

MINUTES**THE STATE MEDICAL BOARD OF OHIO****January 11, 2017**

Amol Soin, M.D., President, called the meeting to order at 9:57 a.m. in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Robert P. Giacalone, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Anita M. Steinbergh, D.O.; Donald R. Kenney, Sr.; Mark A. Bechtel, M.D.; Andrew P. Schachat, M.D.; Michael Schottenstein, M.D.; and Ronan M. Factora, M.D. The following members did not attend the meeting: Michael L. Gonidakis; and Richard Edgin, M.D.

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

MINUTES REVIEW

Dr. Steinbergh moved to approve the draft minutes of the December 14, 2016, Board meeting, as written. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

APPLICANTS FOR LICENSURE

Dr. Steinbergh moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the genetic counselor applicants

listed in Exhibit "A," the massage therapist applicants listed in Exhibit "B," the Oriental medicine practitioners listed in Exhibit "C," the physician assistant applicants listed in Exhibit "D," the physician applicants listed in Exhibit "E," and the radiologist assistants listed in Exhibit "F," as listed in the Agenda Supplement and handouts. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

REPORTS AND RECOMMENDATIONS

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

Dr. Soin asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Robert Michael Cook, M.D.; Philicia S. Duncan, M.D.; Jayaprakash Ayillath Gosalakkal, M.D.; Jake Paul Heiney, M.D.; James Patrick Mima, P.A.; Steven Barnett Schwartz, M.D.; and Giridhar Singh, M.D. A roll call was taken:

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

Dr. Soin asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

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

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

Dr. Soin noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member. In addition, Dr. Bechtel served as Secretary and/or Supervising Member on matters concerning some respondents; therefore, he will recuse as appropriate.

Dr. Soin reminded all parties that no oral motions may be made during these proceedings.

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

ROBERT MICHAEL COOK, M.D.

Dr. Soin directed the Board's attention to the matter of Robert Michael Cook, M.D. Objections to Ms. Shamansky's Report and Recommendation have been file and were previously distributed to Board members.

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

Dr. Cook was represented by his attorney, Patrick O'Shaughnessy.

Mr. O'Shaughnessy stated that Dr. Cook simply did not do what the State has accused him of doing, as a matter of law and a matter of fact. Mr. O'Shaughnessy stated that as a matter of law, Dr. Cook needed to act recklessly or worse in order to commit the offenses, and that Dr. Cook did not act recklessly. Mr. O'Shaughnessy stated that neither the State's arguments nor the Hearing Examiner's Report and Recommendation address this issue. Therefore, Mr. O'Shaughnessy stated that the Conclusion of Law is insufficiently supported by the Findings of Fact in this this case and no further punishment should be imposed.

Mr. O'Shaughnessy continued that the State's allegations concern 18 patients. Mr. O'Shaughnessy stated that Dr. Cook only worked at the clinic for about six-and-a-half weeks and he was not working at the clinic at the times that eight of those patients were seen. Mr. O'Shaughnessy also stated that the State's allegations raised the prospect of pre-signed prescriptions, but the State did not attempt to make a case on that issue.

Mr. O'Shaughnessy asked the Board, if it believes the Dr. Cook's case warrants further punishment, to keep in mind that Dr. Cook has had the Board's Notice of Opportunity for Hearing on his record for more than a year. Mr. O'Shaughnessy added that many of the mitigating factors identified by the Board's

disciplinary guidelines apply to Dr. Cook's case. Mr. O'Shaughnessy quoted from the Report and Recommendation that "there is also no evidence that any patient was actually harmed in this case." Mr. O'Shaughnessy stated that the conduct in question occurred on Dr. Cook's first two days on this job in 2014, making it remote in time. Mr. O'Shaughnessy stated that Dr. Cook refused to get involved in this type of behavior ever again.

Mr. O'Shaughnessy stated that Dr. Cook's actions were not reckless or willful. Mr. O'Shaughnessy stated that Dr. Cook has been practicing medicine for 25 years and, until the allegations of this case, he has maintained a spotless record and had never been sued or subject to any disciplinary proceedings. Mr. O'Shaughnessy stated that Dr. Cook had never even been accused of any unprofessional conduct until these allegations. Mr. O'Shaughnessy stated that Dr. Cook is deeply remorseful for associating with the clinic and he hoped to move forward to continue making a positive contribution to society as a physician.

Dr. Cook stated that he accepts full responsibility for his actions and that he is sorry he was ever involved with the men's clinic. Dr. Cook stated that he respectfully objects to three of the Hearing Examiner's findings.

First, Dr. Cook stated that he was accused of allowing medical assistants to make drug dose decisions for test or teaching doses as well as take-home doses for erectile dysfunction treatment. Dr. Cook stated that, in fact, he made all dosing decisions for all patients. Dr. Cook noted that State's witness Nicholas Haught stated under Oath, "Dr. Cook made all the dosing decisions" and he repeated this assertion two or three times on examination and cross-examination. Mr. Haught also mentioned that round-table discussion, which Dr. Cook stated was part of teaching which is often done in medicine.

Second, Dr. Cook observed that State's witness Carol Cunningham, M.D., testified that the emergency medical technicians (EMT's), who were called medical assistants in the clinic, had made decisions on the efficacy of the medicine used in treatment. Dr. Cook stated that this is not true; rather, Dr. Cook directed the medical assistants to ask patients to compare drug-induced erections to past erections without medication. Dr. Cook stated that the medical assistants had gathered information for him and the he, Dr. Cook, made the physician decisions.

Third, Dr. Cook noted that Dr. Cunningham had testified that EMT's, or medical assistants, are not allowed to give shots. Dr. Cook stated that medical assistants are allowed to give shots; he indicated that Section 4731-23-02, Ohio Administrative Code, allows medical assistants to give as long as a doctor is present for supervision and the shots are not intravenous (IV) or intra-arterial (IA). Dr. Cook stated that the intercavernosal injections give at the clinic were neither IV nor IA.

In closing, Dr. Cook stated that he made the decisions at the clinic and the medical assistants had assisted him by gathering information.

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

Ms. Snyder stated that Dr. Cook is a radiologist who decided to work in an erectile dysfunction clinic. Ms. Snyder stated that, though there is some dispute about the facts, everyone agrees that Dr. Cook performed physical evaluations of patients who would then go to the clinic's EMT's, which Dr. Cook refers to as medical assistants. The EMT's would then roundtable with Dr. Cook about the appropriate dosage of erectile dysfunction medications to administer to the patient. Afterwards, an EMT would measure the

medication into a syringe, put it into an EpiPen-type dispenser, and administer the shot to the patient's penis. The EMT would later evaluate the resulting erection at two different times and report back to Dr. Cook. The EMT would then teach the patient how to administer the medication so that they could do it at home. Ms. Snyder stated that there was no dispute at Dr. Cook's hearing that this constitutes the practice of medicine.

Ms. Snyder stated that the State's expert witness, Dr. Cunningham, is the State Medical Director at the Ohio Department of Public Safety, Division of Emergency Medicine Services. Dr. Cunningham testified that no level of EMT, not even a paramedic, is formally trained to do these types of things. Ms. Snyder stated that since these acts are not within the scope of practice of an EMT, this constitutes delegating the practice of medicine to an unlicensed individual. Dr. Cunningham had felt strongly that allowing EMT's who have not been formally trained to do this presented a risk to patient safety.

Ms. Snyder agreed with Dr. Cook that there is no evidence of pre-signed prescriptions. Ms. Snyder also agreed that there is no evidence that the EMT's were determining dosages themselves during the seven-week period that Dr. Cook worked at the clinic. Ms. Snyder stated that if Dr. Cook had defended himself by saying that he had been deceived and that he left the clinic as soon as he figured out what was happening, the Board may be having a different conversation today. However, Dr. Cook's defense was that he only worked at the clinic and that it was someone else's responsibility to determine the credentials of the people working for Dr. Cook. Ms. Snyder stated that this defense may carry some weight in a hospital setting with a whole team of physicians and a credentialing department. However, Dr. Cook was the only physician at the clinic while he worked there and he was fully aware of what the EMT's were doing on a daily basis.

Ms. Snyder stated that Dr. Cook does not want the Board to look at the clinic because the clinic's practices were highly questionable. Ms. Snyder stated that the clinic was owned by non-physicians, the medical director was a non-physician, and Dr. Cook was required to read off a script when speaking with patients. Ms. Snyder added that the clinic was charging patients hundreds of dollars for a cream which Dr. Cook knew to be a sham and did not contain any testosterone. Ms. Snyder stated that while Dr. Cook should not be blamed for these things, they should have been very clear indications to Dr. Cook that the clinic was not what it purported to be.

Ms. Snyder asked the Board to accept the Hearing Examiner's Report and Recommendation and the Proposed Order of a minimum 60-day suspension of Dr. Cook's medical license.

Dr. Steinbergh moved to approve and confirm Ms. Shamnsky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Robert Michael Cook, M.D. Dr. Schachat seconded the motion.

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

Mr. Giacalone briefly reviewed Dr. Cook's medical career. In 2014 Dr. Cook was unable to find work in his field of radiology and he was recruited to work as an independent contractor for the Yale Clinic, an erectile dysfunction clinic. Dr. Cook testified that he interviewed for the position with Rick Neiswonger, who was "part-owner and entrepreneur" of the clinic. Dr. Cook testified that he believed that Mr. Neiswonger had some type of medical training. Mr. Giacalone observed that while Dr. Cook did a Google search of the Yale Clinic, he failed to do any similar inquires on Mr. Neiswonger, who was essentially

going to be Dr. Cook's boss.

Mr. Giacalone stated that in reviewing the clinic's website, Dr. Cook found that it operated facilities in several other states and that Dr. M. Sheldon Polsky, a board-certified urologist, was associated with the clinic. However, Dr. Cook never met or spoke with Dr. Polsky. Dr. Cook testified that even though he had never practiced urology, he believed that the position at the clinic treating erectile dysfunction was a good match because he was very competent at taking histories and performing physicals of patients. Although Dr. Cook was the first physician hired by the clinic, he testified that he had no role in hiring staff, licensing the clinic, or marketing or advertising for the clinic.

Mr. Giacalone continued that Dr. Cook described his clinic training as "more pep talk than training," given by Mr. Neiswonger and David Vitelli, the "Assistant Medical Director" of the clinic. Dr. Cook testified that he thought Mr. Vitelli was an EMT or a paramedic from Philadelphia, but he never saw Mr. Vitelli's diploma or license to know what credentials he had. Mr. Neiswonger and Mr. Vitelli provided Dr. Cook with a script to use when talking to patients, which Dr. Cook described as emphasizing what to say and what to avoid saying. Dr. Cook testified that in addition to an office manager and sales representatives, the clinic also hired three men to work as medical assistants who were actually EMT's.

Mr. Giacalone stated that the clinic offered a particular treatment for erectile dysfunction, which involved a combination of three and sometimes four medications mixed and injected into the corpora cavernosa, the spongy erectile tissue in the penis. When a patient would come to the clinic, Dr. Cook would review their medical chart, take the patient's history and physical, and perform an ultrasound evaluation of the penile blood flow. Dr. Cook stated that while the ultrasound evaluation may have given some Assurance to patients, he stated that it was mostly "for show." If a patient was deemed to be a suitable candidate for the clinic's erectile dysfunction treatment, Dr. Cook would discuss the medications' potential side effects with the patient. Once the risks were explained, Dr. Cook would leave the examination room and an EMT, working as a medical assistant, would give the patient a test dose of the medication mix.

Mr. Giacalone stated that in his hearing, Dr. Cook agreed that the treatment of erectile dysfunction is the practice of medicine and that, because he was the only physician on duty, he was responsible for the medical care of any patients that he treated for that condition at the clinic. Dr. Cook also acknowledged that the EMT's who were giving the test injections of these medications were not physicians. While Dr. Cook testified that he was familiar with the scope of training and practice of EMT's, he agreed that an EMT's scope of practice is limited by Ohio law to providing emergency treatment and that the scope of practice is different in a physician's office. Cook testified that Mr. Neiswonger and Mr. Vitelli had represented to him that the clinic's EMT's had been trained to do the test injections by Dr. Polsky. However, Dr. Cook later acknowledged that he thought the EMT's had been trained by having them watch videotapes of Dr. Polsky.

Mr. Giacalone noted Dr. Cook's testimony that during his first few days he had observed the EMT's performing test injections and teaching patients how to self-administer the medication mix. Afterwards, Dr. Cook's usual practice was to see the next patient while the EMT performed these functions. Dr. Cook admitted that he usually did not go back to confer with the patient after the EMT's test injection and patient education. Dr. Cook testified that he would discuss each patient's appropriate test dosage with the EMT using a dosage chart developed by Dr. Polsky. Mr. Giacalone stated that in addition to the medications prescribed and injected, the clinic also offered patients a product called "Andro Mix," which Dr. Cook compared to hand lotion. Dr. Cook testified that he did not feel comfortable recommending it for patents because it was very costly and was no different from lotions sold at supermarkets.

Mr. Giacalone stated that the State's expert witness, Carol Cunningham, M.D., is board-certified in emergency medicine and has served as an emergency medical services (EMS) instructor since 2001. Dr. Cunningham is the Medical Director for Lakeland Community College where she teaches and oversees the curriculum for EMS students. In addition, Dr. Cunningham has served as the State Medical Director for the Ohio Department of Public Safety since 2004 and holds a federal appointment as the Medical Director for the National EMS Advisory Council.

At Dr. Cook's hearing, Dr. Cunningham described the scope of practice for an EMT, their level of training, and the very limited medications that EMT's are permitted to administer. Dr. Cunningham stated in her expert report to the Board, as well as in her testimony, that it was outside the scope of practice for an EMT to administer injections into a patient's penis for the treatment of erectile dysfunction. Dr. Cunningham maintained that EMT's are not trained to evaluate penile tumescence (the extent of erection) as the EMT's were doing at the clinic, nor are they trained to use the multiple medications that the EMT's were injecting at the clinic. Dr. Cunningham further testified that it "absolutely" presented a risk to patients to have EMT's administering this type of injection, explaining that EMT's are not trained in the dosage or use of these medications, in recognizing the side-effects or complications of them, or in assessing the patient's reactions to them. Dr. Cunningham stated that the fact that a physician was on the premises did not eliminate her concerns because there was no physician at the clinic who was trained in urology or emergency medicine. Dr. Cunningham had opined that the EMT's had engaged in the practice of medicine even if the dosage was ultimately Dr. Cook's decision because the dosing was based on the EMT's assessment.

Dr. Cook testified that he left the Yale Clinic in October 2014 after working there for only six or seven weeks. Dr. Cook stated that he left the clinic because he had an opportunity to work in radiology again and not because he thought there was anything illegal or inappropriate happening at the Yale Clinic.

Based upon the evidence and testimony provided, Mr. Giacalone opined that the Board should adopt the Hearing Examiner's analysis, Findings of Fact, Conclusion of Law and Proposed Order. Mr. Giacalone based his rationale on the following:

- While Dr. Cook claims that he was ignorant of what was required of The Yale Clinic staff and operations, he did accept the offer to serve as the Clinic's physician where he could see first hand that the facility was focused on making profit as opposed to operating a legitimate medical clinic. Such suspect activities included:
 - Being hired by Rick Neiswonger, who appeared to be more of a marketing/sales person and not a physician;
 - While Dr. Cook admitted that he never met with Dr. Polsky, a urologist allegedly associated with the Yale Clinic. Rather, Dr. Cook's connection with Dr. Polsky appears to be that he relied on EMT's, working as medical assistants, who were trained via videotape by Dr. Polsky;
 - When Dr. Cook began working at the clinic, and he described his clinic training as "more pep talk than training" given by two non-physicians, even though Respondent had never practiced urology;

- Essentially all of the prescriptions filled for the Clinic's patients were faxed to a compounding pharmacy in Florida because, unbelievably, the Respondent claimed that "There are no compounding pharmacies in Ohio";
- Dr. Cook was aware that the Clinic sold an exorbitantly-priced cream called Male Andropause Cream costing up to \$897 for a four to six-ounce bottle that contained no medication and was no different than lotion that could be purchased in a supermarket;
- Dr. Cook was given a script to use with Clinic patients which directed him to use certain words and refrain from using others in promoting erectile dysfunction treatment options, including making statements that he (Dr. Cook) actually used the \$897 Male Andropause Cream himself and that it would provide patients with "energy and stamina." In short, the script appeared to be more a marketing piece as opposed to something drafted by a urologist.
- It is clear that Dr. Cook has aided and abetted one or more of the Yale Clinic EMT's to practice medicine without a license to do so. Dr. Cook did this by allowing the EMTs to perform the following acts:
 - Making decisions related to the types of medications and dosing of medications used to treat patient's erectile dysfunction;
 - Administering test dosages of said medications to patients through injections into the penis;
 - Evaluating the results after injection;
 - Teaching patients how to inject the medications themselves.
- The State's Expert, Dr. Cunningham, testified unequivocally that those tasks constitute the practice of medicine. Dr. Cunningham further testified that EMTs have no training in any of those aspects of treating erectile dysfunction and that those tasks are outside the scope of an EMT's practice, as defined in Chapters 4765 and 4766 of the Ohio Revised Code. Dr. Cunningham further concluded that these practices posed a danger to patients because the EMTs were not trained in the use of the injectable medications, nor in assessing a patient's reaction to them or recognizing complications of them.
- Hence, the evidence shows that Dr. Cook has violated the Medical Practices Act under RC 4731.22(B)(10) in that he was complicit in aiding the EMT's in the unlicensed practice of medicine, which violates RC 4731.41, and is a felony of the 5th degree under R.C. 4731.99.

Mr. Giacalone expressed interest in hearing the opinions of his fellow Board members on Dr. Cook's alleged complicity in aiding in the unlicensed practice of medicine.

Dr. Steinbergh agreed with Mr. Giacalone. Dr. Steinbergh also agreed with the Hearing Examiner, except for the Hearing Examiner's contention that there was no patient harm in this case. Dr. Steinbergh stated that anytime a patient is exposed to this kind of care, the patient is harmed. Dr. Steinbergh stated that one does not have to prove that patient care was disruptive to any one of the patients to know that it was

disruptive to all of them. Dr. Steinbergh stated that she does not know any urologist who would delegate this type of injection to someone who is not licensed to do it.

Dr. Steinbergh noted that two patients had to go to the emergency department due to priapism. Dr. Steinbergh stated that when a patient presents to the emergency department with priapism, the patient is usually treated by a urologist. Dr. Steinbergh stated that if these patient had had priapism in the clinic, there was no urologist on-site and they would have had to go to the emergency department from the clinic. Dr. Steinbergh stated that it would have been much better for the clinic to have a urologist caring for these patients.

Dr. Steinbergh stated that this is one of many cases that have come before the Board in which a physician steps away from his or her primary specialty in order to make money and then gets into this kind of trouble. Dr. Steinbergh stated that Dr. Cook did an excellent job taking patient histories and physicals, but it was inappropriate for him to allow EMT's to perform these functions without the proper licensure. Dr. Steinbergh commented that there was no real medical oversight of the clinic. Dr. Steinbergh agreed with the Proposed Order.

Dr. Schottenstein opined that, having listened to Dr. Cook today, that Dr. Cook does not truly understand the nature of the Board's concerns. Dr. Schottenstein likened the situation to that of an airplane pilot who allows a flight attendant with minimal flying experience to fly the plane during relatively uneventful periods of the flight. Dr. Schottenstein furthered the analogy by supposing that the pilot decided to refer to the flight attendant by another title, such as flight assistant or flight technician. Dr. Schottenstein stated that in this analogy the pilot's opinion of the flight attendant's ability to fly the plane is irrelevant; it is simply outside the scope of the flight attendant's position. Likewise, Dr. Cook's opinion of the EMT's ability to perform these functions is irrelevant. Dr. Schottenstein stated that to allow physicians, or pilots, to decide for themselves who can perform certain aspects of their jobs would be to invite anarchy. Dr. Schottenstein stated that if Dr. Cook feels strongly that EMT's can perform these functions, he should lobby the legislature and the appropriate state agencies to allow such practice and not take the matter into his own hands.

Dr. Schottenstein noted that reference has been made to Rule 4731-23-02, OAC. Dr. Schottenstein stated that Section (B)(5) of that rule states, "That the person to whom the task will be delegated is competent to perform that task." Dr. Schottenstein stated that the EMT's were not competent to perform these tasks. Dr. Schottenstein stated that Rule 4765-15-04, OAC, defines the scope of practice of EMT's and it does not mention administering injectable medication or evaluating patients for erectile dysfunction. Dr. Cunningham specifically testified that a medical director can only limit an EMT's scope of practice, not expand it.

Dr. Schottenstein observed that Dr. Cook's objections spent a good deal of time on the question of culpability and *mens rea*, making the point that statutes regarding the unauthorized practice of medicine and complicity are not strict liability laws. The defense argued that when a statute does not impose strict liability or specified culpability, then the element of the offense is established only if the person acts recklessly. Dr. Schottenstein disagreed with the defense counsel's assertion that Dr. Cook did not act in a reckless manner. Dr. Schottenstein opined that Dr. Cook did not do his due diligence in terms of investigating the clinic and that a simple Google search is inadequate. Dr. Schottenstein further opined that Dr. Cook accepted this position with recklessness and heedless indifference to the consequences. Dr. Schottenstein noted that the defense counsel has stated that Dr. Cook would never have worked for the clinic if he knew then what he knows now. Dr. Schottenstein pointed out that the facts that Dr. Cook

now wishes he had known were knowable at the time.

Dr. Schottenstein opined that only through heedless indifference to consequences and thoughtless lack of concern would a physician put himself in the position of delegating treatment of erectile dysfunction to an EMT. Dr. Schottenstein supported the Proposed Order.

Mr. Giacalone agreed with Dr. Schottenstein regarding recklessness, noting that there were many suspect activities and red flags at the clinic that would cause a reasonable person to realize that there were significant issues with the clinic.

Dr. Soin pointed out the harm to patients is not necessarily limited to physical harm. Dr. Soin stated that patients of the clinic were harmed financially by paying for a product that had little clinical utility or benefit.

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

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

The motion to approve carried.

PHILICIA S. DUNCAN, M.D.

Dr. Soin directed the Board's attention to the matter of Philicia S. Duncan, M.D. No objections were filed. Mr. Porter was the Hearing Examiner.

Dr. Soin stated that a request to address the Board has been filed on behalf of Dr. Duncan. However, the request was not filed in a timely manner. Therefore, the Board must determine whether to allow Dr. Duncan to address the Board. Dr. Soin asked if any Board member wished to make a motion regarding Dr. Duncan's request to address.

Dr. Steinbergh moved to grant Dr. Duncan's request to address the Board. Mr. Giacalone seconded the motion. A vote was taken:

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

Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Bechtel	- abstain

The motion carried.

Dr. Soin stated that five minutes will be allowed for Dr. Duncan's address.

Dr. Duncan was represented by her attorney, Barry Doyle.

Mr. Boyle stated that he and Dr. Duncan accept all of the Hearing Examiner's conclusions in the Report and Recommendation and in the Errata. Mr. Boyle stated that Dr. Duncan has already followed all the recommendations in the Hearing Examiner's Report and Recommendation and has already obtained her assessment. Mr. Boyle stated that Dr. Duncan is a very good doctor who was born in Jamaica and attended the best medical schools. Mr. Boyle stated that Dr. Duncan currently works at The Ohio State University Wexner Medical Center where she is highly valued. Mr. Boyle noted a letter from Dr. Duncan's supervisor, Eric Schumacher, D.O., which states that Dr. Duncan provides outstanding care for her patients and has a bright future in hospital medicine due to her positive attitude, genuine care for patients, overall collegiality, and passion for medicine.

Mr. Boyle stated that he knows Dr. Duncan works a very good recovery program he is also a member of the recovery program. Mr. Boyle stated that Dr. Duncan has a sponsor and home group and she attends three to four Alcoholics Anonymous meetings per week. Mr. Boyle stated that Dr. Duncan takes her Consent Agreement very seriously and that she has done everything that has been asked of her.

Mr. Boyle stated that there was a violation of Dr. Duncan's Consent Agreement in the sense that a positive test result is a violation, even if there is evidence that another type of test would have been negative. Mr. Boyle stated that Dr. Duncan accepts that she somehow made a mistake. Mr. Boyle stated that Dr. Duncan is very conscious of her sobriety date, which was originally three years ago.

Mr. Boyle noted that if the Board accepts the Hearing Examiner's recommendation of a 90-day suspension from October 19, 2016, Dr. Duncan will be able to apply for reinstatement in the very near future.

Dr. Duncan stated that the three most important things to her are her sobriety, God, and her job. Dr. Duncan stated that she is ready to do whatever the Board recommends in order to continue working as a physician. Dr. Duncan stated that she loves her job and she believes that being a physician is part of the reason she was placed here.

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

Mr. Wilcox stated that this is a case of a relapse. Dr. Duncan tested positive for amphetamines, which she had been found to be dependent on when she first entered into her Step I Consent Agreement in June 2013. Mr. Wilcox stated that Dr. Duncan knows very well how to comply with the requirements of her current Step II Consent Agreement. Mr. Wilcox further noted that, based on Dr. Ferguson's testimony, both the A and B samples of Dr. Duncan's September 2016 sample were positive for amphetamines. Mr. Wilcox stated that Dr. Duncan needs to come to terms with the fact that the evidence

shows that she relapsed.

Mr. Wilcox stated that the Proposed Order is essentially for “time served,” since the 90-day suspension will have begun on October 19, 2016, when her license was summarily suspended.

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

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

Dr. Steinbergh briefly reviewed Dr. Duncan’s career. Dr. Steinbergh also summarized Dr. Duncan’s history of using stimulants during her medical training to self-treat her depression, social anxiety, and attention deficit disorder (ADD). Dr. Steinbergh stated that in June 2013 Dr. Duncan entered into a Step I Consent Agreement with the Board due to her having obtained Paxil and Ritalin for her own use by writing prescriptions under her own name or name of another physician who was unaware of the prescribing. An assessment at a Board-approved facility resulted in Dr. Duncan being diagnosed with stimulant dependence and ADD, with a history of depression not otherwise specified. In October 2013, Dr. Duncan entered into a Step II Consent Agreement which reinstated her training certificate. Dr. Duncan subsequently received her full medical license in July 2015.

Dr. Steinbergh continued that under her Step II Consent Agreement, Dr. Duncan contractually agreed that if the Secretary and Supervising Member of the Board determine there is clear and convincing evidence that she had violated any term, condition or limitation of the Consent Agreement, such violation would also constitute clear and convincing evidence that her continued practice of medicine presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension.

Dr. Steinbergh stated that a urine drug screen submitted by Dr. Duncan in September 2016 tested positive for, and was GC-MS confirmed for, the presence of amphetamines. Dr. Duncan denied having used any substance that contained amphetamine and asked that the test be reconfirmed. The sample was then sent to a different lab and was reconfirmed positive for amphetamines. At her hearing, Dr. Duncan denied using any stimulants or drugs that contain amphetamines. Dr. Duncan acknowledged that any positive test is violation of her Step II Consent Agreement. The Board summarily suspended Dr. Duncan’s license on October 19, 2016, and the license remains suspended.

Dr. Steinbergh noted that on October 10, 2016, Dr. Duncan submitted a hair sample for testing; the hair sample tested negative for all substances. Dr. Ferguson, the Medical Director of FirstLab, testified that the urine test and the hair test tell similar, but not identical, things. Dr. Ferguson testified that both results are valid and the fact that they are not the same does not necessarily invalidate the other result. Dr. Ferguson explained that the urine amphetamine detection period is thought to be about three to four days, while properly-clipped hair can test back to 90 days. Dr. Ferguson opined that Dr. Duncan ingested some amphetamines in the three to four days prior to the September 1, 2016, test, but the amount was not enough to cause a positive hair result on October 10, 2016. Dr. Ferguson stated that because of the type of tissue that hair is, it takes much greater drug ingestion to have a positive hair test result. Dr. Ferguson opined that a positive urine test and a negative hair test indicates a prescription version of amphetamines rather than an illicit drug. Dr. Ferguson indicated that hair testing is more sensitive to the illicit version of amphetamines. Dr. Ferguson further testified that Ritalin ingestion would not have caused the positive urine test result.

Dr. Steinbergh continued that Dr. Ferguson testified that the medications that have been prescribed to Dr. Duncan would not cause a positive result upon GC-MS confirmation. With respect to over the counter substances, including energy drinks, Dr. Ferguson testified that there is nothing legally sold in the United States that would cause a positive test for amphetamines. Dr. Ferguson testified that he found nothing in the testing process that would cause him to doubt the result of the positive urine screen. In response to journal articles that Dr. Duncan had presented at the hearing, Dr. Ferguson noted that the articles indicate that hair testing has a higher positivity rate than urine due to its longer detection period and that hair testing is more likely to show patterns of use than reveal a single use.

Dr. Steinbergh stated that a witness identified only as "Linda" testified on Dr. Duncan's behalf. Linda testified that Dr. Duncan is very professional and honest in her recovery program and that she participates in discussion at rehabilitation meetings. Dr. Steinbergh also noted a letter of support from Dr. Schumacher, Dr. Duncan's supervisor, and Dr. Hunt, Dr. Duncan's psychiatrist. Dr. Hunt's letter stated, in part, "I do not feel at this time that any of her [Dr. Duncan's] prior symptoms or behaviors are impairing her ability to function as a physician in her current employment. She remains fully compliant with the Board agreement to the extent of my knowledge." Another letter from Kimberly Bonta, Program Director at Cornerstone Recovery, indicates that Dr. Duncan was appropriate during the program and can be a positive contributor to group discussion when she participates.

Dr. Steinbergh stated that the Proposed Order of a minimum 90-day suspension is consistent with a first relapse. Dr. Steinbergh believed that Dr. Duncan did relapse and that the Proposed Order is appropriate.

Dr. Schottenstein agreed with Dr. Steinbergh. Dr. Schottenstein opined that when there is a positive test for amphetamines, the licensee has the burden of proving otherwise. Dr. Schottenstein observed that Dr. Duncan's counsel alleged that the test may have been inaccurate, but he did not offer any proof of why that would be true. Dr. Schottenstein felt that the principle of Occam's Razor holds true in situations such as this, meaning that the simplest explanation is likely to be the correct one. Dr. Schottenstein opined that it is likely that Dr. Duncan slipped with regard to use of the amphetamines. Dr. Schottenstein believed the descriptions of Dr. Duncan as honest and hard-working, but he also believed that Dr. Duncan has a substance abuse disorder and that honest and hard-working people with substance abuse disorders can relapse. Dr. Schottenstein hoped that Dr. Duncan will continue to work hard at her sobriety, fulfill the obligations of her treatment recommendations, and return to the practice of medicine. Dr. Schottenstein agreed with the Proposed Order.

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

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

The motion to approve carried.

JAYAPRAKASH AYILLATH GOSALAKKAL, M.D.

Dr. Soin directed the Board's attention to the matter of Jayaprakash Ayillath Gosalakkal, M.D. Objections to Ms. Mosbacher's Report and Recommendation have been filed and were previously distributed to Board members.

Dr. Soin stated that yesterday, counsel for Dr. Gosalakkal filed a request for his, Dr. Soin's, recusal from this matter. Dr. Soin stated that he does not have any knowledge regarding Dr. Gosalakkal other than the information contained in the Board's official hearing record. Dr. Soin concluded that there is no need for him to recuse himself from participating in the discussion and voting on this matter.

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

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

Mr. Tkach stated that Dr. Gosalakkal was unable to come to today's meeting from Michigan and he deeply regrets that he cannot address the Board in person. Mr. Tkach stated that the Hearing Examiner's Report and Recommendation does not adequately reflect the testimony and exhibits that were produced during Dr. Gosalakkal's hearing. Mr. Tkach stated that Dr. Gosalakkal takes full responsibility for his actions and that he admitted that he could have and should have been more proactive in independently notifying the Board about the matter in the United Kingdom in 2013.

Mr. Tkach stated that the Report and Recommendation does not include any references to State's Exhibit 3B, an email between Dr. Gosalakkal and Board Enforcement Attorney Mark Blackmer. Mr. Tkach stated that State's Exhibit 3B and Dr. Gosalakkal's testimony show that Dr. Gosalakkal worked very closely with the Board in 2014 and 2015 to keep the Board informed about the status of the United Kingdom matter once it became a disciplinary action.

Mr. Tkach continued that the issue in this case is honesty. Mr. Tkach stated that Dr. Gosalakkal did not know that the United Kingdom matter had become a disciplinary action until 2013 at the same time the Board found out through a television report in Dayton. Mr. Tkach stated that Dr. Gosalakkal did not appreciate his duty to independently notify the Board of what he knew it already knew. Dr. Tkach stated that Dr. Gosalakkal deeply regrets that he did not look at the rules more closely to know what was required of him.

Mr. Tkach stressed that the matter in the United Kingdom was not disciplinary until the Fitness to Practise Panel of the Medical Practitioners Tribunal Service voted to make it disciplinary in 2013. Mr. Tkach stated that he submitted subpoena requests to have people come in from the United Kingdom to provide additional information about the British disciplinary system, but those subpoena requests were quashed. Mr. Tkach stated that he renews his motion to have those subpoenas enforced.

Mr. Tkach stated that Dr. Gosalakkal was born in India and lived most of his life in India and the United Kingdom. Consequently, Dr. Gosalakkal learned English in the United Kingdom system. Mr. Tkach stated that there are discrepancies between how English is used in the United Kingdom and Midwest America which the Report and Recommendation do not address.

Mr. Tkach stated that Dr. Gosalakkal has provided him with a lengthy statement which he cannot read in the time allotted. Mr. Tkach read portions of Dr. Gosalakkal's written statement:

"I accept full responsibility. I promise that given an opportunity to continue my career, I will not repeat any of these. Justice should be tempered with mercy, and I hope the Board would find it in itself to allow me to complete my medical career with dignity."

Mr. Tkach stated that this case does not warrant revocation of Dr. Singh's Ohio medical license. Mr. Tkach stated that Dr. Gosalakkal should have reported his disciplinary action independently, but he now recognizes that it was his responsibility to do so. Mr. Tkach suggested that a reprimand and a course in ethics would be an appropriate resolution.

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

Ms. Snyder agreed with Mr. Tkach that this case is about honesty. Ms. Snyder stated that Dr. Gosalakkal knew in February 2011 that he had been suspended from the University Hospitals in the United Kingdom, but he did not apply for an Ohio medical license until May 2011. Ms. Snyder stated that Dr. Gosalakkal answered "no" to the application question, "Have you ever been warned, censored, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, ..." Ms. Snyder stated that the Ohio Medical Board only found out about the United Kingdom action because of a media report in 2013. Ms. Snyder stated that Dr. Gosalakkal did not answer the application truthfully and did not inform the Board as his United Kingdom action worked through the system. Ms. Snyder stated that Dr. Gosalakkal only began to communicate with the Ohio Board after the Board learned about the disciplinary action.

Ms. Snyder stated that the action against Dr. Gosalakkal, even though it is in another country, is still a suspension. Ms. Snyder asked the Board to adopt the Hearing Examiner's Report and Recommendation.

Dr. Steinbergh moved to approve and confirm Ms. Mobacher's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Jayaprakash Ayillath Gosalakkal, M.D. Dr. Schottenstein seconded the motion.

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

Dr. Soin stated that on or about July 25, 2014 the Fitness to Practise Panel of the Medical Practitioners Tribunal Service in the United Kingdom issued a decision which suspended Dr. Gosalakkal's registration in that jurisdiction for period of six months. Following an appeal, Dr. Gosalakkal's suspension became effective in or around August 2015. The Board's proposed actions are further predicated upon Dr. Gosalakkal's May 2011 Application for Physician Licensure, in which Dr. Gosalakkal affirmed that his answers were truthful and that he would immediately notify the Board in writing of any changes to the answers of any of the questions contained in the License Application prior to a license being granted by the Board. The Board granted Dr. Gosalakkal's license on December 9, 2011.

Dr. Soin continued that on the May 2011 License Application, Dr. Gosalakkal attested that he had never had his clinical privileges limited. In fact, in or around February 2011, Dr. Gosalakkal's clinical privileges had been restricted under a term of exclusion at University Hospitals of Leicester, England, United

Kingdom. Dr. Gosalakkal further attested on his application that his employment had never been terminated. In fact, Dr. Gosalakkal's employment at University Hospitals of Leicester ended in October 2011 due to the termination of his contract. Dr. Soin briefly reviewed Dr. Gosalakkal's medical career.

Dr. Soin stated that in February 2011, Dr. Gosalakkal's practice was restricted at University Hospitals of Leicester while an investigation was conducted into his practice. Dr. Gosalakkal was not permitted to practice medicine at University Hospitals of Leicester, but he continued doing research and teaching. Dr. Gosalakkal testified that he believes the investigation and restriction of his practice was the result of numerous whistleblower complaints that he had filed against others. Dr. Gosalakkal applied for an Ohio medical license in May 2011 while the United Kingdom investigation was in progress. Dr. Gosalakkal certified that the information provided was accurate and complete. Dr. Gosalakkal also certified that his privileges to practice had never been restricted by any employer. The Board granted Dr. Gosalakkal's medical license in December 2011.

Dr. Soin stated that Dr. Gosalakkal learned from a reporter that the United Kingdom investigation had resulted in charges being brought against him by the Fitness to Practise Panel of the Medical Practitioners Tribunal Service. Dr. Gosalakkal's employment in Dayton was terminated and he returned to the United Kingdom for a hearing on the charges. Following a hearing, the Medical Practitioners Tribunal Service suspended Dr. Gosalakkal's privileges to practice for six months. Dr. Gosalakkal appealed the suspension, which was affirmed in 2015.

Dr. Soin stated that Dr. Gosalakkal had been untruthful on his application for licensure. Dr. Gosalakkal's registration in the United Kingdom was subsequently suspended for six months due to his having been found impaired by reason of misconduct. Dr. Soin stated that the Proposed Order would revoke Dr. Gosalakkal's Ohio medical license.

Dr. Steinbergh commented that she found Dr. Gosalakkals' testimony to have been evasive and circuitous, making it difficult to get to the root of the matter.

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

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

The motion to approve carried.

JAKE PAUL HEINEY, M.D.

Dr. Soin directed the Board's attention to the consolidated matters of Jake Paul Heiney, M.D. No objections were filed. Mr. Decker was the Hearing Examiner.

Dr. Steinbergh moved to approve and confirm Mr. Decker's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Jake Paul Heiney, M.D. Mr. Giacalone seconded the motion.

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

Dr. Factora stated that Dr. Heiney was found guilty on two counts of Gross Sexual Imposition, a felony of the fourth degree; one count of Tampering with Records, a misdemeanor of the first degree; and two counts in Michigan of Criminal Sexual Misconduct, a misdemeanor of the fourth degree.

Dr. Factora stated that two patients reported separate experiences of examinations of their breasts during evaluations for shoulder pain. One patient also alleged an examination of her buttocks during the course of the evaluation. Dr. Factora stated that detailed descriptions of these experiences from perspective of the patients reveal the prolonged duration and repetition of these examinations as well as their inappropriate nature. The Tampering with Records charge stems from Dr. Heiney's alteration of medical records to justify these examinations after a police investigation was initiated. The charges in Michigan were related to similar actions in that state. Dr. Factora noted that all of these events took place while the patients were seeking medical treatment, and thus occurred during the course of practice.

Dr. Factora continued that based on the convictions in Ohio, Dr. Heiney was declared a Tier 1 sex offender subject to concomitant registration and disclosure requirements, as well as a four-year period of community control following his release of incarceration, including a 90-day period of Work Release, an additional \$4,000 fine, and participation in a sex offenders program. In Michigan, Dr. Heiney was sentenced to 90 days of jail with five years of probation and other sanctions.

Dr. Factora stated that Dr. Heiney's behavior demonstrates a clear violation of the trust that patients place in their physicians. Dr. Factora stated that the egregious nature of this violation, the number of times the violation was committed by Dr. Heiney, and his attempt to cover up the violation through alteration of the medical records show that Dr. Heiney's continued practice of medicine is a danger to the people his profession is responsible for caring for. Dr. Factora supported the Proposed Order of permanent revocation of Dr. Heiney's Ohio medical license.

Dr. Steinbergh noted that in the case of Patient 1, there was no nurse in the room during the examination. Patient 1 described Dr. Heiney performing actions such as pulling down her bra and pulling her left breast out of the bra more than one time. Dr. Steinbergh stated that this is absolutely unacceptable behavior by any physician. Dr. Steinbergh stated that patients sometimes become dependent on their relationships with their physicians and have trouble recognizing inappropriate behaviors. Dr. Steinbergh stated that patients should understand that this behavior is never appropriate and should never be tolerated. Dr. Steinbergh added that tampering with medical records is also inappropriate and unethical. Dr. Steinbergh noted that there were also alleged actions with patients other than Patient 1 and Patient 2 which did not result in criminal charges. Dr. Steinbergh stated that based solely on Patient 1 and Patient 2, the only recourse is permanent revocation of Dr. Heiney's license.

Dr. Steinbergh commented that the Board should continue to educate the public on what they may or may not expect from their physician. Dr. Steinbergh encouraged patients to immediately leave the physician's office and report to the authorities whenever physicians behave in such an inappropriate manner. Dr. Steinbergh stated that patients should not fear losing their only link to medical care and that other physicians can provide appropriate care. Dr. Steinbergh stated that patients should feel empowered to

walk away from such situations.

Dr. Schottenstein agreed with Dr. Steinbergh. Dr. Schottenstein stated that this not merely a sexual boundary issue. Rather, this is a case of a sexual predator committing sexual assault. Dr. Schottenstein stated that physicians with sexual boundary issues may be remediable if they are truly repentant and take ownership of their behavior. In Dr. Heiney's case there is no repentance, as shown by his attempts to falsify records to make the behavior appear appropriate and to make the victims appear to be overreacting. Given Dr. Heiney's sexually predatory behavior, deceit, and lack of repentance or willingness to apologize, Dr. Schottenstein opined that Dr. Heiney's license should be permanently revoked.

Mr. Giacalone agreed with Dr. Schottenstein that Dr. Heiney is a calculating sexual predator who victimized patients. Mr. Giacalone stated that Dr. Heiney should never practice medicine again and he opined that Dr. Heiney will not spend enough time in jail.

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

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

The motion to approve carried.

JAMES PATRICK MIMA, P.A.

Dr. Soin directed the Board's attention to the matter of James Patrick Mima, P.A. Objections to Mr. Porter's Report and Recommendation have been filed and were previously distributed to Board members. However, the objections were not filed in a timely manner. Dr. Soin asked if any Board member wished to make a motion regarding Dr. Bansal's request to address the Board.

Dr. Steinbergh stated that she does not favor accepting the objections because of the amount time it took to receive them.

Dr. Steinbergh moved to deny Mr. Mima's request to accept his objections. Mr. Kenney seconded the motion. A vote was taken:

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

Dr. Soin	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Bechtel	- abstain

The motion carried.

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

Mr. Mima was represented by his attorney, Kerry O'Brien.

Mr. O'Brien stated that he believed that approximately two years ago an anonymous letter, sent to the Board and possibly to Mr. Mima's employer, letter indicated that Mr. Mima may have been giving samples of non-narcotic medications to people who were not patients. Mr. O'Brien stated that, in fact, Mr. Mima was taking samples that had been left in his practice by salesmen and giving them to some members of his family. Mr. O'Brien stated that Mr. Mima did this because his family was in very modest financial circumstances. Mr. Mima was visited by investigators from the State Medical Board of Ohio and the Ohio Board of Pharmacy. Mr. Mima was soon terminated from his job and he has not practiced any type of medicine for almost two years. Mr. O'Brien commented that Mr. Mima was fully cooperative with the investigators.

Subsequently, Mr. Mima was indicted on one count of Theft of Drugs, a fourth-degree felony. Mr. O'Brien stated that this left Mr. Mima with a choice of either going to trial, which is always risky; pleading guilty; or getting into an "intervention in lieu of conviction" program. Mr. O'Brien stated that this became a "legal fiction." Mr. O'Brien stated that the psychodiagnostic unit initially stated that Mr. Mima did not have a drug problem, but he was let into the intervention in lieu of conviction program following a re-evaluation. Mr. O'Brien stated that Judge McCarty approved this with the understanding of exactly what was going on. After one year, which is the minimum time required in the program, the Judge dismissed the charge.

Mr. Mima stated that he takes full responsibility for and regrets his actions. Mr. Mima stated that he became a physician assistant to help and serve people and that his patients trusted and respected him. Mr. Mima stated that no patients were harmed or involved in these events and there were never any complaints by patients or staff.

Mr. Mima stated that the bottom line of this case is that he signed an agreement with the Board and he was non-compliant because he never had a drug problem to begin with. Mr. Mima stated that he understands the position of the Hearing Examiner and the Board faced with two contradictory statements. Mr. Mima stated that he was instructed by his attorney to lie and pretend to have a drug problem because it was the surest and easiest way around prosecution at that time under those circumstances.

Mr. Mima stated that his legal matters have been dismissed and the Board has evidence supporting the fact that he is clean, responsible, and ready to return to practice. Mr. Mima asked the Board to consider reinstating his physician assistant license.

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

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of James Patrick Mima, P.A. Dr. Schottenstein seconded the motion.

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

Mr. Kenney stated that Mr. Mima allegedly violated the terms of his January 13, 2016 Step I Consent Agreement. In September and October of 2014 Mr. Mima took sample medications from his employer's office and provided them at no cost to his family members. Mr. Mima testified that none of the samples he took were controlled substances. In February 2015 an indictment was filed against Mr. Mima for one count of theft of drugs, a felony of the fourth degree. In 2015 Mr. Mima was found eligible for intervention in lieu of conviction by the Summit County court. For acceptance into the intervention program, it was required that Mr. Mima have a substance abuse problem. As Mr. Mima later stated, he lied about having a drug problem so that he could enter the intervention program. Thus, Mr. Mima entered into treatment and completed the intervention program in 12 months, whereupon the Theft of Drugs charge was dismissed. Mr. Kenney noted that Mr. Mima has also admitted to two prior convictions for misdemeanor theft in 1997 and 2002.

Mr. Kenney continued that Mr. Mima entered into a Step I Consent Agreement with the Medical Board in January 2016 which suspended his physician assistant license for a minimum of 90 days. As a condition for the reinstatement of his license, Mr. Mima was required to complete at least 28 days of inpatient treatment at a Board-approved facility and submit to random screening for drugs and alcohol which included a daily call-in procedure. Unfortunately, Mr. Mima failed to submit specimens for drug screening on six specified dates between February and May, 2016. Mr. Mima also failed to call in as required on February 11, February 28, March 17, March 20, March 28, and April 1 through May 4 of 2016. Mr. Mima informed the Board staff the he would no longer submit to testing because he could not afford it. Mr. Mima testified that a treatment facility would cost \$35,000. Mr. Mima stated that he is currently working at Home Depot making \$400 per week and he cannot comply with these costs.

Mr. Kenney stated that around August 2015, Mr. Mima indicated that he had been diagnosed with, and then treated for, alcohol and chemical abuse and dependency. Mr. Mima also acknowledged in a signed statement that he had used cocaine from January 2014 to February 2015 and that he had abused marijuana 30 years earlier. However, Mr. Mima later said that he had not used those substances and that he had lied in order to be consistent with what he had told the courts. Mr. Kenney stated that for reasons he did not understand, Mr. Mima's Notice of Opportunity for Hearing did not charge him with making false statements to the Board, and therefore he cannot be punished for that conduct today. However, Mr. Kenney stated that Mr. Mima's deceptive conduct and lack of honesty is unacceptable and constitutes just cause for discipline.

Mr. Kenney stated that he agrees with the Hearing Examiner's Proposed Order, though he felt that it was very lenient. The Proposed Order would suspend Mr. Mima's license for 90 days in addition to the suspension he is currently serving under his Step I Consent Agreement. The Proposed Order would also require Mr. Mima to pay a fine of \$5,000. Mr. Mima's Step I Consent Agreement would remain in full force and effect.

Dr. Schottenstein opined that Mr. Mima has a credibility issue, stating that it is difficult to trust the word of someone who has provided false statements to a court and to the Board. Dr. Schottenstein agreed that

Mr. Mima should be bound by the Consent Agreement he entered into, and therefore he agreed with the suspension and the fine in the Proposed Order.

Dr. Schottenstein stated that Mr. Mima's attorney had suggested to Mr. Mima that he endorse a false history of substance abuse in order to enter the court's intervention in lieu of conviction program. Mr. Mima's attorney, who referred to this as a "legal fiction," had given this advice because it was the quickest way for Mr. Mima to deal with his situation. Dr. Schottenstein further noted that the judge in this case apparently went along with the legal fiction. Dr. Schottenstein stated that he understands that legal fictions are created in order to do justice, but he was uncertain if this was an appropriate use of the legal fiction concept.

Dr. Schottenstein continued that in a very basic sense, the court and Mr. Mima's attorney recommended that Mr. Mima feign a substance abuse condition for purposes of secondary gain, namely to get him back to work and earning money as soon as possible. Dr. Schottenstein stated that this essentially is encouraging malingering, which is the fabricating of symptoms of mental or physical disorders for a motive such as avoiding school, work, or the draft; for obtaining drugs; or, as in this case, for getting a lighter criminal sentence. Dr. Schottenstein stated that he would not have thought of this as an appropriate use of legal fiction. Dr. Schottenstein questioned whether the taxpayers paid for Mr. Mima's group therapy and his substance abuse assessment, where he lied to the examiner about his substance abuse history. Dr. Schottenstein further questioned, in light of a scarcity of resources for substance abuse treatment, whether Mr. Mima's participation in the program meant that someone who truly needed such treatment was unable to enter the program.

Dr. Schottenstein stated that people in a substance abuse treatment program have an extremely serious condition and are trying to get better. Dr. Schottenstein stated that the point of group therapy is that each member of the group is supported by other members by virtue of their shared history of substance abuse problems. Dr. Schottenstein stated that when someone without such problems gets into the group, he or she is not only using resources that could have been used by someone who truly needs it; he or she is also detracting from the convalescence of the other group members because he or she is not able to help the others and he or she is taking up their time with his or her fake problems. Dr. Schottenstein asked how this behavior is different from faking an injury in order to get money from an insurance company.

Mr. Giacalone quoted the closing argument of the Assistant Attorney General in Mr. Mima's hearing:

Especially this Assistant Attorney General that has an extensive history in criminal law, I do understand and acknowledge that legal fictions do exist when it comes time to plea. I've done them myself. You do things in the courtroom in regard to a plea to come to an end result; however, I will say now that I'm sitting on the administrative side and I represent the State Medical Board side, we can only go forward with what we know in regard to the Consent Agreement.

Mr. Giacalone commented that the criminal court system is not a pristine process. Mr. Giacalone stated that Mr. Mima had a choice between going to jail or entering the intervention in lieu of conviction process. Mr. Giacalone stated that pleas in criminal court are often made for things that do not necessarily align with reality. Regarding the question of whether Mr. Mima took a space in a treatment program from someone who may have truly needed it, Mr. Giacalone pointed out that the same would be true if Mr. Mima continues to be monitored as an addict by the Board, as would happen under the Proposed Order.

Mr. Giacalone agreed that Mr. Mima needs to be disciplined for lying to the Board and that the Proposed Order of a minimum 90-day suspension and a fine may be appropriate. Mr. Giacalone suggested the Mr. Mima undergo another evaluation to determine if he is truly a substance abuser, and then to require or not require a treatment program as appropriate.

Ms. Anderson commented that Mr. Mima has been charged with violating his Consent Agreement; although questions about Mr. Mima's truthfulness can be considered as an aggravating factor, the Board's discipline must be based on the violation of the Consent Agreement.

Dr. Steinbergh thanked Mr. Giacalone for his input about the reality of how courts operate. Dr. Steinbergh stated that her focus in this case is on Mr. Mima's lying. Dr. Steinbergh stated that in her mind, Mr. Mima should have pled guilty or gone to trial rather than say something that is a lie. Dr. Steinbergh observed that Mr. Mima has informed the Board that he cannot and will not comply with his Consent Agreement due to financial reasons. Dr. Steinbergh suggested revoking Mr. Mima's license. Dr. Steinbergh stated that Mr. Mima lied about being a drug user and this is what the Board does with licensees who are drug users: put them into a consent agreement and, if they cannot comply with the consent agreement, non-permanently revoke the license until they can show that there is no evidence of impairment and they are able to resume their professional responsibilities.

Mr. Giacalone opined that Mr. Mima did not lie to the court. Rather, Mr. Mima entered into a plea agreement. Mr. Giacalone stated that in court, one weighs the risks and benefits of a course of action. Mr. Giacalone stated that Mr. Mima had a choice of risking going to jail for something that, arguably, should not even be a jailable offense, or taking an alternative that may not be factually correct but was the only vehicle to avoid the risk of jail. Mr. Giacalone reiterated that Mr. Mima should be disciplined, but he struggled with the concept of revoking Mr. Mima's license because Mr. Mima got caught up in a system and made an honest decision to avoid the risk of jail.

Dr. Schachat suggested tabling this topic. Dr. Steinbergh agreed.

Dr. Steinbergh moved to table the topic of James Patrick Mima, P.A. Dr. Schachat seconded the motion. A vote was taken:

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

The motion to table carried.

STEVEN BARNET SCHWARTZ, M.D.

Dr. Soin directed the Board's attention to the matter of Steven Barnett Schwartz, M.D. Objections to Ms.

Blue's Report and Recommendation have been filed and were previously distributed to Board members.

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

Dr. Schwartz stated that it is with shame and regret that he stands before the Board today. Dr. Schwartz stated that despite what has occurred, no patient was ever put at risk and there was never contact with anyone. Dr. Schwartz stated that what he did was not related to addiction, but rather to distracted, avoidant behavior. Dr. Schwartz stated that he is currently receiving therapy to deal with this issue. Dr. Schwartz stated that therefore, any potential issues with public safety are being addressed.

Dr. Schwartz stated that he wished to reiterate several important facts which contradict the narrative of the Hearing Examiner's Report and Recommendation. Dr. Schwartz stated that there was one incident of a Torrent file download in or about March 2013. Dr. Schwartz stated that there was absolutely no way for him to know what the content of that file was before he viewed it. Dr. Schwartz stated that once he viewed the contents, he deleted the file and never attempted to download or view a similar file again. Dr. Schwartz stated that from March 2013 to April 2014 he did not view, download, or attempt to search, view or download any illegal material.

Dr. Schwartz continued that in April 2014 he clicked on a file which led authorities to his house. Dr. Schwartz stated that, once again, he again did not know the contents of the file. Dr. Schwartz stated that as soon as he was able to see what the download contained, he stopped the download, deleted the file, and never attempted to revisit that file. Dr. Schwartz stated that this does not represent a pattern of behavior where the goal is to procure and save illegal pornographic material. Dr. Schwartz stated that the computer forensic evidence, his testimony, and the State's witness' testimony support these facts.

Dr. Schwartz briefly described his journey to becoming a physician and neurosurgeon, including his upbringing in South Africa and his education and training in South Africa, Canada, and the United States. Dr. Schwartz also described his passion for neuroanatomy and neurosurgery. Dr. Schwartz stated that he is a compassionate physician and has always put his patients first. Dr. Schwartz stated that during this time he was married and he has four children. Dr. Schwartz stated that he has always been and still is a devoted father. Dr. Schwartz stated that he had intended to read a birthday card given to him by his daughter today, but he felt that the experience would be too emotional for him.

Dr. Schwartz stated that his motivation for being here today is twofold. First, Dr. Schwartz wants to be able to provide a service to my patients, which has been one of the greatest sources of personal satisfaction in his life. Second, Dr. Schwartz wants to be able to provide for his children. Dr. Schwartz asked the Board to take everything into consideration and to believe him when he says that he has accepted responsibility for my actions and has been punished severely. Dr. Schwartz stated that this will never happen again. Dr. Schwartz asked the Board to not accept the Hearing Examiner's severe recommendation. Dr. Schwartz asked the Board to instead find a way to allow him to make his way back to practicing the profession which has been a passion for him and to allow him to use his skills to contribute to the well-being of his fellow citizens.

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

Ms. Pelphrey stated that Dr. Schwartz pleaded guilty to, and was convicted of, one felony count of Sexual

Abuse of Children, Child Pornography. Ms. Pelphrey stated that Rule 4731-13-24 states that a certified copy of a plea of guilty to or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of commission of all the elements of that crime. Ms. Pelphrey stated that this alone is sufficient to prove the State's case against Dr. Schwartz.

Ms. Pelphrey stated that claiming that these downloads were accidental is not mitigating, it is simply denying the fact that Dr. Schwartz pleaded guilty and admitted to a judge that everything that was in the search warrant of probable cause was true, including that there were over 6,000 images of child pornography on Dr. Schwartz's computer. Ms. Pelphrey read a portion of the child pornography statute:

Any person who intentionally views or knowingly possesses, or controls any books, magazines, pamphlets, photographs, videotape, computer depiction, or other materials depicting a child under the age of 18 years engaging in a prohibited sexual act, or any simulation of such acts, commits the offense.

Ms. Pelphrey further defined the statutory definition of the term "intentionally viewed":

Deliberate, purposeful, voluntary viewing of materials depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such an act ... The term shall not include the accidental or inadvertent viewing of such material

Ms. Pelphrey emphasized that this is the statute that Dr. Schwartz had pleaded guilty to. Ms. Pelphrey stated that she continued to object throughout Dr. Schwartz's hearing because the defense counsel was attempting to retry the criminal case with additional evidence and testimony. Ms. Pelphrey reiterated that Dr. Schwartz pleaded guilty to these charges in a court of law. Ms. Pelphrey stated that she did not call any rebuttal witnesses because her case was proven by the prior conviction alone and that Dr. Schwartz's guilty plea means that he committed all the elements of the offense.

Ms. Pelphrey stated that in her experience as a prosecutor, it is extremely common for such defendants to claim that it was accidental or that it was not them who downloaded the material. Ms. Pelphrey stated that without the demand for child pornography, there would be no such product. Ms. Pelphrey asked the Board to adopt the Proposed Order of permanent revocation.

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

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

Dr. Schottenstein stated that on June 8, 2015, Dr. Schwartz pleaded guilty to, and was found guilty of, one felony count of Sexual Abuse of Children – Child Pornography. At that hearing, Dr. Schwartz admitted to the following facts:

- That on or about April 10 of 2014, Detective Sergeant Christopher Stouch of Lower Heidelberg Police Department was conducting investigations into the possession and sharing of child pornography.
- During that investigation, Detective Stouch learned that there was a file sharing of child

pornography with a certain IP address that was ultimately traced to Dr. Schwartz's address.

- On or about May 12, 2014, Detective Stouch executed a search warrant on Dr. Schwartz's address and seized multiple computers and hard drives and thumb drives.
- On a laptop belonging to Dr. Schwartz, Detective Stouch found approximately 6,303 images of child pornography and child erotica known as the LS Model Series.
- Examination of a thumb drive taken from Dr. Schwartz's residence shows there were approximately 1,500 deleted images of the same LS Model Series on an iMac computer.
- Detective Stouch found an incomplete download of a BitTorrent file called "Web Video Collection."
- A fourth device also had a BitTorrent file that contained child pornography that was downloaded on April 14, 2014

Dr. Schottenstein stated that Dr. Schwartz admitted that he did knowingly and intentionally view and possess these items of child pornography and erotica, including depictions of children under the age of 13. The court sentenced Dr. Schwartz to prison for not less than six months and no more than 23 months, followed by supervised release for five years. Dr. Schwartz is also required to register as a Tier 1 sex offender for next 15 years.

Dr. Schwartz testified that he had viewed adult pornography over his life and he estimated that he viewed adult pornography at least several times per week. Dr. Schwartz eventually utilized BitTorrent, a file-sharing network, to download pornography because he was curious to see if there was "something different" than what was on the usual internet websites. Dr. Schwartz indicated that he was not explicitly searching for child pornography, but he did type in terms such as "young models" in the search box. After the LS Models file appeared, Dr. Schwartz clicked on it out of what he called "curiosity." Dr. Schwartz maintains that once he saw that it was child pornography, he deleted it from his devices. Dr. Schwartz indicated that he ultimately realized that he had engaged in reckless behavior that was a manifestation of curiosity and that he had repressed the guilt in the activity and chose not to think about it. Although Dr. Schwartz viewed the files, he claimed that he was only interested in looking at the images that were post-pubescent.

Dr. Schottenstein continued that in April 2014 Dr. Schwartz went back on the BitTorrent file sharing site and clicked on a file called "Web Video Collection." Dr. Schwartz indicated that once he saw a preview of the download, he stopped the download and deleted it. Dr. Schottenstein stated that that file was being tracked by the police, who determined Dr. Schwartz's IP address and resulted in a search warrant. Dr. Schwartz claimed that when he downloaded the file, he did not know what he was going to find on it except that it was pornography. Dr. Schwartz acknowledged that the Web Video Collection file showed sex acts with underage people and was clearly child pornography.

Dr. Schwartz testified that in his treatment with a psychologist, he realized that his behavior had been selfish and immoral. In April and May 2015 Dr. Schwartz was evaluated by Dr. Dattilio, a forensic psychologist, who determined that the incident offense involved only possession of child pornography and deemed Dr. Schwartz to be a non-contact offender. Dr. Dattilio did not diagnose significant psychopathology and he indicated that Dr. Schwartz's prognosis was relatively good. Dr. Schottenstein

noted some discrepancy in Dr. Dattilio's testimony, in the sense that he appeared to believe that Dr. Schwartz only looked at females ranging from ages 13 to 18. Dr. Schwartz stated that he had told Dr. Dattilio that the images showed some females that were clearly pre-pubescent.

Dr. Schottenstein stated that Dr. Schwartz was in prison for six-and-a-half months, took an anger management course, and participated in a sex offender group. Dr. Schwartz has not practiced medicine since May 2014.

Dr. Schottenstein noted that Dr. Schwartz produced character witnesses who testified that Dr. Schwartz is a person of integrity and is a very good surgeon. Dr. Schwartz has maintained that there are several mitigating factors, namely that he is hard-working, kind, and dedicated. According to the forensic psychology evaluation, Dr. Schwartz has no psychopathology that would predispose him to reoffending. Further, Dr. Schwartz states that he has taken responsibility for his actions and he has paid his debt to society.

Dr. Schottenstein noted that the Hearing Examiner stated that child pornography is not a victimless crime and that in the case of Dr. Schwartz, some of the victims are prepubescent girls between ages 5 and 12. The Hearing Examiner did not find Dr. Schwartz to be a credible witness. At his hearing, Dr. Schwartz stated that he did not intentionally search for child pornography and that it was an accident. But by his own admission, Dr. Schwartz searched for young models on a file sharing network rather than on legal internet websites. Dr. Schwartz viewed pictures and videos of young girls and had thousands of images of child pornography on his devices, including images of female children between ages of 5 and 10. Dr. Schottenstein reiterated that Dr. Schwartz's plea in his criminal case included that admission that he had knowledge and intent when he downloaded the child pornography.

Dr. Schottenstein observed that the Hearing Examiner disagreed with Dr. Schwartz's assertion that he has taken responsibility for his actions. Despite evidence to the contrary, Dr. Schwartz continues to deny that he intentionally downloaded child pornography. The Hearing Examiner found that Dr. Schwartz was untruthful and not forthcoming to Dr. Dattilio about the ages of the victims in the child pornography downloads; therefore, the Hearing Examiner placed no weight on Dr. Dattilio's conclusions.

Dr. Schottenstein stated that Dr. Schwartz is essentially asking the Board to believe that this is all a big mistake. Dr. Schottenstein opined that if Dr. Schwartz truly believes this, then this is a rationalization. Dr. Schottenstein stated that although Dr. Schwartz says he was not looking for child pornography, he was not taking measures to avoid it either. Dr. Schottenstein stated that Dr. Schwartz's common sense had deserted him and stated that one's judgement may become impaired when in a state of sexual arousal. Dr. Schottenstein stated that if the first incident in 2013 was truly a mistake, he is incredulous that it happened again in 2014 and that Dr. Schwartz did not learn his lesson the first time. Dr. Schottenstein stated that it is not plausible that this was a simply an unlucky coincidence.

Dr. Schottenstein stated that in his testimony, Dr. Schwartz stated that he went to the file-sharing site because he was looking for something different. Dr. Schottenstein suspected that in viewing legal adult pornography several times per week, Dr. Schwartz became somewhat inoculated to it and it became somewhat routine and banal. Dr. Schottenstein stated that clicking on a non-descript file that had unknown and possibly taboo contents added to Dr. Schwartz's level of excitement.

Dr. Schottenstein stated that Detective Stouch had testified that it was common in his investigations for suspects to claim that the child pornography was downloaded accidentally, but he knew of no cases

where that was actually the case in his opinion. Detective Stouch stated that in Dr. Schwartz's case, any "accidental" download of child pornography occurred over the course of four days in April 2014, in addition to the 2013 incident, and involved transfer of the data to a thumb drive where it was stored for 2 weeks. Dr. Schottenstein noted that the data was also found on three different computers. Detective Stouch testified to his belief that Dr. Schwartz had downloaded the child pornography through multiple computers and stored it on thumb drive. Dr. Schwartz would then delete the child pornography from his computer, which would put it into unallocated space of the hard drive.

Detective Stouch further testified that people who view and get sexual gratification from child pornography do not do it on one occasion, but rather over a course of years. Detective Stouch explained that the deletion of the data as something that someone with a reputation to protect would do because they would be much more careful and take more precautions. Detective Stouch pointed out that the 1,500 files in Dr. Schwartz's computer recycle bin could easily have been restored to the computer for viewing purposes.

Dr. Schottenstein stated that this is as serious an offense as is seen at the Medical Board. Dr. Schottenstein stated that our society simply does not tolerate the downloading, viewing, or dissemination of child pornography. Dr. Schottenstein stated that Dr. Schwartz made himself a participant in the market for child pornography. Dr. Schottenstein stated that in this respect, Dr. Schwartz admitted that he engaged in conduct that is harmful to children, and neither the Medical Board nor our society tolerates that activities in its physicians. Dr. Schottenstein suspected that Dr. Schwartz and his character witnesses would agree with this sentiment were Dr. Schwartz not in his current position. Dr. Schottenstein stated that no matter how skilled Dr. Schwartz may be, practicing as a physician is a position of trust, and so the mitigating factors in this case would have to be profound to have the Board impose a less severe sanction than permanent revocation. Dr. Schottenstein opined that the mitigating factors in this case simply are not adequate to warrant a less severe sanction.

Dr. Bechtel stated that he has experience working at Children's Hospital with children who have been sexually abused. Dr. Bechtel stated that the pain these children go through is incredible, both the physical pain and the psychological pain which remains forever. Dr. Bechtel stated that these children rarely recover. Dr. Bechtel stated that these children were subject to significant pain, suffering, and lifelong psychological ramification in the filming of this pornography.

Dr. Steinbergh agreed with Dr. Bechtel's statements. Dr. Steinbergh stated that while Dr. Schwartz may not have been physically hurting these children at the time, he was perpetuating the harm to these children in a constant way. Dr. Steinbergh stated that these acts are so egregious that there is no other way to handle it except for permanent revocation.

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

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

Dr. Bechtel - aye

The motion to approve carried.

GIRIDHAR SINGH, M.D.

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

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

Dr. Singh was represented by his attorney, Bob Stinson.

Mr. Stinson stated that the Hearing Examiner in this case has concluded that the State proved its case that Dr. Singh had sent a text message asking a patient to dinner four years ago. For other allegations, the Hearing Examiner explained why he felt the State did not meet the burden of proof and why he found that the witnesses were not credible.

Regarding the alleged text message, Mr. Stinson stated that the Hearing Examiner relied heavily on Exhibits M2 through M7, which were submitted after the hearing for the sole purpose of authenticating Exhibit L. Mr. Stinson stated that there was no opportunity to provide testimony or cross-examination in relation to Exhibits M2 through M7. Mr. Stinson stated that the Hearing Examiner unfortunately tried to make sense of Exhibits M2 through M7 outside of the hearing without the benefit of testimony or cross-examination and he speculated on what the information meant. Mr. Stinson stated that at times the Hearing Examiner attributed text messages to Dr. Singh and Patient 2 that were not written by either of them. Mr. Stinson stated that because of the way Exhibits M2 through M7 were presented, they are confusing strings of text messages which were distorted to change their meaning. Mr. Stinson stated that this evidence should not have been used.

Mr. Stinson noted that the Hearing Examiner stated in his report that these exhibits were critical in his decision-making process. The Hearing Examiner particularly noted that in the text messages, Dr. Singh did not deny the allegation made against him. Mr. Stinson stated that this is flawed reasoning for several reasons. Mr. Stinson stated that making a decision based on a respondent's non-denial shifts the burden of proof to the respondent, whereas the burden of proof is actually on the State.

Mr. Stinson stated that the fact that there was no denial, at least as far as the Hearing Examiner could see in the text messages, does not prove that there was an admission by Dr. Singh. Mr. Stinson stated that there could be any number of reasons why Dr. Singh may not have denied the allegations at that time, such as the vagueness of whether Patient 2 was actually making an allegation. Mr. Stinson also stated that Dr. Singh could have recognized that Patient 2 was a drug addict in withdraw, which she admitted to, and that it would be pointless to engage in a text war with her. Mr. Stinson stated that SendHub, the telecommunications company in question, only provided partial text message for exhibit and was unable to provide Dr. Singh's sent text messages despite Dr. Singh's significant efforts and his expenditure of \$1,800 to pull his Verizon phone records and messages. Mr. Stinson stated that this is the reason the exhibits do have contain a denial from Dr. Singh.

Mr. Stinson continued that other than Patient 1 and Patient 2, the State called only one other witness, a

police officer. Mr. Stinson stated that the police officer did not testify that she saw the text message nor did she mention the message in her police report, despite Patient 2's testimony that she showed the message to the officer. Therefore, Mr. Stinson stated that there is no evidence that the office saw the text message.

Mr. Stinson stated that the Board should not accept the Hearing Examiner's recommendation. Mr. Stinson stated that this is based on a false accusation, which the Hearing Examiner seems to have appreciated except in the matter of the text message to Patient 2.

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

Ms. Pelfrey agreed with Mr. Stinson that the Hearing Examiner lost his way in this case. Ms. Pelfrey stated that she believes this because the Hearing Examiner stated that, with the exceptions of Dr. Freeland and Officer Griffith, no witness in the hearing was entirely credible. However, Ms. Pelfrey pointed out that the Hearing Examiner also stated that without being able to articulate a clear and discrete theory what may have motivated Patient 1 and Patient 2 to make their allegations, he could not think of a reason why they would have invented the allegations.

Ms. Pelfrey continued that there are many similarities between Patient 1 and Patient 2:

- Both patients were drug-addicted women with histories of drug use and abuse;
- Both patients needed their treatments;
- Both were patients of Dr. Singh;
- Dr. Singh made the treatments affordable for both patients;
- Both patients saw Dr. Singh for years and had an established trusting relationship with him;
- Both patients saw Dr. Singh as a father figure and shared things with him that they may not have shared with others;
- Both patients alleged misconduct at the hands of Dr. Singh;
- Neither patient benefited from these disclosures and had nothing to gain;
- And most importantly, the patients did not know each other and neither made their disclosures voluntarily.

Ms. Pelfrey added that there is no evidence that either patient tried to extort Dr. Singh for money in exchange for silence. Ms. Pelfrey stated that the motive in this case is on the part of Dr. Singh, who took a leave of absence from his employment when Patient 2 made her disclosure. Ms. Pelfrey stated that Dr. Singh had the motive of avoiding accountability from those allegations.

Ms. Pelfrey stated that one important aspect of this case was the made-up email accounts in which Dr. Singh was emailing himself stories with different names which are not in the medical records. Dr. Singh testified that only he had access to these email accounts. Ms. Pelfrey opined that this is motive to conceal and noted that even the Hearing Examiner said that it seemed like Dr. Singh had been setting up his future defense.

Ms. Pelfrey stated that Dr. Singh also treated Patient 1 and Patient 2 for other things and gave them prescriptions for the other conditions they believed they had. Ms. Pelfrey opined that in this sense, Dr. Singh had a motive to maintain patient control and to control their dependence on him as a physician.

Ms. Pelphrey stated that in her experience as a former prosecutor, she often saw cases in which people would single out their victims based on groups such as children, people with criminal histories, or drug addicts, because these groups are not thought of as being as credible as others. Ms. Pelphrey asked the Board to view these matters from Dr. Singh's perspective and to recognize that he was targeting a particular population that was at his fingertips. Ms. Pelphrey stated that these patients depended on Dr. Singh, which made it very difficult to leave him and find another physician.

Ms. Pelphrey asked the Board to analyze the facts, the circumstances, and credibility of everyone who testified, and to take appropriate action on Dr. Singh's license.

Dr. Steinbergh moved to approve and confirm Mr. Decker's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Giridhar Singh, M.D. Dr. Schachat seconded the motion.

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

Dr. Schachat stated that Dr. Singh holds medical licenses in Ohio and Pennsylvania. Dr. Singh is triple-boarded in psychiatry, psychosomatic medicine, and addiction medicine, and he has been practicing psychiatry in Ohio since 1997. Dr. Singh has not been disciplined by any board that the Ohio Board is aware of.

Dr. Schachat continued that in 2007 Dr. Singh opened a part-time addiction medicine practice in Dublin, Ohio. Dr. Singh treated Patient 1 from April 2009 to November 2013 for opioid dependence. Patient 1 alleged that in late 2011 Dr. Singh made a romantic advance towards her. Patient 1 further alleged a sexual interaction in the summer of 2013. Dr. Schachat noted that on one occasion when Dr. Singh felt threatened during a visit with Patient 1 and Patient 1's sister and brother-in-law, Dr. Singh instructed his receptionist to call the police. Patient 1 gave a statement to the police at that time which was different in material ways from her testimony at Dr. Singh's hearing. The Hearing Examiner concluded that the State has not demonstrated that Dr. Singh engaged in sexual misconduct with Patient 1.

Dr. Schachat stated that Patient 2 was also treated for opioid dependence by Dr. Singh from 2009 to 2015. Dr. Schachat stated that Patient 2 testified to some inappropriate activity by Dr. Singh, but the key issue that the Hearing Examiner found credible was the allegation that Dr. Singh texted her at 2:00 a.m. in 2012 inviting her to a dinner date. Dr. Schachat stated that a physician asking a patient who he is treating for opioid dependence for a date obviously raises many ethical and physician/patient boundary issues.

Dr. Schachat stated that the Hearing Examiner's Proposed Order would suspend Dr. Singh's license for a minimum of 180 days with conditions for reinstatement, including a course on physician/patient boundaries. Dr. Schachat stated that he would be interested to hear the opinions of his fellow Board members on this matter.

Dr. Schottenstein stated that, in trying to determine what the preponderance of the evidence shows, he sees Dr. Singh's 2:00 a.m. text to Patient 2 asking for a date to be key. Dr. Schottenstein stated that Patient 2's allegations that Dr. Singh asked her for a date are contemporaneous with the text in question. Dr. Schottenstein also noted that when Dr. Singh initially supplied evidence of the texting, he indicated that he may have left out some texts that were not important. However, Dr. Singh had omitted a chain of messages between him and Patient 2 from January 31 to February 2, 2015 that relate to Patient 2's allegation. Dr. Schottenstein acknowledged that it is possible that the text messages were not chained

together correctly in the Exhibit, but it appeared that Dr. Singh had the opportunity in that exchange to deny the allegation and he did not do so. Dr. Schottenstein opined that, typically, a physician would respond in a fairly frantic way denying a false accusation of this nature. Dr. Schottenstein felt that Dr. Singh's lack of response to the allegation at that time lends credibility to Patient 2's allegation.

Dr. Schottenstein stated that another concern is the fact that Dr. Singh had a printout of the messages on August 23, 2016, prior to his hearing, but he did not present them until October 2016, after his hearing. Dr. Schottenstein stated that this made it appear that Dr. Singh was attempting to hide something.

Dr. Schottenstein observed that in his hearing, Dr. Singh was specifically asked if he had ever solicited a date or romantic relationship with Patient 2, and he answered "no." Dr. Schottenstein opined that Dr. Singh did ask for a date, based on Dr. Singh's non-denial of the allegation when Patient 2 initially made it and the fact that Dr. Singh produced an incomplete record of messages. Dr. Schottenstein stated that, while asking a patient for a date is very different from the other allegations brought forth in this case, it calls Dr. Singh's credibility into question.

Dr. Steinbergh stated that Dr. Singh had very vulnerable patients and that she believed there were some sexual boundary issues that occurred. Dr. Steinbergh noted that the Hearing Examiner felt that Dr. Singh's case was most similar to that of Patrick Muffley, D.O., in which the Board imposed a minimum 60-day suspension. Dr. Steinbergh disagreed with the Hearing Examiner and opined that Dr. Singh's case was different from Dr. Muffley's. Dr. Steinbergh stated that Dr. Muffley had been sexting a patient, but he had not been prescribing controlled substances to the patient like Dr. Singh had been. Dr. Steinbergh noted that she had recused herself from the matter of Dr. Muffley.

Dr. Steinbergh stated that two patients have made allegations of misconduct on the part of Dr. Singh. Dr. Steinbergh stated that Patient 1 testified that when she was pregnant, Dr. Singh would always tell her that he thought pregnant women were "hot" and he would make inappropriate comments. Dr. Steinbergh stated that she did not know how one could concoct such a thing unless one was exposed to it. Dr. Steinbergh stated that in 2013 Dr. Singh invited Patient 1 to his office on a Sunday to pick up Xanax pills, which Dr. Singh was not prescribing but were being prescribed to Patient 1 by her family physician. Dr. Steinbergh questioned why Dr. Singh would be giving Xanax to Patient 1. Patient 1 described a sexual discussion that then took place. After the encounter, Dr. Singh asked if Patient 1 wanted money. Dr. Steinbergh stated that these details bothered her tremendously. Dr. Steinbergh added that the Board has permanently revoked physicians' licenses for such behavior.

Dr. Steinbergh stated that she believes the allegations of Patient 1 and Patient 2 and that there is no question in her mind that sexual boundaries were compromised. Dr. Steinbergh further stated that she believes Dr. Singh did this because he controlled these vulnerable women and their medications. Dr. Steinbergh opined that Dr. Singh should be required to take a course in professional/personal ethics in addition to the course on physician/patient boundaries. Dr. Steinbergh also opined that a suspension longer than 180 days would be appropriate.

Dr. Steinbergh stated that the fact that a patient returns to such a physician for additional visits does not prove that the allegations did not occur. Dr. Steinbergh commented that physicians often have a connectivity to their patients which is usually a positive thing, but it can be a negative thing in situations such as this.

Mr. Giacalone stated that he struggled with this case because there are credibility issues with both the

witnesses and Dr. Singh. Mr. Giacalone stated that it is difficult to determine how much testimony was true and how much was not true. Mr. Giacalone stated that reading the hearing transcript did not help him because it was just written words. Mr. Giacalone stated that the Hearing Examiner was in a position to actually observe the testimony and the demeanor of the witnesses, and therefore he felt that he should defer to the Hearing Examiner on these questions.

Dr. Schachat noted that the police were called on two different occasions and did not pursue any charges, even though they would probably have heard allegations of sexual misconduct. Dr. Schachat further noted that in both instances, the police were called to defend Dr. Singh. Dr. Schottenstein stated that the prosecutor elected not to pursue formal charges. Dr. Schottenstein also commented that criminal cases must meet the "beyond a reasonable doubt" standard, whereas the Board only has to meet the "preponderance of the evidence" standard. Dr. Schottenstein stated that if the Board had a "beyond a reasonable doubt" standard, he would be thinking of this case differently.

Dr. Schottenstein stated that another point of concern for him was Dr. Singh's testimony that when a physician sees someone every two or four weeks for a period of years, the physician thinks of them as family. Dr. Schottenstein stated that this is a boundary issue and that physicians should not think of their patients as family. Dr. Schottenstein added that he was surprised that Dr. Singh had prescribed Adderall to such a patient. Dr. Schottenstein noted that Adderall is a controlled substance and the patient was being treated for addiction. Dr. Schottenstein stated that someone prone to one addiction is potentially prone to another addiction.

Dr. Steinbergh stated that she is convinced that the patients' testimony was truthful, but she senses that her fellow Board members are not completely convinced. Therefore, Dr. Steinbergh stated that she would offer an amendment to increase the length of Dr. Singh's suspension and to add a requirement for a professional/personal ethics course.

Dr. Steinbergh moved to amend the Proposed Order so that Dr. Singh's medical license will be suspended for a minimum of one year. Dr. Steinbergh further moved to add a requirement that Dr. Singh complete a course in professional/personal ethics as a condition for reinstatement or restoration. Dr. Schottenstein seconded the motion.

Dr. Steinbergh commented that Dr. Singh was not charged by the Board with impairment. However, Dr. Steinbergh hoped that Dr. Singh would take a good look at himself through the professional/personal ethics course and, if there is a need for help, that he would avail himself to that.

Mr. Kenney stated that he understands adding the requirement for a professional/personal ethics course, but he did not understand what would be accomplished by increasing the length of Dr. Singh's suspension from a minimum of 180 days to a minimum of one year. Dr. Steinbergh replied that she found the witness testimony credible and that, if it were solely up to her, the sanction would be harsher. Dr. Steinbergh opined that Dr. Singh needs a considerable amount of time out from practice for his actions. Dr. Steinbergh noted that the Board's disciplinary guidelines specify a one-year suspension as the minimum sanction for sexual misconduct within practice. Mr. Kenney expressed concern that the Board may take action based on opinion and not on fact.

Mr. Giacalone asked what the Board has done with previous cases of a similar nature. Ms. Anderson replied that she does not have that information readily available. Ms. Anderson reiterated that the Hearing Examiner concluded that Dr. Singh violated the Board's sexual misconduct rules and that the

Board's disciplinary guidelines specify a minimum sanction of a one-year suspension for sexual misconduct, though the Board may choose from the full range of sanctions.

Mr. Giacalone commented that it is important for the Board to be consistent and that he would agree with a one-year suspension if that is historically what the Board has done in such cases. Dr. Steinbergh stated that there would not be absolute consistency over the years because each case is different with mitigating and aggravating circumstances. Dr. Steinbergh also stated that the Board changes as its membership changes over the years. Dr. Steinbergh stated that, while this is not the most egregious case the Board has ever seen, she is convinced from her reading of the hearing record that something inappropriate happened.

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

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

The motion to amend did not carry.

Dr. Steinbergh stated that she would like to offer another amendment just to add a requirement for a professional/personal ethics course, without changing the minimum 180-day suspension in the Proposed Order.

Dr. Steinbergh moved to amend the Proposed Order to add a requirement that Dr. Singh complete a course in professional/personal ethics as a condition for reinstatement or restoration. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Mr. Decker's Findings of Fact, Conclusions of Law,

and Proposed Order, as amended, in the matter of Giridhar Singh, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to approve carried.

The Board took a recess at 1:10 p.m. and resumed at 2:05 p.m. Dr. Schottenstein was not present when the meeting resumed.

JAMES PATRICK MIMA, P.A.

Dr. Steinbergh moved to remove the matter of James Patrick Mima, P.A., from the table. Mr. Giacalone seconded the motion. A vote was taken:

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

The motion carried.

Dr. Steinbergh stated that Mr. Mima has testified that he is not able to comply with the terms of his Consent Agreement. Dr. Steinbergh stated that she will offer an amendment to revoke Mr. Mima's license, thus eliminating the Consent Agreement. Dr. Steinbergh stated that if Mr. Mima wants to regain his license in the future and he can demonstrate to the Board that he has been evaluated for chemical dependency or impairment, he will be able to go through the reapplication process.

Dr. Steinbergh moved to amend the Proposed Order in the case of James Patrick Mima, P.A., to a revocation of Mr. Mima's physician assistant license. Mr. Kenney seconded the motion.

Dr. Schottenstein returned to the meeting at this time.

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

ROLL CALL:

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

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Mr. Porter’s Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of James Patrick Mima, P.A. Mr. Kenney seconded the motion. A vote was taken:

ROLL CALL:

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

The motion to approve carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

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

ROBERT TILTON BOWEN, M.D.

Dr. Soin stated that Dr. Bowen has applied for a license to practice medicine and surgery in Ohio. The Board notified Dr. Bowen that it proposed to deny his application based upon: His failure to complete an examination sequence acceptable to the Medical Board, specifically by not passing the Step 3 United States Medical Licensing Examination (USMLE) until his seventh attempt; and his failure to successfully complete 24 months of graduate medical education through the second year level or its equivalent.

Dr. Steinbergh moved to find that the allegations set forth in the November 3, 2016 Notice of

Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, denying Dr. Bowen's application for licensure. Dr. Saferin seconded the motion. A vote was taken:

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

The motion to deny carried.

AMANDA DAWN WORKMAN, M.D.

Dr. Soin stated that Dr. Workman has applied for a license to practice medicine and surgery in Ohio. The Board notified Dr. Workman that it proposed to approve her application, provided that she successfully complete a Pediatric Board Review Course within one year, due to the fact that Dr. Workman has not engaged in the active practice of medicine for more than 2 years.

Dr. Steinbergh moved to find that the allegations set forth in the November 3, 2016 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Dr. Workman's application, provided that she successfully complete a Pediatric Board Review Course within one year of November 3, 2016. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

EXECUTIVE SESSION

Dr. Steinbergh moved to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action, and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity. Dr. Factora

seconded the motion. A vote was taken:

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

The motion carried.

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

The Board returned to public session.

RATIFICATION OF SETTLEMENT AGREEMENTS

JONATHAN R. OPPENHEIMER, M.D. – PERMANENT SURRENDER

Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Dr. Oppenheimer. Mr. Giacalone seconded the motion. A vote was taken:

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

The motion to ratify carried.

D.M.B., M.D. – CONSENT AGREEMENT

Dr. Schottenstein moved to ratify the Proposed Consent Agreement with D.M.B., M.D. Mr. Giacalone seconded the motion.

Dr. Steinbergh stated that she opposes ratification of this Consent Agreement due to the vague nature of the language regarding the proposed permanent restriction on D.M.B., M.D.'s ability to prescribe

controlled substances.

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

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

The motion to ratify did not carry.

SHELDON KAMEN, M.D. – VOLUNTARY PERMANENT RETIREMENT

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

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

The motion to ratify carried.

YI XIONG, D.O. – PROBATIONARY CONSENT AGREEMENT

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

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

Dr. Factora - aye
Dr. Bechtel - aye

The motion to ratify carried.

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

Dr. Steinbergh moved to send the Notice of Immediate Suspension and Opportunity for Hearing to Sean Patrick Hammond, L.M.T. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion to send carried.

Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Anne L. Phelan-Adams, M.D., in accordance with Section 4731.22(G), Ohio Revised Code, and to issue the Notice of Summary Suspension and Opportunity for Hearing. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Robert Lloyd Thomas, III, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- aye

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

The motion to send carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to William Rudolph Bauer, M.D.; Isaac J. Covey, M.T.; Theodore Marston Hunter, M.D.; Nilesh B. Jobalia, M.D.; Cyma Khalily, M.D.; Thomas D. Murray, M.D.; Abdul-Ghani M. Orra, D.O.; and Sandra Sue Vonderembse, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to send carried.

RULES AND POLICIES

PUBLIC HEARING COMMENTS ON RULE 4731-11-09

Ms. Debolt stated that at the December 8, 2016 public rules hearing on proposed rule, comments were received on proposed amendments to Rule 4731-11-09 as it relates to controlled substances. Ms. Debolt stated that the comments were carefully reviewed with respect to the hospice community and the long-term care community. The Controlled Substance Act was also carefully reviewed to find a way to honor the requests of the commenters without violating federal law. As a result, Ms. Debolt suggested an amendment to the Rule, as listed in her memo to the Board.

Dr. Steinbergh started that hospice physicians often struggle to provide appropriate pain control for their patients. Dr. Steinbergh stated that federal law makes this very difficult because it prevents a hospice physician from electronically transmitting a prescription for controlled substances to a pharmacy. Instead, the prescription must be presented to the pharmacy in person, which may be extremely difficult at certain times of the night. Dr. Steinbergh opined that the federal law binds the hands of hospice physicians by not allowing them to appropriately care for their patients. Ms. Debolt commented that such a prescription may be transmitted to the pharmacy by fax so long as it uses telephone lines and not the internet.

Dr. Steinbergh stated that the proposed amendment would add the following language to the rule:

The physician is the medical director or attending physician for a hospice program licensed pursuant to Chapter 3712 of the Revised Code and both of the following conditions are met: a) The controlled substance is being provided to a patient who is enrolled in that hospice program programs, and b) the prescription is transmitted to the pharmacy by a means that is not facilitated by the internet.

Dr. Steinbergh stated that this is a difficult situation for hospice physicians and similar physicians. Dr. Schottenstein agreed with Dr. Steinbergh and opined that the proposed amendment is the best way to address the issue while still complying with federal law.

Dr. Steinbergh moved to approved the proposed amendments to proposed Rule 4731-11-09. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

OPERATIONS REPORT

Human Resources: Mr. Groeber stated that the Board is currently back-filling some investigator positions. Colin DePew, the Board's new Attorney 2, is working in the Legal Section, as will the Attorney 4 position for which there will be interviews starting next week.

Information Technology: Mr. Groeber stated that the e-License project is still on track to be implemented in June 2017 for licensure of allopathic, osteopathic, and podiatric physicians.

Communications and Outreach: Mr. Groeber stated that a new set-up will be used today for electronic probationary appearances. Also, Ms. Pollock will record portions of the appearances to be used the Board's educational initiatives with medical students.

Agency Operations: Mr. Groeber stated that the Board's overall number of cases continues to decrease.

Mr. Groeber observed that Licensure ended 2016 very strong with a 10% increase in new licenses across all license types. M.D. and D.O. licenses saw a 16% increase for December and a year-over-year increase of 11%. Mr. Groeber noted that the number of expedited licenses issued increased by 66% from 2015 to 2016, representing approximately \$155,000 in additional revenue. Mr. Groeber stated that the Licensure section will do an analysis of the monetary impact that expedited licensure can have for

employers by allowing them to employ physicians an average of 21 to 23 days sooner than by traditional licensure. The Licensure Section will also analyze how much more tax revenue the State collects due to expedited licensure.

Federation of State Medical Boards Annual Meeting: Mr. Groeber stated that the Annual Meeting of the Federation of State Medical Boards (FSMB) will be April 20-22, 2017. Mr. Groeber stated that he will attend the meeting and his expenses will be covered by the FSMB's scholarship for executive directors. Mr. Groeber stated that both Dr. Soin, Mr. Giacalone, and Dr. Rothermel will not be available to attend, but Dr. Schottenstein has expressed interest in possibly attending as the Board's voting delegate. Dr. Steinbergh will also attend and will serve on an FSMB committee. Mr. Groeber recommended that Ms. Pollock, Director of Communications, and Mr. Turek, Deputy Director for Licensure, also attend the meeting.

Committee Assignments: Mr. Groeber stated that he, Dr. Soin, and Mr. Giacalone have discussed committee assignments. Dr. Soin will be in contact with the Board members on this topic.

Board Member Compensation Report: Mr. Groeber stated that the annual Board Member Compensation Report is attached to the Operations Report. Mr. Groeber opined that the Board is getting a great bargain for the quality of work it gets from the Board members.

Board Retreat: Mr. Groeber stated that he and Dr. Soin have discussed having a Board retreat sometime after March 2017.

Financial Disclosure Statements: Mr. Groeber stated that the Board members' financial disclosure statements are due at the Ethics Commission by May 15, 2017. Mr. Groeber stated that Board members who have already filed will need to attach their travel reimbursement report and resubmit the financial disclosure statement. Ms. Loe stated that she will email each Board member their travel reimbursement report.

REPORTS BY ASSIGNED COMMITTEES

FINANCE COMMITTEE

FISCAL REPORT

Ms. Loe stated that in November the Board had \$493,000 in revenue and \$771,000 in expenses, with a cash balance of \$4,500,000. Ms. Loe stated that the Board is still 10% ahead of where it was two years ago. Ms. Loe stated that although expenditures were higher than revenue in November, the Board is not too far ahead with spending and is not behind in revenue projections.

FINE COLLECTION

Ms. Loe stated that the Board is beginning to see some fines collected. Ms. Loe stated that last month the Board approved three consent agreements which contained fines and two of those fines have already been paid.

FEDERATION OF STATE MEDICAL BOARDS ANNUAL MEETING

Mr. Kenney moved to approve the Board member and staff expenses to be paid for attendance at the Federation of State Medical Boards (FSMB) meeting in April 2017 in Fort Worth, Texas. Mr. Kenney further moved that the attendance at the meeting is in connection with the responsibilities as, and related to, their positions with the State Medical Board of Ohio. Mr. Kenney further moved that two staff members chosen by the Executive Director attend annual meeting and their expenses to be paid by the Board. Mr. Kenney further moved that Mr. Groeber attend the Annual Meeting of FSMB and accept the FSMB Executive Director scholarship, and that his attendance at the meeting is in connection with his responsibilities as it is related to his position as Executive Director of the Medical Board. Mr. Kenney further moved to approve attendance and payment for the FSMB Foundation Luncheon for Board members and staff attending the Annual Meeting. Mr. Kenney further moved that Mr. Groeber attend the 2017 annual meeting of Administrators in Medicine (AIM) as his attendance at the meeting is in connection with his responsibilities and related to his position as Executive Director of the Medical Board. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

Dr. Steinbergh moved that Dr. Schottenstein attend the Annual Meeting of FSMB and accept the FSMB voting delegate scholarship, and that his attendance at the meeting is in connection with his responsibilities as it is related to his position as a member of the Medical Board. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

BOARD MEMBER COMPENSATION

Mr. Groeber stated that the Finance Committee discussed changing the procedure by which Board members submit their time in order to simply and streamline the process. Under the new proposal, Board members will report only having worked up to four hours in a day (resulting in a half-day *per diem* payment) or more than four hours in a day (resulting in a full-day *per diem* payment). Mr. Groeber stated that working more than eight hours in a day will still result in a single full-day *per diem* payment. Mr. Kenney stated that this change would have little effect on cost.

POLICY COMMITTEE

LEGISLATIVE UPDATE

Dr. Soin stated that the legislature is currently between sessions, and therefore very little is occurring on the legislative front.

MEDICAL MARIJUANA UPDATE

Dr. Soin stated that the Policy Committee spent a good deal of time discussing the proposed medical marijuana rules. Ms. Anderson stated that the draft rules have been provided to all Board members and will be discussed again in February. Ms. Anderson stated that members of the public can comment on the proposed rules at the medicalmarijuana.ohio.gov website, while Board members who wish to comment and contact Ms. Anderson directly.

ONE-BITE REPORTING EXEMPTION UPDATE

Mr. Groeber stated that language concerning the One-Bite Reporting Exemption will be introduced in the legislature when the next General Assembly begins.

LICENSURE COMMITTEE

CERTIFICATE OF CONCEDED EMINENCE APPLICATION REVIEW

KURT RUETZLER, M.D.

Dr. Saferin stated that Dr. Ruetzler graduated from the University of Vienna and he currently holds an Ohio Clinical Research Faculty Certificate, which expires in June 2018. Dr. Ruetzler has served as Associate Staff of General Anesthesiology and Outcomes Research at The Cleveland Clinic since 2015 and the focus of his current research is improving quality of care by implementing research-based clinical perioperative and postoperative pathways, specially focusing in emergency medicine. Dr. Ruetzler will soon assume clinical responsibilities within the Adult Medical Emergency Team. Dr. Saferin stated that this new area is referred to as Clinical Integration or Implementation Research. Dr. Ruetzler holds a current, unrestricted medical license in good standing in Switzerland. Dr. Saferin noted that Dean Pamela B. Davis, M.D., Ph.D. has attested to Dr. Ruetzler's unique talents and extraordinary abilities.

Dr. Saferin stated that Dr. Ruetzler overwhelmingly qualifies for the Certificate of Conceded Eminence.

Dr. Saferin moved to approve Dr. Ruetzler's application for a Certificate of Conceded Eminence. Dr. Steinbergh seconded the motion. A vote was taken:

ROLL CALL:

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

The motion carried.

COMPLIANCE COMMITTEE

Dr. Steinbergh stated that On December 14, 2016, the Compliance Committee met with Michael T. Bangert, M.D.; Thomas M. Bender, A.A.; Linda J. Dennis, M.D.; Ryan S. Fryman, D.O.; and Timothy F. Mynes, D.O., and moved to continue them under the terms of their respective Board actions.

The Compliance Committee accepted Compliance staff's report of conferences on November 7 & 8, 2016.

The Compliance Committee also had a brief discussion regarding the practice of tolling probationers.

PROBATIONARY REQUESTS

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

Dr. Schottenstein stated that William Martin, M.D., entered into a Step I Consent Agreement in May 2011 and a Step II Consent Agreement in September 2011. However, Dr. Martin is still a probationer more than five years after his Step II Consent Agreement. Ms. Murray explained that Dr. Martin's probationary time has been extended due to tolling.

Dr. Steinbergh noted that she will abstain on the probationary request of Kendra N. von der Embse, D.O. However, Dr. Steinbergh opined that Dr. Radcliffe will make an excellent monitoring physician for Dr. von der Embse.

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

- **To grant Joseph C. Carver, M.D.'s request for approval of the submitted practice plan; approval of Majid A. Qureshi, M.D., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at 10 charts per week;**
- **To grant Freeda J. Flynn, M.D.'s request for discontinuance of the chart review requirement; and discontinuance of the drug log requirement;**

- To grant Deborah Lynne Frankowski, M.D.'s request for discontinuation of the chart review requirement;
- To grant Elise Hoff, M.D.'s request for reduction in appearances to every six months;
- To grant Ross Rosario Lentini, M.D.'s request for approval of Charles L. Payne, D.O., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at 10 charts per month;
- To grant William G. Martin, M.D.'s request for reduction in appearances to every six months;
- To grant Sheila S. Reddy, M.D.'s request for approval of Parminder B. Singh, M.D., to serve as the new monitoring physician; and
- To grant Mark Aaron Weiner, D.O.'s request for approval of Christopher M. Mohler, M.D., to serve as the new monitoring physician.

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

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

The motion carried.

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

- To grant Kendra N. von der Embse, D.O.'s request for permission to administer, personally furnish, and possess controlled substances; approval of Lawrence G. Ratcliff, M.D., to serve as the new monitoring physician, and determination of the frequency and number of charts to be reviewed at 10 charts per month.

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

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

Dr. Soin	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Bechtel	- abstain

The motion carried.

REINSTATEMENT REQUEST

WILLIAM K. BASEDOW, D.O.

Dr. Steinbergh moved that the request for the reinstatement of the license of William K. Basedow, D.O., be approved, effective immediately, subject to the probationary terms and conditions as outlined in the June 10, 2015 Board Order for a minimum of 3 years. Mr. Giacalone seconded the motion.

Dr. Schottenstein stated that he hopes that the past recommendations regarding Dr. Basedow are incorporated into his practice plan.

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

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

The motion carried.

FINAL PROBATIONARY APPEARANCES

BRADLEY E. DICKSON, M.D.

Dr. Dickson was appearing before the Board pursuant to his request for release from the terms of his December 11, 2013 Consent Agreement. Dr. Soin reviewed Dr. Dickson's history with the Board.

In response to questions from Dr. Soin, Dr. Dickson stated that he is a general pediatrician but he specializes in mental health. Dr. Dickson stated that he still prescribes controlled substances and that he checks the Ohio Automated Rx Reporting System (OARRS) routinely. Dr. Dickson stated that he now used electronic medical records and anyone he treats must be in that system. Dr. Dickson plans to continue working as a physician following his release.

Dr. Steinbergh asked if Dr. Dickson would address the medical students in attendance regarding his situation. Dr. Dickson stated that he had had a difficult time saying “no” to anyone and that he tried to help everyone. Dr. Dickson advised the students to know their limits and to follow the rules. Dr. Dickson stated that he thought he had been following the rules, but he had tried to do too much. Dr. Dickson explained that he had treated several patients without fully documenting the treatment, or documenting at all in the case of one patient. Dr. Dickson told the students that as physicians, their time will be in very short supply, especially if they are a primary care physician or treat mental health issues.

Dr. Dickson stated that as a result of his violations, his medical license was suspended for 45 days and he was placed on three years of probation. Dr. Dickson stated that this was extremely hampering to his small private practice. Dr. Dickson had been required as part of his probation to take courses in prescribing and in physician/patient boundaries. Dr. Dickson stated that it is very important for physicians to know their boundaries and know who they can and cannot treat.

Dr. Steinbergh emphasized for the medical students that because of Dr. Dickson’s probation, he had difficulty with third-party payors. Dr. Steinbergh stated that the ability to practice medicine is a privilege, not a right.

Dr. Soin stated that in his personal opinion, it is important for physicians to dress and act professionally when in professional situations. Dr. Soin opined that it would be unwise for a physician to appear for a final probationary appearance before the State Medical Board wearing a Batman T-shirt and cargo pants, as Dr. Dickson has done today. Dr. Dickson asked if he could comment on why he is attired in this way. Dr. Soin stated that Dr. Dickson could not say anything that would change Dr. Soin’s opinion in this matter. Dr. Dickson apologized for his attire.

Mr. Giacalone moved to release Dr. Dickson from the terms of his December 11, 2013 Consent Agreement, effective January 27, 2017. Dr. Steinbergh seconded the motion. A vote was taken:

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

The motion carried.

JACKSON L. J. FLANIGAN, M.D.

Dr. Flanigan was appearing before the Board pursuant to his request for release from the terms of his January 11, 2012 Consent Agreement. Dr. Soin reviewed Dr. Flanigan’s history with the Board.

In response to questions from Dr. Steinbergh, Dr. Flanigan stated that his relapse led to a great deal of difficulty. Dr. Flanigan was forced to leave his group practice. Dr. Flanigan attempted to go into solo

practice, but he relapsed and went into rehabilitation for the second time. Currently, Dr. Flanigan is back in solo practice and is able to work as much or as little as he needs. Dr. Flanigan has developed a support network of sober people that includes those outside the medical community, which he feels gives him a better perspective than he had on his first recovery program. Dr. Flanigan stated that his family support is excellent; he is currently single but he is in a stable, monogamous relationship and he has shared custody of his 11-year-old child. Dr. Flanigan's adult child currently lives with Dr. Dickson and also provides good support.

Responding to questions from Dr. Soin, Dr. Flanigan stated that very little will change after he is released from probation. Dr. Flanigan stated that after his first recovery program and release, he made many changes. Dr. Flanigan now realizes that that was a mistake and that stability and structure is very important for him.

Responding to questions from Dr. Schottenstein, Dr. Flanigan stated that he attends ten rehabilitation meetings per month and he attends with his significant other and some very close friends. Dr. Flanigan also has a sponsor who he contacts regularly, including just before this meeting. Dr. Flanigan stated that he works step 10 of the 12-step program on a daily basis and finds that it is difficult to sleep if he does not.

Dr. Schottenstein noted that Dr. Flanigan had previously commented that he still has some embarrassment speaking about his history with people who are not in the recovery program. Dr. Schottenstein understood Dr. Flanigan's feelings, but asked him to consider such interaction as an opportunity. Dr. Schottenstein stated that Dr. Flanigan could be speaking to someone who could go down the same course that he did and that speaking about his history could help them avoid those problems.

Dr. Steinbergh moved to release Dr. Flanigan from the terms of his January 11, 2012 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

PHILIP M. GOLDMAN, M.D.

Dr. Goldman was appearing before the Board pursuant to his request for release from the terms of his December 14, 2011 Consent Agreement. Dr. Soin reviewed Dr. Goldman's history with the Board.

Responding to questions from Dr. Steinbergh, Dr. Goldman stated that he has been through a remarkable journey. Dr. Goldman stated that at the beginning of his journey he was resentful and felt like he had

been deceived. At that time, Dr. Goldman hated the work, hated himself, hated his profession, and he took no responsibility for his actions. Dr. Goldman stated that the transformation he has made in the last five to six years in Alcoholics Anonymous (AA) has been like a rebirth. Dr. Goldman stated that he is now serene and content and he has a calm that he has never had before.

Dr. Goldman continued that his transformation is due to having worked the steps of the 12-step program. Dr. Goldman stated that the first time he worked the steps was a half-hearted effort and it was full of deceit, self-will, and ego. When Dr. Goldman's sponsor warned that their relationship would end if Dr. Goldman did not work the steps properly, he went through the steps again with honesty and found them to be transformational. Dr. Goldman stated that he does not know if he would be alive today without the recovery process, or if he would want to be alive. Dr. Goldman stated that he continues to attend and enjoy his aftercare meetings. Dr. Goldman also sees a psychiatrist for depression and anxiety. Dr. Goldman had no plans to change his program following his release from probation.

Dr. Goldman stated that he felt shame that he had let down his profession, his family, and himself. Dr. Goldman stated that this process has made him a better physician and he now works as a medical director for the same group that had previously terminated him. Dr. Goldman stated that his work used to be primary, but now his work is secondary and his recovery is primary. Dr. Goldman serves on the Board of Directors of his AA clubhouse and his sponsors three people. Dr. Goldman stated that he does not socialize very much, but when he does it is with AA people. Dr. Goldman concluded that he is at a good point in his life.

Mr. Kenney congratulated Dr. Goldman and thanked him for sharing his story.

Dr. Steinbergh moved to release Dr. Goldman from the terms of his December 14, 2011 Consent Agreement, effective January 14, 2017. Mr. Giacalone seconded the motion. A vote was taken:

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

The motion carried.

I. PRAVEEN KUMAR, M.D.

Dr. Kumar was appearing before the Board pursuant to his request for release from the terms of his January 8, 2014 Consent Agreement. Dr. Soin reviewed Dr. Kumar's history with the Board.

Mr. Giacalone asked if Dr. Kumar would address the medical students in attendance regarding his situation. Dr. Kumar stated that he had come to the Board's attention due to prescribing narcotics without proper documentation. Dr. Kumar stated that this is probably due to a lack of time and his limited

knowledge in that area. During the time his license was suspended, Dr. Kumar took many continuing medical education (CME) classes on opioid addiction and prescribing to improve his knowledge of prescribing narcotics and proper documentation. Dr. Kumar stated that because his specialty board certification was cancelled due to his suspension and probation, he experienced difficulty obtaining employment. Dr. Kumar eventually acquired employment at an urgent care center that also provides addiction medicine treatment.

Dr. Kumar continued that having some knowledge of opioid addiction is very important due the growing national health crisis of addiction. Dr. Kumar commented that proper treatment of addiction includes counseling and psychosocial support. Dr. Kumar stated that proper documentation helps prevent diversion of medication and to ensure that medication is being taken properly.

Responding to questions from Dr. Soin, Dr. Kumar stated that he does not currently treat pain and he only prescribes Suboxone. Dr. Kumar uses an opioid risk tool to risk-stratify his patients and he uses this tool to decide if a patient is a candidate for Suboxone therapy. Dr. Kumar refers his patients to other practitioners for the counseling portion of treatment. Dr. Kumar stated that he plans to take the board certification examination following his release from probation.

Dr. Soin asked how Dr. Kumar treats acute pain in his urgent care. Dr. Kumar stated that he may prescribe a very small amount of narcotics for acute pain, perhaps one or two days' worth. Dr. Kumar commented that he also checks the Ohio Automated Rx Reporting System (OARRS) when he prescribes. Dr. Kumar stated that patients with very acute pain, such as from a broken leg, is referred to an emergency department for treatment.

Mr. Giacalone commented to the medical students in attendance that Dr. Kumar's medical license was suspended for 180 days due to his deficiencies in documenting narcotic prescriptions. Mr. Giacalone opined that if Dr. Kumar's case had come before the current Board, his license could potentially have been permanently revoked. Mr. Giacalone stated that there is a drug problem in Ohio and, unfortunately, its genesis in many respects was through the over-prescribing of narcotics and opioids. Mr. Giacalone told that students that they, as future physicians, will be the first line in making sure that new addicts are not created. Mr. Giacalone stated that patients with pain must be treated, but the prescribing must be done appropriately.

Dr. Schottenstein agreed with Mr. Giacalone's comments. Dr. Schottenstein stated that sometimes a physician may feel that it is better for a patient to have too much medication rather than too little. Dr. Schottenstein stated that that extra medication ends up in the supply and gets distributed. Dr. Schottenstein stated that it is important to prescribe the minimum amount of medication necessary for patients to be comfortable so that the extra medication does not end up on the streets.

Dr. Schottenstein noted that Dr. Kumar's report on his CME courses, which was very good, was handwritten. Dr. Schottenstein asked if Dr. Kumar is dictating his notes or if he has electronic medical records (EMR). Dr. Kumar responded that he has EMR.

Mr. Giacalone moved to release Dr. Kumar from the terms of his January 8, 2014, effective immediately. Dr. Steinbergh seconded the motion. A vote was taken:

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

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

The motion carried.

KEVIN S. BALTER, M.D.

Dr. Balter was appearing before the Board via electronic means pursuant to his request for release from the terms of the Board's Order of January 14, 2015. Dr. Soin reviewed Dr. Balter's history with the Board.

In response to questions from Dr. Soin, Dr. Balter stated that he has been a pain management physician for 17 or 18 years, the duration of his medical career. Dr. Balter stated that he is currently under the care of a psychiatrist, as required by his Board Order. Dr. Balter stated that his psychiatrist does not feel that Dr. Balter needs medication, but that Dr. Balter would benefit from behavioral therapy. Dr. Balter is currently in a group practice. Dr. Balter stated that his Board-approved monitoring physician has oversight over all aspects of his professional activities and is able to ensure that Dr. Balter is prescribing appropriately and is not self-prescribing.

Dr. Soin asked what Dr. Balter's drug of choice was when he was self-prescribing. Dr. Balter replied that he had had no drug of choice and no substance abuse problem. Rather, the incident in question involved morphine pills that he had prescribed to himself for the purpose of committing suicide by overdose. Although he had intended to commit suicide, Dr. Balter only took two pills before stopping and calling his psychologist.

Responding to questions from Dr. Schottenstein, Dr. Balter stated that both his psychologist and his psychiatrist feel that he has learned from his mistake and that he has been demonstrating positive and healthy behaviors. Dr. Balter felt that he benefited a great deal from the behavioral therapy. Dr. Balter stated that following his release from probation, he intends to discontinue counseling, though his psychologist and psychiatrist are always available if needed.

Dr. Schottenstein commented that mental health issues can be episodic. Dr. Schottenstein advised Dr. Balter to quickly reach out to his psychiatrist or psychologist if any symptoms of depression or anxiety return. Dr. Balter agreed.

Dr. Schachat moved to release Dr. Balter from the terms of the Board's Order of January 14, 2015, effective January 17, 2017. Mr. Kenney seconded the motion. A vote was taken:

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

Dr. Soin	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Bechtel	- abstain

The motion carried.

SHANE HANZLIK, M.D.

Dr. Hanzlik was appearing before the Board via electronic means pursuant to his request for release from the terms of his January 11, 2012 Consent Agreement. Dr. Soin reviewed Dr. Hanzlik's history with the Board.

In response to questions from Dr. Soin, Dr. Hanzlik stated that he currently practices orthopedics in Portland, Oregon, in a small group with five other orthopedists. Dr. Hanzlik stated that after his experience with the Board, he is much more strict with how he prescribes controlled substances to his patients, even after surgery. Dr. Hanzlik tries to have a long dialogue with patients if they start to show signs of continuing to use narcotics beyond the time that Dr. Hanzlik thinks is appropriate. Dr. Hanzlik stated that he does not take controlled substances himself.

Dr. Soin asked Dr. Hanzlik to describe the situation that brought him before the Board. Dr. Hanzlik explained that he had been drinking one night while off work for a week. Dr. Hanzlik's wife, who had recently had a baby, had some narcotics in the house and he decided to take some of those pills. In an effort to cover-up what he had done, Dr. Hanzlik wrote a prescription for a refill of the medication.

Dr. Soin asked if Dr. Hanzlik has a problem with drugs or alcohol. Dr. Hanzlik answered that he does have such a problem and that once he starts drinking he has very little control over being able to stop. Dr. Hanzlik stated that he had been able to fool himself for a long time because he did not drink often, but many bad experiences occurred when he drank too much. Dr. Hanzlik stated that he must adhere to the first step of Alcoholics Anonymous so that he does not end up in the same place.

Mr. Giacalone asked Dr. Hanzlik to explain his self-prescribing of testosterone for self-use. Dr. Hanzlik explained that when he was a second-year resident one of his colleagues had commented that his energy levels had improved since he had begun using a testosterone cream. Dr. Hanzlik looked into using the cream himself, but it was too expensive. Dr. Hanzlik realized that he could obtain testosterone injections much more cheaply through prescriptions. Dr. Hanzlik stated that he did this only one time. When the issue with his alcohol and narcotics use arose, he disclosed his self-prescription of testosterone from years ago in an effort to be fully candid.

Mr. Giacalone asked if Dr. Hanzlik could address the medical students in attendance. Dr. Hanzlik advised the students that anyone can develop a drug or alcohol problem, even if they are very successful in life. Dr. Hanzlik wished that he could go back and pay more attention to those who had tried to warn him that he had a problem.

Dr. Schottenstein reiterated Dr. Hanzlik's comment that one does not have to drink every day in order to have a problem with alcohol. Dr. Schottenstein advised the students to be mindful of whether their drinking, even if only on weekends, has a quality of unpredictability. Dr. Schottenstein stated that some

people will drink to excess, but it ends at some point and they get a ride home and go to bed. However, others may drink to excess and then drive their car into a ditch, or wind up on the side of the road not knowing how they got there, or end up in jail. Dr. Schottenstein stated that if one is going out to drink and does not really know what is going to happen, it is a problem even if it only happens every one or two weeks.

Responding to a question from Dr. Schottenstein, Dr. Hanzlik stated that he intends to continue working his recovery problem following his release from probation.

Mr. Giacalone moved to release Dr. Hanzlik from the terms of his January 11, 2012 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

Dr. Hanzlik expressed appreciation for the Board's efforts. Dr. Hanzlik commented that even though this seemed like a very terrible experience at the beginning, the Board has been nothing but a blessing in his life.

DENISE I. GILMAN, D.O.

Dr. Gilman was appearing before the Board via electronic means pursuant to her request for release from the terms of her November 4, 2015 Consent Agreement. Dr. Soin reviewed Dr. Gilman's history with the Board.

Responding to questions from Dr. Soin, Dr. Gilman stated that she lives in Pennsylvania and is in a general surgery practice in Steubenville, Ohio, with two other surgeons. Dr. Gilman stated that what she learned from her experience with the Board is that she needs to think before she acts because actions can have serious consequences. Dr. Gilman added that she must also remember that patients put their trust in her and she has to uphold that trust. Dr. Gilman also learned that the Board takes these things very seriously.

Dr. Steinbergh asked Dr. Gilman to explain her situation to the medical students in attendance. Dr. Gilman explained that she had performed surgery on a patient who had a Pinocchio tattoo on his genitals. Dr. Gilman and the other staff found this amusing and, while the patient was under anesthesia, she took a photo of the tattoo with her cell phone. Dr. Gilman stated that she did not consider the ramification of her actions and that she had just acted like a person on the street who would take a picture of something that was interesting or funny. Dr. Gilman stated that she had not thought at the time that this was wrong and

she did not think about it until afterwards. Dr. Gilman stated that she had just started her practice at that time and was just out of her training. Dr. Gilman opined that she must not have been prepared for the responsibility of being a physician at that time.

Mr. Giacalone commented to the students that, although this situation may sound amusing, this was technically a violation of patient privacy laws in addition to be morally and ethically wrong. Mr. Giacalone stated that such actions could potentially lead to charges. Mr. Giacalone stated that patients will put their trust in the students as physicians. Mr. Giacalone asked the students to put themselves in the place of a patient and asked if they would feel comfortable with someone taking amusing photographs of them while sedated. Mr. Giacalone stated that physicians should return the trust that patients put in them and to make sure they are treated appropriately.

Dr. Steinbergh stated that Dr. Gilman's actions were very egregious, unprofessional, and unethical. Dr. Steinbergh stated that this incident will continue to follow Dr. Gilman for all of her professional life. Dr. Steinbergh encouraged the students to think of their professional responsibilities as physicians and the moral and ethical ramifications of assuming patient care.

Dr. Bechtel stated that as a dermatologist, he often takes pictures of patients' skin conditions for medical purposes. Dr. Bechtel agreed with Mr. Giacalone that such pictures are protected patient information and should never be taken with a camera that is not protected and secure. Dr. Bechtel stated that taking a picture of a patient with a cell phone could violate many patient privacy laws.

Dr. Soin asked what Dr. Gilman had intended to do with the picture she took and if she had intended to post it on Facebook or Twitter, or simply look at it and laugh later. Dr. Gilman replied that her action was spur-of-the-moment and there was no future thought process involved. Dr. Gilman stated that it was a very stupid action and she had had no advance plans to do anything with the picture.

Dr. Soin commented on two similar incidents. In one incident, an anesthesiologist posted a selfie when a very famous person was getting an endoscopy. That patient ultimately died and the selfie was used against the anesthesiologist criminally, and likely for a malpractice suit as well. In the other incident, a volunteer fell on the floor and a resident took the volunteer's picture while she was on the floor. Dr. Soin stated that these things are very inappropriate and seem to be happening with the younger generation of physicians. Dr. Soin advised caution to the students.

Dr. Schottenstein noted that Dr. Gilman had stated that she had done something that anyone on the street would have done. Dr. Schottenstein felt that Dr. Gilman still did not quite understand the situation. Dr. Schottenstein opined that the average person of the street would not have taken that picture and would have been respectful of something like that. Dr. Schottenstein stated that there can be a culture in the operating room where things are funny that are not so funny to society at large. Dr. Schottenstein stated that others in the operating room will take their cue from Dr. Gilman because she is the surgeon. Dr. Schottenstein asked Dr. Gilman to set an example going forward. Dr. Gilman agreed and stated that she had not intended to belittle the experience or how wrong it was.

Dr. Soin asked how long following the incident did Dr. Gilman delete the picture. Dr. Gilman replied that she deleted the picture a couple of hours later after her partner had mentioned that taking the picture was not a good idea. Dr. Gilman stated that until that point she had not thought about it as a physician, but it really hit her after her partner's comment.

Mr. Giacalone moved to release Dr. Gilman from the terms of her November 4, 2015 Consent Agreement, effective immediately. Dr. Schachat seconded the motion. A vote was taken:

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

The motion carried.

STEPHEN A. STRAUBING, M.D.

Dr. Straubing was appearing before the Board via electronic means pursuant to his request for release from the terms of the Board's Order of August 5, 2010. Dr. Soin reviewed Dr. Straubing's history with the Board.

In response to questions from Dr. Soin, Dr. Straubing stated that following his treatment in Ohio in 2012 he went to Florida for a two-year fellowship in addiction medicine. Dr. Straubing is currently employed full-time at a fairly large non-profit psychiatric and substance abuse facility in Florida. Dr. Straubing is also involved in teaching third-year medical students at the University of Florida and he instructs family medicine residents at the University of Central Florida.

Dr. Straubing stated that prior to the events that led to the suspension of his medical license, he was an unhappy person in a very stressful practice. Dr. Straubing stated that he did not have coping mechanisms, so he turned to very unhealthy ways of managing his stress. Dr. Straubing stated that in recovery he has learned healthy ways to cope with life. Dr. Straubing commented that he has changed his medical specialty, as he previous specialty had been a significant stressor in his life. Dr. Straubing stated that he has reconnected with his children and with his long-term significant other and he feels that he is doing meaningful work. Dr. Straubing stated that recovery has been a great, life-changing experience and he wishes it had happened 20 years ago.

Dr. Schottenstein commented that Dr. Straubing seems to be doing much better than he had previously. Dr. Schottenstein asked if Dr. Straubing is prone to any mental health issues. Dr. Straubing answered that he had a major depressive episode in 2008. Dr. Straubing stated that he sees an addiction psychiatrist every six months, pursuant to his Agreement with the Florida Board of Medicine. Dr. Straubing stated that he is currently doing well emotionally and mentally. Dr. Straubing stated that, on the advice of his psychiatrist, he is currently taking anti-depressant medications. Dr. Straubing commented that he kayaks in Florida every weekend and is enjoying his life, his job, and his family, including his first grandchild.

Dr. Schottenstein moved to release Dr. Straubing from the terms of the Board's Order of August 5, 2010, Mr. Giacalone seconded the motion. A vote was taken:

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

The motion carried.

PROBATIONARY APPEARANCES VIA ELECTRONIC MEANS

Dr. Soin stated that, in his opinion, final probationary appearances should be done in person unless there are extenuating circumstances, such as the licensee living outside the continental United States. Dr. Soin opined that final probationary appearances via electronic means should be suspended until the Board can more thoroughly discuss it at its next retreat. Dr. Soin stated that the Secretary and Supervising Member may choose to meet probationers for other meetings by electronic means, at their discretion.

Mr. Groeber asked if today's experience with electronic appearances met the Board's expectations for proper interaction. Dr. Soin stated that the quality of today's electronic appearances were a vast improvement over previous attempts, but he still felt that there should be live interaction when a Board is considering releasing a probationer.

Dr. Steinbergh agreed with Dr. Soin and stated that the relationship a probationer has with the Board is such that they should appear in person when their probation is concluded. Dr. Schottenstein opined that the electronic appearances are adequate, but they are not as impactful for the probationer as a live meeting.

Dr. Saferin noted that some probationers who will make their final probationary appearances in coming months have already been approved to appear electronically. Dr. Soin stated that the Board should allow electronic appearances that have already been approved, but future electronic appearances should be put on hold until the Board can discuss it at the next retreat.

Mr. Groeber thanked the staff for their hard work in making these electronic appearances possible, using equipment that was already on-hand. Dr. Soin also thanked the staff for its hard work on the project.

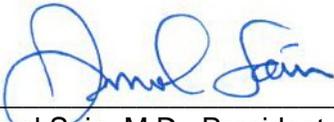
ADJOURN

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

Thereupon, at 4:45 p.m., the January 11, 2017 session of the State Medical Board of Ohio was adjourned.

January 11, 2017

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on January 11, 2017, as approved on February 8, 2017.



Amol Soin, M.D., President



Kim G. Rothermel, M.D., Secretary

(SEAL)

