



# 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 6, 2015 – 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  
Bashir Chowdhry, M.D.  
Wayne Hardwick, M.D.  
Rachakonda D. Prabhu, M.D.  
Sandy Peltyn

#### *Board Members Absent*

Beverly A. Neyland, M.D.  
Ann Wilkinson

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*Staff/Others Present*

Edward O. Cousineau, J.D., Executive Director  
Todd C. Rich, Deputy Executive Director  
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

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 with the exception of Dr. Neyland and Ms. Wilkinson. Mr. Cousineau announced there was a quorum.

Mr. Cousineau introduced Alexia M. Emmermann, the Board's new General Counsel, and provided a brief summary of her background and experience.

Agenda Item 2

**PUBLIC COMMENT**

Dr. Fischer asked whether there was anyone in attendance who would like to present public comment. No public comment was received.

Agenda Item 3

**APPROVAL OF MINUTES**

- December 5, 2014 Board Meeting – Open Session

Dr. Prabhu moved that the Board approve the Minutes of the December 5, 2014 Board Meeting – Open Session. Dr. Berndt seconded the motion and it passed unanimously.

Agenda Item 4

**LEGISLATIVE UPDATE**

Keith L. Lee, Esq., Board Legislative Representative, stated he and Board staff are closely following 19 different measures, are engaged in 11 of those measures, and will continue to follow the bill draft requests. There are still a couple of weeks before all bill draft requests become bills and the bills are introduced. There is an April 10 deadline for bills to move out of committee from the house of origin. There are a lot of bills that are still in bill drafting, including a couple bills in which the Board has some interest. The Board's bill, AB227, was filed Wednesday and was given a tentative hearing date of March 16 before the Assembly Committee on Commerce and Labor. There are two other bills of interest to the Board that have not yet been introduced. The first is the Governor's telehealth bill. Mr. Lee explained that he and Board staff had served on an interim ad hoc committee convened by the Governor at which they provided information

regarding what is already permitted under the law in terms of consultations. He said he expects this will be a rather lengthy bill and the Board will need to spend some time reviewing it to see what works and what doesn't work from the Board's perspective. He suspects there will be a great deal of debate on the bill, as there are a lot of different interests and parties weighing in on it.

The second bill that is of great interest to the Board that hasn't yet been introduced is the Interstate Compact licensing bill. He said he believed it would be introduced either that day or the following Monday. He said he and Board staff had been meeting with a number of members of the Assembly and the Senate and have been receiving a great deal of accolades for the Board bringing the Interstate Compact and for all the work the Board and the Federation of State Medical Boards had put into it.

He stated that ABI64, which we refer to as the "Right to Try Bill," would be heard that afternoon. He explained that one hearing on SB181, a bill to add an additional licensure category under Chapter 630 for anesthesiologist assistants, had been held thus far, at which both proponents and opponents testified, that an amendment or two were offered, and that the bill was pending a work session in the Senate Commerce, Labor and Energy Committee.

Dr. Fischer asked what the opponents to the anesthesiologist assistant bill said in the hearing. Mr. Lee stated the only opponents he recalled were a group of nurse anesthetists who felt they would be displaced if anesthesiologist assistants were licensed.

#### Agenda Item 5

#### CONSIDERATION AND ACTION REGARDING VARIOUS LEGISLATIVE INITIATIVES NOT PREVIOUSLY CONTEMPLATED BY THE BOARD

Mr. Cousineau explained that he, Mr. Lee and Ms. Comis met with Assemblyman Ohrenschall regarding ABI64 last month and Assemblyman Ohrenschall asked if they would be willing to put the proposed legislation before the Board.

Craig Handzlik, State Policy Coordinator for the Goldwater Institute, stated the proposed legislation is currently law in five other states. It is a bipartisan bill that has a wide variety of support. In this session, it is either in front of the Governor, passed one house or has been introduced in 29 additional states. He then described the intent of ABI64. The bill says if your doctor has given you a terminal diagnosis and there is a medication that has passed the first phase of FDA clinical trials and trials are still ongoing, then a patient, along with his or her doctor, can request access to that medication directly through the manufacturer of the medication. To do so, there are a couple of other criteria which must be met. One is informed consent between the physician and the patient outlining all the possible negative side effects and possible financial liability to the patient, as well as any other positive or negative effects that trying an investigational medication might have. Mr. Handzlik stated this is essentially a personal freedom issue. The bill does not mandate that anyone take part in the program; all it does, essentially, is open the door, and who walks through it is entirely up to physicians and patients.

Dr. Berndt asked whether the proposed bill would more precisely define "terminal condition."

Janette Dean, Political Scientist with Assemblyman Ohrenschall's office, explained that AB164 uses the definition for "terminal condition" found in NRS 449.590: "terminal condition means an incurable and irreversible condition that without the administration of life-sustaining treatment will, in the opinion of the attending physician, result in death within a relatively short time."

Dr. Fischer asked about the FDA's position on this concept and asked whether the patients will get a deal on the cost of the medications that haven't gone through the FDA's complete trial process since the drug companies haven't had to go through all of the same research and development that they have with fully-FDA-approved medications.

Mr. Handzlik stated the FDA had publicly come out as neutral on "right to try," but now that they see the bill is currently running in 29 states, it is law in 5, and it is reaching governors' desks, they are beginning to realize that their compassionate use program, expanded access, is a very cumbersome and time-consuming process that does not work for the segment of the population that has a terminal illness. So they have started to make some moves to try to adjust their own process. With respect to the cost, in the vast majority of other states, the bill says that a manufacturer of an investigational medication may provide the medication at no cost to the patient or they may seek to recoup the cost of the production of the dose that that patient would receive.

Ms. Clark expressed concern regarding possible instances where people may be led down paths that have no real hope just because the treatments had passed a certain stage of the trials.

Mr. Handzlik explained that it is a 10- to 12-year process that costs somewhere in the neighborhood of a billion dollars just to get through the first phase of the FDA clinical trials, and these medications also need to be prescribed for the sole purpose of saving or prolonging one's life. "Right to try" does not apply to medications that might have some beneficial use to a terminally-ill patient in terms of comfort, pain management or the like.

Dr. Berndt stated it is often very difficult to enroll patients in Phase II studies and it is very important to society that we have Phase II studies, and asked if Mr. Handzlik thought this would discourage people from entering true randomized Phase II studies because they could go this route and get in there quicker without a lot of the rigorous things that you have to do when you go through a true randomized Phase II study.

Mr. Handzlik stated this would not discourage patients from entering into FDA clinical trials for one main reason – that most of the time, terminally-ill patients are not permitted access to clinical trials in the first place.

Dr. Hardwick moved that the Board support the advancement of AB164 to the Legislature. Ms. Clark seconded the motion and it passed unanimously.

Mr. Cousineau introduced Jerry Matsumura, M.D., a local anesthesiologist, and Robert Wagner, an anesthesiologist assistant and a professor at Nova Southeastern University in Florida, who were present to provide background and answer questions as they related to SB181.

Dr. Matsumura stated he represented Associated Anesthesiologists, a 54-physician anesthesiology group in Reno, which is the largest medical group in Northern Nevada and the sole provider of anesthesiology services for Renown Health Systems. He said he was also the Past-President of the Nevada State Society of Anesthesiologists, the author of SB181. He explained that as the person in charge of credentialing and scheduling for his anesthesiology group, and a member of their management committee, they have had a difficult time recruiting enough anesthesia providers to the area. He stated that while you will find there are some people giving testimony in certain areas that there are plenty of anesthesiology providers, his group is constantly in a scramble to find people. Additionally, they find that when they bring anesthesiologists to the area who don't have ties to the area, such as family, they come and work for a few years and then family ties usually draw them away. So recently they started to look at expanding to use CRNAs within their group. They went on a national search, got it down to about four CRNA's they were looking at hiring, and last winter had two in their office they were ready to hire. They created a category for them and for AAs at Renown Health Systems. Then, because of contracting issues, they weren't able to hire the CRNAs, so they tabled it for the next round of contract negotiations and at the same time decided they would start looking for anesthesiologist assistants. However, at this point, there is no provider category for anesthesiologist assistants, so that is why they are trying to pass this bill; to help increase the supply of anesthesia providers.

Dr. Fischer asked whether anesthesiologists in Las Vegas were in support of the bill. Dr. Matsumura stated they received unanimous approval from those attending the last two meetings of the Nevada State Society of Anesthesiologists.

Discussion ensued regarding the supervisory requirements for anesthesiologist assistants in the proposed bill.

Dr. Berndt asked whether including anesthesiologist assistants in their provider service was necessary to satisfy cost-effectiveness at Renown. Dr. Matsumura stated it was, and that nationally, almost over 90% of other large groups use an anesthesia care team model, which includes anesthesiologist assistants. He stated that in the western United States, only Colorado and New Mexico already have this category, so by creating this category of anesthesiologist assistants, we will have our pick almost of the western half of the United States of anesthesiologist assistants who want to come here.

Discussion ensued regarding the relationship between Medicaid reimbursement and the difficulty in recruiting anesthesiologists.

Discussion ensued regarding the various employment models for anesthesiologist assistants, qualifications and specialization of anesthesiologist assistants, supervision of anesthesiologist assistants by physician anesthesiologists, and malpractice insurance coverage for anesthesiologist assistants. Mr. Wagner described the anesthesiologist-anesthesiologist assistant relationship.

Mr. Cousineau explained that if the bill passes, anesthesiologist assistants will be licensed and regulated by this Board. He said when staff and Keith Lee met with the lobbyist who represents the anesthesiologist assistants, she estimated there would be 20 to 40 potential licensees in the first biennium, which would increase thereafter. He said he didn't believe the licensee base would be terribly significant very soon. There will be initial startup costs to the

Board and some exhaustive regulations will need to be promulgated, similar to what occurred in 2009 with the addition of perfusionists.

Mr. Wagner indicated that within the Nova Southeastern University system there are currently four Nevadans who will graduate in August and who have been doing clinical rotations as students in Las Vegas, so he thinks the numbers are roughly correct.

Dr. Prabhu asked how an anesthesiologist can supervise four anesthesiologist assistants at one time and whether the anesthesiologist would also be taking care of another patient of his or her own at the same time. Mr. Cousineau stated that the bill states, and the lobbyist had indicated, that an anesthesiologist who is supervising one or more anesthesiologist assistants cannot be actively treating a patient at the same time, and Dr. Matsumura and Mr. Wagner concurred. Further discussion ensued regarding supervision of anesthesiologist assistants.

Dr. Hardwick moved that the Board encourage the advancement of SB181 through the Nevada State Legislature. Dr. Berndt seconded the motion and it passed, with Dr. Prabhu voting against the motion and all remaining Board members voting in favor of the motion.

#### Agenda Item 6

#### CONSIDERATION AND ACTION REGARDING PROPOSED AMENDMENT TO NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.080 to Add Language Which Requires That an Applicant for Licensure Has Actively Practiced Clinical Medicine for the Past Five Years in Any State or Country in Which the Applicant is Licensed, or Has Had the Official Authority to Practice (R134-14)

Mr. Rich explained the genesis for the proposed regulation was a change during the 2013 legislative session relative to NRS 630.020 and NRS 630.261. He stated a public workshop and a public hearing had been held in November 2014. No verbal comment was received at either the workshop or hearing, and no written comment had been received.

Mr. Cousineau explained that this regulatory change relates to the creation of the special purpose license for telehealth during the last legislative session and recognizes those individuals who have met the five-year clinical practice threshold while outside of the United States.

Dr. Berndt moved that the Board adopt the regulation as written. Dr. Hardwick seconded the motion and it passed unanimously.

#### Agenda Item 7

#### CONSIDERATION OF REQUEST OF SEAN SU, M.D. FOR REMOVAL OF RESTRICTIONS ON HIS MEDICAL LICENSE

Dr. Su appeared in Las Vegas.

Dr. Su explained that he was asking the Board to lift the restrictions on his medical license because having a restricted-status license is creating barriers for employment. It has been five years since those restrictions were placed on his license. If the Board were to lift those

restrictions, he would continue to follow those conditions; however, an unrestricted license would allow him to seek employment with medical groups. Employers and insurers are requesting Board Certification in order to hire him or contract with him. He was Board Certified in 2000, but is unable to be recertified, as the American Board of Family Medicine requires a full, unrestricted license to sit for the exam.

Mr. Cousineau explained that the structured settlement entered into with Dr. Su provided that as long as Dr. Su was licensed in Nevada, he would never be allowed to perform certain procedures, specifically plastic surgery and the like. Dr. Su did come before the Board a couple of years after the settlement was entered, and the Board acquiesced to allow him to perform various minimal cosmetic procedures. Mr. Cousineau stated he did not believe the intent at the time the Board adopted the settlement was to ever allow these conditions to be lifted and he doesn't believe it would be appropriate to give Dr. Su an unrestricted license and then enter into a separate agreement through which Dr. Su would agree to abstain from these various procedures. He believes the spirit and the understanding at the time the settlement was entered was that these conditions would be permanent. So he could not, as staff, advocate for removal.

Dr. Su said he did not realize at the time he entered into the settlement that he would be excluded from employment with a restricted license, which is what is occurring now. He made a mistake in the past, and has grown and learned from his mistakes and was pleading with the Board to allow him to continue to practice medicine.

Dr. Fischer stated that in the event the Board was to grant Dr. Su an unrestricted license, it didn't have the power to enforce the condition if Dr. Su decided to again do cosmetic procedures, and stated Dr. Su had legal counsel at the time he agreed to the settlement with the Board.

Mr. Cousineau said he had worked with Kris Rath for many years in many matters, and considered him to be very competent counsel, and seriously doubted he did not explain to Dr. Su the potential ramifications of entering into the settlement agreement. In fact, he recalled that he specifically brought that to both Dr. Su's and Mr. Rath's attention when they spoke telephonically prior to the settlement agreement being entered.

Dr. Su stated that Mr. Rath told him he would be employable with these restrictions.

Discussion ensued regarding whether the Board should lift the restrictions from Dr. Su's license.

Dr. Prabhu moved that the Board grant Dr. Su an unrestricted license and remove the restrictions on his medical license. Dr. Chowdhry seconded the motion.

Dr. Fischer asked Dr. Su how soon he could take his board recertification exam in the event the Board granted him an unrestricted license, and Dr. Su stated it would be several years.

A vote was taken on the motion and it failed, with Dr. Chowdhry, Dr. Prabhu and Ms. Peltyn voting in favor of the motion and Dr. Fischer, Dr. Berndt, Ms. Clark and Dr. Hardwick voting against the motion.

Dr. Hardwick moved that the Board deny Dr. Su's request. Ms. Clark seconded the motion and it passed, with Dr. Fischer, Dr. Berndt, Ms. Clark and Dr. Hardwick voting in favor of the motion and Dr. Chowdhry, Dr. Prabhu and Ms. Peltyn voting against the motion.

#### Agenda Item 8

#### REPORTS

##### (a) Physician Assistant Advisory Committee

Physician Assistant Advisory Committee member Janet Wheble, PA-C, stated the current members of the Physician Assistant Advisory Committee, as well as recent past members, were very grateful for the opportunity to work with the Board on issues involving physician assistants in the state and they take this responsibility very seriously. They have met with physician assistants, the Clark County Medical Society and the Nevada State Medical Association multiple times regarding legislative proposals for the current legislative session. She then read a message to the Board from Physician Assistant Advisory Committee Member Roy Monty Cary, who was resigning his position on the Physician Assistant Advisory Committee.

##### (b) Investigative Committees

###### - Consideration of Cases Recommended for Closure by the Committees

Dr. Berndt reported that at its December 8, 2014 meeting, Investigative Committee A considered 65 cases. Of those, the Committee authorized the filing of a formal complaint in 1 case, sent 6 cases out for peer review, requested an appearance in 7 cases, issued 32 letters of concern, referred 4 cases back to investigative staff for further investigation or follow-up and recommended closure of a total of 15 cases. At its February 20, 2015 meeting, Investigative A considered 124 cases. Of those, the Committee authorized the filing of a formal complaint in 6 cases, sent 9 cases out for peer review, requested an appearance in 12 cases, issued 39 letters of concern, referred 4 cases back to investigative staff for further investigation or follow-up and recommended closure of a total of 54 cases.

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

Dr. Chowdhry reported that at its February 10, 2015 meeting, Investigative Committee B had met and considered 73 cases. Of those, the Committee sent 5 cases out for peer review, requested an appearance in 1 case, issued 14 letters of concern, referred 2 cases back to investigative staff for further investigation or follow-up and recommended closure of a total of 51 cases.

Dr. Berndt moved to approve for closure the cases recommended by Investigative Committee B. Dr. Chowdhry 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 537 and the current number of cases per investigator was 77. There were 13 peer reviews in the field and 16 peer reviews awaiting assignment. She advised the Board that she was in the process of setting



up interviews to hire another Investigator in the Las Vegas office, which was necessary to handle the number of cases there.

## (2) Quarterly Compliance Report

Ms. Castagnola reported that a total of \$9,422.77 in costs and no fines had been collected during the fourth quarter of 2014, for a total of \$9,422.77. The total costs outstanding was \$200,159.38, the total fines outstanding was \$41,617.00, for a total amount outstanding of \$241,776.38. The total compliance collections costs collected in 2014 was \$804.28. Since the end of the fourth quarter to date, an additional \$2,144.52 in costs and \$12,336.85 in fines had been collected.

## (d) Nevada State Medical Association Report

Stacy M. Woodbury, Executive Director of the Nevada State Medical Association (NSMA), reported that Assemblyman Oscarson, who is going to be sponsoring the telehealth bill, expects the bill to be out next week. One thing she wanted the Board to be aware of is that the bill includes a proposal for a consult that will be defined in state law and will allow an unlicensed person to provide that consult. The bill describes what a consult is and rules out certain things: you can't diagnose or direct or manage care if you are a consultant. In addition to being the Governor's bill, the main proponents of the bill are from Renown, and NSMA has been in discussions with Renown for a few months regarding the bill. NSMA has concerns about how a provider of health care can consult with someone without confirming a diagnosis themselves before providing advice, so ideologically, they are not sure how that might be implemented. They also have real issues with having a licensed health care provider in Nevada being given advice on treating a patient by someone who is not also licensed in the state and also that if something goes wrong, the appropriate board could not take disciplinary action against that person. NSMA has been talking to the APRNs and the RNs and plan to talk with the Nursing Board and Pharmacy Board, but NSMA is hopeful the Board might share their concerns. Two years ago, the Legislature created a special license for telehealth, that she understands has not been used by very many people in the state, and she doesn't think it is overly burdensome for someone to get that license or to get a medical license if they want to diagnose, treat and consult on patients in the state. She said NSMA had also been monitoring some of the same bills as the Board's lobbyist and would also be monitoring several bills on prescription drug abuse they understood would be forthcoming. NSMA's annual Physicians Day at the Legislature will be held on April 23 and its annual Membership Meeting will be held at the Hyatt Regency at Lake Tahoe April 24-26.

## (e) Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that CCMS would be kicking off their junior mini-internship program, which will run from March 9 through 26. CCMS has approximately 50 applicants, which is the largest number they have ever had, and it has been a very successful program. The students selected to attend are chosen by the Clark County School District. CCMS plans to run the junior program in the spring and the adult program in October. The CCMS installation dinner will be held June 27, with a location to be determined. Ms. Moses thanked Dr. Hardwick, Ms. Peltyn, Mr. Cousineau and Mr. Rich for attending the CCMS town hall meeting in January. On October 15, CCMS held a CME in collaboration with the Nevada Psychiatric Association, and brought in a national

Speaker – the Chief Medical Officer for the Substance Abuse and Mental Health Services Administration. Approximately 60 local physicians participated. CCMS is building a new office building at the current office site, and anticipate a groundbreaking sometime around July.

Agenda Item 9

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SYED NAEEM AHMED, M.D.*, BME CASE NO. 14-9147-1

This item was not discussed at the meeting.

Agenda Item 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CESAR A. ESTELA, M.D.*, BME CASE NO. 14-19407-1

Dr. Estela was not present.

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

Ms. Albright outlined the allegations contained in the Complaint filed against Dr. Estela and the terms of the proposed Settlement Agreement.

Dr. Prabhu 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 11

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ARLYN M. VALENCIA, M.D.*, BME CASE NO. 14-26427-1

Dr. Valencia was not present.

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

Ms. Albright explained that an Order of Summary Suspension was filed against Dr. Valencia on August 21, 2014, after the Board's Investigative Committee received evidence and information that Dr. Valencia needed to enroll in an immediate detoxification program. After Dr. Valencia's license was summarily suspended, the Investigative Committee approved the filing of a formal complaint. Ms. Albright then described the allegations contained in the Complaint filed against Dr. Valencia. She stated that after multiple negotiations and a review of Dr. Valencia's evaluation, a settlement was reached. Ms. Albright then outlined some of the terms of the proposed Settlement Agreement.

Dr. Hardwick 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. PETER H. PHILANDER, M.D.,  
BME CASE NO. 14-12104-1

Dr. Philander was not present. Dr. Philander's legal counsel, Brianna Smith, 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 Complaint filed against Dr. Philander. She then explained that after the Complaint was filed, additional records were provided by Dr. Philander and his counsel and were reviewed by the Investigative Committee's peer reviewer. After the peer reviewer's review of those records, it was determined the Investigative Committee could not proceed with two of the four counts alleged in the Complaint. After multiple negotiations, a settlement agreement was reached. Ms. Albright then outlined the terms of the proposed Settlement Agreement.

Dr. Berndt 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 13

CONSIDERATION AND ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL  
LICENSE OF DAVID R. ARMITAGE, PA-C, LICENSE NO. 620

Mr. Armitage 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 Mr. Armitage, accompanied by his actual license to practice medicine. Since Mr. Armitage 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. Chowdhry moved that the Board accept the voluntary surrender of Mr. Armitage's license. Ms. Clark seconded the motion and it passed unanimously, with all adjudicating 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. Cousineau described the single request for staff training that was before the Board for approval.

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

(b) Quarterly Update on Finances

Ms. Jenkins highlighted the various sections of the Balance Sheet for the fourth quarter of 2014. She explained that the majority of the Board's assets are held in cash and CDS, and the total of those asset items was \$5,795,000, with the Board's total assets being \$6,139,000. The Board's liabilities are primarily held in deferred income, which are license renewal fees that are held over the course of the biennium. The Board's total liabilities were \$2,145,000. The next renewal period will start in April and there will be a new set of renewal fees that will be recognized during the balance of the biennium beginning July 1. The total equity represents the Board's reserves, which was \$3,993,000.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the fourth quarter of 2014. She stated the Board's income was almost 5% over budget at 104.8% of its budgeted revenue. The majority of the overage was in Account 401, medical doctor registration fees. The personnel expenses were at 98.6% of budget and the operating expenses were at 88% of budget. The Board's interest income was \$4,000 above budget.

Dr. Berndt moved that the Board accept the report. Ms. Clark seconded the motion and it passed unanimously.

(c) Consideration and Approval to Enter Into New Lease Agreement for the Medical Board Office in Las Vegas

Mr. Rich explained that the sublease with the Dental Board for the Board's office space in Las Vegas expires in May. The staff is very happy with the physical space and location of the office in Las Vegas, we have had positive experiences with the building owner and have no reason or desire to engage in the process of finding new office space. Board staff had engaged in discussions with Dental Board leadership and both parties were interested in continuing the agreement that we share our collective conference rooms for Board meetings. It has been agreed it is in the best interests of both parties to enter into separate lease agreements with the building owner, rather than to enter into another sublease. The Dental Board is moving down the path to negotiate directly with the building owner. Board staff is interested in negotiating a reasonable five-year lease with a few needed tenant improvements. These include adding a new wall to create a new office for the new Investigator and updating the restrooms and break room. He said staff was asking for the Board's approval to allow Mr. Cousineau to enter into this agreement.

Dr. Hardwick moved that the Board authorize Mr. Cousineau to negotiate and enter into a new lease in Las Vegas. Ms. Clark seconded the motion.

Dr. Berndt asked whether Mr. Cousineau would come back to the Board with the negotiated terms for final approval or whether the Board was giving him authorization in advance to enter into the lease. Mr. Cousineau stated the Board was giving him authorization to determine what was reasonable and enter into the lease. He then explained that based on preliminary negotiations, over the course of five years, the total increase was anticipated to be \$27,000 more than what the Board was currently paying; however, he thought staff may be able to negotiate better terms. Of that \$27,000, approximately \$21,000 would be used for the improvements Mr. Rich had described. He stated the expenditure falls within the Board's budget. Ms. Clark concurred.

#### Agenda Item 15

##### LEGAL REPORTS

###### - Board Litigation Status

Ms. Albright reported there were currently 73 cases in the Legal Division, 4 of which had been presented to the Board for action at this meeting. There were 17 cases pending the CMT process, 11 cases awaiting filing of a formal complaint, 31 cases in which a formal complaint had been filed that were pending hearings, 4 of which were filed subsequent to the last Board meeting, and 59 letters of concern were approved by the Investigative Committees at their February meetings. She provided a summary and update regarding the various civil court cases in which the Board was currently involved.

#### Agenda Item 16

##### LICENSURE RATIFICATION

###### - Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the December 5, 2014 Board Meeting

Dr. Chowdhry moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the December 5, 2014 Board Meeting. Dr. Prabhu seconded the motion and it passed unanimously.

#### Agenda Item 17

##### APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

###### 17(a) Jay W. Eneman, M.D.

Dr. Eneman appeared before the Board on his application for licensure by endorsement.

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

Dr. Prabhu questioned Dr. Eneman regarding the fact that he had not disclosed one of the cases of malpractice that was pending against him on his application for licensure.

Dr. Eneman explained that it was an accidental oversight, and was not done in attempt to hide it, as he had listed all of his other malpractice cases. He stated that his application had already been submitted at the time, the case had just come up and he wasn't sure it was actually a case at the time, as he never received a subpoena until later, by mail. His practice and his hospital had been closed and he had a lot going on at the time trying to find other work. He stated that to date, he didn't know what the case was about.

Dr. Prabhu questioned Dr. Eneman regarding his affirmative responses to Questions 5a and 5b on his uniform application for licensure.

Dr. Eneman explained the circumstances surrounding the one case of malpractice that had been filed against him which resulted in a settlement and one of the two additional cases of malpractice that were pending against him.

Dr. Prabhu asked Dr. Eneman what he planned to do if granted a license to practice medicine in Nevada.

Dr. Eneman explained that he had stopped practicing surgery and closed his practice two years ago, due to Hurricane Sandy. He and his wife had decided to relocate to Nevada and he would like to practice part-time, but does not plan to return to surgical intervention.

Dr. Berndt questioned Dr. Eneman regarding the fact that he had not practiced orthopedic surgery for the past two years.

Dr. Eneman explained that although he had not performed orthopedic surgery, he had continued to practice clinical medicine, and had no intention to return to performing surgery.

Dr. Fischer asked Dr. Eneman whether he would be willing to undergo a peer review, and Dr. Eneman asked what a peer review entailed.

Ms. Daniels explained the peer review process and stated Dr. Eneman would be responsible for the cost of the peer review.

Dr. Eneman indicated he would be willing to undergo a peer review.

Dr. Berndt moved that the Board grant Dr. Eneman a license by endorsement contingent upon successful passage of a peer review. Dr. Hardwick seconded the motion and it passed unanimously.

#### 17(b) John A. Lang, M.D.

Dr. Fischer asked Dr. Lang 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. Lang regarding his affirmative responses to Questions 5a and 5b on his Uniform Application for Licensure.

Dr. Lang explained the circumstances surrounding the three cases of malpractice that had been filed against him which resulted in a settlement.

Dr. Chowdhry asked Dr. Lang what he planned to do if granted a license to practice medicine in Nevada.

Dr. Lang explained that he currently served in the public health service in the Bureau of Prisons for the Department of Justice and was the clinical director and a physician at Federal Correctional Institute Herlong in Herlong, California. He said he would like a Nevada license because St. Mary's has a contract with the prison to take care of the inmates, and to keep his skills up, he would like to apply for privileges at St. Mary's to at least perform colonoscopies and small procedures and monitor the inmates while they are in-patients, mainly to save taxpayer money, but there are also safety issues in transporting the inmates.

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

17(c) Glenn E. Irwin, Jr., M.D.

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

Ms. Clark questioned Dr. Irwin regarding the fact that he had not practiced clinical medicine since June 2010.

Dr. Irwin described what he had been doing since June 2010. He explained that he had been working full-time for a company named Executive Health Resources, performing concurrent compliance reviews, and described what compliance reviews are.

Ms. Clark asked Dr. Irwin what he planned to do if granted a license to practice medicine in Nevada.

Dr. Irwin explained that the company he would potentially be working for, Southwest Medical Associates, had 22 primary care clinics, and he would be practicing primary care in an office setting, treating patients, and would not be practicing independently or privately.

Mr. Cousineau stated that Dr. Irwin had entered into a six-month preceptorship with Southwest Medical Associates, which would be a condition on Dr. Irwin's license, and that Dr. Irwin would have to come back to the Board after six months to request that the condition be removed.

Ms. Clark moved that the Board grant Dr. Irwin a license contingent upon the conditions delineated on page 39 of Dr. Irwin's application packet and that he can come back to the Board after six months to request removal of the conditions from his license. Dr. Hardwick seconded the motion and it passed unanimously.

17(d) Christine P. Chao, M.D.

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

Dr. Berndt asked Dr. Chao what she had been doing since her fellowship. Dr. Chao explained that she had been continuously employed since she completed her fellowship and was currently practicing as a diagnostic radiologist at Sutter Medical Group in Sacramento, California.

Dr. Berndt asked Dr. Chao whether she would be performing diagnostic radiology if granted a license to practice medicine in Nevada. Dr. Chao explained that she would, and would be providing those services from Sacramento, as her group provides services for hospitals in Nevada that don't have radiology coverage.

Dr. Berndt questioned Dr. Chao regarding her affirmative response to Question 12a on her application for special purpose licensure.

Dr. Chao explained the circumstances surrounding the single case of malpractice that had been filed against her.

Dr. Berndt moved that the Board grant Dr. Chao a special purpose license. Dr. Chowdhry seconded the motion and it passed unanimously.

17(e) George V. Simon, M.D.

Dr. Fischer asked Dr. Simon 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. Simon regarding his affirmative responses to Questions 12 and 12a on his application for licensure.

Dr. Simon explained the circumstances surrounding two of the cases of malpractice that had been filed against him that resulted in a settlement.

Dr. Fischer asked why Dr. Simon wanted to practice in Nevada, and Dr. Simon explained that he wanted to close his office in the Bay Area and work in Nevada.

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

17(f) Joaquin P. Guzon, M.D.

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

Dr. Hardwick questioned Dr. Guzon regarding the fact that he did not disclose two incidents that occurred in Missouri in his initial response to Question 31 on his application for licensure.

Dr. Guzon stated he had nothing to hide; that it was an error.

Dr. Hardwick recommended that Dr. Guzon withdraw his application and then reapply with a clean application. He explained that if the Board decided not to grant him a license that day, he would have something else to report to the other states.



Dr. Berndt asked Dr. Guzon if he currently held an active license in any state, and Dr. Guzon stated he held an active license in Missouri.

Dr. Berndt asked Dr. Guzon whether he had been practicing medicine since January of 2013, and Dr. Guzon stated that he had been practicing full-time as an emergency physician in Missouri.

Dr. Berndt stated he was concerned with the fact that Dr. Guzon had a very poor record communicating with other medical boards and was now giving this Board alibis regarding what had occurred, and asked why this Board should trust him to communicate with it candidly.

Dr. Guzon stated he did not realize that if there was an adverse action on his license, he should report it immediately to the boards.

Dr. Fischer asked Dr. Guzon why he wanted a license in Nevada. Dr. Guzon explained that his sister lived in Henderson and had asked him to visit her frequently, and he has friends who live in Las Vegas.

Dr. Fischer asked Dr. Guzon if he comprehended what Dr. Hardwick had told him, and Dr. Guzon stated this was the first time he found out that he had to report the case immediately after it happened.

Mr. Cousineau said he wanted to clarify what he thought Dr. Hardwick was trying to impart. Dr. Guzon could decide to proceed and allow the Board to take a vote on whether to grant his application for licensure. There was the potential that it could be denied, which would be reportable to various national bodies and would be a further blight on Dr. Guzon's record. The alternative was that Dr. Guzon could withdraw his application and submit a new application that was factually correct.

Dr. Fischer explained to Dr. Guzon that he had two choices. The Board could vote on whether or not to grant him a license that day or he could withdraw his application and could reapply with a new, accurate application.

Dr. Prabhu advised Dr. Guzon that his best course of action would be to withdraw his application that day and reapply with an application that was complete, with no omissions.

Dr. Guzon withdrew his application.

#### 17(g) Daisy de Guzman, M.D.

Dr. de Guzman appeared before the Board on her application for licensure by endorsement.

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

Hardwick questioned Dr. de Guzman regarding her affirmative response to Question 13 on her application for licensure.

Dr. de Guzman stated that her probation would end on 9/16/15, that she had been excluded from Medicaid and Medicare and that her Internal Medicine Board Certification had been rescinded. She said her last major examination was in 1978 and she had not practiced clinical medicine since February 2012.

Dr. Hardwick questioned Dr. de Guzman regarding her negative response to Question 30 on her application for licensure.

Dr. de Guzman explained that she had answered the question in the negative because she had misunderstood the question.

Dr. Hardwick questioned Dr. de Guzman regarding her negative response to Question 32 on her application for licensure.

Dr. de Guzman explained that she had answered the question in the negative because according to her lawyer, she was only required to give up her medical license, not her DEA registration. However, the sentencing memorandum required her to surrender her DEA registration since she no longer had a medical license.

Dr. Hardwick asked Dr. de Guzman whether she would be able to take her recertification exam after she had completed her probation, and she indicated she could.

Dr. Hardwick stated he did not think Dr. de Guzman met the criteria for licensure by endorsement.

Dr. de Guzman asked that the Board grant her a restricted license so she could participate in a preceptorship and work as a volunteer physician as a re-entry program.

Mr. Cousineau explained that Dr. de Guzman had applied for licensure by endorsement, and not for a restricted license, and that she would need to submit a different application for a restricted license, together with a formal preceptorship plan.

Dr. de Guzman stated she could not participate in a preceptorship without a license.

Discussion ensued regarding the options available to Dr. de Guzman to become eligible for a license in Nevada. Dr. Prabhu suggested that Dr. de Guzman reapply to the Board with a preceptorship plan.

Dr. Fischer suggested that Dr. de Guzman withdraw her application and speak with the Licensing Division prior to any reapplication to discuss the options available to her.

Further discussion ensued regarding the options available to Dr. de Guzman to become eligible for a license in Nevada.

Dr. de Guzman withdrew her application.

Agenda Item 18

**CONSIDERATION AND APPROVAL OF REVISIONS TO BOARD POLICY AND PROCEDURE MANUAL, TO INCLUDE POTENTIAL CHANGES TO THE BOARD'S PAYROLL SCHEDULE, TIMEKEEPING PROCEDURES AND BENEFITS**

Mr. Cousineau explained that in September 2014, the Board adopted a new policy and procedure manual. The policy and procedure manual addresses the requirement for a timekeeping system, and a new timekeeping system was implemented the previous Monday. In conjunction with that, staff was proposing a biweekly payroll schedule to replace the current bimonthly schedule, which was strongly recommended by the Board's Secretary-Treasurer.

Mr. Rich added that the second change staff was requesting was the addition of a holiday that was inadvertently left out of the new policy and procedure manual.

Mr. Cousineau explained that the holiday that was not included was family day – the day after Thanksgiving – which is a state holiday. Additionally, staff was requesting a change to the paid vacation and sick leave based on the changes to the payroll schedule.

Dr. Berndt moved that the Board adopt the revisions to the policy and procedure manual. Dr. Chowdhry seconded the motion and it passed unanimously.

Agenda Item 19

**CONSIDERATION AND APPROVAL OF ADDITIONS TO BOARD WEBSITE**

Ms. Munson explained that staff was requesting approval to add a “career corner” to the Board's website where staff could post job openings as they come available, as another way to reach prospective applicants.

Ms. Clark moved that the Board approve the proposed addition to the Board's website. Ms. Peltyn seconded the motion and it passed unanimously.

Agenda Item 20

**ANNUAL REVIEW AND DISCUSSION OF PROFESSIONAL COMPETENCY OF STAFF**

Mr. Cousineau stated that the annual reviews of all Board employees had been accomplished and to date, he had received no requests from any Board members to review any of those evaluations.

No Board member expressed an interest in reviewing any employee's evaluation.

Agenda Item 21

**DISCUSSION REGARDING THE BOARD'S CURRENT FISCAL RESERVES AND CONSIDERATION AND ACTION REGARDING MAINTENANCE OR REDUCTION OF THOSE RESERVES BY VARIOUS MODALITIES, TO INCLUDE A POTENTIAL REDUCTION IN LICENSURE FEES**

Mr. Cousineau explained that in 2009, the Board's reserves were approximately \$50,000. It was clear to management and staff at that time that the reserves needed to be increased, and through significant fiscal austerity efforts by the Board over the last several years, that number has increased to the point where the Board's fiscal reserves are nearly identical to its actual

expenditures. Based on current trends in the Board's revenue stream, the Board will probably see 100% this calendar year. Staff is proposing two options for potential reductions in licensing fees for all of the Board's licensure categories. The first option involves an approximately 6% decrease to all licensure categories, and the second involves an approximately 12% decrease to all licensure categories. The total projected decreases for each option for the biennium are based on figures from the 2013 renewal cycle. This plan was discussed with the Secretary-Treasurer and we believe we are in a sound position and could withstand any type of legal or other economic onslaught that might visit us, but at the same time we believe we should also consider trying to keep our fiscal reserves in line with our goal, which is approximately one year of the Board's annual expenditures. Staff's recommendation, if the Board desires to adjust the fees, is to start conservatively in doing so, and choose the first option. This recommendation is based on a potential decrease in the Board's licensee base, particularly its medical doctor licensee base, due to the Affordable Care Act, as well as some potential legislation coming out of this legislative session. In 2010, the Administrators in Medicine performed an audit of the Board, and the auditors recommended that the Board keep in place a strong fiscal reserve. Additionally, he thinks it is also considered the norm for a government, non-profit service to retain at least a six-month to one-year reserve. Lastly, he believes the Interstate Compact will make it through this legislative session, and there will likely be some significant startup costs for the Interstate Compact that will be borne by all the individual states who are part of the Compact. The Interstate Compact licensing numbers may not offset the initial outlay, so we want to make sure we have monies in place to support what is anticipated to be a monetary outlay for the first couple of years until the licensure category starts populating.

Mr. Rich added that the proposed fee reductions were for renewal fees only; that staff was not recommending a reduction of all the Board's fees. He said he thought there were a lot of reasons to have a strong reserve. One that Mr. Cousineau did not speak of was that the Board does not have a safety net; that it can't go to the General Fund and ask for a loan if it gets into a position where it needs funding to continue its operations.

Discussion ensued regarding the potential for the state to draw funds from the Board's reserves to fund other agencies.

Dr. Hardwick asked when the reduction in renewal fees would take effect, and Mr. Cousineau stated that staff could put it into effect this renewal season.

Ms. Platt asked whether the Board would be adopting regulations to set the reduced fees. Mr. Cousineau explained that the fees are set by statute as a maximum that can be charged, and we are reducing them.

Dr. Fischer moved that the Board accept Option 1 with the exception of reducing the fee for residents from \$45 to \$40. Dr. Hardwick seconded the motion.

Discussion ensued regarding Dr. Fischer's proposal to reduce the resident fee to \$40.

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

Agenda Item 22

STAFF COMMENTS/UPDATES

Ms. Daniels advised the Board that renewals would begin April 1 through July 1, and all licensees would be sent a renewal postcard with the new fee set on it. The Continuing Medical Education (CME) requirements are on the Board's website, and in lieu of ethics CME, licensees could now complete two hours of pain management or addiction care CME.

Agenda Item 23

MATTERS FOR FUTURE AGENDAS

Mr. Cousineau stated the following items would be on the agenda for a future meeting: review and approval of the 2014 Annual Report; review and approval of the 2014 financial audit; a report on the 2015-2017 renewal cycle; a report by Mr. Lee, and possibly Ms. Comis, regarding what ultimately came out of the legislative session; and a subcommittee will be putting together for the Board's consideration numbers regarding the cost and viability of holding some Board meetings in Las Vegas, as the conference room at the Dental Board is too small to hold the meetings there.

Agenda Item 24

PUBLIC COMMENT

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

Ms. Daniels said she wanted to thank Roy Monty Cary for his service on the Physician Assistant Advisory Committee. Dr. Fischer said the Board would send him a letter to that effect.

ADJOURNMENT

Dr. Hardwick moved to adjourn. Dr. Chowdhry seconded the motion and it passed unanimously. Dr. Fischer adjourned the meeting at 2:07 p.m.

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