

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
3 DIVISION OF OCCUPATIONAL LICENSING
4 STATE MEDICAL BOARD

5
6 MINUTES OF MEETING

7
8 January 25 – 26, 2007

9
10 By authority of AS 08.01.070(2) and in compliance with the provisions of AS 44.62, a scheduled meeting
11 of the Alaska State Medical Board was held on Thursday and Friday, January 25 – 26, 2007, in Room 1270
12 of the Atwood Building, 550 West Seventh Avenue, in Anchorage, Alaska.

13
14
15 **Thursday, January 12, 2007**

16
17 Call to Order – Roll Call – On the record at 9:15 am.

18
19 **ROLL CALL**

20
21 Present were: David M. Head, MD, Chair Michael J. Tauriainen
22 Robert A. Breffeilh, MD Jean M. Tsigonis, MD
23 John T. Duddy, MD
24 Nancy Puckett

25
26 Absent were Dr. Kevin Tomera and Physician Assistant Ed Hall.

27
28 Staff members present were Linda Sherwood, licensing examiner, and Leslie Gallant, the board's
29 executive administrator. Visitors Tim Pampusch and Tom Dale, physician assistants, were also present.
30 Administrative Law Judge Kay Howard was also present.

31
32 Dr. Head introduced and welcomed Dr. Jean Tsigonis to the board.

33
34 **AGENDA ITEM 1 In the Matter of Roger G. Gano, MD**

35
36 Judge Howard joined the board at the table to discuss the case.

37
38 **MOTION TAURIAINEN moved that in accordance with AS 44.62.310(c) (2), the board go into**
39 **executive session for the purpose of discussing the proposed decision in the**
40 **matter of Roger G. Gano, MD**
41 **2nd PUCKETT**
42 **VOTE 6 Yea votes (Head, Breffeilh, Duddy, Puckett, Tauriainen, Tsigonis)**
43 **0 Nay votes**
44 **0 Abstentions**

45
46 Off the record at 9:19 am; on the record at 9:30 am.

47
48 **MOTION BREFFEILH moved to accept the decision of the administrative law judge in the**
49 **matter of Roger G. Gano, MD.**
50 **2nd PUCKETT**
51 **VOTE 6 Yea votes (Head, Breffeilh, Duddy, Puckett, Tauriainen, Tsigonis)**
52 **0 Nay votes**
53 **0 Abstentions**

54
55 Mr. Tauriainen commented that he wanted to encourage Dr. Gano to keep after getting his license.

1 D. Head noted that the board found this was not an easy decision but that Dr. Gano has a lot to offer
2 but he still has a long way to go before he can safely offer himself to the public as a physician.
3

4 **AGENDA ITEM 3 Malpractice Case Review**

5 There were three cases for consideration by the board. Dr. Head explained how the board conducts
6 these case reviews.
7

8
9 Ms. Gallant explained the history behind the board's review of cases and the board's actions against
10 physicians who fail to report malpractice settlements as required by law.
11

12 Board members discussed the possibility of reinstating their newsletter to get information out to the
13 licensees about things like malpractice reporting.
14

15 Case 1

16
17 **MOTION DUDDY moved to take no action regarding malpractice case No. 1.**
18 **2nd TAURIAINEN**
19 **VOTE 6 Yea votes (Head, Breffellh, Duddy, Puckett, Tauriainen, Tsigonis)**
20 **0 Nay votes**
21 **0 Abstentions**
22

23 Case No. 2

24
25 **MOTION TAURIAINEN moved to take no action regarding malpractice case No. 2.**
26 **2nd PUCKETT**
27 **VOTE 6 Yea votes (Head, Breffellh, Duddy, Puckett, Tauriainen, Tsigonis)**
28 **0 Nay votes**
29 **0 Abstentions**
30

31 Case No. 3

32
33 **MOTION BREFFELH moved to take no action regarding malpractice case No. 3.**
34 **2nd DUDDY**
35 **VOTE 6 Yea votes (Head, Breffellh, Duddy, Puckett, Tauriainen, Tsigonis)**
36 **0 Nay votes**
37 **0 Abstentions**
38

39 **AGENDA ITEM 4 Trauma Registry Review Committee Nominations**

40
41 Dr. Head explained to the board members the work of the Trauma Registry Review Committee.
42

43 **MOTION TAURIAINEN moved to approve the nominees to the Trauma Registry Review**
44 **Committee, Mark Johnson and Debra Gariepy.**
45 **2nd BREFFELH**
46 **VOTE 6 Yea votes (Head, Breffellh, Duddy, Puckett, Tauriainen, Tsigonis)**
47 **0 Nay votes**
48 **0 Abstentions**
49

50 **AGENDA ITEM 5 Physician/Pharmacist Cooperative Plan Review**

51
52 The board reviewed the cooperative plan submitted to Dr. William Cooper.
53

54 **MOTION TAURIAINEN moved to approve the cooperative plan between William L. Cooper,**
55 **MD and Amber Briggs, pharmacist.**
56 **2nd PUCKETT**
57 **VOTE 6 Yea votes (Head, Breffellh, Duddy, Puckett, Tauriainen, Tsigonis)**

1 0 Nay votes
2 0 Abstentions
3

4 Ms. Puckett asked for a definition of "legend drugs." Ms. Gallant will forward to her the description after
5 the meeting.

6
7 **AGENDA ITEM 8** **In the Matter of Winslow C. Nicholas, MD**
8

9 The board received information from the Pennsylvania board regarding Dr. Nicholas and that
10 precipitated the agreement to surrender his license in Alaska.

11
12 **MOTION** **BREFFELH moved to approve the surrender of license signed by Dr. Winslow**
13 **Nicholas.**
14 **2nd** **TAURIAINEN**
15 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
16 **0 Nay votes**
17 **0 Abstentions**
18

19 **AGENDA ITEM 12** **Board Actions**
20

21 Robert D. Wald, MD
22

23 The board discussed the case involving Dr. Wald and discussed how they wanted to handle the matter.
24 Ms. Gallant reported that Dr. Wald self-reported that he had forgotten to send in his renewal
25 application for his license and had seen patients with his license expired.

26
27 Mr. Tauriainen moved and Dr. Breffelh seconded a motion not to reprimand or fine Dr. Wald but to send
28 him a letter of caution. Following discussion, Dr. Breffelh withdrew his second and Dr. Duddy seconded
29 the motion.

30
31 Mr. Tauriainen advised that, in his opinion, the staff should continue to prepare the memoranda of
32 agreement consistent with the board's past actions and present to the board as was done in this case
33 and then the board can determine what final action it wishes to take as was done in this case.

34
35 Mr. Tauriainen moved not to reprimand or fine Dr. Robert Wald but to send him a letter of caution that is
36 not reportable. Dr. Duddy seconded the motion. By a vote of five nay votes (Head, Breffelh, Duddy,
37 Puckett, and Tsigonis) to one yea vote (Tauriainen), the motion failed.

38
39 **MOTION** **DUDDY moved to approve the memorandum of agreement with a change to**
40 **suspend the \$1,000 civil fine.**
41 **2nd** **PUCKETT**
42 **VOTE** **5 Yea votes (Head, Breffelh, Duddy, Puckett, Tsigonis)**
43 **1 Nay vote (Tauriainen)**
44 **0 Abstentions**
45

46 The board members wished to express their gratitude to Dr. Wald for his honesty.
47

48 **AGENDA ITEM 2** **In the Matter of David Reynolds, MICP**
49

50 Administrative law judge Andrew Hemenway joined the meeting via teleconference. Also on the
51 teleconference were Robert Spitzfaden, attorney representing Mr. Reynolds, Mr. Reynolds, and David
52 Brower, assistant attorney general representing the state.

53
54 Mr. Hemenway addressed the board regarding the additional documents that the board received in
55 response to the proposed decision. The documents included the letters from Terry L. Thurbon. There
56 were also three other documents distributed to the board members on this date: Mr. Reynolds'

1 proposal for action, Mr. Brower's request asking to submit a late proposal for action, and Mr. Reynolds'
2 opposition to the Division's request to submit a late proposal.
3

4 Mr. Hemenway's recommendation to the board was to deny the motion to submit a late proposal and
5 to hear from both parties what they think the appropriate action should be.
6

7 Dr. Head recommended that if the board allows both sides to be heard that their comments be limited
8 to five minutes. Mr. Hemenway concurred.
9

10 Mr. Spitzfaden questioned exactly what the board was doing at this meeting as he was unclear.
11

12 Mr. Hemenway clarified that what the board was proposing was that they would deny the motion for
13 late filing to submit a proposal for action. In addition, the board was proposing to give both sides in the
14 matter the opportunity to speak directly to the points raised in their proposals for action.
15

16 Mr. Spitzfaden felt that Ms. Thurbon's letter stated that was what could not happen, that they would not
17 be allowed to argue the merits of the opposing sides.
18

19 Mr. Hemenway stated that what the chief judge (Ms. Thurbon) was saying in her letter was that a late
20 proposal for action ought not to be considered. She indicated in her letter that the board options were
21 To deny the motions and hear from the parties at the meeting or ...
22

23 Mr. Spitzfaden asked what the board would be hearing from the parties about. Mr. Hemenway went on
24 that under the Administrative Procedure Act, the parties may be afforded the opportunity to speak to
25 whatever they choose to speak at the appropriate meeting when the proposed decision comes up for
26 consideration. That is not part of the proposed action process but is under the Administrative Procedure
27 Act. The board was contemplating providing to Mr. Spitzfaden and Mr. Brower the opportunity to argue
28 to the board on your client's behalf with respect to the proposed decision.

29 Dr. Head advised Mr. Spitzfaden that the board members came to the meeting after reviewing a
30 significant amount of information in preparation for the meeting. However, the board was given new
31 material at the meeting; in order to take that into consideration, the board is giving him the opportunity
32 to tell the board what the new proposal is. If he did not wish to do that, the board members came to
33 the meeting prepared to vote on a decision in the matter.
34
35

36 Mr. Spitzfaden stated that Mr. Reynolds' proposal was submitted within the time limit required by law.
37 He questioned why the proposal was not given to the board when it was submitted.
38

39 Mr. Brower interjected and advised that it would not matter to him if his request for late filing was
40 considered or not but he asked if the proposal for action was filed by Mr. Reynolds went directly to the
41 board or did it go to the Office of Administrative Hearings.
42

43 Ms. Gallant advised that the proposal went to the Office of Administrative Hearings and was then
44 forwarded to her by that office. She further explained to Mr. Spitzfaden that the board's meeting
45 materials were mailed out to the board members more than a week prior to the meeting to allow them
46 enough time to read the material and be able to address the matters at the meeting. When
47 documents are received in her office after the board's books have been distributed, that late material
48 is held, copied and distributed to the board members at the beginning of the meeting. She confirmed
49 that the material Mr. Spitzfaden provided was distributed to the board members at the start of this
50 meeting.
51

52 Mr. Hemenway advised that the deadlines and scheduling of this case with respect to the proposed
53 decision were established to coincide with the next scheduled board meeting, this date. In the ordinary
54 course of events, this might have been scheduled for the subsequent meeting which would be in April.
55 The reason for the timing was to try to get the matter before the board at this meeting as an
56 accommodation to the parties who have had to wait for quite a long time. If the parties would prefer
57 to hold this over until April so the board could consider this at its leisure that would be another option.

1 He further stated that the deadline of January 26 in Ms. Thurbon's letter of January 19, 2007 is incorrect
2 but that the matter could be held over until the April meeting.

3
4
5 Dr. Head noted that one of the requests by Mr. Reynolds is that the case be referred back to the
6 administrative law judge to allow sufficient time for his case in Maine to be resolved. He noted that he
7 had no problem with that but he thought Mr. Reynolds wanted this resolved as soon as possible so that
8 he could know where he needs to proceed from here. He asked what Mr. Reynolds wants the board to
9 do.

10 Mr. Spitzfaden stated that Mr. Reynolds wants his license. Also, he asked the board take five minutes to
11 read their proposal for action and then decide what they were going to do.

12
13 Mr. Hemenway agreed that the board may allow the proposal to be admitted on the record and if Mr.
14 Brower does not wish to speak to the board, the board could do that.

15
16 Mr. Brower stated is would be fine with him if the board denied his motion to accept a late filing.

17
18 Dr. Head advised that he would have no problem referring the case back to the administrative law
19 judge and allowing Mr. Reynolds to resolve the investigation in Maine because this board will not license
20 him as long as there is an open investigation in another state. He felt there is no point in even
21 addressing this issue until that investigation is resolved.

22
23 Mr. Brower pointed out that he did not see in the Office of Administrative Hearings' statutes that such a
24 request to return the matter to the ALJ is authorized because if it is sent back to the ALJ under AS
25 44.64.060(e)(2), for other specific proceedings, the ALJ shall complete the additional work and return
26 the revised proposed decision to the agency within 45 days. He questioned if that could happen. He
27 also noted that anyone who is denied a license for a specific reason is not precluded from applying
28 again.

31 **MOTION** **TAURIAINEN** moved that in accordance with AS 44.62.310(c)(2), the board go into
32 **executive session for the purpose of discussing the proposed decision in the**
33 **matter of David Reynolds, MICP.**
34 **2nd** **BREFFEILH**
35 **VOTE** **6 Yea votes** (Head, Breffelth, Duddy, Puckett, Tauriainen, Tsigonis)
36 **0 Nay votes**
37 **0 Abstentions**
38

39 Off the record at 10:48 am; on the record at 11:03 am. [The board moved on to other agenda items
40 while it waited for all parties to return to the teleconference to complete Agenda Item 2.]

41
42 **AGENDA ITEM 11** **Reports, Ethics, Minutes, Budget**

43
44 Reports
45 Board members had no questions about the reports for consideration.

46
47 Ethics
48 Board members had no ethics or conflicts of interest matters to report.

49
50 Minutes

51
52 **MOTION** **BREFFEILH** moved to accept the minutes of the meeting of October 12 – 13, 2006.
53 **2nd** **PUCKETT**
54 **VOTE** **6 Yea votes** (Head, Breffelth, Duddy, Puckett, Tauriainen, Tsigonis)
55 **0 Nay votes**
56 **0 Abstentions**
57

1 Budget

2 Ms. Gallant requested that the board approve and support sending the two medical board
3 investigators to training in Orlando, FL in June. The board members expressed their support of this
4 activity and approved the expenditure for this purpose. The board recognizes the importance of this
5 specialized training for its investigators, particularly in light of the fact that both medical board
6 investigators are new.

7
8 Mr. Tauriainen asked if the Division performs any background check in the investigators they hire. Ms.
9 Gallant advised that to her knowledge, they are subject to the standard employment review.

10
11 Mr. Tauriainen requested that a copy of the completed paid travel authorization be returned to the
12 board member with the reimbursement so they could see what was paid and what was not reimbursed.
13 Ms. Sherwood will request that the Juneau office do that.

14
15 Dr. Head requested that the state provide beverages and snacks at the board meetings.

16
17 Dr. Head advised that the board would wait until Mr. Reynolds and his attorney could rejoin the meeting
18 for their decision. The board was reluctant to move forward with a vote until all parties were present.
19 Mr. Hemenway and Mr. Brower disconnected from the call.

20
21 **AGENDA ITEM 10** **Regulations Project: New**

22
23 The board discussed the regulations being offered for the board's consideration.

24
25 Regulation No. 1 – 12 AAC 40.020 License by Examination

26
27 **MOTION** **BREFFELH moved to accept the proposed regulation change to 12 AAC 40.020 as**
28 **written.**
29 **2nd** **TSIGONIS**
30 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
31 **0 Nay votes**
32 **0 Abstentions**

33
34 Regulation No. 2 – New Regulation – Qualifications for Licensure

35
36 Dr. Head proposed changing the wording to read that ... "the board may deny a license" so that the
37 board still retains some discretion in considering these cases.

38
39 **MOTION** **TAURIAINEN moved to approved regulation No. 2 with the change in the wording**
40 **to read: "The board may deny a license to an individual..." .**
41 **2nd** **BREFFELH**
42 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
43 **0 Nay votes**
44 **0 Abstentions**

45 Regulation No. 3 – New Regulation – Acceptance of FCVS Credentials in the Application for
46 License

47
48 **MOTION** **BREFFELH moved to approve the proposed new regulation entitled "Acceptance**
49 **of Federation Credentials Verification Service Credentials in the Application for**
50 **Licensure as written.**
51 **2nd** **PUCKETT**
52 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
53 **0 Nay votes**
54 **0 Abstentions**

55
56 Mr. Tauriainen noted that if this regulation makes it through and becomes effective, he would like to see
57 that the existing language in the paramedic regulation 12 AAC 40.310(b) be removed.

1
2 Regulation No. 4 – Ethical Standards
3

4 Ms. Gallant explained that whenever one of the codes of ethics changes for one of the professionals
5 licensed by the board, the regulation must change as well.
6

7 **MOTION** **TSIGONIS moved to approve regulation 4 as written.**
8 **2ND** **BREFFELH**
9 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
10 **0 Nay votes**
11 **0 Abstentions**
12

13 **AGENDA ITEM 2** **In the Matter of David Reynolds, MICP (Continued)**
14

15 Messrs. Spitzfaden and Reynolds rejoined the meeting via telephone.
16

17 **MOTION** **TAURIAINEN moved to deny the request for late filing of proposed action**
18 **submitted by David Brower.**
19 **2nd** **BREFFELH**
20 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
21 **0 Nay votes**
22 **0 Abstentions**
23

24 Dr. Head remarked that the board determined the cleanest way to handle this case was to adopt the
25 administrative law judge's proposed decision and deny Mr. Reynolds' license with the recognition that
26 there are many issues in his application that the board would want addressed in the future. This also
27 gives Mr. Reynolds time to go back and resolve issues with the Maine board. The options available to
28 Mr. Reynolds will be in the letter sent to him by the Office of Administrative Hearings.
29

30 **MOTION** **TAURIAINEN moved to adopt the administrative law judge's proposed decision in**
31 **the matter of David Reynolds.**
32 **2nd** **PUCKETT**
33 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
34 **0 Nay votes**
35 **0 Abstentions**
36

37 **AGENDA ITEM 10** **Regulations Project: New (Continued)**
38

39 Regulation No. 5 – Reinstatement of a Surrendered License
40

41 This regulation is a housekeeping matter to make the language in this regulation conform to current
42 CME requirements defined elsewhere in the regulations.
43

44 **MOTION** **BREFFELH moved to approve the language as written for regulation No. 5.**
45 **2nd** **TAURIAINEN**
46 **VOTE** **6 Yea votes (Head, Breffelh, Duddy, Puckett, Tauriainen, Tsigonis)**
47 **0 Nay votes**
48 **0 Abstentions**
49

50 Regulation No. 6 – Definitions
51

52 Ms. Gallant explained that this proposed language came about as a result of complaints received by
53 the board. The definition of "key third parties" is consistent with usage by other boards and is used in
54 the code of ethics for the physician assistants that the board just passed.
55

56 **MOTION** **BREFFELH moved to approve the proposed new paragraph 12 AAC 40.990(b)(5)**
57 **that includes a prohibition against sexual misconduct with key third parties and**

1 defining key third parties.
2 **2nd** **PUCKETT**
3 **VOTE** **6 Yea votes (Head, Breffeilh, Duddy, Puckett, Tauriainen, Tsigonis)**
0 Nay votes
0 Abstentions

6
7 **PUBLIC COMMENT**

8
9 There were no members of the public present to speak with the board and no correspondence was
10 received.

11
12 Off the record at 12:03 pm; on the record at 12:35 pm.

13
14 Present were:

15	Dr. Head	Ms. Puckett
16	Dr. Breffeilh	Dr. Tsigonis
17	Dr. Duddy	

18
19 Absent were Dr. Tomera, Mr. Hall, and Mr. Tauriainen.

20
21 **AGENDA ITEM 12** **In the Matter of Solomon Kamson, ND**

22
23 Ms. Gallant advised the board that it was discovered that another board had taken action against Dr.
24 Kamson. Since the Washington board suspended his license, the California board has also suspended
25 his license there.

26
27 **MOTION** **BREFFEILH moved to approve the voluntary suspension signed by Dr. Kamson.**
28 **2nd** **PUCKETT**
VOTE **6 Yea votes (Head, Breffeilh, Duddy, Puckett, Tauriainen, Tsigonis)**
0 Nay votes
0 Abstentions

31
32
33 **AGENDA ITEM 12** **In the Matter of Hernan Garreud, PA-C**

34
35 Ms. Gallant explained that Mr. Garreud wrote a prescription for a Schedule II controlled substance.
36 Mr. Hall was consulted on this case and recommended the reprimand and civil fine. Mr. Garreud is
37 reportedly no longer living in Alaska but still holds an active license here.

38
39
40 **MOTION** **BREFFEILH moved to approve the memorandum of agreement with Hernan**
41 **Garreud.**
42 **2nd** **DUDDY**
43 **VOTE** **6 Yea votes (Head, Breffeilh, Duddy, Puckett, Tauriainen, Tsigonis)**
44 **0 Nay votes**
45 **0 Abstentions**

46
47 **AGENDA ITEM 12** **In the Matter of William J. Foody, MD**

48
49 Dr. Foody had a previous case before the board that was not pursued. More recently, a complaint was
50 received regarding his competence.

51
52 **MOTION** **DUDDY moved to approve the voluntary surrender of William J. Foody, MD**
53 **2nd** **BREFFEILH**
VOTE **6 Yea votes (Head, Breffeilh, Duddy, Puckett, Tauriainen, Tsigonis)**
0 Nay votes
0 Abstentions