



KIM REYNOLDS, GOVERNOR  
ADAM GREGG, LT. GOVERNOR

IOWA BOARD OF MEDICINE  
KENT NEBEL, J.D., EXECUTIVE DIRECTOR  
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## **PUBLIC A G E N D A<sup>1, 2, 3, 4, 5</sup>**

### **REGULARLY SCHEDULED MEETING – AUGUST 27-28, 2020**

**BOARD MEMBERS:** Chair; Warren Gall, M.D., Vice Chair; Ronald Kolegraff, M.D., Secretary; Nikhil Wagle, M.D., Trudy Caviness, Diane Cortese, Patricia Fasbender, D.O., Mary Jo Romanco, Joyce Vista-Wayne, M.D.

#### **THURSDAY, AUGUST 27, 2020**

- 7:30 a.m. - **EXECUTIVE COMMITTEE**  
Chair Gall, Cortese, Kolegraff, Romanco, Vista-Wayne
- 7:30 a.m. - **SCREENING COMMITTEE**  
Chair Wagle, Caviness, Fasbender
- 9:00 a.m. - **MONITORING COMMITTEE**  
Chair Kolegraff, Caviness, Cortese, Vista-Wayne
- 9:00 a.m. - **LICENSURE COMMITTEE**  
Chair Romanco, Fasbender, Gall, Wagle

#### **BOARD – OPEN SESSION**

#### **BOARD – CLOSED SESSION**

- A. Iowa Physician Health Committee**
- B. Committee Reports**
1. Screening
  2. Monitoring
  3. Licensure
- C. Review of Closed Minutes**
1. July 9-10, 2020 Board meeting
  2. August 13, 2020 teleconference

#### **LUNCH BREAK**

#### **FULL BOARD – CLOSED SESSION**

#### **FULL BOARD – OPEN SESSION**

- A. Unlicensed Practice of Medicine Cases**
1. SBN Consultants
- B. Vote on Closed Session Cases**

**FRIDAY, AUGUST 28, 2020**

**7:30 a.m. - BOARD-OPEN SESSION**

**BOARD-CLOSED SESSION**

**BOARD-OPEN SESSION**

**Members of the public may participate in the public session by calling (866) 685-1580 USE CODE: 971-913-4151**

**9:00 a.m. - BOARD-PUBLIC SESSION**

**A. Roll call to establish a quorum**

**B. Vote to approve agenda**

**C. Introduction of Public Present**

**D. Opportunity for Public Comments<sup>5</sup>**

*(Public can make comments now or when specific agenda items are addressed.)*

**E. Staffing**

1. We have started to interview the candidates for the chief investigator position
2. IPHP case manager position has been posted.

**F. Board Minutes for Consideration of Approval (Open & Closed)**

1. July 9-10, 2020 Board meeting
2. August 13, 2020 teleconference

**G. Vote to approve Licensure fees for Fiscal Year 2021**

**H. Executive Director's Report**

**I. Administrative Rules**

**1. Physician Supervision of a Physician Assistant 21.4 – ARC 5133C**

Physician Assistant Supervision Statute Mandated Rule Changes

- a. Notice of Intended Action filed – public hearing will be held on 9.2.2020

**2. IPHP 2020 Rule Revisions ARC 5132C**

- a. Notice of Intended Action filed – public hearing will be held on 9.2.2020

**3. Standards of Practice - mCBD - Intellectual disability (ID) with aggression and/or self-injury NIA ARC 5001C**

- a. The Board voted to Notice the action at February 7, 2020 Board meeting
- b. Notice of Intended Action was filed and published in legislative bulletin on March 24, 2020
- c. Vote to Adopt rules

**J. Legislative Update**

**1. HF 2627 - Professional Licensure**

HF 2627 was signed into law by Governor Reynolds on June 25, 2020. This regulatory reform bill impacts all health boards and many non-health boards. All provisions of the bill must be implemented by January 1, 2021. (with the exception of a provision related to the extension of renewal, which were effective immediately).

The Boards are working collaboratively to interpret and implement HF 2627. This effort includes the boards of nursing, medicine, pharmacy, dentistry and a number of boards from the Iowa Department of Public Health. There are 3 primary components of the bill, which are effective January 1, 2021. They are as follows:

- **Fee Waivers** A licensing board, agency, or department shall waive any fee charged to an applicant for a license if the applicant's household income does not exceed two hundred percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

**Action Items:** We are writing draft policies and procedures related to this requirement. This will likely include adding a new section to our application for licensure, regarding eligibility for a fee waiver.

- **Licensure Of Persons Licensed In Other Jurisdictions**

This provision provides a new pathway for licensure to the following individuals:

1. Persons who have established residency in the state of Iowa, or,
2. The spouse of an active duty member of the military forces who is accompanying the member on an official permanent change of station to a military installation.

Requirements that must be met:

1. Currently licensed and in good standing;
2. Be licensed for at least one year;
3. The original licensing jurisdiction imposed minimum educational requirements, work experience and clinical supervision requirement - all of which were verified prior to licensure;
4. The person previously passed an examination;
5. The person hasn't had a license voluntarily surrendered in response to an investigation for unprofessional conduct;
6. The person has not had any discipline that has not been resolved (board shall not issue or deny a license until the matter is resolved);
7. The person does not have a pending complaint, allegation, or investigation relating to unprofessional conduct (board shall not issue or deny the license until the matter is resolved);
8. Pays all fees;
9. The person does not have a criminal history that would prevent the person from be licensed.

- **Criminal History**

The Board currently has full authority to deny or restrict a license based on an applicant's criminal history. This bill provision takes away some of that authority and provides a consistent framework for all licensing boards to follow. Some of these provisions we already largely follow, and some of these provisions will be new to the Board. Key provision are below:

The board may deny a license to or revoke the license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or an offense, **and the offense directly relates to the duties and responsibilities of the profession, or that there has been a founded report of child abuse against the person.** Rules adopted in accordance with this paragraph shall provide that in determining whether a person should be denied a license or that a practitioner's license should be revoked, the board shall consider the nature and seriousness of the founded abuse or crime in relation to the position sought, the time elapsed since the crime was committed, the degree of rehabilitation which has taken place since the incidence of founded abuse or the commission of the crime, the likelihood that the person will commit the same abuse or crime again, and the number of founded abuses committed by or criminal convictions of the person involved.

A licensing board, agency, or department that may deny a license on the basis of an applicant's conviction record shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession.

A licensing board, agency, or department shall not deny an application for a license on the basis of an arrest that was not followed by a conviction or based on a finding that an applicant lacks good character, suffers from moral turpitude, or on other similar basis.

A licensing board, agency, or department shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

- a. The nature and seriousness of the crime for which the applicant was convicted.
- b. The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of section 709.4, a sexually violent offense as defined in section 229A.2, dependent adult abuse in violation of section 235B.20, a forcible felony as defined in section 702.11, or domestic abuse assault in violation of section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.
- c. The circumstances relative to the offense, including any aggravating and mitigating circumstances or social conditions surrounding the commission of the offense.
- d. The age of the applicant at the time the offense was committed.
- e. Any treatment undertaken by the applicant.
- f. Whether a certification of employability has been issued to the applicant pursuant to section 906.19.
- g. Any letters of reference submitted on behalf of the applicant.
- h. All other relevant evidence of rehabilitation and present fitness of the applicant.

A licensing board, agency, or department that denies an applicant a license solely or partly because of the applicant's prior conviction of a crime shall notify the applicant in writing of all of the following:

1. The grounds for the denial or disqualification.
2. That the applicant has the right to a hearing to challenge the licensing authority's decision.
3. The earliest date the applicant may submit a new application.
4. That evidence of rehabilitation of the applicant may be considered upon reapplication.

Note that "In any administrative or civil hearing authorized by this section or chapter 17A, a licensing board, agency, or department shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought."

A determination by a licensing board, agency, or department that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in subsection 4 sufficient for a review by a court.

## 2. **Federal Legislation**

Recently introduced federal legislation in the Senate that would directly impact state medical and osteopathic boards and authorize licensed health care professionals to practice across state lines during COVID-19 without being subject to state licensure or certification requirements in the state where the patient is located.

- **Senator Ted Cruz (R-TX)** and **Senator Marsha Blackburn (R-TN)** introduced the "[Equal Access to Care Act.](#)" (S. 3993). This bill would allow health care professionals licensed in a primary state to provide health care services "*in interstate commerce through electronic information or telecommunication technologies*" in a secondary state without obtaining a license in the secondary state for the duration of the public health emergency and for 180 days after and deem the location of services to be the primary state of licensure.
- **Senator Chris Murphy (D-CT)** and **Senator Roy Blunt (R-MO)** introduced the [Temporary Reciprocity to Ensure Equal Access to Treatment "TREAT" Act](#). This bill would allow practice across state lines in person or via telehealth during certain public health emergencies and provides parameters for initiating telehealth services. It requires

health care professionals to notify the licensing authority where the care was provided within 30 days and include the professionals' name, e-mail, phone, and state of licensure.

- Follow the link below for the Senator's press release, and a list of organizations supporting the bill, located at the bottom of the press release.

<https://www.murphy.senate.gov/newsroom/press-releases/murphy-blunt-introduce-legislation-to-allow-health-care-professionals-to-render-services-anywhere-throughout-covid-19-pandemic->

#### **K. Iowa Physician Health Program Report – Amy Van Maanen, Coordinator**

1. Monthly statistics

#### **L. Judicial Review – Anagha Dixit, Assistant Attorney General**

**1. Calcaterra v. Board of Medicine-Domenico Calcaterra, M.D.** The Board issued a declaratory order finding that statements of charges are public documents. Dr. Calcaterra renewed his petition for judicial review of this declaratory order. Parties briefed the matter and had oral arguments on the matter on January 17, 2020. This case received a decision on April 26, 2020. We have requested this decision be stayed and reconsidered. The Court heard oral arguments on the motions in July. The Board is awaiting a decision.

**2. Robinson v. Board of Medicine-David Robinson, M.D.,** entered a settlement agreement with the Board in 2016. In 2019, the Board terminated the terms of his probation. Dr. Robinson requested that the Board rescind the 2016 settlement agreement, and the Board declined to do so. Dr. Robinson has now sought judicial review of this agency action in district court. The appendix in this case was filed but Dr. Robinson alleges that the entire investigatory report should be part of the record. The Board has resisted the matter and a hearing was held on the issue on January 28, 2020. The matter has been submitted and awaiting an order. The scheduling order has been delayed as we still have not received a decision from the Court.

**3. Yates v. Board of Medicine-Leroy L. Yates, JR, M.D.,** lost a contested case on December 12, 2019. Dr. Yates filed a pro se Petition for Judicial Review, which the court ruled as timely. He has since acquired local Florida counsel. Counsel for Petitioner filed their brief in early July. The Board filed their response brief at the end of July. Dr. Yates will have an opportunity to respond to our brief in August and then the Court will hear oral arguments on the case before issuing a decision.

**4. Doe v. Board of Medicine-John Doe, M.D.,** lost a contested case on January 16, 2020. The Petitioner had been ordered by the Board to attend a confidential comprehensive competency evaluation. A hearing was held on the matter over two days in 2019 and Administrative Law Judge Johnathan Gallagher issued his decision on January 16, 2020. A timely petition for judicial review was filed. The matter was heard in late June and the parties now await a decision.

#### **M. Petition to consider Joint statement concerning Hydroxychloroquine & Draft Response from the Board.**

#### **N. Iowa Capital Dispatch publications**

1. *Iowa Doctors Accused Of Serious Offenses Admonished In Secret By State Board*
2. *Unnamed Doctor May Pose A 'Significant Danger To The Public*

#### **O. Interstate Medical Licensure Compact Update**

**P. Correspondence** - Letter from Public Citizen and 15-Year Summary of Sexual Misconduct by U.S. Physicians Reported to the NPDB

**Q. Articles** - *2020's Best & Worst States for Health Care* – August 3, 2020, Adam McCann, Financial Writer for WalletHub.

#### **R. Board Education**

1. **Recommended Health Equity Training** – If you missed it last month, here is the link for the recording: <https://www.accme.org/advancing-social-justice-resources>.  
**AMA Advancing Social Justice** - with Accredited Continuing Education Webinar

**Webinar info** - Please join Graham McMahon, MD, MMSc, President and CEO, ACCME; Aletha Maybank, MD, MPH, Chief Health Equity Officer, American Medical Association; and David Ansell, MD, MPH, Senior Vice President for Community Health Equity at Rush University Medical Center, for a **community conversation exploring how we, as educators, can be part of the solution.**

- 2. IMS Professional Burnout & Resiliency Programming** – Join the Iowa Medical Society on Thursday, September 10 for the very first virtual presentation of the IMS Professional Burnout & Resiliency Programming. This event, presented in conjunction with Aveea Partners, provides resources to help you: prevent burnout, recognize warning signs, explore simple, evidence-based solutions, discuss how to lead without leading to burnout, build a resilient organization, rediscover the joy of practicing medicine, and return to your primary purpose: caring for patients.

**To attend this free webinar, register here:**

<https://iowamedicalsociety.wildapricot.org/event-3750671>

**BOARD-CLOSED SESSION**

**LUNCH BREAK**

**BOARD-CLOSED SESSION**

**BOARD-OPEN SESSION**

1. Vote on Closed Session Cases

**ADJOURN**

<b>Board Meetings - 2020</b>	<b>Board Office Closings</b>
October 22-23	Labor Day - September 7
December 10-11	Veterans Day - November 11
	Thanksgiving Day - November 26
	Friday after Thanksgiving - November 27
	Christmas Day - December 25

*(1) The confidential matters listed on the agenda may concern medical records on the condition, diagnosis, care or treatment of a patient or investigation reports and other investigative information which are privileged and confidential under the provisions of Sections 22.7(2) and 272C.6(4), of the 2017 Code of Iowa. These matters constitute a sufficient basis for the Board to consider a closed session under the provisions of Section 21.5(1) (a), (c), (d), (f) and (g) of the 2017 Code of Iowa. These sections provide that a governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body if all present, or all of the members present if not all members are present at the meeting to review or discuss records which are required or authorized by state or federal law to be kept confidential, to discuss whether to initiate licensee disciplinary investigations or proceedings and to discuss the decision to be rendered in a contested case conducted according to the provisions of Chapter 17A.*

*(2) Hearings may be closed at the discretion of the licensee, according to Section 272C.6(1) of the Code of Iowa 2017.*

*(3) Public agenda materials are available via e-mail. Contact: [ibm@iowa.gov](mailto:ibm@iowa.gov)*

*(4) The Board may address agenda items out of sequence to accommodate persons appearing before the Board or to aid in the efficiency or effectiveness of the meeting.*

*(5) At this time, members of the audience may address the Board for a period not to exceed 5 minutes. The Board reserves the right to reduce this time based on the number wishing to speak. If a member of the public wishes to address the Board with the intention of getting a Board decision at the meeting, the individual should request permission to be on the Board agenda. Written requests are due in the Board office at least 14 days in advance of the meeting.*

*If you require the assistance of auxiliary aids or services to participate in/or attend the meeting because of a disability, please call our ADA Coordinator at (515) 281-5604. If you are hearing impaired, call Relay IA TTY at 1-800-735-2942.*