



**Medical Board of Ohio Meeting Minutes  
December 8, 2021**

Betty Montgomery, President, called the meeting to order at 10:10 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; 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. Saferin moved to approve the minutes of the November 10, 2021 Board Meeting. Dr. Reddy seconded the motion.** All members voted aye, except Mr. Giacalone, who abstained. 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: Richard B. Darr, M.D.; Seirra Benner; and Vernon Proctor, M.D. A roll call was taken:

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

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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. Johnson	Y
Dr. Schottenstein	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. Darr.

### **Richard B. Darr, M.D.**

Ms. Montgomery directed the Board's attention to the matter of Richard B. Darr, M.D. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

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

Dr. Darr was represented by his attorney, Michael Lyon.

Mr. Lyon stated his belief that the bar in this case is very high compared to other cases, noting that Dr. Darr has practiced medicine for over 50 years. During that time, Dr. Darr has had only one malpractice case about 30 years ago that resulted in a \$50,000 payout. Mr. Lyon stated that in 50 years there has not been one scintilla of evidence that any act or failure to act on Dr. Darr's part caused injury to any patient. Further, there is no sexual misconduct, drugs, criminal activity, or fraud in Dr. Darr's past. Rather, this case has to do with Dr. Darr's ability to practice medicine and whether a diagnosis has been made that would reflect an inability to practice medicine.

Mr. Lyon stated that the evidence presented by the State falls far short of the high bar in this case. The State called Stephen Noffsinger, M.D., a forensic psychiatrist, as a witness. Mr. Lyon suggested that Dr. Noffsinger is not an appropriate witness for this inquiry because he is not a cognitive neurologist. Dr. Noffsinger, using the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition (DSM-V) and a 45 to 60 minute remote interview, diagnosed Dr. Darr with "Unspecified Neurocognitive Disorder." Dr. Noffsinger testified that a neuropsychological examination administered by Scott A. Magnuson, Psy.D., was incorporated into his analysis. Dr. Magnuson had found that there was mild neurocognitive disorder, and therefore Dr. Noffsinger concluded that Dr. Darr is not appropriate to practice medicine.

Mr. Lyon continued that if one compares the neuropsychological examination taken by Dr. Darr in 2009 to the one taken in 2021, they are identical and there had been no progress in the condition, yet he continued to practice medicine for 12 years without incident, without interventions, and without any problems.

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Mr. Lyon stated that Douglas W. Scharre, M.D., a board-certified neurologist specializing in cognitive disorder, testified on behalf of Dr. Darr. Dr. Scharre has been seeing Dr. Darr on a regular basis since 2009 as a treating physician and has tested Dr. Darr numerous times. Dr. Scharre testified that in his opinion, based on his own observations, testing, background, education, and training, that Dr. Darr does not have any cognitive disorder. Rather, Dr. Scharre testified that Dr. Darr has attention deficit hyperactivity disorder (ADHD), and it is so minor that Dr. Scharre did not feel it needed treatment.

Mr. Lyon stated that Dr. Scharre's testimony was dismissed by the Hearing Examiner. Mr. Lyon suggested that Dr. Scharre, who has seen Dr. Darr since 2009, is in a better position to evaluate him than Dr. Noffsinger, a forensic psychiatrist. There was also testimony by Thomas W. Ericksen, M.D., a board-certified internal medicine specialist who has been seeing Dr. Darr for 20 years and knew him as a patient and a colleague. Dr. Ericksen testified that Dr. Darr is lucid and capable of evaluating and discussing issues. Dr. Ericksen had also inherited many of Dr. Darr's patients and, having examined the patients' charts, Dr. Ericksen opined that the histories and medications in the charts reflect a physician who is competent and practicing medicine with no problem whatsoever. Mr. Lyon opined that this carries tremendous weight, yet it was dismissed by the Hearing Examiner.

Mr. Lyon opined that given the totality of the evidence, this case does not rise to the level of removal of Dr. Darr's medical license.

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

Ms. Snyder said that the State has a tremendous amount of respect for Dr. Darr's practice of medicine, and there is no question that over the last 50 years he has dedicated his life to that practice. Ms. Snyder stated that it gives her no pleasure to talk about Dr. Darr's mental capacity and fitness to practice medicine. However, that is what must be discussed today because multiple experts have found that Dr. Darr's cognitive abilities have suffered to an extent that he is no longer able to safely practice medicine. Ms. Snyder noted that even Dr. Darr himself has noticed that his short-term memory is not what it used to be, though he attributes this to age-related decline.

Ms. Snyder stated that the Board members had the opportunity to view a video of Dr. Darr being interviewed by Dr. Noffsinger. Ms. Snyder noted the cadence of Dr. Darr's answers during that interview, as well as the tangents he would go on when he could not quite figure out what the answer was. Ms. Snyder also stated that Dr. Darr would physically massage his forehead, as if trying to physically pull the memories out. Ms. Snyder stated that it was very compelling evidence to watch Dr. Darr struggle with the interview. Ms. Snyder stated that Dr. Darr behaved similarly during his hearing, though the written transcript does not capture this. Ms. Snyder stated that at the hearing she would ask a straight-forward question and five minutes later Dr. Darr still had not answered the question; Ms. Snyder would ask if Dr. Darr remembered the question that had been asked, and he could not remember.

Ms. Snyder stated that the Board is not here today to disparage Dr. Darr, but to protect the public. Ms. Snyder commented that as she watched Dr. Darr's interview with Dr. Noffsinger, she found herself adjusting her expectations as one would when speaking with an older person who has some memory difficulties. However, expectations cannot be adjusted in this case because Dr. Darr is an active physician in active practice and he must be held to a higher standard. Ms. Snyder noted that Dr. Darr practices geriatrics, and therefore takes care of one of the most vulnerable segments of the population. The Board must be able to trust that Dr. Darr's memory and cognitive function are good enough to process information, have abstract problem-solving skills, and have the cognitive capabilities to practice every day.

Ms. Snyder was also struck by Dr. Magnuson's report. Dr. Magnuson performed a neuropsychological evaluation and in the vast majority of categories, Dr. Darr tested at average or below average. However, those were the results as compared to other 75-year-olds; when compared to 65-year-olds or 55-year-olds, the percentages dropped.

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Ms. Snyder recognized that Dr. Darr has spent a lifetime in medicine, and she speculated that that is why it is so difficult for him to recognize that it is time to hang up the stethoscope. Ms. Snyder observed that even lawyers age out, noting that judges are restricted from being a judge after the age of 70, and that it is simply a fact of life. Ms. Snyder reiterated that it is the Board's responsibility to put the patient first. Ms. Snyder recalled that Dr. Magnuson said, "The brain can't tell the brain when the brain is sick." Ms. Snyder regretted that the Board must tell Dr. Darr that he is no longer able to practice medicine.

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

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

Dr. Schottenstein stated that minor neurocognitive disorder describes a modest cognitive decline where activities of daily living are preserved and the concern is not severe enough to warrant a diagnosis of dementia. Dr. Schottenstein stated that this is the gray area between the cognitive changes of normal aging and the cognitive impairment consistent with dementia. Dr. Schottenstein stated that brief mental status examinations such as the Folstein Mini-Mental Status examination or the Self-Administered Gerocognitive Exam (SAGE), which were administered at Dr. Darr's appointments with his neurologist Dr. Scharre, are insensitive for detecting mild neurocognitive disorder. Dr. Schottenstein stated that unless there is actual dementia, a patient will score well on these tests. Dr. Darr scored well because he does not have dementia and no one has alleged that he has dementia; the concern with Dr. Darr regards mild neurocognitive disorder.

Dr. Schottenstein noted Dr. Scharre's testimony that he uses the Folstein Mini-Mental Status examination and the SAGE at every visit because they are great tools to evaluate change over time. Dr. Schottenstein stated that this is true if one is screening for or following a patient with dementia. However, those tests are not good tools to screen or evaluate for changes over time for mild neurocognitive disorder. The way to make the distinction between mild neurocognitive disorder and normal age-related cognitive decline is with neuropsychological testing; if the testing shows cognitive decline that is substantially more severe than one would expect for one's age and level of education, then that is compelling.

Dr. Magnuson testified that Dr. Darr's premorbid cognitive abilities are estimated to be in the high average to above average range. Dr. Magnuson also testified that Dr. Darr demonstrated a decline in cognitive functioning on certain measures of executive functioning, working memory, attention, and memory. Dr. Darr's performance on those measures ranged from low average to exceptionally low. Given the evidence of decline in cognitive functioning coupled with the reported intact ability to perform activities of daily living, Dr. Darr was felt to meet criteria for mild neurocognitive disorder. Dr. Schottenstein acknowledged that defense counsel has concerns about the validity of this diagnosis. However, Dr. Schottenstein opined that the diagnosis is non-controversial. Dr. Darr meets the criteria for the diagnosis and two autonomous Board experts independently came to the same conclusion.

Dr. Schottenstein continued that the neuropsychological assessments are compelling and concerning, but he would not use the results of such assessments in a rigid way whereby a physician scoring in the low range would automatically lose their license. However, Dr. Darr's neuropsychological assessments substantially corroborate the nature of the complaints the Board has received over a period of years regarding his behavior. In particular, Dr. Schottenstein expressed concern about the report of the investigator from the Court of Common Pleas Probate Division in Clark County, Ohio, filed on November 15, 2015. The report was prompted by the judge's concerns about Dr. Darr's court testimony in the guardianship proceeding. Dr. Schottenstein found the report to be disturbing and it corroborates the results of the neuropsychological testing based on behavioral observations of his co-workers.

A second example of concern is that in March 2021, the Springfield Regional Medical Center asked Dr. Darr to withdraw his admitting privileges due to concerns that he is an impaired physician. Dr. Darr agreed, but it was

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reported that he continued to track and direct the care of his patients. Dr. Darr's explanation to Dr. Noffsinger for the hospital's actions was tangential and disorganized.

In his closing argument at the hearing, and also today, Dr. Darr's attorney indicated that Dr. Darr has not done anything in 50 years that would reflect any kind of conduct that would hurt anyone. Dr. Schottenstein stated that is, regrettably, arguably not true because Dr. Darr prescribed testosterone to someone who was being prescribed a testosterone antagonist for treatment of his prostate cancer, and this arguably sabotaged the patient's cancer treatment. Dr. Schottenstein noted that testosterone is contraindicated in patients with prostate cancer because it can cause the cancer to recur or progress. Testimony showed that the patient's prostate-specific antigen (PSA) levels subsequently increased, signifying progression of the cancer. Dr. Darr's explanation for his behavior varied and was unsatisfactory. Dr. Darr testified that he had been aware of the patient's prostate cancer diagnosis, but the patient looked frail to him and that he did not make a mistake. However, Dr. Darr told Dr. Magnuson that the patient did not tell him about the prostate cancer diagnosis, that physician error is very common, and that everyone makes mistakes for various reasons.

Dr. Schottenstein did not believe that Dr. Darr had been dissembling about the prostate cancer patient. Dr. Schottenstein felt that Dr. Darr's difficulty explaining his behavior is consistent with why he is before the Board today and that he has difficulty understanding his own actions. Dr. Schottenstein opined that Dr. Darr's judgment is informed by his cognitive impairment, and he was concerned that this episode represents the kind of behavior that can be expected from Dr. Darr if he continues to practice medicine.

Dr. Schottenstein found Dr. Darr's presentation to be tangential and disorganized. Dr. Schottenstein stated that Dr. Darr has rehearsed go-to topics of discussion that act like filler in conversation, something commonly seen in patients with cognitive impairment; the patient goes off-track into a topic that feels safe to them because they have rehearsed it and they are having trouble processing the topic of conversation at hand. Dr. Schottenstein noted that this was seen often in the transcript of Dr. Darr's testimony, as well as in the video of Dr. Darr's conversation with Dr. Noffsinger. Dr. Schottenstein stated that to say, as Dr. Scharre did, that this is a manifestation of ADHD is simply not true. This was not a case of someone getting off-topic due to a lack of focus. Dr. Noffsinger described Dr. Darr's testimony as addled and somewhat odd, and that is not typical of patients with ADHD.

Dr. Schottenstein opined that the defense counsel's concerns about Dr. Noffsinger changing his diagnosis at the last minute are overblown. Dr. Schottenstein stated that that was a technical correction to the diagnosis and not a substantial one, and Dr. Schottenstein felt that was self-evident.

Dr. Schottenstein appreciated the testimony of Dr. Scharre and Dr. Ericksen, who have known Dr. Darr for a long time. However, Dr. Schottenstein stated that that relationship can also make it difficult to be objective, and this is why Dr. Schottenstein is more inclined to be persuaded by the testimony of the independent experts. Dr. Schottenstein stated that, especially when physicians have a physician as a patient, the treating physician can form an alliance and identify with the patient, which can make it difficult to maintain objectivity.

Dr. Schottenstein was very appreciative of Dr. Darr's commitment to the medical profession and patient care. However, there is a recent neuropsychological assessment that indicates mild neurocognitive disorder, as well as a forensic expert who independently came to the same conclusion and opined that Dr. Darr is not cognitively capable of practicing medicine. The forensic expert further stated that there are no practice limitations or treatments that would change that opinion. Dr. Schottenstein stated that the Medical Board is a patient-protection board. Combined with the history of concerning behavior and Dr. Darr's own presentation, Dr. Schottenstein stated that he regrettably had no choice other than to support the Proposed Order to permanently revoke Dr. Darr's medical license.

Dr. Kakarala agreed with Dr. Schottenstein. Dr. Kakarala stated that it is always concerning to consider removal of a physician's license. Dr. Kakarala stated that there are no age restrictions or mandatory retirement for physicians, and for good reason. In this current case, the hearing transcript and the video of the interview

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with Dr. Noffsinger demonstrates that there is enough concern in a multitude of areas to support the permanent revocation of Dr. Darr's license.

Mr. Giacalone agreed with Dr. Kakarala, and he especially appreciated Dr. Schottenstein's opinion as a psychiatrist. Mr. Giacalone stated that he is not a physician, but upon reading the hearing transcript and viewing the video, it was very apparent that Dr. Darr could not answer questions in a straight-forward manner and would go off on a tangent. Mr. Giacalone's yardstick is whether he would trust himself for his family member seeing this physician. Mr. Giacalone was certain that Dr. Darr was an excellent physician in his time, but unfortunately that time is not now. Mr. Giacalone regretfully agreed with the previous Board members that Dr. Darr's continued practice of medicine poses a harm to the public.

Dr. Feibel stated that this case is by far the most difficult case he has reviewed since being on the Medical Board. Dr. Feibel stated that he has thought about this case a great deal and he feels horrible about the situation Dr. Darr is in. Unfortunately, Dr. Feibel felt there is enough concern based on expert testimony that the Board must act to protect the public. Dr. Feibel watched the interview with Dr. Noffsinger and thought that Dr. Darr had been cognitively acute in parts of it, but there were other parts in which he was not. Dr. Feibel stated that he painfully came to the conclusion that the Proposed Order to permanently revoke Dr. Darr's license is the correct order. Dr. Feibel added that it is the most painful vote he will have cast as a member of the Medical Board.

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

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

The motion carried.

Ms. Montgomery thanked Mr. Lyon for representing his client well. Ms. Montgomery believed that all the Board members cast their votes with some regret.

### **Seirra Benner**

Ms. Montgomery directed the Board's attention to the matter of Seirra Benner. No objections have been filed. Ms. Shamansky 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 Ms. Benner. 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

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

The motion carried.

### **Vernon Proctor, M.D.**

Ms. Montgomery directed the Board's attention to the matter of Vernon Proctor, M.D. 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. Proctor. Dr. Bechtel seconded the motion.**

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

Dr. Schottenstein stated that he is glad when physicians see it as their mission, as Dr. Proctor does, to recommend medical marijuana because there is a great need for providers and the patients are long-suffering. However, Dr. Schottenstein noted the undeniable risk to patients and to society at large that are inherent in this type of practice, and those risks include impacts on mental and physical health as well as diversion. Therefore, it is right and understandable that this type of practice is highly regulated and receives a great deal of scrutiny from medical boards and law enforcement. Dr. Schottenstein stated that Dr. Proctor did not seem to understand that if a one is going to be in the forefront of practicing in this area of medicine, then one must try twice as hard to be respectful and compliant regarding the spirit and the letter of the law and rules; to do otherwise invites scrutiny and consequence.

Dr. Schottenstein continued that Dr. Proctor's narrative seems to be that the Michigan Board of Medicine is heavy-handed and that the Michigan Attorney General's office is intolerant and prosecutorial. Further, Dr. Proctor appears to believe that he unfairly attracted the attention of those entities solely because he was a trailblazer who had worked hard to make medical marijuana recommendations to patients in need. Dr. Proctor does not take responsibility for his actions, nor does he express remorse. Dr. Schottenstein stated that there are, in fact, clear, legitimate concerns about Dr. Proctor's practice that have nothing to do with an overzealous exercise of authority by regulatory and law enforcement bodies.

Dr. Schottenstein stated that if the Board accepts the Hearing Examiner's Proposed Order, then Dr. Proctor will have a pathway to practice in Ohio. Because Dr. Proctor keeps finding himself in trouble with medical boards, Dr. Schottenstein suggested that Dr. Proctor adopt a quality assurance program for his practice. Dr. Schottenstein did not wish to amend the Order to require such a program because such a provision would be complicated and there is no standard language for it. Also, this matter involves a violation of 4731.22(B)(22), Ohio Revised Code, which is action taken by another agency, in this case the Michigan Board of Medicine. As a (B)(22) case, Dr. Schottenstein would be hesitant to add conditions beyond what the Michigan Board stipulated. As a well-intended suggestion rather than a requirement, Dr. Schottenstein opined that Dr. Proctor would be right to hire professionals to regularly monitor his charting, billing, and compliance with laws and rules, in effect auditing his practice. Otherwise, Dr. Schottenstein feared that Dr. Proctor will ultimately find himself permanently out of practice because he does not seem to have the inherent objectivity and skill set to administratively manage his practice.

Dr. Schottenstein opined that the Michigan Board's order was as strong as an order in this case can be without permanently revoking Dr. Proctor's license. Dr. Schottenstein further opined that permanent revocation would

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be premature and he would hesitate to choose that option when the medical board that first had knowledge of the matter did not do so. Dr. Schottenstein supported the Hearing Examiner's Proposed Order.

Mr. Giacalone commented that Dr. Proctor almost seems to have had a marketing plan for medical marijuana, including seminars, lawyers, and cross-country travel. Dr. Proctor did not perform examinations on the patients for whom he provided medical marijuana cards. Mr. Giacalone also noted Dr. Proctor's past issues with incorrectly prescribing suboxone. Mr. Giacalone expressed concern about Dr. Proctor's continued practice of medicine, but questioned whether there was enough in the record to keep him from practicing in Ohio.

Dr. Feibel shared Mr. Giacalone's and Dr. Schottenstein's concerns. Dr. Feibel did not feel that Dr. Proctor's Ohio medical license should be permanently revoked, but opined that he should lose his right to prescribe controlled substances in Ohio.

**Dr. Feibel moved amend the Proposed Order to add a permanent restriction from prescribing controlled substances, including recommending medical marijuana. Dr. Reddy seconded the motion.**

Ms. Montgomery agreed that Dr. Proctor had inappropriately distributed marijuana cards in Michigan. Nothing in the record indicated to Ms. Montgomery that there had been a physician/patient relationship in these cases. Ms. Montgomery was also troubled that this is the second time Dr. Proctor had come to the attention of the Board. Ms. Montgomery supported the indefinite suspension of Dr. Proctor's Ohio medical license, and she also supported Dr. Feibel's proposed amendment.

Dr. Bechtel agreed with the prior statements. Dr. Bechtel stated that the record contains no indication that there had been any legitimate physician/patient relationships, evaluations, or examinations. This is also Dr. Proctor's second time before the Board. Dr. Bechtel also pointed out that Dr. Proctor profited by his actions in dispensing medical marijuana cards.

Dr. Johnson also agreed with the preceding statements. Dr. Johnson noted that Dr. Proctor had only spent three to five minutes with each patient. Dr. Proctor made \$1,085,000 in one year and dispensed 21,708 medical marijuana cards in that time. Dr. Johnson further noted that Dr. Proctor had 20 to 40 clinics and when the Board asked him to produce patient records, he told the Board it had to tell him in which clinic he had seen the patient. Dr. Johnson found this to be ridiculous and stated that Dr. Proctor did not have a physician/patient relationship with these individuals.

Dr. Schottenstein appreciated the spirit of the discussion and the proposed amendment, for which he intended to vote in favor. However, Dr. Schottenstein wished to take this opportunity to have a higher-level discussion of what it means to amend an order in a (B)(22) case.

Dr. Schottenstein recalled that during the last Board retreat, Mr. Roach had discussed the matter of Dr. Angerbauer. Dr. Angerbauer had been disciplined by the Washington Medical Commission, and the State Medical Board of Ohio subsequently imposed a substantially harsher penalty than the Washington board had. Dr. Schottenstein stated that the Board should be careful not to abuse its discretion in these matters, meaning that the Board should not typically take a (B)(22) matter, decide the original state board's order was too lenient, and impose something harsher. Dr. Schottenstein opined that if the Board does so, it should be memorialized thoroughly and have a precedent if possible.

Dr. Schottenstein noted the case of *Henry's Café v. Board of Liquor Control*, a 1959 case before the Ohio Supreme Court. *Henry's Café* set the precedent that an appeals court can review a Board order to ascertain whether the Board had used reliable, probative, and substantial evidence and whether the Order was in accordance with the law. Dr. Schottenstein stated that perhaps once per year the Board receives a remand from an appeals court judge and is asked to reconsider an order. However, a judge never decides to change an order himself or herself because he or she does not like the order. The advantage of *Henry's Café* is that judges can remand an order, but cannot change the order. Dr. Schottenstein stated that *Henry's Café* is not

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permanent and the Board should be careful that it is not taken away, in the same way that the Board is careful in how it uses its summary suspension authority. Abuse of these authorities can lead the courts or the legislature to take them away.

Dr. Schottenstein stated that Dr. Feibel's proposed amendment has been discussed thoroughly and he felt comfortable voting in favor of it. Dr. Schottenstein added that going forward he will be careful and not be too quick to amend a proposed order in a (B)(22) case just because he feels the original state's order was not strong enough.

Ms. Montgomery stated that the Medical Board is an independent board and it makes independent decisions. The Board has now seen Dr. Proctor twice and the current case is very egregious, involving issues of inappropriate medical records, lack of physician/patient relationships, and over 21,000 medical marijuana cards being dispensed. There is a great deal of concern about whether Dr. Proctor is actually in the practice of medicine or the practice of business. Ms. Montgomery appreciated Dr. Schottenstein's concerns, but stated that those are matters for the attorneys while it is the Board's duty to protect the public and the practice of medicine. Ms. Montgomery stated that Dr. Schottenstein's comments are appropriate, but probably should not be at the forefront of what the Board considers.

Dr. Feibel stated that he respectfully disagrees with Dr. Schottenstein's thoughtful points. Dr. Feibel stated that unlike a court, the Medical Board does not have the ability to remand an order that it disagrees with back to another state medical board. Dr. Feibel stated that the Medical Board has the duty to protect the public in Ohio, and if it the Board feels differently than another medical board about a case based on the facts, then the Board has a duty and a responsibility to adjudicate the case as it sees fit. Dr. Feibel stated that he uses other medical boards' orders in some respects to help him determine where he stands on a case, but it is not the sole determinate.

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

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

The motion carried.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Johnson	Y
Dr. Schottenstein	Y
Dr. Kakarala	Y
Dr. Feibel	Y
Dr. Reddy	Y

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Dr. Bechtel	Y
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 Dr. Shelchkov.

#### **Albert Aiad-Toss, M.D.**

**Dr. Bechtel moved to find that the allegations as set forth in the June 9, 2021 Notice of Opportunity for Hearing in the matter of Dr. Aiad-Toss 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. Bechtel's motion:

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

The motion carried.

#### **David Engel, L.M.T.**

**Dr. Bechtel moved to find that the allegations as set forth in the May 12, 2021 Notice of Opportunity for Hearing in the matter of Mr. Engel 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. Bechtel's motion:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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

The motion carried.

### **Dmitry A. Shelchkov, M.D.**

**Dr. Reddy moved to find that the allegations as set forth in the May 12, 2021 Notice of Opportunity for Hearing in the matter of Dr. Shelchkov 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.

Dr. Kakarala stated that the Proposed Order in this matter would impose an indefinite suspension of Dr. Shelchkov's medical license, despite the multiple egregious incidents involved in the case which led to peoples' deaths. Dr. Kakarala questioned why a permanent revocation is not being considered. Ms. Anderson stated that the action against this physician in New York is a pre-hearing action, so there are only allegations and no findings at this point. Dr. Kakarala thanked Ms. Anderson for that clarification.

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

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

The motion carried.

### **Alan Richard Stacey, L.M.T.**

**Dr. Bechtel moved to find that the allegations as set forth in the June 9, 2021 Notice of Opportunity for Hearing in the matter of Mr. Stacey have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee'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. Bechtel's motion:

Dr. Rothermel	Abstain
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Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Johnson	Y
Dr. Schottenstein	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 matter, the Board issued a Notice of Opportunity for Hearing, and documentation of Service was received. There was no timely request for hearing filed, and more than 30 days have elapsed since the mailing of the Notice. This matter is therefore before the Board for final disposition. This matter is non-disciplinary in nature, and therefore all Board members may vote.

#### **Christine M. McGowan, M.T.**

Ms. Montgomery stated that on October 13, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Christine M. McGowan, 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. McGowan has not engaged in the active practice of massage therapy for more than two years.

**Dr. Reddy moved to find that the facts set forth in the October 13, 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. McGowan’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. Johnson	Y
Dr. Schottenstein	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:**

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Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Johnson	Y
Dr. Schottenstein	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 11:10 a.m. and returned to public session at 11:44 a.m.

The Board meeting was recessed at 11:45 a.m. and resumed at 12:55 p.m.

## **SETTLEMENT AGREEMENTS**

### **Benjamin R. Gibson, M.D.**

**Dr. Bechtel moved to ratify the proposed Superseding Step I Consent Agreement with Dr. Gibson. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

### **Jared L. Nye, R.C.P.**

**Dr. Bechtel moved to ratify the proposed Consent Agreement with Mr. Nye. Dr. Reddy seconded the motion. A vote was taken:**

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

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The motion carried.

## **BG, M.D.**

**Dr. Johnson moved to ratify the proposed Consent Agreement with BG, M.D. Dr. Reddy seconded the motion.**

Mr. Giacalone opined that the Board should oppose ratification of this consent agreement, which is based on events that took place in Florida. Mr. Giacalone noted that the patient died because of the physician's mismanagement of her care. Mr. Giacalone stated that although the Florida Board of Medicine did nothing about this, he felt that a reprimand is simply inadequate for this situation.

Dr. Schottenstein commented that there may be many aspects about this case to which the voting Board members are not privy.

Ms. Montgomery stated that all the Board members are concerned about the patient death in this case. Ms. Montgomery also noted, on the other hand, that not enough is known about this out-of-state case.

Mr. Giacalone commented that if this agreement is rejected and the matter goes to hearing, more facts will become available to the Board. Mr. Giacalone stated that the Board may ultimately make the same decision as proposed in the agreement, but he would hate to let the agreement go through without knowing more about the situation.

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

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

Having failed to achieve six affirmative votes, the motion did not carry.

## **Thomas Dae Young Kim, M.D.**

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

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

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Ms. Montgomery	Y
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The motion carried.

**Marios Dimitrios Papachristou, M.D.**

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

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

The motion carried.

**Bradley Thurlow Schwarz, D.O.**

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

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

The motion carried.

**Linda C. Ruhe, L.M.T.**

**Dr. Bechtel moved to ratify the proposed Consent Agreement with Ms. Ruhe. Dr. Reddy seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Johnson	Y
Dr. Schottenstein	Y
Dr. Kakarala	Y
Dr. Feibel	Y
Dr. Reddy	Y

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Dr. Bechtel	Y
Ms. Montgomery	Y

The motion carried.

**Michael David Clewlow, R.C.P.**

**Dr. Johnson moved to ratify the proposed Permanent Surrender with Mr. Clewlow. Dr. Bechtel seconded the motion. A vote was taken:**

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

The motion carried.

**Vincent J. Malkovits, D.O.**

**Dr. Kakarala moved to ratify the proposed Consent Agreement with Dr. Malkovits. Dr. Johnson seconded the motion. A vote was taken:**

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

The motion carried.

**Dale A. Harris, M.D.**

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Johnson	Y
Dr. Schottenstein	Y
Dr. Kakarala	Y
Dr. Feibel	Y

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

The motion carried.

## Heather Jagoda, M.D.

**Dr. Bechtel moved to ratify the proposed Superseding Step I Consent Agreement with Dr. Jagoda. Dr. Johnson seconded the motion. A vote was taken:**

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

The motion carried.

## Karipineni Prasad, M.D.

**Dr. Reddy moved to ratify the proposed Permanent Surrender with Dr. Prasad. Dr. Johnson seconded the motion. A vote was taken:**

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

The motion carried.

## Amir Qader Dada, D.O.

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

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

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

The motion carried.

### **Mahmood Rahman, M.D.**

**Dr. Reddy moved to ratify the proposed Permanent Surrender/Retirement with Dr. Rahman. Dr. Johnson seconded the motion. A vote was taken:**

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

The motion carried.

### **Ellen See, P.A.**

**Dr. Reddy moved to ratify the proposed Permanent Surrender with Ms. See. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

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

Responding to a question from Dr. Schottenstein, Ms. Canepa stated that the cases of the six massage therapists among today's proposed citations who allegedly violated Section 4731.22(B)(34), Ohio Revised Code, failure to cooperate with a Board investigation, are somewhat related to each other. None of these massage therapists are currently in Ohio, but the investigation was initiated for the same reason related to the schooling they received.

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

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1. Myla Bennett, M.D.: Based on other board action, specifically a Georgia Public Consent Order.
2. Hexiang Chen, L.M.T.: Based on failure to cooperate in an investigation conducted by the Board, specifically failure to comply with a subpoena to appear for a deposition.
3. Jianmei Danuk, L.M.T.: Based on failure to cooperate in an investigation conducted by the Board, specifically failure to comply with a subpoena to appear for a deposition.
4. Jordan P. Fitzpatrick: To be issued to a massage therapist applicant, based on an inability to practice based on several events from 2018 and 2019; and an evaluation conducted in July 2021 by a Board-approved psychiatrist.
5. Biyun Hu, L.M.T.: Based on failure to cooperate in an investigation conducted by the Board, specifically failure to comply with a subpoena to appear for a deposition.
6. Yan Fang Huang: Based on failure to cooperate in an investigation conducted by the Board, specifically failure to comply with a subpoena to appear for a deposition.
7. Taiying Liu, L.M.T.: Based on failure to cooperate in an investigation conducted by the Board, specifically failure to comply with a subpoena to appear for a deposition.
8. Jessica Suber, MD.: Based on sexual misconduct with a patient.
9. Dillon Williams: To be issued to a massage therapist applicant, based on pleas of guilty to two drug-related felonies in January 2021.
10. Xiaohui Yang, L.M.T.: Based on failure to cooperate in an investigation conducted by the Board, specifically failure to comply with a subpoena to appear for a deposition.
11. Joseph Michael Bannon, D.O.: Based on acts constituting a misdemeanor of moral turpitude; and for providing untruthful answers to a Board investigator during an investigation.
12. Chigurupati Ramana, M.D.: Based on action by the Oklahoma State Board of Medical Licensure.
13. Milagros R. Rivera, M.D.: Based on plea of guilty in federal court to a felony in the course of practice; and another board's action, specifically a Georgia consent order.
14. Walter Wynne, M.D.: Based on another board action from California regarding failure to properly supervise a physician assistant; and also failure to cooperate with an investigation of the Board by failing to respond to interrogatories.

**Dr. Reddy moved to approve and issue proposed Citations #'s 1 through 14. Dr. Johnson seconded the motion.** A vote was taken:

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

The motion carried.

**ENTRY AND ORDER RESCINDING CITATION & VACATING ORDER**

Ms. Montgomery stated that the Board was recently made aware that there was a matter of mistaken identity involving a September 9, 2020, Notice of Opportunity for Hearing to Abdul Haq, M.D. and a September 8, 2021, Order permanently revoking Dr. Haq’s license to practice medicine and surgery in Ohio and imposing an \$18,000 fine.

Dr. Haq held a license in Ohio, which expired in 1996. He currently practices in Kentucky and has never held a license to practice in Michigan. The Notice of Opportunity for Hearing and Order was based upon a guilty plea to Conspiracy to Commit Healthcare Fraud in the United States District Court for the Eastern District of Michigan. Upon review, it was discovered that the Abdul Haq who had held an Ohio license was not the same Abdul Haq who was indicted and convicted in the federal court in Michigan.

Upon verifying that an error had been made, information regarding the formal action was removed from the Board’s website, the Federation of State Medical Boards and National Practitioner Data Bank. All actions to collect the fine were halted. Communication was made with Dr. Haq acknowledging the error and advising him of the steps taken to remove reference to the cite and Order. The last step is the formal adoption by the Board of the Order and Entry which rescinds the Notice of Opportunity for Hearing and vacates the September 8, 2021, Order permanently revoking Dr. Haq’s license to practice medicine and surgery.

On behalf of the Board, Ms. Montgomery presented an apology to Dr. Haq. Ms. Montgomery stated that this matter will be reviewed thoroughly.

**Dr. Johnson moved to rescind the September 9, 2020 Notice of Opportunity for Hearing and to vacate the September 8, 2021 Final Order permanently revoking Dr. Haq’s license to practice medicine and surgery in Ohio. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

**OPERATIONS REPORT**

**Jewell Bates:** Ms. Loucka asked Jewell Bates to come forward. Ms. Loucka wished to thank Ms. Bates for her service to the Board. Ms. Bates is such a good employee, the only thing she ever failed at is that she retired from the Board once before, but came back. Though everyone hopes that Ms. Bates fails at this retirement also, it is likely to stick this time.

Ms. Bates has served the Board in many different areas and is now retiring with over 40 years of state service. Ms. Bates began as an administrative assistant in February 1978, worked as a payroll officer, and retired the first time in September 2008. Ms. Bates came back to the Board in 2010 as an intermittent employee in Licensure, then came back full-time in 2012. Ms. Bates joined the Enforcement staff in February 2017.

Ms. Loucka shared some comments from Ms. Bates’ colleagues:

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Jewell is smart, friendly, and a dedicated colleague. You can rely on her to get things done, which is such an invaluable thing. When the previous administrative assistant in Enforcement retired there was a real panic. We were very grateful that we were able to 'steal' Jewell away from Licensure, which allowed us to continue our work without missing a beat. In fact, she put us in a better position now than we were five years ago, all thanks to her ideas and hard work. She never fails to come through for us and we could not work without her support.

On behalf of the Board and its staff, Ms. Loucka wished Ms. Bates the best on her second retirement. Ms. Loucka also hoped that Ms. Bates would fail at this retirement as well and come back. The Board and staff applauded Ms. Bates.

**Human Resources:** Ms. Loucka stated that the hiring process to fill the positions authorized by the recent budget bill continues.

Ms. Loucka stated that Ms. Pokorny has taken on the role of lead enforcement attorney, and so will be stepping into the duties of that position and will also keep a docket. The process has begun to backfill Ms. Pokorny's position.

Ms. Loucka stated that applications are being reviewed to fill the new hearing examiner position.

**Fiscal Summary:** Ms. Loucka stated that the Board's cash balance as of October is about \$6,500,000. The fines report is attached to the Operations Report.

**Compliance:** Ms. Loucka stated that the Compliance unit is working to strengthen the compliance program. The staff is reviewing statistics and using that data to bring recommendations to the Compliance Committee.

**Licensure:** Ms. Loucka stated that there are still some delays with background checks for applicants. The Attorney General's office has been able to assist in specific instances, but efforts continue to determine the problem.

Ms. Loucka stated that the return-to-work pilot continues with the Licensure staff working from home and productivity remains high.

**Complaints:** Ms. Loucka stated that last month had a high complaint closure rate. The number of complaints continues to be high at about 7,000 annually. Ms. Montgomery asked why the number of complaints received in June 2021 was significantly higher than other months. Ms. Loucka was uncertain why complaints were high that month, but stated that the Board often receives a cluster of complaints whenever there is a high-profile situation that is reported in the media.

**Investigations and Enforcement:** Ms. Loucka stated that proposed citations and settlement agreements are very high and she thanked the Enforcement and Investigations staffs.

**Continuing Education Audits:** In response to questions from Dr. Schottenstein, Mr. Turek stated that continuing medical education (CME) audits are now conducted on the eLicense system and not with CE Broker. Mr. Turek stated that this has made the audits easier because all the information is in one place rather than on a separate platform. Mr. Turek commented that the response rate is probably somewhat better with eLicense because many CE Broker notifications were caught in spam filters. A small number of eLicensure notifications were also caught in spam filters and the staff may investigate what that occurred. Mr. Turek speculated that it is easier for licensees to respond to eLicense notifications because they already have an eLicense account to log into and upload the information.

Dr. Schottenstein asked if all licensees should be required to upload their CME information to eLicense. Mr. Turek replied that currently a licensee is only able to upload CME information into the eLicense system if they have been selected for an audit.

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Dr. Schottenstein asked if there has been any cost savings since the Board stopped using CE Broker. Mr. Turek answered that there has not been cost savings because the Board was not charged by CE Broker. Mr. Turek stated that licensees may, if they wish, still use CE Broker to track their CME and use any other functionality that system offers, but the Board is not using it for auditing purposes.

**2021 Accomplishments:** Ms. Loucka provided the Board with a list of some of the Board's accomplishments in 2021. Ms. Loucka noted that this list does not include the day-to-day activities of the Board, but rather the things that are being innovated outside those daily duties. Ms. Loucka opined that it is remarkable what the staff has been able to accomplish given the events of the last two years, both with staffing changes and the Covid-19 pandemic. Ms. Loucka was proud of the staff and extremely grateful for the work they produce every day.

Ms. Montgomery also thanked the staff for its hard work. Ms. Montgomery also thanked Ms. Loucka for doing a remarkable job. Ms. Montgomery stated that Ms. Loucka is on duty 24/7 and has made a great deal of difference in this agency. The Board and staff applauded Ms. Loucka.

### **ELECTION OF OFFICERS**

**Dr. Bechtel moved to elect Ms. Montgomery as President for a term beginning January 1, 2022, and ending December 31, 2022. Dr. Saferin seconded the motion.**

Dr. Reddy thanked Ms. Montgomery for her work in making the Board meetings lively. Dr. Schottenstein also expressed appreciation for Ms. Montgomery's hard work and dedication. Ms. Montgomery stated that she is grateful for everyone on the Board. Ms. Montgomery stated that whether the Board members agree or disagree on something, there is never a question about preparation or focus on the Board's mission. Ms. Montgomery stated that being on the Board is intellectually challenging and she is proud to be part of it.

**A vote was taken on Dr. Bechtel's motion.** All members voted aye, except Ms. Montgomery, who abstained. The motion carried.

**Dr. Bechtel moved to elect Dr. Johnson as Vice President, Dr. Rothermel as Secretary, and Dr. Saferin as Supervising Members for terms beginning January 1, 2022, and ending December 31, 2022. Dr. Reddy seconded the motion.**

Dr. Kakarala stated that Dr. Johnson, Dr. Rothermel, and Dr. Saferin are all doing a great job. Ms. Montgomery and Dr. Schottenstein agreed.

**A vote was taken on Dr. Bechtel's motion.** All members voted aye, except Dr. Johnson, Dr. Rothermel, and Dr. Saferin, who abstained. The motion carried.

### **RULES & POLICIES**

#### **Rule Review Update**

Ms. Anderson stated that a rules hearing was held on December 3 for six rules, including the United States Medical Licensing Examination (USMLE) rules, the treatment provider rules, the emeritus status rules, and the military rules. Comments in favor of the treatment provider rules were received from the Ohio Society of Respiratory Care and the Ohio Academy of Nutrition and Dietetics. All these rules went to the Joint Committee on Agency Rule Review (JCARR) on December 6 and there were no questions. These rules will be brought to the Board at its January 12, 2022 meeting for final adoption.

Ms. Anderson reminded the Board that a large number of rules will be reviewed in 2022, starting in the January meeting.

### **Physician Assistant Consult Rules**

Ms. Anderson stated that these rules will allow physician assistants to enter into consult agreements with pharmacists. A public rules hearing was held on October 29 and no comments were received. These rules were developed in conjunction with the Board of Pharmacy and the Board of Nursing.

**Dr. Bechtel moved to adopt and amend the rules as described in the November 29, 2021 memorandum from Ms. Anderson and to assign each rule action the effective date of December 31, 2021. Dr. Kakarala seconded the motion.** All members voted aye. The motion carried.

Dr. Feibel exited the meeting at this time.

### **Proposed Amendments to Rule 4731-30-03, Approval of Licensure Applications**

Mr. Turek stated that this internal management rule outlines how licensure applications are approved. The proposed changes would permit the Secretary and Supervising Member to grant USMLE/COMLEX waivers and graduate medical education equivalency, which currently come to the full Board for approval and are often approved in a very routine manner. Mr. Turek stated that these proposed changes would streamline the approval of these requests. Responding to a question from Ms. Montgomery, Mr. Turek stated that he has discussed these proposed changes with Ms. Anderson to ensure that there are no improper delegation of Board duties.

Dr. Saferin stated that the Secretary and Supervising Member already approve expedited licenses and certificates to recommend the medical use of marijuana on a weekly basis, and the waive and equivalency request would become a similar process. These changes would improve efficiency for the Board and allow applicants requesting waivers and equivalencies to receive their license in a very timely manner.

**Dr. Saferin moved to approve the rule as drafted for initial circulation. Dr. Reddy seconded the motion.** All members voted aye. The motion carried.

Dr. Feibel returned to the meeting at this time.

### **Legislative Update**

**House Bill 122, Telemedicine:** Ms. Loucka stated that she testified before the Senate Health Committee last month and proposed amendments to this bill. At a hearing this morning, amendments were added to the sub-bill and the Board staff is currently in the process of reviewing those changes. From an early reading, it appears that the language was clarified so that the standard of care for telemedicine visits must be the same as with in-person visits, as requested by the Board. There also appears to be an amendment specifying that in certain situations involving certain types of medications an in-person visit will be required.

Ms. Loucka stated that a detailed email will be sent to Board members at the end of this week after a thorough review of the sub-bill has been completed.

Ms. Montgomery stated that the Board owes a great deal of thanks to Senator Huffman, the Chair of the Senate Health Committee. Ms. Montgomery had received feedback on how impressed the Committee had been with Ms. Loucka's testimony. Ms. Loucka also wished to thank Senator Huffman, as well as members of both chambers for being receptive to the Board's feedback.

**House Bill 193, Electronic Prescriptions:** Ms. Loucka stated that this bill, which would require prescribers to issue an electronic prescription when prescribing a schedule II controlled substance, had a second hearing in the Senate Health Committee on November 17.

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House Bill 356, Opioid Prescribing: Ms. Loucka stated that this bill would establish some limitations on opioid prescribing. House Bill 356 had its first hearing in the House Criminal Justice Committee on November 10, but has seen no further movement.

Senate Bill 157, Attempted Abortions: Ms. Loucka stated that this bill would require a physician who performs or attempts to perform an abortion in an ambulatory surgical facility or other non-hospital location to immediately provide newborn care if the child is born alive. Mr. Smith stated that Senate Bill 157 was reported out of committee yesterday, but has not yet been scheduled for a vote on the Senate floor.

Senate Bill 161, Surgical Smoke: Ms. Loucka stated that this bill has had its second hearing in the Senate Health Committee. In response to a question from Ms. Montgomery, Dr. Johnson stated that surgical smoke is the smoke that is produced when a physician cauterizes a wound with a heat source such as a laser. Dr. Bechtel added that surgical smoke can contain infectious material such as viral parts. The smoke can be inhaled by members of the surgical staff or get in their eyes or noses.

### **COMMITTEE BUSINESS**

#### **Quality Assurance Committee Report**

Dr. Bechtel stated that the Quality Assurance (QA) Committee met this morning. The Committee was established due to a recommendation from the Federation of State Medical Boards (FSMB). The Committee will perform audits of a sampling of closed complaints in order to provide checks and balances to the Board's Investigations and Enforcement sections, as well as provide reassurance to the public that the Board is providing accountability to the complaint closure process.

Dr. Bechtel briefly reviewed the method by which closed complaints will be selected for review, a process by which each of the Committee's five members will receive 2 closed complaints to review each month. Closed Complaints from the Enforcement section, Investigations section, and Standards Review section will be selected. The selections will include both the oldest and the newest complaints from each section, and the selection of the rest of the complaints will be randomized. After six months, the Committee will evaluate whether to change the selection criteria. Dr. Bechtel noted that, based on recommendations from the FSMB, the first sexual misconduct case selected for review in a month will be assigned to the Committee's consumer member; if a second sexual misconduct case is selected, it will be assigned to a physician member; if a third is selected, it will be assigned to the consumer member along with the first; and any additional sexual misconduct cases will be distributed to other physician members. In addition, a mechanism will be developed whereby a staff member who has concerns that a complaint was improperly closed can bring the matter to the Committee.

#### **Compliance Committee Report**

Ms. Montgomery stated that the Compliance Committee met this morning and reviewed proposed compliance guidelines for probationary violations, which will clarify what violations are and the consequences for violations. Next month, the Committee will discuss treatment provider applications.

#### **Finance Committee Report**

Dr. Schottenstein stated that in October 2021, the Board's revenue was \$851,561, a decrease from the previous month. Dr. Schottenstein pointed out that October is not a license renewal month, and revenue is roughly in-line with that of October 2019. The Board had a net negative revenue of \$-264,525, reflecting the fact that the Board had unusually high expenditures of more than \$1,000,000. This is explained by the fact that there were three payroll periods in October, as well as a banking invoice for credit card fee processing. These additional expenses largely inform the 5.4% increase in expenditures year-to-date. The Board's cash balance is \$6,596,685, a drop of about \$100,000 from the previous month. The Board received \$25,791.23 in disciplinary fines.

# State Medical Board of Ohio Meeting Minutes – December 8, 2021

## eLicense

Dr. Schottenstein recalled that last month the Board discussed the costs of the eLicense system. Dr. Schottenstein stated that he is beyond grateful to the Department of Administrative Services (DAS) for being responsive to the Board's concerns. There has been many productive conversations with DAS about future rate setting and enhancements.

Dr. Schottenstein noted that the methodology for the expenses of eLicense was set in 2018 by the Steering Committee, of which the Medical Board is part. The Steering Committee will meet again soon and it is open to suggestions for how to go forward with charging for the service. Currently, licensing boards are charged for both active and inactive licenses. Some boards, including the Medical Board, have relatively more inactive licenses. In the Medical Board's case, this is in no small part due to the fact that physicians must first have a training certificate, which counts as a license, and then a full medical license which counts as another license. Dr. Schottenstein opined that it may make more sense to charge based on the number of active licenses because those are the ones that account for the cost of the service. However, Dr. Schottenstein recognized that such a change could be detrimental to boards that have relatively fewer inactive licenses, so he would not favor being abrupt with a change of this nature. Dr. Schottenstein stated that it is also possible, though not ideal, for the Medical Board to dispose of its inactive licenses. While this may be fiscally prudent, the Board would rather keep those records. Dr. Schottenstein was confident that a fiscally appropriate approach to eLicense charges will be found.

## Cash Balance

Dr. Schottenstein stated that, historically speaking, the Board is currently carrying a large cash balance. Dr. Schottenstein stated that the Committee and staff will research what an appropriate cash balance for the Board would be, especially over the next budget cycle. Dr. Schottenstein stated that on some level, this situation will rectify itself because of the new hires that will be brought onto staff to fill the new positions authorized in the budget bill. Dr. Schottenstein stated that this alone could cause the cash balance to drop to under \$4,000,000 within a year.

Ms. Montgomery noted that the Board will also have many more licensees in the coming years. Dr. Schottenstein agreed and also noted that the number of complaints has risen dramatically in recent years, which also requires additional staff time to process. The Board will continue to reassess its needs in licensure and in every area and may need to consider expansion of staff positions or changes in licensing fees.

## **Report on the Federation of Podiatric Medical Boards 2021 Fall Meeting**

Dr. Saferin stated that he and Mr. Turek attended the Federation of Podiatric Medical Boards 2021 Fall Meeting. The report of the meeting has been included in the Board meeting materials.

## **Licensure Application Reviews**

**Dr. Reddy moved to approve the Licensure staff recommendations for the requests of Dema Atoum, M.D.; Joseph Davis; Ayman Khafagi, M.D.; Elizabeth Morton, M.T.; Zachary Brogan, R.C.P.; Justin McGill; Ahmad Mohamed, M.D.; Susannah Yan; Elizabeth Geffert, M.T.; and Diana McShannic, L.D. Dr. Kakarala seconded the motion.**

Dr. Saferin noted that because the Board has approved the proposed changes in the licensure approval rules, items of this nature will come to the full Board only if it involves something non-routine and cannot be resolved by the Licensure staff.

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

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

The motion carried.

### **Advisory Council Updates**

#### **Respiratory Care Advisory Council**

Dr. Kakarala stated that the Respiratory Care Advisory Council met yesterday. The Council was updated on changes to the Board's impaired practitioner rules, which will allow respiratory care professionals and certain other license types to receive outpatient evaluation and treatment rather than inpatient whenever possible. Jerica Stewart provided a presentation on the Board's Partners in Professionalism program. The Ohio Society of Respiratory Care provided an update regarding the education of respiratory care professionals and the outlook for future staffing Ohio.

The Council will meet again on March 8, 2022.

#### **Dietetics Advisory Council**

Ms. Loucka stated that the Dietetics Advisory Council met on December 6. Ms. Loucka was able to attend the Council meeting for the first time and it was a pleasure to meet the Council members. Nelson H. Heise, Clinical Director of the Ohio Physicians Health Program, provided information on the one-bite program and how it works for the licensees. Kay Mavko of the Ohio Academy of Nutrition and Dietetics provided an update to the Council.

The council will meet again on January 10, 2022. (This date was subsequently changed to March 7, 2022.)

#### **Appointment to Dietetics Advisory Council**

Ms. Montgomery stated that to fill a vacancy on the Dietetics Advisory Council, she and the Executive Director recommend the appointment of Sharon Zwick-Hamilton. Ms. Swick-Hamilton is a licensed dietitian who has vast experience in her field. Ms. Swick-Hamilton is a certified Diabetes Care and Education specialist who has also worked in various hospital settings as a licensed dietitian including in the ICU, pediatric, and prenatal areas.

**Dr. Bechtel moved to appoint Ms. Zwick-Hamilton for a three year term on the Dietetics Advisory Council as a licensed dietitian, effective December 1, 2021. Dr. Saferin seconded the motion. All members voted aye. The motion carried.**

### **PROBATIONARY REPORTS AND REQUESTS**

#### **Office Conference Reviews**

**Dr. Johnson moved to approve the Compliance staff's Reports of Conferences for November 8 and 9, 2021. Dr. Reddy seconded the motion.** All members voted aye, except Dr. Rothermel, Dr. Saferin, and Dr. Bechtel, who abstained. The motion carried.

# State Medical Board of Ohio Meeting Minutes – December 8, 2021

## Probationary Requests

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

- a) Julie M. Alderson, D.O.: Request for approval of Glen Apseloff, M.D., F.C.P., to serve as the new monitoring physician.
- b) Kavita Kang, D.O.: Request for approval of Mark N. Casdorff, D.O., to complete a psychiatric return to work assessment.
- c) Adam N. Leid, D.O.: Request for approval of Keith P. Radbill, D.O. to complete a return to work assessment required for reinstatement.
- d) Ross Rosario Lentini, M.D.: Request for release from the terms of the December 14, 2016 Step II Consent Agreement.
- e) George W. Shahade, D.O.: Request for approval of the previously-completed course *Intensive Course in Controlled Substance Prescribing*, offered by Case Western Reserve University, to fulfill the controlled substance prescribing course requirement; and approval of the course *Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*, offered by Case Western Reserve University, to fulfill the medical records course requirement.
- f) Jon B. Silk, Jr., M.D.: Request for reduction in psychiatric sessions to every four weeks for four to six months, then quarterly sessions thereafter, with updated letter of support required prior to reducing sessions to quarterly.
- g) Derek Kurt Urban, M.D.: Request for release from the terms of the December 9, 2020 Board Order.
- h) Regina A. Yaskey, M.D.: Request for approval of the previously-completed course *Intensive Course in Controlled Substance Prescribing*, offered by Case Western Reserve University, to fulfill the controlled substance prescribing course requirement; and approval of the previously-completed course *Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*, offered by Case Western Reserve University, to fulfill the medical records course requirement.
- i) Aly M. A. Zewail, M.D.: Request for release from the terms of the December 14, 2016 Step II Consent Agreement.

**Dr. Reddy seconded the motion.** A vote was taken:

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

The motion carried.

## ADJOURN

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

State Medical Board of Ohio Meeting Minutes – December 8, 2021

The meeting adjourned at 2:09 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on December 8, 2021, as approved on January 12, 2022.

  
Betty Montgomery, President

  
Kim G. Rothermel, M.D., Secretary

(SEAL)





State Medical Board of Ohio

**FINANCE COMMITTEE MEETING**

**December 8, 2021**

via live-streamed video conference

<p><b>Members:</b> Michael Schottenstein, M.D., Chair Bruce Saferin, D.P.M.</p> <p><b>Other Board Members present:</b> Mark Bechtel, M.D. Yeshwant Reddy, M.D.</p>	<p><b>Staff:</b> Stephanie Loucka, Executive Director Joel Whetstone, Deputy Director of Operations Cinnamon Pipkin, Human Resources &amp; Fiscal Administrator Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 8:00 a.m.

### Financial Summary Review

Dr. Schottenstein stated that in October 2021, the Board's revenue was \$851,561, a decrease from the previous month. Dr. Schottenstein pointed out that October is not a license renewal month, and revenue is roughly in-line with that of October 2019. The Board had a net negative revenue of \$-264,525, reflecting the fact that the Board had unusually high expenditures of more than \$1,000,000. This is explained by the fact that there were three payroll periods in October, which is an extra \$340,000 expense. In addition, every few months the Board receives, as it did in October, a banking invoice for credit card fee processing, which came to \$62,000. These additional expenses largely inform the 5.4% increase in expenditures year-to-date. Otherwise, the Board's spending is *status quo*.

The Board's cash balance is \$6,596,685, a drop of about \$100,000 from the previous month. The Board received \$25,791.23 in disciplinary fines in October, which is a good month for the Board.

### eLicense

Ms. Loucka provided a handout that details the highlights of the eLicense system. Ms. Loucka stated that the Board has had good, productive conversations with representatives from the Department of Administrative Services (DAS) regarding the funding of the system. The discussions have been in regard to future rate setting, future enhancements, and how the system is funded at different points. Ms. Loucka stated that DAS's entire senior team from tech and the director's office have been very helpful in guiding these conversations.

Ms. Loucka stated that the methodology for charging for eLicense was set in 2018 by the eLicense Steering Committee, of which the Medical Board is part and therefore the Board had a voice in that decision. DAS has been open to different options regarding the methodology, though the process is complicated and involves multiple agencies. The Board will continue to work through the Steering Committee and listen to their expertise. What the Board is seeing now with its rates reflects the true

costs and there is transparency in those costs. Since it is a significant line item, the Board will have questions about this funding from time to time. DAS is committed to bringing new users onto the system, which will lower the Board's costs in the long run.

Responding to a question from Dr. Saferin, Ms. Loucka stated that DAS provides an updated rate annually. DAS is looking very closely into what makes sense for a methodology for determining future rate levels.

In response to a question from Dr. Schottenstein, Ms. Loucka stated that the rate is currently based on the number of records the boards have in the system, including both active and inactive licenses. The advantage of this is that it is a true reflection of everything in the system, and there is a cost of maintaining a record in the system.

Dr. Schottenstein noted that each physician generates two licenses: A training certificate, and subsequently a full medical license. Arguably, this inflates the Board's relative number for inactive licenses. Dr. Schottenstein appreciated that funding of the system is complicated, but felt that it is the active licenses that generate the costs of the system. Dr. Schottenstein opined that it would be logical to weight the costs of the active licenses more than the inactive licenses. However, Dr. Schottenstein acknowledged that this would result in additional costs for boards with relatively fewer inactive licenses. Dr. Schottenstein wanted to be sensitive about burdening such a board with additional costs, but suggested that over time the methodology could move in that direction. Dr. Saferin agreed.

Dr. Schottenstein stated that if it is feasible and not too complicated, he would like to see the costs broken down on a per license basis, or perhaps active licenses compared to inactive licenses. Ms. Loucka stated that she will follow-up on numbers with respect to a breakdown of costs.

Ms. Loucka stated that the last Steering Committee meeting included a thorough conversation with DAS leadership about the costs per record and about active versus inactive licenses. The theme of the meeting was stability and predictability. There was also discussion about not wishing to incentivize the removal or deletion of records as a means of lowering costs. Ms. Loucka stated that there can be an internal review of the Board's processes to develop ways to sustain the costs in the long-term without deleting records. One possibility could be to convert training certificates and full medical licenses into one record. Ms. Loucka stated that whatever the methodology, the Board can be creative in how it goes forward without deleting records.

Dr. Schottenstein appreciated the tension between wishing to preserve records and also being stewards of the Board's finances. Dr. Schottenstein was grateful for DAS's attention to this matter and for being so responsive to the Board's concerns. Dr. Saferin added that DAS has been very transparent and the Board is included in the decision-making process.

## **Cash Balance**

Dr. Schottenstein stated that the Board should discuss how much of a cash balance it should be carrying. Dr. Schottenstein opined that the current cash balance is too high, but stated that that is just his own feeling and there should be a method to determine what an appropriate cash balance for the Board would be. Dr. Schottenstein stated that on some level, this situation will rectify itself because of the new hires that will be brought onto staff to fill the new positions authorized in the budget bill. Dr. Schottenstein stated that this alone could cause the cash balance to drop to under \$4,000,000 within a year.

Ms. Loucka agreed and stated that the Board should engage with people with expertise in public finance to determine a proper cash balance. From a staffing perspective, Ms. Loucka noted that over the last five years the number of Board licensees has increased by almost 50% and the number of complaints has increased almost 37%. Until this most recent budget cycle in which the Board was granted the ability to hire additional resources, the Board's staffing levels have been stable over that same time period. Ms. Loucka stated that as the next budget cycle approaches the Board can address the cash balance issue, as well as factor in other costs such as cost-of-living increases over the next two or three budget cycles.

Dr. Saferin stated that generally speaking, organizations such as professional associations retain about 50% of their annual budget in savings. The Board's current cash balance is about 50% of its approximately \$11,000,000 annual budget, so the level may be appropriate. Dr. Schottenstein wondered if there is a distinction in this regard between associations and boards. Dr. Saferin agreed that experts on public finance should weigh in on this matter.

### **Adjourn**

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

The meeting adjourned at 8:21 a.m.

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State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING**

**December 8, 2021**

30 E. Broad Street, 3<sup>rd</sup> Floor, Administrative Hearing Room, Columbus, OH 43215

<p><b>Members:</b> Betty Montgomery, Chair Robert Giacalone, R.Ph., J.D. Michael Schottenstein, M.D. Harish Kakarala, M.D.</p> <p><b>Other Board Members present:</b> Kim Rothermel, M.D. Bruce Saferin, D.P.M. Mark Bechtel, M.D. Jonathan Feibel, M.D. Yeshwant Reddy, M.D.</p>	<p><b>Staff:</b> Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Brandi Dorcy, Chief of Compliance Amy Pridday, Compliance Manager Nathan Smith, Senior Legal and Policy Counsel Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 8:30 a.m.

**Proposed Updates to Compliance Guidelines for Probationary Violations**

Ms. Montgomery congratulated Ms. Dorcy on the wonderful job she did developing the compliance guidelines. Ms. Dorcy stated that Ms. Pridday, the Board's new Compliance Supervisor, was instrumental in helping produce this proposal. Ms. Dorcy stated that the Committee members have been provided with the current guidelines approved by the Board in 2015, the proposed new guidelines, and a memo that provides an overall outline of the information.

Ms. Dorcy continued that over the past year, the Compliance staff has been maintaining statistics and reviewing the entire compliance program, including looking at every licensee in the program, every success, and every failure. The decision was made to focus on the very small number of individuals who are struggling in the program and see what can be done to help the licensees improve as practitioners while also protecting the public.

Ms. Dorcy noted that the current guidelines have a maximum and a minimum sanction for each area of deficiency. The proposed guidelines have more graduated sanctions, which is a typical probation model and gives individuals a step-by-step process to address any concerns. The process begins with a low Level 1 sanction, namely a written reprimand to help them get back on track. If the issue is not addressed, it can move to a moderate Level 2 sanction, which can involve a caution letter, a meeting with the Secretary and Supervising Member, or having a complaint filed. The issue can also move to a Level 3, which can lead to a complaint filed with Enforcement.

Ms. Dorcy stated that different areas of deficiencies are outlined in the proposed guidelines, such as personal appearances, paperwork, attendance at rehabilitation meetings, attendance at treatment programs, and drug testing procedures. Depending on the level of seriousness, the process could

begin at Level 2 instead of Level 1 because it is felt that something like a missed appearance should have some sort of immediate cautionary action.

Dr. Schottenstein asked about the process of tolling. Ms. Dorcy stated that tolling is a special tool that is only written into some orders and agreements, not all of them. Tolling is not utilized often, but when it is it is usually a 30-day or 60-day extension of probationary terms. Ms. Dorcy stated that if someone has been tolled, she felt that individual had already had a sanction and additional issues can move them to the next level.

Responding to a question from Mr. Giacalone, Ms. Dorcy stated that caution letters and non-formal written warnings are not disciplinary in nature and are not reported to the National Practitioner Databank. Responding to further questions, Ms. Dorcy stated that if the proposed guidelines are approved, licensees in the program will be sent a 30-day notification with a read receipt or confirmation of receipt to ensure that it was received. A copy of the notification will be provided to Committee members.

**Dr. Schottenstein moved to approve the proposed guideline updates for probationary violations. Mr. Giacalone seconded the motion.** All members voted aye. The motion carried.

#### **Minutes Review**

**Mr. Giacalone moved to approve the draft minutes of the October 13, 2021. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

The meeting was adjourned at 8:41 a.m.

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State Medical Board of Ohio

**QUALITY ASSURANCE COMMITTEE MEETING**

**December 8, 2021**

30 E. Broad Street, 3<sup>rd</sup> Floor, Administrative Hearing Room, Columbus, OH 43215

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

### **Quality Assurance Committee Follow-Up**

Dr. Bechtel stated that this Committee was formed in response to recommendations from an audit conducted by the Federation of State Medical Boards, as well as the Board's own reflection upon the events of the Dr. Richard Strauss matter. The purpose of the Committee is to audit a sampling of closed complaints. This will provide a check and balance on the Board's investigative and enforcement processes, as well as give reassurance to the public that the Board is doing its due diligence. Dr. Bechtel stated that Ms. Marshall has done an extraordinary job developing proposals that reflect her insight and experience. The Committee is made up of four physician members and one consumer member. The goal is for each Committee member to review two cases per month, resulting in about 120 cases reviewed annually.

Dr. Bechtel stated that the questions before the Committee today relate to the process for selecting closed cases for review, the assignment of cases involving sexual misconduct, and a possible mechanism for Board staff members to request Committee review if they feel a complaint has been closed inappropriately.

### **Selection Process**

Dr. Bechtel stated that Ms. Marshall's suggested process for selecting closed cases for review involves selection from the three sections of the Board in which cases are closed: Investigations, Standards Review, and Enforcement. Dr. Bechtel agreed with Ms. Marshall that it is important to look at cases from each of these sections to see if there are any concerns in those areas. Dr. Bechtel also agreed that complaints closed by protocol, which are automatic closures for specific reasons, should be excluded from review. Ms. Marshall had also suggested that the oldest complaints from each

section and the newest complaints from each section should be reviewed. Review of the oldest complaints will inform the Committee of issues related to backlogged cases, while review of the newest complaints will ensure those cases were not closed too hastily.

The Committee thoroughly discussed the case review selection process. Following discussion, the Committee agreed on the following process:

- Each month, 10 complaints will be selected for review from those closed in the month three months prior. This will allow sufficient time for collection and preparation of materials.
- Complaints will be selected from each of the following three sections: Investigations, Standards Review, and Enforcement.
- The oldest complaint and the newest complaint from each section will be selected for review, for a total of six complaints.
- An additional complaint will be selected randomly from each section, bringing the total to nine complaints.
- The tenth complaint for review will be selected randomly from one of the sections on a rotating basis.

Dr. Bechtel suggested that a formal analysis of the selection process be performed after six months to see if the Committee wishes to make any changes. The Committee members agreed.

### **Sexual Misconduct Cases**

Dr. Bechtel opined that it will be important to have the Committee's consumer member involved in the review of closed complaints that include allegations of sexual misconduct. Ms. Marshall has suggested that if one or two sexual misconduct cases are selected in a month they should be assigned to the consumer member, and any additional sexual misconduct cases can be assigned to one of the physician members randomly.

Dr. Feibel agreed that it is important to have consumer member involvement in these cases, but stated that there is also value in having a physician member involved as well. Dr. Feibel opined that it will be rare to have more than two sexual misconduct cases in a month, and therefore the same person would potentially be reviewing all such cases.

Following thorough discussion, Dr. Feibel suggested that the first sexual misconduct complaint should be assigned to the consumer member; if there is a second such complaint, it should be assigned to a physician member; if there is a third such complaint, it should be assigned to the consumer member in addition to the first complaint; any additional sexual misconduct complaints should be assigned to physician members. In this way, the consumer member is likely to review more than 50% of the sexual misconduct complaints selected. The Committee members agreed. Ms. Marshall stated that the sexual misconduct complaints assigned to physician members can be done on a rotating basis. The Committee members agreed.

Dr. Schottenstein asked how many sexual misconduct complaints one might expect to be selected for review in a given month. Ms. Marshall replied that the selection for January has already been made and it includes three sexual misconduct complaints, but that may be unusually high because of the

high number of sexual misconduct complaints that had been recently reviewed as part of the historical lookback project.

### **Mechanism for Staff Request for Quality Assurance Committee Review**

Dr. Feibel opined that there should be a mechanism by which a member of the Board's staff can confidentially bring a closed complaint to the Committee for review if the staff member feels the Secretary and Supervising Member had closed a complaint inappropriately. Dr. Feibel opined that this would happen very infrequently, but expressed concern that such a mechanism does not exist.

Ms. Loucka agreed with Dr. Feibel, stating that the more avenues staff has to raise concerns confidentially, the better. Ms. Loucka stated that staff members with such concerns can come to her, but acknowledged that the staff member may not feel comfortable doing that. Ms. Loucka supported more options to escalate any concerns, within guardrails and as part of the quality assurance program. Dr. Schottenstein and Dr. Reddy agreed, stating that having such a mechanism in place would be good for the culture of the Board.

In response to a question from Dr. Reddy, Ms. Marshall stated that she could not recall any situation in which a staff member felt that a complaint had been improperly closed. Ms. Marshall stated that attorneys have strong opinions and do not always agree with the Secretary and Supervising Member, but that is very different from believing that the Secretary and Supervising Member had not fulfilled their duty or violated the law.

Dr. Feibel reiterated his opinion that such a mechanism would be utilized very infrequently, and it will therefore give the other Board members comfort if, for instance, the mechanism is not utilized at all in the first year. If the mechanism is utilized five or six times in the first year, that would be more concerning.

Dr. Rothermel briefly discussed the process of rounds and the closure of complaints. Twice per month, complaints are reviewed by the Secretary and Supervising member and all of the Board's Enforcement Attorneys sitting in the same room. Each Enforcement Attorney presents their own cases, but all the attorneys are able to comment and give their opinion on every case, and are in fact encouraged to do so by the Secretary and Supervising Member. Dr. Rothermel stated that rounds is a very good place for staff to express their concerns, rather than remaining silent and then pursuing another route later.

After thorough discussion, the Committee agreed on a process. Staff members who are concerned that a complaint may have been closed inappropriately can take the matter to Ms. Loucka or Ms. Marshall. That complaint can be included in the next month's group of 10 complaints and assigned to a Committee member for review in the usual manner. To remove the possibility of bias, the Committee will not be informed that a complaint had come via this route until after the review is complete.

### **Additional Issues**

Ms. Montgomery commented that there should be consideration of a process apart from the quality assurance process which allows for a post-mortem review of a case that has been heard by the Board. Such a process can address concerns that Board members may have about specific cases that seem egregious but the details of which are limited due of the confidentiality of investigative material.

Regarding the quality assurance program, Ms. Montgomery asked if someone will track the cases that are reviewed and those that are reopened. Ms. Marshall answered that she will track all complaints reviewed by the Committee, which member reviewed each complaint, and the decision of whether the closure of the complaint was deemed appropriate or if it was referred back to the Secretary and Supervising Member. Any complaint that is reopened will be tracked and the ultimate disposition will be reported back to the Quality Assurance Committee.

Ms. Marshall noted that the Secretary and Supervising Member, as well as the membership of the Quality Assurance Committee, will change over time and will not always be the current group. The Board elects the Secretary and Supervising Member, and now the Quality Assurance Committee will act as an additional check and balance. Ms. Marshall commented that if the Committee sends a relatively large number of cases back to the Secretary and Supervising Member and they all still remain closed with no further action, then the Board may wish to consider electing another Secretary and Supervising Member.

Dr. Bechtel identified two important items for future discussion. First, the Committee should discuss a mechanism for a post-mortem review as suggested by Ms. Montgomery. Second, the Committee should discuss the process that will unfold when a Committee member feels that a complaint should be reopened and what that member's role is in the further discussion, adjudication, and participation in that complaint. Ms. Marshall stated that under current statute, the Quality Assurance Committee can review the decisions of the Secretary and Supervising Member, but it has no authority or immunity to participate in those decisions. If there is a statutory change, the Board could consider different levels of participation that a Committee member could have.

## Adjourn

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

The meeting adjourned at 10:00 a.m.

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