



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

**Tuesday, July 21, 2015  
Wednesday, July 22, 2015**

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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 8:42 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  
Dennis Higdon, MD  
Deborah Christiansen, MD  
Neal Beckford, MD  
Pat Eller, Consumer Member  
Melanie Blake, MD  
Reeves Johnson, MD  
Nina Yeiser, Consumer Member  
Barbara Outhier, Consumer Member

Board member(s) absent: Michael Baron, MD  
C. Allen Musil, MD

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

**I. ACKNOWLEDGMENT OF NEW BOARD MEMBERS**

The Board was joined by its new members, Deborah Christiansen, MD and Melanie Blake, MD. Dr. Christiansen is a general pediatrician who has been practicing in Knoxville since 1987. For the past several years, Dr. Christiansen has had a behavior and development practice. Dr. Blake has been practicing outpatient internal medicine in Chattanooga since 2009.

The Board also acknowledged the service of Dr. Keith Lovelady, whose term on the Board recently expired. Dr. Zanolli recognized his contributions to the Board, both professionally and personally, over the past ten years.

## **II. APPROVAL OF MINUTES**

The Board was asked to consider the minutes from the May 19<sup>th</sup> and 20<sup>th</sup> regular meeting. Dr. Ali made a motion to approve the minutes, which was seconded by Dr. Beckford. Ms. Eller made a friendly amendment that the first name of the physician be included on page 8. Dr. Ali accepted the amendment. The motion passed by unanimous vote.

Drs. Ali, Higdon, Zanolli and Ms. Eller were asked to consider the May 18<sup>th</sup> Development Committee Meeting minutes. Dr. Ali made a motion to approve, which was seconded by Dr. Higdon and approved by acclamation.

Drs. Higdon and Dr. Zanolli were asked to consider the minutes from the June 16<sup>th</sup> teleconference to discuss the collaborative pharmacy practice proposed rule. Dr. Higdon made a motion to approve, which was seconded by Dr. Zanolli. The minutes were approved by acclamation.

The Board was asked to consider the minutes from the June 16<sup>th</sup> teleconference to finalize responses to telemedicine commenters and the Petitions for Declaratory Order of Dr. Donald Denmark and Dr. Muhammad Ajmal. The minutes were approved by acclamation.

## **III. APPLICANT INTERVIEWS**

### **MD X-Ray Operator Reentry Memorandum:**

The Board was asked to consider a memorandum prepared by Ms. Martin and Dr. Saunders regarding possible reentry options for MD X-Ray Operators who have been out of clinical practice for a period of two (2) years or more. This issue was discussed at the May Development Committee meeting at which time the Committee directed Dr. Saunders to work with Radiologic Education Seminars (RES) to determine what pathways were currently available to these applicants, or could be developed. Ms. Martin stated that she and Dr. Saunders spoke with RES as well as Examination Services and determined that there are four (4) reentry pathways: 1) a preceptorship; 2) reexamination; 3) didactic retraining; 4) a combination of the foregoing. The Board asked that this issue again be placed on the Development Committee's agenda. Specifically, the Committee should look at developing a policy using the memorandum as a starting point.

Dr. Ali thought that all three pathways looked reasonable and asked whether it would be possible to approve all three and allow the medical director to determine which pathway was most appropriate given an applicant's particular situation. Ms. Martin and Ms. Huddleston agreed that it would be. Dr. Zanolli noted that the Board has previously discussed approving pathways based on how long an applicant has been out of practice. Ms. Eller asked whether RES could take students back into their program. Ms. Ann Watson from RES addressed the Board and stated that it could, the problem is that the courses are offered a limited number of times per year.

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

**Fernando Fernandez** – appeared before the Board because he has not operated x-ray equipment since October 2012. According to Mr. Fernando, he was a medical doctor in Cuba until he immigrated to the US. Board Rule 0880-5-.08(3) provides that the Board may impose on applicants who have been out of practice for a period of more than two (2) years any requirements necessary to establish current levels of competency. Dr. Beckford explained that the Board has an obligation to ensure that his absence from practice does not pose a risk to patients in Tennessee. Dr. Johnson made a motion, consistent with recent precedent, to table Mr. Fernandez’s application for a period of up to six (6) months to work with the medical consultant to identify an appropriate reentry pathway. Dr. Ali seconded the motion. The Board made Mr. Fernandez aware that he may be entitled to work in the hospital setting based on his ARRT certification alone, as licensure is not required for the operation of x-ray equipment in that setting. The motion carried unanimously.

**Lorrie A. Gibson** – was asked to appear before the Board because she allowed her license to lapse in October 2012 and has been out of practice since that time. Ms. Gibson has been training with a radiologic technologist at MidSouth Family Medicine since December 2014. The Board was given a letter authored by the MidSouth office manager attesting to her remediation efforts to date. Ms. Gibson stated that she may observe and assist in the shooting of 20 chest x-rays one day and 5-6 extremity x-rays the next. She shadows a radiologic technologist (RT) under the supervision of a physician. Dr. Saunders asked the Board whether the letter confirming her activities should be authored by the physician or RT. Dr. Zanolli made a motion to license Ms. Gibson contingent on receipt and approval of a letter signed by the physician and RT attesting to Ms. Gibson’s remediation efforts. The motion was seconded by Dr. Beckford and passed by unanimous vote. Dr. Johnson sought to specify that the letter would have to be satisfactory to the medical consultant.

**Carol Kittrell** – appeared before the Board to address her absence from practice since 2012. Ms. Kittrell stated that she voluntarily left practice to care for her mother. Ms. Kittrell was in practice for approximately thirteen (13) years prior to that time. Her ARRT certification is current through August 2016. Dr. Ali made a motion to table this application for a period of up to four (4) months to allow her to work with the medical consultant to identify an appropriate reentry pathway. Dr. Zanolli asked whether (4) months instead of six (6). Dr. Ali amended his motion to specify that Ms. Kittrell would have six (6) months instead of four (4). The motion was seconded by Beckford.

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

Dr. Zanolli asked the Board to interview the applicants who were invited on account of the seven year statute out of order.

**Won Jae Huh, MD** – appeared before the Board because his examination history does not satisfy the seven year statute set out at TCA § 63-6-207(b). Dr. Huh was enrolled in a PhD program; however, he does not qualify for the PhD extension set out by rule because his MD degree was not earned from a LCME accredited program. Dr. Huh obtained his PhD in developmental biology from the University of Washington. Dr. Beckford asked Ms. Huddleston whether the rule and/or statute require that the MD and PhD degree be earned from the same institution. Ms. Huddleston replied that the rule is unclear. Dr. Beckford stated his comfort with this applicant’s qualifications, before asking Ms. Huddleston whether licensing Dr. Huh would violate the seven year statute. He added that if it would violate the seven year statute, perhaps it would be best to direct this applicant to proceed with a petition for declaratory order. Ms. Huddleston stated that that would be the best path forward. Ms. Eller spoke in favor of a petition for declaratory order. Dr. Higdon made a motion to deny the application based on the seven year statute then amended his motion to table the application to allow the candidate to consider filing a petition for declaratory order. The motion was seconded by Dr. Ali. Dr. Higdon accepted Dr. Ali’s friendly amendment to table the application for up to four (4) months. Dr. Johnson asked Ms. Huddleston whether

the seven year statute applies to R. 0880-02-.05. She confirmed that it did. Dr. Beckford called the question. The motion passed by unanimous vote.

**Maram Mallisho, MD** – appeared before the Board because she did not pass all three Steps of the USMLE within seven years of her first successful attempt. She did pass all Steps on her first attempt. Dr. Mallisho spoke at length about the personal issues that caused the delays in her examination history. The Board explained the straightforward nature of the problem: that the applicable statute requires that she pass all Steps within seven years of her first successful attempt. The Board is authorized to promulgate exceptions to the statute by rule, which they have done. Unfortunately, Dr. Mallisho does not qualify for the existing exceptions. Accordingly, the Board could not approve her application for licensure. Dr. Zanolli asked Ms. Huddleston whether there were any other exceptions which would allow Dr. Mallisho to qualify. Ms. Huddleston stated that there are none. Dr. Mallisho referenced the (d) (4) MD/PhD exception which provides: “presents a verifiable and rational explanation for the fact that he or she was unable to meet the seven year limit.” Ms. Huddleston clarified that (4) is part of the broader MD/PhD exception. In order for that provision to apply, Dr. Mallisho must also satisfy (d) (1)-(d) (3) and she does not. Dr. Mallisho was offered the opportunity to withdraw her application, which she elected to do.

**Edwin Schaumburg, MD** – appeared before the Board because his examination history does not satisfy the seven year statute set out at TCA § 63-6-207(b). Dr. Schaumburg was represented by counsel. He did pass all required Steps on his first attempt. Dr. Schaumburg was not aware of the seven year statute and specified that he took all Steps as directed by his program. He stated that he did take all Steps within seven calendar years of his first successful attempt. Ms. Huddleston read the rule into the record which states that all steps must be completed within seven years *of the date* of the first successful attempt. Dr. Schaumburg referred R. 0880-02-.05 and asked whether he would qualify on the basis of his licensure in Kentucky. Ms. Huddleston stated again that the seven year statute applies to this rule. Dr. Schaumburg asked whether he could submit a petition for declaratory order. Dr. Zanolli answered that he could. Mr. Darrel Townsend, Dr. Schaumburg’s attorney, spoke on his behalf. He suggested that one reading of the Board’s R. 0880-02-.05 is that the absence of the seven year language from the examination history portion of the rule operates as the Board’s promulgation of an exception to the statute as authorized by TCA § 63-6-207. Dr. Zanolli referred Mr. Townsend to Ms. Huddleston’s earlier remarks and stated that this matter would be best resolved by contested case. Mr. Townsend then asked the Board to consider whether the applicant’s completion of all steps within seven (7) calendar years is sufficient to satisfy this rule. Ms. Huddleston again referenced the statute which states that all steps must be completed from the date of the first successful attempt. Mr. Townsend, on behalf of Dr. Schaumburg, asked the Board to consider tabling his application for up to four (4) months to allow him to explore the possibility of filing a petition for declaratory order. Dr. Johnson made the requested motion which was seconded by Ms. Yeiser. The motion passed unanimously.

Dr. Ali requested that consideration of the seven (7) year statute be placed on the Development Committee agenda. Dr. Beckford added that he would like to see the statute amended so that this issue has permanent resolution.

**James Clement, MD** – appeared before the Board because he is a graduate of a medical school that is not currently recognized as “Board-approved” pursuant to R. 0880-02-.04(3) and existing Board policy. Dr. Johnson asked Dr. Clement whether he has plans to become board certified. Dr. Clement answered that he will be sitting for the exam soon. He also passed all steps of the USMLE on his first attempt. Dr. Zanolli explained that current Board precedent allows the Board to license applicants who are graduates of an “unapproved” international medical school if he or she passed all steps of the USMLE on his or her first attempt and is board certified. Dr. Beckford made a motion to allow the administrative office to administratively approve Dr. Clement’s application upon receipt of confirmation of successful board certification. The motion was seconded by Dr. Johnson. Ms. Martin asked whether Dr. Beckford’s

motion included an outer time limit on passage. He amended his motion to specify that board certification would have to be completed within six (6) months. The motion passed with Ms. Outhier abstaining.

Dr. Zanolli stated that this is another issue that comes up repeatedly and that the Board should attempt to “firm up.” He asked that this issue be added to the Development Committee’s agenda. He does not feel that the Board has adequate resources to accredit or approve schools. Specifically, Dr. Zanolli requested that the Board consider amending its policy to consider accreditation by bodies other than LCME, such as CAAM-HP.

**Ajitpal Dhaliwal, MD** – was originally scheduled to appear before the Board at its March 2015 meeting. He asked to reschedule his interview to the Board’s May 2015 meeting; however, he failed to attend. At that meeting, the Board made note of Dr. Dhaliwal’s unexcused absence and directed the administrative office to contact him to reschedule his application or close his application. He was notified by certified mail of the unexcused absence and told that he would not be scheduled for the July Board meeting unless and until he provided written confirmation of his attendance. Ms. Lawrence referred the Board to an email sent on Dr. Dhaliwal’s behalf on May 28<sup>th</sup>, 2015. Dr. Ali made a motion to deny which was seconded by Dr. Johnson. The motion passed unanimously and the application was denied.

**Kurtis Eaton, MD** – appeared before the Board to address the nature of and circumstances giving rise to his current monitoring with the Alabama physician’s health program (PHP). Dr. Eaton has been in touch with the Tennessee Medical Foundation (TMF). Dr. Gray with the TMF spoke on Dr. Eaton’s behalf. He explained that the monitoring in Alabama will continue with quarterly reporting to TMF. Should Dr. Eaton relapse or otherwise become uncompliant with the Alabama contract, Alabama will notify TMF. Dr. Gray said that the facts of Dr. Eaton’s previous impairment do not warrant, in his opinion, another five year or lifetime contract. Dr. Beckford asked Dr. Eaton how was able to combine his last year of medical school with his internship year. Dr. Eaton participated in an accelerated program which allowed him to combine those years. Dr. Johnson asked what he would be doing in Tennessee. Dr. Eaton will serve as the medical director for Optum, Inc. in a mostly administrative role but will also do some clinical work. Dr. Ali made a motion to approve Dr. Eaton’s application contingent upon his continued Alabama advocacy with quarterly reporting to TMF. Ms. Yeiser seconded the motion. Ms. Eller opposed the motion. All others voted in support of the motion which passed.

Ms. Eller directed the Board to page 5 of the application. She asked whether the Board should consider amending the application so that applicants disclose their participation in a monitoring program even if they are not currently engaged in the illegal use of controlled substances. Dr. Beckford agreed that it was a good suggestion. He believes that the issue could be addressed by making the subpart to question 3 an independent question and eliminating the “If yes” caveat.

**Young Ezekial-Braide, MD** – appeared before the Board on an application for a new license. His license was previously revoked. Dr. Zanolli asked him why he is back before the Board now when he has failed to comply with the conditions of the Board order. Dr. Ezekial-Braide responded that he is seeking an order of modification which is scheduled before the Board for the afternoon session. Ms. Huddleston suggested that the Board take up his application at the same time it takes up his order of modification. The Board agreed.

**Nicole Kissane, MD** – appeared before the Board to discuss her current monitoring with Massachusetts. Dr. Kissane was diagnosed with postpartum depression after the birth of her child. She underwent aggressive treatment for her condition. She voluntarily reported to the Massachusetts PHP at the urging of her colleagues. Her monitoring was primarily related to her clinical diagnosis; however, there was a substance component, since she abused alcohol during her illness. Dr. Ali asked Dr. Gray whether he

agreed with Massachusetts' three (3) year contract. Dr. Gray responded that he believed it is and it would be appropriate for Dr. Kissane to finish out her monitoring contract in Tennessee. Dr. Beckford made a motion to approve Dr. Kissane's application. Dr. Ali seconded the motion. Dr. Zanolli clarified that there is no contingency to Dr. Beckford's motion. Ms. Huddleston pointed out that Dr. Kissane has already signed a TMF contract to finish out her monitoring in Tennessee. Ms. Eller abstained and all other members voted in support of the motion.

**Paul Locus, MD** – appeared before the Board to address several malpractice suits. Dr. Locus confirmed that he has been named as a party in seven (7) malpractice suits. Dr. Ali asked in how many of those cases he has been the primary physician. Dr. Locus said he was the primary on three cases. Dr. Ali made a motion to grant an unrestricted license. Dr. Beckford seconded. The motion passed unanimously.

**Lee Magro, MD** – appeared before the Board to address his alcohol related arrests in 1999 and 2003. Dr. Magro was 23 and 27 at the time of his arrests. Dr. Zanolli asked whether there have been problems with any other substances. Dr. Magro stated that there have not been. Dr. Ali made a motion to approve Dr. Magro's application, which was seconded by Dr. Beckford. The motion passed unanimously.

**Kathleen McConnell, MD** – was invited to appear before the Board to address the nature of and circumstances giving rise to her advocacy with the Virginia health practitioner's monitoring program (HPMP). Dr. McConnell self-reported for depression and was subsequently diagnosed with substance use disorder. She currently holds two licenses: South Carolina and Virginia. Dr. Johnson made a motion for licensure contingent upon TMF advocacy. Dr. Ali seconded the motion. Dr. Johnson amended his motion to specify that the TMF advocacy should continue for five (5) years. The amendment was accepted by Dr. Ali. Ms. Eller asked whether the TMF contract would contain a limitation on her work week akin to the limitation contained in her VA contract. Dr. Gray stated that it may. The motion passed unanimously.

**Sarah Pietrangelo, MD** – appeared before the Board because she completed one (1) year of a three (3) year residency before going on maternity leave. After the birth of her daughter, she did not return to her residency and she has now been out of practice for more than two (2) years. Dr. Pietrangelo stated that it isn't possible for her to return to her residency because of her childcare responsibilities. Dr. Zanolli asked how she is planning to balance her work as a pediatrician with her childcare responsibilities. Dr. Pietrangelo responded that she plans to provide part-time volunteer care. Dr. Pietrangelo stated that she realizes that the Board is concerned about her competency and that she looked into the evaluation suggested by the medical consultant; however, the cost of the evaluation is prohibitive and the out-of-state testing somewhat burdensome given that she doesn't plan to return to full-time practice.

Dr. Pietrangelo asked whether the Board would consider that her application was submitted in January 2015, less than two (2) years from her residency. Dr. Saunders clarified that although her application and most supporting materials were submitted in January, additional information required to complete her application was not received by administrative staff until June. She added that her concerns are due to Dr. Pietrangelo having only completed one year of her residency as well as the time she has been out of practice. Dr. Christiansen pointed out that granting a license, despite her current intentions to practice in this limited capacity, will allow Dr. Pietrangelo to practice in any setting she chooses.

Dr. Beckford asked whether it would be possible for her to shadow someone in the volunteer clinic in which she is currently seeking employment. Dr. Pietrangelo thought that it would be.

Dr. Zanolli made a motion to table Dr. Pietrangelo's application until the September meeting to allow her to explore other options, such as a preceptorship. Dr. Ali seconded the motion. Ms. Martin suggested that Dr. Pietrangelo might qualify for an inactive pro bono license. Dr. Beckford voiced his concern with

that pathway, noting that if the Board has concerns about her competency, they won't be obviated by her practice being limited to a volunteer setting. The motion passed unanimously.

**William Smith, MD** – Dr. Smith appeared before the Board because he inadvertently allowed his license to expire in October of 2014 and he now seeks reinstatement. He is retired and does not provide care in Tennessee; however, he does provide international charity care and he must have a state medical license to do so. Dr. Johnson asked the applicant whether he would be willing to work with the medical consultant to determine an appropriate reentry pathway. He said that he would. Dr. Saunders pointed out that although Dr. Smith has completed a lot of CME; all of his CME was awarded by the company that he himself owns. He actually signed his own CME certificates. Dr. Johnson made a motion to table Dr. Smith's application for a period of up to six (6) months to allow him to work with Dr. Saunders to identify a reentry pathway which would satisfy the Board that he has maintained his clinical competence. Dr. Zanolli seconded the motion. Dr. Beckford added that it would probably be most helpful for him to be evaluated in anesthesiology. Dr. Higdon agreed with Dr. Beckford and recommended that Dr. Smith become recertified in anesthesiology. Dr. Smith asked what he will be asked to do. Dr. Higdon responded that Dr. Saunders will work with him to identify an appropriate pathway. The motion passed unanimously. Ms. Huddleston asked the Board to confirm that it is comfortable with the SPEX examination, if that's the pathway selected, and that they have no issues with Dr. Smith being the signatory to his own CME certificates. They were comfortable with the SPEX examination and there were no concerns about his CME certificates, given that it is approved by the ACCME.

**Lan Ta, MD** – appeared before the Board because he is a graduate of a medical school that is not currently recognized as "Board-approved" pursuant to R. 0880-02-.04(3) and existing Board policy. Dr. Ta did not pass all steps of the USMLE on his first attempt. Dr. Ta has been doing locum tenens work for the past three (3) years. He has been contacted by three hospitals in Tennessee about employment. Dr. Johnson asked about the time he took off from medical school to work at a dental clinic to pay tuition and for other reasons. Dr. Ta confirmed that he did have to work as a supervisor to pay for his tuition, which was due at the commencement of instruction and he had to take some time off to study for step 1 of the USMLE. Dr. Zanolli explained to the applicant that the Board is really unable to apply any exception to Dr. Ta's application because he doesn't qualify. Ms. Huddleston agreed and added that the Board's task is to determine whether this school meets LCME criteria, which it appears that it is unable to do at this time. Dr. Ali stated his discomfort with deviating from established precedent, which would be required in this case in order to approve Dr. Ta's application. Dr. Zanolli made a motion to deny Dr. Ta's application. Dr. Ali asked that Dr. Zanolli allow Dr. Ta to withdraw his application. Dr. Ta withdrew his application. Dr. Zanolli withdrew his motion.

**William Welder, MD** – appeared before the Board on an application for reinstatement. Dr. Welder's application reveals that he has not held a Tennessee medical license since 1998. He has been out of active clinical practice since 2007, though he has been practicing administrative medicine. Dr. Saunders also pointed out that his application raises some question as to whether he has been practicing on an expired license. Dr. Welder has just become recertified in family medicine. Dr. Welder stated that he has not provided care to any patient since he has been in Tennessee. Dr. Saunders directed the Board to the portion of Dr. Welder's application which brings this claim into question. Dr. Welder provided a satisfactory explanation to the Board regarding these activities. Ms. Huddleston added that the Board, in the past, has accepted an individual's participation in the maintenance of certification process as proof of clinical competency. Dr. Zanolli made a motion to reinstate Dr. Welder's license. Dr. Beckford seconded the motion, which passed unanimously.

**Fazal Yayha, MD** – Dr. Yahya appeared before the Board because he is a graduate of a medical school that is not currently recognized as "Board-approved" pursuant to R. 0880-02-.04(3) and existing Board policy. He did pass all three steps of the USMLE on his first attempt; however, he is not board certified.

Dr. Yayha has signed a contract with Baptist Memorial Hospital in Memphis. Dr. Johnson asked when Dr. Yayha is planning to sit for his boards. Dr. Yayha cannot take the boards until August of 2016. The Board discussed the “lists” that Dr. Yayha’s schools may or may not be on, but ultimately determined that the Board’s existing statutes, rules and policies do not permit it to grant a license at this time. Dr. Johnson summarized CAAM-HP’s accreditation of Xavier University and stated that before accreditation was granted, there were issues identified which had to remediate. Dr. Yayha stated that he has checked with his school and he is the only Xavier graduate that has sought licensure in Tennessee.

Dr. Zanolli asked whether Dr. Yayha had to take the MCAT for his medical school admission and he did not. Ms. Eller asked whether Dr. Yayha will need a license to sit for his certification examination and Dr. Johnson believes that he does. Ms. Martin reminded the Board that the Development Committee will take up this issue at the next meeting, so it’s unlikely that Dr. Yayha will have to wait until August 2016 for resolution of this issue. Ms. Huddleston added that Dr. Yayha could consult with an attorney and consider the filing of a petition for declaratory order. Dr. Zanolli made a motion to table Dr. Yayha’s application until the September meeting when the Development Committee will have an opportunity to consider this issue. Dr. Ali seconded the motion. Dr. Yayha was given an opportunity to withdraw his application, but declined to do so. The motion passed unanimously.

**Adnan Zafar, MD** – Dr. Zafar was scheduled to appear before the Board because he is a graduate of a medical school that is not currently recognized as “Board-approved” pursuant to R. 0880-02-.04(3) and existing Board policy. After listening to the interviews, he told administrative staff he would like to withdraw his application.

#### **IV. CONDUCT NEW BUSINESS**

##### Ratification of Licenses

Dr. Johnson suggested that the new, reinstated, failed-to-renew and voluntarily retired licenses for the following professions be ratified en masse:

- Medical Doctors
- MD X-ray Operators
- Genetic Counselors
- Clinical Perfusionists
- Physician Assistants
- Polysomnography

These lists were ratified.

##### Consideration of Committee Policies and other Actions

Ms. Martin asked the Board to reconsider the Committee on Physician Assistants’ (hereinafter “COPA”) revised Lapsed License Policy. She reminded the Board that they considered this revised policy in March 2015. At that time, the policy was rejected and sent back to COPA for reconsideration with the recommendation that COPA consider increasing the “per-month” penalty from \$100. COPA reconsidered this policy at its July 10, 2015 meeting and decided to increase the “per-month” penalty from \$100 to \$300. Dr. Ali made a motion to ratify the policy and Dr. Beckford seconded the motion. The motion passed with only Ms. Eller voting in opposition to the motion.

Ms. Martin asked the Board to reconsider the Committee on Clinical Perfusion’s (hereinafter “Committee”) revised Lapsed License Policy. The Board considered this policy at the same time they considered COPA’s policy. They rejected the Committee’s policy and asked that it consider increasing

the “per-month” penalty. The Committee considered the Board’s recommendation at its June 16<sup>th</sup> meeting, but ultimately determined that the \$100 “per-month” penalty was proper. Dr. Beckford made a motion to approve the policy, which was seconded by Dr. Johnson. Ms. Eller and Dr. Ali opposed the motion. All others voted in support of the motion which passed.

The Board was directed to COPA’s “Standards to Evaluate Orthopedic Physician Assistant Programs” Policy. Ms. Martin explained that COPA has jurisdiction to license physician assistants and orthopedic physician assistants. The statutes and rules specify that an OPA may qualify for license by graduated from a Board and Committee approved OPA program. There are no statutes, rules or policies identifying the criteria the Committee and Board should use in determining the adequacy of an OPA program. Accordingly, when COPA received the University of St. Augustine’s application to become a Committee approved OPA program, they considered this issue over the span of multiple meetings before they ultimately convened a taskforce of subject matter experts to identify appropriate educational and training criteria. That taskforce met on June 9<sup>th</sup> and was comprised of one PA, two OPAs, two orthopedic surgeons, one pharmacist, the Board of Medical Examiners’ consultant and representation from the Tennessee associations for PAs and OPAs. Those recommendations were used to generate this policy document which was considered, revised and adopted by COPA at its July 10<sup>th</sup> meeting.

Mary Katherine Bratton, counsel for COPA, clarified that the Board should first consider the policy document and then COPA’s determination that St. Augustine did not satisfy the policy.

Dr. Ali made a motion to approve the policy statement, which was seconded by Dr. Johnson. The motion passed unanimously.

Ms. Martin stated that the second order of business related to this item and that is the Board’s consideration of COPA’s determination that St. Augustine’s program does not meet the policy criteria. Dr. Ali made a motion to ratify COPA’s determination. Dr. Higdon seconded the motion.

Ms. Huddleston stated that in light of *North Carolina Dental Board of Examiners v. Federal Trade Commission*, the decision has been made that this action should be ratified by the Commissioner of Health.

Dr. Zanolli called the question. All voted in support of the motion.

#### COPA Rule change

Ms. Bratton summarized two rule changes that need to be authorized. First, the Committee seeks to reduce the biennial renewal fee for physician assistants from \$225 to \$175. Second, it seeks to increase the number of hours of controlled substance prescribing required biennially. Current rules require one hour of CE in prescribing practices; however, the Committee would like to require two hours of controlled substance prescribing to include instruction in the Department’s “Chronic Pain Guidelines.” The rulemaking hearing was held Friday, July 10th. Ms. Bratton stated that before the rulemaking can be sent to the attorney general’s office, the Board has to ratify COPA’s action by roll call vote.

Dr. Ali sought confirmation that the Committee has considered the financial impact of the reduction. Ms. Martin responded that this fee reduction is actually an effort to better balance the Committee’s budget by reducing the amount of its cumulative carryover.

## **V. DEPARTMENTAL REPORTS**

Follow up Report from the Office of Legislative Affairs

Ms. Valerie Nagoshiner appeared before the Board in follow up to the legislative summary provided to the Board during its May meeting. She introduced staff from the Office of Legislative Affairs before addressing public chapter 186, which was discussed during the last meeting. There was a minute clinic that was interpreting the law such that the company didn't feel that they could hire PAs, only APNs. So the PA Association sought to amend the law to clarify that the bill did not prohibit the hiring of PAs.

Ms. Nagoshiner acknowledged the Board's continued interest in public chapter 261. Dr. Zanolli asked whether the PC 261 allows telehealth to occur without the level of store-and-forward. Dr. Johnson asked specifically whether the public chapter considers a telephone call to be telehealth. Ms. Nagoshiner responded that to the extent that public chapter conflicts with the Board's work on telemedicine, the public chapter will prevail. Dr. Zanolli noted that the Board wasn't invited to participate in the process, though he believes Board members would have been valuable to the process. He volunteered the Board to be participants in the future.

Dr. Zanolli asked Ms. Nagoshiner to discuss the Board's responsibilities with respect to public chapter 494. Jeremy Davis was asked how the Department is planning to determine who is performing cosmetic medical services and has to register. Mr. Davis believes that licensees will have to self-report. Ms. Martin added that as with any bill, there is an implementation period, and the administrative office is in the midst of discussing implementation. Dr. Beckford asked whether penalties are authorized for licensees who fail to register in accordance with the public chapter. Mr. Davis answered that the legislation does not create a separate penalty; however, the Board would be authorized to take action.

Dr. Blake asked the legislative staff to address public chapter 475, specifically, Dr. Blake voiced her concern that the ABPM certifications may not be on par with the other certifications. Dr. Mutter said that part of the problem was that there were only 50-55 ABMS pain specialists to provide care to 90,000 pain patients in the state. This fact necessitated a compromise.

#### Office of Investigations Report

Ms. Moran presented the Office of Investigations' report. As of July 10<sup>th</sup>, there have been 381 complaints this year and 170 of those complaints remain open. There were 42 complaints opened against MD X-Ray operators, most of those were CME violations. There have been 19 complaints filed against pain management clinics. The Office of Investigations has completed 49 audits to date. The goal is to complete 100 audits per year. Eleven clinics were closed when the investigators arrived to conduct the random audit. Those 11 clinics failed to notify the Board that their doors had closed.

Ms. Moran also presented the disciplinary report. The Office of Investigations is currently monitoring 249 individuals, which includes debts and collections that the Office is attempting to collect on behalf of the Board. Ms. Moran hopes to have a financial report of collections to the Board at the September meeting.

#### Status Update on Rules In-Progress and to-be-Initiated

At the last Board meeting, Ms. Eller requested that a list of rules in-progress and to-be-initiated be generated. Ms. Martin directed the Board to the requested list which was provided in the agenda. The Board is directed pursuant to Public Chapter 396 to define "addiction specialist." At the May meeting, the Board directed that Dr. Baron and Dr. Musil be consulted to begin work on this definition. Ms. Martin stated that she has received initial feedback from Dr. Baron; however, she has not yet had an opportunity to discuss this matter with Dr. Musil. She believes draft work will be ready for the Board's review before the September meeting.

Public Chapter 494 also requires rulemaking to carry out the registration of medical spas and set corresponding fees. At this time, the Department is working on the technology necessary to implement this bill and initiation of the rulemaking process is premature. Ms. Martin will provide updates to the Board on this matter as they become available.

Ms. Huddleston stated that the rule change to increase fees has been subjected to the internal review process and is pending in the Governor's Office. The Governor's Office has indicated that it will wait until the fiscal office officially closes the books before it gives approval, which will be about six weeks. Dr. Zanolli pointed out that this review is not to give the rule effect, but just to authorize the rulemaking hearing and asked that the point be conveyed to the Governor's Office.

Ms. Huddleston confirmed that all responses have been sent to all commenters regarding the proposed telemedicine rule. She hopes to send the rule to the Attorney General's Office this week. The purpose of that review is to determine the rule's legality. So the discussion that transpired during Ms. Nagoshiner's presentation should be resolved by the Attorney General's Office as part of its review.

Public Chapter 26 repeals the intractable pain act. At the last meeting, Dr. Johnson was asked to work with Ms. Huddleston and Ms. Martin on the necessary amendments. The applicable rule is 0880-02-.14. Included within these rules were some general and some very specific rules about prescribing which are actually very good and are used often by the Board and the Office of General Counsel and those have been retained. The references to prescribing for pain have been deleted and language has been added to refer to the Commissioner's guidelines, which of course, are the "Chronic Pain Guidelines." Dr. Johnson summarized the group's discussion and noted that this will apply uniformly to all prescribing. Ms. Huddleston has already submitted the proposed rule to the internal review process. Dr. Higdon spoke in support of the proposed rule. Dr. Christiansen made a motion to approve the proposed rule, which was seconded by Ms. Yeiser. The motion passed unanimously.

#### Manager's Report

Ms. Martin directed the Board to the statistical report. At the May meeting, the Board was given some graphics showing licensure trends in the administrative office. Dr. Zanolli asked that those graphics continue to be presented to the Board.

#### Travel Authorizations

Ms. Martin asked the Board to authorize Dr. Saunders to attend a CPEP learning summit in November. Dr. Beckford made a motion to approve. The motion was seconded by Ms. Yeiser. The point of the summit is to gain a better understanding of CPEP's evaluation process. Ms. Eller spoke in support of the motion, which passed unanimously.

#### Request from Licensee regarding Assessment of Professional Privilege Tax

The Board was presented with a request from licensee, Dr. Barthel, to backdate her retirement so she can avoid the professional privilege tax. Ms. Martin stated that the administrative office is routinely faced with this issue and we are unable to make any changes to her retirement date. Ms. Eller made a motion to deny the request, which was seconded by Dr. Beckford. The motion passed unanimously.

#### Request to Amend Minutes

Mr. David Steed, on behalf of Dr. Nedra Jackson, submitted a request that the May 28, 2013 be amended. Specifically, Mr. Steed has requested that those minutes be amended to delete the reference to healthcare fraud. Ms. Huddleston does not have an objection to the minutes being amended; however, she pointed out that Dr. Jackson agreed to this language. Ms. Martin asked the Board to specify how they want the minutes to be amended: they can either refer readers to the Louisiana order, or they can be amended to include language from the Louisiana order. Ms. Eller spoke in favor of including the language from the

order. Dr. Beckford spoke in favor of referring to the order. Dr. Ali made a motion to amend the minutes to refer to the Louisiana order, which was seconded by Dr. Higdon and passed unanimously. Dr. Johnson voiced his concern about the letter signed by Dr. Jackson. He recommended that we issue a clarifying letter. Ms. Huddleston pointed out that the letter is essentially an informal order of the Board and it was not included in Mr. Steed's request. Dr. Ali made a motion that a confirmation letter be sent to Dr. Jackson summarizing that the minutes have been amended. Dr. Higdon seconded the motion, which passed unanimously.

#### Status Update on Public Chapter 832

Dr. Higdon stated that deliberations on this issue began in January 2015 with an administrative look at the rulemaking required pursuant to Public Chapter 832. The group has just wrapped up deliberations. Dr. Reagan agreed to act as a facilitator early on in the process, and that was extraordinarily helpful as the group had different perspectives, priorities and concerns. The Board of Pharmacy has the authority to promulgate this rule and will move forward with the current draft at a rulemaking hearing. Dr. Beckford asked what liability coverage pharmacists usually have and whether they were troubled by the requirement that they will have to carry \$1 million in coverage in order to engage in collaborative practice. Dr. Higdon responded that they did not push back. Dr. Ali believes that coverage is typically arranged by the employing entity. Dr. Zanolli applauded Dr. Higdon and Dr. Baron's efforts and noted that the workgroup convened for this purpose has now been dissolved.

Dr. Johnson asked why the group decided to "strongly encourage" ten (10) hours of CME. Dr. Higdon responded that pharmacy CME may not be available in this area. Ms. Eller asked whether pharmacists get a certificate of fitness to prescribe. Ms. Huddleston responded that they do not. They have to have a DEA number to prescribe. Dr. Higdon noted that the group agreed that controlled substance prescribing will not be permitted. Dr. Beckford asked whether the group discussed the financial aspect of this arrangement.

#### Website Change

Ms. Martin acknowledged that there has been a website change, system wide, in the past several weeks. She also acknowledged that the feedback has not been particularly positive. Ms. Eller asked to go on the record in saying that the website was especially poor and it was not very well designed.

#### OGC/Disciplinary Business

##### **Petition(s) for Order Modification:**

**Young Ezekial-Braide, MD** – appeared before the Board, with counsel, Dan Warlick, Esq., on an application to reinstate his medical license and a Petition for Order of Modification. Dr. Ezekial-Braide's medical license was revoked for violations of the medical practice act related to overprescribing. Specifically, Dr. Ezekial-Braide seeks to have his order modified so that costs are not due. Dr. Zanolli asked whether any payments have ever been made. Dr. Ezekial-Braide confirmed that he has not made any payments. Ms. Huddleston specified that the Office of Investigations routinely works with respondents to determine a suitable payment plan. Ms. Nichelle Dorroh, disciplinary coordinator, confirmed that she has reached out to Dr. Ezekial-Braide to determine a payment plan. He told her at that time that he could not afford to make payments but offered to engage in community service to discharge his debt. Ms. Eller made a motion to deny the Petition for Order Modification, which was seconded by Ms. Outhier. Dr. Beckford opposed the motion, Dr. Ali abstained, all other board members voted in support of the motion. The motion passed.

The Board, having addressed his Petition, considered Dr. Ezekial-Braide's application for a medical license. Dr. Zanolli noted that Dr. Ezekial-Braide has been out of practice for nine (9) years. Dr. Ezekial-Braide stated that he has completed a lot of CME in his absence from practice. Dr. Zanolli made a motion to deny Dr. Ezekial-Braide's application. Dr. Blake seconded the motion. Dr. Ezekial-Braide asked whether he could withdraw his application. Dr. Zanolli, having made the motion, permitted Dr. Ezekial-Braide to withdraw his application, which he did.

**Petition(s) for Declaratory Order:**

**Jennifer Brault, MD** – appeared before the Board. She is represented by counsel, Michele Marsicano, Esq., and Tom Wiseman, Esq. Dr. Brault's examination history violates the "seven year statute" (TCA § 63-6-207(b)) and she now seeks an exception to that statute. She seeks to work in Vanderbilt's Neurogenetic and Metabolism Clinic. Mr. Wiseman addressed the Board. Dr. Ess spoke in favor of licensure for Dr. Brault. He stated that there are only two physicians (including Dr. Brault) who have her training, and in his opinion, her triple residency training exceeds the PhD training for which an exception exists. Dr. Beckford made a motion to approve the Petition and set the matter for contested case, which was seconded by Dr. Ali. The motion passed unanimously.

**Nisreen Jallad, MD** – did not appear before the Board; however, her counsel, Dan Warlick, Esq., addressed the Board on her behalf. Dr. Jallad appeared before the Board in November 2014 because her examination history violates the "seven year statute" (TCA § 63-6-207). She withdrew her application at that time. He stated that Dr. Jallad passed all steps of the USMLE on her first attempt; however, due to her mother's illness, she did not sit for all steps within seven (7) years. She is board-certified in internal medicine, cardiology, nuclear cardiology, interventional cardiology and echocardiography. She has also completed two fellowships. Mr. Warlick's contention is that Dr. Jallad is an exceptionally well-qualified physician. Mr. Warlick clarified that he seeks now by petition, that Dr. Jallad be granted a license and not that this matter be referred to a contested case. Ms. Huddleston stated that the rule requires that the Board's granting of the petition will put this matter before a panel of the Board in a contested case. Dr. Higdon made a motion to approve the Petition and set the matter for contested case, which was seconded by Ms. Yeiser. Dr. Ali recused himself. The motion passed unanimously.

**Petition(s) for Order of Compliance:**

**Christopher Matthews, MD** – Dr. Matthews appeared before the Board. He was represented by counsel; however, counsel did not speak on his behalf. Ms. Huddleston appeared on behalf of the state. Dr. Matthews was disciplined in May 2012 for violations of the medical practice act related to prescribing. He now seeks to have the Board grant an order of compliance lifting his probation. Ms. Dorroh, disciplinary coordinator, provided an affidavit stating that he is entitled to the relief he seeks. Dr. Zanolli asked whether Dr. Matthews' probationary period posed any problems for him with insurance panels. Dr. Matthews responded that he has had some trouble. He also spoke to his efforts to reduce his controlled substance prescribing. Dr. Beckford made a motion to approve the petition for order of compliance which was seconded by Dr. Ali. The motion passed unanimously.

**Douglass Green, MD** – Dr. Green did not appear before the Board. He was represented by counsel; however, counsel did not appear or speak on his behalf. Ms. Huddleston appeared on behalf of the state. Dr. Green was disciplined in 2012 for violations of the medical practice act related to prescribing. He now seeks to have the Board grant an order of compliance lifting his probation. Ms. Dorroh, disciplinary coordinator, provided an affidavit stating that he is entitled to the relief he seeks. Dr. Ali made a motion to approve the petition for order of compliance which was seconded by Dr. Yeiser. The motion passed unanimously.

**Winifred Lassiter, MD** – Dr. Lassiter did not appear before the Board. He was represented by counsel; however, counsel did not speak on his behalf. Ms. Huddleston appeared on behalf of the state. Dr. Lassiter was disciplined in 2012 for violations of the medical practice act related to prescribing and dispensing of HcG. She now seeks to have the Board grant an order of compliance lifting her suspension. Ms. Dorroh, disciplinary coordinator, provided an affidavit stating that she is entitled to the relief she seeks. Ms. Yeiser made a motion to approve the petition for order of compliance which was seconded by Dr. Christiansen. The motion passed unanimously.

**Earl Lawrence, MD** – Dr. Lawrence did not appear before the Board. His petition identified counsel; however, counsel did not appear or speak on his behalf. Ms. Huddleston appeared on behalf of the state. Dr. Lawrence was disciplined in 2009 for violations of the medical practice act related to improper prescribing. He now seeks to have the Board grant an order of compliance lifting his probation. Ms. Dorroh, disciplinary coordinator, provided an affidavit stating that he is entitled to the relief he seeks. Dr. Zanolli pointed out some discrepancies in the date in the Order (in one area, November 2010 is noted; in another, November 2009). Ms. Huddleston confirmed that the National Practitioner Databank (NPDB) states that the action occurred in 2009. Dr. Ali made a motion to approve the petition for order of compliance which was seconded by Dr. Beckford. The motion passed unanimously.

**Gina Dieudonne, MD** – Ms. Huddleston invited Dr. Dieudonne to appear before the Board to hear her petition for order of modification. Ms. Huddleston could not confirm that Dr. Dieudonne received the invitation, as Ms. Huddleston did not receive a responsive communication. Dr. Ali asked that Ms. Huddleston invite her to the next meeting.

Motion to recess was made by Ms. Yeiser at 6:18 pm. The motion was seconded by Dr. Blake. The motion passed.

## **Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners Wednesday, July 22, 2015**

The second day of the regular board meeting was called to order at 8:30 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. Subhi Ali, Ms. Pat Eller, Dr. Melanie Blake, Dr. Neal Beckford, Ms. Barbara Outhier, Dr. Dennis Higdon, Dr. Reeves Johnson, Dr. Zanolli and Dr. Deborah Christiansen. Drs. Baron and Musil along with Ms. Yeiser were absent.

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

Ms. Huddleston directed the Board to the OGC Report which included information on how many cases are currently open. She also summarized a recent Chancery court decision regarding Dr. Oni. Ms. Huddleston stated that the Chancery court remanded the matter for further proceedings on the grounds that the revocation of Dr. Oni's license was improper, given that he had allowed his license to lapse. Ms. Huddleston disagrees with this holding. The attorney general's office has said in the past that the automatic revocation language in Title 63 is violative of due process and the Office of General Counsel continues to believe that the Board retains authority over expired licenses. The attorney general's office is likely to appeal this decision. Ms. Huddleston also informed the Board that its revocation of Dr. Larry Perry's license was recently upheld.

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

**James Joyner, MD** – Dr. Joyner did not appear before the Board, nor did counsel. Ms. Mollie Gass appeared on behalf of the state. This action is taken pursuant to a criminal indictment filed in the Eastern District of Tennessee. Dr. Joyner was one of several healthcare providers named in an indictment related to the sale and prescribing of controlled substances. Dr. Joyner failed to provide notice to the Department of his indictment in violation of a statutory obligation. The order acknowledges that he has retired his license; however, Dr. Joyner understands that the Board may take separate action based on the underlying facts of his indictment and/or a later conviction. There is no action being taken at this time, only an agreement that he will not reapply until such time as these issues are resolved, he is, however, required to pay costs. Ms. Eller made a motion to approve the consent order which was seconded by Dr. Johnson. The motion passed.

**Kristin Colby, PA** – Ms. Colby did not appear before the Board, nor was she represented by counsel. Ms. Hughes-Toombs appeared on behalf of the state. Ms. Colby was placed on probation in 2009 which was to run concurrently with a TnPAP monitoring contract. Her monitoring contract was suspended when she was diagnosed with a terminal illness. Ms. Colby agreed not to prescribe controlled substances while her monitoring contract was suspended; however, in 2013, information was received that she had been fraudulently writing prescriptions for herself. As a result of these violations, the Committee on Physician Assistants now seeks to revoke Ms. Colby's license, assess penalties not to exceed \$750.00 and costs. Dr. Beckford made a motion to approve the order. The motion was seconded by Dr. Blake and passed unanimously.

**Walter Blankenship, PA** – Mr. Blankenship did not appear, nor did an attorney appear on his behalf. Ms. Mary Katherine Bratton appeared on behalf of the state. This order seeks to temporarily suspend Mr. Blankenship's license pending resolution of his criminal indictment. He does not admit the facts giving rise to this indictment; however, he is prohibited from prescribing as a condition of his bond release. If Mr. Blankenship is convicted, this will be unprofessional conduct and the suspension will continue. If he's acquitted, the Committee on Physician Assistants has delegated authority to lift the suspension to the disciplinary coordinator upon verification by the Office of General Counsel that he has submitted sufficient proof of his acquittal. Dr. Ali made a motion to approve the order, which was seconded by Dr. Johnson. The motion passed unanimously.

**David Brickhouse, PA** – Mr. Brickhouse did not appear, nor did an attorney appear on his behalf. He is involved in the same criminal indictment as Dr. Joyner and Mr. Blankenship. He has agreed to the temporary suspension of his license pending resolution of his criminal indictment. He does not admit the facts giving rise to this indictment; however, he understands that should he be convicted, the conviction will prove unprofessional conduct and the suspension will continue. He, unlike Mr. Blankenship, will have to appear before the Committee on Physician Assistants to have his suspension lifted. Dr. Johnson made a motion to approve the order. Dr. Ali seconded the motion which passed unanimously. Dr. Beckford asked whether complaints were filed in these matters. Ms. Bratton responded that the statuses of complaints are confidential; however, in this particular case, the indictments brought these matters to the attention of the Office of General Counsel.

**Chris Boy, PA** – Mr. Boy did not appear, nor did an attorney appear on his behalf. Ms. Bratton appeared on behalf of the state. Mr. Boy's license was issued conditioned upon the following: 1) he could not prescribe controlled substances for a period of one year; 2) he could not work in an emergency room or pain management setting for at least one year; and 3) he was referred to TnPAP for an evaluation. Mr. Boy has complied with the first two conditions and is still under a TnPAP contract. He seeks now to have the first two restrictions lifted from his license. His monitoring is ongoing. Dr. Ali made a motion to approve which was seconded by Dr. Christiansen. The last restriction will remain. The motion was passed unanimously.

**David Luck, MD** – Dr. Luck did not appear, nor did an attorney appear on his behalf. Ms. Bratton appeared on behalf of the state. Dr. Luck prescribed controlled substances and other medications without documenting a written treatment plan and had failed to make appropriate individualized diagnosis. These acts are violative of the applicable rules and statutes. The order is a reprimand of Dr. Luck’s license and includes the requirement that he reduce his prescribing of controlled substances by thirty percent (30%). He is also required to take a prescribing and medical recordkeeping course, and he must maintain a practice monitor through Affiliated Monitors for at least three (3) years. He is fined \$3,000 in civil penalties and costs up to \$5,000. Ms. Eller asked that a report be provided to the Board about the success of the thirty percent (30%) reduction. Ms. Bratton said that such a report will be provided to the Board, by order, if Dr. Luck fails to reach that goal. The Board spoke favorably about the requirement to reduce Dr. Luck’s prescribing and asked several questions regarding how staff would determine that the goal had been reached. Dr. Ali made a motion to approve the order, which was seconded by Dr. Beckford. The motion passed unanimously.

**Agreed Order(s):**

**Travis Pardue, MD** – Dr. Pardue did not appear. Attorney Bob Kraemer appeared on Dr. Pardue’s behalf. Mr. Marc Guilford appeared on behalf of the state. Dr. Pardue was first disciplined in 2007 for improper supervision of mid-level providers. The discipline on his license wasn’t lifted until 2013; however, information was received that Dr. Pardue continued to supervise mid-levels despite the encumbrance on his license. He was also disciplined this year by agreed order for failing to obtain any CME. This agreed order seeks to revoke Dr. Pardue’s license and impose civil penalties not to exceed \$5,000 for his unauthorized supervision of mid-level providers. Mr. Kraemer addressed the Board and acknowledged that Dr. Pardue has had some substance abuse issues as well as some other medical issues and is voluntarily agreeing to remove himself from practice. Dr. Zanolli made a motion to approve the agreed order, which was seconded by Dr. Blake. The motion passed with an abstention by Dr. Johnson.

Dr. Johnson announced that this would be Mr. Guilford’s last appearance before the Board as he is relocating to South Dakota. He may be able to work remotely for a time to wrap up some of his cases.

**Agreed Citation(s):**

**Ahmad Wattad, MD** – Dr. Wattad has agreed to pay \$1,200 in civil penalties for failure to obtain twelve CME hours. Ms. Eller made a motion to approve the agreed citation, which was seconded by Dr. Higdon. Dr. Ali recused himself. The motion to ratify the agreed citation passed.

**James Grisolano, MD** – Ms. Huddleston stated that this agreed citation will be held over until the next meeting as it appears that it may contain an error.

**Michael Bible, MD** – Dr. Bible has agreed to pay \$675 in civil penalties for failure to obtain 6.75 CME hours. Dr. Higdon made a motion to approve which was seconded by Dr. Zanolli. Ms. Eller recused herself. The motion to ratify the agreed citation passed.

**II. Contested Case(s):**

*State of Tennessee Board of Medical Examiners v. Allen Hamilton, MD*

## **Iris Room**

**Administrative Law Judge:** Thomas Stovall  
**Panelists:** Melanie Blake, MD; W. Reeves Johnson, MD; Ms. Pat Eller  
**Counsel for State:** Francine Baca-Chavez, Esq.  
**Respondent:** Allen Hamilton, MD  
**Counsel for Respondent:** Chris Kaufman, Esq.

This matter was scheduled for a contested case hearing; however, prior to commencement of the hearing, the State and Respondent entered into negotiations which resulted in a settlement of the case.

The facts giving rise to this matter are as follows. Dr. Hamilton was the sole owner of Centennial Pediatrics, which at the time in question, was the largest pediatric practice in the state. On or about November 13<sup>th</sup>, Dr. Hamilton pled guilty to a misdemeanor count of healthcare fraud. Dr. Hamilton billed for comprehensive testing when lesser testing was completed. He has paid approximately \$1.6 million in penalties in accordance with the False Claims Act. He has been excluded from participating in all federal health care programs for twenty (20) years.

The Department now seeks to suspend Dr. Hamilton's license for a period of ninety (90) days effective thirty (30) days from today (July 22, 2015). The delay in the effective date of this order is to allow Dr. Hamilton to make arrangements for his patients' continued care. During Dr. Hamilton's suspension, he must complete an ethics course relating to billing practices which must be approved by the Board's consultant. Following the suspension, he must obtain a monitoring contract, which will also be subject to approval by the Board's consultant. Before the suspension can be lifted, he must appear before the Board. At the termination of his suspension, Dr. Hamilton's license will be subject to probation for a period of five years and he will be subject to ongoing monitoring.

After the facts were read into the record and the order summarized, the Board requested a few minutes to review the Agreed Order.

After discussion of the order, Ms. Eller made a motion to accept the agreed order. The motion was seconded by Dr. Blake. There was a roll call vote. All panelists voted in support of the motion, which passed unanimously.

## ***State of Tennessee Board of Medical Examiners v. William Kincaid, MD*** **Poplar Room**

**Administrative Law Judge:** D. Kim Summers  
**Panelists:** Subhi Ali, MD; Barbara Outhier; Neal Beckford, MD  
**Counsel for State:** Jennifer Putnam, Esq.  
**Respondent:** William Kincaid, MD  
**Counsel for Respondent:** Guy W. Blackwell, Esq.

The facts giving rise to this case are as follows. Dr. Kincaid was president, majority owner and managing partner of McLeod Cancer and Blood Center. On or about September 2007, McLeod Cancer began purchasing assorted chemotherapy drugs from Quality Specialty Products ("QSP"), a Canadian business. Intermittently, from September 2007 through February 2012, McLeod Cancer knowingly and intentionally purchased over \$2 million dollars in misbranded, unapproved drugs which were billed to Medicare, TennCare and other health benefit programs. On December 11, 2012, Dr. Kincaid pled guilty

in US District Court one count of receiving in interstate commerce a misbranded drug with intent to defraud or mislead.

The Department now seeks to revoke the license of Dr. Kincaid effective immediately. Additionally, Dr. Kincaid must pay the actual and reasonable costs not to exceed \$3,000. Dr. Ali made a motion to revoke Dr. Kincaid's license, which was seconded by Ms. Outhier. There was a roll call vote on the motion. Dr. Ali and Ms. Outhier voted aye, with Dr. Beckford voting nay. All other terms and provisions of the final order were adopted unanimously.

***State of Tennessee Board of Medical Examiners v. Andrew Okpaleke, MD***  
**Poplar Room**

**Administrative Law Judge:** D. Kim Summers  
**Panelists:** Subhi Ali, MD; Barbara Outhier; Neal Beckford, MD  
**Counsel for State:** Jennifer Putnam, Esq.  
**Respondent:** Andrew Okpaleke, MD  
**Counsel for Respondent:** None

This matter was scheduled for a contested case hearing; however, respondent did not appear, nor did counsel appear on his behalf. Consequently, the State made a motion to proceed in default.

The facts giving rise to this case are as follows. In September 2013, Dr. Okpaleke entered into a consent order for the following violations of law: Dr. Okpaleke changed his pain clinic location without notifying the Department or obtaining a new certificate, accepted cash as payment, failed to utilize drug screens and pill counts and maintain records that failed to show adequate medical justification for the amounts, combinations and durations for the prescriptions. One of the terms of Dr. Okpaleke's consent order was to engage a practice monitor through Affiliated Monitors, Inc. On or about July 2014, the Department was notified that Affiliated Monitors had terminated their relationship with Dr. Okpaleke for noncompliance with the terms of their agreement.

The Department now seeks to revoke Dr. Okpaleke's medical license. Additionally, Dr. Okpaleke must be the remaining balance of the civil penalties assessed to him in 2013 as well as costs not to exceed \$3,000.

After the panel's consideration of the final order, there was a roll call vote. All terms and provisions of the final order were adopted unanimously.

**Uma Shastri, MD**  
**Petition for Declaratory Order**  
**Mockingbird Room**

**Judge:** Rob Wilson  
**Panelists:** Dennis Higdon, MD; Deborah Christiansen, MD; Michael Zanolli, MD  
**Counsel for State:** Andrea Huddleston, Esq.  
**Petitioner:** Uma Shastri, MD  
**Counsel for Petitioner:** Gail Vaughn Ashworth, Esq.  
Michele T. Mariscano, Esq.

Dr. Shastri seeks a declaratory order issuing a full and unrestricted license to practice medicine in the state of Tennessee. She alleges that her training exceeds the requirements of TENN. COMP. R. & REGS. 0880-02-.03(3) and TENN. CODE ANN. § 63-3-207(a) (1) (C).

Dr. Higdon moved to adopt the findings of facts, as amended, in the Petitioner's proposed order. Dr. Christiansen seconded. The motion passed unanimously.

Dr. Christiansen moved to adopt Petitioner's conclusion of law. Dr. Higdon seconded and the motion passed unanimously.

Dr. Christiansen moved to adopt the policy statement as amended. Dr. Higdon seconded the motion which passed unanimously.

Dr. Zanolli made a motion to grant the petition and grant an unrestricted license. Dr. Christiansen seconded the motion, which passed unanimously.

**Muhammad Ajmal, MD  
Petition for Declaratory Order  
Mockingbird Room**

**Judge:** Rob Wilson  
**Panelists:** Dennis Higdon, MD; Deborah Christiansen, MD; Michael Zanolli, MD  
**Counsel for State:** Andrea Huddleston, Esq.  
**Petitioner:** Muhammad Ajmal, MD  
**Counsel for Petitioner:** Frank Scanlon, Esq.

Dr. Ajmal seeks a declaratory order issuing a full and unrestricted license to practice medicine in the state of Tennessee pursuant to TENN. CODE ANN. § 63-6-209(b). Dr. Ajmal has not completed a three year residency in the US as required by TENN. CODE ANN. § 63-6-207(a) (2) (F).

Dr. Higdon moved to deny the petition. Dr. Christiansen seconded the motion which passed unanimously.

Dr. Higdon moved to adopt the findings of fact as amended from the Department's order. Dr. Christiansen seconded the motion. The motion passed unanimously.

Dr. Higdon moved to adopt the policy statement as amended. Dr. Christiansen seconded the motion which passed unanimously.