

**Vermont Board of Medical Practice
Minutes of the March 4, 2009 Board Meeting
Gifford Medical Center, Randolph, Vermont**

“Approved – April 1, 2009”

1. Call to Order; Call the Roll; Acknowledge Guests:

David W. Clauss, MD, Chair, called the meeting to order at 12:14 p.m.

Members Present:

David W. Clauss, MD; Patricia A. King, MD; Margaret F. Martin; William K. Hoser, PA-C; Hon. David A. Jenkins; John J. Murray, MD; Sharon L. Nicol; Harvey S. Reich, MD; Robert R. Rinaldi, DPM; Janice E. Ryan, RSM; Toby Sadkin, MD; William H. Stouch, MD; Peter Thomashow, MD; Florence Young.

Others in Attendance:

William E. Wargo, Director; Philip Ciotti, Investigator; Roberta Downes, Licensing Administrator; Paula Nenninger, Investigator; James Arisman, Assistant Attorney General; Marjorie Power, Legal Counsel and Presiding Officer (joined meeting at approximately 1:00 p.m.); Bessie Weiss, Assistant Attorney General; Tracy Hayes, Administrative Assistant.

2. Approval of the Minutes of the February 4 and 18, 2009 Board Meetings:

Sr. Ryan made a motion to accept the minutes of the February 4, 2009 Board meeting. Dr. Reich seconded the motion. The motion passed, opposed: none; recused: none.

Dr. Stouch made a motion to accept the minutes of the February 18, 2009 Board meeting. Dr. Reich seconded the motion. The motion passed, opposed: none; recused: none.

3. Board Matters (Dr. Clauss):

A. Legislative bills:

Amendment to 26 V.S.A § 1400(b) (House’s palliative care bill, no number)

Dr. Clauss asked for the Board’s input regarding the proposed amendment to 26 V.S.A. § 1400(b) which would require all physicians to have four continuing medical education (CME) credits in palliative care before their licenses could be renewed.

Board members discussed CME requirements in general and specifically legislation proposing to mandate CME requirements expressly for palliative care. Some issues raised were:

- Physicians in private practice and not affiliated with hospitals or other institutions may not complete CME, like those who are affiliated in some way.
- How can it best be assured that licensed physicians are maintaining continued competency?
- Is the issue really about CME requirements and palliative care, or is there an unspoken link between this issue and assisted suicide?
- CME is expensive, and mandating specifically palliative care CME may prevent physicians from taking courses they need for their actual field of practice. Mandating legislation will require all physicians to spend money on CME they may never use.
- A different division of the Vermont Health Department should oversee whether or not CME requirements are being completed. This should not be the responsibility of the Board of Medical Practice, since the Board is the regulatory division for physicians.
- Legislation should not direct or guide the practice of medicine.
- The Board of Medical Practice should have a voice in any decision as to mandating CME requirements.
- It should be the Board of Medical Practice making the determination whether or not to mandate certain CME. This would allow the Board to put programs together and change the programs as the needs of the physicians and the public change.
- Physicians are not against CME requirements or other requirements that would assure continued competency.
- The general public does not see the work that physicians must do to keep updated on new methods, procedures, and changes within their field of practice. Nor does the public see what is required of physicians to be affiliated with a hospital or other type of institution.
- The Vermont Medical Society and the Board need to work on educating the general public on what is required of physicians.

Dr. Murray made a motion to have the Board of Medical Practice express its unanimous opinion that the Board is opposed to the amendment to 26 V.S.A § 1400(b) which would require all physicians to have four continuing medical education (CME) credits in palliative care before their licenses could be renewed. The opinion of the Board is that legislation mandating specific palliative care CME requirements for all physicians, whatever the nature of their practice, is not appropriate. There are alternative options that should be considered, and more comprehensive study should be undertaken to ensure the maintenance of competency rather than mandating specific CME through legislation. It should be noted that the Board in conjunction with the Vermont Medical Society, the UVM College of Medicine, and Fletcher Allen Health Care is looking closely at the various options for assuring that physician continuing education is kept up to the highest possible levels. Dr. Rinaldi seconded the motion. The motion passed, opposed: none; recused: none.

Amendment to 18 V.S.A § 9408a (H.212)

The Board discussed the proposed change to 18 V.S.A. § 9408a which would ostensibly require the Board of Medical Practice to use the Council for Affordable Quality Healthcare (CAQH) credentialing application for licensing physicians in the State of Vermont.

Board members stated that they had put a lot of work into the current application, and the current application has specific questions that would not necessarily be on the CAQH application. If the CAQH application and the current application used were combined, it may result in additional monetary expenses, extra time for processing, and redundancy of certain pieces of information.

Dr. Murray made a motion to have the Board of Medical Practice express its unanimous opinion that the Board is opposed to the amendment to 18 V.S.A § 9408a. The opinion of the Board is that the Council for Affordable Quality Healthcare (CAQH) application alone is insufficient for the purposes of licensing physicians in Vermont for at least the following reasons:

- Recently the Common License Application Form (CLAF) created by the Federation of State Medical Boards was incorporated into Vermont's initial physician licensure application. The Licensing Committee then reviewed and revised the complete initial application, and the Board approved.
- The CAQH application does not provide the Board of Medical Practice with adequate information to license a physician in Vermont. The CAQH does not ask the specific questions currently asked on the

Vermont initial physician licensure application, which the Board feels are necessary to help ensure the safety of all Vermonters.

- Certain questions would be redundant if both the CAQH and Vermont's initial physician licensure application were used.
- Cost may increase for physicians, the Board of Medical Practice, and the State of Vermont if the CAQH application is used.

Mr. Hoser seconded the motion. The motion passed, opposed: none; recused: none.

Amendment to 26 V.S.A § 273 Exemptions (S.82)

This proposed bill would amend 26 V.S.A. § 273 so that there would be no prohibition on the use of nonablative lasers by licensed estheticians. "Nonablative laser" is defined in the bill as a laser that does not penetrate the stratum corneum, or the outermost layer of the skin.

The Board asked that Mr. Wargo write a letter to the Senate Committee on Government Operations referring the Senate Committee to the Board's motion on September 3, 2008 regarding the use of lasers:

September 3, 2008 Motion:

Dr. Murray made the motion that the Board adopt the South Committee proposal that "the use of lasers/pulsed light devices, or other energy source, chemical, or modality that affects living tissue, for the purpose of treating a physical disease, disorder, deformity, or injury constitutes the practice of medicine under Vermont law, 26 VSA § 1311." Dr. Sadkin seconded the motion. The motion passed, opposed: none; abstained: none.

Naturopathic physician amendment (Not in any specific bill)

This amendment would allow naturopathic physicians to perform "procedures such as skin biopsies and lesion destruction, incision, or repair that do not involve general anesthesia or respiratory assistance." Some concerns raised by Board members were as follows:

- The need to make a medical diagnosis.
- The need to provide the necessary and proper treatment
- Continuing Medical Education needed in that area

Dr. King made a motion to oppose the proposed amendment that would allow naturopathic physicians to perform "procedures such as skin biopsies and lesion destruction, incision, or repair that do not involve

general anesthesia or respiratory assistance." Dr. Reich seconded the motion. The motion passed, opposed: none; recused: none.

Section 1369. Treatment of Partner of Patient Diagnosed with Chlamydia Infection to be added to Title 26: Professions and Occupations Chapter 23: Medicine and Surgery (H.41)

The Board discussed whether or not they supported this legislation, and members were unable to obtain unified agreement. Therefore, they did not reach a decision. Some members of the Board supported the addition of Section 1369, because it would allow treatment and possible prevention without the partner of the patient diagnosed having to visit their own physician. Other members of the Board opposed the addition of Section 1369 for some of the following reasons: treating a patient who had not been evaluated; possible allergic reactions to the prescription given; and the wording for the proposed section is somewhat vague and open-ended (for example, "drugs" could also include pain medication).

B. Opening cases for investigation

The Board discussed opening cases for investigation.

Some questions raised during this discussion were:

- What are "L" and "R" cases, and when are these letters added to the normal case numbers?

"L" cases represent cases that came from the Licensing Committee and are now being monitored by one of the three Board Committees for various reasons.

"R" cases represent mainly cases that are being reviewed because of a malpractice settlement that has been brought to the attention of the Board. Currently there is no protocol for "R" cases in the statutes or Board Rules and Regulations. "R" cases apparently originated from a complaint that needed to be investigated before determining whether or not to open a formal investigative case against a physician.

After further discussion, the Board felt that the "R" designation should be used for malpractice cases as it has been done in the past, but that the cases should be formally opened if further information is sought beyond the information available in public records.

- How does the Board obtain information against professionals they oversee to open investigative cases?

Cases are the results of either formal complaints being submitted against a certain professional, or through the investigators' receiving leads from various sources.

- Are all complaints submitted to the Board opened, and who has the authority to make the determination to open a case or not?

The Director of the Board of Medical Practice has the authority to determine whether or not a complaint submitted is to be opened or not. Generally, all complaints submitted to the Board of Medical Practice are opened. However, under certain circumstances (for example, clear lack of jurisdiction), it may be determined by the Director that a certain complaint will not be opened.

It was suggested that certain guidelines be set up for opening and not opening cases.

- Should the investigators be able to do some investigating to substantiate a lead before determining whether or not to open it as a case?

After discussion by the Board, it was determined that investigators could, after receiving a lead, do some investigating to substantiate a lead—if necessary. However, the Director must be notified of the situation as soon as possible. He will determine whether a case should be opened. The Director must know about all investigations being carried out.

- What is the process for cases to be opened?

In response to this question, Mr. Wargo will put together guidelines regarding the process of opening cases, and present them to the Board. The following should be taken into consideration:

- ❖ Clarity, consistency, and transparency in the process of opening and not opening cases.

- ❖ Guidelines as to when a case is or is not opened.

- ❖ If any "secret" investigations are being conducted, they should be well thought out.

- When are professionals notified of an open investigation against them?

Generally, professionals are notified as soon as the case is opened. However, in some cases, professionals are not notified at the request of the investigators who may have concerns about records and other information being altered or destroyed.

After further discussion by the Board, it was suggested that respondents should be notified as soon as possible when an investigative case has been opened against them.

4. Administrative Update (Mr. Wargo):

Mr. Wargo informed the Board members of the e-mail he received from Madeleine Mongan, Vermont Medical Society, regarding the draft bill on palliative care and pain management that the House Human Services Committee is working on. (See copy of e-mail dated Tuesday, March 3, 2009 from Madeleine Mongan).

5. Presentation of Applications:

Applications for physician licensure and physician assistant certification were presented and acted upon as detailed in Appendix A, incorporated by reference into these minutes.

Break: 2:14 p.m.

Return: 2:27 p.m.

6. Recess; Convene Hearing (Ms. Power):

Ms. Power convened a hearing to consider adjudicative matters before the Board.

**In re: Susan S. Wiedenkiller, PA-C – MPN 159-0803 & MPN 79-1001 –
Amendment to Stipulation and Consent Order**

Brought forth by and presented by Mr. Arisman

Mr. Hoser made a motion to grant the Amendment to Stipulation and Consent Order. Sr. Ryan seconded the motion. The motion passed, opposed: none; recused: Dr. King, Dr. Thomashow, and Dr. Reich.

7. Executive Session to Discuss Investigative Matters

Sr. Ryan made a motion at 2:32 p.m. to go into Executive Session to discuss confidential matters related to investigations. Dr. Reich seconded the motion. The motion passed, opposed: none; recused: none.

8. Open Session

Return to open session: 3:36 p.m.

Dr. Reich, South Investigative Committee, asked to close:

MPS 7-0109

Dr. King made a motion to close the case presented. Dr. Stouch seconded the motion. The motion passed, opposed: none; recused: South (Mr. Hoser, Ms. Martin, Dr. Reich, and Dr. Rinaldi); 7-0109 – Dr. Clauss.

The Central Investigative Committee asked to close:

MPC 136-1208 MPC 129-1108 MPC 145-1208
MPC108-0908 MPC 146-1208

Sr. Ryan made a motion to close the cases presented. Dr. King seconded the motion. The motion passed, opposed: none; recused: Central Committee (Dr. Clauss, Hon. D. Jenkins, Dr. Murray, Dr. Thomashow and Ms. Young); on 145-1208 and 146-1208 – Dr. Reich; on 108-0908 – Mr. Hoser.

Dr. King, North Investigative Committee, asked to close:

MPN 130-1108 MPN 76-0708 MPN 131-1108
MPN 75-0708 MPN 74-0708 MPN 2-0109
MPN 144-1208 MPN 156-1208 MPN 8-0109
MPN 143-1208 MPN 157-1208 MPN 9-0109

Dr. Rinaldi made a motion to close the cases presented. Dr. Thomashow seconded the motion. The motion passed, opposed: none; recused: North Committee (Dr. King, Ms. Nicol, Sr. Ryan, Dr. Sadkin and Dr. Stouch); on 143-1208 and 144-1208 – Mr. Hoser; on 74-0708, 75-0708 and 76-0708 – Dr. Reich.

9. Any Other Business:

None.

10. Next meetings:

Upcoming meetings:

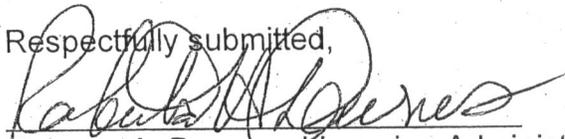
- **April 1, 2009**, Licensing Committee meeting, 10:30 a.m. Gifford Medical Center, Randolph
- **April 1, 2009**, Board meeting, 12:00 p.m. Gifford Medical Center, Randolph
- **April 9, 2009**, North Investigative Committee Meeting, 12 p.m., Water Supply Conference Room #039, Old Pantry Building, State office Complex, Waterbury
- **April 10, 2009**, Central Investigative Committee Meeting, 12 p.m., Liquor Control Conference Room, 13 Green Mountain Drive, Montpelier
- **April 15, 2009**, Board meeting on pending applications, 1:10 p.m., teleconference meeting, with public access at the Board offices, 101 Cherry Street, Burlington
- **April 15, 2009**, South Investigative Committee Meeting, 1:00 p.m., Asa Bloomer Building, 88 Merchants Row, Rutland

11. Adjournment

Sr. Ryan made a motion to adjourn. Dr. Reich seconded the motion. The vote was all in favor, opposed: none, recused: none.

Meeting adjourned at 4:38 p.m.

Respectfully submitted,



Roberta A. Downes, Licensing Administrator I

Attachments:

Appendix A

Presentation of Applications (Recommendations were in the form of motions by the member making the recommendation)

Dr. Clauss reported on interviews conducted with

Raul Braylan, MD Sinclair Cottingham, MD

Recommended by Dr. Clauss for physician licensure
Seconded by Dr. King, passed, opposed: none, recused: none

Dr. Clauss moved for the issuance of a special physician license for use only at the Good Neighbor Clinic located at 70 North Main Street, White River Junction, Vermont to

Omar Khan, MD

Seconded by Dr. King, passed, opposed: none, recused: none

Dr. Clauss moved for the issuance of a limited temporary license for

Catherine Seeley, MD

Seconded by Dr. Stouch, passed, opposed: none, recused: none

Mr. Hoser reported on an interview conducted with

Richard Callahan, PA-C

Recommended Mr. Hoser for physician assistant certification
Seconded by Dr. King, passed, opposed: none, recused: none

Mr. Hoser reported on interviews conducted by Dr. Cahill with

Russell Fricke, MD Jacalyn Shafer, MD

Recommended by Mr. Hoser for physician licensure
Seconded by Dr. King, passed, opposed: none, recused: none