

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

November 18, 2011

Call to Order:

Dr. Johnson called the meeting to order at 7:58 a.m., at the board offices in Bismarck, North Dakota. Unless otherwise noted, the following members were present:

Investigative Panel A

Gaylord Kavlie, MD, Chair
Andrew McLean, MD, Vice-Chair
Larry Johnson, MD
Robert Tanous, DO
Burt Riskedahl
Mary Jo Lewis, MD

Investigative Panel B

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

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

Courtney Koeble, North Dakota Medical Association; and Scott Barry, PA-C, as well as other members of the public were in attendance.

Minutes:

Dr. McLean moved to approve the minutes of the July 22, 2011, meeting. Dr. Lewis seconded the motion. The motion passed unanimously.

Physician Waiver of Interviews:

The board reviewed the list of physicians for whom personal interviews were deemed to be waived. Dr. Byers moved approval of all physicians listed. Dr. Tanous seconded the motion. The motion passed unanimously.

Special Licenses Eligible for Waiver of Interview:

The board reviewed the list of special license applicants for whom personal interviews were deemed to be waived. Dr. Kavlie moved approval of all applicants listed. Dr. Byers seconded the motion. The motion passed unanimously.

Resident Licenses Eligible for Waiver of Interview:

The board reviewed the list of resident license applicants for whom personal interviews were deemed to be waived. Dr. Byers moved approval of all applicants listed. Dr. Martin seconded the motion. The motion passed unanimously.

Investigative Panel A Report:

Dr. Kavlie, Chair of Panel A, reported that Panel A met November 17, 2011, and reviewed five cases. One complaint was issued, two letters of concern were issued, and two cases were referred for further review. Panel A also invited one physician into the PHP, released two participants, and denied two participants an early release from the program.

Investigative Panel B Report:

Dr. Byers, Chair of Panel B, reported that Panel B reviewed nine cases. One complaint was issued, one stipulation was approved, and seven cases were dismissed.

IPA v. Shantell M. Two Bears, MD:

The board considered the stipulation executed to resolve the complaint against Dr. Two Bears, which was issued because she failed to provide information about patient records legally requested

by the board, despite numerous requests made by staff. The stipulation provided for a fine of \$1,000.00 and required Dr. Two Bears to pay the costs of investigation and prosecution.

Dr. Kavlie moved to approve the stipulation. Dr. Lewis seconded the motion. The motion passed unanimously, with members of Panel B and Ms. Larson, PA-C, voting, as Ms. Larson was not a member of Panel A when the complaint was investigated and issued.

Thomas F. Kozlek, MD:

The board considered the application of Dr. Kozlek. Dr. Kozlek had first applied for a license in 2007. Action on his application was deferred in order to obtain additional information about a privileging action taken by a former hospital employer. There was a conflict between the statements of Dr. Kozlek and the commander of the medical unit as to whether Dr. Kozlek had been informed of a negative peer review and suspension of privileging action at the time of the termination of his employment contract with Kimbrough Medical Center, a military hospital.

Dr. Kozlek reapplied with the board in 2008, after his privileges at Kimbrough had been reinstated, with a condition that his charts be 100% reviewed. The board deferred action pending the outcome of the review process.

Dr. Kozlek then applied in 2011. He did not complete the monitoring process or chart review because he had been terminated prior to the end of that contract year, and did not work there after those conditions were imposed.

The board believed those issues of serious patient care were left unresolved and nothing further was done by the hospital or by Dr. Kozlek. He did not improve upon the situation since his last application, or provide any further information to the board that he had done so.

Dr. Byers moved to deny Dr. Kozlek's application for a license. Dr. Kavlie seconded the motion. The motion passed unanimously.

Kirsten D.Peterson, MD:

Dr. Peterson personally appeared before the board in support of her application for reinstatement of her license, which had been suspended due to alcohol dependency that impaired her ability to practice medicine.

She explained that over the last one and one-half years, she has worked hard on improving herself. She has participated in a rigorous random drug screening regimen under the PHP of Wisconsin. She has been attending AA regularly and is actively working with a sponsor.

In response to questions from Dr. McLean, Dr. Peterson stated her program now has several layers of accountability. She attends AA 4-5 times per week, as she feels it is beneficial to go more often. She has been keeping her CME current through online studies.

Dr. Hoerauf noted that the Hazelden report recommended more leisure time in order to better care for herself. Dr. Peterson responded that she does volunteer work at her son's school, has started writing, reads more often and walks or runs once or twice per week.

Dr. Johnson asked whether she remained board certified. She responded that her certification was terminated because of her license suspension.

Mr. Riskedahl asked her to recap her standing with the Wisconsin board, and Dr. Peterson explained she had worked there after North Dakota, and began participating in their PHP when her license was suspended there.

Duane asked if she was working to regain board certification, and Dr. Peterson said she hopes to do some work at UND medical school while she is doing that.

Mr. Riskedahl asked whether we would keep Dr. Peterson in our PHP or use the Wisconsin program. Duane said we would coordinate between the two programs and likely defer to the Wisconsin protocols she is already following as long as she remains in that program.

Dr. Miller moved to reinstate Dr. Peterson's license with the condition that she remain in either the Wisconsin or North Dakota PHP for a full period of five years. Dr. McLean seconded the motion. The motion passed unanimously.

Pharmacy Collaborative Agreement:

The Board considered an amendment to a Sanford pharmacy agreement approved in July. Dr. Byers previously reviewed, stated it only added more pharmacists to the agreement, and had no problem with it.

Dr. Miller moved approval of the agreement. Dr. Lewis seconded the motion. The motion passed unanimously.

Tony F. Bruno, MD:

Dr. Bruno personally appeared in support of his application for a medical license.

Dr. McLean led the interview. He began by asking Dr. Bruno about a synthetic screen he had in the Alberta program. Dr. Bruno said he had a screen with a pH of 8.0, which is the upper limit of normal. It was questioned and noted, but he was not charged with a synthetic screen.

He said he was invited back because he did not follow the AA 12 step recovery program, which he does not believe in. He did not attend meetings and did not have a sponsor. He participates in Smart Recovery, a cognitive program.

Dr. McLean said the important part of that is accountability, and that might be questioned because of Dr. Bruno's lack of compliance with calling in for screens. Dr. Bruno said it was hard in residency and he simply did a poor job at compliance. He said since then he has done much better.

In response to a question from Dr. McLean, Dr. Bruno said his drug of choice was cocaine, and that he used it for a period of six months in 2003. Since then, he has used no mood altering

substance. He said 2003 was a very difficult period for him and he asked for help. He said there were a lot of supportive programs in Alberta, but not for students. He was going to be kicked out of medical school and appealed, which he won.

Dr. Bruno explained that he has signed a contract with Essentia in Minnesota, which has a facility in Fargo.

Dr. McLean asked why Dr. Bruno why he should be granted a license. Dr. Bruno said he is a good and safe physician. He has now shown compliance and the program records since 2009 support them. He said since 2009, he has had good compliance.

In response to a question from Dr. Kavlie, Dr. Bruno said that, despite his aversion to the 12 step program, he does not think any mood-altering substance is worth taking and avoids it all.

Mr. Riskedahl asked Dr. Bruno to explain the Smart Recovery program. Dr. Bruno said the main distinction is that one does not submit to a "higher power", but remains in control of one's decision.

Mr. Riskedahl asked what the Smart Program actually is and what are its components. Dr. Bruno said he attends a weekly "Smart" meeting that is mediated by a trained psychologist or counselor. There are no sponsors, but participants exchange numbers and help each other.

Dr. Bruno was excused while the board discussed his application.

Dr. Kavlie moved to approve Dr. Bruno's unconditional license. Dr. Hoerauf seconded the motion.

Dr. Martin noted that Dr. Bruno was in a high risk specialty, and should stay in our PHP.

Dr. McLean agreed with Dr. Martin, noting that there are more and more people who seek alternatives to the 12 step program. He stated his lapses in compliance are more his personality, rather than an addiction problem, and he needs to be monitored closely.

Dr. Martin said the hours of work could be a problem. Dr. McLean noted that he is currently restricted to 46 hours per week.

The panel discussed the number of hours required of an emergency room physician versus the need to limit hours. Dr. Miller suggested that a start of four 12 hour shifts would be reasonable. Dr. Miller moved to amend the motion to include the following conditions: Dr. Bruno will be limited to 48 hours per week for the next 6-8 months; that he participate in our PHP program and have a physician approved by the board report to us quarterly; and that he participate in a support program, either Smart Recovery or another that the board approves. Dr. Kavlie seconded the motion. The motion to amend passed unanimously. The motion, as amended, passed unanimously.

Robert J. Manning, MD:

Dr. Tanous led the interview of Dr. Manning, who appeared in support of his license application. Dr. Manning explained that he relinquished his Colorado license in 2009 because he had difficulty breathing at high altitudes. Colorado then filed an adverse action report, which he appealed with the NPDB. He talked with them last week and was told the appeal can take up to two years. He said his attorney has advised him this was not an adverse, disciplinary action, but a voluntary relinquishment due to a physical condition.

Dr. Tanous noted for the board that prior to the relinquishment of the Colorado license, Dr. Manning had tests showing he had 90% oxygen saturation. Dr. Manning said that his pulmonologist said he has no limitations under three thousand feet.

Dr. Tanous then asked about the suspension of privileges in 2008 at Parkwest Surgery Center, due to alleged abusive behavior. Dr. Manning said that this was based on an incident when a nurse failed to sedate a patient, who kicked Dr. Manning in the groin. He pushed the patient's leg back

on the Gurney and it hit the railing. The other nurse in the room said there was no abuse and the patient also confirmed it. Dr. Manning admits he was unprofessional with the clinic manager who called him to say his privileges were suspended.

Dr. Tanous then asked about the neuropsych that was performed. Dr. Manning said it was a request from the facility where he worked. There was a great deal of turmoil there, with many doctors who left. He said the medical director there said he was "different" and reported various incidents to the Colorado PHP. He had the neuropsych and was told he had minor depression. He joined the PHP and successfully completed it. He said he takes mood stabilizing medication, and has done fine. He said if he doesn't take the medication, he tends to fly off the handle and say things he wishes he hadn't.

Dr. Martin stated he successfully completed his locum assignment at Medcenter without incident. Dr. Tanous thought Dr. Manning was very honest and, for the length of his practice, the malpractice cases are not concerning.

Dr. Miller moved to grant Dr. Manning an unrestricted license. Dr. Kavlie seconded the motion. The motion passed unanimously.

IPA v. Brian E. Briggs, MD:

John Olson asked if everyone had had an opportunity to review the ALJ's findings, conclusions and recommended order. He noted that the ALJ found that Dr. Briggs had violated both the inappropriate prescribing statute and the documentation statute. One of the patients was pregnant while Dr. Briggs cared for her and he did not know it. One of the facts found was that scars from a C-section were found by Dr. Briggs to be from removal of an ovarian cyst.

Mr. Olson noted that the ALJ agreed with the recommendation of IPA counsel that Dr. Briggs likely could not be rehabilitated, given the nature of his practice in his home, with no nursing staff

and his lack of attention and focus on traditional medicine.

The ALJ did not accept counsel's recommendation that Dr. Briggs' license be revoked, however. He stated in light of Dr. Briggs' long career with no disciplinary proceedings in evidence, his recommendation would be that the board suspend Dr. Briggs' license for a period of time it determines appropriate.

Mr. Olson stated he could certainly recommend giving Dr. Briggs an opportunity to be evaluated and retrained, but at this stage of his career, it is not realistic.

Dr. McLean asked why is it unrealistic that Dr. Briggs be retrained. Is it his age or something else? Mr. Olson stated it was not only his age, but the fact that he practices in his home and is primarily focused on alternative, not traditional medicine. His care of these two patients reflects that.

Mr. Houdek added that it is because of the nature of Dr. Briggs' practice. Not only does he have a lack of focus and documentation, but he has no support staff in his home that can provide the necessary structure to help him practice appropriately. This is not going to change. It is unrealistic that Dr. Briggs, who maintains no privileges or clinical associations would ever again practice in a group setting.

Michael Ward, attorney for Dr. Briggs, stated that this should not be a matter of Dr. Briggs' age. He asked the panel to first evaluate Dr. Briggs if they felt he was not competent to practice before his license is revoked. He said further that he could understand if Dr. Briggs was prohibited from prescribing narcotics.

He said Dr. Briggs has focused on the fact that certain foods affect one's health, but many, more traditional, physicians are beginning to reach the same conclusion.

He said he understands that Dr. Briggs may not have examined one patient sufficiently to

determine her pregnancy, but others have prescribed to her as well during that time period.

Dr. Hoerauf asked whether Dr. Briggs refers patients to other providers and, if so, whether his documentation is sufficient to apprise them of the patient's conditions. Mr. Ward said, although Dr. Briggs did not do all the traditional things he would like to see in his documentation, his notes were long and detailed and sufficient.

Dr. Kavlie noted that this statement conflicts with the ALJ's findings of fact and Mr. Ward said he disagrees with that finding.

Ms. Wardner asked Mr. Ward if other physicians gave the pregnant patient the same drugs as Dr. Briggs. Mr. Ward said that was the case; he believed others saw her while she was pregnant.

Dr. Briggs offered to explain his prescribing and said he didn't have access to the Board of Pharmacy's PDMP.

Mr. Houdek explained that first the board should consider the recommended findings and conclusions of law of the ALJ. Dr. Martin moved the adoption of the findings of fact. The motion passed unanimously. Mr. Olson noted that there needed to be a vote on the conclusions of law. This passed unanimously.

Dr. Johnson called for a motion with regard to the disposition of the case. Dr. Miller moved to revoke Dr. Briggs' license. The motion died for lack of a second.

Dr. Byers moved that the board not revoke Dr. Briggs' license, but look at other alternatives. Ms. Wardner seconded the motion.

Dr. Miller suggested that if the board was going to go that route, perhaps Dr. Briggs should be evaluated by CPEP, which the board has used before, and suspend his license until the board can evaluate the report. Dr. Kavlie questioned whether the CPEP evaluation would be all inclusive,

including documentation, and whether Dr. Briggs' license would be suspended until the board could see and review that report.

Mr. Ward stated the evaluation should be done before any period of suspension is imposed.

Dr. Miller moved to amend the motion on the table, his amended motion was to suspend Dr. Briggs' license until such time as an evaluation was completed by CPEP and the board had an opportunity to review it and act accordingly. Dr. Byers seconded the motion. The motion to amend passed unanimously, with members of Panel B voting.

Dr. Johnson called the question on the motion, as amended. Mr. Olson stated that perhaps the motion should be further amended to include the award of costs and to state that Dr. Briggs would bear the costs of the evaluation. Mr. Houdek stated that this is an ordinary part of every board order. Dr. Johnson stated it was understood that the motion included costs of both the investigation and evaluation to be paid by Dr. Briggs.

The motion, as amended, passed unanimously, with members of Panel B voting.

PHP Progress Report:

Mr. Riskedahl provided a written report to the members of the Board regarding the interim progress of the PHP committee, which was directed at the last meeting to continue to study the PHP program.

Mr. Riskedahl told the board of the meeting with former director of the Ohio PHP, Dr. Stan Sateren, a North Dakota native. He said that there are many models for PHP programs. We talked about other groups that might share an interest in joining a separate PHP and one group is dentists, which is the model Montana uses.

Dr. Sateren said that participation would be greater if the PHP were not under a regulatory board such as ours.

The PHP committee met and concluded a separate PHP could be proactive, rather than reactive, which is how the board must run the program.

Mr. Riskedahl asked the board for a resolution to continue to go forward. It is likely legislative changes would be needed. Other groups would have to be looked at for participation and for funding. It is anticipated that a free standing PHP would need a full time director and support person, and a part-time medical director.

The committee would need to continue to evaluate methods for ensuring that the relationship between the PHP and this board is such that patient safety is not compromised in any way.

Mr. Riskedahl's final comment is that on page 3 of the handout, the issues and questions that might arise are addressed, especially in the area of accountability. He described two tracks that would correspond to those people now ordered to participate for disciplinary reasons, who would continue to be known to the board, and those invited, with no disciplinary issues, for whom statistical reports only would be made.

Dr. McLean thanked Mr. Riskedahl for championing this issue and noted that its basis was the understanding that we could be serving more physicians than we now are serving. He also noted that we should be covering medical school students, which could be done with a separate, non-disciplinary program.

Mr. Houdek noted that physicians in the PHP do very well. Over 90% complete the program without any disciplinary actions or major relapses. But we know our participation is low—about 1½ % of the in-state physician population. States with separate programs are treating 5-6%, and so we know we could be reaching more people.

He also said that, as staff, we can be only reactive. We are not counselors or therapists—when something happens to a physician in the program, our only recourse is to come to the board and

see whether discipline should be imposed. Our positive responses are limited by the nature of the program.

Mr. Houdek noted funding will be a major issue. The board can contribute some, but not all that is needed to operate such a program. We need to include many stakeholders, not only for buy-in, but for funding.

Dr. Kavlie thanked Mr. Riskedahl for his work and thought it will be of major benefit to physicians in North Dakota. He too is concerned about funding and stated we needed to examine that.

Dr. Miller suggested perhaps, once the program was established, we could impose an additional flat fee to continue to help support it.

Dr. Byers thanked Mr. Riskedahl for the work he has done. He noted, however, that we are doing a good job now, getting good reviews from participants, and we should not be looking to making government agencies bigger. Government should be limited. The medical association exists to represent physicians.

Dr. Miller felt such a program would encourage people to seek the help they need.

Dr. Hoerauf sees this program as an avenue for seeking help for colleagues that is not available.

Ms. Wardner asked whether we are creating a level of government where private entities could be doing this. Wouldn't physicians just handle this privately?

In response to questions from the board, Mr. Riskedahl noted that all but four other states have separate PHP programs. They are many variations to these programs, but the one we seem to be gravitating toward is very common.

Dr. Miller noted that every physician helped would benefit thousands of patients and really help the public.

Mr. Riskedahl said he would like to see the board pass a motion to support going forward with the work on a separate PHP.

Dr. Johnson called for a straw vote, which passed 11-1, to ask the PHP committee to continue its work on establishing a separate PHP program. Dr. Byers opposed, for the reasons previously noted.

Thermography:

Duane brought to the board's attention an issue Dr. Miller raised about an out of state physician who is sending "thermography" reports to a massage therapist in Watford City. This physician is not licensed in North Dakota. The board agreed this was the practice of medicine, as he was using the title "M.D." in his reports, and it was being used to treat people for various ills. Duane said we need to do a cease and desist order or letter to the physician.

Nominating Committee:

Drs. Johnson, Byers and McLean agreed to serve as a nominating committee to make recommendations to replace Dr. Colón and Dr. Lewis, when she leaves the board due to her leaving active practice at Sanford.

Audit Report:

Duane noted that the audit report was clean, with the only new issue raised being that staff should use and change individual passwords every three months. Duane said staff would do that.

Budget:

Dr. Lewis said she and Duane visited about the budget. She noted a request for a 4% increase in salaries, with other categories being relatively the same as prior years. She also noted a significant increase in income due to the recent fee increase for annual renewals.

Duane noted that the salary increase request was based on the September CPI report of 3.9%. Dr. Byers asked how this compared to other state agencies. Duane said it was one percent less, and when you average it with last year's increase of 2%, it is perhaps 2% less than other state agencies.

Dr. Kavlie asked how much we will realize from the fee increase and Duane said it should bring in about \$160,000 additional per year. Of that, we know \$60,000 will be spent in the coming year on the computer upgrades, and perhaps a little more as there are always enhancements that are not covered in the initial contract. He also noted we spoke of contributing to a separate PHP, and we could afford to contribute perhaps \$50,000 to that effort, plus some reserves for start-up costs.

Dr. Lewis moved to approve the budget as submitted. Dr. Miller seconded the motion. The motion passed unanimously.

Office Matters:

Duane noted that staff is meeting twice a week to review their business practices and conform the new program with them. The data is imported into the new program and the website is designed. The contractors are telling him they expect to be running by April. Duane said his hope is to have the board disciplinary part of the program ready to demo at the March meeting.

Dr. Jon Allen of the UND medical school contacted the office to state his intention to try to develop a North Dakota "CPEP", using patient simulators they have at the school. Dr. McLean said the potential is there for this. Dr. Kavlie said the simulator program there is very impressive.

Duane said he would follow up when UND is ready to move forward.

Duane informed the board of current and recent hearings: Dr. Kennedy's hearing on a CME violation has been held and we are waiting for the ALJ decision; Dr. Wildman's hearing was held on a physical and mental disability to practice; and the Dr. Lorenz case is in the pre-hearing stage.

Stacy is representing the board in that case.

MOL/MOC:

Dr. Kavlie reported that at the recent AMA meeting, it was demonstrated that the online CME tests have been shown not to correlate. The specialty certification exams, on the other hand, have been demonstrated to correlate to competency. He said there are ongoing discussions at the AMA about how to ensure CME promotes competency, as opposed to just licensure.

Unfinished Business:

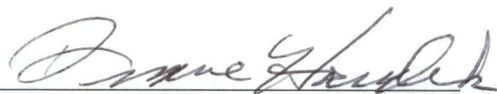
Dr. Johnson thanked Dr. Lewis for her service on the board, and noted a plaque from the Governor would be forthcoming after she resigned in January. Dr. Lewis said it was a pleasure to serve on the board.

Adjournment:

Dr. Byers moved to adjourn the meeting. Dr. Lewis seconded the motion. The motion passed unanimously. Dr. Johnson adjourned the meeting at 11:33 a.m.



Larry E. Johnson, MD
Chairman



Duane Houdek
Executive Secretary