

NORTH DAKOTA BOARD OF MEDICINE

JANUARY 28, 2022

Call to Order:

Robert Sticca, MD, chair, called the meeting to order at 8:00 a.m. Attending the meeting via Zoom:

Robert Sticca, MD, Chair
Rup Nagala, MD, Vice -Chair
Lacey Armstrong, MD
Catherine Houle, MD
Mandi Johnson, MD
Vaune Johnson (in person)
Robert Kemp, MD
Jay Metzger, PA-C
Ann Reich
Michael Quast, MD

Absent: Thomas Carver, DO; and Brenda Miller, MD; Rajendra Potluri, MD

Also present: Sandra DePountis, Executive Director; Lynette McDonald, Deputy Executive Director; Stacy Moldenhauer, Litigation Counsel (present through COVID discussion); and Allyson Hicks, General Counsel.

Guests present: Courtney Koebele, NDMA; Dr. Melissa Henke and Ann Leiseth, NDPHP (present through the NDPHP report).

The following were present via Zoom for their respective interviews: Sanjay Gupta, MD, and John Jerius, MD.

Minutes

Dr. Houle moved to approve the November 19, 2021, regular meeting minutes, seconded by PA-C Metzger. The motion passed unanimously.

NDPHP Report

Dr. Melissa Henke provided information regarding the timing of quarterly NDPHP reports the same month of Board meetings and therefore January reports will be made at the Board's April meeting, and so forth.

As per NDBOM/NDPHP contract, two reports are required from the PHP in January each year – a report of the total number of NDBOM participants v. participants from other licensing boards and financial statements indicating surplus.

Dr. Henke and Ms. Leiseth provided their 2021 financial statements and a report of NDBOM ordered v. voluntary participants. At this time, only NDBOM licensees are participants, but the PHP is hoping for more Boards being added in the upcoming legislative session. Currently, the PHP has 43 participants, 15 board ordered with 8 as primary and 7 as collaborating. 4 cases were pending, and 4 cases were successfully closed out in the last quarter.

The PHP also answered questions regarding the financial reports. Ms. V. Johnson requested the PHP provide the 990 tax form – Ms. Leiseth said she would run this by her Board and provide.

PHP Committee Update (Drs. Armstrong (chair), Houle, and Carver)

Dr. Houle motioned to approve the Committee's Dec. 2, 2021, meeting minutes, seconded by Dr. Armstrong. Motion passed unanimously by Committee members.

An overview of the PHP Committee meeting was provided to the Board, during which the law, contract, and current PHP policies were reviewed and discussed. The Committee discussed the need for written policies from the PHP for its procedures. It was determined that the PHP would draft the policies, present for review to the PHP Board of Directors, and then provide to the Committee for review and discussion. A timeline was to provide recommendations for approval at the Board's next meeting in April.

Interview for Licensure – Sanjay Gupta, MD

Dr. Gupta is a board-certified trauma surgeon, licensed in Massachusetts and New Hampshire, seeking licensure in North Dakota. Dr. Gupta received a malpractice settlement of \$750,000 in 2019 regarding complications with a laparoscopic cholecystectomy surgery. As per Board policy, malpractice claims of over \$500,000 reported in the last 5 years require an interview. Dr. Nagala led the interview of this applicant.

Dr. Gupta provided context for the underlying case and answered questions from the Board.

Dr. Nagala motioned to grant the license, seconded by Dr. Houle. The motion passed unanimously by roll call vote.

Interview for Licensure – John Jerius, MD

Dr. Jerius is a board-certified general surgeon licensed in Arkansas. Dr. Jerius's application reported denial of privileges from two medical facilities and a malpractice settlement. Dr. Sticca led the interview of this applicant.

Dr. Jerius answered questions regarding the underlying issues that led to the non-renewal of privileges and revocation of privileges at two different facilities. Dr. Jerius also provided information that he had not worked in a clinical setting since February of 2021 and although he had no employment pending at the time of the meeting, was looking to practice at a rural location in North Dakota.

The Board discussed its concerns with the previous clinical/medical judgement issues noted from the two facilities, along with Dr. Jerius not practicing for almost a year and potential practice in a rural setting which would diminish collaboration opportunities. The Board also discussed the interpersonal relationship concerns documented from the facilities.

Dr. Nagala made a motion to approve the license, seconded by PA-C Metzger. The motion failed with a vote of 4-5 with Ms. A. Reich, Ms. V. Johnson, Dr. Johnson, Dr. Kemp, Dr. Sticca voting no; Dr. Houle abstaining; and all others voting in favor.

Dr. Johnson made a motion to deny the license, seconded by Ms. A. Reich. The motion passed with a vote of 5-4 with Dr. Nagala, Dr. Armstrong, Dr. Quast, and PA-C Metzger voting no; Dr. Houle abstaining; and all others voting in favor.

Draft Operations Manual, Proposed PA Statement, Application Updates

The Board reviewed a proposed draft of its Operations Manual that clarified procedures for fingerprint submissions for criminal history record checks in accordance with FBI/BCI protocols and late renewals of genetic counselors.

The Board next reviewed a proposed statement regarding physician assistant practice in North Dakota. The Board office is inundated with questions regarding what facilities physician assistants are authorized to practice in North Dakota and the statement will provide context and guidance on the law.

Finally, the Board reviewed proposed language to be added to physician applications for licensure. While processing applications, there are numerous instances in which an applicant answers in the negative on the “personal questions” – and upon verification, the office learns that they should have answered yes. To mitigate this issue, stronger language is being proposed to incorporate into the application – letting applicants know that they are responsible for providing truthful and accurate information and failure to do so may result in disciplinary action, an interview before licensure, or administrative fees – as provided by law.

PA-C Metzger made a motion to approve the Operations Manual, PA Statement, and application language, seconded by Dr. Houle. The motion passed unanimously by roll call vote.

COVID Misinformation/Disinformation Discussion

At its previous meeting, the Board reviewed the FSMB statement regarding COVID mis/disinformation, along with similar statements from credentialing boards and other state medical boards, and disciplinary actions taken in other states. The Board discussed having a similar position statement, and Dr. Miller volunteered to work on the statement with Director DePountis, to bring back to the Board for review at its next meeting.

A proposed ND COVID Statement was presented for review and discussion. The Board discussed that it would treat complaints regarding mis/disinformation as it would any other complaint received, as required by law. It therefore was not necessary to issue such a statement. PA-C Metzger motioned to not adopt the statement, seconded by Dr. Armstrong. The motion passed by roll call vote with Dr. Johnson voting no and all others voting in favor.

Physician Approval of License and Waiver of Interview

Dr. Quast moved to approve the sixty (60) licenses and waivers of interview for physician applicants, which included three (3) cases with derogatory information and one (1) special license, as presented, seconded by Dr. Houle. The motion passed unanimously by a roll call vote.

Physician Assistant Approval of License and Waivers of Interview

PA-C Metzger motioned to approve the licensure and waiver of interview for the eight (8) physician assistants, as presented, seconded by Dr. Houle. The motion passed unanimously by a roll call vote.

Genetic Counselor Waivers of Interview

Dr. Houle motioned to approve the licensure and waiver of interviews for the eleven (11) genetic counselors, as presented, seconded by Dr. Johnson. The motion passed unanimously by a roll call vote.

IMLC License Granted

Six (6) Letters of Qualification for State of Principal Licensure and seventy-six (76) non-principal licenses were issued under the Compact. Deputy Director McDonald gave an update that – to date – ninety-two (92) SPLs and seven hundred and sixteen (716) non-SPL licenses have been issued in North Dakota.

Dr. Nagala also gave an update on the FSMB through his role as a member of the Nominating Committee and encouraged Board members to consider attending the upcoming FSMB training in New Orleans at the end of April.

Investigative Panel A report

Dr. Quast, Vice-Chair, reported that Investigative Panel A reviewed a total of twenty (20) cases: two (2) cases were referred for formal disciplinary action, one (1) confidential Letter of Concern was authorized, three (3) cases were tabled for further review; one (1) renewal was locked; all other cases dismissed, or no action taken.

Investigative Panel B report

Dr. Houle, Chair, reported that Investigative Panel B reviewed a total of sixteen (16) cases: three (3) confidential Letters of Concern were authorized, two (2) renewals were locked, all other cases dismissed, or no action taken.

Petition for Eligibility – Mohamad Ammar Al Nuss, MD

N.D.A.C. 50-02-02-01(2) allows for a special license to an applicant who does not meet all technical eligibility requirements if the Board determines the applicant is uniquely qualified through training or experience or will make a unique and special contribution to the practice of medicine not readily available to the citizens of the state. The Board must consider a variety of factors as dictated by the law to determine whether a special license should be issued.

Dr. Al Nuss is seeking licensure as a transplant surgery specialist. He is not Board certified and does not have 30 months of ACGME accredited training but completed three different fellowships. He holds an unrestricted license in Florida – after being required to practice under supervision for 6 months. The Board discussed Dr. Al Nuss at its November 2021, meeting, and requested additional information on whether this presents a unique/special contribution not readily available in North Dakota before it could approve the license.

Dr. Koleilat provided a letter of support, as a transplant surgeon at Sanford Bismarck, saying that with only two transplant surgeons in the state, it would be beneficial to have additional licensees. Dr. Houle made a motion to approve the special license, seconded by Dr. Nagala. Motion passed unanimously by roll call vote.

COMMITTEE REPORTS

Budget Committee (Ms. V. Johnson (chair), Dr. Kemp, PA-C Metzger)

Ms. V. Johnson motioned to approve the Committee's January 5, 2022, meeting minutes, seconded by PA-C Metzger. Motion passed unanimously by Committee members.

Director DePountis walked through the proposed 2022 budget, which the Committee recommended for approval. Questions were answered regarding conservative estimates. The Board requested the Budget Committee review the investment portfolio and come forward with any recommendations.

Ms. V. Johnson, as chair of the Committee, provided an update on the 2020 audit report, with Committee recommendations for approval.

Ms. V. Johnson motioned to approve the 2020 audit report and 2022 budget as presented, seconded by Dr. Quast. Motion passed unanimously by roll call vote.

IT Committee (Dr. Nagala (chair), Dr. Johnson, Ms. A. Reich).

Ms. A. Reich motioned to approve the Committee's November 30 and December 7, 2021, meeting minutes, seconded by Dr. Johnson. Motion passed unanimously by Committee members.

The Committee provided an update on its decision to move forward with a Cybersecurity Audit and Assessment. After a formal evaluation process, the contract was awarded to CyberNet Security, who began its audit at the first of the year. If all vendors cooperate, the audit is set to be completed by the end of March. The report received from the audit will dictate future actions by the Committee.

Laws/Rules/Legislative Committee (Drs. Miller (chair), Sticca, Quast).

The Committee updated the Board that it will be reviewing the Administrative Code for clarification, with hopes to present recommendations of rule changes to the full Board at its April meeting. The Committee started its discussion of possible legislative changes to propose during the next session in 2023. Naturopaths were discussed and the Committee will continue

to review its options moving forward with naturopaths, including whether to bring a bill forward placing them under the Board's jurisdiction.

CME Audit and Updates

Dr. Houle volunteered to be the point of contact for the office during the 2022 CME audit.

Director DePountis provided information regarding collaboration with the ACCME, which will allow the Board office to access the ACCME PARS database to check on completed CME hours of North Dakota licensed physicians. A draft announcement prepared for the News Blast was reviewed and discussed.

Finally, the Board discussed how to handle two different renewal situations. In the event that a physician reports non-compliance with CMEs, the physician will be given an option to not renew or to sign an agreement for a 60-day extension to obtain the required credits. The license will be renewed upon execution of the agreement, but if the physician fails to obtain the necessary CMEs at the deadline, the matter will be referred to an Investigatory Panel for discipline.

If a physician reports being in compliance with the CME, and a subsequent audit finds otherwise, the case will be referred to an Investigatory Panel for discipline.

Dr. Quast made a motion to adopt this policy into the Operations Manual, seconded by Dr. Houle. Motion passed unanimously by roll call vote.

Office Matters

FSMB Annual Meeting. At this time, the FSMB is moving forward with an in-person meeting set for April 28-30, 2022, in New Orleans, LA. Director DePountis, Chair Sticca, and Vice-Chair Nagala will be attending. If others would like to attend, they should get in touch with the Board office as soon as possible.

CHRI Training. Director DePountis urged the Board members to complete their required online training to receive criminal history background checks, in order to move forward with

the in-person training at the April meeting. Director DePountis will again email those who have not completed the training, so each member has their credentials and login information readily available.

The meeting was adjourned at 11:37 a.m.