

June 12, 2014 Minutes

South Dakota Board of Medical & Osteopathic Examiners – Public Board Meeting

Board Members Present: Kevin Bjordahl, MD; Ms. Deb Bowman; Walter Carlson, MD; Mary Carpenter, MD (telephonically); Mr. Bernie Christenson; David Erickson, MD; Laurie Landeen, MD; Brent Lindbloom, DO; Jeffrey Murray, MD

Board Staff Present: Margaret Hansen, PA-C; Mr. Tyler Klatt; Ms. Jane Phalen; Ms. Randi Sterling; Ms. Misty Rallis

Counsel Present: Roxanne Giedd, Board counsel
William Golden, Staff counsel

Advisory Committees
Members Present: Ms. Helen Nichols
Licensed Nutritionist Advisory Committee

Dr. Walter Carlson, Vice-President of the Board, called the public meeting to order at 9:00 am. Roll was called, a quorum was established.

A motion to approve the agenda was ratified by the Board (Landeen/unanimous).

A motion to approve the minutes from the March 13, 2014, meeting was ratified by the Board (Erickson/unanimous).

A motion to approve the minutes from the April 28, 2014, telephonic meeting was ratified by the Board (Erickson/unanimous).

The reports of the various Advisory Committees were presented by Mr. Tyler Klatt. The advisory committees are working with Mr. Klatt to draft profession specific administrative rules as needed for the Board's consideration on ethics, fees, and continuing education.

A motion to approve the new licenses, permits, registrations and certificates issued since the March 13, 2014, Board meeting was ratified by the Board (Erickson/unanimous).

Dr. Carlson recognized Margaret Hansen on her recent election to president of the Administrators in Medicine (AIM), the national organization for executive directors of medical boards. Ms. Hansen has worked with AIM since 2005, and has accepted leadership roles by serving as a member of the AIM Board along with participating on numerous committees. Dr. Carlson and the Board members congratulated her on this accomplishment.

Representatives from the Federation of State Medical Boards (FSMB), Dr. Humayun (Hank) Chaudhry, President/CEO, and Dr. Jon Thomas, Liaison Director, met with the Board and presented information on several topics including but not limited to: 1) the FSMB is working with the American Telemedicine Association (ATA) and the Center for Telemedicine (C-Tel), along with other agencies on the issue of telemedicine, licensure portability, and access to care; 2) the FSMB is facilitating a drafting committee for an interstate licensure compact; 3) the upcoming third edition of FSMB's book entitled

“Responsible Opioid Prescribing”. Dr. Chaudhry also recognized Margaret Hansen for her recent election as president of the Administrators in Medicine (AIM), a not-for-profit national organization for state medical and osteopathic board executives. Founded in 1984, the mission of AIM is to assist and support administrators for medical licensing and regulatory authorities to achieve administrative excellence and ultimately advance public safety. Dr. Choudhry also expressed his appreciation to Ms. Hansen who continues to work closely with the FSMB on several work groups and committees to address issues such as the interstate licensure compact.

A motion to approve the request to dismiss without prejudice the petition for a declaratory ruling on community paramedics was ratified by the Board (Christenson/unanimous).

Discussion was held regarding the Interstate Licensure Compact draft. The Board discussed fees, sovereign immunity and indemnification, legislative issues, and found that more information is needed about sharing information. The Board directed the executive director to obtain information from other compacts to determine how they address fees, indemnification, sovereignty, and how they function. The Board further directed the executive director to reach out to other South Dakota stakeholders regarding the Interstate Licensure Compact.

The Board reviewed drafts of proposed administrative rules for the use of controlled substances for the treatment of pain. After discussion and direction from the Board, the Board counsel will draft rules for best practices in the prescribing of opioids for pain for the Board to review at the September meeting.

The financial report was presented by Ms. Hansen. Discussion was held on the following topics: 1) the funding of the Health Professionals Assistance Program (HPAP); 2) query the Department of Health regarding restricted accounts; 3) updating the Board’s current IT system; 4) the Board Conference Room, which is a DDN center. The room has been used approximately 6 times a week for conference calls, hearings, advisory committee meetings, and by other state agencies; 5) upcoming expenses. The Board discussed the report and then accepted it for information.

Confidential Physician Hearings (Closed Session pursuant to SDCL 36-4-31.5 unless privilege is waived by physician): Board members assigned to a case do not deliberate or vote in that case (ARSD 27:78:05:05).

The physicians did not waive privilege so the Board entered a closed session pursuant to SDCL 36-4-31.5 *Evidence in cancellation, revocation, suspension, or limitation proceedings confidential. Testimony of a witness or documentary evidence of any kind on cancellation, revocation, suspension, or limitation proceedings are not subject to discovery or disclosure under chapter 15-6 or any other provision of law, and are not admissible as evidence in any action of any kind in any court or arbitration forum, except as hereinafter provided. No person in attendance at any hearing of the Board of Examiners considering cancellation, revocation, suspension, or limitation of a license, resident license, or certificate issued by it may be required to testify as to what transpired at such meeting. The prohibition relating to discovery of evidence does not apply to deny a physician access to or use of information upon which a decision regarding the physician's staff privileges was based. The prohibition relating to discovery of evidence does not apply to any person or the person's counsel in the defense of an action against the person's access to the materials covered under this section. Source: SL 1985, ch 297, § 21; SL 2009, ch 178, § 13; SL 2013, ch 172, § 14.*

ARSD 20:78:04:06. Effect of failure to renew during investigation. *The holder of a license, permit, or certificate may choose not to renew the license, permit, or certificate after a complaint investigation has been initiated by the executive secretary. A failure to renew after investigation has been initiated shall be reported as "withdrawn under investigation" in the board's permanent license files and in any national databases to which the board is required to report licensure action.*

The Board's public meeting resumed.

A motion to remove the withdrawal while under investigation regarding the medical license of Dr. Heloise Westbrook. The Board determined that there was not withdrawal, but instead, there was a lapse, and that Dr. Westbrook has since reinstated her medical license (Landeem/unanimous).

A motion to approve the withdrawal while under investigation of the application submitted by Jerome A. McTague, MD (Lindbloom/unanimous).

A motion to approve the withdrawal while under investigation of the application submitted by David Hoffman Van Thiel, MD (Lindbloom/unanimous).

A motion to approve the Consent Agreement for the Voluntary and Indefinite Suspension of the Medical License of Sudhir E. Finch, MD (Bjordahl/unanimous).

Public Hearings: Board members assigned to a case do not deliberate or vote in that case (ARSD 27:78:05:05).

A motion to remove the conditions and to reinstate the paramedic license of Kristene Rancour to an unrestricted status was ratified by the Board (Landeem/unanimous).

A motion to approve the Consent Agreement with Reprimand of Eric Ottenbacher, PA, was ratified by the Board (Bowman/unanimous). The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote.

A motion to approve the Consent Agreement with Reprimand of Mary Bray, OTA, was ratified by the Board (Murray/unanimous). The assigned Board member, Dr. Lindbloom, did not participate in the deliberation or vote.

A motion to approve the Consent Agreement for 30-day Suspension of License from July 1, 2014, through July 30, 2014, of Misty Peck, Paramedic, was ratified by the Board (Lindbloom/unanimous). The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote.

The executive director presented the following information:

- 1) the Annual Report of the SDBMOE including the events, statistics, and accomplishments from the past year, issues with the FSMB Uniform Application, the Board's advisory committees meeting with staff on a regular basis, the Advanced Life Support Personnel statutes and rules.
- 2) update from the 2014 FSMB Annual Meeting.
- 3) request for guidance in processing requests for continuing medical education credit for renewal purposes. A motion for staff to review and approve appropriate continuing education requests was ratified by the Board (Murray/ unanimous).

4) update on the State of South Dakota Data Collection System. The Board is collecting information during the renewal period.

Discussion was held regarding the complaint and investigation docket. Board members having questions about complaints or investigations were asked to contact the Board attorney or refer questions to the executive director or the staff attorney.

Discussion was held regarding the annual evaluation of the executive director. The Board members were reminded that the completed evaluations are due by July 1, 2014.

Discussion was held regarding investigating competency and malpractice issues. Ms. Bowman initiated discussion with her questions regarding the previous instructions from the Board that only physician members would be assigned competency and malpractice cases, and not the public members. Dr. Carpenter explained that the intent was for the physician members to review the limited amount of information available to determine if there was sufficient evidence to initiate an investigation. Further, it was discussed that the Board is reviewing these cases from a standpoint of public safety when a physician has multiple cases. The Board also reviewed a flowchart of the process for addressing malpractice and competency cases. The staff was directed to research how Iowa investigates issues of competency and malpractice in order to create a process for reviewing and investigating competency concerns.

Maria Eining, director of Midwest Health Management Services, LLC, (MHMS) formerly the South Dakota Health Professionals Assistance Program (HPAP), met with the Board and presented information on the preparations for the roll out of the mental health portion of the contract. Additional stakeholders have either expressed interest in participating and funding MHMS, or will be contacted in the future.

A motion to enter executive session pursuant to SDCL 1-25-2(3) to consult with Legal Counsel was ratified by the Board (Murray/unanimous).

The Board's public meeting resumed.

President Mary Carpenter, MD, asked the Board members if they had questions about conflicts of interest. The Board members instructed Board counsel to draft a Conflict of Interest rule for review. A motion to retain the current slate of officers for another year was ratified by the Board (Bjordahl/unanimous). President: Mary Carpenter, MD; Vice-President: Walter Carlson, MD; Secretary: Brent Lindbloom, DO.

The next meeting of the Board is Thursday, September 11, 2014. The Joint Board of Medicine and Nursing will meet at 9:00 am, and the regular Board meeting will follow.

There being no further business, the Board adjourned at 3:00.