

**NORTH DAKOTA BOARD OF MEDICINE**

**November 18, 2016**

**Call to Order:**

Dr. Hoerauf called the meeting to order at 8:00 o'clock, a.m., at the Board office in Bismarck. All board members were present: Investigative Panel A: Rob Olson, MD; Rup Nagala, MD; Thomas Carver, MD; Genevieve Goven, MD; Ann Reich; Robert Sticca, MD. Investigative Panel B: Kate Larson, PA-C; Brenda Miller, MD; William Haug, MD; Manuel Colón, MD; Sara Solberg, MD; Kent Hoerauf, MD; Vaune Johnson.

Staff present: Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; and legal counsel Stacy Moldenhauer.

Guests present: Kirby Krueger, Cora Rabenberg, Amy Burke, and Kim Mertz, representing the North Dakota Dept. of Health; Stacey Pfenning, Melissa Hanson, and Tammy Buchholz, representing the North Dakota Board of Nursing; Courtney, representing the North Dakota Medical Assn.; and Dan Hannaher, representing the Health Policy Consortium/Sanford Health.

**Minutes:**

Dr. Haug moved to approve the minutes of the July 22, 2016, meeting as distributed. Dr. Colón seconded the motion. The motion passed unanimously.

**Physician Waiver of Interview:**

Ms. Larson moved to waive the interview of 116 physician licensure applicants, as presented. Dr. Goven seconded the motion. The motion passed unanimously.

**Resident Waiver of Interview:**

Dr. Colón moved to waive the interview of one (1) resident licensure applicant. Dr. Haug seconded the motion. The motion passed unanimously.

**Investigative Panel A report:**

Dr. Olson, Chair, reported Investigative Panel A reviewed 13 cases: two were referred for action, two were issued letters of concern, one stipulation was approved, one case was referred for further review, and seven cases were dismissed.

**Investigative Panel B report:**

Ms. Larson, Chair, reported Investigative Panel B reviewed 14 cases: two were referred for action, three letters of concern were issued, two stipulations were approved, one case was referred for further review, and six cases were dismissed.

**IPA vs. Erik Larson, MD:**

A complaint was authorized at the July meeting by IPA against Dr. Larson for failing to comply with CME requirements. The panel discovered after issuing the complaint that Dr. Larson was eligible for a waiver of the CME requirements, although he failed to claim his exemption.

Ms. Moldenhauer informed the board that it was discovered Dr. Larson was not practicing, and could have claimed an exemption from CME requirements. She presented a stipulation that dismissed the complaint.

Dr. Colón moved to approve the stipulation of dismissal. Dr. Carver seconded the motion. The motion passed unanimously.

**IPA vs. John Moseley, MD:**

Dr. Moseley agreed to stipulate for an indefinite suspension of his license, which was approved at a prior meeting. His counsel now petitions for relief from that order in order to facilitate a review by the Georgia Board of Medicine, where Dr. Moseley lives, which would not review the matter as long as his license was under suspension in North Dakota.

Dr. Colón moved to reinstate his North Dakota license as long as he was current with our CME requirements. Dr. Carver seconded the motion. Following discussion, Dr. Colón moved to

amend his motion to further condition the reinstatement upon a successful competency examination, in light of the length of time Dr. Moseley has been out of active practice. Dr. Carver, as second, agreed to the amendment.

The motion, as amended, passed 12-1, with Dr. Solberg opposing.

**IPB vs. Laura Andreson, DO**

Ms. Moldenhauer presented a stipulation to resolve the case against Dr. Andreson. It called for a license suspension, stayed pending a competency evaluation at PACE in San Diego, and completion of any recommendations made by the evaluators that are then approved by the board.

The motion to accept the stipulation was approved 6-0, with members of IPA voting.

**IPB vs. John Vynych, MD**

Ms. Moldenhauer presented a stipulation to resolve IPB vs. John Vynych, MD, by requiring completion of an ethics course about patient confidentiality and the issuance of a public letter of censure.

The motion to accept the stipulation was approved 6-0, with members of IPA voting.

**Nurses Dispensing in Family Planning Clinics:**

Representatives of the North Dakota Department of Health informed the board that nurses in family practice clinics have been following standing orders for nearly 40 years under a strict protocol that allowed them to test and treat STD's and distribute contraceptives without the patient first having been seen by a provider.

They said this was never an issue until recently, when the Board of Nursing concluded the protocols were outside a nurse's scope of practice and disapproved the practice.

The board advised the department that because medical directors reviewed the nurse's actions and was responsible for them, and because this was primarily a nursing issue, not a medical issue, they felt comfortable in allowing the practice to continue.

**Physician Interview – Daniel Downs, MD**

Dr. Sticca led the interview of Dr. Downs, who was asked to explain 20+ malpractice suits he incurred as a surgeon in Jackson County, Missouri, of which all but eight were dismissed.

Dr. Downs explained that the large number of malpractice suits was due to a change in Missouri law, which required only an allegation of negligence for a suit to go forward. He stated insurance companies would settle cases because it was cheaper to do so than to risk possible verdicts that could result from all cases going to a jury.

Dr. Solberg and Dr. Carver agreed that this was, indeed, a time of an unusual malpractice activity in Jackson County.

Ms. Larson moved to grant Dr. Downs an unconditional license. Dr. Sticca seconded the motion. The motion passed unanimously.

**Physician Interview – Kenneth Sladkin, MD:**

Dr. Olson led the interview of Dr. Sladkin, who had been charged criminally in Iowa because a boy who was missing from his family was found at Dr. Sladkin's residence. Dr. Sladkin explained that children in the neighborhood would often come over to use his pool, and this particular boy had not told his parents where he was. Once the facts were discovered, the charges were dismissed.

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

**NDPHP Report:**

Ms. King, executive director, and Barrie March, MD, medical director of the NDPHP program presented the NDPHP report.

They indicated the program is seeking other funding sources in order not to rely on just the medical board for funding. They discussed their outreach to North Dakota's residency

programs and medical facilities. They have been seeking to speak to a variety of groups to get the word out on their program.

They indicated they are also educating the court system to encourage referrals to NDPHP from judges.

They have 30 active cases, all but 5 of which are in-state. They have enrolled their first medical student after the board authorized unlicensed students to join the program last meeting.

They informed the board of their DUI policy, which states that those charged with a DUI with a BAC of >0.16, even if not found to have a substance abuse disorder, must abstain from alcohol for a period of one year.

The board thanked them for their work and for their report.

**NDPHP Treatment Records:**

The NDPHP informed the board that, after discussion of a recent case, they have amended their policy to provide to the board all treatment records of an individual referred to the Board of Medicine as non-compliant.

**PA Supervision Request – Majid Ghazi, MD**

Majid Ghazi, MD, requested that he be allowed to supervise his wife as a PA because he is starting his own practice and she is working with him.

The board denied the request, noting 50-03-01-03, NDAC, provides a physician may not supervise an immediate family member.

**Interstate Compact Act:**

Mr. Houdek reported that the interstate medical licensure commission has begun the process of implementing rules to address the practice under the interstate medical licensure compact. One concern the board has had – the commission would be funded by fees from

member states or from physician applicants – has been addressed to the board’s satisfaction by placing the licensing fee with the physician applicant.

Other rules are not complete and no licenses have been issued. Mr. Houdek advised that it would be prudent to wait to see how the commission actually operates when it starts licensing physicians in 2017 before joining. He didn’t have any knowledge that a bill would be introduced in North Dakota this legislative session.

**PA Supervision Rule:**

Staff reported that Physician Assistants have just one primary supervising physician, but may have as many as 25 other supervising physicians in large health care organizations. Under current rules, each requires a separate supervision contract. Staff suggested a rule change that would delete the requirement of a supervisory contract for all but the primary supervising physician, as that is the person to whom the board looks to and holds accountable for supervision.

Dr. Sticca moved approval of such a rule. Dr. Olson seconded the motion. The motion passed unanimously.

**Pharmacy Collaborative Agreement:**

Dr. Goven reviewed personnel changes and renewals of collaborative agreements for CHI St. Alexius – Williston and Family Healthcare in Fargo, and recommended their approval. Dr. Solberg moved to approve the agreements. Ms. Larson seconded the motion, which passed unanimously.

**Audit Report – 2015:**

The draft management letter and financials of the 2015 audit were provided to the board. The audit was completely clean, with no new management issues.

**Proposed Budget – 2017:**

Mr. Houdek presented the draft 2017 budget, which was noted to be tentative due to a new executive secretary beginning in the two months prior to Mr. Houdek’s retirement April

30, 2017, to allow for a transition period. The specifics of the salary package was not yet available.

The budget reflects a reduction from the 2016 budget, in response to the Governor's directive to non-general fund boards and agencies to help contribute to a downturn in the economy.

A more finalized budget will be submitted after the hiring of the new executive secretary and related expenses are known.

**Office matters:**

**A. Executive Secretary Vacancy:**

The search committee met with Bonnie Storbakken, and after reviewing her experience and qualifications, strongly recommended that she be offered the executive secretary position upon Mr. Houdek's retirement. Dr. Hoerauf would take the lead in negotiating her contract.

Dr. Sticca moved to offer the executive secretary position to Ms. Storbakken. Dr. Haug seconded the motion. The motion passed unanimously.

**B. Telemedicine Store and Forward:**

At Mr. Houdek's request, the board considered and approved his response to a company seeking to practice telemedicine in the state using store-and-forward technology of basic medical charts without further compliance with the board's telemedicine policy.

**C. Annual Investment Review:**

Mr. Houdek reviewed the investment performance and noted that although it is down lately, it is simply reflecting the economy as a whole. He has asked the state investment board staff to assess the risk of raising the rate of return goal by a point and report back to the board.

**D. Atlanta Journal Constitution:**

Mr. Houdek reported that the Atlanta Journal Constitution had completed a nation-wide investigation of the transparency to the public of medical board's practices and websites and

was ranked 15<sup>th</sup> out of 68 boards. We were singled out for the detailed description of the basis for disciplinary actions that we make available to the public. We ranked lower than we otherwise would only because we do not report malpractice settlements which, in North Dakota, are reported by the insurance department, and criminal convictions.

**E. ACGME Milestones Data:**

Dr. Olson reported on the ACGME milestone report in relation to residents. There is a current effort to upgrade and standardize milestones, to better insure residents are ready to practice. This effort is just beginning. He noted these milestones are intended for internal program use, and not for licensing boards to act upon in a disciplinary fashion.

**Unfinished Business:**

Mr. Houdek reminded the board members they are invited to attend the FSMB meeting April 20-22, 2017, in Ft. Worth. Dr. Olson will be attending, as the board's representative, the jointly held meeting of the FSPHP.

Dr. Goven questioned the physician's roles under the medical marijuana initiative passed by the people of North Dakota this month, and the board's role in response.

Dr. Olson offered that our role will be to reinforce the concept that this is a matter of individual judgment on the part of each physician, and each has a right to choose not to endorse the usage of marijuana under the law.

**Adjournment:**

Dr. Solberg moved to adjourn the meeting. Dr. Haug seconded the motion. The motion passed unanimously.

Dr. Hoerauf adjourned the meeting at 11:32 o'clock, a.m.