

BOARD OF MEDICAL LICENSURE AND DISCIPLINE

FULL BOARD

MINUTES OF MEETING

12 MARCH 2008

Open Session

Minutes

Board Members in Attendance:

David R. Gifford, MD, MPH, Chair

John Audett, MD

Patrick Barry, Esq.

Charles Cronin, DO

Margaret Coughlin

Robert Dinwoodie, DO

Joseph DiPietro, Esq.

Richard P. Iacobucci, MD

Noubar Kessimian MD

Shelagh McGowan

Board Members Absent:

Thomas Breslin, MD

Norm Chapman

Staff Members in Attendance:

Robert S. Crausman, MD, Chief Administrative Officer

Bruce W. McIntyre, Board General Counsel

Linda Julian, Board Investigator

Mary Salerno, Administrative Officer

Christine Tyce, Legal Intern

Guests:

James Cahill, PA-C, Board of Physician Assistants

1. A quorum was established at 8:40 AM.

2. On a motion by Mr. DiPietro seconded by Dr. Audett it was voted to approve the minutes of the 6 March 2008 Licensing Committee meeting.

3. On a motion by Dr. Audett seconded by Dr. Kessimian it was voted to approve the minutes of the Open Session of the 13 February 2008 meeting.

4. Chief Administrative Officer's Report

A. The Letter from the Director of Action on Smoking and Health (ASH) regarding physician liability for patients who smoke was reviewed. The Board was offended by the content of this letter and members could not think of any physicians in the State of RI who would refuse to recommend smoking cessation to their patients.

B. The Common License Application Form (CLAF), which is part of the license portability project was reviewed for the Board by Attorney McIntyre who is deeply involved in this initiative. The goal is to have a unifying license application available on-line for each state. Once the Federal Credential Verification Service (FCVS) receives all documents by the physician, that physician will be able to log in to the National Board of Medical Examiners (NBME), fill out the individual state application, and have the whole packet sent electronically to that state. Mr. McIntyre is working with the New England states to begin this process. New Hampshire is now in the pilot phase and Connecticut is also considering the use of this form. RI plans to transition to this system in July of this year. The Goal is to be eventually paper free.

C. Mr. McIntyre reviewed the Profiles Law and release of disciplinary information to the public by the Board. The RI BMLD has been posting other state Board and criminal actions and RI hospital actions on its disciplinary webpage. Mr. McIntyre suggested that posting other state Board and criminal actions on the RI disciplinary webpage was supported by the Profiles Law but that doing so on a separate page or section titled, "Other State Board and Criminal Actions," was more appropriate. The law does not support posting RI hospital actions as these are not yet formal actions by the State. Therefore these should be removed from the webpage but the Board will continue to notify all RI hospital CEOs of these actions by fax. On a motion by Dr. Dinwoodie seconded by Mrs. Coughlin it was

voted to continue to list other state Board actions on the RI BMLD disciplinary webpage in a separate section but to remove RI hospital actions. The motion passed with one abstention.

D. The opinion regarding public letters of concern was reviewed and is attached (Attachment A).

E. The Bill submitted to the RI State Legislature by the RI Medical Society to allow for the expungement of formal actions by all professional Boards after a set amount of time was reviewed. There was general consensus that this was not in line with other state Medical Boards and would not provide necessary information if physicians with adverse actions, which have been expunged, apply to other state Boards. On a motion by Mr. DiPietro seconded by Mr. Barry it was voted to oppose the concept of expungement. This sentiment will serve to guide the DOH in its review of this or similar bills. The motion passed with all in favor.

5. Old Business:

Patient Safety and Quality Improvement Act of 2008 - (Attachment B)

6. New Business:

None presented at this time.

7. At 8:58 AM the Board adjourned to Executive Session pursuant to Sections 46-42-4 and 42-46-5 of the Rhode Island General Laws.

Attachment A

July 31, 2007

TO: Board of Medical Licensure and Discipline

**FROM: Bruce McIntyre
General Counsel**

RE: Letters of Concern

Two questions were raised at the July meeting of the Board of Medical Licensure and Discipline regarding whether the Board's "Letter of Concern" to a physician may be made public and whether Letters of Concern received by other states can be made public by Rhode Island

A “Letter of Concern” was an administrative creation of the Board of Medical Licensure and Discipline in the early 1990s for instances where a physician’s conduct in a particular case was disturbing to the Board but did not rise to the level of “unprofessional conduct” as described in § 5-37-5.1. Many other regulatory boards within the Department of Health have adopted the Letter of Concern.

Since the Letter of Concern was not anticipated by the legislature when it drafted the Board’s enabling act, there is little guidance contained in § 5-37. The major issue is how much, if any, of the Board’s work-product is confidential. Two primary laws need to be considered when evaluating whether a document of a public agency has any protection of confidentiality associated with it.

The Department of Health, including all its boards, are public agencies subject to the Public Records Act § 38-2-1 et seq. “Public Records” are defined in § 38-2-2(d) as any recording of official business of the agency. The law allows for some 22 exceptions to the public records act. One such exception is investigatory records of public bodies pertaining to possible violations of law. This exception does not include final actions of the agency following notification of the violation.

The Board’s enabling act, § 5-37-5.2(d) provides for confidentiality for “investigations”, “initial hearings”, “investigatory hearings” and “full

hearings before the board”. The final decision of the hearing panel after a formal administrative hearing is deemed public by virtue of § 5-37-5.2(3). This section states unequivocally: “The Board shall make public all decisions including all conclusions against a license holder ...”

The intent of the law is to give the public access to the business of state agencies so that there can be appropriate oversight. Our current enabling legislation for the Board provides a small amount of confidentiality for our hearings and investigations. The Board, however, is one of only two administrative bodies left in the Department of Health that has confidential hearings. There does not appear to be any legislative support for keeping Letters of Concern confidential as long as they do not contain any privileged patient specific health care information. The same applies to Letter of Concern that have been provided to Rhode Island by other states.