

**VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the March 1, 2017 Board Meeting
Gifford Medical Center, Randolph, Vermont**

Approved

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

Robert G. Hayward, MD, Vice-Chair, called the meeting to order at 12:12 PM.

Members Present:

Richard Bernstein, MD; Brent Burgee, MD; Richard Clattenburg, MD; Michael Drew, MD; Faisil Gill; Sarah McClain; Christine Payne, MD; Harvey Reich, MD; Ryan Sexton, MD; Marga Sproul, MD.

Others in Attendance:

David Herlihy, Executive Director; Paula Nenninger, Investigator; Scottie Frennier, Board Investigator; Karen LaFond, Operations Administrator; Margaret Vincent, AAG; Kassandra Diederich, AAG; George Belcher, Esq.

2. Public Comment:

None

3. Approval of the Minutes of the February 1 and February 15, 2017 Board Meetings:

Dr. Bernstein moved to accept the minutes of the February 1, 2017 meeting. Mr. Gill seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Ms. McClain moved to accept the minutes of the February 15, 2017 meeting. Dr. Drew seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

4. Board Issues (Dr. Hayward):

None

5. Report of the Nominating Committee:

The Nominating Committee recommended: Chair – Will Hoser, PA-C; Vice-Chair: Robert K. Hayward, MD; and Secretary: Richard Bernstein, MD

6. Election of Officers:

Dr. Reich made a motion to approve the recommendations for officers as presented by the Nominating Committee. Mr. Gill seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

7. Administrative Update (Mr. Herlihy):

Mr. Herlihy informed members that he would be attending the Grand Rounds at Northeastern Vermont Regional Hospital (NVRH) on March 9th to discuss the new rules for the Vermont Prescription Monitoring System (VPMS) and Prescribing Opioids. The Opioid Rule now covers prescribing for acute pain, not just chronic. Mr. Herlihy noted that he is still working on the revisions to the Opioid Policy to incorporate the new rules and Guidelines from the Centers for Disease Control (CDC).

8. 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.

9. Presentations to the Board:

None

10. Recess; Convene hearing to discuss any stipulations or disciplinary matters that are before the Board. Mr. Belcher presided over each hearing:

- **In re: Kellie M. Marlow, PA-C – MPS 001-0115 – Stipulation and Consent Order**

Mr. Belcher made inquiry of Ms. Diederich as to whether the Respondent would attend. Ms. Diederich noted that the Respondent and her attorney were notified of the hearing and were not expected to attend. Ms. Diederich then addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order and the contents of the Order. Mr. Gill made a motion to approve the Stipulation and Consent Order. Dr. Payne seconded the motion. The motion passed; opposed: none; abstained: none; recused: South Investigative Committee.

- **Marcus J. Hampers, MD – MPS 080-0516 – Stipulation and Consent Order**

Mr. Belcher made inquiry of Ms. Diederich as to whether the Respondent would attend. Ms. Diederich noted that the Respondent and his attorney were notified of the hearing and were not expected to attend. Ms. Diederich then addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order and the contents of the Order. Dr. Sexton made a motion to approve the Stipulation and Consent Order. Mr. Gill seconded the motion. The motion passed; opposed: none; abstained: none; recused: South Investigative Committee.

In re: Tracey S. Maurer, MD – MPC 089-0516 – Stipulation and Consent Order

Mr. Belcher made inquiry of Ms. Diederich as to whether the Respondent would attend. Ms. Diederich noted that the Respondent and her attorney were notified of the hearing and were not expected to attend. Ms. Diederich then addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order and the contents of the Order. Dr. Bernstein made a motion to approve the Stipulation and Consent Order. Mr. Gill seconded the motion. The motion passed; opposed: none; abstained: none; recused: Dr. Hayward and the Central Investigative Committee.

In re: Scott Durgin, MD – Licensing Matter – Stipulation and Consent Order

Mr. Belcher made inquiry of Ms. Vincentas to whether the Respondent would attend. Ms. Vincent noted that the Respondent was notified of the hearing and was not expected to attend. Ms. Vincent then addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order and the contents of the Order. Mr. Gill made a motion to approve the Stipulation and Consent Order. Dr. Bernstein seconded the motion. The motion passed; opposed: none; abstained: none; recused: Licensing Committee.

11. 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. Ms. McClain made a motion at 12:21 p.m. to go into Executive Session to discuss confidential matters related to investigations. Dr. Bernstein seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

Dr. Bernstein made a motion at 1:00 p.m. to return to Open Session. Dr. Payne seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

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

Dr. Hayward, North Investigative Committee, asked to close:

MNP 167-1216 – Special Letter #1
MPN 193-1216 – Letter #1
MPN 166-1216 – Special Letter #1

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

Dr. Burgee, Central Investigative Committee, asked to close:

MPC 009-0117 – Letter #1
MPC 174-1216 – Letter #1

Dr. Reich 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 130-0816 – Special Letter #2; Dr. Sproul recused
MPS 142-0916 – Special Letter #1
MPS 004-0117 – Special Letter #1; Dr. Sproul recused
MPS 207-0913 – Special Letter #3
MPS 178-1216 – Special Letter #1

Mr. Gill made a motion to close the cases presented. Dr. Sexton seconded the motion. The motion passed; opposed: none; abstained: none; recused: 1 and South Investigative Committee.

14. Other Business:

Legislative Updates – Mr. Herlihy sent information to the Board prior to the meeting to facilitate discussion of the multiple bills that are of interest to the board.

S.14 – expansion of VPHP. This was passed by the Senate and was referred to the House Health Care Committee. He advised that the wording of the bill as passed can be found at: <http://legislature.vermont.gov/assets/Documents/2018/Docs/JOURNAL/sj170215.pdf#page=19>.

S.16 – amendments to the Medical Marijuana Registry program. Mr. Herlihy reminded the Board that at the February meeting there had been discussion of the provision that would have mandated CME for all licensees on the Marijuana Registry every licensing period, and the Board passed a motion opposing that requirement. The bill was passed by the Senate without the section creating the CME requirement. As passed, it says nothing about CME. However, a version of S.16 was introduced in the House as H.77; it includes the language regarding CME. Mr. Herlihy indicated that he would watch H.77 to see if goes

anywhere. He noted that the language of S.16 as passed can be seen online at page 191 of the Senate Calendar at: <http://legislature.vermont.gov/assets/Documents/2018/Docs/CALENDAR/sc170215.pdf#page=1>

S.31 – Circulating Nurses in ORs. Mr. Herlihy noted this as another bill mentioned at the February meeting. This is an issue that is not directly of concern to the Board, but it's something to watch because it's in the nature of legislating a standard of care, which is not something the Board typically opposed. Mr. Herlihy advised that he had provided informational testimony (but not a position) in his role as Hospital Licensing Director.

S.37 – Mr. Herlihy noted this as another bill mentioned at the February meeting. He said this had been proposed in a prior session, and this version is another proposal to enact the "right to try," which would allow terminal patients to use treatments not approved by the FDA. He noted significant Committee Action on this in the Senate Health and Welfare Committee and that it was scheduled for a possible vote on March 1. There was discussion about the fact that there would be limited access to unapproved drugs outside of trials. Mr. Herlihy noted that a primary concern for the Board would be the wording of any language providing immunity from discipline for use of unapproved drugs; there have been instances when such provisions are worded in a manner that is much too broad and would prevent the Board from addressing some instances of unprofessional conduct that probably should not be protected.

S.71 – administration of immunizations by pharmacists. Mr. Herlihy told members about this bill and that they could find it online at <http://legislature.vermont.gov/bill/status/2018/S.71>. He said that the bill was referred to Senate Health and Welfare Committee on February 7 but there had been no committee action on the bill as of February 28. This bill would amend the law to say that pharmacists are authorized to administer all immunizations to individuals 7 and older. It also provides for reimbursement at the same rate as physicians. Members observed that promoting access to immunizations is generally good, but it was also noted that primary care providers may be in a better position to track immunizations and assess if any are not appropriate for a patient. Members noted that there is an immunization registry, but there was uncertainty over how complete that is. Mr. Herlihy advised he would continue to watch the bill and seek more information.

H.280 – Prescribing by psychologists with a doctorate. Mr. Herlihy described the bill, which would authorize controlled substances prescribing by psychologist-doctorates who meet certain additional requirements. It's not all controlled substances, but limited to those that are: "recognized in or customarily used in the diagnosis, treatment, and management of a person with a psychiatric, cognitive, nervous, emotional, or behavioral disorder." He noted that it was referred to House Health Care and that there had been no reported Committee activity.

H.320 -- an act relating to physicians' duties under the patient's bill of rights for palliative care and pain management. Mr. Herlihy explained that this short bill would amend a provision seen before in the context of the lawsuit brought against the Board regarding the end of life law. The bill proposes to add a brief section that would provide: Sec. 1. 18 V.S.A. § 1872 is added to read: § 1872. DUTIES OF A PHYSICIAN Nothing in the bill of rights in section 1871 of this title shall be construed to impose upon any physician an affirmative duty to offer information that has not been requested by a patient related to patient choice at end of life pursuant to chapter 113 of this title. He noted that the bill was scheduled to be introduced to the House Committee on Human Services along with several other bills.

H.345 – Mr. Herlihy asked if members had concerns about this bill, which would mandate that nursing homes allow APRNs to perform all kinds of medical services. Members noted that the bill seemed to describe care that is already being provided by APRNs in nursing homes.

S.45/H.149 – Mr. Herlihy explained that these are bills that would allow health care providers to receive meals, soft drinks, and coffee at seminars & conferences, and that the bills pertain to the Vermont law that either prohibits or requires the reporting of all forms of gifts from pharmaceutical companies to health care providers, including sandwiches and snacks at professional development activities sponsored by covered businesses. He noted that the Board doesn't administer this law and doesn't really have a direct interest, but that the office receives a lot of questions about it from licensees, and it actually may be causing some licensees who do not practice regularly in Vermont to drop their licenses.

Mr. Herlihy noted a number of bills that are not of direct interest to the Board, other than as proposals that concern delivery of health care: S.53 – universal primary care; H.254/H.255 – two bills with revisions to the end of life law. H.346 – A plan to increase primary care residencies. <http://legislature.vermont.gov/bill/status/2018/H.346> .

Mr. Herlihy noted that there is a bill that would affect all professional regulation, including the Board, H.443, *An act relating to statewide professional regulation standards for the licensure of applicants with criminal conviction histories*. He explained that the proposal would significantly limit the ability to ask about convictions or rely upon them in making decisions about granting licenses. <http://legislature.vermont.gov/bill/status/2018/H.443>

He noted that the Board asks all applicants about convictions, both felony and misdemeanor and that although the Board rarely issues a notice of intent to deny based upon a conviction, there are many cases in which there is follow up of some kind – often it relates to convictions that have something to do with substances. He observed that limiting the ability to ask about convictions would be worrisome given the fact that individuals must show that they possess the moral character to practice medicine and that by law the Board is authorized to refuse a license to any applicant who has engaged in “immoral, unprofessional, or dishonorable conduct.” He advised that he will be following the bill closely.

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

- **March 9, 2017, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3rd Floor, Conference Room 2C, Burlington, VT**
- **March 10, 2017, Central Investigative Committee Meeting, 9 a.m., Central Vermont Medical Center, Conf. Rm. 2, Berlin, VT**
- **March 15, 2017, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2nd, Floor Burlington, VT (and via**

telephone)

- **March 15, 2017, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **April 5, 2017, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **April 5, 2017, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

16. Open Forum:

17. Adjourn: Dr. Hayward declared the meeting adjourned at 2:20 p.m.

Attachments: Appendix A

APPENDIX A

Presentation of Applications

Dr. Hayward moved for the issuance of physician licenses and physician assistant licenses for:

Carlos Alfaraz, MD	Mark Armstrong, MD	Ali Badday, MD
Nancy Caffrey, PA-C	Jerome Carioso, MD	Melissa Cotton, PA-C
Kila Dabney-Smith, MD	Scott Durgin, MD	Jennifer Eaton, MD
Robert Feldman, MD	Lisa Furmanski, MD	Wendell Grigg, Jr., MD
Paul Hill, MD	Nataniel Lester-Coll, MD	Chikaodili Logie, MD
Betsy Loika, PA-C	Elizabeth Meehan, MD	Maisha Pesante, MD
Alexis Purdy, PA-C	Kevin Quiusky, MD	Carol Sena, MD
Clayton Wilburn, MD		

Recommended by Mr. Gill for licensure. Seconded by Dr. Sexton. The motion passed; opposed: none; abstained: none; recused: none.

Dr. Hayward moved for the issuance of Limited Temporary Physician licenses for:

David Coggin-Carr, MD	Jason Zeller, MD
-----------------------	------------------

Recommended by Dr. Reich for licensure. Seconded by Mr. Gill. The motion passed; opposed: none; abstained: none; recused: none.

