

WEST VIRGINIA BOARD OF MEDICINE
Executive/Management Committee Minutes
November 3, 2024

The West Virginia Board of Medicine’s Executive/Management Committee met at 10:30 am on November 3, 2024 at the Board Office.

The following committee members attended the meeting:

Jonathan P. Lilly, MD, Executive/Management Committee Chair
Angela A. Mayfield
Ashish P. Sheth, MD
Victoria L. Takubo, PA-C

The following committee member did not attend the meeting:

Matthew Q. Christiansen, MD, MPH

The following staff members attended the meeting:

Mark A. Spangler
Jamie S. Alley, Esq.
Evelyn R. Bush
Greg S. Foster, Esq.
Jamie C. Frame

With a quorum of members present, Dr. Lilly called the meeting to order, and attendance was documented by Ms. Frame.

**CALL TO
ORDER**

Prior to today’s meeting, a copy of the draft September 8, 2024 meeting minutes were made available for members to review. Ms. Mayfield moved that a spelling error be corrected, and that the September 8, 2024 meeting minutes be approved as corrected. Ms. Takbuo seconded the motion, and the motion carried without opposition.

**APPROVAL
OF MINUTES**

Prior to today’s meeting, a copy of the fiscal reports and purchasing card transactions for the months of August and September 2024 were made available for members to review. Mr. Spangler provided an overview of the Board’s financial status and reported that the Board continues to maintain a good financial position. Dr. Sheth moved that the August and September 2024 fiscal reports and purchasing card transactions be approved. Ms. Takubo seconded the motion, and the motion carried without opposition.

At the September 8, 2024 meeting, committee members inquired whether electronic bank transfer could be accepted by the Board as a method of payment. Mr. Spangler reported that Ms. Bush will be attending the West Virginia State Treasury Banking Conference, which will be held on November 12 -14, 2024. Ms. Bush will provide an update related to electronic bank transfer as a method of payment at the January 12, 2025 meeting.

Mr. Spangler reported that the West Virginia Treasurer's Office applies a 2.25% convenience fee to all payments made to the Board via credit card transaction. Since 2016, the Board has elected to absorb the convenience fee rather than pass the fee on to credential holders. Dr. Sheth moved that the Committee recommend that the Board continue to absorb the 2.25% convenience fee that is applied to credit card transactions, so long as the convenience fee does not exceed 3%. Ms. Takubo seconded the motion, and the motion carried without opposition. If the fee increases in the future to exceed 3%, the Committee will reconsider absorption of the fee.

Prior to today's meeting, a draft guidance document with preliminary recommendations, which was drafted by the Advisory Commission on Additional Licensing Models (a group formed by the Federation of State Medical Boards (FSMB), the Accreditation Council for Graduate Medical Education (ACGME), and Intealth, was made available for members to review. Mr. Spangler reported that the draft guidance provides a survey current practices across the country regarding alternative licensure pathways for international medical graduates who are seeking to enter the US physician workforce without involvement in ACGME accredited training and a set of recommendations for jurisdictions seeking to develop alternate pathways for this cohort of international physicians. The Advisory Commission is seeking comments from interested stakeholders and members of the public. Dr. Sheth moved that the Committee direct Board staff to submit a written comment on behalf of the Board which encourages the inclusion of the best practices and rigorous standards for this license type. The comment will further opine that the standards should not require employment as a prerequisite to licensure, and encourage, as a substitute, that license recipients complete supervised practice in an institutional setting for a set minimum period of time. Ms. Takubo seconded the motion, and the motion carried without opposition.

Prior to today's meeting, an inquiry which relates to laser hair removal and seeks clarification regarding the Board's *Public Policy Statement on Surgery Using Laser, Pulsed Light, Radiofrequency Devices, and Other Techniques* was made available for members to review. Mr. Spangler reported that the following three inquiries were made:

"The guidance states 'Physicians may also delegate the performance of nonablative treatments to nonphysician health practitioners (defined as registered nurses, cosmetologists, aestheticians, and medical assistants or other qualified personnel).' I was wondering if you could provide insights on what type of licensees would fall under the term "other qualified personnel."

"For the purposes of laser hair removal, could you please provide the definition of 'direct supervision' by physicians (e.g., if there is an on-site requirement, or can the physician be available remotely)."

"For the 'initial review' that must be conducted by a physician before a non-physician can perform laser hair removal, must this initial review be conducted in person, or can it be conducted via telehealth?"

After robust discussion, Ms. Takubo moved that the Committee direct Board staff to respond and provide that: (1) the term "other qualified personnel" is undefined, which permits the physician to delegate nonablative treatments to nonphysician health providers who, based upon their education, training and experience, are qualified to safely perform the procedure/treatment; (2) direct supervision requires that the supervising physician be onsite and immediately available to furnish assistance and/or directions to the supervised individual; and (3) the initial review by the physician must conform to the appropriate standard of care; an in-person encounter, or at a minimum a video evaluation, should be considered the default standard of care, unless the physician determines otherwise and documents such determination in the patient's medical record. Ms. Mayfield seconded the motion, and the motion carried without opposition.

Prior to today's meeting an inquiry which relates to whether an advanced practice registered nurse can use the title "Medical Director" was made available for members to review. Mr. Spangler reported that the term "Medical Director" is not defined in the West Virginia Medical Practice Act or any of the Board's rules; however, it is defined elsewhere in code, for specific circumstances, to refer to physicians. The Committee engaged in an expansive discussion of this issue which recognized historical norms and acknowledged the current practice landscape. Thereafter, Ms. Takubo moved that the Committee direct Board staff to respond and provide that: (1) traditionally the term "Medical Director" refers to physicians; (2) the Board believes that members of the public generally understand the term to refer to physicians; (3) that "Medical Director" is not defined in the Board's statute or rules, however, it is defined elsewhere in state code, for specific circumstances, to refer to physicians; and (4) encourage the individual to contact the West Virginia Office of Health Facility Licensure and Certification to see if they have guidance for the use of the term "Medical Director". Ms. Mayfield seconded the motion, and the motion carried without opposition.

Prior to today's meeting an anonymous report that was submitted to the West Virginia Board of Medical Imaging & Radiation Therapy Board of Technologists, for which the Board of Medicine was copied, was made available for members to review. Mr. Spangler reported that the correspondence expresses concern about "the potentially dangerous status of radiology services at Charleston Area Medical Center (CAMC)", particularly at CAMC outpatient imaging centers in South Ridge and Kanawha City, West Virginia. The primary concern identified in the correspondence is an alleged lack of on-site physician supervision at the identified outpatient imaging centers operated by CAMC, particularly for patients who are administered IV contrast agents by radiologic technologists without a physician on site. The correspondence also raises concerns regarding whether CAMC's oncology and breast imaging accreditation is valid. Ms. Mayfield moved that the Committee direct Board staff to communicate to the Medical Imaging & Radiation Therapy Board of Technologists that the scope of practice limitations set forth in W. Va. Code § 30-23-10 include "administering contrast media after consultation with, and under the supervision of, a physician who is immediately and physically available" and request to be advised if information concerning insufficient collaboration by a Board of Medicine licensee is discovered. Ms. Mayfield further moved that the West Virginia Department of Health and Counsel for CAMC

be copied on the Board's correspondence to the Medical Imaging & Radiation Therapy Board of Technologists. Ms. Takubo seconded the motion, and the motion carried without opposition.

Prior to today's meeting correspondence related to the proposed name of a limited liability company (LLC) was made available for members to review. Mr. Spangler reported that an individual holding a Doctor of Philosophy Degree (PhD) is seeking to open an LLC named Dr Rick, LLC. The business purpose is to offer education and consulting services related to artificial intelligence (AI). The West Virginia Secretary of State's Office advised the individual that prior to processing the application that was submitted to the Secretary of State's Office, the company would need either a Letter of Authorization from the Board of Medicine or correspondence from the Board indicating that the Board does not have concerns with the company using the business name Dr Rick LLC. Mr. Spangler further reported that since the sole member of the company is not a Board of Medicine licensee, he is not eligible to receive a Letter of Authorization from the Board. The Committee concluded that the use of the title "Dr" in the proposed business name, without additional descriptive information, may lead the public to believe that the owner of the business is a medical professional who is practicing medicine and surgery or performing healthcare acts through the business, including healthcare acts which relate to or incorporate the use of AI. In an effort to clearly articulate to members of the public the services being provided through the company and the type of doctor providing the services, Ms. Mayfield moved that the Committee direct Board staff to advise the individual that the Committee has no concerns with the use of the business name Dr Rick PhD AI Expert, LLC. Ms. Takubo seconded the motion, and the motion carried without opposition.

Prior to today's meeting correspondence related to the proposed name of a medical corporation was made available for members to review. Mr. Spangler reported that a corporation with the name Informed Medical Decisions, Inc. DBA InformedDNA is seeking to foreign qualify to do business in West Virginia. The shareholders of the corporation are genetic counselors, and the business purpose is to perform genetic testing utilization management. The West Virginia Secretary of State's Office advised the corporation that prior to processing the application that was submitted to the Secretary of State's Office, the corporation would need either a Letter of Authorization from the Board of Medicine or correspondence from the Board indicating that the Board does not have concerns with the corporation using the business name Informed Medical

Decisions, Inc. DBA InformedDNA. Mr. Spangler further reported that since the corporation shareholders are not Board of Medicine licensees, that the corporation is not eligible to receive a Letter of Authorization from the Board. Ms. Takubo moved that the Committee direct Board staff to advise the corporation that the Committee does not have concerns with the use of the business name Informed Medical Decisions, Inc. DBA InformedDNA in West Virginia. Ms. Mayfield seconded the motion, and the motion carried without opposition.

Mr. Spangler reported that it is customary for the Board to delegate authority to the Legislative Committee to act on behalf of the Board in relation to legislative matters prior to and during the legislative session. As the Legislative Committee did not meet this weekend, Ms. Mayfield moved that the Executive/Management Committee recommend that the Board delegate authority to the Legislative Committee to act on behalf of the Board with regard to 2025 legislative matters. Dr. Sheth seconded the motion, and the motion carried without opposition.

Mr. Spangler reminded members that at the July 15, 2024 Board meeting, the Committee recommended, and the Board approved, sponsoring Mujtuba Ali Hassan Baksh, MD to sit for Step 3 of the United States Medical Licensing Exam (USMLE) for a final time. Following the July Board meeting, Board staff submitted a letter of sponsorship to the USMLE. The Board was recently notified that the USMLE will allow Dr. Baksh to register for one final attempt at Step 3 of the USMLE.

Mr. Spangler reported that in March 2024, the Board approved the issuance of an invoice in the matter of *West Virginia Board of Medicine, Petitioner, v. David Nathaniel Smith, MD, Respondent*, which assessed Dr. Smith the costs and expenses of the proceeding. Dr. Smith did not pay the costs and expenses of the hearing as required by the Board's Final Decision and Order within the allotted time. The Board sought assistance from the West Virginia Attorney General's office in collecting payment; however, to date, all attempts to collect payment have thus far been unsuccessful. The Attorney General's Office has advised that further collection activity would exceed the payment amount, and therefore does not recommend pursuing further collection. Ms. Mayfield moved that the Committee recommend that the Board not pursue further collection of the costs and expenses of the proceeding at this time; however, if Dr. Smith pursues relicensure in

the future, this matter will be reevaluation. Ms. Takubo seconded the motion, and the motion carried without opposition.

Mr. Spangler asked Ms. Alley to provide an update regarding the Physician Assistant Licensure Compact. Ms. Alley reported that she attended the inaugural meeting of the Physician Assistant Licensure Compact Commission, which was held on September 24-25, 2024 in Washington, D.C. During the meeting, the Commission elected officers, modified proposed bylaws and approved a rule on rulemaking. West Virginia has representation on each of the current working committees, including the Executive Committee, Rules Committee, Finance Committee and Communication Committee.

Mr. Spangler reported that Interstate Podiatric Medical Licensure Compact (IPMLC) proposed legislation is nearing completion; after which, it will be ready for introduction and consideration by individual states. The IPMLC, which is based on the Interstate Medical Licensure Compact, will streamline the process for obtaining podiatric licensure in multiple states.

Mr. Spangler reported that Board staff recently met with representatives from the West Virginia Purchasing Division to discuss the process for securing a new database and website. The Purchasing Division recommended that the Board pursue a Request for Proposal (RFP) rather than a Request for Quotation (RFQ). The RFP process is beneficial for agencies who are seeking a customized, solution-based approach, and allows for a contract to be awarded on factors other than best price. Board staff will continue working with the Purchasing Division throughout the RFP process.

Mr. Spangler reported that Ms. Emilie Lloyd, who previously served as the Administrative Office Assistant/Receptionist, has transferred to the Licensure Analyst position that was vacated by former staff member, Amal Khan. Additionally, Ms. Christina McNealy, who was hired to serve as the Administrative Office Assistant/Receptionist, began her employment with the Board on September 23, 2024. Board staff look forward to working with Ms. Lloyd and Ms. McNealy.

There being no further business to consider, Dr. Sheth moved that the meeting adjourn.
Ms. Takubo seconded the motion, and the motion carried without opposition.



Jonathan P. Lilly, MD
Executive/Management Committee Chair