

**BOARD OF MEDICAL EXAMINERS  
FULL BOARD MEETING  
301 SOUTH PARK AVENUE, HELENA MT  
DATE: OCTOBER 7, 2011**

**MINUTES**

**AMERICANS WITH DISABILITIES ACT:**

The Department of Labor and Industry is committed to providing meeting access through reasonable accommodation under the Americans with Disabilities Act. Please contact the Board office prior to the proposed meeting date for further information.

**ITEM # 1: Call to Order and Introductions**

**Members Present:** Dr. Anna Earl, Ms. Pat Bollinger, Dr. Mary Anne Guggenheim, Dr. Kristin Spanjian, Ms. Tanja Brekke, Ms. Eileen Sheehy, Dr. Dean Center, Dr. Nathan Thomas, Dr. James Upchurch, Mr. Dwight Thompson, Mr. Ryan Burke, Dr. Bruce Hayward, Ms. Kay Bills-Kazimi

**Members Absent:** Ms. Carole Erickson

**Staff Present:** Mr. Ian Marquand, Ms. Maggie Connor Ms. Anne O'Leary, Ms. Lavelle Potter, Mr. Ken Threet, Mr. Jerry Morse, Ms. Donna Peterson, Mr. Brad Bowers

**Guests Present:** Mr. Mike Ramirez with the Montana Professional Assistance Program, Ms. Jean Branscum with Montana Medical Association, Mr. Bradley Williams with Montanans Against Assisted Suicide, Ms. Jessica Grennan with Compassion & Choices, Ms. Niki Zupanic with ACLU of Montana, Mr. Dennis Clark with the Board of Chiropractors, Ms. Sandra Marston Physical Therapist and Ms. Tammy Ellison, Mr. Steve Martinez, Mr. Dalls Seaber, Mr. Don Beans, Ms. Sara Marie, Ms. Jane Lee Hamman, Ms. Kara Burpee, Ms. Jerrie Lynn Nelson all with the Montana Association of Acupuncturists and Oriental Medicine.

**ITEM # 2: Approval of Agenda**

The Board reviewed the October 7, 2011 Agenda.

**MOTION: Mr. Dwight Thompson made the motion to approve the October 7, 2011 agenda and Dr. James Upchurch seconded. The motion passed unanimously.**

**ITEM # 3: Approval of Minutes**

The Board reviewed the September 1, 2011 Minutes.

**MOTION: Dr. Dean Center made the motion to approve the September 1, 2011 minutes and Dr. Nathan Thomas seconded. The motion passed unanimously.**

## **ITEM # 4: Open Forum for Public Comments**

### **PUBLIC COMMENT STATEMENT:**

In accordance with 2-3-103(1), MCA, the Board will hold a public comment period. Please note that Open Forum is the public's opportunity to address the Board on any topic that is not on the agenda for this meeting. While the board cannot take action on the issues presented, the Board will listen to comments and may ask the issue be placed on a subsequent agenda for possible action by the Board. The Chairperson of the board will determine the amount of time allotted for public comment.

Dr. Anna Earl opened the meeting for public comment. Mr. Bradley Williams with Montanans Against Assisted Suicide was present to make public comment and stated he could make his comments during the discussion on item number 13A(3).

## **ITEM # 5: Compliance Report**

Ms. LaVelle Potter presented the compliance report to the Board. The Board had no questions for Ms. Potter.

## **ITEM # 6: Licensee Administrative Action**

### **A. Dr. James Armstrong – Petition for Reinstatement**

Dr. Armstrong was present for the meeting in person and requested the Board discuss his petition in executive session.

### **B. Dr. Patricia Evans – Inactive to Active Status Request**

Dr. Evans was present for the meeting in person. Ms. Anne O'Leary stated Dr. Evans was before the Board at the March 2011 meeting requesting to move her license status from inactive to active. At that time it was motioned that she be assessed by the CPEP program to acquire an educational plan. Dr. Evans has completed the assessment conducted on June sixteenth and seventeenth and now has a plan in place with a designated preceptor.

**MOTION: Dr. Dean Center made the motion to grant Dr. Evans a one year probationary license that could be extended for another year if needed to complete her program and acceptance of an MPAP agreement that incorporates the CPEP recommendations. If Dr. Evans completes her program earlier than the one year time frame she may petition the Board to move her license to an active status. Dr Kristin Spanjian seconded. The motion passed unanimously.**

## **ITEM # 7: Unlicensed Practice (Executive Session)**

Ms. Anne O'Leary

A. Complaint No. 2011-161-MED – Follow-up

B. Complaint No. 2012-022-MED

## ITEM # 8: Non-routine Applications

### A. Dr. Andrea Gessner

Dr. Gessner was present for the meeting in person. Ms. Anne O'Leary stated Dr. Gessner has not worked as a physician since 1999 where she was working as a pathologist. Dr. Gessner does not want to practice as a pathologist at this time or practice general medicine but would like to work as a liaison between physicians and patients in oncology. Dr. Gessner will be required to take the SPEX exam for licensure and possibly a CPEP program. If Dr. Gessner passes the SPEX exam and is granted a license she would be able to go back to practicing medicine. Dr. Gessner stated she has been approached by other facilities and physicians to help out when needed as well. The Board suggested to Dr. Gessner that she look into a CPEP reentrance assessment and practice plan if she were to pursue licensure. Dr. Gessner is unsure at this time if she wants to apply for licensure but would like to take the SPEX exam.

**MOTION: Dr. Dean Center made the motion to sponsor Dr. Gessner to sit for the SPEX exam and Dr. James Upchurch seconded. The motion passed unanimously.**

### B. Dr. Christopher Peters

Dr. Peters was not present for the meeting. Ms. Anne O'Leary stated Dr. Peters was before the Board as he has a number of malpractice and other issues in the past and there is still a case unsettled at this time. There was some dispute on his license application in regards to answering the disciplinary questions. Dr. Peters was pursuing employment at one time however, that opportunity is no longer an option. Dr. Peters did not respond to the letter sent to him requesting his appearance at this meeting. His application was received in February of 2011 and will expire in February of 2012.

**MOTION: Dr. James Upchurch made the motion to send a letter to Dr. Peters stating he was requested to appear before the Board, he did not reply and if he would like to withdraw his application, notify the Board within fifteen days, otherwise the application will be reviewed at the November 18, 2011 meeting and it may be denied which is reportable to the National Practitioners Data Base. If Dr. Peters wants to keep his application active he will be required to participate in the November meeting either in person or by phone. Mr. Dwight Thompson seconded. The motion passed unanimously.**

### C. Dr. Lawrence Zazzo

Dr. Zazzo was present for the meeting by phone and was before the Board as he had only one year of post graduation education but has been practicing medicine since 1972. The Board discussed the application with Dr. Zazzo where he stated he was planning to work in Wolf point.

**MOTION: Dr. Kristin Spanjian made the motion to grant Dr. Zazzo an active physician license and Mr. Dwight Thompson seconded. The motion passed unanimously.**

D. Dr. Ilyas Colombowala

Dr. Colombowala was present for the meeting by phone. Ms. Anne O'Leary stated Dr. Colombowala was before the Board as he was granted a license based on discussion with Dr. Anna Earl and Dr. James Upchurch after receiving additional information on his non-routine physician application. This was a follow-up conversation requested by the Board.

E. Ms. Rachel Moore – EMT Basic

Ms. Moore was present for the meeting in person and was before the Board as she had two Minor in Possession charges and several traffic violations. The Board advised Ms. Moore to work very hard at not obtaining any further violations as driving ambulances is an integral part of working as an EMT.

**MOTION: Mr. Ryan Burke made the motion to grant Ms. Moore an active EMT license and Dr. James Upchurch seconded. The motion passed unanimously.**

**ITEM # 9: License Ratification**

A. Merik Morgan, EMT-B

Ms. Anne O'Leary stated Mr. Morgan now has an active probationary license and the final orders need to be ratified. Mr. Mike Ramirez will give the Board a progress report on Mr. Merik at the November 18, 2011 meeting.

**MOTION: Dr. Dean Center made the motion to ratify Mr. Merik's final order and Dr. James Upchurch seconded. The motion passed unanimously.**

B. Dr. Kenneth Crawford

Ms. Anne O'Leary stated Dr. Crawford now has an active probationary license and the final orders need to be ratified.

**MOTION: Dr. Dean Center made the motion to ratify Dr. Crawford's final order and seconded Dr. James Upchurch. The motion passed unanimously.**

**ITEM # 10: Administrative Rules**

A. Hyperbaric Oxygen Rules – Follow-up

Ms. Anne O'Leary stated these rules were approved by the Board at the July meeting and they are now moving forward and will be noticed along with the new proposed EMT rules when they are approved by the Board. The Board agreed to draft a position paper regarding this item and directed Dr. Sibold to work on the draft when he begins work.

B. MAR 24-156-75 – Public Hearing Report

Ms. Anne O'Leary presented the hearing report to the Board and stated there were no comments received regarding amendments to the Acupuncture rules (ARM 24.156.1401, 1403, 1404, 1411, 1412, the repeal of 1405 and new rules 1,2,3,4 and 5 related to Acupuncture continuing education. The board, after discussion, asked that the rule be cleaned up by adding the words "or successor" to 24.156.1404(1)(b) after the words "Accreditation Commission for Acupuncture and Oriental Medicine" so that it reads: "Accreditation Commission for Acupuncture and Oriental Medicine, or its successor". The board proposed to clean up 24.156.1404(1)(d) to add "or its successor" after the words "National Commission for the Certification of Acupuncture and Oriental Medicine" so that it reads: "National Commission for the Certification of Acupuncture and Oriental Medicine, or its successor". The board is requesting this clean up so that references to these organizations are consistent.

**MOTION: Dr. Mary Anne Guggenheim made the motion to accept the proposed rule changes with the amendments. Dr. Bruce Hayward seconded. The motion passed unanimously.**

There were no comments to proposed rule 24.156.1623 regarding chart review for Physician Assistants.

**MOTION: Mr. Dwight Thompson made the motion to accept the rule change as written. Dr. Dean Center seconded. The motion passed unanimously.**

The Board discussed the remaining proposed rule changes regarding Physician Assistants in detail and recommended several amendments to them after reviewing comments received. (See attachment 1). The amended rules adoption notice will be posted on the Board of Medical Examiners web site.

**MOTION: Dr. Kristin Spanjian made the motion to adopt the proposed rule changes as amended. Dr. Dean Center seconded. The motion passed unanimously.**

#### **ITEM # 11: MD / EMT K-9 Unit Care**

Ms. Anne O'Leary stated this came to the attention of the Veterinary Board that EMT's and other care givers were providing care to injured animals on incidents. The Veterinary Board agreed it would not file a complaint against EMT's providing care to the animals while on the scene.

#### **ITEM # 12: Board Security**

Mr. Jerry Morse stated he talked to several security agencies and received price proposals for providing guards during board meetings and provided the proposals to the Board. He is looking into a short course for the Board members addressing recognizing agitated behavior and defusing practices. Also he is working on new tables for the conference room to rearrange it to better accommodate meetings and security issues.

#### **ITEM # 13: Committee & Sub Committee Reports**

## A. Physician / Hospital Committee

Dr. Kristin Spanjian

### 1. Itinerant Surgery

Dr. Kristin Spanjian stated this item was brought up in a past meeting specifically regarding a group of Ophthalmologists that would travel from the Seattle area to this area to perform lasik and cataract surgery and return to their area leaving the patients' post-operative care to the Optometrists in our area. In this state there are several small towns with rural hospitals that use the option of itinerant surgeons as they do not have the availability of surgeons to perform basic surgery. The American College of Surgeons has issued a statement on itinerant surgery and it will not allow anyone to become a fellow of their association if they perform itinerant surgery. There was a report from the Office of the Inspector General in 1989 that researched the issue in seventy-two rural hospitals throughout the country. They found itinerant surgery was used frequently; the results were not as good as when the hospitals used their own surgeons. Some of the problems did relate to post-op care and they found that eight percent of the elective surgeries performed by itinerant surgeons were considered contraindicated. The committee looked at ways to research the issue and see if this is a problem in Montana and if this something the Board would act on. Dr. Ozog was present by phone and stated the itinerant surgeons leave one-hundred percent of post-op care to the Optometrists in the area where the surgery is performed and many times the patients are not able to be seen post-operatively. These surgeries are performed in his area at times. Dr. Ozog works in a large big city trauma center and does perform cataract surgery with a group where their patients have Ophthalmologists available to them if needed for post-op care. There was no data provided to the Board regarding adverse outcomes in patients and their post-operative care. The Board discussed the comments and materials received and had no position at this time as it is not evident that it is a problem in Montana. The Board thanked Dr. Ozog for his comments and concerns and urged him to file a complaint if he knows of any instances of sub-standard care provided by caregivers. Dr. Ozog had referenced a web site in his discussion (Find an Optometrist) where Ms. Anne O'Leary found it was referencing them as Optometric Physicians which by statute they cannot use the term physician in Montana.

**MOTION: Dr. Dean Center made a motion to direct staff to draft a letter to the company advertising this site and advise them the term Optometric Physician cannot be used in Montana. Dr. Nathan Thomas seconded. The motion passed unanimously.**

### 2. Maintenance of Licensure

Dr. Kristin Spanjian stated this is an issue other states are addressing and it may be time for the Board to take some action on the issue. She has provided the Board with a survey to send to physicians and get input on the issue. The Board discussed the questions on the survey. The Board agreed that Dr. Spanjian would receive further comment from Board members, finalize the survey based on the discussion and bring it back to the Board at the January 2012 meeting to possibly be put on the online renewal requesting physicians to take the survey and send the survey out on list serves as well.

### 3. Physician Assisted Death

Dr. Kristin Spanjian stated the issue has been brought up in the past and the Board has received a letter from Dr. Eric Kress and Dr. Stephen Speckart asking the Board to provide some guidance to providers performing this task. This item was raised as a result of a Supreme Court ruling stating a person who is mentally competent terminally ill adult could have the right to obtain a prescription from a cooperating physician and they cannot be prosecuted for writing the prescription. The Board listened to testimony from several individuals regarding the issue. The Board discussed the comments received and stated they do not have statutory or legislative literature and may not take a position solely on a Supreme Court case. The Board agreed they may need to draft a position paper addressing care standards provided by caregivers and minimal guidance to start further discussion. The Board agreed to have the Physician/Hospital committee along with Dr. Mary Anne Guggenheim who will draft an original paper and Ms. Pat Bollinger to bring the issue back to the Board at a future meeting.

#### B. Medical Director Sub Committee

##### A. Agitated Delirium (Draft Protocol)

Dr. James Upchurch presented a draft protocol that was provided to him from a medical director and requested this item be sent to the Medical Director Sub Committee for review and recommendation to the Board. The Board agreed this will be sent to the Medical Director Sub Committee for review along with documentation from Dr. Kristin Spanjian.

#### **ITEM # 14: Working Lunch, MPAP Report (Executive Session)**

Mr. Mike Ramirez presented the report to the Board during executive session.

#### **ITEM # 15: Dry Needling**

- A. Montana Association of Acupuncture and Oriental Medicine
- B. National Certification Commission for Acupuncture and Oriental Medicine
- C. Physical Therapists and Dry Needling

Dr. Anna Earl opened the item for discussion. Mr. Ian Marquand presented the Board and meeting attendees with statutes addressing Acupuncturists and their practice, also statutes addressing other professions. He also provided some history regarding these issues including an Attorney General opinion in 1999. Ms. Anne O'Leary provided opinions and rules from other states where some allow dry needling as part of other caregiver professions and others only allow Acupuncturists to use this skill. The Board listened to testimony and comment from several individuals from the Montana Association of Acupuncture and Oriental Medicine and a Physical Therapist. Ms. Anne O'Leary stated there may be two avenues to approach this issue. One is to ask for an Attorney General opinion or approach the Physical Therapy board to form a joint committee to address the issue of dry

needling. The Board reviewed and discussed the comments from meeting attendees, comments and materials received by mail and statements made by Ms. O'Leary and Mr. Marquand. The Board agreed to approach the Board of Physical Therapy and ask to form a joint committee to address this issue in detail and make recommendations to both boards. Ms. Tanja Brekke and Ms. Kay Bills-Kazimi will represent the Board of Medical Examiners along with two members from the Montana Association of Acupuncture and Oriental Medicine.

#### **ITEM # 16: Board Communications**

##### **A. Economic Affairs Interim Committee Update**

Mr. Ian Marquand stated the committee hearing went very well for the Board and Dr. Anna Earl was an excellent representative.

##### **B. Rules Discussion with DPHHS EMS & Trauma Systems**

Mr. Ian Marquand stated Mr. James DeTienne had requested a meeting regarding Mr. Ken Threet being the voting delegate for educational programs at the National Association of State EMS Offices meeting and it was Mr. Threet's year to be that voting delegate. Mr. DeTienne wanted to clarify Mr. Threet's approach to issues brought up at that meeting. Mr. Marquand stated this is informational material only and the Board needs to take no action. Dr. James Upchurch stated the Board of Medical Examiners has a new State Medical Director starting in the middle of October and wants make it clear that Dr. Sibold will represent Montana on the state medical director's council at these types of meetings.

##### **C. Correspondence Letter from Dr. David Christianson**

Mr. Ian Marquand stated a letter was received from Dr. Christianson essentially asking the Board to make a positive statement on the efficacy of marijuana as a treatment for illnesses. The Board agreed the current position paper regarding this subject will remain in effect and there is no substantial evidence to make a statement for or against its efficacy. The Board directed staff to send Dr. Christianson a letter thanking him for his concerns.

#### **ITEM # 17: Medical Assistants, Supervision Clarification**

Ms. Anne O'Leary stated she received a letter from Ms. Pam Christianson the Medical Assistant Program Director at Montana State University-Great Falls requesting clarification if Medical Assistant can work under a Physician Assistant or Nurse Practitioner as long as there is a physician in the clinic the Medical Assistant can consult with. The Board reviewed and discussed the statutes and rules regulating the practice Medical Assistants. The Board directed Ms. 'Leary to send a letter to Ms. Christianson advising the Medical Assistant cannot work under a Physician Assistant or Nurse Practitioner.

#### **ITEM #18: EMT**

## A. Staff Report

Mr. Ken Threet stated he has been traveling throughout the state getting comments and input on the proposed implementation plan to introduce new rules that will follow the educational plan for the future. The comments and input will be reviewed by the Medical Director Sub Committee and they will make recommendations to the Board. Mr. Threet reported the Trauma Symposium presentation in Kalispell went well and it was substantially attended by EMT's and Medical Directors.

### **ITEM # 19: Legal Report**

Ms. Anne O'Leary stated she had nothing to report at this time. She requested that her and Mr. Mike Fanning the Board prosecuting attorney attend an upcoming Federation of State Medical Boards legal meeting.

**MOTION: Dr. Mary Anne Guggenheim made a motion to send Ms. O'Leary and Mr. Fanning to the meeting if approved by the department. Ms. Pat Bollinger seconded. The motion passed unanimously.**

### **ITEM # 20: Department Update**

Ms. Maggie Connor, Healthcare Licensing Bureau Chief thanked Dr. Anna Earl for an outstanding job at the Economic Affairs Committee hearing. She had nothing else to report and advised the members to contact her at any time if they need assistance with any issues. Dr. Anna Earl asked who the new contracted peer review service is. Ms. Connor stated it is Maximus Federal Services Inc. Ms. Pat Bollinger asked when the new data base will be going live. Ms. Connor replied due to some circumstances not under the division's control has set it back to sometime in January of 2012.

### **ITEM # 21: Executive Director Report**

#### A. Budget report

Mr. Ian Marquand presented the budget report to the Board.

#### B. Application Report

Mr. Jerry Morse presented the application report to the Board.

#### C. Board Web Sites Update

Mr. Marquand stated there was nothing to report at this time.

#### D. Program Manager Position Update

Mr. Marquand stated this position was opened sometime in July where there were a number of applications received however; he did not get a chance to look at them until September. He has reopened the position and rewritten one of the supplemental questions. The position will close Friday October 14 and the process

of reviewing applications and interviews will be implemented very soon after that time.

E. FSMB Attorney Seminar Attendance

This item was addressed in the legal report.

**ITEM # 22: Meeting Organization**

The Board looked at the 2012 calendar and set meeting dates for the coming year. It was agreed the 2012 meeting dates will be January 20, March 16, May 17 & 18, July 20, September 21, and November 16.

**Adjourn: Dr. Dean center made the motion to adjourn the meeting at 17:23 and Dr. James Upchurch seconded. The motion passed unanimously.**

**Next meeting: November 18, 2011**