

VERMONT BOARD OF MEDICAL PRACTICE
Minutes of the September 7, 2022 Board Meeting
108 Cherry Street, Burlington, VT
and remote via Teams

Unapproved

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

Saran McClain, Chair, called the meeting to order at 12:00 PM

Members Present:

Richard Bernstein, MD; Maureen Bogosian; Brent Burgee, MD; Richard Clattenburg, MD; Gail Falk; Matt Greenberg, MD; Rick A. Hildebrant, MD; Patricia Hunter; Suzanne Jones, PA-C; Leo LeCours; David Liebow, DPM; Christine Payne, MD; Marga Sproul, MD; Margaret Tandoh, MD; Robert E. Tortolani, MD.

Others in Attendance

David Herlihy, Executive Director; Paula Nenninger, Investigator; Scott Frennier, Investigator; Kelly Lawler, Administrative Services Technician IV; Tracy Hayes, Medical Licensing Specialist; Justin Sheng, AAG; Megan Campbell, AAG; Kurt Kuehl, AAG; George Belcher, Esq., Jessa Barnard of Vermont Medical Society.

2. Approval of the Minutes of the August 3 and August 17, 2022 Board Meetings:

Rick Hildebrant, MD moved to accept the minutes of the August 3, 2022 and August 17, 2022 meetings. Richard Bernstein, MD seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

3. Board Issues (Ms. McClain):

Ms. McClain advised that she and Mr. Herlihy are discussing the development of a retreat program with a consultant who focuses on physician wellness. Also, as discussed at the August meeting, they are also looking to arrange for an informational presentation on issues likely to confront medical boards in the wake of the US Supreme Court decision in the Dobbs case.

4. Administrative Updates (Mr. Herlihy):

Mr. Herlihy announced that the recruitment process to fill Karen LaFond's position as Medical Licensing and Operations Administrator had been successfully concluded. An offer had been made and accepted and the new employee will begin on September 14. Thanks to Paula Nenninger, Scottie Frennier, Kurt Kuehl, and Chair McClain who participated in interviews.

Mr. Herlihy also followed up on an email sent to inquire about attendance at the October 5th meeting, which coincides with a religious holiday. Three members indicated they would not be available on that day and one is unsure. With the appearance that a quorum will be reached the meeting will be held as scheduled.

5. Presentation of Applications:

Applications for physician, physician assistant and limited temporary physician licensure were presented and acted upon as detailed in Appendix A, incorporated by reference into these minutes.

Ms. McClain called for a motion for the issuance of physician licenses and physician assistant licenses. (See Appendix A)

Rick Hildebrant, MD made a motion to accept all applicants for licensure as presented. Seconded by Christine Payne, MD. The motion passed; opposed: none; abstained: none; recused: none.

Ms. McClain called for a motion for the issuance of limited temporary licenses to practice medicine. (See Appendix A)

Recommended by Robert Tortolani, MD for licensure. Seconded by Margaret Tandoh, MD. The motion passed; opposed: none; abstained: none; recused: none.

6. Other Business:

- **Relief for Applicants Impacted by Disruption of USMLE Testing** – Mr. Herlihy explained that Section 17 of the Board Rules provides that applicants must have passed all steps of the USMLE exam within seven years of their first attempt, or within ten years if an MD/PhD. The only exception in the rule is for applicants who are in good standing in another state and who hold specialty certification. There was a period during March and April 2020 when the testing centers used by USMLE were entirely closed due to COVID-19. Some centers reopened in May, but some did not. After reopening, as a COVID-19 precaution centers were operating at half capacity to allow for additional distancing between individuals taking the exam. Many individuals faced difficulty obtaining seats for testing in a timely manner. As a result, there are residents who have finished residency programs, or who will be finishing programs, who, through no fault of their own, did not complete the USMLE within seven years (or ten for MD/PhDs) and who have not yet received specialty board certification.

Ms. McClain asked if the Licensing Committee had reviewed this. Mr. Herlihy replied that the Committee had passed a motion that morning recommending two years additional time be granted to applicants whose time for completing the USMLE would run out during the period from March 1, 2020 and March 2, 2022, and providing for applicants whose time to complete the USMLE would have run out between March 1, 2020 and August 31, 2022, and who still did not meet the time frame even with the two extra years, could apply for a case-by-case waiver based on special circumstances such as government travel bans or a personal medical condition that prevented them from travelling. Dr. Hildebrant asked about the basis for the existing time limit. Mr. Herlihy replied that it had been discussed at length in recent years when the Board Rules were being updated and that the Board elected to maintain the limits. He stated

that one reason is concern about capacity for success in practice for people who have great difficulty passing the exam and some indication of a link between difficulty and later problems in practice. Integrity of the exam is another concern. The Board has no limit for the number of attempts at the first two steps, so the time limit also acts as a check on the number of attempts. There are concerns about the integrity of the exam when individuals see questions several times. Ms. McClain asked if this should be addressed in a motion.

Dr. Hildebrant moved for the Board to pass the following motion and Dr. Sproul seconded it:

The Board's Rules should be amended to allow applicants whose time for completion of the USMLE sequence as stated in Section 17.1 would have ended during the period from March 1, 2020 to March 1, 2022 all have two additional years added to the time limit, so that MD applicants meet this requirement if they successfully completed the USMLE testing sequence within nine (9) years of the first attempt and MD/PhD applicants meet the requirement if they completed within twelve (12) years of the first attempt. Applicants who still do not qualify who but had special circumstances that significantly affected their ability to complete the examination sequence, such as government-imposed travel bans or a personal health condition that precluded travel to take an examination during the period from March 1, 2020 to August 31, 2022 may apply for an individual waiver. Such applications will be considered on a case-by-case basis and determined by the Board based on a bona fide inability to meet the time limitations for reasons beyond the applicant's control.

The motion passed 16-0-0.

Before moving to the next item, Mr. Herlihy noted that he had not yet mentioned that staff believes a new record was set for the number of licenses issued at a meeting. He thanked the Licensing Committee, which began their meeting 90 minutes early, Dr. Burgee as Chair of the Committee, and Ms. Hayes for all their hard work.

- **Initial reports from the Ad Hoc Committee on Diversity, Equity, and Inclusion and the Ad Hoc Committee on Telemedicine.** Ms. McClain shared that each of the ad hoc committees had met once and that a brief report would be made.

Telemedicine – Dr. Hildebrant stated that the group met on August 31, 2022. Members had reviewed the April 2022 revision of the FSMB policy on telemedicine and found it to be an excellent starting point. The group agreed that in adapting the policy to be a BMP policy the approach should be to make only those changes needed to reflect Vermont laws or circumstances. The group has done a line-by-line review of approximately half the document and plans to meet again soon.

DEI - Ms. McClain began by saying that the DEI group had met on September 2, 2022 and had begun with discussion of FSMB's April 2022 Report on Diversity, Equity, and Inclusion. While that report is starting point, the work of the ad hoc Committee on DEI

will be more ongoing than that of the Telemedicine group. The Committee considered the report and how it would inform policies for the Board. A first step may be issuing a Board statement on the topic. A member then suggested that poverty is a major factor causing inequity in healthcare in Vermont and should be considered in addressing DEI. Ms. McClain added that the Committee began the discussion of concrete actions that might be taken related to DEI, noting that changes to Board practices and policies will need to be carefully reviewed for legal and practical implications. For example, if the Board considers any changes with regard to how information about gender or other demographic factors is collected there would be a need to review all the various obligations the Board has for reporting demographic information. The Committee will continue to meet and report to the Board.

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

- **In re John C. Louras, MD – Stipulation and Consent Order -- MPN 060-0618**

Mr. Belcher addressed the Board and established on the record that the Respondent and Respondent's Counsel were not in attendance and had indicated that they would not attend. AAG Campbell summarized the facts leading up to the Stipulation and Consent Order and described the agreed terms of the Order. Christine Payne, MD made a motion to approve the Stipulation and Consent Order. Patricia Hunter seconded the motion.

Mr. Belcher asked for a roll-call vote: The motion passed; Yeas: Dr. Burgee, Ms. Bogosian, Dr. Clattenburg, Ms. Falk, Dr. Greenburg, Ms. Hunter, Ms. Jones, Dr. Liebow, Dr. Payne, Dr. Tortolani. Opposed: none; Abstained: none; Recused: Central Investigative Committee Dr. Hildebrant needed to leave the meeting for another obligation before the hearing began and was absent; he did not participate.

8. Reconvene meeting; Executive Session to Discuss:

- **Investigative cases recommended for closure**
- **Other matters that are confidential by law, if any**

Richard Clattenburg, MD made a motion at 1:29 PM to go into Executive Session to discuss confidential matters related to investigations. Marga Sproul, MD 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:

Margaret Tandoh, MD made a motion at 1:55 PM to return to Open Session. Patricia Hunter seconded the motion. The motion passed; opposed: none; recused: none; abstained: none.

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

MPN 073-0920 – Special Letter #2

Richard Clattenburg, MD made a motion to close the case presented. Maureen Bogosian seconded the motion. The motion passed; opposed: none; abstained: none; recused: Suzanne Jones, PA-C. North Investigative Committee.

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

MPC 031-0422 – Letter #1
MPC 057-0522 – Letter #1
MPC 056-0522 – Letter #1
MPC 036-0321 – Special Letter #1

Leo LeCours made a motion to close the cases presented. Richard Bernstein, MD seconded the motion. The motion passed; opposed: none; abstained: none; recused: Christine Payne, MD and Margaret Tandoh, MD. Central Investigative Committee.

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

- September 15, 2022, North Investigative Committee Meeting, 9 a.m., [108 Cherry Street, Burlington, VT and remote via Teams](#)
- September 16, 2022, Central Investigative Committee Meeting, 9 a.m., [108 Cherry Street, Burlington, VT and remote via Teams](#)
- September 21, Board Meeting on pending applications, 12:10 p.m., [108 Cherry Street, Burlington, VT and remote via Teams](#)
- September 21, 2022, South Investigative Committee Meeting, 12:15 p.m., [108 Cherry Street, Burlington, VT and remote via Teams](#)
- October 5, 2022, Licensing Committee Meeting, 11:00 a.m., [108 Cherry Street, Burlington, VT and remote via Teams](#)
- October 5, 2022, Board Meeting, 12:00 p.m., [108 Cherry Street, Burlington, VT and remote via Teams](#)

11. Open Forum:

A member asked about the start time for the November meeting due to the planned retreat. Mr. Herlihy said that typically when there is a retreat the meeting starts an hour early at 11 am.

Dr. Bernstein mentioned that in one location the Board of Medical Practice webpage still mentions a CME requirement of 30 hours. Staff will check and make corrections.

Dr. Sproul, MD noted that during renewal she found it went smoothly and there was a direct link to the Workforce Census.

Mr. Herlihy said that he had received complaints about an advertisement for paid CME that licensees found misleading. He has spoken with the Attorney General's Office and will continue to follow up. He noted that notices were sent in July and again with the renewal announcement in late August telling licenses that there are no mandatory paid CME courses.

12. Adjourn: Sarah McClain adjourned the meeting at 1:41 PM

APPENDIX A

INSERT Presentation of Applications