

HAWAII MEDICAL BOARD
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes ("HRS").

Date: Thursday, December 8, 2016

Time: 1:00 p.m.

Place: King Kalakaua Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Present: Niraj S. Desai, M.D., Chairperson, Kauai Member
Sharon "Shay" Bintliff, M.D., Vice-Chairperson, Hawaii Member
Gerard K. Akaka, M.D., Oahu Member
Maria Chun, Ph.D., Public Member
Darren K. Egami, M.D., Maui Member
Peter Halford, M.D., Oahu Member
Peter Holt, M.D., Oahu Member
Karen E. Sept, D.O., Oahu Member
Shari J. Wong, Deputy Attorney General ("DAG")
Ahlani K. Quiogue, Executive Officer
Wilma Balon, Secretary

Excused: Jone Geimer-Flanders, D.O., Oahu Member
Palasi Puletasi, Public Member

Guests: Jon Kawamura, Office of Representative Della Au Belatti

Call to Order: The meeting was called to order at 1:00 p.m., at which time quorum was established.

Approval of the November 10, 2016 Minutes: It was moved by Dr. Halford, seconded by Dr. Holt, and unanimously carried to approve the minutes of the November 10, 2016 meeting as circulated.

Additions/Revisions to Agenda: None.

Adjudicatory Matters: Chair Desai called for a recess from the meeting at 1:04 p.m. to discuss and deliberate on the following adjudicatory matters pursuant to Chapter 91, HRS.

a. In the Matter of the License to Practice Medicine of Dennis I. Ayon, M.D.; MED 2010-109-L

At its meeting on November 10, 2016, the Board voted by a majority, with the exceptions of Drs. Chun and Sept who voted in opposition to the motion, to accept and adopt the Hearings Officer's Findings of Fact, Conclusions of Law, and issue a Final Order, which reflect modifications to the Recommended Order. The Final Order was provided to members for their signature.

b. In the Matter of the License to Practice Medicine of Stephen H. Denzer, M.D.; MED 2010-199-L

The Board reviewed Dr. Denzer's letter dated November 4, 2016, requesting that the probationary status be removed from his Hawaii Medical License, License No. MD-4563. In addition to Dr. Denzer's request, the Board also reviewed a letter dated September 23, 2016 (received October 18, 2016) from Kristopher Bjornson, M.D., Medical Director, Pu`ulu Lapa`au, and its Final Order dated December 13, 2012.

After due consideration of the information received, it was moved by Dr. Halford, seconded by Dr. Egami, with Dr. Bintliff who recused herself from the vote, and carried by a majority to defer Dr. Denzer's request. The Board requests that Dr. Denzer obtain a letter from the Drug Enforcement Agency, Honolulu District Office, regarding his compliance with the Memorandum Of Agreement signed August 24, 2011.

c. In the Matter of the License to Practice Osteopathy of Troy M. Denunzio, D.O.; MED 2016-217-L

After discussion, it was moved by Dr. Bintliff, seconded by Dr. Egami, and unanimously carried to accept the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and the Board's Final Order.

d. In the Matter of the License to Practice Medicine of Ara Keshishian, M.D.; MED 2014-178-L

After discussion, it was moved by Dr. Halford, seconded by Dr. Holt, and unanimously carried to accept and adopt the Hearings Officer's Findings of Fact, Conclusions of Law, and Recommended Order as its Final Order.

Following the Board's review, deliberation and decision in this matter pursuant to Chapter 91, HRS, Chair Desai announced that the Board reconvene to its regular Chapter 92, HRS, meeting at 1:19 p.m.

Applications for
License/
Certification:

- a. Ratifications:
(i) List

It was moved by Dr. Egami, seconded by Dr. Sept, and unanimously carried to ratify the attached lists of individuals for licensure or certification.

It was moved by Dr. Akaka, seconded by Dr. Bintliff, and unanimously carried to enter into executive session at 1:21 p.m. pursuant to HRS §92-5(a)(1) to consider and evaluate personal information relating to individuals applying for professional licenses cited in HRS §26-9, and pursuant to HRS §92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Applications for
License/
Certification:

b. Applications:

Rodney P. Canete, M.D.
Paul E. Hartman, M.D.
Venkatarao Isola, M.D.
William H. Maisel, M.D.
Mary K. Mays, M.D.
Chen-Li Sung, M.D.
Walter W. Tom, M.D.
Colin Zhu, D.O.
Manuel J. Garcia, EMT

c. Request for Reconsideration

Geoffrey S. Ames, M.D.

It was moved by Dr. Bintliff, seconded by Dr. Akaka, and unanimously carried to return to the open meeting at 2:05 p.m.

It was moved by Dr. Holt, seconded by Dr. Akaka, and unanimously carried to approve the following applications:

Paul E. Hartman, M.D.
Venkatarao Isola, M.D.
William H. Maisel, M.D.
Walter W. Tom, M.D.
Colin Zhu, D.O.
Manuel J. Garcia, EMT

Rodney P. Canete, M.D.

The Board reviewed and considered the records and files of Dr. Canete's application, and information received from him as well as from other organizations.

After due consideration of the information received, it was moved by Dr. Sept, seconded by Dr. Halford, and unanimously carried to defer Dr. Canete's application and request that he appear in-person or phone in to one of its next scheduled meetings.

Mary K. Mays, M.D.

After due consideration of the information received, it was moved by Dr. Egami, seconded by Dr. Sept, and unanimously carried to defer to Mays' application pending additional information.

Chen-Li Sung, M.D.

After due consideration of the information received, it was moved by Dr. Akaka, seconded by Chair Desai, and unanimously carried to defer Dr. Sung's application pending additional information.

Geoffrey S. Ames, M.D.

The Board reviewed and considered Dr. Ames letter dated November 10, 2016, requesting a reconsideration of its October 13, 2016 denial of his Application for License – PHYSICIAN (MD License).

After due consideration of the information received, it was moved by Chair Desai, seconded by Dr. Sept, and unanimously carried to deny Dr. Ames' request for reconsideration.

New Business:

a. Federation State Medical Board

(i) Draft Report on Team-Based Regulation

The Board reviewed and discussed the draft report of the FSMB Workgroup on Team-Based Regulation.

The Board determined that it would not submit comments regarding the draft report.

(ii) FSMB Model Guidelines for the Recommendation of Marijuana in Patient Care

Chair Desai welcomed Jon Kawamura, Office Manager for Representative Della Au Belatti, and informed members that he is present for the Board's discussion.

Executive Officer Quiogue reminded members that Representative Au Belatti and Senator Rosalyn Baker co-chair the Medical Marijuana Legislative Oversight Working Group ("Working Group") which was established through Act 230, Session Laws of Hawaii ("SLH") 2016. The Working Group is tasked with addressing issues related to the medical

marijuana dispensary program in the State, including operations, edibles, and any issues the Working Group finds relevant to the medical marijuana dispensary program. The Working Group is also responsible to submit an interim report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the regular session of 2017, and a final report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the regular session of 2018.

The Board reviewed and discussed the Federation of State Medical Boards ("FSMB") Model Guidelines for the Recommendation of Marijuana in Patient Care ("Guidelines").

By way of background, the FSMB appointed the Workgroup on Marijuana and Medical Regulation ("FSMB Workgroup") to develop model policy guidelines regarding the recommendation of marijuana in patient care, including conditions, diseases, or indications for which marijuana may be recommended. The FSMB Workgroup was further tasked with the development of a position statement or white paper regarding the regulation of licensees who use marijuana (it was noted that this topic will be addressed in separate document).

Executive Officer Quiogue informed members that the Guidelines are before them to consider whether they will adopt it. She stated that it could be used as an informational piece for both physicians and consumers. It may be formally adopted, informally adopted or the Board could choose not to adopt it at all.

Dr. Egami asked what the difference is between formal and informal adoption.

Executive Officer Quiogue explained that formal adoption of the Guidelines would require legislative amendments similar to the Board's Pain Management Guidelines (See HRS § 453-1.5). Once amendments are made to its statutes, the Guidelines would have legal standing. It was explained further that the Guidelines would not have the force or effect of law if the Board decides to informally adopt it.

Chair Desai stated that his preference would be to informally adopt the Guidelines mainly because the Board should be able to provide to licensed physicians and patients guidelines/clarification of specific medical practice decisions. For instance, Section Three, Treatment Agreement, contains a provision regarding advice about the potential risks of the medical use of marijuana; Chair Desai was concerned that not all of the recommendations would apply to all patient populations who seek qualification for medical marijuana.

Drs. Egami and Holt expressed their concern regarding whether the Guidelines are adopted informally or formally by the Board. As an

example, the Regulated Industries Complaints Office (“RICO”) would not be able to use the Guidelines in a legal matter if the Board were to informally adopt.

Dr. Egami asked again for clarification regarding informal and formal adoption of the Guidelines.

Executive Officer Quiogue referred to her earlier comments regarding its Pain Management Guidelines, and how those guidelines were implemented through statute. If the Board were to formally adopt the Guidelines by amending its statute then it would have the force and effect of law.

Executive Officer Quiogue asked DAG Wong to explain the difference between formal and informal adoption.

As an example of formal adoption, DAG Wong explained to members that the Board can have something in the statute or rules that authorizes the Board to create, adopt, or implement guidelines concerning medical marijuana.

Chair Desai expressed his concerns with having formal guidelines versus informal guidelines. He went on to explain that to amend its statutes to include the Guidelines is essentially telling a physician how they should specifically practice medicine.

Dr. Egami asked how the information would be disseminated if the Board were to informally adopt the Guidelines.

Executive Officer Quiogue explained to members that this information is available on the FSMBs website (https://www.fsmb.org/Media/Default/PDF/BRD_RPT_16-2_Marijuana_Model_Guidelines.pdf) and a link can be included on the Board’s website.

Dr. Sept stated that the Guidelines set out a pre-comprehensive model as to what should be enforced if someone is inappropriately qualifying patients for medical marijuana.

Dr. Halford stated that the Guidelines are not only a good educational tool for physicians and patients, but also set acceptable practice guidelines.

After discussion, it was moved by Chair Desai, seconded by Dr. Halford, and unanimously carried to informally adopt the Guidelines which provide acceptable practice guidelines for both physicians and consumers when choosing to incorporate the recommendation of marijuana in patient care and management.

b. 2017 Board Meeting Schedule

The 2017 Board meeting schedule was distributed to members for informational purposes.

Correspondence:

- a. Letter received on November 9, 2016, from Brian J. Murphy, Regarding Medical Marijuana
- (i) Dr. Marcus Conant et al., Plaintiffs, v. Barry R. McCaffrey, as Director, United States Office of National Drug Control Policy, et al., Defendants

The Board considered and discussed Mr. Murphy's letter dated November 9, 2016, as well as the case entitled "Dr. Marcus Conant et al., Plaintiffs, v. Barry R. McCaffrey, as Director, United States Office of National Drug Control Policy, et al., Defendants" ("Conant Case"). In particular, Mr. Murphy is seeking clarification: on the medical marijuana program in the state of Hawaii; and whether a physician will lose their license to prescribe certain medications if they are connected with a medical marijuana dispensary.

Dr. Holt referenced the Guidelines that recommend the following:

Physician Conflicts of Interest: A physician who recommends marijuana should not have a professional office located at a dispensary or cultivation center or receive financial compensation from or hold a financial interest in a dispensary or cultivation center. Nor should the physician be a director, officer, member, incorporator, agent, employee, or retailer of a dispensary or cultivation center.

Executive Officer Quiogue also referred to Hawaii Administrative Rules ("HAR") § 11-850-31, which prohibits a dispensary licensee, including dispensary licensee's officers, employees, agents or anyone with financial interest in a licensed medical marijuana dispensary from certifying patients for the use of medical marijuana.

Dr. Halford stated quite emphatically, and members agreed that the "connection" with a medical marijuana dispensary itself, is not grounds for a physician to lose one's license. However, Dr. Halford stated that there are specific standards that provide clear prohibitions established through HAR § 11-850-31.

Discussion followed. After due consideration of Mr. Murphy's letter, the Board informally opined that it takes no position with regard to the Conant Case, and recommends that Mr. Murphy seek guidance from private legal counsel to assist him with an explanation of the case. The Board also recommends that Mr. Murphy be referred to its November 12, 2015 meeting minutes in which it discussed "medical marijuana certifications

and dispensaries”. Further, Mr. Murphy, as well as any other consumer may, at any time, file a complaint with RICO.

Lastly, in accordance with HAR § 16-201-90, the above interpretation is for informational and explanatory purposes only. It is not an official opinion or decision, and therefore is not to be viewed as binding on the Board or the Department of Commerce and Consumer Affairs.

Unfinished Business: a. Email Inquiry dated November 1, 2016, from Nathaniel M. Lacktman, Regarding Telehealth

The Board noted that this matter was deferred at its November 10, 2016 meeting for further deliberation and discussion.

At its November meeting, the Board reviewed and discussed an email from Mr. Lacktman dated November 1, 2016, regarding whether a Hawaii-licensed physician may use telehealth for the purpose of establishing a physician-patient relationship without the requirement of an in-person exam, provided the treatment meets the applicable standard of care.

Chair Desai referred to Act 226, SLH 2016, specifically subsections (e) and (f), which states:

(e) A physician shall not use telehealth to establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii.

(f) A physician-patient relationship may be established via telehealth if the patient is referred to the telehealth provider by another health care provider who has conducted an in-person consultation and has provided all pertinent patient information to the telehealth provider. Once a provider-patient relationship is established, a patient or physician licensed in this State may use telehealth for any purpose, including consultation with a medical provider licensed in another state, authorized by this section or as otherwise provided by law.

Chair Desai provided clarification of both subsections (e) and (f).

With regard to subsection (e), Chair Desai stated that he interprets this to mean that a Hawaii-licensed physician may use telehealth to establish a physician-patient relationship with a patient in this State.

Members agreed with Chair Desai’s interpretation of subsection (e).

With regard to subsection (f), Chair Desai asked members if they agree that this section provides a mechanism for a non-Hawaii-licensed physician to, by obtaining a referral through a Hawaii-licensed physician who has conducted an in-person exam, consult with a patient in Hawaii.

Dr. Bintliff explained that she interprets subsection (f) to increase and further clarify what is stated in subsection (e), but emphasized that a non-Hawaii-licensed physician must still obtain a license.

Executive Officer Quiogue reread the language from subsection (f), and stated that this provision does not require an out-of-state licensed physician to obtain a medical license in the State. She explained that once a Hawaii-licensed physician establishes a physician-patient relationship, the Hawaii-licensed physician may refer the Hawaii-patient to a non-Hawaii-licensed physician. The referral alone will then allow the Hawaii-patient and the non-Hawaii-licensed physician to consult with one another independent of the Hawaii-licensed physician.

Executive Officer referred to the scenario provided on page 11 of its November 10, 2016 open session minutes, which states:

In order to explain and provide more clarity to this matter, Chair Desai presented the Board with the following scenario involving: a Hawaii-patient (Jane); Hawaii-licensed physician (Dr. John); and a non-Hawaii-licensed physician (Dr. Bob).

With regard to subsection (f), Chair Desai stated that this section provides a mechanism for: Dr. John to establish an in-person physician patient-relationship with Jane; Dr. John to refer Jane to Dr. Bob; and Dr. Bob to provide indefinite care to Jane without ever obtaining a Hawaii medical license. The referral made between Dr. John and Dr. Bob lasts indefinitely. Once the referral is made, Jane may contact Dr. Bob independent of Dr. John, to receive care via telehealth.

Members voiced their concerns and displeasure with the above interpretation.

Chair Desai asked members, independent of their personal opinions, whether they agree that subsection (f) provides a mechanism for a non-Hawaii-licensed physician to, by obtaining a referral through a Hawaii-licensed physician who has conducted an in-person exam, consult with a patient in Hawaii.

Dr. Holt expressed his concerns regarding subsection (f), and stated that a license should be required.

Executive Officer Quiogue stated that the Board cannot require the non-Hawaii-licensed physician to obtain a license because of the amendments reflected in subsection (f).

Discussion followed. Chair Desai again asked members whether subsection (f) provides a mechanism for a non-Hawaii-licensed physician

to, by obtaining a referral through a Hawaii-licensed physician who has conducted an in-person exam, consult with a patient in Hawaii.

Executive Officer Quiogue explained to the Board that once a referral is made, the Hawaii-patient or Hawaii-licensed physician may use telehealth for any purposes including, consultation with a medical provider licensed in another state.

Using the scenario discussed at its November 2016 meeting, DAG Wong explained that Jane or Dr. John can consult with Dr. Bob independent of each other. DAG Wong questioned whether Dr. Bob would be required to obtain a license in Hawaii.

Based on the amended language in Act 226, SLH 2016, Chair Desai stated that it does not appear that Dr. Bob would have to obtain a medical license in Hawaii. He stated further that it is unclear how the Board, in the case of patient harm, incompetence, or unprofessional conduct, is to discipline a non-Hawaii-licensed physician.

Chair Desai explained that it appears that the Board may not have jurisdiction over a physician who is not licensed here.

Executive Officer Quiogue stated that the non-Hawaii-licensed physician's home state of licensure may not be able to take action against the physician because the patient is physically located in the State of Hawaii, and the practice of medicine occurs where the patient is physically located.

Discussion followed. Members again expressed their concern with this provision. Chair Desai stated that absent legislative amendments, it is unclear how the Board, in the case of patient harm, incompetence, or professional misconduct, is able to discipline a non-Hawaii-licensed physician.

With regard to Mr. Lacktman's specific inquiry and Act 226, SLH 2016, it was moved by Chair Desai, seconded by Dr. Halford, with Dr. Egami abstaining from the vote, and carried by a majority to inform Mr. Lacktman that it is the Board's informal opinion that HRS § 453-1.3, allows a Hawaii-licensed physician to establish a physician-patient relationship with a patient in this State without the requirement of an in-person exam. Further, subsection (f) of Act 226, SLH 2016, provides a mechanism for a non-Hawaii-licensed physician to, by obtaining a referral through a Hawaii-licensed physician who has conducted an in-person exam, consult with a patient in Hawaii.

Lastly, in accordance with HAR § 16-201-90, the above interpretation is for informational and explanatory purposes only. It is not an official opinion or decision, and therefore is not to be viewed as binding on the Board of the Department of Commerce and Consumer Affairs.

Advisory

- Committees:
- a. Physician Assistants
 - b. Emergency Medical Service Personnel
 - c. Podiatrists

Announcements: None.

Next Meeting: Thursday, January 12, 2017
King Kalakaua Conference Room, First Floor
335 Merchant Street
Honolulu, HI 96813

Adjournment: It was moved by Dr. Holt, seconded by Dr. Egami, and unanimously carried to adjourn the meeting at 3:15 p.m.

Reviewed and approved by:

/s/Ahlani K. Quiogue

(Ms.) Ahlani K. Quiogue
Executive Officer

Taken and recorded by:

/s/Wilma Balon

Wilma Balon
Secretary

AKQ:wb
12/30/16

- (X) Minutes approved as is.
- () Minutes approved with changes; see minutes of _____.

HAWAII MEDICAL BOARD (12/08/2016-RATIFICATION LIST)

LTYPE LIC NUM BP NAME PART 1

MD 18880 SEAN T <CARROLL<
MD 18881 JOHN P <NOLAN<
MD 18882 NYREE <PADILLA<
MD 18883 MICHAEL L SCHINDEL
MD 18884 ROBERT R <PULLING<
MD 18885 FAIZ <HUSSAIN<
MD 18886 NOELANI C <HOBBS<
MD 18887 SCOTT <HANKINSON<
MD 18888 BARBARA A <BLANKENSHIP<
MD 18889 MARK R <MATTHEWS<
MD 18890 MELISSA B <DAVIS<
MD 18891 ESTHER R <SMITH<
MD 18892 TY <CHUN<
MD 18893 DARIUS Z <ZOROIFY<
MD 18894 DANIEL W <JOHNSON<
MD 18895 DOUGLAS T <NELSEN<
MD 18896 EVA H <MCCULLARS<
MD 18897 PEI-CHIA <LIANG<
MD 18898 ERIN L <IMLER<
MD 18899 JIMMY C <HUANG<
MD 18900 KELLY A <HOLES-LEWIS<
MD 18901 BRIAN D <FITCH<
MD 18902 TIMOTHY G <BERNEY<
MD 18903 DERRICK J BEECH
MD 18904 BYUNG L <CHUNG<
MD 18905 JUDITH H <WEISS<
MD 18906 MOLLY R <MATHEWS<

AMD 726 ROBERT F <THOMANN<
AMD 727 ALLISON H K <HIGA-HOWERTON<

DOS 1773 CAITLIN M <GRANADILLOS<
DOS 1774 FARZAD <POURARIAN<
DOS 1775 PETER J <GERTONSON<

MDR 7199 JAMES K <FALLIN<
MDR 7200 CHLOE <MCCOY<

MDR 7201 CHRISTOPHER D <KOHLS<
MDR 7202 CHRISTIAN H <SIMPSON<
MDR 7203 ANNA <PETER<
MDR 7204 BRETT C <KODISH<
MDR 7205 THOMAS G <MCKELVEY< JR
MDR 7206 JONATHAN L <GOSS<
MDR 7207 MICHAEL W <LINDSEY<
MDR 7208 MARK G <PRODGER<
MDR 7209 DAVID M <TSENG<

DOSR 390 MATTHEW A <WESTHOFF<
DOSR 391 RYAN K <PHILLIPS<
DOSR 392 RICHARD <KLINE<

EMTP 2131 JASON C <COFFMAN<
EMTP 2132 MICHAEL J <POST<
EMTP 2133 MATTHEW K M <PI<
EMTP 2134 LANEY J <AZEVEDO<
EMTP 2135 MATTHEW M <CASE<
EMTP 2136 KYLE M <MUIN<
EMTP 2137 KALA J <HAASENRITTER<
EMTP 2138 JONATHAN E H <HARA<
EMTP 2139 CHRISTOPHER N <ALMODOVA<
EMTP 2140 MICAH D M <TSUE<
