



BOARD MEETING – DECEMBER 10-11, 2020 OPEN MINUTES

THURSDAY, DECEMBER 10, 2020

MEMBERS PRESENT:

Warren Gall, M.D., Chair
Ronald Kolegraff, M.D., Vice-Chair
Nikhil Wagle, M.D., Secretary
Trudy Caviness
Patricia Fasbender, D.O.
Mary Jo Romanco
Joyce Vista-Wayne, M.D.

MEMBERS ABSENT:

Diane Cortese

STAFF PRESENT:

Kent M. Nebel, J.D., Executive Director
Joseph A. Fraioli, J.D., Legal Director
Don J. Woodhouse, M.D., Medical Director
Anne Schlepfforst, Chief Investigator
Aaron Kephart, Investigator
Brandi Allen, Investigator
Dave McGlaughlin, Investigator
Jerome Hill, Investigator
Laura Wood, Investigator
Emily Zalasky, Monitoring Coordinator
Annie Hoffman, Licensure Director
Cheryl Gravett, Licensing Specialist
Jaime Dunbar, Licensing Specialist
Melissa Nelsen, Licensing Specialist
Natalie Lyons, Iowa Physician Health Program Case Manager
Kari Rolls, Administrative Assistant
Anagha Dixit, Assistant Attorney General
Steven Ervin, Information Technology Support

At 10:24 a.m., Warren Gall, M.D., Chair, called the meeting to order.

At 10:25 a.m., on a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all members present voted to meet in closed session, pursuant to Iowa Code Sections 21.5(1)(a), 21.5(1)(d) and 21.5(1)(f), to review or discuss records which are required or authorized by state or federal law to be kept confidential, discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings, and discuss the decision to be rendered in a contested case. Trudy Caviness, Patricia Fasbender, D.O., Warren Gall, M.D., Ronald Kolegraff, M.D., Mary Jo Romanco, Joyce Vista-Wayne, M.D., and Nikhil Wagle, M.D., all voted aye in a roll call vote to approve the motion.

At 3:05 p.m., while still in closed session, all members present voted in favor of a motion by Ronald Kolegraff, M.D., seconded by Nikhil Wagle, M.D., to meet in an open session. In open session, the Board took the following actions:

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to accept the Settlement Agreement for Nicky Shah, M.D., file 02-2018-014.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-647, with no formal action.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 02-2018-053.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 02-2018-210.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 02-2018-358.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to file Statement of Charges against William E. Olson, M.D., files 02-2016-235, 02-2016-566 and 02-2018-197. Nikhil Wagle, M.D., recused.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2017-486, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open files 03-2018-394 and 03-2019-396. Ronald Kolegraff, M.D., Mary Jo Romanco and Anagha Dixit, Assistant Attorney General, recused.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 03-2019-435.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2017-052, with no formal action.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2018-415, with no formal action.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-307, with no formal action.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 02-2019-317.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-191, with no formal action.

On a motion by Patricia Fasbender, D.O., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 03-2019-188.

On a motion by Patricia Fasbender, D.O., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 03-2020-042, with no formal action. Ronald Kolegraff, M.D., recused.

On a motion by Patricia Fasbender, D.O., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-057, with no formal action.

On a motion by Patricia Fasbender, D.O., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-262, with no formal action.

On a motion by Mary Jo Romanco, seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-494, with no formal action.

On a motion by Mary Jo Romanco, seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-602, with no formal action.

On a motion by Mary Jo Romanco, seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 02-2018-400.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to affirm its original decision to close file 02-2020-268, with no formal disciplinary action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to affirm its original decision to close file 02-2020-148, with no formal disciplinary action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2017-063, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2017-064, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2018-261, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-266, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-272, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 03-2020-005.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to leave open file 06-2020-305.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-708, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-118, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-571, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2018-346, with no formal action.

On a motion by Nikhil Wagle, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-701, with no formal action. Patricia Fasbender, D.O., recused.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-548, with no formal action.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-655, with no formal action. Mary Jo Romano recused.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-564, with no formal action. Patricia Fasbender, D.O., recused.

On a motion by Ronald Kolegraff, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 03-2019-230, with no formal action. Warren Gall, M.D., recused.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-280, with no formal action.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-210, with no formal action.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-288, with no formal action.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-303, with no formal action.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-251, with no formal action. Mary Jo Romano recused.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-634, with no formal action.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2020-214, with no formal action.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to close file 03-2020-237, with no formal action. Joyce Vista-Wayne, M.D., recused.

On a motion by Warren Gall, M.D., seconded by Joyce Vista-Wayne, M.D., all Board members present voted to close file 02-2019-706, with no formal action.

On a motion by Ronald Kolegraff, M.D., seconded by Patricia Fasbender, D.O., all Board members present voted to accept the Monitoring Committee Report and its recommendations.

On a motion by Nikhil Wagle, M.D., seconded by Mary Jo Romanco, all Board members present voted to accept the Screening Committee Report and its recommendations.

On a motion by Mary Jo Romanco, seconded by Trudy Caviness, all Board members present voted to accept the Licensure Committee Report and its recommendations.

At 3:16 p.m., all members present voted in favor of a motion by Nikhil Wagle, M.D., seconded by Mary Jo Romanco, to adjourn the meeting.

FRIDAY, DECEMBER 11, 2020

MEMBERS PRESENT:

Warren Gall, M.D., Chair
Ronald Kolegraff, M.D., Vice-Chair
Nikhil Wagle, M.D., Secretary
Trudy Caviness
Patricia Fasbender, D.O.
Mary Jo Romanco
Joyce Vista-Wayne, M.D.

MEMBERS ABSENT:

Diane Cortese

STAFF PRESENT:

Kent M. Nebel, J.D., Executive Director
Joseph A. Fraioli, J.D., Legal Director
Don J. Woodhouse, M.D., Medical Director
Anne Schlepfforst, Chief Investigator
Dave McGlaughlin, Investigator
Jerome Hill, Investigator
Emily Zalasky, Monitoring Coordinator
Jaime Dunbar, Licensing Specialist
Natalie Lyons, Iowa Physician Health Program Case Manager
Shantel Billington, Office Manager
Chrissy Greco, Assistant to Executive Director
Steven Ervin, Information Technology Support

At 10:00 a.m., Warren Gall, M.D., Chair, called the public session to order and roll call was taken. Diane Cortese was absent, and all other members were present.

On a motion by Warren Gall, seconded by Mary Jo Romano, all members present voted to approve agenda.

Introduction of the public - via teleconference line:

| Name | Representing |
|-----------------------|----------------------|
| Laura Miller | State of Iowa |
| Sherry Muller Marceau | Self |
| Linda Thiesen | University of Iowa |
| Dennis Tibbins | Iowa Medical Society |

Sherry Muller Marceau spoke regarding her July 2020 complaint to the Board regarding an incident from 1974, in which a man who was convicted of lascivious act with a child involving herself and several other children. She thanked Mr. Nebel for keeping her in the loop and the Board for investigating her claim. She said that she wants answers on how this man was granted a license to practice medicine with his criminal history involving children.

Mr. Nebel gave the details of his Executive Director's Report, which can be found here: <https://medicalboard.iowa.gov/sites/default/files/documents/2020/12/executivedirectorsreport december.2020.pdf>

Budget – update only. Mr. Nebel let the Board know that in spite of recent legislation on license renewal deadlines, it would seem that the Board's budget would remain stable.

Minutes

On a motion by Warren Gall, M.D., seconded by Mary Jo Romano, all members present voted to approve the open and closed minutes for the November 19, 2020 teleconference.

On a motion by Truday Caviness, seconded by Mary Jo Romano, all members present voted to approve the open and closed minutes for the October 22-23, 2020 Board meeting.

On a motion by Mary Jo Romano, seconded by Warren Gall, M.D., all members present voted to approve the Ruling on the Petition for Declaratory Order for

Administrative Rules Update – Joseph Fraioli, Legal Director

Eligibility for Licensure - HF 2627. The Rules were approved by the Board on 10.23.2020, and he is waiting for the other Boards to complete approval process so that the rules can be filed simultaneously, pursuant to a request by the Legislative Services Agency.

Waiver Rule Revisions - Notice of Intended Action was filed 12.3.2020 and a public hearing is set for 1.20.2021 at 1:00 p.m.

Supervision of Executive Director - Notice of Intended Action was filed 12.3.2020 and a public hearing is set for 1.20.2021 at 2:00 p.m.

Judicial Review – Anagha Dixit, Assistant Attorney General

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 Court denied those motions in November. We have filed a notice of appeal and our brief is due in December.

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.

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. The parties both briefed the issues and an oral argument was held in District Court. The Board's decision was affirmed. As of the date of writing this summary, Dr. Yates has not filed a notice of appeal of that decision.

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 parties briefed the issue and had oral arguments. The Board's decision was affirmed and Dr. Doe has filed a notice of appeal. The parties will now need to re-brief for the appellate courts.

Interstate Medical Licensure Compact – Updates were given by Mary Jo Romanco and Dr. Warren Gall. They spoke about the annual Compact meeting and stated that Jaime Dunbar, licensure specialist for the Board, was a main presenter. They said that a new director will be appointed to the Compact in January of 2021.

The Board discussed and approved sending the drafted letter to the Governor, requesting that she fill the several vacancies for Board members and alternatives.

Dennis Tibben from the Iowa Medical Society updated the Board on the COVID 19 vaccination rollout efforts. He said that the state Infectious Disease Advisory Council (IDAC) continues to prioritize distribution, and that the Pfizer vaccine may be available as early as Sunday, December 13, 2020. He stated that IDAC hopes to see administration of the vaccine begin a week to ten days after receiving it.

At 10:31 a.m., all members present voted in favor of a motion by Joyce Vista-Wayne, M.D., seconded by Ronald Kolegraff, M.D., to adjourn the meeting.