



**State Medical Board of Ohio Meeting Minutes
May 12, 2021**

Mark A. Bechtel, M.D., President, called the video conference meeting to order at 10:01 a.m. with the following members present: Betty Montgomery, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Sherry Johnson, D.O.; Harish Kakarala, M.D.; Jonathan Feibel, M.D.; and Yeshwant Reddy, M.D.

MINUTES REVIEW

Dr. Saferin moved to approve the minutes of the April 14, 2021 Board Meeting and the March 30, 2021 Special Board meeting, as drafted. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

REPORTS AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

Ryan Reed Lee

Dr. Bechtel directed the Board's attention to the matter of Ryan Reed Lee. No objections have been filed. Ms. Shamansky was the Hearing Examiner.

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

Mr. Lee was represented by his attorney, Todd Newkirk.

Mr. Newkirk stated that after hearing all evidence, the Hearing Examiner has recommended that Mr. Lee's massage therapist license application be granted and immediately suspended for a minimum of 60 days, with a two-year probationary period and a requirement to complete an ethics course. Mr. Newkirk opined that the recommendation is fair and appropriate and he asked the Board to adopt it.

Mr. Lee agreed that the Report and Recommendation is fair. Mr. Lee stated that the question before the Board is whether he is a good candidate for licensure. Mr. Lee believed that he is a good candidate and he plans to do good things if the Board grants his license. Mr. Lee stated that it took a lot of hard work to successfully complete his massage therapy education, but he applied himself and graduated. Mr. Lee stated that he will do the same as a massage therapist, with the Board's approval.

Dr. Bechtel asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he does not have a response and he deferred to the Report and Recommendation.

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

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

Ms. Montgomery congratulated Mr. Lee on persevering in his efforts. Ms. Montgomery agreed with the Report and Recommendation to essentially give Mr. Lee a second chance. Ms. Montgomery offered words of encouragement for Mr. Lee and noted that, as his lawyer may advise him, he may qualify for expungement of his record at some point.

Dr. Schottenstein stated that Mr. Lee pled guilty to the fifth-degree felony of receiving stolen property, and was represented by counsel. In mitigation, Dr. Schottenstein noted that Mr. Lee has no prior disciplinary record, this is probably an isolated incident that is unlikely to recur, Mr. Lee has made free and full disclosure to the Board, the Assistant Attorney General described Mr. Lee as forthcoming and truthful at his hearing, and Mr. Lee has expressed remorse and taken responsibility for his actions. Dr. Schottenstein also agreed with the Hearing Examiner that Mr. Lee's culpability was low. Dr. Schottenstein opined that Mr. Lee's conduct was negligent but not reckless. Dr. Schottenstein supported the Proposed Order.

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

The motion to approve carried.

Paul Yang, M.D.

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

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

Dr. Yang was represented by his attorney, James McGovern.

Dr. Yang stated that he loves his profession and the patients he was privileged to care for. Dr. Yang expressed embarrassment and shame today knowing that he betrayed his patient and the medical profession by upcoding. Dr. Yang stated that if he could go back in time, he would never have engaged in the conduct that led to his conviction and placed him here today with his Ohio medical license in the Board's hands. Dr. Yang thanked Ms. Shamansky and Ms. Pelphrey for making him feel as comfortable as possible at his hearing.

Except for a few objections that will be addressed by Mr. McGovern, Dr. Yang supported the Hearing Examiner's Report and Recommendation and appreciated that the recommendation will leave the door open for him to someday return to the practice of medicine in Ohio. Dr. Yang stated that he has strived to cooperate with the Board and demonstrate sincere contrition for his illegal conduct, just as he had in dealing with the United States during its investigation and his criminal case. Dr. Yang took full responsibility for his actions and apologized for the harm he causes to everyone who was negatively impacted by his conduct.

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Dr. Yang stated that he has learned from his mistakes. Dr. Yang's criminal conduct occurred while he was employed by Dr. Sharma's practice. After that, Dr. Yang practiced with Heritage Primary Care without incident from 2012 to 2018. In 2018, Dr. Yang worked in non-medical positions to try to support his family, earning far less than he did as a physician. In evaluating Dr. Yang's character now, Dr. Yang encouraged the Board to consider the testimony of Matt Tschimperle, his boss at Everett Agencies of Ohio.

Dr. Yang continued that he has been humbled by this sequence of events, starting with his criminal conviction and ending here today. Dr. Yang stated that since 2012 he has not violated the law. Dr. Yang pledged that regardless of what he does to earn a living, he will continue to follow his straight and narrow path as a hard-working, honest, and law-abiding citizen. Dr. Yang has come to understand the need for complete honesty in all facets of his life, and he recognized that honesty is essential in his dealings with the Board whenever he is allowed to return to practice in Ohio. Dr. Yang promised that if a path is left for him to return to the practice of medicine in Ohio, he will do what is required of him to remain in full compliance with the Ohio Medical Practice Act.

Mr. McGovern stated that Dr. Yang has expressed true remorse and has taken full responsibility for his actions. Mr. Govern stated that Dr. Yang received a fair hearing and he has filed limited objections to the Report and Recommendation.

In deciding on a sanction, Mr. McGovern stated that strong consideration should be given to the remoteness of Dr. Yang's conduct, which ended in 2012, along with the steps he has taken since that time to be a better physician and a better person overall. Mr. McGovern also suggested that the Board consider that, other than maintaining his employment with Dr. Sharma, Dr. Yang received no additional benefit, financial or otherwise, from the upcoding he engaged in. Mr. McGovern stated that the upcoding was clearly illegal and involved dishonesty, but since being confronted as part of his criminal investigation Dr. Yang has been 100% honest with the criminal investigation and with this Board. This included Dr. Yang's proffer that the United States used to help convict Dr. Sharma, who was the ringleader in the upcoding that occurred in his practice.

Mr. McGovern urged the Board to consider all the mitigating evidence set forth on pages 16 through 23 of the Report and Recommendation, including Dr. Yang's community service. Mr. McGovern asked the Board to consider imposing a sanction that does not include revocation of Dr. Yang's Ohio medical license and essentially gives him a second chance.

Dr. Bechtel asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he will defer to the Report and Recommendation.

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

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

Dr. Schottenstein stated that as he read through Dr. Yang's case, he felt that he was actually reading two cases. One case, which was substantially brought forth in Dr. Yang's hearing and in the Report and Recommendation, is the case of a physician who was caring for his patients in a responsible way but was directed by his employer to upcode his billing sheets and, against his better judgment, he acquiesced. The other case is contained in Respondent's Exhibit B, which substantially consists of the pre-sentence investigation report, the U.S. Attorney charges, and the plea agreement and its attached Statement of Facts.

Dr. Schottenstein found the behavior of Lindenwald Medical Associates (LMA), as described in the plea agreement's Statement of Facts, to have been brazen and audacious in its perpetration of health care fraud. The charges included allegations that LMA, "By and through defendant Yang and others known and unknown," would "examine" approximately 40 to 60 patients per day, and that employees were directed to schedule as many patients as they could and get them out of the office as quickly as possible.

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In addition, the plea agreement's Statement of Facts also included the following allegations:

- Many patients received at most a cursory examination to determine the extent of their pain level, and many of these patients would leave the office with a prescription for a controlled substance.
- Employees were directed to give every patient a urine screen whether or not there was medical necessity for it. The results of the urine screens were often not reviewed by the physicians at Lindenwald, if at all, until after the patient had left the office with a prescription for a controlled substance.
- Employees were directed to bill for multiple units of urine screens when only one unit should have been billed.
- Employees were directed to alter dates in order to get claims for urine screens approved and to order diagnostic tests regardless of medical necessity.

At his hearing, Dr. Yang testified that he was promised kickbacks from LMA, but never received them. However, Dr. Schottenstein quoted from the Statement of Facts: "The LMA clinicians that ordered these tests, including [Dr.] Yang and others known and unknown, were provided kickback payments through the labs that processed the tests. [Dr.] Yang terminated his participation in the kickback payments early on, because he did not feel right about it."

Dr. Schottenstein continued that in his testimony, Dr. Yang described his initial conceptualization of the upcoding as a victimless crime. However, the scope of the fraud clearly had the potential for negative repercussions in terms of patient care. Dr. Schottenstein stated that it is difficult to know the degree of the doctor's participation in these additional behaviors because it was not elucidated at the hearing. Dr. Schottenstein noted that Dr. Yang worked at LMA for years and the clinic does not function without physicians, so Dr. Yang at the very least aided and abetted this behavior on the part of LMA.

Dr. Schottenstein noted that Dr. Yang and his attorney signed the Statement of Facts containing these allegations and acknowledged them as true and correct. At his hearing, Dr. Yang was specifically asked whether the Statement of Facts was a true and accurate summary of what had occurred, and his level of involvement in what had occurred, and he answered affirmatively. Dr. Yang went on to testify that "the biggest concern" regarding his own behavior was the upcoding. Dr. Schottenstein emphasized that Dr. Yang described the upcoding as his biggest concern, not his only concern, a characterization that implies the presence of other concerning behavior.

Dr. Schottenstein perceived discrepancy in Dr. Yang's testimony. Dr. Yang testified clearly in his hearing that he did not rush patients through, provide substandard care, or receive kickbacks, but the Statement of Facts he signed suggests otherwise. Dr. Schottenstein observed that the Assistant U.S. Attorney in Dr. Yang's criminal case testified at his Board hearing and indicated that he was constrained in what he could talk about, but stated, "We prosecuted a number of individuals from that clinic over a period of time. That particular clinic had been a bastion of pill distributions for quite a while, some involved Dr. Yang and some did not."

Dr. Schottenstein stated that billing upcoding is stealing, and in this case it is stealing from taxpayers because it involved government-funded health care plans. Dr. Schottenstein stated that Dr. Yang's behavior brings the medical profession into disrepute. Dr. Schottenstein stated that the cornerstone of the medical profession is the trust that patients and their families place in medical practitioners that they will be treated professionally, competently, and ethically. Behavior such as Dr. Yang's chips away at that trust, and by diminishing that trust it diminishes the inclination of the public to seek out needed medical care. Dr. Yang ignored his fiduciary responsibility to his patients by engaging in behavior to artificially inflate the cost of medical care. Dr. Schottenstein also noted that although Dr. Yang's behavior is remote in time, it went on for years.

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Dr. Schottenstein stated that, regrettably, it is a bridge too far for him to open the door to allowing Dr. Yang to practice in Ohio with conditions following a suspension, especially given the additional concerns raised by the plea agreement's Statement of Facts. Dr. Schottenstein stated that he had struggled with whether to support the Proposed Order of non-permanent revocation, permanent revocation, or even to remand the matter back to the Hearing Unit to try to get a stronger sense of Dr. Yang's involvement in these other concerning behaviors. However, Dr. Schottenstein noted that the Board's Rule 4731-13-24 specifies that a plea of guilty to a crime constitutes evidence of commission of all aspects of that crime. Therefore, all aspects of that crime have been conclusively proven. Dr. Schottenstein was uncertain how much a remand to the Hearing Unit would add to what the Board already knows, but he would be glad to entertain that suggestion if other Board members felt that additional information would legitimately change how they would vote in this matter.

Dr. Schottenstein felt it would be inappropriate to grant Dr. Yang a license to practice medicine in Ohio. Dr. Schottenstein suggested a permanent revocation of Dr. Yang's Ohio medical license.

Dr. Schottenstein moved to amend the Proposed Order to a permanent revocation of Dr. Yang's license to practice medicine and surgery in Ohio. Dr. Reddy seconded the motion.

Dr. Reddy stated that physicians must be held to a higher standard. Dr. Reddy agreed with Dr. Schottenstein's recommendation, stating that the allegations have been proven beyond a doubt. Dr. Feibel also agreed with Dr. Schottenstein and the recommendation for permanent revocation.

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

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

The motion to amend carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

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

Ho D. Anh, M.D.

Dr. Kakarala moved find that the allegations as set forth in the July 8, 2020 Notice of Opportunity for Hearing in the matter of Dr. Ahn have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Johnson seconded the motion.

Dr. Bechtel stated that he will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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Vote on Dr. Kakarala's motion to approve:

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

The motion carried.

Chelsie Colombini

Dr. Johnson moved find that the allegations as set forth in the February 12, 2020 Notice of Opportunity for Hearing in the matter of Ms. Colombini have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

Dr. Bechtel stated that he will now entertain discussion in the above matter. No Board member offered discussion in this matter.

Vote on Dr. Johnson's motion to approve:

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

The motion carried.

Khalid Jalil, M.D.

Dr. Johnson moved find that the allegations as set forth in the June 10, 2020 Notice of Opportunity for Hearing in the matter of Dr. Jalil have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

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

In response to a question from Dr. Feibel, Ms. Anderson stated that statute allows the Board to take action on an expired license.

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Vote on Dr. Johnson's motion to approve:

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

Rogener Lacerna, M.D.

Mr. Giacalone moved find that the allegations as set forth in the November 10, 2020 Notice of Opportunity for Hearing in the matter of Dr. Lacerna have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

Dr. Bechtel stated that he will now entertain discussion in the above matter. No Board member offered discussion in this matter.

Vote on Mr. Giacalone's motion to approve:

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

The motion carried.

David C. Shamblin, M.D.

Mr. Giacalone moved find that the allegations as set forth in the May 9, 2019 Notice of Opportunity for Hearing in the matter of Dr. Shamblin have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

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

Mr. Giacalone commented that given the amount of controlled substances prescribed, it goes without saying that this person should be permanently denied a license in this state. Mr. Giacalone supported the Proposed Order.

Vote on Mr. Giacalone's motion to approve:

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

The motion carried.

Venkata Rao Yeleti, M.D.

Dr. Kakarala moved find that the allegations as set forth in the August 12, 2020 Notice of Opportunity for Hearing in the matter of Dr. Yeleti have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee’s Proposed Findings and Proposed Order. Dr. Johnson seconded the motion.

Dr. Bechtel stated that he will now entertain discussion in the above matter. No Board member offered discussion in this matter.

Vote on Dr. Kakarala’s motion to approve:

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

The motion carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

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

Marian F. Bachmeyer, M.T.

Dr. Bechtel stated that on March 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Marian F. Bachmeyer, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided that she take and

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pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Bachmeyer has not engaged in the active practice of massage therapy for more than two years.

Dr. Johnson moved to find that the facts set forth in the March 10, 2021 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Bachmeyer’s application for restoration of her license to practice massage therapy in the State of Ohio, provided that she takes and passes the MBLEx within six months of March 11, 2021, the date of mailing of the Notice of Opportunity for a Hearing. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

Jason Fox, M.T.

Dr. Bechtel stated that on March 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Jason Fox, M.T., informing him that the State Medical Board of Ohio proposed to deny his application for a license to practice massage therapy because he does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board’s required course of instruction, and has not held a current license, registration or certificate of good standing for massage therapy in another state for at least the preceding five years.

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

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

The motion carried.

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Melissa Kay Lecher

Dr. Bechtel stated that on March 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Melissa Kay Lecher informing her that the State Medical Board of Ohio proposed to deny her application for a license to practice respiratory care because she has not successfully passed an examination approved by the Board. The Board requires respiratory care professional applicants to provide documentation that they have successfully completed both portions of the Registered Respiratory Therapist (RRT) examination, administered by the National Board for Respiratory Care. The RRT consists of the Therapist Multiple Choice (TMC) examination, and the Clinical Simulation Examination (CSE). Ms. Lecher has not provided documentation that she has completed the required CSE portion of the RRT examination.

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

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

The motion carried.

Brian James Stebbings

Dr. Bechtel stated that on February 10, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Brian James Stebbings informing him that the State Medical Board of Ohio proposed to deny his application for a license to practice respiratory care because he has not successfully passed an examination approved by the Board. The Board requires respiratory care professional applicants to provide documentation that they have successfully completed both portions of the Registered Respiratory Therapist (RRT) examination administered by the National Board for Respiratory Care. The RRT consists of the Therapist Multiple Choice (TMC) examination, and the Clinical Simulation Examination (CSE). Mr. Stebbings has not provided documentation that he has completed the required CSE portion of the RRT examination.

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

Ms. Montgomery asked if there is a legitimate distinction between being a certified respiratory therapist and a registered respiratory therapist. Mr. Alderson stated that one must be a registered respiratory therapist in order to be licensed as a respiratory care profession in Ohio. Dr. Kakarala added that in the past, health care systems could hire certified respiratory care therapists with the understanding that they would take the CSE and pass it within a certain timeframe and become a registered respiratory therapist. Now, one must have already passed the CSI and become a registered respiratory therapist in order to be hired. Ms. Montgomery thanked Dr. Kakarala for that information.

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

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

The motion carried.

Carla R. Perry, R.C.P.

Dr. Bechtel stated that on December 9, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Carla R. Perry, R.C.P., informing her that the State Medical Board of Ohio proposed to deny her application for restoration of her license to practice respiratory care in the State of Ohio. Ms. Perry's denial is based upon former Rule 4761-8-01(G), Ohio Administrative Code, that was in effect on December 9, 2020, which required when a license has been inactive for more than five years, the applicant must either:

- (a) Provide proof of current licensure in another state whose standards for licensure are equal to those of Ohio, or,
- (b) Pass re-examination equivalent to the examination recognized by the Board to originally obtain a license pursuant to Rule 4761-5-01, OAC, to wit: The Board requires applicants to successfully complete both portions of the registered respiratory therapist (RRT) examination.

In this case, Ms. Perry was issued a license on August 26, 1999, which expired on June 30, 2012. On or about September 26, 2020, she submitted her application for restoration of her license to practice respiratory care, a period of time over five years, thereby bringing her into the purview of the Rule.

Mr. Alderson noted that if Ms. Perry were to submit an application today, she still would not be eligible for licensure because she is not a registered respiratory therapist.

Dr. Kakarala moved to find that the facts set forth in the December 9, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Ms. Perry's application for restoration of her license to practice respiratory care in the State of Ohio. Dr. Saferin seconded the motion. A vote was taken:

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

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Dr. Bechtel	Y
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The motion carried.

EXECUTIVE SESSION

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

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

The motion carried.

The Board went into Executive Session at 11:03 a.m. and returned to public session at 11:24 a.m.

The Board recessed at 11:24 a.m. The meeting resumed at 11:49 a.m.

REPORTS AND RECOMMENDATIONS

Paul Yang, M.D.

Mr. Taylor informed the Board that in its prior discussion of Dr. Yang, it did not vote upon a motion to approve and confirm the amended Report and Recommendation following approval of Dr. Schottenstein’s motion to amend.

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

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

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The motion to approve carried.

SETTLEMENT AGREEMENTS

Schickri Sami Aina, P.A.

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

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

The motion carried.

Gerard Cosgrove, R.C.P.

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

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

The motion carried.

Andrew Philip Feiner, M.D.

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

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

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

The motion carried.

Heather Jagoda, M.D.

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

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

The motion carried.

Michael David Clewlow R.C.P.

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

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

The motion carried.

Antonio J. Del Rosario, M.D.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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

The motion carried.

Ellen See, P.A.

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

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

The motion carried.

Aaron Jones, M.T.

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

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

The motion carried.

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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. Kaytlin D. Berger, L.M.T.: A summary suspension, based on failure to attend a Board-ordered substance abuse examination scheduled for April 26, 2021.
2. Nathaniel Wentworth Chase, D.O.: To be issued to an applicant, based on failure to attend a Board-ordered psychiatric evaluation scheduled for March 18, 2021.
3. Austin Kosier, M.D.: A summary suspension, based on the physician receiving intervention in lieu of conviction for attempted unlawful sexual contact with a minor.
4. James Ferrel Cunagin, M.D.: To be issued to a psychiatrist, based on allegations of sexual misconduct involving one patient.
5. David M. Engel, L.M.T.: Based on violation of the terms of his probation under his June 2020 Consent Agreement with the Board.
6. Omar Garcia, M.D.: Based on felony convictions related to practice and action taken by the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation.
7. Sam N. Ghoubril, M.D.: Based on allegations of acts constituting criminal offenses, including abduction and gross sexual imposition involving a female co-worker.
8. Maureen Pelletier, M.D.: Based on action taken by the Kentucky Board of Medical Licensure.
9. Dmitry A. Shelchkov, M.D.: Based on action by the New York State Board for Professional Medical Conduct regarding anesthesia care to four patients.
10. Craig A. Stevens, M.D.: Based on action by the North Carolina Medical Board arising from the doctor's voluntary agreement not to practice in North Carolina due to an indictment on crimes of a sexual nature.
11. Brenda Valentine: To be issued to a respiratory care professional applicant, based on false statements in attempting to secure a license and a history of conviction of a misdemeanor of moral turpitude.
12. Alexander Robert Votruba, M.D.: To be issued to a training certificate holder. Ms. Marshall noted that this citation is not a summary suspension because the doctor left his training program in Ohio last year.
13. Yange Zhang, L.Ac. aka Dr. Andrew Chang: Based on two issues, sexual misconduct from 2018 and holding himself out as being a physician on his website.

Regarding Citation #5, Ms. Montgomery asked if the personal appearances missed by the licensee were scheduled to be video appearances. Ms. Marshall replied that they were video appearances.

Regarding Citations #8 and #9, Ms. Montgomery appreciated the staff's work to get these matters before the Board quickly.

Regarding Citation #10, Ms. Montgomery asked about the standards for summary suspension in cases such as these. Ms. Montgomery noted that this practitioner appears to be a predator and is currently not allowed to practice in North Carolina. Ms. Montgomery asked what Cite #10 was not a summary suspension.

Ms. Marshall answered that to meet the legal requirements for a summary suspension, two conditions must be met: First, clear and convincing evidence of a violation; and second, the Board must be able to show an immediate and serious risk of harm to patients in Ohio. This physician has entered into a voluntary agreement not to practice in North Carolina and was not summarily suspended there. Ms. Marshall stated that this physician has not yet been determined to be a predator, he has only been charged and he has not yet been

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convicted or had his due process. For these collective reasons, it was determined that the second condition for summary suspension cannot be satisfied at this time.

Ms. Montgomery agreed that the physician has not yet been convicted, but asked if there was an interim action the Board could take similar to what the North Carolina Board did. Ms. Marshall replied that in cases such as this, the staff will consistently attempt to obtain a voluntary agreement from the respondent to not practice. These offers are often rejected. Ms. Marshall stated that the Board could take further action if there is a conviction, a subsequent Board order from North Carolina, or information indicating that the licensee has moved into Ohio.

Ms. Montgomery asked related questions regarding Citation #9. Ms. Marshall stated that that situation is very similar to that of Citation #10 in that there is no final order to determine if the licensee actually violated that minimal standards of care, and he is located in New York.

Dr. Feibel noted that the physician in Citation #10 continues to be licensed in Ohio and could come to Ohio at any time and begin practicing. While the physician's case is being adjudicated, which could take a year or more, he could obtain employment in Ohio and start practicing, thus putting Ohio patients at risk. Ms. Montgomery agreed and opined that if another state has taken action that is sufficient evidence of the need to protect the public by taking a similar action, at least temporarily.

Ms. Marshall stated that many factors are weighed when a summary suspension is considered. When the physician is not in Ohio, it is a much higher burden to meet the second condition in good faith and say that the Board can show immediate and serious risk in Ohio. Ms. Marshall reiterated that if the Board received information that the physician had relocated to Ohio, it could take action and propose a summary suspension.

Ms. Montgomery stated that the problem is that there is not a vehicle by which the Board would know if the physician has come to Ohio. Ms. Montgomery stated that the physician presumably has no income in North Carolina, so he could come to Ohio and do *locum tenens* work or similar work without the Board's knowledge unless someone informs the Board. Ms. Marshall stated that licensees are required to notify the Board of any change in their practice address within 30 days. Ms. Marshall noted that if a physician is in a neighboring state, there would be a better supporting basis for immediacy of patient harm in Ohio.

Ms. Marshall stated that everyone wants to protect people and a very important tool in protecting people is making sure the summary suspension statute stays intact. The courts are very vigorous in making certain the Board is being responsible with its summary suspension power. The Board consults with its Assistant Attorneys General to make sure every summary suspension as a strong basis. Ultimately, under current statute, it is the Board's Secretary and Supervising Member, who are elected by their fellow Board members, who make the final decision on what qualifies for a summary suspension and what does not.

Ms. Montgomery stated that Ms. Marshall is very wise to be cautious about using the summary suspension. Ms. Montgomery asked how licensees know that they are required to notify the Board of a change in practice address within 30 days. Ms. Marshall replied that it is in Ohio law and licensees are responsible for knowing the laws concerning their licenses.

Dr. Schottenstein stated that the Board is bound by statute, and the statute references eminent risk of harm, not the potential for eminent risk of harm. Dr. Schottenstein stated that the Board cannot summarily suspend a licensee because there could be an eminent risk of harm someday; rather, there must be a present eminent risk of harm. Dr. Schottenstein stated that if the Board gets too far ahead of itself with the summary suspension power, there is a chance that that power could be taken away. Dr. Schottenstein appreciated everyone's concerns, but stated that if the Board feels strongly about this then it should work with the legislature to change the statute.

Ms. Montgomery agreed with Dr. Schottenstein and stated that the Board should explore the possibility of another vehicle to address these situations while a legislative package is developed. Ms. Montgomery stated

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that Ms. Marshall is correct that the summary suspension should be used with discretion and care because it is a tool the Board cannot afford to lose and the courts will look at it carefully.

Responding to a question from Dr. Reddy, Ms. Marshall stated that once citations are approved by the Board, they are posted to the Board's website and the public can see why the licensee was cited.

Dr. Feibel opined that with people's ability to travel, it should not matter if a physician is in a neighboring state or in a state like North Carolina or New York. Dr. Feibel stated that the physician in Citation #10, if the allegations are proven to be true, has shown that he has no regard for the law and probably would not comply with a law requiring him to inform the Board of a change in his practice address. Dr. Feibel stated that if the physician comes to Ohio and a patient is harmed, it will reflect poorly on the Board. Dr. Feibel noted that this physician has voluntarily agreed not to practice in North Carolina, which Dr. Feibel saw as very different from deny the allegation and continuing to practice. Dr. Feibel hoped that the courts would not penalize the Board if it were to summarily suspend in such a case because it is the Board's duty to protect the public from predators.

Mr. Giacalone opined that if the physician is only licensed in Ohio and North Carolina, that would be almost equivalent to being in an adjacent state because it would not be illogical for him to move to Ohio to make a living if he cannot practice in North Carolina. Mr. Giacalone felt that this could meet the immediacy requirement.

Dr. Feibel stated while the Secretary and Supervising Member make decisions on summary suspension, it is the Board that votes to affirm their determination. Dr. Feibel expressed great appreciation for Dr. Rothermel and Dr. Saferin and the work they do as the Secretary and Supervising Member, but stated that it is the Board that makes the decision, and if the Board is not making the decision then it should not be voting on it. Ms. Marshall stated that under current statute, the Secretary and Supervising Member hold the legal authority to make the determination of whether to pursue and recommend a summary suspension, while the Board votes on whether to issue the citation and pursue formal disciplinary action. A "yes" vote is a vote to pursue discipline, and a "no" vote or an abstention means not supporting formal discipline. Mr. Wilcox agreed with Ms. Marshall's analysis.

Mr. Giacalone stated if the Board votes against a citation, it could ask the Secretary and Supervising Member to reconsider issuing a summary suspension. Ms. Marshall stated that procedurally, the Board voting down a citation means no action will occur this month on that case. The matter would go back to the Secretary and Supervising Member, who would make a decision based on the same information they had before. It is very possible that the matter will come back to the Board exactly as it was before but a month older. Mr. Giacalone commented that there could also be an immediate suspension because of commentary from the Board.

Ms. Snyder stated that when Assistant Attorneys General review a case, they must be very careful that what they are putting forth is something that will stand up in court. Ms. Snyder stated that if she tells a judge that the Board has summarily suspended someone who is in North Carolina and the Board does not know if he is in Ohio, that is not likely to stand up and will weaken the Board's ability to summarily suspend. Ms. Snyder added that it would be very difficult for the physician to travel to Ohio and obtain employment with a hospital when he is under indictment.

Mr. Giacalone stated that he agrees with Ms. Snyder if the physician has licenses in multiple other states, but if he is only licensed in Ohio and North Carolina he could become a rogue doctor here, set up shop, and start prescribing pills. Mr. Giacalone further noted that this case involved allegations of sexual misconduct.

Ms. Snyder noted that if the physician moved to Ohio and did not inform the Board, another way for the Board to discover this is from reports from the Ohio Automated Rx Reporting System (OARRS) if he is prescribing medications. Mr. Giacalone agreed, but noted that the Board would find out only after the physician may have prescribed many controlled substances.

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Ms. Snyder opined that many of these concerns are speculative in nature, and the Assistant Attorneys General cannot defend a summary suspension before a judge by saying that there was a speculation that the physician could have taken certain actions. Rather, the Assistant Attorneys General need clear and convincing evidence that the physician poses a risk currently. Mr. Giacalone reiterated that if the physician is only licensed in Ohio and North Carolina and he cannot practice in North Carolina, there is an immediacy for him to come to Ohio to practice, very similar to being in an adjacent state. Ms. Montgomery added that the physician could also come to Ohio and work *locum tenens*.

Ms. Montgomery opined that there should be an interim process for such situations. For instance, if a physician is only licensed in Ohio and one other state and is indicted in that other state with some sort of bond requirement, perhaps the Board can reach out to the other state and request that, as a condition of bond, notice be given if the physician moves to practice in Ohio.

Mr. Giacalone stated that if the Board votes to reject this citation and ask for reconsideration of a summary suspension, it would also give the Enforcement staff a month to attempt a negotiation of an agreement to potentially avoid a summary suspension. Ms. Marshall stated that she cannot talk about a settlement in public session, but it is Enforcement's consistent and routine approach to negotiate an agreement, but that attempts is often not successful. Mr. Giacalone stated that the difference this time is that the licensee would know there is a possibility of a summary suspension.

Dr. Schottenstein stated that one thing the Board should consider is how it would look to the public if the Board passes on an opportunity to cite someone who could be a sexual predator. Dr. Schottenstein opined that the Board should consider that first impression, as opposed to subsequent explanations as the Board tries to fully explain itself. Mr. Giacalone noted that the Board is on record as to why it would be voting down the citation, and would even support the notion that the Board wants the licensee out of practice now. Mr. Giacalone opined that it would look worse if the Board has to explain why it didn't take him out of practice sooner.

Ms. Marshall noted that if the Board were to summarily suspend in Citation #10, the licensee would have a right to an expedited hearing in seven to fifteen days. In that expedited hearing, there will be proof that the licensee had been indicted, but nothing else on which to base a final action that actually proves the person is a predator. In such a case, the Board would be trying to take a final disciplinary action on his license when he has not yet been convicted of anything. This could result in either permanently revoking the license someone the Board suspects of being a predator but without any proof, or disciplining them and putting them back into practice in a formal order while the criminal case is ongoing.

Ms. Montgomery stated that she spent many years prosecuting sexual predators and she feels strongly about that issue. Ms. Montgomery also opined that Mr. Giacalone's and Dr. Feibel's concerns are very legitimate. Ms. Montgomery stated that if she has to make a choice now, she would choose to cite this licensee but also see if an agreement can be reached to protect the state.

Dr. Feibel agreed with Ms. Montgomery. Dr. Feibel hoped that with the sexual misconduct legislation pending, the legislature could approve summarily suspending based on indictment or on someone voluntarily relinquishing their license in another state. Dr. Feibel opined that if someone voluntarily agreed not to practice in another state, the legislature should find it acceptable for the Board to prevent that person from practicing in Ohio as well.

Regarding Citation #11, Dr. Schottenstein noted that one of the charges alleged involves moral turpitude. Dr. Schottenstein asked if legislation was recently passed that limited the Board's ability to use moral turpitude as an allegation. Ms. Marshall answered that such a law was passed, but it has not become effective yet. Ms. Marshall stated that the core issue in Citation #11 is that the licensee is lying about the conviction, more so than the conviction itself. The licensee is denying that she was the person convicted despite overwhelming evidence that it was her.

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Regarding Citation #12, Ms. Montgomery asked why there was a delay. Ms. Marshall replied that this came to the Board in September 2020. The Board knew that the license had a training certificate and was no longer with an Ohio training program, so there was no exposure to patients in Ohio and no risk of patient harm and there was more time to work out the citation.

Responding to further questions about Citation #12, Ms. Marshall stated that licensees with initial impairment are monitored by the Ohio Physicians Health Program (OPHP) under the One-Bite statutes and agreements. When a licensee falls out of that program, the Board has to address their issues. Ms. Marshall stated that the Board will have the full range of options following a hearing, so the citation does not mean the end of this young physician's career, it is just a mechanism to make sure his problem is addressed.

Dr. Kakarala moved to approve and issue proposed Citation #1, an Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based upon Presumption of an Admission of Impairment. Dr. Soin seconded the motion. A vote was taken:

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

The motion carried.

Dr. Soin moved to approve and issue proposed Citation #3, a Notice of Summary Suspension and Opportunity for Hearing. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

Dr. Kakarala moved to approve and issue proposed Citation #'s 7 and 9. Dr. Schottenstein seconded the motion. A vote was taken:

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

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

The motion carried.

Dr. Kakarala moved to approve and issue proposed Citations #'s 2, 4, 5, 6, 8, and 10 through 13 Dr. Johnson seconded the motion. A vote was taken:

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

The motion carried.

OPERATIONS REPORT

Strauss Working Group Report Recommendations: Ms. Loucka stated that the Office of Internal Audit (OIA) has started their process of reviewing the Board's sexual misconduct protocol, at the Board's request. Ms. Loucka has worked closely with OIA to provide information and discuss the process. The review is expected to be complete by the end of June. The Board has a confidentiality agreement with OIA since they will be seeing confidential information. Thus far, the process is going smoothly.

Ms. Loucka stated that continuing medical education (CME) course for the duty-to-report will be effected at the end of May and work on the duty-to-report video is concluding. Ms. Loucka thanked Jerica Stewart for the work she has done on the video with the Department of Public Safety. Ms. Loucka also thanked Dr. Johnson for graciously offering time for that video. The video also includes witness testimony and some victim testimony. Ms. Loucka stated that the draft of the video has exceeded her expectations, and the Board will be able to view it before it goes live.

Financial Disclosure Forms: Ms. Loucka stated that financial disclosure forms are due from the Board members on May 17. The forms can be filed directly with the Ethics Commission and the Board will be billed for the filing.

Attorney General Representation: Ms. Loucka stated that she and Ms. Anderson have recently discussed the Board's outside counsel needs for the next fiscal year with the Attorney General's office. The Attorney General's office estimates that outside counsel could potentially be \$75,000, though it may not go that high. Ms. Loucka stated that the opiate litigation is ongoing and Ms. Anderson and the former executive director will be deposed at the end of May. Additionally, other litigation will continue. Ms. Loucka stated that she and the staff are extremely mindful of the high cost, but it is rather unavoidable for these situations.

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In response to a question from Ms. Montgomery, Ms. Loucka stated that the Board does as much legal work in-house as possible.

Human Resources: Ms. Loucka stated that the Board is in the process of filling some vacant positions, as outlined in the Operations Report.

Finance: Ms. Loucka stated that the Board's revenue has increased slightly this month. There are still about 9,000 licensees who have delayed renewal of their licenses and have until July 1 to renew. Ms. Loucka also noted that every year about 4,000 licensees do not renew. The Communications staff is in constant communication with those licensees, as well as medical associations, reminding them that renewing now will help avoid system failures that are likely to occur when hundreds of thousands of licensees in many professions around the state try to renew on June 30.

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

Licensure: Ms. Loucka stated that the Licensure staff is extremely busy issuing training certificates. Licensure staff continue to do a great job working from home, but licensing processing time has slowed somewhat due to the hundreds of training certificate applications that have been received in the last couple of weeks.

Project Management Update: Ms. Loucka stated that currently, there is not standard documentation that any employee can use to work in the Salesforce system. Consequently, staff has been working to document job aides and process flow there can be more standardization and better onboarding for new employees. System consistency will save time as things are processed.

Communications: Ms. Loucka stated that Communications remains very busy, as well the constituent inquiries group. Ms. Loucka commented that Ms. Reardon has been handling about 50 to 100 emails per week answering questions from stakeholders.

Complaints: Ms. Loucka stated that the Board continues to receive record numbers of complaints and the total number of open complaints continue to increase even as complaints are closed or otherwise resolved. Ms. Loucka was hopeful that some of the revisions of the licensure application questions approved previously by the Board may reduce open complaints coming from Licensure. The staff is also looking at every tool to give themselves options between no action and public enforcement. The staff is looking to other states, the Federation of State Medical Boards, and having conversations with the Assistant Attorneys General on how to help licensees be more successful and close more complaints faster with appropriate resolutions.

Ms. Montgomery commented that the last few Board meetings have been very productive and complimented the staff on their hard work.

Permanent Surrenders: Ms. Montgomery noted that Dr. Soin has previously had questions about permanent surrenders and the process by which licensees agree to them. Ms. Montgomery asked if there can be training or changes in the Board's template to establish that the process is fair. Ms. Loucka stated that others have also shared those observations, in addition to Dr. Soin.

Ms. Loucka stated that staff has been reviewing data on surrenders and all other Board actions over the past two years, looking at underlying allegations, how the final action was arrived at, and what processes were followed. Ms. Loucka stated that she had reviewed about 30 permanent surrenders over the last two years and has not seen anything alarming to date. Ms. Loucka commented that she recently listened in on an investigation and the investigator actually had to tell a licensee who was ready to surrender that they needed to slow down and discuss it with counsel before discussing permanent surrender. Ms. Loucka stated that the Board wants its licensees to be successful, and if a discipline can get someone back on track and practicing, then that is what it wants. In cases of egregious public safety situations, the Board will gladly accept a

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permanent surrender. Ms. Loucka stated that the Board is constantly balancing the need to preserve future litigation, and a surrender is a certain way to avoid appeal and further litigation. The board also weighs the public safety risk.

Dr. Soin stated that in the case of something egregious or someone's life is in danger, such as child molestation, that is a clear-cut situation. What Dr. Soin would not favor is any statement to a licensee such as, "This is so egregious and terrible that the Board will take your license away and it will be embarrassing for you." Dr. Soin noted examples in which the Board refrained from revoking a license, even when that was the Proposed Order.

Dr. Soin asked if there is data comparing Ohio to other states with regard to permanent surrenders. Dr. Soin stated that if Ohio is an outlier in this regard, it could indicate room for improvement. Dr. Soin estimated that 40% to 50% or more of the Board actions over the last few months have been permanent surrenders. Ms. Loucka did not know how Ohio compared with other states in terms of permanent surrenders. Ms. Loucka agreed with Dr. Soin's sentiment that discipline is not a measure of success; rather, a measure of success would be seeing fewer complaints leading to less discipline, which would indicate that the Board is doing its job as a regulatory agency to educate licensees. The staff can research other states and report back to the Board. Ms. Loucka stated that one of the bigger focuses over the next year is what is available to the Board for enforcement activity, so there may be fewer permanent surrenders in the future.

With respect to speaking on behalf of the Board to licenses, Ms. Loucka stated that she will bring that comment to the staff. Ms. Loucka stated that staff should never presume the activity of the Board or to know how the Board will vote in a particular matter. Ms. Loucka stated that she has not encountered this occurring, but she will be mindful of that and inform staff that it will not speak on behalf of the Board and what it will do in the future. Dr. Soin clarified that he has not heard anything that was concerning to him, but it is his own personal assessment that that could be happening and that may be incorrect. Dr. Soin stated that permanent surrender can sometimes be a mechanism to avoid embarrassment and speculated that it could be coercive.

Mr. Giacalone agreed with Dr. Soin that Board staff should not be making such comments to respondents unless there is precedent for the Board revoking a license in the same circumstances. With regard to comparative data from other states, Mr. Giacalone noted that the Board has seen many cases from out-of-state in which the other state's sanction was less than what the Board thought was appropriate. Mr. Giacalone stated that the Board should exercise caution when reviewing those numbers unless there is some granularity as to the nature of the cases.

Dr. Soin agreed with Mr. Giacalone and added that going through the process of gathering and reviewing such data would be a healthy exercise for the Board. Dr. Soin stated that he is not overly-concerned at this time, but he has noticed a trend of increasing numbers of permanent surrenders and he wants to make sure the Board is mindful of not being coercive.

Live-Streaming of Board Meetings: Ms. Montgomery asked if the Board meetings will continue to be livestreamed after the Board resumes in-person meetings. Ms. Montgomery noted that livestreaming the Board's video conference meetings during the COVID-19 pandemic has been a great benefit to the public. Ms. Loucka answered that options are being explored to continue livestreaming the meetings due to very positive feedback from licensees, associations, and even the Board's staff.

Board Retreat: Ms. Montgomery asked if there will be a Board retreat this summer. Ms. Loucka replied that planning has not begun for a retreat, but one can be planned for the autumn similar to last year's retreat.

Dr. Bechtel: Ms. Loucka noted that Dr. Bechtel's term on the Board has expired and he is currently in his 60-day extension as a Board member. No word has yet been received from the Governor's office as to whether Dr. Bechtel will be reappointed to another five-year term. Consequently, it is possible that this meeting will be Dr. Bechtel's last as a member of the Board. In the event that this is Dr. Bechtel's last meeting, Ms. Loucka

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wanted to take this opportunity to thank him for his long and diligent service to the Board. Board members agreed that it has been a pleasure to work with Dr. Bechtel and hoped that he could continue on the Board.

Dr. Bechtel stated that it has been a tremendous honor working with all the Board members. Dr. Bechtel thanked the Board for its professionalism, integrity, and concern for public safety.

RULES & POLICIES

Rule Review Update

Ms. Anderson stated that the proposed rules on delegation, sexual misconduct, and prescribing to family and self have been released from the Common Sense Initiative (CSI) and are ready to be filed with the Joint Commission on Agency Rule Review (JCARR).

Rule 4731-6-05 concerning attempt limits for examinations has been circulated to interested parties. This rule will be brought back for Board discussion next month along with any comments received.

The Board will have a public rules hearing on May 17 on the proposed hearing rules, three dietetics rules, and the permanent light-based medical devices rules.

Adoption of Rules

Ms. Anderson stated that rules on the following topics are ready for adoption:

- Confidential personal information
- Continuing medical education (CME)
- Exposure prone invasive procedures
- Temporary licensure for members of the military and their spouses who are licensed in another jurisdiction
- Updates to radiologist assistant rules

Ms. Anderson noted that new Rules 4731-10-02 requires physicians to complete a minimum of one hour of CME each renewal cycle on licensees' duty to report violations.

Dr. Johnson moved to adopt, amend, and rescind the rules as described in the April 22, 2021 memorandum from Ms. Anderson and to assign each rule action the effective date of May 31, 2021; and for Rule 4731-10-02 and the duty to report video, enforcement of that provision will commence for licensees submitting their renewal applications on or after July 1, 2021. Dr Kakarala seconded the motion. All members voted aye. The motion carried.

Rule Revisions Required by House Bill 442

Ms. Anderson stated that House Bill 442 made a number of changes to the massage therapy curriculum and eliminated licensure for cosmetic therapists and Oriental medicine practitioners. Mr. Turek has reviewed the Board's massage therapy rules and made a number of updates, especially those related to limited branch schools.

Discussions have been ongoing with the massage therapy associations and schools, with the assistance of Ms. Reardon and Ms. Wonski. Comments have been received from massage therapy schools about a proposed revision to Rule 4731-1-15 regarding the definition of clock hours. Taking those comments into account, the draft version before the Board today specifies that an hour means a period of 60 minutes with a minimum of 50 minutes of instruction.

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In addition, there are proposed changes to Rule 4731-22-07, regarding emeritus status, to delete reference to cosmetic therapists; Rule 4731-30-03, regarding internal management for approval of licensure applications, to delete reference to Oriental medicine practitioners; and Rule 4731-36-01, regarding military provisions related to education and experience requirements for licensure, to delete referenced to cosmetic therapists and Oriental medicine practitioners.

Dr. Schottenstein observed that in proposed Rule 4731-1-15(B)(4), one of the criteria for someone applying for a license to practice as a massage therapist in Ohio is that they hold licensure in another state for the five years preceding the application. Dr. Schottenstein opined that five years feels like a long time and he wondered if there are many qualified potential candidates who do not meet the five-year rule. The Board and staff briefly discussed whether the five-year rule should be shortened, perhaps to two years. Ms. Anderson noted that the five-year requirement is statutory in 4731.19, Ohio Revised Code, and therefore any change would have to be pursued with the legislature. Ms. Montgomery stated that a request for such a change could be included in the Board's package of legislative proposals.

Ms. Anderson recommended approval of these draft rules for initial circulation to interested parties, stating that the staff can research how other states address this issue to aid the Board's decision on whether to suggest shortening the five-year rule. Mr. Giacalone agreed and recommended that the staff contact the massage therapy associations to ascertain their position on the subject.

Dr. Kakarala moved to approve the rules as drafted for initial circulation. Ms. Montgomery seconded the motion. All members voted aye. The motion carried.

Draft List of Disqualifying Offenses

Mr. Smith stated that House Bill 263, signed into law on January 9, 2021, requires all licensing authorities to establish a list of criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an applicant from obtaining a license. The list of disqualifying offenses must be approved and published on the Board's website by October 9, 2021.

Mr. Smith continued that when reviewing initial license applications after October 9, the licensing authority may only consider criminal offenses on the list. The list of offenses will be time-limited to five years, with the exception of offenses of violence and sexually-oriented offenses, which will have no time limit. The licensing authority must consider the offenses along with other factors such as the nature and seriousness of the offense or whether the denial of the license is reasonably necessary to protect the public. The statute requires the licensing authority to include on its list offenses that are directly related to the duties and responsibilities of the licensed occupations.

Mr. Smith stated that Board staff from Investigations, Enforcement, Licensure, Legal, and Hearing Unit have reviewed all the criminal statutes in Chapters 2903 through 2927, Ohio Revised Code, and various other parts of the Revised Code, as well as Board records on previous discipline related to convictions. Board staff also spoke with representatives from the Board of Nursing and the Board of Pharmacy about the considerations in making their lists. Based on this research, a list of disqualifying offenses has been drafted for the Board's review and initial feedback. The list will continue to be refined based on the Board's feedback, with final consideration likely to occur at the Board's October 8, 2021 meeting.

Dr. Schottenstein asked if the Board will be able to add or remove offenses from the list following its publication. Mr. Smith replied that there will likely be a Board management rule that will enable the Board to do a periodic review of the list, perhaps annually or biannually. The Board will be able to amend the list and be reactionary to statutory changes in criminal law.

Dr. Schottenstein asked may retroactively add something to the list if there is an applicant with concerning behavior that is not on the list. Mr. Smith stated that the staff can discuss that situation with the assistant

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attorneys general. Mr. Smith stated that an annual review should address such concerns, given that usually more than one year will pass between the passage of a new criminal statute, the 90 days that usually pass between passage and the effective date of the law, someone violating that law, then being indicted, charged, given a trial date, and convicted.

Ms. Montgomery congratulated Mr. Smith on doing a wonderful job delving into all of Ohio's criminal codes, including those scattered throughout the Ohio Revised Code outside Chapters 2903 through 2927. Mr. Smith stated that many staff members participated in the exhaustive process of reviewing the Ohio Revised Code statute by statute, including but not limited to Mr. Roach, Ms. Marshall, Ms. Canepa, Ms. Lee, and Ms. Wonski.

Ms. Montgomery noted that the draft list includes "penalty waterways and watercraft." Mr. Smith stated that that is based on a case the Board reviewed within the past few years that involved a licensee who operated a boat after drinking, hit someone, and left the scene. Its inclusion on the list covers both operation of a watercraft while under the influence of drugs and alcohol and leaving the scene of an accident.

Responding to Mr. Giacalone, Mr. Smith clarified that if an applicant has been convicted of an offense on the list within the past five years, the Board may consider that offense along with the five factors listed on the Board's memo to decide whether to grant or deny the license. Exceptions to the five-year time limit are offenses of violence and sexually-oriented offenses; the Board may consider those offenses, along with the five factors, regardless of how much time has passed since the conviction.

Mr. Giacalone observed that, arguably, if someone pleaded down from murder to reckless homicide, they would receive the benefit of the five-year limit. Mr. Giacalone noted that while involuntary manslaughter is murder, reckless homicide and negligent homicide are not murder, and therefore someone with a good attorney could plead down and then benefit from the five-year limit. Mr. Smith noted that the five-year limit applies to the time of conviction, but it also applies to incarceration. Therefore, if a person was incarcerated, the five-year limit would apply to the time the person was released from incarceration. Mr. Smith stated that there are additional provisions related to post-release control such as probation, though the calculations for the different iterations and scenarios for post-release control is quite complicated.

Legislative Update

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

House Bill 110, State Operating Budget: Ms. Wonski stated that this bill was passed out of the House and is currently under review in the Senate committee process. The Board's initial budget request, which had been granted in the executive version of the budget, remained unchanged in the House-passed version. Ms. Loucka provided testimony before the Senate Health Committee regarding the Medical Board appropriation. The Senate substitute bill is expected as early as next week.

Senate Bill 6: Ms. Wonski stated that the first House hearing for Senate Bill 6 is scheduled for tomorrow in the Families, Aging, and Human Services Committee. Ms. Wonski stated that this bill will require Ohio to join the Interstate Medical Licensure Compact (IMLC). In the last few months, Ms. Loucka and Ms. Wonski have met with the bill's sponsor and co-sponsor and continue to reiterate that this language will present operational challenges and could slow the licensure process for out-of-state applicants who come to Ohio through the IMLC. The Senate-passed version included the Board's proposed amendments to extend the implementation time from six months to one year, and also provides for appropriations for start-up costs.

Ms. Wonski noted that the bill's language is a contract and cannot be changed.

House Bill 37: Ms. Wonski stated that House Bill 37 was passed out of the House last week and would allow pharmacists to dispense certain drugs up to three times in a 12-month period without a prescription. Currently,

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statute allows for emergency prescriptions to only be filed once. The bill is waiting for its first hearing in the Senate.

House Bill 176: Ms. Wonski stated that House Bill 176 was recently passed out of the House and is awaiting its first hearing in the Senate. The legislation would allow athletic trainers to enter into a collaborative agreement with a physician or podiatrist and also expand their services under that agreement.

House Bill 122: Ms. Wonski stated that this bill would permit specified health care professionals to provide telehealth services. The language requires telehealth services to be done according to specified conditions and standards. The bill was passed out of the House and is awaiting its first hearing the senate health committee.

Senate Bill 131 and House Bill 203: Ms. Wonski stated that these bills would require occupational licensing authorities to issue a license or government certification to any applicant who currently holds a license, government certification, or private certification in another state. The policy team has looked through this language extensively and is working through concerns with interested parties and stakeholders. House Bill 203 has had two hearings in the House state and local government committee. Senate bill 131 has not yet had a hearing.

JCARR and the Rule-Making Process: Ms. Loucka stated that this week Ms. Anderson was invited to appear before the Joint Committee on Agency Rule Review (JCARR) to answer questions about a letter sent in response to an inquiry from Dr. Daniel Logan regarding the scope of his podiatric practice. JCARR questioned whether the policy outlined in the letter should have been arrived at via the rule-making process rather than simply a policy decision.

Ms. Loucka stated that prior to that decision, a law had been enacted in 2018 whereby JCARR was granted the authority to call into question such executive actions. That law permits JCARR to question agencies about these actions and, if appropriate, invalidate the policy and require the agency to go through the rule-making process. Ms. Loucka noted that this was the first hearing JCARR had conducted under that statute, and both the Medical Board and the Ohio Department of Education appeared in the hearing for different issues.

Ms. Loucka continued that Ms. Anderson presented testimony to JCARR outlining the process the Board went through and how they came to the decision to issue the letter. JCARR members asked multiple questions about the process, and it was clear that the members believe the Board should have created a rule instead of just making a policy decision. However, JCARR did not take a formal vote in that meeting. There was conversation with the Chair of JCARR, who indicated that he would prefer that the Board implement the policy by rule instead of JCARR making the Board do so.

Ms. Loucka stated that JCARR has concerns about executive overreach and this is an attempt to bring balance back to actions by executive agencies. When there is a clear division between stakeholders, the legislature's preferred path will always be the rule-making process. Although the end result may be the same, the legislature feels strongly that stakeholders should be able to engage in and offer testimony in a formal process. Ms. Loucka commented that Ms. Anderson did a fantastic job in a difficult process and she represented the Board tremendously well.

Ms. Loucka asked for the Board's permission to inform JCARR that the Board will engage in the rule-making process relative to the issues posed in Dr. Logan's letter.

Dr. Saferin observed that the Board had answered a question from a podiatrist regarding the scope of practice. That answer was based on a rule the Board already has, Rule 4731-20-02, surgery at the ankle joint. Ms. Loucka stated, as Ms. Anderson pointed out to JCARR, that the Board does not delineate every scope of practice, and it would be impossible to list every detail of every scope of practice. However, JCARR indicated that whenever there is a question of whether something is in a scope of practice and there are two very differing opinions, it should be proposed as a rule. In this case, the Board can engage in the rule-making

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process and create a rule that reflects the answer it have given and have specificity that is not in the current rule. Ms. Loucka stated that the legislature is extremely interested in what regulatory bodies are doing, and the Board and other regulatory agencies may need to be more specific in their rules going forward.

Mr. Giacalone commented that it appears that if the Board ever gives an advisory opinion and someone challenges it, it must default to a rule. Mr. Giacalone opined that this defeats the purpose of any regulatory agency in providing guidance to its regulated group. Mr. Giacalone stated that he is sensitive to overreach by agencies and lack of rule creation, but he felt that this swings the pendulum too far the other way.

Ms. Loucka agreed that there are concerns about how the Board offers advice, noting that the Board does not want to be in the position of being unable to answer a licensee's question because it cannot go quickly through the rule-making process. The Board would rather give good advice so licensees do not find themselves in an enforcement situation. Ms. Loucka recalled a recent example in which a licensee asked a question and the Board staff worked with the licensee's counsel to produce a Frequently Asked Questions (FAQ) document. Ms. Loucka opined that the Board will find itself in the same situation more often, with an FAQ document going forward in some circumstances. The Board will need to assess each situation and determine if the rule-making process is needed or if an FAQ document is called for.

Ms. Loucka noted that the 2018 law was actually vetoed by the Governor, so there was clear concern that the law could create a chilling effect on regulation. That being said, the Board is respectful of the legislature's desire to hear stakeholder feedback.

Ms. Montgomery stated that it behooves the Board to have a robust FAQ process in these areas. Ms. Montgomery noted that when she was Attorney General, her office was often asked if something was legal and the response was always that the Attorney General's office cannot advise them. Ms. Montgomery stated that in the Board's case, it should refer inquirers to an FAQ document. If the FAQ document does not sufficiently answer the question, the inquirer should seek input from counsel. Ms. Loucka agreed and stated that Ms. Anderson and Mr. Smith already have such conversations with outside parties and advise them to seek counsel on their questions.

Mr. Giacalone noted that even if the Board produces an FAQ document, there is no guarantee that that will resolve the issue. Ms. Loucka agreed. Mr. Giacalone observed that producing an FAQ document does not involve public notice of a formal comment period. The FAQ is good as long as everyone agrees with it, but when someone objects to the FAQ the Board will find itself in the rule-making process. Dr. Saferin commented that the rule-making process is quite lengthy and the Board may be unable to answer constituents questions for years.

Ms. Loucka thanked Ms. Reardon and Ms. Wonski for their hard work responding to stakeholders' concerns. Ms. Reardon and Ms. Wonski spend hours every day speaking with associations, constituents, and other interested parties, and also work closely with Ms. Anderson and Mr. Smith as they draft rules. Thanks to these efforts, the Board has a very good sense of stakeholders' opinions on different issues and the Board can use this knowledge to expediate the process toward the rule.

Dr. Schottenstein moved to engaged in the rule-making process concern the inquiry from Dr. Logan, as discussed. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

COMMITTEE BUSINESS

Dietetics Advisory Council Report

Ms. Reardon stated that the Dietetics Advisory Council met on May 10. An update was given on pending legislation and rules in process that are pertinent to dietitians. The Council was reminded that a public hearing on some of those rules will be held on May 17. Council member David Reyerson gave a short presentation on food insecurity and the impact in underserved areas were dietitians can be helpful. The Council was advised

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that there are 620 licensed dietitians that potentially need to renew their licenses by July 1. The terms of three Council members will expire soon; appointment to fill those vacancies will be proposed to the Board at its June 9 meeting.

The Dietetics Advisory Council will meet again on August 9, 2021.

Compliance Committee Report

Ms. Montgomery stated that the Committee had a robust discussion about the outpatient evaluation and inpatient evaluation rules, including clarification of the terms “psychiatric evaluation” and “biopsychosocial assessment.” The Committee also discussed the process of changes to the licensure application questions and received a complete statistics review from Ms. Dorcy.

The Committee recommended that draft Rules 4731-16-02, 4731-16-05, and 4731-16-08, which would allow outpatient evaluations for certain license types rather than 72-hour inpatient evaluations, be circulated to interested parties for input.

Dr. Rothermel moved to approve rules for initial circulation to interested parties as discussed. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Ms. Montgomery continued that the Committee also discussed probation, how many probationers the Board currently has, and probation oversight going forward as the Board moves from a checklist probation to a more substantive, focused probation. The Committee discussed the very strong relationship the Board has with the Ohio Physicians Health Program (OPHP), what information can be shared with them, and if a process can be developed by which a referred licensee who are clearly not impaired may avoid a costly and time-consuming evaluation.

Finance Report

Dr. Schottenstein stated that March 2021 was basically a break-even month. Revenue was \$834,737, a fair increase from the previous month which likely reflects the April 1 renewal deadline of many licensees. An influx of license renewals is expected at the end of June to meet the July 1 deadline extension granted by the legislature.

The Board’s cash balance was mainly stable at \$5,215,703. As a preview, Dr. Schottenstein stated that April revenue is over \$1,000,000. Dr. Schottenstein stated that monthly communications are being send to licensees strongly advising them to avoid waiting until the last minute to renew their licenses because there is a risk of system issues if all licensees from all licensing boards who are eligible for the deadline extension try to renew at the end of June. As that deadline approaches, those communications will be send with increasing frequency.

Dr. Schottenstein stated that Ms. Loucka testified before the Senate Health Committee regarding the Board’s budget. Dr. Schottenstein opined that the testimony went well.

Dr. Schottenstein stated that spending in March was unremarkable with a 2.8% year-to-date increase, which essentially reflects payroll.

Dr. Schottenstein stated that the Board received \$6,5000 in disciplinary fines and \$207.19 from collections in March.

Licensure Application Reviews

Dr. Johnson moved to approve the Licensure staff recommendations for the requests of Jenna Parzych; and Michael Riley, M.T. Dr. Kakarala seconded the motion. A vote was taken:

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

The motion carried.

PROBATIONARY REPORTS AND REQUESTS

Office Conference Review

Dr. Johnson moved to approve the Compliance staff's Reports of Conferences for April 12 and May 4, 2021. Dr. Kakarala seconded the motion. All members voted aye, except Dr. Rothermel and Dr. Saferin, who abstained. The motion carried.

Probationary Requests

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

- a) Jennifer D. Bahner, M.D.: Request for approval of Marie-Claire Day, M.S., Ed.S., L.P.C.C., N.C.C., C.C.M.H.C. to serve as the mental health provider.
- b) Jesse M. Ewald, M.D.: Request for release from the terms of the May 11, 2016 Step II Consent Agreement.
- c) Thomas J. Gantner, P.A.: Request for approval of Brad L. Bernacki, M.D., to serve as the reporting physician.
- d) William L. Houser, M.D.: Request for approval of the ethics course *PBI Medical Ethics and Professionalism: An Ethics Protection, Violation Prevention Course*, offered by University of California, Irvine School of Medicine, to fulfill the ethics course requirement.
- e) Otto Kausch, M.D.: Request for approval of the course *Intensive Course in Medical Ethics, Boundaries and Professionalism*, offered by Case Western Reserve University, to fulfill the professional boundaries course requirements.
- f) Jaydutt Patel, M.D.: Request for discontinuance of the drug log requirement; and discontinuance of the chart review requirement.
- g) Christopher N. Vashi, M.D.: Request for approval of Joel P. Maier, M.D. to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per month.
- h) Melissa L. Verchio, M.D.: Request for discontinuance of the drug log requirement.

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

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

The motion carried.


ADJOURN

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

The meeting adjourned at 2:16 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on May 12, 2021, as approved on June 9, 2021.


Betty Montgomery, President


Kim G. Rothermel, M.D., Secretary





State Medical Board of Ohio

MEDICAL MARIJUANA EXPERT REVIEW COMMITTEE MEETING

May 12, 2021

via live-streamed video conference

Members: Mark Bechtel, M.D., Chair Amol Soin, M.D. Robert Giacalone, R.Ph., J.D. Michael Schottenstein, M.D. Yeshwant Reddy, M.D.	Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Brandi Dorcy, Communications Liaison Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Deputy Director of External Affairs Jerica Stewart, Communications & Outreach Administrator Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian
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The meeting was called to order at 2:31 p.m.

Minutes Review

Dr. Reddy moved to approve the draft minutes of the Committee's March 10, 2021 meeting as drafted. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Review of Expert Reports

Dr. Bechtel stated that Robert Albright, M.D., has provided expert reviews on four of the petitions to add qualifying conditions for treatment with medical marijuana. Dr. Albright is board-certified in neurology and in hospice and palliative medicine. Dr. Albright also holds a Certificate to Recommend the Medical Use of Marijuana. Dr. Bechtel commented that Dr. Albright's reports were very detailed, thoughtful, and evidence-based, and included a detailed review of the medical literature. The Committee appreciated Dr. Albright's time and effort.

Dr. Albright is present in today's meeting to discuss the petitions and answer the Committee members' questions.

Terminal Illness

Dr. Bechtel stated that for purposed of this petition, terminal illness is defined as projecting less than six months of life expectancy or eligibility for hospice care. The main focus for add this as a qualifying condition would be to make the patients comfortable. As pointed out in Dr. Albright's report, the efficacy of opioids decreases over time for some patients and they become less effective in suppressing pain. In other situations, opioids can produce significant side-effects that would necessitate stopping them. It was Dr. Albright's expert opinion, to a reasonable degree of medical certainty, that terminal illness should be added as a qualifying condition.

Dr. Albright commented that the review for terminal illness was difficult because it is a very broad condition and no receptor studies or animal models were available. The review was based on a limited number of clinical trials and many meta-analyses. Dr. Albright stated that in treating this patient population, one encounters a number of symptoms that are difficult to manage with the medications currently available. In his own practice, Dr. Albright often presents the option of medical marijuana to his patients because many, but not all, of their problems already qualify for treatment with medical marijuana.

Dr. Albright stated that in his medical opinion, patients with terminal illness who are unable to achieve comfort with standard palliative treatments should be able to access medical marijuana.

Dr. Bechtel noted that use of medical marijuana in treatment of terminal illness is currently approved in Pennsylvania and West Virginia.

Dr. Bechtel noted that according to Dr. Albright's report, it is possible that some of the components of medical marijuana could interfere with cytochrome P450, causing reactions with other ongoing medications and potentially causing problems with over-sedation. Dr. Albright agreed and stated that physicians treating these patients can consult with electronic prescription services to highlight possible drug interactions.

Dr. Schottenstein thanked Dr. Albright for meeting with the Committee and stated that he valued Dr. Albright's reports. Regarding treatment of terminal illness, Dr. Schottenstein asked if Dr. Albright, in his experience, found medical marijuana more useful in providing relief from the existential fears and psychological trauma that comes with end-of-life situations, or if it is more helpful with physical issues like nausea and pain. Dr. Albright commented that it is very rare that a hospice patient is able to afford medical marijuana because it is not supported through hospice due to Medicare and other federal limitations. Outside of that population, Dr. Albright has observed multiple improvements from medical marijuana, including existential improvements.

Spasticity and Spasms

Dr. Bechtel noted that medical marijuana is approved for treatment of spasticity and spasms in Michigan and Pennsylvania. In his report, Dr. Albright defines spasticity as injury to the upper motor neurons and is not to be confused with persistent muscle spasms. Dr. Albright has opined that spasticity should be considered as a qualifying condition, but not muscle spasms.

Dr. Albright stated that spasticity is not muscle cramps, but is a pyramidal dysfunction. There is evidence that medical marijuana would be appropriate for treatment of spasticity from a receptor perspective, an animal model perspective, and a clinical perspective.

Dr. Schottenstein asked if Dr. Albright sees a more neurodegenerative process rather than a traumatic process impacting prognosis and response to medical marijuana. Dr. Albright responded that post-traumatic situations frequently result in upper motor neuron pyramidal spasticity. Dr. Albright treats a number of patients with multiple sclerosis (MS) who have upper motor neuron pyramidal spasticity, but he does not have direct experience with medical marijuana with that patient population. Dr. Albright noted that amyotrophic lateral sclerosis (ALS) is already approved for treatment with medical marijuana and he advised families of those patients about the availability of medical marijuana, mostly for its effect on spasticity.

Mr. Giacalone asked if there is a large patient population outside MS and ALS who are affected by spasticity. Dr. Albright replied affirmatively, stating that post-trauma, spinal cord injuries, strokes, or anything that affects the upper motor neuron system can result in spasticity. Dr. Albright stated that spasticity should be managed because it is a precursor to bed sores, decubitus, pain, and contractures. Currently, spasticity outside of MS and ALS is not approved for treatment with medical marijuana in Ohio.

Mr. Giacalone asked about potential side-effects of medical marijuana for these patients. Dr. Albright stated that when purchasing medical marijuana, patients receive guidance from distributors on the many options regarding the appropriate THC to CBD ratio to minimize their side effect profiles.

Dr. Reddy thanked Dr. Albright for serving as an expert for the Board. Dr. Reddy asked Dr. Albright to comment on approving medical marijuana for treatment of “painful spasms” rather than “persistent muscle spasms,” particularly painful spasms not related to neurological conditions. Dr. Reddy opined that medical marijuana should be approved if there is a neurological conditions that is causing painful spasms, but not for painful spasms not related to neurological conditions. Dr. Albright agreed, but pointed out that extra-pyramidal conditions can result in tonal abnormalities that people consider spastic. Dr. Albright opined that it would be much clearer to define spasticity as an upper motor neuron process for purposes of treatment with medical marijuana.

Huntington’s Disease

Dr. Bechtel stated that medical marijuana is currently approved for treatment of Huntington’s disease in Pennsylvania and West Virginia. Dr. Albright’s report was supportive of adding Huntington’s disease as a qualifying condition when other methods of conventional treatment had failed.

Dr. Albright noted that there are actually strong clinical trials and extensive research into treating Huntington’s disease with medical marijuana. Dr. Albright recommended that for Huntington’s disease, the patient, family, and medical team should be allowed to access medical marijuana therapy after clinical trials are considered and after other medications have failed.

Dr. Schottenstein observed that Huntington’s disease can have psychiatric manifestations, such as anxiety and psychosis, and marijuana can potentially provoke similar issues. Dr. Schottenstein asked if there is concern that Huntington’s disease patients would be at increased risk of worsening psychiatric symptoms if medical marijuana is added to their regimen. Dr. Albright answered that that would be a concern and that is why he would be interested in looking at the clinical trials. Dr. Albright added that medications that are currently used in treatment of Huntington’s disease also have side-effects. Dr. Albright opined that getting the patient into a clinical trial should be the first approach, but if that is not possible then medical marijuana could be a potentially valuable comfort tool in dealing with the patients’ movements.

Mr. Giacalone asked if it would be fair to say that the symptoms and effects of Huntington’s disease are similar to that of MS, even though their physiological genesis may be different. Dr. Albright replied that the movements related to those two conditions are very different and he would not link the two in that way. Dr. Albright stated that there is similarity in that both conditions cause degenerative changes in muscle control, but the pathways are different and their respective effects on patients are unique.

Mr. Giacalone asked if it would be fair to say that the benefits of using medical marijuana in the treatment of Huntington’s disease outweigh the risks. Dr. Albright answered that that would be a fair

statement on an individual basis and there are Huntington's disease patients who have significant symptomatic comfort relief with medical marijuana.

Restless Leg Syndrome

Dr. Bechtel stated that Dr. Albright has recommended against approval of medical marijuana to treat restless leg syndrome.

Dr. Albright stated that he could find no objective data that the endocannabinoid system links to restless leg syndrome. Dr. Albright stated that restless leg syndrome is extremely common and he did not feel that the clinical data reflects adequate information on the efficacy or side-effects of treating with medical marijuana. Dr. Albright added that there are no animal models for this condition other than those related to iron deficiency. Dr. Albright did not feel that there is sufficient evidence at this time that medical marijuana would have a direct effect on restless leg syndrome.

Dr. Schottenstein commented that some patients experience pain with restless leg syndrome and wondered if medical marijuana would be helpful for pain control. Dr. Albright stated that medical marijuana may help with the pain and insomnia that can accompany restless leg syndrome, but that would constitute the treatment of the syndrome's secondary phenomena and not the syndrome itself.

Review of Category IV Petitions to Add Qualifying Conditions

Autism Spectrum Disorder: Asperger Syndrome, Autistic Disorder, Pervasive Developmental Disorder

Dr. Bechtel stated that Committee has previously considered autism as a qualifying condition for treatment with medical marijuana. The Committee has reviewed the new literature that was included in the two current petitions for autism. Dr. Bechtel stated that autism is a devastating condition for the patients and their families, noting that therapy is challenging and many therapies currently utilized have significant side-effects. The Committee greatly appreciates the concerns that families have expressed and the sincerity of the petitions.

Dr. Bechtel stated that autism specialists at Nationwide Children's Hospital, Cincinnati Children's Hospital, and mental health directors for the State of Ohio have expressed concern with approving medical marijuana for treatment of autism. These concerns including worsening of several psychiatric conditions in pediatric patients, long-term negative effects on cognition, potential long-term negative effects in intelligence quotient, negative effects on concentration and problem-solving, potential obesity, and potential decline in personal engagement later in life.

Dr. Schottenstein appreciated Dr. Bechtel's comments and he also regretted the emotional pain that families manage when there are children in the home with autism. Dr. Schottenstein was also respectful of the concerns noted by experts about the minimal rigorous evidence that medical marijuana is beneficial for autism and the substantial association of marijuana with the worsening of several psychiatric conditions. Dr. Schottenstein observed that experts from the children's hospitals expressed alarm at the prospect of approving medical marijuana for both autism and anxiety. The experts described themselves as deeply concerned and indicated that they felt it would be negligent and unethical to approve medical marijuana for these conditions without the results of good studies that are currently underway to support these indications. Dr. Schottenstein regretted that approval of medical marijuana to treat autism seemed premature to him at this time.

Dr. Soin moved to recommend approval of the petitions to add autism spectrum disorder to the list of qualifying conditions for treatment with medical marijuana. Dr. Schottenstein seconded the motion. All members voted nay. The motion did not carry.

Restless Leg Syndrome (AKA Willis-Ekborn Syndrome)

Dr. Soin moved to recommend approval of the petition to add restless leg syndrome to the list of qualifying conditions for treatment with medical marijuana. Dr. Reddy seconded the motion. All members voted nay. The motion did not carry.

Huntington's Disease

Mr. Giacalone moved to recommend approval of the petition to add Huntington's disease to the list of qualifying conditions for treatment with medical marijuana. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

Panic Disorder with Agoraphobia

Dr. Bechtel stated that Committee has previously considered this condition as a qualifying condition for treatment with medical marijuana. The Committee has reviewed the new literature that was included in the current petition.

Dr. Schottenstein stated that he is respectful of the expert opinions he has seen on this topic. Dr. Schottenstein stated that medical marijuana can provoke severe panic in some patients, and he did not feel comfortable recommending it at this time for fear of aggravating the underlying disorder instead of treating it. Dr. Schottenstein was not aware of any way to predict which patients would potentially benefit from medical marijuana and which patients would potentially suffer a severe reaction and end up in the emergency department.

Dr. Schottenstein moved to recommend approval of the petition to add panic disorder with agoraphobia to the list of qualifying conditions for treatment with medical marijuana. Mr. Giacalone seconded the motion. All members voted nay, except Dr. Soin who voted aye. The motion did not carry.

Terminal Illness – Estimate of 6-Month Life Expectancy or Less

Dr. Bechtel noted that there were two petitions regarding terminal illness. One petition defined terminal illness as an estimated six-month life expectancy or less, while the other defined it as less than six months to live with eligibility for hospice care.

Dr. Reddy moved to recommend approval of the petitions to add terminal illness to the list of qualifying conditions for treatment with medical marijuana. Dr. Soin seconded the motion. All members voted aye. The motion carried.

Spasticity and Spasms

Dr. Bechtel suggested that the Committee vote on the petition to add spasticity and spasms to the list of qualifying conditions for treatment with medical marijuana, and then vote on only spasticity.

Dr. Reddy moved to recommend approval of the petitions to add spasticity and spasms to the list of qualifying conditions for treatment with medical marijuana. Dr. Soin seconded the motion.

The Committee briefly discussed the definition of spasticity for purposes of this vote and the nature of the spasms being considered. Dr. Bechtel recalled that Dr. Albright suggested defining spasticity as injury to the upper motor neuron pyramidal system.

A vote was taken on Dr. Reddy's motion. All members voted aye. The motion carried.

The Committee members expressed uncertainty regarding the motion and the vote. Ms. Loucka suggested that the Committee take two separate votes, one on spasticity and one on spasms, to avoid confusion. Dr. Bechtel agreed.

Dr. Soin moved to recommend approval of the petition to add spasticity to the list of qualifying conditions for treatment with medical marijuana. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Mr. Giacalone moved to recommend approval of the petition to add spasms to the list of qualifying conditions for treatment with medical marijuana. Dr. Reddy seconded the motion. All members voted nay. The motion did not carry.

Dr. Bechtel thanked Dr. Albright again for his extensive research and expert reports.

Adjourn

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

The meeting adjourned at 3:28 p.m.

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