VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the February 7, 2018 Board Meeting
Gifford Medical Center, Randolph, Vermont

Approved

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

   William K. Hoser, PA-C, called the meeting to order at

   Members Present:
   Brent Burgee, MD; Allen Evans; Christine Payne, MD; Ryan Sexton, MD

   Members in Attendance via Phone:
   Richard Clattenburg, MD; Michael Drew, MD; Robert G. Hayward, MD; Patricia Hunter; David A. Jenkins; Leo LeCours; David Liebow, DPM; Sarah McClain; Harvey Reich, MD

   Others in Attendance:
   David Herlihy, Executive Director; Bill Reynolds, AAG; George Belcher, Esq.

   Others in Attendance via Phone:
   Paula Nenninger, Investigator; Scottie Frennier, Board Investigator; Karen LaFond, Operations Administrator; Tracy Hayes, Licensing Specialist; Margaret Vincent, AAG; Kassandra Diederich, AAG

2. **Public Comment:**

   None

3. **Approval of the Minutes of the January 3 and January 17, 2018 Board Meetings:**

   Dr. Hayward moved to accept the minutes of the January 3, 2018 meeting. Mr. LeCours seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

   Mr. LeCours moved to accept the minutes of the January 17, 2018 meeting. Dr. Reich seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

   Mr. Hoser reminded members that he will be attending the annual Federation of State Medical Boards conference.

   Mr. Hoser informed members that the Medical Director of the Vermont Medical Society, Suzy Parker, MD, will be retiring and the work she provides for the

Vermont Practitioner Health Program will be transitioned to the Interim-Medical Director, Todd Mandell, MD. Mr. Hoser recommended the Board recognize her and the years of service to the medical community and the Board.

Ms. Hunter made a motion to recognize and acknowledge Suzy Parker, MD for her efforts to establish and her contributions to the Vermont Practitioner Health Program. Mr. LeCours seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

The Board recognizes Dr. Suzy Parker upon her departure from the position of Medical Director for the Vermont Practitioner Health Program. Dr. Parker was instrumental in the formation and development of the program. She has made tremendous contributions to the medical community, the Board of Medical Practice, and patients, through her untiring work to assist the Board in evaluating and monitoring licensees, as well as assisting licensees to find appropriate avenues to safe practice. Thank you, Dr. Parker!

5. Administrative Update (Mr. Herlihy):

Mr. Herlihy informed members that the contract with MicroPact is in the final stages of approval. Although the goal was for a 2-year contract, the Agency of Digital Services and the Administration allowed only a 1-year contract with a provision that may permit extension of an additional year. He noted that there is a strong desire to push state entities to use other systems within state government with the intent to achieve financial savings. He stated that the Secretary of State's Office of Professional Regulation (OPR) has a new system and ADS's stated goal is to have BMP use the system. In a recent meeting he, Ms. LaFond, and Karen Clark, VDH IT Director, attended a meeting with Colin Benjamin, Director of OPR, to review the Board's system requirements. Mr. Herlihy's assessment of the status of OPR's system implementation is that OPR fully engaged with attempting to make their system meet their own needs and it will be many months before OPR can begin the work needed to create a system for BMP within the OPR platform. He stated that he and Ms. LaFond will continue to work with Ms. Clark to ensure BMP has a functional system before any changes are made.

Mr. Herlihy asked Ms. Hayes to summarize the outcome of the Physician Assistant, Radiologist Assistant and Anesthesiologist Assistant renewal period that ended on January 31, 2018. Ms. Hayes reported that there were 426 PAs, RAs and AAs at the beginning of the renewal period and the total current numbers include: 366 PAs, 15 AAs and 1 RA. 59 PAs lapsed for not renewing and 20 of those had a status of "License Inoperable" because they weren't working. She also noted that 5 emails were sent during the renewal period and the majority of the licensees were responsive only after the 3rd or 4th message.

She stated that she believed some of the delay in timely submission of the application and documentation was due to: 1) a new requirement to have all of the paperwork submitted in one packet, versus accepting documents piecemeal in prior renewals; and 2) monitoring and reviewing the Delegation Agreements to ensure the language accurately reflected requirements specified in the Board Rules that went into effect on October 15, 2017.

Mr. Herlihy thanked Ms. Hayes for her hard work and noted that she and Ms. LaFond made a concerted effort to call the remaining 50 licensees on January 30th to ensure they were aware of the license expiration date. Ms. LaFond also noted that the licensees were diligent about completing the Workforce Census and only 12 had attested completion of the survey without having completed it. She has sent email messages to these individuals and is hopeful they will correct the oversight.

6. Presentation of Applications:

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:

None

8. Recess; Convene hearing to discuss any stipulations or disciplinary matters that are before the Board:

In re: Shakuntala Modi, MD – MPN 148-0817 – Cessation of Practice Agreement

Mr. Belcher and Mr. Reynolds addressed the Board, summarizing the facts leading up to the Cessation of Practice Agreement. Dr. Sexton made a motion to approve the Cessation of Practice Agreement. Dr. Payne seconded the motion. The motion passed; opposed: none; abstained: none; recused: North Investigative Committee.

In re: Loren Landis, MD – MPN 208-1212 and MPN 210-1013 – Stipulation and Consent Order

Mr. Belcher and Mr. Reynolds addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order. Dr. Clattenburg made a motion to approve the Stipulation and Consent Order. Mr. Hoser seconded the motion. The motion passed; opposed: none; abstained: none; recused: North Investigative Committee.

In re: Jocelyn Vrba Chauvin, PA – Licensing Matter – Stipulation and Consent Order

Mr. Belcher and Ms. Vincent addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order. Dr. Sexton made a motion to approve the Stipulation and Consent Order. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: 1.

Dr. Hayward made a motion to approve Jocelyn Vrba-Chauvin, PA, for licensure. Mr. Jenkins seconded the motion. The motion passed; opposed: none; abstained: none; recused: none

9. **Reconvene meeting; Executive Session to Discuss:**
   - **Investigative cases recommended for closure**
   - **Other matters that are confidential by law, if any**

The Board began discussion of this topic out of order, before the scheduled time for the beginning of the public hearing. Mr. Jenkins made a motion at 12:51 p.m. to go into Executive Session to discuss confidential matters related to investigations. Ms. Hunter seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

Dr. Hayward made a motion at 1:26 p.m. to return to Open Session. Dr. Liebow seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

MPN 172-1117 – Letter #1
MPN 143-0817 – Letter #1
MPN 135-0717 – Special Letter #2

Ms. Hunter made a motion to close the cases presented. Mr. Jenkins seconded the motion. The motion passed; opposed: none; abstained: none; recused: North Investigative Committee.

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

MPC 191-1216 – Special Letter #3
MPC 134-0717 – Special 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.

Dr. Reich, South Investigative Committee, asked to close:

MPS 128-0717 – Letter #1; Dr. Payne recused
MPS 156-1017 – Special Letter #1
MPS 183-1217 – Special Letter #1
MPS 159-1017 – Special Letter #1
MPS 165-1117 – Letter #1
Mr. Jenkins made a motion to close the cases presented. Dr. Hayward seconded the motion. The motion passed; opposed: none; abstained: none; recused: 1 and South Investigative Committee.

11. Board Actions on Committee recommendations with regard to any non-confidential matters:

12. Other Business:

Mr. Herlihy led the discussion summarizing proposals in the 2018 Legislative Session that will require Board input or that the Board may wish to monitor. (See Attachment 1 with the Agenda)

Specifically, Mr. Herlihy noted that S. 243, an act relating to the Board of Medical Practice and reporting of professional disciplinary actions, has met opposition from VAHHS, individual hospitals, and VMS. They are opposed to the requirement to report more disciplinary matters, especially those with less severe sanctions.

S. 253, an act relating to Vermont's adoption of the Interstate Medical Licensure Compact: Mr. Herlihy believes this will move forward this session as there is support from the Vermont Medical Society and it appears that VAHHS will support it, too.

H. 640: an act relating to the right to a hospice consultation: Mr. Herlihy informed members of two reasons this bill may be of concern. One is that it relates to a statute that figured in the dismissal of the federal suit brought against the Board last year. Any changes to that law might prompt a new challenge. He also questions the proposal to make the Palliative Care and Pain Management Patients' Bill of Rights enforceable as a form of unprofessional conduct.

H. 690: an act relating to explanation of advance directives and treating clinicians who may sign a DNR/COLST. He explained that the Board was consulted early on this and there are no concerns about the language of the bill.

H. 684: an act relating to professions and occupations regulated by the Office of Professional Regulation. Mr. Herlihy advised that the portion of the bill of interest to the Board is in section 13, beginning at line 10 of page 22. It proposes to eliminate 26 V.S.A. §§ 1612 & 1613, which are the provisions that require APRNs to file written practice guidelines with the Board of Nursing and to have a collaboration agreement with a physician or qualified APRN unless they meet certain requirements for experience, measured as a minimum number of hours and years of practice (at least 24 months, 2,400 hours in an initial role and population focus, or 12 months and 1,600 hours for an additional role and population focus).

After extended discussion, Dr. Hayward made a motion stating:

The purpose for the Board of Medical Practice is to protect the public when receiving medical care. It is the Board's position that Section 13 of H.684 should not be enacted into law. Neither the minimal requirements to document an APRN's scope of practice in a practice guideline document, nor the requirement for an inexperienced APRN to have a collaboration agreement in place amounts to a barrier to practice or an anti-competitive measure. The statutory requirements are reasonable regulatory responses that promote practice only within those areas for which an APRN is qualified and promote the availability of a collaborating mentor for the least experienced APRNs. The requirements protect the public and are well justified.

Mr. Jenkins seconded the motion. The motion passed: opposed: 1; abstained: none; recused: none. Roll Call of the Vote:

"Yes" votes: William K. Hoser, PA-C; Brent Burgee, MD; Allen Evans; Christine Payne, MD; Richard Clattenburg, MD; Michael Drew, MD; Robert G. Hayward, MD; Patricia Hunter; David A. Jenkins; Leo LeCours; David Liebow, DPM; Sarah McClain;

"No": Ryan Sexton, MD

Members not present for the vote: Harvey Reich, MD; Richard Bernstein, MD; Marga Sproul, MD

Ms. Hunter made a motion to approve the analysis provided by Mr. Herlihy, summarized for the Board in Appendix 2 of the minutes, supporting the position of the Board regarding H. 684 of the 2018 legislative session. Dr. Hayward seconded the motion. The motion passed: opposed: none; recused: none; abstained: none.

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

- **February 15, 2018, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, Conference Room 2C, Burlington, VT**

- **February 16, 2018, Central Investigative Committee Meeting, 9 a.m., Central Vermont Medical Center, Conf. Rm. 2, Berlin, VT**

- **February 21, 2018, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2nd, Floor Burlington, VT (and via telephone)**

- **February 21, 2018, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**

- **March 7, 2018, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

- **March 7, 2018, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

14. Open Forum:

None

15. Adjourn:

Mr. Hoser declared the meeting adjourned at 2:10 p.m.

Attachments: Appendix A

APPENDIX A

Presentation of Applications

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

Jeffrey Allgaier, MD	Agnes Balla, MD	Brian Bates, MD
Lawrence Campbell, MD	Gerard Carroll, MD	Lisa Eberwein, PA-C
Elizabeth Forbes, MD	Lauren Gilstrap, MD	Nicole Golding, MD
Melissa Groves, MD	Charles Halter, MD	Kanik Kathuria MD
Sean Kearin, MD	Sherrie Khadanga, MD	Susan Mahler, MD
Daniel Murphy, MD	Adam Pruett, MD	April Richardson, MD
Aviral Roy, MD	Alan Sazama, MD	

Recommended by Ms. McClain for licensure. Seconded by Mr. LeCours. The motion passed; opposed: none; abstained: none; recused: none.

Mr. Hoser moved for the issuance of limited-temporary physician licenses for:

Amber Barnato, MD	Ruth Foss, MD	Cory Mitchell, MD

Recommended by Ms. Hunter for licensure. Seconded by Ms. McClain. The motion passed; opposed: none; abstained: none; recused: none.

APPENDIX 2

Background and Analysis on Section 13 of H. 684

The Board has been asked to provide input in response to a section of a bill in the General Assembly, H.684. Section 13 proposes to remove the requirement for written practice guidelines and the requirement for transition to practice under an agreement with a physician or experienced APRN.

The Board has previously passed motions in 2011 and 2014 that provide support for there being a requirement of what is known as "transition to practice" for inexperienced APRNs. When those opinions were offered, written practice guidelines were a longstanding feature of APRN practice. In response to the proposal in H.684, Section 13, to remove both the requirement for written practice guidelines and the requirement for transition to practice under an agreement with a physician or experienced APRN, the Board finds:

- Patient safety is served by written practice guidelines. In the words of the Federal Trade Commission (FTC) Report cited to the Committee by OPR: *Licensure and scope of practice regulations can help to ensure that health care consumers (patients) receive treatment from properly trained professionals. APRN certification and state licensure requirements should reflect the types of services that APRNs can safely and effectively provide, based on their education, training, and experience.* 2014 FTC Report on Competition and the Regulation of Advanced Practice Nurses, pages 3-4 (emphasis supplied). The report includes examples of what constitutes burdensome scope of practice restrictions: *Some scope of practice restrictions are procedure-oriented, limiting APRNs' ability to prescribe medicines, refer for, order, or perform certain tests or procedures, or treat certain indications. Other restrictions focus on the types of patients APRNs may see. For example, APRNs may not be allowed to "examine a new patient, or a current patient with a major change in diagnosis or treatment plan, unless the patient is seen and examined by a supervising physician within a specified period of time."* FTC Report at 9-10 (footnotes omitted). The Vermont law includes none of those requirements that are seen as burdensome; it requires only submission of guidelines that reflect current standards of advanced nursing practice specific to the APRN's role, population focus, and specialty. That's a minimal administrative burden that allows for an APRN to practice without any other restrictions within the limits of their training and experience.

- Patient safety is served by requiring a period of supervised or mentored clinical practice for inexperienced providers of medical care, before they qualify for fully independent practice. One recent study found a strong correlation between physicians having fewer years of residency training and the likelihood of having a board sanction for a quality of care issue. *Training Matters: A Retrospective Study of Physician Disciplinary Actions by the Louisiana State Board of Medical Examiners*, 1990-2010. That study confirms what one would surmise based on simple logic: more training makes one better prepared to engage in a complex task such as providing medical diagnosis and treatment. APRN

program standards call for 500 supervised clinical hours during training. In contrast, medical school programs typically consist of 5,000 or more supervised clinical hours, yet MDs do not qualify to be licensed when they finish medical school. This Board requires two full years of residency training, estimated at 3,000 to 4,000 hours per year, in order to qualify for a license to practice independently.

- A principal justification offered by OPR and other witnesses who favor elimination of the requirements at issue is that the FTC advocates for competition in medical care. FTC advocacy includes the position that regulation should be minimized so as not to unduly impair competition. However, Vermont's requirements do not present barriers and are not anti-competitive.

    - OPR's position relies on the 2014 Study Report by the FTC. Throughout the report when it mentions burdensome supervision requirements, it is phrased in terms of requirements for physician supervision. The Vermont law allows for an APRN with two years' experience to act as the collaborating professional. Alone, the ability to have an APRN act as the collaborating professional is a significant distinction between the Vermont APRN standard and those of all other states that are discussed as having burdensome requirements. Moreover, the Vermont requirement could not be less restrictive without being eliminated. The report offers examples of what are considered burdensome supervision requirements: *Physician supervision may be required for all APRN practice, or for particular practice activities such as prescribing medications. Supervision rules sometimes define the parameters of supervision more specifically. Some require that APRN patient charts be reviewed at some particular frequency; some limit the number of independent APRNs one physician may supervise, or restrict the physical distance permitted between a supervising physician and a supervised APRN. Florida law, for example, imposes broad supervision requirements on APRN practice, while also specifying that an APRN cannot practice more than a certain distance from the primary place of practice of his or her supervising physician.* FTC Report, 10-11 (footnotes omitted). <u>The Vermont law simply calls for collaboration</u>. As implemented by the Board of Nursing, the rule regarding collaboration states in its entirety: ***8.16 Collaborating Provider Responsibilities*** *A collaborating provider shall: (a) review, sign, and date the APRN's practice guidelines; (b) serve as an advisor, mentor, and consultant to the APRN; (c) participate in quality assurance activities.*

    - A very recent FTC opinion supported the passage of a law that would allow independent practice by Pennsylvania APRNs after three years of practice under a collaboration agreement. That is compelling evidence that the FTC would find Vermont's lesser requirement of collaboration for those with less than two years' experience not to be a barrier to competition.

- Additionally, the 2014 FTC Report cited by OPR shows what the FTC considers to be burdensome, rigid requirements. Examples in the report include: a requirement that a collaborating physician share patients with the APRN; restrictions on the number of APRNs that a physician may supervise; limitations on the physical distance that a supervising doctor may be from an APRN. FTC Report, pages 32-33. Vermont's statutory requirements for APRNs are not burdensome or rigid. Witnesses supporting the bill struggled to identify any examples of APRNs being unable to practice because of the statutory requirements. The one example offered was of an APRN who was able to practice, but who had some difficulty finding a collaborating provider. Moreover, it became clear that the APRN's difficulty was not based on the law, but on the Board of Nursing's own rules about who can be a collaborating professional, which offer no flexibility or ability to seek a waiver.