

NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

Michael J. Fischer, M.D.
Board President



Edward O. Cousineau, J.D.
Executive Director

*** * * MINUTES * * ***

OPEN SESSION BOARD MEETING

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

and videoconferenced to

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

FRIDAY, DECEMBER 2, 2016 – 8:30 a.m.

Board Members Present

Michael J. Fischer, M.D., President
Rachakonda D. Prabhu, M.D., Vice President
Wayne Hardwick, M.D., Secretary-Treasurer
Theodore B. Berndt, M.D.
Sandy Peltyn
Victor M. Muro, M.D.
M. Neil Duxbury
April Mastroluca
Aury Nagy, M.D.

Board Members Absent

None

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

Edward O. Cousineau, J.D., Executive Director
Todd C. Rich, Deputy Executive Director
Robert Kilroy, J.D., General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Donya Jenkins, Finance Manager

Staff/Others Present at Board Office in Reno

Peter K. Keegan, 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. Mr. Cousineau announced there was a quorum.

Dr. Fischer recognized Senior Investigator Monica C. Gustafson, CMBI, for her long-term service to the Board of 10 years, and Ms. Gustafson was presented with a service award memorializing same.

Mr. Cousineau advised the Board that a new License Specialist, Nancy Padilla, had been hired.

Agenda Item 2

PUBLIC COMMENT

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

Weldon Havins, M.D., J.D., President of the Nevada State Medical Association, said he was happy to be following two great former Presidents for the Nevada State Medical Association, who were on this Board. He said has been coming to these Board meetings since September 1999, and has missed only three so far. He said Dr. Fischer is, by far, the most efficient, competent person to run a meeting he has ever seen. Dr. Hardwick started coming to the meetings of the County Medical Society and did a great job in bringing the north and south together. He complimented Mr. Cousineau on his testimony at the Governor's meeting on the opiate issue because he had the integrity to bring up that he hoped the Governor and the Legislature acted prudently because of the potential unintended consequences of the mandates that may be created that physicians will be obligated to obey. Mr. Havins said he is already seeing this. He recently gave a CME for NOMA, and the individuals he talked with there said if some particular regulations the Nevada Board of Osteopathic Medicine has come up with pass, they are going to stop writing for opioids for chronic pain. The Board of Nursing has a different set of regulations, and he understands this Board is going to consider some regulations as well. He said it would be nice if there was uniformity for everyone who writes for opiates, so we are all on the same page. He said he wanted to mention a

few things that were of concern. The Dental Board is proceeding with their regulations on Botox use with no restrictions for dentists and dental hygienists. The Medical Board, in NRS 630.138, was delegated by the Legislature to adopt regulations governing the possession and administration of botulinum toxin, Botox, by medical assistants and any other person. This Board did not develop those regulations, and he thinks one consequence of that was the Dental Board feeling they could develop their own regulations, and they received a letter from this Board saying, "do what you want to do." This has caused some consternation, particularly among plastic surgeons and dermatologists, at least in the south. Another issue is the website. In the Board's bill of the last legislative session, it says that a member of the Board shall not place any information on the Internet website without the approval of the Executive Director and the Board. That puts the Executive Director equal to the Board. If the Board wants to place something on the website, they cannot do it, by statute, unless the Executive Director agrees. He doesn't think that is a prudent approach. The Board should be making decisions. The Executive Director works for the Board. He couldn't find any place else in Nevada law where the Executive Director is equal to the Board on a decision. Furthermore, in the legislative initiatives that the Board is submitting to the Legislature it says that the Executive Director clearly has been given the authority to oversee and manage all Board administrative functions, including information technology. So the Executive Director makes decisions on what's going on the website; it doesn't even require the Board. If you read those two together, one could conclude that the Board has no say over it and can't bring it up for discussion at a meeting unless the Executive Director approves it. In his opinion, this is not a prudent approach. He said NSMA appreciate the staff attending the NSMA meeting and discussing the issues and taking questions. One of the issues that raised the most concern was the interpretation of what an investigation is and the stigmatizing effect that potentially has. NRS 630.364 uses the term "inquiry." When he was the Executive Director and Counsel at the Board of Osteopathic Medicine, they did inquiries, and they didn't rise to the level of an investigation until they had sufficient information to find the allegation was credible, and then they moved ahead with an investigation. The way it was defined by Board staff at the NSMA meeting, as he understood it, is that if an allegation is made against a licensee and it is for a potentially sanctionable offense, an investigation has been initiated. That puts an onus on the licensee that would seem to be inappropriate at times. He said it might be appropriate to consider reinterpreting what constitutes an investigation and not put the onus of an investigation on a physician when an inquiry is simply being made and there is not sufficient information developed to call it an investigation.

Agenda Item 3

APPROVAL OF MINUTES

- September 9, 2016 Board Meeting – Open/Closed Sessions

Dr. Prabhu moved that the Board approve the Minutes of the September 9, 2016 Board Meeting – Open/Closed Sessions. Ms. Peltyn seconded the motion, and it passed unanimously.

Agenda Item 4

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

- (a) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC Chapter 630, Amending NAC 630.810 to Clarify the Training Requirements for Medical Assistants, as Well as the Functions They May Perform (R096-16)

Mr. Rich explained that the impetus to amend this regulation was based upon some concerning issues observed relative to some recent Board investigations regarding the functions of

medical assistants. Medical assistants in Nevada are not licensed, but licensed medical practitioners may delegate tasks and functions to these individuals. Therefore, the accountability for actions of medical assistants falls upon the licenses of the delegating medical practitioners. The objective in advancing this change is to ensure medical assistants are appropriately trained for the tasks they will perform, as well as clarifying the functions that a medical assistant may not engage in. Board staff has seen evidence that indicates medical assistants are engaging in such functions as administering injections of dangerous drugs, performing liposuction and performing laser skin treatments. The Board wants to ensure that these individuals are competent to perform these functions and that there is documentation demonstrating that they have been adequately trained relative to the functions they are performing. Additionally, we want to ensure that medical assistants are not engaging in the practice of medicine, and they shall not make a diagnosis, initiate a treatment or prescribe any drugs to patients. At the June 2016 Board meeting, staff was given the authority to proceed with the regulatory adoption process. On July 27, 2016, a public workshop was held at the Board's Las Vegas office. The Board received testimony regarding the proposed regulatory change. The testimony contained some concerns relative to the original language, and, as such, the language was amended based upon the concerns that were communicated during the workshop. On October 20, 2016, a public hearing was held at the Board's Reno office. The only testimony received during that hearing was from the Nevada State Medical Association, and they offered support of the amended language. Mr. Rich said he was requesting final Board approval to adopt the regulation.

Dr. Prabhu moved that the Board adopt the proposed regulation. Dr. Berndt seconded the motion.

Discussion ensued regarding the requirement that an employer of a medical assistant document in the medical assistant's employment record that the medical assistant has been appropriately trained and is competent to perform the tasks and procedures assigned to him/her. Dr. Berndt said physicians in the state need to be made aware of this change.

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

(b) Request for Authorization to Proceed With the Regulatory Adoption Process to Create a Regulation Requiring Physician and Physician Assistant Licensees to Complete Continuing Education Related to Misuse and Abuse of Controlled Substances

Mr. Rich explained staff was requesting authorization and approval to proceed with the regulatory adoption process to create a new regulation that would mandate a minimum of one hour of continuing education on the topic of the use of controlled substance in pain management. This new regulation would apply to physicians and physician assistants. He thinks it goes without saying that the opioid crisis in the United States and in Nevada is at an epidemic level, and it is imperative that Board licensees understand the impact of prescribing opioids to their patients. During the 2015 Legislative Session, bills were passed that addressed this issue. Included in this new legislation was the addition of NRS 630.2535, which reads, "the Board may, by regulation, require each physician or physician assistant who is registered to dispense controlled substances pursuant to NRS 453.231 to complete at least 1 hour of training relating specifically to the misuse and abuse of controlled substances during each period of licensure. Any licensee may use such training to satisfy 1 hour of any continuing education requirement established by the Board." The new requirement would be structured as part of the biennial licensure renewal process, and would allow this one hour of continuing education to be substituted for one hour of medical ethics continuing education.

Discussion ensued regarding the fact that this requirement would apply to all physician and physician assistant licensees, regardless of whether or not they prescribe controlled substances.

Dr. Prabhu moved that the Board authorize staff to proceed with the regulatory adoption process on the proposed amendment. Dr. Hardwick seconded the motion, and it passed unanimously.

(c) Discussion Regarding Possible Creation of a Regulation Requiring Licensees to Notify Patients of a Probationary Status on Their Licenses

Mr. Rich explained that staff wanted to explore the topic of potential creation of a regulation which would require licensees to notify their patients of their probationary license status. The idea was brought forth to Board staff as a concept for patient protection and safety, and staff thought it was prudent to bring it to the Board. A petition had been presented to the Medical Board of California, which subsequently rejected the concept at its October 2015 quarterly Board meeting. From a staff perspective, we think the concept has some merit; however, the implementation of it would be somewhat problematic. For instance, how would an emergency room physician with a probationary license notify his patients if they were unconscious or unable to read a consent form. In addition, what would be the methodology required for notification? At this time, the Board has only six licensees with a probationary status, so the impact would be very minimal.

Dr. Hardwick asked what other states require in this regard. Mr. Rich said he had asked the Federation of State Medical Boards (FSMB) for information, but they had not gotten back to him. He doesn't know if there are any other states that require this. He called a couple of neighboring boards. Arizona doesn't do anything like this. He has calls in to other states and is awaiting more information. He doesn't get the sense this is happening throughout the nation.

Mr. Duxbury asked about the intent of the requirement. Mr. Rich said he thought it was to provide a safety net to ensure that patients will know that there may be issues with a physician they are seeing.

Mr. Cousineau added it was another modality to notice the patient populous that there may be some concerns with a practitioner they are seeing. He said what staff wanted to do was to determine whether the Board was desirous of having staff draft some proposed language that could be contemplated at a future meeting for advancement through the regulatory process.

Discussion ensued regarding whether the potential unintended consequences would outweigh the potential benefits of such a regulation, whether the need was there to create such a regulation, or whether there were additional ways in which patients could be notified, in addition to those already in place, such as the Board website.

Dr. Berndt asked who in California was pushing this idea, and Mr. Cousineau explained that Consumer Reports had been pushing it nationwide.

Dr. Hardwick said he thought it was a valid point, but needed further investigation, and suggested that it be up at the Federation of State Medical Boards (FSMB) annual meeting next April for discussion.

Ms. Mastroluca agreed the issue merited additional discussion, and suggested that, if appropriate, a subcommittee could look at what is out there and is being done, and bring a recommendation to the Board.

Dr. Fischer recommended that further discussion on this item be postponed until the June meeting, after it is presented to the FSMB annual meeting in April.

Agenda Item 5

CONSIDERATION OF REQUEST BY JERRY MATSUMURA, M.D. FOR BOARD SUPPORT OF BDR 155, TO CREATE A LICENSING CATEGORY FOR ANESTHESIOLOGIST ASSISTANTS

Jerry Matsumura, M.D. thanked the Board for allowing them to approach the Board with their request for support and endorsement of their BDR, No. 155. He said it was very similar to the senate bill that was presented to the Board during the last legislative session in 2015, which the Board endorsed, and it is to create a licensing category for certified anesthesiologist assistants. There are two changes from the 2015 Senate bill. First, they eliminated the licensing fee, which had subjected the bill to a 2/3 requirement to pass the Assembly and the Senate. The 2015 bill passed the Senate with a 21-0 vote, but got caught in the Assembly Commerce and Labor Committee and was not able to pass out of that Committee. By removing the licensing fee, the bill will only require a 51% majority vote to pass. Second, the National Commission for Certification of Anesthesiologist Assistants recently updated the language in the description of the scope of practice for anesthesiologist assistants, so they updated the language in this BDR.

Dr. Fischer asked if other states have licensing fees for these practitioners. Dr. Matsumura said they do. Dean Polce, D.O., President of the Nevada State Society of Anesthesiologists, explained they had replaced the licensing fee language from the previous bill with language borrowed from the Interstate Medical License Compact bill, SB 251, from the 2015 session. Dr. Matsumura said the language states, “[T]he Board of Medical Examiners and the State Board of Osteopathic Medicine may impose a fee for a license issued to certified anesthesiology assistants and are authorized to develop rules regarding those licensure fees.”

Dr. Prabhu asked how many other states license anesthesiologist assistants, and Dr. Polce said there are 15 other states, and they are also licensed to work in the VA system and the territory of Guam.

Mr. Cousineau asked how many licensees they anticipated would be in place in Nevada if the legislation is adopted and what kind of time frames they expected as far as implementation of licensure.

Robert Wagner, a certified anesthesiologist assistant and Chairman of the Anesthesiologist Assistant Training Program at Nova Southeastern University, said that normally, when states open up to anesthesiologist assistant licensure, they don't get a mass number of people coming in initially. He said he could provide a number from the American Academy of Anesthesiologist Assistants, which is there are currently 58 anesthesiologist assistants who are from Nevada who want to come back to the state. Whether they come within the first year, within three years, within five years, remains to be seen. Initially, the first year, the Board is probably looking at 6 to 12, and implementation would probably begin January 1, 2018, or whatever is convenient for the Board.

Dr. Hardwick thanked them for coming to the Board, but said this was a matter for the Legislature, and moved that the Board not take a stand either way. Dr. Berndt seconded the motion and it passed, with Ms. Mastroluca voting against the motion and all other Board members voting in favor of the motion.

Agenda Item 6

PRESENTATION BY THE NATIONAL COMMISSION ON CERTIFICATION OF PHYSICIAN ASSISTANTS, INC. (NCCPA) REGARDING WORKFORCE DATA FINDINGS AND PHYSICIAN ASSISTANT CERTIFICATION

Dawn Morton-Rias, Ed.D., PA-C, President and CEO of NCCPA, gave a PowerPoint Presentation which described the NCCPA, its mission, and involvement by physician assistants in the organization. She then outlined the data that had been provided to the Board in a handout, including demographics of the profession and practice patterns of physician assistants nationwide, as well as statistics specific to Nevada and comparisons to those nationwide. She then outlined the certification and recertification programs and examinations for physician assistants. She closed by saying that NCCPA is working really hard to live up to and to continue its 40-year history of protecting the public through development and administration of credible, reputable, reliable certification and recertification processes that have served the profession well since its inception.

Agenda Item 7

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

Douglas S. Lynch, PA-C explained that he is a physician assistant who specializes in orthopedic surgery and pain management. The primary reason for his request was that he had been denied credentialing by the HCA Hospital Group, which is one of the biggest groups for which he performs surgical procedures, and Culinary insurance, which is very large in Las Vegas, also had a problem with the probation status. So once it is lifted, he understands he can reapply for credentials with Culinary insurance after one year. The Board should have received the letters of advocacy from the five supervising physicians he works with, two surgeons and three pain management doctors, as well as Larry Espadero, Director of the PRN monitoring program, which he was currently with, and Dr. Trudy Gilbert, a trauma therapist who he sees regularly.

Dr. Fischer asked how much of time was left on his contract with the PRN, and Mr. Lynch indicated there were close to four years remaining.

Dr. Muro asked Mr. Lynch to summarize what had transpired in this matter prior to this point. Mr. Lynch explained he had a relapse in February and March of 2015. He had been working excessive hours and used methamphetamine five times over two months. He never used it during times of patient contact; only during his off hours. His license was suspended in March 2015. He went into rehab at Desert Hope in Las Vegas, and underwent in-patient and intensive outpatient drug rehab. Numerous terms in the Settlement Agreement included eight hours CME in drug abuse and opioid prescribing. He thinks he is currently at around the mid-50s or over 60 hours of CME, which has made quite an impact on his prescribing perspective. He has continued with the PRN program and monitoring, which includes random urine screens several times a month, and does voluntary hair toxicology screens quarterly, and all tests have been negative. He continues to work with a sponsor for AA and NA, who is also a physician, and is active in AA and NA meetings.

Pursuant to the Settlement Agreement, his probationary period was five years, and he had completed roughly one year. He said he was not asking to be liberated from his five-year obligation of participation in the PRN program and the other stipulations, just the probation flag itself.

Dr. Berndt asked if he had had any other relapses, and Mr. Lynch stated he had not.

Dr. Fischer asked if, at the time he agreed to probation, he understood it might affect his ability to contract, and Mr. Lynch stated he did.

Dr. Hardwick said he thought it was admirable that he had done well his first year on probation, but he was put on probation for five years, and the Board could not control what other entities do as a result of his being on probation. It is the Board's duty to protect the public, and it put him on probation for five years for a reason, so he thought it was a little premature, and would not personally be in favor of removing probation at that time.

Dr. Muro said he echoed Dr. Hardwick's sentiments. Although he understood the hardship and limitations the probationary status imposed upon Mr. Lynch, he didn't think that negated the reasoning behind why Mr. Lynch was put on probation.

Mr. Cousineau said although Mr. Lynch was requesting only that the probationary language be lifted, that language needed to remain in place to enforce all the other terms of the settlement, and suggested that Mr. Lynch come back to the Board with his request after additional time has passed – perhaps six months to a year.

Dr. Hardwick moved that probation not be lifted at that time and be revisited in the future. Dr. Berndt seconded the motion.

Dr. Prabhu said they should give Mr. Lynch an opportunity to come before the Board in six months.

Dr. Hardwick amended his motion to include that Mr. Lynch can come back before the Board in six months. Dr. Berndt seconded the amended motion, and it passed unanimously.

Agenda Item 8

DISCUSSION REGARDING SETTING REDUCED INITIAL APPLICATION AND REGISTRATION LICENSURE FEES FOR LICENSURE APPLICATIONS RECEIVED PURSUANT TO NRS 630.1607 AND NRS 630.2752

Mr. Cousineau explained that at the September Board meeting, he had brought to the Board's attention some shortcomings in two new endorsement statutes, and at that time the Board authorized him to seek modification in the next legislative session to clear up some of the inconsistencies, ambiguities and difficulties, as well as possibly consolidating the two statutes into one. Pursuant to NRS 630.268, the Board is not entitled to charge an applicant applying under NRS 630.1607 or NRS 630.2752 more than 50% of the fees set forth for the initial application or the initial registration. So for physicians it would be \$300.00 for initial application fees, as opposed to \$600.00, and \$400.00 for initial registration fees, as opposed to \$800.00, and for physician assistants it would be \$200.00 for initial application fees and \$400.00 for initial registration fees. He wanted the Board to consider whether it wanted to charge 50% or whether it would prefer a lesser amount. He explained these two licensure categories were not something that the Board currently had in place, based on the erroneous language in both statutes, as well as the fact that the Nevada Department of Public Safety is unwilling to process fingerprints for those applicants due to

the fact that they don't believe our statutory fingerprint language is intended to include applications by endorsement.

Dr. Prabhu moved that the Board reduce initial application and registration fees for licensure applications received pursuant to NRS 630.1607 and NRS 630.2752 to 50%. Ms. Peltyn seconded the motion.

Dr. Nagy asked for clarification whether this would apply to all medical doctor and physician assistant applicants, or whether it would only apply to military applicants, and Mr. Cousineau stated it would apply only to active duty military, spouses and veterans.

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

Agenda Item 9

REPORTS

(a) Investigative Committees

Dr. Hardwick commended his co-committee members, staff and the medical reviewers. He then reported that at its November 18, 2016 meeting, Investigative Committee A considered 91 cases. Of those, the Committee authorized the filing of a formal complaint in 1 case, sent 9 cases out for peer review, requested an appearance in 15 cases, issued 16 letters of concern, referred 8 cases back to investigative staff for further investigation or follow-up and recommended closure of a total of 42 cases.

Dr. Prabhu reported that at its November 1, 2016 meeting, Investigative Committee B considered 64 cases. Of those, the Committee authorized the filing of a formal complaint in 1 case, sent 7 cases out for peer review, requested an appearance in 8 cases, issued 16 letters of concern and recommended closure of a total of 32 cases.

(b) Nevada State Medical Association Report

Catherine O'Mara, Executive Director of the Nevada State Medical Association (NSMA), thanked Mr. Rich for working with the NSMA on the medical assistant regulation. She said medical assistant oversight is something that is very important for all Nevada patients, and physicians support this oversight. She reported that NSMA had been working with the Board of Pharmacy for over six months in trying to change the regulation to allow physicians to utilize nurses and medical assistants to initiate prescriptions electronically, in order to meet their meaningful use standards, which require a certain amount of electronic prescriptions. That regulation had gone through a workshop and will be set for a hearing in early 2018, and hopefully it will pass in early 2018. Some of the NSMA physician leadership were working on a standardized training document they could provide to physicians to explain how they can implement a policy in their offices. NSMA had been working with the State Board of Health on the Cancer Registry regulations. There are draft regulations that are overbroad and burdensome on a lot of physicians and their practices. NSMA has expressed displeasure with the Dental Board moving forward with their regulation to allow dentists and dental hygienists to administer Botox in their offices. There is no requirement in the regulation that requires it be related to a dental procedure. The Dental Board knows their position very clearly. NSMA is fighting it at the Legislative Commission level, and hopefully the regulation will go back to the Dental Board to start over again and they can come up with a solution that makes sense for Nevada patients moving forward. NSMA's position is that oversight of Botox administration should be at the Board of Medical Examiners, at the Board of

Osteopathic Medicine and, in cases where an APRN is qualified to do it, at the Board of Nursing. She reported the AMA held its Interim Meeting in November, and it has sort of reversed its position on the Affordable Care Act with the outcome of the election. It has identified things in the Affordable Care Act it wants to keep and things it sees as ripe for change. With the nomination of Dr. Price to become the Health and Human Services Director, NSMA think there will be some changes to the Affordable Care Act. NSMA doesn't think it will be repealed altogether, but it does think there will be changes. She stated NSMA is interested in busting the caps on residency programs. The northeast has a lot more residency spots than the rest of the nation, and they are not subject to the same use-it-or-lose-it restrictions we are in Nevada. So there are approximately 80 to 100 residency spots that go unused each year, and NSMA would like to see them redistributed to the southwest. She gave kudos to their AMA delegation students, who had a resolution passed by the House of Delegates that makes it a formal position of the AMA that you should not have a fail-first policy when you are talking about substance abuse drugs. It is a great step forward, and NSMA looks forward to seeing what the AMA can do with it at the national level. She reported that April 17, 2017 will be Nevada Physicians Day at the Legislature and the NSMA Annual Meeting will be held August 25-27, 2017, at which Dr. Steven Parker will be installed as President.

(c) Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that CCMS would be moving into its new office building the week of December 12. As part of its CME series, CCMS held a multi-specialty robotics symposium, with 60 attendees. It will be holding a follow-up CME sometime in May. On January 10, CCMS will hold a MACRA and MIPS CME. CCMS will hold a town hall on January 24, at the Las Vegas City Hall, on the UNLV School of Medicine, in collaboration with the City of Las Vegas and the Las Vegas Medical District, which is where the medical school is going to be built. On February 18, in collaboration with the Nevada Psychiatric Association, CCMS will host a CME on medication management during pregnancy, and on February 22 and 23, CCMS will hold a follow-up MACRA and MIPS conference. On February 27, CCMS will hold its first community-wide residents research poster session in collaboration with the Association for Hospital Medical Education. On April 1, CCMS will hold a telemedicine CME, and plans to hold additional CMES on physician burnout and wellness, as well as opioid prescription drug abuse.

(d) Washoe County Medical Society Report

Catherine O'Mara, Executive Director of NSMA, advised the Board that Jeanie Catterson, Executive Director of the Washoe County Medical Society (WCMS), was unable to attend the meeting that day. She was retiring after 25 years as Executive Director, and this was her last day, and WCMS was in the process of hiring a new Executive Director. Dr. Andy Pasternak will be installed as President of WCMS on January 28.

Agenda Item 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ROGELIO MACHUCA, M.D.*, BME CASE NO. 15-33896-1

This item was not discussed at the meeting.

Agenda Item 11

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LO FU TAN, M.D.*, BME CASE NO. 16-28591-1

Neither Dr. Tan nor his attorney was present.

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

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

Dr. Muro moved that the Board approve the Settlement Agreement. Dr. Prabhu seconded the motion, and it passed, 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. KAREN F. ARCOTTA, M.D.*, BME CASE NO. 16-5972-1

Neither Dr. Arcotta nor her attorney was present.

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

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

Ms. Peltyn moved that the Board approve the Settlement Agreement. Dr. Nagy seconded the motion, and it passed, 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. JAN THOMPSON, M.D.*, BME CASE NO. 15-11459-1

This item was not discussed at the meeting.

Agenda Item 14

EXECUTIVE STAFF/STAFF REPORTS

(a) Investigations Division Report

Ms. Castagnola reported the current number of open investigative cases was 608 and the current number of cases per investigator was approximately 76. There were 40 peer reviews and 2 psychiatric examination in the field, and 18 peer reviews and 2 psychiatric examinations awaiting assignment, for a total of 62.

(b) Quarterly Compliance Report

Ms. Jenkins reported the total number of files in collection with the State Controller's Office for the third quarter of 2016 was 7, for a total of \$39,706.00; there was nothing written off

during the quarter; total costs outstanding were \$56,942.00, total fines outstanding were \$8,000.00, for a total outstanding balance of \$64,942.00. Total costs collected during the third quarter were \$21,493.00.

(c) Quarterly Update on Finances

Ms. Jenkins highlighted the various sections of the Balance Sheet for the third quarter of 2016. She explained the Board's total cash in checking, savings and CDs investments was \$7,177,000.00, and total assets were \$8,076,000.00. The Board was 10% better at the end of the third quarter of 2016 than it was at the same time during the last biennium. She then summarized the liabilities and equity section. She stated the total other current liabilities, which represent the amount of money the Board collected for renewals and new licenses that it hasn't yet recognized, were \$2,857,000, which is right on track to be recognized through the rest of the biennium, which will end on June 30, 2018. The Board's reserves were \$1,344,000.00.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the third quarter of 2016. She stated the Board's total income was \$974,385.00, which was 87.9% of budget. She said she thinks the reason it didn't perform as well against the budget in the third quarter was a timing issue. The Board performed very well in the second quarter, when the residents were renewing, didn't perform as well during the third quarter, as there was a little dip in the number of applications, but there had been an uptick in the number of applications during the fourth quarter of 2016. The personnel expenses were \$781,797.00, which was at 90% of budget, the operating expenses were at 100.1%, so they were right on budget for the quarter. The Board's interest income is performing well right now, and we are looking forward to an interest rate increase on the Board's investments in December. The net loss for the quarter of \$118,508.00 was expected and budgeted for. The Board was a little different from its budget due to the timing issues, so she included a Profit and Loss Budget vs. Actual for the year. It shows that the Board is right on track for the year. Total income is at 93% of budget, personnel expenses are at 91%, operating expenses are at 100.1%, and total expenses are at 94%, with a profit to the reserves for the year to date of \$71,000.00, which is 95% for the year to date.

Ms. Mastroluca asked why the temporary employment number was so high. Ms. Jenkins explained that staff uses this section of the expenses to help train new applicants who are applying for permanent positions as License Specialists and Administrative Assistants, and staff has budgeted to do that next year as well.

(d) Legal Division Report

Mr. Kilroy reported there were currently 97 cases in the Legal Division, 2 of which had been presented to the Board for action at this meeting; 25 cases pending the CMT process; 36 cases awaiting filing of a formal complaint; 22 cases in which a formal complaint had been filed that were pending hearings and 7 miscellaneous legal matters requiring further investigation, etc. There were 2 new cases in federal court, *Sharda vs. the Board* and *Chancellor vs. the Board*, and Barry Breslow, Esq. was handling both cases. There was one appeals case regarding Dr. Tate's Petition for Judicial Review, which is set for a hearing on December 14.

Agenda Item 15

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the September 9, 2016 Board Meeting

Dr. Berndt moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the September 9, 2016 Board Meeting. Dr. Prabhu seconded the motion, and it passed unanimously.

Agenda Item 16

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

(a) Michael Anthony Sibal, RRT

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

Mr. Duxbury questioned Mr. Sibal regarding his affirmative response to Question 13 on his application for licensure.

Mr. Sibal explained the circumstances surrounding his arrest for domestic violence in 2014 and the outcome of the case. He completed a six-month anger management course, which has helped him a lot. Mr. Sibal then described the circumstances surrounding the investigation of allegations against him for inappropriately touching a patient while a student at Valley Hospital in Las Vegas in 2008, which led to his termination for a HIPAA violation.

Mr. Duxbury asked him what he had been doing since being fired from Valley Hospital. Mr. Sibal explained that he had moved home to New Jersey for a few years and returned to Nevada in 2012, and then described what he had been doing since. He said he has worked in many places and no similar issues have occurred.

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

(b) Holly Renee Day Strike, M.D.

Hal Taylor, Esq. appeared with Dr. Strike as her legal counsel.

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

Dr. Muro questioned Dr. Strike regarding her affirmative responses to Questions 12 and 12a on her application for licensure.

Dr. Strike explained the circumstances surrounding the single case of malpractice that had been filed against her that resulted in a settlement.

Dr. Muro asked what she planned to do if granted a license to practice medicine in Nevada. Dr. Strike explained that she was currently employed with Intermountain Healthcare in St. George, Utah, at the Dixie Regional Medical Center. She joined the practice in June 2016. They recently

contracted with William B. Ririe Hospital in Ely, Nevada, to provide telemedicine support to the family practitioners and pediatricians there, which will require her to have a Nevada license.

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

(c) Chad Douglas Cole, M.D.

L. Kristopher Rath, Esq. appeared with Dr. Cole as his legal counsel.

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

Dr. Nagy asked Dr. Cole about his practice plans if granted a license in Nevada, and Dr. Cole said he would be joining a general neurosurgery practice in Reno. Dr. Nagy reviewed Dr. Cole's training and practice history with him and then questioned Dr. Cole regarding his affirmative response to Question 12 on his application for licensure.

Dr. Cole explained the circumstances surrounding the two cases of malpractice that had been filed against him.

Dr. Nagy questioned Dr. Cole regarding the fact that he responded in the negative to Question 31 on his application for licensure when he should have responded in the affirmative.

Dr. Cole explained that he had misunderstood the question. He didn't understand that the Dixie Regional Medical Center matters could be construed as alleged statutory violations. He had disclosed everything to the Board under Question 33, but after further review of Question 31 with his lawyer after the fact, he understood the language better and revised his answer. He then described the circumstances surrounding the incident that occurred while he was at Dixie Regional Medical Center which resulted in suspension of his privileges there in 2016, as well as a subsequent incident that occurred while he was on suspension and the resulting indefinite extension of the suspension.

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

(d) Robert Lewis Streisand, M.D.

Dr. Fischer asked Dr. Streisand 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. Streisand regarding the fact that he failed to disclose eight cases of malpractice that had been filed against him when responding to Question 12 on his application for licensure.

Dr. Streisand explained that he only had records going back 10 years and those cases occurred prior to that; that he was not the primary defendant on those cases and most of them were dismissed. He said he wasn't trying to hide anything. He then described the circumstances surrounding the two cases of malpractice against him that resulted in settlements in 2006 and 2015.

Dr. Fischer asked what he planned to do if granted a license in Nevada, and Dr. Streisand stated he would like to continue to perform thoracic surgery, but he was primarily interested in teaching thoracic surgery, possibly at the new medical school in Las Vegas.

Dr. Fischer moved that the Board grant Dr. Streisand's application for licensure. Dr. Prabhu seconded the motion, and it passed unanimously.

(e) Bruce Howard Marko, M.D.

Dr. Fischer asked Dr. Marko 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 read from a report from the Federation of State Medical Boards listing adverse actions that had been taken against Dr. Marko by other state medical boards. Dr. Hardwick then stated that Dr. Marko did not disclose two cases of malpractice that had been filed against him on his application in 2014, which he subsequently withdrew, and did not disclose one case of malpractice that had been filed against him on his current application. Additionally, Dr. Marko also failed to disclose an open, pending investigation against him in North Carolina on his current application. He then asked Dr. Marko if he had been denied a license in any other state, and Dr. Marko said he had been denied a license in Louisiana in the early 2000s due to a case in Florida in the 1990s, which Louisiana said he did not disclose to them on his application. He said he had disclosed the case; however, there was a second part to the case that was given another number, so it was considered a second case. He gave them all the information, but didn't provide it as a second case. Additionally, Nebraska initially denied his application for licensure, but he appealed and they granted his application with a restriction.

Dr. Fischer asked what specialty he planned to practice if granted a license in Nevada, and Dr. Marko said he would strictly practice hair restoration.

Dr. Fischer explained that the Board could only restrict him to practice hair restoration by giving him a restricted license, which might cause him problems with insurance carriers.

Dr. Berndt said that based on his previous record with other boards and how he has interacted with this Board, he found it difficult to believe anything Dr. Marko was telling the Board, and asked Dr. Marko to explain this behavior.

Dr. Marko said with respect to the case that is under investigation, he did provide the information about the Brown case as part of the malpractice case information, but didn't know the investigation in North Carolina was open until he received the letter from this Board advising him he needed to check with the North Carolina Board. He didn't intentionally leave something out. He wasn't trying to be deceitful to the Board. He recently received a license in California and had provided everything that he provided to this Board to the California Board as part of that application.

Dr. Muro asked about his formal training in the area of hair restoration.

Dr. Marko explained he started practicing hair restoration in 1999. In early 2000, he transitioned out of his OB/Gyn practice and did a year-and-a-half fellowship with a national company called Medical Hair Restoration. Hair restoration is not recognized by the AMA as a fellowship program, but he spent a year-and-a-half training with them, and opened several offices for them. He has been doing hair restoration on his own since 2003, and slowly added some other

cosmetic procedures. He then explained the circumstances surrounding the lawsuit he had been involved in with the owner of the corporation he had trained with and worked for.

Ms. Mastroluca asked if he was currently applying for licensure in Arizona and Washington. Dr. Marko confirmed that he was and explained he had applied in those states because he had been offered positions by companies in both. He had not yet received licenses in either.

Dr. Muro stated the Board is charged with ensuring the safety of the public by ensuring that those who come to Nevada to practice medicine are qualified and will deliver the kind of care that we all would like to receive. He said he had very serious concerns, given Dr. Marko's history, and he didn't feel comfortable saying that Dr. Marko's practice pattern would be consistent with what he would want the residents of Nevada to receive. He said he knew Dr. Marko had tried to answer the questions as well as he could, but he thought there were still lots of questions that he didn't know could ever be answered.

Dr. Fischer asked him what information the state of Nebraska provided to him that would lead him to believe they were going to lift the restriction on his Nebraska license, and Dr. Marko said he was advised that his request for removal of the restriction would be considered at the next board meeting, which was this month.

Dr. Fischer suggested Dr. Marko may want to withdraw his application and reapply at a future date, possibly after the restriction was lifted from his license in Nebraska.

Dr. Hardwick moved that the Board deny Dr. Marko's application based on his failure to disclose required information.

Mr. Cousineau clarified for the record that the denial would be based on Nevada statutory language, which would be NRS 630.304(1), attempting to obtain a license by fraud, misrepresentation, etc. Dr. Berndt seconded the motion.

Discussion ensued regarding whether the Board should give Dr. Marko the opportunity to withdraw his application.

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

Dr. Fischer advised Dr. Marko he had the opportunity to withdraw his application.

Dr. Marko said he would withdraw his application, and asked for recommendations he could follow when reapplying to have a better opportunity to obtain a license.

Mr. Cousineau stated the onus was upon Dr. Marko to answer all questions on the application accurately and completely, and that he may want to wait until he clears up the issues in the other jurisdictions where he is applying.

Dr. Marko said he was withdrawing his application.

(f) Ravi Murali, M.D.

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

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

Upon returning to open session, Dr. Prabhu moved that the Board grant Dr. Murali a license contingent upon successful passage of a peer review.

Mr. Cousineau described the peer review process to Dr. Murali, and Dr. Murali said he was agreeable to undergoing a peer review. Dr. Berndt seconded the motion, and it passed, with Dr. Fischer, Dr. Hardwick and Dr. Muro voting against the motion and all remaining Board members voting in favor of the motion.

(g) Parviz Paul Tahery, M.D.

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

Ms. Mastroluca asked Dr. Tahery when he was originally licensed in California. Dr. Tahery said it was a long time ago. Ms. Mastroluca asked if it was in 1996, and he said that it was.

Ms. Mastroluca asked if his last federal licensing exam was in 1984, and Dr. Tahery said he hadn't taken any since then.

Ms. Mastroluca asked what he planned to do if granted a license in Nevada, and Dr. Tahery said he wanted to work part-time for charity, a free clinic or something. Ms. Mastroluca asked if he already had something lined up, and he said he did not; that he was searching.

Ms. Mastroluca questioned Dr. Tahery regarding his affirmative response to Question 12 on his application for licensure.

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

Dr. Hardwick asked whether he had ever been board certified in any specialty, and Dr. Tahery said he had not.

Dr. Berndt asked what he had been doing in the last 12 to 18 months, and Dr. Tahery said he had been practicing primary care and had been seeing 10, 12, 15 patients a day.

Mr. Cousineau reminded the Board that Dr. Tahery was applying for a license by endorsement, and that licensure by endorsement is reserved for appropriate circumstances. He said the only alternative he would recommend in this case would be a peer review.

Dr. Fischer explained the peer review process and asked Dr. Tahery if he would be willing to undergo one. Dr. Tahery said he didn't want to go through a peer review.

Dr. Hardwick said he wasn't comfortable granting Dr. Tahery a license, even with a peer review, without a review of his professional and physician competency by a formal organization that does that sort of thing.

Dr. Tahery said he wanted to withdraw his application.

Agenda Item 17

PERSONNEL

- Annual Performance Evaluation of Executive Director

Dr. Fischer stated that, as the President of the Board, Mr. Cousineau has kept him informed about everything, Mr. Cousineau has been the one who really lets the buck stop with him as the Executive Director, and he has had absolutely no problems whatsoever in dealing with Mr. Cousineau. He has done everything the Board has asked him to do and he has moved Nevada forward on a national front with the Interstate Medical Licensure Compact.

Dr. Prabhu said Mr. Cousineau was easily the highest qualified and most experienced candidate the Board has ever had and he has proved his worth over the last two years and done a fantastic job. He contacts the Board members on a regular basis and is always there to answer all questions. He is a rising star on the national scene and he will make us all proud.

Dr. Berndt moved to accept Mr. Cousineau's evaluation. Ms. Peltyn seconded the motion, and it passed unanimously.

Agenda Item 18

CONSIDERATION AND ADOPTION OF BUDGET FOR CALENDAR YEAR 2017, TO INCLUDE ANY POTENTIAL STAFF SALARY INCREASES

Ms. Jenkins outlined the proposed budget for Calendar Year 2017. She indicated the proposed budget included a net loss for the year. She explained the Board has a solid reserve and staff was proposing to use a very conservative amount of the Board's reserve to further the Board's mission. All increases in expenses have been proposed in places where we know we can improve our mission, and at the directive of our Executive Director, they are to improve our timelines in each of our divisions.

Ms. Jenkins then outlined the proposed income. She said last year we projected 10% growth in the Board's income. This year we have modified it to be somewhat more conservative, at 6% growth, which is based on a 3%-per-year increase in the Board's licensing base, or 6% for the biennium.

Ms. Jenkins then outlined the proposed expenses, which included a 0.7% cost-of-living increase and a 4% merit increase for the entire staff and the addition of five staff positions to improve the Board's time frames: two for licensing, an additional administrative assistant in Las Vegas to replace the current staff member in Las Vegas who was promoted to Investigator but is currently performing the administrative assistant duties in addition to her Investigator duties, an additional Investigator in the Reno office, and an additional attorney. She explained the 0.7% cost-of-living increase was based on the Consumer Price Index and a possible merit increase of 4% will be based on the annual reviews. The other two significant increases in the expenses are in the operating section. Last year we budgeted for \$166,000.00 in Category 531 (Investigations). This expense is only peer reviews and medical reviews, and because of the heavy caseload at the Board, this has proved to be too low. So we have increased it considerably and it includes the option to

take one of our medical reviewers in Las Vegas from part time to full time. We feel that increasing the budget in this category will significantly help with our Investigations and Legal timelines. The only other category that is significantly different is Category 546 (Ads, Public Relations and Outreach). We have decreased that budget this year based on how much we used, and this \$25,000.00 amount will be an appropriate outlay to allow us to cover the areas that will need to be addressed during the upcoming year, including some forms of outreach, possible website expenses and advertising regarding the opiates issue. The proposed IT expenses are only around \$30,000.00 because we did so many improvements this year and we are in a good position there. For the interest on CDs, we used the year-to-date and the projections on the interest we are receiving on our CDS and proposed a \$50,000.00 income figure for our interest. This comes to a net loss of \$239,500.00.

Dr. Hardwick explained that the State cost-of-living increase is 2% and the Board's is 0.7% because it is in line with the Board's policies. The State's merit increase is 4.5% and the Board's is 4%, so we are a little below the State on both.

Dr. Hardwick moved that the Board adopt the budget as proposed including the 0.7% cost-of-living increase and the 4% merit increase for all staff. Ms. Mastroluca seconded the motion, and it passed unanimously.

Agenda Item 19

MATTERS FOR FUTURE AGENDAS

Mr. Cousineau stated there will be a legislative update at the March meeting and further discussion regarding notification of patients by licensees with a probationary status at the June meeting. Additionally, Dr. Fischer, as well as Dr. Berndt, will be terming out next year, after 8 years. Dr. Fischer would normally be Board President until the September meeting, but in light of this, we will be holding elections for the Executive Committee positions at the June meeting, and those terms will carry through the following September.

Agenda Item 20

STAFF COMMENTS/UPDATES

Mr. Cousineau stated the Interstate Medical Licensure Compact Commission had held several telephonic meetings over the last couple of months and had a goal of trying to stand up the Compact for issuance of licenses by the various compact states by January 1. That is a goal he didn't believe will be met, although commissioners are endeavoring still to accomplish that. However, they are progressing at a very good pace compared to other compacts that have been formed previously. He thinks they will be a lot further along in March and he will provide the Board with an update then. He and Barbara Longo, the Commissioner for the Board of Osteopathic Medicine, are actively participating on behalf of Nevada. The FSMB 2017 Annual meeting will take place in late April 2017 in Fort Worth, Texas, and the Board has funds to pay the costs for any and all Board members who wish to attend. He encouraged any Board members who have not attended to do so.

Mr. Rich said the Board's outreach program was very successful this year. Staff began the year with a presentation in Las Vegas for residents, and Mr. Rich thanked Dr. Prabhu for setting that up. There was another nice outreach in Las Vegas that Mr. Rich thanked Ms. Peltyn for setting up. Staff presented a program at St. Mary's Hospital in Reno, with a full house, and recently Mr. Cousineau and he gave a presentation at the Northeastern Regional Medical Center in Elko, where it was standing room only. Staff plans to continue the program in 2017, and has already been

asked for a couple of dates. Ms. Peltyn said she had received requests from Sunrise Hospital, St. Rose Hospital and the University of Nevada.

Mr. Rich commended Ms. Munson for her assistance in setting up the technology aspects of this Board meeting.

Agenda Item 21
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 22
ADJOURNMENT

Dr. Prabhu moved to adjourn the meeting. Ms. Mastroluca seconded the motion, and it passed unanimously. Dr. Fischer adjourned the meeting at 1:52 p.m.

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