

**NEW MEXICO MEDICAL BOARD**  
**Fourth Quarter Meeting**  
**November 8-9, 2012**

**MINUTES**

**Members Present:**

Steve Weiner, MD, Chair (by teleconference 10:20 a.m. & in person 11:20; out at 4:55 p.m. 11-08-12)  
Rebecca Cochran, CPMSM, CPCS, Vice Chair  
Paul Kovnat, MD, Secretary / Treasurer (out at 4:55 p.m. 11-08-12)  
Roger Miller, MD (out at 4:55 p.m. 11-08-12)  
Steven Jenkusky, MD  
Sam Kankanala, MD  
Steven Komadina, MD  
Albert Bourbon, PA

**Members Absent:**

Albert Bourbon, PA (11-09-12)

**Others Present:**

Lynn Hart, Executive Director  
Andrea Buzzard, Assistant Attorney General (in at 12:00 p.m. 11-08-12)  
Dan Rubin, Administrative Prosecutor  
Grant La Farge, M.D., Medical Director  
Gayle Mascarenas, CFO/HR  
J.J. Walker, Compliance / PIO  
Amanda Quintana, Licensing Manager  
Debbie Dieterich, Investigations Manager  
Amanda Chavez, Investigator  
(see list of attendees attached to these minutes)

**1. CALL TO ORDER / ROLL CALL:**

Ms. Cochran, Vice Chair, called the regular meeting of the New Mexico Medical Board to order at 8:30 a. m. and a quorum was present.

**2. APPROVE AGENDA:**

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

**3. APPROVE MINUTES:**

**MOTION** was made by Dr. Komadina to approve the September 27, 2012, Interim Meeting Minutes. **SECONDED** by Dr. Jenkusky. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kovnat, and Dr. Jenkusky. **ABSENT:** Dr. Weiner and Mr. Bourbon. **ABSENT** from the September meeting: Dr. Kankanala. **MOTION CARRIED.**

## **EXECUTIVE SESSION:**

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

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

## **4. COMPLAINT COMMITTEE REPORTS:**

### **A. Complaint Committee Reports**

#### **Complaint Committee A:**

**RECOMMENDATION** was made by Dr. Kovnat to close complaint cases 2011-A-147, 2011-A-190, 2011-A-201, 2011-A-222, 2011-A-224, 2011-A-227, 2011-A-240, 2011-A-242, 2012-A-004, and 2012-A-019, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Ms. Cochran, Dr. Miller, Dr. Kankanala, Mr. Bourbon and Dr. Jenkusky. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2012-A-015 RECOMMENDATION** was made by Dr. Komadina to close this case and issue an advisory letter regarding the organization of discharge procedures for patient care, especially for patients who are traveling distances with a copy sent to the institution.

**Case #2012-A-018 RECOMMENDATION** was made by Dr. Komadina to close this case and issue an advisory letter on patient communication, sanitation of the office and cooperating with a board investigation.

**Case #2012-A-074 RECOMMENDATION** was made by Dr. Komadina to close this Case and issue an advisory letter on boundaries. **RECUSED:** Dr. Kovnat.

**Case #2012-A-085 RECOMMENDATION** was made by Dr. Komadina to close this case and issue an advisory letter regarding due diligence when charting orders for patients.

**Case #2012-A-116 RECOMMENDATION** was made by Dr. Komadina to close this case and grant applicant an unrestricted license and issue advisory letter on full disclosure.

**YES:** Ms. Cochran, Dr. Miller, Dr. Kankanala, Mr. Bourbon and Dr. Jenkusky.

**ABSTAINED:** Dr. Kovnat and Dr. Komadina. **ABSENT:** Dr. Weiner.

**RECOMMENDATION PASSED.**

**2012-A-061 RECOMMENDATION** was made by Dr. Kovnat to issue a Notice of Contemplated Action based on, but not limited to, injudicious prescribing and failure to maintain accurate medical records on a patient. **YES:** Ms. Cochran, Dr. Miller, Dr. Kankanala, Mr. Bourbon and Dr. Jenkusky. **ABSTAINED:** Dr. Kovnat and Dr. Komadina. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

#### **Complaint Committee B:**

**RECOMMENDATION** was made by Ms. Cochran to close complaint cases 2011-B-126, 2011-B-134, 2011-B-176, 2011-B-192, 2011-B-202, 2011-B-231, 2012-B-003, 2012-B-020, and 2012-B-107, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Mr. Bourbon, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, and Dr. Jenkusky.

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

**Case #2011-B-106 RECOMMENDATION** was made by Ms. Cochran to close this case and issue an advisory letter on patient communication and cooperation with a board investigation.

**Case #2012-B-058 RECOMMENDATION** was made by Ms. Cochran to close this case and issue an advisory letter regarding patient interaction.

**Case #2012-B-133 RECOMMENDATION** was made by Ms. Cochran to close this case and grant applicant an unrestricted license and issue an advisory letter regarding providing full disclosure.

**YES:** Mr. Bourbon, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, and Dr. Jenkusky.

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

**Case #2012-B-068 RECOMMENDATION** was made by Ms. Cochran to issue a Notice of Contemplated Action based on, but not limited to, disciplinary action taken by another licensing jurisdiction. **YES:** Mr. Bourbon, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, and Dr. Jenkusky. **ABSTAINED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2012-B-109 RECOMMENDATION** was made by Ms. Cochran to issue a Notice of Contemplated Action to deny licensure based on, but not limited to, incompetency to practice medicine. **YES:** Mr. Bourbon, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, and Dr. Jenkusky. **ABSTAINED:** Ms. Cochran and Dr. Miller. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

#### **Complaint Committee C:**

**RECOMMENDATION** was made by Dr. Kankanala to close complaint cases 2011-C-149, 2011-C-188, 2011-C-203, 2011-C-238, 2012-C-002, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **ABSTAINED:** Dr. Kankanala. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2011-C-200 RECOMMENDATION** was made by Dr. Kankanala to close this case and issue an advisory letter on providing proper notice of patient termination.

**Case #2012-C-029 RECOMMENDATION** was made by Dr. Kankanala to close this case and issue an advisory letter regarding the delay in communication with patients.

**YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky.

**ABSTAINED:** Dr. Kankanala. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2012-C-084 RECOMMENDATION** was made by Dr. Kankanala to order the physician be evaluated by an Impaired Physician Committee (IPC) under the Impaired Healthcare Provider Act. The case will return to the Board when the IPC Report is received and when the Board receives additional information on the criminal investigation and final disposition of the criminal case. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **ABSTAINED:** Dr. Kankanala. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Complaint Committee D:**

**RECOMMENDATION** was made by Mr. Bourbon to close complaint cases 2011-D-141, 2011-D-150, 2011-D-174, 2011-D-187, 2011-D-193, 2011-D-199, 2012-D-036, and 2012-D-121, as there was no evidence of a violation of the Medical Practice Act or rules. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2011-D-148 RECOMMENDATION** was made by Dr. Jenkusky to close this case and issue an advisory letter regarding patient communication, informed consent, and accurate medical record keeping.

**Case #2011-D-198 RECOMMENDATION** was made by Dr. Jenkusky to close this case and issue an advisory letter regarding proper termination of patient by a psychiatrist, not his office receptionist.

**Case #2011-D-221 RECOMMENDATION** was made by Dr. Jenkusky to close this case and issue an advisory letter regarding appropriate patient termination and providing advice on resources for healthcare.

**YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala and Dr. Kovnat.

**ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Weiner.

**RECOMMENDATION PASSED.**

**Case #2012-D-078 RECOMMENDATION** was made by Dr. Jenkusky to offer physician a Letter of Reprimand based on, but not limited to, injudicious prescribing and violating a Federal drug law. Physician will also be required to immediately obtain the required 5 hours of CME in prescribing. If physician does not accept the offer, recommend issuance of a Notice of Contemplated Action based on same. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala and Dr. Kovnat. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2012-D-101 RECOMMENDATION** was made by Dr. Jenkusky to issue a Notice of Contemplated Action based on, but not limited to, misrepresentation on renewal applications, injudicious prescribing, violation of a state drug law and conduct unbecoming.

**YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala and Dr. Kovnat.

**ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Weiner.

**RECOMMENDATION PASSED.**

**Case #2012-D-112 RECOMMENDATION** was made by Dr. Jenkusky that Resident Physician be ordered to undergo an evaluation under the Impaired Healthcare Provider Act.

The case will remain open pending receipt of the report and then will be returned to the Board.

**YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala and Dr. Kovnat.

**ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Weiner.

**RECOMMENDATION PASSED.**

**Complaint Committee E:**

**RECOMMENDATION** was made by Dr. Weiner to close complaint cases 2012-E-075 and 2012-E-076, as there was no evidence of a violation of the Medical Practice Act or rules.

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

**Case #2011-E-115 RECOMMENDATION** was made by Dr. Weiner to issue a summary suspension based on the physician being an imminent danger to the public, along with the issuance of a Notice of Contemplated Action based on, but not limited to, manifest

incapacity to practice medicine, injudicious prescribing, falsifying medical records, and misrepresentation on renewal applications.

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

**Case #2012-E-122 RECOMMENDATION** was made by Dr. Weiner to issue a Notice of Contemplated Action to deny licensure based on unprofessional conduct. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Jenkusky, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner. **RECOMMENDATION PASSED.**

**Case #2012-E-134 RECOMMENDATION** was made by Dr. Weiner to transfer this case to the legal department for expert review on standard of patient care. This case will return to the Board for final determination once the expert report is received. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Jenkusky, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Dr. Weiner. **RECOMMENDATION PASSED.**

**B. Executive Committee Report**

There were no criminal history hits. The Board reviewed and Ms. Cochran **RECOMMENDED** that the Executive Committee Report be approved. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Jenkusky, Mr. Bourbon and Dr. Kovnat. **ABSTAINED:** Ms. Cochran. **ABSENT:** Dr. Weiner. **RECOMMENDATION PASSED.**

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

**A. Jasmine Breitung, M.D.**

**1. Decision and Order**

**MOTION** was made by Dr. Weiner to **ACCEPT** the Hearing Officer's Report as amended and issue an advisory letter advising the physician to abide by all Federal and State laws, including but not limited to, Federal and State drug laws. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller and Dr. Kankanala. **NO:** Dr. Jenkusky. **RECUSED:** Mr. Bourbon. **ABSTAINED:** Dr. Komadina and Dr. Kovnat. **MOTION CARRIED.**

**2. Motion for Costs**

Dan Rubin, Prosecuting Attorney, requested that the Board formally withdraw the motion for costs in the case of Dr. Breitung.

**B. Consider Settlement – Richard Lieberman, M.D.**

**MOTION** was made by Dr. Komadina to accept the proposed settlement as presented. **SECONDED** by Dr. Kankanala. **YES:** Ms. Cochran, Dr. Komadina, and Dr. Kankanala. **ABSTAINED:** Dr. Jenkusky and Mr. Bourbon. **ABSENT:** Dr. Weiner, Dr. Kovnat and Dr. Miller. **MOTION CARRIED.** This vote took place at 5:00 p.m. on November 8, 2012.

**C. Consider Amended Stipulation – Suzanne Gray, M.D.**

**MOTION** was made by Dr. Kovnat to accept the proposed Amended Stipulation of Licensure as presented. The Administrative Prosecutor represented to the Board that the Respondent's attorney concurred with this amendment. **SECONDED** by Dr. Jenkusky. **YES:** Ms. Cochran, Dr. Miller,

Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky.  
**ABSTAINED:** Dr. Weiner. **MOTION CARRIED.**

- D. Cheryl McChesney, M.D. – Review mini-sabbatical assessment and consider granting unrestricted license**  
**MOTION** was made by Dr. Miller to **GRANT** physician an unrestricted license to practice medicine. **SECONDED** by Dr. Jenkusky. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon, Dr. Jenkusky and Dr. Weiner. **MOTION CARRIED.**
- E. Jose Antonio, M.D. – Consider medical experience in lieu of 2<sup>nd</sup> year of post graduate training**  
**MOTION** was made by Dr. Kovnat to accept the request to consider Dr. Antonio's medical experience and one year of ACGME training in lieu of a second year of post graduate training and **GRANT** an unrestricted license to practice medicine. **SECONDED** by Dr. Miller. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon, Dr. Jenkusky and Dr. Weiner. **MOTION CARRIED.**
- F. Indira Thirkannad, M.D. – Consider medical experience and non-ACGME post graduate training in lieu of two years of ACGME post graduate training**  
**MOTION** was made by Mr. Bourbon to accept the request to consider Dr. Thirkannad's medical experience and non-ACGME post graduate training in lieu of two years of ACGME post graduate training and **GRANT** an unrestricted license to practice medicine. **SECONDED** by Ms. Cochran. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon, Dr. Jenkusky and Dr. Weiner. **MOTION CARRIED.**
- G. Gordon Neufeld, M.D. – Reinstatement; has not practiced in over 2 years, consider non-disciplinary stipulated license for administrative medicine**  
No action taken; agenda item withdrawn.
- H. Guy Rosenschein, M.D. – Consider experience & foreign PGT in lieu of 2 years of US post graduate training**  
**MOTION** was made by Mr. Bourbon to accept the request to consider Dr. Rosenschein's medical experience and foreign post graduate training in lieu of two years of US post graduate training and **GRANT** an unrestricted license to practice medicine. **SECONDED** by Dr. Miller. **YES:** Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon, Dr. Jenkusky and Dr. Weiner. **MOTION CARRIED.**

**6. REPORTS:**

**A. Chair** – No report at this time.

**B. Executive Director**

**1. Proposed Changes to the Nursing Practice Act**

Ms. Hart discussed the proposed changes to the Nursing Practice Act. She said the Board of Nursing plans to introduce the changes during the 2013 legislative session. Pursuant to 61-3-23.3, Paragraph E of the current Nursing Practice Act, the Board of Nursing, in collaboration with the Medical Board shall develop the prescriptive authority formulary for certified

registered nurse anesthetists. This has not happened and the Board of Nursing plans to introduce legislation that will remove this language. The Board directed Ms. Hart to ask the Board of Nursing to clarify the meaning of "...or other registered nurses with the appropriate credentials . . ." in the proposed revision to Section 61-3-6 of the Nursing Practice Act.

**2. Personnel Issue(s)**

Ms. Hart announced JJ Walker is retiring effective November 30, 2012, and introduced Jackie Holmes who will be joining the Board staff effective Monday, November 19, 2012 as the new Compliance Manager / Public Information Officer. Ms. Holmes' previous experience includes Board Administrator for the Psychology, Massage Therapy and Landscape Architect Boards. Ms. Hart also advised the Board that Investigator Leann Lovato will be on Family Medical Leave for the next 2-3 months following the birth of her baby.

**C. Prescription Drug Misuse & Overdose Prevention & Pain Management Advisory Council (Council) – Dr. Jenkusky**

Dr. Jenkusky reported that the Council consists of 8 official voting members, although many more participants representing various groups attend their meetings. The Council's next meeting will be held on Friday, November 16, 2012. Dr. Jenkusky provided a handout from the last Council meeting entitled, *Recommendations by Area of Intervention to Reduce Prescription Drug Overdose*. This handout will be discussed at the next meeting. He said that Larry Loring, Board of Pharmacy Director reported that New Mexico is moving toward electronic prescriptions for controlled substances. Dr. Jenkusky shared some of the items that will be discussed at the next meeting as part of what is referred to as the centennial plan, including: the availability of lock boxes for family members through a program where the lock boxes would be paid for and available to Pharmacies; promoting Medicaid; expanded reimbursement; school-based education; and quality improvement.

• **NM Medical Society PMP White Paper**

Another issue discussed was the "White Paper" put forth by the NM Medical Society (NMMS). The NMMS has a committee looking at similar issues, including promoting increased access to drug treatment. The one controversial issue is creation of a peer review function of providers that is funded by the state with one of the criteria to include looking at the top 100 prescribers.

Ms. Hart added that the peer review would be an entity contracting with the state that currently reviews malpractice cases and charts for Medicare and Medicaid. The entity under consideration is *Healthsight New Mexico*, formerly known as the NM Medical Review Association. One question that is unclear deals with the timing of the peer review. Is the peer review done before or after the Board opens an investigation case? What are the criteria and who sets the criteria? If the state needs to give this entity subpoena power, there may be issues with HIPAA regulations. In 2011, the NM Medical Board ranked 7th in the US for the number of investigations conducted per year. This may be one reason the NMMS is proposing a peer review. Hospital Peer Review is protected under the NM Review Organization Immunity Act; it is unclear if the information generated by this entity will also be protected from the licensing boards and/or the trial bar.

The Board's thought on the proposal was to give the changes already initiated some time to take affect before we take the next step. We should see what impact has been made when we look at the top prescriber list after a year under the new regulations and the use of the Prescription Monitoring Program (PMP). We currently have the ability to receive a list of the top prescribers in any format and timeframe requested. Ms. Hart added that as a government entity, the Board already has complaint committee review, expert review, as well as confidentiality of its records. It may be difficult for the peer review entity to have an appropriation approved by the legislature. Also, the Department of Health (DOH) will be in charge of accepting bids on the contract, oversight and setting of the contract criteria. This is the same Agency that wanted to restrict physician prescription dosages. The Board's decision is not to support the proposed "White Paper" at this time.

**D. Medical Director** – No report at this time.

**E. Assistant Attorney General** – No report at this time.

**F. Administrative Prosecutor**

- Prosecution Status Report  
Mr. Rubin reviewed all pending cases with the Board.

**G. Licensing Manager Update – Federation Uniform Application for Physician State Licensure**

Ms. Quintana announced that Licensing has started using the Federation of State Medical Board's (FSMB) uniform application for Physician State Licensure and received their first official application November 7, 2012. Ms. Quintana reported that the application is very clear, concise and will go "live" on the Board's website next week.

- **Update on Expediting**

Ms. Quintana advised the Board that Licensing is looking at ways to expedite licensure for applicants who apply directly to the Board in order to include: accepting ECFMG certification in lieu of duplicative documents; if the applicant qualifies by exam, and holds a license in another state, obtaining a certified copy of the original application from the other state; and, receiving copies of transcripts more quickly from UNM for Residents applying for licensure.

**H. Financial / HR Manager**

- **Review FY13 Budget - Revenue Status Report**

Ms. Mascarenas reviewed the Fiscal Year 2013 Budget Status and Revenue Status Reports. The Fiscal Year 2012 audit began last week and every indication is that everything looks positive, however, we will not know until the audit is complete. Beginning July 1, 2012, the balance in the Board's "Due to Other State Agency" account was \$17, 900, specifically for background checks. This amount is our payment to the Department of Public Safety (DPS). The auditor expressed concern with the high account balance. Ms. Mascarenas informed the auditor that the issue with background checks is being addressed and that by next fiscal year the balance should be substantially lower. The Board's goal and requirement will be to process the background checks through DPS within one month of receipt. Ms. Mascarenas



also reported that the Licensing staff has diligently reduced the backlog of background checks.

Dr. Komadina inquired about reimbursement for Board Members who participate as hearing officers. Ms. Mascarenas advised the Board that they are entitled to per diem.

The Board Members discussed the possibility of receiving continuing medical education (CME) credit either for serving on the Board, or when a formal educational presentation is made to the Board at a meeting. Ms. Hart said it is currently possible to award New Mexico CME for serving on the Board. Continuing Medical Education for these purposes.

**I. Investigation Department**

Ms. Dieterich updated the Board on the current status of investigative cases. She also provided the Board with a summary of the types of cases being investigated, ranked descending in order by the number of complaints for the following issues: quality of care and patient interaction; prescribing issues; substance abuse or impairment; patient abandonment; medical record issues and some type of adverse action taken by another entity.

**J. Compliance**

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

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

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

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

Jon Thayer, Executive Director and Dan Collins, MD, Medical Director, were present to discuss the status of mandatory MTP participants and the operations report. Mr. Thayer also reported that MTP is moving to a new electronic system effective December 3, 2012. The new system will provide a higher level of accountability.

**11. INFORMAL INTERVIEWS:**

Adelfio Fronterotta, MD; Tracy Reavis, PA; Keith Levitt, MD; Richard Smith, MD; Daniel Brandt, MD; James Cordova, RPSGT; Julie DiCianno, MD; Tim Klein, MD; Chandler Morgan, PSGT; Kathleen Van Osten, MD; Richard Hempstead, MD; Jennifer Tso, PA; Michael Bellas, Pa; Kenneth Bull, MD; Stephanie Hedstrom, MD; David Melamed, MD; David Stalker, MD; and James Bradley, MD were interviewed in Executive Session regarding current practices and compliance with their board orders. Deborah Aaron, MD and Sally D'Angelo, MD were interviewed by teleconference. Richard Rubin, PA and James Galizia, MD missed their interviews.

Jon Wagner, MD was interviewed on Friday, November 9, 2012.

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

**MOTION** was made by Dr. Weiner to amend Dr. Bradley's work restriction and accept his proposed amended return to work proposal. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

**9. COMPLIANCE:**

- A. Tracy Reavis, P.A. – Request Release from Stipulation**  
**MOTION** was made by Dr. Weiner to remove the stipulations and **GRANT** an unrestricted license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**
- B. David Melamed, M.D. – Request Release from Stipulation**  
**MOTION** was made by Dr. Weiner to remove the stipulations and **GRANT** an unrestricted license. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**
- C. Deborah Aaron, M.D. – Possible Licensure Action**  
**MOTION** was made by Dr. Weiner to issue a Summary Suspension pursuant to 10.10.5.15 NMAC for violation of the physician's Stipulation and simultaneously issue a Notice of Contemplated Action based on, but not limited to, violation of a Board Order. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat, Mr. Bourbon and Dr. Jenkusky. **MOTION CARRIED.**

**FRIDAY, November 9, 2012**

The Board reconvened at 9:00 a.m. on Friday, November 9, 2012, and a quorum was present. Dr. Weiner called the Rule Hearing to order. A transcript of the Rule Hearing and Old Business from November 9, 2012, is attached to these minutes.

**10. RULE HEARING:**

Dan Rubin presented a brief rationale for each of the following proposed rule revisions, as noted in the meeting transcript attached to these minutes.

- A. 16.10.4 NMAC – Continuing Medical Education**
- B. 16.10.5 NMAC – Disciplinary Power of the Board**
- C. 16.10.10 NMAC – Report of Settlements, Judgments,  
Adverse Actions and Credentialing**
- D. 16.10.14 NMAC – Management of Pain with Controlled  
Substances**
- E. 16.10.15 – Physician Assistants: Licensure and Practice  
Requirements**
-

The Regular Board Meeting reconvened at 9:17 a.m.

**11. ADOPTION OF RULES:**

**A. 16.10.4 NMAC – Continuing Medical Education**

**MOTION** was made by Dr. Weiner to adopt Title 16, Chapter 10, Part 4 as presented for the reasons stated in the Rule Hearing. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat and Dr. Jenkusky. **ABSENT:** Mr. Bourbon. **MOTION PASSED.**

**B. 16.10.5 NMAC – Disciplinary Power of the Board**

**MOTION** was made by Dr. Weiner to adopt Title 16, Chapter 10, Part 5 as presented for the reasons stated in the Rule Hearing. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat and Dr. Jenkusky. **ABSENT:** Mr. Bourbon. **MOTION PASSED.**

**C. 16.10.10 NMAC – Report of Settlements, Judgments,  
Adverse Actions and Credentialing Discrepancies**

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

**D. 16.10.14 NMAC – Management of Pain with Controlled  
Substances**

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

**E. 16.10.15 – Physician Assistants: Licensure and Practice  
Requirements**

**MOTION** was made by Dr. Weiner to adopt Title 16, Chapter 10, Part 15 as presented for the reasons stated in the Rule Hearing. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat and Dr. Jenkusky. **ABSENT:** Mr. Bourbon. **MOTION PASSED.**

**12. OLD BUSINESS:**

**A. Consider Motion for Briefing & Oral Argument – Pawankumar Jain, M.D.**

Dr. Weiner stated that the Board had received the transcript of the Hearing and the Hearing Officer's report in the matter of Dr. Pawankumar Jain. A motion before the Board for an oral presentation is uncommon when a hearing has already been conducted, so Dr. Weiner asked both Dr. Jain's attorney and the Board's prosecuting attorney to comment briefly on why the Board should allow oral arguments in this case. Each attorney was given 15 minutes to respond.

José Coronado, Attorney for Dr. Jain, referenced the Board's rule 16.10.6.24, Subsection C on oral argument. He also stated that this case is unusual due to the number of deaths involved. He also stated that Dr. Jain is not a native English speaking person and due to the language barrier, some of what he said in the record was not what he meant. Mr. Coronado also cited the recent revision to the Board's pain management rule. He said that the rule was revised after he had treated his patients. Mr. Coronado said this is a big case, voluminous and complicated, and that there were many allegations.

Dan Rubin, Administrative Prosecutor, stated that the Board's rule 16.10.6.24, Subsection C, does not apply because it requires that briefs have been filed, and there have been no such briefs in this case. This case is being processed under the same procedures as in every other case before the Board. At the conclusion of the hearing, the Hearing Officer asked both sides to submit findings of fact. Mr. Coronado had not asked the Hearing Officer to allow closing arguments and there is no indication in this case that the hearing officer had been biased. The transcript of the hearing does not reflect Dr. Jain's accent, and neither Mr. Coronado nor Mr. Rubin had requested changes to the transcript.

**B. Briefing & Oral Argument (to be determined by vote on Agenda Item 12A) – Pawankumar Jain, M.D.**

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

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

**MOTION** was made by Dr. Weiner to disallow oral argument. However, the parties may submit supplemental briefs simultaneously on November 30, 2012 setting forth their arguments. The Board will consider the parties' proposed findings of fact and the supplemental briefs, together with the transcript and the hearing officer's report in reaching its final decision. The Board will schedule a meeting for December 13, 2012 to rule on this case. **SECONDED** by Ms. Cochran. **YES:** Dr. Weiner, Ms. Cochran, Dr. Miller, Dr. Komadina, Dr. Kankanala, Dr. Kovnat and Dr. Jenkusky. **ABSENT:** Mr. Bourbon. **MOTION CARRIED.**

**13. NEW BUSINESS:**

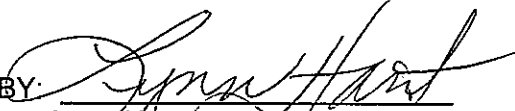
Dr. Komadina made a recommendation that the New Mexico Medical Society (NMMS) should develop a letter that describes the requirements of the New Mexico Medical Board and the American Medical Association for how a patient is to find a new practitioner after being formally terminated from his current physician's practice.

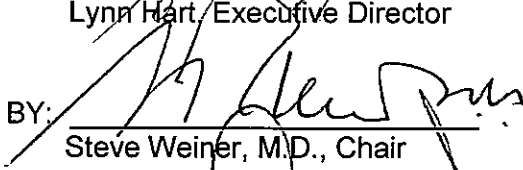
This template-letter should also include a formal procedure for the termination of the physician-patient relationship, including a time-line, and suggestions of possible healthcare resources such as local hospital help lines, medical specialty and insurance plan listings, as well as business directories (like the yellow pages) with listings of available practitioners.

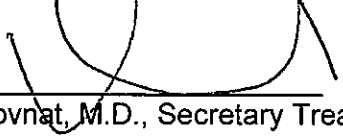
**14. ADJOURN:**

The Board revised the date of the scheduled December Special Meeting to be December 13, 2012, beginning at 4:00 p.m.

There being no further business scheduled, the meeting was adjourned at 10:40 a.m.

SUBMITTED BY:  DATE: Jan 3, 2013  
Lynn Hart, Executive Director

APPROVED BY:  DATE: Jan. 3, 2013  
Steve Weiner, M.D., Chair

APPROVED BY:  DATE: 1/15/13  
Paul Kovnat, M.D., Secretary Treasurer