

OREGON BOARD OF MEDICAL IMAGING
BOARD MEETING, January 17, 2014
Portland State Office Building, 800 NE Oregon Street
Conference Room "1-D"

APPROVED MINUTES

Board attendance: Thomas King (Chair), Frank Krause (Vice-Chair), Wayne Lemler, Kelly Solberg, Shirlee Templeton, William McMillen, Kimberly Earp, Dr. Akshay Gupta. Also Margaret Lut, (RPS; advisory member), David Howe (RPS; advisory member).

Others in attendance: Ed Conlow, Executive Director; Carol Parks, Senior Assistant Attorney General; Catherine Hess, OBMI Investigator; Michelle Van Kleeck, OBMI investigator; Sarah Anderson, Administrative Licensing Specialist; Vincent Mandina, Administrative LEDS Specialist.

Call to order: 8:35 a.m. by board chair Thomas King.

Executive session: Thomas King convened the board in executive session pursuant to ORS 192.660(2)(k) at 8:36 a.m.

Convene public session: Upon completion of executive session at 1:10 p.m., Chair Thomas King adjourned executive session and directed Board members to get lunch and return for public session, which convened at 1:35 p.m.

Approval of the previous meeting minutes

Approval of minutes from Board meeting of October 11, 2013: Motion by Earp; second by McMillen. Approved unanimously, without amendment.

Investigative Case Vote:

Case 13-12-02: Motion by Solberg; second by Krause, to allow issuance of probationary licensure to the applicant for a five-year period, with conditions of probation to include:

- A chaperone must be present in the room during all imaging procedures conducted by the applicant, during the probation period;
- The applicant must provide a copy of the probation agreement with OBMI to each employer for whom the applicant works, for all employers now and into the future;
- The applicant must sign a blanket release to allow the OBMI to contact all employers of the applicant during the probationary period, to confirm that the employer has been appropriately advised of terms of the OBMI licensure probation;
- On an annual basis beginning one year following the date this agreement is signed by both parties and continuing throughout the probationary period, the applicant must provide the OBMI with a written statement from the applicant disclosing the name of each of the applicant's employers during the preceding one-year period, the address and telephone number of each employer, the name of the applicant's supervisor at each employer, and certifying that the applicant has complied with the terms of this agreement;
- Applicant's failure to comply timely with any of the terms of this agreement may result in license revocation.

Case 13-10-02: Motion by Solberg, second by McMillen, to charge the licensee with unprofessional conduct, a violation of ORS 688.525(1)(b) and OAR 337-030-0002(1). The Board will sign a stipulated agreement that will allow the licensee to practice under probation if the licensee submits to random drug testing, as specified by the Board, at the cost to the licensee, with test results reported to the Board.

Case 13-11-03: Motion by Solberg, second by Krause, to take no Board action and close the case.

Case 13-11-04: Motion by Solberg, second by Krause, to take no Board action and close the case.

Case 13-10-03: Motion by Solberg, second by Krause, to issue a \$500 civil penalty for unprofessional conduct in accordance with ORS 688.525(1)(c) as defined by OAR 337-030-0002(8), failure to cooperate with an investigation conducted by the Board. The civil penalty is in accordance with OAR 337-030-0010(3)(g), making a false statement to the Board.

Case 13-03-05: Motion by Solberg, second by Krause, to take no Board action and close the case.

Case 13-12-04: Motion by Solberg, second by Krause, to issue a \$500 fine for obtaining a license through misrepresentation, in violation of ORS 688.525(1)(g), with the fine in accordance with OAR 337-030-0010(3)(i).

Case 13-11-01: Motion by Solberg, second by Krause, to take no further action and close the case.

Case 14-01-01: Motion by Solberg, second by McMillen, to issue a \$500 civil penalty for practicing without a license in violation of ORS 688.415(1)(a), with penalty in accordance with ORS 688.915(1).

Case 13-12-05: Motion by Solberg, second by Krause, to close the case with no Board action.

Case 13-09-06: Motion by Solberg, second by McMillen, to issue a final order by default for revocation of license.

Ratification of licenses: Motion to ratify by McMillen; second by Krause. Approved unanimously.

1. Radiographer licenses: From 171646 to 171709
2. Nuclear medicine licenses: 500266 to 500272
3. MRI licenses: From 400501 to 400512
4. Sonography licenses: From 601088 to 601118
5. Limited x-ray machine operator permits: From 4127 to 4129
6. Radiation therapy licenses: 270093 to 270098
7. All temporary initial medical imaging modality licenses and permits: L51125 to R51155.

Board ratification of civil penalties for practicing on expired license, with no Board appearance:

Motion to ratify civil penalties for violation of ORS 688.415(1) with civil penalties based upon OAR 337-030-0010:

- Motion to ratify \$100 civil penalty related to cases 13-03-13, 13-02-04, 13-10-04, 13-12,01 ad 13-12-03. Motion by Earp, second by Templeton. Approved unanimously.

- Motion to ratify \$200 civil penalty related to case 13-03-02. Motion by Earp; second by Krause. Approved unanimously.

Old Business:

Physician Assistants practicing fluoroscopy: Judah Gold-Markel, PA-C, addressed the committee. He noted that he appeared before the committee about a year earlier. He noted a trend toward more minimally-invasive interventions in medicine and a growth in the use of fluoroscopy in the practice setting. He said PAs can use ionizing radiation, particularly fluoroscopy, in 39 states. He said he approaches the OBMI to see if there is a way for the OBMI to allow PAs to incorporate fluoroscopy or ionizing radiation into their practice, in a safe way. He noted that the AAPA and ASRT have developed a didactic framework. Barbara Smith (PCC, OSRT) said that the AAPA/ASRT 40-hour course is not comprehensive. Ms. Smith said that she wants to make sure that PAs would need to pass the AART fluoro exam and that 40 hours didactic training should be a minimum, and that supervision requirements should be clarified. Others who testified including Pat Williams, RPA, who indicated support for a work group and who volunteered to be a part of the work group. Julie McNamara, RPA, also testified with regard to the extensive training that RPAs receive. She said that the proper amount of training in fluoro cannot be obtained in a 40-hour course.

Following discussion, OBMI staff was directed to bring together a work group consisting of stakeholders. The work group could meet and see if there is a consensus position of the group that could be brought back to the Board for consideration in April. If agreement could be reached and a legislative concept is needed for 2015, then the Board may be able to approve a legislative concept to submit for the 2015 legislative session in Salem. McMillen moved the recommendation to form a work group to continue to work on this issue; Earp seconded. Approved unanimously.

Proposed 2014 legislation by hospital association to allow waivers to credentialing requirement: Ed Conlow explained the legislation that the hospital association was proposing for 2014. As background, Troy Juniper from Grande Ronde Hospital appeared before the Board in October, to seek an exception from the credentialing law, because two out of GRH's three nuclear medicine technologists do not have a nuclear medicine registry credential and did not anticipate qualifying to sit for a registry exam. The OAHHS became involved after being asked by the Governor's office to see if they could mediate a solution to GRH's problem. Accordingly, the OAHHS is working on legislation with Rep. Bob Jenson from Grande Ronde, to give the OBMI the discretion to waive the credentialing requirement in situations involving critical access hospitals, if an individual seeking a waiver could demonstrate to the OBMI that the registry credential requirement would result in substantial lack of availability of services. Also, the board would be able to set requirements for the waiver.

Andi Easton and Troy Soenen from the OAHHS addressed the Board. They indicated that LC 185 (HB 4074) was assigned to the House Health Care Committee. There was discussion about amending the legislation to allow the Board to require an applicant to pass an exam, such as a national registry exam under state sponsorship. Based upon the discussion, the OAHHS indicated that they would seek to amend the legislation to specifically allow the Board to require passage of an examination, as one requirement to qualify for a waiver. Several board members expressed general support for the narrow exception language provided by the OAHHS draft.

Update from Radiation Protection Service (RPS) on a proposed variance to Providence to allow CVT staff to operate fluoro: In April, 2011, Dan Sharbaugh and Jeff Robins from Providence Hospital in Portland asked the Board to establish the authority for cardiovascular techs to pan the table during a fluoro exam, when the physician is in the room with them. The Board subsequently declined to take action on Mr. Sharbaugh's request, but rather suggested a possible joint rulemaking between OBMI and RPS down the road. In 2013, Mr. Sharbaugh approached the Board again, to ask if the Board would revisit this issue and make a definitive decision. At that point, RPS suggested that RPS could offer a variance to Providence, to test the concept. (The fluoro operator rules are under RPS.) At the 1/17/14 meeting, Margaret Lut updated the Board to say that RPS is still in the process of working on Providence's variance request, and is waiting for Providence to submit information required for the variance.

Allow OBMI to regulate imaging subspecialties: Ed Conlow presented a legislative concept that was first approved by the Board in 2012, to give the Board statutory authority to regulate licensure subspecialties. In 2012, the immediate interest was, once the legislation was enacted, to adopt rules to require sonographers to have at least passed one exam in any of the three general sonography categories (general; vascular; cardiac) in which they practice.

The 2012 legislation drew opposition from some sonographers who were concerned that such a requirement would impact access-to-services in rural areas. Opponents approached the Governor's office, and the Governor's office asked the Board to withdraw this concept from consideration in 2013 and try to work with opponents to find middle ground.

Randy Jarigese RDMS(AB,OB) addressed the Board and presented a proposed amendment to the Board's proposed legislation: "In the ultrasound modality, practicing sonographers (RDMS, RVT, RDCS) registered before April 6, 2009, can practice in all modalities without additional certifications." He said that sonographers who became registered prior to that date were not required to pass the Sonography Principles and Instrumentation (SPI) physics exam of the American Registry of Diagnostic Medical Sonographers (ARDMS). Mr. Jarigese's amendment would exempt sonographers who became credentialed prior to the implementation of the SPI exam from needing to meet the requirements of the proposed legislation. Following Board discussion, it was decided that no motion is required at this time; the proposed legislation would be brought back before the Board at the next meeting on April 25, 2014, for final approval regarding submission as a legislative concept.

OBMI to take over RPS rules for CT operators: Ed Conlow presented a draft rule for OBMI to take over (from RPS) operators' rules for diagnostic CT and hybrid imaging. Kim Earp and Catherine Hess discussed some clarification of the CT rules that relate to radiation therapy; Ed Conlow said he would get their language and include it in the rulemaking. Based upon Board discussion, it was determined that a *total* of 16 hours of additional training should be the minimum requirement under "additional training requirements," rather than 16 hours didactic and 16 hours in cross-sectional anatomy. Ed Conlow said he would draft the rule to require a minimum of 8 hours didactic education in CT plus a minimum of 8 hours didactic training in cross-sectional anatomy (for a total of 16). Ed Conlow said that we could coordinate an effective date with RPS, so that the OMBI rule goes into effect on the same day that RPS repeals their CT operator rules. Catherine Hess said there might need to be some clarification in the rules regarding cone beam CT machines that are in ENT offices, to clarify who can operate cone beam CT. Ed Conlow asked if the rule could simply state that cone beam CT is a form of diagnostic CT – would that address the issue of who could operate cone beam

CT? Earp made a motion to make the changes discussed and begin a rulemaking; Krause second. Approved unanimously.

Legislative update: Ed Conlow indicated that he prepared and distributed a written summary of legislation of interest from the 2013 legislative session in Salem.

Background check: Ed Conlow asked the Board if the Board wished to require an FBI fingerprint criminal background check on new licensees only, not for renewals. The reason for the FBI check is that it covers the 50 states, whereas currently the OBMI uses state police criminal background checks through the LEDS system, which can only check Oregon criminal records. With increasing mobility and an increasing number of license applicants from out of state, the FBI check would give the OBMI an effective method to check the background of out-of-state applicants. Ed Conlow said that the downside of the FBI check is that it delay an application for several weeks, if the fingerprint is conveyed using the old-style ink card. During discussion, the Board determined that, if a new applicant needs to expedite the application process for a pending job, then it will be the choice and duty of the applicant to obtain a fingerprint record using the Livescan process which is processed more quickly than the ink card. Ed Conlow noted that the Oregon State Board of Nursing has an administrative rule that charges \$52 total for a fingerprint check, covering the fees charged by the state and federal agencies plus a small administrative amount to the Board. Earp moves to initiate rulemaking as follows: "Fingerprinting -- \$52." McMillen seconded. Approved unanimously.

Ed also asked the Board if the Board thought is would be a good idea to subscribe to the Accurant Lexis/Nexis program for comprehensive background search information, for financial and legal background information on applicants. This would be an aide to the licensing staff and a supplement to the criminal background checks. Subscription would be about \$130 per month. Following discussion, Board members spoke against subscribing to Accurant at this time, based in part on the fact that the Board is seeking to implement FBI fingerprint background checks for all new applicants.

New Business

Emergency temporary rules for waive supervision for provisional licensees who get a post-primary license: Ed Conlow asked the Board if they wanted to create a temporary exception for licensees who had a provisional license, gained substantial experience in the modality, and now have a first-time post-primary license which requires direct supervision. The proposed temporary rule would enable these licenses to forego direct supervision, since they already have experience. He said that he'd heard complaints from imaging directors or licensees from three hospitals, who wondered why their experienced MRI technologists needed in-the-room supervision. Following discussion, the Board did not take action to create a temporary exception.

Update on audit of health boards being completed by the Secretary of State: Ed Conlow said that he was hoping to be able to update the Board on the contents of a draft program audit of health licensing boards, which is being conducted by the Oregon Secretary of State's office. He said that the draft has not been released yet, so he has nothing to report.

Budget outlook: Ed Conlow noted that the scanner package that was authorized by the Legislature for \$11,000 in the 2013-15 budget is only going to cost about \$2,000, with savings derived primarily by doing our document storage in-house, using our current IT contractor, Grant Moyle. Due to the

savings, the Board may need to have a budget package in the 2015-17 budget to de-authorize unobligated funds related to this program.

Other legislative issues: Randy Harp, representing the Oregon Society of Radiologic Technologists (OSRT) asked the Board to provide a letter of support for the federal CARE bill, to require minimum federal education standards for persons who use ionizing radiation on humans. He also discussed the markup bill related to Medicare reimbursement. Mr. Harp provided an update on federal legislation and noted that some members of the Oregon delegation had been added as co-sponsors. He said that the OBM could do one letter and have it cover both CARE and Mark-up. Earp moved to offer a letter of support; Krause second. Approved unanimously.

Public Comment:

No public comment.

Meeting Adjourned: at 3:42 p.m.