

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 24, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Heider** called the Health and Welfare Committee to order at 3:02 p.m. and silent roll was taken.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice-Chairman Nuxoll for continuation of the pending rule review.

DOCKET NO: 22-0101-1201 **Relating to the Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho.** **Nancy Kerr**, Executive Director, Idaho State Board of Medicine, presented. She stated that **Docket Number 22-0101-1201** is a pending rule of the Idaho Board of Medicine, and that these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 483-487). Licensees were also notified of the proposed changes in the summer 2012 newsletter of the Idaho Board of Medicine. A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin.

The rule corrects the web address and eliminates multiple paper copies of documents in proceedings before the Board of Medicine in favor of one electronic copy. The rule adds the requirement for a birth certificate or current passport consistent with the Federal Bureau of Investigation (FBI) requirements for criminal background checks. It also clarifies the scope of malpractice claims on which a physician may be required to serve as panel member as limited to a licensed Idaho Physician or licensed acute care hospital.

The following is a summary of changes:

- Section 006 - clarifies the web address;
- Sections 007 - eliminates multiple paper copies in favor of a electronic copy;
- Section 050.04.n. - adds the requirement for a birth certificate or current passport consistent with the FBI requirements for a criminal background check and renumbers the section for consistency; and
- Section 081 - clarifies the scope of malpractice claims on which a physician may be required to serve as panel member.

MOTION: **Senator Martin** moved to approve **Docket No. 22-0101-1201**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Relating to the Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho. **Ms. Kerr** stated that **Docket Number 22-0111-1201** is a pending rule of the Idaho Board of Medicine, and these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 496-504). Licensees were also notified of the proposed changes in the summer 2012 newsletter. A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin.

She furthered that the rule corrects the web address and eliminates multiple paper copies of documents in favor of one electronic copy, adds the requirement for same site supervision of polysomnographer trainees, clarifies the disclosure of criminal charges regardless of outcome, and allows a temporary permit to be renewed one time only and prohibits those who have held a permit as a technician from re-applying as trainee.

The following is a summary of the changes:

- Section 006 - clarifies the web address;
- Sections 007- eliminates multiple paper copies in favor of a electronic copy;
- Section 010.19 - adds the requirement for same site supervision of trainees;
- Section 032.01.a. - clarifies disclosure of all criminal charges regardless of outcome;
- Section 032.02.c.iii. - clarifies that a temporary permit may only be renewed once; and
- Section 032.05.f.iii - defines the exclusion of those who have held a technician permit from making application as a trainee.

Senator Guthrie referred to page 459, Section 32.01.a. He asked if a person were charged but not convicted, explain the purpose of the need of that information.

Ms. Kerr replied that one example that they frequently see is a Driving Under the Influence (DUI) citation that has been pled down to a reckless driving charge. She stated that pleading it down does not change the fact that the individual had an elevated blood alcohol, and that would indicate to us that this person would need to be monitored for further drug or alcohol abuse.

Senator Lakey asked further clarification of page 459, § 32.01.a. He asked if just the charge itself is sufficient. **Ms. Kerr** replied that just the charge would be enough, as it speaks to the integrity of the applicant. During a criminal background check, it is better if the applicant discloses all information on their application instead of omitting something. **Senator Guthrie** indicated that he was going to press harder, because if someone is falsely charged, the charge has no bearing or relevance, where is the protection for the individual. He stated that he was not comfortable with it. **Ms. Kerr** stated that being charged does not exempt someone from obtaining a licence; it just alerts us to the integrity of the individual. If you look at all the applications for professional licenses, they all require disclosure of charges. It is best of if the applicant discloses the information first instead of us finding out about it later with the background check. Even if a charge is dismissed or stricken from the books, the FBI still has records of those charges.

Senator Lakey asked if someone is wrongfully charged, how do you deal with the charge; how do you consider that, and could the charge be considered negatively even if it was dismissed. **Ms. Kerr** reiterated that charges are not grounds for denial of an application. The individual can still be licensed, but again, we are speaking to the integrity. We have found on multiple background checks where people have been charged with something and failed to disclose it on their application. If someone has been charged, it could indicate that there may be a problem.

MOTION: **Senator Schmidt** moved to approve **Docket No. 22-0111-1201**. **Senator Martin** seconded. The motion carried by **voice vote**. **Senator Guthrie** voted nay, and wished to be recorded.

DOCKET NO: **22-0112-1201** **Rules Relating to Health Care Workers.** **Ms. Kerr** stated that **Docket Number 22-0112-1201** is a pending rule of the Idaho Board of Medicine, and these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 505). Licenses were also notified in the spring and summer 2012 newsletter. A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin. She furthered that the rule is redundant information contained in the specific statutory and rule language for each profession and is generally outdated, and the board requests repeal of the outdated and redundant information.

MOTION: **Senator Martin** moved to approve **Docket No. 22-0112-1201**. **Chairman Heider** seconded. The motion carried by **voice vote**.

DOCKET NO: **22-0114-1201** **Rules Relating to Compliant Investigation.** **Ms. Kerr** stated that **Docket Number 22-0114-1201** is a pending rule of the Idaho Board of Medicine, and these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 510-515). Licensees were also notified of proposed changes in the spring and summer 2012 newsletter. A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin.

She furthered that the rule adds the web address, eliminates multiple paper copies of documents in favor of one electronic copy, clarifies the format for submission of a complaint to the Board, requires the signature of the complainant and provides housekeeping changes to clarify language. The rules clarify the authority of the Board in conducting investigations and add clarity the practice indicators for investigation.

The following is a summary of the changes:

- Section 006.05 - adds the Board web address;
- Sections 007 - eliminates multiple paper copies in favor of a electronic copy;
- Section 10-14 - housekeeping changes to language and grammar. Requires a complainant signature on complaint form;
- Section 20 - clarifies the requirement of for a copy of all information to be attached to the report of investigation;
- Section 21 - provides housekeeping changes to language and grammar; and
- Section 23 - clarifies the indicators for proactive investigations eliminating age as an indicator and clarifying deterioration from any illness as an indicator for investigation.

MOTION: **Senator Martin** moved to approve **Docket No. 22-0114-1201**. **Chairman Heider** seconded. The motion carried by **voice vote**.

DOCKET NO: **22-0102-1201** **Relating to the Rules of the Board of Medicine for the Registration of Externs, Interns and Residents (pending fee rule).** **Ms. Kerr** stated that **Docket Number 22-0102-1201** is a pending fee rule of the Idaho Board of Medicine, and these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 488-492). Licensees were also notified of the proposed changes in the summer 2012 newsletter of the Idaho Board of Medicine. A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin.

She informed the committee that the rule adds the web address, eliminates multiple paper copies of documents in favor of one electronic copy; clarifies definitions and accrediting agencies for medical and osteopathic education and the various statuses of students and post graduate trainees; and requires a copy of a birth certificate or passport consistent with FBI requirements for criminal background checks. She continued that the rule requires the applicant disclosure of criminal charges, disciplinary actions or malpractice proceedings regardless of outcome; adds the requirement for notification of adverse action, change in training programs, or supervision within 14 days of such an event; changes the period issuance of registration from up to three years to not less than one year and require renewal of registration before the expiration date; and adds a requirement for annual renewal of registration and allows the board to charge a fee for renewal.

The following is a summary of changes:

- Section 006.05 - adds the Board web address;
- Section 007 - eliminates multiple paper copies in favor of a electronic copy;
- Section 008 - adds a severability clause;
- Section 010 - clarifies the accrediting agencies and requirements for training and education programs and clarifies the status of each training applicant;
- Section 016 - adds requirements for birth certificate or passport consistent with FBI requirements for identity verification and clarifies reporting of malpractice claims regardless of outcome;
- Section 017 - requires notification to the Board of any adverse action or change in training programs, and changes the period of issuance and requires the annual renewal of registration and allows the Board to charge a fee for such renewal consistent with the 1977 statute.

Senator Bock asked why it is important to notify the reason why a person has left the program. **Ms. Kerr** replied that it is not important to notify the reason why, just that the person left the program. We would probably investigate to find out why they left the program. **Senator Bock** asked why it is important to give notification that a person has left a program. **Ms. Kerr** replied that it would be important if they found out it was due to patient care issues while they were in training. Most of the time when a person leaves the program, it is because they either no longer wish to pursue a medical career or they decided another specialty would be more appropriate.

Chairman Heider referred to paragraph 02, and asked if we have a cooperative agreement with Canada to train medical students. **Ms. Kerr** replied that they accept the licensing exams for physicians, and their training programs as accepted as being equal, or in some cases superior, to the United States. This limits our physician rules in that we recognize Canada's training programs as being equivalent to ours.

Senator Schmidt asked about the definition of extern or student as a bona fide student enrolled in an acceptable school of medicine; did it only encompass U.S. schools and not international schools. **Ms. Kerr** that there are international schools that are approved. She indicated that there is the Educational Commission for Foreign Medical Graduates (ECFMG) that oversees the approval of the school or individual and goes through many levels of approval for that school or individual to be acceptable.

Senator Hagedorn inquired about Title 54, Chapter 1806, and asked where might it say that there must be an annual renewal. **Vice Chairman Nuxoll** replied that she had researched the Code and found the requirement, located at 54-1807, that reads: "A registration fee shall be fixed by the board and registration must be renewed annually." She furthered that she could understand that the registration must be done annually, but not the fee, and had a concern.

Senator Hagedorn asked what is the current balance of the Board of Medicine (Board) at the end of every year; is that positive or negative, and is there an issue regarding the spending of the Board where this annual fee is necessary? **Ms. Kerr** replied that there was an approved registration fee of \$10 for residents, and there is a plan to raise that to \$20. The Board may charge a renewal for registration, and the majority of programs require licensure after one year of training in residency.

Senator Hagedorn asked what was the reason behind increasing the fee from \$10 to \$20. **Ms. Kerr** responded that at that time, they were looking at the fees across the board. The Idaho Board of Medicine does not increase their fees very often; as a matter of fact, it has been twelve years in between fee increases for physicians. This past year, with the zero-based budgeting, we reviewed all fees, and we have one of the lowest registration fees for residents in the United States.

Senator Guthrie inquired about Sections 016.03.a. and 016.03.h., and asked Ms. Kerr to explain the justification of including that, since the language was strong. **Ms. Kerr** replied that currently, there are two residents who are in a recovery program while they are in residency training. The issues were discovered on application when they disclosed charges of DUI. They came before the Board, the Board considered some of the information that they had received, and they went for an evaluation. It was determined that they did, in fact, have issues with drugs or alcohol at that time and they are in a monitored program while they are in training. That did not prompt Section h, however; that was listed in our previous rules, and is just renumbered. It just means that if the application lacks information, we are allowed to ask for additional information in support of the application.

Senator Guthrie stated that he agreed with Senator Lakey and was concerned that the non-guilty would have to disclose any criminal charges; and that through no fault of their own, they were falsely accused. The Criminal Justice System makes mistakes, too, and this is creating a cloud over their title, so to speak. This seems to be more aggressive than it needs to be and it could just specify someone who has been convicted.

Senator Schmidt commented that people who are applying for privileges to practice, and that full disclosure is proper when people want to practice. He furthered that in his opinion, full disclosure, even when it includes someone falsely accused, should be allowed in order for the Board to adjudicate that. He stated that if the Board is disallowed that, it would not be able to function in a judicious fashion. He stated that doctors are expected to disclose every claim. The claim is explained to the Board in terms of what happened and how it turned out. Full disclosure is looked at critically and he supported it.

Senator Bock commented that he recalled on his application to the state bar in California and Idaho, the expectation was for full disclosure as well, and this is not a departure from that.

Senator Hagedorn commented that he felt Senator Guthrie had valid concerns, and although he appreciates the depth at which the Board goes; however, if someone is charged with child abuse or a sexual crime and then found not guilty, why is that applicable to the professional ability of a person that is being reviewed. There are a number of charges where the person was found not guilty of the criminal charge. Conviction is perfectly acceptable on the disclosure, but his concern was the charge.

Vice Chairman Nuxoll commented on the fee, and stated that while the amount may not be much, it does not state whether it needs to be charged annually.

Senator Bock commented on who should pay for the processing of the right to practice, the taxpayer of Idaho or the applicant. He felt the applicant should be the one to pay.

MOTION:

Chairman Heider moved to approve **Docket No. 22-0102-1201**. **Senator Lodge** seconded. The motion carried by **voice vote**. **Senator Hagedorn** and **Senator Guthrie** voted nay, and wished to be recorded.

**Docket No.
22-0103-1201**

Relating to Rules for the Licensure of Physician Assistants. Ms. Kerr stated that **Docket Number 22-0103-1201** is a pending fee rule of the Idaho Board of Medicine, these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 493-495). A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin.

She furthered that the rule:

- adds the provision for a temporary license exclusively for those applicants awaiting the outcome of the criminal background check;
- clarifies that all fees are non-refundable;
- adds a fee range for a temporary license and provides for prorated fees; and
- clarifies that a license not renewed in two years shall be cancelled and a new application required.

Ms. Kerr informed the committee that the following changes were being made:

- Section 022 - Defines a temporary license that may be issued exclusively to applicants who are awaiting the outcome of a criminal background check;
- Sections 051 - Clarifies that all fees are non-refundable;
- Section 051.06.n. - Adds a fee range for a temporary license consistent with other professions licensed by the Board of Medicine and provides for a prorated fee; and
- clarification that a license not renewed within two years shall be cancelled and a new license application required.

MOTION:

Senator Schmidt moved to approve **Docket No. 22-0103-1201**. **Senator Martin** seconded. The motion carried by **voice vote**.

**Docket No.
22-0113-1201**

Relating to the Rules for the Licensure of Dietitians (pending fee rule). Ms. Kerr informed the committee that **Docket Number 22-0113-1201** is a pending fee rule of the Idaho Board of Medicine, and these rules were published in the October 3, 2012 Idaho Administrative Bulletin Volume 12-10 (page 506-509). Licensees were also notified in the summer 2012 newsletter. A Public Hearing was held October 23, 2012 and no comments were received. The rules were published without change as pending rules in the January 2013 Idaho Administrative Bulletin.

She informed the committee that the rule adds the web address, eliminates multiple paper copies of documents in favor of one electronic copy, and adds a severability clause; the rules clarify the authority of the Board in disciplinary matters and clarifies the grounds for discipline consistent with other professions licensed by the Board; and the rule establishes a fee range schedule for applications, renewal and license reinstatement and allows the Board to charge for extraordinary expenses.

Ms. Kerr advised the following changes were being made:

- Section 006.05 - Adds the Board web address;
- Sections 007 - Eliminates multiple paper copies in favor of a electronic copy;
- Section 008 - Adds a severability clause;
- Section 032.01.02 - Clarifies the disciplinary authority of the Board to include suspension, revocation and probationary conditions;
- Section 032.02.c. - Adds specific grounds for discipline consistent with other professions licensed by the Board of Medicine;
- Section 041.01-03 - Provides a fee range for initial applications, renewals and reinstatement; and
- Section 041.07 - Allows the Board to charge for extraordinary expenses.

Senator Schmidt asked that in regard to Section 32.01.k, what was the definition of "former patient." **Ms. Kerr** replied that a former patient is a person that you would have influence on, based on your profession, even after they have ceased to be a patient. For a physician, that would be for a much longer period of time. For a dietitian, it would be to a lesser degree.

Senator Hagedorn commented that he is struggling with the fees in general. Some of these fees are going up between 30 and 90 percent. He asked how these fee increases are going to impact the operating budget. **Ms. Kerr** responded that the Board of Dietitians (Board) actually imposed a \$20 fee increase in 2010. The rules had a restriction that we could not implement that high. They made a recommendation to the Board of Medicine that the fee increase was to cover their operating costs.

Senator Hagedorn expressed concerns over increases such as this without justification as to why this increase is important to the operation of the Board. He inquired if there was a way we can get a snapshot of what the expenditures and budgets are. **Ms. Kerr** replied that the costs include: the cost of processing those applications; holding meetings; the Board paying for fares when meetings are held; the Board paying for travel expenses to the meetings; the cost of administration; costs for publishing rules; and the like.

Senator Hagedorn stated that he is trying to understand a fee increase and what the revenue is for the board that is making the request, and why that increase is important to balance the revenues and expenditures. **Ms. Kerr** responded that each individual board is presented with a breakdown, and that is what is presented to those boards.

Senator Lakey asked that the fees that are about to be approved state "no more than" - so does that mean that the Board has set the fees lower and you have the authority within the Board's discretion to increase those? **Ms. Kerr** replied that it is a cost-saving measure for the Board, and we are a conservative board. I think the history shows that this Board has not had any kind of fee increase since 1994 or 1998. The fee is based on that individual Board's expenses and revenues, and the cost of administering the Board.

Senator Lakey then asked how these fees compare to others in the region. **Ms. Kerr** responded that we are a very low fee state for our professional licensing. Comparatively, for example, some physician licensures in other states run \$1,000 or more for an initial license. I think we handle our fees very efficiently. I cannot say what dietitians across the United States, but this particular fee increase was also run through their association, and the association saw no problem with that fee increase.

MOTION: **Senator Guthrie** moved to approve **Docket No. 22-0113-1201**. **Senator Hagedorn** seconded. The motion carried by **voice vote**. **Vice Chairman Nuxoll** voted nay, and wished to be recorded.

Senator Guthrie wished to comment that it was not his intention to be contrary, but wanted to refer back to page 10 of the Pending Fee Rules Review Book. He directed the committee to the last sentence of Section 016.03, which states: "The application form shall be verified and shall require the following information:..." Under "b.", it says: "The disclosure of any criminal convictions, criminal charges, medical disciplinary actions or medical malpractice actions, whatever the outcome, involving the extern, intern or resident." The language already exists, and it is troublesome when you add language that is already in place, and then coupled with something as broad as the word "whatever" interjected. It concerns me, and I just wanted to express that, and thank you for that indulgence.

PASSED THE GAVEL: Vice Chairman Nuxoll passed the gavel back to Chairman Heider.

Chairman Heider thanked Ms. Kerr for coming. He extended an invitation to anyone in the Medicare and Medicaid community to attend the Joint Health and Welfare Committee meeting with the House and Senate on February 8. We will allow for testimony by anyone in the community that wishes to come in and express their opinions.

CONVENED: There being no more business before the committee, **Chairman Heider** adjourned the meeting at 4:15 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary