

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS, AND PROFESSIONAL LICENSING
STATE MEDICAL BOARD

January 22, 1010

MINUTES OF MEETING

By authority of AS 08.01.070 (2) and in compliance with the provisions of AS 44.62, a regularly scheduled meeting of the Alaska State Medical Board was held on Friday, January 22, 2010, in room 1270 of the Atwood Building, Anchorage, Alaska.

Friday, January 22, 1010

Call to Order

The meeting was called to order at 9:03 am.

Roll Call

Present were:

Jean M. Tsigonis, MD, Chair	David A. Miller, MD
John S. Cullen, MD	David J. Powers, MD
Edward A. Hall, PA-C	William W. Resinger, MD
Kathleen Millar, Public Member	Michael J. Tauriainen, Public Member

Also present were board staff members: Leslie Gallant, Linda Sherwood, Lee Strout, and Susan Winton. Also present was Jim Lipinski, PA-C, representing the Alaska Academy of Physician Assistants.

Agenda Item I Malpractice Case Review

Case No. A+

MOTION	MILLER moved to take no action on Case No. A.
2nd	POWERS
VOTE	8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
	0 Nay votes
	0 Abstentions

Case No. B

MOTION	MILLER moved to take no action on Case No. B.
2nd	CULLEN
VOTE	8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
	0 Nay votes
	0 Abstentions

Case No. C

MOTION	MILLER moved to take no action on Case No. C.
2nd	CULLEN
VOTE	8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
	0 Nay votes
	0 Abstentions

Case No. D

MOTION	POWERS moved to take no action on Case No. D.
2nd	RESINGER

VOTE 8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Case No. E

MOTION MILLER moved to take no action on Case No. E.
2nd RESINGER
VOTE 8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Case No. F

MOTION MILLER moved to take no action on Case No. F.
2nd TAURIAINEN
VOTE 8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Case No. G

The board members requested additional information on this case before making a determination. Specifically, the wished to know if this was a specialist or a family practice physician. That information will be obtained and given to the board.

Case No. H

Dr. Miller had specific comments regarding this report from a surgeon's standpoint. He noted that first, it was a prisoner and the physician implied that he did not have adequate time to evaluate and know the patient. Dr. Miller felt that he should not have scheduled the surgery until he knew the patient better. Secondly, the reporting physician indicated that the x-rays were "placed backwards." He noted that when he was a resident, it was the operating surgeon's responsibility and was never delegated to an intern or anyone else to place the xrays and confirm the location. If you are going to make an incision in a patient's chest, you make sure you have identified the patient, the x-ray, and the side. He felt that the board could not just "write this case off." He felt the board needed to initiate an investigation. He felt that a history and physical examination were not adequately performed on this patient.

MOTION MILLER moved to refer this case to the investigations unit for further inquiry and to obtain additional information.
2nd MILLAR
VOTE 8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Case No. I

MOTION CULLEN moved to take no action on Case No. I.
2nd POWERS
VOTE 8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Case No. J

MOTION RESINGER moved to take no action on Case No. J.
2nd MILLAR
VOTE 8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Case No. K

MOTION **MILLER** moved to take no action on **Case No. K.**
2nd **CULLEN**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Case No. L

MOTION **RESINGER** moved to take no action on **Case No. L.**
2nd **MILLER**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Case No. M

MOTION **HALL** moved to take no action on **Case No. M.**
2nd **MILLAR**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Case No. N

MOTION **MILLER** moved to take no action on both cases behind tab **No. N.**
2nd **CULLEN**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Case No. O

MOTION **MILLER** moved to take no action on **Case No. O.**
2nd **POWERS**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Case No. P

The board had information regarding past malpractice cases for this physician and discussed their concerns regarding this physician.

MOTION **MILLER** moved to refer this case to investigations for further inquiry and review.
2nd **MILLAR**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes

Off the record at 9:55 am; on the record at 10:07 am.

Agenda Item 8 Reports, Minutes, Ethics

The board members reported no ethics or conflicts of interest since the last meeting.

MOTION **HALL** moved to approve the minutes from the **October 22-23, 2009.**
2nd **CULLEN**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)

0 Nay votes

Investigator Susan Winton was present to discuss the investigations report with the board members.

Agenda Item 5 Board Discussion: Regulation of Medical Spas

Board members discussed the materials provided to it by Dr. Michael Manuel, a plastic surgeon in Anchorage.

Dr. Cullen pointed out that there is certainly the potential for harm.

Mr. Hall noted that the board does not have jurisdiction over the aestheticians so this might be a challenge for the board. Dr. Manuel has volunteered to help on establishing what people should be allowed to do.

Dr. Miller pointed out that the medical board has a policy from 2004 that is clear and he sees no reason to change that statement. He asked what happens when people not under the jurisdiction of the medical board perform these tasks.

Ms. Gallant advised that Dr. Manuel hoped that the medical board in Alaska would lead the way in a joint effort similar to what occurred in Massachusetts with the medical board, the nursing board, and the barbers and hairdressers board to draft legislation regulating spas.

Dr. Miller felt that the best approach for this project would be for Dr. Manuel or some other interested individual to approach a legislator to sponsor a bill that would provide for regulation of these "medical" spas.

The board members asked Ms. Gallant to draft a letter to Dr. Manuel asking that he work with a legislator to create a bill that would address the concerns he has raised. The board also reaffirmed its 2004 policy on delegating procedures to non-physician personnel when performing certain dermatological procedures.

Ms. Gallant advised the board members that the physician involved in malpractice case No. G is an ophthalmologist. The board determined to take no action.

MOTION	MILLER moved to take no action on Case No. G.
2nd	POWERS
VOTE	8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
	0 Nay votes
	0 Abstentions

Mr. Tauriainen left the meeting at 10:15 am.

Off the record at 10:22 am; on the record at 10:30 am.

Agenda Item 2 Board Actions

In the Matter of Jay Abbott, MD

Administrative Law Judge Dale Whitney and Dr. Jay Abbott joined the meeting via teleconference to discuss the matter of Tab Q in the board books.

Judge Whitney summarized the case for the board members.

Dr. Abbott was permitted to address the board to give a statement regarding his case. He asked if the board members had read his letter that accompanied the proposed decision. Board members confirmed that they had read his letter.

Following Dr. Abbott's statement, Dr. Miller advised that he did not feel it necessary to go into executive session to deliberate a decision in this matter. While he was sympathetic to Dr. Abbott's argument, he felt that the board is bound by consistency in the application of its laws.

Dr. Cullen agreed that the board has addressed this matter before and did not want to change the board's past practices.

MOTION CULLEN moved to adopt the proposed administrative law judge's decision in the matter of Jay Abbott, MD.
2nd
VOTE MILLAR
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

[Noted that Mr. Tauriainen was absent during this portion of the meeting.]

Board members discussed making greater efforts to apprise license holders of their obligations under the law.

Dr. Tsigonis pointed out that when a physician has been notified of the settlement of a malpractice, it is a significant event and a memorable one.

Ms. Gallant also noted for the board's consideration that it is a statute that imposes the 30-day reporting requirement on licensees, not a regulation. It was the wisdom of the legislature that placed that requirement in the law.

Ms. Millar asked about Dr. Abbott's comments regarding insurance companies reporting to state licensing authorities.

Ms. Gallant replied that Alaska's law actually requires the physician to provide the report.

In the Matter of Jesse Fenger, PA-C

Investigator David Newman was present to discuss this case with the board members.

MOTION MILLER moved that in accordance with AS 44.62.310(c)(2), the board go into executive session for the purpose of discussing the matter of Jesse Fenger, PA-C.
2nd
VOTE RESINGER
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

Off the record at 11:00 am; on the record at 11:15 am.

MOTION MILLER moved to adopt the order requiring that Jesse Fenger, PA-C be required to undergo medical and psychiatric evaluations.
2nd
VOTE HALL
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

MOTION MILLER moved to temporarily suspend the license of Jesse Fenger pending receipt of the report from the ordered evaluation.
2nd
VOTE HALL
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

[The above motion to temporarily suspend was rescinded later in the meeting.]

In the Matter of Dr. Robert G. Thompson

Ms. Gallant presented the proposed consent agreement with Dr. Thompson to the board.

Dr. Miller advised the board members that he has concerns regarding the practice of dermatology paragraph C, page 6 of the agreement. He opined that sclerotherapy and ambulatory phlebectomy fall outside the area of expertise of an obstetrician/gynecologist. These are procedures that are not without significant complications and potential morbidity.

Dr. Tsigonis asked why the authority to continue to perform these two procedures was given in the agreement.

Dr. Miller stated that these are procedures that are often taught at weekend seminars to pick up this type of skill. If there is any extravasation of this highly toxic sclerosing therapy substance, it can result in full thickness skin necrosis. This is clearly a cosmetic procedure in nature for the treatment of spider veins. Phlebectomy is not something that an OB/GYN typically has on their credential list when they graduate from residency. This is clearly outside his area of expertise.

Board members wondered why these two procedures were retained in the agreement. Dr. Cullen asked why ambulatory phlebotomy was included.

Dr. Miller stated that it is basically an office-based procedure where you dig out the veins and tie them off under local anesthesia. He did not think that he would want his veins treated like that.

Dr. Cullen agreed that he has done it in the hospital and he agreed that it is one of the ugliest procedures you can perform.

Dr. Miller agreed that it is a bloody procedure and can be a major problem. He felt that Dr. Thompson has gotten himself into trouble practicing outside his area of specialty and the board cannot sign off on something that says "go ahead and continue to do that." Other board members agreed with Dr. Miller's comment.

MOTION MILLER moved that paragraph C, page 6 shall read: "respondent shall cease practicing any and/or all dermatology of any form indefinitely. Respondent agrees to refer dermatologic cases to a board certified dermatologist."

2nd
VOTE HALL
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

MOTION MILLER moved that the consent agreement be adopted as amended [by the previous motion].

2ND
VOTE CULLEN
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

In the Matter of Richard J. Zajac, MD

Investigator Lee Strout requested the board go into executive session for the purpose of discussing the case of Dr. Richard J. Zajac.

MOTION CULLEN moved that in accordance with AS 44.62.310(c)(2), the board go into executive session for the purpose of discussing the matter of Richard J. Zajac, MD.

2nd
VOTE MILLER
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

Off the record at 11:25 am; on the record at 11:30 am.

MOTION MILLER moved that the board adopt the suspension of license of Richard J. Zajac, MD, based on AS 08.64.331(e) submitted by Commissioner Emil Notti.

2nd
VOTE CULLEN
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

In the Matter of Jennifer Nance, PA-C

Investigator Strout asked that if the board wished to discuss the case, they go into executive session. The board did not go into executive session.

MOTION MILLER moved that the board adopt the consent agreement in the matter of Jennifer Nance, PA-C.
2nd MILLAR
VOTE 7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

Dr. Tsigonis complimented the staff for their presentation of the cases and the timelines that were provided for the cases.

Off the record at 11:33 am; on the record at 11:40 am.

AGENDA ITEM Special Application Review - Ilardi

Dr. Ilardi joined the meeting by telephone.

Ms. Gallant briefly summarized Dr. Ilardi's past history with the Alaska board where he surrendered his license during an administrative hearing. Dr. Ilardi submitted a new application for the board's consideration.

MOTION MILLER moved that, given the overwhelming interest of public safety, the board deny his application for the return of his license based on AS 08.64.240, AS 08.64.326 (a)(13).
2nd MILLAR
VOTE 7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

Ms. Gallant advised Dr. Ilardi that he has appeal rights and that her letter to him would detail that process for him.

AGENDA ITEM 3 Board Discussion – Maintenance of Licensure

The board reviewed the report from the advisory group that reviewed the February 2008 report on maintenance of licensure. The members also reviewed the draft proposed letter written to give the board a 'head start' on responding to the report.

Dr. Cullen agreed that most of the things contained in the report are things that ought to be occurring but it is really not that useful as a practical tool.

Dr. Powers stated that he has several issues; the whole thing makes him mad. He likes the proposed letter. He felt that trying to set up some process to make sure every physician is competent is impossible. In addition, most of the issues that the board deals with are not related to competence.

Ms. Gallant stated that in her opinion, competency, continued competency and maintenance of competency are functions of education, not regulation. The board has met its obligation as a regulatory authority by setting a minimum standard for licensure. The board also asks that licensees continue their competency or some level of currency by asking licensees to complete at least 25 hours each year of continued medical education. If the board wanted to do something more with CME they could do that. But the options being offered in the document are not practical, not necessarily achievable, and may not actually do exactly what is intended for them to do; i.e., measure or demonstrate competency.

Dr. Tsigonis thought that the physicians this document really refers to are those doctors who are practicing general medicine, without a specialty and without board certification. She wondered if in the future, physicians would have to be board certified in order to practice at all.

Dr. Miller felt that the license being a property right is an important point that should be in the letter as well. It is the board's responsibility to follow the statutes and regulations under which it operates.

It was the consensus of the board that it wishes to send the letter proposed; Ms. Gallant will tighten up the language a little and distribute it to the board. She will include language regarding property rights in the letter as well.

AGENDA ITEM 10 License Application Review

In the Matter of James E. Wilson, PA-C

Investigator Susan Winton was present and available to discuss the application of James Wilson, PA-C. Because the applicant labeled documents in his application file as "confidential," she asked for executive session in order to respect his privacy.

MOTION CULLEN moved that in accordance with AS 44.62.310(c)(2), the board go into executive session for the purpose of discussing the application of James Wilson, PA-C.
2nd VOTE HALL
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

Off the record at 12:03 pm; on the record at 12:25 pm.

MOTION HALL MOVED TO decline the application for licensure to James E. Wilson, PA-C based on AS 08.64.240, AS 08.64.326(a)(7) and (13), and 12 AAC 40.967(2)(a) because of his surrendered license in another licensing jurisdiction and his failure to report material information in his application.
2nd VOTE MILLAR
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

AGENDA ITEM 7 In the Matter of Lavern Davidhizar, DO

The board reviewed the two physicians submitted by Dr. Davidhizar: Dr. Roderer to be his supervising physician and Dr. Kelley to be his practice monitor.

MOTION MILLAR moved to approve Dr. Roderer and Dr. Kelley to be Dr. Davidhizar's supervising physician and practice monitoring respectively for Dr. Lavern Davidhizar.
2nd VOTE HALL
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes
0 Abstentions

AGENDA ITEM 4 Regulations Project

The board reviewed and discussed the regulations project and the comments that were received during the public comment time.

MOTION MILLER moved to revise the wording of proposed regulation 12 AAC 40.944 to read: "A physician who practices in any specialty, regardless of board certification status, must meet the nationally accepted standard of care in the specialty in which the physician practices."
2nd VOTE HALL
6 Yea votes (Tsigonis, Cullen, Hall, Miller, Powers, Resinger)
1 Nay vote (Millar)
0 Abstentions

MOTION HALL moved to adopt the following proposed regulations and revisions to regulations as public noticed:
12 AAC 40.024, 12 AAC 40.036, 12 AAC 40.038, 12 AAC 40.370, 12 AAC 40.490, 12 AAC 40.965, 12 AAC 40.967, and 12 AAC 40.988.
2nd VOTE RESINGER
7 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger)
0 Nay votes

0 Abstentions

[Included in these minutes as Attachment A.]

Public Comment Forum

Attorney Linda Johnson was present to make comments to the board.

Off the record at 1:17 pm; on the record at 1:24 pm.

AGENDA ITEM 2 Board Actions - Continued

In the Matter of Jesse Fenger, PA-C

Investigator David Newman returned to the meeting and asked the board to return to the matter of Jesse Fenger, PA-C.

MOTION **TAURIAINEN** moved that the board go into executive session for the purpose of discussing the matter of Jesse Fenger, PA-C.
2nd **POWERS**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Off the record at 1:30 pm; on the record at 1:59 pm.

MOTION **MILLER** moved to withdraw the board's previous decision [to temporarily suspend Fenger's license] and based on additional information to accept the proposed order prepared that requires Mr. Fenger to submit to psychiatric/psychological and medical evaluations [within 30 days] and failing to do so would result in an automatic suspension of his license. The board rescinds its previous motion to suspend.
2nd **CULLEN**
VOTE **8 Yea votes** (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
 0 Nay votes
 0 Abstentions

Dr. Cullen expressed his grave concerns about Mr. Fenger's continuing to work and is only agreeing to rescind the earlier vote to suspend because the board understands he is not working. Ms. Millar concurred with Dr. Cullen's concerns.

Mr. Hall suggested that the board send him a letter with the order that he does not have the privilege of utilizing the 14 day window for beginning a new job.

Ms. Gallant pointed out that there is language in the regulations that requires physician assistants who are under a board order to have their new collaborative plans approved in advance of beginning a new position.

Investigator Newman will call Mr. Fenger to notify him of the board's action.

NEW AGENDA ITEM Board Discussion of HB 282 - Naturopaths

Board members discussed the provisions of the naturopath bill currently under consideration in the legislature.

AGENDA ITEM 6 Full Board Interview - Christopher Michael, MD

Dr. Michael was present to discuss his application with the board.

MOTION CULLEN moved that the board go into executive session for the purpose of discussing the application of Christopher Michael, MD.
2nd
VOTE MILLER
8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Off the record at 2:13 pm; on the record at 2:35 pm.

MOTION POWERS moved to grant an unrestricted Alaska license to Dr. Christopher Michael pending receipt of a clean report from the New York Board of Professional Medical Conduct regarding its pending open case.
2ND
VOTE MILLAR
8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

Dr. Tsigonis reminded Dr. Michael to notify the board immediately when there is resolution of the New York case.

Off the record at 2:37 pm; on the record at 2:50 pm.

AGENDA ITEM 10 License Application Review

Board members reviewed application files until Mr. Auth's arrival at 3:15 pm.

AGENDA ITEM 9 Board Discussion: Use of Automatic Suspension Language in Agreements

Mr. Robert Auth, assistant attorney general representing the AG's office, was present to discuss the use of automatic suspension language in the board's consent agreements.

Mr. Tauriainen asked about the use of the words that a license "...may be automatically suspended" in that the word may does not seem to fit with the use of the word automatic.

Mr. Auth defined the language to mean that the word 'may' gives the board some discretion as to whether the automatic suspension should result from even the most minor violation of the agreement. The use of the word "automatic" means without going through the accusation process, meaning immediately as opposed to filing an accusation and going through the hearing process.

Dr. Miller asked if this language has come up as a problem in the past.

Mr. Auth responded that it has never been a problem. The language is intended to provide some "wobble" room to the board. If it said "will" that would mean that it is definitely going to happen even if it gets lost in the mail. It provides a tiny bit of discretion.

Dr. Tsigonis asked if the wording really means immediate or if it means automatic. Perhaps that should be changed.

Mr. Auth responded that it really means immediate. Either way, it means something will happen without going through the accusation and starting all over again. It is immediately effective. The licensee is still entitled to a hearing after the suspension, called a post deprivation hearing, after the fact. The idea is that you have already agreed to it when you sign the agreement. It is an enforcement tool. The only other "twist" on this is whether the alleged violation should have come back to the board and the board decides independently there is a violation requiring automatic suspension versus the board's agent taking the action.

Dr. Miller asked if language could be used to say the license "...may be suspended without further action of this board?"

Mr. Auth agreed and advised that AG's office and the division have experimented with different language. Some court could say that the division in fact suspended rather than the board suspended. But, the argument would be made that the board has 'pre-authorized' the action by the division on behalf of the board.

There was some discussion about the use of immediate versus automatic. Dr. Miller felt that the use of may be automatically suspended does seem to achieve the purpose desired.

Dr. Tsigonis felt that mostly, when that language is in an agreement, the board wants it there and wants the license suspended if something is done wrong. She felt the standard should be "will be automatically suspended." She thinks the word 'may' should be removed.

Ms. Gallant pointed out that, generally speaking, the reason someone is in a consent agreement with the board is because they violated the law. There are disciplinary actions contained in the agreement; there have been documented violations already. If you have someone who has violated and they have a subsequent consent agreement, and information comes to the division that they have violated again, then why consume everyone's time and resources by bringing it back to the board again?

Mr. Auth stated that there is the possibility that a court could decide that if a letter went out from the division advising that a license has been suspended with no board action, it could be considered an improper delegation of the board's duties. He thought that if there is breach of the agreement, the board through the division is suspending the license. And since the board adopts the agreement, there is a board order. Mr. Auth noted for the board that the automatic suspension language is standard throughout the division for all boards. He told the board that the attorneys in the AG's office have been discussing this language and has not yet reached a consensus opinion on what it should be. In discussion, Mr. Auth stated that a suspension is not effective until a letter is sent to the respondent about the breach of the agreement. The notice would include information on their due process rights to a hearing. Mr. Auth feels this language is a very effective enforcement tool.

The board determined that it would continue to review each agreement. If there is a problem with an agreement, the staff will bring it to the board for a decision.

The board extended its thanks to Mr. Auth for coming to speak with them.

AGENDA ITEM 12 **License Application Review**

MOTION **MILLAR moved to approve the physicians for licensure in Alaska:**

Adam, Margaret Pearson	Jaksha, Jonathan Andrew
Allgood, Norma Lynne	Johnson, Corey B.
Atchison, Fawn Wen	Kemp, Jennifer Lynn
Awh, Mark Hyunchol	Klein, Michael Vincent
Battah, Shadi Imran	Krohn, Aaron John
Beasley, Benjamin Edward	Laufer, Frederick James
Benfanti, Paul Lawrence	Logalbo, Matthew James
Bennett, Michael Ernest	
Berry, Donald Fletcher	Murphy, Mary Fischer
Braziunas, Aretas	Nye, Andre Marcus
Brodts, Erik Ryan	Rayess, Rachad Hady
Bryant, Sean Olof	Roche, Steven Michael
Chobanov, Zeljka	Safford, Shawn David
Cizek, James Edward	Sahara, Joshua James Buol
Cohen, Harold Gene	Sasse, Robert Joseph
Connors, Christopher James	Schwarz, Richard Michael
Dauria, Colin Kenneth	Shafer, Ronald Morton
Elrod, Dennis Burkley	Siebel, John Vaughan
Farb, Harry Franklin	Small, Alanna Michon
Gibb, Kenneth Alan	Smith, George Barker
Harpole, Joseph Hunter	Sylvester, John Edward
Horozov, Nikolay Petrov	Tackett, James Faird
Howell, Gary Alan	Templeton, Bonnie Heather

Hulebak, Alice Lynn
Hyer, Jennifer Elizabeth

Tucker, Kirsten Lee
Zwiacher, Kaye Freeman

**2nd
VOTE**

TAURIAINEN
8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

MOTION

MILLAR moved to approve the following physicians for licensure in Alaska pending completion of their application files:

Beutel, William Dean
Easton, Willam Robert
Lopez, David Javier

Rossero, Robert Henry
Tauschek, Heather Clarie

**2nd
VOTE**

TAURIAINEN
8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

MOTION

MILLER moved to approve the following doctors of osteopathy for licensure in Alaska:

Calhoun, Shannon Patrick
Grimm, Peter Douglas
Piromalli, Barbara Jane

Piromalli, Christopher Scott
Ring, Joseph John

**2nd
VOTE**

TAURIAINEN
8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

MOTION

MILLER moved to approve the following mobile intensive care paramedics for licensure in Alaska:

Brown, Paula Suzanne
Gehring, Steven John
Justice, James Cole
Larsen, Travis John-Brooks
Miranda, Paul Anthony

Montez, Roberto Antonio
Quincy, Tamara Deann
Schultz, Benjamin Eugene
Stevens, Glenn William

**2nd
VOTE**

TAURIAINEN
8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

MOTION

MILLER moved to approve the following physician assistants for licensure in Alaska:

Albright, Louisa Mary
Block, Douglas J.
Chelmo, Jefferey Todd

Hackenbruch, Gregory Scott
Isbell, Kendra Clark
MacMillan, Paul Edward

Cravens, Darcie Kremer
Crawford, Jared Eugene
Cuaresma, Lindsay Suzanne
Denman, Patrick Kyle
Greene, Daniel Dale

Nunley, Diane Elaine
Porta, Jennifer Kay
Udelhoven, Shane Michael
Vann Sara Elizabeth
Wallace, Jared Lee

2nd
VOTE

TAURIAINEN

8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

MOTION
2nd
VOTE

MILLAR moved to approve the license application of Dr. John A. Marascalco.
POWERS

8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

MOTION
2nd
VOTE

TAURIAINEN moved to adjourn this meeting of the Alaska State Medical Board.
RESINGER

8 Yea votes (Tsigonis, Cullen, Hall, Millar, Miller, Powers, Resinger, Tauriainen)
0 Nay votes
0 Abstentions

The meeting adjourned at 3:52 pm.

Respectfully submitted:

Approved:



Leslie A. Gallant, Executive Administrator
Alaska State Medical Board

4/15/10
Date



Jean M. Tsigonis, MD, Chair
Alaska State Medical Board

4/15/10
Date

**NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE STATE MEDICAL BOARD**

The State Medical Board proposes to adopt regulation changes in Title 12, Chapter 40 of the Alaska Administrative Code, dealing with licensure requirements, locum tenens permit, residency permit, scope of authorized activities, disciplinary action, standard of care, reinstatement, unprofessional conduct, and fees for copying medical records, including the following:

1. **12 AAC 40.024, Licensing requirements for applicants from fifth pathway programs**, is a proposed new section that establishes licensing requirements for applicant who graduated from fifth pathway program.
2. **12 AAC 40.036, Locum tenens permit application requirements**, is proposed to be changed to alter the provisions related to application requirements for locum tenens permit.
3. **12 AAC 40.038, Residency permit**, is proposed to be changed to alter the provisions related to application requirements for residency permit.
4. **12 AAC 40.370, Scope of authorized activities**, is proposed to be changed to alter the provisions related to scope of authorized activities.
5. **12 AAC 40.490, Grounds for suspension, revocation, or denial of license**, is proposed to be changed to alter the physician assistant requirements for disciplinary action.
6. **12 AAC 40.944, Standard of care**, is a proposed new section that establishes standard of care in the specialty in which the physician practices.
7. **12 AAC 40.965, Reinstatement of a surrendered license**, is proposed to be changed to alter the requirements for reinstatement.
8. **12 AAC 40.967, Unprofessional conduct**, is proposed to be changed to alter the provisions related to unprofessional conduct.
9. **12 AAC 40.988, Fees for copying medical records**, is a proposed new section that establishes fees that a physician and physician assistant may charge for copying medical records.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments by mail, fax, or e-mail to:

Jun Maiquis, Regulations Specialist
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community, and Economic Development
P.O. Box 110806
Juneau, AK 99811-0806
Fax: (907) 465-2974
E-mail: jun.maiquis@alaska.gov

The written comments must be received no later than 4:30 p.m. on January 19, 2010.

If you are a person with a disability who needs a special accommodation in order to participate in the process for written comments, please contact Jun Maiquis at (907) 465-2537 no later than January 12, 2010 to ensure that any necessary accommodations can be provided.

Chapter 40. State Medical Board.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted. Complete new sections are not underlined.)

12 AAC 40 is amended by adding a new section to read:

12 AAC 40.024. Licensing requirements for applicants from fifth pathway

programs. (a) A physician applicant who graduated from a fifth pathway program on or after January 1, 2010 may not apply for and receive licensure by examination in this state.

(b) A physician applicant for licensure by credentials who graduates from a fifth pathway program on or after January 1, 2010 must provide verification of the following information in order to be licensed in this state:

(1) full and unrestricted licensure in at least one licensing jurisdiction in the United States, other than this state;

(2) evidence of successful practice in another state or territory of the United States or province of Canada for a period of a minimum of five consecutive years;

(3) board certification by a board under the American Board of Medical Specialties. (Eff. ___/___/___, Register ___)

Authority: AS 08.64.100

12 AAC 40.036(a) is amended by adding a new paragraph to read:

(4) if the applicant is a foreign medical graduate, the applicant must meet the requirements of 12 AAC 40.016.

(Eff. 5/18/85, Register 94; am 4/10/88, Register 106; am 8/17/97, Register 143; am 8/9/2000, Register 155; am 6/15/2001, Register 158; am ___/___/___, Register ___)

Authority: AS 08.64.100 AS 08.64.275 AS 08.64.279
AS 08.64.180

12 AAC 40.038(a) is amended by adding a new paragraph to read:

(4) if the applicant is a foreign medical graduate, the applicant must meet the requirements of 12 AAC 40.016(a)(1).

(Eff. 8/2/86, Register 99; am 8/20/87, Register 103; am 4/10/88, Register 106; am 8/17/97, Register 143; am 12/16/99, Register 152; am 8/9/2000, Register 155; am 10/14/2006, Register 180; am ___/___/___, Register ___)

Authority: AS 08.64.100 AS 08.64.272 AS 08.64.279

12 AAC 40.370(b)(2) is amended to read:

(2) the activities that take place in a hospital are supervised by a physician, physician assistant, mobile intensive care paramedic, or nurse; and

(Eff. 1/13/80, Register 73; am 8/24/90, Register 115; am ___/___/___, Register ___)

Authority: AS 08.64.100 AS 08.64.107

12 AAC 40.490 is amended by adding a new paragraph to read:

(9) in the clinical setting, a physician assistant shall clearly identify oneself as a physician assistant to patients and shall not use or permit to be used on the physician assistant's behalf the term "doctor", "Dr.", nor "doc", nor hold oneself out in any way to be represented to be a physician or surgeon. (Eff. 1/13/80, Register 73; am 9/30/81, Register 79; am 8/20/87, Register 103; am 3/12/89, Register 109; am 6/28/97, Register 142; am 9/1/2007, Register 183;

am ___/___/___, Register ____)

Authority: AS 08.64.100 AS 08.64.107

12 AAC 40 is amended by adding a new section to read:

12 AAC 40.944. Standard of care. ~~A physician may practice a specialty without being certified by that specialty board. However,~~ A physician who practices in any specialty, regardless of board certification status, must meet the nationally accepted standard of care in the specialty in which the physician practices. ~~The care that is rendered in any specialty must be that which is reasonably expected of an appropriately trained physician in the setting within which the care is rendered.~~ (Eff. ___/___/___, Register ____)

Authority: AS 08.64.100

12 AAC 40.965(a)(1)(B) is amended to read:

(B) the applicant continues to qualify under AS 08.64 and this chapter for the license requested to be reinstated unless the applicant is not qualified under AS 08.64.240(b);

(Eff. 1/7/99, Register 149; am 12/21/2007, Register 184; am 7/25/2008, Register 187; am ___/___/___, Register ____)

Authority: AS 08.01.075 AS 08.64.107 AS 08.64.331
AS 08.01.100 AS 08.64.240 AS 08.64.334
AS 08.64.100

12 AAC 40.967(26) is amended to read:

(26) failing to report to the board any disciplinary action against the licensee, taken by another licensing jurisdiction, health care entity, law enforcement agency, or any conviction of a crime referred to in AS 08.64.326(a)(4) within 30 days from the effective date of such action;

12 AAC 40.967(29) is repealed and readopted to read:

(29) prescribing, dispensing, or furnishing a prescription medication to a person that the licensee has not first conducted a physical examination of that person or previously established a patient-physician or patient-physician assistant relationship; the provisions of this paragraph do not apply to prescriptions written or medications issued for use in emergency treatment, expedited partner therapy for sexually transmitted diseases, in response to an infectious disease investigation, public health emergency, infectious disease outbreak, or act of bioterrorism;

12 AAC 40.967 is amended by adding a new paragraph to read:

(30) any conduct described in (1) – (29) of this section that occurred in another licensing jurisdiction and is related to the applicant's or licensee's qualifications to practice. (Eff. 3/16/2000, Register 153; am 9/5/2002, Register 163; am 4/2/2004, Register 169; am 10/14/2006, Register 180; am 7/25/2008, Register 187; am ___/___/___, Register ___)

Authority: AS 08.01.070 AS 08.64.100 AS 08.64.326

12 AAC 40 is amended by adding a new section to Article 6 to read:

12 AAC 40.988. Fees for copying medical records. Physicians and physician assistants

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may charge a fee for copying medical records in their possession of no more than \$30 for the first 20 pages of the record and 50 cents per page for each page over 20 pages. (Eff. __/__/__, Register ____)

Authority: AS 08.64.100