

**NORTH DAKOTA BOARD OF MEDICINE**  
**July 24, 2015**

**Call to Order:**

The meeting of the North Dakota Board of Medical Examiners, (North Dakota Board of Medicine as of 8/1/2015) was called to order by Gaylord Kavlie, MD, Chair, at 8:00 o'clock, a.m., at the Board office in Bismarck, North Dakota.

Board attendance was as follows:

Investigative Panel A		Investigative Panel B	
Burt Riskedahl	Present	Kent Hoerauf, MD	Present
Gaylord Kavlie, MD	Present	William Haug, MD	Present
Robert Olson, MD	Present	Sara Solberg, MD	Present
Thomas Carver, DO	Present	Kayleen Wardner	Present
Genevieve Goven, MD	Present	Kate Larson, PA-C	Present
		Brenda Miller, MD	Absent
		Manuel Colón, MD	Absent

Staff attending were Duane Houdek, executive secretary; Lynette McDonald, deputy executive secretary; Marijo DeMott, recording secretary; and Stacy Moldenhauer, counsel.

Dr. Kavlie noted this would be the last meeting using the name North Dakota State Board of Medical Examiners, as the name is changed, statutorily, to the North Dakota Board of Medicine, effective August 1, 2015.

**Minutes:**

Dr. Goven moved the minutes of the March 20, 2015, meeting of the board be approved as distributed. Dr. Olson seconded the motion. The motion passed unanimously.

**Waiver of Interview – Physicians:**

Dr. Haug moved approval of the list of physicians granted a waiver of interview. Dr. Hoerauf seconded the motion, which passed unanimously.

**Waiver of Interview – Residents:**

Dr. Solberg moved approval of the list of residents granted a waiver of interview. Dr. Haug seconded the motion, which passed unanimously.

**Report of Investigative Panel A:**

Mr. Riskedahl, Chair of Investigative Panel A, reported that the panel considered nine cases: one referred for further review, two letters of concern issued, and six cases dismissed.

**Report of Investigative Panel B:**

Dr. Hoerauf, Chair of Investigative Panel B, reported that the panel considered seven cases: one stipulation was approved and six cases were dismissed.

**IPA vs. Michael Schmit:**

At the March, 2015, meeting, Dr. Schmit petitioned to be released from practice limitations. Action on his petition was tabled until this meeting, as he had not practiced under the limitation for the six months required in the original order.

As of August 1, 2015, it was confirmed that Dr. Schmit will have been fully compliant with all practice limitations and will have practiced successfully under those limitations for a period of six months.

Mr. Riskedahl moved to issue Dr. Schmit an unrestricted license on August 1, 2015, barring any practice violations in the interim. Dr. Hoerauf seconded the motion. The motion passed unanimously.

**Matter of John Dumbolton, DO:**

Dr. Dumbolton was ordered to undergo a competency evaluation at CPEP and is requesting an additional six months in which to attend the evaluation due to financial concerns and a death in his family.

Mr. Riskedahl moved to extend the date by which the competency evaluation must be completed to December 12, 2015. Dr. Hoerauf seconded the motion. The motion passed unanimously.

**Matter of Dan Dalan, MD:**

Dr. Dalan has requested that the stayed suspension imposed under his current disciplinary order be shortened by one year.

Citing Dr. Dalan's long history of substance abuse, Dr. Olson moved to deny his request. Dr. Haug seconded the motion. The motion passed unanimously.

**IPB vs. Julie Solberg, PA-C:**

Investigative Panel B issued a formal complaint against Ms. Solberg, based on her prescribing practices. Ms. Solberg agreed to a stipulation, under which her license would be suspended for one year, with that suspension stayed for a period of two years, on the condition that within six months she undergoes an evaluation of her prescribing practice and follows all board-adopted recommendations that stem from that evaluation, and that she pay costs of such evaluation and of prosecution.

Dr. Goven moved to approve the stipulation. Dr. Olson seconded the motion. The motion passed unanimously, with members of Panel A voting on the disposition.

**Pharmacy Collaborative Agreement:**

Dr. Goven reviewed and recommended approval of the addition of five physicians to a pharmacy collaborative agreement submitted by Altru Health System for an anticoagulation clinic.

Dr. Goven moved approval of the agreement. Dr. Carver seconded the motion. The motion passed unanimously.

**Fluoroscopy Procedures:**

Sanford Health requested that it be allowed to follow the Health Department's lesser requirements for certifying fluoroscopy technologists, rather than the licensing requirements of this board.

The board observed that certain questions about training, supervision and monitoring of the techs remained unanswered.

Dr. Goven moved to table action on the request until further information regarding the details of the proposal are obtained. Dr. Olson seconded the motion. The motion passed unanimously.

**Interview: Kevin Sullivan, MD:**

Dr. Olson led the interview of Dr. Sullivan, who is applying for a postgraduate training license. Dr. Sullivan was asked to interview because of past alcohol abuse and incompleteness of past training programs.

Dr. Sullivan explained that he had abused alcohol in the past, but has since been in treatment and is following an aftercare program. He feels the family practice residency in Williston is a better fit for him than the anesthesiology residency he did not complete. He has voluntarily entered the North Dakota Professional Health Program, which is authorized to advise the board of any relapse in his recovery.

Dr. Solberg questioned whether he might not feel isolated in Williston, but he felt he had a good support system in North Dakota, including two classmates in Minot and another in Williston.

Dr. Haug moved to grant Dr. Sullivan an unrestricted postgraduate training license. Ms. Wardner seconded the motion, which passed unanimously.

**IPB vs. Eric Pezhman, MD:**

Dr. Pezhman appeared, together with his counsel Bob Udland, to discuss the appropriate resolution of the complaint brought against him for his role in a cardiac death organ donation, in which he administered 660 mg. of propofol within a ten minute period, after which the patient expired. On behalf of Panel B, Ms. Moldenhauer expressed the perception that this case presented a "perfect storm" of events that led to the complaint against Dr. Pezhman, citing the lack of clear policies, the

inexperience of all involved in the procedure, and Dr. Pezhman's lack of training in cardiac death donation procedures. She submitted that Dr. Pezhman had an ethical obligation to refrain from acting in areas in which he was not trained or competent to act, but that the totality of the circumstances mitigated the sanctions to be imposed, recommending that a public letter of censure be issued and that Dr. Pezhman attend an ethics course to reinforce his ethical obligation in such cases.

Dr. Pezhman, and Mr. Udland, on his behalf, submitted that he acted only to provide comfort care to the patient, and that to discipline him for not stopping the procedure does not take into account the situation in which he was placed. He responded to the circumstances that occurred in an appropriate manner and his only alternative would have been to walk away from his patient, which he could not do. He was familiar with this patient, and knew his tolerances, and was the most appropriate person, at that point, to provide care.

Some members of the board not involved in bringing the complaint noted that physicians have a responsibility to act only in areas in which they are trained and have demonstrated competence, and to refuse to act outside the scope of their training, regardless of the pressures of the situation. They agreed that Dr. Pezhman acted with good intentions, and that the level of sanction proposed by Panel B were appropriate. Others noted that Dr. Pezhman was attempting to care for his patient and that this was really a system failure.

**NDPHP Presentation:**

Tammy King, executive director of the North Dakota Professional Health Program, and Dr. Barrie March, medical director, reported that the new program is fully operational, and has added voluntary participants since beginning in March of 2015.

They described the monitoring program, and their employment of an online case management program, which is used to provide active monitoring of participants and a level of assurance of compliance with all aspects of the program.

They are working to develop an extensive marketing plan for the program to fulfill the statutory directive to provide education to the physicians of the state about the benefits of the program.

They requested that a member of the medical board attend their federation meetings, as having a liaison on the board has proved to be valuable. Dr. Olson volunteered to serve in that capacity.

**Child Vaccinations:**

At the request of the Health Department, the board discussed the issue of physicians requiring that children be given all vaccinations, or they would not be given any, which is reported by the Health

Department to have occurred within the state. The board noted that people can go to other physicians if this is the policy of a private clinic, but if done by a public health clinic, that may be an issue the health department may want to address.

**Matter of Madana Jeevanandam, MD:**

Dr. Jeevanandam presents an eligibility question, as he has completed two fellowships at institutions with accredited residency programs, but the fellowships themselves are not accredited. Dr. Jeevanandam plans to take the SPEX examination. If the board deems the fellowships to be acceptable training, Dr. Jeevanandam could be eligible under 43-17-18(3)(b), NDCC.

Dr. Goven moved that, provided Dr. Jeevanandam sits for the SPEX examination, his eligibility should be approved. Dr. Olson seconded the motion, which passed unanimously.

**Telemedicine Rule Draft:**

Mr. Houdek reviewed the telemedicine rule draft, which is attached to these minutes and will not be separately stated. The board emphasized that the rule reflects its position that there not be a separate standard of care for telemedicine, includes the authorization for PA's to practice telemedicine with their supervising physicians, who need not be physically practicing in North Dakota, and changes the current board policy by allowing prescription of controlled substances through approved telemedicine encounters, with the exception of prescribing opioids for pain control. With one wording change regarding examinations that do not meet the standard of care, which change is reflected in the attached draft of the rule, the board unanimously authorized a public hearing of the rule, following a motion to do so by Dr. Olson and a second by Dr. Haug.

Mr. Houdek submitted that the board should consider rescinding the cease and desist order against Teladoc that the board issued in 2012, as the principles under which the cease and desist order were issued differ from the proposed telemedicine rule.

Mr. Riskedahl moved to rescind the 2012 cease and desist order. Dr. Goven seconded the motion, which passed unanimously.

**Special License Rule Draft:**

Dr. Haug moved to approve the administrative rule draft regarding special licenses, which is attached to the minutes. Ms. Wardner seconded the motion. The motion passed unanimously.

**FSMB Meeting Comments:**

Dr. Kavlie noted the value of attending the Federation of State Medical Board's annual meeting, and encouraged board members to take the time to attend future meetings.

**Anti-trust Immunity:**

Mr. Houdek reported that he continued to work with the Attorney General and the Governor's counsel regarding active state supervision of board action, in an effort to regain state immunity from anti-trust litigation.

**Election of Officers/Nomination of Board Members:**

Dr. Solberg moved that Dr. Hoerauf be nominated as Chair for the coming year and that nominations cease. Dr. Haug seconded the motion, which passed unanimously.

Dr. Haug moved that Ms. Larson, PA-C, be nominated as Vice-chair for the coming year and that nominations cease. Dr. Goven seconded the motion, which passed unanimously.

Ms. Wardner moved that Dr. Goven be nominated as Treasurer for the coming year and that nominations cease. Dr. Haug seconded the motion, which passed unanimously.

All nominated officers were elected unanimously.

**Office Matters:****1. Employee Compensation:**

Dr. Kavlie reported that state law provides that the board may purchase up to five years of service for employees, and that this would be a valuable recruitment and retention tool. After discussion, Dr. Olson moved that the board authorize a policy to purchase up to five years of service for employees, subject to availability of finances and that the purchase of five years be approved for the executive secretary at this time. Dr. Haug seconded the motion. The motion passed unanimously.

Dr. Kavlie reported that the salary range for the executive secretary has not been increased in at least ten years, and, because of this, the purchasing power of that salary has diminished. Dr. Haug moved that the salary range be annually reviewed, that it be increased in accordance with the proposed budget, and the executive secretary's salary be adjusted to correspond to the top of that salary range.

**2. Rule considerations:**

In light of a new accreditation organization governing Caribbean medical schools, Mr. Houdek requested that the board abandon its current reliance on the California list of disapproved medical schools and develop a rule deferring to the Caribbean accreditation process. Dr. Hoerauf so moved, and Dr. Haug seconded the motion. The motion passed unanimously.

**Recognition of Board Members:**

Dr. Hoerauf presented plaques and letters of commendation from Governor Jack Dalrymple to outgoing board members Gaylord Kavlie, MD, Burt Riskedahl, and Kayleen Wardner. On behalf of the Board, Dr. Hoerauf thanked them for their commitment to serving the public throughout their tenure on

the Board.

**Adjournment:**

Dr. Hoerauf moved to adjourn, seconded by Dr. Haug. Dr. Kavlie adjourned the meeting at 12:53 o'clock, p.m.