

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, January 22, 2014

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:** None

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 meeting to order at 3:03 p.m. and welcomed the audience. He mentioned that a few members of the Committee were not present, but that enough were present to form a quorum. He asked the Secretary to take a silent role.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Nuxoll to begin rules review.

DOCKET NO. 24-0501-1302 **Rules of the Board of Drinking Water and Wastewater Professionals (Pending Fee):** **Tana Cory**, Chief of the Bureau of Occupational Licenses (Bureau), informed the Committee that the Bureau provides service to 29 self-governing, self-supporting boards and commissions. She introduced two people in the audience: Mr. Barry Burnell, the Chairman of the Drinking Water and Wastewater Professional Boards, and Joan Cloonan who is the public member of the Board of Drinking Water and Wastewater Professionals.

Ms. Cory stated that last year the Legislature approved H 185, which allowed the Board the ability to charge less than what the exam provider charges. This change allowed the same amount to be charged for the online and written exam for the benefit of licensees and for purposes of efficiency. Under Rule 200.02, an update is being applied to the rule to state that the examination fee shall not be greater than those charged by the exam provider. Under Rule 200.03, 04 and 05, the Board is reducing the endorsement, original license, and annual renewal fee from \$35 to \$30. It is anticipated that this fee reduction will reduce the amount of dedicated fund fees collected by the Drinking Water and Wastewater Professionals Board (Board) by approximately \$19,280 per year. In the past, the Board's fees exceeded what it cost to operate the Board; therefore, the Board is proposing this fee reduction for its licensees.

Finally, the Board is adding additional courses that would meet the education qualification for licensure for a very small water and very small wastewater system. These proposed rule changes were discussed in open, noticed meetings of the Board, posted to the website, and distributed to interested parties. She asked the Committee to approve the pending fee rule.

Vice Chairman Nuxoll asked for clarification regarding the course requirements for a smaller wastewater system. **Ms. Cory** referred to Barry Burnell, who also works for the Idaho Department of Environmental Quality. **Mr. Burnell** informed the Committee that the purpose behind the addition of the optional course is to provide a variety of courses that the operator can take, in order to give operators a better chance to become licensed.

Vice Chairman Nuxoll reminded the Committee that this is a fee rule, and the purpose is to reduce fees.

MOTION: **Chairman Heider** moved, seconded by **Senator Martin**, to adopt **Docket No. 24-0501-1302**. The motion carried by **voice vote**.

DOCKET NO. 24-1301-1302 **Rules Governing the Physical Therapy License Board (Pending Fee):** **Tana Cory** introduced the Physical Therapy Board Chair, Mr. Brian White. She informed the Committee that this pending fee rule lowers the initial licensure fee and annual renewal fee for a physical therapist from \$40 to \$25 ; lowers the initial licensure and renewal fee for a physical therapy assistant from \$35 to \$20; and lowers the examination fee from \$40 to \$20. In addition, the application fee is being lowered from \$50 to \$25. She stated that over the last three fiscal years, the Physical Therapy License Board (Board) has collected an average of \$20,000 more per year than it has spent. It is expected that this fee reduction will reduce the amount of dedicated funds collected by the Board by approximately \$27,510 per year. The Board's current fees have exceeded what it costs to operate the Board, so the Board is proposing the fee reduction for its licensees.

Senator Martin commended the Board for the reduction in fees for those who participate in this program.

MOTION: **Senator Martin** moved, seconded by **Senator Schmidt**, to adopt **Docket No. 24-1301-1302**. The motion carried by **voice vote**.

Senator Hagedorn asked if there is, in the instance of a disciplinary action, a policy that sets aside funds to cover those expenses. He stated that those types of things could be expensive and could put a board behind for years, and he asked Ms. Cory to comment.

Ms. Cory informed the Committee that all of the boards that they serve have to be self-supporting and operate only on dedicated funds, which are primary licensure fees. In a disciplinary action, an effort is made to recoup monetary losses if an individual is found to be in violation. She furthered that boards set aside 12 to 18 months of a cash balance in their budget as a buffer, which serve to protect the public and enables them to come before Legislature to discuss what is happening and to adjust fees accordingly.

DOCKET NO. 24-2601-1301 **Rules of the Board of Midwifery (Pending Fee):** **Tana Cory** introduced Barbara Rawlings, the Chair of the Board of Midwifery (Board). **Ms. Cory** informed the Committee that this pending fee rule raises the application fee from \$50 to \$200; raises the license fee from \$550 to \$800; and raises the annual renewal fee from \$550 to \$850. She furthered that Ms. Rawlings, who presented in the Committee yesterday, mentioned that this Board has dealt with some expensive disciplinary matters. At the end of fiscal year (FY) 2010, the Board had a positive cash balance of \$6,441. At the end of FY 2013, the Board had a negative cash balance of \$79,908. The majority of these costs stemmed from cases involving three midwives who went to hearing. As of the end of December, which is halfway through FY 2014, the Board's negative balance was \$72,363. The Board is self-governing and receives no general fund money.

Ms. Cory furthered that the Board operates on dedicated funds primarily generated by licensing and renewal fees. She advised the Committee that attempts are made to recoup costs from disciplinary actions when a licensee is found to be in violation of the Board's laws and rules. This fee increase will result in an annual increase in the Board's dedicated fund of approximately \$10,000, based on the current number of licensees and an estimated one additional licensee per year. This proposed fee rule was posted on the Board's website and was discussed with the Idaho Midwifery Council. These fees will assist the Board in ensuring they are able to work toward eliminating their negative balance, while also ensuring that they are still able to carry out their charge of protecting the public.

Senator Martin asked what the cost was in these investigations. **Ms. Cory** replied that when there is a complaint received by the Bureau, an investigation results. There are investigative costs that are involved. During due process, the licensee has the opportunity to go to a hearing. The Board is paying to prosecute those individuals, as well as for hearing officer costs and costs associated with the process. **Senator Martin** then asked if there was a way for the involved parties to incur more of the cost of the investigation of the allegations.

Ms. Cory responded that when the Board receives a complaint, it is reviewed to determine if it is within the Board's jurisdiction. If it is not, it is taken to the Board and then closed. There may be small violations, and the Board will work with that individual and they may enter into a consent agreement. However, these particular cases mentioned in the pending fee rule were fairly complex and resulted in a full hearing where the Board prosecuted.

Vice Chairman Nuxoll asked if those involved in wrongdoing were required to pay back the expenses of litigation. **Ms. Cory** replied that there is an effort to recoup those costs and that is part of the order entered by the Board, but that the effort is not always successful.

Senator Schmidt remarked that the number of midwives was small in Idaho, and that raising this fee may make the fee burden heavier. Is there a critical mass of participation needed? **Ms. Cory** responded that the Board considered this and worked with the Idaho Midwifery Council, and that this fee increase will yield \$10,000 this year that will aid in propelling this in the proper direction. A higher fee was initially proposed, but a compromise was made to come up with this particular fee increase. **Senator Schmidt** asked for a status report next year, which **Ms. Cory** agreed to. She furthered that on their website for the Bureau, there are listings of boards, budgets and reports that are updated monthly that could be viewed in the meanwhile.

MOTION:

Chairman Heider moved, seconded by **Senator Martin**, to adopt **Docket No. 24-2601-1301**. The motion carried by **voice vote**.

Vice Chairman Nuxoll asked if there were any comments. **Molly Steckel**, Policy Director of the Idaho Medical Association (IMA), stated although the Committee might be concerned about the cost, the IMA considers the Board a success. The Board is protecting the public, and the IMA appreciates what they are doing.

Tony Smith spoke on behalf of the Midwifery Council, and stated that he is aware of the concerns about the fee increase. The midwives, as an association, understand that they are to be a self-sustaining board, and that is the reason for the fee increase.

Vice Chairman Nuxoll commented that with only 39 midwives, there was not much of a choice, and that their debt must be cleared.

**DOCKET NO.
24-1101-1301**

Senator Lodge stated that the midwives are a success story. The actions that they had to take were not what they wanted to do, but she commended them for the work they have done.

Vice Chairman Nuxoll then called on Roger Hales and asked if he would do the fee rule first, which was out of order on the agenda.

Rules of the State Board of Podiatry (Pending Fee): Roger Hales, on behalf of the State Board of Podiatry (Board), stated that the Board regulates the practice of podiatry in the State. The Board is served by the Bureau of Occupational Licenses. The rule docket is primarily designed to update the Board's rules based upon changes in the profession. The rule updates the Code of Ethics, updates definitions, streamlines application approach, eliminates the deadline for application, eliminates the high school documentation requirement (these students graduated from college and podiatric medical school, and a high school transcript is not necessary), eliminates certain exam fees in rules, and updates the title of podiatric exam. **Mr. Hales** informed the Committee that the Board uses the national exam. Since the Board no longer has any participation in administering the exam, they are eliminating the associated fee of \$25 in the rule. The re-exam fee is also being removed. If a person takes the exam and fails, it can be retaken at the national exam entity after the fee is paid. The exam consists of three parts, each part costing \$900. The re-exam fee would mean that the Board would be subsidizing the re-exam, which is not appropriate, and that is why it is being eliminated.

He informed the Committee that there was some concern expressed by Legislative Services over the elimination of the \$25 administrative fee in rule where it is also set forth in law. The Board is bringing a House bill that will also revise this examination section and eliminate the administrative and exam fees. If there is any inconsistency, it will be resolved before the session is out. There is a new name for the national exam; it is now called The American Podiatric Medical Licensing Exam.

Mr. Hales advised the Committee that there are changes to continuing education (CE). Currently, 12 hours of CE is required annually. That is being raised to 15 hours annually. This is geared toward individuals coming to Idaho from other states. **Mr. Hales** deferred from discussing that for a moment. He moved on with a revision of a provision requiring the Board to meet on a specific day of the year, which is no longer a necessary element. Then returning to the topic of increasing the CE, **Mr. Hales** indicated that it will become effective beginning January 1, 2015. He compared other states requirements to Idaho's CE requirements for podiatrists: Nevada requires 50 hours every two years, while Idaho will require 30; Oregon requires 50 hours every year; Utah requires 20 hours every year; Washington requires 50 hours every two years; Wyoming requires 40 every two years; and Montana has no CE requirements. We are moving closer to the standard of continuing education.

Mr. Hales informed the Committee that the Board is now allowing a carryover, which means if a person obtains, for example, 30 hours in one year, 15 hours of that can be carried forward. If there is some sort of hardship, such as a health issue, that person can ask the Board to waive the CE requirement. **Mr. Hales** stated that this rule was discussed in open meetings of the Board and notice was provided to all licensees, and of the nine comments received, eight were in favor of the CE upgrade.

Senator Martin asked about the passing grade. He said that before, the passing grade was 70 percent, and now it is proposed: "A passing grade in all subjects examined shall be the grade as established by the examination provider." Will this be whatever they feel is a passing grade?

Mr. Hales responded that at times the test results are curved. They also analyze some of the questions to make sure they are fair. So on certain occasions, the passing rate may dip below 70 percent in an effort to be fair. This is a consistent approach when it comes to national examining entities, and they want to make sure that the passing grade is fair and reasonable, and legally defensible as well.

Senator Guthrie asked for clarification of the reexamination fee. **Mr. Hales** responded that by eliminating the re-exam fee, concerns would also be eliminated about having to subsidize the national exam if a person fails it and has to retake it.

Vice Chairman Nuxoll asked what is deemed a CE course. **Mr. Hales** responded that there were many opportunities to get CE through various medical groups. The course has to be germane to the practice of podiatry, and has to be approved by the Council on Podiatric Medical Education, or the Board can approve a course. This rule tries to accommodate the possibility that if a person goes to a CE seminar that lasts for a few days, they may acquire more CE credits than they need for that year, and the balance of those credits may be carried forward.

MOTION: **Senator Martin** moved, seconded by **Senator Schmidt**, to adopt **Docket No. 24-1101-1301**. The motion carried by **voice vote**.

DOCKET NO. 24-0601-1301 **Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants (Pending):** **Roger Hales** informed the Committee that this rule's intent is to conform the Board's rules to a recent law change. H 33 passed the Legislature in 2013, revising the duration of a limited permit to six months or as extended by the Board. A limited permit allows an individual to practice under supervision after graduation, but before passing the exam. This rulemaking has been open and transparent, and there was no opposition.

MOTION: **Senator Bock** moved, seconded by **Chairman Heider**, to adopt **Docket No. 24-0601-1301**. The motion carried by **voice vote**.

DOCKET NO. 24-1301-1301 **Rules Governing the Physical Therapy License Board (Pending):** **Roger Hales** indicated to the Committee that this rule pertains to supervision of physical therapy assistants. It reduces regulations without jeopardizing public health. In the present rule, there is a requirement of patient reevaluation by a physical therapist after every five visits with a physical therapy assistant. The new proposed rule will allow for up to 10 visits with a physical therapist assistant before reevaluation, but not less than 60 days. This new approach is consistent with Medicaid regulations. This will be of significant benefit to rural practices. There was transparency in this rulemaking, the Board worked with the state association and held a meeting with interested parties. There was no opposition.

MOTION: **Senator Martin** moved, seconded by **Senator Schmidt**, to adopt **Docket No. 24-1301-1301**. The motion carried by **voice vote**.

DOCKET No. 24-1401-1301 **Rules of the State Board of Social Work Examiners (Pending):** **Roger Hales** informed the Committee that this rule proposes changes to the social work supervisor requirement rule, which reduces regulation/barrier to entry. In order to supervise a social worker, a social worker must register as a supervisor. In reviewing this rule, the Board decided to make two changes that would benefit applicants or licensees. One change clarifies that it only applies to practice in Idaho, and has no jurisdiction in other states. The second change revises the two-year experience requirement to accept experience obtained in any state, rather than just in Idaho. This has affected some professionals' ability to get licensed and registered immediately when moving to Idaho, where their job may require them to supervise social workers as part of their employment. The Board does not anticipate any effect upon competency. This proposed rule has been open and transparent, was posted on the Board's website, notice was sent to the state association, and there have been no objections.

MOTION: **Senator Guthrie** moved, seconded by **Senator Bock**, to adopt **Docket No. 24-1401-1301**. The motion carried by **voice vote**.

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

ADJOURNED: **Chairman Heider** thanked everyone, and reminded the Committee that tomorrow morning there would be a joint public hearing from 8:00 until 9:30 in the Lincoln Auditorium for anyone that would like to speak before the House and Senate Health and Welfare Committees. The meeting was adjourned at 3:54 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary