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OHIO RESPIRATORY CARE BOARD

77 SOUTH HIGH STREET, 16TH FLOOR

COLUMBUS, OHIO 43215-6108

OFFICIAL BOARD MEETING MINUTES OF FEBRUARY 9, 2011

STANDING COMMITTEE MEETINGS

The Board's Home Medical Equipment Committee met at 9:10 a.m. in room West B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. Official minutes of the Board's Home Medical Equipment Committee were prepared and are maintained separate of this journal.

The Board's Scope of Practice Committee met prior to regular business at 9:05 a.m. in the office of the Ohio Respiratory Care Board, 16th Floor of the Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. Official minutes of the Board's Scope of Practice Committee were prepared and are maintained separate of this journal.

Regular Business Meeting

Agenda item #1: CALL MEETING TO ORDER

Presiding: Marc Mays, President, called the meeting to order on February 9, 2011 at 10:10 a.m. in room West B&C, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio. Mr. Joel Marx took the roll. Present were Marc Mays, R.R.T., R.C.P., President, Kenneth Walz, J.D., R.R.T., R.C.P., Sandra Stabile Harwood, J.D., Public Member, Robert Cohn, M.D., Anita Adams, M.B.A, R.C.P., Susan Ciarlariello, M.B.A, R.C.P., Joel Marx and Esther L. Kester, R.R.T., R.C.P. Mr. Mays noted for the record that Ms. Carol Gilligan advised the Board she could not attend the meeting and was excused. Mr. Mays noted that a quorum of the members of the Board was present and that business could be conducted. Before beginning the meeting, Mr. Mays asked each member to introduce themselves to Ms. Sandra Stabile Harwood, the Board's newest member.

Members in attendance (Exhibit A):

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

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

Robert Cohn, M.D.

Sandra Stabile Harwood, J.D., Public Member

Joel Marx, HME Member

Susan Ciarlariello, M.B.A., R.C.P.

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

Anita Adams, M.B.A, R.C.P.

Staff in attendance:

Christopher H. Logsdon, Executive Director

Marcia Tatum, HME Manager

Anthony Isom, Investigator

Others in Attendance:

Yvonne Tertel, Assistant Attorney General

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.

Motion #1: Ms. Adams moved to approve the meeting agenda for February 9, 2011. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item 1.2: Approval of Prior Meeting Minutes (Exhibit C)

The prior meeting minutes were mailed in advance of the meeting. Mr. Mays inquired if there were any changes or corrections to the minutes. Mr. Walz and Ms. Kester addressed several non-substantive typographical or grammatical corrections. Mr. Logsdon recorded the corrections for inclusion in final version.

Motion #2: Mr. Mays moved to approve the December 1, 2010 meeting minutes as corrected. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7 - yes, 1 - abstained (Ms. Harwood).

Agenda item #2:

BOARD OFFICER AND STAFF REPORT

Agenda item 2.1: President's Report (Exhibit D)

Mr. Mays filed a written report. Mr. Mays reminded members that the annual Ohio Ethics Commission's financial disclosure filing is required to be filed with the Ohio Ethics Commission by April 15, 2011. Mr. Mays urged each member to be timely filers. Mr. Logsdon stated that the agency is fined for late filings and asked each member to send him written confirmation when the form is filed. Ms. Harwood informed the Board that she would be filing via a different appointment and that the Board will not be responsible for the fee requirement.

Next, Mr. Mays asked to add a non-scripted item to his report. Mr. Mays informed the Board that Robert C. Fischer, RCP.3589, a long-standing member of the Ohio Society for Respiratory Care and Clinical Educator at Washington State Community College, passed away unexpectedly this week. Mr. Mays stated that Mr. Fischer was regularly involved in educational issues with the Board; he was well respected by his students and his peers.

Dr. Cohn inquired if Ms. Ciarlariello would be on the Board for the next meeting. Mr. Logsdon stated that each member has a 60-day hold over provision and he anticipated that Ms. Ciarlariello would likely be a member in April, but the Governor's office could appoint a replacement prior to Ms. Ciarlariello's expiration date. Dr. Cohn stated, based on the uncertainty, that the Board should recognize Ms. Ciarlariello for her twelve years of service to the Board. Dr. Cohn stated that Ms. Ciarlariello has clearly gone beyond the call of duty as a member of the Board. Mr. Mays agreed and stated that the Board owes her a debt of gratitude for her service.

Next, Mr. Mays stated that he would like to complete the Executive Director's annual performance review, but he would like to have the HME Manager complete her report before going into Executive Session.

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

Ms. Tatum filed a written report with the Board and gave a verbal overview of the report. She reported the following:

1. Ms. Tatum reported that the Board staff has approved 6 new HME licenses and 23 new Certificates of Registration since the Board's last meeting in December 2010. Ms. Tatum also stated that she has eight applications pending.
2. Ms. Tatum reported that all licensed facilities eligible for inspection in FY 2011 have been scheduled. She informed the Board that she is running into issues concerning the accreditation status of licensed facilities. Ms. Tatum stated that inspectors are reporting a significant number of facilities inform them that they are accredited, but only after the inspection is scheduled. Ms. Tatum reported that licensed facilities have been informed on numerous occasions that they could seek a certificate of registration if they were accredited by a recognized organization. Ms. Tatum stated that she is working with the facilities, but it has created more work since the facilities wait until an inspection is scheduled before letting her know that they are accredited.

Discussion: Ms. Adams asked if accrediting bodies could advise licensees that seek accreditation that they are eligible for registration. Ms. Tatum stated that she will be involving accrediting organizations in a joint presentation in the near future. Mr. Logsdon stated that licensed facilities do have some staff turn over, which creates compliance continuity problems.

3. Next, Ms. Tatum stated that the inspectors completed their rating of each of the HME license inspection standards and the Board's HME Committee completed its ratings. Ms. Tatum reported that the results were combined and the next step will involve creating a new inspection tool for Board inspectors.
4. Ms. Tatum reported on the revenue collected for FY 2011, reporting a total of \$49,910.00 since July 1, 2010.

Mr. Mays asked Ms. Tatum how she thought HME licensing was going. Ms. Tatum stated that the program is very busy. She stated that the number of applicants has not slowed down and that she is seeing an increasing number of licensed companies choosing registration as they become accredited. Ms. Tatum also stated that the Board is seeing an increasing number of out-of-state providers seeking licensure.

Mr. Mays asked membership to entertain a motion to enter executive session to consider the performance and continued employment of a public employee.

Motion #3: Dr. Cohn moved to go into Executive Session pursuant to ORC 121.22 (G)(1) to consider the ongoing employment of a public employee. Ms. Kester seconded the motion. Roll call vote:

Marc Mays - Yes Esther Lucile Kester - Yes

Anita Adams -	Yes	Kenneth Walz -	Yes
Robert Cohn, M.D. -	Yes	Joel Marx -	Yes
Susan Ciarlariello -	Yes	Sandra Stabile Harwood -	Yes

Motion carried.

The Board entered executive session at 10:30 a.m. All eight Board Members remained in executive session. All other staff and visitors were asked to leave the room. At 10: 55 a.m., the Board asked Mr. Logsdon to join them in Executive Session. Mr. Logsdon did so. The Board returned to public session at 11:15 a.m.

Following Executive Session, the Board made the following motions:

Motion #4: Ms. Adams moved to approve the Executive Director's annual performance review and his continued appointment as the Executive Director of the Ohio Respiratory Care Board. Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 8 - 0.

Motion #5: Mr. Walz moved to approve the Home Medical Equipment Manger's report. Ms. Kester seconded the motion. Discussion: None. Motion carried: 8 - 0.

Motion #6: Mr. Walz moved to approve the Board President's report. Mr. Marx seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item 2.2: Executive Director's Report (Exhibit F collective)

Mr. Logsdon gave a verbal overview of his written report. He also directed the Board to an additional handout titled, "Death to Common Sense..." that he stated would be reviewed during his presentation on the next two-year budget and potential changes to government structure. The following was verbally reviewed by Director Logsdon:

1. FY 2011 financial activity report. Mr. Logsdon reported that the Board is currently well within its budget allotments and under budget. Mr. Logsdon predicted that the agency will end the fiscal year under budget and will have no need to seek additional funds for the current fiscal year.
2. Next, Mr. Logsdon reviewed FY 2012/2013 budget submission and potential issues that may arise during the budget process or afterwards. Mr. Logsdon stated that the Board's FY 2012/2013 budget had been filed with the Office of Budget and Management (OBM) and that OBM has begun budget review and analysis. Mr. Logsdon reported that OBM has asked him a few routine questions about the Board's budget submission. Mr. Logsdon stated that the new Administration has not released any information concerning the Executive budget, other than information reported in the media. Mr. Logsdon stated that he has received no suggestion that the new Administration will require submission of revised budgets.

Mr. Logsdon reported that the Boards and Commissions that use the services of the Department of Administration, Central Service Agency (CSA) have formed a strategic planning sub-committee of the joint regulatory board group. Mr. Logsdon then addressed several handouts that he provided to the Board members. The following was provided to the membership: Information handout on Boards and Commissions that utilize CSA services, a draft letter for legislators, page 19590 of the Ohio Medical Board meeting minutes, the Executive Summary of the publication titled, "Redesigning Ohio," and an article titled, "Death of Common Sense." Mr. Logsdon stated that the planning committee is designed to develop strategic goals and objectives for CSA, but more recently has re-focused on the potential changes that may arise from the State's current fiscal environment. Mr. Logsdon stated that the new Administration, recent media reports and other publications have suggested some of the potential changes, which, Mr. Logsdon stated, include consolidation, reorganization, and privatization of government offices. Mr. Logsdon stated that available information

would suggest a strong likelihood that changes are coming and that Boards and Commissions need to be prepared to address the change. Mr. Logsdon stated that the strategic planning sub-committee is in the process of developing recommendations for the new Administration and the Ohio Legislature on structural improvements to the current shared service system under CSA. Mr. Logsdon stated that the sub-committee is stressing improved efficiencies and cost-savings for participating agencies, while maintaining the programmatic autonomy that has proven its value. Mr. Logsdon stated that the Board must be prepared to address challenges with positive solutions. Mr. Logsdon stated that he would be seeking the advice and assistance of Board members in the months to come.

Discussion: Ms. Harwood asked when the Governor would file the Executive Budget. Mr. Logsdon stated the deadline is March 15, 2011, but the Governor could file it earlier. Mr. Walz asked if the Board should be doing something. Mr. Logsdon reviewed the budget process and stated that members need to be prepared for the possibility of budget cuts and potential legislation that may seek to restructure boards. Mr. Walz stated that he expects budget cuts, but stated that budget cuts for small agencies have a greater impact on operations. Mr. Marx stated that he never understood why the Boards and Commissions are included when the Board's revenues and expenses do not intermingle with the General Revenue Fund. Ms. Adams asked if there was legislation being considered that proposes to consolidate boards. Mr. Logsdon stated that he did not know of any at the current time. Ms. Adams stated that she watched such legislation pass in Virginia many years ago and the outcome was chaotic. Mr. Logsdon stated there are many ways to restructure agencies and in recent years, consolidation has been proposed. Mr. Logsdon stated that boards, in his opinion, have not opposed change as long as programmatic autonomy was maintained. Mr. Logsdon stated that the CSA Boards and Commissions see real advantages in working together to gain common efficiencies through shared service models.

3. Next, Mr. Logsdon reported on the current budget disbursements and budget balances as of January 28, 2011.
4. Next, Mr. Logsdon reported on the licensing and revenue statistics for the current fiscal year.
5. Next, Mr. Logsdon reported on the Examination Requirements Workgroup. He stated that invitation letters were mailed to five stakeholder agencies. He stated that he has heard from all, but the Ohio Hospital Association. Mr. Logsdon stated that he would be working on an agenda for the first meeting, which he plans to hold in March or early April, 2011.
6. Mr. Logsdon reported on Executive Orders: 2011-01K and 2011-03K. Mr. Logsdon stated that 2011-01K focuses on small business which may present the Board with some obligation to consider amnesty for first time paperwork violations. In addition, the order may require the Board to re-write some of its rules. Mr. Logsdon stated that the Governor's office would be creating a "Common Sense Initiative" office that will be responsible for reviewing rules to determine economic impact. In regards to Executive Order 2011-03K, Mr. Logsdon stated that he is trying to determine how the Attorney General's office will be addressing the issue, since the board's assigned Assistant Attorney General is generally considered our chief legal officer.
7. Next, Mr. Logsdon reported on the final outcomes of the 2010 continuing education audits.

Discussion: Mr. Walz asked about the finding. Specifically, he addressed the group that completed the ethics course requirement after the June 30, 2010 deadline. Mr. Logsdon stated that a small number did not have the ethics course, but completed it upon notification. Mr. Logsdon cited the general reason for the lapse as being persons that did not know the hour in ethic/respiratory care law was a requirement. He stated that some were practicing in other states. Mr. Logsdon stated that the second group had completed the ethics course on time, but did not provide proof until asked specifically for the documentation. The third group, Mr. Logsdon stated, completed a course in ethics, but the program was not approved directly by the Board. Mr. Logsdon recommended lenience for the third group.

Based upon the information presented, the Board identified audit groups as:

- a. Group 1 - 6 persons that did not complete one contact of ethic/laws or rules continuing education within the term of collection required under OAC 4761-9-02 (C)(1).

- b. Group 2 - 9 persons that completed the required one contact of ethic/laws or rules continuing education within the term of collection.
- c. Group 3 - 11 persons that completed one contact of ethic/laws or rules continuing education within the term of collection, but not one recognized by the Board.
- d. Group 4 - 4 persons that did not complete the required number of hours.
- e. Group 5 - 3 persons that failed to respond to the random audit.
- f. Group 6 - 2 persons that failed to turn in certificate of completion, but did provide conference sign-in logs.
- g. Group 7 - 1 person that completed the written registry examination in lieu of RCCE, but took the examination prior to their initial licensure date.

The Board directed that an admonishment letter be sent to persons in groups 3, 2, and 7. The Board directed that groups 1, 4, and 5 be forwarded to the probable review committee for review.

8. Last, Mr. Logsdon reported that all personnel performance reviews were completed for FY 2010.

Motion #7: Mr. Marx moved to approve the Executive Director's report. Mr. Walz seconded the motion. Discussion: None.
Motion carried: 8 - 0.

The Board broke for lunch at 12:00 p.m.

Agenda item #3: ADMINISTRATIVE HEARINGS

The Board returned to public session at 12:45 p.m.

Item #3A: In the Matter of Rebecca Marie D'Amico, Case #2008ORCB005

The matter of Rebecca M. D'Amico came before the following members of the Ohio Respiratory Care Board on February 9, 2011 at 1:08 p.m. in room West B & C, 31st floor of the Vern Riffe Building for Government and the Arts, 77 S. High Street, Columbus, Ohio. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Joel Marx, HME member, Robert Cohn, M.D., Esther L. Kester, R.R.T., R.C.P., Sandra Stabile Harwood, J.D., Public Member, Ken Walz, J.D., R.R.T, R.C.P. and Anita Adams, M.B.A, R.C.P. Robert Cohn, M.D. and Marc Mays, RRT recused themselves from the proceedings based upon their role as the Board liaisons to the Investigatory Probable Review Committee. Kenneth Walz, J.D., R.R.T., R.C.P. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. D'Amico appeared Pro Se. Sheryl A. Bennett, was the hearing reporter from Deposition Specialists, Inc. 35 East Gay Street, Suite 300, Columbus, OH 43215.

Mr. Walz asked Ms. D'Amico if she had received the Board's Notice of Opportunity for Hearing. Ms. D'Amico confirmed receipt. Mr. Walz asked Ms. D'Amico if she was prepared to go forward with the hearing without representation by legal counsel. Ms. D'Amico stated that she was prepared to represent herself. Mr. Walz then explained the hearing procedures.

Mr. Walz inquired if there were any preliminary matters: Ms. Tertel stated that Ms. D'Amico had an opportunity to review State's exhibits A, A-1, B, B-1, C, D, and E. Ms. Tertel stated that Ms. D'Amico has agreed to stipulate to the admission of the State's exhibits. Ms. Tertel stated that Ms. D'Amico would also like to introduce Respondent's exhibit A - D. Ms. Tertel stated that the State of Ohio has agreed to stipulate to the admission of all of the respondent's exhibits. Ms. Tertel stated that State's exhibit D involves a medical record, which she would request be sealed upon admission.

Mr. Walz also inquired if there were any preliminary stipulations. Ms. Tertel stated that there were stipulations to exhibits only. Mr. Walz stated that he would introduce exhibits following the introduction of each exhibit.

Ms. Tertel then gave a brief opening statement. Ms. D'Amico followed and gave a brief opening statement.

Case for the State:

Witnesses called for the state:

Anthony Isom, Investigator

Rebecca M. D'Amico was called as on cross-examination.

During cross-examination, Ms. D'Amico presented Respondent's exhibits A - D and summarized the contents of each.

Following witness testimony, Ms. Tertel moved to enter State's Exhibit on the record. Mr. Walz asked Ms. D'Amico if she had any objection to the admission of State's exhibits A, A-1, B, B-1, C, D, and E. Hearing no objection, Mr. Walz admitted State's Exhibits A, A-1, B, B-1, C, D, and E and he then ordered that State's Exhibit D be placed under seal.

State's Exhibits admitted:

- A - Notice of Opportunity for Hearing approved on October 13, 2010 and mailed to Rebecca M. D'Amico by registered mail/return receipt # 7004 1160 0000 5913 4520 on October 19, 2010.
- A-1 - Signed return receipt for register mail, article # 7004 1160 0000 5913 4520.
- B - Hearing scheduling letter, dated November 16, 2010, mailed to Rebecca M. D'Amico to her address of record.
- B-1 - Hearing scheduling letter addendum, dated January 18, 2011, mailed to Rebecca M. D'Amico to her address of record.
- C - Copy of Consent Agreement for Case #2008 ORCB005, effective date June 18, 2008 between the Ohio Respiratory Care Board and Rebecca M. D'Amico (RCP.8806).
- D - Detailed test history report from First Lab. (Sealed)
- E - Letter dated November 15, 2010, from Rebecca M. D'Amico requesting a hearing before the Ohio Respiratory Care Board and providing written testimony.

Mr. Walz asked Ms. D'Amico if she would like to have Respondent's exhibits A - D admitted. Ms. D'Amico stated she would like her exhibits admitted. Hearing no objection, Mr. Walz admitted Respondent's exhibits A - D.

Respondent's Exhibits admitted:

- A - Letter dated February 7, 2011, from Sarah B. McEwuen, RRT.
- B - Letter from Karen Jagers.
- C - Letter dated January 22, 2011, from Tammy Jimmerson, CRT, RN.
- D - Sign-in sheet for Self-Help meeting dated October 18, 2010 to January 24, 2011 inclusive.

Mr. Walz stated to Ms. D'Amico that she has had the opportunity to testify at some length, but that ordinarily she would be given the opportunity to present her own case in chief. Mr. Walz asked Ms. D'Amico if she would like to do so. Mr. Walz explained that she could provide additional testimony, call witnesses, etc. Ms. D'Amico stated that she did not have any further testimony and agreed to rest her case.

Both sides gave a brief closing statement.

The hearing concluded at 2:10 p.m.

Motion #8: Ms. Adams moved to enter Executive Session for the purpose of discussing proposed disciplinary action against licensees, which is pending or imminent court action under R.C. 121.22(G)(3) and involves matters that are required to be kept confidential under R.C. 149.43(A)(2) and R.C. 4761.031 and 4752.08 (B). Ms. Ciarlariello seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Esther Lucile Kester -	Yes
Anita Adams -	Yes	Kenneth Walz -	Yes
Robert Cohn, M.D. -	Yes	Joel Marx -	Yes
Susan Ciarlariello -	Yes	Sandra Stabile Harwood -	Yes

Motion carried.

The Board entered executive session at 2:11 p.m. and returned to regular, public session at 3:00 p.m. Dr. Cohn, Mr. Mays, Ms. Tertel, Ms. D'Amico, and Mr. Isom was excused from the meeting room and did not participate in deliberation. Mr. Logsdon was asked to remain in Executive Session.

JOURNAL ENTRY IN THE MATTER OF REBECCA M. D'AMICO (Exhibits G)

In the Matter of Rebecca M. D'Amico

Motion #9: Mr. Walz moved that the Board find that the allegation contained in Count 1 of the Opportunity for hearing in the matter of Rebecca M. D'Amico is true. Ms. Harwood seconded the motion. Discussion: None. Motion carried: 5 - yes, 1 - no (Mr. Walz), and 2- abstained (Dr. Cohn and Mr. Mays).

Motion #10: Ms. Ciarlariello moved that based upon the Board's findings of fact and conclusions of law in this matter, the Board hereby extends the PROBATION of Ms. D'Amico's license to practice as a respiratory care professional in the State of Ohio in accordance with the conditions contained in the Board's Consent Agreement labeled as State's Exhibit C. That said Probation shall be extended until December 31, 2011, and that all current and pertinent conditions contained in the Consent Agreement will remain in effect and be transcribed over to the Order of the Board in this matter. In addition, the following new requirements will be imposed:

- i. Ms. D'Amico shall file a valid release of information form with the Board permitting Ms. D'Amico's employer to file quarterly performance reviews, which shall be filed on forms prescribed by the Board. The first performance review shall be filed with the Ohio Respiratory Care Board fourteen (14) days following the effective date of this Order and every three months thereafter.
- ii. Ms. D'Amico shall be responsible to continue with the provisions of her prior Consent Agreement, labeled as State's Exhibit C, which, in part, includes submitting to random drug and alcohol test in a manner prescribed by the Board and that any

scheduled drug and alcohol test that is missed by Ms. D'Amico and reported to the Board as missed, shall be deemed a positive test for the presence of drugs or alcohol. Any positive test shall be a violation of this Order.

The minutes of the Board shall serve as the official journal of the Board in this matter and the original order shall be signed by the Board President and attached as an exhibit hereto. The Order of the Board shall become effective upon the date of mailing. Mr. Marx seconded the motion. Discussion: None. Question called. Motion carried: 6 – yes, 2 abstained (Dr. Cohn and Mr. Mays).

Item #3B: In the Matter of Alicia Renee McElhaney, Case #2011ORCB008

The matter of Alicia Renee McElhaney came before the following members of the Ohio Respiratory Care Board on February 9, 2011 at 3:10 p.m. in room West B & C, 31st floor of the Vern Riffe Building for Government and the Arts, 77 S. High Street, Columbus, Ohio. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Joel Marx, HME member, Robert Cohn, M.D., Esther L. Kester, R.R.T., R.C.P., Sandra Stabile Harwood, J.D., Public Member, Ken Walz, J.D., R.R.T, R.C.P. and Anita Adams, M.B.A, R.C.P. Robert Cohn, M.D. 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. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. McElhaney did not request a hearing before the board and was not present. 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). Sheryl A. Bennett, was the hearing reporter from Deposition Specialists, Inc. 35 East Gay Street, Suite 300, Columbus, OH 43215.

Mr. Walz also inquired if there were any preliminary stipulations. Hearing none, he asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Christopher H. Logsdon, Executive Director

Following witness testimony, Ms. Tertel moved to admit State's Exhibits A, A-1, B, B-1, C, D collectively, and the Executive Director's affidavit. Mr. Walz admitted State's exhibits A, A-1, B, B-1, C, D collectively, and the Executive Director's affidavit.

State's Exhibits admitted:

- A - Notice for Opportunity for hearing approved on October 13, 2010 and mailed to Alicia Renee McElhaney by registered mail/return receipt # 7004 1160 0000 5913 4438 on October 19, 2010.
- A-1 - Signed return receipt for register mail, article # 7004 1160 0000 5913 4438.
- B - Hearing scheduling letter, dated November 23, 2010, mailed to Alicia Renee McElhaney to her address of record by registered mail/return receipt #7004 1160 0000 5913 3783.
- B-1 - Signed return receipt for register mail, article # 7004 1160 0000 5913 3783
- C - Application for Reinstatement or Reactivation filed by Alicia Renee McElhaney on July 20, 2010.
- D - Copies of continuing education certificates of completion - 9 items.

Also admitted - Affidavit prepared by Christopher H. Logsdon, Executive Director for the Ohio Respiratory Care Board, dated January 31, 2011.

Ms. Tertel gave a brief closing statement.

The hearing concluded at 3:25 p.m.

Item #3C: In the Matter of Stacey Jo Stevens, Case #2011ORCB034

The matter of Stacey Jo Stevens came before the following members of the Ohio Respiratory Care Board on February 9, 2011 at 3:26 p.m. in room West B & C, 31st floor of the Vern Riffe Building for Government and the Arts, 77 S. High Street, Columbus, Ohio. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Joel Marx, HME member, Robert Cohn, M.D., Esther L. Kester, R.R.T., R.C.P., Sandra Stabile Harwood, J.D., Public Member, Ken Walz, J.D., R.R.T, R.C.P. and Anita Adams, M.B.A, R.C.P. Robert Cohn, M.D. 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. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Ms. Stevens did not request a hearing before the board and was not present. 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). Sheryl A. Bennett, was the hearing reporter from Deposition Specialists, Inc. 35 East Gay Street, Suite 300, Columbus, OH 43215.

Mr. Walz also inquired if there were any preliminary stipulations. Hearing none, he asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Christopher H. Logsdon, Executive Director

Following witness testimony, Ms. Tertel moved to admit State's Exhibits A, A-1, B, B-1, C, D, and the Executive Director's affidavit. Mr. Walz admitted State's exhibits A, A-1, B, B-1, C, D, and the Executive Director's affidavit.

State's Exhibits admitted:

- A - Notice for Opportunity for hearing approved on October 13, 2010 and mailed to Stacey Jo Stevens by registered mail/return receipt # 7004 1160 0000 5913 4476 on October 19, 2010.
- A-1 - Signed return receipt for register mail, article # 7004 1160 0000 5913 4476.
- B - Hearing scheduling letter, dated November 23, 2010, mailed to Stacey Jo Stevens to her address of record by registered mail/return receipt #7004 1160 0000 5913 4025.
- B-1 - Signed return receipt for register mail, article # 7004 1160 0000 5913 4025
- C - Random Audit Notice for continuing education dated July 15, 2010, mailed to Stacey Jo Steven's address of record.
- D - Random Audit Notice for continuing education (final notice) dated September 8, 2010, mailed to Stacey Jo Steven's address of record.

Also admitted - Affidavit prepared by Christopher H. Logsdon, Executive Director for the Ohio Respiratory Care Board, dated January 28, 2011.

Ms. Tertel gave a brief closing statement.

The hearing concluded at 3:36 p.m.

Item #3D: In the Matter of Terry Andrew Kovacs, Case #2011ORCB007

The matter of Terry Andrew Kovacs came before the following members of the Ohio Respiratory Care Board on February 9, 2011 at 3:37 p.m. in room West B & C, 31st floor of the Vern Riffe Building for Government and the Arts, 77 S. High Street, Columbus, Ohio. Present were Marc Mays, R.R.T., R.C.P., President, Susan M. Ciarlariello, R.R.T., R.C.P., Joel Marx, HME member, Robert Cohn, M.D., Esther L. Kester, R.R.T., R.C.P., Sandra Stabile Harwood, J.D., Public Member, Ken Walz, J.D., R.R.T, R.C.P. and Anita Adams, M.B.A, R.C.P. Robert Cohn, M.D. 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. was the appointed hearing officer in this matter. Yvonne Tertel, Assistant Attorney General, represented the state of Ohio. Mr. Kovacs did not request a hearing before the board and was not present. 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). Sheryl A. Bennett, was the hearing reporter from Deposition Specialists, Inc. 35 East Gay Street, Suite 300, Columbus, OH 43215.

Mr. Walz also inquired if there were any preliminary stipulations. Hearing none, he asked Ms. Tertel to present her case-in-chief.

Witnesses called for the state:

Christopher H. Logsdon, Executive Director

Following witness testimony, Ms. Tertel moved to admit State's Exhibits A, A-1, B, B-1, B-2, B-3, C, D collectively, and the Executive Director's affidavit. Mr. Walz admitted State's exhibits A, A-1, B, B-1, B-2, B-3, C, D collectively, and the Executive Director's affidavit.

State's Exhibits admitted:

- A - Notice for Opportunity for hearing approved on October 13, 2010 and mailed to Terry Andrew Kovacs by registered mail/return receipt # 7004 1160 0000 5913 4421 on October 19, 2010.
- A-1 - Signed return receipt for register mail, article # 7004 1160 0000 5913 4421.
- B - Hearing scheduling letter, dated November 23, 2010, mailed to Terry Andrew Kovacs to his address of record by registered mail/return receipt #7004 1160 0000 5913 4032.
- B-1 - Return receipt for register mail, article # 7004 1160 0000 5913 4032.
- B-2 - Enveloped for postal article # 7004 1160 0000 5913 4032, stamped "unclaimed" by the U.S. Postal Service.
- B-3 - Certificate of mailing for regular mail, dated December 20, 2010.
- C - Application for Reinstatement or Reactivation filed by Terry Andrew Kovacs on July 9, 2010.
- D - Copies of continuing education certificates of completion - 7 items.

Also admitted - Affidavit prepared by Christopher H. Logsdon, Executive Director for the Ohio Respiratory Care Board, dated January 31, 2011.

Ms. Tertel gave a brief closing statement.

The hearing concluded at 3:54 p.m.

Motion #11: Mr. Walz moved to enter Executive Session for the purpose of discussing proposed disciplinary action against licensees, which is pending or imminent court action under R.C. 121.22(G)(3) and involves matters that are required to be kept confidential under R.C. 149.43(A)(2) and R.C. 4761.031 and 4752.08 (B). Ms. Ciarlariello seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Esther Lucile Kester -	Yes
Anita Adams -	Yes	Kenneth Walz -	Yes
Robert Cohn, M.D. -	Yes	Joel Marx -	Yes
Susan Ciarlariello -	Yes	Sandra Stabile Harwood -	Yes

Motion carried.

The Board entered executive session at 3:55 p.m. and returned to regular, public session at 4:20 p.m. Dr. Cohn, Ms. Tertel, and Mr. Isom was excused from the meeting room and did not participate in deliberation. Mr. Logsdon was asked to remain in Executive Session.

JOURNAL ENTRIES (Exhibits H, I, and J)

In the Matter of Alicia Renee McElhaney (Exhibit H)

Motion #12: Mr. Walz moved that the Board find the allegation contained in Count 1 of the Opportunity for hearing in the matter of Alicia Renee McElhaney is true and that based upon the findings of fact and conclusions of law in this case, the Board hereby Orders that Alicia Renee McElhaney be FINED in the amount of one hundred dollars (\$100.00). Further, that the minutes of the Board shall serve as the official journal of the Board in this matter and the original order shall be signed by the Board President and attached as an exhibit hereto. The Order of the Board shall become effective upon the date of mailing.

Ms. Harwood seconded the motion. Discussion: None. Question called. Motion carried: 7 – yes, 1 abstained (Dr. Cohn).

In the Matter of Stacey Jo Stevens (Exhibit I)

Motion #13: Mr. Walz moved that the Board find the allegation contained in Count 1 of the Opportunity for hearing in the matter of Stacey Jo Stevens is true and that based upon the findings of fact and conclusions of law in this case, the Board hereby Orders that Stacey Jo Steven's license to practice respiratory care in the state of Ohio is INDEFINITELY SUSPENDED pending satisfactory response to the Board's audit notice for continuing education or upon completion of all continuing education requirements for the 2010 license renewal. Further, that the minutes of the Board shall serve as the official journal of the Board in this matter and the original order shall be signed by the Board President and attached as an exhibit hereto. The Order of the Board shall become effective upon the date of mailing.

Ms. Adams seconded the motion. Discussion: None. Question called. Motion carried: 7 – yes, 1 abstained (Dr. Cohn).

In the Matter of Terry Andrew Kovacs (Exhibit J)

Motion #14: Mr. Walz moved that the Board find that the allegation contained in Count 1 of the Opportunity for hearing in the matter of Terry Andrew Kovacs is true and that based upon the findings of fact and conclusions of law in this case, the Board hereby Orders that Terry Andrew Kovacs be FINED in the amount of three hundred dollars (\$300.00). Further, that the minutes of the Board

shall serve as the official journal of the Board in this matter and the original order shall be signed by the Board President and attached as an exhibit hereto. The Order of the Board shall become effective upon the date of mailing.

Ms. Harwood seconded the motion. Discussion: None. Question called. Motion carried: 7 – yes, 1 abstained (Dr. Cohn).

Agenda item #5: PROBABLE REVIEW COMMITTEE

Motion #15: Dr. Cohn moved to enter Executive Session for the purpose of discussing proposed disciplinary action against licensees, which is pending or imminent court action under R.C. 121.22(G)(3) and involves matters that are required to be kept confidential under R.C. 149.43(A)(2) and R.C. 4761.031 and 4752.08 (B). Ms. Adams seconded the motion. Discussion: None. Roll Call vote:

Marc Mays -	Yes	Esther Lucile Kester -	Yes
Anita Adams -	Yes	Kenneth Walz -	Yes
Robert Cohn, M.D. -	Yes	Joel Marx -	Yes
Susan Ciarlariello -	Yes	Sandra Stabile Harwood -	Yes

Motion carried.

The Board entered executive session at 4:25 p.m. and returned to regular, public session at 4:40 p.m. All eight Board Members, Mr. Isom, Ms. Tertel, and Mr. Logsdon were present during Executive Session.

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

Agenda item 5.1: Approval of Opportunity for Hearing Notices (Exhibit K - R)

Motion #16: Mr. Walz moved to issue an opportunity for hearing notice as presented to the Board in the matters of:

RCB Opportunity for Hearing Notices

<u>Exh. #</u>	<u>Case no./Respondent</u>	<u>Allegation</u>	<u>ORC Code</u>
K.	2011ORCB043 (Samantha A. Gollon, RCP.4097)	Continuing Education was not within term.	ORC 4761.09(A)(2)
L.	2011ORCB055 (Eric S. Lattimer, New applicant)	Felony convictions	ORC 4761.09 (A)(1)
M.	2011ORCB063 (Irina Y. Wyatt, RCP.8077)	Continuing Education not recognized for renewal	ORC 4761.09 (A)(2)
N.	2011ORCB064 (Jeffrey L. Merringer, RCP.0244)	Continuing Education not reported for renewal	ORC 4761.09 (A)(2)
O.	2011ORCB065 (Christine A. Mossor, RCP.10755)	Continuing Education not reported for renewal	ORC 4761.09 (A)(2)
P.	2011ORCB066 (Steven D. Thompson, RCP.6232)	Continuing Education	ORC 4761.09 (A)(2)

not reported for renewal

HME Opportunity for Hearing Notices

<u>Exh. #</u>	<u>Case no./Respondent</u>	<u>Allegation</u>	<u>ORC Code</u>
Q.	2011HME012 (Aberdeen Medical Services, Inc, HMEL.11437)	Unlicensed Practice	ORC 4752.09 (A)(1)
R.	2011HME015 (The Creative Mobility Group, LLC, HMEL.11439)	Unlicensed Practice	ORC 4752.09 (A)(1)

Mr. Marx seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 – abstained (Dr. Cohn).

Agenda item 5.2: Withdraw of Approval of Opportunity for Hearing Notices (Exhibits S & T)

Motion #17: Mr. Walz moved to withdraw the Notices of Opportunity for Hearing issued separately to the following persons:

- S. Case #2011ORCB035 (Wanda M. Vergallito, RCP.2414)
- T. Case #2011ORCB036 (Alvin C. Poweleit, RCP.5773)

Mr. Marx seconded the motion. Discussion: None. Motion carried: 7 - yes, 1 - abstained (Dr. Cohn).

Agenda item 5.3: Consent Agreement Approval (Exhibits U -Z, Exhibit AA and BB)

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

Motion #18: Mr. Walz moved to approve the consent agreement between the Board and the following cases:

RCB Agreements

<u>Exh. #</u>	<u>Case no./Respondent</u>	<u>Violation</u>	<u>Action</u>
U.	Case #2011ORCB0004 (Melissa R. DeVoe, RCP.11879)	Continuing Education was not within term.	reprimand/fine
V.	Case #2011ORCB0005 (Kenneth J. Turner, RCP.6558)	Continuing Education was not within term.	reprimand/fine
W.	Case #2011ORCB0014 (Timothy D. Eidel, RCP.9419)	Continuing Education was not within term.	reprimand/fine
X.	Case #2011ORCB0029 (Rebecca L. Miller, RCP.11824)	Continuing Education	reprimand

was not within term.

- Y. Case #2011ORCB0040 (Jill E. Tewart, RCP10078) Continuing Education was not within term. fine
- Z. Case #2011ORCB0044 (Fidaa A. Lahoud, RCP.7963) Negligence reprimand

HME Agreements

- AA. Case #2011HME0008 (Capitol Sleep Medicine, HMEL.11432) Unlicensed practice reprimand/fine

Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 7 – yes, 1 – abstained (Dr. Cohn).

Motion #19: Mr. Walz moved to approve a voluntary surrender agreement filed by:

Exh. # Case no./Respondent

- BB. Gregory P. Myles (RCP.2433) (**Exhibit BB**)

Ms. Ciarlariello seconded the motion. Discussion: None. Motion carried: 8 - yes

Agenda item #6: NEW BUSINESS

Agenda item 6.1: Application ratification for Respiratory Care Licenses and Limited Permits (Exhibit CC)

Motion #20: Mr. Walz moved to ratify respiratory care professional licenses and limited permits issued on the following dates:

Limited Permits issued on: November 26, 2010, December 2, 2010, December 9, 2010, December 16, 2010, December 30, 2010, January 6, 2011, January 14, 2011, January 20, 2011, and January 27, 2011.

Respiratory Care Professional Licenses issued on: November 26, 2010, December 2, 2010, December 9, 2010, December 16, 2010, December 30, 2010, January 6, 2011, January 14, 2011, January 20, 2011, January 21, 2011, and January 27, 2011

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

Agenda item 6.2: Application ratification for Home Medical Equipment Licenses and Certificates of Registration (Exhibit DD)

Motion #21: Mr. Walz moved to ratify HME licenses and certificates of registration issued on the following dates:

HME Licenses issued on: November 30, 2010, December 2, 2010, December 6, 2010, December 14, 2010, January 4, 2011, and January 7, 2011.

HME Certificates of Registration issued on: November 23, 2010, December 2, 2010, December 8, 2010, December 13, 2010, December 30, 2010, January 4, 2011, January 7, 2011, January 10, 2011, January 12, 2011, January 19, 2011, January 20, 2011, and January 26, 2011.

Mr. Marx seconded the motion. Discussion: None. Motion carried: 8 – 0.

Agenda item 6.3: 2011 Limited Permit Renewal Application (Exhibit EE)

Motion #22: Mr. Walz moved to approve the 2011 Limited Permit Renewal Application. Ms. Kester seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item 6.4: 2011 Winter Newsletter (Exhibit FF)

Motion #23: Mr. Walz moved to approve the 2011 Winter Newsletter. Ms. Adams seconded the motion. Discussion: Mr. Walz asked if the newsletter could be amended to consistently write professional credentials with or without periods, but not both. No further discussion. Motion carried: 8 - 0.

Mr. Marx asked if he could address a non-substantive issue with the newsletter. Mr. Marx stated that the newsletter header states 2010, not 2011. Dr. Cohn also asked to address a website issue. He stated the information concerning some of the Board Members is outdated. Mr. Logsdon stated that he was aware of the issue and he was working with DAS to get documentation on appointment dates.

Agenda item 6.5: 2011 Postcard Informational Mailer (Exhibit GG)

Motion #24: Mr. Walz moved to approve the 2011 informational mailer. Ms. Adams seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item #4: COMMITTEE REPORTS (Exhibit HH - JJ)

Scope of Practice Committee -

Dr. Cohn reported that the Scope of Practice Committee met prior to regular business today. He stated that the Committee approved the prior meeting minutes and then reviewed three scope of practice inquiries:

Exh. # Inquiry filer

HH. Ford Greene, Greene Respiratory Services, Inc. - Use of non-licensed HME personnel to change pressures on CPAP unit.

II. Kerry Russell, Akron Children's Hospital - Use of respiratory care professionals to perform nurse double-check procedures for high-risk medications.

JJ. Michael Robertson, Select Specialty Hospital - Use of Respiratory Care Professionals to insert PICC lines.

Dr. Cohn reported that Mr. Green's inquiry asked if non-licensed persons could change pressures on a CPAP unit, if a licensed therapist received and reviewed the order. Dr. Cohn stated that the Committee believes changing pressures on a CPAP/BiPAP unit should be completed by a licensed therapist and that an unlicensed person cannot change the pressure.

Dr. Cohn reported that Mr. Russell asked if a respiratory therapist could perform a nurse double-check procedure for high risk medications. The Committee, he stated, believes double check procedures could theoretically be taught to a respiratory therapist, but the therapist could only administer medications within their legal scope of care.

Dr. Cohn reported that Mr. Robertson asked if a respiratory therapist could insert a PICC line. The Committee, he stated, believes the hospital is generally in the best position to determine the privileges of any specific group of individuals for this procedure, but with

regard to therapist, it would appear the scope of practice would permit insertion by therapists if competent for purposes within the respiratory care scope of practice.

Home Medical Equipment Committee -

Mr. Marx stated that the Home Medical Equipment Committee met prior to the regular business meeting. Mr. Marx reported that the committee reviewed a list of HME licenses and registrations approved by staff and the committee already recommended ratification of these to the Board during new business. Mr. Marx also reported that the committee reviewed the current inspection schedule and inspection completion report. The committee, he reported, reviewed a draft inspection guidance manual for inspectors. Mr. Marx stated that he had hoped that a new procedure would be complete and ready for Board review, but the draft process still needs additional work. Mr. Marx reported that the staff has completed a presentation for accrediting organizations and Mr. Marx asked to participate in the presentation. Last, Mr. Marx stated that the Committee reviewed an inquiry filed by Therapy Support, Inc. Mr. Marx stated that Therapy Support, Inc. attended the Committee meeting to participate in discussion and Mr. Winsley, Executive Director of the Ohio Board of Pharmacy attended. Mr. Marx stated that Therapy Support requested clarification on the standard of practice for requiring a prescription for oxygen services rendered by the request of a Hospice organization. Mr. Marx stated that Mr. Winsley stated that Ohio Pharmacy requires a prescription be sent to the home care company for any oxygen tank requested by a hospice. Mr. Marx stated that a tank is different from an oxygen concentrator, which would fall under the authority of the Ohio Respiratory Care Board. Mr. Marx stated that the policies of each Board should be in unison since a concentrator and tank are normally delivered together, but the Board has no specific rules or policy on the issue of requiring a prescription for an accredited company. Mr. Marx stated that the Committee would accept Mr. Winsley's offer to work on joint rules and improved communications with hospices.

Motion #25: Ms. Ciarlariello moved to approve the Scope of Practice Committee report and the Committee responses for

- | |
|---|
| 1. Ford Greene, Greene Respiratory Services, Inc. |
| 2. Kerry Russell, Akron Children's Hospital |
| 3. Michael Robertson, Select Specialty Hospital |

Mr. Marx moved to second the motion. Discussion: None. Motion carried: 8 - 0.

Motion #26: Ms. Kester moved to approve the Home Medical Equipment Committee report. Mr. Walz seconded the motion. Discussion: None. Motion carried: 8 - 0.

Agenda item #7: OPEN FORUM

No appearances for Open Forum

Agenda item #8: FOR THE GOOD OF THE BOARD

Mr. Mays stated that the Board would hold officer elections in April. Mr. Mays stated that the Board would use the process described in rule.

Agenda item #8: ADJOURNMENT

Mr. Mays adjourned the business meeting at 5:05 p.m.

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Ohio Respiratory Care Board
Meeting Minutes
February 9, 2011

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 April 6, 2011.

Secretary

Witness