

**Vermont Board of Medical Practice
Minutes of the February 6, 2013 Board Meeting
Gifford Medical Center, Randolph, VT**

Approved

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

Patricia King, MD, PhD, Chair, called the meeting to order at 12:20.

Members Present:

William K. Hoser, PA-C ; Allen Evans; Joshua Plavin, MD; Carol A. Diamond; Robert G. Hayward, MD; Leo LeCours; Patricia Hunter; Sarah McClain; David A. Jenkins; Robert Rinaldi, DPM; Harvey Reich, MD; William H. Stouch, MD; Toby Sadkin, MD; Michael Drew, MD; Janice Gallant, MD.

Others in Attendance:

David Herlihy, Executive Director; Paula Nenner, Investigator; Philip Ciotti, Investigator; Karen LaFond, Licensing Administrator; Margaret Vincent, AAG; Robert McDougal, AAG; Kurt Khuel, AAG.

2. Public Comment:

None

3. Approval of Minutes of the January 2, 2013 and January 16, 2013 Board Meetings:

Dr. Gallant moved to accept the minutes of the January 2, 2013 meeting. Mr. Hoser seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Drew moved to accept the minutes of the January 2, 2013 meeting. Ms. Diamond seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

4. Board Issues (Dr. King):

Dr. King summarized a special Federation of State Medical Boards (FSMB) meeting held on January 16 & 17, 2013 in Dallas, Texas, to discuss issues relating to license portability and proposals to create national licensure, issues that have become much discussed with the increasing role of telemedicine. Dr. King mentioned that there had been a proposal to create a "Platinum Standard" program during the FSMB meeting in the spring of 2012. That proposal was to create a multi-state standard for expedited licensure. It did not pass, but was approved for further study by the Federation. Pressure in this area comes from two sources – the telemedicine lobby, which has a financial interest in seeing an increase in the remote practice of health care, and also in response to expected increases in demand for health care as up to 30 million additional individuals gain health insurance coverage under the Affordable Care Act. The FSMB advocacy group has expressed an urgency for action because if the Federation and member boards don't offer proposals to counter the allegations that the current model of state licensure is inefficient and a barrier to access to care, then something may be imposed on the Federation and its members. There could not be a formal vote for a resolution at the

Dallas meeting in January, but there was a consensus of support to work on a multi-state compact to facilitate licensure in additional states. The FSMB will continue this discussion at the annual meeting in April 2013, which will be held in Boston, MA.

5. Administrative Update (Mr. Herlihy):

Mr. Herlihy provided the members with an update on going paperless. Purchase of iPads has been approved and Ms. LaFond will be submitting the forms this week.

Mr. Herlihy asked members if they would devote time to professional development on a Board day. It would be an opportunity for training and discussion on topics such as Administrative Procedures and ethical standards that apply to Board members. Because so many members travel long distances, it was proposed that the Licensing Committee and full Board meeting would start early one day, with the goal to finish by noon or shortly thereafter, with the afternoon then devoted to training. Members were agreeable to the idea and Mr. Herlihy stated he would propose some dates for consideration.

Mr. Herlihy informed members that he has been reviewing the Physician Application with Tracy Hayes and will soon be disseminating a proposed draft of revisions for consideration. He will first bring it to the Licensing Committee for comment, then the full Board, and he will also send it out to external stakeholders for comment.

Mr. Herlihy noted that the Continuing Medical Education sub-committee has not yet met, but he will send something out within the next week or so.

The FSMB will hold its annual meeting in Boston, MA in April 2013 and Mr. Herlihy encouraged board members to attend. Although the Board cannot fund the attendance fee, Mr. Herlihy will look into "scholarship funding" that is provided by the FSMB. Those members who are interested in attending can either contact FSMB directly or send him an e-mail.

6. Presentation of Applications (12:30 p.m. – 12:45p.m.):

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

7. Consideration of Request to Approve Training for Satisfaction of Stipulation, In Re: Theodore L. Johnson, MD – MPN 112-1010 (12:45 p.m. – 1:00 p.m.):

In consideration of Dr. Johnson's request to approve a class, the Board discussed at length whether online courses should be allowed, whether the language of the stipulation allowed other than attendance at an in-person event, and the quality of the proposed course.

Dr. Rinaldi made a motion to approve the online course submitted by Dr. Johnson to satisfy the requirement in the Stipulation and Consent Order November 7, 2012. Dr. Hayward seconded the motion. The motion passed, opposed: 1; abstained: none; recused: North Investigative Committee.

8. Update Regarding Bills Proposed in the Legislature of Interest to the Board (Mr. Herlihy, 1:00 p.m. – 1:15 p.m.):

H. 25 – Health Care Professional Transparency – There is the potential for the Board to support this bill because it would dictate some standards for clearly identifying providers by name and occupation in advertising and documents distributed to patients. It also requires the Board and the Office of Professional Regulation to make Rules that would require the use of photo ID tags with the name and occupation. Previously, the Board had considered a similar concept in the context of changes to Nursing Rules that permitted APRNs to practice without a collaboration agreement. For more information on this bill, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-025.pdf>.

H. 35 – No-fault Compensation Program for Malpractice by Primary Care Physicians – This was introduced by Dr. George Till, a physician from Jericho who serves in the House. Although there is no specific role for the Board, the language seeks to create a review board that would hear claims brought against PCPs and, if found to be merited, authorize payment from a fund that would take the place of malpractice insurance. If this were to come into law, implications for the Board would be related to reviewing “no-fault” payments and making determinations as to whether there was fault. This bill seems to be an attempt to open a discussion on Tort Reform. For more information, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-035.pdf>.

H. 68 – Continuing Medical Education – This bill has been introduced by Dr. George Till and proposes to amend the language of 26 V.S.A. § 1400(b) by removing the requirement for CMEs related to hospice and palliative care and prescribing of controlled substances and substitute “provided, however, that the Board shall not require physicians to earn continuing medical education credits on subjects unrelated to their field or fields of practice.” The requirement for the CMEs was the most controversial issue that came up in the establishment of CME and the Rules for CME. Some licensees have expressed frustration that the hospice/palliative care CME requirement is unrelated to their work, but the legislature sought to increase understanding of the issues by requiring the CME. Regardless of the outcome, the statute should provide clear guidance as to what is required for CMEs. <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-068.pdf>

H. 77 – Prior Authorizations – This bill does not appear to be closely related to the work of the Board. Some requirements would be imposed on insurers related to their communications associated with prior authorization. For more information, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-077.pdf>

H. 116 – An Act Relating to Health Care Administration - This bill is primarily concerned with transfer of some functions from the Department of Financial Regulation to the Green Mountain Care (GMC) Board and adding some administrative details about GMC Board operations. The part that is of interest to this Board is a section that addresses the power of the Board to collect the health care provider census data. By specifying that that this Board has the power to collect census data, it will provide the ability to make the requirement part of the renewal application and require every renewal applicant to provide answers. Historically, the Board had included the survey in the packet with the renewal application, but this year the survey was sent out separately from the renewal. The response rate was only about 60%, which is much lower than previous years. For more information, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-116.pdf>

H. 121 – An Act Relating to Law Enforcement Access to Prescription Records at Pharmacies – This would eliminate the statutory language authorizing law enforcement access to pharmacy records, with the intended outcome that a warrant would be required to access the records. For more information, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-121.pdf>

H. 123 – An Act Relating to Lyme Disease and Other Tick-Borne Illnesses – This bill was proposed in the last legislative session. The Board opposed it. The standard of care is supposed to reflect what the weight of reasonably competent practitioners believe is appropriate care, not whatever advocacy groups can prompt legislators to do. For more information, <http://www.leg.state.vt.us/docs/2014/bills/Intro/H-123.pdf>

S. 67 An Act Relating to the Vermont Prescription Monitoring System - During the 2012 legislative session, this bill failed in the final days of the session. The 2013 version features some of the changes that were offered in the prior bill, but not all of them. It goes beyond VPMS issues and gets into a broader range of matters regarding prescription drug abuse. Some major features of this version: requirement for an ID in order to pick up a Schedule II, III, or IV Prescription; requirements relating to patients keeping regulated-drug prescriptions in the original container; adds language specifying that not just the prescription data confidential, but also “all related information and records” is confidential; authorizes interstate sharing with other PMSs, subject to some restrictions; requires us to disclose the name of the subject of our investigation when we request data; requires each licensing board that licenses authorized prescribers to develop standard guidelines for prescribing for chronic pain and “other medical conditions”; requires every prescriber and every dispenser of Schedule II, III, and IV controlled substances to register; requires each licensing board that licenses prescribers to adopt standards regarding use of VPMS; requires each licensing authority that licenses dispensers to make rules regarding reporting by dispensers, no less than every 7 days; establishes special procedures for all replacement Prescriptions for II, III, and IV meds; creates a VPMS advisory commission to advise the Commissioner of Health; creates a “Unified Pain Management System Advisory Council” to advise the Commissioner on appropriate use of controlled substances, addiction, and prevention of prescription drug abuse”; requires the Commissioners of Health and Public Safety to make a joint recommendation as to how to establish an unused drug take-back program. For more information, <http://www.leg.state.vt.us/docs/2014/bills/Intro/S-067.pdf>

Mr. Herlihy stated that if the Board members felt inclined to talk with state representatives in their district, they may wish to specifically discuss H. 121 and H. 123.

9. Recess; Convene Hearing to discuss any stipulations or disciplinary matters that are before the Board (1:45 p.m. – 2:15 p.m.): (Mr. Simpson)

10. Executive Session to Discuss:

- a. Investigative cases recommended for closure
- b. Other matters that are confidential by law, if any.

Dr. Plavin made a motion at 2:00 p.m. to go into Executive Session to discuss confidential matters related to investigations. Mr. Hoser seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

11. Return to Open Session; Board Actions on Matters Discussed in Executive Session:

Dr. Reich made a motion at 2:51 to return to Open Session. Mr. Evans seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

12. Board Actions on Committee Recommendations with Regard to any Non-confidential Matters:

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

None

Mr. Jenkins, Central Investigative Committee, asked to close:

MPC 74-0512 – Special Letter #1; Dr. Reich recused
MPC 170-1112 – Letter #1; Dr. Reich recused
MPC 167-1012 – Special Letter #1
MPC 84-0612 – Special Letter #3; Dr. Plavin & Ms. Hunter opposed
MPC 171-1112 – Special Letter #1; Dr. Sadkin recused
MPC 104-0812 – Letter #1
MPC 116-0912 – Letter #1

Mr. Hoser made a motion to close the cases presented. Mr. Evans seconded the motion. The motion passed, opposed: 2; abstained: none; recused: Central Investigative Committee & 3 others.

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

MPN 211-1212 – Letter #1
MPN 154-1012 – Special Letter #1
MPN 148-1012 – Letter #1
MPN 184-1112 – Special Letter #1
MPN 194-1112 – Letter #1; Dr. Reich recused
MPN 101-0812 – Letter #1
MPN 150-1012 – Letter #1; Ms. McClain recused
MPN 151-1012 – Letter #1
MPN 98-0812 – Letter #1
MPN 156-1012 – Letter #1

Dr. Hayward made a motion to close the cases presented. Dr. Rinaldi seconded the motion. The motion passed, opposed: none; abstained: none; recused: North Investigative Committee, Ms. Diamond & 2 others.

13. Other Business:

Mr. Herlihy informed members that an agreement in the case brought by Bill Wargo, former Director of the Board. He stated that he did not have more specifics other than the fact that the case had been settled. State settlements are public, so this will be available in the further if individuals are interested.

Mr. Herlihy informed the Board that David Englander has been hired to fill the position of Dixie Henry as the Health Law and Policy Advisor to the Commissioner of Health, and is Mr. Herlihy's supervisor.

Mr. Herlihy also stated that the Guidelines for Pain Management need to be updated. One known revision that should be made is to include reference to use of VPMS. Those interested in participating in the process to revise the guidelines will have an opportunity to do so.

14. Upcoming Board meetings, committee meetings, hearings, etc.: (Locations are subject to change, you will be notified if a changes takes place.)

- **February 14, 2013, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3rd Floor, Conference Room 3B, Burlington, VT**
- **February 15, 2013, Central Investigative Committee Meeting, 9 a.m., Liquor Control Conference Room, Basement Floor, 13 Green Mountain Drive, Montpelier, VT**
- **February 20, 2013, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2nd, Floor Burlington, VT (and via telephone)**
- **February 20, 2013, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **March 6, 2013, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **March 6, 2013, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

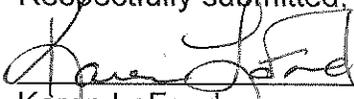
15. Adjournment:

Dr. Hayward made a motion to adjourn. Dr. Reich seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Meeting adjourned at 2:57 p.m.

Attachments: Appendix A

Respectfully submitted,



Karen LaFond
Licensing Administrator

Appendix A

Presentation of Applications

Dr. King moved for the issuance of physician licenses and physician assistant licenses for:

Jared Blum, MD
Lixia Ellis, MD
Stell Legarda, MD
Chinwe Oraka, MD
Louis Remyse, MD
Patricia Webster, MD

Giulio Cavalli, MD
Charles Gillespie, MD
Peggy Lindsey, MD
Richard Patterson, MD
Kathleen Smith, MD
Howard Yeaton, MD

Lyn Duncan, MD
Syed Hassan, MD
Kellie Marlow, PA-C
Joseph Pierson, MD
Alison Sullivan, MD

Recommended by Dr. Reich for licensure. Seconded by Dr. Plavin. The motion passed; opposed: none; recused: none; abstained.

Dr. King moved for the issuance of Limited Temporary Physician licenses for:

Erinc Akture, MD-LTL

Recommended by Dr. Plavin for physician licensure. Seconded by Dr. Drew, passed, opposed: none; recused: none; abstained: none.