

1 **Meeting Report**  
2 **Department of Health**  
3 **Board of Medicine**  
4 **Rules/Legislative Committee Meeting**  
5 **Marriott Tampa Airport**  
6 **4200 George Bean Parkway**  
7 **Tampa, FL 33607**  
8 **(813) 879-5151**  
9 **April 8, 2010**

10 Roll Call 4:00 p.m.

11  
12 **Present:**

13 Jason Rosenberg, M.D.  
14 Donald Mullins, Consumer Member arrived at 4:42 pm  
15 Steven Rosenberg, M.D.  
16 H. Frank Farmer, M.D.  
17 Michael Chizner, M.D.  
18 Onelia Lage, M.D. arrived at 4:35 p.m.

12 **Not Present:**

Fred Bearison, M.D.

19  
20 **Staff Present:**

21 Larry McPherson, Executive Director  
22 Ed Tellechea, Board Counsel  
23 Donna McNulty, Board Counsel  
24 Nancy Murphy, Paralegal  
25 Crystal Sanford, Program Administrator

20 **Others Present:**

American Court Reporting

26  
27  
28 **Rules Discussion:**

29  
30 **Tab 1 - Rules Report**

31 Provided for information only.

32  
33 **Tab 2 - Rule 64B8-8.0011 – Standard Terms Applicable to Final Orders**

34  
35 Mr. Tellechea explained the following changes to the rule:

- 36 a. Change of address for the Compliance Management Unit  
37 b. Community service hours must be verified by an official from the organization at  
38 which the services were provided  
39 c. Lectures must address the specific events arising from the Respondent's disciplinary  
40 matter.

41  
42 A motion was made, seconded and carried unanimously to approve the draft language.

43  
44 A motion was made, seconded and carried unanimously to find these changes would not have an  
45 impact on small business and therefore a statement of estimated regulatory costs (SERC) is not  
46 required.

47  
48 **Action taken:** language approved; SERC not required

1 Dr. Rosenberg recognized Josie Tamayo, J.D., Department of Health General Counsel, who was  
2 present in the audience.

3  
4 **Tab 3 - Rule 64B8-8.001, FAC – Disciplinary Guidelines**

5  
6 Mr. Tellechea presented 2 changes to the disciplinary guidelines related to violations of the  
7 standards of practice and inspection rules for pain management clinics.

8  
9 Diane Kiesling, Prosecuting Attorney with the Department of Health, addressed the Committee  
10 with concerns regarding the fine set for first offenses. She suggested there be a range from  
11 \$5,000 – 10,000 which could be assessed based on the severity of the offense.

12  
13 A motion was made, seconded and carried unanimously to approve the language as amended.

14  
15 A motion was made, seconded and carried unanimously to find this change could have an  
16 economic impact on small business and therefore a SERC is required.

17  
18 A motion was made, seconded and carried unanimously to approve the draft SERC.

19  
20 A motion was made, seconded and carried unanimously to notice this rule for development.

21  
22 **Action taken:** draft language approved as amended, SERC required, draft SERC approved,  
23 authorized to notice for rule development

24  
25 **Legislative Discussion:**

26  
27 **Tab 4 Bill Matrix (2010 Legislative Session)**

28 Provided for information only.

29  
30 **Tab 5 - HB 573**

31  
32 This bill would remove the 3 month experience required before prescribing Physician  
33 Assistant's (PA's) can be authorized to prescribe and allows PA forms to be submitted  
34 electronically.

35  
36 Mr. McPherson explained the PA Council decided to remain neutral on this bill.

37  
38 Deborah Gerbert, PA-C, Chair of the PA Council, addressed the Committee and advised the  
39 Florida Academy of Physician Assistant worked with Legislative Staff to remove the part of the  
40 bill that allows electronic submission of forms and that this bill was moving through the  
41 Committees.

42  
43 A motion was made, seconded and carried unanimously to refer this matter to the full Board to  
44 determine whether to stay neutral, support or oppose the bill.

45  
46 **Action taken:** referred to full Board for decision

47  
48 **Tab 6 - SB 1456 (Compare to HB 573)**

1 This bill is identical to HB 573 except for the provision that allows electronic submission of  
2 forms.

3  
4 A motion was made, seconded and carried unanimously to refer this matter to the full Board to  
5 determine whether to stay neutral, support or oppose the bill.

6  
7 **Action taken:** refer to full Board for decision

8  
9 **Tab 7 - SB 2146**

10  
11 This bill concerns the practice of physical therapy and removes the authority from the board to  
12 set criteria for the performance of electromyography and removes supervision of a physical  
13 therapist assist by a physician.

14  
15 A motion was made, seconded and carried unanimously to oppose this bill due to patient safety  
16 issues by removing the medical doctor from this process.

17  
18 **Action taken:** not support the bill.

19  
20 **SUMMARY OF Tabs 8-11 are pain\_clinic bills which the committee recommended support**  
21 **with concerns raised in the following areas that are in some but not all of the bills:**

- 22
- 23 • **Limitations on ownership, particularly for physicians who once impaired have since**  
24 **been rehabilitated.**
  - 25 • **Limitations on dispensing controlled substances that apply to all dispensers, not just**  
26 **pain clinics**
  - 27 • **Creation of another prescription drug database program that appears to duplicate**  
28 **efforts and resources of the current PDMP being developed**
  - 29 • **Changes in the definition of “clinic” that would have unintended consequences of**  
30 **certain clinics being able to advertise pain management and dispense controlled**  
31 **substances but could avoid registration and it would be difficult for regulation to**  
32 **challenge the non-registration.**
  - 33 • **How the board could define the 24 hour limitation on how many prescriptions**  
34 **could be written at a pain clinic location.**
  - 35 • **Fiscal impact of fingerprinting and renewal provisions**
  - 36 • **3-hour CME on prescribing required for all physicians at initial licensure and upon**  
37 **renewal**
  - 38 •

39  
40  
41 **Tab 8 - HB 225**

42  
43 This is one of several comprehensive pain management bills in the current Legislature. Mr.  
44 McPherson summarized the bill, which includes:

- 45 • changes the definition of which clinics need to register. The change could result in  
46 unintended consequence that clinics could advertise pain management and be  
47 prescribing/dispensing controlled substances and still not register. It would be very  
48 difficult to determine whether the clinic’s level of prescribing/dispensing met the  
49 standard for registering the clinic.

- 1 • creation of a new prescribing network system required to be used by prescribers,  
2 dispensers, or pharmacists. The system to be created by the Agency for Health Care  
3 Administration
- 4 • adds restrictions on ownership
- 5 • Designated physician and medical director must be a medical doctor or osteopathic  
6 physician
- 7 • restrictions on advertising
- 8 • adds grounds for discipline
- 9 • restrictions on dispensing of controlled substances, including 72 hour supply limitation

10  
11 Dr. Lage arrived.

12  
13 Mr. Mullins arrived.

14  
15 After a lengthy discussion, a motion was made, seconded and carried unanimously to support  
16 this bill with the following concerns:

- 17 • Change in the definition of ‘clinic’ may have unintended results.
- 18 • Unsure of the role of the network system as there is a PDMP being created..
- 19 • Concerns about the limit on dispensing of controlled substances to 72 hours on certain  
20 practice situations.
- 21 • Concerns about restrictions on advertising.
- 22 • Concerns regarding the limitations on ownership.

23  
24 **Action taken:** support with above concerns

25  
26 **Tab 9 - SB 2272 and SB 2722**

27  
28 Mr. McPherson summarized SB 2722, another pain management clinic bill, as follows:  
29 SB 2722

- 30 • fewer restrictions on the Department obtaining patient records
  - 31 • provides 4 new exemptions for registration
  - 32 • clinic must be owned by a medical doctor or osteopathic physician
  - 33 • requires designated physician to have a full, unrestricted license
  - 34 • limitations on ownership
  - 35 • provides basis of denial of registration
  - 36 • dispensing of medications limited to medical doctor or osteopathic physician
  - 37 • limits and restrictions on dispensing of controlled substances
  - 38 • counterfeit resistant prescriptions required
  - 39 • notice requirement for loss of prescription pads
  - 40 • must notify Department within 10 days of leaving employment
  - 41 • no dispensing of controlled substances for cash, credit card or check
  - 42 • board has authority to determine how often designated physician must be in the clinic
  - 43 • board has authority to determine maximum number of controlled substances that can be  
44 prescribed in a clinic in a 24 hour period
  - 45 • provides grounds for discipline
- 46

1 The Committee discussed concerns regarding the possible impact of the new exemptions for  
2 large public ally traded corporations and 501(3)(c) entities that would allow pain clinics that  
3 should be registered to avoid regulation..  
4  
5

6 After a lengthy discussion, a motion was made, seconded and carried unanimously to support the  
7 bill with the following concerns:

- 8 • concerns on ownership limits
- 9 • unsure how to accomplish verification of the limitation on the number of prescriptions for  
10 controlled substances written in a 24-hour period.
- 11 • Concerned with language on training requirements language as drafted regarding the  
12 board approving and qualifying pain clinics when there is no authority to do so.
- 13 • Concerned with exemptions for large corporations and 501(3)(c) entities
- 14 • Concerns with language that requires review of violations by regulatory entity – unsure if  
15 that means the physician is subject to disciplinary action  
16

17 **Action taken:** support SB 2722 with the above concerns  
18

19 SB 2272

20 Mr. McPherson advised this bill is moving through the Legislature faster than the other pain  
21 management bills.  
22

23 Mr. McPherson summarized the bill for the members as follows:

- 24 • counterfeit resistant prescriptions pads
- 25 • notice requirement for loss of prescription pads
- 26 • must notify Department within 10 days of leaving employment
- 27 • fewer restrictions on the Department obtaining patient records
- 28 • provides grounds for disciplinary action
- 29 • requires designated physician to have a full unrestricted license
- 30 • inspections will include review of medical records
- 31 • provides basis for denial of registration
- 32 • provides 4 exemptions to registration
- 33 • Board determines how often designated physician must be at the clinic
- 34 • Board has authority to determine maximum number of controlled substances that can be  
35 prescribed in a 24-hour period
- 36 • Restrictions on education for physicians working in the clinic
- 37 • Limitations on ownership
- 38 • dispensing of medications limited to medical doctor or osteopathic physician
- 39 • limits and restrictions on dispensing of controlled substances  
40

41 A motion was made, seconded and carried unanimously to support SB 2272 with the following  
42 concerns:

- 43 • concerns with language that authorizes the Boards of Medicine and Osteopathic Medicine  
44 to adopt “a” rule regarding the number of prescriptions written in a 24-hour period
- 45 • concerns with the language on Department ability to get patient records without a  
46 subpoena<sup>7</sup>
- 47 • concerns with exemptions for large corporations and 501(c)(3)

- 1 • concerned that by limiting registration to physicians who have completed an ACGME
- 2 Fellowship there may not be enough physicians to take care of the patients
- 3 • limitations on ownership

4  
5 **Action taken:** support SB 2272 with the above concerns

6  
7 **Tab 10 - HB 1499**

8  
9 Mr. McPherson summarized the bill and stated it was similar to HB 225:

- 10 • 3 hours CME in prescribing for renewal
- 11 • Counterfeit resistant prescription pads
- 12 • Notice requirement for loss of prescription pads
- 13 • Grounds for disciplinary action
- 14 • must notify Department within 10 days of leaving employment
- 15 • fewer restrictions on the Department in obtaining patient records
- 16 • narrow definition of 'clinic' that have unintended consequences
- 17 • requires designated physician to have a full, unrestricted license
- 18 • inspections include review of patient records
- 19 • provides basis for denial of registration
- 20 • Board has authority to determine how often the designated physician must be in the clinic
- 21 • Requires designated physician be on the premises 33% of the time
- 22 • Creates 2 year renewal
- 23 • Requires additional information on the registration application
- 24 • Requires fingerprinting of manager and next 4 highest ranking employees
- 25 • Limitations on owners for certain criminal history and drug issues
- 26 • Limits on dispensing of controlled substances for 72 hours

27  
28 After discussion, a motion was made, seconded and carried unanimously to support the bill with

29 the following concerns:

- 30 • provides sole discretion to the Department to obtain patient records
- 31 • concerns that language regarding rule making authority granted to the Department and
- 32 the Board may be unclear
- 33 • 3-hour prescribing class is required for all physicians, not just those working in pain
- 34 management clinics
- 35 • Fiscal impact of renewals and fingerprinting

36  
37 **Action taken:** support with concerns above

38  
39 **Tab 11 - HB 671**

40  
41 Mr. McPherson summarized this pain management bill:

- 42 • narrows definition of what entities must register
- 43 • limitations on ownership for felony history
- 44 • creates 2 year renewal
- 45 • requires fingerprinting
- 46 • requires additional information on registration application

1 A motion was made and seconded to support the bill with concerns regarding the fiscal impact of  
2 renewals and fingerprinting.

3  
4 The motion carried unanimously.

5  
6 **Action taken:** support with concerns regarding the fiscal impact of renewals and fingerprinting

7  
8 **Tab 12 - SB 1722/CS for SB 1722**

9  
10 This bill amends the current controlled substance monitoring database program.

11  
12 Mr. McPherson advised the Department has received a small grant and is pending receipt of the  
13 money for an approved grant for \$400,000.

14  
15 **Action taken:** none, considered an FYI

16  
17  
18 **SB 214**

19  
20 Mr. McPherson summarized this bill which requires physicians to obtain a second opinion on  
21 patients with symptoms of autism. He explained last year's version required the physician to  
22 immediately refer the patients and this version removes that requirement.

23  
24 Dr. S. Rosenberg stated this year's version of the bill is more flexible with no added burden on  
25 the physician; however, it does impact HMO's. He felt this was a good bill.

26  
27 A motion was made and seconded to support the bill.

28  
29 An amendment was offered to include the concerns discussed on how the bill might impact the  
30 role of the treating physician. The amendment was not accepted.

31  
32 The motion carried unanimously.

33  
34 **Action taken:** support

35  
36 **CS for SB 1256**

37  
38 Mr. McPherson explained this bill expands who is eligible for an area of critical need (ACN)  
39 license. Currently physicians only need to demonstrate they have a license in some jurisdiction.  
40 This bill would allow physicians who do not have a license to receive an ACN license if the  
41 licensee was in the military for at least 10 years and received an honorable discharge.

42  
43 After discussion a motion was made and seconded to support the bill except for adding the VA  
44 Affairs Clinic to the list of ACN's.

45  
46 Another motion was made and seconded to support with concerns. The motion failed 3-3.

47  
48 A motion was made, seconded and carried unanimously to refer this matter to the full board for a  
49 decision.

1  
2 **Action taken:** refer to Board

3  
4 **CS for SB 1844**

5  
6 This bill affects all agencies in that it imposes changes to the rule making process that would  
7 often include legislative authority before a rule could be in force. This would have a significant  
8 impact on the Board's pain clinic rules.

9  
10 Mr. Tellechea explained if a SERC finds a rule change will have more than a \$200,000 impact  
11 on small businesses, the rule has to be ratified by the legislature at the next regularly scheduled  
12 session. He was concerned this may slow the rule making process.

13  
14 A motion was made, seconded and carried unanimously not to support this bill as it poses an  
15 undue burden on the agencies and the complicated process already in place would become a  
16 more lengthy process.

17  
18 **Action taken:** do not support due to burden on the agencies and the complicated process already  
19 in place would become a more lengthy process

20  
21 **CS for SB 7183**

22  
23 Mr. McPherson explained this bill did not have a direct impact on the Board but he wanted to  
24 share the bill with the Committee. He said this bill would:

- 25
- 26 • reorganize the Department of Health
  - 27 • changes to the physician workforce council and survey
  - 28 • changes to the physician workforce council and survey
  - 29 • transfer health care boards to the Department of Business and Professional Regulation

30 Mr. Chris Nuland stated that the bill also removes responsibilities from the State Surgeon  
31 General regarding public health

32  
33 A motion was made, seconded and carried unanimously to remain neutral on this bill.

34  
35 **Action taken:** neutral

36  
37 **Discussion Items:**

38  
39 **Tab 13 - Global Health Outreach**

40  
41 Mr. Mullins presented an idea to the Committee to revise the CME rule to grant CME credit for  
42 the good work physician's do in their community (volunteer service).

43  
44 Mr. Tellechea stated that s. 456, F.S. grants CME credit for pro bono services provided within  
45 the state of Florida. He said physicians can receive up to 25% of the required CME hours (10  
46 hours).

47  
48 Dr. J. Rosenberg asked if the profile could be modified to allow physicians to add community  
49 service work.

1  
2 Dr. Lage suggested using the quarterly newsletter as a mechanism to report physician's work and  
3 to encourage physicians to publish their community service work in the local newspaper.  
4

5 Mr. Tellechea advised the Committee that Rule 64B8-13.005(9), FAC provides 5 hours CME for  
6 pro bono services provided to the indigent, underserved areas and areas of critical need.  
7

8 Mr. Mullins agreed to take lead in researching this further and to report back to the Board at the  
9 June or August Board Meeting.  
10

11 **Action taken:** Mr. Mullins to conduct further research and report back at June or August Board  
12 Meeting.  
13

#### 14 **Tab 14 - Supervision of Electrologists**

15

16 Larry Gonzalez, Esquire, representing the Florida Electrologists presented to the Committee his  
17 interpretation of the statute regarding direct supervision and responsibility of electrologists. He  
18 stated the Board could interpret s. 458.348, F.S. to not require the physician's presence when  
19 laser hair removal procedures are being done by Electrologists.  
20

21 Judy Adams, President of the Florida Society of Electrologists and also representing the Florida  
22 Electrology Association, addressed the Committee. She opined that the statute is applicable to  
23 PA's only and not Electrologists who are regulated under a different chapter of statutes. She  
24 stated Electrologists can work under indirect supervision because they are adequately trained.  
25 She stressed there is an uneven playing field in that PA's and ARNP's are under indirect  
26 supervision and as a result the profession of electrology is dying.  
27

28 Melanie Cowling, EO, addressed the Committee in support of the request stating that PA's and  
29 ARNP's do not have the same training as Electrologists in using lasers.  
30

31 Terri Labrecque, EO, addressed the Committee and stated that the medical director in the  
32 spas/clinics could have the authority to make the determination of whether the Electrologist  
33 should be under direct or indirect supervision.  
34

35 Nancy Peritore Neal, EO, addressed the Committee next and stated that she had not seen an  
36 instance where the supervising physician was needed due to a problem.  
37

38 Karen Cowles, EO, addressed the Committee in support of the request.  
39

40 Ms. Adams read a letter from the Office of Small Business Advocate and then submitted a copy  
41 of this letter and other letters from physicians to the members. She stated that medical assistants  
42 are required to be under direct supervision yet the statute allows them to perform home dialysis.  
43 She stated she would be willing to bet a physician is not present during home dialysis.  
44

45 Chris Nuland, Esquire, representing the Florida Society of Dermatology and Dermatological  
46 Surgery and the Florida Society of Plastic Surgeons, addressed the Committee in opposition to  
47 the request. He provided a history of this rule stating that the Electrologists have tried in 1999,  
48 2000 and again in 2001 to have direct supervision and responsibility removed. In all instances,  
49 the Joint Administrative Procedures Committee sent letters to the Board of Medicine stating the

1 statute requires the physician to be on site. As a result, the Board developed Rule 64B8-  
2 2.001(1)(a), FAC. He reiterated that s. 458.348, F.S. explicitly states that Electrologists are to be  
3 under the direct supervision and responsibility of a physician. He went on to say that when SB  
4 720 passed in the 2009 Legislative Session and exempted PA's and ARNP's from direct  
5 supervision and Electrologists were specifically left out of the bill.

6  
7 Albert Nemeth, M.D., President of the Florida Society of Dermatologists and Dermatological  
8 Surgery addressed the Committee in opposition of the request. He stated that lasers and IPL's  
9 are surgical equipment. He also stated that he has seen burns and scars resulting from the use of  
10 these pieces of equipment.

11  
12 L. William Luria, M.D., Past President of the Florida Society of Plastic Surgeons addressed the  
13 Committee next and stated his comments were coming out of 15 years of clinical observations:  
14 1. These are painful procedures that sometimes require blocks prior to beginning the procedures.  
15 2. He reiterated that significant dermal destruction can occur.  
16 3. He reminded the Committee these pieces of equipment radiate a substantial amount of energy.

17  
18 Randy Banks, PA from the Florida Society of Dermatologic PA's stated that he does believe he  
19 has adequate training to use lasers for hair removal.

20  
21 Juhan Mixon representing the Florida Academy of Physician Assistants stated that when SB 720  
22 was introduced, he had discussions with Mr. Gonzalez who had requested the bill be amended to  
23 include Electrologists. He said he told Mr. Gonzalez at that time to go to the Legislature with his  
24 own bill.

25  
26 Holly Miller, Esquire, representing the Florida Medical Association (FMA) stated the FMA  
27 supports Mr. Nuland and Mr. Mixon's comments specific to PA's and ARNP's.

28  
29 Mr. Gonzalez addressed the Committee again to reiterate that the Board has historically  
30 supported the physician not be required to be onsite. He also stated there have been no instances  
31 of licensed Electrologists hurting patients.

32  
33 Ms. Adams responded to earlier comments and stated the procedures are painful, but needle  
34 electrolysis is more painful, yet topical anesthetics are not necessary. She also stated that CME  
35 on dermatological conditions is part of their training.

36  
37 Mr. Tellechea read the last sentence of s. 458.348, F.S. which states the statute is self executing  
38 and provided no authority to the Board for rule making.

39  
40 Dr. J. Rosenberg thanked both sides for their presentations and to the Committee for a thorough  
41 review and discussion.

42  
43 **Action taken:** none – advised to go through the Legislature to change the statute

44  
45 The meeting adjourned at 7:20 p.m.