

NEW MEXICO MEDICAL BOARD

Fourth Quarter Meeting

November 15-16, 2007

2055 S. Pacheco, Building 400

Santa Fe, New Mexico

MINUTES

1. CALL TO ORDER / ROLL CALL / INTRODUCTIONS:

Dr. Kovnat, Board Chairman, called the regular meeting of the New Mexico Medical Board to order at 8:40 a.m., and a quorum was determined present. Dr. Kovnat introduced the Board's newest member, Dr. Frank Crespín.

Members Present:

Paul Kovnat, M.D., Chairman
Steven Weiner, M.D., Vice-Chair
John Lauriello, M.D., Secretary / Treasurer
Rebecca Cochran, Public Member
Reza Ghadimi, P.A.
Vivian Giudice, M.D.
Robert McRoberts, M.D.
Frank Crespín, M.D.

Members Absent:

Richard Heim, Public Member

Others Present:

Lynn Hart, Executive Director
Grant La Farge, M.D., Medical Director
Corliss Thalley, Assistant Attorney General
(present 11-15 from 9:20 a.m. - 12:00 p.m. ; present 11-16)
G.T.S. Khalsa, Board Prosecutor
J.J. Walker, Compliance Mgr. / PIO
Lynn Tipton, Administrative Assistant
(See list of all attendees attached to these minutes.)

2. APPROVAL OF AGENDA:

MOTION was made by Mr. Ghadimi to approve the Agenda as presented. **SECONDED** by Dr. Weiner. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

3. APPROVAL OF MINUTES:

MOTION was made by Dr. Weiner to approve the Minutes from the August 16-17, 2007 meeting as presented. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

MOTION was made by Dr. Weiner to approve the Minutes from the September 27, 2007, Interim meeting, as amended to correct the spelling of Dr. Melamed on Page 1. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

4. COMPLAINT COMMITTEE REPORTS:

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

5. ACTIONS RELATED TO EXECUTIVE SESSION:

Complaint Committee A:

RECOMMENDATION was made by Dr. Weiner to close complaint cases 2007-A-063, 2007-A-068, 2007-A-087, 2007-A-096, 2007-A-107, 2007-A-111, 2007-A-115, 2007-A-121, and 2007-A-124, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Dr. Kovnat, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Weiner.

Recommendation was made by Dr. Weiner to keep complaint case 2007-A-092 open for further investigation, so no action was taken.

Complaint Committee AA:

RECOMMENDATION was made by Dr. Weiner to close complaint case 2002-AA-146, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Lauriello, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Weiner and Ms. Cochran.

RECOMMENDATION was made by Dr. Weiner to correct the case number from 2007-AA-146 to 2002-AA-146. **YES:** Dr. Kovnat, Dr. Lauriello, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Weiner and Ms. Cochran.

Case No. 2006-AA-147 ([REDACTED]). **RECOMMENDATION** was made by Dr. Weiner to refer the physician for evaluation by an Impaired Physician Committee. **YES:** Dr. Kovnat, Dr. Lauriello, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Weiner and Ms. Cochran.

Complaint Committee B:

RECOMMENDATION was made by Dr. McRoberts to close complaint cases, 2006-B-025, 2007-B-025, 2007-B-097, 2007-B-106, 2007-B-113, 2007-B-116, 2007-B-125, and 2007-B-129, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Dr. Kovnat, Dr. Lauriello, Mr. Ghadimi, Dr. Giudice, Dr. Weiner, and Dr. Crespin. **ABSTAINED:** Ms. Cochran and Dr. McRoberts.

Recommendation was made by Dr. McRoberts to keep case number 2007-B-033 open for review of additional information received since the complaint committee met, so no action was taken.

Complaint Committee C:

RECOMMENDATION was made by Dr. Giudice to close complaint cases 2007-C-086, 2007-C-089, 2007-C-103, 2007-C-109, 2007-C-112, 2007-C-117, 2007-C-123, 2007-C-127, and 2007-C-133, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, and Dr. Crespin. **ABSTAINED:** Dr. Giudice.

Case No. 2006-C-027 (Howard N. Schwartz, MD). **RECOMMENDATION** was made by Dr. Giudice to issue a Notice of Contemplated Action (NCA) for injudicious prescribing. No second was required. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, and Dr. Crespin. **ABSTAINED:** Dr. Giudice.

Case No. 2007-C-049 ([REDACTED]). **RECOMMENDATION** was made by Dr. Giudice to offer a standard stipulation based on participation in a monitored treatment program. No

second was required. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, and Dr. Crespin. **ABSTAINED:** Dr. Giudice.

Case No. 2007-C-148 ([REDACTED]). **RECOMMENDATION** was made by Dr. Giudice to issue a Notice of Contemplated Action (NCA) for injudicious prescribing. No second was required. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, and Dr. Crespin. **ABSTAINED:** Dr. Giudice.

Complaint Committee D:

RECOMMENDATION was made by Dr. Lauriello to close complaint cases, 2006-D-119, 2006-D-194, 2006-D-195, 2007-D-066, 2007-D-108, 2007-D-110, 2007-D-114, 2007-D-118, 2007-D-120, and 2007-D-122, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Lauriello and Mr. Ghadimi.

Case No. 2006-D-186 ([REDACTED]). **RECOMMENDATION** was made by Dr. Lauriello to offer a standard stipulation based on participation in a monitored treatment program. If the stipulation is not accepted, the case will be returned to the Board for other action. No second was required. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Lauriello and Mr. Ghadimi.

Complaint Committee E:

RECOMMENDATION was made by Dr. Kovnat to close complaint case 2007-E-128, as there was no evidence of a violation of the Medical Practice Act or rules. No second was required. **YES:** Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Kovnat.

Complaint Committee F:

Case No. 2006-F-157 (Mark E. Van Wormer, MD). **RECOMMENDATION** was made by Dr. Kovnat to issue a Notice of Contemplated Action (NCA) based on track count 13 of a pending federal indictment against the physician that he misbranded drugs and misled patients as to what drugs he was treating them with and that conduct specifically violated the Medical Practice Act in the following ways: use of false, fraudulent and deceptive statements in documents connected with the practice of medicine; conduct likely to deceive, defraud or harm the public; improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records; and making false statements or misleading statements regarding the efficacy or value of medication, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of a disease or other condition of the human mind or body. No second was required. **YES:** Dr. Weiner, Dr. Lauriello, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Kovnat and Ms. Cochran.

MOTION was made by Dr. Kovnat to approve a joint resolution collectively proposed by the NMMB prosecutor, members of the complaint committee, the physician, and physician's attorney to include: suspension of the physician's license effective at 5:00 p.m. on December 13, 2007; immediate suspension of the physician's right to diagnose or treat any cosmetic conditions; once released from custody, the physician may apply for consideration to have his New Mexico medical license reinstated; however, he may not diagnose or treat any cosmetic conditions for as long as he holds a New Mexico license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Mr. Ghadimi, Dr. Giudice, Dr. Lauriello, Dr. McRoberts, and Dr. Crespin. **RECUSED:** Dr. Kovnat and Ms. Cochran.

B. Report on Criminal History Hits and other cases

The Board reviewed the reports on criminal background arrest records "hits" compiled by the Executive Committee. The Executive Committee members are Dr. Kovnat, Dr. Weiner, and Lynn Hart. Complaint Committee E provided scenarios of three other cases

concerning disciplinary action taken by other jurisdictions where the Committee recommended not opening an investigation. When reviewing the cases, only Ms. Hart has access to the name of the person with an arrest. The Board will vote on which reports are to have investigations opened and be referred to a complaint committee. A written policy on how to handle criminal background arrest records will be drafted.

The report provided indicates whether or not the licensee checked the appropriate box on their application for licensure or renewal. The Board approved a draft letter to be sent to applicants / licensees that failed to disclose on their initial application or renewal an arrest, charge or conviction.

Staff plans to send out packets in January 2008 that will include the fingerprint cards and forms to complete for the national background screening. The renewal forms with the pin number will be mailed in April 2008.

MOTION was made by Ms. Cochran to accept the Executive Committee's recommendations, as reported, on criminal background arrest records. **SECONDED** by Dr. Lauriello. **YES:** Dr. Lauriello, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, Dr. Giudice and Dr. Crespin. **ABSTAINED:** Dr. Kovnat and Dr. Weiner. **MOTION CARRIED.**

C. Chair Report – Ongoing notifications, complaints and hits

The Board held a lengthy discussion regarding what should be reported to the Board and what should not. Sometimes issues arise that might be brought to the Board's attention; however, the issue is not officially classified as a complaint until the case has been referred to a complaint committee. It is not necessary for the Board to vote on every report that is received by the Investigation Department; nevertheless, there are issues that arise and decisions made that should be reported to the Board as a matter of communication and full disclosure. The Board's prosecutor will begin quarterly reporting, in collaboration with the complaint committees, on cases the Investigation Department considers "on hold". Several examples of such cases were discussed. Mr. Khalsa briefed the Board on all current cases "on hold". All cases are to be reviewed by a complaint committee every three (3) months. The Board directed NM Medical Board Staff to actively track all open cases and bring them forward for complaint committee review on a quarterly basis. As reports are brought forward at each quarterly board meeting, the Board will develop set criteria for handling these cases, similar to that provided for the criminal background screening arrests. The Board's Executive Director or her designated delegate will begin attending all complaint committee meetings. Once the complaint committees start to provide reports, an ad hoc committee will be designated to review the reports and provide recommendations to the full Board on a quarterly basis.

6. **EXECUTIVE DIRECTOR – PERSONNEL ISSUES:**

No issues were discussed.

7. **LICENSING ISSUES, NEW APPLICANTS / REINSTATEMENTS:**

- Valerie Tausch, MD – request for non-disciplinary stipulated license
MOTION was made by Dr. Lauriello to issue Dr. Tausch a non-disciplinary stipulated license for four (4) months practice in IM and AI (Allergy & Immunology) at Lovelace-Gibson Hospital, under supervision of Dr. Robert Shannon and colleagues. If successful, the license would be converted to a permanent license. If Dr. Tausch prefers, she may attend a standard mini-sabbatical at the University of New Mexico rather than be stipulated.

SECONDED by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, Dr. Giudice and Dr. Crespín. **MOTION CARRIED.**

- CME Audit Results

Out of 203 physicians selected for CME audit, 3 have not complied. Out of the 3 that have not complied, one is requesting a 2-3 week extension due to lost CME certificates. The Board granted this licensee an extension until December 31, 2007. Attempts to contact the remaining two licensees have been unsuccessful.

MOTION was made by Dr. Kovnat to issue a Notice of Contemplated Action (NCA) to Licensee #1 for failure to respond to the audit and communicate a forwarding address. Any physician who fails to respond to a CME audit shall be considered in violation of Section 61-6-15.D(23) and Section 61-6-28 of the Medical Practice Act, as well as, Subsection C of Section 13 of 16.10.4 NMAC. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. Lauriello, Dr. McRoberts, and Dr. Crespín. **ABSTAINED:** Dr. Kovnat. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to issue a Notice of Contemplated Action (NCA) to Licensee #2 for failure to respond to the audit and communicate a forwarding address. Any physician who fails to respond to a CME audit shall be considered in violation of Section 61-6-15.D(23) and Section 61-6-28 of the Medical Practice Act, as well as, Subsection C of Section 13 of 16.10.4 NMAC. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. Lauriello, Dr. McRoberts, and Dr. Crespín. **ABSTAINED:** Dr. Kovnat. **MOTION CARRIED.**

The Board directed staff to make sure every avenue possible has been explored in our efforts to locate Licensees #1 and #2 before implementing the NCAs. The Board suggested contacting the DEA and the Pharmacy Board for assistance.

- Henry Bramanti, MD – request for amended stipulated license

MOTION was made by Dr. Kovnat to amend the physician's stipulation approving psychiatric visits from monthly to quarterly and to suspend visits from January – April 2008 while the physician is out of the country. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, Dr. Giudice and Dr. Crespín. **MOTION CARRIED.**

- Probation vs. Active Status

Ms. Hart discussed the license status entered in the database when a licensee is issued a stipulation. Historically, we have left the status as "active" with public action indicated. We discovered a number of "stipulated" licenses where the status was entered as "probation", thus a lack of consistency due to an inadvertent procedural error. Ms. Hart provided the Board with a chart of all the licensees with a probation status. Staff contacted various sources, such as, Medicare, Presbyterian, Lovelace, Blue Cross/ Blue Shield and other state medical boards to find out how the license status affects reimbursement and board certification for the physician. Some sources state that a probation status may have negative consequences; reimbursement by health care plans is one example. The question before the Board is to come to a consensus on the status that should be entered for all stipulated licenses. The Board's intent when placing a licensee on probation and under stipulation is to allow them to continue practicing under certain terms and conditions agreed upon by both parties.

MOTION was made by Mr. Ghadimi to change the database status, for the licensees identified with a probation status, from "probation" to "active with stipulations" for clarification and consistency. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. Lauriello, Dr. McRoberts, and Dr. Crespin. **MOTION CARRIED.**

8. NM MONITORED TREATMENT PROGRAM (MTP) REPORT:

Jon Thayer, Executive Director Dan Collins, M.D., Medical Director and Connie Merrell, Clinical Director, were present to discuss the status of mandatory MTP participants. Mr. Thayer gave a quarterly business report and an overview of the operating budget. The Board questioned the procedure when a physician has a relapse and they explained the first action taken is to speak with the individual and assist them while simultaneously notifying the Board. Next, safety issues are addressed, such as whether or not the individual is practicing and what action is necessary to protect the public. The Board went into Executive Session prior to the clinical portion of the MTP report.

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **MOTION CARRIED.**

Mr. Thayer, Dr. Collins and Ms. Merrell left the meeting, while the Board remained in Executive Session.

ACTIONS RELATED TO EXECUTIVE SESSION:

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.

Case No. 2007-C-103 ([REDACTED]) and Case No. 2007-C-112 ([REDACTED]). **RECOMMENDATION** was made by Dr. Giudice to close the case, as there was no evidence of a violation of the Medical Practice Act; however, an advisory letter will be issued regarding the licensee's responsibility to report, to this Board, any actions taken by any licensing jurisdiction. **SECONDED** by Dr. Lauriello. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, and Dr. Crespin, **ABSTAINED:** Dr. Giudice.

Case No. 2007-C-089 ([REDACTED]). **RECOMMENDATION** was made by Dr. Giudice to close the case, as there was no evidence of a violation of the Medical Practice Act; however, an advisory letter will be issued regarding behavior relating to rudeness and appropriate communication. **SECONDED** by Dr. Kovnat. **YES:** Dr. Kovnat, Dr. Lauriello, Dr. Weiner, Ms. Cochran, Dr. McRoberts, Mr. Ghadimi, and Dr. Crespin, **ABSTAINED:** Dr. Giudice.

Case No. 2006-B-001 (Craig Northcutt, MD). **RECOMMENDATION** was made by Dr. Lauriello to issue a Notice of Contemplated Action (NCA) based on repeated similar negligent acts. No second was required. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **ABSTAINED:** Dr. Lauriello and Mr. Ghadimi.

EXECUTIVE SESSION:

MOTION was made by Ms. Cochran to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to issuance, suspension, renewal or revocation of a license. **SECONDED** by Dr. Kovnat. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **MOTION CARRIED.**

ACTIONS RELATED TO EXECUTIVE SESSION:

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.

9. Interview and Compliance – James Hartenbach, MD:

Dr. Hartenbach was interviewed in Executive Session regarding current practices and compliance with the Board. Ms. Hart was directed to draft a stipulation and schedule the physician to appear before the Board in February 2008.

10. Interview and Compliance – Nathan Crowder, PA:

Mr. Crowder was interviewed in Executive Session regarding current practices and compliance with the Board.

11. INFORMAL INTERVIEWS:

Robert Graor, MD; Keith McClung, MD; Christopher Gallagher, MD; Johnnie Vigil, MD; James Bradley, MD; James Rose, MD; Jeff Neidhart, MD; Alonso Pacheco, MD; and Timothy Busch, PA were interviewed in Executive Session regarding current practices and compliance with the Board.

12. ACTIONS RELATED TO EXECUTIVE SESSION:

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.

- **MOTION** was made by Dr. Kovnat to release Jeff Neidhart, MD from stipulation and issue an unrestricted license. **SECONDED** by Dr. Giudice. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. Lauriello, Dr. Crespin, and Dr. McRoberts. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **MOTION CARRIED.**

The Board **RECESSED** at 5:30 p.m. on Thursday, November 15, 2007.

FRIDAY, November 16, 2007

13. RULE HEARING:

Dr. Kovnat, Board Chairman, called the Rule Hearing to order at 9:10 a.m. **MEMBERS PRESENT:** Dr. Kovnat, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. Weiner, and Dr. Crespin. Dr. McRoberts arrived at 9:15 a.m. **MEMBERS ABSENT:** Mr. Heim and Dr. Lauriello. **OTHERS PRESENT:** See list of attendees attached to these Minutes.

EXHIBITS: Exhibits numbers 1 through number 7 were entered into the record.

Revisions were proposed on Parts 2,3,4,9, and 11 of Title 16, Chapter 10, New Mexico Administrative Code. Ms. Hart summarized each rule.

- Rule 16.10.2 NMAC – Physician Licensure Requirements
There were no comments from guests or board members.
- Rule 16.10.3 NMAC – Examinations
There were no comments from guests or board members.
- Rule 16.10.4 NMAC – Continuing Medical Education

- There were no comments from guests or board members.
- Rule 16.10.9 NMAC – Fees
There were no comments from guests or board members.
- Rule 16.10.11 NMAC – Physicians Supervising Pharmacist Clinicians
There were no comments from guests or board members.

EXHIBITS: Exhibit number 8, the attendance sheet, was entered into the record.

The **Rule Hearing** was **adjourned** at 9:20 a.m.

The Board **RECONVENED** the regular meeting at 9:22 a.m. on Friday, November 16, 2007. **Members Present:** Paul Kovnat, M.D., Chairman; Steven Weiner, M.D., Vice-Chair; Rebecca Cochran, Public Member; Reza Ghadimi, P.A.; Vivian Giudice, M.D.; Robert McRoberts, M.D.; and Frank Crespín, M.D. **Members Absent:** John Lauriello, M.D., Secretary / Treasurer and Richard Heim, Public Member. **Others Present:** Lynn Hart, Executive Director; Grant La Farge, M.D., Medical Director; Corliss Thalley, Assistant Attorney General; G.T.S. Khalsa, Board Prosecutor; J.J. Walker, Compliance Mgr. / PIO; and Lynn Tipton, Administrative Assistant. (See list of all attendees attached to these minutes.)

14. ACTIONS RELATED TO RULE HEARING:

MOTION was made by Dr. Kovnat to adopt Title 16, Chapter 10, Part 2, as amended to remove the proposed revision in Subsection D of Section 12 for lack of statutory authority. Roll call vote as follows. **SECONDED** by Mr. Ghadimi. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to adopt Title 16, Chapter 10, Part 3, as presented. **SECONDED** by Dr. Crespín. Roll call vote as follows. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to adopt Title 16, Chapter 10, Part 4, as presented. **SECONDED** by Dr. Giudice. Roll call vote as follows. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to adopt Title 16, Chapter 10, Part 9, as amended to remove the proposed revision in Subsection L of Section 8 for lack of statutory authority. **SECONDED** by Dr. Crespín. Roll call vote as follows. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to adopt Title 16, Chapter 10, Part 11 as presented. **SECONDED** by Mr. Ghadimi. Roll call vote as follows. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Giudice, Ms. Cochran, Mr. Ghadimi, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

15. Default Hearing – Case #2007-008, Winslow C. Nicholas, M.D.

Mr. Khalsa presented the case against Dr. Nicholas as charged in the Notice of Contemplated Action (NCA) issued on August 23, 2007. The NCA was mailed to the last known address of Dr. Nicholas by certified mail as required pursuant to the Uniform Licensing Act and returned as undeliverable, no forwarding address. Dr. Nicholas did not appear at the hearing and did not have anyone appear on his behalf. Mr. Khalsa submitted Exhibits 1 through 4, all of which were admitted into

evidence. A compact disk recording of the Default Hearing is available in the Board office.

MOTION was made by Dr. Kovnat to accept the Findings of Fact that the NCA was served on Respondent by certified mail, return receipt requested, directed to Respondent at his last known address in accordance with NMSA 1978, §61-1-5 and returned undeliverable. **SECONDED** by Dr. McRoberts. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to revoke the license of Winslow C. Nicholas, M.D. based on evidence presented in the default hearing and pursuant to §61-1-1 et seq. of the Uniform Licensing Act. **SECONDED** by Dr. Giudice. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**

16. Default Hearing – Case #2007-009, Jeffrey Pollock, PA

Mr. Khalsa presented the case against Mr. Pollock as charged in the Notice of Contemplated Action (NCA) issued on September 26, 2007. The NCA was mailed to the last known address of Mr. Pollock by certified mail as required pursuant to the Uniform Licensing Act and returned as undeliverable, no forwarding address. Mr. Pollock did not appear at the hearing and did not have anyone appear on his behalf. Mr. Khalsa submitted Exhibits 1 through 6, all of which were admitted into evidence. A compact disk recording of the Default Hearing is available in the Board office.

MOTION was made by Dr. Kovnat to accept the Findings of Fact that the NCA was served on Respondent by certified mail, return receipt requested, directed to Respondent at his last known address in accordance with NMSA 1978, §61-1-5 and returned undeliverable. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **RECUSED:** Mr. Ghadimi. **MOTION CARRIED.**

MOTION was made by Dr. Kovnat to revoke the license of Jeffrey Pollock, PA based on evidence presented in the default hearing and pursuant to §61-1-1 et seq. of the Uniform Licensing Act. **SECONDED** by Dr. Weiner. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **RECUSED:** Mr. Ghadimi. **MOTION CARRIED.**

17. Rule Reviews, Revisions, Requests

Ms. Hart brought forth the following recommendations for future proposed rule revisions.

- 16.10.13 NMAC – Delegated Use of Devices and Procedures by Medical Assistants; Cosmetic Injections
Dr. La Farge summarized the proposed revisions based on a letter received from the American Society for Dermatologic Surgery (ASDS). The ASDS is concerned about consumer deception by individuals performing cosmetic medical procedures in facilities where onsite physician supervision does not exist. The ASDS proposes expanding the definition of “medical therapeutic or cosmetic medical procedure”, further defining the supervision of the physician over the unlicensed certified assistant, and recommends adding a section devoted to public communication. The Board directed Dr. Crespín and Dr. La Farge to draft revisions for the Board’s review at the February 2008 meeting and proposed rule hearing in May 2008.

- 16.10.16 NMAC – Administering, Prescribing and Distribution of Medications
Mr. Ghadimi summarized the proposed revisions based on redundant, outdated and unnecessary language. Primarily the formulary language needs to be deleted as this requirement is under the purview of the Pharmacy Board. The Board directed Mr. Ghadimi and Ms. Walker to draft revisions for the Board's review at the February 2008 meeting and proposed rule hearing in May 2008.
- 16.10.17 NMAC Management of Medical Records
Ms. Hart summarized the issues being brought forth. The Board directed Mr. Ghadimi, Ms. Hart and Ms. Walker to research the issues related to record management, electronic record keeping, and fees for future review. The NM Medical Society may be asked to research and present their view on this issue at the February 2008 meeting.
- Letter from Medical Society
Ms. Hart copied the Board with a letter from the NM Medical Society regarding the NM Medical Review Commission and the difficulty they are experiencing enlisting physicians to serve on the medical-legal panels. The NM Medical Society adopted a resolution on October 20, 2007 that the NM Medical Society Council consider regulations that require each licensed physician to register to serve on at least one NM Medical Review Commission medical legal panel as a panelist or as an expert witness. The NM Medical Practice Act does not grant the Board authority to require this service as a mandate for licensure. The Board may encourage physicians to participate on the medical-legal review panels through articles in the Board newsletter. Ms. Walker was directed to collaborate with the NM Medical Society on an article for the April 2008 newsletter and Ms. Hart will advise them the Board does not have statutory authority to mandate this requirement.
- Letter from William Chesnut, MD
The Board discussed a physician's request that all licensees be audited for triennial renewal and determined that the current audit system is sufficient and no revision is necessary at this time.

18. REPORTS:

A. Executive Director

- Budget Report
Ms. Hart testified before the Legislative Finance Committee on October 5, 2007, and no questions were asked regarding the budget. Ms. Hart and Ms. Mascarenas gave a brief overview of the budget process for the benefit of new board members.
- Medical Director Contract
Ms. Hart advised the Board that the Medical Director's contract is up for bid this fiscal year and she would like the Board to consider converting the position to that of a classified state employee. Initially, the position might be created as a term position until approved by the legislature as a permanent position. Benefits of the position being classified would include coverage by Risk Management as well as a smooth transition should the employee resign. Dr. La Farge, current Medical Director, supports the recommendation.
- Governor's Call
Ms. Hart announced that the Governor has agreed to put the Board's proposed revisions to the Medical Practice Act that he vetoed in the 2007 Legislative Session on his call for the 2008 Legislative Session. The legislature no longer

allows bills to run concurrently, they now have to run sequentially. The 2008 legislative session begins on January 10, 2008.

- Other

Ms. Hart reported the Governor has proposed an overall initiative of approximately \$1.84 million in funding be included in the Executive Budget Recommendation for the 2008 Legislative Session as part of his plan to enhance health care in New Mexico. The proposal would advance the NM Medical Board \$80,000 to cover the application fees for physician residents who choose New Mexico as their first state of licensure.

B. Medical Director

- Letter from Dr. Campa

Dr. La Farge copied the Board with a letter from Dr. John Campa III, MD thanking the UNM School of Medicine for allowing him to participate in a pain management mini-sabbatical. The Board had directed Dr. Campa to attend the mini-sabbatical as a condition for licensure.

- Letter to Senator Garcia

Dr. La Farge copied the Board with a letter he proposed sending to Senator Mary Jane M. Garcia updating her on the accomplishments toward responsible pain management following Senate Memorial 22 in 2001. Along with the letter, Dr. La Farge plans to enclose a copy of the book "Responsible Opioid Prescribing: a Physician's Guide", and advise her that every licensed physician practicing in New Mexico has been sent a copy of the book.

- Update on FSMB Opioid Book

Dr. La Farge reported that New Mexico was one of the first medical boards to receive distribution of the handbook on "Responsible Opioid Prescribing: a Physician's Guide". Mr. Ghadimi requested a copy of the book be sent to all physician assistants and anesthesiologist assistants.

- Update on UNM Job Fair – November 30, 2007

Dr. La Farge announced that he would be attending the UNM Job Fair on November 30, 2007, along with Amanda Quintana and Barbara Mohler from the Licensing Department. They would be representing the Board office and answering questions related to the licensing procedure. Dr. La Farge would also be speaking to the attendees about licensure during their luncheon.

- Other

- Dr. La Farge contacted Dr. Michael Gendel, Medical Director of the Colorado Physician Health Program, inviting him to give a presentation to the full Board on how to handle physicians with mental health disorders, similar to a presentation he gave at the 2007 Federation of State Medical Boards conference on various mental health disorders. Dr. Gendel is a Psychiatrist, Board Certified in Addiction Psychiatry and also licensed in New Mexico. Dr. Gendel may be able to speak to the Board at their February 2008 meeting. Dr. Kovnat recommended inviting the chief medical officers from NM hospitals, other chief medical personnel and the NM Medical Society officials to the presentation.

- Dr. La Farge reported he received a call from John Wills, Chief of the Anesthesiology Department at UNM. Mr. Wills reported the anesthesiologist assistants are chafing under the original agreement that brought them under the Medical Practice Act. The current language only allows them to serve at a hospital with a medical school. A number of

other hospitals have expressed an interest in having anesthesiologist assistants work with them. With the current CRNA shortage, they are requesting the Board consider revising the statute to allow anesthesiologist assistants to work in other large hospitals around the state. This proposal would not change the supervision requirements. Anesthesiologist Assistants' training is about a half a year longer than CRNA. The Society of Anesthesiology supports this proposal.

C. Assistant Attorney General

The Board's Assistant Attorney General, Corliss Thalley, announced she would be retiring effective December 31, 2007.

- Guidelines for Recusals and Abstention

Ms. Thalley provided the Board with quorum and voting issues definitions; then, explained the process for deciding when a board member should be disqualified from deciding a case, when he/she should abstain, and when he/she should be recused. New Mexico combines the investigation state with the decision-making state; therefore, board members will frequently be required to abstain or recuse themselves from voting on an issue to maintain impartiality and so the decision makers are unbiased. The Attorney General's office recommends complaint committee members abstain during the portion of the meeting when the complaint is presented to the full board. Once a Notice of Contemplated Action (NCA) has been issued, the complaint committee members should be recused from voting because the respondent's due process right has been invoked at that stage. Regarding counting toward a quorum of the board, an abstained member is counted toward the quorum, whereas, a recused member is not. The quorum for the NM Medical Board is five (5) because it is a nine (9) member board.

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to issuance, suspension, renewal or revocation of a license, including a case of possible litigation and one of on-going litigation.

SECONDED by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Lauriello, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **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.

- Elias Said, M.D. – Request to revise 2004 HIPDB report

MOTION was made by Dr. Giudice to direct the Board's Assistant Attorney General to draft an addendum to the HIPDB report. **SECONDED** by Dr. Kovnat. **YES:** Dr. Kovnat, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespin. **RECUSED:** Ms. Cochran and Dr. Weiner. **MOTION CARRIED.**

- George Schwartz, M.D. – Appeal Decision

The Board's Assistant Attorney General was asked to consult with her superiors regarding an appeal.

D. Administrative Prosecutor

- Cases on Hold

The Investigation Department is creating systems for review of cases "on hold", as well as, systems for handling licensees that are noncompliant.

E. Investigation Department

- New Investigator – Debbie Dietrich

Mr. Khalsa announced that Debbie Dietrich has been hired effective November 19, 2007. Ms. Dietrich comes to the Board Staff from the Attorney General's Office, having worked as a Paralegal for Corliss Thalley, A.A.G.

F. Compliance Department

- Compliance for Participants – Not Enrolled in MTP
Ms. Walker provided compliance summaries for the Board's review and reported no participants out of compliance.
 - Compliance Committee Report (Task Force)
The Compliance Task Force met on October 18, 2007. The Task Force members are Dr. Kovnat, Dr. Lauriello, Ms. Hart, Mr. Khalsa, Ms. Mascarenas, and Ms. Walker. The Task Force discussed various topics, primarily how to monitor physicians with bi-polar or other mental health issues.
 - Staff noted that the MTP contract is in effect for another year thus eliminating an urgent need to develop the Request for Proposal (RFP) and send it out for bid.
 - Ms. Walker was directed to develop a list of mental health treatment facilities, resources, and cost options.
 - The Task Force recommends the following language revision for the Board to consider as replacement language in the license application. The current question reads, "Have you been treated for mental or significant physical illness during the past five (5) years?"

The recommended revision reads, "In the five (5) years prior to this application have you had any physical injury or disease, or mental illness or impairment, which either has affected or could reasonably be expected to affect your on-going ability to practice medicine safely and competently?"
- MOTION** was made by Dr. Kovnat to accept the Compliance Task Force's recommended language revision for the license application. **SECONDED** by Dr. Weiner. **YES:** Dr. Kovnat, Dr. Weiner, Ms. Cochran, Mr. Ghadimi, Dr. Giudice, Dr. McRoberts, and Dr. Crespín. **MOTION CARRIED.**
- Letter from Dr. Barry Maron
The Board received a letter from Dr. Maron proposing an ad hoc committee be formed to assess issues related to the evaluation of the impaired physician by an Impaired Physician Committee. Dr. Maron's proposal was assigned to the Compliance Task Force for review.

19. **ACTIONS RELATED TO EXECUTIVE SESSION:**

There were no actions under this agenda item.

20. **NEW BUSINESS:**

A. Governor's proposal re: resident physicians

This agenda item was discussed under the Executive Director's report.

21. **OLD BUSINESS:**

A. Update on Senate Memorial 48

Mr. Khalsa updated the Board regarding assessing current law relating to the public's right to access safe and effective traditional, cultural, complementary and alternative health care remedies. Before beginning the next step, the committee is requesting

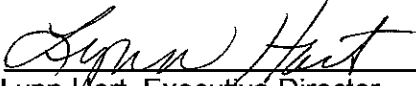
approval by the NM Medical Board of the first draft proposal. Mr. Khalsa briefly reviewed the three categories covered in the proposal: therapists that will not be allowed to provide health care services under the proposed act; therapists providing services under the proposed act will only be allowed to provide topical services, not invasive; and up to \$10,000 in fines for violating the proposed act with the Regulation and Licensing Department acting as the prosecuting agency. Once the draft of the proposed act is approved, the Attorney General's office will prepare a draft for presentation at a public hearing. The goal is to introduce a bill at the 2009 Legislative Session. The Board determined this proposal required further discussion and review; however, they initially supported the intent of the draft proposal.

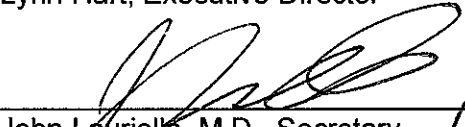
B. Code of Conduct

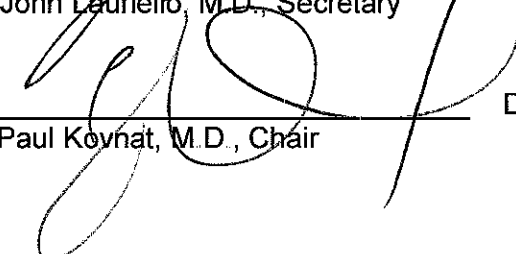
Discussion on a Code of Conduct was postponed until the February meeting.

22. ADJOURN:

There being no further business, the meeting adjourned at 12:50 p.m.

SUBMITTED BY:  DATE: 2/19/08
Lynn Hart, Executive Director

APPROVED BY:  DATE: 2/15/08
John Lauriello, M.D., Secretary

APPROVED BY:  DATE: 2/15/08
Paul Kovnat, M.D., Chair