



# Nevada State Board of Medical Examiners

## \* \* \* MINUTES \* \* \*

### OPEN SESSION BOARD MEETING

Held in the Conference Room at the Offices of the  
Nevada State Board of Medical Examiners  
1105 Terminal Way, Suite 301, Reno, Nevada 89502

and videoconferenced to

the Conference Room at the Offices of the Nevada State Board of  
Medical Examiners/Nevada State Board of Dental Examiners  
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

*FRIDAY, SEPTEMBER 9, 2011 – 8:30 a.m.*

#### *Board Members Present (in Reno)*

Benjamin J. Rodriguez, M.D., President  
Theodore B. Berndt, M.D., Vice President  
Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer  
Beverly A. Neyland, M.D.  
Michael J. Fischer, M.D.  
Donna A. Ruthe  
Sue Lowden

#### *Board Members Absent*

None

*Staff/Others Present*

Douglas C. Cooper, CMBI, Executive Director  
Edward O. Cousineau, J.D., Deputy Executive Director  
Lyn E. Beggs, J.D., General Counsel  
Bradley O. Van Ry, J.D., Deputy General Counsel  
Laurie L. Munson, Chief of Administration and Information Systems  
Pamela J. Castagnola, CMBI, Chief of Investigations  
Lynnette L. Daniels, Chief of Licensing  
Donya Jenkins, Finance Manager  
Harry B. Ward, J.D., Deputy Attorney General

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum

- *Benjamin J. Rodriguez, M.D., President*

The meeting was called to order by President Benjamin J. Rodriguez, M.D., at 8:30 a.m.

Ms. Beggs took roll call, and all Board Members were present. Ms. Beggs announced there was a quorum.

Mr. Cooper stated that a Perfusionist Advisory Committee had been formed and named the three perfusionist licensees who had been appointed by the Board to serve on it. One Advisory Committee member, Richard G. Berryessa, BS, CCP, LP, was present, and stated he was pleased perfusionists were now licensed with the Board and that the Advisory Committee was ready to go to work.

Dr. Rodriguez reminded Board members that they need to be careful when making comments to anyone outside of the Board regarding anything that may be considered protected information. The official spokespeople for the Board are the President and the Executive Director. Board members may talk to the Press as Board members, but not for the Board.

The Board recognized four members of the staff for their long-term service of ten years or more, and presented them with service award pins. Mr. Cooper stated there were also five-year and three-year service pins, which would be presented to staff at a staff meeting.

Agenda Item 2

PUBLIC COMMENT

Dr. Rodriguez asked whether there were any members of the public present who would like to make public comment, and there were none.

Agenda Item 3

APPROVAL OF MINUTES

- June 8, 2011 Telephone Conference Board Meeting – Open Session
- June 10, 2011 Board Meeting – Open/Closed Sessions

Ms. Ruthe moved to approve the Minutes of the June 8, 2011 Telephone Conference Board Meeting – Open Session and the Minutes of the June 10, 2011 Board Meeting – Open/Closed Sessions. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 4

CONSIDERATION AND APPROVAL OF FY 2010 ANNUAL AUDIT BY KOHN COLODNY LLP, CERTIFIED PUBLIC ACCOUNTANTS

- *Beth Kohn-Cole, CPA, Kohn Colodny LLP; Valerie J. Clark, BSN, RHU, LUTCF, Secretary-Treasurer; Douglas C. Cooper, CMBI, Executive Director; Donya Jenkins, Finance Manager*

Beth Kohn-Cole, CPA explained that the audit opinion issued as a result of the FY 2010 annual audit was an "unqualified audit opinion," or "clean audit opinion," which is what the Board wants to receive. Additionally, as part of the audit report, the auditors are required to disclose compliance with laws and regulations in accordance with government auditing standards, and again they issued a clean audit opinion. They noted no material weaknesses. As part of the audit package, they review any issues they have seen in previous years. All recommendations on internal control made in previous years had been implemented and there were no new audit findings. Ms. Kohn-Cole then outlined the results of operations. Overall, the operating results were good and no issues or problems were found with management.

Discussion ensued regarding revenue from the compliance program.

Dr. Neyland moved that the Board approve the audit. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 5

CONSIDERATION AND ACTION REGARDING PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630

- Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.045 to Add Perfusionists to the List of Those to Whom the Regulation Applies
- Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.243 to Add Practitioners of Respiratory Care and Perfusionists to the List of Those to Whom the Regulation Applies
- Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.270 to Update the Manner by Which Disciplinary Findings and Orders of the Board May Be Served and Adding Perfusionists to the List of Those to Whom the Regulation Applies
- Consideration of Amendment to Nevada Administrative Code Chapter 630, Amending NAC 630.187 to Accurately Reflect the Current Title of the Federation of State Medical Board's Publication, *Model Policy for the Use of Controlled Substances for the Treatment of Pain*
  - *Edward O. Cousineau, J.D., Deputy Executive Director*

Mr. Cousineau stated he was requesting the Board's authority to accomplish some minimal modifications to four currently-existing sections of the Nevada Administrative Code, NAC 630.045, NAC 630.243, NAC 630.270 and NAC 630.187. He explained the modifications

were housekeeping in nature, and said he didn't anticipate difficulty with them going through the regulatory adoption process.

Mrs. Lowden moved that the Board proceed with the proposed regulations. Ms. Ruthe seconded the motion, and it passed unanimously.

Agenda Item 6

CONSIDERATION OF REQUEST OF SEAN SU, M.D. FOR REMOVAL OF CONDITIONS ON HIS MEDICAL LICENSE

- *Sean Su, M.D.*

Dr. Su was present in Las Vegas.

Dr. Rodriguez asked if all Board members had read Dr. Su's request, and they indicated they had.

Dr. Su explained that it had been a year and a half since the conditions had been placed on his license and he had complied with the terms imposed by the Board. He was requesting the Board allow him to return to performing non-invasive cosmetic procedures in the office. He said he had been unable to obtain employment despite the Board's allowing him to practice family medicine. He was struggling to earn a living and was unable to pay the fees he owes to the Board, and was asking for help so he could continue to practice.

Ms. Clark stated that although she understood Dr. Su's predicament, she was really struggling with his request because from what she had read regarding the situation giving rise to the initial complaint against Dr. Su, it was one of the most appalling she had seen, and she couldn't reconcile his actions.

Dr. Su stated he was not requesting authorization to perform any type of surgery, he had never had any problems with the types of treatments he was requesting authorization to perform, and he can't make a living doing only what he is currently allowed to do.

Dr. Berndt asked whether Dr. Su had provided the Board with any information regarding training he had received on performing these procedures appropriately, and Dr. Su stated he had. Ms. Castagnola stated the Compliance Officer had not received any documentation for any type of training from Dr. Su. Dr. Su stated he had not taken any since being placed on probation; it was all taken prior thereto.

Dr. Rodriguez asked Dr. Su whether he was unable to obtain employment or be included in insurance panels due to the restrictions upon his license, and Dr. Su stated that was the case. Dr. Rodriguez asked whether Dr. Su had pursued employment with groups that would hire a family practice doctor, and Dr. Su indicated he had and that he could supply supporting documentation.

Dr. Berndt stated that Dr. Su was trained as a family practitioner and there are many employment opportunities in that field, so he would like to see documentation that he had been turned down due to the restrictions imposed upon him by the Board. He said he found it difficult to believe Dr. Su couldn't find some form of employment as a family practitioner where he would not have to do the types of procedures he was requesting he be allowed to do. Dr. Su stated he

accepted the settlement agreement because he believed it would allow him to work, but instead the Board's actions were preventing him from obtaining employment.

Dr. Rodriguez expressed a concern with some of the procedures Dr. Su was requesting he be allowed to perform.

Ms. Clark moved that the Board deny Dr. Su's request to practice the list of treatments. Ms. Ruthe seconded the motion.

Dr. Su stated he was not necessarily asking to be allowed to do all the procedures on the list; he was leaving it to the Board's discretion which procedures on the list they felt were appropriate for him to do.

Ms. Clark clarified that her motion was to exclude the entire list of procedures. Ms. Ruthe seconded the motion, and it passed, with Dr. Rodriguez voting against the motion and all other Board members voting in favor of the motion.

Dr. Rodriguez suggested that Dr. Su advise prospective employers to contact the Board for clarification with respect to the conditions on his license.

Agenda Item 7

CONSIDERATION OF REQUEST OF CAROLYN CORNELIUS, M.D. FOR REMOVAL OF CONDITIONS ON HER MEDICAL LICENSE

- *Carolyn Cornelius, M.D.*

Dr. Cornelius was present in Las Vegas. Robert Futoran, M.D., of the Women's Cancer Center of Nevada, was present with Dr. Cornelius.

Dr. Cornelius stated she was requesting that the conditions on her license be removed. She had gone through a proctorship with the doctors at the Women's Cancer Center for over a year and a half and had assisted in surgical cases in the operating room.

Dr. Rodriguez stated the documentation received showed steady progress in her capabilities, and the documentation was very good and accurate.

Dr. Neyland moved that the Board give Dr. Cornelius a full, active license. Ms. Ruthe seconded the motion.

Discussion ensued regarding the progress reports submitted to the Board which were authored by Dr. Hsieh.

Dr. Rodriguez stated this was one of the best cases of preceptorship and proctorship that had come before the Board.

A vote was taken on the motion, and it passed unanimously.

Agenda Item 8

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. JAMES TATE, M.D., BME CASE NO. 09-9809-1

- Harry B. Ward, J.D., Deputy Attorney General

Dr. Tate was present in Reno. Jacob Hafter, Esq. was present in Las Vegas, and Robert McKenna, Esq. was present in Reno, as co-counsel for Dr. Tate.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Ward provided the Board with procedural instruction regarding adjudications.

As Dr. Rodriguez was not an adjudicating Board member for this agenda item, Dr. Fischer presided over the matter.

Dr. Fischer asked whether the adjudicating Board members had read the material related to the matter, and all indicated they had. Dr. Fischer then outlined the facts of the case.

Mr. Ward stated that Count I had been dismissed.

Discussion ensued regarding the allegations contained in Count II of the Complaint.

Ms. Ruthe moved that the Board find Dr. Tate violated NRS 630.301(9) as alleged in Count II of the Complaint based on Dr. Tate's unprofessional actions and loss of control toward the patient's father and grandmother, which had a negative impact on the quality of care that Dr. Tate rendered to the patient. Mrs. Lowden seconded the motion. A vote was taken on the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Mr. Van Ry presented the Investigative Committee's recommendation regarding discipline to be imposed in the matter, which included that Dr. Tate receive a public reprimand; that he reimburse the Board's costs in the matter pursuant to NRS 622.400; that he attend, in person, 10 hours of continuing medical education on patient interaction and/or related topics; and that he pay a fine of \$1,000.

Mr. Hafter presented his argument in response to the proposed discipline to be imposed in the matter. He stated he was gravely concerned by the finding of the Board that Dr. Tate was guilty of disrepute, which had a negative impact on quality of care, as quality of care was never an issue at the hearing. Therefore, the Board had found him guilty of an allegation for which he had no notice or opportunity to defend himself, which was a violation of his rights under the Fourteenth Amendment of the Constitution. He asked that the Board reconsider its decision as to whether or not he was guilty because the count that dealt with quality of care and standard of care was Count I, which had been dismissed, so the fact that Ms. Ruthe made a motion to find him guilty of misconduct that negatively affected the standard of care was a violation of his due process rights to be heard on that and was something they would be fighting in court if the Board continued to proceed on the issue. The Hearing Officer found that Dr. Tate did nothing wrong under the circumstances. The family admitted they did not believe Dr. Tate's actions constituted disrepute on the medical profession. The Board was sanctioning a doctor for defending himself when under attack.

Mr. Van Ry objected and stated it was proper for Mr. Hafter to speak to the disciplinary recommendation only and asked that his arguments be directed to that.

Mr. Hafter stated Dr. Tate should not be disciplined for what happened and should not have to pay the costs of the hearing when the Hearing Officer found in his favor. If the Board wants to give him a public reprimand, give him one, but it shouldn't assess him costs when he prevailed at the hearing. Any discipline, at a maximum, should be a private letter of reprimand or a letter of caution only.

Discussion ensued regarding the proposed discipline.

Ms. Castagnola stated the costs incurred in the case to date were \$10,134.23.

Ms. Ruthe moved that the Board accept the disciplinary action as read earlier.

Mr. Van Ry asked whether she was referring to the Investigative Committee's recommendation, and Ms. Ruthe stated it was.

Mr. Van Ry read the recommendation into the record again.

Mr. Ward stated that would include the costs that were mentioned.

Mrs. Lowden seconded the motion.

Discussion ensued regarding whether it was appropriate to assess the costs as part of the discipline.

Dr. Neyland moved that the Board assess a public reprimand and the Investigative Committee costs, and then stated she meant to include the fine as well.

Mr. Ward stated the first motion that had been seconded had to be acted upon first.

Further discussion ensued regarding the discipline proposed by the Investigative Committee.

Ms. Ruthe amended her motion to remove the \$1,000 fine. Mrs. Lowden seconded the amended motion.

Further discussion ensued regarding the costs proposed as part of the discipline.

A vote was taken on the amended motion, and it failed, with Ms. Ruthe voting in favor of the motion and the remaining adjudicating Board members voting against the motion.

Dr. Neyland moved that Dr. Tate receive a public reprimand, pay a fine of \$1,000 and complete the continuing medical education that was recommended. Mrs. Lowden seconded the motion, and it passed, with Ms. Ruthe voting against the motion and the remaining adjudicating Board members voting in favor of the motion.

Agenda Item 9

ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. WILLIAM BOREN, M.D., BME CASE NO. 10-7440-1

- Harry B. Ward, J.D., Deputy Attorney General

Dr. Boren was present in Las Vegas with his legal counsel, John Curtas, Esq.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Dr. Rodriguez asked whether the adjudicating Board members had reviewed the materials related to the matter, and they indicated they had. Dr. Rodriguez then outlined the charges against Dr. Boren.

Mr. Ward stated that Count V of the Complaint had been dismissed, and Mr. Van Ry explained that it had been dismissed at the conclusion of the hearing based on evidence adduced at the hearing.

Discussion ensued regarding the allegations contained in the Complaint and the facts of the case.

Dr. Fischer moved that the Board find Dr. Boren not guilty of Count I. Mrs. Lowden seconded the motion, and it passed, with Ms. Ruthe voting against the motion and all other adjudicating Board members voting in favor of the motion.

Dr. Fischer moved that the Board find Dr. Boren guilty of Count II. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Ms. Ruthe moved that the Board find Dr. Boren violated NRS 630.3062(1) as alleged in Count III of the Complaint, based on his failure to keep accurate, legible and complete medical records regarding his patients' treatment, care and diagnosis. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

With respect to Count IV, Mrs. Lowden moved that the Board proceed with the allegation provided by Nevada Revised Statute 630.306(2)(a), that provides that engaging in any conduct which is intended to deceive is grounds for initiating discipline against a licensee. Ms. Ruthe seconded the motion.

Discussion ensued regarding whether the decision on Count I would hold true on Count IV.

Mrs. Lowden withdrew her motion regarding Count IV. Ms. Ruthe withdrew her second to the motion.

Dr. Fischer moved that the Board find Dr. Boren not guilty of Count IV. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Mr. Van Ry presented the Investigative Committee's recommendation regarding discipline to be imposed in the matter, which included suspension of Dr. Boren's license, with the suspension

stayed for a period to mirror or equal the length of the Integrity Agreement with the Office of the Inspector General (OIG) and the Department of Health and Human Services (HHS), through March 12, 2014; that Dr. Boren receive a public reprimand; that he attend, in person, 12 hours of continuing medical education (CME) in medical ethics and ethics; that he pay a fine of \$5,000 for each violation of the Medical Practice Act, for a total of \$10,000; and that he reimburse the Board's costs in the matter.

Ms. Castagnola stated the costs incurred in the case to date were \$5,887.16.

Mr. Curtas presented his argument in response to the proposed discipline to be imposed in the matter. He stated he had no issue with the Board's findings with regard to Counts II and III, but Mr. Van Ry's recommendations might be extreme in light of what Dr. Boren did, what he had been through and what he had done to correct the problems with the Medicare billing, which were no longer.

Dr. Boren explained that after he and his partner were audited, they changed everything they did in their practice to ensure their medical records were much better, and Medicare has not found a single violation through subsequent audits.

Mr. Curtas added that suspending a physician's license for errors of this nature that have been long corrected and for which he is paying the federal government, is extreme and is not called for under the circumstances.

Mr. Van Ry added that a reasonable timeframe for payment of costs and/or fines, if assessed, would be 60 days.

Dr. Rodriguez moved that the Board issue a public reprimand, assess the costs, fines of \$5,000 per count, and the CME as recommended, with a 120-day payment period. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 10

**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LUKE CESARETTI, M.D.*, BME CASE NO. 10-7235-1**

*- Harry B. Ward, J.D., Deputy Attorney General*

Dr. Cesaretti was present in Las Vegas with his legal counsel, John Curtas, Esq.

Dr. Rodriguez stated that Dr. Cesaretti is Dr. Boren's partner, and the complaint in this case was basically identical to that in the case against Dr. Boren that the Board had just adjudicated.

Dr. Rodriguez moved that the Board dismiss Count I of the Complaint against Dr. Cesaretti. Mrs. Lowden seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Rodriguez moved that the Board dismiss Count IV of the Complaint against Dr. Cesaretti. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Mr. Ward stated that Count V of the Complaint had been dismissed, and Mr. Van Ry explained that it had been dismissed at the conclusion of the hearing based on evidence adduced at the hearing.

Dr. Rodriguez moved that the Board find Dr. Cesaretti guilty of Count II. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Rodriguez moved that the Board find Dr. Cesaretti guilty of Count III. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Mr. Van Ry presented the Investigative Committee's recommendation regarding discipline to be imposed in the matter, which included suspension of Dr. Cesaretti's license, the suspension stayed with a period of probation to mirror the length of the Integrity Agreement with the Office of the Inspector General (OIG) and the Department of Health and Human Services (HHS), through March 12, 2014; that Dr. Cesaretti receive a public reprimand; that he attend, in person, 12 hours of continuing medical education (CME) in medical ethics and ethics; that he pay a fine of \$5,000 for each violation of the Medical Practice Act, for a total of \$10,000; and that he reimburse the Board's costs in the matter within 120 days.

Ms. Castagnola stated the costs incurred in the case to date were \$5,225.04.

Mr. Curtas requested that the Board impose the same discipline against Dr. Cesaretti as it did against Dr. Boren, to be consistent in the two cases, as they were business partners throughout the entire underlying matter.

Dr. Fischer moved that the Board accept the recommendations of Board counsel. Dr. Neyland seconded the motion.

Discussion ensued regarding the recommendations made by Board counsel and the fact that they were different from what the Board imposed against Dr. Boren, in that the Board did not impose a stayed suspension of Dr. Boren's license.

Dr. Fischer amended his motion to include a public reprimand. Dr. Neyland seconded the amended motion.

Dr. Rodriguez clarified that the discipline imposed against Dr. Boren was a public reprimand, costs, a fine of \$5,000 per count, 12 hours of in-person CME in medical ethics and ethics and 120 days to repay. Mr. Ward stated that was the motion that was on the table.

Dr. Neyland seconded the amended motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item II

**ADJUDICATION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. MOHAMMED SHAFI, M.D.*, BME CASE NO. 10-10760-1**

- Harry B. Ward, J.D., Deputy Attorney General

This item was not discussed at the meeting.

Agenda Item 12

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DOUGLAS BUDDE, JR., M.D.***  
**BME CASE NO. 11-27793-1**

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Budde was not present. L. Kristopher Rath, Esq. was present in Las Vegas as legal counsel for Dr. Budde.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Budde and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement agreement. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 13

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DARBY-ANNETTE CLAYSON, M.D.***  
**BME CASE NO. 11-30595-1**

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Clayson was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Clayson and the terms of the proposed settlement agreement.

Dr. Neyland moved that the Board accept the settlement agreement. Dr. Fischer seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 14

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DAMON SACCO, M.D.***  
**BME CASE NO. 11-29622-1**

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Sacco was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Sacco and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 15

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. LARRY YEE, M.D.*  
BME CASE NO. 10-6816-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Yee was not present.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Yee and the terms of the proposed settlement agreement.

Dr. Fischer moved that the Board accept the settlement as described. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 16

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KENNETH WESTFIELD, M.D.*  
BME CASE NO. 11-5797-1

- *Bradley O. Van Ry, J.D., Deputy General Counsel*

Dr. Westfield was not present.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Dr. Neyland recused herself from consideration of the matter.

Mr. Van Ry outlined the allegations contained in the Complaint filed against Dr. Westfield and the terms of the proposed settlement agreement.

Ms. Ruthe moved that the Board accept the settlement as written. Dr. Fischer seconded the motion, and it passed unanimously, with all participating adjudicating Board members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DANIEL WILLIAMS, M.D.*  
BME CASE NO. 11-30754-1

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Williams was not present.

Mr. Cousineau outlined the allegations contained in the Complaint filed against Dr. Williams and the terms of the proposed settlement agreement.

Ms. Ruthe moved that the Board accept the settlement as written. Dr. Neyland seconded the motion.

Dr. Rodriguez named the adjudicating Board members who were considering the matter, and then named those who had considered Item 15.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 18

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NAVNEET SHARDA, M.D.***  
**BME CASE NO. 10-11856-1**

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Sharda was not present. Jacob Hafter, Esq. was present in Las Vegas as legal counsel for Dr. Sharda.

Dr. Rodriguez named the adjudicating Board members who would be considering the matter.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Sharda and the terms of the proposed settlement agreement.

Mrs. Lowden moved that the Board accept the settlement agreement. Ms. Ruthe seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 19

**CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CLAYTON FULLER, M.D.***  
**BME CASE NO. 11-29479-1**

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Dr. Fuller was not present.

As Dr. Rodriguez was not an adjudicating Board member for this agenda item, Dr. Berndt presided over the matter.

Mr. Cousineau outlined the allegations contained in the Complaint filed against Dr. Fuller and the terms of the proposed settlement agreement.

Dr. Berndt named the adjudicating Board members who would be considering the matter.

Dr. Fischer moved that the Board accept the settlement agreement. Ms. Clark seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF SETTLEMENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ANTHONY LEE, M.D., BME CASE NO. 11-18873-1

- *Lyn E. Beggs, J.D., General Counsel*

Dr. Lee was not present.

As Dr. Rodriguez was not an adjudicating Board member for this agenda item, Dr. Berndt presided over the matter.

Dr. Berndt named the adjudicating Board members who would be considering the matter.

Ms. Beggs outlined the allegations contained in the Complaint filed against Dr. Lee and the terms of the proposed settlement agreement.

Ms. Clark moved that the Board approve the terms of the settlement as read. Dr. Neyland seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 21

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL LICENSE OF BRYAN ESPINOSA, P.A.-C, LICENSE #453

- *Edward O. Cousineau, J.D., Deputy Executive Director*

Mr. Espinosa was not present.

Mr. Cousineau explained that in April 2011, Mr. Espinosa was convicted of a Class 4 Felony in the state of Arizona, specifically, assisting a criminal syndicate. After Board staff was notified of the conviction, the Investigative Committee authorized disciplinary action against Mr. Espinosa. Additionally, based upon Mr. Espinosa's indication to the Board that he no longer desired to practice in the state of Nevada, the Investigative Committee advised Mr. Espinosa he could surrender his license while under investigation, pursuant to NAC 630.240. The Board has been provided with Mr. Espinosa's sworn Affidavit indicating his desire to voluntarily surrender his license. The regulation requires that the Board adopt the surrender of the license, and if adopted, the surrender will become irrevocable, meaning Mr. Espinosa will not be able to reapply for licensure in the state of Nevada.

Dr. Fischer moved that the Board accept the surrender of Mr. Espinosa's license. Mrs. Lowden seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 22

CONSIDERATION OF ACCEPTANCE OF VOLUNTARY SURRENDER OF MEDICAL LICENSE OF DIANE RUHL, P.A.-C, LICENSE #401

- *Lyn E. Beggs, J.D., General Counsel*

This item was not discussed at the meeting.

Agenda Item 23

**REPORTS**

- Physician Assistant Advisory Committee - *Roy M. Cary, Jr., P.A.-C; Janet Wheble, P.A.-C, Advisory Committee Members*
- Consideration of Request for Appointment of Board Member to Exploratory Committee to Research Possible Change to Statutes Concerning a Physician Assistant's Ability to Sign Forms
- Practitioner of Respiratory Care Advisory Committee - *John H. Steinmetz, R.R.T., Advisory Committee Member*
- Perfusionist Advisory Committee - *Douglas C. Cooper, CMBI, Executive Director*
- Investigative Committees
  - Consideration of Cases Recommended for Closure by the Committees
    - *Theodore B. Berndt, M.D., Vice President, Chairman, Investigative Committee A;*
    - *Benjamin J. Rodriguez, M.D., President, Chairman, Investigative Committee B*
- Investigations Division
  - Status of Investigative Caseload
  - Quarterly Compliance Report
    - *Pamela J. Castagnola, CMBI, Chief of Investigations*
- Nevada State Medical Association Report - *Lawrence P. Matheis, Executive Director, Nevada State Medical Association; Michael J. Fischer, M.D., Board Member*
- Clark County Medical Society Report - *Loretta Moses, Executive Director, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board President*

**Physician Assistant Advisory Committee**

- Consideration of Request for Appointment of Board Member to Exploratory Committee to Research Possible Change to Statutes Concerning a Physician Assistant's Ability to Sign Forms

Janet Wheble, P.A.-C, explained the Advisory Committee is requesting that physician assistants be allowed to sign forms as delegated to them by their supervising physicians, which would prevent delays in processing of the forms. When this matter was discussed at the last Board meeting, it was suggested that a Board member work with the Advisory Committee on its proposal.

Mr. Cooper stated the exploratory committee, composed of the Advisory Committee, Mr. Cousineau and Mr. Cooper, would like a Board member to work with them to locate all places in the various statutes that need modification in order to accomplish the Advisory Committee's request, prior to bringing the formal proposal to the Board for approval to go forward with a legislative initiative to change the statutes.

Discussion ensued regarding whether the Board member should be a physician member.

Dr. Rodriguez suggested the exploratory committee draft the proposal first and then send an email to the physician Board members requesting a volunteer to assist.

**Practitioner of Respiratory Care Advisory Committee**

No report was given by the Practitioner of Respiratory Care Advisory Committee.

## Perfusionist Advisory Committee

No report was given by the Perfusionist Advisory Committee.

## Investigative Committees

### - Consideration of Cases Recommended for Closure by the Committees

Dr. Berndt reported that Investigative Committee A had met and considered 126 cases, authorized the filing of a formal complaint in 8 cases, sent 2 cases out for peer review, requested an appearance in 16 cases, issued 32 letters of concern, and recommended closure of a total of 100 cases, including the cases in which letters of concern were issued.

Dr. Rodriguez reported that Investigative Committee B had met and considered 109 cases, authorized the filing of a formal complaint in 10 cases; sent 6 cases out for peer review, requested an appearance in 7 cases, issued 21 letters of concern, referred 2 cases back to investigative staff for further investigation or follow-up, and recommended closure of a total of 84 cases, including the cases in which letters of concern were issued.

Dr. Rodriguez moved to approve for closure the cases recommended by the Investigative Committees. Dr. Fischer seconded the motion, and it passed unanimously.

## Investigations Division

### - Status of Investigative Caseload

Ms. Castagnola reported that there were currently 454 open investigative cases. The current number of cases per investigator was 76. There were 27 peer reviews in the field and 1 peer review awaiting assignment.

Mr. Cooper stated the average turnaround time for investigations was 99 days in 2010 and from reviewing the stats so far this year, he believes it will either remain the same or will decrease for 2011.

### - Quarterly Compliance Report

Ms. Castagnola asked whether any Board members had questions regarding the Quarterly Compliance Report, which had been provided to them in written form, and there were none.

## Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association (NSMA), stated the NSMA is providing workshops and assistance to physicians regarding the new reform laws and payment restructuring. Several of the laws passed during the last legislative session will be going into effect October 1st. One of those will require every physician's practice where prescribing is done to post a notice indicating patients have the right to ask the physician to direct the dispensing pharmacist to put the purpose of the prescription on the prescription label. The NSMA Director of Government Relations, Amber Joiner, put together a poster, which they have distributed to their membership and which they will provide to the Board. The law hasn't changed, but the posting of the notice is new. Mr. Matheis then introduced Ms. Joiner to the Board.

Discussion ensued regarding the specifics of the required notice.

## Clark County Medical Society Report

Loretta Moses, Executive Director of the Clark County Medical Society (CCMS), reported that the CCMS Board of Trustees held a strategic planning meeting on August 20, which was the first of probably several sessions. They identified four goals for CCMS: to increase their membership; to promote positive image within the medical community; to involve current Society members in more activities, which will hopefully lead to stronger leadership; and to develop a more comprehensive communications and marketing strategy, which will assist them to better communicate with physicians and patients in the community. Daily operations are going smoothly and she is getting up to speed, and their 2011-2012 Directory will be out within a couple of weeks.

### Agenda Item 24

#### EXECUTIVE STAFF/STAFF REPORTS

- Consideration and Approval of Proposed 2012 Meeting Schedule - *Douglas C. Cooper, CMBI, Executive Director*
- Consideration of Request for Staff Attendance at Educational Meetings
  - *Douglas C. Cooper, CMBI, Executive Director*
- Quarterly Update on Finances - *Donya Jenkins, Finance Manager*
- Informational Items - *Douglas C. Cooper, CMBI, Executive Director*

#### Consideration and Approval of Proposed 2012 Meeting Schedule

Mr. Cooper identified the proposed dates for the Board's quarterly Board meetings in 2012, as listed on the proposed schedule, and stated the Investigative Committee meetings are more flexible

Dr. Rodriguez asked if any Board members had conflicts with any of the dates.

Mrs. Lowden said she would be unable to attend the December meeting on the dates as proposed.

Discussion ensued regarding changing the date for the December meeting.

A decision on the proposed schedule was tabled until later in the meeting.

When the Board returned to discussion of this item, Dr. Rodriguez moved to approve the 2012 Meeting Schedule with a change in the December meeting dates to November 30 and December 1. Ms. Ruthe seconded the motion, and it passed unanimously.

#### Consideration of Request for Staff Attendance at Educational Meetings

Mr. Cooper described the requests for staff training that were before the Board for approval.

Discussion ensued regarding the request for investigator training regarding electronic records.

Dr. Berndt moved that the Board approve the requests for training with the condition that one investigator take the course regarding electronic records to determine whether it was a worthwhile course before any others sign up to take it. Dr. Rodriguez seconded the motion, and it passed unanimously.

## Quarterly Update on Finances

Ms. Jenkins highlighted the information contained in the financial documents provided to the Board for the second quarter of 2011. She stated the total cash as shown in the current assets section on the Balance Sheet was exactly what it should be at the end of a renewal period. She explained that the total cash is budgeted out over the two-year period following the end of the renewal period, June 30, to pay the Board's expenses over the next two years. She then highlighted the various sections of the Profit and Loss Budget vs. Actual, which shows the Board's income and expenses, and stated it had been a good quarter for the Board financially.

## Informational Items

Mr. Cooper stated the current turnaround for license applications had been fluctuating between 40 and 60 days, and was currently at 60 days. Each addition of the Board's newsletter was receiving more and more positive comments.

Discussion ensued regarding the upcoming FSMB Annual Meeting.

Discussion ensued regarding potential employment of a medical reviewer in Las Vegas.

## Agenda Item 25

### LEGAL REPORTS

- Board Litigation Status
  - *Lyn E. Beggs, J.D., General Counsel*

Ms. Beggs reported there were 103 open cases in the Legal Division, 13 of which were presented to the Board at this meeting. There were 16 cases in the CMT process and 20 cases awaiting the filing of a formal complaint. During the last quarter, there were 2 summary suspensions and 11 disciplinary complaints were filed. There were 41 cases in which a formal complaint had been filed that were pending hearings. There were 2 petitions for judicial review and 7 miscellaneous legal matters pending. The number of civil cases is increasing, which is taking a lot of extra time. Fifty-six letters of concern came out of the last two Investigative Committee meetings. Adjudication training will be provided again once the two new Board members are appointed. The Attorney General's Office is offering training for Board members in November, in Las Vegas and in Carson City, which covers matters not covered in the adjudication training, such as the Open Meeting Law and Ethics in Government.

## Agenda Item 26

### LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the June 10, 2011 Board Meeting

Dr. Rodriguez moved that the Board ratify the licenses issued, reinstatements of licensure and changes of licensure status approved since the June 10, 2011 Board Meeting. Dr. Berndt seconded the motion, and it passed unanimously.

Agenda Item 27

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE

27(a) Ahad Mohammad Yousuf, M.D.

Maria Nutile, Esq. was present with Dr. Yousuf as his legal counsel.

Dr. Rodriguez asked Dr. Yousuf whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved that the Board go into closed session. Dr. Neyland seconded the motion, and it passed.

Upon returning to open session, Dr. Fischer moved that the Board grant Dr. Yousuf a limited license contingent upon acceptance into an approved residency program in the state of Nevada within a three-year period of time.

Dr. Rodriguez requested an addition to the motion that Dr. Yousuf be treated by a psychiatrist in the state where he resides, and that he be evaluated by a program acceptable to the Board. Dr. Fischer accepted that as an addition to the motion. Ms. Ruthe seconded the motion.

Mr. Cooper requested an addition to the motion that the appropriate release forms be initiated wherever Dr. Yousuf receives treatment so the Board can examine the records. Mr. Cousineau asked for clarification as to when the conditions were to begin. Discussion ensued regarding when it would be appropriate to institute the conditions.

Dr. Fischer moved that Dr. Yousuf be granted a limited license upon acceptance into an accredited residency program in the state of Nevada within a three-year period from that date, and if it doesn't occur within three years, he will have to return to the Board, and that he have a compliance program in Nevada and a psychiatric evaluation and treatment, and that the Board have access to those records, in the event the license is issued. Ms. Ruthe seconded the motion, and it passed unanimously.

27(b) Sona Chandulal Patel, M.D.

This item was not discussed at the meeting.

27(c) Victor Shuangfu Lee, M.D.

Dr. Rodriguez asked Dr. Lee whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Rodriguez moved that the Board go into closed session. Dr. Neyland seconded the motion, and it passed.

Upon returning to open session, Dr. Neyland moved that the Board grant Dr. Lee a limited license contingent upon his participation in the Nevada Professionals Assistance Program for the next two years, which will be memorialized in an order of the Board. Dr. Fischer seconded the motion, and it passed unanimously.

27(d) Wilson Fulla Bernales, M.D.

Dr. Rodriguez asked Dr. Bernales whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did not.

Ms. Clark questioned Dr. Bernales regarding his response to Question 19 on his application for licensure.

Dr. Bernales described his medical training, the circumstances surrounding his dismissal from his internship at Floyd Medical Center in Georgia, his application to the Arkansas Medical Board and the disciplinary action taken against him during his fellowship at Louisiana State University Medical Center.

Dr. Berndt asked Dr. Bernales about past medical practice and Dr. Bernales described his practice over the last five years.

Ms. Daniels asked Dr. Bernales why he took a pager into the USMLE Step 3 examination the last time he took it, when it is a violation of the rules, and he stated that he was expecting a page at the time he went to the examination and forgot to turn it off or leave it outside when he entered the examination room.

Ms. Daniels stated Dr. Bernales met the examination requirement because he was Board Certified in Family Practice by the ABMS and asked Dr. Bernales whether he planned to take the recertification examination. Dr. Bernales stated he planned to maintain his Board Certification.

Ms. Daniels stated that Dr. Bernales did not fully disclose all information on his application, and he explained that when he completed the application, he was using the Federation Credentials Verification Service (FCVS), and he knew that whatever he might miss in his application would be provided by the FCVS.

Ms. Clark moved that the Board grant Dr. Bernales' application for licensure contingent upon successful passage of a peer review, in the specialty of family practice, based upon his conversation during this appearance. Dr. Rodriguez seconded the motion, and it passed unanimously.

Ms. Beggs asked whether the Board would like the decision memorialized in an order, and Dr. Rodriguez responded in the affirmative.

27(e) Jeffrey Feliciano Tudla, M.D.

Dr. Rodriguez asked Dr. Tudla whether he wanted his application to be considered in closed session, with the public being excluded, and he said that he did.

Dr. Fischer moved that the Board go into closed session. Mrs. Lowden seconded the motion, and it passed.

Upon returning to open session, Dr. Fischer moved that the Board grant Dr. Tudla's application for licensure. Dr. Neyland seconded the motion, and it passed unanimously.

27(f) Cynthia Lois Archer, M.D.

Dr. Rodriguez asked Dr. Archer whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did.

Dr. Neyland moved that the Board go into closed session. Dr. Fischer seconded the motion, and it passed.

Upon returning to open session, Dr. Fischer moved that the Board grant Dr. Archer's application for licensure. Dr. Berndt seconded the motion, and it passed unanimously.

Dr. Rodriguez suggested that the group Dr. Archer was going to work for review a percentage of her charts for the first couple of months, to protect her, her group and the public.

Agenda Item 28

MATTERS FOR FUTURE AGENDA

Mr. Cooper advised that the following items would be included on the agenda of a future Board meeting: (1) the 2012 fiscal year budget; (2) annual staff evaluations; (3) response to the hospital privileges report by Public Citizen; (4) replacement of Practitioner of Respiratory Care Advisory Committee member Peggy Alby; (5) consideration of rewording of Question 13 on the Board's application for licensure; and (6) a proposed study to create a job series concept for Board staff, which will provide for steps and levels within the various job classifications. The proposed system is used widely in the states and the federal system.

Agenda Item 29

PUBLIC COMMENT

Dr. Rodriguez asked whether there were any members of the public present who would like to make public comment, and there were none.

Ms. Ruthe stated that an attorney she had worked with on a real estate deal had highly praised Mr. Van Ry, and she wanted to share that with the Board.

ADJOURNMENT

Dr. Fischer moved to adjourn the meeting. Ms. Ruthe seconded the motion, and Dr. Rodriguez adjourned the meeting at 3:38 p.m.

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