State Medical Board of Ohio Meeting Minutes
July 8, 2020

Michael Schottenstein, M.D., President, called the video conference meeting to order at 10:19 a.m. with the following members present: Mark A. Bechtel, M.D., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Betty Montgomery; Sherry Johnson, D.O.; Jonathan Feibel, M.D.; and Harish Kakarala, M.D.

MINUTES REVIEW

Motion to approve the minutes of the June 10, 2020 Board meeting, as drafted:

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

The motion carried.

REPORTS AND RECOMMENDATIONS

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

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

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

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

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

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

Dr. Schottenstein stated that in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the disciplinary matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

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

Stephen N. Crowe, M.D.

Dr. Schottenstein directed the Board's attention to the matter of Stephen N. Crowe, M.D. Ms. Lee was the Hearing Examiner.

Dr. Schottenstein stated that objections to the Report and Recommendation and a request to address, have been made on Dr. Crowe's behalf. However, the objections and request to address were not filed within the Board's established deadlines for today's meeting. Therefore, the Board will vote on this matter.

Motion to accept the objections filed by Dr. Crowe for the Board's consideration, and to grant his request to address the Board:

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

The motion carried.

Dr. Schottenstein stated that five minutes will be allowed for Dr. Crowe's address.

Dr. Crowe apologized to the Board for the trouble he has caused. Dr. Crowe stated that he willingly accepts the recommendations of the Hearing Examiner. However, Dr. Crowe added that due to the coronavirus pandemic and the fact that he has a very small practice, he has literally been without an income for three months. Dr. Crowe asked for any leniency the Board could provide regarding the monetary penalty in the Proposed Order. Dr. Crowe stated that he understands what he did and he apologized again to the Board.

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

Ms. Pelphrey thanked the Board for hearing this important case in a timely manner. Dr. Crowe's medical license was immediately suspended due to being granting intervention in lieu of conviction. Ms. Pelphrey did not recall the Board ever having a case involving intervention in lieu of conviction that involved anything other than substance abuse, so it is important for the Board to recognize that courts can offer intervention in lieu of conviction for various reasons.

Ms. Pelphrey opined that the Hearing Examiner did a good job and she asked the Board to adopt the Report and Recommendation.

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

Motion	Dr. Johnson
2nd	Dr. Soin

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

Mr. Giacalone suggested that the Board consider amending the Proposed Order to No Further Action. Mr. Giacalone commented that as he reviewed this case, it seemed to him as if equity and common sense had been abandoned.

Mr. Giacalone observed that when Dr. Crowe discovered that his billing assistant was writing prescriptions in his name without his authorization, he called the police and the Board of Pharmacy. The billing assistant was later convicted of writing at least 60 illegal prescriptions. Following that conviction, the billing assistant brokered a deal with the prosecutor to testify against Dr. Crowe because he had written one prescription for Retin-A, an acne cream which is not a controlled substance or a drug of abuse, for his own use. Dr. Crowe made the mistake of putting the prescription in the billing assistant's name because she was going to the pharmacy and could pick it up for him. Dr. Crowe testified that he had not known that his actions were wrong.

Mr. Giacalone continued that Dr. Crowe faced felony charges because of his actions regarding the single prescription for an acne cream. Dr. Crowe plea bargained to a lesser charge which was still a fifth-degree felony and could have resulted in a jail sentence of six to twelve months. The court found Dr. Crowe eligible for intervention in lieu of treatment. Dr. Crowe was required to undergo at least one year of community control, follow assessment recommendations including continued mental health treatment, and undergo random drug testing. Mr. Giacalone commented that these conditions were imposed despite the fact that Dr. Crowe has no abuse or addiction issues.

Mr. Giacalone noted that Dr. Crowe told the truth about the acne cream. At the hearing, Dr. Crowe's attorney stated the following:

> I'll share something with you that is not of record, but it's -- it's the truth of the matter in that the prosecutor said to me, "You know, had he said, 'No, I never did that,' this whole thing would have went away." But he was honest. And then the pharmacy representative said, "Well, that's the violation." And here we are.

Mr. Giacalone opined that Dr. Crowe has suffered more than enough for his mistake and he saw no reason to add further punishment to what Dr. Crowe has already suffered at the hands of the legal system. Mr. Giacalone did not understand how Dr. Crowe was given this punishment by the court considering that his original goal had been to stop a serious crime being committed by his billing assistant, and that he admitted to committing a violation involving prescriptions for an acne cream, a violation that hurt no one. Mr. Giacalone doubted that Dr. Crowe will ever do this again. Mr. Giacalone opined that a Board Order of No Further Action may restore Dr. Crowe's faith in a system which imposed what Mr. Giacalone personally felt was an unnecessarily harsh penalty.

Ms. Montgomery agreed with Mr. Giacalone. Ms. Montgomery speculated that the prosecutors in Dr. Crowe's criminal case may have suspected that something else was going on in this situation. However, Ms. Montgomery opined that the court's sentence was a miscarriage of justice.

Motion to amend the Proposed Order to No Further Action:

Motion	Dr. Feibel
2nd	Ms. Montgomery

Dr. Feibel agreed with Mr. Giacalone and Ms. Montgomery, commenting that a message should be sent that the Medical Board feels that what the court did in this case was wrong, unfair, and unjust. Dr. Feibel was thankful that this case was brought to the Board expeditiously, but he felt that the Board investigator's time could have been spent better. Dr. Feibel asked that the Board staff who prioritize cases keep these comments in mind in the future.

Mr. Gonidakis agreed with the previous comments and questioned how this case came to be before the Board rather than being taken care of beforehand. Ms. Montgomery echoed this sentiment. Ms. Anderson responded that the case is before the Board due to Dr. Crowe's violation of Section 4731.22(B)(9), Ohio Revised Code.

Dr. Bechtel also agreed with the previous comments. Dr. Bechtel stated that dermatologists use Retin-A frequently and that other retinoids are currently available over-the-counter. Retin-A can also be obtained over-the-counter in other countries. Dr. Bechtel stated that Retin-A is not habit-forming and is not a scheduled drug. Rather, it is simply an acne cream that could potentially be obtained over-the-counter in the United States eventually. Based on these facts, Dr. Bechtel felt that a fine of $18,000 was very excessive.

The Board members had several questions regarding the fact that Dr. Crowe's medical license had been immediately suspended upon citation in May 2020, especially in light of other more serious cases in which the physician's license was not suspended upon citation. Ms. Anderson explained the differences between an immediate suspension and a summary suspension, which are based on different statutory authority. Dr. Crowe's license was subject to an immediate suspension due to Section 3719.121(C), Ohio Revised Code, which requires all licensing boards to immediately suspend a license upon notification that the licensee has been convicted of, pleaded guilty to, granted intervention in lieu of conviction of, or had a finding of guilt by a jury or court of a drug-related offense. In this case, Dr. Crowe's license had been immediately suspended due to his conviction for Illegal Processing of Drug Documents.

Dr. Soin agreed with the proposed amendment of No Further Action. However, Dr. Soin stated that Dr. Crowe made several errors in this matter and he hoped that Dr. Crowe and other physicians can learn from. Noting that Dr. Crowe's assistant had written at least 60 illegal prescriptions using Dr. Crowe's prescription pad, Dr. Soin stated that Dr. Crowe should have been more vigilant with his prescription pads. For example, Dr. Crowe should have had an inventory of prescription pads and should have known where they were at all times. Dr. Soin further opined that Dr. Crowe should not be using prescription pads in this day of electronic medical records and two-factor identification, which can prevent prescription drug fraud of this nature. Dr. Soin understood that Dr. Crowe was a victim and the prescription pads had been stolen from him, but he felt that Dr. Crowe should have had control mechanisms to prevent such theft in the first place.

Dr. Soin added that Dr. Crowe exercised poor judgment when he deliberately wrote a prescription under someone else's name, even for a non-controlled substance. Dr. Soin opined that though Dr. Crowe has pleaded ignorance, he should have known that was wrong.

Dr. Soin stated that despite the inappropriate behavior he has pointed out, he also feels that Dr. Crowe has suffered severe consequences that have affected his life and livelihood. Dr. Soin opined that Dr. Crowe will not appear before the Board again and that Dr. Crowe does not represent a risk of harm to the public at this time. Therefore, Dr. Soin supported an order of No Further Action.

Dr. Schottenstein stated that he also supports the proposed amendment of No Further Action.

Vote on Mr. Giacalone's motion to amend:

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

The motion carried.

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

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

The motion carried.

Kenneth Hanover, M.D.

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

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

Ms. Snyder commented that it is unusual for the State to request to address the Board before the respondent, but she felt this is an exceptional case. Ms. Snyder stated that this case involves a drug-addicted anesthesiologist, Dr. Hanover, with a proven pattern of stealing drugs from the operating room (OR) to feed his addiction. In the present case, a very credible eye-witness saw Dr. Hanover do this again. Ms. Snyder stated that as a patient, she personally cannot imagine many things more terrifying than her anesthesiologist huffing drugs and falling asleep while her life is literally in his hands. That is exactly what Katie Grace, the x-ray technician in the OR with Dr. Hanover, saw him do on February 12, 2020.

Ms. Snyder continued that Ms. Grace has consistently and credibly stated that she saw Dr. Hanover put a piece of gauze underneath a leaking sevoflurane (an anesthetic) machine, put it to his mask and inhale deeply multiple times until he passed out. Ms. Grace then appropriately reported the incident. Ms. Grace was standing six feet away from Dr. Hanover and she never saw him open a packet of alcohol pads, put it on a piece of gauze, and put it to his face as he claims.

Ms. Snyder agreed with the Hearing Examiner that this case comes down to credibility, stating that there is no "smoking gun" in this case and no commercially-available test for sevoflurane in one's system. Consequently, the Board will have to decide if it believes Ms. Grace or if it believes Dr. Hanover. Ms. Snyder asked the Board to keep in mind that Ms. Grace has no axe to grind with Dr. Hanover and, in fact, had never met him before that day in the OR and she did not know that Dr. Hanover had previously had a drug problem. Ms. Snyder questioned what motive Ms. Grace would have to lie about this incident. Ms. Snyder stated that, in fact, Ms. Grace had every reason to not say anything and look the other way because, as an x-ray technician making a serious allegation against a physician and accusing the physician of wrong-doing in his work, she had a lot to risk. Ms. Snyder appreciated Ms. Grace's courage to do the right thing.

Ms. Snyder stated that allowing a physician to continue practicing as an anesthesiologist after knowing what the Board knows will negatively affect the public's faith in the medical profession. Ms. Snyder argued that Dr.

Hanover's past criminal charges for stealing drugs from the OR, combined with Ms. Grace's eye-witness account that he did so again on February 12, 2020, is enough to find that Dr. Hanover relapsed. The Board must determine based on the hearing record whether Dr. Hanover used sevoflurane during the surgery, noting that a determination that Dr. Hanover only had a significant lapse of judgement would not constitute evidence of a relapse.

Ms. Snyder stated that what makes Dr. Hanover's relapse truly dangerous is that he does not understand his addiction and he is in complete denial. Dr. Hanover claimed during his hearing that he made a rational decision to risk his entire career to steal drugs from the OR at his former employer to treat his back pain, rather than simply take an hour off work to see a pain medicine specialist. Ms. Snyder questioned who would rationally decide to commit multiple felonies and jeopardize one's profession just to avoid going to the doctor.

Ms. Snyder stated that the Board cannot risk allowing Dr. Hanover to practice anesthesiology again. Ms. Snyder asked that the Board to either adopt the Proposed Order to permanently revoke Dr. Hanover's Ohio medical license, or suspend his license and impose a permanent restriction preventing Dr. Hanover from practicing anesthesiology. Ms. Snyder stated that Dr. Hanover has shown that he cannot be trusted to be around anesthesia medications.

Dr. Schottenstein asked if Dr. Hanover or his counsel wished to respond. Dr. Hanover's counsel, Mr. Tapocsi, stated that he wished to respond.

Mr. Tapocsi stated that he will reserve his comments until the end of the five-minute allotment, and turn the floor over to Dr. Hanover.

Dr. Hanover stated that he will not readdress the events that transpired prior to this incident coming to the Board's attention. However, Dr. Hanover stated that in relation to the most egregious error he has ever made in his professional or personal life, he continues to assume responsibility for his actions. Dr. Hanover stated that he continues therapy through weekly aftercare meetings as well as caduceus and Alcoholics Anonymous (AA) meetings. Dr. Hanover added that he continues to work his recovery program with a sponsor and he has complied with the terms of his Consent Agreement. Dr. Hanover indicated that he has taken time to reflect on the character defect of self-importance that initially led him to justify self-medicating for his hip and back pain, culminating in the need to confront his resulting addiction.

Dr. Hanover continued that through his work with his recovery program, he has gained invaluable insight into understanding the disease of addiction. Dr. Hanover was also incredibly humbled by the fact that he was capable of becoming, and indeed had become, an addict. The lack of trust and the jeopardy Dr. Hanover had placed his family in as a result of his addiction was at times an overwhelming burden to bear. Dr. Hanover stated that achieving and maintaining sobriety has allowed him to change and slowly repair some of that damage. After a long year of seeking employment during which he was fully candid about his addiction, Dr. Hanover was finally able to secure a position at Madison Health. Dr. Hanover was incredibly grateful for this opportunity to feel useful again in a career that he had devoted my life to, but what mattered most to him was the healing that was taking place in his family, his marriage, and himself.

Dr. Hanover stated that on the morning of February 12, 2020, while having been ill for the preceding days, his only thought was to not have his patient's surgery delayed or to let down the people who had given him a second chance by calling in sick. In retrospect, Dr. Hanover realized that his failure to prioritize his own well-being jeopardized that of the patient. Dr. Hanover stated that if given the chance, he will never repeat this mistake.

Regarding the question of whether he had relapsed in the OR by using a medication such as sevoflurane, which clearly would have put him to sleep for a significant period of time, Dr. Hanover stated that he can honestly and emphatically say he did not. Dr. Hanover stated that upon realizing how his nodding off for a minute or two may have been interpreted, he immediately decided to voluntarily submit a urine sample for

screening that day, has he had been advised to do by his fellow caduceus members should the question ever arise. Dr. Hanover commented that he considers his sobriety paramount to anything else in his life.

Dr. Hanover stated that two days after this incident, he freely admitted to investigators that he had taken two tablets of Mucinex D over a period of two days to alleviate congestion so that he could make use of his CPAP machine. Dr. Hanover stated that since that time, he has become ware that his use of Mucinex D was a violation of his Consent Agreement. Dr. Hanover stated that he will never again take Mucinex D without first consulting with his primary care provider.

Dr. Hanover stated that during the five months since that day, while being unemployed and enduring the stress this event has caused, he has renewed his commitment to working his program. Dr. Hanover stated that he can honestly say that his sobriety continues to be the primary goal in his day-to-day life. Dr. Hanover reiterated that he has never inhaled sevoflurane, either in February 2020 or any other time, and he sobriety date remains August 20, 2018.

Mr. Tapocsi stated that this is a common-sense case involving a physician without any of the red flags this Board sees for relapse such as failure to appear for quarterly meetings or having problems at home or work. Rather, this case involves a physician who was simply under the weather, as indicated not only by Dr. Hanover's testimony but also by the written words of his AA sponsor and the State's own witness, Nurse Shingler. Mr. Tapocsi stated that what Dr. Hanover did is go to work while sick, something everyone has done. Mr. Tapocsi agreed that Dr. Hanover should not have gone to work sick, nor should he have taken Mucinex D or utilized alcohol pads in an effort to reduce his nausea. Mr. Tapocsi stated that Dr. Hanover had only tried to treat himself for a simple sickness or simple flu.

Mr. Tapocsi stated that the appropriate resolution to this case is the reinstatement of Dr. Hanover's medical license under the terms of his Step II Consent Agreement. Mr. Tapocsi commented that Dr. Hanover has been suspended for four months for a technical violation of his Agreement, and Dr. Hanover is ready to return to practice and continue to abide by the terms of his Agreement.

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

Motion	Dr. Johnson
2nd	Dr. Soin

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

Dr. Schottenstein noted that the Hearing Examiner's Proposed Order would permanently revoke Dr. Hanover's medical license. Dr. Schottenstein opined that if the Board feels there is a preponderance of evidence to show that Dr. Hanover is guilty of what has been alleged, then permanent revocation is appropriate because of the egregiousness of the behavior. Dr. Hanover's counsel made many arguments in his favor, including the following:

- Dr. Hanover had been ill, which has been corroborated.
- Dr. Hanover's urine sample submitted that day was negative.
- Dr. Hanover woke up quickly after passing out in the OR, and neither slurred speech nor dilated pupils were noted.
- Dr. Hanover finished the procedure after a 15 to 20 minute break.
- The addictionologist consulted by Dr. Hanover felt the allegation of sevoflurane abuse during the procedure was highly unlikely.

- Another anesthesiologist, Dr. Chu, who had picked the gauze used by Dr. Hanover out of the trash and smelled it, wrote a letter that appeared to be in support of Dr. Hanover though much of it was redacted.

Dr. Schottenstein opined that all the points made by the defense counsel are compelling, but they do not disprove the allegation, they merely cast doubt on it. By contrast, Ms. Grace testified that at close proximity, she saw liquid dripping from the underside of a vaporizer onto a piece of gauze, and she then saw Dr. Hanover place that gauze up to his mask 12 to 24 times. Ms. Grace further testified that Dr. Hanover behaved in what seemed to her in a furtive manner, as if he was trying to be stealthy.

Dr. Schottenstein stated that Ms. Grace's testimony seems unimpeachable to him. Ms. Grace had a close-up, unobstructed view of Dr. Hanover's behavior and of the liquid dripping from the machine onto the gauze. Though the addictionologist opined that Ms. Grace had misconstrued what she saw, Dr. Schottenstein questioned how one could misconstrue that.

Dr. Schottenstein stated that he made a real effort to give Dr. Hanover the benefit of the doubt and take heed of the concerns raised by the defense counsel. Dr. Schottenstein added that while it is compelling that Dr. Hanover has a history of abuse, that is not proof that he engaged in this behavior. However, Dr. Schottenstein found Ms. Grace's testimony to be credible, and that was sufficient to constitute a preponderance of evidence that Dr. Hanover abused sevoflurane in the OR during the procedure. Therefore, Dr. Schottenstein agreed with the Hearing Examiner's Proposed Order.

Dr. Soin stated that as an anesthesiologist, he would like to make some points about this case. From a technical aspect, the sevoflurane cannister must be refilled with the liquid which will be vaporized into a gas that the patient breathes in. Since there is a valve for refilling, it is possible for the machine to leak sevoflurane. Dr. Soin stated that because sevoflurane has a distinctive odor, he would expect others in the OR to notice if the machine was leaking significantly. More importantly, Dr. Soin stated that the anesthesiologist should do a machine check before the procedure, including checking the ventilator and cannisters, and it would be poor medical practice to allow a leaking machine to be used.

Dr. Soin opined that it is questionable that something like that would happen and not be recognized by others in the OR. However, it is very concerning considering Dr. Hanover's past history. Dr. Soin stated that anesthesiology is different from other fields because an anesthesiologist is often alone with a patient who is critically asleep and it is a very critical time, similar to taking care of an ICU patient. Dr. Soin stated that considering this physician's history, he would feel very uncomfortable having Dr. Hanover provide anesthesia for himself or anyone he knows. Dr. Soin supported the Proposed Order for permanent revocation.

Ms. Montgomery asked what kind of experience an addicted person would have from sniffing sevoflurane. Dr. Soin replied that sevoflurane would not give someone a "high" like ketamine or fentanyl, which Dr. Hanover had abused in the past. Dr. Soin pointed out that some people enjoy inhaling things like paint thinner or gasoline. Dr. Soin explained that sevoflurane is a derivative of ether and at the point of inhaling the drug, just before passing out, there is a feeling that some have described a euphoria. Dr. Soin state that may be a sensation that someone with an addictive personality may be seeking if access to other drugs is limited. Dr. Soin noted that the Board has seen at least one other case involving a physician with a history of substance abuse abusing sevoflurane. Dr. Soin acknowledged that sevoflurane is not a very common drug of abuse.

Ms. Montgomery opined that Ms. Grace was truthful in her testimony, stating that Ms. Grace showed great courage and did exactly what the public wants professionals to do. However, it is possible that Ms. Grace misperceived what she saw. Ms. Montgomery questioned why someone would do this in an OR with ten other people, especially when the results of sniffing the drug may put one to sleep. Ms. Montgomery was somewhat alarmed that someone could walk into an OR with flu and think that is acceptable. Ms. Montgomery stated that Dr. Hanover's decision to enter the OR while sick put his patient at risk and requires some kind of punishment.

Ms. Montgomery opined that the State did a great job with its presentation, but she found the evidence to be questionable. Ms. Montgomery observed that Ms. Grace had seen Dr. Hanover sniffing something on a piece of gauze where Dr. Hanover said he put his alcohol pad. Ms. Montgomery also wondered if the dripping from the sevoflurane machine that Ms. Grace witnessed could have been condensation, noting that it was never asked at hearing if the machine's vaporization process could produce condensation. Ms. Montgomery further noted the following observations:

- Dr. Hanover could have fallen asleep or passed out from not having slept well for several days due to his illness.
- Dr. Hanover was immediately cognizant upon being tapped on the shoulder.
- There were ten people in the room at the time of the alleged incident.
- Dr. Hanover did not have dilated eyes.
- No one reported the odor of sevoflurane in the room.

Ms. Montgomery stated that people who pursued this matter have good intentions, calling Ms. Grace a "hero." However, Ms. Montgomery was not convinced that it had been proven that Dr. Hanover had been engaged in abusing a drug in front of everyone. Ms. Montgomery opined that, while Dr. Hanover's bad judgment in entering the OR while sick requires punishment, these circumstances do not warrant permanent revocation.

Dr. Feibel, speaking as someone who operates in an OR on a regular basis, stated that there are often many people in an OR, but there is very little focus on the anesthesiologist. An anesthesiologist, unlike a surgeon, would not expect that someone was watching them all the time during a procedure. Dr. Feibel opined that anesthesiologists are traditionally able to abuse certain drugs because, for the most part, no one is watching them. Dr. Feibel was also troubled that Dr. Hanover submitted a urine sample right away, noting that anesthesiologists, of all medical professionals, would know that sevoflurane would not be detected in a urine sample. Dr. Feibel stated that very few drugs are undetectable in a urine sample, and this may partly explain why Dr. Hanover chose to use sevoflurane. Dr. Feibel also found the testimony about Dr. Hanover's behavior to be exceedingly odd, and he believed Ms. Grace's testimony more than Dr. Hanover's. Dr. Feibel stated that he will support the Proposed Order of permanent revocation.

Mr. Giacalone agreed that Ms. Grace was truthful in her testimony, but he was bothered by the many inconsistencies in this case. Mr. Giacalone was puzzled that no one noticed the distinctive odor of sevoflurane in the OR, not even Dr. Hanover's associate Dr. Chu who had smelled the gauze that Dr. Hanover had discarded. However, Dr. Hanover's explanation of having merely sniffed alcohol pads to reduce his nausea is suspect because there is no mention of used or discarded alcohol pads afterwards. Mr. Giacalone was uncertain if he could support permanent revocation due to these inconsistencies, though he may be willing to accept that. Mr. Giacalone suggested that another possible order could be a suspension and further probation with additional monitoring.

Regarding sevoflurane, Dr. Soin stated that it is a great anesthetic because the patient breathes it in and it is absorbed through the lungs, and it is then exhaled when the patient breathes out. Dr. Soin stated that Dr. Hanover woke up so quickly after the sevoflurane was discontinued because it is excreted by exhalation, not renally. This is why a test for sevoflurane would be very difficult.

Dr. Soin stated that this situation for an anesthesiologist if different from other specialists, such as primary care physicians. While no one wants to see a primary care physician impaired, if a primary care physician were to become impaired for 15 minutes or take a nap, it is doubtful that anyone would die. If an anesthesiologist does so, the patient's life could be at serious risk. Dr. Soin asked the Board members to consider whether they would want Dr. Hanover to be the anesthesiologist for them or their family member; if the answer is "no," Dr. Soin felt that should indicate how the Board member should vote.

Dr. Kakarala agreed with Dr. Soin's comments, stating that the issue of Dr. Hanover's medical specialty cannot be discounted. Dr. Kakarala stated that OR patients are completely dependent on the anesthesiologist to oxygenate them, as well as monitor hemodynamics, blood pressure, and a host of other things. Large hemodynamic changes can occur in minutes and a patient could be permanently disabled or even die if the anesthesiologist is not at their full faculties.

Ms. Montgomery stated that Dr. Hanover may have sought the immediate urine test because he may have been uncertain at that point of what he may be accused of, noting that he could have been suspected of passing out due to alcohol or another drug. Dr. Kakarala responded that some people with substance abuse problems purposely seek out drugs that cannot be easily tested. Ms. Montgomery noted that it is still uncertain if there it was condensation or anesthetic dripping on the gauze, nor was there any indication of used alcohol pads because that question was not asked.

Dr. Feibel commented that he has been in many OR's and he has never heard of an anesthesiologist falling asleep in the OR while taking care of a patient, no matter the situation. Dr. Feibel stated that to do so violates the standard of care. Dr. Feibel reiterated that Ms. Grace has emphatically stated that Dr. Hanover put a piece of gauze to his nose. Dr. Feibel stated that alcohol pads are not gauze and look nothing like gauze. Dr. Feibel stated that if one wanted to put an alcohol pad to one's nose, there is no reason to put it in gauze. Dr. Feibel opined that there are so many inconsistencies between Ms. Grace's testimony and Dr. Hanover's testimony that one would have to think Ms. Grace is lying in order to come to another conclusion. Mr. Giacalone agreed that Ms. Grace did not lie, but stated that Dr. Hanover could have put a number of alcohol pads in gauze so there would be additional alcohol to inhale.

Dr. Schottenstein reiterated that Ms. Grace saw liquid drop from the bottom of the sevoflurane machine onto a piece of gauze, and she then observed Dr. Hanover picking up that same piece of gauze and bringing it to his face one or two dozen times. Dr. Schottenstein did not believe the liquid was condensation because there is no reason for someone to bring gauze with only water to their face, and it is not certain that the machine produces condensation.

Dr. Soin stated that he appreciates the comments of the attorney members of the Board. Dr. Soin wanted to be sure the Board members are advocating for the public and considering whether they would have Dr. Hanover take care of them or someone they love. Dr. Soin stated that he would agree with giving Dr. Hanover the benefit of the doubt if this was an isolated incident. Dr. Soin observed that Dr. Hanover abused ketamine and fentanyl for a number of years and had lacked awareness of his situation. Dr. Soin supported permanent revocation, but stated that if the Board choses a lesser sanction then it should at least permanently restrict Dr. Hanover from ever providing anesthesia. Dr. Soin opined that it would not be safe to allow Dr. Hanover to continue in the field of anesthesiology. Dr. Soin reiterated that he would not trust any of his family or friends with a physician with these significant issues.

Mr. Giacalone commented that no Board member would advocate retaining someone in practice who they felt was problem. However, Mr. Giacalone questioned if the evidence is sufficient to support permanent revocation. Mr. Giacalone stated that of all the people in the OR, only Ms. Grace observed the dripping fluid from the machine. Ms. Grace brought this to the attention of the nurse, but the nurse did not see the dripping fluid. Dr. Chu also came into the OR, smelled the gauze, and did not see any dripping fluid. Mr. Giacalone believed that Ms. Grace was truthful, but wondered if she could have misinterpreted what she saw. Mr. Giacalone stated that this is not a clear-cut case and there are many inconsistencies, and he was therefore uncertain if he could support permanent revocation.

Dr. Johnson stated that in the OR, alcohol pads, which are quite small, are often opened so that the patient can inhale it to prevent nausea. This is very common in obstetrics after anesthesia is administered. However, only one or two alcohol pads are used for this purpose. Dr. Johnson stated that the alcohol packets are so small it would be difficult to open them, put them in gauze, and hold that up. Dr. Johnson saw no reason for someone to utilize multiple alcohol pads with gauze to prevent nausea. Dr. Johnson stated that if someone is using alcohol pads to prevent nausea, one usually only needs one or two.

Dr. Johnson agreed with Dr. Feibel's comments. In the OR, the majority of the staff is focused on the patient and the surgeon, so it would be easy for an anesthesiologist to avoid being observed by others in the OR. Dr. Johnson added that Dr. Hanover exercised very poor judgement by taking care of a patient in the OR while ill. Dr. Johnson commented that in her personal experience as a surgeon, she has at times felt ill and had left the room to allow another surgeon to take over the patient's care, because the ultimate goal is to protect the patient.

Vote on Dr. Johnson's motion to approve and confirm:

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

The motion carried.

EXECUTIVE SESSION

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

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

The motion carried.

The Board went into Executive Session at 11:32 a.m. and returned to public session at 12:50 a.m.

DISCUSSION ON WAIVER OF CONFIDENTIALITY

Dr. Schottenstein stated that under the case law interpreting Section 4731.22(F)(5), several parties have confidentiality rights in the Board's investigative files, including patients, complainants, the licensee, and the

Board itself. This confidentiality protects sensitive patient information from being inappropriately released to the public. In January 2020, the Board was sued in the Court of Claims by Randall Krawcheck, D.O. Dr. Krawcheck signed a permanent surrender which was ratified by the Board in January 2018, which is the basis of the lawsuit.

Because the Board's investigation of Dr. Krawcheck is at issue in the lawsuit, it may be necessary to disclose some investigatory information as part of the Board's defense. Counsel for the Board is seeking a waiver of the Board's confidentiality in the investigative file involving Dr. Krawcheck for this purpose. The confidentiality rights of all other parties whose information is in the file will remain fully protected.

Motion to waive the Medical Board's confidentiality interest in the investigative materials involving Randall Krawcheck, D.O.:

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

The motion carried.

SETTLEMENT AGREEMENTS

Michael M. Alexander, D.O.

Motion to ratify the proposed Permanent Surrender with Michael M. Alexander, D.O.:

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

The motion carried.

Nancy L. Helldobler, R.C.P.

Motion to ratify the proposed Permanent Surrender with Nancy L. Helldobler, R.C.P.:

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

The motion carried.

Alexander William Kamp, L.M.T.

Motion to ratify the proposed Permanent Surrender with Alexander William Kamp, L.M.T.:

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

The motion carried.

Yoshiro Takaoka, M.D.

Motion to ratify the proposed Permanent Surrender with Yoshiro Takaoka, M.D.:

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

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

The motion carried.

Hyun Bae Kim, D.O.

Motion to ratify the proposed Consent Agreement with Hyun Bae Kim, D.O.:

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

The motion carried.

Jon Patrick Ryan, D.O.

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

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

The motion carried.

Eugenio G. Galindo, M.D.

Motion to ratify the proposed Consent Agreement with Eugenio G. Galindo, M.D.:

Motion	Dr. Johnson
2nd	Dr. Kakarala

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

The motion carried.

Matthew Dale Bauer, D.O.

Motion to ratify the proposed Step I Consent Agreement with Matthew Dale Bauer, D.O.:

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

The motion carried.

Vincent Lombardi, M.D.

Motion to ratify the proposed Consent Agreement with Vincent Lombardi, M.D.:

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

The motion carried.

Manish Bolina, M.D.

Motion to ratify the proposed Permanent Surrender with Manish Bolina, M.D.:

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

The motion carried.

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

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

1. Ho D. Anh, M.D.: Based on action taken in March 2020 by the Medical Board of California.
2. Roozbeh Badii, M.D.: Based on an April 2020 action by the Maryland State Board of Physicians.
3. Daniel R. Canchola, M.D.: Based on actions by the Texas Medical Board, the Virginia Board of Medicine, the Pennsylvania State Board of Medicine, and the Illinois Department of Financial and Professional Regulation, related to allegations of defrauding Medicare.
4. Melissa M. Cyr, D.O.: Based on failure to cooperate in a Board investigation.
5. Ted W. Grace, M.D., M.P.H.: Based on failure to report Dr. Richard Strauss at the Ohio State University in the 1990's; and a false statement related to the practice of medicine.
6. Jong W. Kim, M.D.: Based on actions by the South Carolina Board of Medical Examiners, the North Carolina Medical Board, the Pennsylvania Board of Medicine, and the Wisconsin Medical Examining Board regarding prescribing.
7. Ryan Reed Lee: To be issued to an applicant for a massage therapist license, based on a recent felony conviction.
8. Mahmood Yoonessi, M.D.: To be issued to an applicant for restoration of an Ohio medical license that lapsed in 1976, based on multiple actions by the Medical Board of California and the State of New York, Department of Health, Board for Professional Medical Conduct.
9. Jeffrey A. Jarrett, M.D.: Based on alleged violations of the minimal standards of care related to prescribing involving 11 patients.
10. Nicholas V. Rimedio, D.O.: Based on alleged violations of the minimal standards of care regarding prescribing involving 11 patients, and not checking the Ohio Automated Rx Reporting System (OARRS).
11. John J. Vargo, D.O.: Based on alleged violations of the minimal standards of care regarding prescribing involving nine patients.

Motion to approve and issue proposed Citations #1 through #8:

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

The motion carried.

Motion to approve and issue proposed Citations #'s 9 through 11:

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

The motion carried.

OPERATIONS REPORT

Open Complaints Report: Ms. Loucka briefly reviewed the format for the new Open Complaints Report, which will be used as a daily management tool to ensure that complaints are handled in a timely and substantive way with quality outcomes. Benchmarks will be created to identify the average time expected or each step. These timelines will be tightened as the process moves forward. Past citations and settlement agreements will be reviewed and the role of the staff will be examined in each step to determine what changes would be beneficial. The Open Complaints Report will become part of the Board's Operations Report.

Human Resources: Ms. Loucka thanked the staff for continuing to work from home during the COVID-19 pandemic. The staff members are doing a great job for five months without the tools they would normally use in the office. Ms. Loucka stated that work has been challenging at times, but the staff continues to do a phenomenal job. Ms. Loucka stated that there is still no projected return-to-work date.

IT Plan: Ms. Loucka stated that an IT plan is being developed for the identification of new equipment to purchase and equipment that does not need to be purchased.

Strategic Plan: Ms. Loucka stated that an overall strategic plan will be developed and brought to the Board at the Board Retreat. Ms. Loucka stated that the time is right for a fresh strategic plan with the right mission, the right goals, and the right milestones along the way so that expectations can be set.

Case Management: Ms. Loucka stated that the Operations report includes the number of open and closed complaints for the previous month. The staff is working on turning the report into trend numbers that will indicate what direction things are moving in, though the Board's large dataset can make the project difficult.

Dr. Schottenstein appreciated Ms. Loucka's goals, especially the change in case management. Dr. Schottenstein asked if the Board's staff has the adequate tools to implement these changes. Ms. Loucka replied that the Board needs a case management system with a docket-type system. Due to budget constraints, such a system will probably not be acquired this fiscal year. However, the staff is involved in a day-to-day process of building habits around putting things into what would be considered a docket system. In this way, there will be clean, consistent data to enter into the new system once it is acquired. Most importantly, consistent habits are being created among the staff so that everyone is working complaints in the same way.

Ms. Montgomery suggested that the report and memo templates be reviewed so that the information received by the Board members is consistent across cases. Dr. Schottenstein agreed and also recommended that memos that accompany proposed settlement agreements be expanded to include information addressing concerns that are expressed by Board members across meetings. Ms. Loucka stated that the staff will discuss building consistent practices and providing the same information across cases. Ms. Loucka wanted the staff to exercise professional discretion in the substantive parts of their jobs, but also work on presenting things in a methodical way so that the Board receives the information it needs consistently.

REPORTS BY ASSIGNED COMMITTEES

Medical Marijuana Expert Review Committee Report

Minutes Review

Motion to approve the June 8, 2020 Medical Marijuana Committee minutes as drafted:

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

The motion carried.

Petitions for New Qualifying Conditions

Dr. Bechtel stated that from November 1 through December 31, 2019, the medical board received 28 petitions for potential new qualifying conditions. The petitions for three qualifying conditions were moved forward for further review and discussion: Autism Spectrum Disorder, Anxiety Disorder, and Cachexia.

Dr. Bechtel stated that the Committee had wanted additional input on cachexia, as this condition had not previously been discussed by the Committee. The Board's expert, Dr. Rowland-Seymour, submitted a written report, which all Board members have for review. During the Committee meeting, Dr. Rowland-Seymour expressed concern about the quality of the products and the mechanism involved in development of the medical marijuana dispensaries. Dr. Rowland-Seymour's initial concerns were addressed with more information about Ohio's Medical Marijuana Control Program, and she seemed satisfied by that. The Committee supported adding cachexia as a qualifying condition.

Dr. Bechtel stated that the other two conditions under consideration had come before the board previously, but there was new scientific information submitted this year. The Committee reviewed this new information, but also reflected on the previous discussion benefits versus risks regarding Autism and Anxiety. Although there was new information, the Committee felt that it still did not present compelling evidence that medical marijuana could provide better outcomes with less consequence than current medical treatments.

Dr. Schottenstein opined that the condition of cachexia is as compelling of a case for a new qualifying condition that the Board is likely to receive. Medical Marijuana is already approved in Ohio for cachexia-related conditions such as cancer and AIDS; the FDA has approved dronabinol, a prescription synthetic THC, to treat cachexia; medical marijuana is arguably less likely to cause concerning side effects than dronabinol because it is less potent; Medical marijuana is less expensive than dronabinol; and there is good quality assurance regarding the marijuana product.

Dr. Schottenstein added that cachexia is a devastating syndrome for patients and their families. Poor appetite is a very real qualify of life issue, so one could make a case that increasing appetite of a patient with this condition is beneficial, especially from mental health standpoint because eating is a source of enjoyment for patients and a means of socializing with family and friends. People socially isolate when they cannot eat.

Dr. Schottenstein continued that the studies presented to the Committee regarding autism and anxiety were not substantially different from what was seen last year. The Committee continues to have the same concerns about lack of demonstrated efficacy and potential for substantial side-effects. Dr. Schottenstein stated that he intends to vote to approve the petition for cachexia and to deny the petitions for anxiety and autism.

Motion to approve the petition for cachexia and officially add it as a qualifying condition for the Ohio Medical Marijuana Control Program:

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

The motion carried.

Motion to reject the petitions for Autism Spectrum Disorder and Anxiety Disorder:

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

The motion carried.

Dr. Bechtel stated that the staff will work with the Ohio Board of Pharmacy to add cachexia to the Patient and Caregiver Registry so that physicians with a Certificate to Recommend can select cachexia as a qualifying condition in the system.

Dr. Bechtel commented that the Board will again be accepting petitions for new qualifying conditions November 1 through December 31 of this year. Previously rejected conditions may be considered again as long as the petition includes new scientific information. The Board will also vote in the Fall to set the petition window for 2021.

Sexual Misconduct Committee Report

Dr. Schottenstein stated that the Sexual Misconduct Committee met this morning at 8:00 a.m. The Board is now 82% through the Governor's Working Group's tasks and 75% through the historical case review. Dr. Schottenstein thanked the staff for its hard work on this project. The Committee reviewed the June 16 presentation that had been given to the Governor's Working Group, which had been well-received by the Group.

Dr. Schottenstein stated that, as pointed out by Ms. Loucka earlier today, the staff is not simply checking off these action items and moving on to the next. Rather, this is an ongoing project, especially in terms of the culture work that needs to take place at the Board. The Board had begun to reach out to the law enforcement community, but that effort was derailed when the COVID-19 pandemic imposed the requirement for more social isolation. It is hoped that these efforts can resume in the near future.

The staff continues to work on draft legislative proposals not related to 473122(F)(5), Ohio Revised Code. The legislative proposals will probably be submitted by the end of 2020 or early 2021. Dr. Schottenstein referred the Board members to the minutes of the Committee's meeting for the specifics of those proposals.

Policy Committee Report

Comments Received from Common Sense Initiative

Ms. Anderson related the Policy Committee's recommendation that she and Dr. Johnson work on addressing the comments received from the Ohio Osteopathic Association and the American Osteopathic Association, and also to correct some technical issues in the rule. The Committee also recommended making no changes to the Duty to Report CME rule which was recommended by the Governor's Working Group.

Motion to approve the recommendations of the Policy Committee:

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

The motion carried.

Telehealth

Dr. Soin stated that the telehealth legislation will be a major agenda item for the Policy Committee and will be discussed at each month meeting for the foreseeable future. At the same time, it was suggested that a separate "subcommittee" be formed to review this matter and provide direction for the staff between the monthly Board and Committee meetings. Dr. Schottenstein, Dr. Bechtel, Dr. Soin, and Dr. Feibel expressed interest in serving on the new committee. Dr. Schottenstein made the appointments accordingly.

Legislative Update

Dr. Soin stated that many proactive changes are being made in relation to the legislative update, in response to concerns expressed at last month's meeting. A memo has been made available to Board members outlining the changes to the legislative updating process. Dr. Soin asked Ms. Reardon to briefly explain the changes.

Ms. Reardon explained that the changes are designed to provide more detail and to communicate with the Board members in a consistent manner. There will be a boilerplate-type memo so that every time a Board member opens it, the member will know what it is and what to expect. There will be an effort to refocus and realign so that the staff is not only communicating with the Board members in an appropriate manner, but the staff is also getting information back from the Board members to enable the staff to be strong when they go to the legislature to express the Board's opinion, and to be sure the staff is protecting the Board all its licensees.

House Bill 606

Ms. Reardon stated that this bill, the Civil Immunity Bill, expands the immunity granted to health care providers and businesses during the healthcare pandemic, from March 9, 2020, to December 31, 2020. The bill also expands immunity from professional disciplinary action for health care providers that provide health care services because of, or in response to, a disaster emergency. This legislation was voted out of the Senate Judiciary Committee and the full Senate last week with four amendments. The Senate President and the House Speaker have both stated publicly that they believe the House will accept the Senate's changes because they were not fundamental changes. The bill includes an emergency clause making it effective the date it is signed into law by the Governor.

Ms. Reardon continued that she spoke to a high-ranking caucus policy staff member last week, and that staff member indicated that the House will come back early to concur on legislation. However, this is a continuously changing environment and these circumstances may change. The staff will stay on top of any potential changes to this bill.

Dr. Schottenstein asked if there was rule-making authority under House Bill 606. Mr. Smith replied that the bill immunizes health care providers for the time period indicated and he did not believe the bill included rule-making authority. Dr. Schottenstein noted that the bill includes some exceptions. Mr. Smith stated that the bill would not provide immunity in cases of gross negligence, as it is defined in the bill. Dr. Schottenstein expressed concern that the language is very broad and could be used as a shield, even in cases not directly related to the emergency. Ms. Montgomery agreed, stating that it could eviscerate the Board's standard of care if the Board does not weigh in on it.

Interstate Medical Licensure Compact

Ms. Reardon stated that the Board received a request last week from a coalition of medical facilities and associations asking the Board to consider joining the Interstate Medical Licensure Compact. Staff is reviewing the proposal and both the request and staff comments will be provided to the Board as soon as possible. Dr. Saferin commented that the Board had considered this matter several years ago and decided against joining the compact. Dr. Saferin asked if anything has changed to warrant reconsideration. Ms. Reardon was not familiar with the Board's previous discussions, but she will review past documentation and provide it to the Board so it can make a decision.

Finance Committee Report

Fiscal Update

Dr. Schottenstein stated that the Board's review for May 2020 was $542,139, compared to the May 2019 revenue of $1,078,533. The Board continues to experience a shortfall in revenue based on the delay of license renewal deadlines. The Board will probably be about $1,000,000 under the projected revenue for Fiscal Year 2020 as a result of the license renewal deadlines. Email communications have been sent to licensees with renewal deadlines in the March to September range about the benefits of renewing now, but this shortfall likely be mostly made up in Fiscal Year 2021. Dr. Schottenstein stated that May 2020 was also a higher spending month due the occurrence of three pay periods in the month.

Dr. Schottenstein continued that the Board has a net revenue of $505,082 for Fiscal Year 2020 to date. Although the Board's cash balance went down substantially, it is still health at $5,093,861. Dr. Schottenstein noted that $65,800 remains to be encumbered for the historical case review. That is likely to spend down to approximately $30,000 by the end of the fiscal year, and that will simply re-encumbered for 2021. This amount should get the Board through the remainder of the case review project.

Dr. Schottenstein stated that $15,600 in fines have been collected for May 2020.

Funding for Outside Counsel

Dr. Schottenstein stated that beginning in December 2019, Shumaker, Loop & Kendrick was appointed as special counsel to defend the Medical Board in responding to subpoenas *tucum deces* 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, and the Attorney General's office has approved outside counsel Shumaker, Loop & Kendrick for up to $45,000 for Fiscal Year 2021. The assigned attorney is Joseph Simpson and he has worked with J.T. Wakley and Sara Coulter of the AG's office, as well as Kimberly Anderson, in responding to subpoenas and correspondence from counsel to the parties in the litigation. The Medical Board is not a party to any of the opioid-related lawsuits, but has provided thousands of pages of public documents in response to subpoenas issued in these matters.

The amount requested is likely more than what is actually needed, but Ms. Anderson is seeking approval at this time to encumber the full amount.

Motion to approve funding of up to $45,000 for outside counsel Shumaker, Loop & Kendrick to continue work on the opioid litigation during Fiscal Year 2021:

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

The motion carried.

Licensure Committee Report

Licensure Application Reviews

Teresa Alvarez

Dr. Saferin stated that Ms. Alvarez has applied for restoration of her Ohio license to practice dietetics. Ms. Alvarez has not practiced dietetics within the last five years. However, Ms. Alvarez's dietetic registration with the Commission on Dietetic Registration (CDR) is current (valid through March 31, 2021), verifying she meets all requirements and she is in good standing.

Motion to approve Ms. Alvarez's application for restoration of her Ohio license as presented:

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

The motion carried.

Grace Barber

Dr. Saferin stated that Ms. Barber has applied for an Ohio license to practice dietetics. Ms. Barber has not practiced dietetics within the last five years. However, Ms. Barber's dietetic registration with the Commission

on Dietetic Registration (CDR) is current (valid through August 31, 2020), verifying she meets all requirements and she is in good standing.

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

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

The motion carried.

Erin Burrel

Dr. Saferin stated that Ms. Burrel has applied for restoration of her Ohio massage therapy license. Ms. Burrel has not practiced massage therapy within the last five years.

Motion to approve Ms. Burrell's application for restoration of her Ohio license contingent on successful completion of the MBLEx within twelve months from the date of mailing of the Notice of Opportunity for a Hearing:

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

The motion carried.

Andreia Nikki Jones

Dr. Saferin stated that Ms. Jones has applied for a massage therapy license in Ohio. Ms. Jones has not practiced massage therapy within the last five years.

Motion to approve Ms. Jones's application for an Ohio license pending successful completion of the MBLEx within twelve months from the date of mailing of the Notice of Opportunity for a Hearing:

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

The motion carried.

Nicole McCabe

Dr. Saferin stated that Ms. McCabe has applied for restoration of her Ohio massage therapy license. Ms. McCabe has not practiced massage therapy within the last five years.

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

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

The motion carried.

Angela Wren

Dr. Saferin stated that Ms. Wren has applied for restoration of her Ohio massage therapy license. Ms. Wren has not practiced massage therapy within the last five years.

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

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

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

The motion carried.

COMPLIANCE

Office Conference Review

Motion to approve the Compliance staff's Reports of Conferences for June 8 and 9, 2020:

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

The motion carried.

Probationary Requests

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

a) Christopher G. Alsager Lee, M.D.: Request for acceptance of the drug testing completed by Minnesota Health Professionals Services Program, while the doctor resides in Minnesota.

b) Allen M. Amorn, M.D.: Request for release from the terms of the July 10, 2019 Consent Agreement.

c) Thomas G. Bering, M.D.: Request for approval of Carl J. May, Jr., M.D. to serve as the new monitoring physician.

d) Pankaj Gupta, M.D.: Request for release from the terms of the July 10, 2019 Consent Agreement.

e) Michael J. Howkins, D.O.: Request for approval of Krisanna Deppen, M.D., to serve as the monitoring physician.

f) Yamini Jadcherla, M.D.: Request for discontinuance of the drug log requirement; and discontinuance of the chart review requirement.

g) Michael W. Jones, D.O.: Request for release from the terms of the July 11, 2018 Board Order.

h) Mark C. Nenow, M.D.: Request for acceptance of the drug test and recovery meeting monitoring completed by the West Virginia Medical Professional's Health Program.

i) W. L. Gregory Siefert, M.D.: Request for approval of the previously completed course *Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing*, offered by University of Florida, to fulfill the controlled substance prescribing course requirement; and approval of *Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*, offered by Case Western Reserve University, to fulfill the medical records course requirement.

j) Mark Aaron Weiner, D.O.: Request for release from the terms of the October 8, 2014 Board Order.

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

The motion carried.

ADJOURN

Motion to adjourn:

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

The motion carried.

The meeting adjourned at 1:51 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on July 8, 2020, as approved on August 12, 2020.

Michael Schottenstein, M.D., President

Kim G. Rothermel, M.D., Secretary

(SEAL)

State Medical Board of Ohio

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
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SEXUAL MISCONDUCT COMMITTEE MEETING
July 8, 2020 – via video conference

Committee Members Present:	**Staff Present:**
Michael Schottenstein, MD, Chair Robert P. Giacalone, JD, PhD Michael L. Gonidakis, Esq. Betty Montgomery **Other Board Members Present:** Mark A. Bechtel, MD Kim Rothermel, MD Bruce R. Saferin, D.P.M. Jonathan Feibel, M.D,	Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Stuart Nealis, Project Manager Tessie Pollock, Chief Communications Officer Benton Taylor, Board Parliamentarian

Dr. Schottenstein called the meeting to order at 8:00 a.m.

MINUTES REVIEW

Mr. Gonidakis moved to approve the draft minutes of the Committee's June 10, 2020 meeting. Mr. Giacalone seconded the motion. The motion carried.

JUNE 16 WORKING GROUP PRESENTATION

Ms. Loucka stated that Board staff gave a presentation at the Governor's Working Group's June 16 meeting, conveying what the Board has accomplished to date. The presentation is also included in the Board materials for today's meeting. Ms. Loucka thanked Ms. Pollock and Mr. Nealis for producing the presentation. The Working Group provided a good deal of positive feedback on both the format and the content of the presentation.

Ms. Loucka commented that while it is good to see how close the board is to completing many of the Working Group's recommendations, the culture work is never truly done. The Board continues to work every day to improve the culture, bring up staff morale, and familiarize the staff members with each other's duties in order to foster understanding. Ms. Loucka stated that moving forward in the same direction will be critical.

In response to a question from Mr. Gonidakis, Ms. Loucka stated that the Board has been contacted by members of the law enforcement community who want to hear more about the Board's activities in these areas. Though the Board's outreach efforts to law enforcement were interrupted by the COVID-19 pandemic, those efforts have resumed where it is safe to do so in the form of having investigators visit offices, re-establishing relationships, and making themselves available for questions.

Ms. Montgomery commented that she has spoken with some attendees of the working Group meeting and they were very impressed with the presentation. Dr. Schottenstein agreed that it was a great presentation, having been able to listen to it first-hand. He found the presentation to be very thorough and very well-received. Dr. Schottenstein noted that the Board's work on the Working Group's action plan items is about 82% complete and the historical case review is about 74% complete.

LEGISLATIVE UPDATE

Dr. Schottenstein stated the legislative proposals are substantially divided into those related to 4731.22(F)(5), Ohio Revised Code, and those that are not related to 4731.22(F)(5). Today, the Committee will discuss proposals not related to 4731.22(F)(5).

Ms. Loucka stated that the draft proposals were developed in consultation with individuals familiar with the world of prosecution, building on feedback from the Committee and research on laws in other states. Once the Committee is comfortable with the drafts, they will be circulated to stakeholders. Ms. Loucka reiterated that legislation can be a very slow process and the Board still needs to identify a sponsor for some of these proposals. The Board will also work with the Legislative Services Commission, which will draft the actual bill. Ms. Loucka envisioned having in-person meetings with stakeholders and legislators in August or September, following the Committee's input. The entire process will probably stretch to the end of this year or the beginning of next year.

The Committee discussed the legislative proposals thoroughly. Ms. Loucka noted a suggestion to add podiatrists and massage therapists to the statutes. Dr. Schottenstein asked if all the Board's license types should be included. Ms. Loucka stated that that is a fair question and that the Committee should consider that some professions licensed by the Board are more prone than others to be in a situation where they would physically touch a patient.

Ms. Loucka commented that Section 2907.01 includes the phrase, "without privilege to do so." Ms. Loucka stated that this phrase is intended to refer to actions that have a legitimate medical purpose, but wanted to get feedback from associations before recommending a change to this wording since it would apply to all professionals that fall under Chapter 2907. The phrase "in the course of medical treatment" has been used in Sections 2907.03(A)(11) or 2907.06(A)(6).

Ms. Loucka continued that with respect to statute of limitations, the feedback was to recommend changing the limitation for sexual battery to 25 years after the age of 18. Ms. Loucka commented that subsection 2901.13(J) may address some of the Board's concerns. 2901.13(J) would be amended to differentiate the statute of limitations for sexual imposition from other misdemeanors. Ms. Loucka commented that this would be a big change and the Board will solicit feedback from prosecutors on that matter.

Regarding Section 2921.22(F)(2), the Board proposed adding "good faith" language. Based on research on other state's laws, particularly North Carolina, the proposed language is "so long as the individual is acting in good faith without fraud or malice."

Ms. Loucka state that Section 2921.22(F)(1) is limited to a violation against a patient. The Board's sexual misconduct rules also include key third parties such as parents of pediatric patient and other caregivers. Language will be developed to further define "key third parties." Language is also being added to address a potential loophole that could provide immunity to a physician who self-reports. Dr. Feibel asked about sexual misconduct that may occur between a physician and a staff member or other individual of that nature. Ms. Anderson replied that while that is a crime, it would be addressed by another jurisdiction.

Regarding the peer review statutes in Sections 2305.22 and 4731.22, Ms. Loucka stated that language based on the Board's suggestions was added to allegations of sexual misconduct and criminal misconduct. Ms. Loucka felt that this is a good proposal, but she expected some pushback from associations and she will discuss these matters thoroughly with them. In

response to a question from Mr. Giacalone, Ms. Loucka stated that the associations had concerns about opening the peer review process because that is the process by with professionals learn and the processes have been in place for a very long time. The concern is about striking the right balance between enabling the Board to obtain the information they need to protect the public on one hand, and ensuring that the learning process can proceed and not open people to unnecessary liability on the other hand.

With regard to reporting requirements, the Committee had previously expressed concerns about ensuring that the employer or hospital had good reasons to suspect sexual misconduct following an investigation. The proposed language attempts to strike a balance with the Working Group's expectation that the Board should receive all the information from institutions and then determine whether to go forward. The Working Group had concern about any filters in that collection of information. The proposed language includes a time limit, based on feedback from professionals, of 30 days from the commencement of the investigation to receive information from the facility or hospital.

Replying to a question from Dr. Schottenstein, Ms. Anderson stated that while the Board does not have jurisdiction over facilities, it does have jurisdiction of a medical director if they are a Board licensee and action could be taken on such an individual if they neglect their duty to report. Mr. Giacalone suggested an amendment to specify the medical director as the person responsible for reporting. Dr. Schottenstein reiterated his concern that a licensee may use the peer review process as a shield to hide criminal or sexual misconduct.

Ms. Loucka continued to the proposal to issue summary suspensions to licensees based on an indictment rather than a conviction. Language has been amended to make it clear that any such summary suspension is a decision of the whole Board and not the Secretary and Supervising Member. After discussion, it was decided that the language should use the word "shall" instead of "may."

The Committee discussed this matter thoroughly. Dr. Schottenstein expressed concern that if someone is summarily suspended due to an indictment and that indictment is later dismissed, there could be a question of whether the licensee received due process. This situation could look like overreach by the Board and could invite additional scrutiny from legislators who may think the Board is abusing its power.

Ms. Montgomery shared Dr. Schottenstein's concerns and opined that a process may be worked out with the legislature that is short of a summary suspension but still protects the Board and Ohio's citizens while the Board works the case. Ms. Montgomery stated that the Board should be very careful about taking away someone's livelihood based on a probable cause finding rather thana guilty finding. Ms. Montgomery felt strongly about using summary suspensions more aggressively, but also felt that the Board should be very aware of due process issues and fairness issues. Dr. Feibel was concerned that a process that is short of summary suspension may not be viewed favorably by the public. Dr. Feibel envisioned a scenario in which a physician may be indicted for rape but is out on bond and still able to practice medicine because his license has not been suspended.

Mr. Giacalone commented that if the Board has this ability, it does not necessarily have to use it but the existence of that ability may be helpful when negotiating settlements.

Dr. Schottenstein commented that if the legislature adopts language that an indictment itself constitutes independent proof of wrong-doing, it would allow the Board to move forward in a judicious way.

Ms. Loucka thanked the Committee for its feedback. These insights will be taken to stakeholder groups for discussion and will be reported back to the Committee in August.

HISTORICAL CASE REVIEW

Mr. Nealis stated that as of yesterday afternoon, the Board's historical case review is 75% complete and less than 300 cases remain to be assigned out. Of the completed reviews, 24% have been recommended for some sort of further action or evaluation. The four-week average for completion of cases is 35 cases per week, a drop from May. Mr. Nealis stated that two factors contributed to this drop. First, the assistant attorneys general who had been aiding the reviews are being pulled back to other duties. Second, many staff members took vacation around the Independence Day holiday. Even with this reduction, about 3% of the total volume of cases continue to be completed each week and the project is on schedule for the first stage of reviews to be complete by the end of September.

To date, the Board has been invoiced for slightly over $112,000 by contract reviewers. The assistant attorneys general dd 80 reviews, saving the Board approximately 210 hours or about $10,000. Board staff has spent slightly over 3,300 hours on the historical case reviews. The entire project has been about 4,400 hours.

Dr. Bechtel commented that 24% of cases are recommended for further action or evaluation seems like a high figure. Dr. Bechtel asked if those cases can be broken down into broad categories as to the reason for the further action or evaluation. Mr. Nealis answered that he can provide a breakdown based on recommended action (reopen, law enforcement referral, duty-to-report investigation, etc.). The data will have to be examined further for an analysis of what percentage was due to insufficient enforcement activity or insufficient investigation. Ms. Loucka agreed that that information would be helpful. Ms. Loucka commented that some external reviewers may have requested reopening of some complaints because they are unfamiliar with the Board's processes or internal reasons that the compliant may not be able to be reopened.

ADJOURN

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

The meeting adjourned at 8:55 a.m.

Michael Schottenstein, MD
Chair
bt

State Medical Board of Ohio

30 East Broad Street, 3rd Floor
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State Medical Board of Ohio

POLICY COMMITTEE MEETING
July 8, 2020
via live-streamed video conference

Members:	**Staff:**
Amol Soin, M.D., Chair Robert Giacalone, R.Ph., J.D. Mark Bechtel, M.D. Betty Montgomery Sherry Johnson, D.O. **Other Board Members present:** Michael Schottenstein, M.D. Kim Rothermel, M.D. Bruce Saferin, D.P.M. Michael Gonidakis, Esq. Jonathan Feibel, M.D. Harish Kakarala, M.D.	Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Deputy Director of Strategic Services Tessie Pollock, Chief Communications Officer

Dr. Soin called the meeting to order at 9:00 a.m.

Minutes Review

Dr. Bechtel moved to approve the draft minutes of the June 10, 2020 meeting of the Policy Committee. Ms. Montgomery seconded the motion. The motion carried.

Rule Review Update

Ms. Anderson stated that a number of proposed rules have been filed at the Joint Committee on Agency Rule Review (JCARR) and a public hearing is scheduled for July 23, 2020. Five no-change rules are also filed to be effective in September. There are also proposed rules filed with the Common Sense Initiative (CSI) and other proposed rules ready to be filed with CSI. The Policy Committee will discuss two sets of rules that are at CSI for which public comments have been received.

Comments Received at the Common Sense Initiative (CSI)

Light-Based Medical Device Rules

Ms. Anderson stated that 14 individuals made comments on the proposed light-based medical device rules. Ms. Anderson reminded the Committee that these rules were first proposed in early 2018, which generated a number of public comments at that time. Some public comments from that time, in addition to more recent public comments, alleged a possible anti-trust issue with these rules. CSI had no anti-trust concerns following their anti-trust review in December 2019.

Ms. Anderson stated that the comments received on the light-based medical device rules are wide-ranging, but the area of concern she asked the Committee to focus on today involves physician

assistants and structural concerns about the Physician Assistant Policy Committee (PAPC). Ms. Anderson stated that she will also discuss these items with the PAPC at its August 17 meeting and bring their recommendations back to the Policy Committee. Ms. Anderson recommended that the Committee allow Dr. Bechtel to work with staff on these matters, as he has been instrumental in drafting these rules. Dr. Bechtel agreed with Ms. Anderson's suggestions.

Responding to questions from Ms. Montgomery, Ms. Anderson stated that PAPC had reviewed these draft rules in 2018, at which time the rules went into CSI's anti-trust review process; a long period of time passed, nearly two years, before the rules emerged from that process. Ms. Anderson stated that this situation seems unique to the particular path these draft rules have taken.

Ms. Montgomery observed that there were a number of comments about the use of light-based medical devices for tattoo removal and that the Board has seemed to be inconsistent in the way it handles that issue. Dr. Bechtel stated that the goal of these new rules was to enable physicians to delegate to others the ability to use lasers. When different laser technologies were examined, the biggest concern was patient safety and avoiding things that could result in a lot of patient complications. It was found that vascular lasers has one of the least likelihoods of causing patient injury and is used to treat redness of the face, rosacea, dilated blood vessels, and other conditions. More aggressive lasers, called ablative lasers, can least to permanent scarring, loss of pigment, and irreversible changes. The thought was that if the Board moves forward with expanding the ability of non-physicians to use lasers, it should start with the safest lasers.

Dr. Bechtel stated that the training to use a vascular laser is very robust. Learners have to undergo eight hours of education, observe 15 procedures, and perform 20 procedures under direct physician supervision before they can perform the procedure themselves. In addition, a physician must evaluate the patient prior to a non-physician performing the procedure, and then evaluate the patient afterwards for complications.

Dr. Bechtel commented that tattoo removal is very tricky and it is very difficult to determine which laser should be utilized. The procedure requires great skill, medical background, and has a potential for patient complications.

Ms. Montgomery asked if Dr. Bechtel feels comfortable with the proposed rules, despite the complaints, and that the Board has adequately addressed the complaints. Dr. Bechtel replied that he is comfortable with that.

Mr. Giacalone asked about laser hair removal, noting that there are over-the-counter devices that are available for hair removal. Dr. Bechtel stated that over-the-counter hair removal devices essentially singe hair away through application of heat, but it is not related to lasers. Dr. Bechtel stated that physicians can already delegate laser hair removal to registered nurses, physician assistants, and cosmetic therapists.

Dr. Bechtel stated that proper selection of patients is very important in laser hair removal. Patients with fine white hair may not do well with laser hair removal, while patients with darker skin may have a greater risk of complications with scarring and pigmentation. Dr. Bechtel stated that it is important to select patients who can be treated safely and who will be most beneficial for treatment.

Mr. Giacalone asked if there are any anti-trust issues with the draft rules. Dr. Bechtel commented that the draft rules actually expand rather than restrict the ability of non-physicians to use lasers. Mr. Giacalone asked if anything has occurred with laser technology in terms of safety or efficacy that may

justify loosening requirements. Dr. Bechtel stated that the draft rules reflect a review of al the latest technology and patient safety. Mr. Smith noted that the materials submitted to CSI included at least one article related to the dangers of laser hair removal, so that is something CSI considered as well.

Dr. Schottenstein observed that PAPC is supposed to have a member who is also a physician member of the Medical Board. That position on PAPC has been vacate since Dr. Edgin left the Board. Dr. Feibel stated that he would be happy to serve as the Medical Board member of the PAPC. Dr. Schottenstein thanked Dr. Feibel and appointed him to the PAPC.

Continuing Medical Education (CME) Rules

Ms. Anderson stated that a number of changes were made to these rules in response to statutory changes. All of the comments received are centered on one draft rule, 4731-10-02. Comments from five associations were received with respect to the requirement for CME on licensees' duty to report. Ms. Anderson noted that this rule was a recommendation of the Strauss Working Group and she did not recommend changes to that rule.

Ms. Anderson stated that comments were also received from the Ohio Osteopathic Association (OOA) about CME for osteopathic physicians. It is proposed to address the OOA's comments by removing the requirement for Category 2A credits. There are also technical issues that have been fixed in the new draft. Ms. Anderson added that Dr. Johnson also has comments about the draft rules.

Ms. Anderson noted that additional lengthy comments were received from the OOA this morning and those comments have not yet been reviewed. Ms. Anderson stated that the new comments will be reviewed and provided to the Committee at a later time.

Dr. Johnson explained that there are different categories of CME's for the American Osteopathic Association (AOA) as compared to the OOA. Under AOA, Category 2A are courses that are taught at allopathic institutions. The OOA has requested that the requirement for 2A credits be removed because those courses do not have any osteopathic training component. The concern is that if an osteopathic physician has only allopathic CME credits, they are not continuing the tradition of osteopathy.

Dr. Johnson was also concerned about the provision for Category 1A under the current draft. Dr. Johnson opined that if "Category 1A" was changed to "Category 1," osteopathic physicians would have opportunity to continuing taking allopathic courses that can be approved by either the AOA or OOA. Dr. Johnson pointed out that if that change is made, then paragraph #3 would become redundant and can be removed. Dr. Johnson's was concerned that rule only says "Category 1A," then all of an osteopathic physician's CME's would have to be AOA or OOA approved, which affects the ability of all osteopathic physicians to obtain CME. Dr. Johnson stated that she would be happy to work with Ms. Anderson on the Board's response to the OOA's comments.

Dr. Bechtel moved to make no changes to the proposed rule for CME on the duty to report. Dr. Bechtel further moved that Ms. Anderson work with Dr. Johnson to develop the Board's response to the OOA's comments, and to make technical fixes as required to the proposed rules. Mr. Giacalone seconded the motion. The motion carried.

Telehealth

Ms. Loucka stated that when the Committee last met on June 10, House Bill 679 was moving through the legislature. The bill has now passed the House and is in the Senate and Board staff plans to reach out to members of the Senate about its concerns.

As currently drafted, House Bill 679 does not account for the Board's current in-person physician visit requirements. Under current opiate and weight-loss prescribing rules, the patient's initial visit must be in-person. Ms. Loucka stated that while the Board is supportive of the bill, she asked the Committee for feedback on what guardrails should be included to define what an in-person visit looks like. Ms. Loucka also asked for input on whether the legislation should require a patient's initial visit to a physician to be in-person; there is no such requirement in the current version of the bill. Noting the bill's ambiguity on the standard of care, Ms. Loucka recommended including language granting the Board rule-making authority to define an appropriate standard of care for telehealth. Ms. Loucka also recommended language to address current conflicts with the Board's out-of-state practice requirements. Finally, Ms. Loucka asked the Committee for input on appropriate modes of communication for telehealth, especially considering vulnerable populations, technologically-challenged populations, and areas without broadband coverage.

Regarding how to address the issue of telehealth going forward, Dr. Soin advocated making this topic a standing agenda item for the Policy Committee and getting collective feedback from the Board. Dr. Soin also advocated forming a separate small committee that can move more rapidly on these issues between Board meetings as the bill moves through the legislature. Dr. Soin also encouraged all Board members to reach out to himself, Dr. Schottenstein, Ms. Loucka, or Ms. Anderson if they have any comments on telehealth to be circulated to all Board members. Dr. Soin asked that all Board members consider whether they would like to serve on an *ad hoc* Telehealth Committee, to be appointed at the afternoon full Board meeting.

Dr. Schottenstein commented that, in general, the Board can choose one of two directions on this topic. The Board may support, as a default, the expansion of telehealth and then place guardrails around specific areas of concern; or it may support, as a default, the restriction of telehealth and allow some expansion in certain areas. Dr. Schottenstein favored supporting the expansion of telehealth, stating that telehealth has the ability to fundamentally improve the health of the citizens of Ohio.

Ms. Montgomery commented that if the Board is not supportive of telehealth, it will be imposed by the legislature anyway because patients have realized the convenience of telehealth during this pandemic. Ms. Montgomery agreed that a committee on telehealth should be formed to foster more in-depth discussions. Ms. Montgomery commented that later today, the Board will consider a case that demonstrates the dangers of telehealth when it does not have appropriate guardrails.

Legislative Update

In the interests of time, Dr. Soin stated that the legislative update will be discussed during the full Board meeting. Dr. Soin felt it is important for the Board to hear about the good work that Ms. Loucka, Ms. Anderson, and the entire Board team has done on changing the Board's legislative and bill tracking.

Adjourn

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

The meeting adjourned at 9:48 a.m.

bt

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State Medical Board of Ohio

***AD HOC* TELEHEALTH COMMITTEE MEETING**
July 23, 2020
via live-streamed video conference

Members:	**Staff:**
Jonathan Feibel, M.D., Chair	Stephanie Loucka, Executive Director
Michael Schottenstein, M.D.	Kimberly Anderson, Chief Legal Counsel
Mark Bechtel, M.D.	Nathan Smith, Senior Legal and Policy Counsel
Michael Gonidakis, Esq.	Jill Reardon, Director of External Affairs
Amol Soin, M.D.	Tessie Pollock, Chief Communications Officer

The meeting was called to order at 7:00 p.m.

Ms. Loucka stated that this *ad hoc* committee was formed at the last Board meeting because the Board recognizes the value of telehealth and how valuable a tool it has been during the COVID-19 pandemic. The Committee was formed to help the Board in its role in shaping what telehealth will look like moving forward and the standard of care that should apply.

Dr. Schottenstein appointed Mr. Gonidakis to the committee. Dr. Feibel was announced as the chair of the committee.

Draft Legislative Amendments Discussion

Ms. Loucka stated that an amendment to House Bill 679, the telehealth bill, has been drafted for the Committee's review. Ms. Loucka asked for the Committee's guidance on possible changes to the draft amendment before it is presented to legislators for their consideration. Mr. Smith has provided a memo outlining questions that legislators may be expected to ask about the proposed amendment.

Mr. Smith stated that the draft amendment is loosely based on some teledentistry provisions that were inserted into House Bill 679 just before it passed the House. The draft also incorporates some aspects of the Board's 2012 telemedicine position statement and the Federation of State Medical Boards (FSMB) telemedicine policy.

Initial and Annual Visits

Mr. Smith stated that the initial version of House Bill 679 required a patient's initial visit to a physician to be in-person, with additional in-person visits occurring at least annually thereafter. The physician could waive this requirement by determining that the situation is critical, and an in-person visit is not practical. The bill has since been amended to only require that the appropriate standard of care be satisfied. Mr. Smith stated that this leads to the obvious question of what the appropriate standard of care is.

Dr. Feibel expressed concern that this version of this requirement gives a great deal of leeway to the professional and would be very difficult for the Board to enforce. Dr. Feibel believed that most practitioners would not know the standard of care for such situations and the Board would have to establish it through the rule-making process, which would be very arbitrary. Dr. Feibel felt that for all specialties, except for a few, like psychiatry, it is important to develop the physician/patient relationship in person. Dr. Feibel opined that in the absence of a pandemic or other extraordinary circumstance, a patient should be seen in person on the initial visit and at least annually thereafter.

Dr. Schottenstein shared the board has two options: as a default, the board could support the expansion of telehealth with guardrails or support the restriction of telehealth with certain expansions. He suggested the board would be right in supporting the expansion and gave examples. The board can support the increased access to care with the understanding certain specialties or appointments when telemedicine would not be appropriate.

Dr. Soin shared he agrees with supporting the expansion and that the initial visit should include video. The DEA will have rules about requiring physical exams prior to filling prescriptions.

Dr. Bechtel stated an in-person visit is superior to video but there could be situations in which it would be a good option. However telephonic-only would not be adequate. He gave an example.

Dr. Schottenstein suggested dermatology may be a specialty in which telehealth visits works. He also stated by allowing telehealth, the board is not prohibiting in-person visits. It increases the flexibility.

Dr. Bechtel commented that there is a provision in the law giving a doctor permission to decline a telehealth appointment.

Dr. Feibel expressed concern that telehealth could be abused by physicians and be used as a financial opportunity.

Mr. Gonidakis agreed. He shared that in the past 10 years the board had an aversion to telehealth. He suggested looking past the current COVID-19 emergency to make the decision.

Dr. Schottenstein stated physicians still have a fiduciary duty and responsibility to standard of care. He believed guardrails could be put in place.

Ms. Anderson interjected that the rule for prescribing to patients not seen was amended a few years ago. A physician must do an evaluation, but they can do it in a method that is appropriate for the patient in the condition that they are being seen. That is generally being interpreted to include telemedicine, cross coverage, and other scenarios. It is not a true telehealth rule.

Dr. Feibel asked if under law, a physician could see a patient 20 times via telehealth in a year period, never having met in person. He commented that it is not the standard of care.

The committee discussed.

Ms. Anderson shared the current rule does require an in-person visit, but there are exceptions to do an evaluation remotely depending on the circumstance. It only applies to the initial visit for prescribing. Mandating an initial visit in all circumstances would require a rule change. If the change is in a statute, the statute would control the rule.

Dr. Soin, Dr. Schottenstein, and Dr. Bechtel were in favor of allowing the initial visit to take place via telehealth provided minimal standard of care were maintained and proper guardrails are put in place.

Mr. Gonidakis and Dr. Feibel were in favor of the initial visit taking place in-person.

The committee agreed to move forward with the initial visit taking place in-person barring extenuating circumstances that would better fit telehealth services.

Standard of Care

Mr. Smith posed the question if the standard of care should be the same for in-person vs. telehealth visits. Part of the legislation discusses having a different standard for civil liability.

Dr. Feibel stated the board should hold licensees to the same standard of care.

Dr. Schottenstein suggested the language was included as a safeguard for doctors wanting to comfortably practice not having to worry about the fact, they could be liable just on the basis of performing telehealth services.

Mr. Smith stated the draft has a provision regarding civil liability, but the amendment in bold on page 5 under 2A, states "services delivered by health care professionals licensed by the board under telehealth shall be consistent with standard of care for in person services." The board needs to think about the standard of care and civil liability when deciding.

Dr. Schottenstein stated the amendment language is contradictory to the statute.

Mr. Smith stated he based the amendment language from the FSMB model language and the 2012 position statement language. The board must feel comfortable deciding if the position should be the same as 2012.

Dr. Feibel shared he thought there should be language that telehealth used at time of the governor's declaration of emergency should be immune from liability for using telehealth in lieu of in-person visits.

Mr. Smith stated there is legislation in the works right now regarding civil immunity for any health care services delivered during the pandemic – a separate emergency law governing the situation. He recollected there were aspects of the legislation that needed to be worked out in conference committee, but the law would be retroactive from the date the emergency was declared until the end of the pandemic.

Dr. Feibel stated he thinks that the language regarding care provided during the emergency should be included in this bill, because it changes who is eligible for telehealth during an emergency, if the civil immunity is removed from the bill. He also agreed during a pandemic, any type of initial visit is acceptable to protect the public. During a pandemic, a live visit would be an exception rather than the rule. Vice versa for a non-emergency time.

Mr. Smith stated with the civil immunity bill, people will be covered for the pandemic. He admitted there has not been a situation like this and suggested the board was relatively safe with the present legislation.

Dr. Soin agreed with Dr. Feibel that physicians should be held to the same standard.

Dr. Schottenstein asked with the contradictory amended language if the board should work with the legislature to change the language they have already proposed.

Mr. Smith reminded the committee civil liability language is only proposed language, not law. The board could amend the proposal to make it consistent: the standard of care for in-person visits equal to the standard of care for telehealth visits.

Ms. Loucka stated that the board had not yet tried to harmonize the rest of the bill around that new language. Once the bill is solidified, the board can take that step.

Mr. Smith stated if the committee chose the standard of care being the same, legal would have to revise some other parts and bring it back for review.

Dr. Feibel moved to hold licensees to the same standard of care whether it is a telehealth or non-telehealth visit, except in extenuating circumstances.

Dr. Bechtel seconded the motion.

Dr. Schottenstein agreed.

All in favor. The motion carried.

Rule vs. Statute

Ms. Loucka posed the question if the standard of care requirements should come through rule or statute.

Dr. Soin and Mr. Gonidakis were in favor of a rule, stating that it is easier to change with new information.

Dr. Feibel asked if rule changes are taking a year to complete, what happens if statute goes into effect during that year.

Ms. Anderson confirms it takes approximately a year to get a rule through.

Dr. Schottenstein asked if there is an advantage to having it in statute.

Ms. Loucka stated it is more advantageous to have flexibility of rulemaking, particularly in situations like pandemics. Even if normal process is a year, there is an ability for emergency rules. During this pandemic there were circumstances in the statutes in which board staff thought it could be more nimble if provisions were in rule instead. However, there will be a gap before the rules will become live.

Dr. Soin pointed out that laws may take a year or longer to pass as well and reiterated his being in favor of a rule.

Dr. Schottenstein expressed curiosity why the Board of Dentistry chose a law instead of rule.

Mr. Smith stated in the dentistry telehealth amendment, there are a few requirements for dentists to have to have either written or electronic form and they saved some rule making power. The main thrust of their regulating was giving all the requirements that an individual dentist would have to have in a written protocol, which does not give the same flexibility that rule-making gives. There may be a disadvantage in the first six or twelve months, but thereafter there is more freedom to adapt to changing circumstances. Rules are also reviewed at least every five years, to adapt.

Mr. Smith stated there would be at least 90 days.

Mr. Smith responded to Dr. Soin's question regarding how the board's existing rules would be incorporated into any telehealth statute. He referred to the draft of the standard language, under E2A, services delivered by health care professionals licensed by the medical board shall be consistent with the standard of care, and then under B, comply with the requirements of chapter 4731 of the Revised Code and the rules of the medical board. 2B ties it into board requirements and rules. Considering PA's and dietitians are also permitted to provide telehealth services by this legislation, the board may need to add a couple more numbers depending on what is in those chapters.

Ms. Loucka asked if the board can draft in such a way that allows the board's current rules to continue until new rules are adopted under this statute.

Mr. Smith confirmed.

Ms. Loucka continued; the board would have at least the net of the rules possessed today. She also reminded the committee some of the current telehealth requirements are suspended due to the pandemic. That may reduce the time between enactment and conflicting rules to a 4 or 5 month period.

Ms. Anderson stated when there is a conflict between statute and rule, you must follow the statute. On other things, the board can follow the rule which could provide guardrails.

Dr. Schottenstein asked if the board's language that would allow it to continue to using board rules would supersede that statute that contradicts the rule.

Ms. Anderson did not know.

Mr. Smith added this would not be passed as emergency legislation, and there would be at least 90 days. He offered another solution as delaying enactment, like the consolidation bill.

Dr. Feibel opined the legislature will try to enact this as quickly as possible. He suggested the board try to make a rule as quickly as possible and incorporate the current rule, to the extent that it does not violate statute.

Dr. Soin agreed.

Mr. Gonidakis excused himself from the meeting.

Ms. Loucka asked the committee what parts of health care professional patient interaction should be prescribed by statute or rule and if the committee shared the same thoughts for this question as the previous.

Mr. Smith asked if in the draft, the committee felt that D1 and its subsections covered the field of topics on which to make rules. He wanted to know if the committee felt there were areas that were too prescriptive or things missing.

Dr. Schottenstein asked to define the word *fully* in the phrase *methods to ensure that patients are fully informed.*

Mr. Smith stated he took the language from the dentistry telehealth amendment and proposed removing the word.

Dr. Soin and Dr. Schottenstein agreed.

Ms. Loucka asked how the board accounts for differences in specialties or professions when looking at standard of care requirements. She opined that legislators would ask what kinds of things the board will put in its rule.

Dr. Feibel expressed he thought it will be more specialty specific rather than MD or DO. He suggested it will take time to decide the level of specificity.

Ms. Anderson stated historically it has been the most difficult question and the board has generally landed on very broad language such as “appropriate for the condition” or “appropriate for the patient.” It also includes more universal aspects such as record keeping and making sure the patient is informed, etc. She suggested looking at other state rules. Many of the FAQ’s the board has on 4731-11-09, deal with specific practice situations that are outliers (psychiatry, colonoscopy, etc.)

Ms. Loucka shared the next question as how the board’s existing rules should be incorporated into the legislation, or if they should be kept as rule.

Dr. Soin is in favor of maintaining guardrails. He shared in absence of the board’s current rules, he would be uncomfortable with telemedicine in pain management considering what has happened in Ohio with excessive prescribing.

Dr. Schottenstein agreed and stated his previous comfort with expansion of telemedicine was in knowing that the board has guardrails in place for these specific areas of medicine.

Dr. Bechtel and Dr. Feibel agreed.

Ms. Anderson stated the board’s current rule only deals with the initial visit when there is prescribing. The rules under this statute would be broader and would deal with telemedicine if it was the second, firth or twelfth visit. That has likely been a gap.

Ms. Loucka shared the last question as if the services should be allowed to be provided via asynchronous technology, which do not have both the audio and video. This would include delivery by telephone and email.

Dr. Soin stated he understands there are situations in which a patient may not have a smart phone or access to technology but there are separate rules, billing codes for Medicare for a telephone visit. He supports an audio/video synchronous interface. Doctors and patients can still email, and telephone exchanges as currently allowed.

Dr. Feibel agreed.

Mr. Smith stated in the emergency Medicaid rule on page 48 of the reference document, they defined telehealth. Definition: via synchronous, interactive real-time electronic communication comprising audio and video elements.

Dr. Schottenstein asked to clarify if now with CPT codes physicians may complete a phone consultation.

Dr. Soin confirmed. He hoped using a phone visit due to extenuating circumstance would be rare. Medicare has been clear on its guidance, even during the pandemic, that there must be a video interface to bill for codes similar to how it would be billed in the office. Without video, when a telephone is used, the physician can still bill for it and Medicare is paying during the pandemic, at a lower rate.

Dr. Feibel added it also means the physician has not seen the patient within seven days and will not see the patient again within the next day, to get paid for that code. If Ohio allows this, this might change that and allow those people to potentially bill at least bill private insurance. He is in favor of video and audio synchronous.

Dr. Schottenstein stated there are patients without good internet or technology or are averse to being on video. There is also an expense; maybe a patient can afford a phone but not a computer or laptop or iPad, etc. He suggested there could be language that allows for exception if extenuating circumstance can be documented.

Dr. Soin agreed with the understanding those extenuating circumstances can be specifically documented as a rationale.

Dr. Bechtel pointed out older populations (80 and 90-year-olds) do not have the proper technology. He cautioned the committee to be careful not to exclude access to older adults. He opposed using telephone visits for initial visit, but if the licensee has a relationship with an elderly patient with a medical question who cannot do a video visit because they lack a smartphone, an exception should be considered.

Dr. Schottenstein stated technology is not perfect, even on this meeting, video may freeze at times and phone may have to be used to finish the visit.

Dr. Soin suggested writing it to preserve the intention of an audio video interface, making a good faith attempt, and if that fails and there is extenuating circumstance, then a telephone may be considered.

Dr. Feibel referred to page 7 of the pdf, which says *a health care professional may negotiate with a health plan issuer to establish a reimbursement rate for fees associated with the administrative cost incurred in providing telehealth services as long as the patient is not responsible for any portion of the fee.* He stated it was dangerous to put in the statue because it will thing to put into statute because it will encourage telehealth. He asked if it was referencing something other than an office visit fee.

Dr. Feibel questioned the next line as well: *health care professional providing services shall obtain patient's consent once before billing for providing the services.*

Dr. Schottenstein also shared his concern with the language about needing verification of the patient by asking for name and password, or a personal ID number.

Mr. Smith stated he would have to get back to the committee with the answers. The focus of the initial draft and the meeting was to deal with the standard of care provisions. Board staff envisioned at least a couple of meetings of this committee. The billing and technology issues can be addressed at a future meeting.

Ms. Loucka stated that these questions can be researched for the next discussion. This language has already left the House and the board will be speaking with the Senate.

Adjourn

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

The meeting adjourned at 8:20 p.m.

JS