**NEVADA STATE BOARD OF MEDICAL EXAMINERS**
1105 Terminal Way, Suite 301
Reno, NV 89502-2144

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

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

# * * * MINUTES * * *

## OPEN SESSION R100-17 SUBCOMMITTEE MEETING

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

and videoconferenced to

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 1, Las Vegas, Nevada 89118

*THURSDAY, FEBRUARY 15, 2018 – 2:00 P.M.*

*Subcommittee Members Present at Board Office in Reno*
Paul Edwards, J.D.
Karen Massey, MHA, FACMPE, CPMSM
Catherine O'Mara, J.D.
Erin Russell, Ph.D.
Michael Salas, M.D.
Dave Wuest, R.Ph.

*Subcommittee Members Present at Board Office in Las Vegas*
Victor M. Muro, M.D., Chair
Daniel Burkhead, M.D.
Senator Joseph P. Hardy, M.D.
Rudy Manthei, D.O.
Ms. April Mastroluca
Crane Pomerantz, J.D.
Karen Rubel
Faisal Suba, M.D.

*Subcommittee Members Absent*
Michael C. Edwards, M.D., FACS
Wayne Hardwick, M.D.
Rupesh Parikh, M.D.
Robert Pretzlaff, M.D.

*Staff/Others Present at Board Office in Reno*
Edward O. Cousineau, J.D., Executive Director
Laurie L. Munson, Chief of Administration and Information Systems
Greg D. Ott, J.D., Senior Deputy Attorney General

*Staff/Others Present at Board Office in Las Vegas*
Jasmine K. Mehta, J.D., Deputy Executive Director

Agenda Item 1
CALL TO ORDER AND ANNOUNCEMENTS
- Roll Call/Quorum

The meeting was called to order by Ms. Mehta at 2:04 p.m.

Ms. Mehta took roll call of the Subcommittee members. Not present were Michael C. Edwards, M.D., Wayne Hardwick, M.D., Rupesh Parikh, M.D., and Robert Pretzlaff, M.D. Ms. Mehta stated that Mary Ann Allison, M.D. was present on behalf of Dr. Parikh, and Chike Nzerue, M.D. was present on behalf of Dr. Pretzlaff. She stated that although voting proxies are not allowed, their participation was welcome. She announced there was a quorum.

The Subcommittee members introduced themselves.

Agenda Item 2
PUBLIC COMMENT

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

Agenda Item 3
ELECTION OF SUBCOMMITTEE CHAIRPERSON

Mr. Ott outlined the election process.

Senator Hardy asked if there was a provision for election of a Vice Chair, and Mr. Ott stated the Agenda for this meeting only called for election of a Chairperson; however, election of a Vice Chair could be agendized for the next meeting.

Ms. Mastroluca nominated Dr. Muro for Subcommittee Chairman. Dr. Manthei nominated Senator Hardy for Subcommittee Chairman.

As there were no additional nominations, Mr. Ott stated the nomination process was closed.

A vote was taken on the nominations for Chairman, with 10 votes being received in favor of Dr. Muro and 4 votes being received in favor of Senator Hardy. Dr. Muro was elected Chairman.

Dr. Muro accepted the nomination, and thanked everyone in attendance.

Agenda Item 4
DISCUSSION OF PURPOSE AND ROLE OF THE SUBCOMMITTEE

Ms. Mehta explained that Assembly bill 474 (AB474) became effective on June 16, 2017, for purposes of adopting regulations and performing any administrative tasks necessary to carry out the provisions of the bill. It became effective for all other purposes on January 1, 2018. She explained the provisions of AB474 that require the Board to adopt regulations providing for disciplinary action against a licensee for inappropriately prescribing a controlled substance listed in schedule II, III or IV or violating the provisions of Sections 52 to 58 inclusive, of the Bill.

Ms. Mehta stated the statutory language did not give discretion to the Board to promulgate a regulation. It did not say the Board shall adopt regulations as necessary – that sort of language would have allowed more discretion to the Board to determine whether to promulgate the regulation in the first place.

Ms. Mehta then provided the timeline of the Board's proposed regulation, R100-17.

Ms. Mehta stated the purpose and scope of this body is confined to what the Board of Medical Examiners authorized it to do, which is to make recommendations to the Board of Medical Examiners regarding R100-17 and to the Board of Medical Examiners to make recommendations to the Pharmacy Board regarding proposed regulations necessary or convenient to enforce the provisions of NRS 639.23507 and Sections 52 through 58 of the Bill, inclusive.

Ms. Mehta set forth the regulation-making process. She explained that: (1) a workshop must be held, which was done on January 3, 2018; and (2) a public hearing. The workshop and hearing are to solicit comments from stake holders and the public. No hearing had been held on R100-17. If revisions materially change a proposed regulation, it has to go through the whole process all over again. Ultimately, before adopted, the regulation has to go through the Legislative Commission. The Legislature has the final say on whether a regulation is promulgated.

Ms. Mehta stated concerns were received through the workshop and other input that this proposed regulation would deprive practitioners of their licenses without due process. She explained that due process is: notice to the individual, i.e., a complaint, and opportunity to be heard, i.e., a hearing and an opportunity to defend against evidence presented. She stated it is important for everyone to understand that AB474 specifically requires that before discipline can be imposed, a licensee must be served with a complaint and a hearing must be conducted, just as the Board is required to do now. Nothing in AB474 changes the process that is in place to protect an individual's due process rights.

She explained the proposed regulation was intended to create more certainty for licensees as to what kind of discipline could be imposed for violations of AB474, and that lack of a regulation does not deprive the Board of its mandate to enforce AB474 that is still required under that Bill.

Ms. Mehta stated that concerns were also expressed regarding AB474 itself, not just the disciplinary action provisions, such as the following: clarification of terms, such as "acute pain," "course of treatment," and "initial prescription"; that Section 57 of the bill omits "for treatment of

pain," where other sections refer to "for treatment of pain"; how hospice will comply with the statute and the intersection of federal and state laws applicable to hospice care; clarification of the definition of a bona fide relationship between patient and doctor; how informed consent should be applied – whether only to single providers or to practice groups; and ability to effectuate continuity of care under the Bill.

Dr. Muro opened the floor for comment.

Senator Hardy stated the Subcommittee's recommendations will give hope to the doctors and hope to the patients and that we will still be able to attract people who want to practice in Nevada. He said he agreed with Dr. Muro, and that clarification of definitions was needed. More conversations instead of investigations was what the Bill was designed to do; define what is an inquiry and what is an investigation, good faith before writing a prescription, and treatment of pain.

The consensus of the Subcommittee was a need for clarity of the law and clear definition of certain terms, i.e., work flow, administrative mistakes, valid prescription, individual and group practice consent, unified process, consents and contracts.

Dr. Muro added that the Subcommittee needed to come up with a way of acknowledging the constraints, but also a scenario that allows providers to provide care without fear of misstepping. They are looking to counsel as to what is on the table as options and under what framework the Subcommittee can make recommendations that will hopefully be adopted by respective boards while still allowing care to be delivered. These discussions are scenarios that keep the patient at the center of the discussion and allow the providers to be providers and not get to the point where they punt their responsibility to somebody down the line, such as between hospitals and hospitalists.

Discussion ensued regarding "practitioner," "group practice" and "course of treatment," and defining these terms. Several examples were presented wherein same practice practitioners are seeing the same patient for another practitioner, and the question of how the consent would work in these types of scenarios.

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)

Senator Hardy moved that the patient should be the primary focus of the course of treatment and the group practice, and anyone else who is going to see that patient, and be consistent in the course of treatment, so as to allow that patient, who has already signed the forms, to be treated, whether within the same business model or in an on-call responsibility for that patient. Ms. O'Mara seconded the motion.

Dr. Salas stated if you are covering and you don't have a consent form, you would carry an obligation if you are prescribing a medication to go over the rules, risks and alternatives, and he is not sure he would be comfortable with that.

Senator Hardy clarified that his motion did not preclude a physician from obtaining another consent form.

Discussion ensued regarding the motion.

Senator Hardy further clarified his motion, stating that a group is a group is a group, the patient is the primary thing that determines what the group is treating, whoever the group is, however we define the group, and the course of treatment is the course of treatment that started with somebody.

Discussion ensued regarding the wording of the motion.

Mr. Pomerantz volunteered to draft something in writing that could be provided to the Subcommittee for discussion in order to come to a consensus as to what the language should look like.

Ms. O'Mara said she wanted to take a stab at the language of the motion, and stated: The patient is to be the primary focus of the informed consent so that all providers treating the patient within a course of treatment are covered under the informed consent document.

Discussion ensued regarding the breadth of the informed consent with respect to the providers treating the patient.

Dr. Muro suggested that the motion be amended to ask counsel for the Subcommittee to draft something that achieves the intent with all of its limitations.

Senator Hardy amended his motion to direct counsel for the Subcommittee to make sure that the patient is primordial in all of the discussions that happen within the group that has responsibility for taking care of the patient in the same course of treatment covered by the same informed consent, contract and all the other requirements in AB474.

Ms. Mehta said her recommendation would be that language be available at the next meeting so members of the Subcommittee could vote on it.

Ms. O'Mara seconded the amended motion.

Further discussion ensued regarding the motion and the informed consent.

A vote was taken on the motion, and it passed, with Mr. Wuest and Mr. Edwards abstaining from the vote and all other Subcommittee members voting in favor of the motion.

Discussion ensued regarding defining "bona fide relationship" and "course of treatment."

Dr. Manthei left the meeting.

Senator Hardy moved that "course of treatment" be defined as the initial disease treated and anything secondary to it. Ms. O'Mara seconded the motion.

Senator Hardy clarified his motion was that a course of treatment means one diagnostic finding and assessment and anything secondary related to it.

A vote was taken on the motion, and it passed, with Mr. Wuest and Mr. Edwards abstaining from the vote and all other Subcommittee members voting in favor of the motion.

Discussion ensued regarding the form of the informed consent, and the need for a single form.

Mr. Edwards stated there are sample forms available on the State website, and recommended the Subcommittee review those. Dr. Muro said he thought that would be a great starting point.

Agenda Item 6
CONSIDERATION OF MEETING SCHEDULE

Discussion ensued regarding meeting dates and times.

Dr. Muro moved that the next meeting be set for February 28 from, 2:00 p.m. to 4:30 p.m. Ms. Massey seconded the motion, and it passed unanimously.

Ms. Mastroluca moved that the Subcommittee meet on March 14, March 28, April 11, April 25 and May 9, as needed.

Discussion ensued regarding the proposed date of March 28.

Ms. Mastroluca amended her motion to replace the date of March 28 with March 21, and to include that the meetings would begin at 2 p.m.

Ms. O'Mara seconded the motion, and it passed, with all Subcommittee members voting in favor of the motion.

Discussion ensued regarding how to define a good faith effort to obtain a patient's medical records.

Senator Hardy moved that a good faith effort to obtain medical records includes, at a minimum, the Prescription Monitoring Program. Dr. Muro seconded the motion, and it passed. Discussion followed, indicating confusion regarding the subject of the motion.

Agenda Item 7
PUBLIC COMMENT

Dr. Muro asked whether there was anyone in attendance who would like to present public comment.

Weldon Havins, M.D., J.D., stated that some of this discussion would be answered by looking at the Bill and some of the suggestions were contrary to the plain language of the law.

Dr. Russell left the meeting.

Agenda Item 8
ADJOURNMENT

Ms. Mastroluca moved to adjourn the meeting. Dr. Muro seconded the motion, and it passed unanimously. Dr. Muro adjourned the meeting at 4:31 p.m.

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