



**State Medical Board of Ohio Meeting Minutes  
March 13, 2019**

Dr. Schachat called the meeting to order at in the Administrative Hearing Room, 3<sup>rd</sup> floor, of the Rhodes Office Tower, 30 East Broad Street, Columbus, Ohio 43215 with the following members present: Dr. Rothermel (secretary), Dr. Saferin (supervising member), Mr. Giacalone, Dr. Soin, Dr. Schottenstein (vice president), Dr. Schachat (president), Dr. Edgin, Dr. Johnson, Dr. Factora, Ms. Montgomery and Dr. Bechtel.

**MINUTES REVIEW**

Dr. Schachat called for a motion to approve the minutes of the February 13, 2019 Board meeting, as drafted.

Motion to approve	Saferin
2 <sup>nd</sup>	Schottenstein
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

**APPLICANTS FOR LICENSURE**

Dr. Schachat asked the board to consider the Licensure items on the agenda. No board member asked to consider any applications separately.

Dr. Schachat called for a motion to approve, contingent upon all requested documents being received and approved in accordance with licensure protocols, the physician and allied professional applicants contained in the Handouts (Exhibit A and Exhibit B) provided to Board members.

Motion	Schottenstein
2 <sup>nd</sup>	Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

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Dr. Schachat called for a motion to approve, contingent upon all requested documents being received and approved in accordance with licensure protocols, the applicants for a Certificate to Recommend Medical Marijuana contained in the Handouts provided (Exhibit C) to the Board members.

Motion	Bechtel
2 <sup>nd</sup>	Saferin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

### **REPORTS AND RECOMMENDATIONS**

Dr. Schachat asked the Board to consider the Reports and Recommendations appearing on the agenda. He asked if each member of the Board received, read and considered the Hearing Record; the Findings of Fact, Conclusions and Proposed Orders; and any objections filed in the matters of: Gerry Victor Hsu, P.A.; Stefanie Kafun, R.C.P.; and Michael W. Storer, P.A.

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

Dr. Schachat further asked if each member of the Board understands that the Board's 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 or Permanent Denial.

Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y

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Dr. Bechtel	Y
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Dr. Schachat stated 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 disciplinary matters before the Board today, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

During these proceedings, no oral motions were allowed by either party. Respondents and their attorneys addressing the Board were allotted five minutes to do so. The assistant attorneys general were subject to the same limitations.

## Gerry Victor Hsu, PA

Dr. Schachat informed the board that objections were filed and previously distributed to board members. Mr. Porter was the Hearing Examiner.

A request to address the board has been filed on behalf of Dr. Hsu. Five minutes will be allowed for that address.

Mr. Hsu was represented by his attorney, Paul-Michael La Fayette.

Mr. La Fayette stated that this matter concerns Mr. Hsu's June 2018 application for relicensure as a physician assistant. The Board's initial action in Mr. Hsu's case resulted in a non-permanent revocation of his license on April 12, 2017. In the current matter before the Board, Mr. Hsu only objects to the scope of the proposed restriction on his license that would require a third party be present when Mr. Hsu examines a female patient.

Mr. La Fayette continued that at Mr. Hsu's hearing, there was significant evidence and testimony on Mr. Hsu's behalf with no rebuttal evidence by the State or any expert on the State's behalf. Mr. La Fayette noted that the Board had considerable deliberation when it first considered Mr. Hsu's case, which was based on a criminal conviction for misdemeanor public indecency. At that time, the Board non-permanently revoked Mr. Hsu's physician assistant license. The Board also recommended that Mr. Hsu wait one year and participate in a psychological/psychiatric evaluation, boundaries training, and medical ethics training before applying for another license.

Mr. La Fayette stated that in June 2017, the court expunged Mr. Hsu's record and his conviction. Mr. La Fayette further stated that the National Commission on Certification of Physician Assistants held a hearing in December 2017 and ordered a letter of concern. Mr. La Fayette observed that Peter Ganshirt, Psy.D., who had treated Mr. Hsu since his previous hearing, testified that there is no indication that Mr. Hsu is a danger and that he is suitable to return to practice without restrictions. Mr. La Fayette added that Mark Reynolds, M.D., a board-certified and Board-approved psychiatrist, also concluded that Mr. Hsu clearly understands the severity of the charges and that he should continue psychotherapy. Dr. Reynolds also stated that there were no contraindications to Mr. Hsu returning to practice.

Mr. La Fayette stated that numerous other witnesses, supervisors, and others in the record feel that there should be no restrictions on Mr. Hsu's return to practice. Mr. La Fayette stated that there is no evidence in the hearing record that suggests that there should be a permanent restriction on Mr. Hsu examining female patients. Mr. La Fayette added that the underlying convictions have been litigated and resolved. Mr. La Fayette stated that the Board set a path for licensure for Mr. Hsu, and he has more than completed all the recommendations. Mr. La Fayette stated that any concerns the Board may have about further risks can be addressed by a probationary period and continued psychotherapy.

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Mr. Hsu stated that being a physician assistant is his passion in life and he has worked hard for it. Mr. Hsu stated that he will do everything he can to help his patients and will maintain safe and appropriate boundaries at all times.

Dr. Schachat asked if the Assistant Attorney General would like to respond. Ms. Snyder replied that she would like to respond.

Ms. Snyder asked the Board to adopt the Hearing Examiner's Proposed Order. Ms. Snyder stated that it is notable that Mr. Hsu followed the recommendations the Board set out when it revoked his license. However, Ms. Snyder expressed concern that he was asked if, even though he maintains his innocence, he recognizes that approaching a woman in the parking lot put her in a uncomfortable and untenable position. Ms. Snyder stated that Ms. Hsu still has not admitted to the behavior he was convicted of, and that is the basis of the proposed requirement that he have a third party present when examining a female patient. Ms. Snyder opined that this is not an unfair requirement.

Ms. Snyder acknowledged that Mr. Hsu has worked hard, but stated that the mission of the Board is to protect the public. Given the underlying offense, Ms. Snyder felt that it is in the best interest of the Board and the public to follow the Hearing Examiner's recommendation.

Dr. Schachat asked if there is a motion to approve and confirm the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Mr. Hsu.

Motion	Schottenstein
2nd	Soin

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

Ms. Montgomery stated that this is a difficult case. Ms. Montgomery noted that the Proposed Order would require Mr. Hsu to take additional continuing education courses, despite the fact that he has already taken about 41 hours of continuing education in ethics and more than 100 hours in other continuing education courses. Ms. Montgomery opined that Mr. Hsu has already taken the continuing education that the Proposed Order would require. Mr. Giacalone stated that he would second Ms. Montgomery's proposed amended for purposes of discussion.

Ms. Montgomery moved to remove the requirement for additional continue education courses from the Proposed Order. Mr. Giacalone seconded the motion.

Dr. Soin stated that the underlying facts of Mr. Hsu's initial case is that in 2015, Mr. Hsu exposed his penis to a female who was walking to her vehicle after work. At that time, the Hearing Examiner was troubled that Mr. Hsu continued to deny the conduct that he had been convicted of. Pursuant to Rule 4731-13-24, Mr. Hsu's conviction was proof that he committed all the elements of the offense. Dr. Soin stated that Mr. Hsu has taken many ethics courses, yet he still harbors a denial that the events actually occurred. Consequently, Dr. Soin felt that Mr. Hsu could benefit from additional courses and that such a requirement would not be too onerous.

Dr. Soin noted that Mr. Hsu's objections included an objection to a requirement of having a chaperone when examining female patients. Dr. Soin felt that Mr. Hsu lost the right to object to that requirement when he exposed his penis to someone. Dr. Soin opined that Mr. Hsu should feel grateful for the opportunity to practice under an Order that will also protect the public.

Dr. Schottenstein stated that notwithstanding Mr. Hsu's denials, he believes that Mr. Hsu engaged in the behavior that he was convicted of. Dr. Schottenstein stated that when the Board first considered Mr. Hsu's case, he had favored permanent revocation of his license. However, Dr. Schottenstein did not feel that the Board should permanently deny Mr. Hsu's license at this time because the Board did not permanently revoke

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the license initially, there have been no allegations of additional inappropriate behavior, and he has done everything that the Board had recommended. Dr. Schottenstein also did not favor a non-permanent denial for the same reasons.

Dr. Schottenstein noted that in closing arguments at the hearing, the Assistant Attorney General had asked, in relation to Mr. Hsu's case, what has been rehabilitated. Dr. Schottenstein stated that Mr. Hsu has diligently attended counseling, but the counseling appears to have been focused on Mr. Hsu's social skills deficiencies. Mr. Hsu still has not admitted to the behavior he was convicted of, and Dr. Schottenstein felt that there is a legitimate question of whether the Board's concerns have truly been addressed.

Responding to some points made by Mr. Hsu's defense counsel, Dr. Schottenstein acknowledged that Dr. Reynolds, a Board-approved psychiatrist, did opine that there were no contraindication to Mr. Hsu's return to work as a physician assistant. However, Dr. Schottenstein noted that in his final recommendation, Dr. Reynolds began with the phrase, "Assuming the information provided by Mr. Hsu is true and accurate, ..." Dr. Schottenstein stated that the challenge in this case is that the findings of the evaluators is substantially dependent on the information provided by Mr. Hsu.

Dr. Schottenstein continued that defense counsel contends that the Proposed Order implies that Mr. Hsu must admit to the allegations in order to get an unrestricted license. However, Dr. Schottenstein stated that there had been no guarantees about Mr. Hsu's license, even if he did admit to his behavior. Dr. Schottenstein stated that the reason that Mr. Hsu would be best served by admitting his behavior and work through it in therapy is for his own sake. Defense counsel also contends that the perceived requirement that Mr. Hsu admit to his behavior in order to get an unrestricted license suggests a level of coercion and is tantamount to requiring an admission to perjury since he denied the allegation under oath in his criminal proceedings. Dr. Schottenstein responded to this contention that, respectfully, Mr. Hsu put himself in that position and it was always Mr. Hsu's choice to own his behavior and work on it in therapy.

Dr. Schottenstein stated that the Board must protect the public, and behavior of the kind that he believes Mr. Hsu engaged in is potentially traumatizing to victims. Dr. Schottenstein added that there can also be an impulsive quality to such behavior, which makes it particularly concerning in the privacy of a medical setting. In the absence of therapy specifically for the behavior in question, Dr. Schottenstein was concerned about the potential for inappropriate, impulsive behavior in the patient care setting.

Dr. Schottenstein stated that defense counsel also referred to the favorable testimony and letters of support that indicated that Mr. Hsu is competent and conscientious in the patient care setting. Dr. Schottenstein stated that many very nice things were said about Mr. Hsu, and Dr. Schottenstein believed them all to be true. However, Dr. Schottenstein stated that these fine qualities are not mutually exclusive to the activity for which Mr. Hsu was convicted, and people have a difficult time associating someone they think they know with behavior of this nature. Dr. Schottenstein emphasized his concern that Mr. Hsu did not admit to the behavior. Dr. Schottenstein stated that there is benefit to admitting the behavior, and it is hoped that the admission would come from within and not because the Board requires it. Dr. Schottenstein opined that because recidivism is high for this kind of behavior, the admission would potentially be therapeutic for Mr. Hsu and allow his therapy to be more directed. Dr. Schottenstein stated that the point of making the admission is to achieve breakthrough of the denial that is so very common to behavior of this nature and lead to better choices in future.

Dr. Schottenstein was hopeful that the courses Mr. Hsu took and the counseling he is in is moving things in the right direction. Dr. Schottenstein also opined that the Board has disabused him of the notion that he can engage in inappropriate behavior with impunity. Dr. Schottenstein opined that the Board should grant Mr. Hsu's license with the recommended restriction, which he felt were fair given the circumstances. Dr. Schottenstein also agreed with Dr. Sojin and stated that he may have felt differently about requiring the additional courses if Mr. Hsu had owned his behavior and had had more directed therapy for it.

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Mr. Giacalone, referring to the filed objections, referred to a statement from the defense counsel that if Mr. Hsu admitted to the behavior, then he would be admitting to perjury and put him in a Catch-22 situation. Mr. Giacalone opined that this argument is a bit of a red herring. Mr. Giacalone stated that he may be wrong, but he has never heard of anyone who, after being convicted of a crime and subsequently admitting to the crime, is later found guilty of perjury. In any case, Mr. Giacalone felt that this was an apples-to-oranges comparison and may be an attempt to argue that Mr. Hsu's denial was warranted.

Motion to approve as amended by Ms. Montgomery which removed the additional CE requirements

Motion	Montgomery
2 <sup>nd</sup>	Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	No
Dr. Schottenstein	No
Dr. Soin	No
Dr. Schachat	No
Dr. Edgin	Y
Dr. Johnson	No
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The amendment failed.

Motion to approve the original

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

### Stefanie Kafun, RCP

Dr. Schachat stated that no objections have been filed in the matter of Stefanie Kafun, R.C.P. Ms. Lee was the Hearing Examiner.

**Dr. Schottenstein moved to approve and confirm Ms. Lee's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Stefanie Kafun, R.C.P. Dr. Bechtel seconded the motion.**

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

Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Soin	Y
Dr. Schottenstein	Y

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Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

Michael W. Storer, PA

Dr. Schachat stated that no objections have been filed in the matter of Michael W. Storer, P.A. Ms. Lee was the Hearing Examiner.

**Dr. Schottenstein moved to approve and confirm Ms. Lee's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Michael W. Storer, P.A. Dr. Bechtel seconded the motion.**

Ms. Montgomery, noting that the Board had not been aware of Mr. Storer's OVI arrest in May, asked if the Board had a mechanism to check on licensees in order to discover convictions in a faster manner. Ms. Montgomery further asked if the Board would have found out about Mr. Storer's conviction if he had chosen not to self-report on his license renewal application. Mr. Groeber replied that options to track licensee convictions have been researched in the past at the request of Dr. Schottenstein, but the cost of any such system was not administratively viable based on the number of licensees. Mr. Groeber stated that the Board relies on licensees to honestly and accurately report any convictions; a licensee who fails to report a conviction that the Board finds out about will have much worse problems. Ms. Montgomery agreed and stated that she can understand the balance between the large number of licensees with no convictions and the relatively small number who have convictions.

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

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

The motion carried.

### **PROPOSED FINDINGS AND PROPOSED ORDERS**

Dr. Schachat stated that no timely requests for hearing were received for the board-issued Notices of Opportunity for Hearing. The matters were reviewed by a Hearing Examiner, who prepared Proposed Findings and Proposed Orders, and they are now before the Board for final disposition. These matters are disciplinary in nature, and therefore the Secretary and Supervising Member could not vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

Robert H. Edwards, MD

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Motion to find that the allegations as set forth in the September 12, 2018 Notice of Opportunity for Hearing in the matter of Dr. Edwards have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order.

Motion	Bechtel
2nd	Schottenstein

*No Discussion*

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

The motion carried.

### Kristopher McKay, MD

Motion to find that the allegations as set forth in the October 10, 2018 Notice of Opportunity for Hearing in the matter of Dr. McKay have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order.

Motion	Schottenstein
2 <sup>nd</sup>	Bechtel

Ms. Montgomery remarked on the timeline for the mailings of interrogatories and asked how Ohio's process differed from other state's processes. Dr. Schachat asked if the interrogatory mailing process was required by statute. Ms. Anderson stated that there was no particular rule outlining what the board must do; the uses interrogatories as just one of the tools during investigations. Mr. Groeber stated that this could become part of the discussion during the annual board retreat. Ms. Anderson also stated that in this particular case, the license has expired and the individual was not currently practicing in Ohio.

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

The motion carried.

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## Victorio Cajigal Rodriguez, MD

Motion to find that the allegations as set forth in the May 9, 2018 Notice of Opportunity for Hearing in the matter of Dr. Rodriguez have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order.

Motion	Schottenstein
2 <sup>nd</sup>	Edgin

*No Discussion*

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

The motion carried.

## **FINDINGS, ORDERS, AND JOURNAL ENTRIES**

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

## Katrina Renee Kemen, MT

Dr. Schachat stated that Ms. Kemen has applied for restoration of her license to practice massage therapy in Ohio. The Board notified Ms. Kemen that it proposed to approve her application, provided that she take and pass 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.

Motion to find that the allegations set forth in the November 14, 2018 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. Kemen's application, provided that she take and pass the (MBLEx) within six months from the date of the mailing of the Notice of Opportunity for Hearing by certificate of mailing.

Motion	Saferin
2 <sup>nd</sup>	Schottenstein

During discussion, Dr. Schottenstein said that he always appreciates any additional information from the staff in situations similar to this to know the resolution/outcome of an OVI incident. Dr. Schachat asked if a "yes" answer on renewal or application was the reason the board looked into the incident. Ms. Anderson stated that she could not address this case specifically, but the board does have a process in which affirmative answers are reviewed by licensure staff and the Secretary and Supervising Member. Ms. Anderson continued to explain that a "yes" answer would be tracked by the complaint monitoring system and complaints can only be closed through a protocol that was approved by the Secretary and Supervising Member or by the Secretary and Supervising Member directly.

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

The motion carried.

### Jenifer L. Heidtman, MT

Dr. Schachat stated that Ms. Heidtman has applied for restoration of her license to practice massage therapy in Ohio. The Board notified Ms. Heidtman that it proposed to approve her application, provided that she take and pass the Massage and Bodywork Licensing Examination, the MBLEx, due to the fact that she has not engaged in the active practice of massage therapy for more than two years.

Motion to find that the allegations set forth in the January 9, 2019 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. Heidtman’s application, provided that she take and pass the (MBLEx) within six months from the date of the mailing of the Notice of Opportunity for a Hearing.

Motion	Saferin
2nd	Schottenstein

Discussion  
(Roll Call Vote)

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

The motion carried.

### **EXECUTIVE SESSION I**

Motion 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.

Motion	Saferin
2nd	Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y

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Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

*Executive Session started at: 10:41 a.m. and ended at: 10:59 a.m.*

### **SETTLEMENT AGREEMENTS**

#### PGS, MD

Mr. Giacalone said that he felt a reprimand was insufficient for this case because the physician did not examine the patient in question before determining that she was incompetent; as a result, the patient suffered a violation of all her rights and her assets were liquidated. Mr. Giacalone stated that determining whether patients are competent is an extremely important decision, and physicians who are tasked with making that decision must be held responsible for doing it correctly. Mr. Giacalone opined that issuing only a reprimand in this matter sends the wrong message.

Motion to ratify the proposed Consent Agreement with PGS, M.D., MD

Motion	Schottenstein
2nd	Montgomery
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	N
Dr. Schottenstein	N
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	N
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	N

Having failed to achieve six affirmative votes, the motion to ratify failed.

#### CARLOS DANIEL SEGOVIA, LMT

Motion to ratify the proposed Permanent Surrender with Carlos Daniel Segovia, LMT

Motion	Schottenstein
2 <sup>nd</sup>	Giacalone
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y

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Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

ATUL S. GOSWAMI, MD

Motion to ratify the proposed Permanent Surrender/Retirement with Atul S. Goswami, MD.

Motion	Schottenstein
2nd	Edgin
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	abstain

The motion carried.

MARISSA MAIA MERTZ, MD

Motion to ratify the proposed Step I Consent Agreement with Marissa Maia Mertz, MD

Motion	Schottenstein
2nd	Bechtel
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

HOLLIE MICHELLE ANESHANSLEY, LMT

Motion to ratify the proposed Step I Consent Agreement with Hollie Michelle Aneshansley, LMT

Motion	Schottenstein
2nd	Bechtel

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

The motion carried.

### MELISSA LYNN VERCHIO, MD

Motion to ratify Step I Consent Agreement with Melissa Lynn Verchio, MD

Motion	Bechtel
2nd	Edgin
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

### **NOTICES OF OPPORTUNITY FOR HEARING, ORDERS OF SUMMARY SUSPENSION, ORDERS OF IMMEDIATE SUSPENSION, AND ORDERS OF AUTOMATIC SUSPENSION**

Ms. Marshall presented the following citations to the board for consideration:

1. Hazel Fishel, MD: Based on action taken by the North Carolina Board in December regarding a romantic relationship with a patient.
2. Kara Gottschalk, LMT: Based on sexual misconduct with a patient.
3. Robert Hosbrook, RCP applicant: Convicted in US District court of bank fraud.
4. Ifeoma Kamalu, MD: Based on a November action by the Michigan board for failing to adequately safeguard blank prescriptions.
5. Paul Schwartz, MD: Based on action by the California Board based on providing false information on an application for a license there.
6. William Ritchey, DO: Minimal standards case involving inappropriate and excessive prescribing to 12 patients.

Mr. Giacalone asked Ms. Marshall if the proposed Notice of Opportunity for Hearing for Dr. Ritchey was not a summary suspension because the incident happened in 2016. Ms. Marshall responded that that was correct. Ms. Marshall added that the Secretary and Supervising Member decide when a case merits a summary suspension. Ms. Marshall continued that the challenge with summary suspensions is that the enforcement

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attorneys must have all the evidence ready to present in a hearing within seven days of issuance. Therefore, cases involving minimum standards need to have all the patient records subpoenaed, certified, received, sent to be reviewed by the experts, and have the expert's report returned and the reviewed. Summary suspensions are more likely in prescribing cases that involve criminal activity, like a pill mill, rather than minimum standards violations.

7. Mitchell Simons, MD: Based on inappropriate, excessive prescribing based on a similar time frame.
8. Felix Brizuela, Jr., DO: Immediate suspension based on criminal drug activity, convicted by jury on 15 counts of distribution of controlled substances without a legitimate medical purpose.

Dr. Schottenstein inquired as to the difference between and immediate suspension and a summary suspension. Ms. Marshall said there are three types of suspensions that take place "right now": automatic suspensions can happen with convictions of rape or murder, or when the respondent has been adjudicated as being mentally incompetent; immediate suspensions are triggered by a felony drug related conviction; summary suspensions take effect immediately and are based upon any item for which the medical board has authority to discipline.

Motion to approve and issue citations 1-5.

Motion	Schottenstein
2nd	Giacalone
Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

The motion carried.

Motion to approve and issue citations 6, 7 and 8.

Motion	Schottenstein
2nd	Edgin
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Abstain

The motion carried.

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## **RULES & POLICIES**

Ms. Debolt presented an update on rules and policies to the board: 4731-1-17 now includes agreed-upon language.

Motion for Rule 4731-1-17 to be refiled with JCARR as revised at paragraph (C).

Motion	Saferin
2nd	Schottenstein
Voice Vote in favor	All in favor
Opposed	None

The motion carried.

## **OPERATIONS REPORT**

Mr. Groeber presented the operations report to the board: There continues to be a number of staff vacancies and we are working with the administration as needed to fill some of those. James Roach will be promoted to a permanent status for Chief of Investigations starting the following week. The communications team will be adding a staff member who will be working on the outreach and education projects. We are also working on the investigator positions which need to be filled. The legal group statistic reflect information that is waiting to go to hearing, not a backlog of work. Licensure statistics reflect a 17% increase YTD over licensing volume; still averaging 30 days or less for issuance. Financial disclosure filing is due by May 15, 2019. Ms. Debolt will assist in tracking completed and outstanding filings.

Ms. Murray outlined the discussions that have taken place during Compliance Committee regarding which probationers are making appearances and how those appearances are being structured; probationary request reports and also approval process for treatment providers and One-Bite providers. Proposed changes will be presented at the board retreat in June.

Mr. Groeber then presented metrics from the Legal group: the median days to complete public records requests has gone from two days to 6 hours; staff also worked diligently on rules that needed to be reviewed and updated.

## **REPORTS BY ASSIGNED COMMITTEES**

### **Finance Committee Report**

#### Fiscal Report

Dr. Schottenstein stated that the Board's revenue in January 2019 was \$648,131, which is substantially lower than the previous month because there were no renewal deadlines for any licensee group. Overall, revenue increased 9% year-to-date.

Dr. Schottenstein continued that the Board's net revenue for January 2019 was negative \$632,526. Dr. Schottenstein stated that the drop in revenue was substantially a function of two very large invoices that were paid in January: \$290,757 annual maintenance cost for the new e-License system; and \$232,829 for development of compliance and adjudication modules for the e-License system. Dr. Schottenstein commented that feedback regarding the e-License system and the modules has been positive. Dr. Schottenstein stated that the 11.5% increase in expenditures year-to-date is also substantially a function of two large invoices, and expenditures should level out in the near future.

Dr. Schottenstein continued that the Board's net fiscal year revenue to date is negative \$214,972. Dr. Schottenstein expected the revenue to be positive by the end of the fiscal year, noting that many licensees

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have renewal dates approaching. Dr. Schottenstein stated that the Board’s cash balance has decreased, but it is still respectable at \$4,399,457.

Dr. Schottenstein stated that the Board has received a total of \$42,057 in fines since the last fiscal report.

## Cultural Competency Guide

Dr. Schottenstein stated that the Board’s Cultural Competency Guide for providers has been completed and posted to the Board’s website under the “Resources” tab. A quantity of 300 booklets will cost an estimated \$685 to print, and the booklets will be distributed to upcoming events where the Board will host or have a table.

## Practitioner Diversion Awareness Conference

Dr. Schottenstein stated that the Drug Enforcement Administration (DEA) has invited the Board to be a featured presenter at the Practitioner Diversion Awareness Conference, which will be held on March 18 and 19 in Cleveland. The Conference is co-sponsored by the Federation of State Medical Boards and is designed to assist the DEA and registered practitioners in identifying and preventing diversion activity. Mr. Groeber will be a presenter at the Conference.

## Fining Guidelines Review

Dr. Schottenstein stated that at the Board’s February 2019 meeting, some members raised questions about the fining amounts in the Board’s disciplinary fining guidelines. Based on a survey of members conducted by Mr. Groeber, the Finance Committee determined that the consensus of the members is that there is a comfort level with the fining guidelines at the current levels. The Committee also opined that it is not productive to revisit the fining amounts on a frequent basis.

Motion to not change the fining guidelines and put it on a five-year review cycle.

Motion	Schottenstein
2 <sup>nd</sup>	Edgin
Voice vote in favor	All in favor
Opposed	None

The motion carried.

## **Policy Committee Report**

### Legislative Update

Dr. Soin stated that a great deal of legislative activity is expected over the next few months.

### Rule Review Update

Dr. Soin stated that Ms. Anderson provided the Policy Committee with a rule review update. Dr. Soin stated that there is likely to be respiratory care rules for the Board to consider in April and dietetics rules to consider in June.

### Rules Regarding Military Service

Ms. Anderson stated that it is proposed to combine the Board’s four rules in this area into three rules and aligning all the Board’s license types with respect to renewal, continuing education, and expedited licensure for individuals who are in the military, are veterans, or are spouses of those individuals.

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## Rules Regarding Consult Agreements

Ms. Anderson stated that over 200 comments were received from interested parties about proposed changes to the pharmacist consult agreement rules. The proposed amendments based on the comments are as follows:

- Changes addressing concerns that the prior approval requirements essentially rendered the consult agreements useless because if pharmacists would otherwise not have authorization to make adjustments in accordance with the consult agreement.
- Deletion of the phrase “prior to entering into the consult agreement,” in recognition of the fact that the agreement is between the physician and the pharmacist, with the patient slotted in as they come up.

Motion to file the consult agreement rules, as discussed, with CSI.

Motion	Saferin
2nd	Bechtel
Voice vote in favor	All in favor
Opposed	None

The motion carried.

## Subacute and Chronic Pain Prescribing Rules

Ms. Anderson stated that the following amendments are recommended for the subacute and chronic pain prescribing rules, based on comments received from interested parties:

- Exempting board-certified hematology/oncology physicians from the requirement to consult with a board-certified pain management physician, palliative care physician, or hospice physician if a patient requires more than 120 MED of pain medication.
- Removing the requirement that a second opinion be required before a physician can determine if a patient is terminal and therefore can be exempted from the rule.

Motion to file the subacute and chronic pain rules, as amended, with CSI.

Motion	Saferin
2 <sup>nd</sup>	Bechtel
Voice vote in favor	All in favor
Opposed	None

The motion carried.

## **Licensure Committee Report**

Motion to approve teleconferences and videoconferences as the standard formats for PAPC meetings held on and after March 20, 2019.

Motion	Saferin
2nd	Edgin
Voice vote in favor	All in favor
Opposed	None

The motion carried.

## 1. Licensure Application Reviews

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Nicholas Katz, M.D. – Motion to grant application for licensure as presented.

Motion	Saferin
2nd	Schottenstein
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

Moses Kumar, M.D. – Motion to approve waiver and grant licensure.

Motion	Saferin
2nd	Edgin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

Nichole Brennan, M.T. – Motion to approve request, pending passage of the MBLEX

Motion	Saferin
2nd	Edgin
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

Respiratory Care Continuing Education Course Approval – motion to approve the 3 courses submitted for 1 contact hour each

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Motion	Saferin
2nd	Edgin
Voice vote in favor	All in favor
Opposed	None

## Compliance Committee Report

Dr. Schottenstein stated that the Compliance Committee last met on February 13, 2019, at 2:00 p.m. The Committee met with the following licensees:

- Tina Davis, MT made her initial appearance pursuant to the terms of her November 14, 2018 Consent Agreement based on Ms. Davis' plea of guilty to one count of Tampering with Evidence, a third-degree felony. The Committee voted to continue Ms. Davis under the terms of her November 14, 2019 Consent Agreement, with future appearances before the Board's Secretary or designee.
- Dr. Erin B. Engel, DPM made her initial appearance pursuant to the terms of her November 14, 2018 Consent Agreement, which reinstated Dr. Engel's podiatric medical license following a suspension for her admission that she wrote fraudulent prescriptions for controlled substances for self-use and provided false information concerning her conduct to the Board. The Committee voted to continue Dr. Engel under the terms of her November 14, 2018 Consent Agreement, with future appearances before the Board Secretary or designee.

The Committee also approved the Compliance Staff's Reports of conferences for January 7 and 8, 2019.

The Committee also recommended approval of applications for Certificates of Good Standing as a Treatment Provider for Impaired Practitioners for the following entities:

- Shepherd Hill
- Northland – The Ridge
- Northland Intervention

That agenda item spurred some discussion of the ability to conduct site visits for the Treatment Provider for Impaired Practitioners who hold certificates of good standing. Ms. Murray confirmed for the Committee that this would be a topic of discussion at the June 11 board retreat.

The Committee also approved the minutes from January 9, 2019.

## Medical Marijuana Expert Review Committee

Ms. Murray reported that the Medical Marijuana Expert Review Committee met on January 9, 2019, to review petitions for new conditions for treatment with medical marijuana filed during the November 1 - December 31, 2018, submission period. The Committee placed each petition into one of four categories:

Category 1: Petitions which failed to meet the statutory and rule requirements and were rejected by the Committee. There were 54 petitions in Category 1.

Category 2: Petitions which failed to meet the statutory and rule requirements; however, they concerned conditions which may already be covered under the rule. While these petitions were rejected, the petitioners were sent information about the current conditions covered and informed them that their petition may not be necessary. There were 43 petitions in Category 2.

Category 3: Petitions that failed to meet the statutory and rule requirements only because they failed to include a letter of support from a physician, but were otherwise accompanied by robust supporting material.

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These petitioners were asked to submit a letter of support from a physician before the February Board meeting so that their petitions could be considered. None of the petitioners in Category 3 submitted the requested letter before the February Board meeting, so those petitions were rejected. There were four petitions in Category 3.

Category 4: Petition that met the statutory and rule requirements. The Committee decided to review these petitions at the February meeting to match them with potential experts. There were nine petitions in Category 4.

Ms. Murray continued that at the Committee's meeting on February 13, 2019, the Committee reviewed the Category 4 petitions, which concerned the following conditions: Opioid use disorder, depression, insomnia, anxiety, and autism. The Committee approved the following experts to review the conditions for possible treatment with medical marijuana: Ted Parran, M.D.; David Bearman, M.D.; Mark Woyshville, M.D.; Suzanne Sisley, M.D.; Solomon Zarea, D.O.; Gary Wenk, Ph.D.; and Christian Bogner, M.D. The experts will review the petitions and prepare reports for the Committee to be reviewed at the May meeting. Staff is working on scheduling the experts to be available via Skype at the May meeting so that they may answer any questions the Committee may have.

The Committee will report to the full Board so that the Board can consider the petitions and expert reports at its June 12, 2019 meeting.

Motion to approve the October 10, 2018 and January 9, 2019 minutes from the Medical Marijuana Expert Review Committee.

Motion	Bechtel
2nd	Saferin
All in favor	All in favor
Opposed	None

The motion carried.

At Ms. Montgomery's request, the Board will review the processes involved in reviewing the petitions at the Board's June 11, 2019 Retreat.

### **PROBATIONARY REQUESTS**

Motion to approve the Secretary and Supervising Member's recommendations for the following probationary requests:

- a) Mark Allen, M.D.: Approval of the drug testing and recovery meeting monitoring to continue to be conducted by the Kansas Medical Society Professional's Health Program.
- b) Joseph Carver, M.D.: Approval of the submitted practice plan modification.
- c) Michael Howkins, D.O.: Approval of Michael F. Katz, M.D., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per month.
- d) David Hughes, D.O.: Release from the terms of the March 9, 2016 Consent Agreement.
- e) James Johnson, D.O.: Approval of Kenneth Writesel, D.O., to serve as an additional monitoring physician.
- f) Ross Lentini, M.D.: Approval of request to discontinue the chart review requirement.
- g) Pradeep Mathur, M.D.: Approval of *Intensive Course in Controlled Substance Prescribing: Pain, Anxiety, and Insomnia*, administered by Case Western Reserve University, to fulfill the controlled

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substance prescribing course requirement; and approval of *Intensive Course in Medical Documentation: Clinical, Legal, and Economic*, administered by Case Western Reserve University, to fulfill the medical records course keeping requirement.

- h) James Prommersberger, D.P.M.: Approval of Vern M. Chuba, D.P.M., to serve as the monitoring physician; and determination of the frequency and number of charts to be reviewed at ten charts per week.
- i) Justin Rodebaugh, M.D.: Approval of the updated Virginia Health Practitioner’s Monitoring Program contract.
- j) Frank Stoddard, D.P.M.: Approval of request to reduce personal appearances to every six months.
- k) Aubrey Winkler, P.A.: Approval of request to reduce the chart review requirement to ten per month; and approval of request to reduce the preceptor reports to every three months.

Motion	Schottenstein
2nd	Edgin
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	abstain

The motion carried.

Motion to approve the Secretary and Supervising Member’s recommendations for the following probationary request:

- a) Howard Waxman, D.P.M.: Approval of *Intensive Course in Medical Ethics, Boundaries, and Professionalism*, administered by Case Western Reserve University, to fulfill the professional ethics course requirement; and approval of *Intensive Course in Medical Documentation; Clinical, Legal, and Economic Implications for Healthcare*, administered by Case Western Reserve University to fulfill the medical records course requirement.

Motion	Soin
2nd	Edgin
Dr. Rothermel	abstain
Dr. Saferin	abstain
Mr. Giacalone	Y
Dr. Schottenstein	abstain
Dr. Soin	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	abstain

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The motion carried.

## **EXECUTIVE SESSION II**

I will now entertain a motion 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.

Motion	Saferin
2 <sup>nd</sup>	Bechtel
Dr. Rothermel	Y
Dr. Saferin	Y
Mr. Giacalone	Y
Dr. Schottenstein	Y
Dr. Sojn	Y
Dr. Schachat	Y
Dr. Edgin	Y
Dr. Johnson	Y
Dr. Factora	Y
Ms. Montgomery	Y
Dr. Bechtel	Y

Executive Session II started at 11:47 a.m. and ended at 11:56 a.m.

## **FINAL PROBATIONARY APPEARANCES**

### Christopher S. Croom, M.D.

In response to questions from Dr. Schachat, Dr. Croom stated that he is currently practicing in an internal medical group practice in Dayton which is affiliated with Wright State University. Dr. Croom plans to apply to take the addiction medical board examinations after he is released from his probation. Dr. Croom reported that his recovery program is going well and he is currently sponsoring four men. Dr. Croom regularly attends both Alcoholics Anonymous and Al-Anon meetings.

Dr. Croom commented that he does not encounter many alcoholics in the treatment center, but many of the patients there are young heroin addicts and he has gotten to know that population. Dr. Croom stated that he and a colleague have started a program called Promise to Hope to help pregnant women who are addicted to opiates; Dr. Croom stated that he is not paid for this position, but he sees it as service work and it is also helping his own recovery. Dr. Croom had no plans to change his recovery program following his release from probation.

Motion to release Dr. Croom from the terms of his July 10, 2013 Step II Consent Agreement, effective immediately.

Motion	Edgin
2 <sup>nd</sup>	Sojn
All in favor	All in favor yes
Opposed	None

### John S. Henry, M.D.

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Responding to questions from Dr. Schachat, Dr. Henry stated that he is a partner in an orthopedic surgery group practice in Marietta, OH, servicing Marietta and Parkersburg, West Virginia. Dr. Henry reported that his recovery is going very well; he attends meetings regularly, is active in his church, and is active with his sponsor. Dr. Henry stated that he has never sponsored anyone because he has never been asked. Dr. Henry also commented that he has three college-aged sons who keep him straight. Dr. Henry stated that very little will change with his recovery program following his release from probation, but there is a sense of accomplishment that he has come this far.

Ms. Montgomery asked how Dr. Henry's family has reacted to his situation over the last few years. Dr. Henry replied that his family has been very supportive.

Motion to release Dr. Henry from the terms of his March 12, 2014 Step II Consent Agreement, effective immediately.

Motion	Edgin
2nd	Schottenstein
All in favor	All in favor yes
Opposed	None

### Thomas D. Kramer, Jr., M.D. (Rocky River, Ohio)

In response to questions from Dr. Schachat, Dr. Kramer stated that he is currently practicing as an emergency physician with an independent group in Sandusky, working three to four 10-hour shifts per week. Dr. Kramer stated that most of those he works with in the emergency department are aware of his history. Dr. Kramer commented that he has no shame about his past at this point. Dr. Schachat asked if there were any special risks in the emergency department that Dr. Kramer is anxious about. Dr. Kramer replied that he did not think so. Dr. Kramer added that he sees enough people with drug or alcohol addiction that it is a constant reminder of what his life had been like several years ago and how much better it is now.

Responding to further questions from Dr. Schachat, Dr. Kramer stated that he is not currently sponsoring anyone; he had a sponsee, but the individual recently moved away. Dr. Kramer had no plans to change his recovery program following release from probation, commenting that it is part of his life now and something he depends on.

Dr. Schottenstein noted that there is a mental health component in Dr. Kramer's Board Order and asked if Dr. Kramer is compliant with it. Dr. Kramer replied affirmatively, stating that he has a great psychiatrist and he attends caduceus meetings. Dr. Schottenstein commented that when a mental health issue is not well-controlled, it becomes a risk for relapse. Dr. Kramer agreed and stated that he learned that the hard way.

Motion to release Dr. Kramer from the terms of his April 8, 2015 Board Order, effective immediately.

Motion	Schottenstein
2nd	Montgomery
All in favor	All in favor yes
Opposed	None

Dr. Kramer thanked the board for the opportunity to practice medicine, given what he has went through. Dr. Kramer appreciated the Board's responsibility and stated that he has no resent towards the Board for what he has had to do. Dr. Kramer was grateful that despite his past problems with addiction, he has been able to work and support his family. Dr. Kramer also thanked the Board's staff.

### Adam C. Maier, D.O. (Columbus, Ohio)

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Dr. Schachat asked how Dr. Maier's bipolar I disorder became apparent. Dr. Maier answered that his first manic episode was several years ago during his residency. Dr. Maier stated that he had a second episode when he learned his residency program director was convicted of child pornography, which hit Dr. Maier pretty hard.

Responding to further question from Dr. Schachat, Dr. Maier stated that he currently practices part-time at a radiation oncology practice in Newark, Ohio, usually two days per week depending on staff needs. Dr. Maier stated that he is stable on his current medications, lithium and Abilify. Dr. Maier stated that he is only having medical treatment and is not undergoing psychotherapy. Dr. Maier will continue to see his psychiatrist and stay on his medications because they seem to be working. Dr. Maier did not anticipate any big changes following his release from probation.

Dr. Schottenstein noted that Dr. Noffsinger diagnosed Dr. Maier with bipolar disorder at a Board-ordered examination, and asked if that was the first time Dr. Maier had been assessed for mental health. Dr. Maier replied that he was actually first diagnosed in 2005 and was prescribed Depakote. Dr. Maier did not like that medication and stopped taking it, going many years without any problems or episodes. When Dr. Maier matriculated medical school, he began seeing a psychiatrist in order preempt any possible problems going forward.

Motion to release Dr. Maier from the terms of his May 13, 2015 Consent Agreement, effective immediately.

Motion	Schottenstein
2nd	Factora
All in favor	All in favor yes
Opposed	None

Jerome A. McTague, M.D. (Oklahoma City, Oklahoma)

In response to questions from Dr. Schachat, Dr. McTague stated that he is not an ophthalmologist, but an emergency physician and he continues to practice emergency medicine. Dr. McTague stated that he took his required courses in ethics and medical record keeping in 2014 and he found them to be helpful. In the medical records course emphasized the importance of details. Dr. McTague stated that the ethics course covered many issues not related to his case, but he found it interesting how difficult it can be for physicians to stay on the right side of the line.

Dr. Schachat asked if Dr. McTague has taken advantage of any opportunities to educate any of his colleagues about his situation and to give guidance to avoid certain problems. Dr. McTague answered that he has been able to do so in his role as a medical director at a community hospital. Dr. McTague stated that he uses every opportunity to help physicians make sure they have proper documentation and are maintaining ethics standards. Dr. Schachat asked if Dr. McTague fills out vision forms for driver's licenses. Dr. McTague replied that he cannot do so.

Dr. Schottenstein noted that there had been an aircraft accident and there was a thought that Dr. McTague's assessment of the pilot had been contributory. Dr. Schottenstein imagined that that is a terrible burden to carry and asked how Dr. McTague was holding up. Dr. McTague replied that his assessment of the pilot had been more than a year prior to the accident and the pilot's medical clearance had expired at the time of the accident. Dr. McTague stated that the accident was a great tragedy, but he did not feel that he could have done anything that would have avoided it. Dr. McTague stated that he had not told the pilot that he was safe to fly or anything of that nature.

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Dr. Soin asked if Dr. McTague could explain what ethical breaches had brought him to the Board's attention. Dr. McTague responded that he believes the public trust that was placed in him to detect that this pilot was lying to him and did not possess the vision he seemed to demonstrate. Dr. Soin thanked Dr. McTague and stated that he wanted to make sure Dr. McTague had self-awareness about the situation. Dr. Soin commented that he had been uncertain of Dr. McTague's self-awareness based on his previous answers.

Motion to release Dr. McTague from the terms of his February 12, 2014 Board Order, effective immediately.

Motion	Schottenstein
2 <sup>nd</sup>	Johnson
All in favor	All in favor
Opposed	None

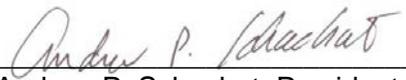
## ADJOURN

Motion to adjourn

Motion	Saferin
2 <sup>nd</sup>	Johnson
All in favor	All aye
Opposed	None

Meeting adjourned at 1:20 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on March 13, 2019, as approved on April 10, 2019.

  
\_\_\_\_\_  
Andrew P. Schachat, President

  
\_\_\_\_\_  
Kim G. Rothermel, M.D., Secretary





**LICENSURE COMMITTEE MEETING  
March 13, 2019 - Room 336**

<b>Committee Members Present:</b> Bruce R. Saferin, D.P.M, Chair Kim G. Rothermel, M.D. Ronan M. Factora, M.D. Richard Edgin, M.D.	<b>Staff Present:</b> Joseph Turek, Deputy Director, Licensure & Licensee Services Mitchell Alderson, Chief of Licensure Colin Depew, Assistant Attorney Sallie Debolt, Senior Counsel
<b>Other Board Members Present:</b> Michael Schottenstein, M.D. Mark A. Bechtel, M.D. Andrew Schachat, M.D.	

Dr. Saferin called the meeting to order at **8:01 a.m.**

#### **MINUTES REVIEW**

**Dr. Edgin moved to approve the draft minutes of February 13, 2019. Dr. Factora seconded the motion. All members voted aye. The motion carried.**

#### **FUTURE PAPC MEETINGS**

Ms. Debolt reported that as of March 20 the Physician Assistant Policy Committee will begin meeting via teleconference or video conference on an as-needed basis only.

**Dr. Edgin moved to recommend to the full board that they allow PAPC meetings to be conducted via teleconference or video conference when needed. Dr. Rothermel seconded the motion. Voice vote- all aye. Motion carried.**

The recommendation to hold PAPC meetings via teleconference will be made to the full board.

#### **LICENSURE APPLICATION REVIEWS**

##### Nicholas Katz, MD – Physician Licensure Application

Dr. Saferin stated that Dr. Katz is applying for medical licensure in Ohio and advises he has not been engaged in the clinical practice of medicine since August of 2016.

**Dr. Rothermel moved to approve Dr. Katz's request for Ohio licensure as presented. Dr. Edgin seconded the motion.**

Dr. Schachat questioned the circumstances. Dr. Rothermel stated that Dr. Katz had a medical illness, but he has been cleared to return to practices and he is still board-certified. Dr. Saferin added that he has kept up on his CMEs.

**All members voted aye. The motion carried.**

Moses Kumar, MD – Physician Licensure Application

Dr. Saferin stated that Dr. Kumar is applying for a medical license and has requested a waiver of the USMLE ten-year rule.

**Dr. Rothermel moved to approve the good cause exception of the 10-year rule as outlined in 4731-6-14(C)(3)(b)(i), and accept the examination sequence so Dr. Kumar may be granted a license. Dr. Edgin seconded the motion. All members voted aye. The motion carried.**

Nichole Brennan – Allied Licensure Application

Dr. Saferin stated that Ms. Brennan is applying for a massage therapy license in Ohio and advises she has not actively practiced massage therapy since 2013.

**Dr. Edgin moved to approve Ms. Brennan’s application for an Ohio license pending successful completion of the MBLEx within six months from the date of mailing of the Notice of Opportunity for a Hearing. Dr. Factora seconded the motion.**

Dr. Schottenstein pointed out that Ms. Brennan had answered affirmatively to the application question about criminal charges without providing explanatory documentation. He would appreciate seeing any additional information the staff could provide in these circumstances. Mr. Alderson stated that in these situations, documentation that cannot be shared with the rest of the members (as they may have been part of a complaint investigation) are reviewed by staff and also the Secretary and Supervising Member. Mr. Turek said that documents provided by the applicants can be shared with committee members, but other investigation information would not be allowable by law.

**All members voted aye. The motion carried.**

**RESPIRATORY CARE CONTINUING EDUCATION COURSE APPROVAL**

Dr. Saferin informed the committee that the board has received three requests for approval of Respiratory Care Continuing Education courses on Ohio respiratory care law or professional ethics. The three courses are “Organ, Eye, and Tissue Donation”, “Fundamentals of Critical Care Ethics for the Respiratory Therapist”, and “Documentation of the PFT Report.”

**Dr. Factora moved that the course, Organ, Eye, and Tissue Donation, be approved for one contact hour of Respiratory Care Continuing Education on Ohio respiratory care law or professional ethics, pursuant to the provisions of chapter 4761-9 of the Ohio Administrative Code. Dr. Rothermel seconded the motion. All members voted aye. The motion carried.**

**Dr. Rothermel moved that the course, Fundamentals of Critical Care Ethics for the Respiratory Therapist, be approved for one contact hour of Respiratory Care Continuing Education on Ohio respiratory care law or professional ethics, pursuant to the provisions**

**of chapter 4761-9 of the Ohio Administrative Code. Dr. Factora seconded the motion. All members voted aye. The motion carried.**

**Dr. Factora moved that the course, Documentation of the PFT Report, be approved for one contact hour of Respiratory Care Continuing Education on Ohio respiratory care law or professional ethics, pursuant to the provisions of chapter 4761-9 of the Ohio Administrative Code. Dr. Rothermel seconded the motion. All members voted aye. The motion carried.**

## **ADJOURN**

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

The meeting adjourned at 8:13 a.m.

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

tp



## FINANCE COMMITTEE MEETING MINUTES

March 13, 2019 - Room 318

<b>Members in attendance:</b> Michael Schottenstein, MD, Chair Bruce R. Saferin, DPM Richard A. Edgin, MD  Additional board member in attendance: Ronan Factora, MD	<b>Staff in attendance:</b> A.J. Groeber, Executive Director Susan Loe, Director of Fiscal & 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. Edgin moved to approve the draft minutes of February 13, 2019. Dr. Saferin seconded the motion. All members voted aye. The motion carried.**

### FISCAL UPDATE

Dr. Schottenstein provided the following update: revenue was \$648,131. That is substantially down compared to the previous month, as there were no renewal deadlines for our licensees. Overall we have a 9 % increase year-to-date in revenue, and that is still a respectable number. Net revenue was negative \$632,526 for January 2019. That is substantially a function of two very large invoices which we paid in January.

Dr. Schottenstein stated that the first invoice was in the amount of \$290,757 for eLicense maintenance and this charge will now represent our yearly maintenance payment for the system. Our previous system cost us much less, \$40,000 per year in maintenance costs, but that system was very basic and outdated, and we essentially were just keeping it up and running until the new eLicense system came online. As we know, the eLicense system is a much more robust system, and virtually every aspect of the medical board utilizes it. Our maintenance expense for the system is prorated, as every government agency is billed based on the number of licensees for which that the agency is responsible. We own about 11 or 12% of the total. We did not ask for an increase in our budget to absorb this expense, because we had money set aside for enhancements to our system already. And we have that \$3.50 transaction fee on license renewals which goes toward that maintenance cost. Otherwise, it would probably cost us approximately \$780,000 per year. We are done paying the \$40,000 per year maintenance cost for the old system. Mr. Groeber stated that without the eLicense system, the staff headcount would need to increase from the current 75 personnel. The system allows for increased efficiency and transparency.

Dr. Schottenstein continued: the second major invoice that we paid in January was a one-time cost totaling \$232,829 for development of compliance and adjudication modules for the eLicense system. The Compliance module has been used to keep track of our probationers, and the adjudication module is used by the hearing unit. Feedback regarding those modules has been good so far. Dr. Schottenstein passed along information from Ms. Murray regarding the compliance module. With the improved capability, licensees can now book their own office conference time slots online after receiving an email reminder that they are due. Licensees can submit their paperwork through the portal directly to their compliance record for review by staff. We are in the process of building methods of separately tracking treatment providers and participants in the confidential B-19 monitoring program. And as we accumulate more data, we will be able to obtain more information about the demographics of our probationers, especially those with impairment issues.

Dr. Schottenstein stated that net fiscal year revenue to date is \$-214,972, and we expect that to level out into positive territory by the end of the fiscal year. Our March numbers should be good, with an April 1 renewal date for licensees pending. Our cash balance has taken a hit, and now stands at \$4,399,457, which is still very respectable, but it is down. With regard to fines, since last report we have received a total of \$42,057.

## COMMUNICATIONS UPDATE

Ms. Pollock informed the committee that the spring magazine is in process. The cultural competencies guide for healthcare providers is complete- posted electronically to the website and printed hard copies. There are numerous presentations scheduled for the next month, including a presentation by Mr. Groeber at the DEA/FSMB conference in Cleveland on March 18 and 19. The monthly electronic newsletter for licensees has shifted publication dates from the last week of the month to the first week of the month. As a result, there was not a February edition of Medical Board eNews. Consumer board members have been added to the distribution list and there is also a sign-up function on the webpage where any interested parties can request they also be added to the distribution list. During the digital communication update, Ms. Pollock let committee members know that Ms. Williams re-designed the Compliance webpage, so it is more user friendly for licensees needing to access those resources.

## NEW BUSINESS

Dr. Schottenstein reminded members that during the February 2019 board meeting, some members raised questions about fining amounts. Mr. Groeber said that several board members sent him comments including Dr. Rothermel and Mr. Giacalone. Mr. Groeber read a comment submitted by Mr. Gonidakis regarding the fining grid as Mr. Gonidakis was not able to attend the meeting. Mr. Gonidakis stated in an email: I oppose any additional changes to the fining grid. We did this exercise last year and I am very concerned that we lack predictability and credibility when we change our disciplinary fines on a regular and reoccurring basis. The Board should not routinely change our practices based on gut feelings. I am strong proponent of only doing a 5-year review of our fining grid. Please have the record reflect that I have strong opposition to any additional modifications.

Mr. Groeber stated that several other board members including Dr. Schottenstein, stated that there should be not changes; eight board members did not opine on the issue. Dr. Saferin stated that he did not opine because he had supported the changes that were made last year, and he is comfortable with the status quo; a 3-5 year review is more appropriate.

**Dr. Saferin made a motion to not change the fining guidelines and reassess on a 5-year cycle from the date of the last update. Dr. Edgin provided a second. All members voted aye. The motion carried.**

Mr. Groeber stated that the last update was done in 2018 and that would set the 5-year review to occur in 2023. Dr. Factora stated that because the fining authority was relatively new, the board was still getting used to the idea and it was natural to question and want to reassess, but it would be most effective to operate under status quo and reassess five years later. Dr. Schottenstein informed the group that full board shall vote on this as well.

## ADJOURN

**Dr. Edgin moved to adjourn meeting. Dr. Saferin seconded the motion. Voice vote- all aye. The motion carried.**  
The meeting adjourned at 8:43 a.m.

Michael Schottenstein, M.D.  
Chair

tp

State Medical Board of Ohio

**POLICY COMMITTEE MEETING**

**March 13, 2019**

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

<p><b>Members:</b> Andrew P. Schachat, MD Robert Giacalone Betty Montgomery Mark Bechtel, MD Amol Soin, MD</p> <p><b>Other Board Members present:</b> Michael Schottenstein, MD Sherry Johnson, DO Ronan Factora, MD Bruce Saferin, DPM Richard Edgin, MD Kim Rothermel, MD</p>	<p><b>Staff:</b> A.J. Groeber, Executive Director Kimberly Anderson, Chief Legal Counsel Sallie J. Debolt, Senior Counsel Nathan Smith, Senior Legal and Policy Counsel Joan Wehrle, Education &amp; Outreach Program Manager Jonithon LaCross, Director of Public Policy and Government Affairs Rebecca Marshall, Chief Enforcement Attorney James Roach, Chief of Investigations Joe Turek, Deputy Director David Fais, Deputy Director</p>
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Dr. Soin called the meeting to order at 9:15 a.m.

### **Meeting Minutes Review**

Dr. Soin reported that the draft minutes of the February 13, 2019 meeting had been distributed to the committee and were included in the agenda materials.

**Dr. Bechtel moved to approve the draft minutes of the Feb 13, 2019 Policy Committee meeting. Mr. Giacalone seconded the motion. Motion carried.**

### **Legislative Update**

Mr. LaCross reported that there are two bills outside of the healthcare bills that we are watching: SB7 Temporary State Occupational Licenses-Military and HB133, the Veteran's licensing bill. Sponsors have reached out to the Board and we are offering changes that are being discussed.

Budget items from the Medical Board are being drafted for the House Health Subcommittee. House budget testimony about our amendments is scheduled for March 25<sup>th</sup>. Mr. LaCross indicated that he will provide budget information to the Board when he receives the language back from the House.

### **Rules Review Update**

Ms. Anderson referred to the information in the agenda materials. She said that we will change the order as the second set of Respiratory Care rules will be on the April committee agenda and the Dietetics rules will be discussed in June. Ms. Anderson said that CSI has returned the Chapter 6 physician licensure rules and 7431-1-02 limited branch.

### **Rules Regarding Military Service (all license types) – Initial Review**

Ms. Anderson said that Mr. Smith drafted the military service rules. The proposed rules update and consolidate the Medical Board's current military rules which carry out the requirements of Ohio Revised Code sections 5903.03, 5903.04, 5903.10, 5903.12, and 5903.121 for occupational licensure, renewal of licensure, expedited processing of license applications, and continuing education.

Ms. Anderson said that current rules had differences between license types. Provisions from fourteen (14) different rules in seven (7) OAC chapters are proposed to be consolidated into three (3) rules in one OAC chapter. We are proposing new Chapter 4731-36 Military Provisions and the proposed rules will consistently apply the above referenced laws to all Medical Board license types:

4731-36-01 Military Provisions Related to Education and Experience Requirements for Licensure

4731-36-02 Military Provisions Related to Renewal of License and Continuing Education

4731-36-03 Processing applications from service members, veterans, or spouses of service members or veterans.

Dr. Bechtel asked if these rules would apply to military personnel who are part of the Veterans Administration. She said it could apply to those in the VA if they seek licensure in Ohio as they must hold a license in a state and Ohio could be that state.

Mr. Smith explained that there is expedited application processing and some active military have some CME changes, but a regular license is issued.

**Dr. Bechtel moved that the proposed rules be sent to interested parties for comment in initial circulation Dr. Schachat seconded the motion. Motion carried.**

### **Rules Regarding Consult Agreements – Reviewing Comments Received after Initial Review**

Ms. Anderson introduced Ms. Tricia Jordan, a pharmacist from the OSUWexner Medical Center. Ms. Jordan helped with the Medical Board and the Pharmacy Board consult agreement rules and she is here to answer any questions of the committee as to how the consult agreements work in clinical situations.

Ms. Anderson said she will summarize the over 200 comments from physicians, pharmacists and hospital systems around the state. Ms. Anderson said it was clear from the comments received that parts of the proposed rules need to be changed. She said the memo in the committee materials identified the categories of concern.

Ms. Anderson said that anything in the rule that required the doctor's approval before making an adjustment to a dose is problematic as it is really the heart of a consult agreement. Essentially, if the pharmacist could not make a dosage adjustment within the confines of the agreement, they would not be able to enter into a consult agreement.

Several comments were received about periodically assessing the patient at least once a year. It was recommended that we remove that requirement.

It was also recommended that the Board remove the word "promptly" with respect to reviewing the medical record as there was concern about what that meant.

Ms. Anderson said we had some rule requirements for prior notice to making an adjustment and for regular meetings between the doctor and the managing pharmacist. She recommends we delete those sections from the rules.

Ms. Anderson said she believed we would still have strong rules if we implement the recommended deletions and it will achieve the purpose of the consult agreements.

Dr. Bechtel expressed concern about having a consult agreement in which the patient may not be seen in a year. He felt that a physician and patient should interact at least once a year. Dr. Soin asked if there were tangible examples because he felt the same way as Dr. Bechtel.

Dr. Schottenstein asked if it would fall under our minimal standards rule, as clearly a physician needs to see a patient from time to time. Ms. Anderson said that we added to rule that the doctor must always comply with minimal standards of care and no comments were received about that requirement.

Even more broadly than the consult agreements, Dr. Schachat referred to the requirement about seeing the patient at least once a year for prescription refills. He said many prescriptions cannot be filled 30 days prior. If a patient makes an appointment in the 11<sup>th</sup> month and its scheduled for the 12<sup>th</sup> month but some unforeseen event requires the appointment to be rescheduled until the following month that puts it over the one year timeframe. Some medications cannot safely be stopped.

Ms. Jordon said that for many patients, such as diabetic patients, the doctor will be seeing the patient more frequently. But when thinking about all patients, how do you operationalize the system to assure that the patient gets seen at least once a year by the physician. She said a patient taking part in a smoking cessation clinic may not see the doctor within a year for that specific indication. So, is the patient seen by a doctor for any indication, or just a specific indication. Discussion noted that patients could be treated for hypertension and other disorders.

Dr. Factora commented that requiring the physician to meet minimal standards of care is making the rule stronger. It makes the treatment specific to the condition rather than setting a fixed period of time and it allows flexibility. If a patient is diabetic and needs to be seen every three months, that is the expectation. But if a patient has stopped smoking and they don't need to be seen for a year or two that is acceptable. It allows for the inclusion of a lot of different diagnoses, but still the doctor is required to maintain standards, but the standard is related to the patient's condition, not just time standards.

Dr. Schottenstein and Dr. Soin voiced support of the requirement to maintain standards of care in the rule.

**Rule 4731-35 02(A)(3):** Ms. Anderson highlighted rule 4731-35 02(A)(3). She said we are matching up language with the language in the Pharmacy Board rule regarding getting consent and communication to the patient.

We had included language that prior to the effective date of the consult agreement, and prior to a pharmacist managing the drug therapy, the physician shall communicate the content of the proposed consult agreement. She suggested that the "prior to the effective date of the consult agreement" be removed. She said it was her understanding that the consult agreement was like the overarching document between the managing pharmacist and the physician group that clarifies the pharmacist is going to manage the patients of the group on a particular drug. The individual patients are then slotted

into the agreement. So, it would be impossible to provide notice to the patients before the effective date of the consult agreement. However, the patient is notified prior to their inclusion in the agreement.

Ms. Anderson continued referencing the memo included in the agenda materials. She said we received a lot of comments about the consent language about how everyone liked the Pharmacy Board rules, so we took a lot of the language from the Pharmacy Board rule around that consent. There is an institutional exception and that is because inpatient drug management and institutional facilities are handled differently than ambulatory. That is recognized in the Pharmacy Board rules. We tried to match that language whenever possible.

Many of the comments expressed concerns about the wording of the informed consent provisions of the rules and suggested that the rules be modified to align with the consent provisions in the rules promulgated by the Board of Pharmacy, as follows:

- (1) Rule 4731-35-01(A)(1)(b): Delete the word “informed” and indicate that the patient’s consent to drug therapy management is based on Rule 4729:1-6-01 (H) and (I) of the Administrative Code. The Pharmacy Board rule indicates that the patient consent must be obtained prior to the pharmacist managing the care and that the patient must be advised that a pharmacist may be utilized in the management of the patient’s care and that the patient or individual authorized to act on behalf of the patient have a right to elect to participate in and withdraw from the consent agreement. The rule also allows the consent to be obtained as part of the patient’s initial consent to treatment.
- (2) Rule 4731-35-02(A)(3): Delete language in (a) through (d) regarding the details regarding the consent of the patient and adding language to reflect the requirements from the Board of Pharmacy’s rule at 4729:1-6-01(H) and (I) of the Administrative Code.

Several commenters expressed concern with the language around the scope of the managing pharmacist in Rule 4731-35-02(B)(1) and (2). It was suggested that this section could be deleted since the language of Rule 4731-35-01(A)(1)(c)-(f) and Rule 4729:1-06-02(b)-(e) already require these items to be outlined in the consult agreement.

Several sections were duplicative or required some clean-up to align with the language from the Board of Pharmacy:

- (1) Rule 4731-35-01(A)(1)(h): language added to match the language in Rule 4729:1-6-02(A)(1)(g) which indicates that the agreement may include a requirement that a managing pharmacist send a consult report to each consulting physician.
- (2) Rule 4731-35-02(A)(2): Modify the references to the sections of the consult agreement dealing with the scope of the agreement for the institutional and ambulatory outpatient facility section.
- (3) Rule 4731-35-02(A)(5): Revise the situations where an amendment to consult agreement is required so it is limited to times when the scope of the permitted procedures expands past what was contemplated.
- (4) Rule 4731-35-01(B): For recordkeeping, add language to indicate that a physician group or institution may also be the entity maintaining the records.

- (5) Rule 4731-35-01(C)(1)(b)(i), (ii): Delete duplicative words at the beginning of each paragraph.
- (6) Rule 4731-35-01(C)(1)(d): Add some language to clarify the meaning of the section.
- (7) Rule 4731-35-02(A)(6): Add some language to indicate that pharmacist's training can be verified through the credentialing process for institutional facilities.
- (8) Rule 4731-35-02(D)(2)(a): Clarify that notification is required if the pharmacist's license is revoked, suspended or denied by the Board of Pharmacy;
- (9) Rule 4731-35-02(D)(2)(b) and (c): Clarify that these sections only apply if the pharmacist is prescribing controlled substances.

Ms. Anderson recommend making these changes to clarify and clean up the language in the rules and file the rules with CSI.

**Mr. Giacalone moved to recommend to the full Board that the Board file the rules as amended with the Common Sense Initiative. Dr. Bechtel seconded motion. Motion carried.**

#### **Subacute & Chronic Pain Rule 4731-11-14 OAC**

Ms. Anderson reported that the Board received comments from outside parties and the Ohio Hospital Association noting that the implementation of the subacute and chronic pain rule is having some negative impact for patients diagnosed with non-terminal cancer and patients diagnosed with terminal conditions. This was not our intent, so we wanted to bring it to the committee's attention.

The comments regarding the patients diagnosed with non-terminal cancer are summarized by an email we received from the Ohio Hospital Association, which is in the agenda materials. In summary, these patients may have severe pain in that treatment requiring dosages which exceed 120MED. However, a hematologist or oncologist does not fit into the exceptions in place in the rule. So, they must refer the non-terminal cancer patient to a pain management specialist or hospice and palliative care specialist which delays the care of the patient.

Ms. Anderson said that the proposal is to amend 4731-11-01(E) (1) to exempt board certified hematologists and board certified oncologists from that portion of the rule so that they would not have refer the patient to a pain management or hospice/palliative care physician. But hematology/oncology would not be included in (E)(2) which would allow patients to see a hematologist/oncologist as a consultant.

Ms. Anderson explained that there is a long list of specialty boards that include hematology or oncology.

Ms. Anderson said that Board staff has also received comments from physicians indicating that the definition of terminal condition is causing delays for those patients. Patients diagnosed with a terminal condition are exempted from the rule, but the definition of terminal condition comes from Section 2133.01 of the Revised Code, which requires a second opinion. She suggested that the definition of terminal condition be amended to eliminate the need for a second opinion.

To reduce delay in making these changes, Ms. Anderson recommend filing the revised rules directly with the Common Sense Initiative rather than requiring an initial circulation to interested parties. The Medical Board became aware of these issues through feedback from interested parties.

**Dr. Bechtel moved to recommend to the full Board that the rules, as amended, be filed with the Common Sense Initiative. Dr. Schachat seconded the motion. Motion carried.**

## **ADJOURN**

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

The meeting adjourned at 9:44 a.m.

jkw

# DRAFT MINUTES

State Medical Board of Ohio

## COMPLIANCE COMMITTEE MEETING

March 13, 2019

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

<p><b>Members:</b> Michael Schottenstein, MD, Chair Ronan M. Factora, MD Robert Giacalone Amol Soin, MD</p> <p><b>Also attending:</b> Kim G. Rothermel, MD Richard Edgin, MD</p>	<p><b>Staff:</b> Alexandra Murray, Managing Attorney Annette Jones, Compliance Officer Angela Moore, Compliance Officer Rebecca Marshall, Chief Enforcement Attorney</p> <p>AJ Groeber, Executive Director, joined the meeting in progress</p>
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Dr. Schottenstein called the meeting to order at 1:25 p.m.

### INITIAL PROBATIONARY APPEARANCES

#### Pankaj Gupta, MD

Dr. Gupta is making his initial appearance pursuant to the terms of his December 12, 2018 Consent Agreement. The agreement suspended Dr. Gupta's license based on the doctor's admission that he engaged in sexual misconduct with one patient. Unless otherwise determined by the Committee, Dr. Gupta will appear as determined by the Board's Secretary or designee.

Dr. Soin asked Dr. Gupta what his practice situation was prior to his suspension. Dr. Gupta said he was in an academic practice in a corneal refractive surgery department. Dr. Soin asked if he planned to return to that practice. Dr. Gupta replied that he does not. Dr. Soin asked his long-term plans. Dr. Gupta said that his wife is pregnant, and his plans are to spend time with her in Canada. At this point his plans are to consider a part-time position. Dr. Soin asked if he was doing any work outside of medicine while on suspension. Dr. Gupta replied that he and his wife have been preparing for the birth of their child. Dr. Soin asked if Dr. Gupta had been seeking a professional boundaries course. Dr. Gupta replied that he had attended a professional boundaries course, but he needs to complete the required paperwork for the Board. Dr. Soin asked what the boundaries course was like. Dr. Gupta said it was one of the courses suggested by the Board. It was very good and run by Case Western Reserve University. He attended the course a few months after the investigation started. One of the most important things he learned is that it is the doctor's responsibility to protect patients, protect the community and there are really good ways to speak to not be manipulated or forced by patients to do things that are do not feel comfortable to your profession and to the safety of patients, not just individuals.

Dr. Soin asked him what types of changes he plans to make in his practice. Dr. Gupta responded that he intends to continue attending professional ethics courses.

Dr. Gupta indicated he did not have any questions regarding his consent agreement.

Dr. Schottenstein asked if everything was okay with his wife. Dr. Gupta said yes, it was okay.

Dr. Schottenstein said that typically when there is a boundary violation in practice it is not abrupt. People do not in short order end up with a boundary violation. It starts with boundary crossings and small boundary violations where people start telling each other things that are really none of the others business, and spending time together and it gradually progresses until there is a sexual misconduct violation. He asked Dr. Gupta if that is what happened in his situation. Dr. Gupta said it was. He had just moved to Cleveland and was getting divorced from his previous wife, so it was a situation he was not well equipped to handle.

Dr. Schottenstein said that's the other thing that is tough as it is on us, as the physician, to prevent the boundary violation. It is not on the patient. The doctors are the ones who must stand firm in that respect. Dr. Schottenstein mentioned that it is helpful to keep aware of smaller boundary crossings as these are red flags.

**Dr. Factora moved to continue Dr. Gupta under the terms of his December 12, 2018 Consent Agreement, with future appearances before the Board's Secretary or designee. Mr. Giacalone seconded the motion. Motion carried.**

#### **Kenneth Hanover, MD**

Dr. Hanover is making his initial appearance pursuant to the terms of his December 12, 2018 Step II Consent Agreement. The agreement reinstated Dr. Hanover's license with a minimum term of five years' probation following his admission of opiate dependence. Unless otherwise determined by the Committee, Dr. Hanover will appear in three months before the Board's Secretary or designee.

Dr. Hanover indicated he was doing very well, and he is currently not practicing but he is seeking a position. He has two positions that look hopeful.

Dr. Schottenstein asked how his recovery program was going. Dr. Hanover stated that he thought it was going well. He has a supportive family and he has been attending five to nine meetings a week, including Caduceus and aftercare. He also talks with his sponsor regularly. Dr. Schottenstein asked if he had any cravings and Dr. Hanover responded that he did not.

Dr. Schottenstein indicated that Dr. Hanover's situation started out with chronic back pain and he was self-injecting with hospital waste medication. Dr. Schottenstein noted that Dr. Hanover is considering returning to anesthesiology. He asked Dr. Hanover if he had any concerns about temptation in that setting that could lead to relapse. Dr. Hanover indicated that he is cognizant of the environment he is heading back into. He feels confident in his recovery and that there are enough checks and balances in place. He reported that he has signed up with the Ohio Physicians Health Program as an additional check and balance as well.

Dr. Hanover said he would have liked to return to his former position. He spoke with his former partners about what happened, but the hospital felt that he is early in recovery and it would be best if he went someplace where people did not know the history of the events. He respectfully

disagrees with that assessment as he thinks it would be more comfortable to go back to work with people he does know but it is the hospital's decision.

Dr. Hanover said he has no questions about his consent agreement.

**Dr. Soin moved to continue Dr. Hanover under the terms of his December 12, 2018 Consent Agreement, with future appearances before the Board Secretary or Designee. Mr. Giacalone seconded the motion. Motion carried.**

**Muyuan Ma, MD**

Dr. Ma is making her appearance today pursuant to the terms of the Board's Order of June 13, 2018. Her license was reinstated on February 13, 2019, with a minimum term of three years' probation following its finding that Dr. Ma has been diagnosed with a mental illness that affects her ability to appropriately provide care without treatment. Unless otherwise determined by the Committee, Dr. Ma will appear again in three months with the Committee.

Dr. Factora asked her current practice situation. Dr. Ma said she is working as a scheduler at a visiting physician company. Dr. Factora asked her if she planned to find work as a physician. Dr. Ma replied that she has reapplied for her old position with the visiting physician company, but she is waiting for the credentialing process to be complete. Dr. Factora asked her how many months she had previously worked as a visiting physician. Dr. Ma said it was about three or four months. Dr. Factora asked how she found that work, and if it was satisfying or more stressful for her. Dr. Ma said it was a very good fit for her, it was less stressful. She got very good feedback from her coworkers and her supervisor. Overall it is a good environment and she has good support.

Dr. Factora asked how she was feeling. Dr. Ma said she is feeling very good. She found a very good support in the Cleveland area that has been very helpful. He asked if she felt that her current medication regimen was effective. Dr. Ma replied that the medication is effective. He asked is she sees a psychiatrist on a regular basis. She replied that she does, and she also sees another counselor regularly, but the counselor suggested that they just schedule appointments as needed as she felt Dr. Ma was doing very well.

Dr. Ma said she does not have any questions about her Board Order.

Dr. Schottenstein said he was grateful to hear that she feels that her mood is under good control, and that her temper is under control. Dr. Ma agreed. Dr. Schottenstein asked if she maintains her composure well, in other words, no meltdowns or explosions. She said keeps her composure. Dr. Schottenstein asked if criticism is directed her way, does she feel that she manages that feeling in a healthy way. She replied that once she accepts it she then tries to see whatever the criticism is directed at. Dr. Schottenstein wished her good luck in her job search.

**Dr. Soin moved to continue Dr. Ma under the terms of her June 13, 2018 Board Order, with future appearances before the Committee in three months. Mr. Giacalone seconded the motion. Motion carried.**

### **Howard Waxman, DPM**

Dr. Waxman is making his initial appearance today pursuant to the terms of the Consent Agreement of December 12, 2018. The Consent Agreement suspended the doctor's medical license based on his admission that he performed a procedure on a patient that developed into an infection, and that he subsequently accessed the patient's medical records with the intention of altering the record by adding aftercare instructions. Unless otherwise determined by the Committee, Dr. Waxman will appear again at the request of the Board's Secretary or designee.

Dr. Schottenstein said he would abstain from the discussion of Dr. Waxman since he served as Acting Supervising Member in this matter.

Mr. Giacalone asked his current practice situation. Dr. Waxman replied that he has been in practice for about 36 years and is now a solo practitioner for the last three years. Mr. Giacalone asked about the patient care episode that led to the consent agreement and what Dr. Waxman has learned from this experience.

Dr. Waxman said that he had been formerly in a group practice but was not a good situation. The patient was in a nursing home and he provided the care and he left oral instructions with the nursing home attendants to take care of this patient. The care was not done. The patient developed an infection and amputation ensued. His partners at the time used as an opportunity to get rid of him and he felt the pressure. He looked for the addendum in the record, could not find it, he panicked and changed the note. Mr. Giacalone commented that he changed the record after the fact, even though he had orally given the instructions. Dr. Waxman said that was correct.

Mr. Giacalone noted that Dr. Waxman was required to complete an ethics course and a medical records course. He asked if Dr. Waxman had gleaned anything from the courses. Dr. Waxman confirmed that he completed the courses. He said the courses were informative and helpful.

Mr. Giacalone asked him if he had any questions about his consent agreement. Dr. Waxman said he has completed the required courses, but he did not know what the next step was to complete his probation. Mr. Giacalone said that the Board's staff can help him with that.

**Dr. Soin moved to continue Dr. Waxman under the terms of his December 12, 2018 Consent Agreement with future appearances at the request of the Board's Secretary or designee. Mr. Giacalone seconded the motion. Motion carried. Dr. Schottenstein did not vote.**

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

**Dr. Factora moved to approve the Compliance Staff's Reports of conferences for February 11 and 12, 2019. Mr. Giacalone seconded the motion. Motion carried.**

### **TREATMENT PROVIDER APPLICATIONS**

**Mr. Giacalone moved to approve the Applications for a Certificate of Good Standing as a Treatment Provider for Impaired Practitioners for 1) Cornerstone of Recovery in Ohio and**

**Tennessee, 2) Arrowhead Behavioral Health, and 3) Health Recovery Services. Dr. Factora seconded the motion. Motion carried.**

## **MINUTES REVIEW**

**Dr. Soin moved to approve the draft minutes from February 13, 2019. Mr. Giacalone seconded the motion. Motion carried.**

Mr. Groeber joined the meeting.

## **COMPLIANCE MATERIALS DISCUSSION**

Ms. Murray referred the committee to the memorandum in the agenda materials regarding compliance materials. She compiled a summary of the current talking points and proposed changes. Dr. Schottenstein requested the committee have a preliminary discussion prior to the Board retreat.

### **Probationary Reports**

Ms. Murray there had been discussion regarding whether there was value to the reports and how much review is given to them and the amount of information provided. Dr. Schottenstein finds value in reviewing the reports but she is aware that the reports can be somewhat lengthy to review. If there are suggestions regarding the materials provided, either reducing what is shown, or only showing you reports for certain type of licensees, the staff welcomes your feedback.

Dr. Schottenstein said he is open to suggestions, but he likes to see everything, but he appreciates that there should be an efficiency to the process.

Mr. Giacalone said as a non-physician he defers to comments from the Secretary and Supervising Member, so he does a brief read, but he wasn't sure how much it adds to the process.

Ms. Murray explained that compliance staff had previously edited the amount of material submitted for each person, but it could be further reduced. We currently try to provide a global snapshot of a licensee's board history, their current requirements, and what we last talked with them about but that could be also be edited.

Dr. Factora thought that the material was currently condensed and to the point. He thinks it is good to know about the background. Some of the items will come up in discussion. In the context of all they must read, the probationary reports are a very small part of the whole. He said the information was thorough and he wondered what had been provided before. Ms. Murray said that the box on the current form that has a bullet point summary of the Board action was usually three or four more pages per licensee explaining the Board action history. Dr. Factora said the current form is well organized. He asked if more information would be available if needed.

Ms. Murray said that we only do the forms for initial and final appearances, but there is a hyperlink on the form that leads to the formal action documents of a licensee on the elicense portal. We could add the hyperlink to the probationary reports. Dr. Factora said for efficiencies we could add a hyperlink to the information along with the probationer's report and the Secretary and Supervising Member's recommendation.

Ms. Murray said staff could do that, but the part that you would not see is the paragraph on the current form that summarizes the licensee's work history and what the licensee is currently doing, and information about their recovery (if applicable.) This information is gathered during their most recent office conference and it is not included in the elicense materials. If we condensed the materials and removed the summary of the board history, you would need a bit more information as to how the licensee is doing now.

Dr. Factora asked Ms. Murray what she would eliminate from the materials if she had a choice. She said if you wanted to reduce what you review the board history information would be available through the hyperlink. But she believes there is value to see it all on one page.

Mr. Giacalone suggested that we could flag the information that is important and needs attention.

Ms. Murray said we had talked about making a separate agenda item for probationary requests that the Secretary and Supervising Member do not approve. She said we could do that for any probationary conference report where the Secretary/Supervising Member have concerns.

Dr. Schottenstein agreed that items that need attention could be highlighted in red as it reinforces that it is something you want us to look at. He said the current report layout is well done.

Mr. Giacalone acknowledged that the staff really has cut back from what it had been in the past because he remembers how it had been.

Ms. Murray said that the compliance module to the elicense system will be enhanced to include demographic information. We will eventually be able to provide information such as how many people have X as their drug of choice, and deidentified social information that can help us provide further education to our licensees. That portion of the compliance module is planned to be operational in about six months.

### **Compliance Committee**

Mr. Groeber said he had talked with Ms. Murray about matters relating to the compliance committee. He asked what is the intent of the Compliance Committee. What interaction with licensees does the committee find valuable. He asked the committee if they get value out of initial appearances.

Dr. Schottenstein said that he feels he gets value from initial appearances because he likes to see the probationers in person and to interact with them, some more than others. There are some that especially get his attention and that interaction is meaningful to him. Mr. Groeber asked if this was someone with either impairment or a mental health issue? Dr. Schottenstein

agreed, and also those with boundary issues. There are just some who more substantially get his attention.

In terms of whether everyone needs to come before the committee, Dr. Schottenstein said that judgment could be used, such as people who let their massage therapy license lapse. Mr. Groeber asked what the current schedule was for initial appearances before the compliance committee. Ms. Murray responded that it is typically three months after the Board Order or Consent Agreement. He asked if the Compliance staff had touched base with the licensee immediately. Ms. Murray explained that once the compliance staff gets the legal documents after the Board meeting, they send out a packet of information to the licensee regarding how to sign up for drug testing, what the requirements are of their Order/Agreement. Typically, there are phone conversations but there is not a face to face meeting with the licensee until they come to the Board for their initial appearance. She said that most of the time it is okay, but sometimes a licensee struggles a little those first few months and they need more assistance. But usually those issues are resolved when compliance staff meets with them in person and reviews their requirements with them.

Ms. Murray said there may be value to change when the licensee comes before the Compliance Committee and when they come before compliance staff. We may also want to review who should be before the Compliance Committee, like what we did with the final appearances, where some people don't have to appear such as a massage therapist who forgot to renew their license.

Ms. Murray said we may be able to better help those with impairment/mental health issues by having compliance staff meet with them before the three-month appearance, or meeting with them first and make an initial appearance six months after the Order/Agreement. Mr. Groeber said that gives the licensee a bit of a runway to get established. Mr. Groeber asked if the licensee would have a change in behavior in three months after the Board Order/Agreement. If a licensee is struggling to understand their obligations, it takes a month or two to get into a routine. If they have a bit more time to adjust, it might be more valuable when they meet with the committee.

Dr. Schottenstein said he does not have a problem with the 90 day schedule, as he thinks that is a reasonable amount of time. He also has no problem with the Secretary/Supervising Member and compliance staff using their discretion in determining who should appear before the Compliance Committee, as that too is reasonable. He believes there is value in personal appearances before the committee by licensees with mental health issues, impairment, boundary issues, minimal standards or ethical lapses.

Mr. Groeber asked if the default would be 90 days unless the staff and the Secretary and Supervising Member felt the licensee was not yet ready to come before the Compliance Committee and giving them the discretion to push out the initial appearance of that licensee for a month or two. Dr. Schottenstein said that seemed fair. He also welcomed the staff meeting with the licensee before they made the initial appearance.

Ms. Murray said staff is trying to figure out a better way to make sure that people can comply to avoid non-compliance issues. Also, it may be somewhat intimidating for people when asked by the Committee if they have questions about their Order/Agreement and many times they don't

ask anything, but staff finds out after the fact that they really do have questions that staff could have answered.

Mr. Giacalone agreed with the 90-day default. He believed that the intimidation factor is a positive as far as he's concerned. Some of those who show up here, especially some who had signed a Consent Agreement, may have thought that they just signed the paperwork and moved along. Then they appear before the Committee and they didn't expect it to be a bit intimidating. Then others who went through a hearing and you can tell that they are not getting with the program, but you can't ask them anything because the Board action has already been deliberated, but when they appear before the Committee we can emphasize the urgency of getting with the program. But that is not everyone, such as the massage therapist who failed to renew their license. He believed there were some licensees who get some benefit from direction from the Compliance Committee at the front end rather than the back end when they may have been winding down the wrong path.

Mr. Giacalone noted that most licenses don't respond when the Committee asks if they have questions about their Order/Agreement. He believed that question was better handled by staff.

Mr. Groeber noted from the discussion that compliance staff should meet with the licensee earlier, optimally within the first 30 days after receiving the board action documents.

Ms. Murray said that staff could work with the Secretary and Supervising Member to prepare a memo for the Board retreat that delineates the types of probationers we have so we can discuss the types of cases that should make personal appearances, the frequency of the appearances and how that could be structured. It could also define the types of cases where personal appearances do not seem to have as much value, unless the Secretary/Supervising Member believes an individual licensee needs to make a personal appearance.

Mr. Groeber asked about a situation where a licensee is on probation for impairment, but the licensee already has a few years of sobriety and they are working their recovery program, would this licensee need to make a personal appearance, or would there be some leeway to waive the appearance. Dr. Schottenstein said leeway could be fine if they are in a groove like that.

Mr. Groeber said it seems like a licensee who is new to the disciplinary process and/or new to recovery, or the incident is relatively fresh would be the type of cases to appear before the Committee.

Ms. Murray noted that some practitioners had their license reinstated per a Step II Consent Agreement, but they had previously appeared before the Committee with their Step I Agreement. Based on the Step II requirements they appear before the Committee again, but that may not be needed in every situation.

Mr. Groeber said this could be further refined before the Board retreat in June. Perhaps we could get more staff input and suggestions from the Secretary and Supervising Member.

Mr. Giacalone said that while we are discussing culling the appearances, we may want to add some in at the discretion of the Secretary/Supervising Member. For example, those who are not getting with the program.

Dr. Rothermel says that is what we do in the Compliance as far as licensees who would not usually appear before the Secretary/Supervising Member. As the Secretary and Supervising Member review all cases, Ms. Murray identifies those who are not meeting requirements and have received a warning. Dr. Rothermel said those licensees are scheduled to meet with compliance staff and the Secretary/Supervising Member.

If the Secretary/Supervising Member identified a significant situation they would say the person needs to appear before the Board. Mr. Groeber asked if that would happen even if the person was mid-way through their probation and Dr. Rothermel said yes. Ms. Murray said the wording in the Consent Agreement says they must appear before the Board or the Board's Secretary or designee. Dr. Rothermel said that through the office conferences you develop a good sense of whether the person is getting it or not.

Dr. Schottenstein said that while he sees value in the personal appearances, it may be impactful for the licensee as well. It may be in some ways more impactful than meeting with staff because it demonstrates how seriously we take it, as we are taking our time and bringing them in and talking with them, and it reinforces the importance of the matter.

Ms. Murray said there definitely licensees who don't take compliance staff as seriously as they would take the Board and there would be value for them to appear before the Board and have the Board reiterate what compliance staff is telling them. Sometimes there seems to be a conflict where they think there is an adversarial relationship there. Having the Board tell the person that this is what we expect you to do and that the person needs to adjust their attitude could be helpful.

Dr. Rothermel said that is exactly what the Secretary and Supervising Member do when they meet with a licensee in a compliance conference. She said that Ms. Murray introduces it as "we have the Secretary/Supervising Member here because ... and they wanted to talk with you about this." She said that she believed most of the time the licensee leaves with a different attitude after the meeting. Ms. Murray said those meetings are effective.

Ms. Murray said most probationers are trying, but there are rare exceptions where it would be helpful for them to appear before the Board.

Dr. Factora said we have this process for initial appearance and for final appearances. The final appearance is necessary as there is a consensus to release the licensee from the terms of the Board Order/Agreement. He said we've had discussion about the purpose of the initial appearance, but do we know why the initial appearance exists?

Mr. Groeber said he has heard the initial appearances are to assure that the licensee is getting on the right path. For the subset of cases with mental health issues, impairment, boundary issues, minimal standards or ethical lapses there may be value in seeing that person. But for technical violations, the personal appearance may not be needed.

Dr. Factora said if we could specifically state the benefit of the personal appearance in front of the Committee it would be clear that this is appropriate. There would be a purpose and a focus, and the questioning would not just be going through the lines, it would be trying to achieve this goal.

Mr. Groeber said as we work through a process flow to see what this would look like, we can delineate pieces where it clearly doesn't make sense and the Secretary and Supervising Member can have the discretion to waive the initial appearance and they would have the ability to demand a licensee appear before the Board.

Dr. Schottenstein said there were a couple of cases where he was concerned about the licensee based on the initial appearance and he was allowed to attend an office conference and it was very helpful to be able to talk with the licensee.

Mr. Groeber said another idea could be for Compliance Committee members to voluntarily hold compliance visits on the Thursday morning after the Board meeting and the licensee could also meet with staff at the same time. Dr. Schottenstein said he felt it was a standing invitation to attend an office conference.

Mr. Groeber asked if it was clarified to do final appearances in the morning so that if we are running ahead the meeting could continue.

Ms. Murray said staff notifies the licensee when to appear and that time has been based on the projected agenda for that month. She said they could change the time to 11 a.m. She suggested that final appearances be here at 11 a.m. and initial appearances at 1 p.m.

It was determined to keep probationary reports and probationary requests in the same format but highlight in red items that need further review by the Board.

### **Treatment Providers**

Dr. Schottenstein mentioned that Ms. Murray's memo also mentioned treatment providers. Ms. Murray said she had some questions, but these may be items to think about before the Board retreat in June. She said we need to figure out if the committee wanted to review the treatment provider applications before presentation to the Board; how deep of a review do you want done by staff, by the committee; do we need to make changes to our applications and what is in our rules for how we approve treatment providers. There had been comments about conducting inspections and that can be discussed at the retreat.

Ms. Murray said once we get a better sense of what our expectations are for treatment providers we can work with our communications team to provide guidance documents for the treatment providers.

Dr. Schottenstein commented that we currently have a checklist that substantially lays out what we are looking for. He wondered if the communications team could expand on those items as a draft guidance document. Ms. Murray said the checklist is based on the content of the current rule.

Mr. Giacalone said that with the opioid crisis there will be some fly-by-night treatment providers. His concern is that he could review an application but if the application is not accurate that would not be obvious. He wanted to know if we were going to do some type of search to assure it is an acceptable program.

Ms. Murray said the checklist allows the program to provide additional information about each question. Some providers include lots of detail, while others provide minimal information. Yet, if the provider meets the qualification listed in the rule, they are submitted for approval.

Mr. Giacalone said with questions, the providers are going to put in the information needed to gain approval.

Dr. Schottenstein said the Ohio Physicians Health Program (OPHP) may have a sense regarding appropriate treatment providers, as they may know what programs are good and which are not. That input could be very valuable.

Mr. Groeber said that once we determine the monitoring organization for the One-Bite program that entity may be helpful. He said we are developing reporting mechanisms to specifically track the outcomes of treatment providers.

Dr. Schottenstein said OPHP would be a very good resource to help us with this.

Ms. Murray said that the monitoring organization selected for the One-Bite program has a roll in vetting the treatment providers for the One-Bite program.

Mr. Groeber said the request for proposal for the monitoring organization has been closed and the initial submissions have been reviewed by legal staff.

Mr. Giacalone asked if the Federation of State Physician Health Programs could be a resource for information about out-of-state providers. Mr. Groeber said that we could work through our contracted entity first and then they could recommend additional resources to the Board.

Ms. Murray said that the treatment provider discussion may be premature until the monitoring organization for the One-Bite program is selected. Dr. Schottenstein agreed.

## Summary

- Ms. Murray said she will prepare information for the retreat regarding initial appearances.
- The probationary reports and requests will remain the same but important information will be highlighted in red.
- The treatment provider discussion will be postponed until the monitoring organization is approved.

## Adjourn

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

The meeting adjourned at 2:23 p.m.

jkw