



OPEN MINUTES OCTOBER 21-22, 2021 BOARD MEETING

THURSDAY, OCTOBER 21, 2021:

MEMBERS PRESENT:

Warren Gall, M.D., Chair
Ronald Kolegraff, M.D., Vice-Chair
Nikhil Wagle, M.D., Secretary
Trudy Caviness
Patricia Fasbender, D.O.
had Stadvold, D.O.

MEMBERS ABSENT:

Diane Cortese
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
Amanda Lockwood, Licensing Specialist
Kari Rolls, Administrative Assistant
Anagha Dixit, Assistant Attorney General
Steven Ervin, Information Technology Support

At 11:02 a.m., Warren Gall, M.D., Chair, called the meeting to order.

At 11:03 a.m., on a motion by Nikhil Wagle, M.D., seconded by Chad Stadvold, D.O., 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., Chad Stadsvold, D.O., and Nikhil Wagle, M.D., all voted aye in a roll call vote to approve the motion.

At 12:32 p.m., while still in closed session, all members present voted in favor of a motion by Ronald Kolegraff, 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 Nikhil Wagle, M.D., seconded by Trudy Caviness, all Board members present voted to **affirm** its original decision to **close** file 02-2021-285, **with no formal disciplinary action**.

On a motion by Nikhil Wagle, M.D., seconded by Trudy Caviness, all Board members present voted to **affirm** its original decision to **close** file 02-2021-242, **with no formal disciplinary action**.

On a motion by Nikhil Wagle, M.D., seconded by Trudy Caviness, all Board members present voted to **affirm** its original decision to **close** file 02-2021-088, **with no formal disciplinary action**.

On a motion by Nikhil Wagle, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2015-703, with **no formal action**.

On a motion by Nikhil Wagle, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2015-704, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 03-2020-381, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 03-2018-167, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **leave open** file 02-2017-645.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **leave open** file 02-2014-478.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **leave open** file 02-2021-030.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2015-536, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2020-207, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2020-334, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 03-2020-335, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2020-336, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 03-2020-337, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2020-404, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **leave open** file 02-2021-160.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2021-301, with **no formal action**.

On a motion by Ronald Kolegraff, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2021-302, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2021-218, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2021-102, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2021-103, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2021-104, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **leave open** file 03-2021-292.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 03-2021-235, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 03-2021-236, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **leave open** file 02-2021-255.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2020-230, with **no formal action**.

On a motion by Warren Gall, M.D., seconded by Trudy Caviness, all Board members present voted to **close** file 02-2020-419, with **no formal action**.

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

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

On a motion by **Warren Gall, M.D.**, seconded by Nikhil Wagle, M.D., all Board members present voted to **accept** the Licensure Committee Report and its recommendations.

At 12:42 p.m., Open Session went to recess. The open session resumed on Friday, October 22, 2021, at 8:30 a.m.

FRIDAY, OCTOBER 22, 2021:

MEMBERS PRESENT:

Warren Gall, M.D., Chair
Ronald Kolegraff, M.D., Vice-Chair
Nikhil Wagle, M.D., Secretary
Trudy Caviness
Patricia Fasbender, D.O.
Chad Stadvold, D.O.

MEMBERS ABSENT:

Diane Cortese
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
Dave McGlaughlin, Investigator
Emily Zalasky, Monitoring Coordinator
Annie Hoffman, Licensure Director
Amanda Lockwood, Licensing Specialist
Natalie Lyons, Iowa Physician Health Program Case Manager
Chrissy Greco, Assistant to the Executive Director
Shantel Billington, Office Manager / Financial Manager
Anagha Dixit, Assistant Attorney General
Steven Ervin, Information Technology Support

PUBLIC SESSION:

At 9:00 a.m., Warren Gall, M.D., called the public session to order.

Roll call was taken. Diane Cortese and Joyce Vista-Wayne, M.D. were absent.

On a motion by Ronald Kolegraff, M.D., seconded by Nikhil Wagle, M.D., all members present voted to approve the agenda.

Public present via Zoom:

Name	Represents
Jill Eggenburger	Amelia Eggenburger - Daughter
Jessica Fink	Iowa Osteopathic Medical Association
John Flynn	Attorney for Sherri Miller Marceau
Tony Leys	Des Moines Register
Sherri Miller Marceau	Self
Dennis Tibbens	Iowa Medical Society

Sherry Miller Marceau attended, representing herself. She recapped her concerns with the physician who continues to practice after a conviction of sexually assaulting her as a child. She stated that she has information that the Board previously investigated this man for four years and still gave him a license to practice medicine. She said she wants to know why nothing has transpired yet regarding her complaint. Mr. Nebel reiterated that the Board could not legally comment regarding her concerns.

John Flynn, attorney for Sherri Miller Marceau, stated that there are no statute of limitations regarding disciplinary actions and that there are grounds for discipline in this case. Mr. Nebel reiterated that the Board could not legally comment regarding these concerns.

Mr. Nebel gave his Executive Director Report, which can be found [HERE](#) on the website.

Joseph Fraioli, Legal Director, gave a quick administrative rules update to say the Board is working on proposed amendments to Iowa Code §272C.6. Mr. Nebel stated that he is hoping to bring this to the Board for the December meeting.

Joseph Fraioli, Legal Director, gave a hearing update regarding upcoming hearings that have been scheduled and can be found [HERE](#) on our website.

On a motion by Nikhil Wagle, M.D., seconded by Trudy Caviness, all members present voted to approve the September 9-10, 2021 Board meeting minutes.

Joseph Fraioli, Legal Director, said the Rules Review Committee is currently working to update the Board's Med Spa Rules.

Judicial Review was submitted by 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. The District Court ruled in the licensee's

favor. The case has been heard and submitted to the Supreme Court and we are awaiting a decision.

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. The parties have filed their briefs and we are awaiting routing and a 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. Dr. Doe lost in the Court of Appeals and his application for further review has been denied.

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. He has attempted multiple avenues to have the matter reviewed by a District Court or higher. Most recently, his judicial review of the Board's decision declining to issue a declaratory order was reviewed by the court and the District Court agreed with the Board's ruling. He has appealed this decision.

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. Final briefs have been submitted and we await routing and a decision.

Doe v. Board of Medicine-John Doe, M.D., Dr. Doe filed an emergency temporary injunction to block the Board from filing a statement of charges. The injunction was granted. The Board moved to dismiss the judicial review and dissolve the temporary injunction. The case will be heard before the judge on October 15, 2021.

The Iowa Physician Health Program

Monthly statistics were provided in the materials by Emily Zalasky, IPHP Program Coordinator. Mr. Nebel added that there has been a significant uptick in program participants over the past three months for doctors who are struggling with mental health and substance abuse issues.

On November 17th the Federation of Physician Health Programs will hold its annual meeting, which will be attended by the IPHP staff.

Interstate Medical Licensure Compact Updates

Mr. Nebel spoke about Iowa being one of the leaders within the Compact due to the Board staff being subject matter experts. He asked Dr. Patricia Fasbender if she would be willing to take on the role of a Compact Commissioner, previously held by exited Board member, Mary Jo Romanco. Dr. Fasbender said she was willing to take on the position.

On a motion by Nikhil Wagle, M.D, seconded by Chad Stadvold, D.O., all members present voted to appoint Patricia Fasbender, D.O. as a Commissioner for Iowa on the Interstate Medical Licensure Compact.

Interest in the FSMB Leadership Opportunities was expressed by Nikhil Wagle, M.D.

On a motion by Ronald Kolegraff, M.D., seconded by Patricia Fasbender, D.O., all members present voted to support Dr. Wagle seeking application for the FSMB Nomination Committee.

Tony Leys from the Des Moines Register asked if the Board plans to draft legislation regarding the Supreme Court ruling on Calcaterra v. Board of Medicine-Domenico Calcaterra, M.D.

Joe Fraioli, Legal Director and Kent Nebel, Board Director, both confirmed that the Board will be drafting legislation regarding the Supreme Court ruling.

At 9:38 a.m., all members present voted in favor of a motion by Ronald Kolegraff, M.D., seconded by Nikhil Wagle, M.D., to adjourn the public session.

At 9:39 a.m., all Board members present voted to go into 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., Chad Stadvold, D.O., and Nikhil Wagle, M.D., all voted aye in a roll call vote to approve the motion.

At 10:06 a.m., on a motion by Warren Gall, M.D., seconded by Trudy Caviness, all members present voted to go back into open session.

At 10:07 a.m. on a motion by Trudy Caviness, seconded by Ronald Kolegraff, M.D., all members present voted to adjourn the October Board meeting.