State Medical Board of Ohio Meeting Minutes
February 10, 2021

Mark A. Bechtel, M.D., President, called the video conference meeting to order at 10:01 a.m. with the following members present: Betty Montgomery, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Sherry Johnson, D.O.; Harish Kakarala, M.D.; Jonathan Feibel, M.D.; and Yeshwant Reddy, M.D.

Mr. Gonidakis joined the meeting at a later time.

Dr. Bechtel called the meeting to order at 10:01 a.m.

STATE MEDICAL BOARD 125TH ANNIVERSARY

Dr. Bechtel stated that on February 27, the State Medical Board of Ohio will celebrate 125 years of public service. Since its establishment, the Medical Board has worked relentlessly to accomplish its mission of public protection through effective medical regulation. Its many roles in licensing, investigations, rulemaking, discipline, monitoring and education provide a stable foundation for Ohio providers.

When the Board was founded in 1896, it licensed only allopathic physicians and midwives. Today, the Medical Board regulates more than 95,000 physicians and other health care professionals and has issued licenses to more than 240,000 individuals working in Ohio communities.

In addition to its regulatory responsibilities, the Board has recognized the importance of engaging with public health concerns. Through collaborative partnerships and education, the Board has helped to address dangerous practices that contributed to the opioid epidemic, combat human trafficking, provide cultural competency education, cultivate physicians in training, provide important pandemic and vaccine information, and serve as a resource to those in need.

To commemorate this monumental milestone, the Medical Board is creating a special anniversary signature block, a news item for the website and a short video that will be shared on the Board's social media channels. Board staff will also gather virtually to celebrate the occasion and hear from Director Stephanie Loucka.

The Board has a tremendous responsibility to protect the public and uphold the practice of medicine, one it does not take lightly. One hundred and thirty-three men and women have served as members of the State Medical Board over the course of 125 years. Many things have changed, but the Board's purpose remains the same. The Board knows that it could not accomplish this work without the confidence of the public and its licensees to do the right thing.

Dr. Bechtel asked everyone to join the Board in celebrating its 125th anniversary.

MINUTES REVIEW

Motion to approve the minutes of the January 13, 2021 Board meeting, as drafted:

Motion	Dr. Saferin
2nd	Dr. Schottenstein

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

The motion carried.

REPORTS AND RECOMMENDATIONS

Dr. Bechtel 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: Linda Elaine Coleman, M.D.; and Marcus F. Cox, M.D.. A roll call was taken:

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

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

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

Dr. Bechtel 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 had served as Secretary and/or Supervising Member in the matter of Dr. Cox.

During these proceedings, no oral motions were allowed by either party. Respondents and their attorneys not addressing the Board are viewing this video conference meeting remotely and have a number to call in the event of an emergency or procedural concern.

Linda Elaine Coleman, M.D.

Dr. Bechtel directed the Board's attention to the matter of Linda Elaine Coleman, M.D. Objections have been filed and were previously distributed to Board members. Ms. Shamansky was the Hearing Examiner.

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

Dr. Coleman was represented by her attorney, Jennifer Myers.

Dr. Coleman stated that in 1999 her husband was diagnosed with cancer. For the next 15 years, Dr. Coleman and her husband balanced raising a small child, building her practice, and three bone marrow transplants. Most of Dr. Coleman's patients were not aware of what she was going through in her personal life because she was able to leave that at the door and focus on their lives when she came to work.

Dr. Coleman and her husband were very active in their community, so when he died in 2015 life changed. Dr. Coleman's son was in high school and trying to get recruited for college football, and Dr. Coleman suddenly had to focus on him. Many coaches and friends extended a hand to help Dr. Coleman through this difficult time. One of Dr. Coleman's patients was an attorney who offered to help her with the estate process. This patient also expressed an interested in dating Dr. Coleman, which was the farthest thing from her mind in those months following her husband's death. When Dr. Coleman told the patient that she cannot and does not date patients, the patient, of his own accord, changed practices. Dr. Coleman subsequently saw this patient periodically at fundraisers in the community.

Dr. Coleman continued that right after Thanksgiving 2016, her father, whom she described as her mentor, her medical partner, and her friend, died of suicide by gunshot wound to his head. Dr. Coleman and her brother found their father and it was devastating to her family. Dr. Coleman found that she could not leave her problems at the door anymore because every patient, in their effort to be thoughtful, asked numerous questions about her father's death, such as whether he had been depressed. One patient even asked how Dr. Coleman could let that happen, which further put the knife in her heart. Dr. Coleman had felt that she should

have been able to recognize her father's depression and where he was mentally. Dr. Coleman felt she had let her brothers down. Dr. Coleman stated that her father knew that, which is why his suicide note was addressed to her asking her not to blame herself.

Dr. Coleman stated that she was emotionally drained by the time she would get home from work, but she had to take care of her mother, who she had to move into her home because she was totally dependent on others to help her. Dr. Coleman's mother is now in Columbus in independent living where her bothers assist in her care.

Dr. Coleman stated that in late December 2016 after her father's suicide, she had a brief relationship with her ex-attorney. It had been seven months since he had been seen in Dr. Coleman's wellness practice and one-and-a-half years since he had discharged himself from Dr. Coleman's primary care practice. Dr. Coleman stated that she was wrong and she regretfully failed to discharge the patient from the hormone practice. Dr. Coleman has not seen that individual since that time.

Dr. Coleman stated that she had been depressed and had reacted inappropriately to the trauma. Dr. Coleman has sought therapy and has made many changes to her life and how she reacts to stress. Dr. Coleman was thankful for her boundaries class because it helped her further realize the boundaries she had crossed and how the warning signs she did not see had been there.

Dr. Coleman has tried to turn her reaction to this trauma into a positive by working with others with depression, guiding them through difficult times and helping them make better choices without irreversibly damaging their lives. Dr. Coleman has also, along with her father's fraternity, started a 501(3)(c) program to address depression. Throughout the COVID-19 pandemic, Dr. Coleman has done multiple webinars about depression and self-care. In her wellness practice, Dr. Coleman stresses TLC, or Total Life Changes, and self-care. Dr. Coleman explained that self-care is not selfish, but it allows people to take care of others better.

Dr. Coleman stated that this will never happen again because she is much more balanced now and she practices what she preaches. Dr. Coleman has incorporated a fitness practice into her business, as well as weight-loss, and many days her patients will see her leaving her work-out at 6:00 a.m. prior to seeing patients.

Dr. Coleman stated that the Virginia Board of Medicine reprimanded her and did not restrict her medical license in that state. Dr. Coleman stated that if her Ohio license is suspended, her Virginia license will automatically be suspended. If that occurs, Dr. Coleman will have to close her practice and lay off her remaining staff that she was able to keep during the COVID-19 pandemic. Dr. Coleman added that she is a single parent and her son is a senior in college.

Dr. Coleman does not plan to practice in Ohio, but her Ohio license affects her Virginia license. Dr. Coleman respectfully hoped that the Ohio Board will agree with the Virginia Board and the recommendation of the Hearing Examiner.

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

Ms. Snyder stated that the Board takes cases that involve a relationship between physicians and patients very seriously. Ms. Snyder believed that through the testimony and evidence in this case, the Board has all the information it needs to determine an appropriate sanction for Dr. Coleman.

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

Motion	Dr. Schottenstein
2nd	Dr. Johnson

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

Ms. Montgomery stated that the Board members sympathize with Dr. Coleman, and those who had met her father have great respect for her family. Ms. Montgomery noted that in Virginia, where the events took place, the Virginia Board of Medicine only reprimanded Dr. Coleman and did not impose a fine. Ms. Montgomery recommended that the Board consider refraining from imposing a fine on Dr. Coleman. Further, Ms. Montgomery did not see why the Board should reprimand Dr. Coleman. Mr. Giacalone agreed and stated that a proposed amended order for No Further Action has been prepared. Ms. Anderson stated that the proposed amended order will be emailed to all Board members immediately for their review.

Motion to amend the Proposed Order to No Further Action and no fine:

Motion	Ms. Montgomery
2nd	Mr. Giacalone

Mr. Giacalone recounted the tragic facts surrounding this case, including the death of Dr. Coleman's husband, her father's suicide, having to essentially raise her child on her own, and caring for her elderly mother. Mr. Giacalone agreed with Dr. Coleman's belief that the patient had taken advantage of her. Mr. Giacalone pointed out that the patient was an attorney and should have been aware that it was inappropriate to have a relationship with his client, especially since he was allegedly an ethics attorney with the Virginia Bar Association.

Mr. Giacalone stated that Dr. Coleman has already been reprimanded by the Virginia Board and she has no plans to practice in Ohio, so he saw no reason to add to her discipline. Due to the highly mitigating facts in this case, Mr. Giacalone agreed with the proposed amendment for No Further Action.

Ms. Montgomery agreed with Mr. Giacalone's comments and added that she may have had a different opinion had Dr. Coleman continued to take care of this patient. However, since Dr. Coleman's relationship with the patient was not contemporaneous with her treatment of him, she supported No Further Action.

Dr. Feibel stated that he is very empathetic to Dr. Coleman's situation and he felt sorry for everything she has been through. However, Dr. Feibel felt that by taking no action, the Board would send a very poor message to its staff, the Board's Secretary and Supervising Member who felt this case should come before the Board, and to the Board's licensees that if one's situation is bad enough then you can break the rules. Dr. Feibel agreed that the actions of the patient/attorney were wrong, but stated that what Dr. Coleman did was also wrong under the Board's rules because she treated the patient while in a romantic relationship with him.

Dr. Feibel opined that Dr. Coleman deserved punishment for violating the Board's rules. Due to the mitigating factors in this case, as well as his sense that Dr. Coleman has been through enough, Dr. Feibel opined that issuing only a reprimand with no fine would be appropriate. Dr. Feibel stated that a reprimand would not affect Dr. Coleman's medical license in Virginia. Dr. Feibel stated that as much as he would like to, he cannot support No Further Action because he did not feel it was right for the Board's licensees, staff, and Secretary and Supervising Member.

Mr. Giacalone stated that this is not a typical case of a physician having a relationship with a patient because the person was attractive. Dr. Coleman has experienced incredible trauma in her life and was taken advantage of by an attorney when she was hurting and vulnerable. Mr. Giacalone felt these facts differentiate this case from others the Board has seen. Mr. Giacalone opined that issuing a reprimand would have no value, would not benefit anyone, and would be cruel and unsubstantiated. Mr. Giacalone stated that any future case involving a relationship with a patient would have to meet a high hurdle to warrant a No Further Action order.

Dr. Schottenstein agreed that Dr. Coleman's story is heartbreaking and his heart went out to Dr. Coleman regarding the losses she's sustained and the suffering she has endured. Dr. Schottenstein also stated that the

Board takes a situation of a physician dating a patient very seriously and he felt it was appropriate to approach the matter dispassionately.

Dr. Schottenstein stated that this is a case of mitigation, so it depends on the nature of the mitigating and aggravating circumstances. Dr. Schottenstein stated that he substantially agrees with defense counsel that there are many mitigating factors and no aggravating factors that he can point to. Dr. Schottenstein opined that Dr. Coleman has been honest and forthcoming in her testimony. Dr. Schottenstein appreciated Dr. Coleman's feelings of remorse, that she is taking full responsibility for her actions, and the remediation she has engaged in to address the matter. Dr. Schottenstein felt that this matter represents an aberration of behavior for Dr. Coleman. Dr. Schottenstein further noted that Dr. Coleman has no prior disciplinary record, has made a full and free disclosure to the Board, there has been no adverse impact on others, and she corrected the problem when she became aware of it. Dr. Schottenstein believed that this was an isolated incident that is unlikely to recur.

Dr. Schottenstein stated that, like Dr. Feibel, he is respectful of the Hearing Examiner's Proposed Order. However, given the mitigating factors, the fact that Dr. Coleman has already been reprimanded in Virginia, and the fact that she is not practicing in Ohio, Dr. Schottenstein agreed with the proposed amendment to take No Further Action.

Dr. Soin generally agreed with the comments that have been made, and also agreed that it is not appropriate for physicians to date patients. Dr. Soin stated that every respondent who will ever come before the Board will present mitigating circumstances and reasons to rationalize their behavior. Dr. Soin also agreed with the proposed amendment for No Further Action. Dr. Soin stated that had Dr. Coleman not already been reprimanded in another state to make it known that this is not appropriate, he would feel differently about this case. Since a reprimand has already occurred, he supported No Further Action. Dr. Schottenstein agreed with Dr. Soin's comments.

Vote on Ms. Montgomery's motion to amend:

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

The motion to amend carried.

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

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

Dr. Reddy	Y
Dr. Johnson	Y
Dr. Kakarala	Y
Ms. Montgomery	Y
Dr. Feibel	N
Dr. Bechtel	N

The motion to approve carried.

Marcus F. Cox, M.D.

Dr. Bechtel directed the Board's attention to the matter of Marcus F. Cox, M.D. Objections have been filed and were previously distributed to Board members. Ms. Shamansky was the Hearing Examiner.

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

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

Dr. Cox stated that he cannot begin to express how devastating this case has been to him and his family. Dr. Cox has practiced in Ohio for 20 years and he has never had any problems with any patient until he moved himself and his family to Dover, Ohio, to work as a surgeon with Union Hospital Group.

Dr. Cox stated that Patient 2 had a painful abscess under her armpit on which his partner and he had performed several operations to remove the infection and alleviate her pain. Patient 2 came to Dr. Cox's office several times for treatments and follow-up. Dr. Cox hadn't felt that Patient 2 needed to be gowned for him to examine her incision, as it was under her armpit and not in her breast area. Dr. Cox stated that Patient 2 had pulled her arm out of her bouse unprompted by him and never objected to the treatments he provided. Dr. Cox stated that he talked with Patient 2 throughout her examination as a way to make her feel comfortable while he examined her. Patient 2 was an employee of Union Hospital System and Dr. Cox had honestly felt that his comments were making her feel at ease. However, with hindsight being 20/20, Dr. Cox realized that he could have chosen his words better and stated he will do so in the future.

Regarding Patient 1, Dr. Cox wished to be clear that he never asked her to walk across the room, he never pulled up her blouse and bra, and he never touched her breast. Dr. Cox stated that Patient 1's testimony at hearing was the first time he had ever heard this complaint, and he categorically denied that this took place. Dr. Cox stated that at all times while he examined Patient 1, she was sitting on the examination table. Dr. Cox examined Patient 1's leg and told her he had to look at the skin on her shoulders and back to see if there were any skin lesions in those areas, which was clinically indicated based on the lesion on the leg. Dr. Cox looked at Patient 1's shoulders and back by slightly moving her blouse to see her skin. Dr. Cox reiterated that he never lifted Patient 1's blouse, lifter her bra, or touched her breast. Dr. Cox had informed Patient 1 that what he was doing and the examination was medically appropriate. Dr. Cox stated that he was horrified by what Patient 1 had testified to in hearing because it never happened.

Ms. Collis stated that in 25 years of appearing before the Medical Board, she has never seen such a disconnect between the evidence produced at hearing and the Report and Recommendation from the Hearing Examiner. Ms. Collis stated that the Hearing Examiner left out many details in this case, and she urged the Board to review the objections that she had filed.

Ms. Collis asked the Board to re-review the video recordings in this case before rendering a final decision. Ms. Collis stated that in those recordings, the Board will see, as Dr. Cox testified, that he was simply attempting to make comments to make Patient 2 feel at ease and find some sort of common ground. Ms. Collis stated that the State had taken Dr. Cox's comments out of context or misquoted his comments. Ms. Collis noted that on the recordings, Dr. Cox talked to Patient 2 about many things, such as family and Christmas shopping. Ms.

Collis stated that Dr. Cox was not flirting with Patient 2 and was not making sexually inappropriate comments. Ms. Collis stated, as Dr. Cox said today, that Dr. Cox could have used more appropriate word choices and he will do so in the future.

Ms. Collis continued that Patient 1's testimony is simply not believable. Ms. Collis stated that Patient's 1's testimony was far different from what she told her employer, which found that her allegations were unsubstantiated and closed their investigation. Ms. Collis stated that this sheds doubt on Patient 1's credibility. Ms. Collis did not know why Patient 1 made these completely baseless and ridiculous complaints, but stated that, sadly, it is common for white women or some women to be nervous or frightened by a Black man, even a Black physician. Ms. Collis noted that according to the American Medical Association, only 5% of physicians in the United States are African-American. Ms. Collis stated that we live in a society today where the actions of Black men are often seen as threatening to some of the population.

Ms. Collis observed that many have said that Dr. Cox should have had a chaperone present during the examination. However, Ms. Collis pointed out that Dr. Cox was not charged with failing to have a chaperone and he was not required by his employer to have one. In fact, Marion Rupert, Dr. Cox's medical assistant who was present in both of these appointments, testified that she was specifically advised by management to not be present in the room and that it was not required to be in the room for every patient.

Ms. Collis stated that Dr. Cox's conduct does not violate the Medical Practices Act. Ms. Collis stated that if the Board finds that Dr. Cox's comments were inappropriate, she would ask that he be required to complete continuing medical education in that regard. Ms. Collis stated that this case does not rise to the level of suspending or revoking Dr. Cox's license.

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

Ms. Snyder stated that there are two separate allegations of sexual misconduct against Dr. Cox from two people who do not know each other. Patient 1 went to Dr. Cox to have a wound on her leg examined. Patient 1 explained in great and consistent detail how Dr. Cox lifted her tank top, lifted her bra, and fondled her breasts the way her husband would touch her. Patent 2 videoed Dr. Cox making sexually suggestive comments while she lay on his examination table in her bra with no shirt or gown. Dr. Cox claims that both patients are lying and vindictive, and that the burden is on the Board to determine credibility. Ms. Snyder stated that Dr. Cox is wrong on both counts.

Ms. Snyder continued that the Board does not have to determine the credibility of the witnesses because that is very difficult to do by just reading the transcript and not watching them testify. Ms. Snyder stated that the Hearing Examiner has already determined that these women are credible by watching their facial expressions and body language, and by watching Dr. Cox's facial expressions and body language, and hearing the pauses after questions are asked which the transcript does not pick up. The Hearing Examiner was in a better position to gauge the credibility of the witnesses, and she believed the patients and did not believe Dr. Cox.

Ms. Snyder stated that Dr. Cox argues that the Board cannot trust Patient 1 because the only evidence is her eyewitness account and there is no independent account or video. Ms. Snyder stated that in order to discount Patient 1's version of events, one would have to find that she is either outright lying or is crazy. Ms. Snyder stated that there is no middle ground in this case or room to think that Patient 1 misinterpreted an event; Dr. Cox says he did not touch Patient 1's breasts, and Patient 1 says Dr. Cox fondled her breasts. Ms. Snyder stated that this is not a case in which Patient 1 had some misunderstanding based in implicit biases or any other reason.

Ms. Snyder stated that after a thorough cross-examination, no motive was identified for why Patient 1 would lie about this. Dr. Cox's counsel appropriately explored the possibility of racial bias, but it was not there. Ms. Snyder noted that Patient 1 never filed a complaint against another health care provider and she did not sue Dr. Cox for money. Ms. Snyder stated that the only thing Patient 1 did was immediately walk into the parking

lot and call the hospital to tell them what Dr. Cox did and that she did not want him to do it to anyone else. This was Patient 1's only motive identified in the hearing. Dr. Cox points to the fact that the hospital summarized Patient 1's complaint differently from the way she testified in hearing. Ms. Snyder observed that the hospital allowed Dr. Cox to resign in light of this before they fired him, and stated that the hospital obviously thought it was more than just a breast examination.

Ms. Snyder stated that according to Dr. Cox, the Board cannot trust Patient 1 because she does not have independent proof, but, also according to Dr. Cox, the Board cannot trust Patient 2 because she videoed her encounter. Ms. Snyder struggled to understand this. Ms. Snyder stated that only in sexual misconduct cases do people question why a victim would record or report an attack. Ms. Snyder stated that if someone is mugged and manages to record it on their cell phone, people do not wonder why the victim recorded the attack, they simply say the victim was mugged.

Ms. Snyder stated that Patient 2 was a victim of sexual misconduct on video available to the Board. Ms. Snyder stated that some people may watch the video and say that Dr. Cox is only saying some kind of creepy things and ask what the big deal is. Ms. Snyder stated that it is a big deal because Dr. Cox is sexualizing Patient 2, a 24-year-old woman who went to Dr. Cox for help because she was afraid that she had flesh-eating bacteria in her armpit. Ms. Snyder noted that in the video, Dr. Cox looked at Patient 2 and lowered his voice, saying things like he liked her tattoos, asking if she dances, and saying that he would love to watch her dance. Ms. Snyder stated that the way Dr. Cox dropped his voice low indicates that he knew he was saying something wrong.

Ms. Snyder stated that it is not the case that you cannot trust a victim if they have a video and you cannot trust a victim if they do not have a video. Ms. Snyder stated that these allegations have been thoroughly vetted. Ms. Snyder stated that Patient 2 videoed the interaction because it had happened to her before. Ms. Snyder stated that Patient 2 did not sue or blackmail Dr. Cox and she was not even the one who reported him.

Ms. Snyder stated that credibility in this case has already been determined. The Board has reliable evidence that Dr. Cox was sexually inappropriate with two patients, and now the Board must determine the appropriate penalty to make sure this does not happen to someone else.

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

Motion	Dr. Schottenstein
2nd	Dr. Kakarala

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

Dr. Schottenstein stated that testimonial evidence is the bedrock of the judicial system and it is common to decide cases based solely on witness testimony. In that regard, the testimony of a competent witness is sufficient to produce a judicial finding. Dr. Schottenstein perceived Patient 1 and Patient 2 to be competent witnesses, and he respectfully disagreed with characterizations from the transcript that the patients are odd, anxious, or hysterical. Dr. Schottenstein stated that these are unfortunate stereotypes meant to diminish witness credibility.

Dr. Schottenstein stated that implicit bias, which is something the Board takes very seriously, has been brought up by the defense counsel as possibly playing a role is how the patients perceived Dr. Cox. Dr. Schottenstein stated that it was inconceivable to him that the matter of Patient 1 is an example of implicit bias. Dr. Schottenstein stated that this case is not at all reminiscent of the Central Park incident that defense counsel referenced in her closing argument. Dr. Schottenstein stated that the facts as alleged by Patient 1 are not subject to interpretation, especially since Dr. Cox said he did not perform a breast examination. Dr. Schottenstein stated that either assault was committed or it was not.

Dr. Schottenstein continued that although it is important to be aware of and monitor for implicit bias, it also should not be used as a shield from consequences for bad behavior. Dr. Schottenstein stated that implicit bias occurs not only with regard to race, but to gender as well. Dr. Schottenstein stated that "he said, she said" is a form of implicit bias toward women in which society questions their veracity in reporting sexual assault.

Dr. Schottenstein observed that it was pointed out that Patient 1 did not say anything to indicate that she had been assaulted when she left the office and she did not cry out when the alleged incident occurred. However, Dr. Schottenstein stated that the Board members learned in its trauma-informed training that victims freeze when they are sexually assaulted. Dr. Schottenstein questioned whether it was really inconceivable that instead of stopping to make a report, Patient 1 would just flee because she was scared. Dr. Schottenstein stated that the way Patient 1 described how Dr. Cox touched her as her husband would is a succinct description.

Dr. Schottenstein noted that Patient 1 could not look at Dr. Cox, was frozen in place, left quickly, locked her doors when she got into her car, and experienced the time dilation that occurs during trauma in which minutes seem like hours. Dr. Schottenstein stated that this all rings true for someone who felt she was in danger. Dr. Schottenstein further noted that Patient 1 called her husband, her mother, the hospital, and her primary care physician immediately afterward. Dr. Schottenstein stated that this is all strong evidence that is easily verified and persuasive.

Dr. Schottenstein understood defense counsel's position that it would be reckless for a physician to engage in such behavior in front of an open window in an office setting. However, this is consistent with impulsive sexual acting out, in which the fear of discovery or consequences minimizes in the moment of opportunity. Dr. Schottenstein also understood defense counsel's attempt to portray Dr. Cox as being physically unable to engage in sexual misconduct because he had previously had knee surgery. Dr. Schottenstein pointed out that Dr. Cox was six weeks post-operative and that he had had an arthroscopic procedure. Dr. Schottenstein felt that Dr. Cox would be able to walk across an examination room unaided by that point.

Dr. Schottenstein further understood defense counsel's position that Patient 1's story is inconsistent with the hospital's investigation. However, defense counsel assumes that the inconsistency is on the patient's part. Dr. Schottenstein recalled Dr. Cox's testimony that Mr. Milligan, the Director of Union Physician Services, said, "It's probably nothing. Don't worry about it." Dr. Schottenstein stated that if this statement is accurate, it betrays a lack of concern about the allegation on the part of the hospital administration, which is disconcerting given the seriousness of the allegation. Dr. Schottenstein stated that it is arguably another example of implicit bias to dismiss the seriousness of an allegation out-of-hand. Dr. Schottenstein stated that this makes Patient 1's testimony that she was never contacted by the hospital believable. Dr. Schottenstein noted that the Board has unfortunately experienced occasions in which institutions did not follow through on investigations of this nature.

Dr. Schottenstein opined that Patient 1 was convincing in her description of the aftermath of the incident. Patient 1 described hypervigilance, looking over her shoulder all the time, increased attention to locking her doors, the lack of trust she now has, the marital difficulties, the substantial about of therapy she is getting, and the need for reassurance from her husband when she woke up from a recent surgery that she had not been sexually assaulted while under anesthesia. Dr. Schottenstein stated that this all rings true to him in terms of what he would expect from someone who had experienced trauma.

Regarding Patient 2, Dr. Schottenstein stated that the Board members can judge for themselves the appropriateness of the interactions in the video. Dr. Schottenstein stated that it made no difference to him whether Patient 2 had wanted time off from work. Dr. Schottenstein added that it was also not Patient 2's responsibility to ask for a gown or a chaperone. Dr. Schottenstein stated that those are lines of questioning that attempt to make it seem that it was Patient 2's fault that she was the recipient of this behavior.

Dr. Schottenstein stated that there is no allegation against Dr. Cox for not having a chaperone when he was required by the hospital to have one. However, there is a pattern that Dr. Schottenstein felt was worth noting because it speaks to Dr. Cox's credibility. Dr. Cox's medical assistant, Ms. Rupert, gave testimony regarding a

March 2016 complaint which preceded the matters of Patient 1 and Patient 2, resulting in Ms. Rupert being mandated to go into the room with Dr. Cox every time he examined a female patient. Dr. Schottenstein also noted a letter written by Mr. Milligan referencing the July 2017 complaint of Patient 1 in which he notes, "We mandated a chaperone be present during his examinations." Despite this, there was no chaperone present in either of the December 2017 video recordings by Patient 2, and Dr. Cox denied in his interrogatories that a chaperone had been required of him. Prior to seeing the videos, Dr. Cox had denied that he had examined Patient 2 without a chaperone present.

Dr. Schottenstein found it difficult to believe that after the March 2016 and July 2017 complaints, the nature of which can have a profound impact on one's license and livelihood, that one would ever again examine a female patient in a state of undress without a chaperone as Dr. Cox did with Patient 2 in December 2017. Dr. Schottenstein was incredulous about this, likening it to touching a hot stove a couple of times and it not making an impression. This caused Dr. Schottenstein to believe that Dr. Cox's conduct was willful.

Patient 2 had testified that Dr. Cox placed his hand on her forehead and then down to her breast when assessing her for a fever, and this was the genesis of the comment he made on the video, "That's why you're warmer down here." Dr. Schottenstein stated that that makes the matter of Patient 2 more than just comments that may or may not be banter. Dr. Schottenstein felt that that by itself is substantially concerning because it is sexual contact disguised as a medical examination, something that is completely inappropriate in and of itself.

Dr. Schottenstein stated that as he listened to the videos, he found himself cringing. Dr. Schottenstein stated that physicians try to put their patients at ease, but will talk about things like college sports or the weather. Dr. Schottenstein stated that there is no world in which Dr. Cox's comments reflect an appropriate interaction between physician and patient. Dr. Schottenstein opined that the comments constitute sexual impropriety.

Dr. Schottenstein stated that to disregard the testimony of Patient 1 and Patient 2 is to conceptualize them as malevolent and conniving in a way that, for Dr. Schottenstein, is not supported by the evidence. Dr. Schottenstein did not find Dr. Cox's explanations to be persuasive. Dr. Schottenstein found it meaningful that the Hearing Examiner found the patients to be credible, given her proximity to the proceedings.

Dr. Schottenstein opined that the preponderance of the evidence shows that the allegations, as set forth, are true. Dr. Schottenstein did not see Dr. Cox taking responsibility or showing remorse. Dr. Schottenstein believed that this behavior is likely to recur, noting that Dr. Cox has already disregarded the hospital's recommendations to consistently use a chaperone. Dr. Schottenstein further opined that Dr. Cox's behavior was willful and reckless. Dr. Schottenstein felt that Dr. Cox has not been forthcoming with the Board and that Dr. Cox has used a position of trust to engage in misconduct that clearly had an adverse impact on these patients. Dr. Schottenstein agreed with the Proposed Order for permanent revocation of Dr. Cox's medical license.

Ms. Montgomery opined that Dr. Schottenstein has wonderfully summarized this sad and difficult case. Ms. Montgomery added that Dr. Cox's deposition includes a reference to another patient and that legal counsel had spoken to him about utilizing a chaperone. Ms. Montgomery stated that there appears to be a very consistent pattern, even though Dr. Cox's behavior with Patient 1 does not make sense because of the risk of discovery due to an open door and open window.

Ms. Anderson noted that the Notice of Opportunity for Hearing issued to Dr. Cox included only Patient 1 and Patient 2, and the Board is confined to the hearing record in making its determination. Ms. Montgomery agreed and stated that she is basing her opinion on the strength of the matters of Patient 1 and Patient 2, particularly the fact that Patient 1 had immediately contacted people about the attack. Ms. Montgomery also found the video in the matter of Patient 2 to be persuasive, albeit difficult to hear.

Mr. Giacalone agreed with Ms. Montgomery and Dr. Schottenstein, particularly when he simply focuses on who he believes is telling the truth. Mr. Giacalone noted that the Hearing Examiner, who was able to see witness reactions, facial expressions, and body language, was convinced that Patient 1 and Patient 2 were telling the

truth and that Dr. Cox was not. Mr. Giacalone questioned why Patient 1 or Patient 2 would do this if the alleged behavior had not occurred. The defense counsel wished to say that the patients had ulterior motives, namely that one was crazy and the other was trying to further her agenda to get a medical leave note. However, Mr. Giacalone stated that the defense counsel's statements did not ring true. Mr. Giacalone stated that the allegations are supported by the conversation in the video which he, like Dr. Schottenstein, found cringeworthy. Mr. Giacalone stated that the video lends credibility to the thought that Patient 1 and Patient 2 are probably telling the truth.

Vote on Dr. Schottenstein's motion to approve:

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

The motion carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

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

Angela Dawn Bovia, R.C.P.

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

Motion	Dr. Schottenstein
2nd	Dr. Johnson

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

Dr. Bechtel noted that one portion of the Proposed Order states that Ms. Bovia is a massage therapist. Dr. Bechtel noted that Ms. Bovia is a respiratory care professional and asked that that typo be corrected.

Vote on Dr. Schottenstein's motion to approve:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Soin	Y

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

The motion carried.

Daniel R. Canchola, M.D.

Motion to find that the allegations as set forth in the July 8, 2020 Notice of Opportunity for Hearing in the matter of Dr. Canchola have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Schottenstein
2nd	Dr. Kakarala

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

Vote on Dr. Schottenstein's motion to approve:

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

The motion carried.

Melissa M. Cyr, D.O.

Motion to find that the allegations as set forth in the July 8, 2020 Notice of Opportunity for Hearing in the matter of Dr. Cyr have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Johnson
2nd	Dr. Reddy

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

Vote on Dr. Johnson's motion to approve:

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

The motion carried.

Raymond Magliulo, D.O.

Motion to find that the allegations as set forth in the August 12, 2020 Notice of Opportunity for Hearing in the matter of Dr. Magliulo have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Kakarala
2nd	Dr. Reddy

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

Ms. Montgomery asked if this matter is finable. Board members indicated that the Board is not authorized to levy a fine in this matter.

Vote on Dr. Kakarala's motion to approve:

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

The motion carried.

George P. Naum, III, D.O.

Motion to find that the allegations as set forth in the July 10, 2019 Notice of Opportunity for Hearing in the matter of Dr. Naum have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Schottenstein

2nd	Dr. Kakarala

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

Vote on Dr. Schottenstein's motion to approve:

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

The motion carried.

Michael Sorkis Zahra, M.D.

Motion to find that the allegations as set forth in the March 11, 2020 Notice of Opportunity for Hearing in the matter of Dr. Zahra have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order:

Motion	Dr. Kakarala
2nd	Dr. Schottenstein

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

Vote on Dr. Kakarala's motion to approve:

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

The motion carried.

EXECUTIVE SESSION

Motion to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action; and for the purpose of deliberating on proposed consent agreements in the exercise of

the Medical Board's quasi-judicial capacity; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official:

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

The motion carried.

The Board went into Executive Session at 11:07 a.m. and returned to public session at 11:55 a.m. Mr. Gonidakis entered the meeting during Executive Session.

SETTLEMENT AGREEMENTS

Adam N. Leid, D.O.

Motion to ratify the proposed Step I Consent Agreement with Adam N. Leid, D.O.:

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

The motion carried.

Bryan Donald Loos, M.D.

Motion to ratify the proposed Consent Agreement with Bryan Donald Loos, M.D.:

Motion	Dr. Schottenstein
2nd	Dr. Kakarala
Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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

The motion carried.

Benjamin R. Gibson, M.D.

Motion to ratify the proposed Step I Consent Agreement with Benjamin R. Gibson, M.D.:

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

The motion carried.

George R. Butler, III, M.D.

Motion to ratify the proposed Probationary Consent Agreement with George R. Butler, III, M.D.:

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

The motion carried.

James Ibrahim Tak, M.D.

Motion to ratify the proposed Addendum to the Step II Consent Agreement with James Ibrahim Tak, M.D.:

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

The motion carried.

Kamel Abraham, M.D.

Motion to ratify the proposed Permanent Surrender/Retirement with Kamel Abraham, M.D.:

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

The motion carried.

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

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

1. Michael David Badik, D.O.: Based on minimal standards violations involving 11 patients, two of whom died from drug interactions, from 2010 to 2019. Also based on violations of administrative rules for pain prescribing and intractable pain rules.

2. Kristina L. Hecht, R.C.P.: Summary suspension, based on impairment of ability to practice due to failure to appear for scheduled examination and a presumption of impairment.
3. Robert J. Keating, M.D.: Based on failure to comply with subpoena, conviction of misdemeanors of moral turpitude, and making false or fraudulent statements in pursuit of attempting to secure a license from the Board.
4. Hannah F. Smith: To be issued to a massage therapist applicant, based on failure to appear for an examination for impairment and inability to practice.
5. Ronald David Smith, M.D.: Based on an out-of-state action involving a consent order with the North Carolina Medical Board. The physician relapsed and was deemed to be impaired in North Carolina due to substance abuse disorder.

Regarding proposed Citation #3, Dr. Feibel asked if the Board has a policy on how quickly a citation is issued when a licensee fails to comply with a subpoena. Ms. Canepa stated that there is no policy and it is determined on a case-by-case basis.

Motion to approve and issue Citation #2, a Summary Suspension:

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

The motion carried.

Motion to approve and issue proposed Citation #1:

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

The motion carried.

Motion to approve and issue proposed Citations #3, #4, and #5:

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

The motion carried.

OPERATIONS REPORT

Human Resources: Ms. Loucka stated that James Roach, who had been the Board's Chief of Investigations, has moved into an enforcement attorney position with the Board. Shawn McCafferty is currently the Acting Chief of Investigations and is also continuing to serve as the Central Region Investigations Supervisor. Ms. Loucka hoped to fill the position of Chief of Investigations soon.

Ms. Loucka stated that the Board is in the process of interviewing for a vacant position in the constituent inquiries group and for a vacant enforcement attorney position.

Ms. Loucka stated that Cindy Erwin, one of the Board's nurse reviewers, will be leaving the Board this Friday. Staff will look into the possibility of contract work to keep things moving while the hiring process to fill the position moves forward.

Facilities: Ms. Loucka stated that staff is actively working on a return-to-work strategy for when employees are allowed to return to the office. There is still no date set for when employees can return to the office, but when that occurs the employees will be put into three groups: Some employees will be primarily office-based; some will be a hybrid, working some days in the office and some days from home on a set schedule; and some will be working from home 100% of the time. The Board's floor space in the Rhodes Building will be adjusted accordingly. Ms. Loe found that by relinquishing the Board's space on the second floor, it will save about $45,000 per year. Ms. Loucka stated that the Board's space on the third floor will accommodate a hybrid and work-from-home model.

Information Technology: Ms. Loucka stated that the IT section is working on the capital spend plan. IT is also working with investigators on the purchase of new recording devices. Ms. Loucka stated that best investigative practices includes recording interviews, so investigators will have recording devices they can use readily, possibly including recording devices they can use with their cell phones.

Finance: Ms. Loucka stated that the Board's cash balance continues to be healthy. Ms. Loucka noted that the Board is not spending much on office supplies lately. Ms. Loucka stated that despite the fact that about 14,000 people who normally would have renewed their licenses have not renewed due to the extension of the renewal deadline, the Board continues to do well. Ms. Loucka expected to see license renewals increase over

the next few months. The Board is engaged in a communications strategy to encourage licensees to renew early.

Ms. Loucka stated that Dr. Schottenstein will give a more thorough update in the Finance Committee report.

Licensure: Ms. Loucka stated that the Board's license application processing time continues to get faster. Although people continue to say that joining the Interstate Medical Licensing Compact is an expedient way of getting licensed in Ohio, Ms. Loucka stated that there is no benefit for an out-of-state licensee to do anything besides go directly through the State Medical Board of Ohio to obtain an Ohio license unless they are applying in multiple states at the same time.

Ms. Loucka noted a large decrease in calls in January 2021. The reason for this is unclear, but it is likely because the number of calls in January 2020 was anomalously high. Ms. Loucka stated that Licensure staff are now taking calls from home and the call rate and processing time is the same as in the office. Ms. Loucka commented that the Licensure staff are the unsung heroes of the agency.

Ms. Montgomery congratulated Ms. Loucka and the staff on the Board's impressive license processing times. Ms. Montgomery further commented that a call wait time of one minute for a government agency is remarkable. Ms. Montgomery congratulated the staff and was impressed with how Ms. Loucka is moving the agency in a more efficient direction. Dr. Bechtel agreed and was grateful for the staff's hard work. Ms. Loucka credited the staff for the positive trends.

Complaints: Ms. Loucka stated that looking at the open complaints dashboard, one thing that stands out is the increase in open complaints over the last year. Specifically, Enforcement has seen a 12% increase and Investigations has seen a 32% increase. Ms. Loucka was certain that the increase in Investigations is due to the fact that the investigators were sidelined for much of the Spring due to the COVID-19 pandemic. Ms. Loucka also noted that some investigators were pulled into the historical case review project, which took them out of the field on current cases.

Ms. Loucka stated that part of the increase in case load may be due to fewer protocol closes, which are complaints routinely closed on triage, and a higher number of complaints moving forward. Ms. Loucka noted that the Board receives many complaints that are outside its jurisdiction and, although not much time is spent on those complaints, it does involve some time. The staff is considering possible changes to the complaint intake process that will ensure the receipt of appropriate complaints and may cut down on some time in investigations.

Ms. Loucka noted a significant increase in the number of complaints involving multiple allegations and minimal standards. There has also been a smaller increase in impairment and sexual misconduct cases.

Communications: Ms. Loucka stated that Ms. Stewart and Ms. Williams are doing a fantastic job responding to media requests, keeping up the Board's social media presence, and doing presentations.

RULES & POLICIES

Rule Review Update

Ms. Anderson referred to the rule review spreadsheet in the Board meeting materials. Rules are currently out for initial public comment and the comment period ends on February 12. The Board will review those rules and the comments at the next Board meeting.

Ms. Anderson stated that several of the Board's rules will need to be amended or rescinded due to the recent passage of House Bill 442, as outlined in the rule review schedule provided to Board members. Some of these changes are already in process and ready to go to the Joint Commission on Agency Rule Review (JCARR). Specifically, the amendments to the continuing medical education (CME) rules regarding volunteer hours,

approved by the Board last month, will be filed with JCARR on March 1, while the other rules that are ready will be filed on February 12. The Board will be able to have one public hearing for all these rules together.

Updates to Rule 4731-11-03

Ms. Anderson stated that Rule 4731-11-03 is pending at the Common Sense Initiative (CSI) with the weight-loss rules. Ms. Anderson noted that Dr. Schottenstein had an opportunity to review Rule 4731-11-03, which has been substantially unchanged for many years, and has made suggestions to update the language.

Mr. Gonidakis exited the meeting at this time.

Dr. Schottenstein briefly reviewed his suggested changes:

- Change the language in Paragraph (B)(1)(b) to read, "perform an appropriate physical and mental status examination of the patient."
- Change Paragraph (B)(2)(b) to read, "The treatment of attention deficit hyperactivity disorder (AHDH) and/or related disorders." Dr. Schottenstein stated that there is no such thing as "abnormal behavioral syndrome," and hyperkinetic syndrome is old language for ADHD.
- Change Paragraph (B)(2)(c) to read, "The treatment of major or mild neurocognitive disorder due to traumatic brain injury or substance/medication-inducted major or mild neurocognitive disorder."
- Eliminate Paragraph (B)(2)(d) because one would not prescribe a stimulant as part of a process of assessing the differential diagnosis of depression, and renumber subsequent sections accordingly.
- Under Paragraph (B)(2)(e) (formerly (B)(2)(f)), remove sections (i) through (vi) because they seem redundant, and replace them with language that reads, "Chronic pain as defined in Rule 4731-11-01 of the Administrative Code."

Dr. Schottenstein stated that these suggested changes are based on the same indications that are already present in the rule, but reflect updated language from the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition).

Ms. Anderson stated that if the Board approves this revised language, she will file it as an amendment with CSI. The Board may be required to circulate the rule to interested parties again; if so, she may circulate them together with the proposed weight-loss rules when they are ready for circulation.

Mr. Giacalone suggested that the Board inform the public that these changes only update the language and do not actually change the indications in the rules. Dr. Schottenstein agreed. Ms. Anderson stated that that can be included in the business impact statement for the rules and also with the filing with the Joint Commission on Agency Rule Review (JCARR), as well as on the Board's website.

Dr. Kakarala moved to approve updated language to be filed with Common Sense Initiative. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Registered Nurse Scope of Practice – Surgical Tasks

Ms. Anderson stated that attorney Eric Plinke has asked the Board to review whether the Board's delegation rules in Chapter 4731-23, Ohio Administrative Code, allow for specific surgical tasks to be delegated to a registered nurse under the direct supervision of a physician. The tasks Mr. Plinke inquires about relate to orthopedic surgery with the registered nurse essentially acting as an extra pair of hands for the surgeon. Ms. Anderson has already discussed this with Dr. Feibel to gain his insight as an orthopedic surgeon.

Ms. Anderson noted that Mr. Plinke first brought his inquiry to the Board of Nursing. While the Board of Nursing stated that these surgical tasks are not within the scope of practice of a nurse, it also directed Mr.

Plinke to the Medical Board to ask if a physician could delegate the tasks to a nurse under the Board's delegation rules.

Ms. Anderson asked for the Board's thoughts for a written response to Mr. Plinke's inquiry.

Dr. Feibel stated that these tasks are something that surgical techs often perform in the operating room. Dr. Feibel opined that it would be fine to allow nurses to be delegated these types of tasks. Dr. Feibel stated that the Board should be very specific that the tasks must be performed under the direct supervision of a surgeon who is scrubbed in and only when the surgeon needs an extra pair of hands, so that there is no ambiguity and cannot be construed as allowing the surgeon to sit in a corner while the nurse or surgical tech does the procedure.

Dr. Feibel commented that, in general, he is reluctant to answer these types of letters because it could tie the Board's hands in the future. However, Dr. Feibel felt that a response in this case would be fine as long as the Board reiterates that the physician in ultimately responsible.

Dr. Rothermel did not disagree with the response, but asked if this could lead to a slippery slope for other surgical specialties to request special circumstances like this. Ms. Anderson could not say if other specialties would make similar inquiries, but noted that this specific matter came to the Medical Board in a very specific way, namely by referral from the Board of Nursing. Dr. Feibel stated that this response would not be specific to orthopedic surgery and could apply to other surgical specialties in which the surgeon may need another pair of hands.

Mr. Gonidakis returned to the meeting at this time.

Dr. Schottenstein stated that he has misgivings about providing legal advice as a Board about scope of practice, though he will support the response if the consensus is that it is reasonable and narrowly-tailored. Dr. Schottenstein wondered if it would be preferable to create a Frequently Asked Questions (FAQ) document for questions about delegation since that is a more neutral way of couching the Board's opinions. Attorneys contacting the Board on matters like this can simply be referred to the FAQ, and if the question is not addressed in the FAQ then the Board could potentially modify the FAQ. Dr. Schottenstein stated that this would take the Board out of the loop of providing legal advice to a firm and also ensure that the answer to the question is disseminated to others. Ms. Anderson commented that if the Board responds to the question, that response will also be put on the Board's website so that everyone, not just Mr. Plinke, would have that answer.

Dr. Reddy agreed with Dr. Schottenstein. Dr. Reddy observed that an attorney is asking the question and he questioned the intent behind it. Dr. Reddy expressed concern that if the Board gives a legal opinion on this matter, the attorney or someone else can use it in the future. Dr. Reddy, having once practiced as an orthopedic surgeon in another country, agreed that extra hands would be useful, but stated that the Board is opening itself to many other specialties asking for help from assistants.

Mr. Giacalone stated that the State Medical Board of Ohio is a regulatory agency and, just like other regulatory agencies such as the Food and Drug Administration (FDA), it can give specific opinions. Mr. Giacalone stated that the Board cannot simply turn a blind eye to someone who is asking a question, stating that it is the Board's role to advise. Mr. Giacalone opined that not answering Mr. Plinke's question would be akin to playing a "gotcha" game with licensees. Mr. Giacalone agreed with Ms. Anderson that any answer provided to Mr. Plinke should also be disseminated to everyone, but stated that that should not keep the Board from its responsibility as a regulatory body to advise its regulated industry. Mr. Giacalone stated that it is not relevant that the question came from an attorney because the question could just as easily have come from a physician or a nurse.

Dr. Schottenstein stated that Mr. Giacalone's comments made sense to him. Dr. Schottenstein noted that the answer that the Board is contemplating would result in an expansion of a scope of practice, and asked if Mr. Giacalone would feel differently if the Board were instead giving legal advice that would restrict a scope of

practice. Mr. Giacalone stated that it would be preferrable to produce an opinion that licensees can follow rather than setting precedent by issuing citations. Mr. Giacalone agreed that the Board should be careful about scope of practice.

Dr. Feibel stated that after thinking through the situation and hearing Dr. Schottenstein's comments, he feels that perhaps the best course would be to send Mr. Plinke the Board's delegation rule and allowing him to interpret it as he will. Alternatively, the Board can go through the process of changing its rule. Dr. Feibel stated that the Board should be very careful about answering questions like this because that is how "scope creep" occurs, and should refrain from doing so as much as possible.

Dr. Schottenstein stated that he is mindful of the gravity of giving advice about the scope of a profession that the Medical Board does not regulate, namely nursing. Ms. Anderson pointed out that the Board is being asked to provide an interpretation of its own rule and whether a nurse, essentially acting as an unlicensed person, can be delegated these specific tasks under the delegation rule. the Board of Nursing has already stated that the tasks are not within the nursing scope of practice, but in accordance with their decision tree for such questions, they stated that the Medical Board should be asked if these tasks fit into its delegation rules as medical tasks.

Dr. Soin agreed with Mr. Giacalone that if the Board has a clear-cut answer to a question, it should give that answer. Dr. Soin added that it would be very odd if people cannot get a clear answer from the Board about its rules. Dr. Soin stated that if someone delegates in this fashion and ends up before the Board for possible disciplinary action, that person can say that they asked the Board and the Board did not give an answer.

Ms. Montgomery agreed with Dr. Schottenstein that there should be a very robust FAQ document that is clear on what the Board's rules say. Ms. Montgomery also agreed that the Board must be extraordinarily careful about giving legal advice and should not be doing that. Ms. Montgomery stated that the Board can interpret its rules, but anything beyond that is very dangerous.

Dr. Kakarala asked whether this question has come before the Board due to a lack of surgical techs in some institutions, or if is a kind of "mission creep" by surgical nurses. Dr. Kakarala stated that as much as the Board can write specific language, there are dozens of surgical subspecialties that no current Board member has expertise in, and he worried that someone will start delegating tasks that are not specifically prohibited because they are not specifically mentioned. Dr. Kakarala added that he is not a surgeon and he does not know if it is currently a big problem for surgeons to complete cases in a timely fashion because they do not have enough help in the operating room.

Dr. Saferin stated that the Board discussed something similar to this in the past concerning whether massage therapists practicing in chiropractors' offices can operate an ultrasound machine. In that instance, it was determined that operation of an ultrasound device is not within the scope of practice of a massage therapist, but a chiropractor can delegate that task to an unlicensed person and can therefore delegate it to a massage therapist acting as an unlicensed person. Dr. Saferin further pointed out that a hospital or surgery center will have to authorize the nurse or other individual to assist the surgeon. Dr. Saferin stated that most surgeons, no matter the subspecialty, has someone in their practice who assists them, but that person must be granted privileges by the hospital or surgery center. Dr. Saferin stated that if a nurse is treated like an unlicensed person, they can assist the surgeon so long as they are granted privileges to do so.

Responding to Dr. Kakarala's comments, Dr. Feibel stated that many hospitals use nurses to scrub instead of surgical techs, and he speculated that that was the impetus of this inquiry. Dr. Feibel reiterated his opinion that this delegation of surgical tasks to a nurse if fine as long as the surgeon is directly supervising. Dr. Feibel favored producing a FAQ document rather than responding directly to Mr. Plinke's inquiry. Dr. Feibel opined that the Board should not get into the business of answering lawyers or licensees specific questions because it leads to "scope creep." Dr. Feibel stated that he would vote for issuing an FAQ document that addresses these issues.

Mr. Giacalone agreed with Dr. Feibel's suggestion, so long as Mr. Plinke's question is answered. Mr. Giacalone stated that a generic, non-specific FAQ document could be interpreted by creative people to produce many loopholes. Mr. Giacalone referred back to the FDA, which tells people exactly what they want because they do not want any mistakes or excursions from what they feel promotes safety. Mr. Giacalone contrasted this with the practices of the Drug Enforcement Administration (DEA), which tends to refrain from saying what they want, which leads to confusion. Mr. Giacalone stated that the DEA model does not work well for the regulated industry or the public. Mr. Giacalone strongly advocated for the FDA model to answer the question and disseminate it to everyone, perhaps in an FAQ document. Mr. Giacalone stated that someone comes to the Board with a question about its rules because the Board is the expert and the decision-maker, so it should make the decision.

Dr. Bechtel asked Ms. Anderson if she would like the Board to move ahead with the motion to work together as a Board to formulate a response and that it could be a Question & Answer type response. Ms. Anderson replied affirmatively.

Dr. Saferin moved to direct staff to formulate a response based on Rule 4731-23-02, Ohio Administrative Code. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Legislative Update

Ms. Wonski stated that the three main legislative priorities currently are the budget, the Interstate Medical Licensure Compact, and the impact of the elimination of cosmetic therapy licenses by House Bill 442.

Executive Budget: Ms. Wonski stated that last week the Governor announced the executive budget for the next biennium, which will become effective July 1, 2021. The budget will go through the legislative process before a final version is sent back to the Governor for signature. Ms. Wonski noted the possibility for changes in the budget language in each step of the process. In the Governor's budget, the Medical Board was given a 14% increase. The Board had submitted an aggressive package to add staff, particularly in response to the Strauss Working Group report. The Board's initial budget request was granted in the executive version and the legislative staff will continue to advocate for that number as they carefully monitor the language through the remainder of the process. Ms. Wonski pointed out that the Medical Board is funded by licensing fees, not general revenue tax dollars.

Ms. Wonski planned to meet with legislators on the finance committees and sub-committees in both chambers to address any questions they may have about the Board or its budget request. Ms. Loucka will also provide testimony before the committees. Ms. Wonski will keep the Board updated as the bill moves through the many steps of the process.

Senate Bill 6: Ms. Wonski stated that this bill would require the Board to join the Interstate Medical Licensing Compact (IMLC). The legislative staff has had several conversations and continue to have regular conversations with the bill's sponsor and co-sponsors, the IMLC, and stakeholders regarding the Board's positions. A few weeks ago, Ms. Loucka and Ms. Wonski met with the sponsor and co-sponsor to reiterate that the bill would provide operational challenges and could actually slow the process of licensure for out-of-state applicants. Ms. Loucka and Ms. Wonski also met yesterday with Marschall Smith, Executive Director of the IMLC, and asked questions about implementation. Mr. Smith has agreed to make a presentation to the Board at the March 10 meeting.

Ms. Wonski noted that the bill language regarding the compact is a contract and cannot be changed. Amendments may be added to the bill to allow for some flexibility around implementation of the legislation. Dr. Schottenstein asked if the Board would have rule-making authority with the compact. Ms. Wonski stated that because it is a contract, changes cannot be made to the compact language and the Board will not have rule-making authority. Ms. Wonski stated that the Board can impact how quickly it is required to implement the legislation.

Dr. Soin opined that there seemed to be a lot of policy momentum in support of the Compact. Ms. Wonski agreed and stated that several influential stakeholders have expressed support for this legislation, including the Ohio State Medical Association and some large hospital systems in Ohio. Ms. Loucka stated that Texas' state medical association is the only state medical association in the nation that has taken a stand against the Compact; all other associations, including the American Medical Association, are advocating for it. Ms. Loucka stated that support for the Compact is a big national movement at this time.

Mr. Giacalone speculated that the Federation of State Medical Boards (FSMB) probably has a committee dealing with matters related to the Compact, and asked if the Medical Board is part of that committee. Ms. Loucka that the Board will become active in Compact matters now that it seems very likely that it will be required to join. Ms. Loucka felt it is important to start connecting with some of the other large states that are already in the Compact to help determine the efficient implementation. Ms. Loucka also wished to explore how to leverage the similarity with other large states in the Compact, and then work with the FSMB on policy.

Ms. Loucka stated that she has had productive conversations with the Senate bill sponsors, expressing the Board's concerns but also acknowledging that if it is passed, the Board wants to be a good partner and do it right. Ms. Loucka stated that the Ohio Board will bring a lot to the table because it has so many physicians, and will probably be the biggest physician-exporting state in the Compact. Ms. Loucka stated that the Board will seek active leadership in the Compact.

House Bill 442: Ms. Wonski stated that this bill was initially introduced in the last General Assembly and applied to certified public accountants. Late in the legislative process, language was added to remove cosmetic therapists from the Board's regulatory authority. The bill will become effective on April 8 and will leave cosmetic therapists, who mainly practice hair removal, unlicensed and unregulated outside salons. Ms. Wonski stated that this is problematic because the majority of cosmetic therapists do not work in salons, but in medical offices and independent facilities.

After a great deal of research, as well as conversations with the amendment sponsor and the Cosmetic Association of Ohio, it has been determined that the Board should amend its Rule 4731-18-03, the light-based medical device rule. Ms. Anderson stated that the proposed amendment to the rule would remove the phrase "cosmetic therapist licensed by the board" and replace it with simply "cosmetic therapist." Cosmetic therapists would still be required to have the same initial training for use of light-based medical devices and would have to have oversight from a physician. Once the cosmetic therapist has performed a certain number of procedures, they would no longer require direct on-site supervision. The physician would have to meet several steps before delegating authority to the cosmetic therapist to use a light-based medical device.

In response to a question from Mr. Giacalone, Mr. Smith stated that rule as amended would have education and training requirements; if the cosmetic therapist refused to comply then it would constitute an unlicensed person who was not following the qualifications in order to be delegated that medical task, which would run afoul of the prohibition against the unlicensed practice of medicine. Ms. Montgomery asked if the physician would also be subject to action. Ms. Anderson replied that the physician could possibly be cited for aiding and abetting the unlicensed practice of medicine.

Ms. Loucka stated that Ms. Wonski researched all the states that do not license cosmetic therapists, and the proposed amendment to the rule reflects how those states address the practice of laser hair removal by unlicensed cosmetic therapists.

Ms. Anderson suggested that the Board grant her the authority to make this change to the rule, which is currently pending with the Common Sense Initiative (CSI).

Dr. Schottenstein moved to authorize Ms. Anderson to amend Rule 4731-18-03, currently pending with the Common Sense Initiative remove references to "cosmetic therapist licensed by the board" and replace it with "cosmetic therapist." Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Dr. Soin, noting that there had been a telemedicine bill pending the last General Assembly, asked if there will be another such bill in the current General Assembly. Ms. Wonski stated that she has not heard whether there will be a telemedicine bill, though it is something many members are interested in.

COVID-19 Vaccination Update: Mr. Smith stated that both Senate Bill 310, which was passed on December 29, 2020, and became effective immediately, and recent amendments to the federal Public Readiness and Emergency Preparedness (PREP) Act, are responses to the COVID-19 pandemic that will increase the pool of health care professionals who can provide COVID-19 vaccinations. Specifically, Senate Bill 310 would allow a physician, physician assistant, or respiratory care professional whose license had expired within the last five years to practice in Ohio on a temporary license until May 1, 2021. The practitioner must have previously held an active license within the last five years and let that license expire or lapse in order to qualify for this provision. Practitioners whose licenses had been revoked, suspended, or surrendered to avoid disciplinary action would be disqualified from this provision.

Ms. Smith continued that last week, the U.S. Department of Health and Human Services issued its fifth amendment to the declaration under the PREP Act for medical countermeasures against COVID-19. The amendment increases the number of vaccinators in all states, including Ohio, by doing the following:

- Allows any health care professional who holds a state license permitting them to prescribe, dispense, or administer the COVID-10 vaccination to prescribe, dispense, or administer it in any state.
- Allows any physician, advanced practice nurse, registered nurse, or licensed practical nurse who has held an active license that allowed them to prescribe, dispense, or administer vaccines and whose license had lapsed or expired within the last five years to administer the COVID-19 vaccine in any other state. Exceptions would be any individual whose license had been suspended or restricted by any licensing authority; surrendered while under suspension, discipline, or investigation; surrendered following an arrest; or on the Office of the Inspector General's list of excluded individuals.

Mr. Smith added that the vaccination training requirements would include documentation of completion of the CDC's COVID-19 training modules. Active licensees who are not currently practicing, or those mentioned above whose licenses have expired, must provide documentation that a currently-practicing health care provider experienced in vaccination has observed them and confirmed their competency in both preparing and administering the particular COVID-19 vaccine that they will be administering.

Mr. Smith stated that the staff will continue to monitor for further vaccination updates.

COMMITTEE BUSINESS

Dietetics Advisory Council Report

Ms. Rearden stated that the Dietetics Advisory Council has been rescheduled for March 8 at 2:00 p.m.

ICD-10 Code Data Review Committee Report

Dr. Soin stated that the ICD-10 Code Data Review Committee will meet following today's Board meeting. The Committee will have a discussion with the Board of Pharmacy's Director of Internal Communications about the possibility of providing a high-level report to the Board's licensees who prescribe controlled substances, similar or identical to the robust quarterly report that pain management physicians receive. The Committee will also review internal data and will discuss research and educational outreach opportunities based on the data.

Finance Committee Report

Fiscal Report

Dr. Schottenstein stated that in December 2020, the Board's revenue was $613,513, a significant decrease from November's revenue of approximately $2,000,000. Dr. Schottenstein stated that the November revenue was due to licenses meeting the December 1 deadline for renewal. Subsequently, another delay in the renewal was established until July 1, 2021, so the decrease is likely a function licensees once again delaying license renewal.

Dr. Schottenstein stated that the Board is about halfway through the fiscal year, so it is a good time to take stock. The Board's cash balance is still historically high at $6,599,624, which should act as a cushion over the next several months with regard to the anticipated decrease in revenue due to extension of the license renewal deadline. Dr. Schottenstein stated that the Board should recoup that revenue from the deadline extension later in the fiscal year, just as was seen in November 2020 with the previous deadline extension.

With regard to spending, Dr. Schottenstein stated that the Board just received an invoice from the Department of Administrative Services (DAS) for the last four months of rent, totaling $124,000, as well as various other services they provide. This will be reflected in the January 2021 numbers as a spike in expenditures. That, combined with the anticipated drop in revenue due to the renewal deadline extension, will negatively impact the Board's cash balance. The Board also just received a $333,000 invoice for eLicense services, which will be seen in the January 2021 or February 2021 numbers. Credit card processing fees also continue to trickle in, and this is another major expense. Dr. Schottenstein stated that this is a function of cash flow and things should even out by the end of the fiscal year.

Fines

Dr. Schottenstein stated that no fines were assessed or collected in December 2020.

Budget Update

Dr. Schottenstein stated that the Board's request for an expansion budget was approved by the Office of Budget and Management (OBM) and the Governor's office, and sent to the legislature which must still approve it. the Board has requested $12,300,000 for Fiscal Year 2022 and $12,500,000 for Fiscal Year 2023. OBM passed the language along largely unchanged, and included the request for six additional positions: One enforcement attorney, three investigators, a victim advocate, and a medical director. Ms. Loucka will testify in support of the budget in the House and Senate. Dr. Schottenstein was cautiously optimistic that the budget would be approved. Dr. Schottenstein noted that the Board has relatively low licensure fees compared to similarly-sized boards and has not increased licensure fees in 20 years.

Controlling Board Request

Dr. Schottenstein stated that the Medical Board currently employs two full-time hearing examiners and utilizes the services of Ronda Shamansky, a private attorney, for contract hearing examiner services as the need arises. Historically, the Board has an annual contact with Ms. Shamansky that does not exceed $50,000, and is currently at $48,925. However, this year, due to a number of factors described below, the Board would like to amend Ms. Shamansky's contact to $68,925. Contracts over $50,000 that are not competitively bid must be approved by the Controlling Board.

Dr. Schottenstein stated that due to the COVID-19 pandemic and delays in Fiscal Year 2020, the Hearing Unit is experiencing an increasingly heavy caseload with many of the cases resulting in complex, multi-day hearings. The Hearing Unit has 55 days of hearings scheduled for the first half of 2021, compared to 20 days last year. Additionally, there has been a drastic increase in prescribing standard of care cases that are notably complex. The Hearing Unit currently has 12 of these cases on its docket, compared to four in all of last year.

Dr. Schottenstein stated that the Board's current hearing process timeline does not allow for a transition of work or training to bring another hearing examiner up to speed during the current fiscal year. Ms. Shamansky has years of familiarity with the Board's hearing processes and has the experience necessary to seamlessly take on large, complex cases without requiring additional training or assistance. Approval of this request will allow the Board to stay on schedule for the remainder of fiscal year by assigning additional cases to Ms. Shamansky. Next fiscal year, the Board intends to seek out other qualified attorneys who can assist in completing this work.

The Finance Committee has recommended approval of this request.

Motion to recommend that the Executive Director seek approval from the Controlling Board to amend Ms. Shamansky's contract to $68,925:

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

The motion carried.

Mr. Gonidakis exited the meeting at this time.

Compliance Committee

Treatment Provider Applications

Ms. Montgomery stated that the Committee recommends approval of the treatment provider applications on today's agenda.

Dr. Rothermel move to approve the treatment provider applications from UF Health Florida Recovery Center; Parkdale Center; Talbot Recovery Campus; Cleveland Clinic Alcohol and Drug Recovery Center; and MARR Addiction Treatment Centers. Dr. Rothermel seconded the motion. All members voted aye. The motion carried.

OPHP Evaluations

Ms. Montgomery stated that the Committee discussed the cost of impairment evaluations and the efficacy of one-day evaluations compared to three-day evaluations. Rather than just having an exception that allows massage therapists to have a one-day outpatient evaluation, the Committee accepted the staff's recommendation to divide the Board's licensees into two clusters. Cluster A (physicians, physician assistants, and anesthesiologist assistants) would be required to have a three-day inpatient evaluation, while Cluster B (all other licensees) would be required to have a one-day outpatient evaluation.

Compliance Statistics Follow-Up

Ms. Montgomery stated that the Committee continues to discuss the quality of the Board's tracking of probationers, as well as the quality of the probation. Ms. Dorcy provided a thorough memo on the compliance statistics.

Letter from Medical Associations Coalition

Ms. Montgomery stated that the Board received a letter from the Medical Associations Coalition (MCA) expressing general concern about the language in the Board's licensure applications, particularly about disclosures of mental health conditions and other conditions. The MAC also requested that the Board establish a program for mental health similar to the One-Bite program for substance abuse and addiction.

Ms. Montgomery noted that Ms. Anderson did research on other states and found that the Board's five-year lookback on licensure applications, in which applicants must report impairment issues occurring within the last five years, is about in the middle in terms of what other states ask on their applications. Some states have a longer lookback, while other states had a shorter lookback, only ask for current status, or do not ask at all.

Ms. Montgomery stated that she and staff members had interesting conversations with the Executive Director of the Ohio Physicians Health Program (OPHP) about what OPHP may be able to help the Board with, beyond what it is already doing.

FSMB Recommendations Review Committee Report

Dr. Schottenstein stated that the Committee met this morning and discussed two major issues. First, the Committee discussed adding a consumer member to the complaint investigation process. In general, the Committee would like to keep proposed language on this matter as general as possible so the Board has maximum flexibility as things proceed. The overall consensus of the Committee is that, while in an ideal world a consumer member would be involved in all aspects of all complaints, the volume and workload would be daunting. The Committee felt that it would be preferrable to begin with sexual misconduct complaints only and then possibly expand from there. The Committee also felt that the consumer member would be inserted into the investigation process mostly at the same points as the Secretary and Supervising Member, with the possible exception of subpoena reviews.

The Committee also discussed establishing a Quality Assurance (QA) Committee to review random samplings of closed complaints, as well as select closed complaints which the complainant has requested be reopened. The staff will develop protocols for a potential QA Committee for future consideration.

Lastly, the Committee discussed the Board's recusal policy. Under current policy, if a licensee has complaint A and a Board member is involved in that investigation, and later the same licensee has complaint B, the Board member must recuse from complaint B as well as complaint A. Dr. Schottenstein opined that this makes sense if complaint B is relevant to complaint A. However, if complaint B has nothing to do with complaint A, Dr. Schottenstein opined that the Board member should be allowed to participate in adjudication of complaint B. Staff will develop language on the recusal policy for consideration in the future.

Licensure Committee Report

Licensure Application Reviews

Motion to approve the Licensure staff recommendations for the requests of Kelly Ackert, Wendy Cunningham, Cynthia DeVaughn, Allison Graves, Andrés Madrigal, M.D., Michelle Specht, and Garnetta Williams:

Motion	Dr. Johnson
2nd	Dr. Kakarala
Dr. Rothermel	Y

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

The motion carried.

Dr. Saferin commented that when he first joined the Board, licensure took in excess of 90 days on average. Currently, licensure takes two weeks.

COMPLIANCE

Reinstatement Requests

Susan D. Lawrence, D.O.

Motion to approve the request for the reinstatement of the license of Susan D. Lawrence, D.O., effective immediately, subject to the probationary terms and conditions as outlined in the February 13, 2019 Board Order for a minimum of five years:

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

The motion carried.

Scott R. Welden, M.D.

Motion to approve the request for the reinstatement of the license of Scott R. Welden, M.D., effective immediately, subject to the probationary terms and conditions as outlined in the June 12, 2019 Board Order for a minimum of five years:

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

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

The motion carried.

Office Conference Review

Motion to approve the Compliance staff's Reports of Conferences for January 11 and 12, 2021:

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

The motion carried.

Probationary Requests

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

a) Julie M. Alderson, D.O.: Request for discontinuance of the drug log requirement; and approval to administer, personally furnish, dispense and possess controlled substances.

b) Michael T. Bangert, M.D.: Request for approval of Kelly B. Rhoadarmer, M.D. to serve as the new treating psychiatrist; and early release from the terms of the March 8, 2017 Step II Consent Agreement.

c) Matthew D. Bauer, D.O.: Request for approval of Susan F. Davis-Brown, M.D., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per month.

d) David M. Burkons, M.D.: Request for release from the terms of the July 12, 2017 Board Order.

e) Thomas J. Gantner, P.A.: Request for approval of Mark W. Stanley, D.O. to serve as the reporting physician.

f) Stephen T. House, M.D.: Request for approval of the course *Medical Record Course*, offered by KSTAR, to fulfill the medical records course requirement; and approval of the course *Intensive Course in Prescribing and Pharmacology of Controlled Drugs: Critical Issues and Communication Pitfalls*, offered by the Medical Association of the State of Alabama, the Alabama Board of Medical Examiners,

and the Alabama Board of Nursing, to fulfill the controlled substance prescribing course requirement.

g) Vern D. Reynolds, D.O.: Request for approval of the course *Controlled Substance Prescribing: Pain, Anxiety and Insomnia*, offered by Case Western Reserve University, to fulfill the controlled substance prescribing course.

h) Arthur H. Smith, M.D.: Request for approval of the course *Certified Medical Compliance Officer*, offered by Practice Management Institute, to fulfill the office management course requirement.

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

The motion carried.

ADJOURN

Dr. Kakarala moved to adjourn the meeting. Dr. Soin seconded the motion. All members voted aye. The motion carried.

The meeting adjourned at 1:46 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on February 10, 2021, as approved on March 10, 2021.

Mark Bechtel MD

Mark Bechtel, M.D., President

Kim G. Rothermel MD

Kim G. Rothermel, M.D., Secretary

(SEAL)

State Medical Board of Ohio

30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
med.ohio.gov

State Medical Board of Ohio

COMPLIANCE COMMITTEE MEETING
February 10, 2021
via live-streamed video conference

Members:	**Staff:**
Betty Montgomery, Chair Robert Giacalone, R.Ph., J.D. Michael Schottenstein, M.D. Harish Kakarala, M.D. **Other Board Members present:** Mark Bechtel, M.D. Kim Rothermel, M.D. Yeshwant Reddy, M.D.	Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Brandi Dorcy, Chief of Compliance Joseph Turek, Deputy Director for Licensure Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Deputy Director of External Affairs Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian

The meeting was called to order at 8:30 a.m.

Minutes Review

Dr. Schottenstein moved to approve the draft minutes of the Committee's January 13, 2021 meeting as written. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

Treatment Provider Applications

Dr. Schottenstein moved to recommend that the treatment provider applications from UF Health Florida Recovery Center; Parkdale Center; Talbot Recovery Campus; Cleveland Clinic Alcohol and Drug Recovery Center; and MARR Addiction Treatment Centers be approved. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

OPHP Evaluations

Ms. Montgomery stated that following the Committee's discussion last month regarding the One-Bite program, she, Ms. Loucka, and Ms. Dorcy had a meeting with Kelley Long, Executive Director of the Ohio Physicians Health Program (OPHP).

Ms. Dorcy stated that the subject of the meeting was how to make sure the One-Bite program is structured for the success of the licensees. One issue brought up was the cost of the evaluations and what was most clinically appropriate for the Board's licensees. Ms. Dorcy's memo to the Committee includes the average costs of the different evaluations. Since the inception of the One-Bite program, 96 licensees have been referred by the Board for evaluation. Of those 96 licenses, approximately 63% either declined to attend the evaluation or were evaluated and not given a diagnosis. In light of

this large percentage, the meeting participants discussed how the Board and OPHP can work together for better outcomes.

The Board's licensees were grouped into two clusters. Cluster A includes the licensees who OPHP felt needed the 72-hour evaluation and could financially support it. Cluster B includes many allied professional licensees that cited financial concerns and need an evaluation, but may not need the 72-hour evaluation. Ms. Dorcy reached out to Ms. Anderson to discuss what legal changes would need to occur if the Committee felt these cluster groups were appropriate, and that legal discussion is outlined in the memo.

In response to a question from Ms. Montgomery, Ms. Dorcy stated that both the 72-hour evaluation and the outpatient evaluation are clinically appropriate. OPHP stated that the licensees in Cluster A responded better to the 72-hour evaluation, whereas those in Cluster B may benefit more from the outpatient evaluation. The clinical appropriateness for each cluster was based on outcomes and OPHP's years of experience dealing with professionals.

Ms. Montgomery commented that in OPHP's experience, physicians have a more difficult time than other licensees recognizing the issues they are dealing with. Dr. Schottenstein was not surprised that physicians may be somewhat more entrenched in that regard.

Dr. Schottenstein substantially believed that the proposed changes were appropriate. Dr. Schottenstein stated that the Board has always allowed massage therapists to have an outpatient evaluation, so when the topic arose of allowing respiratory care professionals do the same it seemed reasonable to use the opportunity to rethink the matter for all the Board's licensees. Dr. Schottenstein agreed with the proposal to keep 72-hour evaluations for those in Cluster A, which includes physicians, physician assistants, and anesthesiologist assistants, while the other licensee types in Cluster B would be well-served with an outpatient assessment.

Dr. Bechtel agreed that the recommendations are very appropriate. Dr. Bechtel stated that these are challenging times for healthcare with the COVID-19 pandemic and the stress it has created on personnel and practices. In these unprecedented times, there should not be roadblocks or barriers in terms of the cost of reaching out and seeking help.

Mr. Giacalone, noting that the Board's decision will have ripple effects in other professions, asked about the positions of the Board of Nursing and the Board of Pharmacy on this matter. Ms. Dorcy replied that she will reach out for that information and report back to the Committee.

Mr. Giacalone asked if respondents who had previously given up their licenses due to financial reasons will be allowed to be relicensed once a more affordable evaluation is available to them. Dr. Schottenstein opined that if the license was not permanently revoked, it would only be fair to allow the licensee to return. Mr. Giacalone agreed. Dr. Saferin also agreed, but stated that the individual would still need an evaluation.

Ms. Montgomery asked if the Board has an affirmative duty to alert these former licensees of this change in the rules. Ms. Loucka answered that given the pandemic and the increase in One-Bite participants among allied professionals, it would be fair to inform them once the rule is effective. Ms. Dorcy stated that she is already in the process of compiling a list of these former licensees. Ms. Montgomery asked how long it will take to institute these new rules. Ms. Anderson stated that the Board will have to follow the normal rule promulgation process and it is difficult to predict how long that

may take. Ms. Anderson stated that the draft rules could be available for Committee review at the next meeting.

Ms. Anderson clarified that the proposal is to make this change across the board for those in the One-Bite program and those not in the program. Ms. Anderson added that those in Cluster B who have an outpatient evaluation and are found to be impaired would have intensive outpatient treatment available to them instead of inpatient treatment. Those in Cluster A who have a 72-hour evaluation and are found to be impaired would have residential or inpatient treatment. Those in One-Bite would have more flexibility because the treatment would be determined by the provider. Ms. Montgomery asked about the cost of intensive outpatient treatment. Ms. Anderson stated that she will get that information, but was certain it would be significantly less than residential treatment.

Ms. Montgomery asked Ms. Dorcy to expand on the final bullet point in the memo, "The behavioral health assessment tool can be utilized as a 'pre-evaluation' prior to a decision being made for a licensee …" Ms. Dorcy explained that among licensees who were evaluated and did not receive a diagnosis, a number of them had been evaluated due to reporting things like OVI arrests on their license renewal applications. OPHP offers a behavioral health assessment which can give the licensee the ability to do a pre-assessment prior to being sent to a full evaluation. The behavioral health assessment involves a clinical interview and information from collateral resources to make a pre-determination of whether the licensee needs a full evaluation.

Ms. Montgomery stated that Ms. Dorcy and other staff will produce material for later review about the possibility of proposing a legislative change that would require a licensee to immediately report an arrest to the Board instead of doing so on their next renewal application. Dr. Schottenstein commented that the Board could also sign up for the Attorney General's Office Rapback program, which would notify the Board in a timely manner if one of its licensees gets into legal trouble. Ms. Montgomery asked Ms. Dorcy to include that information in the materials and commented that the Board may wish to take both approaches. Ms. Loucka stated that rules will be drafted and brought to the Committee for review.

Compliance Statistics Follow-Up

Ms. Montgomery stated that Ms. Dorcy has compiled data on the quality of the Board's management of probationers, which will be helpful in terms of staffing and quality compliance.

Ms. Dorcy stated that the Compliance staff has started collecting data on enhancing the monitoring program that already exists. One way of improving the program is to review the data on a regular basis, as well as the different types of licensees coming into the program. The basic statistics reports have been included in the meeting materials. Ms. Dorcy stated that quarterly updates can be provided that would give a larger sampling of data and allow further de-identification of the data.

Letter from Medical Associations Coalition

Ms. Montgomery stated that a letter from the Medical Associations Coalition (MAC) was included in the meeting materials for the Committee's review. The letter outlined concerns about the questions on the Board's licensure and renewal applications, public disclosure of health information, and confidential monitoring, among other items.

Dr. Saferin noted that Mr. Turek has developed proposed changes to the Board's application questions which incorporate some of the concerns in the MAC letter. These proposals will be further refined and presented for discussion at a later meeting.

Ms. Anderson stated that in about 2015, the Board reviewed its application questions on impairment and made some adjustments. At that time, the Board had a ten-year look-back on impairment issues, but the modified questions reduced that to five years. In comparing this to other states currently, Ohio seems to be in the middle of what other states do. Some other states ask no impairment questions at all, while other states ask about current status only or have a two-year look-back. Still other states have a look-back that is longer than five years.

Dr. Schottenstein was not sure that the middle is viable for Ohio in the long-term. Dr. Schottenstein believed that the national trend is to have either a shorter look-back or only question current status. Dr. Schottenstein opined that it would be helpful to have the Federation of State Medical Boards (FSMB) position statement on wellness and burnout, which speaks to the issues in the MAC letter. The FSMB proposes keeping the impairment question to current status, but suggests that if a Board feels obligated to have a lock-back then it should be two years or less.

Dr. Schottenstein further noted a statement in the FSMB document that states, "It is also very important to recognize that court interpretations of the Americans with Disabilities Act (ADA) have suggested that state medical boards should focus on current functional impairment rather than a history of diagnoses or treatment of such illness." Dr. Schottenstein stated that he wishes to be sensitive to staff who feel it is important to have a look-back on impairment, but opined that the Board should try to move in the direction of current status only, to the degree that staff is comfortable with it, to more closely align with the direction this topic is moving.

Ms. Montgomery stated that she would have a difficult time supporting a question on current status only. Ms. Montgomery was not personally persuaded that Ohio should do something just because other states are doing it, though it certainly helps inform the Board of what may be best practices. Ms. Montgomery opined that this is deserving of fuller discussion at the next meeting.

Mr. Giacalone suggested contacting states that still have a longer look-back on impairment and ask what they have found and why they have kept that in place. Ms. Loucka agreed and added that the staff can also contact states that have shortened or eliminated their look-back to ask what their experience has been.

Ms. Loucka stated that in reviewing renewal applications from 2020 for the question asking if the applicant had been addicted since their last renewal application, .03% answered affirmatively. Ms. Loucka stated that this does not mirror addiction levels in society and opined that this question is not giving the Board correct information. Ms. Loucka added that during last year's historical case review on sexual misconduct complaint, a significant number of the 1,250 licensees reviewed were found to have had OVI's that they did not report to the Board. Ms. Loucka questioned what information the Board is getting that is meaningful and can be acted upon. Ms. Loucka favored Mr. Giacalone's idea of talking to other states to learn what is working or not working there.

Dr. Schottenstein found the lack of reporting OVI's compelling. Dr. Schottenstein stated that this is more reason to consider the Rapback program, and is also an indication that the Board was correct to make legislative proposals for law enforcement to contact the Board about such situations.

Adjourn

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

The meeting adjourned at 9:08 a.m.

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State Medical Board of Ohio

30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
med.ohio.gov

State Medical Board of Ohio

FSMB RECOMMENDATIONS REVIEW COMMITTEE MEETING
February 10, 2021
via live-streamed video conference

Members:	**Staff:**
Michael Schottenstein, M.D., Chair Kim Rothermel, M.D. Bruce Saferin, D.P.M. Robert Giacalone, R.Ph., J.D. Jonathan Feibel, M.D. **Other Board Members present:** Mark Bechtel, M.D. Betty Montgomery Sherry Johnson, D.O. Harish Kakarala, M.D. Yeshwant Reddy, M.D.	Stephanie Loucka, Executive Director Kimberly Anderson, Chief Legal Counsel Nathan Smith, Senior Legal and Policy Counsel Jill Reardon, Deputy Director of External Affairs Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian

The meeting was called to order at 9:10 a.m.

Minutes Review

Dr. Saferin moved to approve the draft minutes of the Committee's January 13, 2021 meeting as written. Dr. Rothermel seconded the motion. All members voted aye. The motion carried.

Addition of Consumer Member

Ms. Loucka stated that the meeting materials includes the statute section that would have to be amended if the Board wishes to add a consumer member to the Board's investigatory processes. The meeting materials also include data on the types of complaints received by the Board over the past year, broken down by category and illustrating sexual misconduct complaints relative to other categories. Ms. Loucka noted that complaints with multiple allegation types is the largest category.

Ms. Loucka asked the Committee to discuss what types of complaints that would be reviewed by the consumer member and at what points in the process.

Ms. Montgomery asked what the dramatic increase in the number of complaints in the past year could be attributed to. Ms. Loucka was uncertain, but speculated that the increase was due to greater media coverage which has enhanced the Board's visibility to the public.

Dr. Schottenstein observed that in previous discussions, the Committee had appreciated the idea of having a consumer member involved in the entire complaint process. However, the Committee also felt that due to practical considerations of the amount of work and time commitment involved, it may be

more prudent to begin with sexual misconduct complaints and then consider expanding from there if it seems appropriate.

Dr. Feibel stated that he continues to support having a consumer member involved in the entire process to provide more transparency. Dr. Feibel specifically advocated having a consumer member involved in complaints alleging violations of the minimal standards of care. Dr. Feibel stated that although a consumer member would not have medical training or expertise, they would be able to suggest further investigation if other physicians think there may be a problem. Dr. Feibel felt that having a consumer member involved in minimal standards cases and sexual misconduct cases would encourage public trust.

Mr. Giacalone agreed that in a perfect world, a consumer member would be involved in all complaints. However, time and resources are limited. Mr. Giacalone opined that it would be asking a lot for a consumer member to review minimal standards complaints and may not add value to the process. Mr. Giacalone, noting that he has at times reviewed minimal standards complaints when the Supervising Member had a conflict, stated that despite his science background as a pharmacist he sometimes struggled with the cases. Mr. Giacalone opined that complaints involving sexual misconduct and unprofessional conduct would benefit the most from consumer member involvement.

Dr. Schottenstein stated that Mr. Giacalone's comments are fair, but had two questions on the subject. First, could the consumer member be helpful in the assessment of a minimal standards complaint? Second, would having a consumer member as part of the process move the process along more quickly? Dr. Schottenstein noted that some minimal standards cases are years old and consumer member involvement could make it a more timely and efficient process.

Ms. Montgomery generally agreed with Dr. Feibel that in an ideal world a consumer member would be involved in all complaints. Ms. Montgomery also noted that there are three consumer members on the Board and it is important for them to be able to speak in the public Board meetings. Ms. Montgomery commented that the longer she is on the Board, the more respect she has for the workload carried by Dr. Rothermel and Dr. Saferin as Secretary and Supervising Member. Ms. Montgomery opined that involvement of a consumer member should begin with sexual misconduct cases and other specific cases, to be identified by a protocol, that would benefit from consumer member involvement.

Ms. Montgomery agreed that there is a backlog of cases due to various factors, but she believed that changes in processes being spearheaded by Ms. Loucka will result in a reduction of the backlog over the next year or so.

Dr. Bechtel stated that having previously served as both Secretary and Supervising Member, he felt it is important to have a consumer member be part of the sexual misconduct investigations. In light of the Dr. Strauss investigations and the recommendations from the FSMB, Dr. Bechtel opined that it is one of the Board's top priorities to institute consumer involvement in sexual misconduct cases as soon as possible. Dr. Bechtel agreed that it is a tremendous time commitment and could be challenging to consumer members, but also concurred with Dr. Feibel that the public wants transparency. Dr. Bechtel stated that having consumer members involved at all levels with all cases, including minimal standards and sexual misconduct, is important.

Dr. Bechtel suggested that the Board move forward with involving a consumer member in sexual misconduct cases as soon as possible, and then explore a more long-term plan for involvement with all complaints. Dr. Bechtel stated that there are a number of different ways the Board can accomplish this. For instance, one consumer member could be involved in only sexual misconduct cases and

would only have to recuse from those cases in the public meetings; another consumer member could be involved in only minimal standards cases and only recuse on those cases; and so forth.

Dr. Schottenstein opined that draft language instituting these policies should be as broad as possible so that the Board will be able to expand the process at its discretion.

Dr. Feibel commented that the Board appreciates the hard work that the Secretary and Supervising Member do and this discussion is in no way a reflection on anyone who has served in those roles. Dr. Feibel stated if the legislature allows the Board to start from a fresh slate, there are a number of things that can be considered. Dr. Feibel stated that the Board could be expanded to include a fourth consumer member who is specifically chosen for the role of consumer member for investigations. This would preserve having three consumer members who can comment during public meetings and the fourth consumer member would know up-front the time commitment of the position.

Dr. Feibel continued that as bad as the matter of Dr. Strauss was, there could be an equally bad public issue if a minimal standards case moves slowly and the licensee is able to continue practicing medicine for ten years. Dr. Feibel agreed with Dr. Schottenstein that a consumer member may move that process along quicker by asking why the case is taking so long or why the contracted expert is taking a year to review the records.

Dr. Schottenstein recalled that Ms. Montgomery once questioned why a dozen patient cases had to be reviewed in a minimal standards case when only five may be enough to establish a pattern. Dr. Schottenstein concurred that using fewer patient cases could streamline the process while still making the point about the physician's practice.

Regarding Dr. Feibel's suggestion about adding a fourth consumer member who would be dedicated to investigations, Mr. Giacalone stated that it sounds good in theory but a new member would not truly understand the extent of the workload and time commitment. Mr. Giacalone predicted that such a position would either be filled by someone who would not do an adequate job, or there will be a revolving door of people coming in and then leaving due to the workload. Mr. Giacalone stated that creating the position would look good, but would serve nothing and may even be counter-productive.

Regarding minimal standards complaints, Mr. Giacalone stated that consumer members presented with such cases in public Board meetings already have the information fleshed out, including expert opinions, whereas consumer members during the investigation process only have the raw data to assess what is legitimate. Mr. Giacalone reiterated his opinion that having consumer members involved in minimal standards cases would not serve any purpose and would probably overwhelm the member. Ms. Montgomery echoed Mr. Giacalone's concerns.

Dr. Schottenstein asked if adding a fourth consumer member would change the quorum requirements, since the Board would then have 13 members. Ms. Anderson replied that by statute, six affirmative votes are needed to impose discipline; there is no statute on quorum, which is determined by the rules of parliamentary procedure that the Board has adopted.

Mr. Giacalone wished to make certain that the legislation reflects that it would not be just one consumer member who would carry all the burden, but that it would be split between two or three consumer members. Dr. Schottenstein agreed.

In regards to where in the process a consumer member would be involved, Dr. Schottenstein opined that it would be at any point where the Secretary and Supervising Member are involved. Mr.

Giacalone agreed. Ms. Loucka commented that there may be administrative steps in the investigation process where the need for consumer member involvement may be questioned, such as review of subpoena requests. Ms. Loucka stated that the Secretary and Supervising Member reviews thousands of subpoena requests. Dr. Schottenstein saw Ms. Loucka's point.

Dr. Rothermel stated that as Secretary of the Board, she will work with whatever rules the Board puts into place. Dr. Rothermel further commented that the discussion has been very interesting and many good points have been made by everyone who has spoken. Dr. Rothermel stated that she and Dr. Saferin review a very large number of minimal standards cases. Regarding comments that having consumer member involvement may shorten the process, Dr. Rothermel opined that that borders on oversight of staff responsibilities and Board operations, which is the role of the Executive Director. Dr. Rothermel stated that Ms. Loucka and her team are working hard to shorten those processes.

Dr. Rothermel also opined that it would be very difficult to have a rotation of consumer members into the role due to the significant learning curve. Dr. Rothermel stated that having two or three members periodically jump into the process would not work well. Dr. Schottenstein stated that it would be ideal to have one public member dedicated to it, but it comes down to a matter of capacity.

Complaints Outside the Board's Purview

Dr. Schottenstein observed that according to the chart in the Committee's materials, 2,533 complaints have been closed because they involved matters not regulated by the Board. Dr. Schottenstein suggested that this number may be reduced by developing guidelines that would allow potential complainants to determine for themselves if their complaint should be filed with the Medical Board. At the same time, Dr. Schottenstein did not wish to inadvertently discourage people whose complaints should be filed with the Medical Board.

Board Member Recusal

Ms. Montgomery felt that that Board's recusal policy is too broad. Ms. Montgomery appreciated that Ms. Anderson it protecting the Board in terms of preventing this from becoming an issue in an appeal process, but she opined that the current policy is too risk-averse.

Dr. Feibel agreed with Ms. Montgomery and did not feel, for instance, that Dr. Bechtel should have to recuse himself from a current case just because he had been involved in an investigation of the licensee in an unrelated matter several years ago. Dr. Feibel questioned why Board members need to recuse themselves and why they cannot be like judges, who see all information in a case and are still able to render an objective decision. Dr. Feibel added that without the requirement for recusal, the Secretary and Supervising Member would feel more a part of the Board's adjudication process. Dr. Feibel asked for an exploration of who has to recuse, why they have to recuse, and whether there is a way to establish in statute that Board members do not have to recuse themselves.

Dr. Schottenstein confirmed that what Dr. Feibel is requesting would require a change in statute. The statute currently states, "No member of the board who supervises the investigation of a case shall participate in further adjudication of the case." Dr. Schottenstein opined that such a change may be tricky and that if the Secretary and Supervising Member were participants in Board adjudication then an outside party would probably be needed to filter what comes to the Board.

Dr. Schottenstein agreed that the Board should review the recusal process. Dr. Schottenstein opined that if a Board member is involved in investigating a compliant which is closed and a subsequent

complaint is filed on the same licensee that is related to the first complaint, then that Board member should recuse from the newer complaint. However, if the newer complaint is independent of the first complaint, Dr. Schottenstein did not feel the Board member should be required to recuse.

In response to questions from Ms. Loucka, Dr. Schottenstein clarified that he would like to see a staff recommendation on this issue. Dr. Schottenstein requested that the staff discuss it internally and report back on whether a change in the recusal policy is reasonable or why it is not reasonable.

Dr. Feibel asked what would happen if, due to recusals, Board vacancies, and member absences, there were fewer than six Board members who could vote on a disciplinary matter. Dr. Saferin answered that the Board could not consider the case and it would be continued to a future meeting when a quorum existed for the matter. Dr. Feibel commented that if there are six voting members, the Board could consider the matter but one dissenting vote could defeat a proposal. Dr. Schottenstein agreed and stated that this illustrates why it is desirable to have a full Board.

Quality Assurance Committee

Ms. Loucka presented research on the Board's previous Quality Assurance (QA) Committee, which existed from 1993 to 2002. The Committee reviewed closed complaints in two ways. First, a random sampling of about 5% of closed complaints was reviewed. Second, there was a focused review of closed complaints in which the complainant had requested that their compliant be reopened. Ms. Loucka speculated that the focused review was only for select cases because it is very common for complainants to request that their complaint be reopened.

Dr. Schottenstein asked what number of complaints were represented by the 5% reviewed by the QA Committee, noting that that number would be what the Committee considered to be a manageable workload. Ms. Loucka stated that she will look into that. Ms. Loucka noted that the Board receives many more complaints now than when the first QA Committee existed.

Dr. Schottenstein speculated on how a QA Committee might operate. For example, a certain percentage of closed complaints could be selected randomly, perhaps through a computer-generated list. If there had been 500 closed complaints and 5% were chosen randomly, that would be 25 cases. If there were five members of the QA Committee, each member would be assigned five cases to review. The Committee members would fill out a form indicating how they perceived the matter was handled. The staff could then collate those results to be presented to the Committee at its next meeting.

Ms. Loucka stated that she and the staff will develop a formal proposal for the Committee to discuss next month.

Adjourn

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

The meeting adjourned at 9:55 a.m.

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State Medical Board of Ohio

30 East Broad Street, 3rd Floor
Columbus, Ohio 43215
(614) 466-3934
med.ohio.gov

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MEDICAL MARIJUANA EXPERT REVIEW COMMITTEE MEETING
February 10, 2021
via live-streamed video conference

Members:	**Staff:**
Mark Bechtel, M.D., Chair Amol Soin, M.D. Robert Giacalone, R.Ph., J.D. Michael Schottenstein, M.D. Yeshwant Reddy, M.D. **Other Board Members present:** Sherry Johnson, D.O. Jonathan Feibel, M.D.	Stephanie Loucka, Executive Director Brandi Dorcy, Communications Liaison Nathan Smith, Senior Legal and Policy Counsel Chelsea Wonski, Director of Legislative Affairs Jerica Stewart, Communications & Outreach Administrator Julie Williams, Public Information Officer Benton Taylor, Board Parliamentarian

The meeting was called to order at 2:01 p.m.

Petitions for Additional Qualifying Conditions

Dr. Bechtel stated that between November 1 and December 31, 2020, the Board received 30 petitions to add new qualifying conditions to the list of conditions that may be treated with medical marijuana. Dr. Bechtel stated that under the Board's rules, as outlined in 4731-31-05, Ohio Administrative Code, petitions must meet the following criteria:

- The name and contact information for the person submitting the petition.
- The specific disease or condition requested to be added as a qualifying condition.
- Information from experts who specialize in the study of the disease or condition.
- Relevant medical or scientific evidence pertaining to the disease or condition.
- Consideration of whether conventional medical therapies are insufficient to treat or alleviate the disease or condition.
- Evidence supporting the use of medical marijuana to treat or alleviate the disease or condition, including journal articles, peer-reviewed studies, and other types of medical or scientific documentation.
- Letters of support provided by physicians with knowledge of the disease or condition. This may include a letter provided by the physician treating the petitioner, if applicable.

Dr. Bechtel stated that the petitions have been divided into categories.

Category 1

Petitions in Category 1 do not appear to meet the requirements of the Board's rules. Dr. Bechtel noted that of the 30 petitions, 17 appear to fit into that category.

Dr. Bechtel asked if the petition for complex regional pain syndrome may already qualify for treatment with medical marijuana under previous chronic pain indications. Dr. Soin opined that complex regional pain syndrome currently qualifies because it is a chronic pain state. Dr. Soin stated that there are two types of complex regional pain syndrome and this petition is for Type 2, which specifically relates to damage of the nerve. Dr. Soin stated that the prevalence of Type 2 is very low, but it would likely be covered under the chronic pain conditions. Dr. Soin pointed out that the petition is less than 15 words and the evidence cited was that the petitioner had read about it online.

Dr. Schottenstein moved to recommend to the Board that the petitions in Category 1 be rejected. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

Category 2

Category 2 is for petitions that appear to be close to meeting the requirements for consideration, but are missing minor details and need administrative follow-up. Dr. Bechtel stated that none of the petitions fit into Category 2.

Category 3

Petitions in Category 3 do not appear to meet requirements, but are most likely already covered by statute. Dr. Bechtel stated that three petitions fit into this category, namely the petitions for fibromyalgia, multiple sclerosis, and post-traumatic stress disorder. Dr. Bechtel suggested that these petitions be rejected, but that staff should contact the petitioners and inform them that the conditions are most likely already qualified conditions.

Dr. Schottenstein opined that the previously-discussed petition for complex regional pain syndrome should probably be in Category 3. Dr. Schottenstein further recommended that the petitions for arthritis and migraines, which are currently in Category 4, should also be moved into Category 3 because those conditions involve pain that is either intractable or chronic and severe. Mr. Giacalone and Dr. Bechtel agreed.

Dr. Soin moved to move the petition for arthritis from Category 4 to Category 3. Dr. Schottenstein seconded the motion. The motion carried.

Regarding migraine headaches, Dr. Soin stated that they may be covered as chronic pain if they are chronic. However, episodic migraines are not chronic and may not be covered currently. However, if the migraines are intractable, Dr. Soin believed they would be covered. Dr. Soin stated that although he is not an expert on the definition of "intractable," he opined that migraines would be covered on the basis that they can be chronic or acute and intractable. Ms. Anderson stated that for the purposes of the Board's previous statutes, the terms "intractable" and "chronic" have been used interchangeably.

Mr. Giacalone asked if chronic migraines should be specified so that people do not think it is referring to transient migraines. Dr. Soin opined that it should be so specified, stating that there is precedent for that in the pain management literature. For example, for treatment with Botox, the Food and Drug Administration defines chronic migraines as occurring on at least 15 days per month. Dr. Soin stated that it is not the Committee's intent that those who, for instance, have one migraine per year would be a candidate for medical marijuana.

Dr. Schottenstein moved to move the petition for chronic migraines from Category 4 to Category 3. Dr. Soin seconded the motion. All members voted aye. The motion carried.

Dr. Soin moved to move the petition for complex regional pain syndrome from Category 1 to Category 3 as a condition already covered as chronic pain. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Category 4

Petitions in Category 4 appear to meet the requirements for consideration to be added as new qualifying conditions.

Autism Spectrum Disorder

Dr. Bechtel stated that the two petitions for Autism Spectrum Disorder presented new articles on this topic, many focused on the endocannabinoid system. Dr. Bechtel commented that there are many neuroreceptors for cannabinoids, which he has worked with as a dermatologist. Dr. Bechtel noted that this condition has been considered for addition to the list of qualifying conditions before, and concerns had been expressed by Nationwide Children's Hospital's Autism Center, Cincinnati Children's Hospital, and the Director of the Ohio Department of Mental Health and Addiction Services.

Dr. Schottenstein felt that the Committee is substantially familiar with the autism petitions and have had expert review on that in the past. Since there is a public comment period that is still ongoing, Dr. Schottenstein opined that it would be premature to vote on the petition at this time. Dr. Schottenstein did not feel the need for expert review for these petitions.

Dr. Reddy expressed concern for the long-term effects of cannabinoids on a young brain. Dr. Reddy stated that until there are substantial studies that indicate no long-term side-effects, he would be very apprehensive about treating autism spectrum disorders with medical marijuana. Dr. Reddy stated that such treatment in adult patients may be a different story.

Mr. Giacalone stated that in previously considering this condition, Nationwide Children's Hospital and Cincinnati Children's Hospital were very specific on the dangers of medical marijuana to young children, and nothing in the new materials alleviated Mr. Giacalone's concerns which were raised by those groups. Mr. Giacalone saw no reason for additional expert review for this condition.

Dr. Bechtel suggested moving this petition forward for further review with the Board serving as its own expert.

Dr. Schottenstein moved for further review of this petition, with the Board serving as its own expert. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

Restless Leg Syndrome

Dr. Schottenstein stated that this is a condition that the Committee has not reviewed before. Dr. Schottenstein felt that there should be expert review for this petition.

Dr. Bechtel agreed with Dr. Schottenstein. Dr. Bechtel also wondered if this would fall under the broad spectrum of spasticity and spasms. Dr. Bechtel noted that the petitioner, Dr. Hurd, had observed that

one of his patients who was taking cannabis seemed to have less problem with restless leg syndrome. The articles that were cited, which were generally from one author in France, were mostly observations that patients who were using recreational marijuana had fewer symptoms of restless leg syndrome; there were no clinical trials or studies beyond these observations. Dr. Bechtel also noted a short article in the petition involving 14 patients who had chronic renal failure and were on dialysis, which indicated improvement in seven of those patients.

Dr. Schottenstein moved to obtain a neurologic expert opinion on this petition. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

Huntington's Disease

Dr. Bechtel commented that Huntington's disease is a very debilitating condition and there are currently no FDA-approved treatments. The petitioner, Dr. Woo, presented some evidence that basal ganglia have a lot of cannabinoid receptors that may be a therapeutic target.

Dr. Reddy commented that of the 22 conditions that are approved for treatment with medical marijuana, nine involved the nervous system: Alzheimer's disease, multiple sclerosis, Parkinson's disease, spinal cord disease or injury, traumatic brain injury, amyotrophic lateral sclerosis (ALS), chronic traumatic encephalopathy, epilepsy or seizure disorder, and Tourette syndrome. Huntington's disease, a genetic neurodegenerative condition, fits very well with these other conditions. Dr. Reddy opined that this petition should have expert review and noted one physician in Mansfield who has expertise in about 200 patients.

Dr. Reddy moved to send this petition to expert review. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Panic Disorders with Agoraphobia

Dr. Schottenstein stated that, similarly to autism, this is a condition the Committee is familiar with and has had expert review in the past. Dr. Schottenstein recommended moving forward in a similar fashion as with autism, being respectful of the comment period but not obtaining outside expert review. Dr. Bechtel and Mr. Giacalone agreed.

Dr. Schottenstein moved for further review of this petition, with the Board serving as its own expert. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

Spasticity/Persistent Muscle Spasms

Dr. Reddy noted that there are some overlaps among the conditions reviewed by the Committee. For example, spasticity and spasms generally occur in multiple sclerosis, spinal cord disease and injury, and traumatic brain injury. Dr. Reddy asked if spasticity and muscle spasms may already be covered under those other conditions.

Dr. Bechtel stated that if this petition is approved, it would allow for the use of medical marijuana to treat spasticity that occurs outside the other conditions. Mr. Giacalone agreed, stating that the legislature approve multiple sclerosis for treatment and the Board is not in a position to redefine that. Currently, spasticity without a diagnosis of multiple sclerosis or the other conditions cannot be treated with medical marijuana. Dr. Schottenstein stated that Dr. Reddy's point, that spasticity and muscle spasms are very reminiscent of something that is already approved, is compelling.

Dr. Reddy observed that several other conditions can also be grouped together, such as ulcerated colitis and Crohn's disease, both of which can encompass inflamed bowel disease. Dr. Reddy suggested as new conditions are added to the list of qualifying conditions for treatment with medical marijuana, they should be categorized. Dr. Bechtel stated that those indications were defined by statute and not by the Board. Dr. Schottenstein stated that Dr. Reddy's suggestion made sense, but he was uncertain if the Board has the ability to categorize the conditions because they were established by the legislature.

Ms. Loucka stated that the Board can have a conversation with the legislature about how the conditions are categorized. Ms. Loucka stated that the statute that enabled use of medical marijuana also authorized its use for about 20 conditions. The Medical Board has the ability to add to that list, but cannot remove conditions and cannot modify it.

Dr. Bechtel stated that it is a difficult situation because the initial qualifying conditions were defined by the legislature based on very little evidence-based medicine or medical review of other significant medical contributions. Dr. Bechtel stated that with Ms. Loucka and the staff working with the legislature, categories may be developed that make more sense.

Dr. Schottenstein moved to move the petition for spasticity/persistent muscle spasms forward for expert review. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

Terminal Illness

Dr. Bechtel stated that being terminally ill is defined as having six months or less to live.

Dr. Schottenstein suggested obtaining expert review for this condition, as it is new to the Committee. Dr. Bechtel agreed. Dr. Schottenstein opined that a physician who works in palliative care or a similar specialty would be ideal. Dr. Schottenstein noted that Ronan Factora, M.D., who specializes in geriatric medicine and is a former member of the Board, may be able to help locate an expert for this review.

Dr. Schottenstein moved to move the petitions for terminal illness forward for expert review. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

Dr. Schottenstein noted that the conditions the Committee is suggesting for expert review, with the exception of terminal illness, are substantially neurological in nature. Dr. Schottenstein asked if it would simplify the process if the Board obtained an expert who can comment on more than one indication. Ms. Loucka replied that the Board will seek one expert for the three neurological conditions.

Public Comment Period

Dr. Schottenstein moved to set the public comment period from February 11, 2021, to February 26, 2021, and include direction on where public comments can be sent. Dr. Reddy seconded the motion. All members voted aye. The motion carried.

CTR Physician Survey

Ms. Dorcy stated that the physicians with a Certificate to Recommend the Medical Use of Marijuana (CTR) must document that their patients are responding to therapy. The response period last year fell during the very beginning of the COVID-19 outbreak and stay-at-home orders, so some leniency was given to physicians who did not respond. Ms. Dorcy asked the Committee to discuss how to move forward regarding physicians with a CTR who do not respond to the survey. Dr. Schottenstein suggested sending the physicians as caution letter. Dr. Bechtel agreed.

Dr. Reddy asked what percentage of physicians with a CTR are actively recommending medical marijuana to patients. Ms. Stewart replied that of the physicians who responded to last year's survey, 34% never made a recommendation to use medical marijuana.

Adjourn

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

The meeting adjourned at 2:40 p.m.

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