

**STATE OF NORTH DAKOTA  
BOARD OF MEDICAL EXAMINERS  
July 25, 2014**

**Call to Order:**

Dr. Johnson, Chair, called the meeting of the North Dakota State Board of Medical Examiners to order at 8:00 o'clock, a.m., at the board offices in Bismarck, North Dakota.

The following members were in attendance:

**Investigative Panel A:**

Burt Riskedahl, Vice-Chair

Larry Johnson, MD

Genevieve Goven, MD

Robert Olson, MD

Gaylord Kavlie, MD (Absent)

**Investigative Panel B:**

Kent Hoerauf, MD, Chair

Kent Martin, MD, Vice-Chair

Kayleen Wardner

Manuel Colón, MD

William Haug, Jr., MD

Sara Solberg, MD

Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; Stacy Moldenhauer, counsel; Cheryl Ulven, PA-C, NDAPA; Courtney Koeble, NDMA; Allison Suttle, MD; and Ed Christensen were also present.

**Minutes:**

Dr. Martin moved to approve the minutes of the March 21, 2014, as distributed. Dr. Hoerauf seconded the motion. The motion passed unanimously.

**Appointment of Nominating committee:**

A nominating committee was appointed by the Chair consisting of Ms. Wardner and Dr. Hoerauf, to recommend candidates for the offices of Chair and Vice-Chair being vacated August 1, 2014.

**Waiver of interviews – Physicians:**

Dr. Goven moved to approve the list of applicants for a medical license whose interview would be waived. Dr. Solberg seconded the motion. The motion passed unanimously.

**Waiver of interviews – Administrative licenses:**

Ms. Larson moved to approve the list of applicants for an administrative license whose interviews would be waived. Dr. Haug seconded the motion. The motion passed unanimously.

**Waiver of interviews – Special licenses:**

Dr. Haug moved to approve the list of applicants for a special license whose interview would be waived. Dr. Solberg seconded the motion. The motion passed unanimously.

**Waiver of interviews – Residents:**

Dr. Haug moved to approve the list of applicants for a resident license whose interview would be waived. Dr. Colón seconded the motion. The motion passed unanimously.

**Investigative Panel A report:**

Mr. Riskedahl, Vice-Chair of Investigative Panel A, reported that the panel met July 24, 2014, and reviewed 16 cases: three cases were referred for disciplinary action; three confidential letters of concern were authorized; three stipulations were approved; two cases were referred for further review; one practitioner was invited to join the physicians' health program; and four cases were dismissed.

**Investigative Panel B report:**

Dr. Hoerauf, Chair of Investigative Panel B, reported that the panel met July 24, 2014, and reviewed 18 cases: four cases were referred for disciplinary action; one letter of concern was authorized; one stipulation was approved; and 12 cases were dismissed.

**Telemedicine:**

Mr. Houdek introduced the topic of the ongoing development of telemedicine and the board's responses to regulating it. He noted that the board, at its March, 2014, meeting passed a policy that basically stated physicians may use technology deemed appropriate, but would be held to the same standard of care as though conducting a face-to-face encounter. He noted that for prescribing, a face-to-face encounter was needed, with stated exceptions.

Since the March meeting, the Federation of State Medical Boards (FSMB) issued a suggested telemedicine policy, which was presented to the board. It varied from the board's telemedicine policy in two respects: First, it requires video. Online questionnaires, phone calls or emails by themselves would not be permitted. Second, it allows physicians to prescribe via telemedicine at their own discretion.

Mr. Houdek provided a brief survey of others state's efforts in this regard, and noted that Kentucky has adopted the FSMB as written and 4-5 other state boards currently are considering it, some just for the prescribing component. North Carolina has adhered to their requirement, thus far, of needing an in-person encounter prior to prescribing. Unlike North Dakota, Minnesota does not require physicians practicing telemedicine to be licensed in Minnesota, but they must be registered.

The real issue is not telemedicine as we have seen it practiced thus far, by remote radiologists or physicians monitoring ICU's, but by physicians encountering patients, possibly for the first time, while the patient is at their home, with no intervening medical personnel, and the physician is remote, connected by Skype or some other electronic means.

Mr. Houdek asked the board to consider the FSMB policy, consider the traditional medical encounter, and identify those things that they feel must be present to have a valid medical examination, diagnosis or treatment.

Mr. Houdek noted that Sanford has approached the board concerning their e-visits, which are online questionnaires for selected conditions, and has asked us to determine where those fall. Sanford expects to add Skype or other video in September of this year.

A bill will be introduced this legislative session saying that a payor may not discriminate against telemedicine encounter *vis-à-vis* personal encounter. There will likely be a question as to what such an encounter must include. Mr. Houdek noted, in this regard, that specialty boards are beginning to develop their own criteria for acceptable encounters, given the nature of their specialty.

Finally, Mr. Houdek asked that the board work to develop acceptable guidelines by the November meeting, including the issues of whether a physician-patient relationship may be established through a telemedicine encounter and whether prescribing may be done through telemedicine at the discretion of the provider.

Discussion was had that in other states where Sanford operates, they are prescribing antibiotics through telemedicine encounters. For now, that is just for patients who have a patient "portal" with Sanford, which can be established through any encounter with Sanford,

including an ER or walk-in clinic visit. Their goal is to expand beyond existing patients, and have first encounters with nurses operating as intake personnel, somewhat like "Ask-a-Nurse" did.

Dr. Hoerauf noted that at the FSMB meeting, some noted concern about regulations that require a traditional face-to-face encounter, stating 70% of acute care can be covered over the phone. It was stated that this is the model of the future and is an issue of cost containment. There is a need to look closely at the conditions under which a face-to-face encounter is necessary. There is also a need to provide some type of guideline for follow-up if the issue isn't resolved. Dr. Suttle, CMIO from Sanford, responded that this is done in their program.

Dr. Suttle also noted that they are looking at technology where patients can take their own vital signs, and medication reconciliation is being done. She stated now they take only patients 18 years of age and older, but they are starting to look at pink eye and are proceeding cautiously.

Ms. Larson stated that a bigger concern is patients who are not connected to a local health care system. This initiated a discussion that there must be disclosure of who the provider is in an electronic encounter, and that there must be something more than an email exchange.

Dr. Hoerauf questioned whether we could establish a telemedicine registry and allow only those registered to practice in that manner.

Dr. Martin provided his six criteria for telemedicine practice:

1. Providers are held to the same standard of care as in person encounters.
2. Providers are accountable to this board for all clinical judgments without regard to the medium of the patient encounter.
3. All providers must be licensed in North Dakota.
4. All medical records must be appropriately kept and made available for this board to determine quality of care.
5. Each encounter must demonstrate that patient established a patient relationship with the provider.

6. Prescribing controlled substances shall be prohibited unless the patient has an established relationship with a primary care provider.

Dr. Olson noted that a telemedicine resident may work with NW Human to help provide coverage in the western part of the state. Ms. Olson suggested the public needs to be educated about the practice of telemedicine.

Drs. Haug, Colón and Hoerauf volunteered to review telemedicine policies in the interim with Duane in preparation for the November meeting.

**IPA vs. Dan Dalan, MD:**

Ms. Moldenhauer reviewed this case and informed the board that Dr. Dalan practices primarily in Missouri. His complaint was issued for habitual use of alcohol. The stipulation provides his license will be suspended, with the suspension stayed for a period of two years, provided he complies with the requirements of the Missouri PHP.

Ms. Wardner moved to approve the stipulation. Dr. Haug seconded the motion. The motion was passed unanimously, with members of panel B voting.

**IPB vs. Scharazard Gray, MD:**

Mr. Houdek reviewed this case, noting that Dr. Gray first started practicing out of his house and had inadequate records for both his patient encounters, including his prescribing. He has since moved to a practice with adequate record-keeping. Mr. Houdek said that because Dr. Gray's previous practice did not have sufficient medical records upon which to base an opinion as to the quality of care provided, he got a list of Dr. Gray's current patients (23), reviewed five of the cases and found appropriate information regarding his patient encounters, prescribing and monitoring.

The stipulation provided that Dr. Gray's license will be suspended for one year, with the Suspension stayed if he completes an approved course on medical documentation and record-keeping within six months of the board's order.

Dr. Goven moved to approve the stipulation. Mr. Riskedahl seconded the motion. The motion passed unanimously, with members of panel A voting.

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

This case involved two separate courses of conduct. The first occurred in North Dakota

and involved Dr. Mosely sending sexually explicit texts to a female patient. The second occurred in Georgia, after Dr. Moseley left North Dakota, and involved his prescribing at a pain clinic in Georgia without the appropriate registration. Dr. Moseley faces criminal charges in Georgia for violation of what is described by the prosecutor as a “pill-mill” statute.

The stipulation provides for an indefinite suspension of Dr. Moseley’s license. Dr. Haug moved to approve the stipulation. Dr. Martin seconded it. The motion passed unanimously, with members of panel B voting.

**IPA vs. Wendell Danforth, MD:**

This complaint was brought against Dr. Danforth for the habitual use of alcohol, and the stipulation is based on the complaint and the further facts that Dr. Danforth prescribed controlled substances to a patient with whom he had a relationship and to employees with whom he had not established a physician-patient relationship.

The stipulation provides that Dr. Danforth’s license be suspended indefinitely.

Dr. Solberg moved to approve the stipulation. Dr. Haug seconded the motion. The motion passed unanimously, with members of panel B voting.

**Pharmacy collaborative agreements:**

Dr. Goven reviewed four collaborative pharmacy agreements that had been provided to the board, and moved they be approved. Dr. Martin seconded the motion. The motion passed unanimously.

**Election of officers:**

Ms. Wardner and Dr. Hoerauf, as the appointed nominating committee, recommended that the offices of Chair and Vice-Chair be filled by Drs. Kavlie and Hoerauf, respectively.

Dr. Martin moved that the recommendation of the nominating committee be accepted and Dr. Kavlie be elected Chair of the board and Dr. Hoerauf be elected Vice-Chair. Dr. Colón seconded the motion. Nominations were closed and Drs. Kavlie and Hoerauf were elected Chair and Vice-Chair, respectively.

**Richard Nybakken, MD:**

Mr. Houdek outlined Dr. Nybakken's history with the board. He last practiced in 2011 when he stopped renewing his license. By report, he is doing well with his alcohol rehabilitation, and has been since June of 2013. The question presented was whether the board wants to consider reinstating his license at this point. Mr. Houdek pointed out that, given the length of time he has been out of practice, perhaps a CPEP assessment would be in order if the board wants to consider him at this meeting.

Dr. Olson asked "how long is long enough"? Does he have cognitive impairment from his last episode? Perhaps there should be a neuropsych and a competency assessment.

The board decided to table consideration of Dr. Nybakken's license at this time.

**Jaime Sheperd, MD:**

Mr. Houdek noted a complaint was authorized against Dr. Sheper who was drinking while on call, and was either pushed or fell down stairs and suffered a head injury. Dr. Sheperd was in contact with us, but now has not responded to us in any way. Mr. Houdek suggested the board may want to consider an emergency suspension, since we can't ascertain Dr. Sheperd's status if he refuses to communicate with us. This poses an unknown, but possibly significant, risk to the public. Under law, we would need to obtain verified statements from witnesses and have a special board meeting by teleconference.

Dr. Olson moved to go forward with an emergency suspension. Dr. Haug seconded the motion, which passed unanimously.

**Office matters:**

Mr. Houdek informed the board of the following matters:

- Thomas Carver, D.O., has been appointed to the board and will be in attendance at the November meeting.
- He has held off scheduling a public hearing on authorized rules until we are sure we know the appropriate amount of surcharge required to operate the NDPAP.
- Dr. Barrie March has been hired as the NDPAP medical director.
- Tammy King has been hired as the NDPAP executive director.
- Newsletters will now be electronic only after July and November meetings.

- The board last reviewed staff performances in 2010. Mr. Houdek will give hard copies of a survey to each board member, seeking input on staff performances and member satisfaction on serving on the board. Responses will be reviewed at the November meeting.

**Investment report:**

In accordance with approval given at the last meeting, investment funds have been moved to the state investment board. Also, Mr. Houdek reminded the board that start-up costs, \$350,000 and then \$75,000 annually have been pledged to support the NDPAP.

**Unfinished business:**

Dr. Hoerauf presented Dr. Johnson with a letter from Governor Dalrymple and a plaque recognizing his eight years of dedicated service to the board and to the people of North Dakota. Dr. Johnson thanked the board members and staff, noting that he enjoyed his service on the board and will miss working with them.

Dr. Martin announced that this will be his last meeting, as he is leaving earlier than planned for mission work in Africa. The board thanked him for his service.

**Adjournment:**

Dr. Martin moved the meeting be adjourned. Dr. Haug seconded the motion. Dr. Johnson, Chair, adjourned the meeting at 10:40 o'clock, a.m.