



**Medical Board of Ohio Meeting Minutes
April 13, 2022**

Betty Montgomery, President, called the meeting to order at 10:00 a.m. in the Administrative Hearing Room, 3rd floor of the Rhodes Office Tower, 30 East Broad Street, Columbus, Ohio 43215 with the following members present: Sherry Johnson, D.O., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Jonathan Feibel, M.D.; Harish Kakarala, M.D.; and Mark A. Bechtel, M.D.

MINUTES REVIEW

Dr. Bechtel moved to approve the minutes of the March 9, 2022 Board Meeting. Dr. Johnson seconded the motion. All members voted aye. The motion carried.

REPORTS AND RECOMMENDATIONS

Ms. Montgomery asked the Board to consider the Reports and Recommendations appearing on the agenda: Linda Pello; Beth Girgis, M.D.; and Bernard Oppong, D.O.

Ms. Montgomery asked all Board members the following questions:

- 1.) Has each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in each of the Reports and Recommendations?
- 2.) Does each member of the Board understand that the Board's disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from Dismissal to Permanent Revocation or Permanent Denial?
- 3.) Does each member of the Board understand that in each matter eligible for a fine, the Board's fining guidelines allow for imposition of the range of civil penalties, from no fine to the statutory maximum amount of \$20,000?

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

Ms. Montgomery stated that in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the

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adjudication of any disciplinary matters. In the disciplinary matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

During these proceedings, no oral motions were allowed by either party.

Linda Pello

Ms. Montgomery directed the Board's attention to the matter of Linda Pello. No objections have been filed. Ms. Shamansky was the Hearing Examiner. This matter is non-disciplinary in nature, and therefore all Board members may vote.

Dr. Bechtel moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Ms. Pello. Dr. Johnson seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- nay
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- nay
	Dr. Bechtel	- aye
	Ms. Montgomery	- nay

The motion to approve carried.

Beth Girgis, M.D.

Ms. Montgomery directed the Board's attention to the matter of Beth Girgis, M.D. No objections have been filed. Ms. Shamansky was the Hearing Examiner.

A request to address the Board has been filed on behalf of Dr. Girgis. Five minutes will be allowed for that address.

Dr. Girgis was represented by her attorney, Brandon Smith.

Mr. Smith stated that no objections have been filed and that Dr. Girgis urges the Board to adopt the Report and Recommendation and impose the reprimand.

Dr. Girgis stated that she takes this complaint seriously and she has taken steps to make changes. Dr. Girgis has been an emergency medicine director for five years and is involved in quality control. Dr. Girgis stated that she and the physicians and physician assistants who work under her review cases monthly and discuss ways to prevent or decrease medical errors. Dr. Girgis respectfully requested that the Board adopt the Report and Recommendation.

Ms. Montgomery asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he wished to respond.

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Mr. Wilcox stated that the Report and Recommendation thoroughly examines what occurred at the hearing, and he opined that the Report and Recommendation is appropriate.

Ms. Montgomery complimented the staff in moving very quickly on this matter.

Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Girgis. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Soin stated that he is sympathetic to the fact that medical errors do occur. Dr. Soin understood that this matter, involving a single case of high glucose, had a terrible outcome in terms of what the patient suffered. Dr. Soin stated that everyone is human and makes mistakes, and Dr. Girgis has been through a lot in Florida for that medical error. Dr. Girgis is currently practicing in Florida.

Dr. Soin stated that the Proposed Order for a Reprimand is acceptable. Dr. Soin would also be amenable to an order of No Further Action, based on the medical facts in the Report and Recommendation, the actions already taken in Florida, and the fact that Dr. Soin could envision a scenario in which such a medical error could occur.

Dr. Feibel agreed with Dr. Soin that medical errors occur and opined that this matter is not worthy of a reprimand.

Dr. Feibel moved to amend the Proposed Order to No Further Action. Dr. Soin seconded the motion.

Mr. Gonidakis asked what the practical effect of a Reprimand would be, as opposed to an order of No Further Action. Dr. Soin replied that a Reprimand would appear on the National Practitioner Databank (NPDB) as a reportable offense. Mr. Gonidakis asked if the administrative action against Dr. Girgis in Florida would already be in the NPDB. Dr. Soin answered that the Florida action should be on the NPDB.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- nay
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion to amend carried.

Dr. Bechtel moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Dr. Girgis. Dr. Feibel seconded the motion.

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

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Dr. Soin	- aye
Dr. Johnson	- aye
Mr. Gonidakis	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion to approve carried.

Bernard Oppong, D.O.

Ms. Montgomery directed the Board's attention to the matter of Bernard Oppong, D.O. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

A request to address the Board has been filed on behalf of Dr. Oppong. Five minutes will be allowed for that address.

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

Mr. Tkach stated that Dr. Oppong is here today because he saw a need to assist with the opioid crisis. Dr. Oppong volunteered at an office, three to four hours per week, with someone he knew. Unfortunately, Dr. Oppong was not aware that there was criminal enterprise occurring at the office. When contacted by prosecutors, Dr. Oppong stated that he did not know anything and he therefore could not provide testimony to assist in other prosecutions, and only then did Dr. Oppong get indicted. When presented with the criminal matter, Dr. Oppong indicated he could not plead guilty to the charges because they were not true. Consequently, Dr. Oppong took his case to a jury trial.

Mr. Tkach continued that unfortunately, Dr. Oppong's attorney at the trial did not prepare and he was not successful. That case is currently on appeal. Dr. Oppong has not practiced since October 2018 and his medical license is currently lapsed.

Mr. Tkach stated that the Report and Recommendation to permanently revoke Dr. Oppong's license, as well as impose a fine of \$18,000 that he has no ability to pay, is not warranted. Mr. Tkach asked the Board to take a different look at this case than what is in the Report and Recommendation. Mr. Tkach stated that this case is different from others the Board has heard because Dr. Oppong is innocent and he was only involved in patient care, not billing or management.

Dr. Oppong stated that he has practiced medicine in Ohio for 28 years and has never had any issue with billing. Dr. Oppong now appeared before the Board with sorrow and regret. When asked to help with the clinic, Dr. Oppong did not know it was going to be his downfall.

Dr. Oppong stated that the medical director of the clinic was a colleague who asked him to help, knowing how passionate Dr. Oppong was about the opioid crisis. Dr. Oppong commented that he worked in an intensive care unit (ICU) and had taken care of many overdoses. Dr. Oppong offered to help at the clinic, but was not aware of what was going on there. By the time the owners of the clinic were indicted, Dr. Oppong was no longer working for them and had only helped them for about 16 months.

When he was approached about being a witness for the government, Dr. Oppong was glad to do that but he did not know much about the case and wanted some assurances about his license; the government could not give such assurances. Ultimately, the government decided to indict Dr. Oppong as an uncooperative witness. Dr. Oppong stated that he received nothing from the scheme and he was not aware of what the clinic owners were doing. The owners were pharmacists and they also owned an outside pharmacy. The owners were

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using Dr. Oppong's name, printing labels to send to people, and billing the government without Dr. Oppong's knowledge.

Dr. Oppong continued that his attorney in the criminal matter thought he had a good case, but he unfortunately had a different plan for him. On the day of the trial, the attorney spent an hour trying to persuade Dr. Oppong to accept a plea deal. However, Dr. Oppong wanted to go to trial and prove his innocence, but the attorney was not ready and was not successful. The case is currently under appeal.

Dr. Oppong asked the Board to temper justice with mercy and give him an opportunity. Dr. Oppong stated that he has been an excellent physician for his patients and he would like to continue that in Ohio.

Ms. Montgomery asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he wished to respond.

Mr. Wilcox stated that permanent revocation of license is reserved for serious cases that come before this Board. In this case, Dr. Oppong used his medical license to perpetuate fraud not only against his patients, but also against the people of Ohio by defrauding Medicare and Medicaid. Mr. Wilcox stated that whether Dr. Oppong's attorney was prepared for the criminal trial is not an issue today. Dr. Oppong was found guilty of five felonies in the course of medical practice by a jury. Mr. Wilcox opined that such physicians do not deserve to have a medical license in this state because they use their license to perpetuate fraud. Mr. Wilcox stated that permanent revocation is appropriate in this case, though he had no opinion regarding the proposed fine.

Dr. Schottenstein moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Oppong. Dr. Feibel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Schottenstein stated that it is undisputed that Dr. Oppong had been convicted of five felony counts in the course of practice, and therefore this is a case of mitigation. Dr. Schottenstein stated that it is mitigating the Dr. Oppong has no prior disciplinary record, but it is not mitigating after a conviction of this nature to proclaim innocence and to explain the convictions away by claiming poor legal representation.

Dr. Schottenstein noted several aggravating circumstances:

- A dishonest or selfish motive.
- Multiple violations.
- Refusal to acknowledge the wrongful nature of his conduct.
- Adverse impact of his conduct on others.

Dr. Schottenstein stated that Dr. Oppong's behavior was negligent at best and he should have known better than to use, or allow others to use, his position of trust and his status as a licensee to accomplish deception and theft. Regrettably, Dr. Schottenstein saw neither remorse nor the taking of responsibility for Dr. Oppong's actions. Dr. Schottenstein stated that it is not impossible that a jury could err as Dr. Oppong claims. However, Dr. Schottenstein observed that Dr. Oppong was indicted on seven charges and he was convicted of five of them. Dr. Schottenstein perceived that the jury had been thoughtful and deliberate and did not simply rubber stamp the charges, and that adds credibility to the jury's verdict.

Dr. Schottenstein commented that this case presents a unique fact pattern. Dr. Oppong is appealing his guilty verdict, and when a licensee presents the Board with a felony conviction that is being appealed, Section 4731.22(H) of the Ohio Revised Code (ORC) comes into play. That statute allows petition for reconsideration of the order if the conviction is overturned on appeal. The statute provides that upon receipt of a petition to reconsider, the Board shall reinstate individuals' license to practice. But in this case there are two allegations,

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one under 4731.22(B)(9), ORC, which is the conviction, and also 4731.22(B)(8), which is the fraud allegation based on the facts surrounding the felony conviction. 4731.22(H) is silent regarding the (B)(8) allegation. If Dr. Oppong's appeal is successful, Dr. Schottenstein questioned whether 4731.22(H) would still apply if the Board finds today that he violated both 4731.22(B)(9) and 4731.22(B)(8).

Dr. Schottenstein continued that in the case of a successful appeal, the Board's staff will assess the situation and give the Board its legal opinion. In Dr. Schottenstein's opinion, if the felony conviction is vacated the Board would still be right to consider a petition for reinstatement because the 4731.22(B)(8) charge completely depends on the facts of the felony conviction, if the conviction is vacated then it would render the 4731.22(B)(8) charge null and void.

Dr. Schottenstein stated that the bar is high to keep a medical license when one has been convicted of five felonies in the course of practice. Dr. Schottenstein agreed with the Proposed Order to permanently revoke Dr. Oppong's license.

Dr. Soin asked if there would be a path forward if the Board permanently revokes Dr. Oppong's license today but his appeal was successful in the future. Ms. Anderson stated that if a conviction is overturned, there is a process for it to come back to the Board. If that occurs in this case, the Legal staff will do a complete review and provide the information to the Board.

Ms. Montgomery asked if the issue of a potentially overturned conviction would be made easier if the Board issued an order for something other than permanent revocation. Ms. Anderson stated that she has not researched that question, but she believed that any action the Board takes based on a conviction could potentially be reviewed if the conviction is overturned.

Dr. Feibel favored the Proposed Order to permanently revoke Dr. Oppong's license. Dr. Feibel stated that five felony convictions is something the Board should take very seriously and that is the fact pattern before the Board today. If the convictions are overturned, the Board can address these issues at that time.

Ms. Montgomery stated that as a former prosecutor, she has seen cases in which an attorney is not prepared and thought he could convince his client to accept a plea agreement at the last moment, and the process is not fair. Ms. Montgomery worried about this case because of Dr. Oppong's limited involvement. However, Ms. Montgomery was also troubled about the issue of negligently filling out prescriptions.

Dr. Soin also sympathized about the legalities that occur for a part-time physician presumedly trying to help a few hours a month in a clinic. However, there were three items that Dr. Soin wanted to mention. First, Dr. Soin stated that the concept of compounded pain cream specifically through Ohio Medicaid and CareSource is a scheme. Dr. Soin explained that there is a quirk in billing when one compounds a drug which can result in an extremely excessive amount of reimbursement for a generic powder. One can procure a powder that costs a few dollars per gallon, make multiple pain creams out of it by mixing it with other agents, and bill CareSource a couple of thousand dollars per month. So every month a patient would be mailed a large tube of pain cream. At some point, these patients informed Dr. Oppong that they did not need the cream anymore. Dr. Soin stated that Dr. Oppong should have seen this as a red flag because he had been unaware of these prescriptions in his name for pain cream.

Second, Dr. Oppong was pre-signing prescriptions for suboxone. Dr. Soin stated that there had to have been a deliberate action to sign a prescription that was blank, and at that point Dr. Oppong should have know something inappropriate was going on.

Third, Dr. Soin appreciated the concept that Dr. Oppong had been offering to help at the clinic. However, physicians are trained in certain things and every specialty is different. As a pain management specialist, it took Dr. Soin a very long time to learn his craft, and he struggles when sees people come to Board because they thought they could do what Dr. Soin does for a few hours per month with little or no training. People in

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this situation often come before the Board and plead ignorance; Dr. Soin stated they were ignorant because they did not to the appropriate training and did not know how to practice in that type of specialty.

Based on the foregoing, Dr. Soin supported permanent revocation of Dr. Oppong's license. Dr. Soin was sympathetic to Dr. Oppong's plight with his legal proceedings and that he had been trying to help at the clinic.

Ms. Montgomery took issue with people being penalized for exercising their appeal rights. However, Ms. Montgomery stated that the suboxone script gave her the sense that Dr. Oppong had been, at best, negligent. Ms. Montgomery also agreed with the Proposed Order of permanent revocation.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

Ms. Montgomery stated that in the following matters, the Board issued Notices of Opportunity for Hearing. No timely requests for hearing were received. These matters were reviewed by a hearing examiner, who prepared Proposed Findings and Proposed Orders for each, and they are now before the Board for final disposition. These matters are disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

Biyun Hu, L.M.T.

Dr. Johnson moved to find that the allegations as set forth in the December 8, 2021 Notice of Opportunity for Hearing in the matter of Mr. Hu have been proven to be true by a preponderance of the evidence and to adopt Mr. Porter's Proposed Findings and Proposed Order. Dr. Schottenstein seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye

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Dr. Feibel - aye
Dr. Bechtel - aye
Ms. Montgomery - aye

The motion carried.

Lindsay Z. Agolia, M.D.

Dr. Johnson moved to find that the allegations as set forth in the October 14, 2021 Notice of Opportunity for Hearing in the matter of Dr. Agolia have been proven to be true by a preponderance of the evidence and to adopt Mr. Madden’s Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Feibel asked whether the Proposed Order should be amended from a Permanent Denial of licensure to a non-permanent Denial. Dr. Feibel stated that the Board does not know the facts of this case, and Dr. Agolia could offer an explanation if she chooses to pursue licensure in Ohio at some future date.

Ms. Montgomery agreed with Dr. Feibel and questioned whether the Board should permanently deny Dr. Agolia’s application because she did not make a request for a hearing. Dr. Schottenstein also agreed.

Dr. Feibel moved to amend the Proposed Order to a non-permanent Denial. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Johnson	- aye
Mr. Gonidakis	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion to amend carried.

Dr. Feibel moved to approve and confirm the proposed findings of fact, conclusions, and order, as amended, in the matter of Dr. Agolia. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Johnson	- aye
Mr. Gonidakis	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

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The motion to approve carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

Ms. Montgomery stated that in the following matter, the Board issued a Notice of Opportunity for Hearing, and documentation of Service was received. There was no timely request for hearing filed, and more than 30 days have elapsed since the mailing of the Notice. This matter is therefore before the Board for final disposition. This matter is non-disciplinary in nature, and therefore all Board members may vote.

Jay A. Keystone, M.D.

Dr. Johnson moved to approve the Legal staff recommendations in the matter of Jay A. Keystone, M.D. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

EXECUTIVE SESSION

Dr. Johnson 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; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

The Board went into Executive Session at 10:40 a.m. and returned to public session at 11:05 a.m.

SETTLEMENT AGREEMENTS

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Mr. Roach briefly reviewed the settlement agreements for the Board's consideration.

Choo Young Rhee, M.D.

Dr. Johnson moved to ratify the proposed Permanent Surrender with Dr. Rhee. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Patsy Buccino, D.O.

Dr. Kakarala moved to ratify the proposed Consent Agreement with Dr. Buccino. Dr. Johnson seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- abstain
	Ms. Montgomery	- aye

The motion carried.

Hope M. Vitellas

Dr. Bechtel moved to ratify the proposed Consent Agreement with Ms. Vitellas. Dr. Johnson seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye

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Dr. Bechtel - aye
Ms. Montgomery - aye

The motion carried.

Michelle Yako, R.D.

Dr. Johnson moved to ratify the proposed Consent Agreement with Ms. Yako. Bechtel seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Johnson	- aye
Mr. Gonidakis	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

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

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

1. Zachary Peele: To be issued to a respiratory care professional applicant, based on a criminal conviction.
2. William Rudolf Bauer, M.D.: An Immediate Suspension, based on a criminal conviction involving several counts.
3. Theodore Riley, D.O.: Based on the surrender of the physician's Pennsylvania medical license.
4. John F. Beary, M.D.: Based on the physician's Veteran's Affairs privileges being suspended and later terminated when he resigned.
5. Elizabeth Schacht, M.D.: Based on the physician's Veteran's Affairs being revoked and her employment terminated.
6. Brandon Hendrix, M.D.: Based on mental or physical illness.
7. David Lapides, M.D.: Based on a criminal conviction involving distribution of child pornography.
8. La'Shondra Mason: To be issued to a massage therapist applicant, based on a criminal conviction.
9. Darlene M. Tarbet, L.M.T.: Based on a criminal conviction.
10. Donnika S. Taylor, L.M.T.: Based on a criminal conviction.
11. Delia Jan Herzog, M.D.: Based on allegations of violations of the minimal standards of care and improper prescribing.
12. Imtiaz Khokhar, M.D.: Based on failure to appear for a chemical impairment examination and legal presumption of chemical impairment.
13. Farhaad Riyaz, M.D.: Based on criminal conviction involving goods purchased from Amazon.

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14. Richard Litz Salberg, M.D.: Based on out-of-state actions in Indiana and Illinois.
15. Dirk Roderick Hines, M.D.: Based on allegations of violations of minimal standards of care, violation of the Board's pain prescribing rules, and improper prescribing.
16. Son Bach, M.D.: Based on allegations involving sexual improprieties, failure to document examinations, and other rules violations.
17. Casey Prifogle, R.C.P.: Based on the practitioner having sent pictures of patients and making inappropriate comments about the pictures.
18. James Zedaker, P.A.: To be issued to a physician assistant applicant, based on having answered incorrectly on his licensure application about pending investigations.

Ms. Montgomery asked about Citation #12, in which the physician from New York pleaded guilty to DUI in May 2019. The physician applied for an Ohio medical license in August 2021. The Board ordered the physician to a three-day evaluation. Ms. Montgomery noted that the Board does not know what the physician's sentence in New York was or if it included an evaluation and treatment. Ms. Pokorny stated that she could not discuss the investigation of this specific case, but in similar cases it is customary for the Board's enforcement attorney to collect all records, including any treatment records, and those are routinely sent to the assessor as part of the evaluation process. If the physician requests a hearing, the sentence in New York and whether he has already had treatment can be discussed and considered in the hearing. The matter before the Board today is whether the physician's failure to attend the three-day evaluation was due to circumstances beyond his control.

Dr. Johnson moved to approve and issue proposed Citation #2, an Immediate Suspension. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- abstain
	Ms. Montgomery	- aye

The motion carried.

Dr. Johnson moved to approve and issue proposed Citations #'s 1 and 3 through 18. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Bechtel	- aye (abstain on #15)
	Ms. Montgomery	- aye

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The motion carried.

OPERATIONS REPORT

Ms. Loucka commented that the Board's Parliamentarian, Mr. Taylor, is absent today because his son, a recent leukemia patient, has been chosen as one of the honorees at this year's Memorial Golf Tournament and today he is attending the tournament's Legends Luncheon.

Human Resources: Ms. Loucka stated that there have been a number of retirements and resignations, and those positions are being filled. A new process has been implemented for vacated positions to determine the most appropriate use for that position.

Budget: Ms. Loucka stated that the Board's expenses have increased due to increased in general operating expenses and equipment costs due to employees' return to the office. Dr. Schottenstein will give a more thorough financial report later in the meeting.

Dr. Bechtel asked if the Board is anticipating increasing costs for outside services, or even services from the state, due to rising inflation. Ms. Loucka answered that that has already been seen and those number will be more clear when the Board enters the budgeting process again in the fall. The Board will have to account for some service cost increases.

Compliance: Ms. Loucka stated that there has been a drop in the number of active probationers with the Board. Going forward, the active probationer count will include only those probationers who are actually engaged in the process of probation. This will exclude individuals who have an agreement or order and have not activated the steps needed to become an active probationer, such as going into treatment or other action required for restoration of their license. Ms. Loucka stated that this will give a more realistic view of the work in Compliance.

Licensure: Ms. Loucka stated that work continues on operationalizing the Interstate Medical Licensing Compact (IMLC). Ms. Loucka participates in a monthly budget call in her capacity as an IMLC commissioner. Dr. Schottenstein, also a commissioner, participates in month calls as a member of IMLC's Communications Committee. The staff is working through the systems updates and the policies and procedures needed to process different license applications.

Ms. Loucka stated that there is not an official date for the Board to "go live" with IMLC, but it is expected to be after July 1 when training certificate applications have been processed. Ms. Loucka noted that when Delaware and Texas went live in March, their revenues increased substantially and a similar impact is expected for Ohio. This will involve a lot of work and will likely require temporary staff to be brought in.

In response to a question from Dr. Schottenstein, Ms. Loucka stated that House Bill 263 required the Board to create a list of disqualifying convictions, which the Board approved last year. An annual report is required on things such as how many applicants disclosed a conviction and how many licenses were granted. The data for the initial report had to be collected manually, but the Department of Administrative Services (DAS) has identified an Enterprise solution that allow better streamlining of the report and a way to capture the data electronically.

Ms. Loucka stated that training certificate applications continue to pour in. If the rate does not level out before July 1, there will be a significant increase in training certificates in Ohio. Currently, there is an increase of about 56% compared to last year to date. Dr. Bechtel commented that many academic and training centers are expanding the number of residents they train every year.

Compliance: Ms. Loucka stated that the Board's Compliance and Licensure sections are working together to operationalize House Bill 122, which includes a provision allowing applicants to participate in the One-Bite

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program under some circumstances. Ms. Loucka commented that a few individuals have already benefited from this provision.

The Board recessed at 11:30 a.m. The meeting resumed at 11:40 a.m.

RULES & POLICIES

Rule Review Update

Ms. Anderson stated that a public rules hearing was held regarding the Interstate Medical Licensing Compact (IMLC) rule, which will clarify that a licensure or renewal application under the IMLC follows the same free structure and renewal pattern as other Ohio medical licenses. That rule will be brought to the Board for final adoption at the May 2022 meeting.

Light-Based Medical Device Rules

Ms. Anderson stated that technical corrections to the Board's light-based medical device rules are necessary to address that fact that everything in the Board's rule was put into statute last year. Although the purpose of the proposed changes is to ensure the references and text lines up with the statute, the comments received following initial circulation to interested parties were of a more substantive nature. All comments have been outlined in the Board's memo.

The rule was also discussed with the Board's Physician Assistant Policy Committee (PAPC). Ms. Anderson opined that some of the questions raised by the PAPC regarding what a physician assistant is allowed to do with regard to light-based medical devices can be addressed in a Frequently Asked Questions (FAQ) document. However, more significant questions were also brought up, as well as comments from the Ohio Association of Physician Assistants asking for more substantive changes.

Ms. Anderson stated that she has consulted with Dr. Bechtel on these matters. Dr. Bechtel stated that he will try to shed some light on this subject.

Dr. Bechtel related that when the Board initially considered the expansion of the use of lasers by non-physicians for procedures other than hair removal, it was decided that allowing use of vascular lasers would be appropriate in terms of patient safety. Dr. Bechtel explained that vascular lasers are absorbed by red material, so it is a straight-forward matter to direct a vascular laser at an area to vaporize red blood vessels. Ablative lasers are more aggressive and can vaporize epidermal tissue, creating a greater risk of infection and scarring.

Many physician assistants have asked for authority to use lasers on lesions without an evaluation by a physician. Dr. Bechtel stated that evaluation by a physician is an important safety measure to ensure that laser treatment is not performed on a lesion for which such treatment would be contraindicated, such as a melanoma. Dr. Bechtel opined that eliminating the requirement for evaluation by a physician prior to laser treatment would not be appropriate.

Dr. Bechtel stated that some physician assistants have also asked for authority to perform tattoo removal using lasers. Dr. Bechtel explained that in tattoo removal different lasers are used for differently colored pigments, and some of the lasers are ablative. Oftentimes more than one laser is required to remove a tattoo and there is potential risk of scarring and hypopigmentation. With regard to how physician assistants may use lasers, Dr. Bechtel opined that it would be a big leap to go from vascular lasers to tattoo removals. Dr. Bechtel felt that this may be appropriate at some point in the future, but would be too big a reach at this time.

Dr. Schottenstein noted the following statement from the letter written to the Board by Ms. Adamson of the Ohio Association of Physician Assistants:

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... physician assistants are already performing procedures in office beneath the dermo-epidermal junction to the subcutaneous fat (such as excisions with intermediate and complex closures) without direct supervision.

Dr. Bechtel stated that it is not uncommon for a physician assistant under the direction of a physician to perform something like a punch biopsy or an excision around tissue to submit to pathology. However, Dr. Bechtel felt that this is not an appropriate comparison; when one makes an incision, one is cutting through the epidermis, not vaporizing it away or destroying it as an ablative laser would. Dr. Schottenstein thanked Dr. Bechtel for the insight.

Dr. Saferin moved to file the proposed light-based medical device rules with the Common Sense Initiative. Dr. Johnson seconded the motion. All members voted aye. The motion carried.

Podiatric Licensure Rules

Ms. Anderson stated that she has worked with Mr. Turek on the podiatric licensure rules, which are due for their five-year review. Dr. Saferin did an initial review of the redraft to ensure that appropriate terminology was being used. The Board's memo outlines the amendments that are being requested. Since the proposed amendments would change more than 50% of the rule, it will be filed as a rescission of the old rule and a filing of a new rule. There is also an effort to make the podiatric licensure process related to training certificates similar to MD and DO training certificates.

Dr. Saferin moved to approve the draft podiatric licensure rules for initial circulation to interested parties. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Limited Branch Rules

Ms. Anderson stated that comments have been received on rules 4731-1-15 and 4731-1-17 related to massage therapy schools. These rules were discussed in last month's meeting of the Massage Therapy Advisory Council (MTAC). Comments from MTAC and others in the massage therapy community have been provided to the Board.

Ms. Anderson recommended amendments to rule 4731-1-15 requiring a massage therapist student to complete at least one massage on a licensed massage therapist, and 4731-1-15(D) requiring notification to massage therapy students that they could be denied licensure based on criminal convictions, charges, and arrests. The language from House Bill 263 that requires the Board to list disqualifying offenses on its website would also be added to the rule. Comments were received suggesting that the Certificate of Good Standing for massage therapy schools be subject to a two-year renewal cycle so it can be determined if the schools continue to meet the requirements. However, the staff is recommending no renewal and to work on processes internally to determine continued eligibility.

Rule 4731-1-17 requires massage therapy experience for individuals who teach at massage therapy schools and lists requirements for those individuals. The staff recommends amending the rule to specify that the individuals must have massage therapy experience but do not have to be involved in every aspect of a massage therapy practice.

Dr. Johnson moved to approve filing the proposed limited branch rules, as amended, with the Common Sense Initiative. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Responding to a question from Ms. Montgomery, Ms. Anderson stated that the staff continue to explore changes to requirements for massage therapist applicants who have practiced in another state. One suggestion being considered is to reduce the amount of time the individual has practiced in another state from five years to two years, but that would require a statutory change.

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Ms. Montgomery thanked Ms. Anderson, Ms. Reardon, and other staff for working so well with the Board's advisory councils, stating that the councils are valuable partners.

Controlled Substance Rules

Ms. Anderson stated that there are three rules in this rules package: Rule 4731-11-03 dealing mainly with stimulants; and Rules 4731-04 and 4731-041 dealing with weight loss prescribing.

Three groups of comments were received around Rule 4731-11-03. Dr. Schottenstein had aided the staff in developing amendments to this rule, which are outlined in the Board's memo. No changes are recommended at this time, based on the rationale provided in the memo. Dr. Schottenstein agreed with Ms. Anderson's suggestions.

A number of comments were received about the weight-loss prescribing rules, particularly from physicians practicing bariatric medicine, who were very complimentary of Dr. Soin's work in getting their comments. Ms. Anderson found these comments to be thoughtful and helpful, and she recommended a number of the changes proposed by the bariatric physicians. Ms. Anderson reviewed each recommendation.

The first recommendation is to delete the caloric restriction because it is duplicative of nutritional counseling, which would include caloric restriction. The Board had no comments on this recommendation.

The second recommendation relates to the use of body mass index (BMI) as an indicator, rather than a population-based measurement. Ms. Anderson commented that BMI has been used in the Board's rules for many years and if it were to be replaced, she was not sure what it would be replaced with.

Dr. Schottenstein speculated that if the BMI language was removed, it would be left to clinical judgment. Dr. Schottenstein expressed concern that standardization would be taken away from the rule. Dr. Kakarala recognized the pitfalls with BMI and that it can sometimes be a very inexact measure, but there is not another standardized metric available for this purpose at this time. Dr. Kakarala therefore recommended keeping BMI because some standard is needed. The other Board members agreed.

The third recommendation was to add insulin resistance, metabolic syndrome, and pre-diabetes to the co-morbidities that would allow the use of phentermine for individuals with a BMI of 27 or greater. Dr. Schottenstein and Dr. Kakarala opined that it would be reasonable to add those conditions. Dr. Kakarala stated that obesity is a growing problem and this would provide an outlet to be preventative rather than waiting until the patient develops worsening obesity-related problems.

The fourth recommendation is to delete 4731-11-04(B)(3)(f), which prohibits the initiation of treatment with a controlled substance if the patient had been unsuccessful in previous attempts to lose weight. Ms. Anderson noted that this item received the most comments, and the comments were very strong. The Board members agreed that this provision should be deleted.

The fifth recommendation is to delete the requirement for an assessment every thirty days for the first three months of treatment. Commenters indicated that assessments every two to three months would be appropriate. Dr. Kakarala stated that in an ideal world there would be an assessment within 30 days, but as a matter of practicality it would be very difficult for a clinic, physician's office, or obesity medicine center to bring in every patient within 30 days. Dr. Kakarala agreed that an assessment within 90 days would be acceptable.

The sixth recommendation is to remove the language limiting a weight-loss prescription to thirty days, noting that these are typically Schedule IV controlled substances and have no federal requirement for a limitation. Ms. Anderson also recommended incorporating the Board of Pharmacy statutes on personally furnishing controlled substances so that the practitioner is aware that they can only personally furnish up to 72 hours of these medications.

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The seventh recommendation is to allow practitioners to “obtain information,” rather than “check information,” via telehealth if it is appropriate under the Board’s telehealth rules.

The eighth recommendation is that the patient must maintain a 5% weight reduction but not necessarily continue to lose weight. This is based on recommendations from interested parties such as the Cleveland Clinic and the Obesity Society have indicated that the idea of a “goal weight” is no longer the standard of care.

The ninth recommendation, related to the fifth recommendation, is to remove the requirement for the 30-day time frame for weighing the patient.

Dr. Schottenstein asked if, under the proposed amendments, a practitioner could conceivably continue prescribing to a patient indefinitely by essentially “reinitiating” treatment. Dr. Schottenstein agreed that it is very desirable and probably in the patient’s best interest to not prohibit them from re-attempting treatment simply because they had been unsuccessful in the past. At the same time, Dr. Schottenstein was concerned that a practitioner could take advantage of that language to perpetually prescribe to someone, whether they are successful in their treatment or not.

The Board discussed this issue thoroughly. Mr. Giacalone recommended establishing a time period of perhaps 30 or 60 days between cessation and re-initiation of treatment. Dr. Soin commented that the stakeholders he has been speaking with are very reputable and they provided credible evidence that Ohio is currently an outlier in this area, and that the recommended changes would bring Ohio more in-line with the standard of care. Mr. Giacalone agreed that the stakeholders would practice ethically, but he was concerned about others who may use the system to their benefit. Dr. Soin agreed that it would be practical to assume that there will be some nefarious individuals who will do so.

Dr. Soin found a 30 or 60 day period before re-initiation of treatment acceptable, but he also suggested requiring the practitioner to document a medically-appropriate rationale for re-initiation. Dr. Schottenstein agreed with Dr. Soin’s suggestion because it addresses the minimal standards issue. Dr. Rothermel suggested clarifying the difference between initiation and re-initiation of treatment. Ms. Anderson agreed.

Based on Board discussion, Ms. Anderson stated that instead of deleting 4731-11-04(B)(3)(f), there can be new language specifying that a prescriber must document the rationale for initiation or re-initiation of treatment. The re-drafted rule can be sent to the Board of Pharmacy for their review and input prior to filing with the Common Sense Initiative (CSI).

Dr. Saferin moved to amend 4731-11-04(B)(3)(f) as discussed and provide the amended rule to the Board of Pharmacy for input; and if the Board of Pharmacy has no substantive comments, file the rule and the other controlled substances rules, amended as discussed, with CSI. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Board of Pharmacy Proposed Rule on Pain Management Clinic Ownership

Ms. Anderson stated that the Board of Pharmacy has filed a proposed rule with the Common Sense Initiative (CSI) dealing with ownership of pain management clinics. The proposed rule would allow an operator to enter into an agreement with the owner of a pain management clinic, and it outlines what the operator can do. Ms. Anderson noted that the owners of pain management clinics are licensed physicians, and therefore the Medical Board has a special relationship with the Board of Pharmacy in this area. Ms. Montgomery asked for a definition of “operator.” Ms. Anderson replied that “operator” is defined in the proposed rule as an individual or an entity, such as a management corporation, who enters into a formal or informal agreement with the owner of a pain management clinic.

Ms. Anderson, noting that Dr. Soin has previously aided the staff on issues involving pain management clinics, asked the Board to authorize Dr. Soin to work with her to develop comments on the proposed rule to provide to the Board of Pharmacy, which are due before the Medical Board’s next meeting.

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Dr. Johnson moved to authorize Dr. Soin to work with Ms. Anderson to develop comments on the Board of Pharmacy's proposed rule. Dr. Saferin seconded the motion. All members voted aye. The motion carried.

Dr. Soin briefly reviewed the recent history of this issue as it relates to the Board. During the “pill mill” crisis, the Board learned that many of the pill mills were not owned by physicians, and some of them were owned by criminal enterprises. To combat that, a bill was passed to require pain management clinics to be owned by physicians. However, the laws contained provisions that had unintended negative effects on pain management clinics, and Dr. Soin felt the Board of Pharmacy is working hard to address those negative effects.

Dr. Soin continued that there has been a mass consolidation of independent pain management clinics across the country that private equity companies and management companies are buying into. There is a perception that that may be prohibited in Ohio by this proposed rule, and that is why the proposed rule includes a reference to management companies.

Dr. Soin stated that his personal goal in the comments to the Board of Pharmacy will be to ensure the Medical Board maintains its oversight role, and at the same time balance the opportunities of clinics or physician to do things that they can do in other states. The current rule provides for a pain management clinic to have a Responsible Person (RP) who is a physician. Dr. Soin stated that it is difficult for a physician to be responsible for all the details of a clinic, including payroll, hiring and termination of staff, and similar issues. However, Dr. Soin did feel that, after reviewing the comments, that it would be appropriate to have physician approval of these matters. Dr. Soin favored allowing the physician to enter into an agreement with a management company, but the physician and not the management company should have the final say in the operations of the clinic. Dr. Soin stated that there have been situations in some states where a management company have made decisions based on profit and in some cases fraud, and he wanted to prevent that in Ohio. This will be the gist of the comments Dr. Soin will develop with Ms. Anderson.

Telehealth Rules

Mr. Smith began discussion of proposed revised telehealth rules 4731-37-01, 4731-11-09, and the five rules that incorporate those rules into the chapters for dietetics, respiratory care, genetic counselors, and physician assistants. The Board staff held stakeholder meetings with more than 25 groups regarding these rules, and many helpful comments were received that helped shape this initial draft. The Board received 71 comments from licensees and stakeholders. The Board also received comments from its Dietetics Advisory Council (DAC) and Respiratory Care Advisory Council (RCAC).

Mr. Smith noted that Sharon Zwick-Hamilton, a member of the DAC, expressed concern about 4731-37-01(B), which states, “A health care professional may provide telehealth services to a patient located in this state.” Ms. Zwick-Hamilton believed that this would limit dietitians’ ability to provide treatment in other states. Ms. Zwick-Hamilton practices dietetics in gerontology and needs to be able to access telehealth in that field. Ms. Zwick-Hamilton felt that this rule is a barrier to treatment for dietitians. Several members of the RCAC also made comments that the rule would adversely impact their ability to see patients from out-of-state, particularly states contiguous to Ohio. These concerns are largely reflective of comments received from the Ohio Society of Respiratory Care. There was also concern about 4731-37-01(F) related to the use of remote monitoring.

Mr. Smith stated that in review of the comments, the staff keep four things in mind. First, there is a new telehealth law and the Board is required to follow the law. Second, the Board’s jurisdiction includes the practice of the profession in question that occurs in the State of Ohio. Third, the practice of medicine that occurs through telehealth occurs at the place where the patient is located. Fourth, the Board’s recommendations for these proposed changes seek to protect patient health and safety, as well as make them operable and functional in real-life practice.

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Mr. Smith briefly reviewed the highlight of the comments that have been provided to the Board.

Asynchronous Communication

Many comments were received about the definition of “asynchronous communication” in 4731-37-01(A)(3). The recommended change would simply reference an accepted standard, namely the definition of asynchronous communication in federal statute 42 CFR § 410.78, for consistency with the federal law.

Formal Consultation

Mr. Smith stated that the definition of telehealth contains the term “formally consulting,” and therefore it is important to define that term. The definition suggested in the Board’s memo is based on very good feedback from the Ohio Hospital Association.

Out-of-State Practice

Many comments were received on how these rules relate to out-of-state practice. The staff is recommending deleting section (F)(1) of the rule, which was reflecting what was already clearly stated in the statute. The removal of section (F)(1) makes it clear that 4731-37-01(B), Ohio Revised Code, applies to all health care professionals, including physicians, physician assistants, dietitians, respiratory care professionals, and genetic counselors. The Board’s jurisdiction for the regulation of the practice of these professions applies when the patient is located in the state of Ohio.

Referrals

A proposed change to Rule 4731-37-01(B)(4) would recognize that advanced practice registered nurses (APRN) are involved in cross-coverage agreements and standard care arrangements. At the request of the Association of Advanced Practice Registered Nurses, it is proposed that a definition of APRN be added to this rule to include three subsets of the profession, specifically Clinical Nurse Specialists, Certified Nurse Midwives, and Certified Nurse Practitioners. Other changes are detailed in 4731-37-01(B)(4)(b) through 4731-37-01(B)(4)(d).

In addition, the staff recommends incorporating language suggested by the Ohio State Medical Association so that if a patient does not need to be seen immediately, the health care professional may “refer the patient to a health care professional in the same specialty to conduct an in-person visit within an amount of time that is appropriate for the patient and their condition.”

Emergency Services

Some commenters thought that a physician calling ahead to an emergency department to inform them that a patient is coming could cause confusion. In the interest of compromise and incorporating everyone’s comments, the staff recommends adding the phrase, “if necessary, in the health care professional’s discretion, provide notification to the emergency room of the patient’s potential arrival.”

Consent to Treatment

Based on comments, Mr. Smith suggested using the phrase “patient or the patient’s legal representative” rather than cumbersome language regarding parent, legal guardian, or durable power of attorney.

Communication of Licensure Information

There was a wide variety of opinions on whether a physician or physician assistant should be required to verify the patient’s identity and location in Ohio and communicate the name and licensure information. The

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recommended changes will clarify the meaning of “licensure information” by substituting the phrase “name and type of active Ohio license held.”

Transmission of Patient’s Medical Records

There were suggestions from hospitals, as well as from the Ohio Association of Hospitals, regarding language on the transmission of patients’ medical records. The staff’s recommendations based on these comments are outlined in the Board’s memo.

Remote Patient Monitoring

There were several comments about this complicated issue regarding algorithms and other issues beyond the remote monitoring devices that can be used. The rule specifies remote monitoring devices that have been approved, cleared, or authorized by the Food and Drug Administration (FDA). No changes are recommended.

Requirements for In-Person Visits

Mr. Smith stated that Section 4731-11-09 includes exceptions to the requirements for in-person visits for a new patient before a physician or physician assistant prescribes a schedule II controlled substances. There were suggestions for adding additional exceptions. However, the statute is quite clear about the exceptions and the Board is not authorized to add additional exceptions.

Dr. Kakarala moved to amend the proposed telehealth rules as discussed and to file them with the Common Sense Initiative. Dr. Johnson seconded the motion. All members voted aye. The motion carried.

Legislative Update

House Bill 60: Mr. Mabe stated that this bill would authorize autism spectrum disorder to be included as a qualifying condition to be treated with medical marijuana. After passing out of the House on March 2, this bill had its first Senate Health Committee hearing on March 30.

Senate Bill 261: Mr. Mabe stated that this bill would make changes to the medical marijuana law, including transferring portions of the medical marijuana program from the Board of Pharmacy to the Department of Commerce; expand the types of qualifying conditions; allow for recommendation through telehealth; and allow a CTR doctor to be the medical director of a dispensary. This bill had its third hearing in House Government Oversight Committee on March 24. We expressed some of our concerns about this bill. Right now we are just waiting on amendments and the sub-bill to come out to see what substantial changes are in those.

Dr. Bechtel asked how similar Senate Bill 261 is in content to House Bill 60. Mr. Mabe replied that House Bill 60 only adds autism spectrum disorder to the list of qualifying conditions, whereas Senate Bill 261 is more encompassing. Dr. Bechtel asked if Senate Bill 261 would allow physicians to define the qualifying conditions. Mr. Mabe stated that Senate Bill 261 lists many conditions, but it also includes a clause stating that it is within the physician’s discretion.

Dr. Bechtel recalled that when the Board was considering a petition to add autism spectrum disorder to the list of qualifying conditions, there were comments from Nationwide Children’s Hospital, Cincinnati Children’s Hospital, and the Ohio Psychiatric Physicians Association. Dr. Bechtel asked if those organizations had testified regarding these bills. Mr. Mabe stated that Nationwide Children’s Hospital weighed in on House Bill 60, but he was uncertain if they did so for Senate Bill 261.

House Bill 286: Mr. Mabe stated that this bill would eliminate a provision that requires appeals against a state agency order to be brought before the Franklin County Court of Common Pleas. If passed into law, this bill would allow individuals to file an appeal in the county in which they reside in or, in the case of a business, the

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county in which the business is located. The bill was passed out of the House on March 30 and was referred to the Senate Judiciary Committee on April 6. Its companion bill, Senate Bill 189, had a fifth hearing in Senate Judiciary on March 29.

Mr. Mabe noted that there are systems in place with the Franklin County Court of Common Pleas to help with patient protection and appeals cases. Mr. Mabe will have conversations with members of the Senate Committee when the hearing process begins to see if that provision can be removed from the bill.

House Bill 203: Mr. Mabe stated that this bill would require automatic licensure for out-of-state applicants who are licensed in another state. The bill was reported out of the House State and Local Committee on April 6 and is awaiting a floor vote. The companion bill, Senate Bill 131, had a third hearing in the Senate Workforce and Higher Education Committee on March 22.

Mr. Mabe stated that the Board's preference is Senate Bill 131, which had some changes in the previous General Assembly that allowed licensing authorities to take disciplinary action against applicants, deny applications for disciplinary reasons, and determine an applicants' fitness to practice. Mr. Mabe will have conversations with legislators over the next month about the Board's position.

Senate Bill 322: Mr. Mabe stated that the Board's sexual misconduct legislative package was introduced yesterday, with the support of Senator Hackett.

House Bill 356: Dr. Soin wished to make comments regarding House Bill 356, which would limit opioid prescriptions for acute pain to three days, then require a re-examination before allowing another three days. Dr. Soin stated that the Board already has very good acute pain prescribing rules that includes limitations on morphine-equivalent doses (MED) and a limit of seven days on prescribing. Dr. Soin opined that the Board's rules are very practical and he would prefer these rules over what is in house Bill 356.

Dr. Soin approved of some other portions of House Bill 356, such as establishing drug treatment facilities. Dr. Soin expressed concern about establishing 10 years of controlled release with drug charges, particularly its effect on African Americans because they tend to be prosecuted for such charges at a higher rate than other racial groups.

House Bill 193: Dr. Soin wished to discuss House Bill 193, which would require all controlled substances to be prescribed electronically. Dr. Soin understand why one would favor this, but there are some scenarios in which this would not be desirable. For instance, some free-standing health care facilities use paper prescriptions for physicians who cross-cover, such as *locum tenens* physicians, who may not have access to the facility's electronic medical record system.

More importantly, Dr. Soin pointed out that once an electronic prescription is sent to a pharmacy, it goes no where else. If a patient needs pain medication because of a recent surgery and the pharmacy is out of that medication, the prescription cannot be transferred to another pharmacy. Conversely, if the patient has a paper prescription he or she can take it to another pharmacy who has the medication. Further, Dr. Soin stated that prescription drugs are very expensive and different pharmacies charge different prices, so a paper prescription would allow the patient to shop around for cost.

Mr. Mabe stated that he will have conversations in the legislature regarding Dr. Soin's comments.

COMMITTEE BUSINESS

Quality Assurance Committee

Dr. Bechtel stated that the Quality Assurance Committee met today and approved a policy providing mechanism for staff members to initiate a quality assurance review. Under this policy, if a staff member feels that a case may have been closed inappropriately, they will be able to bring it before the Quality Assurance

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Committee for review. Dr. Bechtel felt that this is important for transparency and for the public to know that a concerned employee has a way to pursue such matters.

The Committee also discussed implementation in the near future of the ability for Committee members to review the closed complaints electronically with the Salesforce system. Dr. Bechtel commented that Ms. Marshall worked very hard on this process.

The Committee continues to assess closed complaints in same fashion mentioned in last Committee report, but that process may be re-examined in the next three months.

Licensure Committee Report

Dr. Saferin stated that staff put forth a proposal to transition from paper wall certificates to providing wall certificates electronically to new licensees. The Committee discussed three possibilities.

- Maintain wall certificates as they are.
- Move completely into the electronic certificates.
- A hybrid system to have both versions available.

The Committee has recommended a hybrid system in which electronic wall certificates will be issued, but individuals may order a second wall certificate in paper form for a \$35 fee. A licensee could print out the electronic wall certificate, but they may order a second one in paper form which would be suitable for framing and would bear the Board's seal. Currently, licensees can purchase a second wall certificate for a \$35 fee, so no change in statute would be required to implement this hybrid system.

Dr. Saferin moved to accept the recommendation of the Licensure Committee. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Dr. Feibel exited the meeting at this time.

Compliance Committee Report

Ms. Montgomery stated that Ms. Dorcy provided the Compliance Committee with an update on statistics for active probationers. Ms. Montgomery commented that Ms. Dorcy did a nice job of separating active and inactive probationers so the Board and focus time and efforts on those who need oversight.

Treatment Provider Applications

Dr. Saferin moved to approve the Compliance Committee's recommendations to approve the treatment provider applications of Lake-Geauga Recovery Centers, Cornerstone of Recovery, and The Woods and Parkside. Dr. Johnson seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

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The motion carried.

Finance Report

Dr. Schottenstein stated that for February 2022 the Board's revenue was substantially down at \$875,531. Dr. Schottenstein noted that January is a license renewal month for the Board, whereas February is not, and so the reduced monthly revenue is not unexpected and February was a normal revenue month.

Expenditures have come down from roughly 15% to 10.4% from the previous month. However, that number itself is elevated beyond the usual 4% increase year-to-date. The Committee talked about inflationary pressures and other factors. It was noted that Fiscal Year 2021 expenditures occurred in the context of a pandemic, so there were no travel costs and minimal supply costs. Conversely, Fiscal Year 2022 expenditures include in-person meetings, conferences, and staff trainings. Because of this, 2022 expenditures may seem artificially elevated while 2021 expenditures may seem artificially low.

Overall revenue is up 7% year-to-date. There was a net negative revenue for February of \$-41,544, and the Board's cash balance is slightly down at \$6,649,149. Dr. Schottenstein stated that this is still a very good number for the Board. With new hires, the cash balance should go down further at some point.

The Board received \$1,135 in disciplinary fines and \$1,500 in continuing medical education (CME) fines. The Board has received \$134,251 in fines year-to-date. It appears that the Board will have collected about \$150,000 in fines this fiscal year.

Dietetics Advisory Council Report

Ms. Loucka stated that the Dietetics Advisory Council met earlier this week. Mr. Roach provided a presentation on the Board's enforcement processes.

Council members indicated they hear complaints about non-licensed dietitians such as nutrition coaches giving information to citizens that should be given by dietitians, and they wanted to make certain the Board is investigating such complaints when filed. The council was assured that the Board investigates these complaints.

Mary-Jon Ludy, a member of the Council and a representative of the Ohio Academy of Nutrition and Dietetics (OAND), gave an update on behalf of OAND. Ms. Ludy indicated there is confusion about dietitian continuing education courses; staff will look into the issue and report back to the Council.

Selection of new member for the Dietetics Advisory Council

Ms. Loucka stated that this month a position for a licensed dietitian on the Dietetics Advisory Council became vacant. The current member was contacted regarding reapplying to serve an additional term and she chose to let her term expire.

Medical Board staff held an application period with a notice and application posted on the Board's web site. Four applications were received and interviews of each were conducted virtually. The Ohio Academy for Nutrition and Dietetics was consulted regarding filling this position.

Kristen Murray has been a licensed dietitian since 2013. Ms. Murray has wide ranging experience within the field of dietetics including as a clinical dietitian at MetroHealth Medical Center for nine years where she conducted nutrition assessments in medical, surgical and oncology patients, collected and trended malnutrition data systemwide, and conducted nutrition lectures for incoming surgical residents. Ms. Murray is currently in private practice at, and owner of, a business that treats eating disorders and subclinical eating disorders.

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Board staff consulted with the Executive Director and Board President to discuss this appointment and are offering a recommendation of Kristen Murray for the Board's consideration for appointment for a three-year term as a licensed dietitian on the Dietetics Advisory Council beginning April 13, 2022.

Dr. Saferin moved to appoint Kristen Murray for a three-year term on the Dietetics Advisory Council as a licensed dietitian beginning April 13, 2022. Dr. Bechtel seconded the motion. All members voted aye. The motion carried

PROBATIONARY REPORTS AND REQUESTS

Office Conference Reviews

Dr. Johnson moved to approve the Compliance staff's Reports of Conferences for March 7, 8, and 22, 2022. Dr. Kakarala seconded the motion. All members voted aye, except Dr. Rothermel, Dr. Saferin, and Dr. Bechtel, who abstained. The motion carried.

Probationary Requests

Dr. Johnson moved to approve the Secretary and Supervising Member's recommendations for the following probationary requests:

- a) Marvin M. Baula, M.D.: Request for release from the terms of the April 10, 2019 Consent Agreement.
- b) Marios D. Papachristou, M.D.: Request for approval of the individual therapy being conducted through the Pennsylvania Physicians Health Program to meet the aftercare requirement, and approval of the completed prison program Community Transitional Services to count towards the aftercare requirement.
- c) Linda C. Ruhe, M.T.: Request for approval of the course tailored by Donna Homenko, Ph.D., to fulfill the professional ethics course requirement.
- d) Joseph T. Spare, M.D.: Request for approval of the course *PB/ Prescribing Course: Opioids, Pain Management and Addiction*, offered by PSI Education and University of California, Irvine School of Medicine, to fulfill the controlled substance prescribing course requirement; approval of the course *PB/ Medical Record Keeping Course*, offered by PSI Education and University of California, Irvine School of Medicine, to fulfill the medical records course requirement; and approval of the course *Training on ADHD in Children and Adults*, offered by CHADD.org, to fulfill the pediatric deficit hyperactivity disorder prescribing course requirement. In addition to the requested CHADD course, Secretary and Supervising Member also recommend review of the latest American Academy of Pediatric Clinical Practice Guideline, *ADHD: Clinical Practice Guideline for the Diagnosis, Evaluation, and Treatment of Attention-Deficit/Hyperactivity Disorder in Children and Adolescents*, along with all updates, to fulfill the pediatric deficit hyperactivity disorder prescribing course requirement.
- e) Rodney J. Williams, M.D.: Request for release from the terms of the February 12, 2020 Board Order.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Johnson	- aye
	Mr. Gonidakis	- aye
	Dr. Kakarala	- aye
	Dr. Bechtel	- abstain

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Ms. Montgomery - aye

The motion carried.

ADJOURN

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

The meeting adjourned at 1:15 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on April 13, 2022, as approved on May 11, 2022.



Betty Montgomery, President



Kim G. Rothermel, M.D., Secretary

(SEAL)

