

1 Meeting Report
2 Department of Health
3 Board of Medicine
4 Rules/Legislative Committee Meeting
5 Renaissance Orlando Hotel
6 5445 Forbes Place
7 Orlando, FL 32812
8 (407) 240-1000
9

10 August 5, 2010

11
12 Roll Call 4:04 p.m.

13
14 **Members Present:**

15 Steven Rosenberg, M.D., Acting Chair
16 H. Frank Farmer, Jr., M.D.
17 Michael Chizner, M.D.
18 Onelia Lage, M.D. (arrived at 4:25 p.m.)
19 Fred Bearison, M.D.

20
21 **Members Absent:**

22 Jason Rosenberg, Chair
23 Donald Mullins, Consumer Member

24
25 **Staff Present:**

26 Larry McPherson, Jr, Executive Director
27 Ed Tellechea, Board Counsel
28 Donna McNulty, Board Counsel
29 Nancy Murphy, Paralegal
30 Crystal Sanford, Program Operations Administrator

31
32 **Others Present:**

33 American Court Reporting

34
35 **Rules Discussion:**

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37 **Rules Report – Information Only1**

38 This information was provided for information only.

39
40 **Rule 64B8-9.013, FAC – Standards for the use of Controlled Substances for Treatment of Pain for rule development2**

41 Mr. Tellechea explained this rule was originally drafted many years ago and since that time new pain management clinic laws have passed. He stated this law is applicable to all physicians. At the last meeting, the Committee decided to review the existing rule to see if changes needed to be made. He explained there was draft language in the agenda materials for the Committee to review but said it was mostly technical in substance and not substantial changes. He asked for additional input regarding changes to the rule. Mr. Tellechea went on to state in the rule where it previously said “should” the language was changed to state “shall”. He said other changes made this rule more consistent with the proposed pain management clinic rules as well.

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43 Mr. McPherson found an additional “should” that should be “shall” on page 3 of the rule under subsection (3)(a).
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1 Mr. Tellechea stated he would change that as well.

2
3 Mr. McPherson explained the Prosecuting Services Unit uses the Board’s rules to determine if a
4 physician has committed a violation when an Administrative Complaint has been filed. He
5 asked if the members wanted to make any changes to subsection (g) on page two (2) of the rule,
6 which states:

7 *The following standards are not intended to define complete or best practice, but rather to*
8 *communicate what the Board considers to be within the boundaries of professional practice.*

9
10 The Committee decided to make no changes to that portion of the rule.

11
12 A motion was made, seconded and carried unanimously to approve the proposed draft language.

13
14 A motion was made, seconded and carried unanimously to find these changes have no economic
15 impact on small business.

16
17 **Action taken:** language approved; no statement of estimated regulatory costs required

18
19 **Rule 64B8-11.001, FAC – Advertising3**

20 Mr. Tellechea explained the Board approved the American Board of Interventional Pain
21 Physicians as an approved certifying agency for advertising purposes. He stated the rule was
22 amended to add this organization.

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

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26 A motion was made, seconded and carried unanimously to find this change does not have a
27 negative impact on small business.

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29 **Action taken:** language approved; no SERC

30
31 **Rule 64B8-4.024, FAC – Restricted Licenses for Area of Critical Need.....4**

32 After review of HB 5311, the Committee determined this new law does not affect this rule since
33 the law references s. 458.315, F.S. not 458.310, F.S.

34
35 No action taken.

36
37 **Rule 64B8-8.001, FAC – Disciplinary Guidelines5**

38 Mr. Tellechea explained the proposed changes are as a result of two (2) legislative actions. SB
39 1986, 2009 Legislative Session, imposed grounds for discipline for violations of the Medicaid
40 Program [s. 458.331(1)(zz)]. He said when originally drafting the rule, the words ‘for cause’
41 were not included, but are in the new version.

42
43 Mr. Tellechea went on to explain SB 2272, 2010 Legislative Session, added violations related to
44 practicing in a pain management clinic. The first set of nine (9) violations falls under s.
45 458.331(1)(oo), F.S. and are applicable to a licensee who serves as the designated physician in a
46 pain management clinic.

47
48 **1. Registering a pain management clinic through misrepresentation or fraud**

1 The Committee recommended adding language for misrepresentation to reflect the following
2 including a fine range:

- 3 • First offense: letter of concern to probation
- 4 • Second offense: probation to revocation

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6 The Committee recommended adding language for fraud to reflect the following including a fine
7 range: revocation

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9 Dr. Lage arrived.

10
11 2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other
12 person by making or causing to be made, any false misrepresentation

13 The Committee recommended adding language to reflect the following including a fine range:
14 revocation.

15
16 3. Failing to comply with any requirement of chapter 499, the Florida Drug and Cosmetic Act;
17 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the
18 Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse
19 Prevention and Control Act.

20 The Committee recommended adding language to reflect the following including a fine range:
21 First offense: letter of concern to probation
22 Second offense: reprimand to suspension
23 Third offense: suspension to revocation

24
25 4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime
26 involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this
27 state, of any other state, or of the United States

28 The Committee recommended adding language to be consistent with existing guidelines for a
29 violation of s. 458.331(1)(c), F.S.

30
31 5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a
32 regulatory agency of another state for any offense that would constitute a violation of this
33 chapter

34 The Committee recommended adding language to be consistent with existing guidelines for a
35 violation of s. 458.331(1)(b), F.S.

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37 6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of
38 adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice,
39 a licensed health care profession

40 The Committee recommended adding language to be consistent with existing guidelines for a
41 violation of s. 458.331(1)(c), F.S.

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43 7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of
44 adjudication, a crime in any jurisdiction which relates to health care fraud

45 The Committee recommended adding guidelines similar to those used for health care fraud
46 violations already in place.

1 8. Dispensing any medicinal drug based upon a communication that purports to be a prescription
2 as defined in s. 465.003(14) or s. 893.02 if the dispensing practitioner knows or has reason to
3 believe that the purported prescription is not based upon a valid practitioner-patient relationship

4 The Committee recommended adding language to reflect the following including a fine range:

- 5 • First offense: letter of concern to probation
- 6 • Second offense: probation to suspension
- 7 • Third offense: suspension to revocation

8
9 Jon Pellet, Esquire, was asked to explain the role of a dispensing physician as it relates to a pain
10 management clinic. He stated a dispensing physician may only dispense medication for his or
11 her own patient.

12
13 After Mr. Pellet's explanation, the Committee revised their recommendation to the following
14 including a fine range:

- 15 • First offense: reprimand to revocation
- 16 • Second offense: probation to revocation

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18 9. Failing to have a licensed designated physician practicing at the location of the registered
19 clinic. A violation of this paragraph may be the basis for a summary suspension as described in s.
20 456.073(8) or s. 120.60(6).

21 The Committee recommended adding language to reflect the following including a fine range:

- 22 • First offense: letter of concern to probation
- 23 • Second offense: reprimand to suspension
- 24 • Third offense: suspension to revocation

25
26 (pp) Failing to timely notify the department of the theft of prescription blanks from a pain-
27 management clinic or a breach of other methods for prescribing within 24 hours as required by
28 s. 458.3265(2).

29 The Committee recommended adding language to reflect the following including a fine range:

- 30 • First offense: letter of concern to probation
- 31 • Second offense: reprimand to suspension
- 32 • Third offense: suspension to revocation

33
34 (qq) Failing to timely notify the applicable board governing his or her prescribing privileges of
35 the date of his or her termination from a pain-management clinic as required by s. 458.3265(2).

36 The Committee recommended adding guidelines similar to those used for advertising violations
37 already in place.

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39 Mr. Tellechea advised he would bring language back to the next meeting for the Committee's
40 review and approval.

41
42 Mr. McPherson asked if any additional rulemaking needed to be discussed.

43
44 Mr. Tellechea advised the Board could do one of three (3) things:

- 45 1. Do not do specific guidelines for violations and instead use the guidelines for failing to
46 do legal obligation
- 47 2. Do specific guidelines for each type of violation
- 48 3. Do one guidelines that incorporates all pain management clinic violations

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The Committee declined to do anything further at this time.

Action taken: recommended penalties provided

Rule 64B8-1.007, FAC – Forms & Rule 64B8-4.029, FAC – Registration as a dispensing Practitioner; Delegation of Dispensing to Prescribing Physician Assistants.....6

Ms. McNulty explained that Physician Assistants (PAs) have been using the physician dispensing form to advise the Board they wish to dispense although this is not required. In addition, they are also paying the \$100 fee which is not required. As a result, staff added a page to the current physician’s dispensing registration form to include a list of PAs that will be dispensing under then physician’s supervision. She also said the appropriate rules were revised to include this form.

Ms. Sanford advised the assigned form number is DH-MQA 1240.

A motion was made, seconded and carried unanimously to approve the revised form and the revised rules.

A motion was made, seconded and carried unanimously to determine the changes in these rules do not have a negative impact on small business.

Action taken: form and revised rules approved; no SERC

Rule 64B8-13.005, FAC – Continuing Education for Biennial Renewal7

Mr. McPherson explained the Board approved a change in the domestic violence CME requirement as one of their Legislative proposals for the 2011 Session. Draft language was reviewed to accomplish their proposal.

A motion was made, seconded and carried unanimously to approve the proposed legislative language.

Action taken: proposed legislative language approved

New Business No tab

None

The meeting adjourned at 5:00 p.m.