MINUTES

THE STATE MEDICAL BOARD OF OHIO

May 9, 2018

Robert P. Giacalone, President, called the meeting to order at 10:22 a.m. in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Andrew P. Schachat, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Amol Soin, M.D.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; Ronan M. Factora, M.D.; Mark A. Bechtel, M.D.; Betty Montgomery; and Sherry L. Johnson, D.O. The following member did not attend: Michael L. Gonidakis.

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, 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; Joan K. Wehrle, Education and Outreach Program Manager; Nathan Smith, Staff Attorney; Rebecca Marshall, Chief Enforcement Attorney; Marcie Pastrick, Mark Blackmer, Cheryl Pokorny, Angela McNair, James Roach, Kimberly Lee, and Adam Meigs, Enforcement Attorneys; Kyle Wilcox, Melinda Snyder, and Emily Pelphrey, Assistant Attorneys General; R. Gregory Porter, Chief Hearing Examiner; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; Annette Jones and Angela Moore, Compliance Officers; Colin DePew, Legal and Policy Staff Attorney; Jacqueline A. Moore, Legal/Public Affairs Assistant; and Benton Taylor, Board Parliamentarian.

MINUTES REVIEW

Dr. Edgin moved to approve the draft minutes of the April 11, 2018, Board meeting, as written. Dr. Bechtel seconded the motion. A vote was taken:

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

The motion carried.

APPLICANTS FOR LICENSURE

Dr. Bechtel moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the physician applicants listed in
Exhibit “A” and the allied professional applicants in Exhibit “B,” as listed in the Agenda Supplement and handouts; and to approve the results of the April 27, 2018 Cosmetic Therapy Examination and to certify as passing and license those receiving a score of 75 or greater on their examination, and to certify as failing and deny licensure to those who received a score of less than 75 on the examination, as listed in the Agenda Supplement. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

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<tr>
<td>Dr. Rothermel</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Saferin</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Schottenstein</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Soin</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Schachat</td>
<td>aye</td>
</tr>
<tr>
<td>Mr. Giacalone</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Edgin</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Factora</td>
<td>aye</td>
</tr>
<tr>
<td>Ms. Montgomery</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Johnson</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Bechtel</td>
<td>aye</td>
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</tbody>
</table>

The motion carried.

Dr. Soin moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the applicants listed in Exhibit “C” for the Certificate to Recommend Medical Marijuana, as listed in the Agenda Supplement and handouts. Dr. Saferin seconded the motion. A vote was taken:

ROLL CALL:

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</thead>
<tbody>
<tr>
<td>Dr. Rothermel</td>
<td>aye</td>
</tr>
<tr>
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<td>aye</td>
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<td>aye</td>
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<td>Mr. Giacalone</td>
<td>aye</td>
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<td>Dr. Edgin</td>
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<td>Ms. Montgomery</td>
<td>aye</td>
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<tr>
<td>Dr. Johnson</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Bechtel</td>
<td>aye</td>
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</tbody>
</table>

The motion carried.

REPORTS AND RECOMMENDATIONS

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

Mr. Giacalone 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: Katie E. Wolterman; and Fares Fhemi Yasin, M.D. A roll call was taken:
ROLL CALL: Dr. Rothermel - aye  
Dr. Saferin - aye  
Dr. Schottenstein - aye  
Dr. Soin - aye  
Dr. Schachat - aye  
Mr. Giacalone - aye  
Dr. Edgin - aye  
Dr. Factora - aye  
Ms. Montgomery - aye  
Dr. Johnson - abstain  
Dr. Bechtel - aye

Mr. Giacalone 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. Soin - aye  
Dr. Schachat - aye  
Mr. Giacalone - aye  
Dr. Edgin - aye  
Dr. Factora - aye  
Ms. Montgomery - aye  
Dr. Johnson - abstain  
Dr. Bechtel - aye

Mr. Giacalone noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member. Mr. Giacalone stated that the matter of Ms. Wolterman is non-disciplinary in nature, and therefore all Board members may vote in that matter.

Mr. Giacalone 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.

KATIE E. WOLTERMAN

Mr. Giacalone directed the Board’s attention to the matter of Katie E. Wolterman. No objections have been filed. Mr. Porter was the Hearing Examiner.

Mr. Giacalone stated that a request to address the Board has been filed on behalf of Ms. Wolterman. Five minutes will be allowed for that address.
Ms. Wolterman asked the Board to utilize its discretionary rights to bypass the nine-month minimum requirement for completing the course work for massage therapist licensure. Ms. Wolterman stated that, as noted in the Report and Recommendation, she attended a full-time program at the Finger Lakes School of Massage in Mount Kisco, New York, and completed 1,000 hours of coursework in massage therapy. Ms. Wolterman stated that although she has exceeded the 750 hours of coursework required by Ohio, she has been denied licensure because the coursework was completed in seven months.

Ms. Wolterman continued that in her hearing the Board’s Deputy Director for Licensure, Joseph Turek, was asked for the reason for the nine-month minimum. Mr. Turek had replied that the provision was meant to prevent fraud. Ms. Wolterman stated that it was established in the hearing that the Finger Lakes School of Massage is a credible, reputable school. Ms. Wolterman further pointed out that Mr. Turek testified that he had no reason to believe that the school was not in good standing.

Ms. Wolterman opined that the 1,000 hours of coursework that she completed in the seven-month full-time program meets the requirements of the State of Ohio. Ms. Wolterman stated that there was no fraud committed by either herself or the Finger Lakes School of Massage, so it appeared to her that the nine-month minimum required by law does not apply in her case. Ms. Wolterman stated that she has worked very hard to become a massage therapist and she asked the Board to allow her to follow her passion by granting her a license to practice massage therapy in her home state of Ohio.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Ms. Pelphrey stated that she did not wish to respond.

Dr. Schottenstein moved to approve and confirm Mr. Porter’s Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Katie E. Wolterman. Dr. Soin seconded the motion.

Mr. Giacalone stated that he will now entertain discussion in the matter of Ms. Wolterman.

Dr. Bechtel stated that this matter is related to the fact that Ms. Wolterman completed her massage therapy training in seven months rather than the minimum nine months required by Board rule. Dr. Bechtel stated that Ms. Wolterman graduated from the Finger Lakes School of Massage in April 2016 and was licensed to practice massage therapy in New York in October 2016. Dr. Bechtel noted that Ms. Wolterman’s New York license is still active. Dr. Bechtel further noted that Ms. Wolterman passed the Massage and Bodywork Licensing Examination (MBLEX) in November 2016. Dr. Bechtel observed that Mr. Turek’s testimony at the hearing that Ms. Wolterman’s massage therapy education had met or exceeded all of the Board’s requirements, except for that fact that she completed her training in less than nine months. Dr. Bechtel stated that Ms. Wolterman wished to return to Ohio to spend time with her elderly mother.

Dr. Bechtel continued that according to Ms. Wolterman’s testimony, the Finger Lakes School of Massage is in good standing with the American Massage Therapy Association, is recognized by the National Certification Board for Therapeutic Massage & Bodywork, and has been accredited by the Accrediting Council for Continuing Education and Training. During her training, Ms. Wolterman completed 1,000 hours of training, exceeding the 750 hours required in Ohio and, according to her testimony, graduated with a grade point average of 94.6. Dr. Bechtel explained that the Finger Lakes School of Massage offers a part-time massage therapy program which lasts 21 months and a full-time program that lasts seven months. Both programs are 1,000 hours and have identical curricula. Dr. Bechtel stated that if Ms.
Wolterman had taken the part-time program she would have unquestionably qualified for Ohio licensure, but this case has arisen because she chose the full-time program and completed it in seven months.

Dr. Bechtel stated that the evidence in the hearing record would suggest that Ms. Wolterman has completed the requirements to practice massage therapy in Ohio. Dr. Bechtel agreed with the Proposed Order to approve Ms. Wolterman’s application for licensure, provided that she meets all the statutory and regulatory requirements.

Dr. Saferin stated that this matter was discussed this morning in the Licensure Committee meeting and the consensus of the Committee was that the rule does not grant the Board the ability to exercise discretion in this matter. Dr. Saferin pointed out that past applicants have been denied licensure because the Board was not authorized to exercise discretion. Dr. Saferin agreed that Ms. Wolterman had the necessary education to practice massage therapy, but stated that the Board does not have the discretionary ability to overturn the rule.

Dr. Saferin stated that the solution to this issue is to change the rule through the rule-making process so that the Board can determine educational equivalency, similar to the rule for physician licensure. Once the rule is changed, Ms. Wolterman would qualify for licensure. Dr. Saferin asked the Board not to grant Ms. Wolterman licensure at this time due to the bad precedent it would set.

Dr. Schottenstein asked how long it would take to change the rule as Dr. Saferin has suggested. Ms. Anderson replied that any change to the rule would have to go through the whole, which would include submitting the rule to the Common Sense Initiative (CSI) and the Joint Committee on Agency Rule Review (JCARR). Ms. Anderson estimated that even though the amendment would probably not be controversial, the process would take at least six months.

Mr. Giacalone commented that the Board does not need to be a slave to the rule. Mr. Giacalone stated that Ms. Wolterman has completed 1,000 hours of massage therapy education and she is more than qualified for licensure. Mr. Giacalone suggested that the Board grant Ms. Wolterman’s application for licensure and also pursue the rule change recommended by Dr. Saferin. Mr. Giacalone opined that it was ludicrous that Ms. Wolterman would have been licensed had she taken the 21-month part-time program, but she could be penalized because she took the seven-month full-time program.

Dr. Soin commented that if the consensus of the Board is to change the rule, then the argument about setting a precedent is moot. Mr. Giacalone and Dr. Schottenstein agreed.

Dr. Schottenstein stated that he appreciates Dr. Saferin’s thoughts, but he opined that cases like Ms. Wolterman’s is the reason that there is a Board. Dr. Schottenstein stated that the Board can hear cases and exercise discretion rather than having issues essentially go through a computer algorithm for a result. Dr. Schottenstein favored Mr. Giacalone’s suggestion to grant Ms. Wolterman a license and to also begin on changing the rule. Dr. Schottenstein speculated that no one would oppose modifying the rule in a matter consistent with the approval of Ms. Wolterman’s application. Dr. Schottenstein stated that he is mindful of the rule and the setting of precedent, but he is also mindful of provoking an unjust outcome. Dr. Schottenstein opined that denial Ms. Wolterman’s application would be an unjust outcome.

Ms. Montgomery asked if any kind of legal challenge could result if the Board issues Ms. Wolterman a license. Ms. Anderson replied that the person who would have standing to challenge the issuance of the license would probably not do so. However, Ms. Anderson stated that it would be a legal concern if the
Board issues a license contrary to its rule, particularly considering applicants who have been denied under this rule in the past and applicants who the Board may choose to deny in the future. Ms. Anderson stated that the Board's intention to pursue amendments to the rule will ameliorate the situation somewhat. Mr. Giacalone commented that if other similarly-situated applicants in the past, then those people also deserve a license. Mr. Giacalone stated that such similarly-situated people could challenge the denial, but he opined that it would only be an academic exercise since the Board intends to change the rule.

Dr. Saferin reiterated that he is sympathetic to Ms. Wolterman’s situation and he opined that she is more than qualified to practice massage therapy. Dr. Saferin stated that the issue is that other applicants have been denied by the Board because the Board was not authorized to determine educational equivalency under the rule. Dr. Saferin stated that if the Board grants Ms. Wolterman a license, it will have to do so for others even before the rule is changed. Dr. Saferin stated that this is concerning to him because the Medical Board is a group that follows the rules.

Mr. Groeber commented that if other individuals want to apply for licensure, they would go through the same process as Ms. Wolterman.

Dr. Bechtel asked why the minimum time period of nine months for massage therapy education is included in the rule. Dr. Saferin replied that he did not know why that time period was selected because it was done before his time on the Board. Dr. Saferin commented that if the rule simply contained a phrase such as “…and equivalent to be determined by the Board,” then the Board could determine that Ms. Wolterman’s education is adequate and grant her a license. Dr. Saferin stated that the Board’s staff is already working on changing the rule and that the Board should not set a precedent before the rule is changed.

Mr. Giacalone quoted Mr. Turek’s testimony in the hearing regarding why the rule includes a minimum nine-month time period:

I am not [aware of the reason why the Board requires that the program not take less than nine months]. It may have to do with trying to prevent fraud. And we do see sometimes fraudulent transcripts, sort of fraudulent of fly-by-night program.

Mr. Giacalone pointed out that fraud is not an issue in this case and there is no question about the integrity of the school transcripts or of Ms. Wolterman. Mr. Giacalone agreed with Dr. Schottenstein’s comments and added that if the Board is only meant to rubber-stamp things, then there is no reason for the Board to be here. Mr. Giacalone reiterated that the Board intends to change this rule as discussed.

A vote was taken on Dr. Schottenstein’s motion to approve:

ROLL CALL:  
Dr. Rothermel - aye  
Dr. Saferin - nay  
Dr. Schottenstein - aye  
Dr. Soin - aye  
Dr. Schachat - aye  
Mr. Giacalone - aye  
Dr. Edgin - aye  
Dr. Factora - nay  
Ms. Montgomery - nay
The motion to approve carried.

FARES FHEMI YASIN, M.D.

Mr. Giacalone directed the Board’s attention to the matter of Fares Fhemi Yasin, M.D. No objections have been filed. Ms. Blue was the Hearing Examiner.

Dr. Schottenstein moved to approve and confirm Ms. Blue’s Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Fares Fhemi Yasin, M.D. Ms. Montgomery seconded the motion.

Mr. Giacalone stated that he will now entertain discussion in the matter of Dr. Yasin.

Ms. Montgomery stated that Dr. Yasin graduated from medical school in Puerto Rico and was licensed to practice medicine in Puerto Rico in 2003. Dr. Yasin began practice in Michigan in 2005 as a family medicine practitioner. Ms. Montgomery noted that Dr. Yasin in not board-certified in any specialty. Ms. Montgomery noted that Dr. Yasin also apparently practiced as a dentist in the Dominican Republic for one year.

Ms. Montgomery continued that the Michigan Board of Medicine considered eleven counts against Dr. Yasin in April 2011, including issues such as poor record-keeping, failure to obtain proper patient histories, failure to monitor properly, failure to properly use Michigan’s prescription drug monitoring program, failure to have a treatment plan, improper prescribing, and behavior that was determined to be incompetent and a violation of Michigan rules and statutes. As a result, Dr. Yasin entered into a Consent Order with the Michigan Board in August 2012 which included a $1,500 fine, probation for one year, and a requirement to take continuing medical education (CME) courses. The Consent Order also limited Dr. Yasin so that no more than 25% of his practice could be involved in chronic pain management.

In December 2014 Dr. Yasin, who was no longer under probation at that time, was interviewed by a Michigan Board investigator. The interview revealed that 90% of Dr. Yasin’s patients were being prescribed controlled substances. Ms. Montgomery noted that while only 8% of alprazolam tablets dispensed in Michigan were for 2 mg strength, 70% of Dr. Yasin’s patients were given alprazolam tablets of 2 mg or more. A review of Dr. Yasin’s charts again showed a failure to properly monitor patients for abuse or diversion of drugs, failure to use appropriate drug screening, failure to check the prescription drug monitoring program, prescribing inappropriate combinations of drugs, failure to consider alternative approaches, and other issues. In July 2016, the Michigan Board approved a Consent Order that reprimanded Dr. Yasin, fined him $7,500, and required him to take a medical competency assessment and additional CME on prescribing. The Consent Order also barred Dr. Yasin from obtaining, prescribing, possessing, dispensing, or administering any controlled substances unless it had been prescribed to him by another healthcare provider. Ms. Montgomery characterized the Michigan Board’s decision to approve this Consent Order as “very kind.”

Ms. Montgomery stated that in December 2016 Dr. Yasin submitted an application for licensure in Ohio. Dr. Yasin did not appear at his hearing in Ohio, but he submitted a statement indicating that he has learned his lesson, that he now understands more about how one should prescribe, and that he is going
to be a better physician. Dr. Yasin also indicated that he does not want to use or prescribe controlled substances, at least in the near future.

Ms. Montgomery stated that she whole-heartedly agrees with the Hearing Examiner’s Proposed Order, which would permanently deny Dr. Yasin’s application for licensure in Ohio.

Dr. Schottenstein stated that it would be one thing if a doctor had had only one consent order with another state regarding minimal standards and was taking steps to correct the issues. However, Dr. Yasin’s second Consent Order essentially mimics his first from four years prior. Dr. Schottenstein asked how the Ohio Board could have faith that the same conversation will not occur again four years from now. Dr. Schottenstein stated that the implication is that Dr. Yasin cannot be successful remediated to practice medicine appropriately. Dr. Schottenstein stated that he would be concerned about the safety of the public if Dr. Yasin were to have a license in Ohio. Dr. Schottenstein could not identify any interventions that would improve the situation because interventions have not worked in the past.

Dr. Schottenstein continued that Dr. Yasin’s explanation that his prescriptions had been forged or were the result of clerical errors is very difficult to believe in this context. Dr. Schottenstein noted that in his statement, Dr. Yasin admitted that he had inadvertently prescribed controlled substances because he had not realized that those drugs were controlled substances. Dr. Schottenstein stated that it is unethical to prescribe a medication when one does not know such a basic fact about it. Dr. Schottenstein further stated that Dr. Yasin’s explanation does not sound plausible. Dr. Schottenstein stated that for all these reasons, he supports the Proposed Order.

Mr. Giacalone commented that Dr. Yasin’s over-prescribing was ridiculous, noting that one patient alone received Oxycontin 80 mg 60 tablets, Xanax 1 mg, Phenergan w/Codeine cough syrup, and Valium. Mr. Giacalone stated that Dr. Yasin failed to take basic steps such as checking the prescription drug monitoring program. Mr. Giacalone stated that Dr. Yasin is creating chaos, hurting families, and hurting people instead of helping them. Mr. Giacalone agreed with the Proposed Order.

A vote was taken on Dr. Schottenstein’s motion to approve:

ROLL CALL:

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<tbody>
<tr>
<td>Dr. Rothermel</td>
<td>abstain</td>
</tr>
<tr>
<td>Dr. Saferin</td>
<td>abstain</td>
</tr>
<tr>
<td>Dr. Schottenstein</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Soin</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Schachat</td>
<td>aye</td>
</tr>
<tr>
<td>Mr. Giacalone</td>
<td>aye</td>
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<tr>
<td>Dr. Edgin</td>
<td>aye</td>
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<tr>
<td>Dr. Factora</td>
<td>aye</td>
</tr>
<tr>
<td>Ms. Montgomery</td>
<td>aye</td>
</tr>
<tr>
<td>Dr. Johnson</td>
<td>abstain</td>
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<tr>
<td>Dr. Bechtel</td>
<td>aye</td>
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The motion to approve carried.

**EXECUTIVE SESSION**

Dr. Soin 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. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - aye
Dr. Bechtel - aye

The motion to approve 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. Marshall, the Enforcement Attorneys, the Assistant Attorneys General, Mr. Smith, Ms. Moore, Mr. DePew, and Mr. Taylor in attendance.

The Board returned to public session.

RATIFICATION OF SETTLEMENT AGREEMENTS

BRYAN DAVID BORLAND, D.O. – PROBATIONARY CONSENT AGREEMENT

Dr. Schottenstein moved to ratify the proposed Probationary Consent Agreement with Dr. Borland. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain

The motion to ratify carried.
BHUPINDER CHAHAL, M.D. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

Dr. Schottenstein moved to ratify the proposed Permanent Surrender with Dr. Chahal. Dr. Edgin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - abstain
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain

The motion to ratify carried.

REBECCA THERESE CIRINO, D.O. – CONSENT AGREEMENT

Dr. Schottenstein moved to ratify the proposed Consent Agreement with Dr. Cirino. Dr. Edgin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain

The motion to ratify carried.

ROBERT ALBIN DIXON, D.O. – VOLUNTARY PERMANENT RETIREMENT FROM THE PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY

Dr. Schottenstein moved to ratify the proposed Voluntary Permanent Retirement with Dr. Dixon. Dr. Edgin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain

The motion to ratify carried.

JESSICA ELLIOTT, R.C.P. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE RESPIRATORY CARE AS A LICENSED RESPIRATORY CARE PROFESSIONAL

Dr. Schottenstein moved to ratify the proposed Permanent Surrender with Ms. Elliott. Dr. Edgin seconded the motion. A vote was taken:

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

The motion to ratify carried.

DANIEL W. PALMER, M.D. – CONSENT AGREEMENT

Dr. Schottenstein moved to ratify the proposed Consent Agreement with Dr. Palmer. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:  
Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - aye
The motion to ratify carried.

TRACY REANN RUEDISUELI, P.A. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE AS A PHYSICIAN ASSISTANT

Dr. Schottenstein moved to ratify the proposed Permanent Surrender with Ms. Ruedisueli. Dr. Edgin seconded the motion. A vote was taken:

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

The motion to ratify carried.

JEROME BERNARD YOKIEL, M.D. – STEP II CONSENT AGREEMENT

Dr. Schottenstein moved to ratify the proposed Step II Consent Agreement with Dr. Yokiel. Dr. Soin seconded the motion. A vote was taken:

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

The motion to ratify carried.

MICHAEL JOHN HOWKINS, D.O. – STEP I CONSENT AGREEMENT

Dr. Schottenstein moved to ratify the proposed Step I Consent Agreement with Dr. Howkins. Dr. Soin seconded the motion. A vote was taken:

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

The motion to ratify carried.

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

Ms. Marshall reviewed the proposed citations for the members of the Board.

Dr. Schottenstein stated that he had questions regarding proposed citation #1 for Muhammad K. Ahsan, M.D. Specifically, Dr. Schottenstein asked why the citation was not a summary suspension of the physician’s license. Ms. Marshall stated that the physician’s prescribing in Ohio is limited to his practice as a hospitalist. Ms. Marshall stated that one of the criterion for a summary suspension is a risk of serious harm to patients in Ohio. Ms. Marshall stated that the physician’s high level of prescribing took place in Michigan, not Ohio, and occurred from 2015 to 2016 when he worked in a Michigan pain clinic. Ms. Marshall further noted that according to the Michigan Order, the physician had a significant decrease in prescribing beginning in August 2016. Ms. Marshall stated that for these reasons, it cannot be showed that the physician represents a risk of serious harm to patients in Ohio at this time.

Mr. Giacalone observed that the administrative complaint in Michigan against the physician cites the locations that the physician worked, including one in Elyria, Ohio. Mr. Giacalone opined that proposed citation #1 should be a summary suspension based on his very poor prescribing habits, including prescribing 375 morphine-equivalent doses (MED) to one patient and prescribing medications to patients who frequently abused and diverted drugs. Mr. Giacalone stated that if this physician is not a bad prescriber, then he is incompetent and should not be practicing in a hospital.

Ms. Marshall agreed with Mr. Giacalone’s opinion, but stated that a summary suspension cannot be legally supported by prescribing that is two years old and took place in another state. Ms. Marshall stated that if the Board receives evidence of inappropriate prescribing that is more recent or occurred in Ohio, then he could be summarily suspended. Ms. Marshall stated that the Board’s Secretary and Supervising Member make the decision of whether a citation should include a summary suspension based on the totality of evidence, including evidence that cannot be disclosed in the proposed citation.

Mr. Giacalone disagreed and stated that the physician should be summarily suspended because he has acted inappropriately and has practiced in Ohio. Mr. Giacalone stated that he intends to vote against proposed citation #1 because he feels it should include a summary suspension of the physician’s Ohio medical license.

Dr. Schottenstein moved to send the Notice of Opportunity for Hearing to Muhammad K. Ahsan, M.D. Dr. Factora seconded the motion. A vote was taken:
ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - nay
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain

The motion to send carried.

Dr. Schottenstein moved to send the Notice of Opportunity for Hearing to Thomas Ranieri, M.D. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain

The motion to send carried.

Dr. Schottenstein moved to send the Notices of Opportunity for Hearing to Ronnie Christopher Parker, D.O.; Victorio Cajigal Rodriguez, M.D.; and Johnny Ray Trotter, II, M.D. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - abstain
Dr. Saferin - abstain
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Johnson - abstain
Dr. Bechtel - abstain
The motion to send carried.

RULES AND POLICIES

Ms. Debolt stated that the rules in Chapters 4731-10, 4731-20, and 4731-25, of the Ohio Administrative Code have had public hearing, have been approved by the Joint Committee in Agency Rule Review, and are ready to be adopted by the Board.

Dr. Saferin moved that the proposed rules in Chapters 4731-10, 4731-20, and 4731-25 be adopted, with an effective date of May 31, 2018. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

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<tr>
<th>Name</th>
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<tr>
<td>Dr. Rothermel</td>
<td>aye</td>
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<tr>
<td>Dr. Saferin</td>
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<td>Dr. Schottenstein</td>
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<td>Dr. Soin</td>
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<td>Dr. Schachat</td>
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<td>Mr. Giacalone</td>
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<td>Dr. Edgin</td>
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<td>Dr. Factora</td>
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<td>Ms. Montgomery</td>
<td>aye</td>
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<tr>
<td>Dr. Johnson</td>
<td>abstain</td>
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<tr>
<td>Dr. Bechtel</td>
<td>aye</td>
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The motion carried.

Ms. Debolt updated the Board on the status of the proposed rules establishing a confidential monitoring program for licensees with a mental or physical illness. Ms. Debolt stated that the Common Sense Initiative (CSI) have approved the rules as drafted and they will be filed with the Joint Committee on Agency Rule Review (JCARR) no later than next week. Ms. Debolt speculated that the rules could become effective by the end of this summer.

APPOINTMENT TO COMMITTEE ON PRESCRIPTIVE GOVERNANCE

Ms. Debolt stated that Katherine Clark, D.O., one of the Board’s appointees to the Committee on Prescriptive Governance (CPG), is recommended for reappointment to another term on that Committee. Dr. Schottenstein asked Ms. Debolt to briefly review the Committee’s role and function. Ms. Debolt responded that the CPG determined that formulary for advanced practice nurses.

Dr. Bechtel moved to appoint Katherine Clark, D.O., to the Committee on Prescriptive Governance for a term starting May 1, 2018 and ending April 30, 2020. Dr. Saferin seconded the motion. A vote was taken:

ROLL CALL:

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<tr>
<td>Dr. Rothermel</td>
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<td>Dr. Saferin</td>
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<td>Dr. Schottenstein</td>
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<td>Dr. Soin</td>
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<tr>
<td>Dr. Schachat</td>
<td>aye</td>
</tr>
<tr>
<td>Mr. Giacalone</td>
<td>aye</td>
</tr>
</tbody>
</table>
Dr. Edgin - aye  
Dr. Factora - aye  
Ms. Montgomery - aye  
Dr. Johnson - abstain  
Dr. Bechtel - aye  

The motion carried.

**APPOINTMENT TO DIETETICS ADVISORY COUNCIL**

Mr. Smith stated that at last month’s Board meeting, the Board appointed six people to the Dietetics Advisory Council. At this time, the Board staff is recommending Amie N. Heap, M.P.H., R.D., to fill the seventh seat on the Council. Mr. Groeber explained that at the time when applications to the Council were being considered, Ms. Heap was traveling abroad and could not get her materials into the Board. Since that time, those materials have been received. Mr. Groeber stated that Ms. Heap’s resume is stellar and she currently serves as the head of Abbott Nutrition Health Institute. Mr. Groeber noted that Ms. Heap is recognized as an expert in her field and she will soon be speaking at a conference in Geneva, Switzerland. Mr. Groeber stated that Ms. Heap has been a registered dietitian for a number of years and was just granted licensure in Ohio on April 17. Mr. Groeber stated prior to April 17, Mr. Smith reviewed all applications to the Council with Mr. Giacalone and it was determined that Ms. Heap would be an excellent fit for the Council once she was licensed.

**Dr. Saferin moved to appoint Amie N. Heap, M.P.H., R.D., to the Dietetics Advisory Council for a two-year term. Dr. Soin seconded the motion.** A vote was taken:

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<tr>
<td>Dr. Rothermel</td>
<td>- aye</td>
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<tr>
<td>Dr. Saferin</td>
<td>- aye</td>
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<tr>
<td>Dr. Schottenstein</td>
<td>- aye</td>
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<tr>
<td>Dr. Soin</td>
<td>- aye</td>
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<td>Dr. Schachat</td>
<td>- aye</td>
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<td>Mr. Giacalone</td>
<td>- aye</td>
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<td>Dr. Edgin</td>
<td>- aye</td>
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<tr>
<td>Dr. Factora</td>
<td>- aye</td>
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<tr>
<td>Ms. Montgomery</td>
<td>- aye</td>
</tr>
<tr>
<td>Dr. Johnson</td>
<td>- abstain</td>
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<tr>
<td>Dr. Bechtel</td>
<td>- aye</td>
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</table>

The motion carried.

**OPERATIONS REPORT**

**Human Resources:** Mr. Groeber stated that the Board is hiring an Assistant Chief Enforcement Attorney, as well as a Hearing Examiner to replace the departing Danielle Blue. An investigator for the South region has been selected, pending a background check. Mr. Groeber stated that Stacy Tuerck, the Investigator Supervisor for the South region, recently gave notification that she will be leaving the Board to accept another position, so work will begin to fill that position.

**Investigator Firearms:** Mr. Groeber stated that the Board staff is continuing to work with the union to
implement the changes directed by the Board. Management has continued to work with the union to prepare for the return of firearms should the Board vote to rescind investigator authority to carry firearms at the June 2018 meeting. Mr. Groeber stated that until such time as the Board takes a formal vote, the Board will maintain the investigators’ authority to carry firearms.

**Federation of State Medical Boards Annual Meeting:** Mr. Groeber stated that this year’s Annual Meeting of the Federation of State Medical Boards (FSMB) was very fruitful. Two candidates from Ohio ran for positions with the FSMB. Dr. Steinbergh ran for the Board of Directors, but regrettably she was not elected to that position. Mr. Giacalone was elected by acclamation to the Nominating Committee, which vets candidates that run for office with the FSMB.

Mr. Groeber stated that the Ohio Board had proposed a resolution regarding acute pain opioid prescribing practices. Ohio had proposed that a working group be formed to review these practices by state medical boards and other entities in order to share data and produce a guidance document. Unfortunately, the FSMB’s Reference Committee removed many of the key provisions and the resulting resolution simply states that the Committee will compile the current rules from all the states. Mr. Giacalone commented that the FSMB Board of Directors actually supported Ohio’s proposal. Mr. Groeber agreed and noted that the FSMB leadership has indicated to him that they will continue to advocate for Ohio’s proposal.

**Agency Operations:** Mr. Groeber stated that the influx of respiratory care therapists and dietitians has increased the numbers for the Licensure Section. Mr. Groeber noted that with more licensees, the Board may also see more complaints. Mr. Groeber stated that the average time to issue expedited licenses has increased slightly due to some outliers, but even routine licensure was done in an average of just 20 days in April.

**2018 Board Retreat:** Mr. Groeber reminded the Board members that the 2018 Board Retreat is tomorrow at the Grange Insurance Audubon Center.

**Financial Disclosure Statements:** Mr. Groeber reminded the Board members that Financial Disclosure Forms are due at the Ohio Ethics Commission by May 15. Mr. Groeber stated that the agency pays a fine if a Financial Disclosure Form is not filed by the deadline.

**Public Service Recognition Week:** Mr. Groeber stated that this is Public Service Recognition Week. Mr. Groeber stated that the Board has a wonderful staff that does its best to serve the Board and the public. Mr. Groeber stated that he is always humbled by the people who work for him. Mr. Giacalone stated that the Board is grateful for the outstanding job the staff does. The Board members applauded the staff.

REPORTS BY ASSIGNED COMMITTEE

**FINANCE COMMITTEE**

**FISCAL REPORT**

Dr. Schottenstein stated that the Board’s revenue in March 2018 was $1,420,343, a record amount of monthly review and a substantial increase from the approximately $840,000 in revenue from February. Dr. Schottenstein stated that this revenue is largely a reflection of the April 1 deadline for license renewal of many physician licenses. Dr. Schottenstein stated that similar review is expected for April 2018 due to
physician training certificates and license renewals for respiratory care therapists and dietitians. For Fiscal Year 2018, the Board’s net revenue is no longer negative, although it is still behind Fiscal Year 2016.

Dr. Schottenstein stated that the Board’s cash balance in March 2018 was $4,353,742. The cash balance peaked at $4,700,000 on April 3, and $1,100,000 was subsequently transferred from the Board as the final payment of the eLicense development project. Dr. Schottenstein stated that the Board’s current cash balance is $3,600,000, but it is expected to be above $4,000,000 again soon.

Dr. Schottenstein stated that expenditures have increased 4.2% year-to-date, which is consistent with the typical yearly increase of 4% in payroll.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated that the Board has collected fine payments totaling $25,000 since the last Board meeting, $7,500 of which is related to continuing medical education (CME) noncompliance.

COMMUNICATIONS UPDATE

Dr. Schottenstein stated that the Board’s Communication staff provided support for the May 2 press conference with Governor Kasich to announce the proposed chronic pain prescribing rules. The Medical Board created the press release, talking points, and media plan for the event. In addition, the Communications team is initiating projects to educate licensees and better train Medical Board staff.

Dr. Schottenstein stated that one thing that the Communications may work on is putting something on the Board’s website that is informational for licensees who have a complaint lodged against them. Dr. Schottenstein stated that having a complaint filed with the Medical Board can be a very distressful experience, and something that could inform the licensee what to expect would be helpful for them emotionally and may cut down on administrative staff time in terms of having to answer questions.

Dr. Schottenstein stated that the Communications staff is also working on videos that stress cultural competency and videos that stress the issues of boundaries and sexual misconduct.

Dr. Schottenstein reported that the Board has gained more Twitter followers.

The Board meeting recessed at 12:00 p.m. and resumed at 1:05 p.m.

EXECUTIVE SESSION

Dr. Soin 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. Saferin seconded the motion. A vote was taken:

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

POLICY COMMITTEE

LEGISLATIVE UPDATE

Dr. Soin stated that Mr. LaCross provided the Committee with an update in pending legislation that is pertinent to the Board. Dr. Soin stated that Mr. LaCross will be in continuous contact with the members of the Policy Committee with regard to bills and matters that affect the Board.

RULE REVIEW PROCESS

Dr. Soin stated that Ms. Anderson updated the Committee on the rules that the Board is currently reviewing.

MEDICATION-ASSISTED TREATMENT RULES

Dr. Soin stated that the Policy Committee will likely continue to work on these rules. Dr. Soin stated that feedback has been received and some of the comments were well-written and well-thought out. Dr. Soin stated that the Committee will take an opportunity to review the comments carefully and discussion possible amendments to the draft rules.

LETTER FROM DEPARTMENT OF MEDICAID

Dr. Soin stated that this topic will be discussed tomorrow at the Board Retreat.

ONE-BITE REPORTING EXEMPTION RULES

Dr. Soin stated that the Committee spent a significant amount of time reviewing these rules. Dr. Soin asked Ms. Anderson to provide an update to the Board.

Ms. Anderson stated that the draft rules were circulated for public comment and detailed comments were received from four entities. Ms. Anderson stated that there were a number of comments from the Cleveland Clinic about employer-related issues. Currently, the draft rules uses the phrase “return to
work”; those phrases will now be changed to “a determination that the individual is able to practice according to acceptable and prevailing standards” in the hope that that will alleviate some of the employer concerns. Ms. Anderson stated that overall, the relationship between an employee and an employer is not necessarily part of the Medical Board’s regulation.

Ms. Anderson continued that there was also concern about treatment providers and monitoring organizations reporting things to employers because they may not be aware of the employer or there may be more than one employer.

Ms. Anderson stated that there were questions regarding the frequency and type of drug screens that would be required in the one-bite program, with comments suggesting that it should be random drug screens two times per month. The Policy Committee discussed the suggestion and felt that the drug screens should be observed and should be no less than four times per month for the first year and two times per month thereafter.

Regarding alcohol and drug support groups, Ms. Anderson stated that the recommendation of the Medical Association Coalition (MAC) and the Ohio Physicians Health Program (OPHP) was to limit meetings to ten meetings per month for the entirety of the agreement. The Policy Committee considered the recommendation and determined that to be consistent with what is done in disciplinary cases, there should be a minimum of three meetings per week for the first year and two meetings per week with a minimum of ten meetings per month for the remainder of the agreement.

Ms. Anderson stated that the draft rules required that issues such as non-compliance and relapse be reported within 48 hours. The comments on this provision were that there should not be a timeframe for reporting. The Policy Committee determined that a timeframe is necessary, but recommended expanding it to 72 hours. Ms. Anderson stated that there was a great deal of discussion about guidelines for reporting relapse and non-compliance. The Committee determined that the Board would develop those guidelines and that relapses and non-compliance would need to be reported.

Regarding education that would be provided by the monitoring organization, the Committee determined that the monitoring organization would develop the materials in consultation with the Board rather than the Board preparing those materials.

Regarding the requirements for the medical directors of treatment providers, the Committee determined that the requirement that the medical director have knowledge about drug screening and prescribing should remain unchanged. The Committee did recommend changing the language so that the medical director shall oversee the treatment, rather than being directly involved with all aspects of treatment.

Ms. Anderson stated that the Committee discussed group therapy and indicated that the continuing care provider shall provide therapy, including group therapy, led by specified individuals.

**Dr. Saferin moved to file the rules with the Common Sense Initiative, as amended by the Policy Committee. Dr. Schottenstein seconded the motion.** A vote was taken:

**ROLL CALL:**

- Dr. Rothermel - aye
- Dr. Saferin - aye
- Dr. Schottenstein - aye
- Dr. Soin - aye
The motion carried.

PARTNERS IN PROFESSIONALISM

Mr. Giacalone noted that medical residents from Fairview Hospital Cleveland are observing today’s Board meeting, as well as Dr. Harley and Dr. Davidson, attending physicians and faculty from Akron General Hospital. Mr. Giacalone welcomed the guests

REPORTS BY ASSIGNED COMMITTEE

LICENSURE COMMITTEE

LICENSURE APPLICATION REVIEWS

NISSREEN ELFADAWY, M.D.

Dr. Saferin stated that Dr. Elfadawy has applied for an Ohio medical license and has requested a waiver of the United States Medical Licensing Examination (USMLE) ten-year rule based on 4731-6-14(C)(3)(b)(i), Ohio Administrative 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. Saferin noted that Dr. Elfadawy passed Step 1 of the USMLE in 1999, Step 2 (CK) in 2004, Step 2 (CS) in 2010, and Step 3 in 2016, all on the first attempt. Dr. Elfadawy had held ABMS certification in general internal medicine since 2017. Dr. Elfadawy graduated from the University of Alexandria in Egypt in 2003. Dr. Elfadawy also completed a residency and served as a junior faculty member in Egypt. In 2017, Dr. Elfadawy successfully completed two years of an Accreditation Council for Graduate Medical Education (ACGME) approved post-graduate residency training in Internal Medicine at Case Western Reserve University/University Hospitals Cleveland Medical Center. Dr. Elfadawy has been participating in an ACGME-accredited nephrology clinical fellowship at Case Western Reserve University/University Hospitals Cleveland Medical Center since 2017.

Dr. Saferin stated that the Licensure Committee has recommended approval of Dr. Elfadawy’s request.

Dr. Bechtel moved to approve the good cause exception of the 10-year rule as outlined in 4731-6-14(C)(3)(b)(i), Ohio Administrative Code, and accept Dr. Elfadawy’s examination sequence so that she can be granted a license. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel - aye
Dr. Saferin - aye
Dr. Schottenstein - aye
Dr. Soin - aye
Dr. Schachat  - aye
Mr. Giacalone  - aye
Dr. Edgin  - aye
Dr. Factora  - aye
Ms. Montgomery  - aye
Dr. Johnson  - aye
Dr. Bechtel  - aye

The motion carried.

BO XU, M.D.

Dr. Saferin stated that Dr. Xu has requested graduate medical education (GME) equivalency, pertaining to 4731.09(A)(4)(b), Ohio Administrative Code, which permits the Board to determine an equivalent to the GME training requirement of two years through the second-year level. Dr. Saferin noted that Dr. Xu graduated from University of Melbourne in Australia in 2007. Dr. Xu has almost eight-and-a-half years of experience in Australia, including work in cardiology and imaging as the Cardiology Registrar to the Senior Cardiology Registrar and an Advanced Non-Invasive Cardiac Imaging Fellow and Cardiologist. Since July 2016, Dr. Xu has served as an advanced cardiovascular imaging clinical fellow at the Cleveland Clinic and is two months short of successfully completing the twenty-four months of GME required for a license.

Dr. Saferin stated that the Licensure Committee has recommended approval of Dr. Xu’s request.

Dr. Schottenstein moved to deem Dr. Xu's training and experience in Australia and the United States to be equivalent to twenty-four months of graduate medical education through the second-year level of GME so that he may be granted a license. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel  - aye
Dr. Saferin  - aye
Dr. Schottenstein  - aye
Dr. Soin  - aye
Dr. Schachat  - aye
Mr. Giacalone  - aye
Dr. Edgin  - aye
Dr. Factora  - aye
Ms. Montgomery  - aye
Dr. Johnson  - aye
Dr. Bechtel  - aye

The motion carried.

JULIE A. HALDEMAN

Dr. Saferin stated that Ms. Haldeman has applied for restoration of her massage therapy license in Ohio. Ms. Haldeman indicated on her application that she has not actively practiced massage therapy in Ohio since her license expired on October 1, 2014.
Dr. Saferin stated that the Licensure Committee has recommended approval of Ms. Haldeman’s request.

Dr. Schottenstein moved to approve Ms. Haldeman’s request for Ohio licensure, pending successful completion of the Massage and Bodywork Licensing Examination (MBLEX) within six months from the date of mailing of the Notice of Opportunity for a Hearing. Dr. Soin seconded the motion. A vote was taken:

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

The motion carried.

TRAINING CERTIFICATE EDUCATION VERIFICATION

Dr. Saferin stated that this matter was tabled at last month’s Licensure Committee meeting to provide an opportunity for staff to draft a revised training certificate issuance letter that would address the concerns of the Committee. The staff has proposed that the verification of education form be eliminated from the training certificate application in favor of certifications that would be made by the training programs. The Staff is also proposing an amendment to Rule 4731-6-30(B), Ohio Administrative Code, a description of which has been provided to Board members for review. The Licensure Committee has recommended approval of the proposal.

Dr. Schottenstein moved that the verification of education form be eliminated from the application for a training certificate; that certifications be added to the training program certification form; that the training certificate issuance letter be revised as discussed; and that the proposed language for the amendment to Rule 4731-6-30, OAC, be approved. Dr. Soin seconded the motion. A vote was taken:

ROLL CALL:  
Dr. Rothermel - aye  
Dr. Saferin - aye  
Dr. Schottenstein - aye  
Dr. Soin - aye  
Dr. Schachat - aye  
Mr. Giacalone - aye  
Dr. Edgin - aye  
Dr. Factora - aye  
Ms. Montgomery - aye  
Dr. Johnson - aye  
Dr. Bechtel - aye
May 9, 2018

Dr. Bechtel - aye

The motion carried.

COMPLIANCE COMMITTEE

Dr. Schottenstein stated that on April 11, 2018, the Compliance Committee met with Gregory G. Duma, M.D.; Diane Ottolenghi, M.T.; Frank G. Stoddard, D.P.M.; and Rajive Tandon, M.D.; and moved to continue them under the terms of their respective Board actions. The Compliance Committee also accepted Compliance staff’s report of conferences on March 12 & 13, 2018.

TREATMENT PROVIDER APPLICATION

LAKEVIEW HEALTH

Dr. Schottenstein stated that the Compliance Committee has recommended approval of the Application for a Certificate of Good Standing as a Treatment Provider for Impaired Practitioners from Lakeview Health.

Dr. Bechtel moved to approve the Application for a Certificate of Good Standing as a Treatment Provider for Impaired Practitioners from Lakeview Health. Dr. Saferin seconded the motion.

A vote was taken:

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

The motion carried.

RESPIRATORY CARE ADVISORY COUNCIL REPORT

Dr. Factora stated that the Respiratory Care Advisory Council met for first time on May 8, 2018. The Council discussed proposed respiratory care rules referred to the Council by the Policy Committee in April, as well as current respiratory care rules regarding licensure and continuing education. In addition, the Council discussed an inquiry as to the meaning of the term “relevant college credit” in the respiratory care rules. Lastly, the Council discussed whether it was within the scope of practice of a respiratory care therapist to triage patients in the emergency department of a hospital.

Dr. Factora stated that the recommendations made by the Council will be forthcoming at the appropriate time.
PROBATIONARY REQUESTS

Mr. Giacalone advised that at this time he would like the Board to consider the probationary requests on today’s consent agenda. Mr. Giacalone asked if any Board member wished to discuss a probationary request separately. No Board member wished to discuss a probationary request separately.

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

- To grant Nicholas Atanasoff, D.O.’s request for approval of travel between Ohio and Pennsylvania without submitting individual travel requests;
- To grant Michael T. Bangert, M.D.’s request for approval of Sara N. Drake to serve as the doctor’s new mental health counselor;
- To grant Regis P. Burlas, D.O.’s request for discontinuance of the drug log requirement;
- To grant Jennifer C. Campbell, M.D.’s request for approval of Michelle J. Belardo, M.D., to serve as the new monitoring physician;
- To grant Joseph C. Carver, M.D.’s request for reduction in the chart review requirement to ten per month; and approval of the submitted practice plan;
- To grant Theodore R. Cubbison, D.O.’s request for discontinuance of the drug log requirement; and reduction of chart reviews to every six months;
- To grant Gregory G. Duma, M.D.’s request for approval of Vincent A. Sawma, Jr., 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 James George Lamphear, M.D.’s request for approval of William S. Jacobs, Jr., M.D., to serve as the new treating psychiatrist/addictionologist; and approval of the Georgia Professional Health Program to conduct monitoring while the doctor resides in Georgia;
- To grant Robert Lindner, M.T.’s request for approval of Dealing with Ethical Gray Areas in Massage Therapy; and Creating Healthy Boundaries; and Ethical Delimmas Fully Exposed; and Sports Massage: Ethics and Building Trust online courses, administered by the American Massage Therapy Association, to fulfill the professional ethics course requirement;
- To grant Michael C. Macatol, M.D.’s request for approval to reduce psychiatric treatment sessions to every six months;
- To grant Michael J. Palma, M.D.’s request for approval of Edith McCaddin, LICSW, to conduct psychotherapy sessions;
- To grant Nicholas L. Pesa, M.D.’s request for approval to discontinue the Naltrexone requirement;
• To grant James I. Tak, M.D.’s request for approval of David W. Streem, M.D., to serve as the treating psychiatrist; approval of Kenneth G. Alexander, M.Ed., LPCC, LICDC-CS, to serve as the treating psychotherapist; approval of Sanjeev Suri, M.D., to serve as the monitoring physician; and determination of the frequency and numbers of charts to be reviewed at ten charts per month;

• To grant Rajive Tandon, M.D.’s request for approval of Timothy A. Scroggins, M.D., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per month; and

• To grant Aly M. A. Zewail, M.D.’s request for approval of Joseph W. Janesz, Ph.D., to serve as the new psychotherapist.

Dr. Soin seconded the motion. A vote was taken:

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

The motion carried.

FINAL PROBATIONARY APPEARANCES

ERICA FORNEY, M.T.

Ms. Forney was appearing before the Board pursuant to her request for release from the terms of the Board’s Order of September 23, 2013. Mr. Giacalone reviewed Ms. Forney’s history with the Board.

Mr. Giacalone asked Ms. Forney to describe her current practice situation. Ms. Forney responded that she is currently practicing massage therapy in Niles, Ohio.

Mr. Giacalone, noting that Ms. Forney had practiced with an expired license, asked what she is doing differently now. Ms. Forney replied that she is making sure her licenses is up-to-date and that they are renewed in a timely manner. Ms. Forney added that she also reads everything regarding licensure properly with good understanding and applies the ethics of her profession. Ms. Forney stated that he looks up her license on the Board’s website regularly to confirm the date it will expire.

Mr. Giacalone asked if Ms. Forney has been able to educate other massage therapists about her situation. Ms. Forney replied that she has informed others that they need to keep up with their license expiration date and to renew when it is time, and to read over the renewal application properly and with understanding. Ms. Forney has also told others that they should call the Board if they have any
Dr. Schottenstein noted that Ms. Forney had been practicing massage therapy without holding a valid license. Dr. Schottenstein asked why Ms. Forney had requested a hearing regarding her situation. Ms. Forney answered that she applied for license renewal late and had answered a question on the application incorrectly. When she heard back from the Board that her application would be granted after she retakes the Massage and Bodywork Licensing Examination (MBLEX), she contacted the Board to ask why she had to retake the examination. The Board staff explained that the MBLEX was required because Ms. Forney had indicated that she had not practiced for more than two years. Ms. Forney stated that she had answered that question incorrectly and that she had practiced within the previous two years.

Dr. Schottenstein asked if Ms. Forney had been aware that her license was expired when she was practicing. Ms. Forney replied that she had not been aware that the license was expired and that she had forgotten to renew because of a bad car accident that she had around that time.

Dr. Schottenstein moved to release Ms. Forney from the terms of the Board’s Order of September 23, 2013, effective May 11, 2018. Dr. Soin the motion. A vote was taken:

**ROLL CALL:**
- Dr. Rothermel - abstain
- Dr. Saferin - abstain
- Dr. Schottenstein - aye
- Dr. Soin - aye
- Dr. Schachat - aye
- Mr. Giacalone - aye
- Dr. Edgin - aye
- Dr. Factora - aye
- Ms. Montgomery - aye
- Dr. Johnson - abstain
- Dr. Bechtel - abstain

The motion carried.

**KAVITA A. J. KANG, D.O.**

Dr. Kang was appearing before the Board pursuant to her request for release from the terms of her February 8, 2012 Consent Agreement. Mr. Giacalone reviewed Dr. Kang’s history with the Board. Ms. Murray explained that Dr. Kang is appearing via Skype because her obstetrician/gynecologist has ordered bedrest for Dr. Kang due to gestational diabetes.

Mr. Giacalone asked Dr. Kang to describe her current practice situation. Dr. Kang replied that she is currently on medical leave from her residency. Dr. Kang stated that she had briefly returned to residency in April, but had to leave again after a couple of days for medical reasons related to her pregnancy. Dr. Kang stated that her medical leave will continue until she delivers her baby in August. Dr. Kang stated that she is in good standing as a resident. Mr. Giacalone asked if Dr. Kang’s work environment is supportive of her recovery. Dr. Kang answered that her residency is very supportive, noting that they knew of her history and her struggles when they created a slot in the program for her.

Mr. Giacalone asked how Dr. Kang’s recovery is going. Dr. Kang responded that she feels that she is in a
good place right now in her recovery program. Dr. Kang stated that she is very involved with her program and she is able to reflect on where she is in her recovery and to know that she is on track with it. Dr. Kang remarked that she is almost afraid of not being monitored by the Board because, though she is not planning to relapse, she is aware that her illness will not go away. Dr. Kang was grateful to the Board for ensuring that she stuck with her program so she had a chance to learn how to live her life in recovery.

Dr. Schottenstein asked if Dr. Kang feels that her mood is well-controlled. Dr. Kang replied that her mood is stable and she is very vigilant. Dr. Kang stated that it is very traumatic to have been where she was and she is vigilant about her mood because of her responsibilities. Dr. Kang stated that she needs to believe that drinking was going to kill her and as long as she stays sober she will be able to manage. Dr. Schottenstein, noting Dr. Kang’s apprehension about the end of the Board’s monitoring, noted that she can voluntarily contact the Ohio Physicians Health Program (OPHP) and arrange to be monitored by the organization. Dr. Kang stated that she may consider contacting OPHP, depending on how the next few weeks go for her.

**Dr. Schottenstein moved to release Dr. Kang from the terms of her February 8, 2012 Consent Agreement, effective immediately. Dr. Soin seconded the motion.** All members voted aye. The motion carried.

Dr. Kang commented that if the Board has any physicians on probation who are struggling with this, the Board can feel free to provide the physician with her contact information and she would be happy to support them. Mr. Giacalone thanked Dr. Kang.

**PAUL LOPREATO, P.A.**

Mr. Lopreato was appearing before the Board pursuant to his request for release from the terms of his May 8, 2013 Consent Agreement. Mr. Giacalone reviewed Mr. Lopreato’s history with the Board.

In response to questions from Mr. Giacalone, Mr. Lopreato stated that he currently practices urgent care medicine in South Florida. Mr. Lopreato stated that his recovery is going very well and he has been in recovery for six-and-a-half years, the longest he has ever been in recovery. Mr. Lopreato stated that he is blessed with a great wife and two great step-daughters. Mr. Lopreato stated that his daughters live in Ohio and his relationship with them is better than ever. Mr. Lopreato noted that one of his daughters volunteered to drive him from Cincinnati to this meeting in Columbus on her day off so that she could spend time with him.

Mr. Giacalone asked if Mr. Lopreato has a sponsor. Mr. Lopreato responded that he sort of has two sponsors, one in South Florida and one in North Florida. Mr. Giacalone asked if Mr. Lopreato is currently sponsoring anyone. Mr. Lopreato answered that he is quasi-sponsoring an x-ray technician that he works with. Mr. Giacalone asked if Mr. Lopreato will continue with his recovery program after he is released by the Board. Mr. Lopreato replied that he will continue doing what he has been doing that has led him to be sober for this long. Mr. Lopreato commented that if he did not stay in recovery he would be a dead man.

Responding to questions from Dr. Schottenstein, Mr. Lopreato stated that he had started out in occupational medicine and urgent care, and then went to work in a neurology/pain management clinic. Mr. Lopreato stated that he has returned to urgent care and he enjoys his work. Dr. Schottenstein noted that it was very stressful for Mr. Lopreato to go from occupational medicine to neurology. Mr. Lopreato agreed and stated that it was probably the most stressful time in his life because he knew nothing about
Mr. Lopreato stated that it was at that time that he started taking anti-depressants, which led to this situation.

Dr. Schottenstein noted that Mr. Lopreato has a diagnosis of bipolar disorder and asked if he is still managing that condition medically. Mr. Lopreato answered that he takes Depakote every day and he sees a psychiatrist every three months. Mr. Lopreato stated that his mood feels stable.

**Dr. Soin moved to release Mr. Lopreato from the terms of his May 8, 2013 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

**SHEILA S. REDDY, M.D.**

Dr. Reddy was appearing before the Board pursuant to her request for release from the terms of the Board’s Order of August 12, 2015. Mr. Giacalone reviewed Dr. Reddy’s history with the Board.

Responding to questions from Mr. Giacalone, Dr. Reddy stated that she has been practicing internal medicine in an outpatient setting for most of the last year, and a few months ago she added inpatient practice at Marion General Hospital. Dr. Reddy stated that her work environment is very supportive of her recovery. Dr. Reddy commented that her father also works at Marion General Hospital and that her family in general has been a very important part of her support system. Dr. Reddy stated that her recovery is going well and she has found her groove with timing her work with meetings, aftercare, and talking to her sponsor. Dr. Reddy added that she is also getting involved with meditation. Dr. Reddy stated that she is not currently sponsoring anyone.

Mr. Giacalone asked if Dr. Reddy will continue in her recovery program after the Board releases her from probation. Dr. Reddy replied that she plans to stay in the program because it has worked for her. Dr. Reddy stated that she is fearful about straying from this path that has worked so well. Dr. Reddy stated that she will continue with meetings and aftercare and communicating with her sponsor.

Dr. Schottenstein noted that in addition to alcohol use disorder, Dr. Reddy was also diagnosed with amphetamine dependency while in Glenbeigh Hospital. Dr. Schottenstein further noted that Dr. Reddy has a diagnosis of attention deficit disorder and is prescribed Adderall. Dr. Schottenstein asked if the Adderall is something Dr. Reddy feels responsible with and whether it is a concern for her. Dr. Reddy replied that she has informed her primary care physician and all of her providers about her history and situation.

**Dr. Schottenstein moved to release Dr. Reddy from the terms of the Board’s Order of August 12, 2015, effective May 15, 2018. Dr. Soin seconded the motion.** All members voted aye. The motion carried.

**ADJOURN**

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

Thereupon, at 2:05 p.m., the May 9, 2018 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 May 9, 2018, as approved on June 13, 2018.

Robert P. Giacalone, President

Kim G. Rothermel, M.D., Secretary
MINUTES
THE STATE MEDICAL BOARD OF OHIO
Retreat Meeting – Thursday, May 10, 2017

Robert P. Giacalone, R.Ph., J.D., President, called the meeting to order at 8:30 a.m. at the Grange Insurance Audubon Center, 505 W. Whittier Street, Columbus, OH 43215, with the following members present: Andrew P. Schachat, M.D., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Amol Soin, 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: Betty Montgomery. The following members did not attend: Michael L. Gonidakis, Esq.; Richard A. Edgin, M.D.; and Sherry L. Johnson, D.O.

Also present at the meeting were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; William Schmidt, Chief of Investigations; Susan Loe, Director of Human Resources and Fiscal; Joseph Turek, Deputy Director for Licensure; Sallie Debolt, Senior Counsel; Teresa Pollock, Director for Communications; Joan K. Wehrle, Education and Outreach Program Manager; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Rebecca Marshall, Chief Enforcement Attorney; R. Gregory Porter, Chief Hearing Examiner; Nathan Smith, Senior Legal and Policy Counsel; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; and Benton Taylor, Board Parliamentarian.

COMPLAINT MANAGEMENT PROCESS

Mr. Groeber stated that members of the staff will give a brief overview of the Board’s complaint management process and will be happy to answer any questions.

Ms. Montgomery entered the meeting at this time.

Complaint Receipt, Entry, and Triage

Ms. Anderson reviewed the Board’s complaint intake process. Once received, complaints are initially assigned to an attorney for triage to determine where to route the complaint. The triage process takes many factors into account, including any past Board history involving the respondent. Ms. Anderson provided the Board members with a handout of where a complaint can be routed for further action following triage. These options include: Investigation; ASAP investigation; desk investigation process; Secretary and Supervising Member for direction; Standards Review to subpoena records for nurse review; protocol close; refer to another agency; and Enforcement. Ms. Anderson briefly explained each of these routes.

Ms. Anderson made the following statements in response to questions from Board members:

- Members of the public can file a complaint on the Board’s website, but the Board will accept a complaint in any form;
- The Board’s staff will follow-up with complainants if clarification of the complaint is needed;
The Board receives approximately 400 complaints per month;

Some trends in the nature of complaints have emerged, such as complaints encouraged by media coverage of the Me Too movement;

There is no statute of limitations on when a complaint can be filed, but investigation of a complaint is much more difficult if many years have elapsed since the event(s);

Investigation Prioritization and process

Mr. Schmidt reviewed the Board’s processes for investigating complaints following triage and how complaints are prioritized. Ms. Schmidt stated that the investigators always involved law enforcement for any complaint dealing with criminal misconduct. Mr. Schmidt noted that the Board has statutory authority to share information with law enforcement, as well as with medical boards in other states provided that those states require their medical boards to keep the information confidential.

Mr. Giacalone asked if there is ever an issue with the Board putting an investigation on hold for a long time while waiting for a law enforcement agency to complete a criminal investigation. Mr. Schmidt replied that the Board will often put an investigation on hold at the request of law enforcement. Mr. Schmidt commented that the Ohio Medical Board has had a good relationship with the Drug Enforcement Administration (DEA) in Ohio, which is not the case in some other states. Mr. Schmidt stated that the Board could carry on an investigation against the wishes of law enforcement, but that would risk the good relationships and good communications that the Board enjoys with law enforcement. Mr. Giacalone asked if there would be any value in asking the Federation of State Medical Boards (FSMB) to work with the U.S. Department of Justice to address delays in investigation. Mr. Schmidt opined that these issues are best addressed on the state or regional level.

Standards Review / QIP Prioritization and Process

Ms. Murray stated that the Board’s Standards Review processes are mostly confidential and do not end in a formal disciplinary action. Many of the cases in Standards Review involved allegations of violations of the minimal standards of care and can be addressed with a letter of caution or by referring the practitioner to educational courses. Ms. Murray stated that the nurses in Standards Review must complete a review of records within 60 days of receipt, or within 30 days if the case is referred directly from Investigations or Enforcement. Ms. Murray stated that the physicians on the Quality Intervention Panel (QIP) provide expert-level review in addition to the nurse reviewers and the Board’s Secretary and Supervising Member.

Ms. Murray continued that if a complaint is deemed serious enough for referral to Enforcement, the Board can contract with an expert. The expert will review the records, produce an opinion, and, if needed, will testify at the respondent’s hearing. Dr. Saferin commented that the expert must be in the same field and have a similar practice as the respondent; must be specialty board-certified; and must be from another area of the state from the respondent in order to avoid conflict of interest. Ms. Murray added that experts who contract with the Board must have at least 50% of their practice be clinical practice. Dr. Bechtel asked if it is difficult for the Board to find experts. Ms. Murray replied that it is difficult and commented that the requirement to provide testimony if needed can be intimidating to prospective experts.
**Enforcement Prioritization and Process**

Ms. Marshall reviewed the Board’s enforcement processes, including how complaints are prioritized and the timeline for development of a case. Ms. Montgomery asked how many cases each Enforcement Attorney is assigned. Ms. Marshall answered that currently each Enforcement Attorney has 25 to 40 cases, though the goal is to reduce that to 20 to 25 cases per attorney.

Dr. Soin asked questions about the actions the Board has taken for non-compliance with Ohio Automated Rx Reporting System (OARRS) requirements. Ms. Marshall briefly explained that while the cases that come before the Board are based on a small number of patients, there are often many more patients who were not checked on OARRS as required and are not included in the case that goes before the Board. Ms. Marshall stated that the Board is prohibited from using OARRS data alone and it lacks the resources to subpoena records from all of the pharmacies that all of a physician’s patients may go to, which could number in the thousands. In order to keep the case at a manageable level, the staff may select about ten patients out of dozens or hundreds to be part of the documented case. Mr. Groeber commented that the OARRS letters sent to physicians have been very successful in reducing the number of missed OARRS checks for Ohio patients.

Dr. Soin thanked Ms. Marshall for her insight into the nature of these cases. Dr. Soin stated that he would review to see comparable cases. Mr. Giacalone suggested that a committee of Board members be formed to review comparable cases and address Dr. Soin’s concerns. Ms. Marshall stated that she can produce materials for review with confidential information redacted.

The Board took a brief recess at 10:05 a.m. and resumed the meeting at 10:20 a.m.

**CONSENT AGREEMENT DEVELOPMENT AND APPROVAL PROCESS**

Ms. Marshall presented a case to the Board in order to facilitate discussion of how the Secretary and Supervising Member direct the potential development of consent agreements. Ms. Marshall stated that this is an actual case, but the names and all identifying information has been removed. Ms. Marshall also stated that this case predates the terms of the current Secretary and Supervising Member, Dr. Rothermel and Dr. Saferin, as well as that of former Secretary/Supervising Member Dr. Bechtel.

Ms. Marshall presented the case of Dr. X and allowed the Board members to discuss what course of action they would hypothetically direct the enforcement staff to take in negotiating a consent agreement or developing the case for citation. Ms. Marshall introduced additional facts that were uncovered in the course of the investigation as the Board members continued to discuss how these new facts affect their hypothetical directions to the staff.

Dr. Soin asked if the Enforcement staff can share more information with Board members when presenting consent agreements for ratification by the Board. Ms. Marshall replied that sharing too much information on settlement agreements could bias the Board members and jeopardize their ability to take other actions in the case if the proposed agreement is not ratified. Ms. Marshall stated that the Enforcement staff works with Dr. Rothermel and Dr. Saferin, who have been elected Secretary and Supervising Member by their fellow Board members, to negotiate the terms of consent agreements. Because of their positions, Dr. Rothermel and Dr. Saferin see the full range of information that the other Board members do not see and they approve consent agreements to go before the Board for ratification.
stated that on some cases he has been the Acting Secretary or Acting Supervising Member when Dr. Rothermel or Dr. Saferin have recused themselves, and at those times he has only received a brief summary of the case. Dr. Soin stated that this experience has made him wonder who much information Dr. Rothermel and Dr. Saferin see in regular cases.

The Board and staff continued to discuss this topic thoroughly. Ms. Marshall stated that she will continue to work with the staff to provide the Board members with as much information as possible.

The Board took a brief recess at 11:25 a.m. and resumed the meeting at 11:32 a.m.

OPEN MEETINGS LAW

Heather Buchanan from the office of the Ohio Attorney General appeared before the Board to discuss Ohio’s Open Meetings law. Ms. Buchanan is Senior Assistant Attorney General in the Constitutional Offices. Ms. Buchanan reviewed a PowerPoint presentation on this subject and reviewed what a public meeting is according to the law, how to stay compliant with the law, and potential liabilities. Ms. Buchanan answered the Board members’ questions and clarified that individual Board members can discuss things one-on-one outside of a meeting, but a quorum of members cannot. Ms. Buchanan also specified that “round robin” emailing or calling between Board members counts towards an improper quorum.

The Board recessed for lunch at 12:03 p.m. The meeting resumed during lunch at 12:20 p.m.

REVIEW OF BOARD MEETING DELIVERY OPTIONS AND PREFERENCES

Mr. Taylor reviewed the options for Board members to receive materials for each Board meeting, including mail delivery and the use of a secure SharePoint website, as well as varying format preferences. Board members voiced their preferences and specified changes in the way meeting material pages are numbers and how they are posted to SharePoint.

PROBATION AND FINE GUIDANCE DISCUSSION

Dr. Rothermel stated that the purpose of placing some practitioners on probation is to monitor them for specific issues. However, probation tends to be consequences for practitioners that the Board does not intend, such as loss of private insurance provider status, loss of Medicare/Medicaid provider status, loss of jobs, and possibly rendering them unhireable. To address this, Dr. Rothermel suggested that the Board’s disciplinary guidelines be amended to read “probation as appropriate” rather than having specified minimum probationary periods for various violations. Dr. Saferin added that he and Dr. Rothermel are asking for discretion with regard to probation in consent agreements. Dr. Saferin stated that this proposal is not related to impairment and there are no proposed changes to the disciplinary guidelines in cases of impairment.

Mr. Groeber also asked the Board to consider whether it wants to continue to require all probationers to make a final appearance before the full Board prior to release from probation. Mr. Groeber stated that a final appearance makes sense for some probationers, particularly those who are impaired, but may not serve a useful purpose for some other probationers. Mr. Groeber commented that he has never seen the Board deny release to someone making a final probationary appearance before the Board, and the discussions are often very brief.
The Board and staff discussed this proposal thoroughly and determined that the Secretary and Supervising Member should have discretion in cases of non-impairment about whether there should be probation, how long the probation should be, and whether a final appearance before the Board should be required. Ms. Anderson stated that this would require changes to Board rules, which the staff can begin working on.

Regarding the Board’s fining guidelines, Dr. Rothermel opined that the amount of fines have led some licensees to give up their licenses. Dr. Rothermel asked the Board if it wishes to consider changes to the amounts of fines in the Board’s fining guidelines. Ms. Montgomery commented that when she joined the Board she was surprised at the amount of the fines. Ms. Montgomery opined that the fines seemed disproportionately high.

The Board continued to discuss the fining guidelines. The current structure of the guidelines lists a standard fine, a minimum fine, and a maximum fine for each violation. The Board determined that the standard fine should be eliminated, the maximum fine for each violation should be unchanged, and the minimum fine for each violation should be adjusted. Mr. Groeber stated that he will work with individual Board members and develop a proposal for new minimum fining amounts. Mr. Groeber also stated, at Dr. Rothermel’s suggestion, that the fining guidelines will also include a separate column for allied professionals. Mr. Groeber agreed with Dr. Factora’s suggestion to review the fines used by other state medical boards for guidance.

LICENSURE DISCUSSION

Mr. Turek provided a PowerPoint presentation updating the Board on the continuing medical education (CME) audit process and the non-disciplinary fines for CME violations. Mr. Turek answered the Board’s questions about the audit process and how it is continuing to develop.

REGULATION REDUCTION LEGISLATION

Mr. LaCross provided a PowerPoint presentation updating the Board on the proposal in the legislature to reduce regulations by 30% over the next three years. Mr. Smith commented that there has already been great progress in eliminating duplication in the dietetics rules and respiratory care rules.

Dr. Schottenstein asked about the status of proposed legislation that would allow prescribing by psychologists. Mr. LaCross answered that that legislation is currently on hold.

2018 PREVIEW

Mr. Groeber stated that the Board is in an extremely good position for medical marijuana, which is scheduled to become available on September 8, 2018. The Board has already issued Certificates to Recommend Medical Marijuana to qualified physicians. The Board will continue work on the rules that the Board discusses yesterday.

ADJOURN

Dr. Saferin moved to adjourn the meeting. Dr. Soin seconded the motion. The motion carried.
Thereupon, at 1:41 p.m., the May 10, 2018 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 May 10, 2018, as approved on June 13, 2018.

Robert P. Giacalone, President

Kim G. Rothermel, M.D., Secretary
Dr. Saferin called the meeting to order at 8:01 a.m.

MINUTES REVIEW

Dr. Factora moved to approve the draft minutes from April 11th, 2018. Dr. Edgin second the motion. The motion carried.

LICENSE APPLICATION REVIEW

Nissreen Elfadawy, M.D.

Dr. Rothermel moved to recommend approval of the good-cause exception of the 10-year rule as outlined in 4731-6-14(C)(3)(b)(i), and accepting the examination sequence to grant Dr. Nissreen Elfadawy, M.D., a medical license. Dr. Factora second the motion. The motion carried.

Bo Xu, M.D.

Dr. Rothermel moved to recommend Bo Xu, M.D., request that his training and experience in Australia and the United States equivalent to the twenty-four months of graduate medical education through the second-year level so he may be granted a license. Dr. Factora second the motion. The motion carried.

Julie A. Haldeman

Dr. Rothermel moved to recommend Julie A. Haldeman request for a restoration of her Ohio Massage Therapist Licensure, pending successful completion of the MBLEx within six months. Dr. Factora second the motion. The motion carried.
Dr. Saferin stated the Licensure committee tabled this discussion from last month so staff could draft a revised version of the training certificate issuance letter. The staff has recommended approval of an amendment to Rule 4731-6-30(B), eliminating the education verification in favor of certification that can be made by the training program.

Dr. Factora moved to recommend that the 'Verification of Education' form be eliminated from the application for a training certificate; that certifications be added to the 'Training Program Certification' form; that the training certificate issuance letter be revised; and that Rule 4731-6-30 of the Ohio Administrative Code be amended accordingly. Dr. Edgin seconded the motion.

Dr. Schottenstein stated that the Committee had requested a revised version of the letter because the original letter had been inadequate due to wording. Dr. Saferin stated that it was worthwhile to make sure everyone was comfortable with the language and that he is fully supportive. Dr. Rothermel agreed that she was also supportive of the new letter. Dr. Rothermel said it was very clear, answers the committees questions, and alleviates the work and backlog of the Board.

A vote was taken on Dr. Factora’s motion. The motion carried.

COSMETIC THERAPY CONTINUING EDUCATION

Mr. Turek stated he wanted to address a letter from Vickie Mickey that made accusations against him and the Board. Mr. Turek stated that he wanted to respond to some points in the letter and that it was important for the Committee to see the letter. The letter addressed an incident from August 2017 when Cosmetic Therapy Association of Ohio (CTAO) forwarded an agenda for continuing education and there were concerns that the items on it did not meet the requirements for continuing education. Mr. Turek stated that the Board reached out to Kelly Ott-Statzer of the Society of Cosmetic Therapy Training (SOCTT) and advised her about the concerns of the courses. Ms. Ott-Statzer was informed that she could still offer the courses, but only courses that are relevant to cosmetic therapy can count as continuing education. Mr. Turek stated that Mrs. Statzer was not pleased but that he didn’t hear much about it after that. Mr. Turek stated that this incident and the pending cosmetic therapy exam rule which resulted in this letter being sent stating that she felt singled out.

Mr. Turek stated that he has also received communications from other cosmetic therapists regarding continuing education and he informed them that he didn’t think it would meet the requirements but that he would take it to the Board for review. Dr. Saferin inquired if there were clear guidelines that the Board accepts for Cosmetic Therapy. Mr. Turek stated that the rule deems approval by the Board if it meets certain requirements or is put on by one of the approved groups such as CTAO, SOCTT, or a college. Dr. Saferin inquired if they had to come to the Board for any other approval unless they are concerned it doesn’t meet guidelines. Mr. Turek said yes and that he
gives them formal guidance. Mr. Turek also stated that he is not allowed to approve courses but he does advise them.

Mr. Turek went through examples of courses.

Dr. Saferin inquired how the Committee felt about this letter regarding how to answer it because he thinks this letter is inflammatory and accuses a staff member of something that didn't happen. Mr. Turek said the reason he was bringing this to the Committee is because he thinks the Board needs a better way to look at continuing education for cosmetic therapists.

Dr. Schottenstein stated that the Board has had conversations like this one before on whether or not subject matter that was peripheral to the field itself is acceptable for continuing education. Dr. Schottenstein stated that whatever is approved for continuing education should be directly relevant to the practice of the field. Dr. Schottenstein stated that he encourages people get their continuing education courses in their field and then take those other courses on the side because they are valuable also.

Dr. Saferin inquired if anyone had a response to the letter. Dr. Schottenstein stated that he would meet with Ms. Mickey. Dr. Rothermel asked for clarification on Ms. Mickey’s letter. Mr. Turek stated that she requested a meeting regarding the CT exam rule. Mr. Turek stated that he told Ms. Mickey it wouldn’t be worthwhile because it’s already been through the Board process and that it’s at the Common Sense Initiative (CSI). Dr. Saferin and Ms. Scott both agreed that Ms. Mickey was a part of this process and was involved with this from the beginning including conversations about the rule and approved of this process. Mr. Turek thinks a reason for this is to disparage other associations and he doesn’t want to get in the middle of this. Dr. Saferin stated that nothing was done behind closed doors.

Dr. Rothermel stated that the Committee needs to think about this meeting and maybe a meeting does need to be scheduled with some parameters about what’s going to be discussed. Dr. Rothermel stated if there are issues that needed to be discussed for clarification, the Committee needs to think about it and put some rules around it. Dr. Rothermel stated that various organizations are putting on sessions that they say are continuing education for licensees and its coming back to the Board for approval. Dr. Rothermel stated that it’s going to become a bigger issue if every class has to be reviewed and may not be approved by the Board because it’s not clinically significant for the practice of cosmetic therapy.

Dr. Factora inquired if the standards for these courses are in writing. Mr. Turek stated that it’s in the rule that the course has to be relevant to the practice of cosmetic therapy and put on by an approved entity. Dr. Factora inquired if the training by the Society of Cosmetic Therapy was an approved entity. Mr. Turek stated yes, they’re a school. Dr. Factora stated the conflict is that they recognize the continuing education and they are a recognized authority. Dr. Factora stated that either the rule isn’t clear or the standards
being used by organizations to identify continuing education are looser. Dr. Factora inquired who are policing these standards and Dr. Saferin stated the Board is.

Dr. Schottenstein stated that the meeting should take place so these issues could be resolved. Dr. Saferin stated the Board is respectful of the organizations that put on the courses; however, the Board feels that it’s not lining up correctly. Dr. Saferin stated that he feels the meeting should take place and that the appropriate parties should attend the meeting like Ms. Anderson, Mr. Turek and Mr. Groeber. Dr. Saferin stated that someone from the legal department should be present to help go through these steps and help resolve the issue.

Mr. Turek stated that this group should be present. Mr. Turek stated the rule discusses certain aspects of what’s allowed and what isn’t. Dr. Factora stated that the rule says that courses should be relevant to the scope of practice. Dr. Factora said that the Board makes the assumption that each governing body is able to review their own content. Mr. Turek stated that the problem is that no one regulates these organizations. Dr. Factora inquired if the courses would just be approved if no one brought this to the Board’s attention. Mr. Turek stated that the Board would find the courses on audits for continuing education and would determine relevancy. Mr. Turek stated he doesn’t want the Board involved in approving education. Dr. Factora stated it becomes a special problem and that it’s a level of trust that each governing body is able to say if it’s related to the practice. Mr. Turek stated the problem is that there’s no governing body for cosmetic therapy. Dr. Factora stated that’s the complication and that was a problem with cosmetic therapy before that there is no uniform definition state-to-state.

Mr. Turek stated that another problem cosmetic therapists have is that it’s hard to find relevant courses for their continuing education requirements each two year cycle. Dr. Saferin inquired if the Committee agreed to set up this meeting with Mr. Turek and the appropriate people to address the concerns. Dr. Rothermel inquired if other groups should be in attendance an addition to Ms. Mickey so that it’s not unilateral. Dr. Saferin stated that was a wonderful idea to make sure everyone is on the same page and following the rule and if everyone thinks the rule needs to change, then the process can start to change the rule.

Dr. Rothermel stated this is a difficult issue because the Board needs to figure out if it will go through each proposal or accept continuing education from national groups. Dr. Rothermel inquired how the Board looks at these courses to make sure the courses are relevant and approved by these bodies. Dr. Schottenstein stated one of the benefits of having this meeting would be to provide additional direction on this problem. Dr. Schottenstein also stated that if cosmetic therapists are having a difficult time finding courses, maybe the continuing education credits should be lowered so licensees aren’t taking courses that are extraneous.

Dr. Edgin stated if a national organization puts on these courses should they be present at the meeting so the Board can address these concerns on the courses they are offering. Dr. Edgin stated that the problem seems to be that these organizations are just
offering courses to fill the day. Mr. Turek stated that some of these organizations can approve whatever courses they want because these courses might work for other states that license cosmetic therapists. Mr. Turek stated the Board doesn’t regulate these organizations. Dr. Saferin stated they can be invited to the meeting as well.

Dr. Factora inquired about the accrediting body for the cosmetic therapy schools and if they are a part of the Board in terms of enforcement or is it a separate body. Ms. Scott stated that these are the organizations giving the continuing education and not the approved schools, however they are affiliated because it’s such a small group. Dr. Factora stated that he makes the link between the two because they would be able to say what’s relevant to cosmetic therapy and what’s appropriate. Dr. Factora stated they could be useful because they know the content. Ms. Scott stated that Ms. Mickey owns a school and she suggested the course in question. Dr. Factora inquired if there was another accrediting body for the schools and Ms. Scott replied that the Medical Board is.

KATIE E. WOLTERMAN

Dr. Saferin stated that a non-disciplinary Report and Recommendation was coming up for Katie Wolterman, a massage therapist applying for licensure. Dr. Saferin stated the license was not approved because it didn’t meet the rule requirements. The hearing officer decided it did and that Ms. Wolterman should be licensed. Dr. Saferin stated his concern was that the rule does not give the Board the ability to find an equivalence. Dr. Saferin also stated that it should not be approved because others have come before the Licensure Committee looking for an equivalence that didn’t exist and the statute or rule would have to be change to allow for the equivalence.

Dr. Rothermel stated that she wasn’t sure why the minimum time period was in the rule, but it is. Dr. Rothermel also stated that she agreed twenty one months of part-times does not mean nine months of full-time, which is what the rule says. Dr. Rothermel stated that the person probably is qualified but according to the rule she cannot be licensed in the state. Dr. Saferin stated he wanted the support of the Committee when this is discussed. Dr. Rothermel suggested the rule be changed. Mr. Turek agreed that it should be changed. Dr. Saferin stated that was what he was looking at because it has been done before to accommodate licensees in the past. Dr. Edgin inquired if there is a recommendation for what changes to make in the rule. Dr. Saferin stated Mr. DePew and legal would change the rule to eliminate the nine months and add the equivalency. Mr. Depew stated he inquired about the nine months also.

ADJOURN

Dr. Factora moved to adjourn the meeting. Dr. Rothermel second the motion. The motion carried.

The meeting adjourned at 8:35 a.m.
Bruce R. Saferin, D.P.M.
Chair

rsb
Dr. Schottenstein called the meeting to order at 8:35 a.m.

MINUTES REVIEW

Dr. Edgin moved to approve Finance Committee April 11th, 2018 meeting minutes. Dr. Saferin second the motion. The motion carried.

FISCAL UPDATE

Dr. Schottenstein stated for March 2018, revenue was $1,420,343 which was a substantial increase from the roughly $840,000 in revenue from February. Dr. Schottenstein stated that this was a record amount of monthly revenue for the Board. Dr. Schottenstein stated there was an April 1 deadline for MD’s and DO’s, and this revenue was a reflection of that.

The Medical Board’s cash balance in March 2018 was $4,353,742. Dr. Schottenstein stated the Board’s cash balance peaked at $4.7 million on April 3, and $1.1 million was taken out subsequently as the final payment of the E license development project. The Medical Board is back to $3.6 million cash balance, but can expect that to be above $4 million again shortly, he stated.

Dr. Schottenstein stated for Fiscal Year 2018 the net revenue is no longer negative, although the Medical Board is still behind Fiscal Year 2016. Dr. Schottenstein stated the Medical Board is expecting to catch up by the end of the fiscal year. Dr. Schottenstein stated that with the 2% year-to-date decrease in total revenue, numbers continue to improve, and the Medical Board is expected to exceed Fiscal Year 2016 shortly.

FINES, EXPENDITURES AND ALLOCATIONS

Dr. Schottenstein stated in regard to expenditures, the 4.2% increase year-to-date is consistent with the typical yearly 4% increase expenditure in payroll.

Dr. Schottenstein stated that spending on education and safety is unchanged. Dr. Schottenstein noted that the Medication-Assisted Treatment (MAT) conference will not be charged to the Board because other funding has been found. The Medical Board will not be attending the National Certified Investigator and Inspector Training (NCIT) and an alternative is being sought. Dr. Schottenstein stated
the Medical Board does need to pay the Governor’s Cabinet Opiate Action Team (GCOAT) video expense and the acute rule video expenses by the end of the fiscal year.

Dr. Schottenstein stated the amount of money spent on education and safety at this point is about 10% of the total amount that was collected in fines. Dr. Schottenstein stated that it made sense to use the fine money for these endeavors, but he did not know if the fine money had to be exclusively designated for these expenses. He stated that it was reasonable for fine money to also contribute to the expense of investigations and enforcement.

Dr. Schottenstein stated the Medical Board was three quarters through the fiscal year. Dr. Schottenstein stated by the end of fiscal year, the Medical Board hopes to have expenditures of around $9 million total, which is about $1 million under the Board’s allotment. Dr. Schottenstein also stated the Medical Board will probably see a gross total revenue of about $10 million for fiscal year 2018.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated based on the accounts receivable report, the Medical Board collected fine payments since the last report totaling $25,000. $7500 of that is for continuing medical education (CME) payments. Dr. Schottenstein stated the Board received a total of $236,669 in fines, and another $143,000 are outstanding.

EDUCATION AND OUTREACH

Mrs. Pollock stated the Medical Board supported the Governor’s press conference on May 2nd, 2018 where he asked state boards to come forward with chronic pain prescribing rules. Mrs. Pollock thanked the Finance Committee for supporting staff at the Federation of State Medical Boards (FSMB) conference. Mrs. Pollock stated that Dr. Schottenstein and she had begun the discussion of how to improve website content for those going through the investigation/probation process to guide the licensees through the process and help them with what to expect.

Mrs. Pollock stated that the Medical Board will also look into creating Cultural Competency education videos and trauma-informed education for Medical Board staff and Board members. Mr. Groeber stated that the cultural competency education was created by the Oregon Board of Medicine. Mr. Groeber stated that the document had good content that the Medical Board could use. Mrs. Pollock stated that the Medical Board plans on using that content for a printable educational document and a video. Dr. Schottenstein inquired about what the nature of the content. Mrs. Pollock stated the educational information was for licensees to have more of an insight on patient perspective based on their culture. Mr. Groeber stated that the Medical Board often gets legislators who inquire on this as well.

Mrs. Pollock stated the trauma-informed education would focus on how Medical Board staff should be more sensitive to individuals who are making complaints regarding sexual assault and boundary issues to insure staff are properly handling these matters and not retraumatizing the people making these complaints. Mr. Groeber stated the North Carolina Medical Board has investigators who are specifically trained to handle these types of situations. Mr. Groeber also stated that the Attorney General’s Office offers training around this. Mrs. Pollock stated that the Department of Mental Health and Addiction has a federal grant which trained trainers who would be able to come and do the Medical Board training. Mrs. Pollock stated that this will be incorporated into the investigator training and Mr. Groeber stated that it may be a valuable training for board members also.
TRAVEL AUTHORIZATION

Dr. Saferin moved to recommend Mr. Groeber to attend the 2018 Colorado Department of Revenue MED Summit, which will be held May 15th and 16th, 2018 in Denver, Colorado. Mr. Groeber’s travel expenses, which increased, will be paid by the Medical Board in accordance with state travel policy. Mr. Groeber’s attendance at the conference is in connection with his duties as, and is related to his position as, executive director of the State Medical Board of Ohio. Dr. Edgin second the motion. The motion carried.

OARRS

Mr. Groeber stated in the past the Finance Committee discussed funding for Ohio Automated Rx Reporting System (OARRS) Prescriber reports; he stated that May 31st is the projected release date with the Board of Pharmacy and that the Medical Board did not incur any cost with this project.

Mr. Groeber stated the Medical Board reports to the American Medical Association (AMA) and the Federation of State Medical Boards (FSMB) about licensees that is manually compiled every year. Mr. Groeber stated this process can be tedious. Mr. Groeber stated there is an opportunity to send this information directly to the Pharmacy Board, FSMB and AMA all in one. Mr. Groeber stated that Michael Miller has been in talks with the Department of Administrative Services (DAS) to improve this process. Mr. Groeber stated the current price tag on this project would be around $18,042.24; however he believes the price would change once the process is clarified. Mr. Groeber stated he was not looking for an approval today. Dr. Schottenstein asked if the Committee could have more information and discuss it next month. Mr. Groeber stated that was fine and if the price can get below $10,000 he would proceed.

ADJOURN

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

The meeting adjourned at 8:47 a.m.

Michael Schottenstein, M.D.
Chair

rsb
Dr. Soin called the meeting to order at 8:45 a.m.

MEETING MINUTES REVIEW

Dr. Soin reported that a revised draft of the minutes of the April 11, 2018 meeting had been distributed to the committee.

Dr. Bechtel moved to approve the draft Policy Committee minutes of the April 11, 2018 meeting as revised. Dr. Schachat seconded the motion. Motion carried.

Legislative Review

Mr. LaCross reported that the legislature is expected back next Tuesday. It is anticipated that a new Speaker of the House will be selected. He provided the following update:

The Board is working with the Senate on the PA supervision agreement language we agreed upon. With the change, the Board will no longer require supervision agreements be submitted to the Board for approval. The change will require that the supervision agreement be filed onsite at the practice location and the supervising physician will be required to update the agreements as they change. The supervision agreements should be available for review by the Board upon request. The Board will be able to conduct compliance audits. If non-compliance is found during the audit there can be a $5,000 penalty or the availability of a Chapter 119 hearing. Staff will be working internally to set up a process regarding supervision agreement audits.

Mr. LaCross said the amendment may be part of HB 101 or HB110. Other legislative items will most likely be discussed in the fall during the lame duck session.
Chapter 4731-27 Termination of doctor-patient relationship rules

Ms. Debolt said the rules in Chapter 4731-27, OAC, are due for the five-year review and the memo and amended rules begin on page 50 of the committee materials.

4731-27-01: Definitions: No changes proposed

4731-27-02: Dismissing a patient from the medical practice

- Proposed to be amended at paragraph (A)(1)(b) to clarify that a physician is not required to provide emergency treatment and access to services for up to thirty days when the patient has been disruptive or threatening.

Ms. Debolt explained that this amendment is to clarify that the physician may immediately terminate a disruptive or threatening patient. Dr. Soin asked if “disruptive” is defined. Ms. Debolt said it is not specifically defined so the physician would make that determination.

4731-27-03: Notice of termination of physician employment or physician leaving a practice, selling a practice, or retiring from the practice of medicine.

- Proposed to be amended at paragraph (C) to clarify that the rule is applicable to a physician who provides medical services at a practice that is organized as a sole proprietorship. The definition of “health care entity” in Section 4731.228, ORC, does not include a sole proprietorship. Although practicing through a sole proprietorship may be less common than in the past, it still occurs.

- Section 4731.228, ORC, requires that notice be sent to patients when an employed physician leaves a “health care entity.” Health care entity is defined to include any of the following where medical services are delivered: a federally qualified health center, federally qualified health center look-alike, a hospital, corporations, a limited liability company, a health insuring corporation, a partnership, or a professional association.

Dr. Bechtel moved to approve the rules for initial circulation to interested parties for comment. Mr. Giacalone seconded the motion. Motion carried.

Rules 4731-1-02 Application of rules governing limited branches of medicine or surgery

Ms. Debolt said the memo regarding this rule was found on page 55 of the committee materials.

Rule 4731-1-02, Application of rules governing limited branches of medicine or surgery, is proposed to be amended in paragraphs (C) and (D) to update the links to the specified codes of ethics and to make technical changes. No substantive changes are proposed.

Paragraph (C) denotes the American Massage Therapy Association’s code of ethics as applicable to all massage therapists. Paragraph (D) denotes the Society for Clinical and Medical Hair Removal’s code of ethics as applicable to all cosmetic therapists. Ohio law requires the rule to provide a link to the referenced documents. The proposed amendments link to the Medical Board’s front page because
the links currently cited in the rule are now incorrect. The documents are now posted on the Medical Board’s website under the Laws & Rules tab.

The Joint Committee on Agency Rule Review has informed us that updating the links in the rule constitutes amending the rule. Therefore, the entire rule-making process must be completed.

Dr. Bechtel moved to approve the rules for initial circulation to interested parties for further review. Mr. Giacalone seconded the motion. Motion carried.

Proposed One-Bite Program Rules

Ms. Anderson reported that the draft rules were circulated for comment and we received detailed comments from four individuals or entities. She directed the committee to page 473 of the materials, which included the draft rules with comments interspersed. She presented the proposed comments for discussion as follows:

4731-16-17 REQUIREMENTS FOR ONE-BITE PROGRAM

(E)(4) – Ms. Anderson noted a suggestion from the Medical Association Coalition (MAC) to add “of eligibility” to end of section so that it is going to the monitoring organization for confirmation of eligibility. Committee recommendation: accept the edit as it clarifies the language.

(F)(1) and (F)(2) suggested by the Cleveland Clinic. Comments are based on employer concerns in this issue which is a perspective we have not had before.

(F)(1) – comment requests clarification that return to work does not prevent the employer from determining any restrictions based on conduct at work or any modifications to the former employment situation. Ms. Anderson said that it has never been the intention of the Board to come between the employer and the employee. The Cleveland Clinic recommended that language be added to the end that says . . . the licensee shall suspend practice until the licensee is released to return to work by the treatment provider and the medical director of the monitoring organization to the most appropriate assignment as determined by the employer.

Ms. Anderson said she had some concerns about bringing the employer into the rule, but she thought it could be resolved by removing “released to return to work” and using the statutory language of “until the licensee is determined to be able to practice according to acceptable and prevailing standards.” This is really what the treatment provider and medical director of the monitoring organization would be doing. The employer situation is between the employer and the employee.

Dr. Soin asked if this would satisfy their concerns. Ms. Anderson said she hoped it would but they will still have an opportunity to comment on the proposed rules.

(F)(2) – this is a comment from the Cleveland Clinic and they ask that “employer” be added into the notification of any licensee who returns to work prior to obtaining the release. She asked the committee for feedback on this addition.

Dr. Soin asked what the notification requirements are in the proposed rule. Ms. Anderson replied that the treatment provider would notify the board and the monitoring organization of any licensee who returns to work prior to obtaining the release.
Dr. Rothermel asked how will we know if someone goes back to work before getting a release? Ms. Anderson said it is a concern that we don’t necessarily know the licensee’s employer. Dr. Schachat said that a licensee could have multiple employers, or a licensee could be self-employed. He suggested that anywhere we were considering adding an employer reference it should say “employer, as applicable.” Mr. Giacalone asked why the board should get in the middle of a contractual issue between the employer and the licensee, because provisions can be written into the employment contract, rather than in a rule.

The consensus of the committee was to not make the recommended edit to 4731-16-17 (F)(2).

(F)(3) – this is a comment from the Cleveland Clinic and they ask that “employer” be added into the notification of any licensee who does not successfully complete the prescribed treatment.

The consensus of the committee was to not make the recommended edit to 4731-16-17 (F)(3).

Line 59 - (G) Ms. Anderson noted that this section currently reads “Within one week after successful completion of treatment, the monitoring organization shall ensure that the licensee has entered into an agreement with a board approved continuing care provider.” reported that the MAC and the Ohio Physicians Health Program (OPHP) suggested deleting “the monitoring organization shall ensure that” language. Their edit puts the burden on the licensee. She asked for feedback from the committee.

Mr. Giacalone didn’t like it. If we are contracting with a monitoring organization he believed the monitoring organization should have that responsibility.

Dr. Rothermel asked how does the monitoring organization know if a licensee has completed treatment. Ms. Anderson said it is through ongoing communication with the treatment provider. Mr. Groeber said that is expected through the contract that the Board will have with the monitoring organization.

Line 63: (G)(1) Ms. Anderson said that it currently reads “Within one week after successful completion of treatment, the monitoring organization shall confirm that the licensee shall enter into an agreement with a board approved continuing care provider, completes continuing care sessions at least one time per week for at least six months following the release from treatment.”

The MAC and OPHP suggested “Within one week after successful completion of treatment, the monitoring organization shall confirm that the licensee shall enter into an agreement with a board approved continuing care provider, completes continuing care sessions at least one time per week for at least six months following the release from treatment.”

Committee members noted it’s the same issue as (G). The monitoring organization has to take responsibility, it can’t be half in or half out.

Line 73: (H) Ms. Anderson said that the Cleveland Clinic comment adds this sentence to the end of (H) An individual who chooses not to continue in the one-bite program will be subject to the procedures in 4731-16-02 of the administrative code. Ms. Anderson said this is the regular impairment process and she agreed with the addition. Committee members supported the change.

Line 79: (H)(1) Ms. Anderson said that this issue will come up in a few places in the rule. The issue relates to random drug screens. The proposed rule reads: “The licensee shall be required to provide random observed toxicology screenings of biological materials, including, but not limited to, blood,
urine, hair, saliva, breath, or fingernail samples for drugs or alcohol as directed by the monitoring organization with a minimum of four random, observed toxicology screenings per month for the first year of the agreement with the monitoring organization and a minimum of two random observed toxicology screenings per month for the remainder of the agreement with the monitoring organization.” This language recognized other types of screenings available and it provides a different frequency for the first year of the agreement.

The MAC and OPHP comment suggested a minimum of two random drug screens per month for the duration of the licensee’s agreement with the monitoring organization. Ms. Anderson noted that these are random drug screens not the observed toxicology screens with the additional information. She asked for the committee’s feedback on the drug screening issue.

Doctor Schottenstein there are several places where the MAC responded in their letter that we should go back to the original language. He would be glad to consider going back to the original language if there was a reason why we should do that. We have had input from other parties in addition to the input from the MAC, which he thought was very valuable, but we’ve also had communications from addictionologists such as Dr. Whitney, Dr Jerry, and Dr. Parran. He said those conversations were about how can we improve the quality of the program that would result in positive, beneficial changes to the original language. He would not, per se, go back to the original language unless there was a compelling reason to do so.

Dr. Schottenstein said this proposal, and some other ones that we will get to, were based on conversations such as one he and Mr. Groeber had with Dr. Whitney and Dr. Jerry where we were trying to figure out how to make this a very good quality program. The Board’s proposed language does that.

Mr. Giacalone commented that the language in the proposed rule provides consistency as well. Everyone has the same requirements even if it may seem prescriptive. The requirements were vetted and they seem logical. He didn’t know why we would want to provide more subjectivity to an issue that seemed to be agreed upon by the experts.

Dr. Soin indicated he believed there were two parts to (H)(1) – the four screens/month for the first year versus two random screens/month and observed versus non-observed screens. He asked for feedback.

Dr. Schottenstein said he is comfortable with the Board’s language of four screens/month for first year and observed screens. This is based on the feedback from conversations with addictionologists as they had concerns regarding the quality of the monitoring and the quality of some of the treatment providers. These were minimum standards so that we can get to the best place possible.

Dr. Bechtel asked if Dr. Rothermel and Dr. Saferin, as Secretary and Supervising Member, had any input regarding the frequency in testing four times a month versus two and observed or non-observed screens. Dr. Rothermel said its assumed that the drug screen is observed. In the four versus two situation, it may not be necessary to mandate that everyone must have four screens per month for the first year. If it was written as a minimum of two per month, you are giving some flexibility to the monitoring organization to look at each individual’s situation. Some may need four per month while others may not.

Mr. Groeber suggested leave the language but edit it to a minimum of two observed drug screens for the length of the five year agreement.
Mr. Giacalone commented that if the rule says a minimum of two observed screens per month, this will become the default. He suggested three as a compromise between two or four per month.

Mr. Groeber asked Ms. Murray to report on what we currently see in the compliance unit. Ms. Murray reported that typically under a Step I agreement probationers are randomly screened four to five times a month for the first year and then that drops down to two to three times a month per a Step II agreement. There are a few exceptions. Dr. Saferin clarified that these are observed screens. He said that part of the issue for the probationers is making sure that there is someone there to observe the screens.

Mr. Giacalone asked if three observed screens per month would be acceptable.

Dr. Soin noted that the four screens/month are only required for the first year. Mr. Groeber noted that this aligns with what the Board currently requires of probationers.

Dr. Rothermel believed that it may not be necessary to mandate a minimum of four observed screens per month for the first year. The monitoring organization will be selected by the Board. She believed it was the Board’s responsibility to monitor the program but not to micromanage it and to have some trust in the organization selected by the Board.

Dr. Schottenstein said that a person newly in recovery has a 50% chance of relapse in the first year. He believed that a weekly screening is not unreasonable as the fewer screens there are creates more chance for a recovering licensee to try to sneak in some substance use. So, it could be to everyone’s benefit to do a minimum of four observed screens/month for the first year.

Dr. Saferin indicated that he would be opposed to changing the frequency of screens to less than what is currently required of recovering licensees.

**Dr. Soin commented that we seem to have consensus on the observed screens with a minimum of four observed screens/month in the first year with a minimum of two observed screens/month for the remainder of the agreement with the monitoring organization.**

Dr. Rothermel said it isn’t necessary to mandate that as a minimum of two, in her opinion, the monitoring program is going to know about the 50% chance of relapse in the first year, so she doesn’t think there will be many who will only have two screens/month the first year.

Dr. Soin rephrased his question. He said he thought there was consensus to require a minimum of four observed screens/month in the first year. He asked Dr. Rothermel if she could live with that language and she responded that she could.

**Line 88 – (H)(2) regarding AA meetings.** The proposed rule reads: The licensee shall attend drug and alcohol support group meetings (e.g. alcoholics anonymous or narcotics anonymous) as directed by the monitoring organization with a minimum of attendance at three meetings per week for the first year of the agreement with the monitoring organization and at least two meetings per week, with a minimum of ten per month, for the remainder of the agreement with the monitoring organization.

Ms. Anderson reported that the MAC and OPHP suggested a minimum attendance of ten per month for the duration of the agreement with the monitoring organization.
Ms. Murray explained that current probationers are required to attend a minimum of three meetings per week and then after a year, under the Step II agreement they may request modification to two meetings per week with a minimum of ten meetings per month, so the proposed language reflects the current Step 1 and Step II distinction.

Dr. Schottenstein recalled that Dr. Parran supported that a minimum of three meetings a week.

**Dr. Soin said this is similar to the earlier discussion. The consensus of the committee was to make no changes to the proposed language.**

**Line 98 – (I) regarding relapse reporting.** Ms. Anderson reported that the MAC and OPHP suggested the language “or confirmed positive drug screen” be deleted but any relapse is reported to the Board. She wanted the committee feedback on this.

She indicated that she discussed this with Ms. Murray and noted that a confirmed positive drug screen would include an MRO review. If an individual was taking a prescription medication properly as prescribed but it showed up on the screen, it would not be considered a confirmed positive screen.

Dr. Schottenstein commented that his understanding of a confirmed positive screen is that it is has been re-tested in a more specific way and the Board would not want reporting of positive screens caused by proper use of prescribed medications. He stated that if relapse and confirmed positive drug screen are redundant, we could justify taking out the additional language. Mr. Giacalone asked if the terms are redundant. Ms. Murray indicated that it may depend on how the monitoring organization adheres to the definition of relapse as defined in the rule. The Board’s proposed phrasing is trying to cover all bases in case the monitoring organization doesn’t define relapse as broadly as the Board does. Ms. Anderson indicated that the rule does define relapse which is the Board’s current definition. Ms. Murray said that this phrasing is just trying to make sure that even if they don’t follow the relapse definition in the rule we still have this requirement that confirmed positive drug screens would be reported to the Board.

Mr. Giacalone asked if an individual had 10 confirmed positive screens of use of non-approved medication would this automatically default to relapse or could the monitoring organization argue that it is not a relapse. What is the trigger point for reporting to the Board? Ms. Marshall said that is our issue. She thought the reason the confirmed positive drug screen language was included was because of situations in the past when some people were in private monitoring and the Board had some disagreements with the monitoring organization about when a positive screen was a relapse. Particularly, when someone came with an explanation and the monitoring organization accepts the explanation as justification for the positive results but the Board does not, this language gives the Board a mechanism to consider it more and make an independent determination of whether it is a relapse based on Board’s interpretation of relapse.

Mr. Giacalone followed-up on Ms. Marshall’s explanation by noting that if the Board received a report of a confirmed positive drug screen it is not a slam dunk determination that the individual relapsed, the Board would look at it and assess it to determine if it does fall within the Board’s definition of a relapse.

It was noted that the Board’s proposed language is not redundant, but provides an additional safeguard.

**Line 102 – (J) regarding reporting non-compliance.** Ms. Anderson said that the original language said “The board shall develop guidelines for the reporting of non-compliance with conditions of the
one-bite program. Non-compliance shall be reported to the Board by the licensee and the medical
director of the monitoring organization.” Comments from the MAC included edits “The board and the
monitoring organization shall jointly develop guidelines for the reporting of non-compliance with
conditions of the one-bite program. Depending on the frequency or severity of non-compliance, non-
compliance shall be reported to the Board by the licensee and the medical director of the monitoring
organization.” She asked for feedback from the committee.

Dr. Schachat and Mr. Giacalone did not support the suggested edits to the proposed rule.

Ms. Anderson noted that there are times of non-compliance that are not considered relapse, such as
when the agreement is tolled, but that would be addressed in the guidelines.

Dr. Schottenstein noted that when we were drafting the proposed one-bite program rules with
interested parties, we realized it may be challenging to come up with guidelines for non-compliance
and we thought of categorizing issues as mild, moderate or severe. For instance, would a missed call
in get reported to the Board.

Mr. Groeber said it is implicit that once the rules are finalized and the monitoring organization is
selected, there will obviously be a joint effort to work together to narrow areas of ambiguity. He is not
advocating changes in the proposed rule.

Rule 4731-16-02 ELIGIBILITY FOR ONE-BITE PROGRAM

Ms. Anderson said we received two questions from the Cleveland Clinic about this rule. They are
requesting clarification whether individuals who have participated in similar programs in other states
are eligible for the program and whether discipline by a licensing board in another state impacts a
licensee’s eligibility for the program. They are not requesting any changes to the proposed rule.

She reported that under the statutes the program is applied to our licensees not applicants. A licensee
is eligible if they are impaired; if they have not previously participated in the one-bite program in Ohio;
and if they have not previously been sanctioned by the Ohio Board. The answer is if the individual
was not a licensee of the Board at the time they did this, they would not be eligible for the one-bite
program.

The committee agreed with Ms. Anderson’s comments.

Rule 4731-16-19 MONITORING ORGANIZATION FOR ONE-BITE PROGRAM

Line 184: (A)(3) Ms. Anderson said this comment from the Cleveland Clinic was similar to the
previously discussed return to work issue. She suggested we can remove “released to return to work”
and use the statutory language of “able to practice according to acceptable and prevailing standard of
care.” The committee agreed with this change.

Line 196: (A)(6) Ms. Anderson said the proposed language is: “At the request of the board, the
medical director of the monitoring organization shall provide testimony in any disciplinary proceeding
involving a licensee reported to the Board by the monitoring organization.” The MAC recommended
deleting this item. She asked for the committee’s feedback.

Dr. Schottenstein asked who provides testimony now since these situations do come up.
Ms. Marshall explained that currently the Board calls upon the Board approved treatment provider to provide testimony per the treatment provider’s contract with the Board. The treatment provider will testify if the Board needs information about an individual’s relapse or impairment. The problem with deleting this from an enforcement perspective is that there may be situations where you find that you need the testimony of the monitoring organization about someone’s non-compliance, positive test, or relapse and you need them to testify about that. If you don’t have an understanding that they will testify then what she perceives will happen is, because it is potentially treatment for drug and alcohol addiction and subject to federal protections, the Board could subpoena that person and they would have to show up, but they would not have to tell you anything. They could appear for the hearing and say I’m sorry I can’t tell you that and then the Board is unable to bring forth the proof needed to support the non-compliance or the relapse. That’s why we have that contractual relationship between the Board and the Board approved treatment providers that closes that gap.

Mr. Giacalone supported keeping the (A)(6) in the proposed rule.

Ms. Anderson said that the Board will also have the option of including the testimony provision in the contract with the monitoring organization just as we currently have in the contracts with the Board approved treatment providers. She said that the expectation is there, whether it is in the rule or in the contract with the monitoring organization.

Mr. Giacalone said he would rather keep it in the rule to avoid any confusion.

Dr. Rothermel asked if the monitoring organization has already reported that the practitioner relapsed, does that not legally carry the same implication as having the monitoring organization testify. Ms. Marshall responded that it does not because it could be hearsay and we don’t have the details. If someone calls the Board and just says that an individual has relapsed it is what someone told me versus calling that actual person to say this is my firsthand knowledge and also to provide testimony in the hearing unit of the underlying details and circumstances which Board staff will not be able to do because we do not have that firsthand knowledge.

Ms. Marshall said that hopefully this will be a rare thing and we all hope that everybody does well in the program and it does not arise, but in those circumstances were someone does go off the rails we need to be able to deal with that.

Ms. Montgomery asked if it was just a practical problem of designating only the medical director to provide testimony when perhaps another treatment staff person could provide the testimony. Ms. Marshall said that may be a possible issue but the Board would want the physician medical director to provide the testimony.

Ms. Montgomery asked if the Board currently required the Medical Director to provide testimony in Board cases as opposed to other treatment professionals. Ms. Marshall said yes, in Board approved treatment provider contracts, the Medical Director provides testimony.

**Line 203: (B)(1) regarding drug screens and Line 210 (B)(2) regarding AA meetings.** Ms. Anderson said issues regarding drug screens and AA meetings were discussed in the prior rule so we will be consistent there.

**Line 220 (D) reporting timeframes.** Ms. Anderson said the proposed language says, “The monitoring organization shall within 48 hours reports to the board any licensee who fails to comply with the monitoring agreement.” Comments from the MAC and OPHP strikes the 48 hours and adds “in
accordance with the non-compliance guidelines established by the Board and the monitoring organization.” Ms. Anderson said that she thinks the suggested clause is clarifying and would be a good addition to the rule. She asked committee members for feedback regarding the 48 hour provision or what a reasonable timeframe would be.

Mr. Giacalone asked how it became 48 hours. It was noted it is in the existing rule. Ms. Montgomery believed it important to designate a specific timeframe, be it 48 or 72 hours. Considering that some issues occur on a weekend, perhaps 72 hours is more responsible. Dr. Soin asked what happens if something occurs on a weekend. Ms. Marshall says they usually will call and leave a voice mail. Dr. Schachat offered reporting within two business days. **Board members determined a specific number of hours would be preferred and the consensus was 72 hours.**

**Line 223 (D) reporting relapse:** Ms. Anderson said this was a similar issue with 48 hours to report relapse. Comment from the MAC and OPHP suggested taking out “the monitoring organization shall, within 48 hours report” so that it would read: “Any relapse as defined in rule 4731-16-01(B) of the Administrative Code shall be reported to the Board.” **Ms. Anderson suggested maintaining the original proposed language of the rule but changing it to 72 hours from 48 hours. The committee agreed with this suggestion.**

**Line 245 (G) regarding providing education:** Ms. Anderson said the proposed rule states “The monitoring organization in consultation with the board shall provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the one-bite program and the board’s statutes, rules and policies regarding impairment. The monitoring organization shall utilize training materials prepared by the Board”.

The MAC suggested “The monitoring organization and the medical board shall jointly provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the one-bite program. and the board’s statutes, rules and policies regarding impairment. The monitoring organization shall utilize training materials prepared by the Board. Ms. Montgomery asked who prepares training materials for the Medical Board now. Ms. Anderson said that communications department prepares it with input from internal and external experts. Mr. Groeber said that in conversations with OPHP when we were drafting the rules, it was reported that OPHP already does this type of education and outreach and it is of value to those who are in the program and those who could be impacted by the program. Dr. Rothermel asked what is the concern with saying that we will jointly do it because if they already have good training materials why would we specify that they use training materials prepared by the Board. Ms. Anderson replied that we want to assure that the training materials are accurate. Ms. Montgomery asked why the Board just doesn’t approve the training materials used by the monitoring organization. Dr. Rothermel noted that obviously the materials used by the monitoring organization and the Board need to be consistent.

Mr. Giacalone said that he interpreted the “jointly provide education” literally in that the Board and the monitoring organization will provide the education together.

Mr. Groeber said he understands the intent of the change but he believed it important to keep in the reference to the statutes, rules and policies.

**Ms. Anderson summarized the changes accepted by the committee to read:** The monitoring organization in consultation with the board will provide education to the licensees, treatment providers and continuing care providers regarding eligibility criteria for the one-bite program
and the board’s statutes, rules and policies regarding impairment. The monitoring organization shall utilize training materials prepared by the Board.

Line 251: (H) reporting of failure to complete treatment or continuing care. Ms. Anderson asked the committee if they wanted to change the 48 hour reporting timeframe to 72 hours. Committee members agreed with the change.

Rule 4731-16-20 TREATMENT PROVIDERS IN THE ONE-BITE PROGRAM

Lines 265-278 (A)(2)(a) – (A)(2)(c). Ms. Anderson said that there was some concern in previous discussions that the treatment providers for the one-bite program should be a higher level, as all treatment providers may not qualify for this. The Board had added some requirements for the medical director in (A)(2)(a) – (A)(2)(c) as follows:

(A)(2) Medical director is a board-certified addictionologist or board-certified addiction psychiatrist and is experienced in diagnosing and treatment physicians and other health care practitioners with substance use disorders;
   (a) The medical director shall be directly involved in the initial assessment and diagnosis, ongoing treatment processes, including medications, treatment planning and discharge planning.
   (b) The medical director shall have knowledge and experience with prescribing medications specifically indicated for use in patients with substance use disorders and with medications to be avoided for patients with substance use disorders.
   (c) The medical director shall have specific training and knowledge regarding the interpretation of the results of toxicology screening for drugs and alcohol.

Ms. Anderson reported that the MAC recommended amending (A)(2) to read “Medical director is a board-certified addictionologist or board-certified addiction psychiatrist.” The MAC also suggested striking all other language in (A)(2)(a) – (A)(2)(c).

Dr. Schottenstein said all the language in the Board’s proposed rules comes from previous feedback from addictionologists particularly regarding the quality of the treatment providers. It seemed that adding additional criteria would improve the quality of programs treating our licensees. Mr. Groeber was surprised by the change as the intent was to raise the bar. Many comments received throughout this process related to the number of treatment providers and the varying quality of services provided by the providers.

Dr. Schachat asked about the requirement for the medical director to be directly involved in the initial assessment and diagnosis, ongoing treatment processes, including medications, treatment planning and discharge planning. He noted that some organizations are large enough that the medical director may have limited clinical involvement and other treatment professionals have more direct contact with licensees undergoing treatment.

Mr. Groeber remarked that the expectation was that the number of licensees that will be in the program are small enough that they warrant direct one-on-one contact. And if we are expecting the medical director to testify, that one-on-one contact is important.

Dr. Schottenstein asked if there is a level of correlation between the involvement of the medical director and the quality of the treatment program. The addictionologists felt there was a substantial correlation.
Ms. Montgomery also shared concerns as to whether the board was being too prescriptive in a clinical situation regarding the medical director’s direct involvement in patient care. Mr. Giacalone did not believe that the standards are onerous.

After discussion, the consensus of the committee was to change (A)(2)(a) to read: The medical director shall be directly involved in oversee the initial assessment and diagnosis, ongoing treatment processes, including medications, treatment planning and discharge planning. Further, the committee agreed to keep the Board’s proposed language in (A)(2) and in (A)(2)(b) and (A)(2)(c).

Line 295 (A)(6) and Line 298 (A)(7) – Ms. Anderson reported the MAC agrees with the Board’s proposed language.

Line 301 (A)(8) – Ms. Anderson said the MAC suggested adding “partial hospitalization,” and “or others as necessary.” Dr. Schottenstein clarified that the treatment providers for the one-bite program would have to be able to provide all the services listed in (A)(8). The committee agreed with the additional language.

Line 306 (A)(9) – Ms. Anderson said the Board’s proposed language stated: The treatment provider has the ability to provide extended residential care for up to 90 days for patients who require continued treatment of severe, resistant, or advanced stage of substance use disorders. She reported that the MAC suggested striking “for up to 90 days” and striking “severe, resistant, or advanced stage of” so that the change would read “The treatment provider has the ability to provide extended residential care for patients who require continued treatment for substance use disorders.”

Ms. Montgomery asked if the levels of substance use disorders were words of art. Ms. Anderson said that language came from specialists who provided explanations as to why someone may need extra care. Dr. Rothermel commented that some licensees may need more than an additional 90 days for treatment. Ms. Anderson said that she’s OK with the MAC’s recommended changes. The committee agreed to accept the MAC’s recommended changes.

Reconsideration of (A)(8): Mr. Groeber asked if the changes made to (A)(8) could be revisited. He asked if “OR others as necessary” should be changed to “and others as necessary.” Dr. Schottenstein agreed with Mr. Groeber. The committee agreed with Mr. Groeber’s change.

4731-16-21 CONTINUING CARE FOR ONE-BITE PROGRAM

Line 399 (C) Ms. Anderson said that the MAC recommended removing the word “group” from the group therapy reference, just leaving it as therapy. She thought that seemed appropriate but asked the committee’s feedback. The committee agreed with the MAC recommendation to remove the word “group.”

Line 405 Ms. Anderson said that the MAC is recommending an additional paragraph, (C)(3), that would read “Continuing care provider shall provide status reports for each participating licensee to the monitoring organization no less than quarterly.” She agreed with this addition. The committee agreed to add (C)(3) as suggested by the MAC.
Ms. Anderson indicated that this concludes the review of the proposed one-bite program rules. She thanked the committee for their patience.

Dr. Schottenstein returned to Line 399 regarding removing the word “group”. He indicated that group therapy is the treatment of choice for substance abuse disorders and that’s why the original language stated it that way. Individual therapy can be helpful but he did not want to neglect the group therapy by taking it out of that part of the rule. He asked if we should say “provide individual and group therapy.”

Mr. Giacalone suggested we leave it as is. Ms. Murray said it is her understanding that the continuing care is to be similar to aftercare which is group therapy. That’s why the language says group therapy as this is supposed to be a higher-level version of aftercare. She thought changing it to “therapy” and providing the option for individual therapy undercuts the intention of what continuing care is supposed to be.

**Following discussion, Ms. Anderson suggested that (C) read as follows:**

> A continuing care provider shall provide therapy, including group therapy, led by a psychologist or masters-level chemical dependency counselor, social worker or therapist.

The committee agreed with Ms. Anderson’s edits to paragraph (C).

Dr. Bechtel moved to recommend filing the one-bite rules as revised with the Common Sense Initiative. Dr. Schachat seconded the motion. Motion carried.

**Proposed Rules – Chapter 4731-33 Medication Assisted Treatment**

Ms. Anderson said this is also a large group of rules. She indicated the memorandum from Ms. Debolt included in the agenda materials provides the proposed changes and the comments we received.

Ms. Anderson said that the Board is required to promulgate rules on Medication Assisted Treatment by statute. We are starting with the definitions and with the OBOT rules this time, other required rules will be brought to the committee later. The Board received comments from over 30 physicians on the proposed rules and most were not favorable. The Board has made significant changes and the Board has used the ASAM guidelines and TIP 63 from SAMSHA.

Mr. Giacalone said that the committee does not have enough time to discuss these rules today. Dr. Soin agreed and said the comments were well thought out and we want to get the rules right.

Ms. Anderson said that the rules could be brought back to the committee next month. She said that we could also get more feedback by recirculating the proposed changes. Dr. Soin agreed with recirculating the proposed changes.

Mr. Giacalone asked that the MAT rules be provided in the format used for the one-bite rules which highlighted proposed changes. He said this format was very helpful and it crystalized the issues. Ms. Anderson said that would be done.
In conclusion, Ms. Anderson said that the proposed changes to the MAT rule would be recirculated for feedback and provided to the committee for review. She indicated that it may be on the July agenda instead of the June agenda depending on the volume of feedback received.

**Draft Sub-Acute and Chronic pain rules**

Dr. Soin said the rules are a work in progress and are a combination of many different opinion leaders and stakeholders across the state. He believes the rules are responsive to feedback the Board had provided and many of our concerns were addressed in the draft.

Ms. Anderson said that these rules apply to subacute pain lasting 6 – 12 weeks, and chronic pain lasting 12 weeks or more. These rules will replace the current 4731-21 chronic pain rules.

She explained that the proposed rules set up different requirements at different MED levels. At 50 MED physicians will be required to reevaluate the patient, consider consultation with a specialist, and have the patient come in every three months.

At 80MED, the physician and patient enter into a written pain agreement, the physician offers a naloxone prescription, and the physician obtains a consultation with a specialist in the area of the body affected by the pain, a pain management specialist, or specialist in addiction medicine or addiction psychiatry, or a medication therapy management review.

Ms. Anderson said the Board is looking at sample pain agreements so that there will be resources made available.

At 120 MED, physicians will be required to have a pain management specialist as prescriber or consultant, unless the patient was at that dose prior to the effective date of the rule. A consultant is needed if the dose escalates.

Periodic follow-up assessment is required if the dose is below 50 MED. Follow-up assessment is required at least every three months if the dose is at 50 MED or above.

The rule does not apply to opioid prescriptions for patients in hospice care or with terminal cancer or another terminal condition. Additionally, the rule does not apply to inpatient prescriptions under Pharmacy Board statutes.

Dr. Bechtel said he thought the proposed rules were well written and evidence based and there has been a lot of input regarding best practices. Anything that we can do to provide templates and model documents for prescribers would be helpful and make it easier for licensees to comply with the regulations.

Dr. Bechtel said the guidelines are good for pain medicine specialists but a lot of narcotic prescriptions are written in small amounts by isolated providers in Ohio. We need to make it easy for those physicians as he has concern that some primary care physicians will decide to not prescribe narcotics. Dr. Soin echoed Dr. Bechtel’s comments and said that the initial draft was much more aggressive than this one and a lot of those restrictions and requirements for the 50MED have been lifted to address Dr. Bechtel’s points.

Dr. Bechtel expressed concern regarding the availability of pain specialists that accept Medicaid. Dr. Soin said that he felt that he was one of a few pain specialists that accept Medicaid in his area. He noted the potential service burden on the pain specialists available to assist the potential number of
patients is why the grandfather provision is in the proposed rule. The hope is that very few patients will reach that 120 MED level.

Mr. Groeber reported that we ran some of the numbers with Ohio Society of Interventional Pain Physicians averaging 25 patients/day to see how much capacity there would be for consults if needed. Dr. Soin said that the way the rule is drafted to include some grandfathering and if the dose escalates or patients reach those 120 MED levels then a consult is warranted we have enough providers to achieve that.

Mr. Groeber said when you look at the prescribers issuing high numbers of prescriptions, it is generally not pain management physicians, it is primary care providers dealing with a patient who is not responding to treatment so the MED level rises over time. The point is to try to get a consultation with a pain specialist to either cap that medication level or even taper the dosing level.

Dr. Bechtel reported that as a dermatologist there are few dermatologists in Ohio who accept Medicaid but many are centered in academic centers so access to dermatologic care for Medicaid patients is severely restricted and this compromises patient care. His concern is if we run into the same situation with pain specialists, Medicaid patients may have limited access to care. Dr. Soin noted that there could be a bottleneck there, but compared to where we were to where we are now with this draft of the rules, a lot of that has been alleviated. We will be circulating the rules for comment so those concerns may come out.

Mr. Groeber reported that Dr. Applegate from the Ohio Department of Medicaid was involved in these discussions.

Mr. Giacalone echoed Dr. Bechtel’s suggestion that the board develop templates and model pain management agreements for prescribers. Dr. Soin said we are working on that internally.

**Dr Bechtel moved to approve the proposed rules for initial circulation to interested parties. Dr. Schachat seconded the motion. Motion carried.**

Dr. Soin reviewed the remaining items on the agenda and said that we will skip the rule review update. He said that the letter from the Department of Medicaid will be discussed at the retreat. Dr. Soin reported that a few months ago we provided some feedback to the FDA about what the Ohio Board is doing to address opiate issues. We heard back from the FDA and we are working on a response and we will update the committee as it materializes.

**Adjourn**

Ms. Montgomery moved to adjourn the meeting. Mr. Giacalone seconded the motion. Motion carried.

The meeting adjourned at 10:11 a.m.

jkw
Dr. Schottenstein called the meeting to order at 2:18 p.m.

**INITIAL PROBATIONARY APPEARANCES**

**David M. Burkons, M.D.**

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

Responding to questions from Dr. Schottenstein, Dr. Burkons stated that he has not returned to his private practice and he is currently practicing at a women’s clinic two to three days per week, which he finds to be a satisfying work experience. Dr. Burkons found the courses he took on medical record-keeping and controlled substance prescribing to be very productive. Dr. Burkons stated that he no longer pre-signs prescriptions and he checks the Ohio Automated Rx Reporting System (OARRS) on every patient, even though he is not prescribing anything that requires an OARRS check.

Dr. Schottenstein recalled that Dr. Burkons had previously speculated that when he returned to practice he may prescribe no more than two days of pain medication for a patient. Dr. Burkons stated that, in fact, he usually prescribes less than two days of pain medication. Dr. Burkons also confirmed that he is documenting thoroughly and is keeping a medical record on everyone he sees.

Dr. Schottenstein stated that, in the words of Dr. Burkons’ defense attorney, he “passion and compassion” for his patients had potentially led to some boundary issues. Dr. Schottenstein asked if Dr. Burkons is keeping health boundaries with his patient. Dr. Burkons replied that he is keeping healthy boundaries.

Dr. Schottenstein asked if Dr. Burkons had any questions about his Board Order. Dr. Burkons answered that he had no questions.

Dr. Soin asked about Dr. Burkons’ long-term goals. Dr. Burkons responded that his current practice at a women’s clinic is a long-term situation and he did not see himself practicing anywhere else in the next several years.
Mr. Giacalone moved to continue Dr. Burkons under the terms of the Board’s Order of July 12, 2017, with future appearances before the Board’s Secretary or Designee. Dr. Soin seconded the motion. The motion carried.

Wayne J. Myles, D.O.

Dr. Myles is making his initial appearance before the Committee pursuant to the terms of his March 14, 2018 Consent Agreement. Dr. Factora reviewed Dr. Myles’ history with the Board.

In response to questions from Dr. Factora, Dr. Myles stated that he is currently practicing part-time at a clinic in Charleston, West Virginia. Dr. Myles stated that it is likely that he will eventually move to Tennessee to join the faculty of a medical school there. Dr. Myles found his courses in ethics, boundaries, and professionalism to be very informative and applicable to his experience. Dr. Factora asked if Dr. Myles has been made aware of the personnel policies of his place of employment. Dr. Myles responded that he is aware of the policies, though he has resigned from that facility.

Dr. Factora asked if Dr. Myles planned to return to Ohio in the future. Dr. Myles answered that he does plan to return to Ohio.

Dr. Schottenstein asked if Dr. Myles had any questions about his Consent Agreement. Dr. Myles replied that he had some questions about how the terms of his probation will work after he moves to Tennessee, but stated that he can discuss that with the Compliance staff at a later time.

Dr. Soin moved to continue Dr. Myles under the terms of his March 14, 2018 Consent Agreement, with future appearances in six months before the Board’s Compliance staff. Dr. Factora seconded the motion. The motion carried.

Edward I. Nelson, M.D.

Dr. Nelson is making his initial appearance before the Committee pursuant to the terms of his March 14, 2018 Consent Agreement. Mr. Giacalone reviewed Dr. Nelson’s history with the Board.

Mr. Giacalone asked Dr. Nelson to describe what brought him before the Board. Dr. Nelson stated that he has suffered from obstructive sleep apnea virtually all his life, since the age of four. Dr. Nelson sought treatment for somnolence while in college, but the physician he saw could not help him. In 1997, as a practicing anesthesiology, Dr. Nelson diagnosed himself with obstructive sleep apnea and his primary care physician sent him to the University of California Los Angeles for a study. By midnight, Dr. Nelson had been put on a CPAP (continuous positive airway pressure) and he has not slept without CPAP since that time. Dr. Nelson became unstable at times and he was eventually placed on VPAP (variable positive airway pressure).

Dr. Nelson continued that while working several years ago, he became drowsy in front of a patient while charting on a computer, resulting in a complaint. Dr. Nelson speculated that the patient may have been angry at him for not increasing the patient’s dose of opiates, stating that he was working in a less-than-ethical practice where patients were used to having their opiates increased regularly. Dr. Nelson commented that a Medical Board investigator had suggested that that may have been the reason for the complaint. Dr. Nelson underwent a urine drug screen, which was negative. Dr. Nelson stated that he has never drank alcohol and he has only had benzodiazepines and opiates in peri-operative settings and very short post-operative courses.
Dr. Nelson stated that he went to another sleep study at the request of the Board. The study found that when Dr. Nelson entered REM (rapid eye movement) sleep, his lips would relax just enough to cause an arousal on the EEG (electroencephalogram). The study switched Dr. Nelson to a mask in the middle of the night, and as a result he awoke the next morning feeling “fresh as a daisy.” Dr. Nelson stated that it was an amazing experience. Dr. Nelson stated that, apparently, there had been an inappropriate interface between his body and the VPAP machine, and that is why he is before the Board. Dr. Nelson commented that he has had a long, hard battle with the disease process.

Mr. Giacalone asked how Dr. Nelson feels now. Dr. Nelson replied that he feels significantly better, though not as good as the morning he woke up from the latest sleep study. Dr. Nelson stated that his sleep physician has him on the medication Provigil and he is doing well with that. Dr. Nelson added that he is also taking medication for restless leg syndrome.

Dr. Soin asked if Dr. Nelson feels like he should have been sanctioned by the Board. Dr. Nelson analogized that he has possibly been given capital punishment for a parking ticket. Dr. Nelson stated that since he signed his Consent Agreement, he has lost two jobs and an opportunity for a third. Dr. Nelson stated that he is currently unemployed and he is worried that he is unemployable. Dr. Nelson expressed concern that his probation is turning into a revocation of his license because he may not be able to find work. Dr. Nelson stated that he has signed a contract to work in pain medicine and addiction medicine, and he should receive a DATA 2000 waiver soon. Dr. Nelson felt that he is at the top of his career, having become boarded in pain medicine a couple of years ago, and he felt that he has something to provide to the citizens of Ohio.

Dr. Soin stated that he wanted to make sure Dr. Nelson has self-awareness in this situation. Dr. Soin stated that the allegation is that Dr. Nelson was falling asleep during patient encounters. Dr. Soin expressed concern about the safety of the public and stated that Dr. Nelson’s self-awareness can help make sure that this incident does not recur in the future.

Dr. Soin asked if Dr. Nelson has explored neuro-stimulation options or other options for his sleep apnea. Dr. Nelson stated that he only falls asleep when he is sitting down and that it has never been a problem when he is speaking with a patient or doing something similar. Dr. Soin commented that falling asleep when seeing a patient should never happen. Responding to Dr. Soin’s previous question, Dr. Nelson stated that he has not explored the possibility of neuro-stimulation and that he was unfamiliar with it. Dr. Soin recommended that Dr. Nelson discuss it with his sleep physician.

Dr. Soin noted that Dr. Nelson’s statements indicate that he is not in ideal condition currently, and that worries Dr. Soin in terms of patient safety. Dr. Nelson stated that he is 100% stable on Provigil. Dr. Schottenstein asked if Dr. Nelson has ever had a multiple sleep latency test for narcolepsy. Dr. Nelson replied that he passed a sleep latency test, indicating that he does not have narcolepsy. Dr. Schottenstein agreed with Dr. Soin and stated that falling asleep during patient encounters cannot happen. Dr. Schottenstein advised Dr. Nelson to explore every possibility with his sleep physician to make sure he is as well-controlled as possible. Dr. Nelson agreed and stated that he has tried to contact sleep specialists at Ohio State University to see if they can help him beyond what his regular sleep physician has done.

Dr. Schottenstein asked if Dr. Nelson had any questions about his Consent Agreement. Dr. Nelson stated that he did not have questions, but he opined that it was not the Board’s intent to put him into a position where he was no longer employable. Dr. Nelson stated that he is experiencing severe financial difficulties and he is waiting to see if insurance companies will decide if its patients can see a physician who is on probation regardless of the reason. Dr. Nelson analogized that, professionally speaking, he agreed to allow the Board to put a noose around his neck with the understanding that
the Board will not pull the lever as long as Dr. Nelson is compliant; however, Medicaid has pulled the lever and Dr. Nelson is hanging by his neck. Dr. Nelson feared that if he is not cut down soon, he will be dead professionally. Dr. Schottenstein regretted Dr. Nelson’s troubles and advised him to let the Board’s Compliance staff know if there is anything the Board can do. Dr. Nelson commented that Ms. Jones in the Compliance section has been very helpful.

Dr. Saferin advised Dr. Nelson to research an implantable device called Inspire, which helps with sleep apnea. Dr. Soin agreed, stating that Inspire runs automatically. Dr. Nelson stated that he will research that.

Mr. Giacalone moved to continue Dr. Nelson under the terms of his March 14, 2018 Consent Agreement. Dr. Factora seconded the motion. The motion carried.

John M. Smilo, D.P.M.

Dr. Smilo is making his initial appearance before the Committee pursuant to the terms of his February 14, 2018 Consent Agreement. Dr. Schottenstein reviewed Dr. Smilo’s history with the Board.

Dr. Schottenstein asked if Dr. Smilo has taken the courses in medical record-keeping and controlled substance prescribing. Dr. Smilo replied that he has not yet taken the courses and he is looking forward to them. Dr. Schottenstein opined that the courses will be very productive for Dr. Smilo. Dr. Schottenstein asked Dr. Smilo if he is currently practicing. Dr. Smilo answered that he has a private practice in a small county in rural Ohio. Dr. Schottenstein asked how the practice was doing. Dr. Smilo stated that his community has a large Medicaid population and that he is currently unable to provide care to Medicaid patients due to his probation.

Dr. Smilo commented that when he graduated from his residency in 1991, the perception of the treatment of pain was much different than today. Dr. Smilo stated that the guidelines from the Board and from the Surgeon General have made things easier for him because instead of debating whether a patient needs more pain medication, he can simply follow the guidelines. Dr. Smilo, noting that he is a surgical podiatrist, stated that he can also use other medications and physical therapy.

Dr. Schottenstein asked if Dr. Smilo had questions about his Consent Agreement. Dr. Smilo stated that he has no questions. Dr. Smilo commented that Ms. Jones in the Board’s Compliance section has been extremely helpful and he intends to comply with the Agreement.

Dr. Soin stated that Dr. Smilo’s troubles with Medicaid often happens to physicians who are on probation. Dr. Soin advised Dr. Smilo to be vigilant about following his Consent Agreement so that he can be out of probation as soon as possible. Dr. Smilo stated that he has spoken with Medicaid and they see probation as a restriction, even though Dr. Smilo’s probation does not restrict his license at all. Dr. Smilo asked if there was any possibility of reducing his probationary time after he has taken his courses. Dr. Soin and Dr. Schottenstein stated that the probationary time in the Consent Agreement cannot be reduced.

Dr. Soin asked how Dr. Smilo plans to treat patients who come to him in pain and whether Dr. Smilo is still prescribing at the same rate as previously. Dr. Smilo replied that he has been reducing his prescribing progressively since 2012 or 2013, before there was even a Board investigation. Regarding patient pain, Dr. Smilo stated that narcotics are now on the bottom of the list of things to try, including physical therapy and other medications. Dr. Smilo commented that he has also referred a few patients to psychiatry. Dr. Smilo stated that his mainstay treatment for pain is physical therapy and injections performed by himself.
Mr. Giacalone moved to continue Dr. Smilo under the terms of his February 14, 2018 Consent Agreement, with future appearances before the Board’s Secretary or Designee. Dr. Soin seconded the motion. The motion carried.

APPROVAL OF REPORTS OF CONFERENCES

Mr. Giacalone moved to approve the Compliance Staff’s Reports of Conferences for April 9 & 10, 2018. Dr. Factora seconded the motion. The motion carried.

MINUTES REVIEW

Mr. Giacalone moved to approve the draft minutes from April 11, 2018. Dr. Soin seconded the motion. The motion carried.

ADJOURN

Dr. Soin moved to approve the draft minutes from April 11, 2018. Mr. Giacalone seconded the motion. The motion carried.

The meeting adjourned at 2:55 p.m.

Michael Schottenstein, M.D.
Chair

blt