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OHIO RESPIRATORY CARE BOARD

77 SOUTH HIGH STREET, 16TH FLOOR

COLUMBUS, OHIO 43215-6108

OFFICIAL BOARD MEETING MINUTES OF February 12 & 13, 2008

1st Day: February 12, 2008

Agenda items #1: CALL MEETING TO ORDER

Presiding: Marc Mays, President, called the meeting to order on February 12, 2008 at 1:07 p.m. in room West B & C, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215 for the purpose of holding a regular board meeting. Present were Marc Mays, President, Robert Cohn, M.D., Vice President, Susan Ciarlariello, R.R.T., R.C.P., Dana Rinehart, Public Member, Joel Marx, Carol Gilligan, Margaret Traband, M,Ed., RRT, and Eugene Andrews, R.R.T., R.C.P. Ms. Anita Adams arrived late, but was added in the roll call. Mr. Mays noted for the record that a quorum of the members of the board was present and that business could be conducted.

Members in attendance (Exhibit A):

Marc Mays, R.R.T., R.C.P., President

Robert Cohn, M.D., Vice President

Susan Ciarlariello, R.R.T., R.C.P.

Anita Adams R.R.T., R.C.P.

Dana Rinehart, Public Member

Carol Gilligan, HME Provider Member

Eugene Andrews, R.R.T., R.C.P.

Margaret Traband, M.Ed., RRT, RCP

Joel Marx, HME Provider Member

Staff in attendance:

Christopher H. Logsdon, Executive Director

Jason McLean, Investigator

Marcia Tatum, HME Manager

Others in Attendance:

Katherine Bockbrader, Assistant Attorney General

Williams Hills, Joint Committee on Agency Rule Review

Kam Yuricich, Ohio Association of Medical Equipment Services

NOTE ON COMMITTEE MEETINGS

The Board's Rules Committee, Home Medical Equipment Committee, and Scope of Practice Committee met prior to the regular business meeting. Official minutes of the committee meeting were taken and are maintained separate of this journal. Committee Chairperson will give a Committee Report during the course of the business meeting.

Regular Business Meeting

Agenda item 1.1: Approval of Board Meeting Agenda (Exhibit B)

The proposed meeting agenda was mailed in advance of the meeting. Mr. Mays inquired if there were any amendments to the business agenda. Mr. Logsdon stated the a policy for "Board Member reimbursement" under For The Good Of theBoard is being withdrawn. Mr. Logsdon also reviewed the hearing schedule for February 13, 2007. He informed the Board that only Ms. Dawn Long and Ms. Roberta VonGunten remain on the schedule. Each individual, Mr. Logsdon stated, has requested a continuance. Mr. Rinehart stated that he would have an answer on Ms. Long's request for continuance by the end of the meeting. Mr. Mays called the question on approval of the meeting agenda as amended.

Motion #1: Mr. Andrews moved to approve the meeting agenda as amended. Ms. Ciarlariello seconded the motion.
Discussion: None. Motion carried:8-0.

Ms. Adams arrived

Agenda item 1.2: Approval of previous Board Meeting Minutes

Draft meeting minutes from the previous Board meeting on December 11 & 12, 2007, were provided to members in advance of the meeting for review.

Mr. Mays asked the membership if they had the opportunity to review the minutes. All answered affirmatively. Ms. Ciarlariello stated there were a few non-substantive typographical errors to review. Mr. Logsdon stated that Mr. Rinehart had handed him some corrections prior to the meeting. He reviewed the corrections.

Motion #2: Ms. Gilligan moved to approve the meeting minutes from December 11 & 12, 2007, as corrected. Ms. Traband seconded the motion. Discussion: None. Motion carried: 9-0.

Agenda item #2: ADMINISTRATIVE RULES HEARINGS

A public hearing on proposed rules began at 1:12 p.m. Mr. Mays explained the hearing process and had each member of the board introduce themselves. He then asked Mr. Logsdon to list the rules under consideration:

- Proposed Amended Rules:

- 4761:1-5-02:** Application form requirements.
- 4761:1-6-01:** Qualifications to obtain a certificate of registration.
- 4761:1-6-02:** Application form requirements to apply for a certificate of registration.
- 4761:1-6-03:** License and certificate of registration issuance and display.
- 4761:1-7-01:** Qualifications for license renewal.
- 4761:1-7-02:** Qualifications for certificate of registration renewal.
- 4761:1-9-02:** Standards for maintaining a facility.
- 4761:1-9-03:** Standards for maintaining equipment.
- 4761:1-9-04:** Client records.
- 4761:1-9-05:** Personnel.

- Proposed New Rules:

- 4761:1-15-03:** Transfer of Authorization to New Facility or New Ownership.
- 4761:1-15-03:** Requirement to provide board contact information to clients.

The Court Reporter was Sheryl A. Bennett, Deposition Specialists, 35 E. Gay St., Suite 300, Columbus, Ohio 43215.

Ms. Bockbrader, Assistant Attorney General called Mr. Logsdon as a witness for the Ohio Respiratory Care Board.

Mr. Logsdon certified that the following exhibits were maintained in the course of daily business for the board.

The following states exhibits were introduced.

1 – Letter of original electronic rules filing with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission on January 11, 2008 for each rule under consideration.

2 – Copy of Public Hearing Notice filed on January 11, 2008.

3 – Full copy of the proposed new and amended rules and rules summary and fiscal analyses filed with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission.

4 - Electronic mail, dated January 22, 2008, from Kam Yuricich, Ohio Association of Medical Equipment Services

There were no witnesses or verbal testimony provided

Exhibits 1 – 4 were admitted. The hearing concluded at 10:00 a.m.

Motion #3: Mr. Marx moved the following resolution:

WHEREAS, the Ohio Respiratory Care Board may issue an order adopting proposed rules in accordance with Chapter 119 of the Revised Code;

BE IT RESOLVED that:

(1) The Ohio Respiratory Care Board hereby authorized the Executive Director to final file the following rules after Joint Committee on Agency Rule Review (JCARR) jurisdiction ends:

(2) To adopt new rules:

New rules:

4761:1-15-03: Transfer of Authorization to New Facility or New Ownership.

4761:1-15-03: Requirement to provide board contact information to clients.

Amended rules:

4761:1-5-02: Application form requirements.

4761:1-6-01: Qualifications to obtain a certificate of registration.

4761:1-6-02: Application form requirements to apply for a certificate of registration.

4761:1-6-03: License and certificate of registration issuance and display.

4761:1-7-01: Qualifications for license renewal.

4761:1-7-02: Qualifications for certificate of registration renewal.

4761:1-9-02: Standards for maintaining a facility.

4761:1-9-03: Standards for maintaining equipment.

4761:1-9-04: Client records.

4761:1-9-05: Personnel.

Mr. Andrews seconded the motion. Discussion: Mr. Marx noted that the name for the Joint Commission on Accreditation for Health Organizations has changed to only Joint Commission. Mr. Logsdon stated the rule used the original wording, because the law is written that way. Mr. Marx stated that the HME committee had reviewed proposed rule 4761:109-05 and found the criminal background check proposal didn't meet the Board's needs. He suggested amending proposed rule 4761:1-9-05 to require that a government agency in the state of residence should perform the criminal background check for HME employees. Mr. Logsdon questioned if a BCI&I equivalent existed in other states. Ms. Gilligan stated the Board should identify a specific entity in other states for criminal background checks. Ms. Bockbader informed the board she would have to research the issue, but assumes each state has a similar agency. Dr. Cohn asked if the the rule could be amended to allow the Board to determine the need for criminal background checks. Dr. Cohn asked if the Board does not require Ohio background checks would it not be possible that a person could have an Ohio infraction that would not be caught by another state. Mr. Mays stated that he was aware of instances where background checks were required from every state where an employee had been resident. Ms. Gilligan asked if there were any services that looked at all states. Mr. Logsdon stated the FBI could, but an agency need specific legislative authority. Mr. Marx restated his belief that Ohio background checks are useless for non-resident employees. Mr. Mays rhetorically inquired about the purpose of the amendment, stating its purpose is to protect the citizens in Ohio. Ms. Gilligan agreed, stating background checks should be required for anyone that has contact with patients in the home. Mr. Logsdon asked the Board to consider, at minimum, background checks from the state of residence. Mr. Mays asked if the rule could be withdrawn. Ms. Gilligan recommended developing a list of acceptable background check services. Mr. Rinehart recommended withdrawing the rule. Ms. Gilligan inquired about the Executive Director's preference. Mr. Logsdon recommended withdrawing the rule and refiling later. Mr. Marx withdrew his motion.

Motion #4: Ms. Ciarlariello moved to withdraw proposed draft rule 4761:1-9-05. Ms. Gilligan seconded the motion.
Motion carried: 9 -0.

Motion #5: Mr. Andrews moved the following resolution:

WHEREAS, the Ohio Respiratory Care Board may issue an order adopting proposed rules in accordance with Chapter 119 of the Revised Code;

BE IT RESOLVED that:

(3) The Ohio Respiratory Care Board hereby authorized the Executive Director to final file the following rules after Joint Committee on Agency Rule Review (JCARR) jurisdiction ends:

(4) To adopt new rules:

New rules:

4761:1-15-03: Transfer of Authorization to New Facility or New Ownership.

4761:1-15-03: Requirement to provide board contact information to clients.

Amended rules:

4761:1-5-02: Application form requirements.

4761:1-6-01: Qualifications to obtain a certificate of registration.

4761:1-6-02: Application form requirements to apply for a certificate of registration.

4761:1-6-03: License and certificate of registration issuance and display.

4761:1-7-01: Qualifications for license renewal.

4761:1-7-02: Qualifications for certificate of registration renewal.

4761:1-9-02: Standards for maintaining a facility.

4761:1-9-03: Standards for maintaining equipment.

4761:1-9-04: Client records.

Mr. Rinehart seconded the motion. Discussion: None. Motion carried: 9-0.

Agenda item #3: OFFICER AND STAFF REPORTS

Agenda item 3.1: President's Report (Exhibit C)

Mr. Mays filed a written report. He reviewed the following:

1. Mr. Mays listed the current board members facing expired terms in March 2008. He encouraged members interested in re-appointment to file the proper paperwork with the Governor's office and send in a letter requesting re-appointment. He also encouraged members to support others that may seek re-appointment. Mr. Mays stated that he believes members should seek more than one term when possible to preserve continuity. Ms. Ciarlariello and Ms. Gilligan expressed interest in reappointment. Ms. Traband declined, stating her schedule would not permit it.

2. Mr. Mays reminded members to file their financial disclosure forms on time and to inform Mr. Logsdon when the task was completed.

3. Last, Mr. Mays reminded members that April was the month the membership selects Board officers. He stressed that members interested should consider their availability and access.

Agenda item 3.2: Executive Director's Report (Exhibit D)

Mr. Logsdon filed a written report. A verbal review of his report was provided.

1. Mr. Logsdon presented the FY 2008, 3rd Quarter financial activity report. He reported that FY 2008 budget balances are currently in "the black." Mr. Logsdon stated that expenses will rise during the 3rd and 4th quarter of the year due to license renewal activities. He also informed the Board that a controlling Board request was filed for \$13,817 in FY '08 and \$13,921 in FY '09 to adjust for FY '07 expenses paid during the current fiscal year and to anticipate addition fringe benefit expenses. Mr. Logsdon provided members with current budget balances and expense figures. Last, he reported that the Governor's office has met with the state agencies and outlined the fiscal challenges facing the State of Ohio during FY '08 and '09. Mr. Logsdon stated that budget control measures will be adopted by General Revenue Funded agencies, but not non-GRF agencies at this point in time. Mr. Logsdon stated that travel restrictions and equipment purchase restrictions have been imposed.

2. Mr. Logsdon gave an update on fiscal year '08 revenue generation in each licensing category. In addition, he reviewed the current licensing stats in each license category.

3. Mr. Logsdon reported that all paperwork for license and limited permit renewal have been ordered and mailing of applications will commence on or about March 15, 2008. Mr. Logsdon estimated that the Board will renew nearly 7000 RCP licenses, 250-290 limited permits, 200 home medical equipment licenses and 300 plus home medical equipment registrations.

4. Mr. Logsdon informed the Board that all ORC 119.032 rule review activities will be completed at the close of business. In addition, he stated that nine amended and two new rules will be filed. The earliest possible effective date for these rules is March 27, 2008.

5. Mr. Logsdon gave an update on legislative activity. He announced that Sub. H.B. 104, had been passed by the Ohio General Assembly, was signed into law, and will become effective on March 28, 2008. Mr. Logsdon informed the Board that a new application had been designed and, if approved, would be placed on the Board's website for downloading. Additionally, a new rule has been drafted, which Mr. Logsdon stated he be asking for filing authorization.

6. Mr. Logsdon reported that he has met with representatives of the Ohio Association of Medical Equipment Services (OAMES) to discuss some of the Board's initiatives. He reported that OAMES appears willing to work with the Board on some of the clean-up changes and suggested a few State Representatives that may be willing to help.

Additionally, Mr. Logsdon stated he filed a request with the Office of Budget and Management to update the language on renewing licenses and certificates of registration found in ORC 4752.05 and 4752.12. He reported that OBM seems willing to work with the Board. If approved the changes will become part of the annual corrective bill.

7. Last, Mr. Logsdon reported on travel he incurred in the scope his duties and future travel currently on the calendar. Mr. Logsdon asked the membership if they would like him to continue lecturing to respiratory care educational programs about the licensing requirements in light of the new OBM restrictions on travel. Members directed Mr. Logsdon to continue meeting this objective of the agency.

Agenda item 3.3: HME Manager's Report (Exhibit E)

Ms. Tatum filed a written report. She summarized her report and addressed the following:

1. Ms. Tatum reported that the Board staff approved 6 new HME licenses and 9 new HME certificates of registration since the Board's last meeting in December 2007. Additionally, she reported she had 11 pending applications in process.

2. Ms. Tatum reported that the agency has scheduled 50 inspections and completed 33 since the start of the fiscal year.

3. Ms. Tatum reported on the total revenue collected through licensing fees and inspections.

4. Last, Ms. Tatum provided the Board with an update on several ongoing projects. Highlighted was the status of out-of-state inspection packets. Ms. Tatum reported that the self-reporting packets have been mailed and the agency was receiving returns. Thus far, she reported the reaction of licensees has been positive.

Motion #6: Ms. Ciarlariello moved to approve the President's report and Staff reports. Mr. Rinehart seconded the motion.
Discussion: None. Motion carried: 9-0.

Agenda item #4: BOARD COMMITTEE REPORT

Agenda item 4.1: Rules Committee Report – Susan Ciarlariello

Ms. Ciarlariello reported that the committee reviewed several groups of rules in compliance with ORC 119.032. Ms. Ciarlariello stated the committee reviewed recommended changes to OAC rules 4761-1-02, 4761-10-01, and 4761-11-15. The changes are as follows:

4761-1-02: provides language that changes official board office hours to 8 am to 5 pm.

4761-10-01: provides for amendments to the professional ethics rule by clarifying existing language and adding three new ethics standards addressing patient abuse and sexual conduct.

4761-11-15: provides for amendment of the existing rule by changing the duration of time to exchange documents and witness lists prior to hearing.

Next, the committee reviewed no change rules:

4761-9-07	Auditing for compliance with RCCE requirements.
4761-10-02	Proper use of credentials.
4761-10-03	Providing information to the board.
4761-11-01	Filing of complaints.
4761-11-02	Administrative procedure for refusal to issue or renew a license or permit, deny, suspend, or revoke a certificate or license.
4761-11-03	Board imposition of penalties.
4761-11-04	Representation; appearance; communication; applicability.
4761-11-05	Authority and duties of the board or attorney hearing examiner.
4761-11-06	Continuance of hearing.
4761-11-07	Filing.
4761-11-08	Service.
4761-11-09	Computation and extension of time.
4761-11-10	Motions.
4761-11-11	Transcripts.
4761-11-12	Subpoenas for purposes of hearing.
4761-11-13	Mileage reimbursement and witness fees.
4761-11-14	Reports and recommendations.
4761-11-16	Depositions and transcripts of prior testimony.
4761-11-17	Witnesses.

- 4761-11-18 Expert Testimony.
- 4761-11-19 Exhibits.
- 4761-12-01 Initial application fee.
- 4761-12-02 Renewal fees.
- 4761-12-03 Replacement of license or certificate.

The Committee corrected an error on 4761-10-01.

Next, Ms. Ciarlariello reported the Committee reviewed home medical equipment rules scheduled for ORC 119.032 review. She stated the committee reviewed the following recommended change rules:

- 4761:1-1-02: Notice of board meeting. The rule change proposes to change regular office hours to 8 am to 5 pm.
- 4761:1-2-03: Board records. The proposed rule change corrects a typographical error. No substantive change.
- 4761:1-3-01: Definition of terms. The proposed rule change corrects a typographical error. No substantive change.
- 4761:1-5-01: Qualifications for licensure. The proposed change would clarify paragraph (B)(3) by adding language stating product and professional liability insurance coverage must be contained in the total aggregate amount.
- 4761:1-9-01: Standards of practice for license holders. The proposed change modifies paragraph (D)(4) by removing specific mention of accrediting organizations recognized by the Board and replacing the language with general recognition of organizations under OAC 4761:1-4-01.
- 4761:1-12-07: Exchange of documents and witness lists. The proposed change provides for amendment of the existing rule by changing the duration of time to exchange documents and witness lists prior to hearing.

Next, the committee reviewed no change rules:

- 4761:1-1-01 Public hearings on adoption, amendment, or rescission of rules: methods of public notice
- 4761:1-2-01 Board organization
- 4761:1-2-02 Personnel
- 4761:1-2-04 Personal information systems
- 4761:1-4-01 Recognition of accrediting organizations
- 4761:1-5-03 Failure to file a complete application for a license
- 4761:1-6-04 Failure to file a complete application for a certificate of registration
- 4761:1-7-03 Lapsed license or certificate of registration reinstatement procedure
- 4761:1-8-04 License and certificate of registration replacement fees
- 4761:1-9-01 Standards of practice for license holders
- 4761:1-10-01 Filing of complaints
- 4761:1-10-02 Authority of board investigators
- 4761:1-10-03 Licensees and certificate holders must comply with investigations conducted by the board.
- 4761:1-11-01 Administrative procedure for refusal to issue or renew a license, suspend, or revoke a license or impose a fine or other disciplinary action.
- 4761:1-11-02 Board imposition of penalties
- 4761:1-11-03 Filing a request with the Ohio attorney general's office for injunctive relief or civil penalties.
- 4761:1-11-04 Other disciplinary action
- 4761:1-12-01 Representation; appearance; communication; applicability
- 4761:1-12-02 Authority and duties of the board or attorney hearing examiner
- 4761:1-12-03: Filing
- 4761:1-12-04 Motions

4761:1-12-05	Service
4761:1-12-06	Computation and extension of time
4761:1-12-07	Exchange of documents and witness lists
4761:1-12-08	Exhibits
4761:1-12-09	Witnesses
4761:1-12-10	Subpoenas for purposes of hearing
4761:1-12-11	Expert testimony
4761:1-12-12	Mileage reimbursement and witness fees
4761:1-12-13	Depositions and transcripts of prior testimony
4761:1-12-14	Continuance of hearing
4761:1-12-15	Reports and recommendations
4761:1-12-16	Transcripts
4761:1-12-17	Prior action by the board
4761: 1-13-01	Continuing education standards

Agenda item 4.2: HME Committee Report – Joel Marx

Mr. Marx reported that the committee reviewed the agencies current inspection report filed by the HME Manger. He stated that the committee was pleased hear that the Board's out-of-state inspection process was being implemented and recent feedback would seem to be positive. Mr. Marx also reported that the committee reviewed the list of HME facilities issued licenses and certificates of registration and the committee will recommend ratification of these licenses and certificates of registration under new business.

Mr. Marx also reported that the committee reviewed a request from the Ohio Department of Job and Family Services, Ohio Medicaid, to review a list of new reimbursement codes to determine if the equipment reimbursed would constitute home medical equipment under ORC 4752.01. After reviewing the documentation filed by ODJFS, the committee concluded that the new codes do no constitute HME as it is defined under ORC Section 4752.01 and OAC rule 4761-3-02. The list filed by ODJFS will be attached to the minutes as Exhibit F .

Mr. Marx also reported that the committee considered several inquiries from the staff concerning field circumstances being encountered by the inspectors. The first issue reviewed was how to inspect facilities that contract a number of the services rendered by the facility. The committee directed that staff to treat similar facilities no differently than full service facilities. The standards, the committee opined, cannot be waived and the facilities are required to demonstrate how their facility complies, even if the standard is fulfilled by the contract service. The committee also considered Physician-owned HME facilities and the potential that exists for referral violations under the federal Stark law. Although the committee acknowledges the potential for unscrupulous activity, staff did not present enough information to formulate an opinion on the matter. At this point, the committee is requesting more information from staff and legal counsel. Mr. Marx stated that the committee expressed its support for the medical decisions made to benefit the citizens of Ohio.

Agenda item 4.3: Scope of Practice Committee Report – Robert Cohn, M.D.

Dr. Cohn reported that the Scope of Practice Committee met and considered three scope of practice inquiries:

The committee considered three scopes of practice inquiries:

A. Frank H. McCarnet, Attorney at Law

Inquiry: Does an HME facility working under contract for a hospice care program in Ohio need an HME license, if the facility only receives payment for services from the hospice program?

Dr. Cohn stated that the committee approved a response stating that the service being provided was clearly HME based upon the definition of practice contained under ORC 4752.01, but that the service is exempted since the facility is an direct agent of a hospice care program, which is fully exempted under ORC 4752.02.

B. Eric Englehart, Ohio Health

Inquiry: Is it within the scope of respiratory care practice to perform nasal swabbing for the purpose of testing the sample for MRSA culture?

Dr. Cohn stated that committee approved a response stating the procedure was within the scope of respiratory care practice.

C. Kathleen A. Koch, Lakewood Hospital

Inquiry:

- (1) Can a non-licensed EKG tech replace an empty tank of oxygen and switch the device over?
- (2) If the respiratory care department developed oxygen competencies for the EKG tech, would this be permissible under law?

Dr. Cohn stated that the committee, after great debate, determined that the Board did not have jurisdiction to address the inquiry. Dr. Cohn stated that the inquiry asked if respiratory care could develop a competency program for unlicensed personnel. The committee concluded that respiratory care provider had no delegation authority.

Agenda item 4.4: Education Committee – Margaret Traband

Ms. Traband informed the Board that the committee did not meet.

Agenda item #5: PROBABLE REVIEW COMMITTEE REPORT

Motion #7: Mr. Rinehart moved to enter executive session pursuant to Revised Code Section 121.22, for the purpose of considering the investigation of charges or complaints against licensees or regulated individuals under the board's jurisdiction. Mr. Andrews seconded the motion. Discussion: None. Roll Call vote:

Susan M. Ciarlariello -	Yes	Anita Adams -	Yes
Dana Rinehart -	Yes	Joel Marx -	Yes
Robert Cohn -	Yes	Eugene Andrews-	Yes
Margaret Traband -	Yes	Marc Mays -	Yes
Carol Gilligan -	Yes		

Motion carried.

The board entered executive session at 3:03 p.m. and returned to regular, public session at 3:13 p.m. All voting members of the board, Ms. Katherine Bockbrader, Mr. Logsdon, and Mr. McLean were present during executive session.

**Names and identifying information was redacted from discussion and proposed notices during the course of executive session deliberation. Matters were referred to only by case number. Identifying information was added during the writing of the minutes based upon the correlating case number.*

Agenda item 5.2: Approval of Opportunity for Hearing Notices

Motion #8 Ms. Traband moved to issue an opportunity for hearing notice as presented to the Board in the matters of :

1. Case # 2007ORCB056 (Vincent Aiello) for allegedly violating Section 4761.09 (A)(2) of the Revised Code and rule 4761-10-01 (I) .
2. Case # 2008ORCB005 (Rebecca D' Amico) for allegedly violating Section 4761.09 (A)(1) and (2) of the Revised Code and rule 4761-10-01 (I) of the Administrative Code.
3. Case # 2008ORCB017 (Jessica Schenk-Ackley) for allegedly violating Section 4761.09 (A)(2) of the Revised Code.
4. Case # 2008ORCB021(Eric Doherty) for allegedly violating Section 4761.09 (A)(2) of the Revised Code.
5. Case # 2007ORCB023 (Tareva Stretton) for allegedly violating Section 4761.09 (A)(2) of the Revised Code.
6. Cases # 2008OHME0085 (International Quality Healthcare Corporation) for allegedly violating Section 4752.09 (A)(1) and (3) of the Revised Code.

Mr. Rinehart seconded the motion. Discussion: None. Motion carried: 9-0.

Agenda item 5.3 Approval of Consent Agreements (Exhibit G collective)

Motion #9: Ms. Ciarlariello moved to approve consent agreements between the Ohio Respiratory Care Board and the following persons respectively:

2008ORCB016	Jennifer Bryan
2007HME004	Columbus Sleep Consultants
2007HME015	The Medical Sales Group Inc.
2008HME004	Home Choice Healthcare, Inc.
2008HME006	North Canton Medical Foundation
2008HME007	L & L Medical Services
2008HME010	Orbit Medical of Columbus, Inc.
2008HME011	Virtue Medical Supply Company
2008HME012	Canfield Medical Supply
2008HME017	Center for Research in Sleep Disorders
2008HME026	InfuSystem, Inc.
2008HME032	Kornegor Medical Equipment LTD.
2008HME038	M & J Medical Supply LLC
2008HME039	New Visions Medical Equipment, Inc.
2008HME040	Pure Oxygen Services
2008HME041	Electric Mobility Corporation
2008HME042	Tri-State Medical & Bariatric Solutions, Inc.
2008HME048	Advanced Technologies Inc.
2008HME052	Mahoning Medical Equipment Inc.
2008HME055	Keesling Rehab Systems
2008HME057	Wright Care Home Medical Supply, Inc.
2008HME058	Premier Medical Supplies, Inc.
2008HME061	Alley Healthcare Inc.
2008HME063	Cousins Medical Supplies, Inc.

2008HME065 Hartman Respiratory Care
2008HME066 Kathco Medical Supply
2008HME067 Medical Shoppe Inc.
2008HME068 The Oxygen Store, Inc.
2008HME069 Pack Medical, Inc.
2008HME070 Physicians Diagnostic Sleep Technology Specialists
2008HME074 Med-Ox Concentrators
2008HME081 Lincare Inc., America's Best Medical Equipment

Mr. Rinehart seconded the motion. Discussion: Mr. Mays stated that the Board's minutes shall serve as the official journal of proceedings in this matter and that the Board's President shall sign the Original Consent Agreement, which shall constitute the Order of the Board in each of the aforementioned. The Consent Agreements shall be enter upon the official Journal of these proceeding as an exhibit to this record (Exhibit E collective). Motion carried: 7 – yes, 2- abstained (Mays and Marx)

Agenda item #6: NEW BUSINESS

Agenda item 6.1: Application ratification for licenses and limited permits (Exhibit H collective)

Lists of licenses and limited permits issued since the Board's December 11, 2007, meeting pursuant to Rule 4761-2-02 of the Ohio Administrative Code were mailed to members in advance of the meeting.

Motion #10: Mr. Rinehart moved to place upon the minutes of the February 12, 2008 meeting, the names of respiratory therapists and limited permit applicants who met the qualifications for their respective authorization, pursuant to Sections 4761.04 and 4761.05 of the Revised Code and associated rules there under, and who were issued a license or limited permit by the Executive Director of the Board on the following dates: December 20, 2007, January 3, 2008, January 17, 2008, January 30, 2008, and February 8, 2008. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 9-0.

Agenda item 6.2: Application ratification for HME license and certificate of registration (Exhibit I collective)

Lists of HME licenses and certificates of registration issued since the Board's December 11, 2007, meeting pursuant to resolution of the Board were mailed to members in advance of the meeting.

Motion #11: Mr. Marx moved to place upon the minutes of the February 12, 2008 meeting, the names of Home Medical Equipment facility applicants who met the qualifications for their respective authorization, pursuant to Sections 4752.05 and 4752.12 of the Revised Code and associated rules there under, and who were issued a licenses on December 13, 2007, December 18, 2007, December 27, 2007, December 31, 2007, January 18, 2008, and February 5, 2008 and Certificate of Registrations on December 19, 2007, December 24, 2007, December 31, 2007, January 24, 2008, January 30, 2008, and February 5, 2008 by the Executive Director of the Board of the Board. Mr. Rinehart seconded the motion. Discussion: None. Motion carried: 9-0.

Agenda item 6.3: Resolution to file draft rules in compliance with ORC 119.032

Motion #12: Mr. Rinehart moved the following resolution:

WHEREAS, the Ohio Respiratory Care Board may issue an order adopting proposed rules in accordance with Chapter 119 of the Revised Code;

BE IT RESOLVED that:

(1) The Ohio Respiratory Care Board hereby authorized the Executive Director to file the following rules on or after February 12, 2008:

RCB ORC 119.032 rules, no change:

4761-1-01	Public hearings on adoption, amendment, or rescission of rules: methods of public notice.
4761-2-01	Board organization.
4761-2-02	Personnel.
4761-2-04	Personal information systems.
4761-3-01	Definitions of terms.
4761-5-02	Admission to the Ohio credentialing examination.
4761-5-05	Non-resident practice of respiratory care.
4761-5-06	Respiratory care practice by polysomnographic technologists.
4761-7-01	Original license or permit and identification card.
4761-7-03	Scope of respiratory care defined.
4761-7-04	Supervision.
4761-7-05	Administration of medications.
4761-8-01	Renewal of license or permits.
4761-8-02	Licensees not in active practice.
4761-9-01	Definition of respiratory care continuing education.
4761-9-02	General RCCE requirements and reporting mechanism.
4761-9-03	Activities which do not meet the Ohio RCCE requirements.
4761-9-04	Ohio respiratory care law and professional ethics course criteria.
4761-9-05	Approved sources of RCCE.
4761-9-07	Auditing for compliance with RCCE requirements.
4761-10-02	Proper use of credentials.
4761-10-03	Providing information to the board.
4761-11-01	Filing of complaints.
4761-11-02	Administrative procedure for refusal to issue or renew a license or permit, deny, suspend, or revoke a certificate or license.
4761-11-03	Board imposition of penalties.
4761-11-04	Representation; appearance; communication; applicability.
4761-11-05	Authority and duties of the board or attorney hearing examiner.
4761-11-06	Continuance of hearing.
4761-11-07	Filing.
4761-11-08	Service.
4761-11-09	Computation and extension of time.
4761-11-10	Motions.
4761-11-11	Transcripts.
4761-11-12	Subpoenas for purposes of hearing.
4761-11-13	Mileage reimbursement and witness fees.
4761-11-14	Reports and recommendations.
4761-11-16	Depositions and transcripts of prior testimony.
4761-11-17	Witnesses.
4761-11-18	Expert Testimony.
4761-11-19	Exhibits.
4761-12-01	Initial application fee.
4761-12-02	Renewal fees.

4761-12-03 Replacement of license or certificate.

HME ORC 119.032 rules, no change:

4761:1-1-01 Public hearings on adoption, amendment, or rescission of rules: methods of public notice
4761:1-2-01 Board organization
4761:1-2-02 Personnel
4761:1-2-04 Personal information systems
4761:1-4-01 Recognition of accrediting organizations
4761:1-5-03 Failure to file a complete application for license
4761:1-6-01 Qualifications to obtain a certificate of registration
4761:1-6-04 Failure to file a complete application for a certificate of registration
4761:1-7-03 Lapsed license or certificate of registration reinstatement procedure
4761:1-8-04 License and certificate of registration replacement fees
4761:1-10-01 Filing of complaints
4761:1-10-02 Authority of board investigators
4761:1-10-03 Licensees and certificate holders must comply with investigations conducted by the board.
4761:1-11-01 Administrative procedure for refusal to issue or renew a license, suspend, or revoke a license or impose a fine or other disciplinary action.
4761:1-11-02 Board imposition of penalties
4761:1-11-03 Filing a request with the Ohio attorney general's office for injunctive relief or civil penalties.
4761:1-11-04 Other disciplinary action
4761:1-12-01 Representation; appearance; communication; applicability
4761:1-12-02 Authority and duties of the board or attorney hearing examiner
4761:1-12-04 Motions
4761:1-12-05 Service
4761:1-12-06 Computation and extension of time
4761:1-12-08 Exhibits
4761:1-12-09 Witnesses
4761:1-12-10 Subpoenas for purposes of hearing
4761:1-12-11 Expert testimony
4761:1-12-12 Mileage reimbursement and witness fees
4761:1-12-13 Depositions and transcripts of prior testimony
4761:1-12-14 Continuance of hearing
4761:1-12-15 Reports and recommendations
4761:1-12-16 Transcripts
4761:1-12-17 Prior action by the board

RCB ORC 119.032 rules, amended:

4761-1-02 Notice of board meetings.
4761-2-03 Board records.
4761-4-01 Approval of educational programs.
4761-4-02 Monitoring of Ohio respiratory care educational programs by the education committee of the Ohio respiratory care board.
4761-5-01 Recognized examinations.
4761-5-04 License application procedure.
4761-6-01 Limited permit application procedure.
4761-10-01 Ethical and professional conduct.

4761-11-15 Exchange of documents and witness lists.

HME ORC 119.032 rules, amended:

4761:1-1-02 Notice of board meetings
4761:1-2-03 Board records
4761:1-3-01 Definition of terms
4761:1-5-01 Qualifications for licensure
4761:1-9-01 Standards of practice for license holders
4761:1-12-07 Exchange of documents and witness lists

Ms. Adams seconded the motion. Discussion: None. Motion carried: 9-0.

Agenda item 6.4: H.B. 104 Criminal Background Checks: proposed rules and application changes (Exhibit J)

A draft rule and initial application form were provided to the Board for consideration. The members were given an opportunity to review the forms, question staff and make recommendations for changes.

Mr. Logsdon explained the provisions of the new law and provided members with a copy of the statutory changes. He stated that the new law will go into effect on March 28, 2008 and new forms must be in place to meet the needs. Mr. Logsdon stressed provisions of the bill that will not allow the agency to issue a license or limited permit unless a background check is on record and the Board determines that the results of the check do not make the applicant ineligible for practice. Mr. Logsdon informed the Board that the Attorney General's office is looking at the language. He stated there appears to be some debate concerning applications on record prior to the effective date of the act. Members expressed some general concerns with the process or the overall need for the legislation, but understood the mandate.

Mr. Logsdon stated that the proposed rule before the Board would recognize a background check for three months. Members debated this proposal at length. It was noted that students may have to obtain at least three background checks: one to enter the educational program, one from a potential employer, and one to obtain a limited permit. In addition, the members noted that the draft rule would require another prior to obtaining a license. It was the consensus of the membership that the burden was unnecessary and would likely not produce different results. Mr. Logsdon and Ms. Bockbrader explained the background check process, as they understood it. Following discussion, members asked if the draft rule could extend the recognition period from three months to six months. There was no opposition to this recommendation.

Motion #13: Mr. Mays moved to approve the respiratory care initial license/limited permit application and authorize the Executive Director to file the draft rule as amended. Mr. Rinehart seconded the motion. Discussion: Ms. Traband confirmed that the change recommended and adopted would extend the recognition period from three months to six months. Mr. Mays confirmed the change. Mr. Logsdon stated some amendments might be necessary on the instruction page. No further discussion. Motion carried: 9-0.

Agenda item 6.5: Approval of Scope of Practice Inquiries (Exhibit K)

Motion #14: Dr. Cohn moved to approve the draft inquiry responses as presented during the Scope of Practice Committee report. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 9-0.

Mr. Mays directed that the final responses will be attached to minutes as an exhibit for the record.

Agenda item 6.6: Office Policy Updates

Mr. Logsdon stated he was in the process of amending the Board's office tardiness policy and policies on office hours and flextime, in accordance with the Governor's directives. He advised the Board of the proposed changes, but stated some additional amendments may yet be needed. Mr. Mays inquired if he needed to approve the changes. Mr. Logsdon stated the President would need to sign off on the changes.

Agenda item #7: OPEN FORUM

No one appeared.

Agenda item #8: FOR THE GOOD OF THE BOARD

No action taken. Mr. Logsdon stated that he was pulling a proposed policy that would support paying members on an hourly basis rather than a per diem basis. He stated he would like to research the matter further. General discussion ensued about the purpose and necessity of such a policy. Mr. Mays stated the policy makes sense and should be developed further. No further discussion.

Agenda item #9: ADJOURNMENT

Hearing no further matters, the meeting adjourned the meeting at 3:50 p.m.

Day 2, February 13, 2008

Presiding: Marc Mays, President, called the meeting to order on February 13, 2008 at 10:05 a.m. in room West B & C, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215 for holding administrative hearings. Present were Marc Mays, President Robert Cohn, M.D., Vice President, Anita Adams, R.R.T., R.C.P., Dana Rinehart, Public Member, Joel Marx, Susan Ciarlariello, R.R.T., R.C.P., Margaret Traband, R.R.T., R.C.P., and Carol Gilligan. Mr. Andrews was excused from the meeting. Mr. Mays noted for the record that a quorum of the members of the board was present and that business could be conducted.

Mr. Mays reviewed the hearing schedule for the day.

Agenda item 1.1: Hearing in the Matter of Dawn B. Long

The matter of Dawn B. Long came before the following members of the Ohio Respiratory Care Board on February 13, 2008 at approximately 10:05 a.m. in room South A, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215. Present were Marc Mays, President Robert Cohn, M.D., Vice President, Anita Adams, R.R.T., R.C.P., Dana Rinehart, Public Member, Joel Marx, Susan Ciarlariello, R.R.T., R.C.P., Margaret Traband, R.R.T., R.C.P., and Carol Gilligan. Mr. Andrews was excused. Mr. Mays noted for the record that a quorum of the Board was present and business could be conducted. Marc Mays, R.R.T., R.C.P. recused himself from the proceedings based upon his role as the Board liaison to the Investigatory Probable Review Committee. Melinda Snyder Osgood, Assistant Attorney General, represented the state of Ohio. Ms. Long appeared with legal counsel: Brett M. Mancino, Attorney at Law, Ritzler, Coughlin & Swansinger, Ltd., 1360 East Ninth Street, 1000 IMG Center, Cleveland, Ohio 44114. Sheryl A. Bennett was the Court Reporter, Deposition Specialists, Inc., 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Preliminary matters: None.

Each party gave a brief opening statement. Following the open statements, Ms. Snyder Osgood presented her case in chief.

Ms. Snyder Osgood called the following witnesses:

1. Timothy E. Price, Cardiopulmonary Manager, Huron Hospital, Cleveland, Ohio.

During testimony, Mr. Price identified for the record State's Exhibit F, G, H, I, and J as true and accurate copy of the records he provided to the Board.

2. Brenda S. Meyers, Respiratory Care Professional. The Board took a break from 11:20 a.m. to 11:26 a.m. At 11:58 a.m. the Board broke for lunch. The Board returned from lunch and went into public session at 1:13 p.m.

3. F. Herbert Douce, Associate Professor and Director, Ohio State University, Respiratory Therapy Division.

Upon calling F. Herbert Douce, Mr. Rinehart asked if respondent's counsel had any objection to Mr. Douce's qualifications as an expert witness. Respondent's Attorney, Mr. Mancino, stated that he would stipulate that Mr. Douce is an expert. During testimony, Mr. Douce identified for the record State's Exhibits K & L as true and accurate copy of the records he provided to the Board.

4. Jason P. McLean, Investigator, Ohio Respiratory Care Board.

During testimony, Mr. McLean identified for the record State's Exhibit A as true and accurate copy of the record maintained by Board. Respondent's counsel, Mr. Mancino, stipulated to the admission of State's Exhibits B, C, D, E, M, N, and O.

Following the State's case in chief, Ms. Snyder Osgood moved for the admission of State's Exhibits. Mr. Mancino filed no objection to the admission of exhibits. MR. Rinehart admitted State's Exhibits A through O.

State's Exhibits admitted:

A - Notice of Opportunity for Hearing dated August 15, 2007 (correction noted), sent to Dawn B. Long by Certified Mail/Return Receipt #70042510000173526124 and a sign return receipt.

B (1) . Letter dated September 11, 2007, from Brett M. Mancino, Attorney at Law.

B (2) - Letter from Brett M. Mancino, Attorney at Law, requesting a hearing on behalf of Dawn B. Long, filed with the Ohio Respiratory Care Board on September 13, 2007.

B (3) - Notice of Appearance on behalf of Dawn B. Long by Brett M. Mancino, Attorney at Law, filed with the Ohio Respiratory Care Board on September 13, 2007

B (4) - Request for exchange of documents and witness list filed by Brett M. Mancino, Attorney at Law, with the Ohio Respiratory Care Board on September 13, 2007.

C - Notice of Appearance on behalf of the Ohio Respiratory Care Board by Melinda Snyder Osgood, Assistant Attorney General.

- D - Hearing Scheduling letter dated September 17, 2007, mailed to Dawn B. Long by regular mail and copy to Brett M. Mancino, Attorney at Law by Certified Mail/Return Receipt #70042510000173526186 and a sign return receipt.
- E - Request for Continuance of Hearing filed by Brett M. Mancino, Attorney at Law with the Ohio Respiratory Care Board on December 11, 2007.
- F - Investigative report prepared by Tim Price, RRT, Cardiopulmonary Manger.
- G - CERNER system printout for patient number 01335960.
- H - CERNER system printout for patient number 01335960 and Radiometer ABL 700 laboratory results for October 31, 2005.
- I - CERNER system printout for patient number 01443212 and Radiometer ABL 700 laboratory results for December 1, 2005.
- J - CERNER system printout for patient number 01443212.
- K - F. Herbert Douce, Curriculum Vitae.
- L - Expert report filed by F. Herbert Douce, dated January 28, 2008.
- M - Motion to Dismiss filed by Brett M. Mancino, Attorney at Law with the Ohio Respiratory Care Board on January 17, 2008.
- N - Memorandum Contra Respondent's Motion to Dismiss filed by Melinda Snyder Osgood, Assistant Attorney General with the Ohio Respiratory Care Board on January 30, 2008.
- O - Decision and Order to Respondent's Motion to Dismiss.

The Board took a break from 2:05 p.m. to 2:09 p.m.

Following the State's case, Mr. Mancino presented Ms. Long's case-in-chief. He called the following witness for the respondent:

1. Timothy E. Price, Cardiopulmonary Manager, Huron Hospital, Cleveland, Ohio.

Mr. Mancino rested. No respondent's exhibits were submitted.

Each party gave a brief closing statement. The hearing concluded at 2:24 p.m.

Motion #1: Ms. Adams moved to enter executive session pursuant to Revised Code Section 121.22, for the purpose of considering the investigation of charges or complaints against licensees or regulated individuals under the board's jurisdiction.. Mr. Marx seconded the motion. Discussion: None. Roll Call vote:

Susan M. Ciarlariello -	Yes	Anita Adams -	Yes
Dana Rinehart -	Yes	Joel Marx -	Yes
Robert Cohn -	Yes	Margaret Traband -	Yes

Marc Mays - Abstained

Carol Gilligan - Yes

Motion carried.

Prior to entering executive session, Mr. Rinehart instructed voting members of the Board to consider only the allegation contained in the Board's Opportunity for Hearing Notice. Additionally, Mr. Rinehart directed voting members that no conclusions may be drawn from the respondent's decision to not testify. The board entered executive session at 2:26 p.m. and returned to regular, public session at 3:07 p.m. All voting members of the board were present during executive session. Mr. Mays was excused. Mr. Logsdon was asked to remain.

Agenda item 1.1: Findings, Conclusions of Law and Order in the Matter of Dawn B. Long (Exhibit L)

Mr. Mays asked if the Board had reached a decision in the matter of Dawn B. Long and was prepared to read the Order. Mr. Rinehart, Hearing Officer stated that the Board had reached a decision. He asked Mr. Logsdon to read the findings of fact and the conclusions of law in the matter of Dawn B. Long.

Mr. Mays asked if the Board was prepared to enter an Order upon the record. Mr. Rinehart stated the membership was prepared to do so.

Motion #2: Dr. Cohn moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Dawn B. Long is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby REPRIMANDS Dawn B. Long for violating acceptable and prevailing professional standards in the practice of respiratory care. The Board Orders Ms. Long to complete a professional ethics continuing education course, approved by the Executive Director of Board. The Order of the Board shall become effective upon the date of mailing of the Order. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 – abstained.

Mr. Mays stated that the Board's minutes will serve as the official journal of proceedings in this matter. He directed the Executive Director to prepare a final Original Order and that the Board's President shall sign the final Original Order, which shall be attached to the minutes of these proceedings as an exhibit to the record in the matter of Dawn B. Long.

Having no other business, the meeting adjourned at 3:11 p.m.

Secretary's Certification: These are a true account of the proceedings in accordance with Section 121.11 of the Ohio Revised Code, approved by a majority of a quorum of the membership of the Board on April 16, 2008.

Secretary

Witness