

**STATE OF NORTH DAKOTA  
BOARD OF MEDICAL EXAMINERS**

**November 21, 2014**

**Call to order:**

Dr. Kavlie, Chair, called the meeting to order at 8:00 o'clock, a.m., at the board office in Bismarck. Attendance was as follows:

**Investigative Panel A:**

Burt Riskedahl, Chair

Gaylord Kavlie, MD

Robert Olson, MD

Genevieve Goven, MD

Thomas Carver, DO

**Investigative Panel B:**

Kent Hoerauf, MD, Chair

Kayleen Wardner

Kate Larson, PA-C

William Haug, Jr., MD

Sara Solberg, MD

Brenda Miller, MD

Manuel Colón, MD (Absent)

Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; and Stacy Moldenhauer, counsel, were also present.

Guests and members of the public included Dr. Jon Thomas and Lisa Robin from the Federation of State Medical Boards; Courtney Koeble, North Dakota Medical Association; Dr. Richard Nybakken and counsel Lance Schreiner.

Dr. Kavlie welcomed new board members, Thomas Carver, DO, Minot; and Brenda Miller, MD, Bismarck to the board.

**Minutes:**

Dr. Goven moved the approval of the minutes of the July board meeting, as distributed. Dr. Solberg seconded the motion. The motion passed unanimously.

Dr. Hoerauf moved the approval of the minutes of the September 17, 2014, special meeting of the board, as distributed. Dr. Haug seconded the motion. The motion passed unanimously.

**Waiver of Interview:**

**Medical licenses:**

Dr. Hoerauf moved to approve the list of applicants for a medical license whose interviews were waived. Dr. Haug seconded the motion. The motion passed unanimously.

**Administrative licenses:**

Dr. Hoerauf moved to approve the list of applicants for an administrative license whose interviews were waived. Mr. Riskedahl seconded the motion. The motion passed unanimously.

**Special licenses:**

Dr. Haug moved to approve the list of applicants for a special license whose interviews were waived. Ms. Wardner seconded the motion. The motion passed unanimously.

**Report from Investigative Panel A:**

Mr. Riskedahl reported that Investigative Panel A met November 20, 2014, and reviewed nine cases. One stipulation was approved; one case referred for further review; one letter on concern issued; one response to a letter of concern reviewed; and five cases dismissed.

**Report from Investigative Panel B:**

Dr. Hoerauf reported that Investigative Panel B reviewed 12 cases. One case referred for further review; one letter of concern issued; one stipulation dismissed; and nine cases dismissed.

**Investigative Panel A vs. Charles E. Christianson, MD**

Ms. Moldenhauer presented a stipulation with Dr. Christianson, approved by Investigative Panel A, and explained that an action was brought against him because of his failure to monitor patients to whom he had prescribed controlled substances. The stipulation provided that his ability to prescribe controlled substances would be prohibited for one year, from December 1, 2014, to December 1, 2015, and that he would pay the costs of prosecution.

Members of Investigative Panel B and Dr. Carver, who was not a member of Investigative Panel A when this case was commenced, voted unanimously to approve the stipulation.

### **Investigative Panel B vs. John Dumbolton, DO**

Ms. Moldenhauer presented a stipulation with Dr. Dumbolton, approved by Investigative Panel B, and explained that an action was brought against him because Dr. Dumbolton failed to recognize that the facility he was working at was not equipped to provide the care a patient required and the patient expired. The stipulation provided that Dr. Dumbolton's license shall be suspended for a period of two years, and that the suspension shall be stayed for a period of three years, provided Dr. Dumbolton undergo a clinical skills evaluation at the Center for Personal Education for Physicians, follow all recommendations of the evaluation that are approved by the board, and pay all costs of evaluation and prosecution.

Members of Investigative Panel A and Dr. Miller, who was not a member of Investigative Panel B at the time this case was commenced, voted unanimously to approve the stipulation.

### **Matter of Richard Nybakken, MD**

Dr. Nybakken and his counsel, Lance Schreiner, appeared regarding a petition to reinstate Dr. Nybakken's license. Dr. Nybakken had a history of alcohol abuse, with a sobriety date in June of 2013. He applied for reinstatement in March and July of 2013; at both times, the board declined reinstatement.

Ms. DeMott reported that Dr. Nybakken has been very cooperative in providing requested screens and reports and has not had any problems whatsoever since June of 2013. She stated he has been much more sincere in his recovery since that time.

Dr. Nybakken addressed the board and, in response to questions, stated he is minimizing all stressors in his life, doing CME's, has started a group called Professionals in Recovery Together, which has grown to 26 members in a relatively short time, and intends to work part time as a locums. He stated he didn't feel in need of any work restrictions and is willing to participate in the Physicians' Health Program.

After discussion, Dr. Goven moved to reinstate Dr. Nybakken's license with required participation in PHP. Dr. Olson seconded the motion. The motion passed unanimously, with Mr. Riskedahl and Dr. Miller abstaining.

### **Matter of Gloria Tong, MD**

Mr. Houdek summarized that Dr. Tong had interviewed personally when she applied for a license in November of 2013. Her interview left the board with significant questions about her history.

The process that is followed when there are issues of concern that need to be resolved is to issue an informal notice of intent to deny a license, which gives the applicant an opportunity to either have an administrative hearing on the merits of the application, or present evidence to clarify the board's questions. Dr. Tong chose to present additional, sworn, evidence with regard to the board's concerns. This sworn testimony was different than information the board received informally from witnesses during the application process.

Dr. Olson moved to approve a license for Dr. Tong. Ms. Wardner seconded the motion. The motion passed unanimously.

### **Matter of John Wheatley, MD**

Mr. Houdek recounted that Dr. Wheatley's license had been suspended for a breach of patient confidentiality, with the suspension stayed pending a complete psychological evaluation. That evaluation was completed and the reporter noted Dr. Wheatley had a cognitive impairment that affected his processing times and could affect him during surgeries. He further reported there was no cognitive reason he could find for Dr. Wheatley's actions regarding the breach of patient confidentiality.

Mr. Houdek reported that, in conversations with Dr. Wheatley, he indicated he may agree to an indefinite suspension of his license, based on the psychological examination.

Dr. Olson moved to offer Dr. Wheatley a stipulation, based on the psychological examination, under which his license to practice medicine in North Dakota would be suspended indefinitely. Dr. Haug seconded the motion. The motion passed unanimously.

### **Federation of State Medical Boards**

Dr. Kavlie welcomed Dr. Jon Thomas, past president of the Federation of State Medical Boards, and Lisa Robin, Chief Advocacy Officer, who presented to the board about the services FSMB provides to state boards. Of particular discussion was the work FSMB has done creating

model telemedicine policies for state boards, and the interstate licensing compact, which would provide for reciprocal licensing among the compact states of physicians holding certain qualifications. They reported this compact would be a voluntary venture by each state, and each state would create just another path to licensure. Each state board would continue to license and discipline physicians according to its state laws.

Following discussion of the compact and the efforts of FSMB, Dr. Kavlie, on behalf of the board, thanked Dr. Thomas and Ms. Robin for visiting the board and for the work FSMB is doing on behalf of state medical boards.

### **Interstate Compact**

The board discussed the concept of the interstate licensure compact, which, as was explained, would provide for reciprocal licensing among compact states.

Ms. Courtney Koeble, executive director of the North Dakota Medical Association, submitted a resolution of the NDMA, favoring the concept of the compact.

State Sen. Howard Anderson, past executive director of the North Dakota Board of Pharmacy, was asked about this matter and stated he didn't see a push for the compact in this legislative session, but that there might be a resolution to study the concept.

Mr. Houdek offered that the costs of participation have not yet been determined and it may be acceptable to wait to see the financial impact upon compact states before deciding to enter into the agreement. He also noted that it would change the licensing side of the board's responsibilities somewhat, in that if another compact state issued a license, we would have to issue one, as well, and could refuse to do so, essentially, only by bringing a disciplinary action against the physician.

Dr. Goven moved that the board further explore joining the interstate licensing compact. Ms. Wardner seconded the motion. The motion passed unanimously.

### **Telemedicine Policy**

Mr. Houdek reported on a recent conference on this issue held by CTel, composed of telemedicine providers and medical regulatory boards. He also reported the work of the telemedicine subcommittee.

The board was presented with the model FSMB policy, as well as CTel principles to serve as bases for discussion.

Mr. Houdek presented the issues the telemedicine subcommittee had considered, including the required use of video, the question of the use of peripherals and diagnostic tests, prescribing, documentation of encounters and scope of practice of providers.

The board discussed whether there is any organization that certifies telemedicine providers and the technologies being used, as that relates to security and confidentiality.

It was noted in the discussion that on both a state and federal level, and with certain exceptions, laws require an in-person encounter to prescribe controlled substances, and that would continue regardless of the board's policy.

A representative of the psychiatry department at a Bismarck hospital noted that providing access to all who need behavioral health care is very difficult. Perhaps there ought to be an exception for prescribing certain psychotropic drugs.

Mr. Houdek suggested the board examine each issue point by point and indicate their position on the issue. He would then advise licensees and the public of the board's positions and invite comments that could address the implications of each position being considered. He would then bring back those comments for further review at the next meeting. The following represent consensus positions of the board:

- A telemedicine encounter intended to establish a patient-physician relationship needs to be the equivalent of an in-person encounter.
- Video is a necessary component of an initial encounter; audio only and online questionnaires do not meet acceptable standards.
- Peripherals and diagnostic tests, if the standard of care during an in-person visit, are required in a telemedicine encounter.
- Drugs may be prescribed based upon a telemedicine encounter, including psychotropic drugs and controlled substances, with the exception of opioids.
- Medical records must be available and furnished according to North Dakota law. It is recommended, but not required, that records be furnished to the patient's medical home or PCP.

- All practitioners involved in telemedicine encounters must practice within their scope of education and training.
- Patients' identities must be confirmed.
- Physicians should identify themselves by state license number, although there is no requirement that a patient see the same physician in each encounter.

**Legislative committee:**

Mr. Houdek asked that a legislative committee be appointed that is authorized to speak for the board in advising him of positions to take with regard to legislative bills and issues. The pace of legislation is too fast to bring each question back to the board to enunciate its position.

Dr. Olson moved that a legislative committee be formed of volunteers and be given the requested authority. Dr. Hoerauf seconded the motion. The motion passed unanimously.

Mr. Riskedahl, and Drs. Kavlie, Goven and Haug volunteered to serve on the committee.

**Board vacancy:**

Mr. Houdek advised the board that its nominated physician has been forwarded to the Governor's office for consideration, but no appointment has yet been made.

**Board questionnaire:**

Mr. Houdek thanked the board members for responding to the questionnaire sent out after the last meeting. It indicated that the board felt comfortable in their roles and in the management of the board. There were comments that sometimes the meetings move too quickly.

Dr. Kavlie encouraged all board members to take make sure, as the board discusses an item, that we are addressing all issues each board member might have.

There was also an indication that the board would like to see brief educational presentations at each meeting. Mr. Houdek said he would try to include one at each meeting.

**Audit report:**

Mr. Houdek reported that the board was audited in September and that no new issues or findings were made by the auditors, Brady-Martz. We will receive a finalized audit report at the March meeting.

**2015 Budget proposal:**

Mr. Houdek provided a written proposed budget. He noted it looks larger in its expenditures because it includes the money given to the newly formed physicians' health program. They have received \$30,000 per month since September and are scheduled to receive \$350,000 next year, plus first-time, start-up costs.

Mr. Houdek stated it might make sense to continue to fund the \$350,000 out of reserves for now in order to determine what the proper amount of surcharge should be, rather than trying to estimate the amount and imposing a surcharge now.

Ms. Larson moved the board fund the physicians' health program for a year out of reserves at the rates discussed and revisit the issue at that point. Dr. Hoerauf seconded the motion. The motion passed unanimously.

The second item Mr. Houdek discussed was the issue of salaries. Typically, raises are given as a percentage of salaries. After talking with the head of the state's Human Resources Department, it was determined that the state, as a whole, is adjusting salary ranges in order to compete with the increase in salaries in the private sector. The board's proposed budget contains an increase that is intended to provide a flat, dollar amount increase for staff, as opposed to a percentage increase. This would "close the gap" in salary ranges, so to speak, and would provide a relatively larger increase to those salaries that were determined by the human resource department to have fallen further behind their private counterparts.

Dr. Goven moved to approve the proposed budget. Dr. Carver seconded the motion. The motion passed unanimously.



**Office matters:**

**Ed Christiansen complaint:**

Mr. Houdek reported that a complaint had been filed against him with the bar board, and provided a copy of it, together with his response, to the board. No action had been taken by the bar board at the time of the meeting.

**Unfinished business:**

Dr. Goven asked about the FSMB meeting. Dr. Kavlie described his experiences at the meetings and stated that, generally, they are worthwhile to attend. The next meeting is April 23-25, 2015 in Ft. Worth, Texas.

**Educational topics:**

The board identified two possible topics for educational presentations: 1) The disciplinary process: How a complaint moves through the panels to the board and options available at each step. 2) Physician assistant supervision.

**Adjournment:**

Dr. Hoerauf moved to adjourn the meeting. Dr. Olson seconded the motion. The motion passed unanimously. Dr. Kavlie adjourned the meeting at 12:20 o'clock, p.m.