

NEW MEXICO MEDICAL BOARD
Interim Board Meeting
September 29, 2016
MINUTES

Members Present: Steven Jenkusky, M.D. Chair
Albert Bourbon, P.A., Vice Chair
Jennifer Anderson, Esquire, Public Member, Secretary Treasurer
James Spence, M.D.
Philip Styka, M.D. (arrived at 4:15 p.m.)
Peter Beaudette, M.D. (left the meeting at 5:15 p.m.)
Karen Carson, M.D.

Excused: Steve Komadina, M.D.

Others Present: Sondra Frank, J.D., Executive Director
Kara Szkotak, Assistant Attorney General
Debbie Dieterich, Investigations Manager
Amanda Quintana, Compliance Manager / PIO
Samantha Breen, Administrative Assistant

1. CALL TO ORDER / ROLL CALL

Dr. Jenkusky called the Regular Board Meeting of the New Mexico Medical Board to order at 4:03 p.m. and a quorum was present.

2. APPROVAL OF AGENDA

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

3. APPROVAL OF MINUTES

MOTION was made by Dr. Beaudette to accept and approve the minutes of the August 18-19, 2016 Board Meeting as presented. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Spence, Dr. Beaudette, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Styka (Arrived late) **MOTION CARRIED.**

4. Chair Report:
None

5. Executive Director Report:
None

6. RULE HEARING

Dr. Jenkusky called the Rule Hearing to order at 4:10 p.m., and a quorum was present. The following rule was considered: **16.10.14 NMAC Management of Chronic Pain with Controlled Substances**

Dr. Jenkusky explained that the Board is required by law to adopt new Prescription Monitoring Program regulations by January 1, 2017. SB 263 was signed by the Governor this past 2016 legislative session. The 2016 legislative session saw a number of legislative initiatives directed at addressing New Mexico's high overdose death rates. In 2015 the overdose death rates rose 20% by DOH estimates. Opiates accounted for 51% of the overdose death rates in the state. Thus, there was significant pressure to address the overdose death rate by tightening the regulations surrounding opiate usage, prescribing and monitoring. SB 263 was a compromise between stakeholders regarding

practitioner monitoring of opiates. Originally, the bill would have required the PMP to be obtained and reviewed for every opiate prescription in NM. SB 263 was the compromise which allows some exemptions for pulling the PMP. SB 263 requires the following:

1. Before prescribing an opiate for the first time the practitioner must obtain and review the PMP report except where:
 - a. The opiate prescription is for four days or less
 - b. The opiate is prescribed for a patient in a nursing facility or hospice.
[There are no other exceptions]
2. Practitioner must thereafter obtain and review the PMP report no less than once every three months when continuously prescribing or dispensing an opiate to a patient.
3. PMP reports must be pulled from adjacent states if available at onset at no less than every three months as noted above.

Given this legal mandate the Board has proposed adopting 16.10.14.8. The Board does not have the authority to carve out any other exemptions except those noted above. The requirement on prescribers for obtaining and reviewing PMP data at the onset of opiate RX and continuously at a minimum of every three months is mandatory. The Board may not change those strictures as they are required by law.

There are other changes in the PMP regulations which are not required by SB 263 but were supported by the new CDC opiate prescribing guidelines and/or current knowledge of overdose deaths. Overdose deaths often involve multiple substances and we know that a combination of opiates and benzodiazepines can lead to overdose fatalities and opiates, benzodiazepines and SOMA have an even greater risk of overdose fatalities. The current PMP regulations requires PMP monitoring for all controlled substances. The Board chose to keep all controlled substances in the PMP monitoring requirement, but elected to exempt out certain lower risk RXs (testosterone, pregabalin, lacosamide, ezogabine, and pediatric stimulant therapy). Additionally, given the CDC opiate prescribing guidelines issued this year, the Board is proposing to include certain indicators which may alert the prescriber to opioid misuse, abuse or risk of overdose death. See paragraph F in 16.10.14.8. Paragraph G specifically recognizes the practitioners use of his/her professional judgment when faced with opioid misuse, abuse or overdose.

The Board has added a section requiring urine drug testing for chronic pain patients at the onset of RX and at least every six months to monitor for proper opiate usage. Given the level of comment received on this regulation, we should also explain that this change was also supported by the need to address illicit usage of opiates. Urine drug testing is standard practice in most large health plans and ideally will allow the practitioner to see whether the level of drugs in the patients system mirrors what the patient should be ingesting. If not, the results should alert the practitioners to the possibility of illicit drug diversion. The Board provided copies to attendees of a number of articles supporting mandatory UA testing in chronic pain patients but is open to suggestions on how to address UAs reasonably while not overly burdening the patient or delaying treatment for chronic pain.

The following attendees presented comments at the Rule Hearing.

Michael Landen, MD, New Mexico Department of Health

Anthony Reeve, MD, IRC

Lynette Shier, Patient

In addition to the public comments, the Board received 17 written comments prior to the Rule Hearing that are listed in the Exhibit Book. The Rule Hearing was adjourned at 5:05 p.m.

Dr. Jenkusky reconvened the Regular Board Meeting at 5:10 p.m., and a quorum was present.

7. ADOPTION OF RULES:

16.10.14 NMAC Management of Chronic Pain with Controlled Substances

The Board discussed the proposed rule change and the testimony received during the Rule Hearing at length. Dr. Spence stated that to assure that the Board does not need to make changes to this rule every year because the CDC Guidelines are always evolving, it would be proactive to adopt the CDC Guidelines into the rule. This would force the physician to be aware of the Guideline and to have a living Rule.

MOTION was made by Dr. Spence to adopt the CDC Guidelines into the Rule. Motion not **SECONDED**. **MOTION failed**.

There was further discussion regarding compliance monitoring, i.e. pill counting and urine drug screens, giving discretion to the prescribers as to the type of monitoring they could choose that would fit their practice. Dr. Jenkusky stated that the CDC, the New England Journal, etc. specifically states that urine testing should be done when prescribing Opiates. Dr. Styka stated that a urine drug screen is standard just like a liver function test. He stated that what is outlined in the rule change is very easy and not an outrageous expectation.

MOTION was made by Dr. Spence to table the vote until the November 17-18, 2016 Board Meeting. Motion not **SECONDED**. **MOTION failed**.

MOTION was made by Dr. Jenkusky to adopt changes to 16.10.14 NMAC as written. **SECONDED** by Dr. Styka. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **NO:** Dr. Spence **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early). **MOTION CARRIED**.

EXECUTIVE SESSION: Complaint Committee Reports / Executive Committee 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 Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **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.

8. ACTIONS RELATED TO EXECUTIVE SESSION

Complaint Committee A

Case # 2016-A-195 RECOMMENDATION was made by Dr. Carson to **ISSUE** an unrestricted license to the applicant with an advisory letter regarding disclosure on an application for licensure **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **RECUSED:** Dr. Carson. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED**.

Complaint Committee B

Case #2016-B-021 RECOMMENDATION was made by Dr. Spence to allow applicant to withdraw their application while under investigation. If the applicant does not accept a Notice of Contemplated Action

will be issued to deny licensure, based on, but not limited to, incompetency to practice, misrepresentation on an application, violation of the AMA Code of Ethics, interaction with patients that could adversely affect the patient, and adverse licensure action in another state. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Carson and Mr. Bourbon. **RECUSED:** Dr. Spence and Ms. Anderson. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2016-B-191 RECOMMENDATION was made by Ms. Anderson to allow applicant to withdraw their application while under investigation and restricting him from reapplying until the recommendations set forth in the LifeGuard Report are successfully fulfilled and applicant submits to a clinical competency reassessment. If this is not accepted, a Notice of Contemplated Action will be issued to deny licensure based on, but not limited to, incompetency to practice, and misrepresentation an application. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Carson and Mr. Bourbon. **RECUSED:** Dr. Spence and Ms. Anderson. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Complaint Committee C

Case #2015-C-075 RECOMMENDATION was made by Mr. Bourbon to issue physician a Letter of Reprimand. If the physician does not accept a Notice of Contemplated Action will be issued, based on but not limited to, injudicious prescribing, violation of a drug law, and dishonesty. **YES:** Dr. Jenkusky, Dr. Spence, Dr. Carson and Ms. Anderson. **RECUSED:** Dr. Styka and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2015-C-075 RECOMMENDATION was made by Mr. Bourbon to close this case with regard to the physician assistant with an advisory letter regarding the violation of federal and state laws around prescribed scripts and recommending he review those laws. **YES:** Dr. Jenkusky, Dr. Spence, Dr. Carson and Ms. Anderson. **RECUSED:** Dr. Styka and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2015-C-076 RECOMMENDATION was made by Mr. Bourbon to close the case with a strongly worded Advisory Letter regarding the dishonest response submitted to the Board in connection with the complaint. **YES:** Dr. Jenkusky, Dr. Spence, Dr. Carson and Ms. Anderson. **RECUSED:** Dr. Styka and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Complaint Committee D

Case #2014-D-153 RECOMMENDATION was made by Dr. Jenkusky to allow applicant to withdraw their application for reinstatement while under investigation. If this is not accepted a notice of contemplated action will be issued to deny licensure, based on, but not limited to, conduct likely to harm and interaction with patients that interferes with patient care. **YES:** Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Bourbon. **RECUSED:** Dr. Jenkusky and Dr. Styka. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2015-D-113 RECOMMENDATION was made by Dr. Jenkusky to close the case with an Advisory Letter regarding the timely reporting of adverse actions. **YES:** Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Bourbon. **RECUSED:** Dr. Jenkusky. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2016-D-113 RECOMMENDATION was made by Dr. Jenkusky to offer resident physician a stipulated license requiring mandatory participation in MTP for both substance abuse and mental health care with a clause for activating license upon approval from MTP and the Board. If licensee does not accept a Notice of Contemplated Action will be issued based on, but not limited to, habitual and excessive use of substances. **YES:** Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Bourbon. **RECUSED:** Dr. Jenkusky. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2016-D-128 RECOMMENDATION was made by Dr. Jenkusky to allow applicant to withdraw their application while under investigation. **YES:** Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Bourbon. **RECUSED:** Dr. Jenkusky. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Case #2016-D-202 RECOMMENDATION was made by Dr. Jenkusky to close the case and issue a NM genetic counselor license with an Advisory Letter regarding the responsibility of licensees to timely renew their license. **YES:** Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson and Mr. Bourbon. **RECUSED:** Dr. Jenkusky. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

9. Executive Committee Report
None

EXECUTIVE SESSION: Licensing Issues, New Applicants / Reinstatements

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. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **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.

10. LICENSING ISSUES, NEW APPLICANTS / REINSTATEMENTS

Jenny Hargrove, MD Case No. 2016-016 - MOTION was made by Dr. Jenkusky to accept the Proposed Stipulation and Order as presented. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Ronald Fisher, MD Case No. 2015-008 - MOTION was made by Dr. Jenkusky to accept the Hearing Officers report as presented. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Ronald Fisher, MD Case No. 2015-008 - MOTION was made by Dr. Jenkusky to deny Dr. Fisher's application for licensure and allow him to re-apply upon completion of a full residency. **SECONDED** by Dr. Carson. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Ronald Fisher, MD Case No. 2015-008 - MOTION was made by Ms. Anderson to approve the motion for costs. Costs will not be due until Dr. Fisher re-applies for licensure after completion of a full residency. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Edjub Hadzic, MD Case No. 2016-038 - MOTION was made by Dr. Jenkusky to accept the default revocation order as presented. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr.

Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Paul Willette, MD Case No. 2016-040 - MOTION was made by Dr. Jenkusky to deny the Motion for Reconsideration of Summary Suspension. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Cesar Cuadros, MD - MOTION was made by Ms. Anderson to deny the request to approve Dr. Cuadros' teaching CME, as the CME does not meet the requirements set forth in 16.10.4 NMAC. **SECONDED** by Dr. Jenkusky. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**


MOTION was made by Dr. Jenkusky to approve the request to grant an extension of time for Dr. Cuadros to obtain additional CME. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

Linda Velasquez, MD - MOTION was made by Dr. Jenkusky to approve the request to grant an extension of time for Dr. Velasquez to obtain additional CME. **SECONDED** by Mr. Bourbon. **YES:** Dr. Jenkusky, Dr. Styka, Dr. Spence, Dr. Carson, Ms. Anderson, and Mr. Bourbon. **ABSENT:** Dr. Komadina and Dr. Beaudette (left the meeting early) **MOTION CARRIED.**

11. **ADJOURN** - There being no further business before the Board, Dr. Jenkusky adjourned the meeting at 6:46 p.m.

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

DATE: 11/17/16

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

DATE: _____

APPROVED BY: 
Albert Bourbon, PA-C, Vice Chair

DATE: _____