



**Tennessee Board of Medical Examiners
Regular Board Meeting**

**Monday, January 12, 2015
Tuesday, January 13, 2015**

MINUTES

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:45 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Zanolli, Board President.

Board members present: Michael Zanolli, MD
Michael Baron, MD
Pat Eller, Consumer Member
C. Allen Musil, MD
Barbara Outhier, Consumer Member
Neal Beckford, MD
Keith Lovelady, MD
Jeff Lawrence, MD
Nina Yeiser, Consumer Member
Subhi Ali, MD
Dennis Higdon, MD
Reeves Johnson, MD

Board member(s) absent: None

Staff present: Andrea Huddleston, Chief Deputy General Counsel
Maegan Carr Martin, Executive Director, BME
Rene Saunders, MD, Medical Consultant, BME
Stacy Tarr, Administrative Manager
Angela Lawrence, BME Administrator
Jennifer Shell, Administrator

I. CONSIDERATION OF APPLICATIONS

MD X-RAY APPLICANT INTERVIEW(S):

Amy Crawford – was asked to appear before the Board because she has likely been engaged in the unlicensed operation of X-Rays since 2010. She did not appear before the Board because she notified administrative staff that she would be unable to attend. She will appear before the Board in March.

Judith Powell – appeared before the Board to address a guilty plea for battery in 1993. After review of the materials contained in her license file and interviewing her, Dr. Beckford made a motion to grant an unrestricted license. Dr. Johnson seconded the motion, which was approved.

MEDICAL DOCTOR APPLICANT INTERVIEW(S):

Herbert Braren, MD – appeared before the Board because he is party to a pending malpractice suit. Also, in 1996, Dr. Braren's hospital privileges were restricted such that he could no longer perform hymenotomies without the consultant of a pediatric urologist and approval by the chief or vice chief of urology. Dr. Zanolli and Dr. Lawrence recused themselves. After review of the materials contained in his licensure file and interviewing him, Dr. Ali made a motion to grant an unrestricted license. Dr. Beckford seconded the motion which passed.

Allen Foster, MD – appeared before the Board because he was convicted of health care fraud and failure to file a federal income tax return in 2011. Pursuant to this conviction, his medical licenses in CT, PA, and TN were revoked. Prior to his criminal conviction, the Board entered into an Agreed Order with Dr. Foster pursuant to which Dr. Foster was prohibited from writing prescriptions for controlled substances and approving the writing of prescriptions by any other providers. The Board showed some concern regarding the length of time that has passed since he has seen a patient. The Board was also concerned that sufficient remediation had not occurred. After review of the materials contained in his licensure file and at the conclusion of his interview, the Board permitted him to withdraw his application, which he elected to do.

Russell Huq, MD – was asked to appear before the Board because he is an international medical school graduate; however, he has not completed a three year residency program as required pursuant to Board rule 0880-02.04(5), nor is he board-certified. Dr. Huq completed an internship from June 2006 – August 2007 and a residency from September 2007 – August 2009. He did not appear before the Board though he had previously confirmed his attendance. His absence was unexcused.

Steven Klapmeier, MD – appeared before the Board because he was disciplined in Minnesota in 2002 for unprofessional conduct and failure to maintain adequate medical records. During his interview, the Board expressed concern regarding the limited amount of time Dr. Klapmeier has spent providing patient care in the last fourteen (14) years and suggested that he consider remediation to demonstrate his competence. At the conclusion of his interview, the Board permitted him to withdraw his application, which he elected to do.

Frederick Stevens, MD – appeared before the Board because he was disciplined by the Florida Board of Medicine in 1995 for failing to provide proper notice of the termination of his practice to his patients. Dr. Stevens has a history of alcohol dependency and voluntarily participates in monitoring by the Alabama Physicians Health Program. Dr. Musil made a motion to grant an unrestricted license with no monitoring on the basis that he is not under mandatory monitoring by Alabama. Dr. Beckford seconded the motion which passed unanimously.

Yousef Essam, MD – was asked to appear before the Board because he is an international medical school graduate who has not completed a three year residency program as required pursuant to Board rule 0880-02.04(5) nor is he board-certified. The verification of his post-graduate training states that he did not complete his residency and the decision was made to not renew his contract. He did not appear before the Board though he had previously confirmed his attendance and he did not notify administrative staff that he would not be attending. His absence was unexcused.

II. APPROVAL OF MINUTES

Dr. Higdon made a motion to approve the minutes from the regular November meeting. Dr. Zanolli made a request that when an Order of Compliance includes reinstatement, he would like the minutes to reflect the conditions of their reinstatement. Dr. Ali seconded the motion which passed unanimously. Dr. Ali made a motion to approve the minutes from the September 15th Office Based Surgery meeting. Ms. Yeiser seconded the motion which passed unanimously.

III. RATIFICATION OF LICENSES

Dr. Ali made a motion to ratify and approve the new, reinstated, failed renew and voluntary retired licenses for **Medical Doctor**. Dr. Beckford seconded the motion which passed unanimously.

Dr. Ali made a motion to ratify and approve the new, reinstated, failed renew and voluntary retired licenses for **MD X-ray Operators**. Dr. Higdon seconded the motion which passed unanimously.

Dr. Ali made a motion to ratify and approve the new, reinstate, failed renew and voluntary retired licenses for **Genetic Counselors**. Ms. Yeiser seconded the motion which passed unanimously.

Dr. Ali made a motion to ratify and approve the new, reinstate, failed renew and voluntary retired licenses for **Clinical Perfusionists**. Dr. Higdon seconded the motion which passed unanimously.

Dr. Beckford made a motion to ratify and approve the new, reinstate, failed renew and voluntary retired licenses for **Physician Assistants**. Dr. Ali seconded the motion. Dr. Baron recused himself. The motion passed.

IV. RATIFICATION OF POLICIES/STATEMENTS/APPLICATIONS

Ratification of Clinical Perfusion's Revised Lapsed License Policy

The Committee's recently revised lapsed license policy was before the Board for ratification. Dr. Ali made a motion to reject the policy because the proposed fine is only \$100 per month for every month worked in excess of 30 calendar days. Dr. Ali proposed the fine amount be changed to \$1,000 per month. The motion was seconded by Dr. Lovelady. Dr. Johnson suggested changing the language from "month" to "every 30 days" to have consistent language throughout. Dr. Ali accepted that suggestion as a friendly amendment. Ms. Outhier, Ms. Eller, Ms. Yeiser, Dr. Ali, Dr. Beckford, Dr. Lovelady and Dr. Johnson voted to deny the policy. Dr. Musil, Dr. Baron, Dr. Higdon, Dr. Lawrence and Dr. Zanolli opposed. The proposal will go back to the Clinical Perfusion Committee with comments.

Ratification of Committee on Physician Assistant's Revised Lapsed License Policy

The Board was next asked to consider the Committee on Physician Assistants' revised lapsed license policy. Dr. Ali made a motion to reject the policy for the same reasons articulated above. Some additional information had been added to this policy, which was then explained by Ms. Martin. This includes a note that preferential treatment is not given, that even if the P.A. is working for one day beyond that grace period, they would still be fined the full \$100, and that the agreed citations are reportable to the National Practitioner Data Bank. Dr. Ali restated his motion that the policy be rejected due to the proposed fine amount, which should be \$1000, rather than \$100. Dr. Lovelady seconded the motion. Ms. Outhier, Ms. Eller, Ms. Yeiser, Dr. Ali, Dr. Beckford, Dr. Lovelady and Dr. Johnson voted to deny the policy. Dr. Musil, Dr. Baron, Dr. Higdon, Dr. Lawrence and Dr. Zanolli opposed. The proposal will go back to the Physician Assistant Committee with comments.

The Board would also like the Lapsed License Policy for Medical Doctors to be brought to the Board's March Meeting after consideration by the Development Committee.

Ratification of Committee on Physician Assistant's Telemedicine Policy Statement

After discussion of the proposed policy statement, which states under what circumstances a physician assistant may practice telemedicine, Dr. Ali made a motion to ratify the statement. Ms. Eller seconded the motion which passed unanimously.

Ratification of Southern Surgical Arts Application for OBS Suite

After discussion of the proposed application from Southern Surgical Arts, Dr. Ali made a motion to approve the application for OBS Suite. Dr. Beckford seconded the motion. Ms. Eller abstained. The application was approved.

V. DEPARTMENT REPORTS

1. **Report from BME's Administrative Office:** Ms. Stacy Tarr reported on the Administrative Office's licensing activities from November 1, 2014 through December 31, 2014. The statistics are as follows: 163 new applications for Medical Doctors, 7 for Locum Tenens, 3 for Telemedicine, 1 for Special Training, 0 for Single Purpose, and 0 for St. Jude were received. 135 new licenses were issued, 1624 renewals (1133 online renewals), 104 licensees failed to renew, 110 licensees retired their license, and 15 reinstatements. The number of active licenses as of December 31, 2014 is 20,822. The total number of active licensees as of December 31, 2014 with a Tennessee mailing address is 16,224. The total number of telemedicine licenses is 460. There were 2 TSAC suspensions, both Medical X-Ray Operators. There was 1 TSAC suspension for a Medical Doctor, but it was lifted the morning of the Board Meeting.

2. **Consideration of CME Requirements for Residents/Fellows**

The Board was briefed on an issue that has arisen with regard to the continuing medical education requirements of residents or fellows who are currently enrolled in an ACGME program. The rules do not currently except residents and/or fellows. The Board agreed that the use of the term "continuing" in "continuing medical education" implies after the completion of the individual's medical education. Ms. Martin informed the Board that the AMA will award up to twenty hours annually for participation in an ACGME program; however, there is a per-credit fee for non-AMA members. The Board ultimately agreed to "award" twenty hours of CME per year for a resident or fellow's participation in an ACGME program. However, the Board specified that the two hour controlled substance prescribing course would still be required. Ms. Huddleston stated that she would provide a draft copy to the Board for its consideration before the meeting's end.

Dr. Beckford made a recommendation that the Development Committee look at prescribing education in graduate medical education, with the hopes of getting an assessment as to what kind of education is being given, and maybe even encouraging the program directors of the various programs in the state to include substantive prescribing information during their training programs, as it will benefit students when they finish. Dr. Zanolli asked that it be put on the Development Committee agenda and Dr. Ali asked that Dr. Mutter and Dr. Reagan also attend the meeting if possible.

Repeal of BME Prescribing Policy

The Board was asked to consider whether its 1995 policy, "Management of Prescribing with Emphasis on Addictive or Dependence-Producing Drugs" is inconsistent with the "Tennessee Chronic Pain Guidelines" which was adopted by the Board in the Fall of 2014. Ms. Huddleston added that she believed the policies were somewhat in conflict. Dr. Musil made a motion to revoke the 1995 policy. Dr. Baron seconded the motion, which passed unanimously.

Review TMF audit and corrective action plan

Ms. Lisa Tittle discussed the Department of Health's Office of Internal Audit which is tasked with monitoring sub-recipient and grant contracts, of which the TMF contract with the Board for peer assistance is one. In July 2013 the Office of Internal Audit audited the FY 13 contract, and in August 2014 they audited the FY 14 contract. The first year the TMF didn't have an approved cost allocation plan. TMF then worked with the Department to develop a cost allocation plan. The second year the issue was allowable vs unallowable expenditures. For FY 15, reports are coming in timely, TMF is complying with their cost allocation plan, and they are charging for the items that are placed in their budget. The Department is very satisfied.

FY 2014 Financial Report

Ms. Lisa Tittle appeared before the board to further discuss the FY 2014 Financial report, which was originally presented at the November 2014 Board Meeting. The Board came to the conclusion that there is a need to increase income. Dr. Zanolli requested adding another item to the Development Committee agenda – seeing if, and how, the Board should consider raising fees for licensure.

Office of Investigations Report

Ms. Moran presented the report from the Office of Investigations. Comparing the statistics for the past two to three years, it reveals that the same kinds of complaints are coming in, but the numbers of complaints are down. Costs went up because the cases are more complex. Dr. Zanolli requested the past two years of information also be presented at future meetings, similar to the financial report.

Dr. Musil and Dr. Baron left the meeting at 2:45 to attend the reception recognizing the panel responsible for the Chronic Pain Guidelines.

3. OGC/Disciplinary Business

Order(s) of Compliance

Dr. Stephen Heffington: was present, and was represented by counsel, Mr. David Steed. Ms. Andrea Huddleston represented the state. Dr. Heffington was disciplined related to an inappropriate relationship with a patient as well as prescribing to a colleague for whom he did not maintain an appropriate record. He was placed on probation for a period of five years which was effective in November of 2009. He was required to have monitoring with Affiliated Monitors, complete coursework, and pay civil penalties and costs. He is in compliance with the requirements and is entitled to have his petition granted. Ms. Yeiser made a motion to accept the Order. Dr. Beckford seconded the motion which passed unanimously. Dr. Heffington's license is now unrestricted.

Dr. George Booze: was not present, nor was his counsel, Dan Warlick. Ms. Huddleston represented the state. Dr. Booze was disciplined for inappropriate prescribing. He was placed on probation for three years which was effective in November of 2011. He was required to take certain coursework, and have quarterly reports from his employer as well as pay civil penalties and costs. He is in compliance with the requirements and is entitled to have his petition granted. Dr. Higdon made a motion to accept the Order. Dr. Johnson seconded the motion which passed unanimously. Dr. Booze's license is now unrestricted.

Dr. Joseph Rich: was present; however, a legal representative did not appear on his behalf. Ms. Huddleston represented the state. Dr. Rich was originally disciplined by the Board by Order in 2007. He appealed that decision. It ultimately went to the Court of Appeals and the decision was remanded back to the Board for re-deliberation as there were some issues related to the expert

testimony. At the November 2014 Board Meeting it was presented to the Board as an Agreed Order. Dr. Rich's license had been suspended and the agreement was that he was required to get an evaluation by an approved provider, which he has done. Once he had the evaluation he would be on probation for five years and be required to adhere to certain restrictions and requirements. He is in compliance with their requirements to have the Suspension lifted and is entitled to have his petition granted. Dr. Beckford made a motion to accept the Order. Ms. Yeiser seconded the motion which passed unanimously. Dr. Rich's status has changed from Suspended to on Probation.

Respond to Request for Input from Respiratory Therapy Board regarding PICC Lines

The Respiratory Care Board was asked licensee to specify whether current law and regulation permit respiratory care therapists to insert PICC lines. Ms. Mary Katherine Bratton, advisory attorney for the Respiratory Therapy Board, appeared before the BME to request input on the subject. Dr. Saunders provided an explanation of what a PICC line is, and explained that it appears as though eight states currently allow Respiratory Therapists to place PICC lines. Multiple Board members expressed their concern about this practice. The Board was concerned that the training of these professionals is inadequate, that there is a not a demonstrated need, and that respiratory care therapists cannot sufficiently respond to a medical emergency caused by an improperly placed PICC line. Dr. Ali then summarized the general consensus of the Board, which is that the Board is opposed to respiratory therapists being given the authority to place PICC lines. Dr. Beckford suggested someone attend the Respiratory Care Board's next meeting and educate them on the view of the BME, which Dr. Saunders offered to do.

FSMB Annual Meeting

The FSMB Annual Meeting is scheduled to occur on April 23-25th. The Board nominated Dr. Ali to serve as the voting delegate for Tennessee. Dr. Zanolli will attend as a member of the FSMB Board of Directors. Dr. Higdon expressed an interest in attending. Dr. Rene Saunders and Ms. Martin will attend on behalf of administrative staff. Ms. Huddleston will nominate an OGC attorney to attend.

Background Check Policies

The Board was asked to formalize the Administrative Office's unofficial policy regarding criminal background checks. The current policy across Health Related Boards is that criminal background checks expire after six months; however, the policy is not formalized in writing. Occasionally, an applicant's file will be in pending status for more than six months. In those instances, the applicant may resist submitting an additional criminal background check. The Board was informed that the Tennessee Bureau of Investigations has stated that a criminal background check is out-of-date the day after it is prepared. Dr. Beckford made a motion to adopt a policy specifying that criminal background checks expire after six (6) months. Ms. Yeiser seconded the motion, which passed unanimously.

4. **OGC Report:** Ms. Huddleston gave an update on the status of pending Board rules. The rule amendment for the one-point rule has been reviewed and approved. It will be filed and become effective ninety days after that filing. Additionally, there have been some appeals filed but no new decisions. Ms. Huddleston informed the board that as of January 5th, 2014, there were one hundred and twenty-nine (129) disciplinary complaints against eighty-nine (89) respondents pending in the Office of General Counsel. The appeal of Sammy Light does not have a final opinion in writing yet, but OGC was notified orally that there will be a favorable decision.

Recess 4:32 pm

**Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners
Tuesday, January 13, 2014**

The second day of the regular board meeting was called to order at 8:46 a.m. at the Health Related Board's Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee, by Board of Medical Examiners' President, Dr. Michael Zanolli. Members present included: Dr. Michael Baron, Ms. Pat Eller, Dr. Allen Musil, Ms. Barbara Outhier, Dr. Neal Beckford, Dr. Keith Lovelady, Dr. Jeff Lawrence, Ms. Nina Yeiser, Dr. Subhi Ali, Dr. Dennis Higdon, and Dr. Reeves Johnson.

Report from Workgroup on Public Chapter 832

Dr. Higdon and Dr. Baron gave a summary of the January 7th, 2014 meeting on Public Chapter 832. Prior to the meeting, several documents and sets of information were provided regarding agreements in other states between pharmacists and physicians. According to those sources, collaborative pharmacist practice agreements exist to varying degrees in most states. Although Ms. Huddleston distributed a revised version of the rules to the Workgroup members present, the originally proposed rule had to be used to accommodate those attending the meeting by phone. Much of the time was taken up by members of the audience who were all pharmacists. Dr. Higdon felt that the consensus from the pharmacists was that the rule and the statute should be broad enough to allow the collaborative agreement to be the main determiner of what pharmacists and physicians could do. Dr. Baron felt that that the pharmacists wanted the full unmitigated practice of medicine. He was concerned about the level of compromise.

Most of the Workgroup's discussion centered on 1) the proper level of education and training for collaborating pharmacists; 2) whether recent graduates can immediately enter this type of practice; and 3) whether pharmacists and physicians who have previously been disciplined should be excluded. The discussion regarding controlled substances will occur at a later date. The group will meet again on February 3rd. The general consensus of the Board is that there is a great deal of concern about Public Chapter 832.

Question regarding Open Meeting Statutes

Dr. Zanolli addressed the Board regarding how members might communicate with each other to discuss information (but not make decisions) without violating the Sunshine Act. The Board would like to discuss the issue further at the March 2015 meeting.

Amendment to the November Minutes

Ms. Martin presented the amendment to the November Minutes. Dr. Beckford made a motion to approve the amendment. Ms. Martin will add a note as to who signed the Order. Dr. Higdon seconded the motion, which passed unanimously.

Conflict of Interest Policy

The Board members will review the Conflict of Interest policy and mail the documents back.

CME Policy for Residents and Fellows enrolled in an ACGME program

Ms. Huddleston presented the policy for Residents and Fellows enrolled in an ACGME program. Dr. Ali proposed deleting the addition between parentheses and he made a motion to adopt the rest of the proposed policy as written. Dr. Musil seconded the motion which passed unanimously.

CSMD Agenda Item

Ms. Eller proposed that there be a standing Agenda item for a report from the Chairman of the CSMD. Dr. Baron is currently serving in that role.

OGC/Disciplinary Business (cont.)

POPLAR ROOM: Dr. Higdon, Ms. Yeiser, Dr. Ali, Dr. Johnson, Dr. Zanolli

Consent Order(s)

Jerome Sherard, MD – was not present but was represented by Counsel Frank Scanlon. Ms. Mollie Gass represented the state. Dr. Sherard is being disciplined related to a criminal indictment which included sixty-six counts, most of which were related to unlawfully distributing and dispensing controlled substances and maintaining a drug-involved premises, which include violations of Tenn. Code Ann. § 63-6-214(b)(1), (10), (12), (13), (14), as well as a violation of Tenn. Comp. R. & Reg. R. 0880-02-14(6)(e)(3). The Consent Order presented to the Board ordered a revocation of Dr. Sherard’s license, plus costs not to exceed \$10,000. Dr. Higdon made a motion to accept the Order. Ms. Yeiser seconded the motion, which passed unanimously.

Agreed Order(s)

Melvyn Levitch, MD – was not present nor did a legal representative appear on his behalf. Ms. Gass represented the State. Dr. Levitch is being disciplined due to leaving 6 pre-signed, blank prescriptions dated for January 22, 2014 to be completed by his unlicensed office manager for controlled substances, such as Adderall, which could not be called in, and failure to obtain sufficient continuing education in compliance with the continuing education requirements for the calendar years of 2011 and 2012. The violations include Tenn. Code Ann. § 63-6-214(b)(1), (2), Tenn. Code Ann. § 63-6-236 and Tenn. Comp. R. & Reg. R. 0880-02-19. The Agreed Order presented to the Board orders 6 Type B civil penalties of \$250 each, one for each pre-signed, blank prescriptions, for a total amount of \$1,500, plus costs not to exceed \$5,000. Ms. Yeiser made a motion to accept the Agreed Order. Dr. Ali seconded the motion. Dr. Johnson opposed. The motion passed.

Larry Rawdon, D.Ph. – was not present but was represented by counsel, Mr. Frank Scanlon. Ms. Andrea Huddleston represented the State. Mr. Rawdon is being disciplined due to engaging in the unlicensed practice of medicine. This case has been before the Board on two previous occasions and has been reviewed on appeal by the Davidson Chancery Court and the Tennessee Court of Appeals. This case is now before the Board on remand from the Court of Appeals. Mr. Rawdon shall pay civil penalties in the amount of \$70,000.00, plus costs not to exceed \$5,900.00. Dr. Ali feels that the penalties are not high enough and that the maximum amount allowed by law should be assessed in this case to send a clear message. Dr. Ali made a motion to deny the Agreed Order. Dr. Johnson seconded the motion. Dr. Ali and Dr. Johnson voted to approve the motion. Dr. Higdon, Ms. Yeiser, and Dr. Zanolli voted to deny the motion. Dr. Higdon made a motion to accept the order. Ms. Yeiser seconded the motion. Dr. Higdon, Ms. Yeiser, and Dr. Zanolli voted to accept the Order. Dr. Johnson and Dr. Ali voted against the order. The motion passed and the Order was approved.

Order(s) of Compliance

Wayne Durbin, P.A. – was not present nor did a legal representative appear on his behalf. Ms. Kyonzte Hughes-Toombs represented the State. Mr. Durbin has requested that the Physician’s Assistant Committee lift the previously ordered probation on his license. The PA Committee has already voted to approve the Order. It must now be ratified by the BME. Ms. Yeiser made a motion to ratify the Order. Dr. Ali seconded the motion, which was unanimously approved. The license is now unrestricted.

Order(s) of Modification

Justin Turner, PA-C – was present. A legal representative did not appear on his behalf. Ms. Hughes-Toombs represented the State. Mr. Turner has requested that the Physician’s Assistant Committee lift the previously ordered restriction against prescribing any scheduled substances, and allow him to prescribe Testosterone only. The PA Committee has already voted to approve the Order. It is required to be ratified by the BME. Dr. Ali made a motion to ratify the Order. Ms. Yeiser seconded the motion. Dr. Ali, Ms. Yeiser, Dr. Higdon, and Dr. Johnson voted to approve the motion. Dr. Zanolli opposed. The motion passed and the modification has been granted.

Agreed Citations

Jerry Smith, MD – was not present nor did a legal representative appear on his behalf. Ms. Martin presented the Agreed Citation. Dr. Smith failed to timely renew his license and continued to practice in violation of Tenn. Code Ann. § 63-6-210(a) and Tenn. Comp. R. & Regs. 0880-03-.09-(1). As part of the Agreed Citation, Dr. Smith has paid civil penalty of \$100. Dr. Ali made a motion to accept the Agreed Citation. Ms. Yeiser seconded the motion. Dr. Zanolli recused himself. The motion passed.

Andrea Bass, PA – was not present nor did a legal representative appear on her behalf. Ms. Martin presented the Agreed Citation. Ms. Bass failed to timely renew her license and continued to practice in violation of Tenn. Comp. R. & Regs. 0880-03-.09-(1). As part of the Agreed Citation, Ms. Bass has paid civil penalty of \$300. Dr. Johnson made a motion to approve the Agreed Citation. Dr. Ali seconded the motion which passed unanimously.

Benita Qualls – was not present nor did a legal representative appear on her behalf. Ms. Martin presented the Agreed Citation. Ms. Qualls failed to timely renew her license and continued to practice in violation of Tenn. Comp. R. & Regs. 0880-03-.09-(1). As part of the Agreed Citation, Ms. Qualls has paid a civil penalty of \$100. Dr. Johnson made a motion to approve the Agreed Citation. Dr. Ali seconded the motion, which passed unanimously.

OGC/Disciplinary Business (cont.)

IRIS ROOM: Dr. Beckford, Dr. Baron, Ms. Eller, Dr. Lawrence, Dr. Lovelady, Ms. Outhier, Dr. Musil

Consent Order(s)

Susan Lowry, MD – was not present nor was she represented by legal counsel. Mr. Chris Smith represented the State. Dr. Lowry is being disciplined for leaving pre-signed prescription forms for her LPN to fill out and give to patients in her absence. These prescriptions were primarily for non-controlled substances and utilized only for established patients in line with previous orders in the chart. She also her treated immediate family members and prescribed thyroid medication and antibiotics. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(1), as well as of Tenn. Comp. R. & Reg. R. 0880-02-.14(6)(e)(3), Tenn. Comp. R. & Reg. R. 0880-02-.14(7)(a), Tenn. Comp. R. & Reg. R. 0880-02-.15(4)(d), and Tenn. Comp. R. & Reg. R. 0880-02-.14(8). The Consent Order presented to the Board orders a reprimand of her license, she must complete two specific medical courses, must pay a civil penalties totaling \$2,000, and must obtain monitoring through Affiliated Monitoring, plus costs not to exceed \$3,000. Dr. Lovelady made a motion to accept the order. Dr. Musil seconded the motion, which passed unanimously.

Thomas Rodenberg, MD – was not present nor was he represented by legal counsel. Ms. Jennifer Putnam represented the State. Dr. Rodenberg is being disciplined related to entering into an Order in June 2014, voluntarily relinquishing his Florida medical license after he was found guilty of first degree felony drug and racketeering charges that originated in Florida. He is violation of Tenn. Code Ann. § 63-6-214(b)(20). The Consent Order presented to the Board includes a Voluntary Surrendering of Dr. Rodenberg’s license, and he must pay costs not to exceed \$1,000. Dr. Musil made a motion to accept the Order. Dr. Lovelady seconded the motion, which passed unanimously.

Fred Grogan, Jr, MD – was not present nor was he represented by legal counsel. Ms. Fran Baca-Chavez represented the State. Dr. Grogan is being disciplined related to an unannounced on-site investigation that was conducted at Advantage Wellness Plus as the result of a complaint. The physician was listed as being the physician affiliated with Advantage and had allowed medication to be ordered with his DEA registration number for at least two years, though he had never physically been to the location, he never evaluated patients at the location, and he never reviewed any documents, medical records, or lab reports at/from Advantage. In addition, Dr. Grogan never provided any level of supervision over employees, he was aware the facility was providing Vitamin B12 and flu shots, and he suspected they were offering vaccinations. He denies having knowledge that Advantage was offering injections including, but not limited to, testosterone and vitachrom injections. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(1) and Tenn. Code Ann. § 63-6-204(b). The Consent Order presented to the Board includes a reprimand and the permanent retirement of Dr. Grogan’s license. He also agrees to voluntarily surrender any and all DEA registrations, and he shall pay costs not to exceed \$2,000. Dr. Lovelady made a motion to accept the Order. Dr. Musil seconded the motion, which passed unanimously.

Raymond Brown, MD – was not present nor was he represented by counsel. Mr. Marc Guilford represented the State. Dr. Brown is being disciplined related to a guilty plea to a number of federal felonies. These felonies have to do with administering and billing Medicare for misbranded Botox. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(1), (3), (10), (11), (12), (14), as well as §§ 63-1-309(b) and 63-1-311(a),), Tenn. Comp. R. & Reg. R. 1200-34-01-.07(2),), Tenn. Comp. R. & Reg. R. 1200-34-01-.08(1), and (4). The Consent Order presented to the Board includes voluntarily surrender of Dr. Brown’s medical license, voluntary surrender of the pain management clinic certificate of Bradley PM&R. Dr. Brown, the State and the Board have agreed to the effective date of January 31, 2015 for these voluntary surrenders to allow him sufficient time to wind down his practice and help his patients find new doctors to take over their care. Dr. Brown shall also pay costs not to exceed \$500. Dr. Lovelady made a motion to accept the Order. Dr. Musil seconded the motion, which passed unanimously.

Timothy McBride, MD – was not present nor was legal counsel present. Mr. Guilford represented the State. Dr. Musil recused himself. Dr. McBride is being disciplined pursuant to a Virginia Order finding that Dr. McBride had violated the rules and regulations by engaging “in behavior that could reasonably be interpreted as intended for the sexual arousal or gratification of Dr. McBride, his patients, or both.” Dr. McBride contended his acts were performed for a legitimate purpose; however, he did not bill for them. He also inappropriately prescribed narcotics to fourteen (14) different patients, four (4) of which were arrested or convicted for distributing narcotics during the time Dr. McBride treated the individuals. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(1) and (20). The Consent Order presented to the Board requires a probationary period of at least three (3) years, monitoring through Affiliated Monitors, the completion of specific courses, and payment of costs not to exceed \$1,000. Dr. Lovelady made a motion to accept the Order which was seconded by Dr. Lawrence. Dr. Baron and Dr. Beckford abstained. Dr. Musil recused himself. Ms. Yeiser, Dr. Lawrence, Dr. Lovelady, and Ms. Outhier voted to approve. The motion passed.

Augusto Chiriboga, MD – was not present nor was legal counsel present. Mr. Hodges represented the State. Dr. Chiriboga is being disciplined related to an Order in Louisiana. While employed as a contract

physician at Medical & Diagnostic Clinic in Lake Charles, Louisiana, he used a series of ankle blocks for the treatment of patients with peripheral neuropathy. The use of ankle blocks was not indicated for the treatment of peripheral neuropathy and was below the standard of care. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(20). The Consent Order presented to the Board orders that Dr. Chiriboga's license be reprimanded and that he pay costs not to exceed \$1,000. Dr. Musil made a motion to accept the Order. Dr. Baron seconded the motion, which passed unanimously.

Agreed Order(s)

Charles Howe, MD – was not present nor was legal counsel present. Ms. Putnam represented the State. Dr. Howe is being disciplined related to a guilty plea in November 2013 to 14 counts of knowingly and intentionally dispensing and causing to be dispensed, controlled substances outside the scope of professional practice and not for a legitimate medical purpose. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(1), (10), and (14). The Agreed Order presented to the Board orders a revocation of Dr. Howe's license and the payment of costs not to exceed \$1,000. Dr. Lovelady made a motion to accept the Agreed Order. Dr. Musil seconded the motion, which passed unanimously.

Joshua Kadetz, MD – was not present nor was legal counsel present. Mr. Guilford represented the State. Dr. Kadetz is being disciplined related to an Order by the Kentucky Board of Medicine finding that Dr. Kadetz had been found unresponsive while on duty in the physician sleep room of Caldwell County Medical Center on February 7, 2014 after ingesting Soma earlier in the day. He admitted to entering inpatient treatment for alcohol use disorder, nicotine use disorder, and Soma use disorder in March 2014. He admitted having failed to successfully complete his inpatient treatment and to being administratively discharged from that program in May 2014. Dr. Kadetz admitted that as of July 7, 2014, the Kentucky Physicians Health Foundation stated that he did not have its advocacy to resume the practice of medicine in any form in the state of Kentucky. In the Order, Dr. Kadetz admitted having engaged in conduct that violated Kentucky Revised Statutes 311.595(6) and (8). These actions include violations of Tenn. Code Ann. § 63-6-214(b)(20), (1), (5), and (18). The Consent Order presented to the Board orders Dr. Kadetz's medical license be Suspended effective the date he is lawfully able to resume the practice of medicine in Kentucky. Only then is he entitled to submit a Petition for an Order of Compliance in Tennessee. If his Tennessee medical license is reinstated, it will be placed on Probation by the Board for no less than five years and subject to any probationary terms Kentucky had already imposed. Dr. Kadetz will also have to obtain and maintain advocacy with Tennessee Medical Foundation. He is also to pay costs not to exceed \$1,000. Dr. Baron made a motion to accept the Order. Dr. Musil seconded the motion, which passed unanimously.

Thomas Lepsch, MD – was not present nor was legal counsel present. Mr. Guilford represented the State. Dr. Musil recused himself. Dr. Lepsch is being disciplined for prescribing medications to two women with whom he had sexual relationships. Those prescriptions included controlled substances such as hydrocodone and oxycodone. Dr. Lepsch did not create or maintain adequate medical records relating to the prescriptions mentioned, and he also consumed at least some of the prescribed controlled substances himself. These actions include violations of Tenn. Code Ann. § 63-6-214(b)(1), (12), and (14). He also violated Tenn. Comp. R. & Reg. R. 0880-02-.14(7) and (8), as well as a violation of the Code of Medical Ethics of the American Medical Association, Opinion 8.14. The Order presented to the Board orders that Dr. Lepsch's medical license be Reprimanded, Retired, and he must pay costs not to exceed \$1,000. Should Dr. Lepsch ever decide to reactivate his license, he would be required to complete a specific course and obtain and comply with the recommendations of an evaluation. Dr. Baron made a motion to accept the Order. Dr. Lovelady seconded the motion, which passed unanimously.

Other Board Business

There being no other Board business, the meeting adjourned.

Adjourned 10:02 am

CONTESTED CASE

**Panelists: Dr. Neal Beckford, Dr. Reeves Johnson, Ms. Barbara Outhier.
Judge: Kim Summers**

**Hearing for Dr. Michael Rhodes
Attorney for the State: Mr. Marc Guilford**

Dr. Rhodes was represented by Mr. Edward Gross. Judge Summers read into record the charge of the panel and the contested case began with opening statements from Mr. Guilford. Mr. Gross spoke for the defense. Mr. Gross called a witness for the defense, DUI probation officer, Ms. Stephanie Krivcher. The defense called another witness, Ms. Faye Partee. Dr. Rhodes then provided testimony on his own behalf. Ms. Stephanie Krivcher was recalled to provide additional testimony.

After the state and respondent presented all evidence, the Board deliberated. Ms. Outhier made a motion to suspend deliberations. Dr. Johnson seconded the motion, which passed unanimously. Dr. Rhodes then provided additional testimony on his own behalf. Ms. Outhier then made a motion to resume deliberations. Dr. Johnson seconded the motion which passed unanimously. After further deliberation, Dr. Johnson made a motion to suspend deliberations. Ms. Outhier seconded the motion which passed unanimously. The representative from the Tennessee Medical Foundation, Mr. Michael Todd, was asked to speak. Dr. Johnson then made a motion to resume deliberations. Ms. Outhier seconded the motion, which passed unanimously.

The Board finished deliberating and found the following: In July 2009, the Board entered an order reprimanding the Respondent's Tennessee medical license and requiring that Respondent complete certain continuing education courses and pay certain costs. In May 2013, the Board entered an order placing the Respondent's license on probation for a period of at least five years, requiring that Respondent obtain practice monitoring through an approved program, and requiring that Respondent pay certain civil penalties and costs. The 2013 order further required that Respondent maintain good and lawful conduct, and stated that any violation of law would be a violation of the 2013 Order. On or about April 20, 2013, Respondent was arrested and charged with driving under the influence. On or about June 21, 2013, Respondent was again arrested and charged with driving under the influence. On or about April 16, 2014, Respondent was arrested and charged with driving under the influence and reckless endangerment. On or about August 28, 2014, Respondent was convicted of three counts of DUI first and one count of reckless endangerment, all of which are Class A misdemeanors.

The Board found that these facts were sufficient to establish violations of the Tennessee Medical Practice Act and accordingly ordered the following: Respondent's license must be placed on five-year probation and he must undergo an evaluation facilitated by the Tennessee Medical Foundation (TMF) and obtain advocacy. Respondent will be required to comply with the current probation orders as stipulated in the May 22, 2013 consent order for the term of this probation order. Respondent must complete education objectives as outlined by Affiliated Monitors. Respondent is assessed four (4) Type B civil penalties in the amount of \$100.00 each, for a total of \$400.00. Respondent must pay costs not to exceed \$10,000.00.