



**Medical Board of Ohio Meeting Minutes  
November 10, 2021**

Betty Montgomery, President, called the meeting to order at 10:03 a.m. in the Administrative Hearing Room, 3rd floor of the Rhodes Office Tower, 30 East Broad Street, Columbus, Ohio 43215 with the following members present: Sherry Johnson, D.O., Vice President; Kim G. Rothermel, M.D., Secretary; Bruce R. Saferin, D.P.M., Supervising Member; Michael L. Gonidakis, Esq.; Amol Soin, M.D.; Michael Schottenstein, M.D.; Jonathan Feibel, M.D.; Yeshwant Reddy, M.D.; and Mark A. Bechtel, M.D.

Dr. Bechtel was not present when the meeting convened.

**MINUTES REVIEW**

**Mr. Gonidakis moved to approve the minutes of the October 13, 2021 Board Meeting. Dr. Reddy seconded the motion.** All members voted aye. The motion carried.

**REPORTS AND RECOMMENDATIONS**

Ms. Montgomery asked the Board to consider the Reports and Recommendations appearing on the agenda. Ms. Montgomery 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: Joshua L. Brown, D.O.; Dalena R. Clever, M.T.; Anand Kalepu, M.D.; and Ronald David Smith, M.D. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Reddy	Y
Ms. Montgomery	Y

Ms. Montgomery 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. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Reddy	Y
Ms. Montgomery	Y

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Ms. Montgomery further asked if each member of the Board understands that in each matter eligible for a fine, the Board's fining guidelines allow for imposition of the range of civil penalties, from no fine to the statutory maximum amount of \$20,000. A roll call was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Reddy	Y
Ms. Montgomery	Y

Ms. Montgomery 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 not addressing the Board are viewing this video conference meeting remotely and have a number to call in the event of an emergency or procedural concern.

## **Joshua L. Brown, D.O.**

Ms. Montgomery directed the Board's attention to the matter of Joshua L. Brown, D.O. No objections have been filed. Mr. Porter was the Hearing Examiner.

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

Dr. Brown was represented by his attorney, James McGovern.

Dr. Brown appreciated the opportunity to speak to the Board today regarding his pending application for a license to practice osteopathic medicine in Ohio. Dr. Brown supported the hearing examiner's review of the evidence, findings, conclusions, and proposed order. Dr. Brown stated that he would sincerely appreciate the opportunity to hold an Ohio license and someday practice osteopathic medicine and surgery in Ohio.

Dr. Brown hoped the Board could understand what has occurred in his life, both good and bad, regarding his education, training, and experience, as well as his addiction, his recovery, and the steps he has taken to get his life back in order. Dr. Brown stated that he is humble about what he has experienced in his addiction and the loss of his Ohio training certificate. Dr. Brown expressed remorse for what occurred and stated that he has worked hard to make amends to those he has harmed and disappointed.

Dr. Brown continued that he is extremely proud of what he has accomplished since he lost his Ohio training certificate. Although he worked extremely hard to get where he is today, Dr. Brown recognized that his efforts will need to continue every day to continue the sobriety he has maintained since July 18, 2018, which includes his documented sobriety through the Ohio Physicians Health Program (OPHP) since November 2019.

Dr. Brown was grateful for each witness to come to his hearing to testify on his behalf. Dr. Brown stated that each witness provided important details regarding different aspects of my recovery, which in total demonstrate that he is ready to move forward with being granted a license. Dr. Brown understood the need to prove his

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competence to the Board and to continue to demonstrate his sobriety through monitoring and other measures that the Board sees fit. Dr. Brown stated that he will do anything the Board requires of him to prove that he is fit and safe to practice in Ohio.

Mr. McGovern stated that it has been his privilege to represent Dr. Brown. Mr. McGovern admired Dr. Brown for the hard work he did to dig himself out of the terrible circumstances he had been in. The record is clear that Dr. Brown is highly intelligent, very persistent, diligent, and a hard worker. Mr. McGovern stated that Dr. Brown has a lot to offer his profession. Mr. McGovern asked the Board to accept the Report and Recommendation.

Ms. Montgomery asked if the Assistant Attorney General wished to respond. Mr. Wilcox stated that he wished to respond.

Mr. Wilcox opined that the Report and Recommendation is appropriate under the circumstances. Mr. Wilcox stated that this case is a good example of the disease of addiction and how far and low a person can sink in life and then recover.

**Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Brown. Dr. Reddy seconded the motion.**

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Schottenstein stated that he is respectful of Dr. Brown's journey and his battle to come back from the depths of an addiction that almost killed him. Dr. Brown comes before the Board now with over three years of sobriety and a sincere dedication to maintaining it. Dr. Schottenstein found the testimony regarding Dr. Brown's character, work ethic, transparency with others to be meaningful. Dr. Schottenstein opined that Dr. Brown should have a chance to practice medicine.

Dr. Rothermel exited the meeting at this time.

Dr. Schottenstein stated that the Proposed Order would grant Dr. Brown's license, provided that he takes and passes a clinical competency test such as the Comprehensive Osteopathic Medical Variable-Purpose Examination (COMVEX) or the Special Purpose Examination (SPEX), followed by monitoring for his chemical dependency. Dr. Schottenstein was respectful of the Proposed Order, but wished to offer amendments.

Dr. Schottenstein considered whether it was possible to mandate that Dr. Brown repeat a residency program, given that he never finished his first residency program and that he has not practiced medicine for five or more years. However, Dr. Brown has applied for a full medical license, so granting a training certificate would require rejecting his application and asking Dr. Brown to apply for a training certificate. Dr. Schottenstein also stated that due to Dr. Brown's history of substance abuse and his time away from practice, it could take him years to find a residency program to take him, if ever.

Dr. Schottenstein noted that Dr. Brown is technically qualified for a full medical license, even without a residency, because he has more than 12 months of graduate medical education. Dr. Brown only lacks proof of current competency. Dr. Schottenstein agreed with requiring Dr. Brown to take the COMVEX or SPEX, but recommended that he also be required to complete the Post-Licensure Assessment System (PLAS), which is a physician reentry program which assesses clinical competency of physicians who have been out of practice for an extended time. Dr. Schottenstein further stated that Dr. Brown should be required to comply with PLAS' recommendations regarding practice limitations, education, and possible preceptorship. Lastly, Dr. Schottenstein suggested moving the requirement to take the COMVEX or SPEX from the first paragraph of the Proposed Order and putting it in the Conditions for Reinstatement or Restoration and removing the time limitation.

**Dr. Schottenstein moved to amend the Proposed Order as described above. Dr. Johnson seconded the motion.**

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Responding to questions from Dr. Soin and Ms. Montgomery, Dr. Schottenstein stated that he would have understood if a Board member had wished to amend the Proposed Order so that Dr. Brown would get a training certificate rather than a full medical license, and this is why he outlined the difficulties in doing so. Dr. Schottenstein also opined that given the length of time since Dr. Brown last practiced medicine and the fact that Dr. Brown never finished a residency, then passing the COMVEX or SPEX was insufficient. Dr. Schottenstein also stated that it would be impractical to require Dr. Brown to complete a residency, due to the circumstances outlined above. For these reasons, Dr. Schottenstein has suggested the PLAS program instead of a residency, in addition to the COMVEX or SPEX.

Dr. Feibel stated that if the requirements to complete the COMVEX or SPEX are moved to the Conditions for Reinstatement or Restoration, then the Board will be granting and suspending the license prior to the COMVEX or SPEX. Dr. Feibel stated that the Board typically does not grant licensure until the respondent passes on of those examinations. Dr. Schottenstein stated that under his proposed amendment, Dr. Brown's license will be required to pass the COMVEX or SPEX before the license is reinstated, but he would simply have more time to accomplish that.

Ms. Montgomery noted that Dr. Brown would not be able to get into a residency if his license is suspended. Further, if Dr. Brown passes the COMVEX or SPEX and completes the other conditions for reinstatement or restoration, the matter would come back to the Board and his license would become active. At that point, Dr. Brown would be able to practice medicine.

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

Dr. Saferin	Abstain
Dr. Schottenstein	Y
Dr. Soin	N
Dr. Johnson	Y
Mr. Gonidakis	N
Dr. Feibel	N
Dr. Reddy	N
Ms. Montgomery	N

The motion to amend did not carry.

A vote was taken on Dr. Johnson's motion to approve and confirm:

Dr. Saferin	Abstain
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Reddy	Y
Ms. Montgomery	Y

The motion to approve carried.

## **Dalena R. Clever, L.M.T.**

Ms. Montgomery directed the Board's attention to the matter of Dalena R. Clever, L.M.T. No objections have been filed. Ms. Lee was the Hearing Examiner.

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**Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Ms. Clever. Mr. Gonidakis seconded the motion.**

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Schottenstein stated that this is a psychologically-minded board and that the Medical Board's record is very strong regarding its works with licensees who are prone to mental or physical impairment, or prone to chemical dependency issues. The Board does not judge or discipline its licensees merely for having these various conditions; rather, the Board disciplines based on behavior, and licensees are responsible for their behavior.

Dr. Schottenstein stated that Ms. Clever is a registered sex offender, and it is untenable and unacceptable for the Board to have a registered sex offender actively practicing as a massage therapist. Dr. Schottenstein opined that there is no other appropriate order than permanent revocation in this matter. Dr. Schottenstein speculated that even Ms. Clever and her defense counsel would agree that it is generally unacceptable to have registered sex offenders actively practicing massage therapy. Therefore, what Ms. Clever and her counsel are asking for is an exception in this case based on mitigating circumstances. Dr. Schottenstein stated that it is a bridge too far for him to parse which sex offenders can practice and which cannot.

Dr. Schottenstein opined that a lesser order than permanent revocation would diminish the public's confident in the massage therapy profession and cause the public to question whether the Medical Board is doing its job. Dr. Schottenstein stated that the public needs to be confident that registered sex offenders are not practicing massage therapy and that there are no exceptions to that rule. Dr. Schottenstein stated that his goal is to protect the public and the massage therapy profession, not to punish Ms. Clever. Dr. Schottenstein pointed out that there was an underage victim in this case and this matter will always be part of the victim's story and his family's story. Dr. Schottenstein supported the Proposed Order to permanently revoke Ms. Clever's license to practice massage therapy in Ohio.

A vote was taken on Dr. Reddy's motion to approve and confirm:

Dr. Saferin	Abstain
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Feibel	Y
Dr. Reddy	Y
Ms. Montgomery	Y

The motion to approve carried.

## **Anand Kalepu, M.D.**

Ms. Montgomery directed the Board's attention to the matter of Anand Kalepu, M.D. No objections have been filed. Ms. Lee was the Hearing Examiner.

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

Dr. Kalepu was represented by his attorney, Eric Jones.

Mr. Jones stated that Dr. Kalepu had an impeccable career as an employed hospital physician spanning four decades. Near the twilight of his career, Dr. Kalepu applied for a job practicing telemedicine part-time. Dr. Kalepu began working for a company called AffordADoc in December 2018. A few months later, AffordADoc

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abruptly ceased operations. Dr. Kalepu learned through a Google search that AffordADoc had been charged with the largest Medicare fraud case in United States history.

On December 23, 2019, Dr. Kalepu was charged with conspiracy to commit Medicare fraud and was informed that the charges carried potential 10-year prison sentence. On the same day, without seeing the evidence against him, Dr. Kalepu pleaded guilty and agreed to pay restitution and serve three years of probation in order to avoid even the slightest chance of a prison sentence. Dr. Kalepu was not asked to testify in exchange for his plea because he simply did not have information that was helpful to the prosecution.

Mr. Jones observed the hearing examiner's description of Dr. Kalepu's actions as willful ignorance rather than criminal. The hearing examiner found that Dr. Kalepu "Did nothing to determine how to properly prescribe via telemedicine and ... did what AffordADoc told him to do." Mr. Jones stated that, unfortunately, this is true. For his entire career, Dr. Kalepu had been employed as a hospital physician and he had been focused on treating patients rather than the business and legal ends of health care. Dr. Kalepu had trusted AffordADoc, a nationally known and probably the largest telemedicine company in the nation that was making hundreds of millions, if not billions, of dollars in revenue, to properly instruct him on what he was supposed to do. This was Dr. Kalepu's first time practicing telemedicine.

Mr. Jones continued that the hearing examiner has recommended suspending Dr. Kalepu's medical license for a minimum of one year and to permanently restrict him from practicing telemedicine. Mr. Jones found the permanent restriction from telemedicine to be reasonable, but he respectfully and humbly asked the Board to reconsider the proposed suspension. Dr. Kalepu is currently working part-time trying to finish putting his children through school, and his employer has submitted letters of recommendation testifying to his competency and clinical skills. Mr. Jones stated that at this stage, even a one-year suspension would inevitably be an end of Dr. Kalepu's career. Mr. Jones asked the Board to consider what would be in the best interest of the public.

Dr. Rothermel returned to the meeting at this time.

Dr. Kalepu stated that he had been working as a house physician at Marymount Hospital in 2018 when they were replacing physicians with nurse practitioners. Dr. Kalepu then applied for a position with AffordADoc, which he found in a Google search. Dr. Kalepu stated that it looked genuine and there were no adverse reports in the reviews on Google. Dr. Kalepu worked for AffordADoc for three-and-a-half months and all of his patients were in Long Island, New York.

Dr. Kalepu continued that AffordADoc turned out to be a scam and a fraud. Dr. Kalepu is currently working as a part-time physician at Advanced Orthopedics and Physical Therapy. Dr. Kalepu stated that he has three sons and they are still in college.

Dr. Kalepu stated that he is not practicing telemedicine anymore. Dr. Kalepu asked the Board to allow him to continue with his license.

Ms. Montgomery asked if the Assistant Attorney General wished to respond. Mr. Puckett stated that he wished to respond.

Mr. Puckett stated that he is here on behalf of Mr. Wakley, who handled this case. On Mr. Wakley's behalf, Mr. Puckett stated that they support the hearing examiner's Report and Recommendation.

**Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Dr. Kalepu. Dr. Feibel seconded the motion.**

Ms. Montgomery stated that she will now entertain discussion in the above matter.

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Dr. Soin stated that the Board has previously seen instances in which physicians in the twilight of their careers enter new areas of practice and are not compliant with requirements, and thus become subject to discipline. Dr. Soin also appreciated the comments about willful ignorance, which he wished to discuss today.

Dr. Soin continued that in reviewing the pertinent record, it appears that Dr. Kalepu determined that every single patient he saw via telemedicine needed a back brace, shoulder brace, or some other type of brace. Dr. Soin stated that at some point in these circumstances, a physician must understand the indications for braces and when they are or are not appropriate. Dr. Soin noted that there are actually many downsides to bracing.

Dr. Soin stated that many physicians realize the financial incentive for durable medical equipment (DME). If a physician is practicing telemedicine and almost every patient gets DME, one has to wonder if it is legitimate medicine or if it is a front to distribute DME. Dr. Soin stated that a reasonable physician in the twilight of his or her career should recognize at some point that that is not appropriate. Dr. Soin found it somewhat questionable for Dr. Kalepu to portray himself as a victim who ended up in a fraud scheme that was perpetrated by someone else. Dr. Soin supported the hearing examiner's Proposed Order.

Dr. Feibel agreed with Dr. Soin's comments, but worried if the Proposed Order went far enough. Dr. Feibel stated that this case highlights the potential dangers of telemedicine and the reasons that the Board's Telemedicine Committee favors significant guardrails around the practice. Dr. Feibel stated that Dr. Kalepu's case is a classic example of the multiple opportunities for abuse in telemedicine and that the Board should view such cases harshly. Dr. Feibel also found Dr. Kalepu's testimony to be inconsistent with the record.

Dr. Feibel stated that he would favor a permanent revocation of Dr. Kalepu's license to practice medicine in Ohio, but he would like to hear more comments from other Board members before offering such an amendment.

Dr. Reddy stated that this case shows how physicians can do the wrong thing when they do not actually see the patient. Dr. Reddy reiterated that this behavior went on for three days and did not involve only one or two cases. Considering the bills that were created, Dr. Reddy opined that Dr. Kalepu should have realized the impropriety at some point and asked for at least one video conference with a patient with synchronous technology, but that never happened.

Ms. Montgomery noted that in the brief three-month period of improper billing, Dr. Kalepu made \$1.3 million in false claims as part of his involvement in the \$1.2 billion fraud scheme. Ms. Montgomery stated that \$1.3 million is a great deal of money for such a short period of time. By his own testimony, Dr. Kalepu was seeing a patient every 10 minutes. Ms. Montgomery was uncertain if she would describe them as "patients" because she saw no evidence of any application of physician education beyond checkmarks, particularly with regard to DME.

Ms. Montgomery stated that over the last few months the Medical Board has expressed itself clearly on the topic of telemedicine; specifically, the Board is supportive of telemedicine and recognizes that it has opened doors for people who otherwise may not have access to medical care. However, the Board also favors guardrails and an appropriate standard of care so that patients will be protected. Ms. Montgomery stated that she saw nothing to indicate that Dr. Kalepu had protected patients, nor did it appear that Dr. Kalepu did anything to indicate that he was practicing medicine rather than practicing making equipment orders. Ms. Montgomery stated that if a motion was made to amend the Proposed Order to a permanent revocation of Dr. Kalepu's medical license, she would probably agree with the amendment.

Mr. Gonidakis agreed with the other Board member's comments. Mr. Gonidakis stated that the record speaks for itself with regard to the Board's support of telemedicine, within appropriate boundaries, and that the Board will continue to work with the legislature on the topic. Mr. Gonidakis noted that Dr. Kalepu's improper billing continued for three months and opined that Dr. Kalepu should have recognized at least one of the red flags during that time.

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Dr. Schottenstein concurred with the previous comments that have been made. Dr. Schottenstein opined that Dr. Kalepu had turned a blind eye to obvious red flags that he was participating in a scam. Dr. Schottenstein added that Dr. Kalepu had found a convenient, easy job in which he was essentially using his prescription pad as if it were a cash register, churning through patients with 10-minute phone calls that were obviously just a formality. Dr. Kalepu medically assessed the patients only in the loosest sense of the word, without taking his own history, performing his own physical examination, or using discretion or medical judgment. Dr. Schottenstein opined that Dr. Kalepu had not been practicing medicine at all. Dr. Schottenstein did not perceive a bona fide physician/patient relationship inherent in these encounters.

Dr. Schottenstein questioned Dr. Kalepu's judgment with regard to his decision-making and his ethics. Dr. Schottenstein did not perceive recklessness on Dr. Kalepu's part, but he believed Dr. Kalepu had been negligent and should have known better. Dr. Schottenstein supported the Proposed Order, but was also appreciative of arguments in favor of permanent revocation of Dr. Kalepu's medical license.

**Dr. Feibel moved to amend the Proposed Order to a permanent revocation of Dr. Kalepu's license to practice medicine and surgery in Ohio, maintaining the proposed \$18,000 fine. Mr. Gonidakis seconded the motion.**

Dr. Feibel reiterated that he did not find Dr. Kalepu's testimony to be credible. Dr. Feibel opined that Dr. Kalepu must have known what he was doing was wrong, and he did not find testimony to the contrary believable. Dr. Feibel stated that the Board supports telemedicine, but it must hold telemedicine practitioners to the standard of care. Having heard the comments of other Board members, Dr. Feibel felt that anything less than permanent revocation would not be an appropriate sanction.

Dr. Soin reminded the Board members that, irrespective of telemedicine, Dr. Kalepu pleaded guilty to his complicity in a scheme that involved \$1.2 billion dollars of fraud, supposedly the largest health care fraud in U.S. history.

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

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion to approve carried.

**Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Dr. Kalepu. Dr. Johnson seconded the motion.** A vote was taken:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y



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Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion to approve carried.

## **Ronald David Smith, M.D.**

Ms. Montgomery directed the Board's attention to the matter of Ronald David Smith, M.D. No objections have been filed. Ms. Shamansky was the Hearing Examiner.

**Dr. Johnson moved to approve and confirm the Proposed Findings of Fact, Conclusions, and Order in the matter of Dr. Smith. Dr. Feibel seconded the motion.**

Ms. Montgomery stated that she will now entertain discussion in the above matter.

Dr. Schottenstein stated that this is a case of mitigation. Dr. Schottenstein perceived that Dr. Smith's testimony was sincere and it evoked sympathy, and he further opined that Dr. Smith is dedicated to maintaining his sobriety of almost two years. It was meaningful to Dr. Schottenstein that both the hearing examiner and the State believe Dr. Smith should have opportunity to practice in Ohio if he can demonstrate continued sobriety. Dr. Schottenstein also found it meaningful that the North Carolina Medical Board granted Dr. Smith a license in a consent agreement; North Carolina has a strong board and Dr. Schottenstein respected their opinion.

Dr. Schottenstein stated that the Proposed Order requires Dr. Smith to show evidence of full unrestricted licensure in North Carolina as condition for reinstatement of his Ohio medical license. Dr. Schottenstein noted that although Dr. Smith is not currently practicing, the North Carolina consent agreement allows him to practice in that state. Dr. Schottenstein noted that the North Carolina consent agreement states that Dr. Smith shall maintain his current contract with the North Carolina Physicians Health Program which goes through the year 2025 or be restricted. Therefore, Dr. Smith is not considered to have an unrestricted license in North Carolina even though he is allowed to practice there. So under the Proposed Order, Dr. Smith would have to wait until 2025 to reinstate his Ohio license unless he is released from the North Carolina agreement early. Dr. Schottenstein speculated that early release is not likely due to Dr. Smith's history of several relapses.

Dr. Schottenstein opined that the Proposed Order is appropriate and is typically how the Board handles matters of this nature. Dr. Schottenstein wondered why this matter did not come to the Board as a consent agreement rather than a Report and Recommendation. Dr. Schottenstein further wondered if, given Dr. Smith's history of severe alcohol use and multiple relapses, and the fact that the Board members often do not get much information from such consent agreements, if the staff wanted to bring this to hearing as a means of gathering additional information. If that is the case, Dr. Schottenstein appreciated it.

Dr. Feibel asked if it was possible to require a practice plan and/or a monitoring physician for Dr. Smith when his license is reinstated. Dr. Schottenstein noted that according to the record, Dr. Smith does not intend to return to Ohio and he is currently residing in Connecticut. Dr. Schottenstein stated that an amendment to the Proposed Order would be needed to require a practice plan and monitoring physician. Ms. Montgomery stated that additional monitoring may be desirable, stating that a lot can happen in four years.

Dr. Feibel noted that with telemedicine, Dr. Smith can be in Connecticut and still practice in Ohio. Dr. Feibel agreed with Ms. Montgomery that many things, both positive and negative, can happen in four years and the Board may not be aware of such changes. Dr. Feibel agreed that Dr. Smith's Ohio license should be eventually reinstated, but considered that the Board may want guardrails in the form of a two-year probation with a practice plan and a monitoring physician. Dr. Schottenstein stated that he did not have the same concerns because there have only been issues with Dr. Smith's maintenance of sobriety, not his competency to practice. Dr. Feibel noted that Dr. Smith was not cited for impairment, so the Board lacks the ability to

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monitor him for that. Dr. Feibel felt that a practice monitor would help ensure that Dr. Smith 's practicing appropriately, but he did not wish to make the motion to amend if there was no support for it.

A vote was taken on Dr. Johnson's motion to approve and confirm:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion to approve carried.

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

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

Dr. Feibel exited the meeting at this time.

#### **Karen L. Carcioppolo, M.T.**

Ms. Montgomery stated that on September 8, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Karen L. Carcioppolo, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for restoration of her license to practice massage therapy, provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Carcioppolo has not engaged in the active practice of massage therapy for more than two years.

**Dr. Saferin moved to find that the facts set forth in the September 8, 2021 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. Carcioppolo's application for restoration, provided that she takes and passes the MBLEx within six months of the date of mailing of this order. Dr. Reddy seconded the motion. A vote was taken:**

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Ms. Montgomery	Y

The motion carried.

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## Angela Fogle

Ms. Montgomery stated that on August 11, 2021, the Board authorized issuance of a Notice of Opportunity for a Hearing to Angela Fogle, informing her that the State Medical Board of Ohio proposed to deny her application for a license to practice respiratory care, because she has not successfully passed an examination approved by the Board. Specifically, Ms. Fogle has not provided documentation that she has completed the required Clinical Simulation Examination (CSE) to obtain Registered Respiratory Therapist (RRT) certification.

**Dr. Reddy moved to find that the facts set forth in the August 11, 2021 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, denying Ms. Fogle’s application for a license to practice respiratory care in the State of Ohio. Dr. Saferin seconded the motion. A vote was taken:**

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Ms. Montgomery	Y

The motion carried.

## Jinrong H. Hedrick

Ms. Montgomery stated that on September 8, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Jinrong H. Hedrick, informing her that the State Medical Board of Ohio proposed to deny her application for a license to practice massage therapy because she does not hold a diploma or certificate from a school, college or institution in another state or jurisdiction that meets the Board’s required course of instruction, and hasn’t held a current license, registration or certificate of good standing for massage therapy in another state for at least the preceding five years. Specifically, Ms. Hedrick’s program was deficient in the areas of 1) Anatomy, Physiology and Pathology; and 2) Ethics.

**Dr. Reddy moved to find that the facts set forth in the September 8, 2021 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, denying Ms. Hedrick’s application for a license to practice respiratory care in the State of Ohio. Dr. Johnson seconded the motion. A vote was taken:**

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Ms. Montgomery	Y

The motion carried.

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## Isaac N. Yah

Ms. Montgomery stated that on September 8, 2021, the Board authorized issuance of a Notice of Opportunity for a Hearing to Isaac N. Yah, informing him that the State Medical Board of Ohio proposed to deny his application for a license to practice respiratory care, because he has not successfully passed an examination approved by the Board. Specifically, Mr. Yah has not provided documentation that he has completed the required Clinical Simulation Examination (CSE) to obtain Registered Respiratory Therapist (RRT) certification.

**Dr. Johnson moved to find that the facts set forth in the September 8, 2021 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, denying Mr. Yah’s application for a license to practice respiratory care in the State of Ohio. Dr. Saferin seconded the motion. A vote was taken:**

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Ms. Montgomery	Y

The motion carried.

Dr. Feibel returned to the meeting at this time.

## Sara Oliver

Ms. Montgomery stated that On September 8, 2021, the Board authorized issuance of a Notice of Opportunity for Hearing to Sara Oliver, M.T., informing her that the State Medical Board of Ohio proposed to approve her application for a license to practice massage therapy, provided that she take and pass the Massage and Bodywork Licensing Examination (MBLEx) due to the fact that Ms. Oliver has not engaged in the active practice of massage therapy for more than two years.

**Dr. Saferin moved to find that the facts set forth in the September 8, 2021 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. Oliver’s application for restoration, provided that she takes and passes the MBLEx within six months of the date of mailing of this order. Dr. Reddy seconded the motion. A vote was taken:**

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

**EXECUTIVE SESSION**

Dr. Reddy moved to go into Executive Session to confer with the Medical Board’s attorneys on matters of pending or imminent court action; and for the purpose of deliberating on proposed consent agreements in the exercise of the Medical Board’s quasi-judicial capacity; and to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official. Dr. Saferin seconded the motion. A vote was taken:

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

The Board went into Executive Session at 11:11 a.m. and returned to public session at 12:33 p.m.

The Board meeting was recessed at 12:33 p.m. and resumed at 1:27 p.m.

Dr. Bechtel was present when the meeting resumed.

**SETTLEMENT AGREEMENTS**

**Joshua Aaron Shuh, D.O.**

Dr. Johnson moved to ratify the proposed Consent Agreement with Dr. Keating. Dr. Reddy seconded the motion. A vote was taken:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

**Douglas B. Bober, M.D.**

Dr. Reddy moved to ratify the proposed Permanent Surrender with Dr. Bober. Dr. Johnson seconded the motion. A vote was taken:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain

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Dr. Schottenstein	Y
Dr. Soin	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## Regina Arthurlina Yaskey, M.D.

**Dr. Reddy moved to ratify the proposed Consent Agreement with Dr. Yaskey. Dr. Schottenstein seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## Suzette Lynn Huenefeld, M.D.

**Dr. Reddy moved to ratify the proposed Permanent Surrender with Dr. Huenefeld. Dr. Feibel seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Abstain
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## Stephen T. House, M.D.

**Dr. Reddy moved to ratify the proposed Consent Agreement with Dr. House. Dr. Feibel seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
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Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Abstain
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## CVR, M.D.

**Dr. Johnson moved to ratify the proposed Consent Agreement with CVR, M.D. Reed. Dr. Bechtel seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Feibel	N
Dr. Bechtel	Y
Dr. Reddy	N
Ms. Montgomery	N

Having failed to achieve six affirmative votes, the motion did not carry.

## Lora L. Thaxton, M.D.

**Dr. Reddy moved to ratify the proposed Permanent Surrender with Dr. Thaxton. Dr. Johnson seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Abstain
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## Jimmy Mike Henry, M.D.

**Dr. Reddy moved to ratify the proposed Permanent Surrender with Dr. Henry. Dr. Johnson seconded the motion. A vote was taken:**

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Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Abstain
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## **Fabian Soto, L.M.T.**

**Dr. Bechtel moved to ratify the proposed Permanent Surrender with Mr. Soto. Dr. Reddy seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## **Cody Aaron Brown, L.M.T.**

**Dr. Bechtel moved to ratify the proposed Permanent Surrender with Mr. Brown. Dr. Feibel seconded the motion. A vote was taken:**

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## **Heather Lynn Overstreet**

**Dr. Reddy moved to ratify the proposed Permanent Withdrawal of Application with Ms. Overstreet. Dr. Feibel seconded the motion. A vote was taken:**



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Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Abstain
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

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

Ms. Canepa presented the following Citations to the Board for consideration:

1. Bharat Chandulal Shah, M.D.: Based on acts constituting a felony in the course of practice, specifically Gross Sexual Imposition, and also sexual misconduct.
2. Samirkumar Jayantilal Shah, M.D.: Based on conviction for a felony, specifically two counts of Health Care Fraud, resulting in a 78- month prison sentence and a requirement to pay \$1.2 million dollars in restitution.
3. Raed Jitan, M.D.: Based on action taken by the New Jersey State Board of Medical Examiners, and for a plea of guilty to felony, specifically Invasion of Privacy.
4. Anthony Martin, M.D.: Based on violation of the minimal standards of care as they relate to prescribing in the treatment of eight patients.
5. Robert Klickovich, M.D.: Based on sexual misconduct.
6. Eric S. Lee, M.D.: Based on making false and misleading statements, and also for action by the Missouri State Board of Registration for the Healing Arts in denying the physician's application for licensure.
7. Michael Magoline, M.D.: Based on a finding of guilt for a misdemeanor of moral turpitude, and also for acts constituting a misdemeanor involving moral turpitude, specifically for Soliciting a Person to Engage in Sexual Activity for Hire.
8. Jewel Stevens, M.D.: Based on violations of minimal standards of care and inappropriate prescribing.
9. Erin J. Neilson, L.D.: A summary suspension, based on failure to appear for a Board-ordered examination without providing circumstances beyond the dietitian's control.
10. Jordan Washington, M.T.: A summary suspension, based on acts constituting a felony, specifically Sexual Battery; sexual misconduct; failure to cooperate with a Board investigation; and providing false and misleading statements on a license renewal application.
11. Ellen See, P.A.: A summary suspension, based on relapse. The physician assistant had previously entered into a Step I Consent Agreement with the Board and is currently under a Step II Consent Agreement.

**Dr. Reddy moved to approve and issue proposed Citations #'s 1 through 11, as follows:**

- 1) Bharat Chandulal Shah, M.D., a Notice of Opportunity for Hearing.

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- 2) Samirkumar Jayantilal Shah, M.D., a Notice of Opportunity for Hearing.
- 3) Raed Jitan, M.D., a Notice of Opportunity for Hearing
- 4) Anthony Martin, M.D., a Notice of Opportunity for Hearing
- 5) Robert Klickovich, M.D., a Notice of Opportunity for Hearing
- 6) Eric S. Lee, M.D., a Notice of Opportunity for Hearing
- 7) Michael Magoline, MD, a Notice of Opportunity for Hearing
- 8) Jewel Stevens, M.D., a Notice of Opportunity for Hearing
- 9) Erin J. Neilson, L.D., an Opportunity for Hearing on Failure to Submit to an Examination and Notice of Summary Suspension Based upon Presumption of an Admission of Impairment.
- 10) Jordan Washington, M.T., a Notice of Summary Suspension and Opportunity for Hearing.
- 11) Ellen See, P.A., a Notice of Summary Suspension and Opportunity for Hearing.

**Dr. Johnson seconded the motion.** A vote was taken:

Dr. Roethermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y (Abstain on Citations #'s 1, 4, & 8)
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

### **OPERATIONS REPORT**

**Human Resources:** Ms. Loucka introduced the Board new Director of Human Resources and Fiscal, Cinnamon Pipkin. Ms. Pipkin joins the Board from the Office of Budget and Management where she was in human resources office, as well as various other roles in state accounting and other endeavors for 27 years. The Board members welcomed Ms. Pipkin. Ms. Pipkin stated that she is excited to be with the Board.

Ms. Loucka continued that the Board is very actively hiring for the positions that were identified in the budget request. Interviews have been scheduled for three additional investigators. There was recently a resignation from one of the Board's administrative professionals, and that position has repurposed into a program role of a subpoena coordinator. That role will support the work of the Investigations and the Standards & Compliance units. Interviews of this position are in process.

Ms. Loucka stated that a position for an additional hearing examiner has been posted.

**External Affairs:** Ms. Loucka stated that the staff has been busy this past month speaking to legislators about telemedicine and other topics.

**Compliance:** Ms. Loucka stated that Compliance continues to work on proposals for changes in the probation program and will be brought to the Board for consideration next month.

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**Investigations and Enforcement:** Ms. Loucka highlighted the activities of Investigations and Enforcement building relationships with local law enforcement agencies, which help the Board's cases move more quickly.

**Licensure:** Ms. Loucka stated that there continue to be delays in the background checks process with licensure. Ms. Loucka recapped that the Attorney General's office created whole new system for background checks and the kinks are still being worked out of that process. Ms. Loucka stated that Mr. Turek is in constant contact with the Bureau of Criminal Investigation (BCI) regarding the background checks. Ms. Loucka stated that BCI has been helpful in their replies, but the time is approaching when root causes for the delays will need to be identified. The median number of days for issuance of a license has increased by about five days.

**Complaints:** Ms. Loucka stated that a backlogged complaint is defined as a complaint that is older than two years. Beginning this month, the Operations Report will include the number of backlogged complaints.

**Interstate Medical Licensing Compact:** Ms. Loucka stated that the Interstate Medical Licensing Compact (IMLC) will have its annual meeting next Monday and Tuesday, and she and Dr. Schottenstein will participate as Commissioners.

The staff has had internal meetings about the fiscal process for the IMLC and IMLC participants. Staff is also drafting a survey for practitioners asking what their interest level is in participating with the compact. The Board will be issuing letters of qualification for licenses who wish to join the compact, so the survey will allow the Board to plan accordingly.

Dr. Feibel exited the meeting at this time.

## **RULES & POLICIES**

### **Proposed Board Meeting Dates, 2023**

**Dr. Sojin moved to adopt the proposed 2023 meeting dates for the State Medical Board of Ohio, as listed in the Agenda Materials. Dr. Saferin seconded the motion.** All members voted aye. The motion carried.

Dr. Feibel returned to the meeting at this time.

### **Rule Review Update**

Ms. Anderson stated that there was a meeting with the Joint Committee on Agency Rule Review (JCARR) on the physician assistant consult rules, which will be brought to the Board at its December 2021 meeting for final adoption.

There will be a public rules hearing on December 3 for several rules, including the treatment provider rules that will allow for outpatient evaluation and treatment for the license types stipulated in the Compliance Committee. Ms. Anderson anticipated that those rules could be adopted in January 2022.

Ms. Anderson also included in the Board members' packet the rule review plan for 2022. Ms. Anderson observed that many rules are scheduled for review in 2022, including the telemedicine rules, the duty-to-report rules, the medical marijuana rules, the pain clinic rules, and the acute prescribing rules. Ms. Anderson stated that some rule packages may take a little longer and a six-month extension for those packages may be requested.

### **Light-Based Medical Device Rules**

Ms. Anderson stated that revisions to the Board's light-based medical device rules were finalized and became effective on July 31. However, the budget bill, which became effective on September 30, made changes that

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effect those rules, especially with respect to education and training requirements for formerly-licensed cosmetic therapists to perform light-based hair removal.

**Dr. Bechtel moved to approve the amended rules for initial circulation to interested parties. Dr. Johnson seconded the motion.** All members voted aye. The motion carried.

## **Interstate Medical Licensing Compact – Draft Rule**

Ms. Anderson stated that a proposed rule regarding the Interstate Medical Licensing Compact (IMLC) has been drafted for the Board's review. Ms. Anderson stated that the Board's licensure fees are set in statute, so it must be made clear to applicants under the IMLC that they will still be subject to the regular licensure fees. The draft rule refers to the fees from the statute and indicates that the individual has to follow the other statutory requirements such as providing information from the Ohio Automated Rx Reporting System (OARRS) and information on continuing medical education (CME) on renewal applications.

**Dr. Reddy moved to approve the draft rule for initial circulation to interested parties. Dr. Bechtel seconded the motion.** All members voted aye. The motion carried.

## **Podiatric Scope of Practice**

Ms. Anderson briefly summarized this issue. In 2019, the Board issued a guidance letter to a podiatrist who had asked whether a list of procedures was within the scope of practice of a podiatrist. It was determined that the procedures were within the podiatric scope of practice. Two of those procedures, the supramalleolar osteotomy of the tibia-fibula and the harvest of bone marrow aspirate from the proximal tibia, were at issue.

Ms. Anderson continued that the Joint Committee on Agency Rule Review (JCARR) had indicated concerns with the Board's actions with moving forward on a policy rather than going through the rule-making process. The Committee members had many questions for the Board staff and witnesses at a hearing. The Board began the rule-making process in June 2021 and sought comments from interested parties. A second request for comments was sent in late July. More than 80 individuals and associations have provided comments and those have been shared with the Board. In addition, the staff reached out to hospitals to determine if podiatrists are credentialed to perform these two procedures, and the info we received has been shared with Board. Finally, staff has obtained information from Medicaid and the State Health Plan regarding the number of these two procedures that were completed by podiatrists in the last five years; Ms. Anderson commented that the number was fairly low. Ms. Anderson stated that she and Ms. Loucka also met with JCARR staff and caucus staff to obtain their thoughts regarding the statutes and rules.

Ms. Anderson stated that at this time, there appears to be three options available:

- Seek a statutory change; Ms. Anderson stated that this is really a function for stakeholders and not a path for the Board.
- Move forward with a rule change to memorialize the rule policy; this would likely include a change to the definition rule, 4731-20-01, to place the procedure in the definition of a "foot," and perhaps an update to 4731-20-02 to indicate the education, training, board certification, or eligibility and credentialing podiatrists must have before performing the two procedures.
- Withdraw the policy.

The Board considered these options. Dr. Schottenstein opined that the Board would be correct to withdraw its position statement and adopt a stance of neutrality. Dr. Schottenstein perceived concern that the statute needs to be updated and modernized to reflect current podiatric practice, so to try to make a rule around an outdated statute that does not reflect current practice will lead the Board down a difficult path. Dr. Schottenstein stated that by withdrawing the policy, the Board would not be indicating that it is against the

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current podiatric scope of practice, but there needs to be additional legislative clarification before the Board can proceed with rule-making in a clear way.

Dr. Soin agreed with Dr. Schottenstein. Dr. Soin stated that it is clear that podiatrists have been performing these procedures for quite some time, including at institutions with very good reputations such as the Cleveland Clinic. However, Dr. Soin also understood and appreciated some of the concerns because of the way the word “ankle” is defined in the statute.

Ms. Anderson suggested the following language:

The Board has considered the comments we’ve received as we started the rule-making process with respect to whether supramalleolar osteotomy of the tibia and fibula and the harvest of bone marrow aspirate from the proximal tibia are within the scope of practice of podiatry. Based upon this gathered information, the Board determined that it has acted precipitously in this matter and that additional legislative guidance is necessary. Therefore, the Board is withdrawing its statement on these two procedures. It is our understanding that podiatrists were credentialed to perform these procedures prior to the issuance of the Board’s statement in 2019. It is recommended that providers work with their hospital systems and legal counsel going forward.

**Mr. Gonidakis moved to accept Ms. Anderson’s language for a response letter from the Board. Dr. Johnson seconded the motion.** All members voted aye, except Dr. Saferin who abstained, and Dr. Feibel who recused. The motion carried.

## Telemedicine Discussion

Ms. Loucka stated that House Bill 122, the telemedicine bill, has passed the House and has had three hearings in the Senate. There is also a sub-bill, which the Board was provided with on Friday afternoon. Ms. Loucka noted that the sub-bill does not have the guardrails that the Board feels should be included. However, Ms. Loucka felt that this can be addressed with a technical correction to the sub-bill’s language, and she asked for that correction regarding the Board’s rule-making authority during her testimony before the Senate Health Committee this morning. Ms. Loucka had also asked for an implementation clause that would allow for an “onramp” for development of such rules. Ms. Loucka noted that the bill includes an intent clause that specifies that the standard of care for telemedicine shall be the same as in-person visits.

Ms. Loucka continued that the bill is expected to become law. Ms. Loucka stated that there have been very respectful conversations with legislators and their staff, and she was particularly grateful to Chairman Huffman of the Senate Health Committee. Ms. Loucka was optimistic that the testimony was compelling and explained that this is not the time, especially considering that the opiate crisis is ongoing, to relax in-person visit requirements for controlled substance prescribing. The Board is also committed to continuing conversations with stakeholders to ask what does make sense for in-person visit requirements going forward.

Ms. Montgomery underscored that the Board is not opposed to telemedicine, stating that it is a boon to many Ohioans. Ms. Loucka agreed that the Board appreciates telemedicine as a tool that has expanded access to health care. The Board’s primary goal is to protect the public.

Ms. Loucka stated that some legislators are considering inserting an emergency clause into the bill so that it will go into effect immediately upon the governor’s signature, primarily because the Board’s moratorium on enforcement of the current telemedicine rules will end on December 31. Ms. Loucka had informed Senator Huffman that she would discuss this matter with the Board. Ms. Loucka commented that if the Board chooses not to extend the moratorium, the bill may be escalated to emergency status and the final product, without the benefit of continued conversations, may be less to the Board’s liking. Ms. Loucka stated that stakeholders are approaching the Board with common-sense solutions for guardrails. Stakeholders have also indicated that

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from a scheduling perspective, particularly with specialists, it would make sense to look at the issue in terms of three-month intervals.

Mr. Gonidakis asked if there realistically appears to be enough votes in both the House and the Senate to include an emergency clause into the bill. Ms. Wonski was uncertain of the answer to the question, but noted that there is a lot of support for the bill and so it is likely that it could get the votes needed for an emergency clause.

**Dr. Bechtel moved to extend the Board's moratorium on enforcement the telemedicine rules until March 31, 2022. Dr. Saferin seconded the motion.** All members voted aye, except Mr. Gonidakis who voted nay. The motion carried.

Ms. Loucka stated that because legislation is never guaranteed, the Board will continue discussions about guardrails. Ms. Montgomery noted that the need for guardrails was reflected in one of the disciplinary cases earlier today in which a physician practicing telemedicine for three months billed for \$1,300,000 and was prosecuted federally for fraud. The Board permanently revoked that physician's license.

## Legislative Update

Ms. Wonski commented that Ms. Loucka did a very nice job representing the Board and articulating its concerns before the Senate Health Committee this morning.

House Bill 176, Athletic Trainers: Ms. Wonski stated that this legislation was signed by Governor DeWine on October 27 and will be effective on January 25. The bill will allow athletic trainers to enter into collaboration agreements with physicians.

House Bill 196, Surgical Assistants: Ms. Wonski stated that this bill would create a new license type for surgical assistants, to be placed under the purview of the Medical Board. The Board's legislative team has worked with the bill's sponsor to provide them technical advice and to request that the language be amended to mirror that of the Board's other allied license types to make it consistent and easier to implement if it passes.

Senate Bill 261, Medical Marijuana Revision: Ms. Wonski stated that this bill, sponsored by Senator Huffman, would expand the list of conditions that may be treated with medical marijuana to include any condition from which a patient could, in the opinion of a physician, experience relief.

Ms. Wonski is also tracking other bills that have had hearings since the last Board meeting:

- Senate Bill 189 regarding the Court of Appeals for agency orders.
- House Bill 203 regarding occupational licensing
- House Bill 318 regarding anesthesiologist assistants.
- House Bill 138 regarding emergency medical services.
- House Bill 37 regarding emergency prescription refills.
- House Bill 193 regarding electronic prescriptions.
- Senate Bill 150 regarding physician contracts.
- Senate Bill 123, the Human Life Protection Act.
- Senate Bill 161 regarding surgical smoke, which had a second hearing in the Senate Health Committee.

**COMMITTEE BUSINESS**

**Quality Assurance Committee Report**

Ms. Montgomery stated that the Committee had a very healthy discussion on how to execute the functions of the Committee, especially with regard to how cases are randomly selected for review and the process for when a reviewer disagrees that a case should have been closed. Ms. Montgomery thanked Ms. Marshall for her work in this endeavor.

**Finance Report**

Dr. Schottenstein stated that in September 2021 the Board's revenue was \$956,232, a substantial increase from last month. Net revenue in September was \$212,830. The Board's cash balance is \$6,747,019, approximately \$200,000 more than the previous month and approximately \$1,700,000 more than this time last year. There was a 4.4% increase in expenditures year-to-date, which is substantially a function of payroll. Dr. Schottenstein stated that expenditures will continue to increase as vacancies are filled.

Dr. Schottenstein continued that the Board is in the final stages of filling and backfilling several positions and much of that will hopefully be finalized in the next 30 to 45 days. The new positions include a new hearing examiner, a new director of human resources, new investigators, and possibly a new medical director. As positions are filled, the Board's cash balance will decrease. It is estimated that with the new positions filled, the case balance for Fiscal Year 2023 will drop to about \$3,600,000. Dr. Schottenstein stated that that is healthy for the Board because it is not good to carry as large a cash balance as the Board does currently. Dr. Schottenstein stated that time will tell if licensing growth keeps pace with growth in payroll; if it does not, the Board may need to contemplate license fee increases. The last license fee increase occurred in the 1990's.

Dr. Schottenstein stated that the Board has received the Fiscal Year 2022 eLicense invoice from the Department of Administrative Services (DAS) in the amount of \$450,000, 8% higher than projected and approximately double the Fiscal Year 2019 bill. Dr. Schottenstein expressed concerns about the sustainability of the eLicense fee increases.

Dr. Schottenstein stated that the Board received \$11,209 in disciplinary fines and \$1,825.33 in collections.

Responding to questions from Mr. Gonidakis, Ms. Loucka stated that she and the staff are in discussions with DAS to improve the eLicense billing process. Ms. Loucka briefly reviewed the billing and funding process for the eLicense system, recent increases in fees, and the way the cost projections for eLicense affects the Board's budgeting process. Ms. Loucka noted that the Medical Board covers about 13% of the system's charges due to the way DAS accounts for the Board's participation in the system.

Mr. Gonidakis suggested that the Board's Finance Committee begin meeting on a regular basis to discuss this and other financial matters. Ms. Montgomery agreed.

**Licensure Application Reviews**

**Dr. Reddy moved to approve the Licensure staff recommendations for the requests of Stacy Imber, M.T.; Linda Pello; Kathryn Walter; Alicia Alford, M.T.; Makoto Hibino, M.D.; Janine Kinney; Jaimie Wilkie; Kathleen Borges; and Angela Stachowiak, M.T. Dr. Bechtel seconded the motion. A vote was taken:**

Dr. Rothermel	Y
Dr. Saferin	Y
Dr. Schottenstein	Y
Dr. Sojn	Y
Dr. Johnson	Y

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Ms. Montgomery	Y
Mr. Gonidakis	Y
Dr. Bechtel	Y
Dr. Reddy	Y
Dr. Feibel	Y

The motion carried.

## Advisory Council Updates

Ms. Reardon stated that the Physician Assistant Advisory Committee (PAPC) had been scheduled to meet last Friday. Unfortunately, there failed to be a quorum for the meeting.

Both the Dietetics Advisory Council (DAC) and the Respiratory Care Advisory Council (RCAC) met earlier this week. Both councils received a legislative update from Ms. Wonski and the rule review spreadsheet was reviewed. Both councils were notified that there will be a public rules hearing on December 3 on the impaired licensee rules for the allied professionals. The Ohio Academy of Nutrition and Dietetics provided an update for the DAC. The Ohio Society of Respiratory Care gave an update on the credentialing status at Ohio's respiratory education institutions for the RCAC.

Ms. Reardon stated that Mr. White has been working on a dashboard for the advisory councils which will provide the council members with access to relevant statutes and rules, documents for meetings, live data on how many licensees in their profession down to the county level, and the number of open and closed complaints and generally what the complaints involve. Ms. Reardon noted that the information on complaints are the same that is included in the Board's Annual Report and does not include confidential information.

## Appointments to Massage Therapy Advisory Council

Ms. Reardon stated that the legislation authorizing creation of the Massage Therapy Advisory Council (MTAC) became effective in September. 56 applications for membership on the Council were received and many individuals were interviewed. By statute, the Council will be made up of one physician from the Medical Board, one massage therapy educator, one consumer member, and four licensed massage therapists.

**Dr. Saferin moved to make the following appointments:**

- **Appoint Jacqueline Wolf and Heather Mello Roenker to one-year terms on MTAC as licensed massage therapists for terms beginning October 13, 2021.**
- **Appoint Jennifer Cull and Kenneth Morrow to two-year terms on MTAC as licensed massage therapists for terms beginning October 13, 2021.**
- **Appoint Jack Beason to a two-year term on MTAV as a massage therapist educator for a term beginning October 13, 2021.**

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

## PROBATIONARY REPORTS AND REQUESTS

### Reinstatement Request

Ryan R. Lee, M.T.

**Dr. Johnson moved that the request for the reinstatement of the license of Ryan R. Lee, M.T., be approved, subject to the probationary terms and conditions as outlined in the May 12, 2021 Board**



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**Order for a minimum of two years. Dr. Reddy seconded the motion.** All members voted aye, except Dr. Rothermel and Dr. Saferin, who abstained. The motion carried.

## Office Conference Review

**Dr. Schottenstein moved to approve the Compliance staff's Reports of Conferences for October 7 and 14, 2021. Dr. Johnson seconded the motion.** All members voted aye, except Dr. Rothermel, Dr. Saferin, and Dr. Bechtel, who abstained. The motion carried.

## Probationary Requests

**Dr. Johnson moved to approve the Secretary and Supervising Member's recommendations for the following probationary requests:**

- a) Courtney E. Barrows, M.D.: Request for approval of Luis T. Sanchez, M.D. to serve as the treating psychiatrist.
- b) Joseph C. Carver, M.D.: Request for release from the terms of the February 10, 2016 Board Order.
- c) Mark Cockley, M.D.: Request for release from the terms of the December 8, 2010 Consent Agreement.
- d) Raju Fatehchand, M.D.: Request for approval of the course *CPEP Medical Record Keeping Seminar*, offered by CPEP, to fulfill the medical records course requirement.
- e) Otto Kausch, M.D.: Request for release from the terms of the April 14, 2021 Consent Agreement.
- f) Robert J. Keating, M.D.: Request for Approval of the course *Intensive Documentation: Clinical, Legal and Economic Implications for Healthcare Providers*, offered by Case Western Reserve University, to fulfill the medical records course requirement.
- g) James I. Tak, M.D.: Request for approval of a reduction in psychotherapy sessions from weekly to twice per month.

**Dr. Feibel seconded the motion.** A vote was taken:

Dr. Rothermel	Abstain
Dr. Saferin	Abstain
Dr. Soin	Y
Dr. Schottenstein	Y
Dr. Johnson	Y
Mr. Gonidakis	Y
Dr. Bechtel	Abstain
Dr. Reddy	Y
Dr. Feibel	Y
Ms. Montgomery	Y

The motion carried.

## ADJOURN

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

The meeting adjourned at 2:58 p.m.

## State Medical Board of Ohio Meeting Minutes – November 10, 2021

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on November 10, 2021, as approved on December 8, 2021.

(SEAL)