

VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the September 3, 2014 Board Meeting
Gifford Medical Center, Randolph, Vermont

Approved

1. Call to Order; Introduce New Members; Call the Roll; Acknowledge Guests:

Patricia A. King, MD called the meeting to order at 11:08 p.m.

Members Present:

Richard Bernstein, MD; Brent Burgee, MD; Michael Drew, MD; Allen Evans, Janice M. Gallant, MD; Faisal Gill; Robert G. Hayward, MD; William K. Hoser, PA-C; Patricia Hunter; David A. Jenkins; Patricia A. King, MD; Leo LeCours; David Liebow, DPM; Sarah McClain; Joshua Plavin, MD; Marga Sproul, MD.

Others in Attendance:

David Herlihy, Executive Director; Paula Nenninger, Investigator; Karen LaFond, Operations Administrator; Bessie Weiss, AAG; Cassandra Aristide, AAG; Bill Reynolds, AAG.

2. Public Comment:

None

3. Approval of Minutes of the and the August 6, 2014 Board Meetings:

Mr. Gill moved to accept the minutes of the August 6, 2014 meeting. Dr. Reich seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

4. Board Issues (Dr. King):

Dr. King briefed the Board on the draft of proposed rules that she received as a member of the Unified Pain Council that is working on opioid prescribing rules as called for by Act 75. The process is led by the Health Commissioner. She was asked to provide comments on the rules and did so without discussion with the full Board because of the short time allowed to submit comments. There will be additional opportunity for the Board to comment as the rules go through the public process. Dr. King found the draft rules to be quite consistent with the Board's updated policy on prescribing opioids for chronic pain. This draft represents the consensus of a large and inclusive group of stakeholders, so that is an advantage. A major difference between the rules and the Board policy is that the rules are mandatory, whereas the Board policy is established as guidelines. The proposed rules cover many of the same areas as the Board policy, such as intake, monitoring, informed consent & treatment agreements, follow up on urinalysis results, and reevaluation of the patient. A significant departure from the Board policy is the establishment of a standard of maximum daily dosing of 120 Morphine Equivalent Doses (MED), with prescriptions over that level triggering review. The rules also establish additional instances in which emergency room prescribers must check VPMS, and create requirements specific to buprenorphine prescribing. The draft rules will be distributed to Board members and the Board will further

discuss submission of comments on the rules.

5. Administrative Update (Mr. Herlihy):

Mr. Herlihy discussed with members the announcement about the Dept. of Health Comm. Harry Chen's promotion as acting Secretary for the Agency of Human Services. Dr. Chen will officially continue to serve as the VDH Commissioner and there are no plans to replace him at this time.

Mr. Herlihy also provided an update on the status of the vacant investigator position. He made an offer of employment to the top candidate but the offer was declined. The position will be reposted and he will keep the Board updated on the progress of filling this position.

Mr. Herlihy informed the members that the Physician license renewal period had begun and with the new e-mail distribution system we are using to contact our licensees we were able to know that more than half of the licensees opened the renewal notice within the first 5 days. Approximately 150 licensees had submitted renewal applications as of the September 3rd and there had not yet been any issues or concerns raised about the e-license system. He reminded members that the questions had been revised and he would provide updates throughout the renewal cycle.

Finally, Mr. Herlihy noted that Specification of Charges have been filed in the case of Michael E. Scovner, MD, MPN 50-0510 and advised the members that a hearing panel would need to be established for the formal hearing, which would likely take place later in the fall if not after the first of the year. He stated that he will keep members updated on this issue and will be asking Central and South members for volunteers to serve on the panel as soon as the dates have been finalized.

6. Presentation of Applications (12:30 p.m. – 12:45 p.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. Presentations to the Board (12:45 p.m. – 1:15 p.m.):

None

8. Recess; Convene hearing to discuss any stipulations or disciplinary matters that are before the Board (1:15 p.m. – 1:45 p.m.)

In re: Pierre A. Delfausse, PA-C – MPN 35-0311 – Request for Approval of New Work Site and Supervisor

Ms. Weiss addressed the Board, summarizing the facts leading up to the petition for approval of the new work site and supervisor, and monitoring by the New Hampshire Practitioner Health Program. Mr. LeCours made a motion to approve the request for approval of the new work site and supervisor, and monitoring by the New Hampshire

Practitioner Health Program . Dr. Sproul seconded the motion. The motion passed; opposed: none; abstained: none; recused: Mr. Hoser and North Investigative Committee.

In re: Adnan S. Khan, MD – Licensing Matter – Stipulation and Consent Order

Ms. Weiss addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order. Dr. Hayward made a motion to approve the Stipulation and Consent Order. Mr. Gill seconded the motion. The motion passed; opposed: none; abstained: Dr. Reich; recused: none.

9. Reconvene meeting; Executive Session to Discuss:

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

Dr. Gallant made a motion at 12:22 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.

10. Return to Open Session; Board Actions on matters discussed in Executive Session:

Dr. Hayward made a motion at 1:20 p.m. to return to Open Session. Ms. McClain seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

11. Board Actions on Committee recommendations with regard to any non-confidential matters:

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

MPN 46-0514 – Special Letter #1
MPN 53-0514 – Letter #1
MPN 5-0114 – Special Letter #2

Dr. Reich made a motion to close the cases presented. Mr. Hoser seconded the motion. The motion passed; opposed: none; abstained: none; recused: North Investigative Committee.

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

MPC 15-0314 – Special Letter #1
MPC 65-0714 – Letter #1
MPC 32-0314 – Letter #1
MPC 33-0314 – Letter #1
MPC 54-0514 – Special Letter #1
MPC 39-0514 – Letter #1

Ms. McClain made a motion to close the cases presented. Dr. Reich seconded the motion. The motion passed; opposed: none; abstained: none; recused: Central Investigative Committee.

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

MPS 71-0714 – Letter #1
MPS 12-0214 – Letter #1
MPS 17-0113 – Special Letter #2: Dr. King recused
MPS 114-0413 – Special Letter #1: Dr. King recused
MPS 68-0714 – Special Letter #1
MPS 47-0514 – Letter #1
MPS 38-0414 – Special Letter #1
MPS 37-0414 – Special Letter #1

Dr. Gallant made a motion to close the cases presented. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: 1 and South Investigative Committee.

12. Other Business:

The Board reviewed the proposed language to amend the CME Rules. Dr. Hayward moved to approve the language, to be adopted through the rulemaking process. Dr. Gallant seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

13. Retreat

Retreat Topic 1: Investigation Procedures

This was introduced with a reminder that there are two reasons this is on the agenda. First, this discussion is prompted by the long-planned revision to Board Rules, which will include more rules directed toward investigative procedure. Second, Act 130 of the 2013 General Assembly included a directive to engage in dialogue about investigative procedure with interested stakeholders, such as VMS. Discussion followed regarding existing procedures and how they might be documented and/or modified. Suggested presented by VMS in a letter were considered throughout the discussion. The Board provided guidance to the Executive Director for drafting proposed rules regarding many aspects of the investigation process, including: the opening of cases, including those based on anonymous or unsigned complaints and “tips” that are not presented as complaints; notice to Respondents, and when notice may be delayed; time for submission of a written response by Respondents; protocol for when a Respondent may be visited without prior notice; protocols for identification of investigators to Respondents or witnesses; process for obtaining records; issues specific to cases presenting issues of quality of care; and assignment of hearing officers. Draft rules will be prepared and shared with the Board before moving to formal rulemaking.

Retreat Topic 2: Interviewing Respondents

Mr. Herlihy and Ms. Nenner led a discussion of the process surrounding Respondent visits with the Investigating Committees. The discussion covered the goals of Committee interviews, the mechanics/procedures of visits, and techniques for questioning. There was also discussion of how to close the visit, and that discussion resulted in agreement on a consistent process with the Executive Director showing the Respondent and counsel out.

Retreat Topic 3: Closing Letters

Tabled for another meeting as there was not adequate time to discuss this topic.

Retreat Topic 4: Goal Setting for 2015 and Profile of Cases

Tabled for another meeting as there was not adequate time to discuss this topic

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

- **September 10, 2014, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **September 11, 2014, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3rd Floor, Conference Room 3B, Burlington, VT**
- **September 12, 2014, Central Investigative Committee Meeting, 9 a.m., Liquor Control Conference Room, Basement Floor, 13 Green Mountain Drive, Montpelier, VT**
- **September 17, 2014, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2nd, Floor Burlington, VT (and via telephone)**
- **October 1, 2014, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **October 1, 2014, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

15. Open Forum:

None

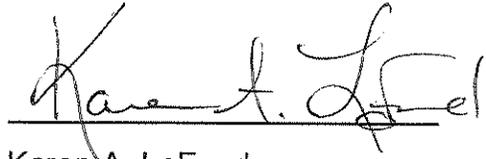
16. Adjourn:

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

Meeting adjourned at p.m.

Attachments: Appendix A

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karen A. LaFond", written over a horizontal line.

Karen A. LaFond

Medical Licensing & Operations Administrator

APPENDIX A

Presentation of Applications

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

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|-----------------------|--------------------------|-----------------------|
| George Atweh, MD | May Azar, MD | Maura Barry, MD |
| William Black, MD | Jocelyn Chertoff, MD | Norman Crocker, MD |
| Joan DeSantis, MD | Roberta DiFlorio, MD | Clifford Eskey, MD |
| Matthew Fazio, AA-C | Edmund Folefac, MD | John Fothergill, MD |
| James Graham, MD | Katherine Gyves-Ray, MD | Soomin Han, PA-C |
| Robert Harris, MD | Barbara Harvey, MD | Stephan Hatch, II, MD |
| David Herman, MD | Barry Highbloom, MD | Elizabeth Hunt, MD |
| Laura Irwin, MD | Nicole Kafka, MD | Adnan Khan, MD |
| Elisa Lafayette, PA-C | Simone Lessac-Chenen, MD | Justin Lewis, MD |
| Petra Lewis, MD | David Ludwig, MD | Frank Mele, MD |
| Savvas Mendrinou, MD | Samantha Nadeau, PA-C | Cumara O'Carroll, MD |
| David Pastel, MD | Miller Pearsall, MD | Dale Sponaugle, MD |
| Mitchell Sullivan, MD | Steven Stetson, MD | Mark Trump, MD |
| Mark Wagner, MD | Stephanie Yen, MD | Elizabeth Zeeck, MD |

Recommended by Mr. Hoser for licensure and certification. Seconded by Ms. McClain. The motion passed; opposed: none; abstained: none; recused: none.