

**MINUTES OF THE**  
**STATE OF NEW MEXICO**  
**HEALTH POLICY COMMISSION**  
**MEETING**

February 11, 2005

**CALL TO ORDER**

Chairman Andy R. Lopez called a regular meeting of the State of New Mexico Health Policy Commission (HPC) to order on Friday, February 11, 2005, at approximately 9:13 a.m. at the Health Policy Commission Office, 2055 South Pacheco, Santa Fe, New Mexico.

**Members Present**

Waldo Anton  
Dr. Frank Hesse  
Andy R. Lopez  
Seferino Montano  
Moises Morales  
Dr. Miles Nelson  
Alicia Roman

**Members Absent**

Gloria Nieto (Excused)

**Welcome and Introduction**

Staff members Dr. Patricio Larragoite, Cindra Stahl, Irma Montoya and Kevin McMullan were present at the meeting.

Guests in attendance were Win Quigley from the Albuquerque Journal; Dr. Thomas Pascuzzi, President, Santa Fe County Medical Society; Jeff Haisley, Regional Manager, American Physicians Insurance Corporation; Elaine Brightwater, American College of Nurse Midwives; and Dr. Christopher Fletcher.

**Approval of Agenda**

**Commissioner Hesse moved for approval of the Agenda. Commissioner Roman seconded the motion, which passed by unanimous voice vote.**

**Approval of Minutes from January 14, 2004 Meeting**

**Commissioner Anton moved for approval of the January minutes as written. Commissioner Nelson seconded the motion, which passed by unanimous voice vote.**

## **DIRECTOR'S REPORT**

### **Budget Update**

Dr. Larragoite reported that for FY06, the HPC has a budget request of \$1,407,000.00. DFA's executive budget recommendation was \$1,394,300.00, and LFC's budget recommendation was \$1,356,400.00. He explained that the reason LFC's recommendation was lower was due to the HPC's extended vacancy rate (5% cut).

Dr. Larragoite explained that he would send a letter explaining the reason for the reversion as well as a requesting a meeting with the DFA and LFC analysts. He further explained that last year there had been \$57,500.00 reversion in the budget which would have been used to upgrade all the CPUs in the office. Because of the Governor's Executive IT Order the money was frozen and then reverted.

Dr. Larragoite reviewed the budget narrative and the audit report pointing out that HPC has complied with, and is right on line with, DFA's budget and that the audit report was clean. In response to a question by Dr. Hesse, Dr. Larragoite responded that if HPC were assigned projects through memorials and studies without funding, supplemental funding requests would have to be made.

### **Personnel Update**

Dr. Larragoite reported that five positions were currently vacant within the agency. Two of the job descriptions have been rewritten and sent to State Personnel, and the agency is currently in the process of rewriting job descriptions for the last three positions. He added that it is anticipated all five positions would be filled by April 15, 2005.

In response to a question by Chair Lopez, Dr. Larragoite explained that the process to fill a vacancy could take up to six weeks and that an IT vacancy can take eight to twelve weeks. He pointed out that, in accordance with the personnel policy, an employee has to give a two-week notice, which could be extended to one month. He added that after reviewing the rules and regulations, he will draft a new policy changing the two-week notice to a one-month notice and will have the draft ready at the next Commission meeting for review and approval.

Dr. Larragoite reported that with the team management concept, there are at least three staff members on each project so that if one staff member leaves, there's someone to follow up on the project.

## **MEDICAL MALPRACTICE ISSUES**

Dr. Thomas Pascuzzi, President of the Santa Fe Medical Society, and emergency physician at St. Vincent Hospital, thanked the Commission for the opportunity to present an update on medical malpractice and provide information regarding the NMMS.

Dr. Pascuzzi reported that the New Mexico Medical Malpractice Act, NMSA §§ 41-5-1 through 41-5-29, was developed in 1976, a time when the state was in a crisis after losing the only insurer in the state in 1975. Through the Act the New Mexico Medical Review Commission (NMMRC) was created and the New Mexico Physicians Mutual Insurance Company (NMPMIC) was created. Over the years the policy has changed setting caps or limitations on damage awards and setting up the review process.

Dr. Pascuzzi stated that current award caps are \$200,000/\$600,000, with the maximum award at \$600,000 for economic/non-economic damages, plus any past and future medical above that. The \$200,000/\$600,000 is divided with \$200,000 coming from the insurance premiums paid by the insurance company representing the practitioner, and the remaining \$400,000, also paid by premiums, coming from the Patients' Compensation Fund (PCF). The PCF has an annual budget of \$350,000.

Dr. Pascuzzi reported that funding for administrative support for the NMMRC comes from the NMMS through the Act. Any case to be heard by the NMMRC must meet certain requirements outlined in the Act. One requirement is that the physician involved must carry medical malpractice insurance. There are two types of malpractice insurance, "claims made" policies and "occurrence based" policies. The claims made policies are usually cheaper but only cover claims for incidents occurring during the policy period, which then force physicians to purchase additional insurance for "tail coverage." Tail coverage can be rather expensive and the period of coverage is set at each state's statute of limitations. New Mexico's statute of limitations for most claims is three years, with children's claims up to age 19. Dr. Pascuzzi added that occurrence based policies, which are more expensive, are covered under the Act and cover any occurrence during the policy period plus 19 years in a child's case.

In response to a question from Chair Lopez, Dr. Pascuzzi explained that all the members of the NMMRC are volunteers from a pool of 260 attorneys and 250 physicians. Every month, a notice is sent out regarding the cases coming up before the panel. The notice identifies the claimant, and gives a brief explanation of the case and the doctors involved. The volunteer attorney or physician then responds to the notice noting they do or do not want to participate. At every hearing, six votes are cast by three attorneys and three physicians, with one director breaking any ties. Two to three cases are heard every Tuesday starting at 7:00 p.m. at the Medical Society Building in Albuquerque and lasting three to four hours, depending on the cases.

Dr. Pascuzzi reported the hearing is a trial type format, with the plaintiff and defendant each telling their side of the story, and the panel convening to make determinations. In the past 28 years there have been 4,883 cases, approximately 150 each year. The determination is either negligence or no negligence. Out of the 4,883 cases, 3,754 were deemed to have no negligence.

Dr. Pascuzzi stated the trend of negligence versus no negligence has remained the same at 20% negligence and 80% no negligence. Any case heard by the panel can go on to the litigation process, but most of the cases are either settled or dropped, which helps ease the burden on the court system. If there is a yes negligence vote, they then have to determine whether the injury occurred from that negligence. Sometimes, however, there is a yes

negligence vote but no injury occurred from that negligence. Part of the criteria for determining a malpractice claim is a breach of the duty to treat.

In response to a question by Dr. Nelson, Dr. Pascuzzi stated that not just trial lawyers serve on the panel, but any attorney belonging to the New Mexico Bar Association can serve on the panel, as well as both retired and active physicians. When a case involves some kind of specialty, at least one physician in that specialty is included to be there to guide some of the discussion. Cases are scheduled from one to two years before the hearing date and there are quite a few cancellations.

In response to a question by Commissioner Montano, Mr. Jeff Haisley, Regional Manager for American Physicians Insurance Corporation, stated his organization has, on average, made indemnity payments on approximately 20% to 25% of all the claims presented. He added that the PCF also adds to the payment.

In response to a question by Dr. Hesse, Mr. Haisley replied that the number of cases that go on to litigation varies from year to year, but generally it is 40% to 50%. He pointed out that the panel is not admissible at trial and insurance carriers will generally treat it as a wake up call for early settlement.

Dr. Pascuzzi pointed out that since the inception date of March 1976, the NMMRC 4,883 claims have been heard by the panel, with 3,758 of those covered by AP Assurance. Of the 3,758 cases, approximately 66% were settled or dropped. Out of the 4,883 cases heard, 1,085 cases that went on to litigation with 782 cases dismissed through summary judgment or settlement.

Dr. Pascuzzi reported that with 3,000 or less physicians in the state, AP Assurance insures 1,500 physicians. AP Assurance is now writing an occurrence based malpractice, Medical Protective is not currently writing new policies for physicians, while St. Vincent Hospital, with approximately 15 physicians, is insured with AIG (they only write policies for their own physicians).

Dr. Pascuzzi stated that with increasing premiums to cover decreasing margins, it is difficult to maintain a system where the physician can afford and continue to practice medicine. As insurance rates go up, the insured population goes down, and Medicaid reimbursement goes down.

Dr. Pascuzzi explained that AMA reported that between 2001 and 2004, three states reported a 100% increase in rates, between nine and 16 states reported a 40% to 99% increase in rates, six to 15 reported a 25% to 39.9% increase, and 33 to 17 states reported a 0% to 24.9% increase. Not all increase requests are approved but there has been a trend of filed increase rates.

Dr. Pascuzzi stated that over the last two years New Mexico has experienced a 24% rate increase with the premium rates broken down as follows: \$13,000 to \$18,000 to \$20,000 for family practitioners; \$26,000 for emergency medicine; \$75,000 for general surgery; \$76,000 for orthopedic surgery; and \$90,000 for OB/GYN. This may not be that bad compared to

other states. He added that AMA also noted that OB/GYNs in Florida are paying up to \$250,000 per year for malpractice insurance.

Mr. Haisley added that the premiums for claims made policies are dramatically less than occurrence claims but only for the first couple of years the policy is in place. The longer a physician is insured, the longer his/her exposure exists. In addition, once a physician leaves a state where there is a claim made coverage, tail coverage rates, on the average, are doubled requiring an extended endorsement. Up to \$600,000 has been paid to the PCF for occurrence-based policies that cover past, future and catastrophic cases.

Dr. Pascuzzi reported that there were several attempts to open up the Act through such legislation as SM7 and SB6 without consideration of risks or impacts on premiums. He added that it is important to have a solid Act to recruit physicians. He reported that SM7, sponsored by Senator Campos, was a memorial requesting the New Mexico HPC and the Insurance Division of the Public Regulation Commission to convene a task force of representatives from statewide health care practitioner groups on health care practitioner liability insurance.

Dr. Pascuzzi stated that the health groups to the task force would include: the New Mexico Medical Society, the American College of Nurse/Midwives, and the New Mexico Nurse Anesthetist Association, the New Mexico Midwives Association, the New Mexico Dental Association, the New Mexico Hospital and Health Systems Association, the New Mexico Health Care Association, the New Mexico Trial Lawyers Association and Foundation, the Office of the Governor, as well as others. The task force would examine the malpractice insurance dilemma and its impact on providers and patients, and examine the statutes, constitutional provisions, regulations and court decisions governing medical malpractice. The task force would then submit its findings and recommendations, including legislative initiatives for malpractice insurance reform for health care providers by November 1, 2005 to the Legislative Health and Human Services Committee, the Legislative Finance Committee, the Department of Health and the Office of the Governor.

Mr. Haisey reported that SB6, sponsored by Senator Campos, would add certified nurse/midwives to the Medical Malpractice Act, provide for types of coverage, and would amend sections of the NMSA 1978. Dr. Hesse stated that the New Mexico Medical Society voted not to open the act because of the risks.

Dr. Larragoite then introduced Ms. Elaine Brightwater, New Mexico Chapter of American College of Nurse Midwives. Ms. Brightwater stated her organization is sympathetic to the medical malpractice issues raised by Dr. Pascuzzi, endorses SM7 and asks that the Commission support the memorial.

Ms. Brightwater reported that 62% of the babies born in New Mexico are delivered by nurse/midwives, the highest per capita delivery rate in the United States. The rate of increase for their medical malpractice insurance was 60% last year and 30% this year with some nurse/midwives paying \$18,000 or 1/3 of their income for medical malpractice insurance. She added that there are three nurse/midwives practicing in Las Vegas who don't even earn the average beginning income for new nurse/midwives and they are in danger of going out of business.

**After discussing both SM7 and SB6, Commissioner Nelson moved for HPC's support of SM7. Commissioner Morales seconded the motion, which passed by unanimous voice vote. Commissioner Hesse abstained from voting.**

**Commissioner Nelson moved that HPC not support SB6 before a study has been conducted. Commissioner Hesse seconded the motion, which passed by unanimous voice vote.**

Dr. Larragoite introduced Dr. Christopher Fletcher who was invited by Dr. Nelson to speak. Dr. Fletcher reported that as a family physician, practicing in the state for 25 years, he has delivered over 1,000 babies, and has 9,000 patients. With only one claim against him in 25 years, which he won after being heard by the NMMRC, he is unable to get a claims policy under \$60,000 and has been forced to pay 200% per year for 19 years tail coverage.

### **LEGISLATIVE REVIEW**

Dr. Larragoite provided the Commission with a summary of 2005 bills and memorials that specifically name the HPC and reviewed each one. He stated that HB374, titled Health Policy Commission, would expand the membership of the HPC from eight to nine members. This bill, introduced by Representative Heaton, is a duplicate of SB358, which was introduced by Senator Lopez. He added that the first hearing would be on February 15, 2005 at 1:30 p.m. and encouraged the commissioners to attend to answer any questions.

In response to a question by Dr. Hesse regarding the difference in the language between the bills regarding the staggered terms of the commission, Ms. Cindra Stahl explained that when the original appointments were made, they were staggered terms. Since some of those appointments have already expired and then renewed, the intent is to have the staggering terms among all the members. She added that she would provide the commission with their expiration dates. In response to a question by Dr. Hesse, Dr. Larragoite explained that if the bill passes the current commission would have to be reappointed and commissioners are allowed to serve two terms.

Dr. Larragoite stated that HB780, titled Electronic Health Care Information System, introduced by Representative Heaton, would provide a \$200,000 appropriation to the HPC for FYs 2006-2008 to lead a 19-member task force to study the development of a single statewide electronic health care information system that would encompass consumer, provider, payer and state agency health information data, resources, needs and access.

Dr. Larragoite stated that HJM21, titled Office of Women's Health, introduced by Representative Rhonda King, would create a task force to study establishment of an Office of Women's Health to facilitate women's health programs and improve coordination of services based on key health concerns of women. The task force would report its findings to the Legislative Health and Human Services Committee by October 2005. Ms. Stahl added that this memorial was a duplicate of SJM30 introduced by Senator Rodriguez, and HPC is a collaborative participant, not leading the task force.

Dr. Larragoite reported that SB358, titled Health Policy Commission Members, introduced by Senator Lopez, is a duplicate of HB374. This bill would allow HPC members to have a

financial interest in health service industries provided the majority of members do not have a financial interest while serving, or for three years prior to serving. It would also increase the number of commissioners to nine.

Dr. Larragoite reported that SB381, titled Health Care: Patient Health Safety Act, introduced by Senator Jennings, provides an objective review process for proposed changes in the scope of practice of licensed health care professionals to make sure that the changes are to the overall improvement of health in the state. Ms. Stahl added this bill, which has been introduced in the past by Senator Jennings, would be a major HPC issue, noting that if any health care related licensure board wanted to change any of their rules or regulations it would have to come before whatever oversight group is set up.

**Dr. Hesse moved for the HPC to approve and strongly support SB381. Commissioner Anton seconded the motion, which passed by unanimous voice vote.**

Dr. Larragoite reported that SB387, titled Breast Cancer Causation Study, introduced by Senator Carraro, would have the HPC and UNM's Health Sciences Center collaborate in conducting a study to review or determine the environmental and physiological impacts on the causation of breast cancer. He added that DOH, who would be the lead agency, would be provided \$1.6 million for the study through FYs 2006 and 2007.

Dr. Larragoite reported that SB785, titled Cultural Competence in Health Care, introduced by Senator Sanchez, would have the Commission on Higher Education as the lead task force in developing course curricula that would foster that cultural competence in health care. The bill would require the boards of health-related licensed professions to make recommendations for required continuing education courses based on the curricula developed by the task force.

Dr. Larragoite reported that SB786, titled Data on Health Care Disparities, introduced by Senator Sanchez, directs the HPC in its collecting of information regarding the state's health care system, to identify disparities in health care access and quality by population subgroups to include race, ethnicity, gender and age. HPC is further directed to also include the language preference of those surveyed, and also to obtain information regarding participation in clinical research trials.

Dr. Larragoite reported that SJM 30, titled Office of Women's Health, introduced by Senator Rodriguez, is identical to HJM21 and would create a task force to study establishment of an Office of Women's Health to facilitate women's health programs and improve coordination of services based on key health concerns of women. The task force would report its findings to the Legislative Health and Human Services Committee by October 2005, and the HPC is named to that task force.

**Commissioner Roman moved for the HPC to support SJM30. Commissioner Morales seconded the motion, which passed by unanimous voice vote.**

Dr. Larragoite reported that SJM37, titled Nursing Staffing and Retention, introduced by Senator Grubestic, requests the HPC, in conjunction with other relevant agencies, to prepare a study on the impact of nurse staffing and retention on workforce development and patient

safety. The report should include recommendations about standards of staff, nurse-to-patient ratios, quality of patient care, and environment of care issues that relate to recruitment and retention of nurses. The commission should report its findings to the Legislative Health and Human Services Committee at its October 2005 meeting.

**Dr. Hesse moved for the HPC to support SJM37. Dr. Nelson seconded the motion, which passed by unanimous voice vote.**

Dr. Larragoite reported that HB876, titled Biennial Health Care Report, introduced by Representative Marquardt, would appropriate \$500,000 (GF) for FYs 2006 and 2007 to the HPC to compile a biennial health care financing report on public and private health care industry costs, spending and economic impact and trends that allows comparison between New Mexico and other states and the nation.

**Commissioner Nelson moved for the HPC to strongly support HB876. Commissioner Montano seconded the motion, which passed by unanimous voice vote.**

In reviewing SB297, relating to health providing for licensure of physicians in certain circumstances, Dr. Larragoite, explained that the bill requests the Board of Medical Examiners to consider the licensure of a person who is of good moral character, a graduate of a medical school or college in good standing, has passed an examination approved by the board and has completed two years in an approved post graduate training program. The bill basically deals with foreign trained physicians and has been endorsed by the Medical Society but was not endorsed by the Board of Medical Examiners.

**After reviewing and discussing the bill, Commissioner Hesse moved for the HPC not to support SB297. Commissioner Montano seconded the motion, which passed by unanimous voice vote.**

The commission does support the initiation of a memorial to study recruitment/licensure issues, particularly with regard to foreign trained medical students. Dr. Larragoite will identify a sponsor and oversee the memorial process.

In reviewing SB292 and SB427, Dr. Larragoite explained that SB292 requested amending Section A of the NMSA 1978 and providing for facility and health care provider risk insurance coverage, while SB427 requested amending and enacting sections of the NMSA 1978 and providing for midwife risk insurance coverage.

Commissioner Anton suggested the HPC consider both bills, but no action was taken to support or not support.

## **ADJOURN**

**Upon motion by Chair Lopez and second by Dr. Hesse, the meeting was adjourned at approximately 11:55 a.m.**

Approved by:

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Andy R. Lopez, NMHPC Chair

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Date

Submitted by:

Michelle Gorman