



# Nevada State Board of Medical Examiners

## \*\*\* MINUTES \*\*\*

### OPEN SESSION BOARD MEETING

Held in Conference Room 1-6 at the Westgate  
Las Vegas Resort & Casino  
3000 Paradise Road, Las Vegas, Nevada 89109

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 4, 2015 – 8:30 a.m.*

#### *Board Members Present*

Theodore B. Berndt, M.D., Vice President  
Wayne Hardwick, M.D., Secretary-Treasurer  
Beverly A. Neyland, M.D.  
Rachakonda D. Prabhu, M.D.  
Sandy Peltyn  
Victor M. Muro, M.D.

#### *Board Members Absent*

Michael J. Fischer, M.D., President

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*Staff/Others Present at Westgate Las Vegas Resort & Casino*

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*

Brett Kandt, J.D., Chief Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

The meeting was called to order by Vice President Theodore B. Berndt, M.D., at 8:30 a.m.

Mr. Cousineau took roll call, and all Board members were present with the exception of Michael J. Fischer, M.D. Mr. Cousineau announced there was a quorum.

Mr. Cousineau advised the Board that Chief Deputy Attorney General Brett Kandt, J.D. was present in the Reno office and would be assisting with various matters, to include Open Meeting Law considerations.

Mr. Cousineau then introduced new General Counsel for the Board, Robert Kilroy, J.D.

Agenda Item 2

PUBLIC COMMENT

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

Weldon Havins, M.D., J.D., President-elect of the Nevada State Medical Association, said the Board was going to be considering a regulatory change to NAC 630.205 that day which had to do with weight loss medications, and that regulation also contained a provision with regard to individuals taking medications for more than three months that requires health care providers to see them and weigh them at the beginning of the month and again at the end of the month. He said that provision defies logic, is inconsistent with practice, and legally makes the health care provider subject to discipline for not doing so. He then provided the Board members with a February 15 article from the Endocrine Society on the standards of treating obesity with medications, which suggests that an individual be seen monthly for the first three months and every three months thereafter, unless there is a reason to see the individual more frequently. He said he had spoken with Mr. Cousineau regarding this issue, and Mr. Cousineau had explained that this proposed regulation could not be amended to include a correction to that provision, so he hoped the Board would consider it at a future time. Dr. Havins said that additionally, the regulation defines appetite suppressants as Schedule IV substances, but there are now Schedule III appetite suppressants as well, so he hoped the Board would also consider a change there.

Mr. Cousineau said he wanted to clarify for the record that although the Board may be agreeable to making Dr. Havins' suggested changes, since these changes would be substantive and the proposed regulation had already gone through the workshop and hearing process, the Board would have to go through the process anew in order to make these changes. So this was something for the Board to consider at a future date.

Erin L. Albright, J.D. stated that she had been General Counsel for the Board up until December first, and she was here with the support of a Board member to request that she be allowed to address the allegations contained in her evaluation which resulted in her termination. She said that on the day her negative employment action took place, she was not allowed to access her employee files, any files on her computer or any emails, and therefore she was not allowed to gather information pertinent to her defense; however, she was here with what she did have to defend the allegations and was requesting that she be allowed to address the issue when the Board considered Agenda Item No. 17.

Dr. Berndt said he wasn't clear what she was requesting.

Ms. Albright stated that under Agenda Item 17, the Board had the ability to review personnel evaluations, and her personnel evaluation could be reviewed at that time, and she wanted to go through the allegations contained in her evaluation step by step to refute what was in it. She said she believed the Board members should be properly apprised of both sides of the story.

Dr. Berndt asked counsel if that would be considered an additional agenda item.

Mr. Kandt stated he believed from a reading of Agenda Item 17, regarding an annual review and discussion of professional competency of staff, that it would encompass current staff, not former staff, and out of an abundance of caution, he would advise the Board not to engage in a discussion or deliberation about the competency of former staff and simply limit it to current staff.

Ms. Albright said she would like to address the allegations contained in her evaluation in public comment then.

Dr. Berndt asked if the four-minute time limit had passed yet.

Mr. Cousineau said because there was a potential for litigation, he was going to refrain from providing any direction to the Board and would leave that to the discretion of Mr. Kandt.

Mr. Kandt stated it was up to the Chairman's discretion whether he wanted to allow a member of the public to exceed the Board's regular, standard four-minute time limitation on public comment, but he once again wanted to caution the Board from engaging in any deliberation on an item that was not agendized.

Dr. Berndt stated the Board had heard from its counsel and that this was public comment and the Board could not proceed further.

Ms. Albright stated she didn't believe her four-minute time frame was up, and Dr. Berndt said it was according to his watch.

Ms. Albright said she would be back at the end of the meeting for public comment.

Agenda Item 3

APPROVAL OF MINUTES

- (a) September 11, 2015 Board Meeting – Open/Closed Sessions
- (b) October 8, 2015 Board Meeting – Open Session

Dr. Prabhu moved that the Board approve the Minutes of the September 11, 2015 Board Meeting – Open/Closed Sessions and the Minutes of the October 8, 2015 Board meeting – Open Session. Dr. Hardwick 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 Amendments to NAC Chapter 630, Amending NAC 630.187 and NAC 630.205 to Update Existing Language for Physicians and Physician Assistants Who Prescribe Appetite Suppressants. This Regulation Change Would Update the Dietary Guidelines to the Current Standards Set Forth by the United States Department of Health and Human Services. (R021-15)
- (b) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC Chapter 630, Amending NAC 630.280 to Clarify the Requirements for Physician Assistant Licensure by Updating an Approved Course of Training to the Current Applicable Name (R022-15)
- (c) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC Chapter 630, Amending NAC 630.505 to Clarify the Requirements for Respiratory Care Practitioner Licensure by Updating the Title of the Educational Program to the Current Applicable Name (R023-15)
- (d) Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to NAC Chapter 630, Amending NAC 630.525 to Change Language Which Defines the Timing for Biennial Registration for Respiratory Care Practitioners. The Amended Language Would Change the Date of Expiration From July 1 to June 30 of Each Odd-Numbered Year. (R024-15)

Mr. Rich explained there were four proposed regulatory changes before the Board. The first, R021-15, would update language in NAC 630.187 and NAC 630.205 regarding physicians and physician assistants who prescribe appetite suppressants. This is the regulation that Dr. Havins referenced. The second regulation, R022-15, would amend NAC 630.280 to clarify requirements for physician assistant licensure. The third regulation, R023-15, would amend NAC 630.505 to clarify the requirements for respiratory care practitioner licensure. The fourth regulation, R024-15, would amend NAC 630.525 to change language which defines the timing for biennial registration for practitioners of respiratory care. He said these four proposed regulatory changes were originally presented to the Board at its June 2015 meeting and the Board gave staff the authority to proceed with the regulatory adoption process. A public workshop was held on September 15, 2015, and a public hearing was held on October 13, 2015. There were two attendees at the workshop, and neither provided any comment. No comments were received at the hearing, and no written comments had been received relative to any of these proposed regulations. He requested that the Board adopt the four proposed regulations.

Dr. Hardwick moved that the Board not approve the first proposed regulatory amendment in view of the comments provided by Dr. Havins. He then thanked Dr. Havins for his comments. Dr. Neyland seconded the motion.

Mr. Cousineau explained that the Board could approve the changes that were before it that day and make the additional changes recommended by Dr. Havins at a later date. The Board did not have to reject the currently proposed changes to do so; staff could just initiate a new regulatory adoption process afterward related to the same regulation.

Discussion ensued regarding the interpretation of the language regarding the requirements for weighing a patient contained within the current regulation.

Dr. Hardwick withdrew his motion.

Mr. Cousineau explained that the concerns addressed by Dr. Havins were already in law and the Board would not be able to address those concerns by adopting or rejecting the current proposal.

Dr. Prabhu moved that the Board adopt proposed regulation R021-15 as written. Dr. Muro seconded the motion and it passed unanimously.

Dr. Hardwick moved that the Board adopt proposed regulation R022-15. Dr. Neyland seconded the motion and it passed unanimously.

Dr. Neyland moved that the Board adopt proposed regulation R023-15. Dr. Prabhu seconded the motion and it passed unanimously.

Dr. Prabhu moved that the Board adopt proposed regulation R024-15. Dr. Neyland seconded the motion and it passed unanimously.

Agenda Item 5

CONSIDERATION OF REQUEST OF SEAN SU, M.D. FOR REMOVAL OF RESTRICTIONS ON HIS MEDICAL LICENSE

Dr. Su appeared in Las Vegas.

Dr. Su explained he had submitted a letter requesting that the Board lift the restrictions on his medical license so that he could seek employment with medical groups. The restrictions had been on his license for six years. He needs an unrestricted license and board certification to contract with carriers and medical groups, and he could not get recertified because of the restriction on his license. He said he knew concerns had been raised by Board members in the past that he would perform some of the surgical procedures he had agreed not to do, but he had learned from his past mistakes and would not do anything to jeopardize his license again; he had learned as a physician and grown as a person to understand his limitations and practice within his scope of family medicine.

Dr. Berndt asked what Dr. Su had been doing for the last 24 months, and Dr. Su explained he had been focusing on family practice and had minimally done some of the cosmetic procedures the Board had allowed him to do.

Dr. Muro asked whether he had completed the continuing education programs required for board recertification, and Dr. Su said he had been unable to complete them because he did not have an unrestricted license.

Dr. Muro said if the Board were to modify decisions of prior boards, it would tend to undermine the integrity of the decisions that were reached. Obviously, when Dr. Su entered into the agreement, he, his counsel and the previous Board felt it was a fair and equitable decision for everyone involved, including the public. When a board modifies something of that nature, he thinks it undermines the process that has already occurred. He asked if there was a standard for petitions such as this to be brought forward or whether it was something that an individual could bring at his or her discretion.

Mr. Cousineau stated there was no standard; that unless it was precluded in the terms of the settlement agreement, an individual would have a right at any time to bring the request.

Mr. Cousineau explained that the terms of the settlement agreement allowed Dr. Su to come back before the Board and petition the Board for the ability to perform certain procedures, but Dr. Su also agreed at the time there were certain procedures he would never be allowed to perform while a licensee in the state of Nevada, so the Board needed to use its discretion as to whether the attenuation of time or change in circumstances would have more impact or import than the decision that was rendered in 2009 when Dr. Su entered into the agreement.

Dr. Su stated that at the time he entered into the agreement, he and his counsel believed he would be able to be employed with a restriction to family practice; however, that is not the case. If the Board were to grant his request, he would only apply for family practice jobs and practice family medicine.

Discussion ensued regarding whether it would be appropriate to lift the restrictions on Dr. Su's license.

Dr. Hardwick asked whether he had been doing any surgery, and Dr. Su said he had not performed any cosmetic surgical procedures since the restrictions were imposed upon him. He had been trying to focus on family practice and had performed some of the minimally-invasive procedures that the Board had allowed him to do, such as Botox.

Dr. Prabhu moved that the Board grant Dr. Su's request for removal of restrictions on his medical license. Dr. Neyland seconded the motion and it failed, with Dr. Neyland, Dr. Prabhu and Ms. Peltyn voting in favor of the motion and Dr. Berndt, Dr. Hardwick and Dr. Muro voting against the motion.

Further discussion ensued regarding whether it would be appropriate for the Board to lift the restrictions on Dr. Su's medical license.

Dr. Prabhu moved that the Board grant Dr. Su's request for removal of restrictions on his medical license. Dr. Neyland seconded the motion.

Further discussion ensued regarding whether the Board should lift the restrictions on Dr. Su's medical license.

A vote was taken on the motion and it passed, with Dr. Berndt, Dr. Neyland, Dr. Hardwick, Dr. Prabhu and Ms. Peltyn voting in favor of the motion and Dr. Muro voting against the motion.

Agenda Item 6

CONSIDERATION OF REQUEST OF ANDREW S. MARTIN, M.D. FOR  
MODIFICATION OF THE TERMS OF HIS CURRENTLY EXISTING SETTLEMENT  
AGREEMENT WITH THE NSBME, SPECIFICALLY TO REMOVE HIS PROBATIONARY  
STATUS

Dr. Martin appeared in Las Vegas.

Dr. Martin explained that he had remained compliant with the Nevada Professionals Assistance Program (NPAP) and had provided the Board with a letter of support from Dr. Mansky outlining his participation in the group, his confidence in Dr. Martin's ability to safely practice medicine and Dr. Martin's overall excellent prognosis. Dr. Martin said this had been a very humbling experience, and through that came growth. His relationships with his wife, his family and his contemporaries are much better, he approaches life with a little more compassion, and he has a new appreciation for what it is to be a physician. Although he still has struggles in his professional life, particularly due to the probationary status, overall his life is in a pretty good place. With respect to his legal matter, he met with Judge Delaney in July and they reached an agreement. The three counts of possession were suspended and no sentence was imposed. He was placed on supervised parole and after his parole period ends, the charges will be dismissed. He had received a letter from the American Board of Orthopedic Surgery that he would be eligible to sit for recertification as early as the upcoming year, provided the probationary status is removed from his license and he has no other restrictions on his license. He had been told by insurance carriers and hospital credentialing that he would have to be off probation before he could reapply. He had continued his community service well beyond the 40 hours required by the settlement agreement.

Dr. Berndt stated Dr. Martin was 12 months into his probationary period with the Board and asked how long he had left on his criminal probation. Dr. Martin stated it was indeterminate, not to exceed 5 years, and that he could petition to have his parole shortened. He said he had been practicing medicine, seeing patients and had performed surgery during the time he had been on probation.

Dr. Berndt stated Dr. Martin had 12 months left of his probationary period with the Board.

Dr. Muro asked if he planned to continue with his community service, and Dr. Martin said he did.

Dr. Berndt asked if he would continue with his monitoring program, and Dr. Martin said he had a five-year contract with NPAP.

Dr. Berndt asked if he was on any medication, and Dr. Martin said that he was not.

Dr. Prabhu moved that the Board grant Dr. Martin's request for modification of the terms of his currently existing settlement agreement. Dr. Berndt said that Dr. Martin would have an unrestricted license, and Dr. Prabhu concurred. Dr. Hardwick seconded the motion and it passed unanimously.

Agenda Item 7

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

Dr. Valencia was present in Las Vegas.

Dr. Valencia stated she had been a physician for 30 years and a neurologist for 20 years, with a subspecialty of stroke and neurorehabilitation. Because she was on probation, she had not been able to work because insurance companies currently will not credential anyone with probation on his or her license. She is one of the original stroke-trained fellows in Nevada. In Las Vegas, there are only two in the field and there is a shortage not only nationally, but internationally. She was placed on probation for testing positive for butalbital, which is a component of Fioricet, and she understands why she was placed on probation. She said that recovery had changed her life and she is a better person.

Dr. Berndt asked whether she had practiced medicine in the last 12 months, and Dr. Valencia said she had not because she could not.

Dr. Berndt asked what medications she was currently taking, and Dr. Valencia said she does stretching exercises and takes Motrin when the pain is really bad. She can't take narcotics because they give her migraines.

Dr. Berndt asked whether she had taken any continuing medical education (CME) in the last 12 months, and Dr. Valencia said she had received 55 CMEs.

Dr. Berndt asked what stressors she currently had in her life and whether they were better than they were when she relapsed, and Dr. Valencia said things were totally better and she had a full understanding now that taking any of those medications is not compatible with her profession and with being a mother. She stated she had a five-year contract with Dr. Mansky and she attends AA meetings.

Dr. Berndt asked whether she was receiving medical care for her stressors in life, and Dr. Valencia said that she was, although her psychologist told her she had no need for further psychological intervention.

Dr. Neyland asked what medications she currently takes for migraines, and Dr. Valencia said she takes sumatriptan.

Dr. Berndt stated he was concerned that Dr. Valencia had only been on probation for a very short period of time. He said that although she had had a relapse, no patient harm had occurred.

Dr. Muro said to echo Dr. Berndt's comments with regard to timing, he thinks it is very critical, as it goes back to what he said earlier about tending to undermine the integrity of previous decisions and the process. So although it is commendable that she had done everything she had done, the timing of the request was an issue.

Discussion ensued regarding whether it would be appropriate to lift the probationary status from Dr. Valencia's license at that time.



Dr. Hardwick moved that the Board lift the probationary status from Dr. Valencia's license. Dr. Berndt said that would give her an unrestricted license and Dr. Hardwick concurred. Dr. Prabhu seconded the motion and it passed, with Dr. Berndt, Dr. Hardwick, Dr. Prabhu and Ms. Peltyn voting for the motion and Dr. Neyland and Dr. Muro voting against the motion.

#### Agenda Item 8

#### REPORTS

##### (a) Investigative Committees

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

Dr. Berndt stated that Investigative Committee A did not meet this quarter because the Committee did not have a public member, and would reconvene sometime in January 2016.

Dr. Neyland reported that at its November 3, 2015 meeting, Investigative Committee B considered 90 cases. Of those, the Committee authorized the filing of a formal complaint in 3 cases, sent 6 cases out for peer review, issued 29 letters of concern, referred 3 cases back to investigative staff for further investigation or follow-up and recommended closure of a total of 49 cases.

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

##### (b) Nevada State Medical Association Report

Catherine O'Mara, Executive Director of the Nevada State Medical Association (NSMA), reported that she had been in the role of Executive Director for five weeks. She said NSMA is really committed to attracting and retaining quality licensees in the state, so they will be working on policies that support that objective, including graduate medical education, among others. Their members are involved in public health initiatives, and will continue to work on the fight against opioid abuse and other issues that affect the state. She thinks it is important for the Board to know that most of its licensees are out there doing really wonderful things for the state and doing a very fine job. The Washoe County Medical Society will hold its annual meeting on January 23 in Reno. The NSMA offices have moved; their main office is still in Reno, but is now at a new location, and they have office space in Las Vegas with the Clark County Medical Society (CCMS). She hopes the Board will consider NSMA a resource and she looks forward to collaborating with the Board in the future.

Dr. Hardwick stated that on behalf of NSMA, they are very pleased to have Ms. O'Mara on board.

##### (c) Clark County Medical Society Report

Loretta Moses, Executive Director of the CCMS, said she too was very happy to have Ms. O'Mara on board, and it was nice to have her support. She reported CCMS would be hosting a Town Hall with the University of Nevada, Las Vegas, School of Medicine on December 9. On December 16, CCMS would be hosting a Colleagues and Cocktails mixer with WellHealth. CCMS would be kicking off its 2016 CME series on January 9. Dr. Havins and Dr. Forman, through Touro University, will present a course on pain medication misuse and

abuse, ethical issues and a legislative update. On February 10, in conjunction with the Nevada Psychiatric Association, they will present a CME on suicide prevention, ethics and assisted suicide. CCMS will be offering four additional CME courses in 2016. They are working with the Southern Nevada Health District to provide public education offerings. The official groundbreaking for CCMS' new office building will be January 12.

Agenda Item 9

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. HEATHER ROHRER, PA-C*, BME CASE NO. 15-28202-1

Neither Ms. Rohrer nor her legal counsel was present.

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

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

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

Agenda Item 10

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. IRWIN GLASSMAN, M.D.*, BME CASE NO. 13-6387-1

This item was not discussed at the meeting.

Agenda Item 11

EXECUTIVE STAFF/STAFF REPORTS

(a) Investigations Division Report

Ms. Castagnola reported the current number of open investigative cases was 589 and the current number of cases per investigator was approximately 84. There were 17 peer reviews in the field and 4 peer reviews awaiting assignment.

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

(b) Quarterly Compliance Report

Ms. Jenkins reported the total number of cases with the Controller's Office at the end of the third quarter was 7, for a total of \$39,706.91, and no cases had been written off during the quarter. Total costs outstanding for the quarter were \$55,879.76 and total fines outstanding were \$16,350.00. The total costs collected during the quarter were \$63,518.86.

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

### (c) Quarterly Update on Finances

Ms. Jenkins highlighted the various sections of the Balance Sheet for the third quarter of 2015. She stated the Board's total assets were \$10,354,000, the majority of which were held in cash and CDs, and said the Board's assets were currently high because the Board concluded its biennial licensure renewal period on June 30, 2015. She explained the total current liabilities were \$5,634,000, which included the Board's current liabilities and its deferred income, which is the majority of the Board's licensing renewal fees that are held to be used over the next two years. She stated the equity represents the Board's reserves, and the total was \$4,720,000.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the third quarter of 2015. The income was \$939,000, which was 91.2% of budget, the personnel expenses were \$626,000, which was 90.8% of budget, and operating expenses were \$239,000, which was 92.1% of budget. The Board's interest income was \$10,975, which was significantly ahead of budget, at 217%. Total net income for the quarter was \$72,668, which was only 2.1% over budget. So the Board performed very well against its budget for the third quarter.

Dr. Prabhu asked what was included in fixed assets, and Ms. Jenkins explained that some items were leasehold improvements, but most were primarily furniture and other items of a permanent nature.

Ms. Jenkins stated the Board had a very solid financial foundation and the Board had reached its goal for its reserves.

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

### (d) Legal Division Report

Mr. Cousineau reported there were currently 82 cases in the Legal Division, 1 of which had been presented to the Board for action at this meeting. There were 12 cases pending the CMT process, 11 cases awaiting filing of a formal complaint, 43 cases in which a formal complaint had been filed that were pending hearings, 8 since the last Board meeting, and 9 miscellaneous cases requiring further investigation, etc. He then provided a summary and update regarding the 4 pending civil court cases in which the Board was currently involved. He said that 30 letters of concern were approved by Investigative Committee B during the last quarter.

#### Agenda Item 12

#### PRESENTATION REGARDING THE IMPACT OF THE SUPREME COURT DECISION IN THE NORTH CAROLINA DENTAL BOARD CASE

Dr. Berndt stated he and Mr. Rich had attended a Tri-Regulatory symposium in early October and one of the issues addressed there was the impact of the North Carolina Dental Board decision by the Supreme Court concerning antitrust issues. It was felt by members of this Board that we should be up to date on that decision and how it impacts this Board.

Mr. Rich provided the Board with an overview of the Supreme Court's decision in the case, the factual background of the case, as well as the potential impact of the decision to this Board and ways this Board can avoid legal trouble.

Mr. Cousineau explained there are several protections in place that are contained in the Medical Practice Act. First, he doesn't believe this Board would have the concern the North Carolina Board had as far as determining scope of practice because we have the ability under statute to seek injunction from the district court. So if we have concerns about an individual we feel is impinging upon the scope of practice of our licensees, we would petition a state district court, and the petition would be heard before a neutral arbitrator – a district court judge. Additionally, if the Board were to sanction or revoke an individual's license, it could potentially be argued that was an anti-competitive action; however, in Nevada, there is the ability to appeal decisions of the Board through the judicial review process. As far as immunity, as long as Board members act in good faith, it would be difficult to prove malice, per se, so he doesn't believe we have any worries here.

Mr. Kandt stated there are some distinctions between this Board and the North Carolina Dental Examiners Board that weren't part of the Supreme Court's analysis in the case, and that Mr. Cousineau had made reference to some of those. Under our statutory scheme, if a board such as this seeks to prevent an individual from engaging in an unlicensed activity, it would require action in the courts and a determination by a neutral magistrate. If an individual is unhappy with a final decision of this Board in a contested case, he or she can seek judicial review of that decision under the Administrative Procedure Act. These are factors that weren't really taken into account in the Supreme Court's analysis in that case, and we think they would be relevant in the event there was a challenge on the basis of antitrust to a board action in Nevada.

Mr. Rich then provided a comparison between the North Carolina Dental Board and this Board, outlined ways the Board can avoid legal trouble, and potential changes that could be on the horizon as a result of the Supreme Court decision.

Agenda Item 13

#### LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the September 11, 2015 Board Meeting

Dr. Prabhu moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the September 11, 2015 Board Meeting. Dr. Neyland seconded the motion and it passed unanimously.

Agenda Item 14

#### CONSIDERATION AND ADOPTION OF BUDGET FOR FISCAL YEAR 2016

Ms. Jenkins outlined the proposed budget for Fiscal Year 2016. She explained the first section was income and, for the first time, the proposed budget was based on forecasted growth. Over the last year and a half, the Board had seen tremendous growth in its licensee base and the growth average over the last few years has been even higher than the 10% being proposed, so as a management team, we felt the conservative thing to do was to propose a budget based on the actual from a non-licensing year, which 2016 will be, and add a 10% growth factor. So the projected total income of \$4,435,600 is based on actual plus 10% growth. She then described the items contained in the Personnel category. She stated the projections for staff included the current staff plus two additional positions in the Licensing Division and one additional Investigator, and included a 1.7% cost-of-living adjustment (COLA) and a 4% merit increase for the staff.

Dr. Hardwick explained that the Board had instituted austerity measures during the recession in 2009 and in solidarity with the State, a freeze in merit increases and cost of living adjustments went into place. The Board had not provided employees any merit increases in recent history. The State reinstated merit increases as of July 2014, which equates to a 4.5% increase each year until an employee reaches Step 10 of his or her salary range. All State employees received a 1% COLA in 2015 and will receive a 2% COLA in July 2016. Board employees received a 2.5% COLA in 2013 and a 2.9% COLA in January 2015. Dr. Hardwick moved that to stay in line with what the State is doing and with the Western States Consumer Price Index, the Board grant staff a 4% merit increase and a 1.7% COLA. He said this is also consistent with the Board's policies and procedures manual. There was no second to the motion.

Dr. Berndt asked whether these increases were factored into the budget, and Ms. Jenkins stated they were included into the total budget for the Personnel section.

Dr. Berndt asked whether Mr. Cousineau anticipated any impact by the Interstate Medical Licensure Compact on the Board's income, and Mr. Cousineau stated it was difficult to say because it was still in its infancy stages; however, as Ms. Jenkins indicated, the Board is well above its desired reserves, so he thinks there is plenty of cushion. It is also the consensus of staff that the Board's licensee base is going to continue to increase, so one of the matters that will be brought to the Board in the future is potentially reducing fees for new applicants consistent with what the Board did for current licensees during the last renewal cycle.

Ms. Jenkins described several new items that had been added to the budget for 2016 and stated the total operating expenses proposed were \$4,366,000. She then described the proposed fixed asset purchases for 2016, which totaled \$4,613,000. She explained that the interest income was projected very conservatively, and she expected the Board to do better than that. The net loss to the Board will be \$148,700, which will begin to slightly reduce the Board's reserve to one year, which is the Board's goal. She said this will be the first time since she has been with the Board that management has proposed a deficit budget. When she started with the Board, the Board's reserves were at \$50,000, and now they are \$4.7 million, so there has been a significant change, and at this point, she thinks we need to change our way of thinking. On the other hand, she expects the Board to perform very well against this budget, and it has been her experience over the last six years that the Board has always done better than its budget, so she would not be surprised if the Board still has a positive net income position.

Dr. Prabhu moved that the Board adopt the budget for fiscal year 2016 as outlined by Ms. Jenkins, including the specific items for merit and COLA increases. Dr. Hardwick stated the amounts were a 1.7% COLA and a 4% merit. Ms. Peltyn seconded the motion, and it passed unanimously.

#### Agenda Item 15

#### MATTERS FOR FUTURE AGENDAS

Mr. Cousineau said staff will present numbers to the Board, which will be substantially similar to the numbers proposed during the last renewal cycle, for lowering the registration fees for new applicants for licensure, again to lower the Board's fiscal reserves and also to provide an equitable reduction in registration fees for future licensees as was provided to current licensees. We may consider again adjusting down those numbers when we approach the next renewal cycle.

Dr. Neyland said she would like to discuss the current opioid drug prescription policy because she doesn't feel there are enough teeth in it for it to be effective and Nevada is fourth in the nation for prescription abuse, and would also like to discuss the composition of the Executive Committee.

Agenda Item 16

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE

(a) Elliott Schmerler, M.D.

Dr. Schmerler was present in Las Vegas. Maria Nutile, Esq. was present with Dr. Schmerler as his legal counsel.

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

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

Upon returning to open session, Ms. Nutile stated Dr. Schmerler was willing to table consideration of his application until the March 2016 Board meeting.

(b) Edward Leone, M.D.

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

Dr. Berndt asked Dr. Leone what he planned to do if granted a license to practice medicine in Nevada, and Dr. Leone said he planned to work with one of the current cardiac anesthesiologists in Las Vegas.

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

Dr. Leone explained the circumstances surrounding the one case of malpractice that had been filed against him that resulted in a settlement.

Dr. Berndt questioned Dr. Leone regarding his affirmative response to Question 31 on his application for licensure.

Dr. Leone explained the circumstances surrounding the investigation by RICO related to the aforementioned malpractice claim.

Dr. Berndt questioned Dr. Leone regarding his affirmative response to Question 33 on his application for licensure.

Dr. Leone explained the circumstances surrounding his loss of privileges at Castle Medical Center in Hawaii.

Dr. Berndt questioned Dr. Leone regarding his affirmative response to Question 19 on his application for licensure.

Dr. Leone described the circumstances surrounding his treatment for chemical dependency during his anesthesiology residency in 1991. He stated he had been sober for 24 years.

Dr. Berndt questioned Dr. Leone regarding the fact that he responded in the negative to Question 28 on his application for licensure when he should have responded in the affirmative.

Dr. Leone explained he had believed he held an unrestricted license in Kentucky. He had obtained licenses in other states previously, and this was the first time the Kentucky Board had ever indicated he had some sort of restricted license with them.

Dr. Hardwick moved that the Board grant Dr. Leone an unrestricted license. Dr. Berndt seconded the motion and it passed unanimously.

(c) Russell Johnson, PA-C

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

Ms. Peltyn questioned Mr. Johnson regarding the fact that he had omitted two incidents that occurred in 2007 when responding to Question 13 on his application for licensure.

Mr. Johnson stated he did not disclose them because he did not remember them.

Ms. Peltyn asked Mr. Johnson what medications he was currently taking, and Mr. Johnson listed them.

Ms. Peltyn asked what he planned to do if granted a license in Nevada, and Mr. Johnson said he had tentatively accepted a position in pain management.

Dr. Prabhu asked if he would be willing to undergo a peer review, since he had not practiced as a physician assistant since June 2014, and Mr. Johnson said he would.

Mr. Cousineau asked if he had a supervising physician in place already, and Mr. Johnson said he did not have one on paper.

Dr. Berndt stated Mr. Johnson's history was marked by anger management issues and asked if martial arts helped him with those issues.

Mr. Johnson stated that although he was ordered to undergo an anger management course in the past, he did not have an anger management issue.

Dr. Berndt expressed concern that Dr. Johnson has a chronic pain problem and he would be working in a pain management practice.

Dr. Johnson said that having lived with chronic pain, he had a greater understanding of what chronic pain patients go through, and that his pain medication use is monitored very strictly.

Dr. Hardwick asked if he was on pain medication when seeing patients, and Mr. Johnson said that he was.

Discussion ensued regarding whether it would be appropriate to require that Mr. Johnson submit a written preceptor plan and/or undergo an evaluation by a diversion program prior to the Board making a decision on his application.

Mr. Cousineau said he did not have as great a concern regarding substance abuse issues, as he knew Mr. Johnson was obviously being treated and received regular medical monitoring for his medication, but he had been out of practice for a while, so it would be good to have a written preceptor plan in place with a supervising physician first, and there were other concerns related to volatility and some arrests that weren't reported, so Mr. Johnson might want to consider withdrawing his application and come back to the Board with a clean application and a written preceptor plan.

Mr. Johnson withdrew his application.

(d) David Watson, M.D.

Dr. Watson was present in Las Vegas. Bradley Van Ry, Esq. was present with Dr. Watson as his legal counsel. Michael Fry, M.D., Dr. Watson's proposed preceptor, was present in Reno.

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

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

Upon returning to open session, Dr. Hardwick moved that the Board grant Dr. Watson a conditional license with the condition of completion of his preceptorship, with the enumerated items on Page 170 [of the materials related to Dr. Watson's application], with the following changes: (1) increase the reports to the Board from Dr. Fry to twice a month for the first 4 months, then once a month for the next 8 months; (2) to stay as is; (3) chart reviews by Dr. Fry 100% for the first 6 months, 50% for months 6 to 9 and 25% for months 9 to 12; (4) Dr. Watson to receive an evaluation for substance abuse within 30 days to determine his fitness. Dr. Neyland seconded the motion.

Mr. Cousineau stated he would provide a copy of Page 170 to Mr. Van Ry.

Discussion ensued regarding the proposed chart review requirements.

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

(e) Duane Anderson, M.D.

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

Dr. Hardwick questioned Dr. Anderson regarding the fact that he hadn't taken a major examination since March 1982.



Dr. Anderson stated he had recertified in ob/gyn in 1988 and 1998.

Ms. Daniels explained that was not with the ABMS; it was with the American College of Obstetrics and Gynecologists, which is not an ABMS board, and this Board does not recognize that board by statute.

Dr. Hardwick asked what Dr. Anderson planned to do if granted a license to practice medicine in Nevada.

Dr. Anderson stated he had been very active in community service and he would like to assist those in need the Las Vegas area. He had been working with Shade Tree, which is a home for women and children, and they have a clinic that presently needs someone to volunteer to perform prenatal checks. He would like to volunteer there and would like the ability to work as an insurance auditor or to teach, or to do other things that will allow him to make a living, but he will not be practicing ob/gyn.

Dr. Hardwick stated that since Dr. Anderson had not practiced clinical medicine since 2012, he would be in favor of a peer review.

Dr. Berndt asked if Dr. Anderson would be willing to undergo a peer review, and whether he could provide more recent letters of recommendation.

Dr. Anderson said he could provide more recent letters of recommendation and would be willing to undergo a peer review.

Mr. Cousineau asked if he was aware that he would be responsible for the costs of the peer review, and Dr. Anderson said he was.

Dr. Hardwick moved that the Board grant Dr. Anderson an unrestricted license contingent upon successful passage of a peer review in the specialty of family practice. Dr. Prabhu seconded the motion and it passed unanimously.

(f) Robert Allen, M.D.

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

Dr. Prabhu questioned Dr. Allen regarding the fact that he had not practiced clinical medicine since 2011.

Dr. Allen said he had not seen patients since 2011 and had been doing utilization review for the last 4-1/2 years.

Dr. Prabhu asked if he was willing to undergo a peer review, and Dr. Allen said he was.

Mr. Cousineau asked if he was aware that he would be responsible for the costs of the peer review, and Dr. Allen said he was.

Ms. Daniels stated Dr. Allen had recertified in pain management in October 2014.

Dr. Allen stated he makes clinical decisions every day on hundreds of cases where he decides whether the treatment being requested is approvable.

Dr. Prabhu moved that the Board grant Dr. Allen an unrestricted license contingent upon successful passage of a peer review. Dr. Neyland seconded the motion.

Dr. Berndt asked whether Dr. Allen would be practicing clinical pain management in Nevada, and Dr. Allen said he would not.

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

(g) Lawrence Mora, M.D.

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

Dr. Neyland questioned Dr. Mora regarding his board certification status.

Dr. Mora explained that he had recertified in April 2015; however, his certification was rescinded afterward because he was placed on probation with the Medical Board of California effective May 27.

Dr. Neyland questioned Dr. Mora regarding his affirmative responses to Questions 12, 12a, 28 and 31 on his application for licensure.

Dr. Mora explained the circumstances surrounding one case of malpractice that had been filed against him that resulted in a settlement, and also resulted in the action taken against him by the Medical Board of California.

Dr. Neyland asked what he planned to do if granted a license to practice medicine in Nevada, and Dr. Mora said he would like to pick up some urgent care hours to supplement his income, but does not plan to relocate to Nevada at this time.

Dr. Muro asked whether it was possible to license someone who is on probation in another state.

Mr. Cousineau said it is possible to license someone who is on probation in another jurisdiction, and the Board could ask that the applicant agree to whatever constraints or restrictions exist on his or her license in the other jurisdiction to be imposed in this jurisdiction. Conversely, the Board has the ability to deny an application for a license to practice medicine based on concerns out of state.

Dr. Berndt asked if he had applied for licensure in other states, and Dr. Mora stated when he applied in Nevada in March, he had an unrestricted license in California, and technically his license in California is now unrestricted. He is still on probation, but all of the conditions that restricted his license in California have been lifted.

Mr. Cousineau said his recommendation would be to deny the application based on statute, for disciplinary action taken in another jurisdiction, unless Dr. Mora would be willing to consent to mirrored terms with those that exist in California, but it probably would not look good to have two licenses with sanctions against them.

Dr. Neyland recommended that Dr. Mora withdraw his application and reapply once his probation was completed in California.

Dr. Hardwick suggested that Dr. Mora might want to make inquiry to the Medical Board of California regarding the possibility of lifting his probation early.

Dr. Mora said he was withdrawing his application.

**(h) Jay Eneman, M.D.**

Ms. Daniels stated that Dr. Eneman had waived his right to appear before the Board and had requested that the Board go into closed session to review the documentation that had been submitted to the Board.

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

Upon returning to open session, Dr. Hardwick moved that the Board table the application. Dr. Prabhu seconded the motion and it passed unanimously.

**Agenda Item 17**

**PERSONNEL**

**(a) Annual Review and Discussion of Professional Competency of Staff**

Mr. Cousineau stated the annual evaluations of all staff had been conducted by the various supervisors and he had not received any requests from any Board members to review any of the evaluations, so if there were no concerns in that regard, he asked that the Board accept the evaluations that were tendered.

Dr. Prabhu moved that the Board accept the evaluations. Dr. Hardwick seconded the motion and it passed unanimously.

**(b) Annual Performance Evaluation of Executive Director**

Mr. Cousineau stated that Dr. Fischer had prepared his evaluation and had requested that this item be pulled from the agenda in the event he wasn't present at the meeting. So we will re-agendize the item for a future meeting.

**Agenda Item 18**

**STAFF COMMENTS/UPDATES**

Mr. Cousineau advised the Board that the 2016 FSMB Annual Meeting would be held in San Diego April 28 through 30, and it had been budgeted for any and all Board members to attend, as well as several members of the staff. Mr. Cousineau would be attending a commission meeting for the Interstate Medical Licensure Compact in Salt Lake City on December 18. Dr. Hardwick attended the first inaugural meeting of the Commission last October. These meetings are not only public, but Board members are certainly welcome to attend and see what they constitute.

Dr. Hardwick stated that Nevada is on the cutting edge and he couldn't believe how much the Commission got done in one meeting. This is going to become a bigger and bigger piece of what we do and it is really gratifying that Nevada is on the cutting edge here.

Agenda Item 19

ELECTION OF VICE PRESIDENT

Dr. Berndt stated he had resigned as Vice President so the Board needed to elect a new Vice President.

Dr. Hardwick nominated Dr. Prabhu for Vice President. Dr. Neyland seconded the nomination. Dr. Prabhu accepted the nomination. A vote was taken and Dr. Prabhu was elected Vice President, with Dr. Prabhu abstaining and all other Board members voting in favor of the nomination.

Dr. Hardwick proffered comment regarding the recent elections for Secretary-Treasurer.

Agenda Item 20

PUBLIC COMMENT

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

Agenda Item 21

ADJOURNMENT

Dr. Berndt moved to adjourn the meeting. Dr. Neyland seconded the motion and it passed unanimously. Dr. Prabhu adjourned the meeting at 2:18 p.m.

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