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OHIO RESPIRATORY CARE BOARD

77 SOUTH HIGH STREET, 16TH FLOOR

COLUMBUS, OHIO 43215-6108

OFFICIAL BOARD MEETING MINUTES OF June 17 & 18, 2008

NOTE ON COMMITTEE MEETINGS

The Board's Scope of Practice, Home Medical Equipment, and Education 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 June 17, 2008 at 11:00 a.m. in room East B, 31st 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 and public rules hearing. Present were Marc Mays, President, Robert Cohn, M.D., Vice President, Susan Ciarlariello, R.R.T., R.C.P., Joel Marx, Carol Gilligan, E. Lucille Kester, R.R.T., R.C.P., and Eugene Andrews, R.R.T., R.C.P. Mr. Mays noted that Anita Adams, R.R.T., R.C.P. 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

Robert Cohn, M.D., Vice President

Susan Ciarlariello, R.R.T., R.C.P.

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

Staff in attendance:

Christopher H. Logsdon, Executive Director

Jason McLean, Investigator

Marcia Tatum, HME Manager

Others in Attendance:

Melinda Snyder Osgood, Assistant Attorney General

Edward Orlett, Ohio Society for Respiratory Care

Kenneth C. Walz, Attorney at Law

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. Hearing no amendments, Mr. asked if there was a motion to approve the agenda.

Motion #1: Dr. Cohn moved to approve the agenda for June 17 & 18, 2008. Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 - 0.

Ms. Gilligan arrived at 11:08 a.m.

Agenda item 1.2: Approval of previous Board Meeting Minutes

Draft meeting minutes from the previous Board meeting on April 16, 2008, were provided to members in advance of the meeting for review.

Mr. Mays asked the membership if they had the opportunity to review the minutes. All answered affirmatively. Nonsubstantive corrections were noted on page 10, page 2, page 13, page 5, and page 7. Mr. Mays inquired if there was any opposition to the recommended changes the minutes. Hearing none, Mr. Mays asked if there was a motion to approve the minutes as amended.

Motion #2: Ms. Kester moved to approve the meeting minutes from April 16, 2008, as amended. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7 - 0.

Agenda item #2: FINDINGS, ORDERS AND JOURNAL ENTRIES

Agenda item 2.1: In the Matter of Roberta M. VonGunten (Exhibit C)

Mr. Mays noted for the record that the respondent, Ms. VonGunten had received a copy of the Hearing Examiner's Report and Recommendation and a letter advising her that she could file written objections within ten (10) days of receipt of the Report and Recommendation and attend the June 17, 2008 meeting to provide verbal response. Mr. Mays noted that the Board has not received any response from Ms. VonGunten concerning the Hearing Examiner's Report and Recommendation and that Ms. VonGunten is not present for the matter being heard.

Executive Session

Ms. Gilligan moved to enter executive session in accordance with ORC 121.22 (G)(1) to deliberate and consider the charges and report and recommendation filed in the matter of Roberta M. VonGunten. Ms. Ciarlariello seconded the motion. Discussion: None. Roll Call Vote:

Susan M. Ciarlariello -	Yes	Carol Gilligan -	Yes
Joel Marx -	Yes	Eugene Andrews-	Yes
Robert Cohn -	Yes	Marc Mays -	Yes
E. Lucile Kester -	Yes		

Motion carried.

The board entered executive session at 11:12 a.m. and returned to regular, public session at 11:30 a.m. All voting members of the board and Mr. Logsdon were present during executive session. All others were dismissed.

Motion #3: Mr. Andrews moved to approve the Hearing Examiner's finding of facts. Motion was seconded by Ms. Ciarlariello. Discussion: None. Motion carried: 5 – yes, 2 abstained (Gilligan and Mays).

Motion #4: Dr. Cohn moved to approve the Hearing Examiner's conclusions of law. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 5 – yes, 2 abstained (Gilligan and Mays).

Motion #5: Mr. Andrews moved to approve the Hearing Examiner's recommendation. Ms. Kester seconded the motion. Discussion: None. Motion carried: 5 – yes, 2 abstained (Gilligan and Mays).

Motion #6: Mr. Marx moved that the following Order:

The Ohio Respiratory Care Board hereby REFUSES TO RENEW the Respondent's Limited Permit (L2-0197) to practice respiratory care in the State of Ohio.

Motion was seconded by Mr. Andrews. Discussion: None. Motion carried: 5 – yes, 2 abstained (Gilligan and 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 transcript of the proceedings and the Hearing Examiner's Report and Recommendations and attached as an exhibit to the record in the matter of Roberta M. VonGunten.

The Board broke for lunch at 11:30 a.m. and returned to public session at 1:04 p.m.

Agenda item #3: PUBLIC RULES HEARING

The public hearing on proposed rules began at 1:05 p.m. Mr. Mays explained the hearing process and had each member of the board introduce themselves.

Motion #7: Ms. Ciarlariello moved to waive the reading of the rules. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 7 – 0.

He then asked Mr. Logsdon to list the rules under consideration:

1. Respiratory Care Licensure ORC 119.032 rules, amended:

- 4761-1-01 Public hearings on adoption, amendment, or rescission of rules.
- 4761-1-02 Notice of board meetings.
- 4761-2-03 Board records.
- 4761-3-01 Definitions of terms.
- 4761-4-01 Approval of educational program.
- 4761-4-02 Monitoring of Ohio respiratory care education programs by the education committee of the Ohio respiratory care board.
- 4761-5-01 Recognized examinations.
- 4761-5-04 License application procedure.
- 4761-7-01 Original license or permit and identification card.
- 4761-8-01 Renewal of license or permits.
- 4761-9-01 Definition of respiratory care continuing education.
- 4761-9-05 Approved sources of RCCE.
- 4761-10-01 Ethical and professional conduct.
- 4761-11-06 Continuance of hearing.
- 4761-11-15 Exchange of documents and witness lists.

2. Home Medical Equipment Licensure ORC 119.032 rules, amended:

- 4761:1-1-02 Notice of board meetings.
- 4761:1-2-03 Board records.
- 4761:1-5-01 Qualifications for licensure.
- 4761:1-9-01 Standards of practice for license holders.
- 4761:1-9-05 Personnel.
- 4761:1-12-07 Exchange of documents and witness lists.
- 4761:1-13-01 Continuing Education Standards.

3. Respiratory Care Licensure ORC 119.03 rule, new:

- 4761-5-07 Criminal records check.

The Court Reporter was Sheryl A. Bennett, Deposition Specialists, 35 E. Gay St., Suite 300, Columbus, Ohio 43215.

Ms. Melinda Snyder Osgood, Assistant Attorney General called Mr. Logsdon as a witness for the Ohio Respiratory Care Board.

Mr. Logsdon certified that the following exhibits were maintained in the course of daily business for the board.

The following states exhibits were introduced.

1 – Letter of original electronic rules filing with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission on May 15, 2008 for each rule under consideration.

2 – Copy of Public Hearing Notice filed on May 15, 2008.

3 – Full copy of the proposed new and amended rules and rules summary and fiscal analyses filed with the Office of the Secretary of State, Joint Committee on Agency Rule Review, Department of Development, and Legislative Service Commission.

4 - A letter, dated June 9, 2008, from F. Herbert Douce, Associate Professor and Director, Respiratory Care Division of the School of Allied Medical Professions, The Ohio State University.

There were no witnesses or verbal testimony provided

Exhibits 1 – 4 were admitted. The hearing concluded at 114 p.m.

Motion #8: Ms. Gilligan moved to amend rule 4761-5-07 to change paragraph (E):

Change “three months” to “one year.”

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

Motion #9: Mr. Andrews moved to final file the rules after the Joint Committee on Agency Rule Review jurisdiction end date. Ms. Ciarlariello seconded the motion. Motion carried: 7 – 0.

Agenda item #4: BOARD OFFICER AND STAFF REPORT

Agenda item 4.1: President’s Report

Mr. Mays informed the Board members that he discussed the Board’s open position with the Governor’s new Boards and Commissions appointment officer, Scott Elizar. Mr. Mays also reported that he received notification that a prior member of the Board, Darrell Heckman has applied for the position.

Agenda item 4.2: 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 2008, final financial activity report. Mr. Logsdon reported that the agency will complete the year slightly under budget. Mr. Logsdon stated that the Board’s authorization to seek and obtain funds from the Controlling Board helped create a positive year-end position, but also forgoing some planned purchases also helped.

2. Mr. Logsdon provided the Board with an update on the financial disbursements and fund balances through June 3, 2008, but noted additional spending through the end of the fiscal year was not included in the summary provided.
3. Mr. Logsdon requested authorization to purchase three new replacement office chairs, 2 replacement personal computers and 1 replacement telephone. Quotes for each item were provided.
4. Mr. Logsdon informed the Board that the agency would be starting budget planning for FY 2010 and 2011. Mr. Logsdon stated that he would be seeking funding in 2010 to upgrade the office modular design to improve workflow and filing system upgrades. Mr. Logsdon stated that he hoped to have better estimates available prior to the next meeting.
5. Mr. Logsdon informed the Board that 2008 spending restrictions will likely be carried over to FY 2009.
6. Mr. Logsdon provided the Board with a written review of revenue collected since the beginning of fiscal year 2008 and the current statistics showing the number of active, inactive, active in renewal, or expired licensees. An update on the current status of respiratory care and HME license renewal was provided. Mr. Logsdon reported that incomplete applications were far more than anticipated and he urged the Board to consider specific improvements for the next renewal, including removing the RCCE reporting requirement.
7. Mr. Logsdon provided an update on legislation and rules activity. He reported that Sub. H.B. 562 was passed by the General Assembly and is awaiting the Governor's signature. H.B. 562, he stated, contains clean up language for the HME program. Mr. Logsdon also stated that he filed a new records retention schedule to address criminal background checks received by the Board. Mr. Logsdon stated that schedule would allow the Board to shred the document upon completion of the review.
8. Mr. Logsdon provided an update on the agency's compliance with State Data Security Policy. Mr. Logsdon stated that all data is now housed on a mainframe computer located in a secure offsite location. The information is encrypted according to state standards and is backed up to redundant drives. In addition, safe boot encryption software has been loaded on all of the Board's laptop devices.
9. Last, Mr. Logsdon reported that the Board's website is being updated to DotNetNuke format. The site will address inefficiency found on the current site and will streamline information flow.

Agenda item 4.3: 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 17 new HME licenses and 25 new HME certificates of registration since the Board's last meeting in April 2008. Additionally, she reported she had 7 new pending applications in process.
2. Ms. Tatum reported that she added 9 out-of-state inspections to the list of due inspections. She reported that inspectors had contacted these facilities and were awaiting completed packets. Ms. Tatum stated that some out-of-state providers have expressed concern over completion timeframe, stating the process is very complex and more time is needed.
3. Ms. Tatum reported on the total revenue collected through licensing fees and inspections.
4. Last, Ms. Tatum provided the Board with an update on several ongoing projects. She reported that the Board's HMEL and HMER initial applications were updated to include shareholder reporting. This information is required under OAC 4761:1-2-03.

Mr. Mays asked a follow up question regarding Inspector reimbursement. Mr. Mays noted that the Inspector fees were changed in FY 2008 and he asked if any comments had been received from the Inspectors on contract

Motion #10: Ms. Gilligan moved to approve the Staff reports. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7-0.

Motion #11: Ms. Kester moved to approve and ratify to Director's May 20, 2008 letter to the Ohio Department of Job and Family Services concerning rules being promulgated by ODJFS. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 7 – 0.

Agenda item #5: BOARD COMMITTEE REPORTS

Agenda item 5.1: HME Committee Report – Joel Marx

Mr. Marx reported that the HME Committee met prior to the regular business meeting at 9:40 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 those authorizations. The Committee, he stated, also reviewed three inspection reports to determine the respondent's compliance with inspection standards. He stated the Committee determined in one case that the Board should continue to enforce its representation on care provided to patients in nursing homes. Mr. Marx stated that if a facility provides HME services to a resident of a nursing facility and bills a third party for payment, then the facility must comply with the Board's standard for a licensed facility. Mr. Marx stated that the issue arose during the Committee discussion and that the Committee, again, reached this conclusion. Mr. Marx also reported that the Committee also denied an appeal filed by Accucare, Inc. concerning the maintenance of personnel records. The Committee moved to encourage voluntary compliance. The Committee reviewed some comments from Out-of-State facilities that complained about the response time. The Committee directed Ms. Tatum to thank such facilities for their comments and compliance with the Board's response time and standards.

Agenda item 5.2: Scope of Practice Committee Report – Dr. Robert Cohn

Dr. Cohn reported that the Scope of Practice Committee met prior to the regular business meeting at 9:00 a.m. Dr. Cohn reported that the Committee reviewed two inquiries requesting clarification of the scope of respiratory care or HME practice.

The first inquiry, he stated, asked if respiratory care professionals could prime blood tubing for infusion. After reviewed the scope of respiratory care practice under Section 4761.01, the Committee determined that the procedure, under the conditions and circumstance defined could perform the procedure, depending upon the competency and training of the respiratory care professional. The Committee, Dr. Cohn stated, requests approval of the response letter drafted by the Board's Executive Director.

The second inquiry, Dr. Cohn reported, asked if home care delivery personnel could perform mask fitting for CPAP patients. The Committee conducted a lengthy review of the question and concluded that the procedure was not within the scope of a licensed or certificate of registration holding facility.

Discussion: Mr. Marx asked if a position on this matter could be published. Mr. Logsdon stated that the Board could write a position statement and post it to the website. Mr. Logsdon stated that the Board should consider position statements if the subject matter would have broader application than just a single respondent. Mr. Marx asked if a position statement needed to be drafted and placed before the Board. Mr. Logsdon stated that he believed the response to the party in this case could be adopted in general form as a position statement and posted to the website.

Motion #12: Mr. Marx moved for the adoption of the response as an official position of the Board. Ms. Kester seconded the motion. Discussion: Mr. Mays requested clarification of the statement. Dr. Cohn read the position determined by the committee. Mr. Marx asked it include new or replacement masks. The membership agreed. Motion carried as modified: 7 – 0.

Agenda item 5.3: Education Committee Report – E. Lucy Kester

Ms. Kester reported that the Education Committee met prior to the regular business meeting at 10:50 a.m. Ms. Kester reported that the only item of business considered by the Education Committee was sponsoring an Education Roundtable meeting for Ohio Respiratory Care Education programs. The Committee, she stated, decided to hold an Education Roundtable on August 12, 2008, from 10:00 am to 12:00 pm. The Committee reviewed a number of possible topics and settled on criminal background checks, updating student respiratory care board lectures, limited permit application procedures and errors, and CoARC survey essentials. Ms. Kester also reported that the Committee recommended that the Board continue to publish an annual education report and contract with F. Herbert Douce to assist the Board with writing the report.

Ms. Ciarlariello inquired if the Board was still considering a Cleveland meeting in August 2008. Mr. Mays stated that the Board would not be meeting in Cleveland, Ohio in August.

Motion #13: Ms. Ciarlariello move to approve the Committee reports and all of the recommendations made by the Committees. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 7-0.

Agenda item #6: PROBABLE REVIEW COMMITTEE REPORT

Motion #14: 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. Dr. Cohn seconded the motion. Discussion: None. Roll Call vote:

Susan M. Ciarlariello -	Yes	Carol Gilligan -	Yes
Joel Marx -	Yes	Eugene Andrews-	Yes
Robert Cohn -	Yes	Marc Mays -	Yes
E. Lucile Kester -	Yes		

Motion carried.

The board entered executive session at 2:45 p.m. and returned to regular, public session at 3:06 p.m. All voting members of the board, Mr. Logsdon, Ms. Snyder Osgood, Ms. Tatum 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.*

Dr. Cohn was excused from the meeting at 2:54 p.m.

Agenda item 6.1: Approval of PRC Active Case Report

Motion #15: Ms. Gilligan moved approve the PRC active case report. Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 – 0.

Agenda item 6.2: Approval of Opportunity for Hearing Notices

Motion #15: Ms. Gilligan 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>
1.	2008ORCB37 (James Cafferro)	Convictions/Failed to Report	4761.09 (A) (1)(4)
2.	2008ORCB39 (Steven Hudson)	Convictions	4761.09 (A) (1)
3.	2008HME05 (Omnicare Respiratory Care Services)	Unlicensed Practice	4752.09 (A) (1)
4.	2008HME19 (Majors Mobility)	Survey/Inspection	4752.09 (A) (7)
5.	2008HME20 (Mid-US Medical, Inc.)	Inspection	4752.09 (A) (7)
6.	2008HME84 (Team Post-op)	Unlicensed Practice	4752.09 (A) (1)
7.	2008HME90 (Home Care Pharmacy)	Unlicensed Practice	4752.09 (A) (1)
8.	2008HME91 (Omnicare Central Ohio)	Unlicensed Practice	4752.09 (A) (1)
9.	2008HME108 (Hometown Medical Supply)	Unlicensed Practice	4752.09 (A) (1)
10.	2008HME109 (Premier Medical Equip & Supply)	Unlicensed Practice	4752.09 (A) (1)
11.	2008HME110 (Bellevue Home Medical Services)	Unlicensed Practice	4752.09 (A) (1)
12.	2008HME111 (A-Z Medical)	Unlicensed Practice	4752.09 (A) (1)
13.	2008HME113 (Medical Technology Resources)	Inspection	4752.09 (A) (7)
14.	2008HME114 (Med-Ox Concentrators)	Inspection	4752.09 (A) (7)

Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 – 0.

Agenda item 6.3: Approval of Consent Agreements (Exhibit F collective)

Motion #16: Mr. Andrews moved to approve consent agreements between the Board and the following respective respondents:

	<u>Case no.</u>	<u>Respondent</u>	<u>ORC Code</u>
1.	2008ORCB05	Rebecca D’Amico	4761.09 (A)(1)
2.	2008ORCB28	Deborah Mezzacappa	4761.09 (A)(2)
1.	2008HME18	Pain Management Tech., Inc	4752.09(A)(1)
2.	2008HME21	Better Living Home Hlth& Med.	4752.09(A)(1)
3.	2008HME27	Pulmonary Care, Inc.	4752.09(A)(1)
4.	2008HME56	Orthotic & Prosthetic Solutions	4752.09(A)(1)
5.	2008HME85	Int’nl Quality Healthcare	4752.09(A)(1)(3)
6.	2008HME95	Medical Technology Resources	4752.09(A)(1)
7.	2008HME96	Med Source Plus, Inc.	4752.09(A)(1)
8.	2008HME99	Access to Independence	4752.09(A)(1)
9.	2008HME103	Key Mobility Services	4752.09(A)(1)
10.	2008HME106	Hom-Med, Inc.	4752.09(A)(7)
11.	2008HME107	Corner Pharmacy, LLC	4752.09(A)(7)

Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 – 0.

Agenda item 6.4: Approval to close investigations

Mr. Mays noted for the record that the Board reviewed four (4) cases recommended for closure by the enforcement staff. Names and identifying information were redacted. Mr. Mays asked if there was a motion to close the investigations.

Motion #17: Ms. Ciarlariello moved to close investigation cases 2008RCB025, 2008RCB038, 2008HME083, 2008HHME102 as non-jurisdictional or unfounded. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 6-0.

Agenda item #7: NEW BUSINESS

Agenda item 7.1: Application ratification for licenses and limited permits
(Exhibit G collective)

Lists of licenses and limited permits issued since the Board's April 16, 2008, meeting pursuant to Rule 4761-2-02 of the Ohio Administrative Code were mailed to members in advance of the meeting.

Motion #18: Mr. Andrews moved to place upon the minutes of the June 17, 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: April 17, 2008, April 24, 2008, May 8, 2008, May 22, 2008, and June 5, 2008. Ms. Kester seconded the motion. Discussion: None. Motion carried: 6 - 0.

Agenda item 7.2: Application ratification for HME license and certificate of registration
(Exhibit H collective)

Lists of HME licenses and certificates of registration issued since the Board's April 16, 2008, meeting pursuant to resolution of the Board were mailed to members in advance of the meeting.

Motion #19: Mr. Marx moved to place upon the minutes of the June 17, 2008 meeting, the names of Home Medical Equipment facility applicants who met the qualifications for their respective authorization, pursuant to Sections 4752.05 and 4752.12 of the Revised Code and associated rules there under, and who were issued a licenses on:

HME Licenses on:

March 18, 2008, April 18, 2008, April 21, 2008, May 01, 2008, May 13, 2008, May 15, 2008, and May 20, 2008

HME Certificates of Registration

March 12, 2008, April 14, 2008, April 18, 2008, April 21, 2008, April 24, 2008, May 6, 2008 May 13, 2008, May 15, 2008, May 23, 2008, May 27, 2008, and May 30, 2008

Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 6 - 0.

Agenda item 7.3: Criminal Background Check Policy (Exhibit I)

A draft policy to handle criminal background check records was distributed to members in advance of the Board meeting.

Motion #20: Ms. Gilligan moved to approve Board office policy 6.4. Mr. Marx seconded the motion. Discussion: None. Motion carried: 6 - 0.

Agenda item 7.4: On Line Jurisprudence Course (Exhibit J)

The Board's Executive Director presented an online jurisprudence course for the purpose of meeting the new continuing education requirements for 1 contact hour of continuing education on respiratory care laws and rules. Mr. Logsdon stated that the course would be listed on the Board's website as a link to a contracted vendor. The site would allow users to read informational material and take a post-test to earn the one hour of continuing education.

Motion #21: Ms. Ciarlariello moved to approve the online education material for Jurisprudence module 1.1 on respiratory care continuing education rules. Ms. Kester seconded the motion. Discussion: None. Motion carried: 6 - 0.

Agenda item 7.5: Board Member per diem pay policy (Exhibit K)

The Board's Executive Director introduced a revised Board Member pay policy. A copy of the policy was distributed to members in advance of the meeting.

Motion #22: Mr. Andrews moved to approve the draft policy for Board Member per diem pay. Mr. Marx seconded the motion. Discussion: Mr. Andrews stated that he though the policy was fair and should be implemented. Ms. Ciarlariello disagreed, stating that she is required to take two days vacation for each board meeting. Ms. Gilligan agreed, stating Board Members use a full day to attend these meetings and pay on an hourly basis only does not take into consideration the full amount of time members invest.

Subsidiary Motion: Ms. Ciarlariello moved to table the main motion. Ms. Kester seconded the motion. Discussion: Mr. Mays stated that he didn't have feelings one way or the other, but that the policy deserves more debate. No further discussion. Subsidiary motion carried: 6 - 0.

Agenda item 7.6: Forms approval (Exhibit L collective)

The Board's Executive Director introduced five amended forms:

- a. Initial application for license and limited permit
- b. RCB Non-resident Waiver form
- c. HME Affidavit of Exceptions
- d. Initial application for HME license
- e. Initial application for HME Certificate of Registration

Motion #23: Mr. Andrews moved to approve the revised forms listed. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 6 - 0.

Agenda item 7.7: Spring Newsletter (Exhibit M)

The Board's Executive Director, introduced and reviewed the Spring 2008 Newsletter. He stated that the HME program would be joining the Newslink publication this fall making a joint newsletter.

Motion #24: Mr. Andrews moved to approve the Spring 2008 RCB Newslink newsletter. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 6 - 0.

Agenda item 7.8: Equipment purchase approvals (Exhibit N)

The Board's Executive Director presented three quotes to purchase equipment and requested authorization to proceed with procurement.

Motion #25: Ms. Ciarlariello moved to approve the purchase and expenditure of funds for two (2) new personal computers, three (3) new office chairs, and one (1) telephone. Ms. Gilligan seconded the motion. Discussion: None. Motion carried: 6 – 0.

Agenda item #8: OLD BUSINESS

Agenda item 8.1: Guidelines on the use of hearing officers

Tabled.

Agenda item #9: OPEN FORUM

No one appeared.

Agenda item #10: FOR THE GOOD OF THE BOARD

Mr. Andrews asked to address the Board. The Chairperson recognized him. Mr. Andrews stated that there was a debate in Cleveland regarding the scope of practice for Emergency Medical Technicians. Mr. Andrews stated that it was suggested at a public presentation that EMTs apply CPAP in the field. Mr. Andrews stated that he is aware of a provision in the EMT statutes that restricts EMT practice to the emergency room in a hospital, but regardless he feels they do not have the training to perform high levels of ventilator management. Mr. Andrews believes such suggestions will lead to very poor outcomes.

Discussion: Ms. Ciarlariello stated that EMTs are licensed by the EMS Board. EMTs, Ms. Ciarlariello stated, are the basic level of provider. Ms. Ciarlariello stated that she is aware of efforts to have EMTs and PEMTs perform high levels of care. Ms. Ciarlariello stated that she has a copy of a letter sent from the emergency medical Board to the Ohio Board of Nursing and the Ohio State Board of Pharmacy, but not the Ohio Respiratory Care Board to assist them in looking at their scope of practice. The EMS Board, she stated, is looking at rapid sequence intubation and inter-facility transport and some drug delivery issues. Ms. Ciarlariello stated that the EMS Board has reported that the other Boards are fine with their efforts. Mr. Andrews expressed concern over the consistency of EMT training. Ms. Ciarlariello suggested that the Board should review the EMS laws. Ms. Ciarlariello stated that the Ohio Respiratory Care Board should have some relationship with the EMS Board. The two groups share some scope responsibilities.

Mr. Andrews also addressed his concern that respiratory care providers are being asked to train hospital and nursing home staff to perform specific respiratory care procedures. Mr. Andrews asked who would be responsible for the care performed.

Discussion: Mr. Mays stated that he doesn't believe the respiratory care provider is responsible. Other members agreed. Mr. Andrews gave an example of training HME personnel on the use of specific equipment. Mr. Marx stated that training others doesn't make the person qualified or legally able to provide the care. Mr. Orlett, Ohio Society for Respiratory Care, asked to be recognized. The Chairperson recognized him. Mr. Orlett stated that he had listened to the issues and believed that the Ohio Society for Respiratory Care would be very interested in any further discussions.

Agenda item #10: ADJOURNMENT

Hearing no further matters, the meeting adjourned the meeting at 4:32 p.m.

Day 2, June 18, 2008

Presiding: Marc Mays, President, called the meeting to order on June 18, 2008 at 9:22 a.m. in room East B, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215 for holding administrative hearings. Present were Marc Mays, President, Anita Adams, R.R.T., R.C.P, Eugene Andrews, R.R.T., R.C.P, Susan Ciarlariello, R.R.T., R.C.P., E. Lucy Kester, R.R.T., R.C.P., and Carol Gilligan. Mr. Marx and Dr. Cohn were excused from 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 O):

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

Susan Ciarlariello, R.R.T., R.C.P.

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

Eugene Andrews, R.R.T., R.C.P.

Carol Gilligan, HME Provider Member

Anita Adams, R.R.T., R.C.P.

Staff in attendance:

Christopher H. Logsdon, Executive Director

Jason McLean, Investigator

Others in Attendance:

Melinda Snyder Osgood, Assistant Attorney General

Kenneth C. Walz, Attorney at Law

Agenda item 1.1: Hearing in the Matter of Aaron Funkhouser

The matter of Aaron Funkhouser came before the following members of the Ohio Respiratory Care Board on June 18, 2008 at approximately 9:22 a.m. in room East B, 31st Floor of the Vern Riffe Building for Government and the Arts, 77 South High Street, Columbus, OH, 43215. Present were Marc Mays, President, Anita Adams, R.R.T., R.C.P, Eugene Andrews, R.R.T., R.C.P, Susan Ciarlariello, R.R.T., R.C.P., E. Lucy Kester, R.R.T., R.C.P., and Carol Gilligan. Mr. Marx and Dr. Cohn were excused. 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. 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. Mr. Funkhouser appeared Pro Se. Sheryl A. Bennett was the Court Reporter, Deposition Specialists, Inc., 35 East Gay Street, Suite 300, Columbus, Ohio 43215.

Mr. Mays then turned the proceedings over to Ms. Ciarlariello who acted as the appointed hearing officer in this matter. Preliminary matters: Ms. Ciarlariello inquired if Mr. Funkhouser was aware of his rights to be represented by legal counsel. Mr. Funkhouser affirmed that he received an Opportunity for Hearing Notice and was aware of his rights to have an attorney. Ms. Ciarlariello asked Mr. Funkhouser if he was prepared to continue without legal representation. Mr. Funkhouser answered affirmatively.

Preliminary matters: None.

Each party gave a brief opening statement. Following the open statements, Ms. Snyder Osgood presented her case in chief.

Ms. Snyder Osgood called the following witnesses:

1. Aaron Funkhouser, as on cross-examination.

During testimony, Mr. Funkhouser identified for the record State's Exhibit D and B as true and accurate copy of the records he provided to the Board.

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

During testimony, Mr. McLean identified for the record State's Exhibit D, E, A, and C as true and accurate copy of the records maintained in the ordinary course of business.

Following the State's case in chief, Ms. Snyder Osgood moved for the admission of State's Exhibits. Mr. Funkhouser had no objection. Ms. Ciarlariello admitted State's Exhibits A through E.

State's Exhibits admitted:

- A - Notice of Opportunity for Hearing dated April 16, 2008, sent to Aaron M. Funkhouser by Certified Mail/Return Receipt #70042510000173527282 and a sign return receipt.
- B - Letter dated April 25, 2008, from Aaron M. Funkhouser requesting a hearing before the Board.
- C - Hearing Scheduling letter dated April 28, 2008, mailed to Aaron M. Funkhouser by regular.
- D - Application for Initial License/Limited Permit filed by Aaron M. Funkhouser on February 11, 2008.
- E - Certified Journal Entries:
 - a. Case No. 94-CR-2544, dated January 25, 1995 in the Court of Common Pleas, Montgomery County, Ohio.
 - b. Case No. 98-CR-B-00185-1-1, dated April 17, 2000 in the City of Bellbrook, Ohio, Municipal Court.
 - c. Case No. 93CRB01256-A, dated December 18, 2002 in the City of Kettering, Ohio, Municipal Court.

d. Case No. 96CRB10165-A, dated January 16, 2008, in the City of Miamisburg, Ohio, Municipal Court.

The State rested.

The Respondent, Mr. Funkhouser then proceeded to present his case in chief. He called no witnesses and introduced no exhibits. Mr. Funkhouser testified on his own behalf and called no other witnesses. Each party gave a brief closing statement. The hearing concluded at 10:10 a.m.

Motion #1: Ms. Adams 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:

Susan M. Ciarlariello -	Yes	Anita Adams -	Yes
E. Lucy Kester -	Yes	Marc Mays -	Abstained
Carol Gilligan -	Yes	Eugene Andrews -	Yes

Motion carried.

The board entered executive session at 10:31 a.m. and returned to regular, public session at 10:40 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 Aaron M. Funkhouser (Exhibit P)

Mr. Mays asked if the Board had reached a decision in the matter of Aaron M. Funkhouser and was prepared to read the Order. Ms. Ciarlariello, 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 Aaron M. Funkhouser. Mr. Logsdon did so.

Mr. Logsdon stated that the Board adopted all of the exhibit submitted by the State of Ohio and found that Mr. Funkhouser was convicted of Trafficking in Marijuana a felony of the 4th degree. The Board found that that Section 4761.09 (A)(1) gives the Board the authority to refuse to issue a limited permit based upon a conviction of a felony. The Board found that the conviction occurred approximately fourteen (14) years ago and the respondent presents no evidence of continued abuse or use of controlled substances or illegal drugs. Additionally, the Board found that the Respondent had completed two (2) Associate Degree since the conviction occurred. The Board concluded that Count I of the Opportunity for hearing notices is true, that that Section 4761.09 (A)(1) gives the Board the discretionary authority to refuse to issue a limited permit based upon a conviction of a felony, that the Respondent present effective mitigating evidence.

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

Motion #2: Ms. Gilligan moved that the Board finds that the allegations contained in Counts 1 of the Opportunity for hearing in the matter of Aaron M. Funkhouser is TRUE. Based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby ISSUES Aaron M. Funkhouser a limited permit to practice respiratory care in the State of Ohio. The Order of the Board shall become effective immediately. Mr. Andrews seconded the motion. Discussion: None. Motion carried: 5 – yes, 1 – abstained.

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 Aaron M. Funkhouser.

Having no other business, the meeting adjourned at 10:45 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 August 12, 2008.

Secretary

Witness