

NEW MEXICO MEDICAL BOARD
Third Quarterly Meeting
August 18-19, 2005

MINUTES

Members Present:

Paul Kovnat, M.D., Chairman
Prakash Ranka, M.D., Vice-Chair
Steven Weiner, M.D., Secretary-Treasurer
Vivian Giudice, M.D.
Allan Haynes, M.D.
Alfredo Vigil, M.D. (Friday only)
Reza Ghadimi, P.A.
Dick Heim, Public Member
Becky Cochran, Public Member

Also Present:

Charlotte Kinney, Executive Director
Grant La Farge, M.D., Medical Director
Corliss Thalley, A.A.G.
G.T.S. Khalsa, Board Prosecutor
Jenny Felmley, P.I.O.
Lynn Tipton, Administrative Assistant
A list of all attendees is attached to these minutes

1. CALL TO ORDER

The regular meeting of the New Mexico Medical Board convened at 8:17 a.m., Thursday, August 18, 2005 in the Board Conference room, 2055 S Pacheco, Santa Fe, New Mexico, *Paul Kovnat, M.D.* presiding. A quorum was declared, with all members present except for Dr. Vigil who was recently appointed and was excused on Thursday, August 18th due to a schedule conflict.

2. APPROVAL OF AGENDA

Mr. Ghadimi **MOVED** the agenda be approved as presented. Ms. Cochran **SECONDED** the motion, which **PASSED UNANIMOUSLY**.

3. APPROVAL OF MINUTES

Mr. Heim **MOVED** the minutes of the June 23, 2005 interim meeting be approved as presented. Dr. Weiner **SECONDED** the motion, which **PASSED**, with all members voting in favor except Dr. Vigil who was **EXCUSED**. Ms. Kinney proposed postponing the vote regarding the minutes for the May 5, 2005 regular meeting until the tapes or notes could be reviewed to verify the vote on Item #8C of Old Business.

4. NM MONITORED TREATMENT PROGRAM REPORT

Executive Session: **MOTION** was made by Dr. Haynes and **SECONDED** by Dr. Ranka to go into executive session to discuss matters of licensure. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.** Jon Thayer, Dan Collins, M.D., and Connie Merrell were present to discuss the status of mandatory participants. The Board returned to open session. Dr. Kovnat stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

Mr. Thayer introduced Connie Merrell, Clinical Director and the new Medical Director, Dr. Dan Collins. MTP staff discussed the implementation of new programs and processes at MTP as part of the new contract they have with the Board. Mr. Thayer provided a copy of the Financial and Operation Reports, noting that

referrals have increased since August 1 and with improved outreach they anticipate further increases. The consultant who reviewed MTP operations identified an issue of the conflict that is created when an individual therapist, who is meeting with participants, is required to report to outside groups, such as the Board. The reorganized program allows the therapists, Mary Miesem and Brett Nelson, to report attendance, participation, and critical incidents to MTP staff. MTP will soon be able to additionally provide comprehensive assessments and treatment plans, as well as better tracking of client participation.

5. COMPLAINT COMMITTEE REPORTS

EXECUTIVE SESSION: **MOTION** was made by Dr. Ranka and seconded by Dr. Haynes to go into executive session to discuss matters of licensure. **YES:** Kovnat, Haynes, Giudice, Weiner, Ghadimi, Heim, Ranka, and Cochran. **MOTION CARRIED.** The Board returned to open session after a discussion of Licensing Requests and Actions. Dr. Kovnat stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

Complaint Committee A On behalf of Complaint Committee A, Dr. Weiner **MOVED** that complaint cases 2004-A-031, 2004-A-071, 2004-A-100, 2004-A-125, 2004-A-156, 2004-A-172, 2005-A-005, 2005-A-006, 2005-A-016 and 2005-A-019 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Kovnat, Haynes, Giudice, Ghadimi, Heim and Ranka. **RECUSED:** Cochran and Weiner. **MOTION CARRIED.**

On behalf of Complaint Committee A, Dr. Weiner **MOVED** that complaint case 2005-A-033 (Alan Goldberg, MD) be issued a Notice of Contemplated Action based on action in another state and falsification of information provided to other state Board. No second was required. **YES:** Kovnat, Haynes, Giudice, Ghadimi, Heim and Ranka. **RECUSED:** Cochran and Weiner. **MOTION CARRIED.**

On behalf of Complaint Committee A, Dr. Weiner **MOVED** that complaint case 2005-A-054 (Michael Flanagan, MD) be issued a Notice of Contemplated Action for disciplinary action based on dishonesty, injudicious prescribing, gross negligence, and deceptive medical records. No second was required. **YES:** Kovnat, Haynes, Giudice, Ghadimi, Heim and Ranka. **RECUSED:** Cochran and Weiner. **MOTION CARRIED.**

Complaint Committee B On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint cases 2004-B-129, 2004-B-144, 2004-B-174, 2004-B-181, 2004-B-183, 2004-B-187, 2005-B-009, 2005-B-012, 2005-B-022, 2005-B-026 and 2005-B-034 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Ghadimi and Cochran. **RECUSED:** Ranka and Vigil (excused). **MOTION CARRIED.**

On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint case 2004-B-173 have no action taken at this time. No second was required. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Ghadimi and Cochran. **RECUSED:** Ranka and Vigil (excused). **MOTION CARRIED.**

On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint case 2005-B-037 (Elbin Orellana, MD) be issued a Notice of Contemplated Action based on action in another state and falsification and misrepresentation on his application. No second was required. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Ghadimi and Cochran. **RECUSED:** Ranka and Vigil (excused). **MOTION CARRIED.**

On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint case 2005-B-038 (Robert Graor, MD) be issued a Notice of Contemplated Action based on disciplinary action in another state. No second was required. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Ghadimi and Cochran. **RECUSED:** Ranka and Vigil (excused). **MOTION CARRIED.**

On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint case 2005-B-058 (Gregory Huss, MD) be issued a Notice of Contemplated Action based on action in another state and falsification and misrepresentation on his application. No second was required. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Ghadimi and Cochran. **RECUSED:** Ranka and Vigil (excused). **MOTION CARRIED.**

Complaint Committee C On behalf of Complaint Committee C, Dr. Giudice **MOVED** that complaint cases 2004-C-102, 2004-C-130, 2004-C-136, 2004-C-161, 2004-C-185, 2004-C-186, 2005-C-

013, 2005-C-014, 2005-C-021 and 2005-C-027 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required **YES:** Kovnat, Haynes, Weiner, Ghadimi, Cochran and Ranka. **RECUSED:** Giudice and Heim. **MOTION CARRIED.**

Complaint Committee D. On behalf of Complaint Committee D, Mr. Ghadimi **MOVED** that complaint cases 2004-D-154, 2004-D-163, 2004-D-166, 2004-D-177, 2005-D-004, 2005-D-010, 2005-D-011, 2005-D-023, 2005-D-028, 2005-D-035 and 2005-D-070 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required **YES:** Kovnat, Weiner, Giudice, Heim, Cochran and Ranka, **RECUSED:** Ghadimi and Haynes. **MOTION CARRIED.**

On behalf of Complaint Committee D, Mr. Ghadimi **MOVED** that complaint case #2004-D-133 (Jeanne Bushnell, MD) be issued a Notice of Contemplated Action based on falsification of information on the application. No second was required. **YES:** Kovnat, Weiner, Heim, Giudice, Cochran and Ranka. **RECUSED:** Ghadimi and Haynes. **MOTION CARRIED**

On behalf of Complaint Committee D, Mr. Ghadimi **MOVED** that complaint case #2004-D-063 (Lowell Duane Barrowes, MD) be referred to CPEP for evaluation of clinical competence. No second was required. **YES:** Kovnat, Weiner, Heim, Giudice, Cochran and Ranka. **RECUSED:** Ghadimi and Haynes. **MOTION CARRIED**

Complaint Committee E. On behalf of Complaint Committee E, Dr. Kovnat **MOVED** that complaint case #2005-E-011 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **RECUSED:** Kovnat. **MOTION CARRIED.**

On behalf of Complaint Committee E, Dr. Kovnat **MOVED** that complaint case #2005-E-079 (Charles Pfaff, MD) be issued a Notice of Contemplated Action based on action in another state and failure to report adverse action to this Board.

Impaired Committee Reports: On behalf of the previous Complaint Committee A, Dr. Weiner **MOVED** that case #2004-A-115 be closed, as there was no evidence of impairment or of a violation of the Medical Practice Act or rules. Dr. Haynes **SECONDED** the motion. **YES:** Kovnat, Cochran, Haynes, Giudice, Ghadimi, Heim and Ranka. **RECUSED:** Weiner. **MOTION CARRIED**

6. LICENSING ISSUES

A. Elliott Marcus, MD - Dr. Haynes **MOVED** that the Board appreciates the forthrightness of Dr. Marcus in bringing this matter to the Board and as long as he abides by the plea agreement the Board sees no need for further action. Dr. Ranka **SECONDED**. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Ghadimi, Cochran and Ranka. **MOTION CARRIED**

B. Raymond Emerson, MD - Dr. Haynes **MOVED** to reinstate his license. Mr. Ghadimi **SECONDED**. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.**

C. Richard Roberts, MD-- Dr. Kovnat **MOVED** that Dr. Roberts be issued a restricted license to practice in New Mexico, limiting him to administrative medicine with no direct patient care. Ms. Cochran **SECONDED** the motion. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi, and Ranka. **MOTION CARRIED.**

D. Misrepresentation on Renewal Application - The Board approved that the staff notify those physicians who provided an incorrect answer to the CME question on their renewal application that they will be offered a settlement which includes a fine of \$500 and 90 days from the day of notification to complete the required 75 hours. This will be offered to first time offenders only. If they agree, they will avoid a hearing, but this settlement will be reported to HIPDB. Following further discussion about the "white lies" that appear regularly on applications, staff was asked to develop a rule to address the issue of misrepresentation on license application or renewal, to include the same conditions for first offenses; second time offenders will be issued a NCA and need to appear before the Board.

7. **REPORTS**

A. Assistant Attorney General. Ms. Thalley discussed the Motion on Dr. Roy. As background information, she explained that his license had been revoked and his appeal for another hearing was denied by the State Court of Appeals.

Ms. Thalley also discussed the role of the Board as appointed officials who are governed by the Governmental Conduct Act. Areas that were specifically covered were due process, conflicts of interest (including a perception of a conflict), ethical issues, confidentiality, and ex-parte communication.

B. Chair. Dr. Kovnat asked which Board members would like to attend the Annual FSMB conference next April in Boston. All members expressed interest and Ms. Kinney stated we would have to check budget status after the first of the year. Dr. Weiner **MOVED** that the Board go into executive session to discuss personnel issues related to a pending resignation. Dr. Haynes seconded the motion. **YES:** Kovnat, Haynes, Giudice, Weiner, Ghadimi, Heim, Ranka, and Cochran. **MOTION CARRIED.** The Board returned to open session and Dr. Kovnat stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

C. Medical Director. Dr. La Farge provided a review of the statistical update of MDs practicing in New Mexico by county, which indicates a net increase of 119 MDs practicing in the State in 2004. The Board discussed that the report does not give a totally accurate picture because it is based on a business address in New Mexico, with no real practice indicators. Dr. Weiner commented on the severe shortage of certain specialties and Dr. Vigil agreed that primary care is generally available statewide but the big issue is specialty care. Dr. La Farge also discussed the Federation of State Medical Boards Special Committee on Scope of Practice Report. He served on the Committee for this report, which makes recommendations to Boards and legislatures about how to evaluate proposed increases in the scope of practice of non-physicians. The Report was presented to the Federation and is now a policy of the Federation of State Medical Boards.

D. Executive Director. Ms. Kinney presented the FY04 year-end budget report and FY05 Operating Budget, which were included in the meeting packet; no one had any questions. The FY07 Budget Request is due at the end of August and Ms. Brandle reviewed the various items, particularly those line items that are increased. Dr. Haynes **MOVED** to request additional budget of up to a 15% increase to support the expanded programs of the NM Monitored Treatment Program. The contract will also need to be amended to reflect the expanded scope of work. Ms. Cochran **SECONDED** the motion. **YES:** Kovnat, Vigil, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi, and Ranka. **MOTION CARRIED.**

E. Compliance. Ms. Felmley presented the Compliance Report and reported that everyone who is being actively monitored is in compliance, with the exception of an applicant whose license had been denied several years ago.

F. New Mexico Medical Society. Randy Marshall gave the Board a brief overview of issues that may come up before the next Legislative session: Senate Memorial 7 (organizing a committee with Health Policy and Department of Health regarding the Medical Malpractice Issue) and increased reimbursement from Medicaid for physicians and midwives practicing in NM. NMMS is meeting with the Governor to request that Scope of Practice issues not be brought up in the 30 day session.

9. **OLD BUSINESS**

A. Update on Psychologist Prescribing. Dr. La Farge reported that there are now three psychologists with licenses for the final supervised 2-year practice prior to being eligible for an unrestricted prescriptive permit.

B. Dialogue with Osteopathic Board. Dr. Kovnat reported that he and Charlotte Kinney visited with the Osteopathic Board at their July meeting. The Osteopathic Board appreciated the visit and looks forward to working with our Board on issues of mutual interest in the future. Also, licensed osteopaths will be included in our 2006 Roster book which will be sent out to all MD licensees who request a copy.

10. NEW BUSINESS

A. Decision on Proposed Rules. Dr. Haynes **MOVED** to adopt the proposed changes to Part 2 of the rules, Physicians: Licensure Requirement, with minor amendments to reflect the correct term for approved schools. Dr. Weiner **SECONDED** the motion. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.**

Dr. Ranka **MOVED** to adopt the proposed changes to Part 3 of the rules, Examinations, as presented. Mr. Heim **SECONDED** the motion. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.**

Dr. Haynes **MOVED** to adopt the proposed changes to Part 15 of the rules, Physician Assistants: Licensure and Practice Requirements, as presented. Mr. Ghadimi **SECONDED** the motion. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.**

Based on public comment at the Hearing, Dr. Kovnat suggested Committees reconvene to review the written and verbal comments and make appropriate changes to the proposed rule on Medical Records, 16.10.17, and Use of Devices and Procedures by Unlicensed Personnel, 16.10.13. He appointed Dr. Haynes to work with Dr. Giudice and Dr. La Farge on medical records, and Dr. Vigil to work with Dr. La Farge on the unlicensed personnel. Ms. Kinney discussed the schedule to allow a decision on these rules in November. Following approval of the new drafts at the September Interim meeting, a hearing officer will hear public comments at a rule hearing in late October or early November. A transcript will be made for review by each member, and then a decision can be made at the November Board meeting.

B. Discussion on Self-Prescribing. Ms. Kinney explained the supporting documentation of the AMA Code of Medical Ethics and the article that was in the Board April newsletter. Everyone was in agreement with the interpretation and there was little comment.

C. Requests for Extended Time to Obtain CME: Dr. Haynes **MOVED** to grant Richard C. Gobeille, MD an extension of six months, starting October 1, 2005 through March 31, 2006 to complete his CME credits. These credits will count for the current renewal and not be allowed to carry over to his next renewal of license. Dr. Ranka **SECONDED** the motion. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.**

Dr. Haynes **MOVED** to grant Bhalachandra A. Kulkarni, MD an extension until the end of October, 2005 to complete his CME credits. These credits will count for the current renewal and not be allowed to carry over to his next renewal of license. Dr. Weiner **SECONDED** the motion. **YES:** Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka. **MOTION CARRIED.**

D. Correspondence. The Board reviewed the following documents that required no action.

1. ASIPP Prescription Electronic Reporting.
2. Permedion Quality of Care Reviews
3. LFC - Fall Budget Hearings
4. FSMB, Rx Beat
5. CLEAR Report on Testing - Repeating Candidates
6. Purdue
7. 2003 Annual Report
8. Letter from Paul Walsky, MD
9. Letter from DEA

10. **Letter from Committee Associated with Centers for Disease Control.** This survey requested a response from the Board regarding revised vaccine information statements. The Board chose not to comment on this correspondence.

11. INFORMAL INTERVIEWS

Executive Session: **MOTION** was made by Ms. Cochran and seconded by Dr. Giudice to go into executive session to discuss matters of licensure. **YES:** Kovnat, Haynes, Giudice, Weiner, Ghadimi, Heim, Ranka, and Cochran. **MOTION CARRIED.**

Jerry Alaniz, MD, James Holbrook, MD, Laura Allen, MD, Johnny Vigil, MD, Cliff Brasher, MD, Robert Palmer, MD, David Bernitsky, MD and James Hartenbach, MD were interviewed in executive session. Sandy Herrin, MD, did not appear for his scheduled appointment, and was excused due to vehicle problems.

RECESS 5:15 p m

RECONVENE. The Board reconvened at 8:00 a.m. on Friday morning with all members present including Dr. Vigil. After a discussion of the Informal Interviews the Board returned to open session. Dr. Kovnat stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

As follow-up to yesterday's discussion, Dr. Haynes **MOVED** to repeal the Board's immunization policy effectively immediately. Ms. Cochran **SECONDED** the motion. **YES:** Kovnat, Haynes, Giudice, Weiner, Ghadimi, Heim, Ranka, Vigil, and Cochran. **MOTION CARRIED.**

12. **ACTIONS RELATED TO INTERVIEWS & LICENSING ISSUES.** No actions were taken.

13. **RELATIONSHIPS BETWEEN NATIONAL ORGANIZATIONS AND LICENSING BOARDS.** Christine Cassel, M.D., President, American Board of Internal Medicine (ABIM) spoke with the Board about how physicians need to be involved with quality improvement and the efforts being made by the ABIM to develop meaningful certification and re-certification requirements. She discussed studies that show physician competence does not improve with experience, but is highest shortly after the completion of their training. ABIM has developed "Practice Improvement" modules in seven areas with more on the way. They are Internet based national guidelines for care that can be used as part of the recertification process.

14. **PLANNING AGENDA BOARD GOALS, LONG AND SHORT TERM.** Ms. Kinney discussed the future of technology with **online applications**, complaint forms, and verifications, as well as the potential for electronic Board meetings. Ms. Mohler discussed discrepancies that appear on physician's application and possibly creating a **new checklist** on the application to eliminate this problem. Members discussed **criminal background checks** and returning to the process of requiring fingerprints from the applicants. Dr. Kovnat asked staff to proceed with further research about what other states are doing and how they are handling the information they gather. The Board will continue the discussion at the next Board meeting. Another issue discussed was **education in a specialized area**, an ethics course, and the effectiveness of CMEs. Dr. Vigil, Dr. Weiner, Dr. La Farge and Mr. Ghadimi volunteered to work on a committee to evaluate the idea of developing an online course with the University. Dr. Haynes, Dr. Giudice, Dr. Ranka and Dr. La Farge volunteered to follow-up with Dr. Cassel on the use of practice management courses for CME credit. Dr. Kovnat asked Dr. La Farge to organize these committee meetings. The Board discussed briefly whether and how **malpractice suit and settlement information** might be made more accessible by the public. Ms. Cochran volunteered to work with staff to gather for information on this issue. Another topic of discussion was concern for the indigent patient. The Board discussed inviting someone such as David Scrase, M.D. to speak with the Board, not about the money problem, but about a **visionary goal related to access** that could possibly involve the Board.

15. **ADJOURN:** There being no further business, the meeting adjourned at 11:45 a.m.

SUBMITTED: Charlotte Kinney Date: 11/10/05
Charlotte Kinney, Executive Director

APPROVED: Paul Kovnat Date: 11 10 5
Paul Kovnat, M.D., Chair

APPROVED: Steve Weiner Date: Nov. 10, 2005
Steve Weiner, M.D., Secretary-Treasurer

**August, 2005
MEETING SUMMARY**

Licensing Actions, in alpha order:

- Lowell Duane Barrowes, M.D.** - be referred to CPEP for evaluation of clinical competence
- Jeanne Bushnell, M.D.** - issued a Notice of Contemplated Action to deny her application based on falsification of information on the application
- Raymond Emerson, M.D.** -- approved license reinstatement.
- Michael Flanagan, M.D.** - issued a Notice of Contemplated Action for disciplinary action based on dishonesty, injudicious prescribing, gross negligence, and deceptive medical records
- Alan Goldberg, M.D.** - issued a Notice of Contemplated Action to deny his application based on action in another state and falsification of information provided to another state Board
- Robert Graor, M.D.** - issued a Notice of Contemplated Action for disciplinary action based on dishonesty and disciplinary action in another state
- Gregory Huss, M.D.** - issued a Notice of Contemplated Action to deny his application based on action in another state and falsification and misrepresentation on his application.
- Elliott Marcus, M.D.** - no action taken at this time as long as he abides by his plea agreement.
- Elbin Orellana, M.D.** - issued a Notice of Contemplated Action to deny his application based on action in another state and falsification and misrepresentation on his application.
- Charles Pfaff, M.D.** - issued a Notice of Contemplated Action for disciplinary action based on action in another state and failure to report adverse action to the Board
- Richard Roberts, M.D.** - issue a restricted license to practice in New Mexico, limiting him to administrative medicine with no direct patient care.

Policies:

- Physicians who answered on the renewal application (online or paper) that they had completed their CME, but who, when audited, do not have proof of the required hours will be offered a settlement of a \$500 fine and 90 days from the date of notification to complete the 75 hours.
- Osteopathic Physicians will be included in future physician Rosters
- Repealed Immunization Policy, effective immediately