

NEW MEXICO MEDICAL BOARD
Interim Meeting
October 3, 2013

FINAL MINUTES

Members Present: Steve Weiner, M.D., Chair
Steve Jenkusky, M.D., Vice Chair (by teleconference)
Paul Kovnat, M.D., Secretary Treasurer
Roger Miller, M.D.
Steven Komadina, M.D. (by teleconference)
Albert Bourbon, PA-C (by teleconference)
Jennifer Anderson, Esquire, Public Member (by teleconference)
Rick Wallace, FACHE, Public Member (by teleconference)

Members Absent: Sam Kankanala, M.D

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

1. CALL TO ORDER / ROLL CALL

Dr. Weiner called the Interim Meeting of the New Mexico Medical Board to order at 4:00 p.m. and a quorum was determined to be present.

2. APPROVAL OF AGENDA

Lynn Hart informed the Board that item 7 on the agenda had been moved to become item 10 to allow Dr. Jenkusky and Ms. Anderson to disconnect from the conference call as they were recused from certain cases to be voted on in item 7.

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

3. APPROVAL OF MINUTES

MOTION was made by Dr. Kovnat to accept and approve the minutes of the August 15-16 Board Meeting as presented. **SECONDED** by Dr. Miller. **YES:** Dr. Weiner; Dr. Miller; Dr. Kovnat; Ms. Anderson; Mr. Bourbon; Dr. Jenkusky; Dr. Komadina; Mr. Wallace. **ABSENT:** Dr. Kankanala. **MOTION CARRIED**

4. CHAIR REPORT

Dr. Weiner reported that the November 21-22, 2013 Board Meeting will convene at 8:30 a.m. on Thursday, November 21st, returning to the normal schedule to accommodate agenda constraints.

5. EXECUTIVE DIRECTOR

Lynn Hart introduced Sondra Frank as the new Board attorney and welcomed her. She will officially be introduced at the November Board meeting.

Ms. Hart reported to the Board that the lease on the office building will expire in 2014 and that Ms. Frank has been tasked with the negotiations of acquiring the space previously vacated by the Commission for the Deaf in order to accommodate Board business.

6. ADMINISTRATIVE PROSECUTOR

Dan Rubin, Board Administrative Prosecutor provided an update on pending cases:

1. Mr. Rubin informed the Board that the Court of Appeals had ruled favorably in the NM Medical Boards case filed against the Board of Chiropractors. He stated that the Court of Appeals set aside the opposed rule, and that the Board of Chiropractors failed to petition the New Mexico Supreme Court to review their decision.
2. Mr. Rubin reported that oral arguments were heard in the case of Adrian Gollas, MD last week in District Court before Judge Sarah Singleton. Mr. Rubin appeared on behalf of the Board and Dr. Gollas was represented by his attorney. Mr. Rubin reported to the Board that proposed orders are being submitted to Judge Singleton early next week and a decision should come fairly quickly, perhaps by the November Board Meeting.
3. Mr. Rubin reported that he filed an answer to suit in the case of Dr. Schwartz, and had served discovery on Dr. Schwartz attorney, Brian Egolf. He advised the Board that the Board's answer to the lawsuit, and the discovery served on Mr. Egolf, can be provided for review if necessary.

7. NEW BUSINESS

DPS Background Checks

Samantha Breen reported that the New Mexico Department of Public Safety has contracted with a third party vendor, 3M Cogent, to begin conducting the Board's background checks. She further stated that there will be facilities set up throughout the state in order for applicants to get fingerprinting done via Live Scan, an electronic fingerprinting methodology. All applicants must register online prior to visiting a Live Scan location. Once the fingerprints are scanned, they will be submitted electronically to 3M Cogent, who will in turn submit the results of the background check to the Department of Public Safety. Ms. Hart asked about the process for out of state applicants. Ms. Breen stated that out of state applicants will follow the same process, however, they must mail their fingerprint cards to a 3M Cogent office location in Ohio.

8. INVESTIGATIONS

None

9. OLD BUSINESS

Pain Management CME Notification

Amanda Quintana reported that the second notice for submission of the required documentation of Pain Management CME will be sent out in alphabetical groups over the next two weeks. This notice will include the URL of the NMMB websites list of approved CME courses, the addresses to which a physician can fax or email the certificates, a quotation of the specific Board Rule regarding the CME requirement. Ms. Quintana stated that the notice will also include a statement that all physicians, regardless of renewal date, are required to submit their Pain Management CME certificate/certificates by July 1, 2014. A phone number will be provided for any questions that may arise.

Dr. Weiner requested that the notice also be sent via email. Ms. Quintana stated that she would send out a mass email in addition to the mailing.

10. LICENSING REQUESTS AND ACTIONS, NEW APPLICANTS / REINSTATEMENTS

Dan Rubin, Administrative Prosecutor presented the following cases to the Board for Consideration:

Margaret Western, M.D. – Consider proposed Stipulation of Reprimand for the actions alleged in the NCA, which include Injudicious prescribing, lack of physician-patient relationship, medical records concerns, misrepresenting information on a renewal application and an issue regarding a DEA investigation in which Dr. Western was allegedly stockpiling medication. Dr. Western's attorney, Kelly Dixon was present to answer any Board questions.

John Wassner, M.D. – Consider Proposed Stipulation of Reprimand for failure to report action taken against the licensee by a health care entity. The NCA addressed two issues, one being an incident involving sexual harassment between Dr. Wassner and a coworker at a health care facility in Santa Fe, the other is failure to report actions taken against him by the hospital. Mr. Rubin stated that after further review, evidence only supports failure to report the adverse action taken by the hospital. That being said, Mr. Rubin felt that he would only be able to bring a case for 'failure to report' and recommended the reprimand. He further stated that Dr. Wassner's attorney, Aaron Wolfe, who was not present, had consulted with his client and they are in agreement with the reprimand.

John Bray-Morris, M.D. – Consider Proposed Settlement to allow Dr. Bray-Morris to present to the Board a work place monitoring plan that will allow him to return to work. Dr. Bray-Morris has agreed to waive his rights to a hearing, allowing attorneys to remove themselves so that he may present his plan to the Board in November. Plan will involve supervision by a licensed medical doctor only. Dr. Bray-Morris' License is currently suspended for violation of previous order. He has agreed to take 6 CME's in ethics, a reprimand and affirms everything listed in the first stipulation will remain in place. Dr. Bray-Morris has reaffirmed that he will continue his contract with MTP. Josh Ewing, Dr. Bray-Morris' attorney, was present.

EXECUTIVE SESSION

Margaret Western, MD

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H) (1) of the Open Meetings Act to discuss matters pertaining licensure and discipline. **SECONDED** by Dr. Kovnat **YES:** Dr. Weiner; Dr. Miller; Dr. Kovnat; Ms. Anderson; Mr. Bourbon; Dr. Jenkusky; Dr. Komadina; Mr. Wallace. **RECUSED:** Dr. Miller **ABSENT:** Dr. Kankanala. **MOTION CARRIED**

OPEN SESSION

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

Dr. Weiner informed Mr. Rubin that the Board had questions regarding the Proposed Settlement for Dr. Western. Kelly Dixon, Dr. Western's attorney, was asked to provide details regarding the allegations in the NCA.

Dr. Weiner stated that due to the number of issues raised in the NCA, the Board is not comfortable at this time and does not believe that a reprimand alone is sufficient. He further stated that the Board needs more information. Dr. Weiner questioned whether Dr. Western needed more education in terms of ethics and medical record keeping. Mr. Rubin stated that he and Ms. Dixon would discuss a settlement that will entail CME's and remedial education if the Board would like to go in that direction. Albert Bourbon questioned if her license had a stipulation at the moment and was informed that it does not. Dr. Weiner stated that the Board was not ready to accept the settlement as presented.

MOTION was made by Dr. Weiner to **DENY** the Settlement as presented in the case of Margaret Western, MD **SECONDED** by Dr. Kovnat **YES**: Dr. Weiner; Dr. Kovnat; Ms. Anderson; Mr. Bourbon; Dr. Jenkusky; Dr. Komadina; Mr. Wallace. **RECUSED**: Dr. Miller **ABSENT**: Dr. Kankanala. **MOTION CARRIED**

EXECUTIVE SESSION

John Wassner, MD and John Bray-Morris, MD

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H) (1) of the Open Meetings Act to discuss matters pertaining to licensure and discipline in these two cases **SECONDED** by Dr. Kovnat **YES**: Dr. Weiner; Dr. Miller; Dr. Kovnat; Mr. Bourbon; Dr. Komadina; Mr. Wallace. **RECUSED**: Ms. Anderson; Dr. Jenkusky **ABSENT**: Dr. Kankanala. **MOTION CARRIED**

OPEN SESSION

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

MOTION was made by Dr. Weiner to **ACCEPT** the Settlement as presented in the case of John Wassner, MD **SECONDED** by Dr. Kovnat **YES**: Dr. Weiner; Dr. Miller, Dr. Kovnat; Mr. Bourbon; Dr. Komadina; Mr. Wallace. **RECUSED**: Ms. Anderson; Dr. Jenkusky **ABSENT**: Dr. Kankanala. **MOTION CARRIED**

MOTION was made by Dr. Weiner to **ACCEPT** the Settlement as presented in the case of John Bray-Morris, MD **SECONDED** by Dr. Miller **YES**: Dr. Weiner; Dr. Miller, Mr. Bourbon; Dr. Komadina; Mr. Wallace. **ABSTAINED**: Dr. Kovnat **RECUSED**: Ms. Anderson; Dr. Jenkusky **ABSENT**: Dr. Kankanala. **MOTION CARRIED**

James Jaramillo, MD

Sondra Frank reported that the proposed Hearing Officer Report on the case of James Jaramillo should be discussed in closed session. Additionally there are a number of documents that were received post hearing that need to be reviewed. These documents include:

1. Letter from Peggy Graham, Respondent's attorney, dated September 30, 2013, addressing additional legal argument;
2. Prosecutor's Objection to the Respondent's Additional Legal Argument dated October 1, 2013;
3. Prosecutor's Closing Argument dated October 3, 2013.

EXECUTIVE SESSION

MOTION was made by Dr. Weiner to go into Executive Session pursuant to Section 10-15-1(H) (1) of the Open Meetings Act to discuss matters pertaining to licensure and discipline. **SECONDED** by Dr. Miller **YES**: Dr. Weiner; Dr. Miller; Dr. Kovnat; Mr. Bourbon; Dr. Komadina; Mr. Wallace. **RECUSED**: Ms. Anderson; Dr. Jenkusky **ABSENT**: Dr. Kankanala. **MOTION CARRIED**

OPEN SESSION


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

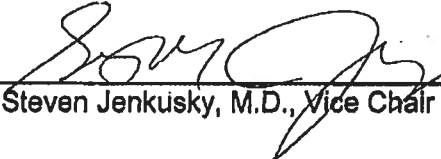
MOTION was made by Dr. Weiner to **ACCEPT** the Hearing Officers Report and **DENY** Application for Reinstatement **SECONDED** by Dr. Komadina **YES**: Dr. Weiner; Dr. Kovnat; Mr. Bourbon; Dr. Komadina; Mr. Wallace. **ABSTAINED**: Dr. Miller **RECUSED**: Ms. Anderson; Dr. Jenkusky **ABSENT**: Dr. Kankanala. **MOTION CARRIED**

11. **ADJOURN**

There being no further business, MOTION was made by Dr. Weiner to adjourn the Interim Meeting at 5:30 p.m.

SUBMITTED BY:  DATE: 12/02/13
Lynn Hart, Executive Director

APPROVED BY:  M.D. DATE: 11/22/13
Steve Weiner, M.D., Chair

APPROVED BY:  M.D. DATE: 11/26/13
Steven Jenkusky, M.D., Vice Chair