

SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS
Minutes November 9, 2011
Board Meeting
8:45 a.m.
Board Room, Sioux Falls

Board Members Present: Mr. Patrick Burchill
Walter Carlson, MD
Mary Carpenter, MD
Robert Ferrell, MD
Brent Lindbloom, DO
James Reynolds, MD
John Vander Woude, MD

Board Member Absent: Mr. Bernie Christenson
David Erickson, MD

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

Consultants: Roxanne Giedd, Counsel to the Board
William H. Golden, Counsel to the Staff

Advisory Committee Members & Nominees:

Nutrition and Dietetics

- Nominee Kendra Kattleman, LN
- Nominee Georgia Larson, LN

Physician Assistant:

- Dan Palmer, PA

Physical Therapy

- Nominee Lana Svien, PT

Respiratory Care Practitioner

- Mary Reinesch, RCP
- Nominee Anthony Hericks, DO
- Nominee Jessie Schoolmeester, RCP

Other Attendees: Barbara Smith
Tim Engel
Brett Lovrien
Rainer Westall
Janice Westall
Constance Hageman

MINUTES

Wednesday, November 9, 2011

The meeting was called to order at 8:45 a.m. by Dr. Ferrell, president of the Board.

The roll was taken and there was a quorum with all Board members present except Mr. Bernie Christenson and Dr. David Erickson

Minutes – A motion by Dr. Lindbloom to approve the September 14, 2011, minutes; was seconded by Mr. Burchill. The vote was unanimous.

New Licenses – A motion by Mr. Burchill to approve the new licenses, certificates, permits, and registrations issued since the last meeting; was seconded by Dr. Reynolds. The vote was unanimous.

The Board met with the following nominees to the Board's Advisory Committees: Respiratory Care Practitioner Advisory Committee (RCPAC):

- Anthony Hericks, DO
- Jessie Schoolmeester, RCP
- Angela Haugen, RCP)

Nutrition and Dietetics Advisory Committee

- Kendra Kattelman, LN
- Georgia Larson, LN

Physical Therapy Advisory Committee:

- Lana Svien, PT

A motion by Dr. Lindbloom to approve the nominations; was seconded by Dr. Carlson. The vote was unanimous.

The staff informed the Board that the hearing on the Declaratory Ruling for Lasers was continued to the March 2012 Board meeting to permit Dr. Hansen to submit his proposal. This was accepted for information.

BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS MINUTES OF PUBLIC HEARING

Dr. Robert L. Ferrell, President of the Board of Medical and Osteopathic Examiners, convened an Administrative Rules Hearing at 9:00 a.m. on Wednesday, November 9, 2011, in the Board Room of the First Dakota National Bank Building, 101 N. Main Ave., Suite 303, Sioux Falls, South Dakota.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the Board numbered 20:70:01 to 20:70:03, 20:47:02 and :05, and 20:78:01 to 20:78:05, inclusive.

Hearing Officer: Robert L. Ferrell, MD, President of the Board, Spearfish, South Dakota.

Members of the Board in Attendance: Patrick Burchill, Walter Carlson, MD, Mary Carpenter, MD, Brent Lindbloom, DO, James Reynolds, MD, and John Vander Woude, MD.

Others in Attendance: Roxanne Giedd, William Golden, Margaret Hansen, Ted Huss, Jane Phalen, Dan Palmer, Mary Reinesch, Barbara Smith and Tim Engel.

Written Testimony

The hearing officer marked and entered into the record a letter from the South Dakota State Medical Association in support of the proposed rules. A motion by Dr. Carlson to accept the submittal of the letter was seconded by Mr. Burchill. The vote was unanimous.

The hearing officer marked and entered into the record a letter which had been received by the secretary of the Board before the hearing. The letter was received from Timothy J. Dougherty and was read into the record. The letter was submitted on behalf of the South Dakota Society for Respiratory Care with an Amendment to the Proposed Rule 20:70:03:01 which defines unprofessional conduct for respiratory care practitioners. The amendment outlined four substantive changes to the proposed rules. A motion by Dr. Carpenter to accept the submittal of the letter containing the proposed amendment to 20:70:03:01, was seconded by Dr. Vander Woude. The vote was unanimous.

Discussion was held regarding an amendment to rule 20:70:03:01, sub-section (3), requesting that sub-section (3) be deleted. A motion by Dr. Carpenter to deny the request and to approve sub-section (3) as written was seconded by Mr. Burchill. The vote was unanimous.

Discussion was held regarding the amendment to rule 20:70:03:01, and two requested changes to sub-section (4). The first change requested the addition of the phrase "if the practitioner has actual knowledge of the declaratory ruling". A motion by Mr. Burchill to deny the request was seconded by Dr. Carpenter. The vote was unanimous. The second change requested the addition of the phrase "pursuant to physician's order". A motion by Dr. Carpenter to approve the addition of the phrase was seconded by Dr. Reynolds. The vote was unanimous. A motion by Dr. Carpenter to approve the amended sub-section (4) was seconded by Mr. Burchill. The vote was unanimous.

Discussion was held regarding the amendment to rule 20:70:03:01, sub-section (6), requesting that this sub-section be deleted. A motion by Mr. Burchill to deny the request and approve sub-section (6) as written was seconded by Dr. Carpenter. The vote was unanimous.

Discussion was held regarding the Amendment to rule 20:70:03:01, sub-section (7), requesting the removal of the word "tends" from sub-section (7). A motion by Dr. Carpenter to deny the request and to approve sub-section (7) as written was seconded by Dr. Carlson. The vote was unanimous.

A motion by Dr. Vander Woude to approve rule 20:70:03:01 as amended was seconded by Dr. Lindbloom. The vote was unanimous.

Oral Testimony

Oral testimony in support of the proposed rules was presented by Tim Engel on behalf of the South Dakota State Medical Association. Mr. Engel explained the specifics of the letter that was accepted into written testimony. The SDSMA and the Board worked together to develop the language for several of the proposed rules, and Mr. Engel expressed the SDSMA's appreciation for the Board's consideration of the recommendations.

Discussion was held regarding rule 20:78:03:03. A motion by Dr. Carpenter to approve the rule was seconded by Mr. Burchill. The vote was unanimous.

Discussion was held regarding rule 20:78:03:05. A motion by Dr. Carlson to approve the rule was seconded by Dr. Lindbloom. The vote was unanimous.

Discussion was held regarding rule 20:78:03:08. A motion by Mr. Burchill to amend the rule to strike the word "fundamental" was seconded by Dr. Vander Woude. The vote was unanimous. A motion by Dr. Reynolds to approve the amended rule was seconded by Dr. Carlson. The vote was unanimous.

Discussion was held regarding rule 20:78:04:03. A motion by Dr. Carpenter to amend the rule to strike the word "fundamental" was seconded by Dr. Reynolds. The vote was unanimous. A motion by Dr. Reynolds to approve the amended rule was seconded by Dr. Vander Woude. The vote was unanimous.

There being no further discussion, a motion by Dr. Carpenter to approve the rules; was seconded by Dr. Reynolds. The vote was unanimous.

A motion by Dr. Lindbloom to close the administrative rules hearing at 10:30 a.m. was seconded by Dr. Vander Woude. The vote was unanimous.

Dr. Ferrell stated that anyone wishing copies of the minutes of the Board meeting, copies of the letters entered as exhibits, or copies of the rules could call or write the South Dakota Board of Medical and Osteopathic Examiners, 101 N. Main Ave., Suite 301, Sioux Falls, South Dakota, 57104.

Discussion was held in regard to the American Telemedicine Association and the website "FixLicensure.org." This was accepted for information.

Discussion was held regarding the Federation of State Medical Boards (FSMB), the Federation Credentials Verification Service (FCVS), and the Federation's Uniform Application (UA). A motion by Dr. Carpenter to develop a disclaimer for the Board's website regarding the FSMB Uniform Application's \$50 fee; was seconded by Dr. Carlson. The vote was unanimous.

Discussion was held regarding anticoagulation supervision practice agreements and prescribing protocols. This was accepted for information.

Discussion was held regarding pharmacists administering vaccines and immunizations. Pharmacists do have the authority in South Dakota administrative rule to administer the influenza vaccine. A motion by Dr. Carpenter to determine the vaccination administration criteria necessary as stated in these administrative rules; was seconded by Dr. Lindbloom. The vote was unanimous. Dr. Reynolds suggested until a committee as described in SDCL 36-11-19.1 (1) is formed and meets on the issue of zoster immunizations, that the Board of Pharmacy be contacted to discuss the matter. The Executive Director will contact the Pharmacy Board and the Department of Health. Dr. Walter Carlson and Dr. John Vander Woude volunteered to serve on the committee to be formed SDCL 36-11-19.1 (1).

A motion by Mr. Burchill to approve the financial report; was seconded by Dr. Carlson. The vote was unanimous.

Discussion was held regarding a question from the Pharmacy Board to the Board of Nursing and Board of Medicine about the signing of prescriptions. A motion by Dr. Carpenter to accept the discussion for information; was seconded by Dr. Vander Woude. The vote was unanimous.

The Executive Director presented her report. A motion by Dr. Lindbloom to accept the report for information; was seconded by Dr. Vander Woude. The vote was unanimous.

Discussion was held regarding the proposed dates for Board Meetings in 2012 and 2013, and for a Strategic Planning Retreat. Dates, Planning, Facilitator and Budget were discussed. Proposals were to select a Friday afternoon, evening and Saturday retreat in the center of the state, and to choose a date in April or May 2012 if possible.

A hearing was held in the matter of an applicant for EMT Student Status. Exhibits were entered and accepted, witnesses were called and testimony was taken. A motion by Mr. Burchill to enter Executive Session for the purpose of consulting with legal counsel was seconded by Dr. Carlson. The vote was unanimous and executive session commenced at 2:00 p.m.

The meeting reconvened at 2:27 p.m. It was noted for the record that Dr. Lindbloom abstained from the discussion and the vote. A motion by Dr. Vander Woude that a conditional student status may be issued provided the applicant first undergoes evaluation for alcohol abuse, anger management, and other concerns was seconded by Dr. Reynolds. The vote was unanimous. The Board directed that the attorneys prepare Findings of Fact and Conclusions of Law to be presented to the Board at a later date.

A hearing was held with a licensee who appeared before the Board requesting that the Board reconsider and vacate the Consent Agreement with Reprimand that was ratified at a previous Board meeting. A motion by Mr. Burchill to deny the request to reconsider and vacate was seconded by Dr. Carpenter. The vote was unanimous.

The Board was informed that Dr. Steven E. Miller signed an Agreement to Voluntarily Surrender his SD Medical License. A motion by Dr. Vander Woude to accept the Voluntary Surrender was seconded by Dr. Reynolds. The vote was unanimous.

A motion by Mr. Burchill to enter into executive session for the purpose of consulting with legal counsel was seconded by Dr. Reynolds. The vote was unanimous and executive session commenced at 3:13 p.m.

The meeting reconvened at 3:21 p.m. A motion by Dr. Vander Woude to vacate the Findings of Fact, Conclusions of Law, and Final Orders in the matters of Drs. Downing, Mensch, Zaza, King and Gilburn, and to ratify the Final Orders to Vacate the actions in these matters was seconded by Dr. Carpenter. The vote was unanimous.

The next meeting is scheduled for Wednesday, March 28, 2012. Additionally, the dates for the remainder of the 2012 Board meetings, and the dates of the 2013 Board meetings were provided to the Board members.

There being no further business, the meeting adjourned at 3:25 p.m.