

**NEW MEXICO MEDICAL BOARD
Interim Board Meeting
January 12, 2022
MINUTES**

MEETING MADE PUBLIC VIA ZOOM AND TELECONFERENCE

Members Present: Steve Jenkusky, M.D., Secretary Treasurer

Video Conferencing: Peter Beaudette, M.D., Chair
Karen Carson, M.D., Vice Chair
James Spence, M.D. – Joined at 3:04
Mark Unverzagt, M.D.
Kathy Johnson, PA
Buffie Saavedra, Public Member
Kristin Reidy, DO
Bradley Scoggins, DO

Excused: Eric Anderson, M.D.

Others Present: Sondra Frank, Esquire, Executive Director
Amanda Quintana, Compliance Manager / PIO
Debbie Dieterich, Investigations Manager
Samantha Breen, Compliance Coordinator

1. CALL TO ORDER / ROLL CALL

Dr. Beaudette, after establishing the presence of a quorum, called the January 12, 2022, Interim Board Meeting of the New Mexico Medical Board to order at 3:03 pm, roll call was completed.

2. APPROVAL OF AGENDA

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

3. APPROVAL OF MINUTES

MOTION was made by Dr. Jenkusky to approve the minutes from the December 16, 2021, Interim Board meeting. **SECONDED** by Dr. Carson. **YES:** Dr. Beaudette, Dr. Carson, Dr. Jenkusky, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson, Dr. Scoggins and Dr. Reidy. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

4. RULE HEARING

See attached transcripts.

ADOPTION OF RULES

The Board had a brief discussion regarding the amendment to the rules.

MOTION was made by Dr. Jenkusky to adopt the amendment to Title 16, Chapter 10, Part 2; Title 16, Chapter 10, Part 3; Title 16, Chapter 10, Part 4; Title 16, Chapter 10, Part 5; Title 16, Chapter 10, Part 9; Title 16, Chapter

10, Part 10; Title 16, Chapter 10, Part 11; Title 16, Chapter 10, Part 14; Title 16, Chapter 10, Part 15; Title 16, Chapter 6, Part 3; Title 16, Chapter 10, Part 5; Title 16, Chapter 6, Part 7; Title 16, Chapter 6, Part 8 and Title 16, Chapter 6, Part 9. **SECONDED** by Dr. Carson. **YES:** Dr. Beaudette, Dr. Carson, Dr. Jenkusky, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson, Dr. Scoggins and Dr. Reidy. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

EXECUTIVE SESSION: Complaint Committee Reports

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

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.

ACTIONS RELATED TO EXECUTIVE SESSION

5. Complaint Committee Reports

Committee A

Case # 2021-A-052 Recommendation was made by Dr. Jenkusky to suspend physician's license under Section 61-7-8(D) of the Impaired Health Care Provider Act. **YES:** Dr. Beaudette, Dr. Carson, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson, and Dr. Scoggins.

RECUSED: Dr. Jenkusky and Dr. Reidy. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

Case #2021-A-244 Recommendation was made by Dr. Jenkusky to offer physician applicant the chance to withdraw his application for physician licensure while under investigation. If he does not accept, a notice of contemplated action will be issued to deny licensure based on, but not limited to, conduct unbecoming and misrepresentation on application. **YES:** Dr. Beaudette, Dr. Carson, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson, and Dr. Scoggins. **RECUSED:** Dr. Jenkusky and Dr. Reidy. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

Case #2021-A-245 Recommendation was made by Dr. Jenkusky to refer physician applicant to obtain a clinical skills assessment by CPEP or comparable program prior to determining licensure issuance. If physician applicant does not accept offer, he may withdraw his application for licensure while under investigation or a notice of contemplated action will be issued to deny licensure based on, but not limited to, incompetency to practice and interaction with others that could adversely affect patient care. **YES:** Dr. Beaudette, Dr. Carson, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson, and Dr. Scoggins. **RECUSED:** Dr. Jenkusky and Dr. Reidy. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

Committee C

Case #2020-C-016 Recommendation was made by Dr. Scoggins to close this case with a strongly worded advisory letter to physician about monitoring patient care, the importance of patient safety, oversight of properly treated mid-level practitioners in their treatment of patients and notifying physician that if he applies for reinstatement of his license in NM, the Board will be reviewing his practice prior to the issuance of a license. Copy of the advisory letter will be sent to the local Nu Male clinic and to the Attorney General Consumer Division. **YES:** Dr. Beaudette, Dr. Jenkusky, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson and Dr. Reidy. **RECUSED:** Dr. Carson and Dr. Scoggins. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

Case #2021-C-248 Recommendation was made by Dr. Scoggins to offer physician applicant a stipulated license in NM requiring mandatory participation in NMHPWP and assessing \$450 in costs. If physician applicant does

not accept, he may withdraw his application for licensure while under investigation or a notice of contemplated action will be issued to deny licensure based on, but not limited to, habitual/excessive use of alcohol and misrepresentation on application. **YES:** Dr. Beaudette, Dr. Jenkusky, Dr. Spence, Dr. Unverzagt, Ms. Saavedra, PA Johnson and Dr. Reidy. **RECUSED:** Dr. Carson and Dr. Scoggins. **EXCUSED:** Dr. Anderson. **MOTION CARRIED.**

6. **Actions Related to Executive Session**

7. **Adjourn**

There being no further business before the Board, Dr. Beaudette adjourned the meeting at 4:27 p.m.

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

DATE: _____

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

DATE: _____

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

DATE: _____

*

THE NEW MEXICO MEDICAL BOARD
RULE HEARING
WEDNESDAY, JANUARY 12, 2022
3:08 P.M.

ZOOM VIDEO CONFERENCE HEARING

A P P E A R A N C E S

PETER T. BEAUDETTE, M.D., DCHAIR, (remote)
KAREN CARSON, M.D., VICE CHAIR, (remote)
STEVE JENKUSKY, M.D., SECRETARY/TREASURER, (remote)
JAMES SPENCE, M.D., MEMBER, (remote)
MARK UNVERZAGT, M.D., MEMBER, (remote)
BRADLEY SCOGGINS, D.O., MEMBER, (remote)
KRISTIN REIDY, D.O., MEMBER, (remote)
KATHY JOHNSON, P.A., MEMBER, (remote)
BUFFIE SAAVEDRA, PUBLIC MEMBER, (remote)

REPORTED BY: KIM KAY SHOLLENBARGER, RPR
PAUL BACA PROFESSIONAL COURT REPORTING
500 4TH STREET, NORTHWEST, SUITE 105
ALBUQUERQUE, NEW MEXICO 87102

1 CHAIR BEAUDETTE: This hearing will please come to
2 order. I am Peter Beaudette, Chairman of the New Mexico
3 Medical Board. I'll be acting as the Presiding Officer for
4 this Rule Hearing.

5 The purpose of this hearing is for the Board to
6 receive public comment on the proposed rule changes to
7 16.10.2; 16.10.3; 16.10.4; 16.10.5; 16.10.9; 16.10.10;
8 16.10.11; 16.10.14; 16.10.15; 16.6.3; 16.6.5; 16.6.7; 16.6.8
9 and 16.6.9.

10 As a general summary, the proposed changes to 16.10
11 involve changes to the term allopathic physicians to
12 physicians so that both allopathic doctors, MDs, and doctors
13 of osteopathy, DOs, are incorporated into the rule. The
14 proposed rule adds osteopathic physician credentials and
15 licensure requirements and adds the definition of physician,
16 which means allopathic doctor or doctor of osteopathy.

17 As additional proposed changes is to add to the New
18 Mexico Medical Board's licensing requirements a list specific
19 criminal convictions that would -- did we skip one --
20 disqualify an applicant from receiving a license based on
21 previous felony conviction.

22 Sondra, do you want me just to go through that? Do
23 we make any comments as we go through this now, or not?

24 EXECUTIVE DIRECTOR FRANK: No, we're just giving an
25 overview about --

1 CHAIR BEAUDETTE: An overview, okay.

2 EXECUTIVE DIRECTOR FRANK: And if you need help
3 reading through these, would you let us know. But we do need
4 to read through them line by line.

5 CHAIR BEAUDETTE: Right, okay.

6 EXECUTIVE DIRECTOR FRANK: And just so the record is
7 clear, the numbers are 16.10.3. They're not dash, but you
8 need to read each point, just so the record is super clear.

9 CHAIR BEAUDETTE: Right.

10 16.10.3 is Examinations. As a general summary, the
11 proposed changes to 16.10.3 again changes the reference from
12 allopathic physician to physicians and adds the required
13 exams for osteopathic medical licensing.

14 16.10.4 concerns Continuing Medical Education. As a
15 general summary, the proposed changes to 16.10.4 adds the
16 required continuing medical education for osteopathic medical
17 licensing.

18 16.10.5, as a general summary, the proposed changes
19 to 16.10.5 is to update the rule to add more relevant
20 language and take out obsolete processes.

21 16.10.9, as a general summary, the proposed changes
22 to 16.10.9 is to make grammatical changes to errors in the
23 rule.

24 16.10.10 is the Reporting of Settlements, Judgments,
25 Adverse Actions and Credentialing Discrepancies. As a

1 general summary, the proposed change is to add locum tenens
2 or staffing agencies to the definition of health care entity.

3 16.10.11 Physicians Supervising Pharmacist
4 Clinicians. As a general summary, the proposed changes are
5 to update the rule language with current practice and
6 licensing processes and requirements.

7 16.10.14 Management of Pain and Other Conditions
8 with Controlled Substances. As a general summary, the
9 proposed changes to 16.10.14 changes the term medical doctor
10 to physician.

11 16.15 Physician Assistants: Licensure and Practice
12 Requirements. As a general summary, the proposed changes to
13 16.10.15 changes the term medical doctor to physicians.

14 And my computer has frozen here. Sondra, do you
15 have -- for some reason I'm -- my computer has now refused to
16 go any further.

17 EXECUTIVE DIRECTOR FRANK: Do you want me to
18 continue reading for you?

19 CHAIR BEAUDETTE: I've got it. I've got it, okay.

20 16.10.15, Physicians Assistants: Licensure and
21 Practice Requirements. As a general summary, the proposed
22 changes to 16.10.15 changes the term medical doctor to
23 physician. I'm sorry, we said that.

24 16.6.3. As a general summary, the proposed changes
25 to 16.6.3 lower fees for naturopathic practitioner licensing

1 to align with the fees for other mid-level providers licensed
2 by the New Mexico Medical Board.

3 EXECUTIVE DIRECTOR FRANK: This is naprapathic --

4 CHAIR BEAUDETTE: Naprapathic.

5 EXECUTIVE DIRECTOR FRANK: -- providers.

6 Naprapathic.

7 CHAIR BEAUDETTE: Naprapathic with a P, yes. I'm
8 sorry.

9 16.6.5 Inactive Status, Reinstatement. As a general
10 summary, the proposed changes to 16.6.5 allow for a
11 naprapathic practitioner to inactivate their license with a
12 one-time fee of \$25 as opposed to \$100 per year.

13 16.6.7 Licensure by Endorsement and Examination. As
14 a general summary, the proposed changes to 16.6.7 combines
15 the requirements for naprapathic practitioner licensing by
16 endorsement and by examination. The requirements are similar
17 and did not need to be separated in the rule.

18 Practice Procedures, 16.6.8. As a general summary,
19 the proposed changes to 16.6.8 changes the name naprapathic
20 physicians to naprapathic practitioner and also deletes a
21 diagnostic procedure that is not used, breaches emergency
22 assistance ministry.

23 16.6.9 Supervision of Interns. As a general
24 summary, the proposed changes to 16.6.9 clarify the
25 procedures for the supervision of interns and also changes

1 the term doctor to naprapathic practitioner.

2 May I remind everyone to sign the attendance sheet
3 and be entered into the record at this hearing. Attendees
4 via Zoom, your names and titles will be added to the
5 transcript.

6 Will the Executive Director, Ms. Sondra Frank, call
7 the roll of the Board members present for the hearing.

8 EXECUTIVE DIRECTOR FRANK: Dr. Peter Beaudette.

9 CHAIR BEAUDETTE: Beaudette here.

10 EXECUTIVE DIRECTOR FRANK: Karen Carson, Dr. Karen
11 Carson.

12 MEMBER CARSON: Karen Carson here

13 EXECUTIVE DIRECTOR FRANK: Dr. Steve Jenkusky.

14 MEMBER JENKUSKY: Present.

15 EXECUTIVE DIRECTOR FRANK: Dr. James Spence.

16 MEMBER SPENCE: Present.

17 EXECUTIVE DIRECTOR FRANK: Dr. Eric Anderson is not
18 present. Dr. Mark Unverzagt.

19 MEMBER UNVERZAGT: Present.

20 EXECUTIVE DIRECTOR FRANK: Ms. Buffie Saavedra.

21 MEMBER SAAVEDRA: Present.

22 EXECUTIVE DIRECTOR FRANK: Kathy Johnson.

23 MEMBER JOHNSON: Present.

24 EXECUTIVE DIRECTOR FRANK: Dr. Bradley Scoggins.

25 MEMBER SCOGGINS: Present.

1 EXECUTIVE DIRECTOR FRANK: And Dr. Kristin Reidy.

2 MEMBER REIDY: Dr. Reidy here.

3 CHAIR BEAUDETTE: Let the record show that
4 Ms. Sondra Frank, the Board's Executive Director, is present
5 to advise the Board.

6 For the record, would the members of the audience
7 please introduce themselves, state their affiliation, and
8 inform the Board if they wish to present testimony.

9 We have the one gentleman.

10 (multiple people speaking)

11 CHAIR BEAUDETTE: Dr. Saini.

12 DR. SAINI: Yes, this is Dr. Saini. I'm a Board
13 Licensed physician in New Mexico. My specialty is internal
14 medicine and I submitted my comments pertaining to 16.10.10
15 NMAC, yesterday through email. I hope the Board will be able
16 to review those.

17 CHAIR BEAUDETTE: Yes, thank you. The public
18 hearing is now open. Ms. Frank, at this time would you have
19 any exhibits to introduce into evidence?

20 EXECUTIVE DIRECTOR FRANK: I have the following
21 exhibits to enter into evidence.

22 Exhibit 1, Title 15, Chapter 10, Part 2 NMAC,
23 proposed changes to the Board's rule entitled "Physicians,
24 Licensure Requirements."

25 Exhibit 2, Title 16, Chapter 10, Part 3 NMAC,

1 proposed changes to the Board's rule entitled "Examinations."

2 Exhibit 3, Title 16, Chapter 10, Part 4 NMAC,
3 proposed changes to the Board's rule entitled "Continuing
4 Medical Education."

5 Exhibit 4, Title 16, Chapter 10, Part 5 NMAC,
6 proposed changes to the Board's rule entitled "Disciplinary
7 Power of the Board."

8 Exhibit 5, Title 16, Chapter 10, Part 9 NMAC,
9 proposed changes to the Board's rule entitled "Fees."

10 Exhibit 6, Title 16, Chapter 10, Part 10 NMAC,
11 proposed changes to the Board's rule entitled "Reporting of
12 Settlements, Judgments, Adverse Actions and Credentialing
13 Discrepancies."

14 Exhibit 7, Title 16, Chapter 10, Part 11 NMAC,
15 proposed changes to the Board's rule entitled "Physicians
16 Supervising Pharmacist Clinicians."

17 Exhibit 8, Title 16, Chapter 10, Part 14 NMAC,
18 proposed changes to the Board's rule entitled "Management of
19 Pain and Other Conditions with Controlled Substances."

20 Exhibit 9, Title 16, Chapter 10, Part 15 NMAC,
21 proposed changes to the Board's rule entitled "Physician
22 Assistant Licensing Requirements."

23 Exhibit 10, Title 16, Chapter 6, Part 3 NMAC,
24 proposed changes to the Board's rule entitled "naprapathic
25 Practitioners, Fees."

1 Exhibit 11, Title 16, Chapter 6, Part 5 NMAC,
2 proposed changes to the Board's rule entitled "Naprapathic
3 Practitioners, Inactive Status, Reinstatement."

4 Exhibit 12, Title 16, Chapter 6, Part 7 NMAC,
5 proposed changes to the Board's rule entitled "Naprapathic
6 Practitioners, Licensure by Endorsement and Examination."

7 Exhibit 13, Title 16, Chapter 6, Part 8 NMAC,
8 proposed changes to the Board's rule entitled "Naprapathic
9 Practitioners, Practice Procedures."

10 Exhibit 14, Title 16, Chapter 6, Part 9 NMAC,
11 proposed changes to the Board's rule entitled "Naprapathic
12 Practitioners, Supervision of Interns."

13 Exhibit 15, the legal affidavit of publication in
14 the New Mexico Register, published on November 29, 2021,
15 meeting the advance notice requirements for a public rule
16 hearing.

17 Exhibit 16, the legal notice posted in the New
18 Mexico Sunshine Portal on December 3, 2021, meeting the
19 advance notice requirements for a public rule hearing.

20 Exhibit 17, the legal notice published in the
21 Albuquerque Journal on December 5, 2021, meeting the advance
22 notice requirement for a public rule hearing.

23 Exhibit 18, public comment from Dr. Saini, M.D.

24 And that completes the exhibits.

25 CHAIR BEAUDETTE: Are there any questions from the

1 Board members?

2 (pause)

3 CHAIR BEAUDETTE: Hearing none, Exhibits 1 through
4 18 are hereby admitted into the record.

5 Any persons wishing to testify and who wish to
6 submit evidence with their comments shall do so when they are
7 recognized to testify. Each document submitted shall be
8 introduced as an exhibit into the record. Board members will
9 be permitted to ask questions before I rule on the
10 admissibility of the evidence. Upon admissibility, each
11 exhibit will be marked and numbered and entered into the
12 record.

13 Would anyone wish to comment on the proposed changes
14 to the Board's rules that have been posted and advertised for
15 30 days prior to this hearing and that I just summarized on
16 the record?

17 MR. NUZZO: Hello. I am Patrick Nuzzo and I am with
18 Southwest University of Naprapathic Medicine and I just
19 wanted to state my full support of the changes as described.

20 CHAIR BEAUDETTE: Thank you, sir. Now, would anyone
21 else care to comment on the rules that have been posted and
22 advertised for 30 days, just as I summarized on the record?

23 Dr. Saini, would you -- I'm sorry, go ahead.

24 DR. SAINI: Sorry. This is Dr. Saini, the comments
25 on 16.10.10. So am I supposed to give my comments now?

1 CHAIR BEAUDETTE: Yes, please do.

2 DR. SAINI: So I don't know if the Board has my
3 written response, or written comments pulled up. Let me just
4 pull them up for myself. I think the Board proposes to add
5 the locum tenens and staffing agencies to the definition of
6 health care entity. And, to my knowledge, I think New Mexico
7 will be the only state or jurisdiction which would have such
8 a requirement in its policies and procedures.

9 The current definition of health care entity is
10 pretty similar to the definition which is in the National
11 Practitioner Database Guide Book and the Health Care Quality
12 Improvement Act, which basically deals with what needs to be
13 reported to federal government agencies about certain actions
14 on a physician's license or practice. None of those entities
15 have locum tenens or staffing agencies as a health care
16 entity, primarily for the chief reason that none of these
17 agencies actually follow any defined peer review process
18 which would give a physician notice of the complaints against
19 them, an opportunity to be heard or present evidence in
20 support of their viewpoint. And without the proper peer
21 review process as the American Medical Association has
22 recognized, it is very unfair for physicians to be labeled as
23 unqualified or lacking professional competence or conduct.

24 So in summary, I will say that if the New Mexico
25 Medical Board has locum tenens or staffing agencies which are

1 primarily in the business of staffing hospitals with doctors
2 and do not offer any peer review process in case there's any
3 event which might reflect poorly on physician's competence or
4 conduct, I think the Board is opening up a lot of matters for
5 investigation and it will put unnecessary strain on
6 physicians and will take time and energy away from patient
7 care.

8 Thank you.

9 CHAIR BEAUDETTE: Thank you, Dr. Saini, we
10 appreciate your input. Can I ask, are you practicing in New
11 Mexico currently now, or not?

12 DR. SAINI: Yes, sir.

13 CHAIR BEAUDETTE: What sort of practice do you have
14 now?

15 DR. SAINI: I work at a rural health clinic as an
16 internist.

17 CHAIR BEAUDETTE: I see, okay. Thank you. Now, do
18 any Board members have any questions of the witness?

19 (pause)

20 CHAIR BEAUDETTE: Would anybody in the audience care
21 to question the witness?

22 (pause)

23 CHAIR BEAUDETTE: Hearing none. Are there any other
24 comments on any of the rule procedures?

25 (pause)

1 CHAIR BEAUDETTE: Hearing no other comments, at this
2 time the attendance sheet shall be marked as an exhibit and
3 entered into the record.

4 EXECUTIVE DIRECTOR FRANK: I ask permission of the
5 attendance sheet as Exhibit Number 19.

6 CHAIR BEAUDETTE: Do we need to vote on that,
7 Sondra?

8 EXECUTIVE DIRECTOR FRANK: No. You control that, so
9 as long as you say, "Exhibit 19 is admitted into the record,"
10 then it is admitted.

11 CHAIR BEAUDETTE: Exhibit 19 is admitted.

12 So the comments submitted and discussion heard
13 during the Rule Hearing will be considered and will be
14 discussed further by the Board during the Opening Meeting
15 following the Rule Hearing. The proposed rules will be voted
16 on by the Board at that time.

17 Any rules adopted by the Board shall be filed by
18 State Records and Archives in accordance with the State Rules
19 Act and New Mexico Register publication deadlines. The
20 adopted rules become effective 30 days after they are filed
21 at Records and Archives.

22 The regular meeting of the Board will begin
23 immediately following the Rule Hearing.

24 Let the record show that this hearing was adjourned
25 at 3:27 p.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Rule Hearing adjourned at 3:27 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Kim Kay Shollenbarger, Registered Professional Reporter, do hereby certify that I reported the foregoing proceedings in stenographic shorthand via Zoom and that the foregoing pages are a transcript of those proceedings taken by me to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties and that I have no interest in the final disposition of this case.

Kim Kay Shollenbarger, RPR