



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 7, 2014 – 8:30 a.m.

Board Members Present

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

Board Members Absent

Beverly A. Neyland, M.D.

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Staff/Others Present

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

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by President Michael J. Fischer, M.D., at 8:35 a.m.

Mr. Cousineau took roll call, and all Board members were present with the exception of Dr. Neyland. Mr. Cousineau announced there was a quorum.

Mr. Cooper reminded everyone of the Federation of State Medical Boards (FSMB) 2014 Annual Meeting on April 24 through 26, and named those Board members and staff who would be attending. He said the Board had received confirmation that Eric Fish, the FSMB attorney expert on the Interstate Compact, will provide a presentation to the Board at its June meeting regarding the FSMB's efforts with respect to the Interstate Compact movement. Additionally, Dr. Greg Snyder, FSMB liaison to Nevada, and David Johnson, FSMB Senior Vice President of Assessment Services, will provide a presentation on the Federation itself. He asked that any Board members who had areas of interest they would like to see addressed by the FSMB representatives at that meeting to let him know. He informed the Board that staff would be meeting with the Governor's Office to go over the licensing presentation that had been given to the Board at its December meeting and to the Legislative Committee on Health Care. He stated he would like to extend an invitation to the Governor to attend the Board meeting during the FSMB presentations, absent objections from the Board. No objections were voiced.

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 6, 2013 Board Meeting – Open/Closed Sessions

Dr. Chowdhry moved that the Board approve the Minutes of the December 6, 2013 Board Meeting – Open/Closed Sessions. Dr. Berndt seconded the motion. Ms. Wilkinson stated she was abstaining from the vote since she was not present at the December 6, 2013 meeting. A vote

was taken on the motion and it passed, with all other Board members voting in favor of the motion.

Agenda Item 4

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

- (a) Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.230 to Add Language Which Makes It Prohibited Professional Conduct to Utilize, or Allow Another Under a Licensee's Direction or Authority to Utilize, a Single-Use Medical Device in More Than One Instance, or on More Than One Patient; or Utilize, or Allow Another Under a Licensee's Direction or Authority to Utilize, a Single-Use Medical Device in a Manner Inconsistent With the Manufacturer's Packaging Instructions or Directions Included With the Medical Device

Mr. Cousineau explained that staff would like to have some additional disciplinary authority beyond the current standard of care model used in instances where it is learned a licensee has engaged in some kind of unsafe or improper injection practice or in any instance where a licensee has used a single-use medical device in multiple instances or with multiple patients. Staff is requesting authority to proceed with the regulatory adoption process to add a new section under prohibited professional conduct which would make it a violation of the Nevada Administrative Code, and therefore a violation of statute, to engage in the administration or use of a single-use medical device in more than one instance or on more than one patient, or in a manner that is inconsistent with the manufacturer's packaging instructions, and add a definition of "single-use medical device."

Discussion ensued regarding the fact that the FDA has guidelines which address this issue, but they are not mandates, and that is why staff deemed it appropriate to create a mandate via regulation.

Dr. Fischer moved that the Board authorize staff to proceed with the regulatory adoption process. Mrs. Lowden seconded the motion and it passed unanimously.

Agenda Item 5

CONSIDERATION OF REQUEST OF JAMES EELLS, M.D. FOR REMOVAL OF CONDITION ON HIS MEDICAL LICENSE

Dr. Eells was present in Las Vegas.

Dr. Fischer explained that Dr. Eells had appeared before the Board on June 8, 2012, to request a change in license status from Inactive to Active. He was issued an Active-status license with conditions that he complete his contract with NPAP and be prohibited from prescribing any controlled substances. Dr. Eells was now requesting that the Board release him from the condition prohibiting him from prescribing controlled substances. Dr. Fischer asked Dr. Eells to explain why the Board should grant his request.

Dr. Eells stated that he was much better off than he had been two years ago. Since then, he had re-established his practice and everything was going well. From a personal standpoint, he was doing well and he was actively participating with the NPAP. He said it was extremely difficult to practice without a DEA license. He had learned his lesson and had a completely

different feeling on narcotics. He shuns them and doesn't like them much, but it is very difficult to treat a lot of conditions if you don't have a DEA license, so to be a better physician, he really needed to get that activated, and this was the first step. He stated there was not one cell in his body that would ever go through what he went through again. It had been two years and he had built a solid foundation and wanted to capitalize on that. He is in a solo practice and has a workplace monitor with the NPAP program. His office manager monitors him for conduct and behavior and files a report with the NPAP every three months. He has two partners in his office and they monitor him as well, and if he has a patient who needs a controlled substance, they will see the patient or sign off on the chart and it will go in their name and not his. He is in a five-year contract with the NPAP.

Dr. Hardwick stated the condition was placed upon Dr. Eells for five years for a reason and he didn't see any reason to change that.

Ms. Wilkinson asked Dr. Eells to explain the status of his criminal case and the terms of his probation. Dr. Eells explained there were many charges against him that were reduced to a charge of possession, and that charge was suspended until the end of his five-year probation, at which time it will be dropped completely and he will have no record; there will be no convictions and he will be able to move to have his record of arrest expunged.

Dr. Fischer asked how removing the condition from his license would change the way he practices if he continues to have two partners who are willing to make sure he is able to prescribe narcotics, and Dr. Eells explained it is a burden because the other doctors are not always there and sometimes he has to wait for one of the other doctors to come in to review the chart and sign off on it in order to call a prescription in.

Ms. Clark moved that the Board not make any changes to the agreement the Board has with Dr. Eells. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 6

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JAMES TATE, M.D.*, BME CASE NO. 10-9809-1

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

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

Mrs. Lowden left the meeting for the duration of this agenda item.

Ms. Platt asked the adjudicating Board members whether they had reviewed the adjudication materials provided to them, and all stated they had.

Mr. Hafter entered his appearance on behalf of Dr. Tate.

Ms. Platt provided the adjudicating Board members with procedural instruction regarding the adjudication process.

Dr. Hardwick stated that from his review of the Complaint, the Synopsis, the Transcript and the exhibits, he thought Dr. Tate violated the statute.

Ms. Wilkinson stated some of the testimony she significantly considered was that of Ms. Leake, and her statements regarding her observance of the smell of alcohol, the request for the use of the C-Arm, and the failure to mark the surgical site on the patient prior to the surgery, as well as Dr. Tate's admission that he drank earlier in the day and the testimony of Dr. Kelly and his report regarding the alcohol evaluation and analysis. She did not find Dr. Okoye's testimony to be convincing, and for those reasons, she supported the Findings of Fact and Conclusions of Law the Hearing Officer and Mrs. Lowden had tendered.

Dr. Chowdhry stated he had reviewed the Complaint, the Synopsis, the Transcript and the exhibits, and concurred with the conclusions of the Hearing Officer and Mrs. Lowden.

Dr. Prabhu stated he agreed with the conclusions of the Hearing Officer and Mrs. Lowden.

Ms. Wilkinson moved that the Board uphold the Findings of Fact and Conclusions of Law issued by the Hearing Officer and Member Lowden, finding that Dr. Tate rendered professional services to a patient while he was under the influence of alcohol or was in an impaired mental or physical condition, which is a violation of NAC 630.230(1)(c), as alleged in the Complaint. Dr. Hardwick seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Mr. Van Ry provided to the adjudicating Board members a handout outlining potential discipline allowed by statute, pursuant to NRS 630.352, and a verified Memorandum of Costs, Disbursements and Attorney's Fees, and requested that the Memorandum of Costs, Disbursements and Attorney's fees become part of the record. He then presented the Investigative Committee's recommendations regarding discipline to be imposed in the matter, which included revocation of Dr. Tate's license to practice medicine or, if the Board did not feel revocation was appropriate, suspension of his license for a finite period of time; a public reprimand; the maximum fine for a single violation of the Medical Practice Act of \$5,000.00; and that he pay the costs in the amount of \$35,364.44.

Mr. Hafter stated for the record that they were not provided with the exhibits Mr. Van Ry provided to the Board, so they were going to object to those.

Mr. Van Ry stated it was simply a recitation of costs and fees and was a verified Memorandum.

Ms. Platt said she would like to provide an opportunity for the costs to be provided to Dr. Tate and his counsel by fax.

Mr. Van Ry stated he would object to that, as he didn't think it was the proper forum for Mr. Hafter to review the costs and fees and to make objections in any way; that was something that was proper for judicial review, as the costs are what they are.

Ms. Platt stated that it was provided to the Board, so it should be a supporting document.

Mr. Hafter stated that was fine; that they would wait for judicial review; and asked if he could continue. He then presented his argument in response to the proposed discipline to be imposed in the matter. He stated Dr. Tate did not cause any harm in this case and he did not understand what revoking Dr. Tate's license and assessing him all those costs, which he couldn't afford to pay, was going to do to protect the public because the public was not harmed. He suggested that if the Board was going to discipline Dr. Tate, that it issue him a public reprimand and, if so inclined, require CMEs, and added that issuing a large fine also wasn't going to accomplish anything.

Discussion ensued regarding the discipline that should be imposed in the matter.

Ms. Wilkinson moved that Dr. Tate receive a public reprimand, that his license be suspended for 30 days, that he be required to participate in a program for alcohol, that he be required to attend 10 hours of CME, that he pay a fine of \$5,000 and pay the fees and costs of the proceeding.

Ms. Platt asked Ms. Wilkinson to clarify how long Dr. Tate would have to pay the fine and the costs.

Ms. Castagnola asked for the time frame for completion of the CMEs.

Ms. Wilkinson said Dr. Tate would have one year for the payment of the fine and the costs and for completion of the CMEs.

Ms. Castagnola asked for the time frame for completion of the diversion program.

Ms. Wilkinson said Dr. Tate would have one year for that.

Dr. Chowdhry seconded the motion.

Discussion ensued regarding the length of suspension of Dr. Tate's license that would be appropriate.

Dr. Hardwick requested that Ms. Wilkinson amend her motion to change the length of suspension of Dr. Tate's license from 30 days to 6 months.

Ms. Wilkinson accepted the amendment, and Dr. Chowdhry seconded the amended motion.

Ms. Platt restated the amended motion, and asked Ms. Wilkinson whether the CME was to be related to alcohol or whether it could be related to anything, and Ms. Wilkinson stated it was to be related to alcohol.

Dr. Prabhu asked that the adjudicating Board members reconsider the length of the suspension and make it three months.

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

Agenda Item 7

CONSIDERATION AND ACTION REGARDING PETITION FROM SCOTT D. FIELDEN, M.D., REQUESTING AMENDMENT OF NAC 630.830(4) TO CREATE AN EXCEPTION THAT ALLOWS MEDICAL ASSISTANTS WITH ADDITIONAL QUALIFICATIONS AND TRAINING IN THE FIELD OF ANESTHESIOLOGY TO ADMINISTER ANESTHETIC AGENTS TO A PATIENT UNDER THE SUPERVISION OF A LICENSED ANESTHESIOLOGIST PHYSICIAN

L. Kristopher Rath, Esq., stated he represented Dr. Fielden and had assisted him in preparing his petition. He stated that prior to February 2013, there was no explicit prohibition against medical assistants providing anesthesia. However, as the regulations now read, there is that specific prohibition. He said they fully understand why the prohibition was put into place; that the Board and the public do not want unqualified individuals providing anesthesia care to patients; and neither do they. What they do want is for anesthesiologists to be able to work with anesthesiologist assistants to render anesthesia care. Anesthesiologist assistants are qualified individuals who have a Master's degree and take the MCAT prior to being admitted to their training. As the statutes and regulations now stand, there is no licensing scheme for anesthesiologist assistants in Nevada, and they are not asking the Board to create such a licensing scheme. Anesthesiologist assistants could carry out their duties as medical assistants but for the language in NAC 630.830(4), so they want to amend the regulation to carve out an exception which would allow anesthesiologist assistants to assist anesthesiology physicians in providing anesthesia care to patients. He then outlined the reasons why they were requesting amendment of the regulation, and stated what they were asking the Board to do was to vote to go forward with the process of amending the regulation in accordance with NRS 233B.061.

Scott D. Fielden, M.D., stated he is an anesthesiologist with Anesthesiology Consultants in Las Vegas. He then provided a brief history as to what precipitated the petition.

Discussion ensued regarding the training and supervision of anesthesiologist assistants.

Robert Wagner, of the American Academy of Anesthesiologist Assistants, described his education, training and experience as an anesthesiologist assistant. He then stated that anesthesiologist assistants have to practice under an anesthesiologist; they cannot practice under any other type of physician. They must pass an exam administered by the National Board of Medical Examiners, the same board that administers physician exams, and they have to re-credential every six years. He then described the education and training of anesthesiologist assistants, and described supervision of anesthesiologist assistants in Florida.

Dr. Prabhu asked how many programs exist for anesthesiologist assistants, and Mr. Wagner listed them.

Discussion ensued regarding how anesthesiologist assistants are employed, supervised and insured.

Discussion ensued regarding the anesthesia care team model some hospitals are now requiring anesthesiology groups to employ.

Discussion ensued regarding the licensing schemes used for anesthesiologist assistants in those states that license them.

Discussion ensued regarding the length and cost of anesthesiologist assistant programs, and the average salary for someone who graduates from one of those programs.

Discussion ensued regarding collaboration agreements between anesthesiologist assistants and their supervising physicians, and notification of those agreements to the Boards who license the anesthesiologist assistants.

Ms. Wilkinson moved that the Board grant the petition to move forward with the regulatory adoption process. Mrs. Lowden seconded the motion and it passed unanimously.

Agenda Item 8

REPORTS

(a) Physician Assistant Advisory Committee

Physician Assistant Advisory Committee Member Janet Wheble, PA-C stated that the Advisory Committee had been working with physician assistants in Nevada, as well as representatives from the Clark County Medical Society, the Nevada State Medical Association and the Nevada Academy of Physician Assistants regarding the proposed changes to the Nevada Administrative Code in LCB draft R151-13. That draft has generated both positive and negative comments from all parties involved, and there are still concerns with the language and how the Board would interpret the language. So they will continue to work with all parties involved to come up with language that is acceptable to all.

(b) Investigative Committees

- Consideration of Cases Recommended for Closure by the Committees

Dr. Berndt reported that Investigative Committee A had met and considered 133 cases. Of those, they authorized the filing of a formal complaint in 7 cases, sent 7 cases out for peer review, requested an appearance in 13 cases, issued 32 letters of concern, referred 3 cases back to investigative staff for further investigation or follow-up and recommended closure of a total of 71 cases.

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

Dr. Chowdhry reported that Investigative Committee B had met and considered 72 cases. Of those, they authorized the filing of a formal complaint in 5 cases, sent 8 cases out for peer review, requested an appearance in 2 cases, issued 14 letters of concern, and recommended closure of a total of 43 cases.

Dr. Prabhu 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 421 and the number of cases per investigator was 70. There were 24 peer reviews in the field and 5 peer reviews awaiting assignment.

(2) Quarterly Compliance Report

Ms. Castagnola reported that a total of \$13,938.77 in costs and \$1,450.00 in fines had been collected as of the end of the fourth quarter of 2013, for a total of \$15,388.77. To date in 2014, an additional \$16,896.63 in costs and \$9,849.84 in fines had been collected.

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

(d) Nevada State Medical Association Report

Dr. Hardwick stated that Stacy Woodbury was not present. He then said he would like to see the language of the proposed regulation amendment in R151-13 be as complete as possible before it goes to the Legislative Counsel Bureau.

(e) Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that CCMS was in the midst of its mini-internship program, which began on March 3 and would run until March 13. It was one of the largest groups they have ever had, and she believed that was a direct reflection of their community outreach efforts. Their town hall meeting series had been going very well. In January, they had Insurance Commissioner Scott Kipper; on February 26, they had Mayor Goodman on the Las Vegas Medical District; and on May 14, they will have Congressman Joe Heck. Their installation dinner will be held June 14, at which they will be installing Dr. Michael Edwards as their 60th President. Also, they will again be giving their "Winged Heart Awards," which were launched last year. On March 18, their Scholarship Committee will be meeting and they will be disbursing their scholarship funds to the two medical schools and the nursing schools.

Agenda Item 9

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. THOMAS GARRISON, M.D.*, BME CASE NO. 13-26118-1

Dr. Garrison was not present.

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

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

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

Agenda Item 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NANCY LONG, M.D.*, BME CASE NO. 11-9612-1

Dr. Long was not present.

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

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

Dr. Prabhu moved that the Board approve the Settlement Agreement. Ms. Wilkinson 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. DONALD YARBRO, JR., M.D.*, BME CASE NO. 12-6960-1

Dr. Yarbrow was not present.

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

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

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

Agenda Item 12

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. VAN BOHMAN, M.D.*, BME CASE NO. 13-10038-1

Dr. Bohman was not present.

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

Ms. Albright outlined the facts of the case, the allegations contained in the Complaint filed against Dr. Bohman and the terms of the proposed Settlement Agreement.

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

Agenda Item 13

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NGOC VO, M.D.*, BME CASE NO. 13-33315-1

Dr. Vo 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. Vo and the terms of the proposed Settlement Agreement.

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

Agenda Item 14

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SEAN SU, M.D.*, BME CASE NO. 13-11344-1

Dr. Su was not present.

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

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

Dr. Prabhu 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 15

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

Dr. Abdella was not present.

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

Ms. Albright outlined the facts of the case, the allegations contained in the Complaint filed against Dr. Abdella and 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 16

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. BRUCE SPERO, M.D.*, BME CASE NO. 12-10270-1

Dr. Spero was not present.

Dr. Fischer named the adjudicating Board members who would be considering the matter. He then stated he was recusing himself from consideration of the matter because Dr. Spero had been a patient of his.

Ms. Albright outlined the facts of the case, the allegations contained in the Complaint filed against Dr. Spero and the terms of the proposed Settlement Agreement.

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

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. GARY GANSERT, M.D.*, BME CASE NO. 13-4774-1

Dr. Gansert was not present.

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

Dr. Hardwick stated he was recusing himself from consideration of the matter because Dr. Gansert works in the same group as he does.

Dr. Berndt stated he was recusing himself from consideration of the matter because Dr. Gansert is a personal friend.

Ms. Albright outlined the facts of the case, the allegations contained in the Complaint filed against Dr. Gansert and the terms of the proposed Settlement Agreement.

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

Agenda Item 18

EXECUTIVE STAFF/STAFF REPORTS

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

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

Dr. Hardwick moved that the Board approve the requests for training. Dr. Chowdhry seconded the motion, and it passed unanimously.

(b) Report Regarding 2013 Department of Public Safety Civil Applicant Fingerprint Response Audit

Mr. Cooper explained that the Department of Public Safety had conducted an audit of the Board's fingerprint and criminal history information, which began in 2013 and was completed on January 21, 2014. The Board was found to be in compliance, and the special category of electronic storage, which was a new process to the Board, will be the subject of a technical security audit later in 2014. New policies and procedures were introduced to the Board through this audit process and the purpose of the audit was to ensure the Board was in compliance, which it was.

(c) Quarterly Update on Finances

Ms. Jenkins summarized the information contained in the Balance Sheet for the fourth quarter of 2013. She explained that because 2013 was a renewal year, a substantial amount of the Board's assets in cash were held on the balance sheet in order to sustain the Board's expenses over the biennium until the next renewal period. The first section showed the Board's assets, and the total was approximately \$8.5 million. The second section showed the Board's liabilities, and the total was approximately \$5.1 million, which included the income that the Board had set aside to cover expenses over the two-year period. The last section was essentially what the Board was holding in its reserve at the time, which was about \$3.3 million. She stated the goal we are working toward is a two-year reserve, which staff anticipates can be achieved in two to three years, if the Board continues on its current path.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the fourth quarter of 2013. She stated the Board's income exceeded its budget by 10.5% and the total expenses were over budget by 4.2%. She explained the operating expenses were under budget by about 3% and the personnel expenses were a little bit above, due to the cost-of-living increases that were instituted in the last half of the year. The Board's interest income was almost double what was budgeted for the quarter, as the Board was able to invest in CDs at a little higher rate than was anticipated or budgeted. The net income shows the amount added to the Board's reserve for the quarter, and was \$96,852.06, which was significantly better than budgeted.

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

(d) Peer Review Statistics Report

Mr. Cooper stated that at the last Board meeting, Dr. Berndt and others had asked for a snapshot of the Board's peer reviews. In response, staff had prepared statistical charts, which were before the Board for consideration. He stated the important line was the one labeled "Peer Reviews." He explained that for a couple of years, the numbers for the north and south did not add up to the total because in some cases a peer review had to be done more than once. Additionally, there were 19 times staff had to go out of state to get a peer review due to the rarity of the specialty or because staff could not find anyone in the state to perform the peer review. Between 2002 and 2013, the Investigations Division completed 8,528 investigations. Of those, 1,662 went to peer review, which is 19%, and is right where the Board should be. Of those 1,662 that went to peer review, 513 came back with a finding of malpractice, which is 31% of the total peer reviews. Due to constraints with the Board's database, staff was unable to go back as far as 2002 to see what action the Board took on those 513, but was able to go back to 2010. In 2010, 22 were settled in the Board's favor; in 2011, 22 were settled in the Board's favor; in 2012, 14 were settled in the Board's favor; and in 2013, 2 were settled in the Board's favor. The number of peer reviews has decreased; however, in 2004 and 2005, the number skyrocketed because in 2003, a law was passed requiring the Board to conduct investigations after receiving certain malpractice reports. The number has decreased due to the Board's Medical Reviewers doing more in the medical reviews to answer the questions at the Investigative Committee level, resulting in fewer peer reviews being sent out by the Investigative Committees, and staff is no longer sending out peer reviews automatically when it appears the case will need to go to peer review; they are reserving that decision for the Investigative Committees. The cost per year for peer reviews has increased due to the fact that the cases going to peer review are harder cases and we are requiring the peer reviewers to provide us with documentation showing where the violation in the standard of care took place. The Board has spent \$970,543.00 on peer reviews since 2002, which is an average of \$598 per peer review.

Ms. Castagnola added that one additional factor attributing to the increase in the cost of peer reviews is that prior to 2005, the Board paid peer reviewers about \$75 per hour, but subsequently increased the hourly fee to \$250 as an incentive for more physicians to perform peer reviews for the Board.

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

Agenda Item 19

LEGAL REPORTS

- Board Litigation Status

Mr. Van Ry reported there were currently 81 cases in the Legal Division, 10 of which were presented to the Board for action at this meeting. There were 10 cases pending the CMT process, 14 cases awaiting filing of a formal complaint, 39 cases in which a formal complaint had been filed that were pending hearings, 12 of which were filed subsequent to the last Board meeting, and 49 letters of concern were approved by the Investigative Committees at their

February meetings. He then provided a summary and update regarding various civil court cases in which the Board was involved.

Agenda Item 20

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the December 6, 2013 Board Meeting

Dr. Berndt moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the December 6, 2013 Board Meeting. Dr. Chowdhry seconded the motion, and it passed unanimously.

Agenda Item 21

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

21(a) Paul Scheele, II, M.D.

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

Dr. Scheele described the circumstances surrounding the two malpractice cases that had been filed against him.

Dr. Fischer questioned Dr. Scheele regarding his affirmative response to Question 31 on his application for licensure.

Dr. Scheele described the circumstances surrounding the action taken by the Colorado Medical Board, which was related to one of the malpractice cases that had been filed against him.

Dr. Fischer asked Dr. Scheele what he planned to do if granted a license in Nevada, and Dr. Scheele explained he was employed by UniPath, a pathology group that does both hospital-based work and also has a large outpatient presence, both in Colorado and in other states, including Nevada.

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

21(b) Deming Chau, M.D.

Dr. Fischer asked Dr. Chau 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. Chau regarding the problems he had during his residency training.

Dr. Chau explained the circumstances surrounding his withdrawal from the internal medicine residency program at Mercy Catholic Medical Center, his transfer to the anesthesiology residency program at UCLA due to closure of the anesthesiology residency program at Albert Einstein Medical Center, his resignation from the residency program at UCLA, his remediation program while in the residency program at the Cleveland Clinic and his subsequent leave of absence from that program, and his completion of residency training at Tulane University.

Dr. Hardwick questioned Dr. Chau regarding his affirmative responses to Questions 12 and 12a on his application for licensure.

Dr. Chau described the circumstances surrounding the two malpractice cases that had been filed against him that resulted in settlements.

Dr. Hardwick questioned Dr. Chau regarding the status of his Board certification, and Dr. Chau stated his Board certification expired at the end of 2013 and he was preparing to take the recertification examination.

Dr. Berndt questioned Dr. Chau regarding how long he had been doing locum tenens, and Dr. Chau stated he had been doing that for the past several years.

Dr. Berndt asked Dr. Chau what he planned to do if granted a license in Nevada, and Dr. Chau explained that he had no specific plans at that time.

Dr. Prabhu asked Dr. Chau when he planned to take the ABMS recertification examination, and Dr. Chau said he planned to take it in July 2014.

Discussion ensued regarding whether it would be appropriate to require Dr. Chau to pass his ABMS recertification examination in order to grant him a license.

Dr. Hardwick moved that the Board not grant Dr. Chau a license by endorsement. Mrs. Lowden seconded the motion.

Discussion ensued regarding whether it would be appropriate to require Dr. Chau to pass the ABMS recertification examination in order to grant him a license, require him to pass a peer review in order to grant him a license or to grant Dr. Chau a license by endorsement.

Mrs. Lowden withdrew her second to the motion.

Dr. Prabhu moved that the Board grant Dr. Chau's application for licensure by endorsement. Dr. Fischer seconded the motion and it passed, with Dr. Berndt and Dr. Hardwick voting against the motion and all other Board members voting in favor of the motion.

21(c) Patty Shih, M.D.

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

Ms. Clark questioned Dr. Shih regarding the fact that she had not practiced clinical medicine since September 2011.

Dr. Shih stated she was a family medicine physician and worked for Anthem Blue Cross performing utilization reviews. They asked her to apply for a license in Nevada in order to perform reviews in the state of Nevada. She had been performing utilization reviews for about seven years, and most of that time she had been in clinical practice as well, but two years ago she phased out of clinical practice and had been performing utilization reviews full time since.

Ms. Clark questioned Dr. Shih regarding her affirmative responses to Questions 12 and 12a on her application for licensure.

Dr. Shih described the circumstances surrounding the one malpractice case that had been filed against her, which was ultimately dismissed.

Ms. Daniels stated that Dr. Shih had provided the Board with certified verification that she was going to take the ABMS recertification examination on April 19.

Dr. Fischer stated that Dr. Shih had indicated on her application that she would be willing to undergo a peer review if it was requested, and Dr. Shih confirmed that she had.

Mr. Cousineau asked Dr. Shih whether it would be acceptable to her for the Board to grant her a license contingent upon successful passage of the ABMS recertification examination, as opposed to requiring her to undergo a peer review, and Dr. Shih said that it would.

Ms. Clark moved that the Board grant Dr. Shih a license contingent upon successful passage of the ABMS recertification examination. Dr. Fischer seconded the motion and it passed unanimously.

21(d) John Katzen, M.D.

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

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

Upon returning to open session, Dr. Berndt moved that the Board grant Dr. Katzen a license contingent upon successful passage of a peer review. Dr. Prabhu seconded the motion and it passed unanimously.

21(e) Allin Vesa, M.D.

Dr. Fischer asked Dr. Vesa 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 asked Dr. Vesa to describe his medical education and training, and Dr. Vesa stated he attended medical school at Indiana University School of Medicine and completed his residency training in Grand Rapids, Michigan. He then described his medical practice since completing his residency training.

Dr. Chowdhry questioned Dr. Vesa regarding his affirmative responses to Questions 12 and 12a on his application for licensure.

Dr. Vesa described the circumstances surrounding the one malpractice case that had been filed against him.

Mrs. Lowden asked Dr. Vesa what he planned to do if granted a license in Nevada. Dr. Vesa explained that the company he works for has an online telemedicine consulting business and Nevada is one of the states with which the company has a contract to provide this service.

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

21(f) Ann DeJong, M.D.

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

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

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

21(g) Mark Lodespoto, M.D.

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

Dr. Lodespoto described the circumstances surrounding the one malpractice case that had been filed against him that resulted in a settlement.

Dr. Prabhu asked Dr. Lodespoto what he planned to do if granted a license in Nevada, and Dr. Lodespoto explained that he would be practicing teleradiology, and may consider relocating to Nevada at some time in the future.

Dr. Prabhu moved that the Board grant Dr. Lodespoto's application for licensure. Mrs. Lowden seconded the motion and it passed unanimously.

Agenda Item 22

CONSIDERATION, DISCUSSION AND APPROVAL OF ITEMS FOR INCLUSION ON THE BOARD'S WEBSITE

This item was not discussed at the meeting.

Agenda Item 23

PERSONNEL

- Annual Review and Discussion of Professional Competency of Staff
 - *Douglas C. Cooper, CMBI, Executive Director; Board Executive Committee*

Mr. Cooper stated that if a Board member would like to see any employee's individual evaluation, he or she could do so at the Board office, and if the Board would like to speak to an employee, the employee has the right to be present while his or her professional competence is being discussed. This applies to all employees except for him, as his evaluation is done in open session in June.

Dr. Fischer asked if any Board member wanted to see any staff member's evaluation.

Ms. Wilkinson inquired as to the criteria and forms used to evaluate the staff, and Mr. Cooper explained the evaluation process and the forms utilized.

Discussion ensued regarding the forms used for staff evaluations. Mr. Cooper said he would provide the forms to any Board member who was interested in seeing them.

Ms. Wilkinson inquired as to the process used to evaluate the Executive Director, and Mr. Cooper described the process.

Dr. Fischer stated that if any Board members want to review Mr. Cooper's evaluation prior to the Board meeting where it will be discussed, he will email it to them.

Agenda Item 24

STAFF COMMENTS/UPDATES

Dr. Chowdhry asked why the Board still requires an applicant to prove he or she has completed the required education and training when the applicant is already Board certified, since an individual cannot sit for a Board certification exam unless he or she has graduated from accredited programs.

Ms. Daniels explained how licensure by endorsement began.

Dr. Chowdhry stated that once a physician is Board certified, his or her training and education have been very well documented and proven, so if an individual is Board certified, it should be accepted by the Board that the individual's education and training were accomplished through accredited programs.

Dr. Fischer suggested that a presentation be given at a future Board meeting showing exactly what is required of all applicants.

Ms. Daniels explained that if the Board were just to accept Board Certification, the Board would not receive the background on an applicant's training history, and if something problematic occurred during the applicant's training, such as being placed on probation, the Board would not be aware of that.

Dr. Chowdhry clarified that the issue is whether the training is accredited, and if an individual is Board Certified, his education and training have already been verified.

Dr. Fischer requested that an overview of the licensure process be placed on the agenda for a future meeting.

Agenda Item 25

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be on an agenda for a future meeting: approval of the 2013 Annual Report in June; approval of the 2013 annual financial audit in June; review and approval of the new Policy and Procedure Manual; legislative initiatives for 2015 in June; the Executive Director's performance evaluation; the FSMB liaison visit in June, with the dinner on Thursday night before the meeting and the presentation at the meeting; and election of officers in September.

Agenda Item 26

PUBLIC COMMENT

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

ADJOURNMENT

Dr. Prabhu moved to adjourn. Ms. Clark seconded the motion and it passed unanimously. Dr. Fischer adjourned the meeting at 2:48 p.m.

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