



**State Medical Board of Ohio Meeting Minutes  
December 9, 2020**

Michael Schottenstein, M.D., President, called the video conference meeting to order at 10:05 a.m. with the following members present: Mark A. Bechtel, M.D., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Betty Montgomery; Sherry Johnson, D.O.; Harish Kakarala, M.D.; and Jonathan Feibel, M.D.

**MINUTES REVIEW**

Motion to approve the minutes of the November 10, 2020 Board meeting, as drafted:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

**REPORTS AND RECOMMENDATIONS**

Dr. Schottenstein asked the Board to consider the Reports and Recommendations appearing on the agenda. He asked if each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in the matters of: Shawn Mark Henry, D.O.; Kimberly O'Connor, L.M.T.; and Derek Kurt Urban, M.D. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

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Dr. Schottenstein further asked if each member of the Board understands that the Board's disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from Dismissal to Permanent Revocation or Permanent Denial. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

Dr. Schottenstein further asked if each member of the Board understands that in each matter eligible for a fine, the Board's fining guidelines allow for imposition of the range of civil penalties, from no fine to the statutory maximum amount of \$20,000. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

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

During these proceedings, no oral motions were allowed by either party. No respondent on today's agenda have requested to address the Board during this video conference meeting. The respondents and their attorneys are still viewing the meeting remotely and have a number to call in the event of an emergency or procedural concern.

### **Shawn Mark Henry, D.O.**

Dr. Schottenstein directed the Board's attention to the matter of Shawn Mark Henry, D.O. No objections have been filed. Ms. Shamansky was the Hearing Examiner.

Dr. Schottenstein stated that a request to address the Board has been made on behalf of Dr. Henry. Five minutes will be allowed for that address.

Dr. Henry was represented by his attorney, Daniel Zinsmaster.

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Mr. Zinsmaster stated that in April 2019, Dr. Henry was found guilty in federal court in Texas on conspiracy charges related to health care bribes and kickbacks, as well as an interesting charge related to the Travel Act. As of today, nearly two years later, Dr. Henry has not been sentenced for that finding by the court. Based on the conviction, the Texas Medical Board issued a temporary suspension of Dr. Henry's Texas medical license. Dr. Henry believes that the government took an unprecedented prosecutorial approach to his case, particularly with regard to the Travel Act, and he plans to appeal the court's decision. However, Dr. Henry cannot appeal until sentencing has occurred. Mr. Zinsmaster stated that Dr. Henry was unable to be present for today's meeting, just as he had been unable to attend his hearing, due to the pending nature of the criminal case.

Mr. Zinsmaster stated that Dr. Henry is a gifted spine surgeon who attended Ohio University for medical school, followed by orthopedic surgery residency and a one-year residency in spine surgery. Dr. Henry practiced as a spine surgeon for almost 18 years until 2019. In 2009, Dr. Henry was approached by a group of non-physician investors who were working on a design and construction of a hospital in Dallas called Forest Park Medical Center, which would be owned by physicians and investors. Of all those who invested and participated in the development of the hospital, Dr. Henry was the only one offered a consulting contract to provide monthly guidance to developers, particularly as it related to the layout of the physical space. Dr. Henry performed surgeries at this hospital.

Mr. Zinsmaster continued that for his consultation, Dr. Henry was paid a monthly fee based on his guidance and his availability up to 100 hours per month at a rate of slightly over \$300 per hour for a total of about \$30,000 per month. Mr. Zinsmaster noted that others charged by the government were focused on the marketing aspects that attempted to bring patients to the hospital, but Dr. Henry had not been involved in that program. Mr. Zinsmaster noted that while Dr. Henry was not the only professional charged by the government, he was the only one with a consulting contract and he believed at that time that his payments pursuant to that contract were valid and legitimate. Likewise, a review of the indictment shows that a number of providers were paid for patient referrals as well as paying patients to receive treatment at this hospital; Dr. Henry was not involved in that type of conduct. Dr. Henry's conduct was related to his consulting contract, which he had had reviewed by a law firm in 2009. Mr. Zinsmaster commented that, though the Hearing Examiner believes there is no evidence to support Dr. Henry's assertions that he had the contract reviewed by counsel, Dr. Henry has been prevented from testifying about his efforts at due diligence as a result of the pending nature of the criminal case.

Mr. Zinsmaster stated that the court has yet to impose a sanction in this matter and the tentative suspension by the Texas Medical Board is not a final action. Dr. Henry was trained and educated in Ohio, his family is from the Midwest, and he would like to return here at some point in the future. Mr. Zinsmaster respectfully requested that the Board not permanently revoke Dr. Henry's Ohio medical license for a conviction that did not result from any patient harm, but rather from an elaborate billing scheme designed by investors to which Dr. Henry had become an unwitting participant. Mr. Zinsmaster asked instead that the Board consider an indefinite suspension of Dr. Henry's license with conditions for reinstatement to include resolution of the criminal case and the Texas Board case. Alternatively, Mr. Zinsmaster proposed a non-permanent revocation of Dr. Henry's license which would allow him to reapply after resolution of the matters in Texas.

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

Ms. Pelphrey opined that the Hearing Examiner's Report and Recommendation speaks for itself. Given the seriousness of the allegations set forth, Ms. Pelphrey asked the Board to accept the Findings of Fact and Conclusions of Law, and agree with the Proposed Order to permanently revoke Dr. Henry's Ohio medical license.

Motion to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Henry:

Motion	Dr. Kakarala
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2 <sup>nd</sup>	Dr. Johnson
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Dr. Schottenstein stated that he will now entertain discussion in the above matter.

Dr. Schottenstein, having read through the case, found Dr. Henry's behavior to have been brazen and audacious in his perpetration of health care fraud. Dr. Schottenstein found it inconceivable that an average, reasonable person would find Dr. Henry's defense of his behavior to be credible.

Dr. Schottenstein continued that the cornerstone of the medical profession is the trust that patients and their family members place in medical practitioners that they will be treated professionally, competently, and ethically. Dr. Schottenstein stated that Dr. Henry's behavior chips away at that trust, and by diminishing that trust it diminishes the inclination of the public to seek out needed medical care. Dr. Henry ignored his fiduciary responsibility to his patients by engaging in behavior to inflate the cost of medical care to enrich himself. In doing so, Dr. Henry contributed to the high cost and lack of access to medical care in our community.

Dr. Schottenstein stated that this Board exists to take practitioners who engage in this kind of behavior out of practice. Dr. Schottenstein agreed with the Proposed Order to permanently revoke Dr. Henry's license.

Ms. Montgomery commented that Dr. Henry is apparently a very accomplished surgeon, but greed has gotten in the way. Ms. Montgomery added that, regrettably, this is a loss to the medical profession, but it is not a loss to the public due to Dr. Henry's reprehensible behavior.

Vote on Dr. Kakarala's motion to approve:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

## **Kimberly O'Connor, L.M.T.**

Dr. Schottenstein directed the Board's attention to the matter of Kimberly O'Connor, L.M.T. No objections have been filed. Ms. Shamansky was the Hearing Examiner. Dr. Schottenstein stated that this matter is non-disciplinary, and therefore all Board members may vote.

Motion to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Ms. O'Connor:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Bechtel

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

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Dr. Schottenstein stated that he is respectful of Ms. O'Connor's argument that she has been engaged in self-study and has tried to keep her skills sharp by providing massage without compensation. However, Dr. Schottenstein regrettably did not feel that those activities adequately addressed his concerns under 4731.222, Ohio Revised Code. It has been about six years since Ms. O'Connor has been employed in the area of massage therapy, her practice of massage appears to have been minimal over that time, and Dr. Schottenstein is not familiar with the materials she has been using for self-study. Dr. Schottenstein stated that passing the Massage and Bodywork Licensing Examination (MBLEx) would give some assurance to the public and to the licensee herself that she is proficient and that her skills are sharp.

Dr. Schottenstein also felt the Board should be consistent in its requirements for licensure. Dr. Schottenstein noted that this case is reminiscent of a case the Board considered a few months ago, that of Douglas Shodd, L.M.T., who also asked the Board to waive his requirement to take the MBLEx based on his uncompensated practice of massage therapy. The Board found that Mr. Shodd's experience was insufficient to waive the MBLEx requirement.

Dr. Schottenstein agreed with the Proposed Order to grant Ms. O'Connor's application for licensure, provided that she takes and passes the MBLEx within one year of the effective date of the order.

Vote on Dr. Johnson's motion to approve:

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Derek Kurt Urban, M.D.**

Dr. Schottenstein directed the Board's attention to the matter of Derek Kurt Urban, M.D. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

Dr. Schottenstein stated that a request to address the Board has been made on behalf of Dr. Urban. Five minutes will be allowed for that address.

Dr. Urban was represented by his attorney, Bill Delaney.

Mr. Delaney asked the Board to consider a more lenient discipline than what was proposed by the Hearing Examiner. Mr. Delaney stated that the 30-day suspension will act as a harsh penalty. Mr. Delaney stated that Dr. Urban has a multi-state radiology practice across 13 states and the hearing record shows that he is an excellent radiologist. Mr. Delaney noted that this case does not involve standard of care issues or any threat to the public. Any suspension would take away from Dr. Urban's ability to assist in the public's health care and also automatically suspend his Virginia medical license, which would jeopardize his employment and possibly cause him to lose his radiology certification. Mr. Delaney added that a suspension could also result in different outcomes in the multiple states in which Dr. Urban works. Mr. Delaney stated that while discipline may be

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appropriate in this case, including terms of probation, a suspension would be an unreasonable hardship in Dr. Urban.

Mr. Delaney continued that Ms. Snyder, the Assistant Attorney General in this case, had no objection to the finding that a reprimand would be appropriate. The Hearing Examiner recognized that Dr. Urban had completely mitigated any kind of continuing harm by securing counsel to assist him in the application process in Ohio and other states. Mr. Delaney stated that this shows that Dr. Urban does not pose any continuing threat to even the regulatory aspects of the Board's supervision.

Mr. Delaney stated that Dr. Urban has been completely transparent with the Board from the very beginning of the Board's inquiries into this matter in June 2016. Dr. Urban thoroughly answered all questions and supplied any information the Board requested in 2016 and 2017. Dr. Urban also disclosed all information on his 2019 application for license renewal.

For these reasons, Mr. Delaney asked that Dr. Urban's discipline not include a suspension of his license.

Dr. Urban stated that he is extremely sorry for his past mistakes and asked for the Board's mercy. Dr. Urban stated that a suspension could end his career, his job, and his certification. Dr. Urban stated that he has a 19-year-old son in college who he has promised to support. Dr. Urban stated that he has taken steps to ensure this does not happen again. Dr. Urban stated that he cannot be more contrite and humble. Dr. Urban asked the Board to spare his career and allow him to continue practicing safely for patients in Ohio and all of the 13 states in which he is licensed.

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

Ms. Snyder stated that this is a bootstrap case based on an allegation that Dr. Urban did not report discipline on his 2015 application to renew his Ohio medical license. Ms. Snyder stated that Dr. Urban was in the military for over 20 years and is a skilled, board-certified radiologist. Dr. Urban received an administrative discipline in the military, which has led to this current case before the Board. The hearing record contains testimony on the nature of an administrative discipline, as well as whether Dr. Urban understood that he need to report it as a discipline on licensure and renewal applications. Dr. Urban testified emphatically that he did not believe he had to report the discipline, while the Hearing Examiner and Ms. Snyder concluded at the time that that was not a reasonable belief.

Having thought about this case a great deal following the hearing, Ms. Snyder has come to understand why Dr. Urban had that belief. Ms. Snyder stated that Dr. Urban is a very literal person and he probably looked at the application language very literally. Ms. Snyder opined that Dr. Urban was not trying to commit fraud or trick anyone into thinking that he had not had that administrative discipline. Therefore, Ms. Snyder stated that there is mitigation in this case that should be considered by the Board.

Motion to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Urban:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala

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

Ms. Montgomery stated that this issue has hung over Dr. Urban's head for many years, which is a very lengthy time for anyone whether they are guilty or not. Ms. Montgomery commented that it had been somewhat difficult to review the documents due to a large amount of redacted confidential information, but it was clear that human foibles played a significant role. Ms. Montgomery opined that Dr. Urban was embarrassed by some of the things he had used his position for and, while there is no excuse for that, it was human.

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Ms. Montgomery stated that she concurred with Ms. Snyder's thoughtful commentary and, given the circumstances of the case, suggested that a reprimand rather than a 3-day suspension of Dr. Urban's license would be appropriate.

Motion to amend the Proposed Order to add a Reprimand and remove the provisions related to suspension of Dr. Urban's medical license, leaving all other provisions intact:

Motion	Ms. Montgomery
2 <sup>nd</sup>	Mr. Giacalone

Mr. Giacalone stated that because Ms. Snyder led the legal case against Dr. Urban, he would defer to her suggestion to reduce the proposed sanction. Mr. Giacalone agreed with Ms. Montgomery that it would be appropriate to issue a reprimand instead of a suspension in this matter.

Dr. Feibel appreciated Ms. Snyder's thoughtful words, as well as Dr. Urban's words about taking responsibility for his actions. Dr. Feibel wished that Dr. Urban would have taken more responsibility for his actions in the hearing record, noting that that does not seem to be the case on pages 30 through 33 of the hearing transcript. Given Ms. Snyder's comments, Dr. Feibel supported Ms. Montgomery's proposed amendment.

Commenting on Dr. Urban's written objections, Dr. Feibel made clear that he is not basing his opinion on any subsequent action that other state medical boards may take based on the Ohio action. Dr. Feibel stated that other boards have the right to make their own rules and he would not choose to support any particular sanction based on possible repercussions from another board. Dr. Schottenstein agreed with Dr. Feibel, stating that he had had similar thoughts.

Dr. Schottenstein stated that one could make a case that Dr. Urban has shown a pattern of misrepresentation, occurring first with his licensure application to the Kansas State Board of Healing Arts and again with his license renewal application to the Ohio Board. While this pattern is an aggravating factor, Dr. Schottenstein also noted the following mitigating factors:

- Dr. Urban made a free and full disclosure to the Board.
- Dr. Urban hired legal counsel to help him with his license applications.
- As noted previously, Dr. Urban appears to be a very literal person.
- Dr. Urban seems to have expressed genuine remorse, both today and at his hearing.
- Dr. Urban's misconduct has not had an adverse impact on others.
- There are no alleged standard of care issues.
- The misconduct is remote in time.
- Dr. Urban has acknowledged that he would answer the application question differently if he had it to do over again.

Because of these mitigating factors, Dr. Schottenstein supported the proposed amendment.

Dr. Feibel thanked Dr. Urban for his service to the country through the armed forces. The other Board members agreed. Dr. Feibel considered Dr. Urban's service to be somewhat of an additional mitigating factor.

A vote was taken on Ms. Montgomery's motion to amend:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Motion to approve and confirm the Proposed Findings of Fact, Conclusions, and Order, as amended, in the matter of Dr. Urban:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **PROPOSED FINDINGS AND PROPOSED ORDERS**

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

#### **Caroline Bialke**

Motion to find that the allegations as set forth in the December 11, 2019 Notice of Opportunity for Hearing in the matter of Ms. Bialke have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Bechtel

Dr. Schottenstein stated that he will now entertain discussion in the above matter. No Board member offered discussion in this matter.

Vote on Johnson's motion to approve:

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Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **FINDINGS, ORDERS, AND JOURNAL ENTRIES**

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

#### **Karen Alice Clemency, M.D.**

Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Karen Alice Clemency, M.D., informing her that the State Medical Board of Ohio proposed to deny her application for a certificate to recommend the medical use of marijuana, because the doctor has previously been subject to disciplinary action that was based, in whole or part, on inappropriately prescribing a controlled substance, or other dangerous drug, making her ineligible for a certificate to recommend.

Motion to find that the facts set forth in the October 14, 2020 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. Clemency's application for a Certificate to Recommend the Medical Use of Marijuana in the State of Ohio:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Abstain
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

#### **Jessica N. Collins, M.T.**

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Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Jessica N. Collins, informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Collins has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the October 14, 2020 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 Ms. Collins' application, provided that she takes and passes the MBLEx within 12 months of the date of mailing of the Notice of Opportunity for Hearing:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Kristie Fry, M.T.**

Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Kristie Fry informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Fry has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the October 14, 2020 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 Ms. Fry's application, provided that she takes and passes the MBLEx within 12 months of the date of mailing of the Notice of Opportunity for Hearing:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

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The motion carried.

## **Breanna N. Hilton**

Dr. Schottenstein stated that on October 15, 2020, the Board notified Breanna N. Hilton, that the State Medical Board of Ohio proposed to deny her application for a license to respiratory care because she has not passed an examination approved under rules adopted by the Board. Although she has passed the Certified Respiratory Therapist examination, the Board requires completion of both sections of the registered respiratory therapist examination.

Motion to find that the facts set forth in the October 15, 2020 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 Ms. Hilton's application for a license to practice respiratory care in the State of Ohio:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

## **Timothy Scott Kress, M.D.**

Dr. Schottenstein stated that on April 27, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Timothy Scott Kress, M.D., informing him that the State Medical Board of Ohio proposed to deny his application for a certificate to recommend the medical use of marijuana because the doctor has previously been subject to disciplinary action that was based, in whole or part, on inappropriately prescribing a controlled substance or other dangerous drug, making him ineligible for a certificate to recommend.

Motion to find that the facts set forth in the April 27, 2020 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. Kress' application for a certificate to recommend the medical use of marijuana in the State of Ohio:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y

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Mr. Gonidakis	Abstain
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Sophat Lort, M.T.**

Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Sophat Lort informing him that the State Medical Board of Ohio proposed to approve his application for restoration of his license to practice massage therapy, provided that he take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Mr. Lort has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the October 14, 2020 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 Mr. Lort's application, provided he take and pass the MBLEx within 12 months of the mailing of the Notice of Opportunity for Hearing:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Margaret M. Paparella, M.T.**

Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Margaret M. Paparella informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Paparella has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the facts set forth in the October 14, 2020 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 Ms. Paparella's application, provided she take and pass the MBLEx within 12 months of the mailing of the Notice of Opportunity for Hearing:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y

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Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Holland J. Stuart**

Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Holland J. Stuart, informing her that the State Medical Board of Ohio proposed to deny her application for a limited permit to practice respiratory care because she failed to submit her application for a limited permit within one year of her date of graduation from her respiratory care program. On April 30, 2020, she submitted her application for a limited permit. However, she graduated from her respiratory care program on April 25, 2019.

Motion to find that the facts set forth in the October 14, 2020 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 Ms. Stuart’s application for a limited permit to practice respiratory care in the State of Ohio:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Saferin

Mr. Giacalone observed that Ms. Stuart missed a one-year window for applying for the limited permit. Mr. Giacalone asked if the licensure staff could contact Ms. Stuart to explain to her what she can do to meet the requirements, and also to make clear that this denial does not permanently bar her from future licensure. Dr. Schottenstein commented that he had discussed this matter with the licensure staff earlier and learned that because it has been more than one year after Ms. Stuart’s graduation from her training program, her recourse is to apply for a full license to practice as a respiratory care professional.

A vote was taken on Dr. Bechtel’s motion:

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

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## Sylvia M. Zavala, R.C.P.

Dr. Schottenstein stated that on October 14, 2020, the Board authorized issuance of a Notice of Opportunity for Hearing to Sylvia M. Zavala, R.C.P., informing her that the State Medical Board of Ohio proposed to deny her application for restoration of her license to practice respiratory care in the State of Ohio because when a respiratory care license has lapsed or been inactive for five or more years, the license may only be reinstated if the applicant provides proof of current licensure in another state whose standards for licensure are equal to those in Ohio, or the applicant successfully passes a re-examination consisting of both portions of the registered respiratory therapist examination as administered by the National Board for Respiratory Care.

Motion to find that the facts set forth in the October 14, 2020 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 Ms. Zavala's application for a license to practice respiratory care in the State of Ohio:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Kakarala

Dr. Schottenstein noted that the five-year requirement is a holdover from the Respiratory Care Board, which was later folded into the Medical Board. Respiratory care therapists still have the same two-year rule as massage therapists that could require additional testing, but the five-year is also still in effect. The licensure staff is in the process of streamlining this issue.

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

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

## EXECUTIVE SESSION

Motion to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action; and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y

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Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

The Board went into Executive Session at 10:48 a.m. and returned to public session at 11:10 a.m.

### **SETTLEMENT AGREEMENTS**

#### **Ingolf Tuerk, M.D.**

Motion to ratify the proposed Permanent Withdrawal of Application with Ingolf Tuerk, M.D.:

Motion	Ms. Montgomery
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

#### **Jerry L. Brand, M. T. .**

Motion to ratify the proposed Permanent Surrender/Retirement with Jerry L. Brand, M.T.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

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## **John Patrick Sheehan, M.D.**

Motion to ratify the proposed Permanent Surrender/Retirement with John Patrick Sheehan, M.D.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

## **Leigh Allison Judge, P.A.**

Motion to ratify the proposed Permanent Surrender with Leigh Allison Judge, P.A.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

## **Morgan B. Charles**

Motion to ratify the proposed Permanent Withdrawal of Application with Morgan B. Charles:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y

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Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Matthew Dale Bauer, D.O.**

Motion to ratify the proposed Step II Consent Agreement with Matthew Dale Bauer, D.O.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

### **Ronnie Christopher Parker, D.O.**

Motion to ratify the proposed Permanent Withdrawal of Application with Robbie Christopher Parker, D.O.:

Motion	Dr. Kakarala
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Richard Hugh Matthews, M.D.**

Motion to ratify the proposed Permanent Surrender/Retirement with Richard Hugh Matthews, M.D.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala

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Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **Wayne K. Kawalek, M.D.**

Motion to ratify the proposed Withdrawal of Application for a Certificate to Recommend the Medical Use of Marijuana with Wayne K. Kawalek, M.D.:

Motion	Dr. Johnson
2 <sup>nd</sup>	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Abstain
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

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

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

1. Wade Lowell Banker,, M.D.: Based on violations of minimal standards of care between 2014 and 2018 involving 15 patients.
2. Kedar Krishna Deshpande, M.D.: An immediate suspension, based on felony conviction related to practice. Specifically, the doctor pled guilty to two felonies in federal court for distributing controlled substances and one count of false statements related to health care matters.
3. Anand Kalepu, M.D.: Based on a felony conviction related to practice in New York, specifically Conspiracy to Commit Health Care Fraud. The doctor pled guilty in December 2019, but was not sentenced until November 2020. The doctor was sentenced to three years of probation, a fine, and was ordered to pay restitution of almost \$700,000.
4. Vernon Proctor, M.D.: Based on action taken by the Michigan Board of Medicine in June 2020. The doctor’s Michigan license was suspended for two years for issuing over 21,000 medical marijuana

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cards within a one-year time frame. The doctor often issued cards without performing an examination or maintaining any records.

Regarding Citation #1, Ms. Montgomery noted that this minimal standards case involves 15 patients. Ms. Montgomery commented that obtaining 15 medical records and having experts review those records is a very costly and time-consuming process. Also, such cases result in very voluminous hearing records that could include thousands of pages of transcripts, which results in additional cost and time for the staff to produce and for the Board members to review. While Ms. Montgomery appreciated the desire to lay out as many facts as possible, Ms. Montgomery suggested that future cases of this nature should include only three or four solid patient cases to establish the allegations so that the matter can be addressed in a more efficient and timely manner. Dr. Feibel agreed with Ms. Montgomery's comments and added that if a physician is truly violating the minimal standards of care, it is important that the Board be able to act quickly on the physician's license.

Ms. Montgomery recommended that the Board members and staff have a strong discussion regarding the policy for minimal standards cases involving multiple patients. Ms. Canepa agreed and commented that including multiple patients in a case can establish a pattern and make a difference in terms of potential penalties. Ms. Montgomery agreed, but opined that perhaps five patients instead of 15 can establish a pattern without delaying the process.

Regarding Citation #2, Dr. Soin stated that he will recuse himself from that case.

Motion to approve and issue Citation #2, an Immediate Suspension:

Motion	Dr. Johnson
2 <sup>nd</sup>	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Abstain
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Motion to approve and issue proposed Citation #1:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain

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Dr. Schottenstein	Y
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The motion carried.

Motion to approve and issue proposed Citations #3 and #4:

Motion	Dr. Johnson
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Abstain
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

## **OPERATIONS REPORT**

**Human Resources:** Ms. Loucka stated that two new employees have joined the staff. Brandi Dorcy joins the staff as Chief of Compliance having previously served in the Attorney General's office. Also, Lydia Johnson is a new investigator for the Northeast Ohio region.

**Budget:** Ms. Loucka stated that many licensees renewed their licenses in November, resulting in increased revenue. Also, office supply expenses are down because the staff are working from their homes during the pandemic. Dr. Schottenstein will provide more information in the Finance Committee report.

**Virtual Call Center:** Ms. Loucka stated that the Board's virtual call center is now live and will allow staff working from their homes to take calls from the public as if they are in the office. Calls and metrics will be tracked so the Board can maintain customer service standards.

**Licensure:** Ms. Loucka stated that at the beginning of the COVID-19 pandemic, the legislature extended the deadline to renew licenses to December 1, 2020. Through that delay, 5,747 licensees did not renew, compared to about 17,000 who hadn't renewed as of September. Subsequent legislation extended the deadline again so that those whose licenses expire through April 1, 2021, now have until July 1, 2021 to renew. The Board will follow the same communication strategy that it did with the group whose licenses were set to expire on December 1. Ms. Loucka commented that Ms. Reardon worked with the medical associations to push that messaging to its membership and that the associations were great partners in that effort.

In response to a question from Dr. Rothermel, Ms. Loucka stated that she and the staff were surprised that the licensure deadline was extended again. Ms. Loucka noted that the extension applies to all licenses statewide, including driver's licenses. Ms. Loucka speculated that the reason the legislature extended the deadline was perhaps to reduce in-person renewals, as well as make accommodations for industries that have seen a lapse of revenue. Ms. Loucka stated that the licensees will be reminded that their initial renewal date will not change and they will not have a full two years between the delayed renewal and the next renewal.

Ms. Montgomery noted that the Board often gets answers on renewal applications that lead to investigations and potential disciplinary action. Ms. Montgomery stated that it may be worthwhile to see if the Medical Board

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could be exempted from the extension so that actionable behavior can be caught and another backlog of cases can be avoided.

**Sexual Misconduct Protocol:** Ms. Loucka stated that the Board's sexual misconduct protocol was adopted in July 2019. That protocol has been revised based on staff input and what has been learned while working with the Governor's Strauss Working Group. The new protocol, approved by Dr. Rothermel and Dr. Saferin, formalizes some of the practices that have been in place. Also, under the new protocol a recommended closure will be reviewed by the Deputy Director of Investigations, Enforcement, and Compliance, rather than a committee, before going to the Secretary and Supervising Member for final approval. Ms. Loucka will provide the new protocol to all Board members.

Ms. Loucka stated that the Strauss Working Group met yesterday and indicated that they would recommend to the Governor that their work has been concluded. The Working Group will make recommendations to all boards and commissions about trainings. Ms. Loucka opined that the Medical Board, given its volume of work, is a little ahead of some other boards and commissions will be able to advise them.

Regarding the historical case review, Ms. Montgomery asked if the Board had reported separately on cases which had a failure to report. Ms. Loucka stated that of the 1,254 licensees reviewed by external reviewers, about 39 were recommended for further review due to possible failure to report. Those reviews will be entered into the staff's workflow and given priority. Given the age of some of the complaints and the rules and laws in effect at that time, caution letters may be appropriate in some cases. Ms. Loucka stated that this can be an educational opportunity to inform licensees that, while it is appreciated that the licensee may have informed their employer, they have a duty to report directly to the Medical Board.

**Compliant Statistics:** Ms. Loucka stated that open and closed complaint data is included in the Operations Report each month. However, based on feedback from the Strauss Working Group and a general desire to improve, there are opportunities to be more granular on what is reported. For example, the data could show how many bootstrap actions are received in a month. Details such as this can show the ebb and flow of the Board's complaints in more detail.

### **ELECTION OF OFFICERS**

Dr. Schottenstein thanked the Board members for the opportunity to serve as the Board President for the last year-and-a-half. Dr. Schottenstein was honored to be able to serve during an eventful time, and he wanted to say from his heart what it has meant to him.

Dr. Schottenstein stated that the work is very meaningful and is an opportunity to give back to the citizens of Ohio and to the medical profession. Dr. Schottenstein expressed great appreciation for the commitment and hard work of all the Board members and the staff, and he has done his best to be worthy of that. Dr. Schottenstein stated that he will miss being President, but he is grateful to continue to serve as a Board member. Dr. Schottenstein stated that he is leaving the presidency in very capable hands, and he wished Dr. Bechtel and Ms. Montgomery all the best.

Dr. Schottenstein noted that when Dr. Bechtel assumes the presidency on January 1, he will become the first Board member to have served in all four of the Board's offices: President, Vice President, Secretary, and Supervising Member. Dr. Schottenstein congratulated Dr. Bechtel on that milestone. Dr. Schottenstein also wished all the best to Dr. Rothermel and Dr. Saferin as they continue on as Secretary and Supervising Member. Dr. Schottenstein gave special thanks to Ms. Loucka, who has been a great partner to him during this time.

Dr. Bechtel stated that Dr. Schottenstein should be recognized and congratulated for his strong leadership and dedication. Dr. Bechtel stated that Dr. Schottenstein faced very challenging times with the Strauss investigation and the impact of COVID-19 on health care delivery. Dr. Schottenstein has been a true champion of Ohio patient protection and has done extensive work behind the scenes. Dr. Bechtel stated that the work

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Dr. Schottenstein has put into the Strauss investigations and sexual misconduct is incredible. Dr. Bechtel was impressed with how Dr. Schottenstein has reached out to Board members and Board employees to engage them in conversation and show how important they are. Dr. Schottenstein has provided strong leadership and set an example of what a great leader truly is.

Ms. Montgomery agreed with Dr. Bechtel, stating that Dr. Schottenstein has set a high bar for all those who will have any leadership with the Board. Mr. Giacalone agreed and commented that not only is Dr. Schottenstein a great physician, but he has shown he could have been a great attorney as well. Mr. Giacalone thanked Dr. Schottenstein for leading the Board through incredible times. Dr. Saferin appreciated Dr. Schottenstein's input and help as President, stating that Dr. Schottenstein was always there when someone needed to work something out. Dr. Saferin stated that Dr. Schottenstein is an exceptional person, very hard-working and unbelievably intelligent.

Dr. Schottenstein thank everyone for their kind words.

Motion to elect Dr. Bechtel as President, Ms. Montgomery as Vice President, Dr. Rothermel as Secretary, and Dr. Saferin as Supervising Member for terms beginning January 1, 2021, and ending December 31, 2021:

Motion	Dr. Kakarala
2 <sup>nd</sup>	Mr. Gonidakis
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Abstain
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

### **RULES & POLICIES**

#### **Adoption of Rules**

Motion to adopt, amend, and rescind the rules as described in the November 20, 2020 memorandum from Ms. Anderson and to assign each rule action the effective date of December 31, 2020:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

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Dr. Schottenstein	Y
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The motion carried.

## **COMMITTEE BUSINESS**

### **Committee Assignments**

Dr. Schottenstein stated that the Board meeting materials includes an item on proposed committee assignments for calendar year 2021.

Dr. Schottenstein also noted that the memo includes a suggestion to incorporate the work of the Policy Committee into future Board meetings as a standing agenda item. Mr. Giacalone commented that when he had served as President, he scheduled the Policy Committee so that everyone could attend because everyone had an interest in that committee. The suggestion to roll the Policy Committee into the full Board meeting seems to Mr. Giacalone like a normal evolution. Ms. Montgomery also supported that suggestion because it should allow for more time for discussion of those topics.

Dr. Feibel noted that the proposed membership of the ICD-10 Code Data Review Committee is quite large and that perhaps that committee could be rolled into the Board meeting as well. Dr. Schottenstein appreciated that thought, but noted that that committee often meets with outside individuals and that may be complicated by having it be part of the Board meeting.

Dr. Schottenstein stated that with the Board's approval, the suggestions of the committee assignments memo will be implemented.

### **Dietetics Advisory Council**

Ms. Rearden stated that the Dietetics Advisory Council met on December 7, 2020. Ms. Wonski provided the Council with an update on legislation pertinent to the Board and the Council. The Council reviewed the frequently asked questions (FAQ's) document for dietitians that is on the Board's website and changes were suggested. The FAQ's will be discussed further at the next Council meeting. The 2021 meeting dates for the Council will be posted to the Board's website. The Council also discussed House Bill 404, which extended the license renewal deadline.

Some Council members' terms will expire in 2021; they will be contacted individually to ascertain if they are interested in reappointment.

The Council will next meet on February 8, 2021.

### **Respiratory Care Advisory Council**

Dr. Kakarala stated that the Respiratory Care Advisory Council met on December 8, 2020. Ms. Wonski provided the Council with an update on legislation pertinent to the Board and the Council. The Council also discussed House Bill 404, which extended the license renewal deadline.

The Council had a robust conversation on the need for and use of respiratory care professionals during the current pandemic and the surge in cases. Dr. Kakarala stated that there had been a lack of respiratory care professionals prior to the pandemic and it has grown significantly during the surge. The Board's staff indicated that all respiratory care professional license and limited permit applications are being expedited during the pandemic and that the Board should be contacted immediately if any issues with an application need to be resolved. The Board staff discussed efforts to work with respiratory therapy educators across the state to make sure any qualified students can obtain their limited permit as soon as possible.

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Next meeting of the Council will be March 8, 2021.

## Policy Committee Report

Dr. Soin stated that the Committee discussed the rule review updates that will occur during 2021. For example, the continuing medical education (CME) rules will be ready for review in January.

### Temporary Military Licensure, Light-Based Medical Devices, and Hearing Rules

Motion to approve the proposed amendments to proposed Rule 4731-36-04, as discussed by the Policy Committee, to be filed with JCARR; to approve the proposed amendments, as discussed by the Policy Committee, to be filed with CSI; and to approve the proposed amendments to proposed Rule 4731-13-03 for filing with CSI:

Motion	Dr. Kakarala
2 <sup>nd</sup>	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

## Legislative Update

Dr. Soin stated that the legislative tracker is available in the Board packet. Dr. Soin commented that the tracker is very robust.

## Consult Agreement Rules

Motion to (1) communicate to the Board of Pharmacy the Board's comments on the Board of Pharmacy's proposed consult agreement rules, and (2) approve submission of the Medical Board's proposed consult agreement rules to the Board of Pharmacy for consultation as required in Section 4729.39(E)(2), ORC:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

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Dr. Schottenstein	Y
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The motion carried.

## **Finance Committee Report**

### Fiscal Update

Dr. Schottenstein stated that revenue for October 2020 was \$1,427,152, compared to \$545,869 in Oct. 2018. Dr. Schottenstein commented that the October 2018 revenue is a more typical number; the increased revenue for October 2020 is a function of licensee renewal for those who had taken advantage of the renewal deadline extension.

Dr. Schottenstein also pointed out that the 5,747 licensees who had not renewed by December 1 likely included many who simply chose not to renew, which happens as part of natural attrition. Of the 15,750 licensees whose renewals are potentially delayed until July 1, 2021, due to recent legislation, Dr. Schottenstein noted that a substantial number of those licensees renewed early. This may be due to the routine email reminders the Board sends out.

The Board's current cash balance improved to \$5,572,042.

Dr. Schottenstein stated that the numbers for November 2020 look very good, with preliminary numbers indicating about \$2,000,000 in revenue, which will be a record for the Board. Preliminary November numbers also indicate a cash balance of about \$6,800,000.

Dr. Schottenstein noted a 13.4% increase year-to-date in expenditures, which is a function of the fact that October 2020 had three pay periods instead of the usual two. The additional pay period represents about \$300,000 in expenses and accounts for the increased expenditure.

Dr. Schottenstein stated that the Board received \$21,700 in disciplinary fines in October, in addition to \$551.20 from collections. The Board levied \$40,500 in fines. The Board has received \$82,047 in total fines year-to-date.

Dr. Schottenstein added that the Board has received about \$25,000 in federal money for reimbursements related to the COVID-19 pandemic due to expenses that would not otherwise have accrued, such as personal protective equipment, laptops, and staff overtime regarding COVID-related matters.

## **Licensure Committee Report**

### Licensure Application Reviews

Motion to approve the Licensure staff recommendations for the requests of Annette Bell, L.D., and Amy Reutzl, M.T.:

Motion	Dr. Bechtel
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Sojn	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y

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Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

### **COMPLIANCE**

#### **Reinstatement Request**

William Danko, M.D.

Motion that the request for the reinstatement of the license of William Danko, M.D., be approved, subject to the probationary terms and conditions as outlined in the August 12, 2020 Board Order for a minimum of three years:

Motion	Ms. Montgomery
2 <sup>nd</sup>	Dr. Johnson
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

#### **Office Conference Review**

Motion to approve the Compliance staff's Reports of Conferences for November 9 and 12, 2020:

Motion	Mr. Giacalone
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

#### **Probationary Requests**

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Motion to approve the Secretary and Supervising Member’s recommendations for the following probationary requests:

- a) Julie M. Alderson, D.O.: Request for reduction in psychiatric treatment from every eight weeks to every twelve weeks.
- b) Michael J. Howkins, D.O.: Request for reduction in recovery meeting attendance to two meetings per week with a minimum of ten meetings per month.
- c) Ariane S. Neyou, M.D.: Request for approval of the online course *PBI Best Practice Prescribing: Opioids, Pain Management and Addiction*, offered by the University of California, Irvine School of Medicine, to fulfill the controlled substance prescribing course requirement; and approval of the course tailored by Donna Homenko, Ph.D., to fulfill the professional ethics/boundaries course requirement.
- d) Christopher N. Vashi, M.D.: Request for approval of the aftercare completed through the Kentucky Physicians Health Foundation to fulfill the aftercare requirement.

Motion	Dr. Kakarala
2 <sup>nd</sup>	Ms. Montgomery
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

### **ADJOURN**

Motion to adjourn:

Motion	Dr. Saferin
2 <sup>nd</sup>	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Mr. Gonidakis	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

# State Medical Board of Ohio Meeting Minutes – December 9, 2020

The meeting adjourned at 12:12 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on December 9, 2020, as approved on January 13, 2021.

*Mark Bechtel MD*

Mark Bechtel, M.D., President

*Kim G. Rothermel MD*

Kim G. Rothermel, M.D., Secretary

(SEAL)



State Medical Board of Ohio

**POLICY COMMITTEE MEETING**

**December 9, 2020**

via live-streamed video conference

<p><b>Members:</b> Amol Soin, M.D., Chair Robert Giacalone, R.Ph., J.D. Mark Bechtel, M.D. Betty Montgomery Sherry Johnson, D.O.</p> <p><b>Other Board Members present:</b> Michael Schottenstein, M.D. Kim Rothermel, M.D. Bruce Saferin, D.P.M. Jonathan Feibel, M.D. Harish Kakarala, M.D.</p>	<p><b>Staff:</b> Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Chelsea Wonski, Legislative Director Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Soin called the meeting to order at 9:01 a.m.

### Minutes Review

**Dr. Bechtel moved to approve the draft minutes of the November 10, 2020 meeting of the Policy Committee. Mr. Giacalone seconded the motion. The motion carried.**

### Rule Review Update

Ms. Anderson stated that there will be fewer rules to be reviewed in 2021, but the group will include rules that are used by the Board often. Among the rules scheduled for review in 2021 are the sexual misconduct rules, the delegation rules, and the rules on prescribing controlled substances for self and family. The 2021 rule review schedule is included in the meeting materials.

Ms. Anderson stated that the Board is scheduled to adopt new rules at today's Board meeting. The continuing medical education (CME) rules, including the mandatory one hour of education on the duty-to-report, has been through the required hearings and will be ready for adoption by the Board at its January 2021 meeting.

### Rules with the Common Sense Initiative

#### Temporary Military Licensure

Ms. Anderson stated that the Board is scheduled to adopt rules this afternoon regarding military licensure. The Common Sense Initiative (CSI) required changes to proposed Rule 4731-36-04 to

reference the Board's processes as described in proposed Rule 4731-36-03. CSI also requested that language be added to explain that licensure fees would be waived. Ms. Anderson noted that statute requires the fee to be waived, and this is why the explanation was not initially included in the proposed Rule. The explanation of the waived licensure fees has been added to the proposed Rule as Paragraph H.

In response to a question from Dr. Bechtel, Ms. Anderson stated that although licensure fees will be waived, the applicant will still be responsible for paying for the background check as required by statute. Ms. Montgomery asked that measures be taken to ensure that the Board does not end up absorbing the costs of the background checks. Ms. Anderson stated that she will work with Mr. Turek to make sure the instructions for the applicants is clear on that point.

**Dr. Bechtel moved to recommend approval of the proposed amendments to Rule 4731-36-04, to be filed with the Joint Committee on Agency Rule Review. Dr. Johnson seconded the motion.** The motion carried.

### **Light-Based Medical Devices**

Ms. Anderson stated that many comments were received on the proposed light-based medical devices rule and have been included in the Committee materials packet. The rules have been discussed with the Physician Assistant Policy Committee as well. Ms. Anderson stated that the physician assistant statutes, especially 4730.21, Ohio Revised Code, already specify how a supervising physician and a physician assistant should work together with respect to the competence of the physician assistant to utilize light-based medical devices, the type of supervision to be given by the supervising physician, and the number of physician assistants that may be supervised at one time. These statutory provisions are slightly different from what has been proposed in this rule.

Ms. Anderson has drafted changes to the rule to address these concerns and to treat physician assistants differently in accordance with statute. For registered nurses, licensed practical nurses, and in some cases cosmetic therapists, the rule would establish a number of procedures to be viewed, require on-site supervision, and limit the physician to supervising up to two individuals.

Because these changes are significant, Ms. Anderson wished to consult with the Physician Assistant Policy Committee and ensure their concerns are being addressed, as well as the Board of Nursing since the rule would affect some of their licensees. Ms. Anderson also asked for the Committee's input on the definitional concerns that were raised in the public comments.

Ms. Montgomery asked for clarification of whether the rule applies to vascular lasers, which was one of the questions in the public comments. Dr. Bechtel stated that the rule specifically discusses what types of skin lesions are considered vascular in nature and therefore amenable to treatment. Dr. Bechtel stated that the energy of vascular lasers is absorbed by the hemoglobin in the blood, which dissipates energy and causes blood vessels to branch down. Dr. Bechtel was satisfied with the rule's description of what skin lesions are considered vascular. Dr. Bechtel was also comfortable with defining vascular lasers as light-based medical devices. Ms. Anderson thanked Dr. Bechtel for clarifying that issue.

Dr. Bechtel continued that the rule is focused on patient safety. Dr. Bechtel stated that vascular lasers are probably the safest of all the lasers and have a lower risk of scarring, and that is why the vascular laser was chosen for expansion into the scope of practice of nurses and cosmetic therapists. The rule also includes rigorous educational requirements, including eight hours of classroom education. The

practitioners are required to observe 15 cases and then perform 20 cases under direct supervision of a physician. Also, physicians cannot supervise more than two individuals at one time. In response to two articles on laser safety sent by the Cleveland Clinic, Dr. Bechtel stated that one article was on ablative lasers, which are not expanded by this rule because of the greater risk of scarring. The other article was published outside the United States. Dr. Bechtel reiterated that he is comfortable that the guardrails and educational requirements in the rule will promote patient safety.

Dr. Schottenstein asked if the Board of Nursing has statutes that governs their licensees' authorization for supervision that could potentially allow them more leeway than this proposed rule would. Ms. Anderson replied that she did not believe that was the case, but she would like to get input from the Board of Nursing.

Regarding the scope of cosmetic therapists, Mr. Giacalone asked Dr. Bechtel to comment on what makes hair removal and tattoo removal different from vascular treatment. Dr. Bechtel responded that cosmetic therapists can perform laser hair removal and those who already do so can continue under this rule. However, the rule would require cosmetic therapists who are beginning to practice laser hair removal to undergo extensive educational instruction. Dr. Bechtel stated that removal of tattoos is very complicated and requires a laser to be specifically chosen based on the tattoo pigment. Tattoo removal also has a much higher incidence of scarring. While allowing cosmetic therapists to use laser for tattoo removal may be something the Board could consider in the future, it is not included in the current proposed rule due to the challenging process and potential risks.

**Dr. Bechtel moved to circulate the proposed changes to the proposed rule to the Physician Assistant Policy Committee and the Board of Nursing for input. Dr. Johnson seconded the motion.** The motion carried.

### **Weight-Loss Prescribing Rules**

Dr. Soin stated that last month the Committee decided to gather additional information on this topic. Since that time, Dr. Soin reached out to key opinion leaders in this field, as well as pharmacists, physicians who treat obesity, and representatives from national obesity associations. Dr. Soin remarked that he received a great deal of valuable information and feedback from these interactions. At the Board's request, these experts also provided written comments that Dr. Soin found to be excellent and well-written. Dr. Soin stated that it would be helpful to have additional time to review the written comments and provide a more robust update next month.

Dr. Soin observed that there were two general themes in the comments. One theme was the potential opportunity to enhance telemedicine visits for some of the wellness checks that are required by rule. Secondly, the vast majority of comments were on the issue phentermine being labeled as an acute treatment and whether there are any opportunities for chronic use. Dr. Soin stated the more information will be gathered for review next month.

### **Hearing Rules**

Ms. Anderson stated that though minor changes to the hearing rules have already been approved by the Board, the Hearing Examiners have requested that the rule be amended so they would have the ability to hold virtual hearings via video conference upon motion from a party or from the Hearing Examiner, even when the current emergency is over. Ms. Montgomery was in favor of this change because of the added flexibility it could provide to licensees and the potential to increase the number of hearings held.

**Ms. Montgomery moved to refile the hearing rule with the proposed change. Dr. Bechtel seconded the motion.** The motion carried.

### **Consult Agreement Rules**

Ms. Anderson stated that the Board of Pharmacy is required by statute to submit any proposed changes to its consult agreement rules to the Medical Board for input. The Board has had an opportunity to review the Board of Pharmacy's proposed changes and Ms. Anderson has been notified of some minor typographical errors. Likewise, the Medical Board is required by statute to submit any potential changes to its consult agreement rules to the Board of Pharmacy for their input.

**Dr. Johnson moved to communicate to the Board of Pharmacy the Board's comments on the Board of Pharmacy's proposed consult agreement rules. Dr. Johnson further moved to approve submission of the Medical Board's proposed consult agreement rules to the Board of Pharmacy for consultation as required in Section 4729.39(E)(2), ORC. Dr. Bechtel seconded the motion.** The motion carried.

### **Legislative Update**

**Senate Bill 246, Occupational Licensing Reciprocity:** Ms. Wonski stated that the legislative staff has worked with the bill's sponsor and the committee chair to address concerns for retaining the Board's ability to make determinations on whether an applicant has adequately met Ohio's qualifications for licensure. Last week, the Senate committee adopted the Board's requested changes. These amendments allow greater flexibility for all licensing boards in making determinations on applicants' fitness to practice. Ms. Wonski thanked Mr. Smith, who was instrumental in both drafting and negotiating the amendments.

Ms. Montgomery asked if there has been discussion on allowing the Board to consider applicants' offenses beyond the five-year limit for cases of violence or sexually-related offenses. Ms. Wonski replied that the fitness-to-practice language allows the Board more flexibility to consider older offenses if they resulted in action on the applicant's license in another state. Mr. Smith commented that Ms. Wonski is working diligently on House Bill 263 to request a longer look-back period on convictions.

**House Bill 263, Occupational Licensing:** Ms. Wonski stated that this legislation would require the Board to provide a comprehensive list of criminal offenses that would prevent a person from becoming licensed in Ohio. The legislative staff has worked with several other health care boards, as well as the bill sponsor and committee chair, to develop solutions to the boards' issues. The Senate Transportation, Commerce, and Workforce Committee had a third hearing on this bill last week. The Board submitted testimony expressing its concerns with the language and offered suggested changes. The bill is scheduled for its fifth hearing today.

**Senate Bill 364, Interstate Medical Licensure Compact:** Ms. Wonski stated that this bill would require Ohio to join the Interstate Medical Licensure Compact. This legislation has not moved recently, but the staff continues to monitor it closely. Ms. Wonski did not expect the bill to move during this General Assembly, but this language may be seen again early next year.

**House Bill 492, Physician Assistants:** Ms. Wonski stated that this bill would expand the ability of physician assistants to perform procedural sedation for the purpose of rapid intubation. Ms. Wonski

stated that several stakeholders have expressed opposition to the bill. The bill has not moved much through the legislative process, but the staff is monitoring it closely.

**Senate Bill 236, Radiation Control and Radiation Technology Professionals:** Ms. Wonski stated that this legislation would authorize the State Director of Health, when adopting rules for Ohio's radiation control program, to deviate from the suggested state regulations for control of radiation if doing so is warranted and does not pose a health, environmental, or safety risk. The staff is watching this legislation because an amendment was added that would grant anesthesiologist assistants the ability to order or direct others to administer drugs under a supervision agreement. The Ohio State Medical Association and the Ohio Society of Anesthesiologists have expressed a neutral position on the amendment.

**Senate Bill 305, Telemedicine:** Ms. Wonski stated that this bill would require insurers to provide coverage for telehealth services during a state of emergency. If the bill begins to move, the Committee will be updated at the next meeting.

**House Bill 388, Out-of-Network Care (Surprise Billing):** Ms. Montgomery asked Ms. Wonski for her evaluation of this bill's progress and flexibility. Ms. Wonski stated that under this legislation, hospitals would be required to notify patients if a test or other service is out of the patient's insurance network, inform the patient if there is way to obtain that service in-network, and provide the cost of any such services if they are not emergency in nature. The bill has had its third hearing in the Senate, so it is possible that it may pass in this legislative session. This bill has the support of the Ohio Department of Insurance.

**Federal Legislation:** Dr. Schottenstein asked if the Board has the ability to provide input on federal legislation. Ms. Wonski stated that the four pieces of federal legislation that is listed in the legislative tracker are not expected to move this year. If there is federal legislation that could potentially move and the Board feels strongly about, the legislative staff can weigh in with Ohio's congressional representatives and senators to make the Board's position known.

### **Pharmacy Board Updates**

There were no Pharmacy Board updates at this time.

### **Adjourn**

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

The meeting adjourned at 9:43 a.m.

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