

**Vermont Board of Medical Practice  
Minutes of the March 2, 2011 Board Meeting  
Gifford Medical Center, Randolph, VT**

**Approved**

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

Patricia A. King, M.D., Chair, called the meeting to order at 12:20 p.m.

**Members Present:**

Patricia A. King, M.D.; William K. Hoser, PA-C; Margaret F. Martin; Michael Drew, MD; Robert G. Hayward, M.D.; Hon. David A. Jenkins; Joshua A. Plavin, M.D.; Harvey S. Reich, MD; Robert R. Rinaldi, D.P.M; Janice E. Ryan, RSM; Toby Sadkin, M.D.; Peter Thomashow, MD; John B. Webber, Esq.

**Others in Attendance:**

David Herlihy, Executive Director; Robert Simpson, Esq., Presiding Officer; Philip Ciotti, Investigator; Paula Nenninger, Investigator; Margaret Vincent, Assistant Attorney General; Karen LaFond, Licensing Administrator; Terry Lovelace, Assistant Attorney General; Kurt Kuehl, Assistant Attorney General; Madeleine Mongan, Vice President for Policy, Vermont Medical Society; Alban Coghlan, MD, Joseph O'Rourke, Esq; Gail Coghlan.

**2. Public Comments: None**

**3. Approval of the Minutes of the February 2 and February 16, 2011 Monthly Board Meeting**

Dr. Drew made a motion to accept the minutes of the February 2, 2011 Board meeting. Sister Janice Ryan seconded the motion. The motion passed, opposed: none; recused: none; abstained: none.

Ms. Martin made a motion to accept the minutes of the February 16, 2011 Board meeting. Mr. Webber seconded the motion. The motion passed, opposed: none; recused: none; abstained: none.

**4. Board Issues (Dr. King):**

Dr. Harry Chen, Commissioner VDH, expressed his gratitude for the work of the board. He stated that the Commissioner receives feedback from the public and the legislature on topics such as: people want more transparency with regard to investigations and the process for licensing takes too long. Dr. Chen hopes to be able to share feedback with the board, especially around legislative issues, and wants to hear from the board about things he can do to help. He has learned from working with the legislators the importance of transparency of process and procedures. To the extent there are very clear procedures about how cases are handled, complaints are handled, how licensing is handled, all of these things truly help the board in terms of interaction with the public.

Sister Janice Ryan inquired about a survey about the board's performance. Given the turn over of Directors, how do we survey our own performance and public perception of performance? Would there be a possibility of a survey from VDH that would be conducted to give the board feedback?

Dr. Chen stated VDH would be happy to help with that.

Dr. Plavin inquired about interaction with other agencies outside of VDH, such as OPR and the AG's office, how could Dr. Chen with interfacing with other agencies where there have been roadblocks in the past?

Dr. Chen he would have no problem at all with trying to remove roadblocks and would be happy to help.

Mr. Hoser sought more information about the feedback about the concerns over licensing hold-ups. The new statute change for Physician Assistants should improve the speed for licensure for PAs, so there have been changes to improve process.

Dr. Chen discussed the statute as is has been introduced to the legislature this session, the new system coming on line, and agrees that the board is taking steps to improve the process over all.

Dr. Plavin commented that the enrollment with insurers is a larger issue rather than licensing. There is a 90 day enrollment that is a barrier with the insurance barriers, not the licensing process. There is no unified standard among insurers.

Dr. Hayward is interested to learn more about how Vermont BMP functions compared to boards in other states. What is the standard? For instance, if apply for a license in Nevada, how long does it take? Some of the issue is that doctors who apply don't necessarily understand the timeframes on the process. It takes 3 months for them to gather information to submit and they expect a 2 day turn around, which isn't the case.

Dr. King commented on Sister Janice's inquiry about the survey. We have in the past talked about a newsletter and with e-mail we could do that pretty easily. We could send to people we license, at whatever given interval, but sharing the information or directing the public to our website would be a way of sharing information. She feels we have quality information and data about our licensees on our website.

Ms. LaFond noted that she will be cleaning up the website and welcomes feedback and suggestions.

Dr. Chen provided an update on the bill as it has been introduced. The legislators are interested and want to make sure the interests of all parties are integrated. Ideally, they do not want to have battles in their committees about the bill, and have omitted more controversial topics at this point so as to allow the board to delegate it's own processes have more self-management in terms of rules. One of the pieces he always runs into is why don't physicians have CME? He put in the bill "may" have CME to communicate to legislators that we are aware of the concerns and it is on our radar screen.

Dr. King advised the board that it is the time for annual election of officers. Dr. Sadkin is the chair for the nominating committee. Dr. Thomashow has been on the committee in the past and will coordinate with Dr. Sadkin.

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

Mr. Herlihy updated the Board on the office move from 101 Cherry Street to 108 Cherry Street. The Board has to be out of the current space by May 31 so we will be moving soon. Consequently, the go-live date for the CAVU system has been pushed out from June to most likely August. He is excited about the system as we will have more reporting capabilities and statistical information about our licensees and enforcement processes. Also, a decision has been made to utilize CAVU for the purpose of storing older files. There had been discussions about using a separate system, but it made more sense to have all files in one system rather than bouncing between two.

Another recent item is a complaint that was received about a Naturopathic physician. The stated complaint was not about practicing medicine outside of the scope of what they are authorized to do under the statute, so it has been passed to OPR. OPR does not have a board for naturopaths, but they do have a process to address these issues. In addition to the written complaint, there have been several communications from the complainant about what naturopaths do. These communications are not specific complaints, but more observations from someone who has taken a strong interest in what naturopaths do, which this person does not agree with. Mr. Herlihy wanted to share this with the board because he has spoken with a few board members about the very broad definition about the practice of medicine in our statute, and in theory someone could create the argument that we take this on, and that it does come within the definition as we presently have in statute. The reality is that if someone is practicing within the scope of a profession as set out in statute for an occupation licensed by the State, there is no basis for action. Given the interest shown by the citizen who has been contacting the Board, this may be covered in the press. If we receive a complaint from someone who is a patient of a naturopath or under the care of one of our licensees, we will investigate.

Dr. Thomashow expressed concern if the naturopath is preventing the person from seeking and receiving life-saving treatment, then it may be something we need to look into. Mr. Herlihy confirmed in this instance, it is not the case and agrees that we would pursue it if it was.

Mr. Herlihy also informed the board about an attorney who has expressed frustration over one of our investigators referring a criminal incident to the AG and local authorities. The attorney and his client were informed of the criminal investigation, and the attorney was extremely upset and is complaining about the referral. One of the statutory revisions proposed by the Board will make making it explicit that the Board may make referrals to law enforcement. It is in the statute for OPR and unfortunately was not included in the Board's statute when the Board split from the Secretary of State's office. While we currently do make referrals and there is no issue with it, we are making the revision in the statute to make it explicitly clear we have the authority. Mr. Herlihy also

has concluded that this issue should be addressed in a written Board policy. He will prepare a draft policy and hopes to have it for Board review next month.

Mr. Webber asked a clarifying question about who would be responsible for deciding whether or not to make a referral to law enforcement. Mr. Herlihy stated that the Executive Director would be made aware of the situation, but that it has not yet been officially decided. Mr. Herlihy also suggested Board members refer other attorneys or anyone inquiring about these policies to the office of the Executive Director at the Medical Board.

Mr. Herlihy informed the Board he would be out of the office Monday, March 21, 2011 through Thursday, March 24, 2011.

The Department of Health received a lawsuit claiming improper termination of William Wargo and it is possible that Board members may be contacted by his attorney.

Mr. Herlihy welcomed Kurt Kuehl, the new AAG.

Palliative Care update: Mr. Herlihy reported that he and Ms. Mongan of VMS testified before the House Human Services Committee regarding a bill that would provide for mandatory CME on palliative care and hospice. The Board opposes the bill, and took the position that the requirements for CME should be studied and established in rulemaking, rather than having specific topics mandated in statute. Despite opposition by the Board and VMS, the Committee seemed to have already decided to include such a requirement in the bill. Mr. Herlihy indicated that he intends to write his representative about this issue and will share that with Board members, who may want to do the same. Last, Mr. Herlihy told the Board of one more change in the Board proposal to update the Board statute. There has been more discussion about fees for PAs. After further discussion with John Bond of the PA Association, and further examination of the numbers, the proposal is \$170 for a license, which is our best estimate to make the change from certification to licensure cost-neutral.

#### **Presentation of Applications:**

Applications for physician licensure and physician assistant certification were presented and acted upon as detailed in Appendix A, incorporated by reference into these minutes.

#### **6. Presentation to the Board: None**

#### **7. Convene Hearing (Mr. Simpson):**

Mr. Simpson convened a hearing to consider adjudicative matters before the Board.

- In re: Alban J. Coghlan, MD, MPC 112-0806, Proposal for Decision

Brought forth by and presented by Robert Simpson, Esq., Presiding Officer.

Joseph O'Rourke, Esq. requested the board accept a proposed amendment to the Final Order changing the words from "only as an employee" to "employee and/or independent contractor under contract to be filed with the board". Margaret Martin, hearing committee member, stated that the intent of the amendment is legitimate and is not objectionable. Mr. Simpson stated that he would incorporate the proposed changes into the Final Order and would then disseminate the Order to the board for signature. Ms. Vincent advised that Dr. King could sign on behalf of the board since she is the Chair.

Dr. King made a motion to approve the Proposal for Decision with the amendment requested by Mr. O'Rourke; Seconded: Mr. Webber; the motion passed; opposed: none; recused: Central Investigative Committee and Dr. Drew; abstained: none.

**8. Executive Session to Discuss Investigative Matters:**

None

**9. Open Session:**

**Dr. Sadkin presented on behalf of Dr. Reich for the South Investigative Committee, and asked to close:**

MPS 117-1110 – Letter #1

MPS 145-1110 – Letter #1

MPS 135-1110 – Letter #1

Sr. Ryan made a motion to close the cases presented. Dr. Hayward seconded the motion. The motion passed, opposed: none; abstained: none; recused: South Investigative Committee.

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

MPC 24-0310 – Letter #1

MPCR 113 – 1010 – Letter #1

MPC 59-0610 – Letter #1

MPC 98-0910, MPC 99-0910 & MPC 100-0910 – Letter #1

MPC 114-1010 – Letter #1 – Dr. King recused.

MPC 104-1010 – Letter #1

Ms. Martin made a motion to close the cases presented. Mr. Hoser seconded the motion. The motion passed, opposed: none; abstained: none; recused: Central Investigative Committee and other individuals for certain cases as listed above.

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

MPN 65-0710 – Special Letter #1 – Mr. Hoser recused.  
MPN 128-1110 – Special Letter #1 – Mr. Hoser recused.  
MPN 122-1110 – Letter #1 – Ms. Martin recused.  
MPN 102-1010 – Special Letter #1 – Dr. Sadkin recused.  
MPN 125-1110 – Letter #1 – Mr. Hoser recused.  
MPN 111-1010 – Letter #1

Dr. Hayward made a motion to close the cases presented. Ms. Martin seconded the motion. The motion passed, opposed: none; abstained: none; recused: North Investigative Committee, and other individuals for certain cases as listed above.

**10. Board Actions on Committee Recommendations With Regard to Any Non-confidential Matters:**

None

**11. Any Other Business: APRN Statute Update:**

Mr. Herlihy provided an update on the APRN statute – as the statutes are now allow the nursing board to establish by rule the standards for licensing and oversight of APRNs. The topic was considered a year ago by a special legislative study and approved by the legislature. February 21, 2011, the nursing board informally approved the rules that they now are going to move forward with to the formal rule making process which includes a period for public comment. There is a process under the administrative procedures before it becomes final. VMS has been concerned that placement of APRNs under exclusive control of the nursing board provides inadequate safeguards to ensure the practitioners would have adequate oversight and clinical training. VMS has been concerned about the proposed rules effectively dropping the requirement for the collaboration agreement and the rules do require it, but only for the first 24 months.

The VMS has proposed a bill that would put the oversight of the APRNs under a joint board that would be made up of APRNs, MDs, and create a statutory minimum numbers of clinical training hours. A meeting was called to review this proposal which included Mr. Herlihy, Ms. Martin, Dr. King, Dr. Plavin and Dr. Reich, Chris Winters from OPR, Linda Davidson, the new director of the Nursing Board, and Steve Maier from DVHA. Mr. Herlihy stated that while we didn't agree with all of the points of the bill, we agreed with the idea of having it introduced due to the way the legislature functions. Supported the request for introduction of the bill and it is now in the discussion phase. Steve Maier wanted to see a resolution in place and suggested they have another meeting. It was then decided that there would be a series of meetings in March to discuss how APRNs would be licensed and overseen, which Mr. Maier would facilitate. A requirement for participating in the meeting was to have an approval of the boards to approve a representative to take part in the series of meetings. Mr. Herlihy stated that it is likely nothing will happen in statute this year unless the parties who are interested come together and agree.

Ms. Mongan further clarified that the bill which was proposed included for solo practitioners would either operate like they do now or there would be a joint board with 2 functions – to approve APRNs who want to go into solo practice; and serve as consultants for complaints about APRNs submitted to the Nursing Board.

## 12. Next meetings:

Upcoming meetings: (Locations are subject to change, you will be notified if a change takes place.)

- **March 10, 2011, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3<sup>rd</sup> Floor, Conference Room 3B, Burlington, VT**
- **March 11, 2011, Central Investigative Committee Meeting, 12 p.m., Liquor Control Conference Room, Basement Floor, 13 Green Mountain Drive, Montpelier, VT**
- **March 16, 2011, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 101 Cherry Street, 3<sup>rd</sup> Floor Burlington, VT (and via telephone)**
- **March 16, 2011, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **April 6, 2011, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **April 6, 2011, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

## 13. Adjournment

Sr. Ryan made a motion to adjourn. Hon Jenkins seconded the motion. The vote was all in favor, opposed: none, recused: none; abstained: none.

Meeting adjourned at 3:52 p.m.

Respectfully submitted,

  
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Karen A. LaFond, Licensing Administrator

**Attachments:** Appendix A

## Appendix A

**Presentation of Applications** (Recommendations were in the form of motions by the member making the recommendation).

**Dr. Plavin reported on behalf of Dr. Rinaldi, who conducted an interview with:**

Samuel Kippenberger, PA-C

Recommended by Dr. Rinaldi for physician licensure. Seconded by Dr. Hayward, passed, opposed: none, recused: none; abstained: none.

**Dr. Hayward reported on interviews conducted with:**

Gerald Westover, MD

Recommended by Dr. Hayward for physician licensure. Seconded by Dr. Plavin, passed, opposed: none, recused: none; abstained: none.

**Dr. Plavin reported on interviews conducted with:**

Charles Knoll, MD  
Ronald Stram, MD

Heather Marancenbaum, MD

Recommended by Dr. Plavin for physician assistant licensure. Seconded by Mr. Hoser, passed, opposed: none, recused: none; abstained: none.

**Dr. King reported on interviews conducted with:**

Cheryl Flynn, MD

Recommended by Dr. Hayward for physician licensure. Seconded by Sr. Ryan, passed, opposed: none, recused: none; abstained: none.

**Dr. King moved for the issuance of a limited temporary license for:**

Myles Webster, MD

Recommended by Dr. King for limited temporary physician licensure. Seconded by Dr. Hayward passed, opposed: none, recused: none; abstained: none.