

WEST VIRGINIA BOARD OF MEDICINE
Legislative Committee Minutes
January 31, 2024

The West Virginia Board of Medicine's Legislative Committee met via Zoom at 5:00 pm on January 31, 2024.

The following committee members attended the meeting:

Mustafa Rahim, MD, Legislative Committee Chair
Douglas S. Dockery, DPM
Jonathan P. Lilly, MD
Ashish P. Sheth, MD
Victoria L. Takubo, PA-C

The following committee member did not attend the meeting:

Kishore K. Challa, MD, FACC

The following staff members attended the meeting:

Mark A. Spangler
Jamie S. Alley, Esq.
Greg S. Foster, Esq.
Jamie C. Frame

With a quorum of members present, Dr. Rahim called the meeting to order, and attendance was documented by Ms. Frame. **CALL TO ORDER**

Mr. Spangler reported that the following Board of Medicine rule bills have been introduced:

- **Senate Bill 90** and **House Bill 4134** – Relating to Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants.
- **Senate Bill 91** and **House Bill 4135** – Relating to Continuing Education for Physicians and Podiatric Physicians.
- **Senate Bill 92** and **House Bill 4136** – Relating to Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows.

The Senate Bills are single referenced to Senate Judiciary Committee, where they have not yet been placed on an agenda for consideration. The House Bills have passed House Health and Human Resources Committee, and are second referenced to House Judiciary Committee. The bills have not yet been placed on a House Judiciary Committee agenda for consideration.

Prior to today's meeting, the potential bill which would consolidate the West Virginia Board of Osteopathic Medicine with the West Virginia Board of Medicine, effective January 1, 2025, was made available for members to review. Additionally, during the meeting, the Federation of State Medical Boards (FSMB) *Guidelines for the Structure and Function of a State Medical and Osteopathic Board* was made available for members to review. Mr. Spangler reported that the potential bill provided to the Board for review has been modified since it was last reviewed to:

- Require that at least four of the members appointed to the Board be allopathic physicians and four of the members be osteopathic physicians.
- Remove the prohibition of employment by a provider of health care services.
- Require that members engage in active clinical practice for a minimum of fifty percent of their total professional practice rather than eighty percent.

In keeping with FSMB guidelines, Dr. Sheth moved that the Committee support the language regarding board membership as it was originally introduced. Dr. Lilly seconded the motion, and the motion carried without opposition. Mr. Spangler reported that Board of Medicine staff will continue to work with Board of Osteopathic Medicine staff and West Virginia legislative staff with regard to the potential bill.

Mr. Spangler reported that a Physician Assistant Compact bill has not yet been introduced.

Prior to today's meeting, **Senate Bill 499**, permitting care of a patient via telemedicine across state lines, was made available for members to review. Mr. Spangler reported that this bill is single referenced to House Health and Human Resources Committee, where it has awaiting consideration.

Mr. Spangler reported that he has communicated to West Virginia Legislative staff that the Board would like to be exempt from all bills which would modify current statutory requirements concerning the transfer of Board of Medicine funds to the State's General Revenue Fund.

Prior to today's meeting, **Senate Bill 161**, creating an emeritus physician license, was made available for members to review. Mr. Spangler reported that this bill continues to await consideration by the Rules Committee.

Mr. Spangler reported that **Senate Bill 169**, allowing physician assistants to own a practice, has passed the Senate and is awaiting consideration by House Health and Human Resources Committee.

Mr. Spangler reported that House Health and Human Resources Committee amended **House Bill 4432**, relating to midlevel practitioners, to remove W. Va. Code 21 30-7-15, which would permit a certified registered nurse anesthetist to administer anesthesia in cooperation with a physician, podiatrist or dentist, from the bill. However, the Committee Amendment was rejected during the House floor session. This bill has passed the House and is awaiting consideration by Senate Health and Human Resources Committee. Board staff will pursue getting podiatrists removed from the House Bill 4432.

Mr. Spangler reported that there have been numerous vaccination related bills introduced. Committee members continue to support vaccinations.

Mr. Spangler asked Mr. Foster to report on **Senate Bill 560**, Medical Ethics Defense Act. Mr. Foster reported that this bill would protect medical providers, healthcare institutions, and healthcare payers from discrimination, punishment or retaliation as a result of conscientious medical objection. The bill would:

- Permit a religious medical provider to make decisions consistent with his/her beliefs.
- Provide whistleblower protection, which:
 - Prohibit a board from reprimanding, sanctioning, revoking or threatening to revoke a license, certificate or registration of a health care practitioner for "engaging in

speech or expressive activity protected under the first Amendment to the U. S. Constitution, unless the board demonstrates beyond a reasonable doubt that the practitioner's speech was the direct cause of physical harm to a person with whom the health care practitioner has a practitioner-patient relationship within the 3 years immediately preceding the incident of physical harm.”

- Require the Board to “provide a medical practitioner with any complaint it has received which may result in the revocation of the medical practitioner’s license, certification, or registration within seven days after receipt of the complaint.”
- Require the Board to “pay the medical practitioner an administrative penalty of \$500 for each day the complaint is not provided to the medical practitioner after the specified seven days.”

Dr. Sheth moved that the Board oppose Senate Bill 560. Dr. Dockery seconded the motion, and the motion carried without opposition.

Mr. Spangler reported that he has submitted the Fiscal Note that was required of the Board with regard to **Senate Bill 377**, exempting certain physicians from specified traffic laws when responding to emergencies. The bill requires the Board of Medicine to issue an automobile emblem for use by physicians in such emergencies. The bill does not authorize a fee. The anticipated costs associated with this bill total \$75,000.00. Committee members support Senate Bill so long as the Board can assess a fee.

Mr. Spangler reported on **Senate Bill 297**, providing that continuing education credits shall be valid for three years. This bill would amend W. Va. Code § 30-1-7A to make continuing education credits obtained for licensing requirements valid for a minimum of three years and, at the licensing board’s discretion, up to six years. Consensus on this bill from last year is unchanged, and the committee members oppose Senate Bill 297.

Mr. Spangler reported that **House Bill 5166**, relating to the distribution of drugs, has been introduced. This bill is double referenced to House Prevention and Treatment of Substance Abuse Committee then House Health and Human Resources Committee. The bill has not yet been placed on an agenda for consideration.

Mr. Spangler asked Ms. Alley to speak to House Bill 5149 and Senate Bill 300.

Ms. Alley reported that **House Bill 5149** would amend W. Va. Code § 30-3-7(8) by adding a new subsection which would require the Board to promulgate rules that, in cooperation with hospitals and health care facilities, would require all hospitals and medical offices to send a notice to all former or current patients when they turn 18, informing them that if they have had any negative or adverse side effects of a procedure that was performed on them as a child to contact the hospital or office to inform them of the issue. This bill is double referenced to House Health and Human Resources Committee then House Judiciary Committee. The bill has not yet been placed on an agenda for consideration. Board staff will continue to closely monitor House Bill 5149.

Ms. Alley reported that **Senate Bill 300**, relating to the organization of the Office of Inspector General, provides, among other things, that “The Inspector General, in collaboration with the West Virginia Board of Medicine and the West Virginia Board of Osteopathy, shall promulgate rules in accordance with the provisions of § 29A-1-1 *et seq.* of this code for the licensure of pain management clinics to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities.” W. Va. Code § 16B-13-9(d) of the bill provides that “Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the director shall provide notice of the violation to the applicable licensing board.” This bill has passed the Senate, passed House Health and Human Resources Committee, and is scheduled for first reading on the House floor tomorrow, February 1, 2024. Board staff will continue to monitor Senate Bill 300.

Mr. Spangler asked Mr. Foster to report on **Senate Bill 407**, Pharmacist Prescribing Authority Act. Mr. Foster reported that this bill would authorize pharmacists to prescribe low-risk medications to patients. This bill is double referenced to Senate Health and Human Resources Committee then Senate Government Organization Committee. The bill has not yet been placed on an agenda for consideration.

There being no further business to consider, Dr. Sheth moved that the meeting adjourn. Dr. Lilly seconded the motion, and the motion carried without opposition.

Mustafa Rahim, MD
Legislative Committee Chair

A handwritten signature in blue ink, consisting of a stylized 'M' and 'R' followed by a flourish. Below the signature, the date '3/11/24' is written in blue ink.