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OHIO RESPIRATORY CARE BOARD

77 SOUTH HIGH STREET, 16TH FLOOR

COLUMBUS, OHIO 43215-6108

OFFICIAL BOARD MEETING MINUTES OF FEBRUARY 19, 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

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

Marcia Tatum, HME Manager

Traci L. McDonald, Administrative Professional I

Others in Attendance:

Steven R. Kochheiser, Assistant Attorney General

Greg Fouche, Joint Committee on Agency Rule Review

Scot Bowling

Allison Bowling

Susan Ciarlariello, Legislative Chairperson, Ohio Society for Respiratory Care

Bharon Hoag, Executive Director, Ohio State Chiropractic Association

STANDING COMMITTEE MEETINGS

The Board's Rules Committee met prior to regular business at 9:04 a.m. in Room East B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. Steve Pavlak chaired the meeting. Joel Marx and Verna Riffe Biemel attended. Mr. Kenneth Walz arrived at 9:09 a.m. The Committee meeting ended at 10:00 a.m. Official minutes of the Board's Rules Committee were prepared and are maintained separate of this journal.

Agenda item #1: HEARING PURSUANT TO ORC 119.032 ON PROPOSED ADMINISTRATIVE RULES

The public hearing on proposed rules began at 10:02 a.m. Mr. Mays presided over the hearing process and asked members of the board introduce themselves.

The public hearing on proposed rules was held in the Room East B, 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, Kenneth Walz, J.D., R.R.T, R.C.P., Steven Pavlak, R.R.T., M.S., Verna Riffe Biemel, Public Member, Maninder Kalra, M.D., Andrea Yagodich, R.R.T., R.C.P., and Robert Slabodnick, R.R.T, M.Ed.

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

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

Preliminary matters: None.

Mr. Logsdon was called as a witness by the State of Ohio to identify the State's Exhibits.

The following states exhibits were introduced.

- A – Copy of Notice of Public Hearing of Intent to amend existing Ohio Administrative Rules"
- B - Screen print copy of the Ohio Respiratory Care Board's website: www.respiratorycare.ohio.gov and www.hme.ohio.gov, demonstrating the posting of Notice of Public Hearing of Intent to amend existing Ohio Administrative Rules and the availability of an imaged version of all rules under consideration.

C (1) to

C (3) - Full copy of the proposed rules relating to the regulation of respiratory care under ORC 4761 and home medical equipment regulation under ORC 4752, and the rules summary and fiscal analyses for each proposed rule filed with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission for the following proposed rules:

Respiratory Care Licensing ORC 4761 rules proposed amendments:

Exhibit C (1): OAC 4761-2-05 Personal information systems,
Exhibit C (2): OAC 4761-11-06 Continuance of hearing.

Home Medical Equipment Licensing ORC 4752 rules proposed amendments:

Exhibit C (3): OAC 4761:1-2-05 Personal information systems,

- D - Letters of confirmation of Electronic Rules Filing dated 1/10/2014 with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission.
- E - Letters of Withdraw of Electronic Rules Filing dated 11/07/2013 with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission.
- F - Copy of Memorandums of Review from the Office of Common Sense Initiative for rules filed (2 memorandums total) and the associated Business Impact Analyses for rules filed with the Office of Common Sense Initiative.
- G. Memorandum of intent to file rules filed with the Office of Common Sense Initiative on February 3, 2014.

Mr. Kochheiser moved to admit exhibits A – G inclusive. Hearing no objection to the admission of the exhibits, Mr. Mays admitted State’s Exhibits A through G inclusive.

Motion #1: Mr. Walz moved to waive the reading of the rules. Mr. Pavlak seconded the motion. Discussion: None.
Motion carried: 8 – 0.

Mr. Mays recognized the Assistant Attorney General for calling witnesses for testimony on the proposed rules.
No witnesses appeared.

Dr. Kalra arrived at 10:11 a.m.

The hearing concluded at 10:11 a.m.

The Board members took a break from 10:11 a.m. to 10:25 a.m.

Agenda item #2: ADMINISTRATIVE HEARINGS

Agenda item 2: In the matter of Jeanette C. McCandlish (a.k.a. Lettau), Case #2013ORCB009

The matter of Jeanette C. McCandlish (a.k.a. Jeanette C. Lettau) came before the following members of the Ohio Respiratory Care Board on February 19, 2014 at 10:30 a.m. in Room East B, 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, Maninder Kalra, M.D., Kenneth Walz, J.D., R.R.T, R.C.P., Steven Pavlak, R.R.T., M.S., Verna Riffe Biemel, Public Member, 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.

Jeanette C. McCandlish (a.k.a. Jeanette C. Lettau) (hereafter referred to as "Ms. McCandlish") 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.

Mr. Kochheiser gave a brief opening statement.

During the hearing, the State called Christopher H. Logsdon, Executive Director as the only witness. The State of Ohio moved for the admission of State's Exhibits 1(A), 1(B), 2, 3, 4(A), 4(B), 4(C), and 5. Mr. Walz admitted State's Exhibits 1(A), 1(B), 2, 3, 4(A), 4(B), 4(C), and 5.

Mr. Kochheiser gave a closing statement. The hearing concluded at 10:48 a.m.

Agenda item #3: CASE DELIBERATION IN PRIVATE SESSION

Agenda item 3: In the matter of Jeanette C. McCandlish (a.k.a. Lettau), Case #2013ORCB009

Motion #2: Ms. Riffe Biemel moved to go into private session for the purpose of entering into quasi-judicial deliberations concerning proposed disciplinary action in the matter of Jeanette C. McCandlish. Mr. Slabodnick 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 -	Yes

Motion carried.

The Board moved into private session at 10:51 a.m., and returned to regular, public session at 11:07 a.m. Mr. Slabodnick and Steven Kochheiser were excused from participation. Seven Board members and Mr. Logsdon were present during private session.

The members broke for lunch at 11:10 a.m. and returned to public session at 1:00 p.m.

Regular Business Meeting

Agenda item #4: CALL REGULAR MEETING TO ORDER

Mr. Mays called the regular business meeting to order at 1:00 p.m. Mr. Mays asked Mr. Pavlak to call the roll. Present were Joel Marx, HME Member, Marc K. Mays, M.S., R.R.T., R.C.P., President, Steven Pavlak, M.S., R.R.T., R.C.P., Robert Slabodnick, M.Ed., R.R.T., R.C.P., Kenneth Walz, J.D., R.R.T., R.C.P., Maninder Kalra, Ph.D., M.D., Andrea Yagodich, R.R.T., R.C.P., and Verna Riffe Biemel, Public Member. Ms. Carol Gilligan was absent. A quorum of the Board was present to conduct business.

Agenda item 4.a: Approval of proposed meeting agenda (Exhibit B)

Motion #3: Mr. Pavlak moved to approve the proposed agenda for February 19, 2014. Mr. Slabodnick seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 4.b: Approval of meeting minutes for December 4, 2013 (Exhibit C)

Motion #4: Ms. Riffe Biemel moved to approve the draft December 4, 2013 meeting minutes. Mr. Pavlak seconded the motion. Discussion: Mr. Pavlak noted an error on page 6.

Ms. Riffe Biemel withdrew her motion and made the following motion:

Motion #5: Ms. Riffe Biemel moved to amend the draft minutes by adding the word “inspectors” to the end of sentence 3 under Agenda item 3c on page 6 and approve then December 4, 2013 minutes of the Ohio Respiratory Care Board as amended. Ms. Yagodich seconded the motion. Discussion: Ms. Riffe Biemel discussed the amendment on page 6. No other discussion. Motion carried: 8 – 0.

Agenda item #5: OFFICER AND STAFF REPORTS

Agenda item 5a: President’s Report

Mr. Mays asked members for a motion to go into executive session for the purpose of considering the ongoing employment or appointment of a public employee.

Motion #6: Mr. Marx moved to enter Executive Session pursuant to ORC 121.22 (G) for the purpose of considering the ongoing employment or appointment of a public employee. Mr. Pavlak seconded the motion.

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 -	Yes

Motion carried.

The Board moved into executive session at 1:05 p.m. Steven Kochheiser, Ms. McDonald, and Mr. Logsdon was excused from participation. Eight Board members were present during executive session. At 1:20 p.m., the members asked Mr. Logsdon to enter executive session. Executive Session concluded at 1:25 p.m.

Motion #7: Mr. Marx moved to approve the Executive Director's annual performance review and to continue his ongoing appointment as the Executive Director of the Ohio Respiratory Care Board. Ms. Riffe Biemel seconded the motion. Discussion: None. Motion carried: 8 – 0.

Motion #8: Mr. Slabodnick moved to approve the President's report. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 8 – 0.

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

Mr. Logsdon submitted a written report to the Board. He verbally reviewed the report.

1. Mr. Logsdon reviewed the financial activity report for FY 2014. Mr. Logsdon reported that an analysis of the Board's expenditures indicates that expenditures were within the appropriation limits of the Board, but not at the level normal for this point in the fiscal year. Mr. Logsdon explained that several significant obligations had not been billed, such as office rent. Mr. Logsdon reported that funds were encumbered to account for obligated expenditures. Mr. Logsdon stated that the Board's inspection workload for home medical equipment facilities had risen significantly since the beginning of the fiscal year. Mr. Logsdon reported that the number of licensed facilities had gone from 92 to 178, largely due to companies that are selling TENs devices. Mr. Logsdon concluded that the Board would not have sufficient funds to support the inspection needs of the nearly 90 new licensees. Mr. Logsdon stated that the Board might need to seek additional funding through the Controlling Board.
2. Mr. Logsdon reported on the current number of active licensees and the current FY 2014 revenue totals and sources.
3. Mr. Logsdon reported on his travel and meetings since the Board's December board meeting.
4. Mr. Logsdon reported that the following projects were complete:
 - a. 2014 Winter Newsletter.
 - b. Draft rules in compliance with EO 2013-05K and the report on Streamlining the Occupation Licensing Process for Veterans.
 - c. Final Minimum Data Set questions for the 2014 RCP license renewal.
 - d. Forms and applications of the 2014 respiratory care and home medical equipment renewal cycle.
 - e. Scanning and uploading to the elicense system for all prior administrative action records back to 2010.
5. Mr. Logsdon also reported on user acceptance testing for the elicense 2.0 system.

Discussion: Members discussed the matter of requiring minimum data set questions. Some members did not support requiring the minimum data set responses for licensing renewal, although they understood that allowing licensees to opt out of the questions would result in incomplete data. Mr. Marx did not like some of the questions and discussed the possibility of removing the questions or allowing for licensees to give no answer. Mr. Logsdon explained the intent of collecting the data. Members inquired how the data would be maintained and shared, expressing concern that the data would be public. Dr. Kalra explained that the data was being used for comparative purposes. Mr. Logsdon expressed willingness to consider any changes, including removing any questions from the list. Members asked Mr. Logsdon to include an explanation of why the Board is requesting the information and how the information is intended to be used.

Mr. Walz inquired about expenditures. Mr. Logsdon explained that the Board cost splits expenditures for the home medical equipment services regulatory activities and the respiratory care regulatory activities.

Dr. Kalra stated that the minimum data set information was beneficial and useful for federal health professions shortage designations. Mr. Mays asked if someone wanted to make a motion to withdraw the minimum data set questions from the renewal application, amend the minimum data set questions, or pass the minimum data set questions as written. Mr. Walz stated his concern with making the survey mandatory. Mr. Logsdon suggested that allowing licensees to opt out of the survey might greatly diminish the usefulness of the data. Mr. Walz agreed. Mr. Marx asked if the President had any problem with the minimum data set questions. Mr. Mays stated he had no problem with the questions.

Motion #9: Mr. Slabodnick moved to approve the Executive Director's report. Ms. Yagodich seconded the motion.
Discussion: None. Motion carried: 8 – 0.

Motion #10: Mr. Walz moved to enter Executive Session pursuant to ORC 121.22 (G) for the purpose of considering the investigation of charges or complaints against a public employee. Ms. Riffe Biemel seconded the motion.

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 -	Yes

Motion carried.

The Board moved into executive session at 2:07 p.m. Steven Kochheiser, and Mr. Logsdon was present during executive session. Eight Board members were present during executive session. Executive Session concluded at 2:42 p.m.

Members took a break from 2:42 p.m. to 2:54 p.m.

Motion #11: Mr. Walz moved the following resolution be entered upon the Board's journal:

We, the members of the Ohio Respiratory Care Board, hereby delegates to the duly employed Executive Director of the Ohio Respiratory Care Board, employed pursuant to the provisions of ORC 4761.02, authority to:

- A. Employ office staff and contract for services as necessary to carry out the Boards responsibilities under Chapter 4761 and 4752 of the Revised Code. The Executive Director may hire, discipline, or terminate board staff in accordance with the Ohio civil service employees association, AFSCME local 11, contract with the state of Ohio. The Executive Director may hire, discipline, or terminate unclassified, exempt staff.
- B. Accept employee resignations on the Board's behalf. An acceptance of resignation should be made in writing, including through written documentation, which may be, for example, electronic mail, instant messaging, text messaging, or other electronic means.
- C. Sign, on behalf of the Board, Position Description Authorizations and Personnel Actions authorizing any of the above actions.
- D. Serve as the authorized representative of the Ohio Respiratory Care Board for filing business forms required to carry out the daily responsibilities of the agency, including filing rules on the Board's behalf.

Mr. Pavlak seconded the motion. Discussion: Mr. Logsdon asked that the phrase "and/or the duly elected President of the Ohio Respiratory Care Board" be added where the Executive Director is also mentioned. Mr. Walz agreed to accept the recommendation as a friendly amendment. Mr. Marx was concerned that the language might result in a conflict. Mr. Marx stated that he was mostly concerned with giving authority to the Board President that would encroach upon the Executive Director's daily management. Mr. Walz recommended a triggering provision. Mr. Marx stated that he did not want the Board President to become a substitute for the Board in the daily operations of the office. **Mr. Walz withdrew the motion.**

Motion #12: Mr. Walz moved the following resolution be entered upon the Board's journal:

We, the members of the Ohio Respiratory Care Board, hereby delegates to the duly employed Executive Director of the Ohio Respiratory Care Board, employed pursuant to the provisions of ORC 4761.02, authority to:

- A. Employ office staff and contract for services as necessary to carry out the Boards responsibilities under Chapter 4761 and 4752 of the Revised Code. The Executive Director may hire, discipline, or terminate board staff in accordance with the Ohio civil service employees association, AFSCME local 11, contract with the state of Ohio. The Executive Director may hire, discipline, or terminate unclassified, exempt staff.
- B. Accept employee resignations on the Board's behalf. An acceptance of resignation should be made in writing, including through written documentation, which may be, for example, electronic mail, instant messaging, text messaging, or other electronic means.
- C. Sign, on behalf of the Board, Position Description Authorizations and Personnel Actions authorizing any of the above actions.
- D. Serve as the authorized representative of the Ohio Respiratory Care Board for filing business forms required to carry out the daily responsibilities of the agency, including filing rules on the Board's behalf.

In the event, the Executive Director is unable, unwilling, or unavailable the Board delegates the duties listed in paragraphs A through D above to the duly elected President of the Board.

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

Motion #13: Mr. Walz moved to approve the minimum data set questionnaire for RCP license renewal. Ms. Yagodich seconded the motion. Discussion: Mr. Pavlak asked that the introduction include some language stating that the data is intended to be aggregated. No further discussion. Motion carried: 7 – Yes, 1 – Abstained (Mr. Walz).

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

Ms. Tatum filed a written report. Ms. Tatum reviewed her report, stating that Board staff had approved 14 HME licenses and 13 HME certificates of registration since the December 2013 Board meeting. Ms. Tatum reported there were 14 pending applications on file. In addition, Ms. Tatum reported that January, February, and March inspections schedules have set; however, Ms. Tatum reported that she was having scheduling difficulty with a few of the Board's contract inspectors due to availability. Ms. Tatum reported on the revenue generated from initial applications. Last, Ms. Tatum reported that the HME Committee held a strategic planning meeting in Mansfield, Ohio on January 30, 2014. Ms. Tatum reported that a representative from the Ohio Association of Home Medical Equipment Services and four contract inspectors attended the meeting. Ms. Tatum stated that the committee identified several issues and courses of action.

Discussion: None.

Motion #14: Mr. Slabodnick moved to approve the HME Manager's Report. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 8 – 0.

Mr. Mays noted that Mr. Bharon Hoag, Executive Director, Ohio Chiropractic Association was present. Mr. Mays asked members if they had any concerns with permitting Mr. Hoag to address the assembly at the present time, rather than waiting until the Open Forum item on the agenda. Hearing none, Mr. Mays welcomed Mr. Hoag.

Mr. Hoag asked Mr. Logsdon to preface his presentation. Mr. Logsdon stated that he had met with Mr. Hoag and/or spoken with Mr. Hoag on several occasions. Mr. Logsdon stated that the Board was knowledgeable of the Ohio Chiropractic Associations concerns. Mr. Logsdon stated that some of those concerns were considered and addressed in recent rule promulgation, such as reducing continuing education hours for limited sales HMEs. Mr. Logsdon reported that the Rules Committee met earlier in the

day and is proposing to define Transcutaneous Electrical Nerve Stimulation (TENS) devices to be items that are not designated as over-the-counter devices by the U.S. Food and Drug Administration (FDA).

Mr. Hoag thanked the Board for listening to his association's concerns and working with him to address those concerns. Mr. Hoag stated that the Ohio Chiropractic Association respects the intent of the Home Medical Equipment licensure act and supports it and its purpose. Mr. Hoag stated that his organization felt that Chiropractic physicians were an unintended consequence or collateral damage of the Board's policy defining Home Medical Equipment. Mr. Hoag stated that his association wanted to work with the Ohio Respiratory Care Board and the Office of Common Sense Initiative to find a way to uphold the integrity of the Board's rules, but also did not create the collateral damage that was occurring within their scope of Chiropractic services. Mr. Hoag stated that the cost of obtaining a Home Medical Equipment license and the costs of inspections were more than the revenue earned for offices that sold only five or six TENS units each year. At the end of the day, Mr. Hoag stated, his association only wants to minimize the collateral damage. Mr. Hoag stated that the announcement of the newly proposed rule was positive, because many of the TENS devices used by Chiropractic physicians are over-the-counter devices.

Mr. Marx stated that the committee did determine that the FDA had very specific labeling that designated an item as over-the-counter. Mr. Hoag promised he would look into the labeling issue and await the public comment period on the proposed rule.

Agenda item #6: COMMITTEE REPORTS

Agenda item 6.a: Rules Committee Report

Mr. Pavlak reported that the Rules Committee met during the morning. Mr. Pavlak stated the Committee reviewed seven draft amended rules and one proposed new rule, including the following:

Draft amended rules:

OAC 4761:1-13-01: Continuing education standards.

Mr. Pavlak summarized the recommended amendment, stating the change would address minimum contact hours and approved education sources for licensed HME providers.

OAC 4761:1-3-02: Home medical equipment defined.

Mr. Pavlak summarized the recommended amendment, stating the change would reorganize equipment types from the "other" category to the "technologically sophisticated" category and amend the definition of TENS devices.

OAC 4761-3-01: Definition of terms.

Mr. Pavlak summarized the recommended amendment, stating the change would add definitions for "active duty military service" and "veteran."

OAC 4761-8-01: Renewal of license or permits.

Mr. Pavlak summarized the recommended amendment, stating the change would extend the filing deadline for active duty military service members or the spouses of active duty military service members that are prevented from renewing on time due to active service. In addition, the draft amend would waive late fees for active duty military service members and spouses. Last, the draft amendment would consider waiver of continuing education or extension of completion time for active duty military service members and spouses.

OAC 4761-9-02: General RCCE requirements and reporting mechanisms.

Mr. Pavlak summarized the recommended amendment, stating the draft amendment would consider waiver of continuing education or extension of term of collection for active duty military service members and spouses.

OAC 4761-9-05: Approved sources of RCCE.

Mr. Pavlak summarized the recommended amendment, stating the draft amendment list relevant continuing education provided by the U.S. Military as an acceptable source of continuing education.

OAC 4761-12-01: Initial application fee.

Mr. Pavlak summarized the recommended amendment, stating the draft amendment would waive half of the initial license fee for active duty military members.

Draft new rules:

4761-4-03: Recognition of military educational programs for active duty military members and/or military veterans.

Mr. Pavlak summarized the recommended new rule, stating the draft rule would identify the military education that is recognized by the Board for licensure in Ohio.

Mr. Pavlak stated that the rules would be filed after receiving recommendation from the Office of Common Sense Initiative.

Motion #15: Ms. Yagodich moved to approve the Scope of Practice Committee report and the two inquiry responses reported. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 6b: HME Committee Report

Mr. Marx reported that the HME Committee met on January 30, 2014 as reported by the HME Manager. Mr. Marx stated that he had nothing more to add to the HME Manager's report.

Motion #16: Mr. Slabodnick moved to approve the HME Committee report. Mr. Pavlak seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item #7: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JOURNAL ENTRIES

Agenda item 7.a: In the matter of Jeanette C. McCandlish (a.k.a. Lettau), Case #2013ORCB009 (Exhibit F)

The Ohio Respiratory Care Board

Adjudication Order

In the Matter Of:

Jeanette C. McCandlish (a.k.a. Jeanette C. Lettau)
2661 Hardwood Avenue
Lancaster, OH 43130

THE MATTER OF JEANETTE C. MCCANDLISH (A.K.A. JEANETTE C. LETTAU) CAME BEFORE THE FOLLOWING MEMBERS OF THE OHIO RESPIRATORY CARE BOARD ON FEBRUARY 19, 2014 AT 10:30 A.M. IN ROOM EAST B, 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, MANINDER KALRA, M.D., KENNETH WALZ, J.D., R.R.T, R.C.P., STEVEN PAVLAK, R.R.T., M.S., VERNA RIFFE BIEMEL, PUBLIC MEMBER, 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.

JEANETTE C. MCCANDLISH (A.K.A. JEANETTE C. LETTAU) (HEREAFTER REFERRED TO AS “MS. MCCANDLISH”) 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.

Witnesses called by the State of Ohio:

Christopher H. Logsdon, Executive Director for the Ohio Respiratory Care Board.

State's Exhibits admitted:

- 1A – Notice of Opportunity for Hearing approved on October 16, 2013 and mailed to Jeanette C. McCandlish by certified mail/return receipt #7011 1150 0001 6788 6291 on October 22, 2013, with **no return** receipt for article #7011 1150 0001 6788 6291.
- 1B – Notice of Opportunity for Hearing approved on October 16, 2013 and mailed to Jeanette C. McCandlish by certified mail/return receipt #7011 1150 0001 6788 6291 on October 22, 2013, returned as, “unable to forward – return to sender.”
- 2 – Affidavit of Publications, Advertisement Order#:0004828760, submitted to Lancaster ROP, Obits and legal, received by the Board on December 3, 2013.
- 3A – Notice of Affidavit of Publication mailed to Jeanette C. McCandlish on December 5, 2013 by ordinary mail, certificate of mailing.
- 3B – Notice of Affidavit of Publication mailed to Jeanette C. McCandlish on December 5, 2013, returned as, “unable to forward – return to sender.”
- 4A- Adjudication Order mailed to Jeanette C. McCandlish on May 3, 2013 , by certified mail/return receipt #7011 1150 0001 6788 7014, documented as received by USPS but **no return** receipt for article #7011 1150 0001 6788 7014.
- 4B- Adjudication Order mailed to Jeanette C. McCandlish on May 23, 2013 , by certified mail/return receipt #7011 1150 0001 6788 5867, returned as unclaimed for article #7011 1150 0001 6788 5867.

- 4C- Adjudication Order mailed to Jeanette C. McCandlish on May 3, 2013 and May 23, 2013, sent by Certificate of Mailing on June 11, 2013.
- 5- Notice of Non-Compliance with the Board mailed to Jeanette C. McCandlish on July 18, 2013 by Certificate of Mailing.

FINDINGS OF FACT

Based upon a preponderance of the evidence the Board finds the following:

- A. On or about May 3, 2013, the Order of the Board (see Exhibit 4A) was mailed by certified mail/return receipt to Ms. McCandlish's address of record.
- B. The U.S. Postal Service failed to return the May 3, 2013 certified mail return receipt to the Ohio Respiratory Care Board.
- C. The Ohio Respiratory Care Board mailed a second certified copy of the Order of the Board (see Exhibit 4B) on May 23, 2013 to Ms. McCandlish's address of record by certified mail/return receipt. On or about June 16, 2013, the second certified copy of the Order of the Board was returned to the Ohio Respiratory Care Board, marked "unclaimed" by the U.S. Postal Service.
- D. In accordance with Section 119.07 of the Ohio Revised Code, the Ohio Respiratory Care Board mailed a certified copy of the Order of the Board by ordinary mail with a certificate of mailing to Ms. McCandlish's address of record (see Exhibit 4C).
- E. On July 18, 2013, the Ohio Respiratory Care Board mailed a notice of non-compliance with the Order of the Board by ordinary mail with a certificate of mailing to Ms. McCandlish's address of record (see Exhibit 5).
- F. On October 22, 2013, the Ohio Respiratory Care Board mailed by certified mail/return receipt a Notice of Opportunity for Hearing to Ms. McCandlish's address of record (See Exhibit 1A).
- G. On or about October 31, 2013, the October 22, 2013 Notice of Opportunity for Hearing was returned to the Ohio Respiratory Care Board, marked "unable to forward, return to sender" by the U.S. Postal Service (See Exhibit 1B).
- H. In accordance with Section 119.07 of the Ohio Revised Code, the Ohio Respiratory Care Board published a summary of the Notice of Opportunity for Hearing in a newspaper of general circulation in the county of Ms. McCandlish's last known address of record (See Exhibit 2).
- I. On December 3, 2013, following publication of the Notice of Opportunity for Hearing in a newspaper of general circulation for one day for three consecutive weeks, the Ohio Respiratory Care Board mailed a copy of the published Notice of Opportunity for Hearing by ordinary mail with a certificate of mailing to Ms. McCandlish's last known address of record (See Exhibit 3A). The copy of the published Notice of Opportunity for Hearing was returned to the Ohio Respiratory Care Board, marked "unable to forward, return to sender" by the U.S. Postal Service (See Exhibit 3B).

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:
 - ***
 - (2) Violating any provision of this chapter or an order or rule of the board;

2. The Order of the Board issued by the Ohio Respiratory Care Board on April 17, 2013 was served upon Ms. McCandlish in accordance with the provisions of Section 119.07 of the Ohio Revised Code. The Board concludes Ms. McCandlish did have legal service of the Order of the Board.
3. The Notice of Opportunity for Hearing issued by the Board on October 16, 2013 was served upon Ms. McCandlish in accordance with the provisions of Section 119.07 of the Ohio Revised Code. The Board concludes Ms. McCandlish did have legal service of the Notice of Opportunity for Hearing issued by the Ohio Respiratory Care Board on October 16, 2013.
4. The Board concludes that the factual and legal allegations contained in Count I of the Notice of Opportunity for Hearing has been proved by a preponderance of the evidence.

ORDER OF THE BOARD

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

In consideration of these findings and conclusions, the Board hereby PERMANENTLY REVOKES Ms. McCandlish's license in the State of Ohio.

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

Motion #17: KENNETH WALZ, J.D., R.R.T. MOVED FOR FINDINGS OF FACT. VERNA RIFFE BIEMEL SECONDED THE MOTION. MOTION CARRIED (AYE – 7, NO - 0, ABSTAINED – 1, SLABODNICK).

Motion #18: KENNETH WALZ, J.D., R.R.T. MOVED FOR CONCLUSIONS OF LAW. ANDREA YAGODICH, R.R.T. SECONDED THE MOTION CARRIED (AYE – 7, NO - 0, ABSTAINED – 1, SLABODNICK).

Motion #19: KENNETH WALZ, J.D., R.R.T. MOVED FOR ORDER OF THE BOARD. JOEL MARX SECONDED THE MOTION. MOTION CARRIED (AYE – 7, NO - 0, ABSTAINED – 1, SLABODNICK).

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: PROBABLE REVIEW COMMITTEE REPORT

Motion #20: 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). Ms. Yagodich seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Kenneth Walz -	Yes
Joel Marx -	Yes	Steven A. Pavlak -	Yes

Agenda item #9: NEW BUSINESS

Agenda item 9.a: Application ratification for licenses and limited permits issued since the last meeting (Exhibit I)

Motion #23: Mr. Walz moved to ratify respiratory care professional licenses and limited permits issued on the following dates:

Limited Permits issued on: November 21, 2013, November 25, 2013, November 29, 2013, December 5, 2013, December 12, 2013, December 20, 2013, December 24, 2013, January 2, 2014, January 16, 2014, January 23, 2014, January 31, 2014, and February 6, 2014.

Respiratory Care Professional Licenses issued on: November 21, 2013, November 25, 2013, November 29, 2013, December 5, 2013, December 12, 2013, December 13, 2013, December 20, 2013, December 24, 2013, January 2, 2014, January 9, 2014, January 16, 2014, January 23, 2014, January 24, 2014, January 31, 2014, February 6, 2014, and February 7, 2014.

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

Agenda item 9.b: Application ratification for Home Medical Equipment Licenses and Certificates of Registration (Exhibit J)

Motion #24: Mr. Walz moved to ratify HME licenses and certificates of registration issued on the following dates:

HMEL

November 26, 2013, December 6, 2013, December 9, 2013, December 10, 2013, December 12, 2013, December 13, 2013, December 19, 2013, January 13, 2014, January 14, 2014, January 24, 2014, and February 4, 2014.

HMER

November 25, 2013, December 6, 2013, December 10, 2013, December 19, 2013, December 23, 2013, January 3, 2014, January 8, 2014, January 24, 2014, and February 3, 2014.

Mr. Slabodnick seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item 9.c: Resolution to file rules (Exhibit K)

Motion #25: Mr. Walz moved to final file the following rules once the Joint Committee on Agency Rule Review's jurisdiction ends:

[Respiratory Care Licensing ORC 4761 rules proposed amendments:](#)

OAC 4761-2-05: Personal information systems.

OAC 4761-11-06: Continuance of hearing.

[Home Medical Equipment Licensing ORC 4752 rules proposed amendments:](#)

OAC 4761:1-2-05 Personal information systems.

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

Agenda item 9.d: Winter Newsletter (Exhibit L)

Motion #26: Mr. Walz moved to approve the Winter Newsletter. Ms. Yagodich seconded the motion. Discussion: Mr. Walz noted a formatting error on page 6. No further discussion. Motion carried: 8 – 0.

Agenda item 9.e: Scope of Practice Inquiry – Larry Ramer, Mercy Medical Center (Exhibit M)

The Board reviewed an inquiry filed by Mr. Larry Ramer asking if respiratory therapist could accept and write verbal orders for chest radiographs. A draft response was provided that affirmed accepting and writing a verbal order for a chest radiograph was within the scope of respiratory care practice.

Motion #27: Mr. Walz moved to approve the draft response. Ms. Yagodich seconded the motion. Discussion: Ms. Riffe Biemel noted that second to last sentence was missing a word. Mr. Logsdon recommended inserting the word “believe” after “The Ohio Respiratory Care Board.” Mr. Marx stated that the response should include some mention of the prescription/order requirements for respiratory care. Mr. Walz agreed to withdraw the motion

Following the withdrawal of the original motion, Mr. Walz moved the following motion:

Motion #28: Mr. Walz moved to approve the draft response with correction and the inclusion of reference to the prescription requirements for respiratory care under section 4761.17 of the Revised Code. Ms. Yagodich seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 9.f: Re-Inspection recommendation for HMEL.11510 and HMEL 11530 (Exhibit N)

Mr. Logsdon presented the re-inspection recommendation for HMEL.11510, Progressive Health & Rehab. Corporation and HMEL.11530, Acuhealth Chiropractic & Wellness Center. The Board reviewed the inspection findings and a summary of the inspection response provided by the licensee. Following a review of the material provided, the follow motion was presented:

Motion #29: Mr. Walz moved not to approve the recommendation of the HME Independent Inspector to re-inspect HMEL.11510, Progressive Health & Rehab. Corporation and HMEL.11530, Acuhealth Chiropractic & Wellness Center. Mr. Pavlak seconded the motion. Discussion: Mr. Marx inquired if the staff felt comfortable with the response provided by the licensees. Mr. Logsdon stated a follow-up inspection would not be justified in both cases. No further discussion. Motion carried: 8 – 0.

Agenda item 9.g: Capital Purchase

Motion #30: Mr. Walz moved to authorize the expenditure of funds to purchase an ergonomic chair. Mr. Pavlak seconded the motion. Discussion: Mr. Logsdon stated that the motion would only authorize the expenditure if needed. No further discussion. Motion carried: 8 – 0.

Agenda item #10: OPEN FORUM

Ms. Susan Ciarlariello, Legislative Chairperson, Ohio Society for Respiratory Care (OSRC) appeared. Ms. Ciarlariello informed that the Board that her committee was reviewing a few legislative clean-up opportunities, including a few that the Board has been reviewing over the last year.

Agenda item #8: FOR THE GOOD OF THE BOARD

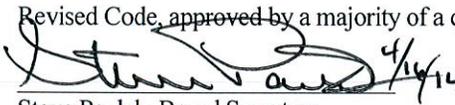
There was no discussion.

Agenda item #9 ADJOURNMENT

Mr. Mays asked if there was any other business to bring before the Board. Hearing none and seeing no objection, he adjourned the meeting.

The meeting adjourned at 4:00 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 April 16, 2014.

 4/16/14
Steve Pavlak, Board Secretary


Witness