

NORTH DAKOTA BOARD OF MEDICINE

January 27, 2023

Regular Meeting

Call to Order:

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

Robert Sticca, MD, Chair
Misty Anderson, DO
Lacey Armstrong, MD
Zena Homan, MD
Catherine Houle, MD
Mandi Johnson, MD
Vaune Johnson
Robert Kemp, MD
Jay Metzger, PA-C
Ann Reich
Michael Quast, MD

Absent: Rup Nagala, MD, and Justin Horner, 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.

NDPHP representatives present: Ann Leiseth, Executive Director; Dr. Missy Henke, Medical Director; and NDPHP Board of Directors Thomasine Heitkamp, Beth Stroup-Menge, John Olson, and Randy Perkins.

The following were present via Zoom for their respective interviews: Mark Spicer, MD; Ezra Koch, MD; Eugenia Cuyar, MD; Joel Pessa, MD; and Debra Weinstein, MD. Dr. Alan Lindemann and his legal counsel Lesley Johnson were present during the discussion on his disciplinary matter. Dr. Stanley Ziomek and his legal counsel Ben Sand were present during the discussion on his disciplinary matter.

Minutes

PA-C Metzger moved to approve the October 21, 2022, regular meeting minutes and December 28, 2022, special meeting minutes, seconded by Dr. Quast, motion passed unanimously.

Physician Approval of License and Waiver of Interview

Dr. Kemp moved to approve the ninety-five (95) licenses and waivers of interview for physician applicants including 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

PA-C Metzger motioned to approve the licensure and waiver of interview for the eleven (11) physician assistants, as presented, seconded by Dr. Houle, motion passed unanimously by roll call vote.

Genetic Counselor Waivers of Interview

Dr. Houle motioned to approve the licensure and waiver of interviews for the sixteen (16) genetic counselors, as presented, seconded by PA-C Metzger, motion passed unanimously by roll call vote.

IMLC License Granted

Fourteen (14) Letters of Qualification for State of Principal Licensure and one hundred and seventy-six (176) non-principal licenses were issued under the Compact. Deputy Director McDonald provided information that that as of January 19 – the NDBOM has issued a total of 123 LOQs for SPLs, 1,463 Non-SPLs, for a total of 1,585 IMLC licenses granted in ND.

Interview for Licensure – Mark Spicer, MD

Dr. Spicer is a board-certified neurosurgeon and is being interviewed due to three malpractice cases and disciplinary action taken by the California Board of Medicine in 2019 resulting in probation, which has since been lifted. Dr. Quast led the interview of this applicant.

Dr. Spicer answered questions regarding his education, training, and practice history along with information on the malpractice cases and cases that led to the probation.

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

Interview for Licensure – Ezra Koch, MD

Dr. Koch completed one year internship in general surgery June 2021 but has not practiced clinically since. Dr. Koch was also recently arrested for a DUI on 1/1/2023. PA-C Metzger led the interview of this applicant.

Dr. Koch answered questions regarding his training, education, arrest, and plans for practice.

Dr. Kemp made a revised motion to issue the license, seconded by PA-C Metzger, motion passed unanimously by roll call vote.

Interview for Licensure – Eugenia Cuyar, MD

Dr. Cuyar completed her surgical residency on 6/30/2022. Dr. Cuyar failed to disclose on her application that she had a LOA during the residency and repeated year 4 with concerns noted from the program. Dr. Cuyar also failed to disclose employment at three facilities or provide information on the abrupt resignation from the hospitals. One facility was contacted with concerns noted. Dr. Sticca led the interview of this applicant.

Dr. Cuyar answered questions and explained the errors in her application package. Dr. Sticca stressed the importance of answering applications truthfully and accurately.

Dr. Quast made a motion to issue the license while encouraging Dr. Cuyar to continue in her training and to not practice above her skill level, seconded by Dr. Houle, motion passed unanimously by roll call vote.

Petitions for Eligibility to Practice

Joel Pessa, MD

Dr. Pessa is seeking licensure to resume practice as a plastic surgeon at Trinity Health in Minot. However, Dr. Pessa has not practiced clinically since 2013. The Board's Operations Manual provides the following:

Applicants who have not practiced in a clinical setting for two or more years immediately preceding their application date, but meet all other requirements for licensure, shall be presented with the following options:

1. Obtain an administrative license under N.D.A.C. 50-02-02.1;
2. Obtain a competency evaluation or reentry to clinical practice from the Center for Personalized Education for Physicians (CPEP);
3. Pass the SPEX examination from the Federation of State Medical Boards; or
4. Interview with the Board at its next regularly scheduled meeting.

Dr. Pessa chose option (4) and is interviewing with the Board. Contact has been made with the American Board of Plastic Surgery which outlines a re-entry to practice. As Dr. Pessa is a "diplomate" he is not required to go through ABPS re-entry, however, he provided a plan that mirrors the suggested ABPS model re-entry plan – which was reviewed by the Board. Dr. Pessa's application is not complete at this time. Therefore, PA-C Metzger made a motion to delegate approval of the license upon a completed application to Dr. Sticca, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

Debra Weinstein, MD

Dr. Weinstein is also before the Board seeking licensure and has been conducting clinical research since 2008 which she is hoping to extend into North Dakota. Through this role she

confirmed she has had clinical practice. Dr. Kemp made a motion to approve the license, seconded by Dr. Anderson, motion passed unanimously by roll call vote.

IPA v. Michael Dallolio, MD

IPA disciplinary action against Dr. Dallolio for (1) having a physical or mental disability materially affecting ability to perform the duties of a physician in a competent manner and (2) failing to comply with the PHP. A proposed Stipulation was signed for indefinite suspension of the license and payment of fees. Dr. Johnson made a motion to approve the proposed Order, seconded by Dr. Houle, motion passed unanimously by roll call vote of Panel B members.

IPA v. Alan Lindemann, MD

IPA disciplinary action against Dr. Lindemann for having a physical or mental disability materially affecting ability to perform the duties of a physician in a competent manner. A proposed Stipulation was signed for indefinite suspension of the license, ability to apply for a Special Emeritus Certificate, and payment of fees. The proposed Stipulation also allows Dr. Lindemann to appear before the Board to discuss rural medicine and retirement. Dr. Houle made a motion to approve the proposed Order, seconded by PA-C Metzger, motion passed unanimously by roll call vote of Panel B members.

IPA v. William Doss, MD

IPA disciplinary action against Dr. Doss for (1) engaging in conduct that is dishonorable, unethical, or unprofessional, likely to deceive, defraud, or harm the public; (2) violated a provision of the medical practice act; (3) prescribing a drug classified as a controlled substance or as an addictive/dangerous drug other than for medically accepted therapeutic purposes; (4) engaging in a continued pattern of inappropriate care; (5) violating a state or federal statute or regulation relating to controlled substance; (6) imposition by another state of disciplinary action against the licensee; and (7) lacking appropriate documentation in medical records for diagnosis, testing, and treatment of patients. A proposed Stipulation was signed for required CME to be completed including 15 hours on pain management and CPEP's record keeping course, along with payment of fees. Dr. Kemp made a motion to approve the proposed Order, seconded by Ms. V. Johnson, motion passed unanimously by roll call vote of Panel B members.

IPB v. Stanley Ziomek, MD

Dr. Ziomek was previously disciplined for unprofessional conduct based on quality/standard of care concerns identified in a competency evaluation performed by CPEP. An Order was approved by the Board on August 20, 2021, requiring CME, payment of fees, and restrictions from performing any endovascular procedures. Dr. Ziomek completed the CME courses, paid the fees, and attended a training on TAVR Endovascular Surgery. Dr. Ziomek is asking for the restrictions to be removed from his license. Dr. Sticca, made a motion to approve an unrestricted license, seconded by Dr. Homan, motion passed unanimously by roll call vote.

Investigative Panel A report

Dr. Quast, Chair, reported that Investigative Panel A reviewed a total of twenty-four (24) cases: three (3) Stipulations were approved, two (2) confidential Letters of Concern were authorized, one (1) case was 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-four (24) cases: five (5) confidential Letters of Concern were authorized, two (2) cases were tabled for further review, all other cases dismissed, or no action taken.

NDPHP Report

Dr. Henke, NDPHP Medical Director, reported thirty-seven (37) active participants in the NDPHP – nine (9) are Board ordered with PHP primary monitoring five (5) and (4) collaborating; twenty-one (21) as voluntary with PHP primary for sixteen (16) and five (5) collaborating, and seven (7) pending cases. NDPHP is primary for a total of twenty-one (21) participants.

Dr. Jack Long is asking for a three-month early release from the program with the NDPHP having no concerns with such a request. Dr. Houle made a motion to grant early release, seconded by Dr. Anderson, motion passed unanimously by roll call vote.

PHP Financials

PHP's 2022 year end financials were provided to the Board for review. The Board had questions regarding participant fees – and why many seemed outstanding. PHP answered questions that they are in the process of implementing new policies and procedures and accounting principles with accounts receivable to obtain and track the billing.

NDPHP and NDBOM entered into a Memorandum of Understanding for Brady Martz to perform an audit of the NDPHP for the years 2020-2021, paid for by the NDBOM, which was scheduled for January 9, 2023. The audit was indefinitely postponed by NDPHP's Executive Director. NDPHP's Executive Director answered questions that due to her workload, she made the decision to postpone the audit. Some reports and documents have been sent to the auditor, however, in follow up, it appears that the audit will now not be able to happen until May. The Board expressed its concern for this unilateral decision, and how it would hinder the contract negotiations which expires in June. Concern was also expressed regarding the content and consistency of policies so far adopted, and the slow implementation of outstanding policies, and how this should not be part of the NDBOM's Executive Director's workload.

NDPHP Board of Directors Chair Thomasine Heitkamp answered questions on updates it is working on including new office policies and procedures that would revise how the office is run and how payroll is conducted; potential hiring of a consultant to help with supervision and implementing office and program policies and procedures, and the desire to be nationally accredited by the end of the year. Chair Heitkamp also recognized the need for more meetings of the NDPHP Board with a firm yearly schedule – and vowed to have a meeting in February.

COMMITTEE REPORTS

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

Dr. Houle motioned to approve the Committee's December 2, 2022, meeting minutes, seconded by Dr. Johnson. Motion passed unanimously by Committee members.

Dr. Armstrong provided an overview of the PHP Committee meetings. The Board, at its October meeting, authorized the issuance of a letter to the NDPHP outlining various concerns

and requesting an action plan from the NDPHP on how it would address the concerns to be received by November 1, 2022. The NDPHP outlined ways to address concerns moving forward including updating its office policies and procedures along with updates to its operations policies. The Committee reviewed 5 policies: Process for Potential Participants, Second Assessment Policy, NDPHP Consistency of Client Management, Process for Reporting to the NDBOM, and the NDPHP Conflict of Interest Policy. Input was given on suggested changes to the policies based on discussion. These policies are set to go before the NDPHP Board of Directors at its next meeting and once that meeting date is set, the PHP Committee will hold another meeting.

Laws/Rules/Legislative Committee (Drs. Sticca, Quast, Anderson, and Horner, and PA-C Metzger).

PA-C Metzger made a motion to approve the Committee's December 2 and 21, 2022, meeting minutes, and January 16, and 23, 2023, meeting minutes, seconded by Dr. Anderson. Motion passed unanimously by Committee members.

Dr. Anderson updated the Board on bills that were filed during the 2023 legislative session affecting the NDBOM and its position on various bills – including the bills formally opposed by the LRL Committee of: SB 2184 (creating a uniform law for all boards); SB 2249 (moving Board administrative services to the Department of Labor); SB 2296 (taking away the Board's final decision making authority and instead giving such authority to an ALJ); and SB 2337 (moving Board administrative services to the Office of Management and Budget).

The Committee also provided amendments to its bill – SB 2115 – specifically section 31 of reporting requirements which were requested by the Hospital Association. Ms. V. Johnson made a motion to approve the amendments, seconded by Dr. Houle, motion passed unanimously by roll call vote.

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

Dr. Kemp made a motion to approve the committees January 4, 2023, meeting minutes, seconded by PA-C Metzger, motion passed unanimously by committee members.

Ms. V. Johnson discussed the proposed 2023 budget – including moving the IMLC licenses to their own line item. Ms. V. Johnson made a motion to approve the 2023 budget, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

Dr. Kemp made a motion to approve \$2.5 million as a litigation reserve amount, seconded by Ms. V. Johnson, motion passed unanimously by roll call vote.

The Board's 2021 Audit was provided and reviewed with the Board having no concerns.

IT Committee (Drs. Nagala [chair], Johnson, Quast, and Ms. A. Reich).

Dr. Johnson made a motion to approve the committees September 6, 2022, meeting minutes, seconded by Ms. A. Reich, motion passed unanimously by committee members.

No new meeting occurred during the interim.

Manual Updates

Compensation. The Board reviewed its policy on compensation for Board members for meetings. This policy was set prior to the implementation of standing committees and the Board discussed whether compensation would be appropriate for this work that can take a lot of time on behalf of Board members. Dr. Anderson made a motion to update the policy to allow for reimbursement of \$50/member/meeting attendance with \$50/member/meeting for prep work, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

Press Inquiries. The Board reviewed a proposed policy on how to handle press inquiries. Dr. Quast made a motion to approve the policy, seconded by Dr. Homan, motion passed unanimously by roll call vote.

NDBOM Member Discussion

The Board discussed coming up with a statement for what it all means to be a member of this Board – expectations, time commitments, etc. This will be included in the Board's News Blast. Dr. Sticca also asked members to start thinking about who would have the time and willingness to serve as Board Chair and Vice-Chair which will be voted upon by the next meeting.

Peer Review Manual

By law, the Board is authorized to employ the services of an expert review for investigatory panel cases. A draft manual outlining expectations, responsibilities, and guidance on drafting was discussed by the Board. Dr. Anderson made a motion to approve the draft manual, seconded by Dr. Houle, motion passed unanimously by roll call vote.

FSMB Policy on Standard of Care

The Board reviewed the proposed policy from the FSMB and determined it would not submit any comments or take a position on the proposed policy at this time.

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 obtained an independent SAAG appointment for David Phillips and associates at his law firm to represent the NDBOM in this case. An update was provided on the cases in which the Judge denied the motion to reopen. However, the Attorney General is appealing this decision to the Eighth Circuit Court of Appeals. Mr. Phillips will keep us apprised of the case as it moves through the court system.

Office Matters

FSMB Annual Meeting: The FSMB is holding its annual conference on May 4-6, 2023, in Minneapolis. Director DePountis, Deputy Director McDonald, and Chair Sticca all plan on attending. Any other Board members who would like to attend should reach out to Director DePountis as soon as possible.

The meeting was adjourned at 11:51 p.m.

Sandra DePountis

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Executive Director