



**Regular Meeting**

**July 26, 2024**

**Call to Order:**

Catherine Houle, MD, chair, called the virtual, regular meeting to order at 8:00 a.m. In attendance:

Catherine Houle, MD – Chair

Lacey Armstrong, MD – Vice Chair – arrived at 9:00 noted in the minutes.

Misty Anderson, DO

Barbara Andrist

Zena Homan, MD

Justin Horner, MD

Mandi Johnson, MD

Robert Kemp, MD

Grant Lannoye, PA

Jay Metzger, PA

Troy Pierce, MD

Michael Quast, MD

Lezlie Scott, ND

Stephanie Sievert

Absent: Bree Dewing, MD

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

NDPHP representatives present: Dr. Missy Henke.

Courtney Koebele, NDMA.

The following were present via Zoom for their respective interviews: Alex Funicello, MD; Miles Ardaman, MD.

### **Minutes**

Dr. Kemp moved to approve the April 26, 2024, regular meeting minutes, seconded by Dr. Pierce, motion passed unanimously (Dr. Quast not present for this vote).

### **Physician Approval of Licenses**

Dr. Homan moved to approve the one hundred and eighteen (118) licenses and waiver of interviews for physician applicants which includes one (1) administrative license as presented, seconded by Dr. Johnson, motion passed unanimously by roll call vote (Dr. Quast not present for this vote).

### **Resident Approval of Licenses**

Dr. Anderson moved to approve the sixty-five (65) licenses and waiver of interviews for resident applicants as presented, seconded by Dr. Pierce, motion passed unanimously by roll call vote (Dr. Quast not present for this vote).

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

PA Metzger moved to approve the nineteen (19) licenses and waiver of interviews for physician assistants, as presented, seconded by PA Lannoye, motion passed unanimously by roll call vote (Dr. Quast not present for this vote).

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

Dr. Kemp moved to approve the fourteen (14) licenses and waiver of interviews for genetic counselors, as presented, seconded by Dr. Horner, motion passed unanimously by roll call vote (Dr. Quast not present for this vote).

## **Naturopathic Doctors**

Dr. Kemp moved to approve the three (3) license and waiver of interview for naturopathic doctors, as presented, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

Dr. Anderson moved to approve the one (1) endorsement for limited prescribing under the collaboration and supervision of a licensed physician, as presented, seconded by Ms. Sievert, motion passed unanimously by roll call vote (Lezlie Scott, ND, and Dr. Kemp recusal of approving ND Scott's own endorsement with Dr. Kemp's supervision pursuant to N.D.C.C. § 43-17-07.2 providing that a board member "may not participate in the making of any decision or the taking of any action affecting that member's personal, professional, or pecuniary interest, or that of a known relative or business or professional associate.").

## **IMLC License Granted**

Nineteen (19) Letters of Qualification for State of Principal Licensure and two hundred and twelve (212) non-principal licenses were issued under the Compact. Deputy Director McDonald provided updated statistics on North Dakota licenses issued via the Compact since its adoption in 2017 which included a total of one hundred and ninety-seven (197) Letters of Qualification issued, and two thousand six hundred and twenty-three (2,623) non-state of principal licenses issued. The IMLC 2024 Statistical Report was provided that outlined that since its implementation, the IMLC was used by more than 25,000 physicians who completed over 65,000 applications, securing more than 100,000 licenses through April 2024. Forty-two (42) states/territories are part of the IMLC.

## **Interview for Licensure – Alex Funicello, MD**

Dr. Funicello was required to interview due a 2020 malpractice settlement of \$2,000,000 for performing a surgical repair of the ventral hernia six weeks after a laparoscopic cholecystectomy which it was argued should have been performed together. Dr. Pierce led the interview of this applicant.

Dr. Funicello answered questions regarding his education, training, gaps in employment due to moving and getting relicensed and recredentialed in various jurisdictions, proposed practice in North Dakota, and finally discussed the two malpractice cases.

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

### **Petitions for Eligibility, Modification, and Completion**

#### **- Elyma Encarnacion, MD**

Dr. Encarnacion is petitioning the Board to grant an exception to the three-attempt exam limit rule under North Dakota Administrative Code 50-02-11-03.1(2) as it took her five attempts to pass Step 3 of the USMLE. Dr. Encarnacion is currently licensed in Maryland, Pennsylvania, and Virginia, without any discipline, has practiced for over five years, and is ABMS Board Certified in Neurology.

Dr. Kemp made a motion to approve granting an exception to the three-attempt limit rule, seconded by Dr. Johnson, the motion passed unanimously by roll call vote.

#### **IPB v. Adisa Jones, MD**

Disciplinary action was sought against Dr. Jones after presenting to work while intoxicated in violation of N.D.C.C. § 43-17-31(1)(d) use of alcohol or drugs to such a degree as to interfere with the licensee's ability to safely practice medicine; (e) having a physical or mental disability materially affecting ability to perform the duties of a physician in a competent manner; (f) engaging in dishonorable, unethical, or unprofessional conduct, likely to harm the public, and (bb) failure to comply with the physician health program.

A proposed Findings of Fact, Conclusions of Law, and Default Order to revoke Dr. Jones' license was reviewed by IPA. Upon review, Dr. Pierce made a motion to approve the proposed findings and Order, as presented, seconded by Ms. Andrist, motion passed unanimously by roll call vote of IPA members.

### **Investigative Panel A report**

Dr. Quast, Chair, reported that Investigative Panel A reviewed a total of thirty-two (32) cases which included fifteen (15) investigatory cases, eight (8) summary matter cases, and nine (9) malpractice cases. Of the thirty-two (32) cases: three (3) cases were tabled for further review and two (2) Letters of Concern were issued; all other cases dismissed, or no action taken.

### **Investigative Panel B report**

PA Metzger, Chair, reported that Investigative Panel B reviewed a total of thirty-four (34) cases which included sixteen (16) investigatory cases, nine (9) summary matter cases, and nine (9) malpractice cases. Of the thirty-four (34) cases: one (1) Default Judgement was approved; disciplinary action is being sought in two (2) cases, three (3) cases were tabled for further review, and four (4) Letters of Concern were issued; all other cases dismissed, or no action taken.

### **NDPHP Presentation and Report**

NDPHP Medical Director Dr. Missy Henke reported thirty-eight (38) active participants in the NDPHP – six (6) are Board ordered. An update was given by Dr. Henke about the NDPHP Board of Director's meeting on 7/15/2024 in which the NDPHP terminated the employment of its Executive Director. NDPHP are actively seeking a new director and also seeking new members to serve on the Board of Directors.

The Board also considered a petition for early release from Aurther Raymond, MD - July 24, 2020, Order requiring monitoring with the NDPHP for five years – in order to retire and move from an active licensure status to a special emeritus certification. NDPHP supports this request. PA Metzger approved the Order of Completion upon such terms, seconded by Dr. Anderson, motion passed unanimously by roll call vote.

## **NDBOM and NDPHP Contract Discussion**

The Board reviewed proposed changes to the NDBOM/NDPHP contract to section 1.1.E(v) and (vi) of the contract regarding the qualifications and staffing of the NDPHP office to better fit their needs. A brief update was given by ex-officio member Stephanie Sievert about changes in the NDPHP and the goal of moving forward in a positive direction. NDPHP provided reassurance that it is actively addressing the breaches of contract noted in a letter provided to the NDPHP Board on June 17, 2024. PA Lannoye made a motion to approve Amendment 2 to the NDBOM and NDPHP contract, seconded by Dr. Quast, motion passed unanimously by roll call vote.

## **COMMITTEE REPORTS**

### **Finance Committee (Ms. Sievert [chair], Drs. Kemp and Pierce, PA Metzger**

PA Metzger made a motion to approve the Finance Committee's June 27, 2024, meeting minutes, seconded by Dr. Kemp, motion passed unanimously by committee members.

Ms. Sievert provided an update on the Finance Committee. The NDBOM mid-year financials were discussed, along with options for moving excess funds out of the checking account and into the SIB account for a better rate of return. Dr. Pierce made a motion to allow the Finance Director and Executive Director to review the NDBOM's bank account and appropriate a sufficient amount of idle cash in the account to the SIB account twice a year in an amount they determine to be necessary, seconded by Dr. Homan, motion passed unanimously by roll call vote.

Ms. Sievert also provided an update from the office of reclassification of positions and suggested new qualifications for the licensing specialist, credentialing specialist and investigator. With the new qualifications and classifications, salaries were reviewed. Dr. Pierce made a motion to approve the reclassification of the two office positions and approve the proposed salary compensations, seconded by Dr. Horner, motion passed unanimously by roll call vote.

**Dr. Lacey Armstrong joined the meeting and participated in the following discussions and votes.**

**Genetic Counselor Advisory Committee** (Board members Dr. Anderson and Dr. Horner)

Dr. Anderson provided an update for the May 31, 2024, meeting of the Genetic Counselor Advisory Committee. The Committee reviewed a proposed bill that would allow genetic counselors to order their own testing and changed the exam limit requirements to align with American Board of Genetic Counseling guidance. Dr. Anderson made a motion to approve the draft bill and move forward with legislation to implement in 2025, seconded by Dr. Horner, motion passed unanimously by roll call vote.

The Committee also reviewed draft rules – North Dakota Administrative Code Chapter 50-07 – regarding genetic counselors. Upon review, Ms. Andrist made a motion to approve the draft rules and move forward with their implementation in compliance with the Administrative Agencies Practice Act, seconded by ND Scott, motion passed unanimously by roll call vote.

**LRL Committee** (Dr. Anderson [chair], Drs. Horner, Scott, and Quast; PA Metzger; and Ms. Andrist)

Dr. Anderson made a motion to approve the LRL Committee’s June 25, 2024, meeting minutes, seconded by Ms. Andrist, motion passed unanimously by committee members.

Dr. Anderson provided an update on the LRL Committee meeting.

The LRL Committee reviewed proposed changes to its North Dakota Administrative Code Article 50 which included an update to the definitions of sexual assault/misconduct and unethical behavior found in each professions’ grounds for discipline. Additional amendments were also drafted for exceptions for licensure for certain telemedicine visits with established patient-provider relationships. Finally, an update clarified that PAs need to have graduated from an accredited school to be eligible for licensure. Ms. Andrist made a motion to approve the draft rules and move forward with their implementation in compliance with the Administrative Agencies Practice Act, seconded by ND Scott, motion passed unanimously by roll call vote

The LRL Committee also reviewed potential amendments to naturopathic doctor's law on eligibility for independent prescribing practices. The Board discussed a potential timeline to be implemented between when a provisional endorsement to prescribe must move forward with the full endorsement. ND Scott and Director DePountis will work on these amendments and bring back for review to the Committee and Board.

Director DePountis provided an update on alternative licensure pathways of international medical physicians that is being considered and reviewed by the FSMB and the Department of Commerce's Workforce Development Committee. This is an evolving topic as research unfolds and Director DePountis will continue to keep the Committee and Board apprised of updates.

### **Interview for Licensure – Miles Ardaman, MD**

Dr. Ardaman was interviewed due to two previous employment verifications - one disclosing termination due to professionalism and clinical competency concerns, and the other disclosing concerns related to clarity, clinical pertinence, and timeliness of clinical documentation. Dr. Armstrong led the interview for this applicant.

Dr. Ardaman answered questions on the derogatory information noted in the file providing context and explanations. He discussed his plans of moving to North Dakota and future practice plans.

PA Metzger made a motion to grant the license, seconded by Dr. Armstrong, 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 PDMP's June 20, 2024, meeting. North Dakota ranks 10<sup>th</sup> of all states who utilize the PDMP. Of all prescriptions being tracked by the PDMP – about 30% are opioids. There is an increase in stimulants being prescribed to patients 65 and older – a trend to be monitored. The Board engaged in discussions on the effects of potentially moving marijuana into a Scheduled III substance and how this will allow for better monitoring for

prescriptive practices with other drugs and practitioners would be able to check for use through the PDMP.

### **Policies and Procedures Review**

IMLC Addendum Policy and Procedure. Board members discussed a policy on how to address IMLC licensees who fail to fill out the addendum questionnaire for initial licensure or renewal within the 30-day deadline. Dr. Kemp motioned to approve a policy in which the \$500 penalty fee required by law will be enforced for failure to fill out the questionnaire, with an investigation open after 60 days of the addendum past due, seconded by Dr. Johnson, motion passed unanimously by roll call vote.

### **Office Matters**

Fireside Contract Amendment #2. Renewal option for continued services with Fireside Office Solutions proposed and discussed. Dr. Quast made a motion to approve Amendment #2 to the contract, extending services for another year, seconded by Ms. Sievert, motion passed unanimously by roll call vote.

FSMB New Board Member Training. The FSMB is providing free online modules for new Board members. Information was provided to Board members on how to access the modules if they so desire.

#### 2025 Proposed Meeting Dates.

January 30-31, 2025 (virtual)

May 1-2, 2025 (in person)

July 24-25, 2025 (virtual)

October 23-24, 2025 (in person)

Ms. Andrist made a motion to approve the 2025 regular meeting schedule, seconded by Dr. Anderson, motion carried unanimously.

The meeting was adjourned at 10:02 a.m.

*Sandra DePountis*

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Sandra DePountis  
Executive Director