

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

March 20, 2015

Call to Order:

Dr. Gaylord Kavlie, Chair, called the meeting of the North Dakota State Board of Medical Examiners to order at 8:02 o'clock, a.m., at the board office in Bismarck. The following were in attendance:

Investigative Panel A	Investigative Panel B
Gaylord Kavlie, MD	Brenda Miller, MD
Burt Riskedahl	William Haug, Jr., MD
Robert Olson, MD	Manuel Colón, MD
Thomas Carver, DO	Sara Solberg, MD
Genevieve Goven, MD	Kayleen Wardner
	Kate Larson, PA-C

Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; and Stacy Moldenhauer, counsel; were also present. Identified members of the public in attendance were Marcy Schultz; Dr. Jon Norberg; Cheryl Ulver, PA-C; Mark Hardy, ND Board of Pharmacy; and Katie Fitzsimmons, NDMA.

Dr. Hoerauf was absent.

Minutes:

Dr. Haug moved the approval of the minutes of the November 21, 2014, board meeting, as distributed. Dr. Goven seconded the motion. The motion passed unanimously.

Physician waivers:

Dr. Colón moved the approval of the list of physicians eligible for waiver of interview, including applicants for regular and administrative licenses, and Dr. T. Do. Dr. Haug seconded the motion. The motion passed unanimously.

Investigative Panel A Report:

Mr. Riskedahl, Chair, reported that Investigative Panel A met March 19, 2015, and reviewed 15 cases. Two cases were referred for further investigation; two letters of concern

were issued; two stipulations were approved; one case was reviewed for informational purposes only; and eight cases were dismissed.

Investigative Panel B Report:

Kate Larson, PA-C, Vice-Chair, reported that Investigative Panel B met March 19, 2015, and reviewed 15 cases. Two letters of concern were issued; two cases were referred for further investigation; one formal complaint was authorized; and 10 cases were dismissed.

IPA vs. Clark Elliott, MD:

This case was brought by IPA for failure to comply with a PHP agreement. The stipulation provided that Dr. Elliott was ordered to comply in all respects with the PHP program. Any failure to do so will result with the suspension of his license for one year.

Dr. Haug moved to approve the stipulation. Ms. Larson seconded the motion. The motion passed unanimously, 6-0, with no members of IPA, which brought the complaint, voting.

IPA vs. Michael Gonzales, MD:

This case was brought by IPA for improper prescribing of controlled substances. The stipulation provided that Dr. Gonzales' license would be suspended for three years, with two years suspension stayed upon the conditions that he not prescribe schedule II drugs, obtain a competency evaluation regarding prescribing from CPEP and follow their recommendations as applied by the board; pay the costs of prosecution and cooperate with random monitoring of his practice by the board. Dr. Gonzales is given credit for one year's suspension already imposed under a non-practice agreement.

Ms. Wardner moved to approve the stipulation. Dr. Miller seconded the motion. The motion passed unanimously, 6-0, with no members of IPA, which brought the complaint, voting.

IPA vs. Michael Schmit, MD:

Dr. Schmit's license was suspended in 2012, and then reinstated in 2014 with conditions of practice, including work hour limitations, the presence of chaperones and workplace monitoring instituted for the first six months of practice. He applies to be released from those conditions.

Dr. Colón moved to defer consideration of Dr. Schmit's application until the July, 2015, meeting, as he has practiced only one month under the license conditions, and the intent was

to review the matter after six months of actual practice under the conditions. Dr. Miller seconded the motion. The motion passed unanimously.

IPB vs. Joseph Wheatley, MD:

This case was brought by IPB in 2014 because Dr. Wheatley accessed the medical records of two hospital employees who were not his patients. His license was initially suspended for two years, with the suspension stayed on the condition that he undergo a complete psychological examination and abide by any recommendations adopted by the board.

The psychological examination found that Dr. Wheatley suffered a disruption in the basic speed of mental operation and in the ability to process cognitive tasks with speed and accuracy. It also found there was no psychological explanation for his breach of the two patients' confidentiality.

The stipulation before the board provides for an indefinite suspension of Dr. Wheatley's license.

Dr. Olson moved to approve the stipulation. Dr. Haug seconded the motion. The motion passed unanimously.

IPB vs. Jon Norberg, MD:

IPB brought this case against Dr. Norberg for the use of propofol without the requisite monitoring in a non-clinical situation. His license was indefinitely suspended in January of 2012.

Dr. Norberg was issued a conditional license in August of 2013, which included a number of practice conditions and monitoring.

Dr. Norberg petitioned the board for an unconditional license. He provided proof that he has been in compliance with all conditions imposed by the board and has completed all requirements under the previous order.

Dr. Goven moved to issue Dr. Norberg an unconditional license. Ms. Wardner seconded the motion. The motion passed unanimously, with Dr. Olson abstaining.

Pharmacy collaborative agreements:

Dr. Goven reviewed the following agreements and recommended to the board that they be approved: Craven-Hagan Clinic name changes, and Sanford diabetic care guidelines.

Dr. Goven moved the approval of the agreements. Dr. Haug seconded the motion. The motion passed unanimously.

FTC vs. North Carolina Dental Board:

Duane informed the board of the United States Supreme Court decision in the case of the *FTC vs. North Carolina Dental Board*. This case involved the issuance of cease and desist orders by the North Carolina board against non-dentist providers of teeth-whitening services. The Court held that any state regulatory board controlled by members of the profession it is regulating does not have state-action immunity from federal anti-trust laws. This means that board members may be sued individually by those alleging anti-competitive effects of board actions.

Duane explained he and Stacy have met with the Attorney General, the Governor's legal counsel and the director of the state's Risk Management division about this issue. Risk Management has stated, in correspondence to the board, that it will provide indemnification to the board and its individual members for any damages that may be awarded under federal anti-trust laws, and will pay for representation in such suits.

Longer term, Mr. Houdek is working with the Attorney General and the Governor's office to provide active state supervision of any board action that may implicate anti-trust laws.

Duane recommended that we establish our 2012 cease and desist order against Teladoc by rule, which will provide review by the Attorney General for legality and by the Administrative Rules Committee of the Legislature for content and impact upon the regulated community.

Mr. Riskedahl moved to authorize a cease and desist order by rule against Teladoc. Dr. Goven seconded the motion. The motion passed unanimously.

Interview of License applicant, Ahsan Bhatti, MD:

Dr. Ahsan Bhatti was asked to interview with the board to inquire about an incident that occurred in February of 2013 in the hospital where he worked. Dr. Bhatti was upset because patients were not properly prepped for surgery. During his encounter with one of the nurses, he physically touched her and, initially, charges were brought against him for that touching.

He explained that he and that particular nurse always joked around and he thought they had a good enough relationship for him to do so in that instance. He stated he now is very

sensitive to that issue, and has had no further incidents, although he continues to work with the same staff.

Dr. Bhatti explained that the charges were dropped.

He has been working with Menninger Clinic to assess his behavior and has been told that he may have difficulty picking up on clues in interpersonal relationships. He has been paying attention to that and has practiced without incident.

Dr. Colón moved to grant Dr. Bhatti an unconditional license. Dr. Olson seconded the motion. The motion passed unanimously.

Telemedicine policy:

Duane outlined the steps that have been taken to revise the board's policy on telemedicine, with a view to approving a telemedicine rule at the next meeting. The board's discussion points were posted on the board's website, together with existing policy, and comments were invited.

Many comments from providers were received and reviewed. In light of the comments, the board authorized Duane to draft a telemedicine rule. It confirmed that an initial encounter by telemedicine that requires a patient evaluation (unlike reviewing store-and-forward information or electronic monitoring) must have video and appropriate diagnostic tests and use of peripherals and that a separate statement should be included saying online questionnaires or audio only does not meet standard of care.

The board also decided to refer to the North Carolina statement regarding the prescribing of controlled substances, which would provide the ability to prescribe controlled substances through initial telemedicine encounter except for prescribing opioids for pain. All federal laws would have to be followed. The prohibition against prescribing opioids for pain would not apply once a physician-patient relationship was established through an acceptable in-person encounter.

The board clarified that, with regard to patient encounters, follow-up communications to patients for the same medical condition, following an in-person encounter or an acceptable telemedicine encounter, are not subject to the telemedicine rules governing establishment of a physician-patient relationship.

Financial audit:

The annual audit report was distributed for review. There were no findings or issues to report.

Legislative update:

Duane referred to the email he sent to the board at cross-over outlining legislative issues the board was following.

Katie Fitzsimmons from the NDMA urged the board to oppose licensing of naturopaths. Previously, the board took a neutral position and worked to amend the law based on the guidance of the legislative sub-committee.

Duane noted we opposed giving psychologists prescribing privileges and that bill now provides for a study.

Office matters:

Duane reported that the disciplinary complaint filed against him as a lawyer by Mr. Christensen was dismissed. He talked about the availability of educational sessions regarding disciplinary process or PA supervision if the board was interested. He reviewed the PHP and noted that representatives of the North Dakota Professional Health Program would appear at the July meeting to give a complete report.

Adjournment:

Dr. Goven moved to adjourn the meeting. Dr. Olson seconded the motion. The motion passed unanimously. Dr. Kavlie adjourned the meeting at 11:49 o'clock, a.m.