



OFFICE OF THE MEDICAL INVESTIGATOR

NEW MEXICO BOARD OF MEDICAL INVESTIGATORS MINUTES OF GENERAL MEETING – March 18, 2024

NM Office of the Medical Investigator
The University of New Mexico Health Sciences Center

BOARD PRESENT:

Patrick Allen <i>Chair</i>	Cabinet Secretary, New Mexico Dept. of Health
Patricia Finn, MD <i>Vice Chair</i>	Dean, UNM School of Medicine
Kent House <i>Board Member</i>	Chair, New Mexico Board of Funeral Services
Josett Monette <i>Board Member</i>	Cabinet Secretary, New Mexico Dept. of Indian Affairs

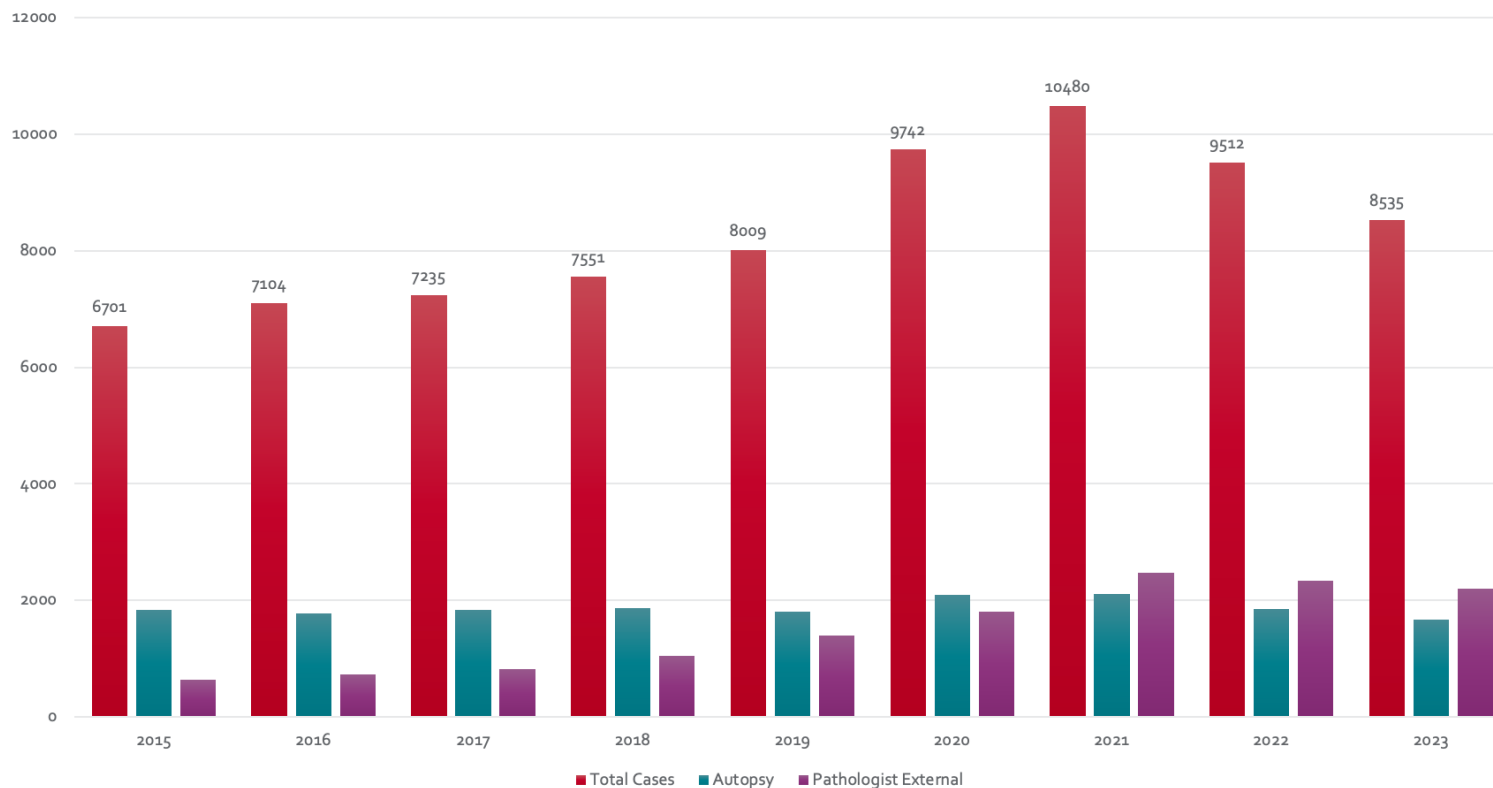
BOARD ABSENT:

Troy Weisler <i>Board Secretary</i>	Chief, New Mexico State Police
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ATTENDEES:

Amy Atiano	HR Administrator 2, OMI
La Vonda Bowens Woodard	Operations Director, OMI
Paul Carbajal	Administrative Assistant 3, OMI
Anthony Cervantes	Administrative Officer, OMI
Francie Cordova	Chief Compliance Officer, UNM
Lauren Dvorscak, MD	Deputy Chief Medical Investigator, OMI
Gina Endlich Terrazas	Administrative Assistant 3, OMI
Elizabeth Gonzales	Supv, Technical Services, OMI
Heather Jarrell, MD	Chief Medical Investigator, OMI
Nancy Joste, MD	Professor, Chair, UNM Department of Pathology
Sara Navarrette	Associate University Counsel, UNM HSC
Charlene Perales	Administrative Assistant 3, OMI
Kyla Sorensen	Accountant 3, OMI
Keven Stevenson	Vice President for HR, UNM

1. **CALL TO ORDER AND CONFIRMATION OF QUORUM**
Secretary Allen called the meeting to order at 1:03 PM and confirmed a quorum.
2. **ADOPTION OF THE AGENDA (action item)**
Dean Finn **MOVED** to adopt the agenda. Mr. House **SECONDED**. Motion **CARRIED**.
3. **VOTE TO APPROVE MEETING MINUTES (action item)**
 - a. December 5, 2023, General Meeting
Dean Finn **MOVED** to approve the meeting minutes. Mr. House **SECONDED**. Motion **CARRIED**.
4. **REPORT FROM THE CHIEF (Information Item)**
Dr. Jarrell presented a graph illustrating the OMI caseload trends. The analysis indicated that, excluding the years 2020, 2021, and 2022, the OMI is following its pre-pandemic trajectory in terms of an increase in caseload. It was noted that historically, there is usually a yearly increase ranging between 4-6%.



Dr. Jarrell reported on the activities and progress for the year 2023. During the presentation, Dr. Jarrell outlined the definition of a Case Reassignment, explaining that this occurs when the original forensic pathologist who conducted the autopsy is unavailable within the state. In such cases, the responsibility for reviewing the case and providing testimony in court is reassigned to a forensic pathologist at the OMI. The reassigned pathologist conducts an objective review to see if they agree with the cause and manner of death before proceeding with court testimony.

Report out for 2023:

- Pre-trial Interviews: 123
- Testimony: 75
- Case reassignments: 118
- Phone calls: 140 calls per day (average)
 - Reports of death
 - Requests for records
 - Request to speak to the pathologist.
 - Status of case
 - Status of release
 - Request for grief services.

Dr. Jarrell handed over the floor to La Vonda Bowens Woodard, Director of Operations at OMI, who led the discussion on phone call operations at OMI. Ms. Bowens Woodard highlighted that phone calls have slightly decreased following the reorganization of the OMI phone tree, aimed at ensuring efficient and effective call handling processes.

Ms. Bowens Woodard continued to highlight OMI Field Deputy Medical Investigators (FDMI's) and the Grief Services Program.

Field Deputy Medical Investigators:

- 667 Field external examinations conducted in 2023.
- 1 supervisor for all FDMI's

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- End of FY23, 80 FDMI's were on staff.
- As of 2/19/24, 101 FDMI's on staff
 - Increased FDMI hourly rate in FY24 from \$15.45 to \$17 per hour
- 5 hours per out-of-county fee decreased from 11,413 hours in FY23 to an estimated 6,225 hours in FY24 resulting in approximately a little under 100k in savings.

Grief Services:

- Funded independently through state appropriations.
- Workshops
 - 3 Notification of Death Workshops
 - 3 Vicarious Secondary Trauma Workshops
- 4 Support Group Cycles
 - Mother Bereaved by Homicide
 - Parenting While Grieving (all Homicide groups)
 - Couples Bereaved by Suicide
 - Tiny Home Village Suicide Community Support Group
- Internship
 - 3 graduated May 2023
 - 2 will graduate in May 2024
- Potential relocation of the Grief Services Program from the OMI building to a new space due to concerns raised about the appropriateness of grieving families having to come to the OMI for grief services given the nature of our operations.
 - UNM Space request form has been submitted.
 - Request expanded funding.

Forensic Pathology Fellowship Program:

Dr. Jarrell cedes the floor to Dr. Lauren Dvorscak, the OMI Deputy Chief Medical Investigator and Forensic Pathology Fellowship Director, who presents an update on recruitment for positions in the Forensic Pathology Fellowship Program. Dr. Dvorscak reports that we successfully filled all four fellowship positions for the next program year, with three candidates from UNM and one from Sanford set to join OMI next July. Currently in the process of MATCH for subsequent years, Dr. Dvorscak highlights that the OMI fellowship continues to be a highly esteemed program nationwide.

- Train 4 forensic pathology fellows per year
- 121 Forensic Pathology Fellows trained at OMI since 1975
- 89 Fellows trained since 2000 (estimated 900 practicing forensic pathologists in US)
- Match Program: 70 fellowship spots for 47 candidates; OMI filled all 4 spots with top choices
- Match Day 2024: May 1st

Special Appropriations Request FY24, Fully Funded \$3,485,100:

Dr. Jarrell informs the board that the OMI's special appropriations request for FY24, totaling \$3,485,100, has been fully funded by the legislature and subsequently signed by the Governor. Dr. Jarrell highlights the specific equipment that the allocated funds will procure. OMI plans to engage the services of the architects and engineers responsible for constructing the current OMI building. These projects must be completed by the end of the fiscal year.

- Replace all 16 autopsy tables.
- Replace Stryker lights.
- Redo autopsy floors.
- Replace server.
- Replace response vehicles and other equipment.

Smith vs Arizona:

Dr. Jarrell provides an update to the board on the Smith vs. Arizona case, showcasing a slide highlighting its significance. Dr. Jarrell reminded the board the definition of a Case Reassignment, explaining that this occurs when the original forensic pathologist who conducted the autopsy is unavailable within the state. In such cases, the responsibility for reviewing the case and providing testimony in court is reassigned to a forensic pathologist at the OMI. The reassigned pathologist conducts an objective review to see if they agree with the cause and manner of death before proceeding with court testimony.

The Smith vs. Arizona case questions the interchangeability of expert witnesses and was deliberated before the Supreme Court in January. The National Association of Medical Examiners (NAME) filed an amicus brief. A decision is expected in May, with indications suggesting that the US Supreme Court may favor the petitioner's argument, potentially leading to the elimination of Case Reassignments. Dr. Jarrell raises concerns about potential challenges this might pose for cold cases where expert witnesses may not be alive, as well as for cases involving experts who have relocated outside the country.

<https://www.scotusblog.com/case-files/cases/smith-v-arizona/>

Docket No.	Op. Below	Argument	Opinion	Vote	Author	Term
22-899	Ariz. Ct. App.	Jan 10, 2024	TBD	TBD	TBD	OT 2023

Issue: Whether the confrontation clause of the Sixth Amendment permits the prosecution in a criminal trial to present testimony by a substitute expert conveying the testimonial statements of a non-testifying forensic analyst, on the grounds that (a) the testifying expert offers some independent opinion and the analyst's statements are offered not for their truth but to explain the expert's opinion, and (b) the defendant did not independently seek to subpoena the analyst.

If SCOTUS rules in favor of the petitioner, case reassignments will cease and the the court will need to have the original pathologist testify.

Property and Valuables of Unclaimed Decedents:

Dr. Jarrell presented a slide highlighting the need to address concerns regarding property and valuables of unclaimed decedents. It was noted that in cases where a decedent remains unclaimed and undergoes the indigent cremation process, their clothing and personal effects remain at OMI and have been stored there since 2005, resulting in OMI running out of storage space. As a solution, OMI will collaborate with UNM legal to develop a Standard Operating Procedure (SOP) that outlines the handling of stored property and establishes protocols for future cases. It was mentioned that the current state statutes present a gray area in this regard.

- **Problem:** Personal effects and valuables of unclaimed decedents remain in storage at the OMI since 2005; Some counties do not want these valuables and clothing while others only want items of significant monetary value

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- **Solution:** Creation of a SOP to address that OMI is not responsible for retention of these items and implementation of a plan for the historical items in storage and for future items.

Jurisdiction Terminated/Non-Accepts – State statute update needed:

Dr. Jarrell presented State Statute 24-14-20 to address issues related to jurisdiction terminated (JT) and non-accept death cases. In these situations, OMI responds to unattended deaths and if it is determined to be a natural death, jurisdiction is relinquished. Dr. Jarrell identified two areas for improvement in the statute. Firstly, in section C, she proposed allowing physician assistants (PAs) to sign death certificates to prevent instances where primary care physicians (PCPs) refuse to sign based on the involvement of a PA. Secondly, in section F, she suggested extending the timeframe from 10 days to one year since the last treatment by a physician before OMI must assume jurisdiction, aligning with practices in other states. Dr. Jarrell cited the precedent set by the Miami-Dade Medical Examiner's office, where a fee is charged to PCPs who refuse to sign, as a model for OMI. A fee is currently established on the OMI fee schedule charging UNMH \$556 for signing death certificates. Considering the additional costs and lengthier process involved when OMI must take jurisdiction of such cases, including transportation, CT scans, and external exams, Dr. Jarrell emphasized the importance of streamlining procedures to ensure timely issuance of death certificates to families.

State Statute 24-14-20:

- A. A death certificate for each death that occurs in this state shall be filed within five days after the death and prior to final disposition. The death certificate shall be registered by the state registrar if it has been completed and filed in accordance with this section, subject to the exception provided in Section 24-14-24 NMSA 1978
- C. The medical certification shall be completed and signed within forty-eight hours after death by the physician or nurse practitioner in charge of the patient's care for the illness or condition that resulted in death, except when inquiry is required by law. Except as provided in Subsection D of this section, in the absence of the physician or nurse practitioner, or with the physician's or the nurse practitioner's approval, the medical certification may be completed and signed by the physician's associate physician or the nurse practitioner's associate nurse practitioner, the chief medical officer of the institution in which death occurred or the physician who performed an autopsy on the decedent; provided that the individual has access to the medical history of the case and views the deceased at or after death and that death is due to natural causes.
- D. Unless there is reasonable cause to believe that the death is not due to natural causes, a registered nurse employed by a nursing home may pronounce the death of a resident of the nursing home and a registered nurse employed by a hospital may pronounce the death of a patient of the hospital. The nurse shall have access to the medical history of the case and view the deceased at or after death, and the individual who completes the medical certification shall not be required to view the deceased at or after death. The death shall be pronounced pursuant to procedures or facility protocols prescribed by the hospital for patients or by the physician who is the medical director of the nursing home for residents. The procedures or facility protocols shall ensure that the medical certification of death is completed in accordance with the provisions of Subsection C of this section
- F. When death occurs without medical attendance as set forth in Subsection C or D of this section or when death occurs more than ten days after the decedent was last treated by a physician, the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death.

According to Florida Statute 382.008(3), as of July 1, 2013, all records on natural cases must be filed by the decedent's primary or attending physician. This is the physician who treated the decedent through examination, medical advice, or medication during the **12 months** preceding the date of death.

Website: http://www.floridahealth.gov/certificates/certificates/EDRS/ documents/DH150-849MD_brochure.pdf

Miami-Dade County will charge an administrative fee of \$770.00 to a primary or attending physician refusing to certify a natural death falling under Florida Statute 382.008(3), thereby requiring the medical examiner to bring the case in for proper certification. A fee of \$220.00 will be charged if the medical examiner must amend a natural death record filed by an attending physician.

Congressional Directed Spending Request:

Dr. Jarrell states that OMI has submitted a congressional directed spending request through Senator Heinrich's office.

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- NM has 2 labs that can process and analyze DNA from crime scenes.
- Problem: Neither lab has ability to process samples from bone from unidentified human remains.
- Requested funds to build a laboratory component to bring DNA identification efforts in New Mexico (currently outsourced to private labs out of state)
- Funding amount: \$2 million
- Anticipated appropriations: DOJ (Byrne Discretionary, COPS Law enforcement technology)

Locums Tenens Forensic Pathologists:

Dr. Jarrell provided an update on the staffing situation for forensic pathology faculty at OMI. According to data presented on a slide; in order to effectively handle the current caseload, it is recommended to have 11 forensic pathologists on staff. As of April 1st, the OMI currently employs 6 forensic pathologists actively involved in handling cases. Dr. Jarrell explained that the workload for OMI faculty forensic pathologists is divided, with 10% dedicated to research, 10% to education, and the remaining portion focused on clinical services such as autopsy procedures and judicial activities. To effectively meet operational needs, the OMI should ideally have 7.7 full-time equivalent (FTE) positions, which equals 11 full-time forensic pathologists.

	Clinical Effort	FTE	FTE - Clinical	FTE - Clinical Adj.
<i>As of April 1, 2024, the OMI will have 6 full-time forensic pathologists.</i>	Dvorscak, Lauren	1.0	0.50	0.30
<u>Current FP faculty, Clinical service:</u>	Gallego, Daniel	1.0	0.60	0.80
• Chief ME: .5 FTE (should be .2)	Helmrich, Emily	1.0	0.80	0.80
• Deputy Chief ME: .5 FTE (should be .3)	Jarrell, Heather	1.0	0.50	0.20
• Forensic Pathologists: .8 FTE x 3	Kerr, Aidan	1.0	0.80	0.80
• Forensic Pathologist: .6	Kerwin, Audra	1.0	0.80	0.80
Total Current Clinical FTE: 4.3	FY26 New Hire	1.0	0.80	0.80
Goal: 7.7 FTE (11 full-time FPs)	FY26 New Hire	1.0	0.80	0.80
	FY27 New Hire	1.0	0.80	0.80
	FY28 New Hire	1.0	0.80	0.80
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	Total FTE	11.0	8.00	7.70

Dr. Jarrell then shifted the discussion to Locums during the presentation. It was emphasized that the OMI requires locum forensic pathologists as a measure to prevent burnout among current forensic pathologist. These locums would essentially be temporary forensic pathologists who would be brought in for a brief period, typically 3 or 4 days, to assist with handling cases. Furthermore, it was noted that according to the National Association of Medical Examiners, a forensic pathologist should not conduct more than 325 autopsies annually. Failure to meet this standard could potentially result in a phase 2 accreditation deficiency for the OMI. Dr. Jarrell proceeded to share a cost breakdown for securing

locums for fiscal year 2025, providing the board with an overview of the proposed temporary solution for the forensic pathologist shortage at the OMI.

Locums - Projected Cost of Locums for FY25

Clinical Effort	FTE	Phase I Deficiency 250 Cases	Phase II Deficiency 325 Cases
Dvorscak, Lauren	0.50	156	203
Gallego, Daniel	0.60	188	244
Helmrich, Emily	0.80	250	325
Jarrell, Heather	0.50	156	203
Kerr, Aidan	0.80	250	325
Kerwin, Audra	0.80	250	325
Total Cases Based on FTE	4.00	1250	1625
CY23 Case Load Adjusted to Autopsy Equiv.		2249	2249
Difference based on 2249 autopsy equiv.		999	624
Number of Autopsies (43% of cases)		430	268
Number of Path External (57% of cases)		1708	1067
Autopsy Cost @ \$1,400 per case		601,398	375,648
Path External Cost @ \$800 per case		1,366,632	853,632
Total: Locums Cost by Exam		\$ 1,968,030	\$ 1,229,280
Days on service (3 autopsies and 3 path externals per day)		356	223

Travel	Cost per Day/Week	Travel Cost	Travel Cost
Airfare (2 flights per week)	650	\$ 67,600	\$ 67,600
Lodging (daily)	150	\$ 53,447	\$ 33,384
Per Diem (daily)	59	\$ 21,022	\$ 13,131
Car Rental (daily)	60	\$ 21,379	\$ 13,354
Total: Travel Costs		\$ 163,447	\$ 127,469
Total Cost for Locums		\$ 2,131,477	\$ 1,356,749

*Assuming that 43% of the cases are autopsies and 57% are path externals

Dr. Jarrell proceeded to address the issue of forensic pathologist salaries, presenting it as a permanent solution. She displayed a slide comparing the current job market postings for forensic pathologists with the salaries of the OMI's current forensic pathologists. Her proposal would be that forensic pathologists ought to have their own equity grid separate from the Department of Pathology at UNM School of Medicine, enabling the OMI to better assess how its salary offerings compare to those of other medical examiner's office.

Current OMI Forensic Pathologist Pay

Current UNM/OMI FP Salary	FY24	FY25
Salary	210,000	220,000.00
Market Adjustment	10,000	9,865.00
TAT Incentive	20,000	20,000
Total Salary	240,000.00	249,865.00

Current Job Market Postings for Forensic Pathologists

Average Minimum Tier Offer: \$257,467.17

Average Maximum Tier Offer: \$296,345.54

Proposal:

1. Place forensic pathologists within our own equity grid, separate from department of Pathology.
2. Increase each forensic pathologist’s salary by \$40k, to be competitive in the current job market

FY26 Legislative Request (Research and Public Service Projects):

Dr. Jarrell expressed her view that the New Mexico Medical Examiner's Office, being a state agency, should not follow the UNM Research and Public Service Project (RPSP) protocol for legislative funding requests. The current process, which involves going through UNM and being selected by them based on their priorities, is not deemed suitable by Dr. Jarrell. She advocated for the OMI to have a direct pathway to present requests to the legislature annually, particularly as expansion may not align with the current goal of securing adequate funding for the agency. Dr. Jarrell highlighted that the RPSP process is not the most appropriate approach for the OMI.

5. **BUDGET (Information Item)**

Dr. Jarrell provided an overview of the OMI FY24 income statement projections from July 1, 2023 – June 30, 2024.

OMI FY24 Income Statement Projections 7/1/23 - 6/30/24

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Revenue Highlights

UH Revenue: \$56k/month average

Cremation Permits: \$275/month

Expense Highlights

Decedent Transportation:
\$159k/month average

Toxicology Expense: \$146k (DOH
funding for tox \$521k [Jan 1,'24])

6. **PUBLIC COMMENT**

Ms. Elizabeth Gonzales, Supv, Technical Services at OMI, shared a public comment with the board.

Good afternoon, Chair, Cabinet Secretary, Mr. Patrick Allen, and esteemed members of the New Mexico Office of the Medical Investigator Board. My name is Elizabeth Gonzales, and I am the Technical Supervisor of the Central Office Investigations. I have been in my current position since August of 2016. I've been employed with OMI since January of 2001. This is my 24th year here at OMI. I've held four different positions during employment. I wanted to personally introduce myself and have the opportunity to know who I am, cause I do have grave concerns with respect to the executive team at the Office of the Medical Investigator. Thank you for allowing me to speak. I come before you regarding the attempts to suppress crucial safety concerns with OMI. Particularly in regard to OSHA violations. Despite my efforts to raise these concerns through proper channels I have encountered significant resistance and attempts to silence me. It has become evident that there has been concerted efforts from upper management to stifle my voice and hinder my ability to address critical issues. Including those pertaining to OSHA violations, workplace abuse and harassment. Despite my commitment to uphold safety standards and voice concerns in accordance with The University of New Mexico and OMI policies, my efforts seem to have been with resistance. Regrettably, this situation has regretted to the extent that I was subjected to a three-day suspension and received an unfavorable performance review. These actions are not only unjust, but detrimental to fostering a workplace environment built on transparency, accountability, and mutual respect. I wish to emphasize my unwavering dedication to OMI, OMI's mission and values, including prioritization of employee's safety and adherence to regulatory standards. It is my sincere belief that an open dialog and constructive feedback. With essential components of organization growth and access. In light of the recent events, I am respectfully requesting a formal review of the disciplinary actions taken against me; and that I be given an opportunity to address any concerns or misunderstandings that have contributed to an unfavorable review. Furthermore, I seek assurance that my rights as an employee to raise legitimate concerns without fear or retaliation be fully respected and protected moving forward. I has always in the past of over twenty years, of over two decades, remain committed to finding an amical resolution to these matters, and continue to contribute positively to this organization. Please consider this communication as a formal appeal and an invitation to engage in constructive dialog in resolving these issues promptly. I'm willing to provide any necessary documentation to support to aid in this process and I am committed to working collaboratively towards a resolution. Thank you Chair board members for this time. Thank you for this opportunity and time to address these situations. I trust that the board will take appropriate actions to uphold the safety and integrity of the New Mexico Office of the Medical Investigator, and to ensure the working environment here is free from abuse and harassment. You may hear that I am a disgruntled employee or that I have violated UNM policies or OMI procedures. This is a perception of the factual truth and a manipulation of the language used in the policies. In twenty-two years, I have never received a negative performance review. So, I urge the board to take decisive action to address these issues and ensure full compliance with OSHA regulations, it is imperative that we foster a culture of transparency and accountability within our organization starting from the highest level of management. Thank you, sir.

7. **VOTE TO CLOSE THE MEETING AND PROCEED IN CLOSED SESSION**

Sec. Allen asked for a motion to close the general session and proceed in closed session. Dean Finn **MOVED**. Mr. House **SECONDED**. All were in favor. Motion **CARRIED**.

8. **RE-OPEN THE GENERAL MEETING**

The general meeting resumed at 2:20 PM. Sec. Allen requested a **MOTION** to adopt a protocol for reporting; to provide board members with reporting information and to establish a quarterly report that includes the volume of complaints, closure reports and details on aging and pending complaints. The motion was unanimously approved without discussion. Motion **CARRIED**.

9. **ADJOURNMENT**

Meeting **ADJOURNED** at 2:21 PM.