

NORTH DAKOTA BOARD OF MEDICINE

July 29, 2022

Call to Order:

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

Robert Sticca, MD, Chair
Rup Nagala, MD, Vice -Chair
Lacey Armstrong, MD
Thomas Carver, DO
Catherine Houle, MD
Mandi Johnson, MD
Vaune Johnson
Robert Kemp, MD
Jay Metzger, PA-C
Brenda Miller, MD
Ann Reich
Michael Quast, MD

Absent: Rajendra Potluri, MD

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

Guests present: Courtney Koebele, NDMA; Dr. Melissa Henke, NDPHP (present for PHP discussions); PA-C Aly Dahl (present through the PA discussion).

Present through the discussion on naturopaths were the following: naturopaths Elizabeth Allmendinger, Samantha Davison, and Tonya Loken; Melissa Hauer, NDHA; Dr. Chris Meeker and Marnie Walth, Sanford.

The following was present via Zoom for their respective interviews: Buck Bania, MD; Douglas Dawson, MD; James Marcin, DO; and Gary Russell, MD.

Minutes

Dr. Miller moved to approve the April 22, 2022, meeting minutes, seconded by Dr. Nagala. The motion passed unanimously.

Interview for Licensure – James Marcin, DO

Dr. Marcin is a board-certified pulmonary disease physician arrested for prostitution and possessing criminal tools in January 2022, which was subsequently pled to disorderly conduct sentenced to probation and payment of fees, which were satisfied as of May 2022. Dr. Nagala led the interview of this applicant.

Dr. Marcin answered questions regarding his criminal history and practice history.

Dr. Nagala made a motion to table a decision on issuance of a license pending verification that Dr. Marcin is receiving counseling services, seconded by Dr. Miller, motion passed by roll call vote with Dr. Carver voting no and all other members voting yes. Dr. Quast made a motion to delegate the decision of approving the license based on verification of counseling to a committee of Drs. Nagala and Sticca, and Director DePountis, second by Dr. Houle, motion passed unanimously by roll call vote.

Interview for Licensure – Buck Bania, MD

Dr. Bania is a board-certified family practice physician seeking licensure who was asked to interview due to past allegations of sexual harassment in the workplace, failure to complete medical records, and concerning evaluations resulting in a performance improvement plan from the Wrangell Medical Center. Dr. Kemp led the interview of this applicant.

Dr. Bania answered questions regarding his work history and how stress, burnout, and personal matters played a part in the above issues.

Dr. Kemp made a motion to approve the license, seconded by Dr. Houle, motion passed with Ms. Reich voting no and all other members voting yes.

Interview for Licensure – Douglas Dawson, MD

Dr. Dawson is a board-certified otolaryngologist and sleep medicine physician seeking licensure who was asked to interview due to his history of a 1999 licensure suspension/probation in Iowa and 25 malpractice cases between 1994 and 1998. Dr. Sticca led the interview of this applicant.

Dr. Dawson answered questions regarding his practice history and recovery, and how he misinterpreted the personal questions on the application form.

Dr. Sticca made a motion to approve the license, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

IPB v. David Lapidés, MD

IPB disciplinary action against Dr. Lapidés for felony conviction of child pornography. A proposed Stipulation was signed for indefinite suspension of the license and payment of fees. Dr. Sticca made a motion to approve the proposed Order, seconded by Dr. Quast, motion passed unanimously by roll call vote of Panel A members.

IPB. Stuart Rice, MD

IPB disciplinary action against Dr. Rice for operating on a patient after consuming alcohol. A proposed Stipulation was signed for indefinite suspension of the license and payment of fees. Ms. Reich made a motion to approve the proposed Order, seconded by Dr. Nagala, motion passed unanimously by roll call vote of Panel A members.

David Okonokwo, MD

After an interview with the Board on August 20, 2021, Dr. Okonokwo received a conditional license due to not practicing in a clinical setting since his residency in October 2018, requiring three months of supervision by a qualified pediatric neurologist. Dr. Okonokwo completed the supervision requirement and proctors from CHI provided a letter recommending Dr. Okonokwo for full licensure status. Dr. Nagala made a motion to approve an Order removing the conditions for licensure, thus granting an unrestricted license to Dr. Okonokwo, seconded by Dr. Miller, motion passed unanimously by roll call vote.

IPA v. Dagoberto Rodriguez, MD

Dr. Rodriguez was disciplined following disciplinary action by the Oregon Medical Board for writing prescriptions for patients located in Oregon without an Oregon medical license. Dr. Rodriguez was Ordered to complete CPEP's record keeping and ethics courses, and pay fees, which are now completed. Dr. Houle made a motion to issue and Order of Completion, seconded by PA-C Metzger, motion passed unanimously by roll call vote.

Physician Approval of License and Waiver of Interview

Dr. Nagala moved to approve the one hundred and twenty-nine (129) licenses and waivers of interview for physician applicants, which included seven (7) cases with derogatory information and one (1) administrative license, as presented, seconded by Dr. Miller. The motion passed unanimously by a roll call vote.

Resident Approval of License and Waivers of Interview

Dr. Houle motioned to approve the licensure and waiver of interview for the sixty (60) residents, as presented, seconded by Dr. Miller. 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 fifteen (15) physician assistants, as presented, seconded by Dr. Carver. The motion passed unanimously by a roll call vote.

Genetic Counselor Waivers of Interview

Dr. Quast motioned to approve the licensure and waiver of interviews for the eighteen (18) genetic counselors, as presented, seconded by Dr. Kemp. The motion passed unanimously by a roll call vote.

Due to previous engagements, Dr. Nagala left the meeting at this time and did not vote or participate in any further discussion.

Interview for Licensure – Gary Russell, MD

Dr. Russell is a board-certified family practice physician seeking licensure who failed to disclose five malpractice cases in his application form. Dr. Houle led the interview of this applicant.

Dr. Russell answered questions regarding the previous malpractice cases. The personal questions were filed by someone else but Dr. Russell recognized it was ultimately his responsibility to verify the accuracy of the entire application.

Dr. Houle made a motion to approve the license, seconded by Dr. Carver, motion passed unanimously by roll call vote.

NDPHP Report

Dr. Melissa Henke reported forty-four (44) active participants in the NDPHP – fifteen (15) are Board ordered, with eight (8) as primary and seven (7) as collaborating; twenty (20) as voluntary, and nine (9) pending cases. NDPHP is primary for a total of twenty (20) participants.

The PHP is requesting approval to close out Vanessa Berg, MD, for program completion. Dr. Berg was ordered by the Board to participate for 5 years with the NDPHP in 2017, and has paid her fees. Dr. Carver made a motion to issue an Order of Completion for Dr. Berg, seconded by Dr. Miller, motion passed unanimously by roll call vote.

PHP Financials

At previous meetings, the Board reviewed the PHP financial statements and requested additional information, including the PHP's 990 tax form. PHP's 990 form for 2020 was provided and reviewed but the Board had additional questions about the profit and loss statements – specifically that total income was not reported as it did not list the income from participation fees and grants. The Board therefore requested follow up information from the NDPHP to show a complete financial picture and a letter was sent by Ms. V. Johnson to the PHP's Board of Directors regarding this request.

Dr. Henke provided an overview of the PHP Board's discussion on how it would be coming up with a formula to apportion expenses based on participants covered by the Board of Medicine versus other participants. The PHP Board of Directors will be updating its way of reporting and Dr. Henke expected updated information be provided in a few months. Dr. Henke also requested a proposed amendment to the contract to provide the financials at a later date than January in order to give the PHP time to meet and review its financials before being submitted to the BOM. This will be discussed by the PHP Committee.

COMMITTEE REPORTS

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

Dr. Houle motioned to approve the Committee's June 13, 2022, meeting minutes, seconded by Dr. Armstrong. Motion passed unanimously by Committee members.

Dr. Armstrong provided an overview of the PHP Committee meetings in which two proposed policies were reviewed. The Committee provided feedback regarding mandatory reporting concerns and therefore the PHP should be relaying that information to potential participants before they identify themselves and enroll in the program. The draft policy on Second Opinion Evaluations was discussed, with input from legal counsel on concerns whether the policy would satisfy due process requirements, and therefore would be researching other states/models for these situations to amend the proposed policy.

Open record and meeting laws were discussed, and the PHP Board of Directors were in agreement that an official opinion requested from the Attorney General's office would be prudent. Dr. Houle made a motion for the NDBOM to request a legal opinion from the Office of Attorney General on the applicability of the ORM laws to the NDPHP, seconded by Ms. Reich, motion passed unanimously by roll call vote.

The Committee will continue to meet with the PHP to collaborate on laws and policies with its next meeting to hopefully occur in August.

Investigative Panel A report

Dr. Carver, Chair, reported that Investigative Panel A reviewed a total of twenty-four (24) cases: one (1) confidential Letter of Concern was authorized, five (5) cases were tabled for further review, all other cases dismissed or no action taken.

Investigative Panel B report

Dr. Houle, Chair, reported that Investigative Panel B reviewed a total of twenty-nine (29) cases: two (2) stipulations were approved, one (1) case was referred for formal disciplinary action, four (4) confidential Letters of Concern were authorized, three (3) cases were tabled for further review, all other cases dismissed or no action taken.

COMMITTEE REPORTS - CONTINUED

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

Dr. Quast made a motion to approve the Committee's June 3 and June 17, 2022, meeting minutes, seconded by Dr. Sticca. Motion passed unanimously by Committee members.

Director DePountis provided an update on the proposed changes to the Administrative Code. A letter from the Attorney General's office was received approving the rules so the rules will now go before the Legislative Administrative Rules Committee for its review in September.

Director DePountis then gave a quick overview of potential changes to the Century Code reviewed and considered by the Committee – along with further discussions and review that is needed for the PA and PHP sections.

The Committee updated the Board on discussions that occurred with the naturopaths and the possibility of bringing this license under NDBOM jurisdiction. The office received an email the morning of the meeting from Ms. Allmendinger, naturopath, updating the Board on discussions with other naturopaths. At this time, the naturopaths will be looking at other boards as they did not feel the Board of medicine adequately understood their education and training, and therefore did not seem like a good fit.

The Board asked whether the naturopaths would be seeking prescriptive authority the next legislative session. Ms. Allmendinger answered affirmatively and that it would be open to continuing discussions with the Board of Medicine and the North Dakota Medical Association on language for such a bill. The Board will schedule a meeting with interested individuals for further discussion.

Due to previous engagements, Dr. Miller and Ms. V. Johnson left the meeting at this time and did not vote or participate in any further discussions.

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

Dr. Johnson motioned to approve the Committee's July 11, 2022, meeting minutes, seconded by Ms. Reich. Motion passed unanimously by Committee members.

Draft contracts with Albertsons and Fireside were reviewed by the Board. The Board is able to utilize State Contract 005 for Albertsons, with a Participating Addendum for specific services required by the Board. A proposal of service – which will include updating the website and database and implementing updated security measures outlined by the Cyber Security Audit and Assessment – was discussed. Dr. Houle made a motion to approve the Participating Addendum with Albertsons, seconded by Dr. Carver, motion passed unanimously by roll call vote.

An outstanding invoice for the Board's 2022 Annual Hosting fee was reviewed along with information from Albertsons for the increase in price. Dr. Sticca made a motion to approve payment of \$15,000 for the outstanding balance, seconded by Dr. Quast, motion passed unanimously by roll call vote.

A proposal from Fireside was also considered that would move the Board to a managed service contract and implement updated security measures outlined by the Cyber Security Audit and Assessment. Attorney Hicks provided information on procurement laws and work being done with the Office of Management and Budget to review this contract. Ms. Reich made a motion to delegate the authority to approve the Fireside contract within the parameters

outlined in the proposal and input from procurement to the IT Committee, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

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

PA-C Metzger motioned to approve the Committee’s July 12, 2022, meeting minutes, seconded by Dr. Kemp. Motion passed unanimously by Committee members.

The Committee reviewed the Board’s financial statements current through June 2022, finding no concerns at this time.

Dobbs v. Jackson Women’s Health Organization

The Board received information regarding the Supreme Court case and potential impacts to the State of North Dakota, including trigger laws that will go into effect August 26, 2022. The Board will review any IMLC issues and cases for discipline under the new laws on a case-by-case basis but recognized it does not have the authority to issue practice advice and guidance.

IMLC License Granted

Eleven (11) Letters of Qualification for State of Principal Licensure and one hundred and forty-five (145) non-principal licenses were issued under the Compact. Thirty-nine (39) states/territories have now joined the compact, the newest members being Connecticut and Rhode Island. There is pending legislation to join the compact in Massachusetts, North Carolina, New York, and Pennsylvania. Deputy Director McDonald provided information that since the IMLC was implemented five years ago, over 39,000 licenses have been issued. During the 2021-2022 fiscal year, \$230,455 has been paid to the NDBOM from licensing fees through the compact.

Petitions for Eligibility

Chrissy Capati, DO: Dr. Capati is seeking an exception under N.D.A.C. 50-02-11-03.1(2) after four attempts to pass Level 3 of the Complex. Dr. Capati is licensed in several other states, board-certified in Family Medicine, and has practiced for over ten (10) years. Dr. Kemp made a

motion to grant the exception to Dr. Capati, seconded by Dr. Carver, motion passed unanimously by roll call vote.

Duane Robinson, MD: Dr. Robinson is seeking an exception under N.D.A.C. 50-02-11-03.1(2) after four attempts to pass Step 3 of the USMLE. Dr. Robinson is licensed in Virginia, board-certified by the American Board of Preventive Medicine in Occupational Medicine and has practiced for over ten (10) years. Dr. Kemp made a motion to grant the exception to Dr. Robinson, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

Sonia Mahajan, MD: Dr. Mahajan is a foreign medical graduate who does not have thirty (30) months of postgraduate training and is therefore seeking an exception under N.D.C.C. 43-17-18(3) with 24 months of ACGME accredited training, board-certified in nuclear medicine, and licensed in New York. Dr. Carver made a motion to grant the exception to Dr. Mahajan, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

PA Discussion

The Board previously issued guidance on physician assistant practice in North Dakota after law changes went into effect in 2019. Questions continue to arise on what is considered acceptable practice including whether a PA can obtain its own privileging and credentialing for a facility or would this be considered independent practice requiring Board approval.

PA-C Dahl provided input and insight into her situation and other questions on the law. PA-C Dahl works at a physician owned practice, with privileging and credentialing provided through Heartland Healthcare. If something happened to the physician, would she be able to take over the practice?

The Board discussed how the laws need to be clarified and updated in this area, and the LRL Committee will be working and meeting with the PA Association to review and get input. In the meantime, PA-C Metzger will work with Director DePountis to update the Board's guidance letter on PA practice. This updated statement will be brought to the Board at its next meeting for review and approval.

FSMB Updates

Drs. Sticca, Nagala, and Johnson attended the FSMB conference in April, along with Director DePountis and Deputy Director McDonald.

One seminar at the conference addressed digitizing the application process and how some states are relying on federal reports from the PDC, AMA, and NPDB, in lieu of requiring license verifications directly from the state of licensure. The Board recognized how removing this second verification would streamline the application process, but also recognized the potential consequences of missing vital information if discipline is not reported by the state to the federal associations. The Board therefore requested more information and data be gathered by the Board's office. The office will be keeping track of how many times in the next year information is gleaned from verifications sent directly from the states that was not reported in the national databanks – and bring this discussion back for consideration next year.

Office Matters

October Meeting. The Board approved exploring having its October meeting at the University of North Dakota School of Medicine and Health Sciences. Director DePountis will reach out to UND for possibilities.

FSMB Attorney Meeting. The meeting is set for Nov. 2-4, 2022, in San Diego. Attorney Hicks and Moldenhauer and Director DePountis will be attending.

USMLE Orientation. Open invitation to anyone who would like to attend the USMLE orientation for Board members to be held in Texas on Oct. 3, 2022. If any Board member is interested in attending, they should reach out to the FSMB/USMLE contact noted in the posted email.

Board Member Terms. Drs. Carver, Miller, and Potluri terms expire July 31, 2022, so this will be their last meeting. The Board expressed gratitude to the members for their dedication to the Board of Medicine. At this time, the Governor's office has appointed two out of the three new members who will begin their appointments August 1, 2022. Director DePountis will reach out the new members for orientation.

The meeting was adjourned at 12:03 p.m.