

MINUTES**THE STATE MEDICAL BOARD OF OHIO****January 10, 2018**

Robert P. Giacalone, President, called the meeting to order at 10:19 a.m. in the Administrative Hearing Room, 3rd Floor, the James A. Rhodes Office Tower, 30 E. Broad Street, Columbus, Ohio 43215, with the following members present: Andrew P. Schachat, Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Anita M. Steinbergh, D.O.; Michael Schottenstein, M.D.; Richard Edgin, M.D.; Ronan M. Factora, M.D.; Mark A. Bechtel, M.D.; and Betty Montgomery. The following member arrived at a later time: Michael L. Gonidakis. The following member did not attend: Amol Soin, M.D.

Also present were: Anthony J. Groeber, Executive Director; Kimberly Anderson, Assistant Executive Director; David Fais, Assistant Executive Director; Sallie Debolt, Senior Counsel; Bill Schmidt, Chief of Investigations; Susan Loe, Director of Human Resources and Fiscal; Jonithon LaCross, Public Policy & Governmental Affairs Program Administrator; Teresa Pollock, Director for Communications; Joseph Turek, Deputy Director for Licensure; Joan K. Wehrle, Education and Outreach Program Manager; Nathan Smith, Staff Attorney; Rebecca Marshall, Chief Enforcement Attorney; Marcie Pastrick, Mark Blackmer, Angela McNair, Cheryl Pokorny, James Roach, Kimberly Lee, Adam Meigs, and Melissa Wood, Enforcement Attorneys; Katherine Bockbrader, Kyle Wilcox and Melinda Snyder, Assistant Attorneys General; R. Gregory Porter, Chief Hearing Examiner; Danielle Blue, Hearing Examiner; Alexandra Murray, Managing Attorney for Standards Review, Experts, and Intervention; Annette Jones and Angela Moore, Compliance Officers; 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 December 13, 2017, Board meetings, as written. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.

Mr. Gonidakis entered the meeting at this time.

APPLICANTS FOR LICENSURE

Dr. Steinbergh moved to approve for licensure, contingent upon all requested documents being received and approved in accordance with licensure protocols, the genetic counselor applicants listed in Exhibit "A," the massage therapist applicants listed in Exhibit "B," the physician assistant applicants listed in Exhibit "C," and the physician applicants listed in Exhibit "D," as listed in the Agenda Supplement and handouts, and to approve the results of the December 18, 2017 Cosmetic Therapy Examination as listed in Exhibit "E" and to certify as passing and license those receiving a score of 75 or greater on their examination, and to certify as failing and deny licensure to those who received a score of less than 75 on the examination. Dr. Saferin seconded the motion. A vote was taken:

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

Dr. Schottenstein - aye
Dr. Steinbergh - aye
Dr. Schachat - aye
Mr. Giacalone - aye
Mr. Gonidakis - aye
Dr. Edgin - aye
Dr. Factora - aye
Ms. Montgomery - aye
Dr. Bechtel - aye

The motion carried.

REPORTS AND RECOMMENDATIONS

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

Mr. Giacalone asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: James Vincent Gasparine, M.D.; and Janet Lynn Rice, M.D. A roll call was taken:

ROLL CALL:

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

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

ROLL CALL:

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

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

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

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

JAMES VINCENT GASPARINE, M.D.

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

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

Dr. Gasparine was represented by his attorney, Elizabeth Collis.

Ms. Collis stated that Dr. Gasparine's case is different from cases typically seen before the Board. Ms. Collis explained that the Board has proposed to take action against Dr. Gasparine's medical license based on a misdemeanor of failing to report a crime. Ms. Collis opined that the Board does not have the authority to take action in this case because the misdemeanor was not involved in the practice of medicine. Ms. Collis asked the Board to review that issue carefully and stated that if the Board finds that it has no jurisdiction to take action, then it must dismiss the case.

Ms. Collis continued that Dr. Gasparine is the type of physician that the Board wants practicing in Ohio, noting that Dr. Gasparine is a youth physician who has already become recognized in his community. Ms. Collis stated that Dr. Gasparine volunteers hundreds of hours every year in his community at sporting events, provides free sports physicals to students, and opens his clinic on Friday nights during football season so that students injured in football games can go to the clinic. Ms. Collis stated that Dr. Gasparine's practice group is full aware of what took place in this incident and it fully supports him. Ms. Collis observed that Dr. Gasparine's managing partner, Karl Saunders, M.D., testified on his behalf

Ms. Collis stated that when Dr. Gasparine provided care to Patient 1, a gym acquaintance, he had no reason to believe that Patient 1 had been involved in a crime. The nature of the injury, as explained by Patient 1, made sense to Dr. Gasparine and did not raise any red flags. Ms. Collis noted that this incident occurred in Dr. Gasparine's first year of private practice. Ms. Collis asked the Board members if they themselves were aware of the legal requirement to report a gunshot wound, and whether they knew of that requirement in the first year of their medical practice. Ms. Collis pointed out Dr. Gasparine's testimony that he had not known of the reporting requirement, had not been trained in it, and had not been informed of it in his residency training. Ms. Collis further pointed out that everyone who testified at Dr. Gasparine's hearing had also not known about the reporting requirement.

Ms. Collis stated that under 4731-13-36(G), Ohio Administrative Code, the Board may determine that

there has been a technical violation of the Board's laws and rules, but choose to take no action. Ms. Collis stated that that Rule was enacted for this type of case. Ms. Collis respectfully requested that the Board take No Further Action in this matter.

Dr. Gasparine stated that Patient 1 had approached him at the gym. Dr. Gasparine stated that he had not known about the legal requirement to report gunshot wounds and that he had believed Patient 1's story that he had accidentally shot himself at a shooting range. Dr. Gasparine stated that when he advised Patient 1 to the emergency department, Patient 1 replied that he had no insurance. Dr. Gasparine stated that he had no reason to believe that Patient 1's injury was the result of a crime. Dr. Gasparine stated that since he often treats people outside his clinic, such as for football or volunteer activities, he did not think twice about looking at Patient 1's wound. Dr. Gasparine stated that he truly wants to help anyone who needs it, especially if they cannot otherwise afford medical care. Dr. Gasparine commented that Zanesville is a tight-knit community and he is known as a caring, chartable physician there.

Dr. Gasparine continued that he fully cooperated with the Zanesville Police Department and he took responsibility for his actions. Dr. Gasparine stated that he is now aware of the gunshot wound reporting laws and he will call the police for any weapon-related injury he treats. Dr. Gasparine commented that he recently saw a patient in his office who had an injury to the forehead from the scope of a gun; although it was not a gunshot wound, Dr. Gasparine still called the police to make sure it did not need to be reported. Dr. Gasparine stated that he did not know about the reporting requirement in 2012 when this incident took place.

Dr. Gasparine stated that this incident has been extremely devastating to him and his family. Dr. Gasparine stated that he never thought he was doing anything wrong by providing care to Patient 1 and never believed he had to report the incident to local law enforcement. Dr. Gasparine noted that he had asked a colleague to check Patient 1 a few days later; the colleague found that the wound was healing properly and never advised Dr. Gasparine that the wound should be reported. Dr. Gasparine stated that if he had known at that time that he was required to report the wound to local police, he would have done so.

Dr. Gasparine respectfully requested that the Board impose no sanction in this matter.

Mr. Giacalone asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he did wish to respond.

Mr. Wilcox stated that common sense should indicate that if someone presents with a gunshot wound, there is a possibility that the wound was the result of criminal activity. Mr. Wilcox stated that it is not the job of the physician in Ohio to investigate how such a wound occurred, but it is incumbent on the physician under Ohio law to report a gunshot wound if he or she treats it. Mr. Wilcox stated that if Dr. Gasparine had called the police as required, Patient 1 would have been investigated and the criminal activities he has been involved with may have been discovered at that time.

Mr. Wilcox agreed that there are mitigating factors in this case. Mr. Wilcox stated that Dr. Gasparine is a young physician and he is obviously a pillar in the community of Zanesville. However, Mr. Wilcox opined that an Order of No Further Action would be too lenient and that a reprimand would be appropriate in this case. Mr. Wilcox stated that the Board needs to state for the record that these types of reporting laws are important in Ohio and must be followed.

Mr. Wilcox added that the Board should also consider including a provision in the Order to require Dr. Gasparine to do presentations on this topic at medical schools or medical societies. Mr. Wilcox stated that we live in a society where violence is real in many communities and there is a very important public protection motive behind the mandatory reporting laws. Mr. Wilcox stated that there are mandatory reporting laws for physicians to report child abuse, domestic violence, and also for treating gunshot wounds or stab wounds. Mr. Wilcox stated that all physicians in Ohio should know these laws and, due to the underlying public protection issue, should not be able to claim ignorance.

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

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

Mr. Giacalone briefly reviewed Dr. Gasparine's medical education, including completion of a family practice residency and a one-year fellowship in sports medicine. Dr. Gasparine is board-certified in family medicine with an added qualification for sports medicine. On June 27, 2017, Dr. Gasparine pleaded No Contest to, and was found guilty of, one count of Failure to Report a Crime or Knowledge of a Death or Burn Injury, a second-degree misdemeanor. Consequently, Dr. Gasparine was sentenced to 60 days in jail, of which 60 days were suspended; placed on probation for 24 months; ordered to pay a fine of \$750 plus court costs; and required to perform 50 hours of community service.

Mr. Giacalone continued that the actions leading to Dr. Gasparine's conviction stemmed from his examination and prescribing of an antibiotic to Patient 1 on or about April 27, 2012. Patient 1, with whom Dr. Gasparine was acquainted from the gym, approached Dr. Gasparine at the gym and requested treatment of a gunshot wound. Patient 1 told Dr. Gasparine that the gunshot injury was due to a shooting range accident. Patient 1 further stated that he could not afford to go to the emergency room because he lacked money or insurance. Dr. Gasparine examined Patient 1 and called in a prescription for Clindamycin 300 mg to try to prevent infection.

In March 2017, Zanesville police detectives interviewed Dr. Gasparine and informed him that Patient 1 was being charged with murdering his estranged wife. The police detectives further informed Dr. Gasparine that Patient 1 had received the gunshot wound at issue while committing a robbery. On May 5, 2017, Dr. Gasparine was charged with one count of Failure to Report a Crime or Knowledge of a Death or Burn Injury. Dr. Gasparine's subsequent guilty plea and conviction form the basis of the proposed Board action.

Mr. Giacalone stated that, based upon the evidence and testimony provided, he agreed with the Hearing Examiner's Findings of Fact and Conclusions of Law. Mr. Giacalone wished to suggest an amendment to the Hearing Examiner's Proposed Order, but he first wanted to address Ms. Collis' argument that her client's actions do not fall under Section 4731.22(B)(11), Ohio Revised Code, because his actions and conviction were not done in the "course of practice." Ms. Collis based her argument on the fact that the "course of practice" for physicians is not defined by statute and that the duty to report a gunshot wound has no relation to the practice of medicine because it imposes no specific duty on physicians. Mr. Giacalone respectfully disagreed with Ms. Collis. Mr. Giacalone agreed with the Hearing Examiner that Dr. Gasparine's actions constituted the course of practice.

Mr. Giacalone stated that not only did Dr. Gasparine examine Patient 1, albeit in a gym, but he also

prescribed an antibiotic to Patient 1 to prevent any infection that might arise from his gunshot wound. Mr. Giacalone stated that it is difficult to accept the concept that the term "course of practice," as defined by case law, is somehow limited to administrative tasks such as completion of medical records, patient billing, completion of a recommendation on behalf of another physician applying for licensure, or obstructing official business. Mr. Giacalone noted Section 4731.34, ORC, which clearly states that the unauthorized practice of medicine includes holding oneself out as a physician and performing various tasks including, but not limited to, examining, diagnosing, and prescribing. Therefore, only a licensed physician can legally perform such tasks as medical examinations and prescribing, which squarely falls under the definition of "course of practice." Mr. Giacalone stated that this is what Dr. Gasparine has admitted to doing in the case involving Patient 1.

Mr. Giacalone continued that from a policy standpoint, it would not be in the public interest to accept that the gunshot wound reporting requirement does not apply to physicians in the course of their practice when treating patients. Mr. Giacalone stated that physicians and other health professionals, given their roles as healers, are more likely than other citizens to be approached by individuals when injuries arising from gunshots occur. Therefore, it is not in the public interest to create a fiction that physicians should somehow be immune to Board discipline simply because the treatment rendered did not occur in their office or failed to involve administrative tasks that are typically performed.

Mr. Giacalone noted the following mitigating circumstances that were pointed out by the Hearing Examiner:

- Dr. Gasparine believed that Patient 1 was telling him the truth and he had no reason to believe that Patient 1's gunshot wound was the result of a crime of violence.
- Dr. Gasparine had no formal trauma or emergency room training in which he would have learned about the mandatory reporting requirements for gunshot wounds.
- Dr. Gasparine fully cooperated with the Zanesville Police and took responsibility for his actions.
- Dr. Gasparine has no prior disciplinary history with the Board.
- Dr. Gasparine is well-respected and highly regarded in both the medical community and the Zanesville community.
- Dr. Gasparine has instituted changes to his practice.
- Dr. Gasparine is extremely remorseful.

In addition, Mr. Giacalone opined that there is nothing substantive to be gained by imposing additional penalties when the court system has already punished Dr. Gasparine. Mr. Giacalone recommended that the Proposed Order be amended to No Further Action. Mr. Giacalone also suggested that the Board ask Dr. Gasparine to submit an article within 90 days of the effective date of the Order which explains the events of this incident and that the article subsequently be published in the Board's newsletter in an effort to remind Ohio physicians of their mandatory reporting requirements pursuant to 2921.22(B), ORC. Mr. Giacalone further suggested that Dr. Gasparine, if so requested by Board staff, make an effort to appear in a Board video to be shown to medical students regarding this topic.

Dr. Schottenstein agreed with Mr. Giacalone's comments. Dr. Schottenstein stated that there are two questions inherent in the defense presented by Dr. Gasparine's counsel. The first question is whether 2921.22(B), ORC, has a relationship to the practice of medicine. The second question is whether a duty

to report is an example of an administrative task that would be conceptualized as occurring in the course of practice.

Regarding the first question, Dr. Schottenstein stated that, while it is true that 2921.22(B), ORC, does not specifically reference a medical practice, he opined that the statute is encompassing of a medical practice. Dr. Schottenstein quoted a portion of the statute: "No person giving aid to a sick or injured person shall negligently fail to report..." Dr. Schottenstein stated that the categorization of persons giving aid to a sick or injured person necessarily includes health care professionals such as physicians. Dr. Schottenstein opined that the average, reasonable person would concur with that statement. Dr. Schottenstein stated that it is uncontested that Dr. Gasparine had a physician/patient relationship with Patient 1 and did, in fact, give aid to him in the context of Patient 1's status as an injured person.

Regarding the second question, the defense counsel argued that 2921.22(B), ORC, does not reference an administrative task related to the operation of a medical practice, and that therefore Dr. Gasparine's behavior did not occur in the course of practice and there was no violation of the Board's laws under 4731.22(B)(11), ORC. While Dr. Schottenstein appreciated the logic of the defense, he disagreed with the premise. Dr. Schottenstein stated that the duty to report a gunshot wound under 2921.22(B), ORC, does not specifically reference an administrative task related to the operation of a medical practice, but he opined that it is encompassing of an administrative task related to the operation of a medical practice. Dr. Schottenstein stated that administrative tasks involve the managing and distributing of information, and therefore the reporting requirement is a transmission of information. Dr. Schottenstein opined that, clearly, one of the most important administrative duties involved in medical practice is to ensure that the practice is following the relevant rules and regulations. Dr. Schottenstein stated that administrative tasks in the course of medical practice are not exclusively related to billing and records; rather, administrative tasks fulfill the regulatory and legal requirements which pertain to the medical practice. Dr. Schottenstein stated that, arguably, one of the most important administrative tasks related to the practice of medicine is the completion of a reporting requirement.

Based on the foregoing, Dr. Schottenstein opined that 2921.22(B), ORC, encompasses medical practitioners and that the reporting requirement is an administrative task that occurs in the course of practice. Consequently, the finding of guilt regarding 2921.22(B), ORC, does meet the criteria of 4731.22(B)(11), ORC, which references a misdemeanor committed in the course of practice.

Dr. Schottenstein noted that there are two suicides for every one homicide in the United States, and two of every three gun deaths are suicides. Dr. Schottenstein stated that if a physician is approached by a patient who claims that he or she was cleaning their gun and was accidentally shot, it is clearly important to report it due to the possibility that a violent crime had occurred which could lead to more violence and possibly harm innocent victims. Dr. Schottenstein added that it is also important for physicians to consider the possibility that the gunshot wound was the result of a failed suicide attempt, which one could argue is a substantially more likely scenario than that of a violent crime.

Dr. Schottenstein opined that the controlling language of 2921.22(B), ORC, is that part of the statute which states that the treating individual knows or has reasonable cause to believe that the injury resulted from an offense of violence. Dr. Schottenstein felt that a very reasonable and strong defense could have been mounted in court based on that clause. However, that is in the past and Dr. Gasparine has already pleaded guilty to, and been found guilty of, violating that misdemeanor statute.

Dr. Schottenstein agreed with the Assistant Attorney General that ignorance of the law is no excuse for

violating the law. However, Dr. Schottenstein observed that Dr. Gasparine's hearing included testimony from multiple witnesses that this law is virtually unknown by medical practitioners outside of emergency medicine. Dr. Schottenstein felt that this is a mitigating circumstance, in addition to the mitigating circumstances discussed earlier by Mr. Giacalone. Dr. Schottenstein also stated that many people in Zanesville carry guns and a reasonable person would believe that someone may have accidentally shot themselves.

Dr. Schottenstein stated that he supports amending the Proposed Order according to Mr. Giacalone's suggestion.

Dr. Steinbergh stated that she agrees with the Hearing Examiner's Findings of Fact and Conclusions of Law. Dr. Steinbergh stated that Dr. Gasparine's actions in seeing a person in a gym and deciding to treat his gunshot wound were clearly in the course of practice. Dr. Steinbergh noted that according to the police report and Dr. Gasparine's testimony, Dr. Gasparine instructed Patient 1 to go to the emergency department, but decided to treat him anyway. Dr. Steinbergh stated that when a physician decides to treat a patient, that patient will not go to the emergency department.

Dr. Steinbergh noted a small discrepancy in Dr. Gasparine's discussion with the police officer. During the police investigation, Dr. Gasparine did not mention that Patient 1 had no health insurance. Dr. Gasparine also stated that he had told Patient 1 to go to the emergency department and he prescribed an antibiotic. Dr. Steinbergh stated that Dr. Gasparine was not cited for violation of minimal standards of care, and she emphasized that she is only basing her decisions in this matter on Dr. Gasparine's conviction of a second-degree misdemeanor. However, Dr. Steinbergh stated that there is standard of care issue in that Dr. Gasparine decided on-the-spot to prescribe an antibiotic when he did not truly know anything about the case. Dr. Steinbergh stated that Dr. Gasparine appropriately instructed Patient 1 to go to the emergency department, and that is where the conversation should have ended. However, Dr. Gasparine went on to treat Patient 1 and no medical record was ever documented. Dr. Steinbergh stated that if it was a matter of Patient 1's inability to pay, Dr. Gasparine could have chosen to see Patient 1 in his office and treat him as a patient without charging him. Instead, the treatment and follow-up took place in a gym and there was no documentation of care.

Dr. Steinbergh stated that she struggles with whether or not there should be No Further Action in this matter instead of a reprimand. Dr. Steinbergh further stated that she somewhat agrees with the Assistant Attorney General about the physician's responsibility to report. Dr. Steinbergh commented that she was not taught about reporting in medical school, nor did she remember learning about reporting in her residency training. However, Dr. Steinbergh stated that common sense would indicate that someone should be made aware of a gunshot wound even if the patient claims it was accidental.

Dr. Steinbergh suggested that the Board further discuss the propriety of No Further Action instead of a reprimand, though she did agree with Mr. Giacalone's suggestion that Dr. Gasparine use this experience in a positive way to teach others.

Dr. Schachat stated that he is comfortable with No Further Action and he opined that Dr. Gasparine will not make another error like this in the future. Dr. Schachat agreed that this incident occurred in the course of medical practice. Dr. Schachat also agreed with Mr. Giacalone's suggestion that Dr. Gasparine write an article on this topic because many other physicians are probably not aware of this reporting requirement and that education on this topic is important. Dr. Schachat recommended that any such article be reviewed by Ms. Anderson or another Board attorney to ensure that it is accurate prior to

publication. Dr. Schachat commented that he himself is not clear about the reporting requirements for stab wounds, especially those involving non-sharp objects such as screwdrivers.

Mr. Gonidakis stated that he supports Mr. Giacalone's suggested amended Order. Mr. Gonidakis asked for clarification that the Order will not include a fine. Dr. Schachat responded that the Board is not authorized to levy a fine in this case because the incident occurred prior to September 29, 2015.

Dr. Edgin also agreed with Mr. Giacalone's suggestion.

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

It is hereby ORDERED that no further action be taken in the matter of James Vincent Gasparine, M.D., Case No. 17-CRF-0109.

In addition, the Board requests that, within 90 days of the effective date of this Order, Dr. Gasparine submit an article to the Board which explains the events that occurred in this matter. This article will subsequently be published in the Board's newsletter in an effort to remind Ohio physicians of their mandatory reporting requirements pursuant to R.C. 2921.22(B). Also, if so requested by Board staff, Dr. Gasparine will use his best efforts to appear in a Board video to be shown to medical students regarding the same topic.

Mr. Gonidakis seconded the motion.

Mr. Giacalone stated that he had struggled with this case because he found it to be unclear as to whether Dr. Gasparine had violated 2921.22(B), ORC. Mr. Giacalone noted that the statute says that a gunshot or stab wound must be reported if a person knows or has reasonable cause to believe it resulted from an offense of violence. In this case, it appeared to be unclear whether this was an accident or an offense of violence given the information available to Dr. Gasparine at the time he acted. Mr. Giacalone also stated that regardless of one's opinion on gun control, in this state people have the legal right to carry guns and it appears that in this part of Ohio doing so is not uncommon. Also, at the time Dr. Gasparine treated Patient 1's wound, the wound appeared to be small, scabbed over and did not appear to require immediate treatment (i.e., it was not bleeding profusely, etc.). However, Mr. Giacalone added that since Dr. Gasparine pleaded no contest to the violation and was found guilty by the court, the bottom line is that there was a violation of the Board's statute.

Ms. Anderson noted for the Board members' benefit that an Order of No Further Action is not a discipline. Consequently, the Board cannot enforce the provision that Dr. Gasparine write an article for publication by the Board. Ms. Anderson stated that the use of the word "requests" in the second paragraph of the proposed amended Order reflects this fact. Mr. Giacalone stated that when he proposed this order, he was aware that the Board cannot enforce that provision. However, Mr. Giacalone noted that in her closing arguments at Dr. Gasparine's hearing, Ms. Collis had indicated that this could be an opportunity to educate other physicians by Dr. Gasparine writing a letter on this topic for the Board's newsletter or something of that nature. Mr. Giacalone stated that given these comments during the hearing and in the record, he expected Ms. Collis and Dr. Gasparine will follow through on this offer, despite the Board's inability to enforce that provision. Mr. Giacalone further opined that such an article educating physicians and the public of the reporting requirement would be worth much more than any reprimand.

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

ROLL CALL:

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

The motion to amend carried.

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

ROLL CALL:

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

The motion to approve carried.

JANET LYNN RICE, M.D.

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

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

Dr. Rice stated that she had had several manic-depressive episodes before she was diagnosed with bipolar disorder in 1996. In one manic-depressive episode in 1990, Dr. Rice used some Xanax that was in her office and also asked a friend, who was also a physician, to prescribe Xanax because she was becoming very anxious, irritable, and slightly paranoid. Dr. Rice stated that at that time she did not know that she was bipolar or that she was becoming mentally ill. Dr. Rice was hospitalized later that month. Dr. Rice subsequently went to a treatment center where she told the physician in charge that she was drinking a pint of vodka per day, when in fact she was not. Following medical treatment for her

depressive episode, Dr. Rice explained to the treatment center staff that she was not drinking and that, while she had used Xanax, she did not use Xanax routinely.

Dr. Rice stated that though she did not sign a contract, she did have a “gentleman’s agreement” in 1990 with the Maryland Board of Physicians to have urine drug screens done at certain intervals at the Maryland Board’s discretion. Dr. Rice stated that the agreement lasted one to two years and no illicit drugs were ever found in her system. Dr. Rice stated that there have been no other incidents of illicit drug use. Dr. Rice stated that she does not like to get high and if she drinks, it is only one drink and usually around the holidays. Dr. Rice opined that another stay at a treatment center is not needed for an episode that occurred 27 years ago. Dr. Rice added that a treatment center would be a financial hardship for her, noting that she currently works part-time as a home health aide in order to supplement her disability income.

Dr. Rice stated that she decided to apply for an Ohio medical license because one of her home health patients had bed sores and she found the treatment to be interesting. Shortly thereafter, Dr. Rice responded to an email from a search group seeking physicians for wound care. Dr. Rice stated that wound care is not as stressful as her previous practice in obstetrics and that she would only do wound care two to three days per week, as opposed to the 80 to 90 hours per week she had worked as an obstetrician.

Dr. Rice stated that her licensure application process has now gone on for one year and two months. Dr. Rice commented that she would be willing to undergo drug screenings if necessary, but she requested that she not be required to go through a treatment center in order to obtain her license.

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

Ms. Snyder stated that this case has three parts to it: A mental impairment part, a chemical dependency part, and a question of clinical competency since Dr. Rice has not practiced medicine for 15 years. Ms. Snyder commented that there is also a human side to this case, as well as a legal side.

Ms. Snyder continued that the Board has statutes and rules regarding chemical impairment. Ms. Snyder stated that when a physician is found to be impaired, as Dr. Rice has, the Board must follow those statutes and rules. Ms. Snyder commented that she struggled with this case because Dr. Rice was very compelling in her hearing. Ms. Snyder further commented that she respects that Dr. Rice came forward to ask for this license. However, the applicable laws and rules stipulate the Dr. Rice must complete 28 days of inpatient treatment. Ms. Snyder stated that although Dr. Rice has completed some treatment at Ridgeview Recovery Center, that facility is not a Board-approved treatment provider.

Ms. Snyder added that there is also a question about Dr. Rice’s ability to return to practicing medicine again after 15 years. Ms. Snyder supported the provision in the Proposed Order for Dr. Rice to demonstrate her competency to continue the practice of medicine.

Dr. Steinbergh moved to approve and confirm Ms. Blue’s Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Janet Lynn Rice, M.D. Dr. Bechtel seconded the motion.

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

Dr. Factora stated that Dr. Rice has applied for a license to practice medicine and surgery in Ohio. The Board has proposed to take disciplinary action based on the following allegations: In August 2003, the Board issued a Finding, Order, and Journal Entry denying Dr. Rice's application at that time, based on violations of Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code; Dr. Rice has not been engaged in the active practice of medicine since January 2002; and/or, in March 2017 the Board ordered Dr. Rice to submit to a psychiatric evaluation with Stephen Noffsinger, M.D., and she was found to be impaired in her ability to practice medicine and surgery

Dr. Factora continued that Dr. Rice obtained her medical degree from the Medical College of Ohio in 1978 and began her flexible internship there. However, Dr. Rice left the program in February 1979. Dr. Rice returned to training from 1980 to 1981 and completed a rotating internship at Akron General Hospital. Dr. Rice subsequently completed a three-year residency in obstetrics and gynecology in 1984 at Baltimore, Maryland. Dr. Rice was in private practice in Baltimore from 1984 to 2001, when she closed her practice due to insufficient income to pay her malpractice insurance. Dr. Rice subsequently practiced at an Indian reservation in Arizona for three months. Dr. Factora noted that Dr. Rice has not practiced medicine since 2002.

Dr. Factora stated that Dr. Rice had her first mental health episode in 1978 during her rotating internship. Dr. Rice consequently left that internship.

Dr. Rice's second mental health episode occurred in 1979, for which she did not seek treatment.

Dr. Rice's third mental health episode occurred in 1987, necessitating hospitalization in Baltimore. Dr. Rice was subsequently prescribed medications and was diagnosed with major depression, recurrent with psychotic features, mood congruent. At that time, Dr. Rice was discharged with a good prognosis.

Dr. Rice's fourth documented mental health episode occurred in 1990, necessitating hospitalization in Smyrna, Georgia. Dr. Rice also completed 28 days of inpatient treatment for alcohol and Xanax dependence after reporting that she drank a pint of vodka at a time and took Xanax three times per day which had been prescribed by a colleague. Upon discharge, Dr. Rice was diagnosed with major depressive disorder, alcohol dependence, and Xanax dependence. Dr. Rice subsequently took a six-month leave of absence from work.

Dr. Rice's fifth documented mental health episode occurred in 1996. Dr. Rice had an emergency evaluation by Beth Wadman, M.D., and was started on new medications at that time. Dr. Factora noted that Dr. Wadman was the first physician to diagnose Dr. Rice with Bipolar II Disorder. Dr. Wadman continued to treat Dr. Rice with psychotherapy and medication management through 2001.

Dr. Rice's sixth documented mental health episode occurred in 2000, reportedly decompensating during a week of managing multiple deliveries with no sleep. Dr. Factora stated that this episode occurred despite a therapeutic lithium level and Dr. Rice's claim that she was adhering to her medical regimen. However, Dr. Rice later reported that she had taken the incorrect amount of lithium and had become confused afterwards. Dr. Rice required admission to a hospital at that time. Dr. Rice recompensated rapidly with the addition of a new medication.

Dr. Factora stated that from 2001 to the present, Dr. Rice has been managed successfully with medication and psychotherapy. Dr. Rice is currently under the care of Kamala Audrey, M.D., who is focusing mostly on medication management with documentation demonstrating mixed Bipolar I Disorder

in full remission, managed with medications, and Generalized Anxiety Disorder also managed with medications and supportive therapy.

Dr. Factora stated that the Board previously denied an application from Dr. Rice in August 2003 based, in part, on the fact that she did not attend Board-ordered psychiatric and chemical dependency examinations. The Board had ordered the examinations based upon Dr. Rice's having resumed alcohol use and after receiving residential treatment for alcohol dependence and Xanax dependence, and having a mental health history, multiple hospitalizations, and multiple disruptions in her practice of medicine for extensive periods of time due to mental illness, and failure to comply with similar examinations ordered by other state medical boards across the United States.

Dr. Rice's current application for licensure in Ohio was submitted in November 2016. Dr. Rice attended a Board-ordered psychiatric examination with Dr. Noffsinger on May 16, 2017. Consequent to his evaluation and assessment, Dr. Noffsinger diagnosed Dr. Rice with Bipolar I Disorder, most recent episode unspecified, in full remission. Dr. Noffsinger reported that he had insufficient data to opine on Dr. Rice's substance abuse disorder diagnosis. Dr. Noffsinger opined that Dr. Rice was not presently capable of practicing medicine according to acceptable and prevailing standards of care for several reasons, including a risk for relapse. Dr. Noffsinger recommended that Dr. Rice's practice be restricted and permitted only under the condition that she is under current mental health treatment monitored by a mental health professional and that the symptoms of Bipolar I Disorder are in relative remission. Dr. Noffsinger further recommended that Dr. Rice's treatment should include a minimum of a half-hour of medication management every month, with medications including mood-stabilizing medication to prevent mood and/or psychotic episodes; periodic surveillance of blood levels of Dr. Rice's mood medication as appropriate; regular written updates by her psychiatrist to the State Medical Board of Ohio; avoidance of any use of illicit substances with random toxicology screens; and a plan to temporarily suspend Dr. Rice's practice of medicine in the event of another mood or psychotic episode until the episode has fully resolved.

Dr. Factora stated that according to her testimony, Dr. Rice had wanted to be a physician since she was 15 years old. Dr. Factora commented that Dr. Rice's career appears to be of value to her. Dr. Factora noted that Dr. Rice has stated she has no intention of stopping her medications and that she would stop practicing if she became ill. Dr. Factora stated that Dr. Rice appears to value the safety of her patients and the integrity of her career. In her testimony, Dr. Rice explained that the reason she did not attend the Board-ordered chemical impairment examination was because she not afford the cost, but she also disagreed with the prior diagnosis of alcohol dependence from 1990. Dr. Rice has stated that the reason for her improvement during her inpatient treatment was her positive response to the medications provided to her.

Dr. Factora agreed with the Hearing Examiner's Findings of Fact, as well as the Proposed Order. Dr. Factora stated that due to a recent change in statute, a determination of fitness to resume practice was no longer applicable to Dr. Rice's licensure application at the time of the hearing. Therefore, the charge based on 4731.222, Ohio Revised Code, must be dismissed.

Dr. Factora expressed concern about Dr. Rice's lack of medical practice since 2002. However, Dr. Factora stated that there is no expiration date for a medical school degree and knowledge gained through post-graduate training prepares a physician for practice. Dr. Factora stated that an increasing time gap between training and practice increases the deficit between what is known by the physician and how the practice of medicine is currently done. Dr. Factora stated that to return to independent practice, Dr. Rice

should demonstrate skill to practice in her anticipated area of practice, which appears to be wound care in nursing homes and extended living facilities. Dr. Factora stated that to ensure that Dr. Rice's skill levels are reflective of current standards of practice, she must at least demonstrate requisite knowledge through the Special Purpose Examination (SPEX) and have a practice plan which includes supervision and feedback of her performance by a practitioner versed in that practice.

Dr. Factora stated that the deficits in Dr. Rice's medical practice are remediable if she is willing to undergo training. Dr. Factora added that Dr. Rice's license may be limited to her chosen practice, which is wound care. Dr. Factora commented that if Dr. Rice chooses to return to the practice of obstetrics and gynecology in the future, additional appropriate requirements should be put into place.

Dr. Factora stated that a larger challenge is how to address the issue of substance abuse, particularly since Dr. Noffsinger did not have enough data to opine on this. Dr. Rice denies that she has a substance abuse problem. Since Dr. Rice failed to initially attend the Board-ordered psychiatric and chemical dependency evaluations, Dr. Factora stated that he has no choice but to agree with the Hearing Examiner's interpretation that, due to Dr. Rice's failure to submit to the examination and a lack of evidence that the failure to attend due to circumstances beyond her control, Dr. Rice was legally presumed to be impaired by the Board in 2003.

Dr. Factora stated that he understands that Dr. Rice values her ability to practice medicine and carefully takes into account her mental capacity when considering her ability to care for her patients. Dr. Factora stated that the Board has the same mission to protect the public, and therefore the goals of the Board and Dr. Rice are in alignment in the area of patient care. Dr. Factora encouraged Dr. Rice to follow the law and the recommendations of the Board so that she can proceed with the practice of medicine which she so clearly values.

Mr. Giacalone asked Ms. Anderson to clarify Dr. Factora's statement regarding a recent change in statute. Ms. Anderson explained that 4731.222, Ohio Revised Code, gives the Board the ability to test a physician's or an applicant's fitness to resume practice. Under the plain language of the statute, it applies when someone is seeking a restoration of their Ohio medical license. However, Ms. Anderson pointed out that Dr. Rice has never had a license in Ohio, and therefore this is not a restoration of license. In a recent revision to the statute that became effective in September 2017, the provision for allowing such testing of an applicant who has practiced in other states was removed. Ms. Anderson stated that this removal was unintended and that Mr. LaCross is working with the Legislature to rectify the situation. Ms. Anderson stated that due to the current statute, the Hearing Examiner's Conclusion of Law #3 must be dismissed.

Ms. Anderson stated that to address the current statute, the Board may grant Dr. Rice's license and then suspend it pending a demonstration of competence and other stipulations. Ms. Anderson stated that this is different from the Proposed Order, which would grant the license pending the passage of the SPEX.

Dr. Schottenstein wished to make sure that everyone understands what a diagnosis of bipolar disorder means. Dr. Schottenstein stated that most people are familiar with the condition of depression, in which one experiences sadness in a way that is not proportional to the circumstances. Rather, the person experiences sadness on a regular basis in a way that is excessive and to the point where it can affect the quality of life and ability to function. Those with depression also exhibit neurovegetative symptoms: They do not sleep, do not eat, do not have energy, cannot focus, stop pursuing their interests, and stop being able to enjoy themselves even when there is an opportunity to do so. Those afflicted with depression can

feel hopeless and worthless, and they may even develop thoughts of wishing for death or suicide.

Dr. Schottenstein continued that one with bipolar disorder suffers from both depressive episodes and manic episodes. Dr. Schottenstein explained that a manic episode is essentially the opposite of a depressive episode. A manic episode is an elevation in the mood that is excessive and out of proportion with the circumstances and not in response to something positive, and can be described as a euphoria. Those with such a mood develop hyperactivity, their thoughts race, they talk loud and fast, and they develop grandiosity. Further, those with such a mood may not need to sleep and they do things that typically would be considered risky or inappropriate for their personality. Dr. Schottenstein stated that a manic episode typically lasts for days at a time and typically ends with a drop back into a depression.

Dr. Schottenstein stated that people often like their manic moods, especially with Bipolar II Disorder, and they often get a lot done and feel very productive during the mood. Therefore, they seek treatment only for their depressive moods. As a result, it is not uncommon for someone with bipolar disorder to be diagnosed with depression and treated by a well-meaning physician with anti-depressants. Since anti-depressants are designed to elevate the mood, giving such medications to someone who is already prone to having moods that are too high can be akin to throwing gasoline on a fire. Dr. Schottenstein stated that, along with mood swings, one can also see psychotic features such as what Dr. Rice has been prone to when her mood has not been stable. Dr. Schottenstein stated that a psychotic feature is essentially a loss of contact with reality and can involve hallucinations or delusions like paranoia. Dr. Schottenstein added that it is very common, even if it is not intentional, for patients in this situation to engage in substance abuse in an effort to self-stabilize their mood.

Dr. Schottenstein noted that Dr. Noffsinger has opined that Dr. Rice's condition is amenable to treatment and that it would not prevent her from practicing medicine as long as she is adequately monitored and compliant with the treatment. However, Dr. Schottenstein observed the medical practice can be stressful. Dr. Schottenstein stated that those with a mood disorder have an almost allergic reaction to stress and it can cause a decompensation in the mood. Dr. Schottenstein found it compelling that Dr. Rice has been stable for such a long time, but that is not a guarantee that the stability will continue if she begins to practice medicine and has to manage the stress which that entails. Therefore, Dr. Schottenstein agreed with the continued psychiatric care in the Proposed Order.

Regarding the allegation of chemical dependency, Dr. Schottenstein stated that Dr. Rice has maintained that there has been something of an overreaction on the part of medical practitioners concerning this diagnosis. Dr. Rice has indicated that she had been delusional when she endorsed her use of alcohol and Xanax. However, Dr. Schottenstein reviewed Dr. Rice's inpatient treatment records from Ridgeview Recovery Center from 1990 and he felt that the records were clear that Dr. Rice did a lot of work regarding substance abuse at that time. Dr. Schottenstein quoted a portion of Dr. Rice's discharge summary:

She felt she had a real problem with these chemicals and admitted that there was a family history of alcoholism.

Dr. Schottenstein stated that this statement corroborates the notion that substance abuse had been a concern. The records also noted that Dr. Rice had done a lot of work in group therapy and that she dealt with fears and acceptance around her addiction.

Dr. Schottenstein continued that during Dr. Rice's stay at Ridgeview, it was noted that she was taking

Xanax and Restoril, in addition to having one or two drinks per day. The treating psychiatrist noted the following:

She began drinking more heavily over the past several months and undoubtedly the effects of her drinking were increased by the synergistic effects of mixing alcohol with sedative hypnotic drugs. She is currently questioning whether she is an addict, and does acknowledge that her drinking was a problem and most likely contributed to her presenting symptoms.

Dr. Schottenstein further quoted from the discharge summary at Ridgeview:

... a recent acknowledgement by the patient of both over-the-counter and prescription drug abuse, including Xanax and Benadryl, as well as an increasing and out-of-control use of alcohol.

Dr. Schottenstein stated that he has the impression from Dr. Rice's testimony that she feels like she made a statement one time while in a delusional state about drinking a pint of vodka per day, and that her physicians have never explored the question further and that she has been incorrectly labeled as having a chemical dependency problem ever since. Dr. Schottenstein felt that there is more to this question of chemical dependency than one stray remark by Dr. Rice, and he further felt that these medical records back up his skepticism.

Dr. Schottenstein stated that he has no reason to disbelieve Dr. Rice when she states that her current pattern of alcohol use is minimal. Dr. Schottenstein stated that one can be prone to substance use disorder and still maintain a low-level use of alcohol in the context of a stable mood. However, when stress increases, the pattern of substance use can worsen if one is not working a substance abuse treatment program. Dr. Schottenstein opined that returning to practice after a 15-year hiatus will be stressful for Dr. Rice, and he therefore felt that the recommendation for chemical dependency treatment is appropriate.

Dr. Schottenstein opined that because Dr. Rice has been out of practice for 15 years, completion of the SPEX is not sufficient to demonstrate a readiness to resume practice. Given this length of time, as well as the mental health and substance abuse issues already mentioned, Dr. Schottenstein suggested that Dr. Rice be required to complete the Post-Licensure Assessment System (PLAS). Dr. Schottenstein explained that PLAS is a joint activity of the National Board of Medical Examiners and the Federation of State Medical Boards and was developed to assist medical licensing authorities in assessing physicians who had already been licensed. Dr. Schottenstein stated that PLAS provides a comprehensive, objective, and personalized assessment of a physician for whom there is a question regarding clinical competence. PLAS evaluates a physician's medical knowledge, clinical judgment, and patient management skills. PLAS can also review the clinical capabilities of a physician with health concerns, including recovery from illness or a history of substance abuse.

Dr. Schottenstein moved to remove Conclusion of Law #3. Dr. Schottenstein further moved to amend the Proposed Order to read as follows:

It is hereby ORDERED that:

A. **GRANT OF PHYSICIAN LICENSURE; SUSPENSION:** The application of Janet Lynn Rice,

M.D., to practice medicine and surgery in Ohio is GRANTED, provided that she otherwise meets all statutory and regulatory requirements. The certificate shall be immediately SUSPENDED for an indefinite period of time.

B. **INTERIM MONITORING:** During the period that Dr. Rice's certificate to practice medicine and surgery in Ohio is suspended, Dr. Rice shall comply with the following terms, conditions, and limitations:

1. **Obey the Law:** Dr. Rice shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Declarations of Compliance:** Dr. Rice shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's office on or before the first day of every third month.
3. **Personal appearances:** Dr. Rice shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Sobriety:**

- a. **Abstention from Drugs:** Dr. Rice shall abstain completely from the personal or possession of drugs, except those prescribed, dispensed, or administered to her by another so authorized by law who has full knowledge of Dr. Rice's history of chemical dependency and/or abuse and who may lawfully prescribe for her (for example, a physician who is not a family member).

Further, in the event that Dr. Rice is so prescribed, dispensed or administered any controlled substance or tramadol, Dr. Rice shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber, the name of the drug Dr. Rice received, the medical purpose for which she received the drug, the date the drug was initially received, and the dosage, amount, number of refills, and directions for use.

Further, within 30 days of the date the drug is so prescribed, dispensed, or administered to her, Dr. Rice shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions from use.

- b. **Abstention from Alcohol:** Dr. Rice shall abstain completely from the use of alcohol.

5. **Drug and Alcohol Screens; Drug Testing Facility and Collection Site:**

- a. Dr. Rice shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Rice shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Rice's drug(s) of choice.
- b. Dr. Rice shall submit, at her expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also be used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Rice shall be negative, except for those substances prescribed, administered, or dispensed to her in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day she is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- c. Dr. Rice shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Rice shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen, and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result on a toxicology screen is prohibited under this Order.

- d. All urine screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and Board-approved collection site pursuant to the global contract between the approved facility and the Board, which provides for the Board to maintain ultimate control over the urine-screening process and to preserve the confidentiality of positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code. The screening process for random testing shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph B.6, below, to approve urine screenings to be conducted at an alternative drug-testing facility, collection site, and/or supervising physician, such approval shall be expressly contingent upon the Board's retaining ultimate control over the urine-screening process in a manner that preserves the confidentiality of positive screening results.
- e. Within 30 days of the effective date of this Order, Dr. Rice shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site ("DFCS") in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Rice shall provide to the

Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Rice and the Board-approved DFCS. Dr. Rice's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- f. Dr. Rice shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure, that the urine specimens are obtained on a random basis, and that the giving of the specimen is witnessed by a reliable person.

In addition, Dr. Rice and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening result.

- g. Dr. Rice shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Rice shall immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph B.6, below, as soon as practicable. Dr. Rice shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.
- i. The Board, in its sole discretion, may withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Rice shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Rice, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Rice.

- a. Within 30 days of the date on which Dr. Rice is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Dr. Rice, she shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Rice shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Rice's residence or employment location, or to a physician who practices in the same locale as Dr. Rice. Dr. Rice shall ensure that the urine-screening process performed through the alternative DFCS or through

the supervising physician requires a daily call-in procedure, that the urine specimens are obtained on a random basis, and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Rice shall ensure that the alternative DFCS or the supervising physician maintains appropriate control over the specimen and immediately informs the Board of any positive screening result.

- b. Dr. Rice shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
 - c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Rice shall immediately notify the Board in writing. Dr. Rice shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Rice shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Rice.
 - d. The Board, in its sole discretion, may disapprove any entity or facility proposed to serve as Dr. Rice's designated alternative DFCS or any person proposed to serve as his supervising physician, or may withdraw its approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
7. **Reports Regarding Drug and Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Rice's declarations of compliance. It is Dr. Rice's responsibility to ensure that reports are timely submitted.
8. **Additional Screening Without Prior Notice:** Upon the Board's request and without prior notice, Dr. Rice shall provide a specimen of her blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Rice or for any other purpose, at Dr. Rice's expense. Dr. Rice's refusal to submit a specimen upon the request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary and Supervising Member of the Board.
9. **Rehabilitation Program:** Dr. Rice shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per

week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

Dr. Rice shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Rice's declarations of compliance.

10. **Comply with the Terms of Aftercare Contract:** Dr. Rice shall maintain continued compliance with the terms of the aftercare contract(s) entered into with his treatment provider(s), provided that, where terms of an aftercare contract conflict with terms of this Order, the terms of this Order shall control.
11. **Continue Psychiatric Treatment:** Within 30 days of the effective date of this Order, unless otherwise determined by the Board, Dr. Rice shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Rice's choice. The Board may consider Dr. Rice's current psychiatrist, Kamala Adury, M.D., as an approved provider.

Dr. Rice shall continue psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from an approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Rice's current treatment plan and any changes that have been made to the treatment plan since the prior report; her compliance with the treatment plan; her psychiatric status; her progress in treatment; and results of any laboratory or other studies that have been conducted since the prior report. Dr. Rice shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Rice's declarations of compliance. **The frequency of Dr. Rice's visits shall be determined by the approved treatment psychiatrist unless otherwise directed by the Board.**

Dr. Rice shall ensure that her treating psychiatrist immediately notifies the Board of Dr. Rice's failure to comply with her psychiatric treatment plan and/or any determination that Dr. Rice is unable to practice due to her psychiatric disorder.

In the event that the designated psychiatrist has been unable or unwilling to serve in this capacity, Dr. Rice shall immediately so notify the Board in writing and make arrangements acceptable to the Board for another psychiatrist as soon as practicable. Dr. Rice shall further ensure that the previously designated psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any psychiatrist proposed to serve as Dr. Rice's designated treating psychiatrist, or may withdraw its approval of any psychiatrist previously approved to serve as Dr. Rice's designated treating psychiatrist, in the event that the Secretary and Supervising Member of the Board determine that any such psychiatrist has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

12. **Releases:** Dr. Rice shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Rice's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

Dr. Rice shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event Dr. Rice fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

13. **Absences from Ohio:** Dr. Rice shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the suspension/probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have discretion to waive part or all of the monitoring terms set forth in this Order for occasional periods of absence of 14 days or less.

In the event that Dr. Rice resides and/or is employed at a location that is within 50 miles of the geographic border of Ohio and a contiguous state, Dr. Rice may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Rice is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

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

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Rice's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Rice shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Rice shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** Dr. Rice shall demonstrate to the satisfaction of the Board that she can practice in compliance with acceptable and prevailing standards of care. Such demonstration shall include but shall not be limited to

the following:

- a. Certification from a treatment provider approved under Section 4731.25, Ohio Revised Code, that Dr. Rice has successfully completed a minimum of 28 days of inpatient/residential treatment for chemical dependency/abuse at a treatment provider approved by the Board.
- b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code. Such evidence shall include, but shall not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.
- c. Evidence of continuing full compliance with this Order.
- d. Two written reports indicating that Dr. Rice's ability to practice has been assessed and that she has been found capable of practicing according to acceptable and prevailing standards of care, with respect to chemical dependency/abuse.

The reports shall have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Rice. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Rice shall provide the assessors with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the assessors shall include any recommendations for treatment, monitoring, or supervision of Dr. Rice, and any conditions, restrictions, or limitations that should be imposed on Dr. Rice's practice. The reports shall also describe the basis for the assessor's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement or restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

4. **Psychiatric Reports Evidencing Fitness to Practice; Recommended Limitations:** At the time Dr. Rice submits her application for reinstatement or restoration, Dr. Rice shall provide the Board with written reports of evaluation by two psychiatrists acceptable to the Board indicating that Dr. Rice's ability to practice has been assessed and that she has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall have been performed within 60 days prior to Dr. Rice's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Rice has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

5. **Post-Licensure Assessment Program:** Prior to submitting her application for reinstatement or restoration, Dr. Rice shall have undergone an assessment and completed the recommended educational activities, as developed for Dr. Rice by the Post-Licensure Assessment System ("PLAS") sponsored by the Federation of State Medical Boards and the National Board of Medical Examiners. Dr. Rice's participation in the PLAS shall be at her own expense.
- a. Prior to the initial assessment by the PLAS, Dr. Rice shall furnish the PLAS copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to that assessment.
 - b. To the extent this is applicable, should the PLAS request patient records maintained by Dr. Rice, Dr. Rice shall furnish copies of the patient records at issue in this matter along with any other patient records she submits. Dr. Rice shall further ensure that the PLAS maintains patient confidentiality in accordance with Section 4731.22(F)(5), Ohio Revised Code.
 - c. Dr. Rice shall ensure that the written Assessment Report by the PLAS includes the following:
 - A detailed plan of recommended practice limitations, if any;
 - Any recommended education;
 - Any recommended mentorship or preceptorship;
 - Any reports upon which the recommendation is based, including report of physical examination and psychological or other testing.
- Moreover, Dr. Rice shall ensure that, within 14 days of its completion, the written Assessment Report by the PLAS is submitted to the Board.
- d. Any Learning Plan recommended by the PLAS shall have been developed subsequent to the issuance of a written Assessment Report, based on an assessment and evaluation of Dr. Rice by the PLAS. Dr. Rice shall successfully complete the educational activities as recommended in the Learning Plan, including any final assessment or evaluation.
 - e. At the time she submits her application for reinstatement or restoration, Dr. Rice shall submit to the Board satisfactory documentation from the PLAS indicating that she has successfully completed the recommended educational activities.
6. **SPEX:** Prior to submitting her application for reinstatement or restoration, Dr. Rice shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. Rice's clinical competency.

- D. **PROBATION:** Upon reinstatement or restoration, Dr. Rice's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Rice shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Post-Licensure Assessment Program:** Dr. Rice shall practice in accordance with the Learning Plan developed by the PLAS, unless otherwise determined by the Board. Dr. Rice shall cause to be submitted to the Board quarterly declarations from the PLAS documenting Dr. Rice's continued compliance with the Learning Plan.

Dr. Rice shall obtain the Board's prior approval for any deviation from the Learning Plan.

If, in a manner not authorized by the Board, Dr. Rice fails to comply with the Learning Plan, Dr. Rice shall cease practicing medicine and surgery beginning the day following Dr. Rice's receiving notice from the Board of such violation and shall refrain from practicing until the PLAS provides written notification to the Board that Dr. Rice has reestablished compliance with the Learning Plan. Practice during the period of noncompliance shall be considered practicing medicine without a certificate, in violation of R.C. 4731.41.

3. **Practice Plan and Monitoring Physician with PLAS Learning Plan:** Within 30 days of the date of Dr. Rice's reinstatement or restoration, or as otherwise determined by the Board, Dr. Rice shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Rice's activities will be directly supervised and overseen by a monitoring physician approved by the Board. The practice plan shall, as determined by the Board, reflect, but not be limited to, the PLAS Learning Plan. Dr. Rice shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Rice submits her practice plan, she shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary and Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Rice and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Rice and her medical practice, and shall review Dr. Rice's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Rice and her medical practice, and on the review of Dr. Rice's patient charts. Dr. Rice shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's office no later than the due date for Dr. Rice's declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Rice shall immediately so notify the Board in writing. In addition, Dr. Rice shall make arrangements acceptable to the Board for another monitoring

physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Rice shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Rice's monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Rice's monitoring physician, in the event of that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

3. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Rice is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Rice's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Rice violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.
- G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Rice shall provide a copy of this Order to all employers or entities with which she is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training; and the Chief of Staff at each hospital or healthcare center where she has privileges or appointments. Further, Dr. Rice shall promptly provide a copy of this Order to all employers or entities with which she contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where she applies for or obtains privileges or appointments. This requirement shall continue until Dr. Rice receives from the Board written notification of the successful completion of her probation.
- In the event that Dr. Rice provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, she shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Rice receives from the Board written notification of the successful completion of her probation.
2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Rice shall provide a copy of this Order to the proper

licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Rice shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which she applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Rice receives from the Board written notification of the successful completion of her probation.

3. **Required Reporting to Treatment Providers/Monitors:** Within 30 days of the effective date of this Order, Dr. Rice shall provide a copy of this Order to all persons and entities that provide chemical dependency/abuse treatment to or monitoring of Dr. Rice. This requirement shall continue until Dr. Rice receives from the Board written notification of the successful completion of her probation.
4. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Rice shall provide this Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

Dr. Steinbergh seconded the motion.

Dr. Steinbergh stated that she agrees with Dr. Schottenstein's comments and his proposal for the Board to adequately determine Dr. Rice's competency. Dr. Steinbergh stated that in addition to the mental health and chemical dependency provisions, the PLAS program will perform a complete assessment of Dr. Rice's knowledge base, her ability to come to clinical decisions, and her ability to manage patient care. Dr. Steinbergh agreed with the following language in the amended Order: "To the extent this is applicable, should the PLAS request patient records maintained by Dr. Rice, Dr. Rice shall furnish those copies ...". Dr. Steinbergh stated that this language is an acknowledgement that Dr. Rice would not have patient care records at this point.

Dr. Steinbergh further noted that Dr. Rice will take the SPEX examination. Once Dr. Rice meets these competency standards, her license will be reinstated and a probationary period of at least five years will begin. During the probationary period, the Board will monitor Dr. Rice's practice through a Board-approved practice plan which may be directed by the PLAS assessment. Other stipulations will also be in effect during the probationary period.

Dr. Factora agreed with Dr. Schottenstein's proposed amendment. Dr. Factora stated that there are minimal standards for licensure in Ohio regardless of the focus of a physician's practice. Dr. Factora

stated that the PLAS program will determine what area Dr. Rice requires additional education in, and that assessment will guide the Board.

Dr. Schottenstein commented that he had considered proposing a restricted license for Dr. Rice, but he decided against that course for two reasons. First, a restricted license makes it more difficult for a physician to find employment. Second, restricting the license to wound care may convey the impression that wound care is not a demanding area of medicine; on the contrary, Dr. Schottenstein stated that wound care is challenging and complicated to become skilled at. Dr. Steinbergh and Dr. Factora agreed.

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

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

The motion to amend carried.

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

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

The motion to approve carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

Mr. Giacalone stated that in the following matter, the Board issued a Notice of Opportunity for Hearing. No timely request for hearing was received. The matter was reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and is now before the Board for final disposition. This

matter is disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

AMIR ZIA, M.D.

Dr. Steinbergh moved to Find that the allegations as set forth in the May 10, 2017 Notice of Opportunity for Hearing in the matter of Dr. Zia 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. Gonidakis stated that Dr. Zia was first licensed to practice medicine in Ohio in February 2008 and his license is currently active. In February 2017, Dr. Zia entered into an Agreed Order with the Kentucky Board of Medical Licensure. The Agreed Order states that Dr. Zia allegedly engaged in inappropriate behavior with a female patient during preparation for an epidural injection in May 2016. Specifically, Dr. Zia allegedly pulled down the patient's underwear and touched her body. A nurse was not present during these alleged actions and only arrived during the injection phase of the procedure.

During the investigation by the Kentucky Board, Dr. Zia denied the allegations and also claimed that he has a nurse or other individual in the room about 80% of the time during these procedures. The Kentucky Board hired an expert consultant who concluded that the allegations and activity were inappropriate. The consultant also concluded that Dr. Zia had no formal training in pain procedures and that his methodology for injections was inappropriate. Lastly, the consultant concluded that Dr. Zia presents some immediate threat to the public due to his lack of training, inadequate monitoring, and failure to maintain current cardiovascular life support training. To counter the consultant's conclusions, Dr. Zia provided a certificate for cardiac life support training to the Kentucky Board.

Mr. Gonidakis continued that in January 2017, Dr. Zia entered into an Agreed Order in lieu of issuing a Complaint and Emergency Order of Restriction on his Kentucky medical license. Mr. Gonidakis noted that the Agreed Order stipulates that Dr. Zia denies any wrong-doing, but that Dr. Zia acknowledges that the Kentucky Board could conclude that he had violated the law. The Agreed Order restricted Dr. Zia's Kentucky medical license so that he was banned from performing epidural injections and was required to have a chaperone present during all procedures involving a female patient. The Agreed Order also fined Dr. Zia approximately \$1,600.

Mr. Gonidakis stated that the Ohio Board sent Dr. Zia a Notice of Opportunity for Hearing in May 2017. Dr. Zia received the Notice, but failed to respond or to request a hearing. The Proposed Order would indefinitely suspend Dr. Zia's Ohio medical license for a minimum of one year, permanently restrict him by requiring a third party to be present when treating female patients, establish standard conditions for reinstatement or restoration of his license, and levy a fine of \$15,000. Mr. Gonidakis stated that he is satisfied with the Proposed Order, but he was uncertain about the \$15,000 fine. Mr. Gonidakis noted that the Kentucky Board only fined Dr. Zia \$1,600 and the incident had occurred in that state. Mr. Gonidakis stated that the facts in this case are terrible and that the Board may wish to consider permanently revoking Dr. Zia's Ohio medical license, but he suggested that discussion of the amount of the proposed fine may be appropriate.

Ms. Montgomery observed that Dr. Zia has characterized the Kentucky consultant's comments about his

epidural methodology as simply a disagreement between two professionals. Ms. Montgomery asked the physician members of the Board to opine about the appropriateness of Dr. Zia's epidural injection procedure. Dr. Steinbergh replied that Dr. Zia's methodology was inappropriate. Dr. Factora agreed.

Ms. Montgomery stated, based on the many years she spent prosecuting sexual offenders, that most sexual predators have many victims before they are discovered. Ms. Montgomery stated that in this case, she was intrigued to learn that when the patient went to another physician and related what had happened during Dr. Zia's procedure, the new physician encouraged the patient to file a complaint against Dr. Zia. The new physician also commented, in what Ms. Montgomery acknowledged was hearsay, that four or five other patients had made similar statements about Dr. Zia. Ms. Montgomery opined that based on her experience and the willingness of another physician to encourage a complaint against Dr. Zia, it appears that Dr. Zia had created a circumstance in which he could find victims and consistently, through the course of his practice, victimize the patients. Ms. Montgomery stated that from her background, she would look at this situation and say that Dr. Zia is simply a predator in a white coat. Based on her experience, Ms. Montgomery found this very alarming and stated that she would not choose to allow Dr. Zia to practice medicine again.

Ms. Montgomery asked the Board members to consider themselves in a public forum or cocktail party having to explain that the Board will allow this physician, whom the Board knows to be dangerous, to practice medicine as long as there is a witness in the form of a chaperone. Ms. Montgomery asked the Board to consider how such a statement would sound to the general public. Ms. Montgomery stated that the Board should not allow a physician such as this to continue victimizing patients.

Ms. Montgomery moved to amend the Proposed Order in order to permanently revoke Dr. Zia's license to practice medicine and surgery in Ohio, and to retain the \$15,000 fine in the Order. Dr. Schachat seconded the motion.

Dr. Schottenstein appreciated Ms. Montgomery's comments and stated that he has struggled with the same thoughts. However, Dr. Schottenstein expressed concern about permanent revocation due to the absence of a "smoking gun." Dr. Schottenstein stated that this case consists of the patient's complaint and hearsay from the second physician. Dr. Schottenstein stated that he did not wish to detract from the emotional power of the patient's complaint, but to permanently revoke a license on such a basis is a big step. Dr. Schottenstein also commented that the second physician had an obligation to file a complaint against Dr. Zia based on what his patients had reported, rather than simply encourage the patients to file complaints.

Ms. Montgomery asked if the voting Board members are allowed to know whether a Board investigator had questioned the second physician or the other patients that he had mentioned. Dr. Schottenstein replied that the voting members of the Board are not privy to such investigatory material. Ms. Montgomery asked the Board to assume that those individuals were not questioned and further asked what the Board does to make certain that its investigators take that extra step. Ms. Anderson stated that this is a "bootstrap" action based on action taken against Dr. Zia's medical license in Kentucky. As such, this matter was investigated by the Kentucky Board, which resulted in the Kentucky Board Order which is the basis of the Ohio Board's consideration today. Ms. Anderson reminded the Board that the full range of sanctions is available in this matter.

Ms. Montgomery asked about the Ohio Board's ability to investigate and question individuals outside the state of Ohio. Ms. Anderson replied that during the investigative stage, the Board's investigators can

perform actions under the direction of the Board's Secretary and Supervising member to gather information and establish facts. In the matter of Dr. Zia, the investigation phase has concluded and the Board must now consider the record that is based on the Notice of Opportunity for Hearing. Ms. Anderson stated that since Dr. Zia did not request a hearing, there was no testimony taken.

Ms. Montgomery asked if a physician is able to thwart the Board's ability to review the full complement of information and to determine appropriate discipline simply by not requesting a hearing. Ms. Anderson stated that the full range of sanctions is available and the Board can determine appropriate discipline based on the record provided. Ms. Anderson stated that the Board investigators can conduct an investigation on out-of-state events instead of simply relying on another state medical board's record, but such investigation must precede issuance of the Notice of Opportunity for Hearing.

Dr. Steinbergh commented that Ms. Montgomery is correct that the absence of a hearing prevents the Board from examining all the evidence and any potential testimony. However, Dr. Steinbergh stated that the Board can choose to permanently revoke a license based on such a record, regardless of what action another state medical board had chosen to take. Dr. Steinbergh stated that if the Board chooses to accept the Proposed Order in the matter of Dr. Zia, then Dr. Zia's Ohio medical license will be suspended for a minimum of one year and he will have a permanent restriction on his license, in addition to other stipulations and conditions for reinstatement or restoration.

Mr. Groeber stated that investigating an incident that occurred outside of Ohio may involve jurisdictional issues that could limit the ability to investigate. Mr. Groeber stated that the Board has a great investigative staff and that these issues can be discussed further in the future. Ms. Montgomery commented that there should not be a problem talking to witnesses wherever they are.

Mr. Giacalone recalled a prior case involving an out-of-state action and a physician who did not request a hearing in Ohio. Mr. Giacalone stated that in that case the physician received a very light sanction from the out-of-state medical board, but the Ohio Board chose to permanently revoke his Ohio license. Mr. Giacalone stated that a licensee's failure to request a hearing can limit the information available, but the Board can still choose to take harsher action than the originating state medical board.

Dr. Schottenstein commented that it is meaningful to him whenever a licensee chooses not to request a hearing to defend his or her license. Dr. Schottenstein asked if the Board could non-permanently revoke Dr. Zia's Ohio license, and then be in a better position to vet the issues of this case if he chooses to reapply for licensure. Ms. Anderson replied that the Board can choose to non-permanently revoke the license, in which case Dr. Zia could theoretically reapply the day after the Order is effective. Ms. Montgomery observed that in that case, the Board could grant the application and still have the authority to suspend or impose conditions.

Dr. Steinbergh stated that if a licensee whose license was non-permanently revoked chooses to reapply for licensure, that licensee would be moved to read the Board's comments as recorded in the meeting minutes and take appropriate action to improve the chances that the reapplication would be approved. Dr. Steinbergh stated that the Board is very concerned about boundary issues and it permanently revokes the licenses of those respondents about whom the Board has grave concerns.

Dr. Steinbergh, referring to a statement made earlier by Dr. Schottenstein, stated that a licensee has a right not to request a hearing and she has always understood that the Board's decision should not be dependent on a failure to request a hearing. Dr. Steinbergh commented that a licensee's failure to attend

a hearing does not make the licensee more guilty of the allegations.

Dr. Steinbergh commented that she respects Ms. Montgomery's willingness to have this conversation today and to bring her experience to the table on this subject.

Mr. Giacalone opined that the issue of Dr. Zia's inappropriate epidural methodology is about as troubling as the sexual allegations. Dr. Steinbergh agreed. Mr. Giacalone noted the following quote from the Kentucky consultant's report:

In conclusion, Dr. Zia is not qualified to perform an epidural steroid injection procedures. ... These procedures have very serious potential complications including paralysis and death. I believe he has demonstrated gross incompetence, gross ignorance, and gross negligence.

Mr. Giacalone stated that he does not wish to diminish the concerns about the sexual predator issue, but felt that in some respects the epidural procedure issue is more problematic, especially upon hearing the opinion of the physician members of the Board that Dr. Zia's methodology was below the minimal standards of care.

Ms. Montgomery commented that she may defer to Dr. Schottenstein's earlier comments regarding non-permanent revocation and the Board's ability to gather more information if Dr. Zia reapplies in the future. Mr. Gonidakis opined that non-permanent revocation is a weaker penalty than the Proposed Order. Mr. Gonidakis reiterated that the Proposed Order would suspend Dr. Zia's Ohio license for a minimum of one year and that he could only return to practice under the Board's terms. Mr. Gonidakis stated that with non-permanent revocation, Dr. Zia could come back on his terms under conditions more favorable to him.

Dr. Steinbergh agreed with Mr. Gonidakis and stated that the Proposed Order addresses the issues of competency and physician/patient boundaries. Dr. Steinbergh added that the Proposed Order would also require Dr. Zia to fulfill the terms of the Kentucky Agreed Order. Dr. Steinbergh listed the educational requirements included in the Kentucky Agreed Order. Dr. Steinbergh stated that if one believes that Dr. Zia is a predator, then his license should be permanently revoked. However, Dr. Steinbergh opined that if one believes that Dr. Zia can be retrained and remediated, then the Proposed Order is appropriate.

Ms. Montgomery stated that if Dr. Zia reapplies for licensure following a non-permanent revocation, then this process would begin again and the Board could choose to impose the same sanctions that are contained in the Proposed Order. Ms. Montgomery respectfully disagreed with Mr. Gonidakis and stated that a non-permanent revocation would not be weaker, only delayed.

Dr. Schottenstein opined that non-permanent revocation is weaker than the Proposed Order for the reasons outlined by Mr. Gonidakis. Dr. Schottenstein stated that he had initially asked about non-permanent revocation as a mechanism by which the Board could gather additional information upon reapplication. Ms. Anderson stated that if Dr. Zia reapplies, he would have to disclose the Kentucky action on the application. However, the Board will have already taken an action based on the Kentucky action, namely revocation. Ms. Anderson was uncertain if the Board could do the same thing again or if the Board would be in the exact same situation as today.

Mr. Groeber stated by way of clarification that the Proposed Order would keep control of the terms upon which Dr. Zia could reapply in the Board's hands, whereas a non-permanent revocation would effectively

wipe the slate clean and require the Board to start over again if Dr. Zia reapplies. Mr. Giacalone commented that a reapplication would result in another Notice of Opportunity for Hearing, which would include Dr. Zia's disciplinary history and would not be a clean slate. Mr. Giacalone also stated that Dr. Zia would be much more likely to attend a hearing to make his case if he were to reapply for licensure.

Ms. Montgomery reiterated that from the public point of view, acceptance of the Proposed Order would appear as if the Board is allowing a predator to continue practicing. Mr. Groeber opined that if the Board does not see a path for Dr. Zia to return to practice, then it should permanently revoke Dr. Zia's Ohio license. However, if the Board does see a potential path back to practice, then Mr. Groeber opined that the Proposed Order is preferable to non-permanent revocation because the Proposed Order would minimize the amount of the Board's resources that would be put forth for Dr. Zia and detract from other things the Board is working on. Ms. Montgomery stated that with all due respect, she is not sympathetic to that view.

Ms. Montgomery wished to change her motion to amend so that Dr. Zia's Ohio medical licensure would be non-permanently revoked, while still retaining the \$15,000 fine. No Board member objected to the change in the motion to amend. The change in the motion to amend was accepted.

Dr. Schachat stated that he is sensitive to the fact that the proposed \$15,000 fine is almost ten times greater than the fine imposed by the Kentucky Board, in whose state the incident occurred. Dr. Schachat stated that this is questionable considering that the Ohio Board does not have more information than the Kentucky Board did. However, Dr. Schachat stated that the Ohio Board is more aggressive about fining than other state medical boards, and so the increase fine is probably appropriate.

A vote was taken on Ms. Montgomery's motion to amend:

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

The motion to amend carried.

Dr. Steinbergh moved to Find that the allegations as set forth in the May 10, 2017 Notice of Opportunity for Hearing in the matter of Dr. Zia have been proven to be true by a preponderance of the evidence and to adopt Mr. Porter's Proposed Findings and Proposed Order, as amended. Ms. Montgomery seconded the motion.

Mr. Gonidakis commented that he intends to vote "nay" on the amended Order because he feels strongly that the Proposed Order is a stronger sanction than the amended Order. Dr. Steinbergh agreed with Mr. Gonidakis' comment.

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

The motion to approve carried.

The Board took a brief recess at 12:10 p.m. and resumed the meeting at 1:07 p.m.

EXECUTIVE SESSION

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

The motion carried.

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

The Board returned to public session.

EXECUTIVE SESSION

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

The motion carried.

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

The Board returned to public session.

RATIFICATION OF SETTLEMENT AGREEMENTSRANDALL O. KRAWCHECK, D.O. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the proposed Permanent Surrender with Dr. Krawcheck. 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. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

ROBERT S. REEVES, JR., M.D. – PERMANENT SURRENDER OF CERTIFICATE TO PRACTICE MEDICINE AND SURGERY

Dr. Steinbergh moved to ratify the proposed Permanent Surrender with Dr. Reeves. 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. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

MLB, M.D. – CONSENT AGREEMENT

Mr. Gonidakis moved to ratify the proposed Consent Agreement with MLB, M.D. Dr. Schachat seconded the motion. A vote was taken:

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

The motion to ratify did not carry.

DIANE OTTOLENGHI, L.M.T. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the proposed Consent Agreement with Ms. Ottolenghi. 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. Edgin	- aye
Dr. Factora	- aye
Ms. Montgomery	- aye
Dr. Bechtel	- aye

The motion to ratify carried.

SHERIF A. SALAMA, M.D. – CONSENT AGREEMENT

Dr. Steinbergh moved to ratify the proposed Consent Agreement with Dr. Salama. 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. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Bechtel	- abstain

The motion to ratify carried.

HEATHER DANIELLE STRAWBRIDGE, M.D. – CORRECTION TO THE RATIFIED CONSENT AGREEMENT

Dr. Steinbergh moved to approve the proposed correction in the matter of the Consent Agreement with Dr. Strawbridge. 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. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Bechtel	- aye

The motion to approve carried.

GREGORY DUMA, M.D. – STEP I CONSENT AGREEMENT

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

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

The motion to ratify carried.

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

Dr. Steinbergh moved to send the Notices of Opportunity for Hearing to Marvin Mercado Baula, M.D.; and Thomas Gerard Bering, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

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

The motion to send carried.

MORY SUMMER, M.D. – OPPORTUNITY FOR HEARING ON FAILURE TO SUBMIT TO AN EXAMINATION AND NOTICE OF SUMMARY SUSPENSION BASED UPON PRESUMPTION OF AN ADMISSION OF INABILITY TO PRACTICE

At this time the Board read and considered the proposed Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based upon Presumption of an Admission of

Inability to Practice in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

Dr. Steinbergh moved to enter an Order of Summary Suspension in the matter of Mory Summer, M.D., in accordance with Section 4731.22(G), Ohio Revised Code, and to issue the Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based upon Presumption of an Admission of Inability to Practice. 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. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Bechtel	- aye

The motion to approve carried.

FINDINGS, ORDERS, AND JOURNAL ENTRIES

Mr. Giacalone stated that in the following matter, the Board issued a Notice of Opportunity for Hearing, and documentation of Service was received. There was no timely request for hearing filed, and more than 30 days have elapsed since the mailing of the Notice. This matter is therefore before the Board for final disposition. This matter is non-disciplinary in nature, and therefore all Board members may vote.

SARAH ANN WRIGHT, L.M.T.

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

Dr. Saferin moved to find that the allegations set forth in the November 20, 2017 Notice of Opportunity for Hearing have been proven to be true by a preponderance of the evidence, and that the Board enter an Order, effective immediately upon mailing, approving Ms. Wright's application for restoration of her Ohio massage therapy license, pending successful completion of the MBLEX within six months of the date of mailing of the Notice of Opportunity for Hearing. Dr. Steinbergh seconded the motion. A vote was taken:

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

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

The motion carried.

OPERATIONS REPORT

Human Resources: Mr. Groeber stated that the Board will be onboarding employees from the Ohio Board of Dietetics and the Ohio Respiratory Care Board in the next 30 days, pursuant to the merger with those boards effective January 21, 2018.

Mr. Groeber stated that a Labor-Management Committee meeting was held recently and that the training schedule for the Investigator Safety Initiative will be finalized within the next 30 days.

Investigator Firearms: Mr. Groeber stated that the Board's staff is continuing to work with the union to implement the changes directed by the Board, and to work with the union's representative on updated drafts of the investigator manual. Management will continue to refine the manual and work with the union to prepare for the return of firearms should the Board vote to rescind investigator authority to carry firearms. Staff has proceeded with the procurement of safety materials and training approved at the December 2017 meeting. Until such time as the Board takes a formal vote, the Board will maintain the investigators' authority to carry firearms.

Agency Operations: Mr. Groeber stated that there has been 0.1% increase in the number of open complaints, most likely related to reduced staffing levels over the holidays.

Mr. Groeber stated that the number of new licenses issued had increased by 4%. Mr. Groeber noted that with the Medical Board's assumption of licensing for dieticians and respiratory care specialists later this month, the Board will have a total of about 80,000 licensees.

Meet the Staff: Mr. Groeber stated that this month the Board's Standards Review and Compliance staff is appearing before the Board to introduce themselves and describe their duties.

Alexandra Murray explained that the Standards Review Section and the Compliance Section are separate sections within the Board. Ms. Murray stated that the Board's Compliance Officers, Angela Moore and Annette Jones, have each been with the Board for more than 15 years. Ms. Jones and Ms. Moore work with the Board's probationers and coordinate their requirements. Ms. Murray stated that Ms. Jones and Ms. Moore go above and beyond to ensure that the probationers understand their respective Board Orders or Consent Agreements.

Ms. Murray stated that the Standards Review Section is responsible for the review of medical records. Standards Review includes two nurses, Cindy Erwin, R.N. and Jack Holdford, R.N., and an administrative assistant, Bonnie Ristow. The nurses review cases of alleged violation of the minimal standards of care to determine if they meet the threshold for enforcement. The nurses will also coordinate with an expert if

needed to prepare the case for possible enforcement or additional investigation. Ms. Murray stated that Ms. Erwin and Mr. Holdford have extensive nursing experience and keep current on industry standards through journals and other publications.

Ms. Murray stated that she has worked for the Board for three years and oversees both of these sections.

Mr. Groeber commented that Donald Davis, currently with the Ohio Board of Dietetics, will join the Standards Review Section following the board consolidation to fill administrative gaps. Mr. Davis will also provide support functions for Investigations and Enforcement.

Mr. Groeber stated that nicest part of every Board meeting is when probationers are released from probation and they thank the Board and give a hug or handshake to the compliance officers. Mr. Groeber stated that this is a testament to the great work the Compliance Section does. Mr. Groeber also stated that the backlog of cases that had existed has been cleared up thanks to the phenomenal work of the current Standards Review group.

Dr. Saferin Reappointment: Mr. Groeber stated that the Governor had reappointed Dr. Saferin to another term on the Medical Board.

2018 Board Retreat: Mr. Groeber stated that April 12 has been chosen as the tentative date for the Board's 2018 Retreat. Mr. Groeber asked the Board members to check their calendars and to let him know if they have a conflict on that date. Off-site locations, such as state and metro parks, are being considered for the site of the Retreat. Topics for the Retreat will include settlement agreements and Board material presentation. Mr. Groeber encouraged the Board members to inform him of any other topics they would like to have discussed at the Retreat.

Board Member Surveys: Mr. Groeber stated that on an annual basis, he will provide the Board members with a survey in order to provide the staff with a sense of what the Board members think should be done differently from an operational standpoint. Mr. Groeber asked the Board members to fill out the survey at their leisure.

Federation of State Medical Boards 2018 Annual Meeting: Mr. Groeber stated that, if approved by the Board during the Finance Committee report, he and Mr. Giacalone will attend the 2018 Annual Meeting of the Federation of State Medical Boards (FSMB) as travel scholarship recipients. Under the Board's policy, up to two non-scholarship Board members and up to two non-scholarship staff members may also attend at the Board's expense. Mr. Groeber asked the Board members to let him know if they are interested in attending the FSMB Annual Meeting, which will be held in Charlotte, North Carolina, from April 26 to April 28.

Dr. Schottenstein indicated that he would be interested in attending the Annual Meeting, but he did not want to prevent another Board member from attending since he also attended last year's meeting. Dr. Steinbergh indicated that she will attend the meeting because she services on an FSMB committee and will be a candidate for the FSMB Board of Directors. Mr. Groeber stated that if the Board is agreeable to the notion, then Dr. Steinbergh's membership and candidacy could constitute a separate reason for attending the meeting and that another Board member in addition to Dr. Schottenstein may attend if they wish.

Holiday Food and Toy Drives: Mr. Groeber stated that the Board donated about 5,300 meals plus a

large box of food, as well as about 50 toys for firefighters. Mr. Groeber noted that a number of Board members also contributed food and money.

Board Consolidation: Mr. Groeber stated that the consolidation with the Ohio Board of Dietetics and the Ohio Respiratory Care Board will become effective on January 21. An amendment has been added to House Bill 145 related to the consolidation.

Board Member Compensation: Mr. Groeber stated that by Board policy, the staff is required to provide information on Board member compensation on an annual basis. The Board member compensation for 2017 is provided on the last page of the Operations Report.

Financial Disclosure Forms: Mr. Groeber reminded the Board members that their Financial Disclosure Forms are due at the Ohio Ethics Commission in May 2018.

102.04(D) Statements: Ms. Debolt reminded the Board that any Board member who receives income from another State source, either directly or indirectly, must file a 102.04(D) form. By filing a 102.04(D) form, the Board member discloses this to both State entities in question, as well as to the Ethics Commission, and promises not to vote on any matter involving an employee of the other agency or a period of two years. Ms. Debolt stated that any Board member who needs to file a 102.04(D) form should do so by the end of this month. Mr. Groeber stated that any Board member who has questions about whether they should file a 102.04(D) statement should contact Ms. Debolt.

REPORTS BY ASSIGNED COMMITTEES

FINANCE COMMITTEE

FISCAL REPORT

Dr. Schottenstein stated that in November 2017 the Board's revenue was \$639,383. The Board's revenue for Fiscal Year 2018 to date is approximately \$2,700,000, which is a 25% decrease compared to the same point in the last two-year cycle. Dr. Schottenstein noted that preliminary numbers are available for December 2017 and it appears that revenue for that month was about \$1,200,000. Dr. Schottenstein stated that this substantial increase in monthly revenue is partly a function of the license renewal cycle for allied specialties other than massage therapists, which is the first group of renewals that were not directly affected by the eLicense system disruption. Dr. Schottenstein noted that there is another upcoming renewal cycle for physicians and massage therapists with a March 2018 deadline, which should provide additional increased revenue. In addition, the Board should see substantial revenue from respiratory care professionals and dietician license renewals from April 2018 through June 2018.

Dr. Schottenstein stated that the Board's cash balance has decreased by 32.7% this fiscal year and is currently \$3,056,296. Dr. Schottenstein observed that a preview of the December 2017 figures shows the cash balance rebounding to about \$3,400,000, showing that November 2017 represents the Board's bottom with regard to cash balance. Dr. Schottenstein stated that the cash balance should continue to increase going forward. Dr. Schottenstein noted that in December 2016 \$1,488,000 was transferred from the Board's fund to support the eLicense system development. Dr. Schottenstein further noted that another final transfer of revenue will occur in the late Spring of 2018 for the eLicense system. Dr. Schottenstein was hopeful that the Board's cash balance will be about \$4,500,000 by late Spring 2018 so that the final transfer of eLicense funds will bring the cash balance back down to roughly the \$3,400,000

range again.

Dr. Schottenstein stated that total expenditures in November 2017 were \$713,735, an overall decrease of 0.4% year-to-date. Dr. Schottenstein stated that this decrease is substantially a function of the fact that the Board has not yet been charged for rent for the first two quarters of the fiscal year, which is about \$85,000 per quarter. Dr. Schottenstein stated that when the Board is billed for rent, expenditures will have increased by 2% to 4% year-to-date. Dr. Schottenstein stated that spending in November was otherwise unremarkable.

Dr. Schottenstein stated that the projected spending for Fiscal Year 2018 is about \$8,600,000, roughly the same as the previous fiscal year.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated that the Board has collected a total of \$44,000 in fine payments since the last Board meeting, with \$9,000 of that from non-disciplinary fines resulting from a failure of licensees to pass a continuing medical education (CME) audit.

COMMUNICATIONS UPDATE

Dr. Schottenstein stated that the Board's acute pain prescribing rules continue to be phased in. An updated video on the acute pain prescribing rules has been produced which includes guidance on ICD-9 codes and best practices for writing prescriptions. The video was sent out via Twitter, YouTube, and the Board's e-News, as well as posted to the Board's website. In addition, the Board will be issuing requests for proposals from companies to develop mobile phone apps to support prescribers in the area of opioid prescribing.

Dr. Schottenstein stated that the Board's new email marketing software is being utilized substantially. Dr. Schottenstein stated that over 37,000 personalized emails were sent last month, and the most activity in the email was from those who had registered in the eLicense system and needed to renew their license by January 1, 2018. Dr. Schottenstein stated that more than 35% of recipients clicked directly to eLicense. With regard to December revenue, Dr. Schottenstein suspected that the email marketing system demonstrated its value by providing prompts for renewal.

Dr. Schottenstein noted that Mr. Groeber had a very good idea to give licensees who are reminded of upcoming renewal an option of clicking a reply that indicates that they have no intention of renewing. Dr. Schottenstein stated that this will help the Board close that licensee and to concentrate its efforts on those who truly need the renewal reminder.

Dr. Schottenstein stated that the Communications team also created an Acute Pain Prescribing Rules packet which was distributed to state legislators. The packet included quick-reference one-page summarizations of the One-Bite program, modernization changes, and the amended to the board consolidation legislation.

Dr. Schottenstein stated that the Winter 2018 issue of HealthScene Ohio magazine is currently undergoing edits. The feature article of the issue will be on professionalism and appropriate provider-patient relationships. The issue will also include an interview with Dr. Bechtel and an introduction to the profession of respiratory care.

BOARD MEMBER COMPENSATION

Dr. Schottenstein stated that Dr. Saferin was reappointed to an additional term on the Board in December 2017. The Board's current protocol is to implement a 4% raise, or about \$0.70 per hour, for reappointed Board members. The Finance Committee has recommended approving this increase for Dr. Saferin.

Dr. Steinbergh moved to adopt a 4% raise, equaling \$.70 per hour, for Dr. Saferin. Dr. Schachat seconded the motion. All members voted aye except Dr. Saferin, who abstained. The motion carried.

TRAVEL AUTHORIZATIONS

Dr. Saferin moved to approve the Board Member per diem for Dr. Steinbergh's attendance at the 2018 AAOE Summit meeting on January 27, 2018 in Austin Texas. Dr. Saferin further moved to find that Dr. Steinbergh's attendance at the conference is in connection with her duties as, and is related to her position as, a Board member of the State Medical Board of Ohio. Dr. Edgin seconded the motion. All members vote aye except Dr. Steinbergh, who abstained. The motion carried.

Dr. Steinbergh moved to approve Mr. Giacalone to attend the 2018 annual meeting of the Federation of State Medical Board (FSMB) and accept the FSMB voting delegates scholarship; and that Mr. Giacalone's attendance at the FSMB meeting is in connection with his responsibilities as, and is related to his position as, President of the State Medical Board of Ohio. Dr. Edgin seconded the motion. All members voted aye except Mr. Giacalone, who abstained. The motion carried.

Dr. Saferin moved to approve that Mr. Groeber to attend the 2018 annual meeting of the FSMB, and accept the FSMB executive director scholarship, as that his attendance at the meeting is in connection with his responsibilities as, and is related to his position as, Executive Director of the State Medical Board of Ohio. Dr. Steinbergh seconded the motion. All members vote aye. The motion carried.

Dr. Edgin moved to approve Mr. Groeber to attend the 2018 annual meeting of Administrators in Medicine (AIM), as his attendance at the meeting is in connection with his responsibilities as, and is related to his position as, Executive Director of the State Medical Board of Ohio. Dr. Steinbergh seconded the motion. All members voted aye. The motion carried.

POLICY COMMITTEEPROPOSED NON-DISCIPLINARY RULES FOR LICENSEES UNABLE TO PRACTICE DUE TO MENTAL OR PHYSICAL ILLNESS

Ms. Anderson stated that the proposed rules for non-disciplinary monitoring for licensees unable to practice due to mental or physical illness were circulated to interested parties for comment in April 2017. Several negative comments on the proposed rules were received from medical associations. Following a meeting between the associations and Board staff in November 2017, the associations held a meeting in late December 2017 and drafted a letter indicating that, while they still have some reservations, they will table those reservations so that the Board can move forward with the rule-making process. The associations also indicated that they would like the rules to include a requirement that reporting

information, excluding identifiers, be provided every six months in order to evaluate the effectiveness of the program.

Ms. Anderson asked the Board to approve filing the proposed rules with the Common Sense Initiative (CSI) office, which will trigger another two-week reporting period. Dr. Schachat noted that the non-identified reporting information would be a public document and not something prepared specifically for the associations.

Dr. Saferin moved to file the proposed rules for non-disciplinary monitoring of licensees due to mental or physical illness with CSI, as discussed. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

CHAPTER 4731-18, ORC: SURGERY STANDARDS AND LIGHT-BASED MEDICAL DEVICES

Ms. Anderson stated that the proposed rules on surgery standards and light-based medical devices are being circulated to interested parties for comment.

DRAFT DOCUMENTS FROM FSMB WORKGROUPS AND COMMITTEES

Ms. Anderson stated that four reports from Federation of State Medical Boards (FSMB) workgroups and committees were reviewed by the Policy Committee. The Policy Committee determined that with respect to the report on prescription drug monitoring programs (PDMP), the Board staff will work with Mr. Giacalone, who is a member of the FSMB committee that drafted the report, to write a letter expressing one concern about requiring warrants and subpoenas from law enforcement and other non-healthcare individuals to access the monitoring program. Mr. Giacalone asked it would be appropriate to share the Board's comments with another member of that FSMB committee, a consumer member from Connecticut who had similar concerns. Ms. Anderson replied that that would be appropriate.

Ms. Anderson stated that the Board's comments on the four FSMB reports are due on January 26. Ms. Anderson stated that any Board member who would like to have comments prepared on any of those report should contact her.

FSMB RESOLUTION ON ACUTE PAIN PRESCRIBING

Ms. Anderson stated that the Policy Committee has updated the Board's proposed FSMB resolution on acute pain prescribing.

Dr. Schachat moved that the Board move forward with the revised proposed FSMB resolution on acute pain prescribing. Dr. Saferin seconded the motion. All members voted aye. The motion carried.

LICENSURE COMMITTEE

REVIEW OF CHAPTER 4731-6, OHIO ADMINISTRATIVE CODE

Dr. Saferin stated that due to statutory changes in Chapter 4731 of the Ohio Revised Code, the Board's staff is recommending revisions to the physician licensure rule in Chapter 4731-6, Ohio Administrative Code. The Licensure Committee approved the revisions to be circulated to interested parties for

comment.

PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE

PHYSICIAN ASSISTANT FORMULARY

Dr. Steinbergh stated that the Physician Assistant/Scope of Practice Committee had a significant discussion regarding possible formats for the physician assistant formulary and how to make the formulary more user-friendly. The Physician Assistant Policy Committee (PAPC) has suggested forming an *ad hoc* committee to determine how best to handle the current formulary. Dr. Steinbergh stated that Mr. Groeber has agreed to facilitate the group, which will include members of the PAPC and also IT staff.

NEW FORMULARY CATEGORIES

Dr. Steinbergh stated that the Committee did not discuss this topic today.

MEDICAL BOARD REPORT FROM DECEMBER 2017

Dr. Steinbergh stated that the Physician Assistant/Scope of Practice Committee had sent a request to the PAPC to reconsider the medications Emflaza and Bevyxxa.

Dr. Steinbergh noted that while the PAPC had recommended Emflaza for the May Prescribe category, the Physician Assistant/Scope of Practice Committee felt that that medication should be in the Physician-Initiated category. The PAPC has agreed to change its recommendation as requested.

Regarding Bevyxxa, Dr. Steinbergh stated that the Physician Assistant/Scope of Practice Committee has asked for a discussion regarding oral anti-coagulants and parenteral anti-coagulants. Dr. Steinbergh stated that the Committees are in the process of having that discussion about anti-coagulant categories.

REQUESTS FOR REVIEW OF DRUGS

Dr. Steinbergh stated that the Physician Assistant Policy Committee and the Physician Assistant/Scope of Practice committee has made the following recommendations for the physician assistant formulary:

- **Vabomere** is a combination antibiotic used parenterally and is indicated for acute urinary tract infections, including pyelonephritis. Vabomere is recommended for the Physician-Initiated category.
- **Mavyret**, is a fixed-dose combination of hepatitis C virus protease inhibitor and an HCV NS5A inhibitor. Mavyret is indicated for treatment for chronic Hepatitis C (HCV) and there are concerns about the risk of hepatitis B virus reactivation. Mavyret has been recommended for the Physician-Initiated category.
- **Aliqopa, Calquence, Idhifa, and Verzenio** are all anti-neoplastics and are recommended for the May Not Prescribe category.
- **Benznidazole** is indicated for treatment of Chagas disease. Because this medication is very specific, it has been recommended for the Physician-Initiated category.
- **Solosex** is for treatment of bacterial vaginosis (BV). Solosex is recommended for the May

Prescribe category.

Dr. Saferin moved to approve the recommendations of the Physician Assistant/Scope of Practice Committee. Dr. Schachat seconded the motion. The motion carried.

PROPOSED FORMULARY REQUEST FORM

Dr. Steinbergh stated that the Physician Assistant Policy Committee and the Physician Assistant/Scope of Practice Committee has recommended two changes to the proposed formulary request form. The first suggested change is to require that the current Food and Drug Administration (FDA) label for the medication be attached to the form. The second suggested change is the addition of the date on the form.

Dr. Saferin moved to approve the proposed changes to the formulary request form. Dr. Bechtel seconded the motion. The motion carried.

PODIATRIST SCOPE OF PRACTICE

Dr. Steinbergh stated that this topic has been tabled and will be discussed at next month's meeting.

REGULATION OF PHYSICIAN ASSISTANT PRESCRIPTIVE AUTHORITY IN OTHER STATES

Dr. Steinbergh stated that this topic has been tabled.

COMPLIANCE COMMITTEE

Dr. Steinbergh stated that on December 13, 2017, the Compliance Committee met with Michelle L. Ahmed, D.O.; Peter C. Johnson, M.D.; and Leslie R. Swart, M.T., and moved to continue them under the terms of their respective Board actions. The Compliance Committee accepted Compliance staff's report of conferences on November 6, 7, & 9 2017.

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 Malak S. Adib, M.D.'s request for approval of Bihu Sandhir, M.D., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at 10 charts per week;**
- **To grant Jesse M. Ewald, M.D.'s request for reduction in appearances to every six months; and discontinuance of the chart review requirement;**
- **To grant Freeda J. Flynn, M.D.'s request approval of the course *Managing Difficult***

Communications in Medical Practice: Controlling Anger, Avoiding Outbursts, Communication Appropriately, offered by Case Western Reserve university, to fulfill the disruptive physicians course requirement;

- To grant Nathan B. Frantz, D.O.'s request to reduction in recovery meeting attendance to two meetings per week with a minimum of ten meetings per month;
- To grant Cyma Khalily, 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 prescribed 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 Ross Rosario Lentini, M.D.'s request for discontinuance of the Naltrexone requirement;
- To grant Muyuan Ma, M.D.'s request for approval of Annemarie L. Daly, M.D., to serve as the new monitoring physician;
- To grant Dennis A. Patel, M.D.'s request for discontinuance of the chart review requirement; and
- To grant Aly M. A. Zewail, M.D.'s request for approval of Nicole T. Labor, D.O., to serve as the new monitoring physician.

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

The motion carried.

REINSTATEMENT REQUEST

CHRISTOPHER MCKINLEY (HEBEN), P.A.

Dr. Steinbergh moved that the request for the reinstatement of the license of Christopher McKinley, P.A., 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
	Dr. Schachat	- aye
	Mr. Giacalone	- aye
	Mr. Gonidakis	- aye
	Dr. Edgin	- aye
	Dr. Factora	- aye
	Ms. Montgomery	- aye
	Dr. Bechtel	- abstain

The motion carried.

FINAL PROBATIONARY APPEARANCES

BRIAN F. GRIFFIN, M.D.

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

In response to questions from Mr. Giacalone, Dr. Griffin confirmed that he has served as Executive Director of the Arnold Sports Festival for 19 years. Dr. Griffin stated that the Festival has grown from 4,000 athletes to 20,000 athletes. Dr. Griffin stated that this year the Festival will run 36 medical teams simultaneously for 16 hours per day for four days. The medical teams represent about 600 volunteers, including about 100 physicians, 100 nurses, and 100 emergency medical technicians. Dr. Griffin stated that one of his duties is to recruit these volunteers. Dr. Griffin stated that his position is full-time at this time of year and is half-time from March to August.

Mr. Giacalone asked how Dr. Griffin's recovery program is going. Dr. Griffin replied that his program is going very well. Mr. Giacalone, noting Dr. Griffin's recurrent history with the Board, asked what Dr. Griffin has put into place to keep himself compliant. Dr. Griffin stated that the number one thing he has done is to involve himself more in the fellowship of the recovery community. Dr. Griffin stated that he had initially identified certain aspects of the recovery program that he felt he needed to focus on and he felt that he did not need to do the other aspects. Dr. Griffin stated that he has since learned that he must work the whole program and let someone wiser than he figure out what may or may not be pertinent and conducive to a sober life.

Dr. Schottenstein was glad to see Dr. Griffin doing well and he hoped that Dr. Griffin will be careful moving forward. Dr. Schottenstein noted that Dr. Griffin has a long history of many different areas of concern. Dr. Schottenstein commented that he could not predict what would happen to Dr. Griffin's medical license if he were to come before the Board again. Dr. Schottenstein urged Dr. Griffin to make good choices and continue working his program. Dr. Schottenstein cautioned that the success the people can have in recovery sometimes breeds a familiarity and a complacency that can lead them to decide that they are okay to drink again.

Dr. Steinbergh stated that as she reviewed Dr. Griffin's history with the Board, it occurred to her that he first came before the Board at the same time that she first became a Board member 25 years ago. Dr. Steinbergh commented that she will finish her fifth term on the Board soon and will be stepping down from the position. Dr. Steinbergh stated that she would like to make a deal with Dr. Griffin that neither one of them will return to the Board. Dr. Griffin stated that that is a fair deal.

Dr. Steinbergh advised Dr. Griffin to heed Dr. Schottenstein's comments, as well as his own comment, about how he works the recovery program. Dr. Steinbergh stated that after being monitored by the Board for 25 years she cannot imagine Dr. Griffin not being successful, but Dr. Griffin is the only one who can be successful in his recovery.

Mr. Giacalone commented that Dr. Griffin has done a phenomenal job of staying sober. Mr. Giacalone observed that the Board stayed a revocation of Dr. Griffin's license at one point. Mr. Giacalone emphasized that it is in Dr. Griffin's best interests not to appear before the Board again. Mr. Giacalone stated that he assumes that Dr. Griffin will continue to adhere religiously to his recovery program. Dr. Griffin agreed.

Dr. Steinbergh moved to release Dr. Griffin from the terms of his January 9, 2013 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

DAVID R. MANDEL, M.D.

Dr. Mandel was appearing before the Board pursuant to his request for release from the terms of his December 9, 2015 Consent Agreement. Mr. Giacalone reviewed Dr. Mandel's history with the Board.

Responding to questions from Mr. Giacalone, Dr. Mandel stated that he continues to practice rheumatology in northeast Ohio and has been very fortunate to maintain a very active practice. Dr. Steinbergh asked if Dr. Mandel takes medical students into his office. Dr. Mandel replied that he takes in podiatry students and some residents from time to time.

Mr. Giacalone stated that Dr. Mandel's case is somewhat unique because it involved importing products from Canada that had not been approved by the Food and Drug Administration (FDA). Dr. Mandel stated that he made a serious mistake by prescribing medications that had not been FDA approved. Dr. Mandel apologized for these actions. Mr. Giacalone asked if Dr. Mandel has had an opportunity to speak to other physicians about this so that they do not find themselves in the same situation. Dr. Mandel replied that he has discussed this with other physicians and what he has learned from it.

Mr. Giacalone asked if Dr. Mandel had found the ethics course at Case Western Reserve University to be beneficial. Dr. Mandel replied that the ethics course was very meaningful and helpful. Dr. Mandel stated that the course covered different topics of medical ethics that he found useful and has implemented in his office.

Dr. Schottenstein, noting that Dr. Mandel's misbranding of medications had continued for a few years, asked if Dr. Mandel had known at that time that it was a prohibited activity. Dr. Mandel answered that the products' labeling was similar or identical to FDA-approved medications, and it was only later that he learned that the importation of these medications was wrong. Dr. Mandel stated that he stopped the practice when he learned it was prohibited and before any investigation of the situation had begun.

Dr. Steinbergh moved to release Dr. Mandel from the terms of his December 9, 2015 Consent Agreement, effective immediately. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

Mandel—thank you. I also want to thank Ms. Jones, she's been very helpful to me during this.

ONYINYECKI ROSE URADU, M.D.

Dr. Uradu was appearing before the Board pursuant to her request for release from the terms of the Board's Order of September 14, 2016. Mr. Giacalone reviewed Dr. Uradu's history with the Board.

Responding to questions from Mr. Giacalone, Dr. Uradu stated that she is still running the buprenorphine clinic and that she is in the process of regaining her Terminal Distributor of Dangerous Drugs (TDDD) license from the Board of Pharmacy. Dr. Uradu stated that she found the course she had taken on prescribing controlled substances to be helpful. In regards to future plans, Dr. Uradu would like to continue in her current area of practice.

Dr. Steinbergh asked if Dr. Uradu sees Ohio patients in her Kentucky practice. Dr. Uradu replied that she does see Ohio patients in her Kentucky office, but she also has an office in Ohio. Dr. Steinbergh asked what other healthcare professionals Dr. Uradu practices with. Dr. Uradu responded that she practices with one other physician and a nurse practitioner. For therapy, Dr. Uradu refers her patients to a certified counseling practice in the same building as Dr. Uradu's practice. Dr. Steinbergh asked if Dr. Uradu documents in the medical record whether her patients are being successful in therapy. Dr. Uradu replied affirmatively.

Dr. Schottenstein noted that Dr. Uradu took several courses in prescribing and asked if that has been productive for her. Dr. Uradu replied that the courses were productive and relevant to her practice. Dr. Schottenstein asked if Dr. Uradu is being more mindful about the number of active patients she has, as the violation of regulations in that area is what had brought her before the Board. Dr. Uradu stated that she has put into place a better tracking system. Dr. Uradu noted that since the time of her violation, the las has been changed for emergency situations, so that provides a safety valve of sorts for prescribing.

Dr. Steinbergh moved to release Dr. Uradu from the terms of the Board's Order of September 14, 2016, effective immediately. Dr. Schottenstein seconded the motion. All members voted aye. The motion carried.

YI XIONG, D.O.

Dr. Xiong was appearing before the Board pursuant to his request for release from the terms of his January 11, 2017 Consent Agreement. Mr. Giacalone reviewed Dr. Xiong's history with the Board.

In response to questions from Mr. Giacalone, Dr. Xiong stated that he is currently a second-year internal medicine resident at Jewish Hospital. Dr. Xiong stated that his residency is going very well and he has been asked to be Chief Resident in July. Dr. Xiong found the courses he had been required to take to be beneficial and that the whole situation has made him more mature. Dr. Xiong recalled that the incident in question occurred in 2009 and he has shared his experience with his colleagues.

Responding to questions from Dr. Steinbergh, Dr. Xiong stated that he had graduated from the Texas College of Osteopathic Medicine and prior to that he had been a registered nurse in Oklahoma. Dr. Steinbergh asked if Dr. Xiong has had conversations with his fellow residents about the Board's action against his license. Dr. Xiong replied that he has such conversations on a daily basis. Dr. Xiong stated that at the time, he had not understood that charting in advance in a medical record is considered falsification of documentation.

Dr. Xiong continued that residents in his program have to log their hours, and many times some residents will log their hours ahead of time. Dr. Xiong stated that he has mentioned to these residents that that is probably not a good idea. Dr. Xiong also commented that many residents will pen their notes in the electronic medical record (EMR) before they see the patient. Dr. Xiong stated that he guesses it is not technically wrong since the resident has not yet signed the note, but he has advised his fellow residents to try to see the patient before beginning to chart.

Dr. Steinbergh asked how one can make a note on a patient without seeing the patient and believe that that is not ethically wrong. Dr. Xiong stated that he does not personally do this, but many residents feel that it is okay so long as they do not sign the note before seeing the patient. Dr. Steinbergh stated that this activity is, in fact, fraudulent and that residents should know that. Dr. Steinbergh stated that one cannot place a note in a patient record when one has not yet seen the patient, regardless of whether the note is signed.

Dr. Steinbergh further stated that this activity can lead physicians to not really observe the patient and simply sign their name to the pre-written note. Dr. Steinbergh stated that this practice can also lead the physician to miss the opportunity to truly, appropriately document the patient's condition and appearance at that time. Dr. Steinbergh stated that there are many different reasons that a medical record is created, and the reason that is probably most important is to tell future providers what the patient looked like on that day. Dr. Steinbergh stated that if something happened with that patient ten minutes later, providers would be relying in an inappropriately-documented chart. Dr. Steinbergh strongly suggested that Dr. Xiong have a serious discussion about this with his program director, who should then have serious discussions with all the residents. Dr. Xiong agreed with Dr. Steinbergh's comments. Dr. Steinbergh added that this practice is a red flag that can lead to a medical error.

Dr. Schachat agreed with Dr. Steinbergh that writing a note in the chart ahead of time is setting oneself up for a potential error or problem. Dr. Schachat stated that there is a proper way to achieve the same goal; namely, one can copy the previous note and write at the top "The note from the last visit said ..." and following the patient visit, one can write "And my update is ..." etc. Dr. Schachat stated that in this way, it is clear that the note has been copied forward and it is labeled as such. Dr. Schachat stated that one can document ahead of time, but the copied previous note and the update must be labeled appropriately. Dr. Xiong stated that he has urged his colleagues to make sure they change what their assessment is today if they copy-and-paste a previous note. Dr. Xiong felt it is better to start a new note in order to force oneself to write new things.

Dr. Schottenstein added that if legal action is ever brought against a physician who has been pre-writing notes in the patient record, a malpractice attorney will seize on that and show that the physician put no thought into the documentation.

Mr. Gonidakis moved to release Dr. Xiong from the terms of his January 11, 2017 Consent Agreement, effective January 12, 2018. Dr. Schachat seconded the motion. All members voted aye.

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 3:13 p.m., the January 10, 2018 session of the State Medical Board of Ohio was adjourned.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on January 10, 2018, as approved on February 14, 2018.



Robert P. Giacalone, President



Kim G. Rothermel, M.D., Secretary

(SEAL)



State Medical Board of Ohio

PHYSICIAN ASSISTANT/SCOPE OF PRACTICE COMMITTEE MEETING

January 10, 2018

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

<p>Members: Anita M. Steinbergh, D.O., Chair Andrew P. Schachat, M.D. Mark A. Bechtel, M.D.</p> <p>Member arriving at later time: Robert P. Giacalone</p> <p>Other Members Present: Kim G. Rothermel, M.D. Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D. Richard Edgin, M.D. Ronan M. Factora, M.D.</p>	<p>Staff: 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

Dr. Schachat moved to approve the draft minutes of December 13, 2017, as written. Dr. Bechtel seconded the motion. The motion carried.

NEW FORMULARY CATEGORIES

Dr. Steinbergh stated that the ultimate goal of the Physician Assistant/Scope of Practice Committee and the Physician Assistant Policy Committee (PAPC) is to have the legislature change the physician assistant formulary to either an inclusionary or an exclusionary format. Aside from that, there is also an effort to re-format the formulary to make it more user-friendly. Dr. Steinbergh stated that Megan Keller, R.Ph., a member of the PAPC, has been working on converting the formulary to a facts-and-comparison format. Dr. Steinbergh briefly reviewed the progress that Ms. Keller has made with the formularies categories.

Dr. Steinbergh stated that she has suggested forming a sub-committee to work on converting the formulary format. The proposed sub-committee would include the Chair of the PAPC, one or both pharmacist members of the PAPC, one physician assistant member of the PAPC, and Mr. Groeber for purposes of process. Dr. Steinbergh commented that one suggestion has been that when a new drug is reviewed, the entire category that drug would go into will be reviewed for consistency and to remove any drug that is no longer manufactured. Dr. Steinbergh stated that the PAPC sometimes questions the Physician Assistant/Scope of Practice Committee's recommendations when they concern drugs with the same types of contraindications but different physician assistant prescribing authority.

Dr. Schachat stated that if the PAPC is suggesting that the Physician Assistant/Scope of Practice Committee is inconsistent, then it is correct. Dr. Schachat stated that it would not occur to him that a group of four or five people could create a good formulary. Dr. Schachat stated that creating a

formulary is an extremely complicated and sophisticated task that probably requires a few dedicated experts. Dr. Schachat suggested that the Board look at some formularies that are available, identify a good one, and copy it. Ms. Debolt commented that there are no physician assistant formularies in other states.

Ms. Debolt stated that the current formulary is searchable, but the goal is to make it more searchable. Dr. Schachat suggested using a few defined fields for each entry that are searchable, such as Class, Chemical Name, and Product Name. Dr. Steinbergh stated that product names are not used on the formulary unless it is an exception. Dr. Schachat commented that that does not sound user-friendly because people do not know the chemical name of drugs. Dr. Steinbergh stated that the formulary includes the generic name, which most practitioners will know within their specialty. Dr. Schachat stated that he knows the generic names of the medications he prescribes, but not for the medications that other physicians may be prescribing the patient. Dr. Saferin opined that using the trade name of the drug would be easier. Ms. Debolt pointed out that the statute stipulates that the drugs must be listed "by class and specific nomenclature." Dr. Saferin opined that the trade name could be added to the formulary in addition to the specific nomenclature.

Dr. Bechtel commented that this discussion shows the challenges of the process. Dr. Bechtel noted that in Ohio, a nurse practitioner can prescribe anything the collaborating physician prescribes as long as it is within Ohio law. Dr. Steinbergh stated that that is the ultimate goal for the physician assistant formulary, though the Physician-Initiated category will probably be retained.

MEDICAL BOARD REPORT FROM DECEMBER 2017

Emflaza

Dr. Steinbergh stated that Emflaza was brought back to the PAPC because the Physician Assistant/Scope of Practice Committee felt it should be in the Physician-Initiated category instead of the May Prescribe category. The PAPC agreed to change their recommendation for Emflaza to Physician-Initiated.

Bevyxxa

Dr. Steinbergh stated that no changes have been made regarding the recommendation for Bevyxxa and it will continue to be for the May Prescribe category.

GENERAL PHYSICIAN ASSISTANT FORMULARY DISCUSSION

Dr. Saferin asked if the physician assistant formulary can be like the nurse practitioner formulary, in which they could prescribe whatever their supervising physician allows them to, within the physician's scope of practice. Dr. Saferin noted that the physician assistant is still under the guidance of the supervising physician and the supervising physician is still responsible for the physician assistant's actions.

Dr. Schottenstein stated that he had the same thought, but he pointed out the nurse practitioners are independent practitioners who can practice without a physician, whereas physician assistants must have a supervising physician. Dr. Schottenstein stated that this makes the physician's relationship with a nurse practitioner more collaborative than supervisory. Dr. Schottenstein asked if the physician assistant formulary could be as Dr. Saferin suggested, but that everything must be physician-initiated. Dr. Schachat commented that this would change the way physician assistants work because physician assistants are able to see patients when the supervising physician is not present. Dr.

Schachat stated that if a patient presents to a physician assistant with a new condition that requires a different medication, this could disrupt the flow of the practice and change the way they work.

Dr. Schachat stated that he had also had the same thought as Dr. Saferin. However, Dr. Schachat pointed out the physicians can prescribe any kind of medicine, including medicines for conditions outside their scope of practice. Therefore, if a physician assistant can prescribe anything within the scope of their supervising physician, then they could prescribe anything.

Dr. Steinbergh opined that some of the drugs used by physicians are too complicated for the physician assistant in terms of decision-making. Dr. Steinbergh stated that physician assistants do not have the same ability to make decisions about these drugs. Dr. Saferin agreed. Dr. Edgin added that some physicians do prescribe medications outside their area of practice.

Dr. Schottenstein appreciated Dr. Schachat's comments about disrupting the flow and the work of the physician assistant if all medications had to be physician-initiated. Dr. Schottenstein suggested that the supervising physician can specify in the supervisory agreement which medications must be physician-initiated for their physician assistants. Dr. Bechtel noted that in some states, the physician assistant's formulary is included in the supervisory agreement. Ms. Debolt agreed and noted that Indiana does so. However, Ms. Debolt noted that if such a structure were adopted in Ohio, every supervisory agreement would require significant reworking.

Dr. Schachat commented that he has received many comments about the inefficiency and paperwork hassle of having to scan and upload supervisory agreements. It has been suggested that this should be done electronically. Ms. Hacker stated that implementing such a system would require changes to the Board's current system. Dr. Schachat stated that the current system works well for places with one or a few physician assistants, but it becomes tedious in large institutions with over 100 physician assistants.

REQUESTS FOR REVIEW OF DRUGS

Vabomere

Dr. Steinbergh stated the Vabomere is combination anti-biotic for complicated urinary tract infections, including pyelonephritis. Vabomere is also parenteral. The recommendation from the PAPC is to place Vabomere in the Physician-Initiated category.

Dr. Schachat moved to recommend placing Vabomere in the Physician-Initiated category. Dr. Bechtel seconded the motion. The motion carried.

Mavyret

Dr. Steinbergh stated that Mavyret is a combination of anti-hepatitis C protease inhibitor and a HCV NS5A inhibitor. Mavyret is for treatment of patients with chronic HCV genotype without cirrhosis. Dr. Steinbergh noted that one of the concerns was the risk of hepatitis B reactivation. The recommendation of the PAPC is to place Mavyret in the Physician-Initiated category.

Dr. Schachat moved to recommend placing Mavyret in the Physician-Initiated category. Dr. Bechtel seconded the motion. The motion carried.

Aliqopa, Calquence, Idhifa, Verzenio

Dr. Steinbergh stated that these medications are anti-neoplastics and have been recommended for the May Not Prescribe category. Dr. Schachat commented that these medications do not seem much riskier than other medications in the Physician-Initiated category. Dr. Steinbergh stated that right now, all anti-neoplastics are being placed in the May Not Prescribe category. Dr. Schachat agreed that these new anti-neoplastics should also be placed in the May Not Prescribe category for consistency.

Dr. Steinbergh commented that in some cases a new medication has been designated as Physician-Initiate by Specialty, which means that the medication must be initiated by a consultant from the specialty in question and not by a general internist or family practitioner.

Ms. Debolt clarified that if a medication is in the May Not Prescribe, a physician assistant may not prescribe it even as a refill, though the physician may write refill prescriptions. Dr. Steinbergh agreed and stated that in those cases, the physician must determine whether the medication is still needed. Dr. Schachat noted that sometimes a patient may need a new prescription for the same medication because they have changed health insurance. Ms. Debolt stated that a physician assistant cannot write the new prescription if the medication is in the May Not Prescribe category, but they may if the medication is in the Physician-Initiated category.

Dr. Bechtel moved to recommend placing Aliqopa, Calquence, Idhifa, and Verzenio in the May Not Prescribe category. Dr. Schachat seconded the motion. The motion carried.

Benznidazole

Dr. Steinbergh stated that Benznidazole is a very specific drug for trypanosomiasis, or Chagas disease. Benznidazole is an anti-microbial and is parenteral. The PAPC has recommended Benznidazole for the Physician-Initiated category.

Dr. Schachat moved to recommend placing Benznidazole in the Physician-Initiated category. Dr. Bechtel seconded the motion. The motion carried.

Solosec

Dr. Steinbergh stated the Solosec is a nitroimidazole antimicrobial for treatment of bacterial vaginosis in adult women. The PAPC has recommended placing Solosec in the May Prescribe category.

Dr. Schachat moved to recommend placing Solosec in the May Prescribe category. Dr. Bechtel seconded the motion. The motion carried.

PROPOSED FORMULARY REQUEST FORM

Dr. Steinbergh stated that the PAPC has approved the proposed formulary request form, with the addition of the date at the bottom of the page and the requirement that the current FDA label be attached.

Mr. Giacalone entered the meeting at this time.

Dr. Bechtel moved to accept the recommendation of the PAPC. Dr. Schachat seconded the motion. The motion carried.

GENERAL PHYSICIAN ASSISTANT FORMULARY DISCUSSION

The Committee continued to discuss possible changes to the format of the physician assistant formulary. The Committee questioned whether further changes to the current format should be pursued when there is a possibility that the legislature may soon approve language that will change the format again. The Committee considered the efforts to make the formulary more user-friendly, as well as the effort of physician assistants to move to an exclusionary format as a way to broaden their prescribing authority.

Dr. Steinbergh suggested that Mr. Giacalone take steps to ensure that the Board's thoughts and perspective on this issue are adequately communicated to the legislature as they consider the formulary. Mr. Giacalone agreed and stated that he will discuss this matter with Mr. LaCross.

Mr. Giacalone exited the meeting at this time.

REGULATION OF PA PRESCRIPTIVE AUTHORITY IN OTHER STATES

Ms. Debolt stated that she has provided the Committee members with a memo outlining physician assistant prescriptive authority in other states.

Dr. Steinbergh opined that Alabama's regulation seemed very difficult and micro-managing. Dr. Schachat agreed, stating that it was awfully detailed.

Dr. Steinbergh noted that in Arizona, the physician assistant must discuss cases in a weekly meeting.

Dr. Steinbergh found the regulation in Georgia very interesting. In Georgia, the physician assistant must inform the patient that he or she has the right to see the physician before receiving a prescription from the physician assistant. Dr. Steinbergh stated that this is very consumer-oriented.

Dr. Steinbergh noted that in Kentucky, physician assistants cannot prescribe any controlled substances. Ms. Debolt commented that Kentucky is the only state with that prohibition.

PODIATRIST SCOPE OF PRACTICE

Dr. Steinbergh stated that this topic will be discussed next month. Dr. Steinbergh opined that the question here is not whether the podiatrist knows how to do the shave and punch biopsies proximal to the ankle but distal to the knee, but whether it is within the podiatrist scope of practice. Dr. Steinbergh stated that the decisions that this Committee has made regarding the podiatrist scope of practice has always affected the foot and ankle, even the matter of hyperbaric treatment, but the Board does not have the authority to extend the scope of practice.

Ms. Debolt agreed and stated that the Committee and the Board can clarify the scope of practice. However, some have made the argument that the Committee and the Board has expanded the scope of practice for podiatrists. Ms. Debolt stated that if things were put into rule instead of opinion letters, it would have to go through the Common Sense Initiative (CSI) and the Joint Committee and Agency Rule Review (JCARR), and those entities could inform the Board if they think the Board is exceeding its authority by expanding the podiatrist scope of practice. Ms. Debolt also stated that the rule-making process would provide for a comment period in which interested parties can raise questions about a negative impact on their profession.

Dr. Bechtel asked for clarification regarding podiatrists practicing in wound centers. Dr. Bechtel stated that in wound care centers throughout Ohio, podiatrists are actively involved treating wounds. Many of these wounds are large ulcerations on the peritubular surface of the calves or other areas of the

lower extremities. Dr. Bechtel asked if there has been any previous rule or comment regarding the podiatrist scope of practice in treating wounds that are on the calves or other parts of the lower extremities. Dr. Bechtel commented that these wounds can sometimes be concerning for malignancy and ulceration on the shin. Dr. Bechtel added that the wounds may be related to trauma, but they could also be related to squamous cell carcinoma.

Ms. Debolt stated that she can add these concerns to the Committee meeting packet for next month.

ADJOURN

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

The meeting adjourned at 8:30 a.m.

Anita M. Steinbergh, D.O.
Chair

blt

LICENSURE COMMITTEE MEETING
January 10th, 2018
30 E. Broad St., Columbus, OH Room 318

Members: Bruce R. Saferin, D.P.M. Richard Edgin, M.D. Kim G. Rothermel, M.D. Ronan M. Factora, M.D. Other Board members present: Michael Schottenstein, M.D.	Staff: Joseph Turek, Deputy Director of Licensure/Renewal Mitchell Alderson, Chief of Physician Licensure Chantel Scott, Chief of Allied Licensure and Renewal Colin DePew, Assistant Attorney
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Dr. Saferin called meeting to order at 8:00 a.m.

MINUTES REVIEW

Dr. Rothermel moved to approve the draft minutes from December 13th, 2017. Dr. Factora seconded the motion. The motion carried.

Review of Chapter 4731-6, Ohio Administrative Code

Mr. Turek stated there are not any major changes, only suggestions making it more consistent with the statutory changes. Mr. Turek stated he had three changes that aren't reflected that was received from Enforcement per Mrs. Marshall:

- 4731-6-22 (C) – Text should be removed “or it’s designee”
- 4731-6-30 (E) – Text will not be removed; original text will be put back in there and paragraphs will be renumbered. Language is necessary.
- 4731-6-30 (L)- and will be reworded to prevent possible loophole which could permit people who have been suspended to obtain in a training certificate.

Dr. Rothermel asked Mr. Turek if Mrs. Marshall was okay with the language used. Mr. Turek said that he and Mrs. Marshall will come together to establish the language to close the loopholes. Dr. Saferin asked Mr. Turek to confirm wording for each. Mr. Turek also stated that there was a typo in 4731-6-34 (A): in the last line the word “to” should not be removed.

Dr. Saferin inquired about 4731-6-33 (C) and (D). He stated that in licensure the Board uses both the Secretary and Supervising Member. Dr. Rothermel asked if this is because the language requires only one. Mr. Turek stated that the language was not

changing from the current one. Mr. Alderson stated that historical process has always been to use both Board Members to review and approve. Mr. Turek said he will follow up to see if the statute has any language relevant to it.

Dr. Rothermel inquired about 4731-6-32 (clinical research faculty research certificates) Dr. Rothermel inquired about locating statutes and rules on the Medical Board's website. Dr. Rothermel asked that if this is eliminated from the rule, how would someone look it up on the website. Mr. Turek stated that the person would have to look up the statute which the Board's website has links to. Mr. Turek stated that the website includes summaries for each license type the Board offers. Mr. Turek also stated that the Medical Board doesn't have rules for certain things and in that instance, one would have to refer to the statute.

Dr. Rothermel asked if all the headings would be changed and Mr. Turek responded that there will be no more revisions after removing 4731-6-32. Dr. Saferin inquired if there was a reason to remove it or if it can remain in order to look complete. Mr. Turek stated he revised this chapter and removed language that was not duplicative of the statute. Mr. DePew inquired where people go if they were looking for Clinical Research Faculty Requirements on the website. Mr. Turek stated that they should look at the statute for those requirements.

Mr. DePew logged onto the website. Mr. Turek directed him where it's located. Mr. Turek stated that if the information was not on the website, that it could be added regarding license and certificate types. Dr. Rothermel stated that the website should be fixed. Dr. Saferin agreed and requested that the website becomes more user friendly, possibly adding a key word search.

Dr. Rothermel asked how many special certificates the Board currently has. Mr. Turek stated that the state of Ohio has five special certificates plus the training certificate. Dr. Rothermel stated they should be listed on the website. Mr. Turek said it can be done. Mr. Alderson clarified what certificates are on the website. Dr. Saferin suggested that the website be more user friendly. Mr. Turek stated he would get with Mrs. Pollock to put in a request to update the website to add key word searching and the listing of all certificates and licenses the Medical Board offers.

Dr. Saferin stated that if approved; the prospective changes to the rules will be sent out to interested parties for review. Dr. Saferin also stated that there will be another meeting with Mr. Turek, Mrs. Marshall, and Mr. Schmidt to make sure everyone agrees with the proposed revisions.

Dr. Saferin made a motion that all changes are reviewed internally and externally. Dr. Rothermel seconded motion. The motion carried.

Dr. Schottenstein stated that when he looks up Medical Board licensees prior to Board Meetings, the website will return no results. He stated this is concerning because the public also uses the website to perform searches. Dr. Schottenstein stated that if the

committee is discussing changes with IT, this should be mentioned also. Dr. Rothermel stated she had the same problem in a meeting with Standards Review. Dr. Saferin asked that this problem be referred to the appropriate person so it can be handled.

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

The meeting adjourned at 8:23 a.m.

Bruce R. Saferin, D.P.M.
Chair

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State Medical Board of Ohio

POLICY COMMITTEE MEETING

January 10, 2018

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

<p>Members: Andrew P. Schachat, M.D. Robert Giacalone Mark. A. Bechtel, M.D.</p> <p>Other Board Members present: Kim G. Rothermel, M.D. Bruce Saferin, D.P.M. Michael Schottenstein, M.D. Anita Steinbergh, D.O. Ronan Factora, M.D. Richard Edgin, M.D.</p>	<p>Staff: A.J. Groeber, Executive Director Kimberly Anderson, Chief Legal Counsel Sallie J. Debolt, Senior Counsel Nathan Smith, Senior Legal and Policy Attorney David Fais, Deputy Director Jonithon LaCross, Director of Public Policy & Government Affairs Tessie Pollock, Director of Communication Joan Wehrle, Education & Outreach Program Manager</p>
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Dr. Schachat, acting Chair, called the meeting to order at 9:15 a.m.

MEETING MINUTES REVIEW

Dr. Schachat asked for approval of the draft minutes of the December 13, 2017 meeting which were included in the agenda materials. He noted that some corrections had been made to the first draft of the minutes.

Dr. Bechtel moved to approve the Policy Committee minutes of the December 13, 2017 meeting as corrected. Mr. Giacalone seconded the motion. The motion carried.

Legislative Review

HB145, One-Bite Reporting Exemption/Board Consolidation amendment

Mr. LaCross reported that we had some complications with the legislation before the holiday break. Some of the legislators needed more information about the one-bite program. Ms. Pollock compiled a fact sheet which helped them understand the program. Mr. LaCross also explained to the legislators that the one-bite program is not a new program. The amendment is ready to move out of the Senate Health Committee when it is approved by the Senate President.

Mr. LaCross also explained that there was some confusion regarding fee increases included in the amendment because of the change from an annual renewal fee to a biennial renewal fee for some licensees. Ms. Pollock prepared an infographic that illustrated the results of the proposed changes and clarified the issue for the legislators.

Mr. LaCross reported that the House Health Committee is slated to meet next week.

He reported that he may be contacting some board members regarding some potential legislative issues just to get their feedback.

Mr. LaCross reported that questions had been raised regarding the PA formulary from the PAPC regarding moving to a negative formulary. He stated that he had many meetings with the PA Association regarding this issue, as well as some other legislative fixes the PA Association would like addressed. He said the PA Association may move to get the formulary in statute if they can. Mr. LaCross said that he will keep the Board members up-to-date, but no drafts have been prepared and there is no legislative vehicle now. He will wait to see what the PAPC and the PA/Scope of Policy recommend to the Board.

Mr. LaCross noted that the Operating budget is coming up this year.

Mr. Giacalone asked what PAs want with the formulary. Mr. LaCross believed that ultimately, they would like to see no formulary so they can prescribe whatever their supervising physicians can prescribe. There are only a few states that have formularies for PAs and very few states have PA regulations like Ohio.

Dr. Steinbergh reported that the Board committees are having full discussions about the PA scope and formulary issues. She also noted that another physician board member will need to serve on PAPC when she leaves the board later this year.

Dr. Edgin reported that he serves on the Ohio Board of Nursing's Committee on Prescriptive Governance. He just wondered if the Nursing Board had many complaints about nurse practitioners. Ms. Lisa Emrick, from the Nursing Board, did not know the complaint information, but she reported that the exclusionary formulary for APRN's is essentially wide open for the classes of drugs an APRN may prescribe but they cannot go beyond their private physician's practice. Dr. Edgin wondered why we can't have something along those lines for PAs.

Dr. Schottenstein said that they had a healthy discussion about it today at the PA/Scope of Practice Committee. He commented that there is a different kind of relationship between the APRN and the physician as it is more collaborative while with PAs the physician is more supervisory. They talked about perhaps having a similar type of approach where maybe the PA prescribes within the scope of practice of their supervising physician and within the PA supervision agreement there could be clarification of what needs to be physician initiated and what the supervising physician is comfortable with the PA prescribing. In that way, it does not disrupt the flow of the practice where the PA is seeing the patients, because the PA has that individual agreement and understanding with the supervising physician as to what they can prescribe on their own. At the same time, it relieves the minutia of having to vet each of these medications in the committee.

Dr. Schachat noted that this topic was not on today's agenda so he asked that the PA/Scope of Practice Committee make some recommendations and we can include it on an upcoming agenda. Dr. Steinbergh reported that this topic will be discussed later today with the full board.

Mr. LaCross indicated that he will talk with the PA Association when Board has a plan and direction.

Rules Update

Rules Spreadsheet: Ms. Anderson reported that the rules spreadsheet begins on page 529 of the agenda materials. She also outlined the 2018 schedule of rules that will be addressed by the Policy

Committee. Today we'll review the light-based medical device rules. In February, we'll review the medication assisted treatment (MAT) rules, the concussion rule, as well as the one-bite rules if the amendment is approved. Dietetics and Respiratory Care rules discussion will begin in March because of statute changes. Genetic counselor rules are scheduled for review in April. Termination of the doctor-patient relationship rules are slated for May, and pharmacy consult rules are scheduled for the June committee agenda.

Chapter 18 Rules:

Standards for Surgery: It was noted that current rule 4731-18-01 Standards for Surgery will be moved to the surgery chapter (4731-25) and listed as 4731-25-08. Minor grammatical changes have been made to this rule.

Dr. Schachat reported that an updated draft of the Chapter 18 rules was distributed to the committee.

Mr. Smith reviewed the rules in Chapter 18 - light based medical devices:

Mr. Smith reported that the changes are in bold type. The changes reflect the intent of the draft to primarily apply the light based medical device rules to dermatologic procedures. He thanked Dr. Schachat for identifying some of these issues so that we could better express this more explicitly than it had been before. He also thanked Dr. Bechtel for his help in drafting the revised rules.

These rules are intended to lay out the framework for application of light based medical devices. The use of lasers in medical practice has increased. As we look at these rules, patient safety is our most important consideration, but we are trying to balance this to account for changing technology and account for the increased use of these services as well.

4731-18-01: Definitions

- Consolidates all definitions in the chapter and adds new definitions including: “phototherapy” (B), “phototherapy devices” (C), “photodynamic therapy” (D), “ablative procedure” (E), “non-ablative procedure”, “physician” (G), and “delegation” (H).

4731-18-02 Use of light based medical devices

- Lays out framework for physician delegation of the application of light based medical devices based on the distinction between ablative and non-ablative procedures.
- Paragraph (B) states that a physician shall not delegate application of light based medical devices for ablative procedures.
- Paragraphs (C), (D), and (E) provide for the delegation of the application of light based medical devices for specific types of non-ablative procedures according to the requirements in subsequent rules

4731-18-03: Delegation of the use of light based medical devices for specified non-ablative procedures

- Paragraph (A) adds the ability of physicians to delegate vascular laser non-ablative procedures to a physician assistant, R.N., or L.P.N. if specified conditions are met including: physician

evaluates patient before and after the first application of the vascular laser; delegate has completed eight (8) hours of education; observed fifteen (15) procedures; performed twenty (20) procedures under direct physical oversight of physician; and physician provides on-site supervision.

Mr. Smith pointed out that this is a new section with specific conditions that must be met. It also includes robust educational and training requirements based to enhance patient safety and prevent adverse events. On-site supervision by the physician is also required, so the doctor must be at the practice office but does not need to be in the room.

- Paragraph (B) retains current rule on laser hair removal delegation by a physician, but adds robust education and training requirements including eight (8) hours of education; observation of fifteen (15) procedures; and performance of twenty (20) procedures under direct physical oversight of physician.

Mr. Smith said that paragraph (B) applies to PA, RN, LPN, and cosmetic therapists. He noted that the education and training requirements have changed to be in line with the requirements in paragraph (A).

- Subsection(C) relates to the off -site supervision of cosmetic therapists performing laser hair removal providing the cosmetic therapists meets some enhanced requirements as well.

4731-18-04: Delegation of phototherapy and photodynamic therapy

Mr. Smith reported the language had been broadly written and referenced delegation to appropriate persons. The proposed revision names PAs, RNs, and LPNs as appropriate persons for delegation and medical assistants for phototherapy for psoriasis and skin diseases. The rule is also treatment specific.

- Paragraph (A) adds specificity to physician delegation of the application of phototherapy in the treatment of hyperbilirubinemia in neonates to include a physician assistant, R.N., and L.P.N. This paragraph also requires training and on-site physician supervision.
- Paragraph (B) also adds specificity to physician delegation of phototherapy for psoriasis and other skin diseases to include a physician assistant, R.N., L.P.N., and medical assistant who has successfully completed training. This paragraph requires on-site physician supervision as well.
- Adds photodynamic therapy delegation by a physician to a physician assistant, R.N. and L.P.N. in paragraph (C) with the requirements that the delegate complete training and that the physician provides on-site supervision.
- Requires reporting of adverse events and failure of treatment by all delegates, and requires physician to personally evaluate patient when this occurs in paragraph (D).
- Lays out the disciplinary framework for violations of (A), (B), (C), and (D).

Dr. Steinbergh asked about medical assistants for 18-04. She suggested that the term certified medical assistant be used.

Dr Schottenstein referred to the definition of phototherapy devices in 4731-18-01 (C) which means any device approved by the United States food and drug administration for the specific purpose it is being used for that can be made to produce irradiation etc. He was trying to understand why the phrase “for the specific purpose it is being used for” was there. As he read it a little more it seemed we were trying to distinguish between the devices used for neonatal hyperbilirubinemia, psoriasis and other skin diseases. It seemed that was the way to distinguish phototherapy device from other light based devices. What if a device has more than one specific purpose? He wondered if it made sense to say that phototherapy devices are devices used to treat neonatal hyperbilirubinemia, psoriasis and other skin diseases.

Mr. Smith said the FDA approves devices without naming specific purposes as there may be other applications.

Dr. Schachat had similar concerns but approached it from another way. He said that these devices get used for other things and there will be other applications. He wondered if there should be an overarching comment that says this rule applies to management of hyperbilirubinemia with light and dermatologic conditions and we are not giving permission for other things.

Mr. Giacalone commented that the devices in question would only be used for their indicated uses and they would not be used off label. Dr. Bechtel said that is correct. Mr. Giacalone said that 18-01(C) needs to read . . . *any device **cleared or approved***. . . given that only addressing “approved” medical devices is too narrow as many medical devices are marketed pursuant to an FDA510(k) or Premarket Notification “clearance” as opposed to being “approved” under a FDA PMA(Premarket Approval.)

Dr. Schottenstein asked the difference between light based device and a phototherapy device. Mr. Smith reported that phototherapy devices are a subclass of light based devices.

Dr. Bechtel commented on the importance of patient safety that went into these rules. The rules exclude ablative lasers which are devices that can cause tissue destruction and can cause lots of scarring and damage. These should never be delegated.

Dr. Bechtel said the only change in these rules is that we’ve allowed physicians to delegate vascular lasers for dermatologic purposes, as these appear to be the safest lasers out there and the side effect risk is relatively low.

Dr. Schachat asked if we defined vascular lasers. Dr. Bechtel said we did not, but vascular lasers are targeted to the hemoglobin in the vessels. But the rule limits vascular lasers for dermatologic purposes.

Dr. Bechtel talked with residents at Ohio State regarding how many they need to do before they become comfortable with the use and the adjustments that need to be made. Twenty procedures seemed to be the consensus number between the residents, as well as the faculty who teach the residents how to use the laser.

Dr. Bechtel said that it is very important for the patient to be evaluated by the physician before laser use and reevaluated after the first treatment to make sure there is appropriate treatment and no complications. The rule also excludes delegation of ablative techniques. He believes we have built patient safety standards into the rule. Robust education and training standards are also required in the rule.

Dr. Schottenstein referred to 4731-18-02 (D) which states “A physician may delegate the application of light based medical devices only for the purpose of hair removal according to the respective requirements in paragraphs (B) and (C) of rule 4731-18-03 of the Administrative Code” He asked about the word “ONLY” as in paragraph (C) it refers to vascular laser. Dr. Schottenstein noted that it appeared to be contradictory. Mr. Smith said that “only” can be removed.

Ms. Debolt asked for clarification regarding laser lipo where a light based device is used to melt away fat. Dr. Schachat said that is not a dermatologic procedure.

He suggested we have a general intro statement that this rule applies to management of hyperbilirubinemia with light and dermatologic conditions, otherwise we’d have to address lasers used for other purposes.

Dr. Giacalone moved to circulate the proposed rules to interested parties for comment. Dr. Bechtel seconded the motion. The motion carried.

Non-disciplinary program mental/physical health rules:

Ms. Anderson reported that draft rules 4731-28-02; 4731-28-03; 4731-28-04; and 4731-28-05 begin on page 55. She also referred to a handout which is a letter from the Medical Association Coalition (MAC) that was received on January 9, 2017.

The memo indicated an overview of the development of the rules. We have had extensive discussion on the rules, circulated for comment, reviewed the initial comments received, and we’ve met with interested parties. The January 9th letter from the Medical Association Coalition said that they still had concerns but they are willing to table concerns to move forward with the rule but they asked for de-identified info to measure how program is working. If the Board shared this information, they would not object to the rule at CSI.

Ms. Anderson said we would provide reports to the Board that are de-identified as well.

Dr. Bechtel moved to recommend sending the rules to CSI. Mr. Giacalone seconded the motion. The motion carried.

The topic will be discussed by the full Board later today.

FSMB Draft Documents from Workgroups and Committees

Ms. Anderson reported that the FSMB has distributed reports from four FSMB workgroups and committees and had asked for feedback from member boards by January 26.

- Physician Wellness and Burnout
- Statement on Compounding of Medications by Physicians
- Regenerative and Stem Cell Therapy Practices
- Prescription Drug Monitoring Programs

Ms. Anderson asked for discussion regarding the Prescription Drug Monitoring Program report. Mr. Giacalone had served on that workgroup.

Ms. Anderson pointed out the recommendations in the document. She referred to page 84 of the agenda materials - **Data Security and Patient Privacy**

iv. Data Security/Patient Privacy –

States should grant PDMP data access to local, state, and federal law enforcement only when there is an issuance of warrant/judicial finding of probable cause.

In order to protect the privacy of patient information and to ensure proper patient treatment, Medicare, Medicaid, state health insurance programs and/or health care payment benefit providers and insurers should not have access to a patient's PDMP record unless a subpoena has been issued in accordance with existing subpoena powers.

Ms. Anderson said that medical board investigators and other regulatory board investigators are considered law enforcement in Ohio for purposes of OARRS, but we don't require warrants or judicial findings of probable cause. There is an enhanced process with OARRS that a supervisor must ensure that it is related to an open investigation, but our investigators and law enforcement in Ohio are checking OARRS and looking at prescribing patterns as part of drug investigations. This recommendation from the FSMB would be problematic if our state law changed and we could not do it the way we are currently as it would make our investigations more cumbersome. Mr. Groeber commented that it would endanger the public and make it more difficult to stop dangerous prescribing.

Ms. Anderson talked with the Board of Pharmacy because one of the things as an alternative here is making sure that you are policing misuse of OARRS on the back end. Our Pharmacy Board does that rather aggressively. If they get information that someone is improperly using OARRS, not related to an open investigation, that is a criminal violation in Ohio. There have been individuals in Ohio who have been criminally convicted of misuse of OARRS.

There are also administrative things the OARRS program can put in place, such as blocking a person's access to OARRS. They are several stages they can take a case through to block misuse. If they have information of a criminal violation of misuse of OARRS, the Pharmacy Board is always going to refer that case to the county prosecutor.

Ms. Anderson asked if we should draft alternative language to recommend strict enforcement of state laws regarding misuse rather than requiring restrictions on the front-end restricting law enforcement, including medical board investigators, from getting that information.

Mr. Giacalone stated that this issue was briefly discussed with the AMA arguing strongly in favor of limiting access to law enforcement. He agreed with Ms. Anderson's recommendations. Dr. Steinbergh asked if the workgroup would meet again after the comments had been received from member boards. Mr. Giacalone said that he did not believe the workgroup would meet again. She did remark

that the workgroup topics will be on the FSMB annual meeting agenda for discussion groups in breakout sessions.

Mr. Groeber said that Ohio accounts for over 25% of PDMP queries in the country. We are the best of the best. He proposed that we develop a document that demonstrates Ohio's successes by avoiding this kind of bureaucracy. He said we can address public protection and the benefit for patients, and explain the wins we've had in the area. The draft FSMB recommendation could also shut down the generalized information we receive from the Pharmacy Board that we use to educate prescribers. He sees us as the hands down leader in the country in this area.

Dr. Steinbergh asked if the Ohio Board would vote against the draft if changes aren't made? Mr. Groeber said we'll emphasize positive outcomes. We use this information much more broadly to educate licensees. The outcomes have been significant as we've seen marked reduction in prescribing practices – but access to information by the medical board is essential. Ms. Anderson said we can also say that safeguarding privacy of information is important and we have steps in place to protect patient privacy.

FSMB Resolution Update

Ms. Anderson distributed copies of the revised draft resolution. Dr. Schottenstein thanked everyone for their input and assistance in developing a resolution addressing acute pain guidelines.

Dr. Schottenstein is pleased with the resolution, but he welcomes any other comments.

Dr. Bechtel moved to recommend that the Board approve the resolution. Mr. Giacalone seconded the motion. The motion carried.

Adjourn

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

The meeting adjourned at 10:06 a.m.

Amol Soin, M.D.
Chair

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State Medical Board of Ohio

FINANCE COMMITTEE MEETING
December 13, 2017
30 E. Broad St., Columbus, OH Room 318

Members: Michael Schottenstein, M.D., Chair Bruce R. Saferin, D.P.M. Michael Schottenstein, M.D. Michael L. Gonidakis Richard A. Edgin, M.D.	Staff: A.J. Groeber, Executive Director Susan Loe, Director of Fiscal and Human Resources Tessie Pollock, Director of Communications
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Dr. Schottenstein called the meeting to order at 8:30 a.m.

MINUTES REVIEW

Dr. Saferin moved to approve Finance Committee November 15th, 2017 meeting minutes. Dr. Schottenstein seconded the motion. The motion carried.

FISCAL UPDATE

Dr. Schottenstein stated that the Medical Board's November 2017 revenue was \$639,383, an increase from \$549,350 in October. Dr. Schottenstein also mentioned the revenue was starting to trend back in the right direction, compared to the November 2015 revenue, which was \$745,625. The Board's revenue over the two-year cycle has a year-to-date decrease of 25%, coming in at roughly \$2.7 million, compared to fiscal year 2016, which had a year-to-date revenue of about \$3.6 million. Net Revenue loss in November 2017 is in the amount of \$74,352, but this is an improvement from the \$113,137 net revenue loss in October 2017. This compares to November 2015, which showed a net revenue gain of \$27,548. He noted that revenue is up about 16% compared to the previous month, October 2017.

Dr. Schottenstein stated that revenue for December was about \$1.2 million. This increase was because of the renewal cycle for the allied specialties other than massage therapists. Another factor is that this is the first group of renewals that were not directly affected by the E-license disruption. There are renewal cycles coming in March and January. Dr. Schottenstein noted that those should be good months, which should be reflected beginning in our March 2018 statistics. From April through June, the Medical Board should start getting substantial revenue from the respiratory and dietetics license renewals; therefore, we are expecting a great fourth quarter.

Regarding the Board's cash balance, the Medical Board has had a 32.7% decrease in the current fiscal year, when compared to this time last year. He stated that currently the balance is \$3,056,296. An additional preview of the December numbers shows the cash balance rebounding to \$3.4 million, and November is the bottom with regard to our cash balance. Dr. Schottenstein states it should continue to go up going forward. In December 2016, \$1.488 million was transferred from the fund to support the E-license development and a final transfer of revenue will occur in the late spring of 2018 for the E- license system. The Board is hopeful that the Board's cash balance will be up around \$4.5 million by then, so that final transfer of the E-license funds will bring the amount back down to roughly the \$3.4 million range again.

FINES EXPENDITURES AND ALLOCATIONS

Dr. Schottenstein stated that the total expenditures for the Board in November 2017 were \$713,735 and that this compares to November 2016 expenditures of \$770,925. Overall, there was an 0.4% decrease in expenditures year to date. This is a function of the fact that the Board has not yet paid rent for the first two quarters, and that comes to about \$85,000 per quarter. In the near future the Medical Board will be billed for rent, and that will probably put us in the roughly 2 to 4% increased year-to-date expenses over last year's amount. He further noted that the Medical Board will not have the responsibility of paying the most recent rent charges for the Respiratory and Dietetics Boards prior to the merger. Dr. Schottenstein stated the Board remains well under the allotted spending of \$10.2 million, with projected spending of about \$8.6 million for fiscal year 2018. Under fine expenditures and allocations, \$67,500 has been allocated to the areas of wellness, education, outreach, and employee safety.

Mr. Gonidakis asked for a breakdown of the \$67,500 in the future, stating it's beneficial to see where and how it's being spent. Dr. Schottenstein recommended that in the future, the financial packets have a financial breakdown on the summary page. Mr. Gonidakis thought this will be good in relation to talking points if asked by legislature what the Board is doing specifically with the funds. Mr. Groeber stated that fiscal comment four has not been updated yet because the spending of the \$45,000 has not been finalized. Ms. Loe stated it may become too large to include on the front page and suggests using the back page. Mr. Groeber suggested trying out different ways to display this information.

ACCOUNTS RECEIVABLE

Dr. Schottenstein stated the Medical Board has collected fine payments totaling \$44,000 since the last Board meeting, and that \$9,000 of that is for fines related to failing a CME audit. One of the CME fines was for \$4,000, the other for \$5,000. He added that the CME fines are on a sliding scale, depending on the degree of noncompliance, and that CME fines can range from \$1,000-\$5,000. Last month, there was discussion about how a fine was sent to collections by the Attorney General's office for \$1,000. Because of the cost of the collection service, originally the Board was only going to see \$667 of that. After being reminded of the agreement between Attorney General's office and the Medical Board that indicated the Medical Board should receive the entire thousand dollars, the Board received the fine check of \$1,000.

Mr. Groeber stated that the Medical Board is striving to target the 2% CME audit each month, and that he is working with Mr. Turek to get the audit rates back up. Mr. Groeber asked Ms. Loe about CME fines total, and she responded that there is one additional fine pending that has not been paid. Mr. Gonidakis inquired about the Medical Board having the chance to ever reach 100% compliance rate like legal professionals in regard to CME requirements for medical professionals. Dr. Schottenstein stated that Dr. Saferin was pushing for this with CE Broker, because once the Medical Board has that capability, all CME courses could be monitored. Mr. Groeber states that CE Broker was discussed at last year's retreat, but that he wants to make sure it is 100% before it is rolled out in the future. Mr. Groeber introduced a new initiative with Mrs. Pollock that will be a more customer service initiated approach to assist those who start the renewal process but don't complete it, including phone calls and email communications. The goal is to help people avoid Board action, fines, and complete the renewal process. This process should also help generate revenue.

Mr. Groeber inquired how various professions handle renewals. Mr. Gonidakis informed him of the steps legal professional take for renewals and how it differs from medical professionals. Dr. Schottenstein noted that the Board has received a total of \$165,500 in fines, and another \$143,000 is outstanding.

EDUCATION AND OUTREACH

Ms. Pollock stated that the video for Acute Prescribing has been updated. It focuses on the Dec 29th new requirements for having the day supply and ICD-9 on prescriptions. Mr. Groeber stated that he has a meeting with Steve Schierholt from the Pharmacy Board to get a first look at the data to see what information has been extracted regarding these new requirements. Ms. Pollock also stated that the Board is working on expanding Take Charge Ohio and prescribing resources to an app in conjunction with the Department of Health who has secured Federal funding to support this campaign. Ms. Pollock stated there have been infographics created to show what is going to happen with Board consolidation with Dietetics and Respiratory Care Boards. Mr. Groeber stated that there was some confusion with the legislature also about the merger and this information would be helpful. Ms. Pollock also stated that the most viewed page on the website last month was the Enews. Mr. Groeber inquired about the Board's social media presence. Ms. Pollock stated that the Medical Board has also been updating the website to improve search terms and add quick links to make it more user friendly.

BOARD MEMBER COMPENSATION

Dr. Schottenstein stated that the Board has new business matters to discuss, the first being an hourly rate increase for Dr. Saferin, who was reappointed to the Board on December 20, 2017. He stated that the current protocol at the Board is to implement a 4% raise, currently coming to \$.70 per hour, for newly reappointed board members.

Dr. Edgin moved to recommend that the Board adopt a 4% raise, equaling \$.70 per hour, for Dr. Saferin. Mr. Gonidakis seconded the motion. The motion carried.

Dr. Schottenstein stated the staff will be presenting the annual Board Member Compensation Report to the full Board as required by policy. Dr. Schottenstein noted a change in the law has removed PAPC members' per diem payment, other than mileage and parking. They are employed in other capacities, and it's more of an honorary kind of position for them. As reported, their revenue was not substantial. Mr. Gonidakis asked if the Board should update Dr. Saferin's to reflect \$20.40 an hour as Dr. Rothermel. Mrs. Loe stated this was the previous year's report. Mr. Gonidakis asked about seeing the current fiscal report and was informed by Ms. Loe that every January the Board shows the prior year's report.

Mr. Groeber asked that the 2017 report include a total of hours worked by Board members, if possible.

TRAVEL AUTHORIZATION

Mr. Gonidakis moved to recommend approving the Board Member per diem for Dr. Steinbergh's attendance at the 2018 AAOE Summit meeting on January 27, 2018 in Austin Texas. Dr. Schottenstein further moved to find that Dr. Steinbergh's attendance at the conference is in connection with her duties as, and is related to her position as, a Board member of the State Medical Board of Ohio. Dr. Saferin seconded the motion. The motion carried.

Dr. Saferin moved to recommend that the Board approve that Robert Giacalone attend the 2018 annual meeting of the FSMB and accept the FSMB voting delegates scholarship; and that Mr. Giacalone's attendance at the FSMB meeting is in connection with his responsibilities as, and is related to his position as, President of the State Medical Board of Ohio. Mr. Gonidakis seconded the motion. The motion carried.

Mr. Gonidakis moved to recommend the Board approve that A.J. Groeber, Executive Director, attend the 2018 annual meeting of the FSMB, and accept the FSMB executive director scholarship, as that his attendance at the meeting is in connection with his responsibilities as, and is related to his position as, Executive Director of the State Medical Board of Ohio. Dr. Saferin seconded the motion. The motion carried.

Mr. Gonidakis moved to recommend that the Board approve Mr. Groeber, Executive Director, to attend the 2018 annual meeting of Administrators in Medicine, as his attendance at the meeting is in connection with his responsibilities as, and is related to his position as, Executive Director of the State Medical Board of Ohio. Dr. Saferin seconded the motion. The motion carried.

ADJOURN

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

The meeting adjourned at 9:01 a.m.

Michael Schottenstein, M.D.
Chair

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State Medical Board of Ohio

COMPLIANCE COMMITTEE MEETING

January 10, 2018

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

<p>Members: Anita Steinbergh, D.O., Chair Robert Giacalone Michael Schottenstein, M.D.</p> <p>Member Absent: Amol Soin, M.D.</p> <p>Other Board members present: Kim G. Rothermel, M.D. Ronan M. Factora, M.D.</p>	<p>Staff: Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Benton Taylor, Board Parliamentarian</p>
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Dr. Steinbergh called the meeting to order at 3:30 p.m.

INITIAL PROBATIONARY APPEARANCES

Anshuli Gupta, M.D.

Dr. Gupta is making her initial appearance before the Committee pursuant to the terms of her October 11, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Gupta's history with the Board.

In response to questions from Dr. Steinbergh, Dr. Gupta stated that her recovery is going well. Dr. Gupta stated that sobriety is the number one priority in her life right now and she expected it to be the number one priority for the rest of her life because she has a life-long diagnosis of chemical dependency. Dr. Gupta stated that she attends Alcoholics Anonymous meetings and is working actively with her sponsor on the steps. Dr. Gupta commented that she just finished the fifth step. Dr. Steinbergh commented that Dr. Griffin, who made his final probationary appearance in the full Board meeting earlier today, discussed the need to work all the steps and to not skip any part of the recovery program. Dr. Gupta agreed and stated that she has found benefit with all the steps.

Dr. Schottenstein commented that the fifth step is very difficult. Dr. Gupta agreed and stated that it was difficult to be that vulnerable with someone else. Dr. Gupta stated that it was also difficult to fully confront and acknowledge her chemical dependency to herself. Dr. Schottenstein stated that Dr. Gupta seems dedicated to her program, as well as brave. Dr. Schottenstein asked if Dr. Gupta has a good relationship with her sponsor. Dr. Gupta answered that she talks to her sponsor every day and they text multiple times per day. Dr. Gupta added that she also has a very close relationship with those she met in her treatment program at Shepherd Hill Hospital.

Dr. Schottenstein asked if there are any triggers to use that Dr. Gupta experiences. Dr. Gupta replied that her biggest trigger before was insomnia and her drug of choice of Ambien. Dr. Gupta stated that she is lucky that once she abstained from Ambien, she has actually gained back a normal sleep pattern very quickly.

Dr. Steinbergh, noting that Dr. Gupta's license has been reinstated, asked when she will resume her residency training. Dr. Gupta replied that the process of returning to residency will be more prolonged

than she had anticipated because she has been excluded from Medicare as a provider until September 23, 2018. Dr. Gupta explained that at Ohio State University where she is in family practice residency, one of the criteria to be credentialed as medical staff is to be a provider with Medicare. Dr. Gupta stated that she must wait for the Medicare exclusion to be lifted before beginning the re-credentialing process. Dr. Gupta stated that it will also be dependent on the funding and how many seats are available in the residency program at that time. Dr. Gupta commented that her residency program director has been very supportive and encouraging.

Responding to further questions from Dr. Steinbergh, Dr. Gupta explained that she is considered to be in post-graduate year (PGY) 2, having technically completed PGY-1 due to transfer credits from a preliminary medicine year. When Dr. Gupta resumes residency, any PGY-2 credits she may have earned will not count and she will start PGY-2 over again. Dr. Gupta stated that even if her Medicare exclusion is lifted in September or October, she will have to wait until July 2019 to return to the residency program.

Dr. Steinbergh asked Dr. Gupta about the Master of Business Administration (MBA) program she is currently in. Dr. Gupta stated that she is technically enrolled in the Working Professional's MBA Program, which is intended to be a night-time, part-time program. However, because Dr. Gupta is not working right now, she is working a full course load that would be equivalent to a full-time program. Dr. Gupta stated that she can put her MBA program on hold when she returns to residency training and resume the MBA program when she has completed residency.

Dr. Steinbergh asked if Dr. Gupta has personal responsibilities in terms of family. Dr. Gupta replied that she has parents and a sister, but she is not married and has no children. Dr. Steinbergh asked if Dr. Gupta understands her Consent Agreement. Dr. Gupta replied that she understands her Agreement.

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

James C. Johnson, D.O.

Dr. Johnson is making his initial appearance before the Committee pursuant to the terms of his October 11, 2017 Consent Agreement. Dr. Steinbergh reviewed Dr. Johnson's history with the Board.

Responding to questions from Dr. Schottenstein, Dr. Johnson stated that his recovery program is going very well. Dr. Johnson stated that he is becoming more and more embracing of Alcoholics Anonymous (AA). Dr. Johnson stated that his wife has also come to understand that AA is actually helpful and not just a punitive measure. Dr. Johnson commented that he is fortunate to be a physician because the Board has helped to keep him in his recovery. Dr. Johnson stated that he has rekindled his relationship with his previous sponsor. Dr. Johnson also stated that he has ideas for an AA home group and he is trying to become more involved in AA service work.

Dr. Schottenstein asked what had initially prompted Dr. Johnson to stop attending AA meetings. Dr. Johnson answered that shortly after he was released from his consent agreement, he was no longer required to attend AA meetings. Dr. Johnson did not start drinking immediately after leaving AA, but he recalled something he had heard from an AA meeting: When you get away from AA, instead of remembering what alcohol did to you, you start remembering what alcohol did for you. Eight to nine months after leaving AA, Dr. Johnson had alcohol in front of him and he thought he may try drinking to see if he enjoyed it, thinking that he could stop if it got out of control.

Dr. Schottenstein stated that in his experience, it is relatively unusual for people to relapse when they are working a recovery program hard and have a sponsor. Dr. Schottenstein stated that what often happens, and what seems to have happened with Dr. Johnson, is that the person does not drink for a while and they feel like they have beaten the problem, and then they feel like they can have a drink. Dr. Johnson agreed. Dr. Schottenstein commented that AA is protective for Dr. Johnson.

Dr. Schottenstein asked if this is Dr. Johnson's second relapse. Dr. Johnson replied affirmatively. Dr. Johnson stated that his first relapse occurred in 2007 when he took a drink on the day or the day after he left his first treatment program. Dr. Johnson stated that he didn't drink more than a swallow, but it counted as a relapse. That first relapse resulted in another 30-day treatment program.

Dr. Schottenstein commented that he sees a few different kinds of patients: Patients who learn the easy way, patients who learn the hard way, and patients who never learn. Patients who learn the easy way recognize the need for AA and keep attending. Patients who learn the hard way need to see for themselves, so they stop AA, relapse, and then determine to never stop AA again. Patients who never learn continue the cycle of attending meetings, getting sober, stopping meetings, relapsing, going back to AA, and repeating the process. Dr. Schottenstein hoped that Dr. Johnson has satisfied himself that attending AA is in his best interest. Dr. Schottenstein hoped that Dr. Johnson uses this as a good learning experience and makes good choices going forward.

Dr. Steinbergh asked about Dr. Johnson's sobriety date. Dr. Johnson answered that his sobriety date is September 12, 2017. Dr. Steinbergh asked what Dr. Johnson is doing now that his medical license is suspended. Dr. Johnson replied that he is trying to enjoy not working and is thinking of it as taking a year of his retirement early. Dr. Johnson stated that his wife works and he has a 13-year-old child, so he is doing more house-husband duties. Dr. Johnson has also taken up woodworking, which he enjoys very much. Dr. Johnson stated that he looks forward to returning to the practice of medicine.

Dr. Steinbergh asked if Dr. Johnson ever precepted medical students in his office. Dr. Johnson responded that he has in the past but not for a few years. Dr. Steinbergh asked if Dr. Johnson would ever have a desire to speak to medical students about alcoholism and chemical dependency. Dr. Johnson replied that he would be very interested in doing that. Dr. Steinbergh stated that she may contact Dr. Johnson because she feels that Dr. Johnson may be a good resource for young students.

Dr. Steinbergh commented the Board's former Supervising Member, the late Mr. Albert, often encouraged suspended physicians to get a job of some sort so that they can see what it is to work in other areas and to understand what they are giving up with their choices. Dr. Johnson agreed and stated that when he was first suspended in 2007 he accepted a much lower-paying job. Dr. Johnson commented that he is currently looking for work and has applied to a nursing college to be a visiting professor for biological sciences and anatomy and physiology.

Dr. Steinbergh asked if Dr. Johnson has any questions about his Consent Agreement. Dr. Johnson replied that he understands his Consent Agreement.

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

APPROVAL OF REPORTS OF CONFERENCES

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

MINUTES REVIEW

Dr. Schottenstein moved to approve the draft minutes from December 13, 2017. Mr. Giacalone seconded the motion. The motion carried.

The meeting adjourned at 3:55 p.m.

Anita M. Steinbergh, D.O.
Chair

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