

NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

Michael J. Fischer, M.D.
Board President



Edward O. Cousineau, J.D.
Executive Director

*** * * MINUTES * * ***

OPEN SESSION BOARD MEETING

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

and videoconferenced to

the Conference Room at the Offices of the Nevada State Board of
Medical Examiners/Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, MARCH 3, 2017 – 8:30 a.m.

Board Members Present

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

Board Members Absent

Sandy Peltyn

Staff/Others Present

Edward O. Cousineau, J.D., Executive Director
Todd C. Rich, Deputy Executive Director
Robert Kilroy, J.D., General Counsel
Jasmine K. Mehta, J.D., Deputy 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
Henna Rasul, J.D., Senior Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

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

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

Dr. Fischer recognized Chief of Investigations Pamela J. Castagnola, CMBI for her long-term service to the Board of 15 years, and Ms. Castagnola was presented with a service award memorializing the same.

Ms. Daniels introduced new License Specialists Nancy Padilla and Aimee D. Dodge, and new Administrative Assistant for the Licensing Division Alexandra D. Hayworth.

Agenda Item 2

PUBLIC COMMENT

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

Weldon Havins, M.D., J.D., President of the Nevada State Medical Association, stated he had seen the item on the Agenda regarding removal of NAC 630.205, and very much agreed with that, and offered his assistance in shepherding it through the process and through the Legislative Commission.

Agenda Item 3

APPROVAL OF MINUTES

- December 2, 2016 Board Meeting – Open/Closed Sessions

Dr. Prabhu moved that the Board approve the Minutes of the December 2, 2016 Board Meeting – Open/Closed Sessions. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 4

PRESENTATION BY THE FEDERATION OF STATE MEDICAL BOARDS REGARDING FEDERATION PROGRAMS AND SERVICES AVAILABLE TO FEDERATION MEMBERS AND UPDATES ON TELEMEDICINE, MEDICAL MARIJUANA AND OPIATES PRESCRIBING

Jerry G. Landau, J.D., member of the Board of Directors of the Federation of State Medical Boards (FSMB), gave a PowerPoint presentation describing the FSMB, its mission, the services and resources it provides to state medical and osteopathic boards, opportunities for participation with the FSMB, and current policy initiatives. He then provided information regarding the following topics: medical marijuana, opioid prescribing and abuse, telemedicine and the Interstate Medical Licensure Compact. He said that telemedicine and medical marijuana are intersecting because in many states, medical marijuana statutes require an in-person examination of the patient before medical marijuana can be recommended, and there is a question whether telemedicine qualifies as in-person. He said we are also seeing an increase of cases where physicians are recommending marijuana, or know the patient is using marijuana, and are also prescribing opioids and other controlled substances. He said that telemedicine and the Interstate Medical Licensure Compact go hand in hand, and the Interstate Medical Licensure Compact is growing pretty quickly. There is currently a lot of state legislative activity with respect to telemedicine. Mr. Landau then provided some statistics regarding the number of Nevada licensees who also hold licenses in other states.

Discussion ensued regarding the prescription drug abuse epidemic and how patient satisfaction surveys play a part in the problem.

Dr. Berndt asked about FSMB's interaction with the American Medical Association (AMA). Mr. Landau said the President of the AMA is on the FSMB Strategic Planning Committee, the FSMB attends AMA House of Delegates meetings, and the AMA attends theirs. The FSMB regularly interacts and works with both the AMA and the American Osteopathic Association.

Dr. Nagy asked if there were national standards in regards to insurance companies or other corporate entities attempting to influence the practice of medicine through the employment and utilization of people and their medical licenses in perhaps an unethical or deceitful fashion. Mr. Landau said he was not aware of any national standards in this area, but he has seen a few complaints in Arizona by physicians against other physician in this area. Discussion ensued regarding insurance company involvement in patient-care decisions.

Mr. Cousineau said he wanted to ensure all Board members were aware that Dr. Fischer is currently the Board's voting delegate to the FSMB and that Ms. Daniels serves on the State Board Advisory Panel for the USMLE, and has for several years.

Agenda Item 5

LEGISLATIVE UPDATE

Mr. Cousineau advised the Board that Keith L. Lee, Esq., the Board's Legislative Representative, was unable to attend the meeting, but had provided the following update. We are currently tracking approximately 60 BDRs. One bill being tracked is SB55, which authorizes a regulatory body to invalidate a license which was issued in error. This Board already has that statutory authority, but the bill would provide that authority to other boards that currently do not. The Governor's bill, SB69, basically addresses changes to NRS 622, which is the general boards and commissions chapter, and speaks to meeting unmet critical needs through licensure by endorsement. This Board already has three endorsement categories, which we are hoping to modify

to a degree this session to clarify them from last session. One other change specifically enunciated in SB69 is our statutory charge to include expansion of economic opportunity, promote competition and encourage innovation. SB101 would prohibit medical assistants and dental hygienists from administering Botox. There was a hearing on this bill earlier in the week, and Board staff is in discussions with the sponsor regarding how this would impact the Board. SB210 relates to licensure of anesthesiology assistants. Last session, they came before the Board and the Board expressed support; however, the bill did not make it through the legislative process. Representatives again came before the Board last December, and the Board took a position of neutrality on the bill. Mr. Cousineau said that Mr. Lee, Mr. Rich and he had met with representatives of the bill after the BDR dropped, expressed various concerns and suggested modifications, which the representatives were agreeable to. If the bill passes, the Board will be taking on a new licensure category. AB105 would mandate three hours of continuing medical education (CME) for all physicians in evidence-based suicide prevention and awareness. Last session, SB93 passed, and requires all psychiatrists to take at least two hours of CME in suicide prevention. There has been some discussion about possibly lowering the number of credits required, as well as recognizing this may not be appropriate for all license specialties. AB129 revises provisions relating to the practice of optometry and the issuance of prescriptions for ophthalmologic lenses. At this point, the Board is not taking a position on the bill and is only monitoring it. We expect several more bills to drop next week. Mr. Cousineau stated that Mr. Lee is at the legislature every day and keeps Mr. Rich and he apprised of anything of merit. Additionally, Libi Anders and Mollie Miller internally keep stats and spreadsheets, and share these with Board staff involved in the process.

Agenda Item 6

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

Request for Authorization to Proceed With the Regulatory Adoption Process to Repeal NAC 630.205 Regarding Prescription of Appetite Suppressants

Mr. Rich explained that NAC 630.205 became law in July 1996, was amended in November 2001 and again in December 2015. The impetus to repeal this regulation was based upon concerns raised by the Nevada State Medical Association. At the December 2015 Board meeting, final approval was granted to amend this regulation, and during the meeting, the Board received public comment regarding the regulation. Unfortunately, it was too late to make any additional changes at that time. The Board had not received any concerns regarding amending this regulation during the regulatory process at either the public workshop or hearing; however, there were specific concerns communicated during public comment at the December 2015 meeting. The first was that a physician could interpret the existing language to mean he/she was required to see and weigh his/her patients at the beginning and end of each month in which the patient was taking the appetite suppressant. Additionally, the regulation defines appetite suppressants as schedule IV substances, but there are now schedule III appetite suppressants as well. Board staff believes this regulation is difficult to manage due to the fact that it is based upon guidelines that have changed in the past and will most likely change again in the future. The regulation has been somewhat of a moving target, and, as Board members are aware, it is unusual for a regulation to specifically define how a physician practices medicine, as this regulation does. The practice of medicine is fluid, and Board staff feels it would be in the best interests of the Board's licensees and the public that it serves to repeal the regulation in its entirety. He requested authority to begin the process to repeal the regulation.

Dr. Prabhu moved that the Board authorize staff to proceed with the regulatory process to repeal the regulation. Dr. Hardwick seconded the motion, and it passed unanimously.

Agenda Item 7

CONSIDERATION OF REQUEST OF ELLIOTT SCHMERLER, M.D. FOR REMOVAL OF CONDITION ON HIS MEDICAL LICENSE

Vance Alm, M.D., Dr. Schmerler's preceptor, was present with Dr. Schmerler.

Dr. Schmerler explained that the condition on his license was that he be proctored by Dr. Alm over a one-year period, and see a total of 400 patients. Over the year, he had worked in Dr. Alm's office in Reno and saw over 400 patients.

Dr. Alm said he had had the honor of being Dr. Schmerler's preceptor. Initially, he was doing this as a favor for a friend and for the Medical Board, but it turned out that he now has a friend, and Dr. Schmerler is an excellent physician and did a great job during the preceptorship. Dr. Schmerler was able to teach Dr. Alm some old-school tricks and Dr. Alm was able to teach him some new tricks. He was a very professional physician. Dr. Alm's patients initially did not want to accept this new person – they wanted to see their doctor – but after just a couple of months, Dr. Schmerler was coming in and patients recognized him, and they felt that he was a wonderful physician and liked him. When his condition was completed and he disappeared, his patients wondered where that wonderful doctor went. He did a great job and Dr. Alm was very impressed with how he did.

Dr. Hardwick moved that the Board grant Dr. Schmerler's request for removal of the condition on his medical license. Dr. Prabhu seconded the motion, and it passed unanimously.

Agenda Item 8

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

Dr. Eells appeared in Las Vegas.

Dr. Eells stated he had satisfied all the terms the Board had placed upon him, that he had rebuilt and resurrected his practice, and that things had never been better with him.

Dr. Hardwick moved that the Board grant Dr. Eells' request for removal of the condition on his medical license. Dr. Prabhu seconded the motion, and it passed unanimously.

Agenda Item 9

CONSIDERATION OF REQUEST OF DAVID G. WATSON, M.D. FOR REMOVAL OF CONDITIONS ON HIS MEDICAL LICENSE

Michael Fry, M.D., Dr. Watson's preceptor, was present with Dr. Watson.

Dr. Watson stated he had successfully completed his preceptorship, that he had been working with Dr. Fry and a couple of other doctors at Tahoe Fracture and Orthopedic, and that they had offered him a job at an orthopedic urgent care clinic.

Dr. Fry stated Dr. Watson had worked with him on a weekly basis over a year, and Dr. Watson was able to learn the management of spine patients, and so forth. He did an excellent job, was always dependable, and all of his work and the charts Dr. Fry had the opportunity to review were great.

Dr. Berndt moved that the Board grant Dr. Watson's request for removal of the conditions on his medical license. Dr. Prabhu seconded the motion, and it passed unanimously.

Agenda Item 10

ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DONJAE PARK, M.D.*, BME CASE NO. 15-40320-1

Dr. Park was not present. Lyn Beggs, Esq. appeared on behalf of Dr. Park as his legal counsel.

Ms. Rasul said she wanted to ensure that any Board member who was involved in the investigation or had direct knowledge regarding the matter recused themselves and to verify that all adjudicating Board members had received all the materials related to the matter and had an opportunity to review them. She then provided procedural instruction regarding the adjudication process.

Dr. Fischer named the adjudicating Board members who would be considering the matter and then read the Complaint that had been filed in the matter.

Ms. Mehta stated it had been stipulated at the hearing to delete paragraph 7 on page 2 of the Complaint, failure to support the patient during lymphoma therapy, as well as the statement on page 3, line 5, that says, "Further, Respondent did not appropriately support Patient A during his lymphoma therapy by omitting recombinant erythropoietin," so that was not something before the Board to adjudicate.

Mr. Cousineau said that, basically, there was an allegation of malpractice, and the adjudicative body needed to have a discussion as to the evidence that was presented and provided to them in advance of this adjudication and make a determination as to whether there was a violation as alleged. If a violation was found, then the adjudicative body would move into the disciplinary sanction phase.

Dr. Fischer asked about the peer review, and Ms. Beggs stated that the peer review had not been admitted as evidence at the time of the hearing. Ms. Mehta concurred.

Dr. Fischer stated that based upon Dr. Goodman's testimony, it was his conclusion that the Respondent's care was inappropriate. Dr. Stein, a professor from Vanderbilt, presented his rationale as to why the Respondent's care was within the standard of care. So there was a conflict between the opinions of Dr. Goodman and Dr. Stein.

Dr. Berndt stated he was very impressed with the evidence that was presented by both sides. He felt that Dr. Goodman was less sure as the proceedings went on, in terms of the standard of care, and he seemed to backtrack. Dr. Berndt said these are difficult clinical decisions when you are presented with a patient such as this, and what to do acutely, sub-acutely and chronically are often in the realm of clinical decision-making rather than standard of care. In medicine, in some cases, there are no hard, standard guidelines, and at the end of the day, he felt this case was in that realm.

Dr. Fischer said that one of the big issues was whether a bone marrow biopsy should have been done on the patient, and he got the impression from Dr. Stein that that was not necessarily what they taught at Vanderbilt University, and Dr. Stein is a professor there. There were also questions regarding the delay in the lymph node biopsy and whether or not the chart reflected the full decision-making process.

Dr. Hardwick stated there are so many gray areas in medicine, and he couldn't make a finding of malpractice.

Dr. Nagy said the question was whether there is a clear standard of care requiring a bone marrow biopsy in the immediate setting after the findings that this patient had, because if that is the standard, then this fell below the standard. He said as he was reading the case, and what the patient presented with, he thought a bone marrow biopsy was going to be done by someone. But he doesn't think we have that standard and, based on the evidence, we don't know for sure that in this situation, a bone marrow biopsy always has to be done. There are apparently two sides to that story from the experts.

Dr. Berndt stated that that is where Dr. Goodman sort of backtracked. He stated that is what he would have done under similar circumstances, but couldn't say that there was such a standard of care.

Dr. Fischer said another question was whether or not this patient would have survived had anything been done differently. Looking at all the evidence that was presented, the patient was very sick when he presented initially, and he had a previous history of ulcerative colitis, which may have confused the doctor somewhat. There was also a question about records not being available at the time the patient was seen at the hospital.

Dr. Berndt said there was one place where he would fault Dr. Park. Dr. Park had a conversation with the family about doing a biopsy, and in his testimony he claimed they didn't want to have it done at that point – they wanted to delay – however, he didn't document that in his records. This points to the importance of documenting everything, including conversations you have with the family.

Dr. Fischer moved that based upon the testimony, the doctor did not deviate from the standard of care. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Mr. Cousineau stated the complaint was therefore dismissed.

Agenda Item II

REPORTS

(a) Investigative Committees

Dr. Prabhu reported that at its February 7, 2017 meeting, Investigative Committee B considered 71 cases. Of those, the Committee authorized the filing of a formal complaint in 1 case, sent 8 cases out for peer review, requested an appearance in 6 cases, issued 11 letters of concern and recommended closure of a total of 45 cases.

Dr. Hardwick reported that at its January 26, 2017 meeting, Investigative Committee A considered 96 cases. Of those, the Committee authorized the filing of a formal complaint in 9 cases, sent 15 cases out for peer review, requested an appearance in 18 cases, issued 14 letters of concern, referred 1 case back to investigative staff for further investigation or follow-up and recommended closure of a total of 39 cases.

(b) Nevada State Medical Association Report

Weldon Havins, M.D., J.D., President of the Nevada State Medical Association (NSMA), reported that NSMA is following over 200 bills at the Legislature. NSMA supports AB135, which removes urine testing for marijuana impairment while driving a motor vehicle. It was heard that morning, and was supported not only by NSMA, but also by public defenders and the District Attorneys' Association. The NSMA Day on the Hill is April 17. NSMA has formed a separate scholarship fund corporation, and yesterday received an IRS letter for its 501(c)(3) status.

Dr. Hardwick asked Dr. Havins to describe AB135, and Dr. Havins explained it would do away with marijuana testing of the urine for cognitive impairment while operating a motor vehicle. The component that is measured in urine is THCCOOH, which is an entirely inert component and has nothing to do with cognitive impairment. Both prosecutors and public defenders recognize that, and toxicologists testified it was inappropriate testing for that. So the recommendation in the bill is to do blood testing for marijuana Delta-9-THC and an active component metabolite called 11-Hydroxy-THC. He said two Touro students did this as a poster project, which they presented in several places, including the American Board of Legal Medicine meeting in Las Vegas last week, and they were awarded first prize on their poster.

(c) Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that CCMS held a statewide MACRA and MIPS CME on January 11, which they did in conjunction with NSMA and the Washoe County Medical Society. On February 17, CCMS held a Medicaid management CME for pregnant women, in collaboration with the Nevada Psychiatric Association. This is the third year CCMS has collaborated with the Nevada Psychiatric Association, and it has been going very well. On February 27, in collaboration with the Association for Hospital Medical Education, CCMS held a community-wide research poster session for residents and fellows with the three GME programs in southern Nevada. On April 1, CCMS will hold a statewide telemedicine CME and on May 11, there will be a statewide MACRA and MIPS Part II CME on payment reform. CCMS is in its new building and will hold an office grand opening on April 18. CCMS is preparing for its annual installation of officers on June 10, and Joseph Adashek, M.D. is the incoming President.

(d) Washoe County Medical Society Report

No report was presented at this meeting.

Agenda Item 12

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. TREVOR A. SCHMIDT, PA-C*, BME CASE NO. 17-36566-1

Mr. Schmidt was not present.

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

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

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

Agenda Item 13

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ALI DANA, M.D.*, BME CASE NO. 16-37541-1

Neither Dr. Dana nor his attorney was present.

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

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

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

Agenda Item 14

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

Neither Dr. Machuca nor his attorney was present.

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

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

Dr. Nagy moved that the Board accept the Settlement Agreement. Dr. Prabhu 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. SHELDON PAUL, M.D.*, BME CASE NO. 15-11328-1

Neither Dr. Paul nor his attorney was present.

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

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

Dr. Muro asked what a no-contest plea means from a legal standpoint. Mr. Kilroy explained that what it means, in essence, is that the Respondent is saying he isn't going to admit to any wrongdoing, but if the case were to proceed, the Investigative Committee would have sufficient evidence to move forward, and he's willing to accept the discipline imposed.

Dr. Muro said he would like the Settlement Agreement to be modified to have Dr. Paul admit that the event happened as stated.

Mr. Kilroy said that procedurally, the Board could only either accept or reject the Settlement Agreement as presented.

Dr. Nagy said that he agreed with Dr. Muro. He said he thought the fundamental problem with this case was Dr. Paul claimed he had done a procedure that he hadn't, and upon being challenged, he reaffirmed he had done it; however, it was found that he hadn't. Dr. Nagy thinks Dr. Paul needs to admit that he didn't perform the procedure and didn't see the patient.

Dr. Muro moved that the Board not accept the Settlement Agreement. Dr. Nagy 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. ROBERT W. WATSON, M.D.*, BME CASE NO. 15-12823-1

This item was not discussed at the meeting.

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ALBERT H. CAPANNA, M.D.*, BME CASE NO. 12-6789-1

This item was not discussed at the meeting.

Agenda Item 18

EXECUTIVE STAFF/STAFF REPORTS

(a) Investigations Division Report

Ms. Castagnola reported the current number of open investigative cases was 617 and the current number of cases per investigator was approximately 77. There were 54 peer reviews in the field and 15 peer reviews awaiting assignment.

(b) Quarterly Compliance Report

Ms. Jenkins explained that the original report provided to Board members had been amended. The primary change was that there was a licensee with an outstanding balance who was now deceased, and the administrative decision was to write off that account due to that event. The amended report shows this item in collections written off, in the amount of \$4,761.61. Ms. Jenkins then reported the total number of files in collection with the State Controller's Office for the fourth quarter of 2016 was 7, for a total of \$39,706.91, and the total compliance collections for the quarter were \$24,761.55. The total outstanding balance was \$33,345.53 in costs and \$5,000.00 in fines. She

said she wanted to note that there has been a significant improvement over the last two years. The first five years she was with the Board, those numbers remained over \$100,000.00, but due to a very much collaborative effort on the part of staff, the numbers were now much lower.

Mr. Duxbury inquired as to the timeline for cases that are in collections. Ms. Jenkins explained that those are cases that have been turned over to the Controller's Office because the Board's auditors have deemed them uncollectible, so they are in the hands of the State, and will remain so until the State makes any collections.

(c) Quarterly Update on Finances

Ms. Jenkins highlighted the various sections of the Balance Sheet for the fourth quarter of 2016. She explained the Board's total assets were \$7.3 million, the majority of which are held in CDs and cash. She then summarized the liabilities and equity section. She stated the total current liabilities were \$2.1 million, the majority of which were in deferred registration fees, which the Board will recognize over the next two quarters – the remainder of the licensing biennium. She explained the long-term liabilities were \$3.7 million, which is the Board's portion of the PERS liability for the State. This is adjusted on a yearly basis, based on the State's reports of what the PERS liability is and what the Board's portion is, and the Board's position improved by \$134,000.00 in the last year. The equity section represents the Board's reserves of \$1.4 million.

Ms. Jenkins then highlighted the various sections of the Profit and Loss Budget vs. Actual for the fourth quarter of 2016. She stated the total income was \$1 million, which is consistent with our year, as the Board has been recognizing approximately \$1 million in each quarter. It is at 91.9% of the Board's budget, which is also consistent with our year, which is just a little higher at 93% of budget. Ms. Jenkins said we did budget a little high in this area for 2016, and have corrected that in the 2017 budget. With respect to the personnel expenses, the point to note here is the Board's retirement program. Ms. Jenkins stated that because we made the adjustment of \$134,000.00 for the Board's improved position in the PERS liability and we show a negative figure in the expense for the fourth quarter, which is a negative \$12,000.00, this puts the total personnel expenses at 74.2% of budget. This is also the reason it is below budget in such a significant manner. The Board's operating expenses were over budget by 31%, and the majority of that was in investigative account 531, which are primarily peer reviews and medical reviews. This is a place we need to spend the money to complete the Board's mission, and it was projected low in 2016, so we have significantly increased the budget for this particular line item for 2017 to support our needs for accomplishing the Board's mission in this regard. The total expenses were at 89% of budget. The Board's CDs are performing well, and the Board does get paid a small percentage on its cash and checking, which was almost double what was budgeted. The total income for the quarter was \$52,093.21, which was better than budget by \$29,634.88. The Board's 2016 fiscal year audit will begin on Monday, and she expects to have a completed audit for the June Board meeting.

Dr. Hardwick said that to make it simple, the bottom line is the Board's biennial budget is about \$8 million, so that's \$4 million a year, \$1 million a quarter. With renewals, the Board will collect around \$6 million by June, and each year, the Board collects about a \$1 million in new application fees, so that brings it up to about \$8 million. So that's an easy way to remember the budget. The Board is 100% funded with PERS, which is unusual, and we have another \$4 million in reserves. Ms. Jenkins explained there is \$3.7 million set aside for the PERS liability and \$1.4 million in other reserves.

(d) Legal Division Report

Mr. Kilroy reported there were currently 129 cases in the Legal Division, 5 of which had been presented to the Board for action at this meeting; 49 cases pending the CMT process; 42 cases awaiting filing of a formal complaint; 26 cases in which a formal complaint had been filed that were pending hearings, 7 since the last Board meeting; 7 miscellaneous legal matters requiring further investigation, etc.; and 33 letters of concern approved by the Investigative Committees during their January/February meetings. He provided an update regarding three pending civil court cases in which the Board was currently involved.

Agenda Item 19

LICENSURE RATIFICATION

- Ratification of Licenses Issued, Reinstatements of Licensure and Changes of Licensure Status Approved Since the December 2, 2016 Board Meeting

Dr. Prabhu moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the December 2, 2016 Board Meeting. Dr. Nagy seconded the motion, and it passed unanimously.

Agenda Item 20

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

(a) Rajeev Kumar Kalra, M.D.

John A. Hunt, Esq. appeared with Dr. Kalra as his legal counsel.

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

Dr. Muro asked Dr. Kalra why he had transferred from one medical school to another, and Dr. Kalra said that it was because he wanted to do his clinical rotations in the U.S., and the second medical school offered him that opportunity.

Dr. Muro asked Dr. Kalra whether he had had any other issues involving alcohol or other substances since getting a DUI in 2006, and Dr. Kalra stated he had not. He stated that he didn't think he had even received a speeding ticket since then.

Dr. Muro questioned Dr. Kalra regarding his affirmative response to Question 31 on his application for licensure.

Dr. Kalra explained the circumstances surrounding his permanent withdrawal of his application for medical licensure in Ohio.

Dr. Muro questioned Dr. Kalra regarding his affirmative response to Question 12 on his application for licensure.

Dr. Kalra explained that the single case of malpractice that had been filed against him was still pending.

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

Dr. Kalra said he had been offered a position with the VA in Las Vegas, and he also wants to work with the underserved community.

Dr. Hardwick asked about his fellowship with Premier Health Care Services, and Dr. Kalra described it.

Mr. Hunt said he thought Dr. Kalra was really trying to be forthright with the Board. The incident was over 11 years old, he holds licenses in good standing in Michigan and Arizona, where they are fully aware of all the incidents, and he has served our servicemen and servicewomen admirably for six years now. He has a brother and sister who are licensed in Nevada as physicians, and he is committed to our state. Hopefully, he has given the Board assurances that although it has been a long road, he is committed, and he has done the right thing for the last six years.

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

(b) Michael David Sapozink, M.D.

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

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

Dr. Sapozink explained the circumstances surrounding the single case of malpractice that had been filed against him.

Dr. Nagy asked Dr. Sapozink what he had been doing since 2013. Dr. Sapozink explained that at the end of 2013, he retired from full-time practice and had been doing locum tenens work, generally one to two weeks a month, mostly in Arizona, some in California, some in New Mexico, and once in Hawaii. He applied for a license in Nevada to take a position in Las Vegas, which is not a long-term position.

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

(c) Eduardo Lichi, M.D.

Dr. Fischer asked Dr. Lichi 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. Lichi regarding the fact that he answered Question 13 in the negative on his 2016 application when he had answered it in the affirmative on his 2013 application.

Dr. Lichi said that it was probably ignorance on his part in not understanding the Latin term "nolo contendere" versus "nolle prosequi," and when he applied for a job in the state of Florida he mistakenly told them that he had agreed to a plea of nolo contendere, and that was completely wrong. The legal papers clearly indicate everything was dropped, he eventually only paid for a traffic ticket, and the case was closed. So when he applied in 2016, his wife was the one that told

him he had been making this mistake all his life. He then described the circumstances surrounding the arrest in 1987.

Dr. Prabhu asked Dr. Lichi what he planned to do if granted a license to practice medicine in Nevada.

Dr. Lichi said he was currently working for the VA and wanted to continue working with veterans.

Dr. Prabhu questioned Dr. Lichi regarding the fact that he did not pass the second part of the ABMS psychiatry and neurology certification examination, and Dr. Lichi explained the circumstances surrounding his failure to pass Step II of the examination.

Dr. Prabhu stated that we do not have enough psychiatrists in the state and moved that the Board grant Dr. Lichi a license by endorsement. Dr. Berndt seconded the motion, and it passed unanimously.

(d) Aaron James Simko, M.D.

Dr. Fischer asked Dr. Simko 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. Simko what he planned to do if granted a license to practice medicine in Nevada.

Dr. Simko explained that he had been practicing neonatology at a hospital in Stockton, and last year the hospital closed the unit in which he had been working. He wasn't able to find enough work locally in the Stockton area, so he looked around and found a locum tenens opportunity in Las Vegas. He needs a Nevada license for that position.

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

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

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

Dr. Simko explained that he was told that in California, whenever there is a lawsuit over a certain amount, the doctor is asked to appear before the Medical Board, but the Board took no action.

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

(e) Garry Earl Siegel, M.D.

Dr. Fischer asked Dr. Siegel 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. Berndt seconded the motion, and it passed unanimously.

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

(f) Manish J. Patel, M.D.

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

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

Upon returning to open session, Dr. Fischer moved that the Board grant Dr. Patel's application for licensure with the condition that he maintain treatment with the Nevada Professionals Assistance Program until October 22, 2020, to be memorialized in an order. Dr. Prabhu seconded the motion, and it passed unanimously.

Agenda Item 21

CONSIDERATION AND APPROVAL OF REVISIONS TO BOARD POLICY AND PROCEDURE MANUAL, TO INCLUDE MODIFICATION OF PROVISIONS RELATED TO EMPLOYEE EVALUATIONS AND SALARY REVIEWS AND CREATION OF NEW PROVISIONS RELATED TO VOTING LEAVE

Mr. Rich explained that staff was requesting Board approval for modification of two sections of the Policy and Procedure Manual. The first was to Section V(J), which relates to employee evaluations and salary reviews. There were two proposed modifications to the language in this section. The first clarifies the potential merit increase a new employee of the Board would be eligible for, based upon the start date of his or her employment. The merit increase would be prorated based upon the employee's start date within that year. The second change to this section was the addition of language that would establish that all employees, irrespective of hire date, are eligible for any cost-of-living adjustments that are approved by the Board. The second proposed modification was to Section VII, under leaves of absence. A new subsection would be added that would contemplate voting leave for Board employees. The proposed language would mirror what the State of Nevada allows for administrative leave for employees to vote in local, state and federal elections. Board management wants to ensure that we are fair and consistent in the application of our compensation and leave policies for Board employees.

Dr. Nagy moved that the Board approve the proposed revisions to the Board Policy and Procedure Manual. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 22

MATTERS FOR FUTURE AGENDAS

Mr. Cousineau stated the following items would be on the agenda for the June meeting: the 2016 financial audit, an overview of the results of the legislative session by Keith Lee, Esq., the 2016 Annual Report, and election of officers. He explained that Dr. Fischer's term as President would normally run through September; however, he will term out as a Board member, after eight years, on August 31, 2017. He may continue to serve until a replacement Board member is appointed by the Governor; however, we will hold the elections in June, as opposed to September, so that we will

have an incoming President who will take office effective September 1, regardless of whether or not Dr. Fischer is still serving on the Board. Dr. Berndt will also term out as a Board member, after eight years, at the end of June.

Dr. Hardwick requested that a staff organizational chart, including phone numbers, be provided to Board members.

Agenda Item 23

STAFF COMMENTS/UPDATES

Mr. Cousineau explained that the Interstate Medical Licensure Compact (IMLC) is still a work in progress. There are still some idiosyncrasies that need to be resolved to make it fully functional. There is the intent on the part of the Compact to try to begin issuing licenses as early as next month. This Board still has the issue of fingerprint results. The Nevada Department of Public Safety (DPS) is unwilling to accept fingerprint cards from individuals who are applying through either the IMLC or the two new endorsement licensure categories, which are considered expedited licenses, so we are trying to make a legislative change to fix that. Mr. Cousineau said there are several Board members and three staff members attending the FSMB 2017 Annual Meeting in Fort Worth in April, and that Mr. Rich, Mr. Kilroy and he would be presenting the Board's Outreach Program to the Philippine Medical Association on March 30, in Las Vegas. He stated that Board staff had presented to the Philippine Medical Association several years ago, and had over 200 attendees. Mr. Cousineau invited any Board members who were interested in attending, and noted that it provides two hours of continuing medical education credit in ethics. He stated that Mr. Rich had taken the lead on the Board's opioid awareness website and had done a very nice job with it, and that a press release was sent out a couple of weeks ago regarding the website.

Mr. Rich stated Board staff had developed a website, in conjunction with the four other health boards, and it was a work in progress, but we are excited about the capabilities of it. It provides information for consumers to understand what opioids are, some of the side effects, some alternative treatments that are not opioid based, and also provides a link for consumers to file a complaint against a provider for overprescribing. He thanked Mr. Duxbury for his assistance with this project. Mr. Rich explained that, at this point, the initial setup of the website has been funded and we have started some advertising of the website. We have developed a public awareness campaign, we have a Facebook account, and the next step is to develop a radio and television production we can get out to consumers in Nevada. We are trying to get someone at a high level within State government to join on this, and are waiting to hear back. We are working with the four other boards to help offset some of the costs.

Dr. Fischer suggested that, going forward, the Board consider providing education on this to schools.

Ms. Mastroluca suggested that Board staff engage the Nevada Broadcasters Association because they will do all of the production at no charge and help get the ads placed, and they offer a three-to-one match of your dollars for prime-time ad space.

Dr. Berndt asked whether this was targeted for consumers or providers, and Mr. Rich stated it was really for consumers.

Mr. Duxbury gave kudos to Mr. Rich for all of his work, and said he had done a great job. He said there has been some discussion, and he thinks it would be valid, to also create something for the providers.

Mr. Cousineau reminded Board members that the biennial renewal cycle would begin in about a month, and licenses will expire on June 30.

Agenda Item 24
PUBLIC COMMENT

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

Ms. Daniels stated that Mr. Cousineau had sent an email to Board members and staff advising them that Carolyn Castleman had tendered her date of retirement, which is early next month. Ms. Daniels wanted to take the opportunity to acknowledge Ms. Castleman's 15 years of service to the Board, with the greater part of that service being in the Licensing Division. She said it had been quite an adventure and she wanted to wish Ms. Castleman a very happy retirement, with many travel adventures.

Ms. Castleman said she had enjoyed it a lot, it was a learning experience, and she will miss everyone.

Agenda Item 25
ADJOURNMENT

Dr. Berndt moved to adjourn the meeting. Ms. Mastroluca seconded the motion, and it passed unanimously. Dr. Fischer adjourned the meeting at 2:01 p.m.

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