



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, SEPTEMBER 5, 2014 – 8:30 a.m.

Board Members Present

Michael J. Fischer, M.D., President
Theodore B. Berndt, M.D., Vice President
Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer
Beverly A. Neyland, M.D.
Bashir Chowdhry, M.D.
Wayne Hardwick, M.D.
Ann Wilkinson
Rachakonda D. Prabhu, M.D.
Sandy Peltyn

Board Members Absent

None

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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., 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
Colleen L. Platt, J.D., Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Announcement of Appointment by the Governor of, and Introduction of, New Board Member, Sandy Peltyn.

The meeting was called to order by President Michael J. Fischer, M.D., at 8:30 a.m.

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

Dr. Fischer introduced new Board member, Sandy Peltyn. Ms. Peltyn stated she had been watching the Board for a long time and it was a pleasure and an honor to now be a member of the Board.

Mr. Cooper announced that Michael Siva had returned to the Board as a License Specialist, replacing Michelle Aldana.

Mr. Cooper advised the Board that License Specialist Brett Canady would be attending the National Board for Respiratory Care (NBRC) Annual Meeting in Kansas on September 13 and 14, which would be paid for by the NBRC, and Chief of Licensing Lynnette Daniels would be attending a meeting of the State Board Advisory Panel to the USMLE at the offices of the Federation of State Medical Boards (FSMB) in Texas on September 26.

Mr. Cooper explained there is an organization called Best Doctors, Inc., which is a research organization with a very well-respected polling system, and they perform a lot of research to determine who the best doctors in America are. The Best Doctors in America list includes the nation's most respected specialists and outstanding primary care physicians. Just recently, in Nevada, three pediatricians were named to the list, and Dr. Neyland was one of the three.

Agenda Item 2

PUBLIC COMMENT

Dr. Fischer asked whether there was anyone in attendance who would like to present public comment.

Weldon Havins, M.D., J.D., stated the proposed Minutes of the June 6, 2014 Board meeting, for Agenda Item 9, didn't reflect that Dr. Fischer called a recess to discuss the proposed regulation with members of the Board and the attorneys, and he requested that the minutes be corrected to reflect that.

Dr. Fischer stated a break was taken so the attorneys could work out proper wording, and the Board would ensure that was reflected in the Minutes.

Agenda Item 3

APPROVAL OF MINUTES

- June 6, 2014 Board Meeting – Open Session

Dr. Prabhu moved that the Board approve the Minutes of the June 6, 2014 Board Meeting – Open Session. Dr. Chowdhry seconded the motion.

Dr. Hardwick offered an amendment to the motion that the Minutes reflect there was a break taken during Agenda Item 9. Dr. Prabhu accepted the amendment to the motion.

A vote was taken on the amended motion and it passed, with Dr. Berndt abstaining from the vote and all other Board members voting in favor of the motion.

Agenda Item 4

PRESENTATION ON VETERANS LICENSURE RECIPROCITY AND DATA SHARING

Caleb S. Cage, Director of Military and Veterans Policy to Governor Brian Sandoval, stated that earlier in the year, Governor Sandoval had declared 2014 to be the "Year of the Veteran" in Nevada. He explained that over the next three years, the United States is anticipating that 350,000 service members will transition into communities across the country, and the goal is to ensure that the barriers to entry in all professions, and into the workforce in general, are removed or reduced as much as possible. This is based on an effort called the Green Zone Initiative, which is dedicated to reducing those barriers, creating policies that do so, creating and coordinating collaboration for service providers and developing outreach for specific veterans.

Mr. Cage stated the employment focus area for the Green Zone Initiative has several pieces to it, and one of them is licensure reciprocity. Late last year, the Governor's Office received a grant from the National Governor's Association to pursue bridge programs for people exiting the military and transitioning into civilian employment to allow them to apply their military experience, training and even licensure, in some cases, to civilian practice. Through that grant, the Governor's Office chose three employment fields – Licensed Practical Nurses, Emergency Medical Technicians and law enforcement professionals – and developed specific bridging opportunities for each of those professions. Through that process, they recognized a need within the state. Nevada is one of five states nationally that does not have a general law on the books that requires licensing boards in the state to have licensure reciprocity for people in the military. The Governor's Office is working through the Interagency Council on Veterans Affairs to put employment recommendations forward, one of which is that Nevada adopt legislation requiring general licensure reciprocity for service members transitioning to Nevada. They are not asking boards to lower their standards in any way; they are just asking for reciprocity for a military member or veteran who is licensed in another state. The one change

they anticipate will affect all licensing boards is the data-reporting requirement. This will require each board to gather information through their applications regarding whether an applicant has ever served in the U.S. Armed Forces, the branch of service, when he or she served, etc., and provide the aggregate data to the Nevada Department of Veterans Services on an annual basis.

Discussion ensued regarding the goals of the initiative and how they would affect licensing boards in Nevada, and specifically the Board of Medical Examiners.

Mr. Cooper asked how the data was going to be used, and Mr. Cage explained the various ways it would be utilized.

Agenda Item 5

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JAMES TATE, M.D.*, BME CASE NO. 09-9809-1

Dr. Tate was present in Las Vegas. Jacob Hafter, Esq. was present with Dr. Tate as his legal counsel.

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

Ms. Platt explained that this matter had been before the Board some time ago and the Board rendered a decision that was appealed to the Nevada Supreme Court. The Nevada Supreme Court rendered a decision that there was not enough deliberation for the action taken by the Board and directed the Board to review the matter again. Ms. Platt stated Count I had been dismissed and did not move forward at the hearing phase. She then provided the adjudicating Board members with procedural instruction regarding the adjudication process for Count II.

Discussion ensued regarding the facts of the case and whether patient care was compromised in any way.

Dr. Neyland moved to dismiss Count II of the Complaint. Dr. Prabhu seconded the motion and it passed unanimously.

Agenda Item 6

REPORTS

(a) Investigative Committees

- Consideration of Cases Recommended for Closure by the Committees

Dr. Berndt reported that Investigative Committee A had met and considered 118 cases. Of those, they authorized the filing of a formal complaint in 7 cases, sent 6 cases out for peer review, requested an appearance in 7 cases, issued 26 letters of concern, referred 8 cases back to investigative staff for further investigation or follow-up, reviewed 2 cases for compliance, and recommended closure of a total of 62 cases.

Dr. Prabhu moved to approve for closure the cases recommended by Investigative Committee A. Dr. Fischer seconded the motion and it passed unanimously.

Dr. Neyland reported that Investigative Committee B had met and considered 73 cases. Of those, they authorized the filing of a formal complaint in 2 cases, sent 2 cases out for peer review, requested an appearance in 1 case, issued 20 letters of concern, referred 3 cases back to investigative staff for further investigation or follow-up, reviewed 1 case for compliance and recommended closure of a total of 44 cases.

Ms. Wilkinson moved to approve for closure the cases recommended by Investigative Committee B. Dr. Chowdhry seconded the motion and it passed unanimously.

(b) Investigations Division

(1) Status of Investigative Caseload

Ms. Castagnola reported the current number of open investigative cases was 494 and the number of cases per investigator was 83. There were 29 peer reviews in the field and 3 peer reviews awaiting assignment.

(2) Quarterly Compliance Report

Ms. Castagnola reported that a total of \$37,431.51 in costs and \$14,478.36 in fines had been collected during the second quarter of 2014, for a total of \$51,909.87. Since the end of the second quarter to date, an additional \$45,985.86 in costs and no fines had been collected.

Discussion ensued regarding how the current number of cases per investigator compared to that in the past. Ms. Castagnola stated the current number was about average.

Dr. Prabhu moved to accept the Investigations Division reports. Ms. Wilkinson seconded the motion and it passed unanimously.

(c) Nevada State Medical Association Report

Stacy M. Woodbury, Executive Director of the Nevada State Medical Association (NSMA), reported there will be a CME opportunity through the Nevada Academy of Family Physicians and the University of Nevada School of Medicine the following Tuesday and Wednesday for physicians, physician assistants and APRNs. Dr. Herbert Fred, from the University of Texas, will be speaking in Elko, and the presentation will be videoconferenced to hospital facilities in Battle Mountain, Caliente, Ely, Fallon, Hawthorne, Lovelock, Winnemucca, and Yerington. NSMA hopes this will be a success and it can continue with these presentations in the future in order to begin getting rural providers engaged in the policy dialogue. NSMA is very concerned that there be a strong voice for rural Nevada in the conversation regarding legislation that is coming out around network adequacy and telemedicine. On September 17, NSMA will hold an employed physicians seminar in Las Vegas, designed to talk with physicians who are working in a hospital setting, or for someone other than themselves, about some of the issues they should consider in doing so. In either October or November, NSMA will be hosting a third-party payer conference in Reno and the candidate receptions will be held in Reno on September 25 and in Las Vegas on October 2.

(d) Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that CCMS held its first annual resident and fellow job fair on August 21, in

collaboration with the University of Nevada School of Medicine and Touro University Nevada. Approximately 75 residents and fellows and 22 employers attended. CCMS is taking a look at how effective this was by talking with the employers to see how many of those residents and fellows have been hired. CCMS is also working on getting back some of our alumni group through a job board posted on its website. CCMS will hold the employed physician seminar in conjunction with the NSMA on September 17. The next issue of the Southern Nevada *Business of Medicine* quarterly publication, published in collaboration with the Las Vegas Business Press, will be out the week of September 22. CCMS is co-hosting the legislative mixer on October 2, its next mini-internship is scheduled for October 13 through 23, and it is working on finalizing a couple of town hall meetings to be held prior to the end of the year on prescription drug abuse and on the margin tax.

Agenda Item 7

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ROBERT JOSEPH AQUINO, M.D.*, BME CASE NO. 14-35576-1

Dr. Aquino was not present.

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

Mr. Van Ry outlined the facts of the case, the allegations contained in the Complaint filed against Dr. Aquino and the terms of the proposed Settlement Agreement.

Dr. Neyland moved that the Board approve the Settlement Agreement. Dr. Prabhu seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 8

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. WILLIAM SMITH, M.D.*, BME CASE NO. 10-11398-1

Dr. Smith was not present.

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

Mr. Van Ry outlined the facts of the case, the allegations contained in the Complaint filed against Dr. Smith and the terms of the proposed Settlement Agreement.

Dr. Hardwick moved that the Board accept the Settlement Agreement. Dr. Neyland seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 9

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KENNETH WESTFIELD M.D.*, BME CASE NO. 14-5797-1

Dr. Westfield was not present.

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

Mr. Van Ry outlined the facts of the case, the allegations contained in the First Amended Complaint filed against Dr. Westfield and the terms of the proposed Settlement Agreement.

Dr. Neyland 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 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DANIEL K. KIM, M.D.*, BME CASE NO. 13-9995-1

This item was not discussed at the meeting.

Agenda Item 11

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NAVNEET SHARDA, M.D.*, BME CASE NOS. 13-11856-1 & 13-11856-2

Dr. Sharda was not present. Dr. Sharda's legal counsel, L. Kristopher Rath, Esq., was present in Las Vegas.

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

Ms. Albright outlined the allegations contained in the two Complaints filed against Dr. Sharda and the terms of the proposed Settlement Agreement.

Ms. Wilkinson moved that the Board approve the Settlement Agreement. Dr. Hardwick 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. BRIAN E. GRACE, PA-C*, BME CASE NO. 14-25576-1

Mr. Grace was not present.

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

Mr. Cousineau outlined the allegations contained in the Complaint filed against Mr. Grace and the terms of the proposed Settlement Agreement.

Dr. Berndt moved that the Board approve the Settlement Agreement. Dr. Prabhu seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 13

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. VICTOR E. GRIGORYEV GRIGG, M.D.*, BME CASE NO. 12-10569-1

This item was not discussed at the meeting.

Agenda Item 14

CONSIDERATION AND ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL LICENSE OF CARLOS TISBE, M.D., LICENSE NO. 10770

Dr. Tisbe was not present.

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

Ms. Albright explained that the Board had received a sworn, written statement of surrender of license from Dr. Tisbe, accompanied by his actual license to practice medicine. Since Dr. Tisbe had complied with the requirements necessary to voluntarily surrender his license to practice medicine, she requested the Board accept the voluntary surrender of license.

Dr. Neyland moved that the Board accept the voluntary surrender of Dr. Tisbe'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 15

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 630.187 and NAC 630.230 to Accurately Reflect the Current Title of the Federation of State Medical Boards' Publication, *Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain* (R001-14)

Mr. Cousineau stated that a workshop was held in May and a public hearing was held in July, and input was received at both from Stacy Woodbury from NSMA. He said from a legal perspective, he had no objection to NSMA's request to delete language as it relates to acute pain and the definition thereto under Nevada Administrative Code (NAC) 630.230. He stated Ms. Woodbury also had comments with regard to whether the term "should," as used throughout the Model Policy, should be amended. He said he did not believe that the language

should be changed; that the language included is indicative of standard of practice and it should be left to the subjective opinion of the practitioner how he/she chooses to treat the patient with respect to the prescription of opioids.

Stacy M. Woodbury, MPA, Executive Director of the NSMA, stated the crux of the matter for NSMA was the inclusion of acute pain when it is a model policy for chronic pain because there are very different circumstances for a physician when he is treating acute pain versus chronic pain, and though you can apply some of the standards, you certainly can't apply all of them all of time. So NSMA's wish would be to delete acute pain from NAC 630.230(k) so that the new policy would apply to chronic pain only. She said as far as the other questions NSMA had raised, she was satisfied with Mr. Cousineau's explanation and the flexibility that it will leave the treating physician.

Discussion ensued regarding whether the Board could modify the language in the proposed regulation before sending it to the Legislative Counsel Bureau. Mr. Cousineau stated it could.

Discussion ensued regarding the fact that acute pain and chronic pain are different and need to be treated differently.

Mr. Cousineau explained that the Board previously adopted the current Model Policy, and the current regulatory language is now inconsistent with the current Model Policy. Based on what is written in regulation, there is potential exposure that NSMA would like to negate or remediate.

Ms. Woodbury stated that was correct; that acute pain is different and it is difficult to treat acute pain in the manner required by the policy, so removing references to acute pain would resolve the issue.

Dr. Berndt moved that the Board adopt the proposed regulation with deletion of references to acute pain. Dr. Hardwick seconded the motion.

Discussion ensued regarding at what point acute pain becomes chronic pain.

A motion was taken on the motion and it passed unanimously.

- (b) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendments to Nevada Administrative Code Chapter 630, Amending NAC 630.430, NAC 630.440, NAC 630.450 and NAC 630.455 to Make the Time Limits for Submission of Requests to the Board for Consideration or Action Under Those Regulations Analogous (R002-14)

Mr. Cousineau stated that a workshop was held in May and a public hearing was held in July, and no comments were received at either, other than Ms. Woodbury saying she believed it was appropriate and it was supported by NSMA. He said the intent was to bring the three different avenues for requesting that a matter be placed on an agenda in line with one another. Currently, if an individual requests to amend or modify existing regulation, he/she has to request that from the Board at least 31 days in advance of the next regularly scheduled Board meeting, whereas for declaratory opinions or advisory opinions, the time frame is only 15 days, and for

other matters it is only 10 days. The language included in R002-14 will require all requests for matters to be placed on an agenda to be made at least 31 days in advance of the next regularly scheduled Board meeting.

Ms. Wilkinson moved that the Board adopt the regulation. Dr. Berndt seconded the motion and it passed unanimously.

- (c) Consideration of Request by the Nevada State Medical Association That the Board Rescind Its June 6 Action on Proposed Amendment R151-13 to Nevada Administrative Code Chapter 630 (Revising Provisions Relating to the Supervision of a Physician Assistant by a Physician and the Collaboration Between a Physician and an Advanced Practice Registered Nurse) and Schedule Additional Workshops and Public Hearings to Consider Additional Revisions to the Amendment

Mr. Cousineau explained that NSMA had requested that the Board recant the language it previously adopted at the June Board meeting and consider holding new workshops and public hearings with regard to the proposed amendment.

Stacy M. Woodbury, MPA, Executive Director of the NSMA, stated that after the regulation was adopted by Board and NSMA was allowed to see the final version, they had concerns with the fact that though supervising physicians would be required to review at least 5% of the charts quarterly, there was no requirement for the supervising physician's name to be noted in the chart or for the supervising physician to be informed that a patient was seen. Since NSMA didn't know how physicians were going to know what records they were supposed to review, she called Mr. Cousineau and they discussed it, but they could not resolve the issue, so rather than bringing it up before the Legislative Commission, NSMA decided to ask the Board to rescind its motion adopting the regulation. After NSMA submitted its request to the Board, Senator Dr. Joe Hardy submitted a bill draft to address the issue legislatively. NSMA has also been talking to the Nevada Academy of Physician Assistants (NAPA), who has proposed some alternate language, and they share an interest in trying to work some of these issues out legislatively, if possible. So at this point, NSMA was requesting the Board rescind its motion to adopt the regulation and table any further action on it.

Discussion ensued regarding the difficulties in determining what charts a supervising physician is to review when a physician assistant works for multiple physicians or in an emergency room setting where there may be multiple supervisors coming on and off shift who overlap the physician assistants.

Ben Prohaska, PA-C, President-Elect of NAPA, stated he was speaking on behalf of the Board of Directors of NAPA, and that they were in agreement with NSMA. NAPA and NSMA have had several discussions and NAPA would like to continue these discussions in order to try to resolve the problem efficiently. He said the name that needs to go on the chart is the name of the doctor who is responsible for the patient, and that was not made clear in what was adopted by the Board.

Dr. Hardwick moved that the Board rescind the Board's action whereby it adopted LCB File R151-13 at its June 6 Board meeting and to table any further action on the regulation. Dr. Berndt seconded the motion and it passed, with Dr. Neyland and Ms. Peltyn abstaining from the vote, Dr. Prabhu opposed to the motion and all remaining Board members voting in favor of the motion.

EXECUTIVE STAFF/STAFF REPORTS

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

Mr. Cooper described the requests for staff training that were before the Board for approval.

Dr. Berndt moved that the Board approve the requests for training. Dr. Neyland seconded the motion and it passed unanimously.

(b) Quarterly Update on Finances

(c) Consideration and Action Regarding Writing Off Bad Debt

Ms. Jenkins highlighted the various sections of the Balance Sheet. She stated the Board had a very solid financial position for the second quarter of 2014 and it was one of the Board's strongest in the last five years. She said the Board was in a very secure cash position, that the majority of the Board's assets were held in cash, and the current total was \$7 million between its CDs and checking account. She explained that Accounts 120 and 121 are the receivable accounts for compliance fines and administrative costs reimbursement, and that the total was \$329,000. Account 119 is the allowance for uncollectible compliance, which is the amount set aside by the auditors to show what they consider to be uncollectible for the Board, and this amount was \$158,000. This amount was already set aside in the Board's financials, which means the Board has already taken the bad debt expense in previous years for this entire figure. She stated the amount of bad debt staff was asking the Board to write off was \$60,897.73, which was only a portion of the total of \$158,000, and would just be a balance sheet change to reduce the allowance and the receivable. She explained the main reason for writing the listed accounts off was their age, and said that staff felt confident in moving forward to collect those debts that weren't set aside. She advised the Board that the Legal Division was working on new legal processes that will assist with the Board's collection efforts in the future. She then stated current total liabilities were \$3,700,000, which was lower than the Board's total assets, and the remainder of the balance was considered the Board's reserve, which staff is continuing to try to improve.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the second quarter of 2014. She stated the Board's income for the quarter was at 105% of budget and the personnel expense was at 95.7% of budget. The travel budget was over for travel out of state, due to so many people attending the FSMB Annual Meeting this year. Though it made the actual over budget for this item, and also the education and training account over by a little bit, it was a very positive thing for the Board and the Board's overall expenses were still at 92.8% of budget. The Board's interest income was at 173% of budget, which reflects the small increase in the interest rates. The Board's net income over expenses was \$290,000, which was better than budget by \$122,000.

Discussion ensued regarding whether the Board could require a former licensee to pay a debt that had been written off before granting a new license to that individual.

Discussion ensued regarding the Board's current and past collection practices, and whether the Board should turn debts to be written off over to the Controller's Office for collection.

Dr. Fischer moved that the Board accept the Quarterly Update on Finances with the caveat that the Board will send the bad debt to the Controller's Office. Dr. Chowdhry seconded the motion.

Discussion ensued regarding whether the collection agency used by the Board makes claims against the estates of deceased licensees who owed debts to the Board.

A vote was taken on the motion and it passed unanimously.

Agenda Item 17

LEGAL REPORTS

- Board Litigation Status

Mr. Van Ry reported there were currently 81 cases in the Legal Division, 6 of which had been presented to the Board for action at this meeting. There were 7 cases pending the CMT process, 15 cases awaiting filing of a formal complaint, 43 cases in which a formal complaint had been filed that were pending hearings, 7 of which were filed subsequent to the last Board meeting, and 51 letters of concern were approved by the Investigative Committees at their August meetings. He then provided a summary and update regarding various civil court cases in which the Board was involved.

Agenda Item 18

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the June 6, 2014 Board Meeting

Dr. Berndt moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the June 6, 2014 Board Meeting. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 19

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

19(a) Melinda Lamb, M.D.

Dr. Lamb appeared before the Board on her application for a licensure by endorsement.

Dr. Fischer asked Dr. Lamb whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Prabhu moved that the Board go into closed session pursuant to NRS 241.030. Dr. Neyland seconded the motion and it passed unanimously.

Upon returning to open session, Dr. Berndt moved that the Board grant Dr. Lamb a license by endorsement. Ms. Clark seconded the motion and it passed unanimously.

19(b) Gerardo Reyes Vidal, M.D.

Dr. Fischer asked Dr. Reyes Vidal 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 asked Dr. Reyes Vidal what he planned to do if granted a license in Nevada.

Dr. Reyes Vidal explained that he works for Accretive Health in Chicago. They perform chart reviews in order to assist physicians with proper documentation, and he needs a license in Nevada in order to review records for patients in Nevada.

Dr. Berndt questioned Dr. Reyes Vidal regarding his affirmative responses to Questions 5a and 5b on his application for licensure.

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

Dr. Berndt moved that the Board grant Dr. Reyes Vidal's application for licensure. Dr. Chowdhry seconded the motion and it passed unanimously.

19(c) Evelyn Del Rosario, M.D.

Dr. Del Rosario appeared before the Board on her application for a licensure by endorsement.

Dr. Fischer asked Dr. Del Rosario 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. Del Rosario regarding her affirmative response to Question 19 on her application for licensure.

Dr. Del Rosario explained the circumstances surrounding her remediation during residency training at William Beaumont Hospital.

Dr. Neyland asked Dr. Del Rosario about her practice history, and Dr. Del Rosario described it.

Dr. Neyland questioned Dr. Del Rosario regarding her affirmative responses to Questions 12 and 12a on her application for licensure.

Dr. Del Rosario explained the circumstances surrounding the one case of malpractice that had been filed against her.

Dr. Hardwick asked Dr. Del Rosario whether she was eligible to retake her board certification exam, and she stated she would have to go through residency training again in order to be eligible.

Ms. Wilkinson asked Dr. Del Rosario what she planned to do if granted a license in Nevada, and Dr. Del Rosario explained that she and her husband would like to live in Nevada due to its close proximity to their children, who live in California.

Dr. Neyland moved that the Board grant Dr. Del Rosario a license by endorsement. Dr. Prabhu seconded the motion and it passed unanimously.

19(d) John Tazelaar, M.D.

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

Dr. Fischer questioned Dr. Tazelaar regarding his affirmative responses to Questions 8, 9, 13 and 28 on his application for licensure.

Dr. Tazelaar stated he was a recovering alcoholic, described his history with alcohol, and explained the circumstances surrounding his three arrests in 2007. He stated he had been monitored for a year by the state of Illinois when he got a license there, and was currently being monitored by the state of Texas.

Dr. Fischer asked what he planned to do if granted a license in Nevada, and Dr. Tazelaar stated he planned to continue working at Companion DX, a molecular testing lab in Houston, Texas, as a molecular genetic pathologist, and would not be seeing patients in Nevada or writing prescriptions for anyone.

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

Agenda Item 20

CONSIDERATION OF REQUEST OF ROBERT CHANCELLOR, M.D. FOR APPROVAL OF COMPLETED PRECEPTORSHIP AND REMOVAL OF RESTRICTIONS/ CONDITIONS ON HIS MEDICAL LICENSE

Dr. Chancellor was present in Reno. Lyn E. Beggs, Esq. was present with Dr. Chancellor as his legal counsel. Dr. Chancellor's preceptor, Robert Troell, M.D., was present in Las Vegas.

Ms. Beggs stated that Dr. Chancellor was requesting that the Board lift the last restriction on his license, which was to fulfill six months of supervised surgical practice, as he had completed that requirement.

Dr. Berndt asked Dr. Chancellor what he had done during the time period from February 2007 to when he began the preceptorship with Dr. Troell, and Dr. Chancellor explained that he had worked at a medical collections agency in southern California.

Dr. Berndt asked Dr. Chancellor whether he planned to practice as a solo practitioner or work with someone else, and Dr. Chancellor said he planned to see what was available once he had an unrestricted license.

Dr. Hardwick asked Dr. Chancellor how long it had been since he practiced clinical medicine at the time he began his preceptorship, and Dr. Chancellor stated he did not practice clinical medicine between June 1998 and December 2013, as he was not in a position to do so.

Dr. Hardwick asked Dr. Chancellor how many procedures, and what types of procedures, he had performed during his preceptorship, and Dr. Chancellor described the types of procedures he had performed.

Dr. Troell stated that they had probably done 12 to 15 cases together a month, for 9 months, so the total was probably over 128.

Dr. Fischer asked Dr. Troell whether he would be comfortable having Dr. Chancellor perform surgery on him, and Dr. Troell indicated he would.

Discussion ensued regarding the Board's concerns with the fact that Dr. Chancellor had not practiced clinical medicine for several years.

Ms. Beggs stated that although Dr. Chancellor understood the Board's concerns, the history shows that Dr. Chancellor tried to work with the Board on numerous occasions to modify the conditions so he could comply with them to the best of his ability and ran into a lot of roadblocks. He had a very difficult time finding someone who was willing to supervise him with the restrictions that were on him, and he had now complied with that restriction. Additionally, he will have to go through the credentialing process to obtain hospital privileges and the hospitals are not going to grant him privileges if they don't feel he is qualified to have privileges for whatever procedures he is requesting, so there is a safety net there. Dr. Chancellor has complied with everything the Board has requested; he has been licensed since 2002 and has renewed every two years since then, and at no time has the Board had any concern with the renewal or added any additional restrictions or conditions, so to now add an additional condition or restriction would be inappropriate.

Dr. Troell said he thinks the most important thing is that the physician in question, Dr. Chancellor in this case, is competent as a surgeon, and that Dr. Chancellor has very good skills as a surgeon and makes prudent decisions.

Dr. Chowdhry asked for a refresher as to what occurred previously with respect to Dr. Chancellor's license, and Ms. Beggs provided a summary of Dr. Chancellor's history with the Board.

Dr. Fischer moved that the Board lift the restrictions on Dr. Chancellor's license. Dr. Berndt seconded the motion and it passed unanimously.

Agenda Item 21

CONSIDERATION AND APPROVAL OF NEW BOARD POLICY AND PROCEDURE MANUAL

Mr. Cooper explained that the Board's Policy and Procedure Manual had been completely revised due to very recent decisions in both the U.S. Supreme Court and the Nevada Supreme Court, as well as changes in the Fair Labor Standards Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Nevada Revised Statutes and the Nevada Administrative Code. He stated the Table of Contents included in the meeting materials for review was correct in its direction where to go; however, changes were subsequently made to that version of the Table of Contents on pages ii and iv, where it said "ERROR! BOOKMARK NOT DEFINED," and this previous version was mistakenly included instead. He explained that

the new manual was quite extensive and covered a wide range of topics. He asked if any Board members had questions regarding the proposed manual.

Ms. Wilkinson asked whether there was a whistleblower policy for employees included in the new manual. Mr. Cousineau stated that was found on page 16 under "Anti-Retaliation Policy."

Ms. Clark moved that the Board approve the employee handbook with the stipulation that the Table of Contents be revised. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 22

CONSIDERATION AND APPROVAL OF PROPOSED 2015 MEETING SCHEDULE

Discussion ensued regarding the date of the last day of the 2015 Nevada legislative session.

Dr. Hardwick moved that the Board approve the 2015 meeting schedule. Ms. Wilkinson seconded the motion.

Dr. Berndt requested that final approval be voted upon at the December meeting.

Dr. Hardwick accepted Dr. Berndt's amendment to the motion. Ms. Wilkinson seconded the amended motion and it passed unanimously.

Agenda Item 23

PERSONNEL

- Review of Final Performance Evaluation of Executive Director

Dr. Fischer stated he had contacted all Board members and requested their input prior to preparing this performance evaluation of Mr. Cooper, and all responses were positive. He then commended Mr. Cooper on his exemplary service to the citizens of the state and its physicians. Ms. Clark, Ms. Peltyn, Dr. Chowdhry, Dr. Berndt, Dr. Hardwick, Dr. Neyland and Dr. Prabhu praised Mr. Cooper for his knowledge, leadership and oversight as Executive Director.

Dr. Prabhu moved that the Board approve the final performance evaluation of the Executive Director. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 24

STAFF COMMENTS/UPDATES

Mr. Cooper stated there were no staff comments/updates for the Board at that time.

Agenda Item 25

MATTERS FOR FUTURE AGENDAS

Mr. Cooper stated the following items would be on an agenda for a future meeting: annual reviews of staff, probably at the March meeting; a discussion and decision regarding whether the Board wants to adopt by reference the FSMB Telemedicine Policy; the September 24 Board meeting for selection of the new Executive Director; an overview of the

licensure process at the December meeting; and a telephonic Board meeting regarding the FSMB Interstate Compact for Licensure.

Dr. Berndt stated he had been approached by a member of the Washoe County Medical Society, who chairs the Medical Ethics Committee at the state level, regarding how they might interact with the Board in a formal sense. Discussion ensued regarding how best that may be accomplished.

Discussion ensued regarding the fact that the Clark County Medical Society always makes a report to the Board but the other medical societies in the state do not. Dr. Fischer suggested that the Board invite the other medical societies in the state to give a presentation at the next Board meeting. Mr. Cooper stated he would do so.

Stacy M. Woodbury, MPA, Executive Director of NSMA, stated that other than the Clark County Medical Society and the Washoe County Medical Society, none of the other medical societies have full-time staff, so it may be difficult for them to attend meetings during the middle of the day.

Agenda Item 26

ELECTION OF OFFICERS AND APPOINTMENT OF COMMITTEE MEMBERS

Dr. Hardwick nominated Ms. Clark for Secretary-Treasurer. Dr. Fischer seconded the nomination and Ms. Clark was elected Secretary-Treasurer by unanimous vote.

Dr. Fischer nominated Dr. Berndt for Vice President. Dr. Neyland seconded the nomination and Dr. Berndt was elected Vice President by unanimous vote.

Dr. Hardwick nominated Dr. Fischer for President. Dr. Berndt seconded the nomination and Dr. Fischer was elected President by unanimous vote.

Dr. Fischer stated that Ms. Peltyn had been appointed to Investigative Committee B and asked if there were any Board members who were not already on an Investigative Committee who would like to serve on one at that time. No Board members responded. Dr. Fischer stated that, accordingly, the Investigative Committees would remain the same for the next year. Mr. Cooper reiterated that Dr. Berndt and Dr. Neyland were the Chairs of the two committees, Dr. Fischer and Dr. Chowdhry were the other physician members of the two committees, and Ms. Clark and Ms. Peltyn were the public members of the two committees.

Agenda Item 27

PUBLIC COMMENT

Dr. Fischer asked whether there was anyone in attendance who would like to present public comment.

Weldon Havins, M.D., J.D., stated he would like to join the Board members in congratulating and thanking Mr. Cooper for his years of service to the Board. He said he had been sitting in Board meetings since September 1999, and had seen the Board go through some trying times. Mr. Cooper took over during a very trying time for the Board, and through his intelligence and integrity, led the board out of financial and other public relations issues that

others probably couldn't have done as well. He said he would like to encourage the Board to read its regulations. With respect to the physician assistant issue, NAC 630.370 is clear that the supervising physician is responsible for all the medical care rendered by the supervised physician assistant, and NAC 630.375 further states that the physician assistant is the agent for the supervising physician. Therefore, if you are going to require the physician to review charts, the name of the supervising physician needs to be in the chart and the supervising physician needs to know the names of the patients, and the only way for the supervising physician to know that is to require the physician assistant to inform the supervising physician of the patient names. He said it seemed to him that would be a fundamental essential of any regulation or statute that may go forward on the issue.

ADJOURNMENT

Dr. Prabhu moved to adjourn. Dr. Chowdhry seconded the motion and it passed unanimously. Dr. Fischer adjourned the meeting at 2:51 p.m.

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