

September 11, 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; David Erickson, MD; Laurie Landeen, MD; Jeffrey Murray, MD

Board Members Absent: Mr. Bernie Christenson; Brent Lindbloom, DO

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

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

Advisory Committees Members Present: Donald Weller, I/85: Advanced Life Support Advisory Committee
Georgia Larson, LN: Licensed Nutritionist Advisory Committee
Bob Brockevelt, PT: Physical Therapy Advisory Committee
Louise Papka, PA: Physician Assistant Advisory Committee

Dr. Mary Carpenter, President of the Board, called the public meeting to order at 9:50 am. Roll was called, a quorum was established.

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

A motion to approve the minutes from the June 12, 2014, meeting was ratified by the Board (Erickson/unanimous).

A motion to approve the new licenses, permits, registrations and certificates issued since the June 12, 2014, Board meeting was ratified by the Board (Murray/unanimous).

The financial report was presented by Ms. Hansen. Discussion was held on the following topics: 1) options to address issues with internet access in the Board Conference room 2) increase budget to address telecommunications at the next opportunity; 3) fee changes must follow the process for administrative rules; 4) funds are available to fix IT issues; 5) security checks and balances are in place. The Board accepted the financial report for information.

Advisory Committee Business:

The Board reviewed a slate of nominees for appointments and re-appointments as listed below:
New committee member nominations:

Donald Kosiak, MD – new physician member of the Advanced Life Support Advisory Committee to fill the vacancy left by Robert Harms, MD

Donald Weller, I/85 – new member of the Advanced Life Support Advisory Committee to fill the vacancy left by Audra Evans, I/85

Becky Jensen, LN – new member of the Licensed Nutritionist Advisory Committee to fill the vacancy left by Helen Nichols, LN

Kelsey Raml, LN – new member of the Licensed Nutritionist Advisory Committee to fill the vacancy left by Amy Richards, LN

DeLaine Rasmussen, LN – new member of the Licensed Nutritionist Advisory Committee to fill the vacancy left by Georgia Larson, LN

Committee member nominations for re-appointment:

Kendra Kattelmann, LN – Licensed Nutritionist Advisory Committee – 2nd term

Arlen Klamm, OT – Occupational Therapy Advisory Committee – 2nd term

Lana Svien, PT – Physical Therapy Advisory Committee – 2nd term

Anthony Hericks, DO – Respiratory Care Advisory Committee – 2nd term

Angela Haugen, RPC - Respiratory Care Advisory Committee – 2nd term

Jessica Schoolmeester, RCP - Respiratory Care Advisory Committee – 2nd term

A motion to approve the slate of nominations for advisory committee appointments and reappointments was ratified by the Board (Erickson/unanimous).

Mr. Tyler Klatt presented reports from the meetings held with the advisory committees since the June Board meeting. In 2013, the Board directed the staff and the committees to work together to formalize the advisory committee roles, and to prepare proposed administrative rules, especially in the area of ethics, for Board consideration.

Mr. Klatt presented the revised statute SDCL 36-4B for Advanced Life Support Personnel. The Department of Health and the Advanced Life Support committee have prepared the revision to define the responsibilities of the Board in matters pertaining to the regulation of Advanced Life Support Personnel. A motion to approve the revised statute and refer it to the Department of Health as an action issue was ratified by the Board (Landeem/unanimous).

Mr. Klatt reported that the advisory committees had each prepared proposed administrative rules, and administrative rule changes where indicated, for the Board members review.

Advanced Life Support: proposed rule changes for fees and to include ethics. A motion to approve ARSD 20:61:01:09 and ARSD 20:61:02, and authorize the staff to proceed was ratified by the Board (Carlson/unanimous).

Athletic Training: proposed rule changes to include ethics. A motion to approve ARSD 20:63:04, and authorize the staff to proceed was ratified by the Board (Carlson/unanimous).

Dr. Carpenter brought the 1994 Declaratory Ruling for Universal Precautions to the attention of the Board. This declaratory ruling appears in the administrative rules for all professions regulated by the Board. The staff was directed to research this and report back to the Board.

Ms. Bowman brought the topic of professional ethics to the attention of the Board, and that it is important to cite to the exact year and national agency or organization for professional ethics, or write the rules using the substance of the national ethics as a guide. It was discussed that the previously approved ethics rules for Advanced Life Support and Athletic Training were satisfactory and did not need to be revisited. It was further decided that if there was a concern about the proposed ethics rules that the Board would direct staff to research and re-write the rules for consideration at the December Board meeting.

Genetic Counselors: proposed rules for fees, licensure requirements, and to include ethics. A motion to approve ARSD 20:82:01:01 and ARSD 20:82:02:01, and authorize the staff to proceed was ratified by the Board (Landeem/unanimous). The Board then directed Mr. Klatt to research and re-write ARSD 20:82:05 for ethics to be considered at the December Board meeting.

Licensed Nutritionist: proposed rule changes for fees, licensure requirements, and to include ethics. A motion to approve ARSD 20:81:01:01 and ARSD 20:81:02:01, and authorize the staff to proceed was ratified by the Board (Landeem/unanimous). The Board then directed Mr. Klatt to research and re-write ARSD 20:81:03:01 for ethics to be considered at the December Board meeting.

Occupational Therapy: proposed rule change to include ethics. The Board directed Mr. Klatt to research and re-write ARSD 20:64:05 for ethics to be considered at the December Board meeting.

Physical Therapy: proposed rule change to include ethics. A motion to approve ARSD 20:66:02:01, and authorize the staff to proceed was ratified by the Board (Carlson/unanimous).

Physician Assistant: proposed rule change to include ethics. A motion to approve ARSD 20:52:02, and authorize the staff to proceed was ratified by the Board (Carlson/unanimous).

Respiratory Care: proposed rule change to include ethics. A motion to approve ARSD 20:70:03, and authorize the staff to proceed was ratified by the Board (Carlson/unanimous).

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

Jessica A. Thurman, PA, and her attorney, David Kroon, appeared at the meeting. A motion to enter into executive session under SDCL 1-25-2(3) was ratified by the Board (Bowman/unanimous). The public meeting resumed. A motion to continue this matter to the December 4th Board meeting was ratified by the Board (Bjordahl/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 Nicholas L. Tolsma, PA, was ratified by the Board (Bjordahl/unanimous). The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote.

A motion to approve the Consent Agreement for Revocation of South Dakota License of Katie M. Krier, OTA, was ratified by the Board (Erickson/unanimous). The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote.

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)

Brian D. Tjarks, MD, appeared with his attorney, Don Petersen. Dr. Tjarks was informed of his right to a closed hearing pursuant to SDCL 36-4-31.5, and he waived privilege. The public meeting resumed. Dr. Tjarks presented a petition to the Board requesting that the requirements and stipulations placed on his license in 2007 be removed, and that his medical license be returned to unrestricted status. The staff had no objections. Maria Eining, Director of Midwest Health Management Services, appeared on behalf of Dr. Tjarks to support his petition and to inform the Board that Dr. Tjarks has maintained compliance with his participation agreement with the South Dakota Health Professionals Assistance Program (SD HPAP). A motion to approve the petition to remove the restrictions and stipulations and return Dr. Tjarks' medical license to an unrestricted status was ratified by the Board (Bjordahl/unanimous). The assigned Board member, Dr. Carpenter, did not participate in the deliberation or vote.

Maria Eining, Director of Midwest Health Management Services (MHMS), presented a report to the Board. MHMS is the contracted administrating agency for the South Dakota Health Professionals Assistance Program (HPAP). HPAP is developing a preferred provider list, and the mental health component is in place and functioning. There was discussion on voluntary participation in the program, and the need to emphasize that voluntary participation does not lead to disciplinary action as long as the professional is compliant with the program. An education piece regarding voluntary participation was discussed, and an article published in SD Medicine, as well as other forms of educational outreach, are needed so that professionals are not afraid to seek the treatment that they

need for safe and effective practice. Dr. Carlson requested that Ms. Eining provide written reports of HPAP statistics and HPAP financial reports at future Board meetings.

The executive director presented the monthly statistical reports for June, July and August 2014.

Interstate Medical Licensure Compact

Dr. Carpenter presented a brief description of the process that has resulted in the final draft of the Interstate Medical Licensure Compact that is being considered at this Board meeting. She and the executive director explained that meetings have been held in Minnesota and South Dakota, and the South Dakota State Medical Association (SDSMA) also addressed this issue at the SDSMA council meeting. Dr. Carpenter explained that the South Dakota Board assists applicants in completing their application process and issuing the licenses in a timely manner, other states take significantly more time to issue licenses. The Board was informed that the staff, the SDSMA, the hospital systems, and many other interested parties have been meeting regularly about the compact. A motion to recommend the compact to the Department of Health as an action item for the 2015 legislative session was ratified by the Board (Bjordahl/unanimous). The staff was directed to notify the healthcare systems, ad hoc groups, Senator John Thune's office, and any other interested party that the Board is moving forward with a recommendation for legislative action.

The Board reviewed the proposed administrative rule for best practices for prescribing controlled substances for the treatment of pain. The Board attorney will work with Board staff to research whether there is authority to write best practices rules and if not, to request an action item for the legislative session for authority to adopt regulations for standards.

The Board reviewed the proposed administrative rule for conflicts of interest. The Board directed the Board attorney to add "direct supervision", to re-write the rule for review at the December Board meeting.

The Board reviewed the Pending Complaints and Investigations Docket and the Completed Complaints and Investigations Docket for information purposes.

Discussion was held regarding malpractice and competency. The malpractice cases are reviewed on a case by case basis using the Board approved screening tool to trigger whether a malpractice case requires in depth investigation. The Board staff keeps the Board informed about competency matters. When an investigation is triggered by the screening tool, a member of the Board is assigned to the investigative panel on the case, and the case then follows the standard investigation procedure.

There being no further business, a motion to adjourn the meeting was ratified by the Board (Erickson/unanimous).