

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

Marriott West Palm Beach
1001 Okeechobee Blvd
West Palm Beach, FL 33401
(561) 833-1234

April 3, 2008

4:00 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:

Ed Tellechea, Board Counsel
Nancy Murphy, Paralegal
Cheryl Graham, Administrative Assistant I
Crystal Sanford, Program Operations Administrator

Others Present:

American Court Reporting

Rules Discussion:

Tab 1 - Rules Report – Information Only

This information was provided for information only.

Tab 2 - 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 patient; however, the rule only refers to the patient.

Mr. Tellechea asked the Committee if they would consider expanding the rule to include family members. The Committee recommended authorizing Mr. Tellechea to notice this rule for rule development and to bring draft language to the next meeting.

After review of the rule by Mr. Tellechea he asked the Board to reconsider developing rule language or changes to 64B8-9.008, FAC.

After much discussion, a motion was made, seconded and carried unanimously to leave the rules as is.

Action taken: No action

Tab 3 - 64B8-10.003, FAC – Costs for Reproducing Medical Records

This matter was withdrawn from the agenda.

Tab 4 - 64B8-3.003, FAC – Renewal Fees

Dr. Rosenberg complimented Dr. Cline for the excellent letter he sent out to all licensed physicians in the state Florida requesting their email addresses.

Dr. Davies suggested that the Department add an additional fee for a physician who requests a paper renewal form verses a physician renewing on-line.

After much discussion, a motion was made and seconded to have Mr. Tellechea draft rule language, place it on the next telephone conference call agenda for approval. Once language is approved by the Board, have language noticed for rule development.

Action taken: draft rule language to add a \$25 fee for physicians who request a paper renewal form

Tab 5 - Electrology Rule Review

The Committee discussed the information provided regarding the Electrology Rule Review.

A motion was made, seconded and carried unanimously to have Mr. Tellechea send a letter to the Executive Director and the Chair of the Electrology Council inviting them to the next meeting in Orlando to discuss questions regarding the rule review.

After more discussion, a motion was made, seconded and carried unanimously to table this matter until the next meeting in Orlando.

Action taken: table until the next meeting

Tab 6 - Rule 64-3.006, FAC – Diagnostic Testing

Ms. Sanford explained the Legislature repealed the personal injury protection (PIP) law and as a result, the Department of Health repealed the rule which deemed certain diagnostic tests as not medical necessary for persons sustaining bodily injuries covered

by PIP insurance. She explained the Legislature later re-enacted the law and the Department is presenting for adoption the same rule text that was in force at the time the PIP law laws repealed.

After discussion, a motion was made, seconded and carried unanimously to recommend supporting the rule, but allowing exemptions for neurosurgeons who utilize evoked potentials intra-operatively as proposed by Christopher Nuland, Esquire.

Action taken: Support proposed rule but recommend adding language exempting neurosurgeons who utilize evoked potentials intraoperatively

Tab 19 - Rule 64B8-8.0011, FAC – Standard Terms Applicable to Final Orders

Dr. Davies asked the Committee to consider adding community service to the disciplinary guidelines.

Ms. Sanford reminded the Committee that Rule 64B8-8.001, FAC was on the agenda to request the Committee grant Mr. Tellechea authority to notice for rule development because we had noticed our violation statutes were no longer matching the disciplinary guidelines.

A motion was made, seconded and carried unanimously to recommend granting Mr. Tellechea authority to notice Rule 64B8-8.001, FAC for rule development and to include community service in the disciplinary guidelines (at least 50 hours).

Mr. Tellechea advised he would review the rule and bring draft language to the next meeting for review.

Action taken: Notice for rule development; bring draft language to next meeting

Supplemental 1 - Office of Vital Statistics Proposed Rule Amendment

Ms. Sanford explained the Department of Health was requesting the Board approve the following language:

A death certificate is prima facie proof of the fact, place, date and time of death and identity of the decedent. A physician's signature and statement as to the cause of death does not constitute prima facie proof of the cause of death.

The Committee had concerns that by adopting this rule language, the cause of death no longer has meaning and suggested the Department obtain input from the Medical Examiners Office.

Action taken: Concerns regarding language, recommend obtaining input from Medical Examiners Office

Supplemental 2 - Rule 64B8-8.001, FAC – Disciplinary Guidelines

See Tab 19 above. No additional action taken.

Legislative Discussion:

Tab 7 - Bill Matrix – Information Only

This information was provided for information only.

Dr. Davies pointed out that the Board had previously voted to support SB 1106 and the matrix reflects the Board opposed. She also asked if Mr. McPherson had obtained any information regarding HB 341 as to whether the schools would bear the costs associated with PRN assistance for medical students.

Ms. Sanford advised she would update the matrix and follow up on HB 341.

Tab 8 - SB 1278/HB 1019

These bills removes language that requires physical therapists to have a practitioner of record review the physical therapists treatment plan for the patient.

After discussion, a motion was made, seconded and carried to remain neutral on this bill.

Action taken: Neutral

Tab 9 - HB 839

This bill provides sovereign immunity for physicians in emergency situations.

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

Action taken: support

Tab 10 - SB 1640

See tab 9. No further action taken.

Tab 11 - SB 1550

This bill would require the Agency for Health Care Administration to develop a web site containing patient medication histories that would be available to physicians statewide.

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

Action taken: Neutral

Tab 12 - SB 1648

This bill relates to HIV testing, informed consent and medical personnel.

After discussion, a motion was made, seconded and carried unanimously to recommend opposing this bill on the basis that the language is too broad.

Action taken: oppose

Tab 13 - SB 2646

This bill would require the Agency for Health Care Administration to report to the Department of Health whenever an adverse incident report is filed on a health care facility and it involved a licensed health care practitioner.

After discussion, a motion was made, seconded and carried unanimously to remain neutral on this bill on the basis that the concept is a good idea, but the Committee is concerned about the financial aspect of the bill.

Action taken: neutral

Tab 14 - SB 2366 / HB 1281

These bills add the Florida International University and the University of Central Florida to the list of medical schools eligible to obtain medical faculty certificates for physicians offered a position on staff.

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

Action taken: support

Tab 15 - HB 1443 / SB 1420 / SB 2694

These bills would require health care facilities to ensure physicians have complied with financial responsibility requirements.

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

After a lengthy discussion, a motion was made, seconded and carried unanimously to reconsider the original motion.

A motion was made, seconded and carried with 1 against to oppose this bill.

Action taken: oppose

Tab 17 - HB 645/SB 1448

These bills concern evidentiary matters involving expert witnesses.

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

Action taken: neutral

Tab 18 - SB 1184 Amendment

This bill prevents physicians from holding themselves out as board certified emergency physicians unless certain requirements have been met.

Mr. Nuland addressed the Committee and advised the bill had died.

No action taken.

Tab 20 - SB 2724/SB 2782/HB 1011/HB 1243/HB 1347

These bills require the Department of Health to develop a prescription drug monitoring program for controlled substances.

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

Action taken: support

Other Business:

Dr. Rosenberg mentioned a bill that clarifies the legible prescription law and requires the patient's name be listed on the prescription.

No action.

Mr. Nuland addressed the Committee concerning a Department of Health ruling that states dispensing practitioners are solely responsible for receiving and dispensing medications. He explained this causes a problem for group practices and corporations. He asked the Committee to support language that would state that any physician in a corporation or group practice can receive and dispense medications on behalf of the corporation or group.

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

Action taken: support

Tab 16 - Violation of HIPAA Rules

Ms. Sanford explained Mr. Beebe requested this matter be placed on the agenda to discuss whether disciplinary guidelines were needed for HIPAA rule violations.

Mr. Tellechea explained the Committee could delineate the disciplinary guidelines for this specific violation or the Committee could recommend that the Department charge physicians who have violated the HIPAA law with failing to comply with a legal obligation.

A motion was made, seconded and carried unanimously to recommend the Department charge physicians who violate the HIPAA law with failing to comply with a legal obligation.

Action: Recommendation for the Department to charge physicians who violate the HIPAA law with failing to comply with a legal obligation

New Business

Mr. Tellechea presented an issue from the Dietetics Council wherein the Council wants to notice rule 64B8-40.003, FAC for rule development to clarify the number of CE credits awarded per college semester credit hour.

A motion was made, seconded and carried unanimously to recommend for rule development.

Action taken: Notice for rule development

Mr. Tellechea advised the Committee he came across an issue in a recent probable cause panel meeting concerning what violation the Department should use to charge a physician who fails to adequately supervise residents. He suggested adding “residents” and any other physician extenders that require supervision to s. 458.331(1)(dd), F.S.

Dr. Davies suggested adding House Physicians as well.

A motion was made, seconded and carried unanimously to place this matter on a future agenda for discussion.

Action taken: schedule for next meeting

Dr. Rosenberg asked the Committee for comments concerning how the agenda materials were provided and made a suggestion that the rules and the bill matrix be provided in paper format, but all supporting documentation be provided on a cd.

Dr. Davies suggested giving the members the full Adobe Standard program which would allow the members to place notes right on the documents on the CD.

Mr. Tellechea stated there were programs other than Adobe that would allow the members to take notes on the documents.

No action taken.

The meeting was adjourned at 6:00 p.m.