

**MINUTES****THE STATE MEDICAL BOARD OF OHIO****March 14, 2018**

Robert P. Giacalone, President, called the meeting to order at 10:48 a.m. in the Administrative Hearing Room, 3<sup>rd</sup> Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: 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.; Ronan M. Factora, M.D.; and Mark A. Bechtel, M.D. The following members did not attend: Richard Edgin, 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, and James Wakley, 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 February 14, 2018, Board meeting, as written. 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. Factora	- aye
	Dr. Bechtel	- aye

The motion carried.

**Dr. Schottenstein moved to approve the draft minutes of the December 1, 2017, meeting of the Ohio Board of Dietetics, as written. Dr. Bechtel 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. Factora	- aye
Dr. Bechtel	- aye

The motion carried.

#### APPLICANTS FOR LICENSURE

**Dr. Saferin 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," the allied professional applicants in Exhibit "B," and the cosmetic therapist applicants receiving a score of 75% or greater on the February 26, 2018 Cosmetic Therapy Examination in Exhibit "C," 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
	Dr. Factora	- aye
	Dr. Bechtel	- aye

The motion carried.

#### PROPOSED FINDINGS AND PROPOSED ORDERS

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

#### JUSTIN AARON CLARK, A.A.

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

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

Dr. Soin stated that on or about January 23, 2017, the Board received information that Mr. Clark had removed from providing care at a hospital after co-workers had found him to be sleepy and acting oddly, as well as having been seen sniffing a sevoflurane-soaked cloth in a drawer. It was further reported that Mr. Clark has been treated for alcohol dependency and that he had recently entered treatment for a relapse. Dr. Soin noted that the Proposed Findings and Proposed Order includes several exhibits, as well as background on the case.

Dr. Soin continued that the Proposed Order would revoke Mr. Clark's anesthesiologist assistant license and fine him \$7,500. Dr. Soin opined that the Proposed Order is appropriate given the nature of this case, the scope of his past history of alcohol dependency, and his recent relapse. Dr. Soin added that the fact that Mr. Clark had to be removed from patient care due to active impairment lends further support for revocation.

Dr. Schottenstein also agreed that revocation of Mr. Clark's anesthesiologist assistant license is appropriate. However, Dr. Schottenstein pointed out that Mr. Clark would be able to reapply for a license in the future. Dr. Schottenstein asked, given the nature of Mr. Clark's abuse, if it would be appropriate for him to ever be licensed again in this field. Dr. Schottenstein commented that there is nothing more dangerous than to abuse sevoflurane and be in an operating room. Dr. Schottenstein also expressed concern for Mr. Clark's safety if he ever regains his license and returns to an operating room. Mr. Giacalone asked if Dr. Schottenstein is suggesting a permanent revocation of Mr. Clark's license. Dr. Schottenstein replied that that is the implication of what he is suggesting. Dr. Schottenstein stated that once someone in an operating room starts abusing sevoflurane, it is incredibly risky for that person to ever return to the operating room.

Dr. Steinbergh commented that she does not find this case to be different from many others in which the Board has revoked a license due to impairment. Dr. Steinbergh stated that if Mr. Clark reapplies for a license, the Board will have an opportunity to review the matter and potentially limit his practice if warranted. Dr. Schottenstein agreed and reiterated his concern about Mr. Clark's wellness should he ever return to the field of anesthesiology. Mr. Giacalone commented that if Mr. Clark reapplies for licensure, there should be heightened scrutiny as to whether he has achieved true sobriety before granting a license. Dr. Schottenstein agreed.

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. Factora	- aye
	Dr. Bechtel	- aye

The motion carried.

DEBORAH S. LUBITZ, M.D.

**Dr. Steinbergh moved to find that the allegations as set forth in the November 8, 2017 Notice of Opportunity for Hearing in the matter of Dr. Lubitz 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 briefly reviewed Dr. Lubitz's education and career. Mr. Giacalone noted that Dr. Lubitz's Ohio medical license expired on July 1, 2014, and is currently inactive.

Mr. Giacalone continued that on or about December 11, 2013, Dr. Lubitz entered into a Consent Agreement with the Board in lieu of formal proceedings based upon her violation of Section 4731.22(B)(19) of the Ohio Revised Code. Mr. Giacalone stated that Dr. Lubitz underwent a Board-ordered psychiatric examination conducted by Stephen Noffsinger, M.D. Based on his evaluation, Dr. Noffsinger concluded that Dr. Lubitz needed to continue medical treatment in order to be able to practice medicine safely. The Consent Agreement imposed certain probationary terms, conditions, and limitations upon Dr. Lubitz's license which were to remain in effect for a minimum of two years. Mr. Giacalone noted that Dr. Lubitz was represented by legal counsel when she accepted the Consent Agreement.

Mr. Giacalone stated that on or about September 14, 2016, the Board issued an Order which found that Dr. Lubitz had violated Section 4731.22(B)(15), Ohio Revised Code, by failing to comply with her December 2013 Consent Agreement. Specifically, Dr. Lubitz had failed to make personal appearances before the Board and failed to provide timely quarterly declarations of compliance to the Board. Mr. Giacalone observed that at the Board meeting of September 14, 2016, the Board discussed at length Dr. Lubitz's situation and the fact that her Consent Agreement arose, in large part, as a result of her inability to practice medicine due to depression and her subsequent psychiatric treatment to help address this issue. The Board at that time also discussed that Dr. Lubitz's citation had been triggered by her failure to make quarterly declarations and personal appearances before the Board or its representatives, as was required by her December 2013 Consent Agreement.

Mr. Giacalone stated that, in an attempt to accommodate Dr. Lubitz's claims of hardship in complying with her Consent Agreement, the Board issued its September 2016 Board Order that modified the December 2013 Consent Agreement. The 2013 Consent Agreement was modified in the following ways:

- Given the perceived hardship presented by Dr. Lubitz in making personal appearances before the Board because she resided out-of-state, she would not be required to make personal appearances when she was not residing or practicing in Ohio.
- Dr. Lubitz could not request termination of the Consent Agreement for a minimum of nine months following the effective date of the September 2016 Board Order.

All other terms and conditions of the December 2013 Consent Agreement remained in full force and effect.

Mr. Giacalone stated that despite the Board's accommodations, Dr. Lubitz has failed to provide quarterly

declarations to the Board since the effective date of the September 2016 Board Order. For example, Dr. Lubitz has failed to provide and/or timely provide declarations of compliance that were due on or about December 1, 2016; March 1, 2017; June 1, 2017; and September 1, 2017.

Mr. Giacalone stated that based on the evidence provided, he supported the Proposed Order to revoke Dr. Lubitz's medical license and impose a fine of \$2,500.

Dr. Schottenstein agreed with Mr. Giacalone's comments and stated that the Board really tried to work with Dr. Lubitz. Dr. Schottenstein recalled that when Dr. Lubitz appeared before the Board in September 2016, she stated that she had not known about the requirement of quarterly declarations and that she would have complied had she known of the requirement. Dr. Schottenstein stated that Dr. Lubitz is clearly aware of the requirement now, but she has still failed to submit the declarations.

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. Factora	- aye
	Dr. Bechtel	- abstain

The motion carried.

## REPORTS BY ASSIGNED COMMITTEE

### PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE

#### PODIATRIST SCOPE OF PRACTICE INQUIRY

Ms. Debolt stated that this matter was discussed this morning by the Physician Assistant/Scope of Practice Committee, and it now comes before the Board without a Committee recommendation. The topic has been pushed forward in the agenda because one Committee member must leave the meeting early and wants to make sure to participate in the Board discussion.

Ms. Debolt stated that the Ohio Foot and Ankle Medical Association (OFAMA) has asked whether podiatrists can perform punch biopsies or shave biopsies on the leg and hand. Ms. Debolt stated that performing these actions on the hand is clearly within the podiatrist scope of practice based on statute. However, the Committee members disagreed on whether performing the biopsies on the leg above the ankle and below the knee is within the scope of practice of a podiatrist. Ms. Debolt noted that the Committee has been advised that a possible expansion of the scope of practice should be done through the rule-making process, which provides an opportunity for input from the public and from two other agencies to make sure the rule is within the Board's authority and is compliant with law.

Ms. Debolt continued that in February 2018, the Committee directed that a letter be drafted in response to the OFAMA's inquiry that such biopsies are within the podiatrist scope of practice, while simultaneously starting work in a rule that would codify what was in the letter. This morning, the Committee discussed the drafted letter, but there was no vote to approve it. Instead, the Committee voted to bring the matter to the full Board to discuss whether punch and shave biopsies above the ankle and below the knee are within the podiatrist scope of practice.

Dr. Saferin opined that the drafted letter simply clarifies the issue and is not an expansion of the podiatrist scope of practice. Dr. Saferin explained that podiatrists already perform biopsies on the foot and they also perform biopsies during wound care which they are allowed to do. Dr. Saferin stated that when podiatrists see a lesion on the other side of the leg which looks concerning, they want to biopsy it so that the patient can get care as quickly as possible. Dr. Saferin stated that this is a patient safety issue and an access-to-care issue, noting that it is very difficult to quickly get patients scheduled to see other providers for biopsy. Dr. Saferin stated that there is no different skill or treatment involved in biopsies whether they are on top of the foot or elsewhere. Lastly, Dr. Saferin opined that it would be below the minimal standards of care for a podiatrist to wait until someone else could biopsy a suspicious lesion.

Dr. Steinbergh stated that over the years, the Physician Assistant/Scope of Practice Committee has been asked to opine on different issues, including podiatric issues. Dr. Steinbergh quote from Section 4731.51, Ohio Revised Code, regarding the podiatrist scope of practice:

The practice of podiatric medicine and surgery consists of the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot; and superficial lesions of the hand other than those associated with trauma.

Dr. Steinbergh continued that when the Committee considered the issues of bariatric medicine and wound care in relation to podiatrists, it concluded that these things actually affect the functions of the foot. Dr. Steinbergh opined that a biopsy on the skin of the leg above the ankle and below the knee is outside of that scope. Dr. Steinbergh agreed with Dr. Saferin that the skill involved is the same whether the lesion is on the foot or above the ankle, but the issue for her is that it has nothing to do with the function of the foot or ankle. Dr. Steinbergh felt that if the Board wished in to engage in that discussion, it should do so through the rule-making process.

Dr. Steinbergh opined that the letter that was drafted at the direction of the Committee is not appropriate. Dr. Steinbergh expressed her preference that the letter state that the Board will consider this matter in the rule-making process, rather than give permission to perform the biopsies prior to making a rule. Dr. Steinbergh noted that no one knows exactly what the rule will look like at the end of the process and it would be difficult to reverse the decision the Board makes now if the eventual rule contradicts it. Dr. Steinbergh opined that this is not compromising patient care in any way; rather, the question is whether the removal of a dermatologic lesion on the leg have anything to do with the podiatrist scope of practice.

Dr. Schottenstein stated that he also sees the letter as an expansion of the scope of practice, based on the definition in statute. Dr. Schottenstein also agreed with Dr. Steinbergh's comments regarding sending a letter now while simultaneously beginning a rule-making process that could conceivably result in a rule that contradicts the letter. Dr. Schottenstein felt that the letter should indicate that this is something that the Board is looking into, rather than giving permission to proceed with the biopsies.

Dr. Schachat agreed with Dr. Saferin that podiatrists already practice wound care, that patient access to care is an issue, and that the skill and training for removing a lesion on the foot is similar to removing a lesion above the ankle. However, Dr. Schachat also agreed with Dr. Steinbergh that the letter should say that the Board is considering a rule, instead of saying that podiatrists can perform the biopsies. Dr. Schachat further stated that he is not certain if the statute allows the biopsies, in which case the rule would be moot.

Dr. Bechtel stated that dermatologists like himself often see challenging wounds on the lower extremities. Dr. Bechtel commented that Ohio has excellent wound care teams that can help advance the healing of such wounds, and those teams include podiatrists. Dr. Bechtel stated that ulcerations on these areas can be a source of aggressive skin cancers, so it concerns him that podiatrists are able to be involved in wound care but may be limited from doing a skin biopsy near the edge of a wound that could potentially be an aggressive malignancy. Dr. Bechtel also agreed with other concerns about the podiatrist scope of practice based on the statutory definitions. Dr. Bechtel stated that this is a dilemma that could be clarified by rules or statutory changes. Dr. Bechtel opined that the podiatrist scope of practice may need to be redefined.

Dr. Soin stated that he sees no problem with a podiatrist performing a shave or punch biopsy between the knee and the ankle, noting that podiatrists already perform more aggressive and invasive procedures in the distal lower extremity. Dr. Soin stated that podiatrists have a compendium of patients that can benefit from biopsies and potentially early detection. Dr. Soin stated that as a matter of patient safety or protection, he sees no risk in allowing podiatrists to perform these procedures.

Dr. Factora stated that the same type of lesion that occurs on the foot can also occur in the lower leg. Dr. Factora stated that podiatrists have the skill to remove the lesion and it should be appropriate for them to actually do the biopsy. Dr. Factora stated that if there is a lesion that could be of a serious nature and a delay could potentially affect the patient's prognosis, an opportunity to address it quicker would be in the best interest of the patient.

Dr. Steinbergh stated that she can appreciate a situation involving a non-healing lesion associated with a wound that a podiatrist is already caring for. Dr. Steinbergh expressed concern that if the scope of practice is expanded to below the knee, then it could also be expanded to above the knee and further up the leg. Dr. Steinbergh reiterated that she is not questioning the skill of podiatrists to perform biopsies, but stated that this is about properly appreciating the scope of practice. Dr. Steinbergh stated that if the Board wants to expand the podiatrist scope of practice, that is the reason the rule-making process exists.

Dr. Saferin opined that there is no physician or non-physician on the Board who would say that a malignancy would not affect the muscles and tendons that function in the foot. Therefore, such a malignancy would be well within the podiatrist scope of practice and would not represent an expansion. Dr. Saferin noted that podiatrists are already doing muscle transfers and skin grafts by taking them from the lower leg. Dr. Saferin further noted that podiatrists can do muscle transfers to cover an ulcer. Dr. Saferin stated that performing a punch or shave biopsy is very minor compared to what podiatrists are capable of and already do within their scope of practice.

Mr. Giacalone stated that he agrees with Dr. Soin's and Dr. Factora's comments. Mr. Giacalone stated that early detection of problems is in the best interest of the public, especially when it concerns a potential malignancy. Mr. Giacalone commented that the statutes were made by legislators, not physicians, and are not always well-defined. Mr. Giacalone stated that the Medical Board, as the agency that is supposed

to interpret the statutes and create regulations if necessary, should be in a position to decide if something is in the best interest of the public. Mr. Giacalone opined that if something is good for the public and there is latitude to do it, then the Board should do that thing. Mr. Giacalone stated that an attorney could argue both sides of this issue, but this is a public health issue and not an attorney issue. Mr. Giacalone favored sending the letter to OFAMA as drafted

**Dr. Saferin moved to send the letter to OFAMA as drafted. Mr. Gonidakis seconded the motion.**

Dr. Steinbergh suggested that all Board members take a few minutes and read the letter. Mr. Giacalone agreed. The Board members spent a few minutes reviewing the letter.

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

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

The motion carried.

Dr. Steinbergh requested that the letter be signed by the President of the Board instead of the Chair of the Physician Assistant/Scope of Practice Committee. Mr. Giacalone agreed.

#### EXECUTIVE SESSION

**Dr. Steinbergh moved to go into Executive Session to confer with the Medical Board's attorneys on matters of pending or imminent court action, and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board's quasi-judicial capacity. Dr. 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. Factora	- aye
	Dr. Bechtel	- aye

The motion carried.

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

The Board returned to public session.

#### RATIFICATION OF SETTLEMENT AGREEMENTS

##### AUBREY D. WINKLER, P.A. – CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the proposed Consent Agreement with Ms. Winkler. 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. Factora	- aye
	Dr. Bechtel	- aye

The motion to ratify carried.

##### WAYNE J. MYLES, D.O. – CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the proposed Consent Agreement with Dr. Myles. 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. Factora	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

JANET LYNN RICE, M.D. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

**Dr. Steinbergh moved to ratify the proposed Permanent Surrender with Dr. Rice. 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. Factora	- aye
	Dr. Bechtel	- aye

The motion to ratify carried.

JAMES IBRAHIM TAK, M.D. – STEP II CONSENT AGREEMENT

**Dr. Steinbergh moved to ratify the proposed Step II Consent Agreement with Dr. Tak. 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. Factora	- aye
	Dr. Bechtel	- aye

The motion to ratify carried.

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

Ms. Marshall provided a brief overview of the five proposed citations on today's agenda.

Dr. Schottenstein asked why proposed citation #4 (Muhammed Nasher-Alneam, M.D.) and #5 (James Prommersberger, D.P.M.) were not summary suspensions of those practitioners' licenses. Ms. Marshall replied that for a summary suspension, statute requires that the Secretary and Supervising Member find 1) clear and convincing evidence of a violation of the Board's statutes or rules, and 2) a danger of immediate and serious harm to the public, which basically refers to Ohio patients since it is an Ohio

statutory action. Ms. Marshall stated that both of these cases meet the first criterion. However, they do not meet the second criterion.

Ms. Marshall elaborated that Dr. Nasher-Alneam lives and practices in Charleston, West Virginia, which is not near the Ohio border. Ms. Marshall further noted that the West Virginia Board of Medicine did not suspend Dr. Nasher-Alneam's West Virginia medical license, but they did require him to enter into an interim agreement in order to grant a continuance of his West Virginia hearing. Consequently, Dr. Nasher-Alneam has not had due process in West Virginia yet and the West Virginia Board has not yet determined the validity of the allegations against him.

Regarding Dr. Prommersberger, Ms. Marshall stated that the questionable prescribing took place from 2014 to 2015. Ms. Marshall also noted that the proposed citation is based on action by the West Virginia Board of Medicine and is related to prescriptions that were filled in Kentucky. At this time, there is no evidence that Ohio patients were involved. Dr. Prommersberger has already successfully completed an intensive prescribing course and the West Virginia Board has allowed him to continue prescribing in some capacity, which undercuts the "pill mill" situation that would typically warrant a summary suspension.

Dr. Schottenstein thanked Ms. Marshall for the explanations.

**Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Nicholas Garritano, D.O.; and Timothy John Morley, D.O. 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. Factora	- aye
	Dr. Bechtel	- abstain

The motion to send carried.

**Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Pankaj Gupta, M.D.; Muhammed Nasher-Alneam, M.D.; and James Prommersberger, D.P.M. 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. Factora - aye  
Dr. Bechtel - aye

The motion to send carried.

#### EXECUTIVE SESSION

**Dr. Saferin moved to go into Executive Session for the purpose of preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Dr. 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. Factora	- aye
Dr. Bechtel	- aye

The motion carried.

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

The Board returned to public session.

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

#### FINAL PROBATIONARY APPEARANCES

##### JOSEPH E. BAUS, M.D.

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

Mr. Giacalone asked Dr. Baus to describe his current practice. Dr. Baus answered that he has a mixed practice of anesthesiology and critical care.

Dr. Soin asked if Dr. Baus has access to fentanyl in his current practice. Dr. Baus replied affirmatively. Dr. Soin asked if there are any checks and balances regarding the fentanyl, given Dr. Baus' history. Dr. Baus responded that the checks and balances are the same as for all other practitioners at the practice. At Dr. Soin's prompting, Dr. Baus explained that when the material is taken out, it is recorded and any waste must be sent to the pharmacy for testing for contamination. Dr. Soin asked if these checks and

balances had been in place when Dr. Baus abused fentanyl. Dr. Baus replied that those checks and balances had not been in place at that time. Dr. Soin asked what is different about the checks and balances now. Dr. Baus replied that one change is that he does not primarily do his own cases anymore and the pharmacy testing is more stringent.

Dr. Soin expressed concern that if Dr. Baus were to relapse, he has almost immediate access to his drug of choice. Dr. Baus understood the concern and noted that he has had five years of documented sobriety. Dr. Soin commended Dr. Baus on his sobriety.

Mr. Giacalone asked if Dr. Baus had self-reported when he had his initial problem. Dr. Baus answered that the hospital he had worked for at that time allowed him the opportunity to contact the Medical Board. Mr. Giacalone asked what Dr. Baus is doing differently from before. Dr. Baus replied that he is working his recovery program, attending meetings, and he has a sponsor. Mr. Giacalone asked if Dr. Baus is working the 12-step program. Dr. Baus replied affirmatively. Mr. Giacalone asked what step Dr. Baus is currently working on. Dr. Baus answered that he has finished the steps, though he is always working step 10 and step 12. Dr. Baus explained that step 10 is taking a daily assessment of his actions, and step 12 is making sure to reach out to other people.

Mr. Giacalone asked Dr. Baus to describe his support group. Dr. Baus stated that in Nebraska he works with anesthesiologists and certified registered nurse anesthetists (CRNA) who are also in recovery and they form a tight network. Dr. Baus stated that his sponsor is an anesthesiologist with about eight years of sobriety. Dr. Baus stated that his sponsor has proven that he can practice anesthesiology; Dr. Baus hoped to prove that as well. Mr. Giacalone asked if Dr. Baus has family or friends who are supporting him in recovery. Dr. Baus answered that his wife is very supportive and he considered his sponsor to be his friend. Mr. Giacalone asked if Dr. Baus has any plans to practice in Ohio. Dr. Baus stated that he may return to Ohio, noting that his mother-in-law would like him to return.

Mr. Giacalone asked if Dr. Baus intends to continue his recovery program after he is released from probation. Dr. Baus answered that he will continue his program. Dr. Baus stated that he still has another year of monitoring under the Nebraska Board of Medicine and Surgery due to time that they added. Mr. Giacalone asked why the Nebraska Board added monitoring time. Dr. Baus responded that he cannot comment on the Nebraska Board's decisions or what may have driven them.

Dr. Schottenstein asked if any activity on Dr. Baus' part that he is aware of had provoked the additional monitoring time in Nebraska. Dr. Baus answered that it was not due to activity on his part. Dr. Schottenstein commented that it is not unreasonable for one to redo the 12 steps from time to time, as some people find it to be helpful and reinforcing. Dr. Baus agreed.

Mr. Giacalone asked if Dr. Baus had any questions for the Board. Dr. Baus stated that this has been a great experience and he thanked the Board for allowing him to practice medicine again. Dr. Baus stated that it is a privilege to practice medicine again and he hoped he could serve as an example for physicians who follow in his path.

**Dr. Schottenstein moved to release Dr. Baus from the terms of his March 13, 2013 Consent Agreement, effective immediately. Dr. Soin seconded the motion.** All members voted aye. The motion carried.

ARMAND L. MINOTTI, D.O.

Dr. Minotti was appearing before the Board pursuant to his request for release from the terms of the Board's Order of January 13, 2016. Mr. Giacalone reviewed Dr. Minotti's history with the Board.

Responding to questions from Mr. Giacalone, Dr. Minotti stated that he is still with the same practice as before, but he no longer practices in the hospital. Dr. Minotti stated that the event that brought him before the Board had occurred at the hospital.

In response to questions from Dr. Steinbergh, Dr. Minotti stated that he goes into the office six days per week. Dr. Minotti added that he has lost many patients because the Board action resulted in his removal from the physician panels of Anthem Insurance, Medicaid, and several other insurances. Dr. Minotti stated that his group has 22 physicians practicing in different buildings; each physician sees their own patients and cover for each other when someone is out of town. Dr. Minotti stated that about seven or eight other physicians in his group practice in his building, but he essentially does his own practice.

Dr. Steinbergh asked if Dr. Minotti expects his relationship with insurance companies to improve once he is released from probation. Dr. Minotti stated that he can apply once he is released, but the process could take months. Dr. Steinbergh asked if Dr. Minotti has support from the other physicians in his group. Dr. Minotti answered that he does have support within his group, but he has just learned that the owner of the group has sold the practice to Mercy Hospital in Youngstown. As a consequence, Dr. Minotti is uncertain what is going to happen in the future.

Dr. Steinbergh asked Dr. Minotti to describe his family and personal support. Dr. Minotti replied that he has three wonderful children and several grandchildren who he is very close to. Dr. Minotti stated that the other physicians in his group have tried to cover his patients, but many of his former patients have gone to other practices. Dr. Steinbergh opined that Dr. Minotti will add value to the new group that will be determined by Mercy Hospital. Dr. Steinbergh asked if Dr. Minotti is enjoying his work. Dr. Minotti replied that he enjoys he work very much.

Dr. Schottenstein asked if Dr. Minotti continues to practice in the prison. Dr. Minotti answered that he no longer practices in the prison. Dr. Schottenstein asked if Dr. Minotti is very careful when documenting in a patient chart to make certain it is accurate. Dr. Minotti answered affirmatively. Dr. Schottenstein asked if the courses Dr. Minotti took in documentation and medical ethics were informative and productive. Dr. Minotti answered affirmatively. Dr. Schottenstein recalled that Dr. Minotti had previously worked many hours and was very busy. Dr. Schottenstein acknowledged that Dr. Minotti would like to be busier than he is now, but suggested that a more healthy busy level than before would be appropriate. Dr. Minotti agreed. Dr. Schottenstein wished Dr. Minotti well.

**Dr. Steinbergh moved to release Dr. Minotti from the terms of the Board's Order of January 13, 2016, effective immediately. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

REPORTS BY ASSIGNED COMMITTEEFINANCE COMMITTEEFISCAL REPORT

Dr. Schottenstein stated that the Board's revenue for January 2018 was \$1,126,708, approximately the same as the previous month and about a 5% increase from January 2016. Dr. Schottenstein stated that this continues the trend in the right direction. The Board's year-to-date revenue for the fiscal year is roughly \$4,900,000, compared to \$5,600,000 at this point in Fiscal Year 2016. Dr. Schottenstein stated that January 2018 showed a net revenue gain of approximately \$232,000, substantial improvement over the net gain in December 2017 of about \$182,000 and the net loss in November 2017 of about \$74,000.

Dr. Schottenstein continued that the Board's cash balance is \$3,575,156, an increase of about 15% compared to January 2017. Dr. Schottenstein noted that the cash balance had reached a low-point of about \$3,000,000 and it is now moving the right direction. Dr. Schottenstein stated that the strong January 2018 figures are partly a reflection of the January 1 deadline for physician license renewals. Dr. Schottenstein noted that January 31 was the deadline for renewal of allied profession licenses other than massage therapists, and that will be reflected in the February 2018 figures.

Dr. Schottenstein stated that the Board has received its first revenue resulting from the January consolidation with the Ohio Board of Dietetics and the Ohio Respiratory Care Board. This revenue is minimal so far, but it should continue to increase over time. Dr. Schottenstein noted that these professionals will renew their licenses during the last quarter of Fiscal Year 2018 and the revenue from those renewals could be about \$1,000,000. Considering that these professionals renew biennially and that the Medical Board absorbed some staff members from those boards, the Board may expect approximately \$200,000 of additional revenue per year from the consolidation. Dr. Schottenstein was hopeful that the last two quarters of Fiscal Year 2018 will make up for the first two quarters.

Dr. Schottenstein stated that total expenditures for January 2018 were \$894,976, compared to January 2017 expenditures of \$735,201. Dr. Schottenstein stated that the increased expenditures were substantially a function of payroll increases as vacant positions have been filled. The Board has had a 3.5% increase in expenditures year-to-date.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated that the Board has collected \$4,000 of fine payments since the last Board meeting. The Board has collected a total \$197,501 in fines, \$163,501 of that in Fiscal Year 2018. There is \$155,499 of imposed fines that is still unpaid. \$3,500 has been collected from administrative fines related to continuing medical education (CME).

COMMUNICATIONS UPDATE

Dr. Schottenstein stated that media inquiries have been very substantial recently, including inquiries from *USA Today*. Many of the inquiries are about medical marijuana and physician misconduct. Dr. Schottenstein noted that Mr. Giacalone had been interviewed by WLWT-TV.

Dr. Schottenstein noted that a Take Charge Ohio event will take place in Toledo to promote safe

prescribing of opioids.

Dr. Schottenstein stated that several additional videos have been created, including one on the history of the Medical Board, an update on fentanyl safety for first responders, and edited clips of final probationary appearances before the Board for the Partners in Professionalism program.

Dr. Schottenstein stated that qualifying physicians will be able to apply for the Certificate to Recommend Medical Marijuana (CTR) soon.

#### TRAVEL AUTHORIZATION

Dr. Schottenstein stated that the National Association of Boards of Pharmacy (NABP) has invited Mr. Giacalone to speak at their annual meeting to discuss medication assisted treatment. The Medical Board is being asked to vote on a motion to approve Mr. Giacalone's travel out-of-state, as well as for reimbursement of any expenses not covered by the NABP. The Finance Committee has recommended approval of the authorization.

**Dr. Saferin moved to approve Mr. Giacalone to attend the 2018 annual meeting of the NABP, which will be held May 6, 2018 in Denver Colorado, and that incidental expenses not covered by the NABP will be paid by the Medical Board in accordance with state travel policy. Dr. Saferin further moved that Mr. Giacalone's attendance at the conference is in connection with his duties as, and is related to his position as, President and member of the State Medical Board of Ohio. Dr. Bechtel seconded the motion.** All members voted aye, except Mr. Giacalone who abstained. The motion carried.

#### OHIO AUTOMATED RX REPORTING SYSTEM

Dr. Schottenstein stated that a joint letter will be issued by the Medical Board and the Ohio Board of Pharmacy which details the very substantial improvement in the pattern of opioid prescribing to the citizens of Ohio between 2012 and 2017. In addition, the Board of Pharmacy will send Provider Insight Reports to practitioners with the goal of improving prescribing practices. The Provider Insight Report contains de-identified data which provide a basic overview of prescribing patterns for a given practitioner.

Dr. Schottenstein stated that there is a proposal to fund the creation of data reports from Ohio Automated Rx Reporting System (OARRS) that would provide identifiable data that is specific to the practice of an Ohio prescriber. This Prescriber Insight Report would allow a practitioner to ascertain which patients he or she prescribed opioids or benzodiazepines to without checking OARRS. The Prescriber Insight Report would also allow licensing boards such as the Medical Board to obtain monthly reports showing all prescribers and their missed patients. Dr. Schottenstein stated that this proposal would cost the Medical Board \$75,000 upon completion of the project and an ongoing annual fee of \$15,000. Dr. Schottenstein opined that the Prescriber Insight Report would provide valuable information. Dr. Schottenstein commented that if the Board is going to issue citations to practitioners for not being compliance with the OARRS statutes and rules, then the Board should provide practitioners with every tool available to be compliant.

Dr. Schottenstein was unclear as to why the proposed report necessitates an incidental charge instead of being an included service. Dr. Schottenstein was also unclear as to the necessity of the ongoing annual payment. Dr. Schottenstein stated that if the proposal is approved, then the Board will be potentially

funding a project that other states will benefit from. Dr. Schottenstein stated that it is fine for other states to benefit from the report, but it then also seems that the other states should share the expense as well.

Dr. Schottenstein stated that there had been a request for a motion to approve the \$75,000 plus the \$15,000 per year in the Finance Committee. However, the Committee did not proceed with that motion because some Committee members felt that things were moving too quickly and there was not enough information at this time. Dr. Schottenstein felt that it was a substantial expense and that the whole Board should be aware of the situation. Dr. Schottenstein commented that if the Board funds development of the Prescriber Insight Report, it will potentially be followed by development of other reports related to the acute pain opioid prescribing rules, the ICD-10 requirement, and other initiative, and that these reports would also need to be funded.

Mr. Groeber provided a brief background on this situation. Mr. Groeber stated that OARRS was first created for the Ohio Board of Pharmacy by a local company in Dublin, Ohio. Chad Garner had worked for that company and helped develop the initial platform for OARRS. Mr. Garner later left the company and accepted a position with the Board of Pharmacy. With Mr. Garner's help, the Board of Pharmacy was able to produce very good tailored reports from OARRS, and they developed the first Prescriber Insight Report at the Medical Board's request. Later, a company named Appriss, which manages the prescription drug monitoring programs of about 40 states, bought the smaller company. Appriss continued to maintain the older, Ohio-based version of OARRS.

Mr. Groeber continued that when the Board first sent OARRS letters in October 2016 telling physicians they had not checked some patients on the system as required, the physicians naturally wanted to know which patients they had not checked. The physicians contacted the Board and it became administratively burdensome for the Board staff to respond to thousands of emails and calls. Because of the influx, the Board stopped sending the OARRS letters. In response to the requests, The Board staff had to email individualized reports to each of the thousands of physician requesting information. This led the Medical Board to direct the Board of Pharmacy to develop the Prescriber Insight Report, which allows the physicians can obtain the information on missed patients themselves.

Mr. Groeber stated that in 2017, Appriss announced the migration of OARRS to a national platform, which led to the loss of the Prescriber Insight Report and other functionality customized for Ohio. Mr. Groeber expressed frustration that it had only recently been learned that the Prescriber Insight Report and other things had been lost with the new OARRS system. Mr. Groeber commented that had it been known beforehand that this would be the situation, the issue could have been mitigated.

Mr. Groeber stated that the quote of \$75,000 plus \$15,000 per year was received from Appriss last Thursday. Mr. Groeber stated that the quote went to the Medical Board instead of the Board of Pharmacy because the Board of Pharmacy has indicated that it does not have the funding to support it. Mr. Groeber acknowledged the concerns of Dr. Schottenstein and other members that the Board would essentially be funding product development for Appriss. However, without the Prescriber Insight Report the Board staff will have to deal with hundreds or thousands of calls and emails from licenses that must be responded to.

Mr. Groeber stated that in the future, he anticipates initiatives to notify practitioners about failure to put ICD-10 codes on prescriptions, violations of the acute pain prescribing rules, and possibly the upcoming rules on chronic pain prescribing. Mr. Groeber stated that these reports are part of a customer service plan to give practitioners the tools necessary to remain compliant with these rules. Mr. Groeber stated that it will be difficult for the Board to consider potential action against a licensee without providing a

reliable way for them to check their compliance.

Mr. Groeber stated that since this morning's Finance Committee meeting, he has informed the Board of Pharmacy that he wishes to speak with representatives from Appriss on this issue. Mr. Groeber noted that the contract is between Appriss and the Board of Pharmacy, and any service would be conducted under that ongoing service and maintenance contract. Mr. Groeber also commented that there has been extraordinary progress in the project and that the number of unchecked patients has lowered significantly.

The Board discussed this matter thoroughly. Dr. Soin opined that the Board must provide for the report if it wants to enforce the rules. Dr. Soin stated that as a pain management physician, it is very helpful to use the report to go back to identify and correct any gaps in service. Dr. Schachat agreed with Dr. Soin and wondered if the Board could claim some intellectual property rights around the product that it will fund the development of. Mr. Groeber appreciated Dr. Schachat's thought, but asked the Board to look at this as an altruistic expense on a product that other states may use as well. Mr. Groeber speculated that the Board could push back against the \$15,000 annual payment by pointing out that it is funding a product that Appriss will then sell to other states. Regarding the initial funding of \$75,000, Mr. Groeber pointed out that the Board has collected \$75,000 in fines for OARRS violations alone.

Dr. Schachat exited the meeting at this time.

Dr. Saferin opined that the proposed expenditure is a necessary evil. Dr. Saferin stated that the Board should trust its staff to manage the project correctly and make sure everything is appropriate before any funds are actually spent. Dr. Saferin appreciated the need for more information on this matter, but felt that the project should proceed in a timely manner.

**Dr. Saferin moved to approve the proposal as discussed and to authorize the expenditure of \$75,000 plus \$15,000 annually for the project. Dr. Steinbergh seconded the motion.**

Dr. Schottenstein stated that he agrees with the comments that have been made. Dr. Schottenstein observed that there is a consensus that the information in the Prescriber Insight Report would be valuable and that the Board will have to pay for it. However, Dr. Schottenstein opined that this seems rushed. Dr. Schottenstein stated that he trusts the staff, but the staff is new to this matter which came up only a few days ago. Dr. Schottenstein stated that it would not hurt to take time to gather additional information and have a phone conversation or meeting about this subject before the Board votes. Dr. Schottenstein stated that at this point the Board does not even know the particulars of the contract or when the project would be expected to be completed.

Mr. Gonidakis agreed with Dr. Schottenstein. Mr. Gonidakis indicated that he, as well as some other Board members, would be willing to participate in a meeting with the Board of Pharmacy. Mr. Gonidakis stated that a meeting could clarify some issues and bring unity on other things as well. Mr. Gonidakis felt it was important to pause and figure out where the Board is before moving forward.

Mr. Groeber asked Ms. Loe to clarify if the full Board would need to vote on this proposal due to the size of the expenditure. Ms. Loe recalled that under Board policy, expenditures over \$50,000 need to be approved by a full Board vote. Mr. Groeber stated that since a full Board vote is required, the next time the Board could approve would be the April 11 Board meeting, which would further delay the project. Mr. Groeber stated that this would push the estimated completion of the project to May, by which time two or three rounds of OARRS letters will have already been sent and the Board will have been inundated with

the subsequent calls from the recipients of the letters.

Dr. Soin opined that the proposal should be approved, stating that he would want to have the necessary tools to correct any shortcomings. Dr. Soin stated that he has not enjoyed having the Board fine practitioners for OARRS violations, but it has done so and has collected revenue from that. Dr. Soin stated that it would make sense to put that revenue to work fixing this issue.

Dr. Steinbergh suggested that Dr. Saferin's motion could be withdrawn and a new motion could be made to approve the expenditure, pending the meeting with representatives from the Board of Pharmacy and Appriss, and final approval by Mr. Giacalone and Dr. Schottenstein as President of the Board and Chair of the Finance Committee, respectively.

Dr. Rothermel asked if there has been any consideration of waiting about a month before sending out the next OARRS letters. Mr. Groeber commented that delaying the OARRS letters would not be in the Board's best interest and that the OARRS letters have had a positive effect. Mr. Groeber also commented that it is unlikely that the project would be complete a month from now. Mr. Groeber added that there are many people pushing for the letters to be sent and a delay is unlikely.

Mr. Giacalone suggested that if the expenditure is approved, the Medical Board should get a commitment from the Board of Pharmacy to meet with the Medical Board's staff every two weeks until the project is complete, and then monthly meetings thereafter. Mr. Groeber agreed.

The Board continued to extensively discuss this topic, including the possibility of negotiating a reduction in price if certain deadlines on the project are not met.

**Dr. Saferin wished to withdraw his motion.** No Board member objection to withdrawing the motion. The motion was withdrawn.

**Dr. Steinbergh moved to approve the proposal and to authorize the expenditure of \$75,000 plus \$15,000 annually for the project, pending final approval by Mr. Giacalone and Dr. Schottenstein following the meeting with the Ohio Board of Pharmacy and Appriss. Dr. Saferin seconded the motion.** All members voted aye. The motion carried.

#### POLICY COMMITTEE

#### LEGISLATIVE UPDATE

Dr. Soin stated that Mr. LaCross had reviewed the Legislative Update with the Policy Committee, and focused on two bills specifically. Regarding House Bill 286, the palliative care bill, there was some discussion about the definition of a serious medical condition. Mr. LaCross will take the Committee's concerns about opioid prescribing under the auspices of palliative care to the legislature and discuss options.

Dr. Soin stated that House Bill 479 is a pharmaceutical bill to make sure that Ohio patients and citizens are paying the appropriate price for prescription drugs.

### ONE-BITE REPORTING EXEMPTION RULES AND CONTRACT

Dr. Soin stated that the Policy Committee discussed the one-bite reporting exemptions rules and contract, and voted to send the draft rules to interested parties for comment.

Mr. Gonidakis exited the meeting at this time.

### LIGHT-BASED MEDICAL DEVICE RULES

Dr. Soin stated that the Policy Committee has recommended filing the light-based medical devices rules with the Common Sense Initiative office. Ms. Anderson stated that the Committee also approved the amendments outlined in Mr. Smith's memo and to file with CSI for anti-trust review.

**Dr. Steinbergh moved to approve the rules for filing with the Common Sense Initiative for an antitrust review. Dr. Saferin seconded the motion.** All members voted aye. The motion carried.

### FSMB RESOLUTIONS AND REPORTS

Ms. Anderson stated that the Federation of State Medical Boards (FSMB) resolutions and reports will need to be revisited at the April Board meeting, but she asked the Board members to provide feedback now or at any time in the next month.

Dr. Steinbergh stated that she is particularly concerned about Resolution 18-3, Supporting the Practice of Physician Assistants. Dr. Steinbergh stated that this proposal from the Washington State Medical Commission asks the FSMB to support the independent practice for physician assistants in what they call a voluntary Optimal Team Practice (OTP). Dr. Steinbergh stated that the OTP is a new physician assistant practice model adopted by the American Academy of Physician Assistants last year.

Mr. Gonidakis returned to the meeting at this time.

Dr. Steinbergh stated that the resolution makes the following recommendations:

- revise the model of the medical practice act and regulations to integrate physician assistants into medical boards as full members with proportional representation
- support state medical boards' efforts to amend their laws to permit voluntary full and independent practice of physician assistants up to the full scope of their education and training
- collaborate with the United States Medical Licensure Examination (USMLE) to allow physician assistants to take appropriate levels of the USMLE
- remove requirements that physician assistants maintain any supervisory or collaborative relationship with a physician in order to practice
- remove the concept that physician assistants' scope of practice is determined by physician delegation and instead allow physician assistants to provide any legal medical service for which they have been prepared by their education, training, and experience, and are competent to perform
- support the establishment of independent physician assistant regulatory boards to license,

regulate, and discipline physician assistants

- supports physician assistants' ability to directly bill insurers and be reimbursed for care at physician rates
- prohibit insurers from imposing practice education or collaboration requirements for physician assistants that are more restrictive than state law
- support the continued movement towards changing the title of physician assistant to just "PA."

Dr. Steinbergh stated that many people have concerns about this resolution and that the Board should give thought to this resolution for discussion next month.

Dr. Steinbergh stated that she also has concerns about Resolution 18-4, Permitting Out-of-state Practitioners to Provide Continuity of Care in Limited Situations, but she did not wish to make comments on it at this time.

Dr. Schottenstein stated that he was interested in Report 18-1, Regenerative and Stem Cell Therapy Practices. Dr. Schottenstein reviewed Ohio's rules and did not see much on regulation of stem cell therapy. Ms. Anderson stated that she is not aware of any rules on stem cell therapy. Dr. Steinbergh commented that she has heard concerns that the Medical Board is not addressing what is happening with stem cell treatment in Ohio today. Dr. Steinbergh stated that there are evidence-based stem cell therapies, but the question is whether more practices are going into stem cell therapies that are not evidence-based. Dr. Schottenstein stated that Report 18-1 paints a bleak picture of what can happen with a lack of regulation in that area.

Dr. Schottenstein observed that Report 18-3, Physician Wellness and Burnout, makes a reference to a Continuous Query option for the National Practitioner Databank (NPDB). Dr. Schottenstein stated that the Continuous Query provides data to medical boards on anything that is reported to the NPDB, including adverse license actions, privilege issues, Medicare/Medicaid expulsions, civil or criminal convictions, and medical malpractice payments. Dr. Schottenstein stated that state medical boards can subscribe to the Continuous Query for an expense. Dr. Schottenstein asked if the Ohio Board has ever considered subscribing to the Continuous Query.

Ms. Anderson stated that the Board can look into the Continuous Query. Ms. Anderson noted that the Board receives information on any board actions from the FSMB and it can query NPDB when there is reason to do so. The Board also receives information regarding Medicare/Medicaid exclusions and the Board can take action based on a Veterans Administration action. Ms. Anderson further noted that state law requires hospitals to notify the Board about any actions against a practitioner's privileges.

Dr. Schottenstein stated that Report 18-3 also talks about "safe haven non-reporting." Dr. Schottenstein found this to be similar to the Board's non-disciplinary monitoring program for mental and physical illness. Dr. Schottenstein commented that the Board has not been inclined to go quite as far as the safe haven non-reporting concept as far as ceding oversight of licensees with mental health issues. Dr. Steinbergh stated that there are concerns about medical students and residents who are reluctant to seek the treatment they need due to the stigma. Dr. Schottenstein agreed and speculated that that may be why the FSMB is advocating the safe haven non-reporting concept. Dr. Schottenstein agreed with the Report's recommendation to put a statement on the board website and through board communications about the importance of physician health.

Ms. Anderson commented that the Board had sent a letter to the FSMB regarding Report 18-2, Prescription Drug Monitoring Programs (PDMP). Ms. Anderson stated that the FSMB accepted some of the Board's comments, but not all. Ms. Anderson noted that on comment the FSMB accepted was that, rather than requiring a subpoena or warrant, licensing agencies should be able to access PDMP's based only on an active investigation, which is the current status of the law in Ohio.

#### UPDATE ON LETTER TO FDA COMMISSIONER

Ms. Anderson stated that at last month's Policy Committee meeting, she was instructed to draft a letter to the Commissioner of the Food and Drug Administration (FDA) to offer the Board's assistance with developing policies that address prescribing without alienating physicians, and to work with physicians to address prescribing issues rather than being punitive. Ms. Anderson stated that the Policy Committee has recommended approval of the letter.

Dr. Steinbergh opined that the draft letter was very good.

**Dr. Steinbergh moved to approve the letter for signature by the Board President. Dr. Schottenstein seconded the motion.** All members voted aye. The motion carried.

#### REVISED DRAFT FOR RULE 4731-11-12 FAQ'S

**Dr. Saferin moved to approve the revised draft frequently asked questions (FAQ) for Rule 4731-11-12 FAQ's as submitted by the Policy Committee. Dr. Bechtel seconded the motion.** The motion carried.

#### LICENSURE COMMITTEE

##### LICENSURE APPLICATION REVIEWS

##### MARIA DEL MAR ROMERO LOPEZ, M.D.

Dr. Saferin stated that Dr. Romero Lopez is requesting graduate medical education (GME) equivalency, pertaining to Section 4731.09(A)(4)(b), Ohio Revised Code, which permits the Board to determine an equivalent to the GME training requirement of two years through the second-year level. Dr. Romero Lopez graduated from University of Valencia in Spain in 2008. Dr. Romero Lopez has held certification from the Educational Commission for Foreign Medical Graduates (ECFMG) since 2015 and it is valid indefinitely. Dr. Romero Lopez had a little over four-and-a-half years of post-graduate training (PGT) in Spain. Since July 2016, Dr. Romero Lopez has participated in a pediatric residency at William Beaumont Hospital in Royal Oak, Michigan, a PGT program accredited by the Accreditation Council for Graduate Medical Education (ACGME). As of March 1, 2018, Dr. Romero Lopez will be four months short of completing her pediatric residency in the United States through the third year level.

Dr. Saferin stated that the Licensure Committee has recommended approval of Dr. Romero Lopez's request.

**Dr. Saferin moved to approve Dr. Romero Lopez's request that the Board deem her training in Spain and twenty months of training in the United States to be equivalent to the twenty-four**

**months of graduate medical education through the second-year level of GME so that she may be granted a license. Dr. Steinbergh seconded the motion. A vote was taken:**

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

The motion carried.

VAHID ENTEZARI, M.D.

Dr. Saferin stated that Dr. Entezari is applying for a license and has requested a waiver of the United Stated Medical Licensing Examination (USMLE) ten-year rule, based on 4731-6-14(C)(3)(b)(ii), Ohio Administrative Code, which states the Board may grant a good-cause waiver to any applicant who “demonstrates good cause, as determined by the Board, for not having passed all three steps or levels within the ten-year period, and otherwise meets the requirements set forth in paragraph (C)(3)(a) of this rule.”

Dr. Saferin stated that Dr. Entezari passed Step 1 of the USMLE on the first attempt in 2006, Step 2 (CK) on the first attempt in 2010, Step 2 (CS) on the first attempt in 2009, and Step 3 on the second attempt in 2017. Dr. Entezari graduated from Iran University of Medical Sciences in 2003. Dr. Entezari successfully completed five years postgraduate training in Orthopedic Surgery at the Cleveland Clinic Foundation, accredited by the Accreditation Council for Graduate Medical Education (ACGME). Dr. Entezari indicated that he will graduate from Thomas Jefferson University’s Shoulder and Elbow fellowship in July 2018. Dr. Entezari has accepted a position as attending physician at the Cleveland Clinic.

Dr. Entezari explained as an international medical graduate, he took Step 1 of the USMLE while he was back home and he had difficulty getting into a surgical residency program. Dr. Entezari immigrated to the United States and completed a postdoctoral research fellowship program at Harvard Medical School in 2007. Dr. Entezari also completed a postgraduate master’s degree in human clinical and translational medicine at Harvard Medical School prior to starting his residency in 2012. Dr. Entezari has stated that the extension of his postgraduate education was the main reason it took him a month-and-a-half longer than the 10-year limit to successfully complete his USMLE sequence.

Dr. Saferin stated that the Licensure Committee has recommended approval of Dr. Entezari’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), Ohio Administrative Code, and accepting the examination sequence so that Dr. Entezari may be granted a license. Dr. Bechtel seconded the motion. A vote was taken:**

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

Dr. Schottenstein - aye  
Dr. Steinbergh - aye  
Mr. Giacalone - aye  
Mr. Gonidakis - aye  
Dr. Soin - aye  
Dr. Factora - aye  
Dr. Bechtel - aye

The motion carried.

#### RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL

Dr. Saferin stated that with the Medical Board's recent consolidation with the Ohio Respiratory Care Board, the Board is now tasked with approving respiratory care continuing education courses.

Dr. Saferin stated that the Ohio State University Wexner Medical Center is requesting approval of its presentation on palliative care, hospice care, and code status be approved for one contact hour of respiratory care continuing education on Ohio respiratory care law or professional ethics. A copy of the presentation has been provided for the Board's review.

Dr. Saferin stated that the Licensure Committee has recommended approval of the presentation.

**Dr. Saferin moved that the presentation be approved 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. Steinbergh seconded the motion.** All members voted aye. The motion carried.

Dr. Steinbergh asked if the Board will be required to approve respiratory care continuing education on a regular basis. Dr. Saferin stated that the Board approves continuing education for respiratory care; that function had been fulfilled by the Ohio Respiratory Care Board, but it now falls to the Medical Board since the board consolidation. Dr. Steinbergh recommended that the Respiratory Care Advisory Council, once it is constituted, make recommendations to the Board on continuing education.

Mr. Giacalone recommended that the rule requiring Board approval of respiratory care continuing education be changed so that any accredited course is approved. Ms. Anderson stated that the staff can explore that option.

#### PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE

##### REVIEW OF NEW DRUGS

##### LUTATHERA

Dr. Steinbergh stated that Lutathera is a new drug which went onto the market in January 2018. Lutathera is a radiopharmaceutical treatment for somatostatin receptor-positive gastroenteropancreatic neuroendocrine tumors (GEP-NET) and is given by IV infusion. Dr. Steinbergh stated that Lutathera falls into the anti-neoplastic category and the new radiopharmaceutical category of the physician assistant formulary.

Dr. Steinbergh stated that the Physician Assistant Policy Committee and the Physician Assistant/Scope of Practice Committee (PAPC) have recommended placing Lutathera into the May Not Prescribe category.

**Dr. Steinbergh moved to approve the recommendation of the PAPC and the Physician Assistant/Scope of Practice Committee. Dr. Saferin seconded the motion.** All members voted aye. The motion carried.

#### RESPIRATORY TRACT AGENTS

Dr. Steinbergh stated that the respiratory tract agents category of the physician assistant formulary now includes inhaled steroids, nasal steroids, and oral steroids in the May Prescribe category.

#### REVIEW OF RULES 4730-1-05, 4730-2-04, AND 4730-2-05

Ms. Debolt stated that several of the comments received on these draft rules had requested that the rules go beyond what the statute allows, which the Board cannot do. Ms. Debolt stated that the only substantive changes were to Rule 4730-04 and involved the definitions included in the Rule. Ms. Debolt stated that the Ohio Physician Assistant Association has concerns that part that a rule on one subject is going to be applied in a negative way toward physician assistants. Ms. Debolt stated that she is working to clarify that a rule that required on-site supervision during the first 500 hours of prescriptive authority for a physician assistant will only apply to that rule and that situation.

**Dr. Saferin moved to approve the proposed rules for filing with the Common Sense Initiative office. Dr. Rothermel seconded the motion.** All members voted aye. The motion carried.

#### PHYSICIAN ASSISTANT PRESCRIBING INQUIRY

Ms. Debolt stated that this topic was tabled by the Committee.

#### COMPLIANCE COMMITTEE

Dr. Steinbergh stated that on February 14, 2018, the Compliance Committee met with Malak S. Adib, M.D.; Christopher G. Alsager Lee, M.D.; Ernest B. de Bourbon, III, M.D.; Cyra Khalily, M.D.; Bradley T. Schwarz, D.O.; James I. Tak, M.D.; and Jerome B. Yokiell, 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 January 8 & 9, 2018.

#### TREATMENT PROVIDER APPLICATION

#### BETHESDA OAK ALCOHOL AND DRUG TREATMENT PROGRAM

Dr. Steinbergh stated that the Compliance Committee recommended approval of the application for a Certificate of Good Standing as a Treatment Provider for Impaired Practitioners from Bethesda Oak Alcohol and Drug Treatment Program.

**Dr. Schottenstein moved to approve the application for a Certificate of Good Standing as a Treatment Provider for Impaired Practitioners from Bethesda Oak Alcohol and Drug Treatment**

**Program. Dr. Bechtel seconded the motion.** All members voted aye. The motion carried.

## OPERATIONS REPORT

**Human Resources:** Mr. Groeber stated that the Board currently has two open positions, one for an investigator in the southern area, and one intermittent front desk position.

**Investigator Firearms:** Mr. Groeber stated that the Board staff is continuing to work with the union to implement the changes directed by the Board. Management has continued to work with the union to prepare for the return of firearms should the Board vote to rescind investigator authority to carry firearms at the April 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.

**Education and Outreach:** Mr. Groeber stated that the education and outreach efforts from Ms. Pollock have been robust. Mr. Groeber also stated that media inquiries have increased.

**Agency Operations:** Mr. Groeber stated that licensure statistics are up 6% over last year; Mr. Groeber noted that this figure will be inflated for the foreseeable future due to the consolidation with the Ohio Board of Dietetics and the Ohio Respiratory Care Board.

Mr. Groeber noted that open complaints have decreased slightly to about 1,200. Mr. Groeber observed that Board investigators were sent out on about 1,100 investigations in 2017, indicating the inputs are trending close to outputs.

Mr. Groeber stated that the times to license applicants continues to decrease. Last month, the Board issued 203 MD/DO license with no associated triage in an average of 21 days. Mr. Groeber commented that it is extraordinary to compare a 21-day issue time to the 100-day time of just three years ago. Due to a few outliers, the expedited licenses were issued in an average of 25 days.

**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 topics of the Retreat will include guidance on fines; a review of the open meetings law; how Board members can communicate between meetings; settlement agreement processes and ways to provide more information on agreements; Board meeting materials format and delivery timeframe; investigation and enforcement case breakdown and prioritization; and an update on continuing medical education (CME) and CE Broker.

**Board Member Surveys:** Mr. Groeber thanked the Board members who returned their surveys, stating that the surveys drove the topics for the May 10 Retreat. The surveys also indicated other common themes that Ms. Pollock is working on.

**Medical Board Audit:** Mr. Groeber stated that the Ohio Respiratory Care Board and the Ohio Board of Dietetics were required to have a close-out audit prior to ceasing operation and consolidating with the Medical Board. The Auditor's office will send the report directly to Board members, as well as staff. Mr. Groeber stated that the Board members will see some minor findings on the Respiratory Care Board audit.

**Advisory Councils:** Mr. Groeber stated that some late applications have been received for the Dietetics Advisory Council and the Respiratory Care Advisory Council as a result of the outreach to associations

that the Board asked for last month. Mr. Groeber stated that the Board will have the full set of applications for the Board to make selections at next month's meeting. Mr. Groeber stated that the first meetings of the councils should take place in May and June.

**Certificate to Recommend Medical Marijuana:** Mr. Groeber stated that the application for the Certificate to Recommend Medical Marijuana (CTR) will go live on the Board's website on Monday, March 19. Mr. Groeber stated that he has high hopes that it will be a good program in this budding industry. Mr. Groeber paused for a moment, then continued.

**Meet the Staff:** Mr. Groeber introduced Greg Porter and Danielle Blue of the Board's Hearing Unit.

Mr. Porter stated that he is the Board's Chief Hearing Examiner. Mr. Porter commented that the Board may not see the Hearing Examiners often, but it sees the Unit's product every month. In response to questions from Mr. Groeber, Mr. Porter stated that he will have been with the Board for 25 years in April and, as of some time ago, he has written more than 350 Report and Recommendations. Dr. Steinbergh commented that she began with the Board at about the same time as Mr. Porter and she has found that she agrees almost all of the time with Mr. Porter's reports.

Responding to questions from Mr. Groeber, Ms. Blue stated that she will have been with the Board for eight years in April and she has written about 200 Report and Recommendations.

Mr. Groeber stated that the quality of the Hearing Unit's proposed orders speaks for itself and that the Board is very seldom overturned in court when it accepts the proposed orders. Mr. Groeber stated that the Medical Board's Hearing Unit sets the bar for many licensing boards.

Mr. Groeber stated that Alana Volakis is not present, but she is the administrative support for the Hearing Unit. Mr. Groeber stated that Ms. Volakis does an excellent job, but she is unfortunately leaving the Board in two weeks to accept another position.

The Board members thanked the Hearing Unit for its work and offered a round of applause.

## PROBATIONARY REQUESTS

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

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

- To grant William Rudolph Bauer, M.D.'s request for approval of *Intensive Course in Controlled Substance Prescribing: Pain, Anxiety, Insomnia*, offered by Case Western Reserve University, to complete the controlled substance prescribing course requirement;
- To grant Danica Gineman, M.T.'s request for approval of the online course *Massage Ethics 101*, offered by Nirvana Massage CE National; and approval of the only course *Massage Ethics 201*, offered by Nirvana Massage CE National, to fulfill the professional ethics course requirement;

- To grant James A. Marsh, Jr., D.O.'s request approval of Clyde G. Barrett, D.O., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at 10 charts per month;
- To grant Richard Ray Mason, D.O.'s request for approval of *Personal and Professional Ethics in Medicine* course tailored by Donna Homenko, Ph.D., to fulfill the professional ethics course requirement;
- To grant Edward I. Nelson, M.D.'s request for approval of Sarah Hussain, M.D., to serve as the sleep specialist physician;
- To grant Florencia A. Riel-Guzman, M.D.'s request for approval to make her final appearance in the August 2018 Board meeting, with release to be effective after the Board's approval at the October 2018 meeting;
- To grant Sherif A. Salama, M.D.'s request for approval of *Intensive Course in Prescribing and Pharmacology of Controlled Drugs: Prescribing Issues Related to America's Opioid Crisis*, administered by the Medical Foundation of Alabama, to fulfill the controlled substance prescribing course requirement;
- To grant Siraj A. Siddiqui, M.D.'s request for approval to reduce the chart review requirement to ten charts per month;
- To grant Robert L. Thomas, III, 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; and approval of *Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*, administered by Case Western Reserve University, to fulfill the medical records course requirement;
- To grant Suman C. Vellanki, M.D.'s request for discontinuance of the drug log requirement; and
- To grant Jerome B. Yokiell, 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.

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

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

The motion carried.

REINSTATEMENT REQUEST

ROBERT R. DAIBER, M.D.

**Dr. Steinbergh moved that the request for the reinstatement of the license of Robert R. Daiber, M.D. be approved, effective immediately. Dr. Schottenstein seconded the motion. A vote was taken:**

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

The motion carried.

ADJOURN

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

Thereupon, at 2:45 p.m., the March 14, 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 March 14, 2018, as approved on April 11, 2018.

  
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 Robert P. Giacalone, President

  
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 Kim G. Rothermel, M.D., Secretary



State Medical Board of Ohio

**PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE MEETING**

**March 14, 2018**

**30 E. Broad St., Columbus, OH Room 345**

<p><b>Members:</b> Anita M. Steinbergh, D.O., Chair Robert P. Giacalone Andrew P. Schachat, M.D. Mark A. Bechtel, M.D.</p> <p>Other Members Present: Kim G. Rothermel, M.D., Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D.</p>	<p><b>Staff:</b> Sallie Debolt, Senior Counsel Cathy Hacker, Physician Assistant Program Administrator</p>
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Dr. Steinbergh called the meeting to order at 7:30 a.m.

#### **MINUTES REVIEW**

**Mr. Giacalone moved to approve the draft minutes of February 14, 2018, as written. Dr. Bechtel seconded the motion.** The motion carried.

#### **REVIEW OF NEW DRUGS**

##### **Lutathera**

Dr. Steinbergh stated that Lutathera is a new drug which is specific for the treatment of somatostatin receptor-positive gastroenteropancreatic neuroendocrine tumors (GEP-NET) the Physician Assistant Policy Committee (PAPC) has recommended classifying this drug in the physician assistant formulary as May Not Prescribe. Dr. Steinbergh commented that this was the first radiopharmaceutical drug that the members of the PAPC could recall that was for treatment purposes, as opposed to diagnostic purposes. Consequently, Lutathera is recommended for its own category on the formulary.

**Dr. Bechtel moved to recommend approval of the recommendations of the PAPC. Mr. Giacalone seconded the motion.** The motion carried.

#### **RESPIRATORY TRACT AGENTS**

Dr. Steinbergh stated that the recommendation last month from the Physician Assistant Policy Committee (PAPC) regarding respiratory tract agents has been clarified. The recommendation is to place steroidal respiratory tract agents, whether they are nasal, inhaled, or oral, into the May Prescribe category of the physician assistant formulary. Dr. Steinbergh commented that the placement of cortical steroids may also need to be revised in the future.

#### **REVIEW OF RULES**

**4730-1-05; 4730-2-04; and 4730-2-05**

Ms. Debolt stated that the proposed amendments to these rules are part of the ongoing effort to reflect the changes to the physician assistant laws passed by the legislature in 2015. Ms. Debolt noted that most of the public comments have come from the Ohio Physician Assistant Association (OPAA). Ms. Debolt commented that the OPAA continues to request that the Board expand the rule beyond the statute, which the Board cannot do. Ms. Debolt stated that the suggestions from the OPAA have been incorporated into the proposed amendments where possible.

**Dr. Bechtel moved to recommend approval of the proposed rules for filing with the Common Sense Initiative office. Mr. Giacalone seconded the motion.** The motion carried.

### **PHYSICIAN ASSISTANT PRESCRIBING INQUIRY**

Ms. Debolt stated that when a physician assistant first receives a valid prescribing number, they must have 500 hours on onsite supervision of their prescribing by the supervising physician. Under statute, however, the physician assistant does not have to fulfill the 500 hours of supervised prescribing requirement if they had practiced in another jurisdiction with at least 1,000 hours of prescribing.

Ms. Debolt explained that the Board has received an inquiry from a recently-licensed physician assistant asking if the Board could accept 500 hours of prescribing that took place in a Veterans Administration (VA) facility. Ms. Debolt stated that this situation is not specifically mentioned in the statute. Ms. Debolt stated that there are concerns because the Medical Board has no jurisdiction over physician assistants practicing in a VA facility and neither the physician assistant nor the supervising physician in a VA facility are required to be licensed in Ohio.

Dr. Steinbergh asked what qualifications a physician assistant must meet in order to practice in a VA facility. Ms. Debolt responded that a PA must have graduated from a program accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) and be certified by the National Commission for Certification of Physician Assistants (NCCPA). Ms. Debolt briefly reviewed some qualifications mentioned in employment advertisements for VA facilities.

The Committee discussed this topic thoroughly. Dr. Saferin asked if the Board could apply the same standard that it does to other physician assistants who come to Ohio after practicing in another state. Ms. Debolt replied that that applies to people applying for licensure in Ohio, whereas the physician assistant who is making this inquiry is already licensed in Ohio and has never practiced anywhere besides the VA system. Dr. Steinbergh asked how long this physician assistant had practiced with the VA. Ms. Debolt replied that she had practiced with the VA for no more than two months. Dr. Schachat suggested that applicants from the VA should meet the same requirements for prescribing authority as applicants from other states.

Mr. Giacalone suggested that the Committee ask Krishnamurthi Ramprasad, M.D., how physician assistant practice and supervision works in the VA system. Mr. Giacalone noted that Dr. Ramprasad is a former member of the Medical Board and currently practices with the VA. Dr. Steinbergh stated that she can contact Dr. Ramprasad with these questions.

### **PODIATRIST SCOPE OF PRACTICE INQUIRY**

Dr. Steinbergh stated that Ms. Debolt, at the Committee's direction last month, has drafted a letter in response to an inquiry from the Ohio Foot and Ankle Medical Association (OFAMA). OFAMA had inquired as to whether it is within the podiatrist scope of practice to biopsy a lesion above the ankle and below the knee. The draft letter states that a podiatrist may biopsy such lesions and that the Board will commence with the rule-making process to put that decision into rule.

Dr. Steinbergh commented that the letter reflects the Committee's discussion last month. However, Dr. Steinbergh continues to disagree with the letter. Dr. Steinbergh expressed concern about sending the letter granting permission for podiatrists to perform this function when there is a possibility that it will not go through the rule-making process. Dr. Steinbergh further opined that the letter expands the podiatrist scope of practice because superficial lesions above the ankle have nothing to do with the function of the foot or ankle. Dr. Steinbergh contrasted this with previous statements regarding bariatric medicine and wound care in that area, which can relate to the function of the foot or ankle. Dr. Steinbergh felt that the letter should describe the Committee's discussion and state that the Board will pursue the rule-making process on this topic.

Mr. Giacalone stated that beginning the rule-making process without addressing the matter in the letter will slow the process. Dr. Steinbergh opined that it would not slow down any significant medical process and that the letter is simply a response to an inquiry.

The Committee continued discussing this matter thoroughly. Ms. Debolt stated that there is a possibility that a rule would not make it through the rule-making process, perhaps due to objections from parties who feel that such lesions are in the dermatologic scope of practice and not the podiatric scope of practice. Ms. Debolt added that any rule must be approved by the Joint Committee on Agency Rule Review (JCARR), which may feel that the rule goes beyond the podiatric scope of practice as described by the statute. Ms. Debolt stated that if the rule does not complete the rule-making process, then those who had proceeded based on the Board's advice would suddenly have to stop.

Dr. Schachat read a portion of Section 4731.51, Ohio Revised Code:

The practice of podiatric medicine and surgery consists of the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot; and superficial lesions of the hand ...

Dr. Schachat stated that treatment of superficial lesions and ulcers do not fit this definition. Dr. Schachat stated that one problem is that this Committee has approved some things that go beyond the law, and now practitioners are asking for similar things. Dr. Schachat opined that OFAMA should withdraw their request to the Board and seek a change in the law for what they would like podiatrists to be able to do.

Dr. Bechtel commented that this is a difficult position because podiatrists have been allowed to participate in wound care above the ankle and below the knee and they have been active in wound care teams. Dr. Bechtel stated that it would make little sense to tell podiatrists that they can debride and treat wounds above the ankle but may not biopsy suspicious lesions in the same area. Dr. Bechtel added that lesions on the legs are often aggressive with high risk of metastasis. However, Dr. Bechtel also agreed with Dr. Schachat regarding the statutory definition of the podiatrist scope of practice.

Mr. Giacalone asked if the benefit of allowing podiatrists to perform these biopsies would outweigh the risks from a public health standpoint. The Committee briefly discussed the possible benefits of earlier detection of problems through biopsy and the appropriateness of potentially expanding the scope of practice beyond statute. The Committee also discussed the ability or willingness of patients to see another practitioner if a podiatrist cannot biopsy a suspicious lesion.

Mr. Giacalone opined that the letter should be sent to OFAMA as drafted.

**Mr. Giacalone moved to accept the letter as drafted.** No Committee member seconded the motion. The motion was lost for want of a second.

Dr. Bechtel opined that the full Board should decide this issue. Dr. Steinbergh agreed. Dr. Steinbergh, noting the Dr. Schachat must leave the Board meeting early, suggested that this topic be moved up on the Board agenda so that Dr. Schachat can participate in the discussion and vote. Mr. Giacalone agreed.

The meeting adjourned at 8:15 a.m.

Anita M. Steinbergh, D.O.  
Chair

blt

State Medical Board of Ohio

**LICENSURE COMMITTEE MEETING**  
**March 14<sup>th</sup>, 2018**  
**30 E. Broad St., Columbus, OH Room 318**

<b>Members:</b> Bruce R. Saferin, D.P.M. Kim G. Rothermel, M.D. Ronan M. Factora, M.D.  Member Absent: Richard Edgin, M.D.  Other Board members present: Michael Schottenstein, M.D.	<b>Staff:</b> 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 8:03 a.m.**

**MINUTES REVIEW**

**Dr. Factora moved to approve the draft minutes from February 14, 2018. Dr. Rothermel second the motion.** The motion carried.

**LICENSE APPLICATION REVIEW**

**Maria del Mar Romero Lopez, M.D.**

Dr. Saferin stated Maria del Mar Romero Lopez, M.D., had requested graduate medical education GME equivalency pertaining to ORC section 4731.09(A)4(b) which permits the Board to determine an equivalent to the GME training requirement of two years to the second-year level. Dr. Lopez graduated from the University of Valencia in Spain and holds a certificate from a ECFMG since 2015 invalid indefinitely. Dr. Lopez had four-and-a-half years of post-graduate PGT training in Spain. In July 2016, Dr. Lopez participated in a pediatric residency at William Beaumont Hospital in Royal Oak, Michigan, an ACGME accredited program. Dr. Saferin stated as of March 2018, Dr. Lopez will be four months short of completing her residency program in the United States on a third-year level.

**Dr. Rothermel moved to recommend approval of Dr. Lopez's request that the Board approve her training in Spain and 24 months of training in the United States equivalent to the 20 months of graduate medical education through the second-year level of GME so Dr. Lopez can be granted a license. Dr. Factora second the motion.**

Dr. Schottenstein inquired why Dr. Lopez didn't want to complete the four-month period. Mr. Alderson stated that it's an option offered to applicants who are three to four months away from obtaining a full license if they meet the criteria upon graduation. Mr. Alderson stated the Medical Board provides a verification form to applicants who chose to take this route so their training can be verified.

**The motion carried.**

**Vahid Entezari, M.D.**

Dr. Saferin stated that Vahid Entezari, M.D., was applying for licensure and had requested a waiver in the USMLE ten-year rule pertaining to ORC section 4731-6-14(C)(3)(b)(ii), which states the Board may grant a good cause waiver for any applicant that demonstrates good cause as determined by the board for not having passed all three steps or levels within a ten-year period. Dr. Entezari passed step one on the first attempt in 2006, step two (c)(k) on the first attempt in 2010, step 2 (c)(s) on the first attempt in 2009, and step three in 2017 on the second attempt. Dr. Entezari graduated from the University of Medical Sciences in 2003 and he successfully completed a five-year ACGME post graduate training in orthopedic surgery at Cleveland Clinic Foundation. Dr. Entezari shared that he would be graduating from the Thomas Jefferson University Shoulder and Elbow Fellowship in July 2018. Dr. Entezari accepted an attending position at Cleveland Clinic, Shoulder and Elbow division.

Dr. Saferin stated Dr. Entezari explained being an IMG, took step one when he was back home and found it difficult to get into surgical resident programs. Dr. Entezari immigrated to the United States and completed a post-doctoral research fellowship program at Harvard Medical School in 2007. Dr. Entezari also completed a post graduate master's degree in human clinical and transitional medicine at Harvard Medical School prior to starting his residency in 2012. Dr. Entezari advised the extension of his post grad education was the main reason it took him a month and the half -past the ten-year limit to successfully complete USMLE sequence.

**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 accepting the examination sequence to grant Dr. Entezari a medical license. Dr. Factora second the motion. The motion carried.**

Dr. Schottenstein stated he noticed with both applicants, in the questions section of the application, the questions have been cut off. Mr. Alderson inquired if Dr. Schottenstein would like to see those questions included in the packet that is presented to the Committee and the Board. Mr. Alderson stated that he wanted the demographics from applicants that were historically more pertinent to each question. Dr. Schottenstein stated that he would like to see all the questions but he is fine with what works best for the committee. Mr. Turek inquired if this information was in the pdf document that was sent out. Dr. Saferin stated it was cut out as well. Mr. Alderson stated that this information is a pdf of the application that was electronically submitted by the applicant. Mr. Alderson stated that historically within the Committee, they focused on residency and education, and not the additional questions unless there was something that needed to be looked at further.

Mr. Alderson stated he's happy to include the information going forward. Mr. Turek inquired if a "yes" answer to any of the additional questions would it have made it to this Committee first. Mr. Alderson stated no. Dr. Saferin stated that it would have been evaluated before it made its way to the Licensure Committee. Dr. Schottenstein inquired whether it is by default that all the questions are answered "no." Mr. Turek said it can be answered "yes" but the issue has been resolved. Mr. Alderson stated that there shouldn't be an issue on any affirmative answers if the issue was in front of the Licensure Committee. Dr. Saferin stated it is no different than approving licensure applicants and everything has been fully vetted.

**RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL**

Dr. Saferin stated the final item was an approval for a new Respiratory Care Continuing Course from Ohio State University Wexner Medical Center. The Medical Center is requesting its presentation on Palliative Care, Hospice Care and Code status 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. 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.**

Dr. Saferin inquired if the State Medical Board of Ohio is the correct entity that is required to approve respiratory care continuing education. Mr. Turek stated the Medical Board approves ethics courses for respiratory care licensees. Mr. Turek stated other courses could come along seeking approval. Dr. Saferin stated he knew with other license types, designated associations approved continuing education. Mr. DePew stated the rule does lay out other approved types of courses from different entities. Dr. Rothermel inquired if this was a current rule. Mr. DePew stated yes, it was a current rule that the Respiratory Care Board had brought over. Mr. Turek also stated that the respiratory association is required to approve majority of respiratory care continuing education courses.

**The motion carried.**

## **ADJOURN**

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

The meeting adjourned at 8:17 a.m.

Bruce R. Saferin, D.P.M.

Chair

rsb

State Medical Board of Ohio

**POLICY COMMITTEE MEETING**

**March 14, 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, unable to attend</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.</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 &amp; Government Affairs Tessie Pollock, Director of Communication Joan Wehrle, Education &amp; Outreach Program Manager Karen Morrison, Education &amp; Outreach Administrator Rebecca Marshall, Chief Enforcement Attorney</p>
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Dr. Soin called the meeting to order at 9:13 a.m.

### **MEETING MINUTES REVIEW**

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

**Mr. Giacalone moved to approve the Policy Committee minutes of the February 14, 2018 meeting. Dr. Schachat 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.

She reported that the Dietetics and Respiratory Care rules are essentially clean-up of the rules due to statute changes included in HB145 and the budget bill. These rules will be on the April agenda for the policy committee along with the Genetic Counselor rules.

### **One-bite draft rules and draft contract**

Ms. Anderson noted that the information was included in the agenda materials. The information had been circulated for comments. We received several comments including those from Dr. Schottenstein and Board staff. The rules were updated to reflect the comments. Ms. Anderson said we were able to clarify several things. Information begins on page 512.

Ms. Anderson said there are five proposed rules. The one-bite rules will be included in OAC Chapter 4731-16, the treatment provider rules.

#### **4731-16-17 Requirements for the one-bite program**

This rule lays out the overview of the program. Ms. Anderson said that there are some entities that are different in this process. The first is a *monitoring organization* which will contract with the Medical Board. She said a draft contract is also included in the materials. It is our hope to get it to DAS in the next week or two for the competitive bid process for that contract. The *one-bite treatment provider* is also a new definition and it is explained more in one of the other rules. Essentially the one-bite treatment provider must meet current treatment provider requirements but must also have additional expertise in their medical director and staff to provide care for the one-bite individuals. *Continuing care provider* is new and it is slightly different from the aftercare that we currently have. The notable difference is that it is more like counseling with licensed counselors are part of the continuing care part of the program. All of this was developed with OPHP and the group facilitated by Representative Grossman.

The monitoring organization will be taking one-bite reports and making eligibility determinations. It is anticipated that the Board will also receive reports as we do now and if the individual is eligible for one-bite the Board will refer them to the monitoring organization.

Ms. Anderson said that another thing that is different with this program is the length of treatment for the licensee who is eligible for one-bite. In the one-bite program, the length of treatment is determined by the treatment provider and the current minimum 28-day treatment is no longer required.

Ms. Anderson said that as we work this process and these rules the board may want to discuss the length of treatment and determine if we want to have two different standards or the same standard. She said that decision does not need to be made now but it is something to keep in mind as it is different.

#### **4731-16-18 Eligibility for the one-bite program**

Ms. Anderson said this rule explains the eligibility for the one-bite program. A lot of the language is set in the statute. A licensee could be eligible for the one-bite program if the individual is diagnosed with a substance use disorder; they are impaired; they have not previously participated in the one-bite program or the prior reporting exemption; and the individual has no prior disciplinary action by the Medical Board for substance abuse.

One of the things that is different is the other things that can go along with impairment. Criminal acts/convictions or mental/ physical health issues would be separated out and would follow a separate track so that it would not be folded into the impairment issue. So, the individual could be eligible for one-bite and get the confidential treatment but they could have a Board action for an out-of-state action or a criminal matter or some other non-impairment issue.

Dr. Steinbergh said that she understands bifurcating cases. She asked if the monitoring provider will be required to monitor the Medical Board's citations and disciplinary actions. She understands what will come to the board as far as complaints. But will the contract require the monitoring organization to monitor the Board's citations so a person in one-bite does not slip through? Does the provider have to report to the board if someone in one-bite has a new citation? Ms. Anderson said at this point the individual can proceed in the one-bite program and the monitoring organization would not be required

to report to the board that the individual is in the one-bite program. As a practical matter, she believed that the Board would find out that information anyway as the individual would tell us they are being monitored by the monitoring organization. She referred to a recent case where the doctor had an out-of-state action but was voluntarily participating in a monitoring program. So, the Board's action was based on the out-of-state action.

Ms. Anderson noted that the monitoring organization is not providing the Board the identify of patients but only statistical information.

Dr. Steinbergh still had concern that the Board would cite a licensee who is in the one-bite program for any issue and the monitoring organization would not be aware of the Board action.

Ms. Marshall said it will probably unfold in several ways depending on the situation. If the licensee is in the one-bite program for impairment and the Board subsequently cites the licensee for something else, it would be up to the licensee to decide if they want to affirmatively raise their impairment as mitigating evidence as part of the administrative hearing regarding the citation. For instance, if we had information that an individual had forged prescriptions and the Board cited them for illegal processing of drug documents, she would expect that the licensee would see that it was in their best interest to say that was all part of their impairment, waive their *Eastway* rights, and we find out about it together.

On the other hand, if a licensee was cited for minimal standards or sexual relations with a patient, the licensee may choose to keep the impairment treatment private and just deal with the separate issue. If the licensee raises their impairment issues in an administrative hearing, it no longer remains confidential. If the licensee decides to keep their impairment treatment private, then they take the chance on what discipline they get by not putting forth all the mitigating evidence.

Dr. Steinbergh summarized it as it being up to the licensee not the monitoring organization. Ms. Marshall said she believed that it would work well for the licensee and the Board as the intent of the one-bite program is to be able for the licensee to keep their impairment treatment confidential if they are doing everything right according to the program.

Mr. Giacalone asked why the Board couldn't send the citation letters to the monitoring organization as its public information. He said it would not take much to email them the information.

#### **4731-16-19 Monitoring organization for the one-bite program**

This rule has more information about the monitoring provider. Ms. Anderson said it is a bridge between the treatment provider and licensee and the Board. There are requirements for the organization to provide treatment provider information to the licensee and for getting the licensee to the evaluation. The licensee also enters into a monitoring agreement with the monitoring organization for a minimum of five years to do the drug screenings and AA meetings. The monitoring organization also provides statistical reports to the Board and education to licensees and treatment providers about the Medical Board's rules and statutes regarding the one-bite program. There are also requirements that they work with the Board on the educational materials so that there is a consistent message.

Ms. Anderson said that relapse must be reported to the Board. She said we are working out some details of issues of reporting non-compliance. Some non-compliance is relatively minor such a one-time missed call-in versus actual relapse. She said we will develop a list of non-compliance issues that absolutely need to be reported to the Board and we will work with the selected monitoring organization. Dr. Steinbergh said it was very important that the non-compliance issues be identified

and reported to the Board. Ms. Anderson indicated that any confirmed positive screen must be reported to the Board.

#### **4731-16-20 Treatment providers in the one-bite program**

Ms. Anderson said that this rule includes the additional requirements and qualifications such as having a medical director who is a board-certified addictionologist or addiction psychiatrist; having the medical director involved in the initial assessment, discharge planning, treatment planning, knowledge of prescribing medications for substance use disorder and interpretation of toxicology screens. We are also requiring a board-certified psychiatrist to be available, and group therapy that is supervised by a psychologist or a master's level chemical dependency counselor, social worker or therapist. Quarterly training regarding one-bite eligibility to all staff of the treatment provider is required. Also, the treatment provider will work closely with the monitoring organization and the treatment provider is also required to report statistics to the board regarding one-bite participants.

#### **4731-16-21 Continuing care for the one-bite program**

The continuing care provider is like an aftercare provider. The minimum time is six months but it is set out by the continuing care agreement by the treatment provider with input from the monitoring organization.

#### **Draft Monitoring Organization Contract**

Ms. Anderson said the proposed contract was also available for committee review. We are finalizing it and getting it set for the competitive process.

Ms. Anderson said we are seeking approval today to send the draft rules to interested parties for comment.

**Dr. Bechtel moved to approve sending the draft rules to interested parties for comment. Dr. Schachat seconded the motion. Motion carried.**

#### **Light based medical device and standards for surgery rules**

Mr. Smith reported that the initial draft rules for light based medical device and standards for surgery were circulated on January 17<sup>th</sup> with a two-week comment period. The Board received 47 written comments from individuals, groups of individuals, and individuals writing on behalf of organizations. A spreadsheet summarizing each of the comments was included in the agenda materials. Mr. Smith reported that the comments had been categorized into a list of subject areas. He noted that the numbers are approximate and many of the written comments received addressed more than one subject area.

Mr. Smith reviewed the following with the committee:

1. Seven comments were generally supportive of the rules with no suggested changes.
2. Three comments raised questions and expressed concerns about the rules' lack of regulation of nurse practitioners and the interplay of the rules with Nursing Board regulation of nurse practitioners' application of light based medical devices.

3. Two comments were concerned with the definition of phototherapy for the treatment of hyperbilirubinemia in neonates. Two other comments expressed concern that the definition was too narrow for cosmetic procedures not regulated in these rules.
4. Five comments sought a definition or clarification of the term “vascular laser”.
5. Seven comments supported expanding the application of non-ablative light based medical devices beyond vascular lasers for dermatologic procedures and hair removal. Five of these seven comments supported expanding delegation to fractionated lasers often used for cosmetic procedures.
6. Four comments opposed expanding delegation of light based medical devices beyond hair removal to vascular lasers, or did not support physician’s delegating the application of light based medical devices at all.

Comments 7 through 10 focused on the difference in delegation between the different professions.

7. Two comments favored delegating light based medical device procedures to only physician assistants due to their more extensive education and training than that of other delegates. Two other comments were in favor of delegation to physician assistants and nurses, but not cosmetic therapists.
8. Three comments advocated delegating all light based medical device procedures, including ablative procedures, to physician assistants.

Mr. Smith pointed out that the first comment on the spreadsheet-Adamson-is a summary of what the OAPA believes about that topic. They believe PAs are authorized to delegate any service, including use of ablative and non-ablative light based medical devices if it is within the scope of their physician’s normal practice.

9. Three comments encouraged extending delegation of phototherapy and photodynamic therapy to cosmetic therapists.

On page 566 of the spreadsheet, the President of the Cosmetic Therapy Association of Ohio summarized the details of that comment.

10. Eight comments favored expanding off-site physician supervision beyond cosmetic therapists to all other delegates.

Comments 11 and 12 dealt with the evaluation of the patient. The proposed rules require an evaluation before and after the application of a specific type of treatment.

11. Nine comments did not agree with the requirements that the physician personally see patients before and after the initial application of a light based medical device, and sought to eliminate the initial evaluation, the follow-up evaluation, or both.
12. One comment requested clarification on whether the phrase “the physician has seen and personally evaluated the patient” allows for video or picture review by the physician instead of the physician being in the same room as the patient.

Several comments were received seeking changes to the rules regarding phototherapy for the treatment of hyperbilirubinemia in neonates.

13. Five comments sought various changes to the rule's delegation of phototherapy in the treatment of hyperbilirubinemia in neonates.

Summaries of the comments can be found under Dr. Randy Miller on page 566, and the comments by Dr. Sequin.

14. One comment advocated extending the delegation of light based medical devices to tattoo removal, and allowing non-medical technicians to perform these procedures along with laser hair removal, skin rejuvenation, and acne treatment.

Mr. Smith said this comment was received from a representative of a laser company. Mr. Smith said he received additional comments yesterday from other laser companies checking on the updates and timeline for the rules.

15. One comment argued that the rules' limited delegation of non-ablative dermatologic procedures was too restrictive and could possibly be in violation of antitrust laws.

Page 564 from John Irwin lays out the summary of the argument. Mr. Smith brought the committee's attention to the comments of Eric Plinke on page 567 questioning the validity of the statement that the application of light based medical devices to the human body is the practice of medicine in light of 4731.34 and asking how the regulation of light based medical devices for aesthetic purposes is within the Board's rule making authority. Both comments were from attorneys.

Comments 16 and 17 address training issues.

16. Four comments had questions about or suggested changes to the new training requirements for delegates applying light based medical devices.
17. One comments inquired into whether delegates who had been lawfully practicing laser hair removal could be exempted from the rule's new education and training requirements. One other comment suggested a grandfather clause for practitioners who had been performing photodynamic therapy for years without regulation.

This comment related to the standards for surgery rule.

18. One comment suggested changing the surgery rule's delegation of aspects of postoperative care to aspects of intra-and perioperative care, as well as inserting physician assistants as a separate and distinct provider of this care from allied healthcare personnel

Mr. Smith said he also presented the initial draft of the rules to the Physician Assistant Policy Committee in February. They had some good comments asking if the treatment of hyperbilirubinemia in neonates could be done by protocol. A second comment from PAPC encouraged adding continuing education to the training requirements to assure the practitioner's knowledge is current and to guard against a practitioner who resumes practice after an extensive break from practice. This idea is to help assure the practitioner keeps up with the changes in technology.

Mr. Smith reported that the initial draft rules were circulated to two physician experts and their responses mirror the diversity of the comments received. Dr. Georgeann Poulos opposed the increased delegation for vascular lasers for non-ablative dermatologic procedures. While Dr. Stephen

Smith advocated broadening the language of the rules to include all nonablative laser and light therapies. Both experts supported the increased training requirements for delegates.

Mr. Smith said that Dr Bechtel worked with him on determining which of the comments would improve the rule. Starting on page 548 of the materials, some changes were made to the rule which are described below:

**18-01 definitions.**

1. In response to comments in #4 of the Comment List, added definition of vascular laser in 4731-18-01(K): “Vascular laser” means lasers and intense pulsed light apparatuses whose primary cutaneous target structures are telangiectasia, venulectasia, and superficial cutaneous vascular structures. In general, these lasers have wavelengths that correspond to the hemoglobin absorption spectrum.
2. In response to comments in #3 of the Comment List, clarified definition of phototherapy by separating phototherapy in the treatment of hyperbilirubinemia in neonates from phototherapy for dermatologic procedures in 4731-18-01(B). Also consolidated definition of phototherapy device within the definition of phototherapy.  

(B) “Phototherapy” means the following:

  - (1) For paragraph (A) of rule 4731-18-04 of the Administrative Code, phototherapy means the application of light for the treatment of hyperbilirubinemia in neonates.
  - (2) For paragraphs (B) and (C) of rule 4731-18-04 of the Administrative Code, phototherapy means the application of ultraviolet light for the treatment of psoriasis and similar skin diseases. This application can occur with any device cleared or approved by the United States food and drug administration for the indicated use that can be made to produce irradiation with broadband ultraviolet B (290-320nm), narrowband ultraviolet B (311-313 nm), excimer light based (308nm), ultraviolet A1 (340-400nm), or UVA (320-400nm) plus oral psoralen called PUVA.
3. In response to comments in #13 of the Comment List, tailored the requirements in 4731-18-04(A) for delegates applying phototherapy in the treatment of hyperbilirubinemia in neonates to follow the standard of care practiced in hospitals by aligning the requirements with hospital policies and protocols.  

(A) A physician may delegate to any appropriate person the application of light based medical devices cleared or approved by the United States food and drug administration for phototherapy in treatment of hyperbilirubinemia in neonates only if all the following conditions are met

  - (1) The use of the light based medical device for this treatment is within the physician’s normal course of practice and expertise.
  - (2) The delegation and application of light based medical devices for phototherapy for this treatment is performed pursuant to hospital rules, regulations, policies, and protocols.
4. In response to comments in #11 and #12 of the Comment List, amended the language in the physician evaluation provisions in 4731-18-03(A)(3) and (4) and (B)(3) and (4) to: clarify that

the requirements for physician evaluation are per type of procedure delegated and applied rather than per procedure or just once per patient; and to make the rule clearer that the physician evaluation provisions require that the physician see and evaluate the patient in person for the initial evaluation and also for the follow-up to the initial application rather than see and evaluate by video or photograph.

For delegation of vascular lasers for non-ablative dermatologic procedures, proposed amended Rule 4731-18-03(A)(3) and (4) states:

(3) The physician has seen and evaluated the patient in person to determine whether the proposed application of the specific vascular laser is appropriate;

(4) The physician has seen and evaluated the patient in person following the initial application of the specific vascular laser, but prior to any continuation of treatment in order to determine that the patient responded well to the initial application of the specific vascular laser;

For delegation of light based medical devices for hair removal, proposed amended Rule 4731-18-03(B)(3) and (4) states:

(3) The physician has seen and ~~personally~~ evaluated the patient in person to determine whether the proposed application of the specific light based medical device is appropriate; ~~and,~~

(4) The physician has seen and ~~personally~~ evaluated the patient in person following the initial application of the specific light based medical device, but prior to any continuation of treatment in order to determine that the patient responded well to that initial application of the specific light based medical device; ~~and,~~

5. In response to comments in #16 of the Comment List, added language in 4731-18-03(A)(6) and (B)(6) to clarify the requirements for education and training. In response to concerns that only inadequate manufacturer generated education would be taught, amended the rule to specify the list of topics that must be included in 8 hours of basic education. Also, spelled out that training must be done per type of procedure rather than per delegating physician in situations where a delegate has multiple delegating physicians. Also, amended rule to explain that the physician involved in the clinical procedure training does not need to be a delegating physician, but must be a physician who performs the type of procedure delegated in the normal course of their practice and expertise. Lastly, amended the rule to add documentation and retention of documentation responsibilities for each delegating physician.

Proposed amended Rule 4731-18-03(A)(6)(a)-(d) for vascular lasers states:

(6) The person to whom the delegation is made has received adequate education and training to provide the level of skill and care required including;

(a) Eight (8) hours of basic education that must include the following topics: light based procedure physics, tissue interaction in light based procedures, light based procedure safety including use of proper safety equipment, clinical application of light based procedures, pre and post-operative care of light based procedure patients, and reporting of adverse events;

(b) Observation of fifteen (15) procedures for each specific type of vascular laser non-ablative procedure delegated. The procedures observed must be

performed by a physician for whom the use of this specific vascular laser procedure is within the physician's normal course of practice and expertise; and

- (c) Performance of twenty (20) procedures under the direct physical oversight of the physician on each specific type of vascular laser non-ablative procedure delegated. The physician overseeing the performance of these procedures must use this specific vascular laser procedure within the physician's normal course of practice and expertise;
- (d) Satisfactory completion of training shall be documented and retained by each physician delegating and the delegate. The education requirement in (a) must only be completed once by the delegate regardless of the number of types of specific vascular laser procedures delegated and the number of delegating physicians. The training requirements in (b) and (c) must be completed by the delegate once for each specific type of vascular laser procedure delegated regardless of the number of delegating physicians;

Proposed amended Rule 4731-18-03(B)(6)(a)-(d) states:

- 6) The person to whom the delegation is made has received adequate education and training to provide the level of skill and care required including:
  - (a) Eight (8) hours of basic education that must include the following topics: light based procedure physics, tissue interaction in light based procedures, light based procedure safety including use of proper safety equipment, clinical application of light based procedures, pre and post-operative care of light based procedure patients, and reporting of adverse events;
  - (b) Observation of fifteen (15) procedures for each specific type of light based medical device procedure for hair removal delegated. The procedures observed must be performed by a physician for whom the use of this specific light based medical device procedure for hair removal is within the physician's normal course of practice and expertise; and
  - (c) Performance of twenty (20) procedures under the direct physical oversight of the physician on each specific type of light based medical device procedure for hair removal delegated. The physician overseeing the performance of these procedures must use this specific light based medical device procedure for hair removal within the physician's normal course of practice and expertise;
  - (d) Satisfactory completion of training shall be documented and retained by each physician delegating and the delegate. The education requirement in (a) must only be completed once by the delegate regardless of the number of types of specific light based medical device procedures for hair removal delegated and the number of delegating physicians. The training requirements of (b) and (c) must be completed by the delegate once for each specific type of light based medical device procedure for hair removal delegated regardless of the number of delegating physicians;

6. In response to comments in #17 of the Comment List, added grandfather clause for the education and training requirements for delegates of light based medical devices for hair removal on a type of procedure basis in 4731-18-03(B)(6):

(e) Delegates who, prior to the effective date of this rule, have been applying a specific type of light based medical device procedure for hair removal for at least two (2) years through a lawful delegation by a physician, shall be exempted from the education and training requirements of (a), (b), and (c) for that type of procedure provided that they obtain a written certification from one of their current delegating physicians stating that the delegate has received sufficient education and training to competently apply that type of light based medical device procedure. This written certification must be completed no later than sixty (60) days after the effective date of this provision, and a copy of the certification shall be retained by each delegating physician and each delegate.

Mr. Smith also noted that the 4731-25-08 Standards for Surgery had been moved from current Chapter 18-01 to chapter 25 (surgery chapter).

Dr. Bechtel said that it is important to note that Ohio and New Jersey have the most restrictions regarding delegation of lasers. It is much broader delegation in 48 states. He said the rules are driven by patient safety. He also said that the observation numbers required are not arbitrary but were based on conversations with those who are training physicians in laser procedures.

He also believed it critical that the physician evaluate the patient before the first laser treatment to be sure that it is appropriate for the patient and that after the first treatment the doctor examines the patient to be sure there were no complications. He believed that the rules included patient safety safeguards by requiring robust education, personal evaluations of the patient by the physician before and after the first treatment, and that the laser treatments be performed with the physician on site, except for laser hair removal.

**Dr. Schachat moved to approve the proposed rules as amended and to recommend the Board approve the proposed rules for filing with the Common Sense Initiative (CSI) for an antitrust review. Mr. Giacalone seconded the motion. Motion carried.**

## **Legislative Review**

Mr. LaCross noted that the legislative report for Board members has been retooled. It will be sent to the Board the Thursday or Friday before the Board meeting.

Mr. LaCross said there are four bills we are currently watching.

### **Senate Bill 259, Physician Assistant Regulation**

The legislation was introduced by Senator Hackett and is currently assigned to the Senate Health Committee. The first hearing was yesterday. The bill is supported by the Ohio Association of Physician Assistants (OAPA) and generally proposes to revise the laws regulating the practice of physician assistants. The Board is working with the OAPA on this bill.

- Removes requirement for physician assistant with out of state prescriptive authority to hold that authority for at least three years prior to obtaining prescriptive authority in Ohio, if the individual does not hold a master's (4730.11).
- Increases the number of physician assistants a physician can supervise at any one time from 3 to 5 (4730.21)
- Removes PA formulary from statute and allows the PA to prescribe according to their supervision agreement and within the scope of practice of the supervising physician (4730.203)
- In a health care facility, the PA may perform rapid intubation and procedural sedation, order rapid intubation and procedural sedation, and order drugs needed to perform rapid intubation and procedural sedation (4730.201) The Ohio Hospital Association and the Anesthesiologist Association are working with the OAPA on this issue.

He indicated that the next steps include:

- An amendment proposed by the Board regarding supervision agreements which would allow on-site filing of the supervision agreement and CME style auditing. This change would require the Board to approve a reformatted supervision agreement.

Mr. LaCross reported that the implementation of the OH-ID program in late January caused difficulty with renewing PA supervision agreements by the January 31, 2018 deadline, so the deadline was pushed to mid-February and then again extended until August 30, 2018. The proposed change would make it much easier for hospitals and licensees to keep PA supervision agreements up-to-date.

- An amendment proposed by the Board on PAPC structure and operation; allowing for telecommunication of meetings for more flexibility in scheduling meetings. Since the formulary will be removed from the statute, the PAPC can help with rules review.
- An amendment proposed by the Board regarding active military, and VA licensure exemption which was explained by Ms. Debolt.

Ms. Debolt reported that currently Physician Assistants with prescriptive authority must have 500 hours of on-site supervision of their prescriptive decisions, but the 500 hour requirement does not apply to a newly licensed PA if they had already worked in another state and had 1000 hours of prescriptive experience. However, it does not currently count if you were a PA who worked in the military, veteran's administration facilities, or public health services facilities. So, we are seeking an amendment that exempts PAs with prescriptive authority in the military, VA, or public health services from the 500 hour on-site requirement if they have 1000 hours of prescriptive experience.

Dr. Steinbergh wanted to comment on process, since the legislation was discussed in the PA/Scope of Practice Committee earlier this morning, and we are now discussing it in Policy Committee. She thinks it should be one discussion rather than multiple conversations on the same issue. Mr. LaCross said that we will try to coordinate conversations on shared topics.

Dr. Soin said there is some concern regarding the scope expansion allowing the physician assistant to do rapid intubation included in the bill.

## House Bill 286, Palliative Care Programs

Mr. LaCross thanked the Board members for their comments regarding this issue. He said that Senator Burke had asked the Medical Board and the Pharmacy Board to look at the legislation before it was moved to committee for two reasons. The bill expanded the definition of palliative care to allow more people in the program and included a pain clinic exemption for hospice programs providing palliative care. The legislation was introduced by Representative LaTourette and is currently in the Senate Health, Human Services and Medicaid Committee on its second hearing.

The bill generally proposes to create the Palliative Care and Quality of Life Interdisciplinary Council, to establish the Palliative Care Consumer and Professional Information and Education Program, and to require health care facilities to identify patients and residents who could benefit from palliative care.

- The definition of palliative care is broadened to “serious illness,” to be provided at any stage (3712.01)
- Creates the Palliative Care Interdisciplinary Council and the Professional Information and Education Program (3701.36)
- The substitute bill proposes to amend the entities that can be exempted from the pain clinic law (4731.054) by allowing inpatient palliative care programs operated by a hospice to be exempted.

Mr. LaCross thanked Dr. Factora for his help. He also reported that the Medical Board agreed to all changes brought forth by Rep. LaTourette’s office. He has a final version of the bill that he will share with the Board members today.

Dr. Schachat asked about the definition of palliative care now including serious illness, so how is “serious illness” defined.

Mr. LaCross said we had concerns regarding the opioid prescribing issue as to which patients we would catch and who we would not catch. We were concerned if we would get the data regarding anyone in the outpatient setting. But the exemption would be only for inpatient palliative care programs operated by a hospice.

Dr. Steinbergh asked if life threatening was dropped. Mr. LaCross said he will verify. Mr. Groeber asked where do you draw the line between serious and life threatening. Dr. Schachat said most things are not life-threatening but he thinks “serious illness” needs to be defined. Dr. Schottenstein remarked that the palliative care definition can be expanded so much that it is just care.

Mr. Groeber reported that the change was made because a lot of non-health care professionals had the impression that palliative care was just hospice with another name. But others wanted to expand palliative care so people could get this care earlier in their illness and not just a month or so before the patient goes to hospice.

Dr. Factora said that hospice eligibility is defined as six-month life expectancy, but palliative medicine can be activated anytime before that. So, hospice patients can be palliative care patients, but not all palliative care patients are hospice patients. His impression was to allow patients greater access to palliative care before they enter hospice because the problem is that hospice care is utilized way too late. In many cases hospice is used just two weeks before the time of death. This change could allow a patient to enter care when they have a serious illness which can lead to life threatening illness to eventually a terminal diagnosis. Palliative care is going to deal with certain diagnoses, but you want a person to enter palliative care earlier in their disease progression so they do not have to suffer

needlessly. Dr. Factora believed that the palliative care medicine physician would determine what a serious illness was.

Mr. LaCross reported that the definition in the -7 version of the bill defines palliative care as:

*Palliative care means specialized care for a patient of any age who has been diagnosed with a serious or life-threatening illness that is provided care at any stage of the illness by an interdisciplinary team working in consultation with health care professionals including those who may be seeking to cure the illness and needs to do all of the following. . .*

Discussion was held regarding exemptions included in the Board's prescribing rules and it was noted that palliative care is not exempted. It was noted that the Board did not want expanded palliative care services to be a gateway to increased opioid use.

It was noted that minimal standards of care apply to all patients.

Dr. Steinbergh asked if we had a definition for palliative care physician, as we do for pain management.

Dr. Schachat asked what are some of things that a palliative care physician could do that they can't do now.

Dr. Factora said that the doctor can monitor the symptom management for the disease progression, such as late stage lung cancer or congestive heart failure. Many time the symptoms may be managed by the primary care physician but the symptoms may evolve and may require closer monitoring and adjustments for symptom management. It may be superseded by other clinical disease processes which the primary care doctor still must take care of. Often the symptoms may be put aside and unaddressed until the time they really become the dominant feature of that person's clinical situation. Palliative care doctors really are meant to address these symptoms specifically.

Dr. Factora said he believes the legislation allows the introduction of appropriate patients into a pathway that is really focused on symptom management. He doesn't think it opens Pandora's box and allows a rate of prescribing freedom for any controlled substance relative to any other discipline.

Dr. Sojin commented that we should be vigilant and that there are guardrails in place for patient safety.

Mr. LaCross said he would keep the board updated regarding the progress of this legislation.

### **House Bill 479, Pharmacy Drug Transparency**

Mr. LaCross said Mr. Giacalone and Dr. Schachat wanted to put this bill on the board's radar. It is supported by the pharmacist's association.

Claw back is used by a pharmacy benefits manager to overinflate the cost of prescription medications at the point of sale transaction. Claw back forces the pharmacies to charge the customers more than the cash price, then the pharmacy benefit manager claws back the money that the customer was overcharged.

Gag restrictions is another practice by a pharmacy benefits manager. So, on top of overinflating the price of the medication, a contractual gag prohibits a pharmacy employee from telling the patient that the medication is cheaper if the patient pays in cash rather than using their prescription benefit.

Mr. LaCross said he wanted to bring this bill to the Board for their information. Mr. LaCross will provide some additional information received from the Pharmacy Association.

Mr. Giacalone was concerned about the gag order as it unacceptable and may interfere with patient care if the patient can't obtain their medication.

### **HB 541 Health Services Volunteers**

Mr. LaCross reported that this bill would allow out-of-state doctors who hold a full license in another state to come to Ohio and work in a RAM clinic for seven days without remuneration but without getting any type of Ohio license. So basically, they treat patients and leave the state.

Mr. LaCross said that language will be added to the legislation: *the person must hold a valid, full and unrestricted license in another state and will be deemed as having a temporary license for a charitable event that will last not more than seven days subject to the authority of the State Medical Board and the provisions of Section 4731. ORC.*

He also said the RAM clinic would have to have information about the providers on file.

### **Adjourn**

**Due to time constraints, Dr. Soin reported that the remainder of the policy committee agenda items will be discussed by full the Board later today.**

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

The meeting adjourned at 10:36 a.m.

jkw

State Medical Board of Ohio

**FINANCE COMMITTEE MEETING**  
**March 14, 2018**  
**30 E. Broad St., Columbus, OH Room 318**

<b>Members:</b> Michael Schottenstein, M.D., Chair Bruce R. Saferin, D.P.M. Michael L. Gonidakis  Member Absent: Richard Edgin, M.D.	<b>Staff:</b> A.J. Groeber, Executive Director Susan Loe, Director of Fiscal and Human Resources Tessie Pollock, Director of Communications
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Dr. Schottenstein called the meeting to order at 8:37 a.m.

**MINUTES REVIEW**

**Dr. Saferin moved to approve Finance Committee February 14, 2018 meeting minutes, as amended. Mr. Gonidakis seconded the motion.** The motion carried.

**FISCAL UPDATE**

Dr. Schottenstein stated that the Board's revenue for January 2018 was \$1,126,708, approximately the same as the previous month and about a 5% increase from January 2016. Revenue over the two-year cycle showed a year-to-date decrease of 12%, an improvement over the 16% year-to-date decrease of the previous month and the 25% year-to-date decrease of two months prior. The Board's year-to-date revenue for the fiscal year is roughly \$4,900,000, compared to \$5,600,000 at this point in Fiscal Year 2016. Dr. Schottenstein stated that January 2018 showed a net revenue gain of approximately \$232,000, substantial improvement over the net gain in December 2017 of about \$182,000 and the net loss in November 2017 of about \$74,000.

Dr. Schottenstein continued that the Board's cash balance is \$3,575,156, an increase of about 15% compared to January 2017. Dr. Schottenstein stated that the strong January 2018 figures are partly a reflection of the January 1 deadline for physician license renewals. Dr. Schottenstein noted that January 31 was the deadline for renewal of allied profession licenses other than massage therapists, and that will be reflected in the February 2018 figures.

Dr. Schottenstein stated that the Board has received its first revenue resulting from the January consolidation with the Ohio Board of Dietetics and the Ohio Respiratory Care Board. Dr. Schottenstein noted that these professionals will renew their licenses during the last quarter of Fiscal Year 2018 and the revenue from those renewals could be about \$1,000,000; since the licensees renew biennially, this translates to approximately \$500,000 of additional revenue annually. Dr. Schottenstein stated that the Medical Board also absorbed a total of three staff members from those two boards whose combined salaries are approximately \$300,000. Subtracting the additional payroll from the additional revenue shows that the Medical Board will net approximately \$200,000 annually as a result of the board consolidation.

Dr. Schottenstein stated that another renewal cycle for physician licenses and massage therapy licenses will end in March 2018 and the revenue from those renewals should be reflected in the March statistics. Dr. Schottenstein was therefore hopeful that the last two quarters of Fiscal Year 2018 will make up for the first two quarters.

Dr. Schottenstein stated that total expenditures for January 2018 were \$894,976, compared to January 2017 expenditures of \$735,201. Dr. Schottenstein stated that the increased expenditures were substantially a function of payroll increases as vacant positions have been filled. The Board has had a 3.5% increase in expenditures year-to-date.

Dr. Schottenstein stated that the Board has finally been billed for rent for the first two quarters of the fiscal year, which amounts to \$85,000 per quarter. The rent for the first quarter was paid in January 2018 and is reflected in the January figures. The rent for the second quarter was paid in February.

Dr. Schottenstein stated that the use of fine money for education and safety initiatives is essentially unchanged from last month.

## **ACCOUNTS RECEIVABLE**

Dr. Schottenstein stated that the Board has collected \$4,000 of fine payments since the last Board meeting. The Board has collected a total \$197,501 in fines, \$163,501 of that in Fiscal Year 2018. There is \$155,499 of imposed fines that is still unpaid. \$3,500 has been collected from administrative fines related to continuing medical education (CME).

Mr. Groeber noted that according to documentation provided to the Committee, three licensees are significantly late in paying their fines. Ms. Loe stated that those cases are currently with the Special Counsel and the Attorney General's office has agreed to contact the Special Counsel regarding the status of those cases.

Mr. Groeber observed that the Board received one payment of \$188 towards a fine. Mr. Groeber stated that this is the result of a garnishment of a respondent's state tax refund, a first for the Board.

Dr. Saferin asked if the Board could hypothetically forgive a debt that someone owes the Board due to a fine. Ms. Loe stated that only the Attorney General's office can forgive a debt. Mr. Gonidakis added that the Attorney General's office can write off a debt only with the permission of the client; in these cases, the client is the Medical Board. Mr. Groeber questioned whether the Board would want to spend more resources pursuing a case when it is apparent that the licensee will not or cannot pay the fine and they are willing to permanently surrender their license.

The Committee continued to discuss this issue thoroughly, including the need for a new order from the Board vacating the fine. Dr. Schottenstein expressed concern that forgiving a debt could establish a precedent and indicate to the community that one simply needs to wait out the Board in order to have a fine vacated. Mr. Groeber stated that because a vacated fine would be predicated on a permanent surrender, this would only set a precedent in cases where the licensee has no intention of practicing in Ohio. Mr. Groeber added that it is also important to him whether the licensee is represented by counsel, reasoning that if the person can pay an attorney then they can pay the Board.

## **BIENNIAL AUDIT**

Dr. Schottenstein stated that the Board is currently undergoing a routine audit. Dr. Schottenstein noted that all state agencies have biennial audits by the auditor's office and there are no particular concerns. The results of the audit will be sent to the Board members directly from the Auditor's office. In response to a question from Mr. Gonidakis, Ms. Loe stated that the Board pays about \$15,000 for the audit.

Ms. Loe stated that the Board members will also receive an audit report about the Ohio Respiratory Care Board, which consolidated with the Medical Board in January 2018. Ms. Loe stated that she has seen a draft of the Respiratory Care Board audit and it listed some minor deficiencies.

## COMMUNICATIONS UPDATE

Ms. Pollock stated that Communications has been busier than usual with a large number of presentations and opportunities for engagement. Ms. Pollock stated that the Board is receiving multiple media calls per day from such outlets as *USA Today*. Also, Mr. Giacalone was interviewed by WLWT-TV in Cincinnati and the interview is expected to air next week. Ms. Pollock stated that multiple media outlets have been calling about medical marijuana.

Ms. Pollock stated that Take Charge Ohio is a multi-agency prescriber education campaign that, among other things, engages with local agencies to continue the conversation about appropriate controlled substance prescribing.

Ms. Pollock stated that the Board continues to produce educational videos. The Board is also anticipating development of an app that would allow physicians with unrestricted licenses to apply for a Certificate to Recommend Medical Marijuana (CTR). Dr. Saferin commented that podiatrists are unable to apply for the CTR, despite the fact that they are identified as physicians by Section 4731, Ohio Revised Code. Mr. Groeber agreed that it was surprising that podiatrists were excluded from the legislation authorizing the CTR since some of the conditions which can legally be treated with medical marijuana affect the foot.

The Committee watched the video on applying for a CTR. Mr. Groeber stated that physicians will be able to apply for the CTR beginning March 19 and the Board can approve applications as early as the April 11 Board meeting. Mr. Groeber stated that patients with a recommendation from a physician with a valid CTR will be able to purchase medical marijuana from an approved dispensary starting in September 2018. Mr. Groeber briefly outlined details of how the medical marijuana program will work.

In response to a question from Mr. Gonidakis, Mr. Groeber stated that preliminary surveys showed that about 250 physicians in Ohio are willing and able to obtain a CTR and provide that service. In response to a question from Dr. Schottenstein, Mr. Groeber stated that the Ohio Automated Rx Reporting System (OARRS) will indicate whether a patient has a medical marijuana recommendation from a physician.

Dr. Schottenstein commented that the YouTube video on the history of the State Medical Board of Ohio looks great.

## TRAVEL AUTHORIZATION

Dr. Schottenstein stated that the National Association of Boards of Pharmacy (NABP) has invited Mr. Giacalone to speak at their annual meeting to discuss medication assisted treatment.

**Dr. Saferin moved to approve Mr. Giacalone to attend the 2018 annual meeting of the NABP, which will be held May 6, 2018 in Denver Colorado, and that incidental expenses not covered by the NABP will be paid by the Medical Board in accordance with state travel policy. Dr. Saferin further moved that Mr. Giacalone's attendance at the conference is in connection with his duties as, and is related to his position as, President and member of the State Medical Board of Ohio. Mr. Gonidakis seconded the motion. The motion carried.**

## **OHIO AUTOMATED RX REPORTING SYSTEM**

Dr. Schottenstein stated that a joint letter will be issued by the State Medical Board and the Ohio Board of Pharmacy which details the substantial improvement in the quantity of opioids prescribed to citizens of Ohio between 2012 and 2017. Dr. Schottenstein stated that during that time period the total number of opioids decreased by 225 million doses, or 28.4%. That same time period also saw an 88% decrease in the number of people engaged in doctor shopping. Dr. Schottenstein stated that the use of the Ohio Automated Rx Reporting System (OARRS) continues to increase, with over 88 million patient reports requested last year. Dr. Schottenstein noted that the American Medical Association (AMA) has recognized Ohio as having the highest number of prescription drug monitoring program queries of any state.

Dr. Schottenstein continued that the Board of Pharmacy will send Provider Insight Reports to practitioners with the goal of improving prescribing practices. The Provider Insight Report contains de-identified data which provide a basic overview of prescribing patterns for a given practitioner.

Dr. Schottenstein stated that there is a proposal to fund the creation of data reports from OARRS that would provide identifiable data that is specific to the practice of an Ohio prescriber. This would allow a practitioner to ascertain which patients he or she prescribed opioids or benzodiazepines to without checking OARRS. The proposed report would also allow licensing boards such as the Medical Board to obtain monthly reports showing all prescribers and their missed patients. Dr. Schottenstein stated that this proposal would cost the Medical Board \$75,000 upon completion of the project and an ongoing annual fee of \$15,000. Dr. Schottenstein opined that the proposed report would provide valuable information. Dr. Schottenstein commented that if the Board is going to issue citations to practitioners for not being compliance with the OARRS rule, then in all fairness the Board should provide practitioners with every possible tool to give them the opportunity to be compliant.

Dr. Schottenstein was unclear as to why the proposed report necessitates an incidental charge instead of being an included service. Dr. Schottenstein was also unclear as to the necessity of the ongoing annual payment. Dr. Schottenstein stated that if the proposal is approve, then the Board will be potentially funding a project that other states will benefit from. Dr. Schottenstein stated that it is fine for other states to benefit from the report, but the question is whether other states should share the expense.

Dr. Schottenstein asked the Committee members for their opinions. Dr. Schottenstein also asked if the Board could bid out this project. Lastly, Dr. Schottenstein wondered if the person who submitted the proposal would be amendable to a phone call so that the Committee can ask questions.

Mr. Groeber provided a brief background on this situation. Mr. Groeber stated that when the first letters were sent informing physicians that they had missed required checks of OARRS for some patients, the physicians naturally wanted to know which patients they had missed. Since the

physicians had no way at that time to find out who they had missed, they contacted the Board for that information. This first set of physicians collectively made about 2,000 contacts with the Board by either phone or email, resulting in an enormous amount of time spent by the staff responding to each inquiry. As a result of this first experience, the Medical Board stopped sending the OARRS letter for a few months and contacted the Board of Pharmacy, which operates the OARRS system. At the Medical Board's request, the Board of Pharmacy developed a Prescriber Insight Report that could tell a physician which patients had been missed.

Mr. Groeber continued that when the company Appriss assumed responsibility for OARRS, it kept the old version operating. However, in April 2017 the Board of Pharmacy migrated to a new platform which was a national standard used by many states. The Board of Pharmacy failed to inform the Medical Board that the Prescriber Insight Report would be lost in the migration. Mr. Groeber stated that the Board of Pharmacy has asserted that the Medical Board should field the phone calls from physicians and share the names of the patients not checked. However, the Medical Board cannot legally share that information.

Mr. Groeber commented that since Appriss essentially owns the OARRS system, it is not feasible to bid out the development of the Insight Report.

Mr. Groeber stated that the Board of Pharmacy needs to deal with the failure to address the loss of this functionality. However, Mr. Groeber stated that the Medical Board needs the Prescriber Insight Report, and the Board of Pharmacy claims to have limitations in their budget and staffing. Mr. Groeber stated that regardless of the situation, the Board has a duty to spend the money from fines on items that educate the Board's licensees. Mr. Groeber stated that in the future the Board will also need OARRS reports on compliance with rules on putting ICD-10 codes on prescriptions, rules about acute pain opioid prescribing, and eventually chronic pain opioid prescribing. Mr. Groeber stated that reports of these sort are required if the Board is going to responsibly contact and potentially take action against a licensee for violations.

Mr. Groeber stated that he does not like the idea of having to spend this money to regain the Insight Report. However, Mr. Groeber stated that he would rather be in a position to drive this program now to avoid the failings that had occurred in the past.

Mr. Groeber read from an email that he sent to the Board of Pharmacy this morning regarding the need to obtain a quote quickly on the ICD-10 code compliance report and the acute pain prescribing compliance report:

... in the same way that we are suffering from the loss of the prescriber unchecked patient report, we can anticipate a similar reaction if we notify prescribers of failures on the ICD-10 codes and violations of the acute opioid prescribing rules. Here's what I think has been missed in our current situation: if we are going to tell our customers that they made a mistake, we need to arm them with self-service tools to access that information and make the changes needed. You will see shortly that the Pharmacy Board is going to be handling the collection and dissemination of unchecked patient lists to licensees who contact us after we do a triage. This will undoubtedly put a strain on Pharmacy Board resources. Best to avoid the situation again if we can. So, yes, we need to have the ability for OARRS registrants to self-access the future reports on these ICD-10 codes and violations of acute opioid rules. Better to be safe and say that we'll

also need this for the chronic rules, which are forthcoming. Please urge Appriss to get the quote together ASAP, as time is already running short.

Mr. Groeber stated that he copied the Governor's office on that email as well.

The Committee continued to discuss this matter thoroughly. Mr. Groeber recommended that the Committee vote to approve the initial \$75,000 payment, but not the \$15,000 annual payment. Mr. Groeber stated that since Appriss will push this functionality to every other state, there is a question of what would be proprietary to the Board. Mr. Gonidakis commented that the contract stipulates the \$15,000 annual payment, then non-payment would result in Appriss not activating the report function.

Dr. Schottenstein opined that, while Mr. Groeber did inform the Committee immediately upon learning of this situation, the situation feels very rushed. Mr. Gonidakis agreed and opined that the Committee is not yet ready to approve this. Dr. Schottenstein stated that there are still many questions about how this will proceed, particularly if other states use the functionality that the Ohio Board will have paid to develop.

Mr. Groeber appreciated the Committee's questions. Mr. Groeber added that some groups want the Board to send OARRS letters to physicians every month, so every day without the Insight Report will generate 1,000 to 2,000 emails per month that the Board's staff will have to spend a great deal of time responding to when they could be performing other duties for the Board's licensees. Mr. Groeber commented that it was grossly negligent for the Board of Pharmacy to not have this functionality in place. Mr. Groeber stated that he has voiced this to the Board of Pharmacy and he will share the minutes of this meeting with the Governor's office. Regardless of the circumstances, Mr. Groeber asked the Committee to approve the expenditure so that this needed functionality can be developed.

Dr. Saferin stated that the Board has collected over \$75,000 in fines that will cover that initial payment. Mr. Gonidakis replied that the Board has already spent much of those funds on other items, such as educational video production, continuing medical education, a conference, a symposium, and body armor and training for Board investigators. Dr. Saferin stated that fines in OARRS-related cases only have raised over \$75,000. Dr. Saferin favored going forward with development so that the Medical Board is no longer beholden to other agencies for the functionality it needs.

**Dr. Saferin moved to move forward with the proposal and recommend approval of \$75,000 to begin development as discussed, as well as the annual maintenance fee of \$15,000.** No Committee member seconded the motion. The motion was lost for want of a second.

Mr. Gonidakis opined that this item is not yet ripe for a vote. Mr. Gonidakis stated that there is no clear understanding with Appriss of what the Board's expectations are, and there must be clarity on both sides of a contract. Dr. Saferin commented that approving the expenditure would not involve a contract, but only allow development to proceed. Dr. Schottenstein asked if the Committee could meet next to potentially approve the proposal after additional details about any potential contract can be provided. Ms. Loe noted that an expenditure of \$75,000 would require approval by the full Board and not just the Finance Committee.

The Committee briefly discussed the details of how payment of the funds, if approved, would work between the Medical Board, Appriss, and the Board of Pharmacy who actually holds the contract with Appriss. The Committee also discussed the possibility of partial refund or a discount on future expenditures if the product financed by the Board is then offered to other states. Dr. Schottenstein

stated that he would like to discuss the details with the Appriss representative who made the proposal. Mr. Groeber stated that he will obtain a copy of the contract for the Committee to review so that a future course of action can be determined.

## **ADJOURN**

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

The meeting adjourned at 9:28 a.m.

Michael Schottenstein, M.D.  
Chair

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State Medical Board of Ohio

**COMPLIANCE COMMITTEE MEETING**

**March 14, 2018**

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

<p><b>Members:</b> Anita Steinbergh, D.O., Chair Robert Giacalone Amol Soin, M.D. Michael Schottenstein, M.D.</p> <p>Other Board members present: Kim G. Rothermel, M.D. Ronan M. Factora, M.D.</p>	<p><b>Staff:</b> Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Steinbergh called the meeting to order at 2:53 p.m.

**INITIAL PROBATIONARY APPEARANCES**

**Linda J. Dennis, M.D.**

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

Dr. Soin asked how Dr. Dennis is keeping busy while her medical license is suspended. Dr. Dennis replied that since her relapse and suspension she has been attending four to five rehabilitation meetings per week as well as aftercare meetings. Dr. Dennis is also reworking the 12-step program with her sponsor and getting back into journaling. Dr. Dennis is also seeking employment.

Dr. Steinbergh noted that Dr. Dennis' prior sobriety date had been January 18, 2016, and asked what her current sobriety date is. Dr. Dennis answered that her sobriety date is January 21, 2018 following her relapse on Ultram.

Dr. Schottenstein observed that in addition to substance use problems, Dr. Dennis had also had mental health issues in terms of mood and stability. Dr. Dennis stated that she had received that diagnosis in 2001 when she was initial coming off of opiates, and it continued when she married her second husband who had bipolar disorder and alcoholism. Dr. Dennis stated that for the two years she was out of that relationship and off of alcohol, she has been on half of the medication has before and her mood has been completely stable. Dr. Dennis stated that she personally questions the diagnosis and she has discussed this with her therapist and her psychiatrist.

Dr. Schottenstein stated that while stress is unpleasant for everyone, those who are prone to a mood disorder have an almost allergic reaction to stress. Dr. Schottenstein commented that Dr. Dennis seems to have been under a lot of stress previously, but the level of stress has come down. Dr. Schottenstein asked what medication Dr. Dennis is taking. Dr. Dennis replied that she is on Depakote and Seroquel. Dr. Schottenstein stated that it is much harder to control one's sobriety when the mood becomes unstable. Dr. Dennis opined that her substance use was not related to a mood disorder, but rather it was related to grief.

Dr. Steinbergh commented that Dr. Dennis seems very insightful and introspective. Dr. Steinbergh asked what kind of employment Dr. Dennis is looking for. Dr. Dennis stated that her license is suspended for a year, so she cannot practice medicine. Dr. Dennis stated that she just passed the examination for health and life insurance, noting that her medical knowledge is applicable to what she would do in that field.

Dr. Steinbergh, noting that Dr. Dennis' specialties are listed as addiction medicine, anesthesiology, and pain management, asked about her residency training. Dr. Dennis replied that her residency was in anesthesiology. Dr. Dennis stated that the last six months of her residency was in pain management, a field which did not require a fellowship at that time. Dr. Dennis stated that she is board-certified in addiction medicine and has taken the examination to be a diplomate of the American Board of Addiction Medicine.

Dr. Steinbergh asked if Dr. Dennis would return to addiction medicine once her medical license is reinstated. Dr. Dennis responded that she is not sure what suits her and that being around patients facing recovery in a different system than Dr. Dennis was in may not be the healthiest thing for her. Dr. Dennis stated that she has looked into getting involved in research and having an active medical license would be helpful in that field. Dr. Dennis also stated that having an active medical license would help further her career in the insurance industry.

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

**Thomas J. Gantner, P.A.**

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

Mr. Giacalone asked what Mr. Gantner is doing now that his physician assistant license is suspended. Mr. Gantner replied that he is focusing on his sobriety. Mr. Gantner stated that he is enrolled in aftercare and he has a sponsor. Mr. Gantner stated that he is working the 12-step program and he is up to step 4. Mr. Gantner stated that he is also working on changing his lifestyle. Mr. Giacalone asked about Mr. Gantner's sobriety date. Mr. Gantner replied that his sobriety date is October 30, 2017.

Mr. Giacalone asked what step 4 of the 12-step program is. Mr. Gantner could not answer and stated that he is just now up to step 4. Mr. Giacalone asked what step 3 is. Mr. Gantner paused, then stated that step 1 is admitting the you are unmanageable. Mr. Gantner mentioned step 2 but could not state what step 2 is. Mr. Giacalone commented that it does not appear that Mr. Gantner is working the steps very hard if he cannot recall the steps. Mr. Gantner stated that he is working the steps and he apologized for drawing a blank.

Mr. Giacalone asked what brought Mr. Gantner before the Board. Mr. Gantner replied that he was in a car accident in 2013 and started taking pain medication. Mr. Gantner commented that he had taken pain medication previously for sports injury surgeries, but the 2013 incident was different and he became addicted. Mr. Gantner eventually began obtaining pain medication illegally. In 2015, Mr. Gantner sought treatment at a non-Board approved suboxone clinic and was on suboxone for about one year. Mr. Gantner stated that he weaned himself off Suboxone and he has been clean from opioids and Suboxone since December 2016. Mr. Giacalone asked if Mr. Gantner had been in a treatment program or if he was simply taking the Suboxone. Mr. Gantner answered that it was

outpatient treatment and was essentially just taking the Suboxone. Mr. Gantner stated that the clinic offered counseling sessions and he attended about three sessions.

Mr. Gantner continued that there was an anonymous complaint to the Board that he had been impaired while working at his previous job. When Mr. Gantner met with a Board investigator, he disclosed his Suboxone treatment and his history of addiction. Subsequently, Mr. Gantner entered into a 28-day inpatient treatment program at Shepherd Hill Hospital.

Mr. Giacalone asked how Mr. Gantner's recovery is going. Mr. Gantner replied that his sobriety is going well, though some days are better than others. Mr. Giacalone asked about Mr. Gantner's relationship with his sponsor. Mr. Gantner stated that he has a good relationship with his sponsor and he sees him a few times per week. Mr. Giacalone asked if Mr. Gantner's family is supportive. Mr. Gantner replied that his family is very supportive. Mr. Gantner commented that his brother had also dealt with addiction early in his life and that he had initially reached out to his brother when Mr. Gantner hit rock bottom.

Dr. Schottenstein, noting that Mr. Gantner had previously been diagnosed with depression and anxiety, asked if that is being treated currently. Mr. Gantner explained that his depression and anxiety came about when his brother was going through his addiction while Mr. Gantner was in physician assistant school. At that time, Mr. Gantner's family physician prescribed Citalopram and Mr. Gantner was stable for a while. In January 2017, after speaking with his physician, Mr. Gantner stopped the Citalopram because he felt his mood was stable. Mr. Gantner stated that when this current situation came about, his anxiety returned. Mr. Gantner opined that he never had much depression and his main problem had been the anxiety. Mr. Gantner stated that he is currently on a low dose of Citalopram and his mood is stable.

Dr. Schottenstein asked if anxiety is a trigger for substance use for Mr. Gantner. Mr. Gantner replied that anxiety is not a trigger. Dr. Schottenstein asked if Mr. Gantner is currently seeing a psychiatrist or a therapist. Mr. Gantner answered that he is not in any additional therapy beyond the counselors at his aftercare program. Dr. Schottenstein commented that while a period of stability can convince one that they do not need medication, it is reasonable to contemplate staying on a maintenance dose to protect oneself from life's stress and anxiety which could trigger substance use.

Dr. Schottenstein asked if Mr. Gantner ever has cravings for opioids. Mr. Gantner replied that he does not have cravings for opioids, but he occasionally has a craving for alcohol because he sees it everywhere. Dr. Schottenstein asked if Mr. Gantner has ever been on naltrexone. Mr. Gantner replied he is currently on naltrexone and he finds it helpful.

Dr. Steinbergh asked what Mr. Gantner's motivation was for answering falsely on his license renewal application in 2015. Mr. Gantner replied that he had feared the consequences of disclosing his problem and that only his friends and family knew at the time. Dr. Steinbergh asked if there was a time when Mr. Gantner really understood that he needed help. Mr. Gantner stated that towards the end of his use of pain medicine that he realized that he had a problem and needed help, and he reached out to his brother at that time. Mr. Gantner stated that his brother helped get him into the Suboxone clinic.

Dr. Steinbergh asked if Mr. Gantner if there is anything out there to help physician assistants in the areas of addiction, such as instruction from the physician assistant association. Dr. Steinbergh also asked if Mr. Gantner had ever considered calling the Medical Board for help. Mr. Gantner stated that he did not have many options at that time and calling the Medical Board was not the first thing he had

thought of. Dr. Steinbergh asked if Mr. Gantner had considered the effects of his addiction on patient care. Mr. Gantner replied that he understood the effects on patient care.

**Mr. Giacalone moved to continue Mr. Gantner under the terms of his December 13, 2018 Consent Agreement, with future appearances before the Board's Secretary or Designee. Dr. Schottenstein seconded the motion. The motion carried.**

**Heather D. Strawbridge, M.D.**

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

Dr. Soin recalled that Dr. Strawbridge's case involved prescriptions for Adderall to three patients. Dr. Soin asked Dr. Strawbridge to describe what happened. Dr. Strawbridge stated that she had been asked to refill three Adderall prescriptions for three people that she knew. Dr. Strawbridge stated that she is a pediatrician and she felt that she could refill the prescriptions. Dr. Strawbridge stated that at that time she did not realize that if she wrote a prescription, she must have a patient chart associated with it. Dr. Strawbridge stated that she spoke with each of the three individuals, took a history, did a physical examination, and made an assessment, but she did not document it. Dr. Strawbridge stated that one of the individuals was questioned by a pharmacist, who reported Dr. Strawbridge to the Board of Pharmacy. Dr. Strawbridge self-reported to the Medical Board.

Dr. Soin stated that Dr. Strawbridge was then cited by the Medical Board for violation of the Ohio Automated Rx Reporting System (OARRS) rules. Dr. Soin asked if Dr. Strawbridge was represented by an attorney when she entered into the Agreement with the Medical Board. Dr. Strawbridge replied that she did have an attorney. Dr. Soin commented that as a member of the Board, he had voted against ratification of the Consent Agreement because he was not sure what was being accomplished by sanctioning someone for writing three prescriptions for Adderall.

Dr. Soin asked if Dr. Strawbridge has made changes to her practice. Dr. Strawbridge replied that she has taken the courses on controlled substance prescribing and medical documentation. Dr. Strawbridge stated that both courses taught her a great deal that she did not learn in her medical training. Dr. Strawbridge stated that she has presented this to her practice because many of her partners were not aware of some of this information. Dr. Strawbridge stated that her hospital has asked her to present a grand rounds, which she will do in the next few months.

Dr. Soin asked Dr. Strawbridge to describe how this process has affected her practice, specifically if she has lost patients or insurance credentials. Dr. Strawbridge answered that she had to send a copy of her Consent Agreement to all third-party payors and explain her situation in order to be reapproved to see patients in her practice. Dr. Strawbridge stated that when the insurance companies realized that she had been reprimanded, she was reapproved. Dr. Soin was pleased that the Board's action had minimal impact on Dr. Strawbridge's insurance credentials. Mr. Taylor pointed out that Dr. Strawbridge's Agreement had only a reprimand, a fine, and course requirements, and not a probation.

Dr. Schottenstein asked if Dr. Strawbridge had felt that she was taking over as her coworker's physician for prescribing Adderall when she provided the prescription to the coworker. Dr. Strawbridge replied that she had not felt that she was taking over as the co-worker's physician. Dr. Strawbridge stated that she had made a mistake that she will never repeat. Dr. Strawbridge stated that the co-worker was in nursing school and had a mother who was undergoing chemotherapy, and she had asked Dr. Strawbridge to write the refill because she was not able to see her physician. Dr. Strawbridge wrote the refill prescription because she was trying to be helpful and she thought she was

allowed to do so. Dr. Strawbridge stated that she did not think that her coworker was abusing or misusing the medication and she did not approach Dr. Strawbridge every month for prescriptions. Dr. Strawbridge stated that the other two individuals were also adults who had previously been diagnosed with Attention Deficient Hyperactivity Disorder (ADHD) and needed refills. Dr. Strawbridge stated that it was her fault that she did not check OARRS for these individuals.

Dr. Steinbergh asked if it had ever occurred to Dr. Strawbridge that, as a pediatrician, she perhaps should not be prescribing to adults. Dr. Strawbridge replied that as a pediatrician, she had felt that she was able to recognize ADHD and symptoms of ADHD and could help those individuals. Dr. Strawbridge stated that she learned a tremendous amount from the courses and that she will never again write a prescription for anyone that she does not have a medical record for. Dr. Steinbergh agreed that that would be appropriate.

Dr. Steinbergh asked if Dr. Strawbridge had questions about her Consent Agreement. Dr. Strawbridge asked if, once she has submitted her paperwork and reports on her required courses, the terms of her Agreement will have been fulfilled. Ms. Murray replied affirmatively.

**Dr. Schottenstein moved to continue Dr. Strawbridge under the terms of the Board's Order of December 13, 2017. Mr. Giacalone seconded the motion. The motion carried.**

**Robert L. Thomas, III, M.D.**

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

Dr. Soin asked for Dr. Thomas' opinion of what caused him to come to the attention of the Board. Dr. Thomas replied that he had written prescriptions for three individuals without checking the Ohio Automated Rx Reporting System (OARRS) or documenting a medical record. Dr. Thomas stated that one of the individuals had been his fiancé and is currently his wife; the other two individuals were people he had known and worked with for quite some time. Dr. Soin asked what changes Dr. Thomas has made to his practice to prevent a repeat of these events. Dr. Thomas stated that he has taken courses in controlled substance prescribing and medical documentation. Dr. Thomas stated that he is unfortunately on administrative leave and is not practicing at this time. Moving forward, Dr. Thomas stated that he intends to never again prescribe controlled substances to family or friends. Dr. Thomas will also check OARRS for anyone he intends to prescribe controlled substances for and document it in the medical record.

Dr. Soin stated that he has his own opinions about Board actions on OARRS check violations, but he saw Dr. Thomas' cases differently due to his relationships with the individuals. Dr. Soin asked if Dr. Thomas had been actively checking OARRS previously for patients who were not close relatives or friends. Dr. Thomas answered that he had not been checking OARRS because he had been under the impression that OARRS checks were only required when prescribing controlled substances for more than seven days; since Dr. Thomas only prescribed controlled substances for no more than five days, he had thought he did not have to check OARRS. Dr. Soin commented that the guidelines change as more data is received. Dr. Soin stated that the Medical Board's website has a section called "Prescriber Resources" that maintains updated versions of all prescribing guidelines.

Dr. Thomas commented that one of the most eye-opening aspects of this situation was the course he took on controlled substance prescribing, stating that Dr. John Irwin does a tremendous presentation on this issue. Dr. Thomas stated that one suggestion Dr. Irwin makes is for every physician to make a

weekly appointment to review regulations on the Medical Board, Drug Enforcement Administration (DEA), Medicare, and Medicaid websites. Dr. Thomas stated that he has committed to making this weekly check without question. Dr. Thomas stated that he also interacts with many younger physicians and, if he is allowed to practice again, he will make sure these young physicians are also aware of the regulations. Dr. Thomas stated that he has recommended to the Chief of Staff at his hospital to invite Dr. Irwin to make the same presentation at the hospital so that this does not happen to someone else.

Dr. Schottenstein stated that at one point Dr. Thomas had prescribed something to himself. Dr. Thomas stated that he has never prescribed anything to himself. Dr. Schottenstein apologized for the confusion.

Dr. Schottenstein asked what medications Dr. Thomas had prescribed to the three individuals in question. Dr. Thomas explained that his current wife had been followed by a neurologist and had been diagnosed with attention deficient disorder (ADD). Dr. Thomas stated that he had refilled her prescription for Vyvanse. Dr. Thomas stated that he did not alter the dosage of the Vyvanse, but that did not make it right. Dr. Thomas continued that a nursing supervisor that he had known for a long time had approached him and said that her efforts to lose weight through diet and vigorous exercise had been unsuccessful. The nursing supervisor asked for a prescription for Adipex, and Dr. Thomas agreed. Dr. Thomas continued that another nursing supervisor who he had known and worked with for a long time had stated that she had trouble staying awake at night due to a severe cough. Dr. Thomas prescribed her Robitussin with codeine. Dr. Thomas stated that he did not check OARRS or document a medical record for any of these three prescriptions.

Dr. Schottenstein agreed with Dr. Thomas' earlier stated that he will never again prescribe controlled substances to family or friends. Dr. Schottenstein recommended that Dr. Thomas refrain from prescribing any medication at all to family or friends. Dr. Thomas agreed.

Dr. Thomas asked if it would be possible to be removed from probation, stating that Medicaid and Anthem insurance view his probation as a restriction on his medical license. Dr. Steinbergh stated that that matter cannot be address by the Compliance Committee at this time and that Dr. Thomas should discuss requests for modification of probation with the Board's Compliance Section or the Board Secretary or designee during a personal appearance.

Dr. Thomas requested permission to share with the Committee the awards he has received, stated that he does not wish for this matter with the prescriptions to be the only body of information that he is represented by. Dr. Steinbergh agreed. Dr. Thomas presented the Committee with his awards for Resident of the year, the Rajiv Ray Academic Achievement Award, and the 2016 Excellence in Mission Award. Dr. Thomas stated that the latter award is most precious to him because he was recognized as the only hospitalist in his program to embody the six virtues that are dear to the hearts of the hospital, including justice, compassion, excellence, service, and sacredness of life.

Dr. Thomas wanted the Committee to know that he takes his reprimand seriously and he wants to make sure that he and all his colleagues are abreast of the rules. Dr. Thomas stated that if he is allowed to practice medicine again, he will make it a personal point to try to make sure none of the physicians practicing in his hospital come before the Board due to being uninformed. Dr. Steinbergh thanked Dr. Thomas and pointed out that Dr. Thomas' medical license, while on probation, is active and that he is able to practice medicine. Dr. Steinbergh acknowledged that Dr. Thomas is not currently practicing due to Medicaid and other insurance issues.

Mr. Giacalone asked if Dr. Thomas had been represented by counsel when he signed his Consent Agreement. Dr. Thomas replied that he did have counsel.

Dr. Soin stated that he found Dr. Thomas' comments to be refreshing and very sincere. Dr. Soin stated that he would be surprised if Dr. Thomas ever had to come before the Board again in his career. Dr. Soin commented that Dr. Thomas struck him as someone who will be proactive and make appropriate changes to his practice. Dr. Soin encouraged Dr. Thomas to continue making requests regarding modification of his probation.

**Dr. Schottenstein moved to continue Dr. Thomas under the terms of his December 13, 2017 Consent Agreement, with future appearances before the Board's Secretary or Designee. Mr. Giacalone seconded the motion. The motion carried.**

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

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

#### **MINUTES REVIEW**

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

The meeting adjourned at 3:43 p.m.

Anita M. Steinbergh, D.O.  
Chair

blt