

**NORTH DAKOTA BOARD OF MEDICINE**

**July 28, 2023**

**Regular Meeting**

**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  
Misty Anderson, DO  
Zena Homan, MD  
Justin Horner, MD  
Catherine Houle, MD  
Mandi Johnson, MD  
Vaune Johnson  
Robert Kemp, MD  
Jay Metzger, PA  
Ann Reich  
Michael Quast, MD

Absent: Lacey Armstrong, MD

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

NDPHP representatives present: Ann Leiseth, Executive Director; Dr. Missy Henke, Medical Director; Thomasine Heitkamp, Chair of the NDPHP Board of Directors; John Olson, member of the NDPHP Board of Directors – present through the PHP Contract Discussion.

New Board members who begin with the NDBOM on August 1, 2023: Barbara Andrist (public member), Stephanie Barth (public member), PA Grant Lannoye, and Lezlie Link, ND.

Courtney Koebele, NDMA; Elizabeth Allmendinger, ND; and Jared Solomon, MD.

The following were present for their respective interviews/cases via Zoom: Joseph Shehadi, MD; Patrick Hanks, MD; Jenny Fraire-Chew, DO; Judah Askew, MD; David Schwartz, MD.

### **Minutes**

Dr. Houle moved to approve the April 28, 2023, regular meeting minutes, and the May 31, 2023, special meeting minutes, seconded by Dr. Anderson, motion passed unanimously.

### **Physician Approval of Licenses**

Dr. Johnson moved to approve the one hundred fifty-seven (157) licenses and waiver of interviews for physician applicants including one (1) administrative license, four (4) special licenses, and twelve (12) cases with derogatory information, as presented, seconded by Ms. A. Reich, motion passed unanimously by roll call vote.

### **Resident Approval of Licenses**

Dr. Kemp moved to approve the sixty-one (61) licenses and waiver of interviews for resident applicants, as presented, seconded by Dr. Quast, motion passed unanimously by roll call vote.

### **Physician Assistant Approval of Licenses**

PA Metzger moved to approve the eighteen (18) licenses and waiver of interviews for physician assistants, as presented, seconded by Dr. Houle, motion passed unanimously by roll call vote.

### **Genetic Counselor Approval of Licenses**

Dr. Kemp moved to approve the eight (8) licenses and waiver of interviews for genetic counselors, as presented, seconded by PA 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 sixty-six (166) non-principal licenses were issued under the Compact. Hawaii and Ohio have officially joined the compact, bringing members states up to 41. Deputy Director McDonald provided updated statistics on licenses issued via the compact since its adoption in 2017 which included one-hundred and forty-seven (147) Letters of Qualifications issued, and one thousand eight hundred and forty-three (1,843) non-state of principal licenses issued – accounting for a total of one thousand nine-hundred and ninety (1,990) licenses issued through the compact.

## **Interview for Licensure – Joseph Shehadi, MD**

Dr. Shehadi is a board-certified neurosurgeon who entered into a civil settlement agreement in 2020 with the United States Department of Health and Human Services for submitting or causing to submit false claims to Medicare that resulted in violations of the Anti-Kickback Statute. Dr. Shehadi was required to pay restitution. Dr. Shehadi has a pending investigation before the Ohio Medical Board regarding the settlement agreement. Dr. Shehadi has one current malpractice case pending and one case previously settled in 2016.

Dr. Quast led the interview for this applicant. Dr. Shehadi answered questions regarding the incidents that led to the Settlement Agreement and his role within the company.

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

## **Interview for Licensure – Patrick Hanks, MD**

Dr. Hanks is board-certified in diagnostic radiology, and he has a malpractice case in the last five years with a settlement greater than \$500,000 and therefore, as Board policy, was required to interview. Dr. Kemp led the interview for this applicant. Dr. Hanks answered questions on the case and subsequent changes in his practice to avoid future issues.

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

**Interview for Licensure – Jenny Fraire-Chew, DO**

Dr. Fraire-Chew is a board-certified family practice physician being asked to interview due to errors/discrepancies on her application in which Dr. Fraire-Chew answered “no” to two personal data questions when in verification of her credentials they should have been answered “yes.” Dr. Johnson led the interview for this applicant. Dr. Fraire-Chew provided that the errors were oversight on her part.

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

**Interview for Licensure – Judah Askew, MD**

Dr. Askew is a cardiothoracic surgeon. Dr. Anderson led the interview for this applicant. At 8:58 a.m. the Board moved into Executive Session to discuss confidential diagnosis and treatment records of Dr. Askew pursuant to 42 CFR Part 2 and N.D.C.C. section 44-04-18.23. All Board members, Director DePountis, Deputy Director McDonald, Attorneys Moldenhauer and Hicks, Dr. Askew, and Dr. Henke and Ann Leiseth from the NDPHP were in attendance.

The Executive session adjourned at 9:17 a.m.

Dr. Sticca made a motion to issue a conditional license requiring enrollment with the NDPHP for five years, seconded by Dr. Nagala, motion passed unanimously by roll call vote.

**Interview for Licensure – David Schwartz, MD**

Dr. Schwartz is a radiation oncologist who has not practiced clinically since August 2018. As per Board policy, 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 administered by the Federation of State Medical Boards; or
4. Interview with the Board at its next regularly scheduled meeting.

Dr. Schwartz chose option (4) and is interviewing with the Board. He provided the Board with a proctoring plan from Essential Health in which he will be supervised and in consultation with another provider. Dr. Houle led the interview for this applicant.

At 9:22 a.m. the Board moved into Executive Session to discuss confidential diagnosis and treatment records of Dr. Schwartz pursuant to 42 CFR Part 2 and N.D.C.C. section 44-04-18.23. All Board members, Director DePountis, Deputy Director McDonald, Attorneys Moldenhauer and Hicks, Dr. Schwartz, and Dr. Henke and Ann Leiseth from the NDPHP were in attendance.

The Executive Session adjourned at 9:50 a.m.

Dr. Houle made a motion to issue a conditional license requiring compliance with the proctoring plan by Essentia Health, with conditions to be removed upon verification of the proctor the plan was completed and Dr. Schwartz is safe to practice independently, seconded by Dr. Anderson, motion unanimously by roll call vote.

#### **IPA v. William Doss, MD – Order**

Dr. Doss was disciplined via Order dated December 19, 2022, following discipline from the Virginia Board of Medicine, for failing to adequately monitor ten patients being prescribed narcotics and benzodiazepines. The Order required Dr. Doss to complete 15 CME hours on pain management, CPEP's course of Medical Records Keeping, and payment of fees. Dr. Doss has completed the requirements of the Order.

Dr. Quast made a motion to approve the Order of Completion for Dr. Doss, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

### **Investigative Panel A report**

Dr. Quast, Chair, reported that Investigative Panel A reviewed a total of twenty (20) cases: one (1) case was referred for formal disciplinary action, two (2) confidential letters of concern were authorized, two (2) cases were tabled for further review, all other cases dismissed, or no action taken.

### **Investigative Panel B report**

PA Metzger, Vice-Chair, reported that Investigative Panel B reviewed a total of twenty (20) cases: one (1) case was referred for formal disciplinary action, seven (7) 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-four (34) active participants in the NDPHP – eight (8) are Board ordered with PHP and twenty-two (22) are voluntary. NDPHP is the primary monitor for a total of eighteen (18) participants.

NDPHP also requested orders of completion for three participants who successfully have completed the program.

Dr. Quast made a motion to issue an Order of Completion for Kimberly Loveless, MD, and Jantey Carey, MD, and to issue an Order of Completion to Warren Looney, MD, after verification from the NDPHP that he paid his outstanding fees to the NDPHP, seconded by Dr. Houle, motion passed unanimously by roll call vote.

### **PHP Contract Discussion**

The BOM/PHP contract will expire September 1, 2023.

A draft audit report was provided by Brady Martz of the NDPHP for fiscal years 2021-2022. Ms. V. Johnson walked the Board through the audit's qualified opinion issued noting several deficiencies and material weaknesses.

NDPHP Chair Ms. Heitkamp answered questions from the Board regarding the NDPHP moving forward to address the concerns noted in the audit.

Before proceeding into executive session, the Board discussed whether it was in the best interest of the licensees, participants, and NDBOM to continue contracting with the NDPHP, noting the audit issues, and other concerns brought up in the last year.

Dr. Nagala made a motion to enter executive session to discuss contract terms under N.D.C.C. section 44-04-19.1 for negotiation strategy and attorney consultation that if held in public would result in an adverse fiscal effect, seconded by Dr. Houle, motion passed unanimously by roll call vote. The executive session began at 10:55 a.m. and in attendance were all Board members, Director DePountis, Deputy McDonald, and attorneys, Hicks and Moldenhauer.

The executive session ended at 11:38 a.m. Dr. Houle made a motion to authorize Allyson to begin negotiating the terms of the proposed new contract with the NDPHP as discussed in executive session, and if a contract is not signed by August 15, 2023, authority is given to Director DePountis to move forward with a contingency plan to make sure board ordered participants will still be appropriately monitored within the NDBOM, seconded by Dr. Quast, motion passed unanimously by roll call vote.

## **COMMITTEE REPORTS**

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

Dr. Anderson provided an update on the formulary the committee is working on for prescriptions authorized for Naturopathic Doctors. There have been numerous discussions with various constituents including pharmacists and the North Dakota Medical Association. The Board discussed that at this time, anti-depressants and SSRIs would not be authorized in the formulary for naturopathic prescribing. Dr. Anderson will continue to work on other drug categories with the naturopaths to propose a formulary.

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

Ms. Johnson provided information on the status of the Board finances – noting no concerns. Another topic discussed in preparation for the upcoming meeting which will approve any salary increases, the Committee reviewed information on salaries for office staff compared with other boards, jurisdictions, the private sector, and state ranges along with COLA increases. Upon review, the Committee is recommended to increase the top salary ranges for board office positions by 20%. Ms. A. Reich made a motion to approve the increase in salary ranges, seconded by Dr. Kemp, motion passed unanimously by roll call vote.

### **PDMP Update**

Dr. Horner is the Board’s representative for the PDMP council. Dr. Horner provided an update of PDMP statistics discussed at the past PDMP meeting held on June 15, 2023.

### **MKB v. NDBOM, et al. – Litigation Update**

The parties appealing to the 8<sup>th</sup> Circuit the District Court’s decision not to reopen the case have agreed to dismiss the appeal. The case is therefore closed.

### **Board Leadership Positions**

Dr. Kemp made a motion to appoint Dr. Quast as the next vice-chair of the Board, and Dr. Homan as the IMLC representative, seconded by Dr. Houle, motion passed unanimously.

### **Various Policy Discussions**

The Board reviewed its policies regarding interviews for licensure and review required by an investigatory panel due to malpractice cases. Dr. Kemp made a motion to increase the minimum automatic interview/panel review of settlements to \$750,000, seconded by Dr. Quast, motion passed unanimously by roll call vote.

The Board next reviewed its policies on requiring state license verifications directly from the jurisdiction – versus utilizing the national databanks/reports for the information. Dr. Nagala made a motion to no longer require verification directly from states, but to run the appropriate federation reports of applicants, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

Finally, the Board reviewed the office holiday policy. Dr. Kemp made a motion to allow the NDBOM Executive Director the discretion to allow employees to take vacation leave and close the office on Mondays and Fridays adjacent to holidays, seconded by Dr. Quast, motion passed unanimously by roll call vote.

### **Office Matters**

Attorney General Training. The AG's office is offering training for members of all regulatory and licensing boards on October 25, 2023. NDBOM members who would like to attend should let Director DePountis know so she can send a RSVP on behalf of the Board.

2024 Meeting Dates. Proposed meeting dates for 2024 were provided for January 25-26, April 25-26, July 25-26, and October 24-25, 2024. The Board should review the dates and decide at the next meeting on whether to hold the meetings in person or virtual.

Executive Director Report. Director DePountis provided an update on the office including current projects of implementation of new laws passed this legislative session for Title 50 and for the integration of naturopaths. Upcoming projects of the hiring of a graphic designer to help with rebranding and obtaining estimates/solutions to a larger conference room table were also discussed.

Outgoing Board Members. As this was the last meeting for the outgoing Board members, and a sincere thank you was expressed to the members who provided eight years of services to the Board. Thank you Ms. A. Reich, Ms. V. Johnson, Dr. Sticca, and Dr. Nagala.

The meeting was adjourned at 12:30 p.m.

*Sandra DePountis*

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Sandra DePountis  
Executive Director