

NORTH DAKOTA BOARD OF MEDICINE

October 21, 2022

Regular Meeting held at the UND School of Medicine

Call to Order:

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

Robert Sticca, MD, Chair
Rup Nagala, MD, Vice -Chair - via Zoom
Misty Anderson, DO
Lacey Armstrong, MD - via Zoom
Catherine Houle, MD
Vaune Johnson
Robert Kemp, MD
Jay Metzger, PA-C
Ann Reich - via Zoom
Michael Quast, MD

Absent: Mandi Johnson, MD, Justin Horner, MD, and Zena Homan, MD

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

Guests present: Courtney Koebele, NDMA; Ann Leiseth, NDPHP (via Zoom). The Board welcomed UND medical student Jacob Tupe. Patrick O'Malley was also present via Zoom.

The following were present via Zoom for their respective interviews: Jared Solomon, MD; Keith Ryan, MD; and Ravee Patel, MD.

Minutes

Dr. Houle moved to approve the July 29, 2022, meeting minutes, seconded by Dr. Nagala, motion passed unanimously.

Interview for Licensure – Jared Solomon, MD

Dr. Solomon is board-certified in adult psychiatry and is being interviewed due to actions taken against his clinical privileges at the Minot Air Force Base. Dr. Armstrong led the interview of this applicant.

Dr. Solomon answered questions regarding his education, training, and practice history along with questions regarding the treatment and prescriptions that gave rise to the review and temporary restrictions on his privileges.

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

Interview for Licensure – Keith Ryan, MD

Dr. Ryan is an anesthesiologist applying for licensure in North Dakota. Dr. Ryan failed to disclose a past criminal assault charge in 2019 on his initial application. Dr. Ryan was subsequently arrested for assault again in 2022, which resulted in termination of his employment from Avera St. Luke's in South Dakota and a suspension of his South Dakota medical license. South Dakota required Acumen to assess fitness for duty and Acumen reported that Dr. Ryan was unsafe to practice. Dr. Quast led the interview of this applicant.

Dr. Ryan answered questions regarding his criminal charges and suspension of license, and his plans to comply with the recommendations from Acumen.

Dr. Nagala made a motion to table the decision on whether to grant a license in order to give Dr. Ryan time to implement and comply with the Acumen recommendations, requiring him to sign waivers so the Board could obtain the necessary information on fitness to practice, seconded by Dr. Kemp, motion passed unanimously by roll call vote. Due to technical difficulties, Ms. A. Reich was not able to provide her voice vote.

Interview for Licensure – Ravee Patel, MD

Dr. Patel is being interviewed due to inconsistencies in his application for licensure including failure to disclose a leave of absence and being placed on an academic remediation plan, failure to disclose licensure from Texas, and for a gap in practice between graduating from medical school in 1/2018 and starting residency in 7/2019. Dr. Nagala led the interview of this applicant.

Dr. Patel provided information on actions spent between school and residency to shadow a physician and study for examinations. The LOA was due to required clerkship hours prior to starting US clinical rotations as Dr. Patel attended an international medical school. Finally, Dr. Patel answered questions regarding the remediation plan.

Dr. Nagala made a motion to approve the license, seconded by Dr. Quast, motion passed by roll call vote with Dr. Sticca voting no and all other members voting yes. Due to technical difficulties, Ms. A. Reich was not able to provide her voice vote.

IPA v. Michael Schmit, MD

IPA disciplinary action against Dr. Schmit for relapse of alcohol use resulting in a 3-day suspension at work and removal from the NDPHP Board of Directors. A proposed Stipulation was signed requiring Dr. Schmit to participate in the NDPHP program for five years and payment of fees. PA-C Metzger made a motion to approve the proposed Order, seconded by Dr. Houle, motion passed unanimously by roll call vote of Panel B members.

NDPHP Report

Ann Leiseth, NDPHP Executive Director, reported thirty-eight (38) active participants in the NDPHP – ten (10) are Board ordered, with six (6) as primary and four (4) as collaborating; twenty-three (23) as voluntary, and five (5) pending cases. NDPHP is primary for a total of nineteen (19) participants.

The PHP requested approval to close out Saurav Pokharel, MD, for program completion. Dr. Houle made a motion to issue an Order of Completion for Dr. Pokharel, seconded by Dr. Nagala, 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. At the Board's July meeting, 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 was going to update its way of reporting and Dr. Henke expected updated information be provided in a few months.

Although the NDPHP provided its 2021 990 form, no other financial information was provided. Ms. V. Johnson provided input that the tax form was not a substitute for the full financial disclosure that is being requested. Ms. Leiseth stated she believed she provided what the NDPHP Board of Directors authorized her to provide and considers this to be a miscommunication.

PHP Discussion

Dr. Sticca provided an overview of conversations he and Dr. Armstrong had with several members of the NDPHP Board of Directors – outlining 6 key concerns, including failure to implement robust policies and procedures on program operations or internal policies and procedures on office management and best practices; lack of full financial disclosure in violation of contract and open records law; communication concerns; failure to timely and fully report participant noncompliance; and an overall lack of collaboration required by law and contract.

The NDPHP Board of Directors was to take this information and come back with a remedial plan to address the concerns before the NDBOM's October 21, 2022, meeting. The plan included updating personnel policies and job descriptions and to do evaluations of its staff.

The Office of Attorney General also issued its opinion that the NDPHP is a public entity subject to the state's open record and meeting laws. NDPHP has yet to start following those laws.

The Board discussed how little progress has been made to address the above despite the NDPHP being in existence since 2015 and the PHP Committee attempting to meet with them since December 2021. Although the NDPHP wants to operate as a separate entity and not be micromanaged, no movement on best practices and implementation of policies occurs without NDBOM involvement. This includes having a financial audit. PA-C Metzger made a motion to approve the Memorandum of Understanding in which the NDBOM will pay for a financial audit of the NDPHP which must be conducted by Brady Martz as soon as possible to review financial years 2020-2021, seconded Ms. V. Johnson, motion passed unanimously by roll call vote.

Attorney Hicks provided options to the Board including doing nothing, have the PHP Committee continue to try and address the concerns, opening up the contract for additional negotiation, sending a letter outlining the concerns that require plans for addressing by a certain date with consequences for not providing adequate remedial proposals, or putting the NDPHP on notice of breach of contract seeking termination.

The Board discussed that the serious concerns warranted action. The Board asked Director DePountis to start looking into other opportunities in case of termination. Ultimately, Dr. Sticca made a motion to send a letter outlining the specific concerns discussed by the Board and require the PHP Board of Directors provide a definitive and comprehensive action plan to address the concerns by November 30, 2022, seconded by Dr. Quast, motion passed unanimously by roll call vote. Dr. Armstrong agreed to review the letter before its issuance.

Due to a previous engagement, Ms. A. Reich was not present for the remainder of the meeting nor participate in any discussion or vote from this point forward.

COMMITTEE REPORTS

Laws/Rules/Legislative Committee (Drs. Sticca, Quast, and Anderson).

Dr. Quast made a motion to approve the Committee's September 16 and October 14, 2022, meeting minutes, seconded by Dr. Anderson. Motion passed unanimously by Committee members.

The Board considered proposed changes to North Dakota Century Code chapters 43-17 and 43-17.1 for the 2023 legislative session. Many changes removed outdated, redundant, unnecessary language and is largely a clean-up bill. Substantive changes include:

- Moving to a two-year licensure system
- Allowing international graduates to obtain a license after 24 months versus 30 months
- Updating use of certain titles prohibited section to now include MD/DO/physician
- Adding a PA to the Board and Investigatory Panel
- Updating reporting requirements
- Record retention of the Board and physicians no longer practicing
- Updating disciplinary action for alcohol/drugs if use interferes with safe practice
- Clarifying what information is closed/confidential with the Board
- Clarifying that all licensees are subject to the disciplinary process of the Investigatory Panels.

Dr. Kemp made a motion to approve the proposed changes to North Dakota Century Code chapters 43-17 and 43-17.1 as presented but to also add in language for a fee for failure to comply with the CME audit and failure for IMLC licensees to timely submit addendum questionnaires – with a cap of three times the licensure fee, seconded by PA-C Metzger, motion passed unanimously by roll call vote.

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

Dr. Houle motioned to approve the Committee’s September 23, 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 updates to North Dakota Century Code chapter 43-17.3 were discussed for the upcoming 2023 legislative session. The changes to the century code being proposed include adding in medical and PA students to NDPHP participants that would be covered by Board funds; requiring the NDBOM and NDPHP collaborate on a policy for participants to obtain an independent, second opinion on program assessment, monitoring, and treatment; and clarification that NDPHP

provide evidence when reporting participant non-compliance and, if necessary, testify at an ALJ hearing.

The PHP is also requesting immunity language be added to their statute 43-17.3-08, similar to what is provided in the investigatory panel chapter. Attorney Hicks provided an overview of the difference between immunity v. liability and that the Legislature is generally hesitant to grant such immunity. The Board discussed how input was sought for several months from the NDPHP on changes to the century code and this recent request was only provided the week of the Board meeting with no proposed language for the Board to review or consider. Therefore, Ms. V. Johnson made a motion to approve the proposed amendments to N.D.C.C. chap. 43-17.3 as presented, with authorization for the PHP Committee to review any proposals from the NDPHP on a separate bill regarding immunity that they should draft and present, seconded by PA-C Metzger, motion passed unanimously by roll call vote.

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

Contracts are now in place with Albertson Consulting for the Board's website/database and Fireside Office Solutions for the Board's IT management. Updates and changes are being implemented and will continue until all vulnerabilities are addressed and all terms required of the contracts are implemented. The Board's office is working on developing a new and improved website. We are hoping that many of these changes will be implemented by the end of the year.

The Cyber Security Audit and Assessment also required the Board adopt certain IT policies and procedures. Draft IT P&P were reviewed by the IT committee and are being recommended for Board approval. Dr. Houle made a motion to approve the IT P&P, seconded by Dr. Sticca, motion passed unanimously by roll call vote.

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

No meeting occurred during the interim.

Standing Committee Discussion

Several Board members expressed interest in serving on more than one committee. Dr. Anderson made a motion that members should let Director DePountis know if they would like to serve on an additional committee and the committee chairs will review the requests and make a decision on committee composition, with a cap of six members per committee, seconded by Dr. Quast, motion passed unanimously by roll call vote.

MKB v. NDBOM, et al.

The Board discussed a 2013 lawsuit in which the Red River Women's Clinic was granted an injunction for a law prohibiting abortions after a heartbeat was detected – with the Court finding such a law to be unconstitutional under Roe and Casey. The Attorney General has filed a motion to reopen the case based on the Dobbs decision. The Board discussed that its role is to enforce physician and PA practices through its disciplinary process but does not take a position on this underlying law, policy, or litigation. The Board therefore will seek to be removed from the lawsuit. PA-C Metzger made a motion to obtain an independent SAAG appointment for David Phillips and associates at his law firm to represent the NDBOM in this case, seconded by Ms. V. Johnson, motion passed unanimously by roll call vote.

Physician Approval of License and Waiver of Interview

Dr. Quast moved to approve the ninety-four (94) licenses and waivers of interview for physician applicants, as presented, seconded by Dr. Houle. The motion passed unanimously by roll call vote. Dr. Quast made a motion to approve the ten (10) cases with derogatory information, as presented, seconded by Ms. V. Johnson. The motion passed unanimously by roll call vote.

Physician Assistant Approval of License and Waivers of Interview

Dr. Quast motioned to approve the licensure and waiver of interview for the twenty-three (23) physician assistants, as presented, seconded by Ms. V. Johnson, motion passed unanimously by roll call vote.

Genetic Counselor Waivers of Interview

Dr. Quast motioned to approve the licensure and waiver of interviews for the ten (10) genetic counselors, as presented, seconded by PA-C Metzger, motion passed unanimously by roll call vote.

Resident Waivers of Interview

Dr. Anderson motioned to approve the licensure and waiver of interviews for the two (2) residents, as presented, seconded by Dr. Houle, motion passed unanimously by roll call vote.

IMLC License Granted

Twelve (12) Letters of Qualification for State of Principal Licensure and one hundred and sixty-eight (168) non-principal licenses were issued under the Compact. Deputy Director McDonald provided information that we are up seven (7) SPLS and sixty-three (63) NSPLS from this point last year. Cumulatively, as of 10/17/2022, the Board has issued 109 LOQs and 1,034 NSPLs, for a total of 1,143 IMLC licenses.

Investigative Panel A report

Dr. Quast, Chair, reported that Investigative Panel A reviewed a total of twenty-one (21) cases: one (1) Stipulation was approved, three (3) cases were referred for formal disciplinary action, two (2) confidential Letters of Concern were authorized, three (3) 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-one (21) cases: six (6) confidential Letters of Concern were authorized, four (4) cases were tabled for further review, one (1) renewal was locked, all other cases dismissed, or no action taken.

Petitions for Eligibility

Eugene L. Kim, MD: Dr. Kim 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. Kim is licensed in several other states with

no disciplinary action, board-certified in Family Medicine, and has practiced for over ten (10) years. Dr. Nagala made a motion to grant the exception to Dr. Kim, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

Jaya J. Varma, MD: Dr. Varma is seeking an exception under N.D.A.C. 50-02-11-03.1(2) after seven attempts to pass Step 1 and four attempts to pass Step 2 of the USMLE. Dr. Varma is licensed in New York and Pennsylvania with no disciplinary action, a board-certified psychiatrist, and has practiced for over five (5) years. Dr. Anderson made a motion to grant the exception to Dr. Varma, seconded by Dr. Armstrong, 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. Two questions came up that the Board discussed at its July meeting – specifically, can a PA co-own part of a “physician owned practice” and what is considered appropriate privileging and credentialing at a facility.

Based on the discussion, PA-C Metzger and Director DePountis updated the PA practice statement to recognize that a physician must own a majority of the practice for it to be considered a “physician owned practice.” The Statement also details what is considered an appropriate privileging structure, modeled after language from the Joint Commission. Dr. Houle, made a motion to approve the updated PA Practice Statement, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

Exam Attempt Limit Discussion

The Board discussed the three-attempt limit to licensure exams contained in North Dakota Administrative Code section 50-02-11-03.1. Even though Step 2 CS is no longer a part of the USMLE – the way the rule is written – if an applicant for physician licensure had previously taken the CS and failed three times, they would not be eligible for licensure under 50-02-11-03.1. However, the law regarding resident licensure is not as clear. The Board therefore discussed whether it would grant a license to a resident applicant who failed the CS three

times. Dr. Houle made a motion that, consistent with physician licensure, Step 2 CS would be considered and count towards the exam limit, seconded by Dr. Quast, motion passed unanimously by roll call vote. The Board discussed reviewing this section of the administrative code next time it will be updating its rules.

Clinical Practice Discussion

Currently, the Board has a policy requiring physicians who have not practiced clinically during a lapsed license to interview before their license may be renewed. However, there is no policy in the manual on applicants who have not practiced clinically for two or more years prior to their seeking licensure. In a review of meeting minutes from 2013, the Board discussed having such applicants either obtain an administrative license or take the SPEX or CPEP competency examinations. The Board discussed a fourth option of having the individual interview before the Board at its next regularly scheduled meeting to present a re-entry to practice plan. Dr. Quast made a motion to approve the four options and to include in the Operations Manual, seconded by Dr. Houle, motion passed unanimously by roll call vote.

Governor Burgum's Red Tape Reduction Working Group

Governor Burgum issued Executive Order 2022-08 requesting agencies and boards to review their laws and regulations and submit ideas on ways to reduce barriers, remove outdated/redundant language, and remove inefficient processes. The Board has been doing just that these past three years, so a letter was sent to the Governor's Office and the Working Group outlining all the steps taken by the Board on its own initiative to review and implement such changes. Director DePountis also volunteered to be the Board's liaison to the Working Group.

Office Matters

Staff Raises and ED Evaluation: Dr. Sticca presented the evaluation of Executive Director DePountis. Information was also provided on the many accomplishments of the Board's office staff this past year. Finally, information was also provided on a 5.9% COLA for 2022. Dr. Houle

made a motion to approve Director DePountis' Amendment 2 for her contract and 5% raises for all staff members, seconded by Ms. V. Johnson, motion passed unanimously by roll call vote.

2023 meeting dates. 2023 meeting dates were presented with the Board in agreement to continue having the January/July meeting virtual and April/October in person at the Board office.

The meeting was adjourned at 12:11 p.m.