

**BOARD OF MEDICAL EXAMINERS
FULL BOARD MEETING
BILLINGS MONTANA, HILTON GARDEN INN
DATE: SEPTEMBER 18, 2009
MINUTES**

www.medicalboard.mt.gov

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.

Members Present: Dr. James Upchurch, Dr. Anna Earl, Dr. Kristin Spanjian, Ms. Carole Erickson, Dr. Mary Anne Guggenheim, Dr. Arthur Fink, Dr. Michael LaPan, Mr. Dwight Thompson, Dr. Dean Center, Ms. Kay Bills-Kazimi

Members Absent: Ms. Pat Bollinger

Staff Present: Ms. Jean Branscum, Ms. Anne O'Leary, Mr. Jerry Morse

Guests Present: Mr. James DeTienne, Mr. Kevin Fitzgerald, Dr. Mark Wick, Ms. Nancy Taylor, Dr. Sandra Spruiell, Dr. Mike Borcut, Dr. Andrew Gray, Ms. Kelli Lala PA, Dr. Frederich Wiseman Dr. David Healow, Dr. Jeffrey Kraft

ITEM # 1: Call to Order

Dr. James Upchurch called the meeting to order and went through the roll call.

ITEM # 2: Approval of Minutes

Dr. Mary Anne Guggenheim stated that the phrase "Dr. Guggenheim also suggested a possible apprentice program" should be stricken from item number 12.

MOTION: Dr. Arthur Fink made the motion to approve the July 24, 2009 minutes with the mentioned amendment and Dr. Mary Anne Guggenheim seconded. The motion passed unanimously.

ITEM # 3: Approval of Agenda

MOTION: Dr. Arthur Fink made the motion to approve the agenda and Dr. Dean Center 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
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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. James Upchurch asked if any person wanted to provide a comment. No individual request was made.

ITEM # 5: Compliance Report

Ms. LaVelle Potter presented a compliance report and a brief summary of the Screening Panel session. The Board agreed that they would like to continue with these reports at future meetings.

ITEM # 6: Unlicensed Practice

A. Dr. Steven R. Biggs

Dr. Steven Briggs, a licensed Montana Chiropractor, was not present for the meeting. There was an anonymous complaint filed against Dr. Briggs for practicing medicine and calling himself a doctor. The Board reviewed the documents presented to them and agreed that Dr. Briggs was not practicing medicine and confirmed he held a medical degree from Belize. Ms. Anne O'Leary read 37-3-103 (2), MCA, licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

MOTION: Dr. Kristin Spanjian made the motion to dismiss without prejudice and Dr. Dean Center seconded. The motion passed unanimously.

B. Dr. Michael P Ruggiero

Dr. Ruggiero had requested an extension and it was approved. This case will be before the Board at the next scheduled meeting, November 20.

C. Jeremy Gilliam EMT

A complaint was filed against Mr. Gilliam alleging he was impersonating an EMT and responding to medical calls to provide care. While Mr. Gilliam has attended and successfully completed an approved EMT course, had not yet certified with the National Registry of Emergency Technicians or obtained a Montana license.

MOTION: Ms. Carole Erickson made the motion to issue a cease and desist order to Mr. Gilliam with a letter of encouragement

to obtain his EMT license and Dr. Arthur Fink seconded. The motion passed unanimously.

ITEM # 7: Non-Routine Application

A. Dr. John Duong-Tran's application for licensure was referred to the Board as his licenses in Oregon and Washington were suspended for nonpayment of child support. The DEA form indicated an issue may exist with his prescriptive authority. Attempts by the office staff and Dr. Duong-Tran to get information from the DEA have not brought any results.

MOTION: Dr. Arthur Fink made the motion to grant Dr. Duong-Tran an unrestricted physician license and Dr. Anna Earl seconded. The motion passed unanimously.

B. Dr. Stephen Stoffel's application was referred to the Board due to his response to having criminal charges. He also has not actively practiced medicine in the past two years which would require him to take the SPEX.

MOTION: Dr. Arthur Fink made the motion to sponsor Dr. Stoffel to take the SPEX examination, to refer him to the Montana Professional Assistance Program, and to review the application again after the examination is passed. Dr. Dean Center seconded. The motion passed unanimously.

C. Dr. Martin Nee Jr.'s application was referred to the full Board as DEA form indicates an issue may exist with his prescriptive authority, there were seven reported malpractice claims, and his contact with patients has been limited to a recent preceptorship. Dr. Nee will need to take the SPEX exam and he indicated plans to self-nominate as he has an active license in PA. Discussion was held on the benefit of linking Dr. Nee with a physician group in Missoula as he begins work as a hospitalist.

MOTION: Dr. Arthur Fink made the motion to sponsor Dr. Nee to take the SPEX examination. Upon Dr. Nee's passing the examination, and the Board's receipt of a letter from a physician group in Missoula who are willing to act as an advisory group to Dr. Nee, a license will be granted. Dr. Kristin Spanjian seconded. The motion passed unanimously.

D. Dr. Upchurch opened the discussion on Dr. Peter Purcell's application noting Dr. Purcell had indicated a chemical dependency on prescription narcotic pain medicine and the completion of the North Carolina Physician's Health Program. Dr. Purcell was referred to MPAP. Mr. Mike Ramirez with MPAP advocated for Dr. Purcell's licensure.

MOTION: Ms. Carole Erickson made the motion to grant Dr. Purcell an unrestricted physician license and Dr. Mary Anne Guggenheim seconded. The motion passed unanimously.

E. Mr. McKinley Smith was referred to the full board as his EMT license application indicated past criminal charges related to alcohol. Mr. Smith was referred to MPAP. Mr. Mike Ramirez of MPAP stated he had met with Mr. Smith and does not recommend that he be monitored by the MPAP program.

MOTION: Dr. Dean Center made the motion to grant Mr. Smith an unrestricted EMT license and Dr. Anna Earl seconded. The motion passed unanimously.

F. The full Board considered Dr. Frederich Wiseman's application which showed he did not take the required Part III of the national exam. The National Practitioners Data Bank report showed two malpractice settlements. The application did show he had passed a Michigan state exam and Dr. Wiseman explained to the Board that Part III was not offered at the time of his initial licensure.

MOTION: Dr. Michael LaPan made the motion to grant Dr. Wiseman an unrestricted Podiatrist license once his application is complete. Dr. Arthur Fink seconded. The motion passed unanimously.

ITEM # 8: Dr. Jeffrey Kraft Reinstatement

Dr. Kraft petitioned the Board for reinstatement of his physician license. The Board reviewed Dr. Kraft's file, including Final Orders related to the initial suspension and the revocation, and documents related to the 2002 petition for reinstatement. The Board discussed with Dr. Kraft his license history and practice plans.

MOTION: Dr. Arthur Fink made the motion to offer Dr. Kraft thirty days to withdraw his petition for reinstatement. If a letter of withdrawal is not received from Dr. Kraft in thirty days, the Board will proceed with the denial of licensure. Dr. Kristin Spanjian seconded. The motion passed unanimously.

ITEM # 9: Physician Assistant

A. Interview Process

Dr. Anna Earl presented some concerns that arose as she was conducting several Physician Assistant interviews. Dr. Earl stated that the Physician and Physician Assistant were uncertain as to what the interview consisted of and what would be discussed. Dr. Earl suggested that interview process details and why the interview is required be available on the Board website for licensees to review. Additionally, it was suggested to add more questions and answers addressing these supervisory agreement interviews to the "Frequently Asked Questions" page. Ms. Jean Branscum stated that the website is new and such suggested changes are helpful as the Board wants to help users navigate through the system more easily. Jean will work with staff to identify how suggestions can be incorporated.

B. Obligation to Report Supervision Agreement Changes

Mr. Dwight Thompson had requested that the Board look at current rules concerning the termination of supervision agreements. Ms. Jean Branscum noted Board staff has reported that numerous supervision agreements on file are likely no longer in effect as the office typically does not receive a notice from the Physician or Physician Assistant when a supervision agreement has terminated. She indicated the office attempts to get updates by sending a letter to the Physician Assistants every few years requesting they review the supervisory agreements on file and notify the Board staff of any changes. Ms. Branscum stated that such a letter is being drafted to both Physicians and Physician Assistants again this year. She stated there are no rules that obligate a licensee to report the termination of an agreement. Unprofessional conduct rules, however, require licensees to respond to requests from the Board. The Board agreed that a rule is needed and that licensees having supervision agreements in place be notified of the rule.

MOTION: Dr. Arthur Fink made the motion to draft a rule requiring supervising physicians and physician assistants to report to the Board within thirty days the termination of a supervision agreement. Dr. Anna Earl seconded. The motion passed unanimously.

C. Physician Assistants Performing Radiology

Ms. Anne O'Leary read to the Board a draft rule addressing Physician Assistants performing radiology. This was initially discussed by the Board, and a motion was passed for a rule to be drafted at the May, 2009 meeting. (See attachment # 1 for the content of the draft)

MOTION: Dr. Kristin Spanjian made the motion to accept the draft rule as written and Ms. Carole Erickson seconded. The motion passed unanimously.

ITEM # 10: Screening & Adjudication Panel Rotation Options

Ms. Jean Branscum provided recommendations on panel membership and offered several screening and adjudication panel member rotation options to the Board for consideration. The Board discussed the proposed options for rotating panel members on a fixed time line rotation or a flexible rotation that would be as needed or requested.

The preferred option was the first flexible option where the term of membership would be on a calendar year basis, and the length of the term would be two years for initial membership followed thereafter on a year by year basis. Screening Panel rotation would include having a minimum of five members with staggered terms. No more than two panel members should leave panel in one year. Panel members would

be replaced on an "as needed basis" and new members would be appointed by the Board Chair.

MOTION: Dr. Kristin Spanjian made the motion to adopt flexible option number one as the panel member rotation option to be used. Ms. Carole Erickson seconded. The motion passed unanimously.

ITEM # 11: Dry Needling Performed by Physical Therapists

Ms. Anne O'Leary presented to the Board a letter that had been sent to the Board of Physical Therapy asking if a Physical Therapist can perform dry needling as part of their practice. The Board of Physical Therapy forwarded the letter to this Board for an opinion addressing this issue. Ms. O'Leary researched other states rules concerning this and found that some states allow this procedure and others do not. Ms. O'Leary and the Board discussed and reviewed current laws and rules concerning this procedure.

MOTION: Mr. Dwight Thompson made the motion to draft a letter to the Board of Physical Therapists stating that at this time, dry needling is not allowed to be performed by Physical Therapists. Dr. Kristin Spanjian seconded. The motion passed unanimously.

ITEM # 12: Pathologist-to-Pathologist Consultations

Dr. Mark R. Wick, President, Association of Directors of Anatomic & Surgical Pathology was present by phone. Dr Wick had sent a letter to the Board requesting an opinion on whether or not a physician license was required for an out of state/country pathologist who serves as a consultant to another pathologist and writes professional interpretation. The "treating" (originating) pathologist then weighs that opinion in formulating a final diagnosis, but said diagnosis remains strictly in his or her purview. Board members, Anne O'Leary and Dr. Wick discussed the current statute and rules addressing this type of procedure.

MOTION: Dr. Arthur Fink made the motion that Pathologist-to-Pathologist Consultations are exempt from Telemedicine Licensure as specified under 37-3-342 (2)(e), MCA. Dr. Mary Anne Guggenheim seconded. The motion passed unanimously.

ITEM # 13: Workers Compensation Approval Request

Ness L300 Foot Drop System
Ness H200 Hand Rehabilitation System

The Board reviewed and discussed the documents, reviews and articles sent to them by Mr. Bruce Chamberlain with the Workers Compensation Regulation Bureau for an opinion on whether or not these systems are approved or are still in experimental status.

MOTION: Dr. Dean Center made the motion that, based on the documentation presented to the Board, these systems are experimental at this time. Dr. Arthur Fink seconded. The motion passed unanimously.

ITEM # 14: Montana Family Medicine Residency Program Overview

Ms. Nancy Taylor, Vice President of Clinical & Educational Services at Riverstone Health, provided an informative overview of the Montana Family Medicine Residency Program. She presented how the program works with physicians in the residency program. The overview showed that sixty-nine percent of the graduates from this program stay in Montana to practice medicine.

ITEM # 15: Resident Licensure

Ms. Anne O'Leary and Ms. Jean Branscum began the discussion on resident licensure by providing an overview on how licensure applications are currently being processed, the exceptions for physicians participating in the Montana Family Medicine Residency Program, and the processing of temporary licenses for physicians completing a rural rotation in Montana as part of a residency program. Jean provided resource information from other states and the Federation of State Medical Boards. The Board reviewed existing statutes and administrative rules and held a general discussion on how the staff should process applications for those residents, including foreign medical graduates, who are participating in the Montana residency program. Board members also discussed how to clarify existing rules and what should be adopted to address the new requirement from HB 80 that applicants successfully complete a residency program of at least two years. Ms. Anne O'Leary made a recommendation that 37-3-305 MCA "Qualifications for Licensure" be looked at by the Laws and Rules committee and work to draft a better statute to help clarify the qualification issues and the grandfathering of Residents currently licensed.

MOTION: Dr. Mary Guggenheim made the motion to draft a rule clarifying that the Board may issue a license to a Resident after they have completed two years of an approved residency program. The license will be a temporary license for one year at a time until the residency program is completed. Dr. Dean Center seconded. The motion passed unanimously.

MOTION: Dr. Dean Center made the motion to have the laws and rules committee begin work on the revision of 37-3-305, MCA (qualifications for licensure) for the next legislative session. Mr. Dwight Thompson seconded. The motion passed unanimously.

ITEM # 16: Administrative Rules

Ms. Jean Branscum

A. HB 80

The Board agreed the previous discussion on resident licensure addressed the needed rule changes related to HB 80 and that staff should draft rules for review at the next Board meeting.

B. Acupuncture Work Group

Ms. Jean Branscum opened the discussion on the updating of administrative rules for acupuncturists. Representatives of the Montana Acupuncture Association asked the Board to work on an update of the rules at a Board meeting and offered to be part of a work group.

MOTION: Dr. Mary Anne Guggenheim made the motion to refer the Acupuncturist work group to the Board laws and rules committee to begin work on Acupuncturist rules. Mr. Dwight Thompson seconded. The motion Passed unanimously.

ITEM # 17: Phlebology & Specialties List

Ms. Jean Branscum received a letter from the American College of Phlebology requesting the Board add the phlebology designation to the specialty listing in the Board's database. Dr. Saundra Spruiell, Dr. Mike Borcut, Dr. Andrew Gray and Dr. Johnson were present by phone and explained that the college had been recognized by the American Medical Association and had offered a board certification exam as dictated by the standards set forth by the American Board of Medical Specialties. The college is requesting the addition so that the public could have better access to physicians in this specialty. The Board explained that the specialties entered in the database are not accessible to the public at this time and specialties are not maintained, but self declared at time of application only. The Board agreed that it supports the specialty and the Montana Medical Association's listing of specialties in their physician directory.

MOTION: Dr. Kristin Spanjian made the motion that the Board draft a letter of support to the Montana Medical Association to recognize the American College of Phlebology and the development of this specialty field. Dr. Anna Earl seconded. The motion passed unanimously.

ITEM # 18: EMT

A. EMT and Immunization

Dr. James Upchurch presented a draft protocol to the Board and explained that this was discussed at the Medical Director Sub Committee. The proposed protocol is a triage protocol that may be used by medical directors and EMTs on a local basis if a flu pandemic is present or declared. Dr. Kristin Spanjian suggested that the Board

gather comments on the protocol from Montana health care facilities before any action is taken by the Board.

MOTION: Dr. Kristin Spanjian made the motion to direct staff to draft a letter explaining the protocol and send it to the Medical Executive Committee and the administrators of Montana hospitals requesting comment on the protocol. Comments and responses need to be received in the Board office by October 15, 2009. Dr. Arthur Fink seconded. The motion passed unanimously.

B. EMT/EMS Complaint Process

Ms. Jean Branscum provided an overview of HB93 which requires the Board to screen all complaints related to EMS and EMTs as of October 1, 2009. She presented a flow chart and outlined a recommended process that was developed in collaboration with internal compliance staff and Department of Public Health and Human Services staff. The Board discussed educational needs to become more knowledgeable of EMS laws and rules and recommended a "just in time" training approach for the screening panel. Also noted was the need for a resource from DPPHS staff, preferably an attorney, to assist in the interpretation of laws related to EMS at screening panel meetings.

MOTION: Dr. Arthur Fink made the motion to adopt the complaint process as presented. Ms. Carole Erickson seconded. The motion passed unanimously.

ITEM # 19: Committee & Sub Committee Reports

A. Strategic Positioning Committee

Dr. James Upchurch presented to the Board the other committees that were formed at the Strategic Positioning Committee meeting. The committees are Laws and Rules, Outreach, Physician/Hospital Provider, and Allied Health. The Board agreed that the committees will have a chairperson assigned, will meet as needed, and committee membership will fluctuate as board members can volunteer to sit on the committee when issues of interest arise. Dr. Arthur Fink will serve as the chairperson for the Laws and Rules Committee. Ms Carole Erickson was elected as chairperson for the Outreach committee. Ms. Kay Bills-Kazimi agreed to sit as chairperson for the Allied Health Committee and Dr. Kristin Spanjian agreed to sit as chairperson for the Physician/Hospital Provider Committee.

B. Laws and Rules Committee

Dr. Arthur Fink explained the draft rules addressing SB 174, Advanced Pharmacist Practitioner, were reviewed and discussed with the executive director of the Board of Pharmacy and representatives of the Montana Pharmacist Association. The

Association will make some recommended changes to the draft rules and bring them back to the committee for further review at a later date. The committee will also invite the representatives of the Acupuncturist Association to the next meeting to discuss needed changes to the current Acupuncturist rules.

C. Outreach Committee

Ms. Carole Erickson explained the goals of this committee were to review the website, develop avenues to improve licensee communication and public awareness such as by submitting articles to publications like the Montana Medical Association, and enhance working relationships with associations, the legislature, and other boards. She noted the committee planned to invite a representative from the Governor's Office to future meetings and that Dr. Mary Anne Guggenheim had given a presentation at the Montana Medical Association annual meeting.

D. Medical Director Sub Committee

Dr. James Upchurch presented an update to the Board on the work and discussion at the September 17 meeting. (See separate minutes)

ITEM # 20: Position Papers

A. Medical Ethics

Dr. Dean Center explained to the Board that the current regulations refer to practicing in an ethical manner; however, there is no definition of ethical practice. He presented a draft position paper for the Board's consideration. The Board reviewed and discussed the draft and recommended some revisions.

MOTION: Dr. Arthur Fink made the motion to accept the position paper with the recommended revisions. Dr. Anna Earl seconded. The motion passed unanimously.

B. Review Findings of Current Position Papers

Dr. Dean Center provided an overview of his ongoing work to review existing position papers. The Board agreed to table discussion on the position paper on physician authority to delegate tasks and responsibilities as the law had been amended. The Board agreed that the remaining position papers should be assigned to the Laws and Rules Committee for a review and any recommendations should be brought back to the Board for approval.

ITEM # 21: Communications

Ms. Jean Branscum, Mr. Ken Threet

A. Board Seal

The Board members discussed the samples provided and directed staff to have a sample created with the single snake symbol of medicine.

B. Electronic Newsletter

Jean provided an update on the progress being made to create an eNewsletter. She is continuing to work with internal staff to overcome barriers that exist in the delivery of a professional newsletter through the available listserv.

ITEM # 22: MPAP Report

Dr. David Healow presented the report to the Board during Executive session.

ITEM #23: EMT Report

Mr. Ken Threet was not present for the meeting. The Board reviewed the written report provided by Mr. Threet.

ITEM # 24: Legal Report

Ms. Anne O'Leary provided an update on her participation on the Attorney General's moot court argument.

Independent Anesthesia License Research Findings

Ms. Anne O'Leary and Dr. Kristin Spanjian presented research documents addressing the question that arose during the past Board meeting on an independent anesthesia license. They explained that Dentists can perform general anesthesia, light anesthesia and conscious sedation with additional training. The training requirements for conscious sedation is forty clock hours of didactic instruction and twenty hours of patient training; with respect to nitrous oxide it is fourteen clock hours of didactic and clinical training, and there are monitoring standards and inspections conducted. Dr. Kristin Spanjian provided documents from the American Society of Anesthesiologists addressing sedation performed by nonlicensed anesthesiologists. There was concern about the health care professional with one year of post graduate training in the administration of general anesthesia monitoring the patient. It was stated that this does not fulfill the Society's guidelines for general anesthesia. The current rule related to Dentists was last amended in 1994.

MOTION: Dr. Arthur Fink made the motion to invite a representative from the Board of Dentistry to the November meeting to discuss the concerns. Dr. Kristin Spanjian seconded. The motion passed unanimously.

ITEM # 25: Executive Director Report

Ms. Jean Branscum

- A. 2009 Fiscal Year End Budget Report
- B. 2010 Budget Report
 - a. Meeting/travel requests
- C. Application report

Ms. Jean Branscum presented the budget and application reports to the Board.

D. ECC Report

Ms. Jean Branscum explained the actions of the Emergency Care Committee that was developed by the Department of Public Health and Human Services. The committee meets on a scheduled basis to address EMS issues and she attended the August meeting. Ms. Branscum explained that this committee was a good bridge builder between the Board and the Department.

E. FSMB Communications and Uniform Application

Ms. Branscum presented the FSMB strategic plan and stated FSMB was seeking comments on the plan. She suggested that any comments on the plan be sent to her and she would pass them onward to FSMB. She also presented an update on the progress of the uniform application being developed in conjunction with FSMB. The application is now being updated with Montana specific information and should be ready to bring to the November meeting for review.

F. MPAP Audit Contract

Ms. Branscum is currently pulling together a contract with Dr. Lynn Hankes and is working to have the audit completed and ready for presentation at the November meeting.

G. MMA Report

Ms. Branscum provided a copy of the annual report sent to the Montana Medical Association.

Adjourn: MOTION: Dr. Arthur Fink made the motion to adjourn the meeting and Dr. Kristin Spanjian seconded. The motion passed unanimously.

Next meeting: November 20 in Helena MT

2010 meeting dates

January 22, 2010

March 19, 2010

May 20 and 21, 2010

July 23, 2010

September 17, 2010

November 19, 2010

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