



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

**Marriott Tampa Airport
6500 George J Bean Parkway
Tampa, Florida 33607**

April 5, 2018

MEETING REPORT

Roll call 4:35 pm

Members Present:

James W. Orr, Jr., Vice Chair
Andre Perez, Consumer Member
Steven Rosenberg, M.D.
Sarvam TerKonda, M.D.
Seela Ramesh, M.D.
Nicholas Romanello, Consumer Member
Steven Falcone, M.D.

Members Absent:

Stephanie Haridopolos, M.D., Chair

Staff Present:

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

Others Present:

Integra Court Reporting
Cynthia Cianciola
(407) 896-1813

**Request for Triennial Reauthorization (Rule 64B8-11.001(9), FAC – Advertising:
American Board of Dermatology2**

Dr. Horn represented the Board of Dermatology and addressed the Committee.

Allen Grossman, Esquire, asked to address the Committee and said he did not think Dr. Rosenberg should be participating in the discussion because he is a dermatologist and it was a financial conflict of interest if he did not recuse himself.

Mr. Tellechea agreed and provided Dr. Rosenberg with his options.

Dr. Rosenberg recused himself and left the table.

Dr. Horn said they had a 95-97% pass rate for their certification examination and eligibility is for five years. He said the examination is written and the certifications are for a limited time. He said there is a maintenance of certification requirement and physicians must have completed an ACGME approved residency program to qualify.

A motion was made, seconded and carried unanimously to recommend reauthorization as a certifying board.

Action taken: reauthorized as a certifying board

American Association of Physician Specialists (AAPS)/American Boards of Physician Specialties

(ABPS) and its member Certification Board in Dermatology1

Allen Grossman, Esquire was present with Jeff Morris, Esquire, Executive Director for AAPS. Mr. Grossman confirmed this board had been approved the last two cycles.

Mr. Morris said the examination is written and the physician must have completed an ACGME approved residency program in dermatology. He said physicians have three attempts to pass and then they are no longer eligible to take the examination. He said the pass rate is about 90% and recertification occurs every eight years. He said there is no maintenance of certification at this time, but there is an annual CME requirement for 50 hours per year, an 8-hour course on ethics and attest to all states in which he/she is licensed.

A motion was made, seconded and carried unanimously to recommend reauthorization as a certifying board.

Action taken: reauthorized as a certifying board

Petition to Amend Rule 64B8-10.002, FAC – Medical Records of Physicians Relocating or Terminating Practice; Retention, Disposition, Time Limitations3

Mark Butler addressed the Committee regarding his petition. He explained his primary care physician retired and asked if he wanted his records. At that time, Mr. Butler said he did not need. The primary care physician told Mr. Butler the name of the physician who would be custodian of the records. Mr. Butler said later he asked the new physician for a copy of his medical records and was unable to obtain all of them. He said there is confusion between subsections (2) and (3) because subsection (2) requires all records be maintained and subsection (3) says maintain for five years. He was requesting the rule be modified to correct that confusion.

Mr. Tellechea said he had never seen a complaint from a consumer regarding this provision of the rule. He advised the five-year requirement has always been in the rule. He said the word “all” could be removed from subsection (2).

Dr. TerKonda said the issue was when the records were transferred to a second party.

Mr. Tellechea said the second physician must maintain the records for five years.

Ms. Kemp confirmed she consulted with the Department’s Enforcement team and confirmed no complaints of this nature have been received.

Mr. Tellechea said the Committee would need to approve the rule for rule development if they wanted to make changes to the rule.

Dr. Falcone suggested combing the two subsections and to clarify it is five years passed last contact with the patient.

A motion was made, seconded and carried with one opposed to recommend noticing the rule for development.

Mr. Tellechea said he would bring proposed language to the next meeting for the Committee’s review and approval.

Action taken: notice for rule development; present proposed language at next meeting

Dietician Rules:

Rule 64B8-40.003, FAC – Delegation of Powers and Duties4

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

The members were asked the following questions:

Will the proposed rule amendments 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 recommend the amendment does not cause an adverse impact.

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 recommend the rule amendment does not create a minor violation.

Action taken: language approved; no SERC

Electrology Rules:5
Rule 64B8-50.003, FAC – Delegation of Powers and Duties to Electrolysis Council
Rule 64B8-51.002, FAC – Licensure by Examination - WITHDRAWN

A motion was made seconded and carried unanimously to recommend approval of the proposed language.

The members were asked the following questions:

Will the proposed rule amendments 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 rule amendment does not cause an adverse impact.

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 recommend the amendment to the rule does not create a minor violation.

Action taken: Rule 64B8-51.002, FAC withdrawn; Rule 64B8-50.003, FAC approved; No SERC

Rules Report6

The rules report was provided to the members by Ms. Murphy for information only.

No action necessary.

Legislative Discussion:
HB 21 – Controlled Substances7
Rule 64B8-13.008, FAC – Requirement for Continuing Education Course on Prescribing Controlled

Mr. Tellechea introduced the mandates of the new law:

- Mandatory use of the PDMP
- All physicians with DEA licenses and prescribe controlled substances must take a two-hour course provided by a statewide physician association accredited by the ACGME.
- Boards are required to set practice rules for the treatment of patients with acute pain.

Mr. Tellechea asked the Committee how they would like to proceed.

Ms. Kemp advised a workgroup has been created to address the practice rules so there is consistency between the six boards required to set rules. She said Dr. Lopez appointed Dr. Vila to represent the Board of Medicine at the April 18th conference call.

Dr. Lopez said the law requires the boards set the rules and he suggested getting the other boards involved.

Mr. Tellechea suggested sending a letter to the other boards asking if they wish to participate in a joint meeting to set the standards. He said ultimately the boards must approve the rules.

Ms. McNulty said the Board of Osteopathic Medicine will be addressing this at their meeting next week. She said the PA Council appointed Ms. Dane, member of the Council, to participate in the meetings to represent the PA's.

Mr. Romanello said the Committee had expressed their wishes and suggested staff send the letter.

Mr. Tellechea said there are current rules that will need to be addressed as well because some of the information in the rule is no longer relevant.

The Committee also suggested the Board of Pharmacy be involved since there have been instances where pharmacists have refused to fill prescriptions.

Dr. Vila said there is a meeting scheduled and he needed direction from the Committee.

Ms. McNulty said the existing rules, while potentially outdated, were a good foundation to begin discussions for development of the practice rules.

Mr. Tellechea said he spoke with Adrienne Rodgers, Bureau Chief over all the Boards, the purpose of the meeting is to discuss how the boards want to move forward. He advised Dr. Vila to tell the workgroup the Board of Medicine would like to conduct a joint meeting with representatives from each board.

A motion was made, seconded and carried unanimously to draft a letter to the other boards suggesting a joint meeting with representatives from each board. The letter is to be reviewed by Mr. Tellechea and Dr. Lopez.

Mr. Tellechea introduced Rule 64B8-13.008, FAC – Requirement for Continuing Education Course on Prescribing Controlled Substances. He said subsection (2) is left blank because no entities have been approved yet to provide the course. He read the requirements for the course to the members.

Ms. McNulty said PA's are exempt from this requirement because they are required to take a three-hour course on controlled substances before being allowed to prescribe controlled substances.

Florida Medical Association (FMA) Course Request

Mary Thomas, Esquire, addressed the Committee. She confirmed their course meets the requirements of being a statewide physician association accredited by the AMA.

A motion was made, seconded and carried unanimously to recommend approval of the FMA course.

Florida Academy of Family Physicians (FAFP) Course Request

Chris Nuland, Esquire, confirmed their course met the requirements. He said this organization would like to start providing the course on July 1, 2018 even if the rule is not ready.

Mr. Tellechea said the course needs to include this rule once passed.

A motion was made, seconded and carried unanimously to recommend approval of this course.

Florida College of Emergency Physicians (FCEP) Course Request

This request was withdrawn prior to the meeting and will be rescheduled for the June Committee Meeting; however, Jorge Lopez, M.D., Chair of the Board, found good cause to place the item back on the agenda.

Julie Gallagher, Esquire, Allen Grossman, Esquire and Beth Brunner, Executive Director of FCEP presented their course to the members.

Mr. Perez asked how the board ensures transfer of knowledge once physicians have taken these courses.

Ms. Brunner said the course is ACGME approved and requires a pre-test and post-test. She said the course is reviewed by the ACGME every four years.

Mr. Grossman explained the course was not ACGME approved but the organization is approved by the ACGME to provide CME. He said the board determines if course content is appropriate.

Dr. Orr suggested including the appropriate laws and rules as part of the course.

A motion was made, seconded and carried unanimously to recommend approval of the course.

Mr. Tellechea said the three courses just approved would be added to Rule 64B8-13.008(2) as approved providers of the course.

A motion was made, seconded and carried unanimously to recommend approval of adding the three entities to subsection (2).

The members were asked the following questions:

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

A motion was made, seconded and carried unanimously to find the rule will not cause an adverse impact.

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

A motion was made, seconded and carried unanimously to recommend the rule will not create a minor violation.

Mr. Tellechea said the impact was created by the legislation, not the rule.

Action taken: Rule 64B8-13.008, FAC approved; no SERC; FMA, FAFP and FCEP approved as providers of the course

Dr. Lopez said he would be interested in serving on the joint committee when discussing the practice standards. He said emergency room physicians treat patients with acute pain every day.

Amended Disciplinary Guidelines 64B8-8.0019

Mr. Tellechea explained legislation passed that requires, for any out-of-hospital planned births, the submission of adverse incidents.

Dr. Orr, Gynecology Oncologist, said he had no problems with the proposed language.

A motion was, made, seconded and carried unanimously to recommend approval of the proposed language.

Mr. Tellechea said physicians are now required to check the PDMP before prescribing controlled substances and the Committee needs to set disciplinary guidelines for failing to consult the PDMP.

Dr. Orr said a citation should be issued for \$100. He suggested Dr. Vila include this discussion during the meeting with the other boards scheduled for April 18th. He suggested \$150 for the second citation. He explained physicians are going to need time to transition because this is a big change to their practice.

Mr. Tellechea said they could issue a notice of non-compliance.

Ms. McNulty said notices of non-compliance can only be issued for non-patient safety issues.

Dr. Orr said the third citation should be for \$200.

Mr. Tellechea said physicians are required to write in the medical records that the PDMP had been consulted. He summarized the Committee's proposal:

First offense – letter of concern, \$1,000-\$2,500 fine

Second offense – reprimand, \$2,500-\$5,000 fine

Third offense – suspension to revocation, \$5,000-\$10,000 fine

A motion was made, seconded and carried with one opposed to recommend the disciplinary guidelines as summarized by Mr. Tellechea.

Mr. Tellechea said he would bring proposed language to the June Committee Meeting for review and approval.

Mr. Tellechea presented subsection (7) of Rule 64B8-8.001, FAC. He explained there could be a non-rule policy challenge against the Board for requiring evaluations be conducted under the auspices of PRN.

Mr. Romanello said the Board may want to open it up to competition.

Dr. Orr expressed concerns about the evaluations being conducted by unknown evaluators.

Allison Dudley, Esquire, Department of Health Prosecution Services, advised Chapter 456, Florida Statutes requires a contract with one entity to do the evaluations. She said PRN is a known entity and the Board would not know all of the circumstances surrounding the evaluations.

Ms. Gallagher suggested the Board look at PRN's criteria for their evaluators.

Dr. Orr said it should be under the auspices of the Department, but does not necessarily have to be PRN.

Mr. Tellechea suggested obtaining the PRN evaluation and if the physician does not like the result, he/she can obtain another evaluation and present both to the Board.

A motion was made, seconded and carried unanimously to recommend approval of the proposed language in subsection (7).

The members were asked the following questions:

Will the proposed rule amendments 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 recommend the amendment does not cause an adverse impact.

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

A motion was made, seconded and carried with one opposed to recommend the rule amendment does not create a minor violation.

Action taken: disciplinary guidelines provided for failing to consult PDMP, bring language next meeting; language regarding adverse incidents for out-of-hospital planned births approved; language for subsection (7) regarding evaluators was approved; No SERC

Old Business:

Area of Critical Need Letter to State Surgeon General8

The letter sent to the State Surgeon General (SSG) was provided as a follow up to previous discussions.

Mr. Tellechea read a section from the letter regarding ACN physicians only providing primary care services and said it was potentially an anticompetitive action. He said the Board has authority to approve applications and to take discipline on ACN physicians. He said the State Surgeon General has the authority to approve areas of critical need. He recommended the Board send no more letter or have discussions regarding this matter. He said it was his understanding the SSG was reviewing the process and will be reporting their findings back to the Board.

New Business:

None

The meeting adjourned at 6:43 pm.