

**Meeting Report
Department of Health
Board of Medicine
Rules/Legislative Committee Meeting**

**Hyatt Regency Jacksonville
225 E Coastline Dr
Jacksonville, FL 32202
(904) 588-1234**

January 31, 2008

3:45 pm Roll Call

Members Present:

Steven Rosenberg, M.D. – Chair
Laurie Davies, M.D.
Onelia Lage, M.D.
George Thomas, M.D.
Michael Chizner, M.D.

Members Absent:

Staff Present:

Larry McPherson, Jr., J.D., Executive Director
Ed Tellechea, J.D., Board Counsel
Nancy Murphy, CP
Crystal Sanford, CPM

Others Present:

American Court Reporting

Rules Discussion:

Tab 1 - Rules Report

This report was provided for information only.

No action taken.

Tab 2 - Rule 64B8-3.004, FAC – Inactive and Delinquent Status Fees

The Committee recommends approval of proposed language to reduce the inactive fee and the delinquent fee to \$360.

Action taken: approve the proposed language

Tab 3 - 64B8-4.024, FAC – Restricted Licenses for Areas of Critical Need

The Committee recommends approval of adding language to this rule to include all correctional facilities as areas of critical need.

Action taken: proposed language approved

Tab 4 - 64B8-9.008, FAC – Sexual Misconduct

Mr. Tellechea stated that s. 456.063, F.S. defines sexual misconduct to include the patient, immediate family member, guardian or representative of the patient; however, the rule only refers to the patient. He asked the Committee if they would consider expanding the rule to include family members.

The Committee recommends authorizing Mr. Tellechea to notice this rule for rule development and to bring draft language to the next meeting.

Action taken: notice rule for development and present draft language at next meeting

Tab 5 - 64B8-10.003, FAC – Costs for Reproducing Medical Records

The Committee reviewed draft language to this rule which would allow physicians to charge \$1.00 per page to copy medical records.

A motion was made and seconded to remove the word “especially” from the proposed language. However, the motion failed with 3 opposed.

The following individuals appeared before the Committee:

1. Leslie Spencer – AARP

She suggested that the Committee lower the amount and to phase in any changes. She also said her organization would be willing to assist in drafting such change.

2. Jason Roth – ACORN

He explained that patients must obtain copies of medical records for various programs including social security benefits and raising the fee would complicate that process. In addition, he suggested a flat rate and asked how electronic medical records would affect copying medical records.

3. Barbara Devane – Secretary, Florida Alliance for Retired Americans

She asked the Committee to vote no on the current proposal

4. Preston Drummer – Teamsters Local 512 Retirees Club

He asked the Committee to vote no on the current proposal

5. Ernest Hartless – Florida Alliance for Retired Americans and The International Association of Machinists

He said that giving the Department a break on the costs for reproducing records and not the patient would not be fair. He went on to say he thought it was more an issue of profit rather than need.

6. Jessica McCaffrey – Florida National Organization for Women

She stated that women are more often the patient with more medical records than any other patient population because of things such as pregnancy. She added that women are also paid less and often a single parent. She felt that raising the fee would be disproportionately unfair to women.

7. Isaiah Rumlin – NAACP

He stated raising the fees would be unfair to the lower income population of our state and he asked the Committee to vote against the proposed language.

8. Nicholas Dix – Florida AFL-CIO

He quoted s. 456.057 and said the statute says that physicians can charge reasonable costs. He said he felt reasonable costs for copying a piece of paper is \$.06. He talked about increases in health care, insurance, and medications and suggested something more reasonable or a cap.

9. Chris Nuland, J.D. – American College of Physicians

Mr. Nuland provided the background of the rule and reminded the Committee the rule had not been updated since 1987 even though the cost of running a practice has increased. He explained that due to HIPAA, there are more requests and each request has to be examined closely which is time and labor. He stated that his organization would support the change and the preamble.

After additional discussion, a motion was made, seconded and carried unanimously to recommend tabling this matter until additional research could be conducted. The Committee made the following suggestions for obtaining information:

- What do other state boards charge and are they having any issues related to the different entities that request copies of medical records?
- What are the costs for obtaining medical records by the Department of Health
- What entity makes the bulk of the requests (patient, attorneys, etc.)
- What are the costs for each type of practice?
- What does a typical contracted vendor charge to make copies on behalf of the physician?
- What is the status of electronic medical records?

Transcript ordered.

Action taken: tabled to conduct additional research

Tab 6 - 64B8-13.005, FAC – Continuing Education for Biennial Renewal

Mr. Tellechea explained that the Joint Administrative Procedures Committee (JAPC) sent a letter indicating that an “or” was dropped in our and made the rule inconsistent with the statute.

A motion was made, seconded and carried unanimously to recommend adding the “or” back to the rule to be consistent with the statute.

Action taken: revise rule in accordance with JAPC’s request

Tab 7 - 64B8-2.002, FAC – General Supervision of Tattooists

Mr. Nulan addressed the Committee and asked them to consider adding the following language to the rule:

The supervising physician, osteopathic physician, or dentist shall, subsequent to the signature of the parent or legal guardian, cosign the informed consent of the parent or guardian authorizing the administration of any tattoo upon a minor by the tattooist pursuant to s. 877.04(3), F.S.

After discussion, a motion was made, seconded and carried unanimously to recommend not taking any action on this suggestion.

No action taken

Tab 9 - s. 458.331(1)(m), F.S. – Grounds for Disciplinary Action

The Committee reviewed draft language that would require physicians to document why the physician did not undertake a course of action that was indicated by the standard of care.

Fred Whitson, J.D., representing the Florida Medical Association (FMA), spoke in opposition of the draft rule.

Jerry Knauer, III, M.D. addressed the Committee and confirmed that most physicians he knows do not document why they did not follow the standard of care when treating a patient.

A motion was made, seconded and carried unanimously to recommend taking no action on the proposed language.

No action taken

Tab 10 - Autism Draft Language

The FMA presented a draft bill for the Committee’s review – information only.

No action taken

Tab 11 - Florida Childhood Lead Poisoning Prevention Program

Dr. Lage explained she provided information to the Department to assist with the development of their rule. That response was in the materials considered by the committee.

A motion was made seconded and carried unanimously to recommend approving the response provided by Dr. Lage as the response of the Board.

Action taken: Recommend approval of response.

Tab 12 - Joint Legislative Auditing Committee

Information only – The Joint Legislative Auditing Committee will not be hearing a request by Rep. David Rivera for OPPAGA to conduct a study on whether there is a need and/or benefit for granting prescription privileges for psychologists with post-doctoral training in psychopharmacology.

No action taken

Tab 13 - Drug Program

This matter was withdrawn from the agenda.

Tab 14 - Bill Matrix

This information was provided for information only.

No action taken

Tab 18 - 64B8-8.011, FAC – Notice of Non-Compliance

Mr. McPherson explained the rule needed to be updated because it referenced the incorrect statutory subsection cite as (x).

A motion was made, seconded and carried unanimously to recommend making the correction of the referenced statutory cite to (nn).

Action taken: revise rule to make correction

Legislative Discussion:

Tab 8 & 26- Proposal for s. 458.3138, F.S – Temporary Licensure for Activities Involving Professional Services.

The Committee reviewed two (2) proposals to require out of state physicians to be registered with the Board to provide instructional program in certain training programs and with continuing education providers.

After discussion, a motion was made, seconded and carried unanimously to recommend tabling this proposal at this time.

Action taken: Tabled

Tab 15 - SB 510

The bill would require children to undergo school-entry health and vision examinations. The Board had previously voted not to support this bill.

No further action taken.

Tab 16 - SB 1016

This bill would prohibit podiatrists from performing surgery on the ankle unless they meet certain requirements. A motion was made, seconded and carried unanimously to recommend supporting this bill.

Action taken: support bill

Tab 17 - SB 972

This bill would allow ARNPs to prescribe controlled substances under a protocol with a physician. A motion was made, seconded and carried unanimously to recommend opposing this bill as it is an expansion of the scope of practice.

Action taken: oppose bill for patient safety concerns.

Tab 21 - HB 509 & SB 1184

These bills would prevent physicians from holding themselves out as board certified emergency physicians unless they meet certain requirements. After a lengthy discussion, a motion was made, seconded and carried with 1 opposed to remain neutral on this bill.

Action taken: neutral on bill

Tab 23 - HB 523

This bill would provide immunity to physicians in emergencies in a non-emergency room setting. A motion was made, seconded and carried unanimously to support this bill.

Action taken: support bill

Tab 22 - SPB 7014/SB 1372

This bill concerns emergency services, care access and the transmission of medical records. It would also allow the Agency for Health Care Administration rulemaking authority on requirements for on call physicians and telemedicine practice in emergency departments. SPB 7014 also has a provision for rulemaking by Boards of Medicine,

Osteopathic Medicine and AHCA consultation on when an orthopedic consultant needs to be called in to the emergency department. A motion was made, seconded and carried unanimously to strongly oppose these bills.

Action taken: strongly oppose bills

Tab 20 - SB 1106

This bill would allow the PA Council to change the PA Formulary to allow PA licensees to prescribe antipsychotics and parenteral preparations. Mr. McPherson explained the PA Council voted to support this bill.

Allen Grossman, J.D., representing the Florida Academy of Physician Assistants, advised the Committee the bill would give the PA Council the authority to make changes to the formulary, not automatically grant the PA licensees such prescriptive authority.

The committee was concerned about what training would be required by the PAs. A motion was made, seconded and carried unanimously to oppose this bill on the basis that these are dangerous drugs and presents the potential problem of misuse of drugs and patient safety issues.

Action taken: oppose bill

Revisit Tab 5 - 64B8-10.003, FAC – Costs for Reproducing Medical Records

Mr. McPherson read an email from Tim Collison indicating that he is retired and on a fixed income. He asked the Committee to vote no on increasing the costs to reproduce medical records.

No additional action taken

Tab 24 - Genetic Counselors

Information only – no action.

No action taken

Tab 27 - HB 341

This bill would authorize the Department of Health to contract with consultants to provide treatment services to allopathic and osteopathic physician students.

Judy Rivenbark, M.D., Assistant Director of the Practitioners Recovery Network (PRN), addressed the Committee and stated that PRN supports the bill.

A motion was made, seconded and carried unanimously to strongly support with the understanding that the costs for medical treatment for students be born by the medical school. This is based on the premise that the bill is for allopathic and osteopathic medical students only and that the medical schools will pay for the students.

Action taken: strongly support with the understanding that the costs for medical treatment for MD and DO students only and be borne by the medical school

Tab 28 - HB 637

This bill relates to electronic medical records, the transmission of medical records, creates the Florida Health Initiative Act and establishes the Electronic Medical Records System Adoption Loan Program.

A motion was made, seconded and carried unanimously to recommend opposing this bill.

Action taken: oppose bill

Tab 29 - HB 685

This bill would prohibit a United States citizen or resident who travels to Cuba to receive medical training or a medical degree from being licensed in Florida, entering a residency in Florida, or practicing medicine in Florida.

A motion was made, seconded and carried with one (1) opposed to oppose this bill.

Action taken: oppose bill

Supplemental - SB 1370

This bill involves the Patient Safety Corporation and gives them a more a more focused objective.

A motion was made, seconded and carried unanimously to support this bill.

Action taken: support bill

New Business

HB 607

This bill would provide an expansion of practice for orthotists and prosthetists.

A motion was made, seconded and carried unanimously to oppose this bill on the basis of patient safety issues.

Action taken: oppose bill

The meeting adjourned at 6:45 p.m.