

**VERMONT BOARD OF MEDICAL PRACTICE**  
**Minutes of the November 2, 2016 Board Meeting**  
**Gifford Medical Center, Randolph, Vermont**

**Unapproved**

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

William K. Hoser, PA-C called the meeting to order at 12:10 p.m.

**Members Present:**

Brent Burgee, MD; Richard Bernstein, MD; Richard Clattenburg, MD; Michael Drew, MD; Chip Evans; Faisal Gill; Robert Hayward, MD; Patricia Hunter; David A. Jenkins; Leo LeCours; David Liebow, DPM; Sarah McClain; Christine Payne, MD; Ryan Sexton, MD; Marga Sproul, MD.

**Others in Attendance:**

David Herlihy, Executive Director; Paula Nenninger, Investigator; Scott Frennier, Investigator; Kassandra Diederich, AAG; Sarah Vose, State Toxicologist (by telephone); Bessie Weiss, AAG (by telephone).

**2. Public Comment:**

None

**3. Approval of Minutes of the October 5 and October 19, 2016 Board Meetings:**

Dr. Bernstein moved to accept the minutes of the October 5, 2016 meeting. Dr. Liebow seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Drew moved to accept the minutes of the October 19, 2016 meeting. Dr. Hayward seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

**4. Board Issues (Mr. Hoser):**

Mr. Hoser raised no Board issues.

**5. Administrative Update (Mr. Herlihy):**

Mr. Herlihy informed members that the Health Department had held the public meeting on the update of the Rule on use of opioids for chronic pain, an update that is to add provisions regarding prescribing opioids for acute pain. He added that the

period for public comment has passed, but that the Board could consider making a statement at the hearing that will be held by the Legislative Committee on Administrative Rules. To have a position for that meeting, the Board must discuss this subject during the mid-month meeting. He advised members that materials will be distributed by email, including the comments submitted by the Vermont Medical Society.

Central Committee members were advised that the meeting is moved to November 18 from November 11 because of the Veterans' Day holiday. It is also in a different location; it will be at the Waterbury State Office Complex. Directions will be forwarded.

Mr. Herlihy explained that the Board will need to discuss protocols for auditing CME records after the current MD license renewal period. Licensees certify that they have completed the required CME, but are not required to submit documentation at the time of renewal. Per the Rule, licensees are subject to audit and must submit documentation if asked. He advised that he will prepare a proposed draft of a plan for audit to include the process and number to be selected for audit. It will be on the agenda for December. A question was raised how those to be audited would be selected. Mr. Herlihy said that there is a function available in Excel to assign random values between 0 and 1 to each line of a spreadsheet, then select a specified number by rank. Another member asked what will happen if any licensees are found to have been inaccurate in certifying completion. Ms. Nenninger advised that it would be a matter for investigation and determination by the Committees.

Members who have a term expiring at the end of this year and who are eligible for reappointment were asked to submit the renewal application, which is available on the Boards and Commissions section of the Governor's webpage.

Members were advised that there is a need for both physician and public members for ad hoc proceedings. They were asked to submit names of colleagues and acquaintances who might be available to serve on a temporary basis.

Mr. Herlihy asked if any members who are attending the VMS Awards Dinner on November 5 and willing to present the Board's citation for Ms. Mongan at the dinner.

Another item, regarding case summaries, was postponed to other business.

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

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

**7. Presentations to the Board (12:45 p.m. – 1:15 p.m.): Review of a proposed revision of the Regulated Drug Rule.**

State Toxicologist Dr. Sarah Vose and AAG Bessie Weiss, both from the Vermont Department of Health presented information to the Board regarding proposed amendments to the Regulated Drug Rule. By law, the Board of Medical Practice is required to provide review and advice to the Board of Health before the Regulated Drug Rule is amended. AAG Weiss explained that the Rule is reviewed and updated every year. Dr. Vose added that the review includes consultation with the toxicology lab at the Department of Public Safety. Mr. Herlihy pointed out the changes to the rule on pages 1, 23, and 25.

Dr. Hayward moved to advise the Board of Health that the Board had reviewed the proposed amendments and has no comments or recommended revisions to the proposed revised Rule. Dr. Liebow seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

**8. Nomination of Candidates for Federation of State Medical Board Leadership Positions (1:05 p.m.):**

Mr. Hoser informed the Board that the Federation of State Medical Boards has solicited nominations from member boards for elected positions. He reminded members that former Board Chair Patricia King, MD, is a member of the Board of Directors for FSMB.

Dr. Hayward moved to nominate Dr. King for the position of Chair of the FSMB Board of Directors. Ms. McClain seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

**9. Recess; Convene hearing to discuss any stipulations or disciplinary matters that are before the Board (1:05 p.m.)**

- **In re: Christopher Robert Macaluso, MD – MPC 116-1014 – Request for Relief from Conditions**

AAG Diederich presented a petition from Dr. Macaluso for relief from the conditions of a Board Order. She advised that the Central Committee did not oppose the action and presented a proposed Order.

Ms. Hunter moved to approve the Order. Mr. Gill seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

**10. Executive Session to Discuss:**

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

Dr. Drew made a motion at 1:15 p.m. to enter into Executive Session to discuss confidential matters related to investigations. Dr. Liebow seconded the motion. The motion passed: opposed: none; abstained: none; recused: none

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

Dr. Bernstein made a motion at 1:55 p.m. to return to Open Session. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

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

MPN 116-0816 – Letter #1;  
MPN 128-0816 – Special Letter #1  
MPN 140-0916 – Letter #1; Ms. McClain, Ms. Hunter, Dr. Drew, Mr. Jenkins, Mr. Burgee, Dr. Payne, and Mr. Hoser recused;  
MPN 103-0616 – Letter #1;  
MPN 123-0816 – Letter #1

Dr. Clattenburg made a motion to close the cases presented. Dr. Drew seconded the motion. The motion passed; opposed: none; abstained: none; recused: as indicated above and North Investigative Committee.

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

MPC 073-0516 – Letter #1

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

**Ms. McClain, South Investigative Committee, asked to close:**

MPS 124-0816 – Letter #1;  
MPS 125-0816 – Letter #1; Dr. Sproul recused  
MPS 120-0816 – Letter #1;  
MPS 128-0715 – Special Letter #2

Dr. Bernstein made a motion to close the cases presented. Mr. LeCours seconded

the motion. The motion passed; opposed: none; abstained: none; recused: 1 and South Investigative Committee.

## **12. Other Business:**

- **Continuation of Board discussion, proposed draft of revised Board Rules**

Dr. Hayward presented the minutes and report of the temporary Rules Committee. One item was the subject of substantial discussion. It was explained that when the Committee reviewed the provision that was drafted to prohibit a PA from prescribing any drug to a physician who acts as the PA's supervisor, it was felt that was too restrictive. The Committee recommended changing that part of the draft to a prohibition on a PA prescribing controlled substances to a supervising physician, but to allow prescription of other non-controlled drugs. That change led to a change in the corresponding section of the MD professional standards. Several members commented that it would be advisable to expand that provision to include a prohibition on MDs being prescribed controlled substances by an APRN for whom the physician acts as the collaborating professional. Dr. Berstein, Dr. Sexton, Dr. Burgee, Dr. Drew, Dr. Hayward, Dr. Payne, and Mr. Hoser all commented on the issue. Members indicated consensus that a provision on APRNs should be added.

Dr. Clattenburg moved that the draft should be approved as reported out by the Committee, with the addition of a provision regarding MD prescriptions for controlled substances from an APRN with whom the MD has a collaborating professional relationship. Dr. Sproul seconded the motion. The motion passed; opposed: none; abstained: none; recused: none. The draft will be submitted to the Vermont Department of Health for consideration as a revision to the Board's Rules, subject to the process for adoption of regulations.

- **Public Outreach by the Board**

Mr. Herlihy asked the Board to consider whether the Board should engage in public outreach to increase public awareness of Board activities, specifically the availability of a process for complaints against licensees and the publicly-posted licensee profiles. He observed that staff members have noted that it's not uncommon for people they encounter to comment that they did not know that there was a state process available for making a complaint about a physician or other provider licensed by the Board. He also noted that the Board's physician profiles, which are required by law, are probably not a well-recognized resource. Ms. Nenninger noted that this topic was considered about 7 or 8 years in the past, but no action had

been taken.

Ms. McClain commented that on the topic of outreach, the Board's webpage needs improvement. Mr. Herlihy replied that the Board had been prohibited from making any revisions beyond updating information while a Health Department project was pending for years to revise the entire VDH website. He added that recently Ms. LaFond was provided access to the new portal and has begun to migrate data from the existing webpage to the new version. Several Board members made comments in favor of considering an effort by the Board to engage in public outreach.

Mr. Herlihy advised that he will include the topic on an upcoming agenda and will be seeking guidance from the Board as to what kind of outreach should be considered. He also asked members to consider whether a special committee should be formed to shape the Board's outreach activities.

- **Case Closing Summaries**

Mr. Herlihy distributed redacted copies of two confidential case closing summaries. He explained that these are two good examples of an appropriate level of detail for introducing a case to the Board during executive session. Ms. Nenner added that it is important for members to complete a summary in the format distributed or any format that works for them. She explained that the summaries are most important for future use if additional complaints about the licensee arise; the summary provides easily accessible information about the nature of the case and the Committee's conclusions.

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

- **November 10, 2016, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3<sup>rd</sup> Floor, Conference Room 2C, Burlington, VT**
- **November 18, 2016, Central Investigative Committee Meeting, 9 a.m., Waterbury State Complex, Cedar Room, Waterbury, VT**
- **November 16, 2016, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2<sup>nd</sup> Floor Burlington, VT (and via telephone)**

- **November 16, 2016, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **December 7, 2016, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **December 7, 2016, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

**14. Open Forum:**

**15. Adjourn:**

Mr. Hoser declared the meeting adjourned at 3:40 p.m.

**Attachments: Appendix A**

Respectfully submitted,

---

David K. Herlihy  
Executive Director

**APPENDIX A**

**Presentation of Applications**

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

Gabrielle Bercy, MD  
Eric Jacobson, PA-C  
Muhammad Mirza, MD  
Saiham Shahabuddin, MD

Yair Chaya, MD  
Jewel Jones, MD  
Andres Nieto, MD  
Robert Shapiro, MD

Kendra Isbell, PA-C  
Ronak Kavian, MD  
Nathaniel Robbins, MD  
Victor Strasburger, MD