

NEW MEXICO MEDICAL BOARD
Interim Meeting
September 24, 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.
Frank Crespín, M.D. – by teleconference
Steve Jenkusky, M.D. – by teleconference
Ann Wehr, M.D. – by teleconference
Kathy Abeles, Public Member – by teleconference
Rebecca Cochran, Public Member – by teleconference

Also Present:

Lynn Hart, Executive Director
Grant La Farge, M.D., Medical Director
Lynn Tipton, Administrative Assistant
Andrea Buzzard, A.A.G.
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

The interim meeting of the New Mexico Medical Board convened at 4:00 p.m., Thursday, September 24, 2009 in the Board Conference Room, 2055 S. Pacheco, Santa Fe, New Mexico, *Paul Kovnat, M.D.* presiding. A quorum was declared. Ms. Cochran joined the meeting at 4:25 p.m.

2. APPROVE Dr. Wehr's absence from meeting. Dr. Wehr was in attendance. No action taken.

3. APPROVAL OF AGENDA

Dr. Miller **MOVED** to approve the Agenda. Dr. Weiner **SECONDED: YES:** Dr. Kovnat, Dr. Weiner, Mr. Ghadimi, Dr. Miller, Dr. Crespín, Dr. Wehr, Dr. Jenkusky and Ms. Abeles. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**

4. APPROVE MINUTES

Dr. Kovnat **MOVED** to approve the minutes of the August 13 – 14, 2009 Quarterly Board meeting as amended. Ms. Abeles was added to the vote on page one, item #3, Approval of Minutes as a YES. Dr. Miller **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Mr. Ghadimi, Dr. Miller, Dr. Crespín, Dr. Wehr, Dr. Jenkusky and Ms. Abeles. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**

5. **LICENSING REQUESTS AND ACTIONS, NEW APPLICANTS/REINSTATEMENTS**
- A. Catherine Condon, MD – Request for Emergency Deferral of CME requirement after audit – Dr. Kovnat **MOVED** to accept the recommendation granting Dr. Condon an Emergency Deferral of CME requirements until December 1, 2009. Dr. Weiner **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Mr. Ghadimi, Dr. Miller, Dr. Crespin, Dr. Wehr, Dr. Jenkusky and Ms. Abeles. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**
 - B. Margarita Macias, MD – Request exception to 7 year rule and grant unrestricted medical license. **MOTION** was made by Dr. Kovnat to **GRANT** an exception to the 7 year rule for completion of all three steps of the USMLE based on the Rules and grant an unrestricted license to practice medicine in New Mexico. Mr. Ghadimi **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles and Mr. Ghadimi. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**
 - C. Alberto Ruiz, MD – Request exception to 7 year rule and grant unrestricted medical license. **MOTION** was made by Dr. Kovnat to **GRANT** an exception to the 7 year rule for completion of all three steps of the USMLE based on the Rules and grant an unrestricted license to practice medicine in New Mexico. Mr. Ghadimi **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, and Mr. Ghadimi. **ABSTAIN:** Dr. Wehr and Ms. Abeles. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**
 - D. Decision and Order – Raymond Nejeles, MD – Case #2009-015. **MOTION** was made by Dr. Kovnat to allow Dr. Nejeles to withdraw his application while under investigation. Dr. Weiner **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr and Ms. Abeles. **ABSTAIN:** Mr. Ghadimi. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**
 - E. Donald Marion, MD – Order to Withdraw Application. **MOTION** was made by Dr. Kovnat to allow Dr. Marion to withdraw his application while under investigation for action in another state. Dr. Weiner **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles and Mr. Ghadimi. **ABSENT:** Ms. Cochran. **MOTION CARRIED.**

Executive Session: **MOTION** was made by Dr. Kovnat and **SECONDED** by Dr. Weiner to go into executive session to discuss matters of licensure and discipline. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr and Ms. Abeles and Mr. Ghadimi. **ABSENT:** 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 to only those specified in the motion for closure.

6. **INVESTIGATIONS**

A. **Case Number 2009-C-150** (Glen Delaney, MD). **RECOMMENDATION** was made by Dr. Crespin to issue physician a Stipulated License limiting his license to administrative, non-clinical practice. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Mr. Ghadimi and Ms. Cochran. **ABSTAINED:** Dr. Crespin and Ms. Abeles **MOTION CARRIED.**

B. **Case Number 2008-D-057** ([REDACTED]) **RECOMMENDATION** was made by Mr. Ghadimi to issue a notice of contemplated action based on dishonesty and

misrepresentation when applying for a license to practice medicine. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Crespin, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Dr. Jenkusky and Mr. Ghadimi. **MOTION CARRIED.**

Case Number 2009-D-143 ([REDACTED]). **RECOMMENDATION** was made by Mr. Ghadimi that physician assistant be evaluated for competency prior to the Board's decision on licensure since he has been out of practice more than two years; the threshold for return to practice proof of competency requirement. The case will remain open until the Board receives the evaluation report. The case will then be returned to the complaint committee for final recommendation on licensure. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Crespin, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Dr. Jenkusky and Mr. Ghadimi. **MOTION CARRIED.**

MOTION was also made by Mr. Ghadimi to grant physician assistant a training license should the competency review require a mini-sabbatical. **SECONDED** by Ms. Cochran. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Abeles, Ms. Cochran and Mr. Ghadimi. **MOTION CARRIED.**

C. Case Number 2009-E-031 and Case Number 2009-E-107 ([REDACTED]). **RECOMMENDATION** was made by Dr. Kovnat to close these cases and issue letters of explanation to the complainants. **YES:** Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Crespin, Dr. Jenkusky, Mr. Ghadimi, Ms. Cochran and Ms. Abeles. **ABSTAINED:** Dr. Kovnat. **MOTION CARRIED**

D. Case Number 2009-F-186 (Mark VanWormer, MD) **RECOMMENDATION** was made by Dr. Kovnat to issue a Summary Suspension of physician's license due to his violation of the April, 2009 Board Order. Included in the provisions of the order, a notice of contemplated action will be issued within ten days of the summary suspension based on violation of the April, 2009 board order. **YES:** Dr. Weiner, Dr. Miller, Dr. Wehr, Dr. Crespin, Dr. Jenkusky, Mr. Ghadimi and Ms. Abeles. **ABSTAINED:** Dr. Kovnat and Ms. Cochran. **MOTION CARRIED**

7. COMPLIANCE

The Executive Committee will meet with Ms. Walker to review the list of monitored treatment interviewees and determine if there are any participants who may be excused from attending the November board meeting.

8. STAFF REPORT

A. Executive Director - Ms. Hart discussed the budget cuts that may be required by the legislature as a result of the special session in October. All agencies, including the Medical Board may have to cut 3 to 3.5 percent or more for FY 2010. We would like to avoid layoffs or furloughs. Effective immediately, no out-of-state travel will be approved for staff or board members; complaint committee meetings will be done by phone, no per diems will be paid. Mileage and per diem for attendance at the board meetings and hearing officer duties will be reimbursed. All line items in the FY 2010 budget will be reviewed.

The budget projections for FY 2011 were submitted to the Legislative Finance Committee and the Department of Finance Administration. We anticipate that a substantial portion of the fund balance will be transferred to the general fund. She will provide the Board with an update at the

November meeting.

Also, Ms. Hart asked the Board for approval to add the Health Policy Commission's Physician Supply and Distribution survey to the 2010 renewal form. The survey would be a condition of renewal and will provide statistics for the state to assist with acquiring federal money, as well as support for programs. **MOTION** was made by Dr. Weiner to approve the health policy survey and allow staff to proceed with the process to include it with the 2010 renewal form. Dr. Miller **SECONDED. YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Cochran, Ms. Abeles and Mr. Ghadimi. **MOTION CARRIED.**

B. Public Information Officer – Newsletter – October, 2009 – Ms. Walker asked the Board to provide her with any revisions by Tuesday, September 29th.

9. **CHAIR REPORT – Physician Corporations Under the Medical Malpractice Act.** Dr. Kovnat reported that he had been alerted by the New Mexico Medical Society that the Department of Insurance is reviewing the Medical Malpractice Act and whether or not physician practices which are incorporated are covered by this Act. Some members of the trial bar are contending that the cap on malpractice insurance only applies to the physician and not the professional corporations (PCs). Many physicians function under PCs. Andrea Buzzard, Assistant Attorney General explained that she has reviewed this issue in the past. She wrote a letter in 1977 and 1987 clarifying whether physician corporations qualify for coverage when providing services and the answer was “yes” in both. She has offered this information to the insurance division's attorney and will keep the Board informed if there is further discussion.

10. **PROPOSED RULE REVIEW AND RULE HEARING IN NOVEMBER**

A. Rule Review - Rule 16.10.9 NMAC – Fees

B. Rule Review - 16.10.20 NMAC – Polysomnographic Technologists: Licensure and Practice Requirement

MOTION was made by Dr. Kovnat and **SECONDED** by Dr. Crespin to adopt 16.10.9 and 16.10.20 for the Rule Hearing in November with the revisions as presented. **YES:** Dr. Kovnat, Dr. Weiner, Dr. Crespin, Dr. Miller, Dr. Jenkusky, Dr. Wehr, Ms. Cochran, Ms. Abeles and Mr. Ghadimi. **MOTION CARRIED.**

11. **NEW BUSINESS**

A. Regulation of Urgent Care Centers – The Board directed that Ms. Hart invite the New Mexico Medical Society to attend the November meeting for further discussion on this issue.

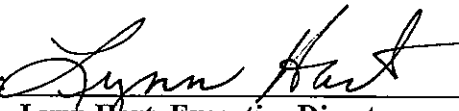
B. Physicians Practicing Acupuncture – Ms. Hart reviewed a letter from a care center asking if the Board would make a ruling regarding a physician's use of acupuncture in his practice. Andrea Buzzard, Assistant Attorney General, reviewed the Acupuncture Act and discussed the issue with the Board. The Board requested further discussion at the November meeting.

C. Refill Consolidation Request – Bill Harvey, Director of the Pharmacy Board, was present to discuss a request both boards received from Prime Therapeutics requesting approval to utilize prescription refills to increase the total quantity of a prescription up to a 90-day supply under certain conditions. Mr. Harvey wanted to know the Medical Board's response to this request. The Medical Board cannot agree that a blanket approval can or should be given to an insurance entity to convert a prescription from a 30-day with two refills to one 90-day. Third

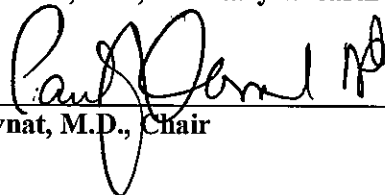
party payers should assume that there is a valid medical reason that a physician wrote the prescription that way. The Medical Board's opinion is that the insurer needs to obtain the permission from the primary physician/provider directly to convert. It is our conclusion that third party payers should communicate to their subscribers that patients may ask their physician if the prescription could be written for 90-day refills, so as to receive their maintenance drugs more inexpensively both for themselves and for the third party payer.

- D. Prescriptions for Blood Glucose Testing Supplies** – Lovelace would like to allow pharmacists to convert prescriptions for specific products to either a generic prescription for “test strips” or to their preferred specific product. The Board determined that the response to this inquiry is the same as their response to the refill consolidation request in Agenda Item C above; the prescribing practitioner should be consulted.
- E. Appoint a Committee to Review Proposed Revisions to the Psychologist Prescribing Rule** – The Board of Psychologist Examiners is requesting that the Board review and approve proposed revisions to regulations affecting prescribing psychologists practice. The Board appointed a committee to include Dr. Kovnat, Dr. Jenkusky, Dr. La Farge and JJ Walker. This committee will report back to the Board at the November meeting.
- F. Franchising Arrangements** – The Board requested that Andrea Buzzard, Assistant Attorney General review the letter from Fox Rothschild, legal counsel for Holtorf Medical Group Centers and draft a response for Board review.
- G. Beyond Acupuncture – Journal Article** – The Board reviewed and discussed the article and concluded that this is another example of why New Mexico needs legislation for a scope of practice review.

12. **ADJOURN:** There being no further business, the meeting adjourned at 6:07 p.m.

SUBMITTED:  Date: 11/12/09
Lynn Hart, Executive Director

APPROVED:  Date: 11-12-09
Reza Ghadimi, P.A., Secretary-Treasurer

APPROVED:  Date: 11/12/09
Paul Kovnat, M.D., Chair