

VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the November 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 12:16

Members Present:

Richard Bernstein, MD; Brent Burgee, MD; Michael Drew, MD; Allen Evans; Robert G. Hayward, MD; Francis J. Heald; Patricia Hunter; David A. Jenkins; Leo LeCours; Sarah McClain; Christine Payne, MD; Harvey Reich, 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; Lindsay Browning, AAG; George Belcher, Esq.; Sarah Bushweller, PA-C; Dan Cole, PA-C.

2. Public Comment:

Mr. Cole thanked the members for the discussion in October regarding the proposed amendments to the statutes governing PA licensure and regulation. Mr. Cole stated the draft is in the final stages, which he will send to Mr. Herlihy and Mr. Hoser and requests another discussion with the board in December.

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

Dr. Bernstein moved to accept the minutes of the October 3, 2018 meeting. Mr. Jenkins seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Ms. McClain moved to accept the minutes of the October 17, 2018 meeting. Dr. Hayward seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

4. Board Issues (Mr. Hoser):

Mr. Hoser gave a brief update from the Federation of State Medical Boards (FSMB) Board Education, Service and Training (BEST) Workgroup, which is launching the first module this month: History of Medical Education. Mr. Hoser welcomes any feedback or comments he can share with the workgroup.

5. Administrative Update (Mr. Herlihy):

Mr. Herlihy gave a quick update on the status of the physician license renewal. He noted there are approximately 1300 licenses to be renewed before November 30 and there are approximately 60 issues that have been reported by licensees, which will be disseminated to the committees for review.

Mr. Herlihy reminded members to submit their expense reports.

Mr. Herlihy noted that he presented at the AIM Bootcamp for new Executive Directors and at the Certified Medical Board Executive program, in conjunction with attending the AIM fall meeting. He thanked the Board for allowing him to participate.

Ms. LaFond highlighted the changes to the dates of the investigative committee meetings for the month and informed members that the mid-month meeting has been canceled.

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

- **In re: Gamal H. Eltabbakh, MD – MPS 079-0612 – Stipulation and Consent Order**

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

8. 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 12:35 p.m.

to go into Executive Session to discuss confidential matters related to investigations. Mr. Jenkins seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

Ms. McClain made a motion at 12:59 p.m. to return to Open Session. Ms. Hunter seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

MPS 074-0718 – Special Letter #1; Dr. Sproul and Dr. Bernstein recused
MPS 084-0818 – Letter #1; Dr. Sproul and Dr. Payne recused
MPS 083-0818 – Letter #1; Dr. Payne recused

Mr. LeCours made a motion to close the cases presented. Dr. Payne seconded the motion. The motion passed; opposed: none; abstained: none; recused: 3 and South Investigative Committee.

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

11. Other Business:

- **Review of initial draft proposal for updating the Board statute, Chapter 23 of Title 26, Vermont Statutes Annotated.**

The Board discussed the items listed in Appendix B. Mr. Herlihy noted the feedback and will update the document to reflect the proposed revisions. He will disseminate a final copy for the Board to review before it is sent to the legislature for consideration.

- **Discuss the statutory requirement for the Board to “require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to assure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services.” 26 V.S.A. § 1400(c).**

The Board began discussion of this topic out of order, before the scheduled time for the beginning of the public hearing. Mr. Herlihy received support from the members to explore changing the way the Board meets this statutory requirement from making it a required subject of CME. He proposed creation

of an online offering about the required topics with test questions to confirm completion. With the Board's support he will explore the financial, programmatic, and technical feasibility of this alternative way to meet the statutory requirement. Dr. Reich noted that the test questions could be made part of the renewal application. Dr. Drew suggested Mr. Herlihy look at the Massachusetts Board program as a viable system to replicate or learn from. Mr. Herlihy stated he would keep the members updated on his progress.

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

- **November 15, 2018, North Investigative Committee Meeting, 12 p.m., Vermont Department of Health, 108 Cherry Street, 3rd Floor, Conference Room 2C, Burlington, VT**
- **November 16, 2018, Central Investigative Committee Meeting, 9 a.m., Central Vermont Medical Center, Conf. Rm. 4 & 5, Berlin, VT**
- **November 28, 2018, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **December 5, 2018, Licensing Committee Meeting, 10:30 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **December 5, 2018, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

13. Open Forum:

None

14. Adjourn:

Mr. Hoser declared the meeting adjourned at 3:10 p.m.

Attachments: Appendix A

Appendix B

APPENDIX A

Presentation of Applications

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

Jose Abad, MD	Lina Abujamra, MD	Diego Adrianzen Herrera, MD
Mahmoud Ahmad, MD	Fredrik Amell, MD	Ashley Brisbin, PA-C
Charles Chung, MD	Maryluz Fuentez, MD	Ricardo Garcia-Rivera, MD
Michael Given, MD	Teresa Hayes, MD	Clarence Henriksen, MD
Robyn Jacobs, MD	Krishnan Kartha, MD	Gene Lee, MD
Ramiro Madden-Fuentes, MD	John O'Malley, MD	Ronaldo Patiag, MD
Aaron Perme, MD	David Rochelin, MD	Alicia Sanchez, MD
Wendy Shedd, PA-C	Murira Shodikulova, MD	Wendy Zimmer, MD

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

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

David Dumont, MD	Brendan Everett, MD	Samantha Smith, MD
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Recommended by Dr. Reich for licensure. Seconded by Dr. Hayward. The motion passed; opposed: none; abstained: none; recused: none.

APPENDIX B

Existing Section	Revised Section	Summary of Changes
26 V.S.A. § 1311		Revise 4 to make def of medical director broader.
26 V.S.A. § 1313		add to (a)(2) the phrase "carrying out official military duties"
		add (6) to (a) describing an exemption for students who do not have an LTL but who participate in an organized clinical training program (PAs, RAs, AAs, and other non-board professions that have clinical training program sites in Vermont
26 V.S.A. § 1317		Revised generally
26 V.S.A. § 1318		Should this be updated? The concept of maintaining a "register" is somewhat outdated. We maintain data bases from which information would be drawn. Would it work better to simply provide that certain deidentified information about the dates and nature of issues in cases is public?
26 V.S.A. § 1351		Last sentence - should add "and voting" so that it reads "the majority of the members present <u>and voting</u> shall be required to carry . . ."
26 V.S.A. § 1353		amend (2) to add sentence regarding employment/contract with hearing officer
		amend (3) to resolve patient's privilege issue
		replace (8) with new language re criminal background checks
26 V.S.A. § 1354		amend (23) to add "or other disciplinary sanction"
		Note - we're discussing a broader revision of sections 1355 through 1361 to make the charging and hearing provisions clearer. The following reflect specific issues with the sections.

26 V.S.A. § 1355		In (a) add wording to include investigation of unlicensed practice, change from chair to exec dir designating the committee to hear or investigate, and change "charges" to "allegations." In (b) clarify makeup of committee - at least three members with at least one MD and one public. In (e) - just grammar and change "the" victim to "a" throughout.
26 V.S.A. § 1356		change "secretary" to someone else? Change "medical practitioner to "licensee"?
26 V.S.A. § 1357		Amend to allow hearing officer to set time of hearing. Delete "stenographic."
26 V.S.A. § 1358		Should this include opportunity for Board/AAG to object to request issuance of subpoena. Also, <u>throughout</u> the term "person complained against" needs to be changed. That doesn't cover cases without a complaint or unlicensed practice cases.
26 V.S.A. § 1359		Change the time for report of hearing to 60 - to be consistent with 1355. Recommend changing this to 60 instead of 26 V.S.A. § 1355 to 30 because Committee members may have difficulty scheduling the additional meetings and hearings typically occur with breaks of days or weeks between hearing days. Also allows for transcripts to be prepared and members to see testimony.
26 V.S.A. § 1360		Revise "person complained against." for (c), same as 1355 for "a" victim
26 V.S.A. § 1361		Add to "a" -- of the board "who make a determination on charges", change "person complained against". In (c) change "exoneration of the person complained against" to "issue a statement that the charges were not proved."
26 V.S.A. § 1365		Certified copy of judgment changes to "notice" - no need for certified copy to initiate investigation. Change "record" to "certified copy in next sentence. Last sentence - don't know that courts do this. How would they know? If it's going to stay, should not be limited to "this chapter" -- should include other profs licensed by Board if we keep it.
26 V.S.A. § 1366		same as 1365 - change "certified copy" to "notice" in first sentence, put "certified copy" in sentence re evidence.

26 V.S.A. § 1368		Need to revise (b) - wording reflects long changed process that featured paper, mailing, and staff entering info about the licensee.
26 V.S.A. § 1391, 1393, 1394, 1395, & 1396	26 V.S.A. § 1391, ?1392	Fold most of 1391 and all of 1393, 1394, 1395, and 1396 into a revised 1391. Create a new 1392(?) for 1391(e), which is LTL/resident licenses.
26 V.S.A. § 1400		Remove transitional language in (b).
26 V.S.A. § 1402		Expand to cover medical directors in orgs other than HMOs - should it be all licensees who work for insurers or make determinations about practice standards or access to care?