

NEVADA STATE BOARD OF MEDICAL EXAMINERS

9600 Gateway Drive
Reno, NV 89521

Nick M. Spirtos, M.D., F.A.C.O.G.
Board President



Edward O. Cousineau, J.D.
Executive Director

*** * * MINUTES * * ***

OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
325 E. Warm Springs Road, Suite 225, Las Vegas, Nevada 89119

and Videoconferenced to

The Conference Room at the Offices of the
Nevada State Board of Medical Examiners
9600 Gateway Drive, Reno, Nevada 89521

FRIDAY, DECEMBER 1, 2023 – 8:00 a.m.

Board Members Present

Nick M. Spirtos, M.D., F.A.C.O.G., President
Bret W. Frey, M.D., Vice President
Ms. Maggie Arias-Petrel, Secretary-Treasurer
Aury Nagy, M.D.
Ms. Pamela J. Beal
Col. Eric D. Wade, USAF (Ret.)
Carl N. Williams, Jr., M.D., FACS
Irwin B. Simon, M.D., FACS
Joseph Olivarez, P.A.-C
Jason B. Farnsworth, RRT, MBA

Board Members Absent

Chowdhury H. Ahsan, M.D., Ph.D., FACC

Staff/Others Present

Edward O. Cousineau, J.D., Executive Director
Sarah A. Bradley, J.D., MBA, Deputy Executive Director
Donya Jenkins, Chief of Finance and Human Resources
Laurie L. Munson, Chief of Administration and Information Systems
Ernesto Diaz, Chief of Investigations
Donald K. White, J.D., Senior Deputy General Counsel
Ian J. Cumings, J.D., Deputy General Counsel
Kory Linn, Chief of Licensing
Chricy E. Harris, J.D., Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by President Nick M. Spirtos, M.D., F.A.C.O.G., at 8:03 a.m.

Dr. Spirtos introduced new Board members, Joseph Olivarez, P.A.-C, and Jason B. Farnsworth, RRT, MBA, and welcomed them to the Board. Mr. Olivarez and Mr. Farnsworth provided brief summaries of their background and experience.

Mr. Cousineau took roll call, and all Board members were present with the exception of Chowdhury H. Ahsan, M.D., Ph.D., FACC. Mr. Cousineau announced there was a quorum.

Agenda Item 2

PUBLIC COMMENT

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

Keith Weaver, Esq., stated that he is a healthcare lawyer and has been practicing for 34 years, the last 15 years in Nevada. He is with the law firm of Lewis, Brisbois, Bisgaard & Smith. He is also licensed in Oregon and California. He said with regard to his public comments, he was present that day only in his individual capacity as a member of the public, and not on behalf of any client. He said for 10 years he was a Governor's appointee to the State Ethics Commission, and is aware of the effort and the time it takes to serve as public officials on State commissions and boards. He said he was there to respectfully request that the Board consider voluntarily putting the Board back on track because for whatever the reason, in the last year to 18 months, the Board has gone off the rails. In the last 15 years and presently, he believes he handled as many Board matters as any attorney in the state and can speak confidently about the Board's recent dramatic negative changes when it comes to formal complaints against licensees. He said the Board's conduct has pretty much guaranteed there will be significant legislative changes made in the next session, and if the buzz in the legal community holds water, contemplated lawsuits against the Board itself and the Board members as individuals may also force changes. But both of those remedies take time, so in the meantime, he was asking the Board to consider voluntarily changing its actions. He said he had a list of many examples of the Board's unlawful patterns of conduct that repeat and repeat; in other words, they are official Board practices ratified by the Board, and presented several of them.

Agenda Item 3

APPROVAL OF MINUTES

- (a) September 15, 2023 Board Meeting – Open/Closed Sessions
- (b) October 19, 2023 Board Meeting – Open Session

Dr. Frey moved that the Board approve the Minutes of the September 15, 2023 Board Meeting – Open/Closed Sessions and the October 19, 2023 Board Meeting – Open Session. Ms. Arias-Petrel seconded the motion, and it passed unanimously.

Agenda Item 4

NEVADA PROFESSIONALS ASSISTANCE PROGRAM (NPAP) PRESENTATION

Michel Sucher, M.D., DFASAM, Medical Director, appeared on behalf of the Nevada Professionals Assistance Program (NPAP). Dr. Sucher provided background regarding NPAP and said he was there with a proposal that would assist NPAP and the Board in becoming better partners and would assist NPAP in doing a better job for the Board and better protect the citizens of Nevada. He then provided a PowerPoint Presentation.

Dr. Sucher said NPAP is the only program that is a member of the Federation of State Physician Health Programs (FSPHP) and is the only program that has a board-certified addiction medicine physician as part of its core staff. He said not all physician health programs are created equal. The current state of multiple providers doesn't provide consistency or quality control policies and procedures and he thinks that opens all of us up to potential liability. NPAP has memorandums of understanding with this Board, the Osteopathic Medicine Board and the Dental Board in Nevada. They have over 30 years' experience doing this in a quality, recognized, state-of-the-art manner. Because of the multiple-choice arena, NPAP has struggled. NPAP is a small program and currently has 12 active participants. NPAP accepts all referrals, both voluntary and mandatory. NPAP has an excellent group facilitator who runs virtual groups throughout the State of Nevada for them, they use state-of-the-art drug testing by SAMHSA certified laboratories. They also have experience in monitoring mental health conditions, boundary issues, disruptive behavior, burnout, etc., but due to the present situation, it is not really financially feasible for NPAP to continue to monitor those types of issues and do the type of job they want to.

Dr. Sucher said that over the years, the FSPHP has developed what they call the PEER (Performance Enhancement and Effectiveness Review) program. It is a process to evaluate and assess the quality, standards and processes of physician health programs nationwide. Dr. Sucher and Mr. Seymour, through their membership in the Federation, have been active participants in developing the process. They believe that NPAP is the only program existing in the State of Nevada that could possibly be accredited and they intend to apply for that accreditation.

Dr. Sucher said NPAP was asking the Board to consider awarding NPAP a sole provider/exclusive contract to provide these services. They believe this would result in consistency and quality and would make NPAP and the Board true partners. This would allow NPAP to become financially stable, to have physical offices in Nevada, and they could expand their group therapy services. Hopefully, this would be something that would expand on the same kind of basis to the Osteopathic Medicine Board, Dental Board and other healthcare boards.

Dr. Sucher said in terms of costs and finances, NPAP accepts all participants regardless of ability to pay. They would be happy to develop a sliding scale fee schedule and discuss a full or partial subsidy model. NPAP has also contemplated a transition plan for those participants in

other programs who may choose to transfer to NPAP. He said that he and Dr. Mansky created the Western State Professionals Health Foundation, which is a 501c3 nonprofit entity.

Ms. Beal thanked Dr. Sucher for his presentation. She asked Dr. Sucher whether they had considered grants or other strategies that would allow NPAP to become financially stable outside of exclusive contracts with the boards.

Dr. Sucher said they have pretty limited resources so they would like the ability to have a volume of participants and revenue. He thinks that currently, NPAP has only 10% of participants in the state who are being monitored due to the current state of choice.

Dr. Frey said exclusivity by definition limits choice for those that are struggling with these kinds of problems and the RFP process seems reasonable because it could elevate the bar, for one, and give other entities additional opportunity to compete. He asked Dr. Sucher if NPAP would be amenable to that process.

Dr. Sucher said NPAP has to do that in Arizona, it is not an uncommon route, and NPAP would be very open to that.

Dr. Simon asked if NPAP was to receive a sole provider contract, what they would do if a particular individual said he or she had a conflict or what might be a reasonable protest.

Dr. Sucher said this is an issue they have dealt with many times. In Arizona, they have always been able to find alternatives when those situations occur, and he thinks that would be part of the RFP process.

Agenda Item 5

PRESENTATION REGARDING POSSIBLE USE OF POLYGRAPHS BY THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

George Olivo stated he is a retired FBI Special Agent. He entered the FBI as a Special Agent in 1998, and worked violent crimes, bank robberies, and so forth. In 2001, after 9/11, he switched to counterintelligence, and in 2011, he became an FBI polygraph examiner.

Mr. Olivo said the polygraph was first introduced into the legal system in the United States in 1920, in the case of *U.S. vs. Frye*. He said what we see on TV and in movies is not legitimate polygraph. It may look like real polygraph, but it is not. He then provided a history of polygraph and described how a legitimate polygraph works. He said what underlies most of the controversy in polygraph is that every deception indicator is a deceptive reaction but not every stressful reaction is a deception indicator. There are other things that cause stress during a polygraph, such as nervousness or confusion.

Mr. Olivo then discussed the accuracy and reliability of legitimate polygraph. He said the most exhaustive peer review study done on polygraph was done in 2003 by the National Academy of Sciences, and they found the accuracy rate to be between 81% and 91%, with a mean accuracy rate of 86% for specific-issue exams. The American Polygraph Association also conducted extensive research, and their computed accuracy rate was 87.75%. He said it is pretty safe to say, if you combine the two, you are looking at over 10,000 polygraph exams, and he is pretty comfortable saying that legitimate polygraph is between 85% and 90% accurate, based on all the studies. He then discussed the error rate for polygraph. He said the bottom line is that polygraph is much better at detecting liars than it is at identifying truth-tellers. Mr. Olivo then addressed the admissibility and

use of polygraphs in court. He said today, there are 19 states, including Nevada, that admit polygraphs in their court proceedings by stipulation.

Dr. Simon asked about polygraph examinations of psychopaths.

Mr. Olivo stated a psychopath is a lot harder to detect than a sociopath because a psychopath is someone who does not perceive any danger in getting caught. He explained that if someone is drunk or on drugs or they don't seem to be quite there with reality, he won't test them. There is a long pretest interview to determine whether a person is suitable for testing.

Dr. Spirtos thanked Mr. Olivo for his presentation.

Mr. Olivo said he believes the FBI is the gold standard when it comes to polygraph and he thinks he is currently the only FBI-trained polygraph examiner in private practice in southern California. If the Board decides to use polygraphs in the adjudication process, he would be happy and honored to participate.

Agenda Item 6

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JON LANE SIEMS, M.D., BME CASE NO. 23-13009-1

Dr. Siems was present in Las Vegas.

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

Ms. Harris said she wanted to confirm that all adjudicating Board members had received and reviewed the materials regarding the matter, and they indicated they had.

Ms. Harris provided procedural instruction regarding the adjudication process.

Dr. Spirtos said he would find in favor of the singular count in the Complaint, a violation of NRS 630.3065(2)(a), knowing and willful failure to comply with a Board order, as he could find no evidence to the contrary. He said it appeared from the documentation that Dr. Siems was given adequate notice, he acknowledged in a number of places that he had received the notice, yet he failed to comply with the order. On that basis, his opinion was the Board should support the findings and recommendations of the hearing officer.

Ms. Arias-Petrel, Mr. Farnsworth and Mr. Olivarez said they would also support the findings and recommendations. Dr. Simon said he agreed, as the facts were clear.

Ms. Arias-Petrel moved that the Board accept and adopt the hearing officer's findings and recommendations. Ms. Beal seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Mr. White provided the Investigative Committee's recommendations regarding discipline in the matter. Pursuant to NRS 630.352, NRS 622.400 and NRS 622A.410, Dr. Siems' license to practice medicine in the State of Nevada be revoked and he may not apply for a new license in the State of Nevada for a minimum period of five years; that he receive a public reprimand; and that he pay the costs and expenses in the amount of \$7,499.20, pursuant to the Memorandum of Costs and Disbursements and Attorneys' Fees, with this amount immediately due and paid in full upon application for a new license.

Dr. Siems described his treatment of the patient that was the subject of the Complaint filed against him which led to the order issued by the Board following adjudication of that case, which order was the subject of the current case before the Board.

Dr. Spirtos said that Dr. Siems' care of the patient was not what was before the Board that day.

Dr. Siems said it was the reason the current case was before the Board.

Mr. Cousineau said the discussion was supposed to be confined to the record, and what the Board was discussing that day was violation of a Board order.

Dr. Spirtos said the Board was willing to hear some of the facts; however, a detailed account of all the medical facts did not address the issue before the Board that day, which was violation of a Board order.

Dr. Siems said if you read the testimony and conclusions of law in the previous case, he doesn't know where the support for the hearing officer's findings in the previous case came from. That said, he was given a public reprimand, he paid the fine immediately and there were other mandates that were levied. He said criticism has been leveled against him because he waited so long to initiate the evaluation at PACE as if there was some callous disregard for finishing this. That is not true. Six weeks prior to the termination date, he initiated a call to PACE to get this accomplished. The cost was \$15,000, so he waited until an appropriate time to still get it done. When he applied to PACE, he was never told the timeframe in which he had to accomplish the program. During the following six weeks, some very terrible personal issues started occurring and it wasn't that he had callous disregard for the evaluation, it is that these other things sort of took priority over that. Additionally, PACE knew quite quickly that he was not a candidate for testing. They couldn't test him because they didn't have the appropriate personnel. He said during the hearing, when he questioned the representative of the Board regarding whether the Board had prior knowledge that he wasn't a candidate, the exact quote was, "I am not surprised they couldn't test you." If someone had told him that, he could have gone somewhere else. He said he had his secretary call the Board to update it regarding what was going on with him in his life, but admits he didn't ask her to ask for an extension. He thought if an extension was needed, it would be given, but nothing was said to him. This establishes he didn't have a callous disregard for the order or its mandates. He said to lose his license for five years for this is absurd. Efforts were made to complete the mandates and the only thing that hasn't been done is an evaluation by this group who can't evaluate him in the first place. He thinks the recommendations provided by Mr. White could not be supported and were excessive.

Discussion ensued regarding the proposed disciplinary recommendations.

Dr. Spirtos said he agreed that five years is a long time and he would like the Board to consider a lesser time of revocation and also require completion of a program of the type Dr. Siems was originally asked to complete.

Discussion ensued regarding the proposed revocation and possible imposition of a requirement for completion of an evaluation like the PACE program.

Mr. Olivarez asked whether the time Dr. Siems' license had been suspended could count towards the five-year period.

Dr. Spirtos said the Board had the option to say that, for lack of a better term, is "time served."

Ms. Beal moved that the Board accept "time served" and that Dr. Siems complete a PACE program or an alternative to a PACE program within an acceptable time period.

Ms. Beal withdrew her original motion and discussion ensued regarding the Investigative Committee's recommendation for revocation of license.

Ms. Beal moved that the Board accept the Investigative Committee's recommendations for disciplinary action subject to the following amendments: that the Board accept "time served" and that Dr. Siems complete a PACE program or an alternative to a PACE program within six months. Ms. Arias-Petrel seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Ms. Harris stated that included in the Investigative Committee's recommendation was attorneys' fees and costs, so there should be another motion to award the requested attorneys' fees and costs upon a finding they are reasonable and customarily incurred following review of the itemized statement which had been passed out to the adjudicating Board members.

Ms. Beal moved that the Board accept the attorneys' fees and costs as they were reasonable and customarily incurred. Ms. Arias-Petrel seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Ms. Bradley said that in the Investigative Committee's recommendation, the fees and costs would be stayed, but because the Board was not ordering a revocation, it sounded like they would be payable now, and requested a timeframe for payment of the fees and costs.

Ms. Beal amended her motion to include payment of the fees and costs within six months. Ms. Arias-Petrel seconded the amended motion, and the motion passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 7

CONSIDERATION OF REVOCABLE DELEGATION AND AUTHORIZATION BY THE BOARD TO THE GENERAL COUNSEL OF THE BOARD TO DEFEND THE BOARD'S FINDINGS, CONCLUSIONS, ORDERS AND ACTIONS IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JON LANE SIEMS, M.D., BME CASE NO. 23-13009-1, IN ANY CIVIL OR CRIMINAL PROCEEDING, STATE OR FEDERAL, THAT IMPLICATES THE BOARD'S ADJUDICATION OF THIS CASE, TO PARTICIPATE IN, DEFEND AGAINST, OR TO INITIATE ON ITS BEHALF ANY PETITION FOR JUDICIAL REVIEW OR APPEAL THEREFROM, TO FILE A NOTICE OF APPEAL OR STATEMENT OF INTENT TO PARTICIPATE ON ITS BEHALF, TO NEGOTIATE AND SETTLE CLAIMS ON ITS BEHALF, AND TO TAKE COMPARABLE ACTIONS AND MAKE COMPARABLE DECISIONS ON ITS BEHALF

Mr. Olivarez moved that the Board authorize the Board's counsel to defend the Board's findings, conclusions, orders and actions in this matter. Dr. Simon seconded the motion and it passed unanimously.

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DIETRICH VON FELDMANN, M.D., BME CASE NO. 23-31575-1

Dr. Von Feldmann was present in Reno.

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

Ms. Harris said she wanted to confirm that all adjudicating Board members had received and reviewed the materials regarding the matter, and they indicated they had.

Ms. Harris provided procedural instruction regarding the adjudication process.

Dr. Frey said on December 2, 2022, the Board found Dr. Von Feldmann violated NRS 630.301(4), malpractice. An order was issued on December 9, 2022, which provided explicit instructions on how to comply, which included submitting to a physical and mental examination to evaluate competency within six months of the order, and pay a fine of \$2,000.00 and the Board's costs and expenses incurred in the investigation within six months of the order. To date, none of that has been paid and there has been a demonstrative failure to submit to the ordered physical and mental examination. Therefore, he supported the findings of the hearing officer.

Dr. Spirtos said he agreed with Dr. Frey's comments and with the findings of the hearing officer.

Dr. Frey moved that the Board accept the findings and recommendations of the hearing officer. Mr. Olivarez seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Mr. Cumings provided the Investigative Committee's recommendations regarding discipline in the matter. Pursuant to NRS 630.352, NRS 622.400 and NRS 622A.410, Dr. Von Feldmann's license to practice medicine in the State of Nevada be immediately revoked for a period of two years; that he receive a public reprimand; that he pay the costs and expenses of \$3,732.62 incurred in this case, pursuant to the Memorandum of Costs and Disbursements and Attorneys' Fees, as well as the \$2,000 fine and the costs and expenses of \$8,509.06 assessed in BME Case Number 22-31575-1, for a total of \$14,241.68, to be paid prior to Dr. Von Feldmann submitting an application for a new license.

Dr. Von Feldmann said the reasons he did not comply with the order were because he was opposed to the conclusion the Board came to on December 2, 2022, that he committed malpractice, because there was no way he could come up with \$15,000.00, and because he found it insulting to submit to a physical and mental examination.

Dr. Frey moved that the Board adopt the Investigative Committee's recommendations for disciplinary action in total, including revocation of Dr. Von Feldmann's license for two years, a public reprimand, and the Board's costs and fees of \$3,732.62 incurred in this matter, plus the \$2,000 fine and costs and fees of \$8,509.06 for BME Case Number 22-31575-1, for a total of \$14,241.68, to be paid prior to any reapplication for a medical license following the two-year revocation period. Dr. Williams seconded the motion and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Spirtos asked Dr. Frey if he would be willing to amend his motion to include that the costs were reviewed, were reasonable and were customary.

Dr. Frey amended his motion to include that after reviewing the Memorandum of Costs, Disbursements and Attorneys' Fees, the Board finds they were actual, reasonable and customary. Dr. Williams seconded the amended motion and it passed, with all adjudicating Board members voting in favor of the amended motion.

Agenda Item 9

CONSIDERATION OF REVOCABLE DELEGATION AND AUTHORIZATION BY THE BOARD TO THE GENERAL COUNSEL OF THE BOARD TO DEFEND THE BOARD'S FINDINGS, CONCLUSIONS, ORDERS AND ACTIONS IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DIETRICH VON FELDMANN, M.D., BME CASE NO. 23-31575-1, IN ANY CIVIL OR CRIMINAL PROCEEDING, STATE OR FEDERAL, THAT IMPLICATES THE BOARD'S ADJUDICATION OF THIS CASE, TO PARTICIPATE IN, DEFEND AGAINST, OR TO INITIATE ON ITS BEHALF ANY PETITION FOR JUDICIAL REVIEW OR APPEAL THEREFROM, TO FILE A NOTICE OF APPEAL OR STATEMENT OF INTENT TO PARTICIPATE ON ITS BEHALF, TO NEGOTIATE AND SETTLE CLAIMS ON ITS BEHALF, AND TO TAKE COMPARABLE ACTIONS AND MAKE COMPARABLE DECISIONS ON ITS BEHALF

Mr. Olivarez moved that the Board authorize Board counsel to defend the Board's findings, conclusions, orders and actions in this matter. Dr. Williams seconded the motion and it passed unanimously.

Agenda Item 10

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JASON HOWARD LASRY, M.D., BME CASE NO. 23-29251-1

Dr. Lasry was present in Las Vegas with his legal counsel, Chelsea R. Hueth, Esq.

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

Ms. Harris said she wanted to confirm that all adjudicating Board members had received and reviewed the materials regarding the matter, and they indicated they had.

Ms. Harris provided procedural instruction regarding the adjudication process.

Dr. Nagy outlined the counts alleged in the formal Complaint filed in the matter and the underlying facts of the case.

Dr. Nagy said that based upon the information presented to the Board, he moved that the Board accept the hearing officer's findings and recommendations. Ms. Beal seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Ms. Bradley provided the Investigative Committee's recommendations regarding discipline in the matter. Dr. Lasry shall receive a public reprimand, pay a total fine of \$10,000, \$5,000 for violation of Count I, malpractice, and \$2,500 each for violation of the two remaining counts of the

Complaint, by no later than April 1, 2024, that he complete 12 hours of continuing medical education (CME), 8 hours on best practices in emergency medicine critical care, including treating envenomization in patients, and 4 hours on best practices in medical recordkeeping; and that he pay the costs and expenses of \$18,268.04, pursuant to the Memorandum of Costs and Disbursements and Attorneys' Fees, no later than April 1, 2024.

Ms. Hueth said that while they respectfully disagreed with the hearing officer's recommendations and the Board's adoption, they do respect its authority to do so. With respect to the Investigative Committee's recommendations, they disagreed. First, with respect to the Memorandum of Fees and Costs, there are a number of itemized fees and costs that were not appropriately supported with invoices or other documentation to demonstrate they were actually or necessarily incurred: the legal assistant fees, the investigative fees, the photocopy fees and the fingerprinting fees. These fees total \$4,651.38. Although they believe the fees and costs should not entirely be awarded, they were proposing a recovery of costs of \$2,500 be awarded by the Board. With respect to the CMEs, they were proposing that four CMEs should be sufficient, as Dr. Lasry completes a number of CMEs beyond what is required every year. Also, that Dr. Lasry receive a public reprimand. However, the rest of the Investigative Committee's recommended discipline should not be adopted.

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

Dr. Nagy moved that the Board accept and adopt the Investigative Committee's recommendations for disciplinary action subject to the following amendments: that the recommended CME be reduced by four hours, to four hours on best practices in emergency medicine critical care, including treating envenomization in patients, and four hours on best practices in medical recordkeeping, and the fine be reduced from \$10,000 to \$7,500, \$5,000 for the violation of NRS 630.301(4) and \$1,250 each for the other two violations. Mr. Olivarez seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Dr. Nagy moved that the Board adopt the fees and costs as they are reasonable and appropriate. Mr. Olivarez seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 11

CONSIDERATION OF REVOCABLE DELEGATION AND AUTHORIZATION BY THE BOARD TO THE GENERAL COUNSEL OF THE BOARD TO DEFEND THE BOARD'S FINDINGS, CONCLUSIONS, ORDERS AND ACTIONS IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JASON HOWARD LASRY, M.D., BME CASE NO. 23-29251-1, IN ANY CIVIL OR CRIMINAL PROCEEDING, STATE OR FEDERAL, THAT IMPLICATES THE BOARD'S ADJUDICATION OF THIS CASE, TO PARTICIPATE IN, DEFEND AGAINST, OR TO INITIATE ON ITS BEHALF ANY PETITION FOR JUDICIAL REVIEW OR APPEAL THEREFROM, TO FILE A NOTICE OF APPEAL OR STATEMENT OF INTENT TO PARTICIPATE ON ITS BEHALF, TO NEGOTIATE AND SETTLE CLAIMS ON ITS BEHALF, AND TO TAKE COMPARABLE ACTIONS AND MAKE COMPARABLE DECISIONS ON ITS BEHALF

Dr. Nagy moved that the Board authorize Board counsel to defend the Board's findings, conclusions, orders and actions in this matter. Mr. Olivarez seconded the motion and it passed unanimously.

Agenda Item 12

**CONSIDERATION AND ACTION REGARDING PETITION FOR ADVISORY OPINION
SUBMITTED BY SASSAN KAVEH, M.D., ASKING WHETHER THE NEVADA STATE
BOARD OF MEDICAL EXAMINERS MAY INITIATE DISCIPLINARY PROCEEDINGS IN
THE ABSENCE OF A CITIZEN COMPLAINT OR A REPORT OF MALPRACTICE**

Melanie L. Thomas, Esq., stated she is a partner at Lewis, Brisbois, Bisgaard & Smith and was appearing on behalf of Dr. Kaveh, who submitted the petition to the Board.

Ms. Thomas said the petition was submitted to determine whether formal disciplinary proceedings may be instituted against a licensee in the absence of a citizen complaint and in the absence of a report of malpractice. She said the Medical Board provides publicly available procedures on its website related to the investigative complaint process, which was attached as an exhibit to the petition. She said the Board is required to keep these processes to provide notice to its licensees. The Governor's office previously recognized the difficulty boards often face when tasked with understanding and interpreting the Nevada Revised Statutes which they enforce, regulate and oversee. With the assistance of the Attorney General's Office, Board members are supposed to be trained on the statutes. She stated she had set forth several statutes in the petition that are intended to place a licensee on notice with regard to the institution of formal disciplinary proceedings, and listed them. She then outlined the legal support for Dr. Kaveh's petition.

Ms. Harris said all that the Board was required to address at that time was whether or not the licensee was entitled to an advisory opinion, and if so, how the Board wanted to go about issuing the advisory opinion.

Dr. Frey said the matter was far too involved to render an opinion that day and moved that the matter be tabled to allow the Board additional time to review the matter and determine whether to issue an advisory opinion. Ms. Beal seconded the motion.

Ms. Bradley said in more than 16 years of practice, she has seen a handful of requests for advisory opinions and declaratory orders. They are generally quite different from this one in that it is a person saying, "here are my qualifications, skills and education; can I do this procedure, can I use this machine, can I advertise this way." She said in her experience, it is usually specific to the person and usually the boards answer those questions themselves. She has never seen a petition styled this way. She said there is not a lot in the Board's statutes or regulations with respect to the process. This is a legal question and it is not specific to one person, and if the Board answers it, it will apply to everybody the Board licenses. This is not something that is normally answered in an advisory petition. If the Board is confused and/or concerned about this issue, at a future date, because it was not agendized that way that day, the Board could request an opinion from the Attorney General's Office. There is not a lot of case law on this issue in Nevada; however, there is more in other states.

Ms. Harris said the Attorney General's Office thinks that based on what is required in the petition, the Board could issue an advisory opinion on it. They understand the general applicability aspect of it, but NRS 233B.120 states that a licensee can inquire as to the applicability of any statutory provision, agency regulation or decision of the agency.

Dr. Williams asked whether there was a specific issue that came up that prompted Dr. Kaveh to request the advisory opinion.

Ms. Thomas stated she was not able to get into that. She said they followed the procedural statutes that allow any licensee to bring these issues at any time.

Mr. Cousineau stated the matter would be placed on the agenda for the Board's March meeting.

Ms. Beal left the meeting at 10:45 a.m.

Agenda Item 13

REPORTS

(a) Investigative Committees

Dr. Frey reported that at its November 17, 2023 meeting, Investigative Committee A considered 96 cases. Of those, the Committee authorized the filing of a formal complaint in 5 cases, sent 4 cases out for peer review, requested an appearance in 2 cases, issued 29 letters of concern, referred 4 cases back to investigative staff for further investigation or follow-up, reviewed no cases for compliance, and recommended closure of a total of 52 cases.

Dr. Frey stated that Dr. Ahsan is the Chair of Investigative Committee B. He then reported that at its November 8, 2023 meeting, Investigative Committee B considered 66 cases. Of those, the Committee authorized the filing of a formal complaint in 4 cases, sent 5 cases out for peer review, requested an appearance in 2 cases, issued 3 letters of concern, referred 2 cases back to investigative staff for further investigation or follow-up, reviewed no cases for compliance, and recommended closure of a total of 50 cases.

Dr. Nagy reported that at its November 9, 2023 meeting, Investigative Committee C considered 51 cases. Of those, the Committee authorized the filing of a formal complaint in 4 cases, sent 2 cases out for peer review, requested an appearance in 1 case, issued 4 letters of concern, referred 8 cases back to investigative staff for further investigation or follow-up, reviewed no cases for compliance, and recommended closure of a total of 32 cases.

(b) Perfusionist Advisory Committee

There was no report provided by the Perfusionist Advisory Committee at this meeting.

(c) Nevada State Medical Association

Sarah Watkins, Executive Director of the Nevada State Medical Association (NSMA), reported that NSMA had filled the newly created position of Policy Director with Ms. Jacqueline Nguyen. She provided a brief background of Ms. Nguyen's experience and said she is based in Las Vegas. Ms. Watkins stated that NSMA had been following the proposed Division of Insurance regulation related to AB398, which passed during the 2023 Legislative Session. NSMA provided comments at the last hearing, and will continue to follow the proposed regulation. Moving forward, we will probably see some possible changes during the next legislative session related thereto. NSMA is also continuing to follow the public option, providing comments when needed, and right now is focusing on its priority list in preparation for the 2025 legislative session. The NSMA 128th Annual Meeting will be held in September in Las Vegas, and NSMA is currently requesting proposals for venues in the area.

(d) Clark County Medical Society

Amber Carter, Executive Director of the Clark County Medical Society, was not present, but had submitted a written report prior to the meeting, which had been provided to all Board members.

(e) Washoe County Medical Society

Angela Bedell, Executive Director of the Washoe County Medical Society, was not present, but had submitted a written report prior to the meeting, which had been provided to all Board members.

Agenda Item 14

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SCOTT RICHARD FERGUSON, M.D., BME CASE NO. 23-32659-1

Ms. Bradley stated a formal Complaint had been filed against Dr. Ferguson alleging one violation of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Mr. Farnsworth moved that the Board accept the proposed Settlement Agreement. Dr. Simon seconded the motion and it passed, 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. RASHID JAHANGIR, M.D., BME CASE NO. 23-28648-1

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

Ms. Bradley stated a formal Complaint had been filed against Dr. Jahangir alleging two violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Ms. Arias-Petrel moved that the Board accept the proposed Settlement Agreement. Mr. Olivarez seconded the motion and it passed, 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. JOHN MICHAEL BOWMAN, M.D., BME CASE NO. 23-8004-1

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

Ms. Bradley stated a formal Complaint had been filed against Dr. Bowman alleging six violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Discussion ensued regarding the provision of the proposed Settlement Agreement regarding supervision of physician assistants.

Dr. Frey moved that the Board adopt the proposed Settlement Agreement. Mr. Olivarez seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. SCHON COLBY ROBERTS, M.D., BME CASE NO. 23-42501-1

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

Ms. Bradley stated a formal Complaint had been filed against Dr. Roberts alleging six violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Williams stated this case and the previous one were very similar, and it is becoming more and more of a problem with physician assistants performing liposuction. He thinks this is an area that people think is very easy to do, but it has a tremendous number of complications. Additionally, not only were these physician assistants performing liposuction, they were also administering their own anesthesia, and their consents were all templated. He said he thinks this is something the Board should look into and stop because even in the best of hands, there are complications with liposuction.

Mr. Wade moved that the Board accept the proposed Settlement Agreement. Dr. Williams seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. HAZEM YOUSSEF AFIFI, M.D., BME CASE NO. 22-19887-1

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

Mr. White stated a First Amended Complaint had been filed against Dr. Afifi alleging two violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Ms. Arias-Petrel moved that the Board accept the proposed Settlement Agreement. Dr. Nagy seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 19

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KRISTINA HALINA DOMANSKI, M.D., BME CASE NO. 23-46394-1

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

Mr. White stated a formal Complaint had been filed against Dr. Domanski alleging two violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Simon moved that the Board accept the proposed Settlement Agreement. Dr. Williams seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. HAI TU DUONG, M.D., BME CASE NO. 23-51850-1

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

Mr. White stated a formal Complaint had been filed against Dr. Duong alleging one violation of the Nevada Medical Practice Act and outlined the alleged violations and the terms of the proposed Settlement Agreement.

Ms. Arias-Petrel moved that the Board accept the proposed Settlement Agreement. Mr. Farnsworth seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 21

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHARLES FARNSWORTH HALES, M.D., BME CASE NO. 23-9713-1

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

Mr. White stated a formal Complaint had been filed against Dr. Hales alleging two violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Nagy moved that the Board approve the proposed Settlement Agreement. Mr. Olivarez seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 22

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. FRANK ANTHONY SHALLENBERGER, BME CASE NO. 23-7127-1

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

Mr. White stated a formal Complaint had been filed against Dr. Shallenberger alleging six violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Williams moved that the Board accept the proposed Settlement Agreement. Mr. Wade seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 23

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NADER HOSSEIN BEHESHTI, M.D., BME CASE NO. 23-19184-1

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

Mr. Cumings stated a formal Complaint had been filed against Dr. Beheshti alleging one violation of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Ms. Arias-Petrel moved that the Board approve the proposed Settlement Agreement. Dr. Simon seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 24

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. FARHAD WILLIAM SANI, M.D., BME CASE NO. 23-46132-1

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

Mr. Cumings stated a formal Complaint had been filed against Dr. Sani alleging three violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Nagy said this appears to be an event where a radiologist missed a 4-1/2-centimeter tumor present on the patient's lung on a CT scan, and missing a 4-1/2-centimeter tumor on a CT is gross negligence, in his opinion. He said what he has observed occurring is that corporations are purchasing physician groups of radiologists and the corporations are obtaining access to the contracts to provide radiological services with different entities, such as hospitals. The corporations intentionally understaff those entities, knowing that it is impossible for the number of physicians they have on staff to accurately and safely read those films. So, the fact that mistakes, sometimes life-threatening mistakes, are happening, is a willful decision on their part, and they are responsible, in part, for the rising number of radiology malpractice suits that are occurring.

Ms. Arias-Petrel moved that the Board accept the proposed Settlement Agreement. Mr. Olivarez seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 25

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHIHUANG EDWARD YEE, M.D., BME CASE NO. 23-11427-1

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

Mr. Cumings stated a formal Complaint had been filed against Dr. Yee alleging one violation of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Frey moved that the Board approve the proposed Settlement Agreement. Mr. Wade seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 26

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. IRA ALAN KLEIN, M.D., BME CASE NOS. 23-43977-1 AND 23-43977-2

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

Ms. Bradley stated that two formal Complaints had been filed against Dr. Klein, both alleging two violations of the Nevada Medical Practice Act, and outlined the terms of the proposed Settlement Agreement.

Dr. Simon moved that the Board accept the proposed Settlement Agreement. Mr. Farnsworth seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 27

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. RONALD DAVID SMITH, M.D., BME CASE NO. 23-31248-1

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

Ms. Bradley stated a formal Complaint had been filed against Dr. Smith alleging four violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Dr. Williams moved that the Board accept the proposed Settlement Agreement. Dr. Nagy seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 28

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ROBERT LEBARON GRANT STEARS, M.D., BME CASE NO. 23-30806-1

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

Ms. Bradley stated a formal Complaint had been filed against Dr. Stears alleging two violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Mr. Wade moved that the Board accept the proposed Settlement Agreement. Dr. Williams seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 29

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. GARY EUGENE TURNER, M.D., BME CASE NO. 23-29548-1

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

Ms. Bradley stated a formal Complaint had been filed against Dr. Turner alleging two violations of the Nevada Medical Practice Act and outlined the terms of the proposed Settlement Agreement.

Ms. Arias-Petrel moved that the Board accept the proposed Settlement Agreement. Dr. Nagy seconded the motion and it passed, with all adjudicating Board members voting in favor of the motion.

Agenda Item 30

EXECUTIVE STAFF/STAFF REPORTS

(a) Investigations Division Report

Mr. Diaz reported that from September 14, 2023, and November 30, 2023, the Investigations Division received a total of 287 complaints. Of those, 81 cases were opened as formal investigations, 102 were not within the Board's jurisdiction, 52 were referred to other agencies and regulatory bodies, 29 were resolved through proactive measures, and 23 were either duplicate complaints or are still pending review.

(b) Quarterly Compliance Report

Ms. Jenkins reported that for the third quarter of 2023, there were zero files in collections and zero collections were written off. She said the total costs outstanding were \$103,523.87, the total fines outstanding were \$118,256.87, for a total outstanding of \$221,780.74. The total costs collected during the quarter were \$29,396.77.

(c) Quarterly Update on Finances

Ms. Jenkins stated the Balance Sheet reflects the assets and liabilities of the Board. She then highlighted the various sections of the Balance Sheet for the quarter ending September 30, 2023. The total current assets totaled \$12,100,000 and total assets were \$18,400,000. The total current liabilities totaled \$9,200,000, with total liabilities and net position of \$18,400,000. The year-to-date addition to net income or net position of the Board was \$749,129.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the third quarter of 2023. The total income for the third quarter was at 96.4% of budget. In the expense section, the personnel expenses were at 92.3% of budget, and total expenses for the quarter were at 97% of budget. The interest income for the quarter was \$51,844. The addition to net position was \$100,454 and the reserves of the Board were at 5.3 months.

Dr. Spirtos said he wanted to thank Ms. Arias-Petrel and Ms. Jenkins for their incredible work. It is consistent and solid and is appreciated.

Ms. Arias-Petrel thanked Ms. Jenkins for always keeping the Board on track with its finances.

(d) Legal Division Report

Ms. Bradley reported that during the last quarter, 19 formal complaints were filed, 1 hearing was held on a formal complaint, there was 1 summary suspension hearing, 26 matters were resolved, some of which the Board had approved that day, and there were 131 formal complaints to be filed in the Legal Division.

Ms. Bradley said she wanted to provide a comparison with last year. We are not yet at the end of this year, but last year, there were 81 cases resolved and this year there have been 96, which is an increase of 18.5%. Last year, 55 formal complaints were filed, and this year, we have filed 85. She said she wanted to point this out because she thinks that under Ms. Contine's leadership, the Legal Division is doing a fantastic job, and she wanted the Board to see the increase in the work the Division is putting forth.

Dr. Spirtos said he thinks that during the last year, the Board has started to close the gap on long-standing complaints and is now much more current going forward, and thanked the staff on behalf of the Board.

Agenda Item 31

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the September 15, 2023 Board Meeting

Dr. Nagy moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the September 15, 2023 Board Meeting. Ms. Arias-Petrel seconded the motion and it passed unanimously.

Agenda Item 32

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

(a) Louis Steven DeLuca, M.D.

Dr. DeLuca appeared via telephone.

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

Dr. Frey moved that the Board go into closed session. Mr. Wade seconded the motion and it passed unanimously.

Upon returning to open session, Dr. Frey said he was inclined to make a motion against granting Dr. DeLuca a license so he wanted to give Dr. DeLuca the opportunity to withdraw his application at that time. He said Dr. DeLuca could apply again sometime in the future, if he so chooses.

Dr. DeLuca said he was withdrawing his application.

Ms. Beal returned to the meeting at 12:40 p.m.

(b) Sunwook Kim-Ashchi, M.D.

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

Dr. Spirtos asked Dr. Kim-Ashchi to explain why she left her residency training program between her third and fourth years.

Dr. Kim-Ashchi explained the circumstances surrounding her suspension from her residency program at University of Florida College of Medicine.

Dr. Spirtos asked Dr. Kim-Ashchi about the case of malpractice that had been filed against her that in part involved an issue of lack of consent, and Dr. Kim-Ashchi described the circumstances surrounding that case.

Dr. Spirtos said that Dr. Kim-Ashchi stated she is board certified in minimally invasive gynecologic surgery and has expertise in procedures using vNOTES.

Dr. Kim-Ashchi described the procedures she has performed using vNOTES and said she had taken a test in minimally invasive gynecological surgery through the American Board of Obstetrics & Gynecology (ABOG) about two years ago.

Dr. Spirtos said there is no such thing as board certification in minimally invasive gynecological surgery. It is not a board-certified subspecialty of ABOG, so it is misleading for Dr. Kim-Ashchi to say that she is board certified in that.

Dr. Kim-Ashchi said she would correct that statement going forward.

Dr. Frey moved that the Board grant Dr. Kim-Ashchi's application for licensure. Dr Simon seconded the motion and it passed unanimously.

(c) Luke Travis Babcock, M.D.

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

Mr. Wade stated Dr. Babcock received his medical doctor degree in 2020 in Florida and completed his residency this year. He passed the last step of the USMLE in 2021. He asked Dr. Babcock whether he held licenses in any other states, and Dr. Babcock said he had a license in Florida and he practices family medicine.

Mr. Wade said that Dr. Babcock had answered affirmatively to the question on his application for licensure regarding any investigations or disciplinary actions during postgraduate training. During his second year of residency, Dr. Babcock had self-reported to a program for treatment of alcoholism, completed a 90-day rehab program and is now on a 5-year monitoring program with the Professional Recovery Network (PRN).

Dr. Babcock explained the circumstances surrounding being placed on probation during his residency training program, which led to his self-report to the PRN program. He said he had been sober for a little over a year now and now has healthier coping mechanisms. His brother is a family physician in Reno and he wants to practice with him. He described what he has been doing to prevent a relapse from occurring.

Mr. Wade asked what he planned to do if granted a license to practice medicine in Nevada, and Dr. Babcock said he wanted to practice at Renown Health in Reno.

Dr. Spirtos said he was impressed with the steps Dr. Babcock had taken towards sobriety.

Dr. Frey moved that the Board grant Dr. Babcock's application for licensure. Dr. Nagy seconded the motion.

Discussion ensued regarding whether the Board should require Dr. Babcock to complete the PRN program. Mr. Cousineau said if the Board were to make that a requirement, it would be a conditional license.

Mr. Cousineau told Dr. Babcock he thought the Board was willing to grant him an unconditional license with the expectation that he will honor his obligation to complete the PRN program, and Dr. Babcock said that he would.

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

(d) Estrada Jefferson Bernard, M.D.

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

Dr. Frey moved that the Board go into closed session. Ms. Arias-Petrel seconded the motion and it passed unanimously.

Upon returning to open session, Dr. Nagy moved that the Board grant Dr. Bernard a license by endorsement. Dr. Frey seconded the motion and it passed unanimously.

(e) Logan Paul Marcus, M.D.

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

Dr. Spirtos asked Dr. Marcus what he planned to do if granted a license to practice medicine in the State of Nevada.

Dr. Marcus explained that he is an occupational environmental medicine physician and works for Concentra. For the last five years, he has been managing the market in northern California which includes 27 clinics from Gilroy through Sonoma County. He said at this time last year, Concentra was contacted by the State of Nevada and told there was a huge shortage of occupational environmental medicine physicians in northern Nevada. Specifically, Washoe County Schools is contracted with Concentra and they have not had an occupational physician to see the Washoe County Schools employees for, he thinks, 10 years, and they asked Concentra if there was

any way they could get a physician in northern Nevada to take care of these employees. Concentra asked him to relocate to be the director of medical operations for northern Nevada and Utah. His job will involve managing 5 clinics in northern Nevada and overseeing the midlevel practitioners. He will also be seeing patients, so he will have both administrative and clinical roles.

Dr. Frey said Dr. Marcus had mentioned a public health crisis, and asked whether he had a form of communication from a State entity or a county entity citing that.

Dr. Marcus said one could be provided, if need be; however, the communication was not something he received directly, it was all through Concentra. Concentra is contracted with the State of Nevada to provide occupational environmental care to all State employees.

Dr. Frey asked whether this was a contractual issue whereby Concentra had been served notice by the State of Nevada or Washoe County that Concentra is falling short of the mark.

Dr. Marcus stated that was not the case. He said he doesn't think this is an issue where Concentra hasn't lived up to its contractual agreements, it is just an area where there is a growing need in the public health space for this type of medicine. This is an area in general that has traditionally been very underrepresented.

Dr. Frey said he keeps a close pulse on the State's needs and he has not heard of this public health crisis.

Dr. Nagy asked how many midlevels Dr. Marcus would be overseeing.

Dr. Marcus said he hadn't started the role yet, so he was not sure.

Dr. Nagy said he brought this up because there is a limit to the number of midlevels a physician can oversee in Nevada, and Dr. Marcus' employer may not have accounted for that.

Dr. Spiritos asked Dr. Marcus how his time would be split between Nevada and Utah.

Dr. Marcus said his role in Utah would essentially be administrative in nature, not clinical. All of his clinical time, 5 days a week, would be either in Reno or Carson City. He said he anticipated that 90% of his time would be spent in northern Nevada.

Dr. Frey stated Dr. Marcus was applying for licensure by endorsement and endorsement is usually reserved for those individuals that have a very unique subset of skills that hardly anyone else or no one else can bring to the state, and asked Dr. Marcus to explain the uniqueness of his skillset.

Dr. Marcus said that occupational environmental medicine is the second smallest specialty in medicine and there is a very small percentage of physicians who are board certified in occupational environmental medicine. He said he had essentially completed the occupational environmental medicine residency at the University of Pennsylvania and will be sitting for the boards in the spring. So, while not currently board certified in occupational environmental medicine, he will be joining the ranks of the few thousand people that do what he does. He thinks he can bring his skills to northern Nevada to help better take care of the workers in this dynamic and growing area.

Ms. Linn stated that Dr. Marcus was applying for licensure by endorsement because he doesn't have 36 months of progressive postgraduate training.

Dr. Marcus described his medical training, and stated that although he doesn't meet the three-year continuous progressive training requirement, he has completed 6 years of postgraduate medical training.

Dr. Spirtos said it seemed to him at that moment that there was a claimed crisis and the answer to the crisis was Dr. Marcus, who is not certified in that specialty. Dr. Marcus is asking the Board to give him a license by endorsement basically on the premise that he is going to take and pass the board exam, which will at least document some level of expertise, and that he was personally troubled by that.

Discussion ensued regarding supervision of the midlevel practitioners at Concentra.

Dr. Spirtos asked Dr. Marcus whether he would be willing to return to the Board at its next meeting with documentation from Concentra as to its perceived need for Dr. Marcus' specialty, the difference Dr. Marcus will make in the state, and also with information regarding supervision of Concentra's midlevels.

Dr. Frey added that would give Dr. Marcus time to take the exam and potentially pass it before returning to the Board.

Dr. Marcus said he was willing to do whatever he needed to do.

Dr. Nagy said Dr. Marcus had been offered a path to success and that path was to return to the Board in three months with a letter of support from his employer demonstrating there is a need for occupational environmental medicine physicians in northern Nevada, which is what he has represented to the Board.

Dr. Frey added it would be really helpful if Dr. Marcus could also provide verification of his passage of the boards.

Dr. Spirtos moved that the Board decline to grant Dr. Marcus' application for licensure by endorsement. Dr. Frey seconded the motion and it passed, with Dr. Nagy voting against the motion and all other Board members voting in favor of the motion.

(f) Kelly James Turner, M.D.

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

Dr. Williams asked Dr. Turner about his military service.

Dr. Turner said he served from 1997 to 2020, served four active-duty tours, and worked as an emergency physician during his two tours in Iraq. He has also been a policeman.

Dr. Williams said from 2013 to 2016, Dr. Turner's Texas license was restricted to practicing only in an institutional-type situation, and Dr. Turner had also voluntarily surrendered his Colorado license.

Dr. Williams outlined Dr. Turner's arrest history, all in 2018 and all involving alcohol, and said he was subsequently referred to a diversion program. Since Dr. Turner completed the diversion program, things have worked out well for him.

Dr. Turner said he holds an inactive-status license in Nevada and wishes to reactivate the license to active-status. He wants to practice emergency medicine with a group.

Dr. Williams asked Dr. Turner whether he had been practicing emergency medicine, and Dr. Turner said he had been practicing emergency medicine in Houston since December 2021, without blemish.

Dr. Williams moved that the Board grant Dr. Turner's application for a change of status to active. Dr. Nagy seconded the motion and it passed unanimously.

Ms. LaRue stated that Dr. Turner was subject to probation for 36 months, pursuant to a settlement agreement he entered into.

(g) James Michael Murphy, M.D.

Lyn E. Beggs, Esq., was present as Dr. Murphy's legal counsel.

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

Dr. Simon asked Dr. Murphy when he last practiced clinical medicine, and Dr. Murphy stated it was in 2016.

Dr. Simon said that Dr. Murphy was currently not licensed to practice medicine and was board certified in anesthesia. He said Dr. Murphy had advised the Board that his board certification will expire at the end of December 2024, and that he has spoken with a couple of groups in Reno, but no one is willing to commit to hiring him unless he gets a license.

Dr. Simon stated an accusation had been made against Dr. Murphy for sexual impropriety, which led to legal battles. Dr. Murphy allegedly brought forth the patient's private medical records into a court of law. There were accusations that Dr. Murphy failed to comply with the Oregon Board's request for medical records and that he contacted individuals and asked them not to cooperate with an ongoing Board investigation. There were also accusations against him of belligerent and obstructive behavior, constituting unprofessional conduct. Records provided to the Board show that he was emailing people in a nasty manner, accusing them of various things. Dr. Murphy voluntarily requested that his license in Oregon be put in inactive status, and the Oregon Medical Board subsequently revoked his license. Dr. Simon asked Dr. Murphy to explain why the Nevada Board should grant him a medical license and why he wants to come to Nevada.

Dr. Murphy said he had worked in Nevada in the past. He stated the Oregon Medical Board found the accusation of sexual assault to be unsubstantiated, in spite of all of the Board's other allegations against him. He also received an honorable discharge from the Air Force, in spite of all of the things they put him through. Dr. Murphy then explained the circumstances surrounding his arrest in March of 2009, which arose from an altercation he had with another physician, as well as the Oregon Medical Board's investigation of him for drinking a glass of wine while on call.

Dr. Frey stated that normally when a physician has been out of practice for a good long time and comes before the Board, the physician brings a plan for reentry. He asked Dr. Murphy if he had developed such a plan with any potential employer.

Dr. Murphy said that is a tough thing to do in his situation, but he is trying, and has contacted various groups. He said there is need for anesthesiologists in the state and he thinks it says a lot that his specialty board has not pulled his board certification.

Dr. Spirtos suggested that Dr. Murphy reach out to his colleagues in the state for assistance with a reentry plan.

Mr. Cousineau said the Board could table consideration of Dr. Murphy's application until the March Board meeting to allow him time to develop a reentry plan. All Board members concurred with tabling the application until the March Board meeting.

(h) Nazih Michel Haddad, M.D.

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

Dr. Haddad explained that the gentleman who accompanied him that day was Grant Levy, who owns a medical spa. Mr. Levy and his wife want to open another medical spa in Henderson and they want him to see their patients and be the medical director there.

Dr. Frey stated that Dr. Haddad was before the Board because some questions on his application were answered incorrectly. Specifically, he answered Questions 5 and 6 in the negative when he should have answered them in the affirmative, and he should have disclosed the six cases of malpractice against him to the Board. Dr. Frey asked him whether he had filled out his application.

Dr. Haddad said Mr. Levy had assisted him with his application.

Mr. Levy said he had filled out the application for Dr. Haddad and that they had difficulty getting information from the various insurance brokers due to the age of the claims.

Dr. Frey said Dr. Haddad had also answered Question 13 in the negative when he should have answered it in the affirmative. That question asks about medical board actions. Dr. Frey said what was of great concern to him is that the Board has a copy of a diploma that says Dr. Haddad completed a residency in 1975; however, Board staff could not direct source verify either of his internships done in two different locations or that he completed his residency training at Thomas Jefferson University Hospital. The residency coordinator at Thomas Jefferson said they have no record of Dr. Haddad's training.

Dr. Haddad said he completed his training in 1975.

Dr. Spirtos said the Board has an email from Thomas Jefferson stating they have no record of Dr. Haddad's training, and what the Board needs is confirmation from the institution that he in fact completed his residency. He said the Board is in a very difficult situation when it has before it a document that says, "we have no record of this person's training." It makes it almost impossible for the Board to move forward.

Dr. Williams stated his concern is that what Dr. Haddad is practicing is not within the scope of his training. It appears that all of his malpractice suits, or the majority of them, were for breast surgeries.

Dr. Williams explained that he is boarded in ENT, as well as in plastic surgery, and in his training in ENT, he did not do breast surgery. He said if Dr. Haddad had wanted to perform cosmetic surgery -- breasts, abdomens, liposuction and everything else -- there are residencies that he could have done, and it is very evident those procedures are out of his scope of practice in ENT.

Dr. Haddad described the training he had received in plastic surgery.

Dr. Williams asked whether Dr. Haddad had kept up with changes in breast surgery because a lot of transitions have occurred since he was trained in breast surgery in 1977, and Dr. Haddad indicated he had.

Dr. Frey said the Board simply could not obtain direct source verification of Dr. Haddad's residency, which is a real problem, because if the Board cannot direct source verify, it is very difficult for the Board to grant a license.

Ms. Linn stated that staff had reached out to the California Medical Board to see if Dr. Haddad's licensure file there contained direct source verification of his residency training, but it did not.

Dr. Spirtos advised Dr. Haddad that he had the option to withdraw his application.

Mr. Cousineau said the Board could table consideration of Dr. Haddad's application until the March Board meeting to allow Dr. Haddad time to obtain direct source verification of his residency training, as well as provide any other outstanding materials the Board requires. All Board members concurred with tabling the application until the March Board meeting.

Agenda Item 33

MOTION TRAINING FOR BOARD MEMBERS

Ms. Bradley stated the Board had requested that staff perform some research regarding *Roberts Rules of Order* and what other boards in the state do, and that is why this item was on the agenda. She said the handout provided to the Board that day was something someone at the Attorney General's Office provided when staff was performing that research. She modified it to say "President" and "Vice President" instead of "Chair" and "Vice Chair." She said it was a summary of general practices for motions, and described the general practices outlined in the handout. She said the intent was to provide it to the Board for reference.

Agenda Item 34

DISCIPLINARY ACTION TRAINING FOR BOARD MEMBERS

Ms. Bradley explained that once one of the Board's Investigative Committees gives the Legal Division the authority to file a formal complaint, and the Legal Division files the formal complaint, the respondent can answer, and the ways a case gets to the Board is either through a settlement agreement or after a hearing has been held. She then described the settlement agreement process and the adjudication process following a hearing. She explained the "preponderance of the evidence" standard. Ms. Bradley then outlined the discipline the Board can impose following an adjudication, as set forth in statute. She described what a voluntary surrender in lieu of other disciplinary action is

and stated it is discipline which is reportable to the appropriate databases. She then described what a summary suspension is, when it is used, and the process that follows imposition of a summary suspension.

Ms. Bradley said she wanted to make sure the Board members know that whatever is in a settlement agreement has been carefully vetted by the Investigative Committee that authorized the filing of the formal complaint in the case. It doesn't mean the adjudicating Board members can't be concerned, but sometimes there are things that can't be shared in the public document that actually affect how the settlement turns out. She said she wanted to be sure the Board members know they are allowed to contact the attorneys before the Board meeting to ask questions if they have them, and the attorneys may be able to tell them some additional information.

Discussion regarding the fines imposed by the Board in disciplinary matters.

Mr. Cousineau reminded the Board members that fines go to the General Fund and are then allocated to something for the betterment of healthcare in Nevada.

Discussion ensued regarding continuing medical education (CME) mandates imposed as disciplinary action.

Dr. Frey said there are performance improvement CMEs available and he would like to investigate utilizing those as options for disciplinary action.

Ms. Bradley said she absolutely supported that and stated the Board attorneys have already begun doing so with regard to ethics CMEs by including the EBAS examination as a requirement, and they are also now including CPEP, which is an in-depth, ethics-focused webinar that started in Colorado for Colorado physicians, but is now available nationwide.

Agenda Item 35

CONSIDERATION AND APPROVAL OF PROPOSED 2024 BOARD MEETING SCHEDULE

Mr. Cousineau stated the proposed meeting dates mirrored those in 2023; however, he was proposing that the Board move the dates of the February Investigative Committee meetings from February 7, 8 and 16 to February 14, 15 and 23 due to the Super Bowl being in Las Vegas on February 11. He also requested that the December Board meeting be moved from December 6 to December 13 due to a conflict in Dr. Spirtos' schedule.

Ms. Arias-Petrel moved that the Board approve the proposed 2024 meeting schedule with the changes outlined by Mr. Cousineau. Dr. Frey seconded the motion and it passed unanimously.

Agenda Item 36

PERSONNEL

- Annual Performance Evaluation of Executive Director

Dr. Spirtos said he had sought input from the other Board members and wanted to summarize those. He thanked Mr. Cousineau for doing an excellent job in handling the Board members, the staff, and issues that have come before the Board. He then read various supportive comments from the Board members and stated they had given Mr. Cousineau an excellent evaluation in general.

Ms. Arias-Petrel thanked Mr. Cousineau for his leadership in guiding the team and said she appreciated him listening to the Board's input.

Dr. Frey stated the Executive Committee recently met with Mr. Cousineau and some of the staff and identified a number of items that have the potential for improvement in performance and efficiency, and Mr. Cousineau has been very cooperative and for these efforts to continue.

Dr. Frey moved that the Board accept the annual performance evaluation of the Executive Director. Ms. Arias-Petrel seconded the motion, and it passed unanimously.

Mr. Cousineau thanked the Board for their support.

Agenda Item 37

CONSIDERATION AND ADOPTION OF BUDGET FOR CALENDAR YEAR 2024, TO INCLUDE ANY POTENTIAL STAFF SALARY INCREASES

Ms. Jenkins outlined the proposed budget for calendar year 2024. She stated it was very straightforward. She said the budgeted income was based on a projection of the fee increases approved in March of 2023 and a projected growth of 6%. The growth percentage is based on a 10-year lookback period. The total projected income is \$6,733,200. She said the personnel expenses were based on current staff, retention bonuses modeled after the State at \$250 per quarter per employee, the addition of a License Specialist, the addition of an IT Specialist, two possible promotions to senior positions in their divisions, and a 4%COLA on July 1, 2024, also modeled after the State. The remaining expenses were all based on the last nonrenewal year in 2022. She explained the reason we use a nonrenewal year is that the Board's income and expenses are very different in a renewal year. She stated the few exceptions were Account No. 530, which is the Board's independent financial audit, which increased by \$3,000, Account No. 546, which is the Board's outreach, which increased by \$30,000 to cover the expenses of a PR firm, and that contract was just approved last week by the Board of Examiners. Account No. 548 is for depreciation, and includes some purchases of computers, printers, and other IT items as well as some building improvements. The total projected depreciation on those items is \$10,000. Account No. 558 is the Board's web hosting fees, and includes the amount we pay for the Board's licensing software, which is billed on a "per licensee" basis. We projected a 6% increase in those fees, as that matches the projected growth in the licensee base. Those were the only items that weren't based on the actual from 2022. The total projected expenses are \$6,812,200.

Ms. Jenkins said the Board's investment income is very conservative, in CDs, but they are performing very well. Therefore, the interest income projection is \$108,700 and the total addition to net position budgeted is \$29,700.

Ms. Arias-Petrel said the Executive Committee is very excited about the addition of an IT technician to assist the organization in its efforts to work more efficiently, and the organization is working to improve the licensing software to better serve the Board's licensees. The addition of a public relations firm will be very beneficial in terms of highlighting all the things the Board does in terms of the community.

Discussion ensued regarding installation of Wi-Fi in the Las Vegas office.

Mr. Wade moved that the Board adopt the proposed budget. Dr. Williams seconded the motion, and it passed unanimously.

Agenda Item 38
NEW BUSINESS

Dr. Simon asked whether the Board could improve the audio in the conference room in Las Vegas.

Ms. Arias-Petrel stated that was already under consideration.

Agenda Item 39
STAFF COMMENTS/UPDATES

Mr. Cousineau said there will be new staff and new programs put in place that will be beneficial to the Board members in their efforts as well as the Board's licensees.

Mr. Farnsworth said he was very interested in licensing turnaround times across the disciplines, and with all the different innovations the Board is doing, he will be interested to see how well we improve as an organization in terms of licensing submission-to-completion rates.

Mr. Cousineau said the Federation of State Medical Boards had provided recommendations for potential improvements in the Board's licensure processes at the Board's June meeting. The staff is making changes to improve the Board's processes and the upgrade in the database software program should also assist us in getting to where we need to be. He said he will keep the Board updated with respect to the progress in improvement of licensure times.

Dr. Spirtos said following the meeting between the Executive Committee and staff, they summarized a lot of the changes that have been made to the Board's processes and identified some issues that are out of the Board's control and will require legislative help.

Dr. Frey said he was working with Ms. Bradley and Mr. Diaz on an article for the Board's next newsletter highlighting common ways that licensees get into trouble and get reported to the Board, and including a list of things to avoid, because some of these things are avoidable.

Agenda Item 40
PUBLIC COMMENT

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

Ronnie Ford said the Board had reviewed his claim a while back and said it didn't see any cause for medical malpractice, so he wondered if everything got sent to the Board. He sent all kinds of pictures, and had pictures with him, showing the before and after of his body, and he was wondering how the Board could make a decision that it wasn't medical malpractice. He said he couldn't do that to himself.

Mr. Cousineau said that was an investigative matter and by statute the Board couldn't talk about it at this meeting. He said if Mr. Ford wanted the Investigative Committee to reconsider it, they could do that, but he should do that through Mr. Diaz or Deputy Chief of Investigations George Tuioti.

Dr. Spirtos explained this meeting was a public forum, and the Investigative Committee meetings are confidential. He said there was an absolute willingness to review the issue again and no one was trying to deny Mr. Ford access to that.

Mr. Cousineau said Mr. Ford could leave his photos and the matter would be reconsidered.

Agenda Item 41

ADJOURNMENT

Dr. Frey moved that the Board adjourn. Dr. Williams seconded the motion and it passed unanimously. The meeting was adjourned at 4:02 p.m.

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