

BOARD MEETING MINUTES

September 23 - 25, 2020

**1203 Front Street
Raleigh, North Carolina**

General Session Minutes of the North Carolina Medical Board (NCMB) Meeting held September 23-25, 2020.

The September 2020 meeting of the North Carolina Medical Board was held at 1203 Front Street, Raleigh, NC 27609 and video conference. Bryant A Murphy, MD, President, called the meeting to order. Board members in attendance were: Bryant A. Murphy, MD, President; Venkata R. Jonnalagadda, MD, President-Elect; John W. Rusher, MD, Secretary/Treasurer; Shawn P. Parker, JD; Varnell D. McDonald-Fletcher, PA-C; Michaux R. Kilpatrick, MD; Christine M. Khandelwal, DO; Jerri L. Patterson, NP; W. Howard Hall, MD; Joshua D. Malcolm, JD; Damian F. McHugh, MD; Devdutta G. Sangvai, MD, and Mr. William M. Brawley

PRESIDENTIAL REMARKS

Dr. Murphy 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. All conflicts were reported as included within the committee reports.

ANNOUNCEMENTS UPDATES

Board members provided a debrief of their Leadership Training.

PRESENTATIONS

Dr. Murphy introduced David Tolentino, DO, Past President of the North Carolina Osteopathic Medical Association (NCOMA) who gave a presentation on the NCOMA.

NORTH CAROLINA PHYSICIAN HEALTH PROGRAM REPORTS (NCPHP)

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.

Joe Jordan, PhD, CEO, North Carolina Physicians Health Program (NCPHP), gave the PHP 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.

Dr. Jordan presented the NCPHP Audit report and Dr. Jonnalagadda presented the NCPHP Board of Directors report.

NCMB ATTORNEY'S 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.

A motion passed to return to open session.

Mr. Brian L. Blankenship, Deputy General Counsel and Mr. Thomas W. Mansfield, Chief Legal Officer, gave the Attorney's Report on Friday, September 25, 2020.

Mr. Blankenship updated the Board on the schedule of upcoming hearings presented statistical information regarding work performed by the Board's Legal Department since the last Attorney's Report.

Executed Cases - Public Actions:

The following actions were executed since the Board's last regularly scheduled meeting. The Board voted to accept these as information.

Agbafe-Mosley, Dorothy Ejinkonye MD
Consent Order executed 07/08/2020

Aiad-Toss, Albert Shockry MD
Notice of Charges and Allegations; Notice of Hearing executed 07/08/2020

Aris, Robert Michael MD
Consent Order executed 08/13/2020

Belle, Beverly Ann Vanessa MD
Public Letter of Concern executed 08/04/2020

Chavis, Robert Michal PA
Consent Order executed 07/29/2020

Cohen, Stephen Mark MD
Public Letter of Concern executed 09/09/2020

Corrigan, Francis Charles MD
Relief of Consent Order Obligations executed 08/04/2020

Dhoopati, Vijay Ramaraju MD

Consent Order executed 09/03/2020

Dickerson IV, Edward Ernest MD

Public Letter of Concern executed 08/21/2020

Dimkpa, Okechukwu MD

Consent Order executed 08/11/2020

DiSanto, Vinson Michael DO

Consent Order executed 07/29/2020

Hambidge, Bertha Bowen MD

Consent Order executed 08/03/2020

Harris, Stephen Allen PA

Consent Order executed 07/31/2020

Henningsgaard, Bradley Lynn PA

Public Letter of Concern executed 08/31/2020

Hey, Lloyd Albert MD

Notice of Charges and Allegations; Notice of Hearing; executed 08/11/2020

Hipke, Matt Elza MD

Consent Order executed 09/08/2020

Jabari, Jawanza Nyahuma MD

Consent Order executed 07/31/2020

Jenkins, John Edward MD

Relief of Consent Order Obligations executed 07/24/2020

Kolender, Mark Harris MD

Consent Order executed 07/29/2020

Krishnaraj, Ramesh Loganathan MD

Relief of Consent Order Obligations executed 08/04/2020

Lu, Kang MD

Consent Order executed 08/24/2020

Miah, Rohima Davi MD

Public Letter of Concern executed 08/11/2020

Mishra, Shashank MD

Consent Order executed 08/25/2020

O'Connor, Brian Joseph PA

Public Letter of Concern executed 08/28/2020

Onuscheck, Douglas Samuel MD

Consent Order executed 08/11/2020

Rifenbark Jr., Neil Petree MD

Consent Order executed 08/07/2020

Salinas, Ruben Rolando MD

Consent Order executed 07/24/2020

Schuett, Andrew Marvin MD

Consent Order executed 08/25/2020

Smith, Tracey PA

Relief of Orders of Licensure Obligations executed 07/13/2020

Spivey, David Lee MD

Relief of Consent Order Obligations executed 08/04/2020

Suls, Howard Lee MD

Consent Order executed 08/21/2020

Thompson, Joel Wesley PA

Relief of Consent Order Obligations executed 08/05/2020

Tran, Trung Trieu DO

Denial of Licensure executed 08/27/2020

Weatherspoon-Cupid, Melissa Jo-Ann MD

Relief of Consent Order Obligations

Zeller, Kathleen Elizabeth MD

Relief of Non-Disciplinary Consent Order executed 08/04/2020

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, 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.

Information regarding outside litigation matters was presented by Mr. Mansfield.

A motion was passed to return to open session.

That concluded the Attorney's Report

NCMB COMMITTEE REPORTS

Executive Committee Report

Members present via video/teleconference were: Bryant A. Murphy, MD, Chairperson; Venkata R. Jonnalagadda, MD; John W. Rusher, MD; Jerri L. Patterson, NP and Shawn P. Parker, JD.

Financial Update

a. Year-to-Date Financials

The Committee reviewed the following financial reports through August 31, 2020: Balance Sheet; Profit & Loss versus Budget; and the Profit & Loss Comparison.

Committee Recommendation: Accept the financial information as reported.

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

b. Investment Account

The Committee reviewed the investment statements for July and August 2020.

Committee Recommendation: Accept the investment statements as reported.

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

c. Proposal Fiscal Year 2020/21 Budget

The Committee reviewed the proposed budget for fiscal year 2020/21. The new fiscal year begins November 1, 2020.

Committee Recommendation: Approve the proposed 2020/21 budget, as amended.

Board Action: Accept Committee recommendation. Accept the proposed 2020/21 budget, as amended.

Old Business

a. Office Space Project Update – Phase 3

The Phase 3 Office Space Project Team gave an update regarding the renovation of Board's office building on Smoketree Court.

Committee Recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as information.

b. Office Space Project Report – Phase 4

The Phase 4 Office Space Project Team gave a report on the plans to move from Front Street to Smoketree Court.

Committee Recommendation: Accept as information.

Board Action: Accept Committee recommendation. Accept as information.

c. Drug Preservation Rule

On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The search for potential treatments for COVID-19 caused shortages in certain drugs. Consequently, the North Carolina State Health Director asked the Medical Board, the Board of Nursing and the Board of Pharmacy to adopt the COVID-19 Drug Preservation Rule in order to alleviate shortages and ensure that these drugs are available to patients who need them. The Board adopted an emergency rule and then a temporary rule for physicians and physician assistants. Jointly with the Board of Nursing, it also adopted an emergency rule and then a temporary rule for nurse practitioners.

The State Health Director has requested that the temporary rules be adopted as a permanent rules because the state of emergency and corresponding potential drug shortages might extend beyond the expiration of the temporary rule. However, the State Health Director has determined that NC is unlikely to suffer future shortages of two of the restricted drugs listed in the temporary rules (oseltamivir and azithromycin) and, therefore, those drugs may be removed from the list.

Due to the length of the rule-making process, the permanent rules (one for physicians and physician assistants, and another for nurse practitioners) - which will remove oseltamivir and azithromycin from the list of restricted drugs - will not become effective until March or April 2021. In order to remove these drugs from the temporary rules before then, the Board may issue orders pursuant to N.C. Gen. Stat. § 90-12.5. Staff recommends entering such orders but delaying the effective date until October 23, 2020, to allow the Medical Board, the Board of Pharmacy and the Board of Nursing to coordinate the effective dates.

Committee Recommendation: (1) Approve the proposed permanent rules for filing with the Rules Review Commission. (2) Approve the proposed order removing oseltamivir and azithromycin from the list of restricted drugs in 21 NCAC 32B .1708 (physicians and physician assistants) effective October 23, 2020, and (3) Approve the proposed order removing oseltamivir and azithromycin from the list of restricted drugs in 21 NCAC 32M .0119 (nurse practitioners), effective October 23, 2020.

Board Action: Accept Committee recommendation. (1) Approve the proposed permanent rules for filing with the Rules Review Commission. Appendix A. (2) Approve the proposed order removing oseltamivir and azithromycin from the list of restricted drugs in 21 NCAC 32B .1708 (physicians and physician assistants) effective October 23, 2020. Appendix B. Approve the proposed order removing oseltamivir and azithromycin from the list of restricted drugs in 21 NCAC 32M .0119 (nurse practitioners), effective October 23, 2020. Appendix C.

New Business

a. CEO Annual Performance Evaluation

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 V, Section 2 of the NCMB Bylaws, the officers of the Board conducted the annual CEO performance review.

A motion passed to return to open session.

Policy Committee Report

Members present were: Shawn P. Parker, JD, Chairperson; Venkata R. Jonnalagadda, MD; Christine M. Khandelwal, DO; Joshua D. Malcolm, JD; Devdutta G. Sangvai, MD; and Mr. William M. Brawley

Old Business:

a. Writing of Prescriptions

Staff gave an overview of the additional revisions made to the position statement. The Committee reviewed the revised position statement favorably. Staff cited the North Carolina Board of Pharmacy's FAQ page as a valuable source for guidance on prescribing. The Committee requested that the revised position statement include hyperlinks to the referenced position statements and add a bullet point regarding physician colleagues and supervisors not writing prescriptions outside of an established physician-patient relationship. Since there were significant revisions to the position statement, the Committee opined that it should be sent for review and comment by licensees and stakeholders.

Committee Recommendation: Submit revised position statement for review and comment by licensees and stakeholders and bring back at the November 2020 Board meeting.

Board Action: Accept Committee recommendation. Submit revised position statement for review and comment by licensees and stakeholders and bring back at the November 2020 Board meeting.

b. Covenants-Not-to-Compete

Staff gave a summary of how this matter came before the Committee for discussion and of the comments received from stakeholders. Staff then gave an overview of how covenants-not-to-compete are addressed in North Carolina, relevant professional ethics, and other state laws pertaining to covenants-not-to-compete. The Committee discussed the contractual nature of covenants-not-to-compete. The Committee thought it would be helpful to have data on the effect of covenants-not-to-compete, and the enforcement thereof, on patient care and on the public. The Committee felt there may be value in creating a workgroup to evaluate what, if any steps, the Committee should take regarding covenants-not-to-compete.

Committee Recommendation: Create workgroup to study issues related to covenants-not-to-compete. The workgroup will report back to the Committee at an appropriate time.

Board Action: Accept Committee recommendation. Create workgroup to study issues related to covenants-not-to-compete. The workgroup will report back to the Committee at an appropriate time.

Licensing Committee Report

Members present were: Christine M. Khandelwal, DO, Chairperson; John W. Rusher, MD; Varnell D. McDonald-Fletcher, PA-C; Shawn P. Parker, JD; Jerri L. Patterson, NP; W. Howard Hall, MD; and Damian F. McHugh, 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 License Committee reviewed two 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.

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.

Three licensure interviews were conducted. 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 (Complaints) Committee Report

Members present were: Michaux R. Kilpatrick, MD, Chairperson; Christine M. Khandelwal, DO; Varnell D. McDonald-Fletcher, PA-C; Bryant A. Murphy, MD; Joshua D. Malcolm, JD; Shawn P. Parker, JD; and Devdutta G. Sangvai, 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 11 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 (Malpractice) Committee Report

Members present were: Michaux R. Kilpatrick, MD, Chairperson; Christine M. Khandelwal, DO; Varnell D. McDonald-Fletcher, PA-C; Bryant A. Murphy, MD; Joshua D. Malcolm, JD; Shawn P. Parker, JD; and Devdutta G. Sangvai, 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 46 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 (Department of Health and Human Services (DHHS) Committee Report

Members present were: Michaux R. Kilpatrick, MD, Chairperson; Christine M. Khandelwal, DO; Varnell D. McDonald-Fletcher, PA-C; Bryant A. Murphy, MD; Joshua D. Malcolm, JD; Shawn P. Parker, JD; and Devdutta G. Sangvai, 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 reported on 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 information.

A motion passed to return to open session.

Disciplinary (Investigative) Committee Report

Members present were: Michaux R. Kilpatrick, MD, Chairperson; Christine M. Khandelwal, DO; Varnell D. McDonald-Fletcher, PA-C; Bryant A. Murphy, MD; Joshua D. Malcolm, JD; Shawn P. Parker, JD; and Devdutta G. Sangvai, 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 62 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.

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.

Nine interviews were conducted. 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: Venkata R. Jonnalagadda, MD, Chairperson; Michaux R. Kilpatrick, MD; and Mr. William M. Brawley

Old Business

- a. Update on outreach activities
 - 1) Public and professional presentations
 - 2) New presentations on telemedicine

The Communications Department gave an update on recent and upcoming professional and public outreach. NCMB has been able to maintain an active professional outreach schedule, delivering five virtual presentations to various professional audiences since July. NCMB plans to expand its efforts to actively soliciting virtual speaking engagements, particularly to private practices. NCMB has also kept its public outreach program moving forward. NCMB participated in its first virtual health fair in August and has booked another for October. In addition, NCMB has scheduled virtual presentations with multiple public and government agency audiences. In response to requests, the Communications Department has developed a new public presentation that discusses telemedicine and provides guidance on getting the most out of a telemedicine consultation.

Committee recommendation: Accept as information.

Board action: Accept Committee recommendation. Accept as information.

b. Update on MedBoard Matters podcast

Launched introductory podcast: <https://www.buzzsprout.com/1230689/5348296>

- 2) Internal process meeting
- 3) Secured Dr. Christine Moutier, CMO of American Foundations of Suicide Prevention
- 4) Recording and production of interview completed

The Committee discussed efforts to raise awareness of suicide in healthcare, including featured content in the current (September-October) issue of the digital Forum and the upcoming Fall/Winter edition of the print edition of the Forum. The Chief Communications Officer reported that she is continuing to engage with medical school students and leaders to learn how the issues of burnout, suicide prevention and wellness are addressed in medical schools, and to determine if NCMB can collaborate in any way. NCMB staff and Board Members will continue to gather information and look for opportunities for NCMB to address stigma or positively engage with others working to improve clinician wellness and resilience.

Committee recommendation: Accept as information.

Board action: Accept Committee recommendation. Accept as information.

New Business

a. Other outreach activities

The Chief Communications Officer outlined plans for NCMB to promote new resources developed to help patients understand their rights during a physical examination and be alert to signs of possible sexual misconduct on the part of a medical provider. The

Communications Department plans to create a short video for distribution online and will dedicate a podcast episode to discussing the material presented in the new resources. The department will also promote in all its usual ways (posting on NCMB's website, posting about the resources on social media, etc.).


Committee recommendation: Accept as information.

Board action: Accept Committee recommendation. Accept as information.

ADJOURNMENT

The Medical Board adjourned at 12:09 p.m. on Friday, September 25, 2020.

The next meeting of the Medical Board is scheduled for November 18 - 20, 2020.



John W. Rusher, MD; Secretary/Treasurer

21 NCAC 32B .1708 COVID-19 DRUG PRESERVATION RULE

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

- (1) Hydroxychloroquine;
- (2) Chloroquine;
- (3) Lopinavir-ritonavir;
- (4) Ribavirin; and
- (5) Darunavir. Oseltamivir; ~~(6)~~
Darunavir; and
- ~~(7) Azithromycin.~~

(b) A physician or physician assistant shall prescribe a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence for its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

- (1) Indicate on the prescription that the patient has been diagnosed with COVID-19;
- (2) Be limited to no more than a 14-day supply; and
- (3) Not be refilled, unless a new prescription is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A physician or physician assistant shall not prescribe a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the ~~physician or the physician's~~ physician, physician assistant, or either of their agent, and that information is recorded in writing in accordance with 21 NCAC 46 .1819(e).

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

History Note: Authority G.S. 90-5.1(a)(3);

Emergency Adoption Eff. April 6, 2020;

Temporary Adoption Eff. June 26, 2020.

NORTH CAROLINA MEDICAL BOARD ORDER REMOVING OSELTAMIVIR AND AZITHROMYCIN FROM THE RESTRICTED DRUG LIST FROM TEMPORARY RULE 21 NCAC 32B .1708.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person-to-person; and

WHEREAS, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on 30 January 2020; and

WHEREAS, on 31 January 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 319 of the Public Health Service Act; and

WHEREAS, by Executive Order No. 116 on 10 March 2020, North Carolina Governor Roy Cooper declared a State of Emergency for the entire State of North Carolina based on the public health emergency posed by COVID-19; and

WHEREAS, the ongoing COVID-19 pandemic continues to significantly impact the health of North Carolinians and place strains on our healthcare institutions; and

WHEREAS, the North Carolina Medical Board (“Board”) is an agency of the State of North Carolina organized under Chapter 90 of the North Carolina General Statutes and is charged with the responsibility for licensing physicians, physician assistants, anesthesiologist assistants and perfusionists to practice in North Carolina and regulating such practice in the interest of the public health, safety and welfare; and

WHEREAS, on 24 March 2020, the Board received a letter signed by the Secretary of the North Carolina Department of Health and Human Services and the State Health Director and Chief Medical Officer, requesting the Board and the Board of Pharmacy take immediate action to adopt emergency and temporary rules to help prevent a shortage of certain drugs that may be used in treating COVID-19; and

WHEREAS, on 6 April 2020, the Board enacted emergency rule 21 NCAC 32B .1708 (also known as the “drug preservation rule”) in which conditions were placed on the prescribing of certain drugs, including oseltamivir and azithromycin, for COVID-19 in order to prevent a shortage of those medications; and

WHEREAS, on 15 July 2020 emergency rule 21 NCAC 32B .1708 became temporary rule 21 NCAC 32B .1708 when the temporary rule was published in the NC Register; and

WHEREAS, temporary rule 21 NCAC 32B .1708 remains in effect for 270 days, or until 11 April 2020, unless replaced by a permanent rule; and

WHEREAS, on 10 September 2020, the Board received a letter signed by the Secretary of the North Carolina Department of Health and Human Services and the State Health Director and Chief Medical Officer requesting the Board and the Board of Pharmacy proceed with permanent rule-making for the drug preservation rule, except for the drugs oseltamivir and azithromycin; and

WHEREAS, a permanent rule is not expected to go into effect until 1 April 2021; and

WHEREAS, the Board believes it is the public interest to remove oseltamivir and azithromycin from the temporary rule restricted list prior to 1 April 2021; and

WHEREAS, the Board has authority under N.C. Gen. Stat. § 90-12.5 to take this action in order to permit the provision of emergency health services to the public; and

WHEREAS, on 25 September 2020 the Board voted to take this action for the benefit and protection of the people of North Carolina and the United States of America.


NOW, THEREFORE, it is **ORDERED** that:

The drugs oseltamivir and azithromycin be removed from the restricted list in temporary rule 21 NCAC 32B .1708 effective 23 October 2020.

This the 25th day of September 2020.

NORTH CAROLINA MEDICAL BOARD

By:



Bryant A. Murphy, M.D.
President

**NORTH CAROLINA MEDICAL BOARD ORDER REMOVING OSELTAMIVIR AND
AZITHROMYCIN FROM THE RESTRICTED DRUG LIST FROM TEMPORARY RULE 21
NCAC 32M .0119.**

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person-to-person; and

WHEREAS, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on 30 January 2020; and

WHEREAS, on 31 January 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 319 of the Public Health Service Act; and

WHEREAS, by Executive Order No. 116 on 10 March 2020, North Carolina Governor Roy Cooper declared a State of Emergency for the entire State of North Carolina based on the public health emergency posed by COVID-19; and

WHEREAS, the ongoing COVID-19 pandemic continues to significantly impact the health of North Carolinians and place strains on our healthcare institutions; and

WHEREAS, the North Carolina Medical Board (“Board” or “Medical Board”) is an agency of the State of North Carolina organized under Chapter 90 of the North Carolina General Statutes and is charged, along with the Board of Nursing, with the approval of nurse practitioners in North Carolina and regulating such practice in the interest of the public health, safety and welfare; and

WHEREAS, the Secretary of the North Carolina Department of Health and Human Services and the State Health Director requested that the Medical Board and the Board of Nursing take immediate action to adopt emergency and temporary rules to help prevent a shortage of certain drugs that may be used in treating COVID-19 and that might be prescribed by nurse practitioners; and

WHEREAS, on 6 April 2020, the Nurse Practitioner Joint Subcommittee recommended the Board of Nursing and the Medical Board adopt an emergency rule to place conditions on the prescribing of certain drugs by nurse practitioners, including oseltamivir and azithromycin, for the treatment of COVID-19 in order to prevent a shortage of those medications; and

WHEREAS, on 21 April 2020, the Medical Board adopted emergency rule 21 NCAC 32M .0119 in accordance with the Secretary and State Health Director’s request; and

WHEREAS, on 15 July 2020 emergency rule 21 NCAC 32M .0119 became temporary rule 21 NCAC 32M .0119 when the temporary rule was published in the NC Register; and

WHEREAS, temporary rule 21 NCAC 32M .0119 remains in effect for 270 days, or until 11 April 2021, unless replaced by a permanent rule; and

WHEREAS, on 10 September 2020, the Board received a letter signed by the Secretary of the North Carolina Department of Health and Human Services and the State Health Director and Chief Medical Officer requesting the Board and the Board of Nursing proceed with permanent rule-making for the drug preservation rule, except for the drugs oseltamivir and azithromycin; and

WHEREAS, a permanent rule is not expected to go into effect until 1 April 2021; and

WHEREAS, the Board believes it is the public interest to remove oseltamivir and azithromycin from the temporary rule restricted list prior to 1 April 2021; and

WHEREAS, the Board has authority under N.C. Gen. Stat. § 90-12.5 to take this action in order to permit the provision of emergency health services to the public; and

WHEREAS, on 25 September 2020 the Board voted to take this action for the benefit and protection of the people of North Carolina and the United States of America.


NOW, THEREFORE, it is **ORDERED** that:

The drugs oseltamivir and azithromycin be removed from the restricted list in temporary rule 21 NCAC 32M .0119 effective 23 October 2020.

This the 25th day of September 2020.

NORTH CAROLINA MEDICAL BOARD

By:



Bryant A. Murphy, M.D.
President