

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, January 31, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, and Jordan

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 of the Senate Health and Welfare Committee (Committee) to order at 3:00 p.m.

GUBERNATORIAL APPOINTMENT: **Consideration of Gubernatorial Appointment of Sue Walker to the Idaho Commission for the Blind and Visually Impaired. Senator Martin** moved to send the Gubernatorial appointment of Sue Walker to the Idaho Commission for the Blind and Visually Impaired to the floor with recommendation that she be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

APPROVAL OF MINUTES: **Senator Anthon** moved to approve the Minutes of the January 23, 2017 Committee meeting. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Souza to conduct the rules review.

DOCKET NO. 24-1001-1601 **Rules of the State Board of Optometry. Mitch Toryanski** introduced himself to the Committee as Legal Counsel to the Idaho Bureau of Occupational Licenses (Bureau), representing the Board of Optometry. **Mr. Toryanski** explained H 333 (2016) aligned the Board of Optometry's renewal and reinstatement statute with the Bureau's new renewal and reinstatement statute at Idaho Code § 67-2614. This year the Board of Optometry rules must be amended to align with the new statute. The rule decreases the reinstatement fee from \$150 to \$35, consistent with the statute. Based on past reinstatement numbers, the Board of Optometry estimates nine optometrists will likely fail to renew their licenses and be required to pay the reinstatement fee. The fee decrease will result in a negative impact of \$1,035 to the Board of Optometry's dedicated fund, and there is no impact to the General Fund.

Mr. Toryanski informed the Committee the docket also increases the number of continuing education hours optometrists can earn online from six to nine annually.

Mr. Toryanski advised the changes in this pending fee rule were approved by the Board of Optometry in an open meeting that was noticed to the public. A postcard was sent to 461 licensed optometrists, and no comments were received.

Vice Chairman Souza asked the amount of the reinstatement fee if someone fails to renew in a timely manner. **Mr. Toryanski** replied today it would cost \$150. If the docket is approved, the cost would be \$35. The reinstatement fee is set in the Bureau's statute.

MOTION:

Senator Foreman moved to approve **Docket No. 24-1001-1601**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-0301-1601**

Rules of the State Board of Chiropractic Physicians. Mr. Toryanski introduced himself to the Committee on behalf of the State Board of Chiropractic Physicians (BCP) and also introduced Dr. Mary Jo White, Chair of the BCP, from Post Falls. **Mr. Toryanski** explained the 2013 balance in the BCP account was \$136,539. Today the balance is negative \$84,825. The steep decline over those four years was caused by increased complaints, investigations, prosecutions, and a negotiated rulemaking hearing held last year. The BCP requests a fee increase estimated to increase revenue by \$36,150 per year. No special assessment is made when the balance goes in the red; instead, the BCP proposes a fee increase and hopes to recover lost ground over three or four years.

Mr. Toryanski stated the docket also contains changes to speed up and streamline the peer review process. It establishes that the recommendation of the Peer Reviewer Panel is not subject to appeal, and if peer reviewers determine a chiropractor has violated any laws or rules, the original request for peer review will be referred to the BCP for investigation so the Peer Reviewer Panel's findings do not taint the process if disciplinary action is required. A patient, chiropractor, or third party can ask for peer review, which does not establish a precedent nor is it controlling authority. It is merely an opinion by learned chiropractors that perhaps can resolve a conflict or dispute without having to go to litigation.

Mr. Toryanski advised the changes were approved by the BCP in a meeting noticed to the public. A postcard was mailed to 722 licensed chiropractors, and no comments were received.

Senator Harris asked if the problems that caused the fund deficit have been fixed. **Mr. Toryanski** said the fee increase will fix the problem. There were some very expensive cases. One local case involved a chiropractor who vigorously disputed every charge the BCP made at every level. When the proceeding concluded, the hearing officer found for the BCP, and the chiropractor appealed the decision to the district court. Before the case was heard on the merits, the chiropractor passed away. In disciplinary actions, if the professional prevails, he can get attorney's costs and fees from the BCP. When the BCP prevails, it can recover its costs and fees. With the death of the chiropractor, the BCP settled for a small amount of the approximately \$130,000 that it took to prosecute the case.

MOTION:

Chairman Heider moved to approve **Docket No. 24-0301-1601**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

Rules of the Idaho State Board of Psychologist Examiners. Mr. Toryanski introduced himself on behalf of the Board of Psychologist Examiners (BPE). **Mr. Toryanski** also introduced Dr. Helen Holly, Psychologist and BPE Member. **Mr. Toryanski** advised the rule docket: 1.) specifies licensees may receive continuing education credit from classes taught on-line from the same organizations from which they can get credit for in-person attendance; 2.) establishes that service extenders can provide service only after their supervisory plan is approved by the Board; 3.) creates a new category of service extender for those who provide psychometrician services only; and 4.) establishes rules to complement the Idaho Telehealth Access Act based on questions received after the Idaho Telehealth Access Act was passed.

Mr. Toryanski explained Section 601 is a new section pertaining to Telepsychology. The rule defines "emergency," "information technology," "telehealth provider," and "telepsychology services" and provides general guidance to psychologists providing services through electronic means. The rule also provides procedures for getting informed consent from patients, security and confidentiality, conducting assessments, and practicing telepsychology across state lines.

Mr. Toryanski informed the Committee the pending rule was approved by the BPE in an open meeting that was noticed to the public. Postcards were mailed to 347 licensees informing them of the change and inviting their comments. The BPE received one comment during the comment period from a psychologist who wanted to know if he was practicing telepsychology if he simply stored clinical information on the hard drive of the computer in his office. The BPE assured him that he was not. After the comment period, the BPE was contacted by an insurance company that was very supportive of the telepsychology rules but had concerns about the Board's interpretation of one of the definitions and one of the security requirements. The BPE agreed to monitor these two issues to determine if any refinement of the rules is needed. The BPE was also contacted by the local American Association of Retired Persons (AARP) representative regarding the need to obtain written, informed consent upon a psychologist's subsequent contact with a telepsychology patient. The BPE agreed with AARP's comment and assured AARP it would not interpret the rule to require psychologists to get a written informed consent every time a service is provided. The BPE will work with AARP over the next year to see if the rule needs more clarity.

Senator Martin stated he heard a judge has ruled parts of the Telehealth Access Act unconstitutional. **Mr. Toryanski** answered he is not aware of any legal action having to do with the Telehealth Access Act. Outside of the constitutionality issue, a number of boards have looked at the law because they also provide services by electronic means. The Telehealth Access Act is so succinct and clear, many boards have decided it is unnecessary to promulgate rules to implement it.

Chairman Heider inquired how long telepsychology has been used, and if psychologists and patients feel it is as effective as meeting with the patient in person. **Mr. Toryanski** responded psychologists have likely been providing telepsychology services since the phone was invented. **Mr. Toryanski** stated Dr. Holly would be a good resource for more information. **Dr. Helen Holly** introduced herself as a clinical psychologist at Saint Alphonsus Pain and Spine Clinic and a new member to the BPE. The experience of telepsychology is important in Idaho because of the rural nature of the State. This service will allow more services to people who are now unable to access them. It has already been used in the military setting for many years, such as with people on ships who are deployed. Navy psychologists are stationed on aircraft carriers, so smaller ships will often conduct telepsychology between the aircraft carrier

and the smaller vessel through a Skype-type mechanism. It seems everyone almost prefers electronic to in-person communication. The level of disclosure is often higher because there is a sense of safety for the patient when in his or her own surroundings and not a foreign environment.

MOTION:

Senator Martin moved to approve **Docket No. 24-1201-1601**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
24-2301-1601**

Rules of the Speech and Hearing Services Licensure Board. Mr. Toryanski introduced himself to the Committee on behalf of the Speech and Hearing Services Licensure (SHSL) Board and also introduced Dr. Gail Chaney, a licensed audiologist and SHSL Board member. **Mr. Toryanski** explained the SHSL Board regulates the practice of audiology, speech-language pathology, and hearing aid dealing and fitting services. This docket: 1.) lowers the original license fee by 30 percent and license renewal fee by 20 percent; 2.) establishes rules to define the role of audiology support personnel; and 3.) establishes qualifications for the audiologists and hearing aid dealers and fitters who supervise provisional permit holders.

Mr. Toryanski informed the Committee the SHSL Board's balance has been steadily increasing over the past six years and is now three times its annual budget of \$85,000 per year. Boards are typically advised to maintain a balance of 100 to 150 percent of their annual budgets. The SHSL Board feels its fund balance is high and wants to collect less from its licensees. The SHSL Board proposes to lower the original license fee from \$100 to \$70 and the license renewal fee from \$125 to \$100.

Mr. Toryanski stated the second change involves rules for audiology support personnel as provided for in the Speech and Hearing Services Act at Idaho Code § 54-2907. Support personnel are helpers trained under the direction of audiologists who perform designated tasks under the supervision of an audiologist. This docket sets forth a supervisor's responsibilities, the tasks support personnel can perform, and training guidance.

Mr. Toryanski advised the SHSL Board felt it was important to establish some minimum qualifications for audiologists and hearing aid dealer and fitters who supervise hearing aid provisional permit holders. A provisional permit holder is a person who holds a permit to practice hearing aid dealing and fitting under supervision. A supervisor must be approved in advance by the SHSL Board and hold either a hearing aid dealing and fitting license or an audiology license that is current and in good standing. The licensee cannot have had any disciplinary action in the two years immediately before becoming a supervisor. If the supervisor is a hearing aid dealer and fitter, the license holder must hold either a current board certificate in hearing instrument sciences for the National Board for Certification in Hearing Sciences or have actively practiced for three years immediately preceding appointment as a supervisor. If the supervisor is an audiologist, the licensee must have actively practiced as a licensed professional for one year before becoming a supervisor.

Mr. Toryanski explained the changes in this pending fee rule were approved by the SHSL Board in an open meeting that was noticed to the public. A postcard describing the changes and requesting comments was sent to all 1,116 licensees. Three responses were received expressing concern that the audiology support personnel section would affect the newborn hearing screening performed by a number of hospitals. The SHSL Board contacted the Idaho Hospital Association and met with a Health and Welfare Program Coordinator for newborn hearing screening along with a number of interested parties who perform this service. Consensus was reached that the proposed rules would not affect the newborn hearing screening. The SHSL Board agreed to examine some language in the coming year to make this clearer. The SHSL Board knows of no opposition to the docket.

MOTION: **Senator Harris** moved to approve **Docket No. 24-2301-1601**. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

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

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:34 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary