

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

**Tampa Airport Marriott
4200 George J. Bean Parkway
Tampa, FL 33607
(813) 879-5151**

March 31, 2011

Roll Call 4:00 pm

Members Present:

Fred Bearison, M.D., Chair
Jason Rosenberg, M.D.
Donald Mullins, Consumer Member
Robert Nuss, M.D.

Members Absent:

Staff Present:

Joy Tootle, J.D., Executive Director
Ed Tellechea, Board Counsel
Donna McNulty, Board Counsel
Nancy Murphy, Paralegal
Crystal Sanford, Program Operations Administrator

Others Present:

American Court Reporting

Rules Discussion:

Rules Report1

This report was provided for information only.

Rule 64B8-8.001, FAC – Disciplinary Guidelines2

Mr. Tellechea provided the history for this rule. He explained the Board set disciplinary guidelines for pain management clinic related violations. The Board received approval from the Governor to move forward with the rulemaking process for this rule. He went on to explain the rule was filed with the Department of State and the Joint Administrative Procedures Committee (JAPC) sent a letter dated December 28, 2010 with some issues regarding the rule.

The first two issues on the letter were statutory cites that were no longer applicable. Ms. Murphy has already made these corrections to the rule.

64B8-8.001(2), FAC

Mr. Tellechea explained JAPC requested statutory authority to impose community service.

A motion was made, seconded and carried unanimously to recommend removal of the community service requirement.

Action taken: community service requirement removed

64B8-8.001(2)(ddd)(2), FAC

Mr. Tellechea explained the current law requires the Board to impose a \$10,000 fine for this violation. The rule currently includes a range for the fine.

A motion was made, seconded and carried unanimously to impose a \$10,000 fine.

Action taken: fine increased to \$10,000 for first offense

64B8-8.001(2)(eee)(2), FAC

Mr. Tellechea explained this part of the rule similar to the one above.

A motion was made, seconded and carried unanimously to impose a \$10,000 fine.

Action taken: fine increased to \$10,000 for first offense

64B8-8.001(2)(fff)(2), FAC and 64B8-8.001(2)(ggg)(2), FAC

Mr. Tellechea explained there were typographical errors in these sections which will be corrected.

Mr. Tellechea went on to explain the letter from JAPC dated February 8, 2011. JAPC questioned whether this rule would require ratification by the Legislature.

Rule 64B8-9.0131, FAC – PMC Training Requirements3

Mr. Tellechea explained a Statement of Estimated Regulatory Costs (SERC) was prepared for this rule; however an older version of the training requirements were analyzed. He recommended the Board send the final version of this rule to Jerry Parrish, the economist who prepared the original SERC to determine if the proposed changes in the rule would change the SERC and as a result require ratification.

A motion was made, seconded and carried unanimously to recommend the Board send the final version of this rule to Mr. Parrish to determine if the proposed changes in the rule would change the SERC and as a result require ratification.

Mr. Tellechea stated he would work with Ms. Tootle to ensure this was accomplished early next week.

Action taken: Send final version of rule for review by Mr. Parrish to determine if proposed changes affect the SERC

Mr. Tellechea then advised the Committee that JAPC had submitted a letter dated February 22, 2011 regarding this rule. He said there were typographical errors in the rule which have already been corrected. Mr. Tellechea then stated the word “or” was left out of the following portion of the rule:

- 4. a. Successful completion of a residency program in physical medicine and rehabilitation, anesthesiology, urology, neurosurgery, family practice, internal medicine, orthopedics or psychiatry approved by the ACGME; or*
- b. sub-specialty certification in hospice and palliative medicine or geriatric medicine recognized by ABMS.*

A motion was made, seconded and carried unanimously to recommend adding the word “or”.

Action taken: make noted corrections to rule

Public Comment on PMC Rule18
No comments by members.

Legislative Discussion:

Bill Matrix (reference)4
This was provided for information only.

HR 15
Mr. Tellechea summarized this bill for the Committee which affects the rulemaking process. He said he brought to the attention of the House staff person that the bill only addressed the Department of Health and the Agency for Health Care Administration, not the Boards. He also advised the language “. . . common sense and logic . . .” is not well defined as used in the rule.

Dr. Bearison pointed out language in the bill that would prohibit people from challenging a proposed rule if those same people did not participate in the rulemaking process.

A motion was made, seconded and carried unanimously to support this bill in concept with Mr. Tellechea’s suggested changes.

Action taken: support this bill in concept with Mr. Tellechea’s suggested changes

SB 1238/HB 1185 (Compare)6
These bills are related to pain management clinics and provide for more stringent criminal sanctions. The Committee reviewed both versions of the bill.

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

Action taken: support

HB 935.....7

This bill requires primary care physicians to post charges for medical services for patients.

Chris Nuland, Esquire, representing the American College of Physicians recommended the Committee oppose the bill. He explained that this bill would require physicians to post thousands of CPT codes.

Dr. Rosenberg said he thought it was a good concept but the details would be tough.

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

Action taken: oppose

SB 1386.....8

Mr. Tellechea explained this bill would make several changes to the current pain management clinic law and includes, but is not limited to, the following:

- changes to the definition of a pain management clinic
- makes mention of the Department of Health having probable cause panels
- changes the name from pain management clinic to controlled substance medical clinic
- exempts interventional pain physicians from registration
- removes the portions of the law related to physician qualifications and the Board's ability to establish standards of practice
- allows ARNP's and PA's to complete the required physical examination
- removes the requirement for the Board to establish the maximum number of prescriptions that can be written in a pain management clinic
- removes the limitation on the 72 hours prescription of controlled substances

Dr. Bearison pointed out the bill was changing almost daily. He said the Board did what they were directed to do and these bills do away with that work.

Paul Sloan addressed the Committee. He was concerned about the change that would exempt interventional pain physicians from registration. He said these physicians also do medication management, not just injections.

A motion was made and seconded to recommend opposing the bill.

Veronica Donnelly, Medical Section Lead, Prosecution Services Unit, addressed the Committee and advised the Department did have probable cause panels.

The motion carried unanimously.

Action taken: oppose

SB 1372.....9

This bill concerns persons with developmental disabilities.

A motion was made, seconded and carried unanimously to recommend remaining neutral on this bill.

Action taken: neutral

SB 1226.....10

Mr. Tellechea explained this bill tightens a law passed a few years ago which placed limits on granting licensure and renewing licensure for those that have been convicted of certain crimes.

Ms. Tootle advised the Committee an amendment was proposed that adds a provision for tolling of the 90 days to the bill.

A motion was made, seconded and carried unanimously to recommend remaining neutral on this bill.

Action taken: neutral

SB 1580.....11

This bill would require the registration of med spas under the Agency for Health Care Administration (AHCA).

Chris Nuland, Esquire, representing the Dermatologists and Plastic Surgeons who helped propose this bill, addressed the Committee and advised the bill would require med spas not current wholly owned by physicians to be registered with AHCA. He said it is impossible currently to hold a med spa accountable for a violation.

A motion was made, seconded and carried unanimously to recommend remaining neutral on this bill.

Action taken: neutral

SB 1676.....12

Mr. Tellechea explained this bill expanded sovereign immunity for certain facilities associated with the University of Florida.

A motion was made to support the bill.

Dr. Rosenberg recused himself from vote because he is with the UF Alumni Association.

Dr. Nuss stated he was an employee of the university and asked if he should recuse himself.

Mr. Tellechea advised that it was not necessary for any of the committee members to recuse themselves.

The motion was seconded and carried unanimously.

Action taken: support

PCB HHCS 11-03.....13

Mr. Tellechea explained this is a House bill that repeals SB 2272 which established the current pain management clinic law. He said it also repeals the ability to dispense Schedule II, III, IV and V controlled substances.

A motion was made and seconded to oppose the bill.

Mr. Tellechea stated an amendment was proposed that would not allow non-chain pharmacies to fill controlled substances prescriptions except in certain circumstances.

Paul Sloan addressed the Committee and warned this bill also would only allow up to 5,000 pills/month be prescribed at a pain management clinic.

Mr. Tellechea stated the Governor supports the dispensing portion of this bill, but he was not sure how the Governor felt about the rest of the bill. He said that Attorney General Bondi does not support this bill.

The motion carried unanimously.

Action taken: oppose

PCB HHCS 11-04.....14

Mr. Tellechea explained this bill eliminates the Office of Drug Control.

A motion was made, seconded and carried unanimously to recommend remaining neutral on this bill.

Action taken: neutral

SPB 7060.....15

Mr. Tellechea stated this bill ratifies the Board's standards of practice rules for physicians practicing in pain management clinics.

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

Action taken: support

SB 1882.....16

This bill has to do with insurance billing for telemedicine procedures.

Mr. Tellechea was concerned about the Board having a stand on this bill because it may allow billing for a service that the Board has found in disciplinary cases to be a violation of the medical practice act. Mr. Tellechea also pointed out concerns because telemedicine is not currently clearly defined.

A motion was made, seconded and carried unanimously to recommend opposing this bill due to the vague definition of telemedicine.

Action taken: oppose due to vague definition of telemedicine

SB 1892.....17

This bill is concerned with the registration of expert witnesses and expands the scope of practice to authorize an ARNP to order, administer, monitor and alter any drug or drug therapies under specified circumstances. This bill also revises the burden of proof in medical negligence cases.

Chris Nuland, Esquire, addressed the Committee and explained this is the same bill as SB 1590 but adds the ARNP prescribing portion.

Mr. Tellechea reminded the Committee that it is impossible for the Board to certify experts within only five days as would be required by this bill. He explained the Department could potentially do that, but not the Board.

Holly Miller, Esquire, representing the Florida Medical Association, addressed the Committee and advised the House version has been amended to expand the timeframe for approval to seven days to certify and she confirmed the ARNP prescribing portion was still in the Senate version of the bill.

Mr. Tellechea explained this bill would give the Board jurisdiction over the experts who provide fraudulent testimony.

Dr. Nuss requested clarification regarding the portion of the bill concerning informed consent in cataract surgery.

Ms. Miller was only able to state that cataract surgery is the most common surgery in Florida.

Dr. Rosenberg stated he was opposed to the bill but would consider supporting the bill if the informed consent portion was removed.

Dr. Bearison suggested supporting the bill without the informed consent portion and the ARNP prescribing portion of the bill.

A motion was made, seconded and carried unanimously to recommend supporting only the concept of expert witness registration but no other specific portions of the bill.

Action taken: support only the concept of expert witness registration

HB 479 C1.....19

This is the House version of the expert witness registration.

No action taken.

SB 818.....20

This is another bill directed at pain management clinics.

Mr. Mullins pointed out there is a newer version of the bill now.

Mr. Tellechea summarized the bill and advised the bill was drafted with the assistance of the Attorney General’s Office and General Bondi is in strong support of this bill.

Paul Sloan addressed the Board and pointed out this version of the bill removes the requirement for fellowship training and carves out an exemption for the interventional pain physicians to register.

A motion was made and seconded to remain neutral on this bill. After discussion, the motion was withdrawn.

A motion was made and seconded to recommend continuing to support registration of pain management clinics and ratification of the Board’s standards of practice rule and any portions of this bill that supports those items.

Mr. Sloan clarified that he supports the bill as well, but is concerned with the amendments.

The motion carried unanimously.

Action taken: recommend continuing to support registration of pain management clinics and ratification of the Board’s standards of practice rule and the portions of this bill that do that

HB 1201.....21

This bill creates the Expedited Partner Therapy Pilot Project.

A motion was made, seconded and carried unanimously to recommend remaining neutral on this bill.

Action taken: neutral

HB 4103.....22

This bill “undoes” SB 699 from a previous legislative session and lessens the requirements for supervision of PA’s and ARNP’s.

Chris Nuland, representing the Dermatologists and Plastic Surgeons, addressed the Committee and strongly recommended opposing this bill.

A motion was made to recommend remaining neutral on this bill. The motion failed for lack of a second.

A motion was made to recommend supporting this bill. The motion failed for lack of a second.

Ms. Miller advised the Board that FMA was opposed to this bill.

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

Action taken: oppose

SB 516.....23

This bill creates the autism spectrum disorder study committee to study autism spectrum disorders.

A motion was made, seconded and carried unanimously to recommend remaining neutral on this bill.

Action taken: neutral

SB 2038.....24

This is a similar bill to HB 4103. The Committee took no further action.

HB 1147 id to SB 81025

This bill is related to pain management clinics and takes portions of the Board’s standard of practice rules for pain management clinics and codifies them into statute.

Mr. Tellechea recommended supporting registration of pain management clinics and ratification of the Board’s standards of practice rule and any bill that supports those items; however, these provisions should be in rule not in statute so the Board can make changes as necessary.

A motion was made, seconded and carried to recommend supporting registration of pain management clinics and the ratification of the Board’s standards of practice rule and any bill that supports those items.

Action taken: support registration of pain management clinics and ratification of the Board’s standards of practice rule and any bill that supports those items

Other:

Rules Review and RecommendationsNo tab

Mr. Tellechea reminded that the Governor issued an Executive Order regarding the rulemaking process which froze rulemaking and required the review of all rules. The Department of Health asked the Attorney General’s office to take the lead on this. Mr. Tellechea had a deadline of March 28th to conduct the rules review and therefore could not wait until a Board Meeting to handle this assignment. He asked the Chair to appoint a member to assist with the review and Dr. Winchester was appointed.

Mr. Tellechea stated the review was completed and as a result, he had identified approximately 20 rules that may need to be repealed because they are no longer useful or because the Board has

no statutory authority for them. His report was provided to the Governor timely and a more detailed report will be provided to the Board at the next meeting.

Mr. Tellechea advised there has been a lawsuit filed on this Executive Order.

No action taken.

New Business No tab

None

The meeting adjourned at 5:31 p.m.