

**NORTH DAKOTA STATE
BOARD OF MEDICAL EXAMINERS**

March 22, 2013

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:

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

Also present were Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; Stacy Modenhauer and John Olson, counsel. Scott Barry, PA-C, and Cheryl Ulver, PA-C, were present, representing the North Dakota Academy of Physician Assistants.

Welcome of New Board Member:

Dr. Johnson welcomed to the board Robert J. Olson, MD, a psychiatrist from Fargo, who was recently appointed by Governor Dalrymple.

Minutes:

Dr. Miller moved to approve the minutes as distributed. Dr. Haug seconded the motion. The motion passed unanimously.

Election of Officers:

Dr. Martin nominated Dr. Tanous for the position of Vice Chair of the board. Dr. Miller seconded the nomination. The nominations were closed and a unanimous ballot was cast for Dr. Tanous.

Dr. Johnson nominated Kate Larson, PA-C, to replace Dr. Tanous as Treasurer. Dr. Miller

seconded the nomination. Nominations were closed and a unanimous ballot was cast for Ms. Larson for the position of Treasurer.

Physicians eligible for waiver:

Dr. Miller moved the approval of the list of physicians deemed eligible for a license without interview. Dr. Haug seconded the motion. The panel discussed a number of applicants, but no separate motions or exceptions were made. The motion passed unanimously.

Resident license applicants eligible for waiver:

Dr. Kavlie moved the approval of the list of residents deemed eligible for a resident license without interview. Dr. Byers seconded the motion. The motion passed unanimously.

Investigative Panel A Report:

Dr. Kavlie, Chair of IPA, reported the panel considered 10 cases. It approved five stipulations, referred two cases for formal action, issued one letter of concern and dismissed two cases.

Investigative Panel B Report:

Dr. Byers, Chair of IPB, reported the panel considered nine cases. It referred two cases for formal action, issued one letter of concern and dismissed nine cases.

Byron Velander, MD

Ms. Moldenhauer, legal counsel, explained that Investigative Panel A had issued a complaint against Dr. Velander for inappropriate texting with a patient. The stipulation offered and accepted by Dr. Velander provides that his license will be suspended for one year, but that suspension will be stayed provided he attends the boundaries course at Vanderbilt University within six months of this board's approval of the stipulation.

Dr. Haug moved to accept the stipulation. Dr. Miller seconded the motion. The motion passed unanimously, with members of Panel B and Dr. Olson voting. Dr Olson was eligible to vote as he was not a member of Panel A when this complaint was brought.

Frank Shipley, MD

Ms. Moldenhauer explained that Investigative Panel A had issued a complaint against Dr. Shipley for non-compliance with the Physicians Health Program (PHP). She stated Dr. Shipley had been a voluntary participant in the PHP, but had failed to comply with the requirement that he attend AA or other support groups as outlined in the PHP agreement.

The stipulation provides that he will now be ordered into PHP and if he fails to comply with any of the PHP components, his license will be suspended for a period of one year.

Ms. Wardner moved to accept the stipulation. Dr. Miller seconded the motion. The motion passed unanimously, with members of Panel B and Dr. Olson voting. Dr. Olson was not a member of Panel A when this complaint was brought.

Michael Schmit, MD

Ms. Moldenhauer explained that Investigative Panel A had investigated a complaint against Dr. Schmit for having sex with a patient. In the course of that investigation, it was established that he had, in fact, done so. It was also established that he had consumed alcohol with this patient. As he was a member of PHP, this was a violation of his agreement with the board.

Ms. Moldenhauer stated the stipulation provides for Dr. Schmit's license to be suspended indefinitely. This is based upon his past history with the board, and the fact that he has been released from employment at two institutions for having sexual relationships with staff, and now a patient.

Duane noted that he also threatened this patient with harm should she disclose this relationship, and has pled guilty to a misdemeanor charge for doing so.

Dr. Haug moved to accept the stipulation. Ms. Wardner seconded the motion. The motion passed unanimously, with members of Panel B and Dr. Olson voting. Dr. Olson was not a member of Panel A when this complaint was brought.

Ronald Wagner, MD

Ms. Moldenhauer said Dr. Wagner has been a member of PHP and has had difficulty abstaining from the use of alcohol. We had been advised by a colleague of Dr. Wagner's in South Dakota that he had relapsed.

Mr. Houdek asked Dr. Wagner to come to the board office to discuss the matter and, at that time, Dr. Wagner signed a stipulation saying he would not practice until this matter could be investigated.

After investigation, a complaint was issued for failing to comply with the PHP agreement. Dr. Wagner signed a stipulation that provided his license would be indefinitely suspended.

Dr. Miller moved to accept the stipulation. Dr. Haug seconded the motion. The motion passed

unanimously, with members of Panel B and Dr. Olson voting. Dr. Olson was not a member of Panel A at the time the complaint was brought.

Mansureh Iravani, MD

Stacy outlined the procedural history of this case. Dr. Iravani was involved in an accident in which she struck a traffic sign. When police interviewed her, she was incoherent and was suspected of being under the influence of alcohol. She tested negative for alcohol, but positive f/or methamphetamine. The police department reported the matter to the board.

Dr. Iravani was sent to Acumen Institute for an evaluation, which found that she was not addicted to drugs or alcohol, but suffered from mental health issues, which, if not treated, could result in her abusing drugs.

Dr. Iravani immediately entered into a stipulation allowing her to practice only if she took daily urine tests and wore a pharm-chem patch, which would test for illicit drugs. Upon completion of the assessment at Acumen, she entered into a stipulation requiring her to abstain from all mood altering substances, have regularly meetings with a psychiatrist and treating physician, submit to frequent drug screening and join the PHP program for a period of five years. A violation of any terms of the stipulation would result in a suspension of her license for one year.

Dr. Olson noted that urinalysis for meth is good for only 24-36 hours, so tests would have to be that frequent to ensure compliance.

Dr. Johnson noted we have to change our PHP agreement to provide for all types of monitoring, given the changing technologies for drug monitoring. Duane said we would do so in our general agreement.

Dr. Miller expressed concern that, as a solo practitioner, there would not be sufficient oversight. Duane noted that is always a concern, as all employees in the office are dependent on one practitioner.

Dr. Haug moved to approve the stipulation. Dr. Martin seconded the motion. The motion passed unanimously, with members of Panel B and Dr. Olson eligible to vote.

William Yvorchuk, MD

Duane reviewed Dr. Yvorchuk's history with the board, dating from the emergency suspension of his license in 2008 for performing surgery while under the influence of alcohol, through the

reinstatement of his license in 2009 for the purpose of attending a residency in addiction medicine, with a prohibition of any surgical practice.

Dr. Yvorchuk now applies for reinstatement of his ability to perform minor surgeries. A treating psychologist sent the board a letter saying that Dr. Yvorchuk's recovery is still fragile and he is not recommended to go back to surgery in the foreseeable future.

Dr. Olson moved to deny his request to obtain the ability to perform surgery. Dr. Goven seconded the motion.

Dr. Kavlie stated that, because of the psychologist's recommendation, he would support the motion, but would hope we communicated to Dr. Yvorchuk that he may reapply if his treatment providers can assure the board he may practice without risk.

The motion passed unanimously, with Panel A members and Ms. Larson and Dr. Haug eligible to vote.

Jon Norberg, MD

John Olson reviewed the case against Dr. Norberg. The board issued a complaint against Dr. Norberg on July 26, 2011, after receiving notice that he had administered propofol to his wife, also a physician, at their home. That same day, the board obtained an agreement from Dr. Norberg that he would not prescribe nor administer propofol during the pendency of the action. The board scheduled a hearing for December 13, 2011. Upon advice of his counsel, Dr. Norberg did not appear. The board established its case and the ALJ issued recommended findings and a recommended order.

On January 5, 2012, the board entered an order indefinitely suspending Dr. Norberg's license and it has remained suspended since that time.

Subsequently, a criminal complaint was brought against Dr. Norberg for reckless endangerment and gross sexual imposition. After a trial to a jury, all criminal charges were dismissed. Dr. Norberg and his wife got divorced and, in that action, his wife was found to be deceptive in her allegations and Dr. Norberg was granted physical custody of the couple's children.

Mr. Olson stated that the criminal verdict is not especially relevant to the board charges, but there are some factors involved that are relevant.

The assessment of Dr. Norberg completed by Acumen Institute, with which Mr. Olson agrees,

indicated that Dr. Norberg was clearly wrong in his actions, but that it occurred situationally – only in the context of his dysfunctional relationship with his wife. There have been no issues of patient care. The board has always acted swiftly to protect the public, but it has also acted to provide rehabilitation to physicians where that is in the best interest of the public. If the board feels Dr. Norberg can be rehabilitated, it should set forth the conditions for a pathway back to practice.

The board discussed the options available to it. Dr. Miller moved to deny Dr. Norberg's petition for relicensure. Dr. Byers seconded the motion.

Ms. Wardner said she thinks the board would be harming North Dakota to deny him a license and noted the support from 205 former patients and the individual jurors who supported him.

What he did was clearly an error in judgment, but it was not the way he practiced generally.

Dr. Haug said what Dr. Norberg did was wildly inappropriate, even more so when treating a family member, which he should not be doing. Propofol is very dangerous and to dose it with a syringe is extremely dangerous. Surgeons do not get training in sedation of this type.

Dr. Kavlie voiced his concern about not providing a pathway back, citing the report finding him fit for practice.

Mr. Riskedahl stated his opposition to just denying a license. This is an extreme case and what was done was a gross error in judgment, but it appears to be an aberration and there does not appear to be a likelihood that it would happen to future patients. He would like to see the board provide a structured return to practice that provides appropriate monitoring.

Dr. Tanous said what was done here was horribly wrong, but it was situational. Things got out of control, but he stills see good here and that a pathway back to practice is appropriate.

Dr. Goven stated that even though Dr. Norberg acted arrogantly, he has shown remorse and was, in fact, trying to help his wife in a difficult situation.

Dr. Kavlie called the question. Duane clarified that passing the motion would deny his request for a license and disapproving the motion would leave the issue at the status quo.

The motion to deny Dr. Norberg's petition for a license failed 5-6, with Dr. Olson abstaining and Dr. Hoerauf absent. Drs. Johnson, Byers, Miller, Haug and Ms. Larson voted in favor of the motion. Drs. Kavlie, Tanous, Goven, Martin, Ms. Wardner and Mr. Riskedahl voted against it.

Dr. Martin moved to agree to the possibility of granting a license after completing an appropriately structured pathway. Dr. Kavlie seconded the motion.

Ms. Wardner questioned whether conditions should be set and a statement made that, if they are met, a license will be granted.

Mr. Riskedahl stated what we need is a “fitness for practice” assessment. Some of that is obtained from Acumen, but additional assessment is needed to be sure proper conditions are in place for a return to practice.

Duane noted the Acumen assessment is “soft”, in the sense that they do not provide objective measurements by which to conclude if conditions are met, except for the recommendation that he practice in a group setting, providing oversight. The only offer made in that regard thus far is from a confederation of free standing facilities that may not have the requisite ability to provide oversight.

Ms. Wardner questioned the applicability of a mentorship.

Duane suggested that a subcommittee be appointed to develop the specifics of a pathway back to licensure, as it will be difficult to do so for the board today. He further suggested having board members from each perspective be involved.

Dr. Miller suggested including Dr. McLean, as the psychiatrist on our board, Dr. Olson, has a stated conflict and cannot be involved.

Dr. Johnson appointed Drs. Tanous, Miller, Haug and Mr. Riskedahl to a panel which shall, following Dr. McLean’s review, develop a pathway back to licensure, if the motion is passed.

Dr. Martin called the question. The motion passed 9-2, with Drs. Miller and Byers opposed.

Lisa Ross, MD

Duane led the interview of Dr. Ross.

Dr. Ross is an OB-GYN who most recently practiced in Billings, Montana, and seeks to join a practice in Dickinson. Duane explained that she was asked to interview, not because she had any one matter that might be fatal to her application, but because there were a few matters that could best be explained by her directly.

Duane led the interview and asked about a DUI Dr. Ross had recently in Billings, where she was found in an apparent state of intoxication behind the wheel of her vehicle. Dr. Ross explained

that she had had only two drinks the evening in question and could not explain much of what went on because she has no memory of the evening. She states that it is her belief that someone had put some drug in a drink for her to have the reaction she did. She states she's never had any alcohol-related conviction or issues of any kind. She asked to be tested for drugs, but it was hand-written in the request and was missed by the lab.

She was reviewed thoroughly by the Montana PHP program and they found she has no issue with alcohol usage.

At one point in her career, Dr. Ross was investigated by the Iowa Medical Board for prescribing Xanax to a relative. She explained this a single incident after a death in the family, and after prescribing to her relative, she arranged for an ER visit and referral to another physician. The Iowa Board investigated the matter at the time and took no disciplinary action.

Duane asked Dr. Ross to discuss three malpractice cases she had, one in 2012 and two in 2002.

Dr. Ross discussed each patient and explained the cases to the satisfaction of the board.

Dr. Kavlie moved to grant an unrestricted license to Dr. Ross. Dr. Goven seconded the motion.

The motion passed unanimously.

Administrative licenses

Lynette recounted that this issue was raised in 2005 and she recalled that there was some support for it, but it never moved forward and became established. She explained we are now getting requests for licenses by physicians who may be providing utilization reviews or are involved in non-patient care situations, such as academic administration. One such applicant offered to sign an affidavit agreeing he would provide no patient care.

Dr. Byers stated this issue is raised consistently at the federation level, with many boards providing for administrative licenses for those physicians who do not practice clinically.

Mr. Riskedahl questioned whether there would be administrative problems with this and Lynette said, since the eligibility requirements would remain the same, it would not be difficult to administer.

Dr. Miller moved to create a license subset for administrative medicine that would not license the practice of clinical medicine and would require an affidavit stating the holder of the license would not practice clinically and could be disciplined if he or she did so. Dr. Olson seconded the

motion.

The motion passed unanimously.

TeleHealth

Duane explained this group wanted to appear before the board and he told them to submit their business model in writing.

The board discussed the fact that we always require licenses for telemedicine. Dr. Martin noted that in the practice of telemedicine, one loses the benefit of seeing the patient first-hand.

Duane said we will continue to see these types of care models. The board was not asked to take any action.

Mayo Clinic Network

Duane explained that two hospitals in the state have affiliated with Mayo Clinic and they have a number of physicians trained out of the United States who, because of the lack of United States residency training, do not qualify for a North Dakota license.

This physician (Dr. Norman Davies) is seeking an exception similar to Minnesota's, which is based on the federal visa language, for physicians of extraordinary knowledge and abilities.

Dr. Byers stated that creating exceptions opens the door to even more requests, and moved to deny the request. Ms. Wardner seconded the motion. Duane noted that there are always some people who fall just on the other side of the line, no matter where it is drawn.

Dr. Haug noted we all refer patients to Mayo, and it would be incongruous to say we will refer to a physician we would not license in North Dakota.

The question was called and the motion failed by a vote of 5 to 7, with Drs. Byers, Olson, Johnson, Ms. Wardner and Mr. Riskedahl voting in favor and Drs. Kavlie, Tanous, Goven, Martin, Miller, Haug and Ms. Larson opposed.

The board further discussed the Minnesota exception. Dr. Miller moved to enact an exception based on the federal visa language dealing with people of extraordinary abilities. Dr. Olson seconded the motion. The motion passed 10-2, with Drs. Byers and Johnson opposed.

Pharmacy collaborative agreement

Dr. Byers reviewed this agreement with Family Health Care in Fargo and found no problems with it. He moved its approval. Dr. Olson seconded the motion. The motion passed

unanimously.

Legislative Update

Genetic Counselor bill:

Duane reported that testimony in the first house indicated it would be a mistake to include a provision requiring genetic counselors to be supervised by a physician who is a geneticist, as there is only one in the state. He asked whether it would be acceptable to the board if supervision was stated to be by a physician, not necessarily a geneticist. That was acceptable, and Duane reported we would have the bill amended to reflect that.

Truth in advertising bill:

Dr. Miller asked what happened to the “truth in advertising” bill, that would require professionals who use the word “doctor” to state in all advertising the field in which they received their doctorate. This was a medical association bill and Dr. Kavlie reported that was defeated.

PHP bill:

Duane reported that the PHP bill has gone through.

Duane also reported that Sanford has budget issues and is now saying they need a pro forma and it is likely they will fund this at a lesser amount than they have been saying. Duane said we will still be able to work this out, and will resort to fees if necessary.

The board confirmed that Duane could commit the \$50,000 to \$75,000 annually that we have talked about in the past. The consensus of the board is that we should do no less.

Dr. Kavlie asked how much the program would cost, and Duane responded that it could vary by one FTE, from a minimum of \$240,000 with 2.5 fte’s to \$300,000 with 3.5 fte’s. Ideally, we would staff it at the higher level.

Financial audit

Duane explained that the audit is free of material faults. There was one criticism that was incorrect: the auditors said we had \$8,215 in uninsured cash balances. This is in fact incorrect, the investment they discussed was insured by an “umbrella” policy put in place by the brokerage firm.

Investment policy

Duane raised the issue that our conservative investment policy – essentially FDIC insured CD’s

or federal agency bonds – is slowly decreasing our return on investments. We are still above the rate of inflation, but the margin is decreasing. This begs the question of whether we should reexamine our investment policy and perhaps revise it accordingly.

It was suggested that we have a subcommittee composed of the officers of the board look at our investment policy and bring recommendations back to the board, that would deal with amounts and types of investments.

Administrative rules – Consideration of public comment

Duane presented the public comments to the proposed administrative rules. The only rule that received comment was the proposed rule increasing the allowable number of attempts of from three to four.

Dr. Elder, a former member of the board, objected to the proposed rule, saying we would be making a mistake to do this.

Dr. Kavlie noted that there is no evidence supporting the conclusion that those who take four attempts make worse physicians or are disciplined more or have any other deficiencies.

Dr. Byers noted we shouldn't be chipping away at our rules, and agrees with Dr. Elder.

Dr. Miller moved we leave the USMLE at 3 attempts, based on public comment.

Dr. Kavlie called the question.

The motion passed 8-4, with Mr. Riskedahl, Ms. Wardner and Drs. Kavlie and Tanous opposed.

Adjournment

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