



**Medical Board of Ohio Meeting Minutes
June 8, 2022**

Betty Montgomery, President, called the meeting to order at 10:00 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: Bruce R. Saferin, D.P.M., Supervising Member; Amol Soin, M.D.; Robert Giacalone, R.Ph., J.D.; Michael Schottenstein, M.D.; Jonathan Feibel, M.D.; Harish Kakarala, M.D.; Yeshwant Reddy, M.D.; and Mark A. Bechtel, M.D.

MINUTES REVIEW

Dr. Saferin moved to approve the minutes of the May 11, 2022 Board Meeting. Dr. Bechtel 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: Melissa Louise Hoffman, R.C.P.; and Michelle Kapon, M.D.

Ms. Montgomery asked all Board members the following questions:

- 1.) Has 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 each of the Reports and Recommendations?
- 2.) Does each member of the Board understand 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?
- 3.) Does each member of the Board understand 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?

ROLL CALL:	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

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. In addition, Dr. Bechtel served as Secretary and/or Supervising Member in the matter of Dr. Kapon.

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During these proceedings, no oral motions were allowed by either party.

Melissa Louise Hoffman, R.C.P.

Ms. Montgomery directed the Board's attention to the matter of Melissa Louise Hoffman, R.C.P. Objections have been filed and were previously distributed to Board members. Mr. Porter was the Hearing Examiner.

Dr. Reddy moved to approve and confirm the Proposed Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Ms. Hoffman. Dr. Kakarala seconded the motion.

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

Dr. Schottenstein opined that the State has met its burden of proof, noting that Ms. Hoffman's chemical dependency evaluation at a well-regarded institution resulted in a diagnosis of a severe degree of alcohol use disorder. Overwhelming evidence from the hearing corroborates that diagnosis.

Dr. Schottenstein commented that this is a very sad story. Ms. Hoffman has been working as a respiratory care professional for 21 years and it is clear to Dr. Schottenstein, based on her testimony, that Ms. Hoffman's job is very meaningful to her. Ms. Hoffman takes pride in her work and has a strong work ethic baseline. Dr. Schottenstein opined that Ms. Hoffman is a good person with a bad disease.

Dr. Schottenstein stated that he experienced a feeling of pathos as he read through Ms. Hoffman's case because alcohol is a scourge in her life and she is in total denial regarding that fact. On June 20, 2021 a report to the compliance hotline at Lima Memorial Health indicated that Ms. Hoffman had reported to work under the influence of alcohol, smelled of alcohol, and appeared to be disoriented. Ms. Hoffman was found sleeping on the job and had been difficult to wake. Whiskey bottles were found in workplace restroom trash cans after she had exited. Then on September 28, 2021, while at work, Ms. Hoffman was noted to have an unsteady gait and lack of coordination. Breath tests showed results of .228 and .245, which is the range in which people black out, become confused, vomit, and feel disoriented. Ms. Hoffman was terminated from Lima Memorial Health, effective October 1, 2021.

Two months after being fired from her job due to a trail of alcohol-related incidents, a note indicated that Ms. Hoffman denied any history of significant alcohol use and she stated that her alcohol intake was rare. This is why Ms. Hoffman's physicians had been trying to confirm diseases like Wilson's disease or hemochromatosis, instead of diagnosing and treating her probable actual condition, which is likely related to alcohol. Ms. Hoffman is not taking responsibility for her health and is not being forthcoming with her physicians. Just one month after that doctor's appointment, Ms. Hoffman was involved in a motor vehicle accident and the state trooper noted a strong odor of alcohol, slurred speech, stumbling gait, bloodshot eyes, and a bottle in her pocket of the same whiskey brand that the hospital staff had found in the trash cans.

Dr. Schottenstein stated that the tragedy of this case is that alcohol use disorder is very treatable, but it will require Ms. Hoffman to accept the help that is being offered to her, not as a punishment but as a resource. In the meantime, the Board must protect the public. Dr. Schottenstein agreed with the Proposed Order.

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

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye

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Dr. Bechtel - aye
Ms. Montgomery - aye

The motion to approve carried.

Michelle Kapon, M.D.

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

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

Dr. Kapon was represented by her attorney, Elizabeth Collis.

Ms. Collis stated that the Hearing Examiner did an excellent job outlining the facts of this case and making an appropriate recommendation. Ms. Collis noted that unlike similar cases previously heard by the Board, Dr. Kapon was not charged with or convicted of health care fraud. All the samples Dr. Kapon sent for testing were medical necessary. Further, Dr. Kapon's conduct was not financially-motivated, with records showing she earned a little over \$7,000 from the plan that was set up so Dr. Kapon would have coverage to deliver babies.

Ms. Collis continued that Dr. Kapon was wrong and should not have accepted money for referring samples to Dr. Wahib's lab. Ms. Collis stated that Dr. Kapon has repeatedly and unequivocally taken responsibility for her conduct. Ms. Collis noted the following quotes from Dr. Kapon, according to the hearing transcript:

“... there isn't a day that goes by I don't regret that. I did it. I made a mistake. I own it. Ultimately it lies with me. I have spent the last year-and-a-half reflecting on all of this.”

“... I don't deny that I -- that I did this.”

“And while I was led astray by my two mentors, ultimately it lies with me, and I should have questioned it. I should have gotten legal counsel about it. I did not. And ultimately I made a mistake, but I have fully 100 percent from the day ... cooperated with the Federal Government ...”

Ms. Collis stated that these comments show that Dr. Kapon understands and accepts her error and takes responsibility for her conduct. In addition, Dr. Kapon had multiple letters of support in the record and many witnesses testified on her behalf. Ms. Collis commented that she could have had about 30 witnesses testify on Dr. Kapon's behalf, but she limited it to about 10.

For the reasons outlined by the Hearing Examiner, Ms. Collis stated that the Report and Recommendation is appropriate.

Dr. Kapon stated that she has prided herself on helping those less fortunate than her through community service or community action prior to entering the world of medicine. Dr. Kapon was not born into medicine and her father, who raised her on his own, never graduated from college. Dr. Kapon's father taught her about honesty, morality, ethics, hard work, and what it means to earn one's own way through life. Dr. Kapon stated that she fell into medicine 20 years ago and it was the best thing that ever happened to her. Through medicine, Dr. Kapon found purpose, direction, and a way to give back to those who needed help the most. Medicine has allowed Dr. Kapon to have a greater impact on her community than any other endeavor. Medicine has helped Dr. Kapon fulfill her need to help those growing up as she did and change their paths.

Dr. Kapon continued that the last year-and-a-half has been devastating to her. Dr. Kapon prided herself on being a good person, following the rules, and doing the right thing, but she has broken those principles. Dr.

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Kapon stated that she made mistakes that ultimately led her to breaking the anti-kickback statute. Dr. Kapon had entered into an agreement with her department chair and her mentors because, as a family physician participating in obstetrics in the hospital, she needed obstetrics and gynecology back-up coverage. The department chair, Dr. Wahib, who made the rules, offered to provide coverage and a nominal fee if Dr. Kapon used his laboratory for tests that she deemed medically necessary. Dr. Kapon stated that her drive to continue care for her obstetric patients in the hospital ultimately led her to this poor decision. Dr. Kapon stated that she should have gotten counsel, asked more questions, and sought outside advice about whether this was appropriate or legal.

Dr. Kapon stated that she is ultimately responsible for her mistakes and the decision to enter into the agreement. Dr. Kapon stated that she has ruined her reputation in the community which she had spent 16 years building, and she has damaged relationships she has fostered with her patients, colleagues, and friends. A day does not go by in which Dr. Kapon does not regret her decision. Dr. Kapon stated that she is before the Board today to accept full responsibility for her actions. Dr. Kapon admitted that, while all the tests were deemed medically necessary and she did not commit health care fraud, she did violate the anti-kickback statute.

Dr. Kapon stated that one year ago she closed her practice, of which the majority was Medicaid, and she has not practiced medicine since that time. Dr. Kapon has taken time to process this situation and she realizes how wrong she was to enter into this agreement and how her actions have affected others. Dr. Kapon stated that she has lost her identity because medicine was not just a job for her, it was who she was. If given the opportunity, Dr. Kapon would like to return to medicine and continue with community outreach to begin making amends for her mistakes. Dr. Kapon humbly pleaded for an opportunity to come back and do better.

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

Mr. Puckett stated that he agrees with the Hearing Examiner's Report and Recommendation and the Proposed Order. Mr. Puckett felt that Dr. Kapon's worst mistake was not exercising her own best judgment in this matter. Mr. Puckett stated that Dr. Kapon was a young doctor and went along with a scheme devised by her department chair. The amount of money involved was just a few thousand dollars, and Mr. Puckett opined that the money was probably not the main reason Dr. Kapon engaged in this kickback scheme. Mr. Puckett further stated that there were others who were more responsible for what happened.

Mr. Puckett believed that Dr. Kapon appreciates now that she could have reported this behavior and could have found other ways to serve her patients, and this is in fact what she did after terminating her relationship with her employer. Mr. Puckett stated that Dr. Kapon's appreciation of her mistakes is a factor that the Board should consider, but there should also be some recognition of the wrongness of her actions. Mr. Puckett felt that the Proposed Order strikes an appropriate balance.

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

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

Mr. Giacalone stated that while it is apparent that Dr. Kapon pleaded guilty to violation of the anti-kickback statute, there are a number of mitigating factors. Having reviewed the hearing record, Mr. Giacalone stated that Dr. Kapon is extremely remorseful and fully accepts responsibility for what occurred. Mr. Giacalone did not believe Dr. Kapon's actions were taken with an intent to defraud Medicaid, but rather to help her patients and assure that her practice had call coverage. Mr. Giacalone opined that Dr. Kapon's actions, if anything, were an honest mistake done in reliance upon her mentors who essentially took advantage of her. Mr. Giacalone added that he has seen few physicians who have done as much as Dr. Kapon for her patients, and for those who are needy and underserved. Mr. Giacalone commented that Dr. Kapon should be used as a role model, and one mistake should not eliminate such amazing work.

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Mr. Giacalone proposed an amendment that reflects the defense counsel's recommendation. The amendment would reduce the fine from \$18,000 to \$5,000, allow for reinstatement of Dr. Kapon's license immediately upon payment of the fine, and place her on probation which will terminate immediately upon completion of an ethics course.

Mr. Giacalone moved to amend the Proposed Order to read as follows:

It is hereby ORDERED that:

- A. **SUSPENSION OF LICENSE:** The license of Michelle Kapon, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than one year from April 15, 2021, the approximate time she closed her practice in April 2021.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. Kapon shall remit payment in full of a fine of five thousand dollars (\$5,000). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Kapon's license to practice medicine and surgery until all of the following conditions have been met:
 1. **Payment of Fine:** Dr. Kapon shall have fully paid the fine as set forth in Paragraph B of this Order.
 2. **Application for Reinstatement or Restoration:** Dr. Kapon shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Kapon has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under 4731.222, Ohio Revised Code, to require additional evidence of her fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Kapon's license shall be subject to the following PROBATIONARY terms, conditions, and limitations. Dr. Kapon shall remain subject to probation until such time as she successfully completes the ethics course requirement as set forth in paragraph D.5, below.
 1. **Obey the Law and Terms of Criminal Probation:** Dr. Kapon shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of any sentence imposed in Case No. 4:21CR-00064 in the United States District Court for the Northern District of Ohio in the event Dr. Kapon is sentenced prior to the termination of this Order's probationary period.
 2. **Declarations of Compliance:** Dr. Kapon shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Kapon's license is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Evidence of Compliance with the Terms of Criminal Sentencing:** At the time she submits her declarations of compliance, Dr. Kapon shall also submit declarations under penalty of Board disciplinary action and/or criminal prosecution stating whether she has complied with all the terms, conditions, and limitations imposed by the United States District Court for the Northern District of

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Ohio in criminal case number 4:21CR-00064 in the event Dr. Kapon is sentenced prior to the termination of this Order's probationary period.

4. **Personal Appearances**: Dr. Kapon shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Kapon's license is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur as directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. **Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Kapon shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Kapon submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, she shall also submit to the Board a written report describing the course(s), setting forth what she learned from the course(s), and identifying with specificity how she will apply what she has learned to her practice of medicine in the future.

6. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Kapon is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
 7. **Modification of Terms; Exception**: Dr. Kapon shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations, except that Dr. Kapon may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member.
 8. **Required Reporting of Change of Address**: Dr. Kapon shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Kapon's license will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Kapon violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her license.
- G. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION**:
1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Kapon shall provide a copy of this Order to all employers or entities with which she is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where she has privileges or appointments. Further, Dr. Kapon shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where she applies for or obtains privileges or appointments.

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

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

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

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

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

This requirement shall continue until Dr. Kapon receives from the Board written notification of the successful completion of her suspension.

This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

Dr. Schottenstein seconded the motion.

Dr. Feibel agreed with most of Mr. Giacalone's comments and agreed that Dr. Kapon is a valuable member of society. However, Dr. Feibel believed that violation of the anti-kickback statute is a serious offense. Dr. Feibel found it plausible that a physician may not be aware that exchanging lab referrals for call coverage is a violation of the anti-kickback statute, but accepting money for referrals, even a small amount, is the essence of the statute. Dr. Feibel also believed the Proposed Order would have been much harsher were it not for Dr. Kapon's good work and ethical conduct in other areas.

Dr. Feibel stated that he would like to support Mr. Giacalone's proposed amendment because he believes Dr. Kapon is remorseful and will take responsibility for her actions. However, this is a serious violation of the anti-kickback statute, a felony to which she pleaded guilty. Dr. Feibel opined that the Proposed Order, including the minimum three-month suspension, is appropriate.

Dr. Kakarala agreed that Dr. Kapon violated the anti-kickback statute. However, Dr. Kakarala stated that most people who come before the Board for this violation are clearly motivated by material gain, amounting to tens or hundreds of thousands of dollars over a prolonged period of time. Dr. Kakarala also stated that young physicians new to their careers might be naïve about such matters, which is generally never covered during medical education. Dr. Kakarala agreed with Mr. Giacalone's proposed amendment.

Ms. Montgomery commented that Dr. Kapon's work has been very impressive, as was her presentation to the Board today. Ms. Montgomery opined that one thing that distinguishes this case from others is the low

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monetary gain and the power differential between Dr. Kapon and her two mentors, one of whom, Dr. Wahib, is a department chair. Ms. Montgomery further noted that Dr. Kapon was dependent on Dr. Wahib for proper coverage of her practice, under rules that were set by Dr. Wahib himself. Ms. Montgomery agreed with Dr. Kakarala that Dr. Kapon was a young physician new to the practice and had been anxious to focus on her patients, and she opined that the compensation from the referrals hadn't meant much to her. Ms. Montgomery supported Mr. Giacalone's proposed amendment.

Dr. Soin agreed with Dr. Feibel for the reasons he outlined earlier. Dr. Soin stated that he appreciates respondent presentations to the Board, but the fact of the matter is that Dr. Kapon clearly violated the anti-kickback statute. Dr. Soin noted that the Board has taken severe, life-altering action against other respondents in the past for very small amounts of fraud. Dr. Soin felt that the Proposed Order was fair considering sanctions that the Board has handed down in other fraud cases involving low monetary amounts. The Proposed Order does not destroy Dr. Kapon's career and allows multiple pathways forward for her to continue contributing to society. Dr. Soin therefore did not support the proposed amendment.

Dr. Schottenstein stated that this is a case of mitigation. It is uncontested that Dr. Kapon was convicted in court of accepting kickbacks, a felony in the course of practice that typically deserves a severe consequence. However, Dr. Schottenstein found the mitigating factors in this case to be compelling:

- Dr. Kapon has no prior disciplinary record.
- Dr. Kapon did not have a dishonest motive.
- This is an isolated incident that is unlikely to recur.
- Dr. Kapon has made full and free disclosure to the Board.
- Dr. Kapon is remorseful and takes responsibility for her actions.
- Dr. Kapon's behavior did not have an adverse impact on others.
- Dr. Kapon's behavior was negligent, but not reckless; she should have known better, but did not.

Dr. Schottenstein appreciated Dr. Feibel's and Dr. Soin's comments. Dr. Schottenstein opined that Dr. Kapon had felt an urgency and a pressure to solve her call coverage problem, and this blinded her judgment. Dr. Schottenstein speculated that if Dr. Kapon hadn't had a problem with call coverage when Dr. Wahib approached her with his proposition, she would have turned him down. Dr. Schottenstein perceived that the felonious behavior in this case is wholly antithetical to Dr. Kapon's character and is an aberration. Dr. Schottenstein stated that Dr. Kapon entered the field of medicine on a mission to help people. Along the way money has clearly been a secondary concern for Dr. Kapon, often spending money out of her own pocket to help people in need. Dr. Schottenstein opined that Dr. Kapon is a good person who made a bad choice, and he agreed that that bad choice should have a consequence. Dr. Schottenstein agreed with Mr. Giacalone's proposed amendment.

Mr. Giacalone opined that Dr. Kapon has experienced enough pain and suffering through the court system and the Proposed Order would be piling on. Mr. Giacalone stated that Dr. Kapon is a good person and did not have any intent to commit fraud; she only wanted call coverage for her patients. Mr. Giacalone stated that Dr. Kapon made a mistake and not everyone is sophisticated about health care fraud, especially a new physician who is reliant on her mentors for guidance.

Ms. Anderson clarified that the basis for the Board's action is Dr. Kapon's conviction for violating the anti-kickback statute and she was not convicted of health care fraud.

Dr. Reddy stated that Dr. Kapon's motive was to make sure her patients were covered, and participation in Dr. Wahib's plan was the price she paid to gain that call coverage. If Dr. Kapon's motive was financial, Dr. Reddy could not discern that from the record.

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Dr. Feibel agreed with the comments that have been made about getting call coverage, and assuring coverage for her patients was admirable on Dr. Kapon's part. Dr. Feibel stated that once the coverage was obtained, Dr. Kapon could have refused any payments for her referrals. Dr. Feibel felt it was disingenuous to say Dr. Kapon was forced to accept money for referrals. Dr. Feibel reiterated that exchanging call coverage for lab referrals is also a violation of the anti-kickback statute, but it would understandable that Dr. Kapon may not have known that if she had not also been freely accepting money. Dr. Feibel opined that the Board should not send a message that the Board will be sympathetic to young physicians who violate the anti-kickback statute if they say they did not realize they were violating the statute and are remorseful.

Dr. Feibel opined that the Proposed Order for a minimum 90-day suspension is fair and is far less than Dr. Kapon would have received if there had been an ulterior motive, lack of remorse, or absence of mitigating factors. Dr. Feibel disagreed that the Proposed Order would be piling on.

Dr. Schottenstein was respectful of Dr. Feibel's thoughts. Dr. Schottenstein noted that in her hearing Dr. Kapon indicated that she had not wanted the payments. Dr. Schottenstein opined that Dr. Wahib had wanted Dr. Kapon to be complicit in his scheme because that would be additional protection for him, and therefore there was pressure for Dr. Kapon to accept the money. Dr. Schottenstein observed that the Assistant Attorney General had said in the hearing the Dr. Kapon could have chosen to not cash the checks; Dr. Schottenstein pointed out the Dr. Wahib would have seen that and he would likely have confronted Dr. Kapon about it because he would not have been comfortable with that. Dr. Schottenstein opined that Dr. Kapon had not wanted to make waves and had not perceived the wrongness of the situation.

Mr. Giacalone agreed with Dr. Schottenstein, stating that this was essentially a power move and Dr. Wahib forced Dr. Kapon into this position. Mr. Giacalone also noted that Dr. Kapon had only sent Dr. Wahib the lab tests that his lab could turn around in 24 hours, which was better for her patients, and other lab tests were sent elsewhere as appropriate. Mr. Giacalone stated that if Dr. Kapon had wanted to make a big profit, she could have sent all her lab tests to Dr. Wahib.

Dr. Soin appreciated everyone's comments and stated that it is possible that Dr. Kapon is a wonderful person, though he refrained from opining on that issue because he did not know Dr. Kapon. The Board may also chose to excuse criminal behavior when a respondent says someone else forced their actions. Dr. Soin stated that the Hearing Examiner has proposed a minimum three-month suspension and a pathway forward for Dr. Kapon to be a contributing member of society. Dr. Soin opined that the Proposed Order, by not revoking Dr. Kapon's medical license, already takes into account the mitigating factors that have been discussed. Dr. Soin felt that the Proposed Order is fair and does not constitute piling on.

A vote was taken on Mr. Giacalone's motion to amend:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- nay
	Dr. Kakarala	- aye
	Dr. Feibel	- nay
	Dr. Reddy	- aye
	Dr. Bechtel	- abstain
	Ms. Montgomery	- aye

The motion to amend carried.

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

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ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- nay
	Dr. Reddy	- aye
	Dr. Bechtel	- abstain
	Ms. Montgomery	- aye

The motion to approve carried.

PROPOSED FINDINGS AND PROPOSED ORDERS

Ms. Montgomery stated that in the following matters, the Board issued a Notice of Opportunity for Hearing. No timely requests for hearing were received. These matters were reviewed by a hearing examiner, who prepared a Proposed Findings and Proposed Orders, and are now before the Board for final disposition. These matters are disciplinary in nature, and therefore the Secretary and Supervising Member cannot vote. In these matters, Dr. Rothermel served as Secretary and Dr. Saferin served as Supervising Member.

Jianmei Danuk, L.M.T.

Dr. Bechtel moved to find that the allegations as set forth in the December 8 , 2021 Notice of Opportunity for Hearing in the matter of Ms. Danuk have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee’s Proposed Findings and Proposed Order. Dr. Reddy seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

A vote was taken on Dr. Bechtel’s motion:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Omar Garcia, M.D.

Dr. Bechtel moved to find that the allegations as set forth in the May 12, 2021 Notice of Opportunity for Hearing in the matter of Mr. Garcia have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky’s Proposed Findings and Proposed Order. Dr. Reddy seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Yan Fang Huang

Dr. Kakarala moved to find that the allegations as set forth in the December 8, 2021 Notice of Opportunity for Hearing in the matter of Ms. Huang have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee's Proposed Findings and Proposed Order. Dr. Reddy seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Marie Therese Shedlock, P.A.

Dr. Bechtel moved to find that the allegations as set forth in the July 14, 2021 Notice of Opportunity for Hearing in the matter of Ms. Shedlock have been proven to be true by a preponderance of the evidence and to adopt Ms. Shamansky's Proposed Findings and Proposed Order. Dr. Kakarala seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

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

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

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Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

Hexiang Chen, L.M.T.

Dr. Reddy moved to find that the allegations as set forth in the December 8, 2021 Notice of Opportunity for Hearing in the matter of Ms. Chen have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee’s Proposed Findings and Proposed Order. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

A vote was taken on Dr. Reddy’s motion:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Xiaohui Yang, L.M.T.

Dr. Kakarala moved to find that the allegations as set forth in the December 8, 2021 Notice of Opportunity for Hearing in the matter of Ms. Yang have been proven to be true by a preponderance of the evidence and to adopt Ms. Lee’s Proposed Findings and Proposed Order. Dr. Bechtel seconded the motion.

Ms. Montgomery stated that she will now entertain discussion in the above matter. No Board member offered discussion in this matter.

A vote was taken on Dr. Kakarala’s motion:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

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The motion carried.

EXECUTIVE SESSION

Mr. Giacalone 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. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- aye
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

The Board went into Executive Session at 10:45 a.m. and returned to public session at 11:27 a.m.

SETTLEMENT AGREEMENTS

Mr. Roach briefly reviewed the settlement agreements for the Board's consideration.

Jeffrey D. Hoffman, M.D.

Dr. Bechtel moved to ratify the proposed Permanent Surrender with Dr. Hoffman. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Mamon Yehya Maiteh, M.D.

Dr. Reddy moved to ratify the proposed Permanent Surrender/Retirement with Dr. Maiteh. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye

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Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- abstain
Ms. Montgomery	- aye

The motion carried.

Michael A. Ekizian, M.D.

Dr. Reddy moved to ratify the proposed Permanent Withdrawal with Dr. Ekizian. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Kurt Schroer, D.O.

Dr. Kakarala moved to ratify the proposed Consent Agreement with Dr. Schroer. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- abstain
	Dr. Bechtel	- abstain
	Ms. Montgomery	- aye

The motion carried.

Arkadiusz Karol Grochowski, M.D.

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

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye

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Dr. Bechtel - aye
Ms. Montgomery - aye

The motion carried.

Thomas C. Thornton, M.D.

Dr. Reddy moved to ratify the proposed Permanent Retirement/Surrender with Dr. Thornton. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:

Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

Ismail S. Ahmed, M.D.

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

ROLL CALL:

Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

Mitchum A. Hissong, L.M.T.

Dr. Reddy moved to ratify the proposed Step II Consent Agreement with Mr. Hissong. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:

Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- abstain
Ms. Montgomery	- aye

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The motion carried.

Lisa Lynn Binkley, L.M.T.

Dr. Feibel moved to ratify the proposed Consent Agreement with Ms. Binkley. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

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

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

1. George Anthony Bertalan, M.D.: A summary suspension, based on mental health concerns and a report from a psychiatrist.
2. Pramila J. Bharwani, P.A.: Based on an order from the Texas Medical Board.
3. Gary F. Gladieux, M.D.: Based on a failure to document treatment for one patient.
4. Alan Franklin Knull, M.D.: To be issued to an applicant for restoration of license, based on the fact that the physician is currently subject to a 1989 Board Order and is now seeking reinstatement of his license.
5. Roland F. Chalifoux, Jr., D.O.: To be issued to an applicant for licensure, based on actions from the Texas Medical Board, the Michigan Board of Osteopathic Medicine and Surgery, and the West Virginia Board of Osteopathic Medicine, a more recent Drug Enforcement Administration (DEA) suspension and reinstatement, and a Medicaid disqualification and reinstatement.
6. Timothy J. Drehmer, M.D.: Based on felonious and misdemeanor acts of moral turpitude in the course of practice, as well as an ethics violation.
7. Michael Wayne Holland, R.C.P.: Based on misdemeanor acts.
8. Kwabena Mawulawde, M.D.: Based on acts constituting a misdemeanor.
9. Kevin W. Scholl: To be issued to an applicant for a limited permit to practice as a respiratory care professional, based on acts constituting a felony and an order by another health care board.
10. Joseph Anthony Shehadi, M.D.: Based on acts constituting a felony involving kickbacks.
11. Lauren Elizabeth Shipman, M.D.: Based on an order from the Arkansas Medical Board.
12. Whitaker Michael Smith, M.D.: Based on an order from the Tennessee Board of Medical Examiners.
13. Fred Arthur Wagshul, M.D.: Based on improper prescribing and violations of the minimal standards of care.
14. Tyler Quantabious James, L.M.T.: A summary suspension, based, in large part, on the salacious contents of his business website.

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15. Edward Luke Bold, M.D.: A summary suspension, based on impairment, issues involving sexual contact with a patient, incorrect or false answers, and a misdemeanor conviction.
16. Prisca Maynard, M.D.: An automatic suspension, based on the fact that a probate court has declared the physician to be incompetent and has appointed a guardianship.
17. Brenda A. Wilps, R.C.P.: A summary suspension, based on impairment.

Ms. Montgomery asked if the physician in Citation #1 is currently practicing. Ms. Pokorny replied that the physician is currently practicing.

Ms. Montgomery asked for clarification of the licensure status of the physician in Citation #5. Ms. Pokorny explained that the physician initially applied for licensure in Ohio in 2014, and that application was denied. The physician applied again in 2021 and that application remains pending. The current citation proposes action on the pending application, which is permitted under the Board's rules. The physician is currently licensed in West Virginia and sees Ohio patients in his West Virginia practice; his provider agreement with the Ohio Department of Medicaid is currently suspended.

Regarding Citation #14, Ms. Montgomery asked if there have been any efforts to have the postings on the massage therapist's website taken down, or if there is any way to work with the Attorney General's office to have that done. Ms. Pokorny replied that the Board has not taken action to do that, nor is she aware of any follow-up on whether the Attorney General's office can effectuate that.

Dr. Feibel asked if the threshold for a summary suspension in the matter of Citation #14 has been met. Ms. Canepa answered affirmatively, stating that the website includes depictions of actual sexual misconduct occurring.

Regarding Citation #15, Ms. Montgomery congratulated the staff on how quickly this matter was brought to citation.

Dr. Kakarala moved to approve and issue proposed Citation #1, a summary suspension. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- aye
	Ms. Montgomery	- aye

The motion carried.

Dr. Bechtel moved to approve and issue proposed Citation #14, a summary suspension. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye

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Dr. Bechtel - aye
Ms. Montgomery - aye

The motion carried.

Dr. Schottenstein moved to approve and issue proposed Citation #15, a summary suspension. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:

Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

Dr. Reddy moved to approve and issue proposed Citation #16, an automatic suspension. Dr. Kakarala seconded the motion. A vote was taken:

ROLL CALL:

Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

Dr. Reddy moved to approve and issue proposed Citation #17, a summary suspension. Dr. Bechtel seconded the motion. A vote was taken:

ROLL CALL:

Dr. Saferin	- abstain
Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye
Dr. Bechtel	- aye
Ms. Montgomery	- aye

The motion carried.

Dr. Kakarala moved to approve and issue proposed Citations #'s 2 through 13. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:

Dr. Saferin	- abstain
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Mr. Giacalone	- aye
Dr. Schottenstein	- aye
Dr. Soin	- aye (abstain on #5)
Dr. Kakarala	- aye
Dr. Feibel	- aye
Dr. Reddy	- aye (abstain on #10)
Dr. Bechtel	- aye (abstain on #'s 3, 5, 6, and 8)
Ms. Montgomery	- aye

The motion carried.

EXECUTIVE DIRECTOR COMPENSATION

Ms. Montgomery stated that exempt staff normally receives a 3% increase effective the pay period that includes July 1. In most cases employees will receive this increase automatically; however, a motion from the Board is required for the Executive Director to receive the increase.

Dr. Saferin asked if the Board is limited to offering a raise of only 3%. Ms. Montgomery answered that the Board has the authority to offer a raise greater than 3%. Ms. Loucka stated that the standard raise for all employees is 3% and she is comfortable with that.

Dr. Soin stated that Ms. Loucka is doing a wonderful job and the raise of 3% does not diminish the work she has done. The Board members individually echoed these sentiments.

Ms. Montgomery stated that Ms. Loucka has taken on some very difficult issues since coming aboard as Executive Director, and has done so with zeal and sensibility. Ms. Montgomery noted that the Board is now a presence in the legislature and has regained its place in the policy world thanks to Ms. Loucka's efforts. Ms. Montgomery thanked Ms. Loucka for the staff she has assembled and the direction she has given them. Dr. Saferin commented that what Ms. Loucka has accomplished has been remarkable.

Dr. Reddy moved to approve a 3% salary increase for Stephanie Loucka, Executive Director, to be effective the pay period that includes July 1, 2022. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

OPERATIONS REPORT

Ms. Montgomery commented that the staff has done an excellent job on the design of the Operations Report, providing a great deal of data in a consumable format.

Ms. Loucka provided an update on various items that she's been working on.

Interstate Medical Licensing Compact: Ms. Loucka explained that the staff is working through various issues with going live with the Interstate Medical Licensure Compact (IMLC). Responding to a question from Dr. Bechtel, Ms. Loucka stated that Ohio is projected to go live with the IMLC on August 2; statute requires that this occur no later than the end of September.

Sexual Misconduct Complaint Process Audit: Ms. Loucka stated that work continues with the Office of Budget and Management's Office of Internal Audit on the second phase of the audit of the Board's sexual misconduct complaint process. Ms. Loucka and other members of the staff have spent a couple of hours per week with the auditors to review how the Board is meeting that process. The audit is expected to be complete by the end of this fiscal year and Ms. Loucka anticipated having something to share with the Board at the August Board meeting. Work will also continue on cases from the sexual misconduct historical case review.

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Responding to a question from Dr. Schottenstein, Ms. Loucka stated that the Board's proposed legislation on this issue has been introduced in the legislature and work on that will continue. The legislature will return to session in November.

Human Resources: Ms. Loucka stated that the Board is in the process of hiring for the Enforcement section, as well as a fiscal manager to help the Board budget strategically and to update processes and protocols around travel and other fiscal processes.

Telehealth: Ms. Loucka stated that she and the staff continue to work with many stakeholders to develop telehealth rules that preserve the Board's interests and the stakeholders' interests and to file those rules with the Common Sense Initiative.

House Bill 263 Reporting Requirements: Ms. Loucka stated that House Bill 263, which directed the Board to create a list of criminal convictions that may prevent an applicant from becoming licensed, requires an annual report to the legislature on the Board's activities in this area. Ms. Loucka commented that the reporting requirement continues to be an administrative hurdle that the staff is working through.

Human Trafficking: Ms. Loucka stated that she and the staff continue efforts with the state's Anti-Trafficking Coordinator on how the Board can participate in that work. Board investigators are sharing resources on human trafficking and aiding in development of best practices.

Federation of Podiatric Medical Boards: Ms. Loucka and Dr. Saferin attended the Annual Meeting of the Federation of Podiatric Medical Boards (FPMB) last week. Dr. Saferin added that the FPMB is also working to be included in the Interstate Medical Licensing Compact (IMLC). Ms. Loucka stated that the IMLC has been welcoming to that idea, but it would also require a change in Ohio statute for Ohio podiatrists to participate.

RULES & POLICIES

Rule Review Update

Ms. Anderson stated that the Rule Review Update has been provided to the Board and she would be happy to answer any questions. No Board member had questions about the Rule Review Update.

Podiatric Licensure Rules

Ms. Anderson stated that the proposed podiatric licensure rules were circulated to interested parties and two comments were received, both of which were favorable and did not suggest changes.

Dr. Saferin moved to approve draft rules for filing with the Common Sense Initiative. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Rules Sent for Initial Circulation

Ms. Anderson stated that these rules involving the proficiency in spoken English, the Board's rule process, and the rescission of the rules on examinations, were circulated to interested parties for comment. No comments were received.

Dr. Saferin moved to approve the proposed no change and rescission for filing with the Common Sense Initiative. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Telehealth Rules

Mr. Smith provided a brief overview of the process of developing the proposed telehealth rules. The Board had engaged extensively with stakeholders, which resulted in 70 comments and led to multiple changes in the

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proposed rules. In May, the Board approved the final version of the proposed rules to be filed with the Common Sense Initiative (CSI). During CSI's comment period, 13 additional comments were received. In order to advance the rules through CSI, the Board has to address those additional comments and make changes to the rules where necessary. Mr. Smith noted that the new telehealth statute provides for expansive telehealth services and the Board's rules must be consistent with both the text and the expressed legislative intent of the statute. The Board has been provided the comments and recommended changes.

Mr. Smith highlighted one section of the proposed rules, 4731-37-01(B)(4), which was the subject of many comments. The consensus among these comments was that there should be a referral when it becomes clear that a telehealth visit will not meet the standard of care for a patient and the telehealth provider cannot see the patient in person. There was also consensus that the current referral provisions, particularly section (B)(4)(a), are too restrictive concerning which health care professional can be referred to. Mr. Smith noted that this section limits referrals when a patient is in need of immediate care, but not emergency department care, to health care professionals whom the referring provider has a cross-coverage agreement, a supervision agreement, or a standard care arrangement. Several comments proposed replacing the current referral provisions with some version of the language submitted by The Ohio State University Wexner Medical Center and OSU Physicians, or incorporating some of the language or concepts included in the recent report from the Federation of State Medical Boards.

Mr. Smith stated that the proposed revision before the Board today incorporates these comments and makes the referral options more expansive, but preserves the requirement that a referral must be made when the telehealth visit does not suffice to meet the standard of care.

Ms. Montgomery commented on the importance of trying to accommodate both the Board's concerns and the concerns of these commenters, noting that difficulties in CSI would reduce the likelihood of having the proposed rules approved by the Joint Committee on Agency Rule Review (JCARR).

Dr. Feibel stated that part of his concern with telehealth in general are the many telehealth pop-up websites that will appear. Dr. Feibel asked how the Board will respond if one of these sites conducts a telehealth visit that does not meet the standard of care, but then a week later refers the patient to another physician. The site will not have met the standard of care in that situation, and there was no way it could meet the standard of care for many conditions. For instance, if a patient presents on a telehealth visit with an ankle injury, the physician will not be able to physically examine the patient, which generally does not meet the standard of care. Dr. Feibel asked if, in this scenario, the need for a standard of care measurement is obviated if they refer the patient one week later to someone who can perform that physical examination.

Mr. Smith replied that the way the proposed rule is written, if the health care professional determines at any time during the telehealth visit that an in-person visit would be necessary to meet the standard of care, that referral should be made. Mr. Smith stated that it is not possible to address every possible medical condition or issue in the proposed rules, but he opined that the rules are functional while remaining faithful to the requirements of the statute.

Dr. Feibel opined that telehealth will necessarily increase health care costs because a telehealth visit cannot meet the standard of care in many situations, and so the patient will be referred somewhere else. This will result in the patient being billed for two office visits when a single in-person office visit would have sufficed. Dr. Feibel stated that the Board may not be able to construct rules to protect against this, but it will be one of the unintended consequences of telehealth.

Mr. Smith stated that as time passes, experience may lead to future changes in legislation that will be influenced by situations such as that which Dr. Feibel described. Mr. Smith said the Board will be as agile and nimble as possible to meet those changes and improve its rules as soon as it is able.

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Ms. Montgomery asked if the Board is keeping a list of complaints related to telehealth. Ms. Loucka responded that the Board is working on a modification to the eLicense system that will allow telehealth complaints to be flagged upon receipt.

Dr. Soin, commenting on Dr. Feibel's statements about increasing health care costs, observed that as a result of the covid-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) has provided a new way to bill for remote patient monitoring. Currently, there is a great deal of remote patient monitoring happening in many specialties, even pain management. Some people are advising physicians to give their patients Fitbits and put the Fitbit report in the patient chart, resulting in an extra billable every month. Dr. Soin stated that this real-world example illustrates Dr. Feibel's point that once people figure out ways to pull money out of the health care system, they will do so. Dr. Soin advised keeping this in mind as these rules on telehealth are developed.

Dr. Reddy asked about a scenario in which a primary care physician receives a phone call from a patient who is asking a question about a medication or a test or trying to clarify something, and the physician converts that question into a telehealth visit so that it is a billable event. Mr. Smith replied that the Board has considered that situation and has included the following language in section (B)(3):

Telephone calls, as a synchronous communication technology, may only be used for telehealth services when all of the elements of a bona fide health care visit meeting the standard of care are performed. Telephone calls that are routine or simply involve communication of information do not constitute a telehealth service.

Mr. Smith stated that under this section, the situation described by Dr. Reddy would be a violation. Dr. Feibel commented that there needs to be robust communication from the Board so physicians are aware that this is not billable. Ms. Montgomery opined that insurance companies will also be aware of these issues. Mr. Smith stated that much of this is still a moving target because the federal rules on telehealth are not yet permanent and no permanent decision on those rules will be made until 2023. Any changes to the federal rules may influence changes at the state level.

Dr. Saferin agreed that physicians may get creative in their billing. In response to Dr. Feibel's point, Dr. Saferin stated that patients are already billed for two office visits when they visit their primary care physician in person and are then referred to a specialist. Dr. Saferin opined that telehealth will increase the ability to obtain health care, but will not increase the costs of health care.

Mr. Smith continued that changes have also been made regarding emergency department care, based on comments received about the different ways people can present in that setting. In addition, Mr. Smith proposed deleting section (A)(8) which defines an advanced practice registered nurse (APRN), noting that APRN's are no longer part of this rule.

Dr. Saferin moved to approve revised proposed new rules 4731-37-01 and 4731-11-09 for submission to the Common Sense Initiative (CSI) as part of the ongoing CSI review of these rules. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Mr. Smith requested authority to make technical, non-substantive changes to these rules as the need arises.

Dr. Bechtel moved to authorize Mr. Smith to make technical changes to these rules as the need arises. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Legislative Update

House Bill 203: Mr. Mabe stated that this bill would require automatic licensure for out-of-state applicants who are licensed in another state. House Bill 203 was reported out of the House State and Local Committee on April 6 and passed the full House on June 1. The bill will now go the Senate where it will be referred to a

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committee. Board members noted this would be a positive development for out-of-state massage therapy applicants.

Senate Bill 131: Mr. Mabe stated that this bill, the companion bill to House Bill 203, contains language allowing licensing authorities to take disciplinary actions against an applicant, deny an application, and determine fitness to practice of an applicant. An amendment has been added to allow a person who holds a license issued through an interstate licensing compact of which Ohio is a part to obtain a license through the compact instead of reciprocity. Another amendment that has been added will delay the bill's effective date 270 days after the bill is passed and signed. The bill was reported out of the Senate Workforce and Higher Education Committee on May 25 and passed the full Senate on June 1. The bill has moved to the House where it will be referred to a committee.

House Bill 196: Mr. Mabe stated that this bill creates a new license type for surgical assistants, to be overseen by the Medical Board. A previous substitute bill was accepted to mirror the licensing process with that of other similar license types, such as radiologist assistants. An amendment was added that allows an applicant who is not credentialed by a national organization as a surgical assistant to be eligible for licensure if they have practiced as a surgical assistant in an Ohio hospital or facility during any part of the 18 months preceding the bill's effective date; the timeframe had originally been six months.

House Bill 196 was reported out of House Health Committee on May 24 and is currently awaiting a House floor vote.

House Bill 193: Mr. Mabe stated that this bill would require all schedule II drugs to be prescribed electronically. The bill includes exceptions that would allow for a written prescription.

The senate has added two amendments during the committee process. Under the first amendment, a physician licensed in Ohio must establish a physician/patient relationship with a patient who is the subject of a consultation before receiving a consultation from an out-of-state physician who is not licensed in Ohio. Under the second amendment, the term "overdose reversal drug" would be defined as naloxone or any other drug that the Board of Pharmacy designates by rule as a drug approved by the Food and Drug Administration (FDA) for reversal of a known or suspected opioid related overdose. This amendment would also replace references to "naloxone" in the Ohio Revised Code with "overdose reversal drug."

This bill was passed out of the Senate Health Committee and by the Senate floor on June 1, and the House concurred in the Senate amendments. The bill now awaits the Governor's signature.

Legislative Session: Mr. Mabe stated that this week is the last week the legislature will be in session before breaking for the summer. The legislature is not expected to be back in session until mid-November. In the meantime, Mr. Mabe will work with Ms. Loucka, Ms. Anderson, Mr. Smith, and Ms. Reardon to develop a plan to accomplish the Board's goals in the upcoming session.

COMMITTEE BUSINESS

Medical Marijuana Committee Report

Dr. Soin commented that a great deal of work was put into reviewing the petitions to add qualifying conditions for treatment with medical marijuana, and there was substantial amounts of deliberation. Dr. Soin appreciated the Committee members for taking the significant time to review the petitions. Dr. Soin also thanked the experts, who did extensive research.

Dr. Soin stated that at the last meeting the Board decided to take a month to reflect and review the materials before voting on them today.

Autism Spectrum Disorder

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Dr. Soin stated that based on the review of the materials and extensive deliberations, the Committee recommended that the petition to add autism spectrum disorder as a qualifying condition should be denied.

Dr. Saferin moved to approve the Committee’s recommendation to reject the petition to add autism spectrum disorder to the list of qualifying conditions to be treated with medical marijuana. Dr. Kakarala seconded the motion.

Dr. Bechtel opined that it is important that the Board be very clear on its thoughts in this matter, especially since there is pending legislation that would approve autism management with marijuana.

Dr. Bechtel continued that the Committee carefully reviewed the medical literature and had extensive discussions. Based on this thorough review, it is evident that there are no good, rigorous clinical studies that support the use of medical marijuana to treat autism, and there are many potential complications in pediatric patients with cognitive disorders, including aggravating other psychiatric conditions and affecting performance in school. Dr. Bechtel further noted that autistic patients often cannot express their feelings and may have trouble communicating how the treatments are affecting them.

Dr. Bechtel opined that it is important for the Board to take a stance because it has followed the medical evidence and is trying to protect the public.

A vote was taken on Dr. Saferin’s motion to deny. All members voted aye. The motion carried.

Opioid Use Disorder

Dr. Soin stated that the Committee thoroughly reviewed the materials and had extensive discussions about this petition, similar to the discussion of autism spectrum disorder. The Committee has recommended denying the petition to add opioid use disorder as a qualifying conditions for treatment with medical marijuana.

Dr. Kakarala moved to approve the Committee’s recommendation to reject the petitions to add opioid use disorder to the list of qualifying conditions to be treated with medical marijuana. Dr. Saferin seconded the motion. All members voted aye. The motion carried.

Committee Minutes Review

Dr. Bechtel moved to approve the draft minutes of the Medical Marijuana Committee’s meeting of May 11, 2022. Dr. Saferin seconded the motion. All members voted aye. The motion carried.

Ms. Montgomery thanked the Committee members for their extensive work on these petitions.

Finance Committee Report

Dr. Schottenstein stated that the Board’s revenue for April 2022 was \$1,501,955, a new monthly record and a substantial increase from the previous month. Net revenue for April was \$380,672. The Board’s cash balance is \$7,625,157, which is another record. Expenditures increased by 13.1%, but this is substantially a function of the fact that the month included three pay periods instead of the usual two. Next month’s data will provide a better sense of the Board’s expenditures.

The Board received \$18,000 in disciplinary fine and \$215 in collections in April. Year-to-date, the Board has received \$172,101 in fines, which is already above the roughly \$150,000 in fine revenue that the Board informally expects each fiscal year.

Special Counsel Assignment

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Dr. Schottenstein presented a request for the payment of up to \$75,000 during Fiscal Year 2023 for the law firm of Shumaker Loop & Kendrick to perform special counsel service on behalf of the Board in ongoing opioid litigation.

The Committee has recommended approval of this request.

Dr. Saferin moved to authorize the payment of up to \$75,000 during Fiscal Year 2023 for the law firm of Shumaker Loop & Kendrick to perform special counsel services on behalf of the Board in the opioid litigation. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

Hearing Attorney Examiner Services

Dr. Schottenstein stated that the Medical Board currently employs three full-time hearing examiners. In the past the board has utilized the services of hearing examiner contractors to help manage the overflow of work as the need arises. Approval of this request will allow the Hearing Unit to continue to shift a number of cases to hearing examiner contractors during Fiscal Year 2023. The contracts will not exceed \$48,925 each.

The Committee has recommended approval of this request.

Dr. Saferin moved to approve the utilization of hearing examiner contractors as needed for Fiscal Year 2023, with contracts not to exceed \$48,925 each to perform Hearing Attorney Examiner Services. Dr. Kakarala seconded the motion. All members voted aye. The motion carried.

Purchase of Additional Salesforce Development Hours

Dr. Schottenstein presented a request for dedicated eLicense development hours for further system enhancements in Fiscal Year 2023. The rate per hour for Fiscal Year 2023 is \$121.02. The staff is requesting that the Board approve up to \$36,000 for Fiscal Year 2022 with an estimated 300 hours of development.

The Committee has recommended approval of this request.

Dr. Saferin moved to authorize up to \$36,000 for dedicated eLicense development hours from DAS OIT. Dr. Bechtel seconded the motion. All members vote aye. The motion carried.

Respiratory Care Advisory Council Report

Dr. Kakarala stated that the Respiratory Care Advisory Council met on June 7, 2022. A legislative update was provided by Mr. Mabe. The Medical Board rule update summary was provided for the Council's review, as well as a status update on the telehealth rules currently going through the administrative rule process.

Dr. Kakarala continued that Nelson Heise, clinical director for the Ohio Physicians Health Program (OPHP), presented to the Council on his organizations work relative to impaired respiratory care professionals.

Council member Amy Rodenhausen gave a brief presentation on her career as a respiratory care professional and what her licensure has allowed her to do.

A licensing update was provided regarding how many respiratory care professionals have renewed their licenses before the June 30, 2022 deadline.

Board staff requested the Ohio Society of Respiratory Care's (OSRC) assistance with disseminating more information to educational institutions and health care systems, encouraging them to email the Board when respiratory care students with licenses graduate.

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Sue Ciarlariello, Legislative Chair for OSRC, gave an update and discussed recent comments given to Common Sense Initiative (CSI) on the Board's telehealth rules relative to the absence of out-of-state practice language for respiratory care professionals. Ms. Ciarlariello also discussed the association's annual conference this summer. OSRC is also working with a legislator to introduce a bill that would create a new license, an Advanced Practice Respiratory Care Practitioner.

The Council's next meeting is September 13, 2022. Unless there is a change from the legislature, this meeting and all future meetings will be in-person rather than by video.

Request for Reappointment to Respiratory Care Advisory Council

Dr. Kakarala stated that Ms. Rodenhausen's term on the Council will expire soon and she has requested reappointment. Dr. Kakarala commented that he has worked with Ms. Rodenhausen for more than two years and has found her to be an exceptional person and great to work with.

Dr. Saferin moved to reappoint Amy Rodenhausen, M.Ed., RRT, for a three year term on the Respiratory Care Advisory Council, beginning April 11, 2022. Dr. Bechtel seconded the motion. All members voted aye. The motion carried.

PROBATIONARY REPORTS AND REQUESTS

Office Conference Reviews

Dr. Schottenstein moved to approve the Compliance staff's Reports of Conferences for May 9, 10, and 16, 2022. Mr. Giacalone seconded the motion. All members voted aye, except Dr. Saferin and Dr. Bechtel, who abstained. The motion carried.

Probationary Requests

Dr. Schottenstein noted that Dr. Vashi has requested early release from his Board Order. The Secretary and Supervising Member do not support this request. Dr. Schottenstein noted that there is no legal mechanism for an early release. Dr. Schottenstein further noted that a denial of a probationary request is reportable to the National Practitioners Databank. Dr. Schottenstein asked if Dr. Vashi is aware that a denial is reportable and if he has had an opportunity to withdraw his request. Ms. Dorcy answered that Dr. Vashi is aware and he has chosen not to withdraw his request.

Dr. Kakarala moved to approve the Secretary and Supervising Member's recommendations for the following probationary requests, as follows:

- a) Joseph M. Bannon, D.O.: To approve the course *PBI Medical Ethics and Professionalism*, offered by PBI Education, to fulfill the medical ethics/boundaries course requirement.
- b) Benjamin R. Gibson, M.D.: To approve the request for the ability to possess and administer nitrous for medical procedures, with the submission of quarterly purchasing/patient use logs, as well as the practice manager securing access to the storage closet.
- c) Adam N. Leid, D.O.: To approve the request for weekly sessions with Earl P. Coxson, Jr., ADD.CA, CPRS, CADCIT to complete the aftercare requirement.
- d) Jack C. Lunderman, M.D.: To approve the course *Professional Boundaries and Ethics*, offered by PBI Education, to fulfill the professional boundaries/ethics course requirement; and to approve the course *Practice Management Regulations and Red Tape*, offered by American Academy of Medical Management, to fulfill the medical billing/coding course requirement.
- e) Joshua A. Shuh, D.O.: To approve of the course *Intensive Course in Controlled Substance Prescribing*, offered by Case Western Reserve University, to fulfill the controlled substance prescribing

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course requirement; to approve the course *Intensive Course in Medical Ethics, Boundaries and Professionalism*, offered by Case Western Reserve University, to fulfill the professional ethics/boundaries course requirement; and to approve the course *Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications by Healthcare Providers*, offered by Case Western Reserve University, to fulfill the medical records course requirement.

- f) James I. Tak, M.D.: To approve Daniel Culver, D.O., to serve as the new monitoring physician.
- g) Christopher N. Vashi, M.D.: To not approve the request for early release from the terms of the August 14, 2019 Board Order.

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

ROLL CALL:	Dr. Saferin	- abstain
	Mr. Giacalone	- aye
	Dr. Schottenstein	- aye
	Dr. Soin	- aye
	Dr. Kakarala	- aye
	Dr. Feibel	- aye
	Dr. Reddy	- aye
	Dr. Bechtel	- abstain
	Ms. Montgomery	- aye

The motion carried.

Treatment Provider Applications

Dr. Schottenstein moved to approve Caron Treatment Centers and Talbott Recovery Campus to continue as Board Treatment Providers. Dr. Soin seconded the motion. All members voted aye. The motion carried.

ADJOURN

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

The meeting adjourned at 12:51 p.m.

We hereby attest that these are the true and accurate approved minutes of the State Medical Board of Ohio meeting on June 8, 2022, as approved on July 13, 2022.

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(SEAL)