#### **HAWAII MEDICAL BOARD**

Professional and Vocational Licensing Division Department of Commerce and Consumer Affairs State of Hawaii

#### MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes ("HRS").

Date: Thursday, November 10, 2016

<u>Time:</u> 1:00 p.m.

<u>Place:</u> King Kalakaua Conference Room

King Kalakaua Building

335 Merchant Street, 1st Floor

Honolulu, HI 96813

<u>Present:</u> Niraj S. Desai, M.D., Chairperson, Kauai Member

Sharon "Shay" Bintliff, M.D., Vice-Chairperson, Hawaii Member

Gerard K. Akaka, M.D., Oahu Member Maria Chun, Ph.D., Public Member Darren K. Egami, M.D., Maui Member Peter Halford, M.D., Oahu Member Peter Holt, M.D., Oahu Member Palasi Puletasi, Public Member Karen E. Sept, D.O., Oahu Member

Shari J. Wong, Deputy Attorney General ("DAG")

Ahlani K. Quiogue, Executive Officer

Wilma Balon, Secretary

Excused: Jone Geimer-Flanders, D.O., Oahu Member

Guests: Denise Balanay, Esq., Staff Attorney, Regulated Industries Complaints

Office ("RICO")

Jeffrey S. Portnoy, Esq., Attorney for Dennis I. Ayon, M.D.

Dennis I. Ayon, M.D., Respondent

Trisha Nishimoto, Esq., Attorney for Dennis I. Ayon, M.D. David E.J. Bazzo, M.D., Clinical Professor of Family Medicine Director, Fitness for Duty Program UC San Diego PACE Program

It was moved by Chair Desai, seconded by Dr. Bintliff and unanimously

<u>Call to</u> The meeting was called to order at 1:02 p.m., at which time quorum

Order: was established.

Approval of the October 13, 2016

October 13, 2016 carried, to approve the minutes of the October 13, 2016 meeting with the following corrections, and to approve the minutes of the executive session

of October 13, 2016 as circulated.

On page 3, under Wendell C. Danforth, M.D.; MED 2014-103-L, the third paragraph should read:

"The Board received documents from Acumen Longitudinal Treatment Program, which indicated that Dr. Danforth successfully completed the Program."

On page 6, under New Business, the fourth paragraph, second sentence should read:

"Dr. Withy explained that IHS collects data from across the country, which is taken from Kaiser Foundation, CMS data, etc."

On page 7, under New Business, the third paragraph should read:

"Chair Desai referred to Dr. Withy's slide entitled 'Hawaii Physician Supply and Demand Estimates-status quo,' and"

On page 7, under New Business, the seventh paragraph should read:

"[Dr. Withy informed the Board that the physician shortage compared to the U.S. average utilization is 500.] Dr. Withy reiterated that the shortage of physicians in Hawaii is 700. Dr. Withy went on to say that the State lost forty-five physicians, but gained ninety-seven, and that there are currently seventy-two vacant physician positions in the State."

On page 8, under New Business, the seventh paragraph should read:

"Dr. Withy explained that the funds are coming from UHA, The Queen's Health Systems, Aloha Care, Ohana, the State of Hawaii Department of Public Safety, and the State of Hawaii Department of Labor and Industrial Relations."

On page 9, under New Business, the second paragraph, first sentence should read:

"Chair Desai noted that The Dartmouth Atlas of Health Care bases its information on CMS information, which it has found to also reflect findings in the private insurance market."

On page 9, the sixth paragraph, first sentence should read:

"Dr. Withy disagreed with Chair Desai's statement that Hawaii has one of the 'mildest physician shortages in the nation,' and explained that a lot of the information is based on the number of licensees we have, and not necessarily those who provide care." Hawaii Medical Board Minutes of Meeting of November 10, 2016 Page 3

On page 9, the eight paragraph should read:

"Chair Desai expressed his apprehension with the term 'shortage,' and indicated that JABSOM's methodology in determining the 'shortage' is very unique."

Additions/ Revisions to Agenda: None.

Adjudicatory Matters:

Chair Desai called for a recess from the meeting at 1:08 p.m. to discuss and deliberate on the following adjudicatory matters pursuant to Chapter 91, HRS.

a. <u>In the Matter of the License to Practice Medicine of Dennis I.</u> Ayon, M.D.; MED 2010-109-L

### Mr. Puletasi entered the meeting room at 1:11 p.m.

Denise Balanay, Esq., RICO ("Ms. Balanay or Petitioner"), Dennis I. Ayon, M.D. ("Dr. Ayon or Respondent"), and counsel for Dr. Ayon, Jeffrey S. Portnoy, Esq. and Trisha Nishimoto, Esq., were invited into the meeting room at 1:26 p.m.

Chair Desai advised the parties that they would be given ten (10) minutes duration for oral arguments and five (5) minutes for rebuttal.

It was noted that on July 25, 2016, Petitioner filed its Exceptions To The Recommended Order, and on August 10, 2016, Respondent filed his Statement In Support Of The Recommended Order.

Both parties presented oral arguments before the Board.

Chair Desai explained to the guests that they would be excused from the meeting room so that the Board would have an opportunity to deliberate over the matter. Ms. Balanay, Mr. Portnoy, Dr. Ayon, and Ms. Nishimoto were excused from the meeting room at 1:49 p.m.

The guests were invited to return to the meeting room at 2:19 p.m.

It was moved by Chair Desai, seconded by Dr. Halford, with Drs. Sept and Chun opposing the motion, and carried by a majority to accept and adopt the Hearings Officer's Findings of Fact, Conclusions of Law. With respect to the disciplinary sanctions, Chair Desai advised the guests that the Board will issue a Final Order at its next meeting, which will reflect modifications to the Recommended Order with the following conditions:

1. Dr. Ayon's medical license shall be placed on probation for at least five (5) years from the date of the Board's Final Order.

- 2. Dr. Ayon shall enter into a Monitoring Agreement with Pu'ulu Lapa'au, The Hawaii Program for Healthcare Professionals ("Pu'ulu Lapa'au") for at least five (5) years from the date of the Board's Final Order.
- 3. The Monitoring Agreement shall include, but not be limited to, stress and anger management, counseling, assessment, and monthly random substance abuse testing.
- 4. Dr. Ayon shall arrange for quarterly reports to be sent directly from Pu'ulu Lapa'au to the Board.
- 5. Dr. Ayon shall continue to regularly attend and participate in alcohol dependency support group meetings.
- 6. All costs and expenses of the Monitoring Agreement shall be paid for by Dr. Ayon.
- 7. If Dr. Ayon fails to comply with any condition of the Board's Final Order, upon filing of an affidavit from Petitioner attesting to the violation, Dr. Ayon's probation may be terminated and his license may be revoked. In that event, Dr. Ayon shall be required to submit all indicia of licensure as a physician in the State of Hawaii to the Executive Officer of the Board within ten (10) days of notification of termination or revocation. Indicia of licensure includes all certificates and pocket identification cards.

The guests were excused from the meeting room at 2:21 p.m.

b. <u>In the Matter of the License to Practice Medicine of Steven A.</u> Baldwin, M.D.; MED 2016-90-L

At its October 13, 2016 meeting, the Board deferred this matter and requested that Dr. Baldwin obtain a signed letter from the Kentucky Board of Medical Licensure, which states that he complied with the Agreed Order of Fine dated June 26, 2014.

The Board considered a letter dated October 28, 2016, from Jill Lun, Legal Assistant, Kentucky Board of Medical Licensure, which confirms that Dr. Baldwin paid a fine in the amount of \$1,000.00 on June 26, 2014, and was then issued a license to practice medicine in the Commonwealth of Kentucky.

Given this information, it was moved by Dr. Halford, seconded by Dr. Sept, and unanimously carried to inform Dr. Baldwin that he has now complied with the reporting requirement set forth in Paragraph C.1. of the Board's Final Order dated August 11, 2016.

# c. <u>In the Matter of the License to Practice Medicine of Michael J.</u> Oakes, D.O.; MED 2013-12-L

After discussion, it was moved by Dr. Halford, seconded by Dr. Akaka, and unanimously carried to accept and adopt the Hearings Officer's Findings of Fact, Conclusion of Law, and Recommended Order as its Final Order.

# d. <u>In the Matter of the License to Practice Medicine of Linda E.S.</u> Stiles, formerly known as Sasha E. Myers, M.D.; MED 2016-81-L

After discussion, it was moved by Dr. Holt, seconded by Dr. Egami, and unanimously carried to accept the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and the Board's Final Order.

Following the Board's review, deliberation and decision in this matter pursuant to Chapter 91, HRS, Chair Desai announced that the Board reconvene to its regular Chapter 92, HRS, meeting at 2:25 p.m.

# Applications for License/ Certification:

#### a. Ratifications:

(i) List

It was moved by Dr. Sept, seconded by Dr. Akaka, and unanimously carried to ratify the attached lists of individuals for licensure or certification.

It was moved by Dr. Halford, seconded by Dr. Bintliff, and unanimously carried to enter into executive session at 2:27 p.m. pursuant to HRS §92-5(a)(1) to consider and evaluate personal information relating to individuals applying for professional licenses cited in HRS §26-9, and pursuant to HRS §92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

# Applications for License/ Certification:

#### b. Applications:

Barbara A. Blankenship, M.D. Scott Hankinson, M.D. Noelani C.C. Hobbs, M.D. Faiz Hussain, M.D. Shawn G. Larson, M.D. Mark R. Matthews, M.D. Robert R. Pulling, M.D. Michael L. Schindel, M.D. Jason C. Coffman, EMT

It was moved by Dr. Bintliff, seconded by Mr. Puletasi, and unanimously carried to return to the open meeting at 2:52 p.m.

It was moved by Dr. Egami, seconded by Dr. Akaka, and unanimously carried to approve the following applications:

Barbara A. Blankenship, M.D. Scott Hankinson, M.D. Noelani C.C. Hobbs, M.D. Faiz Hussain, M.D. Robert R. Pulling, M.D. Michael L. Schindel, M.D. Jason C. Coffman. EMT

#### Mark R. Matthews, M.D.

After due consideration of the information received, it was moved by Dr. Akaka, seconded by Dr. Holt, and unanimously carried to approve Dr. Matthew's application for medical licensure pending a license verification of his Texas Medical License, License No. 13502.

#### Shawn G. Larson, M.D.

The Board reviewed and considered all of the records and files of Dr. Larson's application and information received from him as well as from other organizations. After due consideration of the information received, it was moved by Dr. Halford, seconded by Chair Desai, and unanimously carried to deny Dr. Larson's application for medical licensure.

The Board based its decision on the following grounds of the HRS and Hawaii Administrative Rules ("HAR"), which find factual support in the records and files of Dr. Larson's application:

HRS §453-8(a)(7): Professional misconduct, hazardous

negligence causing bodily injury to another, or manifest incapacity in the practice of

medicine or surgery;

HRS §453-8(a)(9): Conduct or practice contrary to recognized

standards of ethics of the medical profession as adopted by the Hawaii Medical Association, the American Medical Association, the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic Association;

HRS §453-8(a)(11): Revocation, suspension, or other

disciplinary action by another state or federal agency of a license, certificate, or

medical privilege for reasons as provided in

this section;

HRS § 453-8(a)(15): Submitting to or filing with the board any

notice, statement, or other document required under this chapter, which is false or untrue or contains a material misstatement

or omission of fact;

HRS § 436B-19(8): Failure to maintain a record or history of

competency, trustworthiness, fair dealing,

and financial integrity;

HAR §16-85-107(a)(1): When the applicant has committed any of

the acts for which a license or certificate may be suspended or revoked under sections 453-8 or 463E-6, HRS, or section

16-85-112;

HAR § 16-85-107(a)(2): If the applicant fails to demonstrate that the

applicant possesses a good reputation for honesty, truthfulness, fairness, and financial

integrity; and

HAR §16-85-107(a)(3): If the applicant has had disciplinary action

taken by any jurisdiction, including any

federal or state regulatory body.

Accordingly, the Board considers Dr. Larson's conduct extremely troubling and contrary to the recognized standards of medical ethics as adopted by the American Medical Association ("AMA"). Specifically, the Board believes that Dr. Larson failed to uphold the following AMA Principles of Medical Ethics:

- II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to the appropriate entities;
- IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.

#### **New Business:**

a. Overview of the UC San Diego, Physician Assessment and Clinical Education (PACE) Program, Presented by: David E.J. Bazzo, M.D., Clinical Professor of Family Medicine, Director, Fitness for Duty Program, UC San Diego PACE Program

Chair Desai welcomed David E.J. Bazzo, M.D., to the meeting room at 2:54 p.m.

#### Dr. Bintliff left the meeting room at 2:56 p.m.

Dr. Bazzo presented a PowerPoint overview of the UC San Diego, Physician Assessment and Clinical Education (PACE) Program.

#### Dr. Bazzo informed members that PACE:

- Was founded in 1996;
- Is a program of the UC San Diego School of Medicine;
- Is entirely self-funded (receives no outside funding through grants or private donations);
- Provides the following services:
  - Competency assessment
  - Fitness for duty evaluation
  - CME
  - Clinical monitoring in practice

Dr. Bazzo stated that PACE receives referrals to its programs mainly from state medical boards and hospitals. He went on to say that in most instances, physicians are referred to PACE to determine whether they are competent to practice. A general overview of the PACE Competency Assessment was provided, including the following information:

- Experience: over 1700 evaluations to date
- Purpose: to determine whether: a physician is competent and safe to practice; and what, if any, additional remediation and/or oversight is necessary for safe practice
- Length: 3-5 days (3 days is considered unusual. Most assessments are typically 5 days)
- Cost: varies (averages \$15,000 \$20,000)
- Time to complete: (application process to report) 3 months

Dr. Halford asked what the recidivism rate is once a physician completes the program.

Dr. Bazzo stated that PACE does not typically have contact with a physician once they have completed the program. However, out of the 1,700 cases, only 10 doctors were required to come back.

Dr. Bazzo informed members that there are four categories of performance:

- Category 1: Clear Pass 39% of participants
- Category 2: Pass with minor recommendations 29% of participants

- Category 3: Pass with major recommendations 21% of participants
- Category 4: Fail (unsafe to practice) 11% of participants

Dr. Bazzo stated that 100% of its reports, and the decisions made from those reports have withstood legal challenges.

Dr. Holt asked whether a PACE representative was used as an expert witness and if the legal challenges extended beyond California.

Dr. Bazzo answered in the affirmative to both questions.

Dr. Egami asked who PACE uses at its evaluators.

Dr. Bazzo provided that a majority of the evaluators are clinical faculty of UC San Diego, with the exception of a non-faculty physicians who are evaluating physicians for cosmetic surgery procedures, etc.

Chair Desai asked if PACE has analyzed or come up with specific variables to determine whether a physician succeeds or fails, and the risk of someone being unsafe.

Dr. Bazzo indicated that there are no specific variables to determine whether one is successful or not, or even unsafe.

Dr. Bazzo explained that each physician being evaluated must perform a history and physical as part of the assessment. Additionally, the evaluating physician will consider the physician's appearance, their hygiene, whether they are wearing clean clothes or appear disheveled, etc.

Discussion followed. There being no further questions from members, Chair Desai thanked Dr. Bazzo for presenting information on the PACE Program, and excused him from the meeting room at 3:27 p.m.

#### Correspondence:

a. <u>Letter dated October 20, 2016, from Lee Ann Teshima, Executive Officer, Hawaii Board of Nursing, Requesting Clarification of Hawaii Revised Statutes §453-16</u>

The Board considered Ms. Teshima's letter dated October 20, 2016, regarding HRS § 453-16. In particular, the Board was asked whether HRS § 453-16 prohibits other practitioners, specifically, advanced practice registered nurses with prescriptive authority from prescribing medical/medication abortion.

HRS § 453-16, states that:

No abortion shall be performed in this State unless:

- (1) The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
- (2) The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof, or in a clinic or physician's or osteopathic physician's office.
- (b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.
- (c) The State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female
- (d) Any person who knowingly violates subsection (a) shall be fined not more than \$1,000 or imprisoned not more than five years, or both.
- (e) Nothing in this section shall require any hospital or any person to participate in an abortion nor shall any hospital or any person be liable for a refusal.

Discussion followed. After due consideration of Ms. Teshima's inquiry as well as reviewing the legislative intent of 1970, the Board informally opined that advanced practice registered nurses with prescriptive authority may prescribe medical/medication abortions. Prescribing medication for an abortion does not fall within the meaning of abortion as set forth in HRS § 453-16(b).

Lastly, in accordance with HAR § 16-201-90, the above interpretation is for informational and explanatory purposes only. It is not an official opinion or decision, and therefore is not to be viewed as binding on the Board or the Department of Commerce and Consumer Affairs.

# b. <u>Email Inquiry dated November 1, 2016, from Nathaniel M.</u> Lacktman, Regarding Telehealth

The Board reviewed and discussed an email from Mr. Lacktman, dated November 1, 2016, regarding telehealth. In particular, Mr. Lacktman asked the Board to confirm whether a Hawaii-licensed physician may use telehealth for the purpose of establishing a physician-patient relationship, provided the treatment meets the applicable standard of care pursuant to the revisions made to HRS § 453-1.3 (S.B. 2395 / Act 226, SLH 2016).

Additionally, Mr. Lacktman inquired whether a Hawaii-licensed physician may use telehealth for the purposes of establishing a physician-patient relationship without the requirement of an in-person exam, provided that the treatment meets the applicable standard of care.

Members referred to Act 226, specifically subsections (e) and (f), which states:

- (e) A physician shall not use telehealth to establish a physicianpatient relationship with a patient in this State without a license to practice medicine in Hawaii.
- (f) A physician-patient relationship may be established via telehealth if the patient is referred to the telehealth provider by another health care provider who has conducted an in-person consultation and has provided all pertinent patient information to the telehealth provider. Once a provider-patient relationship is established, a patient or physician licensed in this State may use telehealth for any purpose, including consultation with a medical provider licensed in another state, authorized by this section or as otherwise provided by law.

In order to explain and provide more clarity to this matter, Chair Desai presented the Board with the following scenario involving: a Hawaii-patient (Jane); Hawaii-licensed physician (Dr. John); and a non-Hawaii-licensed physician (Dr. Bob).

With regard to subsection (f), Chair Desai stated that this section provides a mechanism for: Dr. John to establish an in-person physician patient-relationship with Jane; Dr. John to refer Jane to Dr. Bob; and Dr. Bob to provide indefinite care to Jane without ever obtaining a Hawaii medical license. The referral made between Dr. John and Dr. Bob lasts indefinitely. Once the referral is made, Jane may contact Dr. Bob independent of Dr. John, to receive care via telehealth.

Executive Officer Quiogue referred to the language in subsection (e), and asked who that section pertains to, is it Dr. John, Dr. Bob, or both Dr. John and Dr. Bob.

DAG Wong stated that subsection (e) appears to apply to Dr. John, the Hawaii-licensed physician.

Chair Desai stated again that the new language in subsection (f) appears to create a mechanism for Jane to receive care from Dr. Bob via telehealth indefinitely, once Dr. John refers Jane to Dr. Bob. He went on to say that this new language fails to provide some ability for the Board to discipline, in the case of patient harm, Dr. Bob or any non-Hawaii-licensed physician.

Members suggested that this matter be deferred for further deliberation and discussion until the December 8, 2016 meeting.

# Advisory Committees:

- a. Physician Assistants
- b. Emergency Medical Service Personnel
- c. Podiatrists

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Report: None.

# Executive Officer's

Report:

Executive Officer Quiogue announced that she attended the Medical Marijuana Legislative Oversight Working Group ("Working Group") meeting on November 9, 2016. She informed members that the Working Group is Co-Chaired by Senator Rosalyn Baker and Representative Della Au Bellati.

The Working Group was established through Act 230, Session Laws of Hawaii 2016. The purpose of the Working Group is to develop and recommend legislation to improve the medical marijuana dispensary system in the State to ensure safe and legal access to medical marijuana for qualifying patients.

Executive Officer Quiogue informed members that she will be attending the next Working Group meeting scheduled for December 14, 2016, at 1:00 p.m.

Next Meeting: Thursday, December 8, 2016

King Kalakaua Conference Room, First Floor

335 Merchant Street Honolulu, HI 96813

Adjournment: It was moved by Dr. Halford, seconded by Dr. Egami, and unanimously carried to

adjourn the meeting at 3:55 p.m.

Reviewed and approved by: Taken and recorded by:

/s/Ahlani K. Quiogue /s/Wilma Balon

(Ms.) Ahlani K. Quiogue Wilma Balon Executive Officer Secretary

AKQ:wb 11/29/16

(X)	Minutes approved as is.	
( )	Minutes approved with changes; see minutes of	

# **HAWAII MEDICAL BOARD (11/10/2016-RATIFICATION LIST)**

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# 11/10/2016-RATIFICATION LIST PAGE 2

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DOS 1768 PETER R <PRZEKOP< JR<br/>DOS 1769 ALLISON A <PRZEKOP<<br/>DOS 1770 ANTHONY H <CROFF<br/>DOS 1771 MARK I <CROSBY<br/>DOS 1772 JASON MATTHEW <CAGE<

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MDR 7192 KASSANDRA K <MCMILLEN<br/>
MDR 7193 PETER R <MOVILLA<br/>
MDR 7194 NICHOLAS M <FURLANI<br/>
MDR 7195 JAMES <FIDROCKI<br/>
MDR 7196 DAVID C <HARRIS<br/>
MDR 7197 MICHAEL P <DREIS<br/>
MDR 7198 WESLEY N <GASCHLER<

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### DOSR 389 ANNAGRETA B < DAVIS <

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EMTP 2123 CHRISTOPHER G <BRISTOL<
EMTP 2124 CHRISTINE O <PARHAM<
EMTP 2125 KEITH A <MAYBERRY<
EMTP 2126 SUZANNE L <HARMON<
EMTP 2127 JEFFREY <FAUX<
EMTP 2128 JEFFREY A <SMARDO<
EMTP 2129 KYLE T <DAS<
EMTP 2130 BULLETT K <BOYLES<

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EMTB 2767 PAUL H <UMEMOTO <
EMTB 2768 AARON J <MARZAN <
EMTB 2769 NATALIE A <BELLINI <
EMTB 2770 KENDAL J <CHANDLER <