

**BOARD OF MEDICAL EXAMINERS  
LAWS AND RULES COMMITTEE  
4<sup>TH</sup> FLOOR CONFERENCE ROOM  
301 SOUTH PARK AVE  
HELENA, MONTANA  
DATE: FEBRUARY 16, 2012  
TIME 5:00 P.M. - CONCLUSION**

**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**

Dr. Guggenheim called the meeting to order at 5:02 p.m. Roll call was taken and a quorum was present.

**Members present:** Dr. Mary Anne Guggenheim (Chair), Dr. Bruce Hayward, Dr. Nathan Thomas, Ms. Pat Bollinger, Ms. Carole Erickson

**Members absent:** None

**Staff present:** Mr. Ian Marquand, Ms. Maggie Connor, Ms. L'Joy Griebenow and Anne O'Leary, Esq.

**Guests present:** Ms. Jean Branscum (Montana Medical Association (MMA), by telephone), Ms. Marti Wangen (RMS Management Services, in person)

**ITEM #2: Review of Agenda**

The Committee reviewed the February 16, 2012 Agenda.

**MOTION: Ms. Carole Erickson made a motion to approve the February 16, 2012 agenda; Ms. Pat Bollinger seconded the motion. Motion passed unanimously.**

**ITEM #3: Approval of Minutes of May 10, 2011 Meeting**

The Committee reviewed the May 10, 2011 meeting Minutes.

**MOTION: Dr. Bruce Hayward made a motion to approve the May 10, 2011 minutes as amended; Dr. Nathan Thomas seconded the motion. Motion passed unanimously.**

## **ITEM #4: Open Forum: Public Comment**

### **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 committee on any topic that is not on the agenda for this meeting. While the committee cannot take action on the issues presented, the committee will listen to comments and may ask the issue be placed on a subsequent agenda for possible action by the Board. The Chair of the committee will determine the amount of time allotted for public comment.

Dr. Guggenheim opened the meeting for public comment.

Anne O'Leary suggested that the Committee consider reviewing definitions in ARM 24-156-501 with respect to hollow form needles and a telemedicine definition.

## **ITEM #5: Legislation – Anne O'Leary**

The Committee heard from Anne O'Leary, Esq., Counsel for the Montana Board of Medical Examiners, regarding various statutory amendments which are proposed to be submitted for possible inclusion with a general housekeeping bill to be submitted by the Department of Labor and Industry for the 2013 legislative session.

### **A. MCA 2-15-2216. Trauma Care Committee**

Ms. O'Leary guided the discussion regarding this section. She explained that this amendment would add a position to the statutorily created Trauma Care Committee which would enable the State Medical Director to be a voting member of that Committee.

### **B. MCA 37-2-302. Gunshot or stab wounds to be reported**

Ms. O'Leary guided the discussion regarding this section. She explained that this amendment was solicited by the Veteran's Administration Hospital (Fort Harrison). The hospital physicians, nurses or other persons licensed to practice a health care profession are subject to a federal policy that does not allow them to report any medical treatment they provide or treatment need which they observe unless there is a penalty for failure to report.

### **C. MCA 37-3-204, 301-307, 312, 321, 323, and 327-328**

#### **1. MCA 37-3-204. Meetings**

Ms. O'Leary guided the discussion regarding this section. She observed that this clean-up amendment is needed because Montana does not offer examinations, much less hold meetings for them.

#### **2. MCA 37-3-301. Licensed required**

Ms. O'Leary guided the discussion regarding this section. She noted that this clean-up amendment is needed because the Board of Medical Examiners has not issued temporary licenses in quite some time and licenses no longer need to be signed by the president of the Board.

Ms. Branscum stated that the MMA was against elimination of temporary licenses and that it was the MMA's position temporary licenses should instead start to be

granted if a physician's license was not issued in a timely fashion. Alternatively, the MMA would be amenable to placing a strict timeframe upon the board for issuance of physician licenses.

**3. MCA 37-3-302. Repealed**

The Committee did not consider this section because it currently stands repealed.

**4. MCA 37-3-303. Practice authorized by physician's license**

Ms. O'Leary guided the discussion regarding this section. The Committee noted that a physician should be required to practice medicine consistent – as opposed to reasonably consistent – with a physician's training, skill and experience.

**5. MCA 37-3-304. Practice authorized by temporary license**

Ms. O'Leary guided the discussion regarding this section. The section is suggested to be repealed consistent with the elimination of temporary license as a license type.

**6. MCA 37-3-305. Qualifications for licensure**

Ms. O'Leary guided the discussion regarding this section. The word "physician" would be included prior to the word "licensure" in the title of section 37-3-305, subsection (3) eliminated consistent with the previous statutes relating to temporary licenses, and the following subsections renumbered.

The Committee expressed a preference to have separate sections in the statutes for each of the four types of licenses.

**7. MCA 37-3-306. Physician's license – examination – reciprocity and endorsement**

Ms. O'Leary guided the discussion regarding this section. She noted that this clean-up amendment is needed because the Board of Medical Examiners no longer grants a physician's license on the basis of reciprocity.

**8. MCA 37-3-307. Qualifications for licensure – temporary license**

Ms. O'Leary guided the discussion regarding this section. The section is suggested to be repealed consistent with the elimination of temporary license as a license type.

**9. MCA 37-3-312. Issuance of license**

Ms. O'Leary guided the discussion regarding this section. She noted that this clean-up amendment is needed to delete references to archaic practices.

**10. MCA 37-3-321. Refusal of license**

Ms. O'Leary guided the discussion regarding this section. She observed that this clean-up amendment is needed because portions of this section seem to conflict with the Montana Administrative Procedures Act.

**11. MCA 37-3-323. Suspension of license – investigation**

Ms. O’Leary guided the discussion regarding this section. This clean-up amendment is needed to reconcile this section with the Medical Physician Assistance Program provisions established in other sections.

**12. MCA 37-3-327. Subpoena – fees**

Ms. O’Leary guided the discussion regarding this section. She observed that this clean-up amendment is needed because this section duplicates, and in a couple of aspects seems to conflict with Rule 45 of the Montana Rules of Civil Procedure. It is also duplicative of powers authorized in 37-1-307.

**13. MCA 37-3-328. Failure to appear or testify**

Ms. O’Leary guided the discussion regarding this section. She observed that this clean-up amendment is needed because this section duplicates, and in a couple of aspects seems to conflict with Rule 45 of the Montana Rules of Civil Procedure. It is also duplicative of powers authorized in 37-1-307.

**D. MCA 37-3-403. Report on prohibition or limitation on practice by hospital**

Ms. O’Leary guided the discussion regarding this section. Committee decided to propose no changes to this section at this time.

**E. MCA 37-6-108 (new) and 304**

**1. MCA 37-6-304. Designations on license – recording**

Ms. O’Leary guided the discussion regarding this section. The section is suggested to be repealed as archaic and unnecessary.

**2. MCA 37-6-108. Certification required for hyperbaric oxygen therapy – places of performance**

Ms. O’Leary guided the discussion regarding this section. This new section is needed to give the Board authority to act in this area and to establish the qualifications as to requisite education, training and experience.

Ms. Branscum reported that the MMA considers this section as a change in scope of practice. She further stated it is the MMA’s position that qualifications in this area should be set in statute instead of rule.

The Committee requested the MMA provide to the Hyperbaric Oxygen Therapy Sub-Committee a written summary of its recommendations for the qualifications of podiatrists to be certified for hyperbaric oxygen therapy. Ms. Branscum agreed to do this.

**F. MCA 37-25-102. Definitions**

Ms. O'Leary guided the discussion regarding this section. The Committee decided to defer to the full board with respect to what extent this section should be amended.

**MOTION:** Ms. Carole Erickson made a motion to submit all of the amended sections discussed during today's meeting as a package, to be included on the "wish list", for consideration by the Department of Labor & Industry for submission to the 2013 Legislature; Dr. Bruce Hayward seconded. Motion passed unanimously.

**ITEM #6: Rules – L'Joy Griebenow**

- A. 24.156.601 Fee Schedule  
24.156.605 Temporary License  
24.156.617 License Categories**

Ms. Griebenow guided the discussion regarding amendments to these rules. These clean-up amendments would be needed if the Legislature acts upon the statutory sections proposed during this meeting.

- B. 24.156.625 Unprofessional Conduct**

Ms. Griebenow guided the discussion regarding amendments to this rule. This clean-up amendment would be needed to correct a sub-section reference resulting from a previous rule deletion.

Mr. Marquand explained that staff needs to get BOME's wish list to the Bureau Chief by March 5 so it can be put on the Department-wide list, and then reviewed up through the Department. Staff will need full board approval and the Department needs to make final decisions on what it wishes to bring forward to the Legislature before the legislative process continues further.

**ITEM #7: Adjourn**

**MOTION:** Ms. Pat Bollinger made the motion to adjourn the meeting; Ms. Carole Erickson seconded. Motion passed unanimously.