



# Nevada State Board of Medical Examiners

## \* \* \* MINUTES \* \* \*

### OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the  
Nevada State Board of Medical Examiners  
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and videoconferenced to

the Conference Room at the Offices of the Nevada State Board of  
Medical Examiners/Nevada State Board of Dental Examiners  
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

*FRIDAY, MARCH 8, 2013 – 8:30 a.m.*

#### *Board Members Present*

Benjamin J. Rodriguez, M.D., President  
Theodore B. Berndt, M.D., Vice President  
Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer  
Beverly A. Neyland, M.D.  
Michael J. Fischer, M.D.  
Donna A. Ruthe  
Sue Lowden  
Bashir Chowdhry, M.D.  
Wayne Hardwick, M.D.

#### *Board Members Absent*

None

*Staff/Others Present*

Douglas C. Cooper, CMBI, Executive Director  
Edward O. Cousineau, J.D., Deputy Executive Director  
Bradley O. Van Ry, J.D., General Counsel  
Erin L. Albright, J.D., Deputy General Counsel  
Laurie L. Munson, Chief of Administration and Information Systems  
Pamela J. Castagnola, CMBI, Chief of Investigations  
Lynnette L. Daniels, Chief of Licensing  
Donya Jenkins, Finance Manager  
Harry B. Ward, J.D., Deputy Attorney General

Agenda Item 1

**CALL TO ORDER AND ANNOUNCEMENTS**

- Roll Call/Quorum

- *Benjamin J. Rodriguez, M.D., President*

The meeting was called to order by President Benjamin J. Rodriguez, M.D., at 8:33 a.m.

Mr. Cousineau took roll call, and all Board members were present. Mr. Cousineau announced there was a quorum.

Mr. Cooper advised the Board that Mr. Ward was transferring to another division within the Attorney General's Office and would no longer be acting as Attorney General counsel to the Board. He then thanked Mr. Ward for his work on the Board's behalf.

Mr. Ward thanked the Board and staff.

Agenda Item 2

**PUBLIC COMMENT**

Dr. Rodriguez asked whether there were any members of the public who would like to present public comment.

Mr. Ward read into the record statutory language from Nevada Revised Statutes Chapter 241 regarding public comment.

Daniel Coll, P.A.-C, George Alexander, M.D., current President of the Clark County Medical Society, Weldon Havins, M.D., J.D., and Amie Duford, P.A.-C, current president of the Nevada Academy of Physician Assistants, presented public comment regarding the proposed regulations to be considered under Item 5 on the Agenda. Mr. Havins additionally presented public comment regarding SB 69 and AB 170, currently before the Nevada Legislature, which would provide for independent practice of APNs, and the fact that the Nevada State Board of Medical Examiners and the Nevada State Board of Osteopathic Medicine have both remained silent with respect to those bills, which some legislators view as tantamount to non-opposition to those bills.

Agenda Item 3

APPROVAL OF MINUTES

- November 30, 2012 Board Meeting – Open/Closed Sessions

Dr. Fischer moved to approve the Minutes of the November 30, 2012 Board Meeting – Open/Closed Sessions. Dr. Neyland seconded the motion and it passed unanimously.

Agenda Item 4

LEGISLATIVE UPDATE AND DISCUSSION REGARDING ESTABLISHING A BOARD LEGISLATIVE COMMITTEE

- *Keith L. Lee, Esq., NSBME Legislative Representative; Douglas C. Cooper, CMBI, Executive Director*

Mr. Lee thanked the Board members who have participated in meetings with legislators and attended legislative hearings. He then provided an update regarding the Board's bill, SB 162. The bill passed the Senate Committee on Commerce and Labor with one amendment regarding signatories on complaints and should move to the Assembly soon. The usual core issues for the Board are present again this legislative session, primarily with respect to licensure by endorsement and what medical licensing Boards can do to speed up the licensure process. There are also a number of bills regarding the unlicensed practice of medicine and a couple of bills dealing with corporate practice of medicine.

Mr. Cooper provided a chart showing licensing times to Board members and stated it indicates the Board is averaging in the 50s for licensing, which is very good when compared to other member boards in the Federation of State Medical Boards.

Mrs. Lowden inquired as to how cooperative law enforcement is with the Board when Board staff advises them of suspected unlicensed practice of medicine, and Mr. Cooper stated it has happened rarely, but staff has received good cooperation in those instances.

Mr. Lee stated there are at least two bills before the Legislature that will increase the penalties for the unlicensed practice of medicine, which will increase the workload on district attorneys' offices. The Board can issue a "cease and desist" order; however, that does not get the person who is committing unlicensed practice of medicine off the street. The Board does not have the tools to do that; those tools are with law enforcement and the prosecutors' offices.

Discussion ensued regarding the public's perception that it is the responsibility of the Board to stop the unlicensed practice of medicine.

Mr. Lee said that of all the Boards and Commissions in the state that are not General Fund Boards or Commissions – those that are regulatory agencies which regulate licensees in a particular profession or professions and are funded exclusively by license applications and their licensees – only one has jurisdiction over unlicensed practice of that profession. That Board is the State Contractors Board, and it has this jurisdiction only because they asked for it and their investigators are all POST certified and are recognized as peace officers. This is a law enforcement function and if the Board is asked to do the same, it will need to put a heavy fiscal note on the bill and the Board's licensees are the ones who would have to pay for it, which means the Board would have to obtain approval to increase license fees.

Mr. Cooper stated Board members had also been provided with a list of bills and BDRs that staff is watching, and requested that at least three Board members volunteer to serve on a panel to communicate individually with him on certain bills for which he needs Board member input.

Dr. Fischer, Dr. Berndt, Dr. Hardwick and Dr. Rodriguez all volunteered.

Mr. Ward reminded the volunteers to address their communications solely to Mr. Cooper.

Agenda Item 5

**CONSIDERATION AND ACTION REGARDING PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630**

- (a) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendments to Nevada Administrative Code Chapter 630, Amending NAC 630.360, NAC 630.490 and NAC 630.495 to Require a Physician Assistant to Document Certain Information in a Patient's Chart; to Require a Collaborating Physician to Ensure That an Advanced Practitioner of Nursing Documents Certain Information in a Patient's Chart, and Revising the Number of Physician Assistants and Advanced Practitioners of Nursing That a Physician May Simultaneously Supervise or Collaborate With (R182-12)
- (b) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.360 Regarding Notification Requirements for a Physician Assistant Regarding Any Change in the Supervision of the Physician Assistant by a Supervising Physician (R183-12)
  - *Edward O. Cousineau, J.D., Deputy Executive Director*

Mr. Cousineau stated that workshops and hearings were held in late January and mid-February on the two proposed regulatory changes. About 90% of the written comment and public comment received was related to proposed regulation R182-12. It was clear from the testimony there was a split camp, and plenty of testimony and comment were received from both the P.A. community and the APN community, which had been provided to the Board members. He said he thought it was fair to say that what was articulated by the President of the Clark County Medical Society during public comment also encapsulated the position of the Nevada State Medical Association, and its position is one the P.A. community thinks would be amenable currently. However, a concern lies with the APN community that there may be some serious legislative changes to the APN collaborative relationship, if one will continue to exist at all, so there is a desire to remove APNs from the proposed regulation. Therefore, the alternatives would be to consider either tabling consideration of the regulation in its entirety or advance the regulation only with references to P.A.s.

Discussion ensued regarding whether it would be appropriate to table consideration of adoption of R182-12 until the conclusion of the current legislative session and the process that would likely occur in the event the Board voted to do so, which might involve revising the proposed regulation and going through the process anew.

Dr. Fischer moved that the Board table consideration of adoption of R182-12 until conclusion of the legislative session. Dr. Berndt seconded the motion and it passed unanimously.

Mr. Cousineau explained that R183-12 was a housekeeping matter to clarify the requirement that the Board be notified within 72 hours when any change occurs in the supervising relationship between a physician assistant and the supervising physician.

Mrs. Lowden moved that the Board adopt R183-12. Ms. Ruthe seconded the motion and it passed unanimously.

Agenda Item 6

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NORMA McCULLOUGH, C.R.T., BME CASE NO. 12-24176-1

- Harry B. Ward, J.D., Deputy Attorney General

Ms. McCullough was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Ward asked whether Ms. McCullough was present. Mr. Andreas stated she was not present in Las Vegas and Mr. Van Ry stated she was not present in Reno. Mr. Ward asked whether the Board had been notified by either Ms. McCullough or an attorney on her behalf that she would be present, and Mr. Van Ry indicated it had not.

Mr. Ward provided the Board with procedural instruction regarding the adjudication process. He stated a hearing had been held in the matter and a synopsis had been provided by the hearing officer. He then summarized the allegations contained in the Complaint against Ms. McCullough.

Discussion ensued regarding the allegations contained in the Complaint and the fact that Ms. McCullough had admitted the allegations.

Dr. Fischer moved that the Board find Ms. McCullough guilty on all five counts. Mrs. Lowden seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Dr. Fischer moved that the Board revoke Ms. McCullough's license to practice indefinitely. Mrs. Lowden seconded the motion.

Mr. Van Ry presented the Investigative Committee's recommendations regarding discipline to be imposed in the matter, which included revocation of Ms. McCullough's license and that she pay all costs in the amount of \$2,052.48, due immediately upon order of the Board.

Dr. Fischer amended his motion to include the costs of investigation. Mrs. Lowden seconded the amended motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 7

**CONSIDERATION OF REQUEST OF ADRIAN ADRIAN, M.D. FOR MODIFICATION OF THE REMAINING TERM OF HIS CURRENTLY EXISTING SETTLEMENT AGREEMENT WITH THE NSBME (CASE NO. 09-30321-1)**

- *Edward O. Cousineau, J.D., Deputy Executive Director; Adrian Adrian, M.D.*

Dr. Adrian was not present. Kelly McIntosh, Esq., was present in Las Vegas as legal counsel for Dr. Adrian.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. McIntosh entered her appearance on behalf of Dr. Adrian.

Mr. Cousineau explained that in August 2009 the Board entered into a settlement agreement with Dr. Adrian which included various conditions, and those conditions basically mirrored the conditions of a settlement between Dr. Adrian and the state of California. Dr. Adrian is requesting that the condition he not perform any cosmetic procedures for a period of five years after adoption of the settlement agreement be lifted or modified, as he is unable to sit for his family practice boards due to the fact that he has a condition on his license.

Ms. McIntosh stated that Board Certification is very important to Dr. Adrian's continuation as a hospitalist.

Dr. Fischer asked whether Dr. Adrian planned to perform cosmetic procedures, and Ms. McIntosh indicated he did not.

Dr. Berndt stated that Dr. Adrian has submitted a statement that he has no desire or intent to provide any cosmetic medical procedures.

Discussion ensued regarding the fact that if the Board were to lift the condition, Dr. Adrian would have an unrestricted license and would be able to perform cosmetic procedures if he elected to do so, even though he has indicated he has no plans to do so, and whether the Board could or should monitor him in some way to ensure that he is not doing so.

Mr. Cousineau stated that if the Board did not lift the condition at this time, it would be vacated by the operation of time in a year and a half anyway.

Dr. Rodriguez moved that the Board lift the remaining conditions on Dr. Adrian's license. Dr. Neyland seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 8

REPORTS

- (a) Practitioner of Respiratory Care Advisory Committee - *John H. Steinmetz, RRT, Advisory Committee Member*
- (b) Investigative Committees
  - Consideration of Cases Recommended for Closure by the Committees
    - *Theodore B. Berndt, M.D., Vice President, Chairman, Investigative Committee A;*
    - *Benjamin J. Rodriguez, M.D., President, Chairman, Investigative Committee B*
- (c) Investigations Division
  - (1) Status of Investigative Caseload
  - (2) Quarterly Compliance Report
    - *Pamela J. Castagnola, CMBI, Chief of Investigations*
- (d) Nevada State Medical Association Report - *Lawrence P. Matheis, Executive Director, Nevada State Medical Association; Wayne Hardwick, M.D., Board Member*
- (e) Clark County Medical Society Report - *Loretta Moses, Executive Director, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board President*

(a) Practitioner of Respiratory Care Advisory Committee

There was no report presented.

(b) Investigative Committees

- Consideration of Cases Recommended for Closure by the Committees

Dr. Berndt reported that Investigative Committee A met and considered 125 cases, and said the new medical review format created by Dr. Calvanese was very helpful in expediting the review of cases.

Dr. Rodriguez reported that Investigative Committee B met and considered 72 cases, authorized the filing of a formal complaint in 1 case, sent 11 cases out for peer review, requested an appearance in 5 cases, issued 20 letters of concern, referred 3 cases back to investigative staff for further investigation or follow-up, reviewed one case for compliance and recommended closure of a total of 31 cases, including those cases in which letters of concern were issued.

Dr. Fischer moved to approve for closure the cases recommended by the Investigative Committees. Dr. Neyland seconded the motion and it passed unanimously.

(c) Investigations Division

(1) Status of Investigative Caseload

Ms. Castagnola reported the current number of open investigative cases was 479 and the number of cases per investigator was 80. There were 25 peer reviews in the field and 9 peer reviews awaiting assignment.

Discussion ensued regarding the average number of cases per investigator.

## (2) Quarterly Compliance Report

Ms. Castagnola reported that total costs collected in 2012 were \$121,026.87 and total fines collected were \$49,200.00, for a combined total of \$170,226.87. To date in 2013, total costs collected were \$19,191.04 and fines collected were \$10,000.00.

Discussion ensued regarding the outstanding balance of \$372,009.06.

Dr. Rodriguez moved to accept the Investigations Division reports. Dr. Chowdhry seconded the motion and it passed unanimously.

### (d) Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association (NSMA), stated Keith Lee had presented a good overview of what is going on at the Legislature. He reported that NSMA facilitates a legislative core group meeting every Thursday evening, attended by the medical specialty societies and lobbyists for physician groups, where legislation and various concerns are discussed. He invited anyone interested in attending those meetings to submit an email address. NSMA is currently tracking 87 bills and 214 bill draft requests, and he estimates by the end of the session they will be tracking about 200 bills. Much of the legislation related to medicine is driven by healthcare reform or by media reports from the last year and a half. He urged the Board to be seen as supportive of efforts to create teams of law enforcement and licensing boards prepared to address the issue of the unlicensed practice of medicine when it comes up. He thinks licensing boards must participate, as law enforcement officials will be reluctant to go in without the licensing authority stating that what is occurring is against the law because it is the practice of medicine without a license, the practice of pharmacy without a license, etc., because prosecutors won't proceed without the licensing authority's evidentiary support. There are three bills that address the unlicensed practice of medicine – one that addresses changes law enforcement needs to make in dealing with it and two that deal with the boards.

Discussion ensued regarding the Board's current and potential future involvement in addressing the unlicensed practice of medicine.

Mr. Matheis stated the NSMA will hold its annual meeting on April 26-28, at the Hyatt Regency, and advised the Board he will be retiring in October after 25 years in his current position.

### (e) Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported they are also busy keeping up with legislative issues. Additionally, they held their first town hall meeting on January 23, which was very successful. They plan to hold a series of these, with the next one scheduled for September. They kicked off their membership drive during the January meeting, their most recent mini-internship program concluded on January 24, they have revised their newsletter, they will install officers on June 29, and they are recruiting delegates for the upcoming NSMA Annual Meeting. In May, they will hold another third-party payer roundtable with the NSMA.



Discussion ensued regarding the content of the CCMS town hall meetings.

Agenda Item 9

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. PAUL LUDLOW, M.D.*, BME CASE NO. 11-5171-1

- *Bradley O. Van Ry, J.D., General Counsel*

Dr. Ludlow was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Ludlow and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement agreement. Dr. Berndt seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. EUGENE PORRECA, M.D.*, BME CASE NO. 11-8513-1

- *Bradley O. Van Ry, J.D., General Counsel*

Dr. Porreca was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Porreca and the terms of the proposed settlement agreement.

Dr. Chowdhry moved that the Board accept the settlement agreement. Ms. Clark seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ABHINAV SINHA, M.D.*, BME CASE NO. 12-27376-1

- *Erin L. Albright, J.D., Deputy General Counsel*

Dr. Sinha was not present. L. Kristopher Rath, Esq, was present in Las Vegas as legal counsel for Dr. Sinha.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Albright outlined the allegations contained in the Complaint filed against Dr. Sinha and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement agreement. Dr. Chowdhry seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 12

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. THOMAS ABDELLA, M.D., BME CASE NO. 12-11024-1**

*- Erin L. Albright, J.D., Deputy General Counsel*

Dr. Abdella was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Albright outlined the allegations contained in the Complaint filed against Dr. Abdella and the terms of the proposed settlement agreement.

Dr. Neyland moved that the Board accept the settlement agreement. Dr. Chowdhry seconded the motion.

Discussion ensued regarding whether the proposed settlement terms were appropriate under the facts of the case.

A vote was taken on the motion and the motion failed, with Dr. Chowdhry and Mrs. Lowden voting in favor of the motion and Dr. Rodriguez, Dr. Neyland, Ms. Ruthe and Dr. Hardwick voting against the motion.

Agenda Item 13

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ALFREDO HIBBERT, P.A., BME CASE NO. 12-287-1**

*- Erin L. Albright, J.D., Deputy General Counsel*

Mr. Hibbert was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Albright outlined the allegations contained in the Complaint filed against Mr. Hibbert and the terms of the proposed settlement agreement.

Discussion ensued regarding the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement agreement. Mrs. Lowden seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 14

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CATHALINE PEARSON, P.A.-C*, BME CASE NO. 12-30027-1

- Erin L. Albright, J.D., Deputy General Counsel

Ms. Pearson was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Albright outlined the allegations contained in the Complaint filed against Ms. Pearson and the terms of the proposed settlement agreement.

Ms. Ruthe moved that the Board approve the settlement agreement as written. Dr. Neyland seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 15

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. EDWARD ZIMMERMAN, M.D.*, BME CASE NO. 12-11216-1

- Erin L. Albright, J.D., Deputy General Counsel

This item was not discussed at the meeting.

Agenda Item 16

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. STEVEN KOZMARY, M.D.*, BME CASE NO. 12-8148-1

- Bradley O. Van Ry, J.D., General Counsel

Dr. Kozmary was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Kozmary and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement agreement. Ms. Ruthe seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ROGER GEE JOE, M.D., BME CASE NO. 13-38154-1

- *Bradley O. Van Ry, J.D., General Counsel*

Dr. Joe was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Joe and the terms of the proposed settlement agreement.

Dr. Rodriguez moved that the Board accept the settlement agreement. Dr. Chowdhry seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL LICENSE OF VINAY BARARIA, M.D., LICENSE #11355

- *Bradley O. Van Ry, J.D., General Counsel*

Dr. Bararia was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry explained that a summary suspension was filed against Dr. Bararia on July 24, 2012, as a result of allegations that Dr. Bararia was caught selling controlled substances to undercover Drug Enforcement Administration agents. Dr. Bararia is currently incarcerated. In lieu of the Board filing a formal complaint against him, he has agreed to voluntarily surrender his license to practice medicine. The Board has in its possession his wall certificate and wallet ID card.

Dr. Rodriguez moved that the Board accept the voluntary surrender of Dr. Bararia's medical license. Dr. Chowdhry seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 19

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE

19(a) Frank Pallares, M.D.

Dr. Rodriguez asked Dr. Pallares whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Berndt questioned Dr. Pallares regarding his training in cardiology, and Dr. Pallares summarized it.

Dr. Berndt questioned Dr. Pallares regarding his affirmative response to Questions 5a and 5b on his application for licensure.

Dr. Pallares explained the circumstances surrounding the three malpractice cases that had been filed against him.

Dr. Rodriguez moved that the Board grant Dr. Pallares' application for licensure. Dr. Neyland seconded the motion and it passed unanimously.

19(b) Shivangi Ashok Bhatt, M.D.

Dr. Rodriguez asked Dr. Bhatt whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Neyland questioned Dr. Bhatt regarding the fact that she has not practiced clinical medicine since May 2011.

Dr. Bhatt described what she had been doing since she last practiced clinical medicine. She works for a company that contracts with a number of different insurance companies and works with insurers and patients from all over the country. She reviews requests for different types of diagnostic studies and testing, therapeutic modalities, medical equipment, specialty pharmacy, etc.

Discussion ensued regarding whether an administrative license would be appropriate under the circumstances, and it was determined that in order to perform utilization reviews for Nevada, she would need an unrestricted license in Nevada.

Dr. Neyland moved that the Board grant Dr. Bhatt an unrestricted license contingent upon successful passage of a peer review by a Board-certified pediatrician. Dr. Fischer seconded the motion and it passed unanimously.

19(c) Eileen Haley, R.R.T.

Dr. Rodriguez asked Ms. Haley whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Hardwick asked Ms. Haley whether she had complied with any of the recommendations made by Solutions Recovery following their evaluation of her.

Ms. Haley stated she had not been provided with the findings of Solutions Recovery's evaluation. She stated she was diagnosed with depression in 1986 and sees a doctor regularly. She has not had a drink in a number of years. She described her work history over the last 25 years and stated she performs well on the job and takes care of herself when she needs medical attention.

Dr. Hardwick asked Ms. Haley whether she attends AA meetings, and she indicated she attends occasionally.

Dr. Hardwick asked Ms. Haley whether she had undergone a psychiatric evaluation recently, pursuant to the second recommendation of Solutions Recovery, and she stated she had not; that she was not aware of the Solutions Recovery recommendations. However, she sees a primary care doctor routinely for depression.

Dr. Hardwick asked Ms. Haley whether she was attending individual counseling, pursuant to the third recommendation of Solutions Recovery, and she stated she was not; that she was not privy to the recommendations of the evaluation.

Ms. Clark asked Ms. Haley whether she was taking medication for her current diagnoses, and Ms. Haley described the medication she currently takes.

Dr. Rodriguez questioned Ms. Haley regarding the fact that she did not disclose five of her ten arrests on her application for licensure.

Ms. Haley explained that she had forgotten about them, that they were in the 80s, and it was unintentional.

Dr. Berndt questioned Ms. Haley regarding when she last practiced respiratory therapy, and she explained she is a registered polysomnographic technologist and a lot of the treatment for sleep apnea involves bi-level and some sophisticated ventilation techniques, but it has been 20 years since she was on the floor working as a respiratory therapist. She is applying for her license because the sleep lab has been slow and she is afraid they are going to close, and she would like to continue working at Sunrise Hospital. She stated the hospital has protocols in place where she would have to meet certain competencies with a preceptor to ensure she is capable of performing procedures before they would allow her to treat patients.

Ms. Daniels stated that the Practitioner of Respiratory Care Advisory Committee has advised Board staff that between Ms. Haley passing the RRT examination in 2012 and the protocols in place at Sunrise Hospital, they were comfortable with her transition from sleep to respiratory therapy.

Ms. Clark asked Ms. Haley whether she would be agreeable to undergoing a psychiatric examination, and she stated she was.

Dr. Hardwick moved that the Board table further discussion regarding Ms. Haley's application pending the outcome of a psychiatric evaluation. Ms. Ruthe seconded the motion and it passed unanimously.

**19(d) Danilo Jaravata, M.D.**

Dr. Rodriguez asked Dr. Jaravata whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Chowdhry questioned Dr. Jaravata regarding his medical training, and Dr. Jaravata summarized it.

Dr. Chowdhry questioned Dr. Jaravata regarding his affirmative response to Questions 5a and 5b on his application for licensure.

Dr. Jaravata explained the circumstances surrounding the two malpractice cases that had been filed against him.

Dr. Chowdhry moved that the Board grant Dr. Jaravata's application for licensure. Dr. Fischer seconded the motion and it passed unanimously.

**19(e) Karim Rizkallah Nahra, M.D.**

Dr. Rodriguez asked Dr. Nahra whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved that the Board go into closed session. Mrs. Lowden seconded the motion and it passed.

Upon returning to open session, Dr. Fischer moved that the Board grant Dr. Nahra's application for licensure. Dr. Hardwick seconded the motion and it passed unanimously.

**19(f) Ira Schneier, M.D.**

Dr. Rodriguez asked Dr. Schneier whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Dr. Rodriguez questioned Dr. Schneier regarding his affirmative response to Questions 12 and 12a on his application for licensure.

Dr. Schneier explained the circumstances surrounding three of the malpractice cases that had been filed against him.

Dr. Rodriguez moved that the Board grant Dr. Schneier's application for licensure. Dr. Fischer seconded the motion and it passed unanimously.

19(g) Albert Lopez, C.C.P.

Dr. Rodriguez asked Mr. Lopez whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved that the Board go into closed session. Dr. Neyland seconded the motion and it passed.

Upon returning to open session, Dr. Hardwick moved that the Board reject Mr. Lopez' application pursuant to NAC 630.710, grounds for rejection of application, any credential submitted by the applicant is false. Ms. Ruthe seconded the motion and it passed unanimously.

Dr. Rodriguez explained to Mr. Lopez that the Board's rejection of his application was not reportable and that he could reapply at any time.

Agenda Item 20

PERSONNEL

- Annual Review and Discussion of Professional Competency of Staff

- *Douglas C. Cooper, CMBI, Executive Director; Board Executive Committee*

Mr. Cooper stated that all employee evaluations had been completed. If any Board member would like to see an employee's evaluation, he or she can do so at the Board office. As has been the case for the last four years, in spite of the fact that the consumer price index is up 2.2% and the cost of living in the area has increased by 1.7% this year, he was not asking for monetary compensation for any employee of the Board at this time. At this point, he wants to see what happens with the Governor's proposal to end the furloughs and the state employee pay situation is going to be addressed, so hopefully this is something that can be brought back in June.

Dr. Rodriguez requested any Board members who want to provide input regarding Mr. Cooper's evaluation to email it to Dr. Rodriguez.

Agenda Item 21

CONSIDERATION AND ACTION REGARDING WRITING OFF BAD DEBT

- *Douglas C. Cooper, CMBI, Executive Director; Donya Jenkins, Finance Manager*

Ms. Jenkins requested authority to write off as bad debt the accounts on the list provided to the Board for review, and explained the reasons why those debts were chosen to be written off. There are five accounts and the total is \$25,571.14. She stated that all of the items had been sent to the Board's collections agency and were deemed uncollectible by the collections agency. They are listed under "uncollectible accounts" on the Board's balance sheet, so this will not cause a loss on the Board's financial statement; it will solely be a balance sheet adjustment.

Ms. Ruthe moved that the Board write off the bad debt in the amount of \$25,571.14. Ms. Clark seconded the motion and it passed unanimously.



Agenda Item 22

**DISCUSSION REGARDING CORPORATE PRACTICE OF MEDICINE IN NEVADA**

- *Douglas C. Cooper, CMBI, Executive Director*

Mr. Cooper explained that at the request of a private attorney who represents a group of physicians in Las Vegas, staff requested an opinion from the Nevada Attorney General's Office to answer three questions regarding the corporate practice of medicine: (1) May a physician be directly employed to provide professional services by a hospital that has to be licensed in the state; (2) if that employment is not currently permitted, how can we get the policy changed; and (3) would a physician's employment by a hospital, where the physician receives fair-market value compensation for his or her services, be in compliance with the laws which prohibit fee splitting or aiding the unlicensed practice of medicine?

Staff received a letter from the Attorney General's Office in response, which stated the March 5, 2010 opinion issued by the Attorney General's Office with respect to this issue stands.

Ms. Albright stated the opinion only answers the question with respect to the corporate practice of medicine. Neither the Nevada Supreme Court nor the Nevada Legislature has expressly addressed the issue of whether or not the corporate practice of medicine doctrine stands in the state of Nevada, so all we have to go on is Attorney General Opinions, and the Attorney General's Office has issued three opinions with respect to this issue. The opinions indicate that the corporate practice of medicine is only legal if it is conducted by a professional corporation pursuant to NRS Chapter 89, or by an HMO, or by corporations for medical services, managed care organizations, prepaid limited health organizations and county hospitals. With respect to employing physicians directly, county hospitals may do so; however, private hospitals have not been addressed by the law. The Attorney General opinion states that with private hospitals, there has been a long-standing practice in the state of Nevada that physicians only work as contractors for private hospitals, and not as employees, and a change to the policy would require either a legislative change or a regulatory change.

Mr. Cooper stated that Senate Bill 138, which is under consideration by the legislature this session, touches upon the issue of corporate practice of medicine. Ms. Albright then outlined the changes proposed by that bill.

Mr. Cooper stated that from a review of the statutes, he did not see how a physician receiving fair-market value compensation would be considered fee splitting with a hospital.

Agenda Item 23

**EXECUTIVE STAFF/STAFF REPORTS**

- (a) Consideration and Approval of Request for Staff Attendance at Educational Meetings  
*Douglas C. Cooper, CMBI, Executive Director*
- (b) Report on Federation of State Medical Boards Conference on Licensure Models  
*Theodore B. Berndt, M.D., Vice President; Lynnette L. Daniels, Chief of Licensing*
- (c) Quarterly Update on Finances - *Donya Jenkins, Finance Manager*
- (d) Informational Items - *Douglas C. Cooper, CMBI, Executive Director*

**(a) Consideration and Approval of Request for Staff Attendance at Educational Meetings**

Mr. Cooper described the request for attendance at the Federation of State Medical Boards 2013 Annual Meeting that was before the Board for approval.

Dr. Fischer moved that the Board approve attendance at the meeting by Dr. Rodriguez, Dr. Berndt, Dr. Chowdhry, Dr. Hardwick, Mr. Cooper and Ms. Daniels. Ms. Ruthe seconded the motion and it passed unanimously.

Mr. Cooper described the request for attendance at the Administrators in Medicine 2013 Annual Meeting that was before the Board for approval.

Dr. Fischer moved that the Board approve attendance at the meeting by Mr. Cooper. Dr. Rodriguez seconded the motion and it passed unanimously.

Mr. Cooper described the request for attendance at the National Association of Drug Diversion Investigators Western Regional Conference that was before the Board for approval.

Dr. Fischer moved that the Board approve attendance at the meeting by Ms. Castagnola and the Board's Compliance Officer, Johnna LaRue. Dr. Rodriguez seconded the motion and it passed unanimously.

**(b) Report on Federation of State Medical Boards Conference on Licensure Models**

Ms. Daniels outlined the various topics of discussion at the meeting.

Dr. Berndt stated there is a push to change the way we license providers, and that push is coming from various sources – from the federal government, from industry and from the way medicine is practiced. The meeting was all about the issue of license portability, and each state has a different way of dealing with that issue. The federal government and some of the eastern states are advocating creation of a “national license” of some sort, but they don't know how to do it and don't have the resources to do it, so the Federation of State Medical Boards is in the best position to come up with some type of model. Different models were discussed and he thinks the compact model won out at the end of the day. The compact model is provided by our Constitution and the government uses it for other things, such as control of water.

**(c) Quarterly Update on Finances**

Ms. Jenkins summarized the information contained in the Balance Sheet for the fourth quarter of 2012. She explained that the total other current liabilities is the amount the Board has deferred for the first six months of this year until we license again. The Board is in a licensing year and that is the remainder of the Board's deferred income. The amount the Board is holding in CDs and its checking account is above that number, so the Board has not spent beyond what it is going to recognize in the next six months, and the Board is continuing to work on its reserve.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the fourth quarter of 2012. The Board's total income was better than budget by 14.3%, personnel was only 2% different than budget and the budget versus actual was different by 37.6%. The 37.6% difference is due to Account 555, which is the Board's bad debt. This is an accounting expense, not a real expense, and is due to a once-a-year reclassification of the amount the auditors consider to be uncollectible, regardless of whether the Board feels it can still collect the monies. Even with that adjustment, the bottom line was a positive \$31,135.00 for the quarter. The total interest received for the quarter was below budget by almost \$4,000.00, which was expected.

Dr. Fischer moved that the Board accept the financial report. Dr. Hardwick seconded the motion and it passed unanimously.

Discussion ensued regarding the percentage of the total debt sent out to collections that is collected.

#### (d) Informational Items

Mr. Cooper advised the Board that renewals would begin on April 1, and asked for physician Board member volunteers to help test the online renewals system prior thereto. He stated the Board's March newsletter had been sent out, and highlighted some of the articles contained therein.

Mr. Cousineau added that the regulation regarding medical assistants had been approved by the Legislative Commission, and the March newsletter contained an article highlighting the regulatory changes.

Mr. Cooper stated the annual financial audit for 2012 had been completed and he was confident the Board did really well.

Agenda Item 24

#### LEGAL REPORTS

- Board Litigation Status

- *Bradley O. Van Ry, J.D., General Counsel*

Mr. Van Ry reported there were currently 82 cases in the Legal Division, 10 of which were presented to the Board for decision at this meeting. There were 13 cases pending the CMT process, 14 awaiting filing of a formal complaint, 33 in which a formal complaint had been filed that were pending hearings, 12 of which were filed subsequent to the last Board meeting, and 9 miscellaneous legal matters pending. There were 56 letters of concern approved by the Investigative Committees at their February meetings. Mr. Van Ry then provided a summary and update as to the two petitions for judicial review that were pending and one additional legal matter that was on appeal.

Discussion ensued regarding why the court threw out the Board's costs in one of the cases that was under judicial review.

Agenda Item 25

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the November 30, 2012 Board Meeting

Dr. Rodriguez moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the November 30, 2012 Board Meeting. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 26

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be discussed at the June Board meeting: the Board's most recent financial audit, its 2012 Annual Report, a legislative wrap-up, election of officers, a report on the biennial licensure renewals and information regarding license portability from the Federation of State Medical Boards.

Agenda Item 27

PUBLIC COMMENT

Dr. Rodriguez asked whether there were any members of the public who would like to present public comment.

Daniel Coll, P.A.-C, presented public comment regarding proposed regulation R182-12, which had been discussed previously during the meeting.

ADJOURNMENT

Dr. Fischer moved to adjourn. Dr. Berndt seconded the motion and it passed.

Dr. Rodriguez adjourned the meeting at 2:18 p.m.

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