

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, October 12, 2017

Time: 1:00 p.m.

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

Present: Jone Geimer-Flanders, D.O., Chairperson, Oahu Osteopathic Member
Peter Halford, M.D., Vice-Chairperson, Oahu Member
Maria Chun, Ph.D., Public Member
Franklin V.H. Dao, M.D., Oahu Member
Darren K. Egami, M.D., Maui Member
Peter Holt, M.D., Oahu Member
Palasi Puletasi, Public Member
Karen E. Sept, D.O., Oahu Osteopathic Member
Shari J. Wong, Deputy Attorney General ("DAG")
Ahlani K. Quiogue, Executive Officer
Wilma Balon, Secretary

Excused: Gerard K. Akaka, M.D., Oahu Member
Sharon "Shay" Bintliff, M.D., Hawaii Member

Guests: Lei Fukumura, Special Deputy Attorney General ("SDAG")
Matthew Koenig, M.D., Medical Director of Telehealth,
The Queen's Medical Center
Jon Thomas, M.D., Chairperson, Interstate Medical
Licensure Compact Commission

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

Approval of the September 14, 2017 Minutes: It was moved by Dr. Halford, seconded by Dr. Dao, and unanimously carried to approve the minutes of the regular session and the minutes of the executive session of the September 14, 2017 meeting as circulated.

Adjudicatory Matters: Chair Geimer-Flanders called for a recess from the meeting at 1:03 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 Charles Arakaki, M.D.: MED 2017-36-L

After discussion, it was moved by Dr. Halford, seconded by Dr. Egami, with the exception of Dr. Dao who recused himself from the discussion and vote of this matter, and carried by a majority to accept the First Amended Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Board's Final Order; Exhibits "1" and "2".

Following the Board's review, deliberation and decision in this matter pursuant to Chapter 91, HRS, Chair Geimer-Flanders announced that the Board reconvene to its regular Chapter 92, HRS, meeting at 1:08 p.m.

Applications for License/Certification:

a. Applications:

It was moved by Dr. Egami, seconded by Dr. Sept, and unanimously carried to enter into executive session at 1:09 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.

(i) Physician:

- a. Kenneth L. Scott, D.O.
- b. Steven B. Cohen, M.D.
- c. Rodni N. Cruz, M.D.
- d. John S. Ellis, M.D.
- e. David R. Ferrell, M.D.
- f. Diana T.H. Kim, M.D.
- g. Gregory S. McFadden, M.D.
- h. Scott C. Serrano, M.D.
- i. Jason C. Tani, M.D.

(ii) Physician Assistant:

- a. Arthur B. Domingo, PA-C

5. Federation of State Medical Boards: Interstate Medical Licensure Compact

It was moved by Dr. Sept, seconded by Dr. Egami, and unanimously carried to return to the open meeting at 2:20 p.m.

Chair Geimer-Flanders welcomed the guests into the meeting room, and asked the guests, staff and members to introduce themselves before the Board proceeded with the next items on its agenda.

Dr. Holt arrived at the meeting at 2:24 p.m.

It was moved by Dr. Egami, seconded by Dr. Halford, with the exception of Dr. Holt who abstained from the discussion and vote of this matter, and carried by a majority to approve the following applications:

- (i) Physician:
 - a. Kenneth L. Scott, D.O.
 - b. Steven B. Cohen, M.D.
 - e. David R. Ferrell, M.D.
 - f. Diana T.H. Kim, M.D.
 - h. Scott C. Serrano, M.D.
 - i. Jason C. Tani, M.D.

- (ii) Physician Assistant:
 - a. Arthur B. Domingo, PA-C

- (i) Physician:
 - d. John S. Ellis, M.D.

After due consideration of the information received, it was moved by Dr. Halford, seconded by Dr. Sept, with the exceptions of Chair Geimer-Flanders who recused herself from the discussion and vote, and Dr. Holt who abstained from the discussion and vote, and carried by a majority to approve Dr. Ellis' application for licensure subject to certain conditions, basing its decision on the following grounds of the Hawaii Revised Statutes ("HRS"), which find support in the records and files of Dr. Ellis application:

- HRS §436B-19(3): Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature; and

- HRS §436B-19(9): Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation.

The Board considers Dr. Ellis conduct as reflected in the records and files of his application to be very concerning and contrary to recognized standards of ethics as adopted by the American Medical Association ("AMA"). Specifically, the Board believes that Dr. Ellis failed to uphold the following AMA Principle of Medical Ethics:

- II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.

Accordingly, the Board hereby imposes the following conditions to Dr. Ellis' conditional medical license:

1. Dr. Ellis shall continue to be monitored by the TPHSP until at least July 2023, or a length to be determined by TPHSP. However, said monitoring may be extended by the Board if the Board believes that reasonable grounds exist.
2. If, at any time, TPHSP determines that Dr. Ellis is not in compliance with the monitoring program, he shall immediately notify the Board and immediately cease practicing medicine until TPHSP specifies to the Board what conditions, if any, it recommends for him to safely resume the practice of medicine. Depending upon TPHSP's written report and recommendations, the Board may evaluate what, if any, further conditions are warranted for Dr. Ellis to practice medicine and impose such conditions on his license. If Dr. Ellis fails to refrain from using drugs or alcohol, the Board also will consider whether to suspend, revoke, or otherwise discipline your license.
3. During the period of Ellis' conditional license, he shall ensure that TPHSP submits quarterly written reports to the Board. These written reports shall include, but not be limited to, assessments regarding: 1) Dr. Ellis' compliance with the monitoring program; and 2) Dr. Ellis' ability to safely practice as a physician. The first quarterly report is due 90 days from the date of this letter.
4. Should Dr. Ellis wish to have any condition removed from his license he shall make a request in writing to the Board, at which time the Board would consider such request. When doing so, Dr. Ellis shall provide evidence of full compliance with his monitoring contract with TPHSP and all other conditions placed on his conditional license.

g. Gregory S. McFadden, M.D.

It was moved by Chair Geimer-Flanders, seconded by Dr. Halford, with the exception of Dr. Holt who abstained from the discussion and vote of this matter, and carried by a majority to defer Dr. McFadden's application pending additional information.

c. Rodni N. Cruz, M.D.

It was moved by Dr. Dao, seconded by Dr. Halford, with the exception of Dr. Holt who abstained from the discussion and vote of this matter, and carried by a majority to defer Dr. Cruz's application pending additional information.

Applications for
License/
Certification:

- b. Ratifications:
(i) List

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

Federation of State
Medical Boards:
Interstate Medical
Licensure Compact:

Matthew Koenig, M.D., Medical Director of Telehealth, The Queen's Medical Center and Jon Thomas, M.D., Chairperson, Interstate Medical Licensure Compact Commission appeared before the Board.

Dr. Koenig informed the Board that he and Dr. Thomas are present to address any possible misunderstandings the Board may have regarding the Federation of State Medical Boards Interstate Medical Licensure Compact ("Compact") or at least be a resource to answer questions members and staff may have.

Dr. Koenig shared his experience in obtaining a Compact license through the state of Utah, and informed the Board that he was issued a medical license within a month after submitting his application. Conversely, his radiologist-friend applied with the Board (at the same time he applied with the state of Utah), and the Hawaii application process took her five months.

Dr. Koenig informed members that although he is the Medical Director of Telehealth at The Queen's Medical Center, he does not directly relate entering the Compact to telemedicine, but rather the Compact allows good physicians without sanctions to practice in the State with fewer delays. He went on to say that given that most physicians would choose other states as their State of Principal Licensure ("SPL"), then the Board may accept verification of static information without having to directly verify that information.

Dr. Koenig advised the Board that he views the Compact as a way of addressing the physician shortage in the State, and allows patients to have greater access to physicians.

In reference to Dr. Koenig's earlier comments about obtaining a license in the state of Utah, Ms. Quiogue queried how Dr. Koenig was able to select the state of Utah as his SPL. Ms. Quiogue stated that in order for a physician to designate a Compact member state as the SPL, the physician must possess a full and unrestricted license to practice medicine in the state, and that specific criteria must be met such as the SPL is the primary residence of the physician, etc.

Dr. Thomas clarified that in order for a state to be designated as the SPL, the physician must possess a full and unrestricted license to practice

medicine in the state, and the state is: 1) the state of primary residence; 2) the state where at least 25% of the practice of medicine occurs; 3) the location of the physician's employer; or 4) the state is designated as the state of residence for purposes of federal income tax. He went on to say that the idea is that there is a connection to the practice of medicine and the physician.

Chair Geimer-Flanders inquired whether a licensee can redesignate a member state as their SPL.

Dr. Thomas indicated that the Compact provides language that allows the Interstate Medical Licensure Commission ("IMLCC") to establish rules that would allow for a licensee to redesignate a member state as their SPL. He provided the following example:

He lives and practices medicine in the state of Minnesota, a Compact member state. Based on the guidelines of the Compact, he would designate Minnesota as his SPL. Minnesota would then issue a Letter of Qualification ("LOQ") to him as well as the IMLCC verifying his eligibility. Upon receipt of a LOQ, he is eligible for expedited licensure in any member state.

Dr. Thomas emphasized that the SPL performs the vetting process, and primary source verifies all static information (e.g., medical school education, exams, graduate medical education, board specialty, performs the FBI background check, etc.).

Executive Officer Quiogue queried whether states designated as the SPL, can charge additional fees in addition to the \$700.00 fee.

Dr. Thomas indicated that SPLs typically only charge what the current application fee is, and explained that the IMLCC has no decision-making authority regarding this matter. Dr. Thomas indicated that in most instances the states fees are set by the state's legislature.

Executive Officer Quiogue explained that the Board's fees are set in administrative rules, and not in statute. As such, the legislature does not have oversight over the Board's fees.

Dr. Thomas indicated that what the IMLCC is attempting to do is to create a standardized process to ease the burden on the physician, so they do not have to submit five different payments to five different medical boards, complete 5 different applications, and be vetted by five different jurisdictions.

Dr. Thomas emphasized that the IMLCC is not deliberative, and does not determine or decide whether a physician qualifies for an expedited license through the Compact.

Ms. Quiogue inquired about the renewal process.

Dr. Thomas explained that the renewal process is completed through the Compact including the payment of all renewal fees. A portion of the fees is disseminated to the state medical boards, and that the physician must still meet the individual states renewal requirements.

Ms. Quiogue indicated that in addition to the aforementioned questions, the Board and others expressed several concerns regarding the Compact at its September 14, 2017 meeting, including, but not limited to: the enforceability of subpoenas issued by other jurisdictions; sharing investigative materials with other jurisdictions; and its lack of providing a physician a hearing or their due process rights if disciplinary action were to occur.

DAG Wong queried whether specific provisions were constitutional, and stated that Section 16(a), page 18, lines 17-19, appear to require the “executive, legislative and judicial branches of state government to enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact’s purpose and intent.” She stated further that there are also several provisions that are confusing and conflict with one another.

Dr. Thomas informed the Board that this language was intended to describe the legislative process and the executive enactment of the Compact language.

In response to Dr. Thomas comments, DAG Wong stated that it is still unclear how the judicial branch of government is bound to enforce the Compact.

Dr. Thomas assured members that this type of language is included in all compacts, but stated that he would seek clarification from an expert who assisted the FSMB in drafting the Compact language.

As there were no further questions, Chair Geimer-Flanders thanked the guests for attending, and explained that the Board had several agenda items that they must review and discuss. Chair Geimer-Flanders informed members that they may leave or remain for the rest of the meeting.

Drs. Koenig and Thomas thanked the members for allowing them to participate in their discussion regarding the Compact, and left the meeting room at 3:35 p.m.

Dr. Halford stated, and several members agreed, that his concerns regarding the Compact still remain. In particular, according to the Board’s data, the Compact will only benefit about 28% of its application population, the Compact language supersedes the State’s laws, and most importantly that the University of Hawaii John A. Burns School of (“JABSOM”) graduate medical education graduates – physicians that are more likely to remain in the State and provide care to Hawaii consumers – would not be able to participate in the Compact because one of the

requirements to obtain a license through the Compact is to possess a specialty board certification. At the time a physician completes residency training they are board eligible, but not yet board certified.

To add to the comments by Dr. Halford and others, Ms. Quiogue stated that the Board receives about 50 – 80 applications from residents who have just completed an accredited residency program either through JABSOM or the Tripler Army Medical Center (“Tripler”), and as previously discussed by the Board, these are the same physicians who are more likely to remain in the State and provide care.

Ms. Quiogue asked the Board for its position regarding the Compact.

Discussion followed. It was moved by Dr. Halford, seconded by Dr. Sept, and unanimously carried that at this time the Board cannot support the Compact for the following reasons:

1. The data of the Board's current applicant population from 2015 to the present indicates that 72% (1399/1932) are from states which do not participate in the Compact. Thus, the Compact would have no effect upon the majority of applications submitted to the Board;
2. The Compact has higher requirements than Hawaii does for a permanent medical license. For example, the Compact requires specialty board certification. This requirement alone would exclude recent residency/fellowship program graduates from the JABSOM and Tripler [there are currently 3,693 physicians providing care to Hawaii patients for a total of 2,903 full time equivalents of direct care vs. 9,996] – the physicians who would most likely remain in Hawaii and provide care to Hawaii consumers;
3. The Compact language contains many confusing and conflicting provisions; and
4. Concerns regarding the enforceability of subpoenas, mandatory disclosure of investigatory information with member boards, ceding the vetting and disciplinary processes, financial costs and liabilities, and separation of powers.

Alternative Pathways
of Licensure:

- a. Expedited route of licensure for MD and DO applicants / licensure by endorsement or reciprocity for MD and DO applicants

Due to time constraints, the above matter was deferred until the November 9, 2017 meeting.

RICO Medical
Advisory Committee:

It was moved by Dr. Halford, seconded by Dr. Holt, and unanimously carried to approve the RICO Medical Advisory Committee List, with the

exception of two physicians who have passed away, and any additional interim appointees that RICO deems necessary to aid in its investigations.

Hawaii Medical
Licensure

Requirement Inquiry: a. Email dated September 20, 2017, from Sarah Joye, Associate, Fox Rothschild, LLP, seeking clarification regarding Hawaii's medical licensure requirements for a licensed physician providing telehealth services while residing in Hawaii to a patient located in another jurisdiction in which the physician is licensed.

The Board reviewed Ms. Joye's email dated September 20, 2017, which seeks clarification of the Board's medical licensure requirements for a licensed physician providing telehealth services while residing in Hawaii to a patient located in another jurisdiction in which the physician is licensed.

In consideration of Ms. Joye's inquiry, members referred to an informal opinion the Board issued at its meeting on February 13, 1998, which states:

Where the physician is located in Hawaii and the patient elsewhere, the recommended policy is as follows:

When the physician has a full and unrestricted Hawaii medical license and practices from Hawaii across state lines using any available means, including electronic equipment, the licensing requirement of the state or country in which the patient resides shall prevail. That is, the practice of medicine occurs where the patient is located. The practice of medicine from Hawaii into another state or country without meeting the legal requirements of that state or country for the practice of medicine shall constitute unprofessional conduct.

Members also reviewed their meeting minutes from the December 31, 2016, in which Ms. Quiogue reiterated the Board's position that the practice of medicine occurs where the patient is physically located.

Ms. Quiogue expressed her confusion with the 1998 informal opinion. She was unsure why a physician would be required to hold an unrestricted medical license in Hawaii if they are providing services to a patient who is located out-of-state and the physician holds a medical license in the jurisdiction in which the patient is physically located. She emphasized the Board's position that the practice of medicine occurs where the patient is physically located.

Dr. Halford agreed with Ms. Quiogue, and stated that the physician, while residing in the State of Hawaii, may provide services to a patient physically located in a jurisdiction with which the physician is licensed

without having to first obtain a Hawaii-medical license or Hawaii-osteopathic medical license.

Discussion followed. Members expressed their support of Dr. Halford's interpretation.

Regarding Ms. Joye's specific inquiry, it was moved by Dr. Halford, seconded by Chair Geimer-Flanders, and unanimously carried to inform Ms. Joye that it is the Board's informal opinion that a physician, while residing in the State of Hawaii, may provide telehealth services to a patient physically located in another jurisdiction in which the physician is licensed without having to first obtain a Hawaii-medical license or Hawaii-osteopathic medical license.

Lastly, in accordance with Hawaii Administrative Rules §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.

Advisory
Committees:

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

Next Meeting:

Thursday, November 9, 2017
King Kalakaua Conference Room, First Floor
335 Merchant Street
Honolulu, HI 96813

Adjournment:

It was moved by Dr. Egami, seconded by Mr. Puleyasi, and unanimously carried to adjourn the meeting at 3:50 p.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Ahlani K. Quiogue

/s/ Wilma Balon

(Ms.) Ahlani K. Quiogue
Executive Officer

Wilma Balon
Secretary

AKQ:wb
10/27/17

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

HAWAII MEDICAL BOARD (10/12/2017-RATIFICATION LIST)

LTYPE LIC NUM BP NAME PART 1

MD 19355 ROBERT <BRADLEY<
MD 19356 DAVID S <KWON<
MD 19357 RUTH <GETTES<
MD 19358 RICHARD K <INAE<
MD 19359 ROBERT S <ISRAEL<
MD 19360 BRANDON J <KAI<
MD 19361 TAE H <RO<
MD 19362 MICHAEL D <SCAHILL<
MD 19363 AMUDHA <PALANISAMY<
MD 19364 AYAZ U H <MALIK<
MD 19365 DOYLE S <COLEMAN<
MD 19366 RYAN G <MCMORRIES<
MD 19367 BARTHOLOMEW D <SAK<
MD 19368 LLOYD D <WAGNER<
MD 19369 ALEXANDER N <LUGER<
MD 19370 CARSTEN R <SEEMANN<
MD 19371 GREG T <MOGEL<
MD 19372 BRADEN <MOGLER<
MD 19373 SPENCER J <CHUN<
MD 19374 NASEH <NAWABI<
MD 19375 DAVID L <MILIKOW<
MD 19376 JING <JIANG<
MD 19377 MARTINA R <GUNARATNAM<
MD 19378 SANDRA V <HAZRA<
MD 19379 MARK A <WOODWARD<
MD 19380 ROBERT H <CONNAUGHTON<
MD 19381 AIDA <CERUNDOLO<
MD 19382 MASON S <TURNER<
MD 19383 BRYAN L <WINKLER<
MD 19384 DOUGLAS L <SMITH<
MD 19385 LORENZO <MANNELLI<
MD 19386 DAVID W <ASHLEY<

AMD 787 ERIN H <JOHNSON<
AMD 788 LAURA <BADALUCCO<
AMD 789 ANTONIETTA E <IOSUE<

DOS 1840 DAVID J <ADAMS<
DOS 1841 ADRIENNE D <FEHR<
DOS 1842 KELLEY K <HUTCHINS<
DOS 1843 CARRIE M <GIORDANO<
DOS 1844 KRISTIN M <REDENBAUGH<
DOS 1845 JONATHAN B <REDENBAUGH<

MDR 7396 MEENAL <MISAL<
MDR 7397 MOHAMED <HAGAHMED<
MDR 7398 JUSTIN <CHAPMAN<
MDR 7399 ERIN E <WENZEL<
MDR 7400 NICHOLAS J <ROBELL<
MDR 7401 ALYSSA <WIELD<
MDR 7402 ELLIOTT J <PENNA<
MDR 7403 AUSTIN S <WHITE<
MDR 7404 LEILA <HESELSON<
MDR 7405 DANIEL <CULY<
MDR 7406 ALEXANDER K <RAHIMI<

PO 223 JON P <MCCREARY<
