



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, NV 89502

and videoconferenced to

the conference room of the Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118

FRIDAY, NOVEMBER 6, 2009 – 8:30 a.m.

and

SATURDAY, NOVEMBER 7, 2009 – 8:30 a.m.

FRIDAY, NOVEMBER 6, 2009

Board Members Present

Charles N. Held, M.D., President
Benjamin J. Rodriguez, M.D., Vice President
Renee West, Secretary-Treasurer
Javaid Anwar, M.D.
Van V. Heffner
Beverly A. Neyland, M.D.
Theodore B. Berndt, M.D.
Michael J. Fischer, M.D.

Staff Present

Douglas C. Cooper, CMBI, Interim Executive Director
Edward O. Cousineau, J.D., General Counsel
Lyn E. Beggs, J.D., General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Acting Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Carolyn H. Castleman, Deputy Chief of Licensing
Johnna S. LaRue, Compliance Officer
Donya Jenkins, Finance Manager

Also Present

Christine M. Guerri-Nyhus, J.D., Chief Deputy Attorney General (*in Las Vegas*)

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Charles N. Held, M.D., President

The meeting was called to order by President Charles N. Held, M.D., at 8:30 a.m.

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

Dr. Held welcomed new Board Members Theodore B. Berndt, M.D. and Michael J. Fischer, M.D., and announced that Mr. Cooper was now the Interim Executive Director of the Board.

Ms. Daniels introduced the Board's new License Specialist, Michael Siva.

Mr. Cooper introduced the Board's new Investigations Coordinator, Samantha M. Hendricks, and new Finance Manager, Donya Jenkins.

Agenda Item 2

APPROVAL OF MINUTES

- August 6, 2009 Board Retreat Meeting – Open Session
- August 7, 2009 Board Meeting – Open/Closed Sessions
- September 18, 2009 Telephone Conference Call Board Meeting – Open Session
- October 6, 2009 Telephone Conference Call Board Meeting – Open Session

Mr. Heffner moved to approve the Minutes of the August 6, 2009 Board Retreat Meeting – Open Session. Dr. Rodriguez seconded the motion, and it passed unanimously.

Dr. Rodriguez moved to approve the Minutes of the August 7, 2009 Board Meeting – Open/Closed Sessions. Dr. Neyland seconded the motion, and it passed unanimously.

Dr. Rodriguez moved to approve the Minutes of the September 18, 2009 Telephone Conference Call Board Meeting – Open Session. Mr. Heffner seconded the motion, and it passed unanimously.

Dr. Fischer moved to approve the Minutes of the October 6, 2009 Telephone Conference Call Board Meeting – Open Session. Dr. Neyland seconded the motion, and it passed unanimously.

Agenda Item 3

CONSIDERATION AND APPROVAL OF 2008-2009 AUDIT BY SOLARI AND STURMER

- Noémi (Amy) Allen, CPA, Solari and Sturmer, LLC; Renee West, Secretary-Treasurer;
Douglas C. Cooper, CMBI, Interim Executive Director; Donya Jenkins, Finance Manager

Noémi Allen, CPA, introduced Jenna Sulprizio and advised the Board that she had been the "Field General" on the Board's audit. Ms. Allen explained that the Board was without a Finance Manager during the time the audit was performed. She thanked the other staff who assisted with the audit, and stated that it had gone smoothly.

Ms. Allen stated that the auditor's report was what they call an unqualified opinion, which is the highest level of assurance they can give. This means that everything was in order and there were no findings of material weaknesses in the internal control system. She explained that the opinion they provide simply states that the Board's financial statements are fairly presented in accordance with generally accepted accounting principles. This is not a full sign-off on the Board's internal control procedures because they would have to perform other procedures in order to provide that. She then outlined the audit report and highlighted certain items included therein. She explained that the statement of net assets is essentially a picture of the Board's assets as of June 30, 2009, offset by any liabilities, to arrive at net assets. Most significantly, cash balances were at almost \$5.6 million compared to \$3 million at the end of the prior fiscal year. This is due to the fact that the Board's licensees renew on a biennial schedule. She then explained revenue and net assets. As of June 30, 2008, there was a deficit in unrestricted net assets, but as of June 30, 2009, the Board showed a positive balance in unrestricted net assets. The Board's operating revenues increased in 2009, and due to careful spending, its operating expenses decreased by \$400,000, as compared to the previous fiscal year, so overall there was a net \$800,000 swing between the two fiscal years.

Ms. West thanked Ms. Allen and acknowledged Board staff for putting together an aggressive and tight budget and showing the discipline to maintain it the past year. She stated the increased revenue, over and above the renewals, is encouraging because it indicates there is still growth in the state. She cautioned that we need to remember that although the Board has made some progress, it is far from being out of the woods financially, so the discipline that has been demonstrated the past year needs to continue into the next year, and we also need to realize the Board may incur unexpected expenses.

Dr. Neyland moved to accept the audit report. Dr. Rodriguez seconded the motion.

Weldon Havins, M.D., J.D., asked why the Board's bank fees in 2009 were \$98,184, which was \$64,000 more than had been anticipated. Ms. Jenkins explained that the figure was actually nearly exactly what the Board budgeted, as there was a large amount of credit card fees for the

online renewals, but the Board charged a fee to its licensees to offset that, so there was an offsetting income item that was included in Miscellaneous Income of around \$60,000.

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

Agenda Item 4

CONSIDERATION OF REQUEST OF DANA MARKS, M.D. FOR RECONSIDERATION AND MODIFICATION OF SETTLEMENT, WAIVER AND CONSENT AGREEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DANA MARKS, M.D., BME CASE NO. 08-18131-1

- Dana Marks, M.D.; Ed Lemons, Esq.

Dr. Marks was present with his attorney, Ed Lemons, Esq.

Since Dr. Held had not been an adjudicating member on the original adjudication, Dr. Rodriguez presided over the matter.

Ms. Beggs described the settlement agreement that was accepted by the Board a little over a year before. Dr. Marks' license was revoked, with the revocation stayed, and he was placed on probation for five years. One of the terms of the settlement agreement was a potential that Dr. Marks would need to participate in the Diversion program. Dr. Marks underwent an evaluation by Dr. Piasecki, to evaluate his need for any sort of substance abuse treatment, and she determined that he was not in need of any treatment. Therefore, all terms of the settlement agreement have been met except for the duration of the probationary term.

Mr. Lemons stated that he did not represent Dr. Marks at the time the settlement agreement was entered into. At that time, the criminal case against Dr. Marks, that was the basis for the Board's action against Dr. Marks, was pending. Since that time, the criminal proceeding has essentially been resolved, with all charges being dropped except one misdemeanor charge for attempting to prescribe a controlled substance inappropriately, which Dr. Marks pled no contest to. Therefore, Dr. Marks' circumstances have changed since entering into the settlement agreement.

Ms. Beggs stated that what occurred in the criminal proceeding does not override the two counts that Dr. Marks pled no contest to in the Board's administrative proceedings, and that was the basis for entering into the settlement agreement. Dr. Marks had been on probation for a little over a year. The original probationary term of five years was based on the assumption that Dr. Marks would be required to go through some type of treatment program. Since Dr. Piasecki found that Dr. Marks was not in need of any treatment for substance abuse, Dr. Marks did not enter into any treatment program. So there are no remaining conditions or requirements that Dr. Marks needs to fulfill and it is just a question of whether the Board wants him to remain on probation for the duration of the original term.

Mr. Lemons stated that this is something that is reportable and affects Dr. Marks every time he has to be approved for hospital credentialing, for participation in health insurance reimbursement, and with professional organizations that require him to demonstrate he has a license in good standing. Therefore, there are great ramifications to him with respect to his continuing probationary status, especially for another four years.

Dr. Marks described for the Board the circumstances surrounding the criminal charges that had been brought against him. Discussion ensued.

Discussion ensued concerning whether continued probation would be appropriate under the circumstances.

Mr. Heffner moved that the Board release Dr. Marks from the duration of the probationary term. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 5

CONSIDERATION OF REQUEST OF KIM ADAMSON, M.D. FOR MODIFICATION OF CONDITIONS ON HIS COUNTY-RESTRICTED MEDICAL LICENSE

- Kim Adamson, M.D.; Maria Nutile, Esq.

Dr. Adamson was present with his attorney, Maria Nutile, Esq.

Ms. Nutile summarized Dr. Adamson's previous appearances before the Board. She then explained that when the Board granted Dr. Adamson a county-restricted license, one of the conditions was that he participate in the CPEP program. Before Dr. Adamson began practicing, issues began arising with CPEP, beginning with approval by the Board of the monitor that CPEP had approved. There seemed to be one issue after another with CPEP. In spite of that, Dr. Adamson complied with the on-site monitoring terms and CPEP subsequently released him from that requirement. Additionally, Dr. Adamson complied with several education requirements and a retrospective chart review. Communication with CPEP was difficult. They lost documents, for which they charged Dr. Adamson a fee, in addition to CPEP's monthly fee. Many months ago, Dr. Adamson asked to be placed on the Board's agenda to discuss modification of his conditions to allow him to use a monitor other than CPEP. His request was not granted. There was no specific term for the CPEP requirement. Currently, Dr. Adamson is not participating in CPEP, and he realizes the Board may still continue to want some monitoring. The requirements of the CPEP program that remained were retrospective review of charts and additional CMEs. Ms. Nutile stated they were asking the Board to consider allowing Dr. Adamson to pay for a monitor through the Board, as opposed to paying an outside program, since it is for a retrospective chart review, and not on-site monitoring. Dr. Adamson missed two months monitoring by CPEP and there were at least another four months remaining on his one-year supervision requirement. They requested that once Dr. Adamson has completed those six months, he be permitted to come back before the Board to request that the monitoring requirement be terminated if there have been no issues.

Dr. Adamson stated he is no longer being supervised by Dr. Gray, as he has completed that condition on his license.

Dr. Rodriguez inquired about feedback received from Dr. Adamson's on-site monitor, and Dr. Adamson stated that Dr. Gray had provided monthly reports to CPEP.

Ms. Daniels stated the reason the Board did not have those reports before them was that CPEP deemed them confidential and would not provide them to Board staff. Ms. Nutile stated they had copies of those reports and the preceptor's reports if the Board wanted to see them.

Dr. Held added that Dr. Gray stated in his letter to the Board that he thought Dr. Adamson was doing a good job and he would be happy to take any of the charts that Dr. Adamson had presented to him and provide ongoing care because they were complete and accurate.

Dr. Adamson described the chart reviews by Dr. Gray and by CPEP, and stated he had taken over 130 CME credits the last year-and-a-half and had passed SPEX two years ago.

Discussion ensued concerning the issues Dr. Adamson had encountered in dealing with CPEP.

Ms. Daniels recommended that Dr. Adamson continue to be monitored during the remainder of the duration of the term of his county-restricted license.

Ms. Nutile questioned why Dr. Adamson's charts must continue to be reviewed for the remaining two years if, after expiration of the original year, the Board deemed it unnecessary.

Discussion ensued concerning Board-monitoring of a licensee and whether it could be perceived there was a bias. It was the consensus it was not a good idea.

Ms. Nutile proposed that Dr. Adamson find a physician who would review his charts and provide the name to the Board for approval.

Mr. Cousineau stated the Board needed to make a determination as to who the monitoring physician would be and the duration of the term of monitoring, and could also set a time certain when Dr. Adamson could return to the Board for consideration of lifting the monitorship requirement prior to expiration of the full two remaining years on his county-restricted license. The Board could defer to staff as to the appropriateness of the monitoring physician.

Dr. Held moved that the Board modify the conditions of Dr. Adamson's county-restricted license and lift the requirement that he deal with CPEP, and that Dr. Adamson present the Board with a list of at least three names of physicians who are willing to review his charts for the timeframe necessary to make a total of 12 months' supervision; beginning with his initial supervision in February of 2009. Mr. Heffner seconded the motion.

Dr. Held amended his motion to add that the list of physician names supplied by Dr. Adamson were to be presented to staff and the Executive Committee for a decision so it did not have to come before the full Board again.

Discussion ensued concerning the number of charts to be reviewed.

Dr. Held further amended his motion to include that the number of charts to be reviewed be four per week and that Dr. Adamson return to the Board at the next regular meeting following completion of a year of supervision for a determination as to his status, and that he bear the costs of monitoring. Dr. Heffner seconded the amended motion, and it passed unanimously.

Agenda Item 6

CONSIDERATION OF REQUEST OF CAROLYN CORNELIUS, M.D. FOR
MODIFICATION OF RESTRICTION ON HER MEDICAL LICENSE

- Carolyn Cornelius, M.D.

Dr. Cornelius was present in Las Vegas.

Ms. Daniels stated that Dr. Cornelius was appearing before the Board because she is trying to obtain surgical assist privileges at hospitals in Las Vegas so she can get her surgical skills back up to par.

Dr. Cornelius stated she cannot obtain surgical assist privileges with the restriction that is currently on her license. There are several physicians who are willing to let her assist them with their patients once she has obtained hospital privileges.

Discussion ensued concerning how Dr. Cornelius' request could be accomplished.

Dr. Cornelius described her training and her previous practice.

Dr. Rodriguez moved that the Board grant Dr. Cornelius surgical assist privileges as a restriction to her license and that prior to giving her surgical assist privileges the Board receive the names of the physicians with whom she will be working and approve them.

Ms. Daniels suggested the Board review the original motion from the minutes of the meeting where it granted Dr. Cornelius her restricted license.

Dr. Rodriguez read the motion from the minutes of the meeting at which Dr. Cornelius was granted a license.

Discussion ensued concerning hospital privileges.

Dr. Cornelius stated the credentialing committees have said the "only office-based" and "no surgeries could be performed" language gave them problems and Sunrise Hospital said their bylaws won't allow someone with a restricted license into the hospital system.

Dr. Rodriguez moved that the Board grant Dr. Cornelius an active license with the condition that she may have hospital-based surgical assist privileges.

Ms. Daniels asked whether Dr. Rodriguez meant that the condition be that she practice office-based ob/gyn with the ability to have hospital privileges for surgical assist only. Dr. Rodriguez stated that was correct.

Dr. Rodriguez amended his motion to add that the Board approve the supervising preceptors.

Dr. Anwar seconded the motion.

Dr. Cornelius asked whether she would have to come back to the Board to request that the conditions be removed.

Dr. Held stated Dr. Cornelius would have to come back with good documentation from her supervising physicians that her skills were up to par in order for the conditions to be removed.

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

Agenda Item 7

CONSIDERATION OF REQUEST OF DAVID LINDEN, M.D. FOR MODIFICATION OF TERMS OF PROBATION

- David Linden, M.D.; Andrew Harrison, Esq.

OPEN SESSION

Dr. Linden was present in Las Vegas with his attorney, Andrew Harrison, Esq.

Ms. Beggs stated that Dr. Linden had appeared before the Board in May 2009 on an order to show cause regarding his probation. At that time he explained some reasons he had been having difficulty with his probation. The Board continued his probation and extended it for an additional two years, to be in congruence with the terms of his probation in Oklahoma. Dr. Linden was now requesting modification of the terms of his probation.

Mr. Harrison requested that the Board lift the restriction prohibiting Dr. Linden from supervising allied health care professionals, which was included in the Oklahoma probationary terms. When Dr. Linden appeared before the Board in May 2009, they explained to the Board the reason for Dr. Linden's noncompliance with the Oklahoma probationary requirement that he undergo a polygraph. Subsequently, Dr. Linden submitted to polygraph examinations and those concluded that there had been no further acts of malfeasance with regard to underlying issues. Dr. Linden has now complied with all terms of his Oklahoma probation and continues to comply with them, and his previous noncompliance was not an act of defiance; rather, it was a matter of confusion.

Mr. Harrison explained that Dr. Linden's practice continues to grow in Las Vegas. He sees patients in group homes, in nursing homes and in his own private practice, and he is in dire need of a physician extender to assist him with his workload here. None of the underlying acts that got Dr. Linden in trouble in his personal life in 2006 involved allied health care professionals or his supervision of them. Dr. Linden has been on probation in Oklahoma for three years and in Nevada for a few months, and he is now requesting that either this Board consider terminating Dr. Linden's probation in its entirety early, or that it make a modification to the terms of his probation to allow him to supervise a physician extender for his practice in Nevada.

Dr. Rodriguez asked whether Oklahoma had lifted the restriction on supervising allied health professionals, and Mr. Harrison stated they had not made that request in Oklahoma due to Dr. Linden's limited amount of practice time there. He is now spending the majority of his professional time in Nevada so there has been no need to make that request to the Board in Oklahoma.

Dr. Rodriguez stated it might be more appropriate for Dr. Linden to make his request to the Oklahoma Board first.

Discussion ensued concerning whether it would be appropriate for this Board to lift the restriction from Dr. Linden's probationary terms at this time.

Dr. Rodriguez moved that the Board not change any of the restrictions of Dr. Linden's probation. Dr. Anwar seconded the motion, and it passed unanimously.

Agenda Item 8

**CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA
ADMINISTRATIVE CODE CHAPTER 630**

- Public Hearing, Review of Public Comments Received, and Consideration of Adoption as Permanent, Proposed Amendment to Nevada Administrative Code Chapter 630, to Require Nevada Physicians Who Sponsor Demonstrations by Out-of-State Physicians to Adhere to the Standards Enunciated in Chapter 629 of the NRS
- Public Hearing, Review of Public Comments Received, and Consideration of Adoption as Permanent, Proposed Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.275 to Make Confidentiality of Certain Information Applicable to Practitioners of Respiratory Care, as Well as Physicians and Physician Assistants
- Public Hearing, Review of Public Comments Received, and Consideration of Adoption as Permanent, Proposed Amendment to Nevada Administrative Code Chapter 630, to Provide a Definition of Clinical Practice of Medicine as it Relates to the Five-Year Practice Rule
- Public Hearing, Review of Public Comments Received, and Consideration of Adoption of Proposed Amendment to Nevada Administrative Code Chapter 630, Revising Continuing Medical Education Requirements for the Renewal of a License of a Physician Assistant
- Public Hearing, Review of Public Comments Received, and Consideration of Adoption of Proposed Amendment to Nevada Administrative Code Chapter 630, Authorizing the Board of Medical Examiners to take Disciplinary Action Against a Physician Assistant Under Certain Circumstances
- Edward O. Cousineau, J.D., General Counsel; Douglas C. Cooper, CMBI, Interim Executive Director

Public Hearing, Review of Public Comments Received, and Consideration of Adoption as Permanent, Proposed Amendment to Nevada Administrative Code Chapter 630, to Require Nevada Physicians Who Sponsor Demonstrations by Out-of-State Physicians to Adhere to the Standards Enunciated in Chapter 629 of the NRS

Dr. Held stated it was time for the public hearing on the proposed amendment.

Mr. Cousineau explained that workshops were held on October 20th on all five of the proposed amendments before the Board at this meeting, and no public comment or input was received on any of the proposed amendments. This first amendment was a temporary regulation until November 1st of this year and is now back before the Board for adoption as a permanent regulation.

Dr. Held asked whether there were any members of the public present who would like to offer comments, and there were none.

Dr. Anwar moved that the Board adopt the regulation as written. Mr. Heffner seconded the motion, and it passed unanimously.

Public Hearing, Review of Public Comments Received, and Consideration of Adoption as Permanent, Proposed Amendment to Nevada Administrative Code Chapter 630, to Amend NAC 630.275 to Make Confidentiality of Certain Information Applicable to Practitioners of Respiratory Care, as Well as Physicians and Physician Assistants

Dr. Held stated it was time for the public hearing on the proposed amendment.

Dr. Held asked whether there were any members of the public present who would like to offer comments, and there were none.

Dr. Anwar moved that the Board adopt the regulation as written. Mr. Heffner seconded the motion, and it passed unanimously.

Public Hearing, Review of Public Comments Received, and Consideration of Adoption as Permanent, Proposed Amendment to Nevada Administrative Code Chapter 630, to Provide a Definition of Clinical Practice of Medicine as it Relates to the Five-Year Practice Rule

Dr. Held stated it was time for the public hearing on the proposed amendment.

Dr. Held asked whether there were any members of the public present who would like to offer comments, and there were none.

Mr. Heffner moved that the Board adopt the regulation as written. Dr. Rodriguez seconded the motion, and it passed unanimously.

Public Hearing, Review of Public Comments Received, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Revising Continuing Medical Education Requirements for the Renewal of a License of a Physician Assistant

Dr. Held stated it was time for the public hearing on the proposed amendment.

Dr. Held asked whether there were any members of the public present who would like to offer comments.

Roy M. Cary, Jr., P.A.-C, stated this proposed amendment was presented to the Board by the Physician Assistant Advisory Committee at a previous meeting, with a request that the Board remove the requirement that physician assistants recertify in order to renew their licenses in Nevada. There are 32 states that currently do not require NCCPA recertification for renewal of a physician assistant's license. It was unanimously voted by the Board at that time that recertification not be required for renewal of licensure.

Mr. Heffner moved that the Board adopt the regulation as written. Dr. Rodriguez seconded the motion, and it passed unanimously.

Public Hearing, Review of Public Comments Received, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630, Authorizing the Board of Medical Examiners to take Disciplinary Action Against a Physician Assistant Under Certain Circumstances

Dr. Held stated it was time for the public hearing on the proposed amendment.

Dr. Held asked whether there were any members of the public present who would like to offer comments, and there were none.

Dr. Anwar moved that the Board adopt the regulation as written. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 9

CONSIDERATION OF REQUEST OF FRANCISCO SANDIGO, R.R.T. FOR REINSTATEMENT OF LICENSE

- Francisco Sandigo, R.R.T.

Ms. Daniels explained that Mr. Sandigo was appearing before the Board on his application for reinstatement of license. He was initially licensed in December 2002 and was suspended for non-payment in February 2008.

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

Dr. Held questioned Mr. Sandigo concerning the fact that he responded in the negative to Question 7 on his application for reinstatement, when he should have responded in the affirmative.

Mr. Sandigo stated that he must have misread the question. The Board was aware of the initial revocation of his license in 1999, so there would be no reason for him to try to hide it.

Dr. Held questioned Mr. Sandigo concerning the recent revocation of his license in California, and Mr. Sandigo stated it was related to his arrest for DUI in 2006 in Las Vegas. He explained that he was receiving professional treatment for depression and no longer drinks alcohol, and described the circumstances that led to his depression and anxiety.

Dr. Held questioned Mr. Sandigo concerning the fact that he responded in the negative to Question 11 on his application for reinstatement, when he should have responded in the affirmative, because California had filed an accusation against him in January 2009, approximately seven months prior to his submission of his application for reinstatement.

Mr. Sandigo stated he did not remember the question so he may have misunderstood it.

Dr. Berndt asked Mr. Sandigo when he had last practiced respiratory therapy, and Mr. Sandigo stated his last day was October 15, 2009, when the California Respiratory Care Board revoked his license. He had practiced respiratory therapy for 14 years and had never been written up, received negative feedback or had any professional complaints filed against him.

Mr. Heffner questioned Mr. Sandigo concerning medications he was currently taking, and Mr. Sandigo named them.

Dr. Rodriguez asked Mr. Sandigo why the Board should reinstate his license when the state of California did not think he should have a license, and Mr. Sandigo stated he has practiced for 14 years and his work record speaks for itself, and that he would continue to seek treatment and anything else the Board deemed necessary in order for him to practice.

Ms. West asked why he had applied for reinstatement of his license, and Mr. Sandigo explained it was simply to get his license back. He said he had also applied in Oregon.

Ms. West asked why Board staff had encountered difficulty in obtaining additional information from him, and Mr. Sandigo stated he had been working as much as he could and was slow to respond.

Dr. Anwar moved that the Board deny Mr. Sandigo's application for reinstatement of license to practice respiratory care in the state of Nevada due to revocation of his license in California on October 15, 2009, pursuant to NAC 630.540(12). Dr. Rodriguez seconded the motion, and it passed unanimously.

Agenda Item 10

REVIEW OF PUBLIC COMMENTS RECEIVED AT WORKSHOPS, AND DISCUSSION CONCERNING LANGUAGE OF PROPOSED AMENDMENT TO NEVADA ADMINISTRATIVE CODE CHAPTER 630, RELATED TO REGULATION OF MEDICAL ASSISTANTS

- Charles N. Held, M.D., President; Douglas C. Cooper, CMBI, Interim Executive Director

Mr. Cooper stated that good cooperation had been received from those in attendance at the two workshops held on the proposed amendment. The point that was made most often was that medical assistants are vital to the practice of medicine in Nevada, they have been for decades, and they need to continue to be part of the practice, but there is a general consensus that the rules could be tightened up. The idea is not to regulate medical assistants, but to provide rules and guidelines to physicians. through regulation, on delegation to medical assistants. They wanted clarification on direct and general supervision and a solution to the issue of supervision of medical assistants in rural areas where no physician is immediately available. Additionally, just about everyone universally agrees that a physician cannot delegate to a medical assistant and the medical assistant then delegate to someone else nor can a physician delegate supervision of a medical assistant to another physician without that physician knowingly accepting such supervision. There was also concern about invasive procedures. The solution was to include language that any invasive procedure that could be delegated to a medical assistant would have to be performed by the medical assistant under direct supervision. Everyone agreed a medical assistant cannot administer any type of anesthetic agent that would render a patient semi-conscious or unconscious. With respect to prescription drugs, the definition of "prescription drug" includes anything you would need a prescription for, which includes crutches, canes, home nebulizers, etc., so it would be impractical to say that medical assistants need supervision to provide these to patients. Mr. Cooper explained that the draft amendment had been submitted to the Legislative Counsel Bureau (LCB), and staff has not yet received a response. He expects there may be an objection to

the language regarding administration of prescription drugs. In the proposed amendment, rural areas are defined as any area other than Carson City, Elko, Henderson, Reno, Sparks, Las Vegas or North Las Vegas, and the LCB has agreed that is a proper definition. Mr. Cooper stated that once a response has been received from the LCB, a public hearing will be scheduled, followed by a telephonic Board Meeting. If the Board approves the regulation at that meeting, the regulation will go before the Legislative Commission for final approval. Mr. Cooper anticipates objection from the Commission to some parts of the proposed amendment.

Agenda Item 11

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KOUSSAY ZARKA, M.D.*

BME CASE NO. 09-5622-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Since neither Dr. Held nor Dr. Rodriguez were adjudicating members on this adjudication, Ms. West presided over the matter.

Mr. Cousineau described the facts of the case and the terms of the proposed settlement agreement.

Mr. Heffner moved that the Board accept the settlement as presented. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Agenda Item 12

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. CHARLES MAHAKIAN, M.D.*

BME CASE NO. 09-9495-1

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

OPEN SESSION

Since neither Dr. Held nor Dr. Rodriguez were adjudicating members on this adjudication, Ms. West presided over the matter.

Ms. Beggs described the facts of the case and the terms of the proposed settlement agreement.

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

Agenda Item 13

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DEAN MONDELL, M.D.*, BME CASE NO. 06-7541-1

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

OPEN SESSION

Since neither Dr. Held nor Dr. Rodriguez were adjudicating members on this adjudication, Ms. West presided over the matter.

Ms. Beggs described the facts of the case. She stated that the parties had reached a settlement some time ago, but due to issues regarding a pending civil case the parties decided to wait to present the settlement agreement to the Board. She then described the terms of the proposed settlement agreement.

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

Agenda Item 15

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. KEVIN BUCKWALTER, M.D.*, BME CASE NO. 08-12069-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Dr. Buckwalter was not present. His attorney, Bryce Buckwalter, Esq., was present on his behalf.

Since neither Dr. Held nor Dr. Rodriguez were adjudicating members on this adjudication, Ms. West presided over the matter.

Mr. Cousineau described the facts of the case and the terms of the proposed settlement agreement.

Mr. Buckwalter stated that Dr. Buckwalter recognized the problems he had encountered through his practice over the last year, and it came down to a charting problem. Dr. Buckwalter has undergone massive training to ensure that never happens again and has taken 174 CME credits. He asked that the Board approve the settlement agreement so that Dr. Buckwalter can return to work.

Discussion ensued concerning whether the terms of the settlement were appropriate under the circumstances.

Mr. Heffner moved that the Board accept the settlement as presented. Dr. Anwar seconded the motion, and it failed, with Dr. Anwar, and Mr. Heffner voting in favor of the motion and Ms. West, Dr. Neyland and Dr. Fischer voting against the motion.

Dr. Fischer moved that the Board reject the proposed settlement as presented. Dr. Neyland seconded the motion, and it passed, with Ms. West, Dr. Neyland and Dr. Fischer voting in favor of the motion and Dr. Anwar and Mr. Heffner voting against the motion.

Agenda Item 16

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. AZBER ANSAR, M.D.*
BME CASE NO. 08-25112-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Since Dr. Held was not an adjudicating member on this adjudication, Dr. Rodriguez presided over the matter.

Mr. Cousineau stated this was an out-of-state action, and described the terms of the proposed settlement agreement.

Dr. Anwar moved that the Board accept the settlement as presented. Mr. Heffner seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Agenda Item 17

CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. TROY EDEN, P.A.-C.*
BME CASE NO. 09-32267-1

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

OPEN SESSION

Ms. Beggs described the facts of the case and the terms of the proposed settlement agreement.

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

Agenda Item 18

CONSIDERATION OF DISMISSAL WITHOUT PREJUDICE IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. ROBERT BERKLEY, M.D.*
BME CASE NO. 08-19290-1

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

OPEN SESSION

Ms. Beggs stated that after the formal complaint was filed in the case, additional information was received, and the case was taken back to the Investigative Committee for review. The Investigative Committee recommended dismissal of the case without prejudice.

Discussion ensued concerning whether dismissal would be appropriate under the circumstances.

Mr. Heffner moved that the Board approve the recommendation for dismissal. Dr. Neyland seconded the motion, and it passed, with Dr. Held voting against the motion and all other adjudicating Board Members voting in favor of the motion.

Agenda Item 19

CONSIDERATION OF DISMISSAL WITHOUT PREJUDICE IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. WILLIAM RAMOS, M.D., BME CASE NO. 07-5299-1

- Edward O. Cousineau, J.D., General Counsel

OPEN SESSION

Mr. Cousineau stated that after the formal complaint was filed in the case, additional information was received from opposing counsel, and the peer reviewer changed his opinion to a finding of no malpractice. Therefore, the Investigative Committee recommended the case be dismissed without prejudice.

Mr. Heffner moved that the Board approve the recommendation for dismissal. Dr. Rodriguez seconded the motion, and it passed, with Dr. Held voting against the motion and all other adjudicating Board Members voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF DISMISSAL WITHOUT PREJUDICE IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. DENNIS GORDON, M.D., BME CASE NO. 09-3892-1

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

OPEN SESSION

Since neither Dr. Held nor Dr. Rodriguez were adjudicating members on this adjudication, Ms. West presided over the matter.

Ms. Beggs explained that after the formal complaint was filed in the case, Dr. Gordon's attorney provided additional information and Dr. Gordon has since retired from practicing medicine. The Investigative Committee recommended dismissal without prejudice.

Mr. Heffner moved that the Board accept the recommendation for dismissal. Dr. Berndt seconded the motion, and it passed unanimously, with all adjudicating Board Members voting in favor of the motion.

Agenda Item 21

DISCUSSION AND DETERMINATION CONCERNING REQUEST FOR OPINION BY THOMAS BELL, CEO OF CLINICIANS MEDICAL GROUP (CMG), REGARDING WHETHER CMG CAN UTILIZE SPECIAL PURPOSE MEDICAL LICENSES TO TREAT PATIENTS VIA VIDEOCONFERENCING EQUIPMENT, ALLOWING REAL-TIME INTERACTION "JUST AS IT WOULD FOR FACE-TO-FACE MEDICAL CARE"

- Douglas C. Cooper, CMBI, Interim Executive Director; Lynnette L. Daniels, Chief of Licensing

Mr. Cooper stated that this began as a request for an opinion from the Board as to whether a special purpose license could be utilized for real-time interaction in telemedicine. This company works a lot with the California Department of Corrections, where they see and treat prisoners via telephone and fiber optics.

Thomas Bell, CEO of Clinicians Medical Group (CMG), stated that what they are proposing to do is provide telemedicine services to Nevada's more underserved areas with medical specialties that are not available to them today. He explained the way it would work is that a physician at one of their contracted facilities would connect to another contracted facility in a rural area where patients could come and be treated. The physical examination would be conducted by an LPN, a nurse practitioner, a medical assistant or other health care provider chosen by the rural health clinic or hospital at the remote site, under supervision of the physician via videoconference. CMG would either set up the remote site to enable it to access their electronic records or would fax the information to the remote site so it could be documented in the charts at the remote site as well.

Mr. Bell stated that all of their physicians are credentialed and those who would work with sites in Nevada would become licensed in Nevada through the regular licensure process. Currently, they perform about 8,000 telemedicine consults a year. They began with a request from the California Department of Corrections four years ago, and have now branched out beyond correctional facilities and are also working with Barton Healthcare Systems in South Lake Tahoe. Currently, they do not have any programs outside of the state of California, but one of the reasons they have made this request is that they have been talking with Barton about providing services to their clinics in Stateline and Gardnerville.

Ms. Daniels stated that initially it was thought that CMG was requesting to utilize a special purpose license, which would not be appropriate, as they would need unrestricted licenses, and this has been clarified with Mr. Bell.

Discussion ensued as to how prescriptions could be written by the physician supervising via videoconference when NRS 639 requires that a patient be seen in person by the physician who writes the prescription.

Discussion ensued concerning the viability and appropriateness of the request.

Ms. Beggs stated that currently there is nothing in Nevada law that precludes CMG from practicing telemedicine, so there is really no action the Board needs to take at this time.

Mr. Cousineau added that with respect to the use of medical assistants, the current position the Board is taking would not preclude what Mr. Bell is proposing.

Dr. Held stated that the bottom line is that they can apply for an unrestricted license and if granted one, they can do with it as they will, as long as it is within the law.

Weldon Havins, M.D., J.D., commented that the fact the statute does not prevent CMG from practicing telemedicine does not trump all other requirements for the practice of medicine, and that the issue should be reviewed.

Agenda Item 22

DISCUSSION CONCERNING BOARD'S DIVERSION PROGRAM

- Douglas C. Cooper, CMBI, Interim Executive Director

Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation, stated there are two experts in the area of Diversion on the Board – one who has worked with physicians health programs and another who has worked with employee assistance programs, especially related to drugs and alcohol. Physicians health programs primarily operate to protect the public through getting sick physicians out of practice and helping them to recover.

The Nevada Health Professionals Assistance Foundation does not provide direct treatment; it provides education, prevention, networking and guidance through evaluation of treatment. One of the most important things it does is early detection. It is a very large program with a large network. Dr. Mansky then described some of the specific programs and services the Foundation offers. He stated the Foundation's contract with the Board ended that month. There is consideration of utilizing a memorandum of understanding for future services, and the Foundation would like to participate in that program and continue to serve the staff and the Board.

Dr. Held stated there has never been any question that the Foundation's program has been very valuable to the Board in protecting the people of Nevada. The issue was cost.

Mr. Cooper explained that the Board had sent out a Request for Qualifications (RFQ) through the State Purchasing process and received only one response. Therefore, the Board has been released from that process and can proceed in whatever manner it deems appropriate. He suggested the Board enter into memorandums of understanding with providers with whom the Board has already sent participants, such as the Nevada Health Professionals Assistance Foundation, CMS of Nevada and Larry Espadero's program at Montevista Hospital, so the Board will have options to offer its licensees and applicants.

Discussion ensued concerning the triage of licensees and applicants with respect to making a determination as to the appropriate program for that particular individual.

Mr. Cooper stated that the Board can no longer financially support any programs.

Discussion ensued concerning the history of financial support provided by the Board to the Nevada Health Professionals Assistance Foundation.

Discussion ensued concerning the importance of quality and experience when sending an individual to a treatment program.

Agenda Item 23

**CONSIDERATION OF UPGRADING VIDEOCONFERENCING SYSTEM AND
PURCHASING REPLACEMENT DESKTOP COMPUTERS FOR BOARD STAFF**

- Douglas C. Cooper, CMBI, Interim Executive Director; Laurie L. Munson, Chief of Administration and Information Systems

Ms. Munson explained that the Board's videoconferencing system is no longer being supported by the manufacturer and that some day it will simply cease to function unless the Board installs an upgrade. At the last meeting, staff proposed an upgrade that would allow the Board to videoconference its meetings to six remote locations, as opposed to just one, as the current system allows, which would enable Board Members to attend some meetings via videoconference instead of having to travel. Additionally, it would enable the Board to stream its meetings over the Internet, if it chose to do so, as the Legislature does. That upgrade would cost the Board \$25,000. The Board asked staff to return with an estimate of savings to the Board in travel costs if the upgrade were purchased. After investigating further, it appears it would not really save the Board money, as most of the meetings that were contemplated to be held via videoconference were those for which the Board Members no longer needed to travel. Therefore, staff was now recommending the minimum upgrade of \$6,224, which would still provide the Board with the capability to videoconference to three remote locations, as opposed to one, and also provide better video and sound quality. The current unit has been operational for six years. An optional maintenance agreement, like the one the Board had on the current system, is available for an additional charge.

Discussion ensued concerning how the videoconferencing system is currently being used, and how often.

Discussion ensued concerning the viability of renting the equipment to others to help offset the costs of the videoconferencing system.

Ms. Munson requested authority to purchase the upgrade now or, alternatively, to do so at such time as the system ceases to operate.

Discussion ensued concerning alternatives to videoconferencing a meeting should the system fail in the middle of the meeting, or just prior to the meeting when there is not enough time to repair the system for the meeting, and how long it would take to upgrade the system at such time as it ceases to operate.

Dr. Rodriguez moved that the Board wait to purchase the upgrade until such time as the system fails and it is necessary to do so, and at that time the Executive Director present the request to the Executive Committee for approval. Phone conferencing is to be added to the Board's agendas, as an alternative to videoconferencing, so the Board is covered under the Open Meeting Law. Ms. West seconded the motion, and it passed unanimously.

Ms. Munson explained that at the last meeting, staff brought a request to the Board for authority to spend up to \$15,000 for replacement desktop computers. The Board requested that staff provide information as to an estimated number and cost of computers needing replacement. She stated the Board currently has 27 desktop computers in service. The current best price for a

desktop and monitor that is comparable to what the Board currently has is \$850. Staff is requesting authority to purchase up to 10 computers at that price or less, in the next fiscal year, if and when the need arises to replace them. Ms. Munson then provided an overview of the age of the computers that are currently in service at the Board.

Ms. West moved that the Board grant staff the authority to purchase up to ten computers at a maximum total cost of \$8,500, as needed in the next fiscal year. Mr. Heffner seconded the motion, and it passed unanimously.

Agenda Item 24

REPORTS

- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, Advisory Committee Member
 - Request and Discussion Regarding Adding Physician Assistants to the List of Those Who Can Perform Sports Physicals Pursuant to NAC 386.819
- Practitioner of Respiratory Care Advisory Committee - John H. Steinmetz, R.R.T., Advisory Committee Member
- Investigative Committees - Charles N. Held, M.D., President, Chairman, Investigative Committee A
Benjamin J. Rodriguez, M.D., Vice President, Chairman, Investigative Committee B
 - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division
 - Status of Investigative Caseload - Pamela J. Castagnola, Acting Chief of Investigations
 - Compliance Report - Johnna S. LaRue, Compliance Officer
- Nevada State Medical Association Report - Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Report - Warren Evins, M.D., Ph.D., FACP, Executive Director, Clark County Medical Society; Benjamin J. Rodriguez, M.D., Board Vice President;

Physician Assistant Advisory Committee

- Request and Discussion Regarding Adding Physician Assistants to the List of Those Who Can Perform Sports Physicals Pursuant to NAC 386.819

Roy M. Cary, Jr., P.A.-C, Advisory Committee Member, stated that physician assistants were requesting that they be added to the list of those who can perform sports physicals for schools pursuant to NAC 386.819.

Ms. Beggs stated there was paperwork concerning the issue that would be forwarded to a member of the Executive Committee for review. Mr. Cooper added that the Board had received a request in writing.

Dr. Held stated the request would be reviewed when it was received.

Practitioner of Respiratory Care Advisory Committee

John H. Steinmetz, R.R.T., Advisory Committee Member, was present and stated that the Advisory Committee had nothing to report.

Investigative Committees – Charles N. Held, M.D., President, Chairman,
Investigative Committee A
Benjamin J. Rodriguez, M.D., Vice President, Chairman,
Investigative Committee B

- Consideration of Cases Recommended for Closure by the Committees

Dr. Held reported that Investigative Committee A had considered 143 cases, authorized the filing of a formal complaint in 8 cases, requested an appearance in 7 cases, issued 15 letters of concern, sent 5 cases out for peer review, referred 7 cases back to investigative staff for further investigation or follow-up, reviewed 2 cases for compliance and recommended closure of 99 cases.

Dr. Anwar moved to approve for closure the cases recommended by Investigative Committee A. Mr. Heffner seconded the motion, and it passed unanimously.

Mr. Cooper stated that Investigative Committee B did not meet during this quarter, as two members of the Investigative Committee were unable to make the meeting. There is a caseload for Investigative Committee B and the cases have been distributed, so there will be a telephonic meeting and the three appearances that would have been included in the meeting in October will be included on the February agenda.

Investigations Division

- Status of Investigative Caseload

Ms. Castagnola reported that there are currently 411 open investigative cases, 202 civil court cases that need to be opened and assigned to Investigators, 34 peer reviews in the field and 12 peer reviews to be assigned.

- Compliance Report

Ms. LaRue reported that during the third quarter, through September 30th, six cases were closed for Investigations and three were closed for Licensing. Total costs collected from January 1 through September 30, 2009 totaled \$42,479.99, and \$10,000 in fines was collected during that time period. Since that time, the Board has collected an additional \$15,000. The current outstanding balance owed is \$209,324.24.

Dr. Anwar asked about the cases that remain open from 2001 through 2004. Ms. LaRue explained that most of those cases remain open based on outstanding fees. Staff has tried a number of ways to try to collect the money and has recently formulated a plan to put them into collections to obtain payment. There is one case from 2001, two from 2003, one from 2005, four from 2006, one from 2007 and three from 2008 that have not paid their fees.

Mr. Cooper added that the amount of costs collected in 2008 was the best ever, at \$61,000.

Nevada State Medical Association Report

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, reported on recent activities of the Nevada State Medical Association, including an update on the national injection safety campaign.

Clark County Medical Society Report

Warren Evins, M.D., Ph.D, FACP, Executive Director of the Clark County Medical Society, reported on recent activities of the Clark County Medical Society.

Dr. Rodriguez stated he had nothing to add to the report.

Agenda Item 25

EXECUTIVE STAFF REPORTS

- Consideration of Proposed 2010 Meeting Schedule
- Consideration and Approval of Revisions and Additions to *Policy and Procedure Manual*
- Consideration and Approval to Schedule the Administrators in Medicine Assessment Program Audit/FSMB
- Consideration of Request for Staff and Board Member Attendance at Educational Meetings
- Discussion Regarding Opening Satellite Office in Las Vegas
- Informational Items
- Douglas C. Cooper, CMBI, Interim Executive Director

Consideration of Proposed 2010 Meeting Schedule

Discussion ensued concerning the proposed Meeting Schedule for 2010. Dr. Neyland said she would not be available on the dates proposed for the March Board meeting. Dr. Fischer said he would not be available on the dates proposed for the December Board meeting. The dates for the Investigative Committee meetings and the License Application and Malpractice Review Committee meetings were acceptable to all Committee members. The consensus was to approve the proposed meeting schedule as is.

Discussion ensued concerning holding the December meeting in Las Vegas. Mr. Cooper advised the Board it is very expensive to hold a meeting in Las Vegas and it is not in the budget for fiscal year 2010. Discussion ensued concerning holding "split" meetings, with some Board Members and staff attending in Reno and some attending in Las Vegas. The consensus was that the March Board meeting be a "split" meeting, to see how well that would work.

Dr. Rodriguez moved that the Board approve the 2010 Meeting Schedule as proposed. Ms. West seconded the motion, and it passed unanimously.

Consideration and Approval of Revisions and Additions to *Policy and Procedure Manual*

Mr. Cooper explained that the Board's press relations policy had been revised in response to comments from Board Members. He then outlined the revised policy. Discussion ensued concerning the proposed revisions and concerning responding to press inquiries in general.

Dr. Berndt moved that the Board approve the revised press relations policy. Dr. Rodriguez seconded the motion, and it passed unanimously.

Dr. Held stated that revision of the job description for the Executive Director and creation of a new position and job description for a Deputy Executive Director were generated from a discussion between Mr. Cooper and him. Because there is so much going on in the Legislature that may long-term influence how the Board functions, neither of them felt it would be fair to ask an applicant from out of state to come to Nevada and commit himself to the Board until the Board knows where it stands legislatively.

Mr. Cooper stated that most medical boards do not require that their executive director be an attorney and most other boards in Nevada do not require it. Further, that requirement limits the number of qualified candidates for the position, so that requirement was replaced with a requirement that the Executive Director hold a minimum of a bachelor's degree. The language on the original draft included in the Board meeting materials was worded incorrectly, and stated "an additional bachelor's degree." This has been corrected. Additionally, all references to the Executive Director being special counsel to the Board were removed from the job description.

Dr. Rodriguez moved that the Board approve the revised Executive Director job description as presented, changing the wording from "an additional bachelor's degree" in the training and experience section to "a minimum of a bachelor's degree." Dr. Fischer seconded the motion, and it passed unanimously.

Mr. Cooper stated the Deputy Executive Director would be the second person in the office to know everything that is going on at the Board. With the growth in the state and the political climate the way it is, two people need to know what is going on at all times, and this is an attempt to solve that problem. The training and experience for the position should include "a minimum of a bachelor's degree."

Dr. Rodriguez moved that the Board approve the new position and job description for Deputy Executive Director, as presented, with the addition of "a minimum of a bachelor's degree" in the training and experience section. Dr. Neyland seconded the motion, and it passed unanimously.

Consideration and Approval to Schedule the Administrators in Medicine Assessment Program Audit/FSMB

Mr. Cooper explained that as there was in 2009, there will be again in 2011, a move to consolidate the Nevada boards in some manner and at some level. To prepare for that, and to give us some feedback from a highly-professional group of regulatory medical administrators, he would like authority to proceed with an assessment by the Administrators in Medicine (AIM) in order to obtain a solid assessment/audit of the Board's licensing, disciplinary and other processes and suggested action plans to make this Board the best it can be and to work as well as it possibly can. The Board functions well right now, but there is always room for improvement in any human endeavor. The Board is required to have an independent audit every eight years, and we are approaching that date, so he would like to get ahead of the game with this assessment. The cost will range somewhere between \$15,000 and \$20,000.

Discussion ensued concerning whether the Board should undertake this assessment/audit.

Dr. Rodriguez moved that the Board authorize the evaluation process through the Administrators in Medicine. Ms. West seconded the motion, and it passed unanimously.

Consideration of Request for Staff and Board Member Attendance at Educational Meetings

Dr. Held outlined the requests for attendance at educational meetings that were before the Board for approval.

Dr. Fischer moved that the Board approve the requests for training. Mr. Heffner seconded the motion, and it passed unanimously.

Discussion Regarding Opening Satellite Office in Las Vegas

Mr. Cooper stated that due to growth in the state, the Board needs to have a larger presence in Las Vegas on a day-to-day basis. Currently, the Board has a very small "day office" space within the Pharmacy Board office in Las Vegas, and the lease on that space expires in February 2010. He would like authority to conduct a cost and staffing study to determine whether it is feasible to open an office in Las Vegas for two staff members and a conference room, to start with. The travel costs the Board is currently incurring for investigators to travel to and from Las Vegas will offset the cost of the office space and staff in Las Vegas.

Discussion ensued concerning the viability of opening an office in Las Vegas.

Ms. West moved that the Board grant Mr. Cooper the authority to proceed with the cost and staffing study and bring it back to the Board. Dr. Rodriguez seconded the motion, and it passed unanimously.

Agenda Item 26

LEGAL REPORTS - Edward O. Cousineau, J.D., General Counsel; Lyn E. Beggs, J.D., General Counsel; Christine M. Guerci-Nyhus, J.D., Chief Deputy Attorney General

- Board Litigation Status

- Board Litigation Status

Ms. Beggs reported there had been six proposed settlements, two modifications of probation and three dismissals before the Board at this meeting, 16 letters of concern would be sent out as a result of the Investigative Committee A meeting in October, with more possibly to follow from the telephonic Investigative Committee B meeting. There are 99 cases pending in the Legal Division, with 48 cases pending or scheduled for hearing through June 2010. There are 30 cases pending filing of formal complaints, 7 of which were approved at the October Investigative Committee A meeting, and 19 CMT reviews to complete. There are still two cases on appeal. We are still awaiting a briefing schedule in the Wick matter in the Nevada Supreme Court and the Lakner case is still pending setting of an oral argument in Washoe District Court on judicial review. The Bass appeal was dismissed.

Ms. Guerci-Nyhus was not present at the time to present a report.

Agenda Item 27

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved Since the August 7, 2009 Board Meeting

Mr. Heffner moved that the Board ratify the licenses issued and reinstatements of licensure and changes of licensure status approved since the August 7, 2009 Board meeting. Dr. Anwar seconded the motion, and it passed unanimously.

Agenda Item 29

MATTERS FOR FUTURE AGENDA

Dr. Held requested that discussion concerning hiring a public information officer and an update on the search for suitable office space in Las Vegas be included on the agenda for the next meeting.

Mr. Cooper stated that the Board had received an email concerning the use of hCG for weight loss and that the Board would be receiving a petition regarding the same. There will be a presentation regarding that petition at the next meeting.

Agenda Item 30

ELECTION OF OFFICERS AND APPOINTMENT OF COMMITTEE MEMBERS

Dr. Held announced that nominations were open for election of officers of the Board.

Dr. Anwar nominated Dr. Held for another term as President. Dr. Fischer seconded the nomination. As no other nominations were received, Dr. Neyland moved that nominations for President be closed. Dr. Anwar seconded the motion, and it passed unanimously.

A vote was taken on the nomination of Dr. Held for another term as President, and it passed unanimously.

Dr. Fischer nominated Dr. Rodriguez for another term as Vice President. Dr. Berndt seconded the nomination. As no other nominations were received, Dr. Neyland moved that nominations for Vice President be closed. Dr. Fischer seconded the motion, and it passed unanimously.

A vote was taken on the nomination of Dr. Rodriguez for another term as Vice President, and it passed unanimously.

Dr. Anwar nominated Ms. West for another term as Secretary-Treasurer. As no other nominations were received, Dr. Rodriguez moved that nominations for Secretary-Treasurer be closed. Dr. Anwar seconded the motion, and it passed unanimously.

A vote was taken on the nomination of Ms. West for another term as Secretary-Treasurer, and it passed unanimously.

Agenda Item 31
PUBLIC COMMENT

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

RECESS

Dr. Berndt moved to recess the meeting. Dr. Fischer seconded the motion. Dr. Held recessed the meeting at 2:22 p.m.

SATURDAY, NOVEMBER 7, 2009

Board Members Present

Charles N. Held, M.D., President
Javaid Anwar, M.D.
Van V. Heffner
Beverly A. Neyland, M.D.
Theodore B. Berndt, M.D.
Michael J. Fischer, M.D.

Board Members Absent

Benjamin J. Rodriguez, M.D., Vice President
Renee West, Secretary-Treasurer

Staff Present

Douglas C. Cooper, CMBI, Interim Executive Director
Lyn E. Beggs, J.D., General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Lynnette L. Daniels, Chief of Licensing
Carolyn H. Castleman, Deputy Chief of Licensing

RECONVENE

Dr. Held reconvened the meeting at 8:30 a.m.

Ms. Beggs took roll call, and all Board members were present with the exception of Dr. Rodriguez and Ms. West.

Agenda Item 28

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS
FOR LICENSURE

28(a) Dina Tack, M.D.

Catherine Goring, M.D., Chairman of the Department of Internal Medicine at the University of Nevada School of Medicine, appeared with Dr. Tack.

Dr. Held asked Dr. Tack whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Anwar questioned Dr. Tack concerning the fact that she had not practiced clinical medicine since she left her fellowship at the Mayo Clinic in May 2004.

Dr. Tack explained that she had not had much contact with patients since then. She is currently teaching at the University of Nevada School of Medicine, and recently began shadowing a local hematologist/oncologist in Carson City once a week.

Discussion ensued concerning how Dr. Tack could bring her clinical skills current.

Dr. Held moved that the Board grant Dr. Tack an unrestricted medical license with the condition that she be monitored by the University of Nevada School of Medicine Internal Medicine Department for one year, with quarterly reports from Dr. Goring to be provided to the Board. Dr. Neyland seconded the motion, and it passed unanimously.

28(b) Andre Vanderhal, M.D.

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

Discussion ensued concerning the fact that Dr. Vanderhal did not complete three consecutive years of medical training in a United States or Canadian medical school.

Dr. Held moved that the Board not exercise its discretion to grant Dr. Vanderhal a license by endorsement. Dr. Fischer seconded the motion, and it passed unanimously.

Dr. Held moved that the Board grant an unrestricted medical license to Dr. Vanderhal. Dr. Fischer seconded the motion, and it passed unanimously.

28(c) Subhash C. Mitra, M.D.

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

Dr. Neyland questioned Dr. Mitra concerning his post-graduate training, and Dr. Mitra described it. Dr. Neyland stated that his post-graduate training had subsequently been verified by staff.

Dr. Neyland questioned Dr. Mitra concerning his affirmative response to Question 12 on his application for licensure, and he explained the circumstances surrounding the one claim of malpractice against him that resulted in a settlement.

Dr. Neyland moved that the Board not exercise its discretion to grant Dr. Mitra a license by endorsement. Dr. Fischer seconded the motion, and it passed unanimously.

Dr. Neyland moved that the Board grant an unrestricted medical license to Dr. Mitra. Mr. Heffner seconded the motion, and it passed unanimously.

28(d) Alejandro N. Ocasio, C.R.T.

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

Mr. Heffner questioned Mr. Ocasio concerning his affirmative response to Question 12 on his application for licensure, and Mr. Ocasio described the circumstances surrounding his past arrests for various criminal offenses.

Mr. Heffner moved that the Board grant Mr. Ocasio's application for licensure. Dr. Held seconded the motion, and it passed unanimously.

28(e) Stephanie Ashman, M.D.

Dr. Held asked Dr. Ashman whether she wanted her application to be considered in closed session, with the public being excluded, and she said that she did not.

Dr. Held questioned Dr. Ashman concerning the fact she had not practiced clinical medicine since 2003.

Dr. Ashman described what she had been doing since that time to keep current and stated she had just completed her online recertification in order to sit for her Boards next year when her current certification expires. She stated she had also been shadowing Dr. Wahi, an outpatient internist, for the past couple of weeks.

Discussion ensued concerning how Dr. Ashman could bring her skills current.

Dr. Held moved to grant Dr. Ashman a status change from inactive to active with the condition that Dr. Wahi precept her for four months and provide a letter to the Board at the completion of the four-month preceptorship signing off on her clinical skills. Mr. Heffner seconded the motion.

Dr. Ashman left the room to contact Dr. Wahi to confirm whether she would be willing to act as preceptor for Dr. Ashman under the aforementioned conditions.

Discussion ensued concerning developing a Board policy to handle these types of situations in the future where applicants have been out of clinical practice for a time.

Dr. Ashman returned to the meeting and advised the Board that Dr. Wahi would be willing to act as Preceptor for her.

Dr. Held moved to grant Dr. Ashman a status change from inactive to active with the condition that Dr. Ashman find a preceptor that is acceptable to the Board and practice hands-on clinical patient care under the preceptor for a minimum of four months, and at the conclusion of the preceptorship, the preceptor submit a written report to the Board signing off on Dr. Ashman's clinical skills. If the report is acceptable to the Board, the Board will lift the condition from Dr. Ashman's license. Mr. Heffner seconded the motion, and it passed unanimously.

28(g) Clark A. Morres, M.D.

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

Dr. Anwar questioned Dr. Morres concerning his affirmative response to Question 12 on his application for licensure, and he explained the circumstances surrounding the one claim of malpractice against him.

Dr. Anwar moved to grant Dr. Morres' application for licensure. Dr. Fischer seconded the motion, and it passed unanimously.

28(i) Jay K. Radhakrishnan, M.D.

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

Dr. Neyland questioned Dr. Radhakrishnan concerning his affirmative response to Question 28 on his application for licensure, and Dr. Radhakrishnan explained the circumstances surrounding the disciplinary action taken against his medical licenses in Florida and North Carolina.

Dr. Neyland questioned Dr. Radhakrishnan concerning the fact that he responded in the negative to Question 31 on his application for licensure, when he should have responded in the affirmative. Dr. Radhakrishnan explained he was not aware that the letter of concern he was issued by the Iowa Board of Medicine was issued as a result of an investigation.

Dr. Neyland moved to grant Dr. Radhakrishnan's application for licensure. Mr. Heffner seconded the motion, and it passed unanimously.

28(j) Stephen Castorino, M.D.

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

Dr. Held moved to go to Closed Session. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Fischer moved to grant Dr. Castorino's application for licensure. Dr. Held seconded the motion, and it passed unanimously.

28(k) Elliott D. Schmerler, M.D.

Dr. Schmerler was present with his attorney, Maria Nutile, Esq.

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

Dr. Held asked Dr. Schmerler to explain his history with the Nevada Board of Medical Examiners, since there were new members on the Board, and Dr. Schmerler did so. He stated he had maintained his Board Certification in Family Practice until 2001, when the Nevada Board placed a restriction on his license which no longer allowed him to practice liposuction. He stated he never received the certified letter from the American Board of Family Practice that his Diplomat status had been rescinded because he was incarcerated at the time it was sent and his office staff signed for it and did not make him aware of it.

Dr. Schmerler explained that he currently holds a teaching position at a family practice group in Phoenix, Arizona, and his involvement is limited to teaching. Dr. Schmerler stated he surrendered his homeopathic license in Arizona following revocation of his medical license in Nevada.

Dr. Held questioned Dr. Schmerler concerning the fact that he responded in the negative on his current application for licensure to questions concerning surrender of his homeopathic license, when he should have responded in the affirmative. Dr. Schmerler explained he had photocopied his answers from his previous application to the Board, which was completed prior to his surrender of his homeopathic license in Arizona, but the Board already had the information concerning that surrender. Ms. Nutile explained that the information concerning surrender of his homeopathic license in Arizona had been submitted as an addendum to his previous application package, as it occurred after he submitted the original application. Dr. Schmerler submitted the current application to the Board directly, without going through her office, and did not photocopy the addendums to the previous application that had been submitted by her office. She then asked that Dr. Schmerler be given the same consideration as others have been given within the last year and stated she had at least three examples within the last year where individuals had admittedly lied on applications and had been given stayed sentences or been given fines, and two additional examples within the last couple of years.

Mr. Cooper clarified that, based on a cursory review of the examples Ms. Nutile had provided, those were cases where individuals had either lied on a renewal application or were discovered to have lied after they had received licenses, and that is why disciplinary action was initiated. Had the Board known they were lying at the time they renewed their licenses, they probably would have been denied renewal.

Ms. Nutile stated there appeared to be inconsistency regarding what lies or inadvertent mistakes are acceptable and which are not.

Dr. Held questioned Dr. Schmerler concerning advertisements listing Dr. Schmerler as an M.D. at a time when he did not have an active medical license in Nevada, and Dr. Schmerler explained that he had been listed as an M.D. on those advertisements because he was licensed as an M.D. in Nevada at the time they were made.

Dr. Anwar asked Dr. Schmerler when he had last practiced clinical medicine. Dr. Schmerler stated it was in October of last year, when he was working full-time in family practice in Pahrump.

Discussion ensued concerning the continuing issues with Dr. Schmerler's judgment and decision-making.

Dr. Anwar asked Dr. Schmerler to explain to the Board why it should feel comfortable allowing him to treat patients in Nevada, and Dr. Schmerler explained he had treated patients in Nevada for almost 20 years and that this was not about patient care, but rather his carelessness in other areas. Dr. Anwar asked Dr. Schmerler what he could cite that would show the Board that he has improved in those areas since the Board revoked his license, and Dr. Schmerler stated he had been teaching and voluntarily took the PROBE course.

Ms. Beggs asked Dr. Schmerler to clarify why he had stated that he was incarcerated at the time the certified letter was sent to him from the American Board of Family Practice when the letter was sent in February 2002, prior to his incarceration. Dr. Schmerler explained that on the date the letter was sent, he was not incarcerated, but he was away; that he had not been in his office at all for six months or more prior to the time he was incarcerated and did not receive mail during that time.

Further discussion ensued concerning Dr. Schmerler's responses to the questions on his application and to the questions posed to him by the Board at the meeting.

Dr. Held moved that the Board go into a non-meeting recess. Dr. Anwar seconded the motion, and it passed.

Upon returning to Open Session, Dr. Held told Dr. Schmerler that he was concerned about his veracity and said that he had not seen anything that would convince him anything had changed.

Dr. Held moved that the Board deny Dr. Schmerler's application based on what had been discussed, most specifically based on the NRS section that authorizes the Board to deny licensure to applicants who are not accurate on their applications.

Ms. Beggs requested clarification as to whether Dr. Held was referring to NRS 630.304(1). He asked her to show it to him, which she did. Dr. Held then requested that Ms. Beggs quote NRS 630.304(1), which she did on the record. She then asked Dr. Held whether that was his ground, and he stated it was. Mr. Heffner seconded the motion, and it passed unanimously.

Ms. Beggs asked Dr. Held whether he wanted to exercise the Board's discretion under NAC 630.050 in any manner.

Dr. Held moved that, pursuant to NAC 630.050(4), the Board prohibit Dr. Schmerler from applying again for three years. Dr. Fischer seconded the motion, and it passed unanimously.

Agenda Item 31
PUBLIC COMMENT

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

ADJOURNMENT

Dr. Anwar moved to adjourn the meeting. Dr. Berndt seconded the motion, and it passed. Dr. Held adjourned the meeting at 12:04 p.m.

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