



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

**Tuesday, January 26, 2016  
Wednesday, January 27, 2016**

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**MINUTES**

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The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:37 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  
Subhi Ali, MD  
Michael Baron, MD  
Pat Eller, Consumer Member  
Reeves Johnson, MD  
Melanie Blake, MD  
Deborah Christiansen, MD  
Nina Yeiser, Consumer Member  
Barbara Outhier, Consumer Member  
Dennis Higdon, MD  
C. Allen Musil, MD  
Neal Beckford, MD

Board member(s) absent: None

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

**I. RECEIVE INFORMATION FROM LEGISLATIVE AFFAIRS OFFICE**

Valerie Nagoshiner, Deputy Commissioner for the Department of Health, presented several proposed bills currently being monitored by the department of health.

**SB 1580:** Revises provisions relating to the qualifications of an applicant for a license to practice medicine; authorizes the Board of Medical Examiners (hereinafter BME) to issue a temporary license to practice medicine to qualified international medical school graduates. Dr. Zanolli spoke in favor of the temporary license bill. Ms. Martin discussed wanting clarification on the specific intent behind requesting a temporary license given that statutory authority exists for the Board to issue temporary licenses for those in training in Tennessee.

**SB 1815:** Deletes the requirement that individual physician's offices and practices register as medical spas and deletes January 1, 2016 deadline to register as a medical spa. Dr. Reeves Johnson and Dr. Subhi Ali spoke in favor of this bill. Dr. Zanolli conveyed concern that the amendment will require the Board to regulate this practice by non-physicians and will exclude physicians who are providing the same services. She further suggested that it might be proper for the registry to be under the control of health related boards rather than specifically the BME if it will not be including their licensees.

**SB 1873:** Permits medical students to apply for exemption from medical licensure requirements while practicing within the scope of certain training programs.

**SB 1704:** Requires the BME to issue cardiovascular invasive specialist licenses to qualified individuals, promulgate rules, governing the practice of these specialists and their scope of practice. Ms. Eller expressed concerns regarding this bill. Ms. Martin explained that a cardiovascular invasive specialist becomes certified through a registration examination. The certification is open to any non-physician, but mostly captures cardiovascular technologists, which currently make up under one thousand individuals with a projected profession growth of 39% by 2022.

**SB 1723:** Authorizes a licensed podiatrist to supervise a physician assistant. Dr. Neal Beckford suggested this type of training may be received through on the job training. Dr. Saunders stated that a physician assistant does receive some orthopedic training during school and may learn podiatry training at that point in time. She also noted that APNs were not included in the bill.

Ms. Nagoshiner reported to the board that the BME was reviewed before government operations at the sunset hearing in fall 2015 and the BME has been extended for another four years to June 30, 2020. Also, the Controlled Substance Advisory Committee was extended for two years, to June 20, 2018.

**SB 1466:** Imposes licensure and certificate of need requirements on pain management clinics. There are a number of additional changes anticipated on this bill. Dr. Zanolli commented that it would be helpful if the bill could clearly define that the requirement is directed towards the facility and not an individual.

**SB 2552:** The Department of Health's Prescription Safety Act of 2016 that will remove the sunset from the prescription safety act of 2012.

## **II. DISCUSSION OF SEVEN YEAR STATUTE**

Dr. Ali provided an overview of the Development Committee's discussion at their January 25, 2016 meeting. With research and drafting efforts from Dr. Reeves Johnson, the Development Committee amended a draft proposal at its meeting. Ms. Martin presented this policy proposal to the full board, commenting that the policy will still need to be carried out in rule. The purpose of the proposed policy would be to broaden the board's authority to grant licensure to applicants who were unable to successfully complete all steps of the USMLE within seven years. Dr. Ali affirmed that the committee passed a motion to present recommendations to the full board but it is the responsibility of full board to make final determinations. The recommendations passed to allow for exceptions to the seven year statute are as follows:

1. Applicant must be board certified by an ABMS member board; or
2. Applicant has been and is currently in active clinical practice in a single state or territory for a period of at least one year and has held a full unencumbered license in that state for at least one year since successfully completing the USMLE; or
3. Applicant must provide evidence of an extreme circumstance as determined by the board which prevented the applicant from completing all steps of the USMLE within a seven year time frame.

Dr. Zanolli expressed concerns regarding the Boards' authority to adopt a policy creating exceptions when the applicable statute directs the Board to promulgate rules for exceptions. Ms. Huddleston stated the statute authorizes the board to create exceptions to the statute and the policy is merely a buffer pending a rule making hearing. Ms. Huddleston reported that any policy passed at this meeting would be presented at the next meeting as a rule. Dr. Zanolli would feel more comfortable allowing these exceptions by rule rather than policy. Dr. Ali stated that if the board chooses to adopt the proposed policy then exception one and two could be determined administratively but exception three would require the applicant to appear before the Board. He asked Ms. Huddleston to confirm that this process is within the Board's authority. Ms. Huddleston assured the Board that it does have the authority to create these exceptions. Dr. Ali stated the proposed policy before the board is the motion on the table. Several members on the board spoke in favor of the policy as proposed. Dr. Zanolli requested all members to raise their hand in favor of the motion. All members present approved the passing of the motion with the exception of Dr. Zanolli who opposed. Ms. Huddleston informed the board that given the passing of this policy the board is allowed to implement this policy as of today.

### **Jane Young, General Counsel for the Department of Health, Legislative Bill 2389**

Jane Young, General Counsel for the Department of Health was present to present a summary of SB 2389. This bill was introduced in response to *North Carolina Dental Board v. The Federal Trade Commission*. It amends the Uniform Administrative Procedures Act and TCA § 4-5-226. This bill is intended to allow state supervision of agencies with respect to rule making and is consistent with what seems to be required by the *North Carolina Dental Board* case.

### **III. CONSIDERATION OF APPLICATIONS**

#### **MD X-Ray Applicant Interview(s):**

**Sarah Lake** – appeared before the Board because she has been out of practice for greater than two (2) years, specifically since 1998. Ms. Lake desires to obtain a mammography certification and has maintained active registration through the ARRT while being out of practice. Dr. Deborah Christiansen made a motion to table Ms. Lake’s application for six (6) months to offer time for her to establish a remediation plan. Dr. Ali seconded the motion and the motion passed.

#### **Medical Doctor Applicant Interview(s):**

**Thomas Byrne** – appeared before the Board address his (7) malpractice claims since 1998. Of the seven (7) malpractice cases, there was only one (1) case that ended in settlement and two (2) are currently pending. The two pending cases involve patients the applicant never actually treated. He was included in the lawsuit due to his role as director. Dr. Musil motioned to grant an unrestricted license contingent on a copy of the applicant’s board certification being added to his file. Dr. Beckford seconded the motion. Dr. Baron abstained and the motion passed.

**Kathryn Celaura** – appeared before the Board to address her absence from clinical practice. Dr. Celaura was in clinical practice as an OB/GYN for a one (1) year eight (8) months and left practice in 2013. The Board explained that when a physician has been out of practice for two or more years, the Board will examine the case to determine the proper reentry options. The Board summarized Dr. Celaura’s options, which included the option to train with/shadow a preceptor, completion of the SPEX examination, submission to a CPEP evaluation or other options available through the FSMB, or a restricted license. Dr. Beckford encouraged the applicant to pursue training opportunities to assist in future endeavors. The Board discussion concluded with the applicant choosing to withdraw her application.

**James Connelly** – appeared before the Board because he did not complete all three steps of the USMLE within seven years of his first successful step. Based on the policy adopted by the Board at this meeting, the applicant would meet the exception for licensure based on maintaining encumbered licensure in Michigan for at least one (1) year and his board certification. Dr. Connelly stated he knew early on he would continue training with a fellowship and due to Michigan not having the seven-year rule he opted to take the last step of the USMLE during his fellowship. Dr. Baron made a motion to grant an unrestricted license and Dr. Ali seconded the motion. The motion passed.

**Jose De La Pena** – appeared before the Board because he has not passed a Board endorsed examination. He took Florida’s state board examination in 1973. The law changed in Tennessee in 1972 such that a national examination was required. Dr. De La Pena is board certified through the American Board of Family Practice. Dr. Pena practiced clinically in private practice for thirty (30) years in Florida and for the last seventeen (17) years has clinically practiced as a Captain in the U.S. Navy. He maintains an unencumbered Florida license. Dr. Ali made a motion to grant an unrestricted full license and Dr. Beckford seconded the motion. Dr. Saunders and Ms. Huddleston referred the Board to Rule 0880-02.05(c)(2) which requires a state examination to have been completed prior to 1972. Ms. Huddleston suggested there is a school of thought that the Board has the authority to waive their own rules and this has been done by the Board and others in the past. Dr. Baron abstained, and the motion passed.

Dr. Beckford requested that Rule 0880-02.05(c)(2) be further investigated and Dr. Ali requested this be added to the agenda for the next Development Committee meeting.

**Paula Dunn** – appeared before the Board because she has been out of clinical practice since 1999. Dr. Dunn completed a CPEP examination in 2014 and feels she has completed all of the recommendations from the evaluation. Dr. Daniel Kalb appeared before the Board in support of Dr. Dunn's application for licensure and confirmed that he reviewed the CPEP examination results and ensured the training Dr. Dunn received fulfilled all recommendations. Dr. Musil made a motion to grant a full unencumbered license and Dr. Baron seconded the motion. Dr. Melanie Blake abstained and the motion passed.

**Hoda Elasmr** – appeared before the Board due to being out of clinical practice since 2005. Dr. Elasmr is board certified in internal medicine and it appears she has maintained maintenance of certification requirements. Dr. Elasmr expressed she does not desire to practice clinically again but her employer prefers all employees obtain a Tennessee medical license. The Board stated that a license restricted to administrative practice would be most proper for Dr. Elasmr, given how long she has been out of practice, Dr. Elasmr indicated that she is not interested in obtaining an administrative license. Dr. Musil made a motion to deny the application request for an unrestricted license which was seconded by Dr. Beckford. Dr. Elasmr opted to withdraw her application for licensure.

**John Holcomb** – appeared before the Board due to being named a party in five (5) malpractice claims. Two (2) of the cases resulted in the death of a patient. Dr. Holcomb is board certified in orthopedic surgery and holds an unencumbered Texas medical license. Dr. Holcomb has been out of clinical practice for two (2) years and one (1) month. However, at the time of his application, Dr. Holcomb had not been out of practice for two or more years. After interviewing the applicant regarding his malpractice history, Dr. Christianson made a motion to grant an unencumbered license and Dr. Ali seconded the motion. The motion passed.

**Jay Parkinson, MD** – was asked to appear before the Board because he has not been in full-time, traditional clinical medicine since 2009. Dr. Parkinson was originally scheduled to appear at the September meeting and has rescheduled his appearance several times. He stated that his flight to Nashville was cancelled due to the blizzard. He asked to appear before the Board via skype or by telephone. The Board declined to conduct Dr. Parkinson's interview by skype or telephone conference because it did not want to create a precedent of allowing interviewees to appear via technology. The Board excused Dr. Parkinson's absence at this meeting.

**Norman Nachez, MD** – was asked to appear before the Board to address his malpractice history. Dr. Nachez is seeking a Tennessee license because he works for a company that does Medicare certifications and they have a new contract in Tennessee. He stated that he may also do some locum tenens work. His last clinical practice was in late 2014. Dr. Nachez answered questions about his claims, which have all been resolved. At the conclusion of Dr. Nachez's interview, Dr. Ali made a motion to grant Dr. Nachez to grant a full and unrestricted license. Dr. Blake seconded the motion. The motion passed.

**Jeffrey Horton, MD** – was asked to appear before the Board because his last clinical practice was in 2012. Dr. Musil recused himself. Dr. Horton is currently participating in an informal reentry program in Virginia. All of his charts are reviewed by the attending physician and he is never on rounds by himself. This will continue until the physicians who are working with him are willing to

attest to his readiness to reenter practice. Dr. Saunders and Dr. Ali agreed that Dr. Horton should reappear before the Board with a letter from a physician who is willing to attest to his competency. Dr. Ali made a motion to table action on the application for a period of up to six months to allow the applicant to complete his reentry program. Dr. Johnson seconded the motion. The motion passed. Dr. Zanolli directed Dr. Horton to work with Dr. Saunders

**Muhammad Jaleel, MD** – appeared before the Board because he did not complete all three Steps of the USMLE within seven years of his first successful attempt. A secondary issue was raised during the meeting, which is Dr. Jaleel’s examination history: it violates Rule 0880-02-.08(2)(c). Dr. Jaleel is not board eligible until September and does not fall within the Board’s newly adopted policy on the USMLE. The Board directed Dr. Jaleel to reapply when he successfully completes his certification examination. At the conclusion of his interview, Dr. Jaleel was allowed to withdraw his application.

**Melissa Larzo, MD** – appeared before the Board because she has been out of clinical practice since 2011. Dr. Larzo does not currently hold an active medical license, but she is board certified. She recertified in 2013. She has been attending some grand rounds locally and has completed continuing medical education. She plans to return to practice in the next several years. She is seeking a Tennessee license because she is up for recertification and must be licensed in order to sit for the examination. The Board suggested she explore the possibility of reactivating her West Virginia license as the Board is likely to require remediation before issuing a Tennessee medical license. At the conclusion of her interview, Dr. Larzo was offered the opportunity to withdraw her application, which she did.

**Rasik Parmar, MD** – was asked to appear before the Board because he did not complete all three Steps of the USMLE within seven years of his first successful attempt. Dr. Saunders stated that pursuant to the Board’s newly adopted policy, Dr. Parmar is entitled to have his application granted. Dr. Beckford moved for approval of Dr. Parmar’s application. Dr. Johnson seconded the motion. The motion passed.

**Andres Perez, MD** – appeared before the Board because he has not treated patients since 1999. He has been involved in population medicine since that time. Dr. Perez is seeking a Tennessee medical license because it is required by his prospective employer; however, his application stated that his intended specialty is emergency medicine and general practice. Dr. Perez became board certified in preventive medicine in December 2015. The Board articulated a great deal of concern regarding Dr. Perez’s absence from clinical practice. It was noted that with a full and unrestricted license, Dr. Perez would be authorized to practice in any specialty. The Board’s discussion included the acknowledgement that in these situations, when a person has been out of clinical practice, remediation is proper. At the conclusion of Dr. Perez’s interview, Ms. Eller made a motion to deny. Dr. Zanolli stated that Dr. Perez could allow the Board to vote on his application, he could withdraw his application, proceed with an administrative licensure restriction, or seek a license through the declaratory order process. Dr. Perez declined all of these offers. Dr. Beckford called the question. Dr. Ali seconded the motion. Dr. Perez asked if he could withdraw his application; however, the Board did not permit it as the question had been called. The motion passed. Ms. Huddleston explained Dr. Perez’s appeal rights to him.

**Kyle Smith, MD** – appeared before the Board to address his criminal history. Dr. Smith is licensed in Kentucky and Virginia. Ms. Eller and Dr. Blake recused themselves. Dr. Smith prepared a letter to the Board summarizing how the consequences of his criminal act changed his life. Ms. Yeiser

made a motion to grant Dr. Smith's license, which was seconded by Dr. Beckford. The motion passed.

**James Ward, MD** – appeared before the Board because he has been out of clinical practice since 2010. Dr. Ward intends to practice administrative medicine. Dr. Ward was asked whether the administrative license restriction would create any issues for him in his employment. Dr. Ward wasn't sure and had sought clarification from his legal counsel. He asked whether his application could be tabled to allow him to explore that possibility further. He also asked whether having a license restricted to administrative medicine would prevent him from pursuing a full and unrestricted license at a later date. Ms. Huddleston said that it would not disqualify him. The Board was agreeable to tabling Dr. Ward's application. Dr. Johnson made a motion to table the application for a period of two months to allow Dr. Ward to gather more information. The motion was seconded by Dr. Beckford. The motion passed.

Dr. Zanolli asked that the Development Committee consider the possibility of creating a licensure category for administrative license. Ms. Huddleston asked that the Committee consider discussion of a formal reentry policy as well.

Dr. Ali summarized the Development Committee's discussion from the previous evening. Ms. Martin stated that the application form had been reformatted and recirculated to the Committee members. She also summarized PC 494 and the administrative office's implementation efforts. After discussing appropriate timing for rulemaking to set the medical spa registration fee, Dr. Zanolli asked that this issue be considered by the Board at the next meeting. Dr. Ali presented the Development Committee's recommendation that a licensee may present a petition for order of compliance at the meeting preceding the compliance date on an effective order, so long as the effective date is consistent with the order. The Development Committee's motion passed.

The Board considered the November minutes for approval. Ms. Yeiser made a motion to approve. The Board directed that the following corrections be made: grammatical error on page 13; grammatical errors on page 16; grammatical error on page 17; revise procedural description of Dr. Kesserwan's appearance before the Board; Dr. Higdon's name is misspelled on page 5; the reference to Public Chapter 949 should be 494; Dr. Zanolli requested that staff refrain from stating that a motion passed unanimously as he most often does not vote. Ms. Yeiser accepted the amendments. The motion was seconded and passed.

Ms. Diona Layden appeared to present the Office of Investigations report and introduced Ms. Antoinette Welch, who has recently taken on the Director position. Ms. Welch has 8 years of experience as an assistant district attorney, 7 years in private practice, and 14 years of experience as a police officer and sergeant in Metro Nashville.

Ms. Layden presented the physician monitoring report which shows 29 suspended, 71 under a probationary order, 26 under a board order, and 90 with a revoked or surrendered license. The x-ray operator monitoring report shows 2 suspended, 0 under a probationary order, 1 under a board order, and 2 revoked. 812 new complaints have been opened in 2016 to date. 810 complaints have been closed. There are currently 214 complaints open in the office. 46 new complaints, 46, total open complaints 3. Dr. Zanolli sought clarification on what Ms. Layden means when she says "complaint." He noted that investigative staff uses the term complaint, as does OGC. He thinks it is confusing, since investigations must close a complaint before transferring to OGC where a case is opened on the same complaint. Ms. Martin stated that if there is any confusion about where the

complaint is in the process, the Board should note who is providing information. If an investigation refers to an open or closed complaint, the Board can be sure that the complaint has not proceeded to OGC.

Ms. Layden presented the pain clinic audit reports. There have been 93 audits reported so far. There are 7 additional inspections have been assigned to the field, though the reports have not yet been submitted to the Office of Investigations. Of the audits completed, the following occurred: 29 were closed with no action, 37 were closed with a letter of concern, 29 were closed with a letter of warning, 8 were referred to OGC, and 14 clinics were closed when the inspectors arrived. Thirty-four complaints were opened against pain management clinics, 17 complaints were closed and 23 remain open. Ms. Yeiser asked what the average time for processing a complaint is. Ms. Layden said that the Office of Investigations would provide this information at the next meeting. Ms. Layden also provided information requested by the Board at the last meeting. Currently there are 103 open investigations. Of those open investigations, there are 0 priority 4 complaints. There are two priority 3 complaints and both are overdue. That is likely due to the fact that both licensees are represented by opposing counsel. There are 91 priority 2 cases and 28 of those cases are overdue. There are a number of possible causes for those overdue investigations: sometimes it's difficult to find a witness, sometimes it's difficult to find the licensee, and the licensee may be represented. There are 10 priority 1 cases and 7 of those cases are overdue.

### **Presentation from CSMD Chair and Director of Special Projects**

Dr. Baron reported that the CSMD Committee met yesterday. The Board of Medical Examiners contributes about 40% of the CSMD's budget. That percentage is based on prescriber licensees. Dr. Mutter, Director of Special Projects summarized the Department's education and outreach activities and announced new staff. He also summarized the changes to the Chronic Pain Guidelines. There were some promising—and some discouraging—developments in 2015. Dr. Baron summarized the legislative report which is presented to the General Assembly.

### **Committee on Physician Assistants' Lapsed License Policy**

Ms. Mary Katherine Bratton presented the policy. The policy is meant to bring the approach of all of the Committees and Boards into uniformity and does not alter the existing policy substantially. One change, however, is the penalty assessed in the event the individual does not agree to the citation. If the matter is referred to the Office of General Counsel, the individual will be assessed a penalty of at least \$300 per month for each month of practice as well as a reprimand. The Board considered the policy and approved the policy.

### **Board's Lapsed License Policy**

Ms. Huddleston presented the Board's revised policy. Again, this policy is being revised to unify the Boards' and Committees' approaches. Dr. Baron pointed out that the policy includes the term "lapsed" and "expired" and advocated for one term or the other. Dr. Beckford asked how frequently this issue comes up. Ms. Martin said that it happens infrequently with this Board's licensees, it is more common with other boards and committees. Dr. Higdon made a motion to accept, which was seconded by Dr. Ali. The motion passed.



## **Petitions for Declaratory Orders**

**Alexander Zotos, MD** – At the November meeting, there was a request for an advisory ruling from Dr. Zotos. He is represented by counsel, C.J. Gideon. The only issue before the Board today is whether to grant the petition for declaratory order and send the matter to a contested case. Mr. Gideon summarized Dr. Zotos' request which is to eliminate the requirement for lifetime TMF advocacy. Mr. Gideon explained Dr. Zotos' reasons for pursuing this matter, his history of sobriety and the TMF's position. Dr. Baron, Dr. Blake and Ms. Eller recused themselves. Ms. Huddleston pointed out that it's not that common that the Board will require lifetime advocacy and typically when it occurs there's a good reason for it. Dr. Higdon made a motion to grant the petition, which was seconded. The motion passed.

**Craion, MD** – Ms. Huddleston summarized Dr. Craion's request. Dr. Craion is represented by Dr. David Steed, who spoke on his behalf. Dr. Craion did not complete all three steps of the USMLE within seven years of his first successful attempt. Dr. Steed believes that Dr. Craion meets the exception set out in the USMLE policy adopted by the Board earlier in the day. Dr. Ali made a motion to table this matter to allow the Craion file to be reviewed by the administrative office for qualification under the policy. Ms. Yeiser seconded the motion. The administrative staff retrieved the file for review.

**Lombard, MD** – Ms. Huddleston stated that Dr. Lombard's application has not been reviewed by the medical consultant. Dr. Lombard is represented by Michele Marsicano, who spoke on his behalf. Ms. Marsicano summarized Dr. Lombard's qualifications. He does not qualify for a license because he did not complete a US residency nor has he completed the USMLE. He has been on the faculty at Duke University for more than a decade and now seeks to join Vanderbilt's faculty. Dr. Musil made a motion to grant the petition, which was seconded by Dr. Ali. Dr. Baron pointed out that the application has not been reviewed by the medical consultant. Dr. Ali made a friendly amendment to the motion to clarify that the scheduling of the contested case for the declaratory order will be contingent upon the medical consultant's satisfactory review of the application. Dr. Musil accepted the amendment. Dr. Ali asked to make a substitute motion, which was allowed, to table the application for up to four months. The motion was seconded. Dr. Johnson made a friendly amendment to revert the original motion as amended. After discussion, Dr. Ali withdrew his motion. The motion to grant the petition contingent upon the medical consultant's satisfactory review of the application passed.

Ms. Huddleston reported that the files of Dr. Craion, Dr. Bolkhiv and Dr. Dao have been reviewed by the medical consultant who has confirmed that each file meets an exception set out in the Board's earlier adopted policy.

## **Ratification of Licensees**

The Board ratified all licenses which have been issued by the Board's committees and councils in the interim since the last meeting. Lists containing those licensees were distributed to the Board in advance of the meeting.

## **Authorize Rulemaking for Committee on Physician Assistants**

The Board was asked by Ms. Bratton on behalf of the Committee on Physician Assistants to Reduce Orthopedic Physician Assistants biennial renewal fee from \$225 to \$175. Ms. Bratton explained that

the rulemaking hearing to reduce the PA licensure fees failed to include a rule change for the OPAs. Ms. Bratton held a roll call vote. All Board members voted to authorize the rulemaking.

### **Report from the Administrative Office**

Ms. Martin announced Ms. Lawrence's promotion and the administrative office's plans to fill her position. Ms. Martin also presented the statistical licensure report, the application report and the CME audit report. Fifty-one percent of all licensees audited in the first six months of 2015 were non-compliant with the CME requirements of their profession. The Board was concerned with the number of non-compliant physicians. Ms. Martin planned to talk with Ms. Waszmer to confirm some of the details of the report. She also explained that the high number is due to the controlled substance prescribing course that is required pursuant to statute and Board rule.

### **FSMB Annual Meeting**

The Board authorized Ms. Martin, Dr. Saunders, Ms. Huddleston (or another attorney), Dr. Johnson and Dr. Baron to attend the FSMB Annual Meeting. The Board appointed Dr. Johnson to serve as the voting delegate to the House of Delegates.

There being no other day one business, the meeting adjourned for the day.

## **Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners Wednesday, January 27th, 2016**

The second day of the regular board meeting was called to order at 8:44 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. Deborah Christiansen, Dr. Reeves Johnson, Ms. Nana Yeiser, Dr. Melanie Blake, Dr. Neal Beckford, Dr. Dennis Higdon, and Dr. C. Allen Musil.

### **Miscellaneous Board Business**

Dr. Zanolli introduced the topic by explaining that one of the items noted in the audit was that the Board had consistency with how they dealt with contested cases, which is a very positive thing, and he thought it was one of the reasons for the four-year time period before the next sunshine. When there are contested cases or screening panels, there is a grid available which is a guideline for the Board members to use. Ms. Huddleston presented summarized how to use the grid as a guideline for reaching an appropriate disciplinary decision. The grid is always available for the Board members to review; they would just need to let the judge know they need to review the document.

Dr. Zanolli urged the Board members to consider prescribers and other specialists who could serve as expert witnesses, especially those who would be appropriate in over-prescribing cases. If members know of providers they would recommend, please let Ms. Huddleston know. Ms. Huddleston added that the Office of General Counsel does have a problem getting people that are willing to do the work because they are busy at their regular jobs. This, of course, would be part-time. Serving as an expert on these cases is a big job and they usually have to testify and be cross-examined. Ms. Huddleston is seeking, specifically, pain management experts, family practice physicians who engage in pain management; and OBGYNs.

Ms. Yeiser asked what they are paid, and Ms. Huddleston replied that it is a range. The state is required to get bids and take the lowest rate. The pay can be up to \$750 per hour, but they are supposed to get multiple bids and take the cheapest. Dr. Johnson asked what the specific requirements were. Ms. Huddleston replied that they don't have to be board certified, but they do have to have an unencumbered license with no history of discipline. They would just need to submit a resume and she would talk with them. Otherwise, specific requirements vary from case to case. Dr. Johnson asked if Ms. Huddleston was looking to create a pool of experts, or for an expert for a specific case. Ms. Huddleston replied that several experts are needed, especially pain management specialists and also OBGYNs. Dr. Blake asked if they were also looking for Advanced Practice Nurses, and Ms. Huddleston replied that they are – that need is specific to pain management.

Dr. Baron noted that when he was first appointed, Judge Stovall, who was Chief Justice at the time, presented a very useful educational program about administrative law and using the grid previously discussed. He then asked if it was still being offered. Dr. Zanolli replied that it was a video. Ms. Huddleston stated they could find it and send it out. Dr. Baron added that he found it very helpful and urged that it be sent out to anyone who was appointed in the future.

Dr. Zanolli stated that they would like to have a retreat for at least the Board of Medical Examiners and Board of Osteopathic Examiners together with administration and the Office of General Counsel later in the year. It is a goal he has for this year.

### **Report from the Office of General Counsel**

Ms. Huddleston presented the Report from the Office of General Counsel. The Telemedicine Rules are at the Attorney General's (AG) office and have made it through the first review. The AG's office has had some questions but she has been unable to connect with the inquirer. The fee increase rule is still awaiting approval from the Governor. Rulemaking amendments regarding the repeal of the Intractable Pain Act and the addiction specialist language are pending internal review.

The Office of General Counsel has been given approval to hire some new attorney positions. She expects four of those positions to go on the prescribing team. The prescribing team handles work for multiple prescribing Boards—including the BME, the BOE, the BON, and COPA—but BME makes up a good portion of what they do, so those costs will eventually be assessed to this Board. She is also considering an additional attorney being assigned to complete BME work. Consequently, the Board should expect that there could be as many as 2-3 additional attorneys affecting the BME's funding. This information will be pertinent when considering a fee increase. Dr. Zanolli stated that the Board was told that it could not increase the application fee until the fiscal year is closed. At this point the fiscal year has been closed for two and half months. Ms. Huddleston believes the delay is due to the fact that the Board's revenue exceeded its expenditures. Dr. Zanolli stated that the rulemaking hearing is the appropriate time for comments and requested that additional follow up be made into when the Board might expect progress on this rule.

Dr. Beckford asked what the fiscal note would be for three FTE attorneys. Ms. Huddleston replied that she does not do the fiscal notes, but Ms. Martin and Ms. Huddleston agreed that it would probably be about \$100,000 for each attorney. Ms. Martin stated that the Board's closing number on the year was \$360,000. Ms. Yeiser whether that sum would be appropriated by the General Assembly and added to the general fund. Ms. Huddleston answered that it would not. Dr. Zanolli explained that the sum would be added to the Board's reserves, and cannot be budgeted.

Dr. Johnson sought clarification on the telemedicine rules and their status. Ms. Huddleston explained that after the rules are reviewed by the Attorney General's office, they will direct questions to Ms. Huddleston or the Board. If there are any legal problems the Board have to deal with them, otherwise the AG's office will sign-off on the rules and they are filed with the Secretary of State. Sometimes there are little issues, amendments that they ask for. Once the rules are on file, they schedule it for review by the Government Operations Committee, and unless there is a problem there, they go into effect 90 days after that. If there is a problem they can suspend the rules for a period of time and ask the agency to consider changes; it is the Board's decision, ultimately – the rules will go into effect after 90 days regardless. There is an omnibus bill every year that permits rules to carry over for another year. The legislature could remove those rules from the omnibus bill if they didn't like them, so they would essentially expire.

Ms. Huddleston returned to the topic of caption bills, which was mentioned in passing by Ms. Nagoshiner. Caption bills, say one thing, something very minor, but can be amended later to make a completely different change, and she just wanted to mention, as Ms. Nagoshiner said there were several caption bills filed that they will expect amendments on. Until those amendments occur, the Department cannot know what is going to happen. Dr. Zanolli added that Ms. Huddleston was right last year; the initial telemedicine bill for 2015 looked pretty innocuous until two days before the session ended.

There was no change in the number of cases that are currently on appeal. There are 115 disciplinary complaints pending against 87 distinct respondents. Dr. Zanolli clarified that an open complaint for OGC means that something has been investigated, they have taken up that case, and it's in OGC to be prosecuted.

### **Agreed Citations**

**David A. Clark, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Clark has agreed to pay \$700.00 in civil penalties for failure to obtain 7 CME hours, to include one (1) hour of prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Mallory Leslie McClure, MD** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the Agreed Citation. As part of her agreed citation, Dr. McClure has agreed to pay \$400.00 in civil penalties for failure to obtain 4 CME hours, to include two (2) hours of prescribing practices with instruction on the Department's Chronic Pain Guidelines. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Melissa Babb** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Babb has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R.T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Susan McGee** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the Agreed Citation. As part of her agreed citation, Ms. McGee has agreed to pay \$400.00

in civil penalties for failure to obtain 20 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Tera Joyce Lyda** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Lyda has agreed to pay \$260.00 in civil penalties for failure to obtain 13 CE hours. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Erica McNeil** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. McNeil has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Grace Harrison** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Harrison has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Amber Cox** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Cox has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Bonnie Coble** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Coble has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Keisha Taylor** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Taylor has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Ayesha Shipp** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Shipp has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a

motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Kellie Hollinger** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Ms. Hollinger has agreed to pay \$40.00 in civil penalties for failure to obtain 2 CE hours, which includes two (2) hours of instruction on appropriate statutes, rules, regulations, and A.R.R. T. Standards of Ethics. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Hafeezul H. Siddiqui, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Siddiqui has agreed to pay \$4,000.00 in civil penalties for failure to obtain 40 CME hours, to include two (2) hours of prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Ahmad Machhor Ibrahimbacha, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Ibrahimbacha has agreed to pay \$1,575.00 in civil penalties for failure to obtain 15.75 CME hours. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Mark Mainwaring, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Mainwaring has agreed to pay \$1,575.00 in civil penalties for failure to obtain 15.75 CME hours. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Mark P. Clemons, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Clemons has agreed to pay \$950.00 in civil penalties for failure to obtain 9.50 CME hours, which includes one (1) hour of prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**David E. Yakin, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Yakin has agreed to pay \$125.00 in civil penalties for failure to obtain 1.25 CME hours. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**John K. Larkin, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Larkin has agreed to pay \$1,300.00 in civil penalties for failure to obtain 13 CME hours, which includes one (1) hour of instruction in prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Gerlad R. Jerkins, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Jenkins has agreed to pay \$3,600.00 in civil penalties for failure to obtain 36 CME hours, which includes one (1) hour of

instruction in prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Colin Murrah Goudelocke, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Goudelocke has agreed to pay \$1,525.00 in civil penalties for failure to obtain 15.25 CME hours. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Charles P. Huges, MD** – was not present nor did a legal representative appear on his behalf. Ms. Huddleston presented the agreed citation. As part of his agreed citation, Dr. Hughes has agreed to pay \$4,000.00 in civil penalties for failure to obtain 40 CME hours. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Clarinda M. Burton-Shannon, MD** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Dr. Burton-Shannon has agreed to pay \$100.00 in civil penalties for failure to obtain 1 CME hour, which includes one (1) hour of instruction in prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

**Jessica Dorothy Hommel, MD** – was not present nor did a legal representative appear on her behalf. Ms. Huddleston presented the agreed citation. As part of her agreed citation, Dr. Hommel has agreed to pay \$1,800.00 in civil penalties for failure to obtain 18.5 CME hours, to include two (2) hours of prescribing practices. Dr. Johnson made a motion to accept the agreed citation. Ms. Yeiser seconded the motion. Ms. Eller recused herself. The motion passed.

### **CE report**

Ms. Martin explained she wanted to return to the CE report that was provided yesterday to add some clarification. The fifty-one percent of non-compliant physicians includes those who were issued warning letters. So at the time that it left the CE unit, they were technically non-compliant. There were 223 licensees audited in the first six months of 2015. There will be a similar number representing the second half of 2015. Since the administrative office is no longer offering the warning letter for the controlled substance prescribing course, the number should go up. Dr. Johnson asked how many agreed citations were sent in the first six months of 2015. Ms. Martin replied that she was giving an approximate guess because she wasn't sure if their dates line up with our dates, because we have the ninety day window where it is still in the CE unit before it gets to us. She is guessing between twenty and thirty.

Dr. Baron stated that he thought continuing education is a very important subject, to stay up to date in one's field of medicine. He asked if it would be appropriate to put on the renewal form all your CMEs so it doesn't rely on an audit, or honesty. Dr. Saunders clarified that what Dr. Johnson was asking was if lines could be added to the renewal form. Ms. Martin replied that it would take at least one additional FTE to make that possible, because right now we are auditing five percent and it is keeping someone about seventy percent busy. Dr. Baron replied that it would remove the need to have an auditor because everyone would hand it in. Ms. Martin replied that we would still have to review it to make sure that it's not duplicative, that it actually falls within the rules. Dr. Johnson noted that with listing the CMEs, those would have to be verified and his recommendation would be

for the person to certify that they did them. If someone did forty one-hour courses, that would add forty lines. Ms. Huddleston noted that her office has some experience with the issue because another board, several years ago, decided to auditing 100% of all licensees. This change resulted in a crippling amount of work for board staff and attorneys. They had at least four attorneys in her office doing primarily CE violation cases for that board. She wished there was an answer, because as she said, the attorneys are audited one hundred percent every year, but there is a big mechanism created to monitor just that. Dr. Beckford agreed with Dr. Baron in that having an opportunity to document your CMEs on your renewal is a good thing. First it's good because it's a memory jog; when you see it and you have to fill it out, you know that you have to do it. We wouldn't have to audit or verify all of them; we could still do five percent, but the applicant would have the knowledge that if you falsify that information, then you would be liable for licensure sanction – significant licensure sanction.

Ms. Martin explained the process and what the obstacles would be. The first obstacle is online renewal. The online renewal form is the same across all professions. If we had a specific online renewal for the MDs, we could proceed in one of two ways. The first option would be to have the licensees list all of their CE activity or we would have to build in the capability for someone to attach their CEs. She didn't think it would be meaningful to require a licensee to list the activity but not actually provide proof of completion. Dr. Beckford clarified we would have them list the CEs, but we would still only audit five percent. If the licensee was not honest in their reporting, then the sanction might be even greater than what they have now. Ms. Huddleston noted that it would be problematic to have proof that all of those individuals were non-compliant with the CME requirements of their profession and not do anything with the information.

Ms. Eller noted that coming from a hospital standpoint, they do require CMEs, as do most hospitals. They have chosen to take on the same requirements that the Board has. Her suggestion is that the renewal applicant submit proof only of completion of the 2 hour prescribing course but also note the total number of hours of CME completed. Dr. Blake stated that it would be problematic to know about this issue and do nothing to remedy it. If they've identified that a certain percentage of physicians routinely are not completing their CMEs or if it's not valid – and perhaps this is an issue that needs to be discussed further at the Development Committee. The Development Committee should look at possible solutions that aren't burdensome. Ms. Martin responded that the solution is manpower. Dr. Zanolli added that the renewal goes across all boards and asked if the two hours is under Chapter 1. Ms. Martin noted that it is just for prescribers who hold a DEA registration. She added that obstacle is surmountable, but the issue is just more manpower. If we increase the percentage or increase the amount of paperwork that's submitted, someone has to go through it and the physicians are not typically the person submitting the information; it's a staff person who may not be exercising a lot of diligence in that task. The administrative office gets certificates from years that are not within the CME cycle, it gets duplicates, it may get a very large stack because people do them in fifteen minute increments: it is incredibly burdensome. That said, if it's a priority of the Board, they will put it on the Development Committee's agenda.

Dr. Beckford stated that the basic question we have to ask is how much of a problem is it for the Board, and to what lengths are they willing to go through to deal with that problem. If it's a manpower issue, is the problem significant enough to warrant adding those FTEs to make it happen? Dr. Baron added that based on the numbers given to the Board, it's a huge amount. He agrees with what was said but he feels really strongly that continuing education is important. Dr. Johnson noted he has been tasked from the Development Committee to work on the online reapplication and this is certainly something they can bring up. Dr. Zanolli added that the initial application and renewal should be on the Development Committee agenda. Ms. Eller asked that if they have a rule and they



can't enforce it, why have it. Ms. Martin replied that the administrative office is enforcing the rule, but staff is enforcing it on certain assumptions, which is they are auditing five percent. There is a system in place.

### **Order(s) of Compliance**

**Gina Marie Dieudonne, MD** – Dr. Dieudonne's license was placed on probation in 2007 after her Illinois license being disciplined for failure to pay her student loans and taxes. She was required to pay outstanding student loans and taxes in Illinois and to apply for and obtain licensure in Illinois. At the November 2015 meeting, the Board approved an Order Modification to delete the requirement regarding licensure in Illinois; Dr. Dieudonne had already paid all outstanding student loans and taxes in Illinois. She is in compliance with the requirements and is entitled to have her petition granted. Ms. Yeiser made a motion to accept the Order. Dr. Beckford seconded the motion which passed.

**Shahid Iqbal, MD** – Dr. Iqbal's license was placed on probation in 2013 related to some violations regarding his office based surgery practice. The probation period was for two years. He was also required to pay civil penalties and provide proof that he is now compliant with the requirements and standards for Level II office based surgery. 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. Dr. Higdon and Ms. Eller recused. The motion passed.

**Debra K. McKenzie, MD** – Dr. McKenzie's license was placed on probation in 2013 related to convictions for TennCare fraud and insurance fraud. The probation period was for three years. Dr. McKenzie was also required to pay civil penalties and costs. She is in compliance with the requirements and is entitled to have her petition granted. The effective date of the order, however, was the 30<sup>th</sup>, so it would not be lifted until January 30<sup>th</sup>. Dr. Higdon made a motion to accept the Order. Dr. Christiansen seconded the motion, which passed.

### **Consent Order(s)**

**John R. Clough, MD** – was not present. He was represented by attorney Daniel Rader. Ms. Paetria Morgan represented the state. Dr. Clough owns Priority Care in Livingston, Tennessee and employs Ginger Clough, LPN. Since August 2010, the Respondent negligently allowed Ginger Clough to operate x-ray equipment. Ginger Clough was not a certified x-ray operator. Dr. Clough violated TENN. CODE ANN. § 63-6-214(b)(1). The Consent Order presented to the Board orders that Dr. Clough's medical license be reprimanded. Dr. Clough must also pay Civil Penalties in the amount of four thousand two hundred and fifty dollars (\$4,250.00), as well as costs not to exceed two thousand dollars (\$2,000.00). This is a formal disciplinary action and will be reported to the National Practitioner Data Bank. Dr. Christiansen made a motion to accept the order. Dr. Baron opposed. Ms. Yeiser seconded the motion, which passed.

**Shelby Lynn Cunningham, MD** – was not present, nor was she represented by counsel. Ms. Paetria Morgan represented the state. Dr. Cunningham was employed by Shelbyville Clinic Corporation which allowed her to obtain hospital privileges at Heritage Medical Center. While practicing at HMC, the Respondent had several patient complications including but not limited to the following: (a) Respondent severed both ureters of one patient, (b) Respondent severed the ureter of a cancer patient, (c) another surgeon had to conduct follow-up surgery because the Respondent failed to repair the hole between a patient's vagina and bladder. The Hospital Medical Executive Committee

completed a review of Respondent's medical records which ultimately resulted in the termination of her employment agreement and loss of her hospital privileges. On September 25, 2013, Respondent signed a lifetime continuing care contract with the Tennessee Medical Foundation for chemical dependency. On or about August 13, 2015, TMF withdrew advocacy from the Respondent because she lost her Soberlink breathalyzer and did not submit to a blood alcohol test. Dr. Cunningham violated TENN. CODE ANN. § 63-6-214(b)(4) and (b)(1). The Consent Order presented to the Board orders that Dr. Cunningham's medical license be suspended. During the period of suspension the Respondent must undergo a Vanderbilt Comprehensive Assessment Program assessment, follow VCAP recommendations, and within thirty (30) days of receiving the assessment, submit the assessment findings and/or recommendations to the Disciplinary Coordinator. Also while under suspension, the Respondent must obtain TMF advocacy and sign a lifetime continuing care contract with them. The Respondent must appear personally before the Board and pay civil penalties in the amount of three thousand dollars (\$3,000.00) and pay costs not to exceed two thousand dollars (2,000.00). After discussing the Order, Ms. Eller made a motion to deny the Order. Ms. Yeiser seconded the motion. After further discussion, Dr. Beckford, Ms. Eller, Ms. Yeiser, and Dr. Blake voted to deny the order. Dr. Christiansen, Dr. Higdon, and Dr. Zanolli voted against the motion to deny the order. Dr. Johnson abstained. The motion to deny the order passed.

**John H. Eason Jr, MD** – was not present but was represented by attorney Robert Kraemer, Jr, who spoke on Dr. Eason's behalf. Ms. Paetria Morgan represented the state. In 2014, Fort Sanders Regional Medical Center suspended the Respondent's medical privileges while the medical review committee conducted an investigation regarding the medical judgment Respondent used while performing surgeries on patients L.V. and N.W. While under investigation at FSRMC, Respondent voluntarily surrendered his clinical privileges at FSRMC. Covenant Health, owner of FSRMC, allowed Respondent to retain his privileges at two of its other medical centers: Fort Loudoun Medical Center and Roane Medical Center. Dr. Eason violated TENN. CODE ANN. § 63-6-214(b)(1) and (b)(4). The Consent Order presented to the Board orders that Dr. Eason's medical license be reprimanded. Dr. Eason must also pay Civil Penalties in the amount of one thousand dollars (\$1,000.00), as well as costs not to exceed five thousand dollars (\$5,000.00). Dr. Christiansen made a motion to accept the order. Dr. Blake seconded the motion. Dr. Johnson recused himself. Dr. Baron and Ms. Eller opposed. The motion passed.

**Charles S. Drummond III, MD** – was not present. He was represented by attorney Robert Kraemer, Jr., who spoke on his behalf. Ms. Jennifer Putnam represented the state. Dr. Baron recused himself. On the morning of September 17, 2014, shortly before Respondent was scheduled to perform surgery at Harton Regional Medical Center on a patient for whom his prior endovascular artherectomy on the left lower extremity was unsuccessful, he exhibited questionable behavior in the Medical Center cafeteria during which staff smelled the odor of alcohol on him. Officials at the Medical Center immediately confronted Respondent resulting in cancellation of the scheduled surgery and Respondent's submission to a drug screen. The result of the screen was positive for alcohol and negative for any other drugs. Respondent took an immediate medical leave of absence from Harton Regional Medical Center and entered into Bradford Health Services where he completed an inpatient program for three (3) months and an outpatient program for one (1) month. Respondent returned to Harton Regional Medical Center with full privileges on January 26, 2015. Respondent signed a five (5) year contract with the Tennessee Medical Foundation on January 26, 2015. Dr. Drummond violated TENN. CODE ANN. § 63-6-214(b)(4). The Consent Order presented to the Board orders that Dr. Drummond's medical license be placed on probation to run concurrent with the Respondent's five year contract entered into with the Tennessee Medical Foundation on January 26, 2015. The Respondent shall maintain advocacy with TMF for the duration of the Probation and

100% compliance with the terms of his contract. Respondent shall cause the TMF to submit quarterly reports documenting his compliance with its contract as well as Respondent's fitness to practice medicine. The probationary period stated above may be lifted upon successful completion of the five year contract Respondent entered into with the Tennessee Medical Foundation on January 26, 2015. Upon successful completion of the contract and before the probation may be lifted Respondent must also petition for, and unless his appearance is waived, appear before the Board and obtain an Order of Compliance. Dr. Drummond must also pay Civil Penalties in the amount of one thousand dollars (\$1,000.00), as well as costs not to exceed one thousand dollars (\$1,000.00). Dr. Beckford made a motion to accept the order. Ms. Yeiser seconded the motion, which passed.

### **Agreed Order(s)**

**Deborah G. Thomas, MD** – was not present, nor was she represented by counsel. Ms. Mary Katherine Bratton represented the state. A criminal indictment was filed for Case No. 3:14-CR-124 in the United States District Court for the Eastern District of Tennessee at Knoxville on October 7, 2014 naming Respondent as a defendant. Respondent failed to report this indictment to the Board of Medical Examiners. The indictment alleges improper prescribing practices related to Respondents work at a pain management clinic. Respondent disputes the charges and is defending against the charges. Trial is currently set for June 2016. While Respondent does not admit that she engaged in any criminal offenses involving controlled substances, she acknowledges that she is under indictment and currently prohibited from prescribing controlled substances. Dr. Thomas violated TENN. CODE ANN. § 63-1-151(a)(1). The Agreed Order presented to the Board orders that Dr. Thomas' medical license be suspended until at least such time as the criminal proceedings in relation to the indictment referred to above reach a final disposition. Upon review and approval from the Disciplinary Coordinator and the Office of General Counsel of the certified documentation of the not guilty verdict or acquittal, the suspension shall be lifted from the Respondent's license without further process. If the Respondent's criminal proceedings referred to above reach any conclusion not anticipated above, Respondent may petition the Board for an Order of Compliance to lift the suspension. Dr. Thomas must also pay costs not to exceed five hundred dollars (\$500.00). Dr. Baron made a motion to accept the order. Ms. Yeiser seconded the motion, which passed.

### **Other Board Business**

There was a brief discussion about one of the Board members reviewing cases, rather than just Dr. Saunders. Ms. Bratton pointed out that doing so would leave fewer Board members available for contested cases, as the Board member who reviewed a particular case would have to recuse themselves.

Dr. Mutter suggested that at the Board Member retreat the Board might discuss the issue of the administrative law judge system, where the Board itself hires its own ALJ. Dr. Zanolli stated that he is in favor of that so that a hearing could go on continuously and he has asked Ms. Martin to pull that data so they can look at it again.

Dr. Higdon asked if they have formally asked for a rulemaking hearing to further ratify changes to policy that they have created. Ms. Huddleston replied that they have not. Dr. Higdon made a motion to request a rulemaking hearing regarding the changes that were made regarding the seven year rule that were presented to the Board the prior day. Dr. Beckford seconded the motion. Dr. Zanolli made a friendly motion clarifying they would be adding additional exemptions to change the current rule. Dr. Higdon accepted the friendly amendment. The motion passed unanimously.

**Contested Case(s)**

**Contested Case**

***Carlo Buena, MD v. State of Tennessee Board of Medical Examiners***

**Mockingbird Room**

**Administrative Law Judge: Mary Collier**

**Panelists: Michael Baron, MD; Dennis Higdon, MD;**

**Nina Yeiser**

**Counsel for State: Mary Katherine Bratton, Esq**

**Counsel for Respondent: William “Paz” Haynes, III, Esq**

Petitioner presented his Petition for Declaratory Order seeking licensure in Tennessee. Petitioner did not complete all three steps of the USMLE within seven years. Petitioner states that he was told in or around 2004 by the ECFMG that the limitation would not apply to him and, relying on that information, he did not complete all the steps. He did complete Step 2 Clinical Skills and Step 3 on the first attempt. Based on the Board’s new policy regarding the seven-year time limitation pursuant to T.C.A. § 63-6-207, a motion was made to grant the Petition and grant a full, unrestricted license to Dr. Buena with the finding that his situation constituted an extreme circumstance. The motion was seconded. Dr. Higdon and Ms. Yeiser voted “aye” and Dr. Baron voted “nay” and the motion passed.

**Contested Case**

***State of Tennessee Board of Medical Examiners v. Anthony Dallas, MD***

**Poplar Room**

**Administrative Law Judge: Thomas J. Stovall**

**Panelists: Neal Beckford, MD; Michael Zanolli, MD;**

**Pat Eller**

**Counsel for State: Paetria Morgan**

**Respondent: Anthony Dallas, MD**

**Counsel for Respondent: Charles K. Grant**

The Department submitted proof showing that Respondent was disciplined by the Mississippi State Board of Medical Examiners on or about September 4, 2014. At the conclusion of the Department’s proof, Respondent argued that the basis for discipline in Mississippi would not be grounds for discipline under the Tennessee laws and rules and therefore moved for dismissal. After consideration, the panel voted unanimously to dismiss the Notice of Charges. The panel adjourned at approximately 2:00pm.

**Contested Case**

***State of Tennessee Board of Medical Examiners v. Gursheel Dhillon, MD***

**Gursheel Dhillon, MD**

**Contested Case**

**Iris Room**

**Administrative Law Judge: D. Kim Summers**

**Panelists: Melanie Blake, MD, Deborah Christiansen MD,**

**Reeves Johnson, MD**

**Counsel for State: Andrea Huddleston**  
**Respondent: Gursheel Dhillon, MD**  
**Counsel for Respondent: Pro Se**

This is a continuation of this matter which began at the November 2015 meeting. The Department rested. Dr. Dhillon testified and also recalled the following witnesses: Nichelle Dorroh, Disciplinary Coordinator for the State of Tennessee Department of Health; Gursheel S. Dhillon, M.D.; and Kenneth Jones, an investigator with the State of Tennessee Department of Health, Office of Investigations. At the conclusion of the proof and the arguments of the parties, the board adopted the findings of fact and conclusions of law proposed by the Department with amendments. After deliberation, the board voted to revoke the license of Dr. Dhillon and to assess the costs of the matter. Dr. Christiansen made a motion to adopt the order as drafted by the board and Dr. Blake seconded. The motion passed unanimously. The board then considered Dr. Dhillon's appeal of the denial of his licensure reinstatement and ruled that the appeal was denied pursuant to Board Rule 0880-02-.12(1)(e) and the prior decision to revoke the license. The matter was adjourned at 6:08pm.