

**NEVADA STATE BOARD OF MEDICAL EXAMINERS**

9600 Gateway Drive  
Reno, NV 89521

Rachakonda D. Prabhu, M.D.  
*Board President*



Edward O. Cousineau, J.D.  
*Executive Director*

**\* \* \* MINUTES \* \* \***

**OPEN SESSION RI00-17 SUBCOMMITTEE MEETING**

Held in the Conference Room at the Offices of the Nevada State Board of  
Medical Examiners/Nevada State Board of Dental Examiners  
6010 S. Rainbow Boulevard, Building A, Suite J, Las Vegas, Nevada 89118

and videoconferenced to

the Conference Room at the Offices of the  
Nevada State Board of Medical Examiners  
1105 Terminal Way, Suite 301, Reno, Nevada 89502

***WEDNESDAY, APRIL 11, 2018 – 2:00 P.M.***

***Subcommittee Members Present at Board Office in Las Vegas***

Victor M. Muro, M.D., Chair  
Daniel Burkhead, M.D.  
Michael C. Edwards, M.D., FACS  
Senator Joseph P. Hardy, M.D.  
Ms. April Mastroluca  
Rudy Manthei, D.O.  
Rupesh Parikh, M.D.  
Robert Pretzlaff, M.D.  
Crane Pomerantz, J.D.  
Ms. Karen Rubel  
Erin Russell, Ph.D.  
Dave Wuest, R.Ph.

***Subcommittee Members Present at Board Office in Reno***

Wayne Hardwick, M.D.  
Karen Massey, MHA, FACMPE, CPMSM  
Catherine O'Mara, J.D.  
Michael Salas, M.D.

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*Subcommittee Members Absent*

Paul Edwards, J.D.  
Faisal Suba, M.D.

*Staff/Others Present at Board Office in Las Vegas*

Jasmine K. Mehta, J.D., Deputy Executive Director

*Staff/Others Present at Board Office in Reno*

Edward O. Cousineau, J.D., Executive Director  
Henna Rasul, J.D., Senior Deputy Attorney General

Agenda Item 1

**CALL TO ORDER AND ANNOUNCEMENTS**

- Roll Call/Quorum

The meeting was called to order by Dr. Muro at 2:03 p.m.

Ms. Mehta took roll call of the Subcommittee members. Subcommittee members not present were Michael Edwards, M.D., Paul Edwards, J.D., Rudy Manthei, D.O., Crane Pomerantz, J.D., Ms. Karen Rubel, Erin Russell, Ph.D., Faisal Suba, M.D. and Dave Wuest, R.Ph. Ms. Mehta announced there was a quorum. Dr. Edwards, Dr. Manthei, Mr. Pomerantz, Ms. Rubel and Dr. Russell arrived subsequent to the roll call.

Agenda Item 2

**PUBLIC COMMENT**

Dr. Muro asked whether there was anyone in attendance who would like to present public comment. No public comment was received.

Agenda Item 3

**APPROVAL OF MINUTES**

- March 21, 2018 Subcommittee Meeting – Open Session

Senator Hardy moved that the Board approve the Minutes of the March 21, 2018 Subcommittee Meeting – Open Session. Dr. Manthei seconded the motion, and it passed unanimously.

Agenda Item 4

**CONSIDERATION OF GRANTING AUTHORITY TO THE SUBCOMMITTEE CHAIRMAN TO APPROVE THE MINUTES OF THE FINAL SUBCOMMITTEE MEETING ON BEHALF OF THE SUBCOMMITTEE**

Dr. Muro stated this is in anticipation of the final set of minutes, and asked if there was a motion.

Senator Hardy asked if the Subcommittee members would see the minutes before Dr. Muro approved them.

Dr. Muro stated the minutes would be disseminated through email and if there were corrections, the minutes would be revised.

Dr. Manthei moved the Subcommittee grant authority to the Chairman to approve the final minutes on behalf of the Subcommittee. Senator Hardy seconded the motion, and it passed unanimously.

#### Agenda Item 5

### COLLECTION OF MEMBER INPUT AND CONSIDERATION OF RECOMMENDATIONS REGARDING PROPOSED REGULATION R100-17 AND PROPOSED REGULATIONS TO CLARIFY IMPLEMENTATION OF ASSEMBLY BILL 474 (2017)

Ms. Mehta stated at the last meeting, the Subcommittee was discussing Subsection 54 (2)(e), informed written consent and the risks of dependency, addiction and overdose during treatment using a controlled substance. The question was whether an informed consent could cover classifications of medications or whether it had to be for each individual substance.

Ms. Mehta presented the proposed language provided by Mr. Wuest. Ms. Mehta read the proposed language from the handout, Option 1 and Option 2.

Discussion ensued regarding the substantive difference in the language of Option 1 and Option 2. Further discussion ensued about changing from one class of medication to another and whether a new informed consent is required.

Senator Hardy commented the Subcommittee is referencing Sections 53 and 54; however, Section 58 defines Sections 53 and 54 as being for pain. The medications discussed are all for pain referenced in Sections 53 and 54 and defined in Section 58.

Further discussion ensued regarding drug classifications.

Dr. Muro affirmed the Subcommittee is comfortable with the proposed language from the Board of Pharmacy and Option 1 is the one preferred by the Subcommittee. Further discussion is to be had with Mr. Wuest regarding consistency when it comes to the pain management agreement.

Mr. Wuest joined the meeting at 2:23 p.m.

Ms. O'Mara asked what classifications of drugs are being prescribed to treat pain and whether there are more classifications than opioids that would be a classification of medication used to treat pain.

Dr. Muro responded there is one particular class that is not included: Schedule 5, for example, muscle relaxers. He said he would not want to incorporate things that are not already included in the Bill.

Discussion ensued regarding other classifications of drugs and their uses.

Mr. Pomerantz asked Mr. Wuest if he thought there was a substantive difference in the proposed language of Option 1 and Option 2.

Mr. Wuest responded they both serve the purpose, and operate inside the law. He said as we are promulgating regulations, it is better to make them as broad as possible and let the doctors decide how they are going to practice. Option 2 was for doctors if they felt they needed a little more direction.

Dr. Burkhead stated the Subcommittee felt Option 1 was clearer for practitioners to understand. He asked whether there was a way the prescription medication agreement could be incorporated with the same sort of regulations that apply to the informed consent.

Mr. Wuest responded he had not considered that, but certainly, the Board of Pharmacy can look at that.

Dr. Muro asked if there was any further discussion.

Dr. Manthei moved that the Board approve Option 1 of the proposed language from the Board of Pharmacy as a recommendation to the Board of Medical Examiners. Senator Hardy seconded the motion, and it passed unanimously.

Ms. O'Mara moved that the Subcommittee track the same language for the pain medication agreement. Dr. Burkhead seconded the motion, and it passed unanimously.

Ms. Mehta asked if the Subcommittee wanted to discuss the language or discuss the disciplinary regulation.

Dr. Muro suggested the Subcommittee discuss the disciplinary regulation because of what was accomplished at the last meeting, as well as the fact that it had created the biggest fear and misinformation in the practitioner community. Dr. Muro addressed a handout from Senator Hardy regarding the process where a violation is found to have occurred. He said when a notice or complaint is brought before the Board, it takes on a life of its own and goes through a variety of different steps. Before it is determined a violation may have occurred, there may be a letter of concern with feedback to the provider stating a concern something is occurring. This is not reportable to the Data Bank, and is not available for other entities to see. It is an internal item.

Ms. Mehta stated this is not a violation.

Dr. Muro continued when something reaches the point of violation, as addressed in the wording on the handout provided by Senator Hardy, a consent or settlement agreement is made where the physician acknowledges that something has occurred that is a reportable behavior. That is a whole different level of discipline and activity.

Dr. Muro stated he hoped this made sense; he wanted to explain the workflow and the process of the Board of Medical Examiners as far as how things are looked at and how things are handled.

Additional discussion ensued regarding the proposed language and how many violations are preceded by a letter of concern.

Ms. Mehta interjected, providing statistics reported on the Board's website from the Investigative Committees in November. She stated Investigative Committee A considered 109 cases, 6 of those were authorized for formal complaint, 10 were authorized for peer review, 9 requested an appearance, which is short of authorizing a formal complaint, 19 were authorized for a letter of concern, 6 had further follow-up or investigation and 59 were closed. To give the Subcommittee an idea, out of 109 cases that came before the Investigative Committee, the majority were closed without further ado, 19 licensees received letters of concern and 6 cases were authorized for the filing of a formal complaint against the licensee.

Senator Hardy asked which ones were counted as a formal investigation for the Data Bank or a licensee's insurance checkmark.

Ms. Mehta stated the Investigative Committee reports none of those. A case has to go to a formal complaint and ends either in a settlement or an adjudication. Once a settlement or adjudication results in a finding of a violation, that is when it goes to a public reprimand. If there is no finding of a violation, it is simply dismissed.

Discussion ensued regarding investigation reporting/checking the box when asked if you have ever been investigated.

Ms. Mehta further clarified that in the Board of Medical Examiners process, once an investigation has been opened, an allegation letter goes out to the licensee. That is what tells the licensee he or she has to check the box that he or she has been investigated.

Discussion ensued regarding the practitioner being notified when a complaint is received.

Dr. Manthei inquired about the period of time related to the statistics stated by Ms. Mehta.

Ms. Mehta responded the Investigative Committees meet quarterly and these statistics were from their meetings in November.

Dr. Manthei stated the statistics apply to the incidents prior to, but not after, the Bill came into effect, as well as the regulations.

Discussion ensued regarding the fear of the unknown and what the Subcommittee voted on at the last meeting regarding removing this period and leaving it to the discretion of the Board because it already has the authority to take action.

Ms. Mehta said what the Subcommittee voted on was to recommend to the Board to withdraw the regulation and recommend to the Board to promulgate language that is similar to the language promulgated by the Dental Board. That language is one of the handouts.

Further discussion ensued regarding the letters of concern and what constitutes an investigation that requires practitioners to "check the box" when asked if they have been investigated.

Mr. Cousineau explained when the Board establishes jurisdiction, it sends a letter of allegation to the licensee asking for a response within 30 days, as well as any appropriate medical records or demonstrative evidence. Those materials are put together for one of the Board's investigators and ultimately advanced to one of the Investigative Committees. Once the Investigative Committee reviews the packet of information, if its determination is that there is no basis for the initiation of formal disciplinary action, then the matter is closed. As Mr. Cousineau has articulated the last few years, when this matter comes up, if an investigation was opened and the licensee received an allegation letter, the licensee has been investigated.

Mr. Cousineau stated, as an analogy, if he receives a State Bar complaint against him that is ultimately unsubstantiated and he applies in another jurisdiction, he has to disclose that, whether there was any merit to it or not. He said this is no different than if there is a civil court filing and ultimately the matter is dismissed for summary judgment, it is still a civil court filing. These things happen. You cannot deny they happen. He said he understands there may be collateral

consequences, but he has answered the question the same way consistently. The Board has no process in place for it to either seal a record or unring an allegation. He said he appreciates the comments here today; a lot of our practitioners, as well as our Board members, receive allegations, and they have to respond to them. He said in this environment, these are punitive consequences of the times; however, he believes you cannot answer in the negative if you were investigated, if the question asks that.

Further discussion ensued regarding disclosing an investigation on applications honestly and thoroughly.

Dr. Pretzlaff stated we have probably the most engaged, educated group of physicians in the State sitting in these rooms and we do not get it. Other regulations have caused a lot of concern and we need to take this opportunity to at least educate people. He suggested an FAQ as to what this means. The concern is at a very high level and, again, we did not have clarity in this room until just a moment ago what it means. We need to put out some documentation for the physicians at large.

Dr. Muro said the concern is what do we put out and when do we put it out. Admittedly, we need to acknowledge the process is in place and at the same time take advantage of the opportunity we have to address some of these things. The other part of the confusion is that it is misunderstood what the Board of Medical Examiners actually does and how it handles allegations. Violations and allegations are two different things.

Mr. Wuest explained AB 474 and what it requires. He said they get very few complaints from the public saying my doctor is prescribing too many meds for me. AB474 puts the requirement on various people, one of which is the Board that runs the prescription monitoring program ("PMP"). As the Pharmacy Board sees things during their normal course of PMP activities, they are obligated to send that to the licensing board. The majority of that is doctor-shopping behavior, where the doctor may not have any culpability, but the patient's behavior is bad, and they are trying to let the doctor know. They go to the practitioner and law enforcement first and then the Board.

Discussion ensued about the complaints the Board of Pharmacy is required by AB474 to send to the various licensing boards.

Mr. Cousineau referred back to the statistics presented by Ms. Mehta from the Investigative committee's reports, and said he would say 97% are non-prescribing related. The core of the Board's work is malpractice, standard of care, demeanor issues, and the like. He made clear that not every investigation the Board undertakes involves prescribing.

Mr. Cousineau outlined the procedures, prior to January 1, the Board followed in connection with the letters received from the Board of Pharmacy. He outlined the new protocols the Board follows subsequent to January 1.

Mr. Cousineau added the one thing AB474 gives the Board is the ability now, which it did not have in the past, to make a determination as to whether it needs to open a case and actually conduct a full fledged investigation. He said you could argue the point that where the Board sends the preliminary inquiry letter and there is no further inquiry beyond the response back from the licensee, that probably would not rise to the level of an investigation. That is what is important to note about AB474 that he or his designee now has the ability to make the determination whether a preliminary inquiry should go to Investigations, whereas they did not have that before AB474.

Ms. O'Mara asked Mr. Cousineau to clarify if that initial allegation letter referred to is not reportable to the Data Bank and such.

Mr. Cousineau responded until it is directed to an Investigative Committee, his designee or he felt it would not be deemed an investigation or reported that it was inquired into. He said we may need to incorporate some language in the Board's closure letter clarifying that this is not something that would be deemed investigatory in nature.

Further discussion ensued regarding what is reportable, what is deemed an investigation and getting information out to the practitioners.

Dr. Muro asked to get back to the proposed draft and the handout of language from the Board of Dental Examiners.

Ms. Mehta stated at the last meeting, Dr. Burkhead recommended, and the Subcommittee voted, to elect language similar to what the Dental Board had promulgated, which is on Page 5 of the handout. Ms. Mehta read the paragraph that the Dental Board is proposing.

Ms. Mehta then referred to and read the proposed language from the handout of the proposed draft regulation required pursuant to AB 474, Section 15(6).

Discussion ensued about the wording of the proposed language.

Ms. Mehta said if the Board gets to an adjudication, not a settlement, NRS 630.352 says that if the Board, at an adjudication, determines there has been a violation, it shall not issue a private reprimand. That is required of an adjudication. It also seems that by the Legislature telling the Board it has to promulgate some sort of disciplinary regulation, it wanted a little bit of teeth.

Additional discussion ensued regarding the proposed language.

Ms. O'Mara moved that the Subcommittee strike "and" and 1(a)(2). Dr. Hardwick seconded the motion.

Discussion ensued regarding the motion.

Dr. Burkhead restated Ms. O'Mara's motion that the Subcommittee strike "and" and 1(a)(2).

Further discussion ensued regarding the motion.

Ms. O'Mara moved to go forward with the pending motion to strike "and" and 1(a)(2). Dr. Hardwick seconded the motion, and it passed unanimously.

Ms. Mehta stated there were some concerns regarding Section 54(2) and what the informed written consent must contain. She stated the Subcommittee was caught on Subsection (e), which is the risk of dependency, addiction and overdose during treatment using a controlled substance. She stated the language proposed by Mr. Wuest addressed that, and asked whether there were any other concerns on Subsections (f) through (j) that the informed written consent must contain.

No comments were received.

Ms. Mehta said that took the Subcommittee to Section 55(1), what a prescriber must do in order to prescribe for 90 consecutive days or more. The subsections of Section 55 were outlined.

Ms. Mehta asked for any comments on Section 55(1).

Discussion ensued regarding Section 55(1).

Mr. Wuest commented that the intent of the statute was to put the requirement on the doctor, to at least consider whenever the issue was outside his or her particular specialty, that it go to another specialist. Practitioners are operating inside these laws already without thinking of them because it is good practice. It was meant purposely to say "consider"; it does not say you have to refer.

Further discussion ensued regarding Section 55 and defining a specialist.

Ms. Mehta said that brought the Subcommittee to Section 55(2). Subsection (2) was read.

Ms. Mehta asked for comment. No comment was received.

Ms. Mehta read subsection (3). No comment was received.

Ms. Mehta moved on to Section 56(1) and read the section. She asked whether there were any questions or clarifications regarding the language.

Discussion ensued regarding clarification of the language in Section 56(1).

Ms. Mehta continued to Section 56(2) and read the section and the subsections.

Discussion ensued regarding Section 56(2) and its subsections. Dr. Salas asked related to the discussion about requiring government issued ID's and false names. Further discussion ensued.

Ms. Mehta moved onto Section 57. She stated there was a lot of contention with this section because it omits the words "for the treatment of pain." Ms. Mehta read Section 57 and Subsections 1-16. Ms. Mehta stated in summary, the question is whether the patient is using the prescription in the way that it has been prescribed or whether the patient is diverting or using other drugs in a manner that is not prescribed.

Discussion ensued regarding Section 57 and Subsections 1-16.

Ms. O'Mara stated she and a colleague drafted a legal opinion letter pointing out different things in the legislative history that could lead the Legislature to believe this should have only been for pain. She stated they did not have an update, but would reach out before next Subcommittee meeting. She said she was inclined to think they are not going to find that it applies only to pain, and for the Subcommittee's purposes, it needed to put this on the list of things that needs to be clarified in regulation, or smoothed out next year.

Further discussion ensued regarding this section and what the Legislative Counsel Bureau (LCB) may say on the issue.

Ms. Mehta read Section 58(1) and (2). No comment was received.



Ms. Mehta moved onto Section 59 and Section 60, reading both Sections.

Discussion ensued regarding Section 60 and its subsections.

Mr. Wuest stated the Board of Pharmacy has already promulgated a regulation to attempt to clarify this and stay within the law. What the Board has done is opened up a multitude of different possibilities where the practitioner can use his or her judgment to prescribe. It was never intended that if the patients need some treatment, they could not get it. Also, this potentially addresses the issue of whether Practitioner B can prescribe the same drug as Practitioner A, which was never the intent of the law.

Further discussion ensued.

Ms. Mehta referred to Section 61, which references the items needed on a practitioner's prescription.

Discussion regarding Section 61, what is required on a prescription, and pharmacists declining prescriptions.

Dr. Burkhead stated he thought the Subcommittee needed to backtrack a little regarding the motion passed striking language in Section 15(6), proposed disciplinary language, as it was never agreed as a Subcommittee that these would be the regulations that it proposed to the Board.

Dr. Burkhead moved the Subcommittee agree that the motion passed regarding striking language in Section 15(6) would be the recommendation proposed to the Board. Senator Hardy seconded the motion, and it passed unanimously.

Ms. Mehta addressed the Subcommittee regarding what it wanted moving forward. She stated the Subcommittee had addressed the substantive provisions, and there are three sections left, which address what inspectors can request from pharmacists and how to do that.

Ms. Mehta proposed two options. She said staff can put together all the recommendations in a packet, distribute to the Subcommittee members and they can say "yea" or "nay" that this is what they want distributed to the Board and not meet next week. Option 2 is the Subcommittee can meet next week and discuss that packet that the Subcommittee members have already voted on in terms of recommendations to go to the Board of Medical Examiners.

Ms. O'Mara moved that the Subcommittee not meet next week and allow the staff time to compile all the recommendations, and allow her time to get the answer on Section 57, which she can get to staff and they can distribute. The Subcommittee does have a meeting scheduled on May 2nd.

Dr. Burkhead inquired if there was a time frame when the Subcommittee members would receive the LCB determinations.

Senator Hardy stated he asked the LCB (that day) for the codification of all of the things in AB 474 as they related to all of the other things. LCB provided a zip drive he could not open. There are 53 different attachments. The codification exists.

Mr. Wuest said he had spoken with the LCB. The discussions went well and he knew there would be questions. The questions about what the Board was attempting to do revolved around

the fact that they thought the way practitioners worked was you sit down in a very quiet room with the patient, then make the determination you are going to prescribe a controlled substance for pain and then you do the informed consent at that particular time. They struggled with how we restructured it for a group practice, but at the end of the conversation, felt good about it. He explained how practitioners actually behave. They understood, having gone to doctors, and understood the patient fills out the paperwork in advance and then the practitioner goes over it in the room with the patient. They thought that was fine. Conception-wise, they did not have any issue with Section 60. They did not agree with the definition, so he expects them to remove the course of treatment definition but leave the structure of what we said in place. They know it is a priority for everyone in the State. He said their hope is to have it back in 30 days, prior to their next meeting, which is in June.

Dr. Burkhead seconded Ms. O'Mara's motion to cancel the meeting on April 18th and reconvene on May 2nd, and the motion passed unanimously.

Agenda Item 6  
PUBLIC COMMENT

Dr. Muro asked for public comment. No public comment was received.

Agenda Item 8  
ADJOURNMENT

Senator Hardy moved to adjourn the meeting. Dr. Suba seconded the motion, and it passed unanimously. Dr. Muro adjourned the meeting at 4:30 p.m.

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