

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

November 16, 2012

Call to order:

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

Investigative Panel A		Investigative Panel B	
Andrew McLean, MD, Vice Chair	Present	Norman Byers, MD, Chair	Present
Larry Johnson, MD,	Present	Kent Martin, MD, Vice Chair	Present
Robert Tanous, DO	Present	Cory Miller, MD	Present
Burt Riskedahl	Present	Kayleen Wardner	Present
Genevieve Goven, MD	Present	Kent Hoerauf, MD	Present
Gaylord Kavlie, MD, Chair	Absent	Kate Larson, PA-C	Present
		Jonathan Haug, MD	Present

Minutes:

Dr. Byers moved the approval of the minutes of the July 27, 2012, meeting of the board, as printed and distributed. Dr. Tanous seconded the motion. The motion passed unanimously.

Physician Waivers:

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

Special License Waivers:

Dr. Miller moved to approve the list of applicants for a special license deemed eligible for waiver of personal interview. Ms. Larson seconded the motion. The motion passed unanimously.

Resident License Waivers:

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

Investigative Panel A report:

Dr. McLean reported that Investigative Panel A reviewed 10 cases. Five cases were referred for

action, one case was referred for further review, one letter of concern was issued, and three cases were dismissed.

Investigative Panel B report:

Dr. Byers reported that Investigative Panel B reviewed eight cases. Two cases were referred for action, one case was referred to the Minnesota Medical Board, and five cases were dismissed.

IPA vs. Modesto Fontanez:

Stacy reviewed this case against Dr. Fontanez, which was based on an Ohio Medical Board action in which Dr. Fontanez' license was suspended indefinitely. This case was twice scheduled for hearing, and each time, Dr. Fontanez and his attorney failed to appear. At the second hearing, the Administrative Law Judge agreed to proceed with the Board's previous testimony, after trying in vain to reach counsel for Dr. Fontanez by telephone. The ALJ issued recommended Findings of Fact, Conclusions of Law and a recommended Order, which called for an indefinite suspension of Dr. Fontanez' license.

Dr. Miller moved to adopt the Findings of Fact, Conclusions of Law and the recommended Order. Dr. Hoerauf seconded the motion. The motion passed unanimously with members of Investigative Panel B and Dr. Goven, who was not a member of the board when this case was brought, voting.

Alexander Walker, MD; Wayne Cotton, MD:

Duane brought forward two applicants from whom the board has sought further information and who have not supplied the requested information to the board.

The first is Dr. Alexander Walker, who personally appeared before the board and was interviewed. After the interview, which revealed incidents involving the use of alcohol and charges of disorderly conduct, Dr. Walker was asked by the board to undergo a psychiatric and alcohol dependence evaluation. He has not done so for many months, and in July of this year emailed us stating he was not going to return to the practice of medicine.

The second is Dr. Wayne Cotton. Dr. Cotton completed his application and, because of certain addiction and mental health issues, was scheduled for an interview in 2011, for which he failed to appear. He said he called to tell us that, but no one in the office took any such call. After again saying he would come to interview, he has now declined and said the job he wanted in North

Dakota is no longer available, so he does not want to follow through with his application.

Duane explained that when an applicant has completed the application and wants to withdraw it due to the discovery of some issue potentially affecting his fitness for licensure, the board typically issues a formal denial of the application. It has not simply allowed the withdrawal of the application, for then there is no notice to the public or to other states that there may be an issue concerning the applicant.

Dr. Byers moved to formally deny the applications of Dr. Walker and Dr. Cotton. Dr. Martin seconded the motion. The motion passed unanimously.

Petitions for license eligibility:

Duane explained that our rules require 30 months of postgraduate training for graduates of international medical schools, but allow the board to waive the requirement of the last 18 months if an applicant 1) is ABMS board certified or has passed the SPEX examination, and has practice experience the board deems equivalent to or surpassing the 18 months of postgraduate training. Each of the applicants for license eligibility under this exception have at least one year of postgraduate training and at least 30 years of practice in other states or countries.

Dr. Michali is board certified in Urological Surgery. Dr. Leyland-Jones is board certified in Oncology. Dr. Knecht has recently passed the SPEX exam.

Dr. Goven moved to grant eligibility under the relevant exception to Drs. Michali, Knecht and Leyland-Jones.

Lynette pointed out that, of the three, Dr. Knecht has completed his application and met all other requirements, so he could be granted a license at this meeting.

Dr. Miller moved to grant Dr. Knecht a license. Dr. Goven seconded the motion. The motion passed unanimously.

PDMP Guidelines:

Duane presented the PDMP guidelines the board had preliminarily approved at the last meeting for the purpose of vetting, and explained that he had taken them to the medical association, the appropriate legislative committees, among others, and they were very positively received.

He asked the board to consider their adoption, as well as a statement that, in the course of an investigation, the board would consider the use or lack of use of them as one piece of evidence in

determining whether a prescribing violation had occurred. The board discussed the PDMP at length, noting that there are real impediments to its use, citing the sign-up process, the length of time it takes to enter the patient information, and the lack of any default time line for information. Dr. Johnson noted that only 33% of North Dakota physicians are signed up for direct access and that should be much higher.

It was the consensus of the board that efforts should be made by the board of pharmacy to make the PDMP much more user friendly if it is expected that more physicians will use these regularly. There was also concern that these do not always have the most up-to-date information.

It was noted that most physicians use these, or internal records, to assist them in prescribing. But it was also noted that those physicians who come before the board often use neither.

There was a discussion that the PDMP was not very efficient. It was also noted that when patient safety is involved, efficiency is not the primary concern.

Ms. Wardner moved to forward the concerns of the board to the board of pharmacy in an effort to improve the PDMP. Following further discussion, she withdrew the motion, which had not been seconded, stating she made it only because she believed we had already adopted the guidelines themselves, which she supported.

Dr. Martin moved that we adopt the guidelines and notify the board of pharmacy that we would like them to address the issues discussed that would make the PDMP more user friendly. Dr. Miller seconded the motion. The motion passed 11-1, with Dr. Byers opposed, having stated in the discussion that the issues with the PDMP should be addressed first before we establish guidelines for its use.

Scope of Dental Surgery

Duane presented a letter from Dr. Lamb questioning the scope of practice allowed for a maxillofacial surgeon with a DDS degree, but no MD. He questioned whether the surgeries described fit within the practice of dentistry.

Dr. Miller felt these were procedure questions that are best handled by the hospital credentialing process. Dr. Haug felt that, following a fellowship in maxillofacial surgery, a person is trained and the underlying degree is not the issue.

After further discussion, the board decided that this was not a question the board should attempt

to answer. Dr. Martin suggested that the Board of Dentistry should decide the scope of practice if the underlying degree is a DDS, and this board should do so if the degree is an MD or DO. In this particular case, the board suggested that we refer this matter to the Board of Dentistry.

Physician Health Program

Duane reported that Mr. Riskedahl and Drs. Johnson and McLean have been working on this in the interim. We have obtained confirmation of previous offers of financial support and Duane said this board could afford to contribute \$50-75K with harming the board's functions or using reserves on an ongoing basis. He said after meeting with the director of the Montana program and doing additional research, he is confident that the program staffing previously presented to the board—3-4 FTE's—would be sufficient to run a robust program in North Dakota.

Mr. Riskedahl said that after considering the cases that have been brought before the board, he feels they could have been caught earlier and appropriate action taken before the disease process led to violations of the law. He is pleased with the board's receptivity to this idea and thinks it would be good to move forward on the issue.

Dr. Goven asked if the program would report to this board. Mr. Riskedahl stated that an agreement would be reached between the board and the PHP, providing that any violations of the medical practice act would be reported for appropriate discipline, but that, unless there were violations, the physicians would get the same confidential treatment that others in rehabilitation programs enjoy.

Dr. Byers asked how many participants we have and Duane said we have 28. Dr. Byers asked if we have job descriptions for PHP staff and Duane said not specifically, although we know the types of employees that are needed for the program. Specific job descriptions would likely be written by the program itself.

Mr. Riskedahl moved to authorize staff to pursue appropriate authorizing legislation, to continue to seek funding sources and to establish an appropriate framework for a separate PHP. Dr. Miller seconded the motion. The motion passed unanimously.

Pharmacy Collaborative Agreements:

Dr. Byers reviewed pharmacy collaborative agreements from Sanford dialysis and anti-coagulation clinic that had previously been approved by the board. He stated they merely added

additional physicians to the agreements. Dr. Byers moved the approval of the agreements. Dr. Hoerauf seconded the motion. The motion passed unanimously.

Personal Interviews

John Moseley, MD

Dr. Tanous led the interview of Dr. Moseley. The main issue was Dr. Moseley's disciplinary actions with the Georgia medical board and his rehabilitation status.

In response to questions from Dr. Tanous, Dr. Mosely explained that he was disciplined in 2006 because he wrote prescriptions to family members and did not properly document them. He said this was really about obtaining drugs for his own addiction. He began treatment as a result of the board order and said it was a great blessing. He says he has been clean for seven years and has numerous drug screens to prove it. In 2007, he was reissued a medical license with restrictions and then, in March of 2012, all restrictions were removed and he now has an unconditional license.

He states he goes to from three to five meetings a week, and has already established contacts in North Dakota to continue meetings. He states he has continued random drug screens on his own, even though they are no longer required, and is looking at how he will do that in North Dakota. The board discussed the matter and it was the consensus that Dr. Moseley has done very well in recovery and would be a safe and good practitioner in North Dakota.

There was a discussion of whether to mandate continued drug screens and it was concluded that the board should ask him to continue to do them, but not to mandate them.

Dr. Tanous moved to grant Dr. Moseley an unrestricted license. Dr. Byers seconded the motion. The motion passed unanimously.

John Sampson, MD:

Mr. Riskedahl led the interview of Dr. Sampson. Mr. Riskedahl outlined that the sole subject of inquiry with regard to Dr. Sampson is a federal criminal complaint with multiple felony counts that has been filed against him in Michigan for defrauding an insurance company by changing procedure codes and labeling cosmetic procedures as medically necessary ones. Mr. Riskedahl noted that in 20 years of practice as a plastic surgeon, Dr. Sampson has never had any disciplinary action by any licensing board and does not have a history of malpractice cases.

In response to questions from Mr. Riskedahl, Dr. Sampson said this is an overreaction on the part of Blue Cross/Blue Shield; that he had submitted documented requests for the procedures in question and they were at first approved. He said the federal case, which has been pending since 2010, has been delayed in part because he has been fighting the seizure of \$750,000 from his office, which he succeeded in getting overturned, and because he refuses any settlement as he believes he has done nothing wrong.

Duane noted the prosecutor in Michigan said this is more than a billing issue; that there is no mistaking the two procedures at issue; and they have medical experts that will substantiate the charges of fraud.

The consensus of the board was that these are just charges at this point, and Dr. Sampson is innocent until proven guilty. It was noted that he is a very competent surgeon and will pose no risk to the public if he practices here while the charges are being resolved. Dr. Martin suggested it may be more appropriate to have him dispose of his criminal charges first and then apply for a license.

Dr. Byers moved to grant Dr. Sampson an unrestricted license. Ms. Wardner seconded the motion. The motion passed 11-1, with Dr. Martin opposed.

Vinod Singh, MD

Dr. McLean led the interview of Dr. Singh. Dr. Singh's main issue is that he has been struggling to maintain sobriety, and states he has been sober since January of 2012. Prior to that he has been in treatment twice for alcohol addiction and has relapsed. His medical license in North Carolina was suspended in March of 2010 by consent decree, and suspensions/denial of renewal followed in Pennsylvania and Illinois.

In response to questions by Dr. McLean, Dr. Singh said he is working chiefly on maintaining his sobriety day to day. He has not practiced medicine for over two years and he has not kept up with CME during that time. He indicated that in 2010, his treatment providers were concerned that he was depressed and, although he felt hopeless at times, now feels that he is doing better in that regard. Dr. Singh told the board that he is seeing a treatment provider in Florida in anticipation of becoming licensed again and joining a Physician's Health Program.

Ms. Wardner moved to deny Dr. Singh's application for a license. Dr. Tanous seconded the

motion. In the board's discussion, it was noted that Dr. Singh appears to be making some progress, but to be licensed, he needs to maintain sobriety for a longer period of time, obtain the necessary CME, and establish proof of medical competency. The motion to deny a license passed unanimously.

Genetic Counseling:

Dr. Johnson indicated that the issue before the board was whether the board should license genetic counseling. Dr. Byers moved that the board not license genetic counselors. Dr. Tanous seconded the motion.

The board engaged in a lengthy discussion of the relative merits of including genetic counselors under the board. The discussion explored, on one hand, the lack of knowledge of the subject matter, making it difficult to regulate, and the disadvantage of spreading ourselves too thin versus the belief that genetic counseling is an integral part of the practice of medicine and will grow in relevance, making it appropriate to license by this board.

The board also discussed at length whether there would be direct supervision by a medical geneticist, MD or DO. It was pointed out that there is only one in the state and this may be difficult from a practical point of view. The genetic counselors in the audience said that in oncology, for example, counselors work directly with oncologists, but not necessarily with medical geneticist.

The board then reviewed the proposed legislation and noted a number of matters that it said would need to be corrected, especially in the area of those exempt from licensure. There was discussion of making sure the exempt students were in training programs, as an example.

Following this discussion, Dr. Tanous stated that genetic counselors would provide an additional piece of information to patients that they might use to help them decide about their medical care. He then withdrew his second of the motion, which died for lack of another second.

The discussion then turned to whether genetic counselors should be supervised by a medical geneticist. Dr. Martin moved that genetic counselors must be under the supervision of a physician medical geneticist. Dr. Miller seconded the motion. Dr. Byers pointed out there is only one in the state and this would be difficult from a practical standpoint. Duane noted that the real question before the board is whether or not to license them—that other issues could be dealt

with subsequently.

Dr. Martin withdrew his motion and Dr. Miller withdrew his second. Dr. McLean moved that genetic counselors be licensed by the board. Dr. Miller seconded the motion. The motion passed 10-2, with Dr. Byers and Mr. Riskedahl opposed.

The discussion then turned to making changes to the draft and Duane asked if there was someone on the board he could talk with as needed going forward. Dr. Miller volunteered to work with Duane as needed to make the appropriate changes.

Audit report:

Duane reported that the auditors completed the audit in September. We don't have the draft back yet, but in the exit interview the auditors said it was completely clean with no materials findings.

Budget:

Duane reported that he reviewed the budget with Dr. Tanous.

He stated he is proposing a three percent increase in staff salaries. He reported that Ms. Redmann retired and there is not a plan to replace her. Many of her duties are being spread out to other staff with the use of the new software program.

The biggest variance in the budget to actual expenditures during the last year was in office equipment and Duane explained that each item—the Ipads, the microphones and the copier were brought to the board for individual approval.

Finally, he stated that he didn't put any PHP contribution in the budget, as it was premature to do so, but the budget had room for the board to contribute \$50-75K without impeding the other board functions or causing us to use reserves.

Dr. Byers moved to approve the budget. Dr. Haug seconded the motion. The motion passed unanimously.

Technology questions:

Members had questions about technology. Dr. Martin asked about getting updates when new matters are posted. Duane said he would work with the programmers to perhaps add that feature to the “last changes” tab in the program. Dr. Goven asked about organizing notes and there was a discussion of that feature.

Duane thanked Lynette, Marijo and Lynn for the hours spent on rewriting the rules for the new

program and website. It involved changing our business rules for every aspect of licensing, and everyone worked on it diligently.

Finally, Duane noted that we have changed the license renewal period from calendar year to physician birthdate and noted the implications that has for CME and renewals.

Other business:

Dr. Johnson regretfully accepted the resignation of Dr. McLean, who is taking a position with Ross University medical school. Dr. McLean said it has been an honor to serve, and the board expressed its appreciation of his service.

Adjournment:

Dr. Byers moved the meeting be adjourned. Dr. Johnson seconded the motion. The motion passed unanimously. Dr. Johnson adjourned the meeting at 11:51 o'clock, a.m.