



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

**Tuesday, January 22, 2019
Wednesday, January 23, 2019**

MINUTES

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:46 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Reeves Johnson, Board President.

Board members present: Reeves Johnson, MD, President
Melanie Blake, MD, Vice President
Subhi Ali, MD
Michael Zanolli, MD
Deborah Christiansen, MD
Phyllis Miller, MD
Julianne Cole, Consumer Member
Robert Ellis, Consumer Member
Jennifer Claxton, Consumer Member

Board member(s) absent: Charles Handorf, MD, Secretary
Neal Beckford, MD
John Hale, MD

Staff present: Mary K. Bratton, JD, Chief Deputy General Counsel
Rene Saunders, MD, Medical Consultant, BME
Angela Lawrence, BME Executive Director
Candyce Waszmer, Administrative Director
Tammy Hulsey, Board Administrator

I. CONSIDERATION OF APPLICATIONS

Medical X-Ray Operator Applicant Interview(s):

Paul Demling, AMDX – appeared before the Board without legal representation. Mr. Demling appeared due to his Florida Radiologic Technology license being relinquished under a disciplinary order from the Florida Department of Health. Mr. Demling reported, in 2005 a DUI misdemeanor led to the Florida

license relinquishment. Dr. Rene Saunders informed the Board that he did not initially attest to the Florida license relinquishment on his application. Mr. Demling explained his practice intentions in Tennessee and discussed the 2005 matter before the Board. Dr. Michael Zanolli motioned to grant unrestricted licensure. Dr. Deborah Christiansen seconded the motion and it passed.

Medical Doctor Applicant Interview(s):

Charles LeMaistre, MD – appeared before the Board without legal representation. Dr. LeMaistre allowed his Tennessee license to expire in January 2018. He has been employed by Sarah Cannon Center since 2012 as a Physician Administrator. He continued to perform his job duties after the license lapsed. Dr. Saunders reports it is not clear whether his job description suggests an absence from clinical practice requiring remediation prior to license reinstatement or practicing on a lapsed license requiring an Agreed Citation prior to reinstatement of this license. Dr. LeMaistre provided the Board and staff with additional materials for his application. He expressed he has not clinically practiced in four (4) years and he does not need a full medical license to perform his job duties. Dr. LeMaistre reports he would be willing to accept an Administrative License. Dr. Christiansen motioned to approve the applicant for an administrative license and Dr. Melanie Blake seconded the motion. The motion passed.

Dr. Phyllis Miller joined the meeting.

Medical X-Ray Operator Applicant Interview(s):

Patricia Wieck, MDX – appeared before the Board without legal representation. Ms. Wieck appeared due to not attending an approved educational program for limited education per Tenn. Comp. Rules & Regs.0880-5-.05. She has attended a two (2) year program for Radiologic Technology but is not ARRT certified thus she does not qualify for a full scope x-ray operator license either. Ms. Wieck does not hold a license in another state therefore she cannot apply for licensure through reciprocity. Ms. Wieck reports it will cost her two thousand dollars (\$2,000.00) in order to attend the twelve (12) day approved limited educational program. Ms. Wieck presented the Board with an overview of her x-ray practice history, since 1980, but indicates she has not performed x-rays in the most recent four (4) years. The Board discussed the need for Ms. Wieck to complete a preceptorship due to her time out of practice. The Board discussed the possibility for Ms. Wieck to petition for a declaratory order or for her complete an approved limited educational program. Dr. Zanolli motioned to table her application for up to six (6) months to allow Ms. Wieck to decide how she wishes to proceed. Dr. Ali seconded the motion and it passed.

Jayshree Pather-Townsend, MDX – appeared before the Board without legal representation. Ms. Pather-Townsend appeared because she is unable to provide a Physician Statement of Clinical Experience attesting to her proficiency in clinical imaging during training. She graduated from Vatterott Educational Centers prior to their loss of Board approval. Ms. Pather-Townsend has never practiced independently as an X-ray Operator. Ms. Pather-Townsend discussed her unsuccessful attempts to obtain the Physician Statement. Dr. Miller suggested the Board staff could try to contact the physician and request the physician statement, since the applicant is unable to get a hold of the physician. Mr. Ellis motioned to table this application for up to four (4) months to allow time for the applicant and administrative staff to get ahold of the physician to complete the statement of clinical experience. Dr. Blake seconded the motion and it passed.

Dr. Blake stated in the future, it should be allowed for staff to go ahead and send a letter, requesting the Physician Statement, to the physician prior to the applicant having to appear before the Board. It is assumed that the applicant may not have recent contact information on the physician but the Board staff may have updated contact information. The Board members agreed that administrative staff can make the decision to send such a letter at their own discretion.

Medical Doctor Applicant Interview(s):

Vinay Hosuru-Siddappa, MD – appeared before the Board without legal representation. Dr. Hosuru-Siddappa is an international medical school graduate who has not completed a three (3) year U.S. residency in one (1) discipline and is not currently American Board of Medical Specialties (hereinafter “ABMS”) Board Certified. He is not currently eligible for Board Certification and does not hold a full medical license in any state. Dr. Hosuru-Siddappa presented an overview of his training history and reports it will take him about five (5) years before he is Board eligible. The Board led a discussion on how the applicant does not qualify for licensure but he could petition for a declaratory order. Dr. Ali motioned to table this application for up to six (6) months to give the applicant time to consider whether or not he would like to petition for a declaratory order. Dr. Miller seconded the motion. The motion passed with Dr. Zanolli opposed and Dr. Christiansen abstained.

Otis Anderson, MD – appeared before the Board without legal representation. Dr. Anderson was fined by the Tennessee Board of Medical Examiners for practicing medicine without a license in 2011. He was reprimanded by the Mississippi Medical Board by reciprocal action in 2012. He has been practicing in Mississippi since completion of his Residency. His license to practice medicine in Mississippi was suspended by the Mississippi Medical Board in November 2018 and is effective January 2019. The Board reviewed the Mississippi consent order which indicates his suspension in Mississippi could be lifted on April 1, 2019 and he would subsequently be on probation for one (1) year after the suspension is lifted. Dr. Zanolli motioned to deny the application due to their being a suspension on his Mississippi license and suggested the applicant could consider applying for licensure once the Mississippi matter is resolved. Dr. Blake seconded the motion. Dr. Johnson offered the applicant the opportunity to withdraw his application before the motion was voted on, as the motion on the table would result in a report to the National Practitioner Databank (hereinafter “NPDB”). Dr. Anderson chose to withdraw his application.

APPROVAL OF MINUTES

The Board reviewed the November 13 – 14, 2018 regular Board meeting minutes. Dr. Christiansen motioned to approve the minutes. Mr. Ellis seconded the motion and it carried.

RATIFICATION OF NEW & REINSTATED LICENSES

The Board reviewed the lists of medical doctors, physician assistants, and polysomnography licenses approved since the last Board meeting. Dr. Blake motioned to ratify the lists and Dr. Miller seconded. The motion passed. Dr. Saunders reported she was uncertain if one of the licensees listed on the medical doctor list should be licensed based on her recall of the review of the file. The motion was rescinded to allow time for this matter to be cleared.

Medical Doctor Applicant Interview(s):

Mila Riehl, MD – was not present and her application was not discussed.

Robert Windsor, MD – appeared before the Board with legal representation from Mr. Street. Dr. Windsor retired his Tennessee medical license in May of 2016 and has been out of clinical practice since June 2016. It was during this time that he was convicted of medical billing fraud and incarcerated. He also has a Medicaid/Medicare exclusion action (not disclosed by applicant). He has had multiple medical board licensing actions due to the charges that led to his incarceration, including action in Tennessee. Dr. Windsor presented the Board with a synopsis of the events leading up to his conviction. Dr. Zanolli questioned if Dr. Windsor has had any issues with other Boards regarding the practice of medicine. Dr. Saunders reported the other state orders do not specifically state there was an issue with patient care but it

cannot be answered if patients were at harm. Dr. Blake motioned to deny the application and Dr. Christiansen seconded the motion. Dr. Zanolli stated as a minimum component towards a path to licensure, Dr. Windsor would have to complete some form of re-entry due to being out of clinical practice. Dr. Blake stated clearing other state board actions and completing federal probation would be other components towards a path to licensure.

Ms. Bratton proposed tabling the application could be an option if the Board would be satisfied with Dr. Windsor getting his Georgia medical license in good standing next month, as he previously discussed, and then for him to work towards completing a re-entry pathway. Dr. Christiansen and Dr. Zanolli indicate that the Georgia Medical Boards decision would be of interest to this Board considering he has an application in process with Georgia and he previously voluntarily surrendered his Georgia license. Dr. Ali discussed the opportunity for him to withdraw his application before the motion was voted on.

Dr. Zanolli motioned to table the application up to six (6) months to permit time to receive the Georgia Medical Board licensure decision. This motion to table takes precedence over the motion to deny. Dr. Ali seconded the motion. Dr. Christiansen said that even with the Georgia Board decision there is still the matter of re-entry and federal probation that would need to be resolved. Dr. Windsor reports his last clinical practice, with an active license in a state, was March of 2017. Dr. Johnson questioned if Dr. Windsor would fit the re-entry need due to applying for reinstatement of licensure while being out of clinical practice for less than two (2) years. Dr. Windsor explained his duties from June 2016 to March 2017. Dr. Zanolli leaned towards this not being acceptable proof of clinical practice and that he would still like to see the applicant complete some form of remediation, possibly for six (6) months. Dr. Johnson suggested the applicant receive the Georgia Medical Board licensure decision and with that information the Board could reconsider the application. It was noted that the information from Georgia will not guarantee licensure in Tennessee.

The motion passed with Dr. Blake opposed.

Discuss and Consider Rules Regarding Inactive Licensure

Ms. Angela Lawrence presented an overview of the current Board rules regarding inactive licensure and a comparison between a licensee choosing to inactivate or voluntarily retire their Tennessee medical license. The Board and staff led a discussion on whether or not there is a benefit of the inactive licensure status. Ms. Bratton reported the Board would need to vote on removing the rules pertaining to issuance of inactive licensure if that is the pleasure of the Board. There are currently forty-three (43) licensees in an inactive status. Dr. Johnson motioned to eliminate the inactive licensure status, move this to a rule making hearing and those currently in inactive status will be given until their current expiration to reinstate or voluntarily retire their license. Dr. Johnson stated when the rule making hearing is scheduled we could notify those individuals who currently hold an inactive license. The motion was seconded by Mr. Ellis. Given that those in an inactive status have been regularly paying to renew that status every two (2) years, Dr. Christiansen suggested the fee be waived for those who wish to reinstate their license. The motion passed.

Ms. Jennifer Claxton joined the meeting.

Quiz Time Project update from Dr. David Reagan, Chief Medical Officer of the Dept. of Health

This project is attempting to make on-going continuing education around opioids, the proper clinical use of opioids and an understanding of substance use disorder more accessible. This project is a collaboration of the Department of Health, Vanderbilt and a 501(c)(3) called One Tennessee. This is about healthcare trying to respond to the opioid epidemic with one voice. This project was funded by the Center for Disease Control beginning in September 2018. The goal of this project is to use a smart phone app called Quiz Time to deliver one text message per day once a clinician has signed up. Continuing medical

education (hereinafter “CME”) credit would be earned for answering the questions correctly. If a user answers a question incorrectly then instructional information is sent to the user about the question and answer.

There are nine (9) quizzes ready for the pilot project. This project should launch in early February. He expressed they are looking for about 30-50 physicians whom are interested in participating in the pilot project. This project will be two weeks long with one question a day. The participants will be e-mailed instructions on how to register and the questions will begin arriving the next day.

The goal would be to develop questions and/or quizzes that would allow physicians to obtain CME credit that would satisfy the Boards TN specific prescribing CME requirement. A long term goal may be to use the app to push news notifications out to users pertaining to important matters relating to their practice.

ACCME Pilot Project update by Dr. Michael Zanolli

Dr. Zanolli provided the following update on the ACCME pilot project:

- The North Carolina Medical Board has joined the pilot project
- CME data collection has begun and is on-going
- This project is open to all CME providers, not just those providing CME’s on opioids
- This data collection will serve as a means of CME tracking and allow relief from physicians in having to save their paper certificate copies
- A future goal of this project is to be able to monitor the data and provide alerts to physician’s when he/she is short on CME requirements prior to when their CME’s should be completed. This would allow for a proactive approach compared to the current reactive approach of citing physicians for non-compliance after becoming aware they were deficient in their CMEs past the required time of completion.

IMLCC update by Dr. Michael Zanolli, as the Boards’ IMLCC representative

Dr. Zanolli provided the following update on the Interstate Medical Licensure Compact Commission:

- IMLCC applications will be received in our office as of January 31st, 2019.
- Since its inception, in late 2017, four thousand five hundred and eleven (4,511) licenses have been issued through the compact; twenty-seven (27) medical boards are now participating in twenty-five (25) states to include D.C. and Guam.
- There are more states which will likely be joining the compact after this year’s legislative session.

Discuss and consider Board approval of TN specific prescribing CME

Ms. Lawrence informed the Board that the office frequently receives requests to approve the Tennessee prescribing CME offered from different entities. Ms. Lawrence questioned if the Board is interested in creating a process for reviewing and approving these courses.

Dr. Mutter reported if the course covers the Tennessee Rules & Regulations and instruction on the Tennessee Chronic Pain Guidelines then that meets the requirement. The rest of the course instruction can be decided up to the course provider. Ms. Bratton advised the Board that they can leave it up to the course provider to provide instruction on the Tennessee Chronic Pain Guidelines and in turn accept the providers’ attestation that it meets the Boards’ standards or the Board can entertain a means for approving these courses.

Dr. Zanolli spoke against having a list of approved courses because the list would frequently be changing. He proposed staff should continue looking for the attestation from the CME provider to determine if the course is accepted or not. When we receive phone calls from course providers to approve their course, staff directs the caller to the rules and guidelines to make their own determination. The consensus of the

Board is that the Board and staff should continue without providing course approval and accepting the course providers' attestation.

Update to APP Taskforce Meeting by Dr. Blake

The Board reviewed the amended draft rules and Dr. Blake, chair of the APP Taskforce, discussed the revisions the taskforce have made on the rules governing the utilization and supervision of the services of a nurse practitioner/prescription writer.

- Dr. Zanolli spoke in favor of the physician reviewing and signing off on all new patient charts.
- The Board questioned why a physician would receive the charts in ten (10) days but not sign off on the chart(s) until up to thirty (30) days. Dr. Blake suggested the language be changed to require the charts be reviewed and signed within thirty (30) days. There was a consensus of the Board that the suggested change is best.
- The Board discussed favoring the requirement of an on-site visit with supervisees every ninety (90) days. Dr. Mutter questioned the Board on how the on-site visits would affect those practicing telemedicine. Dr. Zanolli noted that the on-site visit requirement is still necessary even in matters of telemedicine. Ms. Bratton discussed the scenario where there are multiple physicians supervising one (1) advanced practice professional and the conundrum that presents when determining which physician or if all physicians are responsible for the site visits.
- The Board and staff led a discussion on quickly supervisors and/or supervisees update their supervisory relationships with the Board and how timely those notifications are processed. There was a consensus of the Board to require the physician and nurse practitioner to be equally responsible of notifying the Board in regards to a supervisory relationship change.

Dr. Blake requested the Boards permission for the APP Taskforce to begin meeting with members from the Nursing Board and Physician Assistant Committee. Ms. Bratton suggested there would be a separate taskforce created with members from each board/committee and the member(s) which represent this Board will bring forth the Boards position which has been outlined in the draft rules. Dr. Johnson left the decision to the APP Taskforce as to which member(s) of that taskforce would represent the BME on the new taskforce.

Petition for Order of Compliance

Charles Harris, MD – appeared before the Board with legal representation by Mr. Jed Roebuck. Ms. Mary Katherine Bratton represented the State. Ms. Bratton outlined the consent order, effective July 23, 2014, which placed the Respondents license on probation for four (4) years. The State has no opposition on this petition for order of compliance. Dr. Zanolli motioned to accept the order of compliance. Dr. Ali seconded the motion. Dr. Miller and Dr. Blake recused. The motion passed.

Agreed Citation(s)

The continuing education related agreed citations were previously distributed to the Board for review. Dr. Christiansen motioned to ratify the agreed citations as a whole. Dr. Blake seconded the motion and it passed. This pertains to Dr. Albert Bean: License # 30591, Dr. Dan Shell: License # 13349 , Dr. Miranda Moretz: License # 46195, Dr. Neil Kooy: License # 20713, Dr. Toni Tubb: License # 34762 and Dr. Yanco Gavrizi: License # 29299.

The lapsed license related agreed citations were previously distributed to the Board for review. Dr. Christiansen motioned to ratify the agreed citations as a whole. Mr. Ellis seconded the motion and it passed. This pertains to Kizzie Wallace: License # 6359, Marygayle Alley: License # 9370, Nichole Whitehead: License # 8341 and Toni Jones: License #9435.

Ratification of New & Reinstated Licenses

Dr. Saunders reported the name that caught her eye was an applicant whom was issued an administrative license and it is appropriate for this name and license to be displayed on the ratification report. The Board reviewed the lists of medical doctors, physician assistants, and polysomnography licenses approved since the last Board meeting. Dr. Christiansen motioned to approve the lists and Dr. Zanolli seconded the motion. The motion passed.

March Agenda Item Request

Dr. Blake requested ketamine clinics and how they are regulated in the State be added to the next meeting agenda.

Consideration to send Board members and Board staff to the upcoming FSMB meeting

Dr. Christiansen motioned for approval to send two (2) attorneys, two (2) staff members, two (2) board members, and for Dr. Johnson to serve as the delegate of the Board. Dr. Ali seconded and it passed.

Consent Order(s)

Shanna G. Bailey, MDX – did not appear before the Board nor did legal representation appear on her behalf. Mr. Peyton Smith represented the State. Respondent had been licensed on November 8, 2005 and has a current expiration date of August 31, 2019. Respondent practiced on a lapsed x-ray operator license from September 2005 until November 2017. The facts stipulated are grounds for discipline. This order shall reprimand the Respondents license effective the date of entry of this order. The Respondent must pay twenty-six (26) Type “C” Civil Penalties for a total of two thousand six hundred dollars (\$2,600.00). Respondent must also pay all actual and reasonable costs of the case not to exceed one thousand dollars (\$1,000.00). Dr. Christiansen motioned to accept this order and Ms. Claxton seconded the motion. The motion carried.

Jessica L. Rudd, MDX – did not appear before the Board nor did legal representation appear on her behalf. Mr. Peyton Smith represented the State. Respondent had been licensed on November 4, 2015 and has a current expiration date of January 31, 2021. Respondent practiced on a lapsed x-ray operator license from February 1, 2017 until January 1, 2018. The facts stipulated are grounds for discipline. This order shall reprimand the Respondents license effective the date of entry of this order. The Respondent must pay nine (9) Type “C” Civil Penalties for a total of nine hundred dollars (\$900.00). Respondent must also pay all actual and reasonable costs of the case not to exceed one thousand dollars (\$1,000.00). Dr. Christiansen motioned to accept this order. Dr. Miller seconded the motion and it passed.

ADMINISTRATIVE OFFICE REPORTS

The Board reviewed the statistical licensing report for the time period of October 31st through December 31, 2018.

New Applications Received

- Medical Doctors - 326
- Locum Tenens - 8
- Special Training - 1
- Single Purpose - 2
- St. Jude - 0
- Medical Spas - 16
- MD X-Ray Operator (Full) - 77
- MD X-Ray Operator (Limited) - 8

Total Number of Reinstatements

- Medical Doctors - 33

- MD X-Ray Operator - 25

Total New Licenses Issued

- Medical Doctors - 408
- Administrative - 5
- Locum Tenens - 12
- Temporary International Medical Graduate - 1
- Telemedicine - 0
- Special Training - 3
- Single Purpose - 1
- St. Jude - 0
- MD X-Ray Operator (Full) - 86
- MD X-Ray Operator (Limited) - 13

Total Number Failed to Renew – 218

Total Number of Retired Licenses – 98

Total number of active licensees as of December 31, 2018 is 22,843.

Total number of active licensees as of December 31, 2018 with a Tennessee mailing address is 16,868.

Total number of Telemedicine License – 333

Total number of Special Training License – 73

Total number of Active Physician Assistants – 2,405, Orthopedic Physician Assistant – 15

Total number of Active X-Ray Operators – Full – 2,728 Limited – 1,170

Total number of Active Perfusionists – 141

Total number of Active Acupuncturists – 173; Acupuncture Detoxification Specialists – 53

Total number of Active Radiologist Assistants – 17

Total number of Office Based Surgery licensed – 16

Total number of Active Genetic Counselors – 189

Total number of Active Polysomnographers – 533

Continuing Education Agreed Citation Follow-up

At the Boards last meeting, Dr. Zanolli requested a follow-up on the number of Agreed Citations issued for violation of the two (2) hour prescribing course. Ms. Lawrence reports there are none due to the thirty (30) day grace period approved by the Board at their January 2017 meeting. At that meeting, the Board approved staff to allow licensees non-compliant in their CME, by five (5) hours, to have thirty (30) additional days to complete the CME requirement. At this point, the only continuing education agreed citations coming before the Board are those that did not abide by the thirty (30) day grace period or were deficient more than five (5) CME hours. Dr. Zanolli observed that the Boards action to provide such a grace period shows a favorable result because when given an additional thirty (30) days licensees are complying with the requirement.

Review of Limited Scope Examination Pass Rates

Each limited educational program is required to submit for re-approval every two (2) years. Previously, the Board had to deny re-approval to Vatterott due to their exam passing scores not meeting the Boards requirements. The Board reviewed the exam pass rates from July 1, 2018 through December 31, 2018 for Radiology Education Seminars, Vatterott and X-Ray Instructional Programs. The Board has not been provided these results in the past, prior to each programs re-approval request, but the intent of this review is to identify any concerns for which the Board may wish to notify the program about. Perhaps with an alert the program would have time to correct the matter before it becomes an issue during their request for re-approval. The Board reviewed the material presented and did not discuss whether or not concerns were

identified. Dr. Johnson requested, if possible, for the report to be clearer in whether or not each individual passed or failed the exam.

FINANCIAL REPORT

Ms. Lawrence reported, Ms. Noranda French, with the Bureau Office, does not have an updated financial report for this Board meeting. Based on the Boards previous request for a civil penalty ratio, a handout was provided to the Board. With the information provided it was not clear as to how many cases were involved with the civil penalties collected.

LORI LEONARD, REPORT FROM THE OFFICE OF INVESTIGATIONS

Ms. Leonard presented the following information to the Board:

- Seven hundred and seventy-one (771) new medical doctor complaints opened year-to-date
 - One (1) on abuse/neglect
 - Twelve (12) on falsification of records
 - Seven (7) on fraud or false billing
 - Seven (7) on drugs
 - Eight (8) on sexual misconduct
 - Ninety-five (95) on actions by another state
 - Seven (7) for criminal charges
 - Two hundred and seventeen (217) for malpractice/negligence
 - Four (4) for unlicensed practice
 - Two hundred and forty-five (245) for unprofessional conduct
 - Twelve (12) for violation of a board order
 - Forty (40) for medical record requests
 - Sixty-two (62) for over prescribing
 - Three (3) for lapsed license
 - Twenty-two (22) for failure to supervise
 - Seven (7) for criminal conviction
 - Four (4) for right to know violation
 - Five (5) for mental impairment
 - Two (2) for drug diversion
 - One (1) for practicing beyond the scope
 - Eight (8) for prescribing to friends and family
 - One (1) for CME violation
 - One (1) for other
- Seven hundred and thirty (730) medical doctor complaints closed year-to-date
 - Thirteen (13) were closed due to insufficient evidence to discipline
 - Seventy-five (75) medical doctor complaints were closed and sent to the Office of General Counsel for discipline
 - Five hundred and nineteen (519) medical doctor complaints were closed with no actions
 - Seven (7) medical doctor complaints closed with a letter of concern
 - One hundred and fifteen (115) medical doctor complaints closed with a letter of warning
 - Three hundred and twenty (320) medical doctor complaints currently open being investigated or reviewed
- Fourteen (14) new x-ray operator complaints opened year-to-date
 - One (1) for drugs
 - Three (3) for unlicensed practice
 - One (1) for unprofessional conduct
 - Nine (9) for lapsed license

- Twenty-two (22) x-ray operator complaints closed year-to-date
 - Eleven (11) x-ray operator complaints were closed and sent to the Office of General Counsel for discipline
 - Five (5) x-ray operator complaints were closed with no actions
 - Six (6) x-ray operator complaints closed with a letter of concern
 - Seven (7) x-ray operator complaints currently open being investigated or reviewed

Currently in the Office of Investigations the following are being monitored:

- Twenty-nine (29) suspended medical doctor licensees
- Sixty-seven (67) medical doctor licensees on probation
- Fifty-seven (57) medical doctor licensees under a board order
- Fifty-four (54) medical doctor licensees are revoked or surrendered
- Zero (0) x-ray technologist licensees suspended
- One (1) x-ray technologist licensee on probation
- Eight (8) x-ray technologist licensees under a board order
- Three (3) x-ray technologist licensees revoked or surrendered

OFFICE OF GENERAL COUNSEL REPORT

Ms. Bratton gave the report from the Office of General Counsel which included the following updates:

1. The fee increase rules are set for a rulemaking hearing at the March 2019 meeting.
2. The examination and continuing education rules are in the internal review process.
3. The intractable pain repeal rules are in the internal review process.
4. The St. Jude rules, temporary licensure rules, limited licensure rules and surgical assistant rules are in the internal review process.
5. There are two (2) pending appeals from board action.
6. As of January 14th, there were seventy-nine (79) disciplinary complaints against fifty-six (56) respondents pending in the Office of General Counsel.
7. There are two (2) civil lawsuits pending. One, filed by Adams and Boyle, which names Dr. Ali, as President of the Board of Medical Examiners, in his official capacity. The suit involves the enforcement of the 48 hour waiting period for an abortion and includes the Memphis Center for Reproductive Health, Planned Parenthood – Greater Memphis Region, Planned Parenthood – Middle & East Tennessee and the Knoxville Center for Reproductive Health.
8. The other, filed by Alton Ingram, MD, which names Dr. Ali, Dr. Zanolli, Dr. Saunders, Dr. Arnold, and Ms. Huddleston regarding the handling of his application and appeal. The Attorney General's Office is representing the named parties, and as such in the handling of that matter, all communication from Dr. Ingram should be referred to the Attorney General.

Ms. Bratton queried if three (3) members would be able to volunteer for a special hearing given the Respondents counsel has a conflict with the Boards March and May meetings. Ms. Bratton asked for the members to e-mail her in the next day or two about their availability on the days proposed.

Dr. Blake and Dr. Zanolli provided Ms. Bratton with a synopsis of concerns regarding ketamine clinics which are to be discussed at the next meeting.

The Board recessed and will continue with Board business tomorrow, January 23rd, 2019.



Tennessee Board of Medical Examiners Regular Board Meeting

**Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners
Wednesday, January 23, 2019**

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:35 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Reeves Johnson, Board Chair.

Board members present: Subhi Ali, MD
Reeves Johnson, MD
John Hale, MD
Julianne Cole, Consumer Member
Deborah Christiansen, MD
Robert Ellis, Consumer Member
Phyllis Miller, MD
Michael Zanolli, MD
Jennifer Claxton, Consumer Member
Melanie Blake, MD

Board member(s) absent: Charles Handorf, MD
Neal Beckford, MD

Staff present: Mary K. Bratton, JD, Chief Deputy General Counsel
Rene Saunders, MD, Medical Consultant, BME
Angela Lawrence, BME Executive Director
Candyce Waszmer, Administrative Director

Development Committee Meeting Update

1. The Board reviewed the Committees proposed policy on *Demonstrating Competency for International Medical School Graduates Applying for a Temporary License*. This policy permits temporary licensure to be granted in the following two scenarios:
 - a. When the applicant has graduated from an unapproved international medical school but has completed three (3) years of residency in a single discipline competency can be demonstrated by either 1) passing the third step of the USMLE within two (2) years of graduating from medical school, or 2) by passing the first step of the USMLE on the first attempt. In this scenario the temporary license would give the applicant time to achieve board certification, which would qualify him/her for full licensure.
 - b. When applicant has graduated from an approved international medical school but has not completed a three (3) year residency in a single discipline competency can be

demonstrated by either 1) having completed at least two (2) years of residency and only having one (1) year remaining, or 2) achieve ABMS board certification.

The draft rules which are in the internal review process indicate that temporary licensure is only valid for up to two (2) years. In reference to part (a), there is consensus that a statement be added to include the applicant must be eligible for board certification or be a candidate to sit for the boards within next two (2) years. It was noted that ABMS boards may grant up to twelve (12) months towards a physician's ACGME accredited training when the physician has completed foreign training.

Dr. Zanolli stated it will be important for the Board to have some flexibility even with this policy in place. One issue he brought up is when a physician's program director deems he/she has successfully completed residency training but the training length is less than three (3) years. There was a consensus that this policy should include a reference to direct readers to the Boards One Discipline Policy.

Ms. Bratton reminded the Board that the temporary license should only be issued for a short duration with the end goal being that the applicant will qualify for full licensure by the full length of temporary licensure. Thus, someone who has not attended an approved medical school and has not completed a three (3) year accredited residency program will likely not be able to qualify for full licensure in a short duration.

Dr. Christiansen motioned to accept the policy as amended and Dr. Ali seconded the motion. The motion passed.

2. Administrative access to NPDB on all applicants.
 - a. Research is being done on determining the Boards relationship with the databank and the cost for the Board to have this type of access.
 - b. Ms. Bratton will report back at the March Development Committee meeting as to whether or not the Board would need to make a rule amendment and what options there are. Furthermore, whether or not this would be required as an application item.

Dr. Zanolli mentioned that the FSMB is in the works of gaining access to the NPDB and it might be worth contacting the FSMB to see if there could be a mechanism to obtain results of an NPDB through them.

3. Discussion on possible rule amendment for Amphetamines being used for hypersomnia
 - a. An expert in sleep medicine spoke before the Committee and confirmed that amphetamines are used for hypersomnia when all other traditional treatments are ineffective.
 - b. Ms. Bratton suggested the Committee may want to determine if there are other medical conditions for which amphetamines are being used for treatment.
 - c. It was determined that the rules in this regard are outdated and need to be revised. The Committee will work on this revision in upcoming meetings.

Discussion on Patricia Wieck, MDX applicant interview from the day one meeting

The Board discussed the difficulty presented from this applicant interview who did not attend an approved limited x-ray program. It was brought to the Boards attention that since the applicants' interview, Ms. Anne Watson with Radiologic Education Seminars has agreed to let Ms. Wieck audit the limited x-ray program for free. The Board agreed that a statement of educational completion from Ms. Watson, after auditing her course for the limited areas in which the applicant intends to practice, would be sufficient to meet the limited licensure educational requirements. Additionally, the Board appointed Dr. Christiansen to work with Dr. Saunders to approve a re-entry to practice pathway. Performing the, to be

determined number of, clinical hours for each limited area in which she intends to practice and submission of a Physician Statement of Clinical Competence signed by her supervising physician will be accepted as sufficient proof of clinical remediation.

Dr. Zanolli motioned to reconsider the ruling made at the day one meeting which was to table Ms. Wieck's application for six (6) months. Dr. Ali seconded the motion. The revision to the ruling will be to add the parameters outlined above and to include the application being tabled for six (6) months. Ms. Claxton abstained and the motion passed.

Development Committee Meeting discussion (continued)

Dr. Blake requested for the Boards agenda to list the items covered by the Committee.

Consent Order(s)

Trent Cross, MD – did not appear before the Board but was represented by Mr. Robert Kraemer. Ms. Jennifer Putnam represented the State. Respondent had been licensed on June 14, 2004 and has a current expiration date of March 31, 2019. Respondent entered into a Consent Order with this Board on March 20, 2018. That Order placed his medical license on probation to run concurrent with his criminal probation which is set to conclude on September 18, 2023. The Order required the Respondent to undergo an evaluation by the TMF within thirty (30) days of the date of entry of the Order. TMF confirmed that the Respondent did not contact TMF regarding an evaluation until April 23rd; three days after the date required by the March 2018 Consent Order. From June 25, 2018 through June 27, 2018, the Respondent completed a TMF approved evaluation and subsequently entered into a five (5) year monitoring and advocacy contract with the TMF. The facts stipulated are grounds for discipline. This order shall require the Respondent to pay three (3) "Type B" civil penalties for a total of one thousand five hundred dollars (\$1,500.00). Respondent must also pay all actual and reasonable costs of the case not to exceed one thousand dollars (\$1,000.00). Dr. Ali motioned to accept this order and Dr. Christiansen seconded the motion. The motion carried.

Theodore McCrary, PA – did not appear before the Board nor did legal representation appear on his behalf. Ms. Andrea Huddleston, substituting for Ms. Tracy Alcock, represented the State. Respondent had been licensed on March 19, 1997 and the license expired on August 31, 2015. While employed as a Physician Assistant at Comprehensive Healthcare Systems and East Knoxville Healthcare Services, Respondent prescribed opioids and other narcotics to hundreds of patients outside the scope of professional practice and without a legitimate medical purpose. On or about January 19, 2018, Respondent entered a plea agreement to one (1) count of conspiracy to distribute and dispense, outside the scope of professional practice and not for a legitimate medical purpose. In entering his plea, Respondent admitted that he continued to work at the pain clinics even after realizing they were illegitimate and that most of the patients were pill seekers. Along with other stipulated facts, Respondent failed to report his federal indictment and felony conviction to the Committee within seven (7) calendar days of acquiring actual knowledge of the indictment as required by law. The facts stipulated are grounds for discipline. This order shall permanently voluntarily surrender Respondents license effective the date of entry of this order. This has the same effect as a permanent revocation of his P.A. license. Respondent shall pay five (5) "Type B" civil penalties for a total of five hundred dollars (\$500.00). Respondent must also pay all actual and reasonable costs of the case not to exceed one thousand five hundred dollars (\$1,500.00). Dr. Christiansen motioned to approve the order. Ms. Claxton seconded the motion and it passed.

Samuel W. McGaha, MD – did not appear before the Board nor did legal representation appear on his behalf. Ms. Andrea Huddleston represented the State. Respondent had been licensed on September 6, 1976 and has a current expiration date of March 31, 2020. The Department conducted an investigation that included the review of eighteen (18) of the patient records prepared and kept by Respondent and a

review of the Tennessee Controlled Substance Monitoring Database. Despite requests from the Department for full and complete medical records, Respondent failed to provide copies of the complete medical records requested as part of the Department's investigation. From at least January 2014 to the present, Respondent provided chronic pain treatment and prescribed controlled substances to multiple patients at his internal medicine practice which included prescribing narcotics, benzodiazepines, and other controlled substances. The Department contends that these were prescribed in amounts and/or for duration's not medically necessary. Along with other stipulated facts, the Respondent frequently prescribed his patients dangerous combinations of medications without documenting the medical justification, and without explanation of the risks and benefits of the dangerous combinations, including combinations of opioids, benzodiazepines, and muscle relaxants. The facts stipulated are grounds for discipline. This order shall permanently retire Respondents license effective the date of entry of this order. Respondent agrees to never seek reinstatement or apply for a new Tennessee medical license. Respondent agrees to voluntarily surrender any and all Drug Enforcement Administration (hereinafter "DEA") registration to prescribe or dispense controlled substances and agrees to never seek reinstatement or apply for a new DEA registration to prescribe or dispense controlled substances. Respondent must pay all actual and reasonable costs of this case not to exceed four thousand dollars (\$4,000.00). Dr. Christiansen motioned to approve this order. Dr. Hale seconded and it passed.

Petition for Declaratory Order

Gomal Alshobari, PA – did not appear before the Board nor did legal representation appear on his behalf. Ms. Andrea Huddleston represented the State. Petitioner applied for an Orthopedic Physician Assistant (hereinafter "OPA") license but had not attended an OPA program in the United States. Petitioner attended medical school and was an orthopedic surgeon in Egypt. The Physician Assistant Committee denied his license and Petitioner appealed that decision. At the hearing, the Committee indicated they would be willing to reconsider if he filed a petition for declaratory order. Petitioner filed a petition for declaratory order. At that hearing, on January 11, 2019, the Committee denied the relief he was requesting pursuant to the petition for declaratory order. The Board is asked to ratify the PA Committee's decision. Dr. Zanolli motioned to accept the order and Ms. Claxton seconded the motion. The motion passed.

Petition for Order of Compliance

Michael Smith, MD –appeared before the Board but was not accompanied by a legal representative. Ms. Mary Katherine Bratton represented the State. Dr. Blake and Dr. Miller recused themselves. Petitioners' license was placed on probation, in November 2013, for not less than five (5) years due to sexual misconduct in the practice of medicine. The Office of General Counsel does not have any opposition to his petition for order of compliance. Dr. Christiansen motioned to accept the order. Ms. Claxton seconded the motion and it passed with two (2) recusals from Dr. Blake and Dr. Miller.

This concluded regular Board business.

Iris Room: Ms. Cole, Dr. Zanolli and Dr. Ali

Contested Case

Axel Grothey, MD v. State of Tennessee Board of Medical Examiners

Iris Room

Administrative Law Judge: Stephen R. Darnell

Panelists: Michael Zanolli, MD; Subhi Ali, MD; Julianne Cole, Consumer Member

Counsel for State: Mary Katherine Bratton, JD, Esq.

Counsel for Petitioner: None

This contested case comes before a panel of the Board pursuant to a Petition for Declaratory Order filed by Axel Franz Kurt Grothey, MD.

Dr. Grothey appeared before the Board at their November 2018 Board meeting. He appeared as an applicant interview that graduated from an international medical school and had not completed a three (3) year U.S. residency program. The Board was unable to grant a license but indicated they would consider hearing a petition for declaratory order. At the Board's November meeting, on day two, the Board heard and approved the petition for declaratory order which moved this matter to a contested case.

Dr. Grothey bears the burden of proof as to why he should be licensed in this State. He presented documents to the panel members, with no objection from the State, and this was entered as Exhibit 1. Dr. Grothey outlined his extensive professional medical career to the panel. Dr. Grothey has completed a six (6) year residency program in Germany, with one (1) year in pathology, he has been Board Certified in Internal Medicine since 1994 in Germany, he completed a hematology fellowship in Germany in 1996, he holds active licensure in Minnesota and Arizona, he has been a full staff member since 2005 at Mayo Clinic as a consultant for an attending physician and he completed a full professorship of oncology in 2007 at Mayo Clinic.

Dr. Grothey explained if he is an associated professor for more than two (2) years he could potentially become ABMS board eligible but he cannot do that at this point. Dr. Grothey explained the process required to become European Board Certified. This process requires six (6) years of training, an oral examination, a requirement to rotate through all specialties, and an examination in front of a panel once the training is complete.

Dr. Grothey is a permanent resident of the United States. Also, he completed all steps of the USMLE on his first attempt and within one (1) year. He has no history of disciplinary action or malpractice matters. A witness testified to his good moral character and professional career.

The State's position is that Dr. Grothey does not qualify for licensure despite his distinguished career. The consensus of the panel is that Dr. Grothey's professional career may not meet the letter of the law but it meets the spirit of the law and his training and experience make him a good candidate for Tennessee licensure.

Ms. Cole motioned to grant unrestricted licensure to Dr. Grothey. Dr. Ali seconded the motion and it passed unanimously. The panel revised the proposed Final Order presented by the State.

The revised Findings of Fact are as follows:

1. Petitioner obtained his medical license in 1987 from Ruhr-Universität Bochum Medical School.
2. Petitioner has applied for a Tennessee medical license but failed to meet the training requirements of TCA 63-6-207, which require completion of a three year US residency training program and petitioner is not ABMS Board certified. Petitioner is not eligible for ABMS Board certification.
3. In Germany, he obtained Board certification in Internal Medicine in 1994 and in Hematology/Oncology in 1996 after serving a two year fellowship. He currently maintains these certifications as well as maintaining board certification in Hematology and Oncology from the European Society of Medical Oncology.
4. Petitioner took and passed all three parts of the USMLE on the first attempt in 2003.
5. In 2003, Petitioner joined the Mayo Clinic, Division of Medical Oncology. Petitioner was a full professor at the Mayo Clinic for eleven years and participated in training fellows. He acted as a

mentor for numbers oncology fellows, and he was honored with a teacher of the year award at the Mayo Clinic on seven occasions.

6. Petitioner has worked as a vice chair, chair, or co-chair to National Cancer Institute (NCI) treatment group committees and task forces, including the NCI Colon Cancer Task Force, and the GI Steering Committee.
7. Petitioner is currently licensed in Minnesota and Arizona.

Dr. Ali motioned to accept the modified order. It was seconded by Ms. Cole and it passed unanimously.

This concludes the Board of Medical Examiners day 2 meeting.