

1 **Florida Board of Medicine**
2 **Rules/Legislative Committee Meeting**
3 **Meeting Report**

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5
6 **Marriott Orlando Airport**
7 **7449 Augusta National Drive**
8 **Orlando, FL 32822**
9 **(407) 851-9000**

10
11 **December 1, 2011**

12
13
14 Roll call 5:15 p.m.

15
16 **MEMBERS PRESENT:**

17 Fred Bearison, M.D., Chair
18 Jason Rosenberg, M.D.
19 Robert Nuss, M.D.
20 Zachariah P. Zachariah, M.D.
21 James Orr, M.D.

15
16 **MEMBERS NOT PRESENT:**

17 Donald Mullins, Consumer Member

22
23 **STAFF PRESENT:**

24 Joy A. Tootle, JD, Executive Director
25 Ed Tellechea, Board Counsel
26 Donna McNutly, Board Counsel
27 Nancy Murphy, Paralegal
28 Crystal A. Sanford, CPM, Program Operations Administrator

22
23 **OTHERS PRESENT:**

24 Cindy Green, American Court Reporting

29
30 **Rules Discussion:**

31
32 **Rules Report.....1**

33 This report was provided for information only.

34
35 No action necessary.

36
37 **Rule 64B8-13.005, FAC – Continuing Education for Biennial Renewal2**

38 Mr. Tellechea explained the Committee, at the last meeting, approved the new five most
39 mis-diagnosed medical conditions and the rule was before the Committee for approval of the
40 proposed language.

41
42 A motion was made, seconded and carried unanimously to recommend approval of the proposed
43 language.

44
45 Mr. Tellechea asked the Committee members if the changes to the rule would be likely to
46 directly or indirectly increase regulatory costs to any entity in excess of \$200,000 in the
47 aggregate in Florida within one year after the implementation of this rule amendment.

1 A motion was made, seconded and carried unanimously to find the amendment would not
2 increase costs.

3
4 **Action taken:** proposed language approved; no SERC required

5
6 **Rule 64B8-4.009, FAC – Applications: Medical Faculty Certificate3**

7 Ms. Sanford explained staff determined the application for renewal of a medical faculty
8 certificate did not contain the physician workforce survey which is mandatory along with the
9 required Medicare/Medicaid questions. She said because the form was changed, the rule had to
10 be changed to show the revision.

11
12 After discussion, this matter was tabled until the next meeting.

13
14 **Action taken:** tabled

15
16 **Rules 64B8-12.005, FAC (Procedures) & 64B8-1.007, FAC (Forms Incorporated) –**
17 **Financial Responsibility Form.....4**

18 This matter was withdrawn from the agenda prior to the meeting.

19
20 No action taken.

21
22 **Rule 64B8-8.001, FAC – Disciplinary Guidelines5**

23 This matter was withdrawn from the agenda prior to the meeting.

24
25 No action taken.

26
27 **Discussion Items:**

28
29 **s. 458.3312, FS – Specialties6**

30 Mr. Tellechea explained this bill requires the Board to triennially review and reauthorize the
31 entities that certify dermatologists. He suggested tabling this until the next meeting to give staff
32 time to notify the certifying entities. He said the review must be conducted by July 2012 and
33 would require the Board to go into rulemaking.

34
35 **Action taken:** table until next meeting; notify certifying agencies

36
37 **Executive Order EO 11.2117**

38 Mr. Tellechea reminded the Committee when the Governor issued Executive Order 11-01 which
39 placed a moratorium on rulemaking and required all rules be reviewed by the Office of Fiscal
40 Accountability and Regulatory Reform (OFARR). He said a lawsuit was filed challenging the
41 Governor’s authority. The Florida Supreme Court ruled and limited the Governor’s ability to
42 review rules.

43
44 Mr. Tellechea explained this Executive Order complies with the Supreme Court’s ruling and sets
45 forth the standards for OFARR review. The Board can go into rulemaking and file with OFARR
46 at the same time.

47
48 Mr. Tellechea stated this Order is directed at agencies that are under the control of the Governor
49 and the Board of Medicine is not. He said in the past the Board has voluntarily complied with
50 the Executive Order.

1
2 A motion was made, seconded and carried unanimously to recommend continuing to voluntarily
3 comply with the Executive Order.

4
5 Mr. Tellechea review Section 4 of the Order which requires the agency to appoint an individual
6 to be the Fiscal Accountability Officer and Regulatory Reform Officer.

7
8 A motion was made, seconded and carried unanimously to recommend authorizing the Chair of
9 the Board to appoint this individual.

10
11 Mr. Tellechea explained Section 5 requires the agencies to develop program standards and to
12 evaluate the agencies performance. He said the Department is already doing this and suggested
13 the Board send a letter informing OFARR that the Board is in the process of gathering
14 information and once that is completed, the information will be sent. He said this was due within
15 60 days.

16
17 A motion was made, seconded and carried unanimously to recommend voluntarily complying
18 with this section of the Order and to require the individual appointed by the Chair work on this
19 portion of the Order.

20
21 Mr. Tellechea explained Section 6 requires annual review of the Board's rules. He said this has
22 already been done for this year and asked if the Committee wanted to voluntarily comply with
23 this annual review.

24
25 A motion was made, seconded and carried unanimously to recommend voluntarily complying
26 with the annual review of the Board's rules.

27
28 Mr. Tellechea stated Section 7 requires the Board to submit an annual regulatory plan which
29 outlines the rules the Board intends to revise in the coming year. He said this has already been
30 done for this year and asked the Committee if they want to comply with this portion of the Order.

31
32 A motion was made, seconded and carried unanimously to recommend voluntarily complying
33 with this portion of the Order.

34
35 **Action taken:** voluntary compliance with the Order

36
37 **Legislative Discussion:**

38
39 **Legislative Process (Ms. Tootle) No tab**

40 This discussion was to determine the best method to handle the bills on the agenda.

41
42 No action necessary.

43
44 **HB 167 – Public Health8**

45 This bill would create a pilot project for expedited partner therapy wherein the partner of a
46 patient found to have a sexually transmitted disease will receive one does of medication from the
47 treating physician.

48
49 A motion was made, seconded and carried unanimously to recommend supporting this bill.

50

1 **Action taken:** support

2
3 **HB 227/SB 402 – Prescriptive Drug Abuse.....9**

4 This bill creates a statewide task force on prescription drug abuse and newborns.

5
6 Mr. Tellechea requested, on behalf of the Attorney General, the Committee support this bill.

7
8 A motion was made, seconded and carried unanimously to recommend supporting this bill.

9
10 **Action taken:** support

11
12 **HB 277/SB 290 - Abortions10**

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

15
16 **Action taken:** neutral

17
18 **HB 353 – Medical Use of Cannabis11**

19 This bill would allow for the use of medical marijuana.

20
21 A motion was made, seconded and carried unanimously to recommend remaining neutral on this
22 bill.

23
24 **Action taken:** neutral

25
26 **HB 363/ SB 774 – Physician Assistants12**

27 This bill would remove a Consumer Member from the Board and replace that member with a
28 Physician Assistant (PA). In addition, the bill would remove the requirement for a separate PA
29 prescribing application.

30
31 Ms. Tootle advised the PA Council accepted this as information only.

32
33 Juhan Mixon, Legislative Consultant for the Florida Academy of Physician Assistants (FAPA),
34 addressed the Committee. He advised the bill is revenue neutral and still allows for an odd
35 number of members on the Board.

36
37 Dr. Rosenberg asked if this would cause a problem for probable cause panels.

38
39 Mr. Mixon indicated FAPA would be willing to amend the bill to allow a former Consumer
40 Member to serve on probable cause.

41
42 Dr. Zachariah expressed concern about the other professions requesting the same thing.

43
44 Ms. Tootle provided licensure statistics for physician, PA’s, electrologists, dieticians and
45 anesthesiologist assistants.

46
47 A motion was made to oppose the bill.

48
49 Mr. Mixon stated the Florida Medical Association (FMA) and the Florida Osteopathic
50 Association (FOMA) also supported this bill. He reiterated the change is revenue neutral. He

1 said PA's have been practicing in Florida for 40+ years. He said in today's environment the
2 Board discusses many issues involving health care and the practice of medicine. He said FAPA
3 would like for PA's to be a part of those discussions. He reminded the Committee that PA's
4 practice medicine and the other professions, with the exception of the Anesthesiologist
5 Assistants, practice medicine. He said if any other profession wished to have a member on the
6 Board, they would need to go through the legislative process as well.

7
8 The motion carried with one opposed.

9
10 Dr. Rosenberg clarified that he was not really opposed to the bill, but wanted to remain neutral.

11
12 A motion was made, seconded and carried unanimously to reconsider the previous action.

13
14 Another motion was made and seconded to oppose the addition of the PA member to the Board
15 but to support the portion of the bill regarding deleting the requirement for the PA prescribing
16 application. The motion carried unanimously.

17
18 **Action taken:** oppose PA member on Board, support removing requirement for PA prescribing
19 licensee

20
21 **HB 381 - Electrolysis.....13**

22 This bill would remove the requirement for direct supervision of Electrologists (EOs) when
23 performing laser hair removal. The EO would be under the indirect supervision of a physician.

24
25 Ms. Tootle reminded the Committee in the past, the Board supported this change in supervision.

26
27 Larry Gonzales, Esquire, representing the Florida Society and Association of Electrology,
28 addressed the Committee. He said they attempted previously to have a rule clarify the statute to
29 not require direct supervision; however, the Joint Accreditation Procedures Committee advised
30 the Board did not have the authority to make such a rule. Mr. Gonzales said Mr. Tellechea told
31 him to go the legislative route and this bill is the product of that discussion. He said currently
32 PA's and ARNP's can do laser hair removal under indirect supervision. He said there have not
33 been any complaints at the Department for standard of care issues by an EO.

34
35 Chris Nuland, Esquire, representing the Florida Society of Plastic Surgeons and the Florida
36 Society of Dermatologists, addressed the Committee in opposition to the bill due to safety issues.

37
38 A motion was made and seconded to recommend remaining neutral on the bill.

39
40 Mr. Nuland reminded the Committee that PA's and ARNP's have greater overall health care
41 training than EO's.

42
43 Dr. Rosenberg felt the potential for harm was the point and the level of recourse is different. He
44 said the PA is more likely to recognize disastrous outcomes before they get out of hand.

45
46 Judy Adams, President of the Florida Society of Electrologists, addressed the Committee. She
47 advised she was in possession of a letter from an insurance company supporting this bill. She
48 explained the process for using lasers for hair removal and an EO's interaction with his/her
49 supervising physician.

50

1 A motion was made, seconded and carried 3-2 to recommend remaining neutral on this bill.

2

3 **Action taken:** neutral

4

5 **HB 385/SB 614 - Sovereign Immunity14**

6 This bill provides sovereign immunity to emergency health care providers and requiring agents
7 of the state indemnify the state up to the specified liability limits.

8

9 Holly Miller, Esquire, representing the FMA, stated the FMA is highly supportive of the bill.

10

11 Mr. Nuland addressed the Committee and explained that EMTALA physicians are considered
12 agents of the state and this bill provides sovereign immunity to those physicians.

13

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

15

16 **Action taken:** support

17

18 **HB 4015/SB 248 – Privacy of Firearm Owners.....15**

19 Mr. Tellechea asked the Board to take no position on this bill since there is also a lawsuit
20 pending.

21

22 No action taken.

23

24 **HB 425/SB 362 – Surgical Technology.....16**

25 This bill would create regulation for surgery technicians, requiring certification not licensure.

26

27 Larry Gonzales, Esquire, addressed the Committee regarding this bill and asked for the
28 Committee’s support. He said currently no training or education is required. There are five
29 other states that regulate surgical technicians.

30

31 Dr. Rosenberg commented that it was unusual for a profession to come before the Legislature
32 and ask to be regulated.

33

34 Mr. Gonzales said the bill is in the best interest of public safety. He reiterated they are
35 requesting certification, not licensure.

36

37 Mr. Tellechea advised the Committee the bill authorizes the Agency for Health Care
38 Administration to go into rulemaking to implement the law.

39

40 Dr. Nuss felt this would go a long way in quality improvement and increasing safety. It requires
41 minimal education and these individuals are an integral part of surgery.

42

43 Dr. Nuss asked if there have been any studies that demonstrate regulating this profession
44 increases safety.

45

46 Mr. Gonzales did not know of any studies.

47

48 Mr. Nuland, representing the Florida Society of General Surgeons, supports the bill because
49 some surgeons have not been satisfied with the performance of surgical technicians.

50

1 Mr. Gonzales advised there are 14 community colleges that have training programs for surgical
2 technicians.

3
4 A motion was made to remain neutral on this bill; however, the motion was later withdrawn.

5
6 A motion was made, seconded and carried to recommend approving this bill in concept and
7 applauding the sponsor for the effort to improve quality and safety.

8
9 **Action taken:** approve bill in concept, applaud effort to improve quality and safety

10
11 **HB 477/SB 544 – Health Care17**

12 Mr. Nuland, representing the Florida Society of Plastic Surgeons, addressed the Committee. He
13 stated the Surgical Care Committee recognized a problem with physicians attempting to perform
14 Level II procedures under Level I anesthesia, specifically liposuction procedures. He reminded
15 the Committee of recent office surgery deaths involving liposuction. As a result of that problem,
16 this bill was drafted and filed. He explained the bill would allow Department inspectors to go
17 into Level I facilities to confirm the physicians are performing Level I procedures.

18
19 A motion was made, seconded and carried unanimously to recommend supporting this bill.

20
21 **Action taken:** support

22
23 **SB 134 – Advertising of Legal and Medical Services18**

24 This bill sets forth requirements for the advertising of medical or legal services.

25
26 A motion was made, seconded and carried unanimously to recommend supporting this bill.

27
28 **Action taken:** support

29
30 **SB 162 - Autism.....19**

31 This bill sets forth the requirements for physicians to refer a minor to an appropriate specialist
32 for autism screening in certain circumstances.

33
34 A motion was made, seconded and carried unanimously to recommend remaining neutral on this
35 bill.

36
37 **Action taken:** neutral

38
39 **SB 376 - Radiological Personnel20**

40 This bill requires regulation of certain specialty radiological technicians.

41
42 A motion was made to recommend remaining neutral on the bill.

43
44 Dr. Nuss felt this bill improves safety and quality of care.

45
46 Dr. Rosenberg felt there was something else going on – an agenda.

47
48 The motion was seconded and carried with 1 opposed.

49
50 **Action taken:** neutral.

1

2 **SB 400 - Patient Brokering21**

3 This bill

4

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

6 bill.

7

8 **Action taken:** neutral

9

10 **SB 594 - Medical Care22**

11 This bill allows the Department to obtain medical records without patient consent.

12

13 Mr. Tellechea referred the Committee to line 112 of the bill which requires the Department and

14 the probable cause panel to find probable cause.

15

16 Ms. Tootle explained the current process for obtaining a reasonable cause subpoena.

17

18 Dr. Orr felt the bill is overreaching and invades a patient’s right to privacy because it is not

19 directed at just pill mills.

20

21 Ms. Miller addressed the Committee and advised the FMA opposes the bill due to Section three

22 regarding emergency suspension orders.

23

24 Ms. Tootle explained the bill allows the Department to issue an emergency order based solely

25 on an arrest.

26

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

28 bill.

29

30 **Action taken:** neutral

31

32 **SB 7010 – OGSR/Physician Workforce Survey/Department of Health23**

33 This bill removes the sunset requirement for the physician workforce survey and exempts

34 personal identifying information in the survey from public records.

35

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

37 bill.

38

39 **Action taken:** neutral

40

41 **CS/SB 208 - Health Care Fraud24**

42 This bill changes the statute from Medicaid fraud to health care fraud and lightens the

43 restrictions to licensure based on past arrests for certain crimes.

44

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

46 bill.

47

48 **Action taken:** neutral

49

50 **SB 904 – Controlled Substances25**

1 This bill is a follow up to HB 7095 from the 2011 Legislative Session and makes more changes
2 to the prescribing of controlled substances.

3
4 Mr. Tellechea advised the bill removes the exemption for psychiatrists and replaces it with
5 psychiatrists; requires all physicians to use the prescription drug monitoring program and
6 expands the exemptions for registration as a pain-management clinic.

7
8 A motion was made and seconded to recommend remaining neutral on the bill. The motion
9 carried unanimously.

10
11 **Action taken:** neutral

12
13 **HB 4127 – NICA Assessment..... Hand out**
14 This bill lifts the requirement for physicians that are not OB/GYN's to pay into the NICA fund.

15
16 A motion was made, seconded and carried unanimously to recommend supporting this bill.

17
18 **Action taken:** support

19
20 The meeting adjourned at 7:00 p.m.