

1 **Meeting Report**
2 **Board of Medicine Surgical Care/Quality Assurance Committee**

3
4 **Embassy Suites**
5 **9300 Baymeadows Rd**
6 **Jacksonville, FL 32256**
7 **(904) 731-3555**

8
9 **August 4, 2011**

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11
12 Roll call 5:25 p.m.

13
14 **Members Present:**

15 Jason Rosenberg, M.D., Chair
16 James Orr, M.D.
17 Fred Bearison, M.D.
18 Robert Nuss, M.D.
19 Nabil El Sanadi, M.D.

20
21 **Members Absent:**

22 Trina Espinola, M.D.
23 Brigitte Goersch, Consumer Member

24
25 **Staff Present:**

26 Joy A. Tootle, JD, Executive Director
27 Ed Tellechea, Board Counsel
28 Donna McNulty, Board Counsel
29 Nancy Murphy, Paralegal
30 Crystal Sanford, CPM, Prog. Opr., Adm.

31
32 **Others Present:**

33 American Court Reporting

34
35 **RULES:**

36 **Rule 64B8-9.007, FAC – Standards of Practice (Pause Rule)1**

37 Mr. Tellechea explained the Board, at the last meeting, listened to a disciplinary case
38 involving subtleties to the pause rule. The Board suggested the Committee review the
39 pause rule and make a determination of whether it needs updating.

40 Dr. El Sanadi stated he has a Power Point Presentation he would like to present at the
41 next meeting related to the pause rule and asked the Committee to table this matter.

42 A motion was made, seconded and carried unanimously to table this matter until the next
43 meeting.

44 **Action taken:** table until next meeting

45
46 **Rule 64B8-9.009, FAC – Standard of Care for Office Surgery2**

47 Mr. Tellechea explained this rule incorporates the American Society of
48 Anesthesiologist's Standards for Basic Anesthetic Monitoring (Standards) and the latest
49 update was in 2005. In updating the rule, the wrong standards were named in the rule.
50 He said that issue has been resolved.

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Mr. Tellechea stated that since these standards have been updated, a physician needs to review the language [Rule 64B8-9.009(2)(g-h), FAC to ensure it is consistent with the 2005 version of the Standards.

Dr. Nuss suggested using one of the Department’s expert witnesses.

Mr. Tellechea stated he needs someone to volunteer to assist him and he was willing to travel.

Dr. El Sanadi suggested contacting Rafael Miguel, M.D. for assistance.

Dr. Nuss stated he would help Mr. Tellechea in locating an anesthesiologist to assist him in reviewing the Standards against the rule language.

Mr. Tellechea stated he would have draft language at the next meeting.

Action taken: Mr. Tellechea and Dr. Nuss will find an anesthesiologist to assist in reviewing the Standards against the rule language to ensure consistency

Rule 64B8-1.007, FAC – Forms, Incorporated.....3

Mr. Tellechea explained the Office Surgery Registration form was revised and therefore the incorporating rule needed to be revised to reflect the newest version of the form.

Ms. Sanford explained the application is going online. She further explained that since physicians are questioned at initial licensure and at renewal regarding convictions, those questions related to the physician in the application were removed leaving only those related to the facility.

A motion was made, seconded and carried unanimously to recommend approval of the revisions to the application.

Mr. Tellechea stated the Board did not have authority to approve the form because the Department of Health registers the facilities – not the Board.

No further action taken.

DISUSSION ITEMS:
Wrong site/procedure/person Statistics and Severity Levels4

Dr. Rosenberg explained that at the last Board Meeting, the Board asked the Committee to assist the Prosecuting Services Unit in assigning severity levels to wrong surgery cases for use in proposing appropriate penalties for violations of the law.

Dr. El Sanadi provided some historical background on the Board’s penalties for wrong surgery cases.

1 Mr. Tellechea explained by statute, a wrong surgery violation has occurred if it involves
2 the wrong site, patient or procedure, but also includes prepping the site.

3
4 Dr. El Sanadi said it is important the physician on the probable cause panel (PCP) call
5 help with decisions of whether to give a letter of guidance or file an Administrative
6 Complaint in these types of cases.

7
8 Dr. Rosenberg suggested patient harm as a starting point.

9
10 Mr. Tellechea suggested the following factors:

- 11 • first time offense
- 12 • no patient harm
- 13 • physician discloses the error to the patient

14
15 Dr Rosenberg suggested adding the patient did not file a complaint to the list of factors
16 for consideration too.

17
18 Ms. Donnelly stated the patient frequently refuses to go forward with a case because they
19 still like their doctor.

20
21 Mr. Tellechea reminded the Committee that PSU has limited resources and by providing
22 some guidance in this area more resources can be placed on higher level cases.

23
24 Dr. Nuss asked what percentage reduction would occur if all cases matching the factors
25 suggested were taken into account.

26
27 Ms. Donnelly stated he estimated that figure to be 15-20%. She used to see three cases
28 per week on her desk, but has not seen one case in the past month.

29
30 Dr. Rosenberg suggested adding to the list of factors for consideration whether the
31 procedure continued as scheduled.

32
33 Dr. El Sanadi suggested adding that the Department asks the patient if closing the file
34 with a letter of guidance is acceptable – why pursue a case if the patient is against it.

35
36 Ms. Donnelly said she knew the Board considered items such as timing of X-ray and
37 opportunity to do an X-ray as factors for considering foreign body cases and asked if
38 those applied in wrong surgery cases as well.

39
40 Dr. Rosenberg said if the physician completes the surgery in the wrong area that is a clear
41 violation and should be an Administrative Complaint. He said the pause rule only has to
42 be conducted if an incision larger than removing a mole takes place. With that concept,
43 he said any wrong surgery case that is less invasive than that should result in a lesser
44 penalty such as a letter of guidance.

1 Mr. Tellechea clarified the pause rule says the pause does not have to be performed in
2 certain circumstances, but if a physician removes the wrong mole, that is still wrong
3 surgery even though its small enough that a pause is not required prior to incision.
4

5 Mr. Tellechea suggested using these factors during the PCP calls with a checklist when
6 reviewing wrong surgery cases.
7

8 Dr. Orr said the factors would count unless the physician on the call feels otherwise and
9 believes it warrants an Administrative Complaint.
10

11 Dr. Rosenberg said the foreign body cases fall into two broad categories:

- 12 • foreign body should not be there – example: sponge
 - 13 ○ Count correct
 - 14 ○ Count incorrect
- 15 • Surgical item broke off in patient and should not be there – example: guide-wire
16

17 Dr. El Sanadi said the first offense is a letter of guidance and the second offense is an
18 Administrative Complaint. If wrong counts continue or become a problem at a particular
19 hospital, then the matter is referred to the Agency for Health Care Administration for a
20 look at the hospital’s procedures. He said he believed that a broken guide-wire is
21 technical, causes no harm to the patient and should result in a letter of guidance.
22

23 Mr. Tellechea clarified the Board would not see a case where the physician knew the
24 guide-wire was left in the patient, had not closed the patient while doing the X-ray then
25 removed the wire – there is no violation in this situation. He went on to explain that if
26 the physician did something wrong to cause the guide-wire to break that could be a
27 standard of care violation.
28

29 Dr. Rosenberg stated it should be an Administrative Complaint if there was an incorrect
30 count and no X-ray performed. He said this area is difficult because different hospitals
31 count different instruments.
32

33 Dr. Nuss and Dr. Orr agreed that all surgical items brought into the surgical field should
34 be counted.
35

36 Dr. Nuss said that large sponges left in the patient even when the count is correct, is not
37 acceptable.
38

39 It was suggested that a correct count with a sponge left in the patient is a letter of
40 guidance type violation.
41

42 Ms. Donnelly stated she would move these types of cases earlier on the PCP agenda since
43 they require careful consideration.
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45 Mr. Tellechea reminded the Committee the statute says the Board ‘may’ take disciplinary
46 action in foreign body cases and allows for some leeway.

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Office Based Surgery Outcomes5

Dr. Rosenberg mentioned the adverse outcomes in the press recently. He said the Committee needs to determine whether the rules are being followed but there are negative outcomes to surgery or whether the rules are not adequate to prevent deaths. He asked the Committee if there is a way to gather this information.

Dr. Nuss suggested looking at adverse outcomes for the last couple of years.

Christopher Nuland, Esquire addressed the Committee and stated that he would be able to obtain data from the American Society of Plastic Surgeons for the next meeting. He said physicians are violating the rules in that they are performing Level 2 and 3 procedures under Level 1 anesthesia to avoid having to be registered with the Board.

Mr. Tellechea stated the Board has no authority to require physicians to submit the kind of data the Board needs to make decisions regarding adverse outcomes.

Dr. Nuss stated if the rule is not followed then an Administrative Complaint should be issued. He said the public does not care about statistics. Deaths should not occur.

Dr. El Sanadi suggested trying to obtain information regarding this death noted in the article in the agenda materials.

Office Surgery Rules – Historical Document (Information Only)Separate CD

This was provided for information only.

Dr. Rosenberg stated the Board of Medicine takes adverse outcomes very seriously and will continue to review our rules to ensure patient safety.

The meeting adjourned at 6:25 p.m.