



TENNESSEE BOARD OF OSTEOPATHIC EXAMINATIONS
Regular Board Meeting

May 6, 2015

MINUTES

A regular meeting of the Tennessee Board of Osteopathic Examination was held in the Poplar Conference Room, at 665 Mainstream Drive, Nashville, TN 37243 on May 6, 2015.

Members Present: Donald H. Polk, DO
J. Michael Wieting, DO
Jeffrey L. Hamre, DO
Jan Day Zieren, DO

Members Absent: R. Fletcher Lance, Consumer Member
Shant H. Garabedian, DO

Staff Present: Candyce Waszmer, Administrator
Stacy Tarr, Administrative Manager
Maegan Carr Martin, Executive Director
Francine Baca-Chavez, Deputy General Counsel

The necessary number of Board members joined the meeting and a quorum was established. Board of Osteopathic Examination Chair, Donald Polk, DO, called the meeting to order at 9:05 a.m.

Division of Health Licensure and Regulation

Lisa Tittle from the Bureau Office provided members with the actual revenues and expenditures through December 31, 2014 and projections for FY ending June 30, 2015. Dr. Polk inquired about the ability of the Board to pay for additional Board members to attend the FSMB meeting and other conferences in future years. Ms. Tittle confirmed that funding would not prevent more Board members from travel and training.

Applicant Interview(s):

Alexander Gaitanis, DO – was invited to appear in person before the Board to address two prior malpractice claims and his intended practice in Tennessee. He appeared in person. The first malpractice claim alleged a negligent bone marrow biopsy and settled for \$215,000. The second

claim is pending. Dr. Gaitanis intends to practice oncology on a locum tenens basis; however, in the future he may consider a permanent position. Dr. Hamre noted that the California Medical Board's treatment of Dr. Gaitanis' first malpractice claim seems to suggest it lacked merit. Dr. Gaitanis agreed. Dr. Zieren asked Dr. Gaitanis to address why the address listed on his application is Atlanta, Georgia, though he lives in California and wants to work in Tennessee. Dr. Gaitanis stated that Cancer Carepoint headquarters is located in Atlanta and because they assisted him with the application process, they listed their headquarters as his mailing address. Ms. Baca-Chavez questioned if a licensing Board has taken any disciplinary action for either of the two malpractice claims and Dr. Gaitanis confirmed no disciplinary action has ever been taken. Dr. Hamre made a motion to grant Dr. Gaitanis an unrestricted license. Dr. Zieren seconded the motion. The motion carried unanimously.

Dr. Christopher Hodge, DO – appeared before the Board to discuss a letter in support of his application which stated that he resigned prior to the conclusion of an investigation into whether he violated his employer's policies and standards. Dr. Hodge was initially scheduled to interview at the November 2014 meeting, but rescheduled to the March meeting and then to May. On October 31st he provided notification that his Ohio license was summarily suspended after the Board found that his "continued practice presents a danger of immediate and serious harm to the public."

Dr. Hodge explained that during his residency program at St. Josephs Health Center in Warren, OH he received notification of his first patient complaint in December 2013. With assistance from an attorney, it was determined that it would be in his best interest to complete his residency in a different program so he elected to resign. Dr. Wieting inquired about what led to his Ohio summary suspension. Dr. Hodge stated he self-reported to the Ohio Medical Board in January of 2014, to make the Ohio Board aware of two relationships he had formed with patients during his residency in 2010 and early 2011.

Ms. Baca-Chavez stated that, typically, during summary suspensions, there is a present and imminent danger. She inquired if Dr. Hodge was continuing to form patient relationships at that time. Dr. Hodge reported he only formed patient relationship at the beginning of his residency in 2010 until early 2011. After self-reporting to the Ohio Medical board in January 2014, Dr. Hodge worked in urgent care centers for eight months, but in June 2014, the Ohio Board requested that he see a Board-approved psychiatrist. In October 2014, the evaluating psychiatrist provided his report to the Ohio Board which included a recommendation that he suspend his clinical activities and attend in-patient treatment. Dr. Hodge was ultimately treated at the Keystone Center in Pennsylvania.

Dr. Polk inquired about Dr. Hodge's current practice location. Dr. Hodge reported he has not been practicing since his Ohio license was summarily suspended in October 2014. According to Dr. Hodge, Keystone believes he is eligible to practice under supervision. As part of their recommendations, he was to attend 90 meetings in 90 days at the 12 step program, weekly individual counseling, periodic polygraph tests, and should associate with a physicians' health program, possibly the TMF.

Dr. Hodge suggested he may be uninterested in seeking to resolve the lingering issues in Ohio since it has been the source of a great deal of embarrassment for his family. Dr. Hamre noted that the Board has a history of not issuing any license to an applicant until all licensure issues pending in other states are resolved. Dr. Hodge stated he would be willing to continue to work with the Ohio Medical Board if that is something this Board will require before granting licensure.

Dr. Gray of the Tennessee Medical Foundation (TMF) reported that TMF has a standard of not accepting new physicians for monitoring until after they have cleared up licensure issues in other states. Without receiving and reviewing any treatment reports on the behalf of Dr. Hodge, Dr. Gray is unable to make any recommendations.

Dr. Polk recommended that Dr. Hodge make contact with the Ohio Medical Board and complete their requirements in order to resolve the issues with his Ohio license. Dr. Wieting made a motion to table his application until no later than the November 4, 2015 Board meeting to give Dr. Hodge adequate time to work with the Ohio Board. Dr. Hamre seconded the motion. The motion passed unanimously.

Dr. Daniel B. Powers, DO – Dr. Powers attended the March 4, 2015 meeting and was requested to resolve issues with the Massachusetts licensing Board and provide the Board with documentation. Dr. Powers did not appear at this meeting. Ms. Martin provided the Board with a summary of developments with Dr. Powers' application since the March meeting. Dr. Powers informed Ms. Waszmer that he would be unable to attend the Board meeting but would like a written statement provided to the Board as an update. Ms. Waszmer notified Dr. Powers that applications are not considered unless the applicant appears personally before the Board. The Board discussed several options and ultimately decided that since Dr. Powers' Massachusetts medical license remains encumbered, it would be appropriate to table his application to the August 2015 Board meeting. Dr. Hamre made a motion to table until that time and directed that the administrative office provide notice of the Board's action to Dr. Powers via certified letter. If Dr. Powers does not attend the meeting and/or does not withdraw his application, the Board will be authorized to consider and take action on his application, including negative action such as denying his application. The Board's denial of his application would be a reportable adverse action. Dr. Wieting seconded the motion and the motion carried unanimously.

Minutes

Dr. Wieting made a motion to approve the minutes from the March 4, 2015 meeting of the Board and Dr. Zieren seconded the motion. The motion carried unanimously.

Review and Ratification of Licenses

Dr. Wieting made a motion to ratify all new and reinstatement applications. Dr. Hamre seconded the motion. The motion carried unanimously.

Dr. Wieting inquired about some of the expiration dates for the Certified Professional Midwifery licensees. The first issue was a system error and has already been corrected by the administration. The second issue, Dr. Wieting stated, was confusion as to why an applicant would be issued a license in June 2014 and the Board be ratifying the license in May 2015. Ms. Tarr informed the Board that upon initial approval, a licensee will receive an expiration date that is contingent on being between 13-36 months and the month/year of their birthdate. Ms. Martin informed the Board that the Midwifery Committee only meets once annually and must ratify their licenses before the Board ratifies them. Dr. Wieting made a motion to ratify all new and reinstatement of certified professional midwifery licenses. Dr. Zieren seconded the motion. The motion carried unanimously.

Board Compensation

Ms. Baca-Chavez reviewed her continued research regarding the Board's request to receive compensation for consultants' review of application files. Ms. Baca-Chavez advised the Board that the option of reviewing applications remotely is not authorized by the Telework policy because that policy applies to full-time state employees. Due to the Board members not being full-time state employees, they are ineligible to utilize this option for review and compensation.

Ms. Baca-Chavez informed the Board that should any member travel to the Health Related Boards office to review applicant and/or investigative files, he or she may earn a per diem so long as their work and travel time is equal or greater to four (4) hours in one day.

Ms. Baca-Chavez asked the Board to consider the possibility that member review of investigative files may contribute to a quorum issue as a member who reviewed an investigative file will have to recuse him or herself from discussions, votes and any action taken by the Board on the matter. At the current time, Dr. Rene Saunders, Medical Consultant for the Board of Medical Examiners Unit, of which this Board is a part, reviews the investigative complaint files. She averages somewhere between 8-14 new files per month. The Board decided that they did not want to deviate from their established practice of reviewing new application files electronically and allowing Dr. Saunders to review the investigative files on their behalf.

Legislative Update

Mr. Jeremy Davis, a legislative liaison with the Department of Health, provided an overview of legislative developments which occurred this session and which are of interest to the Board.

SB 1266/HB 1157

Dr. Wieting stated he has opined on this bill previously and is concerned because the AOA has been omitted from the list of pain medicine certifications even though the AOA has a certification that is equivalent to the ABMS certification. Dr. Hamre confirmed that an APN and PA could own a pain clinic but they must have an MD or DO, which is certified as a pain specialist, as the supervising physician. Mr. Davis confirmed this to be true and stated that the supervising physician does not have to be employed or practice at the pain clinic but must perform supervisory duties. Dr. Polk inquired about the required number of hours the supervising physician has to be present in the clinic and Mr. Davis confirmed that it remains 20% of the number of hours that the clinic is open.

SB 1280/HB 1368

Dr. Polk suggested that the exclusion for physician's offices where a total of 50 such procedures are performed in any calendar year is somewhat arbitrary as there is still a risk for those who complete between 1 and 50. Mr. Davis reported the current law states a significant number and for this Bill a significant number has been interpreted as 50 or more that are surgical rather than chemical/medical terminations.

SB 1287/HB 1216

Dr. Polk asked whether top prescribers receiving the letter are asked to respond. Mr. Davis states that current law requires recipients to respond as well those who receive the letter in the dense population areas.

Mr. Davis reported that he was just informed that AOA certification is included in the list of certifications that qualify those licenses as pain management specialists, in reference to **SB 1266/HB 1157**. Dr. Wieting requested to see this in writing and Mr. Davis confirmed he could supply that.

Dr. Wieting asked which bills would require administrative action. Mr. Davis stated that the Board will have to promulgate rules on SB 871 and SB 613. Ms. Baca-Chavez commented that the Board could nominate a member to be a part of a taskforce with the Board of Medical Examiners, if they choose to create such a taskforce, in order to work towards promulgating the rules for med spas.

Mr. Davis also stated that the Board will need to promulgate rules on Senate Bill 157 to delete the intractable pain reference. Ms. Martin stated the Board may also need to take action on the telehealth Bill and that the administration will be sure to bring any action items needed to the Board's attention.

Ms. Baca-Chavez reported she has been researching the existing rules in regards to what rules need to be retracted and stated she can present a suggested change to the Board in reference to SB 157 in the near future.

Consent Order

Andrea Huddleston presented a consent order for Dr. William Williams. Ms. Huddleston appeared on behalf of the state. Dr. Williams was not present, nor was a legal representative present. Dr. Williams is a medical director and partial owner of Family Medical Clinic in Morristown, Tennessee which is a certified pain clinic. After an investigation, it was determined that Dr. Williams was not properly supervising a physician assistant at the clinic, who was also a co-owner of the clinic. Specifically, Dr. Williams was not signing off on charts as required. The investigation also revealed that Dr. Williams' own charts did not reflect sufficient documentation to justify prescriptions of controlled substances—the charts did not contain documentation of histories of physical exams, monitoring for appropriate use of those controlled substances, etc—all in violation of the Board's statutes and rules. The terms of this agreement are that Dr. Williams will surrender that pain clinic certificate, which will mean that the clinic will no longer be allowed to operate as a pain clinic. Dr. Williams understands that certain patients will need to be discharged and claims that this process is already underway. Pursuant to the terms of the Consent Order, Dr. Williams' license will be placed on probation for a period of five (5) years, he is required to take some course work to include courses regarding prescribing and documentation, and also pay the cost of this cause.

Dr. Hamre made a motion approve Dr. Williams' consent order and Dr. Wieting second the motion. The motion carried unanimously.

Ms. Huddleston commented on a previous discussion in reference to **SB 1287/HB 1216**. She confirmed that, since the initial law was enacted, the top prescribers who have been issued the letter have been required to respond. Ms. Huddleston stated she believes there is a small response time, possibly ten (10) days. Also, she reported that the overall opioid prescriptions has decreased and has decreased among each licensee in the top 50 prescribers between 2013 and 2014.

Ms. Martin reported that other Boards with membership on the Controlled Substance Monitoring Database Committee have a standing agenda item to review the CSMD Committee's progress. She inquired if the Board would like to add this Committee report as a standing item on their agenda and it was determined that would be appropriate.

Federation of State Medical Boards

Dr. Polk introduced Dr. Gray from TMF to discuss how the Federation of State Medical Boards (FMSB) and licensing Boards will be working towards better collaboration with physician's health programs. Dr. Gray mentioned that he spoke at the FSMB annual meeting on physician stress, burnout, and suicide. He reported that there are approximately 400-450 physician suicides annually and approximately one million patients left without their physician because of suicide. He states the FSPH is excited about collaborating with the FSMB and hopes to have a workshop next year to discuss the steps towards collaboration. Dr. Gray reports that TMF see's between 100-150 new physicians as clients a year. About half of those will be for alcohol or substance use, with the others referred for behavioral issues, mental health issues, and boundary violations.

Office of Investigations

Nichelle Dorroh informed the Board that there are fourteen (14) open complaints against osteopathic physicians in the Office of Investigations and none against Osteopathic x-ray operators. She reported that the open complaints are reviewed every two weeks, the next review being on May 13, 2015.

Disciplinary Coordinator

Ms. Dorroh directed the Board to the list of individuals currently being monitored by the office of investigations. The Board had no questions or discussion.

Dr. Hamre requested about the general nature of the fourteen (14) open complaints. She stated she does not have that information on her but half of the open complaints are on one physician. Dr. Wieting discussed wishing to receive general information regarding the types of complaints received for his presentations. Ms. Dorroh directed the Board to the office of investigations report that breaks down the complaints received by phone and the nature of the complaint. Ms. Martin informed Dr. Wieting he may request any information needed for his presentations from the administrative office. She asked that he try to give the administrative office between 1-2 weeks to compile any necessary information. Dr. Hamre asked Ms. Dorroh if the physicians receiving complaints were being notified and she reported that they are made aware of open complaints. Ms. Dorroh further stated if no formal disciplinary action is taken on the licensee then nothing is reportable but the compliant records are maintained to monitor for the potential of a pattern.

X-ray Operator Application

Dr. Wieting addressed his concern in regards to the application process for full certification compared to the requirements of limited scope exam. He reported that perhaps all of the applicants should be required to submit primary source training documentation. Ms. Martin explained that an applicant applying for full certification is not required to show proof of training pursuant to the rules and statute. Ms. Martin further explained that in order for an individual to take the ARRT certification exam, the program director from the applicant's ARRT accredited school is required to sign off on the examination application. Ms. Martin read the statute stating the Board has the authority to issue full certification to individuals who hold current and unrestricted national certification from the ARRT.

Dr. Wieting addressed that the application lists ARCRT certification and Ms. Martin confirmed that this organization is obsolete.

Dr. Polk noted an error on the instruction page of the x-ray application that mentions the “Board of Medical Examiners.” Ms. Martin stated that will be changed to refer to the “Board of Osteopathic Examination.”

FARB Conference Request

The Federation of Association of Regulatory Boards’ (FARB) annual meeting is in Denver, Colorado from October 1 thru October 4, 2015. Topics to be addressed include administrative law and comprehensive regulatory training: scope of authority, responsibilities, conflicts of interest, immunity, discipline, and outreach as it relates to the boards. Also, there will be an in-depth discussion of the recent *North Carolina Board of Dental Examiners v. FTC* case, as well as other issues relating to the administrative functions. The conferences overall objective is to improve the effectiveness and efficiency of board staff, members, and attorneys by providing the tools and information needed to fulfill their duties as protectors of the public.

Dr. Wieting asked if this was something that the cost could be shared with the BME. Ms. Baca-Chavez stated that the BME may want to send their board attorney so the cost may not be shareable. Ms. Baca-Chavez clarified that the intention was to request each board to send one attorney to the meeting. Dr. Polk asked who would be attending on behalf of the Board and Ms. Baca-Chavez confirmed she would be attending. Ms. Martin included that this is a meeting she would like to attend in the future and feels the FARB is a reputable organization and that the content of the meeting is strong. Ms. Baca-Chavez informed the Board that the average cost is about two thousand dollars (\$2,000). Dr. Hamre made a motion to approve the request to send Ms. Baca-Chavez to the FARB meeting and Dr. Wieting seconded the motion. The motion carried unanimously.

Office of General Counsel

Ms. Baca-Chavez reported that there are nineteen (19) open cases against five (5) osteopathic physicians and no cases against midwives. Dr. Polk confirmed that many of those cases pertained to one individual and Ms. Baca-Chavez confirmed this to be true.

Manager’s Report

Ms. Stacy Tarr provided the following statistical information: between March 1, 2015 and April 30, 2015 there were forty-four (44) new osteopathic physician applications received, one (1) new osteopathic telemedicine physician application, eighteen (18) special training osteopathic physician applications, and zero x-ray operator applications received. Per Ms. Tarr, there were fifty-five (55) new licenses issued and four (4) reinstatements. Of the eighty-two (82) renewals processed during that time, fifty-three (53) were completed online, bringing the online renewal percentage to 64% for the Board. The total number of active osteopathic licensees as of May 1, 2015 is 1,274. There were forty-six (46) active certified professional midwives and sixteen (16) osteopathic x-ray operators as of this date.

Dr. Polk suggested providing a breakdown of how many licensed osteopathic physicians are actively working in the state of Tennessee and Ms. Tarr suggested she could supply an approximate through totaling the current licensees with a Tennessee mailing address because we are not always provided a practice address.

Collaborative Pharmacy Practice Taskforce

Ms. Martin reported that the next meeting of the Taskforce has been tentatively scheduled. Dr. Polk inquired as to when the next set of rules would be made available. Ms. Martin reported that Ms. Huddleston has been working towards putting together rules since the last meeting and the draft will be available to the taskforce very soon.

Other Items at Board's Discretion

Dr. Polk suggested that at some point, someone on this Board, along with Dr. Zanolli, Chair of the Board of Medical Examiners, may want to meet with someone of authority to discuss how the state is interpreting this decision. Ms. Baca-Chavez discussed she will be meeting with members of the Office of General Counsel, the Department of Health and the Attorney General's office to discuss the implications of the ruling. She will provide the Board with an update at the next meeting. In response to Dr. Polk's suggestion, Ms. Martin provided that the case for state supervision implies that there is a level between the boards and the state which may limit the opportunity for the Boards to participate in the discussion. Ms. Martin noted that OGC and the administrative office are monitoring the situation closely and are aware the case is being tested in other jurisdictions.

Dr. Polk moved to adjourn the meeting and Dr. Wieting seconded the motion. The motion carried unanimously.

The meeting adjourned at 11:29 am.

These minutes were ratified by the Board of Osteopathic Examination on August 12, 2015.