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# OHIO RESPIRATORY CARE BOARD

77 SOUTH HIGH STREET, 16<sup>TH</sup> FLOOR

COLUMBUS, OHIO 43215-6108

## OFFICIAL BOARD MEETING MINUTES OF April 14 & 15, 2009

April 14, 2009

### Agenda items #1: CALL MEETING TO ORDER

Presiding: Marc Mays, President, called the meeting to order on April 14, 2009 at 9:20 a.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH for the purpose of holding a strategic planning meeting. Present were Marc Mays, President, Joel Marx, Carol Gilligan, E. Lucille Kester, R.R.T., R.C.P., Robert Cohn, M.D., Darrell L. Heckman, J.D., Susan Ciarlariello, RRT, RCP, and Anita Adams, RRT, RCP. 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 informed the Board Members that Mr. Andrews was not re-appointed by Governor Strickland and that a new member, Ken Walz was appointed. Mr. Mays stated that the new member would be excused from attending the meeting due to a prior commitment.

### Members in attendance (Exhibit A):

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

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

Joel Marx, HME Provider Member

Carol Gilligan, HME Provider Member

Robert Cohn, M.D.

Darrell L. Heckman, J.D.

Susan Ciarlariello, MBA, RRT, RCP

Anita Adams, MBA, RCP

**Staff in attendance:**

Christopher H. Logsdon, Executive Director

**Others in Attendance:**

Maria Mone, Director of the Office on Dispute Resolution

Yvonne Tertel, Assistant Attorney General

**Strategic Planning Introduction**

Mr. Mays stated that the meeting would focus on strategic planning issues and specifically a few detailed issues that the Board Members need to contribute to reach resolution. Mr. Mays stated that Maria Mone, Director of the Commission on Dispute Resolution and Conflict Management, would facilitate the meeting. Additionally, Mr. Mays announced that the Governor did not re-appoint Mr. Andrews. Mr. Mays informed the members that a new member, Mr. Ken Walz, was appointed but could not attend due to a prior commitment. Following this brief opening to the meeting, Mr. Mays turned to Ms. Mone to facilitate the remainder of the meeting.

Ms. Mone introduced herself and the work performed by her agency. Ms. Mone asked members if they had read Mr. Logsdon's email that set the stage for the discussion and the specific goals. Afterwards, Ms. Mone asked Mr. Logsdon to present the specific issues before the Board.

Mr. Logsdon thanked Ms. Mone for agreeing to facilitate the meeting. Mr. Logsdon stated that strategic planning for a public agency is much different from a private organization. Mr. Logsdon stated that the Board's enabling laws and rules establish the basis for the strategic plan. A private firm, he stated, has objectives that are completely different in focus from a state agency, whose primary purpose is service, not profit. Accordingly, Mr. Logsdon stated that he had prepared a draft strategic plan for FY 2010 and 2011 that he will ask the Board to review and approve during the regular meeting on April 15, 2009. Mr. Logsdon stated that the meeting today would focus on very specific objective to achieve consensus on policy issues that conclude in more efficient and effective regulation. Mr. Logsdon stated that the state of Ohio and the public today expect cost effective governance. Mr. Logsdon stated that one of the most valuable results of the discussion would be identifying new issues that must be addressed through the strategic efforts. Those issues, he stated, would be placed on a "parking lot" list.

Ms. Mone then explained the ground rules for discussion. Ms. Mone stated that she would be looking for consensus agreement on the major issues. Mr. Marx stated that the meeting appears to be an advisory session rather than a strategic planning meeting. Mr. Logsdon agreed with the characterization proposed, but stated that additional objectives will come from the discussion.

The Board took a break at 10:57 a.m. to 11:10 a.m.

The Board took lunch at 12:07 p.m. to 1:10 p.m.

The Board took a break at 2:05 p.m. to 2:17 p.m.

**Issue #1: Licensing Review Process**

Current environment: Increased number of applicants and following criminal background check enactment in March 2008, increased number of applicants with prior conviction. The Executive Director notes that the agency has no guidelines to evaluate background checks. Mr. Logsdon asked the Board to identify review guidance for applications.

Interests and Concerns:

Public safety  
Efficiency in licensing process  
Board time spent in licensing process  
Applicant delay time  
Fairness  
Consistency

Changes to Current Process (Board Policy):

Following discussion, the Board members, by consensus agrees to:

- delegate authority to the Executive Director to make the determination to dismiss or to refer to the Probable Review Committee (PRC) for the following types of prior criminal convictions:  
Minor traffic convictions  
First time DUI  
Minor misdemeanors (not a 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> degree misdemeanor) when there is no pattern ( no more than 2 minor misdemeanors in the last 5 years) of convictions.
- delegate authority to the Probable Review Committee (PRC) to make a determination to dismiss a case for lack of probable cause (lack of a prima facie case -- a factual determination by the PRC) and to issue, renew, or reinstate the license or limited permit for the person in question. If a decision is made by the PRC to dismiss a case, the PRC will give notice to the full Board of the dismissal.
- require the PRC to hold the dismissal, issuance, or reinstatement of a license for cases involving an applicant with a prior conviction or complaint involving a prior conviction, where the PRC makes a determination of probable cause.
- not issue a license for cases involving an applicant with a prior conviction until the Board makes a decision at its next regularly scheduled meeting.

**Issue #2: Administrative Hearing Process**

Current environment: Disciplinary guidance should be reevaluated to determine necessary change.

Changes to Current Process (Board Policy) :

Following discussion, the Board members, by consensus agrees to:

- address Goldman hearings by affidavit (Board policy), thereby avoiding the need to require a court reporter and official transcript of the proceedings.

- consider the use of a hearing examiner when the Board perceives a potential appearance of a conflict of interest. (Board policy).
- for non- Goldman or no consent cases, the Board may appoint a Board member as the hearing officer to hear a case on behalf of the Board/without the full Board (this will be determined on a case-by-case basis) ( and subject to review by the Board’s AAG and to determine if a rule change is required)
- amend the disciplinary guidance manual
  - The Board will explore the possibility of consent before hearing notice for continuing education violations and unlicensed practice violations.
  - Guidelines will only address continuing education violations, unlicensed/unauthorized practice violations, and impairment violations. Retain categories III, II, and VI with changes, and delete categories I, IV, V, and VII. Guidelines will be amended and prepared for future Board review.

### **Issue #3: Home Medical Equipment (HME)**

Current environment: Home Medical Equipment Continuing Education Rule for licensed home medical equipment facilities should be evaluated to determine how to make to process more user-friendly for the licensee.

Changes to Current Process (Board Policy) :

Following discussion, the Board members, by consensus agrees to:

- review “recognized organizations” every two years. (policy)
- apply rule to all employees. (policy) (subject to existing law and rules)
- audit on inspection or validate compliance during inspection (Amend current rule)
- work with HME Board members (Mr. Marx and Ms. Gilligan) to provide additional resources for obtaining contact hours.

Hearing no further matters, Mr. Mays adjourned the meeting at 4:30 p.m.

**April 15, 2009, Day 2**

### **Regular Business Meeting**

#### **Agenda items #1: CALL MEETING TO ORDER**

Presiding: Marc Mays, President, called the meeting to order on April 15, 2009, at 9:00 a.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH for the purpose of holding a strategic planning meeting. Mr. Mays asked Ms. Ciarlariello to serve as interim Secretary and to call the roll. Present were Marc Mays, President, Joel Marx, Carol Gilligan, E. Lucille Kester, R.R.T., R.C.P., Robert Cohn, M.D., Darrell L. Heckman, J.D., Susan Ciarlariello, RRT, RCP, and Anita Adams, RRT, RCP. 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 again stated that Mr. Walz would be excused from the meeting.

**Members in attendance (Exhibit B):**

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

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

Joel Marx, HME Provider Member

Carol Gilligan, HME Provider Member

Robert Cohn, M.D.

Darrell L. Heckman, J.D.

Susan Ciarlariello, MBA, RRT, RCP

Anita Adams, MBA, RCP

**Staff in attendance:**

Christopher H. Logsdon, Executive Director

Anthony Isom, Investigator

**Others in Attendance:**

Yvonne Tertel, Assistant Attorney General

**Agenda item 1.1: Approval of Board Meeting Agenda (Exhibit C)**

The proposed meeting agenda was mailed in advance of the meeting. Mr. Mays inquired if there were any amendments to the business agenda. None presented.

Motion #1: Mr. Heckman moved to approve the agenda for April 15, 2009. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 8 - 0.

**Agenda item 1.2: Approval of previous Board Meeting Minutes**

Mr. Mays asked the membership if they had the opportunity to review the minutes. All answered affirmatively. Mr. Mays asked if there was a motion to approve the minutes.

Motion #2: Ms. Ciarlariello moved to approve the meeting minutes from February 10, 2009. Ms. Kester seconded the motion. Discussion: Mr. Heckman stated that motion #2, under Agenda item 1.2 on page 3 of the minutes needed correction. He stated that he abstained from the vote on the previous meeting minutes, because he was not a member of the Board at the time. No further discussion. Motion carried: 8 - 0. Mr. Mays directed Mr. Logsdon to correct the minutes as indicated.

**Agenda item #2: BOARD OFFICER AND STAFF REPORT**

Agenda item 2.1: President's Report

Mr. Mays informed the Board of the appointment of Mr. Ken Walz to the Board. He stated that Mr. Walz resides in Toledo, Ohio. Mr. Mays reported that Mr. Walz is a practicing attorney and a registered respiratory therapist. Next, Mr. Mays reminded members to postmark their financial disclosures by the end of the day. Last, Mr. Mays explained that April is the Board's month to elect new officers for President and Secretary and to appoint a person to serve as the Board's Hearing Officer. Mr. Mays explained that ballots have been prepared for each position.

Mr. Mays stated that he believed the strategic planning meeting of the prior day was very productive. Ms. Gilligan asked if such a meeting could be held every two years, at least. She also asked Mr. Logsdon if the meeting met his objectives. Mr. Logsdon stated that the parking lot issues were very impressive. He stated that the agency is currently very busy and it would take him some time to evaluate the overall effectiveness of the meeting.

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

The Executive Director filed a written report with the Board. He reported on the following:

1. Financial activity - Mr. Logsdon stated that the Board has entered the fourth and final quarter of FY 2009. He stated that the agency is currently working well within the agency's allotted funds, reporting surplus balances in payroll due to the open Investigator position that was recently filled. Mr. Logsdon gave an update on the electronic records management project. Last, Mr. Logsdon stated that the agency had no unresolved obligations. Mr. Logsdon stated that he would be evaluating the construction of a filing space in the office. A table of budget disbursement and budget summary was provided. Mr. Heckman asked Mr. Logsdon to explain why the payroll is not evenly paid. Mr. Logsdon explained the variable changes in deductions.

Mr. Marx inquired if the Board would have enough budget to meet its expenses in FY 2010 and 2011. Mr. Logsdon stated that the Board budget is flat funded over the next biennium, but there may be some offsets, such as staff furloughs, that may make up for the flat funding. Mr. Marx stated that he did not understand the state's budgeting process. He stated that the Board collects more revenue than needed. If the Board cannot use the funds, he stated, it would appear the Board is overcharging its licensees. Mr. Logsdon stated that projections are performed to be budget neutral, but the projections are conservative and the Board will regularly collect more than required. Dr. Cohn reminded members that the state could not be understood from a private business perspective. Marx stated that legislature is sending mixed messages. Mr. Logsdon agreed. Dr. Cohn stated that if the Board were a corporation, Mr. Logsdon would be deemed a success. Dr. Cohn wondered why the state does not use such qualified persons to correct deficiencies in other agencies. Mr. Logsdon explained the manner of budgeting used by the state. Member expressed concern and frustration with the process. Ms. Gilligan stated that the Board is busy enough to require additional personnel. She stated that the system seems to punish agencies that conservatively project their budgets. Mr. Marx stated that holding excess funds while not adjusting fees is not appropriate. Mr. Logsdon agreed and recommended that the Board evaluate the fee structures over the next year.

2. Revenue Report - Mr. Logsdon reported that the agency had collected \$376,190 since July 1, 2008. Mr. Logsdon stated that \$226,500 of the total revenue was actually carried over revenue from FY 2008.

3. Other budget matters - Mr. Logsdon reported that he testified before the Ohio House of Representatives on the Board's proposed 2010/2011 budget request. Mr. Logsdon stated that the committee he testified before asked several questions about the proposed consolidation of back office services contained in H.B. 1, but otherwise the line of questioning was not irregular for a budget hearing. Members questioned Mr. Logsdon on the Governor's proposal to consolidate back office functions.

4. Licensing - Mr. Logsdon reviewed the licensing statistics with membership, including current active licenses, limited permits and certificates of registration issued. Mr. Logsdon also reported that the agency has mailed 2009 renewal application to Limited permit holders and applicable home medical equipment companies.

5. Mr. Logsdon provided an update of his travel, including a synopsis of his presentation and participation on the AARC's 2015 and beyond conference. Mr. Logsdon provided members with a copy of the AARC's first conference report on the 2015 and beyond project.

6. Legislation: H.B. 648 – Mr. Logsdon reported that he continues to work toward rules to implement the provisions of H.B. 648. Mr. Logsdon stated that he was awaiting directives and definitions from the Department of Administrative Services, IT Division. Mr. Logsdon reported that the Governor has issued a new directive requiring agencies to have a plan in place by mid-May 2009. Mr. Logsdon encouraged the Board to assign members to an Ad-Hoc committee to review data classifications. Mr. Logsdon stated that he has attended some of the work group meetings and needs to evaluate how the regulations will actually be applied to the scope of work and the type of records maintained by the Board. Mr. Logsdon stated that he has taken the step of redacting social security number data on the Board's elicense records to include only the last four digits.

H.B. 62 - Mr. Logsdon reported that this bill would require state licensing agencies to consider relevant military experience and training. The bill also provides for a waiver of renewal fees within six months of separation from military duty.

S.B. 3 Mr. Logsdon stated that this bill would require agencies to conduct an additional level of rule analysis for any rule that has an impact on small business.

7. Paperless filing system update: Mr. Logsdon gave an update on the current paperless filing system.

8. Continuing Education: Mr. Logsdon reported that the office has nearly concluded the 2008 continuing education audits. Mr. Logsdon stated that the office was a little behind on completing the audits.

Last, Mr. Logsdon provided the members with a copy of CoARC's draft accreditation standards for respiratory care educational programs.

Before leaving the Executive Director's Report, Mr. Mays asked if there were any members that would like to work with Mr. Logsdon on the IT and Data Classification Project. Mr. Mays, Ms. Ciarlariello, and Ms. Gilligan volunteered.

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

The HME Manager, Ms. Marcia Tatum, was not present for the meeting, but did file a written report. Mr. Logsdon reviewed the HME Manager's written report. Mr. Logsdon reported that 8 HME licenses and 19 HME Certificates of Registration had been issued since the prior meeting and that 7 applications were pending completion. Regarding inspections, Ms. Tatum reported that the March '09 and April '09 inspections had been scheduled. Mr. Logsdon also reported that scheduling contract inspectors was becoming increasingly difficult due to prior private accreditation survey commitments. Regarding revenue, Mr. Logsdon reported that the program had generated \$87,470 since July 1, 2008. Discussion: Mr. Marx asked that a list of outstanding inspections be included for future meetings.

#### Agenda item 2.4: Assistant Attorney General's Report

No report provided.

Motion #3: Ms. Adams moved to approve the Officer and Staff reports. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 8 – 0.

**Agenda item #4: PROBABLE REVIEW COMMITTEE REPORT**

Motion #4: Ms. Kester moved to enter Executive Session for the purpose of discussing proposed disciplinary action against licensees, which is pending or imminent court action under R.C. 121.22(G)(3) and involves matters that are required to be kept confidential under R.C. 149.43(A)(2) and R.C. 4761.031 and 4752.08 (B). Ms. Gilligan seconded the motion. Discussion: None. Roll Call vote:

Darrell L. Heckman -	Yes	Carol Gilligan -	Yes
Joel Marx -	Yes	Robert Cohn, M.D. -	Yes
Marc Mays -	Yes	Esther Lucile Kester -	Yes
Susan Ciarlariello -	Yes	Anita Adams -	Yes

Motion carried.

The board entered executive session at 10:37 a.m. and returned to regular, public session at 11:03 a.m. All voting members of the board, Mr. Logsdon, Mr. Isom and Ms. Tertel 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 3.1: Approval of PRC Active Case Report

Motion #5: Mr. Heckman moved to approve the open and active investigation case report. Ms. Ciarlariello seconded the motion. Discussion: Mr. Marx confirmed that specific actions must be moved and approved separately. Mr. Mays affirmed Mr. Marx’s point. No further discussion. Motion carried: 8 – 0.

Agenda item 3.2: Approval of Opportunity for Hearing Notices

Motion #6: Mr. Heckman moved to issue an opportunity for hearing notice as presented to the Board in the matters of:

<u>Case no./Respondent</u>	<u>Issue</u>	<u>ORC Code</u>
<b>RCB Proposed OHNs</b>		
1. 2009ORCB053 (Victoria Shorter RCP.11505)	Concealment of material facts	ORC 4761.09 (A)(4)
2. 2009ORCB058 (Susan Yux RCP.4681)	Unlicensed Practice	ORC 4761.09 (A)(2)

Ms. Kester seconded the motion. Discussion: None. Motion carried: 7 – yes, Mays - Abstained

Agenda item 3.3: Approval of Consent Agreements (Exhibit F)

Motion #7: Ms. Ciarlariello moved to approve the following consent agreements between the Board and the following respective respondents:

**RCB Agreements**

<u>Case no.</u>	<u>Respondent</u>
2009ORCB047	Kenneth White RCP.5565

Mr. Marx seconded the motion. Discussion: None. Motion carried: 7 – yes, Mays– Abstained

Agenda item 3.4: Approval to close investigations and withdrawal of Opportunity for Hearing Notices

Motion #8: Mr. Heckman moved to withdraw Opportunity for Hearing Notices in the following matters:

1. 2007ORCB069 Tamela Sanders – no longer in practice

Dr. Cohn seconded the motion. Discussion: Mr. Heckman stated that the individual is no longer in practice. Mr. Marx asked what was the issue alleged. Mr. Isom reported that is was a failed RCCE issue. Motion carried: 7 – yes, Mays– Abstained

Motion #9: Dr. Cohn moved to close cases 2009ORCB055 and 2009ORCB057 as unfounded and upon closing the cases issue limited permits to Ashley M. Green and a respiratory care professional license to James E. Shearer. Ms. Adams seconded the motion. Discussion: Mr. Heckman stated that he was concerned about case #2009ORCB057 because the issue seems to be more serious, but give the time since the event he would be fine with the motion. Mr. Marx stated that the Board does not have a lot of detail and the Board must consider the recommendations of prior personnel. Dr. Cohn stated the event was eighteen years prior and seemed to be isolated. No further discussion. Motion carried: 7 – yes, Abstained – Mr. Mays.

**Agenda item #4: NEW BUSINESS**

Agenda item 4.1: Application ratification for licenses and limited permits  
(Exhibit G collective)

Motion #10: Ms. Ciarlariello moved to place upon the minutes of the April 15, 2009 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 12, 2009, February 13, 2009, February 19, 2009, February 26, 2009, March 5, 2009, March 9, 2009, March 12, 2009, March 17, 2009, March 20, 2009, March 26, 2009, April 2, 2009, and April 9, 2009. Mr. Heckman seconded the motion. Discussion: None. Motion carried: 8- 0.

Agenda item 4.2: Application ratification for HME licenses and certificates of registration (Exhibit G)

Motion #11: Ms. Adams moved to ratify HME licenses and certificates of registration issued on the following dates:

**HMEL**

February 5, 2009, February 9, 2009, March 5, 2009, March 19, 2009, and March 25, 2009.

**HMER**

January 20, 2009, January 23, 2009, February 12, 2009, February 27, 2009, March 9, 2009, March 11, 2009, March 18, 2009, March 19, 2009, March 24, 2009, March 25, 2009, and March 27, 2009.

Ms. Kester seconded the motion. Discussion: None. Motion carried: 8 – 0.

Mr. Logsdon stated that the list would be attached as an exhibit to the record.

**Agenda item 4.3: Recognition of HME Continuing Education (Exhibit H)**

The Board held discussion on the recognition of VGM Group as a continuing education provider under OAC 4761:1-13-01 (D). Ms. Gilligan stated the company is very good and provides a broad range of quality education. Ms. Adams inquired if this was a sole provider. Mr. Logsdon stated, “No.” Mr. Marx explained that VGM was a national buying group for HME industry.

Motion #12: Ms. Gilligan moved to recognize VGM Group as a provider of HME continuing education and to approve the course offerings filed by the organization. Mr. Marx seconded the motion. Discussion: None. Motion carried: 8 – 0.

**Agenda item 4.4: Recognition of Relenza administration within the scope of respiratory care practice (Exhibit I)**

Mr. Logsdon stated that the request for recognition comes before the Board from a member of the Board. The member will recuse himself or herself from deliberation on the issue and Mr. Logsdon stated that the members should not permit the source of the inquiry to persuade their review of the issue. Mr. Logsdon stated that the review should be based upon the Ohio Revised Code only.

Dr. Cohn stated that he Chairs the Scope of Practice Committee and based upon his review of the inquiry and his medical understanding of the medication, he believes the medication administration is clearly within the scope of respiratory care practice. Mr. Heckman inquired as to the use of the medication. Dr. Cohn explained that the medication was an inhaled treatment for influenza. Ms. Adams inquired if it was a one-time administration. Dr. Cohn stated that he did not understand why the question was relevant. Mr. Marx stated the medication was related to the scope due to the cardiopulmonary effect of influenza. Dr. Cohn confirmed. No further discussion

Motion #13: Ms. Ciarlariello moved to recognize the medication Relenza as a medication that falls within the scope of respiratory care practice under the provisions of ORC 4761.01 (A)(4). Dr. Cohn seconded the motion. Discussion: None. Motion carried: 7 Yes, 1 Abstained: Mays

**Agenda item 4.5: CoARC Correspondence Review**

Members reviewed correspondence from the Committee on Accreditation on Respiratory Care (CoARC). No action taken.

**Agenda item 4.6: 2010/2011 Strategic Plan**

Members received a copy of the draft strategic plan for FY 2010 and 2011 on April 14, 2009.

Motion #14: Dr. Cohn moved to approve the FY 2010 and 2011 Strategic Plan for the Ohio Respiratory Care Board. Mr. Marx seconded the motion. Discussion: Mr. Mays noted that the strategic planning meeting identified a number of issues that could not be addressed during discussion, but should be listed in the biennial objectives of the strategic plan. Mr. Logsdon agreed and stated that he was willing to add the changes. Mr. Marx inquired if the efficiencies addressed would reduce meeting to one-day meetings. Ms. Ciarlariello stated that she would support a one day meeting and would be willing lengthen the meeting time to keep the one day schedule. Dr. Cohn agreed stating one day away from the office was always difficult. Mr. Mays inquired if there was any opposition to adding the changes. Hearing none, he called the question. No further discussion. Motion carried: 8 – 0.

#### Agenda item 4.7: Officer Elections

Mr. Mays stated that each member had ballots in there meeting material. He asked that nominees be verbally acknowledged by the Chair for each office: President, Secretary, and Hearing Officer. After the ballot is established, Mr. Mays stated he would ask each member to vote for one nominee for each position. Afterwards, he said, Mr. Logsdon would collect and count the ballots.

Ms. Gilligan nominated Mr. Mays for President. There were no other nominations.

Ms. Ciarlariello nominated Mr. Marx for Secretary. Mr. Marx nominated Ms. Ciarlariello for Secretary. Both accepted the nominations.

Dr. Cohn nominated Mr. Heckman for Hearing Officer.

Mr. Logsdon collected ballots and counted the votes. Afterwards, Mr. Logsdon announced the vote count winners:

President: Marc Mays

Secretary: Joel Marx

Hearing Officer: Darrell Heckman

Mr. Mays appointed Dr. Cohn as the Vice-President of the Board under his authority.

#### **Agenda item #5: OPEN FORUM**

No one appeared.

#### **Agenda item #6: FOR THE GOOD OF THE BOARD**

No issues brought forward.

#### **Agenda item #8: ADJOURNMENT**

Hearing no further matters, Mr. Mays adjourned the business meeting at 12:05 p.m.

The membership broke for lunch at 12:05 p.m. Afternoon Session began at 1:00 p.m.

## ADMINISTRATIVE HEARINGS

### In the Matter of Malcolm R. Toles

The matter of Malcolm R. Toles came before the following members of the Ohio Respiratory Care Board on April 15, 2009 at 1:02 p.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Carol Gilligan, HME member, Joel Marx, HME member, Robert Cohn M.D., Esther L. Kester, R.R.T., R.C.P., Darrell L. Heckman, J.D., Public Member, and Anita Adams, M.B.A, R.C.P. 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. Darrell L. Heckman, J.D. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Mr. Toles did request a hearing before the board, but did not appear. Jamie Pellegrino, R.R.P, was the hearing reporter, Pellegrino Reporting Services, 1001 Poorman Road, Bellville, Ohio 44813.

Mr. Heckman inquired if there were any preliminary matters: None.

Mr. Heckman then asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Ms. Tertel called Christopher H. Logsdon, Executive Director. Following Mr. Logsdon's testimony, Ms. Tertel moved to enter State's Exhibit on the record. Mr. Heckman admitted State's Exhibits A – I.

State's Exhibits admitted:

- A - Notice of Opportunity for Hearing dated October 14, 2008, mailed to Mr. Malcolm R. Toles by registered mail/return receipt # 7004 2510 0001 7343 6164 on October 16, 2008.
- B - Signed return receipt # 7004 2510 0001 7343 6164, signed by Malcolm R. Toles on October 23, 2008
- C - Letter from Malcolm R. Toles requesting a hearing, received by the Ohio Respiratory Care Board on October 30, 2008.
- D - Hearing Scheduling letter dated November 5, 2008, mailed to Malcolm R. Toles by regular mail.
- E - Notice of Hearing Continuance letter dated December 1, 2008, mailed to Malcolm R. Toles by regular mail.
- F - Hearing Scheduling letter dated April 3, 2009, mailed to Malcolm R. Toles by regular mail.
- G - Copy of 2008 license renewal application filed by Malcolm R. Toles on or about March 17, 2008, case progress notes, and a copy of a three (3) hour continuing education certificate dated August 12, 2008 for Malcolm R. Toles.
- H - Copy of three (3), three (3) hour continuing education certificates dated June 25, 2008 for Malcolm R. Toles.
- I - Letter of Understanding, signed and dated by Malcolm R. Toles on September 28, 2008.

Following Ms. Tertel's case-in-chief, she rested. Mr. Heckman concluded the hearing at 1:21 p.m.

### In the Matter of Rose M. Stewart

The matter of Rose M. Stewart came before the following members of the Ohio Respiratory Care Board on April 15, 2009 at 1:22 p.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Carol Gilligan, HME member, Joel Marx, HME member, Robert Cohn M.D., Esther L. Kester, R.R.T., R.C.P., Darrell L. Heckman, J.D., Public Member, and Anita Adams, M.B.A., R.C.P. 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. Darrell L. Heckman, J.D. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. Stewart did not request a hearing before the board and was not present. This hearing was held pursuant to Goldman vs. State Medical Board of Ohio, (March 29, 1996), Franklin County Court of Appeals, 95APE 10-1358 (unreported). Jamie Pellegrino, R.R.P, was the hearing reporter, Pellegrino Reporting Services, 1001 Poorman Road, Bellville, Ohio 44813.

Mr. Heckman inquired if there were any preliminary matters: None.

Mr. Heckman then asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Ms. Tertel called Christopher H. Logsdon, Executive Director. Following Mr. Logsdon's testimony, Ms. Tertel moved to enter State's Exhibit on the record. Mr. Heckman admitted State's Exhibits A – G.

State's Exhibits admitted:

- A - Affidavit in the Matter of Rose Marie Stewart, Case #2009ORCB013, signed and dated by Christopher H. Logsdon, Executive Director on April 9, 2009.
- B - Notice of Opportunity for Hearing dated October 14, 2008, mailed to Ms. Rose Marie Stewart by registered mail/return receipt # 7004 2510 0001 7343 6133 on October 16, 2008.
- C - Signed return receipt # 7004 2510 0001 7343 6133, signed by Rose Marie Stewart on October 18, 2008
- D - Hearing Scheduling letter dated December 1, 2008, mailed to Rose Marie Stewart by regular mail.
- E - Hearing Scheduling letter dated April 3, 2009, mailed to Rose Marie Stewart by regular mail.
- F - Letter of Understanding, signed and dated by Rose Marie Stewart on August 8, 2008.
- G - Application for Reinstatement or Reactivation of license filed by Rose Marie Stewart on or about August 7, 2008 and a copy of an Advance Cardiac Life Support card dated May, 2008 for Rose Stewart.

Following Ms. Tertel's case-in-chief, she rested. Mr. Heckman concluded the hearing at 1:32 p.m.

### In the Matter of Christine A. Mossor

The matter of Christine A. Mossor came before the following members of the Ohio Respiratory Care Board on April 15, 2009 at 1:33 p.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Carol Gilligan, HME member, Joel Marx, HME member, Robert Cohn M.D., Esther L. Kester, R.R.T., R.C.P., Darrell L. Heckman, J.D., Public Member, and Anita

Adams, M.B.A, R.C.P. 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. Darrell L. Heckman, J.D. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. Mossor did not request a hearing before the board and was not present. This hearing was held pursuant to Goldman vs. State Medical Board of Ohio, (March 29, 1996), Franklin County Court of Appeals, 95APE 10-1358 (unreported). Jamie Pellegrino, R.R.P, was the hearing reporter, Pellegrino Reporting Services, 1001 Poorman Road, Bellville, Ohio 44813.

Mr. Heckman inquired if there were any preliminary matters: None.

Mr. Heckman then asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Ms. Tertel called Christopher H. Logsdon, Executive Director. Following Mr. Logsdon's testimony, Ms. Tertel moved to enter State's Exhibit on the record. Mr. Heckman admitted State's Exhibits A – H.

State's Exhibits admitted:

- A - Affidavit in the Matter of Christine A. Mossor, Case #2009ORCB019, signed and dated by Christopher H. Logsdon, Executive Director on April 9, 2009.
- B - Notice of Opportunity for Hearing dated October 14, 2008, mailed to Ms. Christine A. Mossor by registered mail/return receipt # 7004 2510 0001 7343 6188 on October 16, 2008.
- C - Signed return receipt # 7004 2510 0001 7343 6188, signed by a resident at the address of record on October 28, 2008.
- D - Hearing Scheduling letter dated December 1, 2008, mailed to Christine A. Mossor by regular mail.
- E - Hearing Scheduling letter dated April 3, 2009, mailed to Christine A. Mossor by regular mail.
- F - Application for Reinstatement or Reactivation of license filed by Christine A. Mossor on or about August 7, 2008.
- G - Copy of one fifteen (15) hour continuing education certificate for Christine A. Mossor dated August 5, 2008.
- H - Letter of Understanding, signed and dated by Christine A. Mossor on August 19, 2008.

Following Ms. Tertel's case-in-chief, she rested. Mr. Heckman concluded the hearing at 1:46 p.m.

In the Matter of Jessica K. Orth

The matter of Jessica K. Orth came before the following members of the Ohio Respiratory Care Board on April 15, 2009 at 1:47 p.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Carol Gilligan, HME member, Joel Marx, HME member, Robert Cohn M.D., Esther L. Kester, R.R.T., R.C.P., Darrell L. Heckman, J.D., Public Member, and Anita Adams, M.B.A, R.C.P. 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. Darrell L. Heckman, J.D. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. Orth did not request a hearing before the board and was not present. This hearing was held pursuant to Goldman vs. State Medical Board of Ohio, (March 29, 1996),

Franklin County Court of Appeals, 95APE 10-1358 (unreported). Jamie Pellegrino, R.R.P, was the hearing reporter, Pellegrino Reporting Services, 1001 Poorman Road, Bellville, Ohio 44813.

Mr. Heckman inquired if there were any preliminary matters: None.

Mr. Heckman then asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Ms. Tertel called Christopher H. Logsdon, Executive Director. Following Mr. Logsdon's testimony, Ms. Tertel moved to enter State's Exhibit on the record. Mr. Heckman admitted State's Exhibits A – H.

State's Exhibits admitted:

- A - Affidavit in the Matter of Jessica K. Orth, Case #2009ORCB025, signed and dated by Christopher H. Logsdon, Executive Director on April 9, 2009.
- B - Notice of Opportunity for Hearing dated October 14, 2008, mailed to Ms. Jessica K. Orth by registered mail/return receipt # 7004 2510 0001 7343 6218 on October 16, 2008.
- C - Returned envelope for article # 7004 2510 0001 7343 6218, containing the Notice of Opportunity for Hearing marked as "Unclaimed" by the United States Postal Service, the post date stamped register receipt for article #7004 2510 0001 7343 6218, and a copy of the United States Postal Service web service online "Track and Confirm" for article #7004 2510 0001 7343 6218.
- D - Notice of Opportunity for Hearing and cover letter dated December 26, 2008, sent by Certified Regular Mail on December 29, 2008.
- E - Hearing Scheduling letter dated April 3, 2009, mailed to Jessica K. Orth by regular mail.
- F - Application for Reinstatement or Reactivation of license filed by Jessica K. Orth on or about August 6, 2008.
- G - Application for 2008 license renewal filed by Jessica K. Orth on or about August 6, 2008.
- H - Letter of Understanding, signed and dated by Jessica K. Orth on August 15, 2008.

Following Ms. Tertel's case-in-chief, she rested. Mr. Heckman concluded the hearing at 1:57 p.m.

In the Matter of Rebecca M. D'Amico

The matter of Rebecca M. D'Amico came before the following members of the Ohio Respiratory Care Board on April 15, 2009 at 1:58 p.m. in the Malabar room. Mohican Resort and Conference Center, 1098 Ashland County Road 3006, Perrysville, OH. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Carol Gilligan, HME member, Joel Marx, HME member, Robert Cohn M.D., Esther L. Kester, R.R.T., R.C.P., Darrell L. Heckman, J.D., Public Member, and Anita Adams, M.B.A, R.C.P. 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. Darrell L. Heckman, J.D. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. D'Amico did not request a hearing before the board and was not present. This hearing was held pursuant to Goldman vs. State Medical Board of Ohio, (March 29, 1996),

Franklin County Court of Appeals, 95APE 10-1358 (unreported). Jamie Pellegrino, R.R.P, was the hearing reporter, Pellegrino Reporting Services, 1001 Poorman Road, Bellville, Ohio 44813.

Mr. Heckman inquired if there were any preliminary matters: None.

Mr. Heckman then asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Ms. Tertel called Christopher H. Logsdon, Executive Director. Following Mr. Logsdon's testimony, Ms. Tertel moved to enter State's Exhibit on the record. Mr. Heckman admitted State's Exhibits A – I.

State's Exhibits admitted:

- A - Affidavit in the Matter of Rebecca M. D'Amico, Case #2009ORCB041, signed and dated by Christopher H. Logsdon, Executive Director on April 9, 2009.
- B - Notice of Opportunity for Hearing dated October 14, 2008, original registered mail/return receipt # 7004 2510 0001 7343 6263.
- C - Returned envelope and United States Postal Service registered mail card for article # 7004 2510 0001 7343 6263, containing the Notice of Opportunity for Hearing marked as "Unclaimed" by the United States Postal Service, a copy of the United States Postal Service web service online "Track and Confirm" for article #7004 2510 0001 7343 6263. registered mail/return receipt # 7004 2510 0001 7343 6218 on October 16, 2008
- D - Cover letter for Notice of Opportunity for Hearing mailed to Ms. Rebecca M. D'Amico by Certified Regular Mail on December 29, 2008.
- E - Hearing Scheduling letter dated April 3, 2009, mailed to Rebecca M. D'Amico by regular mail.
- F - Cover letter for Notice of Opportunity for Hearing and Consent Agreement sent to Ms. Rebecca M. D'Amico by regular mail January 23, 2009.
- G - Application for 2008 license renewal filed by Rebecca M. D'Amico on or about June 26, 2008.
- H - Two certificates of completion for a total of twelve (12) hours of continuing education completed by Rebecca D'Amico on or about August 22, 2008.
- I - Letter of Understanding, signed and dated by Rebecca M. D'Amico on October 2, 2008.

Following Ms. Tertel's case-in-chief, she rested. Mr. Heckman concluded the hearing at 2:10 p.m.

Motion #15: Ms. Gilligan moved to go into private session for the purpose of entering into quasi-judicial deliberation in the matter of Malcolm R. Toles, Rose M. Stewart, Christine A. Mossor, Jessica K. Orth, and Rebecca M. D'Amico. Ms. Ciarlariello seconded the motion. Discussion: None. Roll Call vote:

Darrell L. Heckman -	Yes	Carol Gilligan -	Yes
Marc Mays -	Yes	E. Lucile Kester -	Yes

Susan Ciarlariello -	Yes	Darrell L. Heckman -	Yes
Anita Adams -	Yes	Joel Marx -	Yes

Motion carried.

The board entered executive session at 2:22 p.m. and returned to regular, public session at 2:50 p.m. All voting members of the board were present during executive session. Mr. Mays, Mr. Isom, Ms. Tertel were excused from Executive Session.

#### Findings, Conclusions of Law and Order in the Matter of Malcolm R. Toles (Exhibit J)

Mr. Mays asked if the Board had reached a decision in the matter of Malcolm R. Toles and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. Mr. Heckman read the findings of fact and the conclusions of law in the matter of Malcolm R. Toles.

Mr. Heckman stated that the Board adopted all of the exhibits submitted by the State of Ohio.

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

Motion #16: Mr. Heckman moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Malcolm R. Toles is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby FINES Malcolm R. Toles a sum of One Hundred Twenty Five dollars. The fine shall be paid within sixty (60) days of the mailing date of the order. The Order of the Board shall become effective upon the date of mailing. Mr. Marx seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 abstained (Mays).

Mr. Mays stated that the Board's minutes would serve as the official journal of proceedings in this matter. He directed the Executive Director to prepare a final Original Order that shall be sign by the Board President. The final Original Order shall be attached to the minutes of these proceedings as an exhibit to the record in the matter of Malcolm R. Toles.

#### Findings, Conclusions of Law and Order in the Matter of Rose M. Stewart (Exhibit K)

Mr. Mays asked if the Board had reached a decision in the matter of Rose M. Stewart and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. Mr. Heckman read the findings of fact and the conclusions of law in the matter of Rose M. Stewart.

Mr. Heckman stated that the Board adopted all of the exhibits submitted by the State of Ohio.

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

Motion #17: Mr. Heckman moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Rose M. Stewart is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby FINES Rose M. Stewart a sum of Two Hundred dollars. The fine shall be paid within sixty (60) days of the mailing date of the order. The Order of the Board shall become effective upon the date of mailing. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 abstained (Mays).

Mr. Mays stated that the Board's minutes would serve as the official journal of proceedings in this matter. He directed the Executive Director to prepare a final Original Order that shall be sign by the Board President. The final Original Order shall be attached to the minutes of these proceedings as an exhibit to the record in the matter of Rose M. Stewart.

#### Findings, Conclusions of Law and Order in the Matter of Christine A. Mossor (Exhibit L)

Mr. Mays asked if the Board had reached a decision in the matter of Christine A. Mossor and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. Mr. Heckman read the findings of fact and the conclusions of law in the matter of Christine A. Mossor.

Mr. Heckman stated that the Board adopted all of the exhibits submitted by the State of Ohio.

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

Motion #18: Mr. Heckman moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Christine A. Mossor is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby FINES Christine A. Mossor a sum of Five Hundred dollars. The fine shall be paid within sixty (60) days of the mailing date of the order. The Order of the Board shall become effective upon the date of mailing. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 abstained (Mays).

Mr. Mays stated that the Board's minutes would serve as the official journal of proceedings in this matter. He directed the Executive Director to prepare a final Original Order that shall be sign by the Board President. The final Original Order shall be attached to the minutes of these proceedings as an exhibit to the record in the matter of Christine A. Mossor.

#### Findings, Conclusions of Law and Order in the Matter of Jessica K. Orth (Exhibit M)

Mr. Mays asked if the Board had reached a decision in the matter of Jessica K. Orth and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. Mr. Heckman read the findings of fact and the conclusions of law in the matter of Jessica K. Orth.

Mr. Heckman stated that the Board adopted all of the exhibits submitted by the State of Ohio.

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

Motion #19: Mr. Heckman moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Jessica K. Orth is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby FINES Jessica K. Orth a sum of Two Hundred dollars. The fine shall be paid within sixty (60) days of the mailing date of the order. The Order of the Board shall become effective upon the date of mailing. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 abstained (Mays).

Mr. Mays stated that the Board's minutes would serve as the official journal of proceedings in this matter. He directed the Executive Director to prepare a final Original Order that shall be sign by the Board President. The final Original Order shall be attached to the minutes of these proceedings as an exhibit to the record in the matter of Jessica K. Orth.

Findings, Conclusions of Law and Order in the Matter of Rebecca M. D'Amico (Exhibit N)

Mr. Mays asked if the Board had reached a decision in the matter of Rebecca M. D'Amico and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. Mr. Heckman read the findings of fact and the conclusions of law in the matter of Rebecca M. D'Amico.

Mr. Heckman stated that the Board adopted all of the exhibits submitted by the State of Ohio.

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

Motion #20: Mr. Heckman moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Rebecca M. D'Amico is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby FINES Rebecca M. D'Amico a sum of Five Hundred dollars. The fine shall be paid within sixty (60) days of the mailing date of the order. The Order of the Board shall become effective upon the date of mailing. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 abstained (Mays).

Mr. Mays stated that the Board's minutes would serve as the official journal of proceedings in this matter. He directed the Executive Director to prepare a final Original Order that shall be sign by the Board President. The final Original Order shall be attached to the minutes of these proceedings as an exhibit to the record in the matter of Rebecca M. D'Amico.

The meeting adjourned at 3:00 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 9, 2009.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Witness