

NEW MEXICO MEDICAL BOARD
Third Quarter Meeting
August 9 - 10, 2012

MINUTES

Members Present:

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

Others Present:

Lynn Hart, Executive Director
Andrea Buzzard, Assistant Attorney General
Dan Rubin, Administrative Prosecutor
Grant La Farge, M.D., Medical Director
Gayle Mascarenas, CFO/HR
J.J. Walker, Compliance / PIO
Debbie Dieterich, Senior Investigator
Leann Adams, Investigator
Amanda Chavez, Investigator
Samantha Breen, Licensing Manager
(see list of all attendees attached to these minutes)

1. CALL TO ORDER / ROLL CALL:

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

2. APPROVAL OF AGENDA:

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

3. APPROVAL OF MINUTES:

MOTION was made by Dr. Weiner to approve the June 28, 2012, Interim Meeting Minutes. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **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. Dr. Kovnat joined the meeting by teleconference.

4. COMPLAINT COMMITTEE REPORTS:

Complaint Committee A:

RECOMMENDATION was made by Dr. Komadina to close complaint cases 2010-A-233, 2011-A-031, 2011-A-059, 2011-A-102, 2011-A-105, 2011-A-111, 2011-A-116, 2011-A-130, and 2011-A-175, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Jenkusky, and Mr. Bourbon. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **RECOMMENDATION PASSED.**

Case No. 2011-A-139 RECOMMENDATION was made by Dr. Komadina to close this case and issue an advisory letter to UNMH Pain Clinic regarding the Board's new regulation which will require use of the Prescription Monitoring Program (PMP).

Case No. 2012-A-040 RECOMMENDATION was made by Dr. Komadina to close this case and issue an advisory letter regarding the Board's regulation on providing medical records with a copy sent to the clinic.

Case No. 2012-A-046 RECOMMENDATION was made by Dr. Komadina to close this case and issue an advisory letter regarding the Board's regulation on providing complete medical records as defined under the Board's Rules .

YES: Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Jenkusky, and Mr. Bourbon. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **RECOMMENDATION PASSED.**

Case No. 2011-A-145 RECOMMENDATION was made by Dr. Komadina to offer physician a Letter of Reprimand based on, but not limited to, making a false statement in a document connected with the practice of medicine and failure to maintain accurate records. If physician does not accept the offer, complaint committee recommends issuance of a Notice of Contemplated Action based on same. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Jenkusky, and Mr. Bourbon. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **RECOMMENDATION PASSED.**

Complaint Committee B:

RECOMMENDATION was made by Ms. Cochran to close complaint cases 2010-B-254, 2011-B-097, 2011-B-112, 2011-B-113, 2011-B-117, 2011-B-140, 2011-B-151, 2011-B-171, 2011-B-210, 2011-B-230, and 2011-B-233, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner, Dr. Kankanala, Dr. Jenkusky, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2011-B-143 RECOMMENDATION was made by Ms. Cochran to close this case and issue an advisory letter regarding the Board's regulation on notification when physicians leave a practice.

Case No. 2012-B-042 RECOMMENDATION was made by Ms. Cochran to close this case and issue an advisory letter reminding the physician about always having a chaperone present when conducting examinations to avoid these types of complaints in the future.

Case No. 2012-B-080 RECOMMENDATION was made by Ms. Cochran to close this case and issue an advisory letter on patient communication.

YES: Dr. Weiner, Dr. Kankanala, Dr. Jenkusky, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2012-B-010 (Keith Levitt, MD) RECOMMENDATION was made by Ms. Cochran to **GRANT** the physician a Stipulated New Mexico medical license requiring mandatory participation in the NM Monitored Treatment Program and other standard substance abuse stipulations. **YES:** Dr. Weiner, Dr. Kankanala, Dr. Jenkusky, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2012-B-033 RECOMMENDATION was made by Ms. Cochran to order the physician to undergo an Impaired Physician Committee (IPC) examination. This case will remain open until receipt of the IPC report and final board determination. **YES:** Dr. Weiner, Dr. Kankanala, Dr. Jenkusky, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2012-B-068 RECOMMENDATION was made by Ms. Cochran to offer the physician an opportunity to place the physician's license on inactive status. If physician does not accept the offer, then require the physician to be assessed by MTP, and if the Physician does not accept either offer, order the physician to undergo an Impaired Physician Committee (IPC) examination, and the case will remain open pending receipt of the report. **YES:** Dr. Weiner, Dr. Kankanala, Dr. Jenkusky, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Complaint Committee C:

RECOMMENDATION was made by Dr. Kankanala to close complaint cases 2011-C-003, 2011-C-029, 2011-C-118, 2011-C-153, 2011-C-177, 2011-C-191, 2011-C-208, 12-NMMB-00002, and 12-NMMB-00004, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner, Dr. Miller, Dr. Komadina, Dr. Jenkusky, Mr. Bourbon and Dr. Kovnat. **ABSENT:** Ms. Cochran. **ABSTAINED:** Dr. Kankanala. **RECOMMENDATION PASSED.**

Case No. 2011-C-168 RECOMMENDATION was made by Dr. Kankanala to close this case and issue an advisory letter regarding refilling controlled substance prescriptions without the patient being seen. **YES:** Dr. Weiner, Dr. Miller, Dr. Komadina, Dr. Jenkusky, Mr. Bourbon and Dr. Kovnat. **ABSENT:** Ms. Cochran. **ABSTAINED:** Dr. Kankanala. **RECOMMENDATION PASSED.**

Complaint Committee D:

RECOMMENDATION was made by Dr. Jenkusky to close complaint cases 2011-D-110, 2011-D-115, 2011-D-144, 2011-D-189, 2012-D-012, 2012-D-025, and 2012-D-064, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2011-D-180 and Case No. 2011-D-232 RECOMMENDATION was made by Dr. Jenkusky to close these cases and issue an advisory letter informing the physician that the Board remains concerned about the physician's psychopharmacology practices and that the Board will continue to monitor this.

Case No. 2012-D-052 RECOMMENDATION was made by Dr. Jenkusky to close this case and issue a cease and desist letter to physician informing the physician that the NM Psychologists Examiners Board regulation is in conflict with the Medical Practice Act, and the physician's supervision violates the ethical standard of care.

YES: Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat.
ABSTAINED: Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

RECOMMENDATION was made by Dr. Jenkusky to **AMEND** the previous vote and to reopen **Case No. 2011-D-180 and Case No. 2011-D-232**. These cases will remain open for further investigation. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala and Dr. Komadina. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **RECOMMENDATION PASSED.**

Case No. 2011-D-170 RECOMMENDATION was made by Dr. Jenkusky to accept the recommendation of the Impaired Physician Committee (IPC) and order the physician to undergo further testing. This case will remain open pending a final IPC report. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat.
ABSTAINED: Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-011 RECOMMENDATION was made by Dr. Jenkusky to offer the physician a Letter of Reprimand based on injudicious prescribing. If the physician does not accept the offer, the complaint committee recommends issuance of a Notice of Contemplated Action based on same. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-023 (John Bray-Morris, MD) RECOMMENDATION was made by Dr. Jenkusky to offer the physician a Stipulated License requiring mandatory participation in the NM Monitored Treatment Program (MTP) and to place the physician's license on inactive status until approved to return to work by MTP and the Board. If the physician does not accept the offer, the pending Notice of Contemplated Action will be amended to add a charge of habitual and excessive use of substances. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat.
ABSTAINED: Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-028 (Steven Petrakis, MD) RECOMMENDATION was made by Dr. Jenkusky to issue a Notice of Contemplated Action based on, but not limited to, injudicious prescribing and adverse action taken against physician by another licensing board. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-041 RECOMMENDATION was made by Dr. Jenkusky to offer the physician a Stipulated License requiring mandatory participation in the NM Monitored Treatment Program. If the physician does not accept the offer, the complaint committee recommends issuance of a Notice of Contemplated Action based on habitual or excessive use of alcohol and other standard substance abuse stipulations. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat.
ABSTAINED: Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-056 RECOMMENDATION was made by Dr. Jenkusky to file an injunction in District Court to stop the physician assistant from practicing, which will toll

the statute of limitations on this case in the event the physician assistant attempts to reinstate the physician's license. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2012-D-066 RECOMMENDATION was made by Dr. Jenkusky to issue a Notice of Contemplated Action to deny licensure based on, but not limited to, conviction of an offense punishable by incarceration and conduct unbecoming.

YES: Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **RECOMMENDATION PASSED.**

Case No. 2010-D-268 RECOMMENDATION was made by Dr. Jenkusky to issue a Notice of Contemplated Action based on, but not limited to, injudicious prescribing, violating a narcotic law, making a false statement in a document connected with the practice of medicine and failure to maintain accurate medical records. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case No. 2012-D-070 RECOMMENDATION was made by Dr. Jenkusky to offer the physician a Stipulated License requiring mandatory participation in the NM Monitored Treatment Program (MTP) and to place the physician's license on inactive status until approved to return to work by MTP and the Board. If the physician does not accept the offer, the complaint committee recommends issuance of a Notice of Contemplated Action based on, but not limited to, habitual or excessive use of substances. **YES:** Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky. **RECUSED:** Dr. Weiner. **RECOMMENDATION PASSED.**

Complaint Committee E:

RECOMMENDATION was made by Dr. Weiner to close complaint case 2011-E-183 as there was no evidence of a violation of the Medical Practice Act or rules.

YES: Ms. Cochran, Dr. Miller, Dr. Jenkusky, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner. **RECOMMENDATION PASSED.**

Case No. 2011-E-155 RECOMMENDATION was made by Dr. Weiner to close this case and issue an advisory letter on patient communication. **YES:** Ms. Cochran, Dr. Miller, Dr. Jenkusky, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner. **RECOMMENDATION PASSED.**

Case No. 2012-E-048 (Elliott Marcus, MD) RECOMMENDATION was made by Dr. Weiner to issue a Summary Suspension pursuant to 16.10.5.15 NMAC for violation of the physician's Stipulation and simultaneously issue a Notice of Contemplated Action based on, but not limited to, violation of a Board Order, injudicious prescribing and failure to maintain medical records. **YES:** Ms. Cochran, Dr. Miller, Dr. Jenkusky, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner. **RECOMMENDATION PASSED.**

Complaint Committee EC:

RECOMMENDATION was made by Dr. Weiner to close complaint case 2011-EC-158 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Miller, Dr. Jenkusky, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat.

ABSTAINED: Dr. Weiner and Ms. Cochran. **RECOMMENDATION PASSED.**

Case No. 2011-EC-159 RECOMMENDATION was made by Dr. Weiner to close this case and issue an advisory letter to the physician regarding maintaining patient monitoring records during procedures. **YES:** Dr. Miller, Dr. Jenkusky, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner and Ms. Cochran. **RECOMMENDATION PASSED.**

Case No. 2012-EC-059 (Shelley Sella, MD) RECOMMENDATION was made by Dr. Weiner to issue a Notice of Contemplated Action based on, but not limited to, gross negligence with regard to the standard of care provided to Patient 1 only. **YES:** Dr. Miller, Dr. Jenkusky, Dr. Kankanala, Dr. Komadina, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner and Ms. Cochran. **RECOMMENDATION PASSED.** Dr. Kovnat exited the meeting after this vote.

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

- **Derek Heldzinger, M.D. – Consider medical experience in lieu of one year of post graduate training and grant unrestricted medical license.**
MOTION was made by Dr. Weiner to accept the request to consider Dr. Heldzinger's medical experience in lieu of one year of post graduate training and **GRANT** an unrestricted license to practice medicine. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**
- **Lindita Naim Çoku, M.D. – Consider request for exception to 7 year rule**
MOTION was made by Dr. Weiner to accept Dr. Çoku's request for an exception to the 7 year rule and **GRANT** an unrestricted license to practice medicine. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**
- **Shelley A. Katz, M.D. – Consider approval of Training (Resident) License for Mini-Sabbatical**
MOTION was made by Dr. Weiner to **APPROVE** the issuance of a Resident License for a mini-sabbatical at the University of New Mexico. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **RECUSED:** Dr. Jenkusky. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **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.

- **James Bradley, M.D. – Consider amending Stipulation and grant reinstatement of Stipulated License**

MOTION was made by Dr. Weiner to **AMEND** the physician's board order and **GRANT** reinstatement of a Stipulated License with restrictions to be developed between the NM Monitored Treatment program and Dr. Bradley to include limited re-entry into the workplace. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

- **Julie DiCianno, M.D. – Consider amending Stipulation and grant reinstatement of Stipulated License**

MOTION was made by Dr. Weiner to **GRANT** reinstatement of a Stipulated License and issue a Stipulation of Licensure requiring participation in the NM Monitored Treatment Program and no prescriptive authority. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

- **Decision and Order – Adrian Gollas, MD**

MOTION was made by Dr. Weiner to **ADOPT** the Hearing Officer's report and to reprimand Resident physician based on, but not limited to, fraud or misrepresentation or dishonesty in applying for his Resident license in New Mexico. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSTAINED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

- **Decision and Order – Mark Leatherwood, MD**

MOTION was made by Ms. Cochran to **ADOPT** the Hearing Officer's report and to **REVOKE** physician's license based on violation of his July 2010 Board Order, failure to cooperate with the Board and injudicious prescribing. The Board delegates authority to Dr. Weiner to sign the final Decision and Order. **SECONDED** by Dr. Jenkusky. **YES:** Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSTAINED:** Dr. Weiner. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

- **Consider Settlement – Marie Rousseau, MD**

MOTION was made by Dr. Jenkusky to **ACCEPT** the proposed Stipulated Order as presented. **SECONDED** by Mr. Bourbon. **YES:** Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSTAINED:** Dr. Weiner and Ms. Cochran. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

- **Consider Settlement – Harold Alexander, MD**

MOTION was made by Dr. Weiner to accept the proposed Stipulated License as amended. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala and Dr. Komadina. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

- **Consider Settlement – John Bray-Morris, MD**

MOTION was made by Dr. Weiner to accept the proposed Stipulated of Licensure as presented. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala and Dr. Komadina. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

6. Reports

- A. Chair** – Dr. Weiner discussed the Pain Management Taskforce recommendations for Part 14. The Taskforce met on August 2, 2012, and drafted proposed revisions to be presented at the Rule Hearing on Friday, August 10, 2012. Further discussion of the proposed revisions was reserved for the Rule Hearing.
- B. Executive Director** - Ms. Hart presented the following issues to the Board for discussion and decision.
1. A request was received from Hinkle, Hensley, Shanor & Martin, L.L.P. (William Slattery) to initiate rulemaking revisions to 16.10.2 NMAC Physicians: Licensure Requirements. **MOTION** was made by Ms. Cochran to decline at this time to initiate the rulemaking proceedings as requested. **SECONDED** by Dr. Weiner. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**
 2. Ms. Hart presented a letter that was sent by the Board's Prosecutor to the Regulation and Licensing Department requesting that the Psychologists Examiners Board initiate rulemaking revisions to 16.22.27.8 NMAC, entitled "Conditional Prescribing or Prescribing Psychologists: Formulary" because the provisions in this rule exceed the scope of the relevant statutory authority of the Professional Psychologist Act and violates commonly accepted medical ethics and practice.
- C. Medical Director**
Dr. La Farge summarized the salient conclusions arising from the Four Corners Telehealth Consortium conference in Salt Lake City, Utah on July 30, 2012, attended by him and by Dr. Kovnat. Most importantly, the focus remains on expedited licensure and privileging for telemedical practice in multiple States, using the Uniform Application for Physician State Licensure, and drawing relevant background data from a national data repository, probably the FCVS (Federation Credential Verification Service). No enthusiasm was expressed for national licensure as a solution since that proposed methodology does not deal successfully with the issue of State jurisdiction over licensed physicians. A second important contributor to successfully expediting licensure would be increased inter-state sharing of data (background checks; active investigations before decisive action, and work verifications). Such sharing will also be important in the advent of international telemedicine licensure. Finally, the conference participants agreed that there is as yet no resolution to the conflict between the Tenth Amendment to the Constitution (State responsibility for State affairs) and the "Commerce Clause" (no barriers to interstate commerce). Further consolidation of ideas and approaches to expedited licensure are to be pursued vigorously during the coming months.
- D. Assistant Attorney General** – No report at this time.
- E. Administrative Prosecutor**

- NCA Status Report – Mr. Rubin reviewed the status of board action cases that the Board has previously voted on.

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H)(7) of the Open Meetings Act subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant.

SECONDED by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat.

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.

- **Consideration of Litigation Settlement – George Schwartz, M.D.**
After discussion with attorney Jaime Sullivan, **MOTION** was made by Dr. Weiner not to approve any settlement offer in the case of Dr. George Schwartz. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**
- **Consideration of Litigation Settlement – Stuart T. Guttman, M.D.**
MOTION was made by Dr. Weiner to **ACCEPT** the proposed Litigation Settlement Agreement as presented. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

F. Licensing Manager – Ms. Breen reported that after approximately 8500 letters were sent to all licensees advising them of the proposed revisions to Part 14 of the Medical Board rules, approximately 1200 letters (14%) were returned by the post office with incorrect addresses. Approximately 800 of the returned letters were resent to forwarding addresses provided by the post office. E-mail addresses were then obtained from the Board's database for approximately 400 more licensees and an e-mail was sent advising them of the rule that requires notification to the Board of any address change. About 3% of the letters returned had no forwarding address or e-mail address on record. Ms. Cochran suggested that we write to all New Mexico and other state hospital administrators about the issue of correct addresses, and request that the administrators deliver that message to their hospital staff licensees. The continuing medical education audit has been run and those licensees who need to provide proof of attendance have been notified.

G. Financial / HR Manager

Review FY12 Budget and Revenue Status Report

Ms. Mascarenas reviewed the FY2012 Budget Status Report and Revenue Status Report. She also reported on the Board's financial status for the previous fiscal year ending June 30, 2012.

H. Investigation Department – Ms. Dieterich updated the Board on the current status of investigative cases.

I. **Compliance / Public Information Officer**

Ms. Walker discussed the role and responsibility of the Public Information Officer position.

EXECUTIVE SESSION:

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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. Dr. Kovnat joined the meeting by teleconference.

7. **COMPLIANCE:**

- **Board Monitored Compliance Report [non-MTP] and MTP**

Ms. Walker reviewed the compliance report and provided the status on all licensees.

- **Board Order – Ricardo Gomez, Jr., M.D.** – request probation be terminated **MOTION** was made by Dr. Weiner to remove the stipulations and **GRANT** an unrestricted license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

8. **NM MONITORED TREATMENT PROGRAM (MTP):**

Jon Thayer, Executive Director and Dan Collins, MD, Medical Director, were present to discuss the status of mandatory MTP participants and the operations report.

EXECUTIVE SESSION:

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **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. Dr. Kovnat joined the meeting by teleconference.

9. **INFORMAL INTERVIEWS:**

Adelfio Fronterotta, MD; James Bradley, MD; Kenneth Bull, MD; Ricardo Gomez, MD; Michael Lente, PA; Michael Bellas, PA; Chandler Morgan, PSGT; Julie DiCianno, MD; Daniel Brandt, MD; Robert Orchard, MD; Ralph Hansen, MD; David Stalker, MD; James Cordova, RPSGT; Kevin Sullivan, MD; Marc Masotti, MD; and Michael Carey, MD were interviewed in Executive Session regarding current practices and compliance with their board orders. James Galizia, MD, missed his teleconference interview.

FRIDAY, AUGUST 10, 2012

10. **RULE HEARING**

Dr. Weiner called the Rule Hearing to order at 9:00 a.m., and a quorum was present. The following rule was considered: **16.10.14 NMAC Management of Chronic Pain with Controlled Substances**

The Board asked Larry Loring, Acting Director, NM Board of Pharmacy, for an update on the Prescription Monitoring Program (PMP). Mr. Loring reported that the number of PMP requests went from 240 – 500 per day and only 1% of those do not process because of user error. The Board of Pharmacy manually processes the 1%. The new Pharmacy regulations require every person who holds a NM Controlled Substance Registration (CSR) to register for the PMP before the Board of Pharmacy will process their CSR renewal. In response to a question from the Board, Mr. Loring explained that, by rule, a physician may designate one employee to run their PMP reports. If the Board of Pharmacy is open to revising this rule, consideration may be given to allowing for two designated users for each physician. When asked if the Board of Pharmacy was aware of any issues with use of the PMP and HIPAA, Mr. Loring responded that there should not be any concerns because the state law dictates how the information may be used.

The following attendees presented comments at the Rule Hearing.

Randy Marshall, New Mexico Medical Society
Annie Jung, New Mexico Medical Society
Jemery Kaufman, MD, Taos County Medical Society
Ryan Baer, MD, Healthfront
Vince Ornelas, NMHSA, Disability Group
H. Diane Snyder, Greater Albuquerque Medical Association
George Kennedy, MD, NMACEP
Harris Silver, MD, UNM RWJF Center for Health Policy
David Siegel, MD, NM Society of Anesthesiologists

In addition to the public comments, the Board received 82 written comments prior to the Rule Hearing that are listed in the Exhibit Book. The Rule Hearing was adjourned at 10:43 a.m.

Dr. Weiner reconvened the Regular Board Meeting at 11:00 a.m., and a quorum was present.

**11. ADOPTION OF RULES:
16.10.14 NMAC Management of Chronic Pain with Controlled Substances**

The Board discussed amending the Pain Management Taskforce recommendations to 16.10.14 NMAC as follows:

- Line 8 amend to remove "~~physicians and physician assistants licensed by the board~~" and revise to read "New Mexico medical board licensees who hold a federal drug enforcement administration registration."
- Line 87 amend to remove "~~should~~" and revise to read "shall".
- Lines 99-101 amend to delete "~~Consultation shall occur early in the course of long term treatment, and at reasonable intervals during continued long term treatment for assessment of benefit and need a minimum of once every six (6) months.~~"
- Line 109 amend to remove "~~urine or hair~~".

- Line 120 amend to remove "as a guiding principle".
- Line 158 amend to remove "by any practitioner treating the patient in any clinical setting."
- Line 161 amend to remove "physicians and physician assistants".
- Line 168 amend to revise by adding a period after "treatment of pain"; then start a new sentence "Courses shall include . . .".
- Line 171, Line 179 & Line 189 amend to by removing "All such courses are subject to board approval" and replacing with "The applicability of such courses toward fulfillment of the continuing medical education requirement is subject to medical board approval."
- Line 195 amend to add a new "D. Biennial requirements for anesthesiologist assistants."; then "D" becomes "E" and "E" becomes "F". The new Subsection D will contain the same language as Subsection C, adapted for Anesthesiology Assistants.
- Lines 199-200 amend to remove "and towards any other continuing medical education requirements as set forth in 16.10.4.8 NMAC and 16.10.15.16 NMAC."

The Board also discussed "regulations" vs. "guidelines" because this was an issue brought up during the Rule Hearing comment period. The Board has used 16.10.14 to enforce discipline since it was adopted in 2003. The Board's attorney pointed out that regulations are enforceable and a guideline is more like a suggestion and not as enforceable. Rules have the force and effect of law. There was also some discussion around "shall" vs. "may" and the Board's attorney explained that "shall" means mandatory and "may" is suggestive.

MOTION was made by Dr. Weiner to **adopt** Title 16, Chapter 10, Part 14 **as amended** for the reasons stated in the Rule Hearing. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Kankanala, Dr. Komadina, Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Kovnat. **MOTION CARRIED.**

12. NEW BUSINESS:

There was no new business discussed.

13. OLD BUSINESS:

There was no old business discussed.

14. ADJOURN:

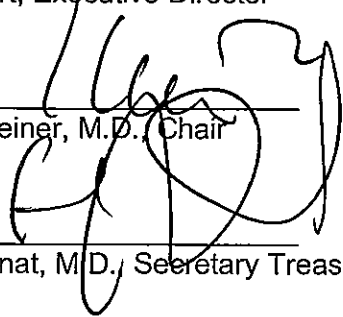
There being no further business, the meeting was adjourned at 11:45 a.m.

SUBMITTED BY: 
Lynn Hart, Executive Director

DATE: 10/02/12

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

DATE: 10/12/12

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

DATE: 10 12 12