

MINUTES

**MEETING OF THE NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE,**

PUBLIC WORKSHOP

AND

INTENT TO ACT UPON AMENDMENTS TO REGULATIONS

8:30AM SATURDAY, AUGUST 24TH, 2002

AIRPORT PLAZA HOTEL

CONFERENCE CENTER

1981 TERMINAL WAY

RENO, NV 89502

775-348-6370

I Call to Order and Approval of Minutes of May 18th, 2002 Meeting:

Dr. Manthei called the meeting to order and called roll. Persons present included: Rudy Manthei, D.O., Chairman; Peter Licata, D.O., Vice-Chairman; Paul Mozen, D.O.; Pamela Parenti; Gary Mono, D.O., Secretary-Treasurer; George Campbell, Esq., Deputy Attorney General; Charlotte Bible, Esq., Deputy Attorney General; Larry Tarno, D.O., Executive Director; Trey Delap, Deputy Executive Director; Ashley Carr, Investigator; and Denise Selleck-Davis.

Motion to accept the minutes of the May 18th, 2002 meeting, by Dr. Mozen, seconded by Dr. Licata, motion passed unanimously.

**II STATUS CHECK: In the matter of the Complaint against BRIAN FINKEL, D.O.
(Case # FE-02-01):** (Discussion/Action)

(Kirk Hendrick, Esq. Represented Dr. Finkel as his counsel via telephone).

Ms. Bible briefed the board on the two count complaint against Dr. Finkel for disciplinary action taken in Arizona as well as lying on his renewal application form. This matter was continued from the last board meeting due to the fact that Dr. Finkel wanted to answer the charges in the complain, however, is unable to leave the state of Arizona and pending a criminal trial.

Ms. Bible reported a negotiated settlement agreement regarding Dr. Finkel voluntarily surrendering his Nevada license while preserving the board's rights in the matter. Ms. Bible stated that a draft of the settlement would be ready for the board's consideration at its next meeting.

Mr. Hendrick reported that Dr. Finkel's desires are to focus on the matter at hand in Arizona and should Dr. Finkel choose to return to Nevada to practice he would answer to the charges in the complaint.

Dr. Mono, the investigating board member in the complaint reported that he had been in negotiation with Ms. Bible regarding the terms of the stipulation and felt that settlement was prudent in this matter. This final stipulation would be coming before the board for its approval at its next meeting.

III HEARING: Consideration of Compliance with Terms of Probation of RICHARD M. TAYLOR, D.O. (Case# AG-01-06)

(Dr. Richard Taylor and his counsel Mr. Louis Test, Esq., were present for this portion of the meeting.)

Ms. Bible presented these issues for the Board's consideration under this agenda item. This matter was continued from the previous Board meeting. First, the Board ordered that Dr. Taylor contract with a psychiatrist, who would attend to his patients and continue care for his patients in the event that Dr. Taylor relapses. Secondly, there was concern from the Diversion program that Dr. Taylor was not complying with the terms of the monitorship namely failing to make himself available to the Diversion program for random drug screening. Ms. Bible entered as evidence a letter from Carol Bowers of the Diversion program indicating that Dr. Taylor was currently in compliance with the full terms of the Diversion contract.

Concerning the condition that Dr. Taylor contract with a psychiatrist to care for his patients, Ms. Bible entered into evidence a letter from Tim Coughlin, MD, indicating that Dr. Coughlin would facilitate the transfer of the care of Dr. Taylor's patients should Dr. Taylor relapse.

The Board began discussing the prospect of Dr. Coughlin's willingness to assist Dr. Taylor. Ms. Parenti raised the issue of Dr. Coughlin's expertise to handle psychiatric care. Dr. Mozen asserted that Dr. Coughlin is an honorable physician and trustworthy. Dr. Mono suggested that the covering physician be a physician practicing in the same area as Dr. Taylor.

Dr. Manthei raised the concern that what the Board ordered was even possible considering the current medical/legal situation in the state. Dr. Taylor claimed he has attempted to get a written agreement from a psychiatrist to no avail. Neither Dr. Taylor nor his attorney produced any documentation substantiating their claim that they had attempted to secure a contract with another psychiatrist. Dr. Manthei made the motion to accept Dr. Coughlin's letter as satisfying the practice coverage requirement of the order, seconded by Dr. Licata, passed unanimously.

Dr. Manthei asked about the other terms of the order, and Dr. Tarno indicated that the CME requirement had not been met for the preceding renewal year. Although this was not a part of the order, Dr. Taylor never met the CME requirement for renewal. Dr. Taylor had stipulated in a letter from his counsel a listing of courses Dr. Taylor planned on taking to earn the CME credits, but he never did it. This revelation sparked extensive discussion regarding the CME's. It was ultimately decided that Dr. Taylor must make up for the 35 CME credit deficit from the preceding renewal year in order to act under his license. Dr. Taylor claimed that he was unable to get CME's due to financial difficulty. However, the board offered suggestions for some sources of CME credit that would be low cost.

Dr. Mozen moved to lift the suspension, seconded by Dr. Mono, the board discussed the motion at length. The motion passed 4-5 with Dr. Licata voting against the motion.

The board then discussed that the suspension may only be lifted upon submission of satisfactory evidence of receipt of 35 CME credits necessary for renewal for 2002. The board discussed the issue that Dr. Taylor would need to make up the 35 CME's from last year as well as earn 35 additional CME's in order to renew his license for 2003. Mr. Test stipulated that he and his client would work on the CME requirement and if there were any further disagreements that the issue would be brought before the board at its next meeting.

IV HEARING: Consideration of Revisions to Board Order against LEO J. CAPOBIANCO, D.O. (Discussion/Action)

Dr. Capobianco was present for this action item. Ms. Bible presented the item and explained that the Board needed to explicate the terms of the Board's previous order regarding the monitorship component of the Board's order. Ms. Bible recommended to the board that monitoring should be related to the charges in the original complaint.

Dr. Manthei asked about the type of practice Dr. Capobianco was currently involved in. Dr. Capobianco stated that he works with Dr. Raymond Mondora and their practice is primarily medical weight loss and family practice, although, he would be expanding into the area of personal injury. Further, Dr. Capobianco is no longer a provider for Medicare and his practice is largely cash-based.

The board discussed the monitorship. Dr. Tarno offered to be the monitor at no charge. The board agreed. Dr. Mono moved that Dr. Capobianco be monitored for 6 months and that the monitor would report back to the board. Dr. Mozen seconded, the motion passed unanimously.

V Public Workshop to Solicit Comments on Changes to Nevada Administrative Code Chapter 633 (Discussion/Action)

Dr. Tarno and Ms. Bible, presented additional amendments to NAC 633. This was the first time that these proposals had been considered by the board. The board discussed the definition of gross medical negligence proposed. Dr. Licata raised the issue that there was inconsistency in the definition. Mr. Delap reported that the law requires that the board adopt a definition of gross medical negligence for the purposes of licensure when an applicant for licensure has had action taken in another jurisdiction prior to applying for licensure in Nevada for gross medical negligence. There was extensive discussion on the question of the definition of gross medical negligence and the concern of the board having the opportunity to evaluate the action taken by the other jurisdiction.

Ms. Bible suggested that the board table this item for further consideration. The other provisions of the second draft of proposed regulations were tabled by the chairman to allow for the board to consider the amendments at a later board meeting.

VI Intent to Act upon the Amendments to Regulations (to be heard at 10:00 a.m. or as soon thereafter as the Board may consider this item): (Discussion/Action)

Ms. Bible reviewed each section of the proposed regulations as amended by the Legislative Counsel Bureau. Ms. Bible explained the changes made by the LCB and offered recommendations for small changes to the LCB's draft.

The main topics included in the draft regulations concerned further definitions of unprofessional conduct, disposition of medical records, explication of the hearing process, changes in the CME requirement for renewal, and changes in the licensing/application procedure.

All sections except for sections 7 and 20 of the proposed regulations were discussed and approved by motion made by Dr. Manthei, seconded by Dr. Mozen, passed unanimously. The board chose to table sections 7 and 20 of the proposed regulations for further consideration at a special telephone meeting to be held at a later date to be determined.

VII Executive Directors' Report/Financial Report (Discussion/Action)

Dr. Tarno presented the financial report and directed the board members to the balance sheet report contained in their board books.

Dr. Tarno reported that the audit was currently being conducted for the fiscal years, 98-99, 00-01, and 01-02. The audit should be available by the next board meeting.

Mr. Delap referred the board to his report on the impact on the board of the amendments to NRS chapter 633 made by the Legislatures special session and Assembly Bill 1. Mr. Delap briefly recounted the expanded reporting requirement of several entities to the board and the

disposition of those reports. Mr. Delap also briefly surveyed the boards reporting requirements to the Governor's office and the Legislative Counsel Bureau.

Mr. Delap and Ms. Bible discussed certain provisions of the law regarding other provisions of the law and adopting certain regulations effectuating the changes of the law.

Dr. Manthei inquired as to the technological capabilities of the office to handle the information gathered pursuant to the new reporting requirements. Dr. Licata inquired as to the electronic scanning of the board's current records. Mr. Delap stated that this might be a possibility of the future, but not currently being done.

Mr. Delap highlighted the difference between the definitions of malpractice explicated in AB 1 versus the already existing definition in chapter 633 of the NRS. The definition of malpractice in AB 1 is considerably broader than our board's definition. The board discussed these differences at length. And considered the possibility that in the future the board may be faced with reconciling these two definitions.

Dr. Manthei asked if it was the opinion of the board to not take a formal position regarding to the provisions of the bill. The economic condition of the professional liability insurance crisis is outside of the jurisdiction and the scope of authority of the board. Therefore, it would not be necessary for the board to make a position concerning the professional liability insurance issue.

AB 1 provides more information to the board for its consideration. Dr. Mozen asked if every action concerning a physician's hospital privileges would be reported to the board (i.e., temporary suspensions for failure to sign medical records). Mr. Delap stated that most likely those reports that are submitted to the National Practitioner Databank would be the same as those submitted to the board. Currently, most temporary privilege suspensions are not reported to the board and it would seem overbroad to expect them to be reported under the provisions of AB 1.

Mr. Delap reported that the Federation of State Medical Boards will be conducting an investigator workshop and a board member workshop the first week of November in Las Vegas. Mr. Delap reported that Ms. Carr will be attending the investigator workshop and invited each board member to seriously consider attending the FSMB's board member workshop.

Mr. Delap reported on his attendance at upcoming training meetings of the Administrators in Medicine to be held in Columbus, OH, and New York City, New York, covering the topics of technology, investigations, and prosecutions. Mr. Delap also reported that he would be asked to serve on a workgroup of the Federation concerning the development of a common licensure application.

Mr. Delap also reported that we currently had 43 open complaints, and some that looked like they would result in adjudication by the board. Mr. Delap reported that the number of these complaints is a function of delays in investigation prior to the hiring of Ms. Carr. Also, that the number of complaints received has increased over the past year.

VIII Presentation of Report Regarding Measuring and Ensuring Continued Medical Competency for the New Millennium (Discussion/Action)

Dr. Mozen presented his report regarding the board's responsibilities in ensuring continued medical competency of its licensees. Dr. Mozen's report explicated three main areas for the evaluation of physician competence including; initial licensure, CME, disciplinary information pursuant to complaint. Dr. Mozen stated that it is the obligation of the board to address quality of care issues. He suggested that the medical boards should use the powers of the board and take a proactive approach to educate its licensees on quality of care issues.

Dr. Mozen reified his position that CME's are an integral part of the physician's maintenance of medical competence. He noted that 19 states do not require CME credits for re-licensure, while 35 other states do. Dr. Mozen noted the four elements of high quality CME courses.

Dr. Mozen noted that it is difficult to measure that a physician is truly competent. One who completes the necessary pre-requisites to become a physician (medical school, testing, etc.), possess the necessary information to perform as a physician. At some point there must be a level of trust established that a physician will conduct themselves in an ethical manner. It is difficult to test to a level of certainty that a physician does in fact possess the ethical character to conduct them in an ethical manner.

Dr. Mozen also covered other avenues of measuring competency including specialty board certification, the FSMB's PLAS system, SPEX/COMVEX testing, and the Colorado CPEP program. The question of competency may not be a lack of knowledge; it may extend into other areas that are difficult to measure in any other way except discipline for unprofessional conduct. The best way to ensure competency is to thoroughly and continually verify the credentials of licensed physicians.

Dr. Manthei discussed his recommendation that the application process be changed to require that a physician have passed a comprehensive test within 10 years preceding renewal. Dr. Manthei suggested that the compulsory interview no longer be required, that the applications be reviewed by the Executive Director and submitted to the board with a recommendation. However, if there are problems with the application, those should be explicated and the board shall have the opportunity to review the application. Further, Dr. Manthei requested that a Nevada Jurisprudence exam be drafted and given to applicants for licensure.

IX Consideration of Financial Grant for the development of a Nevada Law test to be developed for Applicants for Osteopathic Medical Licensure in Nevada.

(Discussion/Action)

Dr. Manthei recommended that a Nevada Jurisprudence exam be drafted and administered to each applicant for licensure. There was extensive discussion regarding the licensure process. Dr. Manthei moved that interview process be changed to include that the interview would no longer be required, the Executive Director would review the application and recommend licensure, without objection, and then the applicant would be required to pass a jurisprudence exam to be drafted by the Executive office. If there were problems discovered in the

application process, the applicant would be required to appear before the board for an interview, also that an appropriation of funds be made available for the development of this test, seconded by Dr. Mono, motion passed unanimously. The Board felt that this test should be in place prior to the abandonment of the compulsory interview requirement.

Dr. Manthei requested that the next meeting provide a draft of this test.

XI Consideration of Recommendations to the 72nd Nevada Legislature Regarding Changes to NRS 633 and for Other Purposes

Mr. Delap reported on the numerous discrepancies within in the NRS concerning the legal standing of licensees of the allopathic medical board versus the licensees of the osteopathic medical board. Mr. Delap requested the board's permission to prepare recommendations for the legislature's consideration to correct these discrepancies. Dr. Manthei suggested that the board review these changes and take some time to find out what the options are to correct the discrepancies in the statutes. This matter was tabled for consideration at a special meeting to be determined. Ms. Bible and Mr. Delap are to find out more information from the LCB on the course of action and report back to the board.

Mr. Delap queried the board on its interest in soliciting the legislature to provide statutory language allowing for the board to access the NCIC for criminal background checks prior to licensure or upon investigation of a complaint. The board agreed with the recommendation to draft a bill to provide the authority to the board to solicit criminal background checks.

Mr. Delap also queried the board to see if it was interested in changing the strict confidentiality language of the statute to provide for more sharing of investigative information with other agencies. The board requested more information.

XII Legal Report (Discussion/Action)

The board did not consider this item.

+XIII Interview of Applicants: CLOSED SESSION

David Adams, D.O.	David J. Bennett, D.O.
Jena Crisler, D.O.	Todd Gottschalk, D.O.
Jason B. Greenberg, D.O.	Rod Hall, D.O.
Gary Karl, D.O.	Warren Magnus, D.O.
Daniel T. McGinn, D.O.	Morris Schaner, D.O.
Anuj (Andy) Sharma, D.O.	Craig A. Strobel, D.O.
Michael Crovetti, D.O. (Christine L. Axton, PA)	
Girish Daulat, D.O. (Conrado D. Ferrer, PA)	
Lonnie Empey, D.O. (Curtis Niederhauser, PA)	
Leonard Gruber, D.O. (Wayne Dunetz, PA-C)	
Kian Kaveh, D.O. (Angela Silverman and William Lee, PA-C's)	
Govind Koka, D.O. (Timothy Knauff, PA-C)	
Peter J. Licata, D.O. (Kathleen Redden, PA-C)	

Thomas Vater, D.O. (Richard O'Bringer, PA-C)

XIV Voting on Applicants: (Discussion/Action)

The motion to grant licensure to all applicants interviewed was made by Dr. Manthei, seconded by Dr. Mono and passed unanimously. Dr. Licata abstained from the vote on his application to employ Ms. Redden.

Dr. Manthei reaffirmed the Board's position that an osteopathic physician shall only have two physician's assistants working under him/her at any one time. With regard to Ms. Redden, this would be Dr. Licata's third PA; Dr. Licata indicated that one of his PA's would be leaving and that she would be leaving prior to Ms. Redden beginning work.

Dr. Manthei requested that the letter going out to those whom have been approved to hire PA's be more specific regarding the supervisory responsibility of PA's explicating that the physician maintains total liability for the actions of the physician's assistant.

XV Matters of Future Agenda (Discussion/Action)

The board did not consider this item.

XVI Public Comment Period

There was no public comment offered at the meeting.

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

To be determined at a special meeting to be held within 3 weeks of the August 24th, 2002 board meeting.