

NEW MEXICO MEDICAL BOARD
Regular Board Meeting
August 7-8, 2014
FINAL MINUTES

Members Present: Steve Weiner, M.D., Chair
Steven Jenkusky, M.D., Vice Chair
Albert Bourbon, PA-C, Secretary Treasurer
James Spence, M.D.
Jennifer Anderson, Esquire, Public Member
Steven Komadina, M.D.
Rick Wallace, FACHE, Public Member
Peter Beaudette, M.D.

Members Absent: Sam Kankanala, M.D.

Others Present: Lynn Hart, Executive Director
Grant La Farge, M.D., Medical Director
Sondra Frank, Board Attorney
Dan Rubin, Administrative Prosecutor
Amanda Quintana, Licensing Manager
Debbie Dieterich, Investigations/Compliance Manager
Gayle Mascarenas, CFO/HR Manager
Amanda Chavez, Investigator
Kate Compton, Investigator
Samantha Breen, Administrative Assistant
Jolene Casados, Licensing

1. CALL TO ORDER / ROLL CALL

Dr. Weiner called the Regular Board 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; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Beaudette. **MOTION CARRIED.**

3. APPROVAL OF MINUTES

MOTION was made by Dr. Weiner to accept and approve the minutes of the June 26, 2014 Interim Board Meeting and the July 10, 2014 Special Meeting as presented. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Beaudette. **MOTION CARRIED.**

EXECUTIVE SESSION: Complaint Committee Reports / Executive Committee Report

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 and disciplinary matters. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

OPEN 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.

4. ACTIONS RELATED TO EXECUTIVE SESSION

A. Complaint Committee Reports

Complaint Committee A

RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** Case #2013-A-106; #2013-A-108; #2013-A-111; #2013-A-132; #2013-A-190; #2013-A-202; #2013-A-227 and #2014-A-026. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2013-A-133 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** the case with an Advisory Letter with regard to maintaining appropriate communications with patient's family and/or care team. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2013-A-150 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** the case with an Advisory Letter with regard to the Board's Regulation on Release of Medical Records and how communications are perceived by patients. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2013-A-220 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** this case with an Advisory Letter to Physician only regarding the Board now having received multiple complaints about his manner and treatment of patients in the emergency department and notifying physician that the Board will be monitoring future complaints against him. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2014-A-014 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** this case with an Advisory Letter to Physician regarding the Board now having received multiple complaints about his manner and treatment of patients in the emergency department and the Board will be monitoring future complaints against him. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2014-A-046 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** this case with a letter to Physician commending her on her change of practice and reminding her to obtain PMP's per Board Regulations. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2014-A-094 RECOMMENDATION was made by Dr. Jenkusky to order physician to undergo an IPC evaluation prior to licensure decision. Case will remain open until receipt of IPC report. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2014-A-120 RECOMMENDATION was made by Dr. Jenkusky to issue of a Notice of Contemplated Action based on, but not limited to, gross negligence, incompetency to practice, failure to maintain patient records, and making false statements in a document connected to the practice of medicine. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Case #2014-A-062 RECOMMENDATION was made by Dr. Jenkusky to offer physician the following options: (1) place his license on inactive status while under investigation; (2) order physician to be evaluated by a forensic specialist; or if doesn't accept either option (3) issue Notice of Contemplated Action based on, but not limited to, failure to cooperate. **YES:** Dr. Weiner; Dr. Spence; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Ms. Anderson; Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

Complaint Committee B

RECOMMENDATION was made by Dr. Spence to **CLOSE** Case #2013-B-079; 2013-B-139; 2013-B-164; 2013-B-180; 2013-B-191; 2013-B-210; 2013-B-228; 2014-B-016; 2014-B-047; 2014-B-052; 2014-B-058; 2014-B-075 and 2014-B-087. **YES:** Dr. Weiner; Ms. Anderson; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Spence and Dr. Komadina. **MOTION CARRIED.**

Case #2013-B-131 RECOMMENDATION was made by Dr. Spence to **CLOSE** this case with an Advisory Letter regarding the need to clarify to patients the physician's credentials and practice. **YES:** Dr. Weiner; Ms. Anderson; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Spence and Dr. Komadina. **MOTION CARRIED.**

Case #2014-B-061 RECOMMENDATION was made by Dr. Spence to **CLOSE** this case with an Advisory Letter regarding the AMA Code of Ethics on the Sale of both non-prescription and prescription medications out of physician's office. **YES:** Dr. Weiner; Ms. Anderson; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Spence and Dr. Komadina. **MOTION CARRIED.**

Case #2014-B-042 RECOMMENDATION was made by Dr. Spence to issuance of a Notice of Contemplated Action based on, but not limited to, injudicious prescribing, failure to maintain accurate, complete medical records, and falsifying medical records. **YES:** Dr. Weiner; Ms. Anderson; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Spence and Dr. Komadina. **MOTION CARRIED.**

Case #2014-B-067 RECOMMENDATION was made by Dr. Spence to issue a PSGT stipulated license requiring mandatory participation in the NM Monitored Treatment Program. **YES:** Dr. Weiner; Ms. Anderson; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Spence and Dr. Komadina. **MOTION CARRIED.**

Complaint Committee C

RECOMMENDATION was made by Mr. Bourbon to **CLOSE** Case #2013-C-110; 2013-C-122; 2013-C-160; 2013-C-163; 2013-C-165; 2013-C-195; 2013-C-223; 2013-C-225; 2014-C-013; 2014-C-021; 2014-C-023; 2014-C-085 **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

Case #2013-C-085 RECOMMENDATION was made by Mr. Bourbon to **CLOSE** this case with an Advisory Letter regarding communication and professionalism towards patients. Future complaints regarding physician will be monitored by NMMB. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

Case #2014-C-027 RECOMMENDATION was made by Mr. Bourbon to **CLOSE** this case with an Advisory Letter regarding obtaining patient consent and reminding physician assistant to adhere to HIPAA Regulations. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

Case #2014-C-060 RECOMMENDATION was made by Mr. Bourbon to offer physician the following options (1) to retire license while under investigation; or (2) place license on inactive status while physician obtains a clinical competency evaluation through CPEP or equivalent program. If physician does not accept either option, a Notice of Contemplated Action will be issued, based on, but not limited to, adverse action in another state, failure to report adverse action and incompetency. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

Complaint Committee D

RECOMMENDATION was made by Ms. Anderson to **CLOSE** Case #2013-D-073; 2013-D-152; 2013-D-178; 2013-D-193; 2013-D-224; 2013-D-229; 2014-D-017 and 2014-D-024 **YES:** Dr. Weiner; Dr. Spence; Dr. Komadina; Mr. Wallace; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Anderson and Dr. Beaudette. **MOTION CARRIED.**

Case #2014-D-204 RECOMMENDATION was made by Ms. Anderson to **CLOSE** this case with an Advisory Letter regarding clear patient communication. **YES:** Dr. Weiner; Dr. Spence; Dr. Komadina; Mr. Wallace; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Anderson and Dr. Beaudette. **MOTION CARRIED.**

Case #2013-D-103 RECOMMENDATION was made by Ms. Anderson to place case into investigations for expert review as discussed. **YES:** Dr. Weiner; Dr. Spence; Dr. Komadina; Mr. Wallace; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Anderson and Dr. Beaudette. **MOTION CARRIED.**

Case #2014-D-056 RECOMMENDATION was made by Ms. Anderson to offer Physician a stipulated license mirroring the Ontario Medical Board stipulation and issuing a reprimand to physician for failure to report adverse board action after already being warned by NMMB for same issue. If he does not accept, a Notice of Contemplated Action will be issued based on, but not limited to, licensure action in other states and failure to report. **YES:** Dr. Weiner; Dr. Spence; Dr. Komadina; Mr. Wallace; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Anderson and Dr. Beaudette. **MOTION CARRIED.**

Complaint Committee E

RECOMMENDATION was made by Dr. Weiner to **CLOSE** Case #2013-E-088; 2013-E-121; 2013-E-198; 2013-E-207; 2014-E-025; 2014-E-049 and 2014-E-050. **YES:** Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

Case #2013-E-233 RECOMMENDATION was made by Dr. Weiner to **CLOSE** this case with an Advisory Letter regarding the physician's role under NM law when presented with a search warrant and a physician's ethical choice with complying, i.e., they may ethically decline such a request. **YES:** Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

Case #2013-E-027 RECOMMENDATION was made by Dr. Weiner to offer physician a Letter of Reprimand based on violation of a Board Order and failure to report adverse action taken by law enforcement, along with the requirement that physician complete the ProBE Ethics Course at CPEP and appear in front of the Board at the November Meeting. If Physician does not accept, issuance of a Notice of Contemplated Action, based on, but not limited to, same is recommended. **YES:** Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

Case#2014-E-057 RECOMMENDATION was made by Dr. Weiner to offer physician the following options: (1) retire medical license while under investigation; or (2) place license on inactive status until physician proves clinical competency through CPEP or comparable program. If physician does not accept, then a Notice of Contemplated Action will be issued based on, but not limited to, conduct likely to harm the public, incompetency, and failure to maintain medical records. **YES:** Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Dr. Weiner and Dr. Jenkusky. **MOTION CARRIED.**

Case#2014-E-059 RECOMMENDATION was made by Dr. Weiner to issue a Notice of Contemplated Action based on part on action in another state and incompetency to practice. **YES:** Dr. Spence; Ms. Anderson; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **ABSENT:** Dr. Komadina. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

EXECUTIVE SESSION: Complaint Committee Reports--Case #2014-E-065 / Executive Committee Report

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 and disciplinary matters. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

OPEN 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.

Case#2014-E-065 – Action Item moved down on agenda pending discussion with MTP.

- B. Executive Committee Report / Other Cases / Criminal Background Hits**
There were no comments.

5. LICENSING ISSUES, NEW APPLICANTS / REINSTATEMENTS

- A. Julia Weinstein, M.D. – Accept professional experience in lieu of second year of accredited PGT.**
MOTION was made by Dr. Weiner to accept professional experience in lieu of second year accredited PGT and grant an unrestricted license to practice in the State of New Mexico. **SECONDED** by Mr. Bourbon. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Dr. Jenkusky. **MOTION CARRIED.**
- B. Fadi Hanbali, M.D. – Accept non accredited PGT and professional experience in lieu of two years of ACGME accredited PGT.**
MOTION was made by Dr. Weiner to accept non accredited PGT and professional experience in lieu of second year accredited PGT and grant an unrestricted license to practice in the State of New Mexico. **SECONDED** by Ms. Anderson. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**
- C. Bernie Hewett, M.D. – Default Hearing**
Per the Uniform Licensing Act, if a person who has requested a hearing does not appear or fails to request a hearing, the Board or Hearing Officer may hear the evidence of such witnesses as may have appeared, and the Board may proceed to consider the matter and dispose of it on the basis of the evidence before it.

Dan Rubin, Administrative Prosecutor presented the case to the Board. Ms. Amanda Chavez, Investigator and Ms. Samantha Breen, Administrative Assistant appeared before the Board as witnesses and were sworn in by Sondra Frank, Board Attorney. Mr. Rubin questioned both witnesses and entered into evidence Exhibits 1-4.

Based on witness testimony and the evidence presented, **MOTION** was made by Dr. Weiner to **REVOKE** Dr. Hewett's license to practice medicine in the State of New Mexico. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; ; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky.

- D. Ramona Anderson, M.D. – Possible Settlement**
MOTION was made by Dr. Weiner to accept the settlement as proposed by Mr. Rubin, Administrative Prosecutor. Dr. Anderson's medical license shall remain suspended until the Board deems her fit to return to the practice of medicine. **SECONDED** by Ms. Anderson. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Mr. Wallace and Dr. Jenkusky. **MOTION CARRIED.**

EXECUTIVE SESSION: Mark Walden, M.D. / Sitaramakrishna Kothalanka, M.D.

MOTION was made by Dr. Jenkusky 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 and disciplinary matters. **SECONDED** by Dr. Weiner. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

OPEN SESSION

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

- A. Mark Walden, M.D. – Review CPEP Report and further modification of Board Order**
MOTION was made by Dr. Jenkusky to **REVOKE** physician's license but stay the revocation. Dr. Walden's medical license remains on suspension while he undergoes a complete history & physical and obtains a neurological psychological evaluation in accordance with the recommendations of CPEP, within one year of the date of the order. Upon completion of these requirements, the Board will then further review the matter and make further recommendations in terms of his case. **SECONDED BY** Dr. Spence. **YES:** Dr. Jenkusky; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**
- B. Sitaramakrishna Kothalanka, M.D. – Decision and Order**
MOTION was made by Dr. Jenkusky to accept the Hearing Officers Report in its entirety, the findings of fact and conclusions of law as presented, and to **REVOKE** physician's license to practice medicine in the State of New Mexico. **SECONDED BY** Ms. Anderson. **YES:** Dr. Jenkusky; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Mr. Bourbon. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

EXECUTIVE SESSION: Gregory Gomez, M.D. / Roderick Mitchell, MD

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 and disciplinary matters. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

OPEN 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.

- C. Gregory Gomez, M.D. – Decision and Order**
MOTION was made by Dr. Weiner to accept the Hearing Officers Report in its entirety, the findings of fact and conclusions of law, and to **DENY** physician's application for licensure. Physician may reapply for licensure in New Mexico after his issues in Florida have been resolved. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Dr. Komadina; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Ms. Anderson, Mr. Wallace and Dr. Beaudette. **MOTION CARRIED.**
- D. Roderick Mitchell, M.D. – Motion to Reopen Case #2014-004**
MOTION was made by Dr. Weiner to **DENY** Respondent's Motion to Reopen the case, without prejudice, noting that there was no new evidence submitted with the motion and informing the physician that the Uniform Licensing Act allows him 30 days after the issuance of the Decision and Order to move to reopen again and also remind him that it is highly recommended that he is represented by legal counsel. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

E. Roderick Mitchell, M.D. – Decision and Order

MOTION was made by Dr. Weiner to accept the Hearing Officers Report in its entirety, the findings of facts and conclusion of law, and to **SUSPEND** physician's medical license pending the resolution of his appeal in the State of Texas. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

6. OLD BUSINESS

F. Finalize 2015 Board Meeting Dates

Quarterly Meetings: February 19-20, 2015; May 14-15, 2015; August 6-7, 2015; November 5-6, 2015

Interim Meetings: January 8, 2015; April 2, 2015; June 25, 2015; September 17, 2015
(**FSMB – April 23-25, 2015 - Ft. Worth, Texas**)

MOTION was made by Dr. Weiner to approve the 2015 Board Meeting Dates as presented. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

7. EXECUTIVE DIRECTOR REPORT

None

EXECUTIVE SESSION: Non MTP and MTP Reports

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 and disciplinary matters. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

8. Board Compliance Report – Non MTP Participants

Ms. Dieterich reviewed the compliance report and reported on the status of licensees under a current stipulation.

9. New Mexico Monitored Treatment Program Report

John Thayer and other members of the NM Monitored Treatment Program presented the status of all mandatory MTP participants and answered relevant questions from the Board.

10. Informal Interviews

Bertrand Bassett, M.D.; Jimmie Charlie, M.D.; Sally D'Angelo, M.D.; Richard Hempstead, M.D.; Sudha Kailas, M.D.; Darrick May, M.D.; Benjamin Stake, M.D.; Kathleen Van Osten, M.D.; Paul De Stefano, M.D.; Edwin Kennedy, M.D.(Via Teleconference); John Bray-Morris, M.D.; Alden Cockburn, M.D.; Ralph Hansen, M.D.; Christopher Jones, M.D.; Keith Levitt, M.D.; Chandler Morgan, PSGT; David Stalker, M.D.; Steven Petrakis, M.D.; Roy Heilbron, M.D.

OPEN 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.

11. ACTIONS RELATED TO EXECUTIVE SESSION

Ralph Hansen, M.D. – Request for Release from Board Stipulation

MOTION was made by Dr. Weiner to release Dr. Hansen from his Stipulation and grant a full unrestricted license to practice in the State of New Mexico. **SECONDED BY** Dr. Jenkusky. **YES:** Dr.

Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

Christopher Jones, M.D. – Request for Release from Board Stipulation

MOTION was made by Dr. Weiner to release Dr. Jones from his Stipulation and grant a full unrestricted license to practice in the State of New Mexico. **SECONDED BY** Dr. Jenkusky. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

Kathleen Van Osten, M.D. – Request for Release from Board Stipulation

MOTION was made by Dr. Weiner to release Dr. Van Osten from her Stipulation and grant a full unrestricted license to practice in the State of New Mexico. **SECONDED BY** Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

Chandler Morgan, PSGT – Request for Release from Board Stipulation

Action Item Tabled

John Bray-Morris, M.D. – Request for Release from Board Stipulation

MOTION was made by Dr. Weiner to amend the Board Stipulation to allow physician to prescribe controlled substances. **SECONDED BY** Dr. Spence. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

Paul De Stefano – Request for Release from Board Stipulation

MOTION was made by Dr. Jenkusky to amend the Board Stipulation to allow physician to prescribe controlled substances once a fully executed copy of his contract with Affiliated Monitors is in place and an expert monitor has been identified and approved by the Board. **SECONDED BY** Mr. Bourbon. **YES:** Dr. Jenkusky; Dr. Spence; Dr. Komadina; Mr. Wallace; Dr. Beaudette and Mr. Bourbon. **NO:** Ms. Anderson. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

Darrick May, Resident M.D. – Request for Release of Board Stipulation

MOTION was made by Dr. Weiner to release Dr. May from his Stipulation and grant a full unrestricted license to practice in the State of New Mexico. **SECONDED BY** Dr. Jenkusky. **YES:** Dr. Weiner; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; ; Dr. Beaudette and Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **MOTION CARRIED.**

Case#2014-E-065 – RECOMMENDATION was made by Dr. Weiner to delegate the decision to issue a license to physician by the Executive Committee upon receipt of further information. **YES:** Dr. Jenkusky; Dr. Spence; Ms. Anderson; Dr. Komadina; Mr. Wallace; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **RECUSED:** Dr. Weiner. **MOTION CARRIED.**

ADJOURN

Dr. Weiner adjourned the first day [August 7, 2014] of the August Regular Board Meeting at 4:58 p.m.

Friday, August 8, 2014

Dr. Weiner reconvened the Regular Meeting and called the meeting to order at 9:00 a.m. on Friday, August 8, 2014; a quorum was present. Agenda items were moved in order to accommodate time commitments for some of the presenters.

12. REPORTS

A. Medical Director

The Optometric Society Telehealth Proposal

Lisa Shin of the Optometric Society and Luke Otero, legislative consultant with the NM Optometric Society appeared before the Board in opposition to the use by Opternative of online refractive eye examination which would lead to the issuance of a prescription either for eye glasses or contact lenses. Such a prescription would be signed by an ophthalmologist or optometrist remotely reviewing the online questionnaire and the results of the refraction, but without an eye examination or a detailed eye health history. Ms. Shin stated that under the NM Administrative Code for optometric practitioners a contact lens prescription is to be issued only after it is determined that the patient's ocular health would not be compromised or the eye itself harmed by the use of contact lenses. The Medical Practice Act also requires ophthalmologists to follow the same procedure. Ms. Shin further stated that she does not oppose the technology itself, but to the way that it is being used. Mr. Otero stated that the population in NM is being served well by the current number of optometrists and ophthalmologists in the state. Following an in depth discussion between the members, the Board agreed that there are too many concerns and unanswered questions involving this proposal, including but not limited to the absence of FDA approval, the absence of a protocol for appropriate eye health history and examination, and liability and insurance. The Board further agreed that NMMB staff would work with the Optometric Society in opposition to the Opternative proposal at this time.

T Choice Clinic Telehealth Proposal

Dr. La Farge informed the Board that we had received a proposal from "T Choice Clinic", in Texas, describing an online telehealth protocol for testosterone replacement therapy in New Mexico. In response to their question as to whether or not that would be the practice of medicine and if the NM Board would approve, the Board affirmed that the T Choice protocol would indeed be the practice of medicine, and that the prescription of testosterone over the Internet is contrary to the Federal law about controlled substances (testosterone is class III). The proposed protocol also does not appear to meet the criteria that are demanded of telehealth prescribing (complete history, physical examination, informed consent, a medical record, and adequate follow-up). Dr. Komadina stated that this is a huge issue and that there is no way for what T Choice proposes to be accomplished through telemedicine, further stating that there are wide varieties of side effects to testosterone use. Larry Loring, Executive Director of the Pharmacy Board, also affirmed that federal law prohibits prescribing any controlled substance without a hands-on physical examination. The Board agreed that the proposal does not meet the NM standards for the physician-patient relationship, as specified in Part 8 of the NM Rules on Medical Ethics, and that a letter would be sent to T Choice Clinic in that regard.

B. **Carl Flausbaum Board of Pharmacy PMP Manager – Presentation of Practitioner Report Cards**

Carl Flausbaum and Larry Loring from the Board of Pharmacy appeared before the Board to talk about the Practitioner Report Cards and corresponding reports issued to the licensing boards. Mr. Flausbaum requested feedback from the Board in regard to the Practitioner Report that was sent to them in May. Dr. Komadina mentioned that it appears as though some practitioners are not accessing patient PMPs, but are writing a fair number of prescriptions to patients who are also receiving multiple monthly prescriptions from multiple providers, and asked if there is any follow up with the practitioner. Mr. Flausbaum responded that they are sending an email to the practitioner cautioning them about the patient receiving multiple

prescriptions from multiple providers. He also acknowledged that there are many practitioners that are not using the PMP, but explained the practitioner may have a delegate that is accessing reports. Recently, an enhancement was added to the PMP system in order to link the delegate to the practitioner. He also informed the Board that out of all the practitioners that are registered, only about 37% are accessing the PMP, and 5% of their delegates are accessing the PMP, so there is still very small usage of the PMP. Mr. Flausbaum stated that while it is not in effect yet, a report will be generated showing that if a practitioner has not accessed the PMP within 13 months, their access to the PMP will expire. Dr. Weiner inquired as to whether or not the Board has due diligence to inform the practitioners of their non-compliance with the use of the PMP and/or inform them about their prescribing activity to the patients who are receiving controlled substances from multiple providers as detailed on the Practitioner Report Card. Ms. Hart stated that it is something that is being looked at by staff. Dr. Weiner thanked Mr. Flausbaum and Mr. Loring for speaking and informed them that the Board is very happy with the report and that it has been very instrumental.

C. Chair Report – Administrative Medicine Licensure

Dr. Weiner brought up the ongoing issue of applicants applying for a license to practice "Administrative Medicine" in New Mexico and having to prove competency versus current licensees who have been out of practice for over two years and are able to renew their license without question. There was a lengthy discussion about the pros and cons of the non-disciplinary stipulation to practice Administrative Medicine, proving competency through mini-sabbatical and creating a license for Administrative Medicine. Ms. Hart stated that within the current statute the Board can grant a full license to someone who only does administrative work, however, there is no control over what that physician does or may do after being granted an unrestricted license. One option the Board has used in the past, but has become uncomfortable with, is placing the restriction on the full license to Only practice administrative medicine. Even though we refer to it as a non-disciplinary stipulation it has to be reported to the National Data Bank because it is a "restriction" to one area of practice. Ms. Hart stated that the Board does not license by specialty and technically "administrative" could be seen as such. Nevertheless, The Board expressed interest in asking the 2015 Legislature for authority to create and offer an "administrative medicine license". The first issues are for the Board to define "administrative license" and to establish the criteria for granting such a license. Staff will research and report to the Board at the November meeting. As a separate issue, Dr. Komadina suggested an "Emeritus" status for licensure, of those retired physicians who do not wish to give up their license but do not practice medicine. A licensee with "Emeritus" status would not be able to practice medicine including the writing of prescriptions.

MOTION was made by Dr. Komadina for NMMB staff to explore, develop and define an Administrative License category and an Emeritus Physician license category. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

D. Licensing Manager

PA Rule Taskforce Report

Ms. Quintana reported to the Board that the PA Rule Task Force submitted proposed rule changes. There were two suggested changes that cannot be made per statute, which are changing or taking out the word "supervision" and removing the requirement to submit written notice of intent to supervise to the Board office. Proposed changes include, removing the requirement for alternate supervisors, minor licensing process changes, removing practice limitations and removing the Federal Emergency provision as the Board does not have statutory authority to issue a Federal Emergency license. Mr. Bourbon thanked the Board for being progressive and supportive of the proposed changes that the NM Physician Assistants Academy are trying to implement. He believes that they will be happy with the removal of a lot of language, especially removing the alternate supervising physician provision as it will eliminate

a lot of the paperwork. He is also pleased with the practice limitations and the removal of the change of supervisor fee for supervising physicians.

MOTION was made by Dr. Weiner to approve the proposed rule changes for Rule Hearing. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

Pain Management CME requirement after July 1, 2014

Ms. Quintana requested guidance from the Board regarding the ongoing Pain Management CME requirement upon renewal. Dr. Jenkusky requested that the courses not have to be preapproved and can be adapted to a specialty. Dr. Komadina suggested the possibility of putting out a 1 hour online course that covers PMP, the NMMB's requirements and specific life-saving topics for NM. All members agreed to this idea. Staff will work with Dr. Jenkusky to put together specific guidelines for the ongoing Pain Management CME requirement.

Proposal for Pain Management PPQ and Rule Change

Ms. Quintana reported that Pain Management Rule 16.10.14.9 requires that licensees who have chronic pain and are being treated with opiates must be evaluated and cleared to practice by a pain specialist. She requested that the Board approve adding a Professional Practice Question to both the initial application and renewal application.

MOTION was made by Dr. Weiner to add the question "Are you currently being treated with opiates for chronic pain? If yes, please provide to the Board upon application a current evaluation from your treating pain provider (MD or DO)." **SECONDED** by Dr. Jenkusky. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette; Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**
Rule changes will be addressed at a later date.

E. Board Attorney – Rules / Religious Practitioner

Ms. Frank informed the Board once again that Board staff is working on all of the rules. They have made good progress and are still waiting for some input from other licensees categories to give staff an idea to any changes that they would like to see. Ultimately, the rules will go to a subcommittee for their input before going to the Board for approval.

Ms. Frank further informed the Board that she received an inquiry from an individual regarding his religious practices and whether or not they constitute the practice of medicine. She informed the individual that based on the information that he provided it did not appear to violate the Medical Practice Act as religious ministrations are generally exempt from the Board's jurisdiction. She further informed him that it did not appear that any of the activities described fall under the definition of the practice of medicine in New Mexico as long as the administration of a drug or medicine is not involved. She did point out that the administration of controlled substances is a complex issue and directed him to also contact the DEA.

F. Financial / HR Manager

Ms. Mascarenas reported the FY14 budget status to the Board. She stated that the agency expended \$1,609,162.02 or 92.8% of its FY14 operating budget of \$1,734,800.00; revenues collected through June 30, 2014 is \$2,016,428 or 16% over the budgeted amount. She further informed the Board that \$26,432 was expended for litigation and hearing process in FY14. The FY15 Operating Budget began on July 1, 2014 with an increase of 8.7% over the FY14 Operating Budget. The Board was informed that FY15 is a 50% year which means that the agency must reserve 50% of the operating budget ending December 31, 2014.

G. Investigations Department

Ms. Dieterich informed the Board that the Investigations Department is up to date and they are now processing complaints as they are received.

H. Administrative Prosecutor

Prosecution Status Report

Mr. Rubin reported on the status of pending administrative prosecution cases. Mr. Rubin also gave a status report on pending litigation involving the Board as follows;

George Schwartz, M.D. – Hearing on Motion to Dismiss the Plaintiffs Complaint on October 9, 2014.

Nicholas Nardacci, M.D. – Appeal is still ongoing with possible settlement.

Richard Rubin, PA – No change in status.

Michael Dolvin, M.D.- Hearing on Motion to Dismiss/Motion to Reconsider on November 17, 2014.

Action Item – District Court Injunction against Paul Bateman, Unlicensed Doctor

Mr. Rubin informed the Board that Mr. Bateman has been holding himself out to be a medical doctor and is providing commercial driver license physicals and issuing CDLs out of a truck stop in Albuquerque, which is a fourth degree felony. The Board's investigative staff was alerted to his activities by the NM Department of Public Safety (DPS) and requested the Board's assistance in stopping the activity. Mr. Rubin requested authority to pursue a civil action against Mr. Bateman and to seek an injunction in District Court, which will be served on Mr. Bateman by DPS. **MOTION** was made by Dr. Weiner to authorize Mr. Rubin to file civil action against Mr. Bateman for the illegal practice of medicine and to seek discouragement of any profits. **SECONDED** by Dr. Spence. **YES:** Dr. Weiner; Mr. Wallace; Ms. Anderson; Dr. Spence; Dr. Komadina; Dr. Beaudette and Dr. Jenkusky. **ABSENT:** Mr. Bourbon. **MOTION CARRIED.**


13. NEW BUSINESS


Due to a possible quorum issue, the September 18, 2014 Interim Board Meeting was rescheduled for September 25, 2014.

14. ADJOURN

There being no further business before the Board, Dr. Weiner adjourned the meeting at 12:09 p.m.

SUBMITTED BY:  DATE: 10/6/14
Lynn Hart, Executive Director

APPROVED BY:  M.D. DATE: 10/6/14
Steve Weiner, M.D., Chair

APPROVED BY:  DATE: 9/25/14
Steven Jenkusky, M.D., Vice Chair