

NEW MEXICO MEDICAL BOARD
First Quarter Meeting
February 7-8, 2013

DRAFT MINUTES

Members Present:

Steve Weiner, MD, Chair
Rebecca Cochran, CPMSM, CPCS, Vice Chair, Public Member
Paul Kovnat, MD, Secretary / Treasurer
Roger Miller, MD
Steven Jenkusky, MD
Sam Kankanala, MD
Steve Jenkusky, MD
Albert Bourbon, PA

Members Absent:

Steven Komadina, MD

Others Present:

Lynn Hart, Executive Director
Andrea Buzzard, Assistant Attorney General (left at 11:30 am)
Dan Rubin, Administrative Prosecutor
Grant La Farge, M.D., Medical Director
Gayle Mascarenas, CFO/HR
Jackie Holmes, Compliance Manager/ PIO
Amanda Quintana, Licensing Manager
Debbie Dieterich, Investigations Manager
Amanda Chavez, Investigator
Leann Lovato, Senior Investigator
(See list of attendees attached to these minutes)

1. CALL TO ORDER / ROLL CALL:

Dr. Weiner called the regular meeting of the New Mexico Medical Board to order at 8:30 a. m. and a quorum was present.

2. APPROVAL OF AGENDA:

MOTION was made by Dr. Weiner to approve the Agenda. **SECONDED** by Ms. Cochran
YES: Dr. Weiner; Ms. Cochran; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky
ABSENT: Dr. Komadina. **MOTION CARRIED.**

3. APPROVAL OF MINUTES:

MOTION was made by Dr. Weiner to approve the minutes of the January 3, 2013 Interim Meeting. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon, and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner 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. Weiner; Ms. Cochran; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

The Board returned to open session. Dr. Weiner (who, along with Ms. Cochran was not present during the executive session discussion of Dr. Sella's case) stated for the record that the matters discussed in executive session were limited only to those specified in the motion for closure.

4. Licensing Requests and Actions, New Applicants/Reinstatements:

A. Shelly Sella, MD

1. Decision and Order

MOTION was made by Dr. Kovnat to ADOPT the Hearing Officer's report, including the findings of fact and conclusions of law and order that the Notice of Contemplated Action be dismissed. **SECONDED** by Albert Bourbon. **YES:** Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner and Ms. Cochran **ABSENT AND RECUSED:** Dr. Komadina. **MOTION CARRIED.**

MOTION was made by Dr. Weiner 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. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

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

5. COMPLAINT COMMITTEE REPORTS:

A. Complaint Committee Reports

Complaint Committee A:

RECOMMENDATION was made by Dr. Kovnat to close complaint cases 12-NMMB-003; 2012-A-009; 2012-A-026; 2012-A-037; 2012-A-043; 2012-A-060; 2012-A-137; 2012-A-166 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kovnat. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-A-031 RECOMMENDATION was made by Dr. Kovnat to close this case and issue an advisory letter regarding the fact that despite the thoroughness of physician's care, the testing performed was unnecessary given the patient's history. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kovnat. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2011-A-236 RECOMMENDATION was made by Dr. Kovnat to issue a Notice of Contemplated Action based on, but not limited to, misrepresentation on application for licensure, dishonesty, and adverse licensure action taken in another state. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kovnat. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-A-157 RECOMMENDATION was made by Dr. Kovnat to offer physician a stipulated license requiring mandatory participation in the NM Monitored Treatment program and other standard substance abuse stipulations and worksite monitoring. If the physician does not accept issuance of a Notice of Contemplated Action based on habitual and excessive use of alcohol and substances is recommended. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kovnat. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-A-164 RECOMMENDATION was made by Dr. Kovnat to issue a Notice of Contemplated Action to deny licensure based on, but not limited to, conviction punishable by incarceration, failure to cooperate with the Board, dishonesty and practicing in violation of the Board's regulations. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kovnat. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Complaint Committee B:

RECOMMENDATION was made by Ms. Cochran to close complaint cases 2011-B-229 and 2012-B-039 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kankanala; Mr. Bourbon; Dr. Weiner; Dr. Kovnat and Dr. Jenkusky. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-B-054 RECOMMENDATION was made by Ms. Cochran to close this case and issue an advisory letter regarding clear communication with patients on pre-op guidelines. **YES:** Dr. Kankanala; Mr. Bourbon; Dr. Weiner; Dr. Kovnat and Dr. Jenkusky. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-B-033 RECOMMENDATION was made by Ms. Cochran to offer the issuance of a letter of reprimand based on violating the AMA code of Ethics for self-prescribing and self-treating. If the physician refuses, the Issuance of a Notice of Contemplated Action is recommended based on the same. **YES:** Dr. Weiner; Dr. Kankanala; Dr. Kovnat; Dr. Jenkusky and Mr. Bourbon. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-B-093 RECOMMENDATION was made by Ms. Cochran to offer the physician a letter of reprimand with the requirement to attend a CME course on recording keeping within six months and to complete the required 5 hours of pain management CME within 6 months. If the physician refuses, issuance of a Notice of Contemplated Action based on failure to maintain accurate and complete medical records and injudicious prescribing is recommended. **YES:** Dr. Weiner; Dr. Kankanala; Dr. Kovnat; Dr. Jenkusky and Mr. Bourbon. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-B-126 RECOMMENDATION was made by Ms. Cochran to offer the issuance of a letter of reprimand based on injudicious prescribing and failure to maintain accurate medical records. If physician refuses, issuance of a Notice of Contemplated Action based on the same is recommended. **YES:** Dr. Weiner; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-B-127 RECOMMENDATION was made by Ms. Cochran to issue a Notice of Contemplated Action based on, but not limited to, injudicious prescribing and failure to maintain accurate and complete medical records on patients. **YES:** Dr. Weiner; Dr. Kankanala; Dr. Kovnat;

Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-B-151 RECOMMENDATION was made by Ms. Cochran to offer physician a letter reprimand based on injudicious prescribing and failure to maintain accurate and complete medical records. If physical refuses, issuance of a Notice of Contemplated Action based on the same is recommended. **YES:** Dr. Weiner; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Complaint Committee C:

RECOMMENDATION was made by Dr. Kankanala to close complaint cases 2011-C-207, 2012-C-001, 2012-C-007, 2012-C-016, 2012-C-044 and 2012-C-057 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kankanala. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-C-159 RECOMMENDATION was made by Dr. Kankanala to close this case and issue an advisory letter regarding physician's failure to report adverse action to the NMMB as required. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kovnat Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Kankanala. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Complaint Committee D:

RECOMMENDATION was made by Mr. Bourbon to close complaint cases 2011-D-038, 2011-D-209; 2012-D-051, 2012-D-063, 2012-D-065 and 2012-D-081 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-D-163 RECOMMENDATION was made by Dr. Jenkusky that the Board close the case and offer the physician an unrestricted license to practice in New Mexico. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2011-D-228 RECOMMENDATION was made by Dr. Jenkusky to close this case and issue an advisory letter regarding maintenance of complete, accurate and legible medical records. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-D-128 RECOMMENDATION was made by Dr. Jenkusky to close this case and issue an advisory letter on patient communication and professionalism. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-D-142 RECOMMENDATION was made by Dr. Jenkusky to close this case and issue an advisory letter regarding treating patients with an addiction and checking the PMP when prescribing. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-D-156 RECOMMENDATION was made by Dr. Jenkusky that the Board Order the physician to be evaluated under the Impaired Health Care Provider Act. The case will remain open

until the IPC is received and will return to the board for final determination. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2011-D-170 RECOMMENDATION was made by Dr. Jenkusky to issue a Notice of Contemplated Action based on violation of a drug law, conduct unbecoming and impairment under the impaired health care provider act. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-D-092 RECOMMENDATION was made by Dr. Jenkusky that the Board order the physician to be evaluated under the impaired health care provider act. The case will remain open until the IPC report is received and will return to the Board for final determination. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-D-165 RECOMMENDATION was made by Dr. Jenkusky to issue a Notice of Contemplated Action against physician assistant based on, but not limited to, injudicious prescribing and failure to maintain complete and accurate medical records. The complaint committee also recommends that the complaint against the physician be closed with an advisory letter on failure to supervise a physician assistant and failure to report adverse action taken by law enforcement. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Complaint Committee E:

RECOMMENDATION was made by Dr. Weiner to close complaint cases 2012-E-008 and 2012-E-047, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-E-154 RECOMMENDATION was made by Dr. Weiner to close this case and issue an advisory letter regarding medical record keeping. **YES:** Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-E-160 RECOMMENDATION was made by Dr. Weiner that the Board refer this matter to the proper federal authorities and state police for unlicensed practice and fraud activities. **YES:** Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

Case #2012-E-114 RECOMMENDATION was made by Dr. Weiner to issue a Notice of Contemplated Action based on, but not limited to, sexual conduct with a patient; conduct likely to harm the public. **YES:** Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

B. Executive Committee Report – Criminal History Hits and Other Cases

The Board reviewed and Dr. Weiner recommended that the Executive Committee Report be accepted. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon, and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECOMMENDATION PASSED.**

6. **LICENSING REQUESTS AND ACTIONS, NEW APPLICANTS/REINSTATEMENTS:**

A. 1. **Mohammed Hassan, M.D.** – Consider AACRAO evaluation of medical education and grant unrestricted license.

MOTION was made by Dr. Weiner to accept the AACRAO and grant Dr. Hassan an unrestricted license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

2. **Adrian Gollas, Resident M.D. – Motion to Reopen Case due to alleged Bias on the Part of the Hearing Officer, Mr. Albert Bourbon**

The Board's Assistant Attorney General, Ms. Buzzard, indicated that Mr. Bourbon could make a statement for the record. Mr. Bourbon stated for the record that his employment at UNMH which is at an outlying Clinic did not create a bias against his serving as the hearing officer in Dr. Gollas' case. He had no knowledge of Dr. Gollas when he accepted the role of hearing officer. His employment as a UNMH hospital employee is separate from the school of medicine, which was Dr. Gollas' affiliation and he had no interaction with the medical residency program in any way.

In regard to Dr. Gollas, **MOTION** was made by Dr. Weiner to deny the motion to reopen. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

7. **REPORTS:**

A. **Chair –**

Hearing officers - Dr. Weiner advised the Board that there are two new hearing officers the Board may consider using, Mr. Coppler and Mr. Appel. **MOTION** was made by Dr. Weiner to accept these two individuals as hearing officers. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat ; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

B. **Executive Director**

1. Personnel Issues – Ms. Hart advised that the Board is recruiting for one position. The Board has also requested an additional FTE in its budget request for FY14. Ms. Hart and Ms. Mascarenas presented that request to the House legislative finance committee. Both the DFA and the Legislative Finance Committee put the requested position in the Board's budget. Our request is included in House Bill 2, upon passage of HB2, the new position will be eligible for recruitment July1.

2. Litigation against the Board – A suit has been filed against the Board by Richard Rubin, PA, in Federal Court for a civil rights violation. Dr. Jenkusky is named in the suit, along with Dr. Weiner; Mr. Rubin and Lynn Hart. Risk management will take over the Board's defense.

3. Dr. Jain will appeal the Board's revocation of his license. Ms. Hart suggested that the Board appoint Mr. Rubin to handle the appeal.

MOTION was made by Dr. Weiner to appoint Mr. Rubin to handle the Dr. Jain appeal. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller;

Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

C. Prescription Drug Misuse & Overdose Prevention & Pain Management Advisory Council – Dr. Jenkusky

Dr. Jenkusky was appointed by the Board to be its representative. The Advisory Council met several times throughout the year. Ms. Hart or another Board staff person attends as well. The Council's job is to make recommendations to the Governor on the proper use of controlled substances for the treatment of pain. At the last meeting in December 2012, the council voted as a group for two pages of recommendations for possible legislative action or for rule adoption. The most controversial item that the Council considered and voted down by considerable margin was the imposition of prescription pain drug dosing limits and the duration of treatment with opioids.

Representatives, including the medical board, met with staff members of the Governor's office and discussed a legislative option that would give the Council the authority to create prescription limits for opiates and other controlled drugs; including the duration of treatment and doses. Under the proposal, the licensing boards would be mandated to adopt the regulations. Representatives at the meeting voiced concern about this approach. Limits will remain an option, however, as our state battles prescription drug overdose.

Ms. Hart added that the Council's two pages of recommendations were not discussed in detail, but were assumed to be accepted by all. Many Council members were not in attendance.

D. Medical Director - Board Sponsorship of USMLE Step 3

The United States Medical Licensing Examination (USMLE) was implemented in the 1990's. It was established to take the place of the National Board of Medical Examiners (NBME) exams. Initially, these exams both required that any MD sitting for step 3 of the USMLE be sponsored by a Medical board to take the exam. Currently, the NMBME and the USMLE are re-shaping the USMLE. They have decided no longer to require sponsorship as of mid-2014. The exam will be much simpler, more integrated, and easier to register for and complete.

E. Assistant Attorney General – No report at this time

F. Administrative Prosecutor

- **Prosecution Status Report**
Mr. Rubin reviewed all pending cases with the Board.
- **Default Hearing - Charlotte Hovey, M.D. Case No. 2012-036**
Dr. Weiner accepted Exhibits 1 through 3 into evidence as presented in the default hearing.

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-H (1) of the Open Meetings Act. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

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

MOTION was made by Dr. Weiner to **SUSPEND** the medical license of Dr. Charlotte Hovey license until such time she can prove, to the Board's satisfaction, that she is sufficiently fit and competent to practice medicine. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon; Dr. Jenkusky. **RECUSED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

- **Consider Settlement – Robert Benson, M.D.**

MOTION was made by Dr. Kovnat to accept the settlement as presented by Mr. Rubin. **SECONDED** by Ms. Cochran. **YES:** Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner; **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

- **Consider Settlement – Deborah Aaron, M.D.**

MOTION was made by Dr. Weiner to accept the settlement as presented by Mr. Rubin. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

- **Consider Settlement – Steven Petrakis, M.D. - MOTION** was made by Dr.

Weiner to accept the settlement as presented by Mr. Rubin. **SECONDED** by Dr. Kovnat. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala and Dr. Kovnat. **RECUSED:** Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

G. Licensing Manager

1. Discussion of recommended policy for approval of reinstatement applications for Doctors of Naprapathy.

MOTION was made by Dr. Weiner to designate the Executive Director and the Medical Director to approve reinstatement applications for Doctors of Naprapathy. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

2. Temporary Camp license holders' compliance with CME requirement for pain management.

MOTION was made by Dr. Kovnat to exempt temporary license holders from the 5 hours of pain management CME. **SECONDED** by Dr. Weiner. **YES:** Ms. Cochran; Dr. Weiner; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

3. Memorandum of Understanding with UNM – workforce data collected by NMMB.

MOTION was made by Dr. Weiner to accept the MOU. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

H. Financial / HR Manager

- **Review FY13 Budget - Revenue Status Report**

Ms. Mascarenas reported that the FY13 operating budget is \$1,620,000. Expenditures ending December 31st were \$739,000 or 45 percent of the total operating budget. In FY13 the Board has to comply with the 50% rule which means that we cannot expend more than half of the budget by the end of December. Revenues collected are \$291,000 or 17.9 percent of the total operating budget. As of today the cash balance is \$1,402,000 but obviously this balance will go down because income accrues again in April through June of this year.

In January the Board had to do a within-program Budget Adjustment Request (BAR) to move funding to cover some of the administrative costs, primarily litigation. The Board spent about \$30,000 on litigation in the period ending December 31st. This amount is up from prior years. Last year the Board spent \$16,000 for the entire fiscal year on litigation; \$10,000 the year before and \$9,000 the year before that. We are still projecting to spend another \$30,000 this fiscal year; between now and the end of June.

- **Approval of Audit**

The FY1-2012 Audit was successful with no negative findings. This year the Board will need to solicit a new audit firm because last year was Macias, Gutierrez & Company's last year.

MOTION was made by Dr. Weiner to approve the audit. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

Ms. Mascarenas also reported that on January 31st the House Appropriations Finance Committee adopted the LFC recommendation for the Board's FY-2014 appropriation request. This will be a 7.1% increase over the current operating budget, or about \$114,000. The increase is in all categories but primarily for the expansion personnel position.

I. **Investigation Department**

- Status Report
- Ms. Dieterich updated the Board on the current status of investigation cases. A discussion was held about the percentage of cases that are alternatively being taken to the Executive Committee for their review and determination on whether formal investigations should be initiated. This is per the Board's policy established in 2008. The Board receives a number of complaints which it does not have jurisdiction over and which do not violate the Medical Practice Act or Rules. Those complaints are typically not formally investigated at the discretion of the Executive Committee (EC). Others such as anonymous complaints and those where the complainant has no "first-hand" knowledge of the alleged infraction are also taken to the Executive Committee. The Executive Committee determines if a case warrants a formal investigation and upon whose behalf – as a Board complaint or on behalf of the complainant. Again, per the 2008 policy, the whole board reviews a summary of the cases the EC does not send to investigations; any board member can direct a case to investigations.
- Attorney General's Task Force on Prescription Drug Abuse in NM

Ms. Dieterich informed the Board that she attended a teleconference meeting with the Attorney General's office regarding their formation of a task force to deal with the prescription drug abuse problem in New Mexico. The Attorney General's task force has asked the Medical Board to give a presentation at their awareness summit, which is to be scheduled in April.

MOTION was made and by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1 (H) and (3) 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. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

J. Compliance

- Compliance Report for February 2013
- **Board Monitored Compliance Report [nonMTP] and MTP**
Ms. Holmes reviewed the compliance report and provided the status on all participating licensees.

8. NM MONITORED TREATMENT PROGRAM (MTP):

Jon Thayer, Executive Director and Kate Woods, Clinical Coordinator, were present to discuss the status of mandatory MTP. Mr. Thayer also reported that MTP's Medical Director Dr. Dan Collins accepted a new position in Las Vegas New Mexico but that he would stay on at MTP for the near future.

9. INFORMAL INTERVIEWS:

Michael Lente, PA; Robert Orchard, MD; James Bradley, MD; Deborah Aaron, MD; Ralph Hansen, MD; Michael Carey, MD; John Bray-Morris, Stephanie Hedstrom, MD; Richard Lieberman, MD; Marc Masotti, MD; Keith Levitt, MD; Richard Smith, MD; Jennifer Tso, PA; and David Stalker, MD were interviewed in Executive Session regarding current practices and compliance with their board orders. James Galizia, MD and Gireesh Velugubanti were interviewed by teleconference. Richard Rubin, PA, Michael Bellas, PA and Tim Klein, MD missed their interviews.

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

FRIDAY, November 9, 2012

The Board reconvened at 9:00 a.m. on Friday, February 8, 2013, and a quorum was present. Dr. Weiner called the meeting to order.

10. COMPLIANCE:

- **John Bray-Morris, MD. – Stipulation Amendment Request**
MOTION was made by Dr. Weiner to deny Dr. Bray-Morris' request for any amendment to the Stipulation on his license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

- **Gireesh Velugubanti, M.D.** – Request Release from Stipulation
MOTION was made by Dr. Kovnat to release Dr. Velugubanti from Stipulation.
SECONDED by Dr. Weiner. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina.
MOTION CARRIED.

- **John Wagner, M.D.** – Request Release from Stipulation
MOTION was made by Dr. Kovnat to release Dr. Wagner from Stipulation.
SECONDED by Dr. Weiner. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina.
MOTION CARRIED.

- **Robert Orchard, MD** – Request release from Stipulation
MOTION was made by Dr. Jenkusky to release Dr. Orchard from Stipulation and offered him an unstipulated license. **SECONDED** by Dr. Weiner. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **MOTION CARRIED.**

- **Marie Rousseau, MD** – Request Release from Stipulation
MOTION was made by Dr. Weiner to release Dr. Rousseau from Stipulation.
SECONDED by Dr. Jenkusky. **YES:** Dr. Weiner; Ms. Cochran; Dr. Miller; Dr. Kankanala; Dr. Kovnat; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina.
MOTION CARRIED.

11. **Steve Jenison, MD** – The Medical Board’s interpretation and application of the Lynn & Erin Compassionate Act
 Dr. Jenison introduced himself to the Board as an infectious diseases physician and advised all that he had worked for the Department of Health for 14 years. As the Medical Director of the Infectious Diseases Bureau at DOH, he was also the Medical Director of the Medical Cannabis Program from 2007 until 2010. Since then Dr. Jenison has been the Chair of the Medical Advisory Board to the Medical Cannabis Program, which is a group established by the Lynn & Erin Compassionate Use Act. The duties of the Medical Advisory Board are to hear petitions from people who want to add new conditions to the list of those who meet eligibility requirements for enrollment in the medical cannabis program, and to hear appeals of denials of patient registry.

The medical cannabis program has three main components. One is the establishment of a patient registry. The purpose of the patient registry is to protect patients with certain specified medical conditions from arrest and prosecution for the possession of a reasonable amount of medical cannabis for their personal use. The second component of the program is the medical advisory board, and the third component is the licensed producer. There are currently 23 licensed producers on medical cannabis in New Mexico. These licensed producers can grow a specified amount of cannabis. The patients in the medical cannabis program have to re-certify each year. According to Dr. Jenison, since many of the patients of the program are poor and uninsured, this aspect of the law has been very difficult for many of the patients of the program.

Dr. Jenison wanted to address the Board concerning certain recent NCA’s issued by the Medical Board. He expressed concern regarding the relevance of the use of the term “prescribe” and the use of the term “primary caregiver in previous Board documents.

Dr. Jenison asked the Medical Board if they would consider establishing a small task force that can review the position of the Medical Board along with the position of the DOH regarding the medical cannabis program.

There was extended discussion on this issue. Dr. Weiner stated that Dr. Kankanala and Dr. Jenkusky would be good candidates to review these issues more thoroughly and report back to the Board. Perhaps the Board can also discuss this issue internally and present a position on rules and certification at the next board meeting.

Mr. Rubin suggested that Dr. Kankanala and Dr. Jenkusky serve on the medical cannabis rules task force. They agreed.

12. NEW BUSINESS:

A. Appoint Task Force to draft Board Regulations on Certifications for the Use of Medical Cannabis Pursuant to the Lynn and Erin Compassionate Use Act

Mr. Hart suggested that the Board consider drafting and adopting rules that address Medical Cannabis; medical board licensees are authorized to certify patients with approved diagnosis for treatment with cannabis, therefore they have to adhere to the Medical Practice Act. A task force should be made up of board members and staff and the members should be charged with consulting with others who need to be part of the process.

B. Appointment of a Task Force to amend Board Regulations on Complaint Procedures and Institution of Disciplinary Action (16.10.6 NMAC).

A task force needs to be created to review current rules and recommend changes if needed to the Board's rules regarding complaint procedures; this is needed in light of the board's upcoming sunset review by the Legislature. The task force would be made up of board members and staff, and be charged with consulting other experts as needed. Dr. Kovnat, Mr. Bourbon and Mr. Rubin volunteered to be on the complaint procedures task force. Other board members offered to participate as needed.

C. Legislative Proposals

1. SB6 Anesthesiologist Definition – Anesthesiologist Assistants
This bill is probably dead again because the CRNA's are fighting the proposal to expand the services of AA to other hospitals in New Mexico.
2. Psychologist Prescribing
There is talk that there will be a prescribing psychologist bill that would expand what psychologists can prescribe beyond psychotropics.
3. Nursing Board Practice Act Proposals
What is proposed would allow the Nursing Board to authorize RN's to do certain types of anesthetic sedation. The ER physicians are in favor of this rule change but the anesthesiologists have concerns about training, skill and experience.
4. HB115 Safe Injections
This bill requiring practitioners to attest to compliance with the CDC requirements for safe injections is basically dead.
5. HB170 Volunteer Health Practitioner Exemption
This bill on proposed volunteer Physicians has been re-drafted
6. HB222 Scope of Practice-Health Professions

This bill would create a panel that reviews and recommends changes in scope of practice. The Medical Board supports this bill.

- 7. HB260 DOM Imaging Licensure exemption
This bill seeks to allow DOMs to do sonographic imaging under exemption from the Medical Imaging and Radiation Therapy Health and Safety Act.
- 8. HB 414 Nurse Practitioner Scope of Practice
This is a scope of practice for advance practice nurses and nurse mid wives. This bill would enable PA's, nurse practitioners and certified nurse mid wives to certify someone as disabled. This Board is recommending that "licensed in New Mexico" be included in the language for each profession.
- 9. HJM 25 Safe Injection Practices CE Requirements
This bill will be re-written to create a study on safe injections, as there is a hepatitis C outbreak in New Mexico, mostly due to self-injection.
- 10. Legislation to control pseudo-ephedrine
This bill seeks to require that pseudo-ephedrine products be added to the PMP.
- 11. SB342 Imaging Licensure exemption for Nurses
This bill seeks to allow Nurses to do sonographic imaging under exemption from the Medical Imaging and Radiation Therapy Health and Safety Act. NMMB supports

Ms. Hart also discussed a bill for the chiropractors that would eventually take the NMMB out of having to approve their formulary, or their schools.

- D. FSMB Annual Meeting** – April 18-20, 2013 – Boston, MA
Ms. Hart asked if any board members would like to attend this meeting, stating that FSMB will pay for one board member and one staff member to attend.
- E. Proposed 2014 Board Meeting Dates** – were given to board members to coordinate 2014 meeting dates with their calendars.

13. ADJOURN:

There being no further business scheduled, the meeting was adjourned at 10:15 a.m.

SUBMITTED BY: _____ DATE: _____
Lynn Hart, Executive Director

APPROVED BY: _____ DATE: _____
Steve Weiner, M.D., Chair

APPROVED BY: _____ DATE: _____
Paul Kovnat, M.D., Secretary Treasurer