

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

July 27, 2012

Call to Order

Larry Johnson, MD, Chair, called the board to order at 8:00 o'clock, a.m., at the Board offices in Bismarck. Attendance was as follows:

Investigative Panel A:

Gaylord Kavlie, MD, Chair

Andrew McLean, MD, Vice-Chair

Larry Johnson, MD

Robert Tanous, DO

Burt Riskedahl

Genevieve Goven, MD

Investigative Panel B:

Norman Byers, MD, Chair

Kent Martin, MD, Vice-Chair

Cory Miller, MD

Kayleen Wardner

Jonathan Haug, MD

Kate Larson, PA-C

Kent Hoerauf, MD – Absent

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

The Chair welcomed Drs. John Martsolf and Stephen Nelson, Mr. John Vastag, Ms. Larissa Hansen and Ms. Marie Schuetzle, who appeared to present information regarding the licensing of genetic counselors; Courtney Koebele, Executive Director of the NDMA; and Scott Barry, PA-C, representing the North Dakota Academy of Physician Assistants.

Approval of Minutes

Dr. Byers moved the approval of the minutes of March 23, 2012, meeting, as distributed. Dr. McLean seconded the motion. The motion passed unanimously.

Dr. Byers asked about the progress of the Tramadol investigation and Duane explained that the information had been given to the Crime Bureau and the Attorney General's office was working with local state's attorneys, but no prosecutions had taken place yet.

Nomination of Officers

Dr. Johnson appointed Dr. Kavlie to survey the board to present a slate of candidates for officers.

Physician Waiver of Interview

Dr. Kavlie moved to approve the list of physician applicants deemed eligible for waiver of interview.

Dr. Byers seconded the motion. The motion passed unanimously.

Special License Waiver of Interview

Dr. Byers moved to approve the list of applicants for a special license deemed eligible for waiver of interview. Dr. Haug seconded the motion. The motion passed unanimously.

Resident Waiver of Interview

Dr. Byers moved to approve the list of residents deemed eligible for waiver of interview. Dr. Miller seconded the motion. The motion passed unanimously.

Genetic Counseling licensing

John Vastag, director of governmental affairs for Sanford in North Dakota, Dr. Stephen Nelson, Dr. John Martsolf, Larissa Hansen and Marie Schuetzle, genetic counselors in North Dakota, gave an oral presentation of this issue and a request that the board consider licensing genetic counselors in North Dakota.

They stated they are asking this board to license genetic counselors because genetic counseling will come to be an integral part of the practice of medicine, with genetic counselors working closely with physicians to tailor treatment and diagnoses to individual patients. The counselors role would be to explain how this is done and the impact of it. All diagnoses and treatments would continue to be done by the physician and the physician must order any genetic test.

Dr. Kavlie questioned the difference between certification and licensure. Dr. Martsolf said a license could prevent those not certified from practicing in North Dakota. Duane noted that licensure also includes an examination of fitness to practice, whereas certification is typically limited to knowledge of the subject matter.

Dr. Goven asked whether counselors worked independently or whether they had supervising physicians. Dr. Miller asked whether counselors would have an objection to a requirement that they have a supervising physician. Ms. Hansen replied that they would definitely be willing to discuss that requirement.

Twenty-one states have licensing for genetic counseling, or are working toward it. This draft

statute presented to the board is modeled after that passed by South Dakota. Mr. Vastag said they have not talked to legislators, but would like to have a bill ready to discuss with legislators in November.

Dr. Kavlie stated he was not sure that genetic counselors need to be licensed, nor that they should be licensed by this board. He question what kind of support they are seeking. Dr. Nelson said this board was sought out, as it has a reputation for thoroughness in its licensing process. Mr. Vastag said if the board did not endorse the concept, they would not be likely to ask the legislature to place genetic counselors with the board. Their goal is to work with the board on this matter.

Dr. Kavlie noted that noone on the board has expertise in genetic counseling and that may make it difficult to judge candidates.

Ms. Wardner stated she felt it would be good to have genetic counselors under the board's umbrella and that it would be consistent with our clear focus on medicine.

The board discussed the issue of how integral such counseling will be to the practice of medicine. The consensus of the board was for staff to continue to work with the genetic counselors on a bill draft, but not to commit to anything, but to bring this back to the board in November.

Investigative Panel A Report

Dr. Kavlie reported that Investigative Panel A reviewed nine cases. Three were referred for action, two were dismissed, one was invited into the PHP, one additional requirement was added to an existing PHP contract, one letter of concern was authorized, and one stipulation was approved.

Investigative Panel B Report

Dr. Byers reported that Investigative Panel B reviewed five cases. One was referred for action and four were dismissed.

IPB vs. James P. Wasemiller, MD

John reviewed this case and explained that Dr. Wasemiller, who practices on the North Dakota/Minnesota border in Wahpeton, had previous disciplinary action from this board and, later, from Minnesota, as well. In the Minnesota case, Dr. Wasemiller's competence to practice was evaluated at CPEP, the Center for Personalize Education for Physicians, and found to be

lacking. There was a recommendation that he be restricted to practicing in a group setting or complete a residency program.

This case went to a hearing before an administrative law judge. Dr. Wasemiller appeared and presented testimony. He stated he could not, as a practical matter, be hired to practice in a group setting, nor could he attend a residency program.

The administrative law judge found that, based on the Minnesota action, Dr. Wasemiller's competence to practice was below standards, and recommended an indefinite suspension of his license.

Mr. Riskedahl moved the acceptance of the findings of fact, conclusions of law and recommended order of the administrative law judge. Dr. Kavlie seconded the motion.

The motion, with panel A and Dr. Haug-- who was not on Panel B when the case was authorized-- voting, was passed unanimously.

IPB vs. Abdul R. Ahmed

Duane explained that the board had placed Dr. Ahmed, who practice in Massachusetts, on probation due to a Massachusetts Medical Board action. In this case, Dr. Ahmed was charged in federal court with obstruction of a healthcare fraud case, and was required to repay certain fees that he had collected. He has completed federal probation and the Massachusetts board has given him a full and unrestricted license. He has now petitioned North Dakota to do the same.

Dr. Kavlie moved to grant Dr. Ahmed an unrestricted license. Dr. Goven seconded the motion. The motion passed unanimously, with members of Panel A and Dr. Haug and Ms. Larson, who were not on Panel B when the case was authorized.

IPA vs. William Canham, MD

Stacy explained she has been working on this case which involved Dr. Canham giving an electronic password to a nurse. She found that the nurse had actually used her own password for the matters in question, which involved prescriptions following surgery, but that Dr. Canham had failed to properly date the prescriptions. This is, in fact, a violation, but it is not the offense we believed it to be.

Stacy entered into a stipulation with Dr. Canham that the case would be dismissed , but that he would be required to sign all electronic records, take any education courses required by the board

and pay the costs of investigation. The nurse in question was disciplined by the Board of Nursing for practicing beyond her scope of practice.

Dr. Miller moved to accept the stipulation. Ms. Wardner seconded the motion. The motion passed unanimously, with members of Panel B and Dr. Goven voting.

It was suggested that the issue of electronic record keeping be a subject of a newsletter article.

Application of Prabhakar Bhamidipati, MD

Dr. Bhamidipati meets all the requirements for a North Dakota license except the full 30 month residency requirement. He is seeking the exemption available to those otherwise eligible who can show they are board certified and have experience and training equivalent to the residency requirement.

Dr. Bhamidipati is board certified and has an extensive practice history.

Dr. Byers moved to grant an eligibility exemption to Dr. Bhamidipati. Dr. Miller seconded the motion. The motion passed unanimously.

Pharmacy collaborative agreement.

Dr. Byers reviewed this agreement, which was an addition to an existing agreement. Dr. Haug seconded the motion. The motion passed unanimously.

Sanford request regarding PA-C's administering deep sedation

The board was asked to consider whether physician assistants, with assignment and approval of a supervising physician, can administer deep sedation.

The board discussed the training that would be involved and noted most hospitals have tests required of those who administer deep sedation. Physician assistants would be subject to these same requirements.

Dr. Miller questioned whether this is a question we should answer, as we don't license procedures or specific privileges. This is, essentially, a hospital issue.

Dr. Kavlie moved that we send Sanford a letter stating we don't license specific privileges and this is a hospital issue, and an issue addressed under our current law regarding physician supervision of physician assistants. Dr. Miller seconded the motion.

The motion passed unanimously.

Interview of James Antes, PA-C

Ms. Larson led this interview. The board considered Mr. Antes' background and qualifications and questioned him specifically about a misdemeanor charge that had been reduced to trespassing. Mr. Antes explained the matter, and said he had disclosed it to the California Board where he was given a full license.

Ms. Larson moved to grant Mr. Antes a license. Dr. Haug seconded the motion. The motion passed unanimously.

Interview of Arden Beachy, MD

Dr. Johnson led this interview. The board reviewed Dr. Beachy's qualifications and asked him to explain a report that he had violated a patient boundary in 2005. Dr. Beachy explained that he had made inappropriate comments in an email to a patient, and did not maintain a professional relationship.

He explained that he took a boundaries course, as required by the Minnesota Medical Board, where this occurred, thereafter surveyed all female patients for their satisfaction, had a female chaperone in the room at the time of examination, and reported regularly to a board member of the Minnesota while this monitoring was ongoing. He has had no further incident or discipline. Dr. McLean moved to grant Dr. Beachy a license. Dr. Haug seconded the motion. The motion passed unanimously.

Interview of Michael J. Bittles, MD

Dr. Kavlie led the interview. The board reviewed Dr. Bittles' qualifications and practice history as a surgeon. They questioned him specifically about 4 malpractice cases he had in 2002, and about a case pending in Nebraska. He stated there was no issue affecting him in 2002; he did a large number of surgeries and these occurred. With regard to the Nebraska case, Dr. Bittles stated that case would be settled with the family, as he admitted he had injured a patient's bladder during surgery.

Dr. Kavlie moved to grant Dr. Bittles a license. Dr. Miller seconded the motion. The motion passed unanimously.

Interview of Gregory Casey, MD

Dr. Kavlie led the interview. The board questioned and reviewed five malpractices cases Dr.

Casey had over his career. The board did not find a pattern that would preclude licensure. Dr. Kavlie moved to grant Dr. Casey a license. Dr. Byers seconded the motion. The motion passed unanimously.

Interview of Wayne Cotton, MD

Dr. Cotton failed to appear for his interview and did not notify the board he would not appear. This is the second time he has been scheduled for an interviewed. The board requested that staff find out why Dr. Cotton failed to appear and bring this information back to the next meeting.

Interview of Don Helland, MD

Mr. Riskedahl led the interview. Dr. Helland is a radiologist. His license was suspended by the California Medical Board in 2003 because of chemical dependency issues. The license was reinstated in 2004 and Dr. Helland then successfully completed four years in the California Physician Health Program, without incident. He was licensed by the state of Montana in 2012 and is participating in the Montana PHP for one year. He has had no dependency issues since 2002. He has the necessary support groups in place.

Mr. Riskedahl moved to grant Dr. Helland a license. Dr. Kavlie seconded the motion. The motion passed unanimously, with Dr. Miller abstaining.

Teladoc

Duane reported that the attorney for Teladoc, sent the board a letter following the issuance of a cease and desist order against their operating in North Dakota. The order was issued initially because Teladoc was offering physicians to consult with North Dakota citizens who are employed by companies having a contract with Teladoc. These physicians were not identified and prescriptions were written without any physical examination.

Mr. Squires said their business model allows certain prescriptions (not including controlled substances) to be issued after a telephone consult and a review of electronic health records. He said they don't identify their physicians, but assured the board they are licensed to practice in the state.

The board discussed the matter and concluded such telephonic prescribing is not allowed under the medical practice act, especially for first time prescriptions and we need to know who the physicians are that are issuing such prescriptions. They also questioned how such an entity could

be sure they are getting access to a complete medical record.

Dr. Martin moved to keep the cease and desist order in place. Dr. Miller seconded the motion. The motion passed unanimously.

Navel Piercing

The board reviewed a request by the City of Bismarck to look at its ordinance restricting navel piercing and excepting those considered medical procedures. The board declined to issue an opinion on the matter and requested staff to relay to the City that if they are concerned with the scope of procedures allowed under this exception, it should be taken care of through the ordinance itself. The board cannot give its opinions prospectively for cases about which it is given no facts.

Request of Advanced Surgical Arts

Dr. Honeycutt requests that her aesthetician be allowed to perform skin tightening using a non-ablative radio frequency device while Dr. Honeycutt is present.. She provided information about the device in question and the training involved.

The board concluded this was permissible.

Request of American Medical Foundation

The American Medical Foundation questioned whether physician mentoring could occur in North Dakota under our current laws and, if not, whether the board is interested in the topic and in making necessary changes in the law to allow it to occur.

Following discussion of who would bear responsibility for any harm to patients in cases in which something went wrong, the board decided to leave the law as is, which is the allowance of a consultation on a one-time, but not continuing, basis.

Request of UND School of Medicine

After visiting with Duane, Dr. Rob Beattie submitted a letter asking the board to increase the allowed number of attempts at each USMLE component from three to four. He explained that they had a small number of students over the years who were allowed to take the test component a fourth time and did well on it, and went on to become good physicians.

The board discussed the merits of allowing further attempts and also the rationale for limiting the number of attempts, which most states do, although the number varies. There was a discussion

of whether a sufficient case had been made, based on fairly rare instances, to change the rule.

Dr. Miller moved to leave the law as it is, requiring passage of each component in three attempts.

Dr. Byers seconded the motion. The motion failed, five votes to seven.

Dr. Kavlie moved to amend the rule to allow four attempts for each component of the licensing examination. Dr. Tanous seconded them motion. The motion passed, eight votes to four.

Resident license fees

Duane explained that, currently, residents pay \$25 per year for each year they are in a program and are allowed to pay in full at the beginning of a program or apply for a new license each year they are in the program.

Staff is proposing this be changed to a resident license fee of \$100.00 for the full duration of a training program, whether that is 3, 4 or 5 years long. Administratively, this would eliminate many applications and would avoid the extensions that must be made when a resident has a short delay in completing a year.

Dr. Haug moved to approve the change to \$100.00 fee for the duration of a residency program.

Dr. Martin seconded the motion. The motion passed unanimously.

Physician CME reporting cycles

Duane explained that we renew physicians' licenses twice a year, splitting the alphabet, and audit CME in three groups, again split by alphabet. This is not the most workable way of doing this. Staff is asking that we now have physicians license expire on their birthdays, so there is less a conflict with the CME schedule, among other things, such as spreading out the workload.

Dr. Kavlie moved to approve the rule change as presented. Dr. Haug seconded the motion. The motion passed unanimously.

PA License renewal requirement

Duane stated we need to make a rule change to reflect a change in the national certification period by the NCCPA from six years to ten. Right now, we say PA's must show they have re-certified every six years, which will no longer be required nationally, beginning in 2013. Rather than again tie ourselves to a specific time period, Duane suggested we change our rule to read:

“A physician assistant, on an ongoing basis, must provide documentation of current certification by the NCCPA or other entity approved by the board.”

Following a motion and second, the motion passed unanimously.

Election of officers

Dr. Kavlie reported a consensus that the slate of officers remain the same as now exists, and he moved that they be nominated and nominations cease. Dr. Haug seconded the motion. The motion passed unanimously.

PHP

Mr. Riskedahl supplied the board with drafts of proposed statutes and agreements that would be necessary to move the PHP out of the board's direct control. It was decided that this issue would be revisited at the November meeting.

Office matters

Duane requested that the board approve the expenditure of \$14,000 for additional microphones, explaining that our system came in groups of six and when we expanded beyond twelve members, we needed to purchase six additional microphones and supporting audio equipment. Dr. Byers moved to approve the expenditure. Dr. Miller seconded the motion. The motion passed unanimously.

Software presentation

Dan Albertson and Zoe Spooner from Albertson Consulting gave the board a presentation of the changes in the database and website, as well as introductory training in how to access documents through the website for board and panel meetings.

Adjournment

Dr. McLean moved the meeting be adjourned. Dr. Byers seconded the motion. Dr. Johnson, Chair, adjourned the meeting at 1:48 o'clock, p.m.