



AGENDA

**STATE MEDICAL BOARD OF OHIO
ASSIGNED COMMITTEES**

July 12, 2017

NOTE: Items listed on Committee agendas may also be discussed during the “Reports of Assigned Committees” on the Board’s Agenda

ALSO, Additions or deletions to this agenda may become necessary after publication. Please check the agenda appearing on the Board’s website for the most current version.

Start times are approximate and agenda items and committee meetings may be taken out of order, at the discretion of the Board President.

**PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE
7:30 a.m. – Conference Room #345**

- I.) Minutes Review
- II.) Physician Assistant Formulary Review
 - a.) Requests for Review of Drugs
 - i. Buprenorphine
 - ii. Zinplava
 - iii. Taltz
 - iv. Immune-Suppressants
 - v. Immune-Modulators
 - vi. Interferon
 - vii. Monoclonal Antibodies
 - viii. Potassium Channel Blockers
 - ix. HCG
- III.) Review of Rule 4731-1-06

LICENSURE COMMITTEE**8:00 a.m. – Conference Room #318**

- I.) Minutes Review
- II.) Licensure Application Reviews
 - a.) Lori Beth Hopper, M.T.
 - b.) Gerald Thomas Bowen, M.D.
- III.) Cosmetic Therapy Examination Rules

POLICY COMMITTEE**8:30 a.m. – Conference Room # 336**

- I.) Minutes Review
- II.) Legislative Update
- III.) Medical Marijuana Rules
- IV.) Proposed Rules on Confidential Monitoring Program
- V.) Rules on Acute Opioid Prescribing
- VI.) Rule 4731-11-09 Interpretation
- VII.) Rule 4731-2-01, Public Notice of Rules Procedures

FINANCE COMMITTEE**9:00 a.m. – Conference Room # 335**

- I.) Minutes Review
- II.) Officer or Staff Reports
 - c.) Medical Board Fiscal Update
 - d.) Other Reports
- III.) Existing Medical Board Fiscal Matters
- IV.) New Medical Board Fiscal Matters
- V.) Action Item



PHYSICIAN'S ASSISTANT POLICY COMMITTEE

AGENDA

James A. Rhodes State Office Tower
Room 336, 3rd Floor
30 E. Broad St., Columbus, Ohio 43215
July 11, 2017
1:30 p.m.

TOPIC

PAGE NO.

- I. Review minutes of the May 9, 2017 meeting**
- II. Elect a new Chair**
- III. Request for review of drugs**
 - i. buprenorphine**
 - ii. Zinplava**
 - iii. Taltz**
 - iv. Immune-suppressants**
 - v. Immune-modulators**
 - vi. Interferon**
 - vii. Monoclonal antibodies**
 - viii. Potassium channel blockers**
 - ix. HCG**
- IV. Rules review**
 - i. 4731-1-06**
- V. New business matters**



AGENDA

James A. Rhodes State Office Tower
30 E. Broad St., Columbus, OH 43215, 3rd Floor
July 12, 2017 - 9:45 a.m.

**NOTE: Additions to this agenda may become necessary.
Please check the agenda appearing on the Board's website for the most current version.**

Agenda items may be discussed out of order, at the discretion of the Board President.

- I. ROLL CALL
- II. MINUTES REVIEW
June 14, 2017 Board Meeting
- III. APPLICANTS FOR LICENSURE
- IV. REPORTS AND RECOMMENDATIONS
 - a.) David M. Burkons, M.D. (South Euclid, OH)
 - b.) Robert Raymond Daiber, M.D. (Toledo, OH)
 - c.) Michael Garber, M.D. (Brooklyn, NY)
 - d.) Anna G. Pollack, M.D. (Dayton, OH)
 - e.) David Antonio Velasquez, M.D. (Westerville, OH)
 - f.) Sandra S. Vonderembse, M.D. (Oregon, OH)
- V. PROPOSED FINDINGS AND PROPOSED ORDERS (none)
- VI. FINDINGS, ORDERS, AND JOURNAL ENTRIES
 - a.) Kathleen Couling Howell, M.D.
 - b.) Hugh Kelley Riley, M.D.
 - c.) Douglas John Morin, M.D.
- VII. EXECUTIVE SESSION I
- VIII. EXECUTIVE SESSION II
- IX. SETTLEMENT AGREEMENTS
- X. NOTICES OF OPPORTUNITY FOR HEARING, ORDERS OF SUMMARY SUSPENSION, ORDERS OF IMMEDIATE SUSPENSION, AND ORDERS OF AUTOMATIC SUSPENSION

BOARD AGENDA

July 12, 2017
9:45 a.m.
(Continued)

TOPIC	PAGE NO.
XI. RULES & POLICIES (none)	
XII. OPERATIONS REPORT	
XIII. REPORTS BY ASSIGNED COMMITTEES	
<u>Finance Committee Report</u>	
a.) Officer or Staff Reports	
i. Medical Board Fiscal Update	
ii. Other Reports	
b.) Existing Medical Board Fiscal Matters	
c.) New Medical Board Fiscal Matters	
d.) Action Item Review	
<u>Policy Committee Report</u>	
a.) Legislative Update	
b.) Medical Marijuana Rules	
c.) Proposed Rules on Confidential Monitoring Program	
d.) Rules on Acute Opioid Prescribing	
e.) Rule 4731-11-09 Interpretation	
f.) Rule 4731-2-01, Public Notice of Rules Procedures	
<u>Licensure Committee Report</u>	
a.) Licensure Application Reviews	
i. Lori Beth Hopper, M.T.	
ii. Gerald Thomas Bowen, M.D.	
b.) Cosmetic Therapy Examination Rules	
<u>Physician Assistant/Scope of Practice Committee Report</u>	
a.) Physician Assistant Formulary Review	
i. Requests for Review of Drugs	
• Buprenorphine	
• Zinplava	
• Taltz	
• Immune-Suppressants	
• Immune-Modulators	
• Interferon	
• Monoclonal Antibodies	
• Potassium Channel Blockers	
• HCG	
b.) Review of Rule 4731-1-06	

BOARD AGENDA

July 12, 2017
9:45 a.m.
(Continued)

TOPIC

PAGE NO.

Compliance Committee Report

- a.) Treatment Provider Application
 - i. Lumiere Healing Centers

XIV. PROBATIONARY REQUESTS

- a.) Thomas B. Benz, M.D. (Parkersburg, WV)
- b.) Courtney D. Bonner, D.O. (Cambridge, OH)
- c.) James C. English, M.D. (Westerville, OH)
- d.) Mary Jo-Ellen Erickson, M.D. (Dayton, OH)
- e.) James T. Lutz, M.D. (Cincinnati, OH)
- f.) Abdul M. Orra, D.O. (North Olmsted, OH)
- g.) Shane T. Sampson, M.D. (Greenville, OH)
- h.) Aubrey D. Winkler, P.A. (Cleveland, OH)
- i.) Kevin G. Baldie, M.D. (Cuyahoga Falls, OH)

XV. REINSTATEMENT REQUEST (none)

XVI. FINAL PROBATIONARY APPEARANCES

Rhonda L. Bever, M.T. (Loveland, OH)

Ms. Bever is appearing before the Board pursuant to her request for release from the terms of her January 14, 2015 Consent Agreement.

Carey K. Gross, D.O. (Fort Smith, AR)

Dr. Gross is appearing before the Board pursuant to her request for release from the terms of her April 11, 2012 Consent Agreement.

Wesley F. Hard, M.D. (Columbus, OH)

Dr. Hard is appearing before the Board pursuant to his request for release from the terms of the Board's Order of November 10, 2010.

Jerry G. Purvis, Jr., M.D. (Adel, GA)

Dr. Purvis is appearing before the Board pursuant to his request for release from the terms of his August 8, 2012 Consent Agreement.

Alan Dale Sabino, M.D. (Stockton, CA)

Dr. Sabino is appearing before the Board pursuant to his request for release from the terms of his July 11, 2012 Consent Agreement.

BOARD AGENDA

July 12, 2017
9:45 a.m.
(Continued)

TOPIC

PAGE NO.



AGENDA

**STATE MEDICAL BOARD OF OHIO
COMPLIANCE COMMITTEE**

July 12, 2017
Approximately 2:00 p.m.
30 E. Broad St., Columbus, OH 43215, 3rd Floor

**NOTE: Additions to this agenda may become necessary.
Please check the agenda appearing on the Board's website for the most current version.**

I. INITIAL PROBATIONARY APPEARANCES

Kevin G. Baldie, M.D. (Cuyahoga Falls, OH)

Dr. Baldie is making his initial appearance before the Committee pursuant to the terms of his April 12, 2017 Consent Agreement.

Paul R. Brown, P.A. (Perrysburg, OH)

Mr. Brown is making his initial appearance before the Committee pursuant to the terms of his April 12, 2017 Consent Agreement.

Robert M. Cook, M.D. (Centerville, OH)

Dr. Cook is making his initial appearance before the Committee pursuant to the terms of the Board's Order of January 11, 2017.

Danica Gineman, M.T. (Toledo, OH)

Ms. Gineman is making her initial appearance before the Committee pursuant to the terms of her March 8, 2017 Consent Agreement.

II. APPROVAL OF REPORTS OF CONFERENCES

June 12 & 13, 2017

III. MINUTES REVIEW

MINUTES**THE STATE MEDICAL BOARD OF OHIO****July 12, 2017**

Amol Soin, M.D., President, called the meeting to order at 9:45 a.m. in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Robert P. Giacalone, 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.; Michael L. Gonidakis; Andrew P. Schachat, M.D.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; Ronan M. Factora, M.D.; and Mark A. Bechtel, M.D.

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; Sallie Debolt, Senior Counsel; Susan Loe, Director of Human Resources and Fiscal; Teresa Pollock, Director for Communications; Joan K. Wehrle, Education and Outreach Program Manager; Gary Holben, Operations Manager; Rebecca Marshall, Chief Enforcement Attorney; Marcie Pastrick, Cheryl Pokorny, Angela McNair, James Roach, Gregory Tapocsi, and Kimberly Lee, Enforcement Attorneys; Kyle Wilcox and Melinda Snyder, 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; Colin DePew, Legal and Policy Staff Attorney; Jacqueline A. Moore, Legal/Public Affairs Assistant; and Benton Taylor, Board Parliamentarian.

MINUTES REVIEW

Dr. Steinbergh moved to approve the draft minutes of the June 14, 2017, Board meetings, as written. Dr. Bechtel seconded the motion. A vote was taken:

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

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 anesthesiologist assistant

applicants listed in Exhibit "A," the genetic counselor applicants listed in Exhibit "B," the massage therapist applicants listed in Exhibit "C," the physician assistant applicants listed in Exhibit "E," and the physician applicants listed in Exhibit "E," and to approve the results of the July 7, 2017 Cosmetic Therapy Examination and to certify as passing and license those receiving a score of 75 or greater on their examination, as listed in the Agenda Supplement . Mr. Giacalone seconded the motion. A vote was taken:

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

The motion carried.

REPORTS AND RECOMMENDATIONS

Dr. Soin announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Soin 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: David M. Burkons, M.D.; Robert Raymond Daiber, M.D.; Michael Garber, M.D.; Anna G. Pollack, M.D.; David Antonio Velasquez, M.D.; and Sandra S. Vonderembse, M.D. A roll call was taken:

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

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

Dr. Soin 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, Dr. Saferin served as Supervising Member, and Dr. Bechtel served as Secretary and/or Supervising Member in all cases except that of Dr. Pollack.

Dr. Soin 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.

Mr. Gonidakis exited the meeting room at this time.

DAVID M. BURKONS, M.D.

Dr. Soin directed the Board's attention to the matter of David M. Burkons, M.D. Objections to Mr. Porter's Report and Recommendation have been filed and were previously distributed to Board members.

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

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

Mr. Graff stated that the Medical Board has often struggled with whether a practitioner is willing to become more knowledgeable and to change their conduct in accordance with the Board's wishes. Mr. Graff noted that in this case, Dr. Burkons sought out information and knowledge to change his practice habits as soon as he became aware of the Board's concerns. Specifically, Dr. Burkons enrolled in intensive educational courses in medical record-keeping and prescribing. Dr. Burkons also immediately signed up to use the Ohio Automated Rx Reporting System (OARRS) and has become an advocate of its use. Mr. Graff stated that Dr. Burkons' prescribing for the patients in question was not challenged and was not cited in his hearing.

Mr. Graff stated that Dr. Burkons' continuation in medical practice has been supported by physician, patients, and even a former member and Secretary of the Medical Board. Mr. Graff stated that Dr.

Burkons shut down his private practice of 40 years and, later, stopped practicing at the clinic. Mr. Graff stated that Dr. Burkons has done everything that the Board would expect and voluntarily withdrew from practice for the time period equal to the six-month suspension recommended by the Hearing Examiner. Mr. Graff asked that Dr. Burkons be given the opportunity to regain the Board's trust, to continue to practice, and to be given some credit for his actions during and after the investigation.

Dr. Burkons stated that he has been a physician for over 44 years and he never thought he would be before the Board in these circumstances. Dr. Burkons stated that he fully understands and deeply regrets the mistakes that he has made and he has taken steps to ensure they will never occur again. Dr. Burkons stated that he now realizes that no matter how much one may want to help patients, family members, or friends in times of need, and regardless of one's desire to run a practice effectively, the rules that have been put in place to protect patients, the public, and physicians cannot be ignored. Dr. Burkons commented that he tells residents and medical students that what truly counts is what one learns after one thinks they know everything, and Dr. Burkons now knows that that applies to him as well.

Dr. Burkons continued that as soon as he was made aware of his transgressions, he took educational courses to improve his practice. Dr. Burkons stated consequently, he has markedly changed the way he practices medicine, particularly in the area of prescribing. Dr. Burkons felt that he is a good physician and that he would like to continue serving patients. Dr. Burkons stated that during the five to six months in which he ceased practicing, he realized how much he missed interaction with patients and how privileged he was to be a member of the medical profession. Dr. Burkons stated that he has submitted three letters from three eminent obstetricians and gynecologists who have known Dr. Burkons and his practice for more than 35 years. Dr. Burkons also stated that he has received hundreds of letters from patients which attest to the quality of his practice and his good moral character.

Dr. Burkons commented that his prescribing habits over the last three years would stand up to the most detailed scrutiny. Dr. Burkons noted that after a thorough investigation, the Medical Board only cited him for record-keeping violations and not for actual prescribing violations. Dr. Burkons reiterated that he has changed his prescribing habits. Dr. Burkons further commented that the clinic in which he practices now has a protocol that only allows for the prescribing of small amounts for medication for mild pre-operative sedation and up to one day of post-operative pain management. Dr. Burkons stated that the clinic checks OARRS for all patients, even though that is not required when prescribing such small amount. Dr. Burkons stated that if he is allowed to continue practicing, he will follow the same guidelines and only prescribe small amounts of restricted drugs.

Dr. Burkons stated that he accepts and regrets that he has made mistakes and that he has taken the time to change his practice accordingly. Dr. Burkons also stated that he fully cooperated with the Board's investigation and supplied all requested information in a timely manner. Dr. Burkons asked the Board to fairly judge him based on his actions and not on what he does.

Dr. Soin asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he did not wish to respond.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of David M. Burkons, M.D. Dr. Schottenstein seconded the motion.

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

Dr. Schottenstein stated that Dr. Burkons has admitted that he provided pre-signed blank prescriptions for his office staff to complete, which is a third-degree misdemeanor. Dr. Schottenstein stated that Dr. Burkons also prescribed controlled substances to patients on an ongoing basis without checking the Ohio Automated Rx Reporting System (OARRS) and he provided controlled substances to multiple patients without proper documentation. Dr. Schottenstein noted that Dr. Burkons is on the teaching faculty of Case Western Reserve University (CRWU), he delivered his last baby in 2002, and he gave up surgical practice in 2012. On January 15, 2017, in anticipation of this case being heard by the Board, Dr. Burkons closed his practice.

Dr. Schottenstein continued that in February 2013, agents from the Drug Enforcement Administration (DEA) came to the clinic where Dr. Burkons was working in order to investigate the failure of the clinic to renew its Terminal Distributor of Dangerous Drugs (TDDD) license. While there, the agents found one blank prescription that had been signed by Dr. Burkons. Dr. Burkons subsequently met with a Medical Board investigator, provided a signed statement, and answered three sets of interrogatories from the Board. Dr. Schottenstein noted that Dr. Burkons took the Intensive Course in Medical Record-Keeping in May 2014 and the Intensive Course in Prescribing Controlled Substances in June 2014, both offered by CRWU. Dr. Schottenstein further noted that Dr. Burkons signed up for OARRS in December 2014 and he now checks OARRS whenever he prescribes a controlled substance.

Dr. Schottenstein stated that Dr. Burkons has essentially stipulated to almost everything in the Board's Notice of Opportunity for Hearing. Dr. Schottenstein briefly reviewed the stipulations:

- Dr. Burkons pre-signed prescriptions for birth control pills that were left in a locked office safe for staff to complete at a later date;
- Since November 30, 2011, Dr. Burkons provided treatment to multiple patients and, in the course of treatment, prescribed controlled substances for longer than 90 days;
- Dr. Burkons failed to access OARRS appropriately and did not sign up for OARRS until December 2014;
- From May 2011 to February 2014, Dr. Burkons failed to record all the controlled substances that he has prescribed in the appropriate medical records, including, but not limited to, prescriptions for Adderall, Percocet, Xanax, Vicodin, Valium, Ativan, Hycodan syrup, Ambien, Lomotil, Tylenol #3, and hydrocodone.

Dr. Schottenstein stated that in the case of six of Dr. Burkons' patients, there was no medical record at all.

Dr. Schottenstein stated that Dr. Burkons has shared multiple cards, letters, and emails sent by his patients expressing sentiments of gratitude and appreciation when they learned he was retiring from practice. In addition, letters of support were written on Dr. Burkons' behalf by medical colleagues, including Lance A. Talmage, M.D., a previous Secretary of the Medical Board.

Dr. Schottenstein stated that since February 2014, Dr. Burkons has not prescribed any controlled substances to family, friends, or acquaintances. Dr. Burkons has testified that if he is allowed to continue prescribing, he plans to prescribe his patients only two days of pain medication, enough for the day of the procedure and the following day. Dr. Burkons has also indicated that he would like to practice on a

decreased basis going forward.

Dr. Schottenstein stated that the Hearing Examiner, considering both the seriousness of Dr. Burkons' violations and Dr. Burkons' substantial degree of remediation, including courses, has recommended suspending Dr. Burkons' medical license for 180 days followed by probationary monitoring for a minimum of three years with a monitoring physician.

Dr. Schottenstein commented that the pre-signing of prescriptions and the failure to check OARRS regularly are relatively straight-forward violations, and Dr. Burkons has taken it upon himself to address these issues by modifying his behavior and signing up for OARRS. However, Dr. Schottenstein opined that the lack of documentation when prescribing controlled substances is not as straight-forward. Dr. Schottenstein quoted from the objections filed by Dr. Burkons' attorney:

Gaps in recording are due to Dr. Burkons' passion and compassion, his willingness to see his long-term patients outside of normal office hours, and his dedication to ensuring those patients had access to the medicine they required.

Dr. Schottenstein agreed with this statement and opined that Dr. Burkons seems to be passionate and compassionate. However, Dr. Schottenstein asked how the documentation issue could be a result of Dr. Burkons' passion, compassion, and willingness to see patients outside normal office hours. Dr. Schottenstein stated that the willingness to see patients outside of normal hours, while laudable, led to boundary issues with Dr. Burkons' patients. Dr. Schottenstein stated that a boundary is a border of professional behavior; there is a necessary psychological and social distance between a physician and patients, which Dr. Schottenstein felt was missing in this case.

Dr. Schottenstein continued that the boundary issue in the matter of Dr. Burkons was what is called a boundary crossing, which is a deviation from the therapeutic aspect of the physician/patient relationship but is relatively harmless. Dr. Schottenstein stated that boundary crossings do not exploit or harm the patient and can even add to the course of treatment. Dr. Schottenstein stated that being available to patients at all hours of the day and night for non-urgent matters, giving out one's cell phone number, and spending time in patients' homes, and the physician's children being friends with the patient's children are examples of boundary crossings. Dr. Schottenstein stated that the difficulty arises when the physician and the patient are overly-familiar within the office setting, which could compromise the therapeutic relationship and the physician's objectivity. Dr. Schottenstein stated that that level of friendliness combined with that level of access can result in an informality that leads to carelessness, negligence, and a general looseness on the part of the physician.

Dr. Schottenstein stated that it is not a coincidence that the patients in question either knew Dr. Burkons well outside the professional setting, had family members who had a relationship with Dr. Burkons, or had been in Dr. Burkons' practice for a long time. Dr. Schottenstein opined that a substantial familiarity led to an informality in the practice of medicine with regard to these patients. Dr. Schottenstein commented that if a physician chooses to be available to patients at all hours for non-urgent matters and to give out their cell phone number, Dr. Schottenstein would applaud that but would also advise the physician to be particularly cautious that the relationship does not deteriorate into the familiar. For those relationships in which the physician is already familiar, such as with family and friends, Dr. Schottenstein would advise the physician to refer those patients to another physician.

Regarding the matter of Dr. Burkons, Dr. Schottenstein stated that he agrees with the Hearing Examiner's

Findings of Fact, Conclusions of Law, and Proposed Order. Dr. Schottenstein noted that in Conclusion of Law #4, the Hearing Examiner stated that he could not, as a non-physician, conclude that Dr. Burkons' acts, conduct, and/or omissions constitute a "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in 4731.22 (B)(6), Ohio Revised Code. The Hearing Examiner further stated that the Board, as a panel of experts, may conclude that there was such a departure and modify the Conclusion of Law accordingly. Dr. Schottenstein opined that there was a departure from minimal standards with regard to a lack of documentation.

Dr. Steinbergh agreed with Dr. Schottenstein's comments, particularly with regard to the boundary issue. Dr. Steinbergh also agreed with the Hearing Examiner's Proposed Order. Dr. Steinbergh noted the following portion of the Proposed Order regarding a monitoring physician:

The monitoring physician shall monitor Dr. Burkons and his medical practice, and shall review Dr. Burkons' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Dr. Steinbergh felt that it should be emphasized that the monitoring physician "shall monitor Dr. Burkons and his medical practice," indicating that the monitoring goes beyond just monitoring patient records. Dr. Schottenstein agreed.

Dr. Schottenstein moved to amend Conclusion of Law #4 of the Report and Recommendation to find that there was departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, as that clause is used in 4731.22(B)(6), Ohio Revised Code. Dr. Schottenstein further moved to emphasize the phrase "shall monitor Dr. Burkons and his medical practice" in the section of the Proposed Order regarding a monitoring physician. Dr. Steinbergh seconded the motion. A vote was taken:

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

The motion to approve carried.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of David M. Burkons, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

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

The motion to approve carried.

ROBERT RAYMOND DAIBER, M.D.

Dr. Soin directed the Board's attention to the matter of Robert Raymond Daiber, M.D. Objections to Ms. Blue's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Gonidakis returned to the meeting room at this time.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Robert Raymond Daiber, M.D. Mr. Giacalone seconded the motion.

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

Mr. Giacalone briefly reviewed Dr. Daiber's medical education and career. Mr. Giacalone stated that Dr. Daiber's history of substance abuse and illicit activity include consuming alcohol for the first time at the age of 16, binge drinking in college on weekends, consuming alcohol occasionally during the week in medical school to "help relax and go to sleep," increased drinking after entering private practice, and abusing medications such as Vicodin around 1996. Mr. Giacalone stated that Dr. Daiber's abuse of Vicodin began with taking office samples, and later involved falsifying prescriptions in the names of his patients or his father-in-law. As a result, Dr. Daiber was charged with Illegal Processing of Drug Documents, for which he was granted intervention in lieu of conviction in May 2000. Mr. Giacalone also noted that Dr. Daiber was convicted of Driving Under the Influence of alcohol or drugs (DUI) in January 2000 and he was ordered to a chemical dependency evaluation, which diagnosed Dr. Daiber with alcohol dependence, opiate dependence, and cannabis abuse.

Mr. Giacalone continued that in March 2000, Dr. Daiber entered an intensive outpatient program and was released at the end of that month in early full remission. Dr. Daiber acknowledged that he drank alcohol again on April 15, 2000, which resulted in his medical license being summarily suspended in October 2000. In November 2000, Dr. Daiber, who was represented by counsel, signed a Step I Consent Agreement in which he admitted to making a false statement when he claimed that he had abstained from alcohol since completing his initial treatment in March 2000. In addition, when signing a Step II Consent Agreement in 2001, Dr. Daiber admitted that he had relapsed on April 15, 2000, by consuming three beers. Dr. Daiber testified that from April 15, 2000, to the beginning of 2016, he did not consume any alcohol or drug.

Mr. Giacalone stated that on September 11, 2016, Dr. Daiber was pulled over by the police for erratic

driving. Dr. Daiber failed a field sobriety test and he refused to take a breathalyzer test. As a result, Dr. Daiber was arrested and taken to jail. On January 31, 2017, Dr. Daiber pleaded no contest to the charge of Reckless Operation, a fourth-degree misdemeanor. Dr. Daiber subsequently completed 28 days of inpatient treatment and was discharged with a diagnosis of alcohol dependence uncomplicated and opioid dependence in remission. Dr. Daiber has testified that he is currently undergoing outpatient treatment.

Mr. Giacalone stated that the issue in this case is whether Dr. Daiber's April 2000 relapse should be considered a clinical relapse. Mr. Giacalone stated that Dr. Daiber and his counsel argues that his use of alcohol in April 2000 should not be considered a relapse because the short period of time since leaving the treatment program was insufficient to incorporate what Dr. Daiber had learned from his treatment. Conversely, the Assistant Attorney General argues that the April 2000 alcohol consumption does constitute a relapse as defined by the Board's Rule 4731-16-01(B) since Dr. Daiber was not in inpatient treatment at that time and had been discharged with a diagnosis of early remission. Mr. Giacalone noted that if the April 2000 incident is considered a relapse, then the more recent incident would constitute a second relapse.

Mr. Giacalone stated that based on the evidence and testimony provided, he agrees with the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order. Mr. Giacalone stated that Dr. Daiber clearly relapsed by drinking alcohol prior to his traffic stop in September 2016 and he admitted to having consumed five to six beers. Rule 4731-16-01(B) defines relapse as an inappropriate use of a substance by an individual "who has received a diagnosis of and treatment for chemical dependency or abuse." The Rule further states that the following does not constitute a relapse: "An instance of use that occurs **during** detoxification treatment or inpatient treatment or residential treatment before a practitioner's disease of addiction has been brought into remission." [emphasis added] Mr. Giacalone stated that Dr. Daiber's use of alcohol in April 2000 occurred after his treatment and thus falls within the definition of relapse.

Mr. Giacalone commented that Dr. Daiber's case is very different from the matter of Ryan S. Fryman, D.O., which was cited by Dr. Daiber's counsel. Mr. Giacalone noted that the issue of whether Dr. Fryman's sanction was reduced was not based on whether his actions constituted a first or second relapse. Mr. Giacalone stated that based on the facts of Dr. Fryman's case, the Board chose to stay a portion of the one-year suspension of that practitioner's license. Mr. Giacalone stated that he did not see the same fact pattern in Dr. Daiber's case. Mr. Giacalone opined that Dr. Daiber's most recent actions and his significant history of substance abuse and illicit behavior, including the falsifying of prescriptions, should not merit the same approach that the Board took in Dr. Fryman's case. Mr. Giacalone noted that Dr. Fryman had had approximately 10 years of sustained sobriety between relapses, and there was a question of whether Dr. Fryman's positive urine test was due, in part, to Dr. Fryman's diabetic condition. Mr. Giacalone further noted that Dr. Fryman had not appeared to be impaired when he was tested, but he admitted to having consumed 10 ounces of a margarita two days prior. Mr. Giacalone compared this to Dr. Daiber's alcohol-related motor vehicle conviction and his significant drinking over a nine-month period.

Dr. Schottenstein agreed with Mr. Giacalone's comments. Dr. Schottenstein acknowledged that the Board has wide latitude to determine the appropriate sanction for violating a rule based on the Board's disciplinary guidelines and the mitigating and aggravating circumstances of a case. Dr. Schottenstein stated, however, that this latitude does not involve modification of the rule itself. Dr. Schottenstein opined that Dr. Daiber's counsel had attempted to make a case that the Board should modify the Rule, which is the law. Dr. Schottenstein stated that the criteria for what constitutes a relapse, as well as the recommended length of suspension, are in the Rule itself and are not in the guidelines where the Board

could exercise discretion. Dr. Schottenstein stated that doing as the defense counsel asks would constitute modification of the Rule outside the normal process which would involve public comments, Board votes, and agency rule review. Dr. Schottenstein stated that this may provide what the defense counsel would consider a just outcome, such activity would have a “ends-justify-the-means” quality which could lead to the Board changing any rule according to its inclinations at any particular time. Dr. Schottenstein opined that a rule, once formulated, binds the Board just as it does a licensee.

Dr. Schottenstein continued that it is clear that under Rule 4731-16-01(B), Dr. Daiber relapsed in 2000, and therefore the 2016 relapse is a second relapse. Dr. Schottenstein added that under Rule 4731-16-01(D), the length of suspension for a second relapse is a minimum of one year. Dr. Schottenstein stated that, while he regrets any additional hardship that may be imposed on Dr. Daiber, he felt bound to agree with the Hearing Examiner’s Proposed Rule.

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

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

The motion to approve carried.

MICHAEL GARBER, M.D.

Dr. Soin directed the Board’s attention to the matter of Michael Garber, M.D. Objections to Ms. Porter’s Report and Recommendation have been filed and were previously distributed to Board members.

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

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

Ms. Collis stated that Dr. Garber is not present today, noting that Dr. Garber lives out-of-state. Ms. Collis stated that Dr. Garber’s Ohio medical license is expired and he has no intention of reinstating his license or returning to Ohio.

Ms. Collis asked the Board to consider the written request that she had filed to review the proffered testimony and proffered exhibits from Dr. Garber’s hearing. Ms. Collis stated that this is a unique case and involves a portion of statute that does not usually come before the Board. Ms. Collis stated that Section 4731.22(B)(26), Ohio Revised Code, authorizes the Board to order a physician to seek a

chemical-dependency evaluation. Ms. Collis stated that this authority is not unfettered, noting that the statute specifically states that the Board must have a reason to believe the physician is impaired before the physician can be ordered to an evaluation. Ms. Collis stated that there is no evidence to support the belief that Dr. Garber may be impaired. Ms. Collis stated that Dr. Garber has no history of impairment, has never been convicted of any crime, has never tested positive on a drug screen, and there is no indication in his employment that he is impaired.

Ms. Collis continued that Dr. Garber came to the attention of the Board when he voluntarily met with a Board investigator who was investigating an issue related to a prescription Dr. Garber had written. Dr. Garber answered the investigator's questions and the prescription was determined to have been valid. At the end of the interview, Dr. Garber was asked if he had ever smoked marijuana and he answered that he had smoked marijuana in school. Nearly one year later, Dr. Garber was sent interrogatory questions from the Board asking about Dr. Garber's recent use of marijuana. Dr. Garber answered that he had legally used marijuana within the last month while traveling in Colorado. Ms. Collis stated that, while the Board may not appreciate or support the position of recreational use of marijuana, Dr. Garber had used the marijuana in a location where such use was legal.

Ms. Collis reiterated that there is no evidence that Dr. Garber is impaired, and without a reason to believe that there is impairment, there is no evidence to order Dr. Garber to an intrusive and expensive evaluation. Absent a reason to believe there is impairment, Ms. Collis argued that the Board should dismiss this case and take no further action against Dr. Garber. Ms. Collis stated that if the Board finds that there was reason to believe there was impairment, she asked the Board to stay the suspension that is in the Hearing Examiner's Proposed Order.

Ms. Collis, noting that Dr. Garber's Ohio medical license is expired, stated that Dr. Garber cannot return to Ohio and practice unless he requests reinstatement or restoration of his license, and therefore there is no harm to the citizens of Ohio if the Board chooses to stay the suspension. Ms. Collis repeated her belief that the Board had no reason to order Dr. Garber to an evaluation and that the Board should dismiss the case.

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

Mr. Wilcox stated that the legislature has given the Medical Board very strong authority to order evaluations of physicians. Mr. Wilcox added that this authority has been given in order to empower the Board to protect the public from potentially impaired physicians. Mr. Wilcox noted that many physicians have come before the Board saying they are not impaired, only to be shown later to be significantly impaired. Mr. Wilcox stated that the ability of the Board's Secretary and Supervising Member to order an evaluation is a very power and very important tool.

Mr. Wilcox stated that Dr. Garber's hearing was for the legal narrow purpose of determining whether Dr. Garber had a legitimate reason to not appear at his Board-ordered evaluation. Mr. Wilcox noted that the Hearing Examiner also noted that the hearing had nothing to do with whether the Board had a reason to believe that Dr. Garber was impaired. Mr. Wilcox observed that the Ohio Revised Code specifically states that all applicants and licensees of the Board

...shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so in writing by the board ... If it has reason that [any individual

authorized to practice by this chapter or any applicant for certification to practice] suffers such impairment, the board may compel the individual to submit to a mental or physical examination...

Mr. Wilcox stated, as noted by the Hearing Examiner, that nothing in statute gives Dr. Garber the right to challenge the ordered evaluation. Mr. Wilcox stated that under the law, a practitioner who does not appear at an ordered evaluation is automatically deemed to be impaired; Mr. Wilcox stated that without this provision, no practitioner would go to an evaluation. Mr. Wilcox stated that it is up to the addiction professionals who perform the evaluation, not the potentially impaired practitioner, to determine if the practitioner is impaired. Mr. Wilcox noted that Dr. Garber sued the Board, but the common pleas court upheld the Board's authority to order the evaluation. When this attempt failed, Dr. Garber's New York attorney wrote a letter stating that Dr. Garber will not cooperate and calling the situation a charade.

Dr. Steinbergh exited the meeting at this time.

Mr. Wilcox stated that Dr. Garber is, pursuant to law, impaired because of his choice not to appear at the evaluation. Mr. Wilcox stated that he supports the Hearing Examiner's Proposed Order.

Dr. Schottenstein moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Michael Garber, M.D. Mr. Giacalone seconded the motion.

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

Mr. Gonidakis stated that Dr. Garber was cited by the Board due to his failure to submit to a Board-ordered examination for chemical dependency and did not notify the Board of any reason that would prevent him from submitting to the examination. Mr. Gonidakis briefly reviewed Dr. Garber's medical education and career. Dr. Garber currently resides in New York and has, in addition to his practice, various teaching responsibilities. Mr. Gonidakis stated that Dr. Garber last practiced in Ohio in the Spring of 2016 primarily in cities of Cincinnati and Youngstown and would fly in from New York to practice. Dr. Garber's Ohio medical license lapsed on January 1, 2017, due to non-renewal.

Mr. Gonidakis continued that in October 2015 Dr. Garber was interviewed by investigators from the Medical Board and the Ohio Board of Pharmacy regarding a prescription issue. During and after the meeting, Dr. Garber admitted to using marijuana to help with a medical condition.

Dr. Steinbergh returned to the meeting at this time.

Mr. Gonidakis stated that Dr. Garber also admitted to using marijuana during this third year of medical school and as recently as May 2016. The Medical Board sent a letter, dated August 18, 2016, ordering Dr. Garber to undergo a 72-hour inpatient evaluation at Shepherd Hill Hospital, based on his admission of marijuana use. The letter also stated that a failure to attend the evaluation would constitute an admission of allegations. Dr. Garber requested a change of date for the evaluation twice, and on the third scheduled date the Board received a letter from Dr. Garber's attorney in New York that read, in part:

As a matter of principle, be advised that Dr. Garber no longer intends to play along with the grim, farcical charade being orchestrated by the State Medical Board; Dr. Garber will not appear for the results-oriented assessment originally scheduled for October 17, 2016.

Mr. Gonidakis stated that Dr. Garber took this matter to the courts, but was unsuccessful. Dr. Garber has admitted that it was his decision to not participate in the Board-ordered examination. Dr. Garber also indicated that he let his Ohio medical license lapse because he never wants to practice in Ohio again. Mr. Gonidakis noted that Dr. Garber has never been convicted of a crime and there is no evidence that he has ever appeared to be impaired at work. The Hearing Examiner's Proposed Order would indefinitely suspend Dr. Garber's expired Ohio medical license and establish various terms and conditions.

Mr. Gonidakis stated that he appreciates Mr. Wilcox's statements regarding the Board's ability to act under the Ohio Revised Code. However, Mr. Gonidakis stated that he sees no evidence to justify the Secretary and Supervising Member's decision to approve sending Dr. Garber to an evaluation in the first place. Mr. Gonidakis commented that a Board-ordered evaluation does not entail simply seeing one's local doctor. Rather, the evaluation in this case required Dr. Garber to come to Ohio from out-of-state, stay at Shepherd Hill Hospital for three days, and pay about \$5,000. Mr. Gonidakis expressed concern that Dr. Garber had no right under Ohio law to rebut the presumed reason to believe that he may be chemically dependent. Mr. Gonidakis further express concern about government overreach based on the evidence at hand. Mr. Gonidakis stated that no patient, colleague, or family member complained that Dr. Garber ever seemed impaired. Mr. Gonidakis also stated that Dr. Garber has been honest with the Board.

Mr. Gonidakis stated that he has immense respect for the Board's Secretary and Supervising Member. However, Mr. Gonidakis stated that the ten voting members of the Medical Board act as a check and balance on the Secretary and Supervising Member as well as the staff. Mr. Gonidakis stated that as part of this role, it is the duty of the ten voting members to weigh the evidence and determine if the correct course of action had been taken. Mr. Gonidakis encouraged further discussion among his fellow Board members to determine an appropriate Order in this case.

Mr. Kenney noted that Dr. Garber admitted to investigators that he smoked marijuana. Mr. Gonidakis agreed, but he questioned whether that constitutes evidence of impairment or that Dr. Garber had ever been impaired in the course of his practice. Mr. Gonidakis observed that Dr. Garber has had no arrests or complaints in other states.

Dr. Steinbergh opined that Dr. Garber's attorney, Ms. Collis, had a compelling argument. Dr. Steinbergh further opined that the letter from Dr. Garber's New York attorney was very inappropriate, unprofessional, and threatening.

Dr. Steinbergh felt that the Secretary and Supervising Member had reason to believe that there were credible concerns about Dr. Garber's possible impairment at the time that they approved the evaluation. However, Dr. Steinbergh stated that the matter seemed to drag on for some time after that time and Dr. Garber continued to practice in Ohio for about two more years without the Board's further intervention beyond sending interrogatories, which Dr. Garber answered honestly.

Dr. Steinbergh observed that Dr. Garber testified that one of the reasons that he did not go to the evaluation was that it would be something that he could not undo. Dr. Steinbergh opined that if Dr. Garber wanted to prove that he is not impaired, he should have submitted to the evaluation. Dr. Steinbergh agreed with Mr. Gonidakis that there is no evidence before the Board to indicate that Dr. Garber may be impaired, though the Secretary and Supervising Member may have had reason in 2014.

Dr. Steinbergh noted Ms. Collis' comments that evidence and testimony that was proffered in the hearing was not included in the hearing record. Dr. Steinbergh asked how the Board can arrange to see and consider that proffered evidence. Ms. Anderson explained that evidence and testimony that is not included in the hearing record is often proffered in order to preserve it on appeal. Ms. Anderson stated that Ms. Collis made a motion after the issuance of the Report and Recommendation to release that proffered evidence to the Board. Dr. Soin, as Board President, reviewed the motion and the Assistant Attorney General's opposition to the motion. Dr. Soin denied the motion because the proffered evidence dealt with whether Dr. Garber was impaired, whereas the issue at hearing was Dr. Garber's failure to appear for the Board-ordered evaluation. Ms. Anderson stated that if the Board wishes to see the proffered evidence, it would have to remand the matter back to the Hearing Unit.

Mr. Giacalone asked if the Board could see the proffered evidence for the purpose of considering mitigation in the matter of Dr. Garber's failure to appear at the evaluation. Ms. Anderson replied that if the Board wishes to see the proffered evidence, the matter should be remanded back to the Hearing Unit.

Dr. Schottenstein stated that he sees this differently from the comments made thus far. Dr. Schottenstein stated that in a letter to the Board requesting a withdrawal of the Board-ordered evaluation, Dr. Garber's attorney stated, "In the instant case, the Medical Board has no evidence to show that Dr. Garber is impaired in his ability to practice medicine." Dr. Schottenstein stated that a reason to believe that there may be impairment, which was the basis of the Board-ordered evaluation, is a different standard from evidence of impairment. Dr. Schottenstein opined that it is a logical fallacy to say that Dr. Garber does not need an evaluation because there is no evidence that he is impaired. Dr. Schottenstein stated that the purpose of the evaluation is to make that determination. Dr. Schottenstein stated that Dr. Garber's attorney is essentially jumping to the end of the evaluation and judging the outcome.

Dr. Schottenstein continued that under the law, evidence is not required to indicate a need for an evaluation; only a reason to believe there is impairment is necessary. Dr. Schottenstein stated that evidence is what is gathered at the evaluation, and if the evaluation shows a lack of evidence then the licensee is found to not be impaired. Dr. Schottenstein stated that in the Franklin County Court of Common Pleas, Dr. Garber through his attorney essentially performed his own evaluation and gave his results by arguing that there is no evidence of impairment or that Dr. Garber's use of marijuana ever affected his training or work. Dr. Schottenstein stated that this could be a possible conclusion of a formal evaluation, but one cannot perform an evaluation on oneself and expect that it can substitute for a Board-ordered evaluation by a Board-approved treatment provider.

Dr. Schottenstein noted Ms. Collis' argument that Dr. Garber did not receive due process because he was denied the ability to have a hearing to ascertain the validity of the Board's reason to believe he may be impaired. Dr. Schottenstein stated that due process is a legal requirement that states respect the legal rights that a person is entitled to under the law. Dr. Schottenstein argued that Dr. Garber's due process rights have not been violated because the law clearly indicated that such a hearing is not a legal right. Dr. Schottenstein opined that the complaint regarding due process is just another way of saying that the defense does not agree with the law in this case. Dr. Schottenstein commented that one cannot make up legal rights that do not exist and then complain that due process is not followed when one does not have access to the made-up legal right.

Dr. Schottenstein stated that aside from the fact that the law does not provide Dr. Garber with a legal recourse in this matter, there is also a practical reason why there should not be a hearing to ascertain the accuracy of the Board's reason to believe that there may be impairment. Dr. Schottenstein stated that if

every impaired licensee was able to challenge the Board's reason to believe there may be impairment and each challenge involved a hearing and a right to appeal, then the Board would be paralyzed in its ability to take action in a timely manner, state resources would be drained, and a just outcome would be delayed or forestalled. Dr. Schottenstein stated that even licensees whose impaired behavior was more egregious would want to take advantage of the right to cross-examine the Board's investigative staff. Dr. Schottenstein stated that this would result in societal harm.

Dr. Schottenstein stated that in a memorandum, defense counsel claimed that Shepherd Hill Hospital is not without bias and that it is in their financial interest to find physicians to be impaired. The memorandum further claimed that this promotes the Medical Board's retention of Shepherd Hill Hospital on the Board's approved provider list. Dr. Schottenstein opined that this is grossly unfair to Shepherd Hill Hospital. Dr. Schottenstein stated that by the defense counsel's logic, any physician anywhere has a financial interest in finding their patients to be ill and making diagnoses and treatment plans for their own financial gain. Dr. Schottenstein stated that physicians have a fiduciary responsibility to put their patients interests above their own self-interest. Dr. Schottenstein stated that Shepherd Hill Hospital has found licensees to be not impaired in the past and it does not simply rubber-stamp every referred licensee as impaired for their own financial gain. Dr. Schottenstein opined that the defense counsel's argument is a rationalization to avoid the evaluation and an attempt to invent a plausible explanation for why Dr. Garber did not attend the evaluation.

Dr. Schottenstein stated that protocol has been followed in this case and he sees no reason to remand or investigate further. Dr. Schottenstein agreed with the Proposed Order.

Mr. Gonidakis stated that Dr. Schottenstein makes a compelling argument, but opined that the argument falls on the second half of the issue. Mr. Gonidakis stated that his focus is on the first half of the issue and whether there was reason to believe that Dr. Garber needed to be sent to a three-day, \$5,000 evaluation. Mr. Gonidakis stated that every case is different and this seems to be a fundamental flaw in this particular case. Dr. Schottenstein appreciated Mr. Gonidakis' comments, but expressed concern that one can always use hindsight to second-guess the investigation that led to the reason to believe there may be impairment. Dr. Schottenstein noted that Dr. Garber admitted to using marijuana. Dr. Schottenstein stated that the voting Board members do not always have all the facts that led to a given decision, but stated that he has to trust that the Board's staff made an informed decision when they collected the data.

Mr. Giacalone stated that he struggles with the limited facts available in this case. Mr. Giacalone stated that Dr. Garber was visited by investigators from both the Medical Board and the Board of Pharmacy and was questioned regarding a minor prescription issue. Mr. Giacalone questioned how the investigators ended up asking whether Dr. Garber had ever smoked marijuana or done other drugs. Mr. Giacalone opined that, based upon the limited facts presented to the Board in this case, this questioning may appear to have been excessive.

Mr. Giacalone stated that he does not question the decision of the Secretary and Supervising Member since they would have information that the other Board members do not. However, Mr. Giacalone did not support the Proposed Order or what appears to have been the approach to the case. Mr. Giacalone stated that he would like to see the proffered evidence and testimony so that he can fully understand the fact patterns. Mr. Giacalone stated that if the Board does not want to remand the matter to the Hearing Unit, then he would favor the defense counsel's suggestion to suspend Dr. Garber's Ohio medical license and to stay the suspension.

Dr. Schachat stated that he is comfortable deferring to the view of the Secretary and Supervising Member. Dr. Schachat asked if this matter can be remanded to the Secretary and Supervising Member so that they can review the evidence again and either send it back to the Board or take some other action that they would deem appropriate. Dr. Steinbergh replied that the Board can only remand the matter to the Hearing Unit, which could then provide the proffered evidence.

In response to a question from Mr. Groeber, Ms. Anderson clarified that if the Board remands this case back to the Hearing Unit, the allegations in the original citation will not change. The Board can instruct the Hearing Unit the it would like to see the proffered evidence and testimony, and the Hearing Examiner would hear arguments on both sides of that issue.

Dr. Steinbergh opined that the Board, as thoughtful individuals, should evaluate this matter dynamically and try to understand what may have happened in the long time period since the Secretary and Supervising Member initially reviewed this information. Dr. Steinbergh stated that she has no question that the Secretary and Supervising Member had reason to believe that there may be impairment, but she also opined that the defense counsel made a compelling statement. Dr. Steinbergh stated that she favors remanding this case to the Hearing Unit so that the Board can see the proffered evidence. Dr. Steinbergh further stated that she could also vote on a final Order today if that is what the Board wants to do.

Mr. Giacalone asked if Dr. Garber's counsel, Ms. Collis, could repeat her suggestion to the Board. Mr. Giacalone noted that he is asking Ms. Collis to simply repeat what she had said before, so this would not be considered an additional comment. Ms. Collis stated that she had recommended imposing a stayed suspension of Dr. Garber's Ohio medical license. However, Ms. Collis added that that recommendation was only if the Board found evidence of a violation.

Mr. Giacalone noted that Dr. Garber has no plans to return to Ohio and his Ohio medical license lapsed on January 1, 2017. Mr. Giacalone opined that there had been reason for the Secretary and Supervising Member to believe that a chemical dependency examination was necessary, but that fact pattern in this case appears to dictate that mitigation is appropriate. Mr. Giacalone agreed with Ms. Collis' suggestion to stay the suspension but to keep the Hearing Examiner's Findings of Fact and Conclusions of Law.

Mr. Giacalone moved to amend the Proposed Order to an indefinite suspension of Dr. Garber's Ohio medical license. Mr. Giacalone further moved that the suspension be stayed. Dr. Steinbergh seconded the motion.

Dr. Soin recommended that this matter be tabled so that the proposed amendment can be properly drafted for the Board's review. Dr. Soin further suggested that the motion to amend be withdrawn at this time in order to avoid confusion. Mr. Giacalone and Dr. Steinbergh agreed.

Mr. Giacalone wished to withdraw his motion to amend. No Board member objected to the withdraw. The motion to amend was withdrawn.

Dr. Steinbergh moved to table this topic. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

ANNA G. POLLACK, M.D.

Dr. Soin directed the Board's attention to the matter of Anna G. Pollack, M.D. No objections have been filed. Ms. Blue was the Hearing Examiner.

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

Dr. Pollack was represented by her attorney, Eric Plinke.

Mr. Plinke stated that this case contains unusual facts and that this regrettable situation could have been avoided had there been some transparency and honesty from one of the witnesses, namely Dr. Pollack's husband. Mr. Plinke stated that he agrees with the Hearing Examiner's Report and Recommendation and her assessment of Dr. Pollack's credibility. Mr. Plinke noted that he is exploring the possibility of reversing the action taken by the Kansas State Board of Healing Arts based on a lack of notice to Dr. Pollack.

Dr. Pollack stated that this has been the most difficult thing she has had to do in both her professional and her personal lives. Dr. Pollack commented that she is gravely disappointed that her husband could do the things he did for so long without her knowledge. Dr. Pollack stated that this has put a strain on their 25-year marriage.

Dr. Pollack stated that she realizes that her medical license is her responsibility and that she realizes, now more than ever, that she must take the lead role in these proceedings and never again allow someone else to do so. Dr. Pollack stated that she realizes the magnitude of her situation and stated that she has already begun to change how the administrative aspect of her practice is managed. Dr. Pollack assured the Board that this situation will never happen again.

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

Ms. Snyder agreed with Mr. Plinke that this is a very unusual case. Ms. Snyder stated that the Board has seen many cases in which a physician states that he or she had delegated the authority to fill out and file an application for renewal of license to another person, and therefore the physician is not responsible for any incorrect information in the application. Ms. Snyder commented that this is a troubling trend. Ms. Snyder stated that physicians must take responsibility for the applications that they submit.

Ms. Snyder stated that Dr. Pollack seems very remorseful and it may be true that her husband had filed her application for renewal of her Ohio medical license with false information. However, Ms. Snyder stated that the Board should consider whether it will hold the physician responsible even if the application was filled out and filed by someone else.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Anna G. Pollack, M.D. Dr. Schottenstein seconded the motion.

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

Dr. Bechtel stated that the Medical Board's citation of Dr. Pollack is based on an action taken by the Kansas State Board of Healing Arts. In May 2015, the Kansas Board issued a final order alleging that Dr. Pollack had provided false, fraudulent, or misleading statements on her application to renew her Kansas medical license. The Kansas Board's Final Order censured Dr. Pollack and fined her \$500. The Ohio Board further alleged that Dr. Pollack provided false, fraudulent or misleading information on her 2016 application to renew her Ohio medical license. Dr. Bechtel noted that Dr. Pollack was first licensed to practice medicine in Ohio in 2014 and she is currently a full-time faculty member, Director of the Neuro-Oncology Program, and Chief of Neurosurgery at the Division of Clinical Neuroscience Institute of Wright State University. Dr. Pollack is also Chief of Neurosurgery at Miami Valley Hospital.

Dr. Bechtel continued that from August 2005 to December 31, 2012, Dr. Pollack was a member of the University of Kansas School of Medicine's Department of Neurosurgery. In June 2013, Dr. Pollack indicated on her application for renewal of her Kansas medical license that she possessed medical malpractice insurance. Dr. Pollack provided a policy number to a self-insured plan with the Kansas University Foundation with an expiration date of June 30, 2013. Dr. Bechtel noted that malpractice insurance is a requirement of having a medical license in Kansas. However, the Kansas Health Care Stabilization Fund showed that Dr. Pollack was terminated from insurance coverage on December 31, 2012. On September 30, 2013, the Kansas Board notified Dr. Pollack of an investigation into this discrepancy and asked for all supporting documentation, which was not provided. Dr. Pollack later testified that she thought she had tail insurance when she left the University of Kansas, but this was not accurate. Dr. Pollack also failed to indicate on her Kansas renewal application that she also held active medical licenses in Ohio and Wyoming. The Kansas Board found that Dr. Pollack had committed fraud and/or misrepresentation when she falsely indicated that she had active malpractice insurance.

Dr. Bechtel stated that Dr. Pollack submitted an application to renew her Ohio medical license in January 2016, which was granted. Dr. Pollack answered "no" to Question #4 of the application, which asked, "At any time since signing your last application for renewal of your certificate has any board, bureau, department, agency or any other body, including those in Ohio other than this board, filed any charges, allegations or complaints against you?" In fact, the Kansas Board had issued a summary order to indefinitely suspend her license in September 2015 and she had failed to remit her civil fine of \$500. Dr. Pollack's fine was paid on October 12, 2015.

At her hearing, Dr. Pollack denied being aware of answering "no" to Question #4 of her Ohio licensure renewal application. Dr. Pollack testified that she had been very busy and was possibly doing *locum tenens* work in Wyoming when it came time to renew her Kansas medical license. Dr. Pollack further testified that she had her husband file her application for renewal on her behalf. Mr. Pollack filled out the application and indicated that Dr. Pollack had active malpractice insurance and submitted a policy number for a policy that did not exist. In fact, Dr. Pollack's malpractice insurance had ended when she terminated her relationship with the University of Kansas. When the Kansas Board sought information about this discrepancy, no information was provided.

Dr. Bechtel stated that it is apparent from Dr. Pollack's and Mr. Pollack's testimony that Dr. Pollack had been fully unaware of these actions and that Mr. Pollack had not informed Dr. Pollack that the Kansas Board had taken an action or even filed a complaint. Dr. Bechtel noted that Mr. Pollack even paid Dr. Pollack's \$500 fine with a money order from his personal checking account. Mr. Pollack had also filled out Dr. Pollack's application to renew her Ohio medical license and had falsely answered "no" to Question #4 without discussing any of the questions with Dr. Pollack. Dr. Bechtel stated that at the time the Ohio renewal application was filed, Dr. Pollack was unaware of any of the actions that had occurred in Kansas.

Dr. Pollack first became aware of these actions when she received notification from Miami Valley Hospital that the Kansas Board had taken action and that the Ohio Board was investigating the untruthful answer to Question #4 on her renewal application.

Dr. Bechtel stated that Dr. Pollack had apparently been in the dark on all of these issues, which were kept from her by her husband. The Hearing Examiner felt that Dr. Pollack was truthful in her responses. Dr. Bechtel agreed with the Assistant Attorney General that the physician has the responsibility of ensuring that applications are truthful, even when they are filled out by another person. Dr. Bechtel expressed concern that the Board will see more such cases where a busy physician delegates the task of filling out applications to someone else. Dr. Bechtel stated that ultimately, it is the physician who must face penalties for untruthful answers.

Dr. Bechtel stated that the primary issue in this case is whether Dr. Pollack intentionally tried to deceive the Board and provide false or fraudulent information on her renewal application. The Hearing Examiner felt the Dr. Pollack had testified convincingly that her husband had filled out the application without consulting with her. The Hearing Examiner also felt it was credible that Dr. Pollack had no knowledge of the Kansas Board action when the application to renew her Ohio medical license was filed. Dr. Bechtel agreed with the Hearing Examiner's assessment. Dr. Bechtel also agreed with the Proposed Order of reprimand.

Dr. Schottenstein stated that it is difficult to believe that Dr. Pollack did not know more about the action taken against her Kansas medical license. However, Dr. Schottenstein stated that it would be even more unbelievable if Dr. Pollack had known these facts and had intentionally behaved in a self-destructive manner with regard to her medical license. Dr. Schottenstein noted a statement in the closing statement made by Dr. Pollack's attorney that she did, in fact, have proof of tail insurance, which would have been relatively easy to convey and could have closed the entire matter. Therefore, to believe that Dr. Pollack knew about the Kansas Board action is to believe that Dr. Pollack had intentionally sabotaged herself professionally, which Dr. Schottenstein did not see as a realistic possibility.

Dr. Schottenstein stated that even if it is conceded that Dr. Pollack had no knowledge of the matter, she is still inarguably responsible for the matter. Dr. Schottenstein stated that when authority to fill out an application is delegated to another party, the physician assumes responsibility for the actions of that other party. Dr. Schottenstein noted that the renewal application includes an attestation that the information contained in the application is truthful, and therefore Dr. Schottenstein felt that Dr. Pollack had violated the letter of Sections 4731.22(B)(5) and (B)(22), Ohio Revised Code. Dr. Schottenstein agreed with the Proposed Order of reprimand.

Dr. Steinbergh stated that in her experience, physicians historically delegate a good deal of responsibility to their spouses or significant others. Dr. Steinbergh stated that this is especially true for female physicians because of the enormous number of other responsibilities that women have in their lives. Dr. Steinbergh commented that Mr. Pollack's actions and what he did to his wife's career were the most severe acts of betrayal she could imagine. Dr. Steinbergh stated that she feels badly for Dr. Pollack, but she agreed with earlier comments that the physician is ultimately responsible for their licensure. Dr. Steinbergh agreed with the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order of reprimand.

Mr. Kenney stated that can understand how this situation could happen. Mr. Kenney stated that as a businessperson, he understands how a person can be very busy and must delegate authority to others for

certain tasks. Mr. Kenney further noted that this matter has nothing to do with patient safety. Mr. Kenney stated that he would not vote to reprimand Dr. Pollack, but would prefer No Further Action. Dr. Schachat stated that he would second that amendment for purposes of discussion.

Mr. Kenney moved to amend the Proposed Order to No Further Action. Dr. Schachat seconded the motion.

Dr. Schachat asked if the Ohio Board requires a statement from physicians regarding malpractice insurance. Ms. Debolt replied that, unlike Kansas, Ohio does not require physicians to have malpractice insurance, though physicians without malpractice insurance are required to have patients sign a form acknowledging that fact. Ms. Anderson added that the Ohio license renewal application does not ask about malpractice insurance.

Mr. Giacalone agreed that this is an unfortunate situation. Mr. Giacalone noted that other practitioners have appeared before the Board arguing that others were responsible for their applications. However, Mr. Giacalone stated that physicians are responsible for their licenses and cannot avoid consequences if someone else files the application incorrectly. Mr. Giacalone opined that Dr. Pollack is getting a very light sanction with the reprimand and that others in similar cases have had harsher penalties. Mr. Giacalone stated that he supports the initial Proposed Order.

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

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

The motion to amend did not carry.

A vote was taken on Dr. Steinbergh's motion to approve the Report and Recommendation:

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

Dr. Factora - aye
Dr. Edgin - aye
Dr. Bechtel - aye

The motion to approve carried.

DAVID ANTONIO VELASQUEZ, M.D.

Dr. Soin directed the Board's attention to the matter of David Antonio Velasquez, M.D. Objections to Ms. Blue's Report and Recommendation have been filed and were previously distributed to Board members.

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

Dr. Velasquez was represented by his attorney, Nelson Genshaft.

Mr. Genshaft noted that Dr. Velasquez's medical license has been suspended since the end of 2016. Mr. Genshaft stated that he cannot ask the Board to ignore Dr. Velasquez's 2016 convictions, but he will ask the Board not to accept the Proposed Order of permanent revocation based on mitigation evidence presented at Dr. Velasquez's hearing. Specifically, Mr. Genshaft stated that Dr. Velasquez has expressed remorse for his actions, did not harm patients, had no selfish motive, contributes to his community, and will not repeat the violations.

Dr. Velasquez stated that he deeply regrets being before the Board today. Dr. Velasquez stated that he takes full responsibility for his actions that took place in 2011 and he does not blame anyone else. Dr. Velasquez stated that he had been acting in the interests of his patients in the epidemic of obesity. Dr. Velasquez commented that he belongs to the Seventh-Day Adventist Church and is a firm believer.

Dr. Velasquez stated that his goal had been to help his patients with the disease of obesity, a disease which affects many people including himself and others in the room today. Dr. Velasquez stated that he was fully aware of the Board's rule against prescribing weight-loss medication for more than 12 weeks, but he was conscious of helping his patients who have struggled in many ways to lose weight. Dr. Velasquez noted that the Medical Board has been in the process of changing its rule on weight-loss medication for some time. Dr. Velasquez continued that obesity is a real problem in our society and that Ohio is the 13th or 14th most obese state, according to the Centers for Disease Control. Dr. Velasquez stated that, even though the Board's rule says that weight-loss medications can only be prescribed for 12 weeks, he thought he was helping his patients. Dr. Velasquez added that less than 10% of his patients are weight-loss patients.

Dr. Velasquez stated that he is here because he would like to speak for his community as a Hispanic physician. Dr. Velasquez stated that there are only four physicians who provide services for his entire community and many of these patients are afraid to go to an emergency department because of the language barrier and other issues. Dr. Velasquez asked the Board to understand his situation and to refrain from permanently revoking his medical license. Dr. Velasquez opined that permanent revocation does not fit his violation.

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

Ms. Snyder stated that Dr. Velasquez was convicted by a jury of permitting drug abuse and drug trafficking in relation to his weight-loss clinic. Ms. Snyder stated that the issue before the Board today is not whether Dr. Velasquez properly prescribed weight-loss medications; the jury in his court case has already determined that he did not. Ms. Snyder opined that the most troubling things in this case, besides the conviction, are Dr. Velasquez's statements that he did not follow the Board's rule because he did not agree with it.

Ms. Snyder stated that this is the second time that Dr. Velasquez had appeared before the Board as a convicted felon. In Dr. Velasquez's first appearance, the Board was very lenient with him and took into account his background and the fact that he was helping an unserved community. Ms. Snyder opined that Dr. Velasquez does not deserve the same leniency a second time. Ms. Snyder stated that the Board cannot trust Dr. Velasquez to follow the laws when he has not done so twice and has been convicted of felonies.

Dr. Steinbergh exited the meeting at this time.

Dr. Schottenstein moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of David Antonio Velasquez, M.D. Mr. Giacalone seconded the motion.

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

Mr. Kenny briefly reviewed Dr. Velasquez's medical education and career. From 2002 to 2012, Dr. Velasquez was employed by five different facilities in Ohio. Dr. Velasquez also opened a medical clinic in El Salvador in 2006 and he has made over 20 trips to El Salvador between 2002 and 2012. At this time, Dr. Velasquez's clinic in El Salvador is closed because he is prohibited from leaving the country due to his convictions, and also due to a lack of funding. In April 2008, the Board issued an Order suspending Dr. Velasquez's Ohio medical license for 15 days, staying the suspension, and placing him under probationary terms for a minimum of one year. This Order was in response to Dr. Velasquez's plea of guilty to four felony counts of passing bad checks in the course of his practice. Dr. Velasquez was released from probation in June 2010.

Mr. Kenney continued that in July 2012, an indictment was filed charging Dr. Velasquez with permitting drug abuse. From about March 1, 2010, to March 16, 2011, Dr. Velasquez continued a course of conduct in which he sold or offered to sell controlled substances to his patients. On September 27, 2016, Dr. Velasquez was found guilty of one felony count of permitting drug abuse and two felony counts of trafficking. The court imposed community control sanctions on Dr. Velasquez and fined him \$12,500. In his testimony, Dr. Velasquez stated that he sold medications to his weight-loss patients because they were embarrassed to use pharmacies. Dr. Velasquez estimated that he earned a low profit, about \$20,000 in two years. Dr. Velasquez testified that he knowingly violated the Board's rule against prescribing weight-loss medication for more than 12 weeks and that he did not think the consequences of the violation would be so great.

Mr. Kenney stated that Dr. Velasquez indicated that he stopped his weight-loss practice after the initial visit from a Board of Pharmacy investigator and that he fully cooperated with that investigation. Dr. Velasquez closed his practice in December 2013 because his patient population had decreased, but he opened a new clinic in Columbus that primarily treated Hispanics. Dr. Velasquez claimed that he had

4,000 patients at the time of his summary suspension in 2016. Mr. Kenney noted that multiple patients testified that they had good results from Dr. Velasquez's treatment.

Dr. Steinbergh returned to the meeting at this time.

Mr. Kenney stated that, based on Dr. Velasquez's passing of bad checks in the course of practice, permitting drug abuse, and two felony counts of trafficking in drugs in the course of practice, he saw no reason to suggest probationary terms in this matter. Mr. Kenney added that he sees no remorse from Dr. Velasquez. Mr. Kenney stated that with drug abuse being such a problem in today's society, he felt compelled to agree with the Hearing Examiner's Proposed Order of permanent revocation.

Dr. Steinbergh commented that when one lives and practices in a state, one must follow the rules of that state. Dr. Steinbergh stated that anyone who does not want to follow the rules because they disagree with them can move to another state.

Dr. Schottenstein stated that Dr. Velasquez justified his violation of the Board's rule by stating that he found appetite suppressants to be helpful for periods of time greater than 12 weeks and in larger doses than those suggested on the labeling. Dr. Velasquez had also indicated that many states allow prescribing of these medications for more than 12 weeks, and he therefore thought this rule would not be enforced.

Dr. Schottenstein stated that a bariatric physician, David A. Bryman, D.O., testified on Dr. Velasquez's behalf. Dr. Bryman opined that there should be no time limit on the use of any pharmacotherapy for obesity and that there were no adverse outcomes as a result of Dr. Velasquez's prescribing. Dr. Bryman also wrote a letter in defense of Dr. Velasquez which stated that caring for patients is not black-and-white, that there is an art to practicing medicine, and that judgment and experience must be taken into account. Dr. Bryman also indicated that Dr. Velasquez was convicted as a drug trafficker based on an arbitrary rule that was not based on science or study.

Dr. Schottenstein opined that Dr. Bryman's defense entirely is beside the point. Dr. Schottenstein stated that even if Dr. Velasquez's opinion of the Board's rule is correct, that does not give Dr. Velasquez the legal or moral authority to violate the rule. Dr. Schottenstein stated that the Board's rule is not a guideline for which a physician may substitute his or her judgment. Dr. Schottenstein stated that the rule is the law, and none of us can violate the law because we disagree with it. Dr. Schottenstein stated that that is the road to anarchy. Dr. Schottenstein stated that the Medical Board is a regulatory body that establishes the standard of care for the practice of medicine in Ohio; if every physician can decide for himself or herself which Board rules to follow and which to violate, then there is no standard of care for the practice of medicine. Dr. Schottenstein felt that it is important for Dr. Velasquez to understand that this is not an isolated case, but rather this case has ramification for the practice of medicine as a whole. Dr. Schottenstein opined that Dr. Velasquez would agree in general that if there is a law the one disagrees with, it is not morally or legally within one's rights to violate that law. Instead, the legislature, or in this case the Board, should be lobbied to change the law and the law should be followed in the meantime.

Dr. Schottenstein commented that he is somewhat incredulous that, having had one encounter with the Board and gotten past that encounter relatively unscathed, Dr. Velasquez was not incredibly careful about following the Board's rules going forward. Dr. Schottenstein stated that he appreciates Dr. Velasquez's life story and his care of patients historically. However, Dr. Schottenstein found it difficult to look past the fact that Dr. Velasquez has willfully violated the law more than once. Dr. Schottenstein stated that,

regrettably, he felt that he has to support the Proposed Order of permanent revocation.

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

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

The motion to approve carried.

SANDRA S. VONDEREMBSE, M.D.

Dr. Soin directed the Board's attention to the matter of Sandra S. Vonderembse, M.D. No objections have been filed. Mr. Porter was the Hearing Examiner.

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

Dr. Vonderembse was represented by her attorney, Eric Plinke.

Mr. Plinke stated that Dr. Vonderembse cannot be here today because she has already reported for her federal prison sentence. Mr. Plinke agreed that this is a serious matter and he did not disagree with the findings or comments in the Hearing Examiner's Report and Recommendation. Mr. Plinke stated that, while Dr. Vonderembse is clearly responsible for her actions, she is also a victim along with many other people who were conned and swindled into believing something that was too good to be true. Mr. Plinke stated that Dr. Vonderembse was apparently a fine and capable practitioner who was drawn in by an unbelievable story about not having to pay taxes.

Mr. Plinke opined that the Hearing Examiner's Proposed Order is reasonable. Mr. Plinke noted that the recommended time of suspension is a minimum of 18 months, which he speculated was an attempt by the Hearing Examiner to match Dr. Vonderembse's prison sentence of 18 months. Mr. Plinke stated that there is a chance that Dr. Vonderembse could be released from prison earlier than 18 months. Mr. Plinke asked the Board to consider shortening the minimum length of suspension so that if Dr. Vonderembse is released early, she will already be eligible for reinstatement. Mr. Plinke stated that this would allow Dr. Vonderembse to return to practice with the Board's permission and begin to generate revenue to pay the restitution she owes to the government.

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

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

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

Dr. Edgin briefly reviewed Dr. Vonderembse's medical education and career. Following residency, Dr. Vonderembse practiced as a psychiatrist in northwest Ohio, including at several correctional facilities. On or about June 13, 2016, an Information was filed in U.S. District Court for Northern District of Ohio that charged Dr. Vonderembse with willfully attempting to evade and defeat a large part of income tax due and owing by her, by filing and causing to be filed false and fraudulent tax returns for tax years 2009 through 2011. On or around June 10, 2016, Dr. Vonderembse signed plea agreement whereby she entered a plea of guilty to the Information. Dr. Vonderembse also agreed to pay restitution plus interest for tax years 2005 through 2011, totaling \$565,128.63, of which about \$200,000 was interest. Dr. Vonderembse was supposed to report to a facility in West Virginia to serve a sentence of 18 months, but this was delayed when she sustained significant injuries in a fall. At this time, Dr. Vonderembse is supposed to be in a facility in Fort Worth, Texas.

Dr. Edgin stated that Dr. Vonderembse had gotten involved in at least two different schemes. Over the course of several years, one Mr. Flickinger and one Mr. Allen advised Dr. Vonderembse to set up the United American Workforce, which was meant to hold money to pay Dr. Vonderembse's taxes, and the Oregon Sailors Fund, which was supposed to be tax-free. Dr. Edgin noted that Dr. Vonderembse payed \$25,000 to one advisor and several thousand dollars to the other advisor. Dr. Edgin stated that Mr. Allen and Mr. Flickinger would send letters in response to inquiries about the funds, but Dr. Vonderembse would sign the letters. Dr. Edgin stated that Mr. Flickinger eventually pleaded guilty to a charge, but Dr. Edgin was uncertain if Dr. Allen ever had trouble with the authorities

Dr. Edgin commented that Dr. Vonderembse seems to have been very naïve about what she was doing and she did not suspect a problem until representatives from the Internal Revenue Service (IRS) came to her house. Dr. Edgin stated that at that time, Dr. Vonderembse consulted a tax attorney and found that the funds that were meant to avoid taxes were fraudulent. Dr. Edgin stated that Dr. Vonderembse pled guilty to, and was convicted of, Attempted Income Tax Evasion.

Dr. Edgin stated that there are mitigating factors in Dr. Vonderembse's case. Dr. Edgin stated that there is no question that Dr. Vonderembse is guilty of the charges against her, she was duped in the scheme, as were others. As a result, Dr. Vonderembse will spend 18 months in prison, which may be suspended, and she will pay over \$500,000 in restitution. The Proposed Ordre would suspend Dr. Vonderembse's medical license for a minimum of 18 months. Dr. Edgin stated that he would strongly support any suggestion to amend the Proposed Order so that, if Dr. Vonderembse is released from prison early, she would be able to apply for reinstatement of her medical license at that time. Dr. Edgin noted that Dr. Vonderembse has admitted that she made a mistake, has expressed remorse, and has been honest during the investigation. Dr. Edgin questioned how Dr. Vonderembse would be able to pay the restitution if her medical license is suspended beyond her release from prison.

Mr. Kenney stated that there was no patient harm involved in this case. Mr. Kenney also reiterated Dr. Edgin's observation that Dr. Vonderembse had paid for the financial advice that she had acted on. Mr. Kenney questioned why Dr. Vonderembse's license should be suspended at all since she is in prison and

did not harm any patients. Mr. Kenney opined that Dr. Vonderembse is already paying enough for her actions.

Dr. Steinbergh stated that Dr. Vonderembse defrauded the government and all taxpayers. Dr. Steinbergh opined that Dr. Vonderembse has only taken responsibility for her actions because she was caught. Dr. Steinbergh disagreed with statements made by Ms. Snyder and by Dr. Vonderembse's attorney, Mr. Plinke, during the hearing that the way Dr. Vonderembse handled the situation was plausible. Dr. Steinbergh agreed that Dr. Vonderembse was susceptible to the scheme, but opined that Dr. Vonderembse had knowledge of the wrongness of the act prior to committing it. Dr. Steinbergh stated that tax evasion is a very serious matter. Dr. Steinbergh stated that she supports the Hearing Examiner's Findings of Fact, Conclusions of Law, and the Proposed Order to suspend Dr. Vonderembse's license for a minimum of 18 months. Dr. Steinbergh stated that the ethical and moral implications of a physician defrauding the government is significant to her.

Dr. Schottenstein stated that there are two possible cases that can be made in this matter. One case, which was made by the Hearing Examiner, is that Dr. Vonderembse was duped by scam artists, was credulous, was financially unsophisticated, used poor judgment, that her behavior was unrelated to her medical practice, that she has no history of prior discipline, that she cooperated with the authorities, that she was described as honest and candid during the hearing, that she takes responsibilities for her actions, and she sounds genuinely remorseful. The other case is that Dr. Vonderembse was suspicious, if not well-aware, that she was filing fraudulent tax returns over many years and that it really strains credulity to believe that she was an innocent pawn.

Dr. Schottenstein noted that Dr. Vonderembse pled guilty to fraud, is required to pay about half a million dollars in restitution, and has been sentenced to 18 months in prison. Dr. Schottenstein further noted that the government's memorandum described Dr. Vonderembse as having a blatant disregard for her obligations under the tax laws. Dr. Schottenstein stated that according to the government memorandum, criminal prosecutions of this nature are relatively rare, and therefore it is noteworthy that Dr. Vonderembse is a party in one of those rare cases. Dr. Schottenstein opined that if Dr. Vonderembse did not have intent or knowledge of her wrongdoing, then the Proposed Order is reasonable. However, if Dr. Vonderembse did have such intent or knowledge, Dr. Schottenstein opined that a more serious sanction is warranted.

Dr. Schottenstein continued that Dr. Vonderembse indicated in her testimony multiple times that she had had suspicions regarding the handling of her taxes, but she was never suspicious enough to call a tax attorney until her son was subpoenaed by a grand jury. Dr. Schottenstein questioned whether Dr. Vonderembse knew on some level that she was participating in a scheme to file false tax returns, but was comforted by the fact that she had plausible deniability, that others were doing the actual dirty work of preparing and filing the tax returns, and that she could claim ignorance of the matter. Dr. Schottenstein noted that Dr. Vonderembse also engaged in behavior to prevent the IRS from collecting her taxes by using multiple fake documents, financial instruments, and tax returns. Dr. Schottenstein added that by using a fake foundation, Dr. Vonderembse actively concealed her income and assets to prevent the government from seizing them to satisfy her tax obligation. Dr. Schottenstein stated that, to him, this is a breath-taking level of fraud and a brazen scheme to defraud the United States government.

Dr. Schottenstein stated that he believes Dr. Vonderembse was initially duped by scam artists, who can be very convincing and persuasive by nature, and that Dr. Vonderembse is not financially sophisticated with regard to tax law, and most people are not. Dr. Schottenstein further believed that Dr. Vonderembse

was presented with a situation that seemed very advantageous to her and she wanted to believe it was legitimate because she had been having tax delinquency issues even prior to engaging in this scheme. However, Dr. Schottenstein opined that the notion that Dr. Vonderembse received repeated notices from the IRS that she was out of compliance with her tax obligation, yet continued to perpetuate her behavior, is not plausible. Dr. Schottenstein further opined that it is not plausible that IRS agents would come to Dr. Vonderembse's home in 2011 and 2012 and she would refuse to meet with them. Dr. Schottenstein stated that this behavior seemed designed to keep a good thing going and to hope that the IRS would simply go away. It did not seem plausible to Dr. Schottenstein that Dr. Vonderembse would not realize that she had a problem and not take steps to rectify it.

Dr. Schottenstein stated that he appreciates the opinions that were previously expressed by Board members. However, Dr. Schottenstein likened this situation to conversations the Board has had regarding the responsibility physicians have for the truthfulness of their licensure applications. Likewise, Dr. Schottenstein stated that people are ultimately responsible for the content of their tax returns and tax documents, even if they may be prepared by someone else.

Dr. Schottenstein opined that one could make a case for the permanent revocation of Dr. Vonderembse's medical license. However, having heard the opinions of his fellow Board members, Dr. Schottenstein suggested that a stayed permanent revocation would be appropriate.

Dr. Schottenstein moved to amend the Proposed Order to include a permanent revocation and to stay that permanent revocation, leaving the rest of the Proposed Order intact. Dr. Steinbergh seconded the motion.

In response to questions from Dr. Edgin, Dr. Steinbergh stated that a stayed permanent revocation sends a message to the licensee and to all licensees that the Board takes this matter very seriously and had considered a permanent revocation. Dr. Factora asked about the implications of including a stayed permanent revocation in the Order with regard to Dr. Vonderembse's practice, insurance, and her ability to develop an income so that she can pay her restitution. Dr. Steinbergh replied that it is the same Order, but with stronger language.

Dr. Edgin stated that it is not uncommon for people to be duped by scam artists. Dr. Edgin further stated that many people have others prepare their taxes because they do not understand tax law. Dr. Edgin stated that even intelligent people have been subject to financial scams and that naivete is not uncommon. Dr. Schottenstein noted that the scheme went on for multiple years. Dr. Edgin observed that Dr. Vonderembse had received letters from her advisors indicating that there were no problems. Mr. Kenney commented that he could not imagine increasing the sanction of the Proposed Order.

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

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

Dr. Schachat	- nay
Dr. Factora	- nay
Dr. Edgin	- nay
Dr. Bechtel	- abstain

The motion to amend did not carry.

Dr. Steinbergh suggested that Dr. Vonderembse be required, in addition to the personal ethics course in the Proposed Order, to take a course in office management which would include IRS tax requirements for medical offices or other small businesses. Dr. Steinbergh stated that this course would educate Dr. Vonderembse on her financial responsibilities as a taxpayer. Dr. Steinbergh noted that Dr. Vonderembse had gotten into this situation because, as a consultant, she had been required to pay her taxes on her own.

Dr. Steinbergh moved to add a requirement under the Probationary terms that Dr. Vonderembse take a course in office management which would include IRS tax requirements for medical offices or other small businesses. Dr. Schottenstein seconded the motion.

Mr. Giacalone stated that he wanted to move that the minimum time of suspension be reduced from 18 months to 12 months. Mr. Taylor stated that the proposed amendment is not germane to the pending motion.

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

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

The motion to amend did not carry.

Dr. Steinbergh moved to reduce the minimum time of suspension from 18 months to 12 months. Dr. Steinbergh further moved to add a requirement under the Probationary terms that Dr. Vonderembse take a course in office management which would include IRS tax requirements for medical offices or other small businesses. Dr. Factora seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye

Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- nay
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- abstain

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Sandra S. Vonderembse, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to approve carried.

The Board took a recess at 12:35 p.m. The meeting resumed at 1:30 p.m. Dr. Saferin and Dr. Bechtel were no present when the meeting resumed.

EXECUTIVE SESSION

Mr. Giacalone moved to go into Executive Session for the purpose of preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Dr. Edgin seconded the motion. A vote was taken:

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

Dr. Schachat - aye
Dr. Factora - aye
Dr. Edgin - 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, Mr. Fais, and Ms. Loe in attendance.

Dr. Saferin and Dr. Bechtel entered the meeting during the Executive Session.

The Board returned to public session.

REPORTS AND RECOMMENDATIONS

MICHAEL GARBER, M.D.

Dr. Steinbergh moved to remove the matter of Michael Garber, M.D., from the table. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Ms. Anderson provided the Board members with a written version of Mr. Giacalone's previous motion to amend. The proposed amendment would indefinitely suspend Dr. Garber's Ohio medical license and stay the suspension. Ms. Anderson commented that the proposed amendment does not meet all of the Board's impairment rules.

Dr. Schottenstein opined that the proposed amendment is tantamount to no order at all. Dr. Schottenstein commented that under this proposal, Dr. Garber could move back to Ohio next week and begin practicing. Ms. Anderson noted that Dr. Garber's Ohio medical license is lapsed due to non-renewal, but he could easily reinstate the license by simply paying a fee if the license is lapsed for less than two years. In answer to questions from the Board, Ms. Anderson stated that the Board could open an investigation if Dr. Garber chooses to reinstate his license in the two-year window, but the reinstatement of his license would still be effective upon payment of the appropriate fees.

Dr. Steinbergh expressed concern that under the proposed amendment, Dr. Garber would be able to resume practice in Ohio. Mr. Giacalone stated that, practically speaking, Dr. Garber will not return to practice in Ohio after this experience and will likely never step foot in Ohio again. Dr. Schottenstein commented that the same effect can be achieved by indefinitely suspending Dr. Garber's license without the stay. Mr. Giacalone replied that without a stay of the suspension, this matter will be on Dr. Garber's record. Ms. Anderson commented that any Order, even with a stay, is reported to the National Practitioner Databank.

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

It is hereby ORDERED that:

SUSPENSION OF CERTIFICATE: The certificate of Michael Garber, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time. Such suspension is **STAYED**.

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

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

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

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Michael Garber, M.D. Mr. Giacalone seconded the motion. A vote was taken:

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

The motion to approve carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

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

KATHLEEN COULING HOWELL, M.D.

Dr. Soin stated that Dr. Howell has applied for restoration of her Ohio medical license. The Board notified Dr. Howell that it proposed to approve her application and restrict her license to participation in a six-month preceptorship.

Dr. Steinbergh moved to find that the allegations set forth in the May 10, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Dr. Howell's application for restoration of her Ohio medical license, pending successful completion of the Special Purpose Examination (SPEX) or specialty board recertification examination; that upon restoration, Dr. Howell's license is immediately restricted to participation in a six-month preceptorship that includes three months of direct observation and supervision and three subsequent months of weekly chart reviews of 10 charts per week; and that upon Dr. Howell's submission of a written report from the preceptor that she has practiced satisfactorily and in accordance with acceptable and prevailing standards of care, said limitations and restrictions shall be terminated. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

HUGH KELLEY RILEY, M.D.

Dr. Soin stated that Dr. Riley has applied for a license to practice medicine and surgery in Ohio. The Board notified Dr. Riley that it proposed to approve his application and restrict his license to the practice of administrative, non-clinical medicine.

Dr. Steinbergh moved to find that the allegations set forth in the May 10, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Dr. Riley's application for licensure, and immediately restricting and limiting his license to administrative, non-clinical medicine; and that those restrictions and limitation shall terminate upon evidence acceptable to the Board or its designee that Dr. Riley has successfully recertified his American Board of Medical Specialties certification in pediatrics and completed a Board-approved preceptorship. Dr. Saferin seconded the motion. A vote was taken:

ROLL CALL:

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

The motion carried.

DOUGLAS JOHN MORIN, M.D.

Dr. Soin stated that the matter of Dr. Morin is disciplinary in nature, and therefore the Secretary and Supervising Member may not vote. In the matter of Dr. Morin, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

Dr. Soin stated that on March 8, 2017, the Board issued a Notice of Opportunity for Hearing to Dr. Morin stating that the Medical Board intended to consider disciplinary action regarding his license to practice medicine in Ohio. On or about November 16, 2016, a Petition for Disciplinary Action and Temporary License Suspension was filed with the Nebraska Department of Health and Human Services alleging that with respect to the care and treatment of three patients, Dr. Morin's acts or conduct constituted negligent and unprofessional conduct, and it was concluded that his continued practice of medicine would constitute an immediate danger to public health and safety. On November 21, 2017, the Nebraska Department of Health and Human Services issued an Order for Temporary Suspension of License to Practice Medicine and Surgery against Dr. Morin's license.

Dr. Steinbergh stated that she had considered both revocation and permanent revocation in this case. Dr. Steinbergh stated that this case involves three very significant patient cases in 2014. Dr. Morin was asked to be assessed by the Center for Personalized Education for Physicians (CPEP). Following the assessment, CPEP felt that Dr. Morin would require a residency or full supervision if he were to practice due to concerns about his knowledge base. Dr. Steinbergh noted that Dr. Morin struggled academically in medical school, but he ultimately passed his board examinations. Dr. Steinbergh also noted that Dr. Morin has very professional habits and was considered hard-working. In 2009, Dr. Morin resigned from his anesthesiology residency secondary to academic issues.

Dr. Steinbergh stated that she tends to favor non-permanent revocation, which would allow him to reapply if there is an improvement in the future which may occur due to his professional habits and hard-working nature. Dr. Soin agreed.

Dr. Steinbergh moved to find that the allegations set forth in the March 8, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, revoking Dr. Morin's license to practice medicine and surgery in Ohio. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion carried.

EXECUTIVE SESSION

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

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- 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, Mr. Fais, Ms. Loe, Ms. Debolt, the Enforcement Attorneys, the Assistant Attorneys General, Ms. Murray, Ms. Moore, Mr. DePew, and Mr. Taylor in attendance.

The Board returned to public session.

RATIFICATION OF SETTLEMENT AGREEMENTSWILLIAM RUDOLPH BAUER, M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Consent Agreement with Dr. Bauer. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

CHRISTOPHER PHILIP CAIOLA, M.D. – PERMANENT SURRENDER OF TRAINING CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Dr. Caiola. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

CARI RENEE CORFMAN, L.M.T. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Ms. Corfman. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion to ratify carried.

ANN DOUGLAS DECLUE, M.D. – VOLUNTARY PERMANENT RETIREMENT FROM THE PRACTICE OF MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the Proposed Voluntary Permanent Retirement with Dr. DeClue. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion to ratify carried.

ANSHULI GUPTA, M.D. – STEP I CONSENT AGREEMENT

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

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Mr. Gonidakis	- aye

Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- aye

The motion to ratify carried.

PERRY MICHAEL KALIS, M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Dr. Kalis. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

JAMES A. MARSH, JR., D.O. – STEP II CONSENT AGREEMENT

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

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

The motion to ratify carried.

AIMEE ANN RACZ, M.D. – PERMANENT WITHDRAWAL OF APPLICATION FOR MEDICAL LICENSURE

Dr. Steinbergh moved to ratify the Proposed Permanent Withdrawal with Dr. Racz. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

FRANK GERARD STODDARD, III, D.P.M. – SUPERSEDING STEP I CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Superseding Step I Consent Agreement with Dr. Stoddard. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

RONALD JOSEPH SANKER, D.O. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Dr. Sanker. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

RAJIVE TANDON, M.D. – STEP I CONSENT AGREEMENT

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

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

The motion to ratify carried.

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

At this time the Board read and considered the proposed Notice of Summary Suspension and Opportunity for Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Richard M. Kincaid, 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. Schottenstein seconded the motion. A vote was taken:

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

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

The motion to approve carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to John Robert Capurro, M.D.; and Tim Valko, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to send carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Janet Lynn Rice, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to send carried.

OPERATIONS REPORT

Human Resources: Mr. Groeber stated that one of the Board's vacant positions is being reclassified to allow for the hiring of an additional enforcement attorney, which will help with the volume of materials that the Enforcement Section is working on. Mr. Groeber stated that a licensure position has also been posted and an internal candidate will fill that role.

Investigator Firearms: Mr. Groeber stated that at the June Board meeting, the Board expressed a desire for management to continue with the appropriate measures to remove firearms from Medical Board investigators, with a target date of September 13, 2017. Mr. Groeber stated that staff has continued to work with the union to implement the changes directed by the Board. An initial draft of an updated investigator manual has been produced, and a final version will be completed in August. Mr. Groeber noted that at this time, the Board has maintained the investigators' authority to carry firearms.

Budget Update: Mr. Groeber stated that Fiscal Year 2017 ended on June 30 and the Board's finances are very good. Mr. Groeber noted that a large payment was made last year towards the Board's e-license system development, but that expenditure has been essentially been recouped.

Information Technology: Mr. Groeber stated that the Board's e-license system was released on June 19 and all physician licensure was moved to the new portal. Physicians can now log in and renew their licenses or apply for initial licensure with the new system. Mr. Groeber stated that some members of the licensure staff came into the office on a Saturday morning to answer licensee questions and help with any technical issues. Mr. Groeber also noted that Ms. Pollock launched a YouTube channel with instructional videos on how to use the new system; the channel has had 1,300 hits so far.

Communications and Outreach: Mr. Groeber stated that the Operations Report lists the Board's publications, presentations, and meetings from the previous month.

Agency Operations: Mr. Groeber stated that the initial statistics showed a slight dip in licensure numbers for the previous month, but recent updated data shows that licensure is actually up about 20% over last year. Mr. Groeber noted that there were ten expedited licenses issued last month, a significant drop from June 2016, but the processing time has dropped from 33 days to 15 days. Mr. Groeber stated that the processing time for standard licensure is 34 days. The total number of open complaints is slightly more than 1,100.

Proposed Order Language for Fines: Mr. Groeber stated that in response to comments made at last month's Board meeting, he and Mr. Porter have developed two options for an acceptable format for the Monetary Fine section of Proposed Orders. Mr. Groeber briefly reviewed Format Option 1 and Format Option 2. Mr. Groeber stated that we reviewed these proposed formats with the Finance Committee this morning, and the Committee unanimously favored Option 1.

After a brief discussion, the Board indicated that it preferred Option 1, which lists the appropriate portion of the fining guidelines for the violation(s) in question and list the minimum, standard, and maximum fine for the violation(s). Also under Option 1, the Discussion of Proposed Order section will not give any opinion or speculation regarding the ability of the licensee to pay the fine.

Meet the Board Staff: Mr. Groeber stated that there was a recent recommendation that Board staff be brought into Board meetings to interact with Board members and give a larger view of the staff's day-to-

day operations. Mr. Groeber stated that he intends to begin the program at the August Board meeting with the Licensure staff.

Issues for Further Discussion: Mr. Groeber stated certain issues have arisen that warrant further discussion and Board member feedback. Mr. Groeber stated that Mr. LaCross will arrange meetings with individual Board members to discuss a range of topics, including the proposed change in continuing medical education (CME) requirements and the effectiveness of committees. Mr. Groeber stated that the Board members' thoughts and comments will be aggregated and brought back to the full Board for future discussion.

Board Consolidation: Mr. Groeber stated that the consolidation of the Ohio Board of Dietetics and a portion of the Ohio Respiratory Care Board into the Medical Board was approved as part of the budget bill. Effective January 21, 2018, the Medical Board will regulate respiratory care therapists and dietitians in Ohio. Mr. Groeber stated that these two groups together comprise about 11,000 licensees. As a result of the consolidation, the Medical Board will gain about four additional staff from those two boards. Mr. Groeber commented that Dr. Soin met last week with the Presidents of those two boards and had a constructive dialogue. Ms. Pollock drafted a letter, signed by Dr. Soin and the appropriate board president, to send to these two licensee groups to welcome them to the Medical Board and explain the resources that will be available to them. Mr. Nealis, the Medical Board's project manager, will make sure the new licensee groups are properly integrated into the Medical Board's processes by January 18.

Dr. Bechtel asked if there will be consultants available to the board regarding matters related to dietetics. Mr. Groeber replied that the statute requires the formation of advisory councils for both dietitians and respiratory care therapists to advise the Board on matters relating to those professions. Mr. Groeber also commented that the Board can contract for experts in those fields for purposes such as patient chart review.

Dr. Bechtel commented that the prospect of regulating dietitians provided much food for thought. Most individuals in the meeting got it.

Dr. Steinbergh asked which Board committees would be responsible for issues related to dietetics and respiratory care. Ms. Debolt replied that issues regarding licensure, scope of practice, and other topics would be handled by the appropriate committee.

RULES AND POLICIES

Ms. Debolt stated that there have been two public hearings on proposed rules since the last Board meeting, and both hearing reports have been provided to Board members. The proposed rules concerned physician licensure, prescribing for chronic pain, the emeritus rules, and mental and physical impairment. There were no comments made at the public hearings. Ms. Debolt stated that these rules will be ready for adoption by the Board in August.

Ms. Debolt stated that the public rules hearing on the Board's proposed medical marijuana rules was held on Monday, and the report of the hearing just became available during this meeting. Ms. Debolt provided a copy of the report for each Board member. Ms. Debolt stated that three public comments are attached to the report. Ms. Debolt commented that the staff is not recommending any changes to these proposed rules based on the comments. However, Ms. Anderson noted that one change has been made to reflect a provision that was included in the budget bill and signed into law by the Governor. Specifically,

physicians will no longer be required to state that the benefits of medical marijuana outweigh the risks whenever they recommend medical marijuana. Dr. Schottenstein commented that no physician would recommend marijuana if they feel the risks outweigh the benefits. Dr. Soin agreed and stated that this change will probably have no practical impact besides removing one piece of required documentation for physicians who recommend medical marijuana.

REPORTS BY ASSIGNED COMMITTEES

FINANCE COMMITTEE

FISCAL REPORT

Ms. Loe stated that the Board's revenue in May was \$1,100,000 and expenses were \$768,000. The Board's cash balance at the end of May was \$4,300,000. Ms. Loe stated that Fiscal Year 2017 ended on June 30 and final numbers from that fiscal year are not yet available. However, Ms. Loe commented that the Board probably underspent its 2017 spending authority by more than \$1,000,000.

Mr. Giacalone exited the meeting at this time.

Ms. Loe stated that the Board's revenue was greater than projected because many physicians renewed their licenses early in order to avoid any potential problems with the e-licensure system that went into effect in June. Ms. Loe estimated that the Board's cash balance at the end of Fiscal Year 2017.

Ms. Loe stated that for the biennium which began on July 1, the Board will have a budget of about \$10,100,000 for Fiscal Year 2018 and \$11,000,000 for Fiscal Year 2019. Ms. Loe stated that these budgets include about \$200,000 for Fiscal Year 2018 and \$700,000 for Fiscal Year 2019 to support the new dietetics and respiratory care licensees and their functions. Ms. Loe stated that the Dietician and the Respiratory Care Boards have always brought in more revenue than they have spent, but the Medical Board will not have funds up front at the beginning of the merger.

ACCOUNTS RECEIVABLE

Ms. Loe reported that a \$7,500 fine and a \$13,000 fine from last month's Board meeting have been paid. Another fine for \$3,000 which the Board approved will not be due until the end of July.

Dr. Steinbergh exited the meeting at this time.

BOARD MEMBER COMPENSATION

Mr. Kenney stated that the Finance Committee has recommended an increase in Dr. Rothermel's compensation by \$0.70 per hour.

Dr. Saferin moved to approve an increase of \$0.70 per hour in Dr. Rothermel's compensation. Dr. Bechtel seconded the motion.

Ms. Loe noted that Dr. Rothermel was appointed to another term on the Medical Board. Under the Board's *per diem* policy, the Board can authorize an increase in a Board member's compensation when the member is reappointed, with the approval of the Governor's Office. Ms. Loe stated that the

Governor's office has approved this proposed increase. Ms. Loe stated that it is a 4% increase, which is a standard raise for Board employees. Mr. Groeber stated that the Finance Committee has confirmed that the Board has the funds to support the increase.

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

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

The motion carried.

APPROVAL OF OUT-OF-STATE TRAVEL

Mr. Groeber stated that he has been invited to the Annual Meeting of the Federation of State Massage Therapy Boards (FSMTB) in Tampa as a voting delegate. Mr. Kenney stated that the FSMTB will pay Mr. Groeber's travel expenses, but the Board must approve the travel.

Dr. Saferin moved to approve Mr. Groeber to attend the Annual Meeting of the FSMTB in Tampa, Florida, and that his attendance at the meeting is in conjunction with his duties as the Executive Director of the State Medical Board of Ohio. Dr. Bechtel seconded the motion.

Mr. Giacalone returned to the meeting at this time.

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

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

The motion carried.

POLICY COMMITTEELEGISLATIVE UPDATE

Mr. LaCross stated that the Governor has signed the budget bill and it will become effective September 28, 2017.

Dr. Steinbergh returned to the meeting at this time.

Mr. LaCross stated that the majority of the changes to the budget bill that was introduced by the Board was kept in the final bill. Mr. LaCross briefly reviewed those changes with the Board:

- The initial licensure fee for allopathic, osteopathic, and podiatric physicians are reduced from \$335 to \$305.
- All certificates to practice are now licenses to practice.
- The licensee renewal cycle will be aligned with the continuing medical education (CME) or continuing education (CE) cycle.
- Renewal notices will be sent one month in advance instead of three months in advance.
- The requirement that physician list their collaborating nurses on the renewal application has been removed.
- The license reinstatement/restoration fee and the late penalty fee are now combined into one fee.
- Physician Assistants will be added to the licensure verification system and \$50 will be charged for those verifications, which matches the fee paid by physicians.
- Genetic counselors and radiologist assistants are added to the Board's background dropdown bar for background checks.
- Podiatric physicians have been added to the Clinical Research Faculty Certificate.
- Members of the Physician Assistant Policy Committee (PAPC) will no longer be paid employees of the Board; instead, PAPC members will be reimbursed for any expenses incurred in the course of their duties.
- The licensure statute's phrase "eligibility for examination" will be replaced with "eligibility for licensure."
- Massage Therapists, Cosmetic Therapists, and other professionals working in salons will be required to provide an electronic version of their license upon request.
- Dieticians and respiratory care therapists will become licensees of the Medical Board.
- The sections regarding the administrative fee for CME violations have been aligned.

Regarding the administrative fee for CME violations, Dr. Steinbergh asked how long the licensee would have to fulfill his or her CME requirements. Mr. LaCross answered that that is something the Board can address through its processes in each case.

Mr. LaCross added that the budget bill also included provision regarding medication-assisted treatment (MAT) for drug and alcohol addiction. Mr. LaCross stated that the Senate altered this amendment so that a physician is required to provide a patient with all information to a patient seeking MAT, not just information regarding their specific kind of addiction. In addition, failure to comply with any provisions, regardless of whether the practitioner has an X number on their DATA waiver, will result in a drop in the maximum number of patients that physician can treat to 30. Mr. LaCross stated that this will be very onerous on physicians and will restrict physicians from providing MAT. Mr. LaCross stated that there is support to change these provisions in the Fall.

Mr. LaCross also added that the budget bill changed the Board's training certificates from a 1-year certificate to a 3-year certificate with a one-time renewal. Mr. LaCross stated that, unfortunately, the Legislative Services Commission missed the accompanying fee increase, so the 3-year certificate still costs only \$35 instead of the planned \$130 with a \$100 renewal. Mr. LaCross stated that this oversight will be rectified in the Fall before most applicants apply. Mr. LaCross noted that trainees can apply for full medical licensure at any point during their education.

Dr. Steinbergh stated that she has concerns about House Bill 273, regarding physician board certification. Dr. Steinbergh related that the bill could not be required to be specialty board-certified for purposes of employment, admitting privileges, or surgical privileges at a hospital or healthcare facility. Dr. Steinbergh stated that medical centers throughout Ohio, especially large medical centers, require physicians to be board-certified. Mr. LaCross stated that this bill was drafted by Representative Gavarone in response to concern by one of her constituents who is a cardiac physician. Mr. LaCross stated that the Ohio Hospital Association and the physician associations are opposed to this bill and it is not expected to advance. Dr. Steinbergh opined that the Medical Board should be involved in that discussion, stating the board certification is very important.

Dr. Saferin asked if the proposed changes to CME requirements will also afford an opportunity to revisit the recently-passed law that provides CME credit for treating the indigent and uninsured. Mr. LaCross replied that the two issues are intertwined, so there will be an opportunity to revisit that law.

RULES ON ACUTE OPIOID PRESCRIBING

Ms. Anderson stated that the proposed rules on acute opioid prescribing will have their public hearing with the Joint Committee on Agency Rule Review (JCARR) on July 26.

RULE 4731-2-01, PUBLIC NOTICE OF RULES PROCEDURES

Ms. Anderson stated that the Board had voted to file this proposed rule with the Common Sense Initiative (CSI). However, further examination revealed that it is unnecessary to file the rule with CSI because it only deals with the Board's processes and has no impact on small businesses. Therefore, Ms. Anderson asked that the proposed rule be filed with the Joint Committee on Agency Rule Review (JCARR)

Dr. Steinbergh move to file proposed Rule 4731-2-01 with JCARR. Mr. Giacalone seconded the motion. All members voted aye, except Mr. Gonidakis, who abstained. The motion carried.

FSMB RESOLUTION ON ACUTE OPIOID PRESCRIBING

Dr. Schottenstein stated that when he served as a voting delegate at the most recent Annual Meeting of

the Federation of State Medical Boards (FSMB), it occurred to him that the FSMB had guidelines for chronic opiate prescribing. However, there were no guidelines for acute opioid prescribing like those advanced in Ohio under the Governor's leadership. Dr. Schottenstein opined that similar guidelines would be productive on the national level. Dr. Schottenstein stated that he has created a rough draft of such guidelines for discussion by the Policy Committee and the Board next month.

Dr. Schachat exited the meeting at this time.

LICENSURE COMMITTEE

LICENSURE APPLICATION REVIEWS

LORI BETH HOPPER, M.T.

Dr. Saferin stated that Ms. Hopper has applied for restoration of her Ohio massage therapy license. Ms. Hopper has not practiced massage therapy since her license expired in 2012. The Committee recommends approval of Ms. Hopper's application.

Dr. Saferin moved to approve Ms. Hopper's request for Ohio licensure, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEX) within six months from the date of mailing of the Notice of Opportunity for Hearing. Dr. Steinbergh seconded the motion.

A vote was taken:

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

The motion carried.

GERALD THOMAS BOWEN, M.D.

Dr. Saferin stated that Dr. Bowen has applied for restoration of his Ohio medical license. Dr. Bowen has not engaged in the clinical practice of medicine since July 2005. Dr. Bowen is a 1960 graduate of the George Washington University School of Medicine and Health Science, he is a retired family medicine physician, and he does not hold board certification.

Dr. Schachat returned to the meeting at this time.

Dr. Saferin stated that, according to Dr. Bowen's application, he would be practicing in an Ohio clinic one to two days per week in order to supplement his income. Dr. Bowen is current with the continuing medical

education (CME) requirements.

Dr. Saferin stated that, after much discussion, the Committee recommends approval of Dr. Bowen's application, pending passage of the Special Purpose Examination (SPEX) or specialty board recertification examination, and requirements related to a preceptorship.

Dr. Saferin moved that the application of Gerald Thomas Bowen, MD for restoration of his license to practice medicine and surgery in the State of Ohio be approved, conditioned upon passage of the SPEX or specialty board recertification examination within twelve months from the date of mailing of the Notice of Opportunity for Hearing. Dr. Saferin further moved that upon restoration of Dr. Bowen's license, the license shall be restricted to a six-month preceptorship to include Board approval of the designated preceptor, two weeks of observation by Dr. Bowen to assess abilities with patient care, one month of direct supervision by the preceptor, three months of on-site supervision by the preceptor, and six weeks of weekly chart review of ten charts per week. Dr. Saferin further moved that at the conclusion of the preceptorship, the preceptor shall provide a written report to the Board or its designee indicating that Dr. Bowen is able to practice in accordance with acceptable and prevailing standards of care. Dr. Saferin further moved that upon successful completion of the preceptorship, the restrictions on Dr. Bowen's license shall terminate. Dr. Steinbergh seconded the motion. A vote was taken:

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

The motion carried.

COSMETIC THERAPY EXAMINATION RULES

Dr. Saferin stated that the proposed Cosmetic Therapy rules would establish the Certified Clinical Electrologist (CCE) Examination, offered by the Society for Clinical and Hair Removal, as the Board's licensing examination for cosmetic therapists. Dr. Saferin stated that these proposed rules have been circulated to interested parties, including all currently licensed cosmetic therapist, for comment. Dr. Saferin stated that, while the Board staff does not recommend any amendments based on the public comments, some technical amendment have been made to proposed Rules 4731-1-19(A) and (B), as suggested by Dr. Schottenstein.

Dr. Saferin moved to approve proposed rules 4731-1-01, 4731-1-11, 4731-1-13, 4731-1-18, and 4731-1-19 for filing with the Common Sense Initiative (CSI) as presented. Dr. Steinbergh seconded the motion. A vote was taken:

ROLL CALL:

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

The motion carried.

PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE

Dr. Steinbergh stated that the Physician Assistant Policy Committee (PAPC) met this month, but it did not have a quorum to discuss the physician assistant formulary because both pharmacist members of the Committee were absent. However, a quorum was present for other discussion purposes. Dr. Steinbergh reported that Dr. Curt Gingrich has been elected the new Chair of the PAPC. Dr. Steinbergh stated that Dr. Gingrich, who has been a very active member of the PAPC since his appointment in 2015, is tasked as the new Chair with improving the Committee's efficiency and effectiveness.

REVIEW OF RULE 4730-1-06

Dr. Saferin moved to file proposed Rule 4730-1-06 with the Common Sense Initiative. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:

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

The motion carried.

COMPLIANCE COMMITTEE

Mr. Taylor stated that on June 14, 2017, the Compliance Committee met with Michael T. Bangert, M.D.;

and Aubrey D. Winkler, P.A.; and moved to continue them under the terms of their respective Board actions. The Compliance Committee also accepted Compliance staff's report of conferences on May 8 & 9, 2017.

TREATMENT PROVIDER APPLICATION

LUMIERE HEALING CENTERS

Mr. Taylor stated that the Compliance Committee has recommended approval of the Application for a Certificate of Good Standings as a Treatment Provider for Impaired Practitioners from Lumiere Healing Centers.

Dr. Bechtel moved to approve the Application for a Certificate of Good Standings as a Treatment Provider for Impaired Practitioners from Lumiere Healing Centers. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

PROBATIONARY REQUESTS

Dr. Soin advised that at this time he would like the Board to consider the probationary requests on today's consent agenda. Dr. Soin asked if any Board member wished to discuss a probationary request separately. Dr. Schottenstein wished to discuss the probationary request of Aubrey D. Winkler, P.A., separately.

Dr. Schottenstein noted that on the Board's documentation for Ms. Winkler, under the "Personal History" section, it states, "The psychiatrist aggressively pursued her and she had an employment contract ..." Dr. Schottenstein suggested amending that phrase to "The psychiatrist aggressively recruited her and she had an employment contract ..." so that some taking a cursory look at this document would not get the wrong impression. Ms. Murray agreed.

Mr. Gonidakis exited the meeting at this time.

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

- To grant Thomas B. Benz, M.D.'s request for discontinuance of the drug log requirement;
- To grant Courtney D. Bonner, D.O.'s request discontinuance of the chart review requirement;
- To grant James C. English, M.D.'s request for discontinuance of the chart review requirement;
- To grant Mary Jo-Ellen Erickson, M.D.'s request for reduction in mental health treatment frequency; and reduction in meeting attendance to two meetings per week with a minimum of ten meetings per month;
- To grant James T. Lutz, M.D.'s request to reduce the patient chart reviews to ten per month; and to reduce personal appearances to every six months;
- To grant Abdul M. Orra, D.O.'s request for approval of *Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*, administered by Case Western Reserve University, to fulfill the medical records course requirement; and approval of *Intensive Course in Controlled Substance Prescribing; Pain, Anxiety, Insomnia*, administered by Case Western Reserve University, taken in November 2016, to fulfill the controlled substances prescribing course requirement;
- To grant Shane T. Sampson, M.D.'s request for approval of *Intensive Course in Controlled Substance Prescribing: Pain, Anxiety, Insomnia*, administered by Case Western Reserve University, to fulfill the controlled substance prescribing course requirement; and approval of *Intensive course in Medical Ethics, Boundaries, and Professionalism*, administered by Case Western Reserve University, to fulfill the professional boundaries course requirement;
- To grant Aubrey D. Winkler, P.A.'s request for approval of *Intensive Course in Medical Ethics, Boundaries and Professionalism*, administered by Case Western Reserve University, to fulfill both the personal/professional ethics course requirement and the boundaries course requirement; and
- To grant Kevin G. Baldie, M.D.'s request for approval of Lori A. Pettinger, M.D., to conduct a psychiatric return-to-work assessment, required for reinstatement; and to consider the previously-submitted return-to-work assessment, pending assessor approval.

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

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

The motion carried.

FINAL PROBATIONARY APPEARANCES

RHONDA L. BEVER, M.T.

Ms. Bever was appearing before the Board pursuant to her request for release from the terms of her January 14, 2015 Consent Agreement. Dr. Soin reviewed Ms. Bever's history with the Board.

In response to questions from Dr. Soin, Ms. Bever stated that she is currently working part-time out of her home when she is not traveling with her husband. Ms. Bever explained that her husband is president of a non-profit organization in Haiti, so she often travels to Haiti with him or travels around the United States for fundraising purposes. Ms. Bever stated that in the future, she will no longer rely on a renewal notice in the mail to remind her to renew her massage therapy license. Instead, Ms. Bever has put reminders on her iPhone, iPad, and laptop computer. Ms. Bever stated that she has also recruited her husband to help her remember when to renew.

Dr. Edgin moved to release Ms. Bever from the terms of her January 14, 2015 Consent Agreement, effective July 13, 2017. Mr. Giacalone seconded the motion. A vote was taken:

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

The motion carried.

Ms. Bever thanked Enforcement Attorney James Roach and Compliance Officer Angela Moore for all the help they have given her.

CAREY K. GROSS, D.O.

Dr. Gross was appearing before the Board pursuant to her request for release from the terms of her April 11, 2012 Consent Agreement. Dr. Soin reviewed Dr. Gross' history with the Board.

Responding to questions from Dr. Steinbergh, Dr. Gross stated that she currently practices in Fort Smith, Arkansas, as a urogynecologist in a multi-specialty practice. Regarding her recovery, Dr. Gross stated that she has a good support system, attending rehabilitation meetings regularly, and acts as a sponsor for others. Dr. Gross also stated that she has worked the 12-Step program several times. Dr. Gross stated that she does not intend to change anything about her program after she is released from probation, aside

from the mechanics of having to call in and similar actions. Dr. Gross stated that she is currently being monitored by the Arkansas State Medical Board on behalf of the Ohio Board, and she will be release from that monitoring when she is released from her Ohio probation.

Dr. Schottenstein noted that Dr. Gross had gone into treatment, became sober, and then relapsed in 2010. Dr. Schottenstein asked how Dr. Gross will prevent another relapse in the future. Dr. Gross answered that at the time of her initial addiction, she also had other health problems. Dr. Gross speculated that she may have not been completely convinced that she was an addict and that her drinking had been the result of these other health problems. When Dr. Gross relapsed in 2010, it became fully apparent to her that she was an alcohol and that her other health problems had played no role in her addiction. Dr. Schottenstein observed that Dr. Gross had a history of depression and anxiety and asked if she is currently in treatment for those issues. Dr. Gross replied that she has only struggled with depression and anxiety when she's had an active addiction and not when she is sober. Dr. Gross stated that she has the normal stressors of normal life, but she has been doing will with her social support and rehabilitation meetings.

Dr. Steinbergh moved to release Dr. Gross from the terms of her April 11, 2012 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

WESLEY F. HARD, M.D.

Dr. Hard was appearing before the Board pursuant to his request for release from the terms of the Board's Order of November 10, 2010. Dr. Soin reviewed Dr. Hard's history with the Board.

Responding to questions from Dr. Soin, Dr. Hard stated that he currently works four days per week in an urgent care and one day per week in a Suboxone clinic. Dr. Hard stated that the urgent care has been bought by another entity which is going to convert it into a primary care practice. Dr. Hard stated that he continues to attend rehabilitation meetings and he does not have cravings for opioids. Dr. Hard commented that he had often used work as a drug and was a workaholic, and then added drugs when work was not enough. Dr. Hard stated that he now avoids being a workaholic and he only works about 40 hours per week. Dr. Hard stated that he exercises regularly, engages in prayer and meditation, and has good support. Dr. Hard stated that he enjoys his rehabilitation meetings and will continue attending them after he is released from probation. Dr. Hard stated that he has sponsored fellow addicts in the past, but he is not currently sponsoring anyone.

Dr. Schottenstein noted that Dr. Hard had overdosed on sleeping pills several years ago and asked if the overdose had been intentional. Dr. Hard replied that the overdose had not been intentional and he has never had suicidal ideation.

Dr. Steinbergh moved to release Dr. Hard from the terms of the Board's Order of November 10, 2010, effective July 14, 2017. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

JERRY G. PURVIS, M.D.

Dr. Purvis was appearing before the Board pursuant to his request for release from the terms of his August 8, 2012 Consent Agreement. Dr. Soin reviewed Dr. Purvis' history with the Board.

Dr. Bechtel exited the meeting at this time.

In response to questions from Dr. Steinbergh, Dr. Purvis stated that his neurosurgeon had advised him not to return to the practice of surgery due to problems with his neck and back. Consequently, Dr. Purvis stated that he is essentially giving up the practice of medicine. Dr. Purvis stated that he has started a company called My Baby Prints which sells kits to make footprints of babies and then puts the footprints on items such as shirts, cups, jewelry, and hats. Dr. Purvis stated that he also has a patent on a deer feeder which he is about to put on the market.

Dr. Steinbergh asked if Dr. Purvis' disability prevents him from doing anything in the medical field. Dr. Purvis responded that due to his medical issues, he does not intend to return to medicine and possibly endanger patients. However, Dr. Purvis intends to fulfill his continuing medical education (CME) requirements and maintain his board certification, stating that he worked hard to gain that certification. Dr. Schottenstein asked if Dr. Purvis has given thought to going into a field of medicine that is more sedentary than surgery. Dr. Purvis replied that he is done with medicine and he is focusing on being a father. Dr. Purvis stated that he still attends Alcoholics Anonymous meetings three times per week, which has encouraged him to have a balance between work and family.

Dr. Schottenstein noted that Dr. Purvis has seen a psychiatrist in the past. Dr. Purvis stated that he did see a psychiatrist as a requirement of his Consent Agreement, but he has never had a psychiatric diagnosis.

Dr. Steinbergh moved to release Dr. Purvis from the terms of his August 8, 2012 Consent Agreement, effective August 9, 2017. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

ALAN DALE SABINO, M.D.

Dr. Sabino was appearing before the Board electronically pursuant to his request for release from the terms of his July 11, 2012 Consent Agreement. Dr. Soin reviewed Dr. Sabino's history with the Board.

In response to questions from Dr. Soin, Dr. Sabino stated that he is currently a full-time chairman and anesthesiologist at a hospital in California. Dr. Sabino reported that his recovery is going well and he attends bi-weekly meetings of a caduceus group. Dr. Sabino thanked the Board for giving him a second chance to practice medicine. Dr. Sabino stated that he has no plans to change his recovery program after his release. Dr. Sabino noted that he is still being monitored by the Medical Board of California for another one-and-a-half years.

Dr. Schottenstein asked if Dr. Sabino continues to struggle with a neck condition. Dr. Sabino responded that his neck condition is much better now thanks to exercises and treatment with a chiropractor. Dr. Sabino stated that he does not take pain medicine, even over-the-counter medication.

Dr. Schottenstein moved to release Dr. Sabino from the terms of his July 11, 2012 Consent Agreement, effective immediately. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

ADJOURN

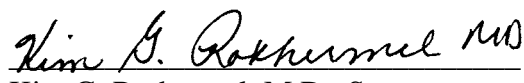
Dr. Saferin moved to adjourn the meeting. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.

Thereupon, at 4:30 p.m., the July 12, 2017 session of the State Medical Board of Ohio was adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on July 12, 2017, as approved on August 9, 2017.



Amol Soin, M.D., President



Kim G. Rothermel, M.D., Secretary

(SEAL)





PHYSICIAN ASSISTANT POLICY COMMITTEE MINUTES

July 11, 2017

The meeting was called to order at approximately 1:37 p.m. on Tuesday July 11, 2017.

Committee members present: Kindra Engle, D.O.; Robert Zaayer, PA-C; Scott Cackler, PA-C; Curtis Gingrich, M.D., and Anita Steinbergh, D.O.

Staff members present: Sallie Debolt, and Cathy Hacker.

Guest: Mandi Grandjean, OAPA, Beth Adamson, OAPA, Greg Lestini, OAPA.

I. [Review of the May 9, 2017 minutes:](#)

Dr. Steinbergh moved to approve the minutes. Dr. Gingrich seconded the motion. All other members voted aye. The motion carried.

Dr. Steinbergh moved to elect Dr. Gingrich as the Chair of the PAPC. Mr. Zaayer seconded the motion. All members voted aye. The motion carried.

Dr. Steinbergh stated that she would like to elect a Co-Chair but would wait until we have a full quorum to discuss that.

II. *Formulary Review*

The committee was unable to review the medications due to lack of quorum.

III. *Rules review*

Sallie informed the committee that Rule 4731-1-06 allows PA's to obtain CE by providing free medical care to the indigent and uninsured. She stated that the NCCPA will accept these CE as well. These rules are being filed with CSI for review.

IV. *New business*

Dr. Steinbergh stated that the current formulary is ineffective and not working and that the committee needs to move forward with approving a negative formulary. She stated that only medications that the PA cannot prescribe will appear on the formulary. She further stated that she feels PA's should not be compared to NP's. She went on to say that the PAPC committee is ineffective and that she feels it should be dissolved and allow the Boards PA/Scope of practice committee to make the decisions for the PA practice.

Dr. Steinbergh requested that Dr. Gingrich and Ms. Debolt work together to find a better date for the committee to meet. The date that we currently meet interferes with the pharmacy board meeting and thus does not allow for the pharmacist members to attend.

Dr. Gingrich stated that he feels the committee could be useful if they managed the formulary faster. He stated that rarely is there a disagreement on where the medications are placed. He further stated that there needs to be a discussion to take into account PA's that are working in a hospital setting.

Sallie informed the members that starting with the October 2017 meeting they will no longer be paid a per diem for their service. They will be paid for their travel. She further stated that they will no longer be required to complete the financial disclosure statements.

The Physician Assistant Policy Committee meeting was adjourned by Dr. Gingrich at approximately 2:44 p.m. on Tuesday, July 11, 2017.

I hereby attest that these are the true and accurate minutes of the Physician Assistant Policy Committee of the State Medical Board of Ohio, meeting on July 11, 2017.

Curtis Gingrich, MD, Chair, PAPC

State Medical Board of Ohio

PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE MEETING

July 12, 2017

30 E. Broad St., Columbus, OH Room 345

<p>Members: Anita M. Steinbergh, D.O., Chair Andrew P. Schachat, M.D. Mark A. Bechtel, M.D. Robert P. Giaclaone</p> <p>Other Board member present: Kim G. Rothermel, M.D. Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D. Ronan M. Factora, M.D.</p>	<p>Staff: Sallie Debolt, Senior Counsel Cathy Hacker, Physician Assistant Program Administrator</p>
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Dr. Steinbergh called the meeting to order at 7:30 a.m.

MINUTES REVIEW

Dr. Schachat moved to approve the draft minutes of June 14, 2017. Mr. Giacalone seconded the motion. The motion carried.

PHYSICIAN ASSISTANT POLICY COMMITTEE

Dr. Steinbergh stated that the Physician Assistant Policy Committee (PAPC) has been having trouble meeting in an efficient or effective manner, and consequently the physician assistant formulary is not being managed well. Yesterday, the PAPC elected a new Chair, Dr. Curt Gingrich. Following the election of the new Chair, the PAPC engaged in a lengthy discussion about the Committee's goals in the next few months with regards to the formulary. Dr. Gingrich plans to either organize small *ad hoc* committees or have the PAPC meet more frequently to properly address formulary issues.

Dr. Steinbergh continued that the PAPC also discussed the possibility of changing the formulary to either a negative formulary or an exclusionary formulary. Representatives from the Ohio Association of Physician Assistants (OAPA) were also present at the PAPC meeting. The OAPA has suggested adopting an exclusionary formulary. Dr. Steinbergh stated that she related to the OAPA the Board's concerns about patient safety. Dr. Steinbergh also noted that managing an exclusionary formulary would require knowing exactly when a new drug enters the market, which can be a large number.

Dr. Bechtel expressed concern about the process and timeliness of the formulary process, noting that a difficulty in obtaining a quorum for PAPC to meet have resulted in long delays in approving medications for the formulary. Dr. Steinbergh agreed and stated that one thing being considered to improve attendance is to change the day on which the PAPC meets. Dr. Steinbergh noted that the PAPC is required to have one pharmacist member who is also a member of the Board of Pharmacy, but the Board of Pharmacy meets at the same time as the PAPC.

Dr. Schachat stated that creating formularies is complicated and not within the Board's expertise. Dr. Schachat suggested that the Board get ideas by seeing how other states have handled their physician

assistant formularies. Dr. Steinbergh commented that six other states have physician assistant formularies and that Florida's formulary may meet the Board's standards. Dr. Steinbergh stated that she has also suggesting contracting with a consultant with experience in such matters who can help organize the formulary. Dr. Schachat noted that the Board's formulary is focused on safety. Dr. Schottenstein agreed and opined that the current physician-initiated category is a safety feature that should be continued.

Dr. Schachat stated that with a negative formulary, physician assistants would be able to prescribe any new medication until it could be placed on the formulary. Dr. Schachat suggested that all new medications be automatically put on the formulary to be removed later as the PAPC and the Board sees fit. Mr. Giacalone agreed and suggested alternatively that there could be a window of time after a new medication is available in which physician assistants could not prescribe it, therefore giving the PAPC time to review it. Mr. Giacalone acknowledged that any difficulty obtaining a quorum for meeting would be a problem with this arrangement.

Dr. Steinbergh stated that she has discussed with Mr. LaCross the possibility of pursuing statutory changes regarding PAPC. However, Dr. Steinbergh felt that the new PAPC leadership should be given a chance to improve efficiency.

REVIEW OF RULE 4730-1-06

Ms. Debolt stated that proposed Rule 4730-1-06 concerns the physician assistant application process and continuing medical education (CME) requirements. Rule 4730-1-06 also addresses the new statutory requirement that physicians and physician assistants be allowed to fulfill a portion of their CME requirements by providing free services to the uninsured and indigent. The proposed Rule was sent to interested parties for comments, but no comments were received. Ms. Debolt asked that this proposed Rule be filed with the Common Sense Initiative.

Dr. Bechtel moved to file proposed Rule 4730-1-06 with the Common Sense Initiative. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

Dr. Saferin commented that the law which allowed the fulfillment of some CME requirements by servicing the uninsured and indigent became law without the Medical Board's prior knowledge or input. Dr. Steinbergh and opined that the Board members need a full legislative report on all pending bills that have an impact on medical practice.

Dr. Steinbergh noted that House Bill 273, currently pending in the legislature, would remove all requirements for physicians to be specialty board-certified as a condition to be employed by, or have admitting or surgical privileges with, a hospital or health care facility. Dr. Steinbergh stated that this bill would have wide-ranging implications for hospital credentialing that requires certification. Dr. Steinbergh speculated that the Ohio Hospital Association will opposed this bill and opined that the Medical Board should also oppose it.

ADJOURN

Dr. Bechtel moved to adjourn the meeting. Mr. Giacalone seconded the motion. The motion carried.

The meeting adjourned at 8:00 a.m.

Anita M. Steinbergh, D.O.
Chair

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State Medical Board of Ohio

LICENSURE COMMITTEE MEETING
July 12, 2017
30 E. Broad St., Columbus, OH Room 318

Members: Bruce R. Saferin, D.P.M., Chair Kim G. Rothermel, M.D. Richard A. Edgin, M.D. Ronan M. Factora, M.D. Other Board members present: Amol Soin, M.D. Michael Schottenstein, M.D.	Staff: Joseph Turek, Deputy Director for Licensure Chantel Scott, Chief of Renewal Mitchell Alderson, Chief of Licensure Sallie Debolt, Senior Counsel Colin DePew, Assistant Attorney
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Dr. Saferin called the meeting to order at 8:03 a.m.

COSMETIC THERAPY EXAMINATION RULES

Ms. Debolt stated that one comment was received on the proposed cosmetic therapy examination rules and has been provided to the Committee members. Ms. Debolt added that the technical amendments suggested by Dr. Schottenstein have been incorporated into the proposed Rules.

Dr. Saferin asked if Levi Tkach, an attorney present in the meeting, had any comments. Mr. Tkach stated that the clients he represents feel that the Certified Clinical Electrologist (CCE) examination does not reflect how cosmetic therapy is practiced or ought to be practiced in Ohio. Mr. Tkach's clients also had concerns about having the examination administered by a third party and the additional cost to applicants.

Dr. Factora moved to recommend that proposed Rules 4731-1-01, 4731-1-11, 4731-1-13, 4731-1-18, and 4731-1-19 for filing with CSI as presented. Dr. Rothermel seconded the motion. The motion carried.

Dr. Edgin stated that his only concern about using the CCE is the cost to applicants. Dr. Edgin noted that the cost to take the CCE is \$350 to \$400, as opposed to \$160 for the Board's examination. Ms. Scott stated that she has spoken to each of the cosmetic therapy schools in Ohio and they indicated the cost of the CCE could be deducted from tuition. In this way, an applicant could take the CCE at least once without incurring additional cost. Ms. Scott stated that that is very similar to what happens with massage therapists who must take the Massage and Bodywork Licensing Examination (MBLEX) after graduation.

Dr. Saferin opined that the CCE is a better examination than the Board's examination. Dr. Rothermel agreed, noting that the Board's examination was not necessarily up-to-date with current practice and that it is expensive to hire people to create the examination. Dr. Rothermel also commented that the Board does not provide an examination for any other licensure group.

LICENSURE APPLICATION REVIEWS

Gerald Thomas Bowen, M.D.

Dr. Saferin stated that Dr. Bowen had spoken with the Committee at the May meeting. Dr. Saferin stated that Bowen has decided to pursue a license even though the Committee informed him that he would have to take the Special Purpose Examination (SPEX) and participate in a preceptorship, something that Dr. Bowen had indicated that he could not do.

Dr. Saferin asked if it would be a reportable action to the National Practitioner Databank (NPDB) if Dr. Bowen decides he does not wish to do these things if the Board accepts this recommendation. Ms. Debolt replied that this is a non-disciplinary action, and therefore nothing would be reported regardless of Dr. Bowen's decision; if Dr. Bowen decides not to fulfill these requirements, he simply would not be given a license.

Dr. Saferin observed that the suggested motion requires Dr. Bowen to complete a six-month preceptorship which includes one month of observation and five months of weekly chart review. Dr. Saferin opined that Dr. Bowen would benefit from having a period of direct supervision included in the preceptorship. Dr. Schottenstein agreed. Dr. Edgin commented that his biggest concern is the many new medications that have become available in the twelve years since Dr. Bowen last practiced. Dr. Factora pointed out that prior to the preceptorship Dr. Bowen will be required to pass the SPEX, which incorporates a lot of pharmacology.

After thorough discussion, the Committee agreed upon the proper combination of observation, direct supervision, on-site supervision, and chart review for Dr. Bowen's preceptorship.

Dr. Rothermel moved to recommend that the application of Gerald Thomas Bowen, MD for restoration of his license to practice medicine and surgery in the State of Ohio be approved, conditioned upon passage of the SPEX or specialty board recertification examination within twelve months from the date of mailing of the Notice of Opportunity for Hearing. Dr. Rothermel further moved to recommend that upon restoration of Dr. Bowen's license, the license shall be restricted to a six-month preceptorship to include Board approval of the designated preceptor, two weeks of observation by Dr. Bowen to assess abilities with patient care, one month of direct supervision by the preceptor, three months of on-site supervision by the preceptor, and six weeks of weekly chart review of ten charts per week. Dr. Rothermel further moved to recommend that at the conclusion of the preceptorship, the preceptor shall provide a written report to the Board or its designee indicating that Dr. Bowen is able to practice in accordance with acceptable and prevailing standards of care. Dr. Rothermel further moved to recommend that upon successful completion of the preceptorship, the restrictions on Dr. Bowen's license shall terminate. Dr. Factora seconded the motion. The motion carried.

Lori Beth Hopper, M.T.

Dr. Saferin stated that Ms. Hopper has applied for restoration of her massage therapy license. Ms. Hopper indicated on her application that she has not practiced massage therapy since her license expired in 2012.

Dr. Rothermel moved to recommend approval of Ms. Hopper's request for Ohio licensure, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEX) within six months from the date of mailing of the Notice of Opportunity for Hearing. Dr. Edgin seconded the motion. The motion carried.

ADJOURN

Dr. Rothermel moved to adjourn the meeting. Dr. Factora seconded the motion. The motion carried.

The meeting adjourned at 8:30 a.m.

Bruce R. Saferin, D.P.M.
Chair

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State Medical Board of Ohio

POLICY COMMITTEE MEETING

July 12, 2017

30 East Broad Street, Columbus, OH 43215, Room 336

<p>Members: Amol Soin, M.D., Chair Andrew P. Schachat, M.D. Robert Giacalone Mark. A. Bechtel, M.D.</p> <p>Other Board Members Present: Kim G. Rothermel, M.D. Michael Schottenstein, M.D. Donald Kenney Anita Steinbergh, D.O. Ronan Factora, M.D.</p>	<p>Staff: A.J. Groeber, Executive Director Kimberly Anderson, Chief Legal Counsel Sallie J. Debolt, Senior Counsel David Fais, Deputy Director Rebecca Marshall, Chief Enforcement Attorney Jonithon LaCross, Director of Public Policy & Government Affairs Tessie Pollock, Director of Communication Joan Wehrle, Education & Outreach Program Manager</p>
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Dr. Soin called the meeting to order at 8:30 a.m.

MEETING MINUTES REVIEW

Dr. Bechtel moved to approve the Policy Committee minutes of the June 14, 2017 meeting. Dr. Schachat seconded the motion. The motion carried.

PROPOSED RESOLUTION – ACUTE PAIN

Dr. Soin reported that Dr. Schottenstein had suggested that the Board consider a resolution to the Federation of State Medical Boards (FSMB) for 2018 regarding acute pain guidelines.

Dr. Schottenstein noted that while attending the 2017 FSMB annual meeting he realized the FSMB had chronic pain guidelines but had not addressed acute pain guidelines. Since Ohio has recently lead an initiative to develop acute pain guidelines in conjunction with the Pharmacy, Dental and Nursing Boards under the Governor’s leadership, he thought it might be prudent for the Board to formulate a resolution to see if we could help provide some national guidelines for physicians through the FSMB. Dr. Schottenstein wrote up some thoughts and sent them to Dr. Soin and Mr. Giacalone for some feedback to see if this would be productive.

Dr. Soin commented that Ohio has been progressive regarding setting guidelines and this may be an opportunity for other states to work on guidelines for their state.

Dr. Schachat thought it was a great idea. He suggested that the Board also send guidelines to the American Academy of Ophthalmology which has established about 25 preferred practice patterns that include recommendations for pain management for particular conditions or procedures.

Dr. Bechtel supported the resolution idea and believes it to be an important initiative. It is an opportunity for Ohio to take the lead on a national level. He said there is no question that prescribing for acute pain can be a pathway for diversion or addiction to drugs if not prescribed appropriately.

Dr. Steinbergh said she believed Dr. Schottenstein's resolution was excellent. She also shared a perspective regarding how the Board has submitted resolutions in the past. She reported the Medical Board will have an opportunity to review the draft resolution and then discuss and approve it next month. Once approved, we can hold it until time to submit resolutions for the 2018 FSMB annual meeting. We could also decide to share the resolution with chairs of other Boards throughout the country to ask their support for the resolution. She said that sometimes other states are working on a similar resolution and you don't know it. It is not unusual to go to the annual meeting and find out that there are two or three similar resolutions that could have been combined and would have had the support of several states at one time. She voiced her support of submitting a resolution to the FSMB and having it ready to forward to the FSMB when the call for resolutions is published.

Mr. Giacalone supported getting feedback from other boards. Dr. Steinbergh said that support from other boards adds weight and value. Dr. Schottenstein said it would have been helpful for Ohio to have a guideline document to work from instead of starting from scratch when preparing the acute pain rules.

Dr. Soin commented that there seems to be consensus on this topic and a direction for going forward. We'll discuss it with the Board and then provide the resolution to the Board next month.

LEGISLATIVE UPDATE

Mr. LaCross said it was great budget this cycle. The Governor signed HB49 on June 28th. Board and staff worked hard for changes that streamlined and modified large amounts of the Revised Code that has been outdated for years.

Mr. LaCross indicated that he had sent the Board members a comprehensive report of the changes made in HB49 that impact the agency. He summarized some of the key provisions for the committee.

Licensure statutes: Mr. LaCross said that the physician licensure and podiatric licensure sections of the Revised Code all referred to qualifications for the licensure examination administered by the Board. HB49 replaced the requirement that the Board administer an examination for individuals seeking to practice medicine and surgery, osteopathic medicine and surgery, and podiatric medicine and surgery in Ohio with a requirement that the individual successfully pass an examination prescribed in rules adopted by the Board.

The bill eliminated references to certificates to practice issued by the State Medical Board and instead refers to licenses to practice. This change impacts all licensees except training certificates.

Reinstatement/Restoration fees: MD, DO, and DPMs seeking to reinstate or restore a license pay a single fee (\$405/reinstatement or \$505/restoration), rather than pay the \$305 renewal fee and a penalty (\$100/reinstatement or \$200/restoration) as under current law. A similar fee change was made for limited branch practitioners (\$125 reinstatement or \$150 restoration).

Podiatric Clinical Research Faculty: Clinical research faculty certificates were expanded to include DPMs under similar terms and conditions as MD and DO clinical research faculty certificates.

CME Non-Compliance: Mr. LaCross reported that CME statutes were aligned. HB49 permits a licensee who has failed to complete the CME requirements for licensure renewal to agree in writing to complete the education and pay a civil penalty in an amount not to exceed \$5000 in lieu of the State Medical Board taking disciplinary action. Ms. Anderson explained that this change allows the licensee to waive their right to an administrative hearing so the CME violation can be resolved through an agreement to pay a fine and submit to additional auditing.

MD-DO-DPM Application Fee Reduction: It was also reported that the bill eliminated the \$35 certificate of preliminary education fee and replaced the \$300 issuance fee for MD, DO and DPM with a \$305 licensure application fee --- saving each applicant \$30. We are the only Ohio regulatory board to reduce fees.

Radiologist Assistant/Genetic Counselor: Radiologist Assistants and Genetic Counselors are now included in the general law governing criminal records checks of applicants for professional licensure.

CT/MT Working in Salon: Cosmetic Therapists or Massage Therapists working in a salon are required to maintain an electronically generated license certification or registration, as added by the bill, or the individual's license or certificate, as required under current law.

PAPC Per Diem Discontinued: The per diem compensation for members of the Physician Assistant Policy Committee was removed in the budget bill. The requirement that the member receive necessary and actual expenses incurred in the performance of official duties was retained.

Renewal Notices: Mr. LaCross said that renewal notices to licensees must be sent at least one month prior to expiration of the license. With the eLicense system, the notice letter will be automatically generated to the licensee one month in advance.

Dr. Steinbergh disagreed with the one month limit as she does not believe this is sufficient notice to the licensee.

Mr. LaCross replied that the Board will be sending more renewal reminder notices to licensees. This change is just the written requirement that the Board send a letter to the licensee.

Ms. Pollock reported that this is minimum. But we will send advance notices. Dr. Steinbergh says that she thinks we do excellent communication with our licensees. But when she talks with other doctors she is not sure if licensees are always paying attention to e-communication from the Board. If an email goes directly from licensure they may pay more attention. She urged us to be sure to make doctors aware of any changes we implement. She doesn't think the Board can reduce the amount of notification to licensees if we don't tell them in advance about the change.

Mr. Groeber appreciated Dr. Steinbergh's comments. He indicated that Ms. Pollock made a very good point. Today we send out notifications six months, then three months, then one month before the renewal deadline. So, the Board has been sending approximately 150,000 renewal letters. With the eLicense system we can notify all licensees in a renewal group of the renewal deadline. We can then send reminder notices only to those who have not yet renewed. This can be further followed-up by a final notice one month before the deadline to those who have still not renewed their license. We will also be supplementing the individual renewal notices with more general renewal reminders. Mr. Groeber said we did this for the July 1 renewal deadline and saw a big increase in the number of on time renewals.

Mr. Groeber said we can now notify licensees right after the renewal date that their license lapsed. Additionally, within a month past the deadline another email notice about their lapsed license can be sent to the licensee.

Mr. Groeber indicated that eventually licensees will be able to enter their CME information through a portal so the licensee will be more engaged with the program. Dr. Steinbergh said we need to be sure the professional associations are aware of any changes so they can help remind licensees.

Ms. Pollock commented that a lot of communication will include notice that the licensee will not be receiving another letter. We want to do everything we can to prevent a license from lapsing.

Dr. Schachat asked what happens when the Board receives a returned letter with no forwarding address. Ms. Pollock said that we include that in the licensee's file. He also asked what happens with a bad email address. Ms. Pollock responded that we can't include it in the file yet, but we do note it. Dr. Schachat suggested that a bad email address should trigger a reminder letter to the licensee to update their email address. Ms. Pollock explained that one of the data conversion issues was that an email address was not required in the old system to renew or apply so no email address was on file.

Dr. Schachat there could also be an issue with a licensee who has a valid email address but the email box is full that day so it bounces back. But the next week the email would go through.

Dr. Schachat reported that the same email sent to more than 10-20 people at the Cleveland Clinic will automatically go to spam. Mr. Groeber said that the Medical Board would be working with larger organizations so that they are aware of Board communications.

Training Certificates: The budget bill made training certificates valid for three years, with an option to renew the certificate. The hospitals are appreciative of this extension.

Training Certificate Fee Changes Pending: Mr. LaCross said that the only problem is that LSC missed the fee increase. Currently, training certificate fees remain \$75 for an initial application and \$35 for renewal until we get this fixed in the fall so that it is \$130 for the initial training certificate, and \$100 for renewal. Mr. Groeber said this will be an operational change for the Board and the training programs, but it will be more efficient for all.

Consolidation: Mr. Groeber reported that the budget bill did include the Board consolidation. Dietitians and respiratory therapists will be regulated by the Medical Board effective January 21, 2018. He will provide more information during his operations report to the Board. Mr. LaCross reported that the statutes for the dietitians and respiratory therapists do not align with Medical Board statutes. He said that parts of their investigations are not confidential. Some decisions are delegated to the Executive Director instead of the Secretary/Supervising Member. We aligned our licensure and enforcement statutes but no changes were going to be made to the board consolidation language in the budget bill. We will try for an amendment in the fall to integrate the Boards.

Mr. Groeber said that we will get this introduced very quickly so that it will have an effective date that will enable us to migrate any open complaints or administrative hearings very smoothly.

Medication Assisted Treatment (MAT): Mr. LaCross reported that HB49 included the following provisions regarding medication assisted treatment for addiction:

- Requires a prescriber to give a patient for whom medication-assisted treatment (MAT) for drug addiction is clinically appropriate information about all drugs approved by the U.S. Food and Drug Administration (FDA) for use in MAT.
- Imposes referral requirements on prescribers when a patient chooses to be treated with, and meets clinical criteria for, treatment with methadone or a controlled substance containing buprenorphine and the prescriber does not meet federal requirements to prescribe those drugs.
- Requires the Medical and Nursing Boards to adopt rules establishing procedures to be followed by Board-regulated prescribers in the use of all FDA-approved drugs used in MAT. Requires that the rules be consistent for all prescribers.
- Limits to 30 the number of patients that a prescriber who fails to comply with these provisions may treat at any one time with MAT, regardless of where the prescriber practices.

Mr. LaCross noted that it may be difficult for physicians in rural areas to refer patients to practitioners who provide methadone or buprenorphine treatment. Additionally, the Medical Board and Nursing Board are required to do a rule on each FDA approved drug used in MAT. He also pointed out state law would limit the practitioner to treating only 30 patients with MAT even though they can treat up to 300 patients with a federal waiver. The Board is working with the associations to make a more physician centered amendment.

Fall legislative agenda: Mr. LaCross said we are also looking to further revise outdated statutes. He'll be working with Board members to get their input on priorities. Additional issues could include CME hour changes and PAPC changes.

MEDICAL MARIJUANA RULES

Ms. Anderson reported that the budget bill addressed the Medical Marijuana Control Program. The section that required physicians to indicate that the benefits would have to outweigh the risks when recommending medical marijuana was taken out of statute. Consequently, the Medical Board rule was amended to take out those provisions so that the rule matches the statute. Doctors would still discuss risks and benefits with patients.

Dr. Bechtel asked who had advocated for the change. Ms. Anderson reported that it was not the Medical Board. It was in the House version, then the Senate took it out, then it came back in through the Conference Committee.

Dr. Soin commented that there is a tremendous amount of patient advocacy on this issue.

Dr. Schachat asked if this change modifies the standards of care. Ms. Anderson said it did not. Dr. Schachat asked if minimal standards still control in general for patients. In general, yes.

Ms. Anderson explained that it had been written in the rule as a component that was on the recommendation itself with a check box to show that the physician had actually done that. It was also a reason that the recommendation could be taken away and that was specifically stated in the rule. She said that those references were removed from the rule due to statute change. She indicated that the expectation is that the physician will practice medicine according to the standard of care.

Ms. Anderson said there is also a concern that there is so little scientific evidence available regarding medical marijuana it may be difficult to quantify the risk/benefit information.

Ms. Anderson said that the public hearing was held on Monday, July 10th and the rules are currently at JCARR. The JCARR meeting is scheduled for July 31, 2017.

Proposed rules – Confidential Monitoring Program

Ms. Anderson reported that information is in the policy committee meeting packet. As a follow-up from April 2017, the Board circulated to interested parties, draft rules regarding the creation of a confidential monitoring program that allows licensees with mental or physical illnesses, other than substance use disorders, to be monitored by the Medical Board without being subjected to formal public disciplinary action. The program, as proposed in the rules, is intended to be entirely within the Medical Board's investigative process and overseen by the Secretary and Supervising Member (SSM) of the Medical Board.

It is an additional option for SSM so that a licensee could be monitored by the Board but it would not be a reportable action. It would stay under the confidential investigative process.

The Board received written comments from nine individuals and groups, which were summarized in the agenda materials.

Ms. Anderson said that the issues raised by the written comments will need to be addressed before these rules can proceed through the Common Sense Initiative Office. In deciding the next steps, the Board could opt to meet with the professional associations and interested parties to reach consensus on the proposed rules. In addition, the Board could also opt to table this matter for now.

Ms. Anderson suggested discussion of the comments received from #8 (Disability Rights Ohio and the National Alliance on Mental Illness, Ohio) and #9 (Medical Professional Associations). Concerns raised included that the Board confidential monitoring program is based on diagnosis or condition and not related to conduct; that the program is not truly confidential because the Secretary and Supervising Member and Board staff will have access to licensees' medical records, progress notes, diagnosis and prognosis; that it does not account for dual diagnosis situations; and that there is a lack of due process regarding entry into the program, continued participation and termination of the program. There were also some Department of Justice issues with ADA.

Ms. Anderson reported that the rules must go to CSI and she does not believe we would be successful at this point based on the comments already received. She suggested two options to consider:

1. Meet with the associations to understand their objections and reach consensus to move forward.
2. Table the rules and revisit in the future.

Ms. Anderson said she would be happy to entertain other options. She thought it would be unlikely that we would be able to move forward given the level of objections.

Mr. Giacalone said he was perplexed and surprised by the comments. The Board tried to do something of benefit to practitioners to allow a situation where they could get around having a disciplinary action noted for mental illness. But we got a lot of push back from organizations Mr. Giacalone was surprised pushed back. He believed that there are some of the things that were just deal stoppers. The sad part is he doesn't believe we are going to be able to reach a resolution and it will just die on the vine. That's unfortunate. The Board worked hard on this trying to get that balance between public safety yet not being draconian for mental illness. The irony is if the licensee doesn't want to participate in the confidential monitoring program they don't have to take it. It is a separate

avenue to pursue. Mr. Giacalone noted that while he appreciates the comments, he believes that the only people that will be hurt are those that the Board was trying to help.

Dr. Rothermel commented that she thinks some people may not understand that the current system is a public disciplinary action that's reportable to the National Practitioners Data Bank and always remains part of the licensee's record as a disciplinary action.

Dr. Schachat asked if we should respond to the comments and indicate that the confidential monitoring program is optional.

Dr. Soin said that the Board is trying to protect patient safety yet help licensees with their issues through the confidential monitoring program so that it doesn't damage their reputation and ability to practice. His opinion is that perhaps the groups didn't fully understand the program's intent and perhaps there was a disconnect there.

Dr. Steinbergh indicated that when we discussed the one-bite program there was a call for a confidential way to address mental health issues so this is what we proposed. She believes we need to table it but have conversations with the associations. The Board wants to help practitioners with mental health issues.

Ms. Anderson suggested the Board table the rule process for now and work with Mr. Groeber and Dr. Soin on how to reach out to the associations. Dr. Steinbergh suggested that Dr. Schottenstein have input as well. Mr. Giacalone said he is not opposed to meeting with the associations but he does not want it viewed as a negotiation but more as an educational opportunity.

Motion was made by Dr. Bechtel that the Board table the rule and reach out to the professional organizations. Dr. Soin and Mr. Groeber will report back to the Board. Motion seconded by Dr. Schachat. Motion carried.

Ms. Anderson said it may take time to set up the meetings so perhaps a report back could be done in the fall.

ACUTE OPIOID PRESCRIBING RULES

Ms. Anderson reported that the acute opioid prescribing rules are at JCARR. The Ohio Hospital Association offered a technical change regarding minors, those who are under the age of 18 and not emancipated. She said that a few years ago, HB314 put in place an informed consent form to be used for minors receiving controlled substances. The recommendation is to use the same terminology as used in the HB314 statute as "authorized adult." JCARR accepts that change if it is aligned with statute.

The public rules hearing is scheduled for July 26 at 10 am in Lobby Hearing Room in the Rhodes State Office Tower.

FAQ for RULE 4731-11-09

Ms. Anderson said a handout was distributed to the committee today. It is a clean version of the FAQs which include technical changes suggested by Dr. Schachat and the Ohio Hospital Association to make the FAQs easier to understand. Ms. Anderson and Ms. Debolt also met with Dr. Steinbergh regarding the revised version.

Ms. Anderson said there is still question on how to address Questions 13 through 16 regarding cross coverage situations and inpatient situations. Ms. Anderson said they would like to get more feedback on the draft. She would also like to continue working with Drs. Schachat and Steinbergh, as well as the associations, and return the document to the committee in August for further review.

RULE 4731-2-01

Ms. Debolt reported that Rule 4731-2-01, Ohio Administrative Code, sets out the procedures by which the Medical Board notifies interested parties of upcoming public rule hearings. The rule was last reviewed in 2005. The rule must comply with requirements of Section 119.032, Ohio Revised Code.

In 2016 the rule was approved by the Board for filing with CSI, with some non-substantive changes for ease of reading. When the rules were circulated for interested party comments, none were received. However, when preparing the rule to file with CSI it became apparent that the rule does not have an adverse impact on business. Therefore, it does not need to be reviewed by CSI. Instead, the rule is ready to file with JCARR for the formal rulemaking process.

Ms. Debolt as the committee to recommend that the Board approve Rule 4731-2-01, as amended, be filed with JCARR for the formal rulemaking process.

Dr. Bechtel moved that the committee recommend that the Board approve Rule 4731-2-01, as amended, be filed with JCARR for the formal rulemaking process. Dr. Schachat seconded the motion. Motion carried.

ADJOURN

Dr. Schachat moved to adjourn the meeting. Mr. Giacalone seconded the motion. Motion carried.

The meeting adjourned at 9:24 a.m.

jkw

State Medical Board of Ohio

FINANCE COMMITTEE MEETING
July 12, 2017
30 E. Broad St., Columbus, OH Room 318

Members: Donald R. Kenney, Sr., Chair Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D. Michael L. Gonidakis Richard A. Edgin, M.D.	Staff: A.J. Groeber, Executive Director Susan Loe, Director of Fiscal and Human Resources
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Mr. Kenney called the meeting to order at 9:00 a.m.

MINUTES REVIEW

Dr. Saferin moved to approve Finance Committee June 14, 2017 meeting minutes. Dr. Schottenstein seconded the motion. The motion carried.

FISCAL UPDATE

Ms. Loe stated that in May 2017 the Board's revenue was about \$1,100,000 and expenses were about \$768,000. Ms. Loe stated that revenue continues to be far above projections, mostly due to physicians who have chosen to renew their licenses early to avoid any potential problems with the Board's new e-license renewal system which was implemented in June. At the end of May, the Board's cash balance was \$4,350,000. Ms. Loe noted that Fiscal Year 2017 ended on June 30 and she estimated that the Board cash balance at that time was about \$4,100,000. Ms. Loe stated that she will have more solid numbers about the end of Fiscal Year 2017 at the next Board meeting.

ACCOUNTS RECEIVABLE

Ms. Loe stated that two fines approved by the Board last month, one for \$13,000 and one for \$7,500, have been paid. Another licensee was fined \$3,000 last month. Responding to a question from Mr. Gonidakis, Mr. Groeber stated that fines paid to the Board go into the Board's fund, but must be used on educational and outreach programs.

Mr. Kenney noted that one Report and Recommendation that will be considered by the Board today did not include a fine. Mr. Kenney noted that the respondent in that case had an addiction, which the Board has decided not to fine. However, the respondent also committed other violations that Mr. Kenney felt should have been fineable. Mr. Groeber stated that he and Mr. Giacalone had discussed that matter with Chief Hearing Officer Porter. Mr. Groeber stated that the Hearing Unit can only levy fines based on violations included in the Notice of Opportunity for Hearing. Mr. Groeber stated that the Enforcement Section's practice has been to choose only one or two violations to include in the Notice, but that this practice can change.

BIENNIAL BUDGET

Ms. Loe stated that the budget bill has passed the legislature and the Board's biennial budget for Fiscal Years 2018 and 2019 has been finalized. Under this budget, the Board is authorized to spend almost \$10,200,000 of its fund in Fiscal Year 2018 and slightly over \$11,000,000 in Fiscal Year 2019. Ms. Loe commented that some of those funds are to facilitate integration of the Board of Dietetics and

a portion of the Respiratory Care Board, which will merge with the Medical Board effective January 2018. Ms. Loe stated that those two boards make more than they cost, but the Medical Board is getting no funds up front for the integration process beyond that included in the Medical Board's budget.

Mr. Groeber stated that with the merger, four employees from both the boards will become employees of the Medical Board. Mr. Groeber commented that the other boards have relatively few complaints under investigation compared to that of the Medical Board.

Mr. Groeber stated that the Board will post a new Enforcement Attorney position soon.

BOARD MEMBER COMPENSATION

Ms. Loe stated that Dr. Rothermel was reappointed to the Board earlier this year. The Governor's office has approved a \$0.70 per hour increase in Dr. Rothermel's compensation, but the Finance Committee had wanted to wait until the budget bill passed before giving final approval for the increase. Mr. Groeber stated that the Board can financially absorb the cost of the increase.

Dr. Edgin moved to recommend that the Board approve an increase of \$0.70 per hour in Dr. Rothermel's compensation. Dr. Saferin seconded the motion. All members voted aye. The motion carried.

TRAVEL AUTHORIZATION

Ms. Loe stated that Mr. Groeber has been invited to attend the Annual Meeting of the Federation of State Medical Boards (FSMTB) as a voting delegate.

Dr. Saferin moved to recommend that the Board approve Mr. Groeber to attend the Annual Meeting of the FSMTB in Tampa, Florida, and that his attendance at the meeting is in conjunction with his duties as the Executive Director of the State Medical Board of Ohio. Dr. Schottenstein seconded the motion. All members vote aye. The motion carried.

FORMAT FOR FINES IN PROPOSED ORDERS

Mr. Groeber commented that, in response to confusion in one case last month regarding a fine in a proposed order, he and Mr. Porter have developed proposed formats for future proposed orders in relation to fines. Mr. Groeber developed Option 1, while Mr. Porter developed Option 2. After a brief discussion, all Committee members favored Option 1, which lists the appropriate portion of the fining guidelines for the violation(s) in question and list the minimum, standard, and maximum fine for the violation(s). Also under Option 1, the Discussion of Proposed Order section will not give any opinion or speculation regarding the ability of the licensee to pay the fine.

ACUTE OPIOID PRESCRIBING RULES

Mr. Kenney noted that the proposed rules on acute opioid prescribing, which was discussed by the Policy Committee this morning, included a phrase indicating that a physician may prescribe more than the limits in the rule if the physician feels it is necessary. Mr. Groeber confirmed that the proposed rule would allow prescribing beyond the 7-day or 30 MED (morphine equivalent dose) per day limits if those levels would not appropriate for the treatment of the pain. Mr. Groeber stated that such

exceptions would be limited to cases of severe trauma such as severe burns, abdominal surgery, severe orthopedic surgery, or crushing injuries.

Mr. Kenney commented that one case to be considered by the Board today involves a physician who prescribed beyond proscribed limits in the treatment of obesity. Dr. Schottenstein stated that physicians have a lot of latitude in guidelines, but not in rules such as the Board's weight-loss rules, which is the issue in the case referenced by Mr. Kenney.

Mr. Kenney expressed concern that the provision in the proposed rules may be creating a loophole. Mr. Groeber replied that the provision is in response to concerns expressed by professionals that the rule not be too rigid.

ADJOURN

Mr. Gonidakis moved to adjourn the meeting. Dr. Edgin seconded the motion. The motion carried.

The meeting adjourned at 9:40 a.m.

State Medical Board of Ohio

COMPLIANCE COMMITTEE MEETING

July 12, 2017

30 E. Broad St., Columbus, OH Administrative Hearing Room

<p>Members: Anita M. Steinbergh, D.O., Chair Amol Soin, M.D. Robert Giacalone Michael Schottenstein, M.D.</p> <p>Other Board members present: Kim Rothermel, M.D. Ronan M. Factora, M.D.</p>	<p>Staff: Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Steinbergh called the meeting to order at 4:42 p.m.

INITIAL PROBATIONARY APPEARANCES

Kevin G. Baldie, M.D.

Dr. Baldie is making his initial appearance before the Committee pursuant to the terms of his April 12, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Baldie's history with the Board.

Dr. Schottenstein recalled that the last time Dr. Baldie appeared before the Board, he had gone off his medication and he felt that his mood was stable. Dr. Baldie agreed and stated that he did fine for a few months without his medication. However, when Dr. Baldie's practice partner gave three-months' notice that he would be leaving the practice in February, Dr. Baldie became more nervous as that date approached. Dr. Baldie experienced burnout in January and again in February which required him to take a couple of days off work. In March, Dr. Baldie experienced a breakdown which required hospitalization.

Dr. Schottenstein asked if Dr. Baldie's breakdown was a result of his mood being too low or too high. Dr. Baldie responded that his mood was low in January and February and he pushed through that, but then his mood became too high. Dr. Schottenstein asked if Dr. Baldie is prone to psychotic features when his mood is elevated. Dr. Baldie replied that he did have psychotic features in the two episodes of elevated mood he has experienced, the episode in 2012 and the most recent episode.

Dr. Schottenstein commented that Dr. Baldie's mood seemed somewhat elevated the last time he appeared before the Board. Dr. Baldie stated that, in hindsight, he could see Dr. Schottenstein's point. Dr. Baldie also commented that he learned that his parents also felt his mood was elevated when he discontinued his medication in June 2016. Dr. Steinbergh commented that being released from his initial probation in December 2016 could also have produced an elevated mood. Dr. Schottenstein agreed.

Dr. Schottenstein recalled his comments from December 2016 that Dr. Baldie should return to his medication regime quickly if he ever sensed that he was becoming unstable. Dr. Schottenstein repeated this advice if Dr. Baldie decides to stop his medication again in the future. Dr. Schottenstein commented that bipolar disorder is a chronic condition for most people and they take their medication indefinitely.

Dr. Schottenstein asked if Dr. Baldie is prone to substance abuse. Dr. Baldie replied that he has never abused substances.

Dr. Steinbergh was pleased that Dr. Baldie recognized within himself to need to seek treatment and stated that that was a very health and patient-protective thing for Dr. Baldie to do.

Dr. Schottenstein moved to continue Dr. Baldie under the terms of his April 12, 2017 Consent Agreement, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion. The motion carried.

Paul R. Brown, P.A.

Mr. Brown is making his initial appearance before the Committee pursuant to the terms of his April 12, 2017 Consent Agreement. Dr. Steinbergh reviewed Mr. Brown's history with the Board.

Responding to questions from Mr. Giacalone, Mr. Brown stated that he is currently unemployed and is seeking a position as a physician assistant. Mr. Brown stated that some job recruiters tell him that they cannot help him due to his Board action, but other recruiters are more willing to work with him. Mr. Brown stated that his recovery is going very well. Mr. Brown stated that golfing is a passion of his and he has joined a golfing group through his fellowship with Alcoholics Anonymous. Mr. Brown commented that his caduceus group has been outstanding and his sponsor is very supportive. Mr. Brown stated that the recovery process has made his life much better.

Mr. Giacalone asked if Mr. Brown had any questions for the Committee. Mr. Brown asked about the process of applying for licensure in other states as he seeks employment. Dr. Steinbergh replied that any state in which Mr. Brown applies for licensure will examine his situation and determine whether or not he should be licensed in that state. Dr. Steinbergh stated that another state may want to enter into a probationary agreement with Mr. Brown, or simply require Mr. Brown to stay compliant with his Ohio Agreement. Dr. Steinbergh advised Mr. Brown to include a personal statement with any application he files.

Dr. Soin moved to continue Mr. Brown under the terms of his April 12, 2017 Consent Agreement, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion. The motion carried.

Robert M. Cook, M.D.

Dr. Cook is making his initial appearance before the Committee pursuant to the terms of the Board's Order of January 11, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Cook's history with the Board.

In response to questions from Dr. Soin, Dr. Cook stated that the ethics course he took at Case Western Reserve University was very impressive. Dr. Cook elaborated that the course was two days, nine hours each day, and included multiple speakers on various topics. Dr. Soin asked what specifically Dr. Cook learned in the course and how he would apply it to his practice. Dr. Cook replied that most of the course applied to things such as primary care, surgery, and impaired physicians. Dr. Cook, as a radiologist, learned that he should remember that every x-ray he reads represents a person and that the patients comes first in every facet of his medical practice.

Dr. Steinbergh asked about Dr. Cook's practice since his license was reinstated in April. Dr. Cook answered that he is unemployed and that he cannot get an interview. Dr. Cook commented that when he applies for a permanent or a *locum tenens* position, he never hears from the prospective employer again. Dr. Cook further commented that job recruiters do not want to be involved with someone who's license has been suspended. Dr. Cook stated that he continues to keep up with his continuing medical education (CME) requirements. Dr. Steinbergh commented that CME conferences can provide an opportunity for Dr. Cook to network. Dr. Steinbergh advised Dr. Cook to stay within his scope of practice as he seeks employment. Dr. Cook agreed and stated that he is only applying for positions in diagnostic radiology and nuclear medicine.

Dr. Schottenstein recalled that Dr. Cook had initially gotten involved in an erectile dysfunction clinic because he had had trouble finding a position in radiology, and his actions at the clinic led to his Board action. Dr. Schottenstein asked if it is generally difficult to find work as a radiologist. Dr. Cook replied that it had been difficult in 2014 when he took the position at the erectile dysfunction clinic, but opportunities in radiology have increased dramatically with the new presidential administration.

Dr. Soin moved to continue Dr. Cook under the terms of the Board's Order of January 11, 2017, with future appearances before the Board's Secretary or Designee. Dr. Schottenstein seconded the motion. The motion carried.

Danica Gineman, M.T.

Ms. Gineman is making his initial appearance before the Committee pursuant to the terms of her March 8, 2017 Consent Agreement. Dr. Steinbergh reviewed Ms. Gineman's history with the Board.

In response to questions from Dr. Soin, Ms. Gineman stated that she is currently a stay-at-home mother. When her massage therapy license is reinstated, Ms. Gineman intends to return to practice in the same chiropractor's office where she had previously practiced. Dr. Soin asked what safeguards Ms. Gineman has put in place to ensure that she does not practice with an expired license again. Ms. Gineman replied that she has done reading on becoming more organized and focused. Ms. Gineman stated that she now uses three different calendars and an app on her cell phone to remind her to renew her license.

Dr. Schottenstein recalled that Ms. Gineman had been aware that her license lapsed in September, but she continued to practice until December. Ms. Gineman explained that when she tried to change her last name on her license, she discovered that it was expired. Ms. Gineman stated that she had never received a letter or an email about renewal. Ms. Gineman stated that she had equated her massage therapy license to a driver's license and she thought she would only have to pay a fine for practicing beyond the license expiration. Ms. Gineman stated that at that point she was not financially able to quit her job. Ms. Gineman stated that she knew it was a serious matter when she received interrogatories from the Board.

Dr. Steinbergh asked if Ms. Gineman had contacted the Board regarding her expired license. Ms. Gineman replied that she had emailed someone at the Board and she was asked if she was currently working. Ms. Gineman had replied that she was still working, but she was not advised to stop practicing. Dr. Steinbergh stated that the member of the Medical Board staff should have so advised Ms. Gineman. Mr. Groeber asked Ms. Murray to obtain Ms. Gineman's contact information so that that situation can be examined further.

Dr. Schottenstein moved to continue Ms. Gineman under the terms of her March 8, 2017 Consent Agreement, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion. The motion carried.

APPROVAL OF REPORTS OF CONFERENCES

Dr. Schottenstein moved to approve the Compliance Staff's Reports of Conferences for June 12 & 13, 2017. Mr. Giacalone seconded the motion. The motion carried.

MINUTES REVIEW

Mr. Giacalone moved to approve the draft minutes from June 14, 2017. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

ADJOURN

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

The meeting adjourned at 5:08 p.m.

Anita M. Steinbergh, D.O.
Chair

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