

NEW MEXICO MEDICAL BOARD
Special Call Meeting
491 Old Santa Fe Trail, Santa Fe, New Mexico
October 4, 2004

MINUTES

Members Present:

John S. Romine, M.D., Chairman, Physician Member
Paul J. Kovnat, M.D., Vice Chair, Physician Member, by teleconference
C. Grant La Farge, M.D., Secretary-Treasurer
Vivian Giudice, M.D., Physician Member
Maureen Boshier, Public Member, by teleconference
Reza Ghadimi, P.A., Public Member

Members Absent:

Steve Weiner, M.D., Physician Member, recused
Prakash Ranka, M.D., Physician Member, recused
Richard Heim, Public Member, excused

Also Present:

Charlotte Kinney, Executive Director
Corliss Thalley, AGA, by teleconference
Jenny Felmley, PIO, by teleconference
G.T.S. Khalsa,
Elias Said, MD
Lee Peifer
Larry Bozeman, Lea Regional Medical Center

The Special Meeting of the New Mexico Medical Board convened at 4:05 p.m., Monday, October 4, 2004, in the New Mexico Medical Society Conference room, 7770 Jefferson NE, suite 400, Albuquerque, New Mexico, *John Romine, M.D.* presiding. Ms. Kinney called the roll and a quorum was declared with members La Farge, Giudice, Romine, Boshier (teleconference), and Kovnat (teleconference) present. Mr. Ghadimi arrived at 4:10.

1. APPROVAL OF AGENDA

Dr. La Farge **MOVED** the agenda be approved with the addition of discussion of an Order Dr. Romine signed last week in the Bhasker case. Dr. Giudice **SECONDED** the motion, which **PASSED UNANIMOUSLY**.

2A. DISCUSSION OF ORDER

Dr. Romine explained to the Board about a Temporary Stay of Enforcement of Board Order he signed on Wednesday, September 29. Enforcement of the Board Order was temporarily stayed until November 19, 2004 on the ground that Dr. Bhasker cannot comply with the requirement to schedule an evaluation with MTP by October 1, 2004 because MTP has declined to perform the evaluation in-house.

2. REQUEST TO ADDRESS BOARD PRIOR TO DELIBERATION

Dr. Romine stated that if there is no objection he will allow the Respondent's attorney, Lee P, ten

minutes to respond to the Hearing Officers Report in Case 2004-010, with ten minutes for the Board's Prosecutor to respond. Dr. Said and Mr. Bozeman were not allowed to address the Board. Mr. Peifer addressed his concerns regarding the Hearing Officers Report and Mr. Khalsa responded with concerns about Dr. Said's fitness to practice.

3. LICENSURE MATTERS, CASE #2004-010, Elias Said, M.D.

EXECUTIVE SESSION: MOTION was made by Dr. La Farge and seconded by Dr. Giudice to go into executive session to discuss matters of licensure. **YES:** La Farge, Ghadimi, Giudice, Boshier, Romine, and Kovnat. **MOTION CARRIED.** The Board returned to open session. Dr. Romine stated for the record that the matters discussed in closed session were limited to only those specified in the motion for closure.

4. ACTION ON LICENSURE MATTERS

Dr. La Farge **MOVED** to accept paragraphs 1-54 from the Hearing Officers Report. Mr. Ghadimi **SECONDED** the motion. **YES:** La Farge, Ghadimi, Romine, Giudice, Boshier, and Kovnat.

Dr. Romine **MOVED** to accept the following Conclusions of Law:

1. The Board has jurisdiction over the Respondent and the subject matter.
2. The Board has complied with all notice and hearing requirements of the Uniform Licensing Act and has afforded Respondent all due process rights required by law. The Decision and Order is timely rendered.
3. Pursuant to § 61-6-15(A), the Board has authority to refuse a license upon satisfactory proof being made to the Board that an applicant has been guilty of unprofessional or dishonorable conduct.
4. Pursuant to § 61-6-15(D)(6), unprofessional or dishonorable conduct includes conviction of an offense punishable by incarceration in a state penitentiary or federal prison.
5. Pursuant to § 61-6-15(D)(8), unprofessional or dishonorable conduct includes fraud or misrepresentation in applying for a license to practice medicine in New Mexico.
6. Pursuant § 61-6-15(D)(14), unprofessional or dishonorable conduct includes discipline imposed on a licensee by another state, based upon acts by the licensee similar to acts that would constitute ground for discipline in New Mexico.
7. Pursuant to § 61-6-15(D)(30), unprofessional or dishonorable conduct includes voluntary surrender of a license before another state licensing board while an investigation or disciplinary action is pending before that board for acts or conduct similar to acts that would constitute grounds for discipline in New Mexico.
8. Pursuant to Rule 16.10.8.8(H) NMAC, unprofessional or dishonorable conduct includes dishonesty.
9. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(14), as alleged in ¶ 3 of the NCA, in that Respondent had discipline imposed by the Virginia Board of Medicine, based upon acts by Respondent in Virginia that are similar to acts that would be grounds for discipline in New Mexico, such as sexual misconduct with a patient, which is ground for discipline in New Mexico.
10. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(14), as alleged in ¶¶ 5, 7, and 8 of the NCA, in that Respondent had discipline imposed by the Georgia Composite State Board of Medical Examiners ("Georgia Medical Board"), based upon acts by Respondent in Georgia that are similar to acts that would be grounds for discipline in New Mexico. Specifically, the Administrative Prosecutor proved that Respondent had discipline imposed for the following acts: substance abuse (habitual or excessive use of drugs), and failure to comply with terms of probation (violations of the Georgia Medical Board's Order), which are grounds for discipline in New Mexico.
11. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(6), in that Respondent has been convicted of offenses punishable by incarceration in a state penitentiary or federal prison as alleged in ¶ 6 of the NCA. Specifically, Respondent has seven (7) felony convictions for violations of the Georgia Controlled Substances Act, obtaining controlled substances by fraud.

12. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(30) unprofessional or dishonorable conduct as alleged in ¶ 9, in that Respondent voluntarily surrendered his license (did not renew) while an investigation or disciplinary action was pending in Georgia for violation of the terms of probation.

13. The Administrative Prosecutor proved by preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(8), unprofessional or dishonorable conduct that includes misrepresentation in connection with applying for a license and Rule 16.10.8.8 NMAC, dishonesty. Specifically, the Administrative Prosecutor proved that Respondent committed misrepresentation and dishonesty as set forth below in ¶¶ (a)-(i) below.

(a). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 12 and 13 of the NCA, regarding the allegations contained in ¶ 2(N)(2) of the NCA.

(b). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 14 and 15 of the NCA, regarding the allegations contained in ¶ 2(N)(3) of the NCA.

(c). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 16 and 17 of the NCA, regarding the allegations contained in ¶ 2(N)(4) of the NCA.

(d). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 18 and 19 of the NCA, regarding the allegations contained in ¶ 2(N)(5) of the NCA.

(e). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 20 and 21 of the NCA, regarding the allegations contained in ¶ 2(N)(6) of the NCA.

(f). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 24-33 of the NCA, regarding the allegations contained in ¶¶ 2(O)(1)-(5) of the NCA.

(g). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 34-37 and 40-41 of the NCA, regarding the allegations contained in ¶¶ 2(P)(1), (2), and (4) of the NCA.

(h). Respondent was dishonest as alleged in ¶¶ 42, 44, 45, 47, and 48 of the NCA, regarding the allegations contained in ¶¶ 2(Q) (1), (4), (6), (7), and (8) of the NCA.

(i). Respondent was dishonest as alleged in ¶ 49 of the NCA, regarding the allegation contained in ¶ 2(R) of the NCA.

14. The Administrative Prosecutor failed to prove that Respondent violated § 61-6-15(D)(14) as alleged in ¶ 4 of the NCA, regarding the allegation contained in ¶ 2(B) of the NCA.

15. The Administrative Prosecutor failed to prove that Respondent committed fraud, misrepresentation, or dishonesty as alleged in ¶¶ 10 and 11 of the NCA, regarding the allegation contained in ¶ 2(N)(1) of the NCA.

16. The Administrative Prosecutor failed to prove that Respondent committed misrepresentation or dishonesty as alleged in ¶¶ 38-39 of the NCA, regarding the allegations contained in ¶ 2(P)(3) of the NCA.

17. The Administrative Prosecutor failed to prove that Respondent was dishonest as alleged in ¶¶ 43 and 46 of the NCA, regarding the allegations contained in ¶¶ 2(Q)(2) and (6) of the NCA.

18. The Administrative Prosecutor failed to prove fraud as alleged in ¶¶ 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40 of the NCA. The Administrative Prosecutor proved that Respondent made untrue statements, that Respondent made untrue statements recklessly or with knowledge that the statements were untrue, and that the Respondent intended the Board would rely on the untrue statements. The Administrative Prosecutor failed to prove by clear and convincing evidence that the Board relied on Respondent's false statements to its detriment.

19. The Board has sufficient evidence in the record to deny Respondent a license to practice medicine in New Mexico.

Ms. Boshier **SECONDED** the motion, **YES:** Romine, Boshier, Giudice, Ghadimi, La Farge, and Kovnat. **MOTION CARRIED.**

Dr. Kovnat **MOVED** to Order Dr. Said's application for licensure be denied with the following terms and conditions by which he may reapply.

The Respondent may reapply for licensure after eighteen (18) months of confirmed abstinence from drugs and alcohol as confirmed by the New Mexico Monitored Treatment Program, proof of current competence if required, and a comprehensive psychiatric evaluation by a board-approved source addressing the issues that led to the license denial. The psychiatric evaluation shall be within three (3) months of the new application for licensure.

Dr. Romine **SECONDED** the motion, **YES:** Romine, Boshier, Giudice, Ghadimi, La Farge, and Kovnat. **MOTION CARRIED.**

5. ADJOURN. There being no further business, the meeting adjourned at 5:37 p.m.

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

APPROVED: _____ **Date:** _____
C. Grant La Farge, M.D., Secretary

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