

NEW MEXICO MEDICAL BOARD
Interim Board Meeting
August 12-13, 2021
MINUTES

MEETING MADE PUBLIC VIA ZOOM AND TELECONFERENCE

Members Present: Peter Beaudette, M.D., Chair
Steve Jenkusky, M.D., Secretary/Treasurer
Karen Carson, M.D., Vice Chair
Eric Anderson, M.D.
Mark Unverzagt, M.D.
James Spence, M.D.
Kathy Johnson, PA

Excused: Buffie Saavedra, Public Member
Bradley Scoggins, D.O.
Kristin Reidy, D.O.

Others Present: Sondra Frank, Esquire, Executive Director
Amanda Quintana, Compliance Manager / PIO
Elishia Lucero, Administrative Assistant
Samantha Breen, Compliance Coordinator
Debbie Dieterich, Investigations Manager
Antoinette Griego, Licensing Manager
Gayle Mascarenas, CFO/HR Manager
Yvonne Chicoine, Esq- Chief Legal Counsel

1. CALL TO ORDER / ROLL CALL

Dr. Beaudette, after establishing the presence of a quorum, called the August 12, 2021, Regular Board Meeting of the New Mexico Medical Board to order at 8:35 a.m., roll call was completed.

2. APPROVAL OF AGENDA

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

3. APPROVAL OF MINUTES

MOTION was made by Dr. Carson to approve the minutes from the June 24, 2021, Interim Board meeting. **SECONDED** by Dr. Jenkusky **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

EXECUTIVE SESSION: Compliance, New Mexico Health Professional Wellness Program and Complaint Committee Reports.

MOTION was made by Dr. Spence 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. Jenkusky **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

4. New Mexico Health Professional Wellness Program Report

Mary Lynn Griffin, and Leah Nelson, MD from HPWP presented the status of all mandatory HPWP participants and answered questions from the Board.

5. Informal Interviews- (appearing via zoom)

James Martin, MD; Danielle Hewey, PA; Mark Standley, PA; Curtis Quintana, PA; Jennifer Bendokas, PA; Renee Friday, MD; Richard Smith, MD; Elliott Marcus, MD (appeared in-person); Ryan Lubert and Winston Nara, MD. Luis Cisneros, MD did not appear for his interview and was not excused.

OPEN SESSION

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

6. ACTIONS RELATED TO EXECUTIVE SESSION

Complaint Committee Reports A: Licensing and Applicants

Committee A

Case # 2020-A-162 Recommendation was made by Dr. Jenkusky to close this case with issuance of an advisory letter to physician about improved communications between physician and patients. **YES:** Dr. Beaudette, Dr. Unverzagt, Dr. Spence, Dr. Carson and Dr. Anderson **RECUSED:** Dr. Jenkusky and Ms. Johnson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2020-A-177 Recommendation was made by Dr. Jenkusky to close this case with issuance of an advisory letter to PA about improved communications between PA and patients. **YES:** Dr. Beaudette, Dr. Unverzagt, Dr. Spence, Dr. Carson and Dr. Anderson. **RECUSED:** Dr. Jenkusky and Ms. Johnson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2020-A-192 Recommendation was made by Dr. Jenkusky to close this case with issuance of an advisory letter to physician reminding him about the requirements to adhere to the Board's regulations concerning prescribing to patients via electronic means and advising physician that selling patients his own cosmetic products, without offering patients other options, may be a violation of the AMA Code of Ethics. **YES:** Dr. Beaudette, Dr. Unverzagt, Dr. Spence, Dr. Carson, and Dr. Anderson. **RECUSED:** Dr. Jenkusky and Ms. Johnson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2021-A-052 Recommendation was made by Dr. Jenkusky to refer physician to an Impaired Physician Committee for an evaluation pursuant to Section 61-7-4 of the Impaired Healthcare Provider Act for the Purpose of determining the physician's fitness to practice with reasonable skill or safety to patients. Investigation case will remain open pending outcome of evaluation. **YES:** Dr. Beaudette, Dr. Unverzagt, Dr. Spence, Dr. Carson and Dr. Anderson. **RECUSED:** Dr. Jenkusky and Ms. Johnson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Committee B

Recommendation was made by Dr. Anderson to **CLOSE** the following cases: 2020-B-160; 2020-B-163; 2020-B-178; and 2021-B-131. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Carson. **RECUSED:** Dr. Spence and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2021-B-028 Recommendation was made by Dr. Anderson to close this case with issuance of an advisory letter reminding Physician about the Board's requirements on reporting and disclosing truthful information on applications and assessing \$300 in costs. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Carson **RECUSED:**

Dr. Spence and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2021-B-124 Recommendation was made by Dr. Anderson to close this case with issuance of a medical license with an advisory letter regarding 1. The misrepresentation on applicant's application 2. Notifying applicant about the Board's regulation requiring live interactive encounters with patients if prescribing via electronic means and providing a copy of the Regulation. 3. Assessing \$150 in costs for misrepresentation on an application. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Carson. **RECUSED:** Dr. Spence and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2021-B-030 Recommendation was made by Dr. Anderson offering physician a chance to voluntarily surrender his license in New Mexico. If physician does not accept offer, a notice of contemplated action will be issued based on, but not limited to, conduct unbecoming, obtaining a fee by fraud, and conduct likely to deceive the public. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Carson. **RECUSED:** Dr. Spence and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Committee C

Case # 2020-C-188 Recommendation was made by Dr. Carson to close this case with issuance of an advisory letter reminding licensee about disclosing truthful information on an application and assessing \$150 in costs. **YES:** Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Jenkusky and Dr. Anderson. **RECUSED:** Dr. Beaudette and Dr. Carson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy **MOTION CARRIED.**

Case #2020-C-303 Recommendation was made by Dr. Carson to close this case with issuance of an advisory letter reminding physician the Board's regulations on prescribing for chronic pain, his continued compliance with PMP Regulation and reminding him about the requirements under his current stipulation. **YES:** Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Jenkusky and Dr. Anderson. **RECUSED:** Dr. Beaudette and Dr. Carson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy **MOTION CARRIED.**

Case # 2020-C-331 Recommendation was made by Dr. Carson offering physician a reprimand and stipulated license requiring payment of \$1000 fine plus costs of investigation and requiring physician to have a female chaperone present when treating female patients if he practices in New Mexico. The compliant committee is also requiring physician to notify the Board if he plans to practice in New Mexico. If physician does not accept, a notice of contemplated action will be issued based on, but not limited to, conduct unbecoming, misrepresentation on an application, adverse licensure action in another state, and failure to report adverse action. **YES:** Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Jenkusky and Dr. Anderson. **RECUSED:** Dr. Beaudette and Dr. Carson **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy **MOTION CARRIED.**

Case # 2021-C-034 Recommendation was made by Dr. Carson offering physician the chance to voluntarily surrender his license or a notice of contemplated action will be issued based on, but not limited to, adverse licensure action taken by another state, misrepresentation on a renewal application, and conduct unbecoming. **YES:** Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Jenkusky and Dr. Anderson. **RECUSED:** Dr. Beaudette and Dr. Carson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Case # 2021-C-123 Recommendation was made by Dr. Carson offering physician applicant the chance to withdraw his application for licensure or a notice of contemplated action to deny licensure will be issued based on, but not limited to, incompetency to practice and repeated negligent acts. **YES:** Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Jenkusky and Dr. Anderson. **RECUSED:** Dr. Beaudette and Dr. Carson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED**

Complaint Committee Reports B: Executive Committee Report

Report for review

7. **Compliance Requests and Actions**

Richard Smith, MD- Request for Release from Stipulation

MOTION was made by Dr. Jenkusky to release Dr. Smith from stipulation and issue an unrestricted license.

SECONDED: Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Ryan Lubert, MD- Request for Release from Stipulation

MOTION was made by Dr. Jenkusky to release Dr. Lubert from stipulation and issue an unrestricted license.

SECONDED: Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Elliot Marcus, MD- Request for Release from Stipulation

MOTION was made by Dr. Jenkusky to release Dr. Marcus from stipulation and issue an unrestricted license.

SECONDED: Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Winston Nara, MD- Request for Release from Stipulation

MOTION was made by Dr. Jenkusky to release Dr. Nara from stipulation and issue an unrestricted license.

SECONDED: Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Luis Cisneros- Review and Decision on Compliance Issues

MOTION was made by Dr. Jenkusky to immediately suspend Dr. Cisneros license. **SECONDED:** Dr. Anderson.

YES: Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson.

EXCUSED: Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED**

8. **Lunch**

9. **Oral Arguments**

IMO- Natalie Pavelock, MD- Dr. Beaudette granted Dr. Pavelock, her counsel, Gretchen Elsner, Esq. and the Board's Prosecutor, Yvonne Chicoine, Esq., ten minutes of oral argument.

IMO-George Madera, MD Dr. Beaudette granted Dr. Madera, his counsel, Alexander Tucker, Esq., on behalf of Dan Akenhead, Esq., and the Board's Prosecutor, Yvonne Chicoine, Esq., ten minutes of oral argument.

10. **Licensing Issues, New Applicants/Reinstatements**

IMO- Natalie Pavelock, MD- Decision and Order following Evidentiary Hearing (Case No. 2020-053)

MOTION was made by Dr. Jenkusky to accept the Hearing Officer's report as amended by Dr. Jenkusky and reviewed by the Executive Committee. **SECONDED** by Dr. Beaudette. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

MOTION was made by Dr. Jenkusky to adopt the following Prosecution's Conclusions of Law, with the addition that Ms. Frank can make editorial corrections as needed.

- A. At all times relevant to this proceeding, the Board has had jurisdiction over Respondent and the subject matter, continuity that the record closed on June 11, 2021.

- B. In its proceedings, the Board accorded Respondent all the due process to which she is entitled.
- C. A preponderance of the evidence supports the following factual allegations.
 - 1. Concerns within the Respondent's practice group regarding Respondent's well being and safety of patients which resulted in Respondent being assessed by the New Mexico Health Professional and Wellness program (HPWP) on two occasions.
 - 2. Respondent engaged in conduct that reflects poorly on the profession and can affect patient safety.
 - 3. Respondent was not forthcoming to the Board investigators regarding her conduct.
 - 4. Respondent failed to provide the New Mexico Health and Wellness program (HPWP) with documentation they requested for purposes of assuring her ability to practice in a safe and competent manner.
- D. Respondent's conduct, as established by a preponderance of the evidence, constitutes, contemplated by the nonexclusive definition of "unprofessional and dishonorable" conduct, as defined in Section 61-6-15(D) of the Medical Practice Act and the Board's Rules.
 - 1. "Habitual or excessive use of intoxicants or drugs" NMSA 1978, § 61-6-17(D)(7),
 - 2. "Conduct likely to deceive, defraud or harm the public" NMSA 1978, § 61-6- 15(D)(18),
 - 3. "Failure to furnish the Board, its investigators or representatives with information requested by the Board" NMSA 1978, § 61-6- 15(D)(23),
 - 4. "Conduct unbecoming in a person licensed to practice of detrimental to the best interest of the public" NMSA 1978, § 61-6- 15(D)(29),
- E. Respondent's violation of the Medical Practice or the Boards rules subjects respondent to discipline including imposition of fines and or remedial requirements. NMSA 1978, § 61-1-4(A).
- F. No basis exists for the Board to excuse Respondent from reimbursing the Board the costs it incurred in its proceedings against her. NMSA 1978, § 61-1-4(G).

SECONDED by Dr. Beaudette. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED**

MOTION was made by Dr. Jenkusky to order the following disciplinary actions; 1) Respondent shall sign a mandatory participation agreement with the New Mexico Health Professional Wellness Program (HPWP) within ten days following entry of this order; 2) Respondent shall sign and maintain all releases giving HPWP and the Board access to medical records as requested; 3) If Respondent does not comply with requirements, her license will be immediately suspended; 4) Respondent is to reimburse the Board the costs incurred for investigating and prosecuting her case. **SECONDED** by Dr. Beaudette. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED**

IMO- Vinay Saini, MD-Motion and Order for Reimbursement of Costs (Case No. 2020-036)

MOTION was made by Jenkusky to approve the Motion and Order for reimbursement of costs. **SECONDED** by Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

IMO- Catherine Lewis, MD-Motion and Order for Reimbursement of Costs (Case No. 2020-035)

MOTION was made by Jenkusky to approve the Motion and Order for reimbursement of costs. **SECONDED** by Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

IMO- George Madera, MD -Motion and Order for Reimbursement of Costs (Case No. 2020-010)

MOTION was made by Jenkusky to approve the Motion and Order for reimbursement of costs. **SECONDED** by Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

IMO- Erin Fenstermacher, MD -Motion and Order for Reimbursement of Costs (Case No. 2020-042)

MOTION was made by Jenkusky to approve the Motion and Order for reimbursement of costs. **SECONDED** by Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

11. Reports

A. Board Chair

No Report

B. Executive Director

Ms. Frank informed the Board that staff is working on an informal Board member retreat. This will allow for Board members to discuss procedural processes, allow time for training of new board members, and informational training from other organizations such as HPWP.

C. Licensing Manger Report

Pandemic Exceptions for Licensure-End or Continue Telemedicine for established patients being treated by another doctor in another state.

Ms. Griego asked the Board if the Board shall continue the continuity of care exemption for Telemedicine Physicians or terminate it.

After discussion, the Board agreed to continue with the Telemedicine continuity of care exemption.

D. Finance Report

Ms. Mascarenas reported to the Board the following;

FY21 Budget/Revenue Status

- Report the FY21 Budget/Revenue Status ending June 30, 2021.
The Budget and Revenue Status ending June 30, 2021 are as follows:
 - ✓ From July 1, 2020 through June 30, 2021 expenditures total **\$1,977,490 (or 84.62%)** of budgeted expenditures (Opbud \$2,336,900);
 - ✓ From July 1, 2020 through June 30, 2021 the agency collected revenues in the amount of **\$2,596,632 (or 121.5%)** of budgeted revenues of **\$2,136,900. (In FY20 the agency collected \$2,423,564) = \$173,068 higher this year.**

- ✓ The Fund Balance on June 30, 2020, is **\$1,717,603**. The cash balance as of June 30, 2021, is **\$2,445,840**.

***Note this amount will be reduced by \$500,000 in FY22 to be utilized for the NMMB Licensing Software Modernization in the current fiscal year leaving a balance of \$1,945,840.**

- For your reference you received the FY21 Statistics Summary that reflects the application/renewal and other fees that make up the total revenues collected in FY21 beginning on July 1, 2020, through June 30, 2021 in the amount of \$2,596,632.

E. Board Attorney Report

Margaret McLean, J.D.- For Review

12. New Business

▪ **New Board Member Orientation**

Will be taken to the next Board meeting

▪ **Rule Hearing Approval**

Ms. Quintana presented to the Board, proposed changes to the following rules:

- 16.10.2 – Physician Licensure Requirements
- 16.10.3 – Examinations
- 16.10.4 – Continuing Medical Education
- 16.10.9 – Fee
- 16.10.15 – Physician Assistant Licensing Requirements

After much discussion the following motion was made.

MOTION was made by Dr. Unverzagt to approve the proposed rule change(s) with amendments as discussed for rule hearing on November 4, 2021. **SECONDED** by Dr. Jenkuksy. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

Ms. Griego presented to the Board changes to 16.6.1. Naprapathic Practitioners rule.

After much discussion the following motion was made.

MOTION was made by Dr. Carson to approve the proposed rule change with amendments as discussed for rule hearing on November 4, 2021. **SECONDED** by Dr. Anderson. **YES:** Dr. Beaudette, Dr. Unverzagt, Ms. Johnson, Dr. Spence, Dr. Carson, Dr. Jenkusky and Dr. Anderson. **EXCUSED:** Ms. Saavedra, Dr. Scoggins, and Dr. Reidy. **MOTION CARRIED.**

12. Old Business

Establish Committee to Write “Safe Harbor” Policy- Moved to next Board meeting.

13. Adjourn

There being no further business before the Board, Dr. Beaudette adjourned the meeting at 3:15 pm.

SUBMITTED BY: Sondra Frank
Sondra Frank, J.D., Executive Director

DATE: 09/23/2021

APPROVED BY: P. Beaudette
Peter Beaudette, M.D, M.D., Chair

DATE: 09/23/2021

APPROVED BY: Karen Carson
Karen Carson, M.D., Vice Chair

DATE: 09/23/2021