



OPEN MINUTES JUNE 3-4, 2021 BOARD MEETING

THURSDAY, JUNE 3, 2021:

MEMBERS PRESENT:

Warren Gall, M.D., Chair
Ronald Kolegraff, M.D., Vice-Chair
Nikhil Wagle, M.D., Secretary
Trudy Caviness
Diane Cortese
Patricia Fasbender, D.O.
Mary Jo Romano

MEMBERS ABSENT:

Joyce Vista-Wayne, M.D.

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
Jennifer Huisman, Investigator
Jerome Hill, Investigator
Laura Wood, Investigator
Michelle Delong, 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
Kitty Moore, Enforcement Support
Anagha Dixit, Assistant Attorney General
Adam Lange, AG Intern
Steven Ervin, Information Technology Support

At 11:27 a.m., Warren Gall, M.D., Chair, called the meeting to order.

At 11:27 a.m., on a motion by Mary Jo Romano, seconded by Nikhil Wagle, 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, Diane Cortese, Patricia Fasbender, D.O., Warren Gall, M.D., Ronald Kolegraff, M.D., Mary Jo Romano, and Nikhil Wagle, M.D., all voted aye in a roll call vote to approve the motion.

At 2:37 p.m., while still in closed session, all members present voted in favor of a motion by Ronald Kolegraff, M.D., seconded by Patricia Fasbender, D.O., to meet in an open session. In open session, the Board took the following actions:

On a motion by Diane Cortese, seconded by Mary Jo Romano, all Board members present voted to **accept** the combined Statement of Charges and Settlement Agreement for Laura M.L. Parkinson, L.Ac., file 06-2020-305.

On a motion by Diane Cortese, seconded by Mary Jo Romano, all Board members present voted to **accept** the Consent Agreement for Jeffery L. Allyn, M.D., file 02-2021-247.

On a motion by Diane Cortese, seconded by Mary Jo Romano, all Board members present voted to **accept** the combined Statement of Charges and Settlement Agreement for Jason A. Rexroth, M.D., file 02-2019-317.

On a motion by Diane Cortese, seconded by Mary Jo Romano, all Board members present voted to **leave open** file 02-2019-276.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romano, all Board members present voted to **leave open** file 02-2018-053.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romano, all Board members present voted to **leave open** file 02-2018-210.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romano, all Board members present voted to **leave open** file 02-2018-358.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romano, all Board members present voted to **affirm** its original decision to **close** file 03-2020-068, **with no formal disciplinary action**.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romano, all Board members present voted to **affirm** its original decision to **close** file 03-2019-541, **with no formal disciplinary action**.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romanco, all Board members present voted to **affirm** its original decision to **close** file 02-2019-675, **with no formal disciplinary action**.

On a motion by Patricia Fasbender, D.O., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2019-080, with **no formal action**.

On a motion by Nikhil Wagle, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2019-201.

On a motion by Nikhil Wagle, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2018-588.

On a motion by Nikhil Wagle, M.D., seconded by Mary Jo Romanco, all Board members present voted to **deny** the request to allow Joseph Berdecia-Rodriguez, M.D., to enroll in a 3-year Family Practice residency program in lieu of undergoing a comprehensive competency evaluation, file 02-2006-407.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2021-090.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-281, with **no formal action**. Nikhil Wagle, M.D., recused.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-282, with **no formal action**. Nikhil Wagle, M.D., recused.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2021-139, with **no formal action**. Anagha Dixit, Assistant Attorney General, recused.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2021-031.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2019-502, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-298, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 03-2021-036, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-532, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2016-352.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2019-554.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2021-021.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2020-490.

On a motion by Warren Gall, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-375, with **no formal action**. Ronald Kolegraff, M.D., recused.

On a motion by Ronald Kolegraff, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-386, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2021-170, with **no formal action**. Patricia Fasbender, D.O., and Anagha Dixit, Assistant Attorney General, recused.

On a motion by Ronald Kolegraff, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2019-562, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Mary Jo Romanco, all Board members present voted to **close** file 02-2020-238, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Mary Jo Romanco, all Board members present voted to **leave open** file 02-2021-093.

On a motion by Ronald Kolegraff, 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 Nikhil Wagle, M.D., seconded by Trudy Caviness, all Board members present voted to **accept** the Monitoring Committee Report and its recommendations.

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

At 2:43 p.m., all members present voted in favor of a motion by Ronald Kolegraff, M.D., seconded by Nikhil Wagle, M.D., to adjourn the meeting.

FRIDAY, JUNE 4, 2021:

MEMBERS PRESENT:

Warren Gall, M.D., Chair

Ronald Kolegraff, M.D., Vice-Chair

Nikhil Wagle, M.D., Secretary

Trudy Caviness

Diane Cortese

**Patricia Fasbender, D.O.
Mary Jo Romanco**

MEMBERS ABSENT:

Joyce Vista-Wayne, M.D.

STAFF PRESENT:

**Kent M. Nebel, J.D., Executive Director
Joseph A. Fraioli, J.D., Legal Director
Don J. Woodhouse, M.D., Medical Director
Anne Schlepffhorst, Chief Investigator
Dave McGlaughlin, Investigator
Jerome Hill, Investigator
Michelle DeLong, Investigator
Emily Zalasky, Monitoring Coordinator
Annie Hoffman, Licensure Director
Natalie Lyons, Iowa Physician Health Program Case Manager
Kari Rolls, Administrative Assistant
Kitty Moore, Enforcement Support
Anagha Dixit, Assistant Attorney General
Adam Lange, AG Intern
Shantel Billington, Office Manager
Chrissy Greco, Assistant to Executive Director
Steven Ervin, Information Technology Support**

At 8:52 a.m., Warren Gall, M.D., Chair, called the meeting to order.

At 8:52 a.m., on a motion by Nikhil Wagle, M.D., seconded by Patricia Fasbender, D.O., all members present voted to meet in closed session, pursuant to Iowa Code Sections 21.5(1)(a) and 21.5(1)(d), to review or discuss records which are required or authorized by state or federal law to be kept confidential and discuss whether to initiate licensee disciplinary investigations or proceedings. Trudy Caviness, Diane Cortese, Patricia Fasbender, D.O., Warren Gall, M.D., Ronald Kolegraff, M.D., Mary Jo Romanco, and Nikhil Wagle, M.D., all voted aye in a roll call vote to approve the motion.

At 8:59 a.m., while still in closed session, all members present voted in favor of a motion by Nikhil Wagle, M.D., seconded by Warren Gall, M.D., to meet in an open session. In open session, the Board took the following actions:

On a motion by Patricia Fasbender, D.O., seconded by Ronald Kolegraff, M.D., all Board members present voted to **leave open file 02-2019-201.**

Mary Jo Romanco joined the meeting at 9:02 a.m.

At 9:03 a.m., Warren Gall, M.D. called the public session to order.

Roll call was taken. All members were present except Joyce Vista-Wayne, M.D.

On a motion by Nikhil Wagle, M.D., seconded by Trudy Caviness, the Board voted to approve the agenda.

Mr. Nebel gave his Executive Director’s Report.

Public present:

Name	Represents
Jill Eggenburger	Amelia Eggenburger - Daughter
Casey Ficek	Iowa Pharmacy Association
Kevin Kruse	Iowa Anesthesiologists
Dr. Anna Marceau	Sherri Marceau – mother
Katie Reece	Iowa Medical Society
Linda Thiesen	University of Iowa

Dr. Anna Marceau spoke on behalf of her mother Sherri Marceau, who was a victim of child molestation by the hand of an Iowa licensed pediatrician who is still practicing today, after being convicted of the crime.

She said she doesn’t understand how the Board has done nothing to protect the children of Iowa from this man and wants to know how they are not using their power to do something and why things are getting lost in semantics.

The Executive Director’s Report was given by Mr. Nebel and can be found on the Board’s website.

On a motion by Mary Jo Romanco, seconded by Patricia Fasbender, D.O., the Board voted to approve the April 15-16, 2021 Board Meeting and May 13, 2021 Teleconference minutes.

An update regarding the following legislation and its movement was given by Kent Nebel:

1. SF 296 - Allows pharmacists to test and treat flu, strep and COVID for patients over the age of six. Allows pharmacists to give patients over 18 COVID and other vaccinations, according to protocols developed by the DPH. Allows a pharmacist to give flu or other shots to patients at least six years old under a public emergency. Allows a pharmacist to have collaborative practice agreement and for a health carrier to pay a pharmacist through that agreement. Includes provisions on COVID shots.
2. HF 764 - A bill for an act relating to disciplinary hearings conducted by professional licensing boards. (Formerly HSB 75.)
3. SF 487 - A bill for an act relating to the operation of state government, including the review of state boards and the regulation of professions and occupations, and including effective date and applicability provisions. (Formerly SSB 1046.)
4. HF 592 - A bill for an act relating to noneconomic damage awards against health care providers. (Formerly HF 517.)

5. HF 763 - A bill for an act relating to emergency care policy and procedure requirements applicable to an ambulatory surgical center. (Formerly HF 115.)
6. HF 431 - A bill for an act relating to the provision of audio-only telehealth or telemedicine by health care professionals. (Formerly HF 88.)

Katie Reece, Iowa Medical Society said that IMS fully supports HF 431 – Audio only telehealth. She said that it removes a barriers for many people. Dr Walgle, Board Secretary said he used audio only telehealth and is in support of this legislation. Mr. Nebel said the Board would discuss what revision may be necessary for revising the Board’s rule.

Kevin Kruse form the Iowa Pharmacy Association asked about the Board’s position regarding SF – 296 Collaborative Practice Agreement for Pharmacists. Mr. Nebel stated that he and the Board of Pharmacy Director, Andrew Funk and himself have been in talks and he looks for the Board of Medicine to revise their rules to reflect the rule.

Legal Director, Joe Fraioli’s Administrative Rules update included the filing of the Administrative Rule - Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions that was preciously adopted by the Board and it is set to published on July 14, 2021.

The Judicial Review below was given by 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 in District Court on the matter on January 17, 2020. This case received a decision on April 26, 2020. We have since appealed and both parties have filed all their briefs. The case has been routed to the Supreme Court and we will have oral arguments sometime this fall or spring of next year.
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.
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. The parties both briefed the issues and an oral argument was held in District Court. The Board’s decision was affirmed. Dr. Yates’ brief is due by June 3rd and then the Board’s brief will be due 30 days after that.

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 parties briefed the issue and had oral arguments. The Board's decision was affirmed and Dr. Doe has filed a notice of appeal. All briefs have been submitted and we are now scheduled for an oral argument in front of the Court of Appeals on June 22nd at 1:30.
5. Lajeunesse v. Board of Medicine Michael LaJeunesse was a complainant whose case was closed by the Board and he is attempting to have the Board's decision judicially reviewed. His writ in District Court, in which he filed an amended petition after the court had already dismissed the matter, has closed. His judicial review – all the briefing is complete and we are scheduled to have oral arguments June 4th. His writ against the District Court has been dismissed. His other appeal is proceeding to the briefing stage.
6. Irland v. Board of Medicine – Mark Irland, M.D. Dr. Irland was issued a confidential order and filed a Motion to Dismiss at the administrative level, which was denied. He filed a judicial review in response and the Board filed a motion to dismiss his judicial review. Oral arguments on the matter were heard on February 3, 2021. The District Court sided with the Board and dismissed the appeal. Dr. Irland filed a notice of appeal. Dr. Irland's brief is due on June 3rd and the Board's response will be due 30 days later.

Interstate Medical Licensure Compact – Updates were given by Mary Jo Romaco and Warren Gall, M.D.

Mary Jo Romanco said that tons of licenses are being issued and that Jaime Dunbar, Board of Medicine Clerk Specialist and the licensure staff have all been very busy.

Warren Gall, M.D., said that the IMLC is being held in person in Minneapolis in September

At 9:31 a.m., on a motion by Mary Jo Romanco, seconded by Nikil Wagle, M.D., the Board voted to adjourn the meeting.