NEW MEXICO MEDICAL BOARD Third Quarter Meeting August 12-13, 2010

MINUTES

Members Present:

Steven Weiner, M.D., Chair

Rebecca Cochran, CPMSM, CPCS, Vice Chair, Public Member

Paul Kovnat, M.D., Secretary Treasurer

Frank Crespin, M.D. Roger Miller, M.D. Steve Jenkusky, M.D. Ann Wehr, M.D. Albert Bourbon, PA-C

Kathy Abeles, Public Member

Others Present:

Lynn Hart, Executive Director

Geraldine Mascarenas, Deputy Director Grant La Farge, M.D., Medical Director Andrea Buzzard, Assistant Attorney General

Julie Meade, Chief Legal Counsel J.J. Walker, Compliance Mgr. / PIO Lynn Tipton, Administrative Assistant Debbie Dieterich, Senior Investigator

Jonni Lu Pool, Investigator

Amanda Quintana, Licensing Manager

1. CALL TO ORDER / ROLL CALL / INTRODUCTIONS:

Dr. Weiner called the regular meeting of the New Mexico Medical Board to order at 8:32 a.m., and a quorum was present.

2. APPROVAL OF AGENDA:

MOTION was made by Dr. Weiner to approve the agenda. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Cochran, Dr. Miller, Dr. Crespin, and Dr. Jenkusky. **ABSENT:** Dr. Wehr, Dr. Kovnat and Ms. Abeles. **MOTION CARRIED.**

3. APPROVAL OF MINUTES:

MOTION was made by Ms. Cochran to approve the Minutes from the June 24, 2010 Interim Meeting. **SECONDED** by Dr. Weiner. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Cochran, Dr. Miller, Dr. Crespin, and Dr. Jenkusky. **ABSENT:** Dr. Wehr, Dr. Kovnat and Ms. Abeles. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner to go into closed 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. **SECONDED** by Dr. Jenkusky. **YES:** Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Crespin, Dr. Jenkusky and Dr. Weiner. **ABSENT:** Dr. Wehr. **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.

4. COMPLAINT COMMITTEE REPORTS:

A. Licensees and Applicants

Complaint Committee A:

RECOMMENDATION was made by Dr. Wehr to close complaint cases 2009-A-192; 2009-A-196; 2009-A-234; 2009-A-239, 2009-A-244; 2009-A-251; 2009-A-256; 2009-A-261; 2010-A-001; 2010-A-030; 2010-A-031 and 2010-A-047, as there was no evidence of a violation of the Medical Practice Act or rules. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Kovnat and Dr. Wehr. RECOMMENDATION PASSED.

Case No. 2010-A-108 – Was returned to investigations.

Case Nos. 2009-A-183 and Case No. 2010-A-081 - RECOMMENDATION was made by Dr. Wehr to close these cases, and to send physicians an advisory letter. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Kovnat and Dr. Wehr. RECOMMENDATION PASSED.

Case No. 2009-A-177 (). RECOMMENDATION was made by Dr. Wehr to request physician voluntarily surrender her license immediately and waive the statute of limitations for this case until she offers proof of competency by way of an MTP evaluation and CPEP or similar evaluation. After physician offers proof of competency, the board will reevaluate physician's licensure status. If physician does not agree to immediately surrender her license, the complaint committee recommends issuance of a notice of contemplated action based on and including, but not limited to, failure to cooperate with the board. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Kovnat and Dr. Wehr. RECOMMENDATION PASSED.

Case No. 2010-A-049 (Timothy Klein, M.D). RECOMMENDATION was made by Dr. Wehr to issue a notice of contemplated action to deny physician's application for reinstatement based on, but not limited to, habitual or excessive use of intoxicants or drugs and licensure discipline imposed by another state. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Kovnat and Dr. Wehr. RECOMMENDATION PASSED.

Case No. 2010-A-059 (Roger Felix, M.D.). RECOMMENDATION was made by Dr. Kovnat to offer physician a stipulated license requiring mandatory psychotherapy and participation in MTP. Physician shall be required to successfully complete courses in medical record keeping, ethics, and professional boundaries. Physician will also be required to have his medical records monitored by another physician who will submit quarterly reports to the Board attesting to physician's compliance. If physician does not accept this stipulated license, a notice of contemplated action will be issued based on, but not limited to, conduct unbecoming and failure to maintain accurate medical records. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Kovnat and Dr. Wehr. RECOMMENDATION PASSED.

Case No. 2010-AAA-037 RECOMMENDATION was made by Dr. Weiner to close this case, and to send physician an advisory letter. YES: Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Weiner and Dr. Wehr. RECOMMENDATION PASSED.

Case No. 2010-AAA-254 RECOMMENDATION was made by Dr. Weiner to close this case, and to send physician an advisory letter. YES: Mr. Bourbon, Ms. Abeles, Dr. Kovnat, Dr. Crespin and Dr. Jenkusky. NO: Ms. Cochran. ABSTAINED: Dr. Weiner, Dr. Wehr and Dr. Miller. RECOMMENDATION PASSED.

Case No. 2009-AAA-086 (Wellington December 1). RECOMMENDATION was made by Dr. Weiner to offer physician a stipulated license requiring psychological monitoring through MTP. If physician does not accept the stipulation, the complaint committee recommends issuance of a notice of contemplated action based on, but not limited to, interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient. YES: Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Weiner and Dr. Wehr. RECOMMENDATION PASSED.

Complaint Committee B:

RECOMMENDATION was made by Ms. Cochran to close complaint cases 2009-B-179; 2009-B-211; 2009-B-245; 2009-B-249; 2009-B-264; 2009-B-267; 2010-B-044 and 2010-B-092 as there was no evidence of a violation of the Medical Practice Act or rules. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Miller and Ms. Cochran. RECOMMENDATION PASSED.

Case Nos. 2007-B-172, 2009-B-241 and 2010-B-060 - RECOMMENDATION was made by Ms. Cochran to close these cases and to issue physicians an advisory letter. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Miller and Ms. Cochran. RECOMMENDATION PASSED.

Case No. 2010-B-148 (Keith Levitt, M.D.). RECOMMENDATION was made by Ms. Cochran to issue a notice of contemplated action based on, but not limited to, action in another state and physician's felony conviction. YES: Dr. Weiner, Mr. Bourbon, Ms. Abeles, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Miller and Ms. Cochran. RECOMMENDATION PASSED.

Complaint Committee C:

RECOMMENDATION was made by Ms. Abeles to close complaint cases 2008-C-200; 2009-C-166; 2009-C-203; 2009-C-215; 2009-C-216; 2009-C-220; 2009-C-225; 2009-C-226; 2009-C-254; 2009-C-260; 2009-C-266 and 2010-C-032 as there was no evidence of a violation of the Medical Practice Act or rules. YES: Dr. Weiner, Mr. Bourbon, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr and Dr. Jenkusky. ABSTAINED: Dr. Crespin and Ms. Abeles. RECOMMENDATION PASSED.

Case Nos. 2009-C-210 and 2009-C-236 - RECOMMENDATION was made by Ms. Abeles to close these cases and to issue physicians an advisory letter. YES: Dr. Weiner, Mr. Bourbon, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr and Dr. Jenkusky. ABSTAINED: Dr. Crespin and Ms. Abeles. RECOMMENDATION PASSED.

Case No. 2009-C-127 (RECOMMENDATION was made by Ms. Abeles to issue a notice of contemplated action based on, but not limited to, physician's felony

conviction. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr and Dr. Jenkusky. **ABSTAINED:** Dr. Crespin and Ms. Abeles. **RECOMMENDATION PASSED.**

Case No. 2010-C-024 (Timothy Bell, M.D.). RECOMMENDATION was made by Ms. Abeles to issue a Letter of Reprimand to physician based on his repeated failure to report licensure action in other states. Complaint Committee further recommends that if physician refuses to accept the Letter of Reprimand that a notice of contemplated action be issued based on, but not limited to, failure to report licensing actions in other states. YES: Dr. Weiner, Mr. Bourbon, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr and Dr. Jenkusky. ABSTAINED: Dr. Crespin and Ms. Abeles. RECOMMENDATION PASSED.

Complaint Committee D:

RECOMMENDATION was made by Dr. Jenkusky to close complaint cases 2009-D-143; 2009-D-212; 2009-D-237; 2010-D-070; 2010-D-075; 2010-D-086 and 2010-D-120 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr and Dr. Crespin. **ABSTAINED:** Mr. Bourbon and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case Nos. 2009-D-222, 2009-D-224, 2009-D-227, 2010-D-091, 2010-D-100 and 2010-D-029 - RECOMMENDATION was made by Dr. Jenkusky to close these cases and to issue physicians an advisory letter. YES: Dr. Weiner, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr and Dr. Crespin. ABSTAINED: Mr. Bourbon and Dr. Jenkusky. RECOMMENDATION PASSED.

Complaint Committee E:

RECOMMENDATION was made by Dr. Weiner to close complaint cases 2009-E-118; 2009-E-219; 2009-E-262 and 2010-E-021 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. **ABSTAINED:** Dr. Weiner. **RECOMMENDATION PASSED.**

B. Executive Committee Report

Criminal History Hits

The Board reviewed the reports on criminal background arrest records "hits" compiled by the Executive Committee in executive session. The Executive Committee members are Dr. Weiner, Ms. Cochran and Lynn Hart. MOTION was made by Dr. Weiner to accept the Executive Committee's recommendations, as reported, on criminal background arrest records. SECONDED by Ms. Abeles. YES: Mr. Bourbon, Ms. Abeles, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. ABSTAINED: Dr. Weiner and Ms. Cochran. RECOMMENDATION PASSED.

Other Cases

The Board reviewed the reports on other cases compiled by the Executive Committee in executive session. The Executive Committee members are Dr. Weiner, Ms. Cochran and Lynn Hart. **MOTION** was made by Dr. Weiner to accept the Executive Committee's recommendations, as reported, on criminal background arrest records. **SECONDED** by Dr. Jenkusky. **YES:** Mr. Bourbon, Ms. Abeles, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. **ABSTAINED:** Dr. Weiner and Ms. Cochran. **RECOMMENDATION PASSED.**

5. ACTIONS RELATED TO EXECUTIVE SESSION

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

A. Nicholas Lam, M.D. – Consider medical experience in lieu of 2nd year of post graduate training.

MOTION was made by Dr. Wehr to accept his medical experience in lieu of 2nd year of post graduate training and **ISSUE** him a license to practice medicine in New Mexico. **SECONDED** by Ms. Abeles. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Crespin and Dr. Jenkusky. **ABSENT:** Dr. Wehr. **MOTION CARRIED.**

B. Mahendra Mangray, M.D. – Request exception to 7 year rule and grant unrestricted medical license.

MOTION was made by Dr. Kovnat to take exception to the 7 year rule and **GRANT** Dr. Mangray a license to practice medicine in New Mexico. **SECONDED** by Dr. Wehr. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Abeles, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. **ABSTAINED:** Ms. Cochran. **MOTION CARRIED.**

C. Alberto Vargas, M.D. – Consider AACRAO evaluation and grant unrestricted medical license.

MOTION was made by Dr. Weiner to consider the AACRAO evaluation and **GRANT** Dr. Vargas a license to practice medicine in New Mexico. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. **MOTION CARRIED.**

- D. James Warson, M.D. Consider non-disciplinary stipulated license. No action at this time.
- E. Mark Whitaker, M.D. Review UNM Mini-Sabbatical assessment and consider reinstatement of medical license.

MOTION was made by Dr. Kovnat to **REINSTATE** Dr. Whitaker's medical license to practice medicine in New Mexico. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin and Dr. Jenkusky. **MOTION CARRIED**

- 7. ACTIONS RELATED TO EXECUTIVE SESSION No actions at this time.
- 8. REPORTS
 - A. Chair Dr. Weiner introduced Julie Meade as the Chief Legal Counsel for the Board.
 - B. Executive Director Ms. Hart discussed potential budget cuts; she stated that one area in which the Board could save money is in the hiring of experts that the Complaint Committees request, she said that Board Members can serve as experts within their area of specialty without having to seek outside expert services that result in costs. In addition, she stated that the Board may also want to consider assessing administrative costs associated with administrative hearings when the Board prevails.

Ms. Hart and Julie Meade discussed the meeting that was held with officials from Presbyterian Healthcare Services. There is concern that Presbyterian is not reporting to the Board physicians whose privileges have been restricted or reporting the physicians who have been terminated. Presbyterian feels our rules and regulations are not clear and questioned the mandatory requirements of the Medical Practice Act.

They are one of the few hospitals in the state that do not report or respond to our investigative subpoenas. Ms. Meade has sent a letter to Presbyterian and will update the board at the September board meeting.

Dr. Kovnat volunteered to serve on the CME committee with the NM Medical Society.

- **C. Medical Director** No report at this time.
- **D.** Assistant Attorney General Ms. Buzzard updated the board on the pending administrative appeal of Andrew Valencia. He has requested a hearing and it will go before Judge Vigil in District Court.
- E. Chief Legal Counsel Ms. Meade reviewed the status report of board actions.
- **F.** Licensing Manager 2010 License Renewal Update Ms. Quintana reviewed the status of renewals. She informed the board that 17% of the physicians had not renewed as of the first week in August. This is 6% higher than at this time last year.
- **G. Financial / HR Manager** Review FY2010 Budget and Revenue Status Report. Ms. Mascarenas updated the board on the Budget Status Report. As of June 30th we had expended 93 % of our budget. She informed the Board that there is a budget meeting coming up with our analyst and to expect more budget cuts. She also reviewed the revenues that we had received during the physician renewal period.
- H. Investigation Department No report at this time.
- I. Compliance / Public Information Officer Report given under Compliance.
- J. Administrative Assistant Visit from Federation of State Medical Boards The Board asked that staff write a letter requesting the Federation contact us in 2011 to schedule a visit.

EXECUTIVE SESSION: MOTION was made by Dr. Weiner to go into closed 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. **SECONDED** by Mr. Bourbon. **YES:** Mr. Bourbon, Ms. Abeles, Ms. Cochran, Dr. Miller, Dr. Kovnat, Dr. Wehr, Dr. Crespin, Dr. Jenkusky and Dr. Weiner. **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.

9. COMPLIANCE

- Board Monitored Compliance Report Ms. Walker reviewed the compliance report and provided status on all licensees.
- Board Order Stan Chao, M.D. request probation be terminated. MOTION was made by Dr. Kovnat to DENY licensee's request to be removed from probation.
 SECONDED by Ms. Cochran. YES: Dr. Kovnat, Dr. Wehr, Dr. Crespin, Dr. Jenkusky, Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran and Dr. Miller. MOTION CARRIED.

Board Order – Susan Rendon, M.D. – request probation be terminated. MOTION was made by Dr. Wehr to remove all Stipulations and GRANT Dr. Rendon an unrestricted license. SECONDED by Ms. Cochran. YES: Dr. Kovnat, Dr. Wehr, Dr. Crespin, Dr. Jenkusky, Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran and Dr. Miller. MOTION CARRIED.

10. NM MONITORED TREATMENT PROGRAM

Jon Thayer, MTP Executive Director, Dan Collins, M.D., MTP Medical Director and Kate Woods, Clinical Director discussed the status of mandatory and voluntary MTP participants and Mr. Thayer gave an update on the operations report.

12. INFORMAL INTERVIEW

Raiph Hansen, MD, Twana Sparks, MD, Stan Chao, MD, Robert Orchard, MD, Michael Carey, MD, Marc Masotti, MD, Pablo Garcia, MD, Timothy Busch, PA, Sally D'Angelo, MD and Leandro Centenera, MD were interviewed regarding current practices and compliance with the Board.

Susan Rendon, MD, Howard Nunn, MD, Steven Petrakis, MD and Keith McClung, MD were interviewed via teleconference.

13. ACTIONS RELATED TO EXECUTIVE SESSION

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 **AMEND** the Stipulation on Twana Sparks, MD to eliminate the requirement of polygraph testing. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Wehr, Dr. Crespin, Dr. Jenkusky, Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran and Dr. Miller. **MOTION CARRIED.**

14. OLD BUSINESS- No items at this time.

15. NEW BUSINESS

- A. Consider Rule Revision Rule 16.10.4 NMAC Continuing Medical Education MOTION was made by Dr. Wehr to approve the proposed revision for the next Rule Hearing. SECONDED by Dr. Kovnat. YES: Dr. Kovnat, Dr. Wehr, Dr. Crespin, Dr. Jenkusky, Dr. Weiner, Mr. Bourbon, Ms. Abeles, Ms. Cochran and Dr. Miller. MOTION CARRIED.
- B. Medical Practice Act Revision Review The Board discussed proposed statute revisions to be considered for the 2011 Legislative Session. The Board approved having staff proceed with the revisions and recommended designating another entity such as the New Mexico Medical Society to work with us.
- **16. ACTIONS RELATED TO EXECUTIVE SESSION** 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.
 - 17. Alfredo Vigil, M.D., Cabinet Secretary, NM Department of Health Dr. Vigil presented an overview and update on the Department of Health's (DOH) Medical Marijuana Program. Dr. Vigil provided an extensive explanation of the Medical Marijuana Program; how it worked, who could prescribe, who could grow marijuana and who qualifies to receive medical marijuana.

The Department of Health is working very hard to maintain high safeguards for this program so that it does not get out of hand as it has in some other states. There are approximately 14 other states that have implemented a Medical Marijuana Program. Board members asked a range of questions about the program, from the effects of marijuana on the brain to number of growers and distributors.

The Board asked how the DOH was dealing with the recent budget cuts and Dr. Vigil responded that fortunately Federal funding to the Medicaid program was extended; however other public health programs and facilities the DOH oversees may be cut.

Dr. Vigil also mentioned that New Mexico has gained national and international attention for their work in the areas of childhood obesity, the ECHO program and the Hidalgo county program, as well as several hospitals that are starting community outreach programs.

18. ADJOURN - There being no further business, the meeting adjourned at 11:25 a.m.

SUBMITTED BY Symmetry Hours Lynn Hart, Executive Director	DATE:	9/	1 30/10	
APPROVED BY: Steve Weiner, M.D. Chair	DATE:	9	120	//
APPROVED BY: Paul Kovnat M.D. Secretary Treasurer	DATE:	10	8	10