

**Florida Board of Medicine
Rules/Legislative Committee Meeting**



**Doubletree by Hilton Deerfield Beach
100 Fairway Drive
Deerfield Beach, FL 33441
(954) 427-7700**

October 9, 2014

MEETING REPORT

12:14 p.m. Roll call

Members Present:

Zachariah P. Zachariah, M.D., Chair
James Orr, Jr., M.D.
Nina DiPietro, Consumer Member
Bernardo Fernandez, M.D.
Steven Rosenberg, M.D.
Jorge Lopez, M.D.

Members Absent:

Onelia Lage, M.D.
Enrique Ginzburg, M.D.

Staff Present:

Allison M. Dudley, J.D., Executive Director
Edward Tellechea, Esquire, Board Counsel
Donna McNulty, Esquire, Board Counsel
Nancy Murphy, Certified Paralegal
Crystal Sanford, CPM, Prog. Opr. Admin.

Others Present:

Rule Hearing:

Rule 64B8-10.003, FAC – Costs for Reproduction of Medical Records1

At the June Committee Meeting, the members determined an additional public hearing in the south Florida area was needed to obtain public comments from that area of Florida. Mr. Tellechea explained the language provided on page 8 was the currently approved proposed language for this rule. He said the language on page 6 was provided at the June meeting, but was not voted upon.

Jason Goldman, M.D., representing the Florida Medical Association (FMA), addressed the Committee. He said the costs are actually greater than \$1.00 per page and FMA supports the rule change.

Chris Nuland, Esquire, representing the Florida Chapter of the American College of Physicians and Surgeons, addressed the Committee next. He said the per page amount regardless of the

medium (paper or electronic) is an essential element and not in dispute. He said HIPAA requires records to be reviewed by an attorney and if one page is missing, the physician is responsible and liable. His organization supports the increase to \$1.00 per page.

Amber Martinez, Florida Health Information Management Association (FHIMA) addressed the Committee in support of the \$1.00 per page.

Alan Pillersdorf, M.D., current President of the FMA addressed the Committee. He said the FMA supports the rule change. He said patients can go online and see their records and reproducing medical records has become more difficult for physician offices as costs have increased. He said the exact costs are difficult to determine but it affects smaller offices the most.

David Caldevilla, Esquire the increase is the patient only. He said the HIPAA law supersedes state law and \$1.00 per page violates the HIPAA law.

G.C. Murray, Esquire, representing the Florida Justice Association disagrees that the cost for reproducing paper documents is the same as reproducing electronic records. He also stated he believes the SERC approved previously by the Committee is incorrect and intends to challenge the rule if it passes.

Alice Vickers, Esquire, Florida Alliance for Consumers stated the cost is a burden to the patients. She said the previous language was two tiered to protect the patients and the physician is in a better place to absorb the costs. She reminded the Committee the HIPAA law is less onerous on the patients.

Cynthia Henderson, Esquire, representing Healthport, addressed the Committee. She stated that Healthport came before the Committee with this request originally and the request was for clarification of the costs for reproducing electronic medical records only, not a general cost increase. She said the rule does not violate the HIPAA law because the rule says \$1.00 per page or less. She stated she approves the language presented at the June Meeting.

Kenneth E. Thomas, a volunteer member with AARP asked the Committee to reject the proposed language. He says the costs has a negative impact on the elderly, indigent and patients needing continuing care and these patients typically have thicker medical records. He said he called his insurance company to see if they would pay for the medical records for him to get a new specialist. He said they told him no.

Scott Jeeves, Esquire stated the current fees were appropriate.

Sabita Ramnarace and Jill Finkelstein with the FHIMA addressed the Committee next. They explained that many physicians are not fully electronic yet and have to go to multiple places to obtain the complete patient medical record. They outlined the records process and stated they support the June version of the proposed language.

Michael Fox Orr, Esquire, next addressed the Committee. He advised he was not related to the Dr. Orr serving on the Committee. He said the argument is attorneys representing the patient being charged the patient rate. He said the average patient medical record is 37 pages which under the current rule would amount to \$26.75 and under the new rule, it would be \$31.00. He said in the cases of continuity of care, the records are given to the consulting physician free of charge. He said the cost should be \$1.00 per page which is the same as hospitals.

Mr. Tellechea explained the staff would accumulate all the materials and present them to the Board at the December Meeting.

Action taken: None taken; accumulate the comments and present at the December Board Meeting for a decision

Rules Discussion:

Rules Report – Information Only2

This report was provided to the members from Ms. Murphy as an update to the status of pending rules.

Action taken: none

Rule 64B8-3.003, FAC – Renewal Fees3

Mr. Tellechea explained he received a letter from JAPC and this matter would require additional work because of some legal and financial issues. He said he plans to meet with Ms. Dudley before the next meeting to work on these issues and he would bring language back at the next meeting.

Action taken: none; schedule meeting with staff to discuss; reschedule next meeting

Rule 64B8-8.0011, FAC – Standard Terms Applicable to Orders & Rule 64B8-8.0012

Probation Variables.4

At the August Board Meeting, the Board considered a licensure case in which the licensee was granted licensure under a period of supervision. At the conclusion of the supervision, the monitoring physician sent a report indicating concerns with the licensee’s performance and recommending additional CME at a minimum. Because the Order did not account for this situation, the condition for supervising was lifted. The Board then asked this Committee to consider revising this rule to add language to cover this type of situation.

Mr. Tellechea stated he tried to come up with language for this but was unable to do this appropriately in the compliance language. He said he could draft language for the standard provisions that says if the monitor determines the physician is not practicing within the standard of care the monitor must either report it to the Probation Committee or file a complaint with the Department.

A motion was made, seconded and carried unanimously to recommend bringing language back at the next meeting requiring the monitor to report or file a complaint if he/she determines the probationer is not practicing within the standard of care.

Action taken: bring language to next meeting requiring the monitor to report or file a complaint if he/she determines the probationer is not practicing within the standard of care

Rule 64B8-9.0141, FAC – Standards for Telemedicine Practice9

At the August meeting, the Committee approved draft language for this rule. Subsequently, the Board received additional comments which were presented for discussion by the Committee.

Mr. Tellechea referred to a letter from the Crystal Stickle with the Florida Hospital Association indicating concerns about a physical being conducted via telemedicine. He said he told her a physical could be conducted via telemedicine if the patient already had a recent examination or if there is a licensed health care practitioner with the patient on one end who conducts the physical examination with the physician watching.

After discussion, the members agreed a physical could be conducted via telemedicine, but the standard of care is still the standard of care even if the examination is done via telemedicine.

A motion was made, seconded and carried unanimously to recommend authorizing Mr. Tellechea to communicate the Committee's comments to Ms. Sickle.

Mr. Tellechea then summarized the letter from JAPC. Afterwards, he suggested sending a letter to JAPC thanking them for the comments but leaving the language as currently written.

A motion was made, seconded and carried unanimously to recommend authorizing Mr. Tellechea to send a letter to JAPC thanking them for the comments but the Board does not want to change the language.

Action taken: send letter of thanks to JAPC, leaving the rule language as is; Mr. Tellechea to follow up with Ms. Sickle regarding physician examination being conducted via telemedicine

Rule 64B8-31.005, FAC – Anesthesiologist Assistant Protocols and Performance and Rule 64B8-1.007, FAC – List of Approved Forms, Inc.....10

This matter was scheduled to revise the AA protocol form which incorrectly listed the number AA's that can be supervised at two instead of four.

The Committee discussed the number of AA's that are being supervised by an anesthesiologist and how that number relates to the number of CRNA's an anesthesiologist can supervise at one time. It was clarified that by law, the surgeon supervises the CRNA, not the anesthesiologist.

Deepak Kapila, M.D., echoed these comments stating that it is not possible for the surgeon to monitor the CRNA and expressed concerns regarding patient safety.

A motion was made, seconded and carried unanimously to notice this rule for rulemaking, redraft the form and bring language to the next meeting.

Action taken: notice for rule development; redraft form, language next meeting

Discussion items:

Definition of designated supervising physician (PA's)5

Mr. Tellechea explained the issue of PA's in large office settings and hospitals having issues with reporting their current supervising physicians. He explained a letter of guidance is issued for the first occurrence, but if another violation occurs, the matter has to go through the disciplinary process. He presented draft legislative language developed in conjunction with the Florida Academy of Physician Assistants (FAPA). He explained FAPA will take the language to the Legislature but requested the Board's support for the language.

A motion was made, seconded and carried unanimously to recommend supporting the proposed language which would require a designated supervising physician be responsible for reporting a PA's supervisors.

Action taken: support proposed legislative language

Use of ABMS MOC to Meet CME Requirements for Licensure Renewal6

Ms. Dudley explained the ABMS is requesting Boards utilize board certification in lieu of the required CME for physicians.

The Committee determined the CME completed while preparing for certification can be used toward the CME requirements, but the actual certification cannot replace the required CME.

Action taken: none taken

Correspondence from Kelly Corredor, Esquire RE: Naloxone Access in Florida11

Ms. Corredor gave a presentation regarding the need for access to Naloxone for patients to reduce the harm for prescription drug misuse. She asked the Board to collaborate with stakeholders in the community and push for legislative action. She indicated her organization would be submitting a petition for declaratory statement as well.

Mr. Tellechea explained she did not have standing to submit a petition for declaratory statement.

She stated Gary Rice, M.D. would be submitting the petition.

Janet Colbert with the STOPP NOW organization, addressed the Committee in support of Ms. Corredor's request and also requested the Board support the mandatory use of the PDMP.

Maureen Kielian, also with STOPP NOW, addressed the Committee next regarding prescription drug abuse.

Action taken: none required at this time

Dietetic Member Appointments:

Member Reappointment: Linda Gammon8

The Committee reviewed this application at the last meeting and determined they had a few questions. The Committee tabled this matter and invited Ms. Gammon to appear.

The Committee asked Ms. Gammon questions concerning her practice and her time on the Council.

Ms. Gammon could not remember the exact date she started practice in Florida. She said she does not counsel patients, but she works at Peggy's Natural Food.

A motion was made, seconded and carried unanimously to recommend requiring Ms. Gammon send additional information including her resume, background information and qualifications. She is not required to attend the next meeting.

Action taken: tabled; asked Ms. Gammon to submit an updated resume, not required to attend the next meeting

Consumer Member: Linda Duggan Rex.....7

The Committee reviewed this application at the last meeting and determined they had a few questions. The Committee tabled this matter and invited Ms. Rex to appear.

Ms. Rex explained she is a retired travel agent whose hobby is nutrition. She said a friend from the League of Women suggested she sit in on some Council Meetings. Afterwards, she applied because she feels nutrition is important. She said the Council interviewed her and recommended approval.

A motion was made, seconded and carried unanimously to recommend approval of Ms. Rex as the Council's Consumer Member.

Action taken: approved

The meeting adjourned at 2:25 p.m.