



MNsurance Board of Directors Meeting Minutes

Wednesday, December 15, 2021, 1 – 3 p.m.

Remote: via WebEx

Participants in attendance: David Fisher, Jessica Kennedy, Assistant Commissioner Cynthia MacDonald (for Commissioner Harpstead), Suyapa Miranda, Stephanie Stoffel, Andrew Whitman

Participants not in attendance:

Staff in attendance: Angela Benson, Libby Caulum, Nate Clark, Joel Ingersoll, Kari Koob, John Nyanjom, Dave Rowley, Christina Wessel.

Guests: ASL interpreter Taylor Gjesdahl, ASL interpreter Hannah Merren, Dr. Daniel Trajano

Meeting Topics

Welcome

Suyapa Miranda, Board Chair

The meeting was called to order at 1 p.m. by Suyapa Miranda, chair.

Chair Miranda read MNsure’s purpose: The purpose of MNsure is to ensure that every Minnesota resident and small business, regardless of health status, can easily find, choose and purchase a health insurance product that they value and does not consume a disproportionate share of their income.

Chair Miranda noted that this month’s board meeting is being conducted remotely and that MNsure’s chief legal counsel, Dave Rowley, will conduct a roll call for attendance and for any votes taken today.

Public Comment

None.

Administrative Items

Suyapa Miranda, Board Chair

Approve November 17 Meeting Minutes

MOTION: Mr. Fisher moved to approve the draft meeting minutes from November 21, 2021. Vice Chair Stoffel seconded. Mr. Rowley took a roll call. All members voted in favor and the minutes were approved.

MNsire Board Conflict of Interest Review and Discussion

Dave Rowley, General Counsel and Chief Compliance Officer, Dr. Daniel Trajano, guest

Chair Miranda invited Mr. Rowley to give a brief presentation of MNsire's conflict of interest policy and to facilitate a discussion of board members regarding the application of the policy to potential board candidate Dr. Daniel Trajano.

Conflict of Interest Policy Overview

Mr. Rowley said he would provide a brief procedural history of this conflict of interest review, a proposed sequence of events at this meeting, an overview of the board's conflict of interest policy, and take questions on the process. The board would then decide whether to apply its conflict of interest policy to Dr. Daniel Trajano. If the policy application is approved, Dr. Trajano would make a presentation to the board. The board would then discuss the potential conflict of interest and vote on it.

Mr. Rowley explained Dr. Daniel Trajano applied for a board seat in August 2021. MNsire staff conducted a conflict of interest review and provided the results to the Governor's office. The Governor's office requested the board apply its conflict of interest policy prospectively to this candidate.

Mr. Rowley said the board would vote on whether to accept the Governor's request to apply its conflict of interest policy to the candidate. If the board agreed to apply the policy, he would make a presentation, and board members could ask him questions. The candidate would decide what information to provide in response. The board would then deliberate and vote on whether there would be a prohibited relationship if the candidate were appointed to the board.

Mr. Rowley gave an overview of the conflict of interest policy. He noted the conflict of interest-statutory definition is "an association including a financial or personal association that has the potential to bias or have the appearance of biasing a board member's decisions in matters related to MNsire or the conduct of activities under this chapter" [Minnesota Statutes, Section 62V]. Simplified, a conflict of interest would occur when the board member has a loyalty that competes with the member's duty of loyalty to MNsire. A conflict of interest can be actual or merely the appearance of one.

In addition to this board definition, the MNsire conflict of interest board policy specifies the following circumstances as being "prohibited relationships."

- Serving as an officer, director or employee of a business partner of MNsire or of another business engaged in providing services similar to the services MNsire provides.

- Within one year prior to or at any time during a Responsible Person's service to MNsure, employment by, membership of the board of directors of, or serving as a representative of a health carrier, institutional health care provider or other entity providing health care, navigator, insurance producer (broker), or other entity in the business of selling items or services of significant value to or through MNsure.
- Having a spouse who serves as an executive at a health carrier.
- Serving as a lobbyist, as defined under Minnesota Statutes. Section 1 OA.01, subdivision 21.

Mr. Rowley explained that both staff and the candidate believe the only issue before the board is whether the candidate became a representative of certain prohibited entities when he performed consulting services for them in the spring and summer of 2021. The conflict of interest issue for the board's consideration is, did the candidate serve as a representative of entities providing health care within one year prior to December 15, 2021.

MOTION: Chair Miranda asked for a motion. Mr. Fisher moved for the board to apply its conflict of interest policy to Dr. Daniel Trajano, a non-member. Mr. Whitman seconded.

Mr. Fisher asked to clarify that board members were voting whether they would be applying the conflict of interest statute and the board policy, not voting on whether there is an actual conflict of interest, and the latter could come in a later vote. Mr. Rowley said that was correct.

Vice Chair Stoffel asked if applying the conflict of interest policy meant they were reviewing the conflict of interest policy. Chair Miranda said they would be activating the conflict of interest policy to have a conversation with Dr. Trajano. Mr. Rowley concurred, saying if the motion passed then board would prospectively apply its conflict of interest policy to a non-board member to then decide if he has a conflict of interest from activity in the last year.

Ms. Kennedy commented that she thought the conflict of interest policy as designed didn't apply here, because the policy doesn't apply to non-board members. However, with the understanding the request was from the Governor's office to provide more information to the decision-maker to help decide, she indicated it made sense to apply it. She said would be deliberate and well thought out to apply it to prospective board members. She said the board is especially informed in how to apply this policy to potential candidates and she saw the value in doing so. Mr. Fisher and Vice Chair Stoffel concurred.

Mr. Rowley took a roll call. All members voted in favor to apply the conflict of interest policy to the non-board member, Dr. Daniel Trajano.

Board Candidate Presentation

Chair Miranda asked Dr. Trajano to introduce himself and make his presentation.

Dr. Trajano introduced himself and said he appreciated the opportunity to present to the board. He is a family doctor and geriatrician, retired from practice. He owns a solo consulting business, which will be the focus of the conflict of interest determination.

He presented a short slide deck. He noted the board received a packet of information including his statement of work and resume. He indicated he wanted to be transparent about his background.

He went over his career background. He practiced medicine and served in an administrative role at Park Nicollet. He has also worked for Medica and Blue Cross Blue Shield (BCBS) Minnesota. His last employment with BCBS Minnesota was over a year ago and in his view shouldn't pose any conflict of interest as there is no ongoing relationship with them. He had not done any consulting with the insurance side of their business in the past year. One consulting client, Livio Health, is under the same umbrella company (Stella Health) but is separate from BCBS Minnesota and is not an insurance provider.

He noted the section of the state conflict of interest statute that relates to board members requires that board members not be employed by or members of boards or otherwise be a representative of the entities listed (health care institution, insurance provider, etc.). Mr. Trajano indicated he didn't believe any of his consulting work was representing any of those entities as related to MNsure.

He then described his work for Pop Health Consulting in the last year. The first engagement was subcontracting with Entira Family Clinics as a subject matter expert to help prioritize and design their care delivery model. His role was limited to one to two hours per week with a compensation of less than \$3,000.

His other consulting work was with Livio Health from April to July 2021, related to educating providers and staff on documenting and coding services accurately. Livio is a health provider focused on home-based palliative care. He worked up to 16 hours a week with a total compensation of less than \$30,000.

Dr. Trajano summarized that he owns a solo consulting firm and has had two health care clients, and does not believe he was representing either of them. He did not think Livio Health has MNsure consumers as patients, as their business is focused on mostly Medicare recipients. Entira Family Clinics may have MNsure consumers as patients, but his work was not related to their MNsure business. He indicated he would be committed to complying to conflict of interest policies for future consulting and would be proactive in making arrangements and accepting consulting engagements if he were to be on the MNsure board.

Chair Miranda thanked Dr. Trajano for his presentation and asked the board if there were any questions. She asked him to clarify if he was going to continue to do consulting.

Dr. Trajano said he's not actively seeking work, but his business is still active. He was open to doing consulting work. He had been offered some teaching opportunities and is likely to spend some of his time on that.

Chair Miranda asked him if he would have conversation with the board before taking consulting work. He said would be willing to do so.

Mr. Fisher thanked Dr. Trajano for his presentation. He said he has some historical perspective on this issue after serving on the MNsure task force that discussed establishing a conflict of

interest policy before the board was formed. That group discussed that if they considered establishing the policy too broadly, they would be shutting out some very qualified people with relevant expertise. He advocated for a narrow application of this policy and thinks it excludes people under contract/consulting with entities. Looking at the word “representative” in the statute Mr. Fisher felt that Dr. Trajano’s work did not make him a representative of these entities, and those two entities were not selling through or to MNsure. He suggested the entities would have to deal with MNsure directly for there to be a conflict of interest. Mr. Fisher said he had significant concern about the ongoing consulting practice because of the perception people may have that Dr. Trajano could use his MNsure board stature to sell his consulting business; people may be critical of that.

Assistant Commissioner MacDonald asked how aware Dr. Trajano was of the business relationship between Livio and BCBS Minnesota, and the role he played with Livio. She said she understood there is some relationship between Livio and BCBS Minnesota, but it may not be directly related to the representative component of conflict of interest policy.

Dr. Trajano said they are under the same umbrella organization, Stella Health. BCBS Minnesota is the health insurance arm of Stella. The provider group arm of the company includes Livio. He reiterated his role of educating the Livio health providers and staff about documenting and coding services. Livio and BCBS Minnesota are separated by firewalls and can’t collaborate on many things.

Assistant Commissioner MacDonald asked him if his role was technical, not strategic or marketing. Dr. Trajano said that was correct, and he was focused on working with providers and their staff.

Ms. Kennedy thanked Dr. Trajano for his interest and willingness to serve and to share his background information with the board. She agreed with Mr. Fisher’s remarks. In her analysis, a representative is able to act on behalf of an entity; for instance, employees, board members are agents, and agency law applies. She noted that statements of work usually accompany umbrella agreements. Those agreements or contracts often spell out what the independent contractor relationship is to disclaim any liability or responsibility of action. She asked if he was aware of any section like that in his agreements to describe his relationship with the entities.

Dr. Trajano didn’t recall an explicit statement like that but would look at his contracts. Ms. Kennedy asked if his actions were capable of binding the entities; that is, could he act on their behalf. He said no, he was advising them and providing expertise on certain aspects of their practice, not binding them to specific actions. He said he had no role in any negotiation of contracts, either.

Ms. Kennedy said she was not sure that a representative role would be limited to negotiations, such as with policy makers and MNsure. She asked if he were an agent, like an employee, that would be a prohibited relationship. She clarified he acted as an advisor not binding the entities. Dr. Trajano agreed with that.

Mr. Fisher asked Dr. Trajano for his response to the possible perception about gaining business as a MNsure board member. Dr Trajano said it was a valid point and he could see how

someone might perceive that. Dr. Trajano explained he is not actively looking at expanding or building his consulting practice. The business is open but he is not actively pursuing clients. If someone approached him with a consulting opportunity, he committed to bringing it to the board to discuss before accepting work if he became a board member.

Mr. Fisher commented that there isn't anything that could be done about other people's perceptions about conflicts of interest, but it was important to have discussed the issue at this board meeting. As long as Dr. Trajano would disclose and recuse, Mr. Fisher indicated would be satisfied.

Vice Chair Stoffel asked Mr. Rowley if the board was recommending to the Governor's office as to whether or not there is a conflict of interest. She commented that the same conflict of interest rules apply to all board members regarding future concerns about conflicts of interest, real or perceived. Mr. Rowley said if a board member has a potential conflict of interest, there is an obligation to disclose it to the board chair. In the past, there have not been any that have advanced beyond that. Vice Chair Stoffel asked if there was already a method for that and Mr. Rowley confirmed. He said that the perception of a conflict of interest is a difficult issue. But if a board member thinks they may have a conflict of interest, they are obligated to bring it forward.

Board Candidate Discussion and Vote

Chair Miranda asked for a motion on whether Dr. Trajano's consulting activities result in a conflict of interest. Mr. Fisher clarified that the motion is that the board finds that Dr. Trajano does not have a conflict of interest to prevent him from being on board. Chair Miranda concurred.

MOTION: Mr. Fisher motioned the board find that Dr. Trajano did not have a conflict of interest from his consulting activities to prevent him from serving on the MNsure board. Vice Chair Stoffel seconded.

Assistant Commissioner MacDonald asked for a restatement of the motion for clarification. Mr. Fisher said it was that the board finds Dr. Trajano is not in a conflict of interest situation and therefore not prohibited from being a member of the board for that reason. A yes vote means agreement that Dr. Trajano does not have a conflict of interest.

Mr. Rowley took a roll call. All members – Mr. Fisher, Ms. Kennedy, Assistant Commissioner MacDonald, Chair Miranda, Vice Chair Stoffel, and Mr. Whitman – voted yes in agreement that Dr. Trajano did not have a conflict of interest.

Mr. Rowley said MNsure staff would communicate the outcome of the vote to the Governor's office.

Chair Miranda thanked the board for their thoughtful conversation and Dr. Trajano for his time and presentation.

MNsured Board Governance

Suyapa Miranda, Board Chair, and Nate Clark, MNsure CEO

Chair Miranda said that Mr. Clark would be giving a brief proposal on how the board could continue to advance priorities.

Mr. Clark reminded board members they would be discussing the priorities discussed in the October and November meetings:

- Being of assistance to staff as requested and appropriate.
- Looking at existing policies, confirming they're appropriate, and identifying any gaps or changes that should be addressed
- Leading the process of defining MNSure's business strategy and goals, establishing performance expectations, and evaluating performance.
- Ensuring existing practices meet board goals and expectations, especially as they relate to MNSure's strategy and business goals.
- Understanding connections and interactions between state agencies, and ensuring they benefit the agencies and the populations they serve.
- Ensuring the business has the resources needed to accomplish its mission.
- Ensuring the board meeting and other meetings achieve board goals and meet the needs of members.

Mr. Clark said they talked at the November board meeting about establishing new ad hoc work groups, using small group meetings and possibly scheduling more board meetings to advance their priorities. The board didn't decide on an action but shared ideas and reactions. There was strong support to using small group calls to share information. Some members liked the flexibility of adding a third hour to board meetings or adding board meetings as needed to the calendar. There was a follow up discussion about how existing work groups may be the best forum to pursue the identified topics.

Since there wasn't any overall consensus, Chair Miranda and Mr. Clark landed on an approach to assess the priority areas the board identified and assign them to board meetings for topical deep dives, to work groups where the topic area was part of group's area of responsibility, or to small group calls as needed as a forum for providing background information and training. Mr. Clark asked the board to discuss these options.

Mr. Clark noted that board meetings typically occur six times a year, and there have been more this year. Board meetings provide opportunities for deep dives in a public forum. The length and frequency can be increased as needed. Priority areas the board identified that are candidates for this approach include business practices and performance of key business areas; interagency coordination and operations; IT and systems infrastructure; and IT governance.

He then discussed existing work groups and how the board might be able to use them. Workgroups focus on a particular subset of board business, and are unique in that board members can work in a smaller setting and apply their expertise in specific areas. Workgroup members aren't making decisions for the board, but these meetings provide opportunities to

make recommendations to the full board. They can dig into areas of interest and use a framework that already exists.

Mr. Clark talked about the existing workgroups and their focus. The strategy workgroup focuses on the legislative agenda and tracking, MNsure's relationship with the Minnesota Department of Human Services, and partnerships with vendors, other agencies or organizations. The group's work could possibly align with topics like MNsure business goals and reviews of policies such as the charter and bylaws.

He commented that they could use workgroups to review policies for relevance, or to modify or rescind, and bring recommendations to the board.

He then discussed the finance workgroup, which has a focus on budget development, financial planning, enrollment projections and financial monitoring. Related policies that may align with the group are the delegation of authority (specifically, what areas are delegated to staff and are the established financial boundaries appropriate) and fiscal policy.

Mr. Clark continued with the operations workgroup, with a focus on navigator and broker initiatives, IT project planning and prioritization, reporting metrics, and human resources. There could be an opportunity to look at the consumer assistance program; for instance, does that policy need to be modified or rescinded, since it was a policy to establish the program. They could also discuss if there are still opportunities to codify some of the elements into standard practice.

Next, he talked about the compliance workgroup. In addition to focusing on audits and assessments monitoring, compliance program updates, privacy and security updates, legal issues, and contracts, the workgroup could also look at the fiscal and conflict of interest policies. They could assess whether the conflict of interest policy should be expanded as board members discussed earlier in the meeting.

He then talked about small groups, which provide an opportunity for staff to share background information and to conduct board member training and orientation. They can be scheduled as necessary. They were useful in preparation for today's meeting, for example, to provide background on the conflict of interest policy.

Mr. Clark noted that ad hoc work groups are also an option. They are authorized in MNsure's charter and bylaws. The board could establish one or more if they would be a better approach to work than using the other options.

In summary, with the understanding the board wants to dedicate time to meeting, discussing and planning around the priority areas they have identified, the proposal uses a framework of board meetings, workgroup meetings and small group calls to accomplish the goals and develop guidance for staff. It is a potential path forward to doing the work. They can then begin to frame 2022 meetings to accomplish the goals brought forward.

Mr. Clark asked for board input and guidance on next steps.

Mr. Whitman asked how much consideration had been given to the ordering of priorities and of staff time. He was concerned about taking too much staff time. Mr. Clark said by segmenting and delegating some work to the workgroups, those groups could prioritize taking them up and using staff expertise to move things forward. For board meetings, it's important for the board to understand operations and MNsure's business. Mr. Clark explained it was important that board members have the information they need to contribute, as was brought up in the August and September meetings. He stated they don't have to address everything in one calendar year.

Mr. Whitman asked what else the board needs to consider beyond the areas that any board of directors has responsibility for, such as the budget and IT. Mr. Clark responded that any time the board has an interest in a topic that would be essential for MNsure's success, it should be considered. One example is the conversation they had earlier in the year about the delegation of authority.

Ms. Kennedy congratulated and shared her gratitude to the MNsure staff who worked on the December 15 enrollment deadline, especially those who are on the phones. She didn't think the board is necessarily looking for easy and efficient ways to address priorities. There are opportunities to improve and add expectations, build a calendar, set goals and metrics, for instance. She suggested board members set aside meetings to have those discussions. She wanted the board to set clear expectations of deadlines, and determine how to communicate that, along with expectations of what to accomplish on small group calls. She would like to see clear decision points and have votes on governance structure at the next board meeting. Perhaps board members should set up an ad hoc group to prepare over the next month. She referred to Mr. Clark offering to collate and share input and suggestions from board members to prepare for the next meeting, so they could vote on items in the plan. She said this would need to be queued up deliberately and specifically to have concrete things to vote on in the next meeting. Given the tight schedule, perhaps they should form an ad hoc work group to do this instead.

Mr. Clark said the approach today is recognizing the need to further the board's conversation. Staff are agreeable to gather decision points and ensure there is something specific and measurable for the board to vote on, but the board needs to provide direction to staff on what that looks like. Part of the challenge has been understanding what framework should be used. He clarified with Mr. Rowley that they cannot ask board members to submit suggestions or vote on list of priorities due to open meeting laws. He said they could form an ad hoc work group to provide a framework to submit to the board at their next meeting. He commented that staff need this kind of discussion and feedback to understand the next steps as there was no board member consensus at their last meeting on how to proceed.

Ms. Kennedy asked if one or two board members could be delegated to create a proposal to discuss at the next meeting, and still follow the open meetings law. Mr. Rowley asked if those members would be working independently, or would other members be submitting ideas to them. There would be concerns with the latter. A sub-group of board members that does not form a quorum could work on recommendations without violating the open meetings law.

Vice Chair Stoffel said – they have already had a small group that provided recommendations and Mr. Clark put forward possible suggestions to meet those recommendations. She suggested board members try what Mr. Clark brought forward for next several months to see what they can learn from it.

Mr. Fisher was in favor of using what Mr. Clark provided. He suggested they use an ad hoc group to consider the responsibilities of the board: what board members would be voting on at each meeting, establishing a calendar of what members need to be doing, and spreading the work out so they are not trying to do all of it in one meeting. He observed that board members are experts in their own fields, are not as immersed in the organization as staff are, and need education on a recurring basis about the day-to-day operations and policies to ensure board members are following the mission and bringing their expertise to advance the mission.

Chair Miranda expressed gratitude for this discussion and input, and thanked Mr. Clark for synthesizing the information and bringing it to the board. She asked the board if they should build space in meetings for deep dives or use small groups to prioritize work for the upcoming calendar year. She commented that many things that happen within the organization weren't "baked into" the board's calendar of work. She preferred they plan ahead and prioritize what is on the calendar to better organize themselves. She stated that Mr. Clark provided a menu of options of how to proceed. She reinforced that this is about the work that they want to carry forward; it's not that they have to do something but that they want to do something they feel is important.

Vice Chair Stoffel said the work is necessary and not easy. She supports being planful and putting certain things on the calendar, recommending that they preassign things to certain months. She suggested they take things in steps; see how the upcoming months' agendas are, assess if they are making progress, and continue to review moving forward.

Mr. Clark proposed that he provide the full organizational calendar before the January meeting to be as efficient and expeditious as possible. They could then look at their list of priorities to slot into future board meetings and work groups or small group meetings.

Ms. Kennedy asked to look at the calendar and provide feedback before the next meeting, to queue-up ideas she has in the most efficient and effective manner. Mr. Clark said he would be available to meet with individual board members to walk through the upcoming calendar.

Ms. Kennedy commented she would like to break out expectations for the board members in preparation for board meetings, small group calls and work groups.

Chair Miranda asked the board if they prefer to use the structure as Mr. Clark laid out in this meeting, at least for next few months, or if they should create an ad hoc committee to look at the calendar and priorities to prepare for the January meeting.

Mr. Clark said for the January meeting, staff will have a calendar prepared as a baseline for discussing the opportunities for the rest of the year. If it then appears there is a need for an ad hoc committee after the January meeting, they could convene one. They would then have good sense of how to move forward.

Ms. Kennedy asked if they would be voting on the calendar and whether to have an ad hoc group in January.

Mr. Whitman said that in the meantime if a board member wanted to clarify some things on the calendar with staff, that could move forward.

Mr. Clark said there was no need to vote on the discussion slide deck content as it was for discussion and to provide staff direction. They would need to vote in January if they wanted to establish an ad hoc group.

Chair Miranda verified they are using the structures they have in place to create the calendar.

Chair Miranda then recapped that staff would put together the 2022 calendar before the January board meeting. Mr. Clark reminded the board that the January meeting is always a busy one and will have a full agenda. It includes a review of MNsure's open enrollment performance, a vote on the annual report (as it is required to be submitted to the legislature by January 15), a review and approval of the assister program, as well as a closed session to update and approve one of the new MNsure plans approved by bargaining units.

Chair Miranda asked if it would be appropriate to extend the meeting time by 30 minutes, and Vice Chair Stoffel agreed in extending it. Mr. Clark said he would confer with staff. They tentatively planned to add 30 minutes to the January 12 meeting, along with building in a scheduled break.

Mr. Fisher asked for the already-established 2022 meeting dates and Mr. Clark said those would be provided ahead of the January meeting.

New Business

Suyapa Miranda, Board Chair

No new business.

Adjourn

Suyapa Miranda, Board Chair

MOTION: Chair Miranda asked for a motion to adjourn the meeting. Mr. Fisher moved to adjourn. Mr. Whitman seconded. Mr. Rowley took a roll call; all board members voted in favor and the meeting was adjourned at 2:45 p.m.