VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the November 6, 2019 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 12:22 PM.

   Members Present:
   Richard Bernstein, MD; Brent Burgee, MD; Richard Clattenburg, MD; Allen Evans; Francis J. Heald; Rick A. Hildebrant, MD; Patricia Hunter; Leo LeCours; Sarah McClain; Christine Payne, MD; Judy Rosenstreich; Ryan Sexton, MD; Margaret Tandoh, MD; Robert E. Tortolani, MD.

   Others in Attendance:
   David Herlihy, Executive Director; Paula Nenninger, Investigator; Scottie Frennier, Board Investigator; Karen LaFond, Operations Administrator; Margaret Vincent, AAG; George Belcher, Esq.

2. **Public Comment:**

   None

3. **Approval of the Minutes of the October 2, 2019 Board Meetings:**

   Dr. Tortolani moved to accept the minutes of the October 2, 2019 meeting. Dr. Bernstein seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

   Mr. Hoser noted that he will be attending a meeting with the Federation of State Medical Boards (FSMB) next week on the topic of creating a version of the Interstate Medical Licensure Compact (IMLC) that would be for physician assistants.

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

   Mr. Herlihy informed the board that the PA, RA and AA license and certification renewal started on October 31, 2019, He stated that he and Mr. Hoser met with PAAV regarding a CME opportunity for PAs on the subject of opioid prescribing. The 2-hour training will be held on January 24, 2020 and PAs can use the credits for the CME requirements for this renewal or for the 2022 license renewal cycle if they have already met the requirement.

Mr. Herilhy noted that he would be out of the office Nov. 11-13 attending the annual Administrators in Medicine (AIM) Executive Directors educational meeting and that he would be presenting at one of the sessions. He thanked the Board for allowing him to participate.

Mr. Herlihy mentioned that Kelly Lawler is on vacation for two weeks and that Ms. LaFond is covering her job duties until she returns on the 18th. He also recognized Ms. LaFond for her recent efforts with multiple contracts including the new Presiding Officer contract, the amendment of the current IT system contract, a contract for the upcoming training session in January and multiple expert witness contracts. The process is often time consuming and he thanked her for her work.

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.

Mr. LeCours made a motion to approve the application of Arthur Esswein, MD for medical licensure. Dr. Tortolani seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

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

- **In re: Arthur J. Esswein, MD – Licensing Matter – Stipulation and Consent Order**

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

- **In re: Edward Peter Durling, PA-C – MPC 145-1019 – Stipulation and Consent Order**

Ms. Vincent addressed the Board, summarizing the facts leading up to the Stipulation and Consent Order. Ms. Hunter made a motion to approve the Stipulation and Consent Order. Mr. Hoser seconded the motion. The motion passed; opposed: none; abstained: none; recused: Dr. Hildebrant and the Central 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. Dr. Hildebrant made a motion at 12:49 PM to go into Executive Session to discuss confidential matters related to investigations. Dr. Sexton seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Ms. McClain made a motion at 1:20 PM to return to Open Session. Dr. Tortolani seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Bernstein made a motion at 1:28 PM to return to Executive Session to discuss confidential matters related to investigations. Dr. Hildebrant 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:

Dr. Clattenburg made a motion at 2:05 PM to return to Open Session. Ms. McClain seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

MPN 116-0619 – Letter #1; Dr. Hildebrant recused
MPN 095-0619 – Special Letter #1
MPN 141-0919 – Special Letter #1

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

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

MPC 128-0819 – Special Letter #1
MPC 120-0719 – Letter #1

Mr. Heald made a motion to close the cases presented. Mr. LeCours seconded the motion. The motion passed; opposed: none; abstained: none; recused: Central Investigative Committee.

Ms. Hunter, South Investigative Committee, asked to close:

MPS 122-0719 – Letter #1
MPS 120-0719 – Special Letter #1

Mr. LeCours made a motion to close the cases presented. Ms. Rosenstreich seconded the motion. The motion passed; opposed: none; abstained: none; recused: South Investigative Committee.

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

11. **Other Business:**

Board of Medical Practice Officers – report of the Nominating Committee and election of Chair, Vice Chair, and Secretary for terms beginning January 1, 2020.

In his capacity as a member of the Nominating Committee, Mr. Evans made a motion to nominate the following members as officers:

Chair: Richard Bernstein, MD
Vice-Chair: Sarah McClain
Secretary: Marga Sproul, MD

Dr. Payne made a motion to accept the nominations and elect the candidates as board officers effective January 2020. Dr. Hildebrant seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Legislative Studies on Scope of Practice for Pharmacy and Optometry

In October the Board received invitations to participate in two separate studies that were directed in Act 30, which became law in May and with an effective date of July 1. Mr. Herlihy will attend a meeting regarding optometry “advanced procedures” on November 8, 2019. Mr. Hoser and Ms. Rosenstreich will attend a meeting regarding pharmacist prescribing on November 14, 2019, and Dr. Bernstein and will attend a second meeting on November 20, 2019.

The objective of the discussion was to establish Board positions that may be delivered at the meetings. See Appendix B for the motions passed on each of topics.

Dr. Hildebrant made a motion to oppose adding prescribing authority to the scope of practice of pharmacists as provided in Section 15 of Act 30 of 2019. Mr. Heald seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

Dr. Clattenburg made a motion to oppose revising the scope of practice of

optometrists to include what is referred to as “advanced procedures” in Section 13 of Act 30 of 2019. Dr. Tortolani seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

Continuous Query

Previously the Board authorized staff to enroll all licensees in the NPDB Continuous Query (CQ) service. CQ allows the Board to submit identifying data for all licensees that causes all reports relating to the licensees to be delivered immediately upon publication. Without CQ, the Board had relied on the imperfect process by which state boards receive notice of NPDB reports. CQ is subscribed one year at a time and Mr. Herlihy discussed whether or not to continue the service and provided statistics regarding the number of reports received before CQ and after using CQ:

> Between January – October, the Board received 111 notifications from the NPDB Continuous Query Reporting. There were 37 cases that were entered into the system with a case nature of “Information from NPDB” during that same time period. Searching by the same case nature “Information from NPDB”, we received 15 in 2018, 4 in 2017 and 8 in 2016.

Dr. Sexton made a motion to support the continuation of using the NPDB Continuous Query reporting system. Ms. Rosenstreich seconded the motion. The motion passed; opposed: none; abstained: none; recused: none.

VPMS Second Quarter of 2019 Prescribing Data – brief presentation about data released by the Vermont Health Department on controlled substance prescribing.

This item was tabled for the December meeting.

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

- **November 14, 2019, North Investigative Committee Meeting, 9 a.m., Vermont Department of Health, 108 Cherry Street, Conference Room 2C, Burlington, VT**

- **November 20, 2019, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2nd, Floor Burlington, VT (and via telephone)**

- **November 20, 2019, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**

- **November 22, 2019, Central Investigative Committee Meeting, 9 a.m.,**

Central Vermont Medical Center, Conf. Rm. 2, Berlin, VT

- **December 4, 2019, Licensing Committee Meeting, 11:00 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

- **December 4, 2019, 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 3:21 PM

Attachments: Appendix A

APPENDIX A

Presentation of Applications

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

Erica Abdallah, PA-C	Francesca Albanese, MD	Lisa Antonelli, MD
Garrick Applebee, MD	Nicole Brugger, PA-C	John Decorato, MD
Anthony Febles, MD	Amelia Gennari, MD	Andre Giannakopoulos, MD
Helen Gray, MD	Sonali Herath-Birmingham, PA-C	Evan Hirsch, MD
Genevieve Kelley, MD	Elizabeth Levine, MD	Barbara, McCorvey, MD
Robert Mordkin, MD	Kei Ouchi, MD	Katrina Overton, PA-C
Risheet Patel, MD	Robert Powell, MD	Marina Pulini-Franks, MD
Emily Rosenberg, MD	Ali Saad, MD	Omar Saleh, MD
Dino Santoro, MD	Tarryn Schneider, PA-C	Charles Sims, MD
Brian Smith, MD	Obiageli Sogetun, MD	Vantuil Varges, MD
Jeffrey Wensel, MD	Karen Willens, MD	

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

Mr. Hoser moved for the issuance of limited temporary licenses to practice medicine for:

Emily Kobin, MD	Luke Lamar, MD	Joel Peterson, MD
Therese Ray, MD	Meghan Reynolds, MD	Jonathan Smits, MD

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

APPENDIX B – Motions passed by the Board regarding Act 30 0f 2019

Write up of motion passed by the Vermont Board of Medical Practice on November 6, 2019, regarding a study of the concept of adding prescribing authority to the scope of practice of pharmacists as provided in Section 15 of Act 30 of 2019.

- Allowing prescribing by pharmacists would fundamentally alter the process for obtaining prescription drugs. At present to obtain a prescription drug two licensed professionals must act independently to authorize and provide the drug. Having two parties involved provides a check and balance that can lower the risk of mistakes and intentional bad conduct.
- Federal law prevents prescribers from having a financial interest in or relationship with businesses to which they might refer patients. 42 U.S.C. § 1395nn ("the Stark Act"). It is widely accepted that the reason for that law is a concern that a relationship between a prescriber and the seller of outpatient drugs could incentivize undesirable behaviors. The same concerns would apply where the prescriber and seller are the same entity.
- More than two-thirds of licensed Vermont pharmacies are operated by large, national or international corporations (97 of 141). There is voluminous history of these corporate-owned pharmacies engaging in bad behavior related to the sale of prescription drugs, such as steering prescriptions to specific drugs or brands in exchange for kickbacks or dispensing (and billing) for quantities greater than prescribed. That conduct occurred despite the check and balance of a separate professional. While the Board does not question the integrity of Vermont's licensed pharmacists, it does not make sense to unify the roles of prescriber and seller of drugs in one business. There are reasons why the Stark Act was enacted and there is ample evidence that for-profit corporations may place pressures on pharmacists to engage in questionable behaviors. The undesired outcomes can be both financial and contrary to the wellbeing of patients.
- Convenience for patients is one justification cited by proponents for expansion of pharmacist scope of practice to include prescribing authority. Drug stores striving to be convenient for patients would be one especially problematic feature of having prescribing in the drug store. Unnecessary care and even care that is contrary to public health in general could result. For example, it is difficult enough for a primary care provider who has access to a patient's full medical record and all the resources, knowledge, and experience to conduct a proper examination of the patient to resist the temptation to prescribe for a patient when the patient (or often the patient's parent) thinks an antibiotic is called for. The Centers for Disease Control have identified overuse of antibiotics as one of the leading public health threats and an important factor in the creation of antibiotic-resistant organisms. The decision of whether to prescribe should not be in the hands of an employee who answers to a corporation that strives to be the retailer of choice. Moreover, there are many ailments and conditions for which non-pharmaceutical interventions may be a better option. Although pharmacists are well trained in the chemistry and properties of pharmaceuticals, their lack of training in other treatment modalities may lead to unnecessary treatment or the use of less appropriate treatments.

- The State of Vermont has expended significant resources on the Blueprint for Health and what is known as the patient-centered medical home. That investment has been made based on the belief that individual health and population health outcomes are best served by having patients in a primary care setting that acts as the hub for all medical care. Changing Vermont law to give pharmacists prescribing authority would invite patients to seek care outside the medical home, in a pharmacy where the medical record is unlikely to be available. That is contrary to the vision for healthcare in Vermont. If a record were created for a drug store patient encounter, it would add one more challenge for those who are trying to establish interconnectedness for the health information of all Vermonters. Likewise, a lack of access to the patient's medical record increases the risk of unnecessary or contraindicated care.
- Along with convenience, challenges of access to care are commonly cited as reasons for expanding pharmacist scope of practice. New Mexico was the first state to enact pharmacist prescribing. According to a statement by the University of New Mexico College of Health Sciences: *New Mexico developed the pharmacist clinician role to address a shortage of primary care providers in a geographically large, rural state. The UNM College of Pharmacy supported legislation that, in 1993, made New Mexico the first state to let specially trained pharmacists provide primary care for patients. Today, about 250 of the state's 1,800 pharmacists are pharmacist clinicians, or advanced practice pharmacists.* Like New Mexico, the majority of states that have experimented with pharmacist prescribing are large, rural states with low population density and unfavorable primary care physician to population ratios. The other states are: California, Hawaii, Idaho, Indiana, Kentucky, New Mexico, North Carolina, North Dakota, and South Dakota. Vermont simply does not have the access to care problems seen in most of those states. While Vermont has certain areas that are considered underserved, those tend to be areas that are underserved for many kinds of services; the areas underserved for primary care tend to be underserved for pharmacy, too. Access to care issues do not justify acceptance of the downsides to pharmacist prescribing outlined above.

Write up of motion passed by the Vermont Board of Medical Practice on November 6, 2019, regarding a study of the concept of revising the scope of practice of optometrists to include what is referred to as "advanced procedures" in Section 13 of Act 30 of 2019.

· Ophthalmologists receive extensive training during medical school and residency training. The quantity of training is much greater than that given to optometrists, and the vast majority of optometrists have not been trained to perform the surgical procedures that are proposed for inclusion in the optometry scope of practice.

· Most all surgical procedures of the eye present a risk of complications. For many of those procedures, recognizing when the procedure should not be done is a challenging and important aspect of being able to do the procedure.

· More education of health care professionals focused on surgical procedures leads to greater probability that the procedures will be performed only when necessary and appropriate, and in the safest manner possible.

· Allowing individuals who have less education and training than ophthalmologists to perform surgical procedures on Vermonters' eyes will subject Vermonters to greater risks.

· There is less information available to patients about adverse history of optometrists than there is about physicians. Vermont law requires public posting of adverse information about medical doctors, but not optometrists. Patients should have such information available when making decisions about something as serious and potentially risky as surgical procedures on the eye and surrounding structures.

· There is no evidence of justification for accepting greater risk on behalf of Vermont patients. The evidence shows no problem with access to care for the procedures at issue.

· Additionally, the Board has concerns about the law on the business structure of optometric practices. 26 V.S.A. § 1708(c)(1) prevents the Board of Optometry from limiting ownership of optometric practices to licensed optometrists. The Board does not have information about ownership of optometric practices, but believes that patients are best served by having decisions about carrying out "advanced procedures" made by a health care provider who is employed by a non-profit hospital or FQHC, or a part of a physician-led professional corporation made up of licensed health care professionals who are subject to standards of professional conduct and ethical standards of their profession.