



**State Medical Board of Ohio Meeting Minutes
August 12, 2020**

Michael Schottenstein, M.D., President, called the video conference meeting to order at 10:04 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; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Betty Montgomery; Sherry Johnson, D.O.; Jonathan Feibel, M.D.; and Harish Kakarala, M.D.

MINUTES REVIEW

Motion to approve the minutes of the July 8, 2020 Board meeting, as drafted:

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	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: William R. Danko, M.D.; Enrico L. Danzer, M.D.; Timothy John Morley, D.O.; and Arthur H. Smith, 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
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
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
Ms. Montgomery	Y
Dr. Feibel	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. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matters of Dr. Danko, Dr. Morley, and Dr. Smith.

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.

William R. Danko, M.D.

Dr. Schottenstein directed the Board's attention to the matter of William R. Danko, M.D. Objections have been file and were previously distributed to Board member. Ms. Lee was the Hearing Examiner.

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

Dr. Danko was represented by his attorney, Elizabeth Collis.

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Ms. Collis stated that this is a very straight-forward case, but the way in which the courts and the Board address this kind of case in cumbersome and often do not fit the facts. Ms. Collis stated that, in fact, this is a mental health case.

Ms. Collis continue that Dr. Danko wrote two prescriptions for himself for Adderall and signed them under the name of his nurse practitioner. One of the prescriptions was filled and the other was rejected by the pharmacist. Ms. Collis stated that Dr. Danko, who has not denied his conduct, prescribed the medications to treat himself in a time of extreme stress and anxiety. Ms. Collis acknowledged that this was a mistake, but stated that, as has been seen in other mental health cases, people often make poor decisions when under extreme duress.

Ms. Collis stated that Dr. Danko should be punished for his error, but this mistake in an otherwise unblemished 28-year career should not result in an unreasonable and unjust sanction as recommended by the Hearing Examiner. Ms. Collis noted that if the Board adopts the Hearing Examiner's Proposed Order, the suspension of Dr. Danko's license will start today rather than in April when his summary suspension began, resulting in an effective suspension of 300 days.

Ms. Collis stated that the court recognized that Dr. Danko's conduct resulted in some type of impairment and he was approved for the Intervention in Lieu of Conviction program because the court does not have another program to deal with mental health issues. Ms. Collis stated that the Board has not treated this as a mental health case, but rather has proposed to take action based on 4731.22(B)(9), Ohio Revised Code, concerning conduct that constitutes a felony, and 4731.22(B)(28), concerning substance use disorder. However, Dr. Danko does not suffer from alcohol impairment. Dr. Danko has been assessed five times and no treatment has been recommended. Dr. Marc Whitsett testified that following a 72-hour evaluation at the Ridge, no treatment was recommended and that Dr. Danko was fit to practice medicine. Dr. Anthony Alvarez, a psychiatrist, also determined that, while Dr. Danko had been suffering from an episode of a mental health impairment when he made the poor decision to prescribe to himself, no treatment was recommended at the time of his evaluation.

Ms. Collis stated that Dr. Danko never tried to avoid or evade the Board's investigation. Dr. Danko testified that the letters from the Board were sent to his former address and he never received them.

Ms. Collis recommended that the Board impose a 90-day suspension, effective from the date of the April 2020 summary suspension, and impose a fine of \$7,500 rather than the proposed fine of \$18,000.

Dr. Danko stated that he takes full responsibility for his conduct. Dr. Danko stated that 2017 and 2018 was a very difficult and stressful time for him. After a 20-year marriage with four children, he was in the middle of a difficult divorce that he did not want to happen. At that same time, he learned that he owed hundreds of thousands of dollars in back taxes for an urgent care facility he owned and operated in Cincinnati. In addition to that, Dr. Danko's father was critically ill during that time and he was spending a great deal of time helping to deal with important decisions that had to be made by family members for his care. Dr. Danko felt stressed and overwhelmed at that time. Dr. Danko also felt at that time that he could not concentrate and he believed he was experiencing symptoms of adult attention deficit disorder (ADD).

Dr. Danko continued that he had briefly been prescribed medication while in medical school for similar symptoms to help him focus, so he believed taking Adderall would help with his concentration issues. Dr. Danko admitted that he should have gone to his own doctor for help, but at that moment he made the poor decision to prescribe to himself and he signed his nurse practitioner's name to the prescription. Dr. Danko stated that he was embarrassed to tell his colleagues, even his own doctor, that he was struggling, commenting that he does not think he even admitted it to himself.

Dr. Danko stated that he has completed every assessment required by the court and by the Medical Board, a total of five evaluations, and no treatment has been recommended. Dr. Danko stated that he has been determined to be fit to resume work as a physician and he is in full compliance with his Intervention in Lieu of

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Conviction program. Dr. Danko stated that his medical license has been suspended since April and he is struggling financially to support his family and keep his urgent care running during this pandemic. Dr. Danko stated that he simply wants to return to work. Dr. Danko requested that the Board reinstate his license and reduce the monetary fine, as it would be impossible for him to pay the excessive fine recommended by the Hearing Examiner. Dr. Danko commented that he is already behind in alimony and child support payments. Dr. Danko stated that he has not avoided punishment or failed to take responsibility for his conduct. Dr. Danko indicated that he understands how stress can manifest itself and that if he is experiencing stress or anxiety, he will seek help from his personal physician.

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

Ms. Snyder opined that the Hearing Examiner did a very good job outlining the facts and testimony in the hearing, which was conducted via video conference. Ms. Snyder noted the Hearing Examiner's comment that Dr. Danko appears to be a man who has managed to mostly avoid consequences and responsibilities for his felonious conduct and that instead of seeking out help he decided to commit two felonies related to prescribing. Ms. Snyder asked the Board to use its expertise and discuss what it should do in a situation dealing with fraudulent prescription writing and issues related to mental health.

Ms. Snyder stated that she is satisfied with the Hearing Examiner's Report and Recommendation and she asked the Board to adopt it.

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

Motion	Dr. Kakarala
2 nd	Mr. Giacalone

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

Ms. Montgomery stated that she is troubled by Dr. Danko's felonious acts, specifically the forging of prescriptions. Ms. Montgomery was also troubled by the fact that Dr. Danko has undergone five evaluations at a presumed substantial financial cost. Ms. Montgomery opined that the \$18,000 fine in the Proposed Order is excessive. Ms. Montgomery further opined, given that Dr. Danko's medical license has been under a summary suspension since April 8, 2020, that the Proposed Order's 180-day suspension be reduced to a 90-day suspension.

Dr. Feibel agreed with Ms. Montgomery, but suggested that the suspension remain 180 days with an effective start date of April 8, 2020. Ms. Montgomery agreed to Dr. Feibel's suggestion. Ms. Montgomery commented that she does not diminish that Dr. Danko had forged prescriptions, but she felt he has already suffered some consequences through the courts.

Motion to amend the Proposed Order so that the 180-day suspension of Dr. Danko's license is effective beginning April 8, 2020; and that the fine be reduced to \$9,000:

Motion	Ms. Montgomery
2 nd	Dr. Soin

Mr. Giacalone agreed with the proposed amendment. Mr. Giacalone commented that this case is somewhat unique among cases involving drug-related felonies because Dr. Danko does not have an issue with substance abuse; rather, he has an issue with veracity and trying to have his nurse practitioner take the blame. Mr. Giacalone was also troubled that Dr. Danko seemed to have ignored the notifications he received from the

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Board. Mr. Giacalone stated that while he will support the proposed amendment, he does not think Dr. Danko is as much a victim as he is portraying himself.

Dr. Schottenstein appreciated that multiple assessments found that Dr. Danko does not have a substance abuse disorder. Dr. Schottenstein also stated that it is possible to abuse a substance without having a substance abuse disorder. Dr. Schottenstein stated that when one forges a prescription for the maximum recommended daily dose of a highly controlled substances to self-medicate mood, anxiety, or attention span, then one is essentially abusing that drug. Dr. Schottenstein stated that this is how people develop substance abuse disorder and he wondered how events would have unfolded if Dr. Danko had not been caught early in the process. Dr. Schottenstein stated that Dr. Danko abused Adderall, even if he does not have a stimulant abuse disorder.

Dr. Schottenstein continued that having read the evaluations, it sounds like Dr. Danko has endorsed a history of intermittent depression, anxiety, and attention span issues. While stress is unpleasant for everyone, those who are prone to these issues have an almost allergic reaction to stress. Dr. Schottenstein therefore felt that it is important for Dr. Danko to have a therapeutic relationship with a physician and a counselor for those times of stress, as well as a psychiatrist to make the determination of how to address these issues medically when they occur. Dr. Schottenstein stated that in Dr. Danko's case, there was a real chance that the Adderall could have made things much worse because stimulants can exacerbate underlying anxiety.

Dr. Schottenstein summarized that Dr. Danko prescribed himself a maximum dose of a controlled substance on two occasions, he did so deceptively by abusing the nurse practitioner's license, and he then asked the nurse practitioner to lie for him. Dr. Schottenstein did not feel that the level of mental health concern is substantially mitigating in that regard. Dr. Schottenstein opined that the fact that this occurred in the absence of a drug dependency issue is almost worse because it implies a willingness to engage in that behavior in the absence of the influence of drug dependency. This makes Dr. Danko's case different from other cases involving forged prescriptions because those physicians had acted under the influence of their impairment.

Dr. Schottenstein stated that he is agreeable to the proposed amendment.

Ms. Montgomery asked if Dr. Schottenstein would suggest any additional requirements for mental health treatment. Dr. Schottenstein stated that the Order already requires Dr. Danko to submit the *curriculum vitae* of a psychiatrist with whom he will be in treatment. Dr. Schottenstein noted that Dr. Danko was diagnosed with adjustment disorder, which basically means that a period of stress can lead to a flare-up of mood and anxiety issues. Therefore, it is important for Dr. Danko to have ongoing relationships with providers for maintenance and for timely treatment when there is flare-up. Dr. Schottenstein opined that Dr. Danko will have these things with the proposed amended Order.

Ms. Montgomery was troubled by the delay in properly notifying Dr. Danko of the Board's Notice of Opportunity for Hearing. After some delay, the Board staff decided to simply call or go to the doctor's office. While it is Dr. Danko's responsibility to notify the Board whenever he changes his address, Ms. Montgomery felt that the Board should consider simple things like looking up a physician whenever there is a failure to serve a Notice of Opportunity for Hearing. Ms. Montgomery suggested that the Board address this process issue in the future.

Vote on Ms. Montgomery's motion to amend:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y

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Dr. Feibel	Y
Dr. Bechtel	Abstain
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. Danko:

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

The motion carried.

Enrico L. Danzer, M.D.

Dr. Schottenstein directed the Board’s attention to the matter of Enrico L. Danzer, M.D. No objection were filed. Ms. Lee was the Hearing Examiner.

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

Motion	Dr. Kakarala
2 nd	Dr. Bechtel

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

Ms. Montgomery stated that, while cheating on examinations is not to be excused, she is most troubled that the Board is seeking a reprimand for behavior that is seven years old. Dr. Schottenstein appreciated Ms. Montgomery’s concerns. Dr. Schottenstein noted that Dr. Danzer did not apply for an Ohio medical license until October 2019, which marked the beginning of Ohio’s investigation and enforcement process in this matter.

Dr. Schottenstein remarked that it would have been preferable if Dr. Danzer had, after engaging in the cheating behavior, reconsidered his actions and went to his administrator on his own and admit his behavior. However, this only came to light because Dr. Danzer’s cheating was discovered by others. Dr. Schottenstein stated that cheating is absolutely unacceptable and, while it is unfortunate that this incident continues to follow Dr. Danzer years later, it is appropriate and that is part of the reason that one does not cheat on examinations. Dr. Schottenstein stated that the integrity of board examinations is integral to being able to rely on the competence of the Board’s licensees and giving the public a sense of competence in the system. Dr. Schottenstein opined that anything less than a reprimand could give the appearance that the Board does not take this matter seriously, and that could have negative consequences. Dr. Schottenstein opined that the Proposed Order is appropriate.

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Mr. Giacalone agreed with Dr. Schottenstein. Mr. Giacalone stated that this sort of thing is seen more and more in various professions and the Board must send a message that it is inappropriate. Mr. Giacalone gave credit to Dr. Danzer for the correct steps he has taken since that time, but noted that it was only after he was caught. Mr. Giacalone agreed that the Proposed Order of a reprimand is appropriate.

Vote on Dr. Kakarala's motion to approve and confirm:

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

The motion carried.

Timothy John Morley, D.O.

Dr. Schottenstein directed the Board's attention to the matter of Timothy John Morley, D.O. Objections have been filed and were previously distributed to Board member. Mr. Porter was the Hearing Examiner.

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

Dr. Morley was represented by his attorney, James McGovern.

Dr. Morley apologized that the Board had to use its time and resources to address this issue. Dr. Morley also appreciated Ms. Pelfrey's and the Hearing Examiner's acknowledgment that he was completely cooperative with the Board's investigation. Dr. Morley stated that his medical license and career are very important to him. Dr. Morley deeply regretted and took responsibility for all his actions in New York years ago.

Dr. Morley stated that he would like to stress a few things. First, there were no allegations that Dr. Morley actually infected anyone with hepatitis C or any other infectious disease. Dr. Morley stated that his New York medical license was not suspended for any safety concerns; those concerns were addressed when Dr. Morley voluntarily offered to cease all phlebotomy pending an investigation. The investigation showed that no one else had hepatitis C or any kind of infectious disease beyond the original few patients that Dr. Morley had diagnosed over the course of the previous year. Dr. Morley stated that his New York license was suspended for his inability to comply with the request to turn over his medical records within 24 hours, which was an impossibility for him. Dr. Morley elaborated that his records had been ready, but he was unable to supply the billing records within that timeframe. Dr. Morley asked the Board to keep in mind that his New York license had been suspended for a technical violation of a rule that has no equivalent in Ohio.

Dr. Morley stated that he has been practicing medicine in Ohio for 18 months and his practice in Ohio is unlike his New York practice. In his current practice, Dr. Morley diagnoses physical injuries and makes referrals. Dr. Morley has completed about 80 hours of continuing medical education (CME) on infectious disease, record-keeping, and proper office management.

Dr. Morley hoped the Board would agree that he poses no safety threat to anyone in Ohio. Dr. Morley respectfully asked the Board to give him an opportunity to practice medicine with a sanction, but without a suspension of his Ohio license. Dr. Morley stated that his medical practice is his only source of income and,

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since he has no partners, a suspension would end the practice and he would have no way to support his wife and daughter.

Mr. McGovern hoped that the Board would agree that a suspension of Dr. Morley's Ohio medical license would be excessive and unnecessary given the record production issue that triggered the underlying suspension in New York. Mr. McGovern stated that probation, practice restrictions, and a fine should suffice to address the violation and protect the public. The New York suspension effectively ended Dr. Morley's practice in that state and created financial hardship for himself and his family. Mr. McGovern stated that Dr. Morley has worked hard to get back on his feet in Ohio, where he has practiced without issue for 18 months. Mr. McGovern contended that the suspension of Dr. Morley's Ohio license would effectively destroy his Ohio practice and resume the financial hardship he is working his way out of.

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

Ms. Pelfrey stated that there was no contesting the fact that an action had been taken on Dr. Morley's New York medical license, and Dr. Morley was cooperative in admitting that. Ms. Pelfrey stated that the Hearing Examiner took all the accounts from testimony into the hearing record and it is within the Board's discretion what sanction to impose.

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

Motion	Dr. Kakarala
2 nd	Dr. Johnson

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

Mr. Giacalone favored removing the suspension from the Proposed Order, while maintaining the probationary terms and the permanent limitations on Dr. Morley's Ohio medical license. Mr. Giacalone described the State of New York is a mind-boggling bureaucracy and he opined that Dr. Morley should not be suspended for a technical issue with the New York State Department of Health. Mr. Giacalone opined that the probation in the Proposed Order is appropriate, as is the permanent limitations due to the public safety issue. Mr. Giacalone agreed with Ms. Anderson's suggestion that the course in infection prevention and control, which is a condition for reinstatement or restoration in the Proposed Order, be moved to the probationary terms in the amendment.

Motion to amend the Proposed Order so that the suspension is removed; and the requirement for an infection prevention and control course be moved to the probationary terms and conditions:

Motion	Mr. Giacalone
2 nd	Ms. Montgomery

Responding to a question from Ms. Montgomery, Mr. Giacalone stated that he had no opinion regarding whether the \$3,500 fine should be reduced or removed, and that he would support whatever the other Board members favored on that matter.

Dr. Schottenstein appreciated the thought that the suspension of Dr. Morley's New York medical license was only related to the delay in producing medical records. However, Dr. Schottenstein noted that the New York Order indicated that the suspension was due to both the failure to provide records and the September 8, 2018 Statement of Charges.

Regarding the concern raised in Dr. Morley's objections about the Hearing Examiner's reference to minimal standards, Dr. Schottenstein stated that when dealing with an out-of-state action the fine is determined by the

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underlying violations. Consequently, since the Conclusions of Law stated that Dr. Morley violated the statute on out-of-state action, that will be the basis for the Board’s decision.

Vote on Mr. Giacalone’s motion to amend:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
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. Morley:

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

The motion carried.

Arthur H. Smith, M.D.

Dr. Schottenstein directed the Board’s attention to the matter of Arthur H. Smith, M.D. No objections were filed. Ms. Lee was the Hearing Examiner.

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

Dr. Smith was represented by his attorney, Douglas Graff.

Mr. Graff stated that this case is based on a guilty plea to a single count of Dispensing a Controlled Substance. The court gave Dr. Smith a two-year probation, a requirement for community service, and a limitation from working in the area of addiction medicine for 24 months, and a \$5,000 fine. Mr. Graff noted that the Drug Enforcement Administration (DEA) was fully supportive of returning Dr. Smith’s prescribing and dispensing privileges after the limitation on working in addiction medicine expired.

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Mr. Graff continued that while many things seemed to have been unfortunately billed incorrectly, no drugs were found to have been diverted or improperly provided to patients, no financial gain for the physicians involved was found, and no improper patient care was cited. This case came down to a billing practice by Dr. Smith's clinic that did not change when one of the physicians entered the practice without a DATA 2000 waiver to dispense suboxone. The U.S. Attorney found that there was no need for restitution in this matter.

Mr. Graff noted that the Hearing Examiner was supportive of returning Dr. Smith to the practice of medicine with a one-year suspension. Mr. Graff noted that Dr. Smith has already been out of practice for six months due to the COVID-19 pandemic. The Hearing Examiner also proposed a \$18,000 fine, which Mr. Graff opined was excessive.

Dr. Smith apologized for this matter and stated that he never thought he would be back before the Board again. Dr. Smith stated that while he was working at this facility, he believed he was helping the recovery community. Dr. Smith was grateful that the Hearing Examiner found that his work had resulted in positive outcomes when he was before the Board several years ago. Dr. Smith stated that he should have been more mindful and judicious with what was associated with his name, and he took full accountability and responsibility for his actions. Dr. Smith stated that he has learned a lot from this and he asked the Board to accept his apologies.

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

Mr. Wilcox stated that Dr. Smith's medical license was immediately suspended by the Board on February 12, 2020, and his license has remained suspended since that time. Mr. Wilcox also noted that the federal government did not pursue a very severe penalty for Dr. Smith.

Mr. Wilcox opined that the reprimand and the probationary terms in the Proposed Order are appropriate. Mr. Wilcox stated that the Board can use its discretion to determine the appropriateness of the \$18,000 fine.

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

Motion	Dr. Johnson
2 nd	Mr. Giacalone

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

Ms. Montgomery commented on Dr. Smith's impressive background, having worked as a janitor and a maintenance mechanic, as well as serving in the U.S. Air Force, before becoming a physician. Unfortunately, Dr. Smith made some mistakes that have brought him before the Board twice. Ms. Montgomery opined that the reprimand and probation in the Proposed Order are appropriate. Ms. Montgomery further opined that the \$18,000 fine is excessive and asked the Board to consider halving that amount.

Motion to amend the Proposed Order to reduce the fine to \$9,000:

Motion	Ms. Montgomery
2 nd	Mr. Giacalone

Dr. Feibel acknowledged the Board's authority to reduce the fine in the Order, but questioned whether the fine derived from the Board's fining guidelines should be lowered in the absence of extenuating circumstances. Dr. Feibel suggested that if the Board is inclined to lower the fine, it may want to consider altering the fining guidelines accordingly.

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Ms. Montgomery observed that Dr. Smith’s license was immediately suspended in February 2020 by operation of law due to his conviction of a drug-related felony. Consequently, Dr. Smith has been without employment since that time. Ms. Montgomery commented that she would not have proposed lowering the fine if the matter were more egregious. However, the case is such that both the Hearing Examiner and the Attorney General’s office agree that a reprimand with probation is appropriate.

Mr. Giacalone agreed with Ms. Montgomery. Mr. Giacalone acknowledged that Dr. Smith was convicted of dispensing a controlled substance, but it is not a typical case in which the substance is diverted and abused. Mr. Giacalone opined that Dr. Smith’s actions were wrong, but not egregious.

Dr. Soin appreciated Dr. Feibel’s comments on the fining issue, but argued that there are extenuating circumstances that would necessitate a lower fine. Dr. Soin stated that the Board’s fining guidelines stipulate a minimum fine of \$18,000 for a felony drug conviction. However, the fact patterns that have emerged, such as a federal court only sentencing Dr. Smith to two years of probation and a fine, are an extenuating circumstance that can justify lowering the fine in this case. Dr. Soin did not support changing the Board’s fining guidelines because the Board retains the ability to change the fine in individual cases as circumstances warrant. Dr. Soin stated the felony charges, especially drug felony charges, are serious and the Board’s fining guidelines should reflect that.

Dr. Soin added that, like Ms. Montgomery, he also appreciated reading Dr. Smith’s background beginning as a janitor and working to become a physician. Dr. Soin found Dr. Smith’s apology at the beginning of his remarks to be genuine and he hoped Dr. Smith meant it.

Dr. Feibel stated that he does not oppose lowering the fine in this case. Dr. Feibel commented that the Board often seems to lower fines from the \$18,000 level, and this is his rationale for suggesting a change to the guidelines.

Vote on Ms. Montgomery’s motion to amend:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
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. Smithj:

Motion	Dr. Johnson
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y

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Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
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. The matter was reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and it is now before the Board for final disposition. This matter is disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In this matter, Dr. Rothermel served as Secretary, Dr. Saferin served as Supervising Member, and Dr. Bechtel served as Secretary and/or Supervising Member.

Rakesh Sharma, M.D.

Motion to find that the allegations as set forth in the November 13, 2019 Notice of Summary Suspension and Opportunity for Hearing in the matter of Dr. Sharma have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Mr. Giacalone
2 nd	Dr. Johnson

Mr. Giacalone commented that considering this physician's practice of dispensing controlled substances, it is appropriate that his Ohio medical license be permanently revoked. Dr. Schottenstein agreed.

Vote on Mr. Giacalone's motion to approve:

Motion	Dr. Johnson
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Abstain
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:

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Motion	Dr. Johnson
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

The Board went into Executive Session at 11:01 a.m. and returned to public session at 11:28 a.m.

SETTLEMENT AGREEMENTS

Adam J. Rowe, M.D.

Motion to ratify the proposed Consent Agreement with Adam J. Rowe, M.D.:

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

The motion carried.

Joseph Alan Cook, D.O.

Motion to ratify the proposed Consent Agreement with Joseph Alan Cook, D.O.:

Motion	Dr. Kakarala
2 nd	Mr. Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y

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Dr. Bechtel	Abstain
Dr. Schottenstein	Y

The motion carried.

Michael L. Scheer, D.O.

Motion to ratify the proposed Permanent Surrender with Michael L. Scheer, D.O.:

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

The motion carried.

Muhammed Samer Nasher-Alneam, M.D.

Motion to ratify the proposed Permanent Surrender with Muhammed Samer Nasher-Alneam, M.D.:

Motion	Dr. Bechtel
2 nd	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.

Jared A. Warren, D.O.

Motion to ratify the proposed Probationary Consent Agreement with Jared A. Warren, D.O.:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y

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Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Lara Kollab, D.O.

Motion to ratify the proposed Permanent Surrender with Lara Dollab, D.O.:

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

The motion carried.

Lee P. Bee, D.O.

Motion to ratify the proposed Consent Agreement with Lee P. Bee, D.O.:

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

The motion carried.

Jon Berkeley Silk, Jr., M.D.

Motion to ratify the proposed Step II Consent Agreement with Jon Berkeley Silk, Jr., M.D.:

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

The motion carried.

Raymond L. Noschang, M.D.

Motion to ratify the proposed Permanent Surrender with Raymond L. Noschang, M.D.:

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

The motion carried.

John O. Uche, M.D.

Motion to ratify the proposed Consent Agreement with John O. Uche, M.D.:

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

The motion carried.

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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. Thomas Falls, M.D.: To be issue to an applicant for full medical licensure, based on a 2018 misdemeanor of moral turpitude for soliciting prostitution and actions against his medical licenses by the Kentucky Board of Medical Licensure and the New York State Board for Professional Medical Conduct.
2. Raymond Magliulo, D.O.: This physician's Ohio medical license has lapsed. The Proposed Citation is based on the physician's conviction for Endangering the Welfare of an Incompetent or Physically Disabled Person in the First Degree, a class E felony, as well as the revocation of the physician's New York medical license.
3. Mark H. Meacham, M.D.: Based on sexual misconduct involving one patient.
4. Daniel Schwarz, M.D.: Based on a recent federal conviction for Intent to Distribute a Controlled Substance.
5. Venkata Rao Yeleti, M.D.: This physician's Ohio medical license has lapsed, but he holds current emeritus status. The physician was convicted of felony rape of a child under 13.

In regards to proposed Citation #5, Dr. Feibel asked what emeritus status means in terms of privileges. Ms. Marshall replied that a physician with emeritus states cannot actively practice medicine, but can hold oneself out as a physician who has been licensed in good standing with the State Medical Board of Ohio.

Motion to approve and issue proposed Citations #1 through #5:

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

The motion carried.

The Board meeting was recessed at 11:48 a.m. The meeting resumed at 12:21 p.m.

OPERATIONS REPORT

Telecommuting: Ms. Loucka stated that there is still no date for the return of staff to the office, so they will continue to work remotely. Ms. Loucka stated that staff productivity remains high, though there are logistical challenges with things like mail, phones, and the need for equipment adaptations. Over the coming months, the Board will review the complexities of caregiver challenges for those with young children who may be learning remotely.

Human Resources: Ms. Loucka stated that there is still officially a freeze on hiring for state agencies, so there is little to report from Human Resources.

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Budget Update: Ms. Loucka stated that staff continues to work on the Board's budget materials, noting that budget submissions for the next biennium are due on September 15. Ms. Loucka expressed a desire to be more strategic with the budget submissions based on the Board's priorities and how it intends to meet them.

The Board's current cash balance is about \$5,000,000. Ms. Loucka noted that license renewals are down due to the emergency law that allows licensees additional time to renew. About 14,000 Medical Board licensees who would normally have renewed since the beginning of the COVID-19 pandemic have not renewed. All of these licensees must renew by December 1, 2020, unless an extension is granted, which Ms. Loucka felt was very unlikely. Ms. Loucka stated that the Board will discuss the budget requests at its September 9, 2020 meeting before the submission is finalized on September 15. Ms. Loucka commented that section managers will have input into the budget requests.

Cost-Saving Days: Ms. Loucka stated that the Board's exempt employees have been mandated to take 10 cost-saving days (CSD) this fiscal year. This means a pay reduction for those employees, but they will also receive 10 additional days off. The union representing non-exempt employees have asked the Board to implement a voluntary cost-saving day program for union employees. This request will be discussed later this week at a Labor/Management Committee meeting. Ms. Loucka commented that this is a typical request and other state agencies have enacted it.

Open/Closed Complaint Data: Ms. Loucka observed that this month's Operations Report includes two bar graphs that summarize open complaint data and closed complaint data. The open complaint graph gives a month-to-month breakdown of the total number of open complaints. Ms. Loucka noted that one licensee with numerous similar complaints was counted as only one complaint in order to avoid skewing the data. As the graphs indicate, there are an average of about 1,850 open complaints and 550 closed complaints every month over a seven-month period. Ms. Loucka noted that many open complaints carry over from month to month.

Ms. Loucka stated that there are practices that the staff can change and sharpen to help address the large number of open complaints the Board has each month. Ms. Loucka noted that fairly static groups of complaints can be found in the sections of Enforcement, Investigations, and Standards Review. Ms. Loucka stated that some new processes have already been implemented, which have resulted in process improvements. While there has been an uptick in productivity from complaint management, Ms. Loucka felt that the Board should consider the share volume, timeline issues, and staffing issues.

Ms. Loucka stated that a data-backed proposal will be brought to the Board in September as part of the budget request.

REPORTS BY ASSIGNED COMMITTEES

Dietetics Advisory Council Report

Ms. Reardon stated that the Dietetics Advisory Council met yesterday via video conference. The Council discussed redoing the Frequently Asked Questions (FAQ) document for all the advisory councils, starting with Dietetics. The Council members shared what they would like to see include from their specific fields and will discuss the FAQ's further at its October meeting.

Sexual Misconduct Committee Report

Dr. Schottenstein stated that the Sexual Misconduct Committee met this morning and discussed the Governor's Working Group's recommendations for changes to the Board's confidentiality statute, 4731.22(F)(5), Ohio Revised Code. The Committee's discussion revolved around three main areas:

- The Board's ability to release information for good cause.
- The Board's ability to release information if there is a threat to public safety.

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- Whether there should be a time limit on the Board’s confidentiality.

Dr. Schottenstein continued that comments are being received on the proposals regarding release of information to entities not covered by 4731.22(F)(5), and the Committee will continue to work on that issue. Dr. Schottenstein commented that the spreadsheet prepared by the staff to illustrate the Federation of State Boards’ recommendations was very helpful.

Policy Committee Report

Dr. Soin stated that the Policy Committee met this morning. The staff provided a rule review update and a review of actions in the Common Sense Initiative. The Committee also discussed several legislative matters.

Legislative Update

Dr. Soin stated that the Committee discussed House Bill 679, the telehealth initiative. The Board’s *ad hoc* Telehealth Committee will discuss that further at a meeting this afternoon. Dr. Soin noted that House Bill 679 has passed the House and is now in the Senate, but has not yet been assigned to a Senate committee. The Committee also discussed Senate Bill 246, the medical licensure bill.

The Committee welcomed the Board’s new representative for legislative matters, Chelsea Wonski, and discussed expectations going forward. Each month, Ms. Wonski will prepare a master list bill tracker that will list every pending bill that may have an impact on the Medical Board or the practice of medicine. Each item on the master list will include three sections: A description of the bill with the bill number; where the bill is in the legislative process; and the Board’s official stance on the bill. Ms. Wonski will also produce an intermediate action bill report with only a few pressings bills copied from the master list for easier digestion by the Committee.

The Committee also discussed the hydroxychloroquine bill that was introduced in the legislature yesterday. Dr. Soin noted that this bill may not proceed through the legislative process given the actions currently being considered by the Board of Pharmacy and the Medical Board. In response to a request for input from the Board of Pharmacy, the Committee recommended to the Board of Pharmacy that it suspend or rescind its proposed rule regarding hydroxychloroquine.

Lastly, the Committee discussed having a more global discussion about the roles of the Medical Board and Board of Pharmacy. As one example, Dr. Feibel had mentioned the fact that pharmacists may sometimes not allow prescriptions for opioids for post-operative surgical patients who had suffered significant trauma, even though such prescriptions are allowed by the Medical Board’s rules. Dr. Soin commented that he has also seen this in his own practice. Dr. Soin stated that the Board of Pharmacy may be able to assist the Medical Board in educating pharmacists on the rule and to maintain patient access to appropriate medication.

Rules at Common Sense Initiative

Motion to approve amendments to Rule 4731-10-02(A)(1)(c), (A)(2)(b) and delete paragraph (A)(3) and provide information to the Common Sense Initiative (CSI):

Motion	Dr. Saferin
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y

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

The motion carried.

RULES AND POLICIES

Ms. Anderson stated that a very large package of rules was the subject of public rules hearing on July 23. Those rules will be submitted to the Joint Committee on Agency Rule Review (JCARR) on August 17. A number of comments were received at the hearing.

Rules 4731-11-01 and 4731-11-14 are a proposed correction to the chronic pain rules to allow for some additional specialists to prescribe at higher limits, including oncologists and hematologists. Based on a comment from the Board of Pharmacy, it is recommended that 4731-11-01(A) and (B) be modified to include a new Board of Pharmacy rule.

Ms. Anderson continued that three substantive comments were received on the detoxification rules. Zachary Holzapfel, Vice-President of Hicks Partners, suggested the following language for Rule 4731-33-02(F)(5) so that the section related to alcohol use disorder is similar to Section (B)(2) for opioid use disorder:

The physician shall refer the patient to an alcohol treatment program licensed or certified by the Ohio department of mental health and addiction services to provide such treatment or to a physician, physician assistant, or advanced practice registered nurse who provides treatment using Naltrexone or any other FDA approved forms of medication assisted treatment for alcohol use disorder. The name of the program, physician, physician assistant, or advanced practice registered nurse to whom the patient was referred, and the date of the referral shall be documented in the patient record.

Because this involved the Ohio Department of Mental Health and Addiction Services (ODMHAS), Ms. Anderson provided this proposed language to Richard Masatti and Dr. Justin Trevino at ODMHAS. Mr. Masatti and Dr. Trevino indicated that these changes were satisfactory from their clinical viewpoint, but they recommended removing the word “Naltrexone” and simply say “using any FDA-approved forms of medication.” Ms. Anderson opined that this suggestion makes sense, but she also pointed out that the Board has a rule, 4731-33-03, that is related to Naltrexone and that word is used. In response to a question from Dr. Soin, Ms. Anderson stated that she can look into whether Rule 4731-33-03 should be altered in any way.

The next recommended change, based on a comment from Henry Van den Berg, Senior Vice President of U.S. World Meds, concerns Rule 4731-33-02(D)(10)(c)(iii), as well as Rule 4730-4-02 for physician assistants. The language initially indicated that “In withdraw management programs of thirty days or less, the physician shall not allow more than one of week of unsupervised or take-home medications for that patient.” Mr. Van den Berg indicated that the drug associated with his company is labeled for use up to 14 days in an outpatient setting. Therefore, he recommended a change to that section.

A comment on this Mr. Van den Berg’s suggestion from ODMHAS, along with a lengthy rationale from Dr. Trevino. Summarizing Dr. Trevino’s comment, Ms. Anderson related that due to safety concerns with patients in this situation, it is not recommended to allow more than a one-week supply of the medication, even though it may be permitted under the label.

Dr. Schottenstein stated that ODMHAS was concerned about both patient safety and the need for the patient to be seen weekly in any case. Dr. Schottenstein agreed with ODMHAS and recommended no change to the proposed rule.

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The third comment was from Dr. Christine Wilder of University of Cincinnati (UC) Health. Dr. Wilder provided a general comment that she did not oppose the rules, but she felt they were too prescriptive and negatively impacted the individualized practice of medicine. Dr. Wilder also requested additional guidance for treating alcohol and sedative withdrawal in an ambulatory setting. This comment was also reviewed by ODMHAS, which recommended added language to Paragraph (E)(4) in both rules about not driving or operating heavy machinery. ODMHAS also recommended importing any other relevant guidance from other areas to the alcohol section, though Ms. Anderson did not see anything that readily lent itself to that. Dr. Schottenstein agreed with Ms. Anderson and recommended simply importing Paragraph (E)(5) into Paragraph (F).

Regarding the consult agreement rules, a comment was received from Cameron McNamee of the Board of Pharmacy to request technical changes because the Board of Pharmacy will be changing its Rule 4729-17-01 by the end of this year. Ms. Anderson noted that the Medical Board's proposed rule references the Board of Pharmacy rule in two places. Ms. Anderson asked for approval to change the references to "Agency 4729," which allows reference to the whole chapter.

Lastly, comments were received from Sue Ciarlariello, Legislative Chair of the Ohio Society for Respiratory Care. Most of the comments were that Ms. Ciarlariello was in agreement with the proposed rule changes. One comment suggested clarifying language for Rule 4761-9-05(A)(1), concerning the college credit being limited to respiratory care. Ms. Anderson stated that the language had already been amended to clarify that point, and therefore no further changes were needed.

Motion to amend the proposed rules as discussed:

Motion	Dr. Bechtel
2 nd	Mr. Giacalone
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

REPORTS BY ASSIGNED COMMITTEES

Telehealth Committee Report

Dr. Feibel thanked the Board members who agreed to serve on the *ad hoc* Telehealth Committee. The members of the committee are Dr. Feibel as Chair, Dr. Schottenstein, Dr. Bechtel, Dr. Soin, and Mr. Gonidakis. The Committee's goal is to establish appropriate guardrails so that telehealth can be conducted in a safe and effective manner while protecting the citizens of Ohio. The Committee met on July 23 and had a robust discussion focusing on four areas of House Bill 679:

- **Initial visits:** The Committee felt that a patient's initial visit to a physician should be in person unless there are extenuating circumstances due to the health and safety of the patient.
- **Standard of care:** The Committee has recommended that the standard of care for telehealth visits be the same as for in-person visits. It is suggested that this provision not be in place when an emergency is invoked by the Governor.

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- **Rule-making authority:** The Committee strongly felt that the Medical Board should have the ability to use rule-making to establish guardrails. The Committee continues to discuss how to logistically deal with the fact that it could take up to a year to promulgate a rule.
- **Technology requirements:** The Committee felt that telehealth visits should be conducted with synchronous technology with interactive audio/video. Exceptions could be made in extenuating circumstances, such as a patient lacking access to video platforms or being unable to use video equipment.

Dr. Feibel stated that the Committee will meet again this afternoon. Dr. Feibel encouraged any Board member to attend the meeting if interested.

Finance Committee Report

Dr. Schottenstein stated that the Board's revenue for June 2020 was \$575,973. Dr. Schottenstein compared this to the June 2018 revenue of \$1,624,136, noting that June 2018 was a record month for the Board largely due to the fact that dietician and respiratory care professional licenses were all due on July 1, 2018. The Board continues to experience a shortfall in review based on the delay of licensure renewal deadlines to December 1, 2020. The Board is about \$1,000,000 under the projected revenue for Fiscal Year 2020, but it is hoped that that shortfall will be made up in Fiscal Year 2021. Though there is a small chance that the renewal deadline will be moved back from December 1, this is considered unlikely because that would substantially affect the ability of licensing boards to perform their functions without cutting into the general revenue fund. Dr. Schottenstein commented that so far, July 2020 seems more consistent with previous years.

Dr. Schottenstein continued that the Board's cash balance is good at \$5,030,208, a record cash balance despite the fact that the Board is substantially below projected revenue. The expected increased revenue in Fiscal Year 2021 may be used for projects such as a docketing case management software system or hiring additional staff to address the backlog of cases. Dr. Schottenstein stated that if additional staff is hired, it would be with the understanding that the Board would continue to look for inefficiencies in its processes so that the backlog will not recur.

Dr. Schottenstein stated that 2020 is the third year of the Board's new fining authority, with approximately \$212,000 collected thus far this year. The Board collected \$222,000 in its first year of fining and \$167,000 in its second year of fining. Dr. Schottenstein noted that the Board had originally estimated about \$150,000 per year from fines.

Expenditures have increased by 0.2% year-to-date compared to last year. However, Dr. Schottenstein noted that Fiscal Year 2019 had 27 pay periods instead of the typical 26, with that extra pay period representing about \$300,000. Therefore, actual spending this year has increased more than the 0.2% would indicate and the true increase is probably closer to 3.0%.

For Fiscal Year 2020, the Board spent \$107,284 on the historical case review. \$46,850 was left over from the incumbered balance, which will be applied going forward and should take the Board through the end of the historical case review project.

Licensure Committee Report

Licensure Application Reviews

Yasir Abu-Omar, M.D.

Dr. Saferin stated that Dr. Abu-Omar has applied for a medical license in Ohio. Dr. Abu-Omar has requested that his experience and training in the United Kingdom, combined with the experience he has gained as a cardiac surgeon working under a Clinical Faculty Research Certificate at University Hospitals, Cleveland, be

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deemed equivalent to 24 months of graduate medical education through the second-year level of graduate medical education.

Dr. Bechtel asked if Dr. Abu-Omar had actually been involved in surgical cases and getting experience, or if his work had been confined to laboratory work. Dr. Saferin replied that Dr. Abu-Omar had been involved in both surgical cases and laboratory work.

Motion to grant the graduate medical education equivalence, as outlined in 4731.09(A)(4)(b), so that Dr. Abu-Omar may be granted a license:

Motion	Dr. Bechtel
2 nd	Dr. Rothermel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Samantha Bedel

Dr. Saferin stated that Ms. Bedel has applied for restoration of her Ohio massage therapy license. Ms. Bedel has not practiced massage therapy within the last five years.

Motion to approve Ms. Bedel's application for restoration of her Ohio license, contingent on passing the Massage and Bodywork Licensing Examination (MBLEx) within 12 months of the date of mailing of the Notice of Opportunity for a Hearing:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Joao Paulo Cavalcante de Almeida, M.D.

Dr. Saferin stated that Dr. Cavalcante de Almeida has applied for a medical license in Ohio. Dr. Cavalcante de Almeida has requested that his experience and training in Brazil and Canada, plus his training at the Cleveland

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Clinic, be deemed equivalent to 24 months of graduate medical education through the second-year level of graduate medical education.

Motion to grant the graduate medical education equivalence, as outlined in 4731.09(A)(4)(b), so that Dr. Cavalcante de Almeida may be granted a license:

Motion	Dr. Bechtel
2 nd	Dr. Rothermel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Nikita Dedhia, M.D.

Dr. Saferin stated that Dr. Dedhia has applied for a medical license in Ohio. Dr. Dedhia has requested a waiver of the United States Medical Licensing Examination (USMLE) 10-year rule.

Motion to approve the good cause exception to the 10-year rule as outlined in OAC 4731-6-05 (C)(2), and accept the examination sequence so that Dr. Dedhia may be granted a license:

Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Kathleen Fermann

Dr. Saferin stated that Ms. Fermann has applied to restore her Ohio license to practice dietetics. Ms. Hermann has not practiced dietetics within the last five years. However, Ms. Fermann's dietetic registration with the Commission on Dietetic Registration is current (valid through August 31, 2021), verifying that she meets all requirements and she is in good standing.

Motion to approve Ms. Fermann's application for restoration of her Ohio license as presented:

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Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Patricia Guice

Dr. Saferin stated that Ms. Guice has applied for a massage therapy license in Ohio. Ms. Guice has not practiced massage therapy within the last five years. However, Ms. Guice recently passed the Massage and Bodywork Licensing Examination (MBLEx) on April 10, 2019.

Motion to approve Ms. Guice’s application for an Ohio license as presented:

Motion	Dr. Johnson
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Vinayak Nagaraja, M.D.

Dr. Saferin stated that Dr. Nagaraja has applied for a medical license in Ohio. Dr. Nagaraja has requested that his post-graduate training in the United States, combined with his experience in India and Australia, and his training in the United Kingdom, be deemed equivalent to 24 months of graduate medical education through the second-year level of graduate medical education.

Motion to grant the graduate medical education equivalence, as outlined in 4731.09(A)(4)(b), so that Dr. Nagaraja may be granted a license:

Motion	Dr. Bechtel
2 nd	Dr. Rothermel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y

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Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Kimberly O'Connor

Dr. Saferin stated that Ms. O'Connor has applied for a massage therapy license in Ohio. Ms. O'Connor has not practiced massage therapy within the last five years.

Motion to approve Ms. O'Connor's application for an Ohio license, contingent on passing of the Massage and Bodywork Licensing Examination (MBLEx) within 12 months from the date of mailing of the Notice of Opportunity for a Hearing:

Motion	Dr. Johnson
2 nd	Dr. Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Pablo Ruda Vega, M.D.

Dr. Saferin stated that Dr. Vega has applied for a medical license in Ohio. Dr. Vega has requested a waiver of the United States Medical Licensing Examination (USMLE) 10-year rule.

Motion to approve the good cause exception to the 10-year rule as outlined in OAC 4731-6-05 (C)(2) and accept the examination sequence so that Dr. Vega may be granted a license:

Motion	Dr. Bechtel
2 nd	Dr. Rothermel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y

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Dr. Schottenstein	Y
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The motion carried.

Sarah Savage

Dr. Saferin stated that Ms. Savage has applied for a genetic counselor license in Ohio. Ms. Savage has not practiced genetic counseling within the last five years. However, Ms. Savage obtained certification as a Diplomate of the American Board of Genetic Counseling on September 18, 2009, and recertified on January 1, 2020, for the five-year certification cycle ending December 31, 2024.

Motion to approve Ms. Savage’s application for an Ohio license as presented:

Motion	Dr. Bechtel
2 nd	Dr. Johnson
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

Applications for Certificates of Good Standing

Pittsburgh Technical College

Dr. Saferin stated that Pittsburgh Technical College, a Limited Branch School, has applied for a Certificate of Good Standing for the State of Ohio. The Therapeutic Massage Practitioner program is accredited by the Middle States Commissions on Higher Education and Pennsylvania Board of Education. The school application has been reviewed by the licensure staff according to the licensure protocols and the school appears to be eligible for licensure in Ohio.

Motion to approve the application of Pittsburgh Technical College for a Certificate of Good Standing as submitted in accordance with licensure protocols:

Motion	Dr. Bechtel
2 nd	Dr. Rothermel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

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The motion carried.

Mason Anthony School of Cosmetology Arts & Sciences

Dr. Saferin stated that Mason Anthony School of Cosmetology Arts & Sciences, a Limited Branch School, has applied for a Certificate of Good Standing for the State of Ohio. The Massage Therapy Program is accredited by the Ohio State Board of Career Colleges and Schools and the National Accrediting Commission of Career Arts and Sciences. The school application has been reviewed by the licensure staff according to the licensure protocols and the school appears to be eligible for licensure in Ohio.

Motion to approve the Mason Anthony School of Cosmetology Arts & Sciences for a Certificate of Good Standing as submitted in accordance with licensure protocols:

Motion	Dr. Bechtel
2 nd	Dr. Kakarala
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

COMPLIANCE

Office Conference Review

Motion to approve the Compliance staff's Reports of Conferences for July 6 and 7, 2020:

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

The motion carried.

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Probationary Requests

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

- a) Krishan K. Aggarwal, M.D.: Request for release from the terms of the August 14, 2019 Consent Agreement.
- b) Julie M. Alderson, D.O.: Request for approval of Nicole T. Labor, D.O. to serve as the monitoring physician.
- c) Christopher G. Alsager Lee, M.D.: Request for approval of David A. McAlpine, M.D. to serve as the new monitoring physician; and determination of the frequency and number of charts at 10 charts per month.
- d) Hollie Aneshansley, M.T.: Request for reduction in appearances to every six months.
- e) Muhammad W. Anjum, M.D.: Request for release from the terms of the December 12, 2018 Probationary Consent Agreement.
- f) Thomas J. Gantner, P.A.: Request for reduction in appearances to every six months; and reduction in required 2-Step recovery meeting attendance to 2 per week with a minimum of 10 per month.
- g) Kyle F. Mills, M.D.: Request for release from the terms of the November 5, 2014 Board Order.
- h) Carla M. Myers, D.O.: Request for release from the terms of the November 5, 2014 Step II Consent Agreement.
- i) Laura A. Ringenbach, R.C.P.: Request for reduction in appearances to every six months; and reduction in required 12-Step recovery meeting attendance to two per week with a minimum of 10 per month.
- j) Jon P. Ryan, D.O.: Approval of Timothy J. Drehmer, M.D. to serve as the monitoring physician. And frequency and determination of the number of charts to be reviewed at 10 charts per month.

Motion	Dr. Johnson
2 nd	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.

The Board meeting was recessed at 1:30 p.m. The meeting resumed at 2:02 p.m.

FEDERATION OF STATE MEDICAL BOARDS

Dr. Schottenstein stated that representatives from the Federation of State Medical Boards (FSMB) have joined the meeting via video conference. The FSMB conducted an audit of the Board's processes over the last

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several months and produced a report which has already been provided to the Board for review. Ms. Loucka invited the FSMB representatives to introduce themselves:

Patricia A. King, M.D., Ph.D., currently serving on the faculty of a medical school in Burlington, Vermont; served 12 years on the Vermont Board of Medical Practice with four of those years as Chair of the Board; served on the FSMB Board of Directors, including as Chair; Chaired the FSMB Workgroup on Physician Sexual Misconduct.

Kathleen Haley, J.D., currently serving on the Foundation for the FSMB's Board of Directors; served as Executive Director of the Oregon Medical Board for 24 years; served on FSMB Board of Directors; participated in reviews of four other boards, including one in Abu Dhabi.

Brian Blankenship, J.D., Deputy General Counsel for the North Carolina Medical Board.

Mark Staz, currently serving with the FSMB in the area of policy development and continuing education; served as staff support for the FSMB's Workgroup on Physician Sexual Misconduct.

John Bremer, currently serving with FSMB as Director of State Legislation and Policy.

Michelle Turner, currently serving in the IT department of FSMB; assisted the audit team in process review and enhancement.

Christine Wells, currently serving in the IT department of FSMB, responsible for project management, software solutions, and implementation.

Ms. Loucka stated that the recommendations of the FSMB fall into three major categories: Communication, staffing, and Board member involvement.

Communications

Mr. Blankenship briefly reviewed the FSMB audit teams recommendations for communications, which are geared towards improving internal communications among staff, communications between staff and Board members, and communications with licensees and complainants. Mr. Blankenship commended the Board on its team approach on sexual misconduct cases. In other cases, the Board had a silo structure in which the most common cross-department communication occurred at the top. The silo structure was also evident in the hand-off of cases from one department to another. For example, once an investigation is complete and handed off, the investigator was rarely contacted and often did not know how the case was resolved.

Mr. Blankenship advocated for a team-based approach to create greater opportunities for communication, greater staff ownership of cases, and an increased sense of ownership among the staff and Board. Mr. Blankenship also recommended good case-management software tailored to the Board's needs. Lastly, Mr. Blankenship communication with licensees and complainants from the beginning of the investigation to the final resolution. Mr. Blankenship commented that it can be very frustrating for complainants or victims if they are not kept routinely involved and not provided a more fulsome explanation upon resolution.

Mr. Blankenship commended the Board for asking for the assessment and for its cooperation. Mr. Blankenship stated that the board is clearly committed to honest self-assessment and improvement.

Staffing

Ms. Haley agreed that the State Medical Board of Ohio is a committed body and is fortunate to have a committed staff and a knowledgeable and respected Executive Director.

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Ms. Haley opined that the Board's investigators should be more involved beyond the beginnings of cases, stating that it is important that those who gathers facts be involved with the case. This would ensure appropriate feedback so the investigator can make improvements. Ms. Haley recommended integration of investigations throughout the whole case.

Ms. Haley also recommended creating the position of Medical Director. Ms. Haley related that her experience in Oregon with a Board Medical Director was very positive; the Medical Director provided in-house medical expertise, communicated to the medical community that a fellow licensee was available, and had the background and expertise to formulate opinions on cases and policy initiatives. Having a Medical Director also helps attract and keep expert reviewers.

Ms. Haley continued that triaging is an essential, critical function. Ms. Haley urged the Board to develop guidance and standardization of the triage process. Ms. Haley added that triage should report to the Chief Investigative Officer. Sufficient resources should be dedicated to the medical aspect of triage, as too much emphasis on the legal aspect can be detrimental.

Ms. Haley stated that one surprising finding was the number of cases that go to hearing, which can be time-consuming. Settling more cases would benefit the public and the licensees. Ms. Haley recommended consideration of a contract model for the Hearing Officer position, which would allow the Executive Director to set expectations and guidelines.

Lastly, when a licensee is on probation, Ms. Haley stated that it is essential that the Compliance Officer monitor the licensee by, for example, making office visits, interviewing staff, or gathering charts for review by the Medical Director.

Board Member Involvement

Dr. King stated that she observed a Board meeting and the Board's dedication to its mission was evident.

Dr. King stated that the goal of the team's recommendations is to optimize the expertise of each Board member and deepen their perspective of complaints, licensee misconduct, and Board functions. Dr. King stated that the public voice on the Board is very important, as is diversity on state boards.

Dr. King opined that Board member involvement early in the investigative process is important. While the involvement of the Board's Secretary and Supervising Member has worked well, best practice is to have more members involved. Dr. King discussed several possible models to accomplish this, such as adding a third member to aid the Secretary and Supervising Member or having a disciplinary committee of members review cases. Dr. King strongly recommended that a public, non-physician Board member be involved in these processes. Dr. King further recommended that Board members be rotated through those roles and that term limits be instituted so that more members would have that opportunity. Another opportunity to increase involvement is to rotate members through a committee to review licensure issues and become familiar with that process. Dr. King noted that in the past, the Board has had a Quality Assurance Committee to review closed complaints, as well as a Quality Intervention Panel program. Dr. King recommended reviving those programs.

Dr. King stated that the public voice is very important and advocated for more public members of the Board, as well as a more active role for those members. This would address the public perception held by some, particularly victims, that the Board exists to protect physicians. Dr. King opined that it would be especially important to have public members involved in decisions on whether to close sexual misconduct cases. Dr. King reiterated that having a public member contributing to decisions is critical for public trust in the Board's decisions.

Lastly, Dr. King emphasized the importance of diversity on the Board in terms of gender, specialty, geographic distribution, race, culture, and both physician and non-physician members. Dr. King stated that the Board has many of these aspects of diversity and recommended continuing to strive for more perspectives. Noting that

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the Governor appoints members to the Board, Dr. King stated that diversity can be promoted by things such as term limits, which do not currently exist for the Ohio Board.

Questions

Ms. Loucka invited the Board members to ask questions related to the FSMB report and presentation.

Dr. Schottenstein stated that settling more cases is a worthy goal and asked what prevents that today. One thing the FSMB team learned is that everyone wants to be successful and desires a case they are certain to win. Dr. King recommended training for attorneys on negotiating cases for a faster resolution.

Mr. Giacalone asked how creating the position of Medical Director, which would likely command a high salary, could be reconciled with tough budgetary times. Dr. King stated that the team's recommendations are inter-related, so the assumption is that an investigative committee may make an educational recommendation for a licensee and the Medical Director would send that letter. A Medical Director can also save money on expert reviews.

Dr. Feibel asked questions regarding moving cases from receipt of the complaint to issuance of a citation in a timely fashion. Dr. King commented that it is very difficult to establish one timeline because cases can be very different in their complexity. The Board and the audit team discussed the importance of having emergency suspension of license available and negotiating settlements to remove physicians from practice while the complaint is being investigated.

Mr. Blankenship commented that how long a case takes is less important than how often there is a process of review so that a case does not stagnate. Instead of an arbitrary timeframe for all cases, Mr. Blankenship recommended a structured process of case review after a period of time and periodically thereafter. Mr. Blankenship stated that his direction to his attorneys is to never avoid taking a case due to fear of losing, as long as there is a belief that the Board has met its ethical obligations and the case has an evidentiary basis.

Ms. Montgomery thanked the team for its thorough report and commented that Ms. Loucka is already working on many of the recommendations. Ms. Montgomery agreed with Mr. Blankenship's comments on taking cases forward if the evidence is appropriate even if the Board may lose in court. Ms. Montgomery briefly discussed the challenges of moving from the Board's current structure to one of investigative committees reviewing cases. Ms. Montgomery felt that the Board can build more public accountability depending on how it restructures itself. Ms. Montgomery also agreed that training in negotiation in order to reduce the number of hearings is essential in addressing the Board's backlog.

Dr. Bechtel expressed concern about implicit bias, particularly in sexual misconduct cases. Dr. Bechtel agreed that having a non-physician Board member involved in the decision to close sexual misconduct cases. Dr. Bechtel asked for comments on avoiding implicit bias such as physicians siding with physicians or, conversely, victim advocates favoring the victim due to bias. Mr. Blankenship replied that it depends a great deal on how the program is structured and the expectations of the victim advocate. Mr. Blankenship stated that in North Carolina, the position is called Victim Witness Coordinators and their job, rather than advocate for the victim, is to help the victim through the process, explain the process, and getting the victim help if they need it. Dr. Bechtel stated that this role will be critical going forward.

Mr. Blankenship commented that in cases in which the only witnesses to sexual misconduct is the victim and the perpetrator, it is especially important to have the investigator involved. Mr. Blankenship stated that it is very difficult to determine credibility of the witness if all you have is written statements.

The Board briefly discussed different models for involving Board members in investigations. Dr. Feibel stated that the FSMB report will be very helpful when the Board discusses restructuring with the legislature, particularly the possibility of allowing Board members who have helped in an investigation to help decide the

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final disposition of cases along with the rest of the Board. Dr. Schottenstein opined that the Board's system essentially works and does not necessarily need to be completely overhauled.

Ms. Loucka asked if there is data showing improved outcomes for state boards that increase participation of non-physician public members. Ms. Haley replied that there is not exact data, but she can provide a publication on the subject of the value of public members.

Ms. Loucka thanked the FSMB team for their presentation and their recommendations.

ADJOURN

Motion to adjourn:

Motion	Dr. Soin
2 nd	Dr. Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	Y
Dr. Bechtel	Y
Dr. Schottenstein	Y

The motion carried.

The meeting adjourned at 3:29 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on August 12, 2020, as approved on September 9, 2020.



Michael Schottenstein, M.D., President



Kim G. Rothermel, M.D., Secretary





SEXUAL MISCONDUCT COMMITTEE MEETING
August 12, 2020 – via video conference

Committee Members Present: Michael Schottenstein, MD, Chair Robert P. Giacalone, JD, PhD Betty Montgomery	Staff Present: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Jill Reardon, Deputy Director for Strategic Services Nathan Smith, Senior Legal Counsel Tessie Pollock, Chief Communications Officer Angela Canepa, Deputy Director for Enforcement and Investigations Chelsea Wonski, Legislative Director Benton Taylor, Board Parliamentarian
Other Board Members Present: Mark A. Bechtel, MD Kim Rothermel, MD Bruce R. Saferin, D.P.M. Jonathan Feibel, M.D.	

Dr. Schottenstein called the meeting to order at 8:05 a.m.

MINUTES REVIEW

Ms. Montgomery moved to approve the draft minutes of the Committee’s July 8, 2020 meeting. Mr. Giacalone seconded the motion. The motion carried.

STAKEHOLDER FEEDBACK ON LEGISLATIVE ITEMS

Ms. Reardon stated that the draft legislation discussed at the last Committee meeting was distributed to 18 stakeholder entities, including other licensing boards and others who may be impacted by the proposed statutory changes. Feedback was received from the following stakeholders: The Ohio Prosecuting Attorneys Association, the Ohio Attorney General’s Office, the Office of the Butler County Prosecuting Attorney, the Ohio Psychiatric Physicians Association, the Ohio Osteopathic Association, the Academy of Medicine of Cleveland and Northern Ohio, the Columbus Medical Association Foundation, the Columbus Medical Association Foundation, the Ohio Chapter of the American Academy of Pediatrics, the Ohio State Medical Association, the Ohio Academy of Family Physicians, the Ohio Foot and Ankle Medical Association, and the Ohio Chapter of the American College of Emergency Physicians.

Ms. Reardon stated that responses continue to come in and that the responses received thus far have been helpful and well thought-out. Several comments expressed concern about the potential effects on hospitals’ peer review processes, in addition to other concerns. The stakeholders understand that these are preliminary steps and that the Board will continue to meet with and work with them over the next few weeks.

LEGISLATIVE DISCUSSION, 4731.22(F)(5), OHIO REVISED CODE

Ms. Anderson stated that the Governor’s Working Group has made three recommendations for amendments to 4731.22(F)(5), Ohio Revised Code, the Board’s confidentiality statute:

- **Good-cause exemption:** Create new language that would permit the Board or a designated Board member to authorize release of investigative information, subject to appropriate redaction, for good cause.

- **Public safety threat exception:** Create new language to allow the President of the Board or a designated Board member to authorize the release of an investigation, subject to appropriate redaction, when, in his or her professional judgment, disclosure of such information would avert or minimize a threat to public health and safety.
- **Confidentiality time limit:** Amend the statute to place a time limit on confidentiality, or at least the confidentiality reserved to the Board's investigation materials. Confidentiality would be continued for the protection of patient and other confidential information regardless of its inclusion in an investigation. This limit on confidentiality may include a provision to make the Report of Investigation available once formal action is taken against the licensee.

Regarding the suggestion for a good-cause exemption, Ms. Anderson stated that the Board of Pharmacy already has such an exemption and that language has been provided to the Committee for review. The Board of Pharmacy's statute is very straight-forward, stating that the Board may, for good cause shown, disclose or authorize disclosure of information gathered pursuant to an investigation.

Ms. Anderson asked the Committee to consider, if the Medical Board adopted language for a good-cause exemption, who would make the determination that a request meets the criteria for such an exemption. Currently, the Board can release information, with appropriate redactions, to law enforcement agencies, other agencies in Ohio, and agencies in other states, and that determination is made by a Board attorney without the involvement of any Board member. There have also been two instances when the full Board has voted to waive its confidentiality. The Working Group's recommendation is to designate a Board member to approve good-cause exemptions.

The Committee discussed this matter thoroughly. It was noted that in the matter of Dr. Strauss, the Board was able to release confidential information to The Ohio State University (OSU) as a governmental entity, as well as to OSU's Special Counsel appointed by the Attorney General; however, the Board did not release confidential information to the law firm that was hired by the Special Counsel to investigate the matter. Ms. Montgomery opined that the statute should clarify that those who contract with a governmental entity are covered by that entity's confidentiality requirements.

Dr. Schottenstein and Dr. Feibel opined that any request to release confidential information to an entity not covered by 4731.22(F)(5) is important enough to be considered by and voted on by the full Board rather than approved by one designated Board member. It was noted that these situations present themselves infrequently and that the Board can hold an emergency meeting to consider such matters if the need arises. The Committee speculated that the number of such requests may greatly increase if the statute is amended to allow good-cause and public safety threat exemptions. Dr. Schottenstein agreed and pointed out that "good cause" and "public safety" are relative terms.

Dr. Bechtel commented that it is important to maintain confidentiality, noting that victims may be hesitant to come forward if they feel their information could be released to the public. Dr. Schottenstein agreed that the language must be carefully crafted to avoid any chilling effect in reporting inappropriate behavior.

Ms. Anderson agreed that the language should be drafted with care. Ms. Anderson noted that a court once ruled that the Board of Pharmacy could not publicize its Notices of Opportunity for Hearing until they had been through their good-cause exemption process, which is the opposite of the intent of the language. Ms. Anderson was uncertain of the final disposition of that case and stated that it may not have gone anywhere, but that she would look into that matter.

Regarding the phrase “appropriate redaction,” Ms. Anderson stated that statute and case law identifies individuals whose rights are protected, such as patients, complainants, and licensees. Therefore, some information related to those individuals may be redacted from released documents.

Mr. Giacalone, noting that the appropriateness of a good-cause exemption may be obvious in a case such as Dr. Strauss’ which involved many victims, asked if the Board would also consider such an exemption for cases involving one or two victims. Mr. Giacalone stated that these cases are important, but that the process could become unwieldy if these cases are also considered. Dr. Feibel replied that the Board can exercise discretion when it discusses and votes on each of these matters. Dr. Feibel opined that when it becomes clear that the Board will not grant approval in every case, people will not waste time making inappropriate requests. Dr. Schottenstein expressed uncertainty, stating that everyone has the feeling that their case is exceptional.

Responding to a question from Ms. Montgomery, Ms. Anderson stated that there is currently no enforcement mechanism that can be used on entities that violate disclosure requirements. Ms. Montgomery suggested that language be included in the statute to specify ramifications for those who breach confidentiality. Ms. Anderson agreed.

Responding to a question from Ms. Montgomery, Ms. Canepa stated that wiretap statutes deal with similar issues of confidentiality and it may be helpful to review those statutes for insight in drafting new language for 4731.22(F)(5).

Ms. Anderson asked the Committee to consider instances in which someone makes a request that involves an active investigation. Previous requests involved cases in which the licensee was inactive or deceased, the case had already been closed, or the Board had already taken formal action. However, if an investigation is active then the request could involve information that could come to the Board later and potentially taint the ability of members to vote on discipline. Ms. Anderson suggested that the Board consider a process to designate a Board member to decide on exemptions for active investigations.

Lastly, Ms. Anderson addressed the recommendation of a time limit for confidentiality. Ms. Anderson noted that in law enforcement, investigative records typically become public once the investigation is complete. This is a model the Board may want to consider, but one problematic aspect is that a licensee may have many complaints with some open and some closed.

If the Board adopts a timeframe for confidentiality, it must determine a starting point for that timeframe. The Board could consider the following starting points:

- Completion of an enforcement formal action.
- Closure of individual complaints.
- The lapse of the practitioner’s license.

Ms. Anderson noted that the Governor's Working Group had contemplated the completion of a formal action as the starting point. However, Ms. Anderson noted that the majority of complaints do not reach Enforcement or result in a formal action, so it is uncertain how such a standard would apply to those cases.

Ms. Anderson recommended a change in the statutory language to allow a committee or designee of the Board to review confidential information for these purposes following the closure of a complaint. This could advance the goal of having more Board oversight of what happens in actual cases in the form of a post-closure audit process. Dr. Schottenstein noted that the Board had a Quality Assurance Committee years ago that essentially audited charts of cases that had been before the Board. Dr. Schottenstein asked if new statutory language would be necessary to establish a similar committee. Ms. Anderson opined that the Board would be in a much better position of new statutory language was adopted.

Ms. Montgomery commented that the Board members have the right to review investigative material at any time, but the problem is that it could taint the Board member and prevent them from voting on the matter in the future. Ms. Anderson agreed. Ms. Montgomery favored establishing a post-closure audit process. Ms. Montgomery also expressed concern that a licensee could be harmed many years later by the disclosure of a complaint that had been proven to have been untrue. Ms. Anderson agreed that Ms. Montgomery's concern is valid. Ms. Anderson further stated that the Board wants licensees to report to the Board, and one way to convincing them to do so is to inform them that their identity will be kept confidential. A time limit on confidentiality could undermine those efforts.

Mr. Giacalone suggested that any post-closure audit committee should have a rotating membership rather than a permanent membership, so that there will be a diversity of opinions. Ms. Anderson stated that the committee could have a rotating membership, though it could create challenges in tracking Board members' ability to vote on future matters involving the respondents. Dr. Schottenstein agreed with Mr. Giacalone's suggestion and he further suggested that the committee always include one public member.

FSMB REPORT RECOMMENDATIONS

Ms. Loucka briefly reviewed the chart in the Committee's materials outlining the recommendations of the Federation of State Medical Boards (FSMB). The chart classifies the recommendations thusly:

- Obvious operational changes that the staff can move forward with.
- Recommendations that the staff advises against adopting, at least in the form stated in the FSMB report.
- Recommendations that require more Board discussion at the September 9, 2020 Board meeting due to possible budget constraints or legislative challenges.
- Recommendations that should be discussed in detail at the Board's October Retreat.

Ms. Loucka encouraged all Board members to reach out to her with any questions or comments about the FSMB recommendations.

ADJOURN

Ms. Montgomery moved to adjourn. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

The meeting adjourned at 9:00 a.m.

Michael Schottenstein, MD
Chair

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State Medical Board of Ohio

POLICY COMMITTEE MEETING

August 12, 2020

via live-streamed video conference

<p>Members: Amol Soin, M.D., Chair Robert Giacalone, R.Ph., J.D. Mark Bechtel, M.D. Betty Montgomery Sherry Johnson, D.O.</p> <p>Other Board Members present: Michael Schottenstein, M.D. Kim Rothermel, M.D. Bruce Saferin, D.P.M. Jonathan Feibel, M.D. Harish Kakarala, M.D.</p>	<p>Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Joe Turek, Deputy Director for Licensure Angela Canepa, Deputy Director for Enforcement and Investigations Jill Reardon, Deputy Director of Strategic Services Chelsea Wonski, Legislative Director Tessie Pollock, Chief Communications Officer</p>
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Dr. Soin called the meeting to order at 9:12 a.m.

Minutes Review

Dr. Bechtel moved to approve the draft minutes of the July 8, 2020 meeting of the Policy Committee. Mr. Giacalone seconded the motion. The motion carried.

Rule Review Update

Ms. Anderson stated that progress continues to be made on the five-year rule review process. A public hearing on proposed rules was held in July, and those rules will be discussed by the full Board at this afternoon's meeting.

Legislative Update

Ms. Loucka introduced Chelsea Wonski, who recently joined the Board staff as Legislative Director. Ms. Wonski briefly related her educational and professional background. Ms. Wonski graduated from Ohio University, was employed by the Ohio Industrial Commission, and served as a policy analyst for the Ohio Department of Insurance before joining the Medical Board staff.

Ms. Wonski stated that the Board created the *ad hoc* Telehealth Committee to address the Board's approach to House Bill 679. House Bill 679 passed the House and was introduced to the Senate, but it has not yet been assigned to a Senate committee. With guidance from the *ad hoc* Telehealth Committee, Board staff continues to draft and refine proposed amendments to House Bill 679 concerning initial patient visits, consistency of the standards of care, the Board's rule-making authority, and synchronous interactive technology.

Ms. Wonski continued that the policy team worked with the sponsors of Senate Bill 246, the occupational licensing bill. Proposed amendment language has been submitted to the Legislative Services Commission (LSC) to address the Board's concerns that the bill as written would diminish the Board's ability to adequately review out-of-state licensure applications. It is not certain when the bill will continue through the legislative process because no hearings are scheduled at this time. The bill is expected to be voted out of committee at the next hearing.

In response to a question from Ms. Montgomery, Ms. Wonski stated that the sponsors of Senate Bill 246 were very receptive to the Board's concerns. Ms. Wonski commented that the sponsors were actually the ones who sent the Board's proposed amendments to LSC for drafting. The goal of the draft amendments is to ensure the Board has the ability to review out-of-state licensure applications with the same standard that is used for in-state applications. Ms. Wonski stated that the Board's timeframe for reviewing applications will not be affected and that the bill sponsors had been impressed with the Board's turn-around time for application reviews.

Ms. Montgomery commented that the *ad hoc* Telehealth Committee has made substantial progress. Dr. Soin stated that the Telehealth Committee will need to remain vigilant to make sure access to telemedicine is preserved while protecting the public from potential pitfalls. The members of the Committee have been responsive between Board meetings and donated an evening of their time to meet and provide feedback to the staff. The Telehealth Committee will meet again today after the full Board meeting to review the latest draft amendments. Dr. Soin thanked all the Telehealth Committee members, and also thanked Ms. Loucka for helping lead this initiative.

Dr. Soin thanked Ms. Wonski for the update and asked that future updates be accompanied by a master list outlining all pending legislation that may impact the Board. Ms. Montgomery agreed, stating that such a master list would give the Committee a broader view and allow the members to ask questions about bills that may not appear to be moving at that time. Dr. Soin specified that the master list of legislation should include three key components:

- The bill number of description
- Where the bill is in the legislative process, such as House, Senate, or a committee
- The Board's stance or opinion on the bill and how it would impact the Board

Ms. Wonski stated that she will create such a master list going forward. Dr. Soin agreed that a master list should accompany a shorter list of higher-priority bills for Committee discussion. Dr. Soin stated that bills that impact the Board that are moving rapidly or coming out of a legislative committee should be reviewed by the Committee, but the master list will be helpful in becoming involved with other bills early in the process. Ms. Reardon commented that the Board members will be provided with a link to a bill tracker document once that document is complete.

Dr. Feibel asked about the recently-introduced bill concerning hydroxychloroquine. Ms. Loucka answered that that legislation was introduced yesterday and it may be impacted by what the Board of Pharmacy decides to do with its hydroxychloroquine rule. At this stage, it is difficult to determine if the bill will gain traction and move through the legislative process.

Rules at Common Sense Initiative

Ms. Anderson stated that the proposed CME rule, as discussed by the Committee last month, is still with the Common Sense Initiative (CSI). On July 17, Dr. Johnson and members of the staff met by

telephone with representatives of the Ohio Osteopathic Association (OOA) about their concerns regarding the added allowance of Category 2-A CME's for osteopathic physicians. During the meeting, Dr. Johnson proposed changing references to "Category 1-A" to simply "Category 1" and deleting reference to Category 2-A. The OOA representatives indicated they would be in favor of that change. Ms. Anderson stated that the Committee materials include pages from the American Osteopathic Association (AOA) guide to CME that explains what types of activities constitute the different categories. Ms. Anderson noted that there may be differences from what is included in the American Medical Association (AMA) Category 1 CME for allopathic physicians.

Dr. Johnson commented that the telephone meeting with OOA was very productive.

Dr. Bechtel moved to approve amendments to Rule 4731-10-02(A)(1)(c), (A)(2)(b) and delete paragraph (A)(3) and provide information to CSI. Ms. Montgomery seconded the motion. The motion carried.

Interstate Medical Licensure Compact

Ms. Reardon stated that the Board received a request from a coalition of hospitals and associations requesting that the Board consider joining the Interstate Medical Licensure Compact. The coalition included Akron Children's Hospital, the Cleveland Clinic Foundation, Kettering Health Network, Mercy Medical Center, OhioHealth, the Ohio Hospital Association, the Ohio State Medical Association, UC Health, and University Hospitals Health Systems. Ms. Reardon noted that the Board received and opined on a similar request in 2015, and those materials have been provided to the Committee as well.

Ms. Reardon continued that the major goals of the compact is to streamline licensing processes and reduce the administrative licensing burden. While these goals are commendable, Mr. Reardon noted that Ohio's licensing process is recognized as both quick and efficient. The requirements of the Compact would be somewhat burdensome because it would create additional processes by bifurcating Ohio's licensing system, it would have to be implemented by Ohio's licensure staff, and it would be a burden on Ohio's eLicense system. Ms. Reardon added that the Compact would inhibit the Ohio Board's ability to regulate its licensees independently and adequately, impose unnecessary fees on applicants, reduce the Board's ability of self-determination, and the additional bureaucracy would increase the time to issue a license.

Dr. Bechtel asked if the Board has contacted other medical boards that currently belong to the Compact for their input. Ms. Loucka replied that other medical boards have not been contacted, but agreed that it would be a good idea to seek out that feedback. Ms. Loucka commented that there seems to be an advantage to joining the Compact for states that have a less robust medical community than Ohio's. Ms. Loucka observed that joining the Compact would mean a lose of the Board's authority over its licensing process. Ohio would become simply one voting member of the Compact, compared to the Ohio Board's current ability to work directly with the legislature to respond directly to the needs of Ohio. Dr. Bechtel agreed with Ms. Loucka.

Mr. Giacalone stated that there was a reference to South Dakota's medical board entering into litigation with the Federation of State Medical Boards over the Compact. Ms. Anderson did not have further information on that litigation, but that matter can be researched. Mr. Giacalone commented that there does not seem to be any benefit for Ohio joining the Compact, but felt it would be helpful to understand South Dakota's issue.

Dr. Bechtel expressed concern with joining the Compact at the same time that the Board is trying to expand telehealth. Dr. Bechtel stated there would be a potential for abuse of the system and could impact the quality of medical care in Ohio, with potential for fraud and other concerns.

In response to a question from Mr. Giacalone, Ms. Reardon stated that there is legislation that would require the Ohio Board of Nursing to enter into a similar interstate compact for nurse licensure. Ms. Reardon and other staff meet with a Nursing Board representative earlier this week and noted that the Board of Nursing are still considering what their position on that legislation should be.

Ms. Montgomery thanked Ms. Reardon and Ms. Wonski for writing a very good memo and doing a thorough job outlining the pros and cons of this subject.

Board of Pharmacy Rule

Ms. Loucka stated that on July 29, it was learned that the Board of Pharmacy would have a rule, effective July 30, that would have prevented the use of hydroxychloroquine for treatment of COVID-19. However, that rule was pulled on July 30 and did not become effective. Ms. Loucka clarified that activity on that rule was suspended but it has not yet been officially rescinded. The Board of Pharmacy had a meeting and, with possible encouragement from the Governor, determined that it would be appropriate to reach out to the Medical Board for input or insight as to possible next steps.

On August 10, Dr. Schottenstein, Dr. Bechtel, Mr. Giacalone, and Ms. Loucka met with some members of the Board of Pharmacy, as well as their Executive Director and some staff members. Specifically, the Board of Pharmacy asked for the Medical Board's input on two options, as outlined in the memo to the Committee. The first option is to permanently withdraw the proposed rule, basically leaving it to the Medical Board to do something with respect to hydroxychloroquine. The second option is to create an emergency rule which would limit the supply that could be prescribed to patients to a one-day supply. Ms. Loucka commented that this rule began to be promulgated in the very early days of the COVID-19 pandemic, when there was a shortage of that medication. The purpose of the rule was to prevent future shortages.

Ms. Loucka asked the Committee to consider its advice regarding these two options, keeping in mind what the Medical Board's role should be with regard to the use of hydroxychloroquine.

Dr. Schottenstein commented that he is very respectful of however the Board of Pharmacy wants to proceed, and he felt that the Medical Board's role at this time is advisory. Dr. Schottenstein noted that while there was talk of a shortage of hydroxychloroquine in the Spring, there no longer seems to be a concern with a shortage now or in the future. Dr. Schottenstein felt that in the absence of a concern for shortages, it is premature to implement restrictions on supplies for the public. Dr. Schottenstein stated that if a shortage presents itself, the matter could be reviewed again. Dr. Schottenstein therefore recommended the first option.

Dr. Bechtel agreed with Dr. Schottenstein, stating that it would be difficult in the absence of a shortage to justify restrictions on the length of time a physician could prescribe a medication or banning its use. Dr. Bechtel opined that if there is no shortage, such a rule interferes with the physician/patient relationship.

Dr. Feibel stated that this brings up an interesting policy issue that may warrant discussion in the future. Dr. Feibel referred to the question of whether the Board of Pharmacy or the Medical Board can regulation what medications can be prescribed by a physician. Dr. Feibel commented that some

specialists in surgery have had a difficult time with some pharmacists who will not fill their prescriptions because they feel it violates the Medical Board's limit of 30 morphine-equivalent dosage (MED). Dr. Soin stated that he would welcome such a discussion at some point. Dr. Soin noted that patients who have undergone major surgery, including specifically orthopedic surgery, are an exemption in the Board's 30 MED rule. Dr. Schottenstein opined that the Board of Pharmacy is not acting in a way contrary to the Medical Board, but rather individual pharmacists are reading the situation through their particular prisms. Dr. Schottenstein suggested that guidance to pharmacists from the Board of Pharmacy may be helpful. Mr. Giacalone commented that the situation with opioids is somewhat unique because it involves a third party, namely the Drug Enforcement Administration, which can complicate the matter.

Regarding hydroxychloroquine, Mr. Giacalone opined that the Board of Pharmacy had been well-intentioned in initiating creation of the rule due to the shortage at that time. However, Mr. Giacalone felt it was not proper for the Board of Pharmacy to try to regulate off-label use of a medication, stating that that is a prerogative of the medical profession. Mr. Giacalone agreed with Dr. Schottenstein's comments regarding option #1.

Based on its discussion, the Committee developed a consensus to advise the Board of Pharmacy to adopt the first option, to permanently withdraw the proposed rule.

Adjourn

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

The meeting adjourned at 9:52 a.m.

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State Medical Board of Ohio

AD HOC TELEHEALTH COMMITTEE MEETING

August 12, 2020

via live-streamed video conference

Members: Jonathan Feibel, M.D., Chair Michael Schottenstein, M.D. Mark Bechtel, M.D. Amol Soin, M.D. Other Board member present: Robert P. Giacalone, J.D., Ph.D.	Staff: Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Director of External Affairs Chelsea Wonski, Legislative Director Tessie Pollock, Chief Communications Officer
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The meeting was called to order at 3:35 p.m.

Minutes Review

Dr. Bechtel moved to approve the draft minutes of the Committee's July 23, 2020 meeting. Dr. Soin seconded the motion. The motion carried.

Mr. Smith noted that there is a typographical error at the top of page 7 of the July 23 minutes. Specifically, the word "asynchronous" should be "synchronous."

Dr. Bechtel moved to correct the draft minutes of the Committee's July 23, 2020 meeting, as suggested by Mr. Smith. Dr. Schottenstein seconded the motion. The motion carried.

Legislative Update

Ms. Reardon stated that House Bill 679, the telehealth bill, passed the House on June 10 and was sent to the Senate on June 12. The bill has not yet been assigned to a Senate committee, but it may be assigned to the Health and Human Services Committee or the Insurance Committee. The Board staff is in contact with the aides of both committees and will be aware when the bill is assigned. The Senate has adjourned until September and the Board has been informed that there will be no committee hearings during the adjournment. However, the staff will continue to follow developments closely.

Proposed Amendments to House Bill 670

Mr. Smith stated that based on the Committee's discussion in July, the proposed amendments have been divided into four areas:

- Initial visits
- Consistency in standards of care

- The Board’s rule-making authority
- Synchronous technology

Initial Visits

Mr. Smith continued that the proposed amendments stipulate that in order to use telehealth for an initial visit, there has to be a determination by the health care professional that an in-person visit cannot occur with endangering the patient. This provision follows the Committee’s advice that an initial visit to a provider via telehealth should be the exception and not the rule. Further, the basis of that determination must be documented in the patient record. If a telehealth visit does occur, it must be via synchronous audio-video interaction. Lastly, an exception is provided so that established patients are not considered new if they are contacting a physician who is providing cross-coverage for the patient’s regular physician.

Dr. Feibel stated that, for example, an individual may be a patient of a hand surgeon in a large orthopedic practice, and that patient may develop a foot and ankle problem and be referred to a foot and ankle specialist in the same practice. Dr. Feibel opined that that patient’s first visit with the new specialist should be considered an initial visit and should be in-person rather than by telehealth, despite the fact that the patient already sees a physician in the same practice. Dr. Feibel stated that this is a different from a patient seeing a cross-covering physician because that does not involve a new medical problem. Dr. Feibel also expressed concern that large health systems such as the Cleveland Clinic or The Ohio State University Wexner Medical Center may be considered a practice and obviate the need for an established patient to see a new physician in-person for a new problem.

Mr. Smith stated that he can draft language that would establish that a visit to a different physician for a new medical problem would be considered an initial visit for purposes of this statute, regardless of whether the new physician is in the same practice as the established physician. Dr. Feibel agreed.

Dr. Bechtel recommended changing the terminology “endangering.” Dr. Schottenstein agreed and opined that the phrase “endangering the patient” is very restrictive and that there would be very few situations where it would be literally dangerous for the patient to go to the doctor’s office. Drs. Bechtel and Schottenstein suggested phrases such as “the telehealth visit would be necessary to avoid significant compromise in patient care” or “the health care professional determines that the patient’s health condition requires telehealth services and a telehealth visit does not violate the standard of care.”

Dr. Feibel agreed with changing the language, but cautioned that the minimal standards of care criteria would be very difficult to enforce because a physician can always say that, in their opinion, the patient needed a telehealth visit. Dr. Feibel stated that the Committee is attempting to allow appropriate telehealth visits, such as when a patient is infirm and cannot leave their house, or if the patient has a psychiatric problem and does not feel comfortable going to the doctor’s office. At the same time, the Committee wants to prevent practitioners from using telehealth indiscriminately, which Dr. Feibel feels will ultimately happen without adequate guardrails. Dr. Feibel stated that if the language is too loose, it will be very difficult to enforce.

Dr. Soin asked if there is evidence that there would be rampant abuse of telehealth by physicians. Dr. Feibel replied that it is difficult to have evidence for something that has not yet been implemented, but many health systems want to use telehealth to expand their coverage areas and treat more patients, which is acceptable if the standard of care is maintained. However, Dr. Feibel was uncertain how the

practice would be regulated without strict parameters that establish that telehealth for an initial visit is the exception and not the rule. Dr. Soin agreed with Dr. Feibel.

The Committee continued to discuss this matter thoroughly. Dr. Schottenstein used a hypothetical example of a psychiatric patient with agoraphobia. It is not dangerous for the patient to go to the doctor's office, but the patient simply won't go due to the condition. Dr. Schottenstein felt that language could be crafted to cover patients who would be endangered, but also provide legitimate exceptions that are in the best interest of the patient's health. Mr. Giacalone suggested that the term "incapacitated" may be appropriate.

Mr. Giacalone expressed concern about the prescribing a controlled substance via telehealth, noting Ohio's previous problems with internet pharmacies and physicians prescribing over the internet. Dr. Feibel agreed, but he also wanted to make certain people are getting the care they need. Dr. Feibel stated that a physician could make their whole practice telehealth and treat many patients that way, but there would not be in the best interest of the patient.

Dr. Soin noted that the Drug Enforcement Agency (DEA) had rigid guidance for the requirement of face-to-face physical examinations for prescribing and dispensing opioids and pain medications, though that guidance is currently suspended due to the COVID-19 pandemic. Dr. Soin added that the current rules in Ohio also provides rigid rules and definitions that would provide guardrails to prevent abuse of telehealth. Dr. Soin agreed with Dr. Feibel's concerns about the initial visit and that some practitioners may try to take advantage. Dr. Soin noted that Ohio's opioid crisis was generated by only nine practices in one city.

Dr. Bechtel reiterated that it is important to not deny access to an initial physician visit for patients who are immobile or have major health issues. Dr. Bechtel commented that he has had patients who have had rashes that required them to spend hundreds of dollars on an ambulance to transport them to the office, and for a condition that could be diagnosed with a telehealth visit with very good quality of care. Dr. Bechtel stated that other patients may be in similar situations, such as patients with recent orthopedic injuries.

Mr. Smith thanked the Committee for its input and stated that he will work on tempering the language to address the Committee's concerns.

Consistency in Standards of Care

Mr. Smith stated that the Committee had wanted to preserve the standard of care consistency between in-person visits and telehealth visits, but also wanted an exception for situations such as the current COVID-19 emergency. Mr. Smith has added an exception for emergencies as defined by 5502.21(E), Ohio Revised Code. Mr. Smith has also removed the provision regarding civil liability.

Rule-Making Authority

Mr. Smith stated that he has removed the word "fully" as it related to informed consent, as that word was not necessary and may cause confusion. Mr. Smith stated that the requirement, borrowed from the teledentistry amendment, to have written protocols on-site has been removed so that the Board can have rule-making authority on that issue.

Synchronous Technology

Mr. Smith stated that under the current language for the amendments, conducting telehealth visits via synchronous interactive audio-video will be the default. Other forms of interaction, such as by telephone, would be permitted in the following exceptions:

- The visit is strictly for verbal consult or verbal counseling, as allowed by CPT billing codes, and the standard of care does not require a physical examination.
- The individual has tried in good faith to contact the provide via synchronous technology and something has gone wrong with the equipment.
- The patient does not have access to the necessary equipment.

Dr. Schottenstein commented that it is important to maintain physicians' ability to communicate with their patients by telephone when appropriate, as is done currently, and not to unintentionally restrict that ability. The Committee discussed the matter and agreed that the current proposed language does not restrict current practices of telephone communication. Dr. Bechtel agreed that elderly patients should not have their access to care restricted simply because they may not have a smartphone with a camera.

Dr. Schottenstein asked if another exception should be carved out for patients who have the appropriate equipment but do not know how to use it. Dr. Feibel opined that such a situation would be covered under the third exception, reasoning that if someone cannot use the equipment that they do not have access to it. Dr. Schottenstein agreed.

Dr. Feibel stated that the changes discussed today will drafted and brought back at the next Committee meeting for further discussion.

Frequently Asked Questions

Ms. Anderson stated that the Board has begun to receive questions from attorneys representing hospitals and hospital physicians about applications of the Board's current rules. Ms. Anderson stated that she will expand the frequently asked questions (FAQ) document on that subject, and asked if the Telehealth Committee would be willing to review the draft additions. The Committee agreed. Ms. Anderson stated that the expanded FAQ document will be brought to the Committee in September.

Adjourn

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

The meeting adjourned at 4:06 p.m.

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State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING
August 12, 2020, via Video Teleconference**

Members: Michael Schottenstein, MD, Chair Amol Soin, MD Robert Giacalone, JD RpH	Staff: Stephanie Loucka, Executive Director Alexandra Murray, Compliance Manager Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Deputy Director of Strategic Services Chelsea Wonski, Legislative Director Tessie Pollock, Chief Communications Officer Benton Taylor, Board Parliamentarian
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Dr. Schottenstein called the meeting to order at 4:10 p.m.

OHIO PHYSICIANS HEALTH PROGRAM

Ms. Loucka stated that the One-Bite reporting exemption program has been operating as constructed in statute for a little over a year. Ms. Loucka, along with Dr. Schottenstein, Dr. Bechtel, and Ms. Reardon, recently met with Kelley Long, Executive Director of the Ohio Physicians Health Program (OPHP), which oversees the One-Bite program. Ms. Long related some concerns and modifications OPHP would recommend for the program to get best outcomes:

- Exempting OPHP's medical director and other physicians from certain reporting violations
- Improving the Board's information-sharing process
- Allowing licensure applicants to participate in the One-Bite program

Reporting Exemption

Regarding the first request, Ms. Loucka related OHPH's concern that receiving information not necessarily related to the impairment issue at hand is creating a duty to report.

Dr. Schottenstein observed that 4731.251(D)(4), Ohio Revised Code, states that the monitoring organization, in this case OPHP, shall not disclose to the Board the name of a practitioner or any records relating to a practitioner unless the practitioner presents an imminent danger to the public or to the practitioner as a result of the impairment, among other exceptions. Dr. Schottenstein found OPHP's request to be curious because it seems that the current language

of the statute essentially substantially covers their request to not feel obligated to report other incidental findings. However, Ms. Long has indicated that the Attorney General's office has informed OPHP that such reports are required.

Dr. Schottenstein recalled when he was first appointed to the Board in 2015, there was a substantial lack of trust between the Board and OPHP. Dr. Schottenstein opined that the reason for this lack of trust was the Board's perception, rightly or wrongly, that OPHP was more of an advocate for physicians than an advocate for the public and that their main priority was to protect physicians. Dr. Schottenstein stated that it took a long time to rebuild trust. Dr. Schottenstein expressed concern that OPHP may again be in a position of being accused of withholding information about a licensee's transgressions when the Board feels they should have reported it, leading to renewed distrust between the two. Dr. Schottenstein stated that whatever happens, there must be a crystal-clear understanding of the Board's expectations so that the relationship between the Board and OPHP does not move backward.

Dr. Soin agreed with Dr. Schottenstein's comments. Dr. Soin added his impression that OPHP had also had trust issues with the Board and that trust is a two-way street. Dr. Soin shared his opinion as an individual, not necessarily representative of the Board's opinion, that OPHP does serve as a physician advocacy group. Dr. Soin stated that OPHP once provided a talk at a medical staff meeting of his hospital network, and they presented themselves in that way.

Mr. Giacalone asked for clarification of OPHP's request, observing that it seems as if they are asking to be exempted from reporting anything to the Board, such as information that a licensee is a sexual predator in addition to having a drug or alcohol problem. Dr. Schottenstein agreed that that seems to be the nature of the request. Ms. Loucka answered that OPHP has acknowledged that certain categories would still need to be reportable, especially in light of what has been learned in the Dr. Strauss case.

Mr. Giacalone stated that he can see OPHP's point, but did not feel they should be given *carte blanche* either. Mr. Giacalone suggested that a list of examples of when OPHP should or should not report would be helpful. Such a list would not be all-inclusive, but it would serve as a guidepost for both OPHP and the Board. Ms. Loucka agreed with Mr. Giacalone's suggestion.

After further discussion, Ms. Loucka stated that she will contact OPHP for clarification of their request, in light of current statutory language that already allows them to refrain from reporting unless the practitioner presents an imminent danger to the public or to themselves.

Information-Sharing Processes

Regarding the second request, Ms. Loucka stated that OPHP provided examples of having a difficult time locating licensees based on the limited information the Board provides, which could cause a significant delay in getting the licensee into treatment. Ms. Murray agreed that there have been cases which could have had better outcomes if more information could have been provided to OPHP. While there are concerns about staying in compliance with 4731.22(F)(5), Ohio Revised Code, Ms. Murray opined that currently not enough information is being shared between the Board and OPHP to utilize them effectively.

Ms. Loucka highlighted a hypothetical example that Ms. Long shared of a physician with an OVI violation. OPHP would only receive the name of the licensee but no details of the violation.

OPHP may differentiate between a severe case (arrested at 2:00 p.m. with a blood alcohol level of .20, for example) and a less severe case (arrested at 8:00 p.m. with a blood alcohol level of .09, for example). OPHP must expend time and resources to contact the physician, which may turn out to be a less severe case that does not involve full impairment issues and does not require intervention by OPHP.

The Committee discussed the request. Dr. Soin opined that if sharing more information would improve outcomes and further protect the public, it is worth exploring. Dr. Schottenstein agreed, stating that OPHP is the Board's partner in this endeavor and it should share with them what it can. Mr. Giacalone also agreed and commented that it may also help the Board's caseload if licensees can get into treatment programs sooner.

Applicant Participation in One-Bite Program

Ms. Loucka stated that this request would require a statutory change to put into effect. Under current statutes, applicants are not eligible for the One-Bite program. The request contemplates initial applicants for training certificates or full licenses who are already involved in a similar program in another state.

The Committee discussed the request thoroughly. Dr. Schottenstein noted that under current law, one would have to be granted a license in order to be eligible for the One-Bite program. Ms. Loucka noted that other states seem to treat this situation with more flexibility than Ohio. At times, potential applicants who are in another state's program are advised not to seek a training certificate in Ohio due to the complexities of how Ohio's program is structured. However, there is also a concern that the Board does not always know the value of another state's program or if it is adequate. Ms. Loucka stated that if this request is pursued, it would have to include some kind of quality assurance of the other state's program.

Mr. Giacalone asked if something could be created for these situations that is both probationary and confidential. Such a program would allow the Board to maintain the confidentiality of the One-Bite program, but take quick action if there is a problem. If no problem arises, the confidential probation could end after one year or a similar time frame.

Ms. Anderson asked for an opportunity to research what mechanisms other states use to deal with this issue. Dr. Schottenstein agreed. Dr. Schottenstein commented that at today's Board meeting, the Board ratified a consent agreement with a training certificate applicant who had a marijuana use disorder but, being an applicant, was not eligible for the One-Bite program. Dr. Schottenstein opined that it would have been nice if the program had been available to the applicant.

Ms. Loucka stated that Ms. Anderson will research other states and report the findings either at the next Committee meeting or in an email report. Ms. Loucka commented that OPHP serves an important role for the Board and it is good that the relationship continues to evolve.

Licensee Monitoring

Dr. Schottenstein commented that in their meeting, Ms. Long mentioned that OPHP does a lot of licensee monitoring. Dr. Schottenstein wondered if the Board should consider utilizing OPHP in that capacity and if it would be helpful to the Board's staff to have that resource.

Mr. Giacalone stated that he is not opposed to the idea, but opined that there should be a test-run first and the Board should be selective in deciding when to utilize OPHP for that purpose. Mr. Giacalone was uncertain if he would be fully supportive, noting some frustrations in the past. Mr. Giacalone was also concerned about the appearance of having too close a relationship with OPHP.

Dr. Schottenstein stated that he is also uncertain if he would support the concept, but he found the idea intriguing and felt he should share it with the Committee.

Dr. Soin opined that there should at least be an exploration of the scope of services OPHP could provide to see if there may be synergies with the Board's processes. Dr. Soin also agreed with Mr. Giacalone, adding that once that door is opened it is difficult to close it without disturbing the relationship.

Adjourn

Mr. Giacalone moved to adjourn the meeting. Dr. Soin seconded the motion. The motion carried.

The meeting adjourned at 4:38 p.m.

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