

**VERMONT BOARD OF MEDICAL PRACTICE**  
**Minutes of the December 4, 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 12:17 p.m.

**Members Present:**

Richard Bernstein, MD; Brent Burgee, MD; Richard Clattenburg, MD; Allen Evans; Francis J. Heald; Leo LeCours; David Liebow, DPM; Sarah McClain; Ryan Sexton, MD; Marga Sproul, MD; Margaret Tandoh, MD; Robert E. Tortolani, MD.

**Members Via Phone:** Judy Rosenstreich

**Others in Attendance:**

David Herlihy, Executive Director; Paula Nenninger, Investigator; Scottie Frennier, Board Investigator; Karen LaFond, Operations Administrator; Margaret Vincent, AAG; Kassandra Diederich, AAG; Bill Reynolds, AAG; Megan Campbell, AAG; John Bond, PA-C.

**Public Comment:**

None

**2. Approval of the Minutes of the November 6 and November 20, 2019 Board Meetings:**

Mr. Heald moved to accept the minutes of the November 6, 2019 meeting. Dr. Bernstein seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Tortolani moved to accept the minutes of the November 20, 2019 meeting. Dr. Liebow seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

Mr. Hoser shared with the member updates from the Federation of State Medical Boards (FSMB) meeting he attended in Washington, DC in November. He participated in “think-tank” and brainstorming discussions about an interstate compact for Physician Assistants, which would be similar to the IMLC for physicians. He also attended a teleconference session of the FSMB Strategic Planning Committee to formulate goals for 2020-2025.

#### **4. Administrative Update (Mr. Herlihy):**

Mr. Herlihy informed members that the Physician Assistants Academy of Vermont (PAAV) forwarded a revised version of proposed legislation to amend statutes regarding PA practice in Vermont. The new proposal was received too late for distribution to members and inclusion on the agenda for the December meeting, so he will add this item to the January agenda for discussion.

Mr. Herlihy reminded members to submit their expense sheets for payment for the last quarter of 2019.

Mr. Herlihy turned the meeting to Mr. Hoser to present the applications for board approval and requested Mr. Hoser turn the floor back to him for an additional administrative item. Mr. Herlihy recognized Mr. Hoser for his service to the Board and noted that, although his term technically expires on December 31, 2019, Mr. Hoser will continue to serve until replaced and that may not happen until March or April 2020.

#### **5. 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.

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

- **In re: Richard H. Dooley, PA-C – MPC 063-0316 – Stipulation and Consent Order**

Ms. Diederich 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: Central Investigative Committee

#### **7. 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 12:49 PM to go into Executive Session to discuss confidential matters related to

investigations. Dr. Tortolani seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Liebow made a motion at 1:15 PM to return to Open Session. Dr. Clattenburg seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

Dr. Liebow made a motion at 1:21 PM to return to Executive Session to discuss confidential matters related to investigations. Dr. Bernstein seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

Dr. Tortolani made a motion at 1:49 PM 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 090-0519 – Administrative Closing  
MPN 135-0819 – Special Letter #2  
MPN 144-1019 – Letter #1  
MPN 129-0819 – Letter #1; Mr. Hoser recused

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

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

MPC 124-1018 – Special Letter #1  
MPC 040-0219 – Special Letter #1  
MPC 152-1019 – Special Letter #1

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

**Dr. Liebow, South Investigative Committee, asked to close:**

MPS 123-0719 – Special Letter #1  
MPS 146-1218 – Stan Burns Letter  
MPS 132-0819 – Letter #1

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

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

None

**10. Other Business:**

- Ms. Diederich and Ms. Campbell gave a brief presentation on the FSMB conference for medical board attorneys they attended with Mr. Reynolds in November. Topics included: common behaviors seen in addicted professionals, FSMB physician discipline data from 2018, ethical dilemmas for board attorneys, who is your client, understanding drug tests: what they tell you and don't tell you.
- Status Report of Act 30 – Mr. Hoser, Ms. Rosenstreich, Dr. Bernstein and Mr. Herlihy provided a brief update on the sessions held in November regarding the Act 30 legislative studies.

First, Mr. Herlihy reported that he had attended a meeting on the concept of optometrists performing “advanced procedures” at the OPR offices on November 8. The meeting did not include other interested parties; he met with the OPR Director and the staff attorney who is working on the report. He presented the Board’s input as stated in the motion passed at the November meeting. He had the impression that the staff working on the study and report are objectively reviewing the proposal and will fairly consider the concerns submitted by the Board.

Second, Mr. Herlihy asked Mr. Hoser and Dr. Bernstein to report on the meetings held on November 14 and 20 on the concept of extending prescribing authority to pharmacists. Mr. Hoser reported that he attended the meeting on November 14 with Mr. Herlihy and Ms. Rosenstreich at the OPR offices. The meeting included interested parties from the pharmacists’ association, the pharmacy program at the Albany College of Pharmacy, BlueCross/BlueShield of Vermont, VMS, and individual pharmacists. Mr. Hoser briefly summarized information that had been presented about four different models of pharmacist prescriptive authority that represent a range of independence. The most restrictive is a model in which a pharmacist is limited to prescribing orders only when there is a collaboration agreement for a specific patient with the prescriber who already provides care for the patient. Next is a model in which a pharmacist has a broader collaboration agreement with a prescriber to prescribe for certain populations/drugs within the prescriber’s group of patients. Next is pharmacist prescribing only pursuant to statewide protocols for specific drugs. The least restrictive is a model in which a pharmacist essentially has independent authority to prescribe. Mr. Hoser and Mr.

Herlihy reported that the staff working on the report seemed to have formed a strong opinion prior to the meeting and were ardent advocates for the concept. Dr. Bernstein agreed that was his impression at the meeting on November 20. He also noted that at the second meeting there was additional discussion about prescribing for mental health conditions. Ms. Rosenstreich noted that advocates for pharmacist prescribing authority had focused on the “clinical pharmacy” training provided to PharmDs and suggested that the Board do more research into the “clinical practice” component of the training pharmacists receive. Members expressed interest in having more information about pharmacist training. Mr. Herlihy advised that regardless of how the recommendations in the report turn out, it is likely that each of the concepts will be the subject of discussion in the Legislature.

- Military Fee Waiver Discussion – Mr. Herlihy and Ms. Vincent provided a brief background on the military fee waiver. The Board has a long-standing practice of issuing and renewing licenses for active duty military personnel without fee. Mr. Herlihy advised that Ms. Hayes had a question come up earlier in the year about the practice, and had asked him for the legal basis for the practice, but upon review of Title 26, Chapter 23 and other relevant provisions of Vermont Statutes, there did not appear to be a legal basis for granting a fee waiver to this group of licensees. He asked AAG Vincent to advise if there is a basis in law for the practice, and she could not find one. Members were advised that the number of individuals who take advantage of this varies from year to year. In a renewal year there may be twenty or more fees waived on this basis, or as few as five in a year when physician licenses are not renewed. Mr. Herlihy explained that absent a provision in the law for a waiver, the Board must follow the law going forward and collect the appropriate fee as provided in law. Members stated their appreciation for the licensee’s service to our country but acknowledged need to act in accordance with the law. Members asked that licensees who had benefitted from the practice should be warned before the next renewal that it will no longer be available.
- Report of VPHP Liaison Committee – Mr. Herlihy and Mr. Hoser summarized the discussion held with representatives of the Vermont Practitioner Health Program on November 13. VPHP was represented by the Medical Director, Dr. Lasek, VMS Executive Director Jessa Barnard, VPHP Program Coordinator Colleen Magne, and Dr. John Valentine, VMS VPHP Committee Chair. Topics discussed included: the VMS session on physician wellness; the lab used by the program, US Drug Testing Laboratories, whose website includes many educational resources (<http://www.usdtl.com/>); reentry to practice after a long absence; outreach with physician employers to promote knowledge of the services available; whether licenses can practice if using Medication-Assisted Treatment; and the questions on the Board’s applications that relate to impairments.
- VPMS Third Quarter of 2019 Prescribing Data: Mr. Herlihy provided a brief presentation about data released by the Vermont Health Department on

controlled substance prescribing. He noted that the link on the agenda was incorrect because the Q3 data became available after the agenda was posted, so the link to the Q3 data is:

[https://www.healthvermont.gov/sites/default/files/documents/pdf/HSRV\\_VPMS\\_quarterly\\_report\\_2019\\_q3.pdf](https://www.healthvermont.gov/sites/default/files/documents/pdf/HSRV_VPMS_quarterly_report_2019_q3.pdf). Members were interested to see that Chittenden County had lower opioid prescribing rates in comparison to less populous counties and discussed the overall decline of opioid prescriptions since 2018.

- FSMB Draft Report of Workgroup on Physician Sexual Misconduct – Mr. Herlihy briefly introduced the recently released draft report and stated that FSMB has requested any input from state boards to be provided by January 10. He asked any interested members to review the report and bring comments to the January 8 Board meeting. If there is consensus on comments, he will submit them to FSMB. The report is on line at: [https://fsmbus.imiscloud.com/common/Uploaded%20files/Draft\\_%20Wk\\_Sexual\\_Misconduct\\_Comment.pdf](https://fsmbus.imiscloud.com/common/Uploaded%20files/Draft_%20Wk_Sexual_Misconduct_Comment.pdf). Comments are due to the FSMB by January 10, 2020.

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

- **December 12, 2019, North Investigative Committee Meeting, 9 a.m., Vermont Department of Health, 108 Cherry Street, Conference Room 2C, Burlington, VT**
- **December 13, 2019, Central Investigative Committee Meeting, 9 a.m., Central Vermont Medical Center, Conf. Rm. 4 & 5, Berlin, VT**
- **December 18, 2019, Board meeting on pending applications, 12:10 p.m., Board of Medical Practice office, 108 Cherry Street, 2<sup>nd</sup>, Floor Burlington, VT (and via telephone)**
- **December 18, 2019, South Investigative Committee Meeting, 12:00 p.m., Asa Bloomer State Office Building, 4th Floor, Room #492, Rutland, VT**
- **January 8, 2020, Licensing Committee Meeting, 11:00 a.m., Gifford Medical Center, Red Clover Conference Room, Randolph**
- **January 8, 2020, Board Meeting, 12 p.m., Gifford Medical Center, Red Clover Conference Room, Randolph**

**12. Open Forum:**

None

**13. Adjourn:**

Mr. Hoser declared the meeting adjourned at 3:18 p.m.

**Attachments: Appendix A**

## APPENDIX A

### Presentation of Applications

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

Crystal Broussard, MD	Mathias Gnass, MD	Adam Hecht, MD
Kimberly Henderson, MD	Teresa Lowery, MD	Douglas Nilson, MD
Yehuda Paz, MD	Robert Peppercorn, MD	Louis-Bassett Porter, MD
Arturo Salazar, MD	David Sargent, MD	April Wright, MD

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

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

Timothy Dekker, MD

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