



**AGENDA**

**STATE MEDICAL BOARD OF OHIO  
ASSIGNED COMMITTEES**

**October 11, 2017**

**NOTE: Items listed on Committee agendas may also be discussed during the “Reports of Assigned Committees” on the Board’s Agenda**

**ALSO, Additions or deletions to this agenda may become necessary after publication. Please check the agenda appearing on the Board’s website for the most current version.**

**Start times are approximate and agenda items and committee meetings may be taken out of order, at the discretion of the Board President.**

**PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE**

**7:30 a.m. – Conference Room #345**

- I.) Draft Minutes
- II.) Request from Cosmetology Board

**LICENSURE COMMITTEE**

**8:00 a.m. – Conference Room #318**

- I.) Minutes Review
- II.) Licensure Application Reviews
  - a.) Eric Cohen, M.D.
  - b.) Jhansi Lanka, M.D.
  - c.) Adrian Piris, M.D.
  - d.) Aimee Luat, M.D.
- III.) Visiting Clinical Professional Development Certificate Statute
- IV.) Continuing Cosmetic Therapy Education Requirements

**POLICY COMMITTEE****8:30 a.m. – Conference Room # 336**

- I.) Minutes Review
- II.) Legislative Update
- III.) Medical Marijuana
  - a.) New Conditions Petition Acceptance Period for 2018
- IV.) Update on Budget Bill Changes
- V.) Acute Prescribing Rules FAQ's

**FINANCE COMMITTEE****9:00 a.m. – Conference Room # 335**

- I.) Minutes Review
- II.) Officer or Staff Reports
  - a.) Medical Board Fiscal Update
  - b.) Other Reports
- III.) Existing Medical Board Fiscal Matters
- IV.) New Medical Board Fiscal Matters
- V.) Action Item



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## **AGENDA**

James A. Rhodes State Office Tower  
30 E. Broad St., Columbus, OH 43215, 3<sup>rd</sup> Floor  
October 11, 2017 - 9:45 a.m.

**NOTE: Additions to this agenda may become necessary.  
Please check the agenda appearing on the Board's website for the most current version.**

**Agenda items may be discussed out of order, at the discretion of the Board President.**

- I. ROLL CALL
- II. MINUTES REVIEW  
September 13, 2017 Board Meeting
- III. APPLICANTS FOR LICENSURE
  - a.) Acupuncturists
  - b.) Anesthesiologist Assistants
  - c.) Genetic Counselors
  - d.) Massage Therapists
  - e.) Physician Assistants
  - f.) Physicians
- IV. REPORTS AND RECOMMENDATIONS
  - a.) Rick James Bucher, M.D. (Oxford, OH)
  - b.) Allison Darlene Justice (Beavercreek, OH)
  - c.) Atma Prakash Nayak, M.D. (Brighton, MA)
- V. PROPOSED FINDINGS AND PROPOSED ORDERS
  - a.) Mitchum Allen Hissong, L.M.T. (Caledonia, OH)
  - b.) Ayssa Vanden Eynden (Cincinnati, OH)
- VI. FINDINGS, ORDERS, AND JOURNAL ENTRIES
  - a.) Molli Lizette Frey, L.M.T. (Wapakoneta, OH)
  - b.) Jennifer Lynn Kinney, L.M.T. (Toledo, OH)
  - c.) Leann Theresa Poston, M.D. (Xenia, OH)
- VII. EXECUTIVE SESSION I
- VIII. EXECUTIVE SESSION II

## **BOARD AGENDA**

October 11, 2017  
9:45 a.m.  
(Continued)

<b>TOPIC</b>	<b>PAGE NO.</b>
IX. SETTLEMENT AGREEMENTS	
X. NOTICES OF OPPORTUNITY FOR HEARING, ORDERS OF SUMMARY SUSPENSION, ORDERS OF IMMEDIATE SUSPENSION, AND ORDERS OF AUTOMATIC SUSPENSION	
XI. RULES & POLICIES (none)	
XII. OPERATIONS REPORT	
XIII. REPORTS BY ASSIGNED COMMITTEES	
<b><u>Finance Committee Report</u></b>	
a.) Officer or Staff Reports	
i. Medical Board Fiscal Update	
ii. Other Reports	
b.) Existing Medical Board Fiscal Matters	
c.) New Medical Board Fiscal Matters	
d.) Action Item Review	
<b><u>Policy Committee Report</u></b>	
a.) Legislative Update	
b.) Medical Marijuana	
i. New Condition Petition Acceptance Period for 2018	
c.) Update on Budget Bill Changes	
d.) Acute Prescribing Rule FAQ's	
<b><u>Licensure Committee Report</u></b>	
a.) Licensure Application Reviews	
i. Eric Cohen, M.D.	
ii. Jhansi Lanka, M.D.	
iii. Adrian Piris, M.D.	
iv. Aimee Luat, M.D.	
b.) Visiting Clinical Professional Development Certificate Statute	

## **BOARD AGENDA**

October 11, 2017  
9:45 a.m.  
(Continued)

TOPIC

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### **Physician Assistant/Scope of Practice Committee Report**

- a.) Request from Cosmetology Board

### **Compliance Committee Report**

- a.) Treatment Provider Application
  - i. Cleveland Clinic Foundation

#### XIV. PROBATIONARY REQUESTS (\* recommendation differs from request)

- a.) Philicia S. Duncan, M.D. (Columbus, OH)
- b.) \*Freeda J. Flynn, M.D. (Columbus, OH)
- c.) Ryan S. Fryman, D.O. (Galena, OH)
- d.) Matthew J. Goldschmidt, M.D. (Independence, OH)
- e.) Stephen Lee Moore, D.O. (Avon Lake, OH)
- f.) Sheila S. Reddy, M.D. (Westerville, OH)
- g.) Siraj A. Siddiqui, M.D. (Mansfield, OH)
- h.) Frank G. Stoddard, III, D.P.M. (Medina, OH)
- i.) Patrick L. Bruno, M.D.

#### XV. REINSTATEMENT REQUESTS (none)

#### XVI. FINAL PROBATIONARY APPEARANCES

##### Casey D. Darrah, M.D. (Farmington Hills, MI)

Dr. Darrah is appearing before the Board pursuant to his request for release from the terms of his October 19, 2016 Non-Disciplinary Consent Agreement.

##### Karl M. Hagen, M.D. (Fort Lauderdale, FL)

Dr. Hagen is appearing before the Board pursuant to his request for release from the terms of his September 9, 2015 Consent Agreement.

##### John Mark Hatheway, M.D. (Columbus, OH)

Dr. Hatheway is appearing before the Board pursuant to his request for release from the terms of the Board's Order of June 9, 2010.

##### Allison C. Heacock, M.D. (Columbus, OH)

Dr. Heacock is appearing before the Board pursuant to her request for release from the terms of her September 14, 2011 Consent Agreement.

## **BOARD AGENDA**

October 11, 2017

9:45 a.m.

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XVI. FINAL PROBATIONARY APPEARANCES (con't)

Bruce J. Merkin, M.D. (Copley, OH)

Dr. Merkin is appearing before the Board pursuant to his request for release from the terms of his June 13, 2012 Consent Agreement.

Frank Welsh, M.D. (Cincinnati, OH)

Dr. Welsh is appearing before the Board pursuant to his request for release from the terms of his October 19, 2016 Consent Agreement.

Martin R. Hobowsky, D.O. (South Charleston, OH)

Dr. Hobowsky is appearing before the Board pursuant to his request for release from the terms of the Board's Order of August 12, 2015.



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**AGENDA**

**STATE MEDICAL BOARD OF OHIO  
COMPLIANCE COMMITTEE**

October 11, 2017  
Approximately 2:00 p.m.  
30 E. Broad St., Columbus, OH 43215, 3<sup>rd</sup> Floor

**NOTE: Additions to this agenda may become necessary.  
Please check the agenda appearing on the Board's website for the most current version.**

I. INITIAL PROBATIONARY APPEARANCES

Cari R. Corfman, M.T. (Sycamore, OH)

Ms. Corfman is making her initial appearance before the Committee pursuant to the terms of her July 12, 2017 Consent Agreement.

Robert R. Daiber, M.D. (Toledo, OH)

Dr. Daiber is making his initial appearance before the Committee pursuant to the terms of the Board's Order of July 12, 2017.

Anshuli Gupta, M.D. (Zanesville, OH)

Dr. Gupta is making her initial appearance before the Committee pursuant to the terms of her July 12, 2017 Consent Agreement.

Rajive Tandon, M.D. (Columbus, OH)

Dr. Tandon is making his initial appearance before the Committee pursuant to the terms of his July 12, 2017 Consent Agreement.

II. APPROVAL OF REPORTS OF CONFERENCES

September 11 & 12, 2017

III. MINUTES REVIEW



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

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

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; Sallie Debolt, Senior Counsel; Bill Schmidt, Chief of Investigations; Susan Loe, Director of Human Resources and Fiscal; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Teresa Pollock, Director for Communications; Joseph Turek, Deputy Director for Licensure; Rebecca Marshall, Chief Enforcement Attorney; Marcie Pastrick, Mark Blackmer, Cheryl Pokorny, 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; David Katko, Assistant Legal Counsel; Colin DePew, Legal and Policy Staff Attorney; Jacqueline A. Moore, Legal/Public Affairs Assistant; and Benton Taylor, Board Parliamentarian.

**MINUTES REVIEW**

**Dr. Saferin moved to approve the draft minutes of the September 13, 2017, Board meetings, as written. Dr. Steinbergh seconded the motion. A vote was taken:**

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

The motion carried.

Dr. Edgin entered the meeting at this time.

**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 acupuncturist applicants listed in "Exhibit A," the anesthesiologist assistant applicants listed in Exhibit "B," the genetic counselor applicants listed in Exhibit "C," the massage therapist applicants listed in Exhibit "D," the physician assistant applicants listed in Exhibit "E," and the physician applicants listed in Exhibit "F," as listed in the Agenda Supplement and handouts. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

#### REPORTS AND RECOMMENDATIONS

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

Dr. Soin asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Rick James Bucher, M.D.; Allison Darlene Justice; and Atma Prakash Nayak, M.D. A roll call was taken:

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

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

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

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

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

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

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

RICK JAMES BUCHER, M.D.

Dr. Soin directed the Board's attention to the matter of Rick James Bucher, M.D. No objections have been filed. Ms. Blue was the Hearing Examiner.

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

Dr. Bucher was represented by his attorney, John Irwin.

Dr. Bucher thanked the Board, and also thanked Hearing Examiner Blue and Assistant Attorney General Wilcox for their professional and respectful manners. Dr. Bucher also thanked the Board's staff, who spent time and energy to correspond with Dr. Bucher regarding this situation.

Dr. Bucher admitted that he was untruthful to investigators from the Medical Board and the Board of Pharmacy during an interview on June 29, 2016. Dr. Bucher stated that he apologized to the investigators during the interview after changing his initial response to their question regarding prescriptions, but he wished to apologize to them again publicly. Dr. Bucher also apologized to the Board, his colleagues, his family, his employees, and his patients for the unprofessional manner in which he had initially conducted himself during the interview.

Dr. Bucher continued that he has learned that there is never a circumstance in which it is acceptable to be untruthful. Dr. Bucher stated that he has learned to follow all the rules and regulations of the Medical Board and the Board of Pharmacy, and that those regulations are in place for the protection of patients. Dr. Bucher stated that he understands that he needs to compose himself and gather his thoughts before answering questions, rather than simply guessing or "shooting from the hip." Dr. Bucher commented that truth is the most important aspect in all encounters.

Dr. Bucher stated that he will continue to follow all his office's prescription policies, which have been

patterned from the rules and recommendations of the Medical Board and from information Dr. Bucher gathered from three conferences he attended on prescribing, ethics, and medical documentation. Dr. Bucher commented that these conferences, presented by Dr. Ted Parran and his colleagues, were life-changing for him. Dr. Bucher stated that he had always thought of himself as a very empathetic, compassionate, and caring physician, but he has realized that he can be even more so after attending the conferences.

Dr. Bucher stated that, having reflected on these experiences over the past year, he now lives by two words: Faith and humility. Dr. Bucher stated that he now has a new and better understanding of these words. Dr. Bucher stated that he has faith that things happen for a reason and that part of the reason this has happened was to allow him an opportunity to grow and become a better physician and human. Dr. Bucher added that he has humility to understand that others have much more pressing issues and problems than he.

Dr. Bucher hoped that he has proven to himself, his patients, and his family that he has grown and matured over this ordeal.

Dr. Soin asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he did not wish to respond.

**Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Rick James Bucher, M.D. Dr. Schottenstein seconded the motion.**

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

Dr. Steinbergh stated that Dr. Bucher is a family physician and owns his own practice in Oxford, Ohio. On March 23, 2017, Dr. Bucher pleaded guilty to, and was found guilty of, one count of Obstruction of Official Business, a second-degree misdemeanor. Following his conviction, Dr. Bucher was sentenced to 90 days in jail, with all days suspended, and his probation was not to exceed five years. Dr. Bucher was also fined \$750 and ordered to pay court costs and supervision fees.

Dr. Steinbergh continued that Dr. Bucher was first licensed to practice medicine in Ohio in 1982 and, until 2007, he was board-certified in family medicine. Dr. Bucher also has privileges at McCullough-Hyde Hospital in Oxford, Ohio, which have been reinstated following his conviction. Dr. Bucher testified that he has about 5,000 active patients of all ages and works about seven days per week at his practice and making rounds at nursing homes and one rehabilitation center.

Dr. Steinbergh stated that on June 29, 2016, investigators from the Medical Board and the Board of Pharmacy questioned Dr. Bucher regarding prescriptions of controlled substances to a particular patient. In response to questions about how many prescriptions he has written for the patient, Dr. Bucher replied that he was not certain of the exact number but that it was "a couple." As the interview continued, Dr. Bucher eventually admitted to writing all the controlled substance prescriptions for that patient.

Dr. Bucher testified that his misdemeanor conviction has affected his medical practice in that his patient volume has decreased. However, when his patients realized that he was not actually in jail, some of them decided to continue with him as their physician. Dr. Bucher also testified that prior to his trial he proactively completed courses in ethics, controlled substance prescribing, and medical record-keeping at

Case Western Reserve University, and that he changed some aspects of his practice based on what he had learned. Dr. Steinbergh felt this indicated that there were concerns about Dr. Bucher's practice and that he realized that he ought to take the courses and update himself on the rules and regulations of the Medical Board. In his testimony, as well as today before the Board, Dr. Bucher apologized to the Board and to the investigators who had questioned him.

Dr. Steinbergh stated that she was impressed by the testimony offered in support of Dr. Bucher, noting that more than one professor at Miami University in Oxford used Dr. Bucher as their primary care physician. One woman, who reported that Dr. Bucher had saved her life twice, described Dr. Bucher as extraordinarily gifted, professional, honest, and an important member of the community. A pediatrician who practices in Oxford and has a collegial but not social relationship with Dr. Bucher stated that Dr. Bucher is highly regarded by both the medical community and the Oxford community. The pediatrician further commented:

“[Dr. Bucher] has the ability to understand the social context in which he practices. He knows the community. Our community consists of Miami University Professors ... people of low income .... People who are impoverished, and it consists of farmers, and he understands all three social contexts.”

Dr. Steinbergh noted that Dr. Bucher was also described as dedicated, caring, and humble, and that there was high regard for his integrity and character. Dr. Steinbergh commented that she was touched by the testimony of a nurse who stated that Dr. Bucher volunteers at a free clinic which she had started in 2006. Dr. Steinbergh opined that any family physician who spends as much time as Dr. Bucher practicing in a community and also donates time to a free clinic ought to be recognized for that.

Dr. Steinbergh stated that she agrees with the Hearing Examiner's Findings of Fact and Conclusions of Law. Dr. Steinbergh also agreed, in part, with the Proposed Order that would reprimand Dr. Bucher and levy a fine of \$11,500. Dr. Steinbergh opined that the reprimand should be listed first in the Order, and then the fine. Dr. Steinbergh also opined that the amount of the fine should be reduced to \$5,000, the minimum fine for Dr. Bucher's violation under the Board's fining guidelines.

**Dr. Steinbergh moved to amend the Proposed Order to read as follows:**

It is hereby ORDERED that:

- A. **REPRIMAND:** Dr. Bucher is REPRIMANDED.
- B. **FINE:** Within thirty days of the effective date of this Order, Rick James Bucher, M.D., shall remit payment in full of a monetary fine of five thousand dollars (\$5,000.00). Such payment shall be made in full, via credit card in the manner specified by the Board through its online portal, or by other means as specified by the Board.

The failure of Dr. Bucher to timely remit full payment shall constitute a violation of this Order. Should such a violation occur, the Board, after giving Dr. Bucher notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon the

mailing of the notification of approval by the Board.

**Dr. Schottenstein seconded the motion.**

Dr. Schottenstein stated that the Board has seen cases in which a respondent's attorney maintained that their client has shown remorse for his or her actions. Dr. Schottenstein commented that there have been times when he did not believe the respondent showed remorse and that the attorney merely asserted that there was remorse because it is a mitigating circumstance and it's the sentiment one is supposed to express after having violated a statute or rule.

However, Dr. Schottenstein opined that Dr. Bucher's case is a good example of what true remorse looks like. Dr. Schottenstein noted that Dr. Bucher corrected himself during the interview with the investigators, apologized for his behavior to the investigators before they left, and did not deny or contest the allegations against him. Dr. Bucher also described himself as "mortified," which Dr. Schottenstein found to be a strong statement implying a vivid feeling of humiliation and shame. Dr. Bucher further testified that this ordeal has changed how he is and that he turns to "faith" and "humility" as words to live by on a daily basis. Dr. Schottenstein stated that Dr. Bucher has been candid with his office staff and he shares his experience with his colleagues so they will not have to go through the same experience.

Dr. Schottenstein continued that near the end of Dr. Bucher's interview with the investigators, one investigator recommended that Dr. Bucher take the intensive courses in ethics, medical record-keeping, and controlled substances at Case Western Reserve University. Dr. Schottenstein took special note of this because investigators are not obligated to make recommendations of that nature. Dr. Schottenstein speculated that the investigator made the recommendation because he or she viewed Dr. Bucher as a sympathetic figure and was encouraging behavior that would be mitigating for the Board. Dr. Schottenstein found this compelling because the investigator had a first-hand observation of Dr. Bucher's behavior. Dr. Schottenstein stated that while he does not presume to speak for the investigator, he suspected that, human nature being what it is, the investigator may not have been so quick to offer helpful advice if he or she had had a fundamental concern about Dr. Bucher's character or behavior.

Dr. Schottenstein added that he was also swayed by the nature of the lie Dr. Bucher told, which was in response to a question about controlled substance prescriptions. Dr. Schottenstein stated that the answer to the question could have been easily fact-checked through the Ohio Automated Rx Reporting System (OARRS) and he was certain that Dr. Bucher was aware of this fact. Dr. Schottenstein stated that choosing to be untruthful for that particular question makes no sense and that someone who is unethical by nature would have done a better job of lying. Dr. Schottenstein stated that this lends credence to Dr. Bucher's claim that he had simply panicked during the interview.

Dr. Schottenstein stated that he agrees with the Hearing Examiner's Proposed Order, with the amendment proposed by Dr. Steinbergh.

Dr. Steinbergh stated that one of the reasons she has proposed to reduce Dr. Bucher's fine is the mitigating circumstance of his volunteer activities at the free clinic. Dr. Steinbergh also noted that Dr. Bucher wishes to recertify in family medicine. Dr. Steinbergh encouraged Dr. Bucher to continue to pursue recertification. Dr. Steinbergh also suggested that Dr. Bucher have a conversation with his hospital's credentialing committee to make certain that his privileges would not be at risk in the event that he fails the recertification examination.

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

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

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 Rick James Bucher, M.D. Dr. Schottenstein seconded the motion.** A vote was taken:

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

The motion to approve carried.

#### ALLISON DARLENE JUSTICE

Dr. Soin directed the Board's attention to the matter of Allison Darlene Justice. No objections have been filed. Mr. Porter was the Hearing Examiner.

**Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Daniel W. Palmer, M.D. Dr. Schottenstein seconded the motion.**

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

Dr. Schottenstein stated that in or around November 2016 Ms. Justice filed an application for a license to practice massage therapy in Ohio. Based on some of Ms. Justice's answers to the application questions, she was informed that the Board intended to consider potential action that could lead to a denial of the license. Specifically, Ms. Justice indicated on her application that she had had legal convictions related to the use of alcohol and/or drugs between November 2011 and September 2013.

Dr. Schottenstein continued that on or around November 10, 2011, Ms. Justice was pulled over by police in Tennessee for falling asleep at the wheel. A police search revealed marijuana under the front seat. Ms. Justice was convicted of possessing marijuana and she was placed on probation for one year.

Ms. Justice's second arrest occurred less than two weeks later on November 23, 2011 in Yellow Springs, Ohio, when she was pulled over for failure to come to a complete stop at a stop sign. At that time, Ms. Justice's blood alcohol content (BAC) was 0.106. Ms. Justice was charged with Operating a Vehicle Under the Influence of Alcohol or Drugs (OVI) and Failure to Obey a Traffic Control Device. Ms. Justice was found guilty of OVI and received a suspended \$250 fine and a 30-day jail sentence, 27 days of which were suspended; Ms. Justice was given three days of credit for having completed a three-day Addiction Resource Center (ARC) program that combines driver education and substance abuse education. In addition, Ms. Justice's driver's license was suspended for six months and she was required to pay court costs.

Ms. Justice's third arrest occurred on September 1, 2013, in Yellow Springs, Ohio, when she was charged with OVI and Underage Consumption. Ms. Justice's BAC at that time was 0.087. Ms. Justice subsequently pleaded guilty to OVI and disorderly conduct. Ms. Justice was sentenced to 30 days in jail with 27 of those days suspended; two years of probation; suspension of driver's license for one year; and she was required to pay a \$250 fine plus costs. Dr. Schottenstein noted that Ms. Justice continued to consume alcohol after this conviction.

In her answer to interrogatories, Ms. Justice disclosed that in March and April 2013 she received treatment for marijuana and alcohol use at A Better Tomorrow, a rehabilitation center in Murrieta, California. Dr. Schottenstein observed that this treatment was prior to Ms. Justice's second OVI conviction.

Dr. Schottenstein stated that in a letter dated January 23, 2017, the Board ordered Ms. Justice to a one-day outpatient chemical dependency evaluation at Glenbeigh Hospital, which Ms. Justice attended on February 20, 2017. The Board subsequently received a letter from Dr. Ted Parran, a board-certified addictionologist at Glenbeigh Hospital. Dr. Parran reported that Ms. Justice had a current diagnosis of alcohol use disorder, mild, and cannabis use disorder, mild. Dr. Parran noted that Ms. Justice drank alcohol within 12 hours of her return home from her 2013 treatment. Dr. Parran further indicated that Ms. Justice is considered to be impaired and incapable of practicing as a massage therapist at acceptable and prevailing standards of care. Dr. Parran recommended that Ms. Justice complete an intensive outpatient program (IOP) or individual counseling with a licensed counselor trained in substance use disorder, along with participation with a 12-step program.

At Ms. Justice's administrative hearing, Dr. Parran testified that after completing the rehabilitation program in California, Ms. Justice continued to drink five or six beers per drinking occasion and also used marijuana at times. Dr. Parran also noted that Ms. Justice discontinued the use of alcohol and marijuana during the time that she was pregnant. Subsequent to the delivery of her child, Ms. Justice resumed the use of alcohol and marijuana and has continued to do so. Dr. Parran testified that the fact that Ms. Justice continued to use alcohol and marijuana immediately after discharge from her 2013 treatment indicated to him that she never went into remission, but simply moved from one level of severity to another. Dr. Parran further testified that although the degree of Ms. Justice's current use is mild, he felt that it had been moderate or even severe in the past. In her testimony, Ms. Justice acknowledged that she had continued to drink alcohol since her Glenbeigh Hospital assessment, though she had not smoked

marijuana since New Year's Day of 2017.

Dr. Schottenstein opined that Ms. Justice's story is an object lesson on the inherent dangers of untreated substance use disorder. Dr. Schottenstein noted, based on her testimony, that Ms. Justice faces difficulty in every area of her life, including a series of odd jobs, unhealthy friendships with others who are prone to mental health and substance abuse issues, unstable relationships with significant others, an unplanned pregnancy, financial difficulties, homelessness, tension with her parents, reckless behavior in the form of driving under the influence, and legal difficulties. Dr. Schottenstein stated that this is a tragedy because Ms. Justice is bright, works hard, and clearly loves her daughter.

Dr. Schottenstein stated that he had the sense from Ms. Justice's testimony that she is still in denial regarding the seriousness of her condition and the wreckage that an untreated condition of this nature can leave in one's life. Ms. Justice had testified that when her parents first suggested the idea of rehabilitation, she thought it was a great idea because it sounded like fun. Ms. Justice further testified that she enjoyed rehabilitation a great deal. Dr. Schottenstein stated that, while there are certainly enjoyable aspects to working a program and going into rehabilitation, it is actually hard work. Dr. Schottenstein stated that the kind of introspection that needs to happen in rehabilitation and the humility that one needs to demonstrate in making amends and taking responsibility for one's actions is really the farthest thing from fun. Dr. Schottenstein stated that when people truly invest themselves in the rehabilitation process and take it with the utmost seriousness, "fun" is not the word they use to describe it. Rather, it is borderline excruciating. Dr. Schottenstein had the sense that Ms. Justice never did that kind of work and that the rehabilitation program was more like camp for her.

Dr. Schottenstein opined that Ms. Justice showed a great deal of strength when she finished her massage therapy program and passed the certifying examination, as well as when she stopped using alcohol and marijuana when she was pregnant. Dr. Schottenstein stated that Ms. Justice needs to draw upon that same strength to help her face the fact that she should never drink or smoke marijuana again, not because that is what the Board wants, but because that is the course of action that will maximize her odds of having the kind of life she wants for herself and her daughter. Dr. Schottenstein stated that 100% sobriety is the base of the pyramid for Ms. Justice and everything will rise and fall from that. Dr. Schottenstein stated that, while Ms. Justice's massage therapy license and the Board's Order are important, in some ways they are the least of her issues. Dr. Schottenstein stated that it may be difficult for Ms. Justice to financially afford the conditions that the Board will require, but there is nothing stopping Ms. Justice from going to Alcoholics Anonymous, getting a sponsor, and putting her heart into that program. Dr. Schottenstein hoped that everything will work out well for Ms. Justice.

Dr. Schottenstein stated that in the case of an ongoing, active substance use disorder in a massage therapist, the Board's rules require completion of an intensive outpatient program. Because Ms. Justice has expressed concerns about the financial impact of treatment and monitoring, the Proposed Order would grant Ms. Justice's application, suspend her certificate indefinitely, and establish standard reinstatement requirements. Upon reinstatement or restoration of her certificate, Ms. Justice will be subject to probationary monitoring for a minimum of five years. Dr. Schottenstein agreed with the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order.

Dr. Steinbergh expressed concern about the Proposed Order and stated that her inclination would be to simply deny Ms. Justice's application. Dr. Steinbergh was concerned that the Board would allow Ms. Justice to be licensed under these circumstances. Dr. Steinbergh acknowledged that the Proposed Order would immediately suspend Ms. Justice's license and establish conditions for reinstatement, but opined

that it seemed to be a reward for bad behavior. Dr. Steinbergh opined that the Board should deny Ms. Justice's application and encourage her to apply in the future when she has been able to find her way to sobriety. Dr. Steinbergh stated that she understands the Proposed Order is an incentive for Ms. Justice to be successful in her recovery; however, Dr. Steinbergh had difficulty with allowing Ms. Justice to be licensed at this time.

Dr. Schottenstein opined that Dr. Steinbergh has made fair statements. Dr. Schottenstein responded that he sees Ms. Justice's bad behavior as occurring in the context of an untreated disease. Dr. Schottenstein stated that he is not satisfied that Ms. Justice has been properly involved in her treatment, and this is why he favors the Proposed Order.

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

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

The motion to approve carried.

ATMA PRAKASH NAYAK, M.D.

Dr. Soin directed the Board's attention to the matter of Atma Prakash Nayak, M.D. Objections to Mr. Porter's Report and Recommendation have been filed and were previously distributed to Board members.

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

Dr. Nayak was represented by his attorney, Jim McGovern.

Mr. McGovern stated that due to visa issues, Dr. Nayak had been unable to attend his administrative hearing. However, Dr. Nayak is present today and appreciates the opportunity to address the Board.

Dr. Nayak stated that he feels embarrassed and ashamed today discussing his regretful and inappropriate actions. Dr. Nayak stated that he has caused a great deal of pain and disappointment to his residency program and the State Medical Board of Ohio, and that he sincerely apologizes for that. Dr. Nayak stated that he appreciates the efforts of the Hearing Examiner in investigating this case without prejudice or bias.

Dr. Nayak asked the Board to consider the impact that denying his application for licensure would have on his career as a physician, not only in the Ohio but in the United States as a whole. Dr. Nayak stated that he cannot overemphasize the impact such a decision would have on him and his family. Dr. Nayak stated that he has put his heart and soul into getting to this point. Dr. Nayak pleaded with the Board members to

take a merciful approach in making a final disposition in this case.

Dr. Nayak continued that he has made mistakes, but he did not have malicious intent. Dr. Nayak stated that he has not lied to the Pennsylvania State Board of Medicine while applying for a training license in that state, and he has not lied to the State Medical Board of Ohio. Dr. Nayak stated that he has disclosed his termination from his residency program and his Operating a Vehicle Under the Influence of Alcohol or Drugs (OVI) at all times. Dr. Nayak added that he also has not lied to his prospective employers or his family. Dr. Nayak stated that he has every intention of completing the two vaginal deliveries that were pending prior to his graduation from the residency program. Dr. Nayak stated that he, in fact, did complete one of those deliveries immediately after his meeting with the program director, but the program did not report it to the Board.

Dr. Nayak stated that he had been in a tough situation in a not-so-ideal environment, and he made a poor choice. Dr. Nayak stated that he takes ownership of his poor decision and assured the Board that he will be truthful in the future. Dr. Nayak stated that he has already lost an entire year of his professional life and has undergone tremendous mental and financial hardship. Dr. Nayak acknowledged that the road ahead of him will be difficult, but he expressed willingness to do everything he can to prove his credentials and his true character. Dr. Nayak stated that he plans to serve the most underserved sections of the community in Ohio as a house-visiting physician. Dr. Nayak also planned to work on finishing his training in the future.

Dr. Nayak stated that he has everything to lose today. Dr. Nayak asked the Board members to take a leap of faith and treat him as one of their own who has erred and needs remediation, not complete abandonment.

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

Mr. Wilcox stated that he supports the Hearing Examiner's Report and Recommendation to permanently deny Dr. Nayak's application for licensure. Mr. Wilcox emphasized that Dr. Nayak is an applicant, not a current licensee, and he must show that he deserves the trust of the Medical Board and the people of Ohio. Based on the record, Mr. Wilcox opined that Dr. Nayak has not demonstrated that the Board should trust him.

Mr. Wilcox continued that in the investigation by the Pennsylvania Board, Dr. Nayak admitted to falsifying documentation that he had attended two vaginal deliveries and then forged the preceptor physician's signature on documentation indicating that he was present. Mr. Wilcox opined that this was egregious behavior. Mr. Wilcox added that Dr. Nayak's reaction to being confronted by his residency program was also inappropriate. Specifically, Dr. Nayak denied the allegation, made excuses, and stated that other residents have engaged in the same behavior.

Mr. Wilcox emphasized the corrupt nature of Dr. Nayak's actions. Mr. Wilcox stated that this was not a momentary lapse in making a bad decision. Rather, Dr. Nayak falsified records and forged signatures on multiple occasions. The residency program's termination letter stated, in part, that Dr. Nayak's "behavior defies professionalism as a physician and is unethical and egregious."

Mr. Wilcox stated that licensure applicants must show that they have the requisite moral character to be a physician in Ohio. Mr. Wilcox opined that Dr. Nayak has not shown the requisite moral character and he

urged the Board to adopt the Proposed Order to permanently deny Dr. Nayak's application.

**Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Atma Prakash Nayak, M.D. Dr. Schottenstein seconded the motion.**

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

Dr. Edgin stated that this matter is based on Dr. Nayak's alleged submission of fraudulent signatures and documents to his residency program, which led to his dismissal from that program. The Board has alleged that such conduct constitutes a failure to furnish evidence satisfactory to the Board of good moral character. Dr. Edgin noted that Dr. Nayak requested a hearing, but he was unable to attend the hearing due to visa problems. Dr. Nayak was represented by an attorney in the hearing.

Dr. Edgin briefly reviewed Dr. Nayak's medical education and background. In July 2013, Dr. Nayak entered a family medicine residency in Scranton, Pennsylvania. In July 2016, shortly before completing the residency, Dr. Nayak was dismissed from the program. Dr. Edgin noted that Dr. Nayak currently holds an unrestricted license to practice medicine in Kentucky.

Dr. Edgin stated that in his application for an Ohio medical license, Dr. Nayak disclosed that he had had an arrest for Operating a Vehicle Under the Influence of Alcohol or Drugs (OVI). Dr. Edgin stated that this arrest is not relevant to the allegations in the current matter, but Dr. Nayak was disciplined by his residency program for failing to disclose the OVI arrest to them.

Dr. Nayak's residency program records include copies of two documents indicating that Dr. Nayak had participated in two spontaneous vaginal deliveries and his cognitive skill and manual skill were checked as "Acceptable." Both documents were purportedly signed by "Dr. Mattison." A Resident Meeting took place on July 27, 2016, which Dr. Litchman, the program director, called in order to clarify the procedures that Dr. Nayak had documented. It was noted that the date of the purported deliveries, May 8, 2016, was a Sunday. Dr. Nayak was asked why he had been at the hospital on a Sunday since residents typically do not work on Sundays. Dr. Nayak replied that he was essentially moonlighting to fulfill his requirements and he needed two additional deliveries to complete his requirements for board certification. Dr. Nayak stated that he had participated by performing a vaginal examination, vital signs, and checking a monitor. Although Dr. Nayak documented that the second delivery procedure had occurred on May 8, the patient had actually been admitted on May 12, 2016, and had had a C-section.

During the Residency Meeting, Ms. Knesis, the Vice President of Human Resources for the facility, asked Dr. Nayak two or three times if the signatures on the logs were, in fact, Dr. Mattison's; Dr. Nayak answered affirmatively. Ms. Knesis confronted Dr. Nayak with multiple issues of falsification, including incorrect information in the procedure book and no duty hours entered for May 8. The minutes further state, "Dr. Nayak admitted he was not there for the delivery but then he stated he was there but had minimal participation and he didn't remember which delivery." After Dr. Litchman noted that neither of the two patients had delivered on May 8, Dr. Nayak replied that he had erred in his documentation. After being pressed further, Dr. Nayak gradually acknowledged what he had done,

Dr. Edgin read the following from the minutes of the Resident Meeting;

Ms. Knesis asked again if that was Dr. Mattison's signature and Dr. Nayak replied "yes."

\* \* \*

Dr. Litchman asked if Dr. Nayak knew what other scen[a]rios there might be regarding the issues being discussed today, to which Dr. Nayak responded "I could be lying." He then asked what the course of action would be if he was lying.

Ms. Knesis stated that if this was falsification of a document he had put the program at risk and his creditability [sic] was diminishing. Again, he asked what the consequences would be.

After Dr. Litchman showed him medical record information (with PHA [personal health information] blackened out) of the two deliveries, he admitted he did not touch either of these patients and Dr. Mattison's signature was forged "by someone." He said he was in a panic because he had many deliveries to make up before his expected date of completion.

Ms. Knesis asked why he would falsify records in May when he had until the end of August to meet his required procedures. Dr. Nayak said that when he received an email from Dr. Litchman reminding of the requirements of graduation, he panic[k]ed.

\* \* \*

Ms. Knesis reminded Dr. Nayak of his failure to disclose a DUI he received and the suspension from training that resulted from the non-disclosure and asked what other documents might be forged/falsified. Dr. Nayak stated this was the only instance [of] forgery.

Ms. Knesis pointed out that Dr. Nayak has lied, falsified documentation and falsified a physician's signature and questioned the character of the person sitting in front of her [i.e. Dr. Nayak].

Dr. Nayak indicated there is fear among the residents regarding getting procedures. Dr. Litchman asked [if] he had talked with his Advisor about this ... he could have gone to anyone of the faculty or the Chief resident for guidance. He responded that it's the general impression of residents that if you go to a faculty member about such things, this upsets the faculty.

Dr. Nayak asked Dr. Litchman to forgive him since he knows he did wrong and explained that he is now on Cardiology [service].

Dr. Edgin stated that based on these actions, Dr. Nayak was later terminated from the program in a letter dated July 28, 2016. The letter stated in part, "Your actions and behavior defies professionalism as a physician and is unethical and egregious." Dr. Nayak filed a grievance concerning the termination. Dr. Nayak's grievance was reviewed by the Grievance Committee, which, as stated in a subsequent letter to Dr. Nayak, "unanimously recommended to uphold the termination as the appropriate level of discipline under the facts and circumstances."

Dr. Edgin commented that the most distressing part of Dr. Nayak's explanation to the Board of these

events is that “My information had no impact on patient care and yet I was punished for doing what was common practice in the residency.” Dr. Edgin stated that that does not make what Dr. Nayak did right. Dr. Edgin noted that Dr. Nayak has apologized to the Board and to his residency program, and several people who have worked with Dr. Nayak have written letters of support. Dr. Nayak has stated that his actions were due to anxiety and making bad decisions. Dr. Edgin pointed out that Dr. Nayak has shown multiple instances of bad behavior and failure to be truthful.

Dr. Edgin quoted the following from the Hearing Examiner’s rationale for the Proposed Order:

Dr. Nayak committed an egregious violation by falsifying his residency records and forging an attending physician’s signature, serious enough to warrant the permanent denial of his application. Any mitigating evidence present in this case—such as his disclosure of adverse information to the Board, or his being a good resident—is outweighed by aggravating factors.

Dr. Edgin agreed with the Proposed Order to permanently deny Dr. Nayak’s application for Ohio licensure.

Dr. Schottenstein stated that Dr. Nayak’s case before the Board is substantially a case of mitigation. In making this case, Dr. Nayak’s counsel has stated that Dr. Nayak has taken a very commendable level of ownership over his inappropriate actions. Dr. Nayak’s counsel further described him as a very commendable and contrite individual who made a mistake. Dr. Nayak’s counsel indicated that he has already received an enormous amount of punishment and that this is not a case where the Medical Board needs to “pile on” to the hardship the doctor has encountered based on his inappropriate conduct.

Dr. Schottenstein stated that he sees things differently from Dr. Nayak’s counsel. Dr. Schottenstein stated that a mistake is a misunderstanding or an error resulting from carelessness. In this respect, a mistake is inherently unintentional and, in that context, morally neutral. However, Dr. Nayak’s behavior was highly intentional and his aim was to perpetrate a fraud. Dr. Schottenstein stated that Dr. Nayak knew exactly what he was doing and he knew exactly the outcome he wished to achieve, and he demonstrably acted purposefully with the intent that his action would cause a certain result. Dr. Schottenstein did not see what Dr. Nayak’s counsel described as a very commendable level of ownership and contrition, certainly not in his immediate reaction.

Dr. Schottenstein stated that the Resident Meeting was the time to show ownership and contrition. Instead, Dr. Nayak tenaciously clung to his story in that meeting. Dr. Nayak continued to insist that the signature he had forged was that of the attending physician, even after he was told that the signature would be brought to the attending physician for verification. Dr. Schottenstein stated that Dr. Nayak lied repeatedly to the residency officials in that meeting. When Dr. Nayak was asked in the Resident Meeting to speculate as to other possible scenarios regarding these issues, he responded that he [Dr. Nayak] could be lying and he asked what course of action would be taken if he was lying. Dr. Schottenstein stated that this shows that Dr. Nayak was “gaming out his options.”

Dr. Schottenstein respectfully disagreed with the counsel’s statement that Dr. Nayak is a bad liar. Dr. Schottenstein stated that bad liars crumble, sweat, and ultimately confess in shame under the weight of their guilt. In this case, however, Dr. Nayak could not be rattled. Dr. Schottenstein stated that there had been a very calculated, smooth quality to Dr. Nayak’s statements until it simply became obvious that they were not true. Dr. Schottenstein stated that these are not the actions of someone with a commendable

level of ownership of bad behavior.

Dr. Schottenstein continued that Dr. Nayak's next clear opportunity to express ownership and contrition was in his letter appealing his dismissal through the resident grievance procedure. However, Dr. Nayak did not express remorse, ownership, or contrition in that letter. Instead, Dr. Nayak described his termination as unfitting, excessive, and discriminatory. Dr. Nayak rationalized his behavior in the letter by explaining that everybody does this and that he is only one of many residents who falsified the requirements and, presumably, forged signatures of attending physicians. Dr. Nayak did not know of any other resident being disciplined for these offenses, so he accused the program director and staff of discriminating against him.

Dr. Schottenstein commented that the defense of "everybody does it" is really no defense at all. Dr. Schottenstein stated that one cannot justify unethical behavior based on the number of people who engage in it. Dr. Schottenstein stated that ethics is not driven by polls. Dr. Schottenstein stated that the greater the number of people who engage in unethical behavior, the greater the societal harm that results. Dr. Schottenstein stated that Dr. Nayak is still responsible for his part of this harm. Dr. Schottenstein stated that physicians are held to a higher ethical standard and are expected to have integrity and do the right thing regardless of whether the group is also doing the right thing.

Dr. Schottenstein stated that he also does not see any other mitigating circumstances in this case. However, Dr. Schottenstein did see multiple aggravating circumstances, including the following:

- Prior disciplinary action for having failed to disclose his OVI to his residency program, which implies a pattern of deceit;
- A dishonest, selfish motive;
- Submission of false statements during the disciplinary process;
- Refusal to acknowledge the wrongful nature of his conduct;
- The misconduct had an adverse effect on others;
- The behavior was purposeful and willful;
- He abused his position of trust to accomplish his deception.

Dr. Schottenstein stated that that Dr. Nayak's consistently troubling pattern of behavior, including the fraud itself and his behavior once the fraud was exposed, implies a lack of integrity. Dr. Schottenstein gave credit to Dr. Nayak's residency program, which could have done the easy thing and looked the other way. However, the integrity of the program was more important to the program administrators. Dr. Schottenstein stated that looking the other way in matters of this nature can lead to corruption of the integrity of the entire residency training process. Dr. Schottenstein stated that Dr. Nayak gave the program no choice but to dismiss him, lest his behavior infect the other residents and lead to overall corruption and demoralization of the program.

Dr. Schottenstein opined that the Medical Board is now in a very similar position as the residency program. Dr. Schottenstein asked what message the Board would send about the standard of care for the practice of medicine in Ohio. Dr. Schottenstein stated that this is important because one day attorneys will refer to this case. Dr. Schottenstein opined that the statement the Board makes today should reinforce the statement made by the residency program, namely that behavior of this nature will

not be tolerated and that there must be integrity in the system. Dr. Schottenstein felt that any sanction less than permanent denial of application will be taken as an indication that the Medical Board does not take this kind of behavior seriously and it will become a precedent that defense attorneys will reference for years. Also, residents and program directors will refer to the decision as an indicator of how strictly they should enforce their rules against this type of behavior.

Dr. Schottenstein stated that for reasons particular to this matter, as well as for reasons regarding the potential impact on the standard of care in Ohio, he agreed with the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order to permanently deny Dr. Nayak's application.

Dr. Steinbergh stated that she also agrees with the Proposed Order and she agrees with the statements made by Dr. Edgin and Dr. Schottenstein. Dr. Steinbergh was most struck by the fact that Dr. Nayak continued to lie to his program director and the staff in the Resident Meeting. Dr. Steinbergh stated that it "boggles" her mind to think that Dr. Nayak would sit face-to-face with these individuals, continue to lie, and then ask what the consequences would be if he were lying. Dr. Steinbergh stated that the residency program's accreditation from the Accreditation Council for Graduate Medical Education (ACGME) would be at risk if that organization, upon review of the residency program, were to see this type of behavior by a resident.

Dr. Steinbergh stated that there were two red flags in this case. The first red flag was the fact that Dr. Nayak had been suspended from the residency program for one month for failing to inform the program of his OVI arrest. Dr. Steinbergh opined that if anyone is suspended from a program, it should be a wake-up call for that person to not make another mistake. The second red flag is that Dr. Nayak continued to lie and to think that it did not affect patient care, when in fact such behavior does affect patient care.

Dr. Steinbergh opined that licensing Dr. Nayak in Ohio would be very risky. Dr. Steinbergh questioned whether Dr. Nayak would be honest with patients, honest in his medical records, or whether his colleagues could trust him. Dr. Steinbergh also questioned how a physician could lie and think that it is a small matter. Dr. Steinbergh did not agree with Dr. Nayak's "everybody does it" defense. Dr. Steinbergh also noted that Dr. Nayak's actions were not something he had to do to save his career.

Dr. Steinbergh stated that the Board's mission is public protection and patient safety, and therefore it would be very inappropriate to license Dr. Nayak in Ohio.

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

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

The motion to approve carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

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

MITCHUM ALLEN HISSONG, L.M.T.

**Dr. Steinbergh moved to Find that the allegations as set forth in the March 8, 2017 Notice of Opportunity for Hearing in the matter of Mr. Hissong have been proven to be true by a preponderance of the evidence and to adopt Ms. Blue's Proposed Findings and Proposed Order. Dr. Schottenstein seconded the motion.**

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

Dr. Schachat stated that the allegations against Mr. Hissong relate to violations of his October 2016 Superseding Step I Consent Agreement with the Board. The allegations include that Mr. Hissong failed to submit declarations of compliance, failed to appear at scheduled appearances, called in late and/or failed to call in for drug screenings, failed to submit urine drug screenings, and failed to submit documentation related to his drug and alcohol rehab program for various dates.

Dr. Schachat continued that Mr. Hissong was first licensed to practice massage therapy in Ohio in 2014. Mr. Hissong's license is currently suspended under the terms of his Consent Agreement, which he entered into due to his relapse on alcohol, Percocet, and cocaine. When asked by the Board about his failure to comply with multiple terms of his Consent Agreement and if everything is okay, Mr. Hissong replied that everything is not okay and that he cannot continue to pay for his drug screens. Mr. Hissong also stated that he is aware that he will lose his license, but he has no choice.

Dr. Schachat stated that the evidence establishes that Mr. Hissong is presently unable to comply with the terms of his Consent Agreement. Therefore, revocation of Mr. Hissong's massage therapy license is warranted. The Proposed Order is to revoke Mr. Hissong's license and to levy a civil penalty of \$2,500, which is the standard fine for this violation. Dr. Schachat stated that he agrees with revoking Mr. Hissong's license, but he felt that the Board may want to discuss the amount of the fine given that Mr. Hissong cannot afford drug testing.

Dr. Soin opined that the proposed fine of \$2,500 is appropriate. Dr. Schottenstein agreed, noting that the Board has always taken the position that the fine should be commiserate with the allegation if the allegation is found to be valid, rather than to take the licensee's personal finances into account.

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

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

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

The motion to approve carried.

ALYSSA VANDEN EYNDEN

**Dr. Steinbergh moved to Find that the allegations as set forth in the February 8, 2017 Notice of Opportunity for Hearing in the matter of Ms. Vanden Eynden have been proven to be true by a preponderance of the evidence and to adopt Ms. Blue's Proposed Findings and Proposed Order. Mr. Giacalone seconded the motion.**

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

Mr. Giacalone stated that on or about March 17, 2014, Ms. Vanden Eynden submitted an application for a license to practice massage therapy in Ohio. By certified letter dated March 15, 2016, the Board ordered Ms. Vanden Eynden to submit to examination to determine whether she was impaired pursuant to Section 4731.22(B)(26), Ohio Revised Code. The ordered examination was based on the fact that she answered "yes" to questions #14 and #15 on her application. Question #15 asked if within the past five years she had engaged in excessive or illegal use of any chemical substances, while Question #14 dealt with being charged with, arrested for, or convicted of a felony or misdemeanor.

Specifically, Ms. Vanden Eynden disclosed that on September 26, 2011, in Cheviot Mayor's Court in Cheviot, Ohio, she pleaded guilty to Drug Abuse arising from her possession of marijuana. Ms. Vanden Eynden also disclosed that March 11, 2014, in the District Court of Campbell County in Newport, Kentucky, she pleaded guilty to, and was found guilty of, OMVI/DUI, Driving Under the Influence of Alcohol or Drugs.

Mr. Giacalone stated that numerous attempts have been made by the Board to contact Ms. Vanden Eynden, including emails, messages, and voicemail. However, Ms. Vanden Eynden was unable or unwilling to comply with the Board's request.

Mr. Giacalone stated that, based on the evidence and testimony provided, he agreed with the Proposed Findings and the Proposed Order to deny Ms. Vanden Eynden's application.

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

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

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

The motion to approve carried.

## FINDINGS, ORDERS, AND JOURNAL ENTRIES

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

### MOLLIE LIZETTE FREY, L.M.T.

Dr. Soin stated that Ms. Frey has applied for restoration of her Ohio massage therapy license. The Board notified Ms. Frey that it proposed to approve her application, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEX) due to the fact that she has not engaged in the active practice of massage therapy for more than two years.

**Dr. Saferin moved to find that the allegations set forth in the April 19, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Frey's application for restoration of her Ohio massage therapy license, pending successful completion of the MBLEX within one year of the date of mailing of the Notice of Opportunity for Hearing. Dr. Bechtel seconded the motion. A vote was taken:**

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

The motion carried.

### JENNIFER LYNN KINNEY, L.M.T.

Dr. Soin stated that Ms. Kinney has applied for restoration of her Ohio massage therapy license. The Board notified Ms. Kinney that it proposed to approve her application, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEX) due to the fact that she has not engaged in the active practice of massage therapy for more than two years.

**Dr. Saferin moved to find that the allegations set forth in the August 14, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Kinney's application for restoration of her Ohio massage therapy license, pending successful completion of the MBLEX within six months of the date of mailing of the Notice of Opportunity for Hearing. Dr. Steinbergh seconded the motion. A vote was taken:**

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

The motion carried.

LEANN THERESA POSTON, M.D.

Dr. Soin stated that Dr. Poston has applied for a license to practice medicine and surgery in Ohio. The Board notified Dr. Poston that it proposed to approve her application, and immediately restrict the certificate to the practice of administrative, non-clinical medicine until Dr. Poston has successfully recertified her American Board of Medical Specialties Certification in Pediatrics and completed a Board-approved preceptorship.

**Dr. Steinbergh moved to find that the allegations set forth in the April 14, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Dr. Poston's application and immediately restricting the certificate to the practice of administrative, non-clinical medicine; all limitations and restrictions shall terminate upon evidence acceptable to the Board or its designee that Dr. Poston has successfully recertified her American Board of Medical Specialties Certification in Pediatrics and completed a Board-approved preceptorship; upon the submission of a written report from the preceptor to the Board or its designee indicating that Dr. Poston is able to practice in accordance with acceptable and prevailing standards of care, said limitations and restrictions shall be terminated. Dr. Saferin seconded the motion. A vote was taken:**

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

Dr. Factora - aye  
Dr. Bechtel - aye

The motion carried.

#### EXECUTIVE SESSION

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

ROLL CALL:

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

The motion carried.

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

The Board returned to public session.

#### EXECUTIVE SESSION

**Dr. Saferin moved to go into Executive Session for the purpose of preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Dr. Rothermel seconded the motion. A vote was taken:**

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Mr. Giacalone	- aye
Dr. Soin	- aye
Dr. Schachat	- aye
Dr. Edgin	- aye

Dr. Factora	- aye
Dr. Bechtel	- aye

The motion carried.

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

The Board returned to public session.

The Board recessed at 12:30 p.m. and resumed the meeting at 1:33 p.m.

#### RATIFICATION OF SETTLEMENT AGREEMENTS

##### ANSHULI GUPTA, M.D. – STEP II CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the proposed Consent Agreement with Dr. Ahmed. Dr. Schottenstein seconded the motion. A vote was taken:**

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

The motion to ratify carried.

##### N.B.J., M.D. – CONSENT AGREEMENT

**Dr. Schottenstein moved to ratify the proposed post-citation Consent Agreement with N.B.J., M.D. Dr. Schachat seconded the motion. A vote was taken:**

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

The motion to ratify did not carry.

JAMES CAMERON JOHNSON, D.O. – STEP I CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the proposed Consent Agreement with Ms. Swart. Dr. Schottenstein seconded the motion.** A vote was taken:

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

The motion to ratify carried.

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

**Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to James A. Gideon, M.D.; and Theodore Marston Hunter, M.D. Dr. Schottenstein seconded the motion.** A vote was taken:

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

The motion to send carried.

OPERATIONS REPORT

**Human Resources:** Mr. Groeber stated that Cyndi Sarigianopoulos started last week as a new investigator for the North area. Mr. Groeber stated that two new enforcement attorneys will begin on Monday, October 16. Mr. Groeber stated that an intermittent customer service position at the front desk will be filled.

**Investigator Firearms:** Mr. Groeber read the following statement:

Staff is continuing to work with the union to implement the changes directed by the Board, and to work with its representative on updated drafts of the investigator manual. Management will continue to refine the manual and work with the union to prepare for the return of firearms should the Board vote to rescind investigator authority to carry firearms at the November meeting.

Mr. Groeber commented that voting on this matter in November is now unlikely, based on recent meetings between staff and the union. Mr. Groeber stated that he will update the Board on this situation in November.

Mr. Groeber added that until such time as the Board takes a formal vote, the Board will maintain the investigators' authority to carry firearms.

**Education and Outreach:** Mr. Groeber stated that Board staff attended a conference by the Attorney General's office regarding the continuum of addiction treatment. Dr. Rothermel was also present at the conference and participated on a panel. Mr. Groeber noted that the Medical Board, with funds received through its fining authority, sponsored the formal continuing medical education (CME) accreditation for the conference. Consequently, the 500 to 600 physicians who attended the conference each received five hours of free CME.

Mr. Groeber stated that the rest of the Board's education and outreach activities in the previous month are listed in the Operations Report.

**Agency Operations:** Mr. Groeber stated that licenses issued have increased 7% over this time last year, and total open cases dropped by 1%. Mr. Groeber noted that there are 10% fewer licenses in the Compliance Section compared to last year. Mr. Groeber opined that this drop in Compliance is due to licensees taking heed of the Board's guidance on how to avoid disciplinary action in the first place.

Mr. Groeber commented that Mr. Miller has begun to send additional notifications to licensees as their reinstatement deadline approaches. As a result, the Board may see an increase in the volume of reinstatements and restorations in the near future. Mr. Groeber commented that the first such letters resulted in about 150 massage therapists, as well as a number of physicians, realizing that they need to reinstate or restore their license.

**Board Consolidation:** Mr. Groeber stated that efforts towards the January 21, 2018 consolidation with the Ohio Board of Dietetics and the Ohio Respiratory Care Board continue. Mr. Groeber stated that the Medical Board is working actively on education and outreach with the licensees of those two boards.

**Board Member Feedback Project:** Mr. Groeber stated that the results of the feedback from Board members have been compiled. Mr. Groeber stated that as action is taken on those issues, the issues will be brought back for more formal discussion in the Policy Committee or before the full Board.

**Federation of State Medical Boards:** Mr. Giacalone stated that he had recently considered running for a position as a consumer member of the Federation of State Medical Boards (FSMB) Board of Directors. However, Mr. Giacalone has decided not to run for that post because the incumbent is running to keep the seat. Instead, Mr. Giacalone has decided to seek a position on the FSMB nominating committee and to consider other opportunities to join the Board of Directors in the future. Dr. Sojin commented that Mr. Giacalone's involvement with the FSMB would be a very positive development.

**Aged Cases:** Mr. Groeber noted that a number of Board members have commented recently on the number of aged cases that are coming before the Board. Mr. Groeber commented that checks and balances that are currently in place to prevent cases from “falling through the cracks” were not in place two to three years ago, resulting in some cases from that time coming before the Board recently. Mr. Groeber stated that currently, anytime there is an affirmative answer on a new license application or a license renewal application a complaint is automatically triggered in the SalesForce system. From that point, it will become part of the Board’s normal complaint managing process.

Mr. Groeber stated that at the direction of the Secretary and Supervising Member, he has worked with the staff to develop goals to move complaints in a timely manner. Consequently, investigators now have a goal of completing all complaints within 120 days, or within 270 days if cases become reprioritized. Mr. Groeber stated that any complaint that is still in investigations beyond 270 days must have a justification. Mr. Groeber continued that for enforcement attorneys, the goal is to complete enforcement cases within three years; Mr. Groeber commented that the legal process is slow. Based on these goals, Mr. Groeber expected that the Board will see more recent cases in the future.

**Expedited Licensure:** Mr. Groeber stated that Mr. Alderson in the Board’s Licensure Section has reviewed and evaluated the effectiveness of the Board’s expedited licensure program. The latest statistics from the program are from 2015 and 2016.

Mr. Groeber reported that the following findings are due to the expedited licensure program:

- There has been 9,784 days of additional physician licensure in Ohio;
- Patient visits were increased by 195,000;
- The physicians who took part in the expedited licensure program saw a total of slightly more than \$5,000,000 of extra salary;
- Hospitals saw a total of more than \$41,000,000 of additional revenue;
- State sales tax revenue was increased by over \$200,000;

Mr. Groeber added that in the last two to three years, the time to receive a license through the routine licensure process has shortened from about 100 days to about 40 days. Mr. Groeber stated that this has resulted in about 3,600,000 extra patient visits afforded to the citizens of Ohio.

Dr. Soin stated that Mr. Groeber has done a great job in making this possible by enhancing operational efficiency. Mr. Groeber commented that the credit for these increases should go to the staff. Dr. Soin agreed.

Dr. Steinbergh related a recent anecdote in which a hospital wanted to hire a new anesthesiologist. The hospital credentialing process went very quickly because the new anesthesiologist applied for expedited licensure and was licensed within two days.

**Staff Volunteer Program:** Mr. Groeber stated that Ms. Rodriguez in the Board’s Legal Section has been managing the Board’s staff volunteer program. In October, staff donated food and materials and volunteered time to pack 191 gift bags for the Ronald McDonald House for the siblings of children who are receiving treatment. Mr. Groeber thanked the staff and commented that Ms. Rodriguez has done a great

job with the program.

## REPORTS BY ASSIGNED COMMITTEES

### FINANCE COMMITTEE

#### FISCAL REPORT

Dr. Schottenstein stated that the Board's revenue for August 2017 was \$464,514, as compared to revenue in August 2015 of \$632,515. There was a substantial decrease in Fiscal Year 2018 with regard to first-quarter revenue due to the surge in license renewals in fiscal year 2017 prior to the eLicense conversion. Revenue over the two-year cycle was \$899,490, a decrease of 30% from Fiscal Year 2016. Dr. Schottenstein commented that August is typically a low-revenue month and this decrease is about the same as what was seen in August 2015. Dr. Schottenstein expected revenue to begin increasing again in September. Dr. Schottenstein stated that because of the cyclical nature of the revenue cycle, as well as the eLicense variable, this decrease is not cause for concern at this time.

Dr. Schottenstein stated that the Board's cash balance has decreased by 25.7% compared to the previous year. Dr. Schottenstein noted that in December 2016, \$1,488,000 was transferred from the Board's fund to support eLicense development. Dr. Schottenstein stated that another transfer of \$1,100,000 is expected and will probably occur at the end of this fiscal year after the Board's cash balance has increased again. Dr. Schottenstein stated that these large cash transfers do not come from the Board's spending authority, but are simply a transfer of funds to the Department of Administrative Services for the development of the eLicense system. Dr. Schottenstein stated that the pending \$1,100,000 transfer is the last large transfer of funds that the Board is currently aware of.

Dr. Schottenstein stated that total expenditures in August 2017 were \$686,453, compared to \$644,011 in August 2016. There has been a 6% increase in expenditures year-to-date. Dr. Schottenstein stated that this increase in expenditures is not thought to be a concern and that it is substantially a function of payroll increase from filling open positions.

#### FINE EXPENDITURES AND ALLOCATIONS

Dr. Schottenstein stated that thus far, \$22,500 have been allocated from fine revenue for the current fiscal year. This total includes allocations for the acute pain prescribing rule video, a continuing medical education (CME) accreditation for a conference on medication-assisted treatment of addiction, and a Governor's Cabinet Opiate Action Team (GCOAT) educational video.

Dr. Schottenstein stated that fine revenue for the upcoming fiscal year is expected to be substantially higher and could conceivably reach about \$50,000 per month as more cases become eligible for fining. Dr. Schottenstein noted that a total of \$55,500 in fines have been received since July.

#### ACCOUNTS RECEIVABLE

Dr. Schottenstein stated that there have been two payments of \$5,500. However, additional fines have been received since this report was generated, so the actual total is probably about \$13,000.

### PARTNERS IN PROFESSIONALISM

Dr. Schottenstein stated that Ms. Pollack shared some details about the Partners in Professionalism program with the Finance Committee. In order to address the needs of Ohio University medical students who have difficulty coming to Board meetings, Ms. Pollack and the Communications Section created an edited video of the Board's proceedings which the Committee reviewed. Dr. Schottenstein stated that the video was very good and will be very educational for the students.

### TRAVEL AUTHORIZATION

Dr. Schottenstein stated that the Finance Committee approved travel for Mr. Giacalone to attend the Federal Pain Management Conference. Mr. Giacalone was invited to the conference by the United States House of Representatives Physician Caucus to participate in an opioid prescribing summit on October 5, 2017. Since Mr. Giacalone has already attended the conference, the travel was approved retroactively. The cost of travel and accommodations, which had been conditionally approved after the September Board meeting, came to about \$1,200.

**Dr. Saferin moved to approve Mr. Giacalone's travel to the Federal Pain Management Conference on October 5, 2017, and related expenses. Dr. Bechtel seconded the motion.** All members voted aye, except for Mr. Giacalone, who abstained. The motion carried.

### INVESTIGATOR VEHICLES

Dr. Schottenstein stated that in the past, the Board had individually reimbursed its investigator staff for automobile expenses. That system has changed so that the Board is now borrowing vehicles that are leased by the Department of Administrative Services (DAS). These vehicles are leased for seven years at a monthly cost of \$165 each. Dr. Schottenstein stated that at some point there is the statistical possibility of damage to a vehicle due to a traffic accident or an increase in maintenance costs. However, after the first full year of using these fleet vehicles, the program has yielded a savings of \$31,499.

Dr. Schottenstein noted that DAS has not allowed global positioning satellite (GPS) devices in the vehicles. Nonetheless, the Board does have the ability to track the vehicles' odometers, and since the investigators use state credit cards to purchase gasoline and those expenses must line up with the odometer reading, there is less concern about the vehicles being used for extracurricular purposes.

Dr. Schottenstein stated that the vehicles need to reach at least 6,000 miles per year to break even on cost. Dr. Schottenstein noted that the vehicles may be rotated between investigators who drive relatively more or less so that the 6,000 miles per year minimum can be met for every vehicle.

### POLICY COMMITTEE

### LEGISLATIVE UPDATE

Mr. LaCross stated that the Legislative Services Commission (LSC) is clarifying whether there will be a bill or an amendment to a bill to implement the proposed one-bite reporting exemption program. Mr. LaCross stated that the final version should be ready by next week and he will distribute it to Board members for their review.

MEDICAL MARIJUANA

Ms. Anderson stated that every October before October 15, the Board is required to set a period in the following year in which individuals and entities can petition the Board to add new conditions to the list of conditions authorized for treatment with medical marijuana. For 2018, the Policy Committee has recommended setting the acceptance period for November 1, 2018, to December 31, 2018.

**Dr. Saferin moved to approve the Policy Committee's recommendation regarding the petition acceptance period for 2018. Dr. Schachat seconded the motion. The motion carried.**

UPDATE ON BUDGET BILL CHANGES

Ms. Anderson stated that the Policy Committee was provided with an overview of House Bill 49, most of which became effective at the end of September. Other parts of House Bill 49 will become effective on January 21, 2018.

ACUTE PRESCRIBING RULE FAQ'S

Ms. Anderson stated that the Policy Committee thoroughly discussed the proposed Frequently Asked Questions (FAQ) document on acute pain prescribing. The Committee recommended some small changes to the document. Ms. Anderson asked the Board to approve the Policy Committee's recommendations so that the FAQ document can be placed on the Board's website.

**Dr. Saferin moved to approve the Acute Prescribing Rules FAQ document, with changes as recommended by the Policy Committee. Dr. Bechtel seconded the motion. The motion carried.**

LICENSURE COMMITTEELICENSURE APPLICATION REVIEWS

Dr. Rothermel exited the meeting at this time.

ERIC COHEN, M.D.

Dr. Saferin stated that Dr. Cohen is applying for a license and has requested a waiver of the United States Medical Licensing Examination (USMLE) ten-year rule based on Section 4731-6-14(C)(3)(b)(ii), Ohio Revised Code, which states the board may grant a good cause waiver to any applicant that "demonstrates good cause, as determined by the board, for not having passed all three steps or levels within the ten-year period, and otherwise meets the requirements set forth in paragraph (C)(3)(a) of this rule." Dr. Cohen passed Step 1 on the first attempt in 1995, Step 2 (CK) on the second attempt in 2010, Step 2 (CS) on the first attempt in 2010 and Step 3 in 2013 on the first attempt. The Board has documentation that Dr. Cohen has participated in a joint MD/PhD program at State University of New York (SUNY), Upstate Medical University. Dr. Cohen graduated from State University of New York, Upstate Medical University in May of 2004. This dual program prolonged his academic track. SUNY did not require posting a score on the USMLE Step II in order to graduate, resulting in his decision to postpone taking the exam. Looking back, Dr. Cohen believes postponement was not the best choice, but he was well-prepared and he successfully completed the USMLE series. Dr. Cohen holds certification with the American Board of Radiology (Diagnostic Radiology) since May 2004.

Dr. Saferin stated that the Licensure Committee has recommended approving Dr. Cohen's application.

**Dr. Saferin moved to approve the good cause exception of the 10-year rule as outlined in 4731-6-14(C)(3)(b)(ii), and accepting Dr. Cohen's examination sequence so that he may be granted a license. Dr. Steinbergh seconded the motion. A vote was taken:**

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

The motion carried.

Dr. Rothermel returned to the meeting at this time.

JHANSI LANKA, M.D.

Dr. Saferin stated that Dr. Lanka is applying for a license and has requested a waiver of the United States Medical Licensing Examination (USMLE) six-attempt rule based on Section 4731-6-14(C)(3)(b)(i), Ohio Revised Code, which states the board may grant a good cause waiver to any applicant that "holds current specialty board certification from the American Board of Medical Specialties or the American Osteopathic Association." Dr. Lanka was board-certified in anesthesiology in 2008. Dr. Lanka passed Step 1 in 1993 on the fourth attempt, Step 2 (CK) in 1995 on the second attempt and Step 3 in 2001 on the eighth attempt. Dr. Lanka completed her medical degree in India in 1980. Dr. Lanka completed a four-year Accreditation Council on Graduate Medical Education (ACGME) accredited postgraduate internship/residency in anesthesiology at University of Louisville School of Medicine in 2001. Dr. Lanka has practiced medicine almost 19 years in the United States. Prior to coming to the United States, Dr. Lanka practiced medicine a total of eleven and half years in India. Dr. Lanka explained that she continued to take the exam numerous times with transitioning to the U.S. and believed she has good cause due to her extensive practice history, completion of a 4-year ACGME-accredited PGT program, and holds board certification. Recommendation from committee is to approve.

**Dr. Saferin moved to approve the good cause exception of the 6-attempt rule as outlined in 4731-6-14(C)(3)(b)(i), and accepting Dr. Lanka's examination sequence so that she may be granted a license. Dr. Steinbergh seconded the motion. A vote was taken:**

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

Dr. Edgin	- aye
Dr. Factora	- aye
Dr. Bechtel	- aye

The motion carried.

ADRIANO PIRIS, M.D.

Dr. Saferin stated that Dr. Piris is applying for a license and has requested a waiver of the United States Medical Licensing Examination (USMLE) six-attempt rule on the basis of Section 4731-6-14(C)(3)(b)(i), Ohio Revised Code, which states the board may grant a good cause waiver to any applicant that "holds current specialty board certification from the American Board of Medical Specialties or the American Osteopathic Association." Dr. Piris was board-certified in anatomic pathology in 2008 and dermatopathology in 2010. Dr. Piris passed Step 1 in 1996 on the first attempt, Step 2 (CK) in 1997 on the third attempt and Step 3 in 2004 on the seventh attempt. Dr. Piris explained in addition to his board certification, he successfully completed a refresher course in clinical patient management in the KAPLAN review program. After retaking steps 1 and 2 to be eligible to take step 3. The recommendation is to approve.

**Dr. Saferin moved to approve the good cause exception of the 6-attempt rule as outlined in 4731-6-14(C)(3)(b)(i), and accepting Dr. Piris' examination sequence so that he may be granted a license. Dr. Steinbergh seconded the motion.**

Dr. Steinbergh noted that Dr. Piris has licensure in other states and that he is appropriately credentialed. Dr. Bechtel added that Dr. Piris is also c-director of one of the leading dermatopathology laboratories in the United States.

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

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

The motion carried.

AIMEE LUAT, M.D.

Dr. Saferin stated that Dr. Luat is applying for a license and has requested a waiver of the United States Medical Licensing Examination (USMLE) ten-year rule based on Section 4731-6-14(C)(3)(b)(ii), Ohio Revised Code, which states the board may grant a good cause waiver to any applicant that "demonstrates good cause, as determined by the board, for not having passed all three steps or levels within the ten year period, and otherwise meets the requirements set forth in paragraph (C)(3)(a) of this rule." Dr. Luat passed Step 1 in 1995, Step 2 (CK) in 1996, Step 2 (CS) in 2006 and Step 3 in 2007, all

exams on the first attempt. Dr. Luat advised she did not complete her 3 steps in 10 years because she was in the Philippines from 1995 to 2003, undergoing her residency training in Pediatrics and fellowship training in Pediatric Neurology. She came to the United States in 2003 to obtain her Clinical Neurophysiology Fellowship at Wayne State University, planning to return to the Philippines. However, her almost 2 years of clinical and training experience as a fellow 'motivated' her and she decided to repeat her residency training in Pediatric Neurology and to practice in the US. She then decided to take Step 2 (CS) in 2006 and Step 3 in 2007. Dr. Luat holds certification with the American Board of Psychiatry and Neurology (special qualifications in Child Neurology) since September of 2010. She also holds a subspecialty certificate in Epilepsy since October 2013.

**Dr. Saferin moved to approve the good cause exception of the 10-year rule as outlined in 4731-6-14(C)(3)(b)(ii), and accepting Dr. Luat's examination sequence so that she may be granted a license. Dr. Steinbergh seconded the motion. A vote was taken:**

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

The motion carried.

#### VISITING CLINICAL PROFESSIONAL DEVELOPMENT CERTIFICATE STATUTE

Dr. Saferin stated that the Licensure Committee discussed the purpose and parameters of the Visiting Clinical Professional Development (VCPD) Certificate statute and whether any changes to the language should be recommended. Dr. Saferin noted that currently only one person holds a VCPD certificate. Under the language of the statute, the VCPD is valid for only one year and cannot be renewed; the holder of the VCPD certificate is in a two-year program. Dr. Saferin stated that the holder of the VCPD certificate is able to apply for an entirely new VCPD certificate to replace the one that is expiring.

Dr. Saferin stated that after discussion, the Committee decided not to recommend changes to the VCPD certificate statute.

#### FIVE YEAR REVIEW OF RULE 4731-1-08

Dr. Saferin stated that Rule 4731-1-08, regarding continuing education requirements for cosmetic therapists, is due for its five-year review. The Board's staff is recommending amendments to the Rule, as outlined in the memorandum to the Board members. The proposed amendments will be circulated to interested parties for comment. Dr. Saferin noted that cosmetic therapists are asking that the required continuing education for each renewal cycle be reduced from 25 hours to 12 hours, but the Committee is not in favor of any reduction.

Dr. Schottenstein asked if the Committee is recommending any change to the requirement that at least one hour of the cosmetic therapists' continuing education be on the subject of business practices. Dr. Schottenstein also asked if the Committee is recommending any change to the four-hour limit on home study for cosmetic therapist continuing education. Dr. Saferin replied that the Committee is not recommending any changes to those provisions.

#### PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE

##### REQUEST FROM COSMETOLOGY BOARD

Dr. Steinbergh stated that the Ohio Board of Cosmetology has requested input from the Medical Board regarding chemical peels used by cosmetologists. Specifically, the Cosmetology Board is requesting guidance on what ingredient concentration and Ph level a chemical peel would have to have to constitute a "medical grade" peel and therefore not be appropriate for a cosmetologist to esthetician to use. Dr. Steinbergh stated that this issue is relevant to physicians since estheticians work in dermatologists' offices and other medical offices.

Dr. Steinbergh stated that Cosmetology Board Rule 4713-8-04, Ohio Administrative Code, defines the esthetician's ability to perform chemical peels as follows:

Chemical peels performed by an esthetician shall be mixed and used at an ingredient concentration of thirty per cent solution or less at final formulation with a pH value not less than three.

Dr. Steinbergh stated that estheticians have asked that the allowable values be increased.

Dr. Bechtel stated that current Cosmetology Board rules specify that estheticians cannot do any more than exfoliate the outer stratum corneum, which is the very outer layer of skin. By regulation, estheticians cannot use a solution with greater than 30% ingredient concentration. Dr. Bechtel stated that solutions of greater than 30 % result in a much deeper peel and the risk of complications is much higher. Regulations also state that the Ph of the solution should be not less than 3. Dr. Bechtel stated that if the Ph is lowered, the risk of complications is significantly increased. Dr. Bechtel stated that the complications that can arise from a solution that is greater than 30% concentration or lower than Ph 3 include permanent loss of pigment, hyperpigmentation, hypertrophic scars, keloids, secondary bacterial infection, and viral infection.

Dr. Bechtel stated that he discussed this issue with academic dermatologists at Ohio State University who perform chemical peels and teach students how to perform chemical peels. Dr. Bechtel stated that these dermatologists felt, based on concerns for patient safety, that the current rules and regulations should not be changed.

Dr. Bechtel stated that in the future the Board may wish to examine new chemical peel products than may have a Ph lower than 3 but not necessarily be associated with risk to patients. However, Dr. Bechtel and the Committee felt that a blanket change regarding concentration or Ph levels would be risky. Dr. Bechtel noted that there is concern that estheticians may not have the medical training to recognize or manage complications that would occur from peels of higher concentration.

Dr. Steinbergh noted that Dr. Bechtel has prepared a letter in response to the Cosmetology Board's

inquiry. The letter has been provided to Medical Board members for their review.

**Dr. Steinbergh moved to approve the guidance document prepared by Dr. Bechtel to be sent to Cosmetology Board in response to its inquiry. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

#### COMPLIANCE COMMITTEE

Dr. Steinbergh expressed appreciation for Dr. Schottenstein having chaired the September 13, 2017 meeting of the Compliance Committee in her absence.

Dr. Steinbergh stated that on September 13, 2017, the Compliance Committee accepted Compliance staff's report of conferences on July 10 and 11, 2017. The Compliance Committee also recommended approval of the Application for a Certificate of Good Standings as a Treatment Provider for Impaired Practitioners from the Cleveland Clinic Foundation.

**Dr. Schottenstein moved to approve the Application for a Certificate of Good Standings as a Treatment Provider for Impaired Practitioners from the Cleveland Clinic Foundation. Dr. Saferin seconded the motion.** All members voted aye, except Dr. Schachat and Dr. Factora, who abstained. The motion carried.

#### PROBATIONARY REQUESTS

##### PROBATIONARY REQUESTS

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

##### FREEDA J. FLYNN, M.D.

Dr. Schottenstein stated that Dr. Flynn has made multiple requests for approval of courses for disruptive physicians, all of which have been denied. Dr. Schottenstein stated that typically when a probationer makes a request that seems likely to be denied, the probationer will withdraw the request because a denial is reportable to the National Practitioner Databank (NPDB). Dr. Schottenstein asked if Dr. Flynn has withdrawn her requests. Ms. Murray stated that she discussed this matter with Dr. Flynn and Dr. Flynn has chosen to proceed with her requests.

Dr. Schottenstein noted that the courses for which Dr. Flynn is requesting approval are online courses, whereas the Secretary and Supervising Member feel that Dr. Flynn should attend an in-person course. Dr. Steinbergh agreed with the Secretary and Supervising Member, opining that the courses submitted by Dr. Flynn are not robust enough. Dr. Steinbergh commented that she would support the courses as part of Dr. Flynn's requirements, but not to fulfill the requirements entirely.

Ms. Murray commented that Dr. Flynn has stated that she is too busy to attend an in-person course. Dr. Steinbergh stated that she does not like Dr. Flynn's attitude or the fact that she thinks the Board's requirements are a joke and a waste of her time. Dr. Steinbergh opined that Dr. Flynn's attitude is very unprofessional. Dr. Steinbergh stated that she appreciates that Dr. Flynn has a busy practice, but Dr.

Flynn came before the Board for a reason and she must fulfill the terms of her Board Order, which has been affirmed by the 10<sup>th</sup> District Court of Appeals.

Mr. Giacalone noted that Dr. Flynn plans to retire in February 2018. Mr. Giacalone asked if Dr. Flynn can avoid these requirements simply by waiting until February. Ms. Murray replied that Dr. Flynn is required to take the courses prior to February. Ms. Murray commented that the Secretary and Supervising Member sometimes grants extensions for such course requirements, but they are not inclined to do so in this case. Dr. Steinbergh pointed out that even after Dr. Flynn retires from practice, she will still have an active Ohio medical license.

STEPHEN LEE MOORE, D.O.

Dr. Steinbergh noted that Dr. Moore is requesting approval of K. G. Sahetya, M.D., who practices in Kentucky, whereas Dr. Moore's address is in northern Ohio. Ms. Jones explained that Dr. Moore has temporarily moved to Avon Lake due to personal matters, but he will be practicing in Kentucky.

**Dr. Steinbergh moved to deny Freeda J. Flynn, M.D.'s request for approval of the course *Challenges: Professional Boundaries and Patient Encounters*, offered by the Texas Medical Association Committee on Physician Health and Rehab, to fulfill the professional ethics course requirement; and to deny Dr. Flynn's request for approval of the course *8 Hour Online Anger Management Class*, offered by Conflict Coaching & Consulting, Inc., to fulfill the disruptive physicians course requirement. Dr. Schottenstein seconded the motion. A vote was taken:**

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

The motion to deny carried.

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

- To grant Patrick L. Bruno, M.D.'s request for approval of the updated practice plan;
- To grant Philicia S. Duncan, M.D.'s request for reduction in psychiatric sessions to once every two months;
- To grant Ryan S. Fryman, D.O.'s request for reduction in drug screens to a minimum of two per month; and reduction in 12-Step recovery meetings to two per week with a minimum of ten per month;

- To grant Matthew J. Goldschmidt, M.D.'s request for reduction in appearances to annually;
- To grant Stephen Lee Moore, D.O.'s request for approval of K. G. Sahetya, 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;
- To grant Sheila S. Reddy, M.D.'s request to discontinue the drug log requirement;
- To grant Siraj A. Siddiqui, M.D.'s request to approve the revised practice plan; and
- To grant Frank G. Stoddard, III, D.P.M.'s request for approval of Joseph M. Garbely, D.O., to conduct one of the return-to-work assessments; and approval of David W. Stroom, M.D., to conduct one of the return-to-work assessments;

**Dr. Schottenstein seconded the motion. A vote was taken:**

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

The motion carried.

#### FINAL PROBATIONARY APPEARANCES

##### CASEY D. DARRAH, M.D.

Dr. Darrah was appearing before the Board pursuant to his request for release from the terms of his October 19, 2016 Non-Disciplinary Consent Agreement. Dr. Soin reviewed Dr. Darrah's history with the Board.

In response to questions from Dr. Soin, Dr. Darrah stated that he is currently working with a *locum tenens* company and practices in Ohio and Michigan. Dr. Darrah's long-term goal is to go into psychiatry. Dr. Darrah stated that he may apply for a psychiatry training program sometime around the year 2020.

**Dr. Steinbergh moved to release Dr. Darrah from the terms of his October 19, 2016 Non-Disciplinary Consent Agreement, effective October 19, 2017. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

Dr. Schachat exited the meeting at this time.

KARL M. HAGEN, M.D.

Dr. Hagen was appearing before the Board pursuant to his request for release from the terms of the Board's Order of September 9, 2015. Dr. Soin reviewed Dr. Hagen's history with the Board.

Responding to questions from Dr. Steinbergh, Dr. Hagen stated that his transition from the field of surgery to the field of addiction medicine went surprisingly well. Dr. Hagen stated that he chose to undergo training in addiction medicine when it became clear that he would not be able to continue as a surgeon. Dr. Hagen stated that the need for addictionologists is tremendous and he feels very fulfilled in his job. Dr. Hagen currently practices in Fort Lauderdale, Florida, but he may consider splitting his time between Florida and Ohio in the later years of his practice.

Dr. Schottenstein recalled that Dr. Hagen was initially disciplined due to a wrong-site surgery involving an appendectomy. Consequently, Dr. Hagen did not simply choose to move from surgery to addiction medicine on his own accord. Rather, it was thrust upon him in the aftermath of the incident. Dr. Schottenstein stated that being in such a position can be challenging, but Dr. Hagen seems to have made peace with what happened. Dr. Schottenstein asked if Dr. Hagen feels that things have worked out for the best. Dr. Hagen answered that he had not planned to go into addiction medicine, but it was the best route available to him since he could not enter another surgical specialty. Dr. Hagen stated that addiction medicine has turned out to be a true career for him. Dr. Schottenstein was glad that things have worked out for Dr. Hagen.

**Dr. Steinbergh moved to release Dr. Hagen from the terms of the Board's Order of September 9, 2015, effective immediately. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

JOHN MARK HATHEWAY, M.D.

Ms. Murray stated that Dr. Hatheway is not present in the meeting.

ALLISON C. HEACOCK, M.D.

Dr. Heacock was appearing before the Board pursuant to her request for release from the terms of her September 14, 2011 Consent Agreement. Dr. Soin reviewed Dr. Heacock's with the Board.

Responding to questions from Dr. Soin, Dr. Heacock stated that her recovery is going great. Dr. Heacock stated that she practices as a hospitalist at The Ohio State University Wexner Medical Center and at Nationwide Children's Hospital. Dr. Heacock stated that her work is about 40% academic and about 30% clinical at each of the two facilities. Dr. Heacock noted that she is currently on maternity leave. Dr. Soin congratulated Dr. Heacock on the birth of her child.

Dr. Schottenstein noted that Dr. Heacock has been historically prone to mood and anxiety issues. Dr. Heacock opined that those issues were related to her alcohol problem, though she has suffered with some post-partum anxiety which she is addressing with her psychiatrist. Other than this treatment for post-partum anxiety, Dr. Heacock has not been treated for these issues. Dr. Schottenstein stated that heavy alcohol use can provoke depression and anxiety and that those who become sober often see improvements in their mood and anxiety when those things are not the primary issues. Dr. Heacock stated and she and her psychiatrist feel that that is the case with her, apart from the post-partum anxiety.

In response to further questions from Dr. Schottenstein, Dr. Heacock stated that she is not currently seeing a counselor. Dr. Heacock is working a recovery program and attends rehabilitation meetings three times per week. Dr. Heacock stated that she has a sponsor and she also has a family member in the recovery program.

Dr. Steinbergh asked Dr. Heacock what parts of her recovery program are important to her. Dr. Heacock replied that her spiritual program is important and she begins every day with that. Dr. Heacock also speaks with her sponsor often and she plans to continue attending meetings after her release from probation.

**Dr. Steinbergh moved to release Dr. Heacock from the terms of her September 14, 2011 Consent Agreement, effective immediately. Dr. Bechtel seconded the motion.** All members voted aye. The motion carried.

BRUCE MERKIN, M.D.

Dr. Merkin was appearing before the Board pursuant to his request for release from the terms of his June 13, 2012 Consent Agreement. Dr. Soin reviewed Dr. Merkin's history with the Board.

Dr. Steinbergh, noting Dr. Merkin's long history with addiction and with the Board, asked what is different for Dr. Merkin this time and how he will continue to heal moving forward. Dr. Merkin responded that recovery is basically his life and he works his recovery every day. Dr. Merkin stated that his work as an addictionologist informs his recovery, but his recovery program is completely separate from his job. Dr. Merkin stated that he has a very close relationship with his sponsor and he has taken sponsees through the 12 steps. Dr. Merkin also spends a great deal of time facilitating the 12 steps for his patients as a key component of their treatment. Dr. Merkin stated that this time around, his investment in his recovery is much more complete than in the past. Dr. Merkin stated that all of his friends are recovering people or the family members of recovering people.

Dr. Steinbergh asked how long Dr. Merkin has been an addictionologist. Dr. Merkin replied that he has been an addictionologist since he took his addiction medicine board examination in 2005. Dr. Steinbergh commented that it always amazes her that a person who specializes in addiction medicine does not have the level of introspection to prevent it in himself or herself. Dr. Merkin stated that that is one of the paradoxical aspects of the disease. Dr. Merkin stated that one of the sayings in recovery is "knowledge will avail you nothing." Dr. Merkin stated that he may have had a lot of knowledge about addiction, but he clearly did not use it in the service of his recovery when he relapsed; instead, he used it in the service of his disease.

Dr. Merkin commented that the experience of going back to ground zero and having his medical license suspended was a profound experience for him. Dr. Merkin stated that once a person has relapsed, it is difficult to make any purely-motivated or introspective choices that are reliable. Dr. Merkin stated that he may have been able to make good choices if he had asked for help from others, but he did not ask for help and that was his mistake. Dr. Merkin stated that, unfortunately, the part of the brain that is involved in proper motivation and ethical choice-making is also part of the circuit related to addiction.

Mr. Giacalone stated that the Board's mission is to protect the public. Mr. Giacalone stated that the Board wishes the best for Dr. Merkin, but the Board does not exist to protect Dr. Merkin. Mr. Giacalone stated

that Dr. Merkin is not likely to get another chance with the Board if he relapses again. Dr. Merkin stated that that is crystal clear.

Dr. Schottenstein stated that in his experience, knowledge can sometimes be counterproductive because it encourages a false sense of confidence and a feeling that one can handle the substance in question due to one's expertise. Dr. Merkin agreed and stated that that was part of his problem prior to his last relapse. Dr. Merkin stated that he is part of a support group of like-minded physicians who are addictionologists in recovery; the group communicates via email and occasionally by telephone, and this is one of the frequent topics of discussion.

Dr. Steinbergh opined that the percentage of addictionologists that are also in recovery is probably very high. Dr. Merkin replied that it is over 50% and possibly as high as 70%.

**Dr. Steinbergh moved to release Dr. Merkin from the terms of his June 13, 2012 Consent Agreement, effective October 12, 2017. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

FRANK WELSH, M.D.

Dr. Welsh was appearing before the Board pursuant to his request for release from the terms of his October 19, 2016 Consent Agreement. Dr. Soin reviewed Dr. Welsh's history with the Board.

In response to questions from Dr. Soin, Dr. Welsh stated that he works for the Veteran's Administration (VA) in Cincinnati performing minor surgery, as well as overseeing hyperbaric oxygen administration at a wound care center in a hospital. Dr. Welsh also works in a spa one day a week performing laser tattoo removal. Regarding his ethics course, Dr. Welsh identified two primary areas: Informed consent documentation and avoidance of fraud; and professionalism, avoidance of boundary-crossing, and fiduciary duty. Dr. Welsh learned that physicians have a fiduciary duty to protect the public from business practices that appear to exploit poor or uneducated patients.

Dr. Schottenstein recalled that Dr. Welsh's case involved his practice at an erectile dysfunction clinic that was charging fairly substantial amounts of money for products. Dr. Schottenstein stated that it is fine for a physician to practice in a clinic that sells products, but he hoped that a physician would say something to the owners about excessive or unfair charges for the products. Dr. Schottenstein asked if this is what Dr. Welsh was referring to when he spoke of fiduciary duty. Dr. Welsh stated that his perception had been that disgruntled patients had not been handled well at the clinic and were not given refunds if they got in over their heads purchasing products from the clinic. Dr. Schottenstein asked if, ideally, a physician would speak up if something like that was occurring and their clinic. Dr. Welsh agreed.

Dr. Schottenstein asked what else Dr. Welsh learned from the course. Dr. Welsh answered that the course helped him have a clear understanding of the establishment of authority of the physician scope of practice. Dr. Welsh stated that he had been told that the primary aspect of his case was that he had been present when emergency medicine technicians (EMT) who were working as medical assistants exceeded their statutory scope of practice. Dr. Welsh learned that the scope of practice is established by the state legislature, which is informed by the Ohio State Medical Association (OSMA) through its lobbying efforts. Dr. Welsh stated that the Medical Board establishes the rules that govern the practice of medicine, based on the legislature's statutes. Dr. Welsh stated that the Medical Board's mission is to protect the public and maintain high standards of care.

Dr. Soin asked if Dr. Welsh feels that he made mistakes. Dr. Welsh replied that his mistake was that he had not been critical enough of the business practices of the clinic.

**Dr. Steinbergh moved to release Dr. Welsh from the terms of his October 19, 2016 Consent Agreement, effective October 20, 2017. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

MARTIN R. HOBOWSKY, D.O.

Dr. Hobowsky was appearing before the Board pursuant to his request for release from the terms of the Board's Order of August 12, 2015. Dr. Soin reviewed Dr. Hobowsky's history with the Board.

Dr. Steinbergh asked Dr. Hobowsky to discuss what events led to his original Consent Agreement in 2010, what he has learned from this process, and how he will prevent this from happening again. Dr. Hobowsky replied that he entered into his 2010 Consent Agreement due to overprescribing narcotics. Dr. Hobowsky commented that he suffers from Chronic Obstructive Pulmonary Disease (COPD) as well as cataracts and glaucoma, and he is becoming hard of hearing. Dr. Hobowsky stated that he has had surgery for his glaucoma in his left eye and will get the surgery for his right eye once the left eye has recovered. Dr. Hobowsky currently practices geriatric medicine in South Charleston, Ohio. Dr. Hobowsky commented that his practice had previously attracted a number of young drug-seekers from across the state, and prescribing to those patients is what had originally brought him to the attention of the Board.

Dr. Soin asked if Dr. Hobowsky currently prescribes controlled substances. Dr. Hobowsky replied that he does not prescribe narcotics. Mr. Giacalone asked if Dr. Hobowsky prescribes any controlled substances besides narcotics. Dr. Hobowsky replied that he does not prescribe any controlled substances. Dr. Steinbergh noted that Dr. Hobowsky surrendered his Drug Enforcement Administration (DEA) registration in 2010 and asked if Dr. Hobowsky has a current DEA registration. Dr. Hobowsky answered that he had voluntarily surrendered his DEA registration in 2010 and he does not hold current registration.

Dr. Steinbergh asked if Dr. Hobowsky is exclusively practicing geriatric medicine at this time. Dr. Hobowsky responded that he "pretty much" practices only geriatric medicine and his patients are at least 50 years old. Dr. Steinbergh asked how many days Dr. Hobowsky practices per week. Dr. Hobowsky replied that it varies between one and four patients. Dr. Steinbergh repeated her question about how many days Dr. Hobowsky practices per week. Dr. Hobowsky replied that he practices about one to three days per week and he sees between one and two patients per day. Dr. Steinbergh asked what the most common diagnosis is among his patients. Dr. Hobowsky answered that the most common diagnoses he sees are hypertension and obesity. Dr. Steinbergh asked if Dr. Hobowsky performs osteopathic manipulative therapy (OMT). Dr. Hobowsky replied that he sometimes performs OMT, but his patients do not like it very much because it is hard on them.

Dr. Steinbergh asked how Dr. Hobowsky usually accesses continuing medical education (CME). Dr. Hobowsky replied that he gets all of his CME online and his most common source is WebMD. Dr. Steinbergh asked if Dr. Hobowsky has access to hospital or medical staff CME. Dr. Hobowsky answered that he does not have access to those CME opportunities. Dr. Steinbergh asked how long Dr. Hobowsky expects to continue to practice. Dr. Hobowsky replied that he expects to practice for approximately ten more years. Dr. Steinbergh asked how many physicians are in Dr. Hobowsky's community of South Charleston. Dr. Hobowsky replied that there are no other physicians in South Charleston besides himself.

Dr. Hobowsky commented that the Board members may be wondering about the wheelchair he is in. Dr. Hobowsky stated that his eyesight is currently very poor, particularly in the eye in which he recently had surgery, and the wheelchair prevents him from tripping over things or stepping on things. Dr. Hobowsky stated that he does not use the wheelchair very much and he should have complete vision back in his left eye in about two months. Dr. Hobowsky stated that it seems like the Board is concerned about his medical conditions or conditions, but he stated that he is not as bad off as he seems. Dr. Hobowsky stated that he is not unfit to practice medicine due to physical limitations.

Dr. Steinbergh asked about the population of Dr. Hobowsky's immediate community. Dr. Hobowsky answered that the population of South Charleston is 1,603. Dr. Steinbergh asked what type of staff support Dr. Hobowsky has in his office. Dr. Hobowsky replied that his wife, a registered nurse, helps in his office during the day and works in a hospital at night. Dr. Hobowsky stated that one of the reasons he limits the number of patients he sees is because his wife already works 12-hour shifts at the hospital and he does not want her to work too much in his office in addition to that. Dr. Hobowsky stated that two people can easily handle the operations of his office and he could even handle it by himself.

Dr. Steinbergh expressed concern about Dr. Hobowsky's visual impairment and his ability to see changes in his patients' medical conditions that the patient may not be able to articulate. Dr. Steinbergh asked if Dr. Hobowsky writes prescriptions or if he uses electronic medical records (EMR) for prescribing. Dr. Hobowsky responded that he writes prescriptions and also calls in prescriptions.

Dr. Schottenstein recalled that Dr. Hobowsky completed an addiction medical fellowship. Dr. Hobowsky confirmed that he completed an addiction medicine fellowship because he wanted to get his patients off of drugs. However, Dr. Hobowsky stated that having the term "addiction medicine" next to his name only drew more drug-seekers to his practice. As a result, Dr. Hobowsky no longer advertises himself as an addictionologist. Dr. Hobowsky stated that he no longer practices any kind of addiction medicine.

Dr. Soin voiced a general concern about Dr. Hobowsky's difficulty with seeing and hearing, and the impact that may have on patient care and his ability to diagnose and treat patients. Dr. Soin asked if Dr. Hobowsky could address these concerns. Dr. Hobowsky responded that he is the same age as his patients, so he has a lot in common with his patients and they get along well.

Dr. Steinbergh, noting that Dr. Hobowsky sees very few patients, asked where his patients and others in that area go for medical care besides Dr. Hobowsky's office. Dr. Hobowsky replied that they usually go to Springfield, Ohio, or London, Ohio. Dr. Steinbergh asked about the last time Dr. Hobowsky had a new patient in his office. Dr. Hobowsky stated that he last saw a new patient about three months ago. Dr. Steinbergh asked about the circumstances of that new patient. Dr. Hobowsky stated that the new patient had hypertension and had come to his office after having received treatment elsewhere for a myocardial infarction (MI). Dr. Hobowsky stated that the new patient was a long-time friend and that he came to Dr. Hobowsky for follow-up care after his MI.

Dr. Steinbergh asked how Dr. Hobowsky interprets his electrocardiograms (EKG) with the difficulty in his vision, or if Dr. Hobowsky has an EKG machine. Dr. Hobowsky replied that he is in the process of getting an EKG machine and in the meantime he can refer patients to other places in Springfield or London if they need an EKG. Dr. Steinbergh asked how Dr. Hobowsky was able to assess the status of his new patient, who was post-MI, without an EKG machine or ability to read an EKG. Dr. Hobowsky stated that if he suspects that a patient may have a cardiac problem, he can refer them to someplace in Springfield or

London.

Dr. Steinbergh asked if Dr. Hobowsky has liability insurance. Dr. Hobowsky answered that he does not have liability insurance and that his patients are aware of this. Dr. Steinbergh asked how Dr. Hobowsky's patients are away of his lack of liability insurance. Dr. Hobowsky answered that he tells his patients over the phone or when they come in for their first visit. Dr. Steinbergh asked if the fact that Dr. Hobowsky has no liability insurance is posted in his office. Dr. Hobowsky answered that it is not posted in his office. Dr. Steinbergh asked if the Board has a regulation requiring the lack of liability insurance to be posted in the office. Ms. Anderson replied that physicians are required to inform their patients if they do not have liability insurance, but she was uncertain at this time whether the law or the Board's rules specify how the patients must be informed.

Dr. Steinbergh stated that she does not feel comfortable releasing Dr. Hobowsky from probation today due to concerns about patient care. Dr. Steinbergh stated that Dr. Hobowsky is a well-meaning physician and that she appreciates his long service as a physician, but she would like Dr. Hobowsky to meet with the Board's Secretary and Supervising Member in three months. Dr. Rothermel and Dr. Saferin agreed.

**Dr. Steinbergh moved to continue Dr. Hobowsky under the terms of his August 12, 2015 Board Order. Dr. Steinbergh further moved that Dr. Hobowsky meet with the Board's Secretary and Supervising Member in three months. Mr. Giacalone seconded the motion.** A vote was taken:

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

The motion carried.

Dr. Steinbergh specified that among her concerns are Dr. Hobowsky's vision difficulties and that he is treating a post-MI patient without the benefit of an EKG machine, which may put that patient at risk. Dr. Steinbergh stated that she would like to know more about Dr. Hobowsky's practice. Dr. Hobowsky reiterated that he has already had surgery on his left eye and that he will have surgery on his right eye once the left eye heals. Dr. Hobowsky stated that after the surgeries, he should have no major vision problems. Dr. Hobowsky acknowledged that he has some hearing loss, but he will see an audiologist in the next few days about getting hearing aids. Dr. Steinbergh stated that the Board appreciates that Dr. Hobowsky is getting treatment. Dr. Steinbergh stated that the extra time on probation will give Dr. Hobowsky an opportunity to communicate with the Secretary and Supervising Member so that they can be certain that those issues have been evaluated properly and the Board can feel comfortable with his patient care.

#### ADJOURN

**Dr. Saferin moved to adjourn the meeting. Dr. Schottenstein seconded the motion.** All members

voted aye. The motion carried.

Thereupon, at 3:22 p.m., the October 11, 2017 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 11, 2017, as approved on November 8, 2017.

(SEAL)

State Medical Board of Ohio

**POLICY COMMITTEE MEETING**

**October 11, 2017**

**30 East Broad Street, Columbus, OH 43215, Room 336**

<p><b>Members:</b> Andrew P. Schachat, M.D. Robert Giacalone Mark. A. Bechtel, M.D. Amol Soin, MD</p> <p><b>Other Board Members Present:</b> Kim G. Rothermel, M.D. Bruce Saferin, D.P.M. Michael Schottenstein, M.D. Anita Steinbergh, D.O. Ronan Factora, M.D. Richard Edgin, M.D.</p>	<p><b>Staff:</b> A.J. Groeber, Executive Director Kimberly Anderson, Chief Legal Counsel Sallie J. Debolt, Senior Counsel Nathan Smith, Senior Legal and Policy Attorney David Fais, Deputy Director Rebecca Marshall, Chief Enforcement Attorney Jonithon LaCross, Director of Public Policy &amp; Government Affairs Tessie Pollock, Director of Communication Joan Wehrle, Education &amp; Outreach Program Manager</p>
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Dr. Soin called the meeting to order at 8:31 a.m.

**MEETING MINUTES REVIEW**

Dr. Soin reported that a copy of the revised draft minutes had been distributed to the committee. He asked for approval of the minutes as revised.

**Dr. Bechtel moved to approve the revised Policy Committee minutes of the September 13, 2017 meeting. Mr. Giacalone seconded the motion. The motion carried.**

**FAQs - ACUTE PRESCRIBING RULES**

Ms. Anderson referred to a draft list of FAQs that had been circulated to the committee. She said that most of these are actual questions we've received and answered. Ms. Debolt has worked tirelessly over the past month or so answering these questions. Ms. Anderson said that she would like approval of the draft by the committee and the full Board so that we can post on the website as the FAQs will help people understand the rules and reduce the number of questions we receive.

It is anticipated that additional questions or comments will be asked about the rules so additional FAQs may be brought to the Board for approval and added to the document later.

Dr. Bechtel said he was impressed with the document. He asked about question #16:

***16. If I have written the first opioid analgesic prescription for a dosage above a 30 MED average per day, may a cross-covering or on-call physician or physician assistant write the patient another prescription for a dosage greater than 30 MED average per day?***

*No. Rule 4731-11-13(A)(3)(c)(iv) authorizes only the original prescriber to exceed the 30 MED average per day limit.*

Dr. Bechtel had concern about not being able to continue the patient on that level of medication when cross-covering. Ms. Anderson responded that the way the rule is written it is limited. Exceeding the 30 MED level is something that happens rarely and only in extreme conditions.

Mr. Groeber asked if the cross-covering physician should direct the patient to the emergency room in that situation, if the patient's pain is spiking. Dr. Schachat said that the pain may not be spiking but it may be persistent and the patient may be running out of medication.

Dr. Bechtel suggested that rather than saying no we can't continue that level of therapy, we offer some alternatives for the patient such as contacting the original prescribing physician, or suggesting the patient go to the emergency room. Mr. Groeber asked if we should direct the original treating physician, if they are going into a cross-coverage scenario, to be available to speak with the cross-covering physician.

Dr. Steinbergh commented that when a patient's persistent pain goes beyond the time expected to have pain, it is time for the patient to be reassessed.

Ms. Anderson said that we can make some revisions to the Q16 response based on the discussion.

Mr. Giacalone asked about question 26:

**26. When writing an opioid analgesic prescription to treat a hospice patient's acute pain is it required that I note on the prescription that it is for a hospice patient?**

*The prescription should include the first four characters of the ICD-10 code for the condition being treated as acute pain. Starting on December 29, 2017 this information will be required on all prescriptions for opioid analgesics, and will be required on all controlled substance prescriptions starting on June 1, 2018.*

*If a pharmacist calls concerning an opioid analgesic prescription that is written for more than 7/5 days or for a dosage greater than 30 MED average per day, the prescribing physician or physician assistant should relate to the pharmacist that the patient is a hospice patient.*

Mr. Giacalone referred to the last paragraph . . . "the prescribing physician or physician assistant **should** tell the pharmacist that the patient is a hospice patient." He asked if the wording could be "...**must** tell the pharmacist that the patient is hospice patient." His concern is for the patient if the pharmacist does not get a call back from the prescriber, especially since it is a hospice patient. Ms. Anderson thought that the ICD-10 code would reference terminal conditions and perhaps hospice. She said we could look at the rule to see if the rule supports his suggested change. Ms. Debolt commented that the response to this question assumed that the pharmacist and the prescriber were talking to each other.

Dr. Soin asked about #21:

**21. I practice at a Veterans Administration medical center. Do I have to comply with the acute pain prescribing rules?**

*The acute pain rules do not apply to a physician or physician while practicing at a U.S. Veterans Administration facility.*

Dr. Soin asked if veterans treatment also includes military hospitals. Ms. Anderson replied that it does. She indicated that we will add military hospitals to the list. She reported that physicians at those facilities are under federal law, not state law, even if they hold an Ohio license.

Dr. Factora asked if VA outpatient facilities were also included. Ms. Anderson reported that they are included if the practitioner is using the federal authorization. Dr. Factora asked if prescriptions provided by VA physicians are only filled at VA pharmacies? No, they are not. He also asked if VA doctors are required to check OARRS for outpatient management? Ms. Anderson replied that the VA physicians are not required to check OARRS under state law but they may do so voluntarily.

Dr. Factora asked if there are any federal laws that limit controlled substance prescribing. Ms. Anderson said she is not aware of any but there may be proposed legislation. Dr. Factora indicated that he sees this as a gap since VA patients don't have to get their prescriptions from a VA facility. Dr. Soin commented that VA facilities and pharmacies don't have to report to OARRS as there is a conflict between state and federal regulations.

Mr. Groeber suggested that we can research VA practice in Ohio and how it relates to OARRS and prescribing regulations and provide that information to the Board.

Dr. Schachat asked if military doctors need to be credentialed if caring for patients in a disaster. Ms. Debolt reported that a military physician is exempt from Ohio licensure if they are practicing within the scope of their military assignment. He also asked if those physicians would need to be credentialed in civilian hospitals if they were providing disaster care. It was noted that the hospital's disaster plan would address those issues.

Dr. Schachat also asked about physicians from other states helping with disaster care in Ohio. Mr. Groeber said that there is legislation being considered addressing disaster management including rebuilding infrastructure and restoring telecommunications as well as other issues. But it is on legislator's minds about how to clear roadblocks so that others can come in and provide help. Ms. Debolt reported that one of the exemptions from licensure is an emergency.

Dr. Schottenstein asked about Question 3:

**3. In what situations would a prescription be considered an "inpatient prescription"?**

*As defined by Rule 4729-17-01, "inpatient" means any person who receives drugs for use while within the institutional facility and "inpatient prescription" means a written, electronic, or oral order for a drug to be dispensed for use in treating an inpatient. The dosage limits do not apply to treatment of pain during a patient's hospital stay.*

*Institutional facility means a hospital, convalescent home, developmental facility, long term care facility, nursing home, psychiatric facility, rehabilitation facility, developmental disability facility and Level III sub-acute detoxification facility.*

Dr. Schottenstein asked if there was a distinction between a developmental facility and a developmental disability center. Ms. Anderson said the response refers to Pharmacy Board rule 4917.29.01. She would like to leave it in the response for now since it is the language in the rule. She has contacted the Pharmacy Board for clarification but has not yet had a response.

**Dr. Schachat moved to recommend approval of the draft FAQs to the full Board. Dr. Bechtel seconded the motion. The motion carried.**

## LEGISLATIVE UPDATE

The following update was provided:

**HB145-Establish confidential program to treat impaired practitioners:** Mr. LaCross reported that we are waiting on the “one bite” legislation.

**Board Consolidation:** Mr. LaCross reported that the sub bill was received last week and we are reviewing the document. The bill may be at hearing within the next two weeks. We hope to have the legislation approved by mid-November but it may not be in effect by 1-21-18, but it should be near that date. Mr. Groeber said that we are working with the Respiratory Care and Dietetics Boards for a smooth transition.

Mr. LaCross provided an overview of the projected legislative calendar for the next few months. He thanked the Board members for their input regarding statutory language that needs to be fixed. Mr. LaCross reported he is in the process of getting proposed revisions drafted. Mr. Groeber said we will not proceed with legislative changes without Board member feedback.

Dr. Steinbergh asked about HB273 which prohibits requiring a physician to have maintenance of certification to obtain licensure, reimbursement, employment, or admitting privileges. She is particularly interested in this bill regarding credentialing issues.

Mr. LaCross reported that erroneous information had been reported that the Medical Board supported the bill but we have taken no stance on the legislation.

In December, the academy of medicine is holding a round table conference on this topic.

Ms. Debolt put together a reference document regarding when the Medical Board addresses specialty board certification. Board certification is not required for licensure. However, a specialty board certified physician applicant for an expedited license does not need to complete an FCVS profile.

The Medical Board may use a specialty board certification examination as an option for those seeking to restore an expired Ohio license. Additionally, if a physician providing office-based opioid treatment (OBOT) wants to prescribe higher than the maximum dosage or wants to prescribe to someone already on maintenance dosage medications, the physician must consult with a specialty board certified addiction medicine physician or addiction psychiatrist. Also, the physician pain clinic owner must hold specialty board certified in specific fields or hold added qualification in specific fields per rule 4731-29-01.

Dr. Schachat asked if it was an adverse action is a licensee lost their specialty board certification. It is not considered an adverse action.

Ms. Debolt reported that the demographic questions included on the physician licensure renewal form ask if the licensee is specialty board certified.

Dr. Schachat reported that he attended a recent meeting where the topic of maintenance of certification for licensure was discussed. A few states have made laws regarding this matter. Ms. Debolt reported that the FSMB advocacy news reported that 10 states have passed prohibitions on this matter.

Mr. LaCross reported that the Medical Board has not taken a position on the bill introduced in Ohio.

Mr. Giacalone asked about HB167 which addresses opioid prescribing and addiction treatment. Mr. LaCross said that no action has been taken on this bill. Recent rules passed by the Nursing, Medical and Pharmacy Boards have tempered action on this bill. Other options have been proposed to the sponsor. The companion bill in the Senate is gone.

#### **RULE 4731-32-05, PETITION TO REQUEST ADDITIONAL QUALIFYING CONDITION OR DISEASE FOR MEDICAL MARIJUANA**

Ms. Anderson referred to the memorandum included in the agenda materials. Per Rule 4731-32-05, the Medical Board must set the timeframe for when we will accept petitions for new conditions for medical marijuana by October 15th each year. The Medical Board then has 180 days after close of the acceptance date to decide on the conditions submitted. It is hard this year since the program does not become operational until September 2018.

**Ms. Anderson proposed Nov 1, 2018 – Dec. 31, 2018 as the timeframe for accepting new condition petitions. Dr. Bechtel moved to recommend acceptance of those dates to the full Board. Dr. Schachat seconded the motion. Motion carried.**

Ms. Anderson reported that this information will be posted on the Medical Marijuana Control Program website when the Board approves the dates.

Dr. Bechtel commented that it may be hard to get experts to help the Board review petition requests since so there is little evidence-based research to support new conditions. Committee members said that the Board may need to check with other states that have medical marijuana programs. Dr. Soin said medical marijuana is a schedule 1 substance, so there are animal studies but not many human studies.

Ms. Anderson said that Dr. Hurst at OHMHAS had a literature review last year. She said that we can see if there have been any updates since that time.

Dr. Steinbergh expressed concern about a potential increase in unemployment because patients taking medical marijuana may be unable to pass employer mandated drug screens.

#### **UPDATE ON BUDGET BILL CHANGES IMPACTING AGENCY**

Ms. Anderson referred to a memorandum included in the agenda materials prepared by Nate Smith. The memo highlights the changes included in HB49, the Budget bill, that impact agency operations.

#### **ADJOURN**

**Dr. Bechtel moved to adjourn the meeting. Dr. Schachat seconded the motion. Motion carried.**

The meeting adjourned at 9:13 a.m.

jkw

State Medical Board of Ohio

**FINANCE COMMITTEE MEETING**  
**October 11, 2017**  
**30 E. Broad St., Columbus, OH Room 318**

<b>Members:</b> Michael Schottenstein, M.D., Chair Bruce R. Saferin, D.P.M. Richard Edgin, M.D. Michael L. Gonidakis	<b>Staff:</b> A.J. Groeber, Executive Director Susan Loe, Director of Fiscal and Human Resources Tessie Pollock, Director of Communications
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Dr. Schottenstein called the meeting to order at 9:05 a.m.

### MINUTES REVIEW

**Dr. Saferin moved to approve Finance Committee September 13, 2017 meeting minutes. Dr. Edgin seconded the motion.** The motion carried.

### FISCAL UPDATE

Dr. Schottenstein stated that the Board's revenue for August 2017 was \$464,514, as compared to revenue in August 2015 of \$632,515. There was a substantial decrease in Fiscal Year 2018 with regard to first-quarter revenue due to the surge in license renewals in fiscal year 2017 prior to the eLicense conversion. Revenue over the year-to-date cycle was \$899,490, a decrease of 30% from Fiscal Year 2016. Dr. Schottenstein commented that August is typically a low-revenue month as license renewals are quarterly and licensees often wait until the last minute to renew. Dr. Schottenstein stated that the net revenue loss for August 2017 of \$297,033, which is comparable to the August 2015 loss of \$271,913. Dr. Schottenstein expected revenue to begin increasing again in September. Dr. Schottenstein stated that because of the cyclical nature of the revenue cycle, as well as the eLicense variable, this decrease is not cause for concern at this time.

Dr. Schottenstein stated that the Board's cash balance has decreased by 25.7% compared to the previous year. Dr. Schottenstein noted that in December 2016, \$1,488,000 was transferred from the Board's fund to support eLicense development. Dr. Schottenstein stated that another transfer of \$1,100,000 is expected and will probably occur at the end of this fiscal year after the Board's cash balance has increased again. Dr. Schottenstein noted that, in general, the Board likes to keep a \$3,000,000 cash balance as a minimum cushion to cover our expenses. Dr. Schottenstein stated that the large cash transfers do not come from the Board's spending authority, but are simply a transfer of funds to the Department of Administrative Services for the development of the eLicense system. Dr. Schottenstein stated that the pending \$1,100,000 transfer is the last large transfer of funds that the Board is currently aware of.

Dr. Schottenstein stated that total expenditures in August 2017 were \$686,453, compared to \$644,011 in August 2016. There has been a 6% increase in expenditures year-to-date. Dr. Schottenstein stated that this increase in expenditures is not thought to be a concern and that it is substantially a function of payroll increase from filling open positions.

Mr. Groeber commented that in about one year, the Medical Board should be a paperless office for all practical intents and purposes, which will result in greater efficiency and savings. Mr. Groeber speculated that increased office efficiency could allow the Board to not fill staff vacancies when

employees retire or leave to pursue other opportunities. Mr. Gonidakis commented that Mr. Groeber's statement encapsulates what the Board is trying to achieve.

## **FINE EXPENDITURES AND ALLOCATIONS**

Dr. Schottenstein stated that thus far, \$22,500 have been approved for allocation from fine revenue for the current fiscal year. This total includes allocations for the acute pain prescribing rule video, a continuing medical education (CME) accreditation for a conference on medication-assisted treatment of addiction, and a Governor's Cabinet Opiate Action Team (GCOAT) educational video. Dr. Schottenstein noted that \$25,000 was allocated last fiscal year for the enhanced email system.

Dr. Schottenstein stated that fine revenue for the upcoming fiscal year is expected to be substantially higher and could conceivably reach about \$50,000 per month as more cases become eligible for fining. Dr. Schottenstein noted that a total of \$55,500 in fines have been received since July. Dr. Schottenstein commented that \$50,000 per month is a lot of money and that the Board will need to be creative in devising wellness, education, and outreach programs to use such allocations. Mr. Groeber commented that this could allow for further reduction in licensure fees or the offering of further reduced fees as an incentive for physicians to obtain a DATA 2000 waiver to engaged in medically-assisted treatment of addiction.

## **ACCOUNTS RECEIVABLE**

Dr. Schottenstein stated that there have been two payments of \$5,500. However, additional fines have been received since this report was generated, so the actual total is probably about \$13,000. Dr. Schottenstein observed that there continues to be some variability in fine revenue from month to month, but such revenue should settle into a roughly static pace over time.

Dr. Schottenstein stated that Marcia Gray, L.M.T., who had been fined by the Board, called Ms. Loe. It appears that Ms. Gray had been under the impression that if she simply discontinued her reporting requirements, then everything would be finished as far as her interactions with the Board. Consequently, Ms. Gray was surprised to learn that the Board has levied a fine against her. Dr. Schottenstein stated that it is uncertain if the Board will be able to collect the fine against Ms. Gray.

Dr. Schottenstein stated that Alexander Clark Halkias, M.D., another licensee against whom the Board has levied a fine, is in a similar situation as Ms. Gray.

## **PARTNERS IN PROFESSIONALISM**

Ms. Pollock stated that the Communications Section has been producing videos of portions of the Board meetings so that the video can be edited and presented to medical students at Ohio University, rather than requiring the students to travel to Columbus to observe a meeting. Ms. Wehrle has embedded a video of a licensee's initial probationary appearance into a presentation to medical students. Ms. Pollock stated that the presentation, and particularly the video, was very well-received. Ms. Pollock hoped to continue to accumulate such videos for future use.

Ms. Pollock played the video for the benefit of the Committee.

Ms. Pollock added that she would also like to interview individual probationers as they leave the Board meeting, stating that medical students would also benefit from seeing that interaction. Dr.

Schottenstein commented that some licensees that come before the Board express gratitude and appreciation for the Board. Dr. Schottenstein stated that video of these licensees would be very good for presentation because it will help people understand that the Board tries to help and it is not the adversarial entity that many believe it to be. Mr. Groeber added that the videos can be categorized based on the type of infraction involved so that presentations can be tailored based on the event.

Ms. Pollock stated that she would like to invite Board members to attend the presentations and address the medical students. Dr. Schottenstein commented that he would be happy to volunteer for such a presentation. Mr. Groeber stated that each presentation should end with information on where the students can go within their institutions if they themselves are struggling with substance abuse or other issues. Ms. Pollock agreed. Dr. Edgin suggested that such information also be posted on the Board's website. Mr. Groeber agreed.

Ms. Pollock stated that on October 23, the Board will work with the Ohio Department of Health and other state agencies to roll out the Take Charge Ohio campaign, which is intended to educate both physicians and the public about prescribing for pain management. Dr. Saferin stated that the Board should address the fact that it is not attempting to frighten licensees into not supplying enough medications for their patients. Dr. Saferin commented that a family member recently went to the hospital with kidney stones and was given insufficient pain medication upon discharge. Dr. Saferin noted that the family member was discharged on a Friday and would not be able to follow up with a primary care physician until the following week. Dr. Saferin stated that the physician in question could have prescribed more medication under the Board's rules, but he was essentially frightened into under-prescribing.

## TRAVEL AUTHORIZATION

Dr. Schottenstein stated that Mr. Giacalone was invited by the United States House of Representatives Physician Caucus to participate in the Federal Pain Management Conference on October 5, 2017. Since Mr. Giacalone has already attended the conference, we need to retroactively approve the travel expenses, which had been conditionally approved by Dr. Soin after the September Board meeting. Mr. Groeber stated that Ohio is one of two states that the Physicians Caucus reached out to for insight on approaches to prescribing and new prescribing rules. Mr. Groeber commented that Mr. Giacalone brings a degree of enthusiasm on this topic.

Ms. Loe stated that Mr. Giacalone's total travel expenses was about \$1,200.

**Dr. Saferin moved to approve Mr. Giacalone's travel to the Federal Pain Management Conference on October 5, 2017, and related expenses. Dr. Edgin seconded the motion.** The motion carried.

## INVESTIGATOR VEHICLES

Dr. Schottenstein stated that in the past, the Board had individually reimbursed its investigator staff for automobile expenses. That system has changed so that the Board is now borrowing vehicles that are leased by the Department of Administrative Services (DAS). Dr. Schottenstein noted that DAS has not allowed global positioning satellite (GPS) devices in the vehicles. Dr. Schottenstein stated that the vehicles need to reach at least 6,000 miles per year to break even on cost and that the vehicles may be rotated between investigators who drive relatively more or less so that the 6,000 miles per year minimum can be met for every vehicle. These vehicles are leased for seven years at a monthly cost of

\$165 each. Dr. Schottenstein stated that at some point there is the statistical possibility of damage to a vehicle due to a traffic accident or an increase in maintenance costs. However, after the first full year of using these fleet vehicles, the program has yielded a savings of \$31,499.

Dr. Schottenstein stated that the Board does have the ability to track the vehicles' odometers, and since the investigators use state credit cards to purchase gasoline and those expenses must line up with the odometer reading, there is less concern about the vehicles being used for extracurricular purposes.

## **EXPEDITED LICENSURE**

Mr. Groeber stated that during the Operations Report in today's Board meeting, he will relate the financial benefits of the Board's expedited licensure program. Mr. Alderson, the Board's Chief of Licensure, did a statistical analysis and found that the program has resulted in hundreds of thousands of patients visits that would not have otherwise occurred, millions of dollars in state revenue, and almost \$1,000,000 in state taxes. In addition, routine licensure, which took about 100 days two to three years ago, now takes about 40 days, resulting in 36,000,000 more patient visits in Ohio in a single year.

Mr. Groeber commented that this is all the result of the efforts of the Board's staff and that Mr. Miller was in the process of implementing many of these changes when Mr. Groeber became the Board's Executive Director.

## **ADJOURN**

**Dr. Saferin moved to adjourn the meeting. Dr. Edgin seconded the motion.** The motion carried.

The meeting adjourned at 9:48 a.m.

State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING**

**October 11, 2017**

**30 E. Broad St., Columbus, OH Administrative Hearing Room**

<p><b>Members:</b> Anita Steinbergh, D.O., Chair Michael Schottenstein, M.D. Amol Soin, M.D. Robert Giacalone</p> <p>Other Board member present: Ronan M. Factora, M.D. Mark A. Bechtel, M.D.</p>	<p><b>Staff:</b> Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Steinbergh called the meeting to order at 3:38 p.m.

**INITIAL PROBATIONARY APPEARANCES**

**Cari R. Corfman, M.T.**

Ms. Corfman is making her initial appearance before the Committee pursuant to the terms of her July 12, 2017 Consent Agreement. Dr. Steinbergh reviewed Ms. Corfman's history with the Board.

Dr. Schottenstein, noting that Ms. Corfman had practiced massage therapy for a long time after the expiration of her license, asked if she had been aware that the license had expired. Ms. Corfman answered that she had been unaware that her license had expired. Ms. Corfman explained that when two years passed and she didn't receive a renewal notice, she went onto the Board's website and that is when she learned the license had expired. Dr. Schottenstein asked if Ms. Corfman removed herself from practice at that point. Ms. Corfman replied that she had thought that she was permitted to continue practice because she had applied for reinstatement of her license.

Dr. Schottenstein observed that the suspension of Ms. Corfman's reinstated license is nearly over and asked if Ms. Corfman planned to return to practice immediately. Ms. Corfman replied that she hoped to resume practice as soon as the suspension was over and that her clients have stayed with her. In response to additional questions, Ms. Corfman stated that she is self-employed, is the sole proprietor of her business, and that her clients come to her facility for the massage therapy. Ms. Corfman stated that she has no questions about her Consent Agreement.

Dr. Steinbergh asked what Ms. Corfman can do to reach out to her professional community to help other massage therapists avoid the same problem that Ms. Corfman has had. Ms. Corfman stated that massage therapists can be more aware and proactive to prevent the expiration of their licenses. Ms. Corfman commented that she has never seen anyone from the Medical Board check on massage therapists and that that may help. Ms. Corfman stated that in her case it was an oversight and that she takes full responsibility. Ms. Corfman stated that she was going through many things in her life at that time, but that that is not an excuse.

Dr. Steinbergh asked if there is any local professional association for massage therapists in Ms. Corfman's area besides the state-level association. Ms. Corfman replied that there is not such an

association. Dr. Steinbergh asked if Ms. Corfman engages in continuing education for massage therapy. Ms. Corfman answered that she occasionally does continuing education. Dr. Steinbergh suggested that Ms. Corfman become involved in a massage therapy association and to encourage other massage therapists to do the same. Dr. Steinbergh stated that a professional association is a good way to keep in touch professionally, learn new things, and to perhaps reduce the problem of massage therapists practicing after allowing their licenses to expire. Ms. Corfman agreed.

**Dr. Schottenstein moved to continue Ms. Corfman under the terms of her July 12, 2017 Consent Agreement, with future appearances before the Board's Secretary or Designee. Dr. Soin seconded the motion.** The motion carried.

**Robert R. Daiber, M.D.**

Dr. Daiber is making his initial appearance before the Committee pursuant to the terms of the Board's Order of July 12, 2017. Dr. Steinbergh reviewed Dr. Daiber's history with the Board.

Responding to questions from Dr. Soin, Dr. Daiber stated that he is not currently employed as a physician and he is doing some non-medical odd jobs. Dr. Daiber stated that his sobriety date is September 11, 2016, and his recovery program is going very well. Dr. Daiber commented that he had had about 15 years of sobriety prior to his relapse, so it was fairly easy to get back into the program of recovery. Dr. Daiber also did 28-days of inpatient treatment at the Brighton Center for Recovery. Dr. Daiber stated that he has a sponsor and that his family is very supportive. Dr. Daiber stated that he attends rehabilitation meetings at least four times per week and a caduceus group on most weeks. Dr. Daiber stated that he has used his time during his suspension to study and do continuing medical education (CME).

Dr. Soin asked if Dr. Daiber has any questions about his Board Order. Dr. Daiber replied that he has no questions.

Dr. Steinbergh asked Dr. Daiber to compare the treatment he had initially received in 2000 to the treatment he received at the Brighton Center 2017 following his relapse. Dr. Daiber stated that his treatment in Toledo was an intensive outpatient treatment, while his treatment at the Brighton Center was residential inpatient. Dr. Daiber stated that he had a very good experience at the Brighton Center and it helped him understand why he relapsed. Dr. Daiber commented that his prior treatment in Toledo was also good, noting his long period of sobriety afterwards.

Dr. Schottenstein noted that Dr. Daiber had previously stated that he is using the additional time he now has to utilize different recovery techniques. Dr. Schottenstein asked what different techniques Dr. Daiber is using. Dr. Daiber replied that he attends many rehabilitation meetings, and because he is not pressed for time he is able to stay afterwards to speak with people and get more into the fellowship of the recovery. Dr. Daiber stated that he has been doing things on a spiritual level with his sister, such as going to church, and that this has been quite helpful. Dr. Daiber commented that he also spends time reading about recovery, about medicine, and for pleasure.

**Dr. Schottenstein moved to continue Dr. Daiber under the terms of the Board's Order of July 12, 2017, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion.** The motion carried.

**Anshuli Gupta, M.D.**

Dr. Gupta is making her initial appearance before the Committee pursuant to the terms of her July 12, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Gupta's history with the Board.

Mr. Giacalone asked if Dr. Gupta's license is still suspended. Dr. Gupta replied that her Step II Consent Agreement reinstating her license was ratified by the Board earlier today. Dr. Gupta stated that she is currently on leave from her family medicine residency at The Ohio State University (OSU). Dr. Gupta stated that her residency program has been extremely supportive and that they will work on the re-credentialing process once her licensing is official reinstated. Dr. Gupta stated that her sobriety date is August 25, 2017.

In response to further questions from Mr. Giacalone, Dr. Gupta stated that she has a strong support system that includes the Alcoholics Anonymous (AA) communities in Columbus and in her hometown of Zanesville, Ohio. Dr. Gupta stated that she has a very good connection to her sponsor and that she is still very close to her counselor at Shepherd Hill Hospital. Dr. Gupta stated that her residency faculty and the Graduate Medical Education Department at OSU have been a good source of support for professional concerns. Dr. Gupta added that her parents and her sister are very supportive. Dr. Gupta commented that her parents have removed all alcohol from their home and have completely abstained from all mood-altering substances in order to help support Dr. Gupta in her new way of life.

Dr. Schottenstein asked if there has been any resolution regarding Dr. Gupta's interaction with law enforcement. Dr. Gupta answered that that matter is still in progress and that she is scheduled for another pre-trial motion in November. Dr. Gupta stated that she and her attorney hoped that she will be able to enter into intervention in lieu of conviction.

Mr. Giacalone asked if Dr. Gupta had any questions about her Consent Agreement or for the Committee. Dr. Gupta stated that she had no questions.

**Mr. Giacalone moved to continue Dr. Gupta under the terms of her October 11, 2017 Step II Consent Agreement, with future appearances before the Board's Secretary or Designee. Dr. Schottenstein seconded the motion. The motion carried.**

**Rajive Tandon, M.D.**

Dr. Tandon is making his initial appearance before the Committee pursuant to the terms of his July 12, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Tandon's history with the Board.

Responding to questions from Dr. Schottenstein, Dr. Tandon stated that his sobriety date is May 23, 2017. Dr. Tandon stated that his sobriety is going very well and he does not have any cravings. Dr. Tandon stated that he took vivitrol for about two months to prevent cravings, but he stopped that medication on advice from Dr. Whitney from Shepherd Hill Hospital due to side-effects of joint pain and shortness of breath. Dr. Schottenstein asked if the vivitrol had helped with Dr. Tandon's cravings while he was taking it. Dr. Tandon responded that the vivitrol had made no difference. Dr. Tandon stated that his cravings did not return when he stopped the medication and that his behavior has been appropriate.

Dr. Schottenstein asked if anything has resulted from Dr. Tandon's interaction with law enforcement. Dr. Tandon replied that that matter is currently in process. Dr. Schottenstein asked Dr. Tandon to describe his recovery program. Dr. Tandon stated that he attends a rehabilitation meeting every day and he is currently working on Step 4 with his sponsor. Dr. Tandon added that he also attends aftercare at Shepherd Hill Hospital and he reads from Alcoholics Anonymous' The Big Book as much as possible. Dr. Tandon also undergoes regular drug screenings.

Dr. Schottenstein asked about Dr. Tandon's practice prior to this incident. Dr. Tandon stated that he had been an assistant professor in pulmonary critical care medicine at The Ohio State University and was running the pulmonary hypertension program.

Dr. Steinbergh asked if Dr. Tandon had any questions for the Committee. Dr. Tandon replied that he had no questions.

**Dr. Schottenstein moved to continue Dr. Tandon under the terms of his July 12, 2017 Consent Agreement, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion.** The motion carried.

#### **APPROVAL OF REPORTS OF CONFERENCES**

**Dr. Schottenstein moved to approve the Compliance Staff's Reports of Conferences for September 11 & 12, 2017. Mr. Giacalone seconded the motion.** The motion carried.

#### **MINUTES REVIEW**

**Dr. Schottenstein moved to approve the draft minutes from September 13, 2017. Mr. Giacalone seconded the motion.** All members voted aye. The motion carried.

#### **ALY MOHAMED ALY ZEWAİL, M.D.**

Dr. Schottenstein asked if Dr. Zewail is doing well and if he had obtained a position in Louisiana. Ms. Jones answered that Dr. Zewail's job opportunity in Louisiana did not eventuate. Ms. Jones stated that Dr. Zewail is currently in the process of entered an addiction medicine fellowship with the Summa Health System in Ohio.

The meeting adjourned at 4:02 p.m.

Anita M. Steinbergh, D.O.  
Chair

blt