



**Florida Board of Medicine
Rules/Legislative Committee Meeting**

**Meet-Me-Number: 888-585-9008
Conference Room Number: 432-162-565**
(Please login and mute your phone)

Thursday, August 6, 2020

MEETING MINUTES

Roll call 3:15 p.m.

Members Present:

Sarvam TerKonda, M.D., Chair
Shailesh Gupta, M.D., Vice Chair
Kevin Cairns, M.D.
Eleonor Pimentel, M.D.
Nicholas Romanello, Consumer Member
Hector Vila, M.D.
Zachariah P. Zachariah, M.D.

Members Absent:

None

Staff Present:

Claudia Kemp, JD, Executive Director
Edward Tellechea, Board Counsel
Donna McNulty, Board Counsel
Nancy Murphy, Certified Paralegal
Crystal Sanford, Program Operations Administrator
Shaila Washington, Regulatory Supervisor
Rebecca Hewett, Regulatory Specialist III

Others Present:

For the Record Court Reporting
1500 Mahan Drive, Ste. 140
Tallahassee, FL 32308
(850) 222-5491

Rules Discussion:

Health History Questions Discussion.....Addendum (V2)

This matter was withdrawn from the Agenda prior to the meeting.

Action taken: item withdrawn

Approval of June 3, 2020 Rules/Legislative Committee Meeting Minutes 1

A motion was made, seconded and carried unanimously to approve the meeting minutes from the June 3, 2020 meeting.

Action taken: minutes approved

July 2020 Rules Report 2

This report, provided by Ms. Murphy, was for the Committee's information.

Action taken: none necessary

Rule 64B8-13.008, F.A.C. - Requirement for Continuing Education Course on Prescribing Controlled Substances 3

At the last meeting, the Committee approved MagMutual Insurance Company as an entity that may provide the required course in prescribing controlled substances. The Committee reviewed draft language incorporating MagMutual Insurance Company in the rule.

A motion was made, seconded and carried unanimously to approve the draft language.

The Committee was asked the following questions.

Will the proposed rule amendments have an adverse impact on small business?

A motion was made, seconded and carried unanimously to find the rule amendment would not have an adverse impact on small business.

Will the proposed rule amendments be likely to directly or indirectly increase regulatory costs to any entity (including government) in excess of \$200,000 in the aggregate in Florida within one year after implementation of the rule amendments?

A motion was made, seconded and carried unanimously to find the amendment would not increase regulatory costs.

Will this rule amendment create an offense that would constitute a minor violation under the rule?

A motion was made, seconded and carried unanimously to find the amendment would not create an offense constituting a minor violation.

Does the Board/Committee want to impose the sunset provision for this rule or rule amendment?

A motion was made seconded and carried unanimously to not sunset this rule amendment.

Action taken: language approved, no Statement of Estimated Regulatory Costs (SERC) required, no minor violation created and no sunset of the rule

Rule 64B8-8.001, F.A.C. – Disciplinary Guidelines 4, Addendum (V2)
Proposed Rule Amendments – Rule 64B8-8.011, F.A.C. – Notices of Non-Compliance and
Rule 64B8-8.017, F.A.C. – Citation Authority

Senate Bill 698 (2020 Session) imposed grounds for discipline for implanting in a patient or causing a patient to be implanted with a human embryo created with human reproductive material of the licensee, or inseminating a patient or causing a patient to be inseminated with the human reproductive material of the licensee. The Committee reviewed draft disciplinary guidelines in Rule 64B8-8.001, F.A.C. for the violation. The Committee also reviewed Proposed Rule Amendments to Rules 64B8-8.001, F.A.C. and 64B8-8.017, F.A.C. for the same violation, submitted by Christopher Nuland, Esquire, representing numerous specialty societies.

Christopher Nuland, Esquire, representing ACOG, addressed the Committee in support of his proposal for rule amendments. He said there are ambiguities in the law. He is concerned about the physicians that commit a technical violation, such as deficiencies in the consent form, while trying to comply with the law. He was proposing notices of non-compliance be issued first in those types of situations and use the disciplinary guidelines for the more egregious violation listed in the law.

Dr. TerKonda asked if it would be better to hear the petition for declaratory statement on this matter which is scheduled before the Board on August 7, 2020 and then make a decision. He was concerned about sending the wrong message to the Legislature.

Mr. Tellechea said the Committee can table this today and let the Board hear the petition at the Board Meeting. He said that discussion may alleviate concerns mentioned today. He said if it does not alleviate the concerns, this matter can be reconsidered at the next meeting.

Mr. Romanello said this was a well-intentioned law, but it has created chaos for physicians trying to comply.

A motion was made to approve the three rules and allow the Department to issue citations in appropriate situations. The motion was not seconded.

Dr. Gupta said this is a new process and the Board should be giving a little leeway until the issues are worked out. He said the Board did a consent form for cataract surgery and suggested the Board consider doing the same.

Mr. Tellechea explained the process if the Committee wanted to allow the issuance of notices of non-compliance and citations before disciplinary action for a non-technical violation – a bad actor. He said if a physician commits the violation in the law, the physician would be issued a notice of non-compliance first. If that physician commits the violation again, a citation would be issued. Then, if the physician does it a third time, the Board can take disciplinary action. He explained this would allow a bad actor to continue practicing.

Mr. Romanello said notices of non-compliance should be issued for consent violations and allow the more egregious cases to go to the Board. He said it is challenging to comply with the law and there needs to be flexibility on the consent form and let the Department charge the physician for the criminal violation or the standard of care violation.

Dr. Zachariah said he was not comfortable making a decision at this time. He suggested tabling it until the Board can hear more discussion about the issues.

Dr. Cairns said he agreed with Dr. Zachariah and said this was a serious issue. He said pelvic examinations are invasive and discipline should be harsh.

Dr. Gupta reiterated it was important to have a consent and maybe the Board should do a general consent.

Mr. Tellechea said he understands there is concern about what happens between now and when the Board takes action on the rule. He reminded the Committee the Department has the authority to dismiss a case if it is legally insufficient. He said the members can dismiss the case or issue a letter of guidance at the probable cause level. That would alleviate some harm for technical violations.

A motion was made, seconded and carried with one opposed to table this until the Board hears the petition for declaratory statement and to reschedule this for the next committee meeting.

Dr. Vila asked if the Board could handle this item after hearing the petition.

Mr. Tellechea said the Board could raise the issue during the Rules/Legislative Committee report. He said there were other items on the Disciplinary Guidelines for the Committee to review. He explained the rule was expanded to address violations applicable to telehealth practitioners and summarized the changes to the rule. He explained the disciplinary guidelines are different for telehealth providers compared to the fully licensed physicians. He said for telehealth providers, the Board could not impose a fine or probation, but can impose a corrective action plan with a suspension. He advised Dr. TerKonda coordinated with them to develop the pelvic examination guidelines. He said any offenses removed by statute have been removed from the guidelines.

Dr. TerKonda pointed a couple of the changes for the Committee's review.

Mr. Tellechea further explained he added a section for telehealth under the foreign body guidelines to cover foreign bodies being left in the body during robotic surgeries. He said he can remove that part of it is not appropriate.

Dr. TerKonda said robotic surgery is coming in the future and could be available any time. He suggested leaving the language in the rule as amended.

A motion was made, seconded and carried unanimously to approve the draft language for Rule 64B8-8.001, F.A.C.

The Committee was asked the following questions.

Will the proposed rule amendments have an adverse impact on small business?

Mr. Tellechea explained any economic impact arises from the legislative provision that created the grounds for discipline. He said in the past the Board has not determined a SERC was needed for this rule.

A motion was made, seconded and carried unanimously to find the rule amendment would not have an adverse impact on small business.

Will the proposed rule amendments be likely to directly or indirectly increase regulatory costs to any entity (including government) in excess of \$200,000 in the aggregate in Florida within one year after implementation of the rule amendments?

A motion was made, seconded and carried unanimously to find the amendment would not increase regulatory costs.

Will this rule amendment create an offense that would constitute a minor violation under the rule?

A motion was made, seconded and carried unanimously to find the amendment would not create an offense constituting a minor violation.

Does the Board/Committee want to impose the sunset provision for this rule or rule amendment?

A motion was made seconded and carried unanimously to not sunset this rule amendment.

Action taken: table discussion on the proposed rule amendments request until the Board hears the petition for declaratory statement scheduled for the following day and to reschedule the request for the next Committee Meeting; draft language for Rule 64B8-8.001, F.A.C. approved, no SERC needed, no minor violation created, no sunset of the rule

Rule 64B8-11.001, F.A.C. – Advertising.....5

House bill 713 (2020 session) removed the requirement against physicians representing themselves as a board-certified specialist in Dermatology unless the recognizing agency is reviewed and reauthorized triennially. The Committee reviewed draft language that removed this required from the rule.

Christopher Nuland, Esquire, representing the Florida Society of Dermatologists and Dermatological Surgery, addressed the Committee. He had no objection to the removal of the language from the rule.

A motion was made, seconded and carried unanimously to approve the draft language.

The Committee was asked the following questions.

Will the proposed rule amendments have an adverse impact on small business?

A motion was made, seconded and carried unanimously to find the rule amendment would not have an adverse impact on small business.

Will the proposed rule amendments be likely to directly or indirectly increase regulatory costs to any entity (including government) in excess of \$200,000 in the aggregate in Florida within one year after implementation of the rule amendments?

A motion was made, seconded and carried unanimously to find the amendment would not increase regulatory costs.

Will this rule amendment create an offense that would constitute a minor violation under the rule?

A motion was made, seconded and carried unanimously to find the amendment would not create an offense constituting a minor violation.

Does the Board/Committee want to impose the sunset provision for this rule or rule amendment?

A motion was made seconded and carried unanimously to not sunset this rule amendment.

Action taken: language approved, no SERC required, minor violation created, no sunset of the rule

Rule 64B8-4.009, F.A.C. – Applications 6, Addendum (V2)

This item was removed from the agenda prior to the meeting.

Action taken: item removed

Rule 64B8-4.029 and Rule 64B15-12.0031, F.A.C. – Registration as a Dispensing Physician; Delegation of Dispensing to Prescribing Physician Assistants 7

- DH-MQA 1070 – Medical Doctor Dispensing Registration
- DH-MQA 1240 – Physician Assistant Dispensing Registration Addendum (V2)

Board staff made changes to both forms including rearranging the items on the form and small changes to the language on the forms. The Committee reviewed the forms and the draft language incorporating the new forms into rule.

Ms. McNulty explained the Department was making changes to the forms. She said the titles of the forms have to be changed to match the title in the rule.

A motion was made, seconded and carried unanimously to approve both forms as amended by Ms. McNulty and the draft rule language.

The Committee was asked the following questions.

Will the proposed rule amendments have an adverse impact on small business?

A motion was made, seconded and carried unanimously to find the rule amendment would not have an adverse impact on small business.

Will the proposed rule amendments be likely to directly or indirectly increase regulatory costs to any entity (including government) in excess of \$200,000 in the aggregate in Florida within one year after implementation of the rule amendments?

A motion was made, seconded and carried unanimously to find the amendment would not increase regulatory costs.

Will this rule amendment create an offense that would constitute a minor violation under the rule?

A motion was made, seconded and carried unanimously to find the amendment would not create an offense constituting a minor violation.

Does the Board/Committee want to impose the sunset provision for this rule or rule amendment?

A motion was made seconded and carried unanimously to not sunset this rule amendment.

Action taken: both forms approved, titles need to be changed so the title for the form matches the rule, draft language approved, no SERC required, no minor violation created, no sunset of the rule

Rules 64B8-31.003 and 64B15-7.003, F.A.C. – Anesthesiologist Assistant Application for Licensure..... 8, Addendum (V2)

This item was removed from the agenda prior to the meeting.

Action taken: item withdrawn

Electrology Council Rules: 9

This item was removed from the agenda prior to the meeting.

Action taken: item withdrawn

Mr. Tellechea no one came forward while the Committee was discussing the agenda items. He suggested allowing public comment.

Mary Thomas, Esquire, representing the Florida Medical Association, asked the Committee to encourage the full Board to take up the issue of consent forms and issuing notices of non-compliance and citations for a technical violation, after the Board has heard the petition for declaratory statement.

Old Business:

There was no old business.

New Business:

There was no new business.

The meeting adjourned at 3:58 p.m.