

NEW MEXICO MEDICAL BOARD
Regular Board Meeting
May 10-11, 2018
DRAFT MINUTES

Members Present: Steve Jenkusky, MD, Chair
Peter Beaudette, MD
Steve Komadina, MD
James Spence, M.D.
Karen Carson, M.D.
Jennifer Anderson, Esquire, Public Member, Secretary Treasurer
Philip Styka, M.D. – Present May 11, 2018
Sebastian Dunlap, Esquire, Public Member

Excused: Philip Styka, MD – Excused May 10, 2018

Others Present: Sondra Frank, J.D., Executive Director
Yvonne Chicoine, J.D., Chief Legal Counsel
C. Grant La Farge, MD, Medical Director
Gayle Mascarenas, CFO/HR Manager
Barbara Orender, Licensing Manager
Debbie Dieterich, Investigations Manager
Samantha Breen, Administrative Assistant
Amanda Quintana, Compliance Manager / PIO

1. CALL TO ORDER / ROLL CALL

Dr. Jenkusky, after establishing the presence of quorum, called the Regular Board Meeting of the New Mexico Medical Board to order at 8:35 a.m., Roll Call was completed.

2. APPROVAL OF AGENDA

MOTION was made by Dr. Jenkusky to approve the Agenda. **SECONDED** by Dr. Carson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

3. APPROVAL OF MINUTES

MOTION was made by Dr. Jenkusky to accept and approve the minutes of the March 29, 2018 Interim Board Meeting as presented. **SECONDED** by Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

EXECUTIVE SESSION: Complaint Committee Reports / Executive Committee Report / Licensing Issues, New Applicants / Reinstatements / Board Attorney Report

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 Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **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.

4. ACTIONS RELATED TO EXECUTIVE SESSION

Complaint Committee A

RECOMMENDATION was made by Dr. Carson to **CLOSE** Case #2017-A-060; 2017-A-065; 2017-A-082; 2017-A-111; 2017-A-135; 2017-A-172; 2017-A-232 and 2018-A-063. **YES:** Dr. Jenkusky, Dr. Komadina, Dr. Spence, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Carson and Dr. Beaudette.

Case #2017-A-251 RECOMMENDATION was made by Dr. Carson to offer physician a letter of reprimand and if he does not accept, a notice of contemplated action will be issued based on, but not limited to, conduct unbecoming and ethics violations. **YES:** Dr. Jenkusky, Dr. Komadina, Dr. Spence, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Carson and Dr. Beaudette.

Complaint Committee B

RECOMMENDATION was made by Dr. Komadina to **CLOSE** Case #2016-B-112; 2016-B-129; 2017-B-012; 2017-B-093; 2017-B-150; 2017-B-157; 2017-B-178 and 2017-B-187. **YES:** Dr. Beaudette; Dr. Spence, Dr. Carson; Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Jenkusky and Dr. Komadina.

Case #2016-B-177 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** this case with an advisory letter noting the Board's concerns about Physician not presenting to hospital when called to see a patient experiencing distress and discomfort even though patient was stable. **YES:** Dr. Beaudette; Dr. Spence, Dr. Carson; Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Jenkusky and Dr. Komadina.

Case #2016-B-280 RECOMMENDATION was made by Dr. Jenkusky to **CLOSE** this case with an advisory letter that although physician may advertise himself as a dermatologist, the communication to the public should not be misleading because of the omission that physician is actually trained in family practice. **YES:** Dr. Beaudette; Dr. Spence, Dr. Carson; Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Jenkusky and Dr. Komadina.

Case #2016-B-210 RECOMMENDATION was made by Dr. Jenkusky to offer physician a stipulated license with issuance of reprimand and requiring (1) physician to obtain a CPEP assessment specific to addiction treatment and (2) requiring a medical records course through CPEP to be completed within 6 months. If physician does not accept, a notice of contemplated action will be issued based on, but not limited to, violation of a drug law, conduct unbecoming, failure to maintain adequate and complete medical records, and injudicious prescribing. **YES:** Dr. Beaudette; Dr. Spence, Dr. Carson; Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Jenkusky and Dr. Komadina.

Case #2017-B-254 RECOMMENDATION was made by Dr. Jenkusky to offer Resident MD a stipulated license requiring mandatory participation in NM Professional Health and Wellness Program for monitoring. If Resident MD does not accept, a notice of contemplated action will be issued based on, but not limited to, habitual/excessive use of alcohol, and conduct likely to harm. **YES:** Dr. Beaudette; Dr. Spence, Dr. Carson; Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Jenkusky and Dr. Komadina.

Case #2018-B-023 RECOMMENDATION was made by Dr. Jenkusky to offer physician the chance to voluntarily surrender his license within 10 days or his license will be summarily suspended based on a plea of guilty to an offense within the practice of medicine. A notice of contemplated action will be simultaneously issued based on, but not limited to, conviction of an offense punishable by imprisonment. **YES:** Dr. Beaudette; Dr. Spence, Dr. Carson; Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Jenkusky and Dr. Komadina.

Complaint Committee C

RECOMMENDATION was made by Dr. Spence to **CLOSE** Case #2016-C-192; 2016-C-204; 2017-C-005; 2017-C-008; 2017-C-032; 2017-C-079; 2017-C-085 and 2017-C-200. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Carson; Ms. Anderson. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Spence and Mr. Dunlap.

Case #2017-C-184 RECOMMENDATION was made by Dr. Spence to **CLOSE** this case with an advisory letter regarding patient communication. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Carson; Ms. Anderson. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Spence and Mr. Dunlap.

Case #2017-C-019 RECOMMENDATION was made by Dr. Spence that physician voluntarily surrender his license in NM and if he does not accept, a notice of contemplated action will be issued based on, but not limited to, incompetency to practice and failure to cooperate with the Board. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Carson; Ms. Anderson. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Spence and Mr. Dunlap.

Case #2017-C-027 RECOMMENDATION was made by Dr. Spence to offer physician a reprimand and \$150 in investigation costs. If he does not accept, a notice of contemplated action will be issued based on, but not limited to, adverse action taken by another state medical board and failure to report an adverse action to the Board as required. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Carson; Ms. Anderson. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Spence and Mr. Dunlap.

Case #2017-C-295 RECOMMENDATION was made by Dr. Spence to issue a Notice of Contemplated Action to deny licensure based on, but not limited to, misrepresentation on an application for licensure, and dishonesty. **YES:** Dr. Beaudette; Dr. Komadina; Dr. Carson; Ms. Anderson. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Spence, Mr. Dunlap and Dr. Jenkusky.

Case #2018-C-059 RECOMMENDATION was made by Dr. Spence to offer physician applicant a stipulated license requiring mandatory participation in the NM Health Professional Wellness Program. If physician does not accept, a notice of contemplated action will be issued to deny licensure based on unprofessional conduct. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Carson; Ms. Anderson. **ABSENT:** Dr. Styka. **RECUSED:** Dr. Spence and Mr. Dunlap.

Complaint Committee D

RECOMMENDATION was made by Ms. Anderson to **CLOSE** Case #2017-D-069; 2017-D-130; 2017-D-196; 2017-D-197; 2017-D-198; 2017-D-218 and 2017-D-283. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

Case #2016-D-147 RECOMMENDATION was made by Ms. Anderson to **CLOSE** the case with an advisory letter cautioning physician that a pattern of quality of care complaints received at the Board is of concern and physician needs to be aware about the context of care provided to patients. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

Case #2017-D-073 RECOMMENDATION was made by Ms. Anderson to **CLOSE** the case Complaint committee recommends closing this case with an advisory letter regarding appropriate patient communication. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

Case #2017-D-153 RECOMMENDATION was made by Ms. Anderson to **CLOSE** the case with an advisory letter regarding patient communication and that even benign statements can be misconstrued by patients. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

Case #2017-D-246 RECOMMENDATION was made by Ms. Anderson to **CLOSE** the case with an advisory letter regarding Board Regulations on timely reporting of adverse actions and reminding physician that even conduct in non-professional settings can have an impact on the profession. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

Case #2017-D-028 RECOMMENDATION was made by Ms. Anderson to offer PA a stipulated license requiring mandatory participation in the NM Health Professional Wellness Program. If PA does not accept, a notice of contemplated action will be issued based on, but not limited to, habitual and excessive use of alcohol or substances, and conduct unbecoming. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

Case #2018-D-060 RECOMMENDATION was made by Ms. Anderson that physician undergo a professionalism evaluation within 90 days, and once that evaluation is received and reviewed, the case will return to the Board for licensure decision. If physician does not accept, a notice of contemplated action will be issued to deny licensure based on, but not limited to, misrepresentation on an application and conduct unbecoming. **YES:** Dr. Jenkusky; Dr. Beaudette; Dr. Komadina; Dr. Spence; Dr. Carson and Mr. Dunlap. **ABSENT:** Dr. Styka. **RECUSED:** Ms. Anderson.

5. LICENSING ISSUES, NEW APPLICANTS / REINSTATEMENTS

Bishnu Rauth, MD Case No. 2017-027 – Decision on Affirming or Excusing Hearing Officer and Other Motions.

MOTION was made by Dr. Jenkusky to affirm the decision made by the Hearing Officer to deny the motion excusing the Hearing Officer. **Seconded** by Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

Padmaneel Kanase, MD Case No. 2017-011 – Decision and Order.

Decision moved to Friday, May 11, 2018

Robert Woody, MD, Case No. 2016-013 – Motion to Lift Stay.

Tabled.

Lynda Labranche, MD, Case No. 2017-031 – Consider Possible Settlement.

MOTION was made by Dr. Jenkusky to accept the settlement as presented. **SECONDED** by Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

Steven Black, MD, Case No. 2018-007 – Consider Possible Settlement.

No settlement presented.

Sitar Kothalanka, MD, Case No. 2017-006 – Consider Possible Settlement.

No settlement presented.

Walter Seidel, MD, Case No. 2014-062 – District Court Remanded Back to Board for Decision.

MOTION was made by Dr. Jenkusky to affirm the amended Decision and Order issued November 16, 2017. **SECONDED** by Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

Further Ms. Frank reported that Dr. Seidel was given notification by Samantha Breen and is part of the file.

Walter Seidel, MD, Case No. 2018-010 – Entry of Default Order.

MOTION was made by Dr. Jenkusky to accept the Default Order as presented. **SECONDED** by Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

6. Board Attorney Report

Margaret McLean, J.D. – For review.

CLOSED SESSION: Compliance Report and New Mexico Monitored Treatment Program Report

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 Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

7. Board Monitored Compliance Report [Non MTP]

Ms. Quintana reviewed the compliance report and reported on the status of monitored licensees.

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.

8. Federation of State Medical Boards (FSMB) – Interstate Compact

Lisa Robin, Chief Advocacy Officer for FSMB and Ian Marquand, Member of the Board of Directors for FSMB presented a brief history of the FSMB, and updates of resolutions, actions and initiatives that came out of the House of Delegates during the recent 2018 FSMB Meeting.

Ms. Robin and Mr. Marquand reported on the current status of the Interstate Medical Licensure Compact which is a voluntary expedited pathway to facilitate multistate practice, increasing access to health care for patients in underserved and rural areas. They explained the physician eligibility requirements, the State of Principal Licensure (SPL) and the role of the Interstate Medical Licensure Compact Commission. The Board discussed the Compact at length with Ms. Robin and Mr. Marquand. The Board then discussed the steps that need to be taken to initiate the Compact in New Mexico.

CLOSED SESSION: New Mexico Health Professional Wellness Program Report

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 Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

9. New Mexico Health Professional Wellness Program Report (Formerly MTP)

Andrea Newman, Dan Collins, MD and Mary Lynn Griffin of the NMHPWP presented the status of all mandatory MTP participants and answered questions from the Board.

10. Informal Interviews

Tracy Pritchard, MD (telephonic interview); Marc O’Cleireachain, MD (telephonic interview); Erika Garbrecht, MD; Steven Greer, MD; Johannes Heynkamp, MD; Stephen Cain, MD; Benjamin Stake, MD; Kathleen Van Osten, MD; David Williams and MD; Nina Nandy, MD.

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.

11. **ACTIONS RELATED TO EXECUTIVE SESSION**

None

12. **REPORTS**

Financial / HR Manager

The FY19 Operating Budget that starts on July 1, 2018 was due on May 1, 2018 and submitted to the Department of Finance & Administration-State Budget Division and the Legislative Finance Committee. The operating budget consists of:

Personal services and employee benefits	\$1,319.7
Contractual services	\$ 334.0
Other	\$ 375.0
Total:	\$2,028.7

Sources consist of: **\$1,948.7 Other Revenues and \$80.0 Fund Balance**

The operating budget includes \$20.6 compensation appropriation in HB2 Section 8 to fund salary increases for executive exempt and classified employees with an average 2% salary increase effective July 14, 2018. In addition, HB2 Section 10 includes additional BAR Authority language in the amount of \$100,000 from other state funds for administrative hearing and litigation process in FY19.

MOTION was made by Dr. Jenkusky to approve the FY19 Operating Budget. **SECONDED** by Ms. Anderson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

The FY 18 Budget and Revenue Status ending April 30, 2018 are as follows:

- Expenditures total \$1,462,798 (or 76.99%) of budgeted expenditures from July 1, 2017 thru April 30, 2018 (Opbud \$1,900,000);
- Revenues collected from July 1, 2017 through April 30, 2018 total \$978,343 (or 53.7%) of budgeted revenues in the amount of \$1,820.0. The agency also budgeted \$80.0 FB in FY18.
- The Fund Balance on June 30, 2017 is \$772,654.
- The Fund Balance in FY18 as of April 30, 2018 \$288,199. (This figure consists of Fund Balance on June 30, 2017 plus revenues collected from 7/1/17 – 4/30/18 less expenditures for the same period).
- The Cash Balance in FY18 as of April 30, 2018 is (\$484,455). (This figure consists of Revenues collected from 7/1/17 – 4/30/18 \$978,343 less expenditures for the same period \$1,462,798 resulting in a negative Cash Balance of (\$484,455).

*Essentially the agency operates with our existing fund balance from June 30 of the previous fiscal year until the agency collects sufficient revenues in the current fiscal year to offset expenditures. The bulk of the revenues are collected during licensing renewals between April-June with June being the month in which most revenues are collected in a fiscal year.

Chair Report

Dr. Jenkusky reported that next Thursday, May 17, 2018, he and Randy Marshall from the NMMS are going down to Las Cruces to the Osteopathic School to meet the new dean and discuss the possible merger of the Medical and Osteo Boards. The Board discussed the feedback they have received regarding a possible merger.

Dr. Jenkusky asked for a sense from the Board of how they feel about the FSMB Interstate Compact and beginning the legislative process for initiation. There was a consensus to begin the process. The

staff will request model legislation from the FSMB and work toward introducing legislation at the next legislative session to adopt the Interstate Compact.

Lastly, Dr. Jenkusky expressed appreciation to Albert Bourbon, PA for serving on the Board for eight years.

Executive Director

16.10.10 NMAC Reporting Regulation – Ms. Frank and Ms. Chicoine reported on the proposed changes to this regulation. The main purpose is to clarify the language in the regulation. The Board discussed the proposed changes at length. Some changes were requested by the Board, such as a good faith reporting clause, harm to the public statement and a specific clause regarding peer review actions for further review at the June 28, 2018 Interim Board Meeting.

16.10.16 NMAC Administering, Prescribing and Distribution of Medications – Ms. Frank also presented to the Board some additional changes to this regulation. After discussion a **MOTION** was made by Dr. Komadina to approve the changes to the rules as presented and to send to the Pharmacy Board for their approval. **SECONDED** by Dr. Spence. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

April 25-19, 2018 FSMB Meeting – Ms. Frank reported that Dr. La Farge received his award and that Dr. Beaudette and Mr. Dunlap also attended the meeting. Dr. Beaudette and Mr. Dunlap presented on the various breakout groups and the main issues that were discussed at the meeting.

Adoption of the Open Meetings Act.

MOTION was made by Dr. Komadina to adopt the Open Meetings Act. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

Licensing Manager

Ms. Orender requested Board approval to send advisory letters to applicants who fail to report an arrest or arrests, excluding DWI and domestic violence, and other non-disclosures such as malpractice suits and being reported to the National Practitioner Data Bank (NPDB). This advisory letter would be sent out of the Licensing Department with the Executive Director's signature. Additionally Mr. Orender proposed that the Board charge the applicant \$150 for administrative costs. **MOTION** was made by Dr. Spence to approve issuance of advisory letters for minor applicant non-disclosures and issuance of \$150.00 administrative costs to the applicant. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Dunlap. **ABSENT:** Dr. Styka. **MOTION CARRIED.**

ADJOURN

Dr. Jenkusky adjourned the first day [May 10, 2018] of the May Regular Board Meeting at 4:25 p.m.

Friday, May 11, 2018

Dr. Jenkusky reconvened the Medical Board and called the meeting to order at 8:35 a.m. on Friday, May 11, 2018; a quorum was present.

CLOSED SESSION: Informal Compliance Interviews Continued

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 Mr. Dunlap. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka and Mr. Dunlap. **ABSENT:** Ms. Anderson. **MOTION CARRIED.**

10. Informal Interviews

Karen Concilio, PA (telephonic interview); Brian Berberian, MD (telephonic interview); Suparna Saha, MD (telephonic interview – Dr. Jenkusky made two attempts to call her and she did not answer); Jenny Hargrove, MD; Miles Nelson, MD and Neil Pivar, MD.

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.

11. Compliance Requests / Actions

Suparna Saha, MD – Request for release from stipulation.

Tabled

Neil Pivar, MD – Request for release from stipulation.

MOTION was made by Dr. Jenkusky to release Dr. Pivar from stipulation. **SECONDED** by Dr. Beaudette. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

Miles Nelson, MD – Request for reactivation of his medical license.

MOTION was made by Dr. Jenkusky to DENY Dr. Nelson's request for reactivation of his medical license. **SECONDED** by Dr. Beaudette. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

Karen Concilio, PA – Request for inactive status of license while under stipulation.

MOTION was made by Dr. Jenkusky to grant inactive status to Ms. Concilio. **SECONDED** by Dr. Beaudette. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

Brian Berberian, MD – Request for release from stipulation.

MOTION was made by Dr. Jenkusky to release Dr. Berbarian from stipulation. **SECONDED** by Dr. Beaudette. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

LICENSING ISSUES, NEW APPLICANTS / REINSTATEMENTS (CONTINUED FROM THURSDAY)

Padmaneel Kanase, MD Case No. 2017-011 – Decision and Order.

MOTION was made by Dr. Jenkusky to accept in part the Hearing Officer's Report with evidence substantiating the NCA allegations in 2a, 2b, 2c, 2d and 2f. Evidence was not substantiated in 2e. **SECONDED** by Dr. Carson. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

MOTION was made by Dr. Jenkusky that in the Conclusions of Law 3a, 3b, 3c, 3f and 3h were substantiated by evidence; 3d, 3e and 3g were not substantiated. **SECONDED** by Mr. Dunlap. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

MOTION was made by Dr. Jenkusky to issue a reprimand and require that Dr. Kanase take an ethics course, pay a \$1,000.00 fine and pay Board costs. **SECONDED** by Mr. Dunlap. **YES:** Dr. Jenkusky, Dr. Beaudette, Dr. Komadina, Dr. Spence, Dr. Carson, Dr. Styka, Mr. Dunlap, and Ms. Anderson (via teleconference). **MOTION CARRIED.**

12. New Business

NM Board of Optometry: Consider position on automated eye exams.

Dr. Beaudette reported that the Optometry Board was seeking the opinion of the NMMB regarding the issue of automated eye exams. These exams are being done via a Skype type of program where the patient sits at a refracting machine and an optometrist from another state, who is not licensed in NM, asks the patient questions from a computer screen then has staff in the office with the patient adjust the refracting machine. Ms. Frank explained that she spoke with the attorney from the Board of Optometry and explained that any physician practicing medicine on a patient in New Mexico must have a license and in this case a Telemedicine license would be sufficient.

Election of Officers

Dr. Jenkusky stated that he would remain as Chair, there are no objections. Dr. Jenkusky is Chair by acclimation.

Dr. Spence nominated Dr. Beaudette as Vice Chair, Dr. Beaudette accepted. There were no objections. Dr. Beaudette is Vice Chair by acclimation.

Dr. Komadina volunteered to be Secretary, there are no objections. Dr. Komadina is Secretary by acclimation.

13. Old Business

NMMB Physician and Physician Assistant Medical Marijuana Usage Policy. Dr. Jenkusky stated that this is an ongoing issue and the Board has been asked by NMHPWP for an opinion on MDs and PAs using medical marijuana. He said the National Professional Health Programs Association is coming out with an opinion on this in the very near future. Dr. Jenkusky asked for guidance from the Board regarding what the Board's next step should be with this. He specified that nothing official needs to happen now, he and staff would like to know if it should just be dropped or actually come up with an official policy. The Board discussed this issue at length and discussed a number of factors that make this issue complex including that physicians are in a safety sensitive positions, that marijuana is difficult to test for impairment, that neuropsychological testing is not necessarily able to give us good guidance on a person's level of impairment, and that the State of Colorado has taken the position of zero tolerance for practicing physicians. The overall consensus of the Board was that zero tolerance for cannabis (THC) was the goal for practicing physicians. The Board asked Ms. Frank to pull any regulations or policies that Colorado has in place, then they will review what the National Professional Health Programs Association recommendation is and go forward with a regulation that would reflect this discussion.

James Rice, MD – Medical Cannabis dispensary within an established pain management facility.

James Rice, MD and David Pacheco, PA presented their model at the Southwest Interventional Pain Specialist to the Board. They discussed the clinic's history. Dr. Rice stated that since cannabis was implemented into the clinic in 2016 the use of benzodiazepine medication use has significantly decreased as well as the amount of opioids used. They discussed several barriers to cannabis utilization such as lack of patient guidance on what may work best; patient monitoring can become challenging; the PMP is not available for cannabis and patient follow up has been historically poor. The clinic's current practices when medical cannabis is being used are using a controlled substance agreement and drug screening every three months along with follow up visits.

Dr. Rice is requesting improved outcome data with the use of medical cannabis and that the dispensing of medical cannabis be allowed within the facility for chronic pain patients to allow for better monitoring and proper dosing adjustments. The Board discussed the information presented and asked various questions. They believe that this needs to be presented to the Department of Health as the regulators of Medical Cannabis.

Mental health question on initial application and renewal application.

Dr. Jenkusky began the discussion regarding the issue of medical histories obtained from licensing applicants during the application process that further the stigma of mental illness and discourage physicians from seeking treatment for mental health issues. Dr. La Farge presented a page of

variations of the question and also reported that the FSMB has recommended a universal question. Ms. Frank talked about various options that Board could consider as a resolution. Dr. Styka suggested that the question be changed to "Do you have any illness or condition which may impair your judgement or which could affect your ongoing ability to practice medicine in a competent manner?" The Board wants to further word smith the various options that were presented.

Disciplinary Guidelines

Ms. Quintana briefly provided an update.

14. ADJOURN

There being no further business before the Board, Dr. Jenkusky adjourned the meeting at 12:20 P.M.

SUBMITTED BY: _____ DATE: _____
Sondra Frank, J.D., Executive Director

APPROVED BY: _____ DATE: _____
Steven M. Jenkusky, M.D., Chair

APPROVED BY: _____ DATE: _____
Peter Beaudette, M.D., Vice Chair