BOARD MEETING MINUTES

November 20-22, 2024

3127 Smoketree Court
Raleigh, North Carolina

General Session Minutes of the North Carolina Medical Board (NCMB) Meeting held November 20-22, 2024.

The November 20-22, 2024, meeting of the North Carolina Medical Board was held in person at 3127 Smoketree Court, Raleigh, NC 27604 and certain closed portions of the meeting were conducted virtually, including licensing and investigative interviews. Devdutta G. Sangvai, MD, JD, MBA, President, called the meeting to order. Board members in attendance were Anuradha Rao-Patel, MD, President-Elect; Robert L. Rich, Jr., MD, Secretary/Treasurer; Earic R. Bonner, MD, MBA; Candace A. Bradley, DO, MBA; J. Nelson Dollar, MA; W. Howard Hall, MD; Vickie A. Harry; Sharona Y. Johnson, PhD, FNP-BC; Joshua D. Malcolm, JD; Mark A. Newell, MD, MMM; Miguel A. Pineiro, PA-C. Member absent: Anthony R. Plunkett, MD.

PRESIDENTIAL REMARKS

Dr. Devdutta G. Sangvai reminded the Board members of their duty to avoid conflicts of interest with respect to any matters coming before the Board as required by the State Government Ethics Act.

INSTILLATION CEREMONY AND NEW OFFICER OATHS

Dr. Sangvai presented Dr. Khandelwal, Immediate Past President with a presidential resolution and gavel plaque for her service as President of the North Carolina Medical Board for 2023 - 2024.

Dr. Khandelwal administered the Oath of Office to Dr. Sangvai as the 126th NCMB President.

Dr. Sangvai administered the Oath of Office for President-Elect to Dr. Anuradha Rao-Patel, and for Secretary/Treasurer to Dr. Robert L. Rich. He also administered the New Board Member Oath to Dr. Earic R. Bonner, MD, MBA and Ms. Vickie A. Harry.

ANNOUNCEMENTS and UPDATES

Dr. Sangvai recognized new staff as they were introduced by their perspective manager. He also recognized staff with milestone anniversaries.

PRESENTATION(S)

Brian Blankenship, Board Chief Legal Officer, introduced Mara White, LMSW, Senior Manager of Consulting with Rape, Abuse & Incest National Network, who gave a presentation on Best Practices for Addressing Physician Sexual Misconduct.

NORTH CAROLINA PHYSICIAN HEALTH PROGRAM REPORTS (NCPHP)

Dr. Hall gave the NCPHP Board of Directors' report.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-

16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney/client privilege.

Dr. Joseph Jordan gave the NCPHP Compliance Committee report. The specifics of this report are not included because the information contained in the report is confidential and non-public.

A motion passed to return to open session.

INVESTIGATIVE MATTER

A motion was made, seconded and passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16 and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney/client privilege and/or to take disciplinary action against persons holding licenses or certificates while meeting with respect to individual holders of such licenses or certificates.

Deputy General Counsel Marcus Jimison presented a confidential investigative matter to the full Board. Mr. Jimison and Independent Counsel Shannon Joseph provided legal advice. The Board discussed the matter and considered the advice of counsel.

A motion was made, seconded, and passed to return to open session.

NCMB ATTORNEYS' REPORT

Mr. Brian Blankenship, Chief Legal Officer, gave the Attorneys' Report on Friday, November 22, 2024.

Mr. Blankenship updated the Board on the schedule of the upcoming hearings and hearing assignments. Mr. Blankenship also provided information within the attorney-client privilege regarding work product occurring since the last Attorneys' Report was presented.

A motion passed to close the session pursuant to N.C. Gen Stat. §143-318.11(a) to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and/or 90-21.22 of the North Carolina General Statutes and not considered public records within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney/client privilege.

Mr. Blankenship provided information within the attorney-client privilege regarding outside litigation matters.

A motion was passed to return to open session.

The Attorneys' Report was concluded.

The Board accepted the report as information.

NCMB COMMITTEE REPORTS

Executive Committee Report

Members present were: Devdutta G. Sangvai, MD, JD, MBA, Chair; Sharona Y Johnson, PhD, FNP-BC Anu Rao-Patel, MD; and Robert L. Rich, MD

Financial Update

a. Year-To-Date Financials

The Committee reviewed the following financial reports through September 30, 2024: Balance Sheet, Profit & Loss versus Budget, and the Profit & Loss Comparison with the Board Controller.

Committee Recommendation: Accept the financial information as reported.

Board Action: Accept the Committee recommendation. Accept the financial information as reported.

b. Investment Account Update

The Committee reviewed the investment statements for September and October 2024 with the Board Controller.

Committee Recommendation: Accept the investment statements as reported.

Board Action: Accept the Committee recommendation. Accept the investment statements as reported.

c. Semi-annual Report from Investment Advisor

Mr. Len Lopez, Fifth Third Bank, provided an update on the stock and bond markets and the Board's investment account.

Committee Recommendation: Accept the report as information.

Board Action: Accept the Committee recommendation. Accept the report as information.

New Business:

a. Letter of support for FSMB Board of Directors

A requirement for candidates intending to run for the FSMB Board of Directors is a nomination from the candidate's Member Medical Board. Dr. Christine Khandelwal would like to run for

election to the FSMB Board of Directors in 2025 and is asking the North Carolina Medical Board to submit the letter of nomination.

Committee Recommendation: Staff to prepare a letter of nomination for Dr. Christine Khandelwal for signature by the Board President.

Board Action: Accept the Committee recommendation. Staff to prepare a letter of nomination for Dr. Christine Khandelwal for signature by the Board President.

b. 2025 Board Retreat Proposal

The Executive Committee needs to select dates for the 2025 NCMB Retreat. Possible dates include August 15-17.

Committee members will need to be prepared to discuss goals for the retreat and potential topics, and also decide a general region in the state where the retreat will be held. In 2022, the retreat was held in the western part of the state and in 2023, the retreat was at the coast. As many of you know, we went back to western NC for 2024.

Staff, working with the President, will bring back ideas for retreat topics as well as location options to discuss at a future meeting. A survey will be sent to gather some alternate dates, possible topics, and locations.

Committee Recommendation: Direct staff to survey Board members and otherwise gather information on alternate dates, possible topics, and locations for a Board Retreat in the eastern portion of North Carolina in August 2025.

Board Action: Accept the Committee recommendation. Direct staff to survey Board members and otherwise gather information on alternate dates, possible topics, and locations for a Board Retreat in the eastern portion of North Carolina in August 2025.

c. Legislative Update

The Committee reviewed the legislative update. There were no new bills for discussion. The Committee also discussed potential updates to the Medical Practice Act, including increases in fees and technical changes.

Committee Recommendation: Accept the legislative update as information.

Board Action: Accept the Committee recommendation. Accept the legislative update as information

Pursuant to the NCMB Bylaws, the Executive Committee must nominate to the Board the name of a member to fill the vacancy left by Dr. Hill-Price. The new role will be effective

immediately and will serve on the Executive Committee as an at-large member for the remainder of the year (through October 31, 2025).

A motion passed to go into closed session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.

As per Article IV, Section 2 of the NCMB Bylaws, the Executive Committee retired to discuss the candidates for At-Large Executive Committee member.

A motion passed to return to open session.

e. Announcement of Nominees

The Executive Committee returned in open session to announce Mark Newell, MD as their nominee for the open member-at-large position on the Committee.

Committee Recommendation: The Committee nominates Mark Newell, MD for the single vacant member-at-large seat on the Executive Committee. The full Board will vote on the nomination on November 22, 2024.
Board Action: Accept the Committee recommendation. The Committee nominates Mark Newell, MD for the single vacant member-at-large seat on the Executive Committee. The full Board will vote on the nomination on November 22, 2024.

Policy Committee Report

Members present were: Mark A. Newell, MD, MMM, Chair; J. Nelson Dollar, MA; Sharona Y. Johnson, PhD, FNP-BC; Miguel A. Pineiro, PA-C, MHPE; and Anuradha Rao-Patel, MD. Members absent: Anthony R. Plunkett, MD

Old Business:

a. 3.2.1: medical records – Documentation, Electronic Health Records, Access, and Retention (Appendix A)

The Committee reviewed the revisions made prior to the meeting and requested a few additional changes. Staff was directed to adopt the revisions, make the additional changes, and publish the position statement.

Committee recommendation: Adopt and publish the revised position statement.

Board Action: Accept Committee recommendation. Adopt and publish the revised position statement.

New Business:

a. 2.1.1: The Licensee-Patient Relationship

   The Committee reviewed the current position statement and requested that staff make a few grammatical changes, with no substantive changes.

   Committee recommendation: Incorporate grammatical changes to current position statement.

   Board Action: Accept Committee recommendation. Incorporate grammatical changes to current position statement.

b. 2.1.4: Availability of Licensees to Their Patients

   The Committee reviewed the current position statement and had no requested edits.

   Committee recommendation: Accept as Information.

   Board Action: Accept Committee recommendation. Accept as Information

c. 2.2.3: Self-Treatment and Treatment of Family Members

   The Committee reviewed the current position statement and requested that staff work with Committee members to revise the language related to self-treatment and self-prescribing. Staff to bring back revisions for further discussion at a later meeting, with an anticipated date of January 2025.

   Committee recommendation: Revise current position statement and bring back for further discussion at a later meeting, with an anticipated date of January 2025.

   Board Action: Accept Committee recommendation. Revise current position statement and bring back for further discussion at a later meeting, with an anticipated date of January 2025.

d. Position Statement Review Chart

   Due to time constraints, the Committee was unable to review and identify position statements for review and discussion at the next available meeting.

   Committee recommendation: Accept as Information.

   Board Action: Accept Committee recommendation. Accept as Information.

Licensing Committee Report

Members present were: Anuradha Rao-Patel, MD, Chair; Candace A. Bradley, DO, MBA; Earic R. Bonner, MD, MBA; Vickie A. Harry, Miguel A. Pineiro, PA-C, MHPE

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The License Committee reviewed 6 cases. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

a. Licensing Dashboard Update

I. The Committee received a presentation on the data in the Licensing Dashboard. The Chief Administrative and Communications Officer presented data on seven metrics developed for the Committee. The data presented was broken down into three areas: current status, workload, and licenses issued.

Current staffing: two new credentialing coordinators have been hired, and one position is open for recruiting. A Credentialing Assistant was hired, and the process for filling the Chief of Licensing role is nearing completion. There are currently 12 staff and one open position in the department.

Licenses issued will likely exceed last year's record of 6,446. About 12% of all license applications are complex and require additional rounds of review. The time to license is an average of 104 days for the reporting period. While this is below the stated timeframe of 4 – 5 months, there was a discussion of opportunities to work on reducing this timeframe in the future. This will require an addition of work force and also changes to the current requirements for licensure.

This data is presented to the Committee three times per year – March, July, and November. After discussion, the Committee accepted the report as information. The next report of the licensing dashboard will occur in March 2025.

License Committee Recommendation: Accept as Information.

Board action: Accept Committee recommendation. Accept as information.

b. Update on Allowable Misdemeanors

I. The Committee received a recommendation to update the list of allowable misdemeanors and to modify the timeframe for past misdemeanors for which the staff requires an applicant

to provide documentation. The goal of this modification is to reduce additional review of license applications due to minor misdemeanors that are remote in time and/or do not have a direct impact on the ability of the applicant to practice safely. The list of allowable misdemeanors was previously established in 2014 and modified in 2015. The primary changes focus on the following:

- Increase the number of allowable misdemeanor charges from one charge to two incidents.
- Increase the timeframe from five years to seven years.
- Remove the limitation that the incident had to occur before professional school.
- Additional misdemeanor charges related to possession, moving violations, combining misdemeanor charges, etc.

License Committee Recommendation: Approve the changes to the allowable misdemeanor list.

Board action: Accept Committee recommendation. Approve the changes to the allowable misdemeanor list.

c. Update on the Limited Emergency Licenses Issued to Date

I. The Committee received information on the Board's work to issue Limited Emergency Licenses in response to the devastating impact of Hurricane Helene. NCMB staff led an inter-departmental effort to get a Limited Emergency License application developed and connected in the software system so that licenses could be issued – manually at first, and later through the usual licensing process.

To date, the Board has issued nearly 200 Limited Emergency Licenses.

Committee Recommendation: Accept as information.

Board action: Accept Committee recommendation. Accept as information.

License Interview Report

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

Five licensure interviews were conducted virtually. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

Disciplinary (Malpractice) Committee Report

Members present were: Robert L. Rich, MD, Chair; Candace A. Bradley, DO, MBA; J. Nelson Dollar, MA; Sharona Y. Johnson, PhD, FNP-BC; Mark A. Newell, MD, MMM; Anuradha Rao-Patel. MD. Member absent: Anthony R. Plunkett, MD.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Malpractice) Committee reviewed 30 cases. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

Disciplinary (Investigative) Committee Report

Members present were: Robert L. Rich, MD, Chair; Candace A. Bradley, DO, MBA; J. Nelson Dollar, MA; Sharona Y. Johnson, PhD, FNP-BC; Mark A. Newell, MD, MMM; Anuradha Rao-Patel. MD. Member absent: Anthony R. Plunkett, MD.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Investigative) Committee reviewed 79 investigative cases. A written report was presented for the Board's review. The Board adopted the recommendations and approved the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

Disciplinary (Complaints) Committee Report

Members present were: Robert L. Rich, MD, Chair; Candace A. Bradley, DO, MBA; J. Nelson Dollar, MA; Sharona Y. Johnson, PhD, FNP-BC; Mark A. Newell, MD, MMM; Anuradha Rao-Patel. MD. Member absent: Anthony R. Plunkett, MD.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Complaints) Committee reviewed 53 complaint cases. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public.

A motion passed to return to open session.

Disciplinary (Compliance) Committee Report

Members present were: Robert L. Rich, MD, Chair; Candace A. Bradley, DO, MBA; J. Nelson Dollar, MA; Sharona Y. Johnson, PhD, FNP-BC; Mark A. Newell, MD, MMM; Anuradha Rao-Patel. MD. Member absent: Anthony R. Plunkett, MD.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (Compliance) Committee reviewed three investigative cases. A written report was presented for the Board's review. The Board adopted the recommendations and approved the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

Disciplinary (DHHS) Committee Report

Members present were: Robert L. Rich, MD, Chair; Candace A. Bradley, DO, MBA; J. Nelson Dollar, MA; Sharona Y. Johnson, PhD, FNP-BC; Mark A. Newell, MD, MMM; Anuradha Rao-Patel. MD. Member absent: Anthony R. Plunkett, MD.

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

The Disciplinary (DHHS) Committee reviewed one case. A written report was presented for the Board's review. The Board adopted the Committee's recommendation to approve the written report. The specifics of this report are not included because these actions are not public.

A motion passed to return to open session.

Investigative Interview Report

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-

16, and 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney-client privilege.

Ten investigative interviews were conducted virtually. A written report was presented for the Board's review. The Board adopted the recommendations and approved the written report. The specifics of this report are not included because these actions are not public information.

A motion passed to return to open session.

Outreach Committee Report

Members present were: Sharona Y. Johnson, PhD, FNP-BC; Chair; Candace A. Bradley, DO, MBA; W. Howard Hall, MD; Robert L. Rich, Jr., MD; and Joshua D. Malcolm, JD.

Old Business

a. Update on presentations
    i. Professional and public presentations
    ii. Regulatory Immersion Series events

The Communications Director gave a brief report on NCMB's professional and public outreach activities. Both professional and public outreach are winding down for the calendar year and staff are scheduling opportunities for 2025. In 2024, NCMB reached every medical school and PA program in the state with its Regulatory Immersion Series mock disciplinary committee course and has received requests for additional presentations of the course from multiple schools. In public outreach, staff participated in community health fairs in Chatham, Durham and Wake counties and has shared content on health literacy through a newsletter for members of the Occaneechi-Saponi tribal community in North Carolina. Committee members expressed strong interest in reaching more audiences outside of the greater Triangle area and asked that staff prepare a map showing the geographic reach of NCMB's outreach efforts in 2024, to be presented at the January 2025 Outreach Committee meeting.
Committee recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as Information.

New Business:

a. Miscellaneous Communications Updates

I. Hurricane Helene Response Efforts

The Communications Director outlined NCMB's efforts to support the state's response to Hurricane Helene. NCMB reactivated its limited emergency license application, which authorizes physicians, PAs, perfusionists and anesthesiology assistants licensed outside of

North Carolina to work or volunteer in the state during a declared state of emergency. To date, NCMB has issued about 200 LELs. NCMB also participated in daily calls with the State Health Director and other stakeholders; Through this engagement, NCMB was asked to develop a directory of open medical practices in Western NC. Communications staff worked with NCMB's web developer to create an online form to collect practice status information, as well as a searchable database that displays practices to the public. To date, about 2,000 healthcare practices and facilities have provided information. Finally, NCMB verified the credentials of about 400 licensees who responded to the NC DHHS's call for volunteers, ensuring that clinicians participating in medical relief efforts had proper authority to practice.

Committee recommendation: Accept as information.

Board Action: Accept Committee Recommendation. Accept as Information.

b. Outreach Priorities

I. Mission and committee description
II. Goals discussion

The Committee Chair invited Committee members to share their thoughts on how the Outreach Committee should focus its efforts during 2025. There was strong support for expanding the geographic reach of NCMB's public outreach to ensure that the Board reaches North Carolina residents throughout the state, including in Eastern and Western NC. Committee members also indicated interest in continuing to identify ways to address the issue of clinician wellness and burnout in ways that are helpful and relevant to licensees. This could include educational content to help licensees understand the relationship between trauma/burnout and regulatory actions and how to seek help to avoid events that could bring a licensee to the Board's attention. In addition, Committee Members asked that the Communications Department consider expanding to social media platforms such as Tik Tok and Instagram to reach a wider audience.
Committee recommendation: Accept as information.
Board Action: Accept Committee recommendation. Accept as Information.

ADJOURNMENT

The Medical Board officially adjourned at 11:32 a.m. on Friday, November 22, 2024.

The next meeting of the Medical Board will be virtual, January 22-24, 2025.

Robert L. Rich, MD, Secretary/Treasurer

3.2.1: MEDICAL RECORDS – Documentation, Electronic Health Records, Access, and Retention

Documentation

An accurate, current, and complete medical record is an essential component of patient care. Licensees shall maintain a medical record for each patient to whom they provide care. The medical record should be legible. When the caregiver does not write legibly, notes should be dictated, transcribed, reviewed, and signed within a reasonable time. It is incumbent upon the licensee to ensure that the transcription of notes is accurate (particularly in those instances where medical records are generated with the assistance of dictation software or artificial intelligence).

The medical record is a chronological document that:

- Records pertinent facts about an individual's health and wellness;
- Enables the treating care licensee to plan and evaluate treatments or interventions;
- Enhances communication between professionals, assuring the patient optimum continuity of care;
- Assists both patient and licensee in communication with third party participants;
- Allows the licensee to develop an ongoing quality assurance program;
- Provides a legal document to verify the delivery of care;
- With appropriate consent, may be used as a source of clinical data for research and education; and
- Assists with compliant billing and coding.

The following required elements should be present in all medical records:

- The purpose of each patient encounter and appropriate information about the patient's history and examination;
- The patient's past medical history including an updated problem list, surgical history, family history, and social history;
- The licensee's clinical decision making including the plan for any treatment and the care and treatment provided;
- Prominent notation of current medications (including all prescribed, recommended, or provided medications, and notation of medications actually taken) and other significant allergies, or a statement of their absence; and
- Clearly documented informed consent obtained from the patient when appropriate.

Licensees are also encouraged to include patient learning needs, barriers to care, and other factors as part of the medical record.

The following additional elements reflect commonly accepted standards for medical record documentation:

- Each page in the medical record contains the patient's name or ID number.
- Include all personal, biographical information such as home address, employer, marital status, and all telephone numbers, including home, work, and mobile phone numbers.
- All entries shall contain the author's identification and the date. Author identification may be a handwritten signature, initials, or a unique electronic identifier.
- All drug therapies are listed, including dosage instructions and, when appropriate, indication of refill limits. Prescription refills should be recorded.
- Appropriate plans and specified times for follow-up care should be included.
- All consultation, laboratory, and imaging reports should be entered into the patient's record, reviewed, and the review documented by the licensee who ordered them. Abnormal reports should be noted in the record, along with corresponding follow-up plans and actions taken.
- An appropriate immunization record is evident and kept up to date.
- Appropriate preventive screening and services are offered in accordance with the accepted practice guidelines.

Electronic Health Records

The Board recognizes and encourages the use of electronic health records ("EHR"). The promise and potential of information technology in health care, particularly the use of EHR, presents licensees with distinct challenges. While the Board encourages the adoption and appropriate use of various forms of EHR, there are some unique aspects and problems associated with EHR that have been repeatedly encountered by the Board, some of which are discussed below. This subsection is meant to identify issues which the Board has repeatedly found to be problematic in malpractice and complaint cases coming to the Board's attention. Basic, well-established principles of medical record documentation, as outlined above, apply to all forms of medical record documentation, including EHR.

The following guidelines are offered to assist licensees in meeting their ethical and legal obligations:

- *EHR Deficiencies.* Licensees must be aware of the idiosyncrasies and weaknesses of the EHR system they are using and adjust their practice accordingly. Licensees are ultimately responsible for the adequacy of their EHR entries and documentation.

- *Responsibility of Licensees.* Licensees remain responsible for clinical decision making. EHR are becoming increasingly sophisticated and may provide flags for follow-up care or other clinical decision-making support, such as health maintenance recommendations. While an EHR system may assist in the clinical decision-making process, it is not responsible for decision making. The licensee is. For example, it is not acceptable to blame an EHR because it failed to recommend particular testing or it failed to prompt clinical follow-up. Increasingly elaborate documentation, clinical management, and productivity tools may also result in increased opportunities for errors or

omissions. These errors or omissions result from the failure of the licensee to assume appropriate responsibility for the care of the patient. In the end, decision-making responsibility rests solely with the licensee; regardless of the information or notices provided by the EHR.

- *Use of Templates.* The Board cautions against overuse of template content or reliance on EHR software which pre-populates, carries forward, or clones information from one encounter to the next, or from different licensees, without the licensee carefully reviewing and updating all information. Documentation of clinical findings for each patient encounter must accurately and contemporaneously reflect the actual care provided. The use of "copy-and-paste" should only be employed in circumstances when the totality of copied material from prior interactions is pertinent to the current situation.

- *Availability of, or Access to, EHR.* Licensees must be able to provide patient medical records under their control in a timely[1] manner for various situations, such as consultations, transfer of care to another licensee, or practice closure. The Board has encountered situations where licensees were unable to access their patients' medical records due to either fee or other disputes with the EHR vendor. This is particularly common when the medical records are maintained off site (e.g., cloud storage). Licensees must understand provisions of their contract with the EHR vendor in this regard.

- *Breakdown of Patient-Licensee Communication.* Misunderstandings and miscommunications between patients, patient family members, licensed health care professionals, and office staff generate a substantial percentage of complaints received by the Board. Many EHR systems allow direct licensee-patient communication (i.e. via a "patient portal"). While this form of communication can facilitate communication, such as follow-up of lab or x-ray results or medication refills, it also places a responsibility on the licensee to provide timely responses to legitimate requests from patients for feedback or information.

- *Employed Licensees and Independent Contractors*. The Board recommends all employed licensees/independent contractors review their employment agreements regarding ownership of the EHR. There should be explicit provisions which set forth the rights and duties of the practice and the licensee upon termination of employment, with regards to notification of patients and access to medical records.

- *Artificial Intelligence*. Once a licensee chooses to use AI, they accept responsibility for responding appropriately to the AI's recommendations. For example, if a licensee chooses to follow the course of treatment provided by an AI-generated response, then they should be prepared to provide a rationale for why they made that decision. Simply implementing the recommendations of the AI without a corresponding rationale may not be within the standard of care. Alternatively, if the licensee uses AI and suggests a course of treatment that deviates from one delineated by AI, then they should document the rationale behind the deviation and be prepared to defend the course of action. Generally, the reason a licensee provides for

[1] In evaluating timeliness, the Board will look at the responsiveness of the licensee and the efforts undertaken to provide the requested records or information to the intended recipient.

disagreeing with any AI recommendation should be because following that recommendation would not be consistent with the applicable standard of care.

Access to Medical Records

A licensee's policies and practices relating to medical records under their control should be designed to benefit the health and welfare of patients, whether current or past, and should facilitate the transfer of clear and reliable information about a patient's care. Such policies and practices should conform to applicable federal and state laws governing health information. These principles of medical record access also apply to licensees practicing via telemedicine.

It is the position of the Board that notes made by a licensee in the course of diagnosing and treating patients are primarily for the licensee's use and to promote continuity of care. Patients, however, have a substantial right of access to their medical records and a qualified right to amend their medical records pursuant to HIPAA privacy regulations.

Medical records are confidential documents and should only be released when permitted by law or with proper written authorization of the patient. Licensees are responsible for safeguarding and protecting the medical records under their direct control and for providing adequate security measures.

Each licensee has a duty on the request of a patient or the patient's representative to facilitate release of a copy of the record in a timely manner to the patient or the patient's representative, unless the licensee believes that such release would endanger the patient's life or cause harm to another person. This includes medical records received from other licensees' offices or health care facilities. A summary may be provided in lieu of providing access to or copies of medical records only if the patient agrees in advance to such a summary and to any fees imposed for its production.

Licensees may charge a reasonable fee for the preparation and/or the photocopying of medical records, keeping in mind that state law limits fees a licensee can charge for copies of medical records in certain cases, including liability claims for personal injury, social security disability claims, and workers' compensation claims. To assist in avoiding misunderstandings, and for a reasonable fee, the licensee should be willing to review the medical records with the patient at the patient's request. Medical records should not be withheld because payment of a patient's account is overdue (including charges for copies or summaries of medical records).

Should it be the licensee's policy to complete insurance or other forms for established patients, then it is the position of the Board that the licensee should complete those forms in a timely manner. If a form is simple, then the licensee should perform this task for no fee. If a form is complex, the licensee may charge a reasonable fee.

To prevent misunderstandings, the licensee's policies or those of the licensee's employer about providing copies or summaries of medical records and about completing forms should be made available in writing to patients when the licensee-patient relationship begins.

Licensees should not relinquish control over their patients' medical records to third parties unless there is an enforceable agreement that includes adequate provisions to protect patient confidentiality and to ensure access by both the licensee and patient to those medical records.*

When responding to subpoenas for medical records, unless there is a court or administrative order, licensees should follow the applicable federal and/or state regulations.

Retention of Medical Records

Licensees have both a legal and ethical obligation to retain patient medical records under their control. The Board, therefore, recognizes the necessity and importance of a licensee's proper maintenance, retention, and disposition of medical records. Patient interests related to present and future healthcare needs should be a licensee's primary consideration when determining how long to retain medical records.

Other Considerations and Board Expectations:

- Patients should be notified regarding how long the licensee will retain medical records.
- In order to preserve confidentiality when discarding old medical records, all medical records should be retained and destroyed in a HIPAA compliant manner, including both paper medical records and EHR. If it is feasible, patients should be given an opportunity to claim the medical records or have them sent to another care licensee before old medical records are discarded.
- The licensee should respond in a timely manner to requests from patients for access to, or copies of, their medical records.
- Licensees should notify patients of the amount, and under what circumstances, the licensee will charge for copies of a patient's medical record.
- Those licensees providing episodic care should attempt to provide a copy of the patient's medical record to the patient, the patient's primary care licensee, or, if applicable, the referring licensee.

It should be noted that these expectations relate solely to Board inquiries and do not preempt other legal or ethical record retention requirements. Licensees are encouraged to seek advice from private legal counsel and/or their malpractice insurance carrier, particularly when responding to a subpoena to produce records.

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*NOTE: Refer also to the Board's Position Statement on "Departures from or Closings of Medical Practices."

(Adopted: July 2018) (Replaced Medical Record Documentation; Access to Medical Records; and Retention of Medical Records) (Amended: March 2021; November 2024)