

MINUTES

NEW YORK STATE ATHLETIC COMMISSION
MEDICAL ADVISORY BOARD
OPEN MEETING
Wednesday – December 2, 2015
6:00 P.M.
123 William Street, 2nd Floor Conf. Rm.
New York, New York 10038

Medical Advisory Board (MAB) Members Present:

Dr. James J. Kinderknecht
Dr. Charles Melone
Dr. Anthony Curreri
Dr. Ambika Nayar
Dr. James M. Noble

Present for the Commission: Tom Hoover, Chairperson, State Athletic Commission
David Berlin, Executive Director, State Athletic Commission
Dr. Barry Jordan, Chief Medical Officer, State Athletic Commission
Eric Bentley, Director of Boxing, State Athletic Commission
James W. Leary, Office of General Counsel, Dept. of State
Joshua Rodriguez, Office of General Counsel, Dept. of State

Also Present: Paul Dominique, attendee, member of the public

Minutes Prepared By: James Leary, Office of General Counsel, Dept. of State

I. Call to order:

Dr. Barry Jordan called the Medical Advisory Board “MAB” meeting to order at approximately 6:18 PM. It was noted that due to an unforeseeable IT equipment failure moments before the meeting, the meeting could not be webcast or electronically recorded as planned.

Dr. Jordan confirmed that a quorum of MAB members (5 of 9) was present.

Dr. Jordan introduced Chairman Tom Hoover to the MAB members present. Chairman Hoover greeted the members, noted his support for the work of the MAB and SAC panel physicians, and reiterated the SAC’s firm commitment to health and safety.

II. Review and acceptance of prior MAB meeting minutes:

Minutes of the MAB meeting held May 6, 2015 were reviewed and unanimously approved by all MAB members present. (A copy of the approved minutes is attached hereto).

III. Old Business (none).

IV. New Business:

A. Review of applications received from candidates for SAC panel physician designation:

Dr. Jordan stated that the MAB had six (6) applications from candidates for panel physician designation to review and consider for potential recommendation to the SAC. Because the review of these applications involves a discussion of each candidate's employment history and other personal information, an executive session was called with the unanimous consent of all MAB members present.

EXECUTIVE SESSION: A discussion was held in executive session regarding each of the applicants for panel physician, their educational and employment history, and their medical qualifications.

Upon return from the Executive Session, the MAB members present voted unanimously to take the following actions:

- a. The application of Dr. Charles Everly for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Everly, by unanimous vote of the MAB, was recommended as medically qualified to the SAC for consideration and approval as a panel physician.
- b. The application of Dr. Edward Amores for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Amores, by unanimous vote of the MAB, was recommended as medically qualified to the SAC for consideration and approval as a panel physician.
- c. The application of Dr. Guillem Gonzalez-Lomas for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Gonzalez-Lomas, by unanimous vote of the MAB, was recommended as medically qualified to the SAC for consideration and approval as a panel physician.
- d. The application of Dr. Anthony Perkins for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Perkins, by unanimous vote of the MAB, was recommended as medically qualified to the SAC for consideration as a panel physician. The MAB also noted that SAC should evaluate whether any relationships exist between the applicant and any boxing promoter(s) that may create a conflict of interest, and that SAC should review/consider the applicant's history of interactions with panel physicians at prior boxing events within New York State before considering the application for formal SAC approval.
- e. The application of Dr. Vanessa Pero for appointment to the NYSAC Medical Panel was reviewed by the MAB. Consideration of the application of Dr. Pero was, by unanimous vote of the MAB, tabled pending receipt of additional information regarding recent work history.
- f. The application of Dr. Louis Rotkowitz for appointment to the NYSAC Medical Panel was reviewed by the MAB. Consideration of the application of Dr. Rotkowitz was, by unanimous vote of the MAB, tabled pending receipt of additional information regarding applicant's experience in the area of sports medicine.

B. MAB annual review of current SAC designated panel physicians:

Pursuant to NY Unconsolidated Laws section 8904(4), which provides that “The advisory board shall review the credentials and performance of each commission physician on an annual basis as a condition of reappointment of each such physician,” Dr. Jordan introduced the applications for recertification and review of 29 current SAC designated panel physicians and stated that 2 additional applications were incomplete and would need to be revisited at a subsequent MAB meeting, once completed documentation was received.

Because the review of these applications involves a discussion of each panel physician's history and personal information, an executive session was called with the unanimous consent of all MAB members present to discuss and review the 29 panel physicians with completed applications for recertification.

EXECUTIVE SESSION: A discussion was held in executive session regarding the applicants for panel physician recertification, their performance history, and their medical qualifications.

Upon return from the Executive Session, the MAB members present voted unanimously to recommend reappointment and to recertify each of the following SAC designated panel physicians:

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|--------------------------|-------------------------------|
| 1. Dr. Diego Alvarez; | 16. Dr. Deborah Light; |
| 2. Dr. Clifford Ameduri; | 17. Dr. David Martin; |
| 3. Dr. Donato Balsamo; | 18. Dr. Robert Meyer; |
| 4. Dr. John Boccio; | 19. Dr. Mark Mirabelli; |
| 5. Dr. Bennett Brown; | 20. Dr. Donald Muzzi; |
| 6. Dr. Avery Brown; | 21. Dr. Anne Nafziger; |
| 7. Dr. Scott Darling; | 22. Dr. Donald Nash; |
| 8. Dr. Angela Gagliardi; | 23. Dr. Robert Polofsky; |
| 9. Dr. Stephan Gelfman; | 24. Dr. Rosanna Sabini; |
| 10. Dr. Dennis Gort; | 25. Dr. Nitin Sethi; |
| 11. Dr. Alex Guerrero; | 26. Dr. Gerard Varlotta; |
| 12. Dr. Jeffrey Kaplan; | 27. Dr. Richard Weinstein; |
| 13. Dr. Victor Kabie; | 28. Dr. Daniel Weinstock; and |
| 14. Dr. Osric King; | 29. Dr. Kevin Wright. |
| 15. Dr. Michael Lenihan; | |

C. Discussion and Recommendation that Ringside/Panel Physicians be converted from independent contractors to per-diem employees of the State of New York:

Executive Director David Berlin stated that he had provided a memorandum to all MAB members describing the issue and requesting that the MAB membership discuss the captioned matter and consider a vote to recommend that the Commission add panel physicians to the DOS special payroll as per diem employees of the State. All MAB members present acknowledged that they had received and reviewed the memorandum from Mr. Berlin, as had Dr. Jordan. A copy of the memorandum is attached to these minutes.

Dr. Jordan called for a discussion on the issue. Dr. Jordan stated his belief that converting panel physicians to State per-diem employees will help the Commission to retain and recruit top physicians to serve as ringside physicians, and that it will enhance the operations of SAC in overseeing boxing events. Dr. Curreri stated that he viewed the proposal very favorably, calling it “the ideal plan.”

Dr. Curreri made a motion to vote to recommend that the Commission convert panel physicians from independent contractors and add panel physicians to the DOS Special Payroll as per diem employees of the State of New York. The motion was seconded by Dr. Kinderknecht. A vote was called, and the MAB members present voted unanimously to recommend that the Commission add panel physicians to the DOS Special Payroll as per diem employees of the State of New York.

D. Discussion of pre-bout physical examination forms and vote to recommend the use of the “Long Form” at all pre-bout physical examinations of boxers in the State of New York:

At present the “History and Physical Examination Record for a License as a Boxer; Long Form” (hereinafter, “Long Form”) physical examination is required only once per license year per boxer, after which time a “short form” physical examination is the required pre-bout screening unless otherwise directed by the examining physician or SAC’s Medical Officer. Dr. Jordan stated that he believes, along with staff of the SAC, that it would promote health and safety to begin requiring the use of the Long Form physical for the pre-bout physical examination of all boxers in the State of New York, as the Long Form contains additional questions regarding medical history and neurological evaluation that would be valuable and provide a more detailed pre-participation screening of boxers than the current short form physical. The Long Form will be better suited at screening for and capturing intervening events that may impact a boxer’s fitness to compete professionally, and therefore, should be used each time a boxer proposes to compete professionally in New York State. Dr. Curreri commented that, in his opinion, completion of the long form is not unduly burdensome and may provide benefits with regard to preserving the health and safety of boxers.

A motion was made by Dr. Curreri, and seconded by Dr. Noble, to recommend and require the use of the Long Form physical evaluation for pre-bout examination of each boxer in the State of New York, effective immediately. A vote was called and the MAB members present voted unanimously to recommend and require the use of the Long Form for the pre-bout examination of each boxer in the State of New York, effective immediately.

Additionally, Dr. Noble commented that the word “seizures” should be added to Question 32 of the Long Form. Dr. Jordan and MAB members present concurred. Dr. Jordan stated that he would make the change.

E. Discussion of the “Cryohelmet”:

The MAB members engaged in a brief discussion of a product called the “Cryohelmet,” which is a cooling device that is similar in appearance to a winter ski-hat with built in ice

packs surrounding the cranium. It was the consensus of the MAB members present, and the opinion of Dr. Jordan, that the product should not be considered a medical device, that it provides no known competitive advantage to boxers, that it provides no significant medical value, that it is not recommended by the MAB for use between rounds as a form of medical treatment for boxers, but that it is not likely to cause harm if used unless it is used as a substitute for recommended medical treatments normally used between rounds.

A motion was made by Dr. Noble to table the MAB discussion of this product, and to reserve any decisions regarding boxer camp requests for approval to use this or similar cooling products for the Commission, in its discretion, considering the comments made by the MAB on this topic. The motion to table the discussion was approved by unanimous consent of the MAB members present.

F. Discussion regarding a tentative date for a subsequent meeting of the MAB:

The MAB members and Dr. Jordan agreed to tentatively schedule the next meeting of the MAB for January 6, 2016 at 6:00 PM.

V. Adjournment

The meeting was adjourned by the unanimous consent of the MAB members present at approximately 7:28 PM.

Attachments: 1. Minutes from May 6, 2015, as approved; and
2. Memorandum from Executive Director David Berlin to Medical Advisory Board Members, entitled "Recommendation that Panel Physicians be added to DOS Special Payroll as Per Diem Employees," dated November 30, 2015.

NEW YORK STATE ATHLETIC COMMISSION
MEDICAL ADVISORY BOARD
OPEN MEETING MINUTES
Wednesday – May 6, 2015
6:00 P.M

Present for the Commission: Dr. Barry Jordan

Also Present:

David Berlin, Executive Director
Dr. James J. Kinderknecht
Dr. Charles Melone
Dr. Anthony Curreri
Dr. Charles P. Melone, Jr.
Dr. Ambika Nayar
Dr. James M. Noble
Joshua I. Rodriguez, Esq. NYS Dept. of State

Minutes By: Joshua I. Rodriguez, Esq., NYS Dept. of State

I. Call to Order

Dr. Barry Jordan called the Medical Advisory Board “MAB” meeting to order immediately upon completion of Executive Session. Dr. Jordan confirmed that a quorum of MAB members was present.

II. EXECUTIVE SESSION (Approximately 30 minutes)

Dr. Jordan led a discussion for therapeutic use exemptions for psychostimulants used by boxers for the treatment of attention deficit hyperactivity disorder and other approved Food and Drug Administration treatments. MAB decided that it would consult with the NCAA to determine which approaches should be taken in the near future with regard to this growing problem.

Upon return from the Executive Session, Dr. Jordan announced that the Commission had voted unanimously to take the following actions:

1. The application of Dr. Bennett Brown for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Brown, by unanimous vote of the MAB, was recommended for approval as a panel physician.

2. The application of Dr. Donald Muzzi for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Muzzi, by unanimous vote of the MAB, was recommended for approval as a panel physician.
3. The application of Dr. Mikhail Strut for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Strut, by unanimous vote of the MAB, was recommended for approval as a panel physician.
4. The application of Dr. Scott Darling for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Darling, by unanimous vote of the MAB, was recommended for approval as a panel physician.
5. The application of Dr. Rufus Sadler for appointment to the NYSAC Medical Panel was reviewed by the MAB. Dr. Sadler, by unanimous vote of the MAB, was recommended for approval as a panel physician.

III. Approval of Past Minutes, pursuant to Public Officers Law sec. 106.

A copy of the minutes was produced from the March 11, 2015 meeting of the New York State Athletic Commission ("SAC"). The Members confirmed the receipt of the minutes, and agreed on the accuracy of the minutes as presented.

1. Motion to approve the minutes from the 9/23/2014 meeting of the SAC was made by Dr. Kinderknecht.
2. The motion was seconded by Dr. Curreri.
3. The motion was unanimously passed by vote of the Members of the MAB.

IV. New Business

Dr. Jordan led a discussion regarding the suspension form and the possible use of discharge instructions. Dr. Jordan stated that, where boxers have experienced knock-outs, technical knock-outs, or have otherwise experienced significant cerebral injury during a competitive bout, neurologic clearance is typically appropriate.

David Berlin referenced Dr. Kinderknecht's suggestion at the previous meeting that any suspension based on cerebral injury should be indefinite pending a neurological clearance.

Dr. Jordan and Dr. Noble discussed possible circumstances that would require a neurological clearance, including assessing the possible need for such a clearance, and whether such a determination would be made at the bout or during a follow up visit.

Dr. James J. Kinderknecht stated his support for a rule where significant intervention by a ringside physician should require a follow up with a physician subject to the discretion of the ringside physician. Dr. Jordan informed the Board that since the previous meeting, he has directed the ringside physicians to be more vigilant about requiring medical clearances.

David Berlin clarified that documentation exists that memorializes that a fighter is examined after a bout. Further, if a fighter is injured, physicians will prepare an accident report and, when appropriate, a suspension notice. The suspension form should detail the reason for the suspension, the length of suspension and the requirements to have the suspension lifted. This form can be used to require neurologic clearance, orthopedic clearance, ophthalmological clearance, ear, nose and throat injury clearance, or any other medical clearance required.

Dr. Kinderknecht made a motion that the suspension form should memorialize that any boxer suspended for medical reasons requires medical clearance before returning to the sport unless otherwise cleared by the ringside physician at the time of injury. Dr. Noble seconded this policy and it was approved unanimously by vote of the Members.

V. Adjournment

1. Motion to adjourn by vote was made by Dr. Jordan.
2. Motion was seconded by Dr. Curreri.
3. The motion was unanimously passed by vote of the Members.

MEMORANDUM

To: Medical Advisory Board
From: David Berlin, Executive Director, NYSAC
Re: Recommendation that Panel Physicians be added to DOS Special Payroll as Per Diem Employees
Dated: November 30, 2015

Pursuant to New York State law, the New York State Athletic Commission (Commission) Medical Advisory Board (MAB) is charged with the duty "to serve in an advisory capacity to the commission and from time to time prepare and submit to the commission for approval. . . regulations and standards of examination as in their judgment will safeguard the physical welfare of the professional boxers licensed by the commission" and to "recommend to the commission. . . such qualified physicians, for the purpose of conducting physical examinations of professional boxers and other services as the rules of the commission shall provide" (see Unconsolidated Laws §8904[2]).

The Commission seeks the advice of the MAB on the question of whether panel physicians, who currently carry the status of independent contractors, should be added to the Department of State Special Payroll as per diem employees. It is proposed that this change in the physicians' status to per diem employees (a) would enhance the objectivity of panel physicians by insulating them within the framework of government, (b) would allow the Commission's Chief Medical Officer to exercise a greater degree of supervision, control and mentoring to panel physicians, (c) would ensure the Commission's ability to comply with the requirements of current State law and create a firewall between physicians and promoters by requiring that the physicians be paid directly by the State for their services while fees equal to such costs are paid to the State by the event promoters, and (d) would enhance the ability of the Commission to retain and recruit qualified panel physicians.

Enhanced Objectivity

Panel physicians are approved by the Commission based on the recommendation of the MAB, and assigned to boxing weigh-ins and events by the Commission in order to ensure that boxers are medically fit to enter the ring for competition, to safeguard the health of the boxers during a bout, and to enhance the safety of the sport. The Commission's mission is to protect the integrity of the sport and the safety of the participants. While promoters support these goals, they also, in most instances, have a stake in a particular boxer winning a bout. As panel physicians possess the authority to terminate a bout or to call a time out (see Unconsolidated Laws §8926[2]; 19 NYCRR §§213.6 and 213.7), their decisions can directly affect the outcome of a bout. By making panel physicians per diem employees of the Department of State, they will be paid by the State rather than the promoters. This change will eliminate any potential conflict of interest as well as the appearance of a conflict, and will promote the objectivity of the panel physician.

Enhanced Supervision

As per diem employees, panel physicians will work under the direct supervision of the Chief Medical Officer (CMO). The CMO, or his appointed designee, will be responsible for the supervision of ringside

physicians at events, and for the training of new ringside physicians and the continuing education of current physicians. In his or her supervisory capacity, the CMO will be better able to ensure that panel physicians, as employees, follow the protocol expected of ringside physicians and bring a standard practice and standard level of care to the boxers.

Compliance with Statutory Payment Structures and the Creation of a Financial Firewall Between Promoters and Panel Physicians

New York State Law provides that for pre-fight physicals conducted at weigh-ins and for services rendered as ringside physicians at professional boxing events, panel physicians should be paid directly by the State and that the State should in turn receive a fee payment from the event's promoter equal to such costs (see Unconsolidated Laws §§ 8925, 8926). Moving panel physicians from independent contractors paid by check from the event promoter to per diem employees of the State will allow the State to issue direct payments to the physicians, while assessing appropriate fees on the promoter of record. As discussed above, this will further enhance objectivity by creating a firm firewall between promoters and panel physicians, as promoters will no longer sign any checks to be cashed by the physicians. Promoters will pay fees to the State. The State will pay the physicians.

Enhancing the Commission's Ability to Retain and Recruit Qualified Physicians

Changing the status of panel physicians to per diem employees of the Department of State will enhance the ability of the Commission to retain the committed and trained doctors who currently work ringside and to recruit new physicians qualified to do ringside work. Without ringside physicians, there can be no professional boxing in New York State. At present, many of the panel physicians qualified to work ringside are not in fact working because their malpractice policies do not cover their work at ringside, or because they are concerned that their policies – which are generally limited to \$3,000,000 in coverage – will not be sufficient to cover the kind of injury that could conceivably take place in a boxing ring. While very few legal claims have been made against ringside physicians in the history of boxing in New York State, it is understood by the Commission that many prudent physicians today are concerned about the realities of insurance and defense coverage limitations within an increasingly litigious society, and it is recognized that such concerns are creating barriers to physician involvement in boxing events. Insurance coverage limitations and concerns about personal liability have created an environment where retention and recruitment of qualified ringside physicians has presented a greater challenge for the Commission than ever before. Making the panel physicians employees of the State will remove this issue and bring a needed stability to the workforce of ringside physicians, which in turn will protect boxers, promoters and the sport of boxing by bringing stability to the staging of boxing events in New York State.

Conclusion:

Based on the foregoing, it requested that the MAB discuss this matter, and consider a vote to recommend that the Commission add panel physicians to the DOS Special Payroll as per diem employees.