NEW MEXICO MEDICAL BOARD

Fourth Quarterly Meeting November 10-11, 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.
Reza Ghadimi, P.A.
Dick Heim, Public Member
Becky Cochran, Public Member (Thursday Only)

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 8:37 a.m., Thursday, November 10, 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.

2. APPROVAL OF AGENDA

Dr. Ranka MOVED the agenda be approved as presented. Dr. Weiner SECONDED the motion. YES: Kovnat, Ranka, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. ABSENT: Haynes. MOTION CARRIED.

3. STATUS OF EXEMPT STAFF, DR. KOVNAT

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

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.

Dr. Kovnat MOVED to write a letter to the Governor supporting the reappointment of Charlotte Kinney as Executive Director of the New Mexico Medical Board. This letter would be signed by all Board members. Dr. Ranka SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.

4. NM MONITORED TREATMENT PROGRAM REPORT

Executive Session: MOTION was made by Dr. Kovnat and SECONDED by Mr. Heim to go into executive session to discuss matters of licensure. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. 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 discussed the new layout of the quarterly report. The new layout will provide additional information on treatment plans and comprehensive assessments, as well as better tracking of client participation.

5. CONSIDER REQUEST FROM DR. LAURA ALLEN TO CHANGE MONITORING ARRANGEMENTS

Dr. Allen and her attorney, Frank Spring, requested the Board consider a change in her monitoring program with MTP, in light of the new requirements of monthly meetings with, and reporting to, MTP.

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, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. Dr. Kovnat stated for the record that the matters discussed in executive session were limited to only those specified in the motion for closure.

MOTION was made by Dr. Haynes that Dr. Laura Allen's request be denied. Dr. Ranka SECONDED the motion. YES: Kovnat, Haynes, Weiner, Vigil, Cochran, Ghadimi, and Ranka. NO: Heim and Giudice. MOTION CARRIED.

6. APPROVAL OF MINUTES

Dr. Haynes MOVED to approve the minutes of the May 5, 2005, August 18-18, 2005, September 20, 2005 and September 29, 2005 Board meetings as presented. Ms. Cochran SECONDED the motion, which PASSED, with all members voting in favor.

7. COMPLAINT COMMITTEE REPORTS

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, Giudice, Weiner, Vigil, 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-162, 2004-A-176, 2005-A-056 and 2005-A-071 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, Vigil, Ghadimi, Heim and Ranka. **RECUSED:** Cochran and Weiner. **MOTION CARRIED.**

On behalf of Complaint Committee A, Dr. Weiner MOVED that complaint case 2005-A-020 (Ambrosio Solano, MD) be issued a Notice of Contemplated Action to deny his application for licensure, based on action in another state and falsification of information on his NM application. No second was required. YES: Kovnat, Haynes, Giudice, Vigil, Ghadimi, Heim and Ranka. RECUSED: Cochran and Weiner. MOTION CARRIED.

On behalf of Complaint Committee A, Dr. Weiner MOVED that complaint case 2005-A-093 (Stephen Horton, MD) be issued a Notice of Contemplated Action for disciplinary action, based on action in another state, falsification of information on his NM application, felony conviction, and failure to report adverse action to this Board. No second was required. YES: Kovnat, Haynes, Giudice, Vigil, Ghadimi, Heim and Ranka. RECUSED: Cochran and Weiner. MOTION CARRIED.

On behalf of Complaint Committee A, Dr. Weiner MOVED that complaint case 2005-A-117 (Elias Said, MD) be issued a Notice of Contemplated Action to deny his application for licensure, based on failure to meet the requirements established by this Board for reapplication, dishonesty to the Professional Renewal Center and conduct unbecoming in a person licensed to practice medicine. No second was required. YES: Kovnat, Haynes, Giudice, Vigil, Ghadimi and Heim. RECUSED: Cochran, Weiner and Ranka. MOTION CARRIED.

After polling the Board, Dr. Kovnat made a formal statement that no Board member has had an independent conversation with Dr. Ranka regarding Dr. Said's case.

Complaint Committee B. On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint cases 2004-B-128, 2005-B-048, 2005-B-053, 2005-B-062, 2005-B-072, 2005-B-080, and 2005-B-115 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. MOTION CARRIED.

Complaint Committee C. On behalf of Complaint Committee C, Dr. Giudice MOVED that complaint cases 2004-C-119, 2005-C-018, 2005-C-025, 2005-C-045, 2005-C-046, 2005-C-050, 2005-C-052, 2005-C-060, 2005-C-068 and 2005-C-075 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, Vigil, Ghadimi, Cochran and Ranka. RECUSED: Giudice and Heim. Case 2004-C-119, Kovnat RECUSED. MOTION CARRIED.

On behalf of 'old' Complaint Committee C, Dr. Kovnat MOVED that complaint case 2004-C-017 be closed as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. YES: Weiner, Vigil, Haynes, Giudice, Cochran, Ghadimi and Ranka, RECUSED: Kovnat and Heim. MOTION CARRIED.

Complaint Committee D. On behalf of Complaint Committee D, Mr. Ghadimi MOVED that complaint cases 2004-D-120, 2004-D-179, 2004-D-184, 2005-D-024, 2005-D-044, 2005-D-061, 2005-D-069, 2005-D-076, 2005-D-082 and 2005-D-083 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. YES: Kovnat, Weiner, Vigil, 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-063 (Lowell Duane Barrowes, MD), referred to CPEP for evaluation of clinical competence at the August 2005 Board meeting, be offered the alternative of attending UNM for a mini residency under conditions approved by the Board. No second was required. YES: Kovnat, Weiner, Heim, Giudice, Cochran, Vigil 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-095 (Justin Psalia, MD) be issued a Notice of Contemplated Action for discipline, based on criminal conviction, action in another state, and dishonesty to this Board. No second was required. **YES**: Haynes, Giudice, Cochran, Weiner, Vigil, Ghadimi, Heim and Ranka. **RECUSED**: Kovnat. **MOTION CARRIED**.

On behalf of Complaint Committee E, Dr. Kovnat MOVED that complaint case #2005-E-106 (Gary Gerlay, MD) be issued a Notice of Contemplated Action for discipline, based on action in another state, fraud on his NM renewal application and dishonesty to this Board. No second was required. YES: Haynes, Giudice, Weiner, Cochran, Vigil, Ghadimi, Heim and Ranka. RECUSED: Kovnat. MOTION CARRIED.

On behalf of Complaint Committee E, Dr. Kovnat MOVED that complaint case #2005-E-134 (Michael Nolen, MD) be referred to the NM Monitored Treatment Program for an independent evaluation concerning possible continuing issues of substance abuse and dependence. No second was required. YES: Haynes, Giudice, Cochran, Weiner, Vigil, Ranka, Ghadimi and Heim. RECUSED: Kovnat. MOTION CARRIED.

MOTION was made by Dr. Kovnat to reconsider the vote denying Dr. Laura Allen's request.

SECOND: Mr. Ghadimi. YES: Kovnat, Haynes, Weiner, Vigil, Cochran, Ranka, Heim, Giudice and Ghadimi. MOTION CARRIED. MOTION was made by Dr. Haynes that Dr. Laura Allen's request be denied. Dr. Ranka SECONDED the motion. YES: Kovnat, Haynes, Weiner, Vigil, Cochran, and Ranka. NO: Heim, Ghadimi and Giudice. MOTION CARRIED.

Impaired Physician Committee Report - Case No. 2004-C-017: MOTION was made by Dr. Kovnat to accept the report, note the physician's response and to close the case as there was no evidence of a violation of the Medical Practice Act or rules. Dr. Ranka SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.

8. LICENSING ISSUES

A. Henry Garcia, MD - Dr. Kovnat MOVED the Board remove all stipulations from Henry Garcia, M.D.'s license. Dr. Haynes SECONDED. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.

B. Mark Bryniarski, MD - Mr. Heim MOVED the Board remove all stipulations from Mark

- **Bryniarski, M.D.'s** license. Dr. Weiner **SECONDED**. **YES:** Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. **MOTION CARRIED.**
- C. David Bernitsky, MD Dr. Kovnat MOVED the Board remove all stipulations from David Bernitsky, M.D.'s license. Dr. Weiner SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.
- **D.** Elbin Orellana, MD Mr. Heim MOVED the Board accept Elbin Orellana, M.D.'s request to withdraw his application for licensure while under investigation, which is reportable to Healthcare Integrity and Protection Data Bank (HIPDB). Dr. Ranka SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.
- **E.** Boaz D. Rosen, MD Dr. Kovnat MOVED the Board accept Boaz D. Rosen, M.D.'s extensive experience in lieu of two years post graduate training and grant him a license. Dr. Haynes SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.
- **F.** James W. Baumbach, MD Dr. Haynes MOVED the Board accept James W. Baumbach, M.D. extensive experience in lieu of a second year of year post graduate training and grant him a license. Mr. Ghadimi SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. MOTION CARRIED.
- **G. Satinder Gill, MD** Dr. Ranka MOVED the Board grant **Satinder Gill, M.D.** a license. Mr. Heim **SECONDED** the motion. **YES:** Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. **MOTION CARRIED.**
- H. Chris Gallagher, MD Dr. Kovnat MOVED the Board accept Chris Gallagher, M.D.'s voluntary restriction of his license pursuant to the Impaired Health Care Provider Act, Section 61-7-6. Ms. Cochran SECONDED the motion. YES: Kovnat, Ranka, Giudice, Weiner, Vigil, Heim, Cochran and Ghadimi. RECUSED: Haynes. MOTION CARRIED.

9. **DEFAULT HEARING**

Jeanne Bushnell, MD, Case #2005-017. Mr. Khalsa presented the case against Dr. Bushnell as charged in the Notice of Contemplated Action (NCA) issued on August 31, 2005. The NCA was sent to the last know address of Dr. Bushnell by certified mail. A copy of the transcript of the Default Hearing is available in the Board office.

Dr. Haynes MOVED to DENY Dr. Bushnell's application for licensure, based on evidence presented in the default hearing, on the grounds of disciplinary action in Florida, failure to report the Florida action on her application for licensure in New Mexico and dishonesty to this Board. Ms. Cochran SECONDED the motion. YES: Kovnat, Ranka, Haynes, Giudice, Weiner, Vigil, Heim and Cochran. RECUSED: Ghadimi. MOTION CARRIED.

10. REPORTS

- **A. Assistant Attorney General.** Ms. Thalley continued discussion of the role of the Board member as a member of the investigative committee versus the deliberating members.
 - **B.** Chair. Dr. Kovnat reported on the status of exempt staff (item number three listed above).
- **C. Medical Director.** Dr. La Farge provided the status of the committees on Rule 17 (Medical Records) and Rule 13 (Medical Assistants and use of Laser Treatment) which are up for discussion at this Board meeting. The committee to work with UNM to consider developing a joint continuing education course in the area of ethics has been postponed to a later time due to scheduling conflicts. Dr. La Farge reported that the committee considering issues of alternative ways to demonstrate current competency had reviewed ABIM certification materials provided by Dr. Cassel, and plans to meet with her on November 22nd.
- **D. Executive Director.** Ms. Kinney presented the MTP contract amendment. Ms. Thalley indicated that she would like a chance to review the amendment. Dr. Haynes **MOVED** to approve the MTP contract amendment, subject to legal review. 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.

11. OLD BUSINESS

A. Follow-up on CME Audits and Agreed Orders. Ms. Kinney reported that a total of four physicians would be receiving settlement orders regarding the outcome of their CME audits, as discussed at the August 2005 Board meeting.

12. NEW BUSINESS

A. Decision on Proposed Rules. Dr. Ranka MOVED to adopt the proposed changes to Part 2 of the rules, Physicians: Licensure Requirement. Mr. Heim SECONDED the motion. YES: Kovnat, Haynes, Weiner, Giudice, Heim, Cochran, Ghadimi and Ranka, MOTION CARRIED.

Mr. Heim MOVED to adopt the proposed changes to Part 6 of the rules, Complaint Procedure and Institution of Disciplinary Action, as presented. Dr. Kovnat 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 13 of the rules, Use of Devices and Procedures by Unlicensed Personnel, as presented. Mr. Heim SECONDED the motion. YES: Kovnat, Haynes, Weiner, Giudice, Heim, Cochran and Ghadimi. ABSENT: Ranka. MOTION CARRIED.

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

Dr. Kovnat MOVED to table the proposed 16.10.17, Management of Medical Records. Dr. Ranka SECONDED the motion. YES: Kovnat, Haynes, Weiner, Giudice, Heim, Cochran and Ranka. ABSENT: Ghadimi. MOTION CARRIED.

- C. Schedule Interim Meeting Dates for 2006. Board members agreed to the schedule for 2006 regular and interim meetings. Regular meetings: February 16-17, May 18-19, August 24-25, and November 16-17. Interim meetings: January 12, March 30, June 29 and September 28.
 - **D.** Correspondence. The Board reviewed the following documents that required no action.
 - 1. FSMB call for nominations for elected offices.
 - 2. Annual Report of the NM Medical Review Commission.
 - 3. DEA publication notice for proposed clarification of regulations related to prescribing Schedule II medications.

13. 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, Johnny Vigil, MD, Cliff Brasher, MD, Robert Palmer, MD, James Hartenbach, MD, Jeff Neidhart, MD, Kathy Jutila, MD, Sandy Herrin, MD, and Rolando Tong, MD were interviewed in executive session.

RECESS 5:15 p.m.

RECONVENE. The Board reconvened at 9:20 a.m. on Friday morning with all members present except Becky Cochran. After a discussion of the Informal Interviews and Complaint Committee 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.

14. ACTIONS RELATED TO INTERVIEWS & LICENSING ISSUES. On behalf of Complaint Committee B, Dr. Ranka **MOVED** that complaint case 2004-B-173 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 and Ghadimi. RECUSED: Ranka and Vigil. ABSENT: Cochran. MOTION CARRIED.

On behalf of Complaint Committee D, Dr. Haynes MOVED that complaint case 2004-D-171 be closed, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. YES: Kovnat, Weiner, Ranka, Giudice, Vigil and Heim. RECUSED: Haynes and Ghadimi. ABSENT: Cochran. MOTION CARRIED.

Dr Haynes MOVED to amend Robert Palmer, MD's stipulation to include MTP monitoring of mental health treatment. Dr. Kovnat SECONDED the motion. YES: Kovnat, Ranka, Weiner, Giudice, Haynes, Ghadimi, Heim and Vigil. ABSENT: Cochran. MOTION CARRIED.

15. STRATEGIC PLANNING DISCUSSION.

- **A.** Criminal background checks. The Board discussed the experience of other state medical boards with conducting criminal background checks, and directed staff to develop a draft rule requiring criminal background checks for all new applicants.
- **B. Revised application questions.** The Board discussed changes to professional practice questions on the application for licensure that would make these questions clearer to applicants.
- **C. On-line applications.** Ms. Kinney reported that the Health Services Corporation and Presbyterian Healthcare are in the process of developing an on-line credentialing application, and that she has been speaking with them about the possibility of the Board being able to share that technology when it is complete. Ms. Kinney also discussed the issue of requiring a notarized signature on initial applications. The Board decided that a notary did not add any value and the application should be revised to delete the required notary signature. The Board also discussed a letter from the American Medical Association requesting that the Board recognize the ECFMG's CVS and the AMA Masterfile as primary source verification of medical school credentials. The Board requested this be further researched by staff, with possible future revision of Board rules to accept these organizations as primary source verification of medical school credentials.
- **D.** Malpractice reporting. The Board discussed adopting a proactive approach to malpractice issues. Staff was directed to complete a survey of malpractice information for existing licensees, and to research rates of malpractice suits for various medical specialties.
- **E.** Reporting Impaired, Incompetent or Unethical Colleagues. Dr. Kovnat appointed Dr. Vigil, Dr. Haynes, Mr. Ghadimi, Mr. Heim and Dr. La Farge to serve on a committee to draft a proposed rule requiring reporting of impaired, incompetent, disruptive or unethical colleagues.
- **16. ADJOURN:** There being no further business, the meeting adjourned at 11:35 a.m.

SUBMITTED: _.		_ Date:
	Charlotte Kinney, Executive Director	
APPROVED:	Paul Kovnat, M.D., Chair	_ Date:
APPROVED:	,	Date:
_	Steven Weiner, M.D., Secretary-Treasur	er

November, 2005 MEETING SUMMARY

Licensing Actions, in alpha order:

Lowell Barrowes, MD – revise referral to CPEP to offer the alternative of attending UNM for a mini residency under conditions approved by the Board

David Bernitsky, MD – remove all stipulations and issue unrestricted license.

Jeanne Bushnell, MD – deny application for licensure based on disciplinary action in Florida, failure to report the Florida action on her application for licensure in New Mexico and dishonesty to this Board

Mark Brynarski, MD – remove all stipulations and issue unrestricted license.

Henry Garcia, MD – remove all stipulations and issue unrestricted license.

Chris Gallagher, MD – accept request to voluntarily restrict license pursuant to 61-7-6

Gary Gerlay, MD – issue a Notice of Contemplated Action for discipline, based on action in another state, fraud on his NM renewal application and dishonesty to this Board

Stephen Horton, MD – issue a Notice of Contemplated Action for disciplinary action, based on action in another state, falsification of information on NM application, felony conviction, and failure to report adverse action to this Board

Michael Nolen, MD – refer to the NM Monitored Treatment Program for an independent evaluation concerning possible continuing issues of substance abuse and dependence

Elbin Orellana, MD – accept withdrawal of application for licensure while under investigation and report to appropriate national data bank.

Justin Psalia, MD – issue a Notice of Contemplated Action for discipline, based on criminal conviction, action in another state, and dishonesty to this Board

Elias Said, MD – issue a Notice of Contemplated Action to deny application for licensure, based on failure to meet the requirements established by this Board for reapplication, dishonesty to the Professional Renewal Center and conduct unbecoming in a person licensed to practice medicine

Ambrosio Solano, MD – issue a Notice of Contemplated Action to deny application for licensure, based on action in another state and falsification of information on NM application

Policies and Rules:

• Adopt rule changes to 16.10.2, 16.10.6, 16.10.13 and 16.10.15.