



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

**Tuesday, May 17, 2016
Wednesday, May 18, 2016**

MINUTES

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 9:05 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Subhi Ali, Vice Chair.

Board members present: Subhi Ali, MD
Michael Baron, MD
Neal Beckford, MD
Melanie Blake, MD
Deborah Christiansen, MD
Pat Eller, Consumer Member
Reeves Johnson, MD
C. Allen Musil, MD
Barbara Outhier, Consumer Member
Nina Yeiser, Consumer Member

Board member(s) absent: Dennis Higdon, MD
Michael Zanolli, MD

Staff present: Andrea Huddleston, Chief Deputy General Counsel
Rene Saunders, MD, Medical Consultant, BME
Maegan Martin, Executive Director
Stacy Tarr, Administrative Manager
Candyce Waszmer, BME Administrator

I. CONSIDERATION OF APPLICATIONS

MD X-Ray Applicant Interview(s):

Gary Cox – appeared before the Board because he did not attend a Board-approved training program. He did, however, successfully complete the examination required by the state of Florida for a basic x-ray operator license. TENN. COMP. R. & REGS. 0880-5-.04(3) provides: “Any person who holds a radiological certificate issued by another state obtained pursuant to standards and procedures substantially equivalent to the standards set by these Rules may receive a certification at an appropriate level at the

Board's discretion." While Dr. Saunders' review of Mr. Cox's application file confirmed that his training program was substantially equivalent to the Board's rule for chest, extremity and spine, she was unable to verify the same for his skull and sinus and bone densitometry training. Accordingly, the Board was asked to review the description of his training and experience to determine the appropriateness of issuing a license to perform skull, sinus and bone densitometry imaging. Dr. Beckford noted Mr. Cox's eleven years of experience in these areas and referred to the letters of recommendation from his supervising physicians attesting to Mr. Cox's very strong clinical skills. Dr. Musil made a motion to approve Mr. Cox's application for limited certification in skull, sinus and bone densitometry. His certification in chest, extremity and spine was already approved by the Board's consultant. Dr. Beckford seconded the motion. Dr. Christiansen abstained. The motion passed.

Medical Doctor Applicant Interview(s):

Mohamad Ali, MD – appeared before the Board because he did not successfully complete a three year US residency as required by TENN. CODE ANN. § 63-6-207(a)(2)(F) and TENN. COMP. R. & REGS. 0880-02-.04(5). The Board considered the circumstances giving rise to Dr. Ali's unsuccessful completion of his internal medicine residency, including the information received from his program director regarding his absences. Dr. Ali produced a certificate/diploma certifying that he completed three years of his residency program; however, the "Verification of Post Graduate Medical Training" completed by his program director indicated that he did not *successfully* complete the program. Ms. Huddleston stated that the statutes and rules require successful completion of a three year US residency program in a single discipline. Accordingly, it is the State's position that Dr. Ali does not qualify for a license at this time. At the conclusion of Dr. Ali's interview, he was given the opportunity to withdraw his application, which he elected to do.

Ntango Banani, MD – first appeared before the Board at its May meeting. At that time he appeared to address events that occurred during his residency program which resulted in his eventual dismissal. At the conclusion of Dr. Banani's interview in March, the Board voted to table his application to its May meeting to give him sufficient time to learn whether you he "matched." When Dr. Banani did not match to a program, he began working with the Board's medical consultant to develop a re-entry program. Materials received from him indicate that he arranged a three month clinical observership with Michael Satchell, MD. Dr. Satchell wrote a letter describing his activities which was reviewed by the Board. According to that letter, Dr. Banani's observership is scheduled to end on June 21, 2016. Dr. Beckford made a motion to approve the license. Dr. Musil seconded the motion and made a friendly amendment to make issuance of the license contingent upon Dr. Banani's completion of the clinical observership and confirmation from Dr. Satchell that the observership was completed successfully. Dr. Beckford accepted the amendment. Ms. Outhier, Dr. Christiansen and Ms. Eller abstained. The motion passed with the Chair voting aye.

Bernard Parham, MD – appeared before the Board to address his clinical inactivity since 2013. Ms. Eller and Dr. Blake recused themselves. Dr. Parham inadvertently allowed his license to lapse in 2013. The Board acknowledged the need for Dr. Parham to complete some type of reentry program. Dr. Parham is planning to recertify this year in internal medicine. Dr. Musil made a motion to grant Dr. Parham an unrestricted license contingent upon Dr. Parham's completion of an eight week Board-approved preceptorship as well as proof of completion of forty hours of AMA Category 1 continuing medical education credits. Dr. Beckford seconded the motion. The motion passed. The Chair votes aye.

Rahman, Ryan, MD – appeared before the Board to address two alcohol-related convictions as well as the nature and severity of his previous impairment. Dr. Rahman made a statement regarding his abuse disorder and treatment. He has been sober since July 4, 2015, and successfully completed inpatient treatment. At the conclusion of Dr. Rahman's interview, the Board voted to approve his application

contingent upon his submission to a TMF evaluation and his compliance with any resulting recommendations. The Board also ordered Dr. Rahman to enter into a five year monitoring agreement with TMF. The Board carefully considered whether a five year contract should be required regardless of the results of the TMF evaluation but ultimately determined that because Dr. Rahman's history of impairment is so recent, a five year contract is appropriate. Dr. Gray spoke during Dr. Rahman's interview and confirmed that a contract would be appropriate. Dr. Baron made a motion to approve Dr. Rahman's license contingent upon evaluation by TMF and advocacy for a period of five years. The motion was seconded by Dr. Beckford.

II. REPORT FROM THE TASKFORCE ON RE-ENTRY

Dr. Johnson and Ms. Martin presented a report on the Taskforce's progress. The group has met three times—two times by teleconference and once in person—and has identified a number of essential elements and positions that are likely to be covered by the final policy document. Dr. Scott Kirby from the North Carolina Medical Board phoned in to the Taskforce's in-person meeting and provided an overview of North Carolina's re-entry program, which is highly-developed and seems to function well. Now that the Taskforce has identified these elements of its future policy, the group will take the time between now and the next meeting to engage in a period of more intense study of these elements so that the economic impact of the policy on all stakeholders (the Board, the licensee and the public) are understood. The Taskforce is hopeful that it will be ready to make recommendations to the full Board at the July meeting, but if not July, then certainly September.

III. APPROVAL OF MINUTES

The Board reviewed the minutes from the March 2016 Board of Medical Examiners meeting and Development Committee meeting. Dr. Johnson made a motion to approve the March meeting minutes which was seconded by Ms. Yeiser. The motion carried.

The Taskforce was asked to review the re-entry meeting minutes. Dr. Christiansen suggested two edits to the April meeting minutes: 1) that the first bullet be amended to include the language "there is some support from other professions and boards in the state of Tennessee as well as others that this time limit is appropriate"; and 2) attributing the definition of "clinical activity" to the ABMS' MOC program. The taskforce members approved these changes. Dr. Blake moved for approval. Dr. Johnson seconded. The motion passed.

IV. CONDUCT NEW BUSINESS

Bradford Chase, PA – the Board was asked to ratify the Committee on Physician Assistants' (COPA) conditional issuance of a PA license to Mr. Chase. Dr. Johnson asked Ms. Martin and Dr. Saunders if they were both present at the COPA meeting. They confirmed that they were and that they had no concerns about the way the decision was reached. Ms. Martin summarized the conditions of Mr. Chase's license which are: 1) he must not prescribe controlled substance for a minimum of one year; 2) he must not become or seek to become a DEA registrant without COPA's approval; 3) He must comply with the terms of his TnPAP contract for the length of the contract; and 4) he must appear before COPA at the conclusion of contract. Dr. Johnson made a motion to approve. Dr. Beckford seconded. Ms. Outhier abstained. The motion passed.

Dr. Blake made a motion to ratify all MD, MD X-ray, genetic counselor, PA and polysomnography licenses issued. Dr. Christiansen seconded. The motion passed.

Presentation by Dr. Mitchell Mutter, Director of Special Projects

Dr. Baron provided a report from the Controlled Substance Monitoring Database (CSMD) Committee. The last meeting was in March, and at that time, the Committee authorized doctor shopper data sharing with Kentucky. Dr. Mutter summarized recent activity by the Chronic Pain Guidelines (CPG) committee who met on Friday to review the CDC's recently released Chronic Pain Guidelines with Tennessee's document and consider revisions. That group considered the 60/90 MME recommendations and declined to adopt them at this time. Dr. Mutter also mentioned the changes to the definition of a pain specialist. New legislation requires ABIPP 1 and 2 for that pathway, instead of completion of just ABIPP 1. Once the final CPG document is prepared, it will be distributed to the Board.

Dr. Mutter's team is also working on producing the top fifty prescriber list as well as identification of the top 10 prescribers in counties with less than 50,000 residents as required by law. Dr. Mutter is looking forward to utilizing medical examiner data. Dr. Beckford asked where we are in overdose deaths nationally. Dr. Mutter responded that we are about 10th in the nation, but he doesn't think that ranking is based on reliable data.

Finally, Dr. Mutter announced that Dr. Stephen Lloyd has been hired to serve as the medical director of Mental Health and Substance Abuse (MHSA).

Report from the Office of Legislative Affairs

Jeremy Davis, assistant commissioner for legislative affairs, made a presentation to the Board regarding legislation of interest.

PC 912 – requires any practice that dispenses suboxone to 50% or more of its patient population, which must be comprised of at least 150 patients, to become licensed as a suboxone clinic by MHSA.

PC 1033 – requires all pain management clinics to be licensed, rather than certified.

PC 1035 – allows the board to issue specialty training, temporary and limited licenses, and would expand the amount of time an applicant has to complete all steps of the USMLE from 7 to 10 years. Also requires any health rule to be submitted to the Senate Health Committee.

PC 540 – extends the Board for four years.

PC 956 – replaces current law requirements for med spas and require physicians' offices that advertises med spa services or primary engages in the provision of elective cosmetic medical services.

PC 632 – extends the exemption of licensure for osteopathic medical students to the same exemptions that apply to medical students, residents and fellows.

PC 766 – allows charitable clinics to contract with or directly employ dentists, physicians, optometrists, psychologists, etc., except for anesthesiologists, emergency physicians, pathologists and radiologists.

PC 829 – revises the definition of pain medicine specialist to require ABIPP specialists to complete parts 1 and 2 of the examination.

PC 1002 – eliminates the sunset provision for the CSMD; creates an operations committee that will govern the day-to-day functions of the CSMD; requires pharmacists to check the database; and checking the CSMD is a requirement for prescribers and dispensers when a patient is exhibiting drug seeking behavior.

Update on Rules in Progress

Ms. Huddleston stated that there will be a rulemaking hearing at the July meeting and the Board will be asked to consider the definition of addiction specialist. Ms. Huddleston worked with Dr. Baron on this definition; however, the Board of Osteopathic Examination was also required to take action and they proposed some language that this Board may also want to consider. Ms. Huddleston will present the proposed language to Dr. Baron to consider revising the definition further. Also at the July rulemaking will be the seven year rule. There is obviously now a separate need to revise the rule now that the statute has been changed to allow a physician to complete all three steps within 10 years of the first successful. The final rule to be a part of the rulemaking hearing is the rule regarding election of officers. Ms. Huddleston presented language to the Board. Dr. Johnson made a motion to approve the proposed rule for rulemaking, which was seconded by Dr. Ali. The motion passed.

The med spa rule is still in internal review.

Dr. Johnson asked whether the elections will be held before the rule become final. Ms. Huddleston said that she believes the Board can move forward with the elections before the rule becomes final.

Statistical Licensure Report

Ms. Tarr gave the statistical licensure report from March 1, 2016 – April 30, 2016. There were 105 MD applications received, 1 locum tenens application, 4 telemedicine applications, 4 special training applications, 47 medical spa registrations, 40 full MD x-ray operators, 17 limited x-ray operators. There were 137 new MD licenses, 3 telemedicine, 56 full MD x-ray operator, and 21 limited x-ray operator licenses issued. Seventy-five percent of physician licensees renewed online. There are currently 21,847 MD licensees.

OGC Report

There will be a rulemaking hearing in July. The telemedicine rules are still under review by the Attorney General's Office. The Intractable Pain Treatment rules are still under internal review. There are four cases pending. The most recent matter, Dr. Wytttenbach, was resolved with a favorable ruling for the Board. In that case, the Court of Appeals upheld the Board's revocation of Dr. Wytttenbach's license. The case was important because at issue was whether a physician can retire his or her license and eliminate the Board's jurisdiction over a pending disciplinary matter. The Court of Appeals held that the Board retains jurisdiction over a retired license.

There are 135 disciplinary complaints pending against 95 distinct respondents in the Office of General Counsel.

Ms. Huddleston referenced the Board's recent decision to increase its fees. She said that the Board is projected to close in the black for the second year since it closed with a deficit in 2014. She asked the Board whether it would like to continue with its fee increase or abandon that change given the Board's healthy financial report. Dr. Ali asked that the fee change discussion be delayed until the Board's next meeting.

Financial Report

Ms. Lisa Tittle appeared before the Board and announced that this would be her last Board meeting before retirement. Mr. Butch Jack provided the fiscal projections. Dr. Ali asked what contributed to the increased communications costs and Ms. Martin reminded the Board that a mailer went out during this time and sending a letter to every licensee costs about \$10,000. According to that report, the Board is expected to collect \$3,125,987.00 in revenue; expend \$2,692,350.61 and close with a current year net of \$433,636.39. The Board's cumulative carryover is \$3,159,047.03. The Board commended Ms. Tittle's work for the Boards over the years.

Personnel from the FSMB joined the meeting via conference call to present the Uniform Application. During and after the presentation concluded the board led a discussion regarding their concerns of upfront, outside of the available grant, and long term costs for the board and appeared to reach a consensus that there would be minimal advantages in adding the uniform application into the administrations processing.

Authorize Staff to Attend Upcoming Conference

Dr. Ali made a motion to allow Ms. Mary Katherine Bratton to attend the CTeL Spring Summit. The motion was seconded by Ms. Eller. The motion passed.

Disciplinary Orders

Shafeeq T. Sheikh, MD – was not present nor did a legal representative appear on his behalf. Ms. Paetria Morgan represented the State and presented the consent order. Dr. Sheikh's Texas medical license has been temporarily suspended for sexual assault of a female patient. The order seeks to suspend Dr. Sheikh's license. If Dr. Sheikh is found not guilty and acquitted of all charges, the suspension may be lifted upon the granting of an order of compliance. Dr. Sheikh is also ordered to pay costs not to exceed \$3,000. Dr. Ali asked that the policy statement be amended to be more reflective of the Board's recently revised mission statement. Dr. Baron made a motion to accept the order, which was seconded by Dr. Musil. The motion passed.

Ali Garatli, MD – was not present nor did a legal representative appear on his behalf. Ms. Jennifer Putnam represented the State. Dr. Garatli entered into an agreed citation for failure to complete all required CME in November 2017. Dr. Garatli did not comply with the requirements of his agreed citation and has no plans to return to practice in the United States. Accordingly, the order seeks to allow Dr. Garatli to voluntarily surrender his medical license. Ms. Yeiser made a motion to accept the order. Dr. Christiansen seconded the motion. Dr. Musil recused himself. The motion carried.

James McGuckin, MD – was not present nor did a legal representative appear on his behalf. Ms. Jennifer Putnam represented the State and presented the consent order. Dr. McGuckin entered into an agreed order with the State of Washington Department of Health wherein he agreed, after several bad outcomes, that he would not practice angioplasty and stenting procedures of the venous system for chronic cerebrospinal venous insufficiency (CCSVI) or MS patients. The order seeks to reprimand Dr. McGuckin's license and prohibit him from performing angioplasty and stenting procedures of the venous system for CCSVI or MS patients in Tennessee. Dr. McGuckin is also ordered to pay costs not to exceed \$1,000. Dr. Johnson made a motion to approve. Ms. Yeiser seconded the motion which passed.

Rose Ellen, MD – was not present nor did a legal representative appear on her behalf. Ms. Putnam represented the State and presented the consent order. Dr. Ellen's application for clinical privileges at Methodist LeBonheur was denied due to "quality concerns and poor clinical judgment." The order seeks to reprimand Dr. Ellen's license and require her completion of the Intensive Review of Internal Medicine

program sponsored by Harvard Medical School. She must also arrange for a preceptor to assist her in her practice and must pay costs not to exceed \$1,000. Ms. Yeiser made a motion to approve. Dr. Christiansen seconded the motion. Dr. Beckford recused himself. The motion passed.

Natalie Burge, PSGP – was not present nor did a legal representative appear on her behalf. Ms. Mary Katherine Bratton represented the State and presented the consent order. Ms. Burge practiced on a lapsed license for at least sixteen months on an expired license. The order seeks to reprimand Ms. Burge’s license and to assess penalties and costs in the amount of \$1,160. Dr. Baron made a motion to approve the consent order, which was seconded by Dr. Musil. The motion passed.

Cyrus Erickson, MD – was not present nor did a legal representative appear on his behalf. Ms. Huddleston represented the State and presented Dr. Cyrus’s petition for order of compliance. The State agrees that Dr. Erickson is entitled to the relief he is requesting. Dr. Baron recused himself. Dr. Blake made a motion to accept the petition which was seconded by Dr. Christiansen. The motion passed.

Venkatachalam Ayyagari, MD – was not present nor did a legal representative appear on his behalf. He is represented by Frank Scanlon. Ms. Huddleston represented the State and presented Dr. Ayyagari’s consent order. Dr. Ayyagari failed to perform a check of the CSMD, at least annually, as required by law. Additionally, Dr. Ayyagari had no written policies in place at his pain clinic regarding random drug screening. The order seeks to place Dr. Ayyagari on probation for a period of no less than 5 years; to require the surrender of his pain clinic certificate; to prohibit his future ownership or employment in a pain management clinic; and the payment of \$3,000 of penalties and costs. Dr. Beckford made a motion to approve the consent order, which was seconded by Dr. Christiansen. The motion passed.

Jatin Kadakia, MD – was not present nor did a legal representative appear on his behalf. He is represented by counsel. Dr. Kadakia arranged the meeting of a donor recipient with a donor family outside of hospital involvement. Dr. Kadakia agreed that his contact was unprofessional. The order seeks to reprimand Dr. Kadakia’s license and assess a \$100 penalty. Dr. Beckford disagreed with the reprimand and spoke in favor of a warning letter. Ms. Putnam confirmed that a reprimand will result in a NPDB report. Dr. Musil and Dr. Baron agreed with Dr. Beckford that the discipline suggested is too harsh. Dr. Musil made a motion to reject the order. Dr. Ali seconded the motion. The motion passed.

Day two of the Regular Meeting of the Tennessee Board of Medical Examiners Wednesday, May 18, 2016

The second day of the regular board meeting was called to order at 8:44 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee, by Board of Medical Examiners’ Vice President, Dr. Subhi Ali. Members present included: Dr. Michael Baron, Ms. Pat Eller, Dr. Reeves Johnson, Dr. Deborah Christiansen, Dr. Melanie Blake, Ms. Barbara Outhier, Dr. C. Allen Musil, and Ms. Nina Yeiser.

Antoinette Welch, Director of Investigations, presented the Office of Investigations disciplinary report to the board. To date there are 21 suspended medical doctors, 65 on probation, 32 board ordered and 63 revoked/surrendered. There are currently zero (0) suspended medical x-ray technicians, zero (0) on probation, one (1) board ordered and two (2) revoked. There are currently thirty (30) open complaints on pain management clinic. The board led a discussion regarding the number of complaints that must be closed out by the end of the year and the patterns regarding complaints received.

Ms. Martin referred to the advisory ruling response for Dr. Charles Leonard and sought the board's ratification on the response as presented. Ms. Martin explained the advisory ruling is necessary when an individual seeks official interpretation of the boards' rules and/or statutory requirements and the response is a collaborative response from the office of general counsel and administrative staff. Dr. Baron made a motion to approve the advisory ruling as it written. Dr. Blake seconded the motion. The motion carried. Based on this advisory ruling the board has decided revisiting the Supervisory Physicians policy should be added to the next meeting's agenda.

Ms. Martin provided an update to the Uniform Application discussion that was held during day one's meeting. She was unable to gather a concrete cost for the upgrade because there have been no discussions with the state's vendor. Based on the consensus of the Board from the day one meeting discussion she suggested we cease discussion on the Uniform Application and revisit at a later time but noted the \$25,000 grant funds would not be available at a later date. Dr. Ali spoke in favor of leaving the discussion for the future because he would be interested in having all of the details, including financial cost and benefits of the product, before voting in favor of it.

Dr. Johnson provided a review on several key points discussed at the 2016 FSMB meeting. Some of these including interstate licensure compact system, opioid abuse and physician burnout, patient safety, the electronic health system taking away from patient contact, USMLE updating step two, boards being more proactive rather than reactive and a physician's duty to report when concerning another physician. Another key issue discussed by Dr. Johnson was how the interstate licensure compact system may have physicians who have not been clinically practicing and would be granted licensure (if/when TN were to join the compact) despite the fact that our board currently requires a re-entry plan for those out of practice for two (2) years or greater.

Petition for Declaratory Order(s)

Rabin Gerrah, MD – was present and did have legal representative appear on his behalf, David Steed. Ms. Andrea Huddleston represented the State. Mr. Steed presented a case regarding the training, favorable recommendations, and specialized expertise that Dr. Gerrah obtains. Dr. Musil made a motion in favor of the declaratory order and Dr. Johnson seconded the motion. The motion carried.

Consent Order(s)

Tomasz Zurawek, MD – was not present nor did a legal representative appear on his behalf. Ms. Morgan represented the State and presented Dr. Zurawek's consent order. Dr. Zurawek failed to timely report conviction after pleading guilty to a felony charge of Solicitation and Receipt of a Kickback. Dr. Zurawek's license shall be placed on probation for three (3) years, pay a \$500 civil penalty fee, completion of a medical ethics course within one year, at the completion of probation appear before the board to request an order of compliance and pay all actual and reasonable costs of prosecuting the case. Dr. Christiansen made a motion to accept the petition which was seconded by Ms. Yeiser. Ms. Outhier abstained. The motion passed.

Ken Berry, MD – was not present and legal representative appeared late on his behalf. Dr. Ali recused himself. Ms. Mary Katherine Bratton represented the state and presented Dr. Berry's consent order. Dr. Berry's treatment files, audited by the Department, indicated prescriptions of controlled substances and other medications to patients whose files did not state medical necessity for such medications, medical decision making for such diagnoses, nor treatment plans outside of continued medication. Lastly, Dr. Berry previously prescribed controlled substances to family members. Dr. Berry shall be placed on probation for three (3) years with an encumbered license, obtain approved practice monitoring within thirty (30) days with stipulations to what his monitoring contract must include to include compliance,

periodic updates along with other stipulations in the order. Dr. Johnson motion to approve the order and Dr. Christensen seconded the motion. The motion carried with Dr. Ali's recusal.

The meeting adjourned.