



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

**Tuesday, November 13, 2018  
Wednesday, November 14, 2018**

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**MINUTES**

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The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:49 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: Subhi Ali, MD  
John Hale, MD  
Phyllis Miller, MD  
Melanie Blake, MD  
Neal Beckford, MD  
Michael Zanolli, MD  
Reeves Johnson, MD  
Charles Handorf, MD  
Deborah Christiansen, MD  
Robert Ellis, Consumer Member  
Jennifer Claxton, Consumer Member

Board member(s) absent: Julianne Cole, Consumer Member

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  
Stacy Tarr, Administrative Director  
Courtney Lewis, Board Administrator

**I. BOARD ELECTIONS**

Dr. Neal Beckford nominated Dr. Reeves Johnson for President. Dr. Phyllis Miller seconded the nomination. The Board unanimously voted Dr. Johnson as President of the Board. Dr. Johnson nominated Dr. Melanie Blake for Vice President. Mr. Robert Ellis seconded the nomination. The Board unanimously voted Dr. Blake as Vice President of the Board. Dr. Beckford nominated Dr. Charles Handorf for

Secretary. Dr. Blake seconded the nomination. The Board unanimously voted Dr. Handorf for Secretary of the Board.

Ms. Jennifer Claxton joined the meeting.

## **I. CONSIDERATION OF APPLICATIONS**

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

**James Siminski, MD** – appeared before the Board without legal representation. Dr. Siminski is currently participating in the Texas Physician’s Health Program (hereinafter “PHP”) with a contract which terminates in March 2020. Dr. Siminski expressed he is interested in practicing telemedicine. The Board questioned the applicant on his path of recovery from substance use disorder. Dr. Michael Baron, Medical Director of the Tennessee Medical Foundation (hereinafter “TMF”), discussed the applicants history of recovery and stated that TMF would be a secondary monitor if he is granted a license. Dr. Michael Zanolli motioned to grant licensure contingent on continued monitoring through TMF as a secondary monitoring contract. Dr. Beckford seconded the motion and it passed.

**Hillary Ebling, MD** – appeared before the Board without legal representation. Dr. Ebling has been out of clinical practice since completing her first year of residency in June 2016. Dr. Ebling addressed her reason for being out of clinical practice, her interest in practicing locum tenens and recent efforts to update her clinical knowledge. Dr. Ebling has been accepted into the six (6) week Drexel University re-entry program to begin in January 2019. The Board referred to their re-entry policy. Dr. Beckford motioned to grant licensure contingent upon successful completion of the Drexel reentry program, for the Boards’ medical director to review proof of such successful completion and to bring the applicant back before the Board if there is any question in licensing. Dr. Zanolli seconded the motion and it passed with one (1) abstention from Dr. Handorf.

**Axel Grothey, MD** – appeared before the Board without legal representation. Dr. Grothey is an international medical graduate who has not completed a U.S. residency training program in one (1) discipline and is not certified through the American Board of Medical Specialties (hereinafter “ABMS”). Dr. Grothey addressed his history of training and clinical experience. The Board recognized Dr. Grothey’s lengthy clinical experience and knowledge but stated the current rules and statutes do not allow the Board to grant licensure. The Board proposed the applicant may petition for a declaratory order if he is interested in licensure. Dr. Blake motioned to table the application until the January 2019 meeting and Dr. Zanolli seconded the motion. The Board will hear the petition for declaratory order request, if it is presented to them, tomorrow on day 2 of the meeting.

**Animesh Sinha, MD** – did not appear before the Board nor did legal representation. Dr. Sinha did not respond to the request for an applicant interview. Dr. Sinha is a Canadian Medical School graduate who has not completed a recognized licensure examination and therefore does not qualify for licensure pursuant to TENN. COMP. R. & REGS 0880-02-.08. Ms. Mary Katherine Bratton reviewed the Board’s examination and reciprocity rules. The statutes and rules state an applicant must have taken one (1) of three (3) specific exams in order to qualify for licensure, with the Canadian licensure exam not being one (1) of them. However, the Boards reciprocity rules state the Canadian examination is acceptable for qualification of licensure. Based on this discrepancy, and with caution that the statute clearly does not accept the Canadian licensure examination but the current rules previously were reviewed and approved, she requested the Board to determine if an applicant may qualify for licensure through reciprocity and having taken the Canadian licensure exam. Dr. Handorf motioned to accept the Canadian examination as a qualifying exam when applying through reciprocity. Dr. Zanolli seconded the motion. The Board and staff led a discussion on whether or not the USMLE and LMCC are equivalent. Presently, that is

unknown. The motion passed. Dr. Christiansen motioned to approve licensure for this applicant based on the newly adopted interpretation of the rule. Dr. Beckford seconded the motion and it passed.

### **Approval of Minutes**

The Board reviewed the September 25 – 26, 2018 regular Board meeting minutes. Dr. Johnson requested two (2) revisions and motioned to approve the minutes with the changes. There was a second and the motion passed.

## **II. CONDUCT NEW BUSINESS**

### **Request for Continuing Education Waiver – Dr. Samuel Bagley**

The request for a waiver on the required continuing education hours was previously disseminated to the Board. Dr. Bagley has recently renewed his license and has been audited for proof of his continuing medical education. Ms. Bratton read TENN. COMP. R. & REGS. 0880-02-.19(1)(d); based on that Rule this request has been submitted outside of the allotted time for a licensee to submit such request. Dr. Handorf motioned to deny the waiver request. Dr. Blake seconded the motion and the motion passed.

### **ACCME Pilot Project Update**

Dr. Zanolli reports that North Carolina has now joined the pilot project. At this time, Ms. Stacy Tarr reports she is working towards obtaining a user name and password so that our staff is able to login to retrieve the data rather than the licensee having to mail any documents to our office.

### **Discussion on National Practitioner Databank (NPDB) Reporting – Dr. Michael Zanolli**

Dr. Zanolli reports he was given permission to allow the Board to review a slideshow presentation created by Michael Dugan, CIO/SVP Operations on the National Practitioner Data Bank Reporting. This slideshow presented the history, reporting data, confidentiality requirements and mission of the databank. A future goal of the FSMB is to have the NPDB report added to the FCVS packet. Also, a future goal could be for Tennessee to join the pilot project which would allow staff to receive the NPDB report for all applicants. The Board and staff led a discussion on how often staff queries the NPDB and how important this information would be for all applicant files. Dr. Zanolli proposed the cost of joining the pilot project could be proposed through legislation and for Congress to recognize the importance of the Board having regular access to the NPDB. Ms. Bratton stated she could look at the NPDB federal regulations to determine if the Board could require this report for every applicant and to include this requirement within the rules. This item has been moved to the Development Committee.

The Board proposed to schedule the next Development Committee for Tuesday, January 22nd, since the Board's office is closed on the Monday prior to the regular Board meeting.

### **Discuss Advanced Practice Professionals Taskforce**

Ms. Tarr informed the Board that the Physician Assistant Committee has nominated a member of their Committee to join this taskforce. Dr. Blake, chair of the taskforce, has requested that this taskforce meet one (1) more time before the PA Committee member join the taskforce.

### **Presentation from Vanderbilt University Medical Center – Mr. Tyler Barrett & Ms. Leslie Fowler**

Dr. Zanolli addressed the Board regarding the need for ease of access to continuing medical education and potential opportunities for the Board to assist in this access. Dr. David Raegan, Chief Medical Officer of the Department, has the opportunity to apply for a Center for Disease and Control grant to assist the Board in this process.

Mr. Tyler Barrett presented the utilization of QuizTime, a mobile method to pass along education in small amounts and to provide immediate feedback. QuizTime is available for the Board to make continuing education available to licensees. He reported that about five (5) correctly answered questions is equivalent to one (1) hour of CME.

The Board supports this project moving forward and looks forward to further updates.

#### **Update from the Opioid Minimum Disciplinary Taskforce**

Dr. John Hale provided the following update: The taskforce has met one (1) time since the last Board meeting. At their last meeting, the taskforce approved the draft proposal of the minimum discipline. The professional organizations collaborated and came up with an agreement which has been provided before the Board at this meeting. The Board will review the draft proposal overnight and bring any comments before the Board tomorrow, at their day 2 meeting.

#### **Presentation from Tennessee Medical Foundation (TMF), Dr. Michael Baron, Medical Director**

Dr. Baron provided the Board with an outline on how the funding provided to TMF has been spent over the last year.

- There are currently one hundred and ninety-seven (197) participants being monitored by TMF. This number has not changed a lot in the last eight (8) years.
- The number of physicians requiring mental health treatment has greatly increased.
- Began using smart phone technology for compliance confirmation. Now TMF receives electronic notification when participants check-in and out of the meetings they are supposed to attend.
- Initiated a senior contract for participants whom have been monitored for five (5) or more years that end monitoring but want to stay active with TMF advocacy. This involves a written agreement and toxicology screening. There are currently four (4) participants who have initiated a senior contract.
- He is a participant in the FSMB's sexual boundaries violation group. This group has met once this year, with another meeting scheduled for later this year.
- TMF was awarded the Physician Assistant contract from the Department of Health for monitoring and TMF is currently monitoring eleven (11) Physician Assistants.
- Developing, along with the American Foundation for Suicide Prevention, a proactive and interactive hotline screening program for physicians and other professions under the health professionals monitoring purview. This Board, the TMA and other professional organizations would have a link set up on their respective website that directs physicians to information on the hotline.

It was requested that Dr. Baron provide an update to the Board twice a year.

#### **Ratify New Licensees**

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

#### **Request to Approve Staff Member to Attend the FARB Forum on January 24-27, 2019 in New Orleans**

Dr. Ali motioned to approve Ms. Angela Lawrence, Dr. Saunders, and one (1) Office of General Counsel attorney to attend the FARB meeting. Dr. Hale seconded the motion and it passed.

### **III. DEPARTMENTAL REPORTS**

#### **Administrative Office Report**

The Board reviewed the statistical licensing report for the time period of September 1, 2018 to October 31, 2018.

The Board and staff members discussed the current online renewal system and common issues experienced by licensees were identified.

### **Ms. Noranda French, Financial Report from the Bureau Office**

The Board reviewed the 2018 Fiscal year-end report presented by Ms. French. The Board has closed in the red by \$231,445.24. The Board reviewed the factors contributing to closing in the red and led a discussion on the need for a fee increase.

Ms. Bratton reports that the Governors Counsel is currently okay with the Board amending their current fee increase request but this may not be the case when a new Governor takes office in January 2019.

Ms. French reported that the Boards motion to grant seven hundred and fifty thousand dollars (\$750,000.00) from their cumulative carryover is still pending so it is not reflective on this report. This report shows an increase in funding to TMF and legal fees. Ms. French reported there has been an annual increase of complaint and case costs.

The Board reviewed a fee increase scenario provided by Ms. French. Changing fees, which requires a rule change, may take a year or more before it becomes effective. Thus, the Board is likely to close in the red again next year.

The next financial report will be provided at the January 2019 meeting. It was discussed that the Board will have to go before Government Operations due to closing in the red again.

Ms. French will gather the three (3) year civil penalty fees comparison and provide it to Ms. Angela Lawrence to disseminate to the Board. Dr. Ali stated it would be helpful for the Board to review the previous fee change submitted as a rule revision prior to having a discussion on changing the current fees. The Board decided to discuss and consider revising the previously submitted fee increase submission tomorrow, day 2 of the Board meeting.

### **Report from the Office of Investigations**

The Board reviewed the previously disseminated report. The Board has requested to defer this until tomorrow morning, day 2, requesting that a member of the Office of Investigations be available to present this report.

### **Ms. Mary Katherine Bratton, Office of General Counsel Report**

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

1. The Medical Spa Registration rules have become effective as of October 29<sup>th</sup> and have been posted with the remainder of BME's rules on the Secretary of State's website.
2. The examination and continuing education rules are in the internal review process.
3. The intractable pain repeal rules and the fee increase 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 three (3) pending appeals from board action. The matter regarding Dr. Andrew Perez decided in the Board's favor with the Chancery Court affirming the Final Order of the BME.
6. As of November 9<sup>th</sup>, there were seventy-three (73) disciplinary complaints against fifty-one (51) respondents pending in the Office of General Counsel.

7. 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.
8. 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.

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

**Stephen Sawrie, MD** – did not appear before the Board nor did legal representation appear on his behalf. Ms. Jennifer Putnam represented the State. Respondent has been licensed since January 21, 2014 with an expiration date of November 30, 2018. On or about June 27, 2018, the Alabama Board summarily suspended the Respondents license due to his alcohol addiction and failure to obtain treatment through a facility approved by the Alabama Physician Health Program. The Respondent admits to suffering from a severe alcohol addiction that has prevented him from practicing medicine since April of 2017; he has ceased the practice of medicine and remained impaired due to alcoholism. The facts stipulated constitute grounds for discipline. This order shall voluntarily surrender the Respondents license effective the date of entry of this order. Respondent must pay all actual and reasonable costs of this case not to exceed one thousand dollars (\$1,000.00). Dr. Johnson motioned to approve the order. Dr. Zanolli seconded the motion and it passed.

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

**Audie Marlar, Jr., PA** – did not appear before the Board nor did legal representation appear on his behalf. Dr. John Hale recused himself. Mr. Andrew Coffman represented the State. Respondent is licensed as a physician assistant and this license expires on November 30, 2019. Respondent failed to comply with federal and state laws regarding controlled substances. Respondent wrote controlled substance prescriptions to his family members without maintaining a medical record for the family members. Respondent has surrendered his D.E.A. registration. The facts stipulated are grounds for discipline. To avoid further administrative action, Respondent's license is hereby voluntarily surrendered and retired. This has the same effect as a revocation and is a formal disciplinary action. Respondent agrees he shall not apply for another Tennessee Physician Assistant license. This order was ratified by the Committee on Physician Assistants on October 29, 2018. Dr. Beckford motioned to approve the order. Dr. Christiansen seconded the motion and it passed.

**Douglas Gaither, MD** – did not appear before the Board nor did legal representation appear on his behalf. Mr. Peyton Smith represented the State. Respondent has been licensed since March 1, 1978 with an expiration date of January 31, 2020. On or about June 8, 2018, the Iowa Board of Medicine entered into a settlement agreement with Respondent which disciplined Respondent's medical license for "violating appropriate professional boundaries and indiscriminately or promiscuously prescribing controlled substances in violation of the laws and rules governing the practice of medicine in Iowa, when he prescribed controlled substances to his domestic partner on multiple occasions..." Respondent was required to pay a five thousand dollar (\$5,000.00) civil penalty as well as undergo a professional boundaries evaluation. The facts stipulated are grounds for discipline. This order shall reprimand Respondents license effective the date of entry of this order. Respondent shall pay one (1) Type A civil penalty in the amount of one thousand dollars (\$1,000.00). Respondent shall pay all actual and reasonable

costs of this case not to exceed two thousand dollars (\$2,000.00). Dr. Beckford motioned to approve the order. Dr. Hale seconded the motion and it passed.

**Denny Schoch, MD** – did not appear before the Board nor did legal representation appear on his behalf. Mr. Peyton Smith represented the State. In July 2018 the California Medical Board placed his license on probation for three (3) years with terms of additional continuing medical education. That order outlined repeated acts of negligence during his care for five (5) patients. The Board questioned the significance of the number of patient concerns given his specialty and not knowing if these occurred over a lengthy period of time. Mr. Smith reminded the Board that the Respondent has reviewed this order and agrees to the terms. The Board discussed a desire to have the Respondent be present at the time he may petition for an order of compliance. Also, the Board discussed a desire to review the California Medical Board order. Dr. Ali motioned to table this order to allow time for Mr. Smith to obtain a copy of the California Medical Board order. The motion carried.

### **Petition for Order of Compliance**

**Marsha Peercy, PA** – did not appear before the Board nor did legal representation appear on her behalf. Ms. Andrea Huddleston represented the State. On July 27<sup>th</sup>, Ms. Peercy submitted a petition for order of compliance pursuant to an agreed order issued by the Board on April 7, 2017. The Department agrees that Ms. Peercy has complied with the order. This petition was ratified by the Committee on Physician Assistant's on October 5<sup>th</sup>, 2018. Dr. Handorf motioned to approve the petition. Dr. Johnson seconded the motion and it was approved.

### **Agreed Citation(s)**

The continuing education related agreed citations were previously distributed to the Board for review. Dr. Johnson motioned to ratify the agreed citations as a whole. Mr. Ellis seconded the motion and it passed.

Dr. Zanolli requested staff to present the number of agreed citations which report a deficiency in the Tennessee prescribing CME at future meetings.

The unlicensed practice related agreed citations were previously distributed to the Board for review. Dr. Miller motioned to ratify the agreed citations as a whole. Dr. Zanolli seconded the motion and it passed.

### **Fee Increase Review**

Ms. Bratton disseminated a copy of the fee increase rule revision which was requested in 2016.

The Board addressed the old fee increase submission and how there appears to be a discrepancy in the number of licensees indicated for year 2014. The Board and staff led a discussion on what total of licensees should be reported when requesting the fee increase. Ms. French informed the Board their expenditures are based on all of the licensees under this Board (to include x-ray operators, physician assistants, and polysomnographers). However, the fee increase proposal only addresses the increase figures for medical doctor licensees. Ms. French stated that the majority of the Boards revenue comes from medical doctors.

Dr. Ali requested Ms. French to bring forth a few different fee increase proposals tomorrow morning.

### **Consent Order (continued)**

**Denny Schoch, MD** – did not appear before the Board nor did legal representation appear on his behalf. Mr. Peyton Smith represented the State. As requested earlier in the meeting, Mr. Smith provided the Board members with a copy of the California Medical Board action and the Board thoroughly reviewed

the document. The consent order, under consideration by the Board, indicates that the Respondent cannot have the probation in Tennessee lifted until he has complied with the terms of the California Medical Board order. Ms. Bratton informed the Board that if they choose to reject this consent order and the Respondent does not sign a new order with the terms suggested by the Board then the matter would turn into a contested case. Dr. Zanolli motioned to accept the consent order. Dr. Johnson seconded the motion. Two (2) members voted in favor of the motion and six (6) voted against the motion. The consent order was denied by the Board. The Board led a discussion on stipulations they would like to see required, of the Respondent, outlined in the order. Ms. Bratton outlined the consensus of the Board to have the following included in the order: to show no further illegal activity involvement, require a submission of the NPDB before the lifting of the probation, require practice monitoring in California and for the length of his probation, requiring the Respondent to appear before the Board at the time of petitioning for probation to be lifted, complete additional educational coursework and provide proof of that coursework.

The Board recessed until tomorrow morning, day 2 of the meeting.



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

### **Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners Wednesday, November 14, 2018**

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:40 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 John Hale, MD Phyllis Miller, MD Melanie Blake, MD Neal Beckford, MD Reeves Johnson, MD Charles Handorf, MD Deborah Christiansen, MD Robert Ellis, Consumer Member Jennifer Claxton, Consumer Member
Board member(s) absent:	Michael Zanolli, MD Julianne Cole, Consumer Member
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



### **Ms. Noranda French, Financial Report from the Bureau Office**

Ms. Noranda French presented before the Board with more information as requested during the day one meeting.

Based on the fiscal year-end report reviewed yesterday, the Office of Investigations and Office of General Counsel has shown a constant expense increase since 2015. There has been an increase in civil penalty and case costs since 2016. Ms. French provided the Board with the exact increases which occurred each year, had there not been a misallocation of funds. Even without the misallocation, the legal costs to support this Board are increasing each year. It is projected that the Boards expenditures will be just under \$4 million dollars by 2020. Ms. French reminded the Board of the CSMD Gateway Project that the Board has approved funding for if all other participating Boards agree to participate. Those funds will come out of the Boards carry-over funds.

The Board reviewed and considered the four (4) different fee increase proposals presented by Ms. French. The Board reviewed the fees for all neighboring states. Dr. Hale motioned to increase the initial application fee to five hundred dollars (\$500.00) and the renewal fee to three hundred dollars (\$300.00). The Board spoke in favor of the increase to support the Board with increased yearly costs as it continues to support the opioid epidemic and advancement projects. The motion passes.

The Boards motion includes the understanding that Ms. Bratton will try to revise the current draft rules that were already submitted. Dr. Johnson motioned to remove the twenty-five dollar (\$25.00) verification fee from the current draft rule revision. Dr. Beckford seconded the motion and it passed.

### **Office of Investigations, Ms. Antoinette Welch**

Ms. Welch presented the disciplinary and currently monitored practitioners report for November 2018.

There have been six hundred seventy-nine (679) complaints opened this year. There have been six hundred and sixty-seven (667) complaints closed this year. Of those complaints sixty-nine (69) closed by the matter being forwarded to the Office of General Counsel for discipline, four hundred and fifty-six (456) closed with no sufficient evidence, four (4) closed with a letter of concern, and one hundred and eight (108) closed with a letter of warning.

Currently there are twenty-seven (27) medical doctors on suspended status, fifty-three (53) with a board order, sixty-four (64) on probation, and sixty-three (63) are revoked/surrendered. Currently there are zero (0) x-ray technologists on suspended status, one (1) on probation, seven (7) with a board order and three (3) revoked.

The Board addressed the Boards denial of a consent order from yesterday. The Board and staff addressed the limitations of information that is available for the Board to review when these orders come before the Board. Furthermore, it was discussed that a denial of a consent order of a licensee of this Board allows that licensee to continue working in Tennessee on an unencumbered license.

### **Discuss rules on opioid minimum discipline taskforce**

The Board was previously presented with a draft proposal to consider for adoption. Dr. Handorf motioned to adopt the draft on opioid minimum discipline. Dr. Johnson seconded the motion and it passed.

### **Petition for Declaratory Order**

**Axel Franz Kurt Grothey, MD** – the Petitioner’s appearance was waived by Dr. Ali given that he appeared at yesterday’s meeting. Yesterday, he appeared as an applicant interview and did not qualify for

licensure under the Boards statutes and rules. The Board was presented with the petition and had time to review the petition. Dr. Christiansen motioned to accept the petition for declaratory order. Dr. Beckford seconded the motion and it passed. Ms. Bratton reported she will try to have this matter set as a contested case for the January Board meeting.

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

**Thomas Ballard, MD** – did not appear before the Board but was represented by Mr. Steven Elliot. Mr. Samuel Moore represented the State. Respondent has been licensed since August 14, 1985 and has an expiration date of April 30, 2020. The Department conducted an investigation of Respondent's and Ballard Clinic's practices that included the review of twenty-two (22) of the patient records prepared and kept by Respondent. The investigation yielded that for some of the records, the Respondent prescribed combinations of controlled substances without appropriately documenting a clear objective finding of a chronic pain source, Respondent insufficiently documented attempts to identify the etiology of reported pain, Respondent prescribed controlled substances and other medication without appropriately documenting a written treatment plan, Respondent prescribed narcotics and/or other controlled substances to persons and in a quantity and duration that the persons may have become dependent to the habit of taking said controlled substances and Respondent could have provided more modalities of treatment other than the prescription of controlled substances. The facts stipulated constitute grounds for discipline. This order shall place the Respondent's license on probation for not less than two (2) years, effective the date of this order. Respondent must adhere to the Tennessee Chronic Pain Guidelines. Respondent shall obtain practice monitoring through Affiliated Monitors or another practice monitoring program. Respondent must complete the courses outlined in the order. Respondent must pay twenty-two (22) Type "C" Civil Penalties for a total of one thousand one hundred dollars (\$1,100.00). Respondent must also pay all actual and reasonable costs of the case not to exceed twenty thousand dollars (\$20,000.00). Dr. Handorf motioned to approve the order. Dr. Hale seconded the motion and it passed.

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

**Allen W. Elster, MD** – appeared before the Board with Mr. Robert Kraemer as his legal representation. Ms. Mary Katherine Bratton represented the State. On March 18, 2016, Petitioner was issued a conditional licensure letter which conditioned Petitioner's license upon maintenance of his TMF contract. Based on the petition and the statements of counsel, and information from TMF, the State has no opposition in lifting the condition of his license. Dr. Christiansen motioned to approve the other. Dr. Beckford seconded the motion and it passed.

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

**Bendik Clark, MD** - did not appear before the Board but was represented by Mr. Robert Kraemer. Mr. Peyton Smith represented the State. Respondent has been licensed since July 8, 2002 and has an expiration date of December 31, 2018. On July 22, 2008, Respondent entered into a Consent Order with the Board whereby Respondent's medical license was suspended for ninety (90) days as a result of issues involving substance abuse. On November 18, 2008, an Order of Compliance was entered by the Board lifting the suspension and placing Respondent's license on probation for a period of not less than five (5) years. As part of his probation, Respondent was required to maintain lifetime advocacy from TMF. The Virginia Board of Medicine reciprocally summarily suspended Respondent's medical license on October 8, 2002. The Virginia Board reinstated Respondent's medical license on June 30, 2011 with specific terms and conditions. Upon applying for a North Carolina license, he was required to appear before their Board on March 20, 2013. Respondent was granted licensure with terms and conditions from the North Carolina Medical Board on April 23, 2013. On March 5, 2018, Respondent lost advocacy of the TMF and was referred for a psycho-sexual evaluation at Atlanta Psychiatric Consultation Center. Respondent

voluntarily surrendered his North Carolina medical license on April 5, 2018 for sexual misconduct as reported to the National Practitioner Databank. On August 24, 2018, the Virginia Department of Health Professions entered an Order of Mandatory Suspension based on Respondent's voluntary surrender of his North Carolina medical license. From 2016 through early 2018, Respondent engaged in inappropriate communications and conduct of a sexual nature with three (3) patients, one (1) of which resulted in a sexual relationship. The facts stipulated are grounds for discipline. This order shall suspend the Respondent's license, effective the date of entry of this order, for a period of no less than one (1) year and until such time that Respondent petitions for and obtains an Order of Compliance lifting the suspension. Respondent shall satisfy several terms before petitioning for an Order of Compliance. If an Order of Compliance is approved the license shall then be placed on probation with additional terms. Respondent must pay three (3) Type "A" Civil Penalties for a total of three thousand dollars (\$3,000.00). Respondent must also pay all actual and reasonable costs of the case. Dr. Christiansen motioned to approve the order. Dr. Johnson seconded the motion and it passed.

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

**Rey Bello, MD** – appeared before the Board and was represented by Ms. Alex Fisher. Ms. Mary Katherine Bratton represented the State. After appearing previously before the Board, he was given a conditional licensure letter, dated September 16, 2016, which outlined three (3) restrictions imposed at the time of initial licensure. The three (3) restrictions placed on his license were: 1) to submit to one year of practice monitoring, 2) the monitor must examine the medical record keeping and billing practices and provide quarterly reports and 3) he is prohibited from working in a pain management clinic.

The Office of General Counsel is not opposed to the lifting of the practice monitoring restriction; he has sufficiently complied with that requirement. The Office of General Counsel is in opposition of the lifting of the restriction prohibiting him from working in a pain management clinic given that the Board was not comfortable licensing him initially without that restriction. The Board was presented with proof that the Respondent met the terms of the original letter.

Ms. Fisher informed the Board he has been granted an unrestricted license in Pennsylvania as of early 2017. She further reported that he has had an unrestricted D.E.A. registration since 2017, he has a background in the practice of neurology and none of his prior disciplinary issues discussed a concern with prescribing opioids. Petitioner has a potential job offer in Knoxville, TN at a pain management clinic if the restriction on his medical license is lifted.

Ms. Bratton advised the Board that from the conditional letter, the first two (2) terms were time limited and that the third (the pain management restriction) was not time limited. Thus, the Board was not comfortable issuing him a full and unrestricted license without that restriction. Ms. Bratton reported that the state disciplinary orders, reviewed by the Board at the time of initial licensure, did not include concerns of over prescribing. In 2016, the Board was aware that Petitioner had surrendered his controlled substance registration which caused the Board to be concerned about the possibility of over prescribing because there must have been a valid reason to have those registrations surrendered.

Having not seen evidence that the Petitioner should be excluded from practicing in a pain management clinic, Dr. Beckford motioned to accept the order of compliance and include all three provisions be lifted. Dr. Handorf seconded the motion and it passed.

**Valerie Augustus, MD** – appeared before the Board and was represented by Mr. Darrel Baker. Ms. Mary Katherine Bratton represented the State. The Board was presented with proof that Respondent met the terms of the original order which suspended her license. The State has no opposition to the lifting of the

suspension and placing her license on probation. Dr. Christiansen motioned to approve the petition for order of compliance. Dr. Miller seconded the motion and it passed with one (1) abstention from Dr. Blake.

**Rene Del Valle, MD** – appeared before the Board and was represented by Ms. Rene Stewart. Ms. Mary Katherine Bratton represented the State. Petitioner has submitted a petition for an order of compliance pursuant to a Consent Order issued by the Board on July 20, 2011, which placed the Petitioner’s license on probation for a period of not less than two (2) years and until such time as Petitioner has met certain other requirements. The State has no opposition to the lifting of the probation. Dr. Beckford motioned to approve the petition for order of compliance. Dr. Hale seconded the motion and it passed.

**David Delaplaine, MD** –appeared before the Board and was not represented by counsel. Ms. Mary Katherine Bratton represented the State. Petitioner has submitted a petition for an order of compliance pursuant to a Consent Order issued by the Board on January 28, 2009, which placed the Petitioner’s license on suspension until such time as Petitioner has an unencumbered and unrestricted Virginia medical license. The Office of General Counsel does not have any concerns about lifting the suspension on his license. Dr. Beckford motioned to approve the petition for order of compliance. Dr. Hale seconded the motion and it passed.

**Gamal Alshobari** – did not appear nor did a legal representative appear on his behalf. Ms. Andrea Huddleston represented the State. Mr. Alshobari previously applied for licensure as an Orthopaedic Physician Assistant and was denied licensure, because he had not attended an OPA training program, by the Committee on Physician Assistants. On the 5<sup>th</sup> of October, 2018, the Committee upheld their decision for denial after Mr. Alshobari appealed the initial decision for denial. This Final Order outlines that the Physician Assistant Committee denies this applicant for licensure but would consider a petition for declaratory order, if filed within the next sixty (60) days, on his current application with an update to his criminal background check. The licensure denial is not reportable to the NPDB. It is requested that this Board ratify this order to uphold the denial of licensure. Dr. Blake motioned to approve this order. Dr. Handorf seconded the motion and it passed.

At this time the Board members divided into three different panels.

*Iris Room Panel: Dr. Johnson, Dr. Hale and Mr. Ellis*

**Contested Case**

**Darrel Rhinehart, MD v. State of Tennessee Board of Medical Examiners**

**Iris Room**

**Administrative Law Judge: Elizabeth D. Cambron**

**Panelists: John Hale, MD; Reeves Johnson, MD; Robert Ellis, Consumer Member**

**Counsel for State: Samuel L. Moore, JD, Esq.**

**Counsel for Respondent: James E. Luper, Esq. and Nathaniel T. Gorman, Esq.**

Respondents counsel called Dr. Rhinehart as a witness. Dr. Rhinehart provided information on his previous practice procedures.

The panel viewed video footage from a patient encounter. Mr. Moore questioned the witness on whether or not he performed an exam on that patient. The Board questioned why this patient was initially dismissed as a patient yet allowed to be seen again in his office. Dr. Rhinehart is unsure as to how the patient was able to schedule and be seen for two (2) additional appointments.

There were no more witnesses from either party.

Mr. Moore presented his closing argument ultimately requesting the panel to revoke Respondents license. Respondents counsel presented his closing argument and reaffirmed that the Respondent has already agreed that he would be okay with probation, monitoring, and/or required continuing education. It was stated that, since 2016, Dr. Rinehart's practice has changed and he has been credentialed in two (2) hospitals since thus should not have to lose his license. Mr. Moore presented a rebuttal with the fact that there has been a history of unsafe practice.

The counsel to each party presented their proposed orders to the panel. After lengthy discussion, the panel motioned to adopt the findings of fact, conclusions of law, and the policy statement. The panel discussed and amended the order presented by the States counsel.

Based on the panels' deliberations, the final order shall be as follows:

Respondent has been licensed since August 17, 1984 with an expiration date of May 31, 2019. This final order outlines twenty-seven (27) stipulated facts. This order shall suspend the Respondents license until May 31, 2019 at which time his license will expire. Respondent will be prohibited from renewing his license, reinstating this license, or applying for a new license. The Tennessee Board of Medical Examiners will notify the Indiana State Medical Board of this action. It is recommended that Respondent successfully complete a course on medical record keeping and prescribing controlled substances. Respondent must pay thirty-two (32) "Type A" civil penalties for a total of thirty-two thousand dollars (\$32,000.00). Respondent must pay all actual and reasonable costs of this case not to exceed one-hundred thousand dollars (\$100,000.00). This order is formal disciplinary action and will be reported to the National Practitioner Data Bank.

Mr. Ellis motioned to approve the order as amended. Dr. Hale seconded the motion and it passed.

***Poplar Room Panel: Dr. Handorf, Dr. Ali and Dr. Beckford***

**Contested Case**

**Brian Waggoner, MD v. State of Tennessee Board of Medical Examiners**

**Iris Room**

**Administrative Law Judge: Rachel Waterhouse**

**Panelists: Charles Handorf, MD; Subhi Ali, MD; Neal Beckford, MD**

**Counsel for State: Andrew Coffman, JD, Esq.**

**Counsel for Respondent: Mr. Tom Wiseman and Ms. Anne Frasier, Esq.**

The last hearing was held on May 4, 2018 and the transcript was provided to the panel. Today is a resumption of the hearing and it marks day seven (7) of this contested case matter.

Mr. Andrew Coffman, for the State, proceeded with his cross examination of Dr. Brian Waggoner as the witness. The panel questioned the witness.

The Respondents counsel called Dr. Mitchell Mutter as a witness. The Respondents counsel questioned Dr. Mutter regarding the Tennessee Chronic Pain Guidelines and information outlined in symposiums he has been affiliated with. The States' counsel and then the panel questioned the witness.

Dr. Michael Stabile was called as an expert witness from the Respondents counsel. The States' counsel and then the panel questioned the witness.

The Respondents counsel called Amber Jones, billing coordinator for the Respondent, as a witness. Mr. Andrew Coffman, for the State, proceeded with his cross examination of the witness. The panel did not have any questions for this witness.

The panel will not be able to hear this matter at the January setting, the next hearing date will be in March.

*Dogwood Room Panel: Dr. Miller, Dr. Christiansen and Ms. Claxton*

**Contested Case**

**Gary L. Murray, MD v. State of Tennessee Board of Medical Examiners**

**Dogwood Room**

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

**Panelists: Phyllis Miller, MD, Deborah Christiansen, MD, Jennifer Claxton, Consumer Member**

**Counsel for State: Paetria Morgan, JD, Esq.**

**Counsel for Respondent: Richard E. Charlton, Esq. and Gail Ashworth, Esq.**

The facts stipulated are as follows:

Respondent has been licensed by the Board as a medical doctor since May 10, 1976 and has an expiration date of October 31, 2019. On or about June 15, 2015, the Respondent wrote a prescription for a seven day supply of Lortab 10-325 to an immediate family member. On or about June 25, 2015, Respondent wrote a prescription for a ten day supply of Percocet 10-325 to the same family member. Respondent failed to perform a physical examination prior to writing the prescriptions for Lortab and Percocet. Additionally, Respondent failed to create a medical record related to the Lortab and Percocet prescriptions. Respondent has provided regular care to that same family member which included treatment for diabetes and cholesterol issues. Respondent gave that same family member clearance to receive lumbar fusion surgery. Respondent has provided non-emergent care to immediate family members for major long-term illnesses. Respondent has written numerous prescriptions, including prescriptions for controlled substances, to another family member, and failed to create and/or maintain a medical record for every prescription.

The panel approved the necessary parts of the final order presented. This final order places the Respondents license on probation for a period of two (2) years, effective the date of entry of this order. Respondent must complete specific coursework. Respondent must pay all actual and reasonable costs of this case not to exceed thirty thousand dollars (\$30,000.00). The Respondent shall pay five (5) "Type B" civil penalties for a total of twenty-five hundred dollars (\$2,500.00). At the expiration of the probationary period, Respondent becomes eligible to petition the Board for an order of compliance lifting the restrictions imposed in this order. Respondent shall appear before the Board as part of his petition for order of compliance.

This concludes the Board of Medical Examiners day 2 meeting.