#### **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").

<u>Date:</u> Thursday, November 14, 2019

<u>Time:</u> 1:00 p.m.

Place: King Kalakaua Conference Room

King Kalakaua Building

335 Merchant Street, 1st Floor

Honolulu, HI 96813

<u>Present:</u> 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 Andrew "Rick" Fong, M.D., Hawaii Member

Peter Holt, M.D., Oahu Member

Michael Jaffe, D.O., Oahu Osteopathic Member

Wesley Mun, Public Member

Danny Takanishi, M.D., Oahu Member Geri Young, M.D., Kauai Member

Shari J. Wong, Deputy Attorney General ("DAG")

Ahlani K. Quiogue, Executive Officer

Josephine Madiro, Secretary Kellie Teraoka, Secretary

Guest(s): Lei Fukumura, DCCA-PVL, Special Deputy Attorney ("SDAG")

Mihoko Ito, SanHi Government Strategies

Paige Heckathorn Choy, Healthcare Association of Hawaii ("HAH")

Hilton Raethel, President and Chief Executive Officer, HAH

Patrick Harrison, HAH

Lei Ana Green, DCCA-PVL, Executive Officer (In-training)

Dorene Eddy, DCCA-PVL, Program Specialist

<u>Call to</u> The meeting was called to order at 1:03 p.m., at which time quorum

Order: was established.

Approval of the October 10, 2019,

Minutes:

It was moved by Chair Geimer-Flanders, seconded by Dr. Holt, to approve the minutes of the executive session of the October 10, 2019, meeting unamended and the minutes of the regular session of the

October 10, 2019, meeting with the following amendment to:

### Page 4; (ii) Physician (Endorsement):

It was moved by Dr. Takanishi, seconded by Dr. Holt, and unanimously carried to return to the open meeting at 2:[08]19 p.m.

# Adjudicatory Matters:

Chair Geimer-Flanders called for a recess from the meeting at 1:05 p.m. to discuss and deliberate on the following adjudicatory matter pursuant to Chapter 91, HRS:

a. <u>In the Matter of the License to Practice Medicine of Warren K.K.</u> Frey, M.D.; MED 2019-13-L

Dr. Egami left the meeting room at 1:07 p.m. and returned at 1:13 p.m.

Vice-Chair Halford entered the meeting room at 1:08 p.m.

After discussion, it was moved by Dr. Takanishi, seconded by Vice-Chair Halford, and carried by the majority, with the exception of Dr. Egami who abstained from the discussion and vote on this matter, to approve the Settlement Agreement Prior to Filing a Petition for Disciplinary Action and Board's Final Order.

# SDAG Fukumura was excused from the meeting room at 1:11 p.m.

# Applications for License/ Certification:

#### A. Applications:

It was moved by Dr. Fong, seconded by Dr. Jaffe, and unanimously carried to enter into executive session at 1:11 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 (Permanent):
  - a. Sundeep Bojedla, D.O.
  - b. Rodney P. Canete, M.D.

Dr. Young recused herself from the discussion and voting on Dr. Canete's application and left the meeting room from 1:17 p.m. to 1:31 p.m.

Dr. Egami left the meeting room at 1:20 p.m. and returned at 1:21 p.m.

- c. Marc S. Demyun, M.D.
- d. Margaret A. Engel, M.D.

- e. Linda M. Gordon, M.D.
- f. John H. Matsuura, M.D.
- g. Sanjay P. Muttreja, M.D.
- h. Henry A. Wojtczak, M.D.
- i. Mark S. Worthen, M.D.

# (ii) <u>Physician (Endorsement)</u>:

- a. Dameon R.V. Duncan, M.D.
- b. Timothy L. Honderick, D.O.
- c. Michael A. Malik, M.D. a.k.a. Michael Anthony Jones, M.D.
- d. Hang Vu, M.D.

## (iii) Request to Withdraw Application:

a. Kent A. Swaine, M.D.

It was moved by Vice-Chair Halford, seconded by Dr. Jaffe, and unanimously carried to return to the open meeting at 2:25 p.m.

# Applications for License/ Certification:

#### A. Applications:

It was moved by Chair Geimer-Flanders, seconded by Dr. Takanishi, and unanimously carried to approve the following applications:

#### (i) <u>Physician (Permanent)</u>:

- a. Sundeep Bojedla, D.O.
- c. Marc S. Demyun, M.D.
- d. Margaret A. Engel, M.D.
- e. Linda M. Gordon, M.D.
- f. John H. Matsuura, M.D.
- g. Sanjay P. Muttreja, M.D.
- h. Henry A. Wojtczak, M.D.

- i. Mark S. Worthen, M.D.
- (i) (Physician (Permanent):

#### b. Rodney P. Canete, M.D.

After due consideration of the information received, it was moved by Chair Geimer-Flanders, seconded by Dr. Takanishi, and carried by a majority, with the exception of Dr. Young who recused herself from the discussion and vote on this matter, to defer Dr. Canete's application pending submission of additional information.

It was moved by Chair Geimer-Flanders, seconded by Dr. Egami, and unanimously carried to approve the following applications:

- (ii) <u>Physician (Endorsement)</u>:
  - a. Dameon R.V. Duncan, M.D.
  - b. Timothy L. Honderick, D.O.
- (ii) Physician (Endorsement):
  - d. Hang Vu, M.D.

After due consideration of the information received, it was moved by Vice-Chair Halford, seconded by Dr. Takanishi, and unanimously carried to approve Dr. Vu's application for licensure and issue a non-disciplinary letter of education.

- (ii) Physician (Endorsement):
  - c. <u>Michael A. Malik, M.D. a.k.a. Michael Anthony</u> Jones, M.D.

After due consideration of the information received, it was moved by Vice-Chair Halford, seconded by Dr. Takanishi, and unanimously carried to defer Dr. Malik's application by endorsement because he does not meet the requirements for this application.

Ms. Quiogue asked the Board to consider delegating to the executive officer the authority to inform applicants that have ever had disciplinary action taken against a medical license that they do not meet the requirements for licensure by endorsement. Instead, the applicant will need to apply for medical licensure through the other more appropriate route and submit an application fee.

The Board members were inclined to delegate this authority to its executive officer.

After thoughtful discussion, it was moved by Dr. Takanishi, seconded by Vice-Chair Halford, and unanimously carried to delegate to the Board's executive officer, in accordance with section 436B-8, the authority to inform applicants that have ever had disciplinary action taken against a medical license that they do not meet the requirements for licensure by endorsement. Instead, the applicant will need to apply for medical licensure through the other more appropriate route and submit an application fee.

#### (iii) Request to Withdraw Application:

#### a. Kent A. Swaine, M.D.

After due consideration of the information received, it was moved by Chair Geimer-Flanders, seconded by Vice-Chair Halford, and unanimously carried to deny Dr. Swaine's request to formally withdraw his application for medical licensure.

# Applications for License/ Certification:

### B. <u>Ratifications:</u>

#### (i) List

It was moved by Char Geimer-Flanders, seconded by Dr. Holt, and unanimously carried to ratify the attached list of individuals for licensure or certification.

# <u>Legislative</u> <u>Proposals:</u>

#### A. Amendments to section 453-2, Hawaii Revised Statutes

The Healthcare Association of Hawaii ("HAH") presented information regarding a possible amendment to section 453-2, Hawaii Revised Statutes ("HRS"), license required; exceptions. This is to address Veterans Affairs ("VA") physician referrals to health care facilities as defined in section, 323D-2, HRS.

Chair Geimer-Flanders welcomed guest speakers: Hilton Raethel, President and CEO, HAH, and his associates, Paige Heckathorn Choy, Patrick Harrison, and Mihoko Ito to the meeting room at 2:31 p.m.

The Board members and staff introduced themselves.

Mr. Raethel provided an overview of HAH's services. He explained that HAH is a trade organization and 501(c) organization, that represents approximately 170 members in the

State of Hawaii, including: State licensed hospitals, long term care facilities, home health agencies, hospices, and assisted living facilities.

Mr. Raethel informed the Board that one of its members, the VA is attempting to find a potential solution to one of its problems. In particular, physicians who are employed by the VA are licensed at a national level. Under federal law, a VA physician is allowed to practice in any state in the nation as long as they hold a license in one primary state.

The issue before the Board impacts a small subset of VA physicians who are rotating through the State and are here for only a few months at a time. These temporary VA physicians are primarily working in VA facilities and clinics and refer VA patients to local facilities for specific services that the VA is not able to provide in a timely manner.

The challenge is when a temporary VA physician needs to refer services outside of the VA system to a home health agency. Home health agencies have their own licensure requirements. Due to these requirements, many facilities are extremely cautious and reluctant to accept orders or referrals from VA physicians who do not hold a Hawaii-medical license. Previously, most home health agencies in the State accepted VA referrals, but due to this issue, all but one facility has stopped taking VA patients due to various hassles.

Mr. Raethel referred to the HAH draft legislation, which he believes is a potential solution to the current problem. The draft language proposes to amend section 453-2, HRS as follows:

- (8) Apply to physicians employed by the United States

  Department of Veterans Affairs while ordering medical
  services outside of a Veterans Affairs health care facility
  located within the State for a Veterans Affairs patient,
  provided that:
- (A) The physician holds a current, active license in good standing in another state or United States territory;
- (B) The physician is engaged in the practice of medicine and in the performance of the physician's official duties within the State; and
- (C) The medical services ordered are provided by a State-licensed health care facility as defined in section 323D-2.

Vice-Chair Halford asked what the specific "hassles" are that home health agencies are being faced with by accepting VA patients from this subset of VA physicians.

Mr. Raethel responded that many home health agencies are concerned about accepting an order from a physician who is not licensed in Hawaii. In the absence of a statute, which would allow these facilities to accept patients from physicians who do not hold a license in the State, the home health agency's license may be at risk if they accept orders from these physicians.

Dr. Jaffe expressed that HAH's proposal would only fix the issue for VA physicians who are in the State for a temporary period but may have long term consequences for a VA physician who decides to stay for a prolonged period of time.

Mr. Raethel ensured the Board that the VA encourages its longterm physicians to apply for permanent licensure and are not looking for an easy way out. The VA is only trying to find a solution for short-term physicians who are filling gaps or rotating through for various reasons on an on-going basis.

Dr. Fong explained that locum tenens physicians who are in Hawaii on a short-term basis are required to apply for a Hawaii license. He asked Mr. Raethel why VA physicians could not do the same.

Mr. Raethel was under the impression that PVL's licensing takes approximately 90 days (receipt of application to issuance of a license).

Ms. Quiogue clarified that the Board does not currently have a limited and temporary license for locum tenens physicians. Locum tenens physicians are required to apply for a permanent medical license either by the regular license process or by endorsement. Licensure by endorsement is a quicker option where an applicant could be granted licensure in approximately two weeks, provided that all information is submitted correctly and timely, and the application does not require her review or the Board's review.

Ms. Quiogue informed the guests that the Legislature authorized the division, through the endorsement bill, to hire two staff members to process initial applications and records for the Board. Given this, the processing time for all applications has decreased significantly.

Chair Geimer-Flanders clarified that the endorsement application process is only for clean applications, with no malpractice, and no disciplinary actions.

Ms. Quiogue stated that the Board has discretion to consider an application by endorsement if the applicant has malpractice history; however, it has no discretion to consider an application for by endorsement if the applicant has a history of disciplinary action taken against a medical license.

Ms. Quiogue mentioned that the hospital form requirement was removed because it was determined to be too cumbersome. Often times the Board receives little to no information at all. The endorsement applicant would only need to submit their application, application fee, license fee, American Medical Association or American Osteopathic Association profile, verifications of medical licenses, etc. Ms. Quiogue stated that the endorsement application is fillable; however, we still require that a hard copy original be submitted since an original wet signature is required.

Guests were informed that 85% of applications are processed by staff, and do not need to be reviewed by the Board. Applications that require review by the executive officer or the Board may take up to 45-60 days to process.

Chair Geimer-Flanders added that licensure by endorsement is fairly new in Hawaii and went into law about a year ago.

Ms. Quiogue informed guests that requesting information from other jurisdictions or organizations could delay the process, so most applicants start requesting information ahead of time.

Ms. Quiogue offered to meet with Ms. Jennifer Gutowski, Administrator for the Hawaii VA, and designate a Board member to accompany her.

Chair Geimer-Flanders stated that she reached out to her counterpart in California and was informed that they do not have this issue in their state because the VA contracts directly with different agencies and nursing homes. She went on to say that the Board is mandated to protect the consumers of this State from incompetent and unprofessional physicians. The proposed legislation would result in the Board not having jurisdiction over the VA physicians if they were not licensed by the Board and provided care to a patient outside of a federal facility. The home state of licensure may not have jurisdiction over the VA physician either because the practice of medicine occurred outside of that state.

Ms. Quiogue explained that because nursing homes are licensed under section 323-18, HRS, they would still need to comply with that provision regardless of whether the Board's statutes are amended. Given that the Board was not inclined to having these physicians exempt from its licensing laws, she asked whether the parties would consider a new limited and temporary license.

- Dr. Mun left the meeting room at 3:04 p.m. and returned at 3:08 p.m.
- Dr. Fong left the meeting room at 3:06 p.m. and returned at 3:10 p.m.

Mr. Mun stated, and members agreed, that the Board was not inclined to amending its statutes to exempt VA physicians from its license requirements. He went on to say that, it is the Board's position that the VA consider having its physicians apply for licensure by endorsement provided they meet the requirements.

Chair Geimer-Flanders thanked Mr. Raethel for his presentation and asked if there were additional questions. Being that there were no further questions, the guests were excused from the meeting room at 3:10 p.m.

# B. Amendments to section 453-1, Hawaii Revised Statutes

The Board reviewed proposed legislation, which was drafted by Chair Geimer-Flanders and Ms. Quiogue. This draft would amend section 453-1, HRS, the definition of the practice of medicine.

The propose draft included the following:

453-1 **Practice of medicine defined.** For the purposes of this chapter the practice of medicine by a physician or an osteopathic physician includes the use of drugs and medicines, surgery, manipulation, water, electricity, hypnotism, telehealth, the interpretation of tests, including primary diagnosis or pathology specimens, images, or photographs, or any physical, osteopathic medicine, or any means or method, or any agent, either tangible or intangible, [for the treatment of] to diagnose, treat, prescribe for, palliate, or correct disease, or prevent any human disease, condition, ailment, pain, injury, deformity, illness, infirmity, defect, physical or mental condition in the human subject; provided that [when] the person is a duly licensed physician or osteopathic physician licensed pursuant to this chapter [pronounces a person affected with any disease hopeless and beyond recovery and gives a written certificate to that effect to the person affected or the person's attendant nothing herein shall forbid any person from giving or furnishing any remedial agent or measure when so requested by or on behalf of the affected person].

This section shall not amend or repeal the law respecting the treatment of those affected with Hansen's disease.

[For purposes of this chapter, "osteopathic medicine" means the utilization of full methods of diagnosis and treatment in physical and mental health and disease, including the prescribing and administration of drugs and biologicals of all kinds, operative surgery, obstetrics,

radiological, and other electromagnetic emissions, and placing special emphasis on the interrelation of the neuro-musculoskeletal system to all other body systems, and the amelioration of disturbed structure-function relationships by the clinical application of the osteopathic diagnosis and therapeutic skills for the maintenance of health and treatment of disease.]

Vice-Chair Halford questioned whether "manipulation" is the appropriate term to use.

Dr. Jaffe clarified that manipulation should be replaced with "manual medicine."

Ms. Quiogue asked whether the term "photographs" is the appropriate term to use.

Dr. Holt stated that the correct term should be "medical imaging", and not "photographs". The Board agreed to replace the terms "images" and "photographs with "medical imaging".

Mr. Mun left the meeting room at 3:20 p.m. and returned at 3:23 p.m.

Dr. Young questioned why allopathic physicians were not included in the draft bill.

Ms. Quiogue explained that the Board would need to amend the entire chapter because there is no other reference to allopathic physicians. Ms. Quiogue will make the Board's revisions and submit to DAG Wong for review. She hopes to have the draft finalized by December or January and will try to schedule a meeting with a legislator to determine whether they would be willing to introduce the bill.

Ms. Quiogue asked whether any members would be willing to testify on behalf of the Board during the 2020 legislative session.

Chair Geimer-Flanders, Dr. Holt, Mr. Mun, and Dr. Takanishi volunteered to testify on behalf of the Board. Vice-Chair Halford indicated that he may be willing to do so.

#### Correspondence:

Α.

Letter from Jonathan W. Crisp, Esq. dated October 12, 2019, regarding: the legality of providing medical treatment of controlled substances via telephone consultation to patients who have never been seen or treated before by the physician of record; and whether it is legal for a credentialed physician with privileges in adult psychiatry and addiction psychiatry to request pediatric psychiatry privileges if the physician has never clinically managed the care for pediatric or pediatric psychiatry patients.

The Board reviewed and discussed the letter from Jonathan W. Crisp, Esq. dated October 12, 2019, regarding: the legality of providing medical treatment of controlled substances via

telephone consultation to patients who have never been seen or treated before by the physician of record; and whether it is legal for a credentialed physician with privileges in adult psychiatry and addiction psychiatry to request pediatric psychiatry privileges if the physician has never clinically managed the care for pediatric or pediatric psychiatry patients.

Mr. Crisp's letter goes on to say that his client is being directed by his superiors to refill patient's medications via a telephone consult, including controlled substances for patients he has not seen.

Ms. Quiogue asked the Board to address the first part of Mr. Crisp's letter, regarding the legality of providing medical treatment of controlled substances via telephone consultation to patients who have never seen or treated before by the physician of record. Ms. Quiogue referred the Board members to sections 453-1.3(b) and 453-1.3(c), HRS, which state:

- (b) Telehealth services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contraindications to the treatment recommended or provided.
- (c) Treatment recommendations made via telehealth, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face-to-face visit but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing opiates or certifying a patient for the medical use of cannabis, a physician-patient relationship shall only be established after an in-person consultation between the prescribing physician and the patient.

Additionally, members referred to section 329-1, HRS, which defines a "physician-patient relationship" as:

The collaborative relationship between physicians and their patients. To establish this relationship, the treating physician or physician's designated member of the health care team, at a minimum shall:

(1) Personally perform a face-to-face history and physical examination of the patient that is appropriate to the specialty training and experience of the physician or the designated member of the physician's health care

- team, make a diagnosis and formulate a therapeutic plan, or personally treat a specific injury or condition;
- (2) Discuss with the patient the diagnosis or treatment, including the benefits of other treatment options; and
- (3) Ensure the availability of appropriate follow-up care.

Based on these citations, members agreed that a Hawaii-licensed physician shall not prescribe opiates/controlled substance without first establishing an in-person, face-to-face patient-relationship.

Chair Geimer-Flanders confirmed that, when practicing telehealth, a face-to-face relationship must first be established in order to prescribe opiates/controlled substances. She went on to say that, she doubts that any non-federal pharmacy would accept a prescription called in for opiates/controlled substances as the Narcotics Enforcement Division requires that all controlled substance prescriptions be submitted electronically.

Regarding the second part of Mr. Crisp's inquiry, Dr. Takanishi was of the opinion, that the Board has no jurisdiction over privileging or credentialing at hospitals, medical centers, or health care facilities. Members agreed with Dr. Takanishi.

Based on the above discussion, the Board members by consensus, instructed Ms. Quiogue to inform Mr. Crisp of its discussion. Specifically, that a Hawaii-licensed physician may not prescribe opiates or controlled substances without first establishing an in-person, face-to-face patient-relationship pursuant to sections 453-1.3(b) and 453-1.3(c), and 329-1. Further, it is the Board's informal opinion that it does not have jurisdiction of credentialing or privileging at a hospital, medical center, or health care facility.

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.

# Other Business: A. Personnel-related Policies:

- (i) Discrimination/Harassment-Free Workplace Policy
- (ii) DCCA Workplace Violence Action Plan

The Board members reviewed DHRD's Discrimination/Harassment-Free Workplace Policy and DCCA Workplace Violence Action Plan, which were included in their Board packets.

Ms. Quiogue explained that Board members are considered agents/employees of the State and must comply with all State

B.

A.

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C.

<u>Advisory</u> Committees:

Open Forum:

Next Meeting:

Adjournment:

/s/ Ahlani K. Quiogue

policies. These policies will be placed in the Board member's operational manuals for future reference. 2020 Hawaii Medical Board Meeting Schedule The Board members were provided the 2020 meeting schedule for their information. **Emergency Medical Personnel** None. Physician Assistants None. **Podiatrists** None. None. Thursday, December 12, 2019 1:00 p.m. King Kalakaua Conference Room, First Floor 335 Merchant Street Honolulu, Hawaii 96813 It was moved by Chair Geimer-Flanders, seconded by Dr. Takanishi, and unanimously carried to adjourn the meeting at 3:32 p.m. Reviewed and approved by: Taken and recorded by: /s/ Kellie Teraoka (Ms.) Kellie Teraoka Secretary

(Ms.) Ahlani K. Quiogue **Executive Officer** AKQ:kt 11/25/19 ( x ) Minutes approved as is. Minutes approved with changes: \_\_\_\_\_

# **HAWAII MEDICAL BOARD 11/14/19 - RATIFICATION LIST**

LTYPE	E LI	C NUM	BP NAME PART 1
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