



**Day 2, October 15, 2008**

**Members in attendance (Exhibit Q): .....14**

Agenda item 1.1:	Hearing in the Matter of Nasky & Goldfinger Medical Corporation.....	14
Agenda item 1.2:	Findings, Conclusions of Law and Order in the Matter of Nasky & Goldfinger Medical Corporation (Exhibit R)..	16
Agenda item 2.1:	Hearing in the Matter of James D. Montgomery.....	16
Agenda item 1.2:	Findings, Conclusions of Law and Order in the Matter of James D. Montgomery (Exhibit S).....	18

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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 October 14 & 15, 2008**

**NOTE ON COMMITTEE MEETINGS**

The Board's Scope of Practice, Home Medical Equipment, and Rules Committees met prior to the regular business meeting. Official minutes of the committee meetings were taken and are maintained separate of this journal. Committee Chairpersons for each committee gave a report during the course of the regular business meeting.

**Regular Business Meeting**

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

Presiding: Marc Mays, President, called the meeting to order on October 14, 2008 at 1:00 p.m. in room West B, 31<sup>st</sup> Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215 for the purpose of holding a regular board meeting. Present were Marc Mays, President, Joel Marx, Carol Gilligan, E. Lucille Kester, R.R.T., R.C.P., Robert Cohn, M.D., Darrell L. Heckman, J.D., and Eugene Andrews, R.R.T., R.C.P. Mr. Marx arrived at 1:04 p.m. Mr. Mays noted that Susan Ciarlariello, RRT, RCP and Anita Adams, RRT, RCP had been excused from attending the meeting. Mr. Mays noted for the record that a quorum of the members of the board was present and that business could be conducted.

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

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

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

Eugene Andrews, 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.

**Staff in attendance:**

Christopher H. Logsdon, Executive Director

Jason McLean, Investigator

Marcia Tatum, HME Manager

**Others in Attendance:**

Melinda Snyder Osgood, Assistant Attorney General

Ken Walz, RRT, J.D.

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

The proposed meeting agenda was mailed in advance of the meeting. Mr. Mays inquired if there were any amendments to the business agenda. Mr. Logsdon presented three addition items that need to be considered during the regular business:

1. October 6, 2008, teleconference minutes.
2. Ratification of license issuance for applicant: Amanda Wuske.
3. CE review and approval for Ethics program submitted by Kenneth Walz, RRT, J.D.

Motion #1: Ms. Kester moved to approve the agenda as amended for October 14, 2008. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 - 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: Mr. Andrews moved to approve the meeting minutes from August 12, 2008. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 – 0.

Motion #3: Ms. Kester moved to approve the teleconference meeting minutes to consider a Summary Suspension in the matter of Case # 2009ORCB027. Ms. Gilligan seconded the motion. Discussion: Mr. Heckman stated that he did not state he would not support the motion based upon a crime of moral turpitude alone. He stated he specifically stated that if the count involving the crime of child endangering could not stand alone. Mr. Heckman requested that motion #2 discussion be changed to strike “moral turpitude” and insert “child endangerment.” Mr. Mays inquired if there was any object to the correction. Hearing none, moved that the minutes be amended and then called the question on approving the minutes as amended. Motion carried: 7 – 0.

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

### Agenda item 2.1: President’s Report (Exhibit C)

Mr. Mays filed a written report. He introduced the Board’s new member: Darrell Heckman. Mr. Mays informed the Board that Mr. Heckman was a prior Board member and had served in officer capacities with the agency. Mr. Mays noted that Mr. Heckman was an attorney and inquired if he would be willing to serve as the Board’s appointed hearing officer. Mr. Heckman affirmed interest and Mr. Mays then formally appointed him, without objection.

Next, Mr. Mays discussed the Executive Director’s performance appraisal. He stated that the performance review of the Executive Director is one of the most important roles members serve. He directed the members to a blank performance evaluation form and asked each member to complete the form and forward comments directly to him. Mr. Mays stated that he would summarize and average the response to arrive at a consensus review, which he would present to the Board at the December meeting. Mr. Mays also appointed Mr. Heckman to the Board’s Rules Committee.

Last, Mr. Mays reminded members to complete annual financial disclosure filings on time. He stated that he has been advised that some members were late last year and the Ohio Ethics Commission will issue a fine, which will be sent to the member first and then to the Board for payment.

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

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

1. Mr. Logsdon presented the FY 2009, expense and revenue statistics. Mr. Logsdon reported that the Board’s current expenditures are within the current quarterly budget allotment plan, but that not all quarter invoices had been received. Mr. Logsdon informed the Board members that some of the Ohio Department of Administrative Services quarterly service invoices had not been released. Mr. Logsdon stated that a full review of first quarter expenses would be presented to the Board in December. Mr. Logsdon reported that he conducted a reconciliation of Board expenses to the State’s OAKs system and found some minor discrepancies. He stated that all expenses were identified on the OAKs system.

2. Mr. Logsdon stated that he was seeking approval to purchase a new filing system and new file labeling system this year, if the agency’s budget could absorb the expenditure.

3. Mr. Logsdon provided the Board with a written review of revenue collected since the beginning of fiscal year 2009 and the current statistics showing the number of active, inactive, active in renewal, or expired licensees.

4. Mr. Logsdon reported that the agency conducted 349 random continuing education audits.
5. Mr. Logsdon stated that the Board filed its 2010/2011 budget request on time. He informed the Board that he removed a request for office modular reconstruction from the final submission, but the request to change the Board's part-time position to a full time position remained in the budget request.
6. Mr. Logsdon reported that he was reviewing operational policies and giving special attention to information technology and data security procedures and policies. He reported that staff will be trained on the policies and procedures when complete.
7. Mr. Logsdon reminded members that Board staff and Board Members are required to attend 2 hours of Ohio Ethics Law training every two years. Available conferences will be emailed to each member as they become available.
8. Last, Mr. Logsdon reported on his meetings and travel since the Board's last regular meeting.

Discussion: Mr. Marx inquired about the Executive Director's intention to purchase a new filing system. He stated that the Board had invested in file scanning a few years ago with the intention to go paperless at some point. Mr. Logsdon affirmed that intention, but stated that original records are still the most preferred method of management and that he was not prepared to consider destruction of original records with one by one comparison of the scanned record with the original.

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

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

1. Ms. Tatum reported that the Board staff approved 9 new HME licenses and 19 new HME certificates of registration since the Board's last meeting in August 2008.
2. Ms. Tatum reported that since the Board's last meeting, sixteen (16) inspections had been added to the fall schedule and that she was receiving regular reports from contract inspectors. Ms. Tatum also reported that the Board's past inspectors all signed new contracts for FY 2009.
3. Ms. Tatum reported on the total revenue collected through licensing fees and inspections for FY 2009.
4. Last, Ms. Tatum provided the Board with an update on several ongoing projects.

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

Ms. Snyder Osgood discussed two issues: (1) Ohio Department of Job and Family Services request to approve a Memorandum of Understanding (MOU) between the Ohio Respiratory Care Board and the department. Ms. Snyder Osgood stated that she had reviewed the MOU and summarized its contents as an information sharing agreement. She stated that some of the language appears to be more one sided, requiring the Board to provide more information than ODJFS provides to the Board. Ms. Snyder Osgood stated that the Ohio Respiratory Care Board is the only Board that has not signed an agreement.

Members discussed the merits of the agreement and in general determine that an MOU could be acceptable. Mr. Mays assigned Mr. Marx to work with Ms. Snyder Osgood to develop a working draft by the Board's next business meeting in December 2008.

Ms. Snyder Osgood reported that she had received a request for an informal opinion from the Board's Executive Director, Mr. Logsdon concerning the Board's newly enacted Criminal Background Check rule 4761-1-5-07. The Board, she stated, asked if a Limited Permit issued by the Ohio Respiratory Care Board is "License" as the term is defined under section 4776.01 of the Revised Code. Based on her analysis, Ms. Snyder Osgood advised the Board that a "Limited Permit" is a license within the

context of the criminal background check law. Based upon that conclusion, she stated that she then considered the Board's second question, which asked if OAC rule 4761:1-5-07 conflicts with the provisions of the criminal background law. Ms. Snyder Osgood advised the Board that the rule does not appear to conflict with the statute, but she could also find no authority for the Board to adopt such a rule. She stated that the law requires the Board to adopt rules regarding the procedure for conducting criminal background checks, but it does address any authority of the board to recognize the check for a determined amount of time.

Discussion: Mr. Mays stated that he was glad to hear the Assistant Attorney General believe a "Limited Permit" is a license within the context of the definition given for criminal background check compliance. Mr. Mays; however, asked if the rule needs to be re-drafted. Ms. Snyder Osgood stated that she didn't think it had to be considered right away but that the Board may want to re-visit the rule. Mr. Logsdon stated that some length of time for recognition of a background check should be considered. He stated that the background checks from the Ohio BCI&I and the FBI are often received months apart. The first issue to consider, he stated, is "What constitutes a background check?" Mr. Logsdon stated that he believes the law considers a background check to be both BCI&I and the FBI together, not separate. Mr. Logsdon stated that he introduced the concept of adopting a policy recognizing the initial filing date (either BCI&I or FBI) as the starting point for when "the clock begins to tick." Mr. Mays stated that the policy was considered in the context of the existing rule that recognized the background check for one year from the date of filing. Mr. Mays stated that within this context the year would begin whenever the first background check is filed and if a year passes both would need to be re-filed. Mr. Logsdon affirmed that understanding. Mr. Logsdon stated that some period, if not a year, would still need to be considered, because the background check and application may not be received at the same time. Mr. Mays directed the issue to be placed on the next agenda.

Motion #4: Mr. Andrews moved to approve the Staff reports and the Assistant Attorney General's report. Ms. Kester seconded the motion. Discussion: None. Motion carried: 7-0.

### **Agenda item #3: BOARD COMMITTEE REPORTS**

#### Agenda item 3.1: HME Committee Report – Joel Marx

Mr. Marx reported that the HME Committee met prior to the regular business meeting at 9:15 a.m. After approving the minutes, the Committee reviewed the report on HME licenses and certificates of registration issued and the Committee will be recommending ratification of 28 new applications for those authorizations. The Committee, he stated, then reviewed the HME Manager's report on inspection conducted since the Board's last business meeting. He stated that Ms. Tatum addressed the committee's questions and that the committee was satisfied with the progress of the inspections currently scheduled.

The Committee then reviewed a new request for recognition of Vision Restoration Therapy equipment as home medical equipment under OAC 4761:1-3-02. The committee reviewed all of the material filed by the provider, Mr. Marx reported. Mr. Marx stated that the Committee noted that the equipment did require regular calibration. Members inquired about the equipment. Mr. Marx stated that the equipment is software based, but also has a head gear component. The Committee he stated recommends that the Board recognized Visual Rehabilitation Therapy devices as home medical equipment under the Board authority under ORC 4752.02 and rule 4761:1-3-02. A statement will be posted on the website, Mr. Logsdon indicated.

Last, the HME Committee considered a request from the Ohio Department of Job and Family Services to render an opinion on a position statement filed by Invacare Corporation that states proposed ODJFS rule 5101:3-10-21 conflicts with Ohio HME law. The Committee, Mr. Marx stated, debated the matter at great length and concluded that the Board should not render an opinion on a conclusion on testimony provided by Invacare, Inc regarding proposed rules issued by ODJFS.

Agenda item 3.2: Rules Committee, Marc Mays, Acting Chairperson

Mr. Mays reported that the Rules Committee met prior to the regular business meeting at 10:10 a.m. The Committee, he stated, reviewed and approved the Committee's prior meeting minutes. The Committee then, he stated, two proposed amended rules and a proposal to amend newly enacted OAC rule 4761-5-07. The first proposed rule reviewed, he stated, was drafted by staff to address the provisions of Am. Sub. H.B. 562 that authorizes the Board to waive the initial application fee for any license or certificate of registration applicant for HME who files an application within six months of January 1<sup>st</sup> of each even-numbered year. The proposed rule, Mr. Mays stated will require the applicant to only pay the renewal fee for the following biennial cycle.

The second rule proposed by staff, Mr. Mays stated, is a clean-up rule that corrects citation errors found in rule 4761-9-02. The rule was originally drafted with the intention that a new respiratory care continuing education rule on ethics would be adopted under OAC 4761-9-08. Instead, Mr. Mays continued, the continuing education rule on ethics was drafted as OAC 4761-9-04.

Mr. Mays stated that the committee will be recommending to the Board that both draft rules be promulgated.

Finally, the Rule Committee, Mr. Mays reported reviewed the new criminal background check rule: OAC 4761-5-07. Mr. Mays stated that the Board's Assistant Attorney General has addressed the issue in part; but that the Rules Committee will formally recommend that the Board adopt the first filing date policy for determining when the one year recognition period under the current rule will end. Second, Mr. Mays stated that the Committee did consider the current rule on the recognition of background checks for one year. Mr. Mays stated that based upon comments of the Board's counsel further review of the rule would be required.

Agenda item 3.2: Scope of Practice Committee Report – Robert Cohn, M.D.

Dr. Cohn reported that the Board's Scope of Practice Committee met prior to the start of regular business at 11:00 a.m. Dr. Cohn stated that the Committee reviewed a position statement the drafted by the Executive Director pursuant to the Board's request at the August 2008 Board meeting. In addition, Dr. Cohn stated that the Committee reviewed a scope of practice inquiry submitted by Respiroincs of Colorado.

Dr. Cohn stated that the position statement proposed addresses the application and instruction of CPAP equipment and mask fitting by unlicensed personnel. Dr. Cohn stated that the Board's Executive Director argued that the statement could be broadened to address more home medical equipment procedures, but that the consensus of the Committee was to address only CPAP and mask fitting. Dr. Cohn summarized the conclusion of the statement by saying the Committee believes the terminology used in the HME statute allows for equipment demonstration, but not application or instruction of CPAP to the patient. He stated that this would include mask fitting. Dr. Cohn stated that that Committee considered broadening the position statement to address a wider spectrum of HME equipment supplied in the home, but chose to limit the position statement to CPAP set up.

Dr. Cohn stated that the Committee reviewed one inquiry filed by Respiroincs Corporation of Colorado. The Corporation, Dr. Cohn stated, essentially asked if persons employed by their company need a respiratory care license to orient and train personnel that will be working in Ohio. Based upon the circumstances outlined in the inquiry, the Committee believes the companies orientation personnel are not practicing respiratory care and would not require a license.

Discussion: Mr. Marx thanked the Scope of Practice Committee for developing the position statement on CPAP setup and mask fitting. Mr. Marx stated that the position statement should help clarify HME practices.

Mr. Mays asked if the Committee Chairpersons would like to forward any motions for consideration.

Motion #5: Mr. Marx moved that the Board adopt the recommendations of the HME Committee by:

- (1) Recognizing Visual Rehabilitation Therapy devices as home medical equipment as the term is defined under ORC 4752.01.
- (2) Refuse to render an opinion on the position statement filed with Ohio Department of Job and Family Services by Invacare Corporation.

Mr. Andrews seconded the motion. Discussion: None. Motion carried: 7-0.

Motion #6: Dr. Cohn moved that the Board adopt the recommendations of the Scope of Practice Committee by approving:

- (1) The position statement CPAP set up and CPAP mask fitting for home medical equipment personnel.
- (2) The opinion statement on the inquiry filed by Respiroics Corporation of Colorado.

Mr. Heckman seconded the motion. Discussion: None.

Mr. Mays directed that the position statement and opinion letter to Respiroics Corporation of Colorado be attached as an exhibit to minutes of the Board.

Motion #7: Mr. Andrews moved to approve draft rule 4761:1-8-01. Mr. Marx seconded the motion. Discussion: None. Motion carried: 7-0.

Motion #8: Ms. Kester moved to approve draft rule 4761-9-02. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 7-0.

Mr. Mays directed Mr. Logsdon to attach the following to the minutes as exhibits: (1) letter from the Ohio Department of Job and Family Services (Exhibit F); (2) material from Visual Rehabilitation Therapy (Exhibit G); (3) the Board's approved position statement on CPAP set up (Exhibit H); the Board's approved response to Respiroics of Colorado (Exhibit I); and (4) the draft rules (Exhibits J and K).

Committee Exhibits: (Exhibits F, G, H, I, J and K)

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

Motion #9: Mr. Marx moved to enter executive session pursuant to Revised Code Section 121.22, for the purpose of considering the investigation of charges or complaints against licensees or regulated individuals under the board's jurisdiction. Ms. Gilligan seconded the motion. Discussion: None. Roll Call vote:

Darrell L. Heckman -	Yes	Carol Gilligan -	Yes
Joel Marx -	Yes	Eugene Andrews-	Yes
Robert Cohn, M.D. -	Yes	Marc Mays -	Yes
E. Lucile Kester -	Yes		

Motion carried.

The board entered executive session at 2:25 p.m. and returned to regular, public session at 2:55 p.m. All voting members of the board, Mr. Logsdon, Ms. Snyder Osgood, and Mr. McLean were present during executive session.

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

Agenda item 4.1: Approval of PRC Active Case Report

Motion #10: Mr. Andrews moved approve the PRC active case report. Mr. Heckman seconded the motion.  
 Discussion: Mr. Marx noted that the Board Investigator, Mr. McLean has been very diligent over the past year to reduce the backlogged investigative case load. No further discussion. Motion carried: 7 – 0.

Agenda item 4.2: Approval of Opportunity for Hearing Notices

Motion #11: Dr. Cohn 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. 2009ORCB002 (Brian Roscovich)	Conviction of Moral Turpitude	ORC 4761.09 (A)(1)
2. 2009ORCB011(Rhonda L. Pirnstill)	Unlicensed Practice	ORC 4761.09 (A)(2)
3. 2009ORCB012(Vanessa A. Smith)	Unlicensed Practice	ORC 4761.09 (A)(2)
4. 2009ORCB013(Rose M. Stewart)	Unlicensed Practice	ORC 4761.09 (A)(2)
5. 2009ORCB014(Theresa M. Johnson)	Unlicensed Practice	ORC 4761.09 (A)(2)
6. 2009ORCB015(Angela Rokas)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)
7. 2009ORCB016(Malcolm R. Toles)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)
8. 2009ORCB017(Yaw O. Agyekum)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)
9. 2009ORCB19 (Christine A. Mossor)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)
10. 2009ORCB021(Tammy L. Cooper)	Felony Conviction	ORC 4761.09 (A)(1)
11. 2009ORCB024 (Cary J. Gulley)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)
12. 2009ORCB025 (Jessica K. Orth)	Unlicensed Practice	ORC 4761.09 (A)(2)
13. 2009ORCB026 (Amy J. Franklin)	Unlicensed Practice	ORC 4761.09 (A)(2)
14. 2009ORCB028 (Jessica M. Stephens)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)
15. 2009ORCB030 (Trisha M. Lyons)	Obtain a permit through concealment of material facts	ORC 4761.09 (A)(4)
16. 2009ORCB031(Hardwick Gundy)	Felony Conviction	ORC 4761.09 (A)(1)
17. 2009ORCB041(Rebecca M. D'Amico)	Failure to complete RCCE within Term	ORC 4761.09 (A)(2)

**HME Proposed OHNs**

1. 2009HME005 (International Rehabilitative Sciences, Inc.)	Unlicensed Practice	ORC 4752.09 (A)(1)
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and to issue Opportunity for Hearing Notices to all license and limited permit renewal applicants that have incomplete applications on file with the Board. Ms. Kester seconded the motion. Discussion: None. Motion carried: 5 –yes (Abstained Mr. Marx and Mr. Mays).

Agenda item 4.3: Approval of Consent Agreements (Exhibit L collective)

Motion #12: Mr. Heckman moved to approve the following consent agreements between the Board and the following respective respondents:

<u>Case no.</u>	<u>Respondent</u>
<u>RCB Agreements</u>	
2008ORCB031	Jeffrey Merringer
2008ORCB036	Timothy Wolfe
2008ORCB043	Kimberly Romes
2009ORCB003	Rhonda Manegold
2009ORCB005	Otis Hankton
2009ORCB006	Michelle Williams
2009ORCB008	Jennifer Gifford

Mr. Andrews seconded the motion. Discussion: None. Motion carried: 6 – Yes, Abstained – Mr. Mays

Motion #13: Mr. Heckman moved to approve the following consent agreements between the Board and the following respective respondents:

HME Agreements

2008HME116	Therapy Support Services
2008HME117	Best Home Medical, Inc.
2008HME118	Robert V. Sibilila, M.D., Inc.

Mr. Andrews seconded the motion. Discussion: None. Motion carried: 6 – Yes, Abstained – Mr. Marx

Mr. Mays then opened the floor to discussion on Case 2008ORCB031. Dr. Cohn asked why the staff negotiated the terms stated. Mr. McLean stated that the matter was reviewed by the Board's Probable Review Committee. The Committee is not aware of any convictions, pending or otherwise concerning the respondent, Mr. McLean stated. Mr. Marx asked if the agreement would be shared with other agencies, such as Federal agencies. Mr. McLean stated that nothing in the agreement prohibits sharing. Mr. Marx stated that penalty seems to be sufficient, because it will be reported to other agencies and may impact future participation in programs. Mr. Heckman stated that agreement does not appear to be measured based on the alleged offense. Dr. Cohn stated that the issue is not the facts; it's the severity of the proposed action. Ms. Snyder Osgood reminded the Board that the action will remain on the respondent's licensure record. Mr. Marx agreed that the real penalty is the reporting of the action to other agencies. Dr. Cohn asked the members if they were satisfied with the proposed agreement conditions. Mr. Mays asked if there was a question on the proposed consent agreement

Motion #14: Mr. Heckman moved to disapprove the proposed consent agreement in the matter of Case # 2007ORCB072. Ms. Kester seconded the motion. Discussion: Mr. Marx asked Mr. Heckman what he wanted in the agreement. Mr. Heckman stated that the staff would have to negotiate, but that a stiffer penalty would be suggested. Mr. Heckman suggested a sixty day suspension. Dr. Cohn asked for the opinion of other members. Mr. Marx asked Dr. Cohn if he would support Mr. Heckman's

recommendation. Dr. Cohn stated that the suggestion was better than the proposal on the table, but he agreed staff would be responsible for negotiating the matter. No further discussion. Mr. Mays asked for an oral vote:

Darrell L. Heckman -	Yes	Carol Gilligan -	Abstained
Joel Marx -	Yes	Eugene Andrews-	Abstained
Robert Cohn, M.D. -	Yes	Marc Mays -	Abstained
E. Lucile Kester -	Yes		

Motion carried.

Mr. Mays directed the members that the consent agreement proposed has no evidentiary value and cannot be considered or relied upon should the matter go to hearing.

#### Agenda item 4.4: Approval to close investigations and withdrawal of Opportunity for Hearing Notices

Motion #15: Dr. Cohn moved to withdraw Opportunity for Hearing Notices in the following matters:

1. Case #2008HME024 Specialized Medical Services, Inc.
2. Case #2008HME019 Major's Mobility, Inc.
3. Case #2008HME104 Protom Medical, Inc.
4. Case #2008HME014 Med Ox Concentrators

Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 6 – yes, Abstained – Mr. Marx.

Motion #16: Mr. Andrews moved to close investigative case #2008ORCB035 and case #2008HME082 as non-jurisdictional or unfounded. Ms. Kester seconded the motion. Discussion: None. Motion carried.

#### **Agenda item #5: NEW BUSINESS**

#### Agenda item 5.1: Application ratification for licenses and limited permits (Exhibit M collective)

Motion #17: Ms. Kester moved to place upon the minutes of the October 14, 2008 meeting, the names of respiratory therapists and limited permit applicants who met the qualifications for their respective authorization, pursuant to Sections 4761.04 and 4761.05 of the Revised Code and associated rules there under, and who were issued a license or limited permit by the Executive Director of the Board on the following dates: August 14, 2008, August 21, 2008, August 25, 2008, August 29, 2008, September 5, 2008, September 11, 2008, September 18, 2008, September 25, 2008, September 26, 2008, October 2, 2008, October 3, 2008, and October 9, 2008. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 - 0.

Motion #18: Dr. Cohn moved to ratify the issuance of a respiratory care professional license issued to Amanda S. Wuske. Ms. Gilligan seconded the motion. Discussion: Mr. Logsdon stated that the ratification was being brought before the Board for approval due to a conflict of interest. No further discussion. Motion carried: 7 – 0.

Agenda item 5.2: Application ratification for HME licenses and certificates of registration (Exhibit N)

Motion #19: Mr. Marx moved to ratify HME licenses and certificates of registration issued on the following dates:

**HMEL**

August 13, 2008, August 19, 2008, August 25, 2008, September 10, 2008, September 24, 2008, and October 1, 2008

**HMER**

August 4, 2008, August 15, 2008, August 21, 2008, August 25, 2008, September 2, 2008, September 4, 2008, September 5, 2008, September 10, 2008, September 17, 2008, September 18, 2008, September 19, 2008, September 22, 2008, September 30, 2008, October 1, 2008, and October 2, 2008.

Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 – 0.

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

Agenda item 5.3: Reduction in HME renewal fees per Am. Sub. H.B. 562

The Board considered the renewal fees of HME licenses and certificates of registration currently scheduled to expire on June 30, 2009. In addition, the Executive Director stated that an audit of records indicating that some HME facilities should have filed for a new license or certificate of registration following a change in address should be considered in the discussion. Mr. Logsdon proposed that the 2009 renewal fee be reduced by the original fee already paid by the holder. Mr. Marx asked if that meant the fee would be less than the standard renewal fee. Mr. Logsdon stated that the law intends that the Board will take into consideration the length of time a license or certificate of registration has until it expires when determining a proportionate reduction in fees. Mr. Logsdon stated that, in his opinion, the total fee paid during the fiscal year should be equal to same fee paid by others. Mr. Logsdon continued that there would be no fee difference for facilities that have already submitted a renewal fee for the biennial year.

Motion #20: Ms. Kester moved to reduce the amount of the 2009 HME license or certificate of registration renewal fee by the amount of licensure fees already submitted toward the license or certificate of registration for FY 2009. Mr. Marx seconded the motion. Discussion: None. Motion carried: 7 – 0.

Agenda item 5.4: Approval of Respiratory Care Continuing Education Courses on Ethics (Exhibit O collective)

The Board's Executive Director presented six petitions filed by education providers for recognition of hourly credit for Respiratory Care Law or Medical Ethics courses. Mr. Logsdon stated that the providers were following the procedure for approval established in rule 4761-9-05 (A)(6).

Motion #21: Mr. Heckman moved to approve the following Respiratory Care Continuing Education Ethics courses for 1 contact hour:

1. Michael Neuendorff, Neumed Diagnostics Inc.: *Legal and Ethical Issues for Health Care Professionals*
2. Sarah M. Varekojis, PhD, RRT, The Ohio State University: *The ABC's of Ethics*

3. Michelle Gaffney, St. Vincent Charity Hospital (AARC program): *Ethical Issues faced by Respiratory Therapists*
4. Mark D. Babic, Fairview Hospital (AARC approved program): *Making Ethical Decisions During a Disaster*
5. Susan Ciarlariello, Dayton Children's: *Ethics for RCPs in Ohio*
6. Kenneth Walz, J.E., Skiver & Associates: *Legal Landmines for Respiratory Therapists*

Ms. Gilligan seconded the motion. Discussion: Mr. Marx inquired about approval of Ms. Ciarlariello's program. Mr. Mays asked if the Executive Director had any other information on the program. Mr. Logsdon stated that Ms. Ciarlariello was asked to give a lecture on the subject area, but that she was doing the service without fee. Mr. Andrews inquired about the course submitted by Ms. Gaffney noting that the course was already approved by the AARC and is an AARC program. Mr. Logsdon stated that the rules are not very clear on ethics programs accredited and recognized by other sources. Mr. Logsdon stated that current rule requires providers to file the program with the Board for review. No further discussion. Motion carried: 7 – 0.

**Agenda item 5.5: 2008 Annual Report (Exhibit P)**

A draft of the 2008 annual Report was mailed to members in advance of the meeting for review.

Motion #22: Mr. Heckman moved to approve the 2008 Annual Report. Mr. Marx seconded the motion. Discussion: None. Motion carried: 7 – 0.

**Agenda item 5.6: Education Consultant Contract**

Mr. Logsdon presented a contract for F. Herbert Douce. Mr. Logsdon stated that Mr. Douce has again agreed to assist the Board by analyzing data submitted by Ohio's Respiratory Care Educational programs and drafting the 2008 Ohio Education Report. The amount of the contract is \$320.00.

Motion #23: Mr. Andrews moved to approve the independent Education Consultant contract with Mr. Douce. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 – 0.

**Agenda item #6: OPEN FORUM**

No one appeared.

**Agenda item #7: FOR THE GOOD OF THE BOARD**

None.

**Agenda item #8: ADJOURNMENT**

Hearing no further matters, the meeting adjourned the meeting at 4:05 p.m.

**Day 2, October 15, 2008**

Presiding: Marc Mays, President, called the meeting to order on October 15, 2008 at 9:02 a.m. in room West B, 31<sup>st</sup> Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215 for the purpose of holding administrative hearings. 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., and Eugene Andrews, R.R.T., R.C.P. Mr. Mays noted that Susan Ciarlariello, RRT, RCP and Anita Adams, RRT, RCP had been excused from attending the meeting. Mr. Mays noted for the record that a quorum of the members of the board was present and that business could be conducted.

Mr. Mays reviewed the hearing schedule for the day.

### Members in attendance (Exhibit Q):

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

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

Eugene Andrews, 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.

#### Staff in attendance:

Christopher H. Logsdon, Executive Director

Jason McLean, Investigator

#### Others in Attendance:

Melinda Snyder Osgood, Assistant Attorney General

#### Agenda item 1.1: Hearing in the Matter of Nasky & Goldfinger Medical Corporation

The matter of Nasky and Goldfinger Medical Corporation came before the following members of the Ohio Respiratory Care Board on October 15, 2008 at approximately 9:22 a.m. in room West B, 31<sup>st</sup> Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215. 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., and Eugene Andrews, R.R.T., R.C.P. Mr. Mays noted for the record that a quorum of the Board was present and business could be conducted. Marc Mays, R.R.T., R.C.P. Mr. Marx recused himself from the proceedings based upon his role as the Board liaison to the Investigatory Probable Review Committee. Melinda Snyder Osgood, Assistant Attorney General, represented the state of Ohio. The Respondent: Nasky & Goldfinger Medical Corporation did not request a hearing in this matter. This hearing was being held in conformance with the Franklin County Court of Appeals decision in Goldman v. Ohio State Medical Board. Cheryl Collins-Johnson was the Court Reporter, Deposition Specialists, Inc., 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Mr. Mays then turned the proceedings over to Mr. Heckman , the appointed hearing officer in this matter. Preliminary matters: Mr. Heckman asked State's counsel, Ms. Snyder Osgood if there were any preliminary matters.

Preliminary matters: None.

Following a brief opening statement, Ms. Snyder Osgood presented her case in chief.

Ms. Snyder Osgood called the following witnesses:

1. Christopher H. Logsdon, Executive Director, on direct examination.

Following the State's case in chief, Ms. Snyder Osgood moved for the admission of State's Exhibits. Mr. Heckman admitted State's Exhibits A through I.

State's Exhibits admitted:

- A - Amended Notice of Opportunity for Hearing dated August 14, 2008, sent to Jessica Ryan, facility Manager for Nasky & Goldfinger Medical Corporation by Certified Mail/Return Receipt #70042510000173435655 and a sign return receipt.
- B - Letter dated September 23, 2008, from John Nasky, Executive President of Nasky & Goldfinger Medical Corporation.
- C - Evidentiary Review Notice letter dated September 18, 2008, mailed to Jessica Ryan, facility Manager for Nasky & Goldfinger Medical Corporation by regular.
- D - Application for Initial Home Medical Equipment Facility License filed by Jessica Ryan, facility Manager for Nasky & Goldfinger Medical Corporation on August 17, 2006 and a Preliminary Application for Home Medical Equipment Service Providers filed by Jessica Ryan, facility Manager for Nasky & Goldfinger Medical Corporation on August 15, 2006.
- E - Form Letter concerning home medical equipment facility standards dated September 14, 2007.
- F - Out-of-State HME Services Provider Inspection Packet dated January 15, 2008.
- G - Inspection Standards Check-off List filed by John Nasky on or about February 5, 2008 and a Home Medical Inspection Survey filed by independent contract inspector Mark Kemerer on February 22, 1008.
- H - Letter of Facility Inspection Findings dated February 25, 2008, mailed to John Nask, Nasky & Goldfinger Medical Corporation.
- I - Inspection Response Reminder letter dated April 30, 2008, mailed to John Nask, Nasky & Goldfinger Medical Corporation.

The State rested.

Ms. Snyder Osgood gave a brief closing statement. The hearing concluded at 9:20 a.m.

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

Darrell L. Heckman -	Yes	Joel Marx -	Abstained
E. Lucy Kester -	Yes	Marc Mays -	Yes
Carol Gilligan -	Yes	Eugene Andrews -	Yes
Robert Cohn, M.D.	Yes		

Motion carried.

The board entered executive session at 9:22 a.m. and returned to regular, public session at 9:35 a.m. All voting members of the board were present during executive session. Mr. Marx was excused. Mr. Logsdon was asked to remain.

#### Agenda item 1.2: Findings, Conclusions of Law and Order in the Matter of Nasky & Goldfinger Medical Corporation (Exhibit R)

Mr. Mays asked if the Board had reached a decision in the matter of Nasky & Goldfinger Medical Corporation and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. He asked Mr. Logsdon to read the findings of fact and the conclusions of law in the matter of Nasky & Goldfinger Medical Corporation. Mr. Logsdon did so.

Mr. Logsdon stated that the Board adopted all of the exhibit submitted by the State of Ohio and found that Nasky & goldfinger Medical Corporation was directed to respond to a request by the Ohio Respiratory Care Board to address unsatisfactory compliance standards for a facility licensed to provide HME services in the state of Ohio. The Board concluded based upon the evidence provided that Nasky & Goldfinger Medical Corporation did not meet compliance with the standards of operation for a licensed home medical equipment facility. The Board found that that Section 4752.09 (A)(1) gives the Board the authority to suspend or revoke a license to provide home medical equipment services based upon a finding that the licensee violated Section 4761.09 (A)(1) of the Revised Code.

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 #2: Dr. Cohn moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Nasky & Goldfinger Medical Corporation is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby REVOKES Nasky & Goldfinger Medical Corporation's a license to practice home medical equipment services in the State of Ohio. The Order of the Board shall become effective upon the date of mailing. Ms. Kester seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 – abstained (Marx).

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

The Board took a break from 9:40 a.m. to 9:54 a.m.

#### Agenda item 2.1: Hearing in the Matter of James D. Montgomery

The matter of James D. Montgomery came before the following members of the Ohio Respiratory Care Board on October 15, 2008 at approximately 9:54 a.m. in room West B, 31<sup>st</sup> Floor of the Vern Riffe Building for Government and the Arts, 77 South

High Street, Columbus, OH, 43215. 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., and Eugene Andrews, R.R.T., R.C.P. Mr. Mays noted for the record that a quorum of the Board was present and business could be conducted. Marc Mays, R.R.T., R.C.P. Mr. Mays recused himself from the proceedings based upon his role as the Board liaison to the Investigatory Probable Review Committee. Melinda Snyder Osgood, Assistant Attorney General, represented the state of Ohio. The Respondent, James D. Montgomery appeared Pro Se. Cheryl Collins-Johnson was the Court Reporter, Deposition Specialists, Inc., 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Mr. Mays then turned the proceedings over to Mr. Heckman , the appointed hearing officer in this matter. Preliminary matters: Mr. Heckman asked State's counsel, Ms. Snyder Osgood if there were any preliminary matters.

Preliminary matters: None.

Mr. Heckman asked Mr. Montgomery if he received the Board's Notice of Opportunity for Hearing. Mr. Montgomery affirmed receipt. Mr. Heckman asked Mr. Montgomery if he was prepared to go forward with the hearing without representation by legal counsel. Mr. Montgomery stated that he was prepared to represent himself.

Opening Statements were waived.

Ms. Snyder Osgood called the following witnesses:

1. James D. Montgomery , as on cross examination.

Before proceeding, Mr. Heckman advised Mr. Montgomery that he did not have to answer any question that would place his 5<sup>th</sup> amendment rights in jeopardy and that he would stop testimony to protect these rights.

2. Jason P. McLean, Investigator for the Ohio Respiratory Care Board on direct examination.

Following the State's case in chief, Ms. Snyder Osgood moved for the admission of State's Exhibits. Mr. Heckman admitted State's Exhibits A through E.

State's Exhibits admitted:

- A - Notice of Opportunity for Hearing dated August 13, 2008, sent to James D. Montgomery by Certified Mail/Return Receipt #70042510000173442790 and a sign return receipt.
- B - Electronic mail dated August 14, 2008, from James D. Montgomery requesting a hearing.
- C - Hearing scheduling letter dated August 19, 2008, mailed to James D. Montgomery by regular.
- D - Application for an Initial Limited Permit filed by James D. Montgomery on June 19, 2008.
- E - Journal Entry Order, Case # 90-F-19, Circuit Court of Wood County, West Virginia dated May 21, 1990.

The State rested.

James D. Montgomery then proceeded to present his case in chief. Mr. Montgomery represented himself and he testified on his own behalf.

James D. Montgomery and Ms. Snyder Osgood gave a brief closing statements. The hearing concluded at 10:27 a.m.

Motion #3: Dr. Cohn moved to enter executive session pursuant to Revised Code Section 121.22, for the purpose of considering the investigation of charges or complaints against licensees or regulated individuals under the board's jurisdiction.. Ms. Gilligan seconded the motion. Discussion: None. Roll Call vote:

Darrell L. Heckman -	Yes	Joel Marx -	Yes
E. Lucy Kester -	Yes	Marc Mays -	Abstained
Carol Gilligan -	Yes	Eugene Andrews -	Yes
Robert Cohn, M.D.	Yes		

Motion carried.

The board entered executive session at 10:27 a.m. and returned to regular, public session at 10:33 a.m. All voting members of the board were present during executive session. Mr. Mays was excused. Mr. Logsdon was asked to remain.

Agenda item 1.2: Findings, Conclusions of Law and Order in the Matter of James D. Montgomery (Exhibit S)

Mr. Mays asked if the Board had reached a decision in the matter of James D. Montgomery and was prepared to read the Order. Mr. Heckman, Appointed Hearing Officer stated that the members had reached a decision. He asked Mr. Logsdon to read the findings of fact and the conclusions of law in the matter of James D. Montgomery. Mr. Logsdon did so.

Mr. Logsdon stated that the Board adopted the entire exhibits submitted by the State of Ohio and found that James D. Montgomery was convicted of the crime of delivery of a controlled substance in the State of West Virginia. The Board noted that Mr. Montgomery did not contest the conviction and accepted responsibility for his earlier actions. The Board finds the length of time since Mr. Montgomery's conviction is a mitigating factor. The Board found that that Section 4761.09 (A)(1) gives the Board the authority to refuse to issue a license based upon a finding that the licensee was convicted of a felony or crime of moral turpitude. The Board also took judicial note that Mr. Montgomery now meets the qualifications for a license and would like to update his application to reflect this change.

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 #4: Ms. Gilligan moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of James D. Montgomery is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby ISSUES James D. Montgomery a license to practice Respiratory Care in the State of Ohio subject to meeting all qualifications. The Order of the Board shall become effective immediately. Dr. Cohn seconded the motion. Discussion: None. Motion carried: 6 – yes, 1 – abstained (Mays).

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

Having no other business before the Board, the meeting adjourned at 10:35 a.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 December 9, 2008.

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Secretary

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Witness