



## TENNESSEE BOARD OF MEDICAL EXAMINERS

### DEVELOPMENT COMMITTEE

Monday, January 25, 2016

---

#### MINUTES

---

The Development Committee meeting of the Tennessee Board of Medical Examiners was called to order at 5:05 p.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Development Committee Chair, Dr. Subhi Ali.

Members Present:

Subhi Ali, MD  
Michael Baron, MD  
Neal Beckford, MD  
Pat Eller, Consumer Member  
Dennis Higdon, MD  
Michael Zanolli, MD

Staff Present:

Jennifer Shell, Board Administrator  
Maegan Carr Martin, JD, Executive Director  
Rene Saunders, MD, Medical Consultant, BME  
Andrea Huddleston, Chief Deputy General Counsel

Major Item(s) on Agenda:

**I. TCA § 63-6-207 & Rule 0880-02-.08 (Seven Year Statute)**

Dr. Reeves Johnson, Board member, presented to the Development Committee. According to Dr. Johnson's research, prior to 1982, TCA § 63-6-11 and 63-6-12 gave the Board the responsibility to test applicants for licensure and make determinations on pass/fail. In 1982, a bill passed allowing the Board to accept the Flex Exam and the National Board Exam (NBME) as its qualifying examinations. This bill also permitted the Board to write their own exams and contract with other national testing organizations. In 1993, the USMLE was added as a qualifying examination. In 2003, it was decided that a limit should be added to be congruent with other states. At that time forty-one (41) states were offering limits on examination time frames; overall, about twenty (20) states had 10 years or more as a limit and about twenty-eight

(28) states had seven years as a limit. Currently TCA § 63-6-207 requires completion of the USMLE within seven years of the first successful attempt. That statute also allows the Board to promulgate rules to extend the statutory timeframe. Dr. Johnson proposed three ways of dealing with this issue: 1) the Board may recognize certification by an ABMS board as meeting the requirement for qualifying examination for licensure, regardless of how long it took the applicant to complete the exam; 2) the Board could extend the timeframe from seven (7) to ten (10) years; or 3) the Board may identify extenuating circumstances, such as illness, medical research study, a fellowship, etc., which will be deemed sufficient to give an individual more than seven (7) years to complete the exam.

Ms. Andrea Huddleston, the Board's counsel, expressed the Board does have the authority to draft such a policy that will identify certain extenuating circumstances so long as the Board follows up with a rule change. This is based on the premise that the statute grants the Board the ability to create extensions to the seven year time frame.

Dr. Neal Beckford commented that offering an extension to the rule to an applicant who is board certified in a specialty is very practical. He believes a board certification demonstrates an accepted level of competence in a discipline of which the applicant will most likely be practicing in.

Dr. Michael Zanolli questioned the Board's authority to create a policy that contradicts the statute. Ms. Huddleston emphasized that the statute allows the Board to create extensions of the seven year time frame, authority the Board would be exercising through policymaking. She believes it is acceptable to put a policy in place while working toward a rule change. If the Board would prefer to proceed with a rule change, it is free to do so; however, the rulemaking process is quite lengthy and will not afford applicants immediate relief. Ms. Huddleston also reminded the Board that there is a bill pending to amend TCA § 63-6-207.

Dr. Subhi Ali stated the policy could be written by listing the exceptions and then to have the most discretion by writing 'as discussed by the Board and voted on. Ms. Huddleston suggested this language would intend that all applicants that meet the exception would still need to come before the Board and Dr. Saunders would not be able to simply approve the applicants that meet the exception.

Dr. Michael Baron commented that allowing an exception to the seven year rule through board certification would not capture applicants that are still in residency and completed the USMLE greater than seven years since they are not eligible for board certification until they are licensed. Dr. Saunders suggested those physicians could apply for licensure in another state that does not have the seven year rule to become eligible to take the boards.

Dr. Zanolli stated a potential problem that could occur if this policy were created and the Board began approving applicants based on the exceptions. This problem being that there are several applicants the Board denied licensure based on not having the authority to override the statute but now it has been determined that Board can promulgate rules to offer exceptions. Dr. Beckford questioned Ms. Huddleston on the Board's liability for previous actions when a new policy goes into effect and is consistently implemented. Ms. Huddleston stated minimal liability.

Dr. Zanolli questioned how the Board can create a policy when the statute states the Board can promulgate rules. Ms. Huddleston explained that in the past the Board has had similar actions, the policy would be in advance of a rule, and creating the policy would offer a benefit for more applicants to be licensed in Tennessee and she cannot imagine anyone would object to that.

Dr. Ali asked Ms. Huddleston if past applicants, the Board denied licensure based on the seven year rule, could re-apply. Ms. Huddleston confirmed those applicants are allowed to re-apply for licensure in Tennessee. Ms. Maegan Martin explained that if a previously denied applicant opted to apply again they would be required to submit all fees and documents as if it were an initial application.

Dr. Higdon questioned if any denied applicant, due to the seven year old, has been reported to the National Practitioner Databank for a denial of licensure. Ms. Martin stated this has not occurred since she has been in her position (since about June 2014). Dr. Zanolli and Dr. Ali expressed their understanding was that a denied application based on the seven year rule was not reportable to the databank. Ms. Huddleston confirmed that not all application denials are reportable to the databank. Those not reported typically relate to qualifications not being met administratively. She also pointed out that most of the applicants opted to withdraw their application rather than have the Board deny their application. Dr. Zanolli commented that in a previous Board meeting the databanks requirements for reporting specifically state to not report if the denial is based on an exam not being completed within the states required time frame. Ms. Martin stated she is pretty certain the Board has not denied any applicants in this regard during her time either.

Dr. Zanolli suggested that the policy be proposed simple and easily applied. Dr. Zanolli discussed common circumstances of applicants that appear before the Board and have not been eligible for licensure based on the seven year rule. One example being foreign medical graduates who complete part one of the examination and it lapses past seven years. Dr. Zanolli stated it will be difficult to determine on a case by case basis due to illness. Dr. Johnson stated the proposal was meant to be broad and amended but that all of the suggestions proposed will allow the Board more leverage in determining on a case by case basis for granting licensure when the seven year rule issue is presented. He suggested that this proposal would allow the Board to help a well-qualified candidate who is board eligible on a case by case basis.

Dr. Ali questioned if there would be a problem in adopting more than one of the proposals presented. Ms. Huddleston stated that would not be a problem and she was under the assumption that the proposal was meant to include all of the options. Dr. Zanolli suggested he was not in favor of any language indicating that the Board could make determinations of licensure approval on a case by case basis and stated there needed to be specific criteria listed.

Dr. Zanolli suggested the committee members brainstorm what specific circumstances should be listed on the policy. Dr. Beckford suggested that military members should be listed and Dr. Zanolli and Dr. Ali agreed this should be added. Ms. Huddleston reminded the board that there is language within the rules that states time spent in training and practice in the armed forces cannot be used when factoring in the seven year rule.

Ms. Martin suggested a common circumstance she has noticed that gets presented before the board is new graduates who have taken longer than seven years to complete the examination but have an offer of employment but cannot accept the offer because they cannot become licensed. Dr. Johnson asked if this circumstance would fall under the manifest in justice. Ms. Huddleston commented that the manifest in justice phrase is one that used to be within the Board's rules. She stated this language is very broad. Dr. Higdon questioned if creating an exception for a situation as a specialty needed at a hospital and they have been searching a long time for. Ms. Huddleston stated that she thinks this could constitute that phrase because it is a needed specialty or even if the applicant has been offered a job in an area of the state that presents a need.

Members discussed wanting to take out eliminating medical research or study. Dr. Saunders stated she thinks including a fellowship would not be appropriate either. This reasoning because she cannot think of very many reasons why at the end of your residency one couldn't at least take step three.

The Committee discussed whether or not an applicant that qualified for an exception would need to appear before the full Board or not. The distinction was made that if the policy and future rule reads "at the discretion" of the Board then it would be required but removing that language would be considered. The board continued their conversation regarding changes in the proposed policy.

In regards to the exception allowing licensure in Tennessee for an applicant who holds an active license in another single state, the Committee discussed adding a minimum length of an unencumbered license as a requirement to this exception. The Committee members agreed on active clinical practice in a single state or territory for a period of one year and have held a full unencumbered license in that state for at least one year since successfully completing the USMLE.

The Committee discussed whether or not serving in the armed services should be listed as an exemption on the proposed policy. The Committee reviewed TENN. COMP. R. & REGS. 0880-02-.08 (e) which offers an extension to the seven year rule for an applicant that has actively served while in continuous training and practice in the armed forces of the United States shall not be counted in calculating the seven year limitation for the USMLE contained in subparagraph (4)(b) of this rule. It was determined that this rule covers armed forces therefore adding it to the proposed policy would not be necessary.

The Committee discussed the proposed exception of verifiable and rational explanation, as determined by the Board, for why the applicant was unable to complete the USMLE in seven years. The committee decided to eliminate this language. The Committee discussed the proposed exception permitting licensure due to an extreme circumstance as determined by the Board. The Committee agreed that this language would require the applicant appear before the full Board for consideration and the Board would need to create consistency in their implementation of this exception.

## **II. Revision to the Medical Doctor Application**

Ms. Martin presented proposed revisions to the current medical doctor full licensure application to the Committee. Dr. Zanolli made a motion to approve the revised application as presented in order for the final version be presented to the full Board to make a determination on. Dr. Beckford seconded the motion. The Committee reviewed some of the major alterations to the application draft presented. The Committee requested for Ms. Martin to provide a fully revised copy of the application, applying the changes, at tomorrow's Board meeting and then to allow the Board to discuss this the following day. The motion made was unanimously passed by the Committee.

Ms. Martin discussed that Dr. Johnson had raised questions regarding the current renewal form application. She reported that Ms. Rosemarie Otto, Director of Health Related Boards, would urge the Board to temporarily suspend any action to amend the renewal form at this time unless there compelling reasons for such a change. Two reasons for not making changes to the form have to do with the online renewal system and that the form is utilized by all professions under Health Related Boards. The Committee determined there was not an immediate compelling reason to alter the renewal form at this time and Dr. Johnson may present his concerns regarding the renewal form at the **Board's May 17, 2016 meeting** if it is still appropriate to do so at that time. **151**

### **III. Implementation of Public Chapter 494; Medical Spas**

Ms. Martin reviewed Public Chapter 494's requirement of the Board of Medical Examiners and the Board of Osteopathic Examination to establish and maintain an online medical spa registry. She indicated that this public chapter includes physician offices in the definition of a medical spa. She advised the Committee that the process of building the infrastructure for an online renewal system has begun, currently there is a spreadsheet that is manually updated and revised as new medical spas are added because the infrastructure has not been built entirely. At last count there are well over one hundred (100) medical spas registered. Administration has added a Medical Spa page on the Department of Health's website which includes the application, FAQ's, and Public Chapter 494. Also, in December 2015, administrative staff sent out a mailer notifying all medical and osteopathic licensees of this public chapter and included the FAQ due to not being able to reach all licensees through the e-notify system because not everyone has opted in to receive notifications. There is hope that by February 2016 the infrastructure will be complete and available on the website so all registered medical spas will be viewable, if not then the spreadsheet of approved medical spas will at least be available on the website. Ms. Martin advised the Committee that there is legislation pending, SB 1815, that will amend this law which will be discussed at tomorrow's Board meeting. Ms. Martin advised the Committee that the Board will need to determine a fee for medical spa application and promulgate the applicable rules. She informed the Committee that the purpose of the fee is to make the medical spa registry self-sufficient and the Committee members followed up by discussing what financial expenditures applied to the registry.

### **IV. Order of Compliance**

The Committee and Ms. Huddleston discussed the timeline that is acceptable for licensees to file for an order of compliance. It was previously determined that the licensee can petition for the order but it cannot be on the Board's agenda prior to the end of the licensee's suspension or probation. Request made before period of suspension expires. However, at the last Board meeting the Board allowed an order of compliance to be presented prior to the completion of the suspension or probation but with the condition that the suspension or probation could not be lifted until the termination date. Dr. Zanolli made a motion for the Board to hear orders of compliance for licensees whose termination of probation or suspension date falls between two Board meetings and up to the next Board meeting. Dr. Beckford seconded the motion. The Committee passed the motion unanimously and it will be presented before the Board at their next meeting January 26, 2016.

The meeting adjourned at 7:08 p.m.