

NEVADA STATE BOARD OF MEDICAL EXAMINERS

1105 Terminal Way, Suite 301
Reno, NV 89502-2144

Rachakonda D. Prabhu, M.D.
Board President

Edward O. Cousineau, J.D.
Executive Director



*** * * MINUTES * * ***

OPEN SESSION BOARD MEETING

Held in the Five Spot Room at the Renaissance Las Vegas Hotel
3400 Paradise Road, Las Vegas, Nevada 89169

and videoconferenced to

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

FRIDAY, DECEMBER 1, 2017 – 8:30 a.m.

Board Members Present

Rachakonda D. Prabhu, M.D., President
Wayne Hardwick, M.D., Vice President
Mr. M. Neil Duxbury, Secretary-Treasurer
Ms. Sandy Peltyn
Victor M. Muro, M.D.
Ms. April Mastroluca
Aury Nagy, M.D.
Michael C. Edwards, M.D., FACS
Weldon Havins, M.D., J.D.

Board Members Absent

None

Staff/Others Present at Renaissance Las Vegas Hotel in Las Vegas

Edward O. Cousineau, J.D., Executive Director
Jasmine K. Mehta, J.D., Deputy Executive Director
Robert Kilroy, 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
Henna Rasul, J.D., Senior Deputy Attorney General

Staff/Others Present at Board Office in Reno

Aaron Bart Fricke, J.D., Deputy General Counsel
Donald K. White, J.D., Deputy General Counsel

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by President Rachakonda D. Prabhu, M.D., at 8:34a.m.

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

Ms. Daniels introduced new License Specialists Heather Hartley and Kristin Santos.

Mr. Kilroy introduced new Deputy General Counsel Donald White, J.D.

Agenda Item 2

PUBLIC COMMENT

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

Mary Ann Allison, M.D., FACP, President of Comprehensive Cancer Centers of Nevada (CCCN), stated she had been an Oncologist for 30 years or more, 24 of those in Henderson. She is the President of an organization that has 43 physicians who see 168,000 patients a year and 15,000 of those are new cancer patients. She stated Dr. Rupesh Parikh, Chief of Staff for St. Rose de Lima and Siena Hospitals, and also a practicing Medical Oncologist who has been with CCCN for many years, was also present. She said they at CCCN really appreciate the opioid problem. There is inappropriate and/or dangerous prescribing in Nevada by physicians that needs to be under control. They agree there are many patients who may potentially benefit from better controls in Nevada, but AB 474 places a 14-day restriction for prescribing new medications for pain. Their belief at CCCN is that the majority of their patients have chronic pain, and they may see them for the first time and that would be a chronic pain situation. They need better clarification on the difference between acute and chronic, and "chronic" needs to be defined well for them to be able to participate. They received the draft of the consent, which is really pretty much a contract. It has many clarifications, and even with their organization, it would be very difficult to implement this within less than 60 to 90 days. From that standpoint, it is going to be very difficult logistically, if not impossible, to have this up and going by the first of January because they don't even have the

final consent form. She thinks that come the first of January, Oncology patients are going to have a difficult time with their pain medicines, and it is CCCN's opinion it is a travesty that these people who are already suffering and under extreme stress will be under more stress being constrained by what we are able to do with their pain medications. She understands this is a political issue, but she thinks the Board represents the physicians and the patients in the state and if there is any way it can help facilitate some improvement or changes in this bill, that would be greatly appreciated by their organization and their patients.

Richard Martin stated he was a pharmacist, he was disabled, and he spent the last four years of his career working as a consultant on the Oncology ward at a hospital in Spokane, Washington. He is also a chronic pain patient currently on high-dose opioids. He said he wanted to bring it to the Board's attention that they were all being totally bamboozled by the media, the politicians and the insurance industry. Since the CDS guidelines came out, there have been volumes of anecdotal evidence of chronic pain patients being involuntarily tapered down or off their pain meds. He said he has a list of 22 people who had committed suicide after the guidelines came out and their doctors tapered them down or off their opioid pain meds. He said the CDC did not endorse involuntary tapering in its guidelines and quoted several sources in support of this. He said he and others who have been tapered down or off of opioid pain meds are now part of a nationwide inhumane experiment. They are being treated as nothing more than human lab rats. He asked how many times we've heard this: "We make up 4.6% of the world's population and consume about 80% of the world's opioids." He said this is just not true. He and others have researched it. He said this statement was quoted in a 2006 pain physician article and was a statement made by a DEA agent who made the statement without any evidence to support it; it was just an opinion; yet the quote has been used for 13 years without anything to back it up. He said right now it seems all the policies and guidelines are being made up by politicians and those who have no understanding of the patient-physician relationship, and that all of us need to stand up and stop this.

Agenda Item 3

APPROVAL OF MINUTES

(a) September 8, 2017 Board Meeting – Open Session

(b) November 8, 2017 Board Meeting – Open Session

Ms. Peltyn moved that the Board approve the Minutes of the September 8, 2017 Board Meeting – Open Session, and November 8, 2017 Board Meeting – Open Session. Dr. Hardwick seconded the motion.

Dr. Havins asked for clarification regarding the intent of the motion which was made and passed at the September meeting regarding the regulation which was proposed furthering some of the provisions of AB 474, as it had not been presented to the Board in its draft form and was not on the Board's website; however, it was on the Nevada Register, which had caused some consternation.

Ms. Mehta explained that the notice of the workshop on the proposed regulation, scheduled for January 3, just went out, and staff was unable to put it on the website prior to this meeting, but it would be on the website next week.

Dr. Havins asked about the Board's policy regarding when proposed regulations are posted on the website.

Mr. Cousineau explained that proposed regulations are placed on the website contemporaneous with the notice of the workshop.

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

Agenda Item 4

CONSIDERATION AND ACTION REGARDING PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE (NAC) CHAPTER 630

- (a) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC Chapter 630 to Repeal NAC 630.205, Regarding Prescription of Appetite Suppressants (R008-17)
- (b) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC Chapter 630 to Create a Regulation Requiring Physician and Physician Assistant Licensees to Complete Continuing Education Related to Misuse and Abuse of Controlled Substances (R163-16)
- (c) Request for Authorization to Proceed With the Regulatory Adoption Process to Amend NAC 630.187 to Reflect Adoption by the Federation of State Medical Boards of the *Guidelines for the Chronic Use of Opioid Analgesics*, replacing the *Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain*

Ms. Mehta explained that workshops on proposed regulations R008-17 and R163-16 were held in Las Vegas and videoconferenced to Reno on August 30, and hearings on the proposed regulations were held in Reno and videoconferenced to Las Vegas on November 12. Favorable comment on repeal of the appetite suppressant regulation was received from Dr. Havins, and there were comments at the hearing on the continuing medical education (CME) regulation regarding clarification as to whether those CME credits could be used for ethics credits. She stated it is staff's position they can; that they can be substituted for any continuing medical education credit that is required. She said she had been working with Catherine O'Mara to draft language to clarify this in the CME requirements form on the Board's website.

Ms. Mehta stated the final proposed regulation would Amend NAC 630.187 to update the title of the publication to reflect adoption by the Federation of State Medical Boards of the *Guidelines for the Chronic Use of Opioid Analgesics*. By operation of law, in terms of approval of the update, that has already occurred, because Section 1(b) of the existing regulation states that each revision of the publication shall be deemed approved by the Board unless it disapproves the revision within 180 days after the publication. So this would merely clarify for the Board's licensees and the public that the guidelines have been updated and those are the guidelines that we will be looking to for guidance.

Ms. Mastroluca moved that the Board approve Item 4(a). Dr. Havins seconded the motion, and it passed unanimously.

Dr. Hardwick moved that the Board approve Item 4(b). Ms. Peltyn seconded the motion, and it passed unanimously.

Dr. Havins moved that the Board grant authorization to proceed with the regulatory adoption process on Item 4(c). Dr. Nagy seconded the motion, and it passed unanimously.

Dr. Havins asked how it will be resolved if the *Guidelines for the Chronic Use of Opioid Analgesics* conflicts with AB 474.

Ms. Mehta stated that AB 474 is the law, and must be abided by. If the *Guidelines* are more stringent, then she thinks we would follow those, because the Board's adoption of the *Guidelines* says this is the conduct by which you must abide. If the *Guidelines* are less strict than AB 474, then AB 474 would be the operative requirement. Additionally, the two need to be read together and construed as harmoniously as possible.

Agenda Item 5

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHARLES P. VIRDEN, M.D., BME CASE NO. 16-10736-2*

Dr. Virden and his legal counsel, Dominique Pollara, Esq., were present in Las Vegas.

Ms. Rasul asked whether the adjudicating Board members had received and reviewed the materials related to the matter, and they confirmed they had.

Ms. Rasul then provided procedural instruction regarding the adjudication process.

Mr. Cousineau named the adjudicating Board members who would be considering the matter.

Dr. Hardwick recused himself from consideration of the matter due to a personal association with Dr. Virden.

Dr. Nagy summarized the facts of the case.

Discussion ensued regarding Dr. Virden's treatment of the two patients in the case and whether, based on the evidence presented, his treatment fell below the standard of care with respect to each of the four counts of malpractice alleged in the formal Complaint.

Dr. Havins moved that as to Count I, the Board find that Dr. Virden committed malpractice as defined in NRS 630, which is a breach of the standard of care. Dr. Nagy seconded the motion, and it passed unanimously.

Dr. Nagy moved that as to Count II, the Board find there was a failure to diagnose in a timely fashion and treat appropriately, which was malpractice. Dr. Havins seconded the motion, and it passed unanimously.

Dr. Nagy moved that as to Count III, the Board find there was a failure to perform with reasonable care when performing an operation and find there was malpractice. Dr. Havins seconded the motion, and it passed unanimously.

Dr. Nagy moved that as to Count IV, the Board find there was a failure to properly diagnose or refer the patient, which was malpractice. Mr. Duxbury seconded the motion, and it passed unanimously.

Mr. Fricke presented the Investigative Committee's recommendations regarding discipline in the matter, which included a 30-day suspension of Dr. Virden's license to practice medicine, a fine of \$5,000.00, a written public reprimand, and reimbursement of the Board's costs and fees

incurred, now totaling \$25,986.76. He stated the Memorandum of Costs and Fees was delivered to Dr. Virden's counsel on November 9, 2017, so she and Dr. Virden had had ample time to review it.

Dr. Havins asked if Dr. Virden would have the opportunity to file a motion to retax costs.

Ms. Rasul explained that is not available at the administrative hearing level. They can address the reasonableness of the costs, but if they take issue with the costs, that would be addressed on appeal.

Ms. Pollara presented her recommendations regarding discipline in the matter, on behalf of Dr. Virden. She recommended that the Board issue a fine and order Dr. Virden to pay costs with regard to the proceedings, and that Dr. Virden receive no other sanction. Additionally, Ms. Pollara stated they had not been provided with the Hearing Officer's Synopsis in this case in advance of the adjudication, and requested it be given to them.

Dr. Havins moved that the Board fine Dr. Virden \$2,500.00, issue a public reprimand and require repayment of the Board's costs and fees of about \$26,000.00, which would include any additional costs involved above those mentioned in the information the Board received. Dr. Edwards seconded the motion. Dr. Havins recommended against suspending Dr. Virden's license.

Dr. Nagy agreed, based on Dr. Virden's statements regarding how he had modified his practice, and as he testified to previously, that it had been four or five years since the events of this case and there had been no further incidents, and that he had probably done over 200 surgeries of this type in that period of time.

Dr. Havins amended his motion to specify that Dr. Virden shall be required to repay the Board's costs and as presented to the Board in the Memorandum of Costs, a \$2,500.00 fine and a public reprimand. Dr. Edwards seconded the amended motion, and it passed unanimously.

Agenda Item 6

CONSIDERATION OF REQUEST OF DOUGLAS S. LYNCH, PA-C FOR MODIFICATION OF THE TERMS OF HIS CURRENTLY EXISTING SETTLEMENT AGREEMENT WITH THE NSBME, SPECIFICALLY TO REMOVE HIS PROBATIONARY STATUS

Mr. Lynch explained his license was suspended in March 2015 after a period of duress, long hours and poor-coping decisions. He used an illicitly-obtained stimulant during off hours – never during work periods or patient contact periods. After his license was suspended, he checked into an in-patient drug rehab facility, then was in an intensive outpatient program, and then started with the PRN program, which he was still with. He said he had completed all the terms of the settlement agreement. He is currently working a second job in a methadone clinic, once a week, and has been in full compliance with the monitoring program. He is not asking to be removed from the monitoring program or any of the other stipulations; he is just asking specifically for the probationary flag to be lifted because it is inhibiting his ability to get credentialing with the HCA hospitals and St. Rose hospitals in town and prohibits him from obtaining credentialing with insurance entities.

Mr. Cousineau stated for the Board members' benefit, he wanted to put on the record that Mr. Lynch had come to him about a year ago and asked about the possibility of his probation being lifted. Mr. Cousineau indicated to him that, based on past practice, it was probably not something that would be available due to the limited time frame between his entering into the PRN contract

and his petition. He said Mr. Lynch has now completed two-and-one-half years of his five-year contract. Every case is unique, and it is at the Board's discretion whether it wants to lift the probation, but he thought Mr. Lynch's supporting documentation would support doing so and staff thought it would be appropriate.

Dr. Prabhu asked about Mr. Lynch's current practice areas, and Mr. Lynch described them.

Dr. Hardwick moved that the Board lift the probationary status on Mr. Lynch's license. Dr. Edwards seconded the motion.

Ms. Mastroluca asked Mr. Lynch what had changed in his life that made it so he was no longer looking for any kind of medication, and Mr. Lynch described the changes he had made.

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

Agenda Item 7

**CONSIDERATION OF REQUEST OF MARYANNE D. PHILLIPS, M.D. FOR
MODIFICATION OF THE TERMS OF HER CURRENTLY EXISTING SETTLEMENT
AGREEMENT WITH THE NSBME, SPECIFICALLY TO REMOVE HER PROBATIONARY
STATUS**

Justin Bustos, Esq. and Ken Hogan, Esq., legal counsel to Dr. Phillips, appeared with her.

Mr. Bustos explained that in March 2016, Dr. Phillips entered into a settlement agreement with the Board's Investigative Committee to resolve two formal complaints that had been filed against her. He then outlined the two complaints. He stated that at all times during the process, Dr. Phillips denied the allegations in both complaints. The issues in both complaints arose out of her Pain Management practice, which she entered into after she had previously worked in Anesthesiology. Neither of the complaints had anything to do with patient bad outcomes. A period of 36 months' probation was part of the settlement agreement. The settlement agreement was structured to get Dr. Phillips out of the practice of Pain Management. She never had any disciplinary problems when she was working in Anesthesiology. The settlement agreement stated, in very clear terms, that Dr. Phillips could not have any involvement in Pain Management whatsoever, which included a restriction on her ability to prescribe Class II-IV medications, except that she was specifically allowed to prescribe any medication she would need to in connection with an Anesthesiology practice, with a list of those medications attached to the settlement agreement. He said he thinks that at the time the settlement agreement was entered into, neither the Investigative Committee nor Dr. Phillips realized the implications probation would have on her ability to move forward with an Anesthesiology practice. Specifically, when the settlement agreement was negotiated, it was agreed that the settlement agreement wouldn't be presented to the Board until such time as Dr. Phillips had completed her certification requirements for Anesthesiology. However, what ultimately occurred is that Dr. Phillips took and passed Part I of the Anesthesiology exam; however, the probation was imposed before she took Part II of the exam, and when she attempted to sign up for Part II, she was told she could not do so until she had an unrestricted license. So, because of the probation on her license, she has been unable to pursue Anesthesiology, and for that reason, she was asking the Board to modify the term of probation. She was not requesting the ability to return to Pain Management, and she was not asking the Board to modify any terms of the settlement agreement that related to Pain Management. Dr. Phillips hadn't been able to practice medicine during the time she had been on probation because of that restriction, so the sole purpose of the petition was to remove the probation status so Dr. Phillips could take Part II of the Anesthesiology exam and move on with her career. Based on the

certification requirements of the Board of Anesthesiology, the last year in which Dr. Phillips can take that exam is 2018, based on the year she completed her residency, so if probation is not removed prior to the time she has to sign up in March of 2018, she will not be able to practice Anesthesiology. He said that to date, Dr. Phillips had fully complied with all the requirements of the settlement agreement.

As one of the issues in the settlement agreement was potential discipline by the Pharmacy Board, Mr. Hogan updated the Board regarding the Pharmacy Board proceedings involving Dr. Phillips.

Discussion ensued regarding whether it was appropriate to lift the probationary status from Dr. Phillips' license.

Mr. Bustos explained the way he was looking at it was, from a licensure perspective, that Dr. Phillips would have an unrestricted license; however, the settlement agreement is a written contract, so he believed they could have a written contract between the Board and Dr. Phillips that stated if Dr. Phillips practices Pain Management in any way, the Board has the right to immediately terminate her license.

Mr. Cousineau stated it would not be an unrestricted license; it would be a conditional license.

Mr. Bustos said if their initial request could not be accomplished by having the settlement agreement in place with the language that she shall not be involved in Pain Management without having a condition on her license, their request would be to remove all restrictions from her license.

After conferring with Dr. Phillips, Mr. Bustos said they didn't know whether the American Board of Anesthesiology would consider the restrictions on her license as to Pain Management as something that would preclude her from going on with Anesthesiology; however, if the Board was not willing to completely remove all restrictions from her license, Dr. Phillips would still request that the probation be removed, which would hopefully be enough to satisfy the Anesthesiology Board. Removing the probation would also allow her to possibly go into other fields, such as Internal Medicine.

Mr. Cousineau asked about the expectations of the Pharmacy Board as it related to the decision of this Board.

Mr. Hogan said the way the Pharmacy Board dealt with the conditional versus restricted issue was to say it was an unrestricted license. He then read the terms that were set out by the Pharmacy Board.

Discussion ensued regarding whether it was appropriate to lift the probationary status from Dr. Phillips' license or lift the probationary status as well as the limitations spelled out in the settlement agreement as they relate to Pain Management practice.

Dr. Muro moved that the probation be removed and Dr. Phillips be granted a conditional license with the remaining restrictions in the current settlement agreement. Dr. Havins seconded the motion.

Dr. Hardwick requested clarification regarding the type of license Dr. Phillips would have.

Mr. Cousineau stated it would be a conditional license; that all terms in the currently existing settlement agreement would remain, absent the probationary status term.

Discussion ensued regarding the timeline of the currently existing probationary period.

Mr. Bustos said that since they didn't know whether the Anesthesiology Board would allow Dr. Phillips to go forward, they had an alternative request that would allow her to turn to Internal Medicine in the event she isn't allowed to go forward with Anesthesiology. In their petition, they provided a list of medications that are typically prescribed in an Internal Medicine practice and they were requesting that that list of medications be added to the list she is allowed to prescribe. That list did not include any medications that would be used in a Pain Management practice.

Mr. Cousineau stated there was a motion on the floor and asked if there was a desire to amend the motion.

Dr. Muro stated he did not want to amend his motion.

A vote was taken on the motion, and it passed, with Dr. Nagy abstaining from the vote due to a prior working relationship with Dr. Phillips and all other Board members voting in favor of the motion.

Agenda Item 8

CONSIDERATION OF REQUEST OF RICHARD SEHER, M.D. FOR APPROVAL OF COLLABORATION AGREEMENT WITH JOCELYN SCHNEIDER, APRN

Mr. Cousineau explained this was a unique circumstance. Ms. Schneider was disciplined by the Board of Nursing several years back. Pursuant to regulation, if an APRN has been disciplined by the Board of Nursing, and a licensee of the Board desires to collaborate with the APRN, there is a requirement that the physician and the APRN appear before the Board for approval of their collaborative agreement.

Ms. Peltyn moved that the Board approve the collaborative agreement. Dr. Hardwick seconded the motion, and it passed unanimously.

Agenda Item 9

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JAMES B. GABROY, M.D., BME CASE NO. 15-10986-1

Dr. Gabroy was not present. Colleen Platt, Esq., legal counsel for Dr. Gabroy, was present in Reno.

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

Ms. Rasul asked whether the adjudicating Board members had received and reviewed the materials related to the matter, and they confirmed that they had.

Ms. Rasul then provided procedural instruction regarding the adjudication process.

Ms. Platt stated she had concerns that the Board members did not have the full record of the

hearing below. She said she received a copy of the packet the day before, which includes the Complaint, the synopsis, the transcripts of proceedings and the exhibits. There were significantly more documents exchanged during the hearing process, including motions, prehearing statements and other orders, which were not included in the supporting documents for this meeting, so she requested that the matter be continued to the March meeting to allow the Board proper time to review the full record.

Ms. Mehta stated the prehearing conference statement, the evidence and witnesses that are disclosed are procedural items that are not necessary for an adjudication and are not normally included in the adjudication packets. Ms. Mehta stated that Respondent's Motion to Dismiss, the Investigative Committee's Motion to Strike the Motion to Dismiss, the oppositions thereto and the Hearing Officer's recommendation to deny both motions were omitted by oversight and should have been included. She said she had copies of those items, and a copy in Reno as well, and she could distribute them to the Board members and the Board could take a recess to review them. However, she requested that the adjudication not be continued.

Ms. Platt said the Board did not have the appropriate time to review a Motion to Dismiss, a Motion to Strike, oppositions to both of those and the Hearing Officer's recommendations in order to go forward at this meeting. She stated that it was a violation of her client's due process, and to adjudicate the matter, the whole record should be reviewed by the Board.

Ms. Mehta stated the prehearing conference items are not relevant to the Board's adjudication because those disclosures may or may not be used at the hearing. The only time those would be relevant would be if somebody sought to introduce evidence that was denied, but in this case, all the evidence that was sought to be introduced was introduced. She submitted that the Board had ample time to take a recess and review the documents, and the adjudication should not be continued yet again.

Dr. Nagy moved that the Board go forward with the adjudication that day, believing the Board had sufficient information in the record presented to make a recommendation on the case. Ms. Mastroluca seconded the motion, and it passed unanimously.

Ms. Mehta recommended that the Board take a recess to allow the adjudicating Board members to review the documents.

Dr. Prabhu recessed the meeting.

Upon returning to open session, Dr. Prabhu asked whether the adjudicating Board members had had an opportunity to review the additional documents, and they indicated they had.

Ms. Mastroluca moved that the Board accept the additional documents that had been provided to them. Dr. Havins seconded the motion, and it passed unanimously.

Dr. Edwards moved that the Board accept the Hearing Officer's recommendation to deny Respondent's Motion to Dismiss. Ms. Mastroluca seconded the motion, and it passed unanimously.

Dr. Havins moved that the Board accept the Hearing Officer's recommendation to deny the IC's Motion to Strike. Ms. Mastroluca seconded the motion, and it passed unanimously.

Discussion ensued regarding whether Dr. Gabroy's records were timely, legible, accurate and complete, pursuant to NRS 630.3062(1), based upon the evidence presented.

Dr. Havins moved that Dr. Gabroy violated NRS 630.3062(1) for failure to maintain timely, legible, accurate and complete records. Dr. Muro seconded the motion, and it passed unanimously.

Ms. Mehta presented the Investigative Committee's recommendations regarding discipline in the matter, which included a public written reprimand, completion of 10 hours of continuing medical education in medical record keeping, to be completed within the next 90 days, a fine in the amount of \$5,000.00, and reimbursement of the Board's costs and fees. She stated the Memorandum of Costs and Fees was hand-delivered to Dr. Gabroy's counsel on November 6, 2017, so she and Dr. Gabroy had had nearly a month to review it. The costs and fees totaled \$45,641.85, which included three days of hearing, multiple motions and extensive preparation by counsel because the hearing was not heard on three consecutive days.

Ms. Platt presented her recommendations regarding discipline in the matter, on behalf of Dr. Gabroy. She recommended that no discipline be imposed, and made due process and regulatory rulemaking arguments. She contended that the Memorandum of Costs contained improper costs regarding public records requests and argued for reduced costs and fees.

Dr. Havins moved that Dr. Gabroy receive a public reprimand, complete 4 hours of continuing medical education in medical record keeping, to be done in 4 months, pay a fine of \$1,000.00, and reimburse the Board's costs.

Mr. Cousineau said that Ms. Platt had articulated some concerns regarding the costs for the public records requests, as well as a review of the hours, and he believed it would be appropriate to reduce the costs as they relate to those, and asked if Dr. Havins was willing to allow that to be incorporated into his motion.

Dr. Havins asked for clarification of the fees attributed to public records requests.

Ms. Mehta enumerated the items to be removed from the costs, and stated they totaled 27.4 hours at \$63.73 an hour, for \$1,746.20 by which the costs and fees should be reduced.

Dr. Havins amended his motion to decrease the amount of costs and fees to be paid by Dr. Gabroy by the amount stated by Ms. Mehta. Dr. Nagy seconded the motion, and it passed unanimously.

Ms. Mastroluca moved that payment of the costs and fees be made within 9 months. Dr. Havins seconded the motion, and it passed unanimously.

Agenda Item 10

REPORTS

(a) Investigative Committees

Dr. Hardwick reported that at its November 17, 2017 meeting, Investigative Committee A considered 109 cases. Of those, the Committee authorized the filing of a formal complaint in 6 cases, sent 10 cases out for peer review, requested an appearance in 9 cases, issued 19 letters of concern, referred 6 cases back to investigative staff for further investigation or follow-up, and recommended closure of a total of 59 cases.

Dr. Prabhu reported that at its November 8, 2017 meeting, Investigative Committee B considered 131 cases. Of those, the Committee sent 15 cases out for peer review, requested an appearance in 9 cases, issued 24 letters of concern, referred 4 cases back to investigative staff for further investigation or follow-up, reviewed 2 cases for compliance, and recommended closure of a total of 79 cases.

(b) Nevada State Medical Association Report

Catherine O'Mara, J.D., Executive Director of the Nevada State Medical Association (NSMA), stated that at the last meeting, she spoke about Nevada physicians going to Texas to help them out in their time of crisis. Since then, we've had a crisis in Nevada, and we had an outpouring of physicians from all over the country wanting to help, but in particular, our state physicians did a phenomenal job responding to this crisis. NSMA worked with Board staff to ensure they had the information NSMA sent out to its members in conjunction with the Clark County Medical Society and the Nevada Psychiatric Association. The really critical information there had to do with how to deal with mental health services, not only for those who were at the actual event but for our providers and their families, because first responders and treating practitioners also deal with a lot of stress in that situation and on an ongoing basis.

Ms. O'Mara said the new opioid law goes in to effect on January 1, 2018, and there is a lot of alarm and confusion about this new law. Physicians want to treat patients and they want to make sure they are in compliance with the law. The problem is there are areas of confusion in the law, and the more we can work together to clear up those areas of confusion, the less alarm there will be, and, ultimately the better care patients are going to receive. We are going to see a shift from providers being willing to treat pain to referral to Pain Management, and we don't have enough Pain Management physicians, so we are going to see some challenges starting January 1. The stated legislative intent of this law is to preserve clinical judgment in the face of addressing a public health crisis. If you focus only on one and not the other, you miss the point of the law, and somebody is going to get harmed. And, ultimately, it is going to be patient care that gets harmed. Ms. O'Mara then outlined some things that NSMA has been doing with respect to provider education, patient education and informed consent. She said there is a provision in the Nevada Administrative Code that allows for groups like the NSMA to request an advisory opinion from the Board. NSMA is planning to submit a request on an informed consent, a pain medication treatment plan and any other tools that physicians need to be able to comply with the law and ask the Board to prepare an advisory opinion to determine whether or not they meet the statutory threshold of AB 474. NSMA also wants to continue to work with the Board on the regulations that have been drafted and are still in the works on this issue.

(c) Clark County Medical Society Report

Alexandra P. Silver, Executive Director of the Clark County Medical Society (CCMS), said she would not go too far into the events of October 1, but CCMS is thrilled and honored, under such unfortunate circumstances, to be able to showcase the quality, talent and passion, not only of our physicians, but of the first responders, other health care professionals in the community, as well as our fellow citizens. CCMS is honored to partner with other organizations, such as NSMA and the Southern Nevada Health District. One of the silver linings that came out of the events of October 1 was the success of the Medical Reserve Corp. That program is not just for health care professionals; it is also for ordinary citizens.

Ms. Silver stated the opioid epidemic has been a hot topic in recent weeks, months, and this morning. On December 5, CCMS will hold a town hall called "Opioid Epidemic and its Impact on Local Health Care Providers." Three complimentary CME credits will be offered for attendance. On January 23, CCMS will hold a suicide prevention and awareness CME; on March 6, there will be a CME on physician burnout and how to better take care of our physicians given the challenges they are facing on a day-to-day basis; the first week of April, CCMS will host its adult mini-internship; and its installation dinner will be held June 2.

Agenda Item 11

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHAD KRUGER, RRT, BME CASE NO. 17-23950-1*

Mr. Kruger was not present.

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

Mr. Kilroy stated the formal Complaint was filed on September 25, 2017, and the proposed Settlement Agreement was executed on October 26, 2017.

Mr. Duxbury moved that the Board accept the Settlement Agreement. Ms. Mastroluca seconded the motion, and it passed unanimously.

Agenda Item 12

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHARLES P. VIRDEN, M.D., BME CASE NO. 16-10736-1*

Dr. Virden and his legal counsel, Dominique Pollara, Esq., were present in Las Vegas.

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

Mr. Kilroy stated the formal Complaint was filed on May 17, 2016, and the proposed Settlement Agreement was executed on November 29, 2017.

Dr. Hardwick moved that the Board accept the Settlement Agreement. Dr. Nagy seconded the motion, and it passed unanimously.

Agenda Item 13

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MICHAEL C. BRAUNSTEIN, M.D., BME CASE NO. 17-4698-1*

Dr. Braunstein was not present. Lyn Beggs, Esq. was present in Reno as his legal counsel.

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

Mr. Kilroy stated the formal Complaint was filed on November 7, 2017, and the proposed Settlement Agreement was executed on November 21, 2017.

Dr. Havins moved that the Board accept the Settlement Agreement. Dr. Edwards seconded the motion, and it passed unanimously.

Agenda Item 14

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JORGE HERNAN PEREZ-CARDONA, M.D.*, BME CASE NO. 17-25257-1

Neither Dr. Perez-Cardona nor his attorney was present.

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

Mr. Kilroy stated the formal Complaint was filed on October 23, 2017, and the proposed Settlement Agreement was executed on November 1, 2017.

Ms. Peltyn moved that the Board accept the Settlement Agreement. Dr. Edwards seconded the motion, and it failed, as no votes in favor of the motion were received.

Dr. Muro moved that the Board not accept the Settlement Agreement. Dr. Havins seconded the motion, and it passed unanimously.

Agenda Item 15

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. WILLIAM VERNE CRAIG, M.D.*, BME CASE NO. 16-44275-1

Neither Dr. Craig nor his attorney was present.

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

Mr. Kilroy stated the formal Complaint was filed on September 27, 2017, and the proposed Settlement Agreement was executed on November 28, 2017. He then advised the Board that Section 5(a), on page 4, had been revised to correct a clerical error so that the Respondent was admitting to one violation of NRS 630.306(1)(k).

Dr. Edwards moved that the Board accept the Settlement Agreement. Ms. Peltyn seconded the motion.

Mr. Cousineau clarified that at the September Board meeting, the Board adopted this Settlement Agreement with all the essential terms save the one minor correction, which was ministerial in nature.

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

Agenda Item 16

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DONALD JEFFREY BOSS, M.D.*, BME CASE NO. 17-29055-1

Dr. Boss was not present.

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

Mr. Kilroy stated the formal Complaint was filed on November 6, 2017, and the proposed Settlement Agreement was executed on November 28, 2017.

Dr. Edwards moved that the Board accept the Settlement Agreement. Ms. Peltyn seconded the motion, and it passed unanimously.

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JORGE YSACC BURGOS, M.D.*, BME CASE NO. 17-26547-1

Neither Dr. Burgos nor his attorney was present.

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

Mr. Kilroy stated the formal Complaint was filed on August 11, 2017, and the proposed Settlement Agreement was executed on November 22, 2017.

Dr. Muro moved that the Board accept the Settlement Agreement. Ms. Peltyn seconded the motion.

Dr. Edwards asked how the monitoring would work, and Mr. Kilroy described the process.

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

Agenda Item 18

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KIARASH L. MIRKIA, M.D.*, BME CASE NO. 17-32904-1

Dr. Mirkia was not present.

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

Mr. Kilroy stated the formal Complaint was filed on September 27, 2017, and the proposed Settlement Agreement was executed on November 28, 2017.

Dr. Muro moved that the Board accept the Settlement Agreement. Ms. Mastroluca seconded the motion, and it passed unanimously.

Agenda Item 19

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. POUPAK P. ZIAEI, M.D.*, BME CASE NO. 17-32905-1

Dr. Ziaei was present.

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

Mr. Kilroy stated the formal Complaint was filed on April 11, 2017, and the proposed Settlement Agreement was executed on November 22, 2017.

Ms. Mastroluca moved that the Board accept the Settlement Agreement. Ms. Peltyn seconded the motion, and it passed unanimously.

Agenda Item 20

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ALI KIA, M.D.*, BME CASE NO. 17-27978-1

Neither Dr. Kia nor his attorney was present.

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

Mr. Kilroy stated the formal Complaint was filed on November 6, 2017, and the proposed Settlement Agreement was executed on November 28, 2017.

Ms. Peltyn moved that the Board accept the Settlement Agreement. Dr. Edwards seconded the motion, and it passed unanimously.

Agenda Item 21

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ARIS Q. URBANES, M.D.*, BME CASE NO. 17-31126-1

Dr. Urbanes was not present.

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

Mr. Kilroy stated the formal Complaint was filed on March 8, 2017, and the proposed Settlement Agreement was executed on November 29, 2017.

Ms. Mastroluca moved that the Board accept the Settlement Agreement. Ms. Peltyn seconded the motion, and it passed unanimously.

Agenda Item 22

EXECUTIVE STAFF/STAFF REPORTS

(a) Investigations Division Report

Ms. Castagnola reported the current number of open investigative cases was 630 and the current number of cases per investigator was approximately 79. There were 51 peer reviews in the field and 29 unassigned, for a total of 80 peer reviews. She gave kudos to her staff in doing an outstanding job of disposing of cases. They closed 180 cases in the last two Investigative Committee meetings in November. The number of new complaints received in November was 109, which was a new record for one month. She congratulated Board Medical Reviewer Jerry C. Calvanese, M.D., for passing his Emergency Medicine Boards.

Dr. Havins asked if there was any pattern to the complaints received; whether they emphasized one area over another. Ms. Castagnola stated she did not have the numbers by category; however, the number of complaints has gradually increased over the past five years.

Dr. Muro thanked the investigative staff. Dr. Hardwick, Ms. Peltyn and Dr. Nagy also thanked them.

(b) Quarterly Compliance Report

Ms. Jenkins reported the total amount in collections for the third quarter of 2017 was \$39,000.00, no collections were written off, total costs outstanding were \$26,000.00, total fines outstanding were \$5,000.00, for a total amount outstanding of \$32,141.98. Total costs collected during the third were \$15,765.52.

(c) Quarterly Update on Finances

Ms. Jenkins highlighted the various sections of the Balance Sheet for the third quarter of 2017. She stated the Board's total assets as of September 30 were \$11 million, \$10 million in CDs and in checking. The total other current liabilities, which represents the Board's deferred income from its current licensing period, were approximately \$6 million. Total long-term liabilities, which are the Board's portion of the Public Employees Retirement System liability for the state, were \$3.7 million. The Board's reserves were \$1.3 million.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the third quarter of 2017. She stated the total income of \$1.1 million was at 93% of budget for the quarter. She explained that this is expected to be the Board's lowest quarter of the biennium because licenses issued during this quarter have a length through the end of the biennium and only a small portion of them are recognized in this quarter. The personnel expenses were at 101.9% of budget, the operating expenses were 0.7% over budget and the Board's interest income was \$18,000.00 for the quarter. There was a net loss for the quarter of \$170,000.00, which is expected at the first part of the biennium. Because of the nature of this quarter versus the previous quarter, she included a Profit and Loss Budget vs. Actual for the year to date. There was a large profit in the second quarter of 2017, so between that and the third quarter, she wanted the Board to be able to look at a year to date. It shows a total of \$3.7 million in income for those first three quarters, at 104.7% of budget, so the Board is ahead of budget for the year. The Board is at 96.9% of budget for personnel expenses for the first three quarters. Total expenses for the year to date are only 0.7% over budget, the Board's interest for the first three quarters was \$49,000.00, and the loss year to date is only \$20,000.00, which is better than budget by \$151,000.

Mr. Duxbury said he wanted to acknowledge the fantastic job Ms. Jenkins has done on the financials.

(d) Legal Division Report

Mr. Kilroy reported there were currently 173 cases in the Legal Division, 13 of which had been presented to the Board for action at this meeting; 73 cases pending the CMT process; 52 cases awaiting filing of a formal complaint; 31 cases in which a formal complaint had been filed that were pending hearings, 11 since the last Board meeting; and 43 letters of concern approved by the Investigative Committees during their November meetings. He provided an update regarding the civil court cases in which the Board was currently involved. He thanked the legal staff for their hard work.

Agenda Item 23

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the September 8, 2017 Board Meeting

Dr. Havins moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the September 8, 2017 Board Meeting. Dr. Nagy seconded the motion, and it passed unanimously.

Ms. Daniels thanked the Licensing staff for their hard work.

Agenda Item 24

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

(a) Todd Andrew Radivan, PA-C

Maria Nutile, Esq., attorney for Mr. Radivan, stated that Mr. Radivan was withdrawing his application.

(b) Justin Kyle Tibule, RRT

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

Dr. Hardwick moved that the Board go into closed session pursuant to NRS 241.030. Ms. Mastroluca seconded the motion, and it passed unanimously.

Upon returning to open session, Dr. Edwards moved that the Board grant Mr. Tibule's application for licensure with the condition that he remain under his five-year contract with the PRN program. Dr. Hardwick seconded the motion, and it passed unanimously.

(c) Darren Randolph Swenson, M.D.

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

Dr. Swenson stated he was withdrawing his application.

(d) Michael Patrick Dunn, M.D.

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

Dr. Prabhu stated that Dr. Dunn was applying for a license by endorsement, as he had not passed a major examination within the past 10 years. He asked Dr. Dunn to tell the Board about himself.

Dr. Dunn described his medical training and practice, and the impetus for obtaining a license to practice medicine in Nevada. He then explained why he chose not to recertify in Family Practice.

Dr. Prabhu asked Ms. Daniels to describe the peer review process for Dr. Dunn, and she did so. She suggested an alternative would be to take the SPEX examination.

Dr. Dunn stated he is board certified by a Board that is not recognized in Nevada. He said he would be willing to undergo a peer review.

Dr. Prabhu moved that the Board grant Dr. Dunn an unrestricted license contingent upon successful passage of a peer review. Mr. Duxbury seconded the motion, and it passed unanimously.

(e) Mark Douglas Novick, M.D.

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

Dr. Nagy discussed Dr. Novick's medical practice history with him.

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

Dr. Novick described the circumstances surrounding one of the cases of malpractice that had been filed against him that resulted in a settlement, and another that he successfully defended.

Dr. Nagy asked what Dr. Novick planned to do if granted a license to practice medicine in Nevada.

Dr. Novick said he would work with Open Sided MRI, and he hoped to bring on a few more facilities in the next year or so, and if the tax laws keep changing the way they are talking, he may be leaving New York and coming out to Nevada. He then described his current practice.

Dr. Nagy moved that the Board grant Dr. Novick's application for licensure. Ms. Peltyn seconded the motion, and it passed unanimously.

(f) Suzanne Hope Steinberg, M.D.

Danka Michaels, M.D., Dr. Steinberg's proposed preceptor, appeared with Dr. Steinberg.

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

Dr. Hardwick questioned Dr. Steinberg regarding the fact that she had not practiced medicine since 1998.

Dr. Steinberg stated she had had three children within three years. She let her board certification in Preventive Medicine expire in 2008, and she took the SPEX examination in 2017.

Dr. Hardwick summarized the proposed preceptor plan that had been submitted by Dr. Steinberg. He stated she had practiced for 4 years, then been out of practice for 20 years, and asked if she thought 15 hours a month was enough time to gain clinical experience.

Dr. Steinberg stated she was teaching at the UNLV School of Medicine, and studied every day.

Dr. Hardwick asked if she had thought about anything like going back with the residents for several months.

Dr. Steinberg said she had been shadowing her husband for the past 3 years and learning e-clinical medicine, and the first 3 months of her proposed preceptorship would be reviewed 100% with an Internal Medicine physician.

Dr. Michaels said they had discussed the number of hours and she will do whatever the Board wants her to do.

Dr. Muro said he echoed Dr. Hardwick's sentiments, and would like to see a more intense preceptorship that involves actual hands-on clinical medicine. He was concerned that she had chosen Internal Medicine, which is different than the area she trained in.

Ms. Daniels asked if she would be amenable to having an evaluation by the PACE program at the University of San Diego, and Dr. Steinberg said she would.

Discussion ensued regarding the number of hours that would be appropriate for Dr. Steinberg's preceptorship. Dr. Hardwick suggested she complete 20 hours a week for 4 months with Dr. Michaels and complete the PACE program.

Dr. Edwards asked what she planned to do if granted a license to practice medicine in Nevada.

Dr. Steinberg stated she wanted to teach the residents clinical Preventive Medicine and practice Women's Health.

Dr. Hardwick moved that the Board grant Dr. Steinberg's application for change of status contingent upon successful completion of 20 hours a week for 4 months with Dr. Michaels, followed by successful completion of PACE.

Discussion ensued regarding the number of patients Dr. Michaels anticipated she would interact with during the preceptorship and the time frame for reports to the Board.

Dr. Hardwick amended his motion to include that the preceptor provide bimonthly reports to the Board on Dr. Steinberg's progress. Dr. Nagy seconded the motion, and it passed unanimously.

(g) Jeffrey Alan Drayer, M.D.

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

Dr. Edwards stated that Dr. Drayer was applying for a license by endorsement, as he had not passed a major examination within the past 10 years and did not have a current ABMS board certification.

Dr. Edwards questioned Dr. Drayer regarding the fact that he did not disclose he was on probation during his residency and also misrepresented the amount of training he had completed on his application for licensure, and asked if Dr. Drayer thought it was correct for him to introduce himself to patients as a Dermatologist when he hadn't finished the training.

Dr. Drayer said he was listed as a Staff Dermatologist, and there are people who are board certified in Internal Medicine who work as Dermatologists.

Dr. Drayer said he had forgotten about being placed on probation during his residency. He then explained that he had an interest in writing, and while he was a first year resident, he applied to get a Masters in Screenwriting at UCLA, and was accepted. He approached the head of the residency program and asked what he thought about him taking some time to obtain his Masters in Screenwriting, and the program did not take to it very well. Their words when they put him on probation were that he would have time for hobbies once he was done with his residency, but he was not going to have any outside interests other than Dermatology while he was with them. So he did not get his Masters in Screenwriting, he continued with his residency, the probation period ended and everybody was happy. He then had an opportunity in the spring of 2001 to start working on a television show, and he decided to do that. He spoke with the residency program, they said go ahead, he had some vacation time saved up and asked if they could make his final day June 30, and he was under the impression that was that. He never looked back, as he never had a reason to look back. He has been working as a television writer and as a physician practicing Dermatology for the last 16 years, and he was unaware the program had not listed June 30 as his final day. Dr. Drayer then described his work as both a physician and a screenwriter. He is now working more regularly in television but still practices in California and the practice he works for asked if he would be willing to work at their practice in Nevada part of the time.

Dr. Muro expressed concern with the fact that although Dr. Drayer has a wealth of practice experience, he did not complete a full residency in the area in which he was practicing.

Dr. Edwards expressed concern that patients who are being seen by Dr. Drayer think they are being seen by someone who has three years of training, as the assumption is they are being seen by a Dermatologist.

Discussion ensued regarding the criteria required to qualify for a license by endorsement, and whether Dr. Drayer met the criteria.

Mr. Cousineau suggested that Dr. Drayer withdraw his application.

Dr. Drayer said he was withdrawing his application.

(h) Rebecca Beach Beyer, M.D.

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

Dr. Muro questioned Dr. Beyer regarding her affirmative response to Question 12 on her application for licensure.

Dr. Beyer described the circumstances surrounding the one case of malpractice filed against her that resulted in a settlement.

Dr. Muro questioned Dr. Beyer regarding her affirmative response to Medical Condition Questions 1 and 2 on her application for licensure.

Dr. Beyer explained she had signed a voluntary limitation with South Dakota because South Dakota doesn't have a Telemedicine only license, and at this point she is only practicing Telemedicine. She underwent surgery about a month-and-a-half ago, which was successful, and her tremor is much improved. Her Neurologist has cleared her to return to clinical practice, but knowing that the tremor had been somewhat progressive to start with and how hard it was on her to stop clinical practice the first time, she is planning to continue to practice Telemedicine only, and that is all she would be doing if granted a license in Nevada.

Mr. Cousineau stated the Board does have a specific Telemedicine license; however, Dr. Beyer was seeking an unrestricted license. He believed there was a recognition on the part of Dr. Beyer that if her skills start degrading, she would not engage in medicine hands-on. The alternative would be for Dr. Beyer to withdraw her application and come back and apply for a Special Purpose License, but the Board has documentation that supports her fitness to hold an unrestricted license.

Dr. Muro moved that the Board grant Dr. Beyer's application for licensure. Mr. Duxbury seconded the motion, and it passed unanimously.

(i) Arthur Joshua Schneider, M.D.

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

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

Dr. Schneider described his current practice. He practices Teleradiology in eight states and also occasionally works per diem at a hospital in Massachusetts.

Ms. Mastroluca questioned Dr. Schneider regarding his affirmative response to Question 12 on his application.

Dr. Schneider described the circumstances surrounding the one pending case of malpractice that had been filed against him.

Ms. Mastroluca moved that the Board grant Dr. Schneider's application for licensure. Dr. Nagy seconded the motion and it passed unanimously.

(j) Mona El Sayed Alqulali, M.D.

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

Mr. Duxbury questioned Dr. Alqulali regarding the fact that she responded to Question 31 on her application in the negative when she should have responded to it in the affirmative.

Dr. Alqulali explained that at the time she was applying for licensure in Nevada, she was also applying for licensure in several other states and at various hospitals, and some of the

questions were worded differently on different applications. Her assistant was helping her with her applications and they misread the question. Dr. Alqulali then explained the circumstances surrounding the events that led to her receipt of a Confidential Letter of Warning from the Iowa Board of Medicine

Mr. Duxbury questioned Dr. Alqulali regarding her affirmative response to Question 12 on her application for licensure.

Dr. Alqulali described the circumstances surrounding the one case of malpractice that had been filed against her that resulted in a settlement.

Ms. Mastroluca asked Dr. Alqulali what she planned to do if granted a license to practice medicine in Nevada.

Dr. Alqulali said she was considering working with a hospitalist group and also wants to practice Gynecology and Women's Health in Las Vegas.

Mr. Duxbury moved that the Board grant Dr. Alqulali's application for licensure. Dr. Edwards seconded the motion, and it passed unanimously.

(k) Renne Dua, M.D

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

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

Upon returning to open session, Ms. Peltyn moved that the Board grant Dr. Dua an unrestricted license contingent upon successful passage of a peer review. Dr. Edwards seconded the motion, and it passed unanimously.

(l) Alfonso A. Ortiz, M.D.

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

Dr. Hardwick questioned Dr. Ortiz regarding the fact that he had three arrests for driving under the influence in January 2003, August 4, 2003 and August 5, 2004, and he failed to provide the Board with an explanation regarding the arrest on August 5, 2004.

Dr. Ortiz said there were two arrests – one in 2003 and one in 2004.

Dr. Hardwick stated the Board had information regarding two arrests in 2003 and one in 2004. Dr. Ortiz stated there was only one in 2003.

Dr. Hardwick questioned Dr. Ortiz about his probation with the New York Department of Health, which ended on December 20, 2014.

Dr. Ortiz explained he was put on probation for five years in 2009 for a 2004 arrest.

Dr. Hardwick stated Dr. Ortiz had an expired license with disciplinary action in the state of Illinois, and Illinois had indicated it refused to renew it.

Dr. Ortiz stated Illinois is a sister-state to New York, and after he was put on probation in New York, Illinois advised him it would not allow him to renew his license there until he resolved the problem in New York.

Dr. Hardwick questioned Dr. Ortiz regarding why he responded in the negative to Question 32 on his application for licensure when he should have responded in the affirmative.

Dr. Ortiz said he didn't recall whether he ever had his DEA registration revoked.

Dr. Hardwick asked Dr. Ortiz if he had had additional arrests for driving under the influence on December 18, 2003 and February 7, 2006.

Dr. Ortiz stated he did not; that that was when he went back to New York to prove he did the community service.

Dr. Hardwick stated Dr. Ortiz had not taken a major exam in 30 years, he had some confusing answers regarding arrests for driving under the influence, he had a DEA registration taken away that he didn't recall, and he had a refusal to renew a license in Illinois. Dr. Hardwick said he thought Dr. Ortiz needed to clean up these issues and reapply.

Mr. Cousineau said he didn't think Dr. Ortiz met the threshold for licensure by endorsement and he was very concerned from a staff perspective that Dr. Ortiz doesn't recall losing a DEA license. He suggested Dr. Ortiz may want to withdraw his application. Mr. Cousineau said he was really concerned regarding Dr. Ortiz's inability to remember or recall certain things, both on his application and when being questioned at this meeting.

Dr. Muro reiterated what Mr. Cousineau had outlined and said there were too many questions Dr. Ortiz couldn't honestly and accurately answer.

Dr. Ortiz said he was withdrawing his application.

(m) Gary Allen Palmer, M.D.

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

Dr. Prabhu stated Dr. Palmer had not actively practiced clinical practice for the past five years.

Dr. Palmer explained that he had a longer career at the University of California and practice until he joined the Biotech sphere as Chief Medical Officer for several leading-edge biotech companies in Genomic Oncology. And though he didn't have direct patient responsibilities during those years, it was his job to stay abreast of clinical medicine. He was the genomic liaison at multiple tumor boards throughout the country because there was just no expertise in the genomic part of Oncology. So he feels very comfortable with the way Oncology is practiced because he is involved with it every day. He has no plans to open a practice and be a general Oncologist; his plans are to be on the adjunct faculty at UNLV, where he thinks they could use his expertise in Genomic Oncology, and also perhaps do some locum tenens work periodically.

Dr. Muro said he appreciates Dr. Palmer's expertise and what he would bring to the State, as well as his intensions; however, there is still the practice requirement.

Mr. Cousineau asked if Dr. Palmer would be willing to undergo a peer review, and Dr. Palmer stated he was. Mr. Cousineau explained the peer review process to Dr. Palmer.

Ms. Peltyn moved that the Board grant Dr. Palmer's application for licensure contingent upon successful passage of a peer review. Mr. Duxbury seconded the motion, and it passed unanimously.

Agenda Item 25

PERSONNEL

Annual Performance Evaluation of Executive Director

Dr. Prabhu stated Mr. Cousineau continues to serve laudably in the position of Executive Director, he serves commendably as a Commissioner and seasoned leader to the Interstate Medical Licensure Compact, and he continues to foster relationships with outside entities with a relevant nexus to the Board's mission. He ensures ongoing efforts to improve community outreach and advancement of the Board's educational efforts. Dr. Prabhu said simply put, Mr. Cousineau has his full trust as to his executive decision making and leadership.

Dr. Hardwick moved that the Board accept the performance evaluation. Ms. Mastroluca seconded the motion, and it passed unanimously.

Mr. Cousineau thanked the Board and said the support of the Board members means everything; that every Board member contributes to his efforts, and he was proud to serve them. He thanked the staff for their support and thanked Ms. Rasul for her efforts as the Board's Senior Deputy Attorney General.

Agenda Item 26

CONSIDERATION AND ADOPTION OF BUDGET FOR CALENDAR YEAR 2018, TO INCLUDE ANY POTENTIAL STAFF SALARY INCREASES

Ms. Jenkins outlined the proposed income in the proposed budget. She stated the proposal for income for 2018 was based on a 6% increase in income. She said this is a conservative figure; that staff did a 10-year look-back to make sure the figure was reasonable, and came up with a 6.6% average growth over 10 years. The income is based on a non-renewal year, as the Board's income is substantially more in a renewal year than in a non-renewal year. The total projected income is \$4.5 million.

Ms. Jenkins then outlined the proposed expenses. A 3.3% cost-of-living increase was proposed for current staff, based on the Consumer Price Index for the Pacific Coast, which is called for in the Board's Policy and Procedure Manual. The proposal for State employees for in 2018 is 3%. Also proposed is a 2% merit increase, which is half of what the State step percentages average. Three new positions are proposed: one in Legal, one in Licensing and one in Investigations – a legal assistant, a license specialist and an investigator. Those three positions are included in the Personnel section number.

Ms. Jenkins then highlighted the items that are different in the operating expenses for 2018. She stated the largest of these is in rent. The Board has a lease proposal for the building it has been considering moving to. What was budgeted was based on the lease proposal at 1.5 per square foot. It would expand the Board's current space from 8,500 square feet to 15,000 square feet. It is a significant increase, which is needed just to accommodate adding the three proposed positions. It is a good rate and a good proposal. The figure of \$328,800.00 includes the rent in Las Vegas and a move in Reno the first of March. Also included is an additional \$30,000.00 in office expenses, which is primarily for moving expenses. If the Board has to purchase additional fixed assets, that depreciation will hit the following year, and we will budget for that in 2019. Also budgeted is \$30,000.00 in public outreach, which is allocated primarily for opioid education and the provisions of AB 474. There is a projected net loss of \$645,200.00. She said this, in her mind, is what the Board has been building its reserves for all these years – to be able to take the opportunity to expand the Board's staff in order to accommodate both AB 474 and the Board's expanding licensing base. The \$600,000.00 would come from the Board's reserves in order to expand the Board's capacity to fulfill its mission.

Dr. Havins inquired about the term of the lease. Ms. Jenkins stated it was now proposed at a seven year plus a five, with an option to purchase.

Dr. Hardwick moved that the Board approve the budget. Dr. Nagy seconded the motion, and it passed unanimously.

Agenda Item 27

STAFF COMMENTS/UPDATES

Mr. Cousineau said the Federation of State Medical Boards Annual Meeting will be held in late April in Charlotte, North Carolina. Ms. Munson will be sending the Board members an email inquiring as to their desire to attend. He stated the Board has budgeted for all Board members, as well as several staff members, to attend, and he particularly encouraged all Board members who have never attended to go.

Mr. Cousineau stated that in late October, he and Ms. Mehta presented the Board's outreach presentation to residents at UMC in Las Vegas, and will continue to do that in coming years. On November 17, Mr. Cousineau was part of a panel at the Nevada Rural Health Opioid Summit, discussing some of the new expectations from AB 474. Earlier in the month he did a radio interview with Lotus Radio Group in northern Nevada, which was broadcast to seven stations in northern Nevada. He said staff is endeavoring to reach out to the rural areas, specifically Elko County and that area, to do a similar interview. Mr. Cousineau said he wanted the Board members to know, as some may not have seen it, that the Board has public service announcements (PSAs) currently airing in the Reno-Carson City-Dayton area addressing the use of opioids and also touting the Board's knowyourpainmeds.com website. Future television and radio PSAs that will run in the Las Vegas area early next year have been incorporated into next year's budget. The cost of broadcasting in Las Vegas is substantially more significant than it is in northern Nevada. Staff has been working with the NSMA for various outreach programs to the Board's licensees. December 5, from 6 to 9:30 p.m., at City Hall in Las Vegas, Mr. Cousineau will be presenting regarding some of the impacts of AB 474, and the expectations as they apply to the Board's licensees. He welcomed the southern Nevada Board members to attend. He said the Board has been advancing Project Echo, a web-based training program, which is available to Board licensees.

Ms. Peltyn wanted to thank Mr. Cousineau and the rest of the staff for making everything the Board does much easier. She also thanked Dr. Prabhu for all he does.

Dr. Nagy asked whether there was any intent to move forward or any mechanism by which the Board could evaluate the comments made during public comment with respect to the opioid crisis in a constructive fashion.

Mr. Cousineau stated he thought some of those comments were similar to comments received previously and that the Board will continue to receive. He said the simple answer is recognition that AB 474 is the law, and it is obviously going to have to be respected and recognized, but also recognizing there will be circumstances where the strict tenants of AB 474 are not going to be able to be abided by due to unique circumstances of the practitioner or the practice. The answer he has been advancing, and will continue to advance when the question comes up, is that the Board is not in the business of going after licensees who try to comply with the requirements in good faith, and the easiest way to justify, if there is a retrospective review as to the conduct, is to document in the medical record the exact rationale or reasoning as to why the licensee was unable to comply with the requirements.

Dr. Nagy said in spine surgery, sometimes you see patients that come from out of state or otherwise, and they are on huge doses of narcotics, which they require, and it frightens people to write doses that high because in normal individuals, those are lethal doses, so if patients get transferred from one provider to another, their medications are going to be reduced. Given the regulations that have come out, pain doctors are starting to reduce these patients' dosages. It is a real thing; people do commit suicide due to pain and the inability to control their pain because the easier escape for them is death.

Mr. Cousineau stated that may be one of the unintended consequences of AB 474; there are many. These are things that may be addressed in a subsequent legislative session.

Agenda Item 28
PUBLIC COMMENT

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

Agenda Item 29
ADJOURNMENT

Dr. Edwards moved to adjourn the meeting. Dr. Nagy seconded the motion, and it passed unanimously. Dr. Prabhu adjourned the meeting at 4:31 p.m.

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