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

**Embassy Suites
9300 Baymeadows Rd
Jacksonville, FL 32256
(904) 731-3555**

August 4, 2011

Roll call 4:12 p.m.

Members Present:

Fred Bearison, M.D., Chair
Jason Rosenberg, M.D.
Donald Mullins, Consumer Member
Robert Nuss, M.D.
Z.P. Zachariah, M.D.
James Orr, M.D. (arrived at 4:17 pm)

Members Absent:

Staff Present:

Joy A. Tootle, J.D., Executive Director
Ed Tellechea, JD, Board Counsel
Donna McNulty, JD, Board Counsel
Nancy Murphy, Paralegal
Crystal A. Sanford, CPM, Prog. Opr. Adm.

Others Present:

American Court Reporting

Rules Discussion:

Rules Report1

This report is provided for information only.

Rule 64B8-8.001, FAC – Disciplinary Guidelines2

- HB 7095 violations - Pain Management Clinics/Controlled Substances s. 456.072(1)(mm), FS
- HB 479 violations - Expert Witness testimony s. 458.331(1)(oo), FS
- HB 1127 violations – Abortion s. 456.072(1)(k), FS

Mr. Tellechea reminded the Committee about the bills, noted above, that imposed various grounds for disciplinary action. He said the Committee had instructed him to draft language for review at this meeting.

Mr. Tellechea introduced the proposed disciplinary guidelines for violation of s. 456.072(1)(mm), FS – failure to comply with controlled substance prescribing requirements of s. 456.44, FS. He reminded the Committee that HB 7095 requires a mandatory six month suspension and \$10,000 fine.

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

2
3 **Action taken:** draft guidelines language for Rule 64B8-8.001(2)(ooo), FAC approved

4
5 Mr. Tellechea introduced the draft language for violation of s. 458.331(1)(oo), FS – providing false or
6 deceptive expert witness testimony related to the practice of medicine.

7
8 Dr. Bearison asked if the expert witness certificate was considered a license.

9
10 Mr. Tellechea stated it is considered a license as defined in Chapter 456, FS.

11
12 Dr. Rosenberg asked if the violation and subsequent revocation was reportable to the National
13 Practitioner Databank.

14
15 Ms. Tootle stated it would be reportable.

16
17 A motion was made, seconded and carried unanimously to recommend approval of the draft language.

18
19 **Action taken:** draft guidelines for Rule 64B8-8.001(2)(ppp), FAC approved

20
21 Mr. Tellechea presented the draft language for violation of s. 456.072(1)(k), FS – failure to comply with
22 the requirements of section 390.0111(3), FS regarding termination of pregnancies.

23
24 A motion was made, seconded and carried unanimously to recommend approval of the draft language.

25
26 **Action taken:** draft guidelines for Rule 64B8-8.001(2)(qqq), FAC approved

27
28 Mr. Tellechea asked the Committee if any of the rule changes would have an adverse impact on small
29 business or be likely to directly or indirectly increase regulatory costs to any entity (including
30 Government) in excess of \$200,000 in the aggregate in Florida within one year after the implementation
31 of the rule changes.

32
33 A motion was made, seconded and carried unanimously to recommend finding the rule changes will not
34 have an adverse impact on small business nor will the changes increase regulatory costs.

35
36 **Action taken:** no impact - no Statement of Estimated Regulatory Costs (SERCs) required

37
38 **New Business**

39 Mr. Tellechea reminded the Committee about HB 155 that was passed this legislative session regarding
40 physicians asking about gun ownership. He explained he initially recommended charging such
41 violations with the *failing to comply with a physician's legal obligation* grounds for disciplinary action
42 and the coinciding disciplinary guidelines. However, he subsequently found case law, with the
43 Construction Board, where a penalty was overturned because the Board did not have specific
44 disciplinary guidelines for specific grounds for discipline. He recommended the Committee draft
45 disciplinary guidelines specific to the violation.

46
47 The Committee asked Mr. Tellechea to draft disciplinary guidelines for the penalty for review at the
48 next meeting.

1 A motion was made, seconded and carried unanimously to recommend authorizing Mr. Tellechea to go
2 into rulemaking pending approval from OFARR.

3
4 **Action taken:** draft disciplinary guidelines for violation of the hand gun law and present at next meeting

5
6 **Rule 64B8-9.0131, FAC – Training Requirements for Physicians Practicing in Pain**
7 **Management Clinics3**

8 Mr. Tellechea reminded the Committee how the drafting of this rule was developed. He explained that
9 HB 7095 incorporated most of the Board’s pain-management clinic rules into law except for the training
10 requirements. He said this rule meets current law and the Board has statutory authorization. Mr.
11 Tellechea also said the Osteopathic Medicine version is identical.

12
13 Christopher Nuland, Esquire representing the Florida Chapter of the American College of Physicians
14 addressed the Committee. He urged the Committee to remove the provision from the rule related to the
15 July 2012 requirement.

16
17 Mr. Tellechea advised the Committee did not have to change the Rule and the rule did not have to mirror
18 the law.

19
20 A motion was made, seconded and carried unanimously to recommend leaving the rule as written.

21
22 **Action taken:** no change to the rule

23
24 Mr. Tellechea advised there was a request on the full board agenda for approval of a course to meet the
25 criteria listed in the rule.

26
27 **Rule 64B8-1.007, FAC – Forms, Incorporated & Rule 64B8-12.005, FAC – Procedures**
28 **(Financial Responsibility)4**

29 Mr. Tellechea explained when a form is changed; the corresponding rule that incorporates the form must
30 also be changed to reflect the update.

31
32 Ms. Sanford explained the form was modified related to the exemptions. The form did not include all
33 the language from the statute and was modified to include it all so that physicians would completely
34 understand the selection they were choosing.

35
36 Ms. McNulty stated the form was also changed to add an affidavit as required by statute and referred the
37 Committee to the last page of the form.

38
39 The members expressed concern regarding the layout of the form. Because of the confusion, the matter
40 was tabled until the meeting.

41
42 **Action taken:** tabled

43
44 **Rule 64B8-1.007, FAC – Forms, Incorporated & Rule 4.029, FAC – Registration as Dispensing**
45 **Practitioner; Delegation of Dispensing to Prescribing Physician Assistants5**

46 Mr. Tellechea explained this form was modified to include the following language which is a result of
47 the passage of HB 7095:

48 *A dispensing practitioner shall not dispense a controlled substances listed in Schedule II or III as*
49 *provided in s. 893.03, FS unless exempted from this section by s. 465.0276, FS.*

1 A motion was made, seconded and carried unanimously to recommend approving the form.

2
3 Mr. Tellechea explained the corresponding rule that incorporates the form is Rule 64B8-4.029, FAC and
4 the rule had been revised to incorporate the updated form.

5
6 A motion was made, seconded and carried unanimously to recommend approving the changes to the
7 rule.

8
9 Mr. Tellechea explained that forms are required to be incorporated into the rules that implement the
10 form. He stated the Board’s forms rule will be repealed as the forms listed in the rule are incorporated
11 into the appropriate rules. He explained the current revision to the rule is to remove the reference to the
12 dispensing practitioner form since it was approved for incorporation into Rule 64B8-4.029, FAC.

13
14 A motion was made, seconded and carried unanimously to recommend approval of the changes to the
15 rule.

16
17 A motion was made, seconded and carried unanimously to recommend authorizing Mr. Tellechea to
18 notice for rulemaking pending OFARR approval.

19
20 **Action taken:** revisions to form approved; both rule revisions approved; approved for rulemaking
21 pending OFARR approval

22
23 **Legislative Discussion:**

24
25 **2012 Legislative Proposal: Fine caps.....6**

26 Mr. Tellechea explained the Board approved the concept of raising fee caps at the last meeting and
27 asked for language to be drafted for review at this meeting. The proposed language, in s. 456.072(2)(d),
28 FS, would add an exception to allow the Board of Medicine to raise their fee cap to \$25,000 per count
29 per violation.

30
31 A motion was made, seconded and carried unanimously to recommend approval of the draft legislative
32 language.

33
34 **Action taken:** draft language approved

35
36 **SB 146.....7**

37 Ms. Tootle explained SB 146 requires the Boards to review their laws and rules for any that impose
38 restrictions on employment or disqualify applicants from licensure based on criminal convictions. She
39 stated that she along with Mr. Tellechea, Ms. McNulty and Ms. Murphy reviewed the Board’s laws and
40 rules and found only one law that disqualifies applicants from licensure, s. 456.0635, FS. She explained
41 the Department of Health has agreed to address this law in their report to the Legislature.

42
43 A motion was made, seconded and carried unanimously to find that the Board of Medicine, with the
44 exception of s. 456.0635, FS, does not have any rules or statutes that would disqualify persons with prior
45 convictions from employment or licensure. Board staff will complete the survey on behalf of the
46 Board and submit to the Department.

47
48 **Action taken:** no laws or rules that restrict employment or disqualify applicants with the exception of s.
49 456.0635, FS which will be addressed by the Department

1 **Annual Regulatory Plan.....8**

2 Mr. Tellechea explained the Governor’s Executive Order regarding rulemaking required the Board to
3 review their rules and submit an annual regulatory plan which outlines the rules the Board intends to
4 address during the upcoming year. He said this list does not prohibit the Board from working on a rule
5 if something changes and needs to be addressed. He said the plan was due July 1, 2011 to the Governor
6 and received temporary approval from the Chair of the Board.

7
8 A motion was made, seconded and carried unanimously to recommend approval of the annual regulatory
9 plan as filed with the Governor’s Office.

10
11 **Action taken:** annual regulatory plan approved

12
13 **New Business**

14 Mr. Tellechea explained JAPC sent letters to the PA Council and the AA Committee regarding the
15 statutory authority to have community service as a disciplinary guideline. He said the Council and the
16 Committee voted to remove community service from their respective disciplinary guidelines. He
17 recommended this Committee remove all references to community service from the guidelines.

18
19 A motion was made and seconded to recommend authorizing Mr. Tellechea to strike references to
20 community service from the rule and present the proposed language at the next meeting.

21
22 Dr. Nuss asked if this had ever been challenged in court.

23
24 Mr. Tellechea said no. He explained it would not affect Settlement Agreements since both parties agree
25 to the penalty.

26
27 The motion carried unanimously.

28
29 **New Business**

30 Dr. Zachariah expressed concern about physicians fraudulently issuing disability parking in South
31 Florida. He asked if the Board had any authority regarding this matter.

32
33 Mr. Tellechea advised the Board had no authority in this area. He said if a complaint was filed against a
34 physician for falsifying the paperwork, he/she could be in violation of the practice act and subject to
35 disciplinary action.

36
37 Dr. Zachariah suggested something be placed in the *Message from the Chair* to advise physicians of that
38 information.

39
40 **Old Business**

41 Allen Grossman, Esquire, asked the Committee to revisit the pain-management clinic training
42 requirements rule again. He was speaking specifically to the 40-hour course requirement and explained
43 the rule was effective May 17, 2011; therefore physicians only have until October 17, 2011 to comply
44 with this portion of the rule or they must comply with one of the other provisions listed in the rule.

45
46 After discussion, the Committee took no further action on this rule.

47
48 The meeting adjourned at 5:20 p.m.