

MINUTES**THE STATE MEDICAL BOARD OF OHIO****October 19, 2016**

Michael L. Gonidakis, President, called the meeting to order at 9:55 a.m. in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Donald R. Kenney, Sr., Acting Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Anita M. Steinbergh, D.O.; Robert P. Giacalone; Andrew P. Schachat, M.D.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; and Ronan M. Factora, M.D. The following member was absent: Amol Sooin, M.D., Vice President.

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

MINUTES REVIEW

Dr. Steinbergh moved to approve the draft minutes of the August 10, 2016, Board meeting, as written. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

APPLICANTS FOR LICENSURE

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

listed in Exhibit "A," the massage therapist applicants listed in Exhibit "B," the physician assistant applicants listed in Exhibit "C," and the physician applicants listed in Exhibit "D" as listed in the agenda supplement and handout. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

REPORTS AND RECOMMENDATIONS

Mr. Gonidakis announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Mr. Gonidakis asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Joseph Franklin Daugherty, III, M.D.; Jerry Mitchel Hahn, M.D.; James Austin Mabe, III, P.A.; John Pease Moore, M.D.; and Donald Leslie Epstein, M.D. A roll call was taken:

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

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

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

Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

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

Mr. Gonidakis reminded all parties that no oral motions may be made during these proceedings.

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

JOSEPH FRANKLIN DAUGHERTY, III, M.D.

Mr. Gonidakis directed the Board's attention to the matter of Joseph Franklin Daugherty, III, M.D. Objections have been filed to Ms. Blue's Report and Recommendation and were previously distributed to Board members.

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

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

Mr. Tkach stated that Dr. Daugherty entered into an Agreed Order with the Kentucky Board of Medical Licensure. The Kentucky Agreed Order was later amended and Dr. Daugherty is currently in full compliance with the Amended Agreed Order. Mr. Tkach stated that Dr. Daugherty is currently, as a requirement of his Kentucky Agreed Order, participating in the Center for Personalized Education in Physicians (CPEP) program. Mr. Tkach stated that Dr. Daugherty's most current progress report from CPEP was not available in time to be included in the hearing record, but it could be provided upon the Board's request. Mr. Tkach stated that Dr. Daugherty anticipates completing his CPEP program in February 2017.

Mr. Tkach stated that Dr. Daugherty would appreciate the opportunity to return to Ohio and practice medicine in the future. Mr. Tkach asked the Board to adopt the Hearing Examiner's Proposed Order, but suggested that the restrictions and limitations be tailored to mirror those of the Kentucky Agreed Order so that Dr. Daugherty would not have two competing sets of limitations on his licenses.

Dr. Daugherty stated that, based on his evaluation from CPEP, he realizes that he has at least three deficiencies. First, Dr. Daugherty's medical documentation had been very short and did not meet the current standards for more detailed documentation. Second, Dr. Daugherty had not kept up with the changing guidelines for prescribing narcotics, which have sharply reduced such prescribing since the time that pain was considered "the fifth vital sign." Third, Dr. Daugherty had fallen behind on his continuing medical education (CME).

Dr. Daugherty continued that he has been back in medical practice since October 2015. Dr. Daugherty stated that he is more than halfway through a CPEP medical knowledge self-assessment program, which involved about 200 hours of CME. Dr. Daugherty stated that he feels he has done well in the general internal medicine section, but he has realized that he was not as current as he should have been in the subspecialties of cardiology, neurology, and gastroenterology.

Dr. Daugherty stated that it would be ideal for him if the Ohio Board matched the Kentucky Agreed Order and require him to continue with CPEP until it is successfully completed. Dr. Daugherty stated that he does not currently have a Drug Enforcement Administration (DEA) certificate and he has no intention of resuming the prescribing of schedule II pain medications for chronic pain patients, which had been a portion of his practice in the last few years. Dr. Daugherty stated that he intends to return to the practice of general internal medicine. Dr. Daugherty stated that he lives in northern Kentucky within three miles of Cincinnati, Ohio, and he would like to return to practice with the hospitals of Cincinnati because many of his patients prefer those hospitals.

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

Mr. Wilcox opined that the Hearing Examiner's Report and Recommendation provides a thorough analysis of this matter. Mr. Wilcox stated that Dr. Daugherty's Kentucky Agreed Order requires him to complete a very extensive CPEP program. Upon completion of the CPEP program, Dr. Daugherty can once again hold an unrestricted medical license in Kentucky.

Mr. Wilcox noted that CPEP has identified multiple gaps in Dr. Daugherty's knowledge of outpatient internal medicine and pain management. Mr. Wilcox stated that, while he feels that the Proposed Order is fair, he himself is not a physician. Mr. Wilcox stated that the physicians on the Board should review the evidence and the CPEP report, then determine if the Proposed Order is adequate to protect the public. Mr. Wilcox also opined that it is appropriate to require Dr. Daugherty to hold an unrestricted Kentucky medical license and an unrestricted DEA certificate before he can practice medicine in Ohio.

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

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Dr. Edgin briefly reviewed Dr. Daugherty's career. Dr. Edgin stated that in December 2012 Dr. Daugherty entered into a Consent Agreement with the State Medical Board of Ohio based primarily on the fact that he failed to conduct or document appropriate physical examinations and diagnose the medical conditions of six patients before prescribing controlled substances. The Consent Agreement suspended Dr. Daugherty's Ohio medical license for a minimum of 90 days, followed by probationary terms and conditions for a minimum of three years.

Dr. Edgin continued that in 2013 or 2014 the Kentucky Board of Medical Licensure became aware of possible issues with Dr. Daugherty's prescribing practices, including the death of one of his patients due to overdose on pain medication. Several consultants reviewed Dr. Daugherty's patient records on behalf of the Kentucky Board and identified problems with Dr. Daugherty's documentation and diagnostics. The resulting Agreed Order from the Kentucky Board required Dr. Daugherty to complete a clinical skills

assessment at the Center for Personalized Education for Physicians (CPEP). Dr. Edgin stated that there have been continued deficiencies in Dr. Daugherty's practice despite his participation in the CPEP program and that this should be considered by the Ohio Board. Dr. Edgin noted that Dr. Daugherty has also surrendered his Drug Enforcement Agency (DEA) certification.

Dr. Edgin stated that by becoming subject to discipline and licensure limitations from the Kentucky Board through the April 2015 Agreed Order and October 2015 Amended Agreed Order, Dr. Daugherty violated his Consent Agreement with the Ohio Board under 4731.22(B)(22) and 4731.22(B)(15), Ohio Revised Code. The Assistant Attorney General has asked the Board to continue Dr. Daugherty's suspension until his Kentucky medical license is unrestricted and he holds an unencumbered DEA certificate. Dr. Edgin stated that the Board must consider whether to follow this recommendation or to revoke Dr. Daugherty's Ohio medical license. Dr. Edgin noted as a mitigating circumstance that Dr. Daugherty continues in CPEP and is making progress in that program. However, Dr. Edgin added that the Board must act on the violation of Dr. Daugherty's Ohio Consent Agreement.

Dr. Steinbergh stated that she agrees with Dr. Edgin's comments and she agrees with the Findings of Fact and Conclusions of Law in the Report and Recommendation. Dr. Steinbergh noted that page 25 of the Report and Recommendation incorrectly reports the dates of Dr. Daugherty's Kentucky Board actions with the year 2016, whereas the correct year is 2015.

Dr. Steinbergh read the following passage from the CPEP Assessment Report:

CPEP recommends Dr. Daugherty participate in a structured, individualized education intervention to address the identified areas of need. Some of these areas, including clinical judgment and reasoning or application of knowledge to patient care, can be challenging to remediate and may require significant time and effort to address.

Dr. Steinbergh interpreted this statement as a polite way of saying the Dr. Daugherty may not be capable of remediation.

Dr. Steinbergh read the following passage from the CPEP recommendation:

Following completion of the POC [Point of Care] experience in prescribing controlled substances, Dr. Daugherty would transition to independent practice of pain management. At that time, he should establish a relationship with an experienced educational Preceptor with training and experience in pain management and treatment of opioid dependency with Suboxone.

Dr. Steinbergh observed that the recommendation specifies that the educational preceptor is not intended to function as a practice monitor. Dr. Steinbergh stated that as an educator who supervises third and fourth year medical students, she recognizes the CPEP recommendation as something that would be appropriate for third year medical students. Dr. Steinbergh stated that, like third year medical students, Dr. Daugherty needs proctoring and is not safe to practice independently at this time. Dr. Steinbergh stated that these comments from CPEP indicate to her that Dr. Daugherty is not at the level that is expected for a practicing physician.

Dr. Steinbergh read another passage from the CPEP recommendation:

Communications course or intensive coaching with a communication professional that either observed actual patient encounters or SP [standardized patient] encounters with immediate feedback.

Dr. Steinbergh stated that this is also something that is done for medical students, especially in years two and three, in which the student is observed interacting with a standardized patient to ensure that the student is properly evaluating the patient.

Dr. Steinbergh read the following passage from the CPEP Progress Report:

Also the volume of information documented in the Impression and Plan section has likewise increased. The challenges now are to increase the quality, relevance, and thoroughness of the clinical information obtained and documented in the history, review of systems, exam, impression and plan and better organize the information in the note.

Dr. Steinbergh stated that this, again, is third year medical school work.

Dr. Steinbergh stated that Dr. Daugherty has a monitor at this time and has made some improvements. However, Dr. Steinbergh opined that Dr. Daugherty is too deficient in many areas of medical practice to be remediated. Dr. Steinbergh commented that a physician may attend evidence-based continuing medical education (CME) courses because they are required by law, but if they do not lead to changes in the physician's practice then the practice may have some deficiencies; likewise, Dr. Daugherty has not brought his practice up-to-date.

Dr. Steinbergh opined that Dr. Daugherty would not be capable of performing any hospital work and that no hospital credentialing body would allow him to practice in their hospital. Dr. Steinbergh noted that the Proposed Order would place Dr. Daugherty into a practice plan. Dr. Steinbergh suggested that if the Board chooses to accept a practice plan, it should be limited to outpatient settings only. Dr. Steinbergh commented that without such a stipulation a small hospital may allow Dr. Daugherty to practice there, but Dr. Steinbergh opined that this would significantly put patients at risk.

Mr. Giacalone read the following statement from the Kentucky Board consultant's December 1, 2013 letter to the Kentucky Board:

In summary, I feel that Dr. Daugherty misdiagnosed and/or over-diagnosed, under-treated medical issues, over-treated pain issues, over-prescribed a combination of dangerous medications to an at risk [sic] population and was therefore a danger to his patients as well as to the community.

Mr. Giacalone commented that he did not know how much more clear this statement could be. Mr. Giacalone also noted portions of the consultant's September 26, 2014 letter to the Kentucky Board involving Dr. Daugherty's prescriptions of high doses of opioids for immediate release, methadone, stimulants, and combinations of various drugs including those notorious among addicts. Mr. Giacalone stated that Dr. Daugherty's practice endangers the public and that his overprescribing has created addicts and impacted patients. Mr. Giacalone stated that the evaluation essentially shows a physician who is incompetent. Mr. Giacalone expressed amazement that the Kentucky Board allowed Dr. Daugherty to retain his medical license in that state.

Mr. Giacalone suggested that the Board permanently revoke Dr. Daugherty's Ohio medical license, stating that he could not imagine where Dr. Daugherty could practice medicine and not be a danger. Mr. Giacalone commented that Ohio has enough problems with drug abuse and does not need Dr. Daugherty practicing in the state.

Mr. Giacalone moved to amend the Proposed Order to permanently revoke Dr. Daugherty's license to practice medicine and surgery in Ohio. Dr. Steinbergh seconded the motion.

Dr. Schottenstein noted that the Proposed Order did not include a fine because the Hearing Examiner agreed with the Assistant Attorney General that a fine would constitute "piling on." Dr. Schottenstein stated that he is not seeking to propose a fine at this time, but he wished to clarify his understanding that the Board's fining is intended to be based on the violations involved, not the assets of the respondent. Dr. Schottenstein commented that levying a fine in any case could be seen as "piling on."

Dr. Schottenstein stated that he would go to great lengths to avoid revoking a license. However, Dr. Schottenstein expressed concern about Dr. Daugherty's practice. Dr. Schottenstein observed that Dr. Daugherty's initial evaluation in Kentucky described gross incompetence, gross ignorance, and gross negligence, and that this language was echoed in the second evaluation. Dr. Schottenstein stated that the Kentucky Board's consultant had stated that Dr. Daugherty does not seem to recognize that his practice is dangerous and veers from current standards.

Dr. Schottenstein continued that Dr. Daugherty has attended multiple CME courses and to the CPEP program, yet he continues to demonstrate a marginal fund of knowledge and deficiencies in the areas of clinical judgment and reasoning, documentation, and communication skills. Dr. Schottenstein opined that the Kentucky Board appears to have been attempting to manage this situation and "make it work." Dr. Schottenstein disagreed with Dr. Angel, one of Dr. Daugherty's proctors, who had opined at the hearing the Dr. Daugherty is having trouble simply because it is difficult to keep up with the many changes in medical practice over time. Dr. Schottenstein stated that he had wondered if Dr. Daugherty had cognitive problems, but Dr. Daugherty had a cognitive function screen when he entered the CPEP program. Dr. Schottenstein stated that he had been surprised that CPEP had felt that Dr. Daugherty was a good candidate for such remediation because, in Dr. Schottenstein's opinion, the situation did not feel remediable.

Dr. Schottenstein expressed concerns about continued efforts to "make this work." Dr. Schottenstein stated that, regrettably, he agreed with the proposed amendment to permanently revoke Dr. Daugherty's Ohio medical license.

Mr. Kenney agreed with Dr. Schottenstein's previous comments regarding a fine and stated that he could not imagine why the Board would refrain from fining Dr. Daugherty. Mr. Kenney asked Ms. Anderson about the Board's fining guidelines for these violations. Ms. Anderson replied that the Board is not able to fine Dr. Daugherty based on his first citation because it predated the Board's fining authority which became effective on September 29, 2015. However, the Board's second citation sent to Dr. Daugherty included the allegation that he had violated his Consent Agreement when the Kentucky Board issued the Amended Agreed Order on October 21, 2015. Ms. Anderson stated that for this violation, the Board's guidelines establish a standard fine of \$5,000, a maximum fine of \$20,000, and a minimum fine of \$3,000.

Mr. Kenny opined, based on the Board's fining guidelines, that a fine of \$10,000 should be included in the Board's Order. Mr. Kenney stated that he is suggesting \$10,000 instead of the maximum \$20,000

because there must be a reason that a fine was not included in the Hearing Examiner's Proposed Order. Mr. Giacalone agreed with Mr. Kenney's suggestion.

Mr. Giacalone stated that he wished to change his motion to amend to include a fine of \$10,000, in addition to permanent revocation of Dr. Daugherty's license to practice medicine and surgery in Ohio. No Board member objected to the change in the motion to amend. The change in the motion to amend was accepted.

Dr. Edgin agreed with previous comments that Dr. Daugherty's situation is not remediable, despite efforts to do so. Dr. Edgin questioned how Dr. Daugherty had been able to maintain his board-certification in internal medicine. Dr. Steinbergh speculated that Dr. Daugherty's certification in internal medicine was granted as a lifetime certification and that he is not required to participate in a Maintenance of Certification program.

A vote was taken on Mr. Giacalone's motion to amend:

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

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Joseph Franklin Daugherty, III, M.D. Mr. Giacalone seconded the motion. A vote was taken:

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

The motion to approve carried.

JERRY MITCHEL HAHN, M.D.

Mr. Gonidakis the Board's attention to the matter of Jerry Mitchel Hahn, M.D. No objections have been filed. Ms. Blue was the Hearing Examiner.

Ms. Anderson stated that Dr. Hahn is present at today's meeting. Ms. Anderson stated that, though Dr. Hahn did not file a request to address the Board, he is indicating today that he would like to make such an address.

Dr. Steinbergh moved to allow Dr. Hahn to address the Board. Mr. Kenney seconded the motion.

A vote was taken:

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

The motion carried.

Mr. Gonidakis stated that five minutes will be allowed for Dr. Hahn's address.

Dr. Hahn stated that he was first licensed to practice medicine in Ohio approximately 30 years ago. Dr. Hahn stated that he had let his Ohio license lapse because he had only been practicing in West Virginia. Dr. Hahn explained that he has applied for restoration of his Ohio medical license because one of his partners has asked him to cover his Ohio practice.

Dr. Hahn continued that at the time of his application he was just leaving a large practice which had a credentialing department. Dr. Hahn stated that the credentialing department filled out Dr. Hahn's Ohio license restoration application using an address that he had lived at six years ago, and therefore all subsequent correspondence went to that address. Dr. Hahn stated that he did not receive that correspondence and only learned of it when he visited that community and someone in a retail store told him about it. the correspondence informed Dr. Hahn that he application for license restoration had not been filled out properly.

Dr. Hahn stated that in about 2003 a complaint was filed against him for allowing a student to help close a surgical incision. Dr. Hahn did not deny the allegation and he acknowledged that the patient's informed consent did not state that a medical student may help close the incision. Dr. Hahn also explained that he served as the medical director of several medical facilities in West Virginia, and therefore he was responsible for denying inmate requests for things such as narcotics or extra mattresses. Consequently, Dr. Hahn became the subject of many complaints filed by inmates. Dr. Hahn noted that all of these complaints have been dismissed.

Dr. Hahn stated that he has multiple offices in rural areas and he supervises many physicians and mid-level providers. Dr. Hahn stated that he takes on tasks and positions that other physicians do not, such as serving in the jail system, and as a consequence he is subject to many complaints. Dr. Hahn stated that he would like to have an Ohio medical license so that he can cover for Ohio practices in weekends.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Ms. Snyder stated that she would like to respond.

Ms. Snyder stated that honesty is the cornerstone of the medical profession and that dishonesty in a physician is not something the Board has taken lightly in the past. Ms. Snyder stated that she supports the Proposed Order to deny Dr. Hahn's application for license restoration.

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

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Mr. Kenney stated that Dr. Hahn was originally licensed to practice medicine in Ohio in 1986, but he let that license expire in 1992. Dr. Hahn is currently licensed in West Virginia and is board-certified in family practice and dermatology. Dr. Hahn accepted a Consent Order and a public reprimand from the West Virginia Board of Medicine based on Dr. Hahn's failure to properly maintain and retain medical records.

Mr. Kenney continued that in 2015 Dr. Hahn submitted an application to restore his Ohio medical license. Mr. Kenney noted that the application included a sworn affidavit certifying that all statements in the application were true and complete. However, Dr. Hahn falsely answered "no" to the question, "Has any board, bureau, department, agency or other body ... limited, restricted, suspended or revoked any professional license, certification, or registration granted to you; placed on probation; or imposed a fine ... or reprimand against you." Mr. Kenney stated that this answer was false because Dr. Hahn was publically reprimanded in the West Virginia Consent Order.

Mr. Kenney stated that Dr. Hahn also falsely answered "no" to the question, "Have you ever entered into an agreement of any kind ... in lieu of or in order to avoid formal disciplinary action...?" Mr. Kenney stated that this answer was false because Dr. Hahn had entered into the West Virginia Consent Order.

Mr. Kenney stated that Dr. Hahn also falsely answered "no" to the question, "Have you ever been notified of any charges or complaints filed against you ...?" Mr. Kenney stated that this answer was false because in January 2014 and October 2014 Dr. Hahn filed responses to complaints. Mr. Kenney noted that both complaints were dismissed by the West Virginia Board of Medicine.

Mr. Kenney stated that in July 2015 the State Medical Board of Ohio sent interrogatories to Dr. Hahn via certified mail. The interrogatories were delivered and signed for. However, no response to the interrogatories were received. The Ohio Board sent the same interrogatories again in August 2015, but they were returned marked "Unclaimed" and "Return to sender." The Ohio Board send the interrogatories a third time in September 2015, but they were returned to the Board marked "Return to sender."

Mr. Kenney summarized that Dr. Hahn failed to disclose his 2003 West Virginia Consent Order, two complaints that had been filed against him, the fact that he was employed by PrimeCare of West Virginia, and he failed to respond to the Board's interrogatories. Mr. Kenney stated that Dr. Hahn blames his staff

or providing false statements. However, Mr. Kenney noted that Dr. Hahn admitted that he consulted with his staff on the application answers and that he reviewed the application before it was submitted. Mr. Kenney stated that Dr. Hahn claimed ignorance of the inmates' complaints even though he, or perhaps someone on his staff, had filed responses to the complaints.

Mr. Kenney stated that it is clear that Dr. Hahn had intended to mislead the Board and he blamed everyone except himself. Mr. Kenney opined that Dr. Hahn was absolutely responsible for this situation. Mr. Kenney noted that Dr. Hahn, who presently has 137,000 patients and owns 14 clinics, may have been so busy that he did not watch the details of his practice. Mr. Kenney opined that the Board should not overlook Dr. Hahn's false and fraudulent acts and omissions. Mr. Kenney further stated that the Board should not want this kind of haphazard management in Ohio clinics. Mr. Kenney stated that he agrees with the Proposed Order to deny Dr. Hahn's application.

Mr. Giacalone agreed that Dr. Hahn did not do what he was supposed to do. However, Mr. Giacalone stated that when a practitioner has a large area to cover they depend on many other people to get things done. Mr. Giacalone stated that he is swayed, in part, by the fact that Dr. Hahn came before the Board alone and did not hire an attorney; Mr. Giacalone opined that a nefarious person would typically want to have an attorney when appearing before the Board. Mr. Giacalone further noted that the staff person in question wrote an email supporting everything Dr. Hahn has said. Mr. Giacalone stated that no one is condoning non-compliance, but he questioned if there was intent in Dr. Hahn's actions. Mr. Giacalone opined that there was, at best, errors made, some of which were within Dr. Hahn's control and some of which were outside his control.

Mr. Giacalone proposed an amendment to the Proposed Order which would require Dr. Hahn to complete his application accurately, whereupon the Board would grant the application and reprimand Dr. Hahn. Mr. Giacalone stated that he supports reprimanding Dr. Hahn because he had failed in his obligation to fulfill the requirements of the application. Mr. Giacalone opined that Dr. Hahn's actions were not intentional, but that he is ultimately responsible for those actions.

Mr. Giacalone moved to amend the Proposed Order to require Dr. Hahn to complete his license restoration application. Mr. Giacalone further moved the upon submission of the complete application, Dr. Hahn's request for license restoration be granted and that he be reprimanded. Dr. Schachat seconded the motion.

Dr. Schachat commented that he has seconded Mr. Giacalone's motion for purposes of discussion.

Dr. Steinbergh stated that she opposes a reprimand for Dr. Hahn and she supports the Proposed Order to deny Dr. Hahn's application. Dr. Steinbergh further stated that she agrees with Mr. Kenney's comments. Dr. Steinbergh stated that when a physician is dishonest in one area, they are dishonest in another area. For this reason, Dr. Steinbergh has great concerns with Dr. Hahn. Dr. Steinbergh noted that the denial in the Proposed Order is not permanent and that Dr. Hahn would have the opportunity, after some introspection, to reapply. Dr. Steinbergh stated that if Dr. Hahn does reapply in the future, the Board would hopefully see some honesty on the application and indications that Dr. Hahn has owed his mistakes. Dr. Steinbergh stated that, while a physician can have people help to fill out applications, she finds it inexcusable for a physician to blame anyone else for their failures on applications.

Dr. Schottenstein stated that this case fits the pattern of some other cases that have come before the Board. Dr. Schottenstein stated that the Board is not always in a position to truly know whether an

applicant's dishonesty is purposeful. Dr. Schottenstein also stated that at some point it is simply incumbent upon the applicant to provide accurate information; otherwise, the Board will forever be parsing who is deserving of leniency and who is not. Dr. Schottenstein stated that he feels more comfortable simply basing the Board's findings on the behavior and not the motivation behind the behavior or other contributing circumstances.

Dr. Edgin noted that according to the record, Dr. Hahn had responded to the complaints against him, though he later said he did not know about the complaints. Dr. Edgin stated that someone else may have actually responded to the complaints, but if Dr. Hahn responded then it is part of the pattern of being untruthful. Dr. Edgin supported the Proposed Order to deny Dr. Hahn's application.

Dr. Factora stated that based on the record, Dr. Hahn serves as the medical director of about seven nursing homes and has other clinical responsibilities seven days per week, in addition to some educational responsibilities. Dr. Factora stated that Dr. Hahn has taken on a tremendous amount of responsibility and this case may show that he is overextended. Dr. Factora opined that asking for even more duties in Ohio may lead to more problems for Dr. Hahn in the future. Dr. Factora stated that this case is an opportunity to show that there are limitations. Dr. Factora opined that at this point it would be good to give Dr. Hahn an opportunity to reconsider what he wants to do, where he wants to go, and whether he has the capacity to take on more clinical responsibilities.

Dr. Factora noted that Dr. Hahn has been practicing medicine in West Virginia since 2002 and he wondered how many times Dr. Hahn has had to state on his West Virginia license renewal applications that he had a Consent Order. Dr. Factora stated that Dr. Hahn must have been aware that that would come up again with his Ohio restoration application. Dr. Factora stated that when one applies for a medical license in another state, it is important to explain things like consent orders or complaints and not ignore them. Dr. Factora stated that the reasons the Dr. Hahn did not provide such an explanation on his Ohio application is a matter of conjecture, but he opined that this shows that Dr. Hahn may have bitten off more than he could chew.

Mr. Giacalone stated that the complaints against Dr. Hahn regarding the prisoner events were dismissed, and therefore they were non-events. Mr. Giacalone stated that if the Board feels that Dr. Hahn was intentionally dishonest on his application then it should be denied. However, Mr. Giacalone reiterated his opinion that this was unintentional.

A vote was taken on Mr. Giacalone's motion to amend:

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

The motion to amend did not carry.

A vote was taken on Dr. Steinbergh's motion to approve the Proposed Order.

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

The motion to approve carried.

JAMES AUSTIN MABE, III, P.A.

Mr. Gonidakis the Board's attention to the matter of James Austin Mabe, III, P.A. Objections to Ms. Shamansky's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Gonidakis stated that a request to address the Board has been timely filed by Mr. Mabe. Five minutes will be allowed for that address.

Mr. Mabe stated that he takes full responsibility for everything that has occurred in this situation. Mr. Mabe stated that he had never intended to do what he did, but at that time he had failed his board examination and he had a lot going on in his personal life. Mr. Mabe stated that this is not an excuse for his actions and that it was a significant lapse in judgment and panic on his part. Mr. Mabe stated that at that time, as the record shows, his mother was very ill and his children were trying to go to college. Mr. Mabe stated that since this event he has had to file for bankruptcy and things have become very difficult for him. Mr. Mabe stated that his employer is holding his position for him.

Mr. Mabe asked the Board to have sympathy and allow him to continue to practice in what he loves to do. Mr. Mabe stated that he has been physician assistant for 15 years and, prior to this, his record was unblemished. Mr. Mabe stated that he is 53 years old and he would like to finish his life and career in what he loves to do.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Mr. Wilcox stated that he would like to respond.

Mr. Wilcox stated that this case was very disturbing to him. Mr. Wilcox stated that Mr. Mabe made a horrible decision in January 2016 to use another physician assistant's National Commission on Certification of Physician Assistants (NCCPA) certification number when he accessed the Board's online license renewal system. Mr. Wilcox stated that the reason Mr. Mabe used another person's NCCPA certification number is that his own certification number was expired. Mr. Wilcox stated that after initially entering the false certification number, Mr. Mabe waited five days before going back onto the website to renew his license using the false number. Mr. Wilcox stated that the fact the Mr. Mabe had five days to

consider this act before committing it was egregious and should disqualify him from ever holding a license with the Board.

Mr. Wilcox asked how the Board could ever trust Mr. Mabe as a licensee or to properly take care of patients. Mr. Wilcox opined that Mr. Mabe could not be trusted. Mr. Wilcox reiterated that Mr. Mabe had significant time to reconsider what he had done, but he did not acknowledge his actions until he was confronted by a Board investigator in April 2016. Mr. Wilcox agree with the Proposed Order to permanently revoke Mr. Mabe's license to practice as a physician assistant.

Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of James Austin Mabe, III, P.A. Dr. Schottenstein seconded the motion.

Mr. Gonidakis stated that he will now entertain discussion in the above matter.

Mr. Gonidakis briefly reviewed Mr. Mabe's career. Mr. Mabe became certified by the National Commission on Certification of Physician Assistants (NCCPA) in 2001 or 2002. Mr. Mabe acknowledged at his hearing that he is required to take the Physician Assistant National Recertifying Examination (PANRE) every six years in order to renew his certification. Mr. Mabe took and passed the PANRE in 2008 or 2009.

Mr. Gonidakis continued that Mr. Mabe knew that his NCCPA certification would expire at the end of December 2014 and that he would have to take the PANRE again to renew the certification. Although Mr. Mabe could have taken the PANRE up to a year in advance, he waited until December 2014 to take it. Mr. Mabe failed the December 2014 examination and was required to wait 90 days before retaking the PANRE. Mr. Mabe retook the PANRE in April 2015 and failed again.

Mr. Gonidakis noted that Mr. Mabe knew his Ohio physician assistant license was due for renewal in January 2016 and he had most of the year following April 2015 to retake the PANRE. Mr. Mabe's explanations for not retaking the PANRE after April 2015 include the demands of his work, family issues, and inadequate finances. Mr. Mabe admitted at his hearing that he had no good answer for why he did not attempt to retake the PANRE after April 2015. Mr. Gonidakis noted that Mr. Mabe's family issues include that he was caring for his mother from 2011 until she passed away in 2014, and that he was the sole source of support for his wife and two children.

Mr. Gonidakis stated that on January 15, 2016, Mr. Mabe logged onto the Board's license renewal website and entered his NCCPA identification number. The Board's licensure system recognized the number as having an expired NCCPA certification and prevented Mr. Mabe from going further in the renewal process. At his hearing, Mr. Mabe admitted that he had known why he had been unable to renew his license. Mr. Mabe contacted the Board and was informed that he could not renew his license until he was recertified by the NCCPA. Mr. Mabe also received an email from the Board staff to this effect. Exactly eight minutes after receiving the email, Mr. Mabe logged onto the Board's renewal website again and used the NCCPA identification number of a colleague with whom he used to work. The system allowed Mr. Mabe proceed on the basis of the false identification number, but Mr. Mabe quickly logged out and did not complete the renewal process at that time. Five days later, Mr. Mabe logged back onto the system with his username and password to, in his words, check the status of his certification. At that time, the Board's system led Mr. Mabe directly to the renewal page without requiring him to re-enter an NCCPA identification number. Mr. Mabe was able to answer the application questions and renew his

license.

Mr. Gonidakis stated that Mr. Mabe admitted at his hearing that what he had done was wrong and that he had not been recertified by the NCCPA. Mr. Mabe further admitted that he renewed his physician assistant license fraudulently. On the online application, Mr. Mabe checked the box attesting to the information he had submitted under penalty of law. Mr. Gonidakis stated that Mr. Mabe never contacted the Board to report what he had done. Although Mr. Mabe could have taken the PANRE every 90 days, he did not retake it until June 2016 after being interviewed by Board investigators. Mr. Mabe successfully passed the June 2016 examination.

Mr. Gonidakis stated that since the summary suspension of his license Mr. Mabe has worked in an eyeglass retail store and in an urgent care center, but not as a physician assistant. Mr. Gonidakis stated that Mr. Mabe has filed Chapter 13 bankruptcy as well. As mitigating factors, Mr. Mabe has pointed out that he has no prior discipline with the Board, has never been convicted of a crime, has had 16 years of clean practice as a physician assistant, and he regrets his actions. Mr. Mabe has asked the Board for a second chance.

Mr. Gonidakis read a portion of the Hearing Examiner's Discussion of the Proposed Order, stating that it summarizes his own opinion as well: "Mr. Mabe's conduct, which permitted him to obtain the renewal of his professional license through fraud perpetrated against [his] licensing board, demonstrates that he is not worthy of the trust that the Board places in someone that it licenses. A permanent revocation is the only appropriate sanction in this case." Mr. Gonidakis further noted that the Hearing Examiner has not recommended a fine because Mr. Mabe has filed for bankruptcy and because the most severe sanction, namely permanent revocation, has been recommended. Mr. Gonidakis stated that he agrees with the Proposed Order of permanent revocation.

Mr. Kenney stated that the Proposed Order does not include a fine because of Mr. Mabe's bankruptcy. However, Mr. Kenney stated that the Board does not investigate a respondent's ability to pay a fine. Mr. Kenney stated that a fine is based on the violation, not the ability to pay. Mr. Kenney noted that for the violation in this case, the Board's fining guidelines specify a maximum fine of \$20,000 and a standard fine of \$5,000. Mr. Kenney opined that a fine of \$5,000 would be appropriate in this case.

Mr. Kenney moved to amend the Proposed Order to include a fine of \$5,000. Dr. Steinbergh seconded the motion.

Dr. Steinbergh stated that she agrees with Mr. Gonidakis' assessment of this case. Dr. Steinbergh stated that, in addition to perpetrating fraud on the Board, Mr. Mabe stole another person's identity, which is a very serious matter. Dr. Steinbergh expressed her belief that the former colleague whose identification number Mr. Mabe had used was chosen purposely in order to match some of Mr. Mabe's demographic information. Dr. Steinbergh stated that Mr. Mabe's actions could have put his former colleague in jeopardy and she hoped that Mr. Mabe has made amends with the former colleague.

Dr. Schottenstein noted that Mr. Mabe told the Board today that his actions had not been intentional. However, Dr. Schottenstein opined that Mr. Mabe's actions were intentional and reckless. Dr. Schottenstein stated that Mr. Mabe's actions demonstrate *mens rea*, malice aforethought, the mental act of the offense, and the physical aspect of the offense. Dr. Schottenstein added that Mr. Mabe knew the consequences of his actions. Dr. Schottenstein stated that Mr. Mabe actually had to overcome fairly substantial obstacles to do what he did.

Dr. Schottenstein observed that Mr. Mabe used the stress in his life as justification for his actions. Dr. Schottenstein stated that he regrets Mr. Mabe's stress, but it is not a mitigating factor and life is unfortunately full of stress for many people. Dr. Schottenstein also echoed Dr. Steinbergh's thoughts that Mr. Mabe did not seem concerned about potentially putting at risk the licensee whose NCCPA identification number he had used. Dr. Schottenstein stated that Mr. Mabe's actions could have resulted in a Board investigation of that licensee, causing great stress in his or her life. Dr. Schottenstein stated that this shows a callous disregard for the welfare of the other licensee.

A vote was taken on Mr. Kenney's motion to amend:

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

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Ms. Shamansky's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of James Austin Mabe, III, P.A. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to approve carried.

Mr. Gonidakis asked, in light of this case, if the Board needs to address any protocols with the Board's online renewal process to ensure that this does not happen again. Mr. Groeber responded that the renewal system has a connection with the NCCPA. Therefore, the system, along with the Board staff's review process, was able to appropriately detect the impropriety. Mr. Groeber stated that the integrity of the Board's data is very good and lends itself to findings issues such as this.

Dr. Schottenstein recalled that, according to the transcript testimony from this case, this issue has been

addressed and it is no longer possible to renew using someone else's NCCPA certification number.

JOHN PEASE MOORE, III, M.D.

Mr. Gonidakis the Board's attention to the matter of John Pease Moore, III, M.D. Objections to Mr. Decker's Report and Recommendation have been filed and were previously distributed to Board members.

Dr. Steinbergh moved to approve and confirm Mr. Decker's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of John Pease Moore, III, M.D. Dr. Schottenstein seconded the motion.

Douglas Graff, Dr. Moore's attorney, stated that he filed a request to address the Board on Dr. Moore's behalf when he filed the request for a hearing. Ms. Anderson agreed. Mr. Gonidakis apologized for the error. Mr. Gonidakis stated that five minutes will be allowed for Dr. Moore's address.

Dr. Moore was represented by his attorney, Mr. Graff.

Mr. Graff stated that this is an unusual case. Mr. Graff asked the Board to honestly and unbiasedly look at the fact that there was a prior action against Dr. Moore and to understand what happened in this case. Mr. Graff stated that to further that goal, he has filed a motion to put some public information before the Board which includes a review by the Board's own staff. Mr. Graff stated that that motion has been denied, and therefore he has filed a motion to remand this matter back to the Hearing Unit.

Mr. Graff stated that the matter before the Board is relatively simple. Mr. Graff noted that the Hearing Examiner believed that Dr. Moore did not understand what he did or take responsibility for it. Mr. Graff stated that this is not true and that Dr. Moore does understand. Mr. Graff stated that no one stands before this Board a second time without a serious appreciation of what they have done.

Dr. Moore stated that after a successful career in sales engineering, he worked his way through medical school through a special program that allowed older students to work and support their families while earning a degree. Dr. Moore subsequently left South Carolina to go to Dayton, Ohio, because of a \$12,000 bonus for entering a primary care residency. Dr. Moore commented that he was the first in his family to attend medical school and that his father-in-law had been a well-known cardiothoracic surgeon who developed a cardiac bypass machine. Dr. Moore stated that he never had the privilege of meeting his father-in-law because he died at the age of 46 from the ravages of hepatitis.

Dr. Moore continued that after his residency he entered a 30-year graduate study in pain management. Dr. Moore had planned to finish an occupational medicine residency on a part-time basis. However, Dr. Moore's decision to enter a medical/chiropractic clinic under a physician mentor led to great stress in his ability to practice. Dr. Moore stated that his medical license was eventually suspended after an incident in his first year of practice. Dr. Moore stated that he did everything he could to the right thing for his patients in the management of his practice.

Dr. Moore stated that eventually six physicians, as well as four licensed independent addiction counselor, joined him in fighting the opioid crisis in Dayton. Dr. Moore stated that he designed his practice as a non-insurance practice because he never wanted the potential to be accused of improper billing, as he had been charged with in the first year of his practice.

Dr. Moore stated that he is devastated and he has hurt the reputation of the medical field in the eyes of his patients and the community. Dr. Moore added that he feels that he has broken the Board's trust. Dr. Moore stated that he had been trying to do right, but he got lost. Dr. Moore stated that he now realizes that his prescribing patterns were wrong. However, Dr. Moore believed that he could be a good and trusted physician and that he could be a value in health care with his passion for preventative medicine.

Dr. Moore stated that he has had a lot of time to think over how he ended up in this situation. Dr. Moore stated that, although he could come up with many mitigating and extenuating circumstances, he has identified two major flaws. First, Dr. Moore stated that he had taken in patients as they came in with needs, whereas he would have been better to go slower and spend much more time managing his practice. Second, Dr. Moore stated that he should not have brought in the other practitioners and facilitated them until he was certain that he could ensure maximum compliance.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Mr. Wilcox stated that he would like to respond.

Mr. Wilcox noted that Dr. Moore's objections to the Report and Recommendation includes a motion to remand this case back to the Hearing Unit. Mr. Wilcox stated that this motion is an attempt to distract the Board from the facts of this case. Mr. Wilcox opined that, while the Board has the option to remand any case that comes before it, the case of Dr. Moore does not need to be remanded.

Mr. Wilcox stated that in May 2003 the Board permanently revoked Dr. Moore's medical license, stayed that revocation, and suspended his license for a minimum of two years. The Board's action was based on a felony conviction for health care fraud in federal court. Mr. Wilcox stated that although the Board had decided to give Dr. Moore a second chance, it was made abundantly clear, as shown in State's Exhibit 3, that if Dr. Moore ever appeared before the Board for a disciplinary matter again his license would be permanently revoked. Mr. Wilcox stated that Dr. Moore reward the Board's faith in him by collecting seven new felony convictions, all related to the practice of medicine. Mr. Wilcox continued that Dr. Moore's attempts at his hearing to attack the process and the investigation make little sense in light of the fact that he pleaded guilty to these seven new charges. Mr. Wilcox stated that Dr. Moore had the opportunity to argue his innocence in the Greene County Court of Common Pleas, but he chose to plead guilty instead.

Mr. Wilcox stated that he agrees with the Hearing Examiner's statement in the Report and Recommendation that "This case is not close." Mr. Wilcox stated that Dr. Moore has conclusively shown that he not only cannot be trusted to practice medicine, but even to refrain from committing felonies. Mr. Wilcox agreed with the Proposed Order to permanently revoke Dr. Moore's medical license.

Mr. Gonidakis stated that he will now entertain Board discussion in this matter.

Dr. Schottenstein stated that in May 2016 the Board immediately suspended Dr. Moore's Ohio medical license. The Board's action was based on Dr. Moore's guilty plea to four felony counts of Trafficking in Drugs and one felony count of Permitting Drug Abuse. Dr. Schottenstein stated that Dr. Moore also pleaded guilty to one felony count of Medicaid Fraud and one felony count of Theft.

Dr. Schottenstein stated that Dr. Moore's prior history includes a 2002 conviction for False Statements Relating to Health Care Matters based on his practice of billing for office visits of moderate to high

complexity when, in fact, the office visits had required straight-forward medical decision making. This conviction resulted in a three-year term of probation from the court. The 2002 conviction also resulted in a May 2003 Board Order from the Medical Board which permanently revoked Dr. Moore's medical license, but stayed that revocation and suspended his license for two years followed by probationary terms. Dr. Schottenstein noted that the Board stayed the permanent revocation after much deliberation. Dr. Moore's medical license was reinstated in 2009 and he was released from the probationary terms on his license in 2012.

Dr. Schottenstein continued that upon the reinstatement of his license in 2009, Dr. Moore submitted a practice plan to the Board which emphasized wellness and age management medicine, the main focus of which appeared to be correcting testosterone deficiency. Due to his concern that opiates can lower testosterone levels, Dr. Moore subsequently asked the Board to approve his entry into the field of addiction medicine. Dr. Moore bought up to five physicians into his practice as independent contractors, as well as up to four addiction counselors.

Concerning Dr. Moore's 2016 convictions, Dr. Schottenstein specified that Dr. Moore had pleaded guilty to improperly prescribing Ambien to Patient 1, improperly prescribing Ambien and possibly Suboxone to Patient 2, and improperly prescribing Diazepam to Patient 3. Because Dr. Moore had prescribed medications that were deemed inappropriate or not medically necessary, and Medicaid or the Bureau of Workers' Compensation had eventually paid for them, this constituted Medicaid Fraud and Theft. Dr. Moore's only testimony regarding the offense of Permitting Drug Abuse, to which he pleaded guilty, was that there were some people in his clinic who were under investigation. Dr. Moore was sentenced to ten months of imprisonment for each of the seven felonies, with six sentences served concurrently, resulting in a total sentence of twenty months of imprisonment and subsequent three years of post-release control. Dr. Moore was also assessed approximately \$80,000 in forfeiture and restitution penalties.

Dr. Schottenstein stated that Dr. Moore and his defense counsel have chosen to contest the Board's action in this matter based on their concerns about the fairness of the investigation which led to the felony convictions. Dr. Schottenstein observed that much of Dr. Moore's hearing revolved around witnesses and exhibits there were excluded from evidence. The State's position is that the Board hearing was not the venue in which to re-litigate the court case or the fairness of the criminal investigation since Dr. Moore had pleaded guilty and been convicted. The State further contended that attacking the investigation is not mitigating in this case and that the time to attack the quality of the investigation was when the matter was still in court. The Hearing Examiner accepted the State's argument and felt justified in excluding evidence which did not appear to have hearing on the matter at hand. Dr. Schottenstein stated that in accordance with the Board's Rule 4731-13-24, Dr. Moore is presumed to have committed the offenses to which he pleaded guilty.

Dr. Schottenstein expressed surprise that Dr. Moore is contesting a Board action based on a second felony conviction. Dr. Schottenstein stated that the State has clearly proved what has been alleged, namely that Dr. Moore pleaded guilty to seven felony counts in April 2016. Dr. Schottenstein stated that when one looks at the 2003 Board Order, it is clear how close Dr. Moore came to having his license permanently revoked at that time. Dr. Schottenstein noted that Dr. Steinbergh, who served on the Board at that time, had admonished Dr. Moore that if he ever appeared before the Board again for a disciplinary matter his license would be revoked. Dr. Schottenstein stated that he is somewhat incredulous that Dr. Moore is back before the Board and that he did not respond to his second chance to practice medicine with the utmost considering and making sure to stay within his ethical and legal obligations.

Dr. Schottenstein commented that Dr. Moore's purpose here today appears to be to lay the groundwork for an appeal to the courts based on issues raised regarding the legitimacy of the investigation and the hearing. Dr. Schottenstein stated that the appeals court judge will have to determine whether any or all the points raised in that respect are legitimate. Dr. Schottenstein stated that for the Board's purposes, the points raised by the defense counsel do not appear to be mitigating. Dr. Schottenstein agreed with the Proposed Order to permanently revoke Dr. Moore's medical license.

Dr. Steinbergh stated that, as mentioned previously, she served on the Board at the time of Dr. Moore's initial Board action in 2003. Dr. Steinbergh stated that the Board gave Dr. Moore another chance in 2003. Dr. Steinbergh stated that during that time it was not unusual for the Board to issue a stayed permanent revocation as a way of sending a message that if the respondent returns, they can expect a permanent revocation of their license.

Dr. Steinbergh continued that, following a lengthy appeal process, the courts eventually supported the Board's 2003 Order and Dr. Moore's medical license was suspended, followed by probationary terms. Dr. Steinbergh questioned how a physician can go through such a process and yet still come back to the Board for a disciplinary matter. Dr. Steinbergh stated that Dr. Moore had learned nothing from his first experience. Dr. Steinbergh opined that Dr. Moore's medical license must be permanently revoked.

Mr. Giacalone stated that he agrees with Dr. Steinbergh and Dr. Schottenstein. Mr. Giacalone reiterated Dr. Moore's multiple felony convictions which resulted, among other things, in prison time. Mr. Giacalone stated that he struggles with how the Board would give Dr. Moore another chance at practicing medicine. Mr. Giacalone stated that Dr. Moore had his opportunity and that it is unfortunate that he did not avail himself of it.

Ms. Anderson wished to address a procedural issue prior to the Board's vote. Ms. Anderson noted that Dr. Moore's defense counsel had filed a motion to remand this matter back to the Hearing Unit and the Assistant Attorney General filed a memo in opposition to that motion. Ms. Anderson stated that under Rule 4731-13-15 the Board can take one of three actions with a Report and Recommendation: Order additional testimony to be taken; permit the introduction of further documentary evidence by remanding the case; or act on the Report and Recommendation. Ms. Anderson stated that if the Board chooses to act on the Report and Recommendation and not the other two options, then it will, in essence, be denying the motion to remand.

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

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

The motion to approve carried.

DONALD LESLIE EPSTEIN, M.D.

Mr. Gonidakis the Board's attention to the matter of Donald Leslie Epstein, M.D. Objections to Mr. Porter's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Gonidakis stated that a request to address the Board has been timely filed by Dr. Epstein. Five minutes will be allowed for that address.

Dr. Epstein stated that he wanted to appear today before the Board to amplify concerns over monitoring that were raised in his written objections to the Report and Recommendation. Dr. Epstein stated that as a pulmonologist he has a consultative practice and sees patients who are referred to him by other physicians and provides the other physician with advice regarding testing and treatment. Dr. Epstein stated that he sees patients in several locations, including his office and in nursing homes. Dr. Epstein added that he also does *locum tenens* work, though he has not been able to look for these opportunities since the Board summarily suspended his medical license.

Dr. Epstein listed the diseases he treats, including chronic obstructive pulmonary disease, asthma, pneumonia, chronic cough, bronchitis, emphysema, solitary nodule, lung cancer, obstructive sleep apnea, cystic fibrosis, pulmonary emboli, deep vein thrombosis, pulmonary arterial hypertension, hypoxia, and sarcoidosis, "Just to name a few." Dr. Epstein described the various procedures he performs and emphasized that they are team efforts that involve himself, nurses, respiratory therapists, and radiologists.

Dr. Epstein stated that the proposed Board monitoring and periodic personal appearances in the Proposed Order would be in addition to the specific monitoring that was described for each practice setting. Dr. Epstein asked the Board to consider his concerns regarding the proposed monitoring.

Mr. Gonidakis asked if the Assistant Attorney General would like to respond. Ms. Snyder stated that she would like to respond.

Ms. Snyder stated that this difficult case involves the allegation that Dr. Epstein is mentally impaired due to mild cognitive impairment. Ms. Snyder commented that Dr. Epstein's hearing was not adversarial and that everyone involved was trying to do the right thing for patients in Ohio and for Dr. Epstein. Ms. Snyder stated that this case requires the physicians on the Board to use their expertise and understanding of their profession to decide how to properly craft this Order. Ms. Snyder stated that two experts have stated that there should be some limitation on Dr. Epstein's ability to practice medicine, and Dr. Epstein seems to recognize that. Ms. Snyder opined that the limitations specified in the Proposed Order, while they may appear harsh, are required.

Ms. Snyder stated that Dr. Epstein is asking the Board to impose a limitation that appears to be similar to one tried at Euclid Hospital in 2013. Ms. Snyder asked the Board to consider Dr. Epstein's history at Euclid Hospital between 2011 and 2015. Specifically, Euclid Hospital restricted Dr. Epstein from practicing in the intensive care unit and in critical care. However, even in that structured environment Dr. Epstein continued to struggle with patient care. Ms. Snyder reiterated that the type of supervision detailed in the Proposed Order is warranted.

Ms. Snyder stated that Dr. Epstein is a very accomplished physician and he should be applauded for wanting to continue to work. Ms. Snyder stated that the Proposed Order was crafted to allow Dr. Epstein

to contribute to the medical community while also protecting patients in Ohio.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Donald Leslie Epstein, M.D. Mr. Giacalone seconded the motion.

Mr. Gonidakis stated that he will now entertain discussion in this matter.

Mr. Giacalone briefly reviewed Dr. Epstein's career. Mr. Giacalone added that Dr. Epstein had been board-certified in pulmonary medicine since 1980. Mr. Giacalone noted that Dr. Epstein holds lifetime board certification and he is not required to periodically recertify. In 2014 Dr. Epstein lost his privileged at Euclid Hospital as a result of reports of issues beginning in 2011. Mr. Giacalone stated that Dr. Epstein engaged in the following actions at Euclid Hospital:

- Examined patients without following proper infectious control practices, even after having a personal discussion with an infectious disease specialist and a discussion with the Chief of Medicine of Euclid Hospital;
- Slapped the hand of a transporter who was attempting to travel to a patient transport claiming that he was "Late for a teleconference and could not afford another stop on the elevator." (Mr. Giacalone noted that Dr. Epstein has stated that he does not recall this event);
- Was found to have fallen asleep at a desk for periods of up to an hour with staff members only able to wake Dr. Epstein if they yelled very loudly or physically shook him;
- Left trash such as coffee cups and popsicle sticks at various locations while working (Mr. Giacalone noted that Dr. Epstein did not remember neglecting to remove his trash);
- Alleged to have contacted an individual in the hospital's information technology department wanting assistance in selecting medication for a patient (Mr. Giacalone noted that Dr. Epstein testified that he does not recall this event);
- Alleged to have acted with rudeness towards a patient's granddaughter;
- According to a report from the team assisting Dr. Epstein, the team had to cue him to provide supplemental oxygen to a hypoxic patient prior to a bronchoscopy;
- Allegation that a radiologist had to lead Dr. Epstein to pull a non-draining chest tube and obtain a chest x-ray.

Mr. Giacalone continued that, based in part on Dr. Epstein's actions at Euclid Hospital and various neurological evaluations, Euclid Hospital terminated Dr. Epstein's medical privileges in 2014. At that time, the hospital's Medical Executive Committee stated that Dr. Epstein's "behaviors undermine the culture of safety at Euclid Hospital" in spite of the fact that the Committee had worked with Dr. Epstein "over the years to try and assist [Dr. Epstein] through some difficult situations, including convening a separate Ad Hoc Committee whose sole purpose was to monitor and provide guidance and support to [Dr. Epstein]."

Mr. Giacalone stated that in July 2015 the Board ordered Dr. Epstein to submit to a neurological evaluation with Steven G. Simensky, M.D., Ph.D. Mr. Giacalone noted that Dr. Simensky is board certified in neurology and clinical neurophysiology. Based on his examination of Dr. Epstein and a review of records, Dr. Simensky opined that Dr. Epstein is susceptible to making medical mistakes in high-stress

environments such as hospital inpatient settings. Dr. Simensky further opined that Dr. Epstein suffers from mild cognitive impairment and is not presently capable of practicing medicine according to acceptable and prevailing standards of care without restrictions. Dr. Simensky made the following recommendations:

- Dr. Epstein should not be allowed to practice medicine in the hospital inpatient setting unless he undergoes a quarterly peer review process and passes a pulmonary/critical care recertification examination;
- Dr. Epstein should be allowed to practice medicine in the outpatient and nursing home settings only if he undergoes a biannual peer review process;
- Dr. Epstein should not be allowed to perform pulmonary or critical care medical procedures unless another pulmonary or critical care physician is supervising him;
- Dr. Epstein's total work hours should not exceed eight hours daily and up to five days per week;
- Dr. Epstein should undergo a full neuropsychological assessment every two years for comparison to his previous evaluations.

Dr. Simensky further stated that mild cognitive impairment is not amenable to treatment and that Dr. Epstein's cognitive condition is likely to worsen over time. Dr. Simensky opined that any evidence of behavioral improprieties, advancing cognitive dysfunction, or poor performance should result in complete cessation of Dr. Epstein's medical practice and privileges until vetted by the Medical Board. Mr. Giacalone noted that Dr. Simensky testified that Dr. Epstein could practice in a nursing home or office setting, provided that there is a peer review process. Upon further questioning, Dr. Simensky clarified that if Dr. Epstein had a solo outpatient practice, he would need to employ someone to be there during the time that Dr. Epstein is practicing who can field patient calls and serve as a sounding board.

Mr. Giacalone stated that Dr. Epstein also underwent a neuropsychological consultation in April 2016 with Philip S. Fastenau, Ph.D., the Director of Clinical Neuropsychology at University Hospitals Case Medical Center Neurological Institute. Dr. Fastenau concluded that there was no evidence of neurodegenerative changes, which is consistent with diagnoses of concerns of cognitive decline which are attributed to normal age-related memory and cognitive changes. However, Dr. Simensky stated that Dr. Fastenau's conclusion was not helpful given that it was unclear whether Dr. Fastenau had evaluated Dr. Epstein's ability to perform as a physician. Dr. Simensky also testified that Dr. Fastenau's recommendations appeared to be the sorts of things that any physician might recommend for any patient.

Mr. Giacalone stated that Alan J. Lerner, M.D., the Director of the Brain Health and Memory Center at University Hospitals Case Medical Center and Professor of Neurology at Case Western Reserve University, who knows Respondent and first saw him in December 2011, largely agrees with Dr. Simensky's report.

Mr. Giacalone stated that, based on the evidence and testimony provided, he supports the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order. Mr. Giacalone stated that the Proposed Order will permanently restrict Dr. Epstein from practicing in a critical care or emergency care setting, require supervision by a qualified physician to practice in an inpatient setting or perform procedures, and limit Dr. Epstein's working hours. Dr. Epstein will also be required to continue neurologic treatment with a Board-approved provider and to have a Board-approved practice plan and monitoring

physician. Mr. Giacalone based his rationale for the Proposed Order on the fact that that Dr. Epstein suffers from mild cognitive impairment which, according to Dr. Simensky, is likely to worsen over time and that his practice must be limited and diligently monitored in order to protect the public.

Dr. Steinbergh stated that she also supports the Proposed Order. Dr. Steinbergh commented that it is very difficult for physicians to have issues such as Dr. Epstein's. Dr. Steinbergh stated that she agrees with the Proposed Order because, as is clear in the hearing record and Mr. Giacalone's comments, Dr. Epstein cannot practice in a critical care or hospital setting any longer. Dr. Steinbergh stated that Dr. Epstein simply cannot perform the decision-making necessary for acute care.

Dr. Steinbergh stated that Section (B)(4) of the Proposed Order requires Dr. Epstein to continue neurologic treatment and that quarterly reports must be submitted to the Board by the treating neurologist. Dr. Steinbergh noted that one of Dr. Epstein's objection was that Dr. Lerner believed the proposed frequency is too often and that once per year would be more standard for conducting neuropsychological evaluations. Dr. Steinbergh stated that the Proposed Order does not require a full neuropsychological evaluation every four months, only that Dr. Epstein see the neurologist every four months. Dr. Steinbergh stated that the quarterly reports to the Board could be as simple as "Dr. Epstein remains stable," while the neuropsychological testing could be conducted yearly or at the neurologist's discretion.

Dr. Steinbergh stated that when Dr. Epstein performs a procedure incorrectly, it not only puts the patient at risk, but the hospital and Dr. Epstein's fellow team members are also put at risk. Dr. Steinbergh reiterated that she supports the Proposed Order.

Dr. Schachat stated that, while he will probably go along with how the Board votes in this matter, he wished to consider a more severe sanction. Dr. Schachat stated that the Proposed Order would limit Dr. Epstein's practice to safer or less demanding areas due to evidence of mild cognitive impairment. However, Dr. Schachat stated that there are life-and-death issues even in safe and undemanding areas. Dr. Schachat expressed concern about public perception if the Board says that a physician with documented cognitive impairment is still allowed to practice medicine.

Dr. Schottenstein opined that Dr. Schachat's concerns are fair, but he also felt that the Board depends on expert testimony to help navigate such issues. Dr. Schottenstein stated that he is agreeable to following the recommendation of the expert testimony in this case that Dr. Epstein could continue to practice with limitations. Dr. Schottenstein stated that he supports the Proposed Order, expressing concern that there would be risk without very close supervision. Dr. Schottenstein stated that part of what can happen in mild cognitive impairment is a loss of insight and unawareness that one is having trouble.

Dr. Schottenstein stated that individuals of an older age who show signs of irritability, fatigue, poor concentration and poor short-term memory indicate the possibility of geriatric depression. Dr. Schottenstein also noted that Dr. Epstein has a prior diagnosis of and treatment for depression, and even his neuropsychological examinations have included descriptions of Dr. Epstein as depressed, tense, irritable, tearful, anxious, and emotional. Dr. Schottenstein stated that he is bringing up this subject because depression and anxiety are risk factors for the progression from mild cognitive impairment to full dementia. Dr. Schottenstein added that at times the depression can actually mimic cognitive impairment and lead to pseudodementia, which is one of the few reversible forms of dementia and can be resolved by treating the depression. Dr. Schottenstein hoped that Dr. Epstein would pursue treatment of his depression in order to improve his prognosis and quality of life, and perhaps improve some of his cognitive issues as well.

Dr. Edgin echoed Dr. Schachat's statements. Dr. Edgin expressed concern about public perception if the Board makes a statement that a physician like Dr. Epstein can treat nursing home patients but cannot treat regular patients, particularly if there are future problems with his care of a nursing home patient.

Dr. Factora stated that he agrees with everything that has been said so far regarding Dr. Epstein's cognition. Dr. Factora stated that, while the mild cognitive impairment diagnosis just represents poor performance in cognitive testing, there is evidence that Dr. Epstein's cognitive function has actually affected his daily routine and there have been changes in his behavior. Dr. Factora stated that, while Dr. Epstein has an excellent fund of knowledge, his ability to apply that knowledge on a daily basis is at the root of the executive impairment that was noted in his neuropsychological testing. Because of this, Dr. Factora agreed that supervision of Dr. Epstein is necessary and his removal from higher-risk situations is appropriate.

Dr. Factora continued that there are three different data points in Dr. Epstein's neuropsychological testing. Dr. Factora stated that if there is a progressive process, as is suggested by Dr. Simensky's last assessment, then continued monitoring is needed to confirm that decline. Dr. Factora stated that daily observation of Dr. Epstein by family, friends, and colleagues is needed because it is not known when that decline will take place. Dr. Factora stated that the key is how Dr. Epstein operates on a daily basis. Dr. Factora opined that the recommendations should include such daily monitoring from collateral sources. Dr. Factor expressed doubt that Dr. Epstein's ability to practice medicine can be ascertained from neuropsychological testing alone.

Dr. Steinbergh commented that under the Proposed Order, Dr. Epstein will be in a supervised, structured environment and that Dr. Epstein will not be able to practice until the Board approves a practice plan. Dr. Steinbergh added that it will be the responsibility of the monitoring physician to make appropriate reports to the Board regarding Dr. Epstein's abilities and activities. Dr. Steinbergh stated that the monitoring physician reports will be reviewed by the Board's Secretary and Supervising Member and that any decline or deviation from the monitoring conditions should be seen as a red flag.

Mr. Kenney stated that, for all the reasons previously stated, there appears to be a significant possibility for patient error. Mr. Kenney opined that when a physician must have another physician with him in order to be productive, then error can occur. Mr. Kenney stated that he will yield to the physician members of the Board on this matter because they know more about this issue.

Dr. Steinbergh stated that the experts in this case feel that Dr. Epstein is capable of practicing under certain circumstances. Dr. Steinbergh stated that she believes in the Board's process and the Board's ability to monitor clinicians. Dr. Steinbergh stated that she is comfortable with the Proposed Order.

Mr. Giacalone asked the physician members of the Board would feel comfortable with Dr. Epstein taking care of their elderly parents in a nursing home under the criteria of the Proposed Order. Dr. Steinbergh replied that she feels that Dr. Epstein is competent to practice under these conditions and that she would feel comfortable with his care.

Mr. Giacalone asked that a straw poll be taken of the physician members on his question, stating that it can affect his position on this case. Mr. Gonidakis stated that a vote will be taken on the motion.

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

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

Having failed to achieve six affirmative votes, the motion to approve did not carry.

Mr. Giacalone suggested that the Proposed Order be considered by the Board again.

Mr. Giacalone moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Donald Leslie Epstein, M.D. Dr. Steinbergh seconded the motion. A vote was taken:

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

The motion to approve carried.

EXECUTIVE SESSION

Dr. Saferin moved to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action, and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity. Dr. Rothermel seconded the motion. A vote was taken:

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

Dr. Edgin - aye
Dr. Factora - aye

The motion carried.

Pursuant to Section 121.22(G)(3), Ohio Revised Code, the Board went into executive session with Mr. Groeber, Ms. Anderson, and the Assistant Attorneys General in attendance.

The Board returned to public session.

The Board took a recess at 1:00 p.m. The meeting resumed at 1:50 p.m.

EXECUTIVE SESSION

Dr. Saferin moved to go into Executive Session to confer with the Medical Board’s attorneys on matters of pending or imminent court action, and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board’s quasi-judicial capacity. Dr. Schachat seconded the motion. A vote was taken:

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

The motion carried.

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

The Board returned to public session.

RATIFICATION OF SETTLEMENT AGREEMENTS

JAGPRIT SINGH DHILLON, M.D. – STEP II CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Step II Consent Agreement with Dr. Dhillon. Dr. Schottenstein seconded the motion. A vote was taken:

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

Dr. Steinbergh	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion to ratify carried.

WILLIAM G. PALOSKI, D.O. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with Dr. Paloski. Mr. Kenney seconded the motion. A vote was taken:

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

The motion to ratify carried.

P.M.B., M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Consent Agreement with P.M.B., M.D. Dr. Factora seconded the motion.

Mr. Giacalone stated that this proposed Consent Agreement is for an individual who prescribed medications to multiple patients via telemedicine based solely on internet requests without establishing a sufficient physician/patient relationship to establish an informed diagnosis. Mr. Giacalone stated that it is unclear what kinds of medications the physician prescribed. Mr. Giacalone noted that the Iowa Board of Medicine fined this physician \$10,000, indicating that the infraction and the medications involved may have been serious. Mr. Giacalone suggested that the Board not ratify this proposed Agreement.

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

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Mr. Giacalone	- nay
	Dr. Steinbergh	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- nay

Dr. Schachat	- aye
Dr. Schottenstein	- nay
Dr. Edgin	- aye
Dr. Factora	- aye

Having failed to achieve six affirmative votes, the motion to ratify did not carry.

CASEY DAVE DARRAH, M.D. – NON-DISCIPLINARY CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Non-Disciplinary Consent Agreement with Dr. Darrah. Dr. Saferin seconded the motion.

Dr. Steinbergh stated that she supports this proposed Consent Agreement. Dr. Steinbergh, noting that the physician is doing *locum tenens* work, commented that this may not be an appropriate setting for the monitoring describe in the proposed Agreement.

Dr. Steinbergh recommended to this physician that he seek a family medicine residency program so that he can ultimately become board-certified. Dr. Steinbergh stated that without board certification, the physician will be limiting his family medicine experience, potential employment opportunities, and his ability to obtain hospital privileges. Dr. Steinbergh stated that there are also third-party payors and other agencies that require board certification.

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

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

The motion to ratify carried.

GORDON J. KORBY, D.O. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the Proposed Permanent Surrender with Dr. Korby. Dr. Schottenstein seconded the motion. A vote was taken:

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

Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion to ratify carried.

FRANK WELSH, M.D. – CONSENT AGREEMENT

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

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

The motion to ratify carried.

MITCHUM ALLEN HISSONG, L.M.T. – SUPERSEDING STEP I CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the Proposed Superseding Step I Consent Agreement with Mr. Hissong. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to ratify carried.

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

Ms. Marshall briefly reviewed the proposed citations.

Mr. Giacalone asked why Citation #2 for Dr. Laub, based on violation of minimal standards and rule violations regarding prescribing involving eight patients from 2007 to 2014, does not include a summary suspension of the medical license. Ms. Marshall replied that the most recent patient care in the case is from August 2014 and the majority of the care in question was significantly earlier than that. Ms. Marshall stated that if information is received of a more current violation, that could be a basis for summary suspension.

Mr. Marshall stated that Citation #3 for Dr. Xiong, who holds a training certificate, is based on that fact that while working as a staff nurse in 2010 he made false entries in two patient records and was disciplined by the Oklahoma Board of Nursing.

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

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

The motion carried.

Regarding proposed Citation #3, Dr. Steinbergh asked if Dr. Xiong had disclosed this Oklahoma Board of Nursing action on his training certificate application. Ms. Marshall responded that Dr. Xiong did disclose the action. Dr. Steinbergh asked if the 2010 incidents had occurred before or during his attendance in medical school. Ms. Marshall replied that she does not know when the incidents occurred in relation to his attendance in medical school.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to James Leigh Laub, D.O.; and Yi Xiong, D.O. Dr. Schottenstein seconded the motion. A vote was taken:

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

Dr. Factora - aye

The motion to send carried.

RULES AND POLICIES

RULES TO BE FILED WITH JCARR

CHAPTER 4731-21, PRESCRIBING FOR CHRONIC PAIN

Dr. Schottenstein noted that the proposed Rule defines the term “intractable pain.” However, Dr. Schottenstein’s understanding was that the term “intractable pain” was being eliminated in favor of the term “chronic pain.” Ms. Debolt agreed and asked the Board to approve filing the proposed Rule with the Joint Committee on Agency Rule Review, with the deletion of the definition of the term “intractable pain.”

Dr. Saferin moved to approve the rules, as discussed, be filed with the Joint Committee on Agency Rule Review. Dr. Rothermel seconded the motion. A vote was taken:

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

The motion carried.

RULES HEARING REPORT ON PROPOSED RULES

Ms. Debolt stated that at the Board’s recent Public Rules Hearing, three proposed rules received public comments. Ms. Debolt stated that those rules have been removed from the Joint Committee on Agency Rule Review (JCARR) process so that the Board can consider the public comments.

Ms. Debolt stated that a public comment on proposed Rule 4731-17-01 from a cosmetic therapist questioned whether laser hair removal is an invasive procedure. Dr. Schottenstein opined that laser hair removal should be consider an invasive procedure. Dr. Schottenstein stated that while laser hair removal does not involve subcutaneous or subdermal activity, it does involve sub-epidermal activity. Dr. Schottenstein commented that the laser does not shave the hair off; rather, it penetrates the dermis where the hair follicle is. Dr. Schottenstein also stated that improperly-performed laser hair removal can result in pain, blisters, burns, or infections. The Board members agreed with Dr. Schottenstein’s comments.

Ms. Debolt stated that a public comment on proposed Rule 4731-17-04 questioned the inclusion of permanent makeup as something that needs to follow this particular rules. The commenter stated that

permanent makeup is a form of tattoo and that tattooing is regulated through the Ohio Department of Health and local boards of health. However, Ms. Debolt stated that the Department of Health licenses tattooing facilities, not individuals. Ms. Debolt further stated that physicians' offices are expressly exempting from that licensing. Ms. Debolt proposed an amendment to the Rule that clarifies that it applies to permanent makeup at a location not licensed under Ohio Department of Health rules.

Dr. Steinbergh moved that proposed Rules 4731-17-01 and 4731-17-04, as discussed, be returned to the rule promulgation process. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

Ms. Debolt stated that the Ohio Society of Anesthesiologists (OSA) commented on Rule 4774-1-01. Ms. Debolt stated that Mr. LaCross discussed this matter with OSA and with Dr. Soin. Mr. LaCross stated that OSA raised concerns about changing the term "deep sedation" to "monitored anesthesia care" and changing the term "moderate sedation" to "conscious sedation." Mr. LaCross stated that OSA opposed changing these terms because they should be kept in line with what the Centers for Medicare and Medicaid Services and other entities are using. Dr. Soin has indicated that he does not oppose using the original terms as OSA has suggested. The Board members agreed with Dr. Soin's comments.

Dr. Saferin moved to amend proposed Rule 4774-1-01 by deleting the changes to paragraphs (B)(2) and (B)(3), as discussed. Dr. Steinbergh seconded the motion. A vote was taken:

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

The motion carried.

Ms. Debolt stated that proposed Rules 4731-11-01 and 4731-11-09, concerning telemedicine and prescribing to persons not seen by the physician, are currently pending with the Common Sense Initiative

(CSI) office. Ms. Debolt stated that these Rules are expected to be returned to the Board prior to the next Board meeting. Ms. Debolt asked the Board to allow Mr. Gonidakis to approve filing the rules with the Joint Committee on Agency Rule Review (JCARR) and have the Board ratify that decision at the November Board meeting.

Dr. Steinbergh stated that she supports this plan, unless CSI makes any significant suggested changes.

Dr. Saferin moved to authorize Mr. Gonidakis to approve the filing of proposed Rules 4731-1101 and 4731-11-09 with JCARR, barring significant suggested changes, pending ratification of the filing by the Board at the next Board meeting. Dr. Schachat seconded the motion. A vote was taken:

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

The motion carried.

OPERATIONS REPORT

Human Resources: Mr. Groeber stated that a number of good candidate have applied for the position of Deputy Director for Licensure. Mr. Groeber stated that one candidate is being looked at very closely and a background check is underway.

Mr. Groeber stated that the Attorney 2 position with the Legal Section has been posted and a number of applications have already been received. Mr. Groeber stated that the position of Attorney 4 in the Legal Section will also be posted.

Mr. Groeber stated that the position of Investigator Supervisor for the North Area will be posted next week.

Budget: Mr. Groeber stated that the Board's proposed budget for the 2018/2019 biennium was submitted on September 15.

Information Technology: Mr. Groeber stated that the E-License project continues as scheduled.

Communications and Outreach: Ms. Pollock stated that at the last month's meeting the Board voted to take the necessary steps to video-record the Board meeting to be used as an educational tool in Ohio medical schools. Ms. Pollock stated that most of the necessary video equipment has been acquired and the recording should begin with the November Board meeting. Ms. Pollock stated that she and other staff will meet with the Ohio Council of Medical School Deans to discuss how to integrate this into their

programs. Dr. Steinbergh commented that the schools' associate deans who are responsible for curriculum development should also be involved in the conversations. Ms. Pollock agreed.

Regarding media inquiries, Ms. Pollock stated that most calls continue to be about medical marijuana and progress on writing rules to implement the medical marijuana program. Ms. Pollock stated that she continues to work with the Atlanta Journal-Constitution as they investigate reports of sexual misconduct by physicians across the country. Ms. Pollock stated that the Journal-Constitution's next story in this investigation may give each state a grade based on their laws, but the State Medical Board of Ohio has been afforded the opportunity to review the research of Ohio statutes and rules so that any needed corrections can be made to ensure the sharing of accurate information.

Ms. Pollock stated that the Board of Pharmacy sent the Medical Board a letter on September 22 with a list of approximately 12,000 physicians and prescribers who have not checked the Ohio Automated Rx Reporting System (OARRS) in August prior to prescribing opioids or benzodiazepines. In response, the Medical Board contacted those prescribers by letter on September 30 and encouraged them to review their practices and procedures. The letter indicated that, while ongoing problems could result in disciplinary action or fines, the Board just wanted the prescribers to review their records and data. Ms. Pollock stated that, while the letter was generally not well-received, it has yielded positive results. Ms. Pollock noted that many practitioners thought they were following the guidelines about found that they had not in some cases, leading to appropriate changes in their practices. Ms. Pollock stated that follow-up communication let people know that prescribers with extreme numbers had already been contacted and that they were not on that list. Ms. Pollock stated that the Board will continue to work through the approximately 1,300 additional email inquiries received from prescribers and respond accordingly.

Mr. Groeber elaborated that of the 12,000 licensees on the list, 8,000 licensees had between 1 and 9 instances over the course of the month and over 300 licensees had more than 100 instances in the course of the month. Mr. Groeber stated that there may be reasons or justifications for those 100-plus instances, but this is an opportunity for the practitioner to review practices. Mr. Groeber stated that the top 45 practitioners on the list prescribed over 200 times without checking OARRS in the second month; Mr. Groeber stated that the Board can have a more personal interaction with those practitioners to ensure their practices are in-line with current guidelines. Mr. Groeber stated that the goal is to get all practitioners off the list.

Dr. Schottenstein commented that, ideally, the OARRS system should eventually evolve into a system does not require manual checks, but rather would alert the prescriber to issues automatically. Mr. Groeber and Mr. Schmidt stated that this is the ultimate goal of the OARRS system. Mr. Groeber and Mr. Schmidt added that efforts are also underway to educate physicians so that OARRS is used properly and for its intended purpose to aid prescribers in making quality prescribing decisions.

Agency Operations: Mr. Groeber stated that the number of new MD/DO physician licenses issues increased by 12% over the same month last year, new podiatric physician licenses increased by 10%, and allied professional licenses increased by 14%.

Regarding proposed fines in the Report and Recommendations, Mr. Groeber stated that he has asked Mr. Porter to consider changes. Mr. Groeber asked the Board to discuss what they would like to see in this regard.

The Board discussed this matter thoroughly. The Board members agreed that the Report and

Recommendation should include information on the minimum, standard, and maximum fine for each alleged violation. The Board also agreed that the Hearing Examiner should have discretion for the exact fine amount between the minimum and maximum of the highest-level violation, just as they have discretion with other aspects of the Proposed Order within the disciplinary guidelines. The Board will retain the ability to alter the fine amount as it deems appropriate.

REPORTS BY ASSIGNED COMMITTEES

FINANCE COMMITTEE

Mr. Kenney informed the Board that the Board of Pharmacy had had an issue with their accounting that it was unable to address properly. However, Ms. Loe took time to address and ultimately resolve the Board of Pharmacy's problem. Ms. Loe did this on top of her regular duties with the Medical Board. Mr. Gonidakis commented that he also received calls from the Executive Director of the Board of Pharmacy, as well as the Governor's office, praising Ms. Loe's work. The Board and staff gave Ms. Loe a round of applause.

Ms. Loe stated that in August the Medical Board had \$600,000 in revenue and \$644,000 in expenditures, leaving a cash balance of \$4,500,000 at the end of August. Ms. Loe, noting that August is only the second month of the fiscal year, stated that revenue is significantly ahead of projections. Ms. Loe stated that revenue may level off as the year progresses.

Ms. Loe stated that the Board's annual audit has concluded and there were no findings.

Ms. Loe stated that she is now producing a monthly report for the Finance Committee on efforts to collect fines and where each fine is in the process.

Mr. Gonidakis asked from the Board's Minority-Owned Business Enterprise (MBE) rate. Ms. Loe replied that she does not have that figure in front of her, but she recalled that it is around 30%. Ms. Loe explained that all state agencies are required to have a goal to spend 15% of its discretionary spending with MBE's. Ms. Loe stated that Mr. Holben spends time to find appropriate vendors to ensure that the Board surpasses the 15% minimum each year.

SPECIAL COUNSEL

Mr. Kenney stated that the Finance Committee voted to recommend approval of up to \$25,000 for attorney fees in an appellate matter.

Dr. Saferin moved to approve up to \$25,000 for Special Counsel, selected by the Board Legal staff and Executive Director, to defend the Board on a pending appellate matter. Dr. Steinbergh seconded the motion.

Mr. Gonidakis clarified that this motion only concerns the allocation of up to \$25,000 and the authority of the Executive Director to spend it. Mr. Gonidakis stated that this motion does not involve the selection of the law firm.

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

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Mr. Giacalone	- aye
Dr. Steinbergh	- aye
Mr. Gonidakis	- aye
Mr. Kenney	- aye
Dr. Schachat	- aye
Dr. Schottenstein	- aye
Dr. Edgin	- aye
Dr. Factora	- aye

The motion carried.

POLICY COMMITTEE

MEDICAL MARIJUANA UPDATE

Mr. Groeber stated that the Board continues to work with the medical marijuana program to implement House Bill 523. Mr. Groeber stated that since the last Board meeting he and Ms. Anderson visited Illinois to learn about best practices from their medical marijuana program. Mr. Groeber stated that the Board has issued a statement regarding the affirmative defense provision of House Bill 523. Mr. Groeber stated that all members of the Medical Marijuana Advisory Committee have been appointed and should hold a meeting in the near future; Mr. Groeber noted that Dr. Soin is on that committee.

Mr. Groeber stated that the Board continues to encourage people to visit medicalmairjuana.ohio.gov for the latest information on this subject.

Mr. Giacalone stated that he made a statement in the Policy Committee meeting that was prepared on behalf of the Board regarding the medical marijuana issue. Mr. Giacalone stated that he would like to restate that statement here:

Although it is not the standard practice of the Board to feature non-staff presenters during the Policy Committee, we, the Board, do want to acknowledge Rob Ryan, who attended the meeting, and the members of NORML [the National Organization for the Reform of Marijuana Laws, Ohio Chapter] who have reached out to us. They have voiced concerns over statements issued by the State Medical Board on September 23 addressing affirmative defense in medical marijuana. You will note that the Medical Board is in no way prohibiting the recommendation of medical marijuana now that House Bill 523 is effective. The intent of this statement is to acknowledge that the conflicting language in House Bill 523 exists. While the legislation says that a physician is not permitted to issue a State of Ohio-approved written recommendation to use medical marijuana until the physician has obtained a certificate to recommend from the State Medical Board of Ohio, it also created an affirmative defense for certain marijuana-related crimes as a way to protect patients and parents or guardians of minor patients who seek to use marijuana prior to the creation and implementation of all the administrative rules necessary to run the Ohio medical marijuana control program. If Ohio physicians wish to recommend medical marijuana before the rules are in place, we the Board strongly recommend that they contact a private attorney because the legislation is not crystal clear and could be interpreted as providing conflicting

instructions to physicians. The Board's statement is final and we will not review nor approve any forms for recommendation at this time.

ONE-BITE REPORTING EXEMPTION UPDATE

Mr. Groeber stated that Board staff meet with various associations and the Ohio Physicians Health Program last week regarding the one-bite reporting exemption. Mr. Groeber stated that a flowchart, which Board members should have seen by this time, lays out the Board's vision for how the reporting exemption could work. There was agreement at last week's meeting that the flowchart showed a solid plan. Mr. Groeber stated that the next step is to put forward legislation to give the Board the authority to implement this program, including authority to contract with a monitoring provider to administer the program. To that end, Mr. Groeber and other Board staff will meet with Representatives Grossman, Huffman, and Sprague to discuss options.

NON-DISCIPLINARY OPTION FOR MENTAL AND PHYSICAL ILLNESS

Ms. Anderson stated that a smaller group is being pulled together to review this proposal in light of research which indicates that, if it is the result of a Board action, it is required to be reported to the National Practitioner Databank.

PROPOSED RULE LIMITING POST-HEARING BRIEFS

Ms. Anderson stated that the Policy Committee voted to approve circulating draft changes to the Board's hearing rules that would limit post-hearing briefs to 15 pages, while granting the Hearing Examiner discretion to increase that limit to 25 pages if it involves a complex legal matter and if it is deemed necessary. The proposed changes would also require motions filed electronically to be in an attachment to an email and not in the body of an email. Lastly, the proposed changes would reduce the timeframe for responses to three days.

ATTORNEYS' FEES

Ms. Anderson stated that Mr. Gonidakis asked her to prepare a memo to the Board on the issue of attorneys' fees and the requirements under 119, Ohio Revised Code, when attorneys' fees are awarded. Ms. Anderson stated that Board members should already have that memo. Ms. Anderson encouraged the Board members to contact her if they have any questions.

LEGISLATIVE UPDATE

Mr. LaCross stated that he had identified five Senate bill and two House bills which could be amended to include language to reduce the Board's initial physician licensure fee from \$335 to \$305. Mr. LaCross stated that the Legislature will be in session from November 16 to December 7.

Mr. LaCross stated that when he has final language for the budget and the physician licensure fee reduction he will circulate it to the Board members.

LICENSURE COMMITTEELICENSURE APPLICATION REVIEWSMIGUEL ERNESTO HABEYCH, M.D.

Dr. Saferin stated that Dr. Habeych is requesting graduate medical education equivalency for his training in Colombia and the United States. The Licensure Committee has recommended approval of Dr. Habeych's request.

Dr. Saferin moved that the Board grant Dr. Habeych's request to deem his training and experience in Colombia and the United States to be equivalent to 24 months of graduate medical education (GME) through the second-year level of GME so that he may be granted a license. Dr. Steinbergh seconded the motion. A vote was taken:

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

The motion carried.

COSMETIC THERAPIST EXAMINATION

Dr. Saferin stated that the Licensure Committee had a robust discussion considering the elimination of Part C of the Board's Cosmetic Therapy Licensure Examination, which is the hands-on practical portion. Dr. Saferin stated that the Licensure Committee voted unanimously to recommend eliminating Part C of the examination.

Dr. Saferin moved to eliminate Part C of the Board's Cosmetic Therapy Licensure Examination. Dr. Edgin seconded the motion.

Dr. Steinbergh stated that she continues to oppose the elimination of Part C of the examination. Dr. Steinbergh stated that she believes in this form of practical examination, noting that the United States Medical Licensing Examination (USMLE) and Comprehensive Osteopathic Medical Licensing Examination (COMLEX) for physicians also have practical portions. Dr. Steinbergh expressed concern that the Board members have not yet truly engaged in a discussion of what a cosmetic therapist does. Dr. Steinbergh stated that when this matter was discussed previously, among the reasons the Licensure Committee gave to eliminate part C were that it was expensive, time-consuming, and, in Dr. Steinbergh's words, essentially "wasn't worth the effort." Dr. Steinbergh recalled that Dr. Sojin had had the same concerns that she did, namely that the elimination of Part C should not be about inconvenience to the Board or the cost of the examination.

Dr. Steinbergh continued that she has spoken with Kelly Wert, C.T., a spokesperson for the Cosmetic Therapy Association of Ohio (CTAO) and proctor of the Board's practical examination, as well as George Dunigan of the CTAO. Dr. Steinbergh stated that Ms. Wert and Mr. Dunigan had concerns with the proposal to eliminate part C, particularly with regard to the training in electrolysis and the delegation of laser treatment. Dr. Steinbergh commented that she had invited Ms. Wert and Mr. Dunigan to present to the Licensure Committee this month, but was asked for administrative reasons to delay until November. Dr. Steinbergh opined that the Board should not vote on this matter until Ms. Wert and Mr. Dunigan can make their presentation.

Dr. Rothermel stated that the Licensure Committee has discussed this matter thoroughly. Dr. Rothermel also stated that in a communication dated June 30, 2016, the aforementioned Ms. Wert wrote, "Overall, everyone is in agreement that the practical portion of the testing is no longer necessary." Dr. Rothermel continued that the Licensure Committee met this morning with Vickie Mickey, C.T., who had a private school and also wrote the original testing for the current practical examination. Dr. Rothermel stated that Ms. Mickey felt that the requirements that the Medical Board makes of the cosmetic therapy schools cover the practical testing and that Part C of the examination is not needed.

Dr. Edgin pointed out that cosmetic therapy is the only profession for which the Board requires a practical examination. Dr. Edgin stated that for physicians, the medical schools are responsible for any oral examination or demonstration of quality.

Dr. Schottenstein appreciated Dr. Edgin's comments, but noted that the argument could also be turned around to contend that the Board should give practical tests to all its licensees like it does for cosmetic therapists. Dr. Schottenstein stated that the only he wants to know on this issue is whether Part C of the Board's Cosmetic Therapy Examination is redundant. Dr. Schottenstein stated that if Part C is redundant, then it should be eliminated; otherwise, the Board should keep it. Dr. Saferin replied that the examination that cosmetic therapy school graduates includes a practical portion in which they have to perform electrolysis, and therefore the Board's practical portion is redundant.

Dr. Saferin continued that from 2005 to 2016 the Board took disciplinary action against only two cosmetic therapists, both for violations of their continuing education requirements. Dr. Saferin pointed out that during that timeframe no disciplinary actions were taken based on cosmetic therapists violating the minimal standards of care in their profession. Dr. Saferin added that the Food and Drug Administration (FDA) had only three complaints over a course of years involving electrolysis; all three complaints concerned electrolysis purchased by consumers for use in the home and did not involve professionals. Lastly, Dr. Saferin reviewed that pass/fail rate for the Board's Cosmetic Therapy Examination, which requires an overall score of 75% averaged from all three portions to pass. Dr. Saferin reviewed the data and observed that many applicants failed Part B but passed the examination thanks to their performance on Part C.

Dr. Saferin stated that the Licensure Committee voted unanimously to eliminate Part C of the examination because doing so would not affect public safety.

Mr. Kenney opined that the Board should vote on this matter, noting that the Licensure Committee has already made its recommendation after thorough discussion and it is the Board's role to either approve or disapprove that recommendation.

Mr. Giacalone stated that Dr. Saferin, Dr. Rothermel, and Dr. Edgin have addressed his concerns with eliminated Part C of the examination. Mr. Giacalone stated that he does not see the risk in eliminating Part C, especially in light of data concerning disciplinary action and FDA issues with cosmetic therapist. Mr. Giacalone opined that Part C may be an additional burden without much benefit.

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

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

The motion carried.

Dr. Saferin stated that Part C will be removed from the Cosmetic Therapy Examination following the next scheduled examination.

COMPLIANCE COMMITTEE

Dr. Steinbergh stated that On September 14, 2016, the Compliance Committee met with Jodi Harwood Chapek, P.A.; and Cara E. Perez, M.D., and moved to continue them under the terms of their respective Board actions. The Compliance Committee accepted Compliance staff's report of conferences on August 8 & 9, 2016.

Dr. Steinbergh stated that the Committee also recommended approval for Christina Delos Reyes, M.D., to conduct return-to-work evaluations for the Board's licensees. Dr. Delos Reyes is board-certified in psychiatry and addiction psychiatry.

Dr. Edgin moved to approve Dr. Delos Reyes to conduct return-to-work evaluations. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

PROBATIONARY REQUESTS

Mr. Gonidakis advised that at this time he would like the Board to consider the probationary requests on today's consent agenda. Mr. Gonidakis asked if any Board member wished to discuss a probationary request separately. Dr. Steinbergh stated that she would like to discuss the probationary request of William K. Basedow, D.O., separately.

Dr. Steinbergh stated that Dr. Basedow's Board Order required him to write a summary of each of his required courses in controlled substance prescribing and medical record-keeping, which he has provided. However, the Board Order also required Dr. Basedow to identify with specificity how he will apply what he has learned to his practice of medicine in the future. Dr. Steinbergh stated that Dr. Basedow's reports on

the courses is very basic and did not describe how it may change his practice. For these reasons, Dr. Steinbergh opposed approving Dr. Basedow's summaries.

Dr. Steinbergh moved to approve the courses submitted by Dr. Basedow, but to not approve Dr. Basedow's summaries of the courses. Dr. Schottenstein seconded the motion.

Mr. Taylor noted for the Board's information that if it chooses to deny Dr. Basedow's request for approval of the course summaries, that action is reportable to the National Practitioner Databank. Dr. Rothermel suggested tabling this matter instead of denying Dr. Basedow's request. Dr. Steinbergh agreed.

Dr. Steinbergh withdrew her motion. No Board member objected to withdrawing the motion. The motion was withdrawn.

Dr. Steinbergh moved to table the probationary requests of Dr. Basedow. Mr. Kenney seconded the motion.

Dr. Saferin opposed tabling this matter, stating that he and Dr. Rothermel reviewed this in their roles as Secretary and Supervising Member. Dr. Saferin acknowledged that Dr. Basedow's summaries may not have been as long or as detailed as others the Board has received, but opined that it was adequate. Dr. Saferin noted that Dr. Basedow's license is currently suspended and he does not have a practice at all at this time. Dr. Saferin also noted that Ms. Murray, an attorney who is also the manager of the Board's Compliance Section, also approved the summaries.

Dr. Steinbergh stated that course summaries with descriptions of how the knowledge gained in the courses will be applied to one's practice is a requirement of Dr. Basedow's Board Order and he did not meet that requirement. Dr. Steinbergh opined that if the requirement is not enforced, the Board should consider removing that language from Board Orders and Consent Agreements. Dr. Steinbergh commented that physicians can attend continuing medical education courses, but if they do not apply that to their practice then their practice never improves.

Ms. Murray observed that Dr. Basedow has a permanent limitation on his license stated that he "shall not prescribe, administer, dispense, or otherwise provide any narcotic analgesics including but not limited to single entity or combination products containing oxycodone, hydrocodone, hydrophorphone, oxymorphone or codeine." Consequently, some of the things Dr. Basedow learned in the controlled substance prescribe course cannot be applied to his practice. Dr. Steinbergh noted that Dr. Basedow was also required to take a medical record-keeping course. Ms. Murray commented that when a probationary request is approved by the Secretary and Supervising Member, the staff does not have discretion to pull it from Board consideration.

Mr. Giacalone noted that Dr. Basedow's permanent limitation still allows him to prescribe some controlled substances, and therefore he would be able to apply some of the prescribing course to his practice. Mr. Giacalone read the relevant portion of Dr. Basedow's Board Order: "He [Dr. Basedow] shall also submit to the board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future." Mr. Giacalone agreed with Dr. Steinbergh that Dr. Basedow did not fulfill this requirement. Mr. Giacalone stated that if the Board sets a precedent for weak one-page course summaries from probationers, then that will be all that the Board receives. Mr. Giacalone agreed with tabling this matter.

Mr. Gonidakis stated that this discussion has served a great purpose to let the Board's staff know the Board's expectations in this matters. Mr. Gonidakis agreed that tabling this matter is the appropriate course of action at this time.

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

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

The motion to table carried.

Dr. Schottenstein stated that he wished to discuss the probationary request of Michael T. Bangert, M.D.

Dr. Schottenstein stated that Dr. Bangert has been diagnosed with schizophrenia. Dr. Schottenstein stated that the Board's expert, Dr. Noffsinger, noted Dr. Bangert's schizophrenia on July 28, 2016, and he was unable to practice at that time. Now, just three months later, Dr. Bangert is requesting approval for two psychiatrists to conduct assessments to see if Dr. Bangert is able to return to practice. Dr. Schottenstein expressed concern about attempts to approve Dr. Bangert for returning to practice in such a short time span.

Ms. Murray stated that Dr. Bangert's request is for approval of the two psychiatrists to conduct the evaluations and has nothing to do with the timing of those evaluations. Dr. Schottenstein thanked Ms. Murray for that clarification.

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

- **To grant Michael T. Bangert, M.D.'s request for approval of Melvyn M. Nizny, M.D., to conduct a psychiatric assessment required for reinstatement; and approval of Douglas A. Songer, M.D., to conduct a psychiatrist assessment required for reinstatement;**
- **To grant Craig L. Bierer, D.O.'s request for approval of Michael E. Miller, M.D., to serve as the new treating psychiatrist;**
- **To grant Micah S. Crouse, M.D.'s request for approval of Jeffrey J. Revill, M.D., to serve as the new monitoring physician; and discontinuation of the chart review requirement;**
- **To grant Franklin D. Demint, D.O.'s request for approval of a reduction in appearances to every six months; approval of the submitted practice plan; approval of Michael M. Alexander, D.O., to serve as the new monitoring physician; and determination of the frequency and number of charts**

to be reviewed at ten charts per month;

- To grant Nicholas C. Diamantis, M.D.'s request for approval of the previously-completed course *Intensive Course in Medical Ethics, Boundaries and Professionalism*, offered by Case Western Reserve University, to fulfill the personal/professional ethics course requirement; and approval of the previously-completed course *Intensive Course in Medical Record Keeping with Individual Preceptorships*, offered by Case Western Reserve University, to fulfill the medical record keeping course requirement;
- To grant Emily K. Helleesen, M.T.'s request for approval of the ethics course tailored by Donna Homenko, Ph.D., to fulfill the ethics course requirement;
- To grant Gregory Allan Parker, M.D.'s request for approval of Randon S. Welton, M.D., to conduct the psychiatric return to work assessment;
- To grant Michael Todd Tatro, M.D.'s request for approval of John T. Columbus, 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; and
- To grant Himchala Veligandla, M.D.'s request for approval of his request to make personal appearances via electronic means.

Dr. Schachat seconded the motion. All members voted aye. The motion carried.

Dr. Schachat exited the meeting at this time.

REINSTATEMENT REQUEST

RYAN S. FRYMAN, D.O.

Dr. Steinbergh moved that the request for the reinstatement of the license of Ryan S. Fryman, D.O., be approved, effective immediately, subject to the probationary terms and conditions as outlined in the August 10, 2016 Board Order for a minimum of five years. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

FINAL PROBATIONARY APPEARANCESMOUNIR BOUTROS, M.D.

Dr. Boutros was appearing before the Board pursuant to his request for release from the terms of the Board's Order of October 8, 2014. Mr. Gonidakis reviewed Dr. Boutros' history with the Board.

Dr. Steinbergh asked if Dr. Boutros could address the medical students in attendance about his experience with the Board. Dr. Boutros agreed.

Dr. Boutros stated that over the last two years he has experienced the impact of his actions of three years ago on his personal and professional life. Dr. Boutros stated that the experience has been very tough, but has also been eye-opening. Dr. Boutros explained that he graduated from medical school in Syria and then came to the United States to pursue specialties in internal medicine, psychiatry, and dermatology. Dr. Boutros stated that his poor judgement led him to make a mistake three years ago.

Dr. Boutros continued that with the guidance of the Medical Board he has tried his best to focus on his practice, provide the utmost ethical patient care, and strengthen his relationship with his two sons and provide them with an example of professionalism, ethics, and moral character. Dr. Boutros stated that he has also tried to strengthen his relationships with his colleagues and friends. Dr. Boutros stated that his required course in ethics involved reviewing two books and many articles about crossing boundaries with patients. Dr. Boutros stated that he has established a strong relationship with a physician, mentor, and friend that has enabled him to gauge his personal and professional conduct. Dr. Boutros added that he has worked hard to keep up his relationships with family members living in four countries on three continents, including helping to support his two sisters who are in the war zone in Syria.

Dr. Steinbergh thanked Dr. Boutros for his comments and for confirmation that the Board's remediation in these areas can be successful.

Dr. Steinbergh moved to release Dr. Boutros from the terms of the Board's Order of October 8, 2014, effective October 30, 2016. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

MATTHEW R. HARRIS, D.O.

Dr. Harris was appearing before the Board pursuant to his request for release from the terms of the Board's Order of January 14, 2015. Mr. Gonidakis reviewed Dr. Harris' history with the Board.

Mr. Giacalone asked if Dr. Harris could explain his situation to the medical students in attendance. Dr. Harris agreed.

Dr. Harris explained that he grew up in an alcoholic household and that daily drinking had been normal for him. Dr. Harris stated that he never drank normally or socially, but always for the purpose of getting intoxicated. Dr. Harris stated that he stopped drinking when he finished undergraduate school, but when he returned to school to attend medical school he began to drift away from his recovery. Dr. Harris stated that he maintained his sobriety through medical school and residency, but he began drinking again when his family practice business failed and he went through a divorce. Dr. Harris stated that he reported himself to the Medical Board and his license was subsequently suspended for a few years.

Dr. Harris stated that the consequences of the Board's action were severe, but it gave him a chance to get his life back and he is now in recovery. Dr. Harris stated that if he does not have his sobriety and his recovery, he is nothing. Dr. Harris stated that his current wife is also in recovery and they have a good relationship. Dr. Harris stated that the Board has given him a chance to regain the ability to be a good family doctor and help people. Dr. Harris stated that he knows that he is horribly allergic to alcohol and if he touches it, he will be dead.

Dr. Harris stated that when he was in medical school there was only about a month of education on substance abuse. Dr. Harris stated that this is not adequate considering that 10% of people have substance abuse problems. Dr. Harris stated that primary care physicians will see substance abuse in their patients often.

Mr. Giacalone asked if Dr. Harris is currently sponsoring anyone in Alcoholics Anonymous (AA). Dr. Harris replied that he had been sponsoring someone, but that person disappeared. Dr. Harris commented that the relapse rate is very high for those whose careers do not depend on recovery.

Responding to questions from Dr. Steinbergh and Mr. Giacalone, Dr. Harris stated that he currently practices as a family medicine physician in a group owned by Licking Memorial Hospital. Dr. Harris stated that there is currently only one other physician in his group since the third physician retired.

Dr. Schottenstein wanted to make certain that Dr. Harris understands that his former sponsee's departure from AA was not Dr. Harris' fault. Dr. Harris agreed, but wished that the sponsee had called Dr. Harris so he could have picked the sponsee up and taken him to a meeting.

Dr. Schottenstein asked if Dr. Harris is working the steps. Dr. Harris replied that he is currently working on steps 10, 11, and 12 as part of his daily life.

Dr. Steinbergh moved to release Dr. Harris from the terms of the Board's Order of February 3, 2015, effective immediately. Mr. Giacalone seconded the motion. All members voted aye. The motion carried.

ROBERT C. TURNER, M.D.

Dr. Turner was appearing before the Board pursuant to his request for release from the terms of his October 9, 2013 Consent Agreement. Mr. Gonidakis reviewed Dr. Turner's history with the Board.

Mr. Giacalone asked if Dr. Turner would address the medical students in attendance about what he has learned and advice to avoid this situation. Dr. Turner agreed.

Dr. Turner explained that he is an orthopedic surgeon. Dr. Turner stated that he had had two problems with his prescribing practices. First, he was too soft and was not good at saying "no." Second, he just didn't know any better. Dr. Turner stated that he did not learn the management of medication for chronic pain in medical school or residency. Dr. Turner stated that his life changed dramatically when he took Dr. Parran's prescribing course at Case Western Reserve University. Dr. Turner stated that that course taught him that properly managing medications for chronic pain patients is very time-consuming and such patients should be referred to pain management specialists.

Dr. Turner continued that following his course in prescribing, he became involved in producing educational materials on prescribing for physicians with the Governor's Cabinet Opiate Action Team (GCOAT). Dr. Turner also testified before the legislature on that subject and was able to present a webinar at a statehouse news conference. Dr. Turner felt that he had helped educate people.

Dr. Turner stated that after his license was reinstated after six months, his former practice refused to take him back. In addition, Dr. Turner lost his malpractice coverage, was no longer accepted by several major medical insurance companies, and temporarily lost his Drug Enforcement Administration (DEA) certificate. Dr. Turner stated that he can see Medicaid patients, which does not pay well.

Dr. Steinbergh commented to the medical students that Dr. Turner had been a very well-respected orthopedic surgeon with a healthy practice, but errors in his prescribing brought him before the Medical Board. Dr. Steinbergh stated that the consequences of Board actions can have significant effects on one's practice and family. Dr. Steinbergh stated that she was impressed with what Dr. Turner had been able to accomplish in terms of developing education and testifying before the legislature.

Mr. Giacalone noted that the allegations in Dr. Turner's initial Notice of Opportunity for Hearing included that he had provided narcotic medication to individuals without office visits or without documentation, failed to address warning signs of drug abuse or diversion, failed to formulate appropriate individualized treatment plans, and failed to cease prescribing narcotics when presented with signs of drug abuse and diversion. Mr. Giacalone stated that issues of over-prescribing and negligent prescribing are much more significant than it had been in the past. Mr. Giacalone commented that Ohio has enough addicts and does not need any more. Mr. Giacalone informed the medical students that if they appear before the Medical Board in the future for anything resembling Dr. Turner's situation, they should consider a different career choice.

Mr. Giacalone moved to release Dr. Turner from the terms of his October 9, 2013 Consent Agreement, effective immediately. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.

CHAD WINFIELD ULMER, M.D.

Dr. Ulmer was appearing before the Board pursuant to his request for release from the terms of the Board's Order of April 8, 2015. Mr. Gonidakis reviewed Dr. Ulmer's history with the Board.

Mr. Gonidakis asked Dr. Ulmer to describe what brought him before the Board. Dr. Ulmer stated that he began to drink at the age of 14 and his drinking progressed into college. Dr. Ulmer stated that drinking every weekend in college seemed very reasonable because it seemed that everyone was doing it. However, Dr. Ulmer stated that the problem comes when you see your classmates and friends stop demonstrating that behavior after graduation and you do not. Dr. Ulmer stated that the drinking problem was always there to some extent and would come to the fore when there was difficulty. Dr. Ulmer stated that his difficulty was with sleeping and he tried to use alcohol to help him in that respect. Soon, Dr. Ulmer wondered if alcohol could help him with his anxiety or his stress. Dr. Ulmer stated that the problem with alcohol is not that it does not work, but that it does work. However, eventually alcohol stops working and you don't get the same effect that you once did.

Dr. Ulmer continued that there will always be times when things will not go well and that this is simply life. Dr. Ulmer stated that it is important to understand that there are ways to deal with the difficulties in life that

are effective and productive and do not involve substances. Dr. Ulmer stated that his failure to recognize his poor decisions ultimately brought him to the Board.

Dr. Schottenstein commented that the habit of drinking alcohol does not start with a bad person doing something wrong, but rather it starts with people consuming alcohol because that is what people do in our society. However, Dr. Schottenstein stated that roughly one in ten people have an addictive brain and the alcohol will affect them much more profoundly than it does their friends. Dr. Schottenstein agreed with Dr. Ulmer that someday alcohol stops working, and then the person needs to drink more to achieve the same enjoyment. Eventually, the person needs to drink simply to feel normal, and ultimately drinking does not even make the person feel normal. Dr. Schottenstein stated that it is very important to have self-awareness to step away from alcohol before it reaches such a point.

Dr. Steinbergh moved to release Dr. Ulmer from the terms of the Board's Order of April 8, 2015, effective immediately. Dr. Schachat seconded the motion. All members voted aye. The motion carried.

ADJOURN

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

Thereupon, at 4:35 p.m., the October 19, 2016 session of the State Medical Board of Ohio was adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on October 19, 2016, as approved on November 9, 2016.


Michael L. Gonidakis, President


Kim G. Rothermel, M.D., Secretary

(SEAL)

