

NEW MEXICO MEDICAL BOARD
Interim Board Meeting
March 26, 2020
MINUTES

Members Present: Steve Jenkusky, MD, Chair

Video Conferencing: Peter Beaudette, MD, Vice Chair
James Spence, MD
Karen Carson, MD
Eric Anderson, MD
Mark Unverzagt, MD
Buffie Saaverda, Public Member

Others Present: Sondra Frank, Esquire, Executive Director
Yvonne Chicoine, Esquire, Chief Legal Counsel-Via Zoom
Debbie Dieterich, Investigations Manager
Amanda Quintana, Compliance Manager / PIO
Elishia Lucero, Administrative Assistant

1. CALL TO ORDER / ROLL CALL

Dr. Jenkusky, after establishing the presence of quorum, called the Interim Board Meeting of the New Mexico Medical Board to order at 4:03pm., roll Call was completed.

2. APPROVAL OF AGENDA

MOTION was made by Dr. Jenkusky to approve the Agenda. **SECONDED** by Dr. Anderson **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, Dr. Unverzagt and Ms. Saavedra. **MOTION CARRIED.**

Christopher Fletcher, MD – Decision and Order following Evidentiary Hearing.

Dr. Jenkusky allowed Dr. Fletcher, his attorney, Deborah Mann and Ms. Chicoine ten minutes for oral argument.

3. APPROVAL OF MINUTES

MOTION was made by Dr. Jenkusky to approve the minutes of the February 20-21, 2020 Board Meeting as presented. **SECONDED** by Dr. Anderson **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, Dr. Unverzagt and Ms. Saavedra. **MOTION CARRIED.**

4. Chair Report

COVID-19 Issues:

Inappropriate and Questionable prescribing/stockpiling of Potential COVID-19 Treatment Drugs

Dr. Jenkusky presented to the Board the letter regarding inappropriate and questionable prescribing/stockpiling of potential COVID-19 treatment drugs that was received from the Board of Pharmacy. The letter states that pharmacists can withhold the prescribing of certain drugs, if they feel the drugs are being ordered inappropriately. The Board of Pharmacy asked the New Mexico Medical Board to endorse the letter. Dr. Jenkusky informed the Board members the letter has been posted to the New Mexico Medical Board's website.

Clinics Closing Due To COVID-19 Safety-Ethical Issues

Dr. Jenkusky invited the Board to comment of the issue of clinics closing due to COVID-19. The Board discussed the ethical patient abandonment issues that are arising due to the interpretation of the Governors order to shut down small business as including behavioral health practices and

urgent care clinics. The Board agreed to provide a letter to licensees with a reminder of the ethical obligation they have to their patients and treating patients safely during the COVID-19 crisis and all measures should be in place to utilize electronic means to care for patients.

Consider Language Waiving Statutory Physician Supervision or Collaboration During a Declared Public Health Emergency or Disaster.

Dr. Jenkusky discussed with the Board an email that was sent by Jeremy R. Kersey, the President of the Physician Assistant Society requesting a waiver on the Physician Assistant supervision or collaboration During a declared health emergency or disaster. After discussion, the Board agreed that the Supervision Physician Assistants currently have is proportional to the work they currently do and and agreed to decline the request.

Other COVID-19 Issues

Dr. Jenkusky provided information on Presbyterian wanting to provide synchronous internet care. Dr. Jenkusky stated that this would violate the Medical Practice act and a letter was generated with relaxing the Boards Telemedicine Rules.

MAY 2020 Board Officer Election Update

Dr. Jenkusky informed the Board of his decision to gradually take over the Medical Director role and considered nominations for the upcoming may meeting.

5. Executive Director

Dr. Jenkusky clarified the authority the Board has on waiving licensure during a crisis. According to state statute, the Board does not have the authority to waive licensure during a crisis, however, does have the authority to issue a Temporary Federal Emergency license or a Telemedicine license that requires very minimal documentation.

EXECUTIVE SESSION: Complaint Committee Report / Licensing Issues, New Applicants/ Reinstatements

MOTION was made by Dr. Jenkusky to go into Executive Session pursuant to Section 10-15-1(H) (1) of the Open Meetings Act to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license and disciplinary matters. **SECONDED** by Dr. Anderson **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, Dr. Unverzagt and Ms. Saavedra. **MOTION CARRIED.**

OPEN SESSION

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

ACTIONS RELATED TO EXECUTIVE SESSION

6. Complaint Committee A

RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** the following cases: 2018-A-227; 2018-A-301; 2019-A-086; 2019-A-091; 2019-A-143 **YES:** Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, and Dr. Unverzagt. **RECUSED:** Dr. Jenkusky and Ms. Saavedra. **MOTION CARRIED.**

Case #2019-A-202 RECOMMENDATION was made by Dr. Jenkusky to offer PSG Trainee the opportunity to voluntarily surrender her license while under investigation or a notice of contemplated action will be issued based on, but not limited to, failure to cooperate with a board investigation. **YES:** Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, and Dr. Unverzagt. **RECUSED:** Dr. Jenkusky and Ms. Saavedra. **MOTION CARRIED.**

Case #2019-A-216 RECOMMENDATION was made by Dr. Jenkusky to issue a cease and desist letter against unlicensed person and to refer matter to district attorney of county where unlicensed practice occurred. **YES:** Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, and Dr. Unverzagt. **RECUSED:** Dr. Jenkusky and Ms. Saavedra. **MOTION CARRIED.**

Case #2019-A-049 RECOMMENDATION was made by Dr. Jenkusky to offer physician a stipulation of licensure requiring payment of a \$2000.00 fine, along with mandatory CME audits in the future, along with issuance of a reprimand. If physician does not accept, a notice of contemplated action will be issued based on, but not limited to, misrepresentation on a renewal application and conduct unbecoming. **YES:** Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, and Dr. Unverzagt. **RECUSED:** Dr. Jenkusky and Ms. Saavedra. **MOTION CARRIED.**

Complaint Committee B

RECOMMENDATION was made by Dr. Anderson to **CLOSE** the following cases: 2018-B-290; 2019-B-074; 2019-B-078; 2019-B-221; **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Carson, Dr. Unverzagt and Ms. Saavedra. **RECUSED:** Dr. Spence and Dr. Anderson. **MOTION CARRIED.**

Case #2019-B-217 RECOMMENDATION was made by Dr. Anderson to offer physician a stipulated license prohibiting physician from prescribing controlled substances until she takes and successfully passes the controlled substance prescribing course offered at CPEP, or other comparable program approved by the Board, requiring payment of a \$3000.00 fine and issuance of reprimand. If physician does not accept, a notice of contemplated action will be issued based on, but not limited to, violation of drug law, violation of Board of Regulation on PMP use, failure to report adverse licensure action, and adverse licensure action in another state. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Carson, Dr. Unverzagt and Ms. Saavedra. **RECUSED:** Dr. Spence and Dr. Dr. Anderson. **MOTION CARRIED.**

Complaint Committee C

RECOMMENDATION was made by Dr. Carson to **CLOSE** the following cases: 2018-C-144; 2019-C-044; 2019-C-065; 2019-C-093; 2019-C-127; 2019-C-156 **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Anderson and Dr. Unverzagt. **RECUSED:** Dr. Carson and Dr. Beaudette **MOTION CARRIED.**

Case #2019-C-121 RECOMMENDATION was made by Dr. Carson to **CLOSE** this case with an advisory letter cautioning physician about an established pattern of complaints relating to her communication style and advising her about patient communication and showing sensitivity to patients. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Anderson and Dr. Unverzagt. **RECUSED:** Dr. Carson and Dr. Beaudette **MOTION CARRIED.**

Case #2019-C-108 RECOMMENDATION was made by Dr. Carson to offer physician a stipulated license requiring an in-depth evaluation for disruptive physicians at an entity to be approved by the Board, and requiring physician to follow recommendations made by entity and or/ Board as a result of the evaluation, and payment of \$1,000.00 fine. If the physician does not accept, a notice of contemplated action will be issued based on, but not limited to, failure to report (x2); conduct unbecoming, interaction with others that could adversely affect patient care. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Anderson and Dr. Unverzagt. **RECUSED:** Dr. Carson and Dr. Beaudette **MOTION CARRIED.**

Case #2020-C-047 RECOMMENDATION was made by Dr. Carson to offer PA the opportunity to voluntarily surrender license while under investigation. If PA does not accept, a summary suspension will be issued based on imminent danger to the public, along with a notice of contemplated action

based on, but not limited to, conduct unbecoming and conduct likely to harm. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Anderson and Dr. Unverzagt. **RECUSED:** Dr. Carson and Dr. Beaudette
MOTION CARRIED.

Complaint Committee D

RECOMMENDATION was made by Dr. Unverzagt to **CLOSE** the following cases: 2018-D-087; 2019-D-080; 2019-D-104; 2019-D116; 2019-D-123; 2019-D-161 and 2019-D167. **YES:** Dr. Jenkusky; Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson and Ms. Saavedra **RECUSED:** Dr. Unverzagt.
MOTION CARRIED.

Case # 2018-D-082 RECOMMENDATION was made by Dr. Unverzagt to **CLOSE** this case with an advisory letter to physician informing him the Board is concerned about the allegations against him regarding his conduct/behavior and notifying him the Board will continue to monitor future complaints against him. **YES:** Dr. Jenkusky; Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson and Ms. Saavedra **RECUSED:** Dr. Unverzagt. **MOTION CARRIED**

Case # 2019-D-209 RECOMMENDATION was made by Dr. Unverzagt to **CLOSE** this case with an advisory letter to physician reminding him about Board reporting requirements and assessing \$300.00 in costs for failure to report (x2). **YES:** Dr. Jenkusky; Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson and Ms. Saavedra **RECUSED:** Dr. Unverzagt. **MOTION CARRIED**

Case # 2019-D-264 RECOMMENDATION was made by Dr. Unverzagt that physician applicant be required to attend and successfully complete an in-depth, in person (or via electronic/virtual given current pandemic) course on ethics/boundaries prior to the granting of a NM medical license. The course must be approved by the Board prior to enrollment and applicant must submit an appropriate ethics/boundaries plan to the Board. If applicant does not accept, physician applicant may withdraw her application for licensure while under investigation or a notice of contemplated action will be issued to deny licensure based on, but not limited to, misrepresentation on application, and conduct unbecoming. **YES:** Dr. Jenkusky; Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson and Ms. Saavedra **RECUSED:** Dr. Unverzagt. **MOTION CARRIED**

Licensing Requests and Actions, New Applicants/Reinstatements:

Christopher Fletcher, MD, Decision and Order following Evidentiary Hearing

MOTION was made by Dr. Jenkusky to accept the Hearing Officer's Report and Findings of Fact with the following Amendments: In accordance with the Prosecutor's Response to Respondent's March 18, 2020, "Objections to Hearing Officer's Proposed Findings of Fact and Conclusions of Law, Proposed Alternative Findings of Fact and Conclusions of Law, and Request for Oral Argument", the Board adopts Findings of Fact #1-8 on page 11 and adopts Findings of Fact #1-8 on page 12. **SECONDED** by Ms. Saavedra. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Unverzagt and Ms. Saavedra. **Recused:** Dr. Anderson. **MOTION CARRIED.**

MOTION was made by Dr. Jenkusky to accept the conclusions of law proposed by the Prosecution in its March 17, 2020, "Response to the Hearing Officer's Proposed Findings of Fact and Conclusions of Law." **SECONDED** by Dr. Unverzagt. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Unverzagt and Ms. Saavedra. **Recused:** Dr. Anderson **MOTION CARRIED.**

MOTION was made by Dr. Jenkusky to issue a reprimand against Respondent, and stipulate Respondent's license requiring payment of a fine of \$1,000.00, and requiring Respondent to place notice in his office to inform each of his patients on arrival that they may file a complaint with the Board

if they have any issues with the care they receive from Respondent. **SECONDED** by Dr. Spence **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Unverzagt and Ms. Saavedra. **Recused:** Dr. Anderson. **MOTION CARRIED.**

Compliance Requests / Actions

Danielle Hewey, PA– Request for reactivation of stipulated license

MOTION was made by Dr. Jenkusky to **GRANT** Danielle Hewey’s request for reactivation of stipulated license. **SECONDED** by Dr. Unverzagt. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Unverzagt and Ms. Saavedra. **Recused:** Dr. Anderson **MOTION CARRIED**

Informal Compliance Interviews

Joseph Strong, PSGT (Telephonic).


14. Old Business

16.10.2 NMAC- Physicians: Licensure Requirements-

Ms. Quintana presented to the Board the rule change on Traveling Sports Team Physicians Licensure requirements that has been revised to be in line with the statute. The board agreed to the revisions and a **MOTION** was made by Dr. Jenkusky to submit the Traveling Sports Team Physician licensure rule for rule hearing in May. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Spence, Dr. Carson, Dr. Anderson, Dr. Unverzagt, and Ms. Saavedra. **MOTION CARRIED**

16. ADJOURN

There being no further business before the Board, Dr. Jenkusky adjourned the meeting at 6:15 P.M.

SUBMITTED BY:  DATE: 04/16/2020
Sondra Frank, J.D., Executive Director

APPROVED BY: RECUSED DATE: _____
Steven M. Jenkusky, M.D., Chair

APPROVED BY:  DATE: 04/16/2020
Peter Beaudette, M.D, Vice Chair