

Missouri State Board of Registration for the Healing Arts
Missouri Council of School Administrators Building
3550 Amazonas Drive
Jefferson City, Missouri 65109

Open Session Meeting Minutes
April 10-11, 2014

The members of the Missouri State Board of Registration for the Healing Arts convened on April 10 and 11, 2014 at the Missouri Council of School Administrators, 3550 Amazonas Drive, Jefferson City, Missouri 65109.

Board Members Present:

Kevin O'Malley, President
Benjamin Lampert, MD, Secretary
Jeffrey Carter, MD, Member
Bradley Freeman, MD, Member
David Poggemeier, MD, Member
David Tannehill, DO, Member

Staff Present:

Connie Clarkston, Executive Director
James Leggett, Executive I
Sarah Schappe, General Counsel
Frank Meyers, Associate General Counsel
Kenneth Hammond, Chief Investigator
Paul Williams, Probation Supervisor
John Short, Probation Supervisor
John Heidy, Probation Supervisor
Michael Bergman, Investigator II
Ann Boulware, Investigator II
Tonya Gammill, Investigator II
Howard Hammers, II
Kevin Moroney, Investigator II
Richard Maxwell, Investigator II
Kerry Placeway, Investigator II
Ralph Ross, Investigator II
Richard Schurman, Investigator II
Elizabeth Stevens, Investigator II
Willard Ward, Investigator II
Kim Beffa, Enforcement Supervisor
Shannon Mills, Paralegal

The order of the items reflected in these minutes are not necessarily reflective of the order in which the items were reviewed and discussed.

Mr. O'Malley called the meeting to order at 1:00pm on Thursday, April 10, 2014.

MOTIONS TO CLOSE

1. I move that this meeting be closed, and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed, under Sections 610.021 (14), 324.001.8 and 324.001.9, RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant.
2. I move that this meeting be closed, and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed, under Section 610.021 (1), RSMo for the purpose of discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.
3. I move that this meeting be closed, and that all votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed, under Section 610.021 (1), RSMo for the purpose of deliberation on discipline.
4. I move that this meeting be closed, and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed, under Section 610.021 (3), RSMo for the purpose of discussing hiring, firing, disciplining or promoting employee of this agency.
5. I move that this meeting be closed and that all records and votes, pertaining to and/or resulting from this closed meeting be closed, under Sections 610.021 (14), 324.001.8 and 324.001.9 RSMo for the purpose of discussing applicants for licensure.
6. I move that this meeting be closed and that all records and votes pertaining to and/or resulting from this closed meeting be closed under Section 610.021 (13), RSMo for the purpose of making performance ratings pertaining to individual employees.
7. I move that this meeting be closed, and that all records and votes pertaining to and/or resulting from this closed meeting be closed, under Section 610.021 (7), RSMo for the purpose of discussing and/or reviewing testing and examination records.
8. I move that this meeting be closed, and that all records and votes pertaining to and/or resulting from this closed meeting be closed, under Section 610.021 (5), RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees.
9. I move that this meeting be closed, and that all records and votes pertaining to and/or resulting from this closed meeting be closed, for the purpose of reviewing and approving the closed minutes of one or more previous meetings under Section of 610.021, RSMo which authorized this agency to go into closed session during those meetings.

Mr. O'Malley advised the Board that these motions could be referenced by number for motions to go into closed session.

Closed Session

Motion made at by Dr. Poggemeier and seconded by Mr. O'Malley to go into closed session under numbers 1, 2, 3, 8 and 9 of the motions to close. Mr. O'Malley, Dr. DiRenna and Dr. Poggemeier were present and voted in favor of the motion. The motion carried unanimously.

Closed Session

Motion made by Dr. Freeman and seconded by Dr. Lampert to go into closed session under numbers 1, 2, 3, 8 and 9 of the motions to close. Dr. Lampert, Dr. Carter, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Closed Session

Motion made by Dr. Freeman and seconded by Dr. Carter to go into closed session under numbers 1, 2, 3, 8 and 9 of the motions to close. Dr. Lampert, Dr. Carter, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Adjournment

Motion made by Dr. Carter and seconded by Dr. Lampert to adjourn for the evening. The meeting adjourned at approximately 8:00 p.m. Dr. Lampert, Dr. Carter, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

General Business Agenda

Mr. O'Malley chaired the meeting during the General Business Agenda and the Board voted the following action be taken:

1. Blue Cross Blue Shield-LiveHealth Online

At their March 23, 2014 conference call the Board reviewed Blue Cross Blue Shield's request to present information to the Board regarding LiveHealth Online. Pursuant to the Board's approval of the presentation, representatives of Blue Cross Blue Shield were present and gave a presentation related to the LiveHealth Online program. No action was taken by the Board; however, the Board requested additional information regarding other state laws from Blue Cross Blue Shield to be reviewed at a future board meeting.

Closed Session

Motion made by Dr. Freeman and seconded by Dr. Carter to go into closed session under number 2. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

General Business Agenda Continued

Mr. O'Malley chaired the meeting during the General Business Agenda and the Board voted the following action be taken:

2. 20 CSR 2150-5.100 Collaborative Practice Rule

Dr. Poggemeier discussed HB315 (telehealth) and amendments to 20 CSR 2150-5.100, which is being jointly promulgated with the Board of Nursing. At the March 23, 2014 conference call, the board voted to reaffirm its position of the following language.

(3) (H) When a collaborative practice arrangement is utilized to provide health care services for conditions other than acute self-limited or well-defined problems, the collaborating physician, or other physician designated in the collaborative practice arrangement, shall examine and evaluate the patient and approve or formulate the plan of treatment for new or significantly changed conditions as soon as is practical, but in no case more than two (2) weeks after the patient has been seen by the collaborating APRN or RN. **If the APRN is providing services pursuant to section 335.175, RSMo the collaborating physician, or other physician designated in the collaborative practice arrangement, may conduct the examination and evaluation required by this section via live, interactive video or in person. Telehealth providers shall obtain patient's or the patient's guardian's**

consent before telehealth services are initiated and shall document the patient's or the patient's guardian's consent in the patient's file or chart. All telehealth activities must comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended and all other applicable state and federal laws and regulations.

On April 3, 2014 the Board was notified that the Board of Nursing suggested alternative language that would allow the collaborating physician or the designee to make the determination of whether the patient requires a follow-up examination in person or via live interactive video. The Board reiterated its position that the Board's draft language complies with the standards of practice for physicians and provides continuity of care regardless of the practice setting.

Motion made by Dr. Poggemeier and seconded by Dr. Carter to maintain the Board's draft language above. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

3. Maintenance of Licensure

At the May 2013 meeting, the Board directed staff to "...gather information from the American Osteopathic Association (AOA) and American Medical Association (AMA) and to obtain information regarding the pilot program from the Federation of State Medical Boards (FSMB) as it pertains to the maintenance of licensure (MOL). After review and consideration of the information available, staff submitted an amendment to 20 CSR 2150-2.125 to allow physicians who are actively participating in a MOL program to submit proof of said MOL and be given continuing medical education (CME) credit for their participation in lieu of regular CME's. The proposal would only give credit to those physicians who have been actively enrolled in a MOL program for the entire two (2) year CME reporting period.

Motion made by Dr. Freeman and seconded by Dr. Carter to approve the submitted draft language and proceed with filing the proposed amendment to 20 CSR 2150-2.125. Dr. Lampert, Dr. Carter, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. Dr. DiRenna voted against the motion. The motion carried.

4. Speech Language Pathology Aide- Draft Rules

During the most recent meeting the Speech Language Pathologist and Audiologist Advisory Commission reviewed Speech Language Pathology Assistant (SLPS) rules. The amendments are being made to help clarify the education requirements of leveling student's applying for registration and to provide a more clear and concise process for supervisors of SLPAs. The Advisory Commission recommended the Board's approval to proceed with the rules.

Motion made by Dr. DiRenna and seconded Dr. Freeman to approve the submitted draft language and proceed with filing proposed amendments to 20 CSR 2150-4.201 and 20 CSR 2150-4.205; along with the rescission of 20 CSR 2150-4.210. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

5. Athletic Trainers- Physical Rehabilitation

Citizens Memorial Healthcare requested the Board's opinion and the Department of Insurance, Financial Institutions and Professionals Registration's (DIFP) interpretation of fraud as it relates to licensed athletic trainers billing for physical rehabilitation services. Ms. Schappe

reported that she has been in contact with the DIFP's legal counsel and requested this item be tabled to allow time for additional research.

Motion made by Dr. DiRenna and seconded by Dr. Freeman for legal counsel to continue research and keep the board informed. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

6. FSMB Annual Meeting

Dr. Carter provided an update for the upcoming FSMB's annual meeting by discussing amendments to the bylaws and resolutions to be presented to the House of Delegates.

Motion made by Dr. Freeman and seconded by DiRenna to support Dr. Carter as the Board's delegate at the upcoming conference. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

7. Patient Safety Conference

The presidents and executive directors of the boards of Healing Arts, Dental, Nursing and Pharmacy joined together to form the Missouri Health Regulatory Boards Coalition in the effort to improve the regulation of health professions in Missouri. At their September 2013 meeting the Coalition began discussing partnering with the Center for Patient Safety at their annual meeting. For several reasons, the Coalition felt it was more appropriate to sponsor its own conference and offer it to licensees. Ms. Clarkston requested the board's approval to support the conference and encouraged member participation.

Motion made by Dr. Freeman and seconded Dr. Poggemeier to support the conference. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

8. Delegated Board Authorities

The Board reviewed and discussed amendments to the Delegated Board Authorities.

Motion made by Dr. Lampert and seconded Dr. Freeman to table amendments to directives related to applicant for licensure who report malpractice action to allow Dr. Freeman and Ms. Clarkston to discuss in further detail. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Motion made by Dr. Lampert and seconded Dr. Freeman to approve the directive allowing the executive director to determine there there is cause to believe a licensee has been convicted of a felony or that their license has been revoked in another state, she may instruct the General Counsel to file a case pursuant to section 334.103, RSMo without further direction from the Board. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Motion made by Dr. Lampert and seconded Dr. Freeman if the Board directs that a settlement agreement be sent based on discipline in state A, any states that subsequently discipline the licensee for the same conduct may be combined into that settlement agreement or complaint if the discipline is at the same level or lower (i.e. both are reprimands or probation and then a reprimand). If the second discipline is of a higher level, the case(s) should be returned to the Board. If the Board directs that a case be filed based on discipline in another state, and subsequent state disciplines may be combined into that case. Dr. Lampert, Dr. Carter, Dr.

DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Motion made by Dr. Freeman and seconded Dr. Lampert to authorize the Executive I to sign a settlement agreement or otherwise act in that case as the Executive Director would in the event that the Executive Director must recuse from a case. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Motion made by Dr. DiRenna and seconded Dr. Freeman to allow staff to renew a license with a letter of concern when a licensee renews their license within ninety (90) days of the expiration of their license and reports that they have been practicing. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Motion made by Dr. Freeman and seconded Dr. Lampert to authorize staff to approve and issue a license with a letter of concern when the applicant has a municipal charge for a first DWI, something other than an event that occurred during the course of practice, or something that involved a sexual crime or controlled substances. If the charge is a first DWI the letter of concern should include information regarding MPHP/MAOPS if the charge was alcohol related. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Motion made by Dr. Freeman and seconded Dr. Lampert to authorize the Executive Director to respond to and deny any request to reopen an investigation or “appeal” a Board decision to close a case unless new information is presented in the request. If new information is presented in the request, the request should be forwarded to the Discipline Chair. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

9. Athletic Trainer Applications and 20 CSR 2150 – Chapter 6

Citizens Memorial Healthcare requested the Board consider to amending the athletic trainer application and 20 CSR 2150 Chapter 6 – Athletic Rules. The Board took no action, however, the board directed legal counsel to contact Citizens Memorial Hospital to discuss the issues further.

10. Rule Request 20 CSR 2150-5.100 Collaborative Practice

The Board reviewed a request to provide additional interpretation regarding 20 CSR 2150-5.100 Collaborative Practice Rules. This would be considered as a petition for amending a rule as described in section 536.041, RSMo.

Motion made by Dr. Lampert and seconded Dr. Freeman for staff to evaluate the petition and respond to the rule petition questions required in section 536.041, RSMo. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Closed Session

Motion made by Dr. Freeman and seconded by Dr. Carter to go into closed session. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Approval of Impaired Physicians Committee Meeting Minutes

Motion made by Dr. Freeman and seconded by Dr. DiRenna to accept the April 20, 2014 Impaired Physicians Committee Open Meeting Minutes. Dr. Lampert, Dr. Carter, Mr. O'Malley, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Closed Session

Motion made by Dr. Freeman and seconded by Dr. Lampert to go into closed session. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Appearance Agenda

Mr. O'Malley chaired the meeting during the Appearance Agenda.

Treacy, Bryan, MD - House Bill 265

2013-002941

Bryan Treacy, MD was scheduled for an HB 265 Disciplinary Hearing pursuant to section 334.102.7. RSMo, for the purpose of determining the truth of the allegations set forth in the Complaint filed by the Board on February 21, 2014. The complaint states that on or about May 16, 2013 the Oklahoma State Medical Board entered an Order Accepting Voluntary Submittal to Jurisdiction placing Dr. Treacy's license on probation for a period of five (5) years, which is final disciplinary action. The Board was represented by Frank Meyers, Associate General Counsel and Glenn Bradford, Contract Attorney. Dr. Treacy was not present and represented by attorney Johnny Richardson. Prior to the hearing, Dr. Treacy signed a settlement agreement, therefore, the hearing was not held.

Closed Session

Motion made by Dr. Freeman and seconded by Dr. Carter to go into closed session. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Appearance Agenda Continued

Mr. O'Malley chaired the meeting during the Appearance Agenda and the Board voted the following action be taken:

Cullinan, Stephen, MD - House Bill 265

2013-005156

2009-002564

2012-004758

2013-002606

Stephen Cullinan, MD was scheduled for a HB265 Disciplinary Hearing pursuant to section 334.102.7 and 334.103.1, RSMo, for the purpose of determining the truth of the allegations set forth in the Complaint filed with the Board on March 4, 2014. The Complaint states that Dr. Cullinan has been disciplined by various state medical boards. Dr. Cullinan was disciplined on three (3) separate occasions by Illinois, once by Michigan, once by Iowa and most recently by Ohio, who permanently revoked Dr. Cullinan's license based on his history of discipline. Each of these disciplinary actions constitutes final disciplinary action. The Board was represented by Frank Meyers, Associate General Counsel and Glenn Bradford, Contract Attorney. Dr. Cullinan was not present and was not represented before the Board. It was determined that a default

judgment was not appropriate due to Dr. Cullinan responding to the Complaint. Exhibits 1-4 and 6 were admitted and accepted into evidence.

Closed Session

Motion made by Dr. Carter and seconded by Dr. DiRenna to go into closed session. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Freeman, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Jamry, Wit, MD - Automatic Revocation

2013-000474

Wit Jamry, MD was scheduled for an Automatic Revocation Hearing pursuant to section 334.103.1, RSMo, to determine the truth of the allegations set forth in the Complaint filed with the Board on December 6, 2013. The Complaint states that on or about February 20, 2013, Dr. Jamry pled guilty to one (1) count of executing a health care fraud scheme, which is a felony. Dr. Jamry was not present and was not represented by attorney Exhibits 1-_____ were admitted and accepted into evidence.

Closed Session

Motion made by Dr. Lampert and seconded by Dr. Carter to go into closed session. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.

Adjournment

Motion made by Dr. Carter and seconded by Dr. Lampert to adjourn the meeting. The meeting adjourned at approximately 4:45 p.m. Dr. Lampert, Dr. Carter, Dr. DiRenna, Dr. Poggemeier and Dr. Tannehill voted in favor of the motion. The motion carried unanimously.