

**MINUTES****THE STATE MEDICAL BOARD OF OHIO****September 14, 2016**

Michael L. Gonidakis, President, called the meeting to order at 10:00 a.m. in the Administrative Hearing Room, 3<sup>rd</sup> Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Amol Soin, M.D., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Anita M. Steinbergh, D.O.; Donald R. Kenney, Sr.; Robert P. Giacalone; Andrew P. Schachat, M.D.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; and Ronan M. Factora, M.D.

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; Susan Loe, Director of Human Resources and Fiscal; Sallie J. Debolt, Senior Counsel; Teresa Pollock, Deputy Director for Communications; Joan K. Wehrle, Education and Outreach Program Manager; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Rebecca Marshall, Chief Enforcement Attorney; Marcie Pastrick, Mark Blackmer, Cheryl Pokorny, Angela McNair, Gregory Tapocsi, James Roach, and Kimberly Lee, Enforcement Attorneys; Kyle Wilcox, Melinda Snyder, and Emily Pelphrey, Assistant Attorneys General; R. Gregory Porter, Chief Hearing Examiner; Danielle Blue, Hearing Examiner; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; Annette Jones and Angela Moore, Compliance Officers; Mitchell Alderson, Administrative Officer; Chantel Scott, Chief of Renewal; Julie Williams, Public Information Officer; Jacqueline A. Moore, Legal/Public Affairs Assistant; and Benton Taylor, Board Parliamentarian.

MINUTES REVIEW

**Dr. Steinbergh moved to approve the draft minutes of the August 10, 2016, Board meeting, as written. Dr. Soin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- abstain
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- abstain
	Dr. Edgin	- aye
	Dr. Factora	- abstain

The motion carried.

APPLICANTS FOR LICENSURE

**Dr. Steinbergh moved to approve for licensure, contingent upon all requested documents being**

received and approved in accordance with licensure protocols, the genetic counselor applicants listed in Exhibit "A," the massage therapist applicants listed in Exhibit "B," the Oriental medicine practitioners listed in Exhibit "C," the physician assistant applicants listed in Exhibit "D," the physician applicants listed in Exhibit "E," and the radiologist assistant applicants listed in Exhibit "F" as listed in the agenda supplement and handout. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

#### REPORTS AND RECOMMENDATIONS

Mr. Gonidakis announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Mr. Gonidakis asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Duane Lee Griffith, M.D.; Kush Kumar, M.D.; Deborah S. Lubitz, M.D.; Timothy Franklin Mynes, D.O.; and Onyinyechi Rose Uradu, M.D. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

Mr. Gonidakis asked whether each member of the Board understands that the 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. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
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Dr. Saferin	- aye
Mr. Giacalone	- aye
Dr. Steinbergh	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

Mr. Gonidakis noted 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 matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

Mr. Gonidakis reminded all parties that no oral motions may be made during these proceedings.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

DUANE LEE GRIFFITH, M.D.

Mr. Gonidakis directed the Board's attention to the matter of Duane Lee Griffith, M.D. Objections have been filed to Mr. Porter's Report and Recommendation and were previously distributed to Board members.

Mr. Gonidakis stated that a request to address the Board has been timely filed by the Assistant Attorney General. Five minutes will be allowed for that address.

Mr. Wilcox stated that Dr. Griffith was brought to the Board's attention due to an allegation of an action having been taken against his Texas medical license, as well as failure to appropriately answer a question on his 2012 application for renewal of his Ohio medical license. Mr. Wilcox stated that Dr. Griffith has intimated that the error on the 2012 renewal application was the fault of his staff and that Dr. Griffith is not taking responsibility for his own license. Mr. Wilcox commented that physicians are responsible for their own licenses.

Mr. Wilcox stated that the Hearing Examiner in this case allowed into evidence, over the State's objection, an affidavit from Eleanor Rogers, a staff member from Dr. Griffith's practice in Texas. Mr. Wilcox opined that Ms. Roger's affidavit should not be given any credibility by the Board. Mr. Wilcox stated that Ms. Rogers never appeared at the hearing to testify in person, and therefore the State did not have an opportunity to cross-examine Ms. Rogers. Mr. Wilcox stated the one must believe what is in Ms. Rogers' affidavit in order to reach the Hearing Examiner's conclusion that it was more likely than not that Dr. Griffith's renewal application was submitted without Dr. Griffith's knowledge, input, or authorization.

Mr. Wilcox opined that Ms. Rogers' affidavit presents a fantastic story that the Board should not find credible. Mr. Wilcox stated that the affidavit requires the belief that Dr. Griffith's practice in Texas had a pattern of receiving certified letters from the State Medical Board of Ohio and that those letters are

completely disregarded by the staff without informing the Ohio-licensed physicians to whom they were addressed. Mr. Wilcox further stated that one would have to believe that Ms. Rogers, who alleges in the affidavit that she was on charge of credentialing in the Texas office, filled out Dr. Griffith's renewal application online and submitted it without informing Dr. Griffith. Mr. Wilcox opined that this is not credible.

Mr. Wilcox opined that because neither Dr. Griffith nor Ms. Rogers appeared at the hearing to testify, the affidavit should not be given any credibility. Mr. Wilcox stated that Dr. Griffith's counsel may argue that the Board could have subpoenaed Dr. Griffith and Ms. Rogers to appear. However, Mr. Wilcox stated that the State received the affidavit two weeks before the hearing and this did not leave enough time to issue such subpoenas. Mr. Wilcox also stated that he is not sure if the Board is able to subpoena someone in Texas. Mr. Wilcox stated that the Board can look at Dr. Griffith's written statement, which was submitted in accordance with Board rules, but the Board does not have to give that statement any weight.

Mr. Wilcox asked the Board to amend the Report and Recommendation to indicate that the affidavit should not be given weight. Mr. Wilcox stated that accepting the affidavit would set a precedent for respondents and witnesses submitting affidavits instead of appearing at hearings.

Mr. Gonidakis asked if Dr. Griffith or his attorney wished to respond. Daniel Zinsmaster, attorney for Dr. Griffith, stated that he wished to respond.

Mr. Zinsmaster stated that Ms. Rogers' affidavit had been provided in conjunction with Board rules. Mr. Zinsmaster further stated that the affidavit was originally provided to Mr. Wilcox's co-counsel, Ms. Snyder, who represented the State during Dr. Griffith's appeal in the Franklin County Court of Common Pleas in December 2013. Mr. Zinsmaster stated that the State could have investigated the affidavit further at that time, but chose not to.

Mr. Zinsmaster quoted a portion of Ms. Rogers' affidavit:

I am the one that renewed Dr. Griffith's medical license. I did this online in July of 2012. I filled out [the application] and submitted it without informing Dr. Griffith that I had done so and without him reviewing the online application to see whether what I submitted was accurate. When I filled out [the application] ... I was unaware that he had a pending complaint with the Texas Medical Board. ... It was my fault and mine alone that the Ohio license renewal application was filled out incorrectly. After I learned of the Texas Medical Board Order, I never notified Dr. Griffith that I had incorrectly filled out the Ohio license renewal online.

Mr. Zinsmaster stated that Ms. Rogers completed the affidavit under oath and submitted it, subject to penalty of perjury, to the Franklin County Court of Common Pleas. Mr. Zinsmaster stated that the affidavit was submitted into a court proceeding jointly by himself and Ms. Snyder, both of whom stipulated that it was the truthful testimony of the affiant. Mr. Zinsmaster stated that at that time both he and Ms. Snyder waived the opportunity to cross-examine the witnesses. Mr. Zinsmaster stated that Ms. Rogers' affidavit is no different from transcripts of court proceedings which often come into the record of Medical Board cases, nor is there a difference between Ms. Rogers' affidavit and affidavits presented in other cases from Medical Board attorneys and investigators. Mr. Zinsmaster added that Ms. Rogers was an administrative assistant in the practice, not the head of credentialing as Mr. Wilcox had characterized her, and that Dr. Griffith was not the owner of the practice.

Mr. Zinsmaster stated that Dr. Griffith trained in Ohio from 2002 to 2007. Mr. Zinsmaster stated that Dr. Griffith has resided in Texas since 2007 and he has no intention of returning to Ohio. Mr. Zinsmaster stated that the action of the Texas Medical Board was based on events that occurred in 2010 and the matter was resolved through a consent agreement. Dr. Griffith fulfilled the terms of his Texas consent agreement and was released from the agreement in 2013. Mr. Zinsmaster stated that the Hearing Examiner has recommended a reprimand for Dr. Griffith's Texas action.

Regarding the allegation that Dr. Griffith committed fraud on an Ohio license renewal application, Mr. Zinsmaster stated that the evidence demonstrates unequivocally that someone other than Dr. Griffith, namely Ms. Rogers, submitted that application without Dr. Griffith's approval or permission. Mr. Zinsmaster stated that, due to Ms. Rogers' actions, the Franklin County Court of Common Pleas voided the Ohio Medical Board's previous action against Dr. Griffith. Mr. Zinsmaster stated that at the Medical Board's subsequent hearing, the Hearing Examiner correctly rejected the State's request to put blindfolds on the Board as it relates to Ms. Rogers' affidavit. Mr. Zinsmaster stated that Ms. Rogers' affidavit is a sworn statement and is reliable. Mr. Zinsmaster encouraged the Board to follow the Hearing Examiner's recommendation and dismiss the charge of renewal application fraud against Dr. Griffith.

**Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Duane Lee Griffith, M.D. Mr. Giacalone seconded the motion.**

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Mr. Gonidakis briefly reviewed Dr. Griffith's medical career. Mr. Gonidakis noted that Dr. Griffith's Ohio medical license is currently inactive due to non-renewal. Dr. Griffith currently practices as an interventional pain specialist in Texas.

Mr. Gonidakis stated that in 2009 Dr. Griffith was employed at a medical practice in Texas. The Texas Medical Board entered into an Agreed Order with Dr. Griffith based on the following findings:

- Dr. Griffith had failed to maintain adequate medical records
- Dr. Griffith had failed to adhere to established guidelines and requirements for the treatment of chronic pain
- Dr. Griffith had failed to use proper diligence in his professional practice
- Dr. Griffith had engaged in sexually inappropriate behavior or comments directed to a patient.

The Agreed Order required Dr. Griffith to complete a course on patient boundaries, eight hours of continuing medical education on the topic of medical records, and pay a fine of \$2,000. The Texas Board noted the following mitigating factors in Dr. Griffith's case:

- The patient in question was a clinical challenge due to her chronic pain;
- Dr. Griffith's goal had been to wean the patient off opioids over a period of time and he had begun to follow that treatment plan;
- there was no indication that the patient was abusing the medication;
- Dr. Griffith cooperated completely with the Texas Board's investigation.

Mr. Gonidakis continued that Dr. Griffith provided a statement to the State Medical Board of Ohio outlining the events in Texas. In his statement, Dr. Griffith stated that the patient had been suffering from recurrent and severe pain following back surgery and was already on a plan for opioids when she presented to him. Dr. Griffith stated that he implemented an individualized therapeutic plan designed to manage the patient's back pain and leg pain with both opioid and non-opioid meds. Dr. Griffith noted that the patient also consulted multiple spine surgeons, all of which were of the opinion that further open-spine surgery was unwarranted. Dr. Griffith further noted that the patient was seen by a social worker and also passed psychological evaluation tests. Lastly, Dr. Griffith stated that he was never presented with evidence that the patient was abusing or misusing the medication; there were no early refill requests and all pill counts were appropriate.

Mr. Gonidakis noted that Dr. Griffith did indicate that the text messages exchanged between him and the patient were inappropriate and that he should have ended that exchange immediately. Dr. Griffith had stated that he had no physical contact with the patient and had simply sent text message which the Texas Medical Board described as "flirtatious." Dr. Griffith has indicated that he is embarrassed by and regrets his actions. Mr. Gonidakis stated that Dr. Griffith's Texas medical license is currently active. Dr. Griffith's Agreed Order with the Texas Board terminated in July 2013.

Mr. Gonidakis stated that in July 2012 the Ohio Board received a license renewal application for Dr. Griffith's Ohio medical license for the 2013-2015 period. The application indicated that there were no other actions against Dr. Griffith by other state boards. In May 2013 the Ohio Board sent Dr. Griffith a Notice of Opportunity for Hearing based on the action of the Texas Medical Board and the failure to disclose that action on the renewal application. The Notice was signed for by an administrative assistant. No request for a hearing was received and the Ohio Board issued an Order in the matter. Dr. Griffith subsequently appealed the Board Order to the Franklin County Court of Common Pleas. Affidavits presented to the Court indicated that Dr. Griffith had not been informed of the May 2013 Notice of Opportunity for Hearing until after the Board Order had been issued. The Court determined that Dr. Griffith had not been served with the May 2013 Notice and vacated the Board's Order in August 2015.

Mr. Gonidakis stated that Dr. Griffith has indicated that he had intended to allow his Ohio medical license to lapse and to not renew it in 2013. In an affidavit, Dr. Griffith stated that he did not receive the May 2013 Notice of Opportunity for Hearing. Rather, Eleanor Rogers, an employee of the same practice which employed Dr. Griffith, put the Notice in a file. Dr. Griffith also alleged that Ms. Rogers filled out his Ohio license renewal application online without his authorization. Dr. Griffith argues that he could not have violated the Ohio Revised Code because he never intended to renew his license. Mr. Gonidakis noted that Ms. Rogers has indicated in an affidavit, made under oath, that she did fill out the renewal application without informing Dr. Griffith. Mr. Gonidakis stated that he disagrees with Mr. Wilcox's argument that Ms. Rogers' affidavit should not be given weight, noting that the Board does allow people to provide statements in this form.

Mr. Gonidakis suggested that the Proposed Order be amended to No Further Action. Mr. Gonidakis based his suggestion on the fact that the Franklin County Court of Common Pleas accepted the affidavit and dismissed the Board's previous action against Dr. Griffith. Mr. Giacalone stated that he would make that motion to amend for purposes of discussion.

**Mr. Giacalone moved to amend the Report and Recommendation's Proposed Order to No Further Action. Dr. Schachat seconded the motion.**



Dr. Steinbergh stated that the Board has seen many cases in which a physician blames administrative problems on their staff. Dr. Steinbergh stated that she never accepts such arguments because the physician has the absolute responsibility to manage his or her licensure, applications, credentialing, and related matters. Dr. Steinbergh agreed with Mr. Wilcox that it is difficult to believe that documents from the State Medical Board of Ohio came into Dr. Griffith's practice and he was never notified of them. Dr. Steinbergh stated that every physician should be responsible for his or her medical license and it should never be handled by a staff member. Dr. Steinbergh stated that it is not inappropriate for a staff member to help with applications, but a staff member cannot be expected to understand what has been happening in a physician's professional life.

Dr. Steinbergh agreed with Mr. Gonidakis regarding the acceptance of affidavits from Dr. Griffith and Ms. Rogers. However, Dr. Steinbergh disagreed with the suggestion to take No Further Action. Dr. Steinbergh opined that Dr. Griffith should be held responsible and should be subject to at least a reprimand. Dr. Steinbergh stated that this would send a message that physicians must be responsible for their own licenses. Dr. Steinbergh further stated that practices should not allow staff members to apply for licenses on behalf of a physician without that physician's knowledge.

Mr. Gonidakis agreed that licensees are responsible for their own licenses and cannot blame things on their assistants. Mr. Gonidakis further stated that he would also be inclined to support a reprimand, but for the fact that the Franklin County Court of Common Pleas believed there was enough credible evidence to dismiss this matter. Ms. Anderson noted that the Franklin County Court of Common Pleas issued a decision regarding the service of the Notice of Opportunity for Hearing and did not review the merits of this case. Mr. Gonidakis thanked Ms. Anderson for the clarification and opined that in view of the Court's decision, it is plausible that Ms. Rogers had taken it upon herself to fill out Dr. Griffith's renewal application. Mr. Gonidakis stated that this is why he has suggested No Further Action.

Dr. Steinbergh noted that the Proposed Order for reprimand is based on the action that had been taken against Dr. Griffith's Texas medical license. Dr. Steinbergh agreed with the Hearing Examiner's rationale that remedial measures appear to have already been addressed, and therefore a reprimand is appropriate for that violation.

Dr. Schottenstein commented that, professionally speaking, a physician's license is the most precious thing they have. Dr. Schottenstein stated that he is incredulous that Dr. Griffith did not have more control over his licensure process and that a rogue employee had access to his license. Dr. Schottenstein stated that an employee should not have the ability to register a license without the physician's approval. Dr. Schottenstein stated that he supports the original Proposed Order of reprimand.

Mr. Giacalone stated that an affidavit, sworn under oath under penalty of perjury, should not be disregarded. Mr. Giacalone opined that, while the truthfulness of an affidavit can be debated just as testimony can be, a sworn affidavit is no more or less reliable than testimony regardless of the cross-examination implications. Mr. Giacalone felt that a reprimand is an appropriate outcome of this case, given that a licensee is ultimately responsible for their license. Mr. Giacalone expressed disappointment that a matter of this nature could not have been resolved through a settlement agreement before reaching this stage in the process.

Mr. Gonidakis suggested, based on the Board's discussion, that the motion to amend the Proposed Order be withdrawn. Mr. Giacalone agreed.

**Mr. Giacalone wished to withdraw his motion to amend the Proposed Order.** No Board member objected to withdrawing the motion. The motion to withdraw was accepted.

A vote was taken on Dr. Steinbergh's motion to approve the Findings of Fact, Conclusions of Law, and Proposed Order in the Report and Recommendation:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- abstain
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to approve carried.

KUSH KUMAR, M.D.

Mr. Gonidakis the Board's attention to the matter of Kush Kumar, M.D. Objections to Ms. Shamansky's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Gonidakis stated that a request to address the Board has been timely filed by Dr. Kumar. Five minutes will be allowed for that address.

Dr. Kumar was represented by his attorney, Levi Tkach.

Mr. Tkach stated that in 2015 Dr. Kumar applied to restore his expired medical licenses in Ohio, California, and Virginia. At that time, Dr. Kumar needed an unrestricted state medical license in order to maintain his employment at a Veterans Affairs (VA) facility in Dublin, Georgia. Mr. Tkach stated that while the Ohio Board was considering his application, Dr. Kumar resolved his California action by surrendering his California medical license. Mr. Tkach stated that, though Dr. Kumar did not know it at the time, the surrender of his California license disqualified him from employment with the Department of Veterans Affairs and he will not be eligible for employment again until he restores his California license. Mr. Tkach stated that due to this intervening fact, Dr. Kumar no longer needs his Ohio medical license. Mr. Tkach stated that Dr. Kumar does not live in Ohio and has no intention of moving his family back to Ohio. Mr. Tkach noted that the only reason Dr. Kumar ever had an Ohio license was due to a six-month fellowship at Children's Hospital in Cincinnati.

Mr. Tkach continued that Dr. Kumar did not have an attorney when he signed his Georgia settlement agreement. Mr. Tkach asked the Board to consider the fact that Dr. Kumar closed his part-time pain practice as soon as he was made aware that Georgia had amended their law because, in his words, "I want to do what is right." Dr. Tkach also asked the Board to consider that the Georgia Composite Medical Board has granted Dr. Kumar a full and unrestricted license.



Mr. Tkach noted that the hearing record is replete with letter written by Dr. Kumar to the Georgia Composite Medical Board and the Governor of Georgia asking for someone to review his medical records and reconsider his case. Mr. Tkach commented that Dr. Kumar's consistent pleas set him apart from similarly-situated physicians. In his Ohio hearing, Dr. Kumar was not allowed to re-try the Georgia case or to introduce complete copies of the medical records. Mr. Tkach stated that Dr. Kumar takes full responsibility for not being aware of the amendment to Georgia law which precipitated this matter.

Mr. Tkach stated that any discipline from the Ohio Board will likely cause the revocation of Dr. Kumar's specialty board certification in nuclear medicine. Mr. Tkach asked the Board to use its discretionary power to allow Dr. Kumar to withdraw his application for restoration, as the Virginia Board of Medicine did. If the Board is unwilling to consider a withdraw, Mr. Tkach asked the Board to review the 2014 case of Ramanadham Kilaru, M.D., which also involved a previous action by another state medical board. In the matter of Dr. Kilaru, the Board approved the licensure application and took no further action based on the fact that Dr. Kilaru had fully complied with his Texas Order. Mr. Tkach stated that this action would also be appropriate in Dr. Kumar's case because Dr. Kumar has no intention of returning to Ohio and he can allow his Ohio license to lapse in the future.

Dr. Kumar stated that he is ashamed to stand before the Board in this situation. Dr. Kumar stated that he is deeply sorry for not knowing about the amendment to the Georgia regulation and that he takes full responsibility for his act. Dr. Kumar stated that he has disputed the allegations of the Georgia Composite Medical Board multiple times, but the Georgia Board has never considered re-opening his case. Dr. Kumar stated that he has fully complied with the terms of his Georgia settlement agreement and he now holds an unrestricted medical license in Georgia.

Dr. Kumar stated that due to the actions of the Georgia Composite Medical Board and the Medical Board of California, he lost his employment at the Veteran's Affairs facility. Dr. Kumar stated that he has been unemployed for almost one-and-a-half years because prospective employers do a background check and discover his disciplinary history. Dr. Kumar stated that any adverse action from the Ohio Board will only harm him and would do no good for Ohio. Dr. Kumar elaborated that any action would cause him to lose his nuclear medicine board certification and reduce his chances of obtaining employment to zero. Dr. Kumar asked the Board to allow him to withdraw his application, as he was allowed to do in Virginia.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Ms. Snyder stated that she would like to respond.

Ms. Snyder stated that the Board's statute allows the Board to take action based on the action and findings of another state medical board, also known as a "bootstrap" action. In this case, the Georgia Composite Medical Board found that Dr. Kumar failed to obtain appropriate histories and physicals for 17 patients and continued to prescribe narcotics despite aberrant urine screens which were either positive for illegal substances or negative for the prescribed narcotics. Ms. Snyder stated that Dr. Kumar had the opportunity to challenge the allegations in Georgia, but he chose not to do so. Ms. Snyder stated that the Ohio Board cannot re-litigate the events in Georgia, but it is able to take a bootstrap action based on the findings of the Georgia Composite Medical Board, which are the most reliable evidence in this case.

Ms. Snyder stated that Dr. Kumar currently has an unrestricted medical license in Georgia. Dr. Kumar permanently surrendered his California medical license in the face of a bootstrap action in that state. Ms. Snyder noted that the Hearing Examiner has recommended denial of Dr. Kumar's application. In the

event that the Board is inclined to grant Dr. Kumar's application, Ms. Snyder recommend placing significant restrictions on the license to ensure that Dr. Kumar is fit to practice medicine in Ohio.

**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Kush Kumar, M.D. Dr. Soin seconded the motion.**

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Dr. Schottenstein stated that a Public Consent Order with the Georgia Composite Medical Board in May 2014 publically reprimanded Dr. Kumar, restricted him from prescribing any Schedule II substances outside his employment at the Carl Vinson VA Medical Center, required him to completed a mini-residency on the appropriate prescribing of controlled substances, and required him to pay a fine of \$10,000 and \$550 in administrative fees. After practicing for several years in orthopedics, Dr. Kumar entered the field of nuclear medicine and became board-certified in that specialty in 2006. Dr. Kumar found employment at the Carol Vinson VA Medical Center in Dublin, Georgia, and he helped establish a nuclear medicine wing at that facility.

Dr. Schottenstein continued that while practicing at the VA center, Dr. Kumar also established and owned a pain clinic which operated in evenings. Dr. Kumar passed the pain management board examination offered by the American Academy of Pain Management prior to opening the clinic. Dr. Kumar has explained that he had treated musculo-skeletal pain as an orthopedist and he therefore felt comfortable treating that conditions and had been encouraged to do so by his colleagues.

Dr. Schottenstein noted Dr. Kumar's testimony that he was not notified of a new Georgia law which took effect in 2013 requiring the licensure of pain clinics, though he admitted that he should have known about the new law. Dr. Schottenstein stated that this led to a series of cascading events. When informed of the new law by a Georgia Board investigator, Dr. Kumar immediately closed the practice and applied for a pain clinic license. Subsequently, the Georgia Board obtained 17 patient records from Dr. Kumar's practice for review and Dr. Kumar was asked to appear before the Georgia Board's Pain Management Committee to discuss the records. Dr. Kumar has indicated that at the meeting, the Committee presented records that were incomplete and he informed the Committee of such. Nevertheless, the Georgia Board sent Dr. Kumar a proposed Public Consent Order for his consideration. Dr. Kumar read and signed the Order without consulting an attorney.

Dr. Schottenstein stated that the Public Consent Order indicated that Dr. Kumar departed from and failed to maintain minimal standards in the following ways:

- A lack of medical evidence to support Respondent's prescriptions for these patients
- Patient histories were inadequate in their content
- Previous treating physician records were not obtained
- Drug screens were avoided
- Continued narcotic prescribing despite multiple aberrant urine drug screens
- No diagnostic testing

- no documented evidence of the treatment response or evaluation for signs of abuse or diversion
- documentation described patients as “happy with the medications,” which is not acceptable documentation when drugs of abuse are given

Dr. Schottenstein stated that Dr. Kumar disputed some of these findings and offered explanations for others. However, Dr. Kumar did sign the Georgia Board's Public Consent Order because he believed doing so would allow him to resume his practice at the pain clinic. Dr. Kumar testified that he had not understood the future implications of signing the Consent Order. In May 2015 the Georgia Board lifted the remaining restrictions on Dr. Kumar's Georgia license upon confirmation that he had completed the required continuing education courses and paid the fine.

Dr. Schottenstein stated that when Dr. Kumar's Georgia medical license was restricted, he was unable to continue his employment with the VA center due to rules that a physician practicing in a VA medical center must have an unrestricted medical license in any state. Dr. Kumar attempted to reactivate his expired California medical license so that it could be used as a basis for his VA employment. However, the Medical Board of California took disciplinary action based on the Georgia Board's action. On the advice of an attorney, Dr. Kumar elected to surrender his California license in June 2015. Dr. Kumar and his attorney were unaware at that time that another VA rule stipulates that any physician whose medical license was surrendered or revoked was ineligible for VA employment. Dr. Kumar petitioned the VA hospital, the Georgia Composite Medical Board, and the Governor of Georgia seeking intervention, but he was ultimately denied.

Dr. Schottenstein stated that, prior to the surrender of his California license, Dr. Kumar also applied to restore his expired Ohio medical license. Dr. Kumar properly disclosed the action on his Georgia license on his Ohio license restoration application. Dr. Schottenstein stated that at this point, Dr. Kumar would like the Ohio Board to either grant him an unrestricted license or to allow him to withdraw his application so that he would not have another adverse disciplinary action against him.

Dr. Schottenstein observed that there were a number of mitigating factors in this case. Specifically, Dr. Kumar has substantial educational accomplishments and specialty certifications, a certificate of recognition from the Department of Veterans Affairs, and several letters of support from colleagues attesting that Dr. Kumar is knowledgeable, ethical, diligent, caring, and of excellent moral character. Dr. Kumar has also emphasized that there were never any issues with the quality of his care at the VA center and that he was only terminated due to the surrender of his California medical license.

Dr. Schottenstein reiterated that Dr. Kumar disagrees with the Georgia Board's findings. However, Dr. Kumar did sign the Consent Order stipulating to the findings rather than request a hearing into the matter. Dr. Schottenstein stated that the Ohio Board cannot re-litigate the Georgia matter, and therefore Dr. Schottenstein felt it was incumbent upon him to go forward on the premise that the Georgia Board's findings, which he found egregious, are accurate. Dr. Schottenstein commented that, as has been seen in other cases before the Board, this appears to be another example of a practitioner practicing outside their area of expertise, resulting in minimal standards concerns and a lack of awareness of medical board rules with regard to that specialty. Dr. Schottenstein stated that Dr. Kumar did not have any formal training in pain management, but simply relied upon his experience treating the pain of patients that he had seen clinically. Dr. Schottenstein suspected that if Dr. Kumar had been formally trained in pain management, these proceedings would not be occurring today.

Dr. Schottenstein stated that granting Dr. Kumar's request for an unrestricted medical license is not indicated. Dr. Schottenstein added that allowing Dr. Kumar to withdraw his application is not appropriate since he is making that request solely to avoid disciplinary action and a withdrawal is not typically something that the Board allows this far into the process. Dr. Schottenstein stated that granting Dr. Kumar a license with a suspension and probationary terms including a practice is something the Board could consider in case involved violation of the minimal standards of care; however, Dr. Schottenstein noted that the only reason Dr. Kumar applied for restoration of his Ohio medical license was so that he could have an unrestricted license to facilitate his practice at the VA center.

Dr. Schottenstein stated that he agreed with the Proposed Order to deny Dr. Kumar's application for restoration. Dr. Schottenstein stated that if Dr. Kumar is inclined to practice in Ohio in the future, he can reapply and the Board can consider the matter at that time.

Dr. Soin stated that he recognizes the challenges of treating pain conditions in VA patients, who often suffer from co-morbidities, and the VA system itself often favors prescribing as opposed to intervention. Dr. Soin stated that it is unfortunate that action by the Ohio Board will affect Dr. Kumar, but that Dr. Kumar's request for withdrawal of his application is simply an attempt to avoid discipline. Dr. Soin observed that Dr. Kumar's immediate closure of his pain clinic upon learning that he needed a pain clinic license was presented in testimony as an act of good faith. However, Dr. Soin pointed out that Dr. Kumar had no choice but to close the clinic immediately because he was in violation of the law. Dr. Soin also expressed concern that Dr. Kumar had failed to act on aberrant drug screens which are a significant red flag for abuse, especially in that patient population.

Mr. Giacalone stated that the lives of the 17 patients whose records were reviewed, as well as other patients, were impacted because they arguably had received opioids for the wrong reasons and abused them. Mr. Giacalone took particular issue with Dr. Kumar's documentation that the patient was "happy," noting that many addicts are happy when they receive opiates. Mr. Giacalone stated that Dr. Kumar looked to profit by opening a pain clinic but, though he referred to himself in some documentation as a pain expert, he had no expertise in pain management. Mr. Giacalone stated that some have said that Dr. Kumar has learned his lesson; however, Mr. Giacalone noted that Dr. Kumar signed the Georgia Consent Order in hopes of reopening his clinic. Mr. Giacalone noted that Dr. Kumar's pleas for consideration were discounted by the Georgia Board and the Georgia Governor's office. Mr. Giacalone opined that the most troubling aspect of this case is Dr. Kumar's insistence that this is not his fault and that he was unaware of any problems. Mr. Giacalone stated that Dr. Kumar severely impacted people's lives.

Mr. Giacalone continued that Dr. Kumar did not mention his pain clinic on his application for restoration of his Ohio medical license, explaining later that he had omitted this because he considered the pain clinic to be "my personal part-time practice." Mr. Giacalone had difficulty believing this, noting that Dr. Kumar owned and operated the clinic, the clinic was at the heart of his Georgia disciplinary action, and he holds himself out as a pain expert. Mr. Giacalone stated that Dr. Kumar should never practice in Ohio and that he would support the permanent denial of Dr. Kumar's application.

Dr. Steinbergh stated that she agrees with the concerns detailed in the Georgia Consent Order. Dr. Steinbergh noted that Dr. Kumar has complied with the Georgia Order and his medical license in Georgia is now active. Dr. Steinbergh stated that Dr. Kumar surrendered his California medical license, but that this was not a permanent surrender and that he can seek reinstatement of that license after three years, and therefore it was similar to a three-year suspension in Ohio. Dr. Steinbergh stated that it is the

surrender of Dr. Kumar's California license which is currently keeping him from being employed with the VA and this could be resolved in time.

Dr. Steinbergh stated that she would like to see the end of the domino effect of disciplinary actions leading to more disciplinary actions for Dr. Kumar. Dr. Steinbergh stated that Dr. Kumar has fulfilled the terms of his Georgia Order and that the California surrender was based on the Georgia Order. Dr. Steinbergh stated that she has asked administrative staff if the Board could allow Dr. Kumar to rescind his application, but the answer was negative. Dr. Steinbergh stated that the initial actions against Dr. Kumar were appropriate given the patient care issues involved, but that Dr. Kumar, a very well-trained physician, should have the ability at this point to continue to provide patient care in a responsible and competent manner. Given a lack of other avenues to consider, Dr. Steinbergh stated that she would support the Proposed Order of denial of Dr. Kumar's application, but would not support a permanent denial.

Mr. Giacalone opined that if the facts which Dr. Kumar agreed to had first been heard before the Ohio Board, they most likely would have resulted in revocation or permanent revocation of licensure, not a suspension. Mr. Giacalone stated that the actions that the Georgia Board and the California Board chose to take based on those facts are irrelevant. Mr. Giacalone read the following passages from the Georgia Consent Order:

- "Many patients' urine testing showed multiple aberrant screens (no prescribed drug, non-prescribed drugs, and illegal substances) with no discussion or diagnosis of possible causes and no referral to Addictionology or evaluation. Dr. Kumar continued to prescribe narcotics in the face of aberrant testing and no justification for continued prescribing."
- "Dr. Kumar's standard history on follow up evaluations was, 'happy with the medications' which is not acceptable documentation when possible drugs of abuse are given."

Mr. Giacalone opined that Dr. Kumar should not be afforded the opportunity to possibly return to practice in Ohio.

**Mr. Giacalone moved to amend the Proposed Order to a permanent denial of Dr. Kumar's application for restoration of his Ohio medical license.** No Board member seconded the motion. The motion to amend was lost for want of a second.

Dr. Schottenstein, responding to Dr. Steinbergh's comments regarding withdrawal of Dr. Kumar's application, expressed concern about allowing a withdrawal this far into the process. Dr. Schottenstein stated that if the Board feels there is a problem in this case, it is obligated to make a finding. Dr. Schottenstein stated that if states allowed application withdraws without findings, individuals could simply move from state to state with no record of what had transpired previously. Dr. Schottenstein opined that there need to be very substantial reasons for the Board to allow a withdrawal of an application.

Dr. Schottenstein stated that Dr. Kumar's pain clinic did not seem like a "pill mill," noting that the clinic was only open a few hours a day, only had six to seven patients per day, and accepted insurance. Dr. Schottenstein stated that, though he appreciates that different medical boards have different standards, he takes into account the fact that the Georgia Board could have revoked Dr. Kumar's Georgia medical license but chose not to. Dr. Schottenstein also noted that Dr. Kumar currently has an unrestricted medical license in Georgia. For these reasons, Dr. Schottenstein stated that he supports a denial of Dr. Kumar's application but not a permanent denial.

A vote was taken on Dr. Steinbergh's motion to approve:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to approve carried.

DEBORAH S. LUBITZ, M.D.

Mr. Gonidakis the Board's attention to the matter of Deborah S. Lubitz, M.D. No objections were filed. Ms. Shamansky was the Hearing Examiner.

Mr. Gonidakis stated that a request to address the Board has been timely filed by Dr. Lubitz. Five minutes will be allowed for that address.

Dr. Lubitz stated that she had written "changes and clarifications" regarding the Report and Recommendation. Mr. Gonidakis directed Dr. Lubitz to provide the written materials to Ms. Anderson.

Dr. Lubitz stated that she is before the Board today because she is in an untenable position with her professional life. Dr. Lubitz stated that she has not done anything wrong and that her only issue is that she was diagnosed with depression. Dr. Lubitz stated that when she was first diagnosed in 1998, she stopped working and sought treatment. When Dr. Lubitz's condition improved after two years she applied for reinstatement of her Ohio medical license, which has lapsed in the intervening time. Dr. Lubitz stated that the Ohio Board, which was fully cognizant of her situation and had letters from her psychiatrist, approve her application for reinstatement.

Dr. Lubitz continued that she soon began doing *locum tenens* work in various states and became licensed in Indiana and Pennsylvania. Dr. Lubitz also obtained temporary licenses for assignments in Maine and Nebraska. Dr. Lubitz also worked for the U.S. Army at Fort Hood in Texas. Dr. Lubitz stated that she never had trouble getting licensed until 2010 when she accepted a job in Massachusetts and applied for a license in that state. Dr. Lubitz explained that Massachusetts had had recent troubles with physicians with mental disorders, and therefore the Massachusetts Board of Registration in Medicine was very conservative about who they licensed in this regard. Dr. Lubitz stated that the licensure process in Massachusetts took almost nine months, despite a lack of evidence or reports of any problems with Dr. Lubitz's patient care. Dr. Lubitz ultimately had to sign an agreement with the Massachusetts Board agreeing to monitoring and other restrictions on her practice. Dr. Lubitz stated that she had no choice but to sign the agreement because she had already moved to Massachusetts, was paying rent, and was not working. Dr. Lubitz stated that she tried to fight the agreement, but could not.



Dr. Lubitz stated that her practice in Massachusetts was uncomfortable with the fact that it had taken her so long to become licensed and that she was under an agreement with the Massachusetts Board. Dr. Lubitz stated that her position at the practice became untenable and she had to leave. Since that time, Dr. Lubitz has been doing *locum tenens* work. Dr. Lubitz stated that she had worked at her present location as a *locum tenens* physician for five months before being offered a permanent job, despite the fact that the practice was fully aware of her situation and that she was on probation in Ohio at the time. Dr. Lubitz opined that being offered a permanent job under such circumstances indicates conclusively that she can do her job.

Dr. Lubitz apologized to the Board for failing to fully comply with the requirements of her Ohio Consent Agreement. Dr. Lubitz stated that she had intended to follow the Consent Agreement, but that life got in the way. Dr. Lubitz stated that there is no excuse for her failure to follow the requirements, only explanations. Dr. Lubitz stated that when she received a letter from the Ohio Board to attend a hearing, she had not received any prior notifications from the Board. Dr. Lubitz stated that it was mostly her fault that she had not received prior notifications because she had not updated her address with the Board. Dr. Lubitz noted that she received the last notification at her office, an address which the Board had had throughout the process.

Dr. Lubitz stated that if she does not get some resolution of this situation she will lose her livelihood. Dr. Lubitz stated that if the Ohio Board does not afford her a full and active medical license her certification with the American Board of Pediatrics will not be reinstated. Dr. Lubitz stated that in that event, insurance companies will not pay her to see patients and she will lose her job. Dr. Lubitz stated that she has worked as a physician for over 30 years and she has never done anything to deserve this situation. Dr. Lubitz suggested that the Board could remove her probationary status but keep her under a monitoring agreement. Dr. Lubitz stated that she would agree to and comply with anything. Dr. Lubitz stated that she has no intention of returning to practice in Ohio.

Ms. Anderson stated that she has reviewed the "changes and clarifications" Dr. Lubitz had provided prior to her statement. Ms. Anderson opined that the document could be characterized as objections to the Report and Recommendation. Ms. Anderson stated that if the document is considered in this manner, then the objections are being filed late and the Board would have to vote on whether to accept them.

**Dr. Steinbergh moved to accept Dr. Lubitz's objections to the Report and Recommendation. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to accept the objections carried.

Copies of Dr. Lubitz's objections were provided to the Board members. Mr. Gonidakis asked the Board members to take a few minutes to review Dr. Lubitz's objections.

Dr. Steinbergh wished to clarify why the Board's correspondence to Dr. Lubitz's parents' address had not been forwarded to Dr. Lubitz. Dr. Lubitz replied that she had arranged for mail to be forwarded to her new address, but she moved yet again and the forwarding to the newer location did not occur.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Mr. Wilcox stated that he would like to respond.

Mr. Wilcox stated that Dr. Lubitz had entered into a Consent Agreement with the Ohio Medical Board and then failed to comply with its requirements. Mr. Wilcox stated that Dr. Lubitz is asking the Board to ignore her failure to comply with her Agreement and to simply release her. Mr. Wilcox stated that the Board must enforce its Consent Agreements. Mr. Wilcox stated that Dr. Lubitz was responsible for following the terms of the Agreement she entered into, as well as updating her address. Mr. Wilcox opined that the Proposed Order in the Report and Recommendation is an appropriate resolution to this matter.

**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Deborah S. Lubitz, M.D. Dr. Sojn seconded the motion.**

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Mr. Kenney prefaced his comments by reiterating that he views patient safety as his primary responsibility as a member of the Medical Board. Mr. Kenney briefly outlined Dr. Lubitz's career, noting that she was first licensed to practice medicine in Ohio in 1989. In 1998 Dr. Lubitz became ill with depression and she ceased work in order to seek treatment. Dr. Lubitz returned to work part-time in 2002. In 2004 Dr. Lubitz returned to full-time work with the approval of her psychiatrist and she worked in several *locum tenens* positions in various states. At her hearing, Dr. Lubitz testified that she continued to have therapy with her psychiatrist and take prescribed medications during that time.

Mr. Kenney continued that in 2010 Dr. Lubitz practiced at Wareham Pediatrics and Tobey Hospital in Massachusetts. At this time, Dr. Lubitz came to the attention of the Massachusetts Board of Registration in Medicine regarding her mental health. Dr. Lubitz entered into a non-disciplinary agreement with the Massachusetts Board that limited her practice to the geographical area in which she was then working, as well as other restrictions. In 2012, Dr. Lubitz went to New York to live with her parents. After being released from her agreement with the Massachusetts Board, Dr. Lubitz was able to find employment in Pennsylvania.

Mr. Kenney stated that at about this time the State Medical Board of Ohio asked Dr. Lubitz to be evaluated by an Ohio psychiatrist. The evaluation concluded that Dr. Lubitz needed to continue her treatment in order to practice safely. Consequently, Dr. Lubitz entered into a Consent Agreement with the Ohio Board in December 2013. Dr. Lubitz has testified that she signed the Consent Agreement under extreme protest because she believed she had done nothing wrong. Dr. Lubitz testified that after unsuccessfully trying to renegotiate the terms of the Consent Agreement, which states that she violated the law, she signed the Agreement because she felt she had no other option. The Consent Agreement required Dr. Lubitz to continuing seeing her psychiatrist, make quarterly declarations of compliance, and

to appear in person for a full interview with the Medical Board or its representatives. Dr. Kenney noted that these conditions could have been waived if Dr. Lubitz was neither residing nor practicing in Ohio; however, the conditions were not waived.

Mr. Kenney stated that Dr. Lubitz complied with the requirement to continue psychiatric treatment and she had psychiatric reports sent to the Board regarding her progress. Dr. Lubitz made her first personal appearance before the Board's Compliance Committee in March 2014, but never appeared at the Board's offices again as required. Mr. Kenney noted that if Dr. Lubitz had continued to make personal appearances and quarterly declarations of compliance, she could have been released from the terms of her Consent Agreement as early as December 2015. Mr. Kenney stated that Dr. Lubitz could have asked for a waiver of the personal appearances requirement because she was living outside Ohio, but Dr. Lubitz testified that she had not known this fact.

Mr. Kenney stated that Dr. Lubitz has conceded that she had not complied with all the conditions of her Consent Agreement, but that she has done everything possible to address her depression. Dr. Lubitz currently works full-time in Pennsylvania and continues to see her psychiatrist once or twice per month. In her testimony, Dr. Lubitz emphasized that she never practiced medicine during the time that depression impaired her abilities. Dr. Lubitz also offered an apology to the Board. Mr. Kenney noted that the Board has received positive letters from individuals who are familiar with Dr. Lubitz's practice.

Mr. Kenney found it difficult to find that Dr. Lubitz was guilty of misconduct, except that she did not follow the terms of her Consent Agreement. Mr. Kenney further commented that he did not understand why Dr. Lubitz was required to enter into the Consent Agreement in the first place. Mr. Kenney stated that Dr. Lubitz violated her Consent Agreement by failing to make required personal appearances, but she did do all that was required to ensure patient safety.

Mr. Kenney commented that prior to the meeting, he had asked the Board's legal counsel if this matter could be resolved by simply nullifying Dr. Lubitz's Consent Agreement. Mr. Kenney had been informed that the Board has never taken such an action. Mr. Kenney suggested that the Proposed Order be amended, based on the finding that Dr. Lubitz did not follow all the terms of her Consent Agreement.

**Mr. Kenney moved to amend the Report and Recommendation's Proposed Order in the following ways:**

- **Dr. Lubitz shall not request termination of her December 2013 Consent Agreement for a minimum of nine months from the effective date of this Order.**
- **Dr. Lubitz shall not be required to make personal appearances before the Medical Board unless requested to do so by the Medical Board.**
- **Dr. Lubitz's personal appearances shall be waived when she is not residing or practicing medicine in Ohio.**
- **All other terms and conditions of the December 2013 Consent Agreement shall remain in full force and effect.**

**Dr. Steinbergh seconded the motion.**

Dr. Steinbergh stated that Dr. Lubitz understood her Agreement with the Medical Board and that

Agreement must be honored. Dr. Steinbergh stated that if the Board were to nullify the Agreement, all credibility would be lost for all of its agreements and orders. Dr. Steinbergh stated that she agrees with Mr. Kenney and his objectives in this matter. Dr. Steinbergh added that if Dr. Lubitz has lost her specialty board certification as a result of these processes, her next step would be to discuss this with her third-party payors.

Dr. Schottenstein commented that Mr. Kenney asked a legitimate question about why Dr. Lubitz had to enter into an Agreement with the Board if she had not behaved inappropriately. Dr. Schottenstein stated that he hopes the Board continues to ponder this question when considering possible future changes. Dr. Schottenstein noted that currently the vast majority of state medical boards use a disciplinary method such as consent agreements to monitor licensees with mental health issues. Dr. Schottenstein stated that the common goal of all the state medical boards is to protect the public and it errs on the side of monitoring those with mental health issues in order to meet that goal.

Dr. Schottenstein regretted that this situation has caused Dr. Lubitz hardship, but noted that she signed the Agreement and had an obligation to follow it. Dr. Schottenstein acknowledged that Dr. Lubitz had had a great deal happening in her life, but stated that Dr. Lubitz made no attempt to contact the Board to request that her personal appearance requirement be waived. Dr. Schottenstein noted that Dr. Lubitz indicated in her testimony that she probably had some passive anger about this situation with the Board. Dr. Schottenstein stated that Dr. Lubitz's feelings may have been understandable, but they are not an excuse to ignore the requirements of her Agreement.

Dr. Schottenstein stated that prior to Mr. Kenney's proposed amendment, he had intended to propose an amendment which would have allowed Dr. Lubitz to make her personal appearances via a suitable electronic means. Dr. Schottenstein's amendment would have maintained the Proposed Order's stipulation that Dr. Lubitz not request termination of her Consent Agreement for 18 months, which matches the time that she was out of compliance with her Agreement. Mr. Giacalone agreed with Dr. Schottenstein's suggestion.

Mr. Gonidakis noted that there seems to be some support for Dr. Schottenstein's comments, as well as for Mr. Kenney's proposed amendment. Mr. Gonidakis suggested that this matter be tabled so that Mr. Kenney and Dr. Schottenstein may agree on a proposed amendment to put before the Board. Dr. Steinbergh opined that the Board should vote on Mr. Kenney's proposed amendment. Mr. Giacalone agreed with Mr. Gonidakis that the matter should be tabled.

**Mr. Giacalone moved to table this topic. Dr. Schachat seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- nay
	Dr. Soin	- nay
	Mr. Gonidakis	- aye
	Mr. Kenney	- nay
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to table carried.

ONYINYECHI ROSE URADU, M.D.

Mr. Gonidakis the Board's attention to the matter of Onyinyechi Rose Uradu, M.D. Objections to Mr. Decker's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Gonidakis stated that a request to address the Board has been timely filed by Dr. Uradu. Five minutes will be allowed for that address.

Dr. Uradu was represented by her attorney, James McGovern.

Mr. McGovern stated that before the beginning of the five-minute presentation on behalf of Dr. Uradu, he wished to point out that this case involves very important public policy issues regarding the opiate overdose epidemic that is raging in Ohio and nationwide.

Mr. Taylor advised Mr. McGovern that Dr. Uradu's five-minute time has already begun.

Mr. McGovern stated that he would like to raise some procedural issues. Mr. McGovern stated that Mr. Gonidakis, as President of the Board, allowed Mr. Wilcox, over Mr. McGovern's objection, to file objections to the Report and Recommendation. Mr. McGovern stated that Assistant Attorneys General are allowed to file objections by Board rule, but it is not allowed under Chapter 119 of the Ohio Revised Code. Mr. McGovern stated that Mr. Gonidakis also denied his ability to review Dr. Uradu's written response aimed at rebutting the blatant misstatements of law which were set forth in Mr. Wilcox's objections. Mr. McGovern added that Mr. Gonidakis also denied Dr. Uradu's request to address the Board second instead of first today so that she could orally rebut what she expects Mr. Wilcox to incorrectly argue today.

Mr. McGovern stated that Dr. Uradu is one of the most competent, credible, and compassionate physicians he has ever met, dating back to 1997 when Mr. McGovern was an Assistant Attorney General and served as counsel for the Medical Board. Mr. McGovern asked that Dr. Uradu be permitted an additional couple of minutes following Mr. Wilcox's address to rebut his arguments. Mr. Gonidakis denied the request.

Dr. Uradu began to address the Board, but Board members experienced difficulty understanding her due to her accent. Mr. McGovern stated that he had suspected that this may be an issue and had previously asked Mr. Wilcox if a written version of her statement could be provided instead. However, there had been questions about whether providing a written address was appropriate. Dr. Steinbergh suggested that a written statement which the Board could read while Dr. Uradu addresses the Board would be helpful. Mr. Gonidakis agreed.

**Dr. Steinbergh moved to accept a written version of Dr. Uradu's address to the Board. Dr. Schottenstein seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain

Mr. Giacalone - aye  
Dr. Steinbergh - aye  
Dr. Soin - aye  
Mr. Gonidakis - aye  
Mr. Kenney - aye  
Dr. Schachat - aye  
Dr. Schottenstein - aye  
Dr. Edgin - aye  
Dr. Factora - aye

The motion carried.

Mr. McGovern provided copies of Dr. Uradu's written statement to the Board members.

Dr. Uradu read the following statement:

Thank you very much for this opportunity to address you before you vote on my case.

Today you will be required to answer one question:

Is the exceeding of a patient cap under DATA 2000 a criminal offense akin to a misdemeanor class 3 in Ohio?

As this will be a case of first impression, many will be watching to see whether you, the members of the Ohio Medical Board charged with protecting the citizens, will support the notion that a violation of a federal patient cap, which has already been changed because it was insufficient to keep pace with the national crisis of opioid overdose, should be viewed as a criminal act in Ohio.

When I set out on a mission in 2012 to improve access to opioid treatment for my southern Ohio patients, I didn't anticipate stirring up the hornet's nest or having my head on the chopping board of every agency or be in jeopardy of losing my Ohio medical license.

The need for addiction treatment is at a crisis point. In 2014, Ohio ranked 2<sup>nd</sup> in drug overdose death and in 2015 alone, Ohio lost 3,050 of its residents to drug overdose, that's a 21% increase from 2014. 46% of those were due to heroin overdose.

Question is, why are we losing so many lives to drug addiction and why does the medical community seem indifferent to the crisis?

The answer is fairly simple:

For over a century, addiction was a criminal offense managed by law enforcement. Doctors who tried to intervene in the early century were criminalized. Criminalization of addiction treatment started with the passage of the Harrison Narcotic Act of 1914 when a law meant for the orderly marketing of opium was used to jail doctors who used narcotics to treat addiction.



The law enforcement argument then was: Since addiction was not a disease, an addict was not a patient, and opiates dispensed or prescribed for him by a physician were therefore not being supplied "in the course of his professional practice."

"Many doctors were arrested under this interpretation, and some were convicted and imprisoned. Even those who escaped conviction had their careers ruined by the publicity. The medical profession quickly learned that to supply opiates to addicts was to court disaster." [Quote from Schaffer Library of Drug Policy]

Sixty years later, the nation acknowledged that addiction is a disease, that addicts are patients, and that opioid maintenance is a legitimate and effective treatment for opioid addiction. This led to the establishment of methadone clinics.

By then, however, it was too late to get enough doctors interested in treating the addicts and law enforcement has not completely given up on the notion that addiction is a crime so the stigma against addiction treatment continued.

In the year 2000, DATA 2000 law was enacted to encourage doctors to treat addicts in the privacy of their offices. To allay the concerns of those who still believed addiction treatment in regular offices may endanger "public interest," it was decided that OBOT should be done in baby steps starting out with few patients so that it can be quickly shut down if those concerns proved right. This was the history of patient cap in DATA 2000. Since from onset they knew that patient limit may be inadequate, it was imbedded into the statute a process which permits the Secretary of HHS to change the patient cap from time to time in response to how well the law was meeting the need of patients without posing a "public interest" issue.

This provision has already been used 3 times since 2000, each time resulted in an increase and the most recent, which occurred shortly after the issue at stake today, raised the patient cap from 100 to 275.

Today, you will decide whether exceeding the now-repealed 100-patient cap was a criminal offence in Ohio. Attorney Wilcox is asking you to accept that under DATA 2000 treatment becomes a criminal act as soon as a doctor "began treating more than 100 patients with Suboxone."

I respectfully disagree with his position.

It is a common saying that "Those who cannot remember the past are condemned to repeat it."

If today you vote in agreement with Mr. Wilcox that violation of the patient cap is a crime and issue a reprimand as recommended by Mr. Decker, you would [sic] have laid the ground work for the successful criminal prosecution of every doctor who exceeds a DATA 2000 patient cap by even one patient.

Such act would further dissuade physicians from entering the already treacherous waters of treating Ohio's addicts, a patient population that is already underserved. The guaranteed outcome will be more death certificates for many more Ohio addicts like Patient #158, who

may still be alive had she been able to receive the treatment she so desperately needed.

If history is prelude, a “yes” vote would go down in history as the day the Ohio Medical Board again turned back the tide against physicians willing to engage in the fight against the scourge of addiction.

During my graduation ceremony from medical school in 1989, my provost notified us that our medical degree is an assurance to people who may have never known us that it is safe for them to entrust their lives in our hands. He then asked us to value that trust in all our medical decisions and to do them no harm.

It was this principle that guided me during those three days in September of 2014 when I was faced with the choice of either quickly dumping the excess patients and letting them fend for themselves, which would have put them at immediate risk of relapse and overdose, or transitioning them safely. I chose to do no harm.

In working to cure my mistake, I didn’t just talk the talk, I also walked the walk as I poured by personal resources into providing my patients with both the care and medications needed to safely transition them to other care givers.

In analyzing my approach, Mr. Decker concluded that: “While Dr. Uradu’s conduct was not strictly lawful, it was, otherwise, more than honorable.”

I truly appreciate Mr. Decker pointing out all the honorable steps I took to solve the problem. Today, I expect you will consider those honorable steps when you decide whether or not my conduct was “more than honorable” and CRIMINAL at the same time.

For the sake of the underserved Ohio addicts and all doctors involved in their treatment, I sincerely hope and pray that you will decide my conduct was not criminal, that you will completely acquit me of the charge in Count 3 of the Notice, and that you will acquit me of the charges in Counts 1, 2, and 4 of the Notice, which Mr. Decker has already decided were not supported by the evidence.

Thank you.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Mr. Wilcox stated that he would like to respond.

Mr. Wilcox stated that this is a challenging case involving very technical legal analysis. Mr. Wilcox opined that the Hearing Examiner’s Report and Recommendation was mostly correct, and therefore he would focus on the alleged violation of 4731.22(B)(24), Ohio Revised Code, regarding the surrender of Dr. Uradu’s Drug Enforcement Administration (DEA) registration, and the alleged violation of 4731.22(B)(12), regarding the misdemeanor committed in the course of practice.

Mr. Wilcox stated that early in this matter it had seemed clear that Dr. Uradu had violated 4731.22(B)(24) by surrendering her “X” registration with the DEA, which had allowed her to prescribe medication to treat addiction. Mr. Wilcox stated that the initial legal analysis concluded that the “X” registration was a separate certification or registration from Dr. Uradu’s regular DEA certification because the “X” registration

requires a separate application as well as special courses and training. However, the Hearing Examiner did not find a violation in that matter because the DEA considers the "X" registration to be a waiver and not a separate registration. Mr. Wilcox stated that he reluctantly agrees with what the Hearing Examiner proposed on that specific issue.

Mr. Wilcox stated that the Hearing Examiner also found that Dr. Uradu did not violate 4731.22(B)(25) by being suspended from the Medicaid program, nor that she violated 4731.22(B)(22) based on prior action by the Board of Pharmacy. Mr. Wilcox opined that the Board was substantially justified in moving forward with those allegations, based on a similar case that had occurred before the Board of Pharmacy. However, Mr. Wilcox stated that has certain facts were developed in Dr. Uradu's hearing, these alleged violations were not found.

Mr. Wilcox stated that he had filed objections to the Report and Recommendation in response to the finding that Dr. Uradu did not violate 4731.22(B)(12) or 3719.06, Ohio Revised Code. Mr. Wilcox stated that Dr. Uradu violated the law by exceeding the 100-patient limit for prescribing medications to treat addiction. Mr. Wilcox disagreed with the Hearing Examiner's finding that Dr. Uradu had only violated 3719.06 for a two to three-day window. Mr. Wilcox stated that the Hearing Examiner arrived at this conclusion based on an analysis of intent. Mr. Wilcox stated that any violation of the 100-patient limit is a violation and there is no requirement of proof of any intention to do so.

Mr. Wilcox stated that by July 2014 Dr. Uradu was exceeding the 100-patient limit by 50 to 100 patients and by August 2014 she was exceeding the limit by 85 patients. Mr. Wilcox stated that violating the limit by such wide margins shows that Dr. Uradu had reckless disregard for how she tracked patient and prescribed these medications. Mr. Wilcox stated that by her own admission, Dr. Uradu was treating 300 to 500 patients per day in her practices in Ohio and Kentucky. Mr. Wilcox opined that the Report and Recommendation should be amended to find that Dr. Uradu exceeded the 100-patient limit for a three-month period and that she violated the law during that time.

Mr. Wilcox stated that the Proposed Order is a reprimand. Mr. Wilcox opined that this case warrants more than a reprimand given the serious scheduled medications being prescribed outside of DEA rules and the law. Mr. Wilcox suggested that some minimal suspension of Dr. Uradu's Ohio medical license would be appropriate in this matter.

**Dr. Steinbergh moved to approve and confirm Mr. Decker's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Onyinyechi Rose Uradu, M.D. Dr. Soin seconded the motion.**

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Dr. Schachat stated that this matter is rather complicated and involves prescribing of controlled substances. Dr. Schachat opined that Dr. Uradu is more concerned than many physicians about helping her drug-dependent patients and she had tried to navigate complex rules and laws relating to the prescribing of the medications in question. Dr. Schachat commented that while there is no appearance of "pill mill" activities in this case, it does appear that rules and laws were not adhered to.

Dr. Schachat continued that in 2008 Dr. Uradu obtained a Drug Addiction Treatment Act of 2000 (DATA 2000) Waiver, allowing her to prescribe controlled substances to up to 30 patients for treatment of addiction. Essentially, this allowed Dr. Uradu to prescribe Suboxone to treat addiction. In 2009, Dr. Uradu's DATA 2000 Waiver was renewed and she was allowed to prescribe medication to treat addiction

in up to 100 patients.

Dr. Schachat stated that in 2007 Dr. Uradu opened and co-owned a treatment center in Kentucky. A Substance Abuse and Mental Health Services Administration (SAMHSA) license for the center was obtained, allowing the staff at the center to treat an unlimited number of patients with Suboxone without those patients counting against Dr. Uradu's personal 100-patient limit. In 2011 Dr. Uradu opened another center in Ohio and had intended to obtain an SAMHSA license for the new center. However, an SAMHSA license was never obtained for the Ohio center, and therefore Dr. Uradu's dispensing at that center was counted against her personal 100-patient limit. In July 2014 the Ohio center received a Terminal Distributor of Dangerous Drugs (TDDD) license from the Ohio Board of Pharmacy and Dr. Uradu was designated as the program director and responsible person under the license. The TDDD allowed the Ohio center to purchase, store, and administer controlled substances.

Dr. Schachat stated that at that time the Ohio center obtained the TDDD license, the staff, without Dr. Uradu's knowledge, stopped carefully monitoring the number of patients in relation to Dr. Uradu's 100-patient limit. Dr. Schachat stated that there is some disagreement regarding the exact number of patients at this time, but there is agreement that the number was more than 100. Dr. Schachat stated that the number may have been 111 or 185, while the Hearing Examiner believes the number is around 120. Dr. Schachat stated that while Dr. Uradu was not specifically aware that she had gone over her 100-patient limit, it was her responsibility to be aware and to assure that her staff to whom she had delegated this task was counting correctly.

Dr. Schachat stated that in September 2014 Dr. Uradu became aware that she had gone over her 100-patient limit. Dr. Uradu immediately notified SAMHSA and asked them what she should do. Dr. Uradu began contacting her patients and advising them to go to another nearby clinic for treatment. However, the next day that treatment clinic was raided and shut down, preventing her patients from receiving treatment there. The closure also caused a large number of new patients to seek treatment at Dr. Uradu's clinic.

Dr. Schachat stated that Dr. Uradu now faced a dilemma: Either refuse patients who have no access to local care and thus cause them immediate harm, or knowingly break the rules by continuing to care for more than 100 patients. Dr. Schachat stated that in this particular dilemma, the decision was taken out of Dr. Uradu's hands by the surrounding society, which created a law limiting the number of patients to 100. Dr. Schachat stated that by creating this law, the society had decided that protecting other patients against having more dangerous drugs around was more important than helping the other patients that Dr. Uradu had immediate responsibility for.

Dr. Schachat stated that, at the request of the Drug Enforcement Administration (DEA), Dr. Uradu executed a voluntary surrender of her DATA 2000 Waiver. In October 2014 Dr. Uradu resigned from the Ohio center, but she continued to practice at the Kentucky center. In March 2015 the Ohio Department of Medicaid issued a letter rescinding Medicaid reimbursement due to a "credible allegation of fraud." Dr. Uradu appealed this decision, but the appeal was denied for unstated reasons and the allegation remains open. In September 2015 the Ohio Board of Pharmacy suspended the Ohio center's TDDD license due to Dr. Uradu exceeding her 100-patient limit.

Dr. Schachat stated that the Hearing Examiner believed that the suspension of Dr. Uradu's DATA 2000 Waiver was not the same as the termination or suspension of a certificate or registration to prescribe medications. Dr. Schachat further noted that the Hearing Examiner believed that the suspension of Dr.

Uradu's TDDD license was not equivalent to the Board of Pharmacy limiting a license to practice. The Hearing Examiner also believed that there ought not be a finding on the matter of the suspension of Dr. Uradu's participation in Medicaid since the suspension is only based on allegations at this point. Regarding the allegation that Dr. Uradu violating the 100-patient limit on treating addiction patients, the Hearing Examiner concluded that Dr. Uradu had been negligent but not reckless or indifferent to the consequences. Dr. Schachat stated that a good summary of the Hearing Examiner's feeling is that, while Dr. Uradu's conduct was not strictly lawful, it was honorable. Dr. Schachat added that there have been no reports of harm or injury resulting from Dr. Uradu's actions.

Dr. Schachat agreed that Dr. Uradu faced the ethical dilemma of either following the law or attempting to reduce harm to patients by violating the 100-patient limit. However, Dr. Schachat stated that this does not fully absolve one from following the law. Dr. Schachat stated that the Hearing Examiner's Proposed Order in this case is a reprimand. Dr. Schachat stated that Mr. Giacalone has signaled his intention to offer an amended Order with a stronger sanction, including an indefinite suspension of Dr. Uradu's medical license. Dr. Schachat stated that he agrees with Mr. Giacalone's rationale, though he may not agree with a suspension.

Dr. Schachat opined that Dr. Uradu did much more good than harm for her community and that she has learned that the law is rather complex and inflexible. Dr. Schachat predicted that Dr. Uradu will adhere to the law in the future.

Mr. Giacalone stated that his proposed amendment has already been circulated to the Board members. Mr. Giacalone commented that Dr. Uradu and her attorney want to turn this case into a referendum on the validity of the regulation. Mr. Giacalone stated that the validity of the regulation is not open to debate, noting that it is grounded in federal statutes. Mr. Giacalone acknowledged that the regulation was recently amended to raise the patient limit from 100 to 275. However, the limit was still 100 at the time these events occurred and Dr. Uradu has admitted exceeding that limit. Mr. Giacalone commented that Dr. Uradu is not a naïve practitioner who is ignorant of the process, noting that Dr. Uradu had commented to a DEA agent that she would have called an attorney had she known that the agent was conducting an audit.

Mr. Giacalone stated that one comment was made on Dr. Uradu's behalf urging that the past not be repeated. Mr. Giacalone agreed and stated that in the past pain clinics had been allowed to proliferate in Ohio without controls. Mr. Giacalone stated that the same potential exists for Suboxone clinics and similar clinics to be misused and abuse allowed to occur if they are not handled correctly.

Mr. Giacalone opined that the voluntary surrender of Dr. Uradu's DATA 2000 Waiver constitutes a violation of the Board's statutes. Mr. Giacalone stated that the DATA 2000 Waiver provides an X registration which is separate from a practitioner's DEA number, regardless of how the federal government may identify it for administrative convenience. Mr. Giacalone stated that there are additional educational and other requirements that must be met to obtain the X registration, further indicating that it is different from a DEA number. Furthermore, the granting of this "X" designation allows a physician in an office-based setting to prescribe controlled substances such as buprenorphine-containing products specifically for addiction. Such "addiction" treatment based prescribing is not permitted under a typical DEA registration that does not carry the "X" designation. Mr. Giacalone disagreed with the Hearing Examiner's contention that the DATA 2000 Waiver is part of the DEA registration and therefore its surrender does not constitute a violation of the Board's statutes.

Mr. Giacalone agreed with the Hearing Examiner that the suspension of Dr. Uradu's participation in Medicaid is not a violation. Mr. Giacalone stated that this suspension is part of an ongoing investigation and there has been no determination from it. Mr. Giacalone stated that, depending on the results of that investigation, this could result in a violation in the future.

Regarding the alleged violation of Dr. Uradu's 100-patient limit, Mr. Giacalone stated that the exact number of patients can be debated, though he believed that the number 266 was probably correct. Mr. Giacalone stated that in any case, Dr. Uradu has admitted to surpassing the 100-patient limit and thereby violating the law. Mr. Giacalone stated that the desire to help is not an excuse for violating the law. Mr. Giacalone drew an analogy with the medical marijuana rules that the Board will be developing in the future, stating that a practitioner will not be allowed to recommend medical marijuana outside of criteria set by the Board simply because he or she believes it will benefit society. Likewise, Mr. Giacalone stated that in the past pain medications could be prescribed as the physician saw fit with no oversight. However, as a result, overprescribing of opiates and the resulting prescription drug abuse epidemic have led to guidelines and prerequisites regulating such prescribing. To simply allow physicians to rationalize overprescribing of opiates and disregard these established prescribing safeguards is not acceptable. Likewise, disregarding federal law and exceeding prescribing requirements for products containing buprenorphine, which is a controlled substance and opioid derivative, is likewise unacceptable.

Mr. Giacalone quoted a portion of the Federal Register regarding the DATA 2000 Waiver:

... Providers treating patients and OTP's (Opioid Treatment Programs) with approved buprenorphine products are required under the Drug Addiction Treatment Acts to provide counseling and other services to patients treated with buprenorphine products, and to assess and document patient suitability and stability before buprenorphine is prescribed for unsupervised use. Office-based buprenorphine providers are not required to provide counseling and to assess suitability and stability.

Mr. Giacalone acknowledged that in an OTP, Dr. Uradu could prescribe Suboxone in an unlimited manner. However, Mr. Giacalone stated these regulations understand that there is a difference between OTP's and office-based providers. Mr. Giacalone stated that OTP's have many more requirements than office-based providers to ensure acceptable treatment for large numbers of patients.

Mr. Giacalone stated that this situation came to light when the Ohio Board of Pharmacy and the DEA raided a nearby facility due to suspected inappropriate conduct. This caused a sudden influx of patients to seek treatment from Dr. Uradu. Mr. Giacalone stated that while he understands Dr. Uradu's predicament, Dr. Uradu should have questioned accepting large numbers of patients from such a facility. Instead, Dr. Uradu decided to violate her 100-patient limit and justified it by saying that she is helping people. Mr. Giacalone further stated that those patients that Dr. Uradu could not see were referred to another facility that was owned by Dr. Uradu and her husband.

Regarding the Proposed Order, Mr. Giacalone felt that the Hearing Examiner made a decision and then tried to craft the law around that decision. Mr. Giacalone stated that such actions make for poor law and poor decisions. Mr. Giacalone stated that he gives Dr. Uradu the benefit of the doubt that she may have been well-intentioned, but violating the law for the right reasons is not an excuse. Mr. Giacalone stated that failure to follow requirements to ensure that patients are being treated appropriately could perpetuate the problem and make things worse. Mr. Giacalone stated that without the proper processes in place, especially counseling of patients, Suboxone and similar medications could become another problem



instead of a solution.

Mr. Giacalone opined that Dr. Uradu's medical license should be suspended, but that all except five days of that suspension should be stayed.

**Mr. Giacalone moved to amend the Report and Recommendation's Findings of Fact to read as follows:**

1. On or about September 15, 2006, Onyinyechi Rose Uradu, M.D., was first licensed to practice medicine and surgery in Ohio, by the Medical Board of Ohio ("the Board"). She remains so licensed. Dr. Uradu is also licensed to practice medicine in Kentucky and West Virginia. Her licenses to practice medicine in Maryland and Virginia have become inactive.
2. Dr. Uradu is board certified in the specialties of Family Medicine and Addiction Medicine. Dr. Uradu has never previously been subject to discipline in Ohio or by any other medical board.
3. In 2008, Dr. Uradu obtained a waiver, pursuant to 21 U.S.C. § 823(g), of the Drug Addiction Treatment Act of 2000 ("DATA 2000"), which permitted her to prescribe Schedule III, IV and V controlled substances to up to 30 patients at any one time, for the treatment of addiction. This DATA 2000 waiver was essentially a license to prescribe and/or personally furnish Suboxone, a Schedule III controlled substance, for the treatment of addiction. Upon her reapplication after one year, Dr. Uradu's DATA 2000 waiver patient limit was increased to 100 effective on or about September 20, 2009.
4. In 2007, Dr. Uradu formed the Ultimate Treatment Center ("UTC"), in Ashland, Kentucky, which she co-owns with her husband. In 2009, UTC was federally certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA") as an Opioid Treatment Program ("OTP") under 42 C.F.R. Part 8. As an OTP, UTC is itself, through staff, authorized to personally furnish or administer Suboxone to an unlimited number of patients. The prescription or dispensation of Suboxone through UTC does not count against any numerical limitation applicable to an individual physician holding a DATA 2000 waiver.
5. In 2011, Dr. Uradu was one of the incorporators in the formation of the Amazing Grace Center ("AGC"), a not-for-profit corporation intended to become an OTP serving the Portsmouth, Ohio, area. Dr. Uradu began working at AGC in late 2012, while continuing her full-time position at UTC. AGC was never licensed as an OTP, although it was intended that AGC become one. At AGC, therefore, Dr. Uradu prescribed Suboxone to patients in her individual capacity using her DATA 2000 waiver. All of these prescriptions were dispensed at a nearby CVS Pharmacy.
6. In July, 2014, the Ohio State Board of Pharmacy issued to AGC a Terminal Distributor of Dangerous Drugs ("TDDD") license. Dr. Uradu was designated as AGC's "Program Director" and "Responsible Person" on the May, 2014, application, and as the "Responsible Person" on the license. The TDDD license authorized AGC to purchase in bulk, store and, on an appropriate order, personally furnish or administer controlled substances.

7. AGC also applied to become an OTP in May, 2014. There were unforeseen delays in processing this application.
8. Dr. Uradu relied on her support staff, and her own quarterly reviews of her patient census, to monitor her own compliance with the 100-patient limit of her DATA 2000 waiver. In June through August, 2014, as word spread in the community that AGC was about to become an OTP, an increasing number of persons appeared at AGC for treatment, and Dr. Uradu's census of patients to whom she was prescribing Suboxone increased above 100. Due at least in part to a misunderstanding of the law, support staff quit monitoring the 100-patient limit about the time AGC received its TDDD license if not earlier, unbeknownst to Dr. Uradu.
9. For the period July 1 through October 2, 2014, using her DATA 2000 waiver at AGC, Dr. Uradu had issued Suboxone prescriptions to *at least* the following numbers of current patients, who continued to be active patients receiving Suboxone, as of the following dates:
  - July 15, 2014 111
  - July 30, 2014 152
  - August 15, 2014 166
  - August 31, 2014 185
  - September 15, 2014 160
10. Dr. Uradu was not specifically aware that the number of her patients currently receiving Suboxone had exceeded 100 through this period. Dr. Uradu failed to properly monitor her own compliance through this period and she was in violation of the 100-patient limit of 21 U.S.C. § 823(g)(2)(B)(iii). Her staff was alleged to have been not properly trained and supervised, and a "quarterly" census count was inadequate to self-monitor Dr. Uradu's compliance under these circumstances.
11. When Dr. Uradu reviewed her patient schedule on September 23, 2014, and discovered that she was in violation of 21 U.S.C. § 823(g)(2)(B)(iii), she immediately notified SAMHSA seeking advice how to remedy the violation, and sought the assistance of Ohio and local officials to make arrangements for the patients she could no longer treat because of the 100-patient limit. The next day, another Portsmouth addiction treatment facility, the Community Counseling and Treatment Service Center ("CCC"), was raided by the Ohio State Board of Pharmacy, the Columbus DEA Tactical Diversion Squad and the Ohio Health Care Fraud Unit, and CCC's operations were interrupted, resulting in increased patient demand for treatment, and preventing Dr. Uradu from referring her patients to that facility.
12. Ultimately, Dr. Uradu did not immediately adjust her patient load, by discharging patients or transferring them to other programs, to become compliant with the 100-patient limit of her DATA 2000 waiver. Rather, between September 23, 2014, and October 2, 2014, she transferred many of her patients to the UTC in Ashland, Kentucky, an OTP facility co-owned by her and her husband, where these patients could continue to receive Suboxone treatment without regard to any DATA 2000 waiver limit. Meanwhile, between September 26, 2014, and October 2, 2014, Dr. Uradu wrote Suboxone prescriptions in her individual capacity for *at least* 120 patients, several of them new ones. Her census of patients

currently receiving Suboxone appears to have exceeded 100 at least through September 26, 2014.

13. In maintaining more than 100 patients to whom she was currently prescribing Suboxone in her individual capacity, between her discovery of having exceeded the 100-patient limit on September 23, 2014, and September 26, 2014, Dr. Uradu acted knowingly. Dr. Uradu testified that her intent in doing so was to prevent harm to her patients, because she understood that an interruption of these patients' Suboxone regimens could throw those patients back into active addictive behavior that posed a serious risk to their health and well-being.
14. On October 2, 2014, at the request of an agent of the Drug Enforcement Administration ("DEA"), Dr. Uradu executed a "voluntary surrender" of her DATA 2000 waiver "for Schedule III." Dr. Uradu retained her underlying DEA registration to prescribe controlled substances.
15. Dr. Uradu resigned from AGC in late October, 2014, after which she no longer saw patients at or issued prescriptions from AGC. Alicia Hopkins, D.O., was Dr. Uradu's successor at AGC, and became the "responsible person" for the purposes of AGC's TDDD license, no later than January 26, 2015.
16. Dr. Uradu continued to practice at and through UTC after leaving AGC. On March 18, 2015, the Ohio Department of Medicaid ("ODM") issued a letter to Dr. Uradu, immediately suspending all Medicaid reimbursements to Dr. Uradu, to UTC, and to UTC Lab. The reason given was that ODM "has determined that a credible allegation of fraud exists based on evidence you were up-coding claims for Medicaid reimbursement of medical office visits and billing a non-covered service (i.e., Methadone treatment) as a covered service (i.e. Suboxone treatment)." Dr. Uradu, through her attorneys, requested that ODM reconsider its decision providing additional information by way of correspondence dated April 5, 2015. ODM denied this reconsideration request via correspondence dated September 30, 2015, citing that ODM had conducted an administrative review and had determined that ". . . a credible allegation of fraud remains and an investigation is ongoing against Dr. Uradu and the Ultimate Treatment Center."
17. On September 21, 2015, the Ohio Board of Pharmacy issued a letter summarily suspending AGC's TDDD license, allegedly pursuant to O.R.C. § 4729.571. The alleged basis for the suspension was that while at AGC, Dr. Uradu had prescribed Suboxone violation of 21 U.S.C. § 823(g)(2)(B)(iii) to more than 100 patients at once between July 1 and September 30, 2014.

**Mr. Giacalone further moved to amend the Report and Recommendation's Conclusions of Law to read as follows:**

1. As a person licensed by the Board to practice medicine and surgery in Ohio, Dr. Uradu is subject to the jurisdiction of the Board, and to the provisions of O.R.C. § 4731.22.

**Charge 1: Voluntary Surrender of DATA 2000 Waiver Registration.**

2. Title 21 U.S.C. 823(g)(1) provides that practitioners who personally furnish narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. This is separate DEA registration that Dr. Uradu had applied for and been granted by the DEA for the specific purpose of prescribing controlled substances to treat addiction. Although nominally referred to as a “waiver of registration,” it acts as a license in that, without it, a physician cannot prescribe Suboxone to patients to treat addiction. Moreover, it bears its own certificate number, and it is subject to revocation or suspension. O.R.C. 4731.22(B)(24) permits the Board the ability to sanction a physician for, “the revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States Department of defense or department of veterans affairs **or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice.**” (Emphasis added.) The facts are clear, and Dr. Uradu testified that on October 2, 2014, she executed a voluntary surrender of her DEA registration #XU\*\*\*\*\* and her ability to prescribe controlled substances under this specific DEA registration to treat addiction. This separate and distinct registration was created under the Drug Addiction Treatment Act (“DATA”) which permits qualified physicians to treat narcotic dependence with schedules III-V narcotic controlled substances that have been approved by the Food and Drug Administration (“FDA”) for that indication. Unlike a typical DEA registration, in order to obtain this registration specifically for purposes of opioid dependency treatment using products such as buprenorphine, physicians must qualify for a physician waiver, which includes completing eight hours of required training, and applying for a physician waiver. Hence the ability to obtain this DEA registration number (carrying an “X” designation) is a separate and distinct process carrying with it additional unique requirements and privileges beyond those permitted under a typical DEA registration. The fact that it is referred to as a “waiver” is simply for administrative convenience for both the DEA and the DEA registrant. However, as mentioned, a typical DEA registration and a registration issued under the DATA carry different unique requirements and privileges such that they should be viewed as separate registrations. Accordingly, Dr. Uradu’s conduct as set forth in Findings of Fact 3, 4, and 8 through 14 violated O.R.C. 4731.22(B)(24).

**Charge 4: Board of Pharmacy’s Suspension of AGC’s TDDD License.**

3. As set forth in Findings of Fact 6, 15, and 17, Dr. Uradu was affiliated with and was the “responsible person” for AGC’s TDDD license during the time frame in which the alleged violations cited by the Ohio State Board Pharmacy occurred. However, the fact that there were no medications personally furnished, administered or even present at AGC’s facility would dictate that any related action against Dr. Uradu’s medical license is unwarranted. While this Board reserves the right to bring its own action, to do so here would be duplicative. Hence, any disciplinary action regarding this claim should be limited to Dr. Urdu’s position as a “responsible person” and determined exclusively by the Ohio State Board Pharmacy. Accordingly, no violation of O.R.C. 4731.22(B)(22) based upon the action of the Pharmacy Board is found.

**Charge 2: Department of Medicaid’s Suspension of Medicaid Participation.**

4. On or about March 18, 2015, the Ohio Department of Medicaid (“ODM”) made a determination to suspend Dr. Uradu from participating in Medicaid based upon

ODM's determination that a credible allegation of fraud exists based upon evidence of up-coding. This determination was reaffirmed by ODM on September 30, 2015, upon a request for reconsideration by Dr. Uradu's attorneys. However, the September 30, 2015, correspondence from ODM is also clear that, while Dr. Uradu's ability to participate in Medicaid is suspended, that the cause for her suspension is ". . . a credible allegation of fraud and an **ongoing** investigation against Dr. Uradu and the Ultimate Treatment Center". (Emphasis added.) Hence, Dr. Uradu's ultimate culpability in this matter has yet to be officially determined. Accordingly, no violation of O.R.C. 4731.22(B)(25) based upon the existing actions of ODM is found.

**Charge 3: Violation of the 100-Patient Limit.**

5. The asserted basis for this charge brought under O.R.C. § 4731.22(B)(12) is that Dr. Uradu committed an "act in the course of practice that constitutes a misdemeanor" in Ohio, specifically that her conduct violated O.R.C. § 3719.06(A)(1)(a), stating that a licensed health professional authorized to prescribe drugs may "[p]rescribe schedule II, III, IV, and V controlled substances" only "in accordance with the laws regulating the profession's practice." Specifically, Dr. Uradu prescribed buprenorphine products for 166 patients, well over the 100-patient limit established by 21 U.S.C. 823(g)(2)(B)(iii), and her actions violate both federal and state law. She admitted under cross-examination that she had exceeded the 100-patient limit by "probably" over 100 patients. This shows that Dr. Uradu knew that she was in violation of federal law. The fact that she called SAMHSA and asked what to do about her discovery that she was prescribing to more than 100 patients shows that she understood the limit, and does not absolve her from breaking the law. To the extent that Dr. Uradu had been unaware that she had exceeded the limit, the size of the violation establishes that she was at least reckless in that regard throughout the period of July 1 through September 26, 2014. Accordingly, Dr. Uradu's conduct, as described in Findings of Fact 3 and 8 through 13, individually and/or collectively, constitutes the "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in O.R.C. 4731.22(B)(12), to wit: Authority of Licensed Health Professional, O.R.C. 3719.05, with respect to each patient in excess of 100 patients. Pursuant to O.R.C. 3719.99(E), such violation constitutes a misdemeanor of the third degree.
6. Pursuant to O.R.C. § 4731.22(B), the above described acts found to violate O.R.C. 4731.22(B)(24) and (12) in Conclusion of Law 2 and 5, individually and/or collectively, authorize the Board to "limit, revoke, or suspend an individual's certificate to practice, refuse to issue a certificate to an individual, refuse to renew a certificate, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate."

**Mr. Giacalone further moved to amend the Report and Recommendation's Discussion of Proposed Order to read as follows:**

A host of legal entanglements appear to have accompanied Dr. Uradu's failure to appropriately follow federal law when prescribing controlled substance medications to treat addiction.

The State would recommend that Dr. Uradu be suspended for a period of 6 months and/or until all of the encompassed Board and agency actions have been completed and she has regained good standing in regard to all licenses and agencies.

The Respondent urges that if a violation is found, a public reprimand is appropriate. (Tr. 306). There are, however, aggravating factors. The most prominent is Dr. Uradu's knowing conduct prior to September 23, 2014. That the 100-patient limit may be criticized as outdated and overly restrictive (Resp. Br. 79), or that DATA 2000 waivers have subsequently become available for up to 275 patients per practitioner, is beside the point. Dr. Uradu had an obligation to honor the restrictions on her federal license in place at the time, and to monitor her own compliance with the 100-patient limit in a strict and effective manner. Once she had exceeded the numerical limitation, Dr. Uradu was essentially passing out narcotics to the citizens of Southern Ohio without legal authorization.

While Dr. Uradu points to the urgent need to treat drug addiction in Southern Ohio (Resp. Br. 79-80), she has not provided a reasonable excuse for her failure to have systems in place that effectively insured that she would provide such treatment within the confines of the law. As Dr. Uradu confessed, "I might be a good doctor, but I'm not a good business person." (Uradu, Tr. 103).

There are mitigating factors present as well. Dr. Uradu has been a physician for some 27 years, and has been licensed to practice medicine in the United States for ten years. This is her first disciplinary infraction.

She has entered a practice area that is difficult, frustrating, and only intermittently rewarding, in a locality where addiction treatment is desperately needed. The treatment of addiction through the administration of Suboxone and/or Methadone is highly regulated, and the potential for abuse, through diversion or otherwise, is high, as is the level of scrutiny from regulators.<sup>1</sup>

Once she discovered that she was in violation of the limits of her DATA 2000 waiver, Dr. Uradu did not attempt to conceal this fact from anyone. Rather, she reported the problem immediately to SAMHSA and asked for advice and assistance in remedying the problem.

Ultimately, while not excusing Dr. Uradu's violation, Dr. Uradu's single-minded focus on the welfare of her patients does go a long way towards explaining it. That focus was evident from her testimony and demeanor, and it was demonstrated by her actions.

In view of the aggravating and mitigating factors present here, the following Order is recommended:

**Mr. Giacalone further moved to amend the Report and Recommendation's Proposed Order to read as follows:**

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<sup>1</sup> Dr. Uradu did appear to have taken appropriate measures to prevent the diversion of Suboxone by the addicts for whom it had been prescribed. She used a single Ohio pharmacy, which was instructed not to transfer prescriptions without her permission; prescriptions were generally written for short terms and transmitted electronically; patients were subject to drug screens and call-backs to check on medication supplies and ensure the lot number in the patient's possession matched that dispensed by the pharmacy; metabolite levels were tested to ensure that the patient had actually been taking Suboxone as prescribed; and requiring that patients whose testing did not add up to take medication under observation.



It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Onyinyechi Rose Uradu, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 180 days. All but five days of the suspension are STAYED.
- B. **PROBATION:** Upon reinstatement, Dr. Uradu's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:
1. **Obey the Law:** Dr. Uradu shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which she is practicing.
  2. **Declarations of Compliance:** Dr. Uradu shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Uradu's certificate is reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Personal Appearances:** Dr. Uradu shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Uradu's certificate is reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  4. **Controlled Substances Prescribing Course(s):** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Uradu shall submit acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Uradu submits the documentation of successful completion of the course(s) dealing with the prescribing of controlled substances, she shall also submit to the Board a written report describing the course(s), setting forth what she learned from the course(s), and identifying with specificity how she will apply what she has learned to her practice of medicine in the future.

5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Uradu is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

6. **Required Reporting of Change of Address:** Dr. Uradu shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Uradu's certificate will be fully restored.
- D. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Uradu shall provide a copy of this Order to all employers or entities with which she is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where she has privileges or appointments. Further, Dr. Uradu shall promptly provide a copy of this Order to all employers or entities with which she contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where she applies for or obtains privileges or appointments.

In the event that Dr. Uradu provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, she shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

These requirements shall continue until Dr. Uradu receives from the Board written notification of the successful completion of her probation.

2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Uradu shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which she currently holds any professional license or certificate. Also, Dr. Uradu shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which she applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Uradu receives from the Board written notification of the successful completion of her probation.
3. **Required Documentation of the Reporting Required by Paragraph D:** Dr. Uradu shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report

confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Uradu violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

**Dr. Steinbergh seconded the motion.**

Dr. Schottenstein stated that Dr. Uradu's address to the Board would have been compelling had this been a legislative hearing instead of a meeting of the State Medical Board. Dr. Schottenstein stated that the Medical Board is not meeting to comment on the appropriateness or validity of the law. Dr. Schottenstein noted the following statement from Dr. Uradu's address:

Many will be watching to see whether you, the members of the Ohio Medical Board, charged with protecting the citizens, will support the notion that a violation of the federal patient cap, which has already been changed because it was insufficient to keep pace with the national crisis of opioid overdose, should be viewed as a criminal act in Ohio.

Dr. Schottenstein also noted another portion of Dr. Uradu's address:

Today you will decide whether exceeding the now-repealed 100 patient cap was a criminal offense in Ohio.

Dr. Schottenstein stated that it is not the Board's purpose today to determine if these acts are against the law. Dr. Schottenstein stated that these acts are, in fact, against the law.

Dr. Schottenstein stated that as he reviewed this case he did not attempt to decide whether the law was just or fair. Rather, Dr. Schottenstein attempted to ascertain whether there were mitigating circumstances that would cause him to look favorably on the situation. Upon reviewing the case, Dr. Schottenstein opined that Dr. Uradu's actions were more negligent than reckless. Dr. Schottenstein stated that after hearing Dr. Uradu's address to the Board, he had the sense that Dr. Uradu is having trouble taking responsibility for her behavior and that, on some level, she had the feeling that it was important that she took the actions at issue in this case. Dr. Schottenstein stated that he respects that opinion, but that it is not appropriate to take rules and laws into one's own hands and decide what is best.

Dr. Schottenstein noted that the Hearing Examiner's Report and Recommendation considers whether Dr. Uradu's behavior was negligent or reckless. Dr. Schottenstein stated that although these terms are often conflated, there are actually two different things. Dr. Schottenstein stated that when one is negligent, regardless of the level of negligence, it is because they are openly careless and inattentive with their behavior and should have known better but did not. Conversely, someone who is reckless does know

better but they take the action anyway.

Dr. Schottenstein continued that Dr. Uradu put herself in a position in which she acted negligently and then needed to act recklessly in order to avoid practicing medicine in an unethical manner. Dr. Schottenstein appreciated the fact that Dr. Uradu behaved in such a way as to practice medicine in an ethical manner by not summarily discharging patients. However, Dr. Schottenstein reiterated his opinion that this was a situation of Dr. Uradu's own making.

Dr. Schottenstein stated that he supports Mr. Giacalone's proposed amendment.

Dr. Steinbergh stated that she agrees with Mr. Giacalone's proposed amendment, as well as with Dr. Schottenstein's comments. Dr. Steinbergh stated that a level of professional ethics was crossed in this case. Dr. Steinbergh stated that there is a law and Dr. Uradu broke that law.

Dr. Steinbergh stated that during her address to the Board, Dr. Uradu spoke of her graduation from medical school and the wonderful privilege of taking care of patients. Dr. Steinbergh stated that all medical school graduates feel that they are going to go forth and help patients and the world. Dr. Steinbergh stated that during training, physicians begin to realize that there are boundaries that must be followed in order to protect patients and care for them in a confident way.

Dr. Steinbergh agreed with Dr. Schottenstein that Dr. Uradu put herself in this situation in a reckless way by violating the 100-patient limit and making decisions that were not hers to make. Dr. Steinbergh stated that one cannot disregard the law and take it into one's own hands. Dr. Steinbergh stated that Dr. Uradu exceeded her boundaries as a physician and was perhaps unable to say "no." Dr. Steinbergh stated that physicians put patients at risk when they see as many patients per day as Dr. Uradu did. Dr. Steinbergh stated that when she observes the sheer number of patients Dr. Uradu was seeing, she cannot help but believe that there were standard of care issues. However, Dr. Steinbergh stated that the Board is not considering allegations of violating the standards of care today and that her views in that regard do not cloud her judgment of the issues at hand.

Dr. Steinbergh stated that she reluctantly agrees with Mr. Giacalone's proposal to stay all but five days of Dr. Uradu's suspension. Dr. Steinbergh cautioned that the stay of most of the suspension should not be interpreted as an endorsement of Dr. Uradu or as an indication that Dr. Uradu's address to the Board has caused the Board to feel guilty in its responsibility. Dr. Steinbergh stated that the Board has a responsibility to uphold the law.

A vote was taken on Mr. Giacalone's motion to amend:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye

Dr. Factora - aye

The motion to amend carried.

**Dr. Steinbergh moved to approve and confirm Mr. Decker's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Onyinyechi Rose Uradu, M.D. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to approve carried.

The Board took a recess at 12:30 p.m. The meeting resumed at 1:30 p.m.

Dr. Schachat was not present when the meeting resumed.

TIMOTHY FRANKLIN MYNES, D.O.

Mr. Gonidakis the Board's attention to the matter of Timothy Franklin Mynes, D.O. No objections were filed. Ms. Shamansky was the Hearing Examiner.

Mr. Gonidakis stated that a request to address the Board has been timely filed by Dr. Mynes. Five minutes will be allowed for that address.

Dr. Mynes was represented by his attorney, Elizabeth Collis.

Ms. Collis stated that this is the first time the Dr. Mynes has appeared before this Board. Ms. Collis stated that Dr. Mynes came to the attention of the Board due to actions taken by medical boards in Kentucky and Virginia. Ms. Collis stated that in 2012 Dr. Mynes was offered the opportunity to practice in a bariatric clinic. At that time Dr. Mynes reviewed all Kentucky laws related to weight-loss prescribing and discussed the subject with his colleagues. Ms. Collis noted that the rules for weight-loss prescribing in Kentucky are very different from those in Ohio. Specifically, in Kentucky there is no time limit for prescribing these medications, no requirement that the patient be seen by the physician on every visit, and no limit to the 30-day dispensing of medication.

Ms. Collis continued that Horizon Weight Loss Clinic, which employed Dr. Mynes, was investigated by the Kentucky Board of Medical Licensure after a pharmacy filled a prescription which had mistakenly used Horizon's Drug Enforcement Administration (DEA) registration; the investigation was not due to any

patient care issue. Ms. Collis stated that an expert witness, who was a competitor with Horizon, reviewed the records for the Kentucky Board and determined that there was issues related to record-keeping. Rather than proceed to a hearing, Dr. Mynes entered into a Consent Agreement with the Kentucky Board which limited his prescriptive authority to 72-hour prescriptions until he completed educational requirements. Ms. Collis stated that Dr. Mynes has completed the educational requirements and the 72-hour limitation has been lifted. Ms. Collis stated that Dr. Mynes continues to be under probationary terms in Kentucky and should complete the second of two required chart reviews next month.

Ms. Collis asked the Board to accept the Proposed Order in the Report and Recommendation or to impose a probationary status which would be consistent with Dr. Mynes' probation in Kentucky.

Dr. Mynes stated that he had always wanted to be a physician and, after completing medical school, he returned to southern to provide patient care in an underserved area. Dr. Mynes stated that he worked most of his career in urgent care and was also an associate professor at the Ohio University Heritage College of Osteopathic Medicine, as well as serving as assistant residency director for the family medicine residency program at Southern Ohio Medical Center. In 2012 Dr. Mynes accepted part-time employment at the Horizon Weight Loss Clinic, a bariatric medicine clinic in Kentucky. Dr. Mynes stated that he reviewed the Kentucky laws for prescribing weight-loss medications, reviewed the literature, and shadowed another physician at the clinic.

Dr. Mynes continued that the Horizon Clinic later came under investigation based on issues other than patient care or patient harm. Dr. Mynes stated that he fully cooperated with the investigation. Dr. Mynes stated that before he ever prescribed to patients he personally met with them, took their medical history, performed an examination, checked the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system, check the patient's body-mass index, and asked about any prior drug abuse or addiction. Dr. Mynes also discussed the possibility of addiction to these medications with his patients. Dr. Mynes stated that the Horizon Clinic turned away at least 10% to 15% of patients who came in because they did not meet the clinic's screening process or were not losing weight. Dr. Mynes stated that the patient charts used by the clinic were created by and purchased from the American Bariatric Society. Dr. Mynes stated that he believed at that time that the clinic was following the law and providing good care, but he acknowledged that he record-keeping should have been better.

Dr. Mynes stated that he entered into a consent agreement with the Kentucky Board on the advice of his counsel. Dr. Mynes stated that he has fully complied with the conditions of his agreement. Dr. Mynes stated that he also entered into an agreement with the Virginia Board of Medicine based solely on the Kentucky action.

Dr. Mynes stated that his family depends on him and he feels that he has let them down. Dr. Mynes stated that he worked very hard to become a physician and he takes it very seriously. Dr. Mynes felt that he has put his career in jeopardy by working at the bariatric clinic and that he will not step outside of mainstream medicine again. Dr. Mynes stated that he no longer works in bariatric medicine and he currently practices exclusively at an urgent care center in Virginia. Dr. Mynes stated that he would like to retain his Ohio medical license in case he wants to move back to Ohio in the future. Dr. Mynes asked that the Board not limit his Ohio license.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Mr. Wilcox stated that he did not wish to respond.



**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Timothy Franklin Mynes, D.O. Dr. Soin seconded the motion.**

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Mr. Giacalone stated that Dr. Mynes was first licensed to practice osteopathic medicine and surgery in Ohio in 2003 and he is board-certified in family medicine. Dr. Mynes completed his residency in 2004 and began practicing full-time at an urgent care center. In 2007, Dr. Mynes became Medical Director of the Southern Ohio Medical Center's Urgent Care in Wheelersburg, Ohio.

Mr. Giacalone continued that Dr. Mynes, due to financial pressures, accepted an offer to practice at the Horizon Weight Loss Clinic, a bariatric medicine practice in Morehead, Kentucky. Dr. Mynes testified that he had had no prior experience in bariatric medicine, but he had been in residency with the physicians who founded the clinic. Dr. Mynes began practicing at the Horizon Clinic in 2012 one day per week while continuing to work full-time at the Urgent Care. Dr. Mynes admitted that at that time he had no specific training in weight loss medicine and had never prescribed any weight-loss medications. In order to become proficient in the area of bariatric medicine, Dr. Mynes stated that he read the Kentucky laws related to weight-loss prescribing, attended educational events, spoke with two physicians who were already working at the Horizon Clinic, and shadowed one of those physicians for two or three days as he saw patients at the clinic.

Mr. Giacalone stated that in or about May 2014 the Kentucky Board of Medical Licensure began an investigation of the Horizon Clinic. Dr. Mynes left the Horizon Clinic in September 2014 when he moved to Virginia to assume another position. In December 2014, Dr. Mynes signed an Agreed Order with the Kentucky Board. Although Dr. Mynes entered into the Agreed Order with the advice of counsel, he alleges the following:

- The consultant engaged by the Kentucky Board owned a weight loss clinic that was a competitor of Horizon Weight Loss Clinic and Dr. Mynes believed she could have been biased.
- Dr. Mynes did not agree with some of the consultant's findings, but he did state that he "definitely agreed that we could have done a lot of things better."
- Dr. Mynes did not have an independent expert review the same files that were reviewed by the Kentucky Board.
- Dr. Mynes stated that while the Kentucky Board's Order was termed an "Agreed Order," he did not have a role in negotiating it. Instead, Dr. Mynes stated that his attorney advised him that if he did not agree to the Order the Kentucky Board would revoke his license and he would be forced to pursue an expensive court appeal that would likely not result in a better outcome.

Mr. Giacalone stated that the Kentucky Board's consultant had reviewed 112 of the Horizon Clinic's Kentucky All-Schedule Prescription Electronic Reporting (KASPER) recording and selected 15 patients named in those records for further investigation of their records. The consultant noted that Dr. Mynes had prescribed and/or dispensed approximately 290 prescriptions for weight-loss medication to approximately 290 patients in four days. The vast majority of patients were on phentermine 37.5 mg and received a quantity of 60 tablets for a 30-day supply. The consultant had expressed concern about the high number of patients seen per day at the Horizon Clinic. The consultant expressed further concern that controlled

substances had been prescribed to at least five employees of the Horizon Clinic and that an anorectic had been prescribed at a high dose to geriatric patients. Finally, the consultant noted that patients had traveled a significant distance to the Clinic.

Mr. Giacalone stated that after reviewing the 15 patient records, the Kentucky Board's consultant found that Dr. Mynes had departed from or failed to conform to acceptable and prevailing medical practices in all 15 cases with respect to diagnoses, treatment and record keeping. Specifically, the consultant found the following:

- There were no carefully prescribed diet, behavior modification and other appropriate supportive and collateral therapies.
- There were no adequate patient records in accordance with Kentucky law.
- Schedule IV controlled substances were prescribed for more than three months with no justification.
- several components were missing from the medical history in the records, including cardiac diseases.
- There were no inquiries into other important conditions such as liver diseases and sleep apnea.
- There were no questions on eating disorders and other important lifestyle questions, incomplete inquiry about initial exercise, and an incomplete family history.
- There were no inquiries on illegal drug use unless the patient had been treated for substance abuse.
- Positive or blank answers on new patient forms were not addressed.
- There were no inquiries about prior treatment compliance.
- No lab tests were done.

The Kentucky Board's consultant had stated that all of the above are required in order to be in compliance with the Kentucky law that was in effect at the time of the inspection.

Mr. Giacalone stated that the Kentucky Board's Agreed Order temporarily restricted Dr. Mynes' ability to prescribe such that he could only prescribe controlled substances for a 72-hour period as part of his urgent care practice. Dr. Mynes was also required to take educational courses, was monitored with limited patient chart review, was required to keep a controlled substance log, and was required to pay a fine. As a result of the Kentucky Agreed Order, Dr. Mynes entered into a Consent Order with the Virginia Board of Medicine in September 2015. The Virginia Consent Order required Dr. Mynes to fully comply with the terms and conditions of the Kentucky Agreed Order.

Mr. Giacalone stated that Dr. Mynes has not practiced bariatric medicine since he left the Horizon Clinic in 2014 and he has stated that he has no intention of returning to bariatric medicine. Dr. Mynes allowed his Ohio medical license to expire in July 2016, though he would like to preserve his ability to reinstate or restore his Ohio license in the future.

Mr. Giacalone stated that, based on the evidence and testimony provided, he agrees with the Hearing Examiner's Findings of Fact and Conclusion of Law. Mr. Giacalone wished to offer an amendment to the Proposed Order which would permanently prohibit Dr. Mynes from prescribing or dispensing phentermine and any other controlled substances for purposes of weight loss treatment. Mr. Giacalone stated that he is offering this amendment because Dr. Mynes' actions appear to be contrary to good medical practice

and simple common sense in terms of prescribing an addictive controlled substance. Mr. Giacalone reviewed the following facts and observations:

- Dr. Mynes prescribed and/or dispensed approximately 290 prescriptions for weight loss medication to approximately 290 patients in four working days; Mr. Giacalone opined that this number of prescriptions over such a short time was “staggering.”
- The vast majority of Dr. Mynes’ patients were on phentermine 37.5 mg and received a quantity of 60 tablets for a 30-day supply; this was essentially the only product that the Horizon Clinic provided to patients, in conveniently prepackaged, ready-to-be-dispensed 60 tablet containers.
- Regardless of whatever literature Dr. Mynes may cite, the package insert, which is premised upon clinical studies necessary for the approval of this product by the Food and Drug Administration (FDA), clearly and unambiguously states that amphetamines such as phentermine “Have been extensively abused and the possibility of abuse of phentermine should be kept in mind when evaluating the desirability of including a drug as part of a weight reduction program.”
- Dr. Mynes’ and Horizon Clinic’s treatment of choice was providing phentermine on a routine basis with no other bariatric treatments offered and no relationships with any bariatric surgeons established.
- Dr. Mynes appeared to have no qualms in prescribing an anorectic at a high dose to geriatric patients, even though the use of this product in the elderly should be done with caution according to the product information.
- Dr. Mynes testified that he ordered no lab work on Horizon patients, claiming that the only purpose for performing lab work was to be able to include more people for treatment.
- Patients with supposedly serious weight loss problems traveled long distances to Horizon Clinic, even though none of its practitioners, including Dr. Mynes, specialized in bariatric medicine. In fact, Horizon Clinic was owned by James Hamlin, a chiropractor, and Adam Brooks. Mr. Giacalone stated that any real expertise in bariatric medicine appears to have been strikingly absent at Horizon Clinic.
- Dr. Mynes failed to recognize obvious red flags associated with this practice, even though his prior physician supervisor had stated that Dr. Mynes was cognizant of the serious problem of addiction to controlled substances in southern Ohio.
- The appearance that Dr. Mynes’ financial need for additional income may have clouded his judgment in terms of proper patient care and possibly added to the existing drug problem.

Mr. Giacalone added that this proposed permanent limitation may also remind Dr. Mynes to be more vigilant in his prescribing practices and to avoid entering into practice arrangement in which he is not qualified or appear suspect. Mr. Giacalone also wished to ensure that a similar situation will not occur in Ohio in the event that Dr. Mynes decides to return to Ohio to practice.

**Mr. Giacalone moved to amend the Report and Recommendation’s Proposed Order to add the following paragraph as Paragraph A:**

- A. **PERMANENT LIMITATION/RESTRICTION:** The certificate of Timothy F. Mynes, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be permanently LIMITED and RESTRICTED as follows: Dr. Mynes shall not prescribe, administer, personally furnish, or in any other manner provide phentermine or any other controlled substances for purposes of weight loss treatment.

**Dr. Steinbergh seconded the motion.**

Dr. Steinbergh stated that she supports Mr. Giacalone's proposed amendment to permanently restrict Dr. Mynes' Ohio medical license as described. Dr. Steinbergh noted that Dr. Mynes has been an associate professor in family medicine in a volunteer faculty role for the Ohio University Heritage College of Osteopathic Medicine, where Dr. Steinbergh serves as an Assistant Dean. Dr. Steinbergh stated that she does not know Dr. Mynes and she does not feel conflicted in any way in this matter.

Dr. Steinbergh stated that Dr. Mynes had been overwhelmed financially, according to his own testimony, and made poor decisions. Dr. Steinbergh stated that Dr. Mynes overwhelmed himself with patient care and, consequently, put patients at risk.

Dr. Schottenstein stated that he also agrees with Mr. Giacalone's proposed amendment. Dr. Schottenstein observed that this is yet another case in which a practitioner put themselves at risk by stepping outside their area of expertise. Dr. Schottenstein stated that doing so is very inadvisable. Dr. Steinbergh stated that the practice of bariatric medicine falls within the realm of family medicine and many family practitioners participate in their patients' weight loss programs. Dr. Schottenstein agreed, but noted that Dr. Mynes had no real background in bariatric medicine when he began practice at Horizon Clinic. Dr. Schottenstein suspected that family physicians who practice bariatric medicine probably enter that field in a more methodical and responsible manner than Dr. Mynes did. Dr. Steinbergh replied that that is true for those who practice in a bariatric clinic. Dr. Steinbergh added that in the primary care setting, family practitioners can help with weight loss by properly documenting goals for weight loss, dietary measures, and other methods, including possibly prescribing phentermine.

A vote was taken on Mr. Giacalone's motion to amend:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to amend carried.

**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order, as amended in the matter of Timothy Franklin Mynes, D.O. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye

Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion to approve carried.

DEBORAH S. LUBITZ, M.D.

**Dr. Steinbergh moved to remove the matter of Deborah S. Lubitz, M.D., from the table. Dr. Soin seconded the motion.** All members voted aye, except Dr. Rothermel and Dr. Saferin, who abstained. The motion carried.

Mr. Gonidakis stated that a revised amended proposed order has been provided to Board members in the matter of Dr. Lubitz. Mr. Gonidakis asked the Board members to take a moment to review the amended proposed order.

**Mr. Kenney wished to withdraw his previous motion to amend.** No Board member objected to the withdrawal. The motion to amend was withdrawn.

**Mr. Kenney moved to amend the Proposed Order to read as follows:**

It is hereby ORDERED that:

- A. The December 2013 Consent Agreement between the Board and Deborah Lubitz, M.D., is hereby modified as follows:
  - 1. Dr. Lubitz shall not request termination of the December 2013 Consent Agreement for a minimum of 9 months following the effective date of this Order.
  - 2. Dr. Lubitz shall not be required to make personal appearances unless requested by the Board. The Board will not request Dr. Lubitz to make personal appearances when she is not residing or practicing in Ohio.
- B. All other terms and conditions of the December 2013 Consent Agreement shall remain in full force and effect.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye

Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion to amend carried.

**Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Deborah S. Lubitz, M.D. Dr. Schottenstein seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to approve carried.

**ONYINYECHI ROSE URADU, M.D.**

Ms. Anderson stated that Dr. Uradu's attorney has filed a motion for reconsideration of the Order that the Board issued today in the matter of Dr. Uradu. The purpose of the motion is for the Board to consider adding a 30-day wind-down period prior to the beginning of Dr. Uradu's 180 suspension, of which all but five days were stayed. Ms. Anderson stated that it is within the Board's discretion whether to reconsider its Order.

**Mr. Giacalone moved that the Board reconsider the Order in the matter of Onyinyechi Rose Uradu, M.D. Dr. Schottenstein seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye



The motion to reconsider carried.

Dr. Steinbergh opined that if the Board includes a wind-down period prior to the beginning of Dr. Uradu's suspension, then it should limit the number of patients Dr. Uradu may see during that time. Dr. Steinbergh also opined that Dr. Uradu should not undertake the care of any new patients during that time. After a brief discussion, Mr. Giacalone stated that the number of patients can be appropriately limited by specifying in the Order that Dr. Uradu must obey all federal laws governing the prescribing of controlled substances for the treatment of addiction. Dr. Steinbergh agreed.

**Dr. Steinbergh moved to amend Paragraph A of the Order in the matter of Onyinyechi Rose Uradu, M.D., to read as follows:**

- A. **SUSPENSION OF CERTIFICATE; NO NEW PATIENTS DURING THIRTY-DAY INTERIM PERIOD:** Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Onyinyechi Rose Uradu, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than 180 days. All but five days of the suspension are **STAYED**. During the thirty-day interim, Dr. Uradu shall not undertake the care of any patient not already under her care, and she shall obey all federal laws governing the prescribing of controlled substances for the treatment of addiction.

**Mr. Giacalone seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

#### EXECUTIVE SESSION

**Dr. Steinbergh moved to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action, and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity. Dr. Saferin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye

Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion carried.

Pursuant to Section 121.22(G)(3), Ohio Revised Code, the Board went into executive session with Mr. Groeber, Ms. Anderson, Ms. Loe, Ms. Debolt, Ms. Pollock, Ms. Marshall, the Enforcement Attorneys, the Assistant Attorneys General, Ms. Murray, Ms. Williams, Ms. Moore, and Mr. Taylor in attendance.

The Board returned to public session.

#### RATIFICATION OF SETTLEMENT AGREEMENTS

##### MICHAEL TODD TATRO, M.D. – STEP II CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the Proposed Step II Consent Agreement with Dr. Tatro. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to ratify carried.

##### LINDA JEAN DENNIS, M.D. – STEP II CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the Proposed Step II Consent Agreement with Dr. Dennis. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye

Dr. Factora - aye

The motion to ratify carried.

MICHAEL THEODORE "TED" BANGERT, M.D. – STEP I CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the Proposed Step I Consent Agreement with Dr. Bangert. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to ratify carried.

PAUL W. CRAIG, II, M.D. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

**Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Dr. Craig. Dr. Soin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to ratify carried.

CITATIONS AND ORDERS OF SUMMARY SUSPENSION, IMMEDIATE SUSPENSION, AND AUTOMATIC SUSPENSION

Ms. Marshall briefly reviewed the proposed citations. Mr. Giacalone asked why the proposed citation to be issued to Sally L. Taylor, M.D., is a standard Notice of Opportunity for Hearing and not a Summary Suspension. Ms. Marshall replied that the period of alleged violation in that case was from 2007 to near the end of 2015, with most of the conduct in question being earlier in that time period. Therefore, it was

not felt that the Board could not meet the immediacy condition under the legal requirement for immediate danger.

**Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Joshua Lennon Brown, D.O., in accordance with Section 4731.22(G), Ohio Revised Code, and to issue the Notice of Summary Suspension and Opportunity for Hearing. Dr. Soin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

**Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Rick D. St. Onge, M.D., in accordance with Section 4731.22(G), Ohio Revised Code, and to issue the Notice of Summary Suspension and Opportunity for Hearing. Dr. Soin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

**Dr. Soin moved to send the Notice of Opportunity for Hearing to Summit Shailesh Shah, M.D. Dr. Edgin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- recuse
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- abstain
	Dr. Soin	- aye
	Mr. Gonidakis	- aye

Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion to send carried.

**Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Anthony Frederick Rossi, D.P.M.; Sally L. Taylor, M.D.; and Callie Yip, L.M.T. Dr. Soin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion to send carried.

## RULES AND POLICIES

### RULES TO BE FILED WITH JCARR

#### CHAPTER 4731-12, PODIATRIC LICENSURE RULES

**Dr. Saferin moved to approve the proposed rules in Chapter 4731-12, Ohio Revised Code, to be filed with the Joint Committee on Agency Rule Review. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.**

#### CHAPTER 4731-22, EMERITUS REGISTRATION

**Dr. Saferin moved to approve the proposed rules in Chapter 4731-22, Ohio Revised Code, to be filed with the Joint Committee on Agency Rule Review. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.**

### ADOPTION OF RULES

#### 4731-13-06, CONTINUANCE OF HEARINGS; AND 4731-13-23, WITNESSES

**Dr. Saferin moved to rescind current Rule 4731-13-06; adopt new Rule 4731-13-06; and adopt amended Rule 4731-13-23. Dr. Saferin further moved that the adopted rules be final filed with an effective date of September 30, 2016. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.**

PROPOSED LIMITS FOR LENGTH OF LEGAL BRIEFS

Mr. Giacalone stated that there have been recent cases in which legal briefs for closing arguments and motions have been very voluminous. Mr. Giacalone stated that courts typically limit briefs to 10 to 15 pages. Mr. Giacalone opined that attorneys should be able to make their case in 10 to 15 pages. Mr. Giacalone suggested that the Board adopt a rule limiting any brief which accompanies motions or closing arguments to 10 to 15 pages.

Mr. Gonidakis asked if other boards or commissions had similar limitations on legal briefs. Ms. Anderson responded that she is uncertain if other boards or commissions have such limits, but she agreed with Mr. Giacalone that it is common in courts. Ms. Anderson stated that she and the legal staff can conduct research and work on drafting a rule to limit legal briefs for the Board's consideration.

**Dr. Saferin moved that the Board pursue adoption of a rule limiting legal briefs which accompany motions and closing arguments, as suggested by Mr. Giacalone. Dr. Schottenstein seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

Mr. Gonidakis stated that the Board's legal staff will work on the proposed rule and bring the matter before the Policy Committee in the future.

OPERATIONS REPORT

**Human Resources:** Mr. Groeber stated that applicants have been selected to fill the vacant intermittent customer service position and the vacant southern area investigator position, pending a background checks.

Mr. Groeber stated that interviews have been conducted for the Deputy Director of Licensure position. There are currently six candidates being considered for that position.

**Budget:** Mr. Groeber stated that the Board's cash balance increased year-over-year despite significant expenditures into the E-Licensure program. Mr. Groeber stated that the Medical Board was initially expected to pay \$3,200,000 towards the E-License system, based on the number of Medical Board licensees. However, it was discovered that the number of Medical Board licensees had inadvertently been greatly overestimated. With the correction, the will be expected to pay \$1,500,000 towards the



system.

**Information Technology:** Mr. Groeber stated that the E-License system continues to be developed. Mr. Groeber thanked Mr. Miller for his hard work on the E-Licensure project.

**Communications and Outreach:** Mr. Groeber stated that the Operations Report includes a list of the individuals who are being featured in the Fall 2016 issue of the Board's Health Scene Ohio magazine. Mr. Groeber stated that Dr. Schachat and Dr. Schottenstein may be asked to continue reviewing the magazine articles from a medical standpoint, as well as other Board members based on specific topics.

Mr. Groeber stated that the acute prescribing guidelines video what was jointly produced by the Medical Board and the Governor's Cabinet Opiate Action Team (GCOAT) has had a very good rate of participation. In reviewing the results, it appears that the video has changed a significant number of attitudes about limiting prescribing practices.

**Medical Marijuana:** Mr. Groeber stated that he gave an update on the development of the medical marijuana rules to the Policy Committee this morning. Mr. Groeber stated that he and Ms. Anderson, along with representatives from the Board of Pharmacy and the Department of Commerce, completed travel to Colorado to review the regulation of medical marijuana in that state. Next week Mr. Groeber and Ms. Anderson will travel to Illinois for the same purpose.

**Agency Operations:** Mr. Groeber stated that the Board is migrating its case management system from a complaint-based model to a case-based model to better reflect the work of the agency.

Mr. Groeber stated that the number of MD and DO licenses continues to increase. For expedited licensure, there were some outliers which increased the average processing time. Mr. Groeber stated that with the outliers removed, the expedited licensure applications were processed in an average of 30 days.

**Proposed Off-Site Board Meetings:** Mr. Groeber stated that over that last few months the Board has discussed the possibility of occasionally having Board meetings at a medical school instead of the usual location so that the Board could more directly engage with medical students. Mr. Groeber stated that he polled the Medical Board members on this subject and received a variety of reactions. Mr. Groeber stated that he also reached out to Dr. Sussman, the Chair of the Ohio Council of Medical School Deans, who anticipated some logistical challenges.

Mr. Groeber asked the Board members to discuss this matter and direct the staff accordingly.

Dr. Soin stated that he opposes the idea of moving the Board meeting off-site, for the reasons previously discussed regarding logistics and staff resources. Mr. Kenney agreed with Dr. Soin.

Mr. Giacalone commented that when he served on the Board of Pharmacy, that Board held one Board meeting per year at a pharmacy school and was very well received by the pharmacy students. Mr. Giacalone further commented that the Board of Pharmacy meetings had even more logistical challenges because, unlike the Medical Board, the Board of Pharmacy conducted hearings in its meetings. Mr. Giacalone stated that medical students would not necessarily be expected to attend the meeting for the entire day, but may rotate in for an hour or two in groups. Regarding logistics, Mr. Giacalone stated that the Medical Board only needs a physical place to hold the meeting. Mr. Giacalone opined that holding a

Medical Board meeting at a medical school would be of great value to the students.

Dr. Steinbergh commented that the Partners in Professionalism program, by which first-year medical students from the Ohio University Heritage College of Osteopathic Medicine attend a Board meeting, has been very beneficial to the students. Regarding Mr. Giacalone's suggestion, Dr. Steinbergh opined that showing meetings in an electronic format may address the concerns that have been expressed while meeting Mr. Giacalone's goals. Dr. Steinbergh commented that the Board tends to utilize a great deal of staff and office support during the Board meetings.

Dr. Schottenstein stated that he supports Mr. Giacalone's suggestion, provided that it is logistically feasible and would be well-received by the medical students. Dr. Schottenstein opined that this would be good outreach to students and would create awareness of the Boards rules and regulations.

Dr. Saferin opposed the suggestion due to the significant logistical challenges not only for the Board members and staff, but also for respondents and their attorneys. Dr. Saferin was supportive of Dr. Steinbergh's suggestion to provide the Board meetings in an electronic format. Dr. Rothermel agreed with Dr. Saferin and added that the Board meeting could be video-recorded and could be presented to classes of medical students by a Board member.

Mr. Giacalone suggested that the Board vote on this matter.

**Mr. Giacalone moved that the Board provide one live Board meeting each year at a medical school. Dr. Schottenstein seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- nay
	Dr. Saferin	- nay
	Mr. Giacalone	- aye
	Dr. Steinbergh	- nay
	Dr. Soin	- nay
	Mr. Gonidakis	- aye
	Mr. Kenney	- nay
	Dr. Schottenstein	- aye
	Dr. Edgin	- nay
	Dr. Factora	- nay

The motion did not carry.

Mr. Giacalone suggested that the Board vote on Dr. Rothermel's suggestion to video-record the Board meetings for presentation to medical students. Mr. Giacalone stated that with a video recorded meeting, a Board member can focus on interesting cases which may resonate with the students and highlight important issues.

**Dr. Saferin moved that the Board take steps to video-record the Board meetings for later presentation to medical students. Dr. Steinbergh seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye

Dr. Steinbergh	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion carried.

Mr. Groeber stated that he will work with Ms. Pollock on this matter. Mr. Groeber stated that it may take a couple of months to have proper equipment in place.

CORRECTION TO THE APPROVED MINUTES OF JULY 13, 2016

Mr. Taylor stated that at the August 10, 2016 meeting of the Medical Board, the Board approved the draft minutes of the July 13, 2016 meeting. However, the draft July minutes had omitted the Board's approval of the probationary requests of Brian D. Hesler, M.D., and Peter C. Johnson, M.D. Mr. Taylor provided the Board members with a copy of the corrected July 13, 2016 minutes.

Mr. Taylor added that the July 13, 2016 approved minutes included the final probationary appearance of Ewe Hansen, M.D. This was in error, as Dr. Hansen had made her personal appearance at the June 8, 2016 meeting, as shown in the approved June 2016 minutes. Therefore, reference to Dr. Hansen in the July 2016 minutes should be removed.

**Dr. Steinbergh moved to correct the approved minutes of the Board's July 13, 2016 meeting, as discussed. Dr. Saferin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- abstain
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- abstain

The motion carried.

EXECUTIVE SESSION

**Dr. Saferin moved to go into Executive Session to discuss the employment of a State employee. Dr. Steinbergh seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye

Mr. Giacalone	- aye
Dr. Steinbergh	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion carried.

Pursuant to Section 121.22(G)(3), Ohio Revised Code, the Board went into executive session with Mr. Groeber and Ms. Loe in attendance.

The Board returned to public session.

The Board took a brief recess at 3:50 p.m. and resumed the meeting at 4:00 p.m. Dr. Edgin was not present when the meeting resumed.

#### REPORTS BY ASSIGNED COMMITTEES

##### FINANCE COMMITTEE

Ms. Loe stated that in July the Board had \$945,000 in revenue and \$823,000 in expenditures. As of the end of July, the Board's cash balance was \$4,700,000.

Ms. Loe stated that the Finance Committee will receive a summary report on the Board's fines at each monthly meeting. The report will include what fines have been collected, if the fines have gone to collection with the Attorney General's office or Special Counsel, or if the fine is on hold due to an appeal.

Ms. Loe stated that the Board's initial budget request for the Fiscal Year 2018-2019 biennium is due on September 16. Ms. Loe stated that the Board will request spending authority for \$10,258,000 for Fiscal Year 2018 and \$10,473,000 for Fiscal Year 2019. Ms. Loe stated that these figures only reflect increases that are due to mandated personnel costs. Ms. Loe stated that the figures also take E-Licensure costs into consideration. Ms. Loe stated that the Board's cash balance will decrease slightly, but there is no reason for the Board to have a \$5,000,000 balance. In response to a question from Dr. Schottenstein, Ms. Loe stated that the Board has historically considered a balance of two to three months of operating costs to be sufficient, given that income from licensure and renewal fees is a virtual certainty.

**Dr. Saferin moved to approve the Board's initial budget submission for Fiscal Year 2018-2019. Dr. Schottenstein seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- abstain

Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Factora	- aye

The motion carried.

Mr. Groeber stated that Mr. Miller has been invited to speak at a conference on transforming state government. Mr. Groeber stated that the conference will pay Mr. Miller's conference fees and the Office of Information Technology will pay Mr. Miller's travel costs; the Board need only approve the payment of Mr. Miller's salary during that time.

**Dr. Saferin moved to approve the travel request for Michael Miller to attend the annual meeting of Salesforce IT Development, and that attendance at the meeting falls within the Mr. Miller's duties with the Medical Board. Dr. Steinbergh seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Factora	- aye

The motion carried.

#### POLICY COMMITTEE

Dr. Soin noted that as of this morning's meeting, he is now serving as the Chair of the Policy Committee. Mr. Giacalone has agreed to join the Committee as well.

Dr. Soin reported that the Policy Committee engaged in discussions on the one-bite reporting exemption and medical marijuana. Dr. Soin noted that the website [medicalmarijuana.ohio.gov](http://medicalmarijuana.ohio.gov) has a great deal of information on the status of medical marijuana and allows people to sign-up for an e-newsletter.

Dr. Edgin returned to the meeting at this time.

Dr. Soin stated that the Policy Committee also discussed a draft proposal for non-disciplinary monitoring of individuals who are unable to practice due to mental or physical illness or condition. Dr. Soin commented that the staff did a very good job on the proposal.

#### RULES 4731-11-01 AND 4731-11-09; COMMENTS RECEIVED IN THE CSI PROCESS

Ms. Debolt reviewed the proposed changes to proposed Rules 4731-11-01 and 4731-11-09, as outlined in the memo provided to the Policy Committee. The Policy Committee has recommended the proposed amendments to the language.

**Dr. Steinbergh moved to approve the proposed changes to Rules 4731-11-01 and 4731-11-09 and to submit the Rules to the Common Sense Initiative office. Dr. Saferin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

#### LEGISLATIVE UPDATE

Mr. LaCross stated that the language to be included in the Board's budget submission has been provided to the Legislative Services Commission for drafting. This language includes provisions concerning the administrative medicine license, clinical faculty research certificate, and reduction in the initial physician licensure fee from \$335 to \$305. Mr. LaCross stated that a provision for reduction in the initial physician licensure fee has also been included in the Opiate Mid-Biennium Resolution language as a possible vehicle for implementation.

#### LICENSURE COMMITTEE

##### GME-TO-FULL MEDICAL LICENSURE BRIDGE PILOT PROGRAM

Mr. Alderson stated that he and other staff have been engaged in conversations with the Ohio State University College of Medicine regarding a pilot program for on-site services to ease the licensure process for new applicants. Mr. Alderson stated that a suggestion to expand the pilot program to include training programs is also being considered in order to provide a bridge from training certificate to full medical licensure. Mr. Alderson stated that he spent time on the Dublin campus of the Ohio University Heritage College of Osteopathic Medicine with Dr. Steinbergh, and found the visit to be very insightful. Mr. Alderson commented that technology will be key to making the program a success.

Dr. Saferin stated that Mr. Alderson's written update on the program has been provided to Board members for their convenience. Dr. Saferin stated that this program will help make the Medical Board more user-friendly and not as simply a disciplinary body.

Mr. Gonidakis exited the meeting at this time. Dr. Soin assumed the chair.



LICENSURE APPLICATION REVIEWSROBERT BOWEN, M.D.

Dr. Saferin stated that Dr. Bowen has applied for a medical license in Ohio. Dr. Bowen failed Step 3 of the United States Medical Licensing Examination (USMLE) six times and passed on his seventh attempt. Dr. Saferin noted that Board rules allow applicants to fail any step of the USMLE no more than five times. Dr. Saferin also stated that Dr. Bowen has completed one year of post-graduate training. Dr. Saferin noted that as an international medical graduate, Dr. Bowen is required by Board rules to complete two years of post-graduate training.

Because Dr. Bowen does not qualify for an Ohio medical license for the above reasons, the Licensure Committee has recommended denial of Dr. Bowen's application.

**Dr. Saferin moved to deny Dr. Bowen's request for Ohio licensure. Dr. Steinbergh seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

AMANDA WORKMAN, M.D.

Dr. Saferin stated that Dr. Workman has not engaged in the clinical practice of medicine since 2012. Dr. Workman is current on her continuing medical education (CME) requirements and holds a current medical license in West Virginia. Dr. Workman recertified in pediatrics in 2012 and that certification expires in 2022. The Licensure Committee has recommended approval of Dr. Workman's application, pending successful completion of the State Medical Board of Ohio-approved pediatric board review course.

Dr. Steinbergh suggested that a time limit be included in the motion. Dr. Saferin agreed.

Mr. Gonidakis returned to the meeting at this time and resumed the chair.

**Dr. Saferin moved to approve Dr. Workman's application for licensure, pending successful completion of a pediatric board review course within one year. Dr. Steinbergh seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye

Dr. Steinbergh	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion carried.

### DRAFT RULES

#### CHAPTER 4731-1, LIMITED BRANCHES OF MEDICINE

Dr. Saferin stated that the Licensure Committee has recommended approval of the suggested changes to the proposed rules in Chapter 4731-1.

**Dr. Saferin moved to approve the rules in Chapter 4731-1, OAC, as discussed, be filed with the Common Sense Initiative office for its review. Dr. Rothermel seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

#### APPLICATION QUESTIONS REGARDING MENTAL AND PHYSICAL HEALTH

Dr. Saferin stated that the Licensure Committee discussed concerns from the Ohio Psychiatric Physicians Association (OPPA) regarding the wording of Question #23 on the application for licensure, which regards mental and physical conditions. Dr. Saferin stated that Dr. Schottenstein discussed these matters with representatives from the OPPA who attended the meeting.

#### COMPLIANCE COMMITTEE

Dr. Steinbergh state that on August 10, 2016, the Compliance Committee met with Devender K. Batra, M.D.; Jose Alberto Crespo, M.D.; Jesse Michael Ewald, M.D.; Erica L. Forney, M.T.; Emily K. Hellenes, M.T.; Lana M. Hetzel, M.T.; William S. Richardson, M.D.; Michael Todd Tatro, M.D.; and Christopher R. White, M.D., and moved to continue them under the terms of their respective Board actions. The Compliance Committee accepted Compliance staff's report of conferences on July 11 & 12, 2016.

Dr. Steinbergh added that the Compliance Committee also recommended approval of the Application for a Certificate of Good Standings as a Treatment Provider for Impaired Practitioners from Parkdale Center.

**Dr. Saferin moved to approve the Application for a Certificate of Good Standings as a Treatment Provider for Impaired Practitioners from Parkdale Center. Dr. Soin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

#### PROBATIONARY REQUESTS

Mr. Gonidakis advised that at this time he would like the Board to consider the probationary requests on today's consent agenda. Mr. Gonidakis asked if any Board member wished to discuss a probationary request separately. Dr. Steinbergh and Dr. Schottenstein each stated that they would like to discuss probationary requests separately.

#### CRAIG L. BIERER, D.O.

Dr. Schottenstein stated that Dr. Bierer is requesting approval of Elizabeth Polanka, L.P.C.C., I.M.F.T., to serve as the new mental health professional. Dr. Schottenstein did not oppose the request, but noted that Ms. Polanka's practice seems to focus on family therapy rather than addiction. Ms. Murray explained that Dr. Bierer is in an area with limited choices and that Ms. Polanka was the best option for him. Ms. Murray stated that Ms. Polanka is aware of Dr. Bierer's history of addiction. Ms. Murray stated that Dr. Bierer feels that Ms. Polanka's experience may help him with other issues in his life as well. Dr. Steinbergh echoed Dr. Schottenstein's concerns regarding Dr. Bierer.

#### ALY M. A. ZEWAİL, M.D.

Dr. Schottenstein asked if Dr. Zewail is seeing a psychiatrist. Ms. Murray replied that she is almost certain that Dr. Zewail is seeing a psychiatrist but she would have to check to make absolutely sure. Dr. Schottenstein expressed great concern for Dr. Zewail given his history, including an incident in which he took valium and later woke up with a pistol lying on his chest.

#### WILLIAM S RICHARDSON, M.D.

Dr. Steinbergh stated that the documentation of Dr. Richardson's probationary request did not specify the

number and frequency of charts to be reviewed. Dr. Steinbergh suggested that ten charts per month be reviewed. The Board members agreed.

**Dr. Schottenstein moved to accept the Compliance staff's Reports of Conferences and the Secretary and Supervising Member's recommendations as follows:**

- **To grant Craig L. Bierer, D.O.'s request for approval of Elizabeth P. Polanka, L.P.C.C., I.M.F.T., to serve as the new mental health professional;**
- **To grant Joseph Peter Burick, D.O.'s request for approval of Kenney J. Braman, D.O., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per month;**
- **To grant Matthew J. Goldschmidt, M.D.'s request for approval of the previously completed course *Intensive Course in Medical Ethics, Boundaries and Professionalism*, offered by Case Western Reserve University, to fulfill the personal/professional ethics course requirement; approval of the previously completed course *Intensive Course in Medical Record Keeping with Individual Preceptorships*, offered by Case Western Reserve University, to fulfill the medical record-keeping course requirement; approval of the personal/professional ethics course summary; and approval of the medical record-keeping course summary;**
- **To grant Kristen G. Landry, M.D.'s request for approval of Jessica A. Lammers, M.D., to serve as the treating psychiatrist;**
- **To grant Adam C. Maier, D.O.'s request for reduction in psychiatric treatment sessions to every two months;**
- **To grant David R. Mandel, M.D.'s request for approval of *Intensive Course in Medical Ethics, Boundaries and Professionalism*, administered by Case Western Reserve University, to fulfill the professional ethics course requirement;**
- **To grant Maneesh L. Mehra, M.D.'s request for reduction in personal appearances to every six months; and reduction in drug and alcohol rehabilitation meetings to two per week with a minimum of ten per month;**
- **To grant Kimberly Marie Peacock, D.O.'s request for reduction in appearances to every six months; and discontinuance of the chart review requirement;**
- **To grant Cara E. Perez, M.D.'s request for approval of *Medical Records Keeping Seminar*, administered by the Center for Personalized Education for Physicians;**
- **To grant Jerry G. Purvis, Jr., M.D.'s request for reduction in drug and alcohol rehabilitation meeting attendance to two per week with a minimum of ten per month;**
- **To grant M. Salim Ratnani, M.D.'s request for approval of R. Jenee Walker, M.D., to serve as the treating psychiatrist;**
- **To grant William S. Richardson, M.D.'s request for approval of Michael A. Dornetto, D.O., to**

serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per month;

- To grant Bernard J. Rose, M.D.'s request for discontinuance of the drug log requirement; reduction in personal appearances to every six months; and reduction in drug and alcohol rehabilitation meeting attendance to two per week with a minimum of ten per month;
- To grant Lawrence M. Rubens, M.D.'s request for reduction in personal appearances to every six months;
- To grant Anthony M. Ruffa, D.O.'s request for approval of Borys Loza, M.D., to serve as the new monitoring physician;
- To grant Suman C. Vellanki, M.D.'s request for permission to administer, personally furnish, and possess controlled substances;
- To grant Christopher R. White, M.D.'s request for permission to continue under the terms of the May 11, 2016 Step I Consent Agreement while residing in New York; approval of personal appearances via internet meeting source; and approval of Adam K. Ashton, M.D., to serve as the new treating psychiatrist;
- To grant Randall G. Whitlock, PA.'s request for discontinues of the controlled substance log requirement; and
- To grant Aly M. A. Zewail, M.D.'s request for approval of *Course #91410 Prescription Opioids: Risk Management and Strategies for Safe Use*, administered by NETCE, to fulfill the controlled substance prescribing course required for reinstatement; approval of ethics course tailored specifically for the doctor by Donna F. Homenko, Ph.D., to fulfill both the personal/professional ethics course requirement and the physician/patient boundaries course requirement for reinstatement.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Steinbergh	- aye (abstain in the matter of Dr. Maier)
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye

The motion carried.

FINAL PROBATIONARY APPEARANCELEIGH ALLISON JUDGE, P.A.

Ms. Judge was appearing before the Board pursuant to her request for release from the terms of her September 14, 2011 Consent Agreement. Mr. Gonidakis reviewed Ms. Judge's history with the Board.

In response to questions from Dr. Soin, Ms. Judge stated that she practices at a small family practice. Ms. Judge stated that the environment at the practice is not chaotic and there are no medications of any kind in the office. Ms. Judge works 8:00 a.m. to 5:00 p.m. four days per week, plus every third Saturday morning. Ms. Judge stated that she has a sponsor. Ms. Judge added that she is also sponsoring someone and that is going well. Ms. Judge stated that her husband and children are supportive and she has a good support system through Alcoholics Anonymous (AA). Ms. Judge stated that she plans to continue the same recovery activities after she is release from probation because it is working well.

In response to questions from Dr. Steinbergh, Ms. Judge stated that she attends AA meeting two times per week in addition to caduceus meetings. Dr. Judge stated that her sobriety date is August 17, 2008.

Mr. Giacalone asked if Ms. Judge would address the medical students in attendance regarding her situation. Ms. Judge stated that she was originally a nurse and she was caught taking drugs from a Pyxis machine due to her chemical dependency problem. Since that time Ms. Judge went to school to become a physician assistant. Ms. Judge commented that according to estimates, 10% of the populatte has trouble with alcohol and drugs. Ms. Judge advised anyone who may have a problem with alcohol or drugs to seek help early and not to wait until they are caught like she was. Ms. Judge stated that seeking help is not a sign of weakness. Ms. Judge recommended that the medical students attend more than one AA meeting during their training, or perhaps an AI-Anon meeting. Ms. Judge stated that attending the meetings will help them in treating the 10% of the population with an addiction problem with compassion without enabling them.

**Dr. Steinbergh moved to release Ms. Judge from the terms of her September 14, 2014 Consent Agreement, effective September 22, 2016. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

The motion carried.

ADJOURN

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

Thereupon, at 4:45 p.m., the September 14, 2016 session of the State Medical Board of Ohio was adjourned.




September 14, 2016

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We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on September 14, 2016, as approved on October 19, 2016.

  
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Michael L. Gonidakis, President

  
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Kim G. Rothermel, M.D., Secretary

(SEAL)

