rather than one year of a residency. Dr. Feibel replied that the difference, in his opinion, is that having already been through a three-year podiatric residency in the past, hospitals will give Dr. Jones privileges to do all the surgeries that a three-year podiatric resident would have. Therefore, Dr. Jones would not necessarily be trained in procedures such as rear foot surgery and fore foot surgery during only one year of a residency. Dr. Feibel felt that Dr. Jones should have that training again before performing these procedures. Dr. Feibel also wished to apply this restriction to office-based procedures because they are operations that require this training as well.

Ms. Anderson commented that she is not certain that post-graduate training programs in this area exist. Ms. Montgomery stated that if Dr. Jones is unable to find such a program, then he will not be able to perform surgery if the Board accepts Dr. Feibel's suggestion. Dr. Feibel stated that such programs do exist, though he did not know if Dr. Jones would be able to obtain one.

Dr. Feibel moved to amend the Proposed Order to add a restriction from performing surgeries or procedures until Dr. Jones has completed one-year of post-graduate training in podiatric surgery. Dr. Bechtel seconded the motion. A vote was taken:

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

The motion carried.

Dr. Bechtel moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Dr. Jones. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

Jonathan Louis Rosenfield, M.D.

Ms. Montgomery directed the Board's attention to the matter of Jonathan Louis Rosenfield. No objections have been filed. Ms. Shamansky was the Hearing Examiner.

Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Jones. Dr. Kakarala seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Schottenstein stated that Dr. Rosenfield's counsel has requested that the Board continue the interim order and not take additional action until the Texas matter is resolved. Dr. Schottenstein was respectful of that position, but he did not find the argument for it to be persuasive. Dr. Schottenstein noted that this case has been pending for years and it is important to dispose of cases in a timely manner, especially serious cases in which a physician's practice may represent a danger to the public.

Dr. Schottenstein continued that Dr. Rosenfield renewed his Ohio medical license in 2020 at a time when he had already agreed to not practice in Ohio. A continuance of the case in federal court was granted based on a motion by the defendants. Dr. Schottenstein was concerned that the matter is being dragged out, and in the meantime Dr. Rosenfield has an active and unrestricted license to practice in Ohio. Though the court has

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imposed conditions that prevent Dr. Rosenfield from practicing while he awaits trial, Dr. Schottenstein noted that the Exhibit entitled “Additional Conditions of Release” shows that the prohibition from practice is partial. The restriction does not prevent Dr. Rosenfield from practicing in a setting where controlled substances are not being prescribed. Therefore, Dr. Rosenfield could potentially see family practice patients or telemedicine patients and not violate his conditions of release from the court.

Dr. Schottenstein stated that under Section 4731.22(B)(22), Ohio Revised Code, the Board is under no obligation to wait for a permanent order to be issued by the Texas Medical Board. If the Texas Board does issue a permanent order, the Ohio Board will likely issue a second Notice of Opportunity for Hearing based on that. The Texas Board action and the criminal case could take years to resolve, and if the Board proceeds in the manner suggested by defense counsel, Dr. Rosenfield will retain his Ohio medical license and be able to practice in Ohio.

Dr. Schottenstein supported the Proposed Order, which indefinitely suspends Dr. Rosenfield’s Ohio medical license until he can show evidence of unrestricted licensure in Texas.

A vote was taken on Dr. Reddy’s motion to approve and confirm:

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

The motion carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

Ms. Montgomery stated that in the following matters, the Board issued Notices of Opportunity for Hearing. No timely requests for hearing was received. These matters were reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and they are now before the Board for final disposition. These matters are disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matter of Mr. Gibson.

Mr. Gonidakis exited the meeting at this time.

Yousif A. Alhallaq, M.D.

Dr. Johnson moved to find that the allegations as set forth in the October 13, 2021 Notice of Opportunity for Hearing in the matter of Dr. Alhallaq have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky’s Proposed Findings and Proposed Order. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

Cristen Evilsizer, L.M.T.

Dr. Kakarala moved to find that the allegations as set forth in the July 14, 2021 Notice of Opportunity for Hearing in the matter of Ms. Evilsizer have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Reddy seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

David Maxwell Gibson, L.M.T.

Dr. Johnson moved to find that the allegations as set forth in the July 14, 2021 Notice of Opportunity for Hearing in the matter of Mr. Gibson have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Feibel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

Roswell Tempest Lowry, M.D.

Dr. Reddy moved to find that the allegations as set forth in the June 9, 2021 Notice of Opportunity for Hearing in the matter of Dr. Lowry have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Johnson seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

Matthew Scott Schaitel, L.M.T.

Dr. Johnson moved to find that the allegations as set forth in the June 29, 2021 Notice of Opportunity for Hearing in the matter of Mr. Schaitel have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Reddy stated that Mr. Schaitel is a disgrace to the entire community of healing professions. Within a very short period of time, seven of Mr. Schaitel's clients, who placed trust in him to help them get better from their

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ailments, were psychologically and physically harmed by him. Dr. Reddy suggested increasing the proposed fine to the maximum of \$20,000.

Dr. Reddy moved to amend the Proposed Order to increase the proposed fine to \$20,000. Dr. Feibel seconded the motion.

Dr. Bechtel asked if this matter has been turned over to law enforcement for criminal investigation. The staff indicated that the matter has been referred to law enforcement.

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

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

The motion to amend carried.

Dr. Feibel moved to find that the allegations as set forth in the June 29, 2021 Notice of Opportunity for Hearing in the matter of Mr. Schaitel have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order, as amended. Dr. Johnson seconded the motion. A vote was taken:

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

The motion carried.

Basem Kaleem Shlewiet, M.D.

Dr. Johnson moved to find that the allegations as set forth in the July 14, 2021 Notice of Opportunity for Hearing in the matter of Dr. Shlewiet have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

Lorna Stookey, M.D.

Dr. Reddy moved to find that the allegations as set forth in the June 9, 2021 Notice of Opportunity for Hearing in the matter of Dr. Stookey have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

Brenda Valentine

Dr. Johnson moved to find that the allegations as set forth in the May 12, 2021 Notice of Opportunity for Hearing in the matter of Ms. Valentine have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

The motion carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

Ms. Montgomery stated that in the following matters, the Board issued Notices of Opportunity for Hearing, and documentation of Service were 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.

Stacy L. Imber, M.T.

Ms. Montgomery stated that on November 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Stacy L. Imber, 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. Imber has not engaged in the active practice of massage therapy for more than two years.

Dr. Bechtel moved to find that the facts set forth in the November 10, 2021 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. Imber's application for restoration, provided that she takes and passes the MBLEx within six months of the date of mailing of this order. Dr. Johnson seconded the motion. A vote was taken:

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

The motion carried.

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Angela E. Stachowiak, M.T.

Ms. Montgomery stated that on November 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Angela E. Stachowiak, 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. Stachowiak has not engaged in the active practice of massage therapy for more than two years.

Dr. Johnson moved to find that the facts set forth in the November 10, 2021 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. Stachowiak's application for restoration, provided that she takes and passes the MBLEx within six months of the date of mailing of this order. Dr Bechtel seconded the motion. A vote was taken:

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

The motion carried.

EXECUTIVE SESSION

Dr. Reddy moved to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action; and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

The Board went into Executive Session at 11:19 a.m. and returned to public session at 11:58 a.m.

Mr. Gonidakis returned to the meeting during Executive Session.

SETTLEMENT AGREEMENTS

Michael Herbert, R.C.P.

Dr. Feibel moved to ratify the proposed Permanent Surrender with Mr. Herbert. Dr. Bechtel seconded the motion. A vote was taken:

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

The motion carried.

David M. Yin, M.D.

Dr. Johnson moved to ratify the proposed Consent Agreement with Dr. Yin. Dr. Kakarala seconded the motion.

Dr. Feibel recommended that the Board not ratify this proposed agreement. Dr. Feibel opined that the discipline in the agreement is not sufficient to address this physician’s actions in prescribing to patients without seeing them.

A vote was taken on Dr. Johnson’s motion:

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

The motion carried.

Eric S. Lee, M.D.

Dr. Johnson moved to ratify the proposed Permanent Withdrawal with Dr. Lee. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

Hollie Aneshansley, L.M.T.

Dr. Johnson moved to ratify the proposed Permanent Surrender with Ms. Aneshansley. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

James Ferrel Cunagin, M.D.

Dr. Johnson moved to ratify the proposed Consent Agreement with Dr. Cunagin. Dr. Bechtel seconded the motion.

Mr. Giacalone stated that he will vote to ratify this proposed agreement, but he strongly advised this physician to avoid coming before the Board again.

Dr. Feibel stated that he will vote against the proposed agreement because he felt there should be practice monitoring and probation for this physician.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y

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Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Dr. Feibel	N
Dr. Reddy	Y
Dr. Bechtel	Y
Ms. Montgomery	Y

The motion carried.

Donna Marie Exner, P.A.

Dr. Johnson moved to ratify the proposed Permanent Surrender with Ms. Exner. Dr. Bechtel seconded the motion. A vote was taken:

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

The motion carried.

Katherina Mielke, L.M.T.

Dr. Kakarala moved to ratify the proposed Permanent Surrender with Ms. Mielke. Dr. Johnson seconded the motion. A vote was taken:

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

The motion carried.

Kavita A. J. Kang, D.O.

Dr. Johnson moved to ratify the proposed Step II Consent Agreement with Dr. Kang. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

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

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

1. Mitchell J. Curtiss, M.T.: Based on failure to cooperate with an investigation, specifically for refusing to answer investigative interrogatories.
2. Farhana Hasan, M.D.: Based on a plea of guilty to a misdemeanor in the course of practice involving theft from a Veterans Administration facility.
3. Edward M. Lichten, M.D.: Based on an action taken by the Michigan Board of Medicine regarding compounding practices.
4. Ritu Malhotra, M.D.: Based on violations of the minimal standards of care in the treatment of four patients resulting in deaths of three of those individuals over period of four years.
5. Amir Shahideh, M.D.: Based on a violation regarding a felony in course of practice, specifically sexual battery, and violations of the Board's sexual misconduct rules.

Regarding Citation #4, Dr. Reddy noted that the four cases occurred from 2014 to 2018 and three of the patients died. Dr. Reddy asked when the complaint was first received by the Board. Ms. Canepa replied that the complaint in Citation #4 was received in March 2018 regarding one of the patients. Records were subpoenaed to determine if this was part of a pattern of practice, and the investigation concluded in 2019. Unfortunately, issues with obtaining expert review of the records caused delay. Dr. Reddy asked if the physician is currently practicing. Ms. Canepa believed that the physician is still practicing.

Ms. Montgomery noted that Citation #4 is not a summary suspension. Ms. Canepa stated that one of the criteria for a summary suspension, that the physician pose an immediate harm to the public, is difficult to establish due to the amount of time that has passed since the last known incident. Dr. Feibel opined that this physician does pose the potential for immediate harm to the public, but stated that he would defer to the judgement of the assistant attorneys general. Ms. Snyder stated that if the matter were taken before a judge, it would be difficult to argue that there is an immediate harm when a number of years has passed since the last known incident.

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Dr. Feibel commented that because minimal standards cases take a long time, they would never meet the criteria for a summary suspension. Ms. Loucka respectfully disagreed, stating that the Board's processes can get such cases to citation faster, but sometimes the window for summary suspension is missed. Dr. Schottenstein added that the Board must have its case ready for hearing upon issuance of a summary suspension because the respondent can demand an expedited hearing.

Dr. Kakarala moved to approve and issue proposed Citations #'s 1 through 5. Dr. Johnson seconded the motion. A vote was taken:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Kakarala	Y
Dr. Feibel	Y
Dr. Reddy	Y
Dr. Bechtel	Y on #1; Abstain on #'s 2-5
Ms. Montgomery	Y

The motion carried.

The Board recessed at 12:19 p.m. The meeting resumed at 1:07 p.m.

OPERATIONS REPORT

Fiscal Summary: Ms. Loucka stated that the Board continues to be in good financial condition. Dr. Schottenstein will provide a more detailed account in the Finance Committee Report.

Compliance: Ms. Loucka stated that the Compliance Committee had a robust discussion this morning, which Ms. Montgomery will detail later in today's meeting. Compliance data has been included in the Operations Report for the Board's review, including a list of participants broken down by license type.

Licensure: Ms. Loucka observed a small increase in the time to issue a license, noting continuing issues with the new fingerprinting system implemented by the Bureau of Criminal Investigation (BCI) last May. These issues have slowed the background checks required for the issuance of licenses. The Board continues to work with BCI on solutions and Ms. Loucka was hopeful that there will be some progress on background checks in the first six months of this year. The Board's Licensure staff is also working to be more precise in identifying applications that can be pushed ahead for issuance.

Ms. Loucka added that the staff is putting a great deal of time into working with hospitals to get respiratory care professionals licensed. Ms. Loucka stated that staffing agencies are bringing in respiratory care professionals from out-of-state. The Board does not have a temporary license type for respiratory care professionals and does not have reciprocity with other states, but it is working hard to get these licenses issued as quickly as possible. BCI is assisting in these efforts as well.

Dr. Reddy stated that it was very nice that 50% of applicants in 2021 were licensed within two weeks of applying. Dr. Reddy asked if there was a goal of getting more than 50%. Ms. Loucka opined that the Board's internal processes are about as optimal as they can be, and if the background check issue is resolved then the median time to issue a license could be one week.

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Complaints: Ms. Loucka stated that the number of complaints is steady. The trend of quicker resolution of complaints and bringing actions to the Board continues, but the number of new complaints continues to increase and the backlog is not really moving. Ms. Loucka stated that this will be a priority in the first six months of this year.

In response to a question from Ms. Montgomery, Ms. Loucka stated that over the past year 6,500 complaints have been submitted, 6,300 complaints have been closed, and there are 2,300 complaints currently open. Some licensees have multiple complaints. There are 241 complaints in the backlog; a backlogged complaint is defined as a complaint that is at least two years old. The backlogged complaints have been broken down by complaint type and are being reviewed by Ms. Pokorny in her new role as Lead Attorney in Enforcement to see what can be done to move them along. Dr. Johnson asked if open complaints can be broken down in the same manner. Ms. Loucka replied affirmatively.

Communications: Ms. Loucka stated that Communications remains busy working with associations and managing the Board's social media. Communications recently sent out a survey to physicians asking about interest in participating in the Interstate Medical Licensing Compact. There was a significant response to the survey and 2,700 replied that they were interested.

RULES & POLICIES

Rule Review Update

Ms. Anderson stated that the rule review update and spreadsheet are included in the meeting materials for the Board's review. There will be a number of internal staff meetings later this month to discuss the large volume of rules that will have their five-year review in calendar year 2022. In February, the Physician Assistant Policy Committee (PAPC) and the Massage Therapy Advisory Council (MTAC) will be presented with draft rules concerning their respective professions, and their comments will be reported back to the Board at its February 9, 2022 meeting.

Interstate Medical Licensure Compact Rule

Ms. Anderson stated that this proposed rule will clarify that the Board can collect the appropriate licensing fees from individuals who apply through the Interstate Medical Licensing Compact (IMLC).

Dr. Saferin moved to approve filing the proposed rule regarding the Interstate Medical Licensure Compact with the Common Sense Initiative. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Rules for Final Adoption

Ms. Anderson asked for approval of the proposed rules as outlined in her memorandum to the Board. These rules include the following provisions:

- Changes to the examination process for medical and osteopathic licensure.
- Changes in impairment evaluation and treatment for most of the Board's allied license types.
- Changes to the military provisions rules and the emeritus state rules which account for House Bill 442, which was recently signed into law.

Ms. Anderson noted that these hearing have had a public hearing and have been considered by the Joint Committee on Agency Rule Review (JCARR). JCARR jurisdiction ended on January 2, 2022.

Dr. Saferin moved to adopt and amend the rules as described in the memorandum from Ms. Anderson and to assign each rule action the effective date of January 31, 2022. Mr. Gonidakis seconded the motion. All members voted aye. The motion carried.

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Internal Management Rule 4731-30-03, Final Adoption

Ms. Anderson stated that this rule, which would allow additional licensure items to be approved by the Secretary and Supervising Member rather than the full Board, was circulated for initial comment. Two comments were received and have been provided to the Board members for their review.

Dr. Saferin moved to approve filing the proposed amendments to internal management rule 4731-30-03 for approval of licensure applications with an effective date of January 31, 2022. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Controlled Substance Prescribing Rules

Based on discussion at the Board's November 2021 meeting, Ms. Anderson stated that the staff has been exploring potential changes to the Board's weight-loss prescribing rules so that they are not strictly tied to Food and Drug Administration (FDA) labeling, while also including safeguards to prevent over-prescribing and diversion. A first draft of these changes have been provided to Board members for review.

Ms. Anderson continued that Rule 4731-11-04 deals with short-term anorexiant, while Rule 4731-11-041 deals with chronic weight management. It has been noted that because the Board strictly follows FDA labeling, it has been treating these two classes of drugs differently and allowing the chronic weight management drugs to be prescribed for longer than 12 weeks. Ms. Anderson stated that these drugs are not generic and are very expensive. The short-term anorexiant have been limited to 12 weeks based on their labeling, which is quite old.

Ms. Anderson stated that she has combined these rules and taken the approach of dealing with all weight-loss prescribing in one rule. Ms. Anderson stated that she would appreciate comments on this first draft. This draft will also be presented to the Physician Assistant Policy Committee (PAPC) and its input can be reported to the Board at the February 9 meeting.

Dr. Soin thanked Ms. Anderson and the Legal staff for the time and effort they have spent on this initiative. Dr. Soin stated that several well-known experts have persuasively argued that the Board's current rules make it an outlier in this area. The staff is attempting to address these arguments while also preventing the undesirable prescribing patterns seen in nearby states. Dr. Soin stated that because the short-term anorexiant have been in generic form for so long, the labeling will never change because there is no financial motivation to conduct a study that could lead to a change in the label.

Mr. Giacalone stated that the Board of Pharmacy is the drug control agency for Ohio and the Medical Board should be aligned with them. Once a course of action is determined, both Boards should issue a statement so there is no confusion when pharmacists begin seeing prescriptions that are out of the norm. Ms. Anderson agreed and stated that reaching out to the Board of Pharmacy is the next step following the Medical Board's review of the first draft.

Ms. Loucka thanked Dr. Soin for his significant involvement and contribution to these efforts.

Ms. Anderson stated that with the Board's approval, she will present the proposed rules to the PAPC and the Board of Pharmacy, and report their comments back to the Board next month. The Board agreed.

Confidential Non-Disciplinary Letters

Mr. Roach stated that, pursuant to prior Board retreat discussions, the Board is seeking to expand the menu of the Board's confidential non disciplinary interventions. These interventions, meant to be proactive and preventative, are with licensees whose actions have raised concerns but may not rise to the level requiring formal Board action. The Board currently sends caution letters to practitioners to resolve complaints of low-

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level violations that do not rise to the level of formal action. These caution letters also offer suggestions for how a licensee can improve their practice and hopefully prevent recurrence of the issue. Caution letters are confidential and non-disciplinary. Mr. Roach asked the Board to consider three approaches in relation to caution letters.

The first stepped approach is to utilize education letters. Unlike a caution letter, which is narrowly focused on the minimal standards of care, an education letter would address best practices and include advice on how the practitioner can improve his or her practice and bring the practice more in line with best practices. An education letter may be issued if the physician is found to have met the minimal standards of care, but areas have been identified in which the physician can improve. The Secretary and Supervising Member will determine the content of an education letter, with input from experts as necessary.

The second stepped approach, depending on the concerns raised, is to continue the use of caution letters as they exist today.

The third stepped approach, depending upon the seriousness of the concerns, involves more monitoring of practitioners for compliance with the Board's recommendations. Hopefully, the follow-up will show substantial changes in the physician's practice that mediate the Board's concerns. If the concerns have not been addressed, the Board retains jurisdiction to keep the matter open and pursue other avenues as appropriate. Follow-up with the licensee will occur through the Board's Compliance section and may involve additional patient chart review. Mr. Roach stated that this is an opportunity to enhance the way the Board protects the public and provide more incentive for licensees to follow through with the Board's recommendations.

The Board discussed this proposal and thanked Mr. Roach for the follow-through from the Board's discussion of this topic at the last Board Retreat. Mr. Roach stated that these initiatives can proceed under the authority of the Secretary and Supervising Member, and feedback from Board members is welcome at any point. Dr. Schottenstein asked that the Board be updated on how productive these letters are once there has been enough experience with them. Mr. Roach agreed.

Non-Disciplinary Permanent Voluntary Retirement Proposal

Mr. Smith stated that his memo to the Board contains a statutory proposal based on discussion at last year's retreat. The purpose of the proposal is to provide a licensee who is in the beginning of a mental or physical illness a pathway to exit practice in a dignified manner. This pathway to exit practice is both non-disciplinary and permanent. This pathway would be available to all licensees regardless of years of service or prior formal actions, provided that no formal action is pending. Section B of the proposal outlines safeguards so that a licensee cannot use this pathway to avoid Board discipline.

The Board discussed the proposal thoroughly, including the requirements for reporting to the National Practitioner Databank (NPDB) and how to treat licensees who may have low-level complaints. Dr. Schottenstein expressed concern about allowing permanent voluntary retirement in lieu of investigation, particularly when the individual may be licensed in other states. Mr. Smith emphasized that the Board will follow all NPDB reporting requirements and that accepting retirement in lieu of investigation or in exchange for closing a complaint is a reportable event. The purpose of this proposal is to allow for non-disciplinary retirement before an issue reaches the level of a reportable offense. For instance, a complaint that is closed with a caution letter in the normal course of the Board's processes may lead the practitioner to request a non-disciplinary permanent voluntary retirement before the issue recurs and leads to more formal action.

The Board also discussed whether physicians can refer to themselves as "doctor" following a permanent retirement. Under the current proposal, a permanent retiree may precede their name with "Retired Doctor." Ms. Montgomery suggested that the word "Retired" should come after the name. Dr. Schottenstein noted that holders of emeritus status do not have a similar requirement to call themselves "Retired." The Board also discussed whether former physicians who no longer have an active license may still refer to themselves as

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“Doctor.” Mr. Smith noted that Section 4731.14, Ohio Revised Code, Unauthorized Practices, references the following:

Use of the word ‘doctor’ or title in connection with a person’s name in any way that represents that the person is engaged in the practice of medicine and surgery.

Ms. Montgomery stated that this does not address the situation of former physicians who are not trying to practice but are simply referring to themselves as “Doctor [last name].” Mr. Smith stated that he will research the matter and provide clarification.

Mr. Smith thanked the Board for its input and stated that these comments will be utilized in drafting the second iteration of this proposal.

Telehealth Rules

Mr. Smith stated that Governor DeWine signed substitute House Bill 122 into law on December 22, 2021, with an effective date of March 22, 2022. House Bill 122 authorizes the Medical Board to adopt rules necessary to implement the law. The final language of House Bill 122 is, in part, a result of the Board’s efforts working with the legislature to clarify that the standard of care must be the same for telehealth as it is for in-person visits. The proposed rules for the Board’s consideration today capture the spirit of the conversations the Board has had with stakeholders over the previous six months. Mr. Smith hoped to continue to gather feedback from stakeholders as the Board continues with the rule-making process.

Mr. Smith briefly outlined the key points of the seven draft rules for today’s discussion:

- Of the Medical Board’s licensees, House Bill 122 allows for telehealth services to be provided by allopathic physicians, osteopathic physicians, podiatric physicians, physician assistants, dietitians, respiratory care professionals, and genetic counselors.
- Telehealth services includes not only technology and communication between a provider and patient in different locations, but also consultations between providers in different locations regarding a patient.
- Since House Bill 122 allows for telehealth services to be provided either synchronously or asynchronously, the rules provide for the escalation of care and/or referral of care if the technology selected does not meet the standard of care for the patient and the medical condition.
- Providers must meet all standard of care requirements that would be met in an in-person visit, including informed consent, identification and verification of the name and location of the patient, documentation requirements, and patient evaluation.
- To prescribe non-controlled substances via telehealth, all requirements of Rule 4731-37-01 must be followed.
- To prescribe controlled substances via telehealth, providers must follow all federal laws, the requirements of Rule 4731-37-01, and the new Rule 4731-11-09.
- Special requirements for physicians, physician assistants, and advanced practice nurses related to the ability to provide telehealth services to a patient located in another state and the use of remote monitoring devices on a patient.

In addition, the legislation specifies that the Board may require an initial in-person visit prior to prescribing a schedule II controlled substance to a new patient, except in the following situations: 1) The patient is receiving hospice or palliative care; 2) the patient is receiving medication-assisted treatment (MAT) or any other medication for opioid use disorder; 3) the patient is being treated for a mental health condition; or 4) the patient, in the clinical judgment of the health care professional, is in an emergency situation. Under the

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proposed rules, the physician or physician assistant may only prescribe the amount of schedule II controlled substance to cover the duration of the emergency or an amount not to exceed a three-day supply, whichever is shorter. Once the emergency has ended, the physician or physician assistant must conduct a physical examination as part of the initial visit before further prescribing a schedule II controlled substance. There are also documentation requirements.

The Board discussed the proposed rules thoroughly. Ms. Montgomery and Dr. Feibel opined that the mental health exception should be further defined. Dr. Schottenstein noted that the exception only applies if the patient has a mental health condition and the controlled substance is being prescribed to treat that condition. Dr. Schottenstein opined that the provision is substantially referencing patients with attention deficit hyperactivity disorder (ADHD) and he felt that it is justifiable to treat those patients in the absence of an in-person examination.

Dr. Schottenstein continued that additional clarification of the term “mental health” would be reasonable, perhaps in relation to the Diagnostic Statistical Manual of Mental Disorders, 5th Edition (DSM-V) or something similar. Dr. Schottenstein was also concerned about the possibility of overprescribing of controlled substances for both mental health and MAT. Dr. Schottenstein was respectful of the legislature’s efforts to increase access to health care, but stated it is now up to the Board to establish guardrails to minimize any risk of a pill mill situation.

Dr. Reddy asked about a situation in which a patient could not be seen in person and did not have access to the internet or a telephone, and was therefore brought to the office in a very segregated area and visited via a phone given to the patient by office staff. Dr. Reddy asked if this would be covered under telehealth, given that both the physician and the patient were at the same location but different rooms. Mr. Smith opined that under the statute, two different rooms could be considered different locations. Although the spirit of the legislation probably intended for the physician and the patient to be at different addresses, the situation described by Dr. Reddy would probably not raise concerns. Dr. Kakarala agreed, stating that the point of the legislation is to expand access for patients and what Dr. Reddy described was a workaround to get the patient the care they needed.

Dr. Bechtel asked about the definitions of synchronous and asynchronous technology. Mr. Smith answered that asynchronous technology sends stored clinical data to a professional at a distant site and can be looked at later, whereas synchronous is real time interaction between provider and patient. Dr. Soin stated that email would be an example of asynchronous communication. Mr. Smith agreed, but stated that to qualify as a telehealth visit the email cannot be simply text about the patient, but must have some visualization or record of the patient attached to be reviewed by the provider.

Mr. Gonidakis asked about informed consent as it relates to parental consent for minor patients. Mr. Smith replied that parental consent is not specifically addressed in the proposed rules, but it is certainly an issue to consider. Following a brief discussion, Mr. Smith stated that language can be added to subsection C to specify that informed consent also includes consent of a parent or guardian of a minor patient.

Dr. Feibel asked for clarification on whether a provider could bill an office visit for an email conversation with a patient. Mr. Smith could not speak to issues of billing, but stated that federal regulations on asynchronous technology state the following:

Stored clinical data that may be transmitted via asynchronous technology means video clips, sound audio files, and photo images that may be sent along with electronic records and written records about the patient’s condition. However, asynchronous communication does not include telephone calls, images transmitted via facsimile machines, and text messages about visualization of the patient such as in an email.

Under this language, Mr. Smith did not believe that a simple email exchange would qualify as a telehealth service. To be considered an asynchronous telehealth visit, a message must be accompanied with some

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video or audio information about the patient to be clinically examined by the provider and not just a transitory communication. Dr. Feibel asked if a telephone call could be considered a telehealth visit. Mr. Smith replied that if all the requirements of proposed Rule 4731-37-01 are met, including informed consent, documentation of the visit, and an appropriate evaluation, a telephone call could be considered a synchronous telehealth visit.

Dr. Feibel commented that this topic can be exceedingly confusing to the medical community. Dr. Feibel suggested that a frequently-asked questions (FAQ) document be developed to clarify these issues. Dr. Feibel expressed concern that under the new legislation, every telephone call will be considered a telehealth visit and, consequently, phone calls which had been made by the physician as a courtesy will now be a billable event. Dr. Feibel stated that this is an unintended consequence of efforts to increase health care access for patients.

Responding to a question from Dr. Reddy, Mr. Smith stated that remote patient monitoring is allowed but is limited to physicians, physician assistants, and advanced practice nurses. Dr. Reddy explained that in chronic care management for such conditions as diabetes, hypertension, or kidney disease, remote patient monitoring devices can send the patient's vital signs to be monitored at the provider's office. Mr. Smith stated that under the proposed rules, the remote monitoring devices must be approved by the Food and Drug Administration (FDA). The devices must also automatically and continuously transmit data and cannot require the patient to manually input the data. Dr. Reddy asked if the incoming data can be monitored by a nurse who would later transfer all the data to a physician, take the physician's opinion, and then talk to the patient afterwards. Mr. Smith stated that if the nurse is not an advanced practice nurse, that may be difficult.

Ms. Montgomery commented that third-party payors do not seem to have been part of these conversations, even though such payors will be very important in how telehealth operates. Ms. Loucka stated that the Medical Board has no jurisdiction over payment issues. Ms. Montgomery agreed and stated that the Board must be careful about discussing what would be a billable event because the Board cannot define that. Dr. Soin agreed, but commented that when the Board defines what a telehealth visit is, it is by definition defining what a physician could legally bill for. Dr. Soin felt that the FAQ document could include a statement that in the Board's opinion, a routine telephone call with a patient does not meet the spirit of a true telehealth visit. Dr. Schottenstein agreed and suggested that the term "bonafide" could be used to differentiate a telehealth visit from a quick or cursory kind of interaction.

Dr. Reddy asked if a physician can prescribe opioids over the telephone without seeing the patient. Dr. Schottenstein answered that a physician cannot do so unless it is an MAT situation. Dr. Reddy commented that that must be made very clear to the physician community. Dr. Soin agreed and stated that the Board's chronic pain rules would still apply.

Ms. Loucka, noting that the two biggest edits from today's discussion seem to be regarding informed consent and clarification of "mental health," stated that under normal circumstances she would favor waiting and presenting a final draft of the proposed rules to the Board and making sure the Board members are comfortable with the draft prior to circulating it to interested parties for comments. However, Ms. Loucka anticipated many stakeholder comments and opined that the faster the process can be moved along, the better. Ms. Loucka recommended circulating the draft rules to stakeholders with the edits as discussed, knowing that further changes could be made based on any comments that are received. Ms. Montgomery agreed, so long as it is made clear to all parties that the proposed rules are evolving documents.

In response to a question from Dr. Feibel, Ms. Loucka stated that House Bill 122 provides for a grace period for the Board to extend its current practice after the law's effective date of March 22 so that the rule-making process can be completed. The Board is also allowed to extend its current moratorium on enforcing telemedicine rules until the proposed rules are finalized, up to a certain date. Ms. Loucka stated that the process will not be completed by March 22, but the Board should act in a good-faith effort towards that date. This will also give stakeholders certainty as to how the new rules will harmonize with the statute.

Ms. Montgomery observed that there is a lot of complexity in these rules. Ms. Montgomery stated that it will be important that each Board member should continue to communicate their concerns to Mr. Smith as he

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develops further drafts of the rules. Once rules are finalized, the Board should provide an FAQ document and robust education materials on the website. Ms. Loucka agreed and added that because this will be such a big change, there should be a full communication plan including interest group meetings and a very structured roll-out.

Ms. Montgomery thanked the staff for their hard work.

FSMB Request for Comments on Draft Telemedicine Technologies Policy

Ms. Loucka stated that the Federation of State Medical Boards (FSMB) has asked for comments on its draft telemedicine technologies policy. Ms. Loucka encouraged the Board members to email their comments to her. Ms. Loucka did not feel that the Medical Board would be able to implement this policy as written because it conflicts with Ohio statutes.

Dr. Schottenstein observed that a sentence on page 7 of the document reads as follows:

To further assure patient safety in the absence of a physical examination, telemedicine technologies should limit medication formularies to ones that are deemed safe.

Dr. Schottenstein opined that one does not compensate for a patient safety concern due to the absence of a physical examination by limiting a medication formulary. Rather, one compensates for such a concern by bringing the patient into the office. Dr. Schottenstein stated that this is the point of the earlier statement in the document:

When the standard of care that is ordinarily applied to an in-person encounter cannot be met by virtual means, the use of telemedicine technologies is not appropriate.

Dr. Schottenstein continued that if there is a safety concern in the absence of physical examination, a limited medication formulary is not a solution to that problem. Dr. Schottenstein questioned how one would determine what medications to include on a limited medication formulary for telemedicine, noting that all prescription drugs are considered dangerous. Dr. Schottenstein also stated that withholding an indicated medication because it is not on the formulary and substituting a less appropriate medication that is arbitrarily deemed safer would violate the standard of care. A physician who is concerned about safety based on the absence of a physical examination should bring the patient into the office. Dr. Schottenstein respectfully recommended that the statement be stricken from the draft document.

Otherwise, Dr. Schottenstein appreciated the work of the FSMB in this area.

Legislative Update

Ms. Loucka commented that the legislature will come back into session over the next few weeks, so bills will begin moving through the legislative process again.

Senate Bill 157, which has been signed into law, adds a new disciplinary division to the Board's statutes for failure to take steps specified in Section 4731.911, Ohio Revised Code, following abortion or attempted abortion in an ambulatory surgical facility or other location that is not a hospital when a child is born alive.

House Bill 122, concerning telemedicine, has been signed into law. Ms. Loucka thanked the Ohio Physicians Health Program (OPHP) for their work in conjunction with the Board on a provision in the bill related to the Board's one-bite program participants. This provision allows licensure applicants who are already in a monitoring program in another state to continue in their confidential one-bite program treatment.

Senate Bill 261 has passed the Senate and will now move to the House. Senate Bill 261 overhauls Ohio's medical marijuana program. Many parts of the bill are relevant to the Board, including the following provisions:

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- The portions of the program currently overseen by the Board of Pharmacy, including the registration of patients and the licensure and oversight of dispensaries, will move to the Division of Marijuana Control in the Department of Commerce.
- The qualifying medical conditions eligible for treatment with medical marijuana will be expanded to include arthritis, migraines, autism spectrum, spasticity or chronic muscle spasms, hospice care or terminal illness, opioid use disorder, or “any condition not specified in this division if a recommending physician, in the physician’s sole discretion and medical opinion, finds any of the following: That the patient’s symptoms may reasonably be expected to be relieved from medical marijuana, or that the patient may otherwise reasonably be expected to benefit from medical marijuana.” The Medical Board will continue to be required to accept and consider petitions to add new qualifying conditions for treatment with medical marijuana.
- Physicians with a Certificate to Recommend the Medical Use of Marijuana (CTR) will be able to make such a recommendation via telemedicine, and the requirement for an in-person examination prior to recommendation will be removed.
- Removes the requirement that an applicant for a CTR demonstrate that he or she does not have an ownership or investment interest in, or a compensation arrangement with, an entity licensed as a dispensary, by allowing the medical director of a dispensary who has a CTR to recommend medical marijuana under the requirements of Section 4731.30, Ohio Revised Code.

The Board thoroughly discussed the provisions mentioned by Ms. Loucka. Responding to a question from Dr. Soin, Ms. Loucka opined that this bill is likely to continue moving through the legislative process.

Many Board members felt that there is no need for the Board to consider petitions for new qualifying conditions of a physician with a CTR can recommend medical marijuana for any condition he or she feels is appropriate. Dr. Feibel felt that that provision should be removed from the bill, and if those efforts are unsuccessful then the Board should disband its Medical Marijuana Expert Review Committee. Dr. Schottenstein appreciated Dr. Feibel’s point, but noted that the bill still adds many qualifying conditions which the Committee and the Board had thoroughly considered and rejected in the past. Dr. Soin noted that each Committee member spends many hours reviewing medical literature and expert opinions in determining whether to accept or reject a petition to add a qualifying condition.

Dr. Rothermel opined that the Board should have a response to this legislation and make its opinions clear to the legislature. Mr. Giacalone felt that the legislature has decided that the determination of when to use medical marijuana should be left to the recommending physician and not the Board, and that the Board would be wasting its time continuing with its Medical Marijuana Committee. Mr. Giacalone also opined that very little would be accomplished by further engaging the legislature on this issue since it seems to have already made a determination. Mr. Gonidakis stated that the legislature may pass this bill, but it is up to the governor to either sign or veto it, and there are not enough votes in the legislature to override a veto of this bill. Mr. Gonidakis stated that the Medical Board, as well as the Board of Pharmacy and the Department of Commerce, can counsel the governor on an appropriate response to this bill if it passes.

Dr. Reddy felt that the Medical Board should let everyone involved know where it stands on this issue, even if the legislature may not agree. Dr. Feibel agreed and stated that the Board has some influence over this matter in both the legislature and with the governor. Dr. Feibel was particularly opposed to the provision allowing a physician with a CTR to recommend medical marijuana for any condition he or she deems appropriate. Ms. Montgomery wondered about the Board’s role in establishing the standard of care for recommending medical marijuana.

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Ms. Loucka stated that the Board's opportunity now is to take these concerns to the House, including the question of why the Board should continue with review of petitions for new qualifying conditions if a physician with a CTR can recommend medical marijuana for any condition if the physician feels the patient may benefit from it. Ms. Loucka added that from a patient safety perspective, it is very questionable to allow a physician with a CTR to also own or have an interest in a dispensary.

COMMITTEE BUSINESS

Quality Assurance Committee Report

Dr. Bechtel stated that the first batch of ten case reviews have been assigned to the Committee members, two cases for each member. Among this month's cases are three cases of alleged sexual misconduct. Dr. Bechtel stated that thanks to the hard work of Ms. Marshall, the Committee members will be able to review the details of their cases in a secure manner despite a glitch in the Salesforce system.

Compliance Committee Report

Ms. Montgomery reported on the work that Ms. Dorcy and the rest of the Compliance staff has done to streamline the Board's probationary process and make it more than simply a checklist probation. To the end, Ms. Dorcy presented the Committee with forms for return-to-work assessments, monitoring plan language, the assignment of chaperones, and practice plan documents.

Treatment Provider Application

Dr. Saferin moved to approve the application for renewal as a Board-approved treatment provider of Vertava Health of Ohio. Dr. Soin seconded the motion. All members voted aye. The motion carried.

Finance Committee Report

Dr. Schottenstein stated that the Board's revenue in November 2021 was \$826,930, which is roughly in-line with revenue two years prior. However, that month also had a net negative revenue of \$-441,549, reflecting the fact that the Board received an invoice that month from the Department of Administrative Services (DAS) for eLicense services of about \$450,000. The 19.6% increase in year-to-date expenditures was primarily the result of this increase in the eLicense costs. Without that additional expense, the increase in expenditures would have been a more typical 3% to 4%. The Board's cash balance is down from the previous month to \$5,996,367, which also reflects the additional expense. The Board received \$29,180 in disciplinary fines in November 2021.

Funding Licensure Compact eLicense Enhancements

Dr. Schottenstein stated that Senate Bill 6, which was signed into law last summer, establishes a deadline of September 29, 2022 for the Board to implement a system to process and issue licenses through the Interstate Medical Licensing Compact (IMLC). Senate Bill 6 also provided an appropriation increase of about \$140,000 for costs related to implementation of the licensure compact. This morning, the Finance Committee recommended approval to use these additional funds to increase the Board's previous \$35,000 allotment to \$55,000 to ensure the ensure the timely completion of the needed enhancements.

Dr. Saferin moved to approve the increase of authorization up to \$55,000 for dedicated Salesforce development hours for Fiscal Year 2022. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Dr. Schottenstein noted that the \$140,000 appropriation the Board received was not from the General Revenue Fund, but a one-time allotment in the Board's spending authorization. In other words, it is money the Board already has which Senate Bill 6 allows the Board to spend for this purpose.

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Regarding the IMLC process, Dr. Schottenstein explained that a licensee can pay a one-time \$700 fee to the IMLC. \$400 of that fee will stay with IMLC and \$300 will go to the primary licensure state of the licensee. The licensee will receive a Letter of Qualification from the IMLC which will streamline that licensee's application for licensure in any other state in the IMLC. According to a Board survey, about 2,700 licensees in Ohio indicated potential interest in the IMLC. Dr. Schottenstein commented that individuals in other states who seek licensure in Ohio through the IMLC could be a potentially substantial revenue source for the Board.

Dr. Schottenstein observed that the IMLC Letter of Qualification is issued as a one-time document, and therefore there is some question as to what happens if a licensee becomes the subject of a state board action or a criminal proceeding subsequent to obtaining a Letter of Qualification. Dr. Schottenstein stated that this question will be explored and reported back to the Board

Licensure Application Reviews

Dr. Soin moved to approve the Licensure staff recommendations for the requests of Lori Magyar, L.D.; Dahlia Nahon, M.D.; Karyn Young, M.T.; and Deepan Mathur, M.D. Sr. Bechtel seconded the motion. A vote was taken:

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

The motion carried.

For the request of Dana Lowenthal, D.O., the staff has recommended two possible motions for the Board's consideration. Based on discussion with Licensure staff, Dr. Saferin recommended approving Dr. Lowenthal's application as presented.

Dr. Soin moved to approve Dr. Lowenthal's application for licensure as presented. Dr. Rothermel seconded the motion. A vote was taken:

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

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The motion carried.

PROBATIONARY REPORTS AND REQUESTS

Office Conference Reviews

Dr. Soin moved to approve the Compliance staff's Reports of Conferences for December 6 and 7, 2021. Dr. Reddy seconded the motion. All members voted aye, except Dr. Rothermel, Dr. Saferin, and Dr. Bechtel, who abstained. The motion carried.

Probationary Requests

Dr. Johnson moved to approve the Secretary and Supervising Member's recommendations for the following probationary requests:

- a) Christopher G. Alsager Lee, M.D.: Request for approval of the health professional's groups, conducted by the Mayo Clinic, to complete the aftercare requirement.
- b) Firas S. Atassi, M.D.: Request for release from the terms of the September 8, 2021 Consent Agreement.
- c) Courtney E. Barrows, M.D.: Request for approval of the drug test monitoring and 12-Step recovery meeting frequency and monitoring to be conducted by New Hampshire Professionals Health Program.
- d) Regis P. Burlas, D.O.: Request for release from the terms of the August 10, 2016 Step II Consent Agreement.
- e) Amir Q. Dada, D.O.: Request for approval of Benjamin V. Bring, D.O., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at 10 charts per month.
- f) Benjamin R. Gibson, M.D.: Request for approval of the course *Medical Ethics and Professionalism*, offered by Professional Boundaries, Inc. (PBI), to fulfill the ethics course requirement.
- g) Peter C. Johnson, M.D.: Request for approval of Karen M. Adams-Ferguson, M.D. to serve as the new monitoring physician.
- h) Vincent J. Malkovits, D.O.: Request for approval of Fareedah Z. Goodwin-Capers, M.D. to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at 10 charts per week.
- i) Timothy J. Morley, D.O.: Request for reduction in chart review requirement from 10 charts per week to 10 charts per month.
- j) Marios D. Papachristou, M.D.: Request for approval of the course *Medical Ethics and Professionalism*, offered by Professional Boundaries, Inc. (PBI) Education, to fulfill the professional ethics course requirement.
- k) William Roddick, M.D.: Request for release from the terms of the September 8, 2021 Consent Agreement.
- l) George W. Shahade, D.O.: Request for release from the terms of the October 13, 2021 Consent Agreement.
- m) Randy M. Smith, D.O.: Request for release from the terms of the January 8, 2020 Step II Consent Agreement.

Dr. Soin seconded the motion. A vote was taken:

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

The motion carried.

ADJOURN

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

The meeting adjourned at 3:14 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on January 12, 2022, as approved on February 9, 2022.


Betty Montgomery, President


Kim G. Rothermel, M.D., Secretary

(SEAL)





State Medical Board of Ohio

COMPLIANCE COMMITTEE MEETING

January 12, 2022

30 E. Broad Street, 3rd Floor, Administrative Hearing Room, Columbus, OH 43215

<p>Members: Betty Montgomery, Chair Robert Giacalone, R.Ph., J.D. Michael Schottenstein, M.D. Harish Kakarala, M.D.</p> <p>Other Board Members present: Kim Rothermel, M.D. Bruce Saferin, D.P.M. Mark Bechtel, M.D. Jonathan Feibel, M.D. Yeshwant Reddy, M.D.</p>	<p>Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Brandi Dorcy, Chief of Compliance Amy Pridday, Compliance Manager Rebecca Marshall, Chief of Quality Assurance Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 9:02 a.m.

Compliance Program Updates

Ms. Montgomery thanked Ms. Dorcy for the improvements made to the Compliance report.

Ms. Dorcy referenced the memo the Committee which outlines proposed changes to return-to-work assessments, practice plans, physician monitoring, and chaperones.

Return-to-Work Assessments

Ms. Dorcy stated that currently probationers under suspension must have two return-to-work assessments indicating their ability to practice according to acceptable and prevailing standards of care before reinstatement of their license. The proposed updates would provide a more detailed rationale for recommendations for treatment, monitoring, and supervision. This will allow Compliance staff to understand the needs of the licensees and identify potential future red flags in order to protect the public.

Responding to questions from Dr. Schottenstein, Ms. Dorcy stated that the licensees pay for their assessments and they are conducted by Board-approved evaluators. If the licensee requests an assessor who is not already Board-approved, that request must be approved by the Secretary and Supervising Member. The licensee can have one assessment from a physician they are already working with, but the second assessment must be conducted by someone else. The staff can provide the licensee with a list of Board-approved assessors. That list can also be found on the Board's website.

Dr. Rothermel stated that if a licensee requests an assessor who is not Board-approved, the Secretary and Supervising Member review that physician's *curriculum vitae* and qualifications. If approved, the physician is given a list of requirements for the examination. Dr. Rothermel opined that it is unlikely that a physician who may know the licensee would write an inaccurate report and put their ethical responsibility at risk.

Dr. Schottenstein asked what happens if one of the return-to-work assessments indicates the licensee is not ready to return to work. Ms. Dorcy answered that the Compliance staff would discuss next steps with the Secretary and Supervising Member. Any such report will indicate why the licensee is not appropriate to return to work so the licensee can be referred to the proper program to address that issue. Following that, the licensee would need to be reassessed.

Practice Plans

Ms. Dorcy stated that the goal of practice plans is to outline how the licensee will continue practicing while adhering to the requirements of their Board order or consent agreement. Practice plans are approved by the Secretary and Supervising Member. Currently, there is no formal process for the licensee to submit a proposed practice plan to staff, and it is often received as an email or a letter. A formal document has been proposed which the licensee will fill out. This document will ask specific questions about the practice plan, and must be resubmitted if the licensee changes employment.

Ms. Dorcy stated that the Board does not currently utilize practice plans as often as the Compliance staff feels it should. Ms. Dorcy hoped that these proposed updates will promote more utilization of practice plans moving forward. Ms. Dorcy elaborated that the updated documents will hopefully show Board members that the practice plan is a tool that can be used effectively, and show Enforcement staff that practice plans can be included in more consent agreements. Enforcement and other staff have had opportunity to review and provide feedback on the proposed document. Ms. Dorcy opined that anyone under a Board order or consent agreement for sexual misconduct, inappropriate prescribing, impairment, and some minimal standards situations should have a practice plan.

Physician Monitoring

Ms. Dorcy stated that Board orders and consent agreements specify whether the licensee is required to utilize physician monitoring. The role of a physician monitor is to ensure the licensee is meeting the standard of care at the highest level through an impartial assessment of the licensee's practice through observation, chart review, or both, as specified in the order or agreement. Monitors are commonly required for licensees with history of mental health or substance use impairment. Requests for approval of a monitor are submitted to the Compliance staff and approved by the Secretary and Supervising Member.

Currently there is a letter that is sent to the monitor that outlines their responsibilities. There is no formal application process to become a monitor. At this time, the Board has 23 probationers with monitoring requirements. The draft monitor application will provide background information to the staff, as well as let the monitor know that the information they are being asked to provide is very important to the licensee and should be provided in a timely manner. The draft application also informs the monitor of the importance of the duty to report and to be impartial if there is a personal relationship with the licensee. Lastly, the draft application will inform the staff if the monitor is being compensated.

Dr. Schottenstein asked if it would be productive to have a list of approved monitors, similar to the list of approved return-to-work assessors. Ms. Dorcy stated that that is a long-term goal.

Ms. Montgomery asked how often monitors submit reports. Ms. Dorcy replied that reports are due quarterly. If reports are not submitted in a timely manner, the licensee's probation can be affected and the staff may have to advise the licensee to find a new monitor.

Ms. Montgomery asked how much monitors are paid. Ms. Dorcy did not know and hoped that information provided by the draft application will help answer that question. Dr. Saferin stated that in general, monitors are not paid and they perform monitoring duties to help the licensee. Monitors are often someone who works with the licensee. Dr. Schottenstein asked about the objectivity of monitors. Ms. Dorcy opined that the monitor application will remind the monitor of their duty to report issues or concerns, especially in impairment cases if there is a relapse. A statement about objectivity can be added to the application.

Ms. Montgomery opined that providing monitors with a format for their reports would be helpful. Ms. Dorcy agreed. Dr. Rothermel also agreed, but cautioned that the report should not be simply a checklist. Ms. Montgomery agreed.

Dr. Rothermel asked about the importance of knowing whether monitors are being paid and how much, noting that the majority of monitors are not paid and have agreed to be a monitor to help a colleague. Dr. Rothermel was concerned that if potential monitors are asked about payment on the application, this may prompt them to consider asking for payment. Dr. Rothermel suggested that the question be removed from the application and instead be asked of the probationer verbally during a compliance conference. Ms. Dorcy stated that that can be done.

Chaperones

Ms. Dorcy stated that currently a Board order or consent agreement will specify if a chaperone is required to be present for patient encounters and under what specific circumstances. Currently, there are no program guidelines, no chaperone application, and no acknowledgement form for the licensee that they understand what having a chaperone entails. Proposed revised language for orders and agreements, developed in conjunction with Enforcement staff, is as follows:

(Name) shall have a third-party present while examining or treating (specify type of patients) patients. The particular qualifications of the chaperone and the specific conditions related to (Name's) utilization of such chaperone must be acceptable to the Secretary and Supervising Member of the Board, who shall consider the "Guidelines for the Use of Medical Chaperones" utilized by the Board's Compliance section in making their determination.

Ms. Dorcy stated that this language will improve the staff's ability to determine if the chaperone is acting appropriately. The proposed guidelines for chaperones, attached to the memo, are an effort to ensure that chaperones are educated on the duties and responsibilities of a chaperone. For instance, a chaperone should be able to watch and not be performing other duties during an examination. A proposed acknowledgement statement for the licensee is also included. These proposals are intended to promote patient safety and to provide extra protection for the licensee as well.

Ms. Montgomery noted that under the proposed guidelines, the licensee is required to inform the patient that there will be a chaperone, though not necessarily inform them of the reason for the

chaperone. If the patient is not comfortable with a chaperone being present, the patient is referred to another physician. Ms. Dorcy stated that she wanted to make sure the patient is aware that there will be another person in the room during the intimate examination, and the physician's office can determine how best to respond to patient questions of why there is a chaperone. If the patient is informed ahead of time, the office can address any requests from the patient such as having a chaperone of a specific gender.

Dr. Reddy asked if a medical assistant in the physician's office can act as a chaperone. Ms. Dorcy replied that a medical assistant can be a chaperone as long as they are acting as a chaperone during the examination and not acting as a medical assistant. During the examination, a chaperone should be focused on that role and not performing medical assistant duties such as charting or taking vital signs.

Dr. Schottenstein asked if there is a conflict in a chaperone being a paid employee of the licensee. Ms. Dorcy replied that that is a concern, but she recognized that it can be very difficult for practitioners to find chaperones outside their office. The hope is that if the Board provides boundaries and guidelines, staff members who are chaperones will know their responsibilities as a chaperone. The Board will also suggest that chaperones take a chaperone class, noting that there is a very good online chaperone class that is about three hours long and costs \$20. Ms. Dorcy noted that Ms. Priddy took the course and found it very informative.

Dr. Schottenstein noted that the Board's Sexual Misconduct Committee had recommended legislation mirroring California's Patients Right to Know Act, which would require that patients be informed if their physician is on probation for a violation of that nature. Dr. Schottenstein stated that such a measure, if enacted in Ohio, would provide additional protection for patients.

Mr. Giacalone approved of Mr. Dorcy's suggestions, but suggested that a statement be added to the chaperone application that they not only do they have a duty to report improprieties as a chaperone, but if they are in a licensed profession they also have a duty to report as a condition of their license. Ms. Dorcy agreed.

Ms. Montgomery asked if the online chaperone course mentioned by Ms. Dorcy should be required for chaperones. Ms. Dorcy noted that the proposed guidelines indicate the Board's preference for chaperones who have taken a course.

Dr. Schottenstein noted a reference in the proposed guidelines that it is best practice to have the provider and chaperone in the same location, but if that is not practical then the guidelines mention use of a camera. Ms. Dorcy stated that that is in relation to telemedicine visits and it is recommended that, if possible, the chaperone should be in the same room as the physician.

Ms. Dorcy thanked the Committee for its input. Ms. Dorcy will make changes based on these comments and present a new draft next month.

Minutes Review

Dr. Kakarala moved to approve the draft minutes of the December 8, 2021. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Treatment Provider Application

Vertava Health of Ohio

Dr. Schottenstein moved to recommend approval of the application for renewal as a Board-approved treatment provider of Vertava Health of Ohio. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

Compliance Statistics

Ms. Dorcy stated that the statistics in the meeting materials are for the second half of 2021. The statistics include the number of reinstatements, the number of probationers in non-compliance and the reason for non-compliance, and how many were released from probation on schedule. 74% were released on schedule and the average time of sobriety at the time of release was six years.

Adjourn

Dr. Kakarala moved to adjourn the meeting. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

The meeting was adjourned at 9:51 a.m.

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State Medical Board of Ohio

FINANCE COMMITTEE MEETING

January 12 , 2022

30 E. Broad Street, 3rd Floor, Administrative Hearing Room, Columbus, OH 43215

<p>Members: Michael Schottenstein, M.D., Chair Bruce Saferin, D.P.M. Michael Gonidakis, Esq.</p> <p>Other Board Members present: Mark Bechtel, M.D. Yeshwant Reddy, M.D.</p>	<p>Staff: Stephanie Loucka, Executive Director Joel Whetstone, Deputy Director of Operations Cinnamon Pipkin, Human Resources & Fiscal Administrator Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 7:30 a.m.

Minutes Review

Dr. Saferin moved to approve the draft minutes of the December 8, 2021 Committee meeting. Mr. Gonidakis seconded the motion. All members voted aye. The motion carried.

Financial Summary Review

Dr. Schottenstein stated that the Board's revenue in November 2021 was \$826,930, which is roughly in-line with revenue two years prior. However, that month also had a net negative revenue of \$-441,549, reflecting the fact that the Board received an invoice that month from the Department of Administrative Services (DAS) for eLicense services of about \$450,000. That invoice substantially informed the 19.6% increase in year-to-date expenditures. Without that additional expense, the increase in expenditures would have been a more typical 3% to 4%, so expenditures are still essentially *status quo*. The Board's cash balance is down from the previous month to \$5,996,367, which also reflects the additional expense. The Board received \$29,180 in disciplinary fines in November 2021, which is a good month for the Board.

Funding Licensure Compact eLicense Enhancements

Dr. Schottenstein stated that at the end of the last fiscal year, the Board approved spending on Salesforce development hours up to \$35,000 for Fiscal Year 2022 with an estimated 300 hours of development needed. Senate Bill 6, signed into law by Governor DeWine on June 29, 2021, authorizes the Medical Board to enter the Interstate Medical Licensure Compact (IMLC). Senate Bill 6 gives the Board until September 29, 2022 to implement the system and begin processing and issuing licenses through this path.

The Board has identified numerous additional Salesforce enhancements needed to implement the licensing compact in an efficient manner by the date required. The estimated cost for these

enhancements is \$17,404 for about 147 hours of work. The Board received an appropriation increase of \$140,000 for Fiscal Year 2022 as part of Senate Bill 6. This appropriation is for IMLC-related implementation costs. These funds will be used to pay for the identified eLicense enhancements.

The Committee has been asked to approve increasing the \$35,000 limit to \$55,000 to ensure the enhancements needed for implementation of the IMLC can be completed.

Mr. Gonidakis asked if the \$140,000 appropriated by Senate Bill 6 comes from the General Fund. Dr. Schottenstein replied that the \$140,000 is already part of the Board's funds and that Senate Bill 6 authorizes the Board to spend those funds for this purpose. If the Board approves the request to increase the spending limit, the additional \$20,000 will come from this authorization.

Ms. Loucka stated that the IMLC is essentially a whole new license type for the Board. The projected revenue from the IMLC is much higher than what will be spent, even initially. Ms. Loucka explained that when an Ohio physician wants to be licensed in another IMLC state, the Board will issue them a letter of qualification. The physician will pay a fee to the IMLC of \$700, which will reimburse \$300 of that fee to the Board. This will be in addition to the regular \$305 license renewal fee the physician pays to the Board every two years. The Board conducted a survey which indicated that about 2,000 of its licensees would be interested in utilizing the IMLC.

Dr. Schottenstein, noting that the letter of qualification maintains that the licensee is qualified and has no criminal history of board action, asked how long the letter is good for. Ms. Loucka answered that the letter of qualification is issued one time; if the holder of the letter becomes subject to discipline, that is reported to the IMLC and the holder loses the letter of qualification. In that circumstance, the physician will lose their licensure in any state where that licensure was dependent on the letter of qualification.

Dr. Schottenstein asked if there is any kind of due process, such as a hearing, involved in a licensee's loss of their letter of qualification. Ms. Loucka replied that the compact is statutory and this is how the compact is structured. Committee members asked further questions, including whether a committee decides the matter at the compact level and in what court a licensee would appeal a decision to revoke a letter of qualification. Ms. Loucka stated that she can research the details on this process and report back to the Committee..

Dr. Saferin moved to recommend that the full Board increase of authorization up to \$55,000 for dedicated Salesforce development hours from DAS OIT in Fiscal Year 2022. Mr. Gonidakis seconded the motion. All members voted aye. The motion carried.

Adjourn

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

The meeting adjourned at 7:45 a.m.

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