

MINUTES**THE STATE MEDICAL BOARD OF OHIO****April 11, 2018**

Robert P. Giacalone, President, called the meeting to order at 10:30a.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; Anita M. Steinbergh, D.O.; Michael L. Gonidakis; Amol Soin, M.D.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; Ronan M. Factora, M.D.; Mark A. Bechtel, M.D.; and Betty Montgomery.

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; Sallie Debolt, Senior Counsel; Bill Schmidt, Chief of Investigations; Susan Loe, Director of Human Resources and Fiscal; Teresa Pollock, Director for Communications; Joseph Turek, Deputy Director for Licensure; 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, Emily Pelphrey, James Wakley, and Katherine Bockbrader, Assistant Attorneys General; R. Gregory Porter, Chief Hearing Examiner; Danielle Blue, Hearing Examiner; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; Annette Jones and Angela Moore, Compliance Officers; Colin DePew, Legal and Policy Staff Attorney; Jacqueline A. Moore, Legal/Public Affairs Assistant; and Benton Taylor, Board Parliamentarian.

MINUTES REVIEW

Dr. Saferin moved to approve the draft minutes of the March 14, 2018, Board meeting, as written. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

APPLICANTS FOR LICENSURE

Dr. Steinbergh moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the physician applicants listed in Exhibit "A" and the allied professional applicants in Exhibit "B," as listed in the Agenda Supplement and handouts. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Soin	- aye
	D. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye

Dr. Bechtel - aye

The motion carried.

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

ROLL CALL:

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

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: Christopher Francis Aul, L.M.T., L.A.c., L.O.M.; John Robert Capurro, M.D.; Charles Michael Misja, M.D.; and Danny Joseph Sayegh, M.D. A roll call was taken:

ROLL CALL:

Dr. Rothermel	- aye
Dr. Saferin	- aye
Dr. Schottenstein	- aye
Dr. Steinbergh	- aye
Dr. Schachat	- aye
Mr. Giacalone	- aye
Mr. Gonidakis	- aye
Dr. Soin	- aye
Dr. Edgin	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
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. Steinbergh	- aye
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Soin	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	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. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matters of Mr. Aul, Dr. Capurro, and Dr. Misja.

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.

CHRISTOPHER FRANCIS AUL, L.M.T., L.A.C., L.O.M.

Mr. Giacalone directed the Board's attention to the matter of Christopher Francis Aul, L.M.T., L.A.c., L.O.M. Objections to Ms. Blue's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Giacalone stated that a request to address the Board has been filed on behalf of Mr. Aul. Five minutes will be allowed for that address.

Mr. Aul was represented by his attorney, Elizabeth Collis.

Ms. Collis asked the Board to carefully review the previous cases of Philip Cardwell, P.A., Christopher Pelloski, M.D., and Steven Schwartz, M.D. Ms. Collis stated that these three prior cases are very different from that of Mr. Aul because in each of the prior cases, the licensee was actively searching for child pornography online or had stated that they had viewed child pornography due to curiosity. Ms. Collis added that in the prior cases the government had determined that the licensees should be registered as sex offenders, an indication that the government found they posed a harm to the public. Ms. Collis stated that this is different from Mr. Aul's case, in which the judge determined that Mr. Aul should only be sentenced based on Count 2, Possession of Criminal Tools.

Ms. Collis continued that a search warrant had been issued based on evidence that child pornography

could be downloaded at Mr. Aul's home. The police collected Mr. Aul's computers and hard drives. Only four images and 19 videos were found on Mr. Aul's computer, as opposed to the hundreds that the police had expected. Ms. Collis stated that this supports Mr. Aul's position that he had attempted to actively delete, stop, or block any such content from coming onto his computer. Ms. Collis stated that this also supports the basis for the court's decision to only sentence Mr. Aul based on Count 2 and to not require Mr. Aul to register as a sex offender.

Ms. Collis respectfully requested, based on all the facts in this case, that the Board impose a sanction that would allow Mr. Aul to continue practice in some capacity in Ohio.

Mr. Aul stated that he hopes to provide the Board with some insight into this devastating situation. Mr. Aul stated that it is profoundly disturbing to know what kind of monsters are out there that have done terrible things to children and, as a father, an uncle, and a person, it breaks his heart to be lumped in with such fiends.

Mr. Aul continued that his downloading of movies was not focused on pornography; rather, he stated that he downloaded all kinds of movies, including science fiction, mysteries, and comedies. Mr. Aul stated that he would enter search terms and hundreds of results would appear and be transferred into his queue. Mr. Aul stated that if he ever saw content in his queue that he did not want or with titles indicating questionable content, he would delete them from the queue before the videos and images every downloaded onto his computer. Mr. Aul stated that he was not actively looking for anything illegal, but after downloading so many movies at one time a few items slipped through.

Mr. Aul stated that the investigator found twelve items on his computer that he had deleted and eleven other items that were simply buried in thousands and thousands of movies that he had. Mr. Aul noted that, as demonstrated by the police report, he had been deleting these items from the queue before they were downloaded onto his computer. Mr. Aul stated that he was shocked to learn from the police report how many items could have been downloaded, stating that he had no idea that he had been so close to this illegal content. Mr. Aul stated that once he realized this type of material was out there, he was on-guard to keep it off his computer. However, due to his hoarding addiction, Mr. Aul did not refrain from downloading movies and television shows altogether.

Mr. Aul stated that he takes full responsibility for having unwanted content on his computer. Mr. Aul stated that in searching for movies he was fishing with a net instead of a pole, and it is his fault for being so careless. Mr. Aul stated that he decided to plead guilty in his criminal case because it was the right thing to do for many reasons, but mainly to protect his young son from negative publicity. Mr. Aul commented that his son is and always will be his highest priority.

Mr. Aul observed that the Hearing Examiner had found that he was not remorseful. Mr. Aul stated that this is not true and that he has been shaken to his core over the allegations and convictions that resulted from his conduct. Mr. Aul stated that he has taken full responsibility and has cooperated to the best of his ability. Mr. Aul added that he continues to participate in counseling to determine what led him to this hoarding behavior. Mr. Aul stated that he no longer uses the internet to download movies, he has moved out of his parents' home, and he is living a much healthier lifestyle.

Mr. Aul stated that he has completed a master's degree and he was one of the first licensed practitioners of Oriental medicine in Ohio. Mr. Aul stated that he works in a small practice on Columbus and has been able to help many people with his education, training, and experience in massage therapy, acupuncture,

and Oriental medicine. Mr. Aul commented that his calling in life is to help people. Mr. Aul stated that, even though his conviction was unrelated to his professional practice, he would understand if the Board does not allow him to continue practicing massage therapy or even acupuncture. However, Mr. Aul respectfully requested a chance to continue working in the field of Oriental medicine, which involves nutritional counseling regarding herbs and lifestyle changes.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Ms. Pelphrey stated that she did wish to respond.

Ms. Pelphrey commented that in her years as a criminal prosecutor, she has not seen a conviction like Mr. Aul's. Ms. Pelphrey stated that Mr. Aul pleaded guilty to both Count One and Count Two, but he was sentenced based only on Count Two. Ms. Pelphrey pointed out that the language in Count Two specifically states that the circumstances of the criminal tools indicate that the substance, device, instrument, or article involved in the offense is intended for use in the commission of a felony, namely the allegations set forth in Count One. Ms. Pelphrey stated that this is essentially saying that the computer was used to view and download the child pornography. Ms. Pelphrey stated that a conviction for Possession of Criminal Tools, even though in this case it refers to the computer that was used for child pornography purposes, does not carry with it a requirement to register as a sex offender. Ms. Pelphrey stated that she could not explain why the prosecutor in the case took the plea arrangement in this way or why Mr. Aul was sentenced the way he was.

Ms. Pelphrey stated that Mr. Aul did not attend his Medical Board hearing, but he did submit an affidavit. Ms. Pelphrey noted that in the affidavit, Mr. Aul stated that he would immediately delete some of the images that he claimed were downloaded accidentally. Ms. Pelphrey stated that the computer forensics in this case indicate that the images were found in allocated space, which means they had not been immediately deleted the way Mr. Aul described.

Ms. Pelphrey stated that the names of the deleted files can constitute aggravating circumstances. Ms. Pelphrey opined that given the names of the deleted files and the circumstances of this case, the Board's mission to protect the public should trump everything else. Ms. Pelphrey recommended accepting the Hearing Examiner's Proposed Order to permanently revoke Mr. Aul's licenses to practice in Ohio.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Christopher Francis Aul, L.M.T., L.A.c., L.O.M. Dr. Schottenstein seconded the motion.

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

Dr. Steinbergh stated that Mr. Aul pleaded guilty to one felony count of Pandering Sexually-Oriented Material Involving a Minor, in violation of 2907.322(A)(5)(c), Ohio Revised Code; and one felony count of Possessing Criminal Tools, in violation of 2923.24(A) and (C), Ohio Revised Code.

Dr. Steinbergh stated that Mr. Aul was first licensed to practice massage therapy in 2001; first licensed to practice acupuncture in 2006, and first licensed to practice Oriental medicine in 2017. Dr. Steinbergh stated that all of Mr. Aul's licenses are currently active and he is currently self-employed at Natural Health Solutions in Columbus, Ohio. Mr. Aul's practice is focused predominately on Oriental medicine, but he regularly provides acupuncture and massage therapy services as well. Mr. Aul has stated that he rarely provides treatment to children and does not plan to treat children in the future.

Dr. Steinbergh continued that in July 2017, an indictment was filed in the Court of Common Pleas, Fairfield County, Ohio, against Mr. Aul charging Count One and Count Two. Count One stated the following:

On or about March 25, 2013, to March 12, 2015, at the County of Fairfield, State of Ohio, Christopher Francis Aul, unlawfully did, with knowledge of the character of the material or performance involved, knowingly solicit, receive, purchase, exchange, possess, or control material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality in violation of §2907.322(A)(5), 2907.322(C) of the Revised Code.

Count Two stated the following for the same time period:

Christopher Francis Aul ... unlawfully did possess or have under the person's control any substance, device, instrument, or article, to wit: one or more electronic devices with purpose to use it criminally in violation of §2923.24(A), 2923.24(C) of the Ohio Revised Code. "Furthermore, the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, to wit: one or more violations of R.C. 2907.32, 2907.321, 2907.322, and/or 2907.323.

Dr. Steinbergh stated that on August 28, 2017, Mr. Aul pleaded guilty to, and was found guilty of, one count of Pandering Sexually-Oriented Material Involving a Minor, a fourth-degree felony; and one count of Possessing Criminal Tools, a fifth-degree felony. The court accepted the parties' plea agreement which permitted Mr. Aul to be sentenced only on Possessing Criminal Tools. Dr. Steinbergh noted that an integral part of the plea states that Mr. Aul had knowledge and intent when he intentionally downloaded and/or viewed child pornography. Mr. Aul was sentenced to four years of community control, including a condition that he must not enter, possess, or download any nudity-related material on internet sites or elsewhere. Mr. Aul was also fined \$1,200.00, and ordered to post-release control for three years.

Dr. Steinbergh stated that pages 3, 4, and 5 of the Hearing Examiner's Report and Recommendation include a good description of the conduct underlying Mr. Aul's conviction. Dr. Steinbergh commented that some of the language used is so offensive to her that she cannot speak the words. Dr. Steinbergh stated that the files show, among other things, a mother performing oral sex on her four-year-old son; a mother performing oral sex on her nine-year-old son; a babysitter and an eight-year-old having sex; and a mother, father, and two children having sex. A forensic examination of Mr. Aul's Maxtor External Hard Drive revealed eight video files of suspected child pornography which were located in allocated space and accessible to the user. Dr. Steinbergh observed that one video file was found to depict two children having sex, and the title of the file claimed that the girl was willing to perform this act.

Dr. Steinbergh noted that in his affidavit, Mr. Aul described some of the difficulties he has had in his life, including some of the psychological effects of having had sex at a young age. Dr. Steinbergh commented that she was not impressed by this description of Mr. Aul's difficulties. The affidavit also states that Mr. Aul has had therapy to deal with what he perceives to be the issues that led him to the downloading of child pornography. Mr. Aul has stated that he had begun to, has he put it, "hoard" movies and the child pornography was downloaded at the same time.

Dr. Steinbergh stated that she agrees with the Hearing Examiner's Findings of Fact and Conclusions of Law. Dr. Steinbergh also agreed with the comments made by the Hearing Examiner in the Discussion of

Proposed Order. Dr. Steinbergh wished to make comments based on readings from evidence-based articles on the effects of child pornography on children. Ms. Anderson asked if the articles are part of Mr. Aul's hearing record. Dr. Steinbergh replied in the negative. Ms. Anderson stated that the Board must make its decision based solely on the hearing record.

Dr. Steinbergh noted the following passage from the Hearing Examiner's Discussion of Proposed Order:

Despite the fact that the court accepted a plea agreement in which Mr. Aul did not have to register as a sex offender, the Hearing Examiner finds that this case is very similar to the other cases. Child pornography is not a victimless crime.

Dr. Steinbergh agreed and stated that child pornography is also not a faceless crime. They could be your children, they could be mine. Dr. Steinbergh stated that, like the opioid epidemic, this issue crosses all areas of our society. Dr. Steinbergh continued to quote from the Discussion of Proposed Order:

In this case, the victims include at least five prepubescent boys and girls between the ages of 4 and 12. In addition to the physical, emotional, and psychological trauma that they have already endured at the hands of their abusers, these young victims will continue to suffer each and every time their picture and/or video is circulated and/or viewed on the Internet by individuals like Mr. Aul.

Dr. Steinbergh stated that she has reviewed Mr. Aul's objections to the Report and Recommendation, but stated that there is no acceptable excuse or explanation for such behavior. Dr. Steinbergh stated that the victims of child pornography must have support from every corner of our society. Dr. Steinbergh speculated that it is not easy for the family and friends of Mr. Aul to reconcile this behavior with someone they may love and admire, but there are consequences for this behavior.

Dr. Steinbergh stated that the Court of Common Pleas judge made a decision in this case that he felt was appropriate. Now the Medical Board, which privileges Mr. Aul to hold his licenses, must be responsible for its mission of public protection. Dr. Steinbergh agreed with the Proposed Order to permanently revoke Mr. Aul's licenses to practice massage therapy, acupuncture, and Oriental medicine.

Dr. Schottenstein stated that the crux of Mr. Aul's defense seems to be that, in the course of downloading multiple movies and images from a file-sharing website, he inadvertently downloaded child pornography. Dr. Schottenstein stated that Mr. Aul maintains that he never searched for child pornography, and in that respect he is essentially asking the Board to believe that this is all a big mistake.

Dr. Schottenstein stated that he does not believe Mr. Aul and that it is very common for suspects to claim that the downloading of child pornography was accidental. Dr. Schottenstein opined that if the first incident of Mr. Aul downloading child pornography in March 2013 was truly an accident, the behavior would not have been repeated on multiple occasions because he would have realized that one could accidentally download child pornography from a file-sharing website and stayed away from that website thereafter. However, there were additional downloadings from the same website in May 2013, July 2013, December 2013, and February 2015. Dr. Schottenstein stated that if the downloading was unintentional, it is simply not plausible that it would occur on multiple occasions.

Dr. Schottenstein stated that the forensic examination summary from the Franklin County Sheriff's Office noted, in addition to the previous comments regarding allocated space, that the storage searches file

contained search terms that had been entered, some of which were related to child pornography. Dr. Schottenstein also noted that the file names of the downloaded materials were highly descriptive of their content. Dr. Schottenstein stated that it is beyond belief that one would mistakenly download content with such file names and then be shocked that the files contain child pornography. Dr. Schottenstein stated that thousands of videos and pictures were downloaded, and the implication is that only a few of them had child pornographic content. Dr. Schottenstein stated that one possibility is that the thousands of files were downloaded as a form of camouflage in an effort to “bury” the inappropriate videos. Dr. Schottenstein emphasized that this is only a possibility.

Dr. Schottenstein appreciated that there may be psychological issues that led Mr. Aul down this path. Dr. Schottenstein also appreciated that Mr. Aul has gone into therapy in an effort to process his trauma and work through his issues. However, Dr. Schottenstein felt that Mr. Aul is having trouble taking responsibility for his actions, noting that Mr. Aul’s explanations have not been consistent. Dr. Schottenstein observed that Mr. Aul indicated that he accidentally downloaded multiple files of illegal material and he immediately deleted them, but in the next breath he indicates that he needs the help of a 12-step Sex Addicts Anonymous (SAA) group to help him with his intimacy disorder and sexual anorexia. Dr. Schottenstein stated that if the downloading of the child pornography had been completely unintentional, then Mr. Aul’s sexual intimacy issues would not be relevant to the matter at hand. Dr. Schottenstein questioned why Mr. Aul would offer his past psychological history as an explanation for behavior that he describes as completely unintentional. Dr. Schottenstein stated that the two contentions that 1) the activity was accidental, and 2) Mr. Aul’s past psychological issues are relevant, cannot both be true simultaneously.

Dr. Schottenstein opined that if Mr. Aul’s activity was intentional and not an accident, then his psychological issues are inadequately mitigating and do not justify the behavior. Dr. Schottenstein stated that having psychological issues and engaging in psychological treatment does not make up for the violation of the right of children to be protected in our society, and Mr. Aul’s behavior contributed to the violation of that right.

Dr. Schottenstein stated that this is as serious an offense that is seen at the Medical Board. Dr. Schottenstein stated that neither society nor the Medical Board tolerates the downloading, viewing, or dissemination of child pornography. Dr. Schottenstein suspected that Mr. Aul and his character witness would agree with that sentiment were Mr. Aul not in this current position. Dr. Schottenstein stated that Mr. Aul made himself a participant in the market for child pornography, and thereby engaged in conduct that was harmful to children. Dr. Schottenstein stated that no matter how skilled Mr. Aul may be, practicing as a healthcare provider is a position of trust and Mr. Aul has violated that trust. Dr. Schottenstein agreed with the Proposed Order to permanently revoke Mr. Aul’s licenses.

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

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

Dr. Edgin	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Bechtel	- abstain

The motion to approve carried.

STEPHEN S. BROWN, M.D.

Mr. Giacalone stated that the matter of Dr. Brown will be considered at a future Board meeting.

JOHN ROBERT CAPURRO, M.D.

Mr. Giacalone directed the Board's attention to the matter of John Robert Capurro, M.D. No objections have been filed. Ms. Blue was the Hearing Examiner.

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

Dr. Capurro was represented by his attorney, Michael Lyon.

Mr. Lyon stated that he has been privileged to represent physicians for 42 years in professional liability matters. Mr. Lyon stated that the Assistant Attorney General and the Hearing Examiner has given Dr. Capurro the fairest possible investigation and hearing. Mr. Lyon stated that the Report and Recommendation was very appropriate and probably more than fair to his client.

Mr. Lyon stated that Dr. Capurro has been open and candid about his mistake. Mr. Lyon stated that there is no question that Dr. Capurro should not have been treating Patient 1 or Patient 2. Mr. Lyon stated that this situation is ironic because Dr. Capurro probably saved the patients' lives, but Dr. Capurro was lucky because the outcome could have been worse for these patients. Mr. Lyon stated that Dr. Capurro has learned his lesson and he asked the Board to adopt the Proposed Order. Mr. Lyon opined that Dr. Capurro will be a better physician because of this experience.

Dr. Capurro was present in the meeting, but did not address the Board.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Ms. Snyder stated that she did wish to respond.

Ms. Snyder stated that Dr. Capurro had been prescribing methadone to treat two patients for addiction. Ms. Snyder stated that methadone is a very dangerous drug with a dangerous half-life. Consequently, when methadone is used to treat addiction it is dispensed, not prescribed. Ms. Snyder explained that if a patient, especially an addict, takes the methadone and does not feel an effect, there is a risk that they will take more; this situation could lead to overdose and death because of methadone's half-life. Because it is so dangerous, the federal government heavily regulates the use of methadone.

Ms. Snyder continued that it is apparent from Dr. Capurro's testimony that he was trying to do the right thing and help these patients. However, it is also apparent that Dr. Capurro did not truly understand the dangerous nature of this medication. Ms. Snyder opined that Dr. Capurro knew he was not supposed to

be prescribing methadone, since a pharmacist told Dr. Capurro that he couldn't prescribe it and Dr. Capurro documented in the patient chart that he was prescribing it for pain instead of addiction.

Ms. Snyder stated that considering the ongoing heroin epidemic, it is particularly important that when patients turn to physicians for this medication management, the physician understands the rules and the dangerous nature of methadone. Ms. Snyder supported the Proposed Order in this matter.

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

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

Ms. Montgomery stated that the matter of Dr. Capurro has been described as a possible case of good intentions overriding sound medical judgment. Ms. Montgomery stated that the issues in this case involve Dr. Capurro having improperly and illegally prescribed methadone over a course of four years to two patients. Ms. Montgomery observed that these acts would constitute a felony and a misdemeanor, and that Dr. Capurro's behavior could constitute the prescribing of drugs for other than legitimate purposes. Ms. Montgomery stated that Dr. Capurro violated the law, good medical practice, and required protocols and procedures.

Ms. Montgomery stated that Dr. Capurro is board-certified in family medicine, has active medical licenses in Ohio and Florida, and holds a Drug Enforcement Administration (DEA) certificate to prescribe controlled substances. Ms. Montgomery noted that during the time of these violations, Dr. Capurro was not a registered narcotic treatment provider and was not a registered opiate treatment provider with the United States Department of Health and Human Services.

Ms. Montgomery continued that this matter involves two patients who were suffering from addiction. Patient 1 presented to Dr. Capurro as a 21-year-old woman who had been addicted to heroin since she was 13 years old and was seeking help. Ms. Montgomery stated that, as often happens in these cases, the ability to pay for medical services and the capacity of the system to absorb people in need of immediate help were lacking. Dr. Capurro responded to this situation by prescribing methadone to Patient 1 for pain. Dr. Capurro continued this prescription despite being questioned by pharmacists several times over the course of four years. Ms. Montgomery also noted that Dr. Capurro did not check the Ohio Automated Rx Reporting System (OARRS) for Patient 1. Dr. Capurro began to taper Patient 1 off of methadone after four years, possibly after learning of the rules requiring DEA registration to prescribe methadone to treat addiction.

Ms. Montgomery continued that Patient 2 presented to Dr. Capurro as a 28-year-old woman who, after several months, acknowledged to Dr. Capurro that she was an addict and had had treatment for addiction in the past. Dr. Capurro began prescribing methadone for Patient 2. Over the next several months Patient 2 provided a variety of excuses to ask for early refills, such as claiming to have lost a prescription or claiming to be going on extended travel. Ms. Montgomery stated that Dr. Capurro made no significant effort to curb the potential diversion of the methadone. In December 2014, Dr. Capurro notified Patient 2 that he would begin tapering her off of methadone. Ms. Montgomery stated that Dr. Capurro did not check OARRS for Patient 2.

Ms. Montgomery stated that in his treatment of both Patient 1 and Patient 2, Dr. Capurro did not perform

proper drug screening. Ms. Montgomery added that Dr. Capurro expressed a compelling desire to help both these patients to remain functional and employed. Ms. Montgomery commented that Dr. Capurro is aware of the impact of this kind of addiction because he saw his wife's family member go through it.

Ms. Montgomery stated that in his hearing, Dr. Capurro admitted that he had misrepresented his prescription of methadone as being for pain. Dr. Capurro further admitted that he should have known about the required registration to prescribe methadone for treatment of addiction; that his medical record-keeping was insufficient; and that he did not check OARRS for Patient 1 or Patient 2. Ms. Montgomery stated that Dr. Capurro was clearly seeking to help these patients, noting that he did not charge either patient for his services.

Ms. Montgomery stated that the Hearing Examiner found that Dr. Capurro had violated the requirement to be properly registered to prescribe methadone to treat addiction; that Dr. Capurro had made false statements with regarding to prescribing the methadone; and that Dr. Capurro dispensed drugs for other than legal and legitimate purposes. Ms. Montgomery noted that if convicted of these offenses, they would constitute a felony or misdemeanor. Ms. Montgomery stated that, given Dr. Capurro's record and his altruistic motives, the Hearing Examiner has proposed suspending Dr. Capurro's medical license for a minimum of 60 days, staying that suspension, establishing probationary terms and conditions for a minimum of two years, and fining the doctor \$20,000.

Ms. Montgomery stated that this case is a classic battle between head and heart. Ms. Montgomery stated that treatment providers should have heart, but that heart is confined by necessary processes and procedures to ensure patient safety as well as society's safety. Ms. Montgomery agreed with the Hearing Examiner's Proposed Order.

Dr. Schottenstein believed that Dr. Capurro prescribed methadone to Patient 1 and Patient 2 because he wanted to help them and that his intentions were good. Dr. Schottenstein noted several mitigating factors in this case:

- Dr. Capurro has no prior disciplinary record.
- There is an absence of a dishonest or selfish motive in this case.
- These are isolated incidents that are unlikely to recur.
- Dr. Capurro has made a free and full disclosure to the Board.
- Dr. Capurro has shown remorse.
- There was no adverse impact of Dr. Capurro's conduct on others.
- Dr. Capurro's conduct was not willful or reckless.
- Dr. Capurro corrected the misconduct when he became aware of it.

Dr. Schottenstein appreciated Mr. Lyon's comments that Dr. Capurro had been lucky because there could easily have been bad outcomes in these cases. Dr. Schottenstein also appreciated the comments of Patient 1 that she believes she would be dead without Dr. Capurro's intervention. Dr. Schottenstein stated that Patient 1 may be correct, but it is also undeniable that Dr. Capurro could have killed Patient 1.

Dr. Schottenstein stated that there is a reason that methadone is administered or dispensed, not

prescribed, for addiction. Dr. Schottenstein echoed Ms. Snyder's comments and stated if a large quantity of methadone, which has a long half-life, is prescribed to an addict who later relapses on another substance, it becomes a potentially very dangerous situation. Dr. Schottenstein noted that Dr. Capurro also prescribed Xanax in combination with the methadone for Patient 1, as well as Valium in combination with the methadone for Patient 2. Dr. Schottenstein opined that this was very dangerous because in combination with methadone, those medications can suppress the respiratory drive and result in fatal overdose. Dr. Schottenstein added that benzodiazepines such as Xanax and Valium are also drugs of abuse and potentially habit-forming. Dr. Schottenstein observed that Patient 1 and Patient 2 were actually under-dosed with regard to the methadone; Dr. Schottenstein stated that prescribing a low dose of methadone for addicts is associated with a higher risk of relapse. Dr. Schottenstein felt that Dr. Capurro did not appreciate how dangerous it is to prescribe methadone for addiction and reiterated that the licenses and registrations to become a methadone treatment provider serve a purpose.

Dr. Schottenstein stated that even though Dr. Capurro had been well-intentioned, his behavior was medically unethical. Dr. Schottenstein stated that it is not acceptable to prescribe a medicine that one does not fully understand to a patient population that one does not understand to treat a condition that one does not understand. Dr. Schottenstein recognized that it was difficult for Dr. Capurro to witness suffering without trying to help, but stated that this is the point of the admonition "First, do no harm," which Dr. Capurro could easily have unintentionally violated. Dr. Schottenstein stated that while Dr. Capurro's heart was in the right place, there are issues of judgment, boundaries, and medical ethics in this case. Dr. Schottenstein stated that it is important for a physician to be able to say "no" when a patient asks for treatment that is outside the physician's comfort level and expertise. Dr. Schottenstein opined that a professional boundaries course would be valuable for Dr. Capurro.

Dr. Schottenstein moved to amend the Proposed Order to add successful completion of a professional boundaries course to the probationary requirements. Dr. Steinbergh seconded the motion.

Mr. Giacalone stated that during Dr. Capurro's hearing, Ms. Snyder had compared this case to that of Gregory Grant, D.O., which had been considered by the Board in January 2016. Mr. Giacalone stated that the Dr. Grant case involved ten patients and the same scenario as Dr. Capurro's case. Mr. Giacalone stated that Dr. Grant's case resulted in a 30-day stayed suspension, no fine, a minimum two-year probation, required courses in professional boundaries and prescribing, and a requirement to pass an examination on the laws in Ohio governing medical practice. Mr. Giacalone stated that he is not defending Dr. Capurro's actions, but he struggled with the Proposed Order which is more severe than the Order issued in Dr. Grant's case. Mr. Giacalone stated that Dr. Capurro may not have done a good job treating these patients, but there is some merit in the fact that Dr. Capurro tried to treat these patients who could not get into a treatment facility.

Mr. Giacalone agreed with Dr. Schottenstein's recommendation to add a professional boundaries course requirement. Mr. Giacalone further suggested reducing the 60-day stayed suspension to a 15-day stayed suspension, reducing the probationary period from a minimum of two years to a minimum of one year, and reducing the fine from \$20,000 to \$1,000. Mr. Giacalone opined that these changes would put the Order more in-line with the Board's decision in Dr. Grant's case. Mr. Giacalone stated that whether the stayed suspension is 60 days or 15 days is a bit of an academic exercise, but opined that 15 days would be more appropriate in light of the Dr. Grant decision.

Dr. Steinbergh stated that she fully supports Dr. Schottenstein's proposed amendment to only add a

professional boundaries course. Dr. Steinbergh agreed with Dr. Schottenstein's concerns about the importance of understanding and using medications the correct way for the correct reason. Dr. Steinbergh stated that the Hearing Examiner has provided a fair Proposed Order, as Dr. Capurro's attorney has stated. Dr. Steinbergh favored adding the professional boundaries course because of the Board's previous experience with physicians who have taken the course and learned how to handle such situations and how to say "no." Dr. Steinbergh stated that she does not condone Dr. Capurro's actions, and therefore she is not in favor of reducing the Proposed Order in any way.

Dr. Soin stated that he favors reducing the Proposed Order along the lines that Mr. Giacalone has suggested. Dr. Soin stated that a reduction of the Proposed Order would not be tantamount to condoning Dr. Capurro's actions; the Board would still be taking an action that will be on Dr. Capurro's record and he would still be fined. Dr. Soin stated that these appear to have been isolated incidences and that Dr. Capurro had been trying to help people. Dr. Soin opined that the suggested reduced Order would still accomplish the Board's goals of protecting the public. Dr. Soin noted that the case of Dr. Grant involved ten patients and resulted in a 30-day stayed suspension, while Dr. Capurro's case involved two patients and has resulted in a Proposed Order with a 60-day stayed suspension. Dr. Soin therefore felt that Mr. Giacalone's suggestion was more reflective of the earlier decision.

Mr. Giacalone stated that the suggested reduction in the suspension from 60 days to 15 days is a matter of optics since the suspension is stayed in either case. However, Mr. Giacalone stated that the optics are important because the gravity of the Dr. Grant case was greater than in Dr. Capurro's case. Mr. Giacalone stated that his suggested reduced Order would not condone Dr. Capurro's actions and would still be a disciplinary action on his license. Mr. Giacalone further suggested that Dr. Capurro should write an article or engage in some educational program, similar to what was included in Dr. Grant's Order, to educate prescribers that these types of activities are inappropriate and subject to discipline. Mr. Giacalone stated that the Board should be consistent in terms of precedent.

Ms. Montgomery asked if the Board's Hearing Examiners review prior Board Orders when drafting Proposed Orders for the Board's consideration. Mr. Giacalone replied that the Hearing Examiners do look at past precedent. Mr. Giacalone added that Ms. Snyder, the Assistant Attorney General, also referenced the Dr. Grant case during Dr. Capurro's hearing.

Ms. Montgomery stated that levying fines is not the Board's primary role, but fines can be used as a part of a sanction against a licensee. However, Ms. Montgomery questioned the size of the fine in the Proposed Order, commenting the \$20,000 is a significant amount. Mr. Giacalone agreed that a \$20,000 fine seems excessive in this case and opined that a \$1,000 fine, as he has suggested, still sends the appropriate message. Mr. Groeber commented that \$20,000 is the standard fine for these violations according to the Board's fining guidelines, and that is why the Hearing Examiner included that amount in the Proposed Order. Mr. Giacalone noted that Dr. Grant was not fined because the actions in that case predated the Board's fining authority.

Mr. Giacalone stated that if Dr. Schottenstein's proposed amendment does not pass, he will ask a Board member to propose his suggested changes as an amendment, which would include Dr. Schottenstein's suggestion of a professional boundaries course.

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

ROLL CALL: Dr. Rothermel - abstain

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

The motion to amend did not carry.

Dr. Soin moved to amend the Proposed Order so that the stayed suspension is reduced to 15 days, the timeframe for the probationary terms and conditions is reduced to a minimum of one year, and the monetary fine is reduced to \$1,000. Dr. Soin further moved that the probationary terms and conditions include successful completion of a professional boundaries course, as well as a requirement to assist in an educational program similar to what had been included in the Order for Gregory Stuart Grant, D.O. Dr. Schachat seconded the motion.

Dr. Steinbergh suggested that this topic be tabled so that the Board's staff can draft Dr. Soin's proposed amendment for review by the Board members. Mr. Giacalone agreed.

Dr. Steinbergh moved to table this topic. Dr. Soin seconded the motion. A vote was taken:

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

The motion to table carried.

CHARLES MICHAEL MISJA, M.D.

Mr. Giacalone directed the Board's attention to the matter of Charles Michael Misja, M.D. Objections to Ms. Blue's Report and Recommendation have been filed and were previously distributed to Board members.

Mr. Giacalone stated that a request to address the Board has been filed on behalf of Dr. Misja. Five

minutes will be allowed for that address.

Dr. Misja was represented by his attorney, Dan Zinsmaster.

Mr. Zinsmaster stated that this matter is a single patient minimal standards case that involves the loss of life for a patient who had serious health problems. The Hearing Examiner's Proposed Order is to suspend Dr. Misja's medical license for minimum of twelve months, require him to undergo assessment by the Post-Licensure Assessment System (PLAS) and comply with all the requirements and recommendations of PLAS, and require him to obtain Board approval of a practice plan before returning to practice.

Mr. Zinsmaster stated that the Report and Recommendation describes a number of unique circumstances that led to the events that occurred in 2015, including the Medical Director's stroke that led Dr. Misja to shoulder the responsibilities of the psychiatric wing of the hospital in addition to the addiction unit. The Report and Recommendation also describes Dr. Misja's use of the medication Clozaril, which he had never before ordered and has not ordered since.

Mr. Zinsmaster stated that the purpose of the objections he filed in this case is to point out that under the Proposed Order, Dr. Misja's license would be suspended for at least twelve months even if he successfully completes the PLAS assessment and complies with all recommendations within a much shorter timeframe. Mr. Zinsmaster stated that, as the Board knows, time away from clinical practice can erode one's clinical skills. For this reason, Mr. Zinsmaster asked that the Proposed Ordre be modified.

Dr. Misja stated that this case is before the Board today because he made mistakes. Dr. Misja stated that he had made decisions that he believed at the time were in the best interest of Patient 1, but despite his good intentions the outcome was tragic. Dr. Misja stated that the loss of a patient's life is every physician's nightmare. Dr. Misja stated that the outcome of Patient 1's case was a seminal event for him and it significantly deepened his awareness of the potential negative impact that overriding altruistic intentions can have. Dr. Misja stated that in this case, the intentions and motivations were to provide additional adequate detoxification services that Montgomery County and surrounding counties desperately need. Dr. Misja stated that he had let certain fundamentals lapse, namely documentation and adequate time management which contributed to a lack of appropriate supervision, which contributed to his decision to approve the initiation of the medication Clozaril.

Dr. Misja continued that he has learned and continues to learn to establish and maintain boundaries with respect to his limitations. Dr. Misja stated that he has implemented mechanisms to ensure that this never happens again, such as completing more formalized education, embracing electronic medical records (EMR), instituting chart auditing measures and peer reviews, decreasing his patient load, and keeping up with psychopharmacology updates.

Dr. Misja stated that as physicians, the members of the Medical Board uniquely understand when Dr. Misja says that there is no more noble profession than being part of the human solution. Dr. Misja stated that he will do everything deemed necessary to retain, maintain, and sustain the privilege granted by the Medical Board.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Ms. Snyder stated that she did wish to respond.

Ms. Snyder agreed with Mr. Zinsmaster that this case involves the minimal standards of care and involves one patient. However, Ms. Snyder stated that this case does not involved just one single mistake. Ms. Snyder stated that this is not a case of a physician having a busy night and a lapse of judgment and then choosing to give a patient an inappropriate and dangerous anti-psychotic medication. Ms. Snyder noted that according to testimony, there were only 30 patents in two psychiatric units and 45 staff members in each unit that night.

Ms. Snyder continued that Patient 1 was hospitalized for 25 days in the psychiatric unit of Heartland Behavioral Health. Ms. Snyder noted that even though Dr. Misja had never completed his psychiatric residency, he was the head of that psychiatric unit and in charge of caring for the sickest of the mentally ill patients. Ms. Snyder stated that the psychiatric unit was no stranger to aggressive behavior or violent patients. Ms. Snyder stated that Patient 1 was a male in his '30's with the approximate IQ of a four-year-old child. Patient 1 was able to communicate his wants and needs, but his speech was difficult and he was difficult to understand. Patient 1 became upset and frustrated when he was not understood, and in the hospital he was scared and aggressive.

Ms. Snyder stated that there is no question that Patient 1 was a challenging patient, but Dr. Misja saw this challenging patient only five times during his 25-day hospitalization. Specifically, Dr. Misja saw Patient 1 during his initial evaluation for 20 minutes, and four more times in passing in the milieu or the common area for approximately 10 minutes each time. Even though Dr. Misja had Patient 1's previous psychiatric treatment records, primary care treatment records, and psychological evaluations, Dr. Misja did not read those records or did not read them well enough to understand Patient 1's medical history. Ms. Snyder added that Dr. Misja also never bothered to call collateral sources such as Patient 1's family or guardian who could have told him about Patient 1's condition or communication issues.

Ms. Snyder stated that despite the lack of time with Patient 1, the lack of collateral information, and the lack of medical history, Dr. Misja authorized Patient 1 to be given Clozaril, a dangerous second-line medication for treatment of schizophrenia which Patient 1 was never diagnosed with. According to the State's expert, Stephen Noffsinger, M.D., Clozaril is the only anti-psychotic medication that can kill a patient. For this reason, Clozaril is reserved for schizophrenic patient who have been resistant to other medications. Ms. Snyder stated that had Dr. Misja reviewed Patient 1's previous treatment records, he would have known that Patient 1 had speech problems but had never before displayed psychotic tendencies. More importantly, Dr. Misja would have known that Patient 1 had a seizure disorder and should not have been given Clozaril, which has a black box warning stating that it is not appropriate for patients with seizure disorders. Ms. Snyder noted that Dr. Misja did not know that Patient 1 had a seizure disorder until the day of his Medical Board hearing.

Ms. Snyder stated that this case does not represent a simple lapse of judgment. Rather, Ms. Snyder stated that this case represents 25 days of treatment that fell below the minimal standards of care. Ms. Snyder stated that there was a systemic failure in Dr. Misja's treatment of Patient 1. Ms. Snyder stated that Dr. Misja exhibited lack of clinical judgment, deficiencies in his practice, and he failed to take responsibility for his conduct. Ms. Snyder noted that Dr. Misja seemed defiant at the beginning of his hearing, but she believed that by the end of the hearing Dr. Misja understood what had happened and felt remorse for Patient 1. Ms. Snyder stated that Dr. Misja needs further education and she opined that the minimum one-year suspension in the Proposed Order is warranted.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Charles Michael Misja, M.D. Dr. Schottenstein seconded the

motion.

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

Dr. Schottenstein stated that the Medical Board cited Dr. Misja based on allegations that from April 2015 to May 2015, he provided care to Patient 1 and that, among other things, he inappropriately treated and/or failed to appropriately treat Patient 1; inappropriately used, prescribed, selected and/or managed controlled substances or dangerous drugs to Patient 1; failed to appropriately fulfill responsibilities of collaboration and supervision with another health care professional; and/or failed to appropriately document his treatment of Patient 1.

Dr. Schottenstein stated that Dr. Misja obtained his medical degree in 2007 from the Ross University School of Medicine in Dominica. Upon graduation, Dr. Misja completed three years and four months of a psychiatry residency at Northeast University College of Medicine in Akron, Ohio. Dr. Misja was first licensed to practice medicine in Ohio in 2009. Dr. Misja is not board certified in psychiatry, but he characterizes himself as specializing in psychiatry. Dr. Misja was the interim medical director of the inpatient unit at the psychiatric hospital where he undertook the care of Patient 1.

Dr. Schottenstein continued that Patient 1 was first evaluated by Dr. Misja on April 8, 2015 at Access Dayton where Patient 1 was admitted for an inpatient psychiatric hospitalization. Dr. Misja noted that Patient 1 was a 31-year-old male who had been sent from his group home for psychiatric treatment due to increasing verbal and physical aggression towards staff and others, bizarre behavior, and uncontrollable mood lability. Upon admission, Patient 1 presented on a medication regimen consisting of Risperdal, Zoloft, and Depakote. Dr. Misja diagnosed Patient 1 with Mood Disorder Not Otherwise Specified with psychotic features; ruled out Bipolar Disorder Not Otherwise Specified with psychotic features vs. Major Depressive Disorder with psychotic features; Intermittent Explosive Disorder; and Intellectual Disability, Moderate. Dr. Misja's admitting plan was to taper the Zoloft and continue the Risperdal and Depakote.

Dr. Schottenstein stated that prior to Patient 1's admission, Dr. Misja had entered into a standard of care arrangement with LaDonna Ross, CNP. Over the course of Patient 1's hospital stay various medication interventions were attempted without substantial success with regard to mood or behavior. On or around April 22, Patient 1 hit a staff member in an unprovoked fashion. Later that day, verbal consent was obtained by Ms. Ross from Patient 1's guardian for a trial of Clozaril. Dr. Misja indicated that the Clozaril was Ms. Ross' idea, but that he did authorize her to proceed. The Clozaril continued to be titrated on a regular basis until May 2, when Patient 1 indicated that he was not feeling well. At that time, Patient 1 was found to have a pulse between 160 and 200. Emergency medical services were called and he was taken to Miami Valley Hospital, where he was admitted with a diagnosis of sinus tachycardia. It was noted at the time that a side-effect of Clozaril is increased heart rate. On May 3, Patient 1 had a psychiatric consultation which recommended that the patient not be restarted on the Clozaril. On May 4, Patient 1 developed a fever of 107 degrees. On May 5, Patient 1 had a cardiac arrest. On May 7, an EEG showed no activity and further assessment showed an absence of blood flow to the brain. On May 9, 2015, Patient 1 was declared brain dead.

Dr. Schottenstein continued that the Montgomery County Coroner's report showed that Patient 1's cause of death was "anoxic encephalopathy due to cardiopulmonary arrest due to myocarditis." Dr. Schottenstein noted that myocarditis is a black box side effect of Clozaril, and therefore one could infer that the Clozaril provoked a side effect which killed Patient 1.

Dr. Schottenstein stated that there are four questions that the Board needs to ascertain:

- Was there a failure to maintain minimal standards with regard to the care of Patient 1?
- Was there a failure to maintain minimal standards with regard to the selection of medications that were employed to treat Patient 1?
- Was there a failure to fulfill responsibilities of collaboration after entering into the standard of care arrangement?
- Did Dr. Misja fail to properly document this treatment?

Regarding the first question, Dr. Schottenstein stated that the record supports the contention that Dr. Misja failed to meet minimal standards with regard to care of Patient 1. Dr. Schottenstein opined that Dr. Misja essentially abdicated the care of Patient 1 to the Ms. Ross. Dr. Schottenstein noted that during Patient 1's 25 day hospitalization, Dr. Misja personally met with and assessed him on four or perhaps five occasions. Dr. Schottenstein stated that Dr. Misja this is an inadequate level of oversight, especially given his level of severity. Dr. Schottenstein stated that there were only three formal assessments and two to three informal assessments of Patient 1 prior to the initiation of Clozaril. Dr. Schottenstein stated that there were only two assessments after the initiation of Clozaril, which is an inadequate level of monitoring given the dangerous nature of the medication and that it is being prescribed for off-label purposes. Dr. Schottenstein opined that the minimal standards of care required the patient to be assessed on a daily or every-other-day basis, especially since the Clozaril was being titrated and the side-effects are dose-related.

Regarding the second question, Dr. Schottenstein opined that there was a failure to maintain minimal standards of care with regard to the selection of medication used to treat Patient 1. Dr. Misja testified that Ms. Ross had suggested a trial of Clozaril due to her past experience of Clozaril helping patients like Patient 1, so Dr. Misja accepted her suggestion. Dr. Misja indicated that prior to this event he had never initiated Clozaril to any patient, and he further indicated that he was not a fan of the drug. Dr. Misja further admitted that he never spoke to Patient 1 or his guardian about Clozaril, he did not talk to Ms. Ross about her discussion with Patient 1's guardian, and he did not do any research on Clozaril prior to the initiation.

Dr. Schottenstein continued that Dr. Misja offered different explanations for why he prescribed Clozaril to Patient 1. First, Dr. Misja argued that Patient 1 reminded him of a patient with schizophrenia or schizoaffective disorder. However, not only was there no such documentation in the records, but neither Dr. Misja nor Ms. Ross noted those diagnoses in the chart as either conclusive or possible diagnoses. Dr. Schottenstein noted that Dr. Misja referred to being socially withdrawn or internally preoccupied as a justification for a hindsight diagnosis of schizophrenia. Dr. Schottenstein stated that these things are not diagnostic of schizophrenia, but they are consistent with developmental delay. Dr. Schottenstein added that one cannot diagnose schizophrenia retroactively and such a diagnosis must be made on the basis of establish criteria.

Dr. Schottenstein stated that Dr. Misja, Dr. Noffsinger, and Dr. Misja's expert witness, Mark MacNealy, D.O., agreed that the only use for Clozaril approved by the Food and Drug Administration (FDA) was for schizophrenia that is treatment-resistant or schizophrenia in the context of a patient that is suicidal. Dr. Schottenstein stated that Patient 1 had neither of these conditions. Dr. Schottenstein opined that for Dr. Misja to spend perhaps 20 minutes with Patient 1 during the initial assessment and then say, though he

did not document it, that he was thinking about the possibility of schizophrenia seemed very self-serving, as though Dr. Misja was justifying his prescribing behavior with hindsight.

Dr. Schottenstein stated that Dr. Misja maintained that he was prescribing Clozaril for off-label use primarily for psychosis, but also for impulse control and decreased frustration tolerance that leads to violence or potential violence. Dr. Schottenstein stated that there are eight years of prior medical records which include diagnoses of fetal alcohol syndrome and a moderate degree of intellectual disability, conditions in which patients notoriously have difficulty self-regulating their mood and temper. Dr. Schottenstein added that none of Patient 1's prior medical records indicated any substantial finding of psychosis or schizophrenia, nor did Dr. Misja provide any evidence that Clozaril can be used off-label under those circumstances.

Dr. Schottenstein stated that the State's expert, Dr. Noffsinger, is board-certified in psychiatry. Dr. Noffsinger opined that the selection of Clozaril for Patient 1 was made in error. Dr. Noffsinger testified that the FDA-approved indication for Clozaril is for treatment-resistant schizophrenia and suicidality in the context of schizophrenia, which was not present in Patient 1. Dr. Noffsinger further stated that according to the record, Patient 1 did not have psychotic symptoms or any circumstances that would have indicated an appropriate off-label use of Clozaril. Dr. Noffsinger felt that the risks of Clozaril far outweighed the benefits in a patient with aggression in the context of developmental delay. Dr. Noffsinger further noted that Clozaril is indicated only for patients who fail to respond to safer drugs. Dr. Noffsinger opined that it was an error for Dr. Misja to use Clozaril and it led to the death of Patient 1.

Dr. Schottenstein noted Dr. Noffsinger's testimony, based on his review of Patient 1's medical chart, that Dr. Misja's care violated 4731.22(B)(2), Ohio Revised Code, because he failed to perform and document a risk-benefit analysis with regard to prescribing Clozaril for Patient 1 prior to Prescribing it. Dr. Noffsinger also disagreed with Dr. Misja's reluctance to engage in trials of benzodiazepines and beta-blockers or lithium. Dr. Schottenstein stated that Dr. Misja did not document why he did not engage in those medication trials or why he did not titrate Patient 1's Risperdal, which he had been prescribed for eight years for explosive behavior and was presumably productive for him at some point since he was still on it.

Dr. Schottenstein noted Dr. Noffsinger's testimony that the standard of care requires obtaining an EKG before prescribing Clozaril because it could provoke arrhythmia. However, an EKG was not obtained prior to prescribing Clozaril to Patient 1. Dr. Schottenstein also stated that Ms. Snyder's point regarding seizure activity was well-taken.

Dr. Schottenstein stated that Dr. Misja's expert, Dr. MacNealy, completed two years of a psychiatry residency and then completed a residency in neurology. Dr. MacNealy is board-certified in neurology, but holds himself out as a psychiatrist and practices addiction medicine. Dr. Schottenstein noted that Dr. MacNealy and Dr. Misja know each other professionally because they were employed at the same facility. Dr. MacNealy acknowledged that Clozaril had risks to the blood cells and to the heart and he agreed that there is a black box warning for Clozaril regarding potential cardiac side-effects. Dr. MacNealy indicated that Patient 1 was not responsive to other anti-psychotic medications such as Risperdal and Haldol, and he indicated that Clozaril would rapidly decrease the propensity for violence. However, Dr. MacNealy also acknowledged that there was no documentation of any scientific evidence in Patient 1's medical record to justify an off-label use of Clozaril.

Dr. Schottenstein continued that Dr. MacNealy opined that Clozaril was the appropriate drug to use at that time and under those circumstances. Dr. MacNealy also indicated that Clozaril is the only drug in the

literature that is suggested for violent behavior, though he did not provide any evidence to support this contention. Dr. MacNealy agreed that there was some indication of improvement, but also some indication of deterioration of Patient 1's condition from the Clozaril. Dr. MacNealy acknowledged that Dr. Misja did not document any risk-benefit analysis in Patient 1's chart and there was no documentation of a diagnosis of schizophrenia or treatment-resistant schizophrenia in Patient 1's prior medical records.

Dr. Schottenstein stated that in rebuttal, Dr. Noffsinger testified that the crux of the matter is Dr. Misja's selection of Clozaril and his decision to prescribe it. Dr. Noffsinger testified that in developmentally-delayed patients with behavior disorders who are not psychotic, the risks of Clozaril outweigh the benefits. Dr. Noffsinger strongly disagreed with Dr. MacNealy's statement that Clozaril was the only medication that would have worked on Patient 1 because Patient 1 did not have a psychotic disorder and did not have a condition that was approved by the FDA for treatment with Clozaril.

Dr. Schottenstein stated that, leaving aside the debate of whether Clozaril was indicated for Patient 1 and the risk-benefit analysis in choosing that medication, he still took issue with the manner in which Dr. Misja made the choice to prescribe Clozaril. Dr. Schottenstein stated that if one wants to prescribe a medicine off-label, especially a medicine as dangerous as Clozaril, one should start by making sure that less dangerous medications have been tried first. Dr. Schottenstein stated that there were multiple reasonable medications for Patient 1's condition that were not tried before the Clozaril. Dr. Schottenstein stated that if one satisfies oneself that appropriate steps have been taken before using Clozaril, it is still incumbent upon the physician to become familiar with the scientific literature on the subject and look for dosing guidelines for the off-label use. Dr. Schottenstein stated that it is also important to explain to the patient or the patient's guardian that the use of Clozaril is off-label and to discuss alternatives, and to document that conversation. The physician should also document the evidence that he or she found that Clozaril is a reasonable choice for the circumstances. Dr. Schottenstein added that a physician may also want to consult with a psychiatrist colleague about the situation. Dr. Schottenstein stated that none of this occurred.

Dr. Schottenstein continued that Dr. Misja did not even know if Ms. Ross told Patient 1's guardian that the Clozaril was being used off-label when she obtained informed consent. Dr. Schottenstein stated that Dr. Misja did no research prior to prescribing the Clozaril and he testified that he had never previously prescribed Clozaril to a patient. Dr. Schottenstein stated that when Ms. Ross suggested Clozaril, Dr. Misja agreed to it without researching the medication in the literature. Dr. Misja testified that he essentially trusted Ms. Ross' judgment and experience and he was happy to let her lead the way on this. Dr. Schottenstein stated that this was inadequate vetting for a drug as dangerous as Clozaril. Dr. Schottenstein stated that Dr. Misja abdicated his own judgment and had Ms. Ross assume the role of psychiatrist. Dr. Schottenstein stated that this was a clear violation of the minimal standards of care.

Regarding the third question, Dr. Schottenstein opined that the record shows that Dr. Misja failed to perform his responsibilities of collaboration after entering into the standard of care arrangement. Dr. Schottenstein stated that Dr. Misja failed to appropriately document his collaboration with, and supervision of, Ms. Ross with regard to the management of patient 1. According to the standard of care arrangement, Ms. Ross was to receive consultation, collaboration, and general supervision from Dr. Misja. Despite this, there is no documentation in Patient 1's chart that Dr. Misja had any collaboration with Ms. Ross. In addition, a chart review was required to be done between Dr. Misja and Ms. Ross during each onsite visit by Dr. Misja, but there is no documentation that any chart review was performed and no explanation for the lack of documentation. Dr. Noffsinger testified that, according to the standard of care arrangement, Ms. Ross was permitted to prescribe Clozaril for an FDA-approved use only and not for off-label use. Dr.

Noffsinger further stated that depending on the nature of the standard of care agreement, Dr. Misja should have personally evaluated Patient 1 at least every other day, and more frequently once the Clozaril was prescribed because of the side-effects

Regarding the fourth question, Dr. Schottenstein stated that he has already alluded to multiple examples of Dr. Misja not adequately documenting his treatment. Dr. Misja agreed that it is difficult for someone to review the medical chart and determine why he selected Clozaril for Patient 1. Dr. Misja also agreed that there is no documentation in Patient 1's chart that reflects his discussion with Ms. Ross regarding the selection of Clozaril. Dr. Misja further agreed that the minimal standard of care required him to document their rationale for prescribing Clozaril off-label. Dr. Misja indicated that he did a risk-benefit analysis of Clozaril, but he did not document that in Patient 1's medical records. Dr. Misja had commented that he is not in the habit of documenting and that he could have documented things better.

Dr. Schottenstein stated that Dr. Misja indicated that he still believes that the use of Clozaril was justified for Patient 1 because he saw positive benefits. Dr. Misja has argued that he is not at fault for his performance in this matter, but only for not documenting more thoroughly. Dr. Schottenstein regretted that statement from Dr. Misja's testimony because it implied that Dr. Misja has not learned anything from reviewing his care in this matter. Dr. Schottenstein stated that Dr. Misja's statement also implies a defensiveness on his part and a failure to take responsibility for his poor judgment. Dr. Schottenstein emphasized that no one is arguing that Clozaril is not effective in treating aggressive behavior, but if that was the sole basis on which one decided whether to prescribe it then it would be prescribed all the time. Dr. Schottenstein stated that the question of whether Patient 1 experienced positive benefits is entirely beside the point in this case. Rather, the crux of the matter is the decision-making process that went into the selection of Clozaril and the failure to seriously contemplate alternatives that are effective and safer. Dr. Schottenstein acknowledged that Patient 1 was a challenging patient, but opined that Dr. Misja would have a difficult time finding another psychiatrist who would have prescribed Clozaril in this case.

Dr. Schottenstein stated that he understands it has been hard on Dr. Misja to lose a patient and then have to go through these proceedings. However, Dr. Schottenstein felt worse for Patient 1 and his family because there is nothing in Patient 1's current or past medical history to indicate a coherent reason to prescribe Clozaril and there is no compelling evidence of psychosis in the records. Dr. Schottenstein stated that every symptom Patient 1 presented with is explained by diagnoses that he had previously acquired and did not include any kind of psychotic process. Dr. Schottenstein opined that Dr. Misja had reached a point in Patient 1's treatment where he was out of ideas after having tried things he thought were reasonable and discarded options that could have been tried that had a decent chance of providing benefit. Dr. Schottenstein speculated that when Ms. Ross suggested Clozaril, Dr. Misja was relieved and was hoping Clozaril would be the answer to his dilemma. Dr. Schottenstein noted that when Ms. Ross brought up the idea of Clozaril, Dr. Misja was initially skeptical. Dr. Schottenstein felt that Dr. Misja's initial reaction was correct, but he opined that Dr. Misja's predicament clouded his judgment. Dr. Schottenstein opined that Dr. Misja's mistake is what one would expect from a psychiatrist who had recently completed residency and whose judgment had not yet fully formed.

Dr. Schottenstein stated that the Proposed Order would suspend Dr. Misja's license for a minimum of one year following a 30-day wind-down period. Dr. Schottenstein opined that this is very justifiable given that a patient death occurred. Prior to reinstatement, the Proposed Order would require Dr. Misja to undergo an assessment with the PLAS program to ensure that he can practice appropriately. Following the PLAS evaluation, Dr. Misja would be required comply with any remedial program recommended by the PLAS evaluators. In addition, Dr. Misja would be required to submit evidence of completion of courses on

pharmacology and medical record keeping. Following reinstatement, Dr. Misja would be subject to a practice plan and monitoring physician with the PLAS Learning Plan, if applicable, as well as other probationary conditions. Dr. Schottenstein agreed with the Proposed Order

Dr. Steinbergh stated that it would be difficult to not agree with everything Dr. Schottenstein said, particularly in regards to psychiatric care. Dr. Steinbergh stated that Dr. Misja relied on a nurse practitioner to make his medical decision, a decision that Dr. Misja was clearly not equipped to make. Dr. Steinbergh questioned why Dr. Misja did not obtain a consultation when he became uncertain how to proceed with Patient 1's treatment. Dr. Steinbergh stated that when a physician reaches a point where they may not recognize what diagnosis their patient has, that is the time to seek another opinion. Dr. Steinbergh stated that there was poor decision-making and poor documentation in this case.

Dr. Steinbergh stated that a white blood cell count was drawn, but there was no monitoring of the white blood cell count, which is clearly indicated in the information about the use of Clozaril. Dr. Steinbergh noted that Dr. Misja did not even put a stethoscope to Patient 1's chest to document whether the rhythm was appropriate, much less perform an EKG. Dr. Steinbergh stated that Dr. Misja never really clinically evaluated Patient 1, and therefore she agreed with the Proposed Order.

Dr. Steinbergh commented that she hopes the Board of Nursing is looking at this matter in regard to the nurse practitioner, Ms. Ross. Dr. Steinbergh felt that the collaboration between Ms. Ross and Dr. Misja was inappropriate and that Ms. Ross's choice of Clozaril was also inappropriate. Dr. Steinbergh opined that the Board should consider placing a permanent restriction on Dr. Misja's license to restrict him from entering into a collaborative relationship or a standard of care arrangement with an advanced practice nurse. Dr. Steinbergh stated that even though this case involves only one patient, the poor clinical decision-making may be pervasive.

Ms. Montgomery asked if, in situations like this, the Board's investigators look into the facility to see if the problem is more wide-spread. Dr. Steinbergh replied that the Medical Board has no authority over the hospital or the advanced practice nurse. Ms. Anderson stated that the Medical Board can and does refer potential problems with facilities or other practitioners to the appropriate governing authorities.

Dr. Schottenstein stated that he would second Dr. Steinbergh's proposed amended for purposes of discussion.

Dr. Steinbergh moved to amend the Proposed Order to add a permanent limitation to restrict Dr. Misja from entering into a collaborative relationship or a standard of care arrangement with an advanced practice nurse. Dr. Schottenstein seconded the motion.

Dr. Schottenstein questioned whether a permanent restriction would hamper Dr. Misja's future employment opportunities given the nature of Dr. Misja's practice. Dr. Schottenstein stated that if the documentation issue with the collaborative agreements is remediable, he would have mixed feeling about attaching a permanent restriction that may hinder him indefinitely from being able to work.

Dr. Factora stated that there are many aspects of this case that are remediable, including medical knowledge, communication, and documentation. However, Dr. Factora stated that one component of this case is the professionalism aspect, the ability to interact with other professionals from other disciplines and to understand their limits. Dr. Factora stated that these things are not necessarily taught in medical school and he was uncertain whether it is included in the PLAS program. Dr. Factora stated if such

remediation is available, that may address Dr. Steinbergh's concerns.

Dr. Steinbergh commented that there are courses available that deal with inter-professional behavior. Dr. Steinbergh stated that the meeting minutes can reflect the Board's concerns about addressing issues of inter-disciplinary decision-making, responsibilities, and communication. Dr. Steinbergh commented that a physician takes on the responsibility of patient care and, though a physician may use physician extenders for a variety of reasons, it is clear that the physician is the one responsible.

Dr. Schottenstein commented that this case reminds him of some previous cases in which physicians practice outside their specialty and run into minimal standards of care problems. Dr. Schottenstein noted that Dr. Misja substantially practices addiction medicine, but he was taking care of more psychiatric patients due to another physician's health problems. Dr. Schottenstein stated that Dr. Misja may have gone outside his area of expertise and that may have been contributory to this situation.

Dr. Steinbergh stated that if there is not enough support for her proposed amendment, she would withdraw it. Dr. Soin commented that he intended to vote against the proposed amendment. Dr. Steinbergh opined that there is enough in the record to substantiate her concerns that Dr. Misja should not enter into a collaborative agreement with an advanced practice nurse.

Dr. Steinbergh wished to withdraw her motion to amend. No Board member objected to the withdrawal. The motion to amend was withdrawn.

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

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

The motion to approve carried.

DANNY JOSEPH SAYEGH, M.D.

Mr. Giacalone directed the Board's attention to the matter of Danny Joseph Sayegh, M.D. 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 Dr. Sayegh. Five minutes will be allowed for that address.

Dr. Sayegh was represented by his attorney, Nicholas Kolitsos.

Mr. Kolitsos stated that Dr. Sayegh was not able to be here in person today because he currently resides and practices in Nevada. Mr. Kolitsos stated that in the Report and Recommendation, the Hearing Examiner has proposed that Dr. Sayegh's failure to appear at the Board-ordered evaluation was due to circumstances beyond his control. Mr. Kolitsos stated that Dr. Sayegh has attempted to comply with the Ohio Medical Board to the utmost of his ability. Mr. Kolitsos stated that Dr. Sayegh was unable to attend the scheduled October 23 evaluation due to miscommunication and misinformation. Mr. Kolitsos stated that Dr. Sayegh had been under the impression that this matter was being transferred to the state of Nevada and, if the matter was not being transferred to Nevada, then the evaluation would be rescheduled.

Mr. Kolitsos continued that the Hearing Examiner has recommended that Dr. Sayegh be rescheduled for another 72-hour evaluation. Mr. Kolitsos stated that Dr. Sayegh is amicable to attending the evaluation, but he requested that Dr. Sayegh be allowed to undergo the evaluation in Nevada or, alternatively, that the entire matter be transferred wholly to the state of Nevada.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Ms. Snyder stated that she did wish to respond.

Ms. Snyder stated that Dr. Sayegh was ordered to an impairment evaluation which he did not attend. Therefore, the sole issue before the Board today is whether Dr. Sayegh's failure to attend was due to circumstances beyond his control. Ms. Snyder noted that one of the circumstances Dr. Sayegh claimed was beyond his control was that his attorney told him he did not have to go. Ms. Snyder stated that the Board has the discretion to determine that that was a circumstance beyond Dr. Sayegh's control, but she opined that this is not a very good reason because all attorney given their clients this advice.

Ms. Snyder noted that Dr. Sayegh is asking to be able to undergo evaluation in Nevada. Ms. Snyder stated that she is not aware of any Ohio Board-approved treatment providers in Nevada, but the Board could consider an evaluation performed in Nevada if it wished to do so.

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

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

Dr. Soin briefly reviewed Dr. Sayegh's medical education and career. The Board received notification that while Dr. Sayegh was working on or about Dec. 30, 2016, staff at his place of employment observed that he appeared very sleepy, exhibited a slow manner of speech, fell asleep during patient encounters, had problems logging in on the computer, and went to the wrong examination room. Subsequently, Dr. Sayegh voluntarily submitted to a urine drug screen and tested positive for hydromorphone and hydrocodone. After the drug screen, Dr. Sayegh was driven home and was later fired by his employer. When Dr. Sayegh was interviewed by a Board investigator about these events, he indicated that the screen was only positive for hydrocodone and that the result was due to taking medication for his back conditions. Later, Dr. Sayegh divulged the hydromorphone result when he saw a copy of the urine drug screen.

Dr. Soin continued that Dr. Sayegh's attorney at that time, Eric Jones, had communicated with James

Roach, an Enforcement Attorney with the Ohio Medical Board, as well as Robert Kilroy, General Counsel for the Nevada State Board of Medical Examiners, to discuss the possibility of having the examination in Nevada where he was then employed. Mr. Jones indicated that Dr. Sayegh is happy to fully cooperate with both boards and do whatever is deemed necessary to demonstrate that he is well-qualified and fit to practice medicine. As noted by the Hearing Examiner, by the time Dr. Sayegh learned that the examination was still scheduled in Ohio it was not possible for him to arrange coverage at his current employment in a professionally responsible manner. The Hearing Examiner also noted that Dr. Sayegh appeared to be a credible witness, his demeanor was appropriate, and he answered all the questions forthright and without delay.

Dr. Soin stated that under the unusual circumstances of this matter, the evidence supports the conclusion that Dr. Sayegh's failure to appear for the Board-scheduled examination was due to circumstances beyond his control, and accordingly Dr. Sayegh has established a basis for granting him an additional opportunity to attend the required outpatient exam. Dr. Soin stated that he supports the Proposed Order that a 72-hour examination be rescheduled to take place within a reasonable period of time following the effective date of the Order.

Dr. Schottenstein opined that the communication from the Ohio board to Dr. Sayegh and his counsel was clear that Dr. Sayegh did not qualify as an out-of-state impairment case under 4731-16-12. Dr. Schottenstein felt that there was no communication that was vague or open to interpretation. However, Dr. Schottenstein had the sense that Dr. Sayegh acted in good faith. Dr. Schottenstein quoted a portion of Dr. Sayegh's testimony: "When I got the phone call the Friday before the 23rd of October, that was the first time I had an inkling that something was wrong." Dr. Schottenstein believed that Dr. Sayegh and his attorney should have known the status of the case, but he also believed that they did not know.

Dr. Schottenstein speculated that it is common for a physician in such a situation to essentially leave things in the hands of their legal representation to rectify the situation. Dr. Schottenstein opined that Dr. Sayegh should have been more attentive to this situation and more careful to get confirmation in writing that his appointment has been postponed or transferred to Nevada. However, Dr. Schottenstein also stated that he could believe that Dr. Sayegh felt that things were being taken care of by his attorney. Dr. Schottenstein stated that it is a circumstance beyond a person's control when that person does not know what they don't know. Dr. Schottenstein stated that he has not seen any hint of protest or defiance from Dr. Sayegh that would cause him to believe otherwise. Dr. Schottenstein opined that the Proposed Order is fair in this case.

Ms. Montgomery, stating that there must be qualified people in Nevada who could perform an evaluation, asked if it is the Board's position that someone in Nevada cannot get an evaluation in Nevada. Ms. Anderson stated that under the law, the Board's Secretary and Supervising Member have the ability to refer someone to a Board-approved treatment provider for a 72-hour evaluation. Ms. Anderson stated that there are some Board-approved treatment providers outside Ohio, but she was uncertain if there were any in Nevada.

Mr. Giacalone noted that Dr. Sayegh's Ohio medical license expired on January 1, 2018, due to non-renewal. The Board members discussed the possibility of transferring this case to the Nevada Board has had been originally requested, or allowing Dr. Sayegh to undergo evaluation in Nevada. Ms. Anderson stated that the Proposed Order is silent on the matter of where Dr. Sayegh's evaluation occurs, except that it be pursuant to 4731.22(B)(26), Ohio Revised Code, which requires that it be performed by a treatment provider approved by the Ohio Board.

Mr. Giacalone suggested tabling this matter until more information can be gathered regarding the possibility of Dr. Sayegh being evaluated in Nevada.

Dr. Steinbergh moved to table this topic. Dr. Soin seconded the motion. A vote was taken:

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

The motion to table carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

Mr. Giacalone stated that in the following matter, the Board issued a Notice of Opportunity for Hearing. No timely request for hearing was received. The matter was reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and is now before the Board for final disposition. This matter is disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

LAWRENCE RICHARD FELDMAN, M.D.

Dr. Steinbergh moved to find that the allegations as set forth in the August 9, 2017 Notice of Opportunity for Hearing in the matter of Dr. Feldman have been proven to be true by a preponderance of the evidence and to adopt Mr. Porter's Proposed Findings and Proposed Order. Dr. Schottenstein seconded the motion.

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

Mr. Giacalone stated that Dr. Feldman was first licensed to practice medicine in Ohio in November 2014 and his Ohio license expired on January 1, 2017. Dr. Feldman currently holds an active medical license in Florida, and he previously held a medical license in Maryland from 1976 to 2016. Mr. Giacalone noted that Dr. Feldman is not board-certified in any specialty.

Mr. Giacalone continued that Dr. Feldman owned a private medical practice with two locations in Maryland from 1987 to 2011 and he employed a physician assistant who worked at both locations. In September 2011, Dr. Feldman sold his practice to Physician A and her non-physician husband, who owned a dermatology and dermatopathology practice headquartered in Georgia. Physician A and her husband also owned a pathology laboratory in Georgia, which is referred to as "Lab A". Following the

purchase of Dr. Feldman's practice locations, Dr. Feldman became an independent contractor for Physician A's practice and worked at three Maryland locations, two of which were his former offices. Dr. Feldman also continued to supervise the physician assistant. Mr. Giacalone noted that Dr. Feldman was now being compensated "based on a formula which was a percentage of the collections minus certain overhead."

Mr. Giacalone stated that on or about June 6, 2017, Dr. Feldman, who was represented by counsel, entered into a Consent Order with the Maryland State Board of Physicians. In that Consent Order, Disciplinary Panel A of the Maryland Board charged Dr. Feldman "unprofessional conduct in the practice of medicine" and that he "grossly overutilizes health care services." Mr. Giacalone stated that in spite of these conclusions of law, the Maryland Board only issued Dr. Feldman reprimand and ordered that prior to reinstatement of his Maryland license, Dr. Feldman shall appear before the Disciplinary Panel for the imposition of any "terms and conditions."

Mr. Giacalone stated that the actions in Maryland originated from a complaint by another physician alleging that Dr. Feldman had improperly supervised his physician assistant and was engaged in gross overutilization of dermatologic procedures. The Maryland Consent Order contained the following findings:

- With respect to nine patients, Dr. Feldman and/or his physician assistant obtained 18 specimens for pathology review that were sent to Lab A between October 2011 and January 2014. No informed consent was obtained or notification documented for those nine patients, which disclosed that Physician A was also the owner of Lab A. Further, there was no documentation that any patient specimens from those nine patients were sent to any laboratory other than Lab A.
- Numerous incidents were identified involving multiple patients wherein Dr. Feldman made certain diagnoses or claimed to have performed certain procedures that were either found to be false, were unnecessary or duplicative, did not occur, and/or were erroneously charged to the patients and/or their insurers, which included Medicare and Blue Cross and Blue Shield.

Mr. Giacalone stated that the specific details of these actions can be found in the Maryland Board's Consent Order of June 6, 2017, set forth in State's Exhibit 3 and the Hearing Examiner's Proposed Findings.

Mr. Giacalone stated that given the facts presented in this case, he agrees with the Hearing Examiner that Dr. Feldman violated Maryland law and that the economic harm that resulted from his misconduct would potentially affect his patients' health and well-being. Mr. Giacalone stated that Dr. Feldman's actions, which came at the price of his patients, were done to profit monetarily at his patients' economic and physical expense. Mr. Giacalone stated that he does not see the rationale in the Maryland Board's decision to simply issue Dr. Feldman a reprimand in this matter. Mr. Giacalone stated that Dr. Feldman preyed upon his patients and used them as a means to satisfy his financial ends, regardless of their well-being. Mr. Giacalone stated that it is obvious that Dr. Feldman cared little for his patients but willingly took their or their insurer's money for fraudulent services.

Mr. Giacalone stated that, based upon the evidence and testimony provided, he supported the Hearing Examiner's Proposed Findings and Proposed Order to permanently revoke Dr. Feldman's Ohio medical license.

Dr. Bechtel emphasized that Dr. Feldman is not a board-certified dermatologist. Dr. Bechtel stated that Dr. Feldman is guilty of fraud, recklessness, and practicing far below the minimal standards of care. For example, Dr. Bechtel stated that when one performs cryosurgery on a pre-cancerous lesion, the physician must spray some liquid nitrogen on the lesion, which takes about one minute. Dr. Feldman was billing this action as a destruction of a malignancy at a much higher level of reimbursement. Dr. Bechtel stated that Dr. Feldman consistently performed actions that took little time and then improperly coded it to produce higher levels of reimbursement. Dr. Bechtel stated that these actions constitute fraud.

Dr. Bechtel continued that Dr. Feldman treated many lesions as a skin malignancy without any biopsy. Dr. Bechtel stated that Dr. Feldman did not know what he was treating because he never obtained a pathology report to confirm malignancy. Dr. Bechtel further commented that liquid nitrogen is rarely used in the treatment of skin malignancies and only under certain circumstances. Dr. Bechtel stated that if the lesions were malignancies, Dr. Feldman's treatment was inappropriate due to the manner in which he used liquid nitrogen and he put patients at risk. Dr. Bechtel stated that Dr. Feldman consistently upcoded by performing one procedure and then billing for a much more detailed and elaborate procedure that was never done.

Dr. Bechtel stated that his one concern is that he was not certain if the billing was done by Dr. Feldman himself or by the owner of his practice. Mr. Giacalone noted that Dr. Feldman had a financial arrangement whereby he would steer patients to Lab A without informed consent or letting them know that the practice was benefiting financially by using Lab A.

Dr. Bechtel stated that the Proposed Order is very appropriate.

Dr. Steinbergh stated that she agrees with the Proposed Order. Dr. Steinbergh pointed out that terminology is used differently by different state medical boards, noting, for example, that the Maryland Consent Order would be called a Consent Agreement in Ohio. Dr. Steinbergh stated that the term "Reprimand" likely means something more strict than how that term is used in Ohio, as evidenced by references in the Consent Order about Dr. Feldman reapplying for licensure in the future.

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

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

The motion carried.

The Board recessed at 12:40 p.m. and resumed the meeting at 1:35 p.m.

EXECUTIVE SESSION

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

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

The motion carried.

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

EXECUTIVE SESSION

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

Ms. Montgomery - aye
Dr. Bechtel - aye

The motion carried.

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

The Board returned to public session.

REPORTS AND RECOMMENDATIONS

JOHN ROBERT CAPURRO, M.D.

Dr. Schachat moved to remove the matter of John Robert Capurro, M.D., from the table. Dr. Steinbergh seconded the motion. A roll call was taken:

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

The motion carried.

Copies of Dr. Soin's written proposed amendment was provided to Board members. Dr. Soin agreed that the drafted amendment is reflective of the amendment he had previously moved verbally.

The Order, if amended, will read as follows:

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE, STAYED; PROBATION:** The certificate of John Robert Capurro, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of fifteen days. Such suspension is **STAYED**, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least one year.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. Capurro shall remit payment in full of a fine of one thousand dollars (\$1,000.00). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.

C. **PROBATION:** The certificate to Dr. Capurro to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:

2. **Obey the Law:** Dr. Capurro shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
3. **Payment of Fine:** Prior to his release from probation, Dr. Capurro shall have fully paid the fine as set forth in Paragraph B of this Order.
4. **Declarations of Compliance:** Dr. Capurro shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
5. **Personal Appearances:** Dr. Capurro shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
6. **Controlled Substances Prescribing Course(s):** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Capurro shall submit acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Capurro submits the documentation of successful completion of the course(s) dealing with the prescribing of the controlled substances, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

7. **Course(s) Concerning Physician/Patient Boundaries:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Capurro shall provide acceptable documentation of successful completion of a course or courses on maintaining physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition

to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Capurro submits the documentation of successful completion of the course(s) on maintaining physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

8. **Examination of Law Relating to the Practice of Medicine and Surgery:** Prior to his release from probation, or as otherwise approved by the Board, Dr. Capurro shall take and pass an examination to be administered by the Board or its designee related to the content of the Revised Code and Administrative Code relating to the practice of medicine and surgery in Ohio, along with federal and state laws and regulations pertaining to the provision of controlled substances. In the event Dr. Capurro fails this examination, he must wait at least three months between re-examinations.

9. **Use Best Efforts to Obtain Speaking Engagements at Ohio Medical Schools:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Capurro shall use his best efforts to obtain a speaking engagement at each accredited medical school in the State of Ohio. He shall offer to speak to each school's students concerning the underlying issue that gave rise to this matter, including the pitfalls of inappropriately prescribing of methadone for treatment of addiction. Dr. Capurro may contact Board staff for assistance identifying the appropriate individual or entity to contact at each institution, and shall send a letter to each individual or entity formally extending his offer. Subject to each school's acceptance of his offer, Dr. Capurro shall provide his service that service to each medical school that accepts his offer at a time mutually agreeable to Dr. Capurro and the accepting medical school(s), and prior to his release from probation. Dr. Capurro will be solely responsible for the content of his materials.

As verification of his best efforts to obtain these speaking engagements, prior to his release from probation, Dr. Capurro shall provide to the Board copies of: (a) each of the letters he sends to the schools, (b) any written communication he receives from the medical schools, or his own written statement that a school or schools did not respond, and (c) verification that he has completed the services offered and accepted. The Board in its sole discretion shall determine whether Dr. Capurro has fulfilled the requirement that he apply his best efforts to fulfill this requirement.

10. **Required Reporting of Change of Address:** Dr. Capurro shall notify the Board in writing of any change of address and/or principal practice address within 30 days of the change.

11. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Capurro is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Capurro's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Capurro violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Capurro shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Capurro shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. Capurro provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

These requirements shall continue until Dr. Capurro receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Capurro shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. Capurro shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license.

Additionally, within 30 days of the effective date of this Order, Dr. Capurro shall provide a copy of this Order to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which he currently holds or has previously held certification.

Further, within 30 days of each such notification, Dr. Capurro shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

This requirement shall continue until Dr. Capurro receives from the Board written notification of the successful completion of his probation.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

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

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

The motion to amend carried.

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of John Robert Capurro, M.D. Dr. Schachat seconded the motion. A vote was taken:

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

The motion to approve carried.

DANNY JOSEPH SAYEGH, M.D.

Dr. Steinbergh moved to remove the topic of Danny Joseph Sayegh, M.D., from the table. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

Ms. Anderson explained that if the Board accepts the Hearing Examiner's Proposed Order to reschedule the evaluation for Dr. Sayegh, then the matter will go back to the Enforcement Section to reschedule the evaluation with guidance from the Board's Secretary and Supervising Member.

Dr. Steinbergh asked if Dr. Sayegh's evaluation could be rescheduled to occur in Nevada or a place near Nevada. Ms. Marshall explained that if the Board accepts the Proposed Order, the matter will return to Enforcement and additional information will be gathered. This new information could change the direction of case, such as whether the physician has entered treatment. Ms. Marshall continued that all the information will be taken to the Secretary and Supervising Member to determine the appropriate course of action.

Ms. Montgomery noted that the Proposed Order, which is still before the Board, does not mention a specific location. Mr. Giacalone stated that a Board-approved treatment provider will be selected by the Secretary and Supervising Member and the Board's conversation of this subject will be taken into consideration when selecting a location.

Ms. Anderson pointed out that Page 1 and Page 15 of the Proposed Findings and Proposed Order makes reference to an outpatient examination. Ms. Anderson stated that this is a clerical error and that the reference should be to an inpatient examination in both instances.

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

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

Mr. Gonidakis	- aye
Dr. Soin	- aye
Dr. Edgin	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Bechtel	- aye

The motion to approve carried.

RATIFICATION OF SETTLEMENT AGREEMENTS

GREGORY G. DUMA, M.D. – STEP II CONSENT AGREEMENT

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

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

The motion to ratify carried.

THEODORE MARSTON HUNTER, M.D. – PERMANENT SURRENDER/RETIREMENT OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the proposed Permanent Surrender/Retirement with Dr. Hunter. Dr. Schottenstein seconded the motion. A vote was taken:

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

Dr. Bechtel - abstain

The motion to ratify carried.

JUSTIN CARLOS PARDUE, L.M.T. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MASSAGE THERAPY

Dr. Steinbergh moved to ratify the proposed Permanent Surrender with Mr. Pardue. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion to ratify carried.

RODNEY E. STONE, M.D. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

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

ROLL CALL:

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

The motion to ratify carried.

SHANNON L. SWANSON, D.O. – SUPERSEDING CONSENT AGREEMENT

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

ROLL CALL:

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

The motion to ratify carried.

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

Dr. Steinbergh moved to send the Notice of Opportunity for Hearing to Abdallah Al-Shahed, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

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

The motion to send carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Atta Asef, D.P.M. Mr. Gonidakis seconded the motion. A vote was taken:

ROLL CALL:

Dr. Rothermel	- abstain
Dr. Saferin	- abstain
Dr. Schottenstein	- abstain
Dr. Steinbergh	- aye

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

The motion to send carried.

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Denise Ann Hamilton, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to send carried.

IMPACT OF PERMANENT SURRENDER ON UNPAID MONETARY FINES

Ms. Marshall stated that the Secretary and Supervising Member have asked her to bring this issue to the Board for discussion and feedback. Ms. Marshall explained that with the Board's recently-acquired fining authority, Enforcement is beginning to encounter situations in which a practitioner has an unpaid or partially-paid fine but now wants to surrender their license, with the expectation that the surrender will erase the prior fine. Ms. Marshall stated that another potential situation is that a practitioner may have an unpaid fine from a prior action and is now subject to another action with a potential fine, and they may wish to surrender their license to erase both the prior fine and any potential new fine. Ms. Marshall asked the Board for feedback on how to address this issue.

Mr. Groeber emphasized that this discussion involves permanent surrenders and there is no contemplation that a practitioner may wipe out his or her fine yet still retain an ability to return to practice. Ms. Marshall added that this only applies when the original order or consent agreement is not a revocation or permanent revocation, since those practitioners would not have a license to surrender following a revocation. Ms. Marshall stated that this discussion involved licensees who received their fine as part of a reprimand, probation, and/or suspension.

The Board engaged in a thorough discussion of this topic. Dr. Steinbergh opined that if a practitioner

wishes to surrender his or her license, then the Board should forgive the remaining balance of any fine. Dr. Steinbergh opined that if the fine has already been partially paid, the Board should not refund that payment. Dr. Steinbergh also commented that if such cases have already been forwarded to the Attorney General's office for collection, the Board would have to instruct the Attorney General's office to cease collection efforts.

Dr. Bechtel exited the meeting at this time.

Ms. Marshall agreed with Dr. Steinbergh regarding the Attorney General's office, but noted that there may be a "point of no return" if, for example, the Attorney General's office has placed a lien on a home or gotten a judgment against the licensee. If such cases, it may or may not be possible to forgive the debt.

Mr. Gonidakis wished to confirm that the Board would never use the prospect of wiping out a debt to motivate or entice a licensee to permanently surrender their license. Mr. Groeber and Ms. Marshall agreed. Ms. Marshall stated that in these situations, the licensee is approaching the Board looking for a resolution to this issue. Ms. Marshall stated that a permanent surrender is routinely offered to respondents, but the possibility of having a debt forgiven is never used to encourage a surrender.

Ms. Montgomery agreed with Mr. Gonidakis' comments. Ms. Montgomery added that there should be a Board policy that ensures that the fining authority is not used as a cudgel to enforce another penalty. Ms. Marshall agreed and stated that in these situations, there is no opportunity to use the fine as leverage because the discipline has already occurred.

Ms. Montgomery stated that if licensees who have partially paid would only have the remaining balance of their debt forgiven after a permanent surrender, whereas licensees who have not paid at all would be treated differently because they would have their entire debt forgiven. Dr. Saferin commented that, as with many things, if someone makes a deal earlier then they may get a better deal than if they wait. Dr. Saferin further commented that fining is very secondary in the Board's disciplinary process. Dr. Rothermel agreed with Ms. Montgomery's point and stated that someone who made an effort to pay what they could before deciding to surrender would not be treated equally to someone who did not pay at all. Dr. Schottenstein stated that those who pay a portion of their fine will have only done what they had been obligated to do. Dr. Schottenstein agreed with Dr. Steinbergh that any remaining balance should be forgiven if the licensee permanently surrenders, but he would not favor refunding money to those who had partially paid. Mr. Groeber comment that the Board does not have a mechanism to issue refunds anyway.

Dr. Schottenstein agreed with the comments made by Mr. Gonidakis and Ms. Montgomery about using fines as leverage. Dr. Schottenstein stated that he would not want to price someone out of their ability to practice. Dr. Schottenstein commented that he would feel badly if a licensee received a reprimand and a fine but could not practice because they could not afford the fine. Ms. Marshall noted that when fining was first initiated, the feedback from the Board was that fines should be fairly assessed based on the fining grid and that a licensee's ability to pay should not be a consideration. Dr. Schottenstein agreed, but stated that if the scenario he outlines happens frequently, then the Board should consider adjusting the fining grid.

Mr. Giacalone stated that he agrees that the Board should forgive a fine if a licensee permanently surrenders, and he also agreed that no partially-paid funds should be refunded to a licensee. Mr. Giacalone stated that any partial payments that someone makes is because they violated the Board's rules or laws.

Ms. Marshall thanked for the Board for its feedback on this issue.

ADVISORY COUNCILS APPLICATIONS REVIEW

Mr. Smith stated that at the February 2018 meeting, the Board had considered applications for the Dietetics Advisory Council and the Respiratory Care Advisory Council. At that time, the Board directed the staff to communicate with the appropriate associations for those professions for any additional nominations to the Councils. Mr. Smith stated that all nominations have now been made.

Dr. Schachat exited the meeting at this time.

Mr. Smith stated that the Board has been provided with all applications, as well as the recommendations from staff, in consultation with Mr. Giacalone, for those who were determined to be good candidates for the councils. Mr. Giacalone noted that the recommendations for the Dietetics Council is for six candidates instead of seven. Mr. Smith stated that the statute allows the Board to appoint up to seven members to the council, so the Board is within its statutory authority to appoint six members instead of seven. Mr. Giacalone stated that the candidates recommended by the staff for the Dietetics Advisory Council are Rachel Pohle-Krauza, Susan Finn, Carmen Clutter, Judy Nagy, Ashley Pax, and Joseph Nigh.

Mr. Groeber stated that the statute requires that one member of the Medical Board serve on the Respiratory Care Advisory Council. Dr. Factora has agreed to serve in this capacity. Mr. Groeber state that in addition to Dr. Factora, the staff is recommending the following candidates for the Respiratory Care Advisory Council: Edward L. Warren, M.D., from the MetroHealth Medical Center; Amy Rodenhausen, from Cleveland Clinic; Sanja Keller, from Sinclair College; Roy Neely, from Aeratech Medical, Inc.; Robert Pelfry, from University Hospitals; and Margaret Traband from the University of Toledo.

Dr. Saferin moved to approve the staff recommendations for appointments to the Respiratory Care Advisory Council. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion carried.

Dr. Saferin moved to approve the staff recommendations for appointments to the Dietetics Advisory Council. Dr. Schottenstein seconded the motion. A vote was taken:

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

Dr. Schottenstein - aye
Dr. Steinbergh - abstain
Mr. Giacalone - aye
Mr. Gonidakis - aye
Dr. Soin - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye

The motion carried.

OPERATIONS REPORT

Mr. Groeber noted former Board member and Board President Krishnamurthi Ramprasad, M.D., is present in the audience. The Board welcomed Dr. Ramprasad back.

Human Resources: Mr. Groeber stated that an attorney position for the Enforcement Section is in the process of being filled.

Mr. Groeber stated that the second round of interviews for the Investigator-South Region position will begin soon.

Mr. Groeber stated that there are pending hires for Human Resources/Payroll and the Front Desk.

Mr. Groeber stated that there is currently a temporary worker in the Hearing Unit to fill in for Alana Volakis, who left the Board recently for another position.

Dr. Schachat returned to the meeting at this time.

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 May 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.

Agency Operations: Mr. Groeber stated that there was a 1% increase in the number of open complaints since last month.

Mr. Groeber stated that there has been an 8% increase in licensure year-to-date compared to last year and clean licensure applications are being processed 30% more quickly than last year.

Mr. Groeber noted that this morning, the Board approved the first group of physician applicants for the Certified to Recommend Medical Marijuana.

2018 Board Retreat: Mr. Groeber stated that the Board Retreat will be on Thursday, May 10, at the Grange Audubon Center south of downtown Columbus. The agenda items for the Retreat have been provided to Board members.

Financial Disclosure Statements: Mr. Groeber reminded the Board members that Financial Disclosure Forms are due at the Ohio Ethics Commission by May 15.

Henry G. Cramblett, M.D.: Mr. Groeber informed the Board that Henry G. Cramblett, M.D., has passed away. Dr. Cramblett had served on the Medical Board for 22 years from 1970 to 1992, including service as the Secretary and President of the Board. Dr. Cramblett was also the recipient of the Distinguished Service Award from the Federation of State Medical Boards. Mr. Groeber stated that Dr. Cramblett's impact on the Board was significant.

REPORTS BY ASSIGNED COMMITTEE

FINANCE COMMITTEE

FISCAL REPORT

Dr. Schottenstein stated that revenue for February 2018 was \$841,143, a 28% increase over February 2016. Dr. Schottenstein noted that February is typically a low-revenue month. Year-to-date revenue is roughly \$5,800,000, compared to \$6,200,000 in Fiscal Year 2016. Dr. Schottenstein commented that the gap in revenue continues to close. The Board's cash balance in February 2018 was \$3,668,017, an 18% increase from February 2017. Dr. Schottenstein stated that strong fiscal revenue numbers are anticipated for the rest of the fiscal year due to multiple pending renewals. Dr. Schottenstein commented renewals for dietitians and respiratory care professionals alone will be about \$1,000,000. Dr. Schottenstein stated that the Board's April cash balance is estimated at about \$4,700,000.

Dr. Schottenstein stated that the Board was recently billed by the Department of Administrative Services for the final eLicense development payment for \$1,114,680. Dr. Schottenstein noted that the anticipated revenue for dietitian and respiratory care professional renewals effectively cancels out this payment.

Dr. Schottenstein continued that total expenditures for February 2018 were \$654,220, representing a 4.1% increase in year-to-date spending. Dr. Schottenstein stated that this increase is largely a function of regular increases in payroll.

Dr. Schottenstein stated that the Medical Board is currently undergoing an audit, and no concerns have been brought up so far.

Dr. Schottenstein stated that last month the Board conditionally approved an expenditure of \$75,000 for development of the Prescriber Insight Report for the Ohio Automated Rx Reporting System (OARRS) and \$15,000 in annual maintenance costs. Subsequent to last month's meeting, Mr. Groeber was informed that the Board of Pharmacy had located grant money to pay for the development of the Prescriber Insight Report. The Report is expected to be completed in May 2018. The Board of Pharmacy also indicated that the development of additional reports related to compliance with acute opioid prescribing rules, the ICD 10 requirement, and other matters, may be developed by the Appriss company itself.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated that \$17,500 in fine payments have been collected since the last Board meeting, all relate to non-compliance with continuing medical education (CME) requirements.

COMMUNICATIONS UPDATE

Dr. Schottenstein stated that the Communications team prepared and sent out correspondence to almost 8,000 licensees regarding utilization of the Ohio Automated Rx Reporting System (OARRS). The Board received more than 700 emails, phone calls, and written letters in response.

Dr. Schottenstein stated that the Take Charge Ohio events continue, with the goal of promoting safe prescribing of opioids. Take Charge Ohio had an event in Toledo in March, and there are upcoming events in Cincinnati and Athens in April and May, respectively.

COLORADO DEPARTMENT OF REVENUE MED SUMMIT

Dr. Schottenstein stated that the Colorado Department of Revenue and its Marijuana Enforcement Division (MED) will host the Marijuana and Cannabis Regulators Spring 2018 Roundtable on Tuesday, May 15 and Wednesday, May 16, in Denver Colorado. Dr. Schottenstein stated that while the focus of the meeting is on issues confronting state-level regulators of the licensed adult use of recreational marijuana industry, the hosts are expanding the invitation list to include two representatives from states with medical marijuana/cannabis-only frameworks, as well as Canadian provincial marijuana regulators. The meeting will consist of a series of roundtable discussions focused on various topics including packaging and labeling, testing, tracing technology, banking challenges and diversion. Estimated cost for airfare is \$350, the estimated cost for hotel is \$650, the estimated cost for transportation is \$100, and the *per diem* is \$200 for an approximate total of \$1,300. The Finance Committee voted to approve Mr. Groeber to attend the meeting.

Dr. Steinbergh moved to approve Mr. Groeber to attend the 2018 Colorado Department of Revenue MED Summit on May 15 and 16, 2018, in Denver, Colorado, and that Mr. Groeber's travel expenses will be paid by the Medical Board in accordance with state travel policy. Dr. Steinbergh further moved that 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. Schachat seconded the motion. All members voted aye, except Mr. Gonidakis, who abstained. The motion carried.

POLICY COMMITTEE

LEGISLATIVE UPDATE

Dr. Soin stated that Mr. LaCross provided the Committee with a summary of the bills that the Board is tracking through the legislature.

RULE REVIEW PROCESS

Dr. Soin stated that Ms. Anderson updated the Committee on the rule review process.

FSMB RESOLUTIONS AND REPORTS

Dr. Soin stated that Ms. Anderson reviewed the Federation of State Medical Boards (FSMB) resolutions and reports for the Board.

UPDATES TO DIETETICS AND RESPIRATORY CARE RULES

Dr. Soin stated that the Committee discussed the updates to the dietetics and respiratory care rules. Mr. Smith noted that the Committee voted to refer the rules to the new advisory councils for those professions and to circulate them to interested parties for comment.

AMENDMENTS TO THE YOUTH SPORTS CONCUSSION RULES

Dr. Steinbergh moved to send the amended youth sports concussion and head injury rules to the Common Sense Initiative for their review. Dr. Saferin seconded the motion. A vote was taken:

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

The motion carried.

NAPHCARE PROPOSAL REGARDING BUPRENORPHINE

Dr. Soin stated that this proposal is from the prison system to help treat inmate patients with buprenorphine. The Committee agreed that NaphCare can proceed with the proposal, in accordance with their obligations with regard to checking the Ohio Automated Rx Reporting System (OARRS) for some of those inmates.

RULE 4731-34-01, PRESCRIPTIONS FOR INJECTION BY PHARMACIST

Mr. Smith stated that the Committee voted to circulate these draft rules to interested parties for comment.

LICENSURE COMMITTEELICENSURE APPLICATION REVIEWSSARA ANN SAVAGE, M.T.

Dr. Saferin stated that Ms. Savage is applying for restoration of her massage therapy license in Ohio. Ms. Savage has indicated on her application for restoration that she has not actively practiced Massage Therapy in Ohio since her Ohio license expired on October 1, 2012. Ms. Savage is requesting the restoration of her Ohio license originally issued in July 2002. Since being placed on the agenda, Ms. Savage has provided proof of successful completion of the Massage and Bodywork Licensing Examination (MBLEX) on March 28, 2018, with passing score. The Licensure Committee has

recommended approval of Ms. Savage's request.

Dr. Saferin moved to approve Ms. Savage's request for Ohio licensure as presented. Dr. Rothermel seconded the motion. A vote was taken:

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

The motion carried.

LISA MARIE KELSO, M.T.

Dr. Saferin stated that Ms. Kelso is applying for restoration of her massage therapy license in Ohio. Ms. Kelso has indicated on her application for restoration that she has not actively practiced Massage Therapy in Ohio since her Ohio license expired on October 1, 2014. Ms. Kelso is requesting the restoration of her Ohio license. The Licensure Committee has recommended approval of Ms. Kelso's request.

Dr. Saferin moved to approve Ms. Kelso'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. Steinbergh seconded the motion. A vote was taken:

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

The motion carried.

SALAH ALTARABSHEH, M.D.

Dr. Saferin stated that Dr. Altarabsheh is applying for a license and has requested a waiver of the United States Medical Licensing Examination (USMLE) ten-year rule. Dr. Altarabsheh passed Step 1 of the USMLE in 1997, Step 2 (CK) in 1998, Step 2 (CS) in 2011 and Step 3 in 2016, all on the first attempt. Dr. Altarabsheh graduated from the University of Jordan in 1997. Dr. Altarabsheh successfully completed one year of postgraduate training in a Cardiovascular Surgery clinical fellowship at Texas Heart Institute/Baylor College of Medicine Program through level three training. Dr. Altarabsheh also successfully completed a two-year clinical fellowship in Thoracic Surgery at the Mayo Graduate School of Medicine at training levels seven and eight.

Dr. Altarabsheh provided a professional chronology of his education, training and experience to-date, along with his request for a waiver of the ten-year exam sequence requirement. Dr. Altarabsheh's letter described his time in Jordan and the United States progressing from a general surgery resident to cardiac surgery resident, senior specialist, then consultant cardiac surgeon. Dr. Altarabsheh shared that after his training in the United States, he went back to Jordan to start his work in the cardiac surgery field where he worked on upgrading from a specialist to consultant cardiac surgeon. Dr. Altarabsheh obtained Jordanian General Surgery Board Certification, membership in the Royal College of Surgeons in Ireland, and American College of Surgeons membership. The Licensure Committee has recommended approval of Dr. Altarabsheh's request.

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

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

The motion carried.

RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL

Dr. Saferin stated that the Respiratory Care Program Student Club at Cuyahoga Community College is requesting that its presentation on "Ethics in Professional Practice" be approved for one contact hour of respiratory care continuing education on Ohio respiratory care law or professional ethics.

Dr. Steinbergh moved to approve the presentation for one contact hour of Respiratory Care Continuing Education on Ohio respiratory care law or professional ethics, pursuant to the provisions of chapter 4761-9 of the Ohio Administrative Code. Dr. Schottenstein seconded the

motion. A vote was taken:

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

The motion carried.

TRAINING CERTIFICATE EDUCATION VERIFICATION

Dr. Saferin stated that the Licensure Committee tabled this topic pending additional information from the Legal Section.

Dr. Steinbergh asked if she could comment on this topic since she is leaving the Board soon and may not have another chance to comment. Mr. Giacalone agreed.

Dr. Steinbergh stated that when a student is about to graduate from medical school, they match into a residency program and the program begins to send them information on how to apply for a training certificate. However, Dr. Steinbergh pointed out that the student cannot enter the training program until they receive a diploma. Dr. Steinbergh stated that on occasion, students are accepted into a program but their graduation from medical school is delayed for some reason and they cannot enter the program until the diploma is actually conferred.

Dr. Steinbergh stated that she is bringing this up because some of the language used in this proposal is unclear regarding an ability to enter a residency program prior to graduation. Dr. Schottenstein commented that he had had similar concerns. Dr. Saferin clarified that no one will practice without a diploma in any circumstance. Dr. Edgin stated that the Committee discussed the fact that the certificate would be null and void if the student did not receive a diploma.

PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE

REVIEW OF NEW DRUGS

Dr. Steinbergh stated that the following medications have been recommended for approval by the Physician Assistant Policy Committee (PAPC) and the Physician Assistant/Scope of Practice Committee.

- **Symfi Lo, Biktarvy, and Cimduo:** These are antiretroviral drugs and are recommended for the Physician-Initiated category.
- **Osmolex ER:** this is a Parkinson's disease medication and is also indicated for treatment of

drug-induced extrapyramidal reactions in adult patients. This is recommended for the CPT May Prescribe category despite the fact that it is amantadine.

- **Dexycu:** this is an ophthalmologic injectable steroid and anti-inflammatory agent, recommended for the CPT May Not Prescribe category.
- **Symdeko:** This is a very specialized cystic fibrosis transmembrane conductance regulator, recommended for the Physician-Initiated category despite the fact that it is a combination drug and the single agents are in the May Prescribe category.
- **Erleada:** This is an anti-neoplastic agent, recommended for the CPT May Not Prescribe category.
- **Imbruvica:** This is a kinase inhibitor for treatment of mantel cell lymphoma, recommended for the CPT May Not Prescribe category.
- **Apadaz:** This is a another formula of a combination of the opioid benzhydrocodone and acetaminophen. It is a Schedule II drug and is recommended for the CPT May Prescribe category.
- **ZTlido:** This is a topical analgesic for the relief of pain associated with post-herpetic neuralgia, recommended for the CPT May Prescribe category.

Dr. Saferin moved to approve the Committees' recommendations. Dr. Sojin seconded the motion. All members voted aye. The motion carried.

Dr. Steinbergh stated that the committees also considered the RadioGenix System, a diagnostic radiopharmaceutical agent. Ms. Debolt stated that as a radiopharmaceutical, the use of this medication falls under the regulations of the Ohio Department of Health. In according with those regulations, the Committee recommends approval for physician assistants to prescribe the RadioGenix System, but they may not prepare or administer the drugs. Ms. Debolt stated that the RadioGenix System can only be prepared and administered by someone licensed by the Department of Health.

Dr. Saferin moved to approve the Committee's recommendation regarding the RadioGenix System. Dr. Sojin seconded the motion. All members voted aye. The motion carried.

FORMULARY REQUEST, WEIGHT LOSS DRUGS

Ms. Debolt stated the some physician assistants and their supervising physicians have requested that physician assistants be allowed to prescribe weight-loss drugs that contain phentermine. Ms. Debolt pointed out that under the Medical Board's rules, only physicians may prescribe weight-loss drugs. Therefore, pursuant to rule, the request for physician assistants to prescribe weight-loss drugs must be denied.

Mr. Gonidakis exited the meeting at this time.

PHYSICIAN ASSISTANT PRACTICE AT VETERANS ADMINISTRATION

Ms. Debolt stated that when a physician assistant receives prescriptive authority, they must have 500 hours of onsite supervision of their prescribing. However, this requirement does not apply if the physician assistant can prove that they have prescribed for at least 1,000 hours in another jurisdiction. Ms. Debolt

explained that in this context, "jurisdiction" means another state or territory and does not include the Veteran's Administration (VA). Ms. Debolt stated that the question has arisen about physician assistants who prescribed in the VA system and have never had onsite supervision. Ms. Debolt stated that the Committee has agreed with her interpretation of current law that physician assistants must have 500 hours of onsite supervision of their prescribing regardless of their prescribing in the VA system. Ms. Debolt commented that there is pending legislation that may change this in the near future.

Dr. Steinbergh commented that she had contacted Dr. Ramprasad, who practices in the VA system, and learned that there is no real regulation of the number of supervised hours for physician assistants in the VA, they simply practice consistent with the scope of practice of their supervising physician.

Dr. Soin exited the meeting at this time.

COMPLIANCE COMMITTEE

Dr. Steinbergh stated that on March 14, 2018, the Compliance Committee met with Linda J. Dennis, M.D.; Thomas J. Gantner, P.A.; Heather D. Strawbridge, M.D.; and Robert L. Thomas, III, 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 February 12 & 13, 2018.

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. Dr. Schottenstein wished to discuss probationary requests separately.

Dr. Schottenstein stated that John R. Kerns, D.O., is the probationer who has requested early release from his Consent Agreement, which the Secretary and Supervising Member are not in favor of. Dr. Schottenstein noted that Dr. Kerns had an opportunity to withdraw his request, but he did not. Instead, Dr. Kerns wrote a letter to the Board indicating that he had simply forgotten to call in to the testing facility on several occasions and that he had not been acting in defiance, and therefore he argued that the Board should dismiss the additional tolling. But at the same time, Dr. Kerns stated that he accepts full responsibility for the days he forgot to call in and he offered his apologies.

Dr. Schottenstein stated that he gives Dr. Kerns a lot of credit for sobriety and his dedication to working his recovery program. However, Dr. Schottenstein respectfully disagreed with Dr. Kerns' contention that he says he accepts full responsibility for his failure to call in. Dr. Schottenstein stated that accepting full responsibility is not consistent with Dr. Kerns' attempt to circumvent the consequences of his forgetfulness, which is the extension of the probationary period. Dr. Schottenstein accepted that Dr. Kerns had not been defiant, but he also felt that the extension of probationary period is appropriate as a consequence of his failure to call in because he did not create a system of safeguards to prevent him from forgetting to call in. Dr. Schottenstein stated that if Dr. Kerns truly takes full responsibility for forgetting to call in, then part of taking responsibility is accepting the consequences for not fulfilling his commitment outlined in his Consent Agreement.

Dr. Steinbergh agreed with Dr. Schottenstein's comments. Dr. Steinbergh opined that Dr. Kerns has written a sincere explanation of his missed urine screens and documentation, and of his commitment to his sobriety. However, Dr. Steinbergh noted that Dr. Kerns has had three tolling periods. Dr. Steinbergh

opined that Dr. Kerns should have learned from his first tolling period and never repeated his non-compliance. Dr. Steinbergh commended Dr. Kerns' sobriety, but she agreed with the Secretary and Supervising Member's recommendation to deny his request.

Regarding William Basedow, D.O., Dr. Schottenstein observed that Dr. Basedow's practice includes Suboxone treatment. However, Dr. Schottenstein also observed that Dr. Basedow is permanently restricted from prescribing narcotics. Ms. Murray stated that the permanent limitation in Dr. Basedow's Board order does not apply to buprenorphine-containing products or any other products that are approved to treat drug addiction provided that they are prescribed, administered, dispensed or otherwise provided in accordance with FDA-approved labeling and other federal and state requirements. Dr. Schottenstein thanked Ms. Murray for the clarification.

Regarding Allan Belcher, D.O., Dr. Schottenstein noted that Dr. Belcher is moving to Utah. Dr. Schottenstein asked if Dr. Belcher will be monitored in Utah. Ms. Murray replied that the Utah Osteopathic Physicians and Surgeons Licensing Board is not going to take any action against Dr. Belcher, so he will continue to be monitored by the Ohio Board while he is in Utah.

Regarding Aly Zewail, M.D., Dr. Schottenstein was glad that Dr. Zewail is starting his addictionology fellowship. Dr. Schottenstein noted that Dr. Zewail wants to take the American Board of Family Medicine certification examination, but Dr. Schottenstein had thought that physician's on probation cannot sit for specialty board certification examinations. Dr. Rothermel stated that the ability to sit for a certification examination is a decision made by the specialty board and it varies from board to board.

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

- **To grant William K. Basedow, D.O.'s request for reduction in the chart review requirement to ten charts every other week;**
- **To grant Allan Belcher, D.O.'s request for approval to continue under the terms and conditions of the Board's Order of January 14, 2015, while residing in Utah;**
- **To grant Renato Dela Cruz, M.D.'s request approval of the previously-completed course *Comprehensive Controlled Substance Prescribing in the Age of Increased Regulations, Legal Challenges and Diversion*, offered by TriHealth, to fulfill the controlled substance prescribing course requirement;**
- **To grant Gregory G. Duma, M.D.'s request for approval for the drug testing to be conducted by the Kentucky Physicians Health Foundation;**
- **To grant Perry M. Kalis, M.D.'s request for approval of *Intensive Course in Controlled Substance: Prescribing, Pain, Anxiety, Insomnia*, administered by Case Western Reserve University, to fulfill the controlled substance prescribing course requirement;**
- **To deny John R. Kerns, D.O.'s request for early release from the terms of his November 14, 2012 Step II Consent Agreement;**
- **To grant Diane Ottolenghi, M.T.'s request for approval of *Ethics in Massage – Roles and***

Boundaries; and Ethics: Contraindications to Massage: and Ethics: Online Marketing online courses, offered by the Center for Massage Therapy Continuing Education, to fulfill the professional ethics course requirement;

- To grant William S. Richardson, M.D.'s request for reduction of personal appearances to every six months; and
- To grant Aly M. A. Zewail, M.D.'s request for permission to administer, personally furnish or possess controlled substances.

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

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

The motion carried.

FINAL PROBATIONARY APPEARANCES

CRAIG L. BIERER, D.O.

Dr. Bierer was appearing before the Board pursuant to his request for release from the terms of his November 14, 2012 Consent Agreement. Mr. Giacalone reviewed Dr. Bierer's history with the Board.

In response to questions from Mr. Giacalone, Dr. Bierer stated that he is a solo practitioner and his practices as an orthopedic surgeon in Oxford, Ohio. In terms of his recovery program, Dr. Bierer stated that he has regular contact with his sponsor and he attends multiple Alcoholics Anonymous (AA) meetings. Dr. Bierer stated that he has taken steps to improve his health and he only takes call at one hospital, which has significantly improved his quality of life. Dr. Bierer stated that he is a churchgoer and he has tremendous support from his wife, his family, his office staff, and his hospital. Dr. Bierer stated that his office staff watches very closely and they are his best friends.

Mr. Giacalone asked if Dr. Bierer is currently seeing a psychiatrist. Dr. Bierer answered that he does see a psychiatrist and will continue to do so after his release from probation. Mr. Giacalone asked if Dr. Bierer will continue with his recovery program following his release from probation. Dr. Bierer replied that he will continue the program, commenting that he enjoys the meetings and many of his friends are there.

Dr. Steinbergh moved to release Dr. Bierer from the terms of his November 14, 2012 Consent Agreement, effective April 14, 2018. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

SEAN A. F. BUTURLA, M.D.

Dr. Buturla was appearing before the Board pursuant to his request for release from the terms of his February 13, 2013 Consent Agreement. Mr. Giacalone reviewed Dr. Buturla's history with the Board.

In response to questions from Mr. Giacalone, Dr. Buturla stated that he currently lives in New Hampshire and he practices in the emergency medicine department of a small community hospital. Dr. Buturla stated that he enjoys his work and has been there for four years now.

Regarding his recovery program, Dr. Buturla stated that he attends Alcoholics Anonymous (AA) meetings. Dr. Buturla also attends caduceus meetings, but they are far away. Dr. Buturla explained that there are no caduceus meetings in New Hampshire so he has to travel to Boston, Massachusetts, or Portland, Maine to attend one.

Mr. Giacalone asked if Dr. Buturla has a good support system. Dr. Buturla replied that he has a good support system, a good sponsor, and his family is very good. Mr. Giacalone asked if Dr. Buturla will continue his recovery program after he is released from probation. Dr. Buturla replied that he will continue with his program.

Dr. Schottenstein asked about Dr. Buturla's specialty. Dr. Buturla replied that he specializes in emergency medicine.

Dr. Edgin moved to release Dr. Buturla from the terms of his February 13, 2013 Consent Agreement, effective April 15, 2018. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.

ANITA M. STEINBERGH, D.O.'S RETIREMENT FROM THE BOARD

Mr. Giacalone stated that today is most likely Dr. Steinbergh's last day on the Board, which is difficult to believe considering that she has served on the Board for almost a quarter of a century. Mr. Giacalone stated that Dr. Steinbergh is the longest-serving female Board member, she holds the sixth-longest tenure on the Board, and she has served on the more Medical Board committees than any other Board member. Mr. Giacalone stated that Dr. Steinbergh was President of the Board when he was appointed and she has been a mentor to him and others. Mr. Giacalone stated that Dr. Steinbergh is an institution and she will be missed.

Mr. Giacalone presented Dr. Steinbergh with a gift from the Board members: An engraved stethoscope that reads "1993 – 2018." Mr. Giacalone stated that Governor Kasich was unable to attend today's meeting, but he has issued a proclamation for Dr. Steinbergh's outstanding service on the Medical Board. Mr. Giacalone presented Dr. Steinbergh with the Governor's proclamation. Mr. Groeber presented Dr. Steinbergh with commendations from the Senate and from the House of Representatives. The Board members and all those attending the meeting gave Dr. Steinbergh a round of applause.

Dr. Steinbergh stated that it has been an incredible privilege to serve on the Medical Board. Dr. Steinbergh related the story of how she was contacted by Governor Voinovich in 1993 about being appointed to the Board and, after some delay, attending her first Board meeting in August 1993. Dr. Steinbergh stated that she was privileged to be reappointed to the Board four times. Dr. Steinbergh was grateful for all the people she has met on the Board that she would not have met otherwise. Dr.

Steinbergh also appreciated the opportunities to attend the annual meetings of the Federation of State Medical Boards (FSMB) and meet people nationally. Dr. Steinbergh commented that the FSMB greatly influenced how she developed as a Board member.

Dr. Steinbergh stated that those she has served with on the Medical Board are incredible people, some of whom have sadly died including Thomas Gretter, M.D., Anant Bhati, M.D., and Robert Heidt, M.D.

Dr. Steinbergh stated that she could not have served on the Board without the support of her husband, who has been very understanding over the years. Dr. Steinbergh also thanked the Board staff for its hard work and particularly those that she could not get along without, including Ms. Wehrle, Ms. Debolt, and everyone who takes her many phone calls and emails on a regular basis.

Dr. Steinbergh commented that the Board is very strong right now and has a terrific Executive Director. Dr. Steinbergh stated that the Medical Board has never been better.

The Board members and staff gave Dr. Steinbergh another round of applause.

ADJOURN

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

Thereupon, at 4:05 p.m., the April 11, 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 April 11, 2018, as approved on May 9, 2018.



Robert P. Giacalone, President



Kim G. Rothermel, M.D., Secretary

(SEAL)



State Medical Board of Ohio

LICENSURE COMMITTEE MEETING
April 11th, 2018
30 E. Broad St., Columbus, OH Room 318

Members: Bruce R. Saferin, D.P.M. Richard Edgin, M.D. Kim G. Rothermel, M.D. Ronan M. Factora, M.D. Other Board members present: Michael Schottenstein, M.D.	Staff: Joseph Turek, Deputy Director of Licensure/Renewal Mitchell Alderson, Chief of Physician Licensure Chantel Scott, Chief of Allied Licensure and Renewal Colin DePew, Assistant Attorney
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Dr. Saferin calls meeting to order at 8:01 a.m.

MINUTES REVIEW

Dr. Factora moved to approve the draft minutes from March 14th, 2018. Dr. Edgin second the motion. The motion carried.

LICENSE APPLICATION REVIEW

Sara Ann Savage, M.T.

Dr. Saferin stated that Sara Ann Savage, M.T. has submitted a Massage Therapy license restoration application. Dr. Saferin stated that her Ohio License expired in October 2012 and that she is not actively practicing in Ohio. Ms. Savage was originally issued a Massage Therapy license in July 2002. Dr. Saferin state that Sara has provided proof of successful completion of the MBLEx.

Dr. Factora moved to recommend approval of Sara Ann Savage's request for licensure as presented. Dr. Rothermel second the motion. The motion carried.

Lisa Marie Kelso, M.T.

Dr. Saferin stated Lisa Marie Kelso, M.T., has submitted a Massage Therapy license restoration application. Dr. Saferin stated that her Ohio License expired in October 2014 and that she is not actively practicing in Ohio. Ms. Kelso was originally issued in February 2014.

Dr. Rothermel moved to recommend approval of Lisa Marie Kelso's request for licensure, pending successful completion of the MBLEx within six months. Dr. Factora second the motion. The motion carried.

Salah Altarabsheh, M.D.

Dr. Saferin stated Salah Altarabsheh, M.D., has requested a waiver of the USLME ten-year rule. He passed step one in 1997, step two (CK) in 1998, step two (CS) 2011, and step three in 2016, all on the first attempt. Dr. Altarabsheh graduated from the University of Jordan in 1997. He successfully completed one year of post graduate training in Cardiovascular Surgery Clinical Fellowship at Texas Heart Institute at Baylor College of Medicine in 2008-2009 through level three training. He also

completed a two-year clinical fellowship in thoracic surgery at the Mayo Graduate School of Medicine in 2009 through 2011 at training levels Seven and Eight.

Dr. Saferin stated Dr. Altarabsheh spent time in Jordan and the United States progressing from general surgery resident to cardiac surgery resident senior specialist then consultant cardiac surgeon. He also shared that after his training in the United States, he returned to Jordan to start his work in the cardiac surgery field where he worked on upgrading from a specialist to a consultant cardiac surgeon. He obtained Jordanian general surgery board certification membership at the Royal College of Surgeons in Ireland and an American College of Surgeons membership.

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)(ii), and acceptance the examination sequence to grant Dr. Altarabsheh a medical license. Dr. Factora second the motion. The motion carried.

RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL

Dr. Saferin stated that Cuyahoga Community College Respiratory Care Program Student Club requested its presentation on ethics and professional practice be approved for one contact hour of Respiratory Care Continuing Education on Ohio Respiratory Care Law or Professional Ethics.

Dr. Factora moved that this course be approved for one contact hour of Respiratory Care Continuing Education on Ohio Respiratory Care Law and Professional Ethics pursuant to the provisions of chapter 4761-9 of the Ohio Administrative Code. Dr. Rothermel second the motion. The motion carried.

TRAINING CERTIFICATE EDUCATION VERIFICATION

Dr. Saferin stated the staff proposed that the Education Verification be eliminated in favor of certification by the training program. Dr. Saferin also stated that staff proposed an amendment to rule 4731- 6-30(B) to eliminate need to get a copy of a diploma or verification from the medical school to issue a training certificate. Dr. Saferin stated it would speed up the process of issuing training certificates.

Dr. Schottenstein stated he was concerned because under this scenario it seems that the Medical Board could possibly issue a training certificate in error if a student wasn't able to complete their schooling. Dr. Schottenstein also inquired if programs will notify the Medical Board in a timely manner about students. Dr. Schottenstein stated that he didn't like idea of issuing a training certificate and then having to retroactively withdrawal it due to various circumstances, especially if the student has already started seeing patients. Dr. Schottenstein stated that it would make the Medical Board seem like they didn't know what they were doing. Dr. Schottenstein he appreciated the desire to improve the application process for training certificates. Dr. Schottenstein inquired if there was a way instead of sending an acknowledgement letter then send the training certificate out, and if there is a way to codify the acknowledgement letter in a rule.

Mr. Turek stated that the acknowledgement letter was already codified in the rule. Dr. Schottenstein inquired why does the Medical Board need to send the letter if the student can start the training. Mr. Turek stated it was because the Medical Board cannot process these applications in a timely manner. Dr. Schottenstein stated with the current process at least there is a verification of the applicant, as opposed to finding out after the fact. Mr. Turek stated that was true but with the current process

complaints could hang around for a long time and the Medical Board would still send out a training certificate even with the applicant having an open complaint.

Dr. Rothermel stated that the Medical Board inquired with several medical schools who stated that they do verify graduation before students can start the program. Dr. Rothermel stated that with the proposed scenario, there is a statement that will be acknowledged stating that they may not start until they have received a diploma from the school. Both school and student are obligated to inform the Medical Board. Mr. Turek stated it was an ACGME requirement that programs cannot have students in a training program who have not graduated.

Dr. Schottenstein stated that his concern was that if something happens, it would fall back on the Medical Board. Mr. Turek stated that currently the Medical Board is issuing acknowledgement letters to students who we don't know have graduated and they are starting their programs before we know. Dr. Schottenstein stated that an acknowledgement letter is different than an actual training certificate. Dr. Schottenstein stated that an acknowledgement letter is essentially like a probationary letter.

Mr. Alderson stated that a positive result from this could be a more complete application. Mr. Alderson stated that by eliminating that form he believes that the Medical Board would be able to issue the training certificates outright to students. Dr. Factora inquired if there was a patient complaint related to someone with an acknowledgement letter versus the actual training certificate being issued, is there a difference in liability for the Medical Board. Mr. Turek stated that overall, he doesn't think the training programs want this liability and that they will always make sure the residents have graduated. Dr. Factora inquired if it was a violation for a training program if a person who has not graduated to start seeing patients. Mr. Turek said he wasn't sure but he assumed they would probably lose their accreditation. Dr. Factora said there are various barriers that would prevent a trainee from seeing patients if there was no verification that they had graduated from medical school.

Dr. Schottenstein said he's concern with the optics as well as the liability. Dr. Schottenstein referred to paragraph C section two. Dr. Schottenstein said it feels awkward to him that the Medical Board had to rely on the program to notify the Medical Board on the licensee. Mr. Turek referred to paragraph D that states the Medical Board would rely on the license holder to notify the board. Dr. Rothermel inquired if there was a statement on the training certificate that says it's void if a diploma isn't provided. Mr. Turek stated not yet; that he was working with legal to get a statement that said if graduation requirements are not met, the certificate is void.

Dr. Saferin stated that the issue is that none of these situations are perfect and that things have happened in the past. Dr. Saferin stated that the Medical Board approves licenses with things pending. Dr. Saferin stated that he does believe this will help everyone get things done in a more efficient way. Dr. Saferin stated that based off the research, no program should start anyone that doesn't have a diploma because the liability is too high. Dr. Schottenstein stated that with the current system, the Medical Board covers the bases as well as it can with the acknowledgment letter and training certificate.

Dr. Rothermel stated that she understands but the issue of patient safety, which is number one, is the same because the same person who received an acknowledgement letter is already seeing patients. Dr. Rothermel asked does the question of the optics rise above the benefit that is significant and free up time to do things like the background checks and checking out problems before things are finalized. Dr. Schottenstein inquired about codifying the rule, and if it's in the rule why does it need to be in the acknowledgement letter; essentially if it's an automatic process, why does staff have to go

through that trouble if it's codified? Dr. Schottenstein stated that staff could remove that part of the work and issue the training certificate when the verification is received. Mr. Turek said the only issue is that the staff will not be able to issue all the training certificates before the programs start.

Dr. Factora stated from a training program director's prospective, he wouldn't be comfortable with trainees seeing patients without any acknowledgement from the state that this was authorized. Dr. Factora also stated that now it's impossible to start fellowship at the same time the trainee is still in residency. He stated he believes this will cause a two-four week delay due to administrative work needed prior to the new fellow starting patient care in fellowship. Dr. Factora inquired on the current delay of the process. Mr. Turek stated the once the application is received, the staff has to wait until the education verification is received to continue to process which creates a major backlog. Mr. Turek stated the staff couldn't issue 3,000 certificates in six weeks. Mr. Alderson stated it's roughly 3,000 applicants in a cycle, within a two to three month period. Mr. Alderson stated he believes this is the reason the acknowledgment letter was created.

Dr. Saferin made a motion to approve amendment to rule 4731- 6-30b, eliminating the education verification in favor of certification that be made by the training program. Dr. Rothermel second the motion.

Dr. Factora inquired if there needed to be a statute change for incorporate the language. Mr. Turek stated he was working with legal to get the proper language. Dr. Rothermel suggested tabling this topic.

Dr. Rothermel made a motion to table this topic so all the language can be prepared and bring it back to the committee in May. Dr. Factora seconded the motion. The motion carried.

REVIEW OF GENETIC COUNSELOR RULES

Mrs. Debolt stated that the Genetic Counselor rules were reviewed and changes have been made to take out unnecessary language.

Dr. Rothermel made a Motion to amended rules for genetic counselors and send them out to interested parties. Dr. Factora second the motion. The motion carried.

ADJOURN

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

The meeting adjourned at 8:33 a.m.

Bruce R. Saferin, D.P.M.

Chair

rsb

State Medical Board of Ohio

POLICY COMMITTEE MEETING

April 11, 2018

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

<p>Members: Amol Soin, MD Andrew P. Schachat, M.D. Robert Giacalone Mark. A. Bechtel, M.D. Betty Montgomery</p> <p>Other Board Members present: Kim G. Rothermel, M.D. Bruce Saferin, D.P.M. Michael Schottenstein, M.D. Anita Steinbergh, D.O. Ronan Factora, M.D. Richard Edgin, M.D.</p>	<p>Staff: A.J. Groeber, Executive Director Kimberly Anderson, Chief Legal Counsel Sallie J. Debolt, Senior Counsel Nathan Smith, Senior Legal and Policy Attorney David Fais, Deputy Director Jonithon LaCross, Director of Public Policy & Government Affairs Tessie Pollock, Director of Communication Joan Wehrle, Education & Outreach Program Manager</p>
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Dr. Soin called the meeting to order at 9:11 a.m.

MEETING MINUTES REVIEW

Dr. Soin asked for approval of the draft minutes of the March 14, 2018 meeting which were included in the agenda materials.

Dr. Bechtel moved to approve the draft Policy Committee minutes of the March 14, 2018 meeting. Mr. Giacalone seconded the motion. Motion carried.

Rules Review Update

Ms. Anderson reported that the rules spreadsheet was included in the agenda materials for information. Several rules are at CSI and we are waiting for those to be released. Several rules will be discussed today. She also reported that the termination of the physician-patient relationship rules are planned for the May Policy Committee.

FSMB Resolutions and Reports

Ms. Anderson reported Mr. Giacalone and Ms. Debolt had met to review the proposed FSMB resolutions and reports that will be presented to the FSMB House of Delegates at the FSMB annual meeting later this month. The agenda materials include a memo outlining the materials and the Board's proposed vote on the items.

Dr. Steinbergh commented that she appreciated the information. She referred to resolution 18-02 Testing Under Time Constraints of the Necessary and Explicit Component of the USMLE. She agreed with the proposed action of requesting further clarification.

Dr. Steinbergh said she wrote to the FSMB and asked for more explanation of the resolution and the explanation was still unclear.

The information she received from the FSMB legal staff indicated that the USMLE is administered under a general time constraint i.e. fixed amount of time or a rate of pacing under which examinees test each step. Resolution 18-02 attempts to address if how quickly the examinee answers the question is factored into the scoring. In other words, not just answering correctly but answering quickly.

Dr. Steinbergh questioned why do we need to know how quickly they answer if the answer is correct. David Johnson, FSMB Senior Vice President for Assessment Services, indicated that some may argue that there are certain aspects of medicine that are time sensitive and how quickly someone can formulate an answer or respond is a relevant part of what should be measured in a test. For example, content designed to reflect decision making in trauma settings. However, USMLE currently does not seek to explicitly assess how quickly someone formulates a correct response to a multiple-choice question in the trauma setting. Thus, whenever someone arrives at the correct answer, whether it is 30 second or 90 seconds, it is not scored any differently.

Legislative Review

Mr. LaCross provided the following update:

SB 259, Physician Assistant Regulation

Hearings started yesterday in the Senate on this bill. The Board is working with the PA association and others to find out the time line to submit an amendment that would allow the Board to review PA supervision agreements rather than having the agreements sent to the Board. He indicated that this bill will move but we are not sure what the definitive version will contain. There is a lot of discussion regarding the conscious sedation/intubation provision, but this may not make it in the definitive version. He indicated we are working with the House and Senate to table this provision and make it a separate discussion.

Dr. Bechtel asked if the proposed changes would have the PAs with prescriptive authority be similar to nurse practitioners where they are able to prescribe within the scope of the supervising physicians. Mr. LaCross said that is true.

House Bill 286, Palliative Care Programs

Mr. LaCross stated that there is an updated version of the bill and our changes are included in the bill. He thanked Dr. Factora for his help on this issue.

Dr. Steinbergh asked where is the discussion regarding doctors who practice outpatient palliative care and are not a pain center but their patients are on opioids for end of life management. Yet the doctor gets pulled for OARRS report compliance because of too many prescriptions because of patient care needs. Does the bill address outpatient palliative care?

Mr. LaCross said that inpatient providers are exempted but OARRS is working to have triggers in place to identify outpatient palliative care.

House Bill 541 Health Services Volunteers

The bill generally proposes that health professionals licensed in other states can provide health services during charitable events in Ohio, such as RAM clinics. The proposed Board amendment has been accepted clarifying that PA, MD, DO, and DPM's practicing in this state during the 7-day charitable event are subject to the authority of the State Medical Board and the provisions of chapter 4731 of the Revised Code. The proposed amendment has been accepted.

Mr. LaCross said that the Nursing Board and the Dental Board would like to see uniformity in language across all boards so we are trying to make this work similar to the Flying Horse Farm language in statute.

House Bill 546 Telemedicine-Health Benefit Plans

The bill generally proposes the prohibition of health benefit plans from treating telemedicine services differently from in-person health care services solely because they are provided as telemedicine services. A health benefit must provide coverage for telemedicine services on the same basis and to the same extent that the plan provides coverage for the provision of in-person health care services; a health benefit plan cannot exclude coverage for a service solely because it is provided as a telemedicine service.

Psychologist prescribing

Mr. LaCross said that he has talked with Dr. Schottenstein regarding psychologists prescribing psychotropics as there is a bill addressing this issue. A sub bill has been introduced and we will be discussing this legislation next month.

Updates to Dietetics and Respiratory Care Rules

Mr. Smith reported that the agenda materials include a cover memo and several pages of rules related to dietetics and respiratory care professions, as we are trying to simplify both rule sets.

He reported that on January 21, 2018, the Medical Board added the licensees of the former boards of dietetics and respiratory care pursuant to the provisions of House Bill 49. Also, House Bill 145, which was signed into law on February 8, 2017, further aligned the dietetics and respiratory care statutes with the Medical Board statutes and processes. The statutory changes in these amended laws require corresponding changes to the rules for dietetics and respiratory care in chapters 4759 and 4761 respectively.

Many of the proposed changes involve requests to rescind rules where the Medical Board already has rules in areas such as disciplinary hearings, personal information systems, criminal record checks, rulemaking, notice of board meetings, and board operations. In addition, many rules have minor amendments that involve substituting State Medical Board of Ohio for the respective board.

Additionally, a substantial number of rules are proposed to be filed as no change rules due to the five-year rule review date already having passed for most dietetics rules and many respiratory care rules.

Specific to dietetics, proposed rules reflect statutory changes to licensure including:

- elimination of licensure by reciprocity
- elimination of inactive status of licenses
- elimination of prorating the initial license fee

The proposed rules include changes to the application and renewal procedures to reflect the electronic licensure and Board processes for other licensees. Also, proposed changes align the reinstatement and restoration processes for expired licenses with Board processes for other licensees.

Lastly, a new rule 4759-11-01 Miscellaneous Provisions is proposed to incorporate dietetics licensees into the Medical Board rules for Criminal Record Checks (4731-4), Personal Information systems (4731-8), Hearings (4731-13), Reporting Requirements (4731-15), Impaired Practitioners (4731-16), Sexual Misconduct and Impropriety (4731-26), and Mental or Physical Impairment (4731-28). There will be corresponding minor changes forthcoming in these rule sets to reference dietitians and specific statutory citations in Title 4759 of the Ohio Revised Code. These align with Sec 4731 rules.

As to respiratory care, proposed changes reflect the statutory elimination of:

- inactive license status
- lapsed license status
- temporary non-resident practice of respiratory care
- collection of hyperbaric technologist certifications (as this was eliminated in the statute)

Also, the respiratory care board had previously convened an education committee to monitor the respiratory care educational programs in Ohio. The proposed amended rule 4761-4-02 assigns an advisory role to the respiratory care advisory committee in this area consistent with its articulated statutory duties in R.C. 4761.032. The rule will align with the statute.

In addition, the proposed rules align limited permit application procedures to electronic licensure processes and Board processes for other licensees.

Lastly, a new rule 4761-15-01 Miscellaneous Provisions is proposed to incorporate respiratory care licensees into the Medical Board rules for Criminal Record Checks (4731-4), Personal Information systems (4731-8), Hearings (4731-13), Reporting Requirements (4731-15), Impaired Practitioners (4731-16), Exposure-Prone Invasive Procedure Precautions (4731-17), Sexual Misconduct and Impropriety (4731-26), and Mental or Physical Impairment (4731-28). There will be corresponding minor changes forthcoming in these rule sets to reference respiratory care professionals and specific statutory citations in Title 4761 of the Ohio Revised Code.

In addition, there will be additional proposed rules forthcoming for respiratory care in the areas of licensure and continuing education. The complexity of the processes in these areas for respiratory care merits further research and consultation with the respiratory care advisory council before these rules would be in suitable form for initial introduction to the Policy Committee.

Mr. Giacalone asked if the Board could get out of continuing education program approval requirements, as this is not consistent for all licensees regulated by the Board. Mr. Smith indicated that this issue can be reviewed further to see if it can be simplified.

Dr. Bechtel moved to approve the rules for initial circulation to interested parties and to refer the rules to the newly appointed respective advisory councils for Dietetics and Respiratory Care for further review. Mr. Giacalone seconded the motion. Motion carried.

Amendments to Youth Sports Concussion Rule

Ms. Debolt reported that Rule 4731-31-01 establishes standards for physicians who assess youth that sustain a concussion or head injury.

At the February 2018 meeting, the Policy Committee approved the proposed amendments for initial circulation to interested parties. The deadline for interested party comments was March 16, 2018. No comments were received.

The amendments to the rule are:

1. Changing the reference to the most recent “Consensus statement on concussion in sport” statement from the Zurich statement to the Berlin statement adopted in 2017, and
2. Moving the reference for the location of the model form developed by the Ohio Youth Sports Concussion and Head Injury Return-to-Play Guidelines Committee from the website of the Ohio Department of Health to the website of the Medical Board. No changes to the form are proposed.

Dr. Bechtel moved to recommend that the Medical Board approve Rule 4731-31-01, as presented, be filed with the Common Sense Initiative Office. Dr. Schachat seconded the motion. Motion carried.

NaphCare Proposal Regarding Buprenorphine

Ms. Anderson noted that NaphCare provides buprenorphine to patients in need of opioid withdrawal in jails. NaphCare was seeking the Board’s approval of their protocol for withdrawal management.

She reported that NaphCare sent a letter dated January 26, 2018, which was provided to the Policy Committee at the February Board meeting. In that letter, NaphCare provides information as to how NaphCare will adhere to Rule 4731-11-12 in providing buprenorphine to patients in need of opioid withdrawal management in the Hamilton County Jail. The protocol would also be implemented in the jails in Franklin and Montgomery counties soon.

After receiving the January 26, 2018 letter, she and Dr. Schottenstein participated in a conference call with representatives from NaphCare to answer some questions we had. NaphCare provided information outlining the questions and answers and some additional forms.

On March 27 and April 2, 2018, Brad McLane, Chief of Administration for NaphCare contacted Ms. Anderson via e-mail to obtain a response from the Policy Committee to the January 26, 2018 letter. In addition, in the April 2, 2018, Mr. McLane asked for information regarding the administration of buprenorphine as a taper in appropriate circumstances for patient who come to the jail on an MAT program.

Ms. Anderson indicated that the agenda materials include the January 26, 2018 letter, the questions and responses from the February 2, 2018 conference call, the March 27, 2018 and April 2, 2018 e-mails and Rule 4731-11-12. The MAT rule, proposed 4731-33-03 has recently been circulated for comment. This proposed rule would apply to office-based opioid treatment and will exempt jails.

Ms. Anderson asked for the Board's feedback on this issue. Representatives from NaphCare were in attendance. Ms. Montgomery clarified that the protocol would be for jails only and not prisons.

Dr. Steinbergh asked if an OARRS check would be run as part of the initial evaluation of the patient. Ms. Anderson said that they check OARRS for all patients receiving buprenorphine.

Dr. Steinbergh asked about NaphCare's ability to use OARRS to find out the medications the patients are on and from how many providers. Ms. Anderson replied that this is not addressed as the proposal is confined to only those receiving buprenorphine.

Mr. Giacalone did not believe a practitioner could run an OARRS report unless he/she is providing treatment with buprenorphine or a controlled substance to the patient and that OARRS inquiries could not be used indiscriminately on all inmates.

Brad McLane from NaphCare said they can check OARRS but the patient needs a zip code for OARRS and often the patient does not have a zip code. Many come in without a lot of medical history or past care. They do urine screens for everyone who will be on withdrawal protocol but he can't, at this moment, answer how fast tox screens are received. He would have to check.

Mr. Groeber noted that the Board's legal staff reviewed the NaphCare protocol and it doesn't match with current rule, however NaphCare's letters explain how they can meet the MAT and that they are also looking at next steps of continuing MAT care if the person comes to the jail on a MAT protocol. NaphCare would use this protocol in Hamilton County, and it hopes to expand it to facilities in Franklin and Montgomery counties.

Dr. Schottenstein commented that Inmates on withdrawal are higher maintenance than those who are on medication assisted treatment. It is a health issue and a quality of life issue. He suggested NaphCare confirm the report of any inmate claiming to have been on MAT prior to coming to jail.

Discussion returned to the topic of obtaining an OARRS report on all inmates if it is allowable by law. It was noted that inmates may not be the best historians. Ms. Montgomery saw that the OARRS report could identify health issues that could be addressed proactively.

Motion was made by Dr. Bechtel to accept the NaphCare protocol as presented. Dr. Schachat seconded the motion. Motion carried.

Proposed Rule 4731-34-01 Standards and Procedures to be followed by physicians when prescribing a dangerous drug that may be administered by a pharmacist by injection

Mr. Smith reported that Ohio Revised Code sections 4729.45 and 4731.057 were enacted in April 2017 as part of the enactment of Senate Bill 332.

He indicated that the Pharmacy Board statute in R.C. 4729.45 allows a pharmacist to administer injections, under certain conditions, of the following drugs: an opioid antagonist administered in a long-acting or extended release form; an antipsychotic drug administered in a long-acting or extended release form; Hydroxyprogesterone Caproate; Medroxyprogesterone Acetate; and Cobalamin (B12 SHOTS).

The conditions include that the drugs must be prescribed by a physician with whom the patient has an ongoing physician-patient relationship. Also, the pharmacist must complete training on the administration of these drugs and basic life support. Lastly, the pharmacist must practice in

accordance with a physician-established protocol for the administration of these drugs by injection by a pharmacist. The requirements of this protocol are codified in R.C. 4729.45, rules promulgated by the Pharmacy Board pursuant to the statute (OAC 4729-5-40), and the proposed rule that is included in the agenda materials.

Mr. Smith noted that the Medical Board statute in R.C. 4731.057 states that “[t]he state medical board shall adopt rules establishing standards and procedures to be followed by a physician when prescribing a drug that may be administered by a pharmacist pursuant to section 4729.45 of the Revised Code.” The statute also requires the board to do so in consultation with the Pharmacy Board. The proposed rule is drafted pursuant to this statutory mandate.

Mr. Smith summarized proposed rule 4731-34-01 as follows:

Paragraph B – defines the drug

Paragraph C of the proposed rule lays out the requirements that a physician must follow when prescribing these drugs.

Of note is the requirement that the physician must specify the pharmacy where the prescription is to be administered. The physician must prescribe to a pharmacy where either the physician has written the protocol or personally reviewed the protocol on file at the pharmacy. Further, the physician must obtain the consent of the patient.

Paragraph C6 - References opioid antagonists

Paragraph D allows the physician to terminate the prescription under certain circumstances.

Paragraph E lists the requirements for the physician-established protocol and in so doing ties in with the Pharmacy Board rule and statute.

Paragraph F allows for biennial review and possible renewal by the physician that wrote the physician-established protocol.

Paragraph G provides the disciplinary mechanism for a violation of this rule.

Dr. Schottenstein noted that the pharmacist must be trained to do injections. He asked if it creates a problem if the doctor has a relationship with the pharmacy, but not the rotating pharmacist working at the pharmacy who may not be trained to administer injections.

Mr. Smith replied that another pharmacy board rule ties the pharmacist into the protocol for administering drugs by injection.

Dr. Schottenstein suggested that perhaps a definition of “pharmacy” could be added.

In response to a question from Dr. Schachat, Mr. Smith said that the rules were mandated as part of Senate Bill 332 as it has been included in the infant mortality bill. The idea of pharmacists providing drugs by injection was portrayed as an access to care issue, as patients could get their medications closer to home.

Dr. Schottenstein explained the difference between short acting and long acting antipsychotic medications.

Dr. Factora noted that pharmacists can administer vaccines. He asked if these rules were in line with the vaccine rules.

Dr. Factor noted that that paragraph C outlines the physician's requirements which seem onerous. He also asked about the pharmacy. For example, is the protocol with the CVS parent company or with the actual neighborhood CVS in a specific location? He also asked if consent was implied if the doctor tells the patient to get the injection at CVS instead of the doctor's office. Is a specific statement required in the medical record?

Mr. Giacalone noted that only doctors who want their patients to receive medication injections by a pharmacist in a pharmacy are obligated to abide by the rule adopted by the Medical Board.

Mr. Smith reported that the intent of the proposed rule is to give physician prescribers a degree of oversight and control as to how this was occurring. He said that some of the requirements could be scaled back if not specifically required by statute.

Motion was made by Ms. Montgomery to approve proposed rule 4731-34-01 to be sent to interested parties for comment in initial circulation as well as to the Pharmacy Board for consultation. Mr. Giacalone seconded the motion. Motion carried.

Adjourn

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

The meeting adjourned at 10:10 a.m.

jkw

State Medical Board of Ohio

FINANCE COMMITTEE MEETING
April 11th, 2018
30 E. Broad St., Columbus, OH Room 318

Members: Michael Schottenstein, M.D., Chair Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D. Michael L. Gonidakis Richard A. Edgin, M.D.	Staff: A.J. Groeber, Executive Director Susan Loe, Director of Fiscal and Human Resources Tessie Pollock, Director of Communications
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Dr. Schottenstein called the meeting to order at 8:35 a.m.

MINUTES REVIEW

Mr. Gonidakis moved to approve Finance Committee March 14th, 2018 meeting minutes. Dr. Saferin second the motion. The motion carried.

FISCAL UPDATE

Dr. Schottenstein stated the fiscal update for February 2018, revenue was \$841,143. That is a substantial decline from the roughly \$1.1 million in revenue from January, but February is always a down month for revenue because nothing is due in terms of renewals. Dr. Schottenstein stated this was a pretty good February. Revenue from February 2017 was about \$624,000 and revenue from February 2016 was about \$659,000. Dr. Schottenstein stated that is about a 28% increase from the February 2016 number.

The Medical Board's revenue over the two-year cycle has a year-to-date decrease of 8%. This is better than the previous 3 months, which showed year-to-date decreases of 12% for January 2018, 16% for December 2017, and 25% for November 2017. Year-to-date, the revenue for the fiscal year is coming in at roughly \$5.8 million, compared to fiscal year 2016 of \$6.2 million.

Dr. Schottenstein stated there was a net revenue gain in February 2018 in the amount of approximately \$187,000. This is down from the net revenue gain in January 2018 in the amount approximately \$232,000, but roughly equivalent to the net revenue gain in December 2017 of \$182,000.

Dr. Schottenstein stated the cash balance had an approximate 18% increase in the current fiscal year when compared to February 2017, with a current cash balance of \$3,668,017. The Medical Board is anticipating strong fiscal revenue numbers for the rest of the fiscal year. March will be substantial, with an April 1 deadline for physicians and massage therapists. Dr. Schottenstein stated the July 1 deadline will be substantial as well. Dr. Schottenstein stated April 1 and July 1 in even years are our 2 largest cycles of revenue, due to the larger number of licensees that fall into that part of the alphabet. In addition, May through July is when the respiratory and dietetics renewals will start to come in. That revenue alone will come to about \$1 million.

Dr. Schottenstein stated a preview of the Medical Board's cash balance as of early April is \$4.7 million. As anticipated, the Medical Board was billed by DAS for the final E license development payment which has been previously discussed. It is hopefully the final payment in this process, and it comes to \$1,114,680. That will come out of the cash balance in about another week. Dr. Schottenstein stated the revenue from the respiratory and dietetics boards will cancel out the E license development final payment. The Medical Board should still be left with a reasonable cash balance of approximately \$3.6 million and that will also likely grow from additional anticipated revenue.

Dr. Schottenstein stated last month that the Medical Board was currently undergoing a routine audit. The auditor is no longer on-site but will be back in July again to finish the auditing of the 4th quarter. No concerns have been brought to the Medical Board's attention thus far. Dr. Schottenstein stated the final Respiratory Care Board audit which had some deficiencies reported will be corrected moving forward. Dr. Saferin stated he received an email regarding the audit. Mr. Groeber stated all board members would receive an email regarding the audit so it is not filtered by staff in any way. Mr. Groeber stated that the Respiratory Care Board audit was based upon how the Board was being run before the merger. Mrs. Loe stated that soon the Medical Board would be receiving information on the final Dietetic Board audit. Mr. Groeber stated that once the two boards merged with the Medical Board it went to an eighty-five-person organization so a lot of items need to be cleaned up procedurally.

FINES EXPENDITURES AND ALLOCATIONS

Dr. Schottenstein stated the total expenditures for the board in February 2018 were \$654,220. This compares to February 2017 expenditures of \$600,880. Overall, the Medical Board had a 4.1% increased year-to-date spending, which is typical, and substantially a function of regular increases in payroll. Dr. Schottenstein stated the use of fines toward education and safety is essentially unchanged from last month.

Dr. Schottenstein stated there is an update regarding the matter of the OARRS prescriber report. Dr. Schottenstein stated that at last month's meeting, the committee discussed the approval of \$75,000 for the development of the OARRS prescriber report which would have included identified patient data. It also would have required an ongoing \$15,000 yearly maintenance fee. Dr. Schottenstein stated the finance committee did not approve the request, and the full board had a thorough discussion of the matter. Ultimately, there was a vote to conditionally approve the funds. Dr. Schottenstein stated Mr. Groeber was informed that the Pharmacy Board had located grant money to pay for the development of this report, with an expected delivery of May 2018. Regarding additional development of reports for compliance with acute opioid prescribing rules, and the ICD 10 requirement, and other matters, the Pharmacy Board indicated that those reports might be developed by the Appriss company.

Mr. Groeber stated grant money can be difficult because it is not continuous. The Medical Board has never sought grants because we can fund the programs we need to with the resources the Medical Board has. It also complicates the fiscal year reporting. Mr. Groeber stated that Mrs. Loe assisted the Pharmacy Board with grant logistics in the past. Dr. Schottenstein inquired if Take Charge Ohio was funded by grants and Mr. Groeber stated yes.

Mr. Groeber stated that March 2018 was the largest revenue month in the history of the Medical Board. Mrs. Loe stated that more information will be provided next month on the fiscal details of March 2018.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated the Medical Board collected fine payments totaling \$17,500 since the last board meeting. These are all related to CME noncompliance. The Medical Board received a total of \$211,500 in fines, and another \$154,500 are outstanding. For fiscal year 2018, the board has collected a total of \$172,670.02. Dr. Schottenstein stated Dr. Talbot (represented in the chart by orange) is a non-disciplinary case who was ordered to pay a \$3000 fine that has not been received. Dr. Talbot's fine was due on March 11, then he said the board would have the fine by April 3. Dr. Schottenstein stated this case has been sent to Enforcement. Dr. Schottenstein stated there is now a new column in the chart for interest and penalties, and the Finance Committee will keep track of that as well.

EDUCATION AND OUTREACH

Mrs. Pollock stated that the most time has been spent on OARRS compliance. Over 7,000 correspondence letters were sent out to licensees regarding the utilization of OARRS as its required in statute. The Medical Board received over 700 emails, phone calls and letters regarding the OARRS correspondence. Mrs. Pollock stated that the Communications team as well as Mrs. Simon from Enforcement have been working together on responding back to all licensees and assisting them with information. The Medical Board is also working through OARRS data to make sure all information is accurate, especially for those working in an exempt portion like the VA, oncology, or hospice care. Mrs. Pollock stated that a lot more physicians have responded more positively towards the OARRS program this time versus the first time the Medical Board did outreach.

Mrs. Pollock stated that the Medical Board is also working on the Take Charge Ohio Campaign. The Medical Board did a roll out of the program last fall. Mrs. Pollock shared hard copies of the communication plan that is being worked on with multiple state agencies. Mrs. Pollock stated the benefits of traveling across the state with this campaign and doing outreach included additional media coverage and education. Mrs. Pollock stated upcoming Take Charge events include visiting Cincinnati and Athens. There will always be additional opportunities for future presentations. Mrs. Pollock stated this platform will be used when discussing prescribing because it unifies what all state agencies are doing and can be used as a resource. Mr. Groeber stated that as the Medical Board chronic pain rules materialize over the next month, the Take Charge campaign will provide check points to both physicians and patients to exhaust other nonopioid options.

Mrs. Pollock stated the digital communication analytics provides us with the data that people are researching on the Medical Board's website. It provides the Medical Board with data on what needs to be improved on the website. The Medical Board has sent out five emails recently with Marketing Cloud. Mrs. Pollock also stated that the Medical Board was in the process of rebidding the email marketing contract for the next fiscal year. While Marketing Cloud was great, the integration with Salesforce wasn't. The Medical Board is researching who has the best price and product. Mr. Groeber stated the important part of this program is that it's just not email communications, but targeted communications where the Medical Board gets feedback on clicks and confirmations of read receipts. Mrs. Pollock stated that she's also working on writing a requirement of a survey function when the new system is implemented. Mr. Groeber stated that was good because it helps House Bill 593.

Mrs. Pollock stated that the Medical Board's social media presence is still active. The board had a lot of engagement on renewal deadlines. At BWC's Symposium, where the Medical Board had a table, Take Charge Ohio educational information was distributed. Mrs. Pollock also stated there was a lot of

engagement with providers who stopped by to inquire about OARRS and other Medical Board practices.

CHRONIC PAIN RULES UPDATE

Mr. Groeber stated that Mrs. Pollock is working on the Chronic Pain rules. This includes the path a patient is expected to progress through from an acute to a subacute chronic condition. Mr. Groeber stated there is certain criteria for the first six weeks, the second six weeks, and then beyond the twelve-week time period is considered a chronic condition. Mr. Groeber stated he approved \$10,000 in order to help develop education materials around this issue. Mr. Groeber stated it is possible to see more financial requests in the future depending on outcomes. Dr. Saferin inquired if the amount should be increased as a backup. Mr. Groeber stated leaving the amount at \$10,000 is safe.

MEDICATION SAMPLES

Dr. Edgin inquired about a law that requires providers who have prescription drug samples onsite in their office to hold a TDDD license. Mr. Groeber said it's for all drugs considered dangerous. Dr. Edgin said it puts a burden on the provider and Medicare patient. Mr. Groeber said the program is run by the Pharmacy Board. Dr. Edgin stated his offices threw out all samples and that the law requires providers to have an additional license. Dr. Edgin stated he's not against the policy on recording the drugs but the Medicare population will suffer. Mr. Groeber stated based off reading the requirements of the policy, it seems to be in response to those providers who didn't manage samples correctly. Mr. Groeber stated that 99.9% of licensees have managed their samples correctly.

Dr. Schottenstein inquired if there was an exemption for solo providers. Mr. Groeber replied there was an exemption. Dr. Saferin stated that regulations have been increased where medical offices are now treated like pharmacies with new reporting styles that include keeping a seven-year log. Mr. Groeber stated there are unintended consequences with samples being in medical offices.

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 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. Mr. Gonidakis second the motion. The motion carried.

ADJOURN

Mr. Gonidakis moved to adjourn meeting. Dr. Saferin seconded the motion.

The meeting adjourned at 9:06 pm.

Michael Schottenstein, M.D.
Chair

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State Medical Board of Ohio

COMPLIANCE COMMITTEE MEETING

April 11, 2018

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

<p>Members: Anita Steinbergh, D.O., Chair Robert Giacalone Michael Schottenstein, M.D.</p> <p>Member Absent: Amol Soin, M.D.</p> <p>Other Board members present: Kim G. Rothermel, M.D. Ronan M. Factora, M.D.</p>	<p>Staff: Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Steinbergh called the meeting to order at 4:22 p.m.

INITIAL PROBATIONARY APPEARANCES

Gregory G. Duma, M.D.

Dr. Duma is making his initial appearance before the Committee pursuant to the terms of his January 10, 2018 Consent Agreement. Dr. Steinbergh reviewed Dr. Duma's history with the Board.

Responding to questions from Dr. Schottenstein, Dr. Duma stated that when his Ohio medical license was suspended the Kentucky Board of Medical Licensure also suspended his Kentucky medical license, so he is not currently practicing anywhere. Dr. Duma stated that the suspension of his Kentucky license will end when the Ohio suspension ends. Dr. Duma stated that his specialty is obstetrics and gynecology, but he has not practiced that since 2005. Dr. Duma stated that he had worked part-time as an employee of a weight-loss clinic and part-time at an urgent care center providing primary care for the underserved.

Dr. Duma continued that his sobriety date is November 3, 2017. Dr. Duma stated that prior to his relapse, he had twelve years of sobriety. Dr. Duma stated that his current program is going very well. Dr. Duma commented that he had had a strong recovery program prior to his relapse, but he became too complacent. Dr. Duma stated that he had worked his prior program hard for ten years, but then began to slowly decrease his recovery activities. Dr. Schottenstein commented that in his experience, the likelihood of relapse is much less when people are working their program hard and that moving away from the program is often a harbinger of relapse. Dr. Schottenstein opined that Dr. Duma's prognosis is good now that he is back in his recovery program.

Dr. Schottenstein asked if Dr. Duma is working the 12-step program. Dr. Duma replied that he is working the steps and he is very active in his program now.

Mr. Taylor noted that the Board ratified Dr. Duma's Step II Consent Agreement earlier today, so the suspension of his Ohio medical license has been lifted.

Dr. Schottenstein moved to continue Dr. Duma under the terms of his April 11, 2018 Step II Consent Agreement, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion. The motion carried.

Diane Ottolenghi, M.T.

Ms. Ottolenghi is making her initial appearance before the Committee pursuant to the terms of her January 10, 2018 Consent Agreement. Dr. Steinbergh reviewed Ms. Ottolenghi's history with the Board.

Mr. Giacalone ask Ms. Ottolenghi to describe her current practice situation. Ms. Ottolenghi responded that she has not practiced massage therapy since June 2017. Mr. Giacalone noted that Ms. Ottolenghi had come to the Board's attention because she had continued practicing following the expiration of her massage therapy license. Mr. Giacalone asked what Ms. Ottolenghi is doing differently to help her remember to renew her license in the future. Ms. Ottolenghi replied that her children have shown her how to program everything into her computer and her phone, so her license renewal is on her calendar for the next several years. Mr. Giacalone asked if Ms. Ottolenghi has had an opportunity to discuss this with her colleagues so that they can avoid a similar situation. Ms. Ottolenghi answered that she has shared her experience with her colleagues.

Mr. Giacalone asked Ms. Ottolenghi to describe the ethics course that she is required to take. Ms. Ottolenghi replied that she has not yet taken her ethics course for the Medical Board, though she has taken ethics courses for her social worker license. Dr. Steinbergh asked if the ethics course Ms. Ottolenghi will take will be an online course. Ms. Ottolenghi replied that she has asked for approval of four ethics courses, one of which will be a workshop and three of which will be online.

Mr. Giacalone asked if Ms. Ottolenghi has any questions about her consent agreement. Ms. Ottolenghi stated that she has no questions.

Dr. Schottenstein asked how Ms. Ottolenghi is spending her days since she is not practicing massage therapy. Ms. Ottolenghi replied that she teaches sociology and social work courses at Ashland University. Ms. Ottolenghi commented that she is also painting a lot. Dr. Schottenstein asked if Ms. Ottolenghi practices as a social worker. Ms. Ottolenghi replied that she has a social worker license, but she is only teaching it and not practicing it.

Mr. Giacalone moved to continue Ms. Ottolenghi under the terms of her January 10, 2018 Consent Agreement, with future appearances before the Board's Secretary or Designee. Dr. Schottenstein seconded the motion. The motion carried.

Frank G. Stoddard, D.P.M.

Dr. Stoddard is making his initial appearance before the Committee pursuant to the terms of his December 13, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Stoddard's history with the Board.

In response to questions from Mr. Giacalone, Dr. Stoddard stated that he is actively practicing podiatric medicine, though in a lighter capacity than before. Dr. Stoddard stated that his recovery is going well and he is currently working on step 8 of the 12-step program. Dr. Stoddard stated that he is in an aftercare program and he attends three Alcoholics Anonymous (AA) meetings per week. Dr. Stoddard stated that he has a sponsor, but he is not sponsoring anyone at this time.

Mr. Giacalone asked if the courses Dr. Stoddard took in prescribing and record-keeping were helpful to him. Dr. Stoddard replied that the courses were helpful and rather intensive. Dr. Stoddard stated that the courses were very timely with the way things are going with the opioid epidemic.

Mr. Giacalone asked if Dr. Stoddard had any questions about his Consent Agreement. Dr. Stoddard responded that he has no questions and he understands his Consent Agreement.

Dr. Schottenstein asked if Dr. Stoddard had straightened out his situation with Medicare. Dr. Stoddard replied that it is a work in progress and it has been difficult.

Dr. Schottenstein asked if the second 28-day inpatient treatment had been productive for Dr. Stoddard. Dr. Stoddard replied that it was very productive.

Mr. Giacalone moved to continue Dr. Stoddard under the terms of his December 13, 2017 Consent Agreement. Dr. Schottenstein seconded the motion. The motion carried.

Rajive Tandon, M.D.

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

Responding to questions from Dr. Steinbergh, Dr. Tandon stated that on May 23 he will have had one year of sobriety. Dr. Tandon stated that he completed his inpatient treatment at Shepherd Hill Hospital in August 2017 and is currently working on the eighth step of the 12-step program. Dr. Tandon stated that he attends aftercare meetings, speaks with to his sponsor almost daily, and attends at least three Alcoholics Anonymous (AA) meetings per week.

Dr. Tandon continued that he has a Medicare/Medicaid exclusion which he believed may be lifted on September 11, 2018. Dr. Tandon stated that he is looking for work, but he is an intensive care physician and it is rather difficult to find work in that field with a Medicare/Medicaid exclusion. Dr. Tandon stated that prior to this, he had worked in Chicago for 12 years and then at Ohio State University (OSU) since November 2016. Dr. Tandon stated that currently he is spending time with his child, attending meetings, and reading. Dr. Tandon added that he is keeping up with his knowledge base and preparing to take his specialty board recertification examination.

Dr. Tandon stated that he has not been able to get through to a Medicaid agent to confirm that his Medicaid exclusion will end in September. Dr. Tandon stated that Medicaid has indicated that a letter was sent in this regard to OSU, but OSU says they never received any such letter. Dr. Steinbergh asked if there is some way that the Medical Board could help Dr. Tandon connect with a Medicaid representative. Ms. Jones stated that she will try to help Dr. Tandon, but she herself had a great deal of trouble contacting anyone at Medicaid despite the fact that she represents a state medical board. Ms. Jones commented that she has even contacted the office of U.S. Senator Sherrrod Brown for help in this regard. Dr. Steinbergh suggested that the Ohio Attorney General's office may be able to help make a connection. Dr. Steinbergh stated that she will also look into this communication issue.

Responding to questions from Dr. Schottenstein, Dr. Tandon stated that he first practiced in Chicago from 2004 to 2016, when he moved to Ohio. In Chicago, Dr. Tandon worked in an intensive care unit in inner-city Chicago, so he saw many cases related to cocaine, opiates, and alcohol. Dr. Tandon stated that it was all about detoxification and he only had about 48 hours for each patient to try to improve their lives, but many patients would end up returning later. Dr. Tandon stated that he never had a judgment, but he heard residents and social workers make disparaging comments about

patients continually returning to the facility. Dr. Tandon stated that when he got into his situation it was very eye-opening, especially the piece following detoxification that involves support from family, friends, AA, and caduceus. Dr. Tandon commented that his aftercare program has been amazing for him and has helped him deal with day-to-day issues with better coping skills.

Dr. Steinbergh asked how Dr. Tandon began abusing drugs. Dr. Tandon replied that he had been riding his bicycle to work in Chicago in 2016 and was hit by a cab, breaking his leg and foot. This developed into a tarsal tunnel syndrome. Dr. Tandon's orthopedic physician decided to try opiates in an effort to resolve the pain without surgery, but he ultimately needed surgery. Dr. Tandon stated that his surgery was rather painful, but looking back on it he felt that it was probably the hyperalgesia from the opiates that made it worse. Dr. Tandon stated that over a course of four or five months, his use of the medications got the best of him.

Dr. Steinbergh asked if Dr. Tandon's orthopedist or another physician was monitoring his use of medications. Dr. Tandon answered that he was seeing a pain specialist who was part of the orthopedic group. Dr. Tandon stated that he was not taking more medication than he was prescribed, but he was clearly taking more than he needed. Since Dr. Tandon never ran out of a prescription early, the physician never thought there was a problem. Dr. Tandon stated that he started taking the medication for non-pain reasons more and more, and he now realizes that he was addicted at that time.

Dr. Steinbergh noted that Dr. Tandon stole Percocet and Oxycodone from patients. Dr. Tandon stated that his pain had gotten worse and there was a bottle sitting in the nursing room, so he took a few pills. Dr. Tandon stated that it was like his brain had been highjacked and it was something he had never thought about before. Dr. Tandon commented that he feels sick that that happened. Dr. Schottenstein asked if there were any legal consequences from Dr. Tandon's theft of the pills. Dr. Tandon replied that he was charged with a misdemeanor and he will complete drug court on November 2, 2018, whereupon the charges will be dismissed.

Dr. Schottenstein commented that it sounds like Dr. Tandon has some relatability to the drug addicts who might show up in the intensive care unit. Dr. Tandon agreed. Dr. Schottenstein commented that if one is prone to addiction to one thing, then one could be prone to addiction to something else. Dr. Schottenstein asked if Dr. Tandon has noticed any tendencies toward secondary additions, such as gambling or alcohol. Dr. Tandon replied that he had not had any secondary addiction, commenting that he recently attended a wedding where people were drinking but he never had a desire for alcohol. Dr. Tandon stated that he suffers from migraine headaches, so alcohol does not appeal to him anyway. Dr. Steinbergh asked what Dr. Tandon takes for migraine headaches. Dr. Tandon replied that he takes Imitrex and that works well.

Mr. Giacalone moved to continue Dr. Tandon under the terms of his February 14, 2018 Step II Consent Agreement, with future appearances before the Board's Secretary or Designee. Dr. Schottenstein seconded the motion. The motion carried.

Dr. Tandon stated that for the employment opportunities he is looking at, he must prescribe opiates because he would be inserting chest tubes. However, he has not yet regained his registration from the Drug Enforcement Administration (DEA) to prescribe controlled substances. Dr. Tandon stated that the DEA had indicated that they may approve him to prescribe Schedule III, IV, and V controlled substances, but not Schedule II. Dr. Tandon stated that this will handicap his ability to work in an intensive care unit. Dr. Steinbergh and Mr. Giacalone stated that it is up to the DEA to determine the status of Dr. Tandon's DEA registration. Dr. Tandon stated that he will meet with representative from

the DEA on Friday. Mr. Giacalone asked if Dr. Tandon is represented by an attorney. Dr. Tandon replied that he is, but his attorney's knowledge of this area of law is limited.

Dr. Steinbergh stated that even when the court says that Dr. Tandon's charges have been expunged, it still must be disclosed on applications. Dr. Tandon commented that honesty is part of his program and he would never want to hide it. Dr. Steinbergh commented that sometimes an attorney will tell their client that they can answer "no" on applications because their record was expunged, but that is not the case.

APPROVAL OF REPORTS OF CONFERENCES

Dr. Schottenstein moved to approve the Compliance Staff's Reports of Conferences for March 12 & 13, 2018. Mr. Giacalone seconded the motion. The motion carried.

TREATMENT PROVIDER APPLICATION

Lakeview Health

Mr. Giacalone moved to recommend approval of the Application for Certificate of Good Standing as a Treatment Provider for Impaired Practitioners from Lakeview Health. Dr. Schottenstein seconded the motion. The motion carried.

MINUTES REVIEW

Dr. Schottenstein moved to approve the draft minutes from March 14, 2018. Mr. Giacalone seconded the motion. The motion carried.

The meeting adjourned at 4:53 p.m.

Michael Schottenstein, M.D.
Chair

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