

---

**OHIO RESPIRATORY CARE BOARD**

77 S. HIGH ST., 16<sup>TH</sup> FL.

COLUMBUS, OHIO 43215-6108

**Contents**

<b>MEMBERS IN ATTENDANCE (Exhibit A): .....</b>	<b>2</b>
<b>Agenda item #1: CALL MEETING TO ORDER AND APPROVAL OF AGENDA .....</b>	<b>3</b>
<b>Agenda item #2: ADMINISTRATIVE HEARINGS.....</b>	<b>3</b>
Agenda item 2a: In the matter of Brittany Dawn Beckman, Case #2014ORCB054 .....	3
<b>Agenda item #1 Cont'd: CALL MEETING TO ORDER AND APPROVAL OF AGENDA (Exhibit B) .....</b>	<b>5</b>
<b>Agenda item #2 Cont'd: ADMINISTRATIVE HEARINGS.....</b>	<b>5</b>
Agenda item 2b: In the matter of Caroline Marie Murphy, Case #2014ORCB039.....	5
<b>Agenda item #3: STANDING COMMITTEE MEETINGS.....</b>	<b>5</b>
<b>Agenda item #4: APPROVAL OF PRIOR MEETING MINUTES (Exhibit C) .....</b>	<b>6</b>
Agenda item 4.a: Prior Meeting Minutes – June 18, 2014 (Exhibit C) .....	6
<b>Agenda item #5: OFFICER AND STAFF REPORTS.....</b>	<b>6</b>
Agenda item 5a: President’s Report .....	6
Agenda item 5b: Executive Director’s Report (Exhibit D).....	6
Agenda item 5c: HME Manager’s Report (Exhibit E) .....	7
<b>Agenda item #10: OPEN FORUM (Exhibit F).....</b>	<b>7</b>
<b>Agenda item #5: OFFICER AND STAFF REPORTS CONT’D.....</b>	<b>8</b>
<b>Agenda item #6: BOARD COMMITTEE REPORTS.....</b>	<b>9</b>
Agenda item 6a: Home Medical Equipment Committee – Joel Marx, Chair .....	9
Agenda item 6b: Scope of Practice Committee – Andrea Yagodich, Chair .....	9
(Exhibits G, H, and I) .....	9
Agenda item 6c: Rules Committee – Steven Pavlak, Chair.....	10
<b>Agenda item #7: DELIBERATION IN PRIVATE SESSION.....</b>	<b>10</b>
Agenda item 7a: Deliberation in Private Session – Brittany D. Beckman .....	10
(Case #2014ORCB054).....	10
Agenda item 7b: Deliberation in Private Session – Caroline M. Murphy .....	11
(Case #2014ORCB039).....	11
Agenda item 7c: Deliberation in Private Session – Daniel G. Musgrave .....	11

	(Case #2013ORCB056).....	11
<b>Agenda item #8:</b>	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JOURNAL ENTRIES .....</b>	<b>12</b>
Agenda item 8.a:	In the matter of Brittany Dawn Beckman, Case #2014ORCB054 ..... (Exhibit J).....	12 12
Agenda item 8.b:	In the matter of Caroline Marie Murphy, Case #2014ORCB039..... (Exhibit K).....	16 16
Agenda item 8.c:	In the matter of Daniel G. Musgrave, Case #2013ORCB056 ..... (Exhibit L) .....	21 21
<b>Agenda item #9:</b>	<b>PROBABLE REVIEW COMMITTEE REPORT .....</b>	<b>26</b>
Agenda item 9c:	Approval of Consent Agreement (Exhibit M).....	27
Agenda item 9d:	Closed Case Review .....	27
<b>Agenda item #10:</b>	<b>NEW BUSINESS .....</b>	<b>28</b>
Agenda item 10a:	Application ratification for licenses and limited permits issued since the last meeting (Exhibit N) .....	28
Agenda item 10b:	Application ratification for Home Medical Equipment Licenses and Certificates of Registration (Exhibit O) .....	28
Agenda item 10c:	Hyperbaric Oxygen Technologist Rule (Exhibit P) .....	28
Agenda item 10d:	Annual Report (Exhibit Q) .....	28
<b>Agenda item #11:</b>	<b>EXECUTIVE SESSION – EMPLOYMENT OF PUBLIC EMPLOYEE.....</b>	<b>28</b>
<b>Agenda item #12:</b>	<b>FOR THE GOOD OF THE BOARD .....</b>	<b>29</b>
<b>Agenda item #13:</b>	<b>ADJOURNMENT.....</b>	<b>29</b>

## UNOFFICIAL BOARD MEETING MINUTES OF AUGUST 20, 2014

### REGULAR BUSINESS MEETING

#### MEMBERS IN ATTENDANCE (Exhibit A):

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

Joel Marx, HME Member

Verna Riffe Biemel, Public Member (arrived at 1:05 p.m.)

Carol Gilligan, HME Member (arrived at 9:14 a.m.)

Steven A. Pavlak, M.S., R.R.T., R.C.P.

Kenneth Walz, J.D., R.R.T., R.C.P.

Robert Slabodnick, M.Ed., R.R.T., R.C.P.

Maninder Kalra, Ph.D., M.D., Physician Member

Andrea Yagodich, R.R.T., R.C.P.

**Staff in attendance:**

Christopher H. Logsdon, Executive Director

Traci L. McDonald, Administrative Professional I

**Others in Attendance:**

Steven R. Kochheiser, Assistant Attorney General

Bobby Robbins, Contract Investigator

Brittany Beckman

Mark Levy, Director OPP Board

Susan Ciarlariello, Legislative Chairperson, Ohio Society for Respiratory Care

**Agenda item #1: CALL MEETING TO ORDER AND APPROVAL OF AGENDA**

Mr. Mays called the meeting order at 9:03 am. Mr. Pavlak took roll call and seven members were present. Mr. Mays noted there was a quorum of the Board and business could be considered.

**Agenda item #2: ADMINISTRATIVE HEARINGS**

Agenda item 2a: In the matter of Brittany Dawn Beckman, Case #2014ORCB054

The matter of Brittany Dawn Beckman came before the following members of the Ohio Respiratory Care Board on August 20, 2014, 2014 at 9:05 a.m. in Room West B&C, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 S. High Street, Columbus, Ohio. Present were Marc Mays, R.R.T., R.C.P., President, Joel Marx, HME Member, Carol Gilligan, HME Member(arrived at 9:14 a.m.), Maninder Kalra, M.D., Kenneth Walz, J.D., R.R.T, R.C.P., Steven Pavlak, R.R.T., M.S., Andrea D. Yagodich, B.S., R.R.T., R.C.P., and Robert Slabodnick, R.R.T,

M.Ed. Robert Slabodnick, R.R.T., M.Ed. recused himself from the proceedings based upon his role as the Board liaison to the investigatory Probable Review Committee.

Kenneth Walz, J.D., R.R.T., R.C.P. served as the Appointed Hearing Officer in this matter.

Steven R. Kochheiser, Assistant Attorney General, represented the State of Ohio.

Brittany Dawn Beckman appeared Pro Se.

Teresa L. Mantz was the Court Reporter, Deposition Specialists, Inc. 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Preliminary matters:

Mr. Walz noted that an Attorney did not represent Brittany Dawn Beckman. Mr. Walz asked Ms. Beckman if his observation was correct. Ms. Beckman affirmed Mr. Walz's observation. Mr. Walz asked Ms. Beckman if she received the Ohio Respiratory Care Board's Notice of Opportunity for Hearing wherein she was advised of her right to be represented by an attorney. Ms. Beckman affirmed that she did receive the Ohio Respiratory Care Board's Notice of Opportunity for Hearing. Mr. Walz asked Ms. Beckman, based on her understanding of her right to be represented by an attorney, if it was her wish to proceed without the presence of counsel. Ms. Beckman affirmed that she was prepared to proceed without the presence of counsel. Mr. Walz noted that the record would so reflect his acknowledgement.

Mr. Walz asked the members of the Board to introduce themselves. Ms. Beckman introduced herself and stated she was recently married and her name had changed to Fiasco. Mr. Walz inquired how she would like to be addressed for the purposes of the hearing record. Ms. Fiasco stated she would prefer to be addressed as Ms. Beckman for the purposes of the hearing.

Mr. Walz briefly reviewed the rules of the hearing and then inquired if there were any other preliminary matters. Mr. Kochheiser stated that he had met with Ms. Beckman prior to the hearing and Ms. Beckman had agreed to stipulate to the admissibility of State's Exhibit 1a through 8.

Mr. Kochheiser gave an opening statement. Ms. Beckman waived the opening statement. The State presented its case in chief. The State called Brittany Dawn Beckman, as on cross-examination. The State of Ohio moved for the admission of State's Exhibits 1a through 8. Hearing no objection from Mr. Wilcox, the State's exhibits were admitted.

Ms. Beckman presented her case in chief. Ms. Beckman did not have any exhibits to introduce. Ms. Beckman testified on her own behalf.

Mr. Kochheiser gave a closing statement. Ms. Beckman waived the closing statement. The hearing concluded at 9:41 a.m.

**Agenda item #1 Cont'd: CALL MEETING TO ORDER AND APPROVAL OF AGENDA (Exhibit B)**

**Motion #1:** Mr. Pavlak moved to approve the regular business agenda for August 20, 2014. Mr. Slabodnick seconded the motion. Discussion: None. Motion carried: 8 – 0.

**Agenda item #2 Cont'd: ADMINISTRATIVE HEARINGS**

Agenda item 2b: In the matter of Caroline Marie Murphy, Case #2014ORCB039

The matter of Caroline Marie Murphy came before the following members of the Ohio Respiratory Care Board on August 20, 2014, 2014 at 9:44a.m. in Room West B&C, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 S. High Street, Columbus, Ohio. Present were Marc Mays, R.R.T., R.C.P., President, Joel Marx, HME Member, Carol Gilligan, HME Member, Maninder Kalra, M.D., Kenneth Walz, J.D., R.R.T, R.C.P., Steven Pavlak, R.R.T., M.S., Andrea D. Yagodich, B.S., R.R.T., R.C.P., and Robert Slabodnick, R.R.T, M.Ed. Robert Slabodnick, R.R.T., M.Ed. recused himself from the proceedings based upon his role as the Board liaison to the investigatory Probable Review Committee.

Kenneth Walz, J.D., R.R.T., R.C.P. served as the Appointed Hearing Officer in this matter.

Steven R. Kochheiser, Assistant Attorney General, represented the State of Ohio.

Caroline Marie Murphy (hereafter referred to as “Ms. Murphy”) did not request a hearing before the Board. 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).

Teresa L. Mantz was the Court Reporter, Deposition Specialists, Inc. 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Preliminary matters: None.

Mr. Walz asked the members of the Board to introduce themselves.

Mr. Walz briefly reviewed the rules of the hearing.

Mr. Kochheiser gave an opening statement. The State presented its case in chief. The State called Christopher H. Logsdon, Executive Director as its only witness. The State of Ohio moved for the admission of State’s Exhibits 1 through 11. Mr. Walz admitted State’s exhibits 1 through 11.

Mr. Kochheiser waived a closing statement. The hearing concluded at 10:04 a.m.

**Agenda item #3: STANDING COMMITTEE MEETINGS**

The Board’s Home Medical Equipment Committee met in Room West B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio at 10:05 a.m. The Committee meeting adjourned at

10:41 a.m. Mr. Marx chaired the meeting. Official minutes of the Board's Home Medical Equipment Committee were prepared and are maintained separate of this journal.

The Board's Scope of Practice Committee met in Room West B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio at 10:42 a.m. The Committee meeting adjourned at 10:54 a.m. Ms. Yagodich chaired the meeting. Official minutes of the Board's Scope of Practice Committee were prepared and are maintained separate of this journal.

The Board's Rules Committee met in Room West B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio at 10:55 a.m. The Committee meeting adjourned at 11:18 a.m. Mr. Pavlak chaired the meeting. Official minutes of the Board's Rules Committee were prepared and are maintained separate of this journal.

#### **Agenda item #4: APPROVAL OF PRIOR MEETING MINUTES (Exhibit C)**

Agenda item 4.a: Prior Meeting Minutes – June 18, 2014 (Exhibit C)

**Motion #2:** Mr. Pavlak moved to approve the June 18, 2014 meeting minutes. Dr. Kalra seconded the meeting. Discussion: Mr. Walz noted a correction in motion #22, page 14, stating the form was a respiratory care licensing program form and not a home medical equipment program form. Mr. Walz recommended striking the words, "home medical equipment" and inserting, "respiratory care." Hearing no objection, Mr. Mays asked Mr. Logsdon to make the correction. Mr. Mays called the question. Motion carried: 8 – 0.

#### **Agenda item #5: OFFICER AND STAFF REPORTS**

Agenda item 5a: President's Report

Mr. Mays did not provide a report to the Board; however, he did note that the Board had an Executive Session at approximately 3:20 p.m. and it would require the presence of all members.

Agenda item 5b: Executive Director's Report (Exhibit D)

Mr. Logsdon reported on the following issues:

1. FY 2014 Financial Report – Mr. Logsdon stated that the Board completed FY 2014 on June 30, 2014. Mr. Logsdon stated the Board's expenditures closely matched the financial plan and only DAS Mail expenditures and American Express billing carried over to FY 2015.
2. FY 2015 financial activity – Mr. Logsdon stated that FY 2015 began on July 1, 2015, he had begun encumbering funds for annual personal service contracts, and DAS service costs. Mr. Logsdon stated that expenditures were unremarkable.
3. FY 2016/2017 budget preparation – Mr. Logsdon reported that the Board's FY 2016/2017 budget needs to be filed by September 17, 2014. Mr. Logsdon recommended assigning two board members to liaison with him on the budget preparation.

4. Workforce Plan – Mr. Logsdon reported that the Boards and Commissions would be receiving new workforce planning guidance, which will likely contain succession-planning components.
5. Year-end reporting – Mr. Logsdon reported that he had completed the annual Legislative Service Commission report, the Board’s Annual Report to the Ohio General Assembly, and the 2015 MBE/EDGE plan.
6. FY 2014/2015 disbursement report – Mr. Logsdon provided a table listing FY 2014 and FY 2015 budget balances and expenditures.
7. FY 2014/2015 Revenue Report – Mr. Logsdon gave a final review of the revenue collected during FY 2014 for each account and a summary of FY 2015 current revenue collections by account.
8. License and Limited Permit Statistics – Mr. Logsdon provided a review of the number of persons holding licenses and registrations.
9. Meetings and Travel – Mr. Logsdon reported on the meetings and travel incurred since the prior meeting on June 18, 2014.
10. Continuing Education audits – Mr. Logsdon reported that 365 persons were randomly audited and letters had been mailed.
11. Reinstatement application review – Mr. Logsdon reported that he had received sixteen applications for reinstatement of licensure after June 30, 2014. Most reported having RCCE completed after July 1, 2014 and/or working after the expiration date of their license. Mr. Logsdon stated he would be reviewing each audit using guidance developed by the Board. Mr. Logsdon inquired if the Board needed to review the guidance.
12. H.B. 486 – Mr. Logsdon reviewed H.B. 486, which creates an incentive program under the Department of Commerce to encourage business compliance. Mr. Logsdon encouraged the members to review H.B. 486 and consider how such a program could be implemented by the Board to encourage regulatory compliance and reduce the costs of compliance.

Discussion: Mr. Mays asked if any members would be interested in being liaisons for budget review. Mr. Pavlak and Mr. Slabodnick volunteered. Mr. Marx inquired about payments for Hearing Examiner, Ms. Shamansky. Mr. Marx inquired about whether the agency’s budget was able to support the services. Mr. Logsdon stated that the agency created an encumbrance to cover the costs within the available budget of the Board. Mr. Pavlak inquired if he foresaw a need for these services in FY 2015 budgets and if the current contract was sufficient. Mr. Logsdon stated that he believed the Board could absorb the costs of the full contract, if needed.

Agenda item 5c: HME Manager’s Report (Exhibit E)

Ms. Tatum was not in attendance to give a verbal review of her report. Mr. Logsdon provided the member with a written report prepared by Ms. Tatum.

Mr. Mays stated the Board would need to take an agenda matter out of order to accommodate the Ohio Society for Respiratory Care.

**Agenda item #10: OPEN FORUM (Exhibit F)**

**Ohio Society for Respiratory Care – Susan M. Ciarlariello**

Ms. Ciarlariello appeared before the Board to present a summary of clean-up issues and recommended amendments to the Ohio Revised Code. Ms. Ciarlariello reported the OSRC was working with Representative Kirk Schuring to draft a bill that would:

1. Add language under ORC 4730.09 to allow Physician Assistants to prescribe or order respiratory care.
2. Add language under ORC 4761.03 and 4761.17 to allow respiratory care professionals to work under physician directed protocols.
3. Add language under ORC 4761.03 and 4761.05 (B) (1) (a) and (B) (2) to restrict the practice of a student who is no longer in good standing in an educational program.
4. Add language under ORC 4761.09 to allow the Board to consider it a violation to be disciplined by another state respiratory care board.
5. Add language under ORC 4761.09 to amend paragraph (A)(8) and add new language to allow the Board to consider it a violation for self-administering dangerous drug without a prescription or using a schedule I substance or habitually or excessively using controlled substances to the extent use impairs a person's ability to practice safe respiratory care.
6. Add language under ORC 4761.03 stating the Board can waive the administering tests if a person has passed a national examination.

Ms. Ciarlariello listed a few other clean-up items. There was no discussion

**Agenda item #5: OFFICER AND STAFF REPORTS CONT'D**

**Motion #3:** Mr. Walz moved to enter Executive Session pursuant to ORC 121.22 (G) to conference with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action. Ms. Yagodich seconded the motion. Roll call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Maninder Kalra, M.D. -	Yes
Steven A. Pavlak -	Yes	Andrea Yagodich -	Yes
Robert Slabodnick -	Yes	Carol Gilligan -	Yes

Motion carried.

The Board moved into executive session at 11:55 a.m. Visitors and staff were asked to leave the meeting. All nine members of the Board, Christopher Logsdon, and Steven Kochheiser were present during Executive Session. Executive Session concluded and the Board returned to public session at 12:05 p.m.

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

**Motion #5:** Mr. Slabodnick moved to approve the HME Manger's report. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 8 – 0.

The Board broke for lunch at 12:06 p.m. and returned to public session at 1:05 p.m.

Verna Riffe Biemel arrived at 1:05 p.m.

#### **Agenda item #6: BOARD COMMITTEE REPORTS**

Agenda item 6a: Home Medical Equipment Committee – Joel Marx, Chair

Mr. Marx reported that he had no additional report other than what the committee and the members heard during the HME Committee meeting.

Agenda item 6b: Scope of Practice Committee – Andrea Yagodich, Chair  
(Exhibits G, H, and I)

Mr. Mays inquired about the inquiry filed by Jerry Mason regarding remote CPAP setups. Mr. Logsdon explained that the HME Committee actually looked at the inquiry. Members proceeded to discuss Mr. Mason's inquiry. Following extensive discussion on the issue of whether a non-licensed person can make remote adjustments to CPAP pressures and settings, the Board directed Mr. Logsdon to draft a position statement for consideration at the next Board meeting.

Ms. Yagodich reported that the Scope of Practice Committee met and reviewed three inquiries. Ms. Yagodich reported the Board's Executive Director provided the committee with draft responses to each inquiry. Following a review of the inquiry and the draft responses, the committee is recommending the Board approve the responses as presented.

Ms. Yagodich stated the first inquiry was from Ms. Kara Walker who asked if respiratory care professionals could perform newborn intubation. Ms. Yagodich reported that the Committee affirmatively addressed the question and recommended approval of the draft response.

Ms. Yagodich stated the second inquiry was from Mr. Shawn Gerrick who asked if respiratory care professional could evaluate mental status and obtain an arterial blood gas by protocol. Ms. Yagodich reported the Committee extensively reviewed the inquiry, noting mental status is not an established criterion for determining when an arterial blood gas should be drawn, but if evaluating mental status was part of a prescribed protocol that determined when a blood gas could be drawn, then respiratory therapist could perform the evaluation. Ms. Yagodich stated the Committee recommended approval of the draft response.

Ms. Yagodich stated the third inquiry was from Ms. Cam Twarog who asked if respiratory care professionals could administer vaccinations and if respiratory care professional could perform all aspects of a medical assistant's job. Ms. Yagodich reported that the Committee affirmed a prior determination stating respiratory care professionals could

administer vaccinations relating to cardiopulmonary impairment disorders. Ms. Yagodich stated the Committee did not address the medical assistant question, because the issue was not within the Committee's jurisdiction. Ms. Yagodich recommended approval of the draft response.

Agenda item 6c: Rules Committee – Steven Pavlak, Chair

Mr. Pavlak reported the Rules Committee met prior to the regular business meeting. Mr. Pavlak stated the Committee reviewed and approved prior minutes and then reviewed a newly proposed rule to address the requirements of H.B. 165 to accept and store hyperbaric technologist certifications. The Committee he reported noted a number of technical corrections in the rule draft, but found the content to be well drafted. The Committee, he stated, is recommending approval of draft rule 4761-14-01 and form rcb-051, incorporated by reference, for filing. Last, Mr. Pavlak reported the Committee reviewed language being proposed by the Ohio Board of Prosthetics, Pedorthics, and Orthotics to prevent an HME provider from selling a drop foot stimulator device, unless a person licensed under ORC Chapter 4779 fits the device. The Committee took the matter under advisement and it will continue to review the proposal.

**Motion #6:** Ms. Yagodich moved to approve the Home Medical Equipment Committee Report. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 9 – 0.

**Motion #7:** Ms. Yagodich moved to approve the Scope of Practice Committee report and the Board's response to the following persons, which will be attached as marked exhibits to the Board's minutes:

Exhibit G – Response to Kara Walker.  
Exhibit H - Response to Shawn Gerrick  
Exhibit I - Response to Cam Twarog

Dr. Kalra seconded the motion. Discussion: None. Motion carried: 9 – 0

**Motion #8:** Mr. Slabodnick moved to approve the Rules Committee report. Ms. Riffe Biemel seconded the motion. Discussion: None. Motion carried: 9 – 0.

**Agenda item #7: DELIBERATION IN PRIVATE SESSION**

Agenda item 7a: Deliberation in Private Session – Brittany D. Beckman  
(Case #2014ORCB054)

**Motion #9:** Mr. Walz moved to go into private session for the purpose of entering into quasi-judicial deliberations concerning the matter of Brittany D. Beckman (Case#2014ORCB054). Ms. Yagodich seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Maninder Kalra, M.D. -	Yes

Steven A. Pavlak -	Yes	Verna Riffe Biemel -	Abstained
Andrea Yagodich -	Yes	Robert Slabodnick -	Abstained
Carol Gilligan -	Yes		

Motion carried.

The Board moved into private session at 1:28 p.m., and returned to regular, public session at 1:35 p.m. Mr. Slabodnick and Steven Kochheiser were excused from participation. Eight Board members, Mr. Logsdon, Ms. McDonald, and Mr. Robbins were present during private session.

Agenda item 7b: Deliberation in Private Session – Caroline M. Murphy  
(Case #2014ORCB039)

**Motion #10:** Mr. Walz moved to go into private session for the purpose of entering into quasi-judicial deliberations concerning the matter of Caroline M. Murphy (Case#2014ORCB039). Ms. Yagodich seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Maninder Kalra, M.D. -	Yes
Steven A. Pavlak -	Yes	Verna Riffe Biemel -	Abstained
Andrea Yagodich -	Yes	Robert Slabodnick -	Abstained
Carol Gilligan -	Yes		

Motion carried.

The Board moved into private session at 1:36 p.m., and returned to regular, public session at 1:57 p.m. Mr. Slabodnick, Mr. Logsdon, and Steven Kochheiser were excused from participation. Eight Board members, Ms. McDonald and Mr. Robbins were present during private session.

The Board took a break from 1:58 p.m. to 2:11 p.m.

Agenda item 7c: Deliberation in Private Session – Daniel G. Musgrave  
(Case #2013ORCB056)

**Motion #11:** Mr. Slabodnick moved to go into private session for the purpose of entering into quasi-judicial deliberations concerning the matter of Daniel G. Musgrave (Case#2013ORCB056). Mr. Pavlak seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Maninder Kalra, M.D. -	Yes
Steven A. Pavlak -	Yes	Verna Riffe Biemel -	Yes
Andrea Yagodich -	Yes	Robert Slabodnick -	Abstained
Carol Gilligan -	Yes		

Motion carried.

The Board moved into private session at 2:12 p.m., and returned to regular, public session at 2:50 p.m. Mr. Slabodnick and Steven Kochheiser were excused from participation. Eight Board members, Mr. Logsdon, Ms. McDonald, and Mr. Robbins were present during private session.

Following private session, the Board took a break from 2:50 p.m. to 2:57 p.m.

**Agenda item #8: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JOURNAL ENTRIES**

Agenda item 8.a: In the matter of Brittany Dawn Beckman, Case #2014ORCB054  
(Exhibit J)

The Ohio Respiratory Care Board

**Adjudication Order**

Brittany Dawn Beckman  
1491 Denny Drive  
Amelia, OH 45102

THE MATTER OF BRITTANY DAWN BECKMAN CAME BEFORE THE FOLLOWING MEMBERS OF THE OHIO RESPIRATORY CARE BOARD ON AUGUST 20, 2014, 2014 AT 9:05 A.M. IN ROOM WEST B&C, 31ST FLOOR OF THE VERN RIFFE BUILDING FOR GOVERNMENT AND THE ARTS, 77 S. HIGH STREET, COLUMBUS, OHIO. PRESENT WERE MARC MAYS, R.R.T., R.C.P., PRESIDENT, JOEL MARX, HME MEMBER, CAROL GILLIGAN, HME MEMBER, MANINDER KALRA, M.D., KENNETH WALZ, J.D., R.R.T, R.C.P., STEVEN PAVLAK, R.R.T., M.S., ANDREA D. YAGODICH, B.S., R.R.T., R.C.P., AND ROBERT SLABODNICK, R.R.T, M.ED. ROBERT SLABODNICK, R.R.T., M.ED. RECUSED HIMSELF FROM THE PROCEEDINGS BASED UPON HIS ROLE AS THE BOARD LIAISON TO THE INVESTIGATORY PROBABLE REVIEW COMMITTEE.

KENNETH WALZ, J.D., R.R.T., R.C.P. SERVED AS THE APPOINTED HEARING OFFICER IN THIS MATTER.

STEVEN R. KOCHHEISER, ASSISTANT ATTORNEY GENERAL, REPRESENTED THE STATE OF OHIO.

BRITTANY DAWN BECKMAN APPEARED PRO SE.

TERESA L. MANTZ WAS THE COURT REPORTER, DEPOSITION SPECIALISTS, INC. 35 EAST GAY STREET, SUITE 300, COLUMBUS, OHIO 43215.

**Preliminary matters:** Mr. Walz asked Brittany Dawn Beckman (hereafter, Ms. Beckman) if she received the Ohio Respiratory Care Board's Notice of Opportunity for Hearing wherein she was advised of her right to be represented by an attorney. Ms. Beckman affirmed that she did receive the Ohio Respiratory Care Board's Notice of Opportunity for Hearing. Mr. Walz asked Ms. Beckman, based on her understanding of her right to be represented by an attorney, if it was her wish to proceed without the presence of counsel. Ms. Beckman affirmed that she was prepared to proceed without the presence of counsel. Mr. Walz noted that the record would so reflect her acknowledgement.

Other preliminary matters: Ms. Beckman informed the Board she had recently married, but for the purposes of the hearing, she would still like to be addressed as Ms. Beckman. Steven R. Kochheiser, AAG stated he met with Ms. Beckman prior to the hearing and Ms. Beckman had agreed to stipulate to the admissibility of State's Exhibit 1a through 8.

***State's Exhibits admitted:***

- 1a – Notice of Opportunity for Hearing approved on June 18, 2014 and mailed to Brittany Dawn Beckman by certified mail/return receipt #7011 1150 0001 6781 8766 on June 20, 2014.
- 1b - Signed return receipt for certified mail article #7011 1150 0001 6781 8766.
- 2 – Request for hearing filed by Brittany Dawn Beckman on June 23, 2014.
- 3a - Hearing Scheduling Letter sent to Brittany Dawn Beckman by certified mail/return receipt article #7011 1150 0001 6781 8780.
- 3b - Signed return receipt for certified mail article #7011 1150 0001 6781 8780.
- 4 - Copy of initial application for license/limited permit filed by Brittany Dawn Beckman on May 5, 2014.
- 5 – Copy of Certified Journal Entry, Case#C/04/CRB/1091 in the Hamilton County Municipal Court, Hamilton, Ohio.
- 6 – Copy of Certified Journal Entry, Case#11-CRB-1910 in the Clermont County Municipal Court, Batavia, Ohio.
- 7 – Letter from Melinda Ping, R.N., dated September 14, 2013.
- 8 - Letter from Tanya Gallagher.

Witnesses called by the State:

- 1. Brittany Dawn Beckman, as on cross-examination.

***Respondent's Exhibits:***

None.

Witnesses called by the Respondent:

1. Brittany Dawn Beckman, appearing on her own behalf.

**FINDINGS OF FACT**

Upon consideration of all the evidence presented and the testimony of witnesses, the board makes the following FINDINGS OF FACT:

- A. Ms. Beckman was issued an Opportunity for Hearing Notice in compliance with Section 119.07 of the Revised Code.
- B. Ms. Beckman did request a hearing before the Ohio Respiratory Care Board.
- C. The Ohio Respiratory Care Board finds that Ms. Beckman was properly notified of the date, time, and place of the hearing.
- D. The Board finds that on or about March 13, 2004, Ms. Beckman was convicted of THEFT, in violation of Section 2913.02 of the Ohio Revised Code, a misdemeanor of the 1<sup>st</sup> degree in the Hamilton County Municipal Court, Hamilton County, Ohio, Case #C-04-CRB-1091.
- E. The Board finds that on or about June 8, 2011, Ms. Beckman was convicted of UNAUTHORIZED USE OF PROPERTY in violation of Section 2913.04 of the Ohio Revised Code, a misdemeanor of the 4<sup>th</sup> degree in Clermont County Municipal Court, Batavia, Ohio, Case #11-CRB-1910.
- F. The Board finds that the acts, conducts, and/or omissions found under paragraph (D) and (E) above constitute offenses involving moral turpitude.
- G. The Board finds that Ms. Beckman was forthcoming with her past convictions and displayed candor during her testimony before the Board.
- F. The Board finds as an aggravating fact that the June 8, 2011, conviction for UNAUTHORIZED USE OF PROPERTY occurred while Ms. Beckman was a student in the respiratory care program she attended.

**CONCLUSIONS OF LAW**

Upon consideration of the findings of fact and a review of Chapter 4761 of the Revised Code, the Ohio Respiratory Care Board makes the following CONCLUSIONS OF LAW:

1. Ohio Revised Code § 4761.09 states in pertinent part:

- (A) The Ohio respiratory care board may refuse to issue or renew a license or a limited permit, may issue a reprimand, may suspend or permanently revoke a license or limited permit, or may place a license or limited permit holder on probation, on any of the following grounds:

\*\*\*

- (1) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for an offense involving moral turpitude or of a felony, in which case a certified copy of the court record shall be conclusive evidence of the matter;

\*\*\*

2. Based upon a preponderance of the evidence, the Ohio Respiratory Care Board concludes that Ms. Beckman was convicted of two prior offenses, as noted in the Findings of Fact that constitute offenses involving moral turpitude.
3. The Board finds by a preponderance of the evidence that Count I of the Board's Opportunity for Hearing Notice is TRUE.
4. Pursuant to Section 4761.09 of the Ohio Revised Code, it is within the Board's discretion to refuse to issue a license or, after issuance of a license may issue a reprimand, may suspend or permanently revoke a license, or may place a license holder on probation based upon the Board's finding that Ms. Beckman was convicted of an offense involving moral turpitude.

THEREFORE, it is ordered, adjudged, and decreed by the Ohio Respiratory Care Board that:

In consideration of these findings and conclusions, the Board hereby ISSUES Brittany Dawn Beckman a license to practice as a respiratory care professional in the state of Ohio. Upon issuance of the license, the Board immediately places Brittany Dawn Beckman on PROBATION for a period of one (1) year beginning on the effective date of this Order of the Board.

The following provisions of Brittany Dawn Beckman's probation shall remain in effect during the term of probation:

- A. Brittany Dawn Beckman shall obey all federal, state and local laws, and all rules governing the practice of respiratory care in Ohio. Any arrest, criminal charge, citation, guilty or no contest plea, criminal jury verdict, conviction or treatment in lieu of conviction for any crime other than a minor misdemeanor traffic offense after the effective date of this order shall constitute a violation of an order of the Board.
- B. No earlier than thirty (30) days before being released from probation, Brittany Dawn Beckman shall obtain a criminal background check from the Ohio Bureau of Criminal Identification and Investigation (BCI&I). Any new conviction identified on the criminal background check involving an offense of moral turpitude or a felony shall be deemed a violation of this Agreement.

The Order of the Board shall become effective upon the date of mailing of the Order.

**Motion #12:** STEVEN PAVLAK MOVED FOR FINDINGS OF FACT. ANDREA YAGODICH SECONDED THE MOTION. MOTION PASSED (AYE – 7/ NO – 0/ABSTAINED – 2 (ROBERT SLABODNICK AND VERNA RIFFE BIEMEL)).

**Motion #13:** ANDREA YAGODICH MOVED FOR CONCLUSIONS OF LAW. DR. MANINDER KALRA SECONDED THE MOTION. MOTION PASSED (AYE – 7/ NO – 0/ABSTAINED – 2 (ROBERT SLABODNICK AND VERNA RIFFE BIEMEL)).

**Motion #14:** STEVEN PAVLAK MOVED FOR THE ORDER OF THE BOARD. ANDREA YAGODICH SECONDED THE MOTION. MOTION PASSED (AYE – 7/ NO – 0/ABSTAINED – 2 (ROBERT SLABODNICK AND VERNA RIFFE BIEMEL)).

SO ORDERED

This Board hereby certifies that the above language is incorporated into the Board's journal in this case.

Mr. Mays stated that the original order should be signed by the Board President and attached as an exhibit to the meeting minutes.

Agenda item 8.b: In the matter of Caroline Marie Murphy, Case #2014ORCB039  
(Exhibit K)

The Ohio Respiratory Care Board

**Adjudication Order**

Caroline Marie Murphy, RCP.9929  
14 Surrey Ct.  
Mentor, OH 44060

THE MATTER OF CAROLINE MARIE MURPHY CAME BEFORE THE FOLLOWING MEMBERS OF THE OHIO RESPIRATORY CARE BOARD ON AUGUST 20, 2014 AT 9:44A.M. IN ROOM WEST B&C, 31ST FLOOR OF THE VERN RIFFE BUILDING FOR GOVERNMENT AND THE ARTS, 77 S. HIGH STREET, COLUMBUS, OHIO. PRESENT WERE MARC MAYS, R.R.T., R.C.P., PRESIDENT, JOEL MARX, HME MEMBER, CAROL GILLIGAN, HME MEMBER, MANINDER KALRA, M.D., KENNETH WALZ, J.D., R.R.T, R.C.P., STEVEN PAVLAK, R.R.T., M.S., ANDREA D. YAGODICH, B.S., R.R.T., R.C.P., AND ROBERT SLABODNICK, R.R.T, M.ED. ROBERT SLABODNICK, R.R.T., M.ED. RECUSED HIMSELF FROM THE PROCEEDINGS BASED UPON HIS ROLE AS THE BOARD LIAISON TO THE INVESTIGATORY PROBABLE REVIEW COMMITTEE.

KENNETH WALZ, J.D., R.R.T., R.C.P. SERVED AS THE APPOINTED HEARING OFFICER IN THIS MATTER.

STEVEN R. KOCHHEISER, ASSISTANT ATTORNEY GENERAL, REPRESENTED THE STATE OF OHIO.

CAROLINE MARIE MURPHY (HEREAFTER REFERRED TO AS “MS. MURPHY”) DID NOT REQUEST A HEARING BEFORE THE BOARD. 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).

TERESA L. MANTZ WAS THE COURT REPORTER, DEPOSITION SPECIALISTS, INC. 35 EAST GAY STREET, SUITE 300, COLUMBUS, OHIO 43215.

**Preliminary matters:** None.

***State's Exhibits admitted:***

State's Exhibits:

- 1- May 13, 2014 Entry of Order of Summary Suspension, and Notice of Opportunity for Hearing, along with a certification by the Board's Executive Director that the documents are true and accurate copies of records kept by the Board, mailed to Ms. Murphy by certified mail, return receipt requested, on May 14, 2014. The Exhibit also contains a return receipt for certified mail, signed by an agent at Ms. Murphy's address of record on May 17, 2014.
- 2- Statement of Facts signed by Caroline Marie Murphy when she was interviewed by Christopher Logsdon at the Eastlake Public Library in Willoughby, Ohio, on March 10, 2014.
- 3- Statement of Facts signed by Lorena Hewitt when she was interviewed by Christopher Logsdon during a teleconference on April 23, 2014.
- 4- Certification of records of drug and alcohol screens conducted by Hillcrest Hospital on January 12, 2014.
- 5- Alcohol testing form by Lifeloc Technologies signed by Caroline Marie Murphy on January 12, 2014 at 12:21 a.m.
- 6- Medtox non-regulated 5-part drug testing Custody and Control form dated January 12, 2014, with laboratory report showing positive screens for Cocaine metabolite and opiates.
- 7- March 12, 2014 letter from Jann Styles, Human Resource Generalist at Hillcrest Hospital, transmitting documents in response to a subpoena issued by the Ohio Respiratory Care Board.
- 8- Certification of records maintained by Hillcrest Hospital concerning Caroline Marie Murphy, including the following:
  - January 12, 2014 email from Lorena Hewitt
  - January 13, 2014 description of incident from Tom Paris, R.R.T.
  - January 12, 2014 email from Dawn Long
  - January 12, 2014 email from Stacy Eubanks
  - January 11, 2014 handwritten statement from Nancy Malone attesting to Caroline Murphy's behavior on January 11, 2014.
  - Handwritten statement from Dianne Kazan, attesting to her observation of Ms. Murphy's behavior on January 11, 2014.

- Handwritten statement from Bill Sprayer attesting to his observation of Ms. Murphy's behavior on or about January 11, 2014.
  - Typed statement of Stefica Plejikosic, attesting to her observation of Ms. Murphy's behavior on January 11, 2014.
  - March 11, 2014 email from Veronica Ukotic, attesting to her observation of Ms. Murphy's behavior on the date of the incident.
  - January 12, 2014 Cleveland Clinic Incident Report concerning the incident involving Caroline Murphy on January 11, 2014.
- 9 - Screen printout from Ohio elicense system showing Caroline Marie Murphy's address of record on file with the Ohio Respiratory Care Board.
- 10 - Affidavit of Christopher Logsdon, Executive Director of the Ohio Respiratory Care Board, dated June 23, 2014, attesting to the issuance of the Summary Suspension of Ms. Murphy's license, the mailing of the Notice of Opportunity for Hearing to Ms. Murphy at her address of record, and the fact that Ms. Murphy failed to request a hearing within 30 days of the date of the Notice.
- 11 - Report and Recommendation letter mailed to Caroline Marie Murphy on July 14, 2014.

Witnesses called by the State:

1. Christopher H. Logsdon, Executive Director

***Respondent's Exhibits:*** None.

#### **FINDINGS OF FACT**

Upon consideration of all the evidence presented and the testimony of witnesses, the board makes the following FINDINGS OF FACT:

- A. Ms. Murphy was issued an Opportunity for Hearing Notice in compliance with Section 119.07 of the Revised Code.
- B. Ms. Murphy did not request a hearing before the Ohio Respiratory Care Board.
- C. In 2014, Caroline Murphy was employed as a Registered Respiratory Therapist [R.R.T.] at Hillcrest Hospital, a facility in Mayfield Heights, Ohio, operated by the Cleveland Clinic Foundation. On January 11, 2014, Ms. Murphy was scheduled to work an evening shift at Hillcrest Hospital. At approximately 5:00 p.m., she called Dianne Kazan and Dawn Long, supervisors at the hospital, to say that she would be late to work because of childcare issues. Ms. Murphy estimated that she would be able to come to work by 7:00 p.m., but she did not arrive until about 9:10 or 9:15 p.m. By this time, other respiratory therapists had already completed Ms. Murphy's first round of patient care assignments.

*This finding is supported by the following evidence:* Exhibits 2, 3, 7, 8.

- D. Shortly after Ms. Murphy arrived at work on the evening of January 11, 2014, other staff members observed that she was acting in a way that suggested impairment. Stacy Eubanks reported that Ms. Murphy appeared to be falling asleep in her chair, and that when she was asked to discard some papers into a bin behind her, she was not able to do it without her hands shaking. Ms. Eubanks related that when a co-worker confronted Ms. Murphy about her unusual behavior, she began shouting at the co-worker. Another co-worker, Nancy Malone, gave a statement attesting that she witnessed Ms. Murphy appearing extremely tired one moment, and then appearing “hyper” and talking very fast the next. Dianne Kazan and Stefica Plejikosic also observed that Ms. Murphy changed from very lethargic behavior, falling asleep on the phone, to very agitated and confrontational behavior, in a short period of time. Several co-workers, including Bill Sprayer, Veronica Ukotic, and Lorena Hewitt wrote statements attesting that they observed Ms. Murphy shouting profanity when she was confronted about her behavior in the hospital that evening.

*This finding is supported by the following evidence:* Exhibit 8.

- E. Because of Ms. Murphy’s unusual behavior at work on January 11, 2014, Veronica Ukotic, the night nursing manager, asked Ms. Murphy to go to the Emergency Department for substance abuse testing. Ms. Murphy reportedly denied using any drugs or alcohol, but she was escorted to the Emergency Department, where she underwent an alcohol and drug screen based on a “reasonable suspicion.” Ms. Murphy signed the Alcohol Testing Form, which was dated January 12, 2014, at 12:21 a.m. Ms. Murphy tested negative for alcohol, but then submitted urine for a drug screening at 12:32 a.m. A report by Medtox Laboratories showed a positive result for both Cocaine metabolite and opiates. The positive test was then confirmed by a liquid chromatography with tandem mass spectrometry [LC/MS/MS] test. The test was reviewed by a medical review officer, a physician with the Medtox Laboratory, to confirm the positive result.

*This finding is supported by the following evidence:* Exhibits 4, 5, 6, 7, 8.

- F. Ms. Murphy was interviewed about the incident by the Ohio Respiratory Care Board’s Executive Director, Christopher Logsdon, on March 10, 2014, and wrote written responses to the questions asked of her. She wrote the following summary of the incident in question:

Jan. 11, 2014 I clocked into work around 2100 and displayed inappropriate behavior. I was very tired. A staff therapist contacted the nursing supervisor of Hillcrest. I was then escorted to Hillcrest’s ER where I had to take a UDS [urine drug screen] which came up positive for opiates and cocaine. I also performed a BAC [blood alcohol content test] of .000. I did not have any [patient] contact on this day. I did not use any drugs on 1/11/14. The UDS (dirty) was from previous use from night before. 1/10/14 (wedding/wedding reception)

Ms. Murphy wrote the following “additional comments” on the interview form:

I do feel I could have performed my duties on 1/11/14. There was a staff therapist Dawn Long who was “in charge” that day. This therapist is in everyone’s business and has made comments of getting people fired. My supervisor Thomas Paris always gave me a hard time and I do believe Dawn and Thomas worked together to get me in trouble. Thomas is now employed at CCF main campus.

*This finding is supported by the following evidence:* Exhibit 2.

- G. When Ms. Murphy was asked during the interview if she had a drug or alcohol dependency, she wrote the following response:

During the time of my father's death, 8/9/13, and the UDS at Hillcrest (1/11/14), I do believe I had a drug and alcohol dependency to cope with my feelings of my father's death. After my inpatient [treatment] at Glenbeigh and IOP/AA [Intensive Outpatient Program/Alcoholics Anonymous], I feel I have the tools to utilize to stay sober.

In a written statement, the hospital's Human Resources Representative, Lorena Hewitt, stated that she was not aware of any prior history of substance abuse by Ms. Murphy.

*This finding is supported by the following evidence: Exhibits 2, 3.*

### **CONCLUSIONS OF LAW**

Upon consideration of the findings of fact and a review of Chapter 4761 of the Revised Code, the Ohio Respiratory Care Board makes the following CONCLUSIONS OF LAW:

1. Ohio Revised Code § 4761.09 states in pertinent part:
  - (A) The Ohio respiratory care board may refuse to issue or renew a license or a limited permit, may issue a reprimand, may suspend or permanently revoke a license or limited permit, or may place a license or limited permit holder on probation, on any of the following grounds:

\*\*\*

    - (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
    - (8) Using any dangerous drug, as defined in section 4729.01 of the Revised Code, or alcohol to the extent that the use impairs the ability to practice respiratory care at an acceptable level of competency;

\*\*\*
2. The acts, conduct, and/or omissions of Caroline Marie Murphy, R.C.P., as described in Findings of Fact C through G, individually and/or collectively, constitute “[e]ngaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public,” as that clause is used in R.C. 4761.09(A)(7).
3. The acts, conduct, and/or omissions of Caroline Marie Murphy, R.C.P., as described in Findings of Fact C through G, individually and/or collectively, constitute “[u]sing any dangerous drug, as defined in section 4729.01 of the Revised Code, or alcohol to the extent that the use impairs the ability to practice respiratory care at an acceptable level of competency,” as that clause is used in R.C. 4761.09(A)(8).
4. Both R.C. 4761.09 and Ohio Administrative Code [OAC] Rule 4761-11-03 authorize the Board to reprimand, suspend, revoke or permanently revoke a license, or place a license on probation because of a

violation of R.C. 4761.09(A)(7) and/or (A)(8). In addition, OAC Rule 4761-11-03 authorizes the Board to fine a violator not less than one hundred dollars nor more than one thousand dollars.

THEREFORE, it is ordered, adjudged, and decreed by the Ohio Respiratory Care Board that:

In consideration of these findings and conclusions, the Board hereby INDEFINITELY SUSPENDS Ms. Murphy's license to practice respiratory care in the state of Ohio. Ms. Murphy shall petition the Board in writing for reinstatement of her license and shall appear before the Ohio Respiratory Care Board as a condition for consideration of this application, should one be filed.

The Order of the Board shall become effective upon the date of mailing of the Order.

**Motion #15:** ANDREA YAGODICH MOVED FOR FINDINGS OF FACT. STEVEN PAVLAK SECONDED THE MOTION. MOTION PASSED (AYE – 7/ NO – 0/ABSTAINED – 2 (ROBERT SLABODNICK AND VERNA RIFFE BIEMEL)).

**Motion #16:** ANDREA YAGODICH MOVED FOR FINDINGS OF FACT. STEVEN PAVLAK SECONDED THE MOTION. MOTION PASSED (AYE – 7/ NO – 0/ABSTAINED – 2 (ROBERT SLABODNICK AND VERNA RIFFE BIEMEL)).

**Motion #17:** KEN WALZ MOVED FOR THE ORDER OF THE BOARD. CAROL GILLIGAN SECONDED THE MOTION. MOTION PASSED (AYE – 7/ NO – 0/ABSTAINED – 2 (ROBERT SLABODNICK AND VERNA RIFFE BIEMEL)).

Agenda item 8.c: In the matter of Daniel G. Musgrave, Case #2013ORCB056  
(Exhibit L)

The Ohio Respiratory Care Board

**Adjudication Order**

**In the Matter Of:**

Daniel Gardner Musgrave, RCP.12748  
2892 Cricket Lane  
Willoughby Hills, OH 44092

Case No. 2013ORCB056

THE MATTER OF DANIEL GARDNER MUSGRAVE CAME BEFORE THE FOLLOWING MEMBERS OF THE OHIO RESPIRATORY CARE BOARD ON AUGUST 20, 2014 IN ROOM WEST B&C, 31ST FLOOR OF THE VERN RIFFE BUILDING FOR GOVERNMENT AND THE ARTS, 77 S. HIGH STREET, COLUMBUS, OHIO. PRESENT WERE MARC MAYS, R.R.T., R.C.P., PRESIDENT, JOEL MARX, HME MEMBER, CAROL GILLIGAN, HME MEMBER, MANINDER KALRA, M.D., KENNETH WALZ, J.D., R.R.T, R.C.P., STEVEN PAVLAK, R.R.T., M.S., ANDREA D. YAGODICH, B.S., R.R.T., R.C.P., VERNA RIFFE BIEMEL, PUBLIC

MEMBER, AND ROBERT SLABODNICK, R.R.T., M.ED. ROBERT SLABODNICK, R.R.T., M.ED. RECUSED HIMSELF FROM THE PROCEEDINGS BASED UPON HIS ROLE AS THE BOARD LIAISON TO THE INVESTIGATORY PROBABLE REVIEW COMMITTEE.

At such time, the Board verified that it reviewed the following material prior to consideration of this matter:

Hearing transcript dated June 9 and 10, 2014; State's Exhibits; Respondent's Exhibits; the Hearing Examiner's Report and Recommendation dated July 21, 2014, and the Respondent's August 14, 2014 written Objections to the Hearing Examiner's Report and Recommendation.

**State's Exhibits Reviewed:**

- 1A – Notice of Opportunity for Hearing approved on October 16, 2013 and mailed to Daniel G. Musgrave by certified mail/return receipt #7011 1150 0001 6788 6338 on October 22, 2013, Certificate of Ordinary mailing dated November 15, 2013. Bates stamped pages 000001 – 000008.
- 1B – Letter dated October 23, 2013 from the Ohio Respiratory Care Board to Daniel G. Musgrave sent by certified mail article #7011 1150 0001 6788 7373, return certified mail article #7011 1150 0001 6788 7373 as “unclaimed,” and letter to Attorney Michael T. Judy from the Ohio Respiratory Care Board sent by certified mail article #7011 1150 0001 6788 7397 and signed receipt. Bates stamped pages 000009 – 000015.
- 2 – Letter from Attorney Michael T. Judy to the Ohio Respiratory Care Board dated November 19, 2013. Bates stamped page 000016.
- 3 - Hearing scheduling letter dated November 20, 2013, sent by certified mail return receipt to Daniel G. Musgrave and Attorney Michael T. Judy. Bates stamped pages 000017 - 000020.
- 4 – Hearing scheduling letter dated December 10, 2013, sent by certified mail return receipt to Daniel G. Musgrave and Attorney Michael T. Judy. Bates stamped pages 000021 - 000025.
- 5 – Personnel File, Daniel G. Musgrave. Bates stamped pages 000026 - 000033.
- 6 – Patient records re: Incident involving Patient #1 (**under seal**). Bates stamped pages 000034 – 000043.
- 7 - Patient records re: Incident involving Patient #2 (**under seal**). Bates stamped pages 000044 – 000052.
- 8A - Statement and Medical Records re: Incident involving Patient #3 (**under seal**). Bates stamped pages 000053 – 000084.
- 8B - Daniel G. Musgrave's Statement re: Incident involving Patient #3. Bates stamped pages 000085 – 000089.
- 8C - Human Resource Records re: Incident involving Patient #3. Bates stamped pages 000090 – 000111.
- 9 - Patient records re: Incident involving Patient #4 and Patient #5 (**under seal**). Bates stamped pages 000112 – 000153.
- 10 - Hillcrest Hospital Policies. Bates stamped pages 000154 – 0001167.

11 - Blood Gas Analyzer Performance Checklist, dated October 10, 2012.

12 - Arterial Blood Gas Puncture and Analysis Performance Checklist, dated October 10, 2012.

**Respondent's Exhibits Reviewed:**

A – Respiratory Therapy Orientation Manual – Certificate of Completion, dated April 4, 2012.

B - Karen Lanese letter, dated April 16, 2013.

B1 – Cleveland Clinic, Department Orientation Checklist

B2 – Cleveland Clinic, Department Orientation Checklist, dated April 2, 2012

B3 – Cleveland Clinic, Department Orientation Checklist, page 3

B4 – Cleveland Clinic, Department Orientation Checklist, page 4

B5 – Cleveland Clinic, Department Orientation Checklist, page 5

B6 – Cleveland Clinic, Patient and Employee Satisfaction, page 6

B7 – Cleveland Clinic, Implementation/Evaluation, page 9

B8 – Cleveland Clinic, Implementation/Evaluation, page 10

B9 – Cleveland Clinic, Implementation/Evaluation, page 11

B10 – Cleveland Clinic, Implementation/Evaluation, page 12

C1 - Blood Gas Analyzer, Performance Checklist, dated October 10, 2012.

C2 - Arterial Blood Gas Puncture and Analysis, dated October 10, 2012.

D1 - Employee Corrective Action Report, dated February 26, 2013.

D2- Cleveland Clinic, Safety Event Reporting System, dated February 24, 2013.

D3- Cleveland Clinic, Safety Event Reporting System form.

D4 - Electronic mail, dated March 8, 2013 from Daniel Musgrave, page 1.

D5 - Electronic mail, dated March 8, 2013 from Daniel Musgrave, page 2.

E - Sunquest Lab Computer v7.1 training document, dated February 10, 2013.

F1 - Cleveland Clinic, Performance Review Form A, page 1.

F2 - Cleveland Clinic, Performance Review Form A, page 2.

F3 - Cleveland Clinic, Performance Review Form A, page 3

G1 - Cleveland Clinic, Performance Review Form, mid year, page 1.

G2 - Cleveland Clinic, Performance Review Form, mid year, page 2.

- H1 - Arterial Blood Gas Puncture and Analysis, dated July 18, 2013, page 52.
- H2 - Arterial Blood Gas Puncture and Analysis, dated July 18, 2013, page 53.
- H3 - Employee Proficiency for Arterial Blood Gas Lab.
- H4 - Blood Gas Analyzer Systems Training and Inservice, page 1.
- H5 - Blood Gas Analyzer Systems Training and Inservice, page 2.
- I1 - Cleveland Clinic, Supervisor Policy and Procedure, page 1 of 6.
- I2 - Cleveland Clinic, Supervisor Policy and Procedure, page 2 of 6.
- I3 - Cleveland Clinic, Supervisor Policy and Procedure, page 3 of 6.
- I4 - Cleveland Clinic, Supervisor Policy and Procedure, page 4 of 6.
- I5 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 1 of 4.
- I6 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 2 of 4.
- I7 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 3 of 4.
- I8 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 4 of 4.
- I9 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 1 of 3.
- I10 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 2 of 3.
- I11 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 1 of 3.
- I12 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 2 of 3.
- I13 - Cleveland Clinic, Human Resources Enterprise Policy and Procedure, page 3 of 3.
- I14 - Cleveland Clinic, Safety Event Reporting System – Reporter Job Aid.
- I15 - Cleveland Clinic, Safety Event Reporting Policy.
- I16 - Cleveland Clinic, Safety Event Reporting Policy.
- I17 - Cleveland Clinic, Safety Event Reporting Policy.
- J1 - Cleveland Clinic, People Management Policies, page 1 of 5.

- J2 - Cleveland Clinic, People Management Policies, page 2 of 5.
- J3 - Cleveland Clinic, People Management Policies, page 3 of 5.
- J4 - Cleveland Clinic, People Management Policies, page 4 of 5.
- J5 - Cleveland Clinic, People Management Policies, page 5 of 5.
- J6 - Dan Musgrave – documentation of events leading to my probation/termination, dated September 5, 2013.
- J7 - Dan Musgrave – documentation of events leading to my probation/termination, page 2.
- J8 - Dan Musgrave – documentation of events leading to my probation/termination, page 3.
- J9 - Dan Musgrave – documentation of events leading to my probation/termination, page 4.
- J10 - Dan Musgrave – documentation of events leading to my probation/termination, page 5.
- K1 - Letter dated July 31, 2013 from Anna Marie Leva.
- K2 - Letter dated July 31, 2013 from Anna Marie Leva, page 2.

Ronda Shamansky was the Hearing Examiner designated in this matter pursuant to Section 119.09, Ohio Revised Code (OCR). *A true copy of the Report and Recommendation of Ronda Shamansky is attached and incorporated herein.*

NOW THEREFORE, after taking into consideration the Report and Recommendation of the Hearing Examiner, the Ohio Respiratory Care Board hereby finds as follows:

1. The Ohio Respiratory Care Board agrees with the Hearing Examiner's Findings of Fact and adopts all of the Findings of Fact contained in the July 21, 2014 Report and Recommendations.
2. The Ohio Respiratory Care Board hereby accepts the Hearing Officer's Conclusions of Law and adopts all of the Conclusions of Law contained in the July 21, 2014 Report and Recommendations with the following amendment to the Conclusions of Law #1:

*The Board has the authority to take disciplinary action against Daniel Musgrave's license to practice as a respiratory care professional pursuant to R.C. 4761.09(A)(2) because he violated rules promulgated by the Board, specifically OAC Rule ~~4661-10-01 (K)~~ 4761-10-01 (K) and (K)(3), with respect to his care of Patients B and C.*

Based upon these findings, the Ohio Respiratory Care Board, in accordance with Sections 119.09 and 4761.09 (A) (2), hereby CONFIRMS AND APPROVES the Findings of Fact, Conclusions of Law, and Discussion contained in the Report and Recommendations of the Board's Hearing Examiner.

Concerning the Recommendation contained in the Report and Recommendation of the Board's Hearing Examiner, the Ohio Respiratory Care Board hereby MODIFIES the recommendation provided and enters the following Order upon its journal:

In consideration of these findings and conclusions, the Board hereby **PERMANENTLY REVOKES** Daniel G. Musgrave's license to practice respiratory care in the State of Ohio.

The rationale for the modification is the following:

The Board finds the severity of the facts and conclusions in this case warrant revocation of Daniel G. Musgrave license.

The Order of the Board shall become effective upon the date of mailing of the Order.

**Motion #18:** KENNETH WALZ, J.D., R.R.T. MOVED FOR FINDINGS OF FACT. CAROL GILLIGAN SECONDED THE MOTION. MOTION CARRIED (AYE – 8, NO - 0, ABSTAINED – 1, SLABODNICK).

**Motion #19:** VERNA RIFFE BIEMEL MOVED FOR CONCLUSIONS OF LAW. ANDREA YAGODICH, R.R.T. SECONDED THE MOTION CARRIED (AYE – 8, NO - 0, ABSTAINED – 1, SLABODNICK).

**Motion #20:** VERNA RIFFE BIEMEL MOVED TO APPROVE THE DISCUSSION CONTAINED IN THE REPORT AND RECOMMENDATION. ANDREA YAGODICH, R.R.T. SECONDED THE MOTION CARRIED (AYE – 8, NO - 0, ABSTAINED – 1, SLABODNICK).

**Motion #21:** JOEL MARX MOVED FOR ORDER OF THE BOARD. ANDREA YAGODICH SECONDED THE MOTION. MOTION CARRIED (AYE – 8, NO - 0, ABSTAINED – 1, SLABODNICK).

#### **Agenda item #9: PROBABLE REVIEW COMMITTEE REPORT**

**Motion #22:** Mr. Walz 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). Mr. Slabodnick seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Steven A. Pavlak -	Yes
Andrea Yagodich -	Yes	Maninder Kalra, M.D. -	Yes
Robert Slabodnick -	Yes	Vern Riffe Biemel -	Yes

Carol Gilligan - Yes

Motion carried.

The Board entered executive session at 3:05 p.m., and returned to regular, public session at 3:18 p.m. Eight Board members were present during executive session. Mr. Slabodnick was excused from participating in executive session. Mr. Logsdon, Ms. McDonald, Mr. Robbins, and Mr. Kochheiser were present during Executive Session.

*\*Names and identifying information was redacted from discussion and proposed notices of opportunity for hearing 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 notices of opportunity for hearing through a motion on the record during public session.*

Agenda item 9c: Approval of Consent Agreement (Exhibit M)

**Motion #23:** Mr. Walz moved to approve the following consent agreement:

**RCB Agreements**

<u>Exh. #</u>	<u>Case no. /Respondent</u>	<u>Violation</u>	<u>Action</u>
M.	2014ORCB059 (Vanessa R. Merrill, RCP.13190)	Conviction of offense involving moral turpitude	Violation of ORC 4761.09 (A) (1)

Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 8 – Yes, 1 – Abstained (Mr. Slabodnick).

Agenda item 9d: Closed Case Review

**Motion #24:** Mr. Walz moved to approve the closure of the following cases:

2014ORCB052  
2014ORCB055

2014HME011  
2014HME012  
2014HME014

Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 8 – Yes, 1 – Abstained (Mr. Slabodnick).

**Agenda item #10: NEW BUSINESS**

Agenda item 10a: Application ratification for licenses and limited permits issued since the last meeting (Exhibit N)

**Motion #25:** Mr. Walz moved to ratify respiratory care professional licenses and limited permits issued on the following dates:

Limited Permits issued on: June 19, 2014, June 26, 2014, July 3, 2014, July 10, 2014, July 17, 2014, July 24, 2014, and August 5, 2014.

Respiratory Care Professional Licenses issued on: June 19, 2014, June 26, 2014, June 27, 2014, July 3, 2014, July 10, 2014, July 17, 2014, July 18, 2014, July 24, 2014, August 5, 2014, and August 8, 2014.

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

Agenda item 10b: Application ratification for Home Medical Equipment Licenses and Certificates of Registration (Exhibit O)

**Motion #26:** Mr. Walz moved to ratify HME licenses and certificates of registration issued on the following dates:

HMEL  
June 27, 2014, July 1, 2014, July 3, 2014, and August 5, 2014.

HMER  
June 25, 2014, June 27, 2014, July 1, 2014, July 3, 2014, and August 5, 2014.

Dr. Kalra seconded the motion. Discussion: None. Motion carried: 9 – 0.

Agenda item 10c: Hyperbaric Oxygen Technologist Rule (Exhibit P)

**Motion #27:** Mr. Walz moved to approve filing the proposed rule 4761-14-01, as amended, and form rcb-051. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 9 – 0.

Agenda item 10d: Annual Report (Exhibit Q)

**Motion #28:** Mr. Walz moved to approve the 2014 Annual Report. Ms. Yagodich seconded the motion. Discussion: None. Motion carried: 9 – 0.

**Agenda item #11: EXECUTIVE SESSION – EMPLOYMENT OF PUBLIC EMPLOYEE**

**Motion #29:** Mr. Walz moved to enter Executive Session under R.C. 121.22(G)(1) for the purpose of considering the employment of a public employee. Ms. Gilligan seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Steven A. Pavlak -	Yes
Andrea Yagodich -	Yes	Maninder Kalra, M.D. -	Yes
Robert Slabodnick -	Yes	Vern Riffe Biemel -	Yes
Carol Gilligan -	Yes		

Motion carried.

The Board entered executive session at 3:36 p.m., and returned to regular, public session at 4:09 p.m. All nine Board members were present during executive session. All staff and visitors were excused from participating in executive session.

**Agenda item #12: FOR THE GOOD OF THE BOARD**

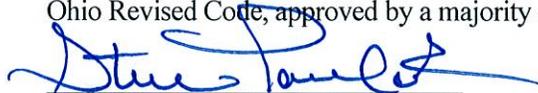
There was no discussion.

**Agenda item #13: ADJOURNMENT**

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

Hearing none, Mr. Mays adjourned the meeting at 4:10 p.m.

Board President'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 October 15, 2014.

  
Steve Pavlak, Board Secretary

  
Witness