

OHIO RESPIRATORY CARE BOARD

77 S. HIGH STREET, 16TH FLOOR

COLUMBUS, OHIO 43215-6108

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OFFICIAL BOARD MEETING MINUTES OF APRIL 22, 2015

REGULAR BUSINESS MEETING

MEMBERS IN ATTENDANCE (Exhibit A):

- Marc Mays, M.S., R.R.T., R.C.P., President
- Steven Pavlak, M.S., R.R.T., R.C.P., Secretary
- Melissa Cross, HME Member
- Maninder Kalra, M.D., Physician Member
- Verna Riffe Biemel, Public Member
- Robert Slabodnick, M.Ed., R.R.T., R.C.P.
- Kenneth Walz, J.D., R.R.T., R.C.P.
- Andrea Yagodich, R.R.T., R.C.P.

Staff in attendance:

- Corey C. Schaal, J.D./M.P.A., Executive Director
- Marcia L. Tatum, HME Manager
- Traci L. McDonald, Administrative Professional I

Others in Attendance:

- Joel Marx
- Sue Ciarlariello, OSRC Legislative Committee Chair
- David P. Corey, OSRC Executive Director
- F. Herbert Douce, Consultant

Stacy Hubbard

Steven R. Kochheiser, Assistant Attorney General – Office of the Ohio Attorney General

Dr. James E. Loomis

Teresa Mantz, Deposition Specialists

Bobby Robbins, Contract Investigator

Christopher Walkes

Aaron Wilcox

Kamela Yuricich, OAMES Executive Director

Jenny Beer

Samantha Booth

Kaitlyn Cirrence

Emery Fry

Katie Hooks

Charles Huston

Whitney Jacobs

Cheryl Linnean

Michael Nell

Victoria Saunders

Aryn Smith

Shelby Stuff

Andrea Teschler

Travis Thompson

CALL REGULAR MEETING TO ORDER

Mr. Mays called the meeting order at 1:06 p.m. Mr. Pavlak took roll call and eight members were present (see exhibit A – Carol Gilligan, HME Member was absent). Mr. Mays noted there was a quorum of the Board and business could be considered.

Agenda item 1. Approval of Previous Meeting Minutes (Exhibit B)

Mr. Mays asked if members received and read the previous meeting minutes. Mr. Mays then asked if there were any changes, deletions or corrections. Mrs. Riffe Biemel indicated that she had provided Mr. Schaal with a list of minor corrections. Hearing no other concerns, Mr. Mays asked if there was a motion to approve the Board's previous meeting minutes as amended from February 11, 2015.

Motion #1: Mr. Slabodnick moved to approve the February 11, 2015 meeting minutes. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 2. Adoption of Proposed Meeting Agenda (Exhibit C)

Mr. Mays asked if there were any changes or additions to the proposed agenda. Hearing none, he asked if there was a motion to approve the agenda.

Motion #2: Mr. Pavlak moved to approve the proposed agenda. Mr. Slabodnick seconded the motion. Discussion: None. Motion carried: 8 – 0.

OFFICER AND STAFF REPORTS

Agenda item 3.a: President's Report

Mr. Mays commented that the only constant was change. He then announced that the Board was losing a couple of excellent members. At this point, he asked Mrs. Stephenson to present a resolution signed by all Board members and Mr. Schaal to Mr. Marx who had declined to be considered for reappointment to the Board. Mr. Marx took a moment to express his appreciation for his time on the Board and the chance to work with all the present and past members. Mr. Schaal then presented a resolution signed by all Board members and Mr. Schaal to Mr. Slabodnick. Mr. Slabodnick then offered a few comments thanking all the members of Board and expressing appreciation for the opportunity to serve the people of Ohio. Reiterating that change is the only constant, Mr. Mays announced that elections would be taking place later in the day, but that he believed that it was time for someone else to serve as President of the Board. Aside from electing a new President, the members of the Board would select a Secretary and possibly an appointed Hearing Officer.

Motion #3: Ms. Yagodich moved to approve the president's report. Dr. Kalra seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 3.b: Executive Director's Report (Exhibit D)

Mr. Schaal reported that an outline of his report appeared in the packets, but that he would highlight the following issues:

1. RCP Reinstatements – Since the last Board meeting in February, 20 individuals with either lapsed or inactive RCP Licenses have sought reinstatement. These individuals are not reflected in the lists of application ratifications for either Limited Permits or RCP Licenses. Staff is attempting to identify report parameters which will enable an easy counting of this subgroup. It may be possible in the future to break down the active number of both Limited Permits and RCP Licenses to reflect those with initial licenses versus those with renewed licenses.
2. Limited Permit Renewals – Slightly over one month ago, the letters for renewals of Limited Permits were mailed out to 214 individuals (L1 – 194, L2 – 20). As of last Friday, 11 Limited Permits had been renewed (L1 – 8, L2 – 3). The early part of the renewal period is typically slow. However, there have been number individuals who have active Limited Permits in renewal who have subsequently submitted applications for their RCP License.
3. Biennial State Audit – The Auditor of State’s office has scheduled to begin our biennial audit on Monday, April 27th. The audit takes place over several days spread out over several months usually split across the last and first year of separate biennia. As such, the cost of the audit will partially fall in FY 2015 with the remainder coming out of FY 2016. The auditor coming to meet with us has not previously audited the Board. Fortunately, the individual who will be heading the Board’s audit is currently auditing the OP/PT/AT Board and Mr. Schaal introduced himself to the new auditor.
4. FY 2016/2017 – Biennial Budget – Mr. Schaal testified before the House Finance Subcommittee on Agriculture and Natural Resources with regards to the Executive’s budget recommendation for the Board. Mr. Schaal’s testimony drew only one question which dealt with whether or not our fine revenue is drawn back into our budget. While fine revenue goes into the 4K90 Fund out of which our Board receives all our appropriations, increases in revenues do not correspond to increases in appropriation authority.

While supportive of the Executive’s recommendation, and firmly believing that the 99.4% recommendation of what was requested is adequate to enable the board to function, Mr. Schaal did inquire as to whether a very small amount of the funds for maintenance and supplies, \$3,000, could be moved from the second to the first year of the biennium to better align with the higher need that occurs when in the midst of renewal. The Board had received \$6,000 less than what we asked for in maintenance and supplies in the first year of the biennium, but it had received \$6,000 more than was requested in the second year of the biennium. While this change was not made by the Subcommittee, the Board is in a similar situation with other Boards that did not get what they had sought. Additionally, to pay for additional tax cuts without raising additional revenues, the members of the House have proposed cutting funds from other agencies.

5. Assistive Personnel Language – As to be discussed in the Rules Committee, the Budget Bill, H.B. 64, originally contained language that enabled assistive personnel in certain programs, Medicaid programs administered through the Departments of Aging & Medicaid, to perform health-related activities – using

C-PAP, BiPAP and pulse oximeters without any license or delegation of authority. Additionally, some of these assistive personnel (home health workers) would be allowed to administer oxygen and meter-dosed inhaled medications. While Mr. Schaal and Mr. Mays have worked to identify concerns with the language, these provisions have been currently removed from the budget bill due to tangential issues raised by the MR/DD community. The proposal is expected to come again either in this or another bill. At a minimum, the Board would like to be among the groups to be specifically named to be involved in any rule-making process.

6. H.B. 667 Redraft – The proposed bill, developed by the Ohio Society for Respiratory Care with input from the Board, has been redrafted by the Legislative Service Commission at the request of Representative Schuring. He is currently soliciting co-sponsors and the bill is expected to be introduced within the next couple of weeks. Corrections and clarifications raised with the Board have been incorporated into the new bill.
7. Human Trafficking CE – At the request of the Governor’s Office, Mr. Schaal has been asked to raise the possibility of having a CE on Human Trafficking being considered as a part or an additional required CE.
8. NPDB Audit – The National Practitioner Data Bank has asked staff to audit our records for 2012-2013 for any Respiratory Therapy Technicians that should be included into the NPDB system. After speaking with the staff at the NPDB, it appears as though the two individuals currently in the system are correct, but we are attempting to have them update their records to reflect that these individuals are L-2 Limited Permit holders. Ideally, the NPDB wishes to reflect the terminology used by the local licensing entity.
9. Document Management Contracts – An expanded contract for renewal of document management services and approval for a price quote have been agreed to and submitted to the Department of Administrative Services. Currently, the Board subcontracts for iSynergy software and server capacity from Coleman Data Solutions. The Board is extending that contract for another year and covering a previously undeclared charge for data storage. Originally, there had been an expectation that the Board’s document management needs would be subsumed under the state’s updated eLicense system. Since that system will not be operational for the foreseeable future, the contract has been renewed and a quote for updating the software has been agreed to by both us and the Chemical Dependency Professionals Board who share the system with the Board. In haggling and simplifying the process, the increase in the total contract cost is being offset by an increase in the costs being borne by the other agency. The update of the iSynergy software from version 3.13 to 5.1 is necessary in that the older version would no longer be supported. However, the update will be delayed to coincide with the anticipated purchase of two new computers. Currently, the two staff members who most frequently use the system have older operating systems which would not support the new software.
10. AARC Update – AARC is in the process of updating their figures on the numbers of licensees and limited permit holders that we have in Ohio and what are the current fees for licensing.

11. Mr. Schaal then reviewed the Boards expenditures and summarized the attached Revenue Report and a Credential Report

Motion #4: Mr. Slabodnick moved to approve the Executive Director's report. Mrs. Riffe Biemel seconded the motion. Discussion: None. Motion carried: 8 – 0.

Mr. Mays then introduced several people around the table to students from North Central State College who were attending the Board meeting.

OHIO SOCIETY FOR RESPIRATORY CARE UPDATE

Ms. Ciarlariello and Mr. Corey from the Ohio Society for Respiratory Care provided an update on behalf of the society.

Ms. Ciarlariello provided an update with regards to legislation proposed by the Society that had been introduced at the end of the last legislative session – H.B. 667. Ms. Ciarlariello explained that Rep. Schuring expected the bill to be introduced in the next couple of weeks. Among the items to be addressed by the bill are the use of protocols by respiratory therapists, being in good standing for students with limited permits, and the ability of the Board to address licensees who appear to be impaired by alcohol and drugs. Rep. Schuring is currently looking for cosponsors for the bill.

Mr. Corey and Ms. Ciarlariello then explained the Assistive Personnel language which had originally appeared in the budget bill. Mr. Corey reiterated that although the measure had been removed from the budget bill, the issue would resurface at some point in a stand-alone measure. Of concern to the Board, the measure would broaden the ability of unlicensed personnel to provide services currently within the scope of respiratory therapists.

OFFICER AND STAFF REPORTS (continued)

Agenda item 3.c: HME Manager's Report (Exhibit E)

Ms. Stephenson reported that since the last meeting staff had approved 12 HME License applications, 29 HME Certificates of Registration applications and there are currently 8 new applications pending. Since the Board's last meeting, inspections were scheduled for February, March and April – some inspection dates are still open for May and June. The Licensing Division has collected \$77,535 in revenue so far for FY 2015. Staff is happy to report that all the HME license files have been prepped and scanned and staff is midway through the scanning of registration files.

Mr. Slabodnick inquired as to whether we had sufficient funding for inspections through the remainder of FY 2015. Mrs. Stephenson deferred to Mr. Schaal who reported that sufficient funds appear to remain to cover all inspections for the year. However, funds may need to be moved from encumbrances from one inspector to another to cover the inspections.

Motion #5: Ms. Yagodich moved to approve the HME Manager's report. Dr. Kalra seconded the motion. Discussion: None. Motion carried: 8 – 0.

Exercising executive privilege, Mr. Mays called for a ten minute break.

COMMITTEE REPORTS

Agenda item 4.a: Rules Committee Report

Mr. Pavlak indicated that a quorum of the committee was present. The group discussed the five year review of OAC rules. There are 45 RCP and 45 HME rules in need of review. The Committee identified proposed changes regarding the appointed hearing officer, non-invasive ventilation and Military ID card. The committee also discussed the following pieces of legislation: HB 667 redraft, HB 39 and HB 64. The committee also discussed what to do with individuals who have been lapsed or inactive for more than 5 years. In a particular instance, the recommendation was made that it be recommended to an individual that they re-take the NBRC exam. Lastly, what if a veteran doesn't ask for a reduction in the initial application fee? It was decided that the individual would not receive a reduction unless it was asked for and documentation is provided.

Motion #6: Mr. Slabodnick moved to approve the Rules Committee Report. Ms. Yagodich seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 4.c: Scope of Practice Committee Report

Ms. Yagodich reported that the committee had met that morning with Mr. Douce in attendance and reviewed four scope of practice inquiries. Three of the inquiries were standard with only one inquiry appearing with a new facet. Ms. Yagodich indicated that Mr. Douce is starting to compile a list of common questions which could be useful in the future on a website. Lastly, the Chiropractic Board had raised an issue with EWO – exercising with oxygen, but the committee decided it was a matter for discussion by the Medical and the Pharmacy Boards.

Motion #7: Mr. Slabodnick moved to approve the Scope of Practice Committee Report. Dr. Kalra seconded the motion. Discussion: None. Motion carried: 8 – 0.

PROBABLE REVIEW COMMITTEE REPORT (Exhibits F, G & H)

Agenda item 5a: Licensing Interview – Aaron Wilcox

Mr. Kochheiser provided background with regards to the requirement that Mr. Wilcox appear before the Board before he would be allowed to possibly receive his RCP License. Mr. Wilcox spoke before the Board and in addition to requesting that he receive his RCP License that his probation be either terminated or end six months earlier than scheduled. Mr. Slabodnick inquired as to whether he had taken the NBRC exams and Mr. Wilcox responded that he has passed both the TMC and the Clinicals. Mr. Mays asked whether he had applied for his RCP License. Mr. Wilcox indicated that he had and Mr. Schaal added that everything was in order in his file with the exception of having had this interview before the Board. Mrs. Riffe Biemel inquired as to the start and length of probation and Mr. Kochheiser indicated that the probation was sent for two years commencing in June of 2014, Mr. Schaal then asked that Mr. Robbins provide a review of Mr. Wilcox's status while on probation. Dr. Loomis, Aaron's sponsor, provided a statement that Mr. Wilcox is working with other people working in their recovery.

Motion #8: Mr. Pavlak moved to enter Executive Session for the purpose of considering the investigation of charges or complaints against licensees under R.C. 121.22(G)(1) and which involves matters that are required to be kept confidential under R.C. 149.43(A)(2) and R.C. 4761.03(E) and 4752.08 (B). Ms. Yagodich seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Melissa Cross -	Yes	Dr. Maninder Kalra -	Yes
Andrea Yagodich -	Yes	Steven Pavlak -	Yes
Verna Riffe Biemel -	Yes	Robert Slabodnick -	Yes

Motion carried.

The Board entered executive session at 2:10 p.m. and returned to regular, public session at 2:50 p.m. As members of the Probable Review Committee, Ms. Yagodich and Mr. Slabodnick excused themselves from participating in this portion of the meeting. Aside from the six remaining Board members, also present during executive session were Mr. Schaal, Mrs. Stephenson, Ms. McDonald, Mr. Robbins and Mr. Kochheiser.

**Names and identifying information were redacted from discussion and from proposed consent agreements during the course of executive session deliberation and the public meeting. Matters were referred to only by case number in documentation and referenced by case number verbally. Identifying information based upon the correlating case number was added during the writing of the minutes after approval of the proposed consent agreements through a motion on the record during public session*

Back in public session, the Board took the following actions:

Agenda item 5.a: Approval of RCP Licensure of Aaron Wilcox

Motion #9: Mr. Pavlak moved to approve the RCP License of Aaron Wilcox with no change in the term of probation. Dr. Kalra seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 5.c: Probation Compliance Report

Motion #10: Mrs. Riffe Biemel moved to approve the Probation Compliance Report. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 6– 0. Mr. Slabodnick and Ms. Yagodich abstained.

Agenda item 5d: Closed Case Review

Motion #11: Mrs. Riffe Biemel moved to approve the closure of the following cases:

2015 ORCB 010
2015 ORCB 037
2014 HME 3002/2014 HME 2002

Dr. Kalra seconded the motion. Discussion: None. Motion carried: 6 – 0. Mr. Slabodnick and Ms. Yagodich abstained.

Agenda item 5.e: Approval of Consent Agreements (Exhibit I)

Motion #12: Mr. Pavlak moved to approve the following consent agreements.

RCB Agreements

Exh. # Case no. /Respondent

Violation

2015 ORCB 036 (Chandra Balderson)

O.R.C. 4761.09(A)(4) violation

Mrs. Riffe Biemel seconded the motion. Discussion: None. Motion carried: 6 – 0 with Ms. Yagodich and Mr. Slabodnick abstaining.

Mr. Schaal inquired as to whether Mr. Slabodnick and Ms. Yagodich had earlier abstained from the vote on the motion to provide Aaron Wilcox with his RCP License. After conferring with Mr. Kochheiser, it was decided that neither Mr. Slabodnick nor Ms. Yagodich needed to abstain as the current matter hadn't been up for discussion in the Probable Review Committee.

Mr. Mays provided a brief synopsis to Ms. Cross, since this was her first meeting as a Board member, as to how the Probable Review Committee operates and why members sometimes needed to abstain from votes on motions.

OLD BUSINESS

Agenda item 6.a: Attorney General Opinion (Exhibit J)

Mr. Schaal provided the members with copies of an Attorney General Opinion which had been requested by the Board in 2014. Mr. Kochheiser provided the members with a summary of the opinion which found that actions of the Board regarding regulation of out-of-state HME providers could be subject to negative outcomes in the courts due to questions tied to the dormant commerce clause. One area that does not seem to pose a problem would be to possibly require pre-inspection prior to issuing an HME License on an in-state HME provider. Mrs. Riffe asked whether there had been a specific case that had driven this question. Mr. Mays could not specifically recall, but Mr. Walz indicated that there had been general questions. Mr. Mays asked if Ms. Yuricich could take this opinion back to OAMES and share it with its members. Mr. Schaal indicated that he would share the opinion with Ms. Yuricich.

Agenda item 6.b: CoARC – Response to California Petition (Exhibit K)

Mr. Schaal provided the members with a letter from CoARC – the Committee on Accreditation for Respiratory Care – that was drafted in response to the resolution passed by the California Society for Respiratory Care petitioning CoARC to increase the accreditation requirements for institutions that support respiratory care programs to include a minimum RRT pass rate on the NBRC exam. Mr. Douce and Mr. Schaal indicated that CoARC essentially refused to set two standards – passage rates for CRT versus RRT for schools. The Board then discussed whether an alternative should be adopted with regards to having Ohio's schools needing to be accredited by CoARC. In response to an inquiry from Mr. Douce about whether the OSRC should tackle this issue, Mr. Mays responded that it is not an issue that the Board has a perspective on one way or the other.

NEW BUSINESS

Agenda item 7.a: Application ratification for RCP Licenses and Limited Permits issued since the last meeting (Exhibit L)

Motion #11: Mrs. Riffe Biemel moved to ratify respiratory care professional licenses and limited permits issued on the following dates:

Respiratory Care Professional Licenses and Limited Permits issued between 2/12/2015 – 4/16/2015.

Mr. Pavlak seconded the motion. Discussion: Mr. Mays asked if the staff could check on the status of a particular school which he had never heard of – ATI Health Education Center – Miami, Florida. Mr. Schaal and Ms. McDonald tried to confer with Ms. Hux to confirm the status of the school. In the interim, Mrs. Riffe Biemel withdrew her motion and the Board proceeded to Agenda item 7.b. Subsequently, the school was found to have been accredited at the time the licensee attended the program. Mrs. Riffe Biemel offered her motion again and it was seconded this time by Mr. Slabodnick. Motion carried 8 - 0.

Agenda item 7.b: Application ratification for Home Medical Equipment Licenses and Certificates of Registration (Exhibit M)

Motion #12: Dr. Kalra moved to ratify HME licenses and certificates of registration issued on the following dates:

Home Medical Equipment Licenses and Certificates of Registration issued between 2/9/2015 – 4/13/2015.

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

Agenda item 7.c: Board of Regents Academic Program Guidelines (Exhibit N)

Mr. Schaal provided an updated copy of guidelines being proposed by the Chancellor of the Board of Regents which would limit the number of hours to a maximum of 65 hours in order to receive an Associate's degree. However, the proposal would allow for more hours if it was required for licensure. The Board discussed the future issues which a revamped Education Committee may need to address.

Agenda item 7.d: *North Carolina State Board of Dental Examiners v. Federal Trade Commission*

Mr. Kochheiser summarized a confidential memo regarding a U.S. Supreme Court decision related to actions taken

Agenda item 7.e: Board Elections

Mr. Mays asked for ballots to be distributed to members of the Board. He then asked for nominations for President of the Board. Mr. Slabodnick nominated Mr. Walz who accepted. No other nominations were made. Mr. Walz took

over as the President. Mr. Walz then asked for nominations for Secretary of the Board. Mr. Mays nominated Mr. Pavlak who accepted. No other nominations were made. Mr. Pavlak was re-elected Board Secretary.

Mr. Slabodnick asked whether Mr. Walz could continue to serve as the Appointed Hearing Officer. Mr. Walz and Mr. Schaal indicated that in the absence of someone being elected as Hearing Officer, the President serves in that capacity. Mrs. Riffe Biemel asked if there was too much work with Mr. Walz serving as both President and the Appointed Hearing Officer whether the Board could then elect someone to serve as the Appointed Hearing Officer.

Mr. Walz indicated that he would keep committees as they were.

FOR THE GOOD OF THE BOARD

Mr. Walz asked if anyone had any other matters for the good of the Board. Mrs. Riffe Biemel expressed her pleasure as being a member of the Board and indicated her desire to be reappointed and hoped that this was not to be her last meeting as a Board member. The Board applauded in recognition of Mrs. Riffe Biemel's comments.

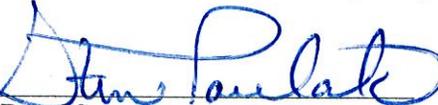
Mr. Slabodnick wished to thank his students from North Central State College for coming to observe the Board meeting.

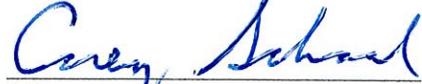
ADJOURNMENT

Mr. Walz asked if there was any other business to bring before the Board.

Hearing none, Mr. Walz adjourned the meeting at 3:50 p.m.

Board 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 10, 2015.


Board Secretary


Witness