



**State Medical Board of Ohio Meeting Minutes  
April 14, 2021**

Mark A. Bechtel, M.D., President, called the video conference meeting to order at 10:06 a.m. with the following members present: Betty Montgomery, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Sherry Johnson, D.O.; Harish Kakarala, M.D.; Jonathan Feibel, M.D.; and Yeshwant Reddy, M.D.

**MINUTES REVIEW**

**Dr. Saferin moved to approve the minutes of the March 10, 2021 Board meeting, as drafted. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

**REPORTS AND RECOMMENDATIONS**

Dr. Bechtel asked the Board to consider the Reports and Recommendations appearing on the agenda. Dr. Bechtel asked if each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in the matters of: Thomas Falls, M.D.; and Gianmarino Gianfrate, D.O. A roll call was taken:

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

Dr. Bechtel further asked if each member of the Board understands that the Board's disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from Dismissal to Permanent Revocation or Permanent Denial. A roll call was taken:

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

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

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

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

Dr. Bechtel 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.

During these proceedings, no oral motions were allowed by either party. Respondents and their attorneys not addressing the Board are viewing this video conference meeting remotely and have a number to call in the event of an emergency or procedural concern.

### **Thomas Falls, M.D.**

Dr. Bechtel directed the Board's attention to the matter of Thomas Falls, M.D. No objections have been filed. Ms. Lee was the Hearing Examiner.

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

Dr. Falls was represented by his attorney, Gregory Tapocsi.

Mr. Tapocsi stated that Dr. Falls has no objections to the Hearing Examiner's Report and Recommendation. Mr. Tapocsi stated that there is no excuse for Dr. Falls' conduct, as he has said since his arrest in 2018. Mr. Tapocsi added that Dr. Falls never intended to demean the seriousness of soliciting prostitution and the associated risk of facilitating human trafficking.

Mr. Tapocsi continued that in these types of cases, the Board typically wants to know if the respondent "gets it" and realizes that his or her conduct was wrong and takes steps to ensure it does not happen again. Mr. Tapocsi stated that Dr. Falls "gets it." Dr. Falls willingly completed three different mental health evaluations which involved multiple trips to Kansas, and another evaluation by a physician approved by the Board. All of those evaluations concluded that Dr. Falls can practice in accordance with minimal standards of care and without further restrictions.

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Mr. Tapocsi stated that Dr. Falls has completed probation in his criminal case and he has sought mental health counseling. Further, Dr. Falls has complied with his Board Order with the Kentucky Board of Medical Licensure and is eligible for early release from that Order. After seeing Dr. Falls' case in total, the Kentucky Board reinstated his license without restriction. In addition, the Drug Enforcement Agency (DEA) has reinstated Dr. Falls' registration without restriction and insurance payors such as Kentucky Medicaid have reinstated his ability to participate on those panels.

Mr. Tapocsi stated that the practice of medicine will always be stressful, but Dr. Falls now has tools to ensure that his decision-making will not be compromised in the future. In short, Dr. Falls "gets it." Mr. Tapocsi stated that Dr. Falls is a young physician and had been working less than a year when this incident occurred. Mr. Tapocsi further stated that Dr. Falls is one out of approximately 20 practitioners across the United States who specializes in limb lengthening and complex reconstruction. Dr. Falls has no other criminal history, not even a speeding ticket, and no other disciplinary history with any other medical board other than in relation to his 2018 arrest.

Mr. Tapocsi stated that it is unfortunate that his fellowship here in Ohio fell through, but he felt it is fortunate that an expert like Dr. Falls does not want to foreclose the possibility of practicing in Ohio. Mr. Tapocsi opined that the Proposed Order would protect the public and also help Dr. Falls continue to grow both as a person and a practitioner.

Dr. Falls stated that he takes full responsibility for his actions that led him to this point. Dr. Falls stated that he had been going through an extremely difficult time both personally and professionally when the incident occurred, but he understood that that does not excuse his actions. Dr. Falls stated that he has worked his entire career to help people and it was never his intention to do anything that could put others in harm's way. Dr. Falls now realizes that what he did could have put others in danger and contributed to the scourge of human trafficking. Dr. Falls stated that in his saddened and wounded state of mind at that time, he did not appropriately evaluate his actions.

Dr. Falls continued that he has undertaken steps to ensure he will never allow something like this to happen again. Dr. Falls quickly got the mental health treatment he needed and was able to take time to reflect on his actions and improve himself. Dr. Falls learned strategies to deal with stress, improve his coping skills, and he understands that self-care is not only necessary but must be practiced regularly. Dr. Falls has a wonderful therapist who has helped him work through his issues. Dr. Falls has rediscovered old hobbies like going to the gym regularly, which has helped his general well-being greatly.

Dr. Falls stated that he is not the same person he was three years ago, and his friends and family members have also made comments to that effect. Dr. Falls stated that he is stronger, more resilient, and more self-aware than before. Dr. Falls added that he is able to stay calm during stressful conditions and maintain a heightened awareness of how his decisions affect others.

Dr. Falls stated that what happened three years ago does not reflect who he is personally or professionally. Dr. Falls stated that he had an inexcusable lapse of judgment and made a terrible mistake, but he can only learn from his mistakes going forward and continually work to ensure that he is a better person. Dr. Falls stated that in his current work with the U.S. Army, he has an opportunity to help others and also serve his country, which gives him a great sense of pride.

Dr. Falls stated that if granted opportunity to practice medicine in Ohio, he will not squander it because he knows that second chances are hard to come by.

Dr. Bechtel asked if the Assistant Attorney General wished to respond. Ms. Pelphrey stated that she did not wish to respond.

**Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Falls. Dr. Schottenstein seconded the motion.**

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

Ms. Montgomery, noting that Dr. Falls has already served a probation following his criminal conviction, questioned whether the Board should impose a probation for a minimum of one year, as stipulated in the Proposed Order. Ms. Montgomery proposed that the probation should last only as long as it takes for Dr. Falls to complete the required educational courses.

Dr. Feibel appreciated that Dr. Falls is remorseful for his actions and he looked forward to Dr. Falls practicing in Ohio. Dr. Feibel felt that Ohio should mimic Dr. Falls' order from the Kentucky Board of Medical Licensure and that his Ohio probation should last as long as he is under probation in Kentucky, noting that Kentucky actually adjudicated his case. Dr. Feibel also opined that a boundaries course, in addition to the other required courses, would be appropriate.

Dr. Schottenstein agreed that it makes sense to either require a boundaries course or specify that there must be a boundaries component in Dr. Fall's ethics course. Dr. Schottenstein commented that the human trafficking course will probably also include a boundaries component. Dr. Schottenstein was agreeable to adding a boundaries course requirement. Dr. Schottenstein added that he would be comfortable with the Ohio probation either lasting at least one year or when Dr. Falls' course requirements are fulfilled, whichever the Board's consensus is.

Dr. Schottenstein stated that Dr. Falls has acknowledged engaging in the alleged behavior, and therefore this is a case of mitigation. Dr. Schottenstein appreciated that Dr. Falls had been under a lot of stress at that time, but added that life is full of stress and it is important for professionals to manage their stress. Dr. Schottenstein stated that when one who is prone to clinically significant depression experiences stress, they can have something akin to an allergic reaction to that stress. This seems to have happened in Dr. Falls' case and his reaction was maladaptive and self-destructive, which Dr. Falls seems to have known on some level. It appears that Dr. Falls sought mental health treatment before his sentinel event, but had trouble finding help. Once Dr. Falls engaged in treatment, he seems to have embraced it and has made a genuine effort to address his mental health issues. Dr. Fall's treatment providers feel that he has made substantial progress.

Dr. Schottenstein observed that the initial criminal charge against Dr. Falls of Promoting Human Trafficking was amended down to Soliciting Prostitution. Dr. Schottenstein continued that when one solicits a prostitute, there is an accompanying risk of furthering the scourge of human trafficking. Dr. Falls testified that he has educated himself on the topic of human trafficking and has spoken to his therapist about it.

Dr. Schottenstein stated that the Medical Board takes human trafficking very seriously. The Board has created videos and posted them to the Board's YouTube channel to bring awareness to the issue. Earlier this year, Governor DeWine initiated an Executive Order adding the Medical Board to the State's Human Trafficking Task Force. The Board's investigators have worked closely with the Office of Criminal Justice Services and other law enforcement offices regarding human trafficking issues.

Dr. Schottenstein stated that Dr. Falls' decision to solicit an escort for sexual activity is certainly indefensible, but there are a number of mitigating factors in this case. Specifically, Dr. Falls has no prior disciplinary record; Dr. Schottenstein believed that this is an isolated incident that is unlikely to recur; Dr. Falls has made full and free disclosure to the Board; Dr. Falls has taken the interim remedial measure to engage in counseling; Dr. Falls has expressed what Dr. Schottenstein perceives to be genuine remorse; and Dr. Falls has taken responsibility for his actions. Dr. Schottenstein also noted aggravating factors: Dr. Falls had a selfish motive; and Dr. Falls' behavior was reckless because he knew better but did it anyway.

Dr. Schottenstein opined that the Proposed order is a proportional response, given the balance of aggravating and mitigating circumstances. Dr. Schottenstein was agreeable if anyone wished to add a boundaries course requirement or to end the probationary period when the courses are complete.

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**Ms. Montgomery moved to amend the Proposed Order to include a boundaries course as a probationary term, and to have the probationary period end when all the requirements of probation are fulfilled. Dr. Schottenstein seconded the motion.**

Dr. Feibel stated that, while he agrees with everything that Dr. Schottenstein and Ms. Montgomery have said about the mitigating circumstances, he felt that the Board needs to come down strongly on human trafficking. Dr. Feibel stated that being on probation for the same time as the Kentucky probation will not affect Dr. Falls' ability to practice. Dr. Feibel opined that matching the Kentucky probation would send a better message to the public that the Board feels strongly that human trafficking is a significant problem.

Dr. Schottenstein appreciated Dr. Feibel's comments, but noted that Dr. Falls may be eligible for early release from his Kentucky probation. Dr. Schottenstein was concerned that the Board could be put into a difficult position if Dr. Falls' Kentucky probation is terminated before he has completed his required courses in Ohio.

Dr. Soin stated that he appreciates all the discussion on this case. Dr. Soin stated that a "yes" vote on the motion to amend does not indicate that he takes human trafficking lightly, and he, in fact, feels exactly the opposite. At the same time, Dr. Soin noted that Dr. Falls is already going through probation in another state, and at some point one has to consider what a proportional response is. Dr. Soin reiterated that he takes human trafficking incredibly seriously, as does all the Board members and the Board as a whole.

Ms. Montgomery commented that the Board should ensure that its probations make sense, and staff time expended on probationers who do not truly need to be on probation should be an issue. Ms. Montgomery agreed with Dr. Soin that every Board member takes human trafficking very seriously.

Vote on Ms. Montgomery's motion to amend:

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

The motion to amend carried.

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

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

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

The motion to approve carried.

### **Gianmarino Gianfrate, D.O.**

Dr. Bechtel directed the Board's attention to the matter of Gianmarino Gianfrate, D.O. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

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

Dr. Gianfrate was represented by his attorney, Douglas Graff.

Mr. Graff stated that Dr. Gianfrate is currently a first-year surgical resident at St. Joseph's Hospital in Toledo. During the application process for his training certificate, Dr. Gianfrate appropriately notified the Board, as he had previously notified his medical school and his residency program, of an event that occurred at the end of his undergraduate sophomore year more than nine years ago.

Mr. Graff continued that he has filed objections to the Hearing Examiner's Report and Recommendation. Mr. Graff stated that the Hearing Examiner found that Dr. Gianfrate had made an Alford plea in North Carolina to a misdemeanor assault charge nine years ago with a female friend. The Hearing Examiner also found that Dr. Gianfrate had been forthcoming to the Board and to others about this event, and that Dr. Gianfrate's information did not undermine his proof of good moral character. Dr. Gianfrate presented significant additional mitigating evidence of his positive community work, civic-minded activities, and his strong family support. In the hearing, Dr. Gianfrate's medical school advisor, Dr. Connington, who has known him for five years; his residency program administrator, Ms. McElrath; and his residency program director, Dr. Dorion, all spoke very highly of Dr. Gianfrate's personal character, work attributes, work ethic, and fitness to be a physician.

Mr. Graff stated that the objections were filed because of the uncertainty of the minimum 90-day indefinite suspension in the Proposed Order while he is in the residency program. Mr. Graff stated that he has heard from Dr. Gianfrate's residency program and the hospital, and they hoped that there would be a definite suspension time so they can allow him to be within the appropriate rotations and serve them fully whenever the suspension takes effect. Therefore, Mr. Graff asked that the Board establish a more definite timeframe, commenting that the timing and precision of rotations is imperative in a residency, especially a surgical residency. Because of the uncertainty of scheduling an ethics course as required in the Proposed order, Mr. Graff asked the Board to allow the course to be taken within the first year of Dr. Gianfrate's licensure rather than during his suspension.

Dr. Gianfrate stated that first and foremost, he takes full responsibility for his part in the event that transpired nine years ago. Dr. Gianfrate stated that the event occurred on the last day of his finals of my sophomore year after a night of celebrating with friends. At that time, Dr. Gianfrate had already decided to transfer to a new school that was better suited to his medical career. Consequently, when the matter came up he had already left the campus. With the support of his family, his advisor, and his counsel at that time, Dr. Gianfrate entered an Alford plea for misdemeanor assault.

Dr. Gianfrate continued that since that event, he has attempted in every way to be productive member of the professional community and society at large. Dr. Gianfrate stated that he understands the tremendous responsibility that is placed on him as a physician because for last several months he has lived and experienced the joys and sorrows of dealing with patients. Dr. Gianfrate stated that he has been working through an unprecedented time in the medical community in which compassionate care and compassionate communication between patients and their loved one who were not able to see each other was at the forefront

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of patient care. Dr. Gianfrate stated that these feelings of fulfillment can only really be understood by members of the medical community. Dr. Gianfrate understood that his lifelong goal of becoming a physician and living with these joys are sorrows is in jeopardy.

Dr. Gianfrate asked for an opportunity to continue his education and to continue growing as a physician and as a person.

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

Ms. Pelphrey did not recall if this occurred during the hearing, but she thought that today may have been the first time she has heard Dr. Gianfrate accept full responsibility in this matter.

Ms. Pelphrey stated that the underlying case involved an Alford plea, so the hearing did not delve into the facts of that case. Given what was discussed at the hearing, Ms. Pelphrey felt that the Proposed Order is appropriate in this matter.

**Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Gianfrate. Dr. Schottenstein seconded the motion.**

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

Dr. Schottenstein stated that Dr. Gianfrate entered an Alford plea, which is when a defendant simultaneously maintains innocence but pleads guilty. Dr. Schottenstein was respectful of the use of Alford pleas in criminal proceedings, but expressed concern that such a plea dilutes the judicial finding of guilt and makes the guilty finding less accurate for the sake of judicial expediency. Dr. Schottenstein stated that there is less clarity regarding the outcome of a court case when an Alford plea is adopted. However, Dr. Schottenstein noted that the Board's Rule 4731-13-24, which is cited in the Report and Recommendation, essentially provides that a plea of guilty to or a finding of guilt regarding a crime is evidence of commission of all aspects of that crime. Consequently, the Board is correct to treat the matter as if there was a clear guilty plea.

Dr. Schottenstein stated that this is a case of mitigation and is not an occasion to relitigate the underlying matter. Dr. Schottenstein identified the following mitigating factors in this case:

- Dr. Gianfrate has no prior disciplinary record.
- The conduct in question is remote in time.
- There have been no further incidents of which the Board is aware, and this therefore appears to be an isolated incident that is unlikely to recur.
- Dr. Gianfrate has made full and free disclosure to the Board.
- Dr. Gianfrate has substantially taken responsibility for his participation in the event that led to his conviction.

As an aggravating circumstance, Dr. Schottenstein stated that it may be surmised that Dr. Gianfrate's misconduct had an adverse impact on the victim and that the victim had been vulnerable to that misconduct.

Dr. Schottenstein respectfully disagreed that the degree of mitigation is sufficient to justify a lesser consequence than suspension. Dr. Schottenstein agreed with defense counsel about the availability of an ethics course, especially during the pandemic, and the possibility that it could be several months before such a course could be available to Dr. Gianfrate. Since the ethics course is a condition for reinstatement of Dr. Gianfrate's license, this could substantially lengthen his suspension. Dr. Schottenstein was also agreeable to changing the suspension from a minimum of 90 days to a definite period of 90 days, to commence on July 1, 2021, to avoid unnecessary disruption to Dr. Gianfrate's education and to the residency program.

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**Dr. Schottenstein moved to amend the Proposed Order to a definite 90-day suspension commencing on July 1, 2021; and making the ethics course requirement a term of the probationary period rather than a condition for reinstatement. Dr. Feibel seconded the motion.**

Dr. Feibel stated that he agrees with most of Dr. Schottenstein's comments, but opined that Dr. Gianfrate should also be required to take a boundaries course in addition to an ethics course. Dr. Feibel also felt that a five-year probation, which would last for the remainder of Dr. Gianfrate's training and into the beginning of his practice, would be warranted to protect the public.

Dr. Schottenstein stated that he would be agreeable to changing his motion to amend to include a boundaries course requirement. Dr. Schottenstein did not agree with changing the probationary period, observing that the incident took place many years ago, there is no evidence of concerns subsequent to that, and there has been good feedback from the professionals working with Dr. Gianfrate.

**Dr. Schottenstein wished to change his motion to amend to include a boundaries course as an additional probationary requirement.** No Board member objected to the change to the motion. The change to the motion was accepted.

Ms. Montgomery noted that the incident in question took place nine years ago and occurred when Dr. Gianfrate was in his sophomore year as a college undergraduate. Neither the nature of the assault nor the effect on the victim are known. Dr. Gianfrate has maintained a good record since that time. Ms. Montgomery stated that if this incident had occurred, for example, two years ago, she would agree with the Proposed Order. However, it is now nine years later and Dr. Gianfrate is perhaps, as many are, more mature today than as a college sophomore. Ms. Montgomery did not wish to diminish whatever happened nine years ago, but opined that when the Board suspends a license it should be closer in time to the event whenever possible. Ms. Montgomery further opined that the Board appears excessive when such punishment is based on events from nine years ago with no subsequent events. Ms. Montgomery stated that she would prefer a reprimand in this matter.

Ms. Montgomery continued that by entering an Alford plea, Dr. Gianfrate was indicating that he did not believe he was guilty, but he believed he may be found guilty and the sentence may be more expensive and more difficult than what he would receive with an Alford plea.

Ms. Montgomery suggested that rather than a 90-day definite suspension of Dr. Gianfrate's training certificate, the Board consider issuing a reprimand. Ms. Montgomery agreed with the addition of a boundaries course, but questioned the need for the probationary period to last beyond the completion of the required courses. Ms. Montgomery commented that probation can be a way to protect the public, but the Board should consider whether it wants a checklist probation or if probation should be reserved for when it can actually have an impact on the licensee.

Dr. Soin stated that he intends to vote "no" on Dr. Schottenstein's thoughtful amendment. Dr. Soin made clear that his vote is not an indication that he is not tough on crime or does not support the victim. Rather, Dr. Soin considered the fact that the incident occurred nine years ago when Dr. Gianfrate was an undergraduate and that Dr. Gianfrate has been vetted subsequently. Dr. Soin stated that Dr. Gianfrate was accepted into medical school after disclosing this history and he certainly had courses on patient boundaries during his medical education. Dr. Gianfrate later applied for a residency and again disclosed these events; Dr. Soin speculated that it would have been difficult to obtain a residency with a criminal conviction, but Dr. Gianfrate was accepted. In addition, the reviews from Dr. Gianfrate's course directors and others were positive.

Dr. Soin stated that if the Board wishes to punish Dr. Gianfrate, he has already been punished by the court of criminal law. Dr. Soin stated that the Board may choose to punish Dr. Gianfrate further, but that may unnecessarily harm his career in the long-term. Dr. Soin favored No Further Action in this case. Ms. Montgomery agreed with Dr. Soin's comments, though she felt that a reprimand is appropriate.

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**Ms. Montgomery moved to amend the Order to a Reprimand only. Dr. Kakarala seconded the motion.**

Following discussion, Ms. Montgomery chose to withdraw her motion at this time so that the Board may have an opportunity to vote on Dr. Schottenstein's motion to amend.

**Ms. Montgomery wished to withdraw her motion.** No Board member objected to withdrawing the motion. The motion was withdrawn.

Dr. Feibel agreed with prior comments that no Board member was supporting any sort of criminal or inappropriate behavior by voting for or against any particular motion. Dr. Feibel noted that in its recent historical case review in response to the Dr. Strauss matter, the Board reviewed cases from 25 years ago. Dr. Feibel did not believe that Dr. Gianfrate's conviction for Assault on a Female should be excused because it occurred nine years ago. Dr. Feibel opined that the Board should send a message that it does not condone such behavior regardless of how long ago it occurred. Dr. Feibel continued to favor a five-year probation for the reasons previously mentioned, but he felt at the very least there should be a minimum one-year probation and a suspension of at least 90 days.

Dr. Soin reiterated that in voting against Dr. Schottenstein's motion to amend, he is not indicating that he is okay with Dr. Gianfrate's behavior, nor is he okay with assault or with hurting people. Dr. Soin further reiterated that the behavior occurred nine years ago, Dr. Gianfrate has been punished through the court of law, he has been vetted by his medical school and received admission, received four years of educational training on managing patient care, received admission to a residency program after disclosing his criminal conviction, and has received positive reviews from the program.

Mr. Giacalone stated that the incident occurred nine years ago and it is still not known exactly what had occurred. However, Mr. Giacalone pointed out that the Hearing Examiner questioned Dr. Gianfrate's veracity, noting that Dr. Gianfrate's assertion that he is incapable of telling lies did more to lower the Hearing Examiner's comfort level than to raise it. That being said, Mr. Giacalone opined that a 90-day suspension is excessive for this incident that occurred nine years ago. Mr. Giacalone suggested a suspension of ten days or even five days in order to send a message.

Dr. Schottenstein appreciated the other Board members' comments and stated that he had also had the thought that this occurred a long time ago. Dr. Schottenstein stated that when he considered this case, he purposely did not take the timeframe into consideration. Dr. Schottenstein stated that the statute defines assault as a threat of bodily harm coupled with the ability to cause that harm which, in turn, causes apprehension in the victim. Dr. Schottenstein stated that battery, which constitutes actual unlawful physical contact, may or may not have been associated with the activity.

Dr. Schottenstein emphasized that there has been no allegation of sexual assault and that this case concerns an assault conviction. The Board is limited to the hearing record, and Dr. Schottenstein did not want to speculate on what may or may not have happened. Dr. Schottenstein wished to proceed along the lines that there has been an Alford plea of guilty to the statute in question. Dr. Schottenstein was agreeable to modifying his motion to amend to reduce the 90-day suspension to a 30-day suspension.

Responding to questions from Ms. Montgomery, Dr. Schottenstein stated that he favored the inclusion of a boundaries course because the conviction for Assault of a Female indicates a boundary issue. Dr. Schottenstein stated that the probationary period remains a minimum of one year.

Dr. Reddy agreed that there should be a punishment, but opined that the punishment should not affect this young physician's career. Dr. Reddy supported reducing the suspension to 30 days. Dr. Reddy also felt that the probation should be longer, but was agreeable to a minimum of one year. Dr. Reddy stated that what happened nine years ago could happen again, so it is appropriate to punish Dr. Gianfrate. The punishment

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should not affect Dr. Gianfrate’s training program, while the public can be assured that the Board will follow him during the probationary period.

**Dr. Schottenstein wished to change his motion to amend so that the suspension of Dr. Gianfrate’s training certificate is reduced from 90 days to 30 days. Dr. Feibel objected to the proposed change in the motion to amend.** The change in the motion was not accepted.

A vote was taken on Dr. Schottenstein’s motion to suspend Dr. Gianfrate’s training certificate for a minimum of 90 days commencing on July 1, 2021, establish a probationary period of a minimum of one year, and require an ethics course and a boundaries course as probationary terms:

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

The motion to amend did not carry.

**Dr. Schottenstein moved to amend the Proposed Order to a definite 30-day suspension commencing on July 1, 2021; remove the ethics course as a condition for reinstatement; and to require an ethics course and a boundaries course as probationary terms for the minimum one-year probationary period. Dr. Reddy seconded the motion.** A vote was taken:

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

The motion to amend carried.

Ms. Montgomery reiterated that at the time of the event, Dr. Gianfrate was a sophomore undergraduate and that he has certainly matured through the intervening nine years and having gone through medical education. Ms. Montgomery stated that the Board’s sanction should be appropriate based on age, time, place, and circumstances, and the Board does not know the circumstances.

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**Ms. Montgomery moved to amend the Order to a reprimand and a probationary period to end when Dr. Gianfrate has successfully completed a boundaries course. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion to amend did not carry.

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

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

The motion to approve carried.

### **FINDINGS, ORDERS, AND JOURNAL ENTRIES**

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

#### **April D. Hall, R.C.P.**

Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to April D. Hall, R.C.P., informing her that the State Medical Board of Ohio proposed to deny her application for a license to practice respiratory care, because she has not successfully passed an examination approved by the Board. Ms. Hall has not provided documentation that she has completed the required Clinical Simulation Examination (CSE) portion of the Registered Respiratory Therapist (RRT) examination.

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**Dr. Saferin moved to find that the facts set forth in the February 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Hall’s application for a license to practice respiratory care in the State of Ohio. Dr. Reddy seconded the motion. A vote was taken:**

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

The motion carried.

### **Darnika M. Butler**

Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Darnika M. Butler informing her that the State Medical Board of Ohio proposed to deny her application for restoration of her license to practice respiratory care in the State of Ohio because, pursuant to Rule 4761-5-01(B), Ohio Administrative Code, restoration applicants who obtained licensure based solely upon the completion of the Certified Respiratory Therapist (CRT) examination may only continue to practice under that license so long as they continue to timely renew. Otherwise, these applicants must apply for a new license and demonstrate that they have successfully completed both portions of the Registered Respiratory Therapist (RRT) examination.

**Dr. Saferin moved to find that the facts set forth in the February 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Butler’s application for restoration of her license to practice respiratory care in the State of Ohio. Dr. Johnson seconded the motion.**

In response to a question from Mr. Giacalone, Dr. Saferin stated that if a practitioner has not practiced in two years, he or she must take the RRT in order to qualify for licensure.

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

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

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The motion carried.

## **Donghong Valladolid**

Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Donghong Valladolid informing her that the State Medical Board of Ohio proposed to deny her application for a certificate to practice massage therapy because she does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board's required course of instruction, and hasn't held a current license, registration or certificate of good standing for massage therapy in another state for at least the preceding five years.

**Dr. Saferin moved to find that the facts set forth in the February 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Valladolid's application for a license to practice massage therapy in the State of Ohio. Dr. Kakarala seconded the motion.**

Responding to a question from Ms. Montgomery, Dr. Rothermel stated that the Board's Licensure staff communicates often with these applicants prior to the Board's decision and would have informed the applicant if they would be eligible for licensure in September 2021 when they meet the requirements of the five-year rule.

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

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

The motion carried.

## **Garnetta D. Williams, M.T.**

Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Garnetta D. Williams, 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. Williams has not engaged in the active practice of massage therapy for more than two years.

**Dr. Saferin moved to find that the facts set forth in the February 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Williams' application for restoration of her license to practice massage therapy, provided that she takes and passes the MBLEx within six months of the date of mailing of the Notice of Opportunity for a Hearing. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

### **Israelite Josma**

Dr. Bechtel stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Israelite Josma informing him that the State Medical Board of Ohio proposed to deny his application for a license to practice respiratory care because he has not passed an examination approved under rules adopted by the Board. The Board requires RCP applicants to provide documentation that they have successfully completed both portions of the Registered Respiratory Therapist (RRT) examination. Mr. Josma has not provided documentation that he has completed either of the required exams necessary for RRT certification.

**Dr. Kakarala moved to find that the facts set forth in the October 14, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Mr. Josma’s application for a license to practice respiratory care in the State of Ohio. Dr. Saferin seconded the motion. A vote was taken:**

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

The motion carried.

### **Meihua Zheng**

Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Meihua Zheng informing her that the State Medical Board of Ohio proposed to deny her application for a license to practice massage therapy because she does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board’s required course of instruction, and hasn’t held a current license, registration or certificate of good standing for massage therapy in another state for at least the preceding five years.

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**Dr. Saferin moved to find that the facts set forth in the February 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Zheng’s application for a license to practice massage therapy in the State of Ohio. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

### **Nicole M. McCabe, M.T.**

Dr. Bechtel stated that on July 8, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Nicole M. McCabe, 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. McCabe has not engaged in the active practice of massage therapy for more than two years.

**Dr. Saferin moved to find that the facts set forth in the July 8, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. McCabe’s application for restoration of her license to practice massage therapy in the State of Ohio, provided that she takes and passes the MBLEx within 12 months of the date of the final date of publication of the Notice of Opportunity for a Hearing. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

### **Wendy N. Cunningham, R.C.P.**

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Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Wendy N. Cunningham, R.C.P., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice as a respiratory care professional, provided that she take and pass the Clinical Simulation Examination (CSE) due to the fact that Ms. Cunningham has not engaged in the active practice of respiratory care for more than two years.

**Dr. Kakarala moved to find that the facts set forth in the February 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Cunningham’s application for restoration of her license to practice respiratory care in the State of Ohio, provided that she takes and passes the CSE within 6 months of the date of mailing of the Notice of Opportunity for a Hearing. Dr. Saferin seconded the motion. A vote was taken:**

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

The motion carried.

### **EXECUTIVE SESSION**

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

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

The motion carried.

The Board went into Executive Session at 11:40 a.m. and returned to public session at 12:32 p.m.

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The Board recessed at 12:32 p.m. The meeting resumed at 1:00 p.m. Mr. Gonidakis was absent when the meeting resumed.

### **SETTLEMENT AGREEMENTS**

#### **Alper Cesmebasi, M.D.**

**Dr. Johnson moved to ratify the proposed Withdrawal of Application with Dr. Cesmebasi. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

Mr. Gonidakis returned to the meeting at this time.

#### **Courtney E. Barrows, M.D.**

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

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

The motion carried.

#### **Dale Alan Harris, M.D.**

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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

The motion carried.

**Daniel Adam Schwarz, M.D.**

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

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

The motion carried.

**David Edward Nowak, M.D.**

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

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

The motion carried.

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**Dowzell Swayngim, M.D.**

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

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

The motion carried.

**Farhad Khorashadi , M.D.**

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

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

The motion carried.

**Jeffrey A. Jarrett, M.D.**

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

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

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

The motion carried.

**Kristie Leigh King, R.C.P.**

**Dr. Schottenstein moved to ratify the proposed Permanent Surrender with Ms. King. Dr. Johnson seconded the motion. A vote was taken:**

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

The motion carried.

**Kamal Yassin, M.D.**

**Dr. Schottenstein moved to ratify the proposed Withdrawal of Application with Dr. Yassin. Dr. Kakarala seconded the motion. A vote was taken:**

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

The motion carried.

**Michele Catherine Walsh, M.D.**

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

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

The motion carried.

**Mark H. Meacham, M.D.**

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

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

The motion carried.

**Otto Kausch, M.D.**

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

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

The motion carried.

**Srinivas Perugu Reddy, M.D.**

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

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

The motion carried.

**Ted W. Grace, M.D.**

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

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

The motion carried.

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

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

1. Joshua V. Belcher, M.T.: Based on allegations of making a false statement on a license renewal application, as well as a misdemeanor conviction of moral turpitude.
2. Ariel Renee Garrett: To be issued to a massage therapist applicant, based on felony convictions for identity fraud and misuse of credit cards, as well as impairment.
3. Deren Huang, M.D.: Based on alleged violation of the Board’s sexual misconduct rule involving one patient.

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4. James Kuhn, P.A.: Based on loss of National Commission on Certification of Physician Assistants (NCCPA) certification and failure to report that loss of certification to the Board, as required by law.
5. Steven Richardson, P.A.: Based on action by California Medical Board related to felonies of prescribing without legitimate medical purpose and identify theft.
6. Uniqua Nicole Warren: To be issued to a massage therapist applicant, based on action taken by Ohio Board of Nursing and false statements on the massage therapist licensure application.
7. Yousif A. Alhallaq, M.D.: A Summary Suspension, based on allegations of administration of drugs for other than legitimate legal purpose; acts constituting the attempt of unlawful abortion, a misdemeanor; and unlawful distribution of an abortion drug, a felony.

**Dr. Schottenstein moved to approve and issue Citation #7, a Summary Suspension. Dr. Johnson seconded the motion.** A vote was taken:

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

The motion carried.

**Dr. Schottenstein moved to approve and issue proposed Citation #3. Dr. Johnson seconded the motion.** A vote was taken:

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

The motion carried.

**Dr. Schottenstein moved to approve and issue proposed Citations #'s 1, 2, 4, 5, and 6. Dr. Johnson seconded the motion.** A vote was taken:

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

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

The motion carried.

### **OPERATIONS REPORT**

**Human Resources:** Ms. Loucka stated that the Board is in the process of hiring for a few positions to fill vacancies in Licensure and Enforcement. Shawn McCafferty has been permanently named Chief of Investigations and he is doing a great job in that position. Mr. McCafferty's former position of Investigator Supervisor for the Central Region will be filled in the near future.

Ms. Loucka stated that news has been received that exempt employees will receive a 3% wage adjustment, effective April 11, 2021. This adjustment was originally to have occurred on July 1, 2020, but was paused due to economic circumstances at that time. The adjustment is not retroactive.

**Finance:** Ms. Loucka stated that the biggest concern financially is those licensees who have not yet renewed due to the delay granted by the legislature. The Board's finances should be what they are expected to be by the end of the fiscal year as these licensees renew before July 1. Ms. Loucka has been informed that another license renewal extension is unlikely to recur.

Ms. Loucka stated that the legislative team has been working with the Senate to prepare them for what they will see in the Board's budget request. Senate testimony on the budget will probably occur in about three weeks. The House version of the budget is unchanged from what was proposed in the Executive version and it is hoped that that will be maintained throughout the budget cycle. Ms. Loucka had an encouraging meeting the senators in the Health Committee about what the Board is doing with its budget.

Ms. Loucka stated that Dr. Schottenstein will give a more detailed report during the financial update later in the meeting.

**Licensure:** Ms. Loucka stated that the Board continues to exceed expectations in licensure and the Licensure staff continues to produce faster, despite the fact that two Licensure positions are currently vacant. Some overtime has been approved to keep license issuance on-track. Ms. Loucka noted that the busiest part of the year is beginning because training certificate applications are arriving. The Board's median time for processing applications remains very good. Ms. Loucka stated that during legislative visits she continues to convey that the Ohio licensure process is much faster than other states across the country, demonstrating why reciprocity is not necessary.

**Complaints:** Ms. Loucka stated that complaints continue to be received in high numbers. The staff is keeping pace with the increased work and not falling behind, but it is difficult to address the backlog. The staff is discussing creative ways to move cases through the process and get quality outcomes, including such things as intermediate sanctions and using experts in different ways. The staff has generated good ideas to address the backlog itself. Leadership has recently worked with individual staff members to review existing caseloads, which has been very helpful. Over the coming year, a system of prioritization will be developed to address the most concerning cases automatically.

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Ms. Loucka stated that she will develop an improved way to graphically represent the Board's trend lines for the Operations Report.

**Communications:** Ms. Loucka stated that Communications continues to do a fantastic job. Ms. Loucka stated that Julie Williams, who manages the Board's social media and keeps the website up-to-date, among other duties, is one of the best she has worked with.

**Federation of State Medical Boards Annual Meeting:** Ms. Loucka stated that the Annual Meeting of the Federation of State Medical Boards (FSMB) will be held on April 29. Since the meeting will be online, there are no travel cost concerns. The Board staff can help any Board member who wishes to register to attend the meeting.

### **EXECUTIVE DIRECTOR COMPENSATION**

Dr. Bechtel stated that early in the onset of the pandemic, salary increases for all exempt state employees were frozen. Exempt staff would normally have received a 3% increase on July 1, 2020, but instead a 3.8% pay-cut was implemented through furlough days. The Ohio Department of Administration Services (DAS) announced last month that due to improved economic conditions in the state, the 3% increase will go through effective April 11. Most employees receive this increase automatically; however, in order for Executive Director to receive this increase, a motion from the Board is required.

Dr. Bechtel noted that Ms. Loucka has received a very favorable performance review from the Board.

**Dr. Reddy moved to approve a 3% salary increase for Stephanie Loucka, Executive Director, to be effective April 11, 2021. Dr. Kakarala seconded the motion. All members vote aye. The motion carried.**

### **RULES & POLICIES**

#### **Rule Review Update**

Ms. Anderson stated that the staff has been successful in working with the Governor's office to obtain an Executive Order concerning the light-based medical device rules, as discussed in last month's meeting. The Emergency Rule became effective on April 9, 2021 and will expire on August 8, 2021. Ms. Anderson appreciated the support from the Board in meeting this goal.

The permanent rules containing the changes related to cosmetic therapists and physician assistants were released from the Common Sense Initiative (CSI) on April 5 and were filed with the Joint Commission on Agency Rule Review (JCARR) on April 9. A rules hearing will be held on May 17 to discuss those rules. CSI also released three dietetics rules and the hearing rules that had been pending. These rules have also been filed with JCARR and will be part of the May 17 rules hearing.

#### **Board of Nursing Consult Agreement Rules**

Ms. Anderson stated that Rule 4729-39 was amended to allow physician assistants and nurse practitioners to enter into consult agreements with pharmacists. The Board of Nursing is working on rules for advanced practice nurses and are consulting the Medical Board. Those proposed rules are in the meeting materials for the Board members' review.

Ms. Anderson stated that the Board of Nursing has made some changes that she recommends the Medical Board make as well. Specifically, for purposes of clarity, the Board of Nursing added the language that the consult agreement "may" include identification of the practitioner who is the primary practitioner. There are also proposed changes to correct a reference to paragraphs in the Board of Pharmacy rule and to add clinical nurse specialists to the list of practitioners who can enter into a consult agreement.

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Ms. Anderson stated that the Board of Nursing received a comment from their Advanced Practice Registered Nurse (APRN) Committee dealing with the process of verifying the education and training for the pharmacists. The APRN Committee recommended deleting the paragraph that required the agreements to include a process to verify that the managing pharmacist met the specified criteria, or alternatively, to make clear that the pharmacist's training and experience does not have to be verified for each consult agreement and each pharmacist. However, Ms. Anderson noted that the language in the current rule and in statute requires that prior to entering into a consult agreement, each pharmacist must have training and experience related to the particular diagnosis for which the drug therapy is being prescribed. Consequently, Ms. Anderson felt that the agreement must include a process to verify that the managing pharmacist meets the criteria. Ms. Anderson did not recommend removing the language because of the statutory requirement and that it is a good idea for the agreement to address a process to verify that.

**Dr. Schottenstein moved to approve amendments to Rule 4731-35-01, OAC and to approve filing with the Common Sense Initiative. Dr. Kakarala seconded the motion.** All members voted aye. The motion carried.

### **Medical and Osteopathic Examination**

Ms. Anderson stated that the United States Medical Licensing Examination (USMLE) and the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) have announced changes that will reduce the permitted number of attempts to pass the examinations from six to four. This will require a change in the Board's rule. Mr. Turek has drafted language for the Board's review. The draft language does not delineate a specific number of permitted attempts, but refers to the number established by the examining bodies. The draft language also allows the Board to consider an applicant who meets the maximum number of attempts that was in place at the time the step or level of the examination was completed. The COMLEX change will become effective on July 1, 2022. The USMLE has not announced an effective date for its change, but has stated it will be no earlier than July 1, 2021.

Since more than 50% of the rule is being changed, the Board will need to file it as a rescission of the old rule and replacement with a new rule.

**Dr. Saferin moved to approve the amendments to the rule for initial circulation to interested parties. Dr. Kakarala seconded the motion.** All members voted aye. The motion carried.

### **Department of Health Rule – Mobile Imaging Centers**

Ms. Anderson stated that the Ohio Department of Health (ODH) has asked for the Board's input on a proposed amendment to their rule on mobile imaging centers. Currently, ODH requires the physician to be onsite when anesthesia or contrast agents are being administered. ODH has asked if a physician assistant or a nurse practitioner could serve in that role. Ms. Anderson directed ODH to the statute that prohibits physician assistants from being involved with any anesthesia other than local anesthesia. In response, ODH has drafted the rule to state that a physician must be onsite when any anesthesia other than local anesthesia is administered, while a physician, certified nurse practitioner, or physician assistant could be onsite when local anesthesia or diagnostic imaging contrast agents are being administered.

ODH has also taken this to the Board of Nursing, which has indicated no concerns with the language.

Dr. Soin approved of the proposed language, particularly the requirement of supervision with the injection of contrast. Ms. Anderson stated that she will convey this comment to ODH.

### **Rules Filed with CSI**

Ms. Anderson stated that this package of rules at the Common Sense Initiative (CSI) includes the sexual misconduct rules, delegation rules, rules on prescribing to self and family, and pronouncement of death rules.

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CSI had a comment period on all these rules; only one comment was received. The Board of Nursing requested in its comment that the pronouncement of death rule refer to a nursing license as a license rather than a certificate of authority, which is the old language of the rule. Ms. Anderson recommended making that change and notifying CSI.

**Dr. Kakarala moved to approve the amendment to Rule 4731-14-01. Dr. Johnson seconded the motion.** All members voted aye. The motion carried.

### **Legislative Update**

Ms. Wonski stated that the Board's biggest priorities continue to be the budget and the Interstate Medical Licensing Compact. The legislative staff will continue to closely monitor various other bills that would impact the Board.

**House Bill 110, State Operating Budget:** Ms. Wonski stated that House Bill 110 was adopted by the House Finance Committee yesterday. The Board's initial budget request, which had been granted in the executive version of the budget, was unchanged in the House. Staff will continue to advocate for that request throughout the rest of the process. Additional language was included in the bill to create a Massage Therapy Advisory Council. The Board has expressed support for this language.

Ms. Wonski stated that she and Ms. Loucka have been meeting with legislators on the finance committees and subcommittees of both chambers to address any questions they may have. Ms. Loucka is expected to be invited to provide testimony before the Senate Health Committee within the next few weeks.

**Senate Bill 6:** Ms. Wonski stated that this bill will require Ohio to join the Interstate Medical Licensure Compact (IMLC). In the last few months, Ms. Loucka and Ms. Wonski have met with the bill's sponsor and co-sponsor and continue to reiterate that this bill will present operational challenges and could slow the licensure process for out-of-state applicants who come to Ohio through the IMLC.

Ms. Wonski noted that the bill's language is a contract and cannot be changed. The Board's proposed amendments to extend the implementation time from six months to one year and for appropriations for start-up costs were approved and added to the bill's language. The amended bill was passed out of the Senate Health Committee and is now awaiting a vote with the full Senate. As passage, the bill will begin the same committee process in the House.

**House Bill 122:** Ms. Wonski stated that this bill would permit health care professionals to provide telehealth services. The language requires telehealth services to be done according to specified conditions and standards. The bill was passed out of the House Insurance Committee and awaits a vote by the full House. After passage, it will move to the Senate for the same process.

**Senate Bill 131 and House Bill 203:** Ms. Wonski stated that these bills were introduced last month and would require occupational licensing authorities to issue a license or government certification to any applicant who currently holds a license, government certification, or private certification in another state. The policy team is currently analyzing the impact of the language. Both bills have been referred to committees but have not yet had hearings.

**House Bill 193:** In response to questions from Dr. Soin, Ms. Wonski stated that this bill, which would require all Schedule II controlled substances to be prescribed electronically, is supported by the Board of Pharmacy. The Board of Pharmacy believes that this bill would create more transparency in the prescribing of those medications.

**House Bill 263:** Mr. Smith stated that this bill, which would require licensing boards to create a list of specific criminal offenses for which a conviction may disqualify an applicant from obtaining a license, was passed at the end of the last General Assembly. The Board will be able to consider an applicant's conviction for any offense

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on the list along with other statutory factors in determining whether to issue the license. The Board's staff has invested many hours composing the list through research and collaborative input from all sections of the Board. The staff has also met with representatives from the Board of Nursing and the Board of Pharmacy to discuss common questions and issues around implementation of the bill.

Mr. Smith stated that this list will be brought to the Board in May or June for approval. Following approval, the list must be published to the Board's website by October 2021.

### **COMMITTEE BUSINESS**

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

Ms. Reardon stated that the Physician Assistant Policy Committee (PAPC) met on April 9. Ms. Wonski provided a legislative update. Ms. Anderson reviewed four documents with the PAPC, including light-based medical device rules, consult agreement rules, and rules pending with the Common Sense Initiative.

The PAPC will meet again on July 9, 2021.

#### **ICD-10 Code Data Review Committee Report**

Dr. Soin stated that the ICD-10 Code Data Review Committee met this morning and discussed a new tool that the Board of Pharmacy is developing that involves a prescriber resource website update, descriptions of the Ohio Automated Rx Reporting System (OARRS), and links to various laws and explanations. The goal is to advance prescriber education. Before the next meeting of the Committee, staff will work with the Board of Pharmacy to ensure accurate data. Members of the Committee will have an opportunity to review the sample website.

Dr. Soin discussed the preliminary data, which suggests that the Board's acute pain prescribing rules may not be followed as rigorously as it would like. This is an opportunity to educate prescribers about the acute pain prescribing rules and to improve and limit prescriptions for things that are clearly for an acute diagnosis to one week, in accordance with the rule.

#### **Compliance Committee Report**

Ms. Montgomery stated that the Committee continues to review certain questions on the Board's licensure applications, at the request of the Medical Associations Coalition. There is a proposal to legislatively exempt from public records the responses to application questions concerning medical conditions, including mental health. The topic will be brought to the full Board in the near future.

The Committee also discussed having two tiers of impairment evaluations based on license type, with some being required to have a 72-hour inpatient evaluation and others a 24-hour outpatient evaluation. The Ohio Physician's Health Program (OPHP) has requested some changes and the Committee continues to discuss that request.

#### **Treatment Provider Applications**

**Ms. Montgomery moved to approve the treatment provider applications from Lakeview Health Systems, LLC; and TriHealth/Bethesda Alcohol and Drug Treatment. Dr. Saferin seconded the motion. All members voted aye. The motion carried.**

#### **FSMB Recommendations Review Committee Report**

Dr. Schottenstein stated that the Committee met this morning and discussed establishment of a Quality Assurance (QA) Committee. Dr. Schottenstein noted that the Governor's Working Group recommended that

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the Board implement QA in ensure that sexual misconduct complaints are being appropriately managed. The Working Group had envisioned that the Board would review a meaningful percentage of the decisions made by the Secretary and Supervising Member to either close a sexual misconduct case without investigation or close after investigation but without referral to enforcement. Reestablishment of the QA Committee is meant to facilitate this review.

Dr. Schottenstein stated that the goals of the QA Committee are as follows:

- Add a layer of redundancy to the review process in order to identify any worrisome trends in the closing of cases.
- Demonstrate to the public that the Board is resolved in this regard.
- Facilitate a more direct level of Board member involvement, thereby increasing understanding and trust in the complaint process.

Following discussion, the Committee recommended that the QA Committee review a random sample of 10 complaints per month, pulled from essentially all closed cases except protocol closes. The QA Committee will be comprised of four physician members and one consumer member, for a total of five members. Each member will be assigned two cases per month to review. The QA Committee will meet quarterly to discuss the reviews.

Dr. Schottenstein continued that for each case, the QA Committee member will review the entirety of the information previously reviewed by the Secretary and Supervising Member. The Committee member will then fill out a QA tool in SalesForce and submit it to staff. During the initial review, the reviewing Committee member will not seek feedback from the staff or the Secretary and Supervising Member so that the review remains objective. If the reviewing member recommends reopening a case, there will be a meeting involving the Secretary, the Supervising Member, a consumer member, and the reviewing member, as well as potentially an investigator and/or enforcement attorney.

### **Finance Report**

#### **Fiscal Update**

Dr. Schottenstein stated that revenue for February 2021 was \$379,169, a decrease from the previous month. This decrease is due to licensees delaying renewal of their licenses due to the deadline extension granted by the legislature. Dr. Schottenstein noted that preliminary numbers for March look better at an estimated \$800,000, which substantially matches what the Board spent that month as well. The shortfall in revenue is expected to be rectified as the end of the Fiscal Year approaches and licensees renew their licenses. The Board's cash balance in February was substantially down from January at \$5,228,386, which is still high by historical comparison.

Dr. Schottenstein stated tha the yearly eLicense invoice from the Department of Administrative Services (DAS) for \$333,000 posted in February. Combined with the drop of revenue due to license renewal delay, this contributed to the negative impact on the Board's cash balance. Payroll and other spending is otherwise consistent.

The Board received \$19,000 in disciplinary fines in February.

#### **Nurse Reviewer Contract**

Dr. Schottenstein stated that the Standards Review unit currently consists of two nurse reviewer positions, one of which recently became vacant. Unit supervisor Brandi Dorcy is currently assessing the volume and type of work done by these staff prior to making a determination regarding backfilling that vacancy to see if any restructuring would be beneficial. As a temporary measure in order to avoid a backlog of case reviews in the

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unit, the Board has entered into a contract with Jack Holdford, RN, who was formerly employed with the Board as a case reviewer. The hourly rate for this review work is \$29.16, which is equal to the starting base pay of a nurse reviewer. The terms require 15 to 30 hours per week, extending through the remainder of the fiscal year. Since this contract could have the potential of exceeding \$10,000, the contract is being brought to the Finance Committee and the Board for approval. The Finance Committee has recommended approval of the contract.

**Mr. Gonidakis moved to approve the contract with Jack Holdford for a maximum of \$12,000 to perform case reviews during April-June 2021. Dr. Saferin seconded the motion.** All members voted aye. The motion carried.

### Attorney General Memorandum of Understanding

Dr. Schottenstein stated that the Board currently utilizes two to three Assistant Attorneys General (AAG) who provide legal services on a rotating basis. After a review of the Board caseload currently assigned to the Attorney General's office, it has been determined it would be beneficial to have an additional AAG dedicated solely to Medical Board cases on a full-time basis. In order to accomplish this, the Attorney General's office has requested financial assistance to add an additional staff member to provide full-time support to the Board.

The Executive Director is seeking approval to enter into a Memorandum of Understanding (MOU) with the Attorney General's office to hire an additional attorney to be assigned solely to Medical Board work, in addition to the support currently being provided. The agreements specify maximums of \$21,587 for the remainder of Fiscal Year 2021, \$124,643 for Fiscal Year 2022, and \$128,382 for Fiscal Year 2023. Dr. Schottenstein stated that the Finance Committee conditionally approved the request, pending review of the MOU.

Mr. Gonidakis noted that the MOU specifies a maximum amount for each fiscal year, but then says there can be additional charges for travel and other expenses. Mr. Gonidakis asked if those additional charges are part of the maximum charges. Ms. Loucka replied that the additional charges would be in addition to the maximum. Ms. Loucka stated that that language is a standard part of the Attorney General's template MOU and she did not anticipate ever having travel expenses.

Mr. Gonidakis asked if there will be an additional MOU in response to some realignment of the AAG staff dedicated to the Board, which was learned this morning. Ms. Loucka answered that the MOU is worded such that existing funding will continue for the three assistant attorneys general that already work with the Board or their replacements, and the additional funding is for a fourth AAG. Mr. Gonidakis, noting that Ms. Pelphrey is leaving the Attorney General's office soon, ask if the overall financial commitment will be adjusted if her replacement starts at a lower salary. Ms. Loucka replied that the funding will probably not change, but she will look into that.

In response to questions from Ms. Montgomery, Ms. Loucka stated that currently Mr. Wilcox is dedicated solely to the Medical Board, while Ms. Snyder and Ms. Pelphrey represent other agencies in addition to the Medical Board. Ms. Loucka confirmed that the fourth AAG that will be funded through the MOU will be dedicated to the Medical Board. Ms. Pelphrey clarified that she and Ms. Snyder spend about 90% of their time on Medical Board work and the remainder on the time representing smaller boards.

Responding to a question from Mr. Gonidakis, Ms. Loe stated that the Board currently does not pay for AAG representation. Ms. Loucka added that the funding specified in this MOU will be the Board's only expense in this area.

Mr. Giacalone, noting Ms. Snyder's extensive experience with the Board, suggested using the funding in the MOU to have Ms. Snyder be a dedicated AAG and allow the fourth AAG to split time with other boards. Ms. Montgomery noted that Ms. Snyder is a part-time worker. Ms. Pelphrey agreed, but suggested that the Board pose the question to Ms. Snyder if it is interested in such an arrangement. Ms. Loucka stated that she will discuss this with the section chief in the Attorney General's office.

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**Dr. Saferin moved to approve the Executive Director to enter into an MOU with the Attorney General’s office not to exceed \$21,587 in FY21, \$124,643 in FY22 and \$128,382 in FY23 for the purpose of acquiring one additional full time assistant AG dedicated to Medical Board cases. Dr. Kakarala seconded the motion.** All members voted aye. The motion carried.

### Special Counsel Assignment:

Dr. Schottenstein stated that beginning in December 2019, Shumaker, Loop & Kendrick was appointed as special counsel to defend the State Medical Board of Ohio in responding to subpoenas *duces tecum* and subpoenas for deposition issued in opioid-related lawsuits, including the multi-district litigation in federal court in the Northern District of Ohio, and litigation filed against pharmaceutical manufacturers and distributors in Ross and Madison counties. The opioid litigation is ongoing. The Board previously approved \$49,500 for Fiscal Year 2021, but due to the ongoing work it is now anticipated that an additional \$40,000 will be billable in this fiscal year. The Attorney General’s office will be requesting Controlling Board approval of these additional expenditures at its April 19, 2021 meeting.

The finance committee has recommended approval of the funding.

**Dr. Saferin moved to approve additional funding of up to \$40,000 for outside counsel Shumaker, Loop & Kendrick to continue work on the opioid litigation during Fiscal Year 2021. Dr. Kakarala seconded the motion.** All members voted aye. The motion carried.

### Licensure Application Reviews

**Dr. Rothermel moved to approve the Licensure staff recommendations for the requests of Dawn Tomko, R.C.P.; Jocelyn Starnier, M.T.; Julie Branham, L.D.; and Lucinda Feller, R.C.P. Dr. Schottenstein seconded the motion.** A vote was taken:

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

The motion carried.

### MEDICAL MARIJUANA COMMITTEE REPORTS - PETITIONS

Dr. Bechtel stated that the Medical Marijuana Expert Review Committee reviewed the petitions submitted during the November 1, 2020 to December 31, 2020 submission period to add new qualifying conditions for treatment with medical marijuana. The petitions were classified into the following categories, as listed in the Board meeting materials:

- Category I included petitions that failed to meet the statutory rule requirements. The Committee has recommended rejecting these petitions and sending rejection letters to the petitioners. 16 petitions were included in this category.

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- Category II is for petitions that appeared close to meeting the requirements, but were missing minor details and needed administrative follow up. None of the petitions met these criteria.
- Category III included petitions that failed to meet the statutory and rule requirements; however, the petitions were submitted for conditions which may already be covered under the current list of approved conditions. The Committee has recommended rejecting these petitions and sending the petitioners a rejection letter with information directing them to the current list of approved conditions. Six petitions were included in this category.
- Category IV included petitions met the statutory and rule requirements to qualify for Board review. The Committee approved these petitions to move forward in the review process. Eight petitions were included in this category.

**Dr. Schottenstein moved to approve the Committee’s recommendations and reject the petitions in Category I, as listed in the Board materials, and to send rejection letters to the petitioners; and reject the petitions in Category III, as listed in the Board materials, and to send the petitioners a rejection letter and information directing them to the current list of approved conditions. Dr. Kakarala seconded the motion.** All members voted aye, except Mr. Gonidakis, who abstained. The motion carried.

### COMPLIANCE

#### Reinstatement Request

#### Office Conference Review

Dr. Schottenstein noted that the probationary report on Bradley T. Schwarz, D.O., includes the following statement: “He has not really had any issues with testing, other than one PEth.” Dr. Schottenstein stated that “PEth” refers to the phosphatidylethanol test, a blood test that can indicate consumption of alcohol within three to four weeks prior to the test. The PEth test is very specific and very sensitive, and is arguably independent proof of a relapse. Dr. Schottenstein was puzzled by the statement in the report.

Dr. Schottenstein observed that Dr. Schwarz has been in a Step I Consent Agreement with the Board since 2017, so his Ohio medical license is currently suspended. Dr. Schwarz is being monitored through the Pennsylvania Physicians Health Program. Dr. Schwarz presumably plans to finish his requirements in Pennsylvania, whereupon he may request a Step II Consent Agreement in Ohio.

The Board’s staff cannot find any documentation about a positive test, a false positive test, or a missed test for Dr. Schwarz. The Pennsylvania Physicians Health Program has not released information on this matter, but it has informed the Board that Dr. Schwarz is in compliance. Dr. Schottenstein stated that he would be grateful to have this mystery solved because it would be very important for the Board to know about a positive PEth test.

**Dr. Schottenstein moved to approve the Compliance staff’s Reports of Conferences for March 8 and 9, 2021. Dr. Kakarala seconded the motion.** A vote was taken:

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

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

The motion carried.

### **Probationary Requests**

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

- a) Jennifer D. Bahner, M.D.: Request for approval of Keming Gao, M.D., Ph.D., to serve as the treating psychiatrist.
- b) Ardeth K. Ellis, M.T.: Request for approval of the courses *Dealing with Ethical Gray Areas in Massage Therapy*, offered by AMTA; and *Ethics for Massage Therapists: A Comprehensive Overview*, offered by AMTA, to fulfill the professional ethics course requirement.
- c) Peter C. Johnson, M.D.: Request for reduction in psychiatric/psychotherapy sessions from every two weeks to monthly.
- d) John J. Kavlich, M.D.: Request for approval of Stephen B. Levine, M.D. to conduct a return to work psychiatric assessment for reinstatement.
- e) Muyuan Ma, M.D.: Discontinuance of the chart review requirement.
- f) Colin S. Moorhead, M.D.: Request for approval of *PBI Medical Record Keeping Course*, offered by University of California, Irvine School of Medicine, to fulfill the medical records course requirement.
- g) Robert D. Rasmussen, D.O.: Request for approval of the course *Medical Record Keeping Seminar*, offered by CPEP, to fulfill the medical records course requirement; and approval of the course *Prescribing Controlled Drugs*, offered by CPEP, to fulfill the controlled substance prescribing course requirement.
- h) Tammy M. Reed, D.O.: Request for release from the terms of the April 10, 2019 Board Order.
- i) Arthur H. Smith, M.D.: Request for approval of the course *Management & Leadership for the Medical Practice*, offered by Practice Management Institute, to fulfill the office management course requirement.
- j) Shannon Lee Swanson, D.O.: Request for release from the terms of the April 11, 2018 Superseding Consent Agreement.
- k) Michael Todd Tatro, M.D.: Request for approval of Timothy D. Genetta, D.O. to serve as the new monitoring physician.
- l) Derek Kurt Urban, M.D.: Request for approval of the ethics course tailored by Donna Homenko, Ph.D., to fulfill the personal/professional ethics course requirement.
- m) Denise Woodrum, C.T.: Request for release from the terms of the September 9, 2020 Board Order.
- n) John Zaino, M.D.: Request for approval of the previously completed course *Intensive Course in Medical Ethics, Boundaries and Professionalism*, offered by Case Western Reserve University, to fulfill the physician/patient boundary course requirement.

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

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

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

The motion carried.

### **ADJOURN**

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

The meeting adjourned at 2:33 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on April 14, 2021, as approved on May 12, 2021.

(SEAL)



State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING**

**April 14, 2021**

via live-streamed video conference

<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> Mark Bechtel, M.D. Kim Rothermel, M.D. Bruce Saferin, D.P.M. 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 Nathan Smith, Senior Legal and Policy Counsel Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 8:38 a.m.

### Public Records Language

Ms. Montgomery stated that at last month's meeting, the Committee discussed a proposal for a change in statute to exempt the answers to the mental and physical health questions on the initial licensure and license renewal applications from the public records law. The purpose of the proposal is to encourage more honest responses to these questions so that the Board is better able to protect the public.

Ms. Anderson stated that the first draft of the proposed legislative language is included in the meeting materials. The proposed language states that responses to the State Medical Board license application questions regarding medical conditions that impair the ability to practice, as well as any documentation provided as part of those application questions, would be exempted from the public records law. Such information would be redacted from any public records requests, though it would still be available to the Board.

In response to a question from Mr. Giacalone, Ms. Anderson stated that information on alcohol or substance abuse would not be exempt from public disclosure under this language. Mr. Giacalone agreed that that information should not be exempt from public disclosure.

Mr. Giacalone asked if sexual deviancy would be considered a mental condition and be exempted from public records laws under this language. Ms. Anderson replied that there are three conditions that the Board's applications ask about that are not covered under the Americans with Disabilities Act: Pedophilia, exhibitionism, and voyeurism. Ms. Anderson commented that the Committee may want the language changed to clarify that those questions, as well as questions about chemical

dependency, are not included in the exemption. Ms. Montgomery stated that the Board should make sure the public understands that a psychiatric condition is considered a medical condition for purposes of this language.

Dr. Schottenstein supported the thrust of this project. Dr. Schottenstein agreed that medical records and conditions of applicants should be protected from being released from the public, while still being available to the Board. Dr. Schottenstein stated that there is a difference between diagnosis and behavior. Things such as voyeurism, pedophilia, and exhibitionism are related to behavior, while impairments like chemical dependency are diagnoses. Dr. Schottenstein stated that the Board should be able to make this distinction and still move generally in the direction of privacy for applicants. Ms. Montgomery agreed that pedophilia will not be exempt from public records requests or shielded from the public.

Dr. Schottenstein questioned whether the exclusion of the chemical dependency question from this proposal will result in applicants continuing to be less than forth-coming on their applications. Mr. Giacalone stated that, rightly or wrongly, there are certain professions that are held to a higher standard because of the impact they have on people's lives, and physicians and attorneys belong to such professions. Mr. Giacalone stated that when he looks at a physician or an attorney, he wants to know if they have a substance abuse issue or similar issue because it matters to him and his family. Because of this, physicians fall into a different category than many other professions and should have a higher level of scrutiny. Mr. Giacalone stated that physicians chose their professions and all the positives and negatives that come with it.

Dr. Feibel stated that he agrees with Mr. Giacalone in theory, but it is more important to him that the Board has information about an applicant's chemical dependency than the applicant being less than truthful about it due to risk of public disclosure. Dr. Feibel stated that substance abuse disorder is a mental illness, and just because someone chose medicine as their profession does not mean they should have their medical records subject to a public records request. Dr. Feibel stated that the Board should have that information, and then not license the applicant if it feels that the problem warrants that. Dr. Feibel supported Dr. Schottenstein's position.

Responding to a question from Dr. Feibel, Ms. Anderson stated the applications have specific language for those in the One-Bite program allowing them not to answer those questions.

Dr. Schottenstein stated that having had this discussion, he supports the language as drafted because when an exception is allowed, the likelihood that an applicant withholds information increases.

Ms. Montgomery stated that Ms. Anderson and the rest of the Legal staff will continue to work on this draft language. Ms. Loucka stated that this will be brought back for further Committee discussion in May. The goal is to include this language in the package of legislation that is part of the Strauss package. That legislative package is currently being reviewed by outside stakeholders, but this language would not need outside review because it concerns internal Board operations.

Ms. Montgomery noted that exempting these questions from public records is, ironically, an effort in increase openness by encouraging honest answers from applicants.

### **Rule Review & Suggested Changes**

Ms. Montgomery stated that at the last meeting, the Committee discussed the merits and costs of 72-hour inpatient evaluations compared to 24-hour outpatient evaluations. Since that meeting, there have

been ongoing discussions with the Ohio Physicians Health Program (OPHP) which have resulted in proposed changes.

Ms. Anderson stated that the changes to Rule 4731-16-05 suggested by Kelley Long, Executive Director of OPHP, are set forth in the meeting materials:

- Updated language to replace “chemical use assessment” with “comprehensive biopsychosocial assessment.”
- Addition of hair testing to urine and blood testing.
- Clarification that the individuals who will receive outpatient assessment (massage therapists, respiratory care professionals, dietitians, radiologist assistants, and genetic counselors) would only have a mental health evaluation as part of their assessment if specifically required by the Board or, in the case of those coming from the One-Bite program, if recommended by their treatment provider.

Ms. Anderson noted that currently, massage therapists who are ordered to an assessment by the Board are only required to have an outpatient assessment; if treatment is needed, that treatment would also be outpatient. For those in the One-Bite program, the treatment is whatever is recommended by the provider, and therefore could be either inpatient or outpatient. The proposed changes would extend this standard to respiratory care professionals, dietitians, radiologist assistants, and genetic counselors.

Ms. Anderson proposed recommending to the full Board that these rules be circulated to interested parties for comment.

Responding to a question from Dr. Schottenstein, Ms. Anderson stated that a higher level of treatment than outpatient may be recommended following the initial outpatient treatment. Ms. Anderson further responded that replacing the phrase “psychiatric evaluation” with “mental health evaluation” would allow for other practitioners, such as psychologists and counselors, to perform the evaluation.

Dr. Schottenstein was glad to have the phrase “comprehensive biopsychosocial assessment” included in the proposed language, but noted that that phrase is redundant with “mental health evaluation,” which is basically the same thing. Dr. Schottenstein stated that “biopsychosocial assessment” includes mental health and chemical use history, so there could be one line that simply says, “comprehensive biopsychosocial assessment, except as in Paragraph (A)(3)(b)(ii).” Dr. Schottenstein added that one could include the phrase “including chemical use history” for emphasis, though it would not be necessary.

Ms. Montgomery suggested keeping the current language of “mental health evaluation” and “chemical use history” because it is more clear than “biopsychosocial assessment.” Ms. Montgomery stated that simplicity is important and the Board should resist using unfamiliar verbiage just because it is new. Ms. Anderson noted that the change was suggested by OPHP in an effort to harmonize the expectations of the elements of the evaluation. Ms. Montgomery agreed with alignment, but stated that the Board will ultimately do what it feels is appropriate, with proper collaboration.

Ms. Anderson stated that she will work with Dr. Schottenstein on this language and bring another draft to next month’s Committee meeting for further discussion.

## **Treatment Provider Applications**

**Dr. Kakarala moved to recommend approval of the treatment provider applications from Lakeview Health Systems, LLC; and TriHealth/Bethesda Alcohol and Drug Treatment. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

### **Compliance Statistics**

Ms. Dorcy stated that there is nothing remarkable in this month's compliance statistics. The Compliance staff will continue to supply the Committee with these statistics, which Ms. Dorcy will also continue to review to identify any changes that are needed. Ms. Dorcy stated that the Compliance guidelines will be revised, including proposed changes to supervision which will ensure appropriate staffing to supervise the licensees under probation and identify red flags.

Ms. Montgomery stated that the first goal of Compliance is recognizing red flags and data focused on potential problems so the Board can better protect the public.

The meeting was adjourned at 9:14 a.m.

bt