



# 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, JUNE 6, 2014 – 8:30 a.m.*

#### *Board Members Present*

Michael J. Fischer, M.D., President  
Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer  
Beverly A. Neyland, M.D.  
Sue Lowden  
Bashir Chowdhry, M.D.  
Wayne Hardwick, M.D.  
Ann Wilkinson  
Rachakonda D. Prabhu, M.D.

#### *Board Members Absent*

Theodore B. Berndt, M.D., Vice President

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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 8:30 a.m.

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

Dr. Fischer recognized Deputy Executive Director Edward O. Cousineau, J.D. for his long-term service of over ten years and presented him with a service award pin memorializing the same.

Mr. Cooper announced the promotion of Donald A. Andreas to Deputy Chief of Investigations for the Las Vegas office and the promotion of Libi Anders to Research Analyst. He then announced that Lynnette Daniels had been recruited by the Federation of State Medical Boards (FSMB) to serve on the State Board Advisory Panel to the USMLE, which provides a sounding board for the USMLE program on various topics and issues, and she had accepted. He advised the Board that Board member Sue Lowden had notified the Governor's office that she is not available for reappointment to the Board, so her term will end June 30, 2014. He presented her with a plaque honoring her for her service. Mrs. Lowden said she very much enjoyed her time on the Board, learned a lot, appreciates her colleagues and all the work they put into this, has a lot of respect for the Board, and that it had been an honor to serve on the Board. Mr. Cooper stated that Laurie Munson, Lynnette Daniels and Carolyn Castleman had attended the System Automation User Conference in Baltimore and learned a lot of information that will assist the Board with its MLO database upgrade. He then announced his intention to retire as Executive Director of the Board at the end of the year. He stated he will have several medical absences during the next six months and Mr. Cousineau will be the Acting Executive Director during those absences.

Agenda Item 2

PUBLIC COMMENT

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

Daniel Coll, PA-C, stated he had been a practicing physician assistant for 13 years, 10 of those in Nevada, and was also a member of the Nevada Academy of Physicians Assistants (NAPA) and one of their Directors at Large. He said he wanted to speak regarding R151-13. He said the proposed regulation contained great language for telemedicine and increasing the physician to PA ratios, but he wanted to express concerns regarding the co-signature requirements and the lack of clarification regarding supervision at the time care is being rendered by the physician assistant. He asked the Board to consider why it was adding administrative burdens that are not proven to improve patient safety and care in a state that has a highly-publicized shortage of healthcare providers and access to care. He asked the Board to consider instead, as many other states have done, how to expand access to quality care in a physician-led healthcare team model.

Dr. Fischer asked Mr. Coll to explain the problem he sees with the co-signature requirement. Mr. Coll explained that in the 1990s, that requirement was removed and now the Board is looking at adding it back. There are concerns regarding the administrative burden that requirement will place on supervising physicians and physician-PA relationships, as well as diminishing time for patient care. Additionally, the initial reason R182-12 was brought to the Board, and part of the genesis for R151-13, was that in 2010, the Board chose to reinterpret simultaneous supervision at the time of care.

Stacy M. Woodbury, Executive Director of the Nevada State Medical Association (NSMA), stated she was speaking to the Board under public comment mostly because she was going to have to leave the meeting prior to Agenda Items 9(a) and (10)(d) being heard. She said that NSMA is excited to be working with the Board and wants to work with it on educational projects, such as prescription drug abuse. She said NSMA appreciates having had the opportunity to work on the physician assistant regulation for the past year, where they worked closely with physician assistants, and that NSMA had submitted its final comments for the record as of May 1. They had reached a consensus on some issues, but not on others. She said that Dr. Keith Brill, President of the Clark County Medical Society (CCMS), and Dr. Howard Baron, the Co-Chairman of the NSMA Committee on Government Affairs in Las Vegas, would be available to answer any questions regarding their proposal and comments during discussion of the proposed regulation later in the meeting.

Jay Somers, PA-C, stated he was the current President of the Nevada Academy of Physician Assistants (NAPA), and was there to represent NAPA and physician assistants in Nevada. He was there in support of their suggested language for R151-13 in their submittal to the Board of May 1. That language was in part drafted with support and significant input from CCMS, NSMA and the entire Nevada State Board of Medical Examiners Physician Assistant Advisory Committee, as well as physician assistants and physicians from Nevada in different practice settings. He stated he had expert testimony available from the American Academy of Physician Assistants (AAPA), as well as the drafters of the original proposed language the Board had before it, present in both Reno and Las Vegas. He said that representatives from NAPA and AAPA were present to field any questions about the proposed language that the Board might have.

Agenda Item 3

APPROVAL OF MINUTES

- March 7, 2014 Board Meeting – Open/Closed Sessions

Dr. Prabhu moved that the Board approve the Minutes of the March 7, 2014 Board Meeting – Open/Closed Sessions. Dr. Neyland seconded the motion and it passed unanimously.

Agenda Item 4

PRESENTATION BY THE FEDERATION OF STATE MEDICAL BOARDS REGARDING FEDERATION PROGRAMS AND SERVICES AVAILABLE TO FEDERATION MEMBERS AND AN UPDATE ON THE PROGRESS OF THE INTERSTATE COMPACT FOR LICENSURE AMONG MEMBER STATES

Gregory Snyder, M.D., Director at Large with the FSMB, stated that at the national meeting this year, two key items which passed the House of Delegates unanimously were the Interstate Compact, which will allow for expedited issuance of licenses to physicians who meet certain criteria, and revision of the FSMB best practices act in telemedicine.

Eric Fish, J.D., FSMB Senior Director of Legal Services, provided an overview of the Interstate Compact. He explained that the process began last year, following the FSMB 2013 Annual Meeting, and described the process that followed. He then highlighted some of the main points of the Interstate Compact: (1) which physicians would be eligible for expedited licensure; (2) the expedited licensure process; and (3) the information flow between state boards. He then provided the timeline for the project. He said a draft should be ready this fall for any interested states to take to their legislatures. The compact will become effective upon seven states passing it.

David Johnson, M.A., FSMB Senior Vice President of Assessment Services, stated in terms of numbers, FSMB took a census of physicians with active licenses in 2012, and there were approximately 880,000 with active licenses in the United States. Of those, about 90% had only one license. So they think there is a pretty sizeable population that will be advantaged by states that are participating in the Interstate Compact.

Dr. Chowdhry asked whether there was a limit to the number of states in which a physician could be licensed, and Mr. Fish stated there was not.

Mrs. Lowden asked about the fees for a license issued through the Interstate Compact, and Mr. Fish explained that each state will be allowed to set its own fees for the license.

Dr. Hardwick asked whether there would be several different compacts, such as regional compacts. Mr. Fish explained that the Interstate Compact will work as a contract, and every state that joins in will sign up for all the included terms, so it will be a national approach.

Dr. Neyland asked how notification regarding disciplinary actions will be made to other participating states, and Mr. Fish explained the process.

Ms. Daniels asked whether there were specific criteria regarding malpractice issues, and Mr. Fish explained that if there are malpractice issues, the law in the state where the patient is located will control.

Mr. Cousineau asked whether a representative from FSMB would be available to testify as a subject matter expert if legislation is forwarded to the Nevada Legislature, and Mr. Fish indicated one of their staff would be available to do so.

Dr. Snyder reiterated that the license issued under the Interstate Compact will be equivalent to any license a state would issue under its current licensing process. A license issued through the Interstate Compact will just give a state confidence that the license it is issuing in this expedited fashion is being issued to a well-qualified physician. Also, it in no way will allow a physician to circumvent the individual requirements for maintenance of licensure in each state of licensure. The physician will have to maintain each state license in the same fashion that any other doctor in that state does. The Interstate Compact just allows a physician an expedited process to obtain multiple state licenses by filling out one form at one time, provided the physician is qualified for the model.

Mr. Fish stated the Interstate Commission will have permissive ability to charge a transaction fee for clearing all the information in order to sustain the system, and they anticipate fees may be charged; however, they don't see that as a roadblock to licensure for physicians.

#### Agenda Item 5

#### CONSIDERATION AND APPROVAL OF FY 2013 ANNUAL AUDIT BY KOHN & COMPANY LLP, CERTIFIED PUBLIC ACCOUNTANTS

Ms. Wilkinson stated she was recusing herself from consideration of the matter because the accountants were involved in an adversarial proceeding with her employer.

Beth Kohn-Cole, CPA, stated the Board had received an unmodified, or clean, audit opinion for fiscal year 2013. In addition, the audit was performed in accordance with government auditing standards and there were no compliance issues noted as part of the audit opinion. She then summarized the results of the financial statements for year-end December 31, 2013. Total assets were approximately \$8.5 million, compared to \$4.6 million the prior year. The reason the increase was so large was because 2013 was a renewal year, so the Board's cash is accumulating and will be offset as deferred revenue in future years. The Board's liabilities are also up because of the deferred revenue, from almost \$2 million to \$5 million. The Board's net position increased \$2.6 million, to approximately \$3.4 million. The Board's total change in net position, which is its revenue minus expenses, totaled approximately \$740,000. Management took steps to really reduce expenses, so the Board's financial position is very good. She then summarized the Board's budget to actual. The Board budgeted total revenue of approximately \$3.5 million, and the actual results were \$4.2 million, so the Board's revenue was approximately \$678,000 better than budget. The Board's expenses were budgeted at approximately \$3.4 million, and they were a little bit over that, at about \$3.5 million, but the Board's net was better than budget by approximately \$580,000, so the operating results were good.

Dr. Neyland moved that the Board accept the audit report. Dr. Chowdhry seconded the motion and it passed, with Ms. Wilkinson abstaining from the vote and all remaining Board members voting in favor of the motion.

Agenda Item 6

CONSIDERATION OF REQUEST OF KIM ADAMSON, M.D. FOR REMOVAL OF  
CONDITION ON HIS MEDICAL LICENSE

Dr. Adamson was present in Reno.

Dr. Adamson explained that he had taken time off from practice due to medical issues. In order to return to practice, he was required to enter into an agreement with the Board that contained a number of stipulations, including that he have a preceptor and a limitation that he work only in the clinic in Lovelock. The agreement had come to an end, he had satisfied all the conditions of it, and he was asking that the conditions be removed.

Dr. Chowdhry stated Dr. Adamson had done everything the Board had asked him to do.

Dr. Hardwick moved that the Board remove the restrictions on Dr. Adamson's license. Dr. Prabhu seconded the motion and it passed unanimously.

Agenda Item 7

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

Dr. Eells was present in Reno.

Dr. Fischer stated Dr. Eells was requesting that the Board release him from the condition prohibiting him from prescribing controlled substances and asked Dr. Eells to explain why the Board should grant his request.

Dr. Eells stated he had been back in practice for two years and it was incredibly difficult to practice full, good quality medicine without a DEA license. He had a partner helping him in his practice for a year-and-a-half, and a couple of friends had helped him, but those sources had dried up, so he needed to get his DEA license back. He said he was a zero risk to himself, his patients, the citizens of Nevada and the Board. He is subject to a random drug screen every day by two different agencies and has passed all of them for the last two-and-a-half years. He sees Dr. Mansky once or twice a week and he has been compliant with every condition placed upon him. This is just the first step; he still has to go before the Pharmacy Board and the DEA.

Mr. Cooper asked Dr. Eells what had changed since he appeared before the Board in March with this request.

Dr. Eells stated that more time had passed, the judge had lifted the restriction that he not hold a DEA license, and he no longer had help in his practice.

Mr. Cousineau stated the key difference was that Dr. Eells was not eligible to apply for reinstatement of his DEA license when he appeared before the Board in March, but became eligible on May 17, 2014.

Dr. Hardwick stated Dr. Eells had done everything the Board had asked him to do and moved that the Board remove the restriction from Dr. Eells' license. Mrs. Lowden seconded the motion and it passed unanimously.

Agenda Item 8

CONSIDERATION OF REQUEST OF JOEL WASHINSKY, M.D. FOR MODIFICATION OF THE TERMS OF HIS CURRENTLY EXISTING SETTLEMENT AGREEMENT WITH THE NSBME, SPECIFICALLY TO REMOVE HIM FROM PROBATION

Dr. Washinsky was present in Las Vegas.

Dr. Fischer asked Dr. Washinsky to explain why the Board should release him from probation early.

Dr. Washinsky stated he had satisfactorily completed the PRN program. He got a lot out of the program, learned a lot about himself, and was now living a much cleaner, more fruitful lifestyle. He was currently only working two days a week because he was unable to get on the majority of insurance programs due to being on probation, and it was creating a great difficulty for him.

Dr. Hardwick stated Dr. Washinsky had fulfilled all the requirements of his probation and moved that the Board release Dr. Washinsky from probation. Dr. Neyland seconded the motion and it passed unanimously.

Agenda Item 9

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

- (a) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Revising Provisions Relating to the Supervision of a Physician Assistant by a Physician and the Collaboration Between a Physician and an Advanced Practice Registered Nurse (R151-13)

Mr. Cousineau explained that in July 2013, CCMS submitted a petition to the Board to make various changes to currently-existing regulation that relates to the supervision of physician assistants by medical doctors. In September 2013, the Board authorized staff to proceed with the regulatory adoption process based on the petition by CCMS. On November 26, 2013, a workshop was held to solicit comments regarding the language proposed by CCMS. Based on the workshop and the comments that emanated therefrom, Mr. Cousineau submitted materials to the Legislative Counsel Bureau (LCB) that he thought accurately reflected the various desires and interests offered at the workshop. He then received R151-13 from LCB. A public hearing was held on April 10, and significant comment was received at that time. The written submissions received prior to and following the workshop, as well as following the public hearing, have been provided to the Board. The cutoff for written submissions was May 1. Additional submissions were received after that date, but were not provided to the Board due to not meeting the cutoff. Mr. Cousineau asked that no matter what else was decided, that the Board advance the language regarding the two following items: (1) the language that currently exists in the proposed regulation regarding supervision of physician assistants via telemedicine, as it is something the Board was directed to adopt pursuant to SB 327 last legislative session; and (2) the language that updates the title of APNs to APRNs, which was changed pursuant to AB 170 last session.

Dr. Hardwick moved that the Board accept the revised proposed regulation of the Board of Medical Examiners, LCB file No. R151-13, with the following amendments: On page 2, delete section 3, paragraph 4. This deletes new proposed language which provides that a PA who has more than one supervising physician must enter the name of the supervising physician associated with the patient encounter in the medical records of the patient. On page 3, section 4, paragraph 2, second line, delete the word "month" and insert the word "quarter." This changes the periodic review of medical records by a supervising physician to quarterly rather than monthly. On page 4, section 4, add a new paragraph 6, as follows: "In a multi-physician, single-specialty practice, the requirements of paragraphs 3, 4 and 5 of this section can be met by one or any combination of the supervising physicians who is/are members of the same multi-physician, single-specialty practice. Every physician registered to supervise the PA is not required to perform all aspects of this section so long as a physician or physicians in the practice is/are performing these requirements. The multi-physician, single-specialty practice plan for meeting the requirements of paragraph 5 of this section must be documented in writing and kept on file at the practice site and made available for review upon request by the Board." This is new language proposed by NAPA and NSMA. This would allow PAs to work for a number of physicians in a multi-physician, single-specialty practice, so long as a plan is in place for meeting the supervising physician review requirements presently in regulation. On page 9, delete section 4, paragraph 14. This deletes new proposed language which provides that an APRN who has more than one collaborative agreement with a supervising physician must enter the name of the supervising physician in the medical records of the patient associated with the patient encounter. On page 9, section 6, paragraph 1, retain the word "simultaneously." On page 9, section 6, paragraphs 6(a), 6(b) and 6(c), delete the words "at the same time." This reinstates the word "simultaneously" in existing regulations and deletes the proposed insertion of "at the same time." On page 10, section 6, add two new paragraphs 3 and 4, as follows: "Except as otherwise provided in subsection 4, a physician assistant shall not enter into a written supervisory agreement or contract with more than four physician practices simultaneously. A physician assistant may petition the Board for approval to enter into more written supervisory agreements or contracts than he or she would otherwise be allowed pursuant to subsection 3. The Board will not approve the petition unless the physician assistant provides satisfactory proof to the Board that special circumstances regarding his or her practice exist that necessitate his or her supervision by more physician practices than would otherwise be allowed pursuant to subsection 3." This adds two new paragraphs which set a new cap that a PA may work for a maximum of four separate physician practices simultaneously and can apply for an exception from that limitation from the Board.

Ms. Wilkinson seconded the motion.

Discussion ensued regarding the proposed changes.

Ms. Platt stated LCB would likely consider two of the provisions included in Dr. Hardwick's proposed amendment substantive, and send it back to the Board for a revised proposed regulation. Then the Board would have to go through another public hearing and adoption hearing before it could make the two changes, specifically the addition of a new paragraph 6 to section 4, and new paragraphs 3 and 4 to Section 6, of the regulation. Those would be considered substantive provisions that the public hasn't been given notice of. She said the other four proposed provisions would not be considered substantive, and the Board could move to adopt the regulation with those specific changes and not the other two.



Dr. Hardwick amended his motion to remove the two substantive provisions.

Ms. Wilkinson seconded the amended motion.

Ms. Platt clarified the four proposed provisions which were included in the amended motion and explained them.

Mr. Cousineau stated that if the Board were to change the language with respect to chart reviews for PAs to 5% every quarter, the language that addresses collaborative agreements and medical doctors meeting with APRNs should also be changed to 5% quarterly, instead of monthly without a percentile.

Dr. Hardwick amended his motion accordingly, so the supervisory requirements would be consistent with respect to PAs and APRNs, and Ms. Wilkinson seconded the amended motion.

Ann Davis, PA-C, Vice President of Constituent Organization Outreach and Advocacy for AAPA, stated there is no evidence base for a limitation on the number of charts that need to be cosigned or the number of PAs that can be supervised at the same time. Additionally, the time a PA needs access to a physician is when clinical care is being provided, and this proposed regulation does not yet reflect this clarification, which has been sought for over two years. These are two outstanding concerns they have.

Keith Brill, M.D., President of CCMS, said that Loretta Moses, Executive Director of CCMS, had asked him to mention that Dr. Neyland will be sworn in on June 14 as an ex-officio member of the CCMS Board of Trustees.

Dr. Brill provided a history of how the proposed regulation had come to be before the Board that day. He stated the parties had done their best to create language acceptable to all, and he believed the majority of the changes proposed by Dr. Hardwick in his amendment were supported by both. As part of the process, they reviewed the AMA's compilation of state laws and regulations on both charting provisions, as well as supervising ratios, and there is no consensus around the country. They feel that access to care is best served by physician-PA teams in a cooperative fashion, and this language was meant to clarify how the supervision process will occur.

Weldon Havins, M.D., J.D., member of CCMS and Secretary of NSMA, stated he was commenting personally. He said that Dr. Hardwick had been involved in the process for many months and had spent countless hours talking to all sides, and it seemed to him that Dr. Hardwick's proposed amendments were about as reasonable a compromise as one could come up with. LCB may have changes, but he would personally favor Dr. Hardwick's amendments as proposed.

Dr. Fischer called a 10-minute break in order to allow the Board attorneys and the Deputy Attorney General to work things out.

Dr. Hardwick withdrew his motion and Ms. Wilkinson withdrew her second to the motion.

Dr. Hardwick moved that the Board accept the revised proposed regulation of the Board of Medical Examiners, LCB File No. R151-13, with the following amendments: On page 2, delete section 3, paragraph 4; on page 3, section 4, paragraph 2, second line, delete the word "month" and insert the word "quarter"; on page 9, delete section 4, paragraph 14; on page 9, section 6, paragraph 1, retain the word "simultaneously," delete "agree to be designated as the supervising physician or collaborating physician for," add "supervise or collaborate with, as applicable," and remove "at the same time."

Ms. Wilkinson seconded the motion.

Discussion ensued regarding the proposed required time frame for chart reviews and the percentage of charts to be reviewed.

Daniel Coll, PA-C, stated he had been working on the project for the last two years and appreciated Dr. Hardwick's efforts to find a consensus with the information he gathered, but wanted to clarify that R151-13 adds a co-signature requirement; a 5% chart review. Nevada previously had this language, and it was removed from the supervision requirements for physician assistants in the 1990s. Currently, the supervision requirements state that a selected chart review will occur each month and the physician will be on site for part of a day each month. This is a new restriction for co-signature, and there is no evidence of improved quality or patient safety with chart co-signature requirements. Additionally, the current proposal still does not clarify that supervision is at the time of patient care, as it was previously defined by the Board until 2010, when the Board reinterpreted "simultaneous."

Elizabeth Kang, PA-C, stated she was a physician assistant who had been practicing in the state of Nevada since February 2006. She said that the initial draft of the regulation included no chart review restriction per se. She stated the trend with supervision of physician assistants is to make supervisory determinations at the practice level, which is the best way to make these determinations due to the variety of roles of physician assistants. The supervising physician knows best how to supervise each physician assistant.

Cameron Byers, PA-C, stated he was a physician assistant who had been practicing for the past 15 years, primarily in Fallon. He stated that supervision is most critical at the time medical care is being provided. For him, the key issue over the past 15 years had been having access to the physician for consultation during those cases where it was absolutely necessary and the patient was sitting in front of him. He stated that is the most important piece of the oversight relationship between physicians and physician assistants. He said he had been tasked with looking into percentage-based chart review while going through this process over the past six months, and he was unable to find any data to support that percentage-based chart review improves quality of care in any situation.

Further discussion ensued regarding the proposed time frame for chart reviews and the percentage of charts to be reviewed.

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

Further discussion ensued regarding the proposed time frame for chart reviews.

Dr. Hardwick amended his motion to change chart reviews to monthly rather than quarterly. Ms. Wilkinson seconded the amended motion and it passed unanimously.

- (b) Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.080 to Add Language Which Requires That an Applicant for Licensure Has Actively Practiced Clinical Medicine for the Past Five Years in Any State or Country in Which the Applicant Is Licensed, or Has Had the Official Authority to Practice

Mr. Cousineau stated he was requesting authorization to proceed with the regulatory adoption process on the proposed regulatory amendment. He explained the amendment was in recognition, especially with respect to special purpose telemedicine licenses, that not all individuals applying for licensure are practicing in the states and, therefore, we want to expand the allowance to include those practicing in other countries. Additionally, the language, "or has had the official authority to practice" is analogous to a license to practice in some countries.

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

Agenda Item 10

## REPORTS

### (a) Physician Assistant Advisory Committee

Physician Assistant Advisory Committee member Janet Wheble, PA-C, stated the Advisory Committee had met with multiple entities regarding LCB file R151-13. Participants in the meetings included physician assistants, NSMA Executive Director Stacy Woodbury, Dr. Mitchell Forman, Dr. Havins, Dr. Hald, CCMS administration, Dr. Brill, Dr. Baron, Ann Davis, PA-C, from AAPA, and NAPA administration. She said as dependent practitioners, physician assistants are obligated by regulation and professional standards of care to maintain an interactive and communicative professional medical relationship with their supervising physicians to ensure quality and competencies are met for public safety

Ms. Wheble then outlined the Advisory Committee's proposed changes and comments with regard to R151-13. She stated the Advisory Committee was committed to working with physician assistants, physicians, the Board and its staff to provide regulations that are in the interest of public safety and promote quality care for the citizens of Nevada. The physician-PA team will play a key role in increasing access and maintaining quality care standards. They appreciate the opportunity to work with the Board and the medical societies on this issue.

### (b) Investigative Committees

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

Dr. Fischer reported that Investigative Committee A had met and considered 99 cases. Of those, they authorized the filing of a formal complaint in 5 cases, sent 6 cases out for peer review, requested an appearance in 8 cases, issued 19 letters of concern, referred 5 cases back to investigative staff for further investigation or follow-up, reviewed no cases for compliance, and recommended closure of a total of 56 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. Neyland reported that Investigative Committee B had met and considered 60 cases. Of those, they authorized the filing of a formal complaint in 3 cases, sent 5 cases out for peer review, requested an appearance in 1 case, issued 15 letters of concern, referred 1 case back to investigative staff for further investigation or follow-up, reviewed no cases for compliance and recommended closure of a total of 35 cases.

Dr. Hardwick moved to approve for closure the cases recommended by Investigative Committee B. Dr. Prabhu 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 468 and the number of cases per investigator was 78. There were 23 peer reviews in the field and 4 peer reviews awaiting assignment.

**(2) Quarterly Compliance Report**

Ms. Castagnola reported that a total of \$22,802.51 in costs and \$10,704.48 in fines had been collected during the first quarter of 2014, for a total of \$33,506.99. Since the end of the first quarter to date, an additional \$27,281.51 in costs and \$12,978.36 in fines had been collected.

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

**(d) Nevada State Medical Association Report**

There was no report provided under this agenda item, as Stacy M. Woodbury, Executive Director of NSMA, had provided a report to the Board during the public comment period under Agenda Item 2, and Dr. Hardwick had nothing to add.

**(e) Clark County Medical Society Report**

Loretta Moses, Executive Director of CCMS, reported that CCMS's installation dinner was scheduled for June 14 and, on August 21, CCMS would be holding a job fair with Touro University Nevada and the University of Nevada School of Medicine to recruit some of the residents to remain in Nevada.

**Agenda Item 11**

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KEVIN PETERSEN, M.D.*, BME CASE NO. 12-19611-1**

This item was not discussed at the meeting.

Agenda Item 12

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

This item was not discussed at the meeting.

Agenda Item 13

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. RAMIN ETEBAR, M.D.*, BME CASE NO. 12-8929-1

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

Ms. Wilkinson moved that the Board accept 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 14

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DARBY-ANNETTE CLAYSON, M.D.*, BME CASE NO. 13-30595-1

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

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

Agenda Item 15

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JOHN DUDEK, JR., M.D.*, BME CASE NO. 12-4879-1

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

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

Agenda Item 16

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KATHLEEN D. SMITH, M.D.*, BME CASE NO. 13-28205-1

Dr. Smith was present in Las Vegas. Kenneth Long, Esq. was present with Dr. Smith as her legal counsel.

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. Smith and the terms of the proposed Settlement Agreement.

Dr. Prabhu moved that the Board accept 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 17

CONSIDERATION AND ACTION REGARDING LEGISLATIVE INITIATIVES FOR 2015 LEGISLATIVE SESSION

Mr. Cousineau explained that the majority of the proposed legislative initiatives were a recapitulation of the Board's initiatives from the last legislative session, which did not make it out of the Assembly. He said staff was proposing to resubmit those they felt were important.

Ms. Wilkinson asked whether the intent was for the Board to spend its efforts and energy on every single one of the initiatives included in the list, or whether they would be prioritized.

Mr. Cousineau explained that the majority of the initiatives would be incorporated into one bill. There may be one or two that, on recommendation of the Board's lobbyist, may be sponsored by a separate legislator. However, staff does not think there is anything included in the list that is controversial, and all the initiatives are basically for the purpose of advancing the Board's mandate for public protection.

Ms. Wilkinson asked if, in light of what happened last legislative session, the initiatives had been revised in any way to address any concerns that may have come out of that process, or whether it was being proposed to go forward with the same proposal.

Mr. Cousineau explained that one or two initiatives had been removed, but he didn't believe it was the content of the initiatives that was the issue. He then explained that the Board was not bound by the proposed list as the entirety of its legislative initiatives and if any Board member subsequently decides there is something he or she would like to see changed, there is time to add it. However, it had been explained by the Board's lobbyist that if too many initiatives are proposed, it increases the odds of not getting the bill through.

Dr. Prabhu moved to proceed with the proposed legislative initiatives. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 18

**DISCUSSION AND ACTION REGARDING A BOARD POSITION ON LICENSEES  
INVESTING IN MEDICAL MARIJUANA ESTABLISHMENTS AND/OR DISPENSARIES**

Mr. Van Ry stated this is a hot-button political issue and the Board is being inundated with questions on a regular basis, so staff was requesting that the Board address the following question: Should a licensee of this Board participate as a shareholder, officer or managing member of any medical marijuana dispensary or other establishment or entity authorized under NRS 453A? At this meeting the Board could, among other things, issue an advisory opinion, take no position, or push the question out to a future meeting to allow time to gather more information and then issue an opinion. Mr. Van Ry then explained that "medical marijuana dispensary", "establishment" and "establishment agent" are all defined by statute at NRS 453A.115 through 453A.117. He said importantly, and significantly, marijuana is still an illegal substance under the Federal Controlled Substances Act. As a result, it has never been fully evaluated or approved by the FDA for medicinal purposes, i.e., dosages, potency, quantity, side effects, long-term side effects, etc. The federal law criminalizing marijuana is really the pre-existing and unresolved conflict in all of these related medical marijuana issues. On May 30, the U.S. House of Representatives approved an amendment from a California representative that will prevent the DEA from using federal funds to go after and prosecute medical marijuana patients and providers. It still needs to go to the Senate for approval and then to the President, so he cannot predict the future of it. Importantly, it does not declassify marijuana as a Schedule I controlled substance. On May 6, 2014, the Nevada Gaming Control Board issued a Notice to Licensees that the Gaming Control Board will not allow a gaming licensee to participate in any way with a medical marijuana establishment because of federal law.

Mr. Cooper read an email received from a licensee of the Board that Mr. Van Ry stated was a good representation of the inquiries being received by Board staff on this issue. Mr. Cooper stated the email contained several questions relating to medical marijuana that needed to be discussed by the Board in order to formulate answers for its licensees.

Mr. Van Ry provided the Board with a copy of the "Attending Physician's Statement" that a physician is required to complete in order to approve, recommend or refer a patient to receive medical marijuana. This was provided to the Board by the Division of Health.

Dr. Hardwick moved that the Board take no stand at this point on anything with regard to marijuana because so much is changing and there are so many unknowns. Dr. Chowdhry seconded the motion.

Ms. Clark stated this issue should be on the agenda for a Board meeting within the next year.

Mrs. Lowden stated that if the Board put off a decision on this issue, there would be ownership by doctors, and it would be really hard to unravel if the Board decides later it is not something it wants to allow.

Dr. Fischer stated that licensure applications had already been made and asked when those applications would be acted upon.

Ms. Platt explained that applications are made at the county level, so it is a county-by-county decision as to whether the county wants to allow those types of businesses to operate there. She said Clark County had been having hearings the last couple of days on applications it had received.

Mrs. Lowden added that the City is also scheduled to hold licensure hearings.

Dr. Neyland suggested the issue be revisited at the next Board meeting.

Discussion ensued regarding whether the Board could prohibit licensees from investing in a medical marijuana establishment or whether it could only advise them that it is against federal law and if something were to happen, appropriate action would be taken by the Board.

Ms. Albright said another issue is whether a licensee should be participating in the economic benefit of the referral process if the licensee is a referring physician.

Mr. Cooper suggested that the Board issue an advisory opinion warning physicians that participating is a violation of federal law, that they proceed at their own peril if they do so, and that they should seek their own legal counsel.

Dr. Hardwick withdrew his motion and Dr. Chowdhry withdrew his second to the motion.

Dr. Hardwick moved that the Board issue an advisory opinion to physicians that if they are going to participate, they should obtain legal counsel; that they are participating at their own peril; and reminding them that it is a violation of federal law. Dr. Chowdhry seconded the motion.

Mr. Cousineau requested that the advisory opinion include language that defines the potential grounds for disciplinary action under current statutes, such as improper referrals to an establishment in which the licensee has a pecuniary interest and a felony conviction related to the practice of medicine.

Dr. Prabhu requested adding language to the advisory opinion prohibiting physicians who certify patients for medical marijuana from being a principal or board member in a dispensary, or if they are a principal or board member in a dispensary, they should not be allowed to prescribe medical marijuana.

Ms. Clark stated the Board should reevaluate the issue often due to rapid changes.



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

Dr. Prabhu moved that the Board prohibit physicians who certify patients for medical marijuana from being a principal or a board member in a dispensary and if a physician holds an economic interest in an enterprise that produces, processes or dispenses cannabis, he or she should not be allowed to authorize the medical use of marijuana. Ms. Wilkinson seconded the motion.

Mr. Cooper stated that as the laws are currently, the Board cannot prohibit a physician from investing; it can only recommend that it not be done.

Discussion ensued regarding whether the Board had authority to prohibit this conduct.

Ms. Clark stated this issue should be a potential agenda item for every Board meeting going forward, at least for the next several meetings.

Mrs. Lowden asked whether it would be appropriate to add the content of Dr. Prabhu's motion to the Board's legislative agenda, and discussion ensued regarding whether it would.

Dr. Prabhu withdrew his motion and Ms. Wilkinson withdrew her second to the motion.

Agenda Item 19

#### EXECUTIVE STAFF/STAFF REPORTS

##### (a) Consideration and Approval of 2013 Board Annual Report

Mr. Cooper gave a brief overview of the contents of the proposed 2013 Annual Report, highlighting the Board's accomplishments, disciplinary actions taken during the year, and other statistical information.

Dr. Neyland moved to approve the 2013 Board Annual Report. Dr. Hardwick seconded the motion and it passed unanimously.

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

Mr. Cooper described the single request for staff training that was before the Board for approval.

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

##### (c) Quarterly Update on Finances

Ms. Jenkins summarized the information contained in the Balance Sheet for the first quarter of 2014. She explained that total assets for the Board were \$7,967,000, and were primarily held in cash and cash equivalents, which are checking and CDs. Total liabilities for the quarter were \$4.4 million. The primary bulk of that was the Board's deferred revenue, which are the licensing fees the Board takes in and defers to spread over the next renewal period. The

Board's cash equivalents were \$7.6 million and total liabilities were \$4.4 million, so the Board is not spending ahead of what it deferred from the money it collected in licensing fees. The Board's general reserves are about \$3.5 million.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the first quarter of 2014. She stated the Board's income came in at 98% of budget. The Board budgeted some extra into its personnel section for this year, and was at 95% of budget. Some temporary employment was included in the budget to help out in both Investigations and Licensing. The travel budget appeared to be right on budget, and the Board was at 87% of budget for operating expenses. The Board's interest income, primarily from CDs, was better than budget, and the Board's total net income for the quarter was \$128,404, which was also better than budget. The Board is continuing its progress of holding its expenses and adding to its reserve so it can reach its goal of having a one-year reserve.

Dr. Neyland moved that the Board accept the report. Mrs. Lowden seconded the motion and it passed unanimously.

#### (d) Report on Federation of State Medical Boards 2014 Annual Meeting

Mr. Cooper stated the Board had a large contingent of nine at the FSMB Annual Meeting in Denver last April. It was an excellent meeting, they got a lot done, and they made a lot of contacts. He gave a brief overview of the topics discussed at the meeting: the future of patient-centered health care, the Interstate Compact, maintenance of licensure, medical marijuana, the USMLE, an FSMB services update, the FCVS, best practices for drug monitoring programs, international accreditation certification, dealing with the public, media and legislators, and trends in assessing professional competency. Lynnette served as a panelist for the FCVS presentation. Dr. Berndt and Dr. Neyland were called up on stage for a mock interview by a journalist, and did really well.

#### (e) Report on Meeting With the Governor

Mr. Cooper stated that on May 6, Dr. Fischer, Dr. Berndt, Ms. Clark, Mr. Cousineau, the Board's lobbyist, Keith Lee, and he met with the Governor and the Governor's Deputy Chief of Staff, Jackie Bryant, at the Governor's office. Governor Sandoval wanted it to serve as the opening of a dialogue between his office and the Board to discuss ways to bring more physicians, especially primary care physicians, to the state. He stated he really would like to see it come to fruition that Nevada becomes a destination for medical tourism. He provided some interesting information. Enrollment in the state's insurance exchange had exceeded expectations, and this is a leading reason why we have such a demand for more physicians. Ms. Clark expressed that the reasons for the shortage in physicians differs in the north, the south and the rural areas. Some factors that play a role in the physician shortage discussed were quality of life in the state, the lack of employment for physician spouses, and the shortage of residency slots. Governor Sandoval said he had reviewed the Board's January 8 submission to the Interim Legislative Committee on Health Care and was impressed with the product. He stated he was glad to have the information because, to quote him: "It helps me defend you guys when I hear complaints about the Board." We discussed consultation by out-of-state licensees in Nevada as an avenue to extending medical services, and we explained that is possible under current law; however, the law says "on an irregular basis." We discussed whether a statutory change defining what "regular" or "irregular" means with regard to those consultations might eliminate fear and open

the door to more consultations by Nevada doctors with specialists who are not Nevada-licensed doctors on Nevada patients, and also discussed potential unintended consequences of either changing the definition of the practice of medicine to help with consultations or defining "regular" or "irregular." Other topics of discussion were the Interstate Compact and medical marijuana. Mr. Cousineau explained that in the next few months, the Board would be advancing proposed regulations that would put in place much more strident and definitive prescription protocols than those that currently exist in Nevada law. It was a very productive meeting.

#### Agenda Item 20

##### LEGAL REPORTS

###### - Board Litigation Status

Ms. Albright provided a summary and update regarding various civil court cases in which the Board was involved, and Mr. Van Ry updated the Board regarding one additional civil court case.

Ms. Albright reported there were currently 80 cases in the Legal Division, 4 of which were presented to the Board for action at this meeting. There were 12 cases pending the CMT process, 15 cases awaiting filing of a formal complaint and 42 cases in which a formal complaint had been filed that were pending hearings, 6 of which were filed subsequent to the last Board meeting.

#### Agenda Item 21

##### LICENSURE RATIFICATION

###### - Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the March 7, 2014 Board Meeting

Dr. Chowdhry moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the March 7, 2014 Board Meeting. Ms. Clark seconded the motion and it passed unanimously.

#### Agenda Item 22

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

###### 22(a) Jennifer Burmeister, PA-C

Ms. Burmeister appeared in Las Vegas. Her proposed preceptor, Chinenye Ezeanolue, M.D., FAAP, FACP, C.I.M.E, appeared with her.

Dr. Fischer asked Ms. Burmeister 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 Ms. Burmeister regarding the fact that she had not practiced clinical medicine since January 2013.

Ms. Burmeister described her plan for reentry into clinical practice as a physician assistant. She stated that following her decision to accept a position with Southwest Medical

Associates as a primary care provider, she had been completing continuing medical education activities and reviewing her materials from PA school, as well as more updated materials. She talked with Dr. Ezeanolue and the staff at Southwest Medical Associates and had developed a pretty extensive preceptorship plan.

Dr. Ezeanolue outlined Ms. Burmeister's proposed preceptorship plan.

Ms. Clark moved that the Board grant Ms. Burmeister's application for licensure with the condition that she complete her six-month preceptorship plan, and that she return to the Board at the completion of six months to request that the condition be lifted. Dr. Fischer seconded the motion and it passed unanimously. Dr. Fischer stated this was to be memorialized in an order.

#### 22(b) Howard Lewin, M.D.

Dr. Fischer asked Dr. Lewin 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. Lewin regarding the fact that he had not passed a major examination in the past ten years and had allowed his American Board of Medical Specialties (ABMS) certifications in internal medicine, cardiology and nuclear medicine to expire.

Dr. Lewin explained that during the time his three ABMS certifications were in place, his practice morphed from clinical cardiology and nuclear cardiology to solely nuclear cardiology, so he retained only his non-ABMS certification in nuclear cardiology, as that is now his sole area of focus. He had a medical license in Nevada previously, which had lapsed due to a clerical oversight.

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

Dr. Lewin explained that most of his nuclear cardiology work is done remotely. He had a potential opportunity, but it was not going to pan out, so he had no specific plans at that time.

Dr. Hardwick moved that the Board grant Dr. Lewin a license by endorsement. Ms. Clark seconded the motion and it passed unanimously.

#### 22(c) Fred Fishman, M.D.

Dr. Fischer asked Dr. Fishman 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 stated that Dr. Fishman was applying for licensure by endorsement and had indicated he would be willing to consider a peer review.

Dr. Fischer asked Dr. Fishman what he planned to do if granted a license to practice medicine in Nevada, and Dr. Fishman explained he worked for Magellan Health Care and made peer review pre-certification decisions for multiple insurance companies, and certain insurance companies require a Nevada license. Right now, the use of the license would be limited to

making peer review pre-certification decisions for insurance companies that require a Nevada license to make such a decision. This involves reviewing medical records and discussion with attending physicians or their representatives. He is not planning to practice clinical medicine.

Dr. Fischer moved that the Board grant Dr. Fishman an unrestricted license contingent upon successful passage of a peer review in internal medicine. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 23

STAFF COMMENTS/UPDATES

Mr. Cooper advised the Board that License Specialist Michelle Aldana had resigned and her last day with the Board would be June 13, 2014. Dr. Fischer asked whether a replacement was going to be hired, and Mr. Cooper stated that would happen as soon as possible.

Agenda Item 24

MATTERS FOR FUTURE AGENDA

Mr. Cooper stated the following items would be on an agenda for a future meeting: election of officers and appointment of committee members; approval of the 2015 meeting schedule; the review of the licensing process that Dr. Chowdhry requested; review and approval of the new Policy and Procedure Manual; review for approval and adoption of the FSMB Telemedicine Model Policy; an update on the Interstate Compact; and the Governor is sending a representative to brief the Board on licensure reciprocity and data sharing.

Ms. Wilkinson asked whether the Board was going to discuss a plan for hiring a new Executive Director after Mr. Cooper's retirement.

Mr. Cooper outlined the process that would be followed.

Ms. Wilkinson asked whether the selection would be made in September, and Mr. Cooper stated a special meeting would be called for selection of the new Executive Director.

Agenda Item 25

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. Dr. Chowdhry seconded the motion and it passed unanimously. Dr. Fischer adjourned the meeting at 1:53 p.m.

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