

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

**Rosen Centre
9840 International Dr
Orlando, FL 32819
(407) 996-9840**

October 4, 2007

3:35 p.m. Roll Call

Members Present:

Onelia Lage, M.D., Chair
Steven Rosenberg, M.D.
Carmel Barrau, M.D.
Gary Winchester, M.D.
Michael Chizner, M.D.

Members Absent:

Staff Present:

Larry McPherson, Jr., J.D., Executive Director
Ed Tellechea, J.D., Board Counsel
Nancy Murphy, Paralegal
Crystal Sanford, CPM, Program Operations Administrator

Others Present:

American Court Reporting

Tab 1 - Approval of Revised Meeting Minutes

A motion was made, seconded and carried unanimously to approve the revised meeting minutes.

Rules Discussion:

Tab 2 - Rules Report

The current rules report was provided for information.

Tab 3 - Rule 64B8-13.005, FAC – Continuing Education for Biennial Renewal

Mr. McPherson explained this rule requires the Board to review and determine the 5 most mis-diagnosed medical conditions of the previous biennium. He explained his research method and presented his proposed rule amendments and explained the summary of the standard of care cases from the previous biennium included in the materials. He recommended the 5 most mis-diagnosed medical conditions are:

Cancer
Cardiac
Acute abdomen
Timely diagnosis of surgical complications
Stroke and cranial conditions

He explained that although wrong site surgeries/procedures is not a medical condition, it is still the most common basis for standard of care violations and he included a statement regarding that in the rule.

A motion was made, seconded and carried unanimously to recommend authorizing Mr. Tellechea to notice for rule development and to approve the proposed amendments.

Tab 4 - Rule 64B8-36.003, FAC – Medicinal Drugs Which May Be Ordered by Pharmacists

Mr. McPherson explained the background regarding this rule. The amendments were agreed upon by a joint committee of the Boards of Medicine and Pharmacy back in 2004; however, the changes to the rule were never completed. He stated the Board of Pharmacy is in the process of amending their version of the rule as well.

A motion was made, seconded and carried unanimously to recommend approving the rule amendments.

Tab 5 - Rule 64B16-26.031, FAC – Influenza Immunization Certification Program

Mr. McPherson explained the Board of Pharmacy was directed, through approval of HB 543 in the 2007 Legislative Session, to develop standards for a pharmacist flu shot certification program. He stated that resulted in the promulgation of this rule. He stated the bill requires the Board of Pharmacy to develop this rule in consultation with the Board of Medicine.

The Committee reviewed the rule and had the following suggestions and concerns:

- a) Preamble – Mr. Tellechea stated the Joint Accreditation on Procedures Committee (JAPC) requires the language to specify to the current regulations from CDC and that would also require this rule be updated every time the CDC changed their regulations.
- b) The Committee expressed concerns about communication with the primary care giver for continuity of care and suggested that may be included in the protocols.
- c) The Committee suggested the Board of Pharmacy consider adding a statement regarding providing instructions for the patient for emergency actions or adverse reactions after leaving the pharmacy.

The Committee wanted to thank the Board of Pharmacy for providing the rule for the Board of Medicine's comments.

The Committee also wanted to inquiry from the Board of Pharmacy what could be done in cases where a physician orders a drug to be given in a specific manner, however, the prescription bottle provides different directions due to standardization of computer language. For instance, a patient may be required to take a drug normally (standard) with lots of fluids; however, the physician writes on the prescription for the medication to be taken with limited fluids due to congestive heart failure. The bottle uses the standard language even though the physician specifically stated with limited fluids.

Board Counsel's Remarks:

Tab 6 - Proposal Regarding Chapter 120, FAC

Mr. Tellechea explained the Attorney Generals are all addressing their Boards to request support in amending §120.56(1)(c), Florida Statutes to reflect 45 days in lieu of 30 days. He explained that in rule challenges, he has 30 days to respond and if a scheduled meeting does not fall within 30 days, he could not obtain the Board's opinion on a specific subject in order to defend the rule challenge. He requested the Committee support the requested change.

A motion was made, seconded and carried unanimously to approve the amendment.

Tab 7 - Rule 64B8-017, FAC & Rule 30.014, FAC – Citation Authority

Warren Pearson, J.D., Prosecution Services Unit, addressed the Committee regarding a discrepancy between the citation authority for CME violations for physicians and physician assistants (PAs).

This rule, as currently written, does not impose \$250 per required course that was not taken as the PA rule does. He requested the Board change this rule to be more consistent with the PA rules.

A motion was made, seconded and carried unanimously to amend the rule to fine \$750 if the physician fails to complete all three of the required courses (HIV/AIDS, Domestic Violence, Medical Errors) to be consistent with the PA rules.

Tab 8 – Rule 64B8-3.005, FAC – Counterfeit-resistant prescription blanks for controlled substance prescribing

Mr. McPherson explained that §893.065, Florida Statutes, requires the Department to develop and adopt by rule the form and content for a counterfeit-resistant prescription blank which may be used by practitioners.

The Committee expressed several concerns regarding the proposed rule:

- a) In (1) use “is authorized to” in lieu of “may” since JAPC has stated in the past that using “may” gives the Board unbridled discretion.
- b) Strike (2) because it is not necessary.

- c) Strike (6) because the Department does not have the authority to make manufacturers produce prescription blanks with a tracking identification number. The Department only has authority to require practitioners to use the tracking identification number and manufacturers will produce what is needed.

The Committee did approve the hand-written changes made on the proposed rule in (4)(2) and in (5).

A motion was made, seconded and carried with 1 opposed to make these recommendations to the Board of Pharmacy. The Committee also suggested that Mr. Tellechea meet with Reginald Dixon, J.D., Counsel to the Board of Pharmacy, regarding these suggestions.

Other Business

Diane Guillemette, J.D., Counsel to the Electrology Council, addressed the Committee regarding 2 legislative proposals the Council would like to pursue:

- a) Modifying the statute requiring direct supervision to indirect supervision by a physician.
- b) Changing the statute regarding the number of training hours from 120 to 145 to encompass the laser training.

The Committee suggested the Council draft the proposed legislative proposals for review the Board.

The meeting was adjourned at 4:35 p.m.