

**STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS
March 23, 2012**

Call to Order:

Larry Johnson, Chair, called the meeting of the North Dakota State Board of Medical Examiners to order at 8:00 a.m., at the Board offices in Bismarck, North Dakota.

Attendance was as follows:

Investigative Panel A:

Gaylord Kavlie, MD, Chair	Present
Andrew McLean, MD, Vice-Chair	Present
Larry Johnson, MD	Present
Burt Riskedahl,	Present
Robert Tanous, DO	Absent

Investigative Panel B:

Norman Byers, MD, Chair	Present
Kent Martin, MD, Vice-Chair	Present
Cory Miller, MD	Present
Kayleen Wardner,	Present
Kent Hoerauf, MD	Present
Kate Larson, PA-C	Present

Duane Houdek Executive Secretary; Lynette McDonald, Deputy Executive Secretary; Marijo DeMott, Recording Secretary; John Olson, Counsel; and Stacy Moldenhaur, Counsel; were also present.

The chair recognized guests Tim Wahlin, Clare Carlson, and Luis Vilella, MD, Workforce Safety and Insurance; Courtney Koebele and Deborah Anderson, North Dakota Medical Association; and Scott Barry, PA-C, North Dakota Academy of Physician Assistants.

Minutes:

Dr. Byers moved to approve the minutes of the November 18, 2011, board meeting, as distributed. Dr. Miller seconded the motion. The motion passed unanimously.

Physician Waiver of Interview:

Dr. Byers moved to approve the list of physician applicants deemed eligible for waiver of interview. Dr. Miller seconded the motion. The motion passed unanimously.

Resident Waiver of Interview:

Dr. McLean moved to approve the list of resident physician applicants deemed eligible for waiver of interview. Dr. Byers seconded the motion. The motion passed unanimously.

Investigative Panel A Report:

Dr. Kavlie reported that Investigative Panel A met and reviewed 12 cases. One case was referred for action, one case was referred for further review, one letter of concern was authorized, two stipulations were approved and seven cases were dismissed.

Investigative Panel B Report:

Dr. Byers reported that Investigative Panel B met and reviewed 16 cases. One letter of concern was authorized, one stipulation was approved, one case was referred for further review and 13 cases were dismissed.

IPA vs. Kevin M. Lorenz, MD:

Stacy provided an overview of the case brought against Dr. Lorenz. Following the Board's emergency suspension of Dr. Lorenz on June 28, 2011, negotiations were undertaken with Dr. Lorenz to resolve the case. The result of the negotiation is the stipulation presented which provides for an indefinite suspension of Dr. Lorenz's license. Dr. Lorenz may apply for a new license in the future, but whether or not he is allowed to practice in North Dakota is up to the sole discretion of the Board.

Dr. Miller moved to accept the stipulation. Dr. Byers seconded the motion. The motion passed

unanimously, with members of Panel B voting.

IPA vs. David R. Mack, MD:

Stacy provided an overview of the case brought against Dr. Mack. Dr. Mack could not produce evidence of having completed the requisite number of CME hours, after certifying on his renewal form that he had completed them. The stipulation provides for the standard sanctions in such case, which is a fine of \$2,500.00, completion of the hours of CME he did not complete and an automatic audit of his CME, although it was noted that Dr. Mack chose not to renew his license and has moved to Alaska, and so the audit may not occur.

Dr. Byers moved to approve the stipulation. Dr. Miller seconded the motion. The motion passed unanimously, with members of Panel B voting.

IPA vs. Tracy Vearrier, PA-C:

Duane outlined that the board suspended Mr. Vearrier's license for one year and stayed that suspension for a year on the condition that he have no further violations of the medical practice act. That one year period of suspension expires in two days, March 25, 2012. Therefore, the board is asked to return his license to unconditional status, effective March 25, 2012.

Dr. Byers so moved. Ms. Larson seconded the motion. The motion passed unanimously, with members of Panel B voting.

Roberto A. Moraledo, MD:

Duane outlined that, following an administrative hearing, the board suspended Dr. Moraleda's license for one year, with 11 months of that suspension stayed for one year on the conditions that Dr. Moraleda attend an approved ethics course, have no further violations of the medical practice act and pay the costs of prosecution. He has now completed all conditions and his period of stayed

suspension expires March 25, 2012. The board is asked to return his license to unconditional status, effective March 25, 2012.

Dr. Kavlie so moved. Dr. McLean seconded the motion. The motion passed unanimously, with members of Panel A voting.

IPB vs. Alonna K. Norberg, MD:

John noted that at the time the board investigated Dr. Jon Norberg, it asked that staff also look at the practice of Dr. Alonna Norberg, to determine whether any action should be taken with regard to her.

John stated that Dr. Norberg suffers from a medical disability and has not practiced medicine for quite some time, last working as a consultant for a children's services agency.

Dr. Norberg agrees that she has a medical disability which currently prohibits her from the practice of medicine. This stipulation provides that she will not practice and will not return to the practice of medicine in North Dakota until she petitions the board to do so, completes whatever evaluations and conditions the board may then deem necessary and is approved to return to practice by the board, in the exercise of its discretion. John noted that there have been no patient complaints, nor any allegations of substandard care.

Dr. Kavlie moved to accept the stipulation. Mr. Riskedahl seconded the motion. The motion passed unanimously, with Panel A voting.

Luis Vilella, MD, Medical Director of Workforce Safety and Insurance:

Duane told the board that he had arranged to call Pat Springer, a news reporter, to allow him to listen to the discussion of this matter.

Duane noted that Dr. Vilella had written to the board, questioning whether he would be subject

to discipline if he followed certain WSI policies with regard to the drafting of medical opinions. Duane noted that the position of WSI is that the policy in question is a draft only, and is intended only to assure that any counter-arguments to a medical conclusion be included in the body of the opinion itself.

Duane also noted that Mark Schneider had previously written a letter to the board, asking it to investigate the WSI practice with regard to independent medical examinations, which letter was provided. He stated that, although it is not the board's role to investigate other agency policies, the answer to Dr. Vilella's questions would address the issue Mr. Schneider raises, as well.

Dr. Vilella asked two specific questions in his letter to the board: First, are decisions of medical appropriateness made by the medical director of WSI within the purview of the Board of Medical Examiners, and second, may discipline be brought against him if he complies with this recommended policy of WSI.

Dr. Byers stated he thought the answer to both questions was "yes".

Duane noted that in March of 2009, the board considered the issue of whether independent medical examinations for purposes of insurance coverage constituted the practice of medicine and held that they did.

Dr. Byers moved that the answer to the first question, of whether decisions of medical appropriateness made by the medical director of WSI are within the purview of board of medical examiners, is "yes". Dr. Miller seconded the motion.

Dr. Kavlie said if someone is impeding a physician, isn't that the practice of medicine? Dr. Byers said we might address those issues as they arise in a specific case. Duane noted that is not the question before the board here; rather it is whether someone is directing a licensee to practice in a certain way.

The chair called the question. In a roll call vote, the motion passed unanimously.

Duane said that the way Dr. Vilella phrased the second question leads the board into consideration of things that are beyond the board's jurisdiction, that is, consideration of policies and the application of policies that may not even be finalized. The real question for the board seems to be whether discipline can be imposed against a physician who allows his medical opinion to be influenced by others.

Dr. Hoerauf stated this implicates the patient-physician relationship. When a doctor enters into a decision with regard to a patient, he or she should weigh the evidence and seek the best possible outcome for the patient. You can take other information into account, but you must be an advocate for the patient.

Dr. McLean said the difficulty is a matter of agency. As you move from a clinic based practice to reviewing a case, can you be only an advocate for the patient?

Dr. Hoerauf said that begs the question of whether WSI is an advocate for the patient. As a doctor, if I am rendering an opinion that affects the patient, I must have that patient relationship.

John Olson noted that, by legal definition, the practice of medicine includes anyone who "suggests" any form of treatment for a person, which would include these types of medical opinions.

Mr. Riskedahl said the question really is whether someone could be sued for their opinion and the answer is "yes". He said he didn't see how we could answer the question in a way it may have been hoped for.

Dr. Johnson said we don't know the policies and procedures of WSI and our question must be whether a licensee is violating the medical practice act.

Duane suggested that the question might be framed as whether a physician can allow someone else to influence the content of a medical decision or opinion.

Dr. Kavlie noted that physicians can be influenced by any number of people or factors.

It was suggested that perhaps the word “dictated” could be substituted for “influenced”.

Dr. Kavlie agreed and moved to frame the question as “If my conduct is reviewable by the board of medical examiners, may disciplinary action be taken against me if I allow my medical opinion to be dictated by others?” Dr. Miller seconded the motion.

After further discussion, Dr. Kavlie rephrased the motion as “Disciplinary action may be taken against a physician or physician assistant who allows his or her opinion to be dictated by others.”

Dr. Miller agreed to the substitute motion.

The substitute motion passed unanimously in a roll call vote of the board.

Thomas F. Kozlek, MD:

Dr. Byers reviewed the history of Dr. Kozlek’s applications with the board, which were deferred with the intent of getting further information about his dismissal from Ft. Meade Army Hospital. Finally, an informal decision to deny a license was given to Dr. Kozlek with the intent of getting his responses to all allegations, which was done. Despite repeated attempts to gain additional information from the hospital itself, further clarification could not be obtained as staff had changed and direct evidence was no longer available.

Dr. Byers said it was clear that there were no substantial allegations regarding Dr. Kozlek’s competency and it seemed to be more connected to his use of electronic medical records. Duane agreed that there were no substantial issues discovered with regard to patient care.

Dr. Byers moved to grant Dr. Kozlek an unconditional license. Dr. Miller seconded the motion.

The motion passed unanimously.

Prescription Drug Monitoring Program Guidelines:

Duane presented the board with a suggestion to consider adopting practice guidelines regarding physicians’ use of the prescription drug monitoring program (PDMP). This is done in light of the

increased issue of prescription drug abuse in the state and nation, and the increase in the number of people who are seeking to divert prescription drugs. He stated he had discussed this generally with the medical association and the response was positive, viewing this as an alternative to having legislation dictate how a physician prescribes.

The board discussed the use of the PDMP and whether it would have to be used or merely suggested, i.e., whether the guidelines would be mandatory.

Dr. Miller said if we go forward with these, it would be important to educate the physicians of the state and we should also give notice in our newsletter.

Mr. Riskedahl moved that staff be authorized to pursue the creation of guidelines and present recommendations at the next meeting. Dr. McLean seconded the motion. The motion passed unanimously.

Interview of Ryan Clauson, MD:

Dr. McLean gave the board a summary of the issues concerning Dr. Clauson. Dr. Clauson got into trouble prescribing to his girlfriend who later became his wife. His license was affected in Nebraska and then Iowa. He has been doing disability reviews for the past year and seems to be doing well. He is now divorced from his wife.

Dr. McLean led the interview of Dr. Clauson by asking about the prescribing to his girlfriend, then wife. He said that he had initially prescribed to her when she was a member of the heart team for a stress fracture in her foot. They got married and he stopped prescribing at that time. She had others prescribing and was ultimately terminated from her employment. At that time, his prescribing history was looked at and he entered into an agreement with the licensing board to take prescribing courses, which he has done.

Dr. Clauson said he has been diagnosed with bipolar/depression, but it is stable and has not been

an issue. He sees a therapist once per month. He said he has matched for a family practice residency here in Bismarck and would switch to a local provider.

He said in his current job, he did not prescribe, but would now need to do so. He said he has talked to DEA and they will issue him a number once he begins.

Dr. Johnson asked whether Dr. Clauson was using any of the drugs prescribed to his girlfriend and he said he did not and took random UA's. He said he has had no issues.

He said, in response to a question by Dr. Byers, that he was very inexperienced when he prescribed to her and that is why he prescribed as he did. Dr. Kavlie discussed the issue of the PHP, but it was concluded that he likely did not need to join.

After the conclusion of the interview, Dr. McLean moved to give Dr. Clauson an unrestricted license. Dr. Kavlie seconded the motion. The motion passed unanimously.

Interview of Jeffrey D. Lovin, MD:

Dr. Lovin failed to appear for his interview.

Interview of David Pecora, PA-C:

Dr. Martin led the interview of Mr. Pecora. Dr. Martin said the issues were his honesty in his application and his history of drug abuse. He said he has good references from his current employer in Cass Lake, Minnesota.

Dr. Martin asked Mr. Pecora to outline his employment history, first as a nurse and then as a PA.

During the course of the interview, the following facts were established:

Mr. Pecora completed an application form on August 20, 2011, to practice as a physician assistant in North Dakota. He declared under penalty of perjury that his answers to questions and all statements made in the application were true and correct.

Mr. Pecora answered "No" to the following Personal Data Questions on the application:

“Have you ever been warned, censured, disciplined, limited, suspended, put on probation or requested to withdraw from a hospital, nursing home, clinic, or other health care facility?”

“Have you ever been investigated by any licensing, certifying, registering or disciplinary authority?”

“ Within the past five years, have you engaged in the excessive or habitual use of alcohol or illegal drugs or received any treatment for alcoholism or excessive or illegal drug use?”

Mr. Pecora was disciplined as a nurse by the licensing authority in West Virginia in 2007 for failing to comply with a drug screening program.

Mr. Pecora was disciplined as a Physician Assistant by the licensing in Florida in 2009, based on the 2007 West Virginia nursing action.

Mr. Pecora pled guilty to five counts of “Obtaining Goods & Services by False Pretenses” in 2006 after having been videotaped taking syringes of etomidate, epinephrine, atropine, bicarb and succinylcholine from a West Virginia hospital where he worked. Although he said he resigned from the hospital, his supervising physician said he was fired.

Mr. Pecora has been monitored by the Minnesota Board for chemical addiction, as recently as 2010. He continues to be monitored by the Florida licensing board. He failed to mention either program, or even that he was licensed in Florida or West Virginia.

Mr. Pecora was in a chemical addiction recovery program as an in-patient from August 17 through November 20, 2007.

When questioned by the board, Mr. Pecora had no explanation for the false answers on his application, saying only that he must have “overlooked” the questions.

Mr. Pecora provided no documentation of his current status with regard to chemical or alcohol addiction or recovery.

Following the interview, Dr. Byers moved to issue an informal decision to deny a physician assistant license to Mr. Pecora. Dr. Hoerauf seconded the motion. The basis was his lack of honesty and documentation on the application. The motion passed unanimously.

Tramadol Prescriptions:

Duane informed the board that a physician in Devils Lake has informed the board that a large number of prescriptions are being delivered to the area from out of state pharmacies and that, from a patient, he found that Tramadol is being prescribed by out of state physicians. The board of pharmacy is investigating the pharmacies involved and Duane requested the authority to pursue this matter by referring the cases to the Attorney General, who has agreed to investigate them and prosecute as appropriate. He stated that these are misdemeanors and the difficulty will be in getting physicians extradited to face prosecution. It is a costly process to bring them to North Dakota. Therefore, he is also requesting the authority to expend up to \$20,000 for extradition costs.

Dr. Miller moved that the board pursue these prosecutions and authorize the expenditure of no more than \$20,000.00 to help defray the cost of extradition. Dr. Byers seconded the motion. The motion passed unanimously.

John Doe, MD:

This physician intentionally chose to not renew his license in North Dakota, as he moved to California for a time. He has returned to Bismarck and was found to have been prescribing, including one prescription to himself. John and Stacy have advised that he cannot be disciplined because he did not have a license at the time of the offense. We would have to prosecute him criminally for practicing medicine without a license. Stacy has talked to the states attorney who agrees to investigate and prosecute.

Dr. Kavlie moved to proceed with a criminal referral and prosecution. (Unidentified second).

The motion passed unanimously.

Teladoc:

Dr. Miller brought this matter to the board's attention. This firm says they have North Dakota physicians prescribing to North Dakota citizens, but they do not identify the physicians. They told Duane they would send a list, but they have not done so. The question is whether we should tell them to cease their business in North Dakota.

DirectHealthMD:

In this case, Dr. Ryan of Altru brought this to our attention. They ran a newspaper ad to treat North Dakota patients, but they said they have had no patients here to date.

Dr. Kavlie moved to issue letters of cease and desist for both Teladoc and DirectHealthMD. Dr. Johnson seconded the motion. The motion passed unanimously.

Pathologist Assistants:

This issue was brought to the board's attention by Dr. Koponen from UND, who questions the use of pathologist assistants at St. Alexius. He feels they may be actually doing autopsies and thereby be practicing medicine.

Dr. Martin said we don't have a mandate to protect the dead and the assistants do stop short of signing any paperwork. The pathologist is responsible.

The board concluded we would need more information before doing anything and recommended that we check with other states and the state medical examiner's office before bringing this back to the board.

Genetic Counselors:

This request to license genetic counselors was given to us by Sanford. They believe this will be an integral part of medicine in the future. Duane said this may be worthy of investigating. The board recommended looking at South Dakota, who recently licensed genetic counselors and bring back that information to the board.

Use of "Doctor" by Allied Professionals:

Dr. Craig Lambrecht from Medcenter suggested we seek legislation that requires health care professionals to name their discipline if they use the word "Dr.".

Courtney Koebele from the medical association state that they are submitting "truth in advertising" legislation that would do just that.

The board recommended that we see their final legislative draft and bring it back to possibly endorse it before the next session.

Navel Piercing:

The board began a discussion of whether navel piercing is a medical procedure if done in a physicians office and deferred further consideration of the matter until a later meeting.

Pharmacy Collaboration Agreements:

Dr. Byers presented two pharmacy collaboration agreements, one for Presentation Medical Center in Rolla and one for Altru in Grand Forks. He said they merely add people to the agreement and do not change the substance of them.

Dr. Byers moved we approve each agreement. Dr. Kavlie seconded the motion. The motion passed unanimously.

Pain Management Program:

Duane presented an email from Mark Hardy at the Pharmacy Board informing the board that they are offering a Pain Management Program free of charge to the first 250 physicians who request it and that it is eligible for CME credit.

PHP Update:

Mr. Riskedahl and Duane reported that we continue to look at funding possibilities and to drafting agreements that would outline the relationship between this board and a free-standing PHP. Duane shared Dr. Ketterling's email, in which she said she is including up to \$200,000 in funding for a PHP in her budget to be presented to Sanford. No action was taken, but the board will continue to develop this issue.

License Exemption:

Duane informed the board of a request from Dr. Rob Beattie of UND to consider a license exemption for the number of examination attempts/time limit rule. Duane will have further discussion with Dr. Beattie and bring it back to the board.

Appointment of Treasurer:

Dr. Johnson moved to appoint Dr. Tanous to fill the current vacancy in the office of Treasurer of the Board. Dr. McLean seconded the motion. The motion passed unanimously.

Federation of State Medical Board's (FSMB) Resolutions:

For informational purposes, Dr. Kavlie informed the board of FSMB resolutions he will be considering as the board's voting member at the annual meeting. One is that maintenance of competency would be incorporated into CME requirements. There is also a resolution about

adding PA's to medical boards. Also, there is a move toward national licensure and the board will consider a "platinum" license status that would allow for movement of physicians from state to state with one license. Finally, there is a resolution dealing with reentry into practice. Dr. Kavlie said he would be glad to forward the resolutions and supporting materials to anyone who requested them.


Office Matters:

Duane showed the board the format of the new website and the physician search. The board concluded it would not want the birth year to be part of the information given. The board also concluded it would want to continue PA supervision agreements as paper documents and not as online certifications.


Duane requested authorization to purchase iPads for the board and data plans, as part of the move toward distributing materials to board members securely over the internet. He estimated the cost at approximately \$10,000 to purchase the devices and up to \$5,000 annually for data plans. Mr. Riskedahl moved to authorize the purchase. Dr. Kavlie seconded the motion. The motion passed unanimously.

Adjournment:

Dr. Hoerauf moved that the meeting be adjourned. Dr. McLean seconded the motion. The motion passed unanimously. Dr. Johnson adjourned the meeting at 12:38 p.m.



Larry Johnson, MD
Chairman



Duane Houdek
Executive Secretary