

**MINUTES****THE STATE MEDICAL BOARD OF OHIO****July 11, 2018**

Robert P. Giacalone, R.Ph., J.D., President, called the meeting to order at 10:23 a.m. in the Administrative Hearing Room, 3<sup>rd</sup> Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Andrew P. Schachat, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; Ronan M. Factora, M.D.; Mark A. Bechtel, M.D.; Betty Montgomery; and Sherry L. Johnson, D.O. The following member did not attend: Amol Sooin, 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; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Teresa Pollock, Director for Communications; Joseph Turek, Deputy Director for Licensure; Nathan Smith, Staff Attorney; Rebecca Marshall, Chief Enforcement Attorney; James Roach, Assistant Chief Enforcement Attorney; Marcie Pastrick, Cheryl Pokorny, Angela McNair, and Adam Meigs, Enforcement Attorneys; Kyle Wilcox and Melinda Snyder, Assistant Attorneys General; Kimberly Lee, Hearing Examiner; Alexandra Murray, Managing Attorney, Standards Review and Compliance; 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. Bechtel moved to approve the draft minutes of the June 13, 2018, Board meetings, as written. Dr. Schottenstein seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion carried.

APPLICANTS FOR LICENSURE

**Dr. Saferin moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the physician applicants listed in Exhibit "A" and the allied professional applicants in Exhibit "B," as listed in the Agenda**

**Supplement and handouts; and to approve the results of the June 25, 2018 Cosmetic Therapy Examination in Exhibit “C” and to certify as passing and license those receiving a score of 75 or greater on their examination, and to certify as failing and deny licensure to those who received a score of less than 75 on the examination, as listed in the Agenda Materials. Dr. Edgin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion carried.

**Dr. Saferin moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the applicants listed in Exhibit “D” for the Certificate to Recommend Medical Marijuana, as listed in the Agenda Supplement and handouts. Dr. Schottenstein seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- abstain
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion carried.

## REPORTS AND RECOMMENDATIONS

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

Mr. Giacalone 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: Anthony Joseph DiCello; and Michael Wade Jones, D.O. A roll call was taken:

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Johnson	- aye
Dr. Bechtel	- aye

Mr. Giacalone 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. Edgin	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Johnson	- aye
Dr. Bechtel	- aye

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

Mr. Giacalone 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.

#### ANTHONY JOSEPH DICELLO

Ms. Anderson stated that Mr. DiCello is present in the meeting, but his attorney has not arrived. Ms. Anderson suggested that the Board could move on to the next item on the agenda while Mr. DiCello attempts to contact his attorney. Mr. Giacalone agreed.

#### MICHAEL WADE JONES, D.O.

Mr. Giacalone directed the Board's attention to the matter of Michael Wade Jones, D.O. No objections have been filed. Ms. Blue was the Hearing Examiner.

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

Dr. Jones noted that this case was not extensively investigated by the State Medical Board of Ohio because the case is based on an Agreed Order which Dr. Jones had entered into with the Kentucky Board of Medical Licensure. Dr. Jones stated that a large number of the Stipulations of Fact listed on the Agreed Order are anything but fact, including the stipulation that Dr. Jones had not properly accessed the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system. Dr. Jones stated that he was able to show the Kentucky Board investigator his KASPER checks in the patient charts, but that did not seem to affect the Stipulations of Fact.

Dr. Jones stated that the borderline substandard care in 16 of his patient charts represented the 16 highest-dosage chronic pain patients in his practice. Dr. Jones stated that patients on chronic pain management made up less than 10% of his family medicine practice. Dr. Jones stated that a few of the borderline, potentially concerning standard of care issues were related to a lack of objective evidence of the need for chronic pain management. Dr. Jones had responded in each of these cases by noting that in his practice there often was not a clear, subjective diagnosis for chronic pain patients. Dr. Jones stated that in the gathering of subpoenaed patient charts, some MRI's, X-ray, and similar items were inadvertently not sent. These items were provided subsequently, but this did not seem to change the Stipulations of Fact.

Dr. Jones continued that the review of records showed an instance of a failure to respond to an abnormal or potentially inappropriate drug screen. Dr. Jones stated that he explained that there was a three- to four-month period in which his office was experimenting with an oral fluids drug screening test. During that time, Dr. Jones dismissed from his practice an inordinate number of patients due to abnormal screenings before he realized that the test was not accurate. At that point Dr. Jones stopped reacting to those particular tests and went back to urine drug screening. Dr. Jones stated that he did not respond to the abnormal test for the individual in question because it was based on the old oral fluids test and the patient had not had an abnormal test under the prior screening method. Dr. Jones stated that this explanation had no effect on the Stipulations of Fact.

Dr. Jones stated that he had taken continuing education courses in pain management and he had a counselor in his office to counsel his chronic pain patients. Dr. Jones stated that his chronic pain patients were required to be evaluated by the counselor before treatment; be evaluated for potential addiction by two different screens; and to see the counselor annually for re-evaluation and to help them learn non-medication methods of coping with chronic pain.

Dr. Jones stated that his situation with the Kentucky Board has been ongoing for almost three years, but he has never been told a specific thing that needed to be corrected in his practice. Dr. Jones commented that one argument was a duality of prescribing, but he noted that that does not exist on the KASPER report.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he had no specific comments, other than to opine that the Hearing Examiner's Report and Recommendation in this matter is appropriate.

**Dr. Schottenstein moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law,**

**and Proposed Order in the matter of Michael Wade Jones, D.O. Dr. Edgin seconded the motion.**

Mr. Giacalone stated that he will now entertain discussion in the matter of Dr. Jones.

Dr. Factora stated that the Board's proposed action against Dr. Jones' license is based on an allegation that on May 2, 2017, the Kentucky Board of Medical Licensure entered into an Agreed Order with Dr. Jones in which, among other things, his license was restricted/limited for an indefinite period of time. In addition, the Board alleged that on August 3, 2017, the Virginia Board of Medicine issued an Order prohibiting Dr. Jones from independently assessing, treating, managing, prescribing to, or consulting regarding patients with chronic pain. Dr. Factora briefly reviewed Dr. Jones' medical education and career, noting that Dr. Jones is currently board-certified in family medicine and obesity medicine.

Dr. Factora continued that the Kentucky Agreed Order required Dr. Jones to complete a "Prescribing Controlled Drugs" course; reimburse the Board's investigative costs; complete a Board-approved course related to Kentucky HB1; and obtain at least two favorable consultant reviews of his patient charts. The Agreed Order arose from a finding during another investigation of another licensee that Dr. Jones was prescribing controlled substances to that same patient, raising concern that Dr. Jones was not running KASPER reports properly for his patients. Subsequently, a review of Dr. Jones' patient charts was conducted and led to the following conclusions:

- Out of 11 charts, a Kentucky Board consultant found that Dr. Jones departed from or failed to conform to acceptable and prevailing medical practices in regard to diagnoses in three charts; in regard to treatment in two charts; and was overall "borderline" in seven charts;
- A second Board consultant reviewed five of Dr. Jones' patient charts that the first Board consultant was unable to form an opinion on. This second consultant found the treatment to be borderline in one chart due to Dr. Jones' failure to act on two inappropriate urine drug screens.

Dr. Factora stated that on August 3, 2017, the Virginia Board issued an Order that prohibited Dr. Jones from independently assessing, treating, managing, prescribing to, or consulting patients regarding patients with chronic pain. The Virginia Order was based in part on the Kentucky Order.

Dr. Factora stated that based on Dr. Jones' testimony, it appears that his foray into pain management was paved with the best intentions. Dr. Factora noted that Dr. Jones had planned to set up strong parameters for prescribing, obtaining consent, drug testing, and even setting up a counselor to provide non-pharmacological means of managing pain.

After the investigation and taking Vanderbilt University's course on prescribing, Dr. Jones commented on what he learned: "I guess one of the big things I've learned was, it doesn't matter your intentions so much as your documentation. So that, I would say, are where mistakes made." Dr. Jones testified that he is in the process of obtaining two favorable consultant reviews, explaining that because he had to wait six months after completing the Vanderbilt course and had closed his office, he did not have any new patients for a consultant to review. Dr. Jones added that he is not doing chronic pain management any longer, so it will be difficult for the Kentucky Board to see that he has implemented changes to his practice. However, Dr. Jones had expressed optimism about completing this requirement by the end of 2018.

Dr. Factora stated that Dr. Jones moved to Virginia in 2017 and he is currently employed as a bariatric

physician in Lynchburg, Virginia. Dr. Jones has indicated that he currently prescribes the following controlled substances to his patients: Qsymia, Belviq, Phentermine, and Phentermine-Topiramate. Dr. Factors noted that these medications are all potentially addictive substances. Dr. Jones testified that he does not plan on renewing his medical license in Ohio.

Dr. Factora stated that he agrees with the Hearing Examiner's Findings of Fact and Conclusions of Law, as well as the Proposed Order. Dr. Factora commented that Dr. Jones when Dr. Jones changed to practice to addiction medicine he seemed to be overwhelmed by the, and this affected his documentation and his management. Dr. Factora noted that Dr. Jones found the prescribing course to be useful, but the implementation of what he learned is probably the most important part of this and feedback on how he makes these corrections in his practice will be worthwhile.

Dr. Factora stated that Dr. Jones is changing his practice once again to bariatric medicine, an area in which he is board-certified. Dr. Factora further stated that this new practice also involves the prescribing of potentially addictive substances, so it will be important that Dr. Jones learns the lessons of his past mistakes.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion to approve carried.

REMAND IN THE MATTER OF CHRISTOPHER LOU DEMAS, M.D.

Mr. Giacalone 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 matter of Christopher Lou Demas, M.D. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye

Dr. Johnson - aye  
Dr. Bechtel - aye

Mr. Giacalone 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. Edgin	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Johnson	- aye
Dr. Bechtel	- aye

Mr. Giacalone stated that on December 9, 2015, the Medical Board issued a Notice of Opportunity for Hearing to Dr. Demas based on allegations that during a time when his medical license was suspended, Dr. Demas prescribed medications to specified patients and/or directed his staff to call in prescriptions for medications for specified patients under the auspices that the prescriptions were authorized by locum tenens doctors working at his medical practice when no such authorization had been provided. The Board alleged that Dr. Demas' acts, conduct or omissions constituted the commission of an act that is a felony in this state and that the acts, conduct and omissions constituted a violation of the Board's May 9, 2013 Order. On November 9, 2016, the Board issued an Order which permanently revoked Dr. Demas' certificate to practice medicine and surgery.

Mr. Giacalone continued that Dr. Demas filed an appeal of the Board's Order with the Franklin County Court of Common Pleas. Dr. Demas argued that the Board's Order was contrary to law and not supported by reliable, probative and substantial evidence because Dr. Demas had been disciplined based on charges or reasons that were not included in the Notice of Opportunity for Hearing. Specifically, Dr. Demas argued that the Board determined that Dr. Demas' conduct failed to conform to minimal standards of care.

On June 25, 2018, the Court determined that the Board had denied Dr. Demas' procedural due process rights by denying him the right to rely upon the Board's stipulation at hearing that no harm came to any patient as a result of the prescriptions in question and by disciplining him based upon charges or reasons that were not included in the Board's Notice. The Court reversed the Board's November 9, 2016 Order and remanded the matter to the Board for further proceedings consistent with the Court's decision.

Mr. Giacalone stated that the Board is now asked to issue a new Order in Dr. Demas' case. The Order should be based upon its previous Findings of Fact and Conclusions of Law related to Dr. Demas' commission of an act that constitutes a felony in this state and violation of the conditions of limitation placed by the Board on Dr. Demas' ability to practice by the May 9, 2013 Board Order. According to the Court's Decision and Judgment Entry, the Board may not consider evidence or argument related to any allegation that Dr. Demas departed from or failed to conform to minimal standards of care of similar

practitioners under the same or similar circumstances as that clause is used in Section 4731.22(B)(6), Ohio Revised Code. In addition, the Board must honor the stipulations entered at hearing, including that no harm came to any patient as a result of the prescriptions in question.

**Dr. Schottenstein moved to approve and confirm the Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Christopher Lou Demas, M.D. Dr. Schachat seconded the motion.**

Mr. Giacalone stated that he will now entertain discussion in the matter of Dr. Demas.

Mr. Giacalone stated that the evidence was undisputed that from around June 2013 to in or around August 2013, during the time that Dr. Demas' license was suspended by the Board, Dr. Demas prescribed medications to Patients 1 through 8 and/or directed his staff to call in prescriptions for medications for Patients 1 through 8 under the auspices that the prescriptions were authorized by *locum tenens* doctors working at his medical practice when, in fact, no such authorization had been provided by the *locum tenens* doctors. By issuing or authorizing the eight prescriptions identified in this case, Dr. Demas engaged in the practice of medicine without a certificate and violated the Board's May 2013 Order. The Proposed Order would permanently revoke Dr. Demas' license.

Dr. Schottenstein stated that he appreciates the decision of the Court in terms of helping the Board get this right. Dr. Schottenstein also respected the efforts of Dr. Demas to get his license back. Having said that, Dr. Schottenstein stated that he is not persuaded by Dr. Demas' arguments. In the objections, Dr. Demas' attorney described permanent revocation of a license as a last-resort sanction that should only be imposed in the most egregious cases. Dr. Schottenstein opined that practicing medicine without a license, especially in violation of a Board Order, constitutes one of the most egregious cases that the Board sees. Dr. Schottenstein stated that an active medicine license is a privilege and serves a public interest by informing the public when a medical practitioner is competent and ethical. Dr. Schottenstein stated that the public needs to be able to rely on the mechanism of licensure so that the public can have trust in the medical profession. Dr. Schottenstein opined that an effort to circumvent a Board-ordered suspension of a medical license is arguably an egregious case because it facilitates the break-down of public's trust in the profession, and a less-than-resolute response by the Board will lead to an erosion in its ability to maintain the competence and ethical standards of its practitioners.

Dr. Schottenstein continued that Dr. Demas' case also has multiple aggravating factors:

- A history of a prior disciplinary action;
- An arguably selfish motive;
- A pattern of misconduct;
- Multiple violations; and
- Behavior that Dr. Schottenstein opined could be fairly characterized as deceptive.

Dr. Schottenstein added that Dr. Demas did not accidentally allow his license expire and then realized it several weeks later. Rather, Dr. Demas' behavior was purposeful and intentional, and it put the licenses of the *locum tenens* physicians at risk as well.

Dr. Schottenstein reiterated his opinion that practicing medicine without a license in contravention of a Board Order really is an egregious act because of its ramifications to the medical profession and the

public, and it is an activity that the Board must not tolerate. Therefore, Dr. Schottenstein agreed with the Proposed Order to permanently revoke Dr. Demas' medical license.

Dr. Factora stated that Dr. Demas committed fraud by writing prescriptions without holding a valid license to practice medicine in Ohio. To review the severity of these egregious acts, Dr. Factora reviewed the prescriptions Dr. Demas issued during that time. The prescriptions were for controlled substances with many side-effects, including Xanax, Diazepam, Lorazepam, Vicodin, and Ultram. Dr. Factora stated that these medications should be prescribed carefully by a knowledgeable practitioner who will be able to monitor the patient for side-effects. Dr. Factora stated that in terms of the degree and the type of medication that was prescribed, these prescriptions are much more concerning than other medications that may have been prescribed.

Ms. Anderson reminded the Board of the instructions for this remand from the Court. Ms. Anderson stated that the conduct that was alleged was practicing medicine without a license and violating the Board's Order, and not about minimal standards of care or fraud issues. Dr. Factora stated that he is not discussing minimum standards of care. Dr. Factora stated that he is reviewing the types of medications to establish the severity of Dr. Demas' actions. Dr. Factora stated that there may be a different consequence if Dr. Demas had practiced medicine without a license by prescribing mild medications. Dr. Factora stated that the type of practice that Dr. Demas conducted while his license was suspended by prescribing controlled substances with many potential side-effects helps show the severity of his actions. Dr. Factora also noted that quantity of medications prescribed by Dr. Demas without a license and the lack of refills.

Dr. Factora stated that the relative severity of Dr. Demas' actions, as opposed to prescribing medications without significant side-effects, help illustrate to him that the severity of these actions warrant permanent revocation of his license.

Mr. Giacalone acknowledged that no patient harm occurred in this case. Mr. Giacalone further stated that the Board members understand that this case does not involve violation of the minimum standards of care. Mr. Giacalone stated that Dr. Demas violated the law not once, but twice. Based on that, Mr. Giacalone opined that permanent revocation of Dr. Demas' medical license is appropriate.

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Edgin	- abstain
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- abstain

The motion to approve carried.

#### PROPOSED FINDINGS AND PROPOSED ORDERS

Mr. Giacalone stated that in the following matter, the Board issued a Notice of Opportunity for Hearing.

No timely request for hearing was received. The matter was reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and it is now before the Board for final disposition. This matter are disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In this matter, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

SEAN PATRICK HAMMOND, L.M.T.

**Dr. Schottenstein moved to find that the allegations as set forth in the November 8, 2017 Notice of Opportunity for Hearing in the matter of Mr. Hammond have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Edgin seconded the motion.**

Mr. Giacalone stated that he would now entertain discussion in the above matter.

Dr. Schachat stated that Mr. Hammond came to the attention of the Board due to his alleged violation of the Board's Order of June 14, 2017. The Board Order imposed a \$3,000 fine and indefinitely suspended Mr. Hammond's massage therapy license, based on a felony conviction and impairment.

On November 8, 2017, the Board sent a Notice of Opportunity for Hearing to Mr. Hammond related to a number of allegations, including failure to pay the fine within 30 days; failure to submit a quarterly declaration of compliance; failure to make a required personal appearance; failure to arrange for required drug testing; and failure to submit evidence of participation in an appropriate rehabilitation program.

Concerning the original criminal matters, in October 2016 Mr. Hammond pleaded guilty to, and was convicted of, actions related to possession of Oxycodone. In November 2016, Mr. Hammond also pleaded guilty to, and was convicted of, aggravated possession of Carfentanil. Following a Board hearing, the Hearing Examiner proposed an Order that would suspend Mr. Hammond's massage therapy license, impose a fine of \$500, and outline a pathway for Mr. Hammond to achieve sobriety. In June 2017 the Board voted to modify the Proposed Order to increase the fine to \$3,000.

Dr. Schachat continued that following Mr. Hammond's documented lack of compliance with the Board Order, another Notice of Opportunity for Hearing was issued. Mr. Hammond has not communicated with the Board, and consequently the Board has not information about Mr. Hammond's well-being or the state of his recovery. The Proposed Order at this time would non-permanently revoke Mr. Hammond's massage therapy license. Dr. Schachat stated that this Order would protect the public and also relieve the Board of monitoring responsibilities for a license who has not shown that he is ready for such monitoring. Dr. Schachat added that Mr. Hammond would be able to reapply for licensure at a later date.

Dr. Schachat agreed with the Proposed Order.

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

Ms. Montgomery - aye  
 Dr. Johnson - aye  
 Dr. Bechtel - aye

The motion carried.

## REPORTS AND RECOMMENDATIONS

### ANTHONY JOSEPH DICELLO

Ms. Anderson stated that Mr. DiCello has concerns about proceeding with his case today because his attorney Eric Jones is not available, although one of Mr. Jones' colleagues is on the way to this meeting. Mr. DiCello has asked that the consideration of his case be postponed to the August 2018 meeting.

**Dr. Schachat moved that Board consider Mr. DiCello's Report and Recommendation at the August 8, 2018 Board meeting. Dr. Schottenstein seconded the motion. A vote was taken:**

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Johnson	- aye
Dr. Bechtel	- aye

The motion carried.

## EXECUTIVE SESSION

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

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Johnson	- 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, Ms. Marshall, Mr. Roach, the Enforcement Attorneys, the Assistant Attorneys General, Ms. Pollock, Ms. Murray, Mr. Smith, Ms. Moore, Mr. DePew, and Mr. Taylor in attendance.

The Board returned to public session.

#### RATIFICATION OF SETTLEMENT AGREEMENTS

##### MADHU AGGARWAL, M.D. – CONSENT AGREEMENT

**Dr. Schottenstein moved to ratify the proposed Consent Agreement with Dr. Aggarwal. Dr. Edgin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

##### JULIE A. KRAUSE, M.D. – CONSENT AGREEMENT

**Dr. Schottenstein moved to ratify the proposed Consent Agreement with Dr. Krause. Dr. Edgin seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

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

Ms. Marshall reviewed the proposed citations for the members of the Board.

Dr. Schottenstein noted that proposed Citation #6, to be issued to Thomas Bernard Edel, M.D., involves a physical health condition. Dr. Schottenstein asked if the Board is continuing to pursue development of a non-disciplinary monitoring process for practitioners with mental and physical health problems. Dr. Schottenstein also asked if this practitioner could be placed in such a process once it is instituted. Ms. Marshall replied that, speaking generally and not in relation to this particular case, that the non-disciplinary monitoring program is near completion. Ms. Marshall added that it is a voluntary program which requires the cooperation of the licensee.

**Dr. Schottenstein moved to enter an Order of Immediate Suspension in the matter of Susan Donna Lawrence, D.O., in accordance with Section 3719.121(C), Ohio Revised Code, and to issue the Notice of Immediate Suspension and Opportunity for Hearing. Dr. Edgin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- abstain

The motion carried.

**Dr. Schottenstein moved to send the Notices of Opportunity for Hearing to Stewart I. Adam, III, M.D.; Roger Todd Adler, M.D.; Chukwuma P. Anyadike, M.D.; Thomas L. Craig, III, M.D.; Thomas Bernard Edel, M.D.; Mohammad Moayeri, M.D.; and Dana P. Richard, D.O. Dr. Edgin seconded the motion. A vote was taken:**

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

Ms. Montgomery - aye  
Dr. Johnson - aye  
Dr. Bechtel - abstain

The motion carried.

**Dr. Schottenstein moved to send the Notices of Opportunity for Hearing to Kansky Delisma, M.D.; and Vernon Proctor, M.D. Dr. Edgin seconded the motion.** A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Johnson	- aye
Dr. Bechtel	- aye

The motion carried.

## OPERATIONS REPORT

**Human Resources:** Mr. Groeber stated that that an investigator for the South area is pending to be hired late this month. Other positions posted include a Hearing Unit assistant, a North area investigator, and two Attorney 3 positions. Mr. Groeber stated that interviews for those positions will begin soon.

**Investigator Firearms:** Mr. Groeber stated that the Board staff is continuing to work with the union to implement the changes directed by the Board. Management has continued to work with the union to prepare for the return of firearms should the Board vote to rescind investigator authority to carry firearms at the August 2018 meeting. Mr. Groeber stated that until such time as the Board takes a formal vote, the Board will maintain the investigators' authority to carry firearms.

**Agency Operations:** Mr. Groeber noted that for the first time in quite some time, there has been a significant increase in open cases. Mr. Groeber speculated that this may be a one-time occurrence, possibly caused by a delay in officially closing cases. Mr. Groeber stated that he will watch this statistic to see if it resolves by next month. Mr. Groeber continued that license issuance has increased almost 12% year-to-date and compliance numbers have decreased 6% year-to-date.

Mr. Groeber stated that Mr. LaCross will work with Mr. Turek to develop statutory language to allow the Board to license individuals on a weekly basis instead of waiting until the next monthly Board meeting. Mr. Groeber commented that enacting this change could cause a dramatic drop in the average time to license applicants.

Mr. Groeber stated that new allopathic and osteopathic medical licenses with clean applications are being issued in an average of 26 days, 25% faster than the previous year. Expedited licensure applications

were approved in an average of 23 days, longer than the 15 days it had taken in June 2017.

**Probationary Appearances:** Mr. Groeber stated that Ms. Murray has developed a proposal regarding probationary appearances, based on the Board's discussion at the Board Retreat. Mr. Groeber also noted that Ms. Murray's adult Irish dance group placed first in the North American Nationals competition last week. The Board applauded Ms. Murray for her achievement.

Ms. Murray stated that the memorandum outlines and makes recommendations for four categories of probationers:

- A licensee on probation for failing to renew his or her license can be released by the Board by written request, similar to other probationary requests for modification. A final appearance before the Board's Secretary and Supervising Member would not be required.
- A licensee on probation for minor criminal acts, can be released by the Board by written request, similar to other probationary requests for modification, provided the licensee has no prior Board action. This request can be submitted following a final appearance before the Board's Secretary and Supervising Member.
- A licensee on probation for minimal standards or prescribing issues can be released by the Board by written request, similar to other probationary requests for modification, provided the licensee has no prior Board action. This request can be submitted following a final appearance before the Board's Secretary and Supervising Member.
- Licensees who are on probation for repeat violations; major criminal acts or criminal acts related to the practice of medicine; and/or impairment issues will continue to appear before the full Board prior to release.

**Dr. Bechtel moved to approve the proposed revisions of The State Medical Board of Ohio's Compliance Appearance Policy. Dr. Edgin seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion carried.

**Board Member IT Issues:** Mr. Groeber stated that any Board member wishing help with IT issues can request that a Board staff member come to their home to help them get set up in that regard.

**ICD-10 Code Compliance:** Mr. Groeber stated that it is probable in the next month or two that the Board will issue letters to licensees regarding compliance with the new requirement to include ICD-10 diagnosis codes on controlled substance prescriptions, similar to the Ohio Automated Rx Reporting System (OARRS) non-compliance letters. Mr. Groeber speculated that, as with the OARRS letters, the Board may want to give a number of months for licenses to correct their behavior and comply with the new rule. Mr. Groeber stated that the initial letters will be more educational in nature, and later letters to those who are not adjusting their practices can contain more compliance-related language.

Dr. Schachat and Dr. Johnson briefly discussed the linking of diagnosis codes to prescriptions in hospital electronic medical record systems. Dr. Schachat noted that according to a recent article in the Journal of the American Medical Association, the error rates for the CD-10 codes are very significant. Mr. Groeber noted that the required ICD-10 reporting is truncated and does not require the entire code, so some of those errors can be eliminated.

Mr. Groeber stated that the data from the reporting can be used to see what conditions are driving opioid prescribing.

**U.S. Department of Health and Human Services Report:** Mr. Groeber stated that he previously circulated to Board members an email with a link to a story from Cleveland.com that included comments from the U.S. Department of Health and Human Services Office of the Inspector General. These comments, based upon Medicaid data from 2016, referred to the potential for pill mill shopping in Ohio. Mr. Groeber also circulated the Ohio Department of Medicaid's preliminary response to that report, which Mr. Groeber felt did a nice job of illuminating some of the issues and concerns that Ohio had with the way the data was pulled and presented, as well as how a narrow set of patients was presumed to be reflective of the entire population.

Mr. Giacalone asked if the Governor's office is going to respond to the article. Mr. Groeber was uncertain if the Governor's office would add to the response from the Department of Medicaid. Mr. Groeber opined that Ohio's efforts in this regard have been significant and positive. Mr. Giacalone agreed. Mr. Groeber added that the numbers also included physicians who were treating patients with cancer and other serious conditions in which high doses of opioids are appropriate.

Mr. Giacalone asked if the Board should respond to Cleveland.com with its concerns about the article. Mr. Groeber stated that he will follow-up with Cleveland.com.

**New Format for Board Meeting Materials:** In response to questions from Mr. Taylor, the Board members indicated approval of the new format for Board meeting materials, with some suggestions. Mr. Taylor stated that he would incorporate the Board's members suggestions.

## RESPIRATORY CARE ADVISORY COUNCIL REPORT

Dr. Factora stated that the Respiratory Care Advisory Council met on July 10, 2018, and approved the minutes of its previous meeting. The Council recommended Board approval of the Ohio Respiratory Care Law and Professional Ethics course video script and quiz prepared by the Board's communications staff. The Council also discussed two scope of practice issues, 1) emergency medicine triage, and 2) changing a tracheostomy tube in an acute setting. Dr. Factora stated that these issues will come to the PA/Scope of Practice Committee soon.

Dr. Factora stated that the Council will next meet on September 11, 2018.

Ms. Montgomery exited the meeting at this time.

## REPORTS BY ASSIGNED COMMITTEES

### FINANCE COMMITTEE

#### FISCAL UPDATE

Dr. Schottenstein stated that the Board's revenue in May 2018 was \$1,078,533, which represents another good month. Dr. Schottenstein stated that it appears that the Board's June revenue will approach \$2,000,000, which will be a record. Dr. Schottenstein noted that because of how revenue is processed at the end of a fiscal year, approximately \$1,600,000 of the June revenue will be credited to June and the rest will be credited to July. Dr. Schottenstein stated that the Board has exceeded the comparison to the same time two years prior for the first time this fiscal year, with a 5% increase in year-to-date revenue. Dr. Schottenstein stated that the Board's cash balance in May 2018 was \$4,029,589 and further increase is expected in the June numbers.

Dr. Schottenstein stated that expenditures have increase 5.4% year-to-date, which is consistent with the typical yearly increase of 4% in payroll and the addition of new staff following the Medical Board's merger with the Board of Dietetics and the Respiratory Care Board.

#### ACCOUNTS RECEIVABLE

Dr. Schottenstein stated that in May 2018 the Board collected fine payments totaling \$38,101. In total, the Board has received a total of \$255,500 in fines, with \$148,500 outstanding.

Dr. Factora exited the meeting at this time.

### EDUCATION AND OUTREACH

Dr. Schottenstein stated the Board continues to roll out educational materials for dietitians and respiratory care professionals. Dr. Schottenstein stated that the programs will be online and will have scripts approved by the Licensure Committee. There will also be educational items included in the Summer edition of the Board's HealthScene magazine.

Dr. Schottenstein stated that the Board has begun using the Benchmark email system and it is going very well. The Benchmark system is very user-friendly, less expensive than the previous system, and can be used to conduct surveys. The Committee is also contemplating finding a media company to develop educational quizzes for the Board's licensees.

### REVIEW OF FINING GRID RESPONSES

Dr. Schottenstein stated that Board member feedback on the Board's fining guidelines has been compiled and reviewed. Dr. Schottenstein stated that the "standard fine" column has been removed from the fining grid and there will only be a "minimum fine" and "maximum fine" going forward. Dr. Schottenstein stated that the minimum fine will be considered the standard fine. The Finance Committee voted to approve the

suggested changes, with the suggested fines rounded to the nearest \$500 increment.

**Dr. Saferin moved to approve the fining guidelines, as discussed by the Finance Committee. Dr. Edgin seconded the motion.** All members voted aye, except Mr. Gonidakis, who abstained. The motion carried.

#### FOOD AND DRUG ADMINISTRATION OPIOID MEETING

Dr. Schottenstein noted that the date of this meeting has been moved to August 28. Dr. Schottenstein also noted that the airfare to travel to the meeting has gotten cheaper.

Ms. Montgomery returned to the meeting at this time.

#### BOARD MEMBER COMPENSATION INCREASE UPON REAPPOINTMENT

Dr. Schottenstein stated that in Fiscal Year 2018, four Board members were reappointed. After consideration, the Finance Committee voted to approve member raises and submit them to the full Board for approval.

**Dr. Saferin moved to approve a 4% raise for Amol Soin, M.D., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Edgin seconded the motion.** All members voted aye. The motion carried.

**Dr. Edgin moved to approve a 4% raise for Michael Schottenstein, M.D., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Bechtel seconded the motion.** All members voted aye except Dr. Schottenstein, who abstained. The motion carried.

**Dr. Edgin moved to approve a 4% raise for Bruce Saferin, D.P.M., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Schachat seconded the motion.** All members voted aye except Dr. Saferin, who abstained. The motion carried.

Dr. Factora returned to the meeting at this time.

**Dr. Saferin moved to approve a 4% raise for Michael Gonidakis, Esq., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Edgin seconded the motion.** All members voted aye except Mr. Gonidakis, who abstained. The motion carried.

#### EXECUTIVE DIRECTOR COMPENSATION INCREASE

Dr. Schottenstein stated that the Finance Committee voted to approve the release of funds to finance a 5.75% raise for the Executive Director, pending the outcome of the *ad hoc* committee that is studying this matter.

**Dr. Bechtel moved to approve the financing of up to a 5.75% increase of the Executive Director's salary, pending the outcome of the Executive Director Review Committee. Dr. Edgin seconded the**

**motion.** All members voted aye. The motion carried.

#### FEDERATION OF STATE MASSAGE THERAPY BOARDS ANNUAL MEETING

Dr. Schottenstein stated that the 2018 Annual Meeting of the Federation of State Massage Therapy Boards (FSMTB) will be October 4-6 at the Marriott City Center in Salt Lake City Utah. FSMTB membership includes the right of each member board or agency to send a voting delegate to the Annual Meeting. Delegate travel, accommodations, meals, and program expenses will be covered by the FSMTB. The Finance Committee approved a motion to this effect earlier today.

**Dr. Saferin moved to approve Mr. Groeber to attend the Federation of State Massage Therapy Boards Annual Meeting on October 4-6 in Salt Lake City, Utah; and any travel expenses not covered by the FSMTB will be paid by the Medical Board in accordance with state travel policy; and that attendance at the conference is in connection with Mr. Groeber's duties as, and is related to his position as, Executive Director for the State Medical Board of Ohio. Dr. Edgin seconded the motion.** All members voted aye. The motion carried.

#### RESPIRATORY CARE AND DIETETICS EDUCATIONAL VIDEO DEVELOPMENT

Dr. Schottenstein stated that Ms. Pollock presented an estimate to develop instructional videos for the Board's newest license types: Respiratory care therapists and dietitians. The estimated cost for the production of the videos is \$15,800. The Finance Committee voted to approve the development of these videos.

**Dr. Saferin moved to approve the expenditure of up to \$15,800 for the development of instructional videos for respiratory care therapists and dietitians. Dr. Edgin seconded the motion.** All members voted aye. The motion carried.

The Board meeting recessed at 12:00 p.m. and resumed at 1:15 p.m.

#### EXECUTIVE SESSION

**Dr. Saferin 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. Mr. Gonidakis seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- 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, and Ms. Loe in attendance.

The Board returned to public session.

#### REPORTS BY ASSIGNED COMMITTEES

##### POLICY COMMITTEE

##### PROPOSED AMENDMENTS TO LIMITED BRANCHES RULE 4731-1-02

**Dr. Saferin moved to approve Rule 4731-1-02 for filing with the Common Sense Initiative office as presented. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

##### PROPOSED RULES FOR OFFICE-BASED TREATMENT OF OPIOID ADDICTION

Ms. Debolt stated that the Policy Committee reviewed the proposed changes to the proposed rules and has recommended two amendments. First, the Policy Committee recommended that proposed Rule 4731-33-03(G)(2)(d) include language to clarify that it would be appropriate to use Subutex for withdrawal management if Suboxone is contraindicated, with documentation in the patient chart. Second, the Policy Committee recommended that the title of proposed Rule 4731-33-04 be changed to Medication-Assisted Treatment Using Naltrexone.

**Dr. Bechtel moved to file the proposed Rules, as discussed by the Policy Committee, with the Common Sense Initiative office. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

##### UPDATES TO DIETETICS AND RESPIRATORY CARE RULES

Mr. Smith stated that the Policy Committee discussed revisions to the Dietetics Rules and the Respiratory Care Rules. The Policy Committee voted to approve the rules as circulate, with three amendments, for filing with the Common Sense Initiative.

**Dr. Bechtel moved to approve the filing of the Dietetics Rules and Respiratory Care Rules, as discussed by the Policy Committee, with the Common Sense Initiative office. Dr. Rothermel seconded the motion.** All members voted aye. The motion carried.

##### LEGISLATIVE UPDATE

Mr. LaCross stated that the Legislature is currently in its summer break, so work is proceeding slowly. Mr. LaCross stated that the pending physician assistant legislation, Senate Bill 259, will probably be passed by the Senate in September.

Mr. LaCross stated that House Bill 111 was passed by the House before the break. House Bill 111

included the following provisions:

- Limited Permits for Respiratory Care will be valid for three years;
- Certification attestations will be required on parts of the licensure applications rather than an affidavit;
- The Board may contract with third-party agents for delivery of subpoenas;
- Termination from the Medicaid or Medicare program is added as a disciplinary action within the Board's disciplinary code;
- Training Certificate rotators are extended to out-of-state residents;
- Equivalency is added for post-graduate training programs in podiatric medicine;
- Physician Assistant supervision agreements will no longer be filed with the Board; instead, they will be filed on-site and be subject to audits by the Board.

Mr. LaCross stated that legislative initiatives for the Fall include changes to physician continuing medical education (CME) requirements and a provision to allow the Physician Assistant Policy Committee to conduct meetings remotely by electronic means.

#### LICENSURE COMMITTEE

##### RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL

**Dr. Saferin moved to approve the Breath Easy Respiratory Conference presentation “Ethics in Healthcare” for one contact hour of RCCE on Ohio respiratory care law or professional ethics, pursuant to the provisions of chapter 4761-9 of the Ohio Administrative Code. Dr. Bechtel seconded the motion.** All members voted aye. The motion carried.

##### DIETETICS CONTINUING EDUCATION PORTFOLIOS

**Dr. Saferin moved that the continuing education portfolios for the nine licensees identified in the memorandum be approved for the period of July 1, 2013 – June 30, 2018 pursuant to 4759-4-04 of the Ohio Administrative Code. Dr. Factora seconded the motion.** All members voted aye. The motion carried.

##### RESPIRATORY CARE AND DIETETICS COURSE APPROVALS

Dr. Saferin stated that Rule 4761-9-04 lays out the requirements for the Ohio respiratory care law and professional ethics course. The Communications staff of the Board has created a script for a video that will be produced and offered online to satisfy this respiratory care continuing education requirement. On June 13, 2018, the Licensure Committee had previously reviewed and approved the outline and concept of the course produced by the Board's Communications staff. At that time, the Licensure Committee indicated a desire to see a more finalized script of the video. Subsequently, the Communications staff created a script for a video that will be produced and offered online to satisfy the dietetics jurisprudence requirement.

**Dr. Saferin moved to approve the dietetics jurisprudence video script and to approve the**

**respiratory care Law and Professional Ethics course video script as presented. Dr. Bechtel seconded the motion.** All members voted aye. The motion carried.

LICENSURE APPLICATION REVIEW

ROBIN LEE RHODES, M.D.

Dr. Saferin stated that Dr. Rhodes is applying for restoration of her medical license in Ohio. Dr. Rhodes' application indicates that she has not been engaged in the clinical practice of medicine since she retired on March 1, 2015, although her license expired on April 1, 2016. Dr. Rhodes is a 1979 graduate of Eastern Virginia Medical School. Since 1984, Dr. Rhodes has held a lifetime certification with the American Board of Pediatrics. According to her application, she would like to come out of retirement to help a local hospital with coverage at their newborn nursery since active pediatricians have resigned their hospital privileges. Dr. Saferin stated that Dr. Rhodes is current with her continuing medical education (CME) requirements and she has retaken her board examination, so she is very competent in the Licensure Committee's estimation

**Dr. Saferin moved to approve Dr. Rhodes' request for Ohio licensure as presented. Dr. Rothermel seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion carried.

COSMETIC THERAPIST CONTINUING EDUCATION COURSE APPROVAL

Dr. Saferin stated that on June 4, 2018, Mr. Groeber, Mr. Turek, Ms. Scott, and Ms. Debolt met with cosmetic therapists to discuss continuing education (CE) issues, including what constitutes an approved course and the number of hours required. The discussion resulted in the recommendation that the number of required CE hours be reduced from 25 to 15, with at least 10 hours being completed in coursework that is clinically relevant to cosmetic therapy and approved by a national accrediting organization approved by the Board. The recommendation further stated that up to five hours could in subjects not clinically relevant to cosmetic therapy, but relevant to maintaining a safe and effective practice.

Dr. Saferin stated that after through discussion, the Licensure Committee amended the proposed language to require 12 hours to be clinical relevant, with up to three hours relevant to maintaining a safe and effective practice. This language will be circulated to interested parties for comment.

DISCUSSION OF MANDATORY CONTINUING MEDICAL EDUCATION

Dr. Saferin stated that he conducted an informal survey of Board members and determined that mandatory continuing medical education (CME) in specific topics would not be pursued. Dr. Saferin stated that staff will create educational items for the Board's newsletters and magazine for the benefit of licensees. Mr. Groeber stated that this was also discussed in Finance Committee. Mr. Groeber stated that the Board will do some research on educational software developers to aid in this endeavor.

PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE"LOCAL ANESTHESIA" DEFINITION INQUIRY

Dr. Schachat stated that a bariatric surgeon's office contacted the Board to ask if a physician assistant in that office could administer a transversus abdominis plane (TAP) block. Dr. Schachat stated that physician assistants are allowed to administer local anesthetics but not regional anesthetics. After some research and consultation with anesthesia physicians, the Committee was advised that a TAP block is a regional anesthetic. Therefore, the Committee recommended that the bariatric surgeon's office be informed that physician assistants cannot perform TAP blocks.

COMPLIANCE COMMITTEE

Dr. Schottenstein stated that on June 13, 2018, the Compliance Committee met with Aubrey D. Winkler, P.A., and moved to continue her under the terms of her Board action. The Compliance Committee also accepted Compliance staff's report of conferences on May 7, 8, & 11, 2018.

EXECUTIVE DIRECTOR COMPENSATION

**Dr. Saferin moved to approve a 5.75% pay increase for the Executive Director, to be effective the pay period that includes July 1, 2018, subject to the approval of the Governor's office. Dr. Rothermel seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- aye

The motion to approve carried.

PROBATIONARY REQUESTS

Mr. Giacalone advised that at this time he would like the Board to consider the probationary requests on today's consent agenda. Mr. Giacalone asked if any Board member wished to discuss a probationary request separately. No Board member wished to discuss a probationary request separately.

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

- **To grant Thuan D. Dang, M.D.'s request for reduction in appearances to once per year;**
- **To grant Timothy M. Hickey, M.D.'s request for discontinuance of the chart review requirement;**
- **To grant James T. Lutz, M.D.'s request for reduction in appearances to one per year;**
- **To grant James A. Marsh, Jr., D.O.'s request for reduction in psychotherapy treatment sessions to every three months; and**
- **To grant Randall G. Whitlock, P.A.'s request for approval of Dennis A. Mesker, M.D., to serve as the new reporting physician.**

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Edgin	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Johnson	- aye
	Dr. Bechtel	- abstain

The motion to approve carried.

FINAL PROBATIONARY APPEARANCESROBERT S. HABER, M.D.

Dr. Haber was appearing before the Board pursuant to his request for release from the terms of the Board's Order of March 9, 2016. Mr. Giacalone reviewed Dr. Haber's history with the Board.

Responding to questions from Mr. Giacalone, Dr. Haber stated that he has an independent practice in Beachwood, Ohio, with another physician. Dr. Haber stated that the last two years has been challenging because due to the Board's action, he lost Medicare privileges and was dropped by two of his office's largest insurances. Dr. Haber stated that the insurances have not put him back on their panels since his

license was reinstated under probationary terms.

Mr. Giacalone asked Dr. Haber's opinion on the controlled substance prescribing course and the medical record-keeping course that he had been required to take. Dr. Haber replied that the courses were very educational. Dr. Haber stated that he has never been a large prescriber of controlled substances, so that course did not pertain to him, but he still found it very educational. Dr. Haber stated that one result of this process is that his prescribing of controlled substances has reduced to almost non-existent levels. Dr. Haber stated that he may write two or three controlled substance prescriptions per year and that this is a permanent change in his practice.

Dr. Schottenstein commented that Dr. Haber's essays on his courses were very good and he seems to have gotten a lot out of those courses. Dr. Schottenstein asked if Dr. Haber shares this experience with colleagues so they can avoid a similar situation. Dr. Haber stated that he shares his experience with residents and fellow physicians on a regular basis. In response to further questions from Dr. Schottenstein, Dr. Haber stated that there are no restrictions on his Drug Enforcement Administration (DEA) registration at this time and he is hopeful to get back on insurance panels once his probation is lifted.

**Dr. Schottenstein moved to release Dr. Haber from the terms of the Board's Order of March 9, 2016, effective July 22, 2018. Dr. Edgin seconded the motion.** All members voted aye. The motion carried.

LANA HETZEL, M.T.

Ms. Hetzel was appearing before the Board pursuant to her request for release from the terms of her April 13, 2016 Consent Agreement. Mr. Giacalone reviewed Ms. Hetzel's history with the Board.

Responding to questions from Mr. Giacalone, Ms. Hetzel stated that she is not currently practicing massage therapy, noting that she had surgery on both hand one year ago due to the work she had to do. Ms. Hetzel stated that she is currently in graduate nursing school, though she intends to keep her massage therapy license once it is reinstated.

Mr. Giacalone asked what Ms. Hetzel will do to avoid another failure to renew her license. Ms. Hetzel replied that she intends to renew her license in a timely manner going forward. Ms. Hetzel commented that the year she forgot to renew her license was a tough year for her and she was a little unfocused. Ms. Hetzel stated that about that time, her 8<sup>th</sup> grade daughter was raped, her 31-year-old nephew was buried after three tours in Iraq, and her son had a baby at the age of 17. Ms. Hetzel stated that when she realized her license had lapsed, she immediately contacted the Board to notify them.

Ms. Hetzel commented that she favors required continuing education for massage therapists, which is not currently required. Ms. Hetzel stated that she will do continuing education and will renew her license in October 2018.

**Dr. Schottenstein moved to release Ms. Hetzel from the terms of her April 13, 2016 Consent Agreement, effective July 15, 2018. Dr. Edgin seconded the motion.** All members voted aye. The motion carried.

KIMBERLY M. PEACOCK, D.O.

Dr. Peacock was appearing before the Board pursuant to her request for release from the terms of her July 8, 2015 Consent Agreement. Mr. Giacalone reviewed Dr. Peacock's history with the Board.

In response to questions from Mr. Giacalone, Dr. Peacock stated that she is a family practitioner in adult medicine at a federally-qualified center in Cleveland. Dr. Peacock stated that her practice is going well and her colleagues have been supportive. Dr. Peacock stated that her family and friends have also been supportive.

Dr. Schottenstein noted that the psychiatrist at Dr. Peacock's Board-ordered evaluation had diagnosed her as being in full remission at that time. Dr. Schottenstein asked how Dr. Peacock had come to the attention of the Board if she had been in full remission. Dr. Peacock replied that she had disclosed her condition and the fact that she had been previously hospitalized on her licensure application. Dr. Schottenstein asked if Dr. Peacock has remained in full remission. Dr. Peacock answered that when she had her baby she developed post-partum depression, which necessitated some adjustments which helped resolve the problem. Dr. Peacock stated that her mental health currently feels good and her baby is doing well. In response to further questions from Dr. Schottenstein, Dr. Peacock stated that she has never had any substance use problems and that she continues to see a therapist.

**Dr. Edgin moved to release Dr. Peacock from the terms of her July 8, 2015 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

SHRI K. RAO, M.D.

Dr. Rao was appearing before the Board pursuant to his request for release from the terms of the Board's Order of April 13, 2011. Mr. Giacalone reviewed Dr. Rao's history with the Board.

Responding to questions from Mr. Giacalone, Dr. Rao stated that he has an independent practice where he treats patients with bioidentical hormones to help them lose weight and get to better health. Dr. Rao also practices in an urgent care at least three weekends per month, the same urgent care that he had worked at previously.

Dr. Giacalone asked how Dr. Rao came to the attention of the Ohio and the Kentucky medical boards. Dr. Rao responded that he came to this country because he wanted to become a cardiologist. After working as an internist in London, Kentucky, for three-and-a-half years, Dr. Rao wanted to return to cardiology. Consequently, Dr. Rao accepted an unpaid research fellowship with the Cleveland Clinic Foundation. Dr. Rao commuted between Cleveland, Ohio, and London, Kentucky, so that he could continue to work part-time as a medical director in London since that was his only source of income.

Dr. Rao continued that at that time he responded to an advertisement in the New England Journal of Medicine which asked for physicians to work from home. Dr. Rao was told that he would only be doing quality control reviews in this position. However, Dr. Rao's employers were basically printing out prescriptions in his name and sending them around the country. Dr. Rao stated that he was so consumed with his research that he did not invest time into thinking about what he was actually getting involved in. Three months later, Dr. Rao was contacted by the authorities. Subsequently, Dr. Rao returned all the money he had gained and he fully cooperated with the investigation. Because of his cooperation, Dr. Rao

was allowed to plea to making a simple false statement.

Mr. Giacalone asked if Dr. Rao had known what was going on with his employment. Dr. Rao stated that he used to work from 6:30 a.m. to 10:00 p.m. or 11:00 p.m. doing research. Dr. Rao stated that it was his fault for not paying attention or thinking about the situation. Mr. Giacalone noted that according to the Board Order, Dr. Rao approved more than 30,798 orders for prescription drugs, which equates to about 1,000 orders per day. Mr. Giacalone further noted that Dr. Rao received \$95,000 over a four-month period. Mr. Giacalone asked if Dr. Rao had felt that this payment was exorbitant for doing almost nothing. Dr. Rao apologized and stated that he had not been paying attention to what he was doing. Dr. Rao stated that when he looked back he realized something was wrong, but he did not think about it at the time.

Mr. Giacalone stated that the Medical Board permanently revoked Dr. Rao's medical license, but stayed that suspension. Mr. Giacalone asked if Dr. Rao understood that if he appears before the Board again, he is likely to lose his license permanently. Dr. Rao replied that he understands the situation and he has no intention of appearing before the Board again. Dr. Rao stated that he now has six attorneys and he always checks with them before doing anything.

Dr. Schottenstein asked if there is a telemedicine component to Dr. Rao's practice. Dr. Rao replied that he does not do telemedicine. Dr. Rao also commented that he is hesitant to do electronic prescribing in the urgent care, even though that is allowed.

**Dr. Schottenstein moved to release Dr. Rao from the terms of the Board's Order of April 13, 2011, effective immediately. Mr. Gonidakis seconded the motion.** All members voted aye. The motion carried.

TERRY L. THOMAS, D.O.

Dr. Thomas was appearing before the Board pursuant to his request for release from the terms of his July 10, 2013 Consent Agreement. Mr. Giacalone reviewed Dr. Thomas' history with the Board.

Responding to questions from Mr. Giacalone, Dr. Thomas stated that his current practice as an emergency medicine physician in West Virginia is going well and his recovery program is excellent. Dr. Thomas stated that he currently had two different sponsors and four sponsees. Dr. Thomas commented that he has become board-certified in addiction medicine and he does some work in the field currently. Dr. Thomas stated that likes emergency medicine, but he would like to practice more addiction medicine because that is where he is happiest. Dr. Thomas stated that there is often a trust issue in addiction medicine, and the fact that he himself is an addict helps to establish some trust with addiction patients.

Responding to questions from Dr. Schottenstein, Dr. Thomas stated that he is authorized to prescribe Suboxone, but he does not currently prescribe it because he is not in favor of the way it is currently done. Dr. Thomas opined that current Suboxone prescribing practices where he is at do more harm than good. Dr. Thomas stated that he would like to prescribe Suboxone when he can set up a program the way he wants.

Dr. Schottenstein asked if Dr. Thomas had used Neurontin in combination with opioids when he was abusing that medication. Dr. Thomas replied that he had not used Neurontin with opioids. Dr. Thomas stated that he went to Talbott Recovery Center in Atlanta, Georgia, for treatment of his addiction to pain

medication and the pain physicians at that facility put him on Neurontin. Dr. Thomas stated that that was the first time he had ever been exposed to Neurontin and he was abusing it before he left treatment. Dr. Schottenstein stated that Dr. Thomas' experience with Neurontin is not common, but it does happen. Dr. Thomas commented that his relapse was the best thing that happened to him because it proved to him beyond a shadow of a doubt that he was an addict.

Dr. Schottenstein asked if Dr. Thomas has any mental health issues that have been a trigger for him to use substances. Dr. Thomas replied that he does not have any such mental health triggers.

**Dr. Schottenstein moved to release Dr. Thomas from the terms of his July 10, 2013 Consent Agreement, effective immediately. Mr. Gonidakis seconded the motion.** All members voted aye. The motion carried.

Dr. Thomas thanked the Board for having a Compliance program and giving licensees an opportunity to get their lives back on track. Dr. Thomas stated that Board action does not have to be a death sentence.

ADJOURN

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

Thereupon, at 2:25 p.m., the July 11, 2018 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 11, 2018, as approved on August 8, 2018.



Robert P. Giacalone, President



Kim G. Rothermel, M.D., Secretary

(SEAL)



State Medical Board of Ohio

**PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE MEETING**

**July 11, 2018**

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

<p><b>Members:</b> Andrew P. Schachat, M.D., Chair Mark A. Bechtel, M.D.</p> <p>Member absent: Robert P. Giacalone</p> <p>Other Board members attending: Kim G. Rothermel, M.D. Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D. Ronan M. Factora, M.D.</p>	<p><b>Staff:</b> Sallie Debolt, Senior Counsel</p>
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Dr. Schachat called the meeting to order at 7:30 a.m.

**MINUTES REVIEW**

**Dr. Bechtel moved to approve the draft minutes of June 13, 2018, as corrected to indicate that Dr. Schachat had called the meeting to order. Dr. Schachat seconded the motion.** The motion carried.

**“LOCAL ANESTHESIA” DEFINITION INQUIRY**

Dr. Schachat stated that the Board has received an inquiry regarding whether physician assistants may perform a transversus abdominis plane (TAP) block. Dr. Bechtel stated physician assistants are restricted by statute from performing regional anesthesia, though they may perform local anesthesia. Dr. Bechtel stated that based on documentation provided by Ms. Debolt, it is clear that a TAP block is a form of regional anesthesia, and therefore physician assistants may not perform it.

Dr. Saferin asked how this will be affected by pending legislation that, if passed, would allow a physician assistant to perform any procedure that is performed by their supervising physician. Ms. Debolt stated that if the legislation does not specifically repeal or amend the statute that limits physician assistants to local anesthesia, then that restriction will remain in place even if the legislation passes.

Dr. Bechtel commented that one concern he has about the TAP block is that it infiltrates a lot of lidocaine into the abdominal wall. Dr. Bechtel that in tumescent liposuction, lidocaine is infiltrated into the abdominal cavity and has, in some cases, lead to cardiac arrests and deaths due to lidocaine toxicity. Dr. Bechtel stated that this form of anesthesia is not without significant risk, and he therefore opined that it is appropriate to restrict physician assistants from performing it. Ms. Debolt noted that lidocaine is usually considered to be a local anesthetic, but it has a regional affect when used in a TAP block.

Ms. Debolt stated that she does not anticipate this being a formal opinion of the Board, but will be an emailed response to the inquiry. Ms. Debolt stated that the question was presented to the Committee

because the staff lacked the expertise to answer the question adequately. Ms. Debolt stated that she will respond to the inquiry with the Committee's consensus that physician assistants may not perform a TAP blocks because it is a form of regional anesthesia, which physician assistants cannot perform by statute.

The Committee engaged in a brief discussion of the Board's rules on physicians delegating tasks to physician assistants and how they relate to statutes.

The meeting adjourned at 7:38 a.m.

Andrew P. Shachat, M.D.  
Chair

blt

State Medical Board of Ohio

**LICENSURE COMMITTEE MEETING**  
**July 11th, 2018**  
**30 E. Broad St., Columbus, OH Room 318**

<b>Members:</b> Bruce R. Saferin, D.P.M., Chair Kim G. Rothermel, M.D. Richard Edgin, M.D. Ronan M. Factora, M.D.  Other Board members present: Andrew P. Schachat, M.D. Michael Schottenstein, M.D.	<b>Staff:</b> Joseph Turek, Deputy Director of Licensure/Renewal Mitchell Alderson, Chief of Physician Licensure Chantel Scott, Chief of Allied Licensure and Renewal Sallie Debolt, Senior Counsel Tessie Pollock, Director of Communications Nathan Smith, Senior Legal and Policy Counsel Colin DePew, Assistant Attorney Karen Morrison, Education and Outreach Program Administrator
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Dr. Saferin called meeting to order at 8:00 a.m.

#### **RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL**

Dr. Saferin stated that the organizer of the upcoming Breathe Easy Respiratory Conference is requesting that its presentation on ethics and healthcare be approved for one contact hour of respiratory care continuing education on Ohio respiratory care law or professional ethics.

**Dr. Factora moved that the presentation be approved for one contact hour of Respiratory Care Continuing Education on Ohio respiratory care law or professional ethics, pursuant to the provisions of chapter 4761-9 of the Ohio Administrative Code. Dr. Rothermel seconded the motion.** The motion carried.

#### **DIETETICS CONTINUING EDUCATION PORTFOLIOS**

Dr. Saferin stated that Rule 4759-4-04, Ohio Administrative Code, provides that licensed dietitians who are not registered dietitians (non-RD) must comply with the continuing education standards set forth by the commission on dietetic registration. Non-RD licensees must submit evidence of continuing education activities for Board approval every 5 years. Dr. Saferin noted that this provision will be amended in the near future. Dr. Saferin stated that the Board's staff has reviewed the continuing education submissions of the nine non-RD's identified in the memorandum and is recommending that they all be approved.

**Dr. Rothermel moved that the continuing education portfolios for the identified nine licensees be approved for the period of July 1, 2013 – June 30, 2018 pursuant to 4759-4-04 of the Ohio Administrative Code. Dr. Factora seconded the motion.** The motion carried.

#### **RESPIRATORY CARE AND DIETETICS COURSE APPROVALS**

Dr. Saferin stated that Rule 4761-9-04, Ohio Administrative Code, specifies the requirements for the Ohio respiratory care law and professional ethics educational requirements. The Board's Communications staff has created a script for a video that will be produced and offered online to satisfy this respiratory care continuing education requirement. On June 13, 2018, the Licensure

Committee reviewed the outline and concept of a course produced by the Board's Communications staff. At that time, the Licensure Committee indicated a desire to see a more finalized script of the video and ratify that script. Subsequently, the Communications staff of the Board created a script for a video that will be produced and offered online to satisfy the dietetics jurisprudence requirement.

**Dr. Factora moved to ratify the Dietetics Jurisprudence video script; and approve the Respiratory Care Law and Professional Ethics course video script as presented. Dr. Rothermel seconded the motion. The motion carried.**

## LICENSURE APPLICATION REVIEW

### Robin Lee Rhodes, M.D.

Dr. Saferin stated that -Dr. Rhodes is applying for restoration of her medical license in Ohio. Dr. Rhodes's application indicates that she has not been engaged in the clinical practice of medicine since she retired on March 1, 2015, although her license expired in April 2016. Dr. Rhodes is a 1979 graduate of Eastern Virginia Medical School. Since 1984, Dr. Rhodes has held a lifetime certification with the American Board of Pediatrics. According to her application, she would like to come out of retirement to help a local hospital with coverage at their newborn nursery since active pediatricians have resigned their hospital privileges. Dr. Saferin noted that Dr. Rhodes is current with her continuing medical education requirements.

**Dr. Factora moved to approve Dr. Rhodes' request for Ohio licensure as presented. Dr. Edgin seconded the motion.**

Dr. Rothermel opined that granting Dr. Rhodes' request is appropriate, noting that although Dr. Rhodes holds lifetime specialty board certification, she voluntarily elected to recertify.

**A vote was taken on Dr. Factora's motion to approve. The motion carried.**

## COSMETIC THERAPIST CONTINUING EDUCATION REQUIREMENTS

Dr. Saferin stated that on June 4th, Mr. Groeber, Mr. Turek, Ms. Schott, and Ms. Debolt met with cosmetic therapists to discuss continuing education (CE) issues, including what constitutes an approved course and the number of hours required. The discussion resulted in the recommendation that the number of required hours be reduced from 25 to 15, with at least 10 hours being completed in coursework that is clinically relevant to cosmetic therapy and approved by an approved national accrediting organization. The staff further recommended that up to five hours could be in a subject that is not clinically relevant to cosmetic therapy, but which is relevant to maintaining a safe and effective practice.

Dr. Saferin stated that under this recommendation, the following paragraphs of 4731-1-08, Ohio Administrative Code, would be proposed to be amended: Paragraph (C), Paragraph (D), Paragraph (K)(1), Paragraph (K)(2), and Paragraph (N).

**Dr. Rothermel moved to approve the draft language as presented for initial circulation to interested parties. Dr. Factora seconded the motion.**

Dr. Schottenstein commented that the way he conceptualizes this recommendation is that cosmetic therapist would need 10 hours of CE for all intent and purposes. Dr. Schottenstein opined that the

additional five hours in business-related topics may the valuable information, but is not practice-related.

Dr. Factora asked for the rationale in dropping the CE requirement from 25 to 15. Mr. Turek responded that finding enough courses to fulfill the requirements had become a major issue for cosmetic therapists. Dr. Factora commented that the recommendation provides a great deal of latitude for the additional five hours in non-practice related topics.

Ms. Debolt commented that under the current rule, any course provided by an organization would be acceptable as long as it was relevant to the practice of cosmetic therapy. However, courses in some questionable topics had been provided. Under this recommendation, the courses would have to be approved by a national organization that is approved by the Board, which should improve the standards for the courses.

Upon further discussion, the Committee concluded that 12 hours of clinically-relevant CE should be required for cosmetic therapists to bring them more in-line with the Board's other licensees. The Committee further concluded that cosmetic therapists may take any additional courses in business topics that wish, but it should not be required by the Board.

**Dr. Rothermel wished to withdraw her previous motion.** No Committee member objected to withdrawing the motion. The motion was withdrawn.

**Dr. Rothermel moved that language be drafted to require cosmetic therapists to complete 12 hours of CE that is clinically relevant to cosmetic therapy in a two-year period, and that the language be circulated to interested parties. Dr. Factora seconded the motion.** The motion carried.

## DISCUSSION OF MANDATORY CONTINUING MEDICAL EDUCATION

Dr. Saferin stated that after performing an informal survey of Board members, he has concluded that the topic of mandatory continuing medical education (CME) in specific topics should be withdrawn at this time. Dr. Saferin stated that there was excellent discussion on other ways to provide relevant educational information to physicians, such as articles in the Board's HealthScene magazine or E-news. Dr. Saferin envisioned something like a "Did You Know ... ?" feature on topics such as ethics or required use of the Ohio Automated Rx Reporting System (OARRS). Dr. Rothermel stated that in this way, the information could be presented without being mandatory.

Dr. Schachat agreed and added that it could also be presented in the form of a monthly e-mail blast to licensees. Dr. Edgin agreed and commented that a similar feature is included in gastroenterology journals. Dr. Schottenstein suggested that a quiz may also be included. Dr. Factora suggested that actual cases encountered by the Board, with all identifying information removed, could also be presented and discussed.

## ADJOURN

**Dr. Rothermel moved to adjourn the meeting. Dr. Edgin second the motion.** The motion carried.

The meeting adjourned at 8:25 a.m.

Bruce R. Saferin, D.P.M.

Chair

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State Medical Board of Ohio

**POLICY COMMITTEE MEETING**

**July 11, 2018**

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

<p><b>Members:</b> Andrew P. Schachat, MD Robert Giacalone Mark. A. Bechtel, MD Betty Montgomery</p> <p><b>Other Board Members present:</b> Kim G. Rothermel, MD Bruce Saferin, DPM Michael Schottenstein, MD Richard Edgin, MD Sherry Johnson, DO Roland Factora MD</p>	<p><b>Staff:</b> A.J. Groeber, Executive Director Kimberly Anderson, Chief Legal Counsel Sallie J. Debolt, Senior Counsel Nathan Smith, Senior Legal and Policy Attorney Rebecca Marshall, Chief Enforcement Attorney Tessie Pollock, Director of Communication Joan Wehrle, Education &amp; Outreach Program Manager David Fais, Assistant Executive Director</p>
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Mr. Giacalone called the meeting to order at 9:15 a.m.

**MEETING MINUTES REVIEW**

Mr. Giacalone reported that the draft minutes of the June 13, 2018 meeting had been distributed to the committee and were included in the agenda materials.

**Dr. Bechtel moved to approve the draft minutes of the June 13, 2018 Policy Committee meeting. Dr. Schachat seconded the motion. Motion carried.**

**RULES REVIEW REPORT**

Ms. Anderson said that the rule review update is provided for the information of the committee. The public rules hearing on the non-disciplinary mental and physical health rules was held July 9, 2018. She anticipated that the report of the rules hearing should be included in the August Board meeting agenda materials.

**PROPOSED AMENDMENTS TO LIMITED BRANCH RULE 4731-1-02**

Ms. Anderson reported that after the May 2018 Policy Committee meeting, the rule was circulated to interested parties for comment. One comment was received, and it was included in the agenda materials. No change to the rule is recommended based on the comment which suggested a different code of ethics and standards of practice for cosmetic therapists.

Ms. Anderson said that the Board is satisfied with continuing to use the code of ethics and standards of practice of the American Massage Therapy Association for massage therapists and the Society for Clinical and Medical Hair Removal for cosmetic therapists.

**Dr. Bechtel moved to recommend the Board approve Rule 4731-1-02 for filing with CSI. Dr. Schachat seconded the motion. Motion carried.**

### **Proposed Rules for Office-Based Treatment of Opioid Addiction (OBOT)**

Ms. Debolt referred the committee to the memo on page 11-31 of the agenda materials.

She reported that we removed references to noncontrolled substances from the OBOT rule and from the definition of office-based treatment of opioid addiction as it was confusing people since only controlled substances approved for OBOT may be used. A separate rule addresses noncontrolled substances approved for the use of office-based treatment of opioid addiction (naltrexone).

Ms. Debolt reported that we received 33 comments from the first circulation of the rule. We made some adjustments to the rule based on the feedback we received then sent out the second version for comment. Four comments were received from the second circulation. The memo in the agenda materials includes comments received from the first and second circulation.

**Rule 4731-33-01 Definitions** – Ms. Debolt referred to page 11-32. Item II is a discussion of the comments received and the proposed changes to the draft rules. We made some changes to this rule which included listing the exceptions in the definitions. She indicated that Dr. Schottenstein had some comments.

Dr. Schottenstein referenced the exemption that in *(A)(1) A state or local correctional facility, as defined in section 5163.45 of the Revised Code*. When we had contact with NaphCare, the company proposing suboxone treatment for patients in local jails. One of the compelling points they made was that it was hard for them to implement rules of this nature because jails are short term stays, often just a few days. But he thought it may not be the same situation in a state correctional facility as that is usually a longer term stay of months, or potentially years. He asked if we should work that into the rule and if we truly meant to have an exemption for state correctional facilities.

Ms. Debolt said we tend to exempt state corrections facilities from our rules. They are excluded from Rule 4731-11-09, prescribing to persons not seen. The Pharmacy Board excludes them from the requirements related to protocols. There is a history of exclusions, but we could discuss it if you think they should be included in this rule. Dr. Schottenstein appreciated the other exclusions. But in terms of concerns about diversion, he thought we should discuss it.

Mr. Giacalone said we don't know what goes on in a state correctional facility and he would hate to make the state facilities do something without having more information. He thought this may be an issue we can revisit later. He agreed with Dr. Schottenstein that the jails are different, and NaphCare made the difference clear, but no one was there from the state prison authority to tell us how it works in those institutions and he did not want to make assumptions.

**Rule 4731-33-01(F) Qualified behavioral healthcare provider** – Ms. Debolt wanted the committee to be aware that the Ohio Association of Physician Assistants (OAPA) suggested that PAs be included as qualified behavioral health providers, as they had been included in the first draft of the rule. The Physician Assistant Policy Committee (PAPC) said that certification for behavioral health for PAs is no longer available, consequently, PAs are not included in this definition.

Mr. Giacalone asked what PAs do in the behavioral health field. The concern from the OAPA is that PAs work for psychiatrists, and by not being included as a behavioral health provider the PAs may be viewed as not being able to work with a psychiatrist.

**Rule 4701-33-03 (B)(12)** – Ms. Debolt said this was changed from required “testing for tuberculosis” to “Consideration of screening for tuberculosis.” Dr. Hurst at OHMAS suggested the change as ASAM notes TB testing is not always required. Dr. Bechtel reported that TB is increasing in Ohio especially in Columbus due to a large Somali population which has brought a lot of TB into the community. Now doctors are finding an increase in patients testing positive for TB. He said we must be careful with the use of immunosuppressive therapy due to the potential for activation of tuberculosis. The cost of TB testing is decreasing as now a simple blood test can be used. He suggested we encourage providers to do TB testing if there is any concern. Ms. Debolt said that patient population or other risk factors would be considered by the provider to determine if TB testing was appropriate for the patient.

Dr. Schachat asked if there was any clarification of TB screening as its very vague. He asked If there is a recipe for figuring out if a patient is at higher risk for TB. Dr. Bechtel agreed that clarification would help. Ms. Debolt responded that the rule says you should do it, but we don't tell providers how to do it.

**Rule 4701-33-03 (E)(5)** – Two paragraphs were added to the rule to clarify when a doctor can personally provide behavioral health services and to define the documentation required if the doctor refers the patient to a qualified behavioral health provider.

**Rule 4701-33-03 (F)** – Amended to require the doctor to offer the patient a prescription for a naloxone kit and, if the patient declines the prescription, to be sure the patient knows how to acquire it without a prescription at a pharmacy.

**Rule 4701-33-03 (G)(2)(d)** – Ms. Debolt noted that the mono product, Subutex, is used for withdrawal management and Dr. Schottenstein had some concerns.

Dr. Schottenstein noted that when we add in for withdrawal management indication it seems to obviate the other paragraphs, and it becomes discretionary for the physician as to when to prescribe the mono product, yet we still have the other criteria. He suggested that we qualify withdrawal management with Subutex when buprenorphine with naloxone is contraindicated and maybe a recommendation that the decision be documented in the patient's chart.

Ms. Debolt said you could make the language similar to that in (G)(2)(e) on page 11-42 which references patient allergies or intolerance to the buprenorphine.

Dr. Schottenstein commented that if we have “for withdrawal management” as criteria we don't need sections a, b, or c as it becomes the physician's decision as to when to prescribe the mono product. It seems that the goal of the paragraph is that the mono product be used under specific circumstances but there is an understanding that there are times when it may be needed for withdrawal management. Dr. Schottenstein agreed with Ms. Debolt's suggestion to indicate that the combination product is contraindicated and to document it in the patient's chart.

**Dr. Bechtel moved to accept Dr. Schottenstein's recommendation. Dr. Schachat seconded the motion. Motion carried.**

**Rule 4701-33-03 (G)(7) regarding dosage limits** – Ms. Debolt said it currently reads: “The physician shall document in the medical record the rationale for prescribed doses exceeding 16 milligrams of

buprenorphine per day. The physician shall not prescribe a dosage exceeding 24 milligrams of buprenorphine per day.” She said that several comments suggested the dosage needed to be increased. But SAMSHA Tip 63 and ASAM acknowledge no clinical advantage to support dosage greater than 24 milligrams a day. She is not recommending any changes that would permit higher dosages with documentation unless the committee believes that it should be allowed.

Dr. Bechtel had a question for Ms. Debolt regarding the induction language changes in (G)(4) which reads “*During the induction phase the physician shall not prescribe a dosage that exceeds the recommendation in the FDA labeling, except for medically indicated circumstances as documented in the medical record,*” Ms. Debolt said the changes are to reflect the FDA labeling and the SAMSHA Tip 63 guidelines so that it is not as prescriptive.

Ms. Montgomery said there were many comments regarding the induction section. She had concern about patients with a high need, as the level may be too low for the patient. She asked if the physician could document the rationale for a higher dosage, at least for the first few days. She thought there were some persuasive arguments to support more medication for patients initially. It feels that we may be stepping between the doctor and their expertise and the patient. Ms. Debolt pointed out that the revised language says the doctor shall prescribe a dosage per FDA labeling *except for medically indicated circumstances as indicated in the medical record*. So, it is not prohibited, but it must be documented.

Dr. Bechtel said it looks as if day one would be 8 milligrams, day two, would allow 16 milligrams with documentation in record. He said the first version of the rule capped dosage at 8 milligrams/day for the entire induction period so that is where the criticism came from. Many of the comments referred to the first version of the rule. Ms. Debolt said we have taken that limitation out of the second version.

**Proposed new Rule 4731-33-04 Medication assisted treatment using a non-controlled substance.** Currently Naltrexone is the only non-controlled drug available for medical assisted treatment. The rule requires the dosage to comply with FDA product labeling. Requirements regarding diversion were dropped as they are not applicable.

Dr. Schachat suggested just calling the rule “medication assisted treatment using Naltrexone” Ms. Debolt said that other drugs may be developed.

Dr. Schottenstein commented that other drugs are being used, but they are being used off label.

Ms. Anderson asked if we need to have a dosage regime that strictly complies with FDA labeling or do you want to be silent on the issue.

Dr. Schottenstein said it makes sense that naltrexone prescribing should follow FDA labeling. The other medicine he had in mind was Clonidine which has been used for a long time to help with withdrawal as it tamps down physical manifestation of withdrawal.

Ms. Anderson said that the rule needs to be more specific regarding Naltrexone. If there are other non-controlled drugs approved for medication assisted treatment at another time we will address it then.

**Motion: Dr. Bechtel moved to accept the amendments offered today and to recommend to the Board that the amended rules be filed with CSI. Dr. Schachat seconded the motion. Motion carried.**

## UPDATES TO DIETETICS AND RESPIRATORY CARE RULES

Mr. Smith said that his memo outlining the updates to the dietetics and respiratory care rules begins on page 11-173 of the agenda materials.

Mr. Smith said that the rules had been brought to the committee in April. The intent was to try to align the Dietetics and Respiratory Care rules with statutory changes made in the budget bill (HB49) and in HB145 and to align them with Medical Board processes.

**Rescinded Rules** – Beginning on page 11-173, there is an extensive list of dietetics rules to be rescinded as they duplicate existing medical board rules in areas like the disciplinary administrative hearing processes, rule-making, board operations etc. Additionally, there are several respiratory care rules to be rescinded for the same reasons.

**New rules for dietetics and respiratory care** – Mr. Smith said the proposed new rules begin on page 11-176. The proposed new rules are: Dietetics Rule 4759-11-01 Miscellaneous Provisions and Respiratory Care Rule 4761-15-01 Miscellaneous Provisions. The intent of the new rules is to clean up what we did by rescinding the old rules.

The new rules will tie in dietetics and respiratory care licensees respectively into the Medical Board rules for Criminal Record Checks (4731-4), Personal Information systems (4731-8), Hearings (4731-13), Reporting Requirements (4731-15), Impaired Practitioners (4731-16), Exposure-Prone Invasive Procedure Precautions (4731-17) (only respiratory care incorporated into 4731-17), Sexual Misconduct and Impropriety (4731-26), and Mental or Physical Impairment (4731-28). There will be corresponding minor changes forthcoming in these rule sets to reference dietetics and respiratory care and specific statutory citations in Title 4759 and 4761 of the Ohio Revised Code.

**Rules with non-substantive changes** – Mr. Smith reported that A few rules in both dietetics and respiratory care required very minor grammatical or spelling changes, or the substitution of State Medical Board of Ohio for the former consolidated board.

**No change rules** – There are a substantial number of rules listed on page 11-175 that are proposed to be filed as no change rules due to the five-year rule review date already having passed for many dietetics and respiratory care rules.

**Circulation of draft rules** – Mr. Smith explained that On April 19, 2018, Medical Board staff circulated proposed dietetics and respiratory care rules to interested parties and included it in the Medical Board's eNews which was sent to all Medical Board licensees. In addition, the respective proposed sets of rules were referred to the Respiratory Care and Dietetics Advisory Councils. On May 8, 2018, the Respiratory Care Advisory Council voted to recommend that the Board adopt the respiratory care rules as proposed. Also, on June 12, 2018, the Dietetics Advisory Council voted to recommend that the Board adopt the dietetics rules as proposed.

**Comments on dietetics rules** – Six comments were received (see page 11-176). A spreadsheet of the comments is on page 11-268

**Comments on the Respiratory Care rules** – Two comments were received (see page 11-177). A spreadsheet of the comments is on page 11-363.

Mr. Smith indicated that there are three main changes to the rules based on the feedback received. He also noted that Dr. Schottenstein had brought some spacing and repeated word issues to his attention, so those matters have been cleaned up. The three substantive changes begin at the bottom of page 11-177.

**Proposed Changes:** The following changes are requested to the proposed rules circulated.

The Ohio Association of Physician Assistants (OAPA) provided two comments regarding the proposed respiratory care rules, both of which will be accepted and are proposed as amended changes:

1. **Respiratory Care Rule 4761-3-01(E)** – In response to OAPA’s comment, the rule is proposed to be amended to include physician assistant to align with the statute:

“Under the supervision” as it is used under division (B) of section 4761.17 of the Revised Code means that the prescribing physician, **physician assistant**, or authorized nurse is available to provide direction to the respiratory care practitioner providing the respiratory care service.”

2. **Respiratory Care Rule 4761-9-05(A)(5)** – In response to OAPA’s comment, the rule is proposed to be amended to include the OAPA.

“All or portions of a continuing education activity relevant to the practice of respiratory care which meet the requirements of paragraph (A) of rule 4761-9-01 of the Administrative Code and which have been approved by a professional organization or association awarding continuing education contact hours, including, but not limited to the American association for respiratory care (A.A.R.C.), the American Medical Association (A.M.A.), the American Nurses Association (A.N.A.), **the Ohio Association of Physician Assistants (O.A.P.A)**, the Ohio Society for Respiratory Care (O.S.R.C.), the Ohio State Medical Association (O.S.M.A.), the Ohio Nurses Association (O.N.A.), the Ohio Thoracic Society (O.T.S.), the American College of Chest Physicians (A.C.C.P.), the American Heart Association (A.H.A.), the American Lung Association (A.L.A.), the Ohio Lung Association (O.L.A.), and the American Association of Critical Care Nurses (A.A.C.C.N.).”

3. **Rescind Dietetics Rule 4759-3-04 Cooperation and communication with professional organizations related to Dietetics.**

Mr. Smith said this rule was initially proposed with very minor changes to it. The rule had references to the Board of Dietetics and specified that the Ohio Academy of Nutrition and Dietetics (OAND) would be the liaison to the Board of Dietetics and have somewhat of a speaking role at board meetings as the board permitted.

He explained that the initial change to the rule was minor and was to substitute the Dietetics Advisory Council for the Board of Dietetics. However, as we implemented the Advisory Councils, and have circulated the proposed rules, we’ve had several Advisory Council meetings. This implementation has shown that consistency within the operations of all Board committees and advisory councils is necessary for the efficient functioning of the Board’s governing processes. Board committees and advisory councils are important places for discussion and decision-making where speaking roles have been reserved for committee members and council members.

For the committees and advisory councils to run efficiently, a lot of discussion from non-committee members would be less timely and efficient.

Ms. Montgomery asked about the effectiveness of the committees/councils. She said that at some point, those impacted by the rules should have the ability to ask questions and get answers within a limited construct. Mr. Smith responded that professional associations for licensees can provide written comments and Board staff is receptive to meetings with associations at times other than formal committee/council meetings.

Mr. Smith also noted that this is the only rule of its type related to Medical Board licensees where a group is named as an official liaison. No other professional organization is recognized in the Ohio Administrative Code as an official liaison or given some sort of official or semi-official speaking role at meetings. It is highly irregular for what we do with other professional associations. He said there is a consistency argument and a fairness argument among licensee groups to not be giving one licensee's professional association special treatment that other licensee professional associations do not have. Mr. Smith said the decision was made to rescind dietetic Rule 4759-3-04 for consistency, fairness among licensee groups, and efficiency in the Board's committee/advisory council meetings and processes,

Ms. Montgomery said it worries her when it appears that we are limiting comment by those impacted by the rules in a forum that allows the rule-makers to hear comments and respond in a formal way rather than behind closed doors or on a document.

Mr. Groeber said there are several professional organizations attending this meeting such as the Ohio State Medical Association (OSMA), the Ohio Osteopathic Association (OOA) and others. If the OSMA was designated as the liaison to the Board for the medical professions, and we cut the OOA out of the mix, that is doing a disservice to one of seven physician licensees. Any degree of favoritism for any professional group is what gives him concern. The Board's contract is with our over 80,000 licensees. Mr. Groeber said that we have very specific rules and processes that allow public feedback in a fair way for all citizens and all licensees. Carving out a special piece for one individual group gives him a lot of concern which is why he supports rescinding the rule.

Ms. Montgomery asked for an explanation of the fair processes. She is not as concerned with the designation of one association as she understands the arguments. Her only concern is where are we enforcing the ability of those impacted by the rule to have an effective voice in the rule-making process.

Mr. Groeber said that the rule-making process lends itself to that as we have two opportunities where people can provide feedback about proposed rules. The first is the Lieutenant Governor's office through the Common Sense Initiative (CSI) program and the comment period regarding proposed rules is open to all of the public and all licensees. We also send notice to the over 100 people who have asked to be included on the rules notification list. A public hearing is held after the rule is filed with JCARR. Ms. Montgomery asked if the Board only invites written comments. Mr. Groeber indicated that written comments are received but persons may speak at the public hearing. He also noted that one of the Medical Board's attorney hearing examiners presides at the rules hearing and our legal group also participates in the rules hearings. He believes the process is very fair for everyone and fair for the Board as we collect comments in a consistent and actionable way.

Ms. Montgomery appreciated Mr. Groeber's comments. She said that JCARR is made up of legislators, not licensees. There is a difference in the commentary and the Q and A that could occur and can occur in a legitimate way. She always gets a little worried when we restrict comments to written documents. Again, her concern is where can we get valid input and where we can get

legitimate Q and A other than restricting it to written documents which don't always flesh out what needs to be done.

Dr. Rothermel voiced her support from the standpoint that if someone sends a written comment that is carefully evaluated by the Board it eliminates the one-on-one discussion that can occur, or interpretation of the comment may be different from the meaning of the comment sent to the Board. She respects the time and efficiency of the meetings, but we may lose something if not letting there be comments from others when discussing topics related to them.

Dr. Schottenstein said he thinks part of the issue is the area of emphasis. If we were going to allow public verbal feedback by the associations he would want to open it up to all licensees. If not expanded, then what could potentially happen is that the associations may unintentionally filter the information for their licensee members. But if we opened it up to all licensees, it could become unworkable.

Ms. Anderson explained that the public hearing that is open for anyone to comment on the rules is held when the rule is filed with JCARR but before the JCARR hearing. The verbal and written testimony is compiled by the Attorney Hearing Examiner and provided to the Board for review and action. Additionally, any Board member is welcome to attend the public rules hearing. Mr. Groeber asked that Board members be added to the Board's public rules hearing distribution list.

Mr. Giacalone thought that great points were brought up in the discussion. He said the problem is we have a tough time getting people to be on these committees. We have a limited amount of time to address issues in committees and if we open it up for discussion from the floor the logistics don't make it workable. If there is enough concern about an issue, the Board will meet with individuals or groups separately.

**Dr. Schachat moved to approve the amendments to the proposed rules and to send the amended proposed rules to the Board for approval for filing with the Common Sense Initiative. Dr. Bechtel seconded the motion. Motion carried.**

The legislative report was tabled as Mr. Groeber reported that Mr. LaCross had an emergency and was unable to attend the meeting.

## ADJOURN

**Dr. Schachat moved to adjourn the meeting. Dr. Bechtel seconded the motion. Motion carried.**

The meeting adjourned at 10:05 a.m.

jkw

State Medical Board of Ohio

**FINANCE COMMITTEE MEETING**  
**July 11<sup>th</sup>, 2018**  
**30 E. Broad St., Columbus, OH Room 335**

<b>Members:</b> Michael Schottenstein, M.D., Chair Bruce R. Saferin, D.P.M. Michael L. Gonidakis Richard A. Edgin, M.D.	<b>Staff:</b> A.J. Groeber, Executive Director Susan Loe, Director of Fiscal and Human Resources Tessie Pollock, Director of Communications
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Dr. Schottenstein called the meeting to order at 8:30 a.m.

**MINUTES REVIEW**

**Mr. Gonidakis moved to approve Finance Committee June 13, 2018 meeting minutes. Dr. Edgin second the motion.** The motion carried.

**FISCAL UPDATE**

Dr. Schottenstein stated that for May 2018, the Board's revenue was \$1,078,533, which represents a good month even though it is somewhat lower than April 2018. Dr. Schottenstein stated that the Board continues to benefit from the fact that the final quarter of an even numbered fiscal year includes one of the Board's largest groups of physician renewals. Dr. Schottenstein stated that training certificates are coming due with related revenue approaching \$260,000. Respiratory care professional and dietitian renewals are also coming due with related revenue approaching \$275,000. Dr. Schottenstein noted that unlike other license types, respiratory care therapist and dietitian license renewals are not staggered, so all 12,000 new licensees are due for renewal by the end of June 2018.

Dr. Schottenstein stated that June 2018 revenue will approach about \$2,000,000. Due to the way revenue is processed at the end of the fiscal year, approximately \$1,600,000 of that will be credited to June and the other approximately \$400,000 will be credited to July.

Dr. Schottenstein stated that there is a 5% increase in revenue year-to-date and the Board has exceeded the 2-year prior comparison for the first time in this fiscal year. Dr. Schottenstein commented that the Board is expected to be that much more ahead of Fiscal Year 2016 in the June 2018 report.

Dr. Schottenstein stated that the Board's case balance in May 2018 was \$4,029,589. The cash balance continues to increase, and a further increase is expected in the June numbers.

Regarding expenditures, Dr. Schottenstein stated that the 5.4% increase year-to-date is consistent with the typical yearly 4% increase expenditure in payroll plus the additional staff from the merger with the Ohio Board of Dietetics and Ohio Respiratory Care Board. Total payroll is up about 10% compared to May 2017, and also when comparing Fiscal Year 2018 to Fiscal Year 2017. Dr. Schottenstein stated that this is substantially a function of the fact that the Board has fewer staff vacancies than it previously had.

Responding to a question from Mr. Gonidakis, Dr. Schottenstein stated that he and Mr. Groeber have briefly discussed how the budget surplus could be used. Mr. Groeber stated that options could include reducing licensure fees again or offering reduced fees if licensees undergo training to provide addiction treatment. Mr. Groeber noted that many physician's licensure fees are paid by their employer. Dr. Saferin stated that software could be purchased to make Board meeting processes more efficient. Mr. Groeber agreed. Mr. Groeber added that upgrades to the Hearing Unit allow for e-filing of hearing-related items.

Mr. Groeber showed the Committee members a medication disposal pouch. Mr. Groeber explained that people can put their old medication in the pouch, add water, and shake it. Mr. Groeber stated that this will degrade the medication safely and it can be disposed in the trash. Mr. Groeber stated that 200 pouches can be purchased for \$800. Mr. Groeber stated that the Board can provide the pouches at every speaking engagement or outreach event and the pouch can be printed with the Medical Board's logo.

### **ACCOUNTS RECEIVABLE**

Dr. Schottenstein stated that the Board collected fine payments in May 2018 totaling \$38,101. In total, the Board has received \$255,500 in fines, and \$148,500 in fines are outstanding.

### **COMMUNICATIONS UPDATE**

Ms. Pollock stated that Communications has been working on two continuing education projects, one for dietitians and one for respiratory care professionals. These videos will be online and will include a quiz and a printable certificate. The Board will be asked to approve the scripts for the videos at today's Board meeting.

Ms. Pollock stated that work continues on the Summer edition of the HealthScene magazine.

Ms. Pollock stated that the Board is now using the Benchmark emailing system. Ms. Pollock stated that Benchmark is very user-friendly and can be used to send letters to specified licensee groups, conduct surveys, and many other functions.

Dr. Saferin commented that these educational modules is a very good use for the money that the Board obtains from fining.

### **REVIEW OF FINING GRID RESPONSES**

Dr. Schottenstein stated that Board members have provided feedback on suggested changes to the Board's fining guidelines grid. Dr. Schottenstein stated that the "standard fine" column has been removed from the grid, and only the "minimum fine" and "maximum fine" remain. Dr. Schottenstein commented that going forward, the minimum fine will be considered the standard fine.

Mr. Groeber stated that the proposed grid has fining amounts that were averaged from the Board member's feedback. Mr. Groeber asked if these amounts should be rounded to the nearest \$500 increment. Dr. Saferin favored rounding to the nearing \$500 increment. The Committee agreed.

Mr. Gonidakis, noting that the new fining amounts are generally lower than the current amounts, asked how Mr. Groeber would respond to media suggestions that the Board is lowering fines for some

actions that can be characterized as heinous. Mr. Groeber replied that the fining grid is only a guideline and that the Board still has the statutory authority to fine any violation for any amount up to \$20,000 based on the circumstances of each case. Mr. Groeber stated that the guidelines are useful to the Hearing Examiners in drafting proposed orders, and also to the Secretary and Supervising member when negotiating settlement agreements. However, the Board is not limited by the guidelines.

Dr. Schottenstein commented that the recommended changes to the fining guidelines is an effort by the Board to be fair and to avoid pricing someone out of their license. Dr. Schottenstein stated that he has been concerned that a licensee who is otherwise remediable could be unable to regain their license because they cannot afford the fine.

**Dr. Edgin moved to recommend approval of the proposed changes in the Board's fining guidelines, with the rounding of suggested fine amounts to the nearing \$500 increment. Dr. Saferin seconded the motion.** All members voted aye, except Mr. Gonidakis who abstained. The motion carried.

#### **FOOD AND DRUG ADMINISTRATION OPIOID MEETING**

Mr. Groeber stated that the Food and Drug Administration (FDA) Opioid Meeting will be held August 28 and that the airfare will be cheaper than had been initially estimated. Mr. Groeber noted that Dr. Soin had been approved to have his travel expenses reimbursed by the Board. However, Dr. Soin has indicated that he will provide his own transportation to the meeting and he will not request reimbursement.

#### **BOARD MEMBER COMPENSATION INCREASE UPON REAPPOINTMENT**

Dr. Schottenstein stated that four Board members were reappointed to the Board in Fiscal Year 2018. These Board members are eligible for a 4% increase in compensation, if approved by the Board and by the Directors of the Department of Administrative Services.

**Dr. Saferin moved to recommend approval of a 4% raise for Amol Soin, M.D., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Edgin seconded the motion.** The motion carried.

**Dr. Saferin moved to recommend approval of a 4% raise for Michael Schottenstein, M.D., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Edgin seconded the motion.** All members voted aye except Dr. Schottenstein, who abstained. The motion carried.

**Dr. Edgin moved to recommend approval of a 4% raise for Bruce Saferin, D.P.M., to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Mr. Gonidakis seconded the motion.** All members voted aye except Dr. Saferin, who abstained. The motion carried.

**Dr. Saferin moved to recommend approval of a 4% raise for Michael Gonidakis, Esq., should he request it, to be effective as of the date of his reappointment, and subject to the approval of the Director of the Department of Administrative Services. Dr. Edgin seconded the motion.** All members voted aye except Mr. Gonidakis, who abstained. The motion carried.

## **EXECUTIVE DIRECTOR COMPENSATION INCREASE**

Dr. Schottenstein stated that the Finance Committee can vote to recommend approval for the financing of an increase in Executive Director's compensation, pending the outcome of the *ad hoc* committee that is studying this matter. Dr. Schottenstein stated that the Finance Committee is only considering approval of the release of the funds for the compensation increase, not approval or disapproval of the increase itself.

Dr. Saferin asked if the 5.75% increase that is being considered is the largest allowed. Dr. Schottenstein replied affirmatively.

**Dr. Saferin moved to recommend approval for the financing of up to a 5.75% increase of the Executive Director's salary, pending the outcome of the Executive Director Review Committee. Mr. Gonidakis seconded the motion. The motion carried.**

## **FEDERATION OF STATE MASSAGE THERAPY BOARDS ANNUAL MEETING**

**Dr. Saferin moved to recommend approval for Mr. Groeber to attend the Federation of State Massage Therapy Boards Annual Meeting on October 4-6 in Salt Lake City, Utah; and any travel expenses not covered by the FSMTB will be paid by the Medical Board in accordance with state travel policy; and that attendance at the conference is in connection with Mr. Groeber's duties as, and is related to his position as, Executive Director for the State Medical Board of Ohio. Mr. Gonidakis seconded the motion. All members voted aye. The motion carried.**

## **RESPIRATORY CARE AND DIETETICS EDUCATIONAL VIDEO DEVELOPMENT**

Dr. Schottenstein stated that Ms. Pollock has presented an estimate for the Finance Committee's consideration to develop instructional videos for the Board's newest license types: Respiratory care therapists and dietitians.

**Dr. Saferin moved to recommend approval of the expenditure of up to \$15,800 for the development of instructional videos for respiratory care therapists and dietitians. Dr. Edgin seconded the motion. All members voted aye. The motion carried.**

## **U.S. SUPREME COURT RULING, JANUS V. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.**

Mr. Gonidakis asked if the recent Supreme Court ruling regarding union dues and public employees raises any issues that the Board should be aware of. Mr. Groeber explained that the ruling overturned a ruling from the 1980's which had required employees in job classification that has union membership to pay a "fair share" for benefits if they elected not to join the union. Mr. Groeber stated that since the "fair share" doctrine was ruled unconstitutional by the new ruling, the Board has not yet received guidance. Ms. Loe stated that the Department of Administrative Services (DAS) will have to address that issue. Mr. Groeber commented that the Board has a very good relationship with the unions representing the Board's employees.

Mr. Gonidakis commented that the Board should ensure that no bargaining unit employee feels threatened or coerced in either direction. Mr. Gonidakis opined that a mechanism should be in place

to handle such a possibility, just as with any other form of harassment. Dr. Schottenstein agreed. Mr. Groeber stated that he can reach out to DAS to make sure there are no pressure tactics on that issue.

## **ADJOURN**

**Dr. Saferin moved to adjourn meeting. Mr. Gonidakis seconded the motion.**

The meeting adjourned at 9:08 am.

Michael Schottenstein, M.D.  
Chair

blt

State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING**

**July 11, 2018**

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

<b>Members:</b> Michael Schottenstein, M.D., Chair Robert Giacalone Ronan M. Factora, M.D.  Member Absent Amol Soin, M.D.  Other Board members present: Kim G. Rothermel, M.D.	<b>Staff:</b> Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Benton Taylor, Board Parliamentarian
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Dr. Schottenstein called the meeting to order at 2:30 p.m.

**MINUTES REVIEW**

**Mr. Giacalone moved to approve the draft minutes from June 13, 2018. Dr. Factora seconded the motion.** The motion carried.

**APPROVAL OF REPORTS OF CONFERENCES**

**Dr. Factora moved to approve the Compliance Staff's Reports of Conferences for June 11 & 12. Mr. Giacalone seconded the motion.** The motion carried.

**INITIAL PROBATIONARY APPEARANCES**

**John R. Capurro, M.D.**

Dr. Capurro is making his initial appearance before the Committee pursuant to the terms of the Board's Order of April 11, 2018. Dr. Schottenstein reviewed Dr. Capurro's history with the Board.

Responding to questions from Dr. Schottenstein, Dr. Capurro stated that he currently practices family medicine at Christ Hospital in Cincinnati and that is going very well. Dr. Capurro hoped to have completed his required courses in controlled substance prescribing and in professional boundaries by October 2018. Dr. Schottenstein opined that Dr. Capurro will find those activities insightful and productive. Dr. Schottenstein asked if Dr. Capurro appreciated the nature of the Board's concern with his prescribing and that Dr. Capurro needs to be able to say "no" when patients ask him to do something that is outside his area of expertise. Dr. Capurro answered affirmatively.

Dr. Schottenstein asked if Dr. Capurro had any questions about his Board Order. Dr. Capurro stated that he has no questions.

**Mr. Giacalone moved to continue Dr. Capurro under the terms of the Board's Order of April 11, 2018, with future appearances before the Board's Secretary or Designee. Dr. Factora seconded the motion.** The motion carried.

**Rebecca T. Cirino, D.O.**

Dr. Cirino is making her initial appearance before the Committee pursuant to the terms of her May 9, 2018 Consent Agreement. Dr. Schottenstein reviewed Dr. Cirino's history with the Board.

In reply to question from Dr. Factora, Dr. Cirino stated that she plans to return to her practice once the suspension of her license is lifted. Dr. Cirino stated that she will continue to practice telemedicine for her patients who are not on controlled substances and she will see patients in person if they are on any controlled substance. Dr. Cirino commented that she began seeing those on controlled substances in person rather than via telemedicine immediately upon learning that that was required and before she had entered into her Consent Agreement. Dr. Cirino stated that she took her required course in controlled substance prescribing even before entering into her Agreement, and she is currently looking for a medical records course to fulfill the medical record-keeping course requirement.

Dr. Factora asked if Dr. Cirino's Consent Agreement has had any impact on her telemedicine practice. Dr. Cirino answered that there has not been any impact and that her patients on controlled substances understood that they had to see her in person once Dr. Cirino explained the situation to them. Dr. Factora asked if Dr. Cirino's telemedicine practice is restricted to Ohio. Dr. Cirino responded that her telemedicine practice is only for Ohio patients.

Dr. Schottenstein noted that according to the information provided to the Committee members, Dr. Cirino "discovered" that she had 16 telemedicine patients who were being prescribed controlled substances. Dr. Cirino was uncertain about the use of the term "discovered." Dr. Cirino explained that most of her patients followed her when she transitioned to a telemedicine practice. Dr. Cirino stated that for new patients, she would perform an initial evaluation and examination just as with any patient that she sees in person. Dr. Cirino stated that she had not been aware that she could not prescribe controlled substances such as benzodiazepines, Adderall, or Vyvanse via telemedicine until a Board investigator so informed her. Dr. Cirino stated that as soon as she learned this, she immediately sent letters to those patients, found an office space, and being seeing those patients in person. Dr. Cirino stated that she continued telemedicine only for her patients who were not taking controlled substances.

Dr. Schottenstein opined that the term "discovered" refers to Dr. Cirino learning of that requirement. Dr. Cirino agreed.

Dr. Schottenstein asked how many telemedicine patients Dr. Cirino has. Dr. Cirino replied that she has about 200 telemedicine patients.

**Dr. Factora moved to continue Dr. Cirino under the terms of her May 9, 2018 Consent Agreement, with future appearances on an annual basis before the Board's Secretary or Designee. Mr. Giacalone seconded the motion. The motion carried.**

**ADJOURN**

**Mr. Giacalone moved to approve the draft minutes from July 11, 2018. Dr. Factora seconded the motion. The motion carried.**

The meeting adjourned at 2:42 p.m.

Michael Schottenstein, M.D.  
Chair

blt