

VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the January 6, 2016 Board Meeting
Gifford Medical Center, Randolph, Vermont

Unapproved

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

William K. Hoser, PA-C called the meeting to order at 12:12 P.M.

Members Present:

Richard Bernstein, MD; Brent Burgee, MD; Richard Clattenburg, MD; Michael Drew, MD; Allen Evans; Faisal Gill; Patricia Hunter; David A. Jenkins; Leo LeCours; David Liebow, DPM; Sarah McClain; Christine Payne, MD; Joshua Plavin, MD; Harvey Reich, MD; Marga Sproul, MD.

Others in Attendance:

David Herlihy, Executive Director; Paula Nenninger, Investigator; Christiana Coyner, Board Investigator; Karen LaFond, Operations Administrator; Margaret Vincent, AAG; Kassandra Diederich, AAG; Bill Reynolds, AAG.

2. Public Comment:

None

3. Approval of Minutes of the December 2 and December 16, 2015 Board Meetings:

Dr. Bernstein moved to accept the minutes of the December 2, 2015 meeting. Dr. Liebow seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Hayward moved to accept the minutes of the December 16, 2015 meeting. Dr. Bernstein seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

4. Board Issues (Mr. Hoser):

None

5. Administrative Update (Mr. Herlihy):

Mr. Herlihy stated that there are two outreach events in coming weeks. First, on January 13 he will visit Southwestern Vermont Medical Center in Bennington to do a

presentation on prescribing and the new VDH rules on opioids and VPMS. He will be accompanied by Investigator Christiana Coyner. The presentation will cover some of the same ground as the Grand Rounds presentation done with VPMS and the Department of Public Safety, but the hospital requested training specific to the rules. On January 29, Mr. Herlihy and Investigators Nenner and Hosier will attend the annual meeting of the Physician Assistant Academy of Vermont to make a presentation. Board Chair Mr. Hosier will be in attendance also.

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

Applications for physician and physician assistant licensure, and certifications of radiologist and anesthesiologist assistants were presented and acted upon as detailed in Appendix A, incorporated by reference into these minutes.

7. Board Selection of Physician Representative to the APRN Committee (12:45 p.m. – 1:00 p.m.)

Mr. Herlihy noted that Dr. Burgee had been nominated to replace Dr. Hayward as the physician representative to the APRN committee and that he had not received any other nominations.

Dr. Hayward made a motion to approve Dr. Burgee as the physician representative to the APRN committee. Dr. Plavin seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

8. Presentations to the Board (12:45 p.m. – 1:15 p.m.):

Ms. LaFond presented statistics regarding the readership of the newsletter that was disseminated to all licensees in October 2015. She noted that of the 4019 recipients, 1687 (or 42%) opened the email; 714 of the 1687 individuals clicked links to various articles; and 2220 (or 55.2%) did not open the email. There was discussion regarding the issues with the email messages from the Board going to spam mailboxes, issues with licensees who unsubscribe from the system and concerns about licensees not receiving Board communications due to invalid or duplicate email addresses. Ms. LaFond noted that with each renewal cycle there are emails that bounce back or are undeliverable, but with the efforts of Ms. Hayes and Ms. LaFond to communicate with hospital and licensing coordinators, the percentage of bounced/undeliverable emails continues to decrease.

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

None

10. Reconvene meeting; Executive Session to Discuss:

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

Dr. Clattenburg made a motion at 12:34 p.m. to enter into Executive Session to discuss confidential matters related to investigations. Dr. Liebow seconded the motion. The motion passed: opposed: none; abstained: none; recused: none

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

Ms. McClain made a motion at 2:32 p.m. to return to Open Session. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

Mr. LeCours, North Investigative Committee, asked to close:

MPN 045-0213 – Stan Burns Letter; Dr. Liebow and Dr. Reich recused.
MPN 171-1115 – Special Letter #1
MPN 145-0915 – Letter #1
MPN 126-0715 – Special Letter #1
MPN 127-0715 – Special Letter #1
MPN 162-1015 – Letter #1
MPN 041-0514 – Special Letter #2
MPN 143-0915 – Special Letter #1
MPN 159-1015 – Letter #1; Dr. Reich recused.

Dr. Reich made a motion to close the cases presented. Dr. Plavin seconded the motion. The motion passed; opposed: none; abstained: none; recused: 2 and North Investigative Committee.

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

MPC 139-0815 – Special Letter #1
MPC 152-0915 – Letter #1
MPC 153-1015 – Special Letter #1
MPC 001-0112 – Special Letter #2; Dr. Hayward recused
MPC 150-0915 – Referral to the Attorney General's Office

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

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

MPS 142-0915 – Letter #1; Dr. Sproul recused

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

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

None

13. Other Business:

Continuation of Discussion of VDH Policy Memo on Analysis of Opioid Prescribing Patterns

It was agreed that this item, which was continued from the December 2015 meeting, would be postponed to be taken up at the February 2016 meeting. Members indicated that they are still interested in hearing more about this subject from Dr. Chen or an appropriate representative from the Health Department.

Invitation to participate in FSMB meeting regarding anti-trust issues associated with the U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, No. 13-534, February 25, 2015.

Mr. Herlihy related the background about this case and its implications for Vermont. He noted that he has not considered it an urgent issue for the Vermont Board, but suggested that there needs to be careful consideration of the issue and that this meeting offers an opportunity to obtain expert advice from other states and FSMB. He noted that the next agenda item is an example of how the Board can be in a position of having to take action on matters that might prompt allegations of anti-competitive actions. Mr. Hoser agreed that it would be of benefit for Mr. Herlihy to attend the meeting so as to obtain a better understanding of the related issues.

Mr. LeCours made a motion to support Mr. Herlihy's participation at the FSMB meeting regarding anti-trust issues associated with the US Supreme Court decision, No. 13-534 to be held in Dallas, TX on February 25, 2016. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

Board Statement on Use of Lasers.

Mr. Herlihy reviewed the background of the "Use of Lasers" issue that has come before the Board in 2008 and 2013. He noted that the Board issued a statement in September 2008 that established certain use of lasers and other modalities as

the practice of medicine, and in July of 2013, the Board passed a motion revising the language to comport with amendments to 26 V.S.A. § 1311 passed in 2011.

Mr. Herlihy informed members that the Administrative Rules of the Board of Barbers and Cosmetologists include language that might be interpreted by licensees of the Board of Medical Practice that it is acceptable to delegate certain tasks that constitute the practice of medicine to persons not licensed or certified to practice any health care profession. He asked members whether or not the Board should consider adding to its statement on this issue to include a position on the acceptability of such delegations. Several members offered comments regarding concerns about delegation of this medical task to individuals not licensed or certified in any relevant health care profession. It was noted that delegation would not be appropriate for all health care professions. The issue was continued to the February meeting and Mr. Herlihy was asked to propose specific language for an amended policy statement.

FSMB Invitation for Comment on Draft Report on Marijuana and Medical Regulation. Enclosure to Board packet

Mr. Herlihy noted that the FSMB draft report is largely directed at physicians who are involved in prescribing marijuana as a medical treatment or making a recommendation for use of marijuana. He explained that the Vermont program does not feature any prescribing or recommendations for marijuana by physicians. Instead, in Vermont, the physician's role is limited to providing information about how long an applicant has been a patient and about the patient's condition. In light of that, he suggested that the Vermont Board does not have a direct interest in this draft report and suggested the Board might decline to comment on the report for that reason. There was no further discussion of the report.

Legislative Updates

Mr. Herlihy briefly reviewed bills that have recently been introduced in the 2016 legislature: S201 and S243, which focus on opioid prescribing practices. He requested that members review the bills before the February meeting at which he will ask the Board to take a position regarding each proposal. He noted that the Board could support, oppose, or propose modifications to the bills. Members suggested that it would be helpful to have Dr. Chen or another representative of the Health Department provide the Department's view on the bills.

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

- **January 14, 2016, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3rd Floor,**

Conference Room 2C, Burlington, VT

- **Januar 15, 2016, Central Investigative Committee Meeting, 9 a.m., National Life – North Building: Calvin Coolidge Conference Room – 6th Floor of the Deane C. Davis Building, Montpelier, VT**
- **January 20, 2016, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2nd, Floor Burlington, VT (and via telephone)**
- **January 20, 2016, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **February 3, 2016, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **February 3, 2016, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

15. Open Forum:

16. Adjourn:

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

Meeting adjourned at 3:43 p.m.

Attachments: Appendix A

Respectfully submitted,

Karen A. LaFond
Medical Licensing & Operations Administrator

APPENDIX A

Presentation of Applications

Mr. Hoser moved for the issuance of physician licenses and physician assistant licenses for:

Gitika Aggarwal, MD	Keerthi Arani, MD	Thomas Barton, MD
Kermit Brunelle, MD	Paul Burke, MD	Gwyn Cattell, MD
Johanna Chang, MD	James Collins, MD	Kevin Croce, MD
Kathryn Cunin, MD	Stephen Fleet, MD	Stephen Frey, MD
Elizabeth Garcia, MD	Jehangir Gowani, MD	Angela Guerrero, MD
Pauline Kahng, PA-C	Amanda Kolb, MD	Michael LaMantia, MD
Francis Lee, MD	Sandor Mecs, MD	Avni Pandya, MD
Alyssa Pearl, PA-C	David Rochelini, MD	Jon Seaver, PA-C
Susan Tucker, MD	Christopher Ward, MD	Scott Whetsell, MD

Recommended by Mr. LeCours for licensure. Seconded by Dr. Hayward. The motion passed; opposed: none; abstained: none; recused: none.

Mr. Hoser moved for the issuance of Limited Temporary Physician licenses for:

Daisy MacCallum, MD

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