

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells
L. Clarence Batts, Jr.
Ann B. Kirol, DDS
John O. Hutto, Sr., MD

Minutes of S.C. Board of Health and Environmental Control

May 8, 2012

The South Carolina Board of Health and Environmental Control met on Tuesday, May 8, 2012 at 10:00 in the Board Room of the S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman
Member-at-Large

Mark S. Lutz, Vice-Chairman
1st District

R. Kenyon Wells
2nd District

L. Clarence Batts
4th District

Ann B. Kirol, DDS
5th District

John O. Hutto, Sr., MD
6th District

Also in attendance were Catherine Templeton, Director, Elizabeth F. Potter, Legal Counsel, Lisa Lucas Longshore, Clerk, and guests. (Attachment 0-2)

Mr. Amsler stated notice of this meeting has been provided to all persons, organizations and news media, which have requested notification, as required by Section 30-4-80(e) of the South Carolina Code of Laws.

Item 1: Board Minutes for April 12 meeting

Mr. Batts moved, seconded by Mr. Lutz, to approve the minutes as submitted for April 12 meeting. Approved.

Item 2: Administrative and Consent Orders issued by Environmental Quality Control (Attachment 2-1)

Ms. Robin Stephens, Assistant to the Deputy Commissioner, EQC, stated twenty-five (25) actions had been taken with total penalties of \$77,968.75.

After discussion, *the Board accepted this item as information.*

Item 3: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation

(Attachment 3-1)

Ms. Melinda Bradshaw, Health Regulation Liaison, stated two (2) suspensions had been issued with no monetary penalties.

After discussion, *the Board accepted this item as information.*

Item 4: Orders issued by the Office of Ocean and Coastal Resource Management (Attachment 4-1)

Ms. Rheta DiNovo, Director, Regulatory Division, Ocean and Coastal Resource Management, stated one action had been taken with penalties of \$1,000.

The Board accepted this item as information.

Item 5: Appointment of eight (8) initial members to the Emergency Medical Services Advisory Council

(Attachment 5-1)

Mr. Dennis Gibbs, Bureau Director, Bureau of Health Facilities Regulation, stated the South Carolina Medical Services Act of 1976 established an Emergency Medical Services Advisory Council which is to be appointed by the Board of the South Carolina Department of Health and Environmental Control. This Advisory Council shall review standards and regulations for improving emergency medical services and make recommendations to the Department. Advisory Council members' terms of office are for a three (3) year period.

Mr. Lutz moved, seconded by Dr. Kirol, to approve William Howiler, MD, Tina Frey, RN, Louis Walter, Hope Rivers, PhD, Charles Dixon, John Zaragoza, Henry (Buck) Turbeville and Phil Clarke for initial appointment to the Emergency Medical Services Advisory Council for a period of three (3) years. Approved.

Item 6: Proposed New Regulation 61- , Standards for Licensing In-Home Care Providers, Legislative review is required (Attachment 6-1)

Ms. Gwen Thompson, Director, Division of Health Licensing, stated The Licensure of In-Home Care Providers Act of 2011, S.C. Code Section 44-70-10 et seq., directed the Department to promulgate regulations for the licensure of in-home care providers. To satisfy requirements of Section 44-70-40 of the Act, the Department is proposing a new regulation entitled, "Standards for Licensing In-Home Care Providers." The regulation will provide standards and procedures including license application and renewal procedures; criminal records checks for licensure applicants; drug testing of licensure applicant; responsibilities and duties of a licensee, including the requirements for bonding, record keeping and reporting; fees the Department may charge to process an application for a license, the issuance of the license, the renewal of a license and the reinstatement of a revoked or suspended license; criteria that a licensee's employee, agent, independent contractor, or referral must satisfy before providing in-home care service. These criteria must include, but are not limited to, personal information, completion of a minimum education requirement, completion of minimum training and continuing education requirements and screening for communicable diseases; standards for liability and other appropriate insurance

coverage; and sanctions the Department may impose for violation of this chapter, including the suspension or revocation of a license or the imposition of a monetary penalty.

Following discussion, *Mr. Batts moved, seconded by Dr. Kirol, to grant initial approval to publish a Notice of Proposed Regulation in the State Register on May 25, 2012, to provide opportunity for public comment, to conduct a staff informational forum, to receive and consider comments, and to allow staff to proceed with a public hearing before the Board. Approved.*

Item 7: Request for Final Approval – Proposed Revision of Regulation 61-24, Licensed Midwives, State Register Document No. 4210, Legislative review is required (Attachment 7-1)

Ms. Thompson presented this item to the Board. The regulation was last amended in July 1993 and included a comprehensive revision. Since that date, numerous changes in the practice of midwifery to improve standards of care have been adopted by the regulated community. Amendment of the regulation is needed to bring it current to reflect those improvements. Standards have been established for the practice of midwifery and have been accepted nationwide. The North American Registry of Midwives (NARM), has established minimum standards including education, skills testing and written examination for evaluating candidates. Candidates who have met the credentialing standards earn the designation of Certified Professional Midwife (CPM). The process used to create and administer the Certified Professional Midwife examination has been evaluated and accredited by the National Commission for Certifying Agencies, the same organization that credentials Certified Nurse Midwives and many other advanced practice nursing credentials. The process used to evaluate the midwife candidates' education and skills verification is more comprehensive than the oral examination currently in use. Adoption of nationally recognized standards will provide reciprocity for CPMs that seek to be licensed in South Carolina. The Department sought to incorporate significant changes to policy on requirements for licensure, educational requirements, revocation criteria, provision of intrapartum care, record keeping and reporting, prenatal care, care of the newborn, incident reporting, tuberculosis testing, and to prohibit licensed midwives from serving as the primary healthcare provider for mothers seeking vaginal births after caesarian section.

Pursuant to S.C. Code Ann. Section 1-23-111, a public hearing was conducted by the Board on January 12, 2012. Due to the number of comments received at the public hearing, the Board deferred a decision on the need and reasonableness of the proposed revision. The Board directed Department staff to consider the written and verbal comments presented at the public hearing and return to the Board for final consideration. The Department received a significant amount of unsolicited informal comments on the proposed regulations presented at the public hearing. Staff noted some amount of opposition to the revisions to the regulations in some of the correspondence. The Department polled the midwives, via e-mail, to determine the level of support for the revisions going forward. Out of thirty-three (33) midwives polled, one (1) indicated full support of the revisions, three (3) indicated opposition to some elements, but overall support, and two (2) indicated full opposition to the revisions.

Department staff has considered the additional public comments received at the public hearing on January 12, as well as all comments received on the proposed revisions of R.61-24. A Comment/Response document for the specific comments received on January 12, 2012, was prepared and submitted to the Board. Department staff has determined that the number of comments, including the comments addressing sections of the regulation that were not within the scope of the proposed revision, requires additional research and study to adequately address concerns from the regulated community and other interested parties. Thus, the Department has modified the proposed regulations before the Board for final consideration, limiting the proposals to NARM certification and allowing for reciprocity for CPM credentialed midwives from other states. Staff believes these regulations are reasonable because they will provide mothers with midwives that have demonstrated competency in a program that is more comprehensive than what the Department currently utilizes and will allow Department staff to

adequately address a comprehensive revision at a later time. In addition to the NARM and reciprocity amendments, the Department is also retaining its proposal to update the hearings and appeals language for consistency with changes in state law for contested cases.

During the promulgation process, Department staff encountered significant opposition from various sources. The medical community, including the South Carolina Medical Association, physicians from OB/GYN practices, and certified nurse midwives opposed portions of the revisions. Many midwives opposed some of the revisions. Staff attempts at building consensus revealed deep disagreements between the medical community and the midwives, as well as within the midwife community itself. Department staff believes that the proposed revision, as presented to the Board on January 12, 2012, would fare poorly in the General Assembly with the current level of opposition.

The proposed amendments concerning utilization of certification credentials from a nationally recognized credentialing organization approved by the Department received near universal support. Adoption of this proposed amendment would provide for newly licensed midwives to have completed a more rigorous skills verification process than what is currently utilized by the Department and provide an extra margin of safety for consumers of midwifery care. The proposed amendment to allow for reciprocity of currently credentialed midwives also received near universal support. Adoption of this amendment would allow certified professional midwives moving to South Carolina to begin midwifery practice sooner. Adoption of the utilization of certification credentials from a nationally recognized credentialing organization approved by the Department would reduce the time the perinatal nurse manager must devote to coordinating and conducting oral examinations. It would also reduce the cost of travel and meals for the oral examination proctors. Adoption of reciprocity would reduce the delay waiting for an oral examination and reduce the associated costs to the Department. Adoption of these two amendments would provide the regulated community and the consumers of midwife care with immediate improvements to the midwife program at reduced administrative burden.

The Department will consider the large amount of public comments that were outside the scope of the proposed revision more intensely and research additional scientific data to address the issues brought up during the process for this proposed revision. The Department requires additional time to present a more comprehensive set of proposals to this regulation.

The amendment of the hearings and appeals language is necessary to update the regulation for consistency due to changes in State law for contested cases.

Mr. Batts moved, seconded by Dr. Kirol, to find for the need and reasonableness of the proposed regulation and to approve it for submission to the Legislature for review. Approved.

Item 8: Final Review Conference – Docket No. 12-RFR-21, Decision dated March 29, 2012, to issue a Certificate of Need to Bluffton Outpatient Center (Hilton Head Health System, LLP) for the construction of a medical office building for the relocation and expansion of outpatient services to include medical imaging services, pediatric rehab services, lab services and cardiopulmonary services. (Attachment 8-1)

Ms. Potter introduced the matter to the Board. Ms. Ashley Biggers represented the Department. Mr. Travis Dayhuff represented Hilton Head Health System, LLP. (Attachment 8-2) Mr. William Thomas represented St. Joseph/Candler Health System. (Attachment 8-3 and 8-4) Ms. Trudy Robertson represented Beaufort Memorial Hospital.

After hearing presentations from all parties and following discussion, *Dr. Hutto moved, seconded by Mr. Wells, to go into Executive Session for the purpose of obtaining legal advice pertaining to the matter being discussed. Approved.*

While in Executive Session, no actions were taken.

After further discussion, **Mr. Batts moved, seconded by Dr. Hutto, to uphold staff decision to grant Hilton Head Health System a Certificate of Need. Approved.**

Item 9: Final Review Conference – Docket No. 12-RFR-20, Administrative Order, hand delivered March 15, 2012, to Bellwood Manor for violations of Regulation 61-84, Standards for Licensing Community Residential Care Facilities and SC Code Ann. §§44-7-110, State Certification of Need and Health Facility Licensure Act. (Attachment 9-1)

Ms. Potter introduced the matter to the Board and explained that several attempts to notify Bellwood Manor, Ms. Harriette Jenerette, of the scheduled Final Review Conference had been made, in accordance with statutory requirements. Ms. Longshore checked the reception areas to verify that Ms. Jenerette or her representative was not present.

Dr. Hutto moved, seconded by Mr. Batts, to accept the decision of staff on basis that requestor has abandoned the appeal. Approved.

Item 10: Agency Affairs (Attachment 10-1)

Dr. Kirol gave a brief update on the April meeting of the CON Review Panel. The next meeting will be May 22.

Director Templeton deferred her Budget Presentation to a later date.

After discussion, ***the Board accepted this item as information.***

Item 11: Legal Report

Ms. Potter asked for an Executive Session for briefing the Board on pending litigation under the Attorney-Client Privilege.

Mr. Lutz moved, seconded by Mr. Wells, to go into Executive Session for discussion of pending litigation under the Attorney-Client privilege. Approved.

While in Executive Session, no actions were taken.

There being no further business, Mr. Amsler declared the meeting adjourned.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

John O. Hutto, Sr., Board Member

Minutes approved this 14th day of June 2012.

ATTEST:

Mark Lutz, Vice-Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes for April 12
- 2-1 Administrative and Consent Orders issued by EQC
- 3-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 4-1 Orders issued by Ocean and Coastal Resource Management
- 5-1 Appointment of eight (8) initial members to the Emergency Medical Services Advisory Council
- 6-1 Proposed New Regulation 61-____, Standards for Licensing In-Home Care Providers
- 7-1 Request for Final Approval – Proposed Revision of R.61-24, Licensed Midwives
- 8-1 Final Review Conference – Hilton Head Health System, Bluffton Outpatient Center MOB
- 8-2 Hilton Head Health System presentation to Board
- 8-3 St. Joseph's/Candler Health System and Beaufort Memorial Hospital presentation to Board
- 8-4 Parker Poe Memorandum “Legality of DHEC Board’s Remand to Department Staff
- 9-1 Final Review Conference – Bellwood Manor, Harriette Jenerette