



STATE OF NEW HAMPSHIRE BOARD OF MEDICINE NEWSLETTER

SUMMER/FALL 2011

MRSC Welcomes New Chair and New Members

The Medical Review Subcommittee of the Board of Medicine ("MRSC"), an 11 member committee that investigates and recommends appropriate action to the Board regarding its licensees has recently added some new members, as well as welcomed back a former MRSC member as its new Chair.

Robert Cervenka, MD, an OB-GYN, first joined the MRSC in February 2002 and served as an MRSC member for several years before becoming a Board member in May 2007. Dr. Cervenka recently replaced Dr. Amy Feitelson as the chair of the MRSC. In his new role, Dr. Cervenka will assume the role of Vice President of the Board and will chair the monthly meetings of the MRSC. The Board extends a large thank you to Dr. Feitelson for her over three-year term as MRSC chair and thanks Dr. Cervenka for assuming the role as chair. Dr. Feitelson will continue to serve as a member of the Board of Medicine, having been recently appointed to another five-year term.

David Conway, MD, an OB-GYN who practices in Concord, NH joined the MRSC in February 2011, along with Paul Scibetta, D.O., an orthopedic surgeon practicing in Manchester, NH. We welcome Dr. Conway and welcome back Dr. Scibetta who served on the Board of Medicine from July 2004 to February 2007 before spending a short time practicing out of state.

In March 2011, Ira Schwartz, M.D., an internist from Portsmouth, NH, joined the MRSC, as well as Christine Fales, from Goffstown, NH, the MRSC's newest public member.

With the addition of these new members, the MRSC now has eleven members, including seven

physicians, one physician assistant and three public members.

Current MRSC Members:

Dr. Robert Cervenka, Chair; Dr. Michael Barr; Dr. David Conway; Mark Iber, P.A.; Dr. Teresa Ponn; Dr. Ira Schwartz; Dr. Paul Scibetta; Dr. Michael Sochat; Christine Fales, Public Member; Linda Tatarczuch, Public Member; Patricia Waldvogel, Public Member.

A reminder that pursuant to RSA 329:16-f, I, all licensees must maintain a current business address on file with the Board. Any changes in your address shall be reported to the Board within 30 days from the date of the change. Changes can be sent to nichole.taylor@nhsa.state.nh.us.

Changes to the Board's Administrative Rules are Adopted

The Board of Medicine recently adopted both revisions to its current Administrative Rules, as well as new rules governing the work the Board and its Medical Review Subcommittee do to protect the citizens of the State of New Hampshire.

Specifically, the new rules more particularly describe how investigations are undertaken after a complaint is received. The rules describe the way the MRSC handles investigations, what a report of investigation is to contain, how the Administrative Prosecutions Unit of the Attorney General's Office ("APU") shall engage in settlement negotiations, what information is confidential and when information becomes public, as well as who is authorized to issue subpoenas for either witnesses or the production of documents.

The new rules also contain a new fee structure for licenses, allowing for a portion of licensee's fees to be allocated to fund the Professionals' Health Program, a vital program that assists licensees with drug, alcohol and other dependency issues. (Look for more on the Professionals' Health Program in our next Newsletter).

The rules also change the number of physician assistants that can be supervised by a physician. Current rules now require that a physician shall not be the RSP for more than 4 physician assistants. Also, a physician shall not be an ARSP for more than 8 physician assistants simultaneously and shall not actively supervise more than 4 physician assistants simultaneously.

FYI: The law governing the Board of Medicine is found at RSA 329 and is known as the Medical Practice Act. The Board is also governed by administrative rules that guide the application of the RSA. The full text of the laws and rules can be found at the Board's website at www.nh.gov/medicine/laws. Changes in the Board's rules are highlighted in this newsletter. See the Winter 2011 edition of the newsletter on the Board's website for the recent changes to the Medical Practice Act.

REPORT FROM THE BOARD:

DR. LOUIS ROSENTHALL DISCUSSES HIS RECENT ELECTION TO THE NOMINATING COMMITTEE OF THE FEDERATION OF STATE MEDICAL BOARDS

I was recently elected to the Nominating Committee of the Federation of State Medical Boards (FSMB) which is the national organization of state medical boards.

At the state level, the Board's job is to license and regulate MDs, DOs and PAs within NH so that the public will be well-served. While the regulatory aspect is constantly challenging and always educational, it is mostly reactive in that we are always responding to complaints and lawsuits against the licensees.

By contrast, service nationally on the FSMB is an opportunity for proactive quality improvement. Current issues of concern are: 1) Maintenance of licensure (MOL) – how do we assure competency of the licensee over his/her career, particularly for the more than 50% of physicians who do not have time-limited board certification (grandfathered) or who are not certified at all. 2) Physician re-entry – what to require of a licensee after how long a hiatus from clinical work. Currently there are no standards for this either in NH or nationally. North Carolina has Reentry into Practice Rules and in NH the Board is in the process of drafting and submitting proposed rules for consideration and approval. 3) Telemedicine – who is responsible when a primary care physician in our state consults a specialist at a tertiary center in another state for an acute head injury via Skype and there is an adverse outcome? Can the traditional doctor-patient relationship be preserved in an era of ever-evolving technology and the emergence of the Electronic Medical Record (EMR)?

The Nominating Committee of the FSMB consists of six physicians and concerned public members from across the United States. Our charge is to attract and recruit talented individuals to serve the FSMB which works collaboratively with member state boards, including our own NH Board.

I am honored to have been elected to a two-year term and am excited about this opportunity. By working diligently to better serve the public, we are in essence protecting the integrity of the medical profession.

*Lou Rosenthal
Physician Member NH Board*

NEW LAW, PLEASE TAKE NOTE:

Pursuant to RSA329:16-f, II, all licensees shall provide the board with a copy of any notice of complaint, action for medical injury, or claim received from or disciplinary action taken in a jurisdiction outside of this state within 30 days of receipt of such notice or action.

Does the Board of Medicine have your current e-mail address? If not, please provide it to nichole.taylor@nhsa.state.nh.us so that you can be sure to receive the next issue of our newsletter.

Suggestions for Patient Care Improvement: Dropped Balls

Reviewing stories of provider/patient interactions is the core of what the Board and Medical Review Subcommittee does, and at times lessons arise from these stories. The following is one such story (names and locations withheld) described by Dr. Perencevich. In these stories, the Board makes suggestions for improved patient communication and safety. Other stories, including this one, can be found on the Board's website. The Board also welcomes from you suggestions on patient care improvement.

The Board recently reviewed a case where a series of "dropped balls" by providers and the patient led to a lawsuit. The patient had a mammogram with worrisome calcifications leading to a benign stereotactic breast biopsy with a marker. She was advised to resume annual mammograms, but did not return a year later. Neither the radiology department nor the primary care provider documented any attempt to have the patient return for annual screening after she did not follow-up at one year. Three years later she did come back and had a mammogram that now showed a subtle mass at the previously marked biopsy site. The radiologist did not check the previous biopsy date and assumed the biopsy was very recent and that the biopsy and marker were for the subtle mass and not for calcifications only. The radiologist was therefore, falsely assured that the mass was benign and suggested a follow-up in one year. When the patient did come back a year later for follow-up, the mass was now an obvious cancer ... hence the lawsuit.

The Board felt all parties could have done better. The patient, who had annual mammograms before the biopsy, should have known better, even with a negative biopsy, to come back a year later as directed. The primary care provider and the radiology department should have had a system in

place with documentation to locate and remind the patient when she did not return for a mammogram one year later. Lastly, the radiologist who saw the subtle mass at the marked site should have gotten the story right by more carefully looking at the dates. The radiologist should have realized that the biopsy was three years prior and that it was calcifications only and not a mass. The radiologist would have then realized at the time that the patient had missed annual screening in the interval between the biopsy and his viewing.

Have any suggestions on patient care improvements like the one featured in this newsletter? Have any ideas, suggestions or comments about the newsletter, e-mail them to kathryn.bradley@nh.gov.

The Medical Review Subcommittee needs assistance from time to time in its review of the standard of care in its investigations of licensees. The work involved includes a complete review of medical records and the writing of an expert report on your findings. If you are interested in considering this opportunity (CME Category 2 credit is also available for the work), contact Dr. Douglas Black, Physician Investigator at (603) 271-0570.

Recent Disciplinary Action Taken by the Board

The following are the public disciplinary actions that were taken by the Board of Medicine between February 1, 2011 and September 30, 2011.

2/2/11 Geoffrey A. Lundy, M.D. The Board of Medicine approved a settlement agreement for Dr. Lundy. The Board obtained information pertaining to Dr. Lundy's practice of unnecessary billing and testing culminating in Dr. Lundy's settlement agreement with the Office of the Inspector General of the U.S Department of Health and Human Services. Dr. Lundy was reprimanded.

2/2/11 David N. Lunianski, D.O. The Board of Medicine approved a settlement agreement for Dr. Lunianski. On his NH application for licensure, Dr.

Lunianski: (1) misrepresented that he graduated summa cum laude; (2) failed to report that he had been suspended and dismissed from a residency program; and (3) failed to report that he was under contract with the Rhode Island Medical Society's Physician Health Committee. Effective February 9, 2011, Dr. Lunianski's license to practice medicine is indefinitely suspended. Dr. Lunianski: (1) is reprimanded; (2) shall participate in a forensic psychiatric assessment by Acumen Assessments, LLC and (3) shall enter a five-year contract with the NH Professional's Health Program.

2/2/11 **Michael J. O'Connell, M.D.** The Board of Medicine approved a Preliminary Agreement for Practice Restrictions for Dr. O'Connell. Dr. O'Connell has professional misconduct allegations pending before the Board. Dr. O'Connell voluntarily agrees not to practice medicine, not to write prescriptions, and not to treat or see patients in the State of New Hampshire until such time as the Board approves his return to practice.

2/2/11 **Jayakumar Patil, M.D.** In July 2009, the Board of Medicine approved a Settlement Agreement for Dr. Patil. Dr. Patil charged an unreasonable fee for copying medical records. He also failed to provide adequate medical record documentation, in that the records he provided consisted of ten handwritten pages of notes that were illegible and undecipherable. Dr. Patil was aware that his medical records are often illegible, and he knew or should have known that he needed to provide some form of transcription of his records to be medically adequate. Dr. Patil was reprimanded and assessed an administrative fine in the amount of \$2,000.00. Subsequent to his June 15, 2009 Settlement Agreement, the Board requested from Dr. Patil and reviewed the records of ten patients created after the 2009 agreement. Dr. Patil's continued failure to keep legible records is a breach of the 2009 agreement. Dr. Patil was reprimanded; his license was suspended for 30 days commencing April 15, 2011. Dr. Patil is assessed an administrative fine in the amount of \$10,000.00.

3/2/11 **Mark E. Splaine, M.D.** The Board of Medicine approved a Settlement Agreement for Mark E. Splaine, M.D. Dr. Splaine failed to inform a patient with a highly elevated Prostate-Specific

Antigen ("PSA") result for more than one year. Dr. Splaine is reprimanded and required to complete an additional 6 hours of CMEs. Three of these hours shall be in the medico-legal aspect of medical records

4/6/11 **Don A. Holshuh, M.D.** The Board of Medicine issued an Order of Emergency Suspension and Notice of Hearing. The Board has received information indicating that the continued practice of medicine by Dr. Holshuh presently poses an imminent threat to life, safety and/or health which warrants the temporary suspension of Dr. Holshuh's license to practice medicine pending a hearing that is scheduled for April 15, 2011.

5/6/11 **Susan M. Hare, M.D.** On May 6, 2011, the Board of Medicine issued a Final Order in the Matter of Susan M. Hare, #11-01. On April 6, 2011, the Board held a hearing to determine whether Dr. Hare failed to comply with the terms of her September 2010 Settlement Agreement by failing to pay the \$5,000.00 administrative fine. The Board found that three \$1,000 checks were paid late, one \$1,000.00 check bounced, and one \$1,000.00 check was never tendered. Dr. Hare is assessed an administrative fine in the amount of \$10,000.00. She is ordered to pay the entire sum of \$12,000.00 on or before May 6, 2012.

5/10/11 **Susan M. Hare, M.D.** On May 10, 2011, the Board of Medicine issued a Final Order in the Matter of Susan M. Hare, #11-01. On April 15, 2011, the Board concluded a hearing to determine whether Dr. Hare failed to comply with the terms of her September 2010 Settlement Agreement by engaging in the practice of medicine during her suspension. The Board found that Dr. Hare practiced medicine while her license was suspended, that she created a SOAP note under another practitioner's name, and that she ordered a prescription under another practitioner's name. Dr. Hare's license to practice medicine in NH is revoked.

6/3/11 **Mathew V. Hopkins, M.D.** On June 3, 2011, the Board approved a Settlement Agreement for Mathew V. Hopkins, M.D. On October 24, 2009, the Medical Board of Wyoming issued a final order regarding a self-reporting to the Wyoming

Professional Assistance Program. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Hopkins is required to enter into a new five-year contract with WPAP and to extend his period of probation for an additional five years.

6/3/11 **Dan W. Joachim, M.D.** The Board approved a Preliminary Agreement for Practice Restrictions for Dan W. Joachim, M.D., License #14530. Dr. Joachim recognizes that professional misconduct allegations are now pending against him before the NH Board and the Louisiana Board. He hereby voluntarily agrees to abide by certain practice restrictions during his practice of medicine in the state of NH until such time as the Louisiana Board and the NH Board issue final orders resolving allegations of professional misconduct against him. Dr. Joachim voluntarily agrees not to practice medicine, not to write prescriptions, and not to treat or see patients in the State of New Hampshire until such time as the Board approves his return to practice.

6/3/11 **Bradley N. Liebenson, D.O.** On June 3, 2011 the Board issued a Final Decision and Order in the Matter of Bradley N. Liebenson, D.O., Docket #11-05. On May 4, 2011, the Board held a hearing after which the Board found that Dr. Libenson engaged in professional misconduct by refusing to provide records subpoenaed by the Board as part of an ongoing investigation. Dr. Libenson is reprimanded and assessed an administrative fine in the amount of \$3,000.00.

6/1/11 **Zarina G. Memon, M.D.** The Board approved a Settlement Agreement for Zarina Memon, M.D., License # 11570. On April 7, 2011, the Massachusetts Board of Registration in Medicine issued a final order regarding the disposition of disciplinary matters relating to an intention to perform a "deep extubation" prior to a patient breathing on her own and relating to the recommendations of an independent psychiatric evaluation. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Memon's license is (non-permanently) revoked pursuant to the terms of the Massachusetts Board Order.

7/8/11 **Rafael Tejada, M.D.** The Board of Medicine approved a Settlement Agreement for Rafael

Tejada, M.D., License #12953. Dr. Tejada failed to properly diagnose and treat bilateral acute bronchopneumonia with systemic deoxygenation, which may have contributed to the patient's death. Dr. Tejada is reprimanded and assessed an administrative fine in the amount of \$1,000. Dr. Tejada is required to participate in 20 additional CMEs in the area of emergency airway management.

7/11/11 **Peter T. Pacik, M.D.** The Board of Medicine issued a Final Decision and Order in the Matter of Peter T. Pacik, M.D., Docket #11-02. On June 1, the Board held a hearing after which the Board found that Dr. Pacik engaged in unprofessional conduct by selling prescription-strength skin-care products via the Internet without first establishing a valid physician-patient relationship and by willfully and repeatedly violating RSA 329:17, VI(d). Dr. Pacik is reprimanded and assessed an administrative fine in the amount of \$635.00. Dr. Pacik is ordered to cease and desist from selling prescription strength medications to customers via the Internet without first establishing a physician-patient relationship.

8/3/11 **Walter J. Griffiths, M.D.** The Board of Medicine approved a Settlement Agreement for Walter J. Griffiths, M.D., License # 5661. On September 1, 2010, the Vermont Board of Medical Practice issued a final administrative order against Dr. Griffiths. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Griffiths is reprimanded, is required to retain a "practice monitor," and is required to complete continuing medical education in practice management and opiate maintenance treatment.

8/3/11 **Michelle F. Lackovic, M.D.** The Board of Medicine approved a Final Order in the Matter of Michelle F. Lackovic, M.D., License #8314. On July 6, the Board held a hearing to determine whether Dr. Lackovic failed to comply with the terms of her September 2010 Settlement Agreement by failing to complete the required continuing medical education course. The Board found that Dr. Lackovic so failed to comply. Dr. Lackovic is reprimanded and assessed an administrative fine in the amount of one dollar. It is further ordered that Dr. Lackovic is restricted from prescribing schedule

II and III narcotics for a minimum of twelve months, effective August 15, 2011.

9/7/11 **William B. Weeks, M.D.** On September 7, 2011 the Board approved a Settlement Agreement for William B. Weeks, M.D., License # 8374. Dr. Weeks twice violated his five-year contract that requires him to be monitored for alcohol use. Dr. Weeks is reprimanded and assessed an administrative fine in the amount of \$1,000.00.

The Occupational Therapy Governing Board has a physician position open on its Board. The physician position would be an ideal opportunity for a retired or semi-retired physician, knowledge of occupational therapy is a plus. Currently, the Board meets on the fourth Monday of the month at 10:00am at the Board offices in Concord, NH. A change in the composition of the members could change the meeting day and time. If you are interested in this opportunity, contact Jennifer Kuzma, Liaison to the Executive Council, for complete details on applying for this appointment. She can be reached at 603-271-2121 or by e-mail at Jennifer.kuzma@nh.gov.

NEXT EDITION:

Details on steps to take when winding down, retiring or ending a practice.

What is the Professionals' Health Program and what is its relationship to the Board of Medicine?

The New Hampshire Medical Society and its role in the monitoring of physician licensee's CME requirements.

Opioid Prescribing -- an educational program for NH licensees coming soon to Concord and the Lakes Region -- details in the next Newsletter.

NH Board of Medicine Mission Statement

To protect the public from the unprofessional, incompetent, or impaired practice of medicine. The Board of Medicine issues licenses to qualified Allopathic and Osteopathic physicians and physician assistants based on recognized credentialing standards. The Board regulates the minimum standards of professional conduct and continued competence and takes disciplinary action against licensees who fail to meet these standards.

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