



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

**Tuesday, May 22, 2018
Wednesday, May 23, 2018**

MINUTES

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:49 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Subhi Ali, Board Chair.

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

Board member(s) absent: Neal Beckford, MD
Robert Ellis, Consumer Member
John Hale, MD

Staff present: Mary K. Bratton, JD, Chief Deputy General Counsel
Rene Saunders, MD, Medical Consultant, BME
Stacy Tarr Administrative Director
Candyce Waszmer, Administrative Director
Courtney Lewis, Board Administrator

I. CONSIDERATION OF APPLICATIONS

Medical X-Ray Application Interview(s):

Sanam Mohammed – appeared before the Board without legal representation. Ms. Mohammed appeared before the Board due to her application lacking a high school transcript and confirmation from the school indicates she did not earn a degree at this high school in the United Kingdom. She completed an x-ray

program in the United Kingdom which she previously faced difficulty with that being acceptable within the United States. Therefore, she chose to complete an x-ray program at Nashville General Hospital in which she graduated in 2017. Ms. Mohammed currently holds ARRT certification and is licensed in the United Kingdom. Dr. Michael Zanolli motioned to approve unrestricted licensure. Dr. Reeves Johnson seconded the motion and it passed.

Medical Doctor Applicant Interview(s):

Joseph Brown, MD – appeared before the Board without legal representation. Dr. Brown is an applicant for reinstatement of licensure from expired status. He is board certified, holds licensure in other states, has a history of malpractice, and does not have any criminal or board action. Dr. Brown has been practicing administrative medicine since 2012. Dr. Brown informed the Board that the last clinical encounter he had with a patient was in 2014 where he completed patient rounds and his last time practicing anesthesiology was in 2012. Dr. Brown has been issued an administrative license while waiting to appear before the Board. Dr. Blake motioned for the medical consultant, Dr. Saunders, to work with a Board member and Dr. Brown in composing a re-entry plan based on the Board's re-entry policy specifically to physicians who have been out of clinical practice for 5 to 7 years. Dr. Christiansen seconded the motion. Dr. Zanolli spoke in favor of recognizing that his patient rounds encounter in 2014 is clinical practice thus his length out of practice would only be 4 years and Dr. Blake accepted that as a friendly amendment. The Board led a discussion on how the re-entry policy would be applied to this applicant to include the possibility of a preceptorship and/or completing a clinical competency assessment approved by the Board. Given that the Board has already come to a consensus on him needing to complete such assessment and Dr. Brown expressed a willingness to do so, the original motion was withdrawn. Dr. Blake motioned to table this application for up to one (1) year to allow Dr. Brown time to complete an assessment which will be approved by the medical consultant and upon receipt of the results he will reappear before the Board for further licensure consideration. Dr. Zanolli seconded the motion. Administrative staff informed the Board that there is currently not an open application for Dr. Brown since he elected to be granted an administrative license. It was determined that no motion was necessary since there is not an open application. Dr. Brown is aware that the Board will require an approved assessment and that he must submit another application with the Board's office.

William Kincaid, MD – Dr. Kincaid is an applicant for full medical licensure after previous revocation of his Tennessee license. He appeared before the Board in January and September of 2017 and is now returning before the Board after completing a formal PLAS assessment. Also, Dr. Kincaid has since successfully completed a preceptorship. Dr. Blake motioned to approve a full unrestricted license contingent upon successful completion of the record keeping course scheduled for June 1st. Dr. Zanolli seconded the motion. The Board led a discussion on whether or not Dr. Kincaid's license should be restricted to his specialty practice. It was determined that it is expected for Dr. Kincaid, like all licensees, to practice good medicine within their best judgment and to restrict his license in that aspect would mean that all licensees should be restricted to the specialty in which they are trained. No further discussion was held. The motion passed.

Radmehr Torabi, MD – appeared before the Board without legal representation. Dr. Torabi has applied for initial licensure as a foreign medical graduate but attended a medical school that was unapproved at the time of completion. The Board interviewed Dr. Torabi regarding his neurosurgery practice specialty and intended fellowship practice in Tennessee. The Board discussed the option of temporary licensure. Ms. Bratton cautioned the Board from issuing a temporary license in this instance when the physician would not be eligible for full licensure until 2022, which would be four (4) years of temporary licensure. The proposed temporary licensure rules drafted state that a temporary license should be issued for a max of two (2) years and it is non-renewable. The Board discussed that these rules needs to be addressed

further at the rulemaking hearing in light of this discussion. It was proposed that the Board will need to discuss being able to issue temporary licensure for longer than two (2) years on a case by case basis.

Dr. Johnson motioned to grant a temporary license effective July 1, 2018, permitting two (2) renewals, which occur every two (2) years, for a total of six (6) years of licensure, when he is eligible for full licensure he will not have to reappear before the Board but rather he will submit a full application and fee opposed to upgrading the temporary license, he must comply with all CME requirements, he is permitted to supervise mid-levels, practice in any setting, and bound to all other Board rules. Dr. Zanolli seconded the motion and the motion passed.

Jorg Winterer, MD – Dr. Winterer appeared before the Board as an applicant for reinstatement of licensure from expired status. Dr. Christiansen recused herself. His license in Massachusetts was summarily suspended recently and the appeal is currently pending. He has participated in a Physicians Health Program (hereinafter “PHP”) in the past and a recommendation for competence assessment was made. A Tennessee Medical Foundation (hereinafter “TMF”) evaluation has been completed and recommendations have been provided to the Board. In Tennessee, Dr. Winterer would like to pursue a position with TeamHealth providing Emergency Medicine.

Dr. Michael Baron, Medical Director with TMF, reported that in 2014 he was referred to Massachusetts PHP but he failed to comply with them and moved to the southwest to practice medicine. Then he returned to Massachusetts and he ended up completing a neuro psychiatric evaluation which identified some executive function processing problems. Dr. Winterer reported having completed a forensic evaluation a few weeks ago and Dr. Baron stated he has not received those results and would like to review the forensic evaluation before he provides any further recommendations.

Dr. Winterer provided a summarized explanation regarding criminal matters which have since been resolved. He summarized complaints from other partners. Dr. Zanolli commented that he does not feel as though a licensure decision can be made until this Board receives the Massachusetts licensure determination. Dr. Zanolli motioned to table this application for up to six (6) months until the final documents from the Massachusetts Board are available and once they are received the Board would reconsider this application. If the information from Massachusetts is not received by six (6) months then Dr. Winterer may reappear before the Board again if he wishes to continue pursuing licensure. Dr. Johnson seconded the motion. The motion passed with one (1) recusal from Dr. Christiansen.

The Board recessed for lunch at 12:10.

LEGISLATIVE UPDATE

Ms. Lacey Blair and Mr. Patrick Powell presented the legislative updates.

PC1039 – This legislation places limits and requirements on the amount of opioids prescribed and dispensed. It limits opioid prescriptions to up to a three day supply with a total of 180 MME (morphine milligram equivalents) for those three days. This limitation is subject to a number of exceptions under certain circumstances. These exceptions include up to a ten day supply with a total of 500 MME, up to a twenty day supply with a total of 850 MME for a procedure that is more than minimally invasive, and up to a thirty day supply with a total of 1200 MME when other reasonable and appropriate non-opioid treatments have been attempted and failed and the risk of adverse effects from the pain exceeds the risk of the patient developing an addiction or overdose. Prescribing under these exceptions requires the prescriber to check the controlled substance monitoring database, personally conduct a physical exam of the patient, consider non-opioid alternatives, obtain informed consent including counseling about neonatal abstinence syndrome and contraception for women of childbearing age, and document the ICD-10 code

for the patient's primary disease (as well as the term "medical necessity" on thirty day prescriptions). These ten, twenty, and thirty day opioid prescriptions will only be filled by dispensers in an amount that is half of the full prescription at a time, requiring patients and pharmacists to consider whether the patient requires the full amount prescribed. There are still further exceptions for those patients undergoing active or palliative cancer treatment, receiving hospice care, diagnosed with sickle cell disease, administered to in a hospital, being treated by a pain management specialist or collaborating provider in a pain management clinic, who have received ninety days or more in the year prior to April 2018 or subsequently do so under one of the exceptions, receiving treatment for medication-assisted treatment, or suffering severe burns or major physical trauma. This act took effect for rule purposes on May 21, 2018, and for all other purposes shall take effect July 1, 2018.

PC 1040 – This act revises various provisions of the law regarding controlled substances and their analogues and derivatives, including updating identifications of drugs categorized in Schedules I - V. The act also creates an offense for the sale or offer to sell kratom, unless it is labeled and in its natural form. It is also an offense to distribute, sell, or offer for sale, kratom to a person under 21 years of age. It is also an offense to purchase or possess kratom if under 21 years of age. This act takes effect July 1, 2018.

PC 901 – This act requires that prior to prescribing more than a three day supply of an opioid or an opioid dosage that exceeds at total of 180 MME to a woman of childbearing age (15-44yo), a prescriber must do the following:

1. Advise of risks associated with opioid use during pregnancy;
2. Counsel patient on effective forms of birth control; and
3. Offer information on availability of free or reduced cost birth control

Doesn't apply if previously informed by prescriber in previous three months or prescriber reasonably believes patient is incapable of becoming pregnant. Requirements may be met with a patient under 18 years of age by informing parent of the patient. The department of health is to publish guidance to assist prescribers in complying with this act. This act takes effect July 1, 2018.

PC 978 – This act makes a number of revisions to opioid treatment regulations. The definition of "nonresidential office-based opiate treatment facility" (OBOT) has been changed to encompass more facilities. The commissioner of mental health is required to revise the rules of OBOTs to be consistent with state and federal law for such facilities to establish certain new protocols. Rules regarding OBOTs are to be reviewed each even-numbered year and the department of mental health and substance abuse services shall submit the rules for OBOTs to each health related board that licenses any practitioner authorized by the state to prescribe products for treatment of an opioid use disorder. Each board is required to enforce the rules. Each board is required to post the rules on the board's website. Violation of a rule is grounds for disciplinary action by the board. The act also makes revisions to the licensing fees of OBOTs. The act requires revision of the buprenorphine treatment guidelines.

The legislation also requires (subject to 42 CFR part 2) that dispensing of buprenorphine be subject to the Controlled Substance Monitoring Database (CSMD) requirements. The act prohibits dispensing of buprenorphine except by certain individuals/facilities and requires pharmacies/distributors to report to the department of health (TDH) the quantities of buprenorphine that are delivered to OBOTs in the state. The act also makes revisions to the high-volume prescriber list compiled by TDH. The act requires the comptroller to complete a study of statistically abnormal prescribing patterns. After the study, TDH shall identify prescribers and shall inquire with the boards of action taken against the prescribers and the board is required to respond within 30 days. Each board is required to report the total number of prescribers disciplined each year, as well as other information. TDH shall report a summary of the data and of the disciplinary actions to the chairs of the health committees. The act also comprises a task force to create minimum disciplinary actions for prescribing practices that are a significant deviation from sound medical judgment. The board of medical examiners, osteopathic examination, dentistry, podiatric medical examiners, optometry, nursing and medical examiner's committee on physician assistants shall select one

member each for the task force before September 1, 2018. This act took effect for rulemaking on May 21, 2018 and takes effect July 1, 2018 for all other purposes.

PC 674 – This chapter allows buprenorphine mono or buprenorphine without naloxone to be directly administered by a healthcare provider acting within the scope of practice. The administration must be for a substance use disorder and pursuant to a medical or prescription order from a physician licensed under title 63 chapter 6 or 9. This does not allow dispensing that would permit administration away from the premises at which it is dispensed. This act took effect April 12, 2018.

PC 675 – This act requires the department of health to accept allegations of opioid abuse or diversion and for the department to publicize a means of reporting allegations. Any entity that prescribes, dispenses, OR handles opioids is required to provide information to employees about reporting suspected opioid abuse/diversion. That notice is to either be provided individually to the employee in writing and documented by the employer OR by posting a sign in a conspicuous, non-public area of minimum height and width stating: “NOTICE: PLEASE REPORT ANY SUSPECTED ABUSE OR DIVERSION OF OPIOIDS, OR ANY OTHER IMPROPER BEHAVIOR WITH RESPECT TO OPIOIDS, TO THE DEPARTMENT OF HEALTH’S COMPLAINT INTAKE LINE: 800-852-2187.” Whistleblower protections are also established. An individual who makes a report in good faith may not be terminated or suffer adverse licensure action solely based on the report. The individual also is immune from any civil liability related to a good faith report. This act takes effect January 1, 2019.

PC1007 – This act allows for a prescription for a controlled substance to be partial filled if requested by the patient or the practitioner who wrote the prescription AND the total quantity dispensed through partial fills does not exceed the total quantity prescribed for the original prescription. The act lays out the requirements on the pharmacists and gives details regarding payments. This act takes effect January 1, 2019.

PC 883 – This act lays the framework for e-prescribing practices in the state and the exceptions from electronic prescriptions. Requires that all Schedule II prescriptions be e-prescribed by January 1, 2020 except under certain circumstances. Any health-related board under TCA 68-1-101(a)(8) that is affected by this act shall report to the general assembly by January 1, 2019 on issues related to the implementation of this section. The commissioner of health is authorized to promulgate rules to effectuate the purposes of this act. This act took effect May 3, 2018 for rule purposes. The act takes effect January 1, 2019 for all other purposes.

PC 1037 – This act clarifies that a physician may accept goods or services as payment in a direct exchange of barter for healthcare services provided by the physician if the patient to whom the healthcare services are provided is not covered by health insurance coverage. This does not apply to healthcare services provided at pain management clinics. This act takes effect July 1, 2018.

PC 610 – This changes the terminology regarding the relationship between physicians and physician assistants. Previously the relationship was described in terms of “supervision.” The new description of the relationship is described as “collaboration.” This act takes effect on July 1, 2018.

PC 638 – This chapter prohibits healthcare prescribers and their employees, agents, or independent contractors from in-person solicitation, telemarketing, or telephonic solicitation of victims within 30 days of an accident or disaster for the purpose of marketing services of the healing arts related to the accident or disaster. There are specific exceptions laid out in the chapter. This act takes effect July 1, 2018.

PC 750 – This chapter updates the specific language required to be in the notice given to mammogram patients that are revealed to have dense breasts or extremely dense breasts. This act takes effect July 1, 2018.

PC 855 – Prohibits alcohol and drug treatment facilities (ADTF), healthcare providers and healthcare facilities from certain practices in regard to solicitation and marketing of alcohol and drug treatment services. This act takes effect July 1, 2018.

PC 862 – This act requires that induced termination of pregnancy (ITOP) reports to include whether a heartbeat was detected IF an ultrasound was performed prior to the ITOP. The department of health shall include data about the detection of heartbeats and the method employed for ITOPs in an annual report. The report shall differentiate between medical and surgical methods and between surgical methods to the extent data permits. This act also requires that if an ultrasound is performed prior to an abortion, the person who performs the ultrasound shall offer the woman the opportunity to learn the results of the ultrasound. If the woman elects to learn the results, the person performing the ultrasound or a qualified healthcare provider shall inform her of the presence or absence of a heartbeat and document that the patient was informed. This act takes effect January 1, 2019.

PC 964 – This legislation requires the department of children’s services (DCS) to develop instructional guidelines for child safety training programs by January 1, 2019 for members of professions that frequently deal with children at risk of abuse. DCS is required to work with each licensing board to ensure any child safety programs created by a licensing board fully and accurately reflect the best practices for identifying and reporting abuse as appropriate for each profession. This act took effect May 15, 2018.

PC 954 – This legislation requires the initial licensure fee for low-income persons to be waived. Low income individuals per the statute are defined as persons who are enrolled in a state or federal public assistance program including but not limited to TANF, Medicaid, and SNAP. All licensing authorities are required to promulgate rules to effectuate the purposes of this act. This act takes effect January 1, 2019.

PC 754 – This chapter prevents any board, commission, committee, etc. created by statute from promulgating rules, issuing statements, or issuing intra-agency memoranda that infringe on an entity member’s freedom of speech. Freedom of speech includes, but is not limited to, a member’s freedom to express an opinion concerning any matter relating to that governmental entity, excluding matters deemed to be confidential under TCA 10-7-504. Violations as determined by a joint evaluation committee may result in recommendations to the general assembly concerning the entity’s sunset status, rulemaking authority and funding. This act took effect April 18, 2018.

PC 929 – This act redefines policy and rule and requires each agency to submit a list of all policies, with certain exceptions, that have been adopted or changed in the previous year to the chairs of the government operations committees on July 1 of each year. The submission shall include a summary of the policy and the justification for adopting a policy instead of a rule. This act also prohibits any policy or rule by any agency that infringes upon an agency member’s freedom of speech. Finally, this act establishes that an agency’s appointing authority shall have the sole power to remove a member from a board, committee, etc. This act takes effect July 1, 2018 and applies to policies adopted on or after that date.

PC 744 – This statute allows a licensing entity the discretion to not suspend/deny/revoke a license in cases where the licensee has defaulted or become delinquent on student loans IF a medical hardship significantly contributed to the default or delinquency. This act took effect January 1, 2019.

PC 1021 – This act allows for appeals of contested case hearings to be in the chancery court nearest the residence of the person contesting the agency action or at that person’s discretion, in the chancery court nearest the place the action arose, or in the chancery court of Davidson County. Petitions seeking review must be filed within 60 days after entry of the agency’s final order. This act takes effect July 1, 2018.

PC 611 – This law requires an agency holding a public hearing as part of its rulemaking process, to make copies of the rule available in “redline form” to people attending the hearing. This takes effect July 1, 2018.

APPROVAL OF MINUTES

The Board reviewed the March 2018 regular Board meeting minutes. Dr. Christiansen motioned to approve the minutes. Dr. Johnson seconded the motion and it carried.

The Board reviewed the March 20, 2018 Office Based Surgery meeting minutes. Dr. Zanolli motioned to approve the minutes. Dr. Ali seconded the motion and it carried.

UPDATE FROM THE DEVELOPMENT COMMITTEE

1. Discuss ways to be more effective in communication with licensees – when the department switched to their new online application and renewal system they experienced issues with sending out mass e-mail communications to all licensees. A product called “listserve” is still in the testing phase but will allow for mass e-mail communication and it is determined that this form of communication is the most economical for the Board. It is suggested that the Board draft rules regarding the Board’s decision to use e-mail communication as their primary communication tool.
2. Development of Board Sponsored Continuing Medical Education – a means to provide information to licensees where they could earn CME credit. Dr. Mitchell Mutter, TN Department of Health Director of Special Projects, presents a prescribing course which is sponsored through East Tennessee State University. Dr. Zanolli informed the Board that the Federation of State Medical Boards is an accredited CME provider and Ms. Kelly Alford with the FSMB could be contacted as a resource. Dr. Johnson advised that costs would be associated but those costs are unknown at this time. Dr. Ali stated if the costs of the project are too excessive then this project is not within the Boards scope. Dr. Johnson proposed that further information could be obtained regarding the costs and to reach out to Ms. Alford regarding what the FSMB could offer.
3. Discuss Delegation Policy/Supervision Policy – discussed the concern of where a physician may be working for an institutional organization and how the supervisee’s of the physician are not their employees but rather they are employees of the institutional organization. A discussion was led on how the relationship between the physician and supervisee is impacted when they do not have the employer-employee relationship. It was determined that, at the time of agreeing to supervise the mid-level, the physician is consenting to being knowledgeable of this particular relationship and agreeing to it as such.
4. Consider revisions to Policy regarding Treatment of Friends and Family – The Board members reviewed a draft of the revisions proposed. Dr. Saunders proposed an addition to the “supervisee treatment” section of the existing policy. Prescribing by supervisees to the physician or families members of the supervising/collaborative physician could give the appearance of coercion and be considered unprofessional conduct. This behavior could result in disciplinary action on the physician’s license.

It was stated that when a medical record and patient-provider relationship is established then perhaps this does not apply. However, Ms. Bratton suggested the provider has the supervising/collaborative authority over the midlevel so it still may apply. Consideration was made to providers in rural areas. Ms. Bratton proposed the FAQs be updated to provide further insight on the Boards interpretation on this policy. Dr. Zanolli proposed the following language be added: “unless there is an established provider-patient relationship prescribing by supervisee” and “no schedule drug should be dispensed or prescribed except in emergency situations”. Dr. Ali motioned to adopt policy with the proposed revisions. Ms. Claxton seconded the motion and it passed.

UPDATE FROM THE FSMB ANNUAL MEETING

Dr. Johnson provided an update to the Board. He outlined the following key points addressed at this year’s annual FSMB meeting:

- Report on physician burnout
- Compact licensure in twenty-five (25) states with over three hundred (300) licenses issued
- Updated FSMB website
- Development of online modules for medical students and residents on medical regulations and education
- Study on duty to report
- Educating the public on who the FSMB is and what they do
- Safe Harbor questions started by West Virginia Medical Board – if you are being treated adequately and it is not affecting your ability to practice then it doesn’t have to be disclosed
- Boundary violation reporting

Dr. Zanolli added to the update by reporting that the Boards bylaws amendment was withdrawn. It was withdrawn because of the Federation’s definition of a consumer member. He reports that perhaps the definition will change and then it will be appropriate to resubmit the bylaws amendment. Also, since the Board has approved the FSMBs physician wellness and burnout document that there is also a stem cell clinic and franchises document, which is the result of an FSMB workgroup, which the Board may want to consider as a reference if needed.

CONDUCT NEW BUSINESS

1. The Board expressed that they do not wish to review rule change proposals at this time because they need more time prior to the meeting to review the proposals.
 - a. **Consider rule and policy change regarding continuing medical education requirements upon reinstatement/reactivation** - Ms. Bratton informed the Board that there are draft rules which they have already agreed on that are in the process and a policy matching those draft rules which is already in effect. After implementing this policy, staff identified some unforeseen circumstances in which this policy has been cumbersome to certain applicants. Ms. Bratton requested the Board rescind the current continuing medical education policy. Dr. Zanolli requested to move this item to tomorrow morning. Dr. Ali seconded the motion and it passed. Ms. Bratton passed out the proposed changes in regards to the continuing medical education requirements of reinstatement/reactivation applicants.

- b. **Discuss and consider adoption of St. Jude licensure rules** – Ms. Bratton advised the Board members that current St. Jude rules do not exist.
- c. **Discuss and consider adoption of continuing education noncompliance policy for genetic counselors and radiological assistants** – there is currently no continuing education reviews being completed for genetic counselors and staff shall commence such review. Therefore staff has created an agreed citation for noncompliance but is asking the Board to create a policy to enforce the citation when noncompliance occurs
- d. **Discuss and consider revisions to inactive licensure rules** – a discussion should be held on whether or not this licensure status should still be available. The Board led a brief discussion on the difference between voluntarily retired and inactive licensure status.

Dr. Ali requested that all of the proposed revisions, for the above b-d items, be sent to the entire Board for review but for the Development Committee to address these proposals, and bring recommendations to the Board, at that their July meeting.

Update from the Department of Health’s Special Projects Director, Dr. Mitchell Mutter

- Focus towards smaller counties that have a high overdose death rate, high MME per capita, and death from heroin/opioid
- It is becoming more of an illicit drug problem than an overprescribing issue. This is determined by there not being a Controlled Substance Monitoring Database entry within the sixty (60) days prior to death.
- HIV/Hepatitis C epidemic educational course has been offered
- Auditing continuing medical education for 100% of the providers within the six (6) high risk counties

Nomination and selection of compact commissioner – Dr. Zanolli volunteered to fill this role but to not specify a timeline of how long he will serve in this role. He would like to request more information about the meeting requirements. Dr. Johnson stated that every commissioner is assigned to some committee and there are four meetings, three of which are conference call and one is a trip. Dr. Christiansen nominated Dr. Zanolli to fill this role and Dr. Blake seconded this nomination. This motioned passed; Dr. Zanolli is nominated as the Medical Board’s Compact Commissioner.

Authorize board liaison for ACCME Pilot Project – Ms. Stacy Tarr provided an overview of the yearlong ACCME Pilot Project. Since he is a member of the ACCME, Dr. Zanolli volunteered to fill this role. Dr. Ali nominated Dr. Zanolli as the liaison for the ACCME pilot project. Dr. Miller seconded the motion and it passed.

Appoint one member to the opioid minimum discipline taskforce – Ms. Bratton outlined the statutory requirements of this taskforce and the potential meeting dates were provided. Dr. Johnson nominated Dr. John Hale and Dr. Handorf seconded the nomination. The motion passed with Dr. Christiansen in opposition and Ms. Claxton abstaining. Dr. Hale will be apprised and it will be determined whether or not he accepts this nomination during tomorrow’s day 2 meeting.

Request for Advisory Ruling, Dr. Delay

The Board reviewed the request that was previously disseminated to them. The Board led a discussion on whether or not it is acceptable to maintain electronic protocols. Dr. Handorf proposed it would be accepted to have protocols online but they must be updated and approved by the supervisor.

1. Protocols may be made available electronically
2. Must be available on site and available to the supervisor and supervisees

3. Protocols must be developed in advance and agreed upon

Dr. Zanolli motioned to approve the above as a response to this advisory opinion. Dr. Blake seconded the motion and it passed.

CONDUCT NEW BUSINESS

The Board reviewed the list of new licenses approved since the last Board meeting. Dr. Handorf motioned to ratify the list and Dr. Johnson seconded. The motion passed.

ADMINISTRATIVE OFFICE REPORTS

The Board reviewed the statistical licensing report.

OFFICE OF GENERAL COUNSEL REPORT

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

1. Conflict of Interest reminder
2. The Medical Spa Registration rules were brought before the Board as a rulemaking hearing at the last meeting and the rules are currently at the Attorney General's Office for review.
3. The examination and continuing education rules for those reinstating/reactivating a license will be reviewed at tomorrows, day 2, meeting.
4. The intractable pain repeal rules and the fee increase rules are in the internal review process. The financial office has been looking into this fee increase and it may be determined that the increase is not necessary because the Board may close out positively for this fiscal year. Dr. Ali requested a report on this from the financial office at the Boards next meeting.
5. The draft rules for temporary licensure, limited licensure and surgical assistants have been in the internal review process. We are still waiting to set the fee for the surgical assistant's application, this will be based off of how many potential applicants there will be. The Board may undergo substantial changes to the temporary licensure and limited licensure rules so Ms. Bratton will be pulling these rules back for the Board to make more revisions.
6. The Board will review and consider St. Jude rules at the September Development Committee meeting.
7. There are three (3) pending appeals from board action.
8. As of May 8th, there were ninety-seven (97) disciplinary complaints against sixty-three (63) respondents pending in the Office of General Counsel.
9. There is one (1) civil lawsuit pending that 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 – East Tennessee and the Knoxville Center for Reproductive Health.
10. Alton Ingram, MD has filed a lawsuit naming 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.

LORI LEONARD, REPORT FROM THE OFFICE OF INVESTIGATIONS

Ms. Leonard presented the following information to the Board.

Currently in the Office of Investigations there are:

- twenty-two (22) suspended medical doctor licensees
- sixty-eight (68) medical doctor licensees on probation
- fifty-three (53) medical doctor licensees under a board order
- sixty (60) medical doctor licensees are revoked or surrendered
- zero (0) x-ray technologist licensees suspended
- one (1) x-ray technologist licensee on probation
- six (6) x-ray technologist licensees under a board order
- three (3) x-ray technologist licensees revoked or surrendered
- two hundred and seventy-three (273) new medical doctor complaints opened year-to-date
 - One (1) on abuse/neglect
 - Four (4) on falsification of records
 - Three (3) on fraud or false billing
 - Two (2) on drugs
 - Four (4) on sexual misconduct
 - Twenty-eight (28) on actions by another state
 - Four (4) for criminal charges
 - Ninety-three (93) for malpractice/negligence
 - Two (2) for unlicensed practice
 - Seventy-three (73) for unprofessional conduct
 - Three (3) for violation of a board order
 - Fifteen (15) for medical record requests
 - Sixteen (16) for over prescribing
 - Two (2) for lapsed license
 - Nine (9) for failure to supervise
 - Nine (9) for criminal conviction
 - One (1) for right to know violation
 - One (1) for drug diversion
 - Two (2) for prescribing to friends and family
 - One (1) for CME violation
- two hundred and seventy-eight (278) medical doctor complaints closed year-to-date
- twenty-eight (28) medical doctor complaints were closed and sent to the Office of General Counsel for discipline
- two-hundred and six (206) medical doctor complaints were closed with no actions
- two (2) medical doctor complaints closed with a letter of concern
- forty-one (41) medical doctor complaints closed with a letter of warning
- two hundred and forty-two (242) medical doctor complaints currently open and being investigated or reviewed
- eight (8) x-ray technologist complaints opened year-to-date
 - these complaints were for unprofessional conduct, drugs or unlicensed practice
- eleven (11) complaints were closed year-to-date
- four (4) x-ray technologist complaints were closed and sent to the Office of General Counsel for discipline
- two (2) x-ray technologist complaints were closed without any action
- five (5) x-ray technologist complaints closed with a letter of warning
- eleven (11) x-ray technologist complaints are currently pending investigations or review

Dr. Zanolli spoke in regard to how sexual misconduct is likely to be under reported based on the assignment of the complaint. The investigator assigns the topic of the complaint based on the largest allegation within the complaint.

- zero (0) radiologist assistant complaints year-to-date
- zero (0) medical office based surgery complaints year-to-date
- zero (0) genetic counselor complaints year-to-date
- two (2) special training medical doctor complaints year-to-date
 - one (1) was since closed and sent to the office of general counsel for discipline
 - one (1) is pending in investigations

The Board requested to review any general counsel orders that could be presented this evening in light of having additional time left for the day 1 meeting. The Board members took a brief break to review the proposed continuing medical education rule and policy revisions while Ms. Bratton determined if any of the general counsel orders could be presented.

The Board addressed the proposed continuing medical education rule revisions. The previous rule required expired licensure status applicants applying for reinstatement/reactivation of licensure to submit proof of all continuing medical education hours for the time period they were not licensed up until the year preceding their reinstatement application submission. This was cumbersome because the total number of CMEs to be produced could easily be excessive if their length of lapsed licensure was a lengthy period of time. Previously, the Board motioned to approve rule revisions which would lighten this burden of CME proof. Also, the Board adopted a policy which would allow administrative staff to effectuate their decision prior to the rule change. Since implementing the new policy, staff has identified that this policy (and rule revisions already voted on) are still cumbersome for certain applicants. The problems with the newly adopted revisions are such:

1. This language within the policy is confusing – “obtained within the four (4) preceding years”. One interpretation is that the CME must have been obtained before applying for reinstatement/reactivation. This presents an issue because some applicants may be in a situation in which they were not obtaining the same number of required CME that this Board requires. Thus the number of CMEs they may be able to submit could be less than what is required and the language does not imply they could presently complete the hours to make them up for the application requirement.
2. An applicant applying for reinstatement from a retired status would be required to submit a full two (2) years’ worth of CMEs. In some cases, the applicant may not have been out of active licensure for the full two (2) years. Also, the old rule only requested this applicant to submit CME proof equivalent to the time period for which his/her license was in retired status. As an example, some applicants could only have been retired for six (6) months thus only being required to submit six (6) months’ worth of CME. Whereas the new proposed rule and adopted policy would require two (2) years’ worth of CME.

Ms. Bratton brought two options before the Board. The **first option** includes the following:

1. Applicants applying for reinstatement/reactivation of licensure from expired status would at minimum be required to submit one (1) year of CME, which is the equivalent of twenty (20) hours of CMEs, but the total CMEs to be submitted should not exceed eighty (80) hours. The number owed would be calculated based on the number of months the applicants license was in expired status; and
2. Applicants applying for reinstatement/reactivation of licensure from retired status would at minimum be required to submit one (1) year of CME, which is the equivalent to twenty (20) hours of CMEs, but the total CMEs to be submitted should not exceed forty (40) hours. The

number owed would be calculated based on the number of months the applicants license was in retired status.

The **alternative option** brought before the Board today differs in that the CME hours are not to be prorated, as suggested in option one, but rather if the applicant reinstates from an expired or retired status they are required to submit the stated number of CME hours regardless.

Ms. Bratton informed the Board that they need to decide on the following:

1. How many CMEs would the applicant from expired and retired status be required to submit?
2. Is the applicant allowed to make-up the CMEs in the same year of applying or would they only be allowed to submit CME's completed in previous years.

Dr. Handorf motioned to accept the proposed rule changes as outlined in **first option** above. Dr. Christiansen seconded the motion and it passed. Ms. Bratton stated that the Board will need to amend their policy statement to match these rules. She will amend the policy statement and present the amended draft before the Board tomorrow for ratification.

Consent Order(s)

Simi Vincent, MD - did not appear before the Board nor did legal representation appear on his behalf. Mr. Peyton Smith represented the state. In 2010, Respondent treated patient R.T., a fifty-eight year old male, for urinary tract infection (hereinafter "UTI"). R.T. had a history of renal stones, sepsis due to UTI and recurring UTIs. Patient had a PICC line placed on July 1, 2010 and IV colistin 2.5/kg was ordered every 24 hours, to be managed by home health. On or about July 21, 2010, colistin was stopped and IV hydration at 125cc/hr was ordered for four days after labs were reviewed. In September of 2010, the patient presented for treatment of a suspected recurrent UTI colonized with E.Coli. Respondent did not consider another source of infection, starting that patient on antibiotics, or ordering and reviewing the results of another urinalysis prior to determining a course of treatment. About a week later, the patient was admitted to the hospital. Upon discharge from the hospital he was diagnosed of lumbar discitis with abscess, diabetes with neuropathy, chronic atrial fibrillation and chronic UTI. Patient was admitted again in November 2010 for management of discitis, epidural abscess L5-S. The facts stipulated are sufficient to establish grounds for discipline. This order shall reprimand the Respondents license effective the date of entry of this order. The Respondent must pay one (1) "Type A" civil penalty fee for the total amount of one thousand dollars (\$1,000.00). Respondent must pay all actual and reasonable costs of this case not to exceed two thousand dollars (\$2,000.00). Dr. Blake motioned for approval of this consent order. The motion was seconded by Dr. Miller. The motion passed with one abstention by Dr. Zanolli.

Agreed Order(s)

Alacia Lynnette Bigham, MD - did not appear before the Board nor did legal representation appear on her behalf. Ms. Paetria Morgan represented the state. Respondent was licensed since October 26, 2009 and has a current expiration date of January 31, 2019. Respondent failed to pay the monthly access fee to Quest Diagnostics for the Care 360 electronic medical record software package that housed her patients' records. Therefore, the Respondent could not access patient records for several months. Subsequently, eight (8) patients have been unable to obtain their medical records because Respondent failed to make provision for the transfer of medical records or otherwise establish a secure method of patient access to their medical records. The facts stipulated are sufficient to establish grounds for discipline. This order shall reprimand the Respondents' license. The Respondent must pay one (1) "Type A" civil penalty for a total of one thousand dollars (\$1,000.00). Respondent shall pay all actual and reasonable costs of this case

not to exceed five thousand dollars (\$5,000.00). Dr. Johnson motioned to approve this order and Dr. Ali seconded the motion. The motion passed.

Frank John Chuck, MD - did not appear before the Board. He is represented by counsel that was not present either. Ms. Paetria Morgan represented the state. Respondent was licensed since August 10, 1995 and has a current expiration date of November 30, 2018. Respondent stopped practicing as an OB/GYN and closed his office in 2014. Respondent asserts that he mailed notice of closure to his patients and provided four (4) months to request their records. After four (4) months had elapsed, Respondent shredded all medical records that were not requested. Respondent's treatment notes for three (3) patients were grossly inadequate. Respondent failed to provide appropriate care to patient as it related to her prenatal care, hypertension, pelvic pain complaints, abnormal Pap smear, and IUD. In September 2014, while performing a caesarean section on a patient, the Respondent perforated the patient's uterus near the cervix and created a full thickness injury to the rectosigmoid colon. These adverse events led to hysterectomy, a partial resection of the rectosigmoid junction, and colostomy formation. Maury Regional Medical Center suspended the Respondent's clinical privileges pending an investigation. While on suspension, the Respondent elected to surrender his clinical privileges. The facts stipulated are sufficient grounds to establish discipline. The order shall reprimand the Respondents' license. The Respondent shall not practice obstetrics or gynecology. Respondent shall pay three (3) "Type B" civil penalties for a total of one thousand five hundred dollars (\$1,500.00). Within thirty (30) days of the effective date of this order, Respondent shall contact the Center for Personalized Education for Physicians (hereinafter "CPEP") for the purpose of enrolling in the Medical Record Keeping Seminar and the six-month follow-up Personalized Implementation Program and shall submit proof of enrollment to the Disciplinary Coordinator. Within one (1) year of this order the Respondent must attend CPEP's 8-hour medical record keeping seminar and complete all pre-seminar requirements. Additionally, Respondent must enroll and pass the six-month follow-up Personalized Implementation Program. Respondent shall request that CPEP provide the Board with a final report following the six-month follow-up Personalized Implementation Program. Respondent shall assure that such report is received by the Board within one (1) year of this order. Respondent shall timely follow all instructions and fully comply with all recommendations. The Respondent authorizes CPEP to immediately notify the Board's disciplinary coordinator if he does not timely follow all instructions and fully comply with all recommendations. Respondent must pay all actual and reasonable costs of this case not to exceed six thousand dollars (\$6,000.00). Dr. Christiansen motioned to approve this order and Dr. Johnson seconded the motion. The motion passed.



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

**Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners
Wednesday, May 23, 2018**

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. Subhi Ali, Board Chair.

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

Board member(s) absent: Neal Beckford, MD
Robert Ellis, Consumer Member

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

Consideration of revised policy on continuing education requirements upon reinstatement (continued from Day 1)

Ms. Mary Katherine Bratton distributed the Board with the revised policy based on the deliberations from their meeting yesterday (day 1). The Board reviewed the policy and Dr. Christiansen motioned to adopt the revised policy. Dr. Johnson seconded the motion and it passed.

Discuss and consider approval of the position statement for the Polysomnography Standards Committee regarding BRPT Certification required for licensure

Ms. Tracy Alcock presented before the Board with an overview on the position statement adopted by the Polysomnography Committee on May 8, 2018. The Board reviewed the position statement provided. Dr. Michael Zanolli questioned if this position is standard for surrounding areas or unique to Tennessee. Ms. Alcock reported that this information was not researched but Tennessee's statutes and rules were considered and it was determined that only the international credential met the standards of those requirements. Dr. Rene Saunders provided a further explanation to the Board regarding the difference between the two (2) certifications addressed in the policy. Dr. Zanolli motioned to accept and ratify the position statement. Dr. Ali seconded the motion and it passed.

Agreed Order(s)

Riley Senter, MD – Mr. David Silvus represented the state. Respondent was licensed since December 8, 1975 and has a current expiration date of April 30, 2020. In 2014 and 2015, the Respondent prescribed suboxone and/or subutex to a patient with whom he had a personal relationship for a period of six (6) to nine (9) months without ever physically examining the patient or having her submit to a urine drug screen. Respondent applied for and received a pain management clinic certificate and claimed he was the sole owner for that pain management clinic. Evidence concludes that Respondent held no ownership of that clinic. Respondent applied for a pain management certificate for a different clinic, also stating he was

the sole owner of that clinic. Respondent has never been qualified as a pain management specialist, from July 1, 2016 until August 9, 2016, yet he served as the medical director of that second clinic despite knowing that he was not qualified to do so. Respondent served as the medical director of Knoxville Integrated Health, from 2014-2016. In that capacity, Respondent pre-signed prescriptions of buprenorphine in order to allow his staff to prescribe buprenorphine to patients when he was not present at the clinic when the patient was seen. The facts stipulated are sufficient to establish grounds for discipline. This order shall permanently revoke the Respondents' license effective thirty (30) days after entry of this order. Respondent agrees to surrender any and all Drug Enforcement Administration registrations within thirty (30) days after entry of this order. Respondent must pay all actual and reasonable costs of this case not to exceed twenty thousand dollars (\$20,000.00). Dr. Johnson motioned to approve this order. Dr. Blake seconded the motion and it passed.

Consent Order(s)

Steven Jackson, MD – Mr. Andrew Coffman represented the state. Respondent was licensed since August 17, 1993 and has a current expiration date of February 28, 2018. Additionally, Respondent was the owner of a certified pain management clinic in the State of Tennessee, until Respondent's certificate was voluntarily decertified on August 12, 2016. Respondent asserts he ceased providing pain management services before July 1, 2016. Respondent wrote controlled substance prescriptions on only three (3) days between June 21, 2016 and August 12, 2016. Between July 1, 2016 and August 12, 2016, Respondent did not employ a statutorily qualified medical director for his pain management clinic, because Respondent had stopped providing chronic pain management services and did not intend to operate a pain management clinic any longer. Respondent temporarily closed his medical offices on June 20, 2016, as he transitioned to providing only primary care. Respondent asserts he had, by that date, referred his pain management patients to other providers. Between 2013 and August 12, 2016, Respondent operated a pain management clinic while failing to use a substance abuse risk assessment tool and by failing to have an alternate medical director for the clinic. Additionally, between January 1, 2013 and March 2, 2016, the Department contends that there are facts that prove that Respondent at times failed to adequately document evidence or medical reasoning that the controlled substances prescribed to patients were in amounts and/or for durations that were medically necessary, advisable, or justified for the documented diagnosis or findings. Respondent denies that this is the case, but admits the facts are sufficient for the Board to determine Respondent engaged in the conduct set forth. The Department reviewed the charts of twenty-five (25) patients in its investigation. The Department contends that Respondent prescribed controlled substances and other medications without documenting an adequately specific diagnosis. Respondent denies he prescribed medications without making an adequately specific diagnosis; however, Respondent admits there are sufficient facts from which the Board could determine Respondent engaged conduct alleged by the Department. The facts stipulated are sufficient to establish grounds for discipline. This order shall place the Respondents license on probation for a period of at least five (5) years. The Respondent must appear before the Board to petition for an order of compliance only after becoming eligible for such order, which will occur after the five (5) year probationary period. The Respondent shall obtain practice monitoring and other certain conditions outlined in the order must be adhered to. Not limited to paying three civil penalties and costs not to exceed two thousand dollars (\$2,000.00). Dr. Christiansen motioned to approve this order. Dr. Johnson seconded the motion and it passed.

Bernard Burgess Jr., MD – did not appear before the Board and Ms. Rene Stewart appeared on his behalf as legal representation. Ms. Paetria Morgan represented the state. Dr. John Hale recused himself. Dr. Burgess was licensed on May 25, 1994 and has an expiration date of April 30, 2020. While

performing surgery on two (2) patients the Respondent inappropriately placed non-biological mesh in contaminated fields, which led to negative health outcomes. Respondent's treatment notes for seven (7) patients are inadequate, making it difficult to ascertain surgical reasoning. The facts stipulated are sufficient to establish grounds for discipline. This order shall reprimand the Respondents' license. The Respondent shall pay two (2) "Type A" civil penalties for a total of one thousand five hundred dollars (\$1,500.00). Within thirty (30) days of the effective date of this order, Respondent shall contact the Center for Personalized Education for Physicians (CPEP) for the purpose of enrolling in the Medical Record Keeping Seminar and the six-month follow-up Personalized Implementation Program. Such proof shall be submitted to the Boards disciplinary coordinator as outlined in the order. The Respondent shall pay all actual and reasonable costs of the case not to exceed three thousand dollars (\$3,000.00). Dr. Johnson motioned to approve the order and Dr. Handorf seconded the motion. The motion passed with Dr. Handorf abstaining and Dr. Hale recused.

Whitney Davis, PA – did not appear before the Board nor did a legal representative appear on her behalf. Mr. Samuel Moore represented the state. Ms. Davis was licensed on April 29, 2014 and has an expiration date of July 31, 2018. An investigation of fourteen (14) medical records for patients to whom the Respondent prescribed controlled substances indicated that the treatment Respondent provided included prescribing narcotics and other medications and controlled substances in amounts and/or for durations not medically necessary, advisable, or justified for a diagnosed condition. The order lists several other stipulated facts which establish that grounds for discipline exist. This order shall suspend the Respondents license for a period of not less than three (3) years and until Respondent has completed the other stated requirements within the order. Once Respondent is eligible and petitions the Committee to lift her suspension her license shall be placed on probation for a period of not less than five (5) years. Respondent agrees to surrender her Drug Enforcement Administration registrations for all schedules of controlled substances and agrees to not seek reinstatement of such DEA privileges until her license is no longer encumbered. Respondent must enroll in and successfully complete the three (3) day medical course entitled "Intensive Course in Medical Documentation" and the three (3) day medical course entitled "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls". Respondent must pay fourteen (14) "Type A" civil penalties for a total of fourteen thousand dollars (\$14,000.00). Respondent must also pay all actual and reasonable costs of this case not to exceed five thousand dollars (\$5,000.00). Dr. Christiansen motioned to approve the order. Ms. Claxton seconded the motion and it passed.

Agreed Order(s)

Allison P. Puckett, MD – did not appear before the Board nor did a legal representative appear on her behalf. Mr. Samuel Moore represented the state. Respondent was licensed on May 25, 2010 and this license expired on January 31, 2017. While Respondent neither admits nor denies the following, the Respondent acknowledges that the State's proof would establish the facts stipulated in the order. In April 2014 Respondent signed and submitted an application for a pain management clinic for Genesis Health and Wellness Group and Respondent identified herself as the owner of Genesis. In September 2014, the Department conducted an audit investigation of Genesis and she confirmed to the investigator that she was the sole owner of Genesis. In actuality, Respondent was a part owner of Genesis with the other two owners not being licensed medical professionals. In November 2016, Respondent signed a consent order voluntarily surrendering her pain management clinic certificate for Genesis. In that consent order, the Respondent agreed to pay civil penalties and costs of the case which had not been paid within the ninety (90) days from the issuance of the assessment of costs. The facts stipulated are sufficient to establish grounds for discipline. This order shall reprimand the Respondents license. Respondent must pay two (2) "Type C" civil penalties for a total of two hundred dollars (\$200.00). Respondent agrees to contact the

disciplinary coordinator within thirty (30) days of ratification of this order to arrange for a payment plan of the civil penalties and costs that Respondent agreed to in the 2016 consent order regarding Genesis Health and Wellness Group. Respondent must pay all actual and reasonable costs of this case not to exceed two thousand dollars (\$2,000.00). Dr. Zanolli motioned to approve this order. Ms. Claxton seconded the motion and it passed.

Appoint one member to the opioid minimum discipline taskforce (continued from day 1) – Dr. Hale is aware and has accepted his nomination to this taskforce.

Consent Order(s)

Walter Blankenship, PA – appeared before the Committee with Mr. Darrel Townsend as his legal representative. Mr. Blankenship's license to practice in Tennessee has been suspended since 2015 and he has been out of practice since October 2014. Furthermore, his license expired in 2015 while under order for suspension of licensure. Thus, Mr. Blankenship has submitted an application for reinstatement of licensure. Since the previous order of the Committee on Physician Assistants (hereinafter "PA Committee") suspending his license, Mr. Blankenship has been convicted of a felony and is not currently NCCPA certified.

Ms. Mary Katherine Bratton represented the state. Ms. Bratton advised the Board that they have two matters to consider. One of which is to determine if Mr. Blankenship's license shall be reinstated (to suspended status). The other matter is to review and consider ratification of the consent order which would lift his suspension and place his license on probation.

The PA Committee has granted Mr. Blankenship a license contingent upon the completion of one hundred (100), category 1, CME hours and successful completion of the NCCPA recertification examination. Mr. Blankenship has completed the one hundred (100) CME hours since this was reviewed by the PA Committee. Once he successfully completes the NCCPA recertification exam his reinstatement of licensure will be approved which then places his license in suspended status. Ms. Bratton informed the Board that the PA Committee has required the NCCPA recertification examination to satisfy the concern of re-entry since being out of practice. Furthermore, the PA Committee has informed Mr. Blankenship to reappear before the Committee if he is unable to sit for the NCCPA recertification examination so that a different re-entry pathway can be chosen.

Ms. Bratton reviewed the terms of the consent order. This order places his license on probation for seven (7) years and implements various other terms and restrictions. Dr. Handorf motioned for approval of the reinstatement of licensure and consent order. Dr. Zanolli seconded the motion and the motion passed.

Discussion on the selection of the new executive director - Dr. Zanolli requested that Dr. Ali represent the Board with selection of the new executive director.

Alton Ingram, MD – Dr. Subhi Ali and Dr. Michael Zanolli have recused and are not present in the room. Dr. Rene Saunders and Ms. Andrea Huddleston are not present in the room. Dr. Charles Handorf was not present in the room when the discussion began. Ms. Mary Katherine Bratton presented an overview of the case. The Board's medical consultant, Dr. Saunders, has been conflicted out of being able to review this matter. Therefore, the matter is before the Board and they are to determine if the documents presented satisfy the requirements, to lift his probation, set forth in the second corrected final order. Dr. Ralph Bard, attorney for Dr. Ingram, and Dr. Ingram appeared before the Board.

The Board questioned Dr. Ingram on what he did during the two (2) months in which he was unable to practice medicine. The Board needs to determine whether or not Dr. Ingram has successfully completed a

twelve (12) month fellowship. Staff had not granted time spent, while not practicing, as a part of the twelve (12) month fellowship. The Board came to a consensus that twelve (12) months of fellowship had been successfully completed. Dr. Christiansen motioned that the documentation provided satisfies that Dr. Ingram has completed twelve (12) months of fellowship training. Ms. Claxton seconded the motion. The motion passed with seven (7) members present and in favor of the motion, Dr. Ali and Dr. Zanolli recused and not present, Dr. Handorf not present, and with Dr. Saunders and Ms. Huddleston not present.

Drs. Ali, Zanolli and Handorf are now present in the meeting.

Petition for Order of Compliance(s)

Winston Griner, MD – appeared before the Board with legal representation. Ms. Bratton stated that Dr. Griner is before the Board pursuant to an initial consent order that was ratified by the Board on September 12, 2012. Ms. Bratton presented the petition for order of compliance and averred that the Department’s Office of General Counsel has no opposition to this order. Dr. Christiansen motioned to approve this order. Dr. Handorf seconded the motion and the motion passed.

Joseph Bowers, MD - appeared before the Board without a legal representative. Ms. Bratton presented the documents necessary to prove Dr. Bowers has complied with his consent order. She reports that the Office of General Counsel is not opposed to this order. Ms. Bratton reviewed the terms of the consent order. Dr. Michael Baron, TMF Medical Director, presented before the Board providing an overview of the treatment and recovery of Dr. Bowers. Dr. Baron advocated for Dr. Bower’s petition to be approved. However, Dr. Baron reports he has not reviewed the evaluation from Florida Cares and the original order required that TMF receive the results of this evaluation before the suspension could be lifted. Dr. Baron took a brief moment to review the Florida Cares recommendation and further discussion on the draft order took place.

The Board requested modification to the draft order of compliance. The requested modifications are as follows: the terms of probation would include submission to the disciplinary coordinator and medical director thirty (30) hours of additional CME in the area of family medicine and urgent care provided in a live format during the next three (3) years of his five (5) year probation, limit practice to part-time with the ability for Dr. Baron to make recommendations to Dr. Saunders for the practice time to increase over time, part-time practice is defined as twenty (20) hours or less per week, a restriction that he may not practice as a solo practitioner, the term length of five (5) years’ probation remain as drafted, that he enter into, within the next ninety (90) days, a contract with affiliated monitors and not have less than ten (10) charts reviewed quarterly, he will renew board certification once he is eligible to do so, and to keep the requirement of one hundred percent (100%) compliance with TMF as stated in the original draft order of compliance. Dr. Christiansen motioned to approve the order of compliance as revised with the previously stated modifications. Dr. Miller seconded the motion and it passed.

The regular Board business concluded.

Iris Room Panel – Dr. Ali, Dr. Johnson and Dr. Handorf

Declaratory Order

David Richard McIlroy, MD v. State of Tennessee Board of Medical Examiners

Iris Room

Administrative Law Judge: Rachel Waterhouse

Panelists: Subhi Ali, MD; Reeves Johnson, MD; Charles Handorf, MD

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

Counsel for Respondent: Ms. Michelle Marchicano, Esq.

Judge Rachel Waterhouse read over the list of potential witnesses. The technical record was reviewed by Judge Waterhouse. Dr. David McIlroy appeared before the Board via video conference.

Ms. Michelle Marchicano presented her opening statement. Dr. McIlroy has been recruited by Vanderbilt for perioperative medicine and Dr. Mark Rice, the executive vice chair at the Vanderbilt anesthesiology department, will be present today. He has been practicing anesthesiology for over sixteen (16) years in Australia.

Ms. Mary Katherine Bratton presented her opening statement. Ms. Bratton stated that Dr. McIlroy has not submitted satisfactory evidence of completion of a three (3) year residency program or that he holds an American Board of Medical Specialties (hereinafter "ABMS") board certification. She further stated that though no one disputes his extensive practice and research he does not strictly meet the requirements of licensure for this Board.

Dr. McIlroy was sworn in as his witness. Some points addressed by Dr. McIlroy were his specialty training in anesthesiology, length of practice, his current practice duties and publications. Ms. Marchicano moved into evidence, as Exhibit 1, Dr. McIlroy's CV.

Dr. McIlroy addressed his medical school education and stated that he was ranked #4 in his graduating class. He discussed his residency training and the requirements he had to meet in order to apply to the anesthesiology program.

Moved into evidence, as Exhibit 2, was his application for licensure.

Ms. Bratton cross-examined Dr. McIlroy. He stated he is not eligible to sit for any of the ABMS certification board exams. When asked if he has any intention of pursuing board certification his response was that he would have to look at the requirements but it is something he would like to achieve.

The Board questioned him. Further information from the file shows that he has obtained an NYU MD degree based on his completion of the USMLE. Also, that his Washington state license was restricted to practice at the University of Washington, in New York he was licensed with a full and unrestricted license and he has had no disciplinary actions.

Ms. Marchicano further clarified that Dr. McIlroy presumes that since he is not joining Vanderbilt as a full faculty staff member then he does not qualify for a distinguished faculty license in Tennessee.

Moved into evidence, Exhibit 3, affidavit from Lawrence Sandberg. Moved into evidence, Exhibit 4 affidavit from Dr. Billings.

Dr. Mark Rice, witness, was questioned by Ms. Marchicano. It was explained that Dr. McIlroy holds Board Certification in Australia and New Zealand. Dr. Rice recommends Dr. McIlroy for full and unrestricted licensure.

Ms. Bratton questioned Dr. Rice about how Dr. McIlroy's experience is considered rare and how that would be helpful to the position he would be placed in. Dr. Rice provided a response. She also questioned if his Department searched for a physician with the same expertise that was already in the United States and Dr. Rice replied affirmatively that such search occurred but they could not find any.

Dr. Reeves Johnson questioned if Dr. Rice agrees that licensing Dr. McIlroy would be in line with the Department's policy statement of protecting the health, welfare, and safety of citizens of Tennessee. Dr. Rice agreed to this statement.

The state did not call any witnesses. Both parties presented closing statements.

Judge Waterhouse charged the Board with their role. The findings of fact were reviewed by the Board members. A unanimous Board vote reopened the case so the panel could ask further questions to the witness, Dr. Rice. Dr. Rice came before the Board again for their questions. Dr. Rice reports he does not feel as though a temporary license would permit Dr. McIlroy to be credentialed at Vanderbilt.

Dr. Ali comments that the postgraduate training he has received in Australia and in the United States meets the competency requirement for physicians in the State of Tennessee and he advocates for a full medical license for Dr. McIlroy.

Dr. Handorf motioned to accept the findings of fact. Dr. Ali seconded the motion and it passed.

Dr. Handorf motioned to accept the conclusions of law. Dr. Ali seconded the motion and it passed.

Dr. Ali motioned to accept the policy statement. Dr. Handorf seconded the motion and it passed.

Dr. Ali motioned to grant the petition for relief and a full unrestricted license be issued for Dr. McIlroy. Dr. Handorf seconded the motion and it passed.

This concludes the Board of Medical Examiners day 2 meeting.