

MINUTES
MASSACHUSETTS BOARD OF REGISTRATION IN MEDICINE
MEDICAL SPA TASK FORCE

October 24, 2007

PRESENT

Task Force Members

Boards:

Nancy Achin Audesse, Board of Registration in Medicine
Gino Chisari, RN, Board of Registration in Nursing
Catherine Hinds, Board of Cosmetology
Barbara Kellman, JD, Board of Registration in Nursing
Kathe Mullally, JD, Board of Cosmetology

Appointees:

Stephanie Cogliano, RE
Dianne Quibell, MD
Winifred Nee Tobin, Consumer
Jeffrey Dover, MD
Jagruti Patel, MD
Faye Marie Jenkins, RN
Karen McKoy, MD

Absent:

Jennifer Infurna, MPH
Senator Joan Menard

Board Staff

Russ Aims, Board of Registration in Medicine
Brenda Beaton, Esq., Board of Registration in Medicine
Fallon Onufrak, Board of Registration in Medicine

1. Welcome, Scheduling, Goals for Today's Discussion

Ms. Achin Audesse called to order the day's Medical Spa Task Force Meeting. She expressed her excitement to be back with the group this month as she was not at the last meeting. Ms. Achin Audesse briefly covered the topics that will be discussed during the meeting.

2. Approval of July 18 & August 29 Minutes

The members of the Task Force went over the minutes for the July, August and September minutes in detail. The July and August minutes were approved with only a minor "housekeeping" change to the August minutes. Ms. Catherine Hinds attended the August meeting, and Dr. Karen McKoy attended the September meeting, not the August meeting. This was not reflected in the minutes.

The Task Force went into significant discussion of the September minutes. Dr. Patel had an issue on page three regarding this issue that was reflected that leads people to believe that nurses could be clinical directors of medical spas. She feels that an issue like this should not just be decided, but should be put to a vote by the Medical Spa Task Force. This notion was agreed by all and the issue will be stricken from the minutes.

Mr. Chisari would like to strike the last line on page six. The September minutes are going to be looked at and brought up for a re-vote in November. Ms. Kellman is going to go over two sentences from the September minutes and submit them to Mr. Aims for approval.

3. Presentation: Cosmetology Board Recommendations, Kathe Mullally

The last time Ms. Mullally addressed the Task Force, she gave a presentation in March 2007. Over course of seven months, there had been a lot of discussion of role of esthetician, cosmetologist and electrologist. At the Task Force meeting, Ms. Mullally is giving presentation to group of statutory changes that would affect each of the boards that license these professionals. She is speaking today to provide recommendations for regulatory changes for each of these professions. Ms. Mullally is giving a PowerPoint presentation that will be available on the website at www.massmedboard.org. She would also like to add that this presentation is not where we are today, but where we would like to be.

The group went into a small discussion after Dr. Patel asked a couple of questions regarding ablative and nonablative procedures. Dr. Dover feels that "superficial" and "deep" would be better terms to be used than "ablative" and "nonablative." Ms. Achin Audesse wants to be consistent. Dr. Dover says that "ablative" is used for a laser procedure whereas "microderm" is not. It was decided that these terms should be used as definitions.

Dr. Patel does not know where the doctor's office plays into the regulatory standards. She has issues with the grandfathering and where the estheticians that have been practicing for years, but with less hours of training may have to go back to school. She thinks that experience speaks volumes over education/training and that asking all estheticians to go back to school is not practical.

Dr. Quibell added that experience is education and is a way to learn. Ms. Jenkins asked the question why estheticians are not able to work in a physician office under proposed regulations. The answer is because the office itself is not regulated. This is a Board proposal, but the Medical Spa Task Force would like to talk more extensively about this as private offices employ extremely skilled estheticians.

Dr. Patel further added that estheticians are pivotal in the doctor's office and she feels that to take them out of the office would be doing them, the patients and the doctors that they work with a disservice.

Ms. Kellman asked Ms. Mullally to ask the Boards if they would consider separating licensing of space and the licensing of the professional, which could take away from some of this controversy. This would be practical and it would allow the physician to regulate their own space. Ms. Hinds feels that the estheticians do not have power and do not have a voice at the Board, and that they need an enormous amount of help from the Board of Cosmetology in order to achieve this.

Ms. Mullally added that DPH is moving towards increasing training to try to raise competency. She knows this may be controversial, but it is felt that all estheticians need additional training. The board is interested in maintaining and regulating their licensees in the space where they are performing. If estheticians are operating in a doctor's office, they are not operating with their licenses, they are being delegated.

Ms. Achin Audesse added that every board is giving up something in order to have a changing environment. Ms. Achin Audesse asked Ms. Mullally if there were any thought to splitting the Cosmetology and Esthetician board in the light of changing times. Ms. Mullally added that the Board believes that cosmetologists and estheticians both have the training to perform basic esthetic procedures therefore it is reasonable to keep them together. Ms. Achin Audesse's response was that challenges arise because the Boards are together and estheticians are being swept into a regulatory environment needed for cosmetology salons that may not be appropriate for estheticians.

Ms. Mullally explained that the Department of Public Health (DPH) does not have enough investigators to go out and inspect all facilities. They would like to maintain the right of investigators to inspect what the licensees are doing within the space and also inspect the space as it is licensed under DPH. It was pointed out, however, that neither the Board of Registration in Medicine (BORIM) nor the Board of Nursing (BORIN) has the ability to go into a doctor's office and inspect the facility.

Dr. Patel asked for clarification on her understanding that the Board will no longer allow estheticians working in private doctors' offices? Dr. Patel thinks this is not a good idea, and thinks that this is a disservice to the patient who they are trying to protect. Dr. Patel knows that these estheticians are practicing excellently because they are under her license. Ms. Achin Audesse reminded the Task Force that they need to think of the best interest of the patient community and that this is not a matter of money, but rather, a matter of control.

Ms. Jenkins asked why it is so necessary to have carved out space. She asked if carved out space had levels of limitations and added that she does not understand why in more controlled spaces such as a Medical Spa, there needs to be carved out space. She added that she thinks regulating high risk areas would be more beneficial.

Ms. Achin Audesse added that DPH needs a regulatory change based on task force recommendations to give the authority to inspect licensees in any setting where they are relying upon their license. This will give them the authority to go into private physician offices. This will give them a way to show cosmetology board that they are giving them recommendations and trying to work together.

Dr. Dover brought up the Medical Spa Procedure List and thinks that estheticians should be added to this list. Ms. Achin Audesse felt the Task Force should discuss it at a later date. Dr. Dover went over changes that will be made to that document that will be made and then circulated to the Task Force for approval.

Dr. Quibell: Comments for the minutes: we are given 7 minutes to cover all meetings, and the reason that PCPs are able to pick up all of the changes in the skin are because they are not able to learn and pick up these problems.

4. Discussion Topic: Sale of Goods

Ms. Tobin put together a working document that she went over quickly which led the group into a discussion regarding the sale of goods.

The Task Force went over the options for allowing the sale of goods in physician offices. Some of the options that were discussed included; applying for license under DPH to sell goods; allowing them to sell within certain limitations; not allowing private offices to sell products; or having a carved out space and allowing the sale of goods only within the space allowed.

Dr. Quibell reminded the Task Force that they are discussing unnecessary medical procedures that are performed for cash. In order to perform these procedures, she needs to use cosmeceuticals on her patients and if she can not offer them cosmeceuticals in her office, they will need to go out and buy them for a lot more money than if they were provided in her office.

Dr. Dover went into a brief description of cosmeceuticals and how they differ from prescriptions. Ms. Achin Audesse explained that the BORIM has had a sale of good ban in physician offices because there may be conflict for patients visiting for medically necessary care. Ms. Achin Audesse's sense is that the Board may be willing to look at the fact that this type of care is not medically necessary and may treat it differently. The Task Force did not vote on this issue, but it was her sense that the Task Force felt that way.

Dr. Patel suggested that the Task Force may want to recommend guidelines on the issue of the sale of goods. Dr. Patel is less concerned about the physician, but more concerned about the physician's proxy that is trying to sell products to patients that are going in for medical procedures. Dr. Patel thinks that the physician should be held accountable if the consumer has a complaint. Ms. Kellman feels that individual board should come up with guidelines for their licensees and come up with regards to informed consent and the sale of goods.

At this time, Ms. Achin Audesse asked the following questions:

1. What will provisions be within the medical spa?
2. How do we coordinate professional standards of each board to ensure that there is ethical behavior by the licensees to protect the consumer? How do we make this consistent? The Task Force should make some guidance for this for DPH to adopt. This would require the input of all the licensing boards.

The Task Force may have problems with exploitation, as the public generally feels differently about private offices than about other offices or hospital settings.

The Task Force then went into discussion regarding those products that are necessary for a procedure and those that may not be necessary. Those products truly related to the procedure may possibly be alright to be sold in an office setting, and Ms. Achin Audesse feels that everyone would agree, but what about the products that "could be helpful?"

Ms. Achin Audesse added that there should be a change from the board if there is a consultation and discussion of option for elective cosmetic, you can do the sale of goods. If you have an appointment for medical reasons, you can not promote the sale of goods.

Dr. Patel added that the physician should have a consent form for the sale of goods for the consumer to sign to say that they were not coerced into buying the goods.

Ms. Tobin thinks that the sale of goods always puts pressure on the patient. Ms. Kellman feels that it is important for the physician to keep the clinical encounters separate from the sales. The physician should try to separate the product from the exam rooms, and then the consumer has some responsibility for him/herself.

Ms. Mullally believes that the consumer wants some type of endorsement or some type of recommendation of a product from someone with experience. She thinks the consumer

should be able to get the products everywhere, but they can get it in the private office for the convenience.

Dr. McKoy believes the issue is money. She would like to see professional guidelines to prevent markup of the product so that consumers can be ensured that the physicians are not making a profit on the product. Dr. Quibell informed the group that her patients are furious that they can not buy their products in her office after the law was passed in 2005. She feels that physicians are not selling goods to make a profit, but rather as a convenience for the consumer.

Ms. Achin Audesse feels that the Task Force should put together a general agreement to allow Medical Spas to sell non prescriptive products and that they should put together a working group to put together disclosures. Mr. Aims is going to put together a few people to work on this issue and they will report back to the Task Force.

4. Next Steps

Next meeting of the Medical Spa Task Force is tentatively scheduled for Wednesday, November 28, 2007 from 8:00-11:00am.