



THE STATE MEDICAL BOARD OF OHIO
Board Retreat – Tuesday, June 11, 2019
Grange Insurance Audubon Center
505 W. Whittier St.
Columbus, OH 43215

Board members: Michael Schottenstein, M.D., Acting President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Amol Soin, M.D.; Harish Kakarala, M.D.; Betty Montgomery; Robert Giacalone, R.Ph, J.D.; Michael L. Gonidakis, Esq.; and Sherry L. Johnson, D.O.

The following members did not attend: Richard A. Edgin, M.D.; Jonathan Feibel, M.D.; Mark A. Bechtel, M.D.

Also present at the meeting were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; James Roach, Acting Chief of Investigations; Susan Loe, Director of Human Resources and Fiscal; Joseph Turek, Deputy Director for Licensure; David Fais, Deputy Director of Enforcement, Investigations and Standards Review; Sallie Debolt, Senior Counsel; Teresa Pollock, Director of Communications; Joan K. Wehrle, Education and Outreach Program Manager; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Rebecca Marshall, Chief Enforcement Attorney; R. Gregory Porter, Chief Hearing Examiner; Kimberly Lee, Hearing Examiner; Nathan Smith, Senior Legal and Policy Counsel; Alexandra Murray, Managing Attorney for Standards Review and Compliance; Lindsay Miller, Enforcement Attorney; Angela McNair, Enforcement Attorney; Adam Meigs, Enforcement Attorney; Cheryl Pokorney, Enforcement Attorney; Marcie Pastrick, Enforcement Attorney; and Melinda Ryans-Snyder, Assistant Attorney General.

Attendee registration/sign-in began at 9:30 a.m.

Mr. Groeber welcomed Dr. Kakarala, newly appointed board member, and attendees introduced themselves.

Ohio Medical Marijuana Control Program

Presented by AJ Groeber, Executive Director, and Kimberly Anderson, Chief Legal Counsel

Mr. Groeber provided an overview of Ohio's medical marijuana program enacted by HB523 which went into effect in September 2016. The legislation classified medical marijuana as a Schedule II controlled substance and tasked the Medical Board with establishing:

- Procedures when applying for a certificate to recommend (CTR) medical marijuana
- Conditions that must be met to be eligible for CTR
- Schedule and procedures for renewing CTR
- Reasons for which a CTR may be suspended or revoked
- Standards under which a suspension of CTR may be lifted
- Minimal standards of care when recommending treatment with medical marijuana

Chapter 4731-32, Ohio Administrative Code, the medical board rules addressing medical marijuana, went into effect on September 7, 2017. The board began accepting certificate to recommend medical marijuana (CTR) applications in March 2018. As of May 2019, there were 484 active CTRs.

An online map of those with an active CTR is available so potential patients can find a provider. CTR providers can list multiple office locations. The map is posted on the Medical Marijuana program website and the medical board's website.

Ms. Anderson reviewed the original 21 qualifying conditions set in Ohio law. The law also requires the board to consider new conditions. The petition window is open each year between November 1 - December 31. Submissions are made via webform on MedicalMarijuana.ohio.gov.

Petitions require (per 4731-32-05 OAC):

- Information from experts who specialize in condition
- Relevant medical, scientific evidence
- Are conventional medical therapies insufficient?
- Evidence supporting use of medical marijuana to treat condition, other types of medical/scientific documentation
- Letters of support provided by physicians

Ms. Anderson reported that 110 petitions were submitted and nine met the requirements outlined in rule and were accepted for expert review, including:

- Anxiety Disorder (2)
- Autism Spectrum Disorder (2)
- Depression
- Insomnia
- Opioid Use Disorder (3)

Physicians who had clinical experience with medical marijuana in the treatment of the specific condition served as subject matter experts for the board's review of the petitions. The Medical Marijuana Expert Review Committee considered the reports provided by the expert reviewers and have made recommendation to the full board regarding approval or rejection as qualifying conditions. This matter is on the agenda of the July 12, 2019 board meeting.

Ms. Anderson noted that rule 4731-32-05(G), OAC, specifies that any petition for a condition that has been previously reviewed by the board and rejected will not be considered by the board unless new scientific research that supports the request is offered.

FY20 Preview – Legislative Update

Presented by Jonithon LaCross, Director Public Policy and Government Affairs

Mr. LaCross reported that the budget bill has moved from the House to the Senate. A substitute bill is expected to be introduced this afternoon. Several operational changes for the agency are included in the House version of the bill which have been previously reviewed and discussed by the board. Many of the changes update current language in the statutes enforced by the board.

Ohio Ethics Law

Presented by Susan Willeke, Education and Communications Administrator, Ohio Ethics Commission

Ms. Willeke provided an informative presentation on Ohio ethics law that included practical examples of potential ethical violations, as well as sample case stories. Topics addressed in her presentation included conflict of interest, gifts, nepotism, post-employment issues, and sales to state agencies. She also indicated that the Ohio Ethics Commission can provide advisory opinions. The Ethics Commission advisory opinion can provide legal immunity if the guidelines included in the opinion are followed.

OnBoard Tutorials & Questions

Presented by Tessie Pollock, Director of Communications

The medical board recently implemented OnBoard as the board meeting management software. During the working lunch, Ms. Pollock provided individual assistance to board members regarding logging in, locating and navigating documents, highlighting text, and annotating documents.

Case Management: Rules of Engagement and Standard Processes

Panel discussion: James Roach, Acting Chief of Investigation; Alexandra Murray, Managing Attorney, Standards Review and Compliance; Rebecca Marshall, Chief Enforcement Attorney; and Melissa Ryans-Snyder, Assistant Attorney General

Investigation: Mr. Roach reported that in some situations the board's investigative staff may work with other state and federal agencies, as well as local law enforcement. Such collaboration may include joint investigations, which may be a joint investigation from the start or it could develop into a joint investigation based on where the evidence takes the investigation. It could also include task forces; collaborative teams or sharing information.

Mr. Roach said that the goal of investigation is evidence gathering and public service by understanding the impact of trauma on the individual and how that impacts the investigation.

Dr. Schottenstein commented that sometimes an investigator may find a hole in the story when discussing the situation with the victim. In the past, some people may have viewed the victim as not being credible. He noted that it is not unusual for a victim's memory to be fragmented due to the trauma. Ms. Montgomery asked if investigators had taken any training regarding trauma informed investigations.

Mr. Roach reported that investigators had just completed an intensive training course in the trauma informed approach that was facilitated by the Ohio Attorney General's office. Additional training will be provided later this year. He said that by using a victim-informed approach it encourages victim healing, which encourages more reporting and cooperation. This approach enables investigators to obtain better interviews and perform better investigations which enhances the opportunity for offender accountability.

Mr. Roach reported the issue of health systems and legal representation. Some health systems have taken the perspective that unless they specifically state otherwise, they are legal counsel for their employees. The effect of this position is that medical board investigators are now scheduling interviews through the legal departments of these health systems. The investigation is further complicated by the fact that the legal interests of the health system and the licensee are not always perfectly aligned.

Standards Review: Ms. Murray explained that two full time nurse reviewers typically review minimal standards of care issues that have been directly triaged from complaint intake triage or tasked from investigations or enforcement. The nurse report is reviewed by the Secretary/Supervising Member who determine the next step in the case.

Physician Experts: Ms. Murray said that a request for a physician expert typically comes from nurse review or enforcement. Physician experts are obtained to review applicable patient records. Usually 10-15 patient records are reviewed in minimal standards cases. The report of the expert is reviewed by the enforcement attorney and the Secretary/Supervising Member to determine the next direction. Often the reviews show a need for the licensee to obtain further education such as medical record documentation, or that the allegations in the complaint are not substantiated.

Enforcement: Ms. Marshall explained the legal standards needed for a disciplinary action. Reliable, probative and substantial evidence (RPS) is our necessary standard of proof, so that board actions can stand up on court appeals. *Reliable* is evidence that is dependable and can be confidently trusted. To be reliable, there must be a

reasonable probability that the evidence is true. *Probative* is evidence that tends to provide the issue in question. It must be relevant in determining the issue. *Substantial* is evidence that has weight. It must have importance and value. The burden of proof is on the agency.

Summary suspensions require a higher burden of proof as the Secretary/Supervising Member must determine that there is clear and convincing evidence of a violation of 4731.22 and the licensee's continued practice presents a danger of immediate and serious harm. Ms. Marshall explained that the board must be ready to go to administrative hearing when the summary suspension is ordered, as there is an expedited hearing process.

Court appeals of board orders: Ms. Marshall reported that Common Pleas Court will uphold the order if it is supported by RPS evidence **and** is in accordance with the law. Tenth District Court of Appeals review is more limited, but twofold.

(1) Appeals court reviews whether the trial court abused its discretion.

(2) On questions of whether the agency's Order was in accordance with the law, the appeals court review is plenary (full, complete, absolute and unqualified)

Ms. Marshall outlined ways the board works to stop a licensee's practice if there is danger of immediate and serious harm which include: permanent surrender of the license; B34 Consent Agreement (failing to cooperate in board investigation); summary suspension if we can meet the higher standard of proof; working with prosecutor to request a prohibition against practicing as a bond condition in criminal cases; using expert witnesses to prove minimal standards violations; and using board-ordered examinations where appropriate.

AAG Engagement in process: Ms. Snyder reported that AAGs review all proposed citations before they go to the board. The enforcement staff, AAGs, and Secretary/Supervising Member have a monthly cite review meeting to discuss all pertinent legal issues and establish post-cite settlement terms. AAGs draft post-cite settlement agreements which are reviewed by the Chief Enforcement Attorney to ensure that they confirm to the established settlement terms and are globally consistent with pre-cite settlements of similar cases. AAGs work with investigators who are going to testify at hearings. She also reported that in high profile cases or those involving complex or unique legal issues, Enforcement will reach out to the AAGs for input early in the process.

Mr. Giacalone said that at the FSMB annual meeting it was noted that Kansas has a statute that permits the summary suspension of a license, then a second charge is issued on the merits of the case. He asked if we had reviewed that statute. Ms. Marshall commented that in such a situation, the licensee could potentially appeal the summary suspension and return to practice if the summary suspension is not upheld by the court. There is no appeal allowed with an Ohio summary suspension.

Case scenarios: Mr. Groeber noted that in a heinous case, the licensee will be offered a permanent surrender of license, which they may or may not sign. It may take between 30 to 90 days to get the case before the board (average 60 days). However, each case has its own complexities and delays may occur with obtaining patient records and expert review or receiving required court documents.

Mr. Groeber said he would like the board to have the authority to cite a licensee who has been indicted for a serious crime. There is no authority to do so under current statutes. Ms. Marshall said that some states have this authority.

Dr. Schottenstein said he would be hesitant to revoke a license based only on an indictment.

Following discussion, Mr. Groeber said we can do further research on the ability to act on an indictment and add it to our list of potential statutory changes after the budget bill is enacted.

Mr. Groeber reported that a standard priority case averages 12-18 months to complete as these cases usually have more patient records for review.

Bootstrap actions of a disciplinary action taken by another regulatory board: Mr. Groeber reported that staff had completed a thorough review of the process steps related to bootstrap actions. He explained the changes made in the overall process following the review. It is anticipated that processing time will be reduced by approximately 30 days. He also reported that the Federation of State Medical Boards is working to include a copy of the reporting board's disciplinary action documents in the notice sent to sister boards. It was noted that not all boards contain as much information in the board actions as Ohio does.

Mr. Giacalone asked if the board ever does a Google search on a licensee under investigation. Ms. Marshall said that we have used that as a source to help fill in information that may need further investigation, but we have not used it as evidence. Dr. Rothermel said that such information may only be opinion and not a reliable source.

Compliance Committee Process Discussion

Presented by Alexandra Murray, Managing Attorney for Standards Review and Compliance

Ms. Murray provided an overview of the compliance process. She also noted that a new tracking system has been recently implemented which will enable staff to obtain more data.

Following the 2018 Board Retreat, modifications were made regarding final appearances before the full board so that only those licensees who had actions based on impairment, criminal convictions, minimal standards, prescribing issues, or repeated violations would make a final appearance.

General discussion followed regarding proposed modifications related to initial and final appearances, as well as the materials provided to board members regarding office conference reports and probationary requests.

Following discussion, attendees agreed to the modifications listed below. Ms. Murray indicated she would prepare the appropriate motions for consideration at the July board meeting.

INITIAL APPEARANCES

- All licenses will have their first meeting with Compliance staff and the Secretary and Supervising Member in accordance with their Board Order or Consent Agreement (typically three months following the issuance of the Order or Consent Agreement).
 - The Secretary and Supervising Member will determine if an appearance before the Compliance Committee is necessary.
 - If an appearance before the committee is necessary, Compliance Staff will provide additional detail to committee members when drafting the script and materials for the appearance.
- A list of initial appearances will be provided to Compliance Committee members by email, as committee members may request a licensee make an appearance before the committee following the initial office conference.

FINAL APPEARANCES

- Compliance Staff will provide the Board members a list of probationers eligible to be released, three months before their projected release date. The Board may request a licensee make a final appearance before the Board.
- The Secretary and Supervising Member will meet with the licensee at their final scheduled office conference before the licensee is due to be released.
 - An additional office conference may be scheduled for licensees on an annual meeting schedule, given the length of time between office conference appearance and eligibility for release.
 - The Secretary and Supervising Member will determine if an appearance before the Board is necessary.

- If an appearance before the Board is necessary, Compliance Staff will provide additional detail to Board members when drafting the script and materials for the appearance.
- A licensee may also elect to make a final, in-person appearance before the Board.
- For licensees not making a final, in-person appearance before the Board, a written request to be released must be presented to the Board.

OFFICE CONFERENCES

- No changes were made to the format of the “cheat sheets” drafted by Compliance Staff.
- Compliance Staff will draft a memo coversheet summarizing the previous month’s office conferences for Compliance Committee.

PROBATIONARY REQUESTS

- No changes were made to the format of probationary requests submitted to the Board.
- Compliance Staff will draft a memo coversheet summarizing the probationary requests and drawing attention to those where the Secretary and Supervising Member are NOT in approval.

Treatment Providers: Ms. Murray reported that the Compliance Committee had discussed potential changes to the application review process for Board approved treatment providers, including an in-person inspection of the facility. Discussion of possible changes was tabled until the One Bite program could be established.

Mr. Groeber reported that the Ohio Physicians Health Program (OPHP) has been selected as the monitoring organization for the One Bite program. Currently OPHP is soliciting treatment providers to apply to be approved One Bite treatment providers. Once the One Bite program has been coordinated with OPHP, the Board can reopen the discussion of its requirements and approvals.

Adjourn

Mr. Groeber thanked everyone for their participation in the retreat. The retreat ended at 4:08 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio annual retreat on June 11, 2019 as approved on July 10, 2019.



Michael Schottenstein, M.D., President



Kim G. Rothermel, M.D., Secretary

