Vermont Board of Medical Practice
Minutes of the March 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:
Michael Drew, MD; Allen Evans; Carol A. Diamond; Janice Gallant, MD; Robert G. Hayward, MD; Leo LeCours; Patricia Hunter; David A. Jenkins; Joshua Plavin, MD; Robert Rinaldi, DPM; Harvey Reich, MD; Peter Thomashow, MD; William H. Stouch, MD; Toby Sadkin, MD.

Others in Attendance:
David Herlihy, Executive Director; Paula Nenninger, Investigator; Philip Ciotti, Investigator; Karen LaFond, Licensing Administrator; Tracy Hayes, Licensing Technician; Margaret Vincent, AAG; Robert McDougal, AAG; Kurt Khuel, AAG; Robert Simpson, Esq., Presiding Officer.

2. Public Comment:

None

3. Approval of Minutes of the February 6, 2013 and February 20, 2013 Board Meetings:

Dr. Gallant moved to accept the minutes of the February 6, 2013 meeting. Dr. Drew seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Gallant moved to accept the minutes of the February 20, 2013 meeting. Dr. Drew seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

4. Board Issues (Dr. King):

None

5. Administrative Update (Mr. Herlihy):

Mr. Herlihy congratulated Ms. Diamond on receiving a scholarship from the Federation of State Medical Boards (FSMB) to attend the annual conference that will be held in Boston, MA on April 18 – 20, 2013.

Mr. Herlihy discussed with the members that the Department of Health has created guidelines for a "healthy menu" at VDH sponsored events, so the food options for all Board and committee meetings will soon be changed.

Mr. Herlihy informed members that Ms. LaFond tested the HSIN site on an iPad and it works great. The order for the iPads has been placed and it is our hope that we will be distributing them at the May Board meeting.

Mr. Herlihy provided an update on the new investigator position for the Board, and although the position had been approved by the Department of Health and the Commissioner there is a hold on all "pool positions." This means that there will be no new positions added to state government at this time, and it is unclear when or if a position will be granted in the foreseeable future. The staff is working on strategies to help the investigators with their workload, such as assigning some investigative support work to the Administrative Assistant.

Mr. Herlihy discussed legislative updates with the members, specifically: S104 - an act relating to expedited partner therapy; H. 123 – An Act Relating to Lyme Disease and Other Tick-Borne Illnesses; S77 – an act relating to patient choice and control at end of life; and H 350 – an act relating to the posting of medical unprofessional conduct decisions and to investigators of alleged unprofessional conduct.

S104 – Mr. Herlihy was asked to give VDH Commissioner Chen a written memo briefly outlining the Board's position regarding the practice of prescribing antibiotics for the sexual partners of patients diagnosed with sexually-transmitted diseases, without examining those partners. The practice is referred to as Expedited Partner Therapy (EPT). While the Board had not established a formal position to provide to Comm. Chen, he did explain that the Board generally opposes statutory provisions that set the standard of care in law. Discussion focused on why this would need to be in statute versus a VDH policy. Also, members clarified that the Board does not set standards of care for the licensed community, but they interpret the standard of care as it exists because it is continually changing. The practice of EPT has developed as an exception to the requirement to examine and diagnose prior to prescribing, and only after a thorough, scientific examination of the risks and benefits of prescribing. The Board feels strongly that the standard of care should not be set in statute, but is accepting of EPT when it has been carefully studied, as reflected in the CDC guidelines for EPT. .

H. 123 – As discussed in previous Board meetings, this bill remains controversial as it is perceived that the Board is preventing people from obtaining the long-term treatment for Lyme Disease. The Board has taken the position that the standard of care should not be legislated, and the Board does not set the standard of care. With assistance of experts, the Board determines the standard in the medical community and what constitutes the standard of care for a particular condition many be continually and quickly changing. In this instance, the Board's opposition is also based on the overwhelming weight of scientific evidence that causes the treatments addressed by this bill to not constitute accepted medical practice.

Dr. Rinaldi made a motion for the Board to oppose the statute. Ms Diamond seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Plavin added a "friendly amendment to the motion" stating that the Board opposes H.123/S.112 and opposes legislation of the standard of care. Dr. Reich seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Reich made a motion to accept the amended version of the original motion. Ms. Hunter seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

S77 – aka: Death with Dignity or the Physician-assisted Suicide act. This was passed in the Senate and sent to the House on February 14, 2013, and was assigned to the Committee on Human Services. As passed in the Senate, the bill may present potential problems for the Board in its oversight of medical practice. It was amended to leave only a short declaration of

immunity for physicians who prescribe in the circumstances covered by the bill. A health care professional who has a bona fide health care professional-patient relationship with a patient with a terminal condition and who prescribes medication to that patient for the relief of symptoms associated with or caused by the terminal condition shall not be subject to criminal or civil liability or professional disciplinary action if the patient self-administers more than a prescribed dosage of the medication and dies as a result. Discussion focused on the fact that this version removed the much broader framework that the bill originally featured, and replaced it with immunity for a physician who writes a prescription for a terminally ill patient. That immunity could be subject to misuse, such as in a case in which a provider is not authorized to write the prescription at issue, or the physician fails to properly document the treatment and prescription, or it was an improper prescription that causes death in an instance in which the patient did not intend death but, for whatever reason, took more than the prescribed dose. It appears that this stripped-down version of the bill was passed only to allow it to move to the House, and it is likely that significant changes will be seen in the House. Because of the likelihood for significant changes, Mr. Herlihy did not ask the Board to establish a position with a motion, but will keep the Board informed of developments and seek the Board's input as needed.

H350 – This bill proposes to modify the Board statute in two ways – first, some changes to public dissemination of Board information and, second, investigator qualifications. On the first, the law currently calls for both the physician profile and the register of Board actions to include all actions by the Board, including those cases that do not result in findings of unprofessional conduct. Regarding the second, the bill requires all professional licensing investigators to be certified law enforcement officers, including the Board investigators, and OPR investigators, and for the Criminal Justice Training Counsel to develop a special training program and certification of professional licensing investigators. These changes would not have a big impact on the Board. Adjusting provider profiles to not include such cases would not be objectionable. Removing the actions in cases that result in no findings of unprofessional conduct would, however, be contrary to the principles of transparency and openness in government, and would preclude the posting of a full and complete record of the Board's work. The investigator requirements would not have a big impact on the Board because the Board's investigators are required to be certified law enforcement officers by our internal policy. Discussion focused on the concern that the Board should not appear to be hiding information from the public and should allow for transparency where legally appropriate.
Mr. Herlihy stated that he would keep the Board informed of the progress of these bills during the legislative session.

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. **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)**

- **In Re: Warren R. Montgomery, PA-C – MPN 129-1110 – Stipulation and Consent Order**

Mr. Simpson and Mr. Kuehl addressed the Board, summarizing the facts leading up to the agreed-upon stipulation. Dr. Hayward made a motion to approve the Stipulation and Consent Order. Dr. Rinaldi seconded the motion. The motion passed; opposed: none; abstained: none; recused: Ms. Diamond & North Investigative Committee.

8. Executive Session to Discuss:

a. Investigative cases recommended for closure

b. Other matters that are confidential by law, if any.

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

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

Dr. Hayward made a motion at 3:08 to return to Open Session. Dr. Reich seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

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

MPS 007-0113 – Letter #1
MPS 181-1112 – Letter #1
MPS 157-1012 – Special Letter #1; Dr. King recused
MPS 027-0113 – Letter #1
MPS 228-1212 – Special Letter #1; Dr. Reich & Dr. Hayward recused
MPS 021-0113 – Letter #1
MPS 032-0113 – Letter 31; Dr. King and Dr. Thomashow recused
MPS 179-1112 – Special Letter #1
MPS 033-0113 – Special Letter #1
MPS 11-0113 – Special Letter #1; Ms. Diamond and Dr. Thomashow recused
MPS 145-1012 – Special Letter #1
MPS 103-0812 – Letter #1

Ms. Diamond made a motion to close the cases presented. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: South Investigative Committee and 5 others.

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

MPC 138-1111 – Special Letter #1; Dr. Reich recused
MPC 169-1012 – Letter #1
MPC 107-1010 – Special Letter #2
MPC 007-0112 – Special Letter #2
MPC 172-1112 – Special Letter #1
MPC 216-1212 – Special Letter #1; Dr. Reich recused

MPC 011-0211 – Special Letter #1

Dr. Drew made a motion to close the cases presented. Dr. Plavin seconded the motion. The motion passed, opposed: none; abstained: none; recused: Central Investigative Committee & 1 other.

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

MPN 224-1212 – Letter #1
MPN 198-1112 – Letter #1
MPN 193-1112 – Special Letter #1
MPN 167-1210 – Special Letter #2; Dr. Reich recused
MPN 161-1012 – Special Letter #1; Dr. Plavin recused

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

11. Other Business:

Dr. Reich raised for discussion his concern about the increasing number of prescribing investigations that are coming to the Board, especially when there is no finding of unprofessional conduct. In some cases, the licensee is practicing in an exemplary manner and yet we still send out a closing letter that states the investigation will remain as a part of their file regardless of the fact that they haven't done anything wrong. He asked whether or not there is an opportunity to revise the Letter #1 in these cases and essentially thank them for doing their job well and close it administratively, or if there is another process that can be defined to review and close these cases more quickly.

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

- **March 14, 2013, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3rd Floor, Conference Room 3B, Burlington, VT**

- **March 15, 2013, Central Investigative Committee Meeting, 9 a.m., Liquor Control Conference Room, Basement Floor, 13 Green Mountain Drive, Montpelier, VT**

- **March 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)**

- **March 20, 2013, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**

- **April 3, 2013, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

- **April 3, 2013, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

13. Adjournment:

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

Meeting adjourned at 3:20 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:

Andrew Chen, MD
Mohammed Khan, MD
Colin McCreight, MD
David Murman, MD
Christopher Daley, MD
Michael Lees, MD
Radu Mihail, MD
Judith Sherman, MD
Melissa Davidson, MD
Christopher Macaluso, MD
Pringl Miller, MD

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

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

Poula Kontonicolas, MD-LTL
Charmaine Patel, MD-LTL

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