

## **November 13, 2013 Minutes**

### **South Dakota Board of Medical and Osteopathic Examiners – Regular Board Meeting**

Board Members Present: Kevin Bjordahl, MD; Mr. Patrick Burchill, Walter Carlson, MD; Mary Carpenter, MD; Mr. Bernie Christenson; David Erickson, MD; Jeffrey Murray, MD; Brent Lindbloom, DO; James Reynolds, MD

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

Counsel Present: Diane Best, Board counsel  
William Golden, Staff counsel

Dr. Mary Carpenter, President of the Board, called the public meeting to order at 9:00 am. Roll was called, a quorum was established.

The Public Hearing on proposed administrative rules 20:78:03:11 and 20:78:03:12 was called to order.

### **SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS MINUTES OF PUBLIC HEARING**

The purpose of the meeting was to conduct a public hearing on the proposed rules of the Board numbered: ARSD 20:78:03:11 and ARSD 20:78:03:12.

**Hearing Officer:** Diane Best, assistant attorney general, South Dakota Office of the Attorney General, Sioux Falls, South Dakota

**Members of the Board in Attendance:** Kevin Bjordahl, MD; Mr. Patrick Burchill; Walter Carlson, MD; Mary Carpenter, MD; Mr. Bernie Christenson; Brent Lindbloom, DO; Jeffrey Murray, MD; James Reynolds, MD

**Members of the Board Absent:** David Erickson, MD

**Others in Attendance:** Margaret Hansen, William Golden, Ted Huss, Jane Phalen, Daniel Heinemann, MD; Barbara Smith, SDSMA; Robert L. Ferrell, MD; Dan Palmer, PA; Louise Papka, PA; Bob Brockevelt, PT; Lana Svien, PT; Barb Tarbox, OT; Mary El Karmassi, OTA; Tryg Odney, AT; Tom Price, Paramedic; Amy Richards, LN; Mike Strubel, RCP

**Public Notices:** Notice of this public hearing was published in the Rapid City Journal, Rapid City, South Dakota; Aberdeen News, Aberdeen, South Dakota; Capitol Journal, Pierre, South Dakota.

#### **Written Testimony:**

Four (4) electronic messages and one (1) letter were received by the executive secretary of the Board before the hearing. These messages and the letter were received from: Tim Engel, attorney, and Barbara Smith, CEO - South Dakota State Medical Association (Sioux Falls); Mark Johnston, Vice President, Sanford Health

Public Policy (Sioux Falls); Nicholas Schilligo, Director, American Osteopathic Association (Chicago); Dr. Robert Allen, Vice President, Medical Affairs, Rapid City Regional Hospital (Rapid City); and Paula McInerney-Hall, general counsel, Regional Health, Inc. (Rapid City).

### **Oral Testimony:**

Oral Testimony supporting the proposed rules numbered 20:78:03:11 and 20:78:03:12 was presented by Dr. Daniel Heinemann from Sioux Falls, South Dakota on behalf of the South Dakota State Medical Association.

There was no testimony opposing 20:78:03:11.

There was no testimony opposing 20:78:03:12.

The hearing officer then asked for additional questions and/or comments. There being no further questions or comments the testimony portion of the rules hearing was concluded.

The hearing officer then asked for additional questions and or comments from the Board members. There being no further questions or comments from the Board members, the public hearing for the proposed administrative rules 20:78:03:11 and 20:78:03:12 was concluded.

The hearing officer then called for discussion regarding 20:78:03:11. There being no further discussion Mr. Burchill moved to approve 20:78:03:11 and this motion was duly seconded and unanimously approved.

The hearing officer then called for discussion regarding 20:78:03:12. There being no further discussion, Mr. Burchill moved to approve 20:78:03:12 and this motion was duly seconded and unanimously approved.

At 9:30 am., there being no further business, Mr. Christenson moved to close the Public Hearing, and this motion was duly seconded and unanimously approved.

Anyone wishing to obtain a copy of the minutes of the Public Hearing, a copy of the above referenced electronic communications or the letter, or a notice of Board meetings may call (605) 367-7781, email to [SDBMOE@state.sd.us](mailto:SDBMOE@state.sd.us), or write to the South Dakota Board of Medical and Osteopathic Examiners, 101 N. Main Ave., Suite 301, Sioux Falls, South Dakota, 57104.

### **The Board's public meeting resumed.**

Dr. Daniel Heinemann, president of the South Dakota State Medical Association, presented information to the Board regarding the Association's stand regarding truth in advertising.

### **Physician Hearing: Board members assigned to a case to no deliberate or vote in that case.**

The physician 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.*

The hearing was continued and no vote was taken at this meeting.

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A motion to approve the Consent Agreement with Reprimand for Dr. Lisa Aguirre was ratified by the Board (Erickson/unanimous).

### **The Board's public meeting resumed.**

#### **Advisory Committees**

The following nominees appeared before the Board and a motion to approve these nominations was ratified by a vote of the Board (Burchill/ unanimous vote).

Tom Price, Paramedic – appointed to the Advanced Life Support Committee to replace Kurt Klunder, Paramedic.

Paul Scheuth, EMT/I/99 – appointed to the Advanced Life Support Committee to replace Bob Hardwick, EMT/I/99.

Mike Stubel, RCP – appointed to the Respiratory Care Committee to replace Mary Reinesch, RCP.

Amy Richards, LN – appointed to the Licensed Nutritionist Committee to replace Tanja Cutting, LN.

Louise Papka, PA-C – appointed to the Physician Assistant Committee to replace Vicki Blake-Nafus, PA-C.

Tryg Odney, AT – appointed to the Athletic Trainer Committee to replace Steve Fryberger, AT.

Mary El Karmassi, OTA – appointed to the Occupational Therapy Committee to replace Randy Breske, OTA.

In addition, a motion to approve a one year re-appointment of Dr. Robert Harms to the Advanced Life Support Committee was ratified by a vote of the Board (Burchill/unanimous).

A summary of the eight (8) Advisory Committee meetings was presented by the executive director.

Advisory committee procedures are being formalized:

- By statute, at least one committee meeting in person annually
  - Occupational Therapy must meet twice annually
  - Possible distance communications options in the future for additional meetings
- Committee advisory role to the Board defined
- Committee reports to be prepared in advance for the quarterly Board meetings
  - Board staff will assist,
  - Contents include profession concerns, rules progress etc.
- Attend at least 1 Board meeting every calendar year

**Advisory Committee Meeting Dates:**

Advanced Life Support Personnel: 10/29/2013

Genetic Counselor: 10/25/2013

Licensed Nutritionist: 10/25/2013

Occupational Therapy: 10/18/2013

Physical Therapy: 10/18/2013

Physician Assistant: 10/18/2013

Respiratory Care Practitioner: 10/25/2013

**General Topics discussed at each committee meeting:**

- Charge of each Advisory Committee
- Statutory creation and authority granted by the legislature:
  - Assist the Board in matters pertaining to regulation of the professions represented
- Board staff will assist: profession concerns, rules progress etc.
- Assist in making or abolishing rules pertaining to professions
- Advocacy versus Regulatory: recognize boundaries = no conflict of interest(s)
- Regulatory authority of the Board granted by the legislature does not include jurisdiction over facilities or professions not licensed by the Board
- Statute and Rules Process
- Topics for Administrative Rules: Fees, Code of Ethics, continuing education
- Minimal Data Demographics questions to be included in applications
- Developing a slate of potential nominees and succession plans
- member may serve three-year term, and a total of three terms

**Specific Topic Reports listed by Committee (Reported by):**

Advanced Life Support Personnel (Board Staff)

1. Code of Ethics
2. Statute and Rules need updating to include new Advanced level
3. Scope of practice for all levels
  - a. e.g. Maryland has standardization of scope for ALS levels
  - b. National Registry lists the scopes for ALS levels
4. Committee Terms – all were first (inaugural) members, need a staggered succession plan so not all leave at the same time.
  - a. Dr. Harms would accept reappointment of 1 year to the committee

- b. Kurt Klunder and Bob Hardwick would like to have successors nominated
- c. Audra Evan's term has 2 years remaining

Genetic Counselor (Board Staff)

- 1. Code of ethics
- 2. Rules needed including fees in rule
- 3. Telemedicine practitioners

Licensed Nutritionist (Board Staff)

- 1. Code of ethics
- 2. Rules needed including fees in rule
- 3. Problem with definition of statutory terms, need clarifications
- 4. Dietetic Educators, not a regulated profession
- 5. Licensed Nutritionist National Examination must be facilitated by board staff

Occupational Therapy (Barb Tarbox, Arlen Klamm)

- 1. Code of ethics
- 2. Continuing Education; accrediting body for approval
- 3. Fees in rule
- 4. Renewal date – encourage compliance by end of calendar year
- 5. Meeting with professional society leadership

Physical Therapy (Lana Svien, Bob Brockvelt)

- 1. Code of ethics,
- 2. Statute and Rules need updating to exclude outdated language (e.g. Registered PT has not been used for approximately 20 years)
- 3. Renewal date – encourage compliance by end of calendar year
- 4. PT licensure compact
- 5. Federation of State Boards of Physical Therapy topics:
  - a. Examination lifetime limit of six NPTE attempts and limit of two attempts for anyone with a very low score
- 6. Foreign trained physical therapists
  - a. establishing English proficiency
  - b. coursework comparability

Physician Assistant (Dan Palmer)

- 1. Code of ethics
- 2. Continuing Education; accrediting body for approval
- 3. Supervision Requirement Compliance
  - a. Agreements on file
  - b. Inappropriate "modification" requests (PAs requesting modifications for already included core competencies)

Respiratory Care Practitioner (Board Staff)

- 1. Code of ethics
- 2. Continuing Education; accrediting body for approval
- 3. Supervision Requirement Compliance
- 4. Statute and Rules need updating to exclude outdated language (certification is being phased out in favor of registration)
- 5. Home Health Companies and equipment delivery – lack South Dakota licensed supervisors

A motion to approve the minutes from the September 11 meeting was ratified by the Board (Lindbloom/unanimous).

**Public Hearings: medical assistant, paramedic: Board members assigned to a case do not deliberate or vote in that case.**

Sarah Duermier was not present at the meeting. A motion to approve the Administrative Law Judge's Proposed Findings of Fact and Conclusions of Law and Recommendation for Denial of Application for Medical Assistant Registration was ratified by the Board (Christenson/unanimous) The assigned Board members, Mr. Burchill and Dr. Carlson, did not participate in the deliberation or vote (ARSD 27:78:05:05)

David Starner was not present at the meeting. A motion to accept the Voluntary Withdrawal of Paramedic License While Under Investigation was ratified by the Board (Burchill/unanimous) The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote (ARSD 27:78:05:05)

**Discussion**

Discussion was held regarding malpractice cases and how to monitor and review these cases, which are public records. The Board reviewed and discussed information regarding how other states monitor and review malpractice cases. A motion to approve the use of a monitoring and scoring system based upon the system developed by the Iowa Board of Medicine was ratified by the Board (Carlson/unanimous)

A motion to approve the list of new licenses was ratified by the Board (Burchill/unanimous)

Representatives Maria Eining and Dr. Craig Uthe from the South Dakota Health Professionals Assistance Program (SD HPAP) met with the Board. Discussion was held in regard to the expansion of the program to include mental health services and the need to budget and plan for this expansion. A motion to support the expansion of SD HPAP, for Ms. Eining to prepare a business plan for the Board to review, and for the executive director to work with Ms. Eining to bring more information to the Board was ratified (Carlson/unanimous)

A motion for the staff to query the Board members to find a date for an telephone Board meeting in January to discuss the Federations of State Medical Board's updated opioid policies and the FSMB interstate medical compact proposals was ratified by the Board (Bjordahl/unanimous) This meeting will eliminate the first day of the two-day Board meeting scheduled in March.

The executive director presented a report on the following topics: 1) SD is a leader in influenza vaccinations; 2) Pharmacists are required to report the administration of the flu vaccine to the primary care provider within 14 days. If there is no primary care provider, the pharmacy must report the administration of the flu vaccine to the Department of Health; 3) Interviewing is underway for an upper level staff position; 4) the National Practitioner Data Bank is conducting an audit of all state medical boards and their compliance in reporting adverse actions. South Dakota Board will be audited in April 2014; 5) The Board Room is on target; 6) Ms. Hansen is attending a Leadership meeting in Boston. The report was accepted for information.

Three board members, Mr. Patrick Burchill, Dr. Robert Ferrell, and Dr. James Reynolds, were recognized for completing their terms as board members, and were presented with a plaque thanking them for their service to the State of South Dakota and to the Board.

There being no further business, the meeting was adjourned.