

NORTH DAKOTA BOARD OF MEDICINE

November 20, 2015

Call to order:

Kent Hoerauf, MD, Chair, called the meeting of the North Dakota Board of Medicine to order at 8:00 o'clock, a.m., at the board office in Bismarck, North Dakota. Attendance was as follows:

Investigative Panel A		Investigative Panel B	
Robert Olson, MD	Present	Kate Larson, PA-C	Present
Genevieve Goven, MD	Present	Kent Hoerauf, MD	Present
Thomas Carver, DO	Present	Manuel Colón, MD	Present
Rup Nagala, MD	Present	William Haug, MD	Present
Ann Reich	Present	Sara Solberg, MD	Present
		Brenda Miller, MD	Present
		Vaune Johnson	Present

The following staff were in attendance: Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; and Stacey Moldenhauer, counsel.

Courtney Koeble, NDMA; Cheryl Ulven, ND Academy of PA's; and Dan Hannaher, Sanford Health; were also present.

Minutes:

Dr. Haug moved to approve the minutes of the July 24, 2015, meeting, as distributed. Dr. Goven seconded the motion. The motion passed unanimously.

Introduction of new board members:

Dr. Hoerauf introduced and welcomed to the board Rup Nagala, MD, Oakes; Ann Reich, Bismarck; and Vaune Johnson, Dickinson.

Waiver of interview – Physicians:

Ms. Larson, PA-C, moved to approve the physicians listed for waiver of interview. Dr. Olson seconded the motion. The motion passed unanimously.

Waiver of interview – Special licensee:

Dr. Solberg moved to approve the waiver of interview for the special licensee, Dr. Nirmal Kharel. Dr. Goven seconded the motion. The motion passed unanimously.

Waiver of interview – Residents:

Ms. Larson moved to approve the residents listed for waiver of interview. Dr. Haug seconded the motion. The motion passed unanimously.

Investigative Panel A report:

Dr. Olson, Chair of Investigative Panel A, reported that the panel met and reviewed 18 cases: one formal complaint was authorized, two cases were referred for further review, one letter of concern was authorized, and 14 cases were dismissed.

Investigative Panel B report:

Ms. Larson, PA-C, Chair of Investigative Panel B, reported that the panel met and reviewed 17 cases: two formal complaints were authorized, two stipulations approved, four letters of concern were authorized and nine cases were dismissed.

IPA vs. Marc Eichler, MD:

Mr. Houdek reported Dr. Eichler has been charged with one count of Gross Sexual Imposition and two counts of Luring Minors by Computer in state district court. The warrant of arrest was served October 29, 2015.

On November 3, 2015, Dr. Eichler entered into a public stipulation with the board under which he agreed to cease practicing medicine in North Dakota immediately and to not practice medicine in North Dakota until the board completes its investigation and any disciplinary action that may be taken because of the criminal actions brought against him.

Dr. Olson questioned whether other medical boards would be notified of the non-practice agreement. Mr. Houdek responded that we could notify the boards in which Dr. Eichler is licensed.

IPB vs. Robert Beattie, MD:

Investigative Panel B presented a stipulation under which Dr. Beattie agreed to an indefinite suspension of his medical license and to pay the costs of investigation, based upon his having been charged with possession of child pornography and admitting to possession of such material in his office.

Dr. Goven moved to approve the stipulation. Dr. Carver seconded the motion. The motion passed unanimously, with members of Investigating Panel A voting.

IPB vs. Eric Pezhman, MD:

Investigative Panel B presented a stipulation under which Dr. Pezhman agreed to receipt of a public disciplinary letter of censure, attendance at an ethics course and payment of the costs of investigation, for his role in an organ donation after cardiac death procedure.

Dr. Olson moved to approve the stipulation. Dr. Goven seconded the motion. The motion passed unanimously, with members of Panel A and Ms. Johnson, who was not a member of either panel at the time the case was initiated, voting.

Matter of Robert Wilson, MD:

Mr. Houdek reported that the board disciplined Dr. Wilson in 2000, based solely on disciplinary action taken by the medical board of Illinois. The Illinois medical board's decision was reversed in court, and Dr. Wilson has petitioned this board to rescind its 2000 disciplinary action and notify the National Practitioners' Data Bank (NPDB) that it has done so.

Dr. Colón moved to rescind the 2000 disciplinary order of the board and to notify the NPDB of our action. Dr. Solberg seconded the motion. The motion passed unanimously.

Administrative rules – Special license:

Mr. Houdek reported that a public hearing was held October 12, 2015, with regard to this proposed administrative rule, which would give the board discretion to grant a medical license to applicants who are uniquely trained or qualified, or who would make a unique or special contribution to the practice of medicine in the state, even though they may not meet all technical eligibility requirements. He reported there were no adverse public comments received.

Dr. Goven moved to approve the rule. Dr. Nagala seconded the motion. Dr. Miller asked whether such applicants would be brought before the board for approval and Mr. Houdek responded that they would. The motion passed unanimously.

Administrative rules – Administrative license:

Mr. Houdek reported a public hearing was held October 12, 2015, with regard to this proposed administrative rule, which would create an administrative class of medical license, under which a physician could be licensed to practice administrative medicine in the state, defined as administration or management using the medical knowledge, skill or judgment of a license physician that may affect the health of any member of the public, but which would not authorize the practice of clinical medicine, defined as the diagnosis or treatment of any patient, including the prescribing of any drug or the delegation of authority to, or supervision of, any health professional.

An applicant for an administrative medical license would be subject to the same eligibility requirements as applicants for a general license, but would not be required to demonstrate maintenance of an active clinical practice. Holders of an administrative license would be subject to the same rules and regulations as holders of a general license, including those governing license renewal, fees, continuing medical education and discipline.

Dr. Solberg moved to approve the rule. Ms. Larson, PA-C, seconded the motion. The motion passed unanimously.

Administrative rules – PDMP:

Mr. Houdek presented a first draft of a rule that will be proposed as an administrative rule to comply with state law, which requires each regulatory board that licenses health care providers who prescribe controlled substances to pass a rule regulating usage of the state's prescription drug monitoring program (PDMP). The concern of the legislature is that participation in the PDMP by state physicians is below thirty percent. It was noted that, often-times, nurses are signed up for the PDMP and access it for multiple physicians, so the percentage may not reflect true utilization.

The board reviewed the draft rule, which is attached to these minutes, and concluded that a working group of the board, consisting of Drs. Colón, Solberg, Olson and Ms. Reich, should work with Mr. Houdek to refine a draft of the rule to bring back to the board for consideration.

Among the issues raised during the board discussion of the draft rule were:

- Mandatory registration for those who prescribe (those with a DEA number) might be achieved by putting a "stop" in the online license renewal process, not allowing physicians to continue the renewal process until they have registered for the PDMP.
- Discussion should be had of the roll-out of registration and utilization.
- Consequences of failure to comply with rule is a disciplinary violation.
- Whether there is a way to get rid of the notarization part of the rule.
- There may be facilities other than nursing homes and hospitals that offer regulated prescribing, such as group homes, which may be exempt from the rule.
- Drug screens that are negative for prescribed drugs do not always indicate that the drug was not taken, especially in the case of some short acting drugs.

In this regard, it was noted that the rule requiring utilization of the PDMP does not dictate how the prescriber should then proceed with treatment, that is left to the professional judgment of the practitioner. The rule just makes sure the PDMP is being considered in certain instances.

- The phrase “receiving drugs” in 3(H) of the draft rule should be changed to “using controlled substances”.

Interview – Nathan Mickelson, DO:

Dr. Mickelson interviewed with the board as part of his license application process. The questioning and discussion related to the central issue of his application, a federal conviction and sentence for possession of child pornography. Dr. Mickelson related that he has yet to finish an orthopedic residency because of this conviction, but would desire to continue a career in medicine.

Dr. Colón moved to deny Dr. Mickelson’s application. Dr. Olson seconded the motion. The board discussed the fact that granting a license at this time would permit a full range of the practice of medicine, with no specific practice plan in place. In contrast, should Dr. Mickelson obtain placement in a residency program, there would be close monitoring in place that might present a stronger case for licensure.

The board noted that conviction of a felony, if deemed to have a direct bearing on the ability to practice medicine, is grounds for discipline and, by law, is also grounds for denial of a medical license.

The board voted unanimously to pass the motion to deny Dr. Mickelson’s application.

NDPHP report:

Tammy King, executive director, and Dr. Barrie March, medical director, reported on the status of the North Dakota Professional Health Program.

They reported there are 22 current participants, which is an increase of nine since they started the program earlier in the year. They have received referrals from health care facilities.

Dr. March asked that the board consider mandatory reporting of DUI arrests, rather than allowing the reporting to be done at the licensee’s next renewal. It is important to address such matters in a timely manner, and there could be a long lapse – close to a year— before DUI’s are reported under the current system.

They are beginning a state-wide education campaign to educate the public and practitioners of the services of the new program.

Administrative rules – Telemedicine:

Additional members of the public attended the meeting for discussion of this topic: Bev Adams, Sanford legal counsel; Claudia Tucker, Teladoc; John Ward, local counsel for Teladoc; and Dr. Chris Meeker, Chief Medical Officer, Sanford-Bismarck.

Mr. Houdek reported that a public hearing was held October 12, 2015, to consider proposed administrative rules, including the rule on telemedicine. A comment period was open through October 26th, although any comment received up to the date of this board meeting have been presented to the board for its consideration. All comments received are attached to these minutes.

The comment from Sanford was repeated in a number of comments, questioning whether the language of the rule requires a face-to-face examination every time a patient is seen, as a diagnosis is made at every encounter. They also questioned whether the rule allows for physicians designated by the treating physician as “on-call” providers would be able to practice by telemedicine. Because it was not the intent of the board to require a face-to-face examination at each encounter, nor to preclude on-call coverage by physicians designated by the treating physician to provide temporary coverage, Mr. Houdek presented a “red-line” amendment to the rule which addressed these issues. That red-line rule is attached to these minutes.

Ms. Adams told the board that, with the changes made in the attached “red-line” version of the rule, the rule is acceptable to Sanford.

Ms. Tucker proposed that the rule be amended to allow telemedicine provided by “Interactive audio with asynchronous store and forward technology or audio-video, at the discretion of the physician.”

Ms. Tucker explained that physicians at Teladoc cannot access a patient without a past medical record or history. She stated 95% of patients use audio to access Teladoc, but that the physician can determine whether the encounter is appropriate for an audio-only session and require a video or in-person visit. She estimated 94% of patients who access by audio are resolved and 6% are referred.

Mr. Houdek noted each written comment that was provided during the rule making process. As mentioned, those are attached.

The board considered the comments made, and approved the red-line version for further consideration.

Dr. Colón noted the comments regarding prescribing and suggested that we change the rule to completely prohibit prescribing opioids by telemedicine, and not just prohibit prescribing opioids for pain control by telemedicine. After discussion, the board directed Mr. Houdek to provide a draft that reflected this suggestion.

The board also specifically considered comments made by the American Association of Physician Assistants that the rule should be amended to remove the requirement that a Physician Assistant and supervising Physician must be physically located in the same state to provide telemedicine to patients located in North Dakota.

After discussion, the Board directed Mr. Houdek to amend the rule to reflect that a physician assistant may provide services through telemedicine, provided he or she holds a North Dakota license, and physician supervision is being provided by a physician holding a North Dakota license. The requirement of being located in the same state is to be removed.

The board further stated that this should be the case for all physician assistants, not just those practicing by telemedicine, and any requirement that the supervising physician be located in North Dakota or in the same location as the physician assistant should be removed from our regulations and laws.

The board did not take final action on the rule, but directed Mr. Houdek to convene a public meeting of the board by telephone conference, at which the suggested amendments to the administrative rule would be considered and finalized.

Pharmacy Collaborative Agreement:

Dr. Goven reviewed the Bismarck Sanford anti-coagulation clinical request and moved its approval. Dr. Olson seconded the motion, which passed unanimously.

Mr. Houdek noted that under new law, if the only change to a pharmacy collaborative agreement is the addition of new personnel, it will no longer have to be approved by this board.

Audit:

Mr. Houdek reported that we've received a preliminary draft of the 2014 audit from Brady Martz. There were no new findings or issues of any kind. We will have a final report for the March, 2016, meeting.

Budget:

Mr. Houdek reported that Dr. Goven, Treasurer, had reviewed and approved the 2016 budget prior to its submission to the board. Dr. Goven had no issues to report regarding the budget.

Mr. Houdek asked the board to specifically note two matters: First, the budget includes a 4% salary increase for staff other than himself; the board addressed his salary at the July, 2015, meeting. Second, the budget includes \$250,000 to be given to the North Dakota Professional Health Program; \$100,000 to be taken from operating revenue and \$150,000 to be taken from reserves. He noted the board authorized \$350,000 during the 2015 budget year, and not all of that was needed. He also noted none of the amount in 2015 had to be taken from reserves. There may come a time when the board is no longer able to fund this program from reserves, and a small license surcharge may have to be enacted, but for now, addressing the NDPHP funding issue annually will allow the board to avoid the imposition of a surcharge until necessary to maintain adequate reserves.

Dr. Solberg moved to approve the budget. Dr. Miller seconded the motion. The motion passed unanimously.

Office matters:

Mr. Houdek noted that Burt Riskedahl, who just resigned from the board prior to moving to Minnesota, received the North Dakota Medical Association's "Friend of Medicine" award for his work on establishing the North Dakota Professional Health Program as an entity separate from the board. Mr. Riskedahl was nominated for the award by Dr. Gaylord Kavlie, who just completed his second term on the board and served as its Chair.

Mr. Houdek also noted the Federation of State Medical Board is holding its annual meeting April 28-30, 2016, and invited board members to express interest if they want to attend.

Adjournment:

Dr. Solberg moved to adjourn the meeting. Dr. Colón seconded the motion. The motion passed unanimously. Dr. Hoerauf, Chair, adjourned the meeting at 1:18 o'clock, p.m.