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OHIO RESPIRATORY CARE BOARD
77 SOUTH HIGH STREET, 16TH FLOOR
COLUMBUS, OHIO 43215-6108

OFFICIAL BOARD MEETING MINUTES OF April 16, 2008

NOTE ON COMMITTEE MEETINGS

The Board’s Home Medical Equipment Committee met prior to the regular business meeting. Official minutes of the committee meeting were taken and are maintained separate of this journal. Committee Chair, Mr. Marx, gave a Committee Report during the course of the regular business meeting.

Regular Business Meeting

Agenda items #1: CALL MEETING TO ORDER

Presiding: Marc Mays, President, called the meeting to order on April 16, 2008 at 1:40 p.m. in room 1932, 19th 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., Joel Marx, Anita Adams, R.R.T., R.C.P., E. Lucille Kester, R.R.T., R.C.P., and Eugene Andrews, R.R.T., R.C.P. Mr. Mays noted that Ms. Gilligan had been excused from attending 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.

Before taking role, Mr. Mays addressed the membership. Mr. Mays reminded the members that Mr. Dana Rinehart, a dear member of the Board, resigned his position a few weeks ago. Mr. Mays stated that he wanted to go on the record and thank Mr. Rinehart for his service to the Board and the citizens of Ohio. Mr. Mays jokingly asked members to, occasionally, prompt him to move the meeting along, so that he would not miss Mr. Rinehart too much. Mr. Mays also stated that Ms. Margaret Traband’s position was filled. He also, stated on the record, that Ms. Traband’s service to the Board was well appreciated and that her colleagues would miss her. Next, Mr. Mays introduced the Board’s newest member, appointed to replace Ms. Traband, Ms. E. Lucille Kester (Lucy Kester). Ms. Kester stood and introduced herself and her qualifications. Members welcomed her to the Board.

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.

E. Lucille Kester, R.R.T., R.C.P.

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

Joel Marx, HME Provider Member

Staff in attendance:

Christopher H. Logsdon, Executive Director

Jason McLean, Investigator

Marcia Tatum, HME Manager

Others in Attendance:

Melinda Snyder Osgood, Assistant Attorney General

Kam Yuricich, Ohio Association of Medical Equipment Services

For the sake of time, and the best use of the Court Reporter's time, Mr. Mays stated that he would consider Agenda item #5.1, in the matter of E & R Medical.

Agenda item 5.1: Evidentiary Administrative Hearing

The matter of E & R Medical Supply came before the following members of the Ohio Respiratory Care Board on April 16, 2008 at approximately 1:45 p.m. a.m. in room 1932, 19th 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., Joel Marx, Susan Ciarlariello, R.R.T., R.C.P., Eugene Andrews, R.R.T., R.C.P., and E. Lucille Kester, R.R.T., R.C.P. . Mr. Mays noted for the record that a quorum of the Board was present and hearing could continue. Joel Marx, HME member 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. Heidi Funderburk was the Court Reporter, Deposition Specialists, Inc., 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Mr. Mays stated that E&R Medical, Inc. did not request a hearing before the board and was not present. Mr. Mays stated that the hearing is an evidentiary review hearing being held in compliance with Goldman vs. State Medical Board of Ohio, (March 29, 1996), Franklin County Court of Appeals, 95APE 10-1358 (unreported).

Mr. Mays asked the State's Assistant Attorney General, Ms. Snyder Osgood, if there were any preliminary matters. Hearing none, Mr. Mays asked each member and staff present to introduce themselves. Next, Mr. Mays asked Ms. Snyder Osgood to present the State's case, in chief.

Ms. Snyder Osgood presented the members with a packet of exhibits. Ms. Snyder Osgood summarized the case before the Board, stating, in summary, that the Ohio Respiratory Care Board inspected E & R Medical. Ms. Snyder Osgood stated, the Board issued the facility a list of findings that identified deficiencies, the facility failed to respond to the inspection findings, even after several written notifications. Ms. Snyder Osgood stated that the Executive Director of the Ohio Respiratory Care Board, Christopher H. Logsdon, has prepared a signed affidavit attesting to the authenticity of State's Exhibits A through F, contained in the packet. Ms. Snyder Osgood stated that Mr. Logsdon could be called as a witness for the State of Ohio, if necessary. Ms. Snyder Osgood offered a correction to paragraph #5 of Mr. Logsdon's affidavit. Ms. Snyder Osgood stated that Exhibit D was not a third notice of inspection findings, but a survey that was sent but not responded to by E & R Medical, Inc. Hearing no request for Mr. Logsdon's testimony, Ms. Snyder Osgood rested the State's case and moved for the admission of State's Exhibits A through F. Ms. Snyder Osgood asked the Board to consider revocation of the HME license held by E & R Medical. Mr. Mays stated that the Exhibits would be admitted.

State's Exhibits admitted:

- A - Home Medical Equipment Inspection Survey, dated February 8, 2007, completed by Independent Contract Inspector, Timothy Pontius.
- B - Letter of Facility Inspection Findings, dated February 23, 2007, mailed to E & R Medical, Inc. by regular mail.
- C - Letter of Facility Inspection Findings – Second Notice, mailed May 16, 2007, sent to E & R Medical, Inc. by regular mail.
- D - Unlicensed practice survey letter, dated August 13, 2007, mailed to E & R Medical, Inc. by regular mail.
- E - Notice of Opportunity for Hearing, dated December 17, 2007, mailed to E & R Medical, Inc. by Certified Mail Return Receipt No. 70042510000173526803 and a signed return receipt.
- F - Evidentiary Review Hearing Notice, dated January 24, 2008, mailed to E & R Medical, Inc. by regular mail.

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 that only one of the Administrative Hearing scheduled during the morning session actually occurred, due to continuances. He stated that one evidentiary hearing; PSS World Medical, Inc. had signed a Consent Agreement and that the hearing will likely need to be continued pending the outcome of the Board's decision on the Consent Agreement. Mr. Mays inquired if there were any other matters to be changed on the agenda. Ms. Ciarlariello asked for time to discuss the Board's hearing procedures. Mr. Mays stated he would accommodate that discussion just prior to the Probable Review Committee Report.

Motion #1: Dr. Cohn moved to continue the administrative hearing in the matter of PSS World Medical, Inc. subject to consideration of a Consent Agreement to settle the matter. Ms. Adams seconded the motion. Discussion: None. Motion carried: 7-0.

Hearing no other matters, Mr. Mays stated the agenda would be adopted.

Agenda item 1.2: Approval of previous Board Meeting Minutes

Draft meeting minutes from the previous Board meeting on February 12 & 13, 2008, 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. Mr. Andrews noted one non-substantive typographical error on page 3 of the minutes. Mr. Marx asked a correction to a summary of his comments appearing on page 5 of the minutes. Mr. Marx stated the proposed rule was too broad. Mr. Marx stated the rule simply did not meet the Board's needs. He requested that the minutes be changed to reflect his actual comments. Mr. Mays inquired if there was any opposition to the recommended changes the minutes. Hearing none, Mr. Mays asked if there was a motion to approve the minutes as amended.

Motion #2: Ms. Cairlariello moved to approve the meeting minutes from February 12 & 13, 2008, as amended. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 abstained (Kester).

Agenda item #2: OFFICER AND STAFF REPORTS

Agenda item 2.1: President's Report

Mr. Mays stated that he did not have a report to file.

Agenda item 2.2: Executive Director's Report (Exhibit C)

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

1. Mr. Logsdon presented the FY 2008, 4th Quarter financial activity report. Mr. Logsdon stated that the Board's budget planning for FY 2008 appears to be very sound. He stated that the Board used a zero-based budget approach and projected expenditures have matched well with budgeted funds in most expenditure classes. Mr. Logsdon stated that available funds have been re-allocated to accommodate the additional needs, such as home medical equipment inspections. Mr. Logsdon reported that the Board had anticipated a shift away from HME licenses to HME Certificate of Registrations based upon new CMS accreditation requirement. He stated some HME facilities are changing authorization types, but not in the numbers initially predicted. In fact, the Board continues to receive new HME license applications weekly. Mr. Logsdon stated that new HME licenses mean more HME inspections and he believes funding more inspections would be a benefit to the Board.

Mr. Logsdon reported that some additional funding would be needed to meet year-end licensing renewal expenditures for Lockbox and Credit Card transaction services. Mr. Marx inquired if the agency has alternatives to Lockbox and Credit Card processes to save money. Mr. Logsdon stated that electronic renewal is costly, but that the service is in line with the State's objective to create an electronic business gateway. The service has several advantages, he stated, such as immediate data upload, faster processing, and faster revenue collection. The per transaction cost, he stated, is a cost of doing business in the electronic environment, but encouraged the Board to support the program. Mr. Logsdon stated that Lockbox transaction fees are avoidable if the office staff could absorb the work. Mr. Marx expressed concern over the costs associated with Lockbox renewal and asked for a breakdown on the number of persons applying on line verses the number filing paper renewal applications. Mr. Logsdon, based upon the current renewal numbers, estimated half were sending the forms through Lockbox services and half through online services. Mr. Logsdon estimated the two costs combined would be approximately \$5,400.

Mr. Mays inquired about the Board's Controlling Board (CB) request for funds used toward paying fiscal year 2007 obligations. Mr. Logsdon stated the Board was scheduled. Mr. Logsdon stated that the Board is requesting new funds to support prorated

costs for employee benefits for fiscal year 2008 and full costs for fiscal year 2009 for one staff position that is currently not funded. In addition, the CB request seeks approximately \$8,700 in new allocation. Mr. Logsdon stated that Board tried to absorb all non-funded expenditures with the Board's current allocation, but based upon an analysis of the Board's needs, he stated that he was confident the Board would need the funds.

Ms. Ciarlariello inquired about an expenditure listed for unemployment compensation in March 2008. Mr. Logsdon stated that the payment was a final payment.

2. Next, Mr. Logsdon reported on the fiscal year 2010/2011 budget. He stated that guidance has been completed and will be sent to each state agency. The guidance will hold Non-GRF agencies, like the Board, to 100% of fiscal year 2009 funds for both years of the biennium and supplemental funding requests to 105% of fiscal year 2009 funds for both years of the biennium.

3. Mr. Logsdon provided the Board with a written review of revenue collected since the beginning of fiscal year 2008 and the current statistics showing the number of active, inactive, active in renewal, or expired licensees.

Agenda item 2.3: HME Manager's Report (Exhibit D)

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

1. Ms. Tatum reported that the Board staff approved 9 new HME licenses and 7 new HME certificates of registration since the Board's last meeting in February 2008. Additionally, she reported she had 12 pending applications in process.

2. Ms. Tatum reported that the agency had scheduled 40 inspections since the beginning of the calendar year. Of the 40 inspections scheduled, Ms. Tatum reported that 34 inspections have been completed and 11 of these were reviewed and approved following the receipt of documentation supporting compliance with cited standard deficiencies.

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. Ms. Tatum reported that out-of-state inspections appear to be well received and that the Board has received very good responses from reporting HMEs. She stated it was very apparent that selected HMEs put a lot of work into the process and the reports appear to be very comprehensive.

Motion #3: Mr. Marx moved to approve the Staff reports. Ms. Adams seconded the motion. Discussion: None. Motion carried: 7-0.

Agenda item #3: BOARD COMMITTEE REPORT

Agenda item 3.1: HME Committee Report – Joel Marx

Mr. Marx reported that the HME Committee met prior to the regular business meeting at 1:06 p.m. After approving the minutes, Mr. Marx stated that the committee spent considerable time reviewing the HME Manager's inspection report. Mr. Marx stated that Ms. Tatum addressed the status of open inspections. As Chairperson of the Committee, Mr. Marx stated that he would like more reporting on open inspections. Mr. Marx stated that the Committee is interested in the number of facilities that are late in paying inspection fees and late in filing an inspection response. Mr. Marx asked the staff to adhere to the specific guidance on the issuance of first and second inspection notice letters. Mr. Marx stated that the Committee asked Ms. Tatum to prepare a broader report for the HME Committee adding information on complete, in process, and initiated inspections.

Mr. Marx stated that the Committee reviewed the list of HME licenses and HME certificate of registrations issued since the Board's last meeting and verified that with staff that all met the qualifications of law. He stated that the Committee will recommend ratification of these facilities under new business.

Mr. Marx stated that the Committee also considered an inspection response submitted by We Care Medical. The facility submitted a response to four deficient standards, which was forwarded by staff based upon the facility's apparent appeal of two of the standards. Mr. Marx stated that the facility argued that two of the standards were not applicable, because their services were provided to Long Term Care Facilities. Mr. Marx stated that the Committee rejected the facility's appeal concerning standard C-3, which required HME facilities to provide patient education on the safe and proper use of equipment, storage of equipment and the patient's maintenance responsibilities. With regard to standards C-2 (d) and (f) and P-1, the committee found that We Care met the standard and upheld the facilities appeal on these points. Mr. Marx stated that the Committee would recommend to reject the facility's appeal of standard C-3 and direct staff to issue a written response addressing the Committee's determination in the matter.

Last, Mr. Marx reported that the Committee reviewed a request submitted by the Ohio Department of Job and Family Services (ODJFS). ODJFS requests a review of a new procedure called Vacuum Assisted Closure (VAC) for wound closure. ODJFS asked if the provision of the device is subject to Ohio HME licensure. Mr. Marx stated the Committee believes the device is a technologically sophisticated medical device as such device is defined under OAC 4761:1-3-02 (B). Marx stated that the Committee will recommend including VAC devices under the definition of HME pursuant to rule OAC 4761:1-3-02 (B), because the equipment has a component that requires professional medical involvement.

Motion #4: Mr. Andrews moved to approve the report and recommendations of the HME Committee. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 7-0.

Agenda item #4: PROBABLE REVIEW COMMITTEE REPORT

Use of Contract Hearing Officers

Before considering a motion to enter executive session, Mr. Mays asked the members of the Board to discuss the use of contract hearing officers. Mr. Mays stated that the Board's prior appointed hearing officer, Mr. Dana Rinehart, a member of the Board, recently resigned. This event, he stated required the Executive Director to retain a contract Hearing Officer, which the Board has not traditionally used. Mr. Mays requested open discussion on the ongoing use of a contract Hearing Officer.

The Board's Assistant Attorney General, Melinda Snyder-Osgood advocated the use of a hearing officer in order to preserve the record, simply scheduling, and save the Board's time. The Board members expressed concerned about being divorced from the process, the missed opportunity to educate the licensees, and the hearing officer's lack of expertise in the field of respiratory care.

Mr. Mays asked for any concluding comments in order to move along with the business of the Board. Ms. Ciarlariello stated that the Board uses the hearing process to mentor and educate respondents. Dr. Cohn stated that Board members would be putting their reputations on the line for cases in which the Board does not participate. Mr. Mays asked if the report and recommendations of a contract Hearing Officer would have to be adopted. Ms. Snyder Osgood stated the Board has the authority to adopt all or none of the report and recommendations or amend the report and recommendations. Mr. Mays asked the Executive Director if he had any final comments. Mr. Logsdon stated that he would not recommend to the Board to hire a legal consultant, but would suggest that the Board explore the hybrid approach of hearing some, but not all matters based upon the technical nature of the case. Mr. Logsdon also reminded the Board that the recommendations made by the Assistant Attorney General are advisory and that the Board has the authority to conduct hearing as it determines in compliance with law.

Mr. Mays asked member to consider the information presented and that he would entertain any motion suggesting a position of the membership on the issue.

Recognition of limited practice

Mr. Mays asked members to discuss the recognition of limited practice for the purpose reinstating limited permits under Section 4761.06(A)(2) of the Revised Code. Mr. Andrews stated limited practice is based upon exceptions listed in the law and it is not respiratory care practice, which is prohibited without a license or limited permit. Ms. Ciarlariello stated that persons seeking to reinstate a limited permit under Section 4761.06(A)(2) of the Revised Code cannot do so if no longer employed as a provider of respiratory care. As an option, Ms. Ciarlariello stated that the original law provides certain providers with an educational waiver to take the State of Ohio respiratory care licensing examination. Mr. Logsdon confirmed that the option still exists. Mr. Mays thanked members for the brief discussion.

Motion #5: Ms. Ciarlariello 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
Joel Marx -	Yes	Eugene Andrews-	Yes
Robert Cohn -	Yes	Marc Mays -	Yes
E. Lucile Kester -	Yes		

Motion carried.

The board entered executive session at 3:05 p.m. and returned to regular, public session at 4:03 p.m. All voting members of the board, Mr. Logsdon, Ms. Snyder Osgood 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.*

Mr. Logsdon asked and was recognized to address the Board. Mr. Logsdon stated that the Probable Review Committee often reviews convictions reported by initial license/limited permit applicants. In some cases, the convictions are minor misdemeanor convictions that do not constitute a conviction of involving moral turpitude and the PRC dismisses the matter. Mr. Logsdon stated review delays to issuance of the applicant's license or limited permit. Mr. Logsdon requested some guidance from the membership.

Agenda item 4.7: Guidelines on reviewing RCB applications with reported convictions

Motion #6: Dr. Cohn moved to develop guidelines giving the Executive Director, with the involvement of the Assistant Attorney General, case-by-case discretion to review minor misdemeanors reported by initial applicants to determine jurisdictional necessity to forward the matter to the Board's PRC or issue the license/limited permit. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7-0.

The Board took a break from 4:05 p.m. to 4:15 p.m.

Agenda item 4.2: Approval of Opportunity for Hearing Notices

Motion #7: Dr. Cohn moved to issue an opportunity for hearing notice as presented to the Board in the matters of :

- a. Case # 2008ORCB027 (Aaron Funkhouser) for allegedly violating Section 4761.09 (A)(2) of the Revised Code.
- b. Case # 2008ORCB028 (Deborah Mezzacappa) for allegedly violating Section 4761.09 (A)(2) of the Revised Code.

Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 – abstained (Mays).

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

- a. Case #2008HME018 (Pain Management Technologies, Inc.) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- b. Case #2008HME021(Better Living Home Health and Medical Supplies, LLC) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- c. Case #2008HME027(Pulmonary Care, Inc.) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- d. Case #2008HME087(Westhaven Services Co., LLC dba: Omnicare Pharmacy of NW Ohio) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- e. Case #2008HME088(Evergreen Pharmaceuticals of California, Inc. dba: Omnicare Canoga Park, CA) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- f. Case #2008HME089(Home Care Pharmacy, LLC) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- g. Case #2008HME092(Royal Care of Michigan, LLC) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- h. Case #2008HME095(Medical Technology Resources, LLC) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- i. Case #2008HME096(Med Source Plus, Inc.) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- j. Case #2008HME097(RXO2, Inc) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- k. Case #2008HME098(William S. Sage, dba: Walking Aids for Independence) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- l. Case #2008HME099(Access to Independence) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- m. Case #2008HME103(Key Mobility Services) for allegedly violating Section 4752.09 (A)(1) of the Revised Code.
- n. Case #2008HME104(Pro Tem Medical, Inc.) for allegedly violating Section 4752.09 (A)(1) and 4752.07 (G) of the Revised Code.
- o. Case #2008HME105(Life Quest Medical Supply, Inc.) for allegedly violating Section 4752.09 (A)(1) and 4752.07 (G) of the Revised Code.
- p. Case #2008HME106(Farooq Aziz, dba: Hom-Med, Inc.) for allegedly violating Section 4752.09 (A)(1) and 4752.07 (G) of the Revised Code.
- q. Case #2008HME107(Corner Pharmacy, LLC) for allegedly violating Section 4752.09 (A)(1) and 4752.07 (G) of the Revised Code.

Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 – abstain (Marx)

Agenda item 4.4: Approval to close investigations

Mr. Mays noted for the record that the Board reviewed seven (7) cases recommended for closure by the enforcement staff. Names and identifying information were redacted. Mr. Mays asked if there was a motion to close the investigations.

Motion #9: Ms. Ciarlariello moved to close investigation cases 2008HME009, 2008HME086, 2008HME093, 2008HHME094, 2008HME100, 2007ORCB057 and 2008ORCB003 as non-jurisdictional or unfounded. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 7-0.

Agenda item 4.3 Approval of Consent Agreements (Exhibit E collective)

The Board reviewed twelve (12) proposed consent agreements. Mr. Mays asked if there was a motion to approve the consent agreements as presented.

Motion #10: Ms. Ciarlariello moved to approve consent agreements between the Ohio Respiratory Care Board and the following persons respectively:

2008ORCB017	Jessica R. Schenk-Ackley
2008ORCB020	Alicia A. Howe
2008ORCB021	Eric G. Doherty
2008ORCB023	Tareva L. Stretton
2007ORCB056	Vincent Aiello
2007HME010	PSS World Medical, Inc., dba: Ancillary Medical Solutions, Inc.
2008HME035	Care First of Fort Wayne, Inc., dba: Advanced Healthcare
2008HME044	Independence Technology
2008HME050	Broadfield Services
2008HME060	Valley Home Care, LLC
2008HME064	Frees Medical, Inc.
2008HME078	The Drug Store Pharmacy

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 – 0.

Other Matters:

Motion #11: Ms. Ciarlariello moved to withdraw Opportunity for Hearing Notices issued in matter of cases:

- a. 2008ORCB001 (Kimberly S. Dubro)
- b. 2008ORCB002 (Karen Hollifield)
- c. 2008HME076 (Patriot Products)
- d. 2008HME075 (Link-up Health Services and DME)

Dr. Cohn seconded the motion. Discussion: Ms. Ciarlariello stated that each Opportunity for Hearing Notice was being withdrawn for different reasons. Patriot Products, she stated, was being withdrawn, because compliance was finally met. Link-up Health Services, she stated, was confirmed closed and no longer in business by the Board's investigator. Ms. Dubro and Ms Hollifield are debatable matter, because the office has not been able to locate the respondents and must now consider publishing the notices. Ms. Adams inquired how long has the Board been trying to find the two respondents. Mr. McLean stated that the notices were approved by the Board in August 2008. Dr. Cohn stated that the two respondents, although from all reports are not working in respiratory care, could return at some point. Dr. Cohn expressed concern that the Board could fail to remember the matters later. Mr. Mays stated that he believes strongly that costs of publication should not be a reason for withdrawing the notices. Mr. Mays stated that he does not support the motion. Mr. Marx disagreed. Mr. Marx stated that the two respondents are purportedly not working in the practice of respiratory care and the use of public funds verses public risk should be considered. Dr. Cohn reiterated his concern that these two persons could work their way back into the

licensing system. Mr. Marx asked if the Board was using resources here that could be better utilized. Mr. Logsdon stated that the Board has no basis to believe the persons are working in any arena of health care. Mr. Mays called the question. Motion carried: 5 –yes, 2 – no (Mays and Cohn).

Agenda item 5.2: Findings, Orders and Journal Entries

In the Matter of E & R Medical , Inc. (Exhibit F)

Motion #12: Dr. Cohn 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
Esther L. Kester -	Yes	Joel Marx -	Yes
Robert Cohn -	Yes	Eugene Andrews -	Yes
Marc Mays -	Abstained		

Motion carried.

The board entered executive session at 4:28 p.m. and returned to regular, public session at 4:40 p.m. All voting members of the board were present during executive session. Mr. Logsdon was asked to remain.

Motion #13: Dr. Cohn moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of E & R Medical, Inc. is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby SUSPENDS the license issued to E & R Medical until such time the following conditions are met:

1. E & R Medical, Inc. shall respond to the Board's directive to remedy any and all facility standards deficiencies listed on the February 8, 2007, Inspection Survey. Proof of compliance with deficient standards shall be sent to the Ohio Respiratory Care Board and the Board's Home Medical Equipment Manger shall review the facility's response and the Board's Executive Director shall have discretion to approve the response.
2. E & R Medical shall pay a fine in the amount of five hundred dollars (\$500.00). Payment shall be made by cashier's check or money order made payable to "Treasurer, State of Ohio."

The Order of the Board shall become effective thirty (30) days after the date of mailing of the Order. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 – abstained (Marx).

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 E & R Medical, Inc.

Agenda item #5: NEW BUSINESS

Agenda item 5.3: Application ratification for licenses and limited permits
(Exhibit G collective)

Lists of licenses and limited permits issued since the Board's February 12, 2008, meeting pursuant to Rule 4761-2-02 of the Ohio Administrative Code were mailed to members in advance of the meeting. Two additional applications were provided to the Board for independent review of the applicant's qualifications. Mr. Mays asked the membership to consider the two independent applications first.

Initial application for license filed by Billy J. Thiele

Motion #14: Dr. Cohn moved to approve the application of Billy J. Thiele and to issue a respiratory care professional license. Ms. Kester seconded the motion. Discussion: Mr. Logsdon stated that the question at hand was the applicant's qualifications under ORC 4761.04. Mr. Logsdon stated that OAC 4761-5-04 (D) permits the applicant to qualify for the waiver of educational requirement under specific conditions. Dr. Cohn stated that he reviewed the applicant's documentation and believes the waiver of education requirements were met. No further discussion. Motion carried: 7-0.

Initial application for a limited permit filed by Amanda S. Wuske

Motion #15: Dr. Cohn moved to approve the application of Amanda S. Wuske and to issue a limited permit. Ms. Adams seconded the motion. Discussion: Mr. Mays stated that the applicant does meet all of the requirements to be issued a limited permit. Mr. Mays stated that the application was forwarded to the Board due to a conflict of interest the Executive Director disclosed. No further discussion. Motion carried: 7-0.

Motion #16: Ms. Ciarlariello moved to place upon the minutes of the April 16, 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: February 14, 2008, February 28, 2008, March 13, 2008, March 20, 2008, and April 3, 2008. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 7-0.

Agenda item 5.4: Application ratification for HME license and certificate of registration
(Exhibit H collective)

Lists of HME licenses and certificates of registration issued since the Board's February 12, 2008, meeting pursuant to resolution of the Board were mailed to members in advance of the meeting.

Motion #17: Mr. Marx moved to place upon the minutes of the April 16, 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 February 20, 2008, February 22, 2008, February 27, 2008, February 29, 2008, March 4, 2008, and March 18, 2008, excluding Hursh Health Care, and Certificate of Registrations on February 25, 2008, February 29, 2008, March 4, 2008, and March 12, 2008 by the Executive Director of the Board of the Board. Ms. Adams seconded the motion. Discussion: None. Motion carried: 7-0.

Motion #18: Mr. Andrews moved to place upon the minutes of the April 16, 2008 meeting, the name of Hursh Health Care who met the qualifications for an HME license, pursuant to Sections 4752.05 of the Revised Code and associated rules

there under, and who was issued a license on February 20, 2008. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 abstained (Marx).

Agenda item 5.6: Petition to extend the active term of limited permit – Corrie Criner

The Board considered a petition for extension of the active term of a limited permit for Corrie Criner. Mr. Criner filed a written petition stated unusual hardship circumstances.

Motion #19: Ms. Ciarlariello moved to approve the extension of Mr. Criner’s limited permit based upon an established unusual hardship. Ms. Adams seconded the motion. Discussion: Mr. Andrews inquired if the applicant really provided evidence of an unusual hardship. Mr. Andrews stated that, based upon the information provided, he would not support the motion. Dr. Cohn countered and asked the members to show some mercy for the applicant. No further discussion. Motion failed: 3 – yes, 4 – no.

Agenda item 5.5: New application form approval for HME licenses and certificates of registration

Revised application forms were mailed to the membership in advance of the meeting. Mr. Logsdon was asked to review the changes, which he did.

Motion #20: Mr. Marx moved to approve the revised applications for initial HME Licenses and Certificates of Registration. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 7-0.

Ms. Adams was excused from the meeting due to prior commitments at 5:10 p.m.

Agenda item 5.7: Resolution to file draft rules in compliance with ORC 119.032

A copy of all draft rule changes were mailed in advance to the Board membership. Mr. Logsdon explained that the rules approved by the Board for filing on February 12, 2008 were held pending additional review and comments by interested parties and licensees in accordance with the Executive Order 2008-04S. Some new changes are being proposed and an extension on filing was granted by the Joint Commission Agency Rules Review.

Motion #21: Dr. Cohn 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 April 16, 2008:

RCB ORC 119.032 rules, no change:

4761-2-01	Board organization.
4761-2-02	Personnel.
4761-2-04	Personal information systems.
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.
4761-6-01	Limited permit application procedure.
4761-7-03	Scope of respiratory care defined.
4761-7-04	Supervision.
4761-7-05	Administration of medications.
4761-8-02	Licenses not in active practice.
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.
4761-9-07	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.
4761-11-07	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
4761:1-6-04	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	Licenses 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
4761:1-12-03	Filing
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:

4761-1-01	Public hearings on adoption, amendment, or rescission of rules: methods of public notice.
4761-1-02	Notice of board meetings.
4761-2-03	Board records.
4761-3-01	Definitions of terms.
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.
4761-7-01	Original license or permit and identification card.
4761-8-01	Renewal of license or permits.
4761-9-01	Definition of respiratory care continuing education.
4761-9-05	Approved sources of RCCE.
4761-10-01	Ethical and professional conduct.
4761-11-06	Continuance of hearing.
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
4761:1-5-01	Qualifications for licensure
4761:1-9-01	Standards of practice for license holders
4761:1-9-05	Personnel

4761:1-12-07 Exchange of documents and witness lists
4761:1-13-01 Continuing Education Standards

Mr. Andrews seconded the motion. Discussion: None. Motion carried: 6-0.

Mr. Mays asked if Agenda items 5.8 (Criminal Background Check Policy), 5.9 (Online Jurisprudence Course), and 5.10 (Board Member per diem pay policy) needed to be reviewed and approved at this meeting. Mr. Logsdon stated that he believed Board action could wait. Mr. Mays then directed that Agenda items 5.8 (Criminal Background Check Policy), 5.9 (Online Jurisprudence Course), and 5.10 (Board Member per diem pay policy) be tabled.

Agenda item 5.11: Election of Board Officers

President: Ms. Ciarlariello nominated Mr. Mays. Nomination seconded. No other nominations.

Motion #22: Ms. Ciarlariello moved to elect Mr. Marc Mays as Board President for the term beginning April 16, 2008 and ending on the next board meeting date scheduled in April 2009. Mr. Marx seconded the motion. Discussion: None. Motion carried: 6-0.

Secretary: Ms. Ciarlariello nominated Mr. Andrews. Nomination seconded. No other nominations.

Motion #16: Ms. Ciarlariello moved to elect Mr. Eugene Andrews as Board Secretary for the term beginning April 16, 2008 and ending on the next board meeting date scheduled in April 2009. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 6-0.

Mr. Mays immediately appointed Dr. Robert Cohn as Vice-President of the Board.

Appointment of Committee Members and Chairpersons

Mr. Mays immediately appointed Committee Chairperson assignments. He directed each chairperson to contact interested members to fill their committee rosters.

Committee Assignments:

Esther L. Kester was appointed Chairperson for the Education Committee
Robert Cohn, M.D. was appointed Chairperson for the Scope of Practice Committee
Ms. Ciarlariello was appointed Chairperson for the Rules Committee
Mr. Marx was appointed Chairperson for the HME Committee

Agenda item #6: OPEN FORUM

No one appeared.

Agenda item #7: FOR THE GOOD OF THE BOARD

No action taken.

Agenda item #10: ADJOURNMENT

Hearing no further matters, the meeting adjourned the meeting at 5:27 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 June 17, 2008.

Secretary

Witness