

**NEW MEXICO MEDICAL BOARD
Fourth Quarter Meeting
November 12-13, 2009**

MINUTES

Members Present: Paul Kovnat, M.D., Chairman
Steven Weiner, M.D., Vice-Chair
Reza Ghadimi, P.A., Secretary / Treasurer
Roger Miller, M.D.
Steve Jenkusky, M.D.
Ann Wehr, M.D.
Kathy Abeles, Public Member
Rebecca Cochran, Public Member

Absent: Frank Crespin, M.D.

Others Present: Lynn Hart, Executive Director
Grant La Farge, M.D., Medical Director
Andrea Buzzard, Assistant Attorney General
G.T.S. Khalsa, Board Prosecutor
J.J. Walker, Compliance Mgr. / PIO
Lynn Tipton, Administrative Assistant
Geraldine Mascarenas, Deputy Director
Debbie Dieterich, Senior Investigator
Jonni Lu Pool, Investigator
Amanda Quintana, Licensing Manager

(See list of all attendees attached to these minutes.)

1. **CALL TO ORDER / ROLL CALL / INTRODUCTIONS:**
Dr. Kovnat, Board Chairman, called the regular meeting of the New Mexico Medical Board to order at 8:42 a.m., and a quorum was determined present.
2. **APPROVAL OF AGENDA:**
MOTION was made by Ms. Abeles to approve the agenda. **SECONDED** by Dr. Miller. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Ms. Cochran and Mr. Ghadimi. **MOTION CARRIED.**
3. **APPROVAL OF MINUTES:**
MOTION was made by Dr. Kovnat to approve the Minutes from the September 24, 2009 Interim Meeting. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Ms. Abeles, Dr. Jenkusky, Dr. Wehr, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**
4. **COMPLAINT COMMITTEE REPORTS:**

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters pertaining to the issuance, suspension, renewal or revocation

of a license. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**

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

5. ACTIONS RELATED TO EXECUTIVE SESSION

A. Licensees and Applicants

Complaint Committee A:

RECOMMENDATION was made by Dr. Weiner to close complaint cases 2008-A-255; 2009-A-014; 2009-A-015; 2009-A-027, 2009-A-033; 2009-A-037; 2009-A-044; 2009-A-063; 2009-A-078; 2009-A-108; 2009-A-112; 2009-A-114 and 2009-A-129, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Miller, Dr. Jenkusky, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **ABSTAINED:** Dr. Weiner and Dr. Wehr. **RECOMMENDATION PASSED.**

Case No. 2008-A-230 RECOMMENDATION was made by Dr. Weiner to close this case and to send physician an advisory letter regarding patient interaction and communication. **YES:** Dr. Kovnat, Dr. Miller, Dr. Jenkusky, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **ABSTAINED:** Dr. Weiner and Dr. Wehr. **RECOMMENDATION PASSED.**

Case No. 2009-A-086 ([REDACTED]). RECOMMENDATION was made by Dr. Weiner to refer physician to an Impaired Physician Committee for evaluation. If physician does not accept the referral, issue a Notice of Contemplated Action based on failure to cooperate with a Board investigation. **YES:** Dr. Kovnat, Dr. Miller, Dr. Jenkusky, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **ABSTAINED:** Dr. Weiner and Dr. Wehr. **RECOMMENDATION PASSED.**

Complaint Committee B:

RECOMMENDATION was made by Ms. Cochran to close complaint cases 2006-B-116; 2009-B-004; 2009-B-010; 2009-B-034; 2009-B-048; 2009-B-049; 2009-B-062; 2009-B-065; 2009-B-089; 2009-B-141 and 2009-B-151 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Wehr, Dr. Jenkusky, Ms. Abeles and Mr. Ghadimi. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Case No. 2009-B-011 RECOMMENDATION was made by Ms. Cochran to close this case and to send physician an advisory letter regarding patient communication. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Wehr, Dr. Jenkusky, Ms. Abeles and Mr. Ghadimi. **ABSTAINED:** Ms. Cochran and Dr. Miller. **RECOMMENDATION PASSED.**

Complaint Committee C:

RECOMMENDATION was made by Ms. Abeles to close complaint cases 2008-C-140; 2008-C-166; 2009-C-030; 2009-C-036; 2009-C-056; 2009-C-061; 2009-C-069; 2009-C-072; 2009-C-081; 2009-C-099 and 2009-C-111 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Ms. Cochran and Mr. Ghadimi. **ABSTAINED:** Ms. Abeles. **RECOMMENDATION PASSED.**

Case No. 2008-C-231 RECOMMENDATION was made by Ms. Abeles to close this case and to send physician and resident physician an advisory letter reminding them about maintaining

accurate medical records. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Ms. Cochran and Mr. Ghadimi. **ABSTAINED:** Ms. Abeles. **RECOMMENDATION PASSED.**

Case No. 2009-C-043 RECOMMENDATION was made by Ms. Abeles to close this case and to send physician an advisory letter reminding physician of the Board's requirement to report adverse actions. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Ms. Cochran and Mr. Ghadimi. **ABSTAINED:** Ms. Abeles. **RECOMMENDATION PASSED.**

Case No. 2009-C-050 RECOMMENDATION was made by Ms. Abeles to close this case and to send physician an advisory letter regarding patient communication with vulnerable and upset patients. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Ms. Cochran and Mr. Ghadimi. **ABSTAINED:** Ms. Abeles. **RECOMMENDATION PASSED.**

Case No. 2009-C-087 (Shahper Khalid, MD). RECOMMENDATION was made by Ms. Abeles to issue a Notice of Contemplated Action based on action taken in another state. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Ms. Cochran and Mr. Ghadimi. **ABSTAINED:** Ms. Abeles. **RECOMMENDATION PASSED.**

Case No. 2009-C-113 ([REDACTED]). RECOMMENDATION was made by Ms. Abeles to offer physician a stipulated license and if physician does not accept, issue a Notice of Contemplated Action based on action taken in another state. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Ms. Cochran and Mr. Ghadimi. **ABSTAINED:** Ms. Abeles. **RECOMMENDATION PASSED.**

Complaint Committee D:

RECOMMENDATION was made by Dr. Jenkusky to close complaint cases 2008-D-244; 2009-D-035; 2009-D-066; 2009-D-075; 2009-D-091; 2009-D-096 and 2009-D-148 as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Mr. Ghadimi and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case No. 2008-D-024 ([REDACTED]). RECOMMENDATION was made by Dr. Jenkusky to offer physician a stipulated license requiring mandatory participation in the NM Monitored Treatment Program and other standard substance abuse stipulations. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Mr. Ghadimi and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case No. 2009-D-090 ([REDACTED]). RECOMMENDATION was made by Dr. Jenkusky to offer physician the opportunity to place his application on hold while he comes into compliance with the NM Monitored Treatment Program recommendation to attend and complete an inpatient treatment program for health professionals or physician may withdraw his application for licensure while under investigation. This action is reportable to the National Data Bank. If physician does not agree to either, a Notice of Contemplated Action will be issued based on failure to cooperate with a Board investigation. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Mr. Ghadimi and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case No. 2009-D-110 ([REDACTED]). RECOMMENDATION was made by Dr. Jenkusky to issue a Notice of Contemplated Action based on sexual contact with a patient and based on failure to maintain accurate and complete medical records with regards to

complainant's son. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Mr. Ghadimi and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case No. 2009-D-153 ([REDACTED]). **RECOMMENDATION** was made by Dr. Jenkusky to allow physician to withdraw his application for reinstatement while under investigation. This action is reportable to the National Data Bank. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Mr. Ghadimi and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Case No. 2009-D-201 (James Hartenbach, MD). **RECOMMENDATION** was made by Dr. Jenkusky to issue a Notice of Contemplated Action based on dishonesty and conduct unbecoming in a person licensed to practice medicine. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Mr. Ghadimi and Dr. Jenkusky. **RECOMMENDATION PASSED.**

Complaint Committee F:

Case No. 2009-F-193 ([REDACTED]). **RECOMMENDATION** was made by Dr. Kovnat to issue a Notice of Contemplated Action based on physician's violation of his April 2009 Board Order with regard to his involvement in the company's cosmetic products. This will be combined with the Notice of Contemplated Action issued in September 2009 in connection with Case No. 2009-F-186. **YES:** Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Mr. Ghadimi and Ms. Abeles. **ABSTAINED:** Dr. Kovnat and Ms. Cochran. **RECOMMENDATION PASSED.**

Case No. 2009-F-200 ([REDACTED]). **RECOMMENDATION** was made by Dr. Kovnat to offer physician a formal letter of reprimand based on his admission of prescribing without establishing a physician-patient relationship and fining him \$3,000.00. This action is reportable to the National Data Bank. If physician does not accept this offer, issue a Notice of Contemplated Action based on prescribing without establishing a physician-patient relationship. **YES:** Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Jenkusky, Mr. Ghadimi and Ms. Abeles. **ABSTAINED:** Dr. Kovnat and Ms. Cochran. **RECOMMENDATION PASSED.**

B. Executive Committee Report

- Criminal History Hits
The Board reviewed the reports on criminal background arrest records "hits" compiled by the Executive Committee in executive session and accepted their recommendations. The Executive Committee members are Dr. Kovnat, Dr. Weiner, and Lynn Hart.
- Other Cases
The Board reviewed the reports on other cases compiled by the Executive Committee in executive session and accepted their recommendations. The Executive Committee members are Dr. Kovnat, Dr. Weiner, and Lynn Hart.

C. Procedure for self reporting of DWIs

Ms. Hart reported on the procedure followed when an applicant or licensee self-reports a DWI. Board Staff calls and/or sends a letter informing the person that they need to go to MTP for an assessment. A copy of this letter is also sent to MTP. MTP and the applicant or licensee keep the staff apprised of the progress of the assessment. When MTP reports back to the Board that the person does not meet the criteria for substance abuse, no investigation is opened unless the Executive Committee so orders. If the assessment is positive for substance abuse, an investigation is opened. It is the

Board's policy to send any applicant or licensee that is arrested for DWI, within the last five years, to MTP for an assessment.

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

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

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

7. ACTIONS RELATED TO EXECUTIVE SESSION

- **Decision and Order** – Bishnu Rauth, M.D. – Case #2009-017 - **MOTION** was made by Dr. Kovnat to **ACCEPT** the Hearing Officer's report in its entirety and place his medical license on indefinite probation on the condition that he complete a Board-approved ethics course. This course must be taken and completed within six months of the Board Order, after which time, he may request that the Board release him from probation. Ms. Cochran **SECONDED**. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Abeles, Mr. Ghadimi, Dr. Jenkusky and Ms. Cochran. **MOTION CARRIED**
- **Decision and Order** - Pierre Kamguia, M.D. – Case #2009-012 - **MOTION** was made by Mr. Ghadimi to **ACCEPT** the Hearing Officer's report in its entirety and **send** an advisory letter to Dr. Kamguia regarding maintaining accurate and complete medical records. Dr. Jenkusky **SECONDED**. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Abeles, Mr. Ghadimi, Dr. Jenkusky and Ms. Cochran. **MOTION CARRIED**
- **Consider Settlement** – Twana Sparks, M.D. – Case #2009-011 - **MOTION** was made by Ms. Cochran to accept the Agreed Order as presented and restrict Dr. Sparks' license to practice medicine in New Mexico. Dr. Jenkusky **SECONDED**. **YES:** Dr. Kovnat, Dr. Miller, Dr. Wehr, Ms. Abeles, Mr. Ghadimi, Dr. Jenkusky and Ms. Cochran. **RECUSED:** Dr. Weiner. **MOTION CARRIED**
- **Consider Settlement** – Mark Van Wormer, M.D. – Case #2009-030 - **MOTION** was made by Dr. Weiner to accept the Agreed Order as presented and **REVOKE** Dr. Van Wormer's license to practice medicine in New Mexico. Dr. Jenkusky **SECONDED**. **YES:** Dr. Miller, Dr. Wehr, Ms. Abeles, Mr. Ghadimi, Dr. Jenkusky, Dr. Weiner and Ms. Cochran. **RECUSED:** Dr. Kovnat. **MOTION CARRIED**
- **Kevin McClintock, M.D.** – Consider 17 years of medical practice experience in lieu of seven months of post graduate training. **MOTION** was made by Dr. Jenkusky to accept his medical experience in lieu of his second year of residency and **GRANT** an unrestricted license to practice medicine in New Mexico. Mr. Ghadimi **SECONDED**. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Jenkusky, Mr. Ghadimi, Dr. Miller, Ms. Cochran and Ms. Abeles. **RECUSED:** Dr. Wehr. **MOTION CARRIED**
Recall of the vote.
MOTION was made by Dr. Kovnat to accept his medical experience in lieu of seven months of post graduate training and **GRANT** an unrestricted license to practice medicine

in New Mexico. Ms. Cochran **SECONDED: YES:** Dr. Kovnat, Dr. Weiner, Dr. Jenkusky, Dr. Miller, Ms. Cochran, Ms. Abeles and Dr. Wehr. **MOTION CARRIED**

- **Timothy Link, M.D.** – Request exception to 7 year rule and grant unrestricted medical license. **MOTION** was made by Dr. Wehr to **GRANT** an exception to the 7 year rule for continuous post-graduate training and completion of all three steps of the USMLE within 2 tries each, based on the Rules, and grant an unrestricted license to practice medicine in New Mexico. Dr. Miller **SECONDED: YES:** Dr. Kovnat, Dr. Weiner, Dr. Jenkusky, Mr. Ghadimi, Dr. Miller, Ms. Abeles and Dr. Wehr. **RECUSED:** Ms. Cochran.
- **Peter Bernat, M.D.** – Consider accepting AACRAO evaluation for equivalency of medical education and post graduate training. **MOTION** was made by Dr. Kovnat to accept the AACRAO evaluation and **GRANT** a license to practice medicine in New Mexico. Dr. Jenkusky **SECONDED: YES:** Dr. Kovnat, Dr. Weiner, Dr. Jenkusky, Mr. Ghadimi, Dr. Miller, Dr. Wehr and Ms. Abeles. **NO:** Ms. Cochran.

8. **NEW BUSINESS**

- A. 2010 Legislative Session** – Ms. Hart informed the Board that as a result of the Special Session, the Governor signed HB 3 that transfers \$1,000,000.00 from the Board's cash balance to the General Fund.
- B. Policy for Administrative License** – No discussion was held at this time.
- C. Approve Chiropractic Formulary and Educational Criteria** – Representatives from the Chiropractic Board and Chiropractic profession were present for a discussion on the proposed Advanced Practice Chiropractic Formulary. This Formulary was prepared by representatives from the Chiropractic Board and the Pharmacy Board for approval by the Medical Board. The Board of Pharmacy approved the "Advanced Practice Chiropractic Formulary" on October 19, 2009. Comments in opposition to the Formulary were received from the NM Osteopathic Medical Association and the Greater Albuquerque Medical Association (GAMA) expressing concern with appropriate training, efficacy and patient safety. GAMA expressed strenuous objections to allowing Chiropractors to use and administer injectable or intra-venous substances. These comments were read into the record. It was also noted for the record that the NM Medical Society has not approved the proposed Formulary. After a lengthy discussion regarding the pros and cons related to the proposed Formulary, Dr. Kovnat appointed Dr. La Farge, Dr. Weiner and Mr. Ghadimi to work with the Chiropractic Formulary Taskforce in determining the scope of practice, applicability and appropriateness of the injectable and intra-venous drugs listed in the Formulary, as well as concerns about drug efficacy and safety, in the interest of protecting the public. A representative from the NM Medical Society may also be appointed to this Taskforce. The Board will revisit this issue at their next quarterly meeting. **MOTION** was made by Ms. Cochran to table approval of the Chiropractic Formulary. **SECONDED** by Dr. Miller. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Jenkusky, Mr. Ghadimi, Dr. Miller, Dr. Wehr, Ms. Abeles and Ms. Cochran.
- D. Physician Involvement in Medical Cannabis Production** – The Board received a request for written notification regarding the liability of physicians who may choose to be involved with medical cannabis production, as it relates to possible violation of the Medical Practice Act. Ms. Hart presented the following proposed policy statement:

"The NM Medical Board does not consider participation on the part of licensees in the medical cannabis program to be a violation of the Medical Practice Act and will not prosecute licensees under its jurisdiction as long as the licensee is in compliance with the Department of Health regulations governing the Medical Cannabis Program; and, with the caveat that the Federal government may, at any time, enforce violations of the Federal Controlled Substances Act under its jurisdiction. Please note Attorney Generals Advisory Letter to Dr. Alfredo Vigil, Department of Health, dated August 6, 2007. (see attached)

Dr. Kovnat **MOVED** to adopt this statement as policy. Ms. Cochran **SECONDED**.
YES: Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Ms. Abeles and Ms. Cochran.
NO: Dr. Jenkusky. **ABSENT:** Mr. Ghadimi.

9. REPORTS

- A. **Chair** – No report at this time.
- B. **Executive Director** – Ms. Hart discussed the high cost of hearings related to disciplinary actions. She advised that pursuant to the Medical Practice Act, the Board has the authority to fine and assess costs for depositions, experts, court reporting, transcripts and other expenses back to the licensee. Ms. Hart noted that any fines assessed and collected are required to go to the state school fund pursuant to the state constitution.
- C. **Medical Director** – No report at this time.
- D. **Assistant Attorney General** – Gross Negligence – Andrea Buzzard, AAG, copied the Board with a memo listing various court rulings on "gross negligence" which will be used as a guideline for disciplinary cases related to gross negligence.
- E. **Administrative Prosecutor** - Mr. Khalsa reviewed the NCA report and noted that there is only one NCA that is outstanding. Two hearings are scheduled, one in December and one in January.
- F. **Licensing Manager** – Ms. Quintana reviewed the 2009 CME audit results. This year the Licensing Department also audited the audited licensees to find out who is board certified, holds lifetime certification or time-limited certification and what percentage of CME hours were completed within their specialty. One hundred and seventy one licensees were randomly selected. As of November 1, 2009, three licensees had not responded to the audit. Out of those licensees audited, one hundred and forty-eight licensees are board certified, 58 hold lifetime certification and 90 hold time limited certification.
Ms. Quintana provided the final licensee renewal numbers for FY2009 and reviewed the EXECNET survey that was requested by the Board regarding providers who maintain an active license, and have been out of clinical practice. Sixteen state boards responded to the survey. Half of the state boards do not monitor whether a provider has been out of practice while maintaining an active license. Staff recommended adding a rule that would require providers to notify the board 90 days prior to re-entry into clinical practice. Further discussion of the relationship between active licensure and medical practice will be held at a later time.

- G. **Financial / HR Manager** – Ms. Mascarenas reviewed the FY2010 Budget and Revenue Status report. At this time, revenues are lower than expenditures due to the fact that most revenues are expected during the renewal period of April-June, 2010 license renewals.
- H. **Investigation Department** – No report at this time.
- I. **Public Information Officer** – No report at this time.

10. NM MONITORED TREATMENT PROGRAM

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

11. COMPLIANCE DEPARTMENT

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters of licensure. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**

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

- Board Monitored Compliance Report - Ms. Walker reviewed the compliance report and provided the status on all licensees.

12. ACTIONS RELATED TO EXECUTIVE SESSION

- Board Order – **Gary Puro, M.D.** – (request probation be terminated) - **MOTION** was made by Dr. Kovnat to **DENY** licensee's request to be removed from probation. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED**
- Board Order – **Paul Engstrom, M.D.** - (request probation be terminated) - **MOTION** was made by Dr. Kovnat to remove all Stipulations and **GRANT** Dr. Engstrom an unrestricted license. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**
- Board Order – **Robert George, M.D.** – (request probation be terminated) - **MOTION** was made by Dr. Kovnat to **DENY** licensee's request to be removed from probation. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**
- Board Order – **James Rose, M.D.** (request probation be terminated) - **MOTION** was made by Dr. Kovnat to remove all Stipulations and **GRANT** Dr. Rose an unrestricted license. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**

13. INFORMAL INTERVIEWS

Christopher Gallagher, MD, Ralph Hansen, MD and Allen Mock, MD were interviewed in open session. Adelfio Fronterotta, MD, Stephanie Hedstrom, MD, Daniel Noonan, MD, Jon Wagner, MD, Bryan Wayne, MD, Michael Carey, MD and Robert George, MD were interviewed in Executive Session regarding current practices and compliance with the Board's orders. Howard Nunn, MD, Susan Rendon, MD and Gary Puro, MD were interviewed via teleconference.

14. ACTIONS RELATED TO EXECUTIVE SESSION - No actions were taken at this time.

15. RULE HEARING – ADOPTION OF RULES

A rule hearing was held on Friday at 9:00 am and the following rules were considered:

- 16.10.9 NMAC – Fees
- 16.10.20 NMAC – Polysomnographic Technologists: Licensure and Practice Requirements

16.10.9 NMAC – Fees - **MOTION** was made by Dr. Kovnat to adopt 16.10.9 NMAC as proposed. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles and Ms. Cochran. **ABSENT:** Mr. Ghadimi. **MOTION CARRIED.**

16.10.20 NMAC – Polysomnographic Technologists: Licensure and Practice Requirements - **MOTION** was made by Dr. Kovnat to adopt 16.10.20 NMAC as amended at the Rule Hearing. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles and Ms. Cochran. **ABSENT:** Mr. Ghadimi. **MOTION CARRIED.**

EXECUTIVE SESSION:

MOTION was made by Dr. Kovnat to go into closed session pursuant to Section 10-15-1(H)(1) of the Open Meetings Act to discuss matters of licensure. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Mr. Ghadimi and Ms. Cochran. **MOTION CARRIED.**

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

16. OLD BUSINESS

A. Medical Malpractice Act and Physician Corporations – NMMS – Andrea Buzzard, Assistant Attorney General, informed the Board at the September meeting that she had reviewed this issue in the past and written an opinion on this subject. She had offered this information to the attorney representing the Public Regulation Commission, Department of Insurance. She informed the Board that as of the date of this board meeting, the Attorney General's office has not received a request for an official opinion regarding whether or not physician practices which are incorporated are covered under the Medical Malpractice Act. Randy Marshall, NM Medical Society Executive Director, informed the Board that the Medical Society plans to issue a writ of mandamus against the Department of Insurance. This will be filed in Hobbs and will request an expedited hearing. Mr. Marshall estimated that over 500 professional corporations will be impacted if the Bulletin issued by the Department of Insurance goes into effect January 1, 2010, and a number of issues would then need to be addressed.

B. Regulation of Urgent Care Centers – NMMS - Lynn Bryant, MD, President-Elect of the New Mexico Medical Society, addressed the Board to request their assistance in

defining what urgent care centers are and establishing guidelines that would define the services that they provide. Dr. Bryant stated that the public assumes these centers are a step below an emergency room. The Department of Health (DOH) does not have a licensure category for urgent care centers. Ms. Hart and Dr. Kovnat will establish a committee to assist in drafting procedures and guidelines, as well as, research other states' policies. Representatives from the Osteopathic Board and Nursing Board will be invited to participate on this committee.

- C. **Review Proposed Revisions to the Psychologist Prescribing Rule** – This item was postponed until the next quarterly meeting in February 2010, when one of the presenters was unable to attend.
- D. **Physicians Practicing Acupuncture** – The Board received a request to provide a written ruling as to whether physicians would be in violation of the Medical Practice Act if they *practiced* Acupuncture. This item was discussed at the September meeting with Andrea Buzzard, Assistant Attorney General. Ms. Buzzard reviewed Section 61-14A-6 of the Acupuncture and Oriental Medicine Practice Act, which provides that if a doctor advertises to the public or private group that he is an Acupuncturist or includes the term "Acupuncture" in writing, that he must have a Acupuncture license. Ms. Buzzard stated that there is nothing else in the Acupuncture and Oriental Medicine Practice Act that would prevent a physician from using Acupuncture procedures. Before making any decisions on this issue, the Board directed staff to have further consultation with Dean John Pieper, UNM School of Pharmacy and Chair of the Oriental Medicine and Acupuncture Board.
- E. **Franchising Arrangements** – The Board discussed this item at the September Interim Meeting. The Board's Assistant Attorney General and Executive Director are drafting a response.

17. **ACTIONS RELATED TO EXECUTIVE SESSION** - No actions were taken at this time.

18. **PRESENTATION BY MARTIN CRANE, M.D., CHAIRMAN, FSMB – MAINTENANCE OF LICENSURE** - Dr. Crane gave an overview of the history and development of the program for maintenance of licensure that the Federation has undertaken. The Federation has been conducting research on the implications and impacts that maintenance of licensure would have to state boards. Dr. Crane stated that the intent is to be sure physicians are qualified and competent within their scope of practice not only in the initial application process, but at the time of renewal of licensure, and throughout their professional careers. A final report will be sent to the Federation Board in February, 2010 and presented to the House of Delegates at the April, 2010 annual meeting.

19. **ADJOURN** - There being no further business, the meeting adjourned at 12:36 p.m.

SUBMITTED BY: 
Lynn Hart, Executive Director

DATE: 1-7-2010

APPROVED BY: 
Paul Kovnat, M.D., Chair

DATE: 1/12/10