

MINUTES

MEETING OF THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

1:00 PM FRIDAY, NOVEMBER 8TH, 2002

GRANT SAWYER STATE OFFICE BUILDING
555 E. WASHINGTON AVENUE
ROOM 4100
LAS VEGAS, NV 89101

**I. CALL TO ORDER AND APPROVAL OF MINUTES OF AUGUST 24TH, 2002
MEETING AND SEPTEMBER 5TH 2002 SPECIAL MEETING.**

Chairman Manthei called the meeting to order at 1:23 PM.

Present included:

Rudy Manthei, D.O., Chairman, Gary S. Mono, D.O., Secretary-Treasurer,
Pamela Parenti, Member, Paul H. Mozen, D.O., (participated telephonically),
Peter J. Licata, D.O., was absent for this meeting.

A quorum being present, business was conducted.

Others in attendance included

Larry J. Tarno, D.O., Executive Director, Trey Delap, Deputy Executive Director,
Ashley Carr, Investigator, Charlotte Bible, Esq., Deputy Attorney General.
Denise Selleck-Davis of NOMA, and Mark Witt, D.O.

Motion to accept minutes of August 24th and September 5th meeting made by Dr. Manthei,
seconded by Ms. Parenti and passed unanimously.

II. EXECUTIVE DIRECTOR'S REPORT (Discussion/Action)

Larry J. Tarno, D.O., Executive Director

Trey Delap, Deputy Executive Director

A. Renewal Update

Mr. Delap reported on the status of renewals to date. Mr. Delap reported that the licensees were complying with the additional questions on the application regarding reporting malpractice reports. Mr. Delap reported that there were numerous inquiries regarding the CME requirement change effective 2004.

B. Financial Report

Dr. Tarno presented and reviewed the audit report for FY's 2000 and 2001. Dr. Tarno reported that the accountant was in possession of the necessary materials to conduct the next audit. The current balance reported was around \$142,000.00. Dr. Tarno estimated an additional \$150,000.00 in renewal application receipts.

C. Report on attendance at Administrators in Medicine (AIM) Meeting in Columbus.

Mr. Delap reported on his attendance on the AIM technology summit in Columbus Ohio. He reported that there were several presentations on states engaging in physician profiling including Florida and Virginia. Dr. Manthei asked about physician profiles and Mr. Delap summarized the information provided in a physician profile. Mr. Delap reported that although many of the products presented were out of the price range of our Board, however, the ideas could be augmented to benefit our licensee population.

Ms. Parenti talked about website utilization and public information regarding services available on our public website.

Dr. Mozen volunteered his time to help develop our technological capabilities.

D. Report on attendance at Federation workgroup on Common License application.

Mr. Delap reported that he was asked to participate in the FSMB common licensure application among 11 other executives from other medical boards. Mr. Delap noted that he was the only representative of an independent osteopathic Board. Mr. Delap reported that this workgroup is part of a FSMB initiative to increase license portability.

III. PREHEARING CONFERENCE IN THE MATTER OF THE COMPLAINT AGAINST GARY R. LUTZ, D.O. OR CONSIDERATION OF SETTLEMENT AGREEMENT (**NOTICED FOR CONSIDERATION AT 2:00PM) **(Discussion/Action)**

Gary Mono, D.O, Investigating Board Member was represented by Charlotte Bible, Esq., Deputy Attorney General

Gary Lutz, D.O., and or his Counsel, Frank Cremen, Esq.

Jennifer Carvalho, Esq. Deputy Attorney General acted as Board Counsel for this matter.

Prior to the filing of the formal complaint, Dr. Lutz was ordered by Dr. Mono to have a psychological/psychiatric evaluation conducted by Dr. Jerry Howle. Dr. Howle's concluded that Dr. Lutz was safe to practice osteopathic medicine so long as he remains on medication to treat his underlying psycho-medical conditions.

Ms. Bible reported on the filing of a complaint alleging two counts; first count was a professional incompetence a violation of NRS 633.511 (5). Count two was for unprofessional conduct under NRS 633.511 (1)(f). Following the filing of this complaint, a settlement was drafted through discussions with Drs. Mono, Lutz, and Ms. Bible, and Mr. Cremen.

Considering Dr. Howle's evaluation, a settlement agreement was drafted for the Boards consideration. The terms of the settlement were read for the record. Dr. Lutz's license is conditioned and provides for ordering Dr. Lutz to obtain and maintain psychiatric treatment, reimburse Dr. Howle and the Board for costs associated with prosecution of this complaint, and for quarterly reports from Dr. Lutz's treating physicians outlining progress in his treatment.

Dr. Mono concurred in the settlement agreement and reified that he had thoroughly reviewed the evidence. He supported this settlement as it addresses the problem yet does not close the book on the case should the Board be asked to address this issue again.

Mr. Cremen noted that the respondent had read the agreement and supported to it. Dr. Manthei asked Dr. Lutz whether or not he has continued psychological treatment since moving to Nevada. Dr. Lutz stated that he was not currently under treatment but felt that engaging in treatment with a psychiatrist recommended by Dr. Howle would help him.

Dr. Manthei asked what type of practice Dr. Lutz was engaged in. Dr. Lutz stated that he was seeing a variety of patients including some general practice and personal injury. Ms. Parenti asked about Dr. Lutz's contact with female patients. Dr. Lutz responded that he had several bilingual medical assistants and stated that he would have a female surrogate during gynecological exams and that he has never been without a surrogate present during a gynecological exam.

Dr. Manthei asked if Dr. Mono if he felt the settlement was sufficient to address the issues. Dr. Mono stated that he thinks the monitoring will be sufficient but Dr. Lutz must be closely monitored.

Dr. Tarno asked who would be conducting the monitoring. Ms. Bible stated that the treating physician would report to the Board on a quarterly basis. Failure to supply a report would be a violation of the order.

Dr. Manthei moved to accept the settlement agreement, seconded by Ms. Parenti. Dr. Manthei and Ms. Parenti offered for the record that they trusted Dr. Mono's determination in this case and appreciated his work in this matter. Motion carried unanimously.

IV. HEARING: CONSIDERATION OF THE SETTLEMENT AGREEMENT IN THE MATTER OF THE COMPLAINT AGAINST BRIAN FINKEL, D.O. (Discussion/Action) (NOTICED FOR CONSIDERATION AT 2:00PM)**

Charlotte Bible, Esq., Deputy Attorney General representing Gary Mono, D.O., Investigating Board Member.

Brian Finkel, D.O., participated telephonically and was represented by Kirk Hendrick, Esq., Attorney for the Respondent.

Jennifer Carvalho, Esq., Deputy Attorney General Acted as Board Counsel

Ms. Bible read the charges alleged and outlined in the complaint. Ms. Bible noted that Dr. Finkel was awaiting trial in Arizona for criminal charges to begin in January. A settlement agreement had been negotiated between the Investigating Board Member, Dr. Finkel, Ms. Bible, and Mr. Hendrick. The agreement includes that Dr. Finkel shall surrender his license to practice in the State of Nevada. The agreement is not an admission of guilt for the charges.

Mr. Hendrick stated that he agreed with the terms of the agreement, that Dr. Finkel understands the term of the agreement. Mr. Hendrick requested that the record reflect that Dr. Finkel's absence from this proceeding was due to house arrest and should in no way reflect a lack of respect for the Nevada Board.

Dr. Manthei moved to accept the settlement agreement, seconded by Ms. Parenti. Ms. Parenti, Drs. Manthei and Mozen all voted aye, motion carried.

V. REQUEST BY RICHARD M. TAYLOR, D.O. TO APPROVE OFFERED SUBMISSIONS AS SATISFACTORY CME OR TO CONSIDER WAIVER OF CME REQUIREMENTS FOR THE YEAR 2002 (Discussion/Action) (NOTICED FOR CONSIDERATION AT 2:00PM)**

Louis Test, Esq., represented Richard Taylor, D.O., via telephone.

Upon request of the respondent, the Board shall consider Dr. Taylor's submissions as satisfactory for the CME requirement for renewal of his license for the year 2001 (renewal year 2002). The Board may also consider a waiver of the CME requirement for just cause as petitioned by the respondent.

Mr. Test requested that the Board waive the CME requirements for they calendar year 2002 for Dr. Richard Taylor due to disability pursuant to NRS 633.481 (2). Mr. Test attested that Dr. Taylor attended a medical conference in Anaheim, CA.

Dr. Taylor submitted a listing of numerous articles of medical journals that he claims to have read. He submitted this list in hopes that it would satisfy the CME requirement for 2001(renewal year 2002). However, upon review of the statute it was determined by Dr. Tarno that the Board does not have the *de jure* authority to accredit activities for CME credit. Mr. Taylor submitted the requirements for CME credits as outlined in an AOA document where it is indicated that the AOA will grant ½ credit for every article read. If Dr. Taylor submitted his list of journal articles read to the AOA, the AOA may have granted enough CME's to satisfy the continuing education requirement as outlined in NRS 633.471 (1)(e). However, Dr. Taylor was unable to receive CME credits from the AOA therefore his attorney was requesting a waiver due to disability.

Dr. Tarno recommended that the Board grant a waiver of the CME requirements for 2001.

Dr. Mono motioned to grant a waiver of the CME requirements for the calendar year 2001, Ms. Parenti seconded, motion passed unanimously.

VI. CONSIDERATION OF REQUEST FROM MARK WITT, D.O. FOR ADVISORY OPINION OR ATTORNEY GENERAL OPINION ON THE PRACTICE OF MEDICINE BY A LIMITED LIABILITY COMPANY

Mark Witt, D.O.

Dr. Witt reviewed his request for clarification of the current Attorney General's opinions on the corporate practice of medicine doctrine. His primary question for a physician to practice medicine as a Limited Liability Company, secondly, was it legal for a physician to practice medicine as an employee of a LLC that is not owned by physicians.

Ms. Bible reported that NRS Chapter 633 provided that licensees may practice within a corporation as authorized by law NRS 633.131 (2) (C). Dr. Witt referenced a 1977 Attorney General Opinion addressing the corporate practice of medicine, this AGO was updated in 2000 and noted the exceptions to the corporate practice of medicine.

Dr. Witt reported that when he took employment at Fremont Medical Center he was under the assumption that he was working under Dr. Quershi's professional corporation. However, he later discovered that Fremont Medical Center is a LLC owned in part by non-physicians. Dr. Witt's reiterated that his primary concern that if LLC's are not owned or controlled by physicians, the lay people may be influencing the practice of medicine.

There was some discussion among Ms. Bible, Chairman Manthei, and Dr. Tarno regarding the corporate practice of medicine. Dr. Manthei reified the position that regardless of the employment situation of a physician the physician remains liable for the quality of care they are providing to their patients regardless of possible or real influence coming from lay owners of the physician's employer.

Ms. Bible ultimately concluded that further research into these issues should be conducted to clarify the scope of operations of LLC's, however; she requested a Board motion to conduct the research.

Dr. Manthei requested that Ms. Bible to research this issue further, and further suggested that a workshop on this issue be conducted involving the Nevada Medical Board to address the corporate practice of medicine doctrine. Dr. Tarno noted for the record his appreciation that Dr. Witt brought this concern to the attention to the Board and in doing so exposed himself to potential discipline or liability from the Board. Ms. Parenti also commended Dr. Witt on soliciting the Boards opinion on this timely issue.

VII. CONSENT MOTION TO GRANT LICENSURE (Discussion/Action)

Larry J. Tarno, D.O., Executive Director

Under this item the board may consider the recommendations of the Executive Director to grant licensure to the below listed applicants. The board may remove any applicant's name from the consent motion, but may not discuss the contents of the application for licensure without the applicant present following proper notice pursuant to the open meeting law.

David J. Bennett, D.O., Emergency Medicine/Family Practice

Ian Hassin, D.O., Family Practice

Jeffrey Sheedy, D.O., Orthopedic Surgery

John Tomicic, D.O., General Surgery/Surgical Oncology

Eric E. Goldberg, D.O., Psychiatry

Dr. Manthei moved to consent to grant licensure, seconded by Dr. Mono, passed unanimously without objection.

VIII. CONSIDERATION OF COMPLAINT INVESTIGATION AND REVIEW

PROCEDURE. (Discussion/Action)

Gary S. Mono, D.O., Secretary-Treasurer

Trey Delap, Deputy Executive Director

Ms. Carr reported that there were 55 cases open 22 were pending review by experts and were awaiting additional information and medical records on 23 and 4 were currently before the Board for discipline.

There was extensive discussion regarding the proposed complaint and investigation procedure. Dr. Manthei expressed his desire that non-Board member physicians review complaints as a way of determining potentiality of future Board membership. Ms. Bible reported that outside physicians reviewing complaints would need to be contracted by the board with each contract being approved by the Board of Examiners of the Department of Administrator.

Ms. Parenti commented on her attendance at the FSMB Board Investigator workshop and noted that she felt that it is very important to have standards in place for the processing of complaints for the benefit of the staff and the Board itself.

The Board agreed that rotating review of complaints would expedite the review process. The public is not being served by complaints not being processed in a timely fashion. Dr. Manthei stated that a priority of the Board is to process and adjudicate complaints, as it is the Board's most important function to protect the public.

Dr. Manthei moved to take the un-reviewed cases to be divided by the Board members for review and returned within two weeks time, seconded by Dr. Mono, passed unanimously.

Dr. Manthei asked the Attorney General's office and the Executive Director's office look into setting up a system of recruiting and utilizing outside physicians for complaint review to evaluate potential future Board members.

Mr. Delap reviewed the proposed complaint and investigation procedure. Mr. Delap stated that with the new reporting requirements for malpractice claims, settlements, and judgments, that each report will essentially be treated as a complaint. It is anticipated that this will increase the number of complaints. Mr. Delap also stated that the number of complaints is not indicative of the seriousness of the complaint.

Dr. Mono stated that the proposed procedure was very clean and presents format to work by. It presents a clean orderly manner to proceed from the complaint to the end, which we don't have. Further, Dr. Mono stated that the proposal takes the handling of a complaint from beginning to end.

Dr. Manthei suggested that this procedure be implemented and placed on the agenda for the next meeting to critique and review the procedure.

The Board supported Dr. Tarno reviewing each complaint and making recommendations due to his experience as a physician. Dr. Manthei noted that this works only when the Executive Director is a physician. However, Dr. Manthei also stated that if the Executive Director is spending additional time on complaint review, a salary adjustment should be considered.

IX. PRESENTATION FROM NOMA REGARDING AOA CREDENTIALING SERVICE (Discussion/Action)

Denise Selleck-Davis, Executive Director of the Nevada Osteopathic Medical Association

Ms. Davis offered a presentation on the American Osteopathic Information Association on that organization's physician credentialing/profiling service. Ms. Davis provided a single copy of an AOIA report for the Board's review.

Ms. Davis referenced the newly designed Board Application reflecting the Board's adoption of requiring new applicants for osteopathic medical licensure to have their core credentials verified by the Federation Credentials Verification Service (FCVS). Ms. Davis noted that the FCVS is a subsidiary of the Federation of State Medical Boards (FSMB) who is the parent company of the USMLE. She stated that the FSMB does not have a working relationship with the AOA regarding credentials verifications. She noted that the FCVS costs the applicant \$250.00 to enroll and an additional fee to verify passage of the NBOME testing scores.

Ms. Davis requested that the Board accept the AOIA credentialing report as well as the FCVS report. Ms. Davis stated that that AOIA meets the requirements for primary source verification.

Dr. Tarno stated that personally he felt that the AOIA would be sufficient. Ms. Bible noted that in order to accept the AOIA, a regulation change would have to occur as the newly adopted regulations provide for the requirement that a new applicant submit a FCVS report. Ms. Bible informed the Board that changing the regulation would require notice and workshops.

Mr. Delap noted certain omissions of the AOIA report including lack of certified copies of medical school transcripts, diplomas, and verification of identity. Mr. Delap referenced the statutory requirements for licensure and noted that the Board is obliged to verify and ensure that the applicant physician meets the minimum standards as outlined in the law.

Dr. Manthei asked if the AOA would attend a meeting to discuss the strengths and weaknesses of the AOIA report and the FCVS report. Ms. Davis stated that someone from the AOA would come out for such a meeting. Dr. Manthei suggested that such a workshop be scheduled. Dr. Manthei so moved, Ms. Parenti seconded, motion passed unanimously.

X. CONSIDERATION AND REVIEW OF DRAFT MEDICAL JURISPRUDENCE TEST AND APPLICATION PROCEDURE

Trey Delap, Deputy Executive Director

A. Review the draft medical jurisprudence test.

Mr. Delap reviewed the draft medical jurisprudence test to the Board. Mr. Delap asked for the Board's feedback on the content of the test. The Board felt the test was fair and acceptable. Dr. Manthei outlined the intent of the test was to expose applicant physicians to the applicable laws and regulations. The Board supported the vignette/essay portion of the test because it requires a thought process and serves as an evaluative tool of the applicant's ethical thought process.

Ms. Bible stated that statutorily empowered to require the test as part of the application process. Ms. Bible felt that the test was indeed passable by reading the statutes and regulations. Ms. Bible suggested that a standard answer be developed for the vignette portion of the test. Although there may not be an exact correct answer, there should be some commonality in what the vignettes are trying to evaluate from the applicant physicians' thought process.

Dr. Manthei suggested that answers to the vignettes be submitted to the Board office for compilation into a standard answer.

B. Review standards in reviewing applications for licensure.

Mr. Delap reviewed the revised application forms and discussed the new application review procedure. The procedure includes the review of the application and recommendations of the Executive Director for licensure and implementation of the FCVS reports, and the jurisprudence test. The motion was tabled until the next meeting for final approval of the test and the new procedure.

Mr. Delap presented the criteria used by the Executive Director in reviewing and recommending applicants for licensure. The Board reviewed the recommended guidelines. And struck items 2 and 14 of the proposed guidelines.

Drs. Manthei and Mono suggested that if the Executive Director does not recommend an application for licensure, then the application should be referred to a Board member for consideration before the Board.

Ms. Bible suggests that the Board needs to give the Executive Director explicit directions when they would like to have a personal appearance by an applicant for licensure. This is a necessary step towards the Board's ultimate intent of streamlining the licensing process.

Dr. Manthei suggested that there be at least one Board member on rotation to review applications.

Dr. Manthei requested that the application process be placed on the agenda for the next meeting for further discussion with an explicit recommendation in the application process and including provisions for stale applications.

XI. LEGAL REPORT (Discussion/Action)

Charlotte Bible, Esq., Deputy Attorney General

Ms. Bible reported on her attendance of the Administrators in Medicine (AIM) New York annual meeting. She noted that there were some interesting topics regarding the handling of complaints and adjudication of complaints by medical boards throughout the country.

She noted that New York has a provision in their statute providing for and Administrative Warning of a licensee when a situation arises that may not rise to the level of formal complaint, however, certain issues discovered through the investigation of the complaint, that the Executive Director may have a meeting with the licensee discussing the situation. Drs. Mono, Manthei, and Tarno liked the idea of providing for informal conferences with licensees.

Dr. Manthei suggested that the Board take a more aggressive role of regulating physicians and enforcing the statute more strictly.

XII Matters of Future Agenda (Discussion/Action)

Dr. Mozen suggested discussing teleconference capabilities.

Ms. Parenti suggested a legislative update at the next meeting.

XIII Public Comment Period

Dr. Manthei asked for public comment, and there was no public comment offered.

XIV Next Meeting Date Set and Adjourn (Discussion/Action)

The date for the next Board meeting was set for Saturday, January 18th, 2003

Ms. Parenti moved to adjourn, Dr. Manthei seconded, without objection, motion passed unanimously.