

NEW MEXICO MEDICAL BOARD
Third Quarterly Meeting
August 19-20, 2004

MINUTES

1. CALL TO ORDER

The regular meeting of the New Mexico Medical Board convened at 8:35 a.m., Thursday, August 19, 2004 at the NM Medical Board Conference room in Santa Fe, New Mexico, **John S. Romine, M.D.** presiding. A quorum was declared, with all members present except for Reza Ghadimi who arrived at 8:40 a.m.

Members Present:

John S. Romine, M.D., Chair, Physician Member
Paul Kovnat, M.D., Vice-Chair, Physician Member
C. Grant La Farge, M.D., Secretary-Treasurer, Physician Member
Vivian Giudice, M.D., Physician Member
Prakash Ranka, M.D., Physician Member
Steven Weiner, M.D., Physician Member
Reza Ghadimi, P.A., PA Member
Dick Heim, Public Member
Maureen Boshier, Public Member

Also Present:

Charlotte Kinney, Executive Director
Corliss Thalley, A.A.G., for portions of the meeting
G.T.S. Khalsa, Board Prosecutor, for portions of the meeting
Jenny Felmley, P.I.O.
Lynn Tipton, Administrative Assistant
A list of all attendees is attached to these minutes

2. APPROVE AGENDA

Dr. La Farge **MOVED** the agenda be approved with the following modifications: add Barry Campbell, PA, and James Holbrook, MD, under Licensing Actions. Mr. Heim **SECONDED** the motion, which **PASSED UNANIMOUSLY**.

3. APPROVE MINUTES

Dr. Kovnat **MOVED** the minutes of the May 20-21, 2004 regular meeting and the July 13-21, 2004 special meeting be approved as presented with the modification that Mr. Heim's absence on July 15, 2004 should be identified as excused. Dr. La Farge **SECONDED** the motion, which **PASSED UNANIMOUSLY**.

4. NM MONITORED TREATMENT PROGRAM REPORT

Executive Session: MOTION was made by Dr. La Farge and seconded by Mr. Heim to go into executive session to discuss matters of licensure. **YES:** Romine, La Farge, Heim, Ranka, Ghadimi, Boshier, Weiner, Giudice, Kovnat. **MOTION CARRIED.**

Jaye Swoboda, MD, Mary Miesem, and John Thayer were present to discuss the status of mandatory participants. The Board returned to open session. Dr. Romine stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

Mr. Thayer reviewed the operations report. Referrals, assessments, and discharges are status quo and were very level during the last quarter. There was additional discussion and questions related to physicians who are voluntary participants: how they are monitored, the impact on the physician if they relapse and violate their contract, and when they are reported to the Board.

5. COMPLAINT COMMITTEE REPORTS

Executive Session: **MOTION** was made by Dr. La Farge and seconded by Mr. Heim to go into executive session to discuss matters of licensure. **YES:** Romine, La Farge, Giudice, Kovnat, Ranka, Ghadimi, Weiner, Boshier and Heim. **MOTION CARRIED.**

The Board returned to open session. Dr. Romine stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

6. ACTIONS RELATED TO EXECUTIVE SESSION

A. Complaint Committee A. On behalf of Complaint Committee A, Dr. Weiner **MOVED** that complaint cases 2003-A-099, 2003-A-134, 2003-A-158, 2003-A-161, 2003-A-164, 2003-A-176, 2004-A-010, 2004-A-016, 2004-A-019 and 2004-A-028 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Romine, La Farge, Giudice, Kovnat, Ranka, Ghadimi, and Heim. **RECUSED:** Weiner and Boshier. **MOTION CARRIED.**

On behalf of Complaint Committee A, Dr. Weiner **MOVED** the Board issue a Notice of Contemplated Action in case #2004-A-112 (**Michael Flanagan, MD**) based on falsification of an application for renewal. No second was required. **YES:** La Farge, Giudice, Kovnat, Ghadimi, Ranka, Romine and Heim. **RECUSED:** Weiner and Boshier. **MOTION CARRIED.**

B. Complaint Committee B. On behalf of Complaint Committee B, Dr. Ranka **MOVED** that the following complaint cases be closed as there was no violation of the Medical Practice Act or rules: 2003-B-133, 2003-B-150, 2003-B-168, 2003-B-171, 2003-B-174, 2004-B-012, 2004-B-026, 2004-B-044, 2004-B-048. No second was required. **YES:** Romine, La Farge, Kovnat, Weiner, Boshier, Ghadimi and Heim. **RECUSED:** Giudice and Ranka. **MOTION CARRIED.**

C. Complaint Committee C. On behalf of Complaint Committee C, Dr. Heim **MOVED** that the following complaint cases be closed as there was no violation of the Medical Practice Act or rules: 2003-C-169, 2004-C-007, 2004-C-011, 2004-C-015, 2004-C-023, 2004-C-024, 2004-C-033, 2004-C-037. No second was required. **YES:** Romine, La Farge, Giudice, Ghadimi, Ranka, Weiner and Boshier. **RECUSED:** Kovnat and Heim. **MOTION CARRIED.**

On behalf of Complaint Committee C, Dr. Kovnat **MOVED** the Board issue a Resident license with standard stipulations for substance abuse in case #2004-C-086 (**Christopher Nabors, M.D.**). No second was required. **YES:** Romine, La Farge, Boshier, Giudice, Weiner, Ranka, and Ghadimi. **MOTION CARRIED.**

D. Complaint Committee D: On behalf of Complaint Committee D, Dr. La Farge **MOVED** that complaint cases #2004-D-010, 2004-D-013, 2004-D-014, 2004-D-025, 2004-D-039, 2004-D-047 be closed as there was no violation of the Medical Practice Act or rules. No second was required. **YES:** Romine, Giudice, Kovnat, Ranka, Weiner, Boshier and Heim. **RECUSED:** La Farge and Ghadimi. **MOTION CARRIED.**

On behalf of Complaint Committee D, Dr. La Farge **MOVED** that complaint #2004-D-029 (**Donald Rodgers, M.D.**) be issued a Notice of Contemplated Action for incompetence and negligence. No second was required. **YES:** Romine, Giudice, Kovnat, Ranka, Weiner, Boshier and Heim. **RECUSED:** La Farge and Ghadimi. **MOTION CARRIED.**

On behalf of Complaint Committee D, Dr. La Farge **MOVED** that the physician in complaint #2004-D-087 (**Frederick Miller, M.D.**) be issued a letter of reprimand if he will accept it. If he refuses, a Notice of Contemplated Action will be issued for non-disclosure of past legal problems with drugs on his triennial license renewal. No second was required. **YES:** Romine, Giudice, Kovnat, Ranka, Weiner, Boshier and Heim. **RECUSED:** La Farge and Ghadimi. **MOTION CARRIED.**

On behalf of Complaint Committee D, Dr. La Farge **MOVED** that complaint #2004-D-110 remain open until Committee D can interview applicant. If committees' interview is positive, staff will be instructed to issue a resident license and the case will be closed. **YES:** Romine, Giudice, Kovnat, Ranka, Weiner, Boshier and Heim. **RECUSED:** La Farge and Ghadimi. **MOTION CARRIED.**

E. Complaint Committee E. On behalf of Complaint Committee E, Dr. Romine **MOVED**

the physician in complaint #2004-E-113 (**James Holbrook, M.D.**) be issued a Resident license with standard stipulations for substance abuse. No second was required. **YES:** La Farge, Heim, Boshier, Giudice, Weiner, Ranka, Ghadimi and Kovnat. **RECUSED:** Romine. **MOTION CARRIED.**

On behalf of Complaint Committee E, Dr. Romine **MOVED** that complaint #2004-E-111 be allowed to place his license on inactive status. No second was required. **YES:** La Farge, Heim, Boshier, Giudice, Weiner, Ranka, Ghadimi and Kovnat. **RECUSED:** Romine. **MOTION CARRIED.**

7. LICENSING ISSUES

Dr. La Farge **MOVED** that **William Taylor, M.D.** be issued an unrestricted license to practice medicine in New Mexico upon proof that he has signed a voluntary contract with MTP. Mr. Heim **SECONDED** the motion. **YES:** Romine, Heim, Boshier, Giudice, Kovnat, Weiner, Ranka, Ghadimi, and La Farge. **MOTION CARRIED.**

Dr. Kovnat **MOVED** that **Paul Levy, M.D.** be required to schedule an appointment for an evaluation with a program that staff approves before the November Board meeting. **YES:** Romine, Heim, Boshier, Giudice, Kovnat, Weiner, Ranka, and Ghadimi, **RECUSED:** La Farge. **MOTION CARRIED.**

Dr. Romine **MOVED** that **Thomas R. Mattison, M.D.** be issued an unrestricted license after the Board receives proof of satisfactory completion of a mini-residency at a Board approved program, or of Board re-certification. **YES:** La Farge, Heim, Boshier, Giudice, Weiner, Ranka, Ghadimi, Kovnat and Romine. **MOTION CARRIED.**

Dr. La Farge **MOVED** that **Marsha Silberstein, M.D.** be issued a restricted license to practice administrative medicine with no direct patient care. **YES:** La Farge, Heim, Boshier, Giudice, Weiner, Ranka, Ghadimi, Kovnat and Romine. **MOTION CARRIED.**

Dr. La Farge **MOVED** that **Larry Mason, M.D.** be issued a Stipulated License to practice medicine under the supervision of Dr. Larry Lyons at Presbyterian and that he be required to complete 50 CME hours by the November Board meeting. **YES:** La Farge, Heim, Boshier, Giudice, Weiner, Ranka, Ghadimi, Kovnat and Romine. **MOTION CARRIED.**

Dr. Ranka **MOVED** that **Barry Campbell, P.A.** be allowed to withdraw his application for licensure with the understanding it will be reported to the appropriate national data bank. **YES:** Romine, La Farge, Kovnat, Weiner, Boshier, Ghadimi and Heim. **RECUSED:** Giudice and Ranka. **MOTION CARRIED.**

Staff was asked to develop a policy for Board approval on the issuance of licenses after completion of requirements, i.e., after a mini-residency is completed.

THE BOARD RECESSED FOR LUNCH AT 12:00 p.m. and reconvened at 1:30 p.m.

The Board heard a one-hour presentation on the Scientific Basis of Addiction from George Peacock, MD

8. REPORTS

MOTION was made to go into executive session to discuss the evaluation of Exempt Staff. The Board returned to open session. Dr. Romine stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

A. Chair. Dr. Romine and the whole Board were happy to inform the Executive Director of a very positive evaluation. The Board discussed attendance at upcoming workshops put on by FSMB. Jenny Felmley and Mr. Ghadimi are interested in attending the workshop on November 14th and 15th, 2004. Dr. Weiner, Dr. Kovnat and Dr. Giudice are interested in attending the February 3rd and 4th, 2005 workshop in Las Vegas. Dr. La Farge, Mr. Ghadimi, Dr. Ranka, Mr. Heim and Dr. Romine would like to attend the annual Federation Meeting in May 2005. Dr. Weiner, Dr. Giudice and Dr. Kovnat are possibly also interested.

B. Secretary-Treasurer. Dr. La Farge asked Ms. Kinney to review the budget information. Ms. Kinney gave a brief overview of the FY06 Budget Request. She is proposing the Board consider amending the Rules to increase licensing fees. It was agreed that there will be a Rule Hearing at the November Board meeting to consider this change and the other Rule changes the Board will be discussing

on Friday. Ms. Kinney gave an overview of the year-end expenditures and revenue from FY04. There was discussion regarding the licensing process and time it takes to receive a license.

C. Compliance. The Board discussed the report and suggested that if a physician is not in compliance, the file should go back to a Complaint Committee for review.

D. Executive Director. Ms. Kinney will keep the Board informed as to our move to the new location, hopefully in two to four weeks. She reminded everyone that the Administrators in Medicine group would hold their fall meeting September 23 and 24, 2004 in Santa Fe. Any Board member is welcome to attend. There will be discussion on ethical issues, as well as complimentary and alternative medicine.

E. Assistant Attorney General.

MOTION was made to go into executive session to discuss Attorney-Client privilege. The Board returned to open session. Dr. Romine stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

Ms. Thalley informed the Board that Dr. Bhasker has filed an Appeal of the Board's Order. **MOTION** was made by Dr. Romine and seconded by Dr. La Farge to go into executive session to discuss matters of Dr. Bhasker's appeal. **YES:** Romine, La Farge, Giudice, Kovnat, Ranka, Giudice, Ghadimi, Weiner, and Heim. **MOTION CARRIED.**

9. OLD BUSINESS

Status on Psychologist Prescribing Rules. Ms. Thalley informed the Board of the Public Hearings which are scheduled for 9/10/04 in Las Cruces and 9/17/04 in Albuquerque, the same day as the Board of Psychologist Examiners meeting. If the Psychology Board does not make any substantive changes, the rules can be adopted. If substantive changes are made, the rules will come back to the Medical Board in November for approval. Ms. Felmley prepared a thorough analysis comparing the rules as advertised with the previous rules the Board had approved. Ms. Thalley does not anticipate any substantive changes and plans to review the proposed rules with Dr. Tom Sims, PhD, Chair of the Psychology Board.

10. INFORMAL INTERVIEWS

Executive Session: **MOTION** was made by Dr. Kovnat and seconded by Dr. Ranka to go into executive session to discuss matters of licensure. **YES:** Romine, La Farge, Giudice, Kovnat, Ranka, Ghadimi, Weiner, Boshier and Heim. **MOTION CARRIED.**

Laura Allen, MD, Rolando Tong, MD, Henry Garcia, MD, and Patricia Rowley, MD was interviewed in executive session.

The Board returned to open session. Dr. Romine stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

Johnny Vigil, MD, Robert Palmer, MD, Sandy Herrin, MD, David Bernitsky, MD and Rajan Mirchandani, MD was interviewed in open session.

11. ACTIONS RELATED TO INFORMAL INTERVIEWS. No actions were taken prior to the recess.

THE BOARD RECESSED AT 5:10 p.m.

THE BOARD RECONVENED AT 8:45 A.M., AUGUST 20TH, WITH ALL MEMBERS PRESENT

10. INFORMAL INTERVIEWS, cont.

Executive Session: **MOTION** was made by Dr. La Farge and seconded by Mr. Heim to go into executive session to discuss matters of licensure. **YES:** Romine, La Farge, Giudice, Kovnat, Ranka, Ghadimi, Weiner, Boshier and Heim. **MOTION CARRIED.**

The Board returned to open session. Dr. Romine stated for the record that the matters discussed in

executive session were limited to only those specified in the motion for closure.

The following physicians were interviewed in open session. **Barry Maron, MD, James Holbrook, MD, and Joan Lewis, MD.**

12. LICENSING ISSUES

The following physicians were interviewed in open session. **Jesus Gonzales, MD and Cliff Brashar, MD. Kathleen Van Osten, MD** did not attend the meeting.

13. ACTIONS RELATED TO INTERVIEWS & LICENSING ISSUES

Dr. Romine **MOVED** the Board remove all stipulations and grant an unrestricted license to practice medicine in New Mexico to **Rajan Mirchandani, M.D.** Dr. La Farge **SECONDED. YES:** Romine, Giudice, Kovnat, Ghadimi, Ranka, Weiner, Boshier, Dr. La Farge and Heim. **MOTION CARRIED.**

Dr. Romine **MOVED** the Board change the Stipulation to require only annual meetings with the Board for **David Bernitsky, M.D.** Ms. Boshier **SECONDED. YES:** Romine, Giudice, Kovnat, Ghadimi, Ranka, Weiner, Boshier, Dr. La Farge and Heim. **MOTION CARRIED.**

Dr. Kovnat **MOVED** the Board approve issuing a Resident license to **Jesus Gonzales, M.D.** when the Board receives confirmation that he has been offered a resident position at UNM. Dr. La Farge **SECONDED. YES:** Giudice, Kovnat, Ghadimi, Ranka, Weiner, Boshier, Dr. La Farge and Heim. **RECUSED:** Romine. **MOTION CARRIED.**

Dr. Kovnat **MOVED** the Board change the Stipulation on **Barry Maron, M.D.** to restrict his practice to non-surgical treatments in a group setting; monthly visits with his treating psychiatrist and quarterly reports to the Board, waives any right to confidentiality he may have with respect to the information gathered by his treating physician(s) to release any and all information to the Board; and will appear before the Board upon the Board's request. Dr. La Farge **SECONDED. YES:** Giudice, Kovnat, Ranka, Weiner, Boshier, Dr. La Farge and Heim. **RECUSED:** Romine and Ghadimi. **MOTION CARRIED.**

The Board will consider granting a Stipulated License once **Cliff Brashar, M.D.** has been evaluated in a manner acceptable to MTP and executed his contract with MTP. Until that time, Dr. Brashar's license will remain in a voluntary surrender status.

Kathleen Van Osten, MD did not appear for her scheduled interview. The Board delegated the decision to approve a license with standard stipulations for substance abuse to Dr. La Farge and Dr. Weiner, pending the positive outcome of an interview that will be arranged at everyone's convenience.

14. NEW BUSINESS

A. Policy Discussions/Decisions. Staff requested direction from the Board on the following policy issues.

1) Exam requirements for license by endorsement. The Board requested changes in the Rule regarding Exam requirements for license by endorsement to be consistent with the Law. Until the rule is changed, we will continue to accept license by endorsement if the individual is Board certified, has three years or more practicing in another state and does not have any actions against his/her license, regardless of their exam scores.

2) Interpretation of Board ability to waive PGT. Post Graduate Training questions will be dealt with on an individual basis. The Board does not want to amend the Rule. Dr. Kovnat **MOVED** to accept the Osteopathic postgraduate training and experience of Dr. Ali Alinejad. Dr. La Farge **SECONDED** the motion, which **PASSED UNANIMOUSLY.**

3) Expired license status. The Board will amend the Rule regarding Expired Licenses to match the Law so that a license is not actually expired until October 1 of the renewal year, at which time it can be suspended.

4) UNM concerns on education requirements/residents. A committee was established to work with UNM regarding its concerns with education and resident requirements. Dr. Kovnat, Dr. La Farge and Mr. Ghadimi will be on the committee.

5) Advertising of non-approved specialties will be handled with the Board on an

individual basis.

6) **CME audit issues on renewal applications** will be handled thru the Complaint Committees.

7) **Impaired Physician Committee reimbursement** was discussed. The Board decided to offer volunteer members of IPCs 2 hours of CME credit and travel expenses, in appreciation of their willingness to assist the Board with this difficult task.

8) **Policy on charging for expenses in disciplinary cases** was discussed. The Board, at this time, decided not to charge for expenses.

9) **Discussion of the Medical Director position.** The Board asked Staff to develop a plan for transition and a job description to be presented at the November Board meeting.

B. Approve Changes to Pharmacist Prescribing Regulations. Mr. Heim **MOVED** the Board approve the changes to the Pharmacist Prescribing Regulations presented by Dale Tinker, Executive Director of the New Mexico Pharmaceutical Board regarding the Tobacco Cessation Program. Dr. Kovnat **SECONDED. YES:** Romine, Giudice, Kovnat, Ghadimi, Ranka, Weiner, Boshier, Dr. La Farge and Heim. **MOTION CARRIED.**

C. RFP for Physician Health Program: Dr. Romine appointed Mr. Heim, Mr. Ghadimi, Dr. Ranka, Dr. Giudice and Dr. Peacock to work with staff on a committee to develop and review a Request for Proposals for a Physician Health Program. Our current contract with MTP will expire next year and we need to solicit bids from any organizations offering to provide this service.

D. Pain Management Rule Review: Dr. Romine discussed the requirement to review the Pain Management Rule. Dr. Kovnat agreed to chair the committee. Dr. Weiner, Dr. La Farge, Mr. Ghadimi and Jenny Felmley will serve on the committee. Public comment for the annual review will be advertised immediately, and the Rule will be reviewed at the November Board meeting.

E. Correspondence. The Board, without comment or discussion, reviewed the following documents:

1. CAC News and Views
2. Am Board of Clinical Metal Toxicology
3. Orthopaedic Specialists
4. FSMB

Mr. Ghadimi brought up several issues for discussion, including concerns about reporting of actions taken at UNM from Risk Management and public health issues related to sun exposure and loud music. Dr. Romine discussed the Agreement that was signed with Risk Management several years ago about reporting of final payments resulting from malpractice settlements or judgments. Dr. Romine also clarified the Board's role in public protection to those issues related to physician (and physician assistant) licensing, rehabilitation and discipline. Other public health issues are under the auspices of the Department of Health.

15. **STRATEGIC PLANNING DISCUSSION.** The Board asked Ms. Kinney to email a draft of the strategic plan and they will provide written comments.

16. **ADJOURN.** There being no further business, the meeting adjourned at 1:00 p.m.

SUBMITTED: _____ **Date:** _____
Charlotte Kinney, Executive Director

APPROVED: _____ **Date:** _____
John Romine, M.D., President

APPROVED: _____ **Date:** _____

C. Grant La Farge, M.D., Secretary-Treasurer

MEETING SUMMARY
August 19-20, 2004

Licensing Actions, in alpha order:

- Brashar, Cliff, M.D.** #81-161 – approved for license reinstatement with standard substance abuse stipulations after receipt of signed MTP contract.
- Campbell, Barry, PA** – approved withdrawal of application while under investigation, to be reported to appropriate national data bank.
- Flanagan, Michael, M.D.** #85-176 – approved NCA based on falsification of triennial license renewal
- Gonzalez, Jesus, M.D.** – approved for Resident license after Board receives confirmation that he has a residency at UNM.
- Holbrook, James, M.D.** – approved Resident license with standard substance abuse stipulation
- Maron, Barry, M.D.** #71-177 – approved Amended Stipulation to remove outdated sections of previous Stipulated Agreement.
- Mason, Lawrence, M.D.** – approved Stipulated Agreement requiring that he work with Dr Lyons at Presbyterian, and that he complete 50 CME hours before the November meeting
- Mattison, Thomas, M.D.** – approved for licensure after the Board receives proof of satisfactory completion of mini-residency at UNM or other Board-approved program, or Board re-certification
- Miller, Frederick Alan, M.D.** #98-340 – approved Letter of Reprimand for falsification of triennial license renewal; if not agreed to, issue NCA based on falsification of triennial license renewal
- Mirchandani, Rajan, M.D.** #2000-328 – approved removal of all stipulations and granted an unrestricted license to practice medicine in New Mexico
- Nabors, Christopher, M.D.** – approved Residency license with standard substance abuse stipulations
- Rodgers, Donald, M.D.** #76-254 – approved NCA for incompetence and negligence
- Silberstein, Marsha, M.D.** – approved Stipulated Agreement to limit practice to administrative medicine, with no direct patient care
- Taylor, II, William Earl, M.D.** – approved for unrestricted license upon completion of requirements.
- Van Osten, Kathleen, M.D.** #91-133 – approved for license reinstatement with standard stipulations for substance abuse, pending positive interview with Dr. Weiner and Dr. La Farge.