



**State Medical Board of Ohio Meeting Minutes
January 13, 2021**

Mark A. Bechtel, M.D., President, called the video conference meeting to order at 10:02 a.m. with the following members present: Betty Montgomery, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Sherry Johnson, D.O.; Harish Kakarala, M.D.; Jonathan Feibel, M.D.; and Yeshwant Reddy, M.D.

MINUTES REVIEW

Motion to approve the minutes of the December 9, 2020 Board meeting, as drafted:

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

The motion carried.

REPORTS AND RECOMMENDATIONS

Dr. Bechtel asked the Board to consider the Reports and Recommendations appearing on the agenda. He asked if each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in the matters of: Ava Jie Davis, L.M.T.; Freeda J. Flynn, M.D.; Joseph Michael Franzese, M.D.; Anjmun Sharma, M.D.; and Onyinyechi Rose Uradu, M.D. A roll call was taken:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

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

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Reddy	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 had served as Secretary and/or Supervising Member in the matter of Dr. Flynn.

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.

Ava Jie Davis, L.M.T.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Bechtel directed the Board's attention to the matter of Ava Jie Davis, L.M.T. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

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

Ms. Davis was represented by her attorney, Lawrence Henke.

Mr. Henke stated that House Bill 442, which was passed by the General Assembly and signed by the Governor on January 7, 2021, is applicable to Ms. Davis. Ms. Davis has presented evidence that she is at least 18 years old, of good moral character, and has obtained a high school education. More importantly, Ms. Davis has shown that she received her education and instruction in massage therapy from World of Beauty Academy in Orlando, Florida, and became licensed to practice massage therapy in Florida in August 2019. Ms. Davis has completed approximately 800 hours of massage therapy education; the new law requires 600 hours.

Mr. Henke continued that Ms. Davis received 290 hours of education in anatomy, physiology, pathology, and kinesiology. Whereas the previous law required Ms. Davis to have 325 hours in those subjects, the new law only requires 275 hours. In addition, Ms. Davis has at least 325 clock hours in massage theory and practical, while only 275 hours are required under the new law. Ms. Davis also has had 25 hours in ethics and 25 hours in business and law. Accordingly, the remainder of the Board's academic requirements have been met.

Mr. Henke noted that John Hoke testified in Ms. Davis' behalf. Mr. Hoke is a retired airman in the U.S. Air Force and is also a licensed massage therapist in Ohio. Ms. Davis performed two massages on Mr. Hoke free of charge. Mr. Hoke indicated that Ms. Davis was as good as any massage therapist with whom he has worked. Mr. Hoke testified that Ms. Davis knows the body, works the muscle groups well, and is very skillful. In fact, Mr. Hoke had had a problem with his right shoulder for years and Ms. Davis was able to identify the problem and work on it skillfully.

Mr. Henke stated that, very importantly, Ms. Davis is considerate and compassionate in dealing with the public. Mr. Henke hoped that the Board will see that Ms. Davis has passed all the requirements for a massage therapy license. Mr. Henke further noted that Ms. Davis passed the Massage and Bodywork Licensing Examination (MBLEX) and in August 2020 she took an additional 12 hours of continuing education in massage therapy.

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

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

Motion	Dr. Schottenstein
2 nd	Dr. Kakarala

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

Dr. Schottenstein stated that House Bill 442, recently passed by the General Assembly, will become effective in early April 2021. House Bill 442 will amend Section 4731.10, Ohio Revised Code, with respect to massage therapists' course of instruction. Dr. Schottenstein agreed with defense counsel that the change in the law is potentially germane to Ms. Davis' case, but he did not feel the Board should simply approve the application today because there are other concerns about the application.

Dr. Schottenstein opined that this matter should be remanded back to the Hearing Unit to take additional testimony or documentary evidence.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Motion to amend remand the matter of Ms. Davis back to Hearing Unit to take additional testimony or documentary evidence related to the statutory changes related to massage therapy course of instruction:

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

The motion to remand carried.

Ms. Anderson stated that Ms. Davis and her attorney will be notified when the Board’s Hearing Unit schedules a new hearing.

Dr. Feibel commented that one of his concerns is the fact that Ms. Davis’ massage therapy school has provided three versions of her certified transcripts and all three of them are different. Consequently, Dr. Feibel had questions about the veracity of the school. Dr. Feibel opined that the Hearing Examiner should examine that issue as well as the upcoming statutory change. Mr. Giacalone agreed that the Hearing Examiner should review the matter of the conflicting transcripts.

Freeda J. Flynn, M.D.

Dr. Bechtel directed the Board’s attention to the matter of Freeda J. Flynn, M.D. No objections have been filed. Mr. Porter was the Hearing Examiner.

Dr. Bechtel stated that a request to address the Board has been made on behalf of Dr. Flynn. However, the Request was not filed within the Board’s established deadline for today’s meeting. Therefore, the Board will vote on this matter.

Motion to grant Dr. Flynn’s Request to Address the Board:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Bechtel	Abstain
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The motion carried.

Dr. Bechtel stated that five minutes will be allowed for Dr. Flynn's address.

Dr. Flynn stated that she did nothing wrong. Dr. Flynn stated that she was raised to trust policemen, and when her office was unexpectedly stormed by over 30 gun-toting people at 7:30 a.m., she was taken by surprise. At that time, Dr. Flynn felt that at her age she did not need to be prescribing controlled substances if it involved this much trouble, and there are plenty of other good things she can do. Dr. Flynn told the Drug Enforcement Administration (DEA) agent at the scene that she did not want to prescribe controlled substances anymore, not understanding the consequences of surrendering her DEA certificate. Dr. Flynn did not ask for an attorney at that time because she did not know she needed one.

Dr. Flynn continued that she has just submitted a volunteer application with the University of Cincinnati to help them with blood gases and lumbar punctures, things that she is good at. Dr. Flynn stated that she would like to continue service to the community.

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

Ms. Snyder observed that Dr. Flynn is currently under the terms of a Consent Agreement with the Board, her probation having been extended by a June 2019 Order. The purpose of the hearing was simply to determine whether Dr. Flynn had surrendered her DEA certificate, which was proven to be true. Ms. Snyder asked the Board members to consider whether continuing Dr. Flynn on probation is something that would be beneficial for public safety and a good use of the Board's resources. Ms. Snyder stated that she would rely on the Board members' expertise to make that determination.

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

Motion	Dr. Schottenstein
2 nd	Dr. Soin

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

Ms. Montgomery noted that Dr. Flynn has indicated she is retired and is currently trying to process her medical records for her patients. Rather than reprimanding Dr. Flynn, Ms. Montgomery opined that negotiating a surrender of Dr. Flynn's medical license would be a more humane way of handling this case. Ms. Montgomery suggested remanding this matter to the Assistant Attorneys General so that a possible settlement may be negotiated.

Motion to remand the matter to the Assistant Attorneys General for possible negotiation of a settlement with Dr. Flynn:

Motion	Ms. Montgomery
2 nd	Mr. Giacalone

Mr. Giacalone observed that Dr. Flynn has a disciplinary history with the Board. Mr. Giacalone stated that if Dr. Flynn is planning on retirement, this would be a good opportunity to effectuate that through the settlement process as opposed to continuing the Board's ongoing relationship with Dr. Flynn.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Feibel appreciated the thought behind the motion to remand, but opined that it was not the best use of the Board resources to burden the already overburdened staff with this matter. Dr. Feibel stated that Dr. Flynn could have agreed to a surrender of her license before her hearing. Dr. Feibel was not comfortable with only a reprimand and suggested a non-permanent revocation of Dr. Flynn's medical license. Dr. Flynn would still be able to process her medical records and would have to come back to the Board if she wished to regain her license.

Dr. Feibel expressed concern that when armed agents from the Drug Enforcement Administration (DEA) stormed Dr. Flynn's office, she immediately surrendered her DEA certificate. Dr. Feibel stated that most people do not surrender their DEA certification unless they are worried about something being discovered in an investigation.

Dr. Soin also did not support the proposed remand for a possible negotiated surrender of Dr. Flynn's license. Dr. Soin stated that if the Board does not think Dr. Flynn should practice medicine, it can choose to revoke her license today rather than have the staff work through the process of negotiating with Dr. Flynn for the same outcome. Dr. Soin found the Proposed Order of a reprimand to be acceptable, noting that the loss of Dr. Flynn's DEA certification and ability to prescribe controlled substances is punishment enough from a public protection point of view.

Dr. Schottenstein also did not support the proposed remand. Dr. Schottenstein, noting that Dr. Flynn just informed the Board that she is inclined to practice medicine on a voluntary basis, speculated that she may not be willing to agree to surrender her license. Dr. Schottenstein commented that he would not be surprised if the option of a voluntary surrender had already been offered to Dr. Flynn. Because of this, Dr. Schottenstein did not feel that a remand would be productive.

Dr. Schottenstein favored the Proposed Order of a reprimand. Dr. Schottenstein did not wish to read too much into the DEA raid without more information, commenting that people and government bodies can make mistakes and the Board has no evidence of what had provoked the raid. Focusing on the matter at hand, namely Dr. Flynn's surrender of her DEA certification, Dr. Schottenstein felt that a reprimand is appropriate.

Mr. Giacalone appreciated the previous thoughts, but stated that if Dr. Flynn understands that the Board is struggling with whether to revoke her license, she may agree to a voluntary surrender so she can exit the profession graciously. Mr. Giacalone stated that it does not serve the public to have Dr. Flynn continually return to the Board on disciplinary matters.

Ms. Montgomery agreed and stated that if the Board only reprimands Dr. Flynn, it will continue to have interactions with her because she is still under probation from her previous Order. Ms. Montgomery stated that Dr. Flynn has had some mental health issues and she does not seem to have an understanding of appropriate prescribing. Other factors, such as Dr. Flynn's failure to pay her income taxes, indicates a person who has not been able to appropriately address life's responsibilities. Ms. Montgomery opined that this case should have been settled without bringing it to the public. Ms. Montgomery added that under the new statute, Dr. Flynn would not be able to volunteer or have her license extended because of her disciplinary history.

Ms. Montgomery opined that if the Board is unable to negotiate a surrender of Dr. Flynn's license, then it should take stronger action than a reprimand. Ms. Montgomery stated that the Board should not have Dr. Flynn practicing medicine and should let her exit the profession with dignity.

Vote on Ms. Montgomery's motion to remand:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion to remand did not carry.

Dr. Feibel suggested a non-permanent revocation of Dr. Flynn's Ohio medical license.

Motion to amend the Proposed Order to a non-permanent revocation of Dr. Flynn's medical license:

Motion	Dr. Feibel
2 nd	Dr. Kakarala

Dr. Feibel commented that if this were the first time that Dr. Flynn had come before the Board, he would feel comfortable with a reprimand. Dr. Feibel opined that allowing Dr. Flynn the ability to continue practicing without requiring a Board-approved practice plan is unwise from the standpoint of public protection. Dr. Feibel stated that a reprimand in this case does not protect the public.

Mr. Giacalone stated that if the Board feels that Dr. Flynn is not competent or capable to practice medicine, then it should permanently revoke her medical license. Dr. Soin agreed that if an individual Board member feels that Dr. Flynn is not fit to practice, then a permanent revocation would make more sense than a non-permanent revocation. However, Dr. Soin favored the reprimand because she will not be able to prescribe controlled substances without DEA certification, and the substance of the Report and Recommendation was concerned over Dr. Flynn's prescribing patterns. Dr. Soin felt that in the absence of Dr. Flynn's ability to prescribe controlled substances, it is possible that she could practice and contribute to society in ways that would not risk harm to the public. Dr. Schottenstein echoed Dr. Soin's comments and reiterated his opinion that, sticking strictly to the allegation that Dr. Flynn surrendered her DEA certification, the Proposed Order of reprimand is appropriate.

Mr. Giacalone stated that he struggles with approving only a reprimand because of Dr. Flynn's history with the Board. Mr. Giacalone opined that there is a question of competency with Dr. Flynn and he cautioned that the issues currently before the Board could be the tip of the iceberg.

Dr. Feibel stated that he had difficulty with the fact that Dr. Flynn immediately surrendered her DEA certification when the DEA stormed her office. Dr. Feibel stated that purpose of surrendering the certification is such a situation is to prevent an investigation. Dr. Feibel stated that the DEA does not storm offices for no reason. Dr. Feibel stated that the Board is here for the public, not for Dr. Flynn, and the Board wants to make sure the public is safe. Dr. Feibel opined that allowing Dr. Flynn to continue practicing is not safe.

Dr. Feibel stated that he had proposed a non-permanent revocation because he did not feel that the Board would support a permanent revocation given that the Proposed Order is a reprimand. Dr. Feibel stated that he would prefer a permanent revocation of Dr. Flynn's license.

Dr. Feibel wished to change his motion to amend into a permanent revocation of Dr. Flynn's medical license. No Board member objected to the change in the motion. The change in the motion was accepted.

Vote on Dr. Feibel's motion to amend to a permanent revocation:

Dr. Rothermel	Abstain
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State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion to amend did not carry.

Mr. Giacalone proposed a non-permanent revocation of Dr. Flynn’s medical license, as originally suggested by Dr. Feibel. A non-permanent revocation would give Dr. Flynn an opportunity to come back to the Board in the future and attempt to regain licensure if she so desires.

Regarding the DEA raid of Dr. Flynn’s office, Ms. Montgomery stated that she has been involved in such raids, which are intended to shock and awe and they often come in with overwhelming force. Ms. Montgomery noted that this involved a substance abuse issue, and there was an imperative at that time from the Governor, county commissioners, and local health departments to deal strongly with such situations. Ms. Montgomery could envision a scenario in which someone in the excitement of the moment may be shocked into surrendering their certificate.

Ms. Montgomery did not favor revocation of Dr. Flynn’s license, but stated that the Board will continue to with Dr. Flynn until her license is either surrendered or revoked.

Motion to amend the Proposed Order to a non-permanent revocation of Dr. Flynn’s medical license:

Motion	Mr. Giacalone
2 nd	Dr. Kakarala

Dr. Feibel stated that he appreciates Ms. Montgomery’s comments and perspective. Dr. Feibel stated that the things Ms. Montgomery said about Dr. Flynn’s situation describes someone he does not want practicing medicine on the public. Dr. Feibel opined that it is the Board’s duty to take Dr. Flynn out of practice. Dr. Feibel supported a revocation or some sanction greater than a reprimand, which does nothing to protect the public.

Mr. Giacalone stated that if a Board member would feel comfortable having Dr. Flynn practicing on their family and friends, then they should not vote for revocation; otherwise, the Board member should support revocation.

Vote on Mr. Giacalone’s motion to amend:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Reddy	Y
Dr. Bechtel	Abstain

The motion to amend carried.

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

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

The motion carried.

Joseph Michael Franzese, M.D.

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

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

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

Mr. Lyon commented that in this era of incivility, he wanted to thank Ms. Snyder for demonstrating nothing but professionalism, dignity, and respect to him and his client during this process.

Mr. Lyon noted that the mission of the Board is public safety. Mr. Lyon further noted that at the end of Dr. Franzese's hearing, the Hearing Examiner commented, "It is possible he has seen the error of his ways." Mr. Lyon stated that the question before the Board is two-fold. First, will the structures recommended by the Hearing Examiner make it not only possible, but probable, for Dr. Franzese to see the error of his ways? Second, will those structures allow Dr. Franzese to become the physician everyone would like him to become?

Mr. Lyon continued that at the hearing, Dr. Franzese said, "But at the end of the day, these are things that I did. I acknowledge that I did them. I own that. I love practicing medicine and I just hope that my mistake doesn't preclude me from doing that forever." Mr. Lyon stated that these are nice words, but he asked how the Board can be assured that Dr. Franzese will learn from his mistake and move on in the practice of medicine as the physician the Board wants him to be while protecting the public from the mistakes he made.

In answer to this question, Mr. Lyon submitted that the Hearing Examiner has set forth several safeguards, including educational courses, a permanent restriction from prescribing Schedule II controlled substances, and having a monitoring physician, so that this young physician can learn from his mistakes and incorporate that

State Medical Board of Ohio Meeting Minutes – January 13, 2021

into his practice of medicine. Mr. Lyon speculated that Ms. Snyder, based on her comments during the hearing, also feels that a two-year suspension along with these structures are reasonable and appropriate to fulfill the Board's mission "To protect and enhance the health and safety of the public through effective medical regulation." Mr. Lyon stated that with these structures in place, the Board's mission is fulfilled.

Using a baseball analogy, Mr. Lyon stated that Dr. Franzese knows he has an 0-2 count and one more strike will mean that he is out and will not get another swing. Mr. Lyon asked the Board to adopt the Report and Recommendation and let Dr. Franzese prove that he can learn the error of his ways and will go one to become the physician the Board wants him to be.

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

Ms. Snyder stated that Dr. Franzese is a board-certified obstetrician and gynecologist. Dr. Franzese is here today because he admitted to accepting a small amount of narcotic medication from two of his patients who were also employees of the medical practice where he worked. Dr. Franzese also had a sexual relationship with one of those patients. Dr. Franzese was cited for sexual misconduct, acts constituting felonies in the course of practice for accepting the drugs, and sexual misconduct for engaging in sexual banter with a patient while she was having a procedure. Ms. Snyder noted that Dr. Franzese went to the Ridge for a chemical impairment evaluation and was found to not be impaired.

Ms. Snyder supported the Report and Recommendation and believed that Dr. Franzese has accepted responsibility for his misconduct. Ms. Snyder did not believe that the two patients simply volunteer the medications, but she did believe that this process has awakened something in Dr. Franzese. It is clear that Dr. Franzese had had no respect for the law or appropriate professional boundaries, nor for the power and influence one has as a physician. Ms. Snyder commented that it would be an understatement to say that Dr. Franzese did not show the maturity the Board would expect and demand from a young physician.

Ms. Snyder opined that a two-year suspension is appropriate in this case and will give Dr. Franzese the time he needs to reflect, grow up a little, take all the required educational courses, and to understand that being a physician is a great responsibility and he cannot act like a kid in a candy shop. Ms. Snyder opined that the Report and Recommendation is appropriate and that Dr. Franzese deserves another chance to prove to the Board that he is up to being a physician.

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

Motion	Dr. Schottenstein
2 nd	Dr. Kakarala

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

Ms. Montgomery, observing that the Proposed Order includes a permanent limitation/restriction requiring that a chaperone be present when Dr. Franzese examines or treats a female patient, asked what effect that may have on any out-of-state licenses Dr. Franzese may hold. Ms. Anderson replied that if the Board approves the Proposed Order, both the permanent limitation/restriction requiring a chaperone and the permanent limitation/restriction from prescribing Schedule II controlled substances would be permanent and would continue after the end of probation. Ms. Anderson could not speculate on what action other state medical boards may choose to take, but stated that the action would be reported to the National Practitioner Databank and to other state medical boards through the Federation of State Medical Boards.

Responding to further questions from Ms. Montgomery, Dr. Bechtel confirmed that if the Proposed Order is accepted, the soonest that Dr. Franzese could resume practice in Ohio would be two years.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Schottenstein stated that because Dr. Franzese had acknowledged that he engaged in the alleged behavior, this is a case of mitigation. The behavior in question brings disrepute upon the medical profession and potentially has toxic effects on coworkers and patients.

In mitigation, Dr. Schottenstein noted that Dr. Franzese has no prior disciplinary record and he engaged in counseling after being referred by his employer. Dr. Schottenstein was also mindful that Dr. Franzese is a relatively young man, having only been out of medical training for four or five years.

In regard to aggravating factors, Dr. Schottenstein believed the following:

- Dr. Franzese had a dishonest and selfish motive regarding his behavior.
- There was a pattern of misconduct with multiple violations.
- Dr. Franzese was evasive at times during his testimony when asked about his behavior, which caused Dr. Schottenstein to question how much responsibility Dr. Franzese took for his behavior.
- Dr. Franzese's conduct had an adverse effect on others.
- Patients and co-workers were in vulnerable positions regarding Dr. Franzese's behavior, with one coworker testifying of her fear of speaking up about it.
- Dr. Franzese's behavior was willful and reckless.
- Dr. Franzese used his position of trust and his medical license to violate boundaries and engage in bad behavior.
- It is conceivable that the behavior will recur.

Given the multitude of transgressions, Dr. Schottenstein felt that the length of the suspension and the restrictions in the Proposed Order are fair. Dr. Schottenstein stated that Dr. Franzese is a relatively young man and he would like to give Dr. Franzese a chance to do better. Dr. Schottenstein stated that he had considered supporting a permanent revocation of Dr. Franzese's medical license, but he concluded that a permanent revocation is premature because it is too soon to say that Dr. Franzese cannot be remediated.

Dr. Schottenstein felt that Dr. Franzese would benefit from a course on controlling anger and communicating appropriately in a medical practice environment.

Motion to amend the Proposed Order to require completion of a disruptive physician behavior course as an additional condition for reinstatement or restoration of Dr. Franzese's medical license:

Motion	Dr. Schottenstein
2 nd	Dr. Feibel

Mr. Giacalone agreed with Dr. Schottenstein. Mr. Giacalone objected to the characterization of Dr. Franzese as a young man, noting that Dr. Franzese is in his 30's. Mr. Giacalone stated that Dr. Franzese is an adult and should know better than to engage in this behavior.

Dr. Bechtel agreed that a two-year suspension of Dr. Franzese's license is appropriate, noting that Dr. Franzese split prescriptions for controlled substances that he had written to employees in his office and had sexual contact with one of his patients and employees. Dr. Bechtel was also very concerned about Dr. Franzese's inappropriate behavior with the patient who was using a dating app while undergoing a procedure and on medication.

Vote on Dr. Schottenstein's motion amend:

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion to amend carried.

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

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

The motion carried.

Anjmun Sharma, M.D.

Dr. Bechtel directed the Board’s attention to the matter of Anjmun Sharma, M.D. No objections have been filed. Ms. Shamansky was the Hearing Examiner.

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

Motion	Dr. Kakarala
2 nd	Dr. Schottenstein

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

Ms. Montgomery observed that the behavior in this case occurred six years ago and stated that if the matter had come before the Board in a more timely fashion, she would agree with the Hearing Examiner’s Report and Recommendation. However, at this point Ms. Montgomery felt it would not be appropriate to require Dr. Sharma to take a course, which he has already taken in another state, and impose probationary terms. Ms. Montgomery opined that it makes no sense for the Board to waste its time on probation for actions that

State Medical Board of Ohio Meeting Minutes – January 13, 2021

occurred six years ago and for which Dr. Sharma has already self-regulated. Ms. Montgomery did not wish to diminish Dr. Sharma’s inappropriate actions, which involve some phone calls he made between February 3 and February 6, 2015.

Ms. Montgomery agreed with the reprimand and the fine in the Proposed Order, but recommended that the required courses and probation be removed.

Motion to amend the Proposed Order to retain the reprimand and the \$1,000 fine, but to remove the probationary terms:

Motion	Ms. Montgomery
2 nd	Dr. Schottenstein

Dr. Schottenstein opined that Patient A conceptualized her relationship with Dr. Sharma as transactional. Dr. Schottenstein stated that in the context of her sexual communications, Patient A expected Dr. Sharma to give her a favorable rating on her examination, and when he did not Patient A felt duped, betrayed, and used. When one experiences those feelings, one turns one’s anger onto the perceived responsible party. This explains why Patient A responded so vigorously with calls to two police departments regarding Dr. Sharma’s behavior. The boundary violation transformed Patient A’s reaction to the medical report from one of disappointment to one of anger.

Dr. Schottenstein continued that this situation demonstrates the paradox inherent in sexual misconduct between physician and patient. Because the patient seems inclined to the sexual activity, the physician perceives that she is gratified by it, but in actuality patients walk away from such encounters feeling minimized as human beings. Dr. Schottenstein stated that although this incident took place six years ago, he was certain that Patient A is still thinking about it and is still angry about it.

Dr. Schottenstein stated that Dr. Sharma has had no other inappropriate encounters with patients that the Board is aware of, Dr. Sharma as done a great deal of remedial work to address his boundary issues, and the behavior is remote in time. Also, there is good feedback from Dr. Sharma’s caregivers about the progress he has made. Because of this, Dr. Schottenstein agreed with Ms. Montgomery’s proposed amendment.

Vote on Ms. Montgomery’s motion amend:

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

The motion to amend carried.

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

Motion	Dr. Schottenstein
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State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

Onyinyechi Rose Uradu, M.D.

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

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

Dr. Uradu was represented by her attorney, John Izzo.

Mr. Izzo stated that Dr. Uradu is here today due to the prior Board action against her, but he did not want to retry that case. However, Mr. Izzo pointed out that the prior Board action occurred because Dr. Uradu was utilizing suboxone in the treatment of addiction and violated the 100 patient limit. Mr. Izzo emphasized that Dr. Uradu was never charged with or found to be prescribing inappropriately. Dr. Uradu had been properly prescribing, but the problem was that she had more than 100 patients. Mr. Izzo stated that this was a technical violation that had nothing to do with the care she provided for her patients.

Mr. Izzo continued that Dr. Uradu's prior violation is very different from the reason the Board used to deny Dr. John Allen Ross' application for a Certificate to Recommend the Medical Use of Marijuana (CTR). In that case, Mr. Izzo observed that Dr. Ross had run his office sloppily, allowing two nurses to perform i-lipo laser treatments and leaving left blank pre-signed prescriptions with his office staff, which is clearly inappropriate because he would have no idea who was getting what drugs under his name. As a result, Dr. Ross entered into a consent agreement admitting that he had departed from or failed to conform to minimal standards of care. This violation later became the basis of the Board's denial of Dr. Ross' application for a CTR because it was shown that his past action was related to inappropriate prescribing.

By contrast, Mr. Izzo stated that Dr. Uradu is not reckless in the use of her prescription pad and she was not found to have departed from the minimal standards of care or to have inappropriate prescribed suboxone. As the Hearing Examiner stated in the Report and Recommendation, Dr. Uradu's violation was that she had prescribed suboxone to more than 100 patients, not that she had prescribed inappropriately. As a result, Mr. Izzo did not believe the prior disciplinary action involved inappropriate prescribing and Dr. Uradu should therefore be granted a CTR.

Dr. Uradu wished to highlight why she needs a CTR, the good it can do for her patients, and the reasons the Board should reject the Hearing Examiner's Report and Recommendation. Dr. Uradu stated that she works as an addiction specialist and 100% of her time is spent with patients with substance abuse disorder, which is a complex population. For that reason, Dr. Uradu has always followed proven best practices to ensure her patients' safety and well-being.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Uradu continued that in 2016, based on new knowledge, medical marijuana was approved for the management of specific medical conditions, some of which are very common in Dr. Uradu's patient population. Dr. Uradu decided to apply for a CTR so she could offer her patients that therapeutic option. For instance, 76% of Dr. Uradu's patients who are IV drug users are Hepatitis C positive, 13% have HIV, 10% have chronic intractable pain, and 6.6% have cancer with associated cachexia. Dr. Uradu further noted that 21% to 43% of post-traumatic stress disorder (PTSD) patients also have substance use as a co-morbidity. Dr. Uradu stated that giving these patients access to medical marijuana as a continuum of care could mean the difference between getting a job or spending time in jail or losing custody of their children. Since Dr. Uradu already knows her patients' histories better than most of their providers, having a CTR would allow her to give them more comprehensive care at no extra cost.

Dr. Uradu stated that she would feel inadequate as a provider if she could not offer her patients a treatment option that has been found to be effective for their conditions. Dr. Uradu stated that if she is denied a CTR, it will affect her professionally and her patients will be the worse for it. Dr. Uradu pleaded with the Board to approve her CTR application, especially since her previous administrative sanction had nothing to do with the quality of care she provided or with inappropriate prescribing.

Dr. Bechtel asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he wished to respond.

Mr. Wilcox stated that this case involved a proposed non-disciplinary denial of Dr. Uradu's application for a CTR, which was submitted in August 2019. Mr. Wilcox stated that the Board was given authority by the legislature to promulgate rules for CTR applicants. The Board did so and the rules were promulgated through the Joint Committee on Agency Rule Review (JCARR). Mr. Wilcox commented that the State did not have the opportunity to respond to any of the arguments that were brought forth after the hearing in Dr. Uradu's objections to the Report and Recommendation, but he reiterated that the rules went through the JCARR process and were approved unanimously without objection.

Mr. Wilcox opined that the Board should reject the argument that the language of the rule does not fit what happened in Dr. Uradu's prior action. Although the defense focuses on the phrase "inappropriate prescribing," the rule also uses the phrase "personally furnishing, dispensing, diverting, administering, or supplying any controlled substance." Mr. Wilcox stated that the Board found in 2016 that Dr. Uradu had committed a misdemeanor in the course of practice by exceeding the number of patients to whom she was allowed to prescribe suboxone under her DATA 2000 waiver, and also surrendering that waiver to the Drug Enforcement Administration (DEA). Mr. Wilcox opined that this clearly falls under the Board's rule.

Mr. Wilcox opined that as it did in the case of Dr. Ross, in which the Board considered a similar case and denied the application for a CTR, the Board should adopt the Report and Recommendation in the matter of Dr. Uradu.

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

Motion	Dr. Schottenstein
2 nd	Dr. Johnson

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

Dr. Bechtel stated that the rules for granting a Certificate to Recommend the Medical Use of Marijuana (CTR) are clear. Under those rules, a provider who has been subject to disciplinary action from any licensing board due to inappropriate prescribing or administration of medication is not eligible for a CTR. In Dr. Uradu's case, she was disciplined for exceeding the limit on the number of patients she was allowed to manage, which is

State Medical Board of Ohio Meeting Minutes – January 13, 2021

clearly a violation involving administering. Dr. Bechtel opined that the Proposed Order to deny Dr. Uradu's application for a CTR is appropriate.

Dr. Soin strongly agreed with Dr. Bechtel and opined that it is important to deny Dr. Uradu's application. Dr. Soin stated that Dr. Uradu's actions that led to her prior disciplinary action was inappropriate on many levels. Dr. Soin stated that Dr. Uradu had been limited to prescribing suboxone to 100 patients, but as of July 15, 2014 she was prescribing to 111 patients; as of July 30, 2014, 152 patients; as of August 15, 2014, 166 patients; and as of August 31, 185 patients. Dr. Soin observed that Dr. Uradu had exceeded the limit by nearly 100%.

Dr. Soin stated that Dr. Uradu's actions were below the standard of care for someone trained and certified in addiction medicine because she broke the law that defines the standard of care in this area. Dr. Soin added that addiction specialists are also required to perform quarterly audits and census counts, which she did not do. This constitutes another violation of the standards of care.

Dr. Soin continued that he was also uncomfortable with a statement Dr. Uradu made today before the Board. Specifically, Dr. Uradu had said she wants to offer her patients things that have been proven clinically to be effective. Dr. Soin stated that the clinical efficacy of medical marijuana has not been established in humans. Dr. Soin noted that the one area in which there may be some effectiveness is in chemotherapy-induced nausea, but even that is only with a very small cohort of patients. Dr. Soin stated that if Dr. Uradu feels that medical marijuana is somehow clinically effective, it is based on evidence he has not seen. Dr. Soin further stated that as a member of the Governor's Commission on Medical Marijuana, he reviews a great deal of data on this subject and he has seen no such evidence.

Dr. Soin stated that Dr. Uradu already has a pattern of breaking rules and over-prescribing. Dr. Soin agreed with the Proposed Order to deny Dr. Uradu's application for a CTR.

Dr. Schottenstein stated that he is respectful of and agrees with the comments made thus far. Dr. Schottenstein was also respectful of Dr. Uradu's motivations and intentions regarding her desire to obtain a CTR. Dr. Schottenstein stated that the only thing he is considering today is whether the Board has leeway to grant Dr. Uradu's application under Rule 4731-32-02 and he is not inclined to relitigate the events surrounding the previous Board Order.

Dr. Schottenstein continued that, regrettably, the Rule is explicit regarding the prohibition of CTR for licensees with a history of Board action related, in whole or in part, to inappropriate prescribing. Dr. Schottenstein was mindful of defense objections regarding the use of the word "inappropriate" as it is used in the rule and that the word is not defined in either Chapter 4731 of the Ohio Revised Code or in the Board's rules. Respectfully, Dr. Schottenstein commented that if the word "inappropriate" is not explicitly defined, then he is uncertain how one can say that the Hearing Examiner did not properly interpret it. Dr. Schottenstein opined that what makes this case difficult is not the word "inappropriate," but the phrase "in whole or in part." Dr. Schottenstein stated that that phrase throws a wide net in terms of the history of prescribing concerns.

Dr. Schottenstein noted that the defense counsel was kind enough to include the Common Sense Initiative (CSI) documents on the rule and the Board members were able to review them. Dr. Schottenstein felt that the documents demonstrated that a great deal of stakeholder input went into the rule-making process, but there do not appear to have been comments supporting the defense counsel's concerns regarding the eligibility rule other than some comments about continuing medical education requirements. In fact, the CSI documents state the following:

The State has a compelling interest in promoting safe and temperate use of medical marijuana while avoiding risks associated with the diversion and theft of medical marijuana.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Schottenstein stated that to promote that interest and minimize those risks, the Board has strict eligibility requirements to grant a CTR. So contrary to defense counsel's concerns, Dr. Schottenstein felt that this provides the rational basis for the rule.

Dr. Schottenstein noted that in her hearing, Dr. Uradu referenced the fact that the Board has wide latitude and discretion in matters that come before it and there is no criminal offense that automatically bars an applicant from getting a license. However, Dr. Schottenstein stated that there is a difference between that fact and the fact that there are eligibility requirements for obtaining a CTR. Dr. Schottenstein stated that the Board is an administrative body and it cannot abuse its discretion by picking and choosing when to follow the dictates of a rule. Otherwise, the rule would not be a rule at all, it would be a guideline. Dr. Schottenstein stated that, in fact, the rule is administrative law and the Board is bound by it. When a rule is explicit as Rule 4731-32-02 is, the Board cannot ignore it or behave in a way that contradicts it in order to accommodate a licensee with whom the Board may sympathize.

Dr. Schottenstein agreed with the Proposed Order to deny the application for CTR.

Mr. Giacalone noted the defense counsel's statement that he does not want to relitigate the prior disciplinary case, but opined that that is exactly what he is doing. Mr. Giacalone also noted the defense counsel's statement that Dr. Ross' office had been run sloppily; Mr. Giacalone stated that Dr. Uradu had also run her office sloppily and the prescribing and administering of suboxone had been out of control. Lastly, Mr. Giacalone observed that one of the rationales Dr. Uradu cited in her prior disciplinary case was that her over-prescribing was for the welfare of her patients. Mr. Giacalone stated that Dr. Uradu could conclude that using medical marijuana outside the scope of what is intended by the law is also beneficial for the welfare of her patients.

Mr. Giacalone stated that because of Dr. Uradu's prior disciplinary case, she is not entitled to a CTR.

Vote on Schottenstein's motion to approve:

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

The motion 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. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matters of Dr. Khan and Dr. Triplett.

Ghanshyam Bhambhani, M.D.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Motion to find that the allegations as set forth in the February 12, 2020 Notice of Opportunity for Hearing in the matter of Dr. Bhambhani have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order:

Motion	Dr. Schottenstein
2 nd	Dr. Johnson

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

Ms. Montgomery questioned why the Board staff went through the process of making three publications of notice when a phone call to federal authorities would have told them where Dr. Bhambhani was incarcerated. Ms. Montgomery opined that the publication process was expensive and cause an unnecessary delay.

Vote on Dr. Schottenstein's motion to approve:

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

The motion carried.

Mohammad Raza Khan, M.D.

Motion to find that the allegations as set forth in the April 8, 2020 Notice of Opportunity for Hearing in the matter of Dr. Khan have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order:

Motion	Dr. Schottenstein
2 nd	Dr. Kakarala

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

Vote on Dr. Schottenstein's motion to approve:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

Jong W. Kim, M.D.

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

Motion	Dr. Johnson
2 nd	Dr. Schottenstein

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

The motion carried.

Rosia McKnight

Motion to find that the allegations as set forth in the May 13, 2020 Notice of Opportunity for Hearing in the matter of Ms. McKnight have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Johnson
2 nd	Dr. Kakarala

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

Ms. Montgomery asked if there was a discrepancy in the documents regarding Ms. McKnight's application for licensure. Ms. Montgomery and Ms. Anderson briefly discussed and resolve this issue.

Vote on Dr. Johnson's motion to approve:

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

Monica Lynn Richardson

Motion to find that the allegations as set forth in the May 13, 2020 Notice of Opportunity for Hearing in the matter of Ms. Richardson have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Kakarala
2 nd	Dr. Schottenstein

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

The motion carried.

Stephens Triplett, D.O.

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

Motion	Ms. Montgomery
2 nd	Dr. Kakarala

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

Vote on Ms. Montgomery's motion to approve:

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

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.

Amy Mamajek-Fu, R.C.P.

Dr. Bechtel stated that on June 10, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Amy Mamajek-Fu, R.C.P., informing her that the State Medical Board of Ohio proposed to approve her application for a license to practice respiratory care, provided that she take and pass the Clinical Simulation Examination (CSE) due to the fact that Ms. Mamajek-Fu has not engaged in the active practice of respiratory care for more than 2 years..

Motion to find that the facts set forth in the June 10, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Mamajek-Fu's application for a license to practice respiratory care in the State of Ohio, provided that she takes and passes the CSE within one year of the mailing of the Notice of Opportunity for Hearing:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Feibel	Y
Dr. Reddy	Y
Dr. Bechtel	Y

The motion carried.

Kimberly Sue Overmyer, M.T.

Dr. Bechtel stated that on November 10, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Kimberly Sue Overmyer, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Overmyer has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the November 10, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Overmyer's application, provided that she takes and passes the MBLEx within one year of the date of mailing of the Notice of Opportunity for Hearing:

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

The motion carried.

Kori A. Pierce, M.T.

Dr. Bechtel stated that on November 10, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Kori A. Pierce informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Pierce has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the November 10, 2020 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Pierce's application, provided that she takes and passes the MBLEx within one year of the date of mailing of the Notice of Opportunity for Hearing:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

EXECUTIVE SESSION

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

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

The motion carried.

The Board went into Executive Session at 11:58 a.m. and returned to public session at 12:15 p.m.

The Board was recessed at 12:15 p.m. The meeting resumed at 12:45 p.m.

SETTLEMENT AGREEMENTS

Jimmy L. Berry, R.C.P.

Motion to ratify the proposed Permanent Surrender with Jimmy L. Berry, R.C.P.:

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

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

Jimmy Mike Henry, M.D.

Motion to ratify the proposed Consent Agreement with Jimmy Mike Henry, M.D.:

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

The motion carried.

Leonid Macheret, M.D.

Motion to ratify the proposed Permanent Surrender/Retirement with Leonid Macheret, M.D.:

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

The motion carried.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Vern D. Reynolds, D.O.

Motion to ratify the proposed Consent Agreement with Vern D. Reynolds, D.O.:

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

The motion carried.

Thomas Gerard Bering, M.D.

Motion to ratify the proposed Permanent Surrender with Thomas Gerard Bering, M.D.:

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

The motion carried.

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

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

1. Rachel Border: Based on the failure of this massage therapy applicant to appear for a scheduled examination or providing a reason that the failure to appear was due to circumstances beyond her control.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

2. Brett Cook: Based on the failure of this massage therapy applicant to appear for a scheduled examination. The applicant indicated that he could not afford the examination; however, the Board does not consider that to be a circumstance beyond his control.
3. Ronica Ann Neuhoff, M.D.: A summary suspension, based on failure to appear for an examination in November 2020 for mental health issues.
4. Bernard K. Oppong, D.O.: Based on a conviction in federal court in 2020 for felonies related to his practice.
5. Noel J. Watson, M.D.: Based on a failure to maintain minimal standards of care, inappropriate prescribing in treatment of intractable pain and chronic pain, and violation of the Ohio Automated Rx Reporting System (OARRS).

Motion to approve and issue Citation #3, a Summary Suspension:

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

The motion carried.

Motion to approve and issue proposed Citation #5:

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

The motion carried.

Motion to approve and issue proposed Citations #1, #2, and #4:

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

OPERATIONS REPORT

Human Resources: Ms. Loucka stated that Board staff will continue to work from home through the Spring, per direction from the Department of Administrative Services (DAS). The staff will soon begin meeting to discuss details of the return to the office and the Board's space needs in the Rhodes State Office Building.

Ms. Montgomery commended the staff for the improvements to the Operations Report's graphics. Ms. Montgomery also commended the new hires recently made and commented that Ms. Loucka is assembling an impressive team. Ms. Montgomery stated that the staff has done very good work throughout the COVID-19 pandemic. Ms. Loucka agreed that the staff have done a terrific job through the challenges created by the pandemic. Dr. Bechtel echoed Ms. Montgomery's comments and stated that the Board appreciates Ms. Loucka's great leadership.

Budget: Ms. Loucka stated that the Board has a healthy cash balance at this time. There was a large increase in license renewals throughout the Fall leading up to December 1, 2020, the date when license renewal extensions had been set to expire. The balance does not reflect some large invoices that have not yet been received from DAS, specifically the invoices for the eLicense system and the Salesforce platform.

Dr. Schottenstein will provide more information in the Finance Committee report.

Licensure: Ms. Loucka stated that the Board's new virtual call center is live and working well. The Board's call numbers are almost up to normal status. Ms. Loucka noted that while staff have been working from home, calls have been going to voicemail and those calls have been returned later. With the virtual call center, the staff is taking calls live again from their homes.

Compliant Statistics: Ms. Loucka hoped that the new display of complaint statistics in the Operations Report is easier to read and has more meaningful data. Ms. Loucka stated that open complaints continue to increase while closed complaints have stayed about the same. Ms. Loucka noted that the Board is getting more complaints and the complaints are more complex, so they will figure out a way to move through the complaints without closing complaints simply for the sake of closing them. Ms. Loucka observed that the Board is closing complaints at a fairly proportionate rate for all the groups, which is an indicator that complaints are not being closed just because there are more new complaints.

Ms. Loucka stated that with new complaints being received, staff will be situated to ensure that work flows are optimal. This will be Ms. Loucka's main focus now that many of the Strauss Working Group recommendations have been implemented. These efforts will be Part Two of those recommendations regarding management of

State Medical Board of Ohio Meeting Minutes – January 13, 2021

complaints. The staff will determine how to optimally work through the complaints, ensure a quality outcome, and make sure complaints are closed at an appropriate pace.

Medical Marijuana, Petitions for New Conditions: Ms. Loucka stated that next month, recommendations will be brought to the Medical Marijuana Expert Review Committee regarding petitions for new qualifying conditions. About 30 petitions have been received. Review of the petitions will continue throughout the Summer and will include a public comment period.

FSMB Annual Meeting: In response to a question from Dr. Schottenstein, Ms. Loucka stated that the Annual Meeting of the State Medical Board of Ohio will be virtual again this year. The Board has not yet received information regarding enrollment or cost, but Ms. Loucka will reach out to obtain that information. Ms. Loucka will also reach out to the Board members to see who would be interested in attending. Since the meeting is virtual and no physical travel will be involved, Ms. Loucka was certain that anyone wishing to attend can be accommodated.

Employee Return to Office: Mr. Gonidakis asked if there is a specific date or range of dates that the Board's staff will return to the office. Ms. Loucka stated that the Board is in Phase 3 of the State's plan to return to the office, which was to begin on March 31, 2021 and extend into April. However, Ms. Loucka noted that Phase 1 was supposed to begin on January 1, 2021, but has been delayed. This will certainly push back the planned date for Phase 3, though no official date has been determined yet. The Board has been encouraged to allow staff to continue working remotely until Memorial Day.

Ms. Loucka also wished to have conversations about what a remote work force would look like and the possibility of relinquishing its space on the second floor of the Rhodes State Office Building.

RULES & POLICIES

Approval of Minutes of December 9, 2020 Policy Committee Meeting

Dr. Johnson moved to approve the draft minutes of the December 9, 2020 meeting of the Policy Committee. Dr. Saferin seconded the motion. All members voted in favor. The motion carried.

Rules Review Update

Rules for Initial Review

Ms. Anderson briefly reviewed the rule review update spreadsheet. Ms. Anderson stated that the Board has filed an updated Business Impact Analysis for the proposed hearing rules to address the change that the Hearing Unit requested to allow remote hearing upon motion. Those rules are currently out for comment.

Rules for Initial Circulation

Ms. Anderson stated that the Department of Development Disabilities (DODD) has requested changes to proposed amendments to the delegation rules in Chapter 4731-23. Specifically, DODD requested that their provisions be deleted from the rule and that a statement be added stating that physician delegation is not applicable in DODD facilities. Ms. Anderson stated that DODD has more particular rules that deal with those facilities. There are also some minor amendments to update nomenclature and statutory authority.

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

Comments on Weight Loss Prescribing Rules

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Dr. Soin stated that he and the staff have discussed the weight loss prescribing rules with many people, including pharmacists and representatives of associations. Dr. Soin stated that the comments boil down to two basic families of issues.

First, under current rules phentermine can be used for acute weight loss but there is no mechanism for it to be used chronically and the Food and Drug Administration (FDA) has not approved it for chronic use. This is causing some access issues because phentermine is off-patent and is very cost-effective. The FDA has approved another medication, Qsymia, for chronic weight-loss. Interestingly, Qsymia is a combination of drugs that includes phentermine. The problem is the Qsymia is not generic and is extremely expensive.

Dr. Soin stated that phentermine is a drug that is abused and diverted. Other nearby states, such as Kentucky, have less rigid rules around phentermine than Ohio. As a result, there are cohorts of patients from Ohio that drive to Kentucky to obtain phentermine and then drive back to Ohio. Dr. Soin commented that the Board wants to protect the public and it understands the challenging issues with obesity, but these are the issues it is dealing with,

The second family of comments regards the requirement for in-person physician visits and whether there is an opportunity to expand telehealth in this area. Comments continue to be received on this issue and it will be discussed in further detail next month.

Dr. Soin stated that the Board will continue to discuss this and consider whether to keep the rules unchanged, allow chronic use of phentermine with rigid rules as the Board does with opioids, or to allow open access. This process will take a great deal of time, research, and discussion. Dr. Soin suggested obtaining more data from states that have open access to phentermine to determine the impact on prescribing patterns.

Dr. Reddy stated that weight loss is a significant issue in Ohio, which has much more obesity than the general population in the United States. Dr. Reddy stated that obesity has to be considered a disease rather than a cultural issue, and the medication part of the treatment of obesity is very essential. Dr. Reddy opined that, just like with the treatment of chronic pain, the Board should allow prescribers to use phentermine for long-term use, but have strict controls on how they use it.

Mr. Giacalone agreed that open access to phentermine could be problematic, stating that when Ohio had open access previously it created diet clinic pill mills. Mr. Giacalone expressed concern that it could become like the opioid situation, especially if every physician or physician assistant is allowed to prescribe it. Mr. Giacalone stated that he may consider chronic use of phentermine if it is confined to a certain specialty such as bariatric medicine.

Dr. Schottenstein was respectful of the comments in favor of expanding access to phentermine, but he also recalled a time when the addictive potential of opioids was minimized and he did not want to see the same situation with phentermine. There are many well-meaning comments about the risk of addiction to phentermine being low, which had also been said about opioids. Dr. Schottenstein wanted to help expand access to phentermine and he felt it was important to treat obesity, but he also felt it is worth investing time to proceed cautiously.

Dr. Reddy stated that there are family physicians and internal medicine specialists who specialize in treating obesity, and perhaps they can be considered for physicians who will control prescriptions for chronic phentermine. The Board also consider allowing another physician to continue a chronic phentermine treatment that was begun by another physician who specializes in treating obesity.

Dr. Bechtel asked if there has been any effort to look at states that have approved phentermine for chronic use and if they have guidelines that have minimized abuse and diversion. Dr. Soin stated that the last time the rule was considered the Board looked at some neighboring states, particularly Kentucky. Dr. Soin did not remember the data exactly, but he recalled that it was compellingly significant in terms of the number of doses prescribed there.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

Mr. Giacalone asked if there have been any conversations with the manufacturer of Qsymia about whether the combination of drugs that makes up that medication makes it less of a concern for chronic use. Dr. Soin replied that they have not spoken to the manufacturer, but stated that he would research the question about the combination of drugs in Qsymia.

Mr. Giacalone noted that the comments under review all are very positive. Mr. Giacalone stated that comments should also be gathered from those who may oppose increasing access to phentermine. Ms. Anderson stated that these comments are from bariatric physicians, but comments were also received from the Board of Pharmacy supporting the rule as it is. Mr. Giacalone suggested soliciting comments from other states that have had issues with phentermine.

Ms. Anderson summarized that she will continue to work with Dr. Soin on this matter, do legal research on rules in other states, and reach out to the Board of Pharmacy to possibly obtain pharmaceutical data from other states.

CME Rules

Ms. Anderson stated that House Bill 442 changes the massage therapy curriculum and also impact the continuing medical education (CME) rules. The bill changes the CME requirements for the Clinical Research Faculty Certificate, as well as how volunteer hours are counted towards CME requirements. Ms. Anderson had initially intended to ask the Board to adopt the CME rules today, but will not due to the changes made by House Bill 442. Ms. Anderson asked the Board to approve the amendments to Rules 4731-10-02 and 4731-10-08 so they can be refiled as amended. Ms. Anderson stated that the rules can be brought back to the Board in April when House Bill 442 becomes effective.

Dr. Kakarala moved to amend rules 4731-10-02 and 4731-10-08 as set forth in the December 30, 2020 memorandum from Ms. Anderson and to adopt the rules in this package at a later date. Dr. Johnson seconded the motion. All members voted aye. The motion carried.

Legislative Update

Senate Bill 310, Capital Appropriations: Ms. Wonski stated that this bill would waive two provision agreement requirements for physician assistants and advanced practice nurses, allowing those individuals to work with physicians other than those with which they have a supervision agreement. This would only occur in a hospital or medical facility setting.

Additionally, this bill would allow retired medical professionals to practice temporarily without reinstatement of their license during the COVID-19 pandemic. This excludes those whose licenses had been revoked, suspended, or surrendered to avoid disciplinary actions. These provisions will be effective until May 1, 2021 unless they are extended.

House Bill 263: Ms. Wonski stated that this bill creates licensing opportunities for individuals with former criminal convictions and limits the Board's ability to deny licensure based solely on prior criminal conviction. The Board would be required to create an inclusive list of criminal offenses that would prevent an applicant from becoming licensed. There would also be new reporting requirements for the board to report data to the Department of Administrative Services.

Ms. Montgomery congratulated the legislative staff for its work on amendments addressing the Board's concerns that were accepted into House Bill 263. Answering questions about the list of disqualifying criminal offenses, Ms. Wonski stated that the Board will have 180 days from the effective date of the legislation to create the list. Dr. Schottenstein asked if the Board will be able to revisit and make changes to the list after that 180-day period. Mr. Smith stated that the Board will have rule-making authority to implement the list, but he will look into whether the Board can change the list after it is adopted. Mr. Smith commented that the list

State Medical Board of Ohio Meeting Minutes – January 13, 2021

had to be directly related to the duties and responsibilities of the occupation, so there will probably have to be a list for each license type.

House Bill 442: Ms. Wonski stated that this bill initially applied to certified public accountants, but was amended late in the legislative process to remove Oriental medicine practitioners and cosmetic therapist from the regulatory authority of the Board. The bill would also reduce the education hour requirement for massage therapists, make changes to the requirements for the clinical research faculty certificate, and increase the number of volunteer hours that may be applied for continuing medical education (CME) credits for physicians.

The policy and legal teams continue to review this legislation and are holding meetings to strategize the implementation of any new requirements.

Responding to a question from Ms. Montgomery, Ms. Wonski stated that a physician will be able to obtain one hour of CME credit for every five hours of volunteer work, up to ten hours of CME credit. Ms. Montgomery stated that Ms. Wonski did a great job on this legislation. Ms. Wonski stated that it was a team effort that included Ms. Lynch, Mr. Smith, and Ms. Reardon.

Legislative Outreach: Ms. Wonski detailed the staff's legislative outreach efforts since the end of the lame duck session. The staff also continues progress on the sexual misconduct draft that resulted from the Strauss Working Group recommendations. Telehealth is also among the top priorities in the coming months.

Dr. Bechtel commented that the legislative team is doing a great job and the Board feels it is more informed and engaged in the legislative process.

COMMITTEE BUSINESS

Physician Assistant Policy Committee

Ms. Rearden stated that the Physician Assistant Policy Committee (PAPC) met on January 8, 2021. A legislative update was provided by Ms. Wonski. Mr. Smith presented a group of proposed rules on weight loss and light-based medical devices for discussion.

The next meeting of the PAPC will be April 9, 2021.

ICD-10 Code Data Review Committee

Dr. Soin stated tha the Committee met this morning, having last met in 2019. The Committee reviewed what had been done in the past and the goals and objectives of the Committee. Going forward, the Committee will have an article in the Board's e-News discussing the importance of the ICD-10 Code initiatives and providing a link to the database of ICD-10 Codes. The Committee will also take an inventory of physician outreach that already exists. For instance, physicians who prescribe opioids and have an account with the Ohio Automated Rx Reporting System (OARRS) receive a quarterly prescriber report from the Board of Pharmacy. The inventory will help the Committee understand all the communications going out to physicians so that it can adequately send out messaging without duplicating efforts.

Compliance Committee

OPHP Evaluations for Respiratory Care Professionals

Ms. Montgomery stated that the Committee met with a representative from the Ohio Physicians Health Program (OPHP). The conversation reflected the ongoing conversations many Board members have had about the cost to a licensee when the Board refers them to a substance abuse evaluation. Ms. Montgomery noted that the cost of a three-day residential evaluation is about \$4,000. Currently, the Board exempts massage therapists from three-day residential evaluations because they tend to be lower on the salary scale

State Medical Board of Ohio Meeting Minutes – January 13, 2021

compared to some other licensees. OPHP points out that respiratory care professionals, who have been working very hard during the COVID-10 pandemic, are in a similar situation as massage therapists and asked if they may have the same exemption.

This led to a broader discussion about who needs three-day residential evaluations as opposed to a one-day outpatient evaluation, as well as the relative efficacy of each evaluation. The staff will do research on these questions and report back to the Committee.

Treatment Provider Application

Ms. Montgomery stated that the Committee recommends approval of the treatment provider application from Glenbeigh.

Dr. Saferin moved to approve the application of Glenbeigh to continue as a Board-approved treatment provider, as outlined in Ms. Dorcy's memo to the Board. Dr. Soin seconded the motion. All members voted aye. The motion carried.

FSMB Recommendations Review Committee Report

Dr. Schottenstein stated that the Committee had its initial meeting this morning. Dr. Schottenstein recalled that the Board had engaged the Federation of State Medical Boards (FSMB) to audit its processes in accordance with recommendations from the Strauss Working Group. Among other recommendations, the FSMB made two substantial recommendations that the Committee will be addressing.

First, the FSMB recommended that a consumer member of the Board be involved with the assessment of complaints along with the Secretary and Supervising Member. Though the FSMB's preference was to have a consumer member involved in assessment of all complaints, the Committee considered the significant workload that would entail. The Committee discussed the possibility of having a consumer member involved only in sexual misconduct cases at first. The Committee also discussed rotating the Board's three consumer members into that role instead of assigning it to one consumer member. The goal is to give the public confidence in the Board's system and to add transparency, though the Committee felt that the current system is not broken in any way.

Second, the FSMB recommended reconstituting the Board's Quality Assurance (QA) Committee. In theory, the QA Committee would take a certain percentage of close complaints from the previous month chosen randomly, divide them among the Committee members, and then discuss any discrepancies they perceived. The Committee would then make a report to the full Board. If a discrepancy is identified, one possible path would be to refer the case back to investigations for further review.

Finance Committee Report

Fiscal Update

Dr. Schottenstein stated that for November 2020 the Board's revenue was \$1,993,827. Of that amount, about \$1,800,000 was license renewal fees, so the large revenue was substantially a function of license renewals by licensees who had delayed renewal when the deadline was pushed back to December 1, 2020, due to the COVID-19 pandemic, and then renewed as that new deadline approached. Even though the legislature pushed the deadline back again to July 1, 2021, that was announced so late that basically all licensees had already renewed. As a result, the Board has essentially caught up from the initial deadline delay. Dr. Schottenstein stated that there may be another drop in revenue because of the new deadline delay, but the Board now has a nice cushion and should be able to manage that.

The Board's cash balance improved to \$6,828,732, which is by far a record for the Board. There is a 6.3% decrease in expenditures year-to-date because of a delay in received some large invoices from DAS and credit

State Medical Board of Ohio Meeting Minutes – January 13, 2021

card processors, the Board's two biggest payees. So outside of payroll, the board only had about \$25,000 in expenses, whereas a more typical amount would have been around \$100,000. Non-payroll expenses will go up for December and January as those large invoices are received.

Dr. Schottenstein stated that the Board continues to explore allowing staff to continue working from home on an ongoing basis, which would allow the Board to give up its space on the second floor of the Rhodes State Office Building and reduce expenses further.

Dr. Schottenstein stated that there is still no feedback from the Office of Budget and Management on the Board's budget expansion request.

Dr. Schottenstein stated that House Bill 442 will remove Oriental medicine practitioners and cosmetic therapist from the Board's purview. The Oriental medicine practitioners may become licensed as acupuncturists, which are still regulated by the Medical Board. Cosmetic therapists may move to the Cosmetology Board. The loss of cosmetic therapist license and renewal fees would be about \$30,000 per year.

Dr. Schottenstein stated that the Board received \$24,000 in disciplinary fines in November, in addition to \$4,436.52 from collections. The Board levied \$28,000 in fines in November. The Board has received \$138,920.04 in total fines year-to-date.

Dr. Schottenstein stated that the summary of Board member compensation for calendar year 2020 is included in the Board materials, as it is every January. Dr. Schottenstein noted that Board member compensation has gone down substantially due to the decrease in travel that resulted from the COVID-19 pandemic.

Licensure Committee Report

Licensure Application Reviews

Motion to approve the Licensure staff recommendations for the requests of Nedal Alkhatib, MD; Kimberly Ferguson; Tori Grant; Najji Madi, MD; Gerald McCullough; Da'Vonna Paris; Jesse Pruitt; , and Jami Russell:

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

The motion carried.

COMPLIANCE

Office Conference Review

Motion to approve the Compliance staff's Reports of Conferences for December 7, 8, and 21, 2020:

State Medical Board of Ohio Meeting Minutes – January 13, 2021

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

The motion carried.

Probationary Requests

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

- a) Marvin M. Baula, M.D.: Request for reduction in appearances from every six months to annually.
- b) Brent A. Boyer, M.D.: Request for approval of Elihu Godshalk, M.D., to complete a return to work assessment for reinstatement.
- c) Mary Jo-Ellen Erickson, M.D.: Request for release from the terms of the January 13, 2016 Step II Consent Agreement.
- d) Yamini Jadcherla, M.D.: Request for reduction in appearances to every six months; and reduction in recovery meeting attendance to two per week with a minimum of ten per month.
- e) Robert D. Rasmussen, D.O.: Request for an extension to complete the controlled substance prescribing course and medical records course.
- f) Siraj A. Siddiqui, M.D.: Request for release from the terms of the April 11, 2012 Board Order.

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

The motion carried.

State Medical Board of Ohio Meeting Minutes – January 13, 2021

ADJOURN

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

The meeting adjourned at 12:12 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on January 13, 2021, as approved on February 10, 2021.

Mark Bechtel MD

Mark Bechtel, M.D., President

Kim G. Rothermel MD

Kim G. Rothermel, M.D., Secretary

(SEAL)





State Medical Board of Ohio

ICD-10 CODE DATA REVIEW COMMITTEE MEETING

January 13, 2021

via live-streamed video conference

<p>Members: Amol Soin, M.D., Chair Robert Giacalone, R.Ph., J.D. Sherry Johnson, D.O. Jonathan Feibel, M.D. Yeshwant Reddy, M.D.</p> <p>Other Board Members present: Mark Bechtel, M.D. Michael Schottenstein, M.D. Sherry Johnson, D.O. Yeshwant Reddy, M.D.</p>	<p>Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Stuart Nealis, Project Manager Brandi Dorcy, Communications Liaison Jerica Stewart, Communications & Outreach Administrator Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 8:00 a.m.

ICD-10 Code Data Review and Discussion

Dr. Soin stated that this Committee met four times in 2018 and 2019, during which time it met with representatives from outside groups (such as the Ohio Board of Pharmacy, the Ohio Department of Health, the Ohio Department of Medicaid, and the Ohio Department of Mental Health and Addiction Services, among others) and created some action items. The Committee last met in October 2019, and did not meet in 2020 due to the demands of the COVID-19 pandemic emergency and other issues. The Committee has reconvened because some Board members and outside agencies have expressed interest in revitalizing the work of the Committee.

Dr. Soin briefly review the action items that the Committee had developed in previous meetings:

- **Update the website to add a morphine equivalent dose (MED) per day supply tool.** This tool was created and went public in August or September 2020.
- **Re-release the article “how to Write a Prescription” in the Medical Board e-News and include a link to the MED supply tool.** This appears to have not been done, though the search tool was mentioned briefly in the Board’s magazine in late September 2019.
- **Reach out to prescribers in the 95th percentile to discuss challenges or issues they are facing.** The Board emailed the most non-compliant prescribers with a strongly-worded letter.
- **Staff from the Medical Board and the Board of Pharmacy will discuss desired data for date-based trends.** This did not occur.

- **Begin discussions to develop consensus guidelines for managing back pain.** There is no evidence that this occurred. Dr. Soin commented that there are many guidelines and evidence that can easily be incorporated into back pain guidelines.
- **The Medical Board Communications Section will work on promotion to associations.** There is no evidence that this occurred.

Dr. Soin noted that in terms of managing prescription drug abuse, many actions are occurring in parallel, though not managed directly by this Committee. For instance, physicians who prescribe controlled substances get an emailed snapshot report from the Ohio Automated Rx Reporting System (OARRS) every quarter. This report lists the physician's average MED, total number of pills prescribed, and other data, and provides a graphic that compares them to their peers. Dr. Soin observed that many of the action items were being done, but through different means.

The next steps for the Committee is to define the goal of the Committee's work, recognize the problem that it is trying to solve, determine how best to use this data to educate licensees about prescribing practices, and identify how to capture and analyze specific ICE-10 Code data to understand if something egregious has happened or is happening that could harm the public. The Committee also seeks to establish relationships with peers and become current on their work, identify policy gaps, and determine how the data should be rendered for ease of use by the public and by prescribers.

Ms. Loucka introduced Brandi Dorcy, who has joined the staff as the Compliance Supervisor. Ms. Dorcy had previously worked in the Office of Medicaid Fraud. Ms. Dorcy and Mr. Nealis will be providing staff support to the Committee.

The Committee decided to move forward with those action items from previous Committee meetings that are still incomplete.

Dr. Schottenstein stated that the Committee has a lot of potential to be helpful to the Board's licensees, and opined that the Committee's work should be more educational than punitive. Dr. Schottenstein stated that currently, physicians cannot access a prescriber report on OARRS and see how their prescribing habits compare to their colleagues. Dr. Schottenstein felt that it was bare minimum fairness for physicians to have that data so they can assess themselves and self-correct if needed, as opposed to a strongly-worded letter from the Board saying they may be in some kind of trouble.

Dr. Soin thanked Dr. Schottenstein for his comments, because Dr. Soin does receive such a report from OARRS quarterly and he had thought all physicians received that report. Dr. Soin opined that all physicians should receive the report automatically, commenting that it is incredibly helpful to understand how he compares to others in his specialty. Dr. Schottenstein recalled, based on a conversation he had with the Executive Director of the Board of Pharmacy some time ago, that physicians who prescribe opioids receive the report. Dr. Schottenstein pointed out that many physicians do not prescribe opioids but they do prescribe benzodiazepines, stimulants, and similar controlled substances. Dr. Schottenstein opined that it would be helpful to expand the data to those physicians as well. Dr. Soin agreed. Dr. Reddy agreed with Dr. Soin's comments, stating that he also received the prescriber report from OARRS every quarter and can compare himself to his peers.

Dr. Reddy noted that prescriptions for controlled substances have decreased across the country in the last several years, and asked about the situation in Ohio since the introduction of OARRS. Dr. Soin replied that Ohio has done very well since OARRS was introduced; The total number of pills prescribed is reduced and total MED has decreased substantially. Unfortunately, the total number of

overdose deaths per capita has not decreased. Dr. Soin opined that the Medical Board and the Board of Pharmacy has done a good job reducing the total number of pills used in Ohio.

Dr. Feibel agreed with Dr. Schottenstein's comments that this is a way to educate the Board's licensees. Dr. Feibel felt it was important that letters sent to outlier prescribers are sent out by ICD-10 Code and include data comparing the physician with similar physicians. Dr. Feibel added that the letter should be non-punitive and very cordial, making it clear that the Board only wants to educate them. Dr. Feibel stated that 99.9% of physicians want to do the right thing and may not know they are in the 95th percentile of prescribers, and this data could lead them to decrease their prescribing in a healthy way. Dr. Soin agreed and noted that the OARRS prescriber report is simply sent to him without a letter and he is free to make his own conclusions from it.

Mr. Giacalone suggested that another meeting with the Board of Pharmacy about the prescriber report would be helpful. Dr. Soin agreed that that should be arranged. Ms. Loucka stated that representatives from the Board of Pharmacy can be invited to the next Committee meeting.

Dr. Johnson opined that physicians in a practice should be encouraged to discuss the reports they receive in a practice meeting. Dr. Johnson commented that her practice does this and it has been very helpful. Dr. Soin agreed and stated that that can be included in an article in the Medical Board's e-News.

Dr. Schottenstein recalled that larger chain pharmacies had been more compliant about inputting the diagnosis codes for prescriptions, but smaller independent pharmacies had not been as compliant. Dr. Schottenstein suggested that the Board of Pharmacy review that issue.

Dr. Schottenstein observed that attention deficit disorder is one of the conditions listed for the percentiles for MED. Dr. Schottenstein stated that someone with a primary diagnosis of attention deficit disorder would never receive an opioid. The data is likely a result of diagnosis codes being auto-populated in electronic medical records (EMR); someone with ADHD may also have a condition that provokes acute or chronic pain, but the diagnosis code for an opioids should not reflect the ADHD. Dr. Schottenstein stated that attention needs to be paid to make sure the correct diagnosis code is being used. Dr. Soin agreed and stated that many EMR's will pull the top ICD-10 Code from a previous note.

Dr. Soin recapped that the Committee and staff will work on the e-News, connect with the Board of Pharmacy, take an inventory of resources, and report back at the next Committee meeting.

Adjourn

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

The meeting adjourned at 8:27 a.m.

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State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING
January 13, 2021, via Video Teleconference**

<p>Members: Betty Montgomery, Chair Michael Schottenstein, MD Robert Giacalone, JD RPh Harish Kakarala, M.D.</p> <p>Other Board Member Present: Yeshwant Reddy, MD Bruce Saferin, DPM Mark Bechtel, MD Jonathan Feibel, MD</p>	<p>Staff: Stephanie Loucka, Executive Director Brandi Dorcy, Chief of Compliance Kimberly Anderson, Chief Legal Counsel Benton Taylor, Board Parliamentarian Nate Smith, Senior Legal</p>
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Ms. Montgomery called the meeting to order at 8:30 a.m. She shared she is hoping that working with Ms. Dorcy and Director Loucka will allow the board to review compliance protocols. She mentioned Dr. Saferin and Dr. Rothermel are often working internally on the matters of licensee probation. She encouraged the committee members to look at the processes and procedures and evaluate what works. Ms. Montgomery was confident that many of the board members' opinions can make the board's work more efficient and effective. She reviewed the agenda with the committee.

Glenbeigh – Provider Agreements for Approval

Ms. Montgomery shared the committee has been asked to approval a provider agreement. Glenbeigh has six sites, one of which is an in-patient, full-service site and the others are outpatient. She asked if the committee would like to discuss.

Dr. Schottenstein stated historically Glenbeigh has provided a good level of quality care and he felt positive about their application.

Ms. Montgomery stated in reading about Glenbeigh, they spoke of having a compliance rate in transition of 70 percent. She asked for physician opinion on the rate.

Dr. Schottenstein responded, 70 percent is a good rate and that it's quite a bit lower in the general population. Physicians in general tend to have higher rates. He shared that based on function, there's a lot that physicians can take advantage of in terms of being able to complete a program correctly. There is also motivation to get right with the board. He reiterated 70 percent is quite a bit above average.

Dr. Schottenstein moved to recommend to the board approval of this provider. Mr. Giacalone seconded the motion. All in favor, the motion carried.

Ohio Physicians Health Program

Dr. Feibel joined the meeting.

Ms. Montgomery shared the Ohio Physicians Health Program (OPHP) memo. OPHP has asked the board to consider making an exception as it did for massage therapists based on their income. Some licensees that qualify for treatment with OPHP decide to give up their license because they can't afford the \$4,000. Looking at the 72-hour evaluation required, OPHP has suggested the board consider the respiratory care professionals (RCPs) as another exception to this rule.

Dr. Bechtel shared that he is on a task force at Ohio State and he knows RCPs are under tremendous stress. Intensive care units with COVID-19 are very full and they are working long hours. The stress they are under is significant and that stress is going to lead to more problems, including alcohol use and depression. He suggested it will be very expensive for them to be evaluated and it's a barrier. It is a critical time for this group of providers. They're on the frontlines and facing stress at work and maybe the stress of bringing the infection home to their family members. The board needs to be there to support them. The cost of this evaluation is a barrier and disservice. He supports a lower cost evaluation.

Dr. Schottenstein agreed with Dr. Bechtel. He suggested OPHP's point about RCPs is well taken. He asked if the board could extend that to its other allied health care professionals it monitors. For example, anesthesiologist assistants and genetic counselors. He asked the committee if it's fair for the board to look at it in general for the allied health professionals.

Ms. Montgomery agreed that the cost of the 72-hour evaluation is expensive and the goal is to figure out how get an evaluation that is legitimate and cost effective. She suggested it is worth a conversation with OPHP and that the board should take an evaluation of all board licensees to see who may be affected.

Director Loucka agreed it made sense. She shared in conversations with OPHP, the RCP issue has surfaced because of the volume in numbers they are seeing. But if the board is going to make one change, she suggested it will want to consult with OPHP on their clinical recommendation regarding a less than 72-hour evaluation and what makes sense for the other allied professionals. She emphasized it is not just about cost, but about what makes sense for the evaluation as well.

Mr. Giacalone asked if physician assistants (PAs) are included in the term allied health professionals.

Dr. Schottenstein stated he was thinking through the allied professionals who find themselves in the same situation generally as the RCPs with regard to potentially being priced out of practice. He stated he didn't know if that applied to PAs. He opined physicians would be right to have the more intensive kind of assessment and non-physicians legitimately could have more of the out-patient assessment.

Mr. Giacalone agreed but stated the exception for PAs bothered him. He stated PAs are crossing over into physical treatment, surgery, etc. He agreed with the other allied professionals.

Dr. Schottenstein agreed.

Ms. Montgomery suggested the board staff develop criteria and revisit the issue at the next month's meeting. She also asked if the board knows that the three-day evaluation is far better or that the success rate is better for a three-day program versus a one-day program.

Director Loucka stated the board could discuss that question with OPHP. During the conversation about RCPs, the board did talk about the clinical differences. Different professions require different clinical evaluations. She suspected OPHP would not recommend including physicians in this and that they would probably feel the same about PAs.

Mr. Giacalone asked Director Loucka to ask the Pharmacy Board and Board of Nursing what they do for evaluations.

Ms. Montgomery stated the next step is to make a recommendation to the staff and to bring back more information. Board staff should also let OPHP know the board is sympathetic to the request and that RCPs should be included and study whether there is a broader policy change.

Monthly Compliance Statistics

Ms. Dorcy shared one of the things she has been working on since coming to the board last month is discussing compliance overall with Angela Sturgeon. She has a lot of great information available to Ms. Dorcy and the board. She stated there are numbers the board would be interested in seeing based on her understanding of previous conversations between the board and her predecessor. In tracking statistics from the compliance program, she wants to hear from the board what it would like to see.

Dr. Schottenstein stated he would be glad to know more outcome-based results. For instance, how many violations of probation the board is seeing and the relapse rate. He would essentially like to know how successful the program is in monitoring licensees.

Ms. Montgomery shared she would like to know the number of people on probation and how long they are on probation. She gave an example that some licensees are on probation for five years and she questions why there are on probation. Any data that gives a sense of what works and is not just a checkmark at the end of a consent agreement or discipline. She asked Dr. Rothermel and Dr. Saferin for input.

Dr. Rothermel stated the points that were addressed are important. She shared the board should keep in mind there are people on probation in the middle of their probationary periods for a length of time that's much longer than would be assigned by the board today. The board is still working to get those probationers through. In years past, people were automatically put on probation without much thought as to the benefit. She suggested that's how the board should look at probation, by asking what the benefit to the practitioner and the population is in being a better physician. The data may be skewed a little bit for a while, which should be taken into consideration.

Dr. Saferin stated the board discussed this several years ago at a retreat. The board voted unanimously to allow the Supervising Member and Secretary to choose to put people on probation or choose not to, with no mandatory requirement, except for impairment. He confirmed Dr. Rothermel's statement regarding the numbers being skewed back to when it was an automatic or semi-mandatory probation.

Dr. Bechtel stated measuring outcomes is important and determining if the board is making a difference. He stated he knows the compliance group works hard but in looking at relapses, asked if the board is doing everything it can to make sure its providers are getting the best possible outcome. He asked to look at relapses and statistics, and maybe compare with other states too.

Ms. Dorcy asked the committee members to define what it deems as success.

Ms. Montgomery acknowledged the time constraint and suggested this question be discussed among staff first.

Mr. Giacalone asked if the board thinks there is a group of probationers who are in there for an extended period of time based on previous policies, should the board clear out that group. He suggested it is a resource drain and that he doesn't see the value in keeping the status quo. He asked if the board could review these probationers and change the period based on a recommendation from the Secretary and Supervising Member.

Ms. Montgomery acknowledged Mr. Giacalone's statement as a valid point.

Dr. Schottenstein agreed. He guessed if the board order mandated a minimum probationary period, the board is stuck with it. He would be glad to know if legal staff have a different opinion on the matter. He was not sure the board could go back and make changes if they were in probation because they are serving their minimum recommended time. He noticed there are some licensees who are on probation after their minimum expired. Those people maybe could be reviewed in terms of moving them along.

Ms. Montgomery stated she thinks there would be a way to go back, perhaps a board order that might be done selectively. The board would first need to see the data and then target those who are not required by order to be on probation.

Dr. Kakarala had a comment related to the OPHP conversation. He asked if anesthesia assistants are on the list for an exception.

Ms. Montgomery stated the only exception at this point is the massage therapists and now the discussion regarding RCPs.

Dr. Kakarala suggested the committee needs a list distributed so that it knows exactly who it is talking about. He stated anesthesia assistants gave him pause because of the access to potential drugs of abuse is very high depending on the protocols at various hospitals and centers. Some are highly regulated at university centers, but smaller hospitals may be different. The operating room has a lot of people walking around with medications and the only documentation a piece of paper that ends up in a physical chart that is not reviewed because of electronic health records. He reiterated needing a complete list of all of the providers being

considered and that he doesn't think anesthesia assistants should be included. This is because the board sees a number of anesthesiologists and anesthesia assistants are one step away from them physically in the OR setting. He suggested they may be the one to be most worried about.

Ms. Montgomery suggested sending out a list of new board members and staff internally.

Adjourn

Dr. Kakarala moved to adjourn the compliance meeting. Mr. Giacalone seconded the motion. All in favor, the motion carried.

The meeting adjourned at 8:58 a.m.

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State Medical Board of Ohio

FSMB RECOMMENDATIONS REVIEW COMMITTEE MEETING

January 13, 2021

via live-streamed video conference

<p>Members: Michael Schottenstein, M.D., Chair Kim Rothermel, M.D. Bruce Saferin, D.P.M. Robert Giacalone, R.Ph., J.D. Jonathan Feibel, M.D.</p> <p>Other Board Members present: Mark Bechtel, M.D. Betty Montgomery Sherry Johnson, D.O. Yeshwant Reddy, M.D.</p>	<p>Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian</p>
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The meeting was called to order at 9:00 a.m.

Introduction to Role of the Committee

Dr. Schottenstein stated that the Medical Board had previously engaged the Federation of State Medical Boards (FSMB) to audit the Board's processes in the wake of the Strauss Working Group recommendations. Among other things, the FSMB made two particular recommendations that this Committee will address.

Consumer Member Involvement in Complaint Review

First, the FSMB had recommended that one of the Board's consumer members join the Secretary and Supervising Member in their duties regarding complaints and to be a third voice in that process. Dr. Schottenstein stated that there are several options the Committee may consider:

- Fully implement a consumer member into the process, becoming a third party along with the Secretary and Supervising Member to assess all complaints.
- Adding a consumer member only for assessment of sexual misconduct complaints.
- Make no change to the current process.

Dr. Schottenstein commented that the Secretary and Supervising Member's duties are very time-intensive, and it may be asking a lot of a consumer member to do that as well. Dr. Schottenstein also commented that since the Board has three consumer members, it may consider rotating the consumer members into that role so as to reduce the workload for any individual consumer member.

The Committee discussed the recommendation thoroughly. Ms. Montgomery opined that the consumer member should be involved in review of all complaints, not just sexual misconduct complaints. Ms. Montgomery also expressed concern because any involvement in reviewing a case would require that consumer member to abstain if and when the complaints comes to the full Board for consideration of formal action.

Dr. Schottenstein commented that the Board's current processes work well. However, he felt that it made sense at least optically to have consumer member involvement. Such involvement would demonstrate that the Board members are being as open-minded as possible and are not trying to protect their own, but rather they are trying to apply justice in the most transparent way possible.

Dr. Schottenstein asked for input from Dr. Rothermel and Dr. Saferin as Secretary and Supervising Member, respectively.

Dr. Rothermel indicated that she is flexible on this matter, but agreed that the current system is not broken. Dr. Rothermel also agreed that the position is very time-consuming and is an every day job. Dr. Rothermel noted that in the current system, if the Secretary and Supervising Member disagree about a complaint, they can have a discussion about it; there may still be discussion with three people involved, but with two supporting one course and one supporting another there will be a tendency to simply go with what the two support and this may limit discussion. Dr. Rothermel was also concerned that the consumer member would have to abstain on any complaint he or she reviewed, thus taking one more Board member out of any Board discussion of the case. If consumer members rotate into this role, it will be very difficult to keep track of which consumer member would have to abstain in which cases before the Board.

Dr. Rothermel appreciated the desire to have a consumer member involved in review of sexual misconduct complaints and she did not oppose this suggestion. Dr. Rothermel noted that the protocol for sexual misconduct cases is very thorough and they go through many levels of staff review before coming to the Secretary and Supervising Member. Dr. Rothermel noted that the Board staff reviewing the complaints are, like the consumer members, non-physicians.

Dr. Saferin noted that under current law, a consumer member can serve as the Board's Supervising Member; this has been the case in the past and could be again in the future. Dr. Saferin added that each complaint goes through many hands before it is closed, and he opined that having a third person reviewing 90 complaints every week did not seem like the correct path. Dr. Saferin agreed with Dr. Rothermel that the current system is not broken. Dr. Saferin suggested that a consumer member aid only in review of sexual misconduct cases.

Dr. Saferin commented that when he began as Supervising Member seven years ago, there were thousands of backlogged complaints. However, the current system works very well and there is no need to revamp the whole process. Dr. Saferin opined that the middle road would be to have a consumer member involved only in sexual misconduct cases.

The Committee meeting recessed at 9:15 a.m. due to a technical problem. The meeting resumed at 9:20 a.m.

Dr. Schottenstein agreed with Dr. Saferin's suggestion, stating that the Board could start with utilizing a consumer member only for sexual misconduct cases and potentially expand later if the Board feels that would be productive.

Dr. Feibel thanked Dr. Rothermel and Dr. Saferin for their comments and he agreed that the current system is working well. However, Dr. Feibel felt that the issue here is giving the public confidence in the Board's system. Dr. Feibel opined that having a consumer member involved in complaint review would bring a level of transparency to the system. Dr. Feibel agreed that this would be a lot of work for a consumer member, but stated that that should not hold the Board back from implementing this policy. Dr. Feibel stated that the Board should do what is best for the public, and he opined that having a consumer member in that role would be best for the public. Dr. Feibel further opined that the consumer member should be involved in every complaint, not just sexual misconduct complaints.

Dr. Feibel understood the concerns about a consumer member being required to abstain on cases when they reached that Board, but he opined that a member should not have to recuse themselves simply because they had seen a previous case that had involved a licensee. Dr. Feibel stated that Board members can be objective, just as judges can be objective when deciding a case involving a previous defendant. Dr. Feibel stated that the laws and rules should be reviewed very carefully to make sure the Board is following the law and interpreting the law as liberally as possible with regard to required abstentions. Dr. Schottenstein appreciated these comments, but expressed concern about opening new avenues for a respondent to challenge a Board decision in court.

Dr. Bechtel stated that having been both Secretary and Supervising Member, he agrees with Dr. Feibel's comments. Dr. Bechtel commented that the work intensity for the Secretary and Supervising Member is incredible and the hours spent is significant. When Dr. Bechtel served in those roles, he would review 145 complaints each week and gave up every Saturday night for two to three years. Dr. Bechtel agreed with the concerns about consumer member abstentions in Board meetings if they have reviewed a case. Because of his previous roles, Dr. Bechtel still finds himself having to abstain on cases of respondents who had open complaints in 2013 and 2014, including several abstentions that will occur at this afternoon's Board meeting.

Dr. Bechtel stated that in his time as Secretary and Supervising Member, he was always most concerned about sexual misconduct cases and he thought that a consumer member being involved in the process would give more credibility and transparency. Dr. Bechtel stated that it is very important as a physician to not have any implicit bias or to think that a physician could never do what had been alleged. Though everyone strives to be as objective as possible, Dr. Bechtel felt that the addition of a consumer member would give more credibility to the final decision in sexual misconduct cases. Dr. Bechtel opined that a consumer member would be most impactful in sexual misconduct cases, and that could be a good first step.

Mr. Giacalone stated that at this point the Board is expected to involve a consumer member in the review process, especially in light of the FSMB recommendation. Mr. Giacalone was hesitant to expand it beyond sexual misconduct cases and he questioned what a consumer member could add to a review of an allegation of violation of minimal standards of care, for instance. Mr. Giacalone approved of Ms. Montgomery's suggestion to split the reviews between more than one consumer member.

Ms. Montgomery agreed with Mr. Giacalone's comments about limiting the consumer member reviews to sexual misconduct cases and she withdrew her earlier comments in that regard. Ms. Montgomery further opined that Dr. Rothermel and Dr. Saferin are doing a wonderful job in their roles. Ms. Montgomery also agreed with Dr. Feibel that the Board is being far too conservative in the matter of abstentions and suggested that that policy be legally reexamined. Ms. Montgomery stated that if a respondent challenges a decision in court based on a new policy, the Board can deal with that at that time. Dr. Feibel agreed that it is crucial to have such a legal review.

Dr. Feibel continued to support having a consumer member involved in all complaints, not just sexual misconduct complaints, but recognized that the majority of the Committee seems to disagree. Dr. Feibel stated that the public wants consumer members to be involved in review of complaints. Dr. Feibel stated that it is important to have the transparency that would come with consumer member involvement and it would put the Board on firmer ground if another controversial case like that of Dr. Strauss arises.

Quality Assurance Committee

Dr. Schottenstein asked for the Committee's thoughts on whether it would be in the best interest of the Board and the public to reconstitute the Quality Assurance (QA) Committee.

Ms. Montgomery opined that it is important to reconstitute the QA Committee and set up a process to audit closed complaints. Ms. Montgomery stated that the current processes work, but a QA Committee would be another reassurance to the public. Ms. Montgomery added that it is also important that the Board checks itself.

Dr. Schottenstein speculated that a QA Committee, if reconstituted, would review closed cases in a randomly selected statistical way, perhaps 5% of cases closed in the previous month. Dr. Schottenstein further outlined how the process could work and that any perceived discrepancies could be discussed. The QA Committee would report findings to the full Board, like other committees.

Dr. Feibel agreed that there should be a QA Committee. In addition, Dr. Feibel felt that there should also be a process by which the Board can perform a "post-mortem" in Executive Session to discuss a case that may have been problematic or difficult to review. Dr. Feibel stated that having both a QA Committee and a post-mortem process would enable the Board to say with more authority that it is doing everything appropriately.

Dr. Saferin stated that he is not opposed to a review of closed complaints, but he asked what would happen if the QA Committee opines that a closed complaint should not have been closed. Dr. Schottenstein suggested that in such a case, the case could be referred back to investigations.

Mr. Giacalone asked why the Board's previous QA Committee was sunset in the early 2000's. Ms. Loucka stated that the reason is not reflected in any meeting minutes, but she speculated that the Committee felt it had run its course and was not seeing significant findings in their audits.

Adjourn

Ms. Montgomery moved to adjourn the meeting. Dr. Saferin seconded the motion. All Committee members voted aye. The motion carried.

The meeting adjourned at 9:46 a.m.

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