



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

**Tuesday, March 20, 2018
Wednesday, March 21, 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
Neal Beckford, MD
Melanie Blake, MD
Deborah Christiansen, MD
Reeves Johnson, MD
Julianne Cole, Consumer Member
Phyllis Miller, MD
Robert Ellis, Consumer Member
Jennifer Claxton, Consumer Member
John Hale, MD
Charles Handorf, MD

Board member(s) absent: None

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

RULEMAKING HEARING, 9:00 A.M. CST

Ms. Mary Katherine Bratton described the procedural steps that have been taken in preparation for the rulemaking hearing and established that all formalities were met. The same roll call taken early is accurate meaning the following members were present for voting: Dr. Subhi Ali, Dr. Reeves Johnson, Dr. Melanie Blake, Dr. Michael Zanolli, Dr. Deborah Christiansen, Dr. Neal Beckford, Dr. Phyllis Miller, Dr. John Hale, Dr. Charles Handorf, Mr. Robert Ellis, Ms. Julianne Cole, and Ms. Jennifer Claxton. This

rulemaking hearing proposes amendments to Board rule 0880-02-.01 and 0880-02-.02. The rulemaking hearing proposes the inclusion of new Board rule 0880-02-.24. The proposed rules establish the standards to register as a medical spa registry for purposes of Tenn. Code Ann. § 63-6-105. That statute, among other things, authorizes this Board to promulgate rules to set an annual fee to be assessed on medical spas that are listed on the online registry.

Dr. Christiansen motioned to approve the following documents: the regulatory flexibility analysis and the statement of economic impact to small businesses. Dr. Johnson seconded the motion. The motion carried with Mr. Ellis abstaining. Dr. Christiansen motioned to adopt all proposed rule changes and rule addition for this rulemaking hearing. Dr. Johnson seconded the motion. The Board voted by roll call vote: Dr. Hale – aye, Dr. Beckford – aye, Dr. Johnson – aye, Dr. Ali – aye, Dr. Blake – aye, Dr. Miller – aye, Dr. Handorf – aye, Ms. Cole – aye, Mr. Ellis – abstain, Dr. Christiansen – aye, Ms. Claxton – aye, Dr. Zanolli – aye. The rule passed and the rulemaking hearing concluded.

I. CONSIDERATION OF APPLICATIONS

Medical Doctor Applicant Interview(s):

Sameh Askandar, MD – appeared before the Board with legal counsel from Mr. Jimmy Bradshaw. Dr. Askandar appeared before the Board as an international medical graduate who has not completed a three (3) year U.S. residency in one (1) discipline and is not currently American Board of Medical Specialties (hereinafter “ABMS”) board certified. By rule and statute Dr. Askandar does not currently qualify for licensure in Tennessee. Dr. Askandar currently holds an unrestricted medical license in Ohio, a Tennessee medical volunteer license, completed training in Egypt and intends to practice family medicine once fully licensed in Tennessee. Mr. Bradshaw informed the Board that their original intention was to request approval to petition for a declaratory order and the application be tabled until that process was complete. However, in light of the provision found in TCA § 63-6-207(g), they requested the Board to consider issuing Dr. Askandar a temporary license of limited duration.

Dr. Askandar outlined his training background to the Board. He reported having completed two (2) years of fellowship in surgery and to currently be in his first year of family medicine residency. Dr. Askandar reports to have two (2) years left of family medicine residency and that he is eligible to sit for the ABMS Family Medicine specialty Board in April 2020. He attributes his personal interests and a desire to change the population of patients to which he serves as factors in why he changed his specialty. The Board deliberated on the applicant’s candidacy for a temporary license.

At the January 2018 Board meeting, proposed rule language was discussed on the length at which temporary licensure shall be granted. At that meeting, the Board felt that the length of temporary licensure should not exceed two (2) years. The Board acknowledged that if they granted temporary licensure to Dr. Askandar then his temporary license would expire before he completed his specialty board exam and before he completed his residency program. Thus, the temporary license would expire before he became eligible for full medical licensure. To add to the consideration of temporary licensure, Ms. Bratton stated that previous temporary licenses issued were granted without the authority to supervise midlevel practitioners and the Board may want to consider a similar restriction for this applicant.

Dr. Beckford motioned to grant a temporary license effective July 1, 2018 for a period of two (2) years. Dr. Johnson seconded the motion. Ms. Bratton requested clarification on whether or not there would be any limitations on this license and what his process for upgrading to full licensure would be. Dr. Beckford amended his motion to state that Dr. Askandar would not supervise midlevel practitioners and that he would submit an application, payment and other required documents to apply for full licensure when he is ready to upgrade licensure. Dr. Rene Saunders queried the Board on whether or not they are comfortable

permitting him to practice in any specialty with the temporary license. The Board did not state a concern on this considering the applicants training history. The motion passed.

Julio Galindo, MD – appeared before the Board without legal representation. Dr. Galindo's Ohio Medical license was placed on probation for two (2) years due to prescribing to self, friends and/or family and this probation was lifted as of September 2017. Dr. Galindo addressed the Board regarding the incidences that led to his Ohio disciplinary action. Dr. Galindo informed the Board he is interested in practicing Internal Medicine in Tennessee. Dr. Zanolli inquired as to status of his American Board of Internal Medicine (hereinafter "ABIM") certification during his probation and it was reported that his certification status was not altered by the probation and he became initially certified in 2014.

Dr. Miller inquired as to whether or not Dr. Galindo has participated in a Physician's Health Program (hereinafter "PHP"). Dr. Galindo reported that he has never had any substance use concerns and the action in Ohio had been viewed as a lack of his knowledge regarding the Ohio rules and regulations of licensure. Dr. Saunders stated the Ohio Board order did not discuss the need of a PHP. Furthermore, Dr. Galindo reported that he does not have any action on his D.E.A. certificate. The Board deliberated on whether or not a Tennessee Medical Foundation (hereinafter "TMF") evaluation was necessary and if the license granted should be conditional or contingent. After deliberation, Dr. Beckford motioned to grant a full and unrestricted license and stated that Dr. Galindo has completed his probation requirements in Ohio. Dr. Blake seconded the motion and the motion passed.

Frederick Hodges, MD – appeared before the Board, with legal representation from Mr. Samuel Helmbrecht. Dr. Handorf and Dr. Beckford recused themselves. Dr. Hodges' primary specialty is in Obstetrics and Gynecology. Dr. Hodges appeared before the Board requesting licensure after his previous Tennessee license was revoked for unprofessional conduct, which was effective November 30, 2017. The final order, which revoked Dr. Hodges' medical license, stated he may apply for a new medical license effective December 1, 2017, that he must maintain 100% compliance with current TMF and APCC contracts, pay thirty (30) "Type A" civil penalties and actual and reasonable costs of the case. On March 28, 2014 Dr. Hodges entered into a 5-year contract with TMF. Among other things, the TMF contract requires that he maintain 100% compliance with the Behavioral Medicine Institute (hereinafter "BMI") contract; BMI is now APCC. He has maintained compliance with both agreements.

Dr. Michael Baron, TMF Medical Director, advocated for Dr. Hodges and informed the Board that Dr. Hodges has completed intensive work and has been 100% compliant with his TMF contract without lapse. Dr. Baron reported the current contract length has one (1) year remaining but he would request the contract be extended by four (4) years for a total five (5) more years of TMF monitoring.

Dr. Rochelle, an adult and forensic psychiatrist from Atlanta, presented before the Board and has been treating Dr. Hodges since 2014. Dr. Rochelle explained that his initial evaluation was completed at BMI in Atlanta. After the evaluation, he entered into an intensive outpatient treatment program at BMI where some of the following issues were addressed: impulsive behavior, learning about better boundaries and victim empathy. After completing the intensive outpatient program, he continued treatment in the maintenance phase since March of 2014. Dr. Hodges entered back into practice while in the maintenance phase and this allowed for monitoring of his interactions between patients and staff while back in practice over a span of about four (4) years. Dr. Rochelle outlined the requirements that have been established such as polygraphs every six (6) months, chaperones receiving proper training, evaluations submitted by staff, submission of patient forms which assess his patient interactions, and counseling for Dr. Hodges. She indicated that all of this information is collected and submitted to TMF quarterly. Dr. Rochelle recommended that his monitoring remain the same as it was established prior to revocation of licensure to ensure there is a continued checks and balances in place.

Dr. Blake motioned to grant conditional licensure with a minimum of five (5) years, as of today, of continued TMF monitoring which includes the recommendations of monitoring from APCC (previously BMI) that are already in place. Dr. Johnson seconded the motion. Dr. Zanolli spoke in regards to why Dr. Hodges license was originally revoked and that the members of the Board should be sure to have read the transcripts provided to be knowledgeable on the number of times and length of time the inappropriate behavior lasted.

Dr. Blake and Dr. Zanolli proposed a question regarding the rate of recidivism for sexual misconduct behavior and whether or not an individual can be rehabilitated from such behavior and allowed back into practice. Dr. Rochelle was asked to discuss any information she has available on the rate of recidivism for this type of behavior. Dr. Rochelle reported that published, peer review, data does not exist regarding the rate of recidivism for sexual misconduct. Alternately, randomized controlled trials are not ethical. Also, prevalence rates are limited because of lack of disclosure, transparency and confidentiality.

Dr. Blake altered her motion to grant conditional licensure with lifetime TMF advocacy. A discussion was held on whether or not lifetime TMF advocacy would require monitoring through APCC. The Board understands that the monitoring would be required so long as it continued to be a part of the TMF contract. Dr. Baron stated the TMF contract would include the monitoring and any other requirements recommended from the experts at the monitoring program, APCC. For instance, if APCC felt as though Dr. Hodges no longer needed a chaperone during practice then the TMF contract could be revised to no longer require a chaperone.

The Board led a discussion on the need for a chaperone to be present for all patient encounters or during evaluations. Dr. Rochelle approached the Board to discuss their programs opinion regarding the need for chaperones after professional sexual misconduct. The following are expectations for their chaperoning requirement: the chaperone must be educated about the physicians' professional sexual misconduct, at no time is the physician to be alone with a patient, the chaperone has direct sight and observe the physical exam and the chaperone must document their presence in the room.

Ms. Bratton advised that the Board to alter their motion to include in the Board order that a chaperone be required to practice so the public is aware of this restriction; the public will not have knowledge of the details of the TMF contract or compliance. Ms. Martin added that if the Board voted to issue this requirement of a chaperone as a restriction on his license then the public would be able to see that his license has been restricted before they even review the Board order. The Board led a discussion on the need to have each patient seen by Dr. Hodges aware that a chaperone is required.

The Board discussed an option of having Dr. Hodges hang a sign in his office that reports a chaperone must be present during their visit. Dr. Baron addressed the Board and reported that TMF does not usually monitor signage but if this was something that the Board required then they would work to monitor compliance of this. Dr. Blake motioned to grant a conditional license with lifetime TMF advocacy and for his practice to be restricted to the presence of a trained chaperone during direct patient care.

Dr. Miller identified that the Board has addressed the sign in the office setting but should take caution to the fact that, as an OB/GYN physician, Dr. Hodges will be practicing in multiple settings. Ms. Cole and Ms. Claxton supported the need to have a sign in the office to alert the public that a chaperone should be present during their visit. Ms. Claxton proposed that each patient could sign a form confirming notice of the chaperone requirement. Dr. Blake did not accept that proposed amendment. Ms. Martin reiterated that if the Board decided that the requirement of having a chaperone present for all direct patient care is a restriction on Dr. Hodges license then the public will quickly be able to recognize that a restriction exists on his license because through the license verification system, under his name, the licensure type displayed would show as restricted.

The Board continued to weigh the pros and cons of requiring a sign to be posted and/or to have the patients sign a form confirming they have been alerted to the requirement of needing a chaperone.

Dr. Zanolli commented that he is not in support of the current motion and feels that at minimum the Board should consider a probationary period to give the state more authority and a faster response time in disciplining his license if he should become noncompliant with the terms. Dr. Zanolli stated the present motion gives too much responsibility on TMF to monitor Dr. Hodges compliance and relieves the state too much of its responsibility. Dr. Blake withdrew her motion.

The Board took a break.

Mr. Helmbrecht spoke in regards to the Boards concern on informing patients before treatment. Mr. Helmbrecht stated it would be possible for all new patients to sign an acknowledgment form that a chaperone will be present for Dr. Hodges. Ms. Claxton proposed that if Dr. Hodges and others have offered this viable option then the Board should move forward with including such requirement into their motion.

Dr. Hale motioned to grant a conditional license with lifetime TMF monitoring, to include a chaperone with all direct patient contact which is notated within each chart, to have a form signed by all new patients acknowledging his chaperone requirement, and for his charts to be monitored by either the Board or another monitoring mechanism.

Dr. Baron reported that TMF would not be able to monitor patient charts. Dr. Rochelle spoke in regards to being able to monitor that a chaperone acknowledgement is being made by the patient and the chaperone. She proposed this could be done so through the use of a chaperone log which is signed by the chaperone and patient and if the Board wanted a separate acknowledgment form signed by the patient that could be done so as well.

Dr. Johnson seconded the motion by Dr. Hale. Dr. Johnson requested a friendly amendment to place him on probation for two (2) years and that all patients, opposed to just new patients, are required to acknowledge that a chaperone must be present. Dr. Hale accepted these amendments. It is the intent of the motion to have all patients sign an acknowledgement form prior to their visit with Dr. Hodges and after the visit to have the chaperone and patient sign the chaperone log.

Dr. Blake requested an amendment to the motion to require that the chaperone be trained and knowledgeable of Dr. Hodges misconduct. Also, to have Dr. Hodges license issued as a restricted license. These amendments were accepted by Drs. Hale and Johnson.

Dr. Baron addressed the concern that Dr. Hodges works in a multi-physician group where he may be on-call and see patients of other providers. He suggested it could be challenging, in those situations, to have all patients sign the acknowledgment form and chaperone log. Dr. Rene Saunders proposed that Dr. Hodges should assume sole responsibility of ensuring the appropriate forms are signed by all patients and that a trained chaperone be present during all direct patient care. Dr. Christiansen proposed that the length of probation could be extended and to add the requirement that Dr. Hodges appear before the Board before the probation is lifted.

Dr. Hale's motion, as restated by Ms. Bratton, is to grant a conditional license with lifetime TMF advocacy, that all of his patients for the practice who may be seen by him, absent an unassigned call, be required to sign a form documenting that a chaperone will be present while being seen by Dr. Hodges to be included in each medical record, and to have each patient and chaperone sign a log stating that they

have in fact had a chaperone present during their visit with Dr. Hodges, that the chaperone requirement is a restriction on licensure and is to be reported on the states website as such, that the chaperone be trained, and that the log signed by each patient and chaperone after each visit be monitored by Dr. Rochelle, that the license be placed on probation for two (2) years, and after two (2) years Dr. Hodges must reappear before the Board for a motion of compliance. The motion by Dr. Hale is seconded by Dr. Johnson.

The Board held no further discussion and held a roll call vote on this motion: Dr. Hale – aye, Dr. Johnson – aye, Dr. Blake – opposed, Dr. Miller – aye, Ms. Cole – aye, Mr. Ellis – aye, Dr. Christiansen – opposed, Ms. Claxton – aye, Dr. Zanolli – opposed. The motion passed 6 – 3. Dr. Beckford and Dr. Handorf were recused and Dr. Ali did not vote on the motion.

David McIlroy, MD – was not present but his counsel Ms. Michelle Marshicano represented him before the Board. Dr. McIlroy has applied for initial licensure after completing medical school and seven (7) years of postgraduate medical training in Australia. He is not currently ABMS board certified in the U.S. Also, he does not possess a criminal history and is actively licensed in another state in the U.S. Currently, Dr. McIlroy does not qualify for full medical licensure in Tennessee because he has not completed three (3) years of U.S. residency or become ABMS board certified. Ms. Marshicano reports that a petition for declaratory order has already been submitted on the behalf of Dr. McIlroy. She further explained that he has been recruited to join Vanderbilt University Medical Center as a cardio-thoracic anesthesiologist. Ms. Marshicano requested the Board to allow them to proceed with the petition for declaratory order. As noted by Dr. Saunders, Dr. McIlroy does not hold the current authority to live or work in the U.S. at this time. Dr. Beckford motioned to approve the request for a petition for declaratory order. The motion was seconded by Dr. Zanolli and the motion passed. Dr. Zanolli motioned to table his current application until the petition for declaratory order is heard. Dr. Blake seconded this motion. Dr. Zanolli motioned to waive the requirement of Dr. McIlroy to be physically present during the petition for declaratory order and Dr. Blake seconded the motion. All motions carried.

APPROVAL OF MINUTES

The Board reviewed the January 2018 Board meeting minutes. Dr. Johnson motioned to approve these minutes. Mr. Ellis seconded this motion and it carried.

The Board reviewed the January 2018 Development Committee minutes. Dr. Johnson motioned to approve these minutes. Dr. Blake seconded this motion and it carried.

CONDUCT NEW BUSINESS

At the last meeting, the Board requested Ms. Martin, Dr. Baron and Dr. Mutter review the Boards “Office Based Treatment of Opioid Addiction” policy in light of the Buprenorphine Treatment Guidelines adopted by the Board at their January 2018 meeting. It is their recommendation that the Board rescind the “Office Based Treatment of Opioid Addiction” policy. It was determined that nothing from the old policy was in opposition of the new policy but rather the new policy is more comprehensive and having both may cause confusion. Dr. Johnson motioned to approve the rescinding of the “Office Based Treatment of Opioid Addiction” policy. Dr. Handorf seconded the motion and the motion carried. The “Office Based Treatment of Opioid Addiction” policy has been rescinded.

The Board reviewed the newly licensed and reinstated individuals. Dr. Handorf motioned to ratify all lists of new and reinstated licensees. Dr. Johnson seconded the motion and it carried.

TMF REQUEST FOR FUNDING INCREASE UPDATE

Dr. Zanolli presented an update on the progress of the Boards motion for there to be a one hundred and fifty thousand dollar (\$150,000.00) funding increase for the current fiscal year and for the next fiscal year. Since the last Board meeting, the increase in funding has been approved, aside from waiting on one more signature, and the funding adjustment will soon be included in the Boards budget.

ADMINISTRATIVE OFFICE REPORTS

Ms. Martin presented before the Board an update on the administrative offices' application processing. Currently, there are five hundred and twenty-seven (527) pending medical doctor applications. Thus far, there has been one hundred and twenty-one (121) new medical doctor applications received in March of 2018. In March of 2017, there was a total of two hundred and eleven (211) new applications received. At the previous meeting, Ms. Martin reported a desire to process applications within five (5) weeks of receipt. In reviewing applications presently at the ninety (90) day benchmark about fifty percent (50%) of application files are still pending. However, Ms. Martin reported that further analysis is needed to determine what an appropriate benchmark should be. History shows that the Boards' staff has been unable to process applications within an eight (8) week benchmark since the year 2011.

Ms. Martin presented data on the numbers of interviewees over the last few years. The data reflects a decline in the number of applicant interviews per year. Through policy work and/or rule changes the Board has effectively limited their number of applicant interviews.

ACCME PILOT PROJECT UPDATE

Ms. Martin reported, this project is almost ready to launch and it is time to notify the licensees. She reports an e-mail has been drafted and will be sent out to all licensees that are signed up for electronic communication.

The Board recessed for lunch.

ADVANCED PRACTICE PROVIDERS TASKFORCE (WORKING LUNCH MEETING)

This meeting was called to order at 12:39pm CT by Dr. Melanie Blake.

Board members present:	Neal Beckford, MD Melanie Blake, MD Phyllis Miller, MD
Staff present:	Mary K. Bratton, JD, Chief Deputy General Counsel Maegan Martin, BME Executive Director Rene Saunders, MD, Medical Consultant, BME Candyce Waszmer, Administrative Director

Having previously met on March 2, 2018, the Committee members were provided with notes regarding their deliberations from their last meeting.

The Committee led a discussion on how many patient charts a physician should be responsible for reviewing with the ultimate goal being patient protection. It was proposed that physicians could review 20% of patient charts and for this to include new patients. Dr. Blake spoke in favor of reviewing each new patient chart so the physician has the ability to determine if they patient is an appropriate candidate to be seen by an advanced nurse practitioner. Dr. Beckford spoke in favor of reviewing all new patient charts

and commented that the numbers of new patients will vary based on the practice specialty. Other factors to consider would be the skillset of the advanced practitioner. Dr. Beckford proposed that reviewing a majority of the new patient charts for an advanced practitioner that is new at practice would likely be more important for patient protection than for an experienced advanced practitioner. Dr. Blake suggested that protocols established within each practice would assist in ensuring patient protection when factoring in the level of experience of the advanced practitioners.

The Committee led a discussion on whether or not there should be rules on the pathway to which the review of 20% of the charts shall occur as a means to avoid situations where charts are left un-reviewed because the physician and advanced practitioner did not have a protocol set up to accomplish this task. Ms. Bratton reported that currently the burden is on the physician to ensure that 20% of the charts are being reviewed even if the physician's office has established protocols to where the advanced practitioner or other personnel is sending the charts to the physician. It was proposed that the rules may require each collaborative practice to create a pathway to ensure 20% of all charts are reviewed.

The Committee elected to require that 100% of patient charts, to which the patient was prescribed controlled medications, be reviewed by the physician. Also, the Committee decided to keep the 20% review of patient charts as it currently is required.

The Committee led a discussion on how many advanced practitioners a physician should supervise. It was stated, by Dr. Blake, that the ratio of advanced practitioners to physician can be practice specific but proposed a ratio of 4 to 1 that should be reasonable for all physicians. Although realizing that obtaining this data may be impossible, Dr. Beckford proposed that understanding the current average ratio in Tennessee would be beneficial in this discussion. Ms. Martin estimated there are currently 8,000 advanced nurse practitioners who hold a certificate to practice. Dr. Beckford questioned if staff would have access to obtain data on the number of supervising physicians to the advanced practitioners. Ms. Martin reported that there is not a report available which could identify how many supervisees one physician has and that it is up to the supervisee to notify the office of these changes so the data may not be accurate. Dr. Blake commented that one advanced practitioner could be the equivalent of two practitioners if both are part-time; therefore what is proposed is one to four full time employees. Dr. Blake stated having too many advanced practitioners, such as 7 to 1 physician, dilutes the ability of the physician to monitor and supervise, especially in cases where the advanced practitioners are geographically spread out.

The Committee led a discussion on if the access to electronic medical records eliminates the need for a site visit and at what interval should site visits occur if they are to occur. Currently, site visits should occur every thirty (30) days to every location. The Committee members agreed that a site visit every thirty (30) days is no longer practical but that site visits should still occur. It was decided that thirty (30) days is too short and perhaps six (6) months is too long. Ms. Bratton referenced a discussion from their last meeting about how the Committee had discussed the option of listing requirements that must be met during each site visit to ensure each visit is comprehensive. Dr. Blake stated the purpose of the site visit would be to reinforce the collaborative relationship, to observe the practice site, communicate with the employees and have a setting where they can express any concerns they may have. Ms. Bratton commented that one component discussed previously would be to add the requirement of having the supervisee present during the site visit because this is not specifically required in the present rules. Dr. Beckford spoke in favor of requiring a site visit every three (3) months.

The Committee led a discussion on the total number of patients that make up a caseload. It was determined that this is equivalent to the number of patient visits. Therefore, the physician is reviewing 20% of visits that occur per month.

The Committee led a discussion on the required licensure status of a physician in order to supervise. Currently, the physician's license must be unencumbered to supervise advanced practitioners. Dr. Beckford proposed that some encumbrances faced by physicians may not directly relate to their ability to supervise and the involvement of mid-levels in a practice adds to patient protection. Dr. Blake stated the most critical areas of encumbrance to consider for this restriction would be in disciplinary matters which involved prescribing issues and unprofessional conduct. After further discussion the Committee settled to leave the language, which restricts a physician with an encumbered license from supervising.

Mr. Yarnell Battey with the Tennessee Medical Association (hereinafter "TMA") addressed the Committee but not as a representative of TMA offering TMA's position on this matter. Mr. Battey provided the Committee with common issues brought before the TMA by Tennessee physicians:

- The match between the physician and the supervisee (the specialty of the physician may differ from the advanced practitioner)
- Members are interested in being able to complete review of charts electronically and the visit with the supervisee be electronic or for the site visit to be electronic every other time to ease the burden on the physician
- Patients are often confused as to who the provider technically is, whether it be the nurse practitioner, physician assistant, or physician.
- Is there meaningful supervision when the supervision need is contracted out (such as in cases where a nurse practitioner owns the practice)?
- It will be difficult to determine the ratio of supervisees to supervisor with access to electronic means and multiple practice settings.
- When a physician is disciplined by the Board the Board order should specifically state whether or not supervising midlevel's is allowed or not. Furthermore, certain encumbrances on a physician's license may benefit patient protection by having midlevel practitioners.

Ms. Bratton commented that at their last meeting the Committee suggested that TMA be questioned on whether or not they could poll their members to gain a better understanding of how many supervisees a physician holds current responsibility for and what practice scenarios they are in. Dr. Blake requested that the TMA attempt to poll its members on their supervision preferences and Mr. Battey stated he would be happy to work with the Committee and staff on collecting this data.

Dr. Beckford inquired if there is any census on how long it may be before there are independent nurse practitioners in Tennessee. Mr. Battey stated that the only information available would be to look at trends and presently the number of states with independent practice has continued to increase and has not seen a decrease.

Katherine Moffet, Executive Director for the Tennessee Academy of Physician Assistants, addressed the Committee. She spoke in favor leaving the rules flexible enough for physicians to determine the level of oversight needed for each mid-level based on the mid-levels skills and experience.

The Committee will meet again to review a revised draft rule which includes the proposals provided today.

The Committee determined that there are so many different practice scenarios that it would be more functional to use a blanket approach.

Ms. Bratton stated she will meet with the nursing Board attorney to understand who is given a certificate of fitness to practice and who is not. Also, Ms. Bratton proposed that currently there is a rule which

requires the supervising physician to have experience or expertise in the same field of medicine performed by the supervisee and if this is not currently happening then the Committee may want to address the need for this requirement or determine a way to better enforce the rule.

Advanced Practice Providers Taskforce Meeting adjourned at 1:45 pm CT.

The Board of Medical Examiners Day 1 meeting resumed at 1:57pm CT.

CONDUCT NEW BUSINESS (CONTINUED)

Consider ratification of the Committee on Physician Assistants Criminal Conviction Policy:

The Board members reviewed and considered the policy distributed. It is understood that if an applicant does not report a criminal conviction that does appear on their background check then this policy does not apply them and he/she would still need to appear for an applicant interview due to the discrepancy. Dr. Christiansen motioned to accept the policy. The motion was seconded by Dr. Handorf and it carried.

Consider re-approval request from X-Ray Instructional Programs: Mr. Owen London appeared on behalf of X-Ray Instructional Programs. Since the last meeting, Mr. London has been able to provide the medical consultant, Dr. Saunders, with proof that the appropriate clinical training hours had been met. Dr. Zanolli motioned to approve this request for re-approval. Dr. Johnson seconded the motion and it carried.

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 were brought before the Board, and passed, as a rulemaking hearing earlier in this meeting and from here the rules will be moved to the Attorney General's Office.
 - a. Dr. Zanolli inquired if these rules would change the processing and work that has already been completed for medical spas. Ms. Martin assured the Board that these rules do not change anything other than charge a fee to the applicants. Ms. Bratton further stated that the rules also impose the understanding that it is unprofessional conduct to operate a medical spa without being registered.
2. The intractable pain repeal rules and the fee increase rules are in the internal review process.
3. The draft rules for temporary and limited licensure have been provided to the Board for review.
4. There are three (3) pending appeals from Board action and one (1) civil suit.
 - a. 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 and includes the Memphis Center for Reproductive Health, Planned Parenthood – Greater Memphis Region, Planned Parenthood – East Tennessee and the Knoxville Center for Reproductive Health.
5. As of January 11th, there were one-hundred and twenty-two (122) disciplinary complaints against seventy (70) respondents pending in the Office of General Counsel.

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-one (21) suspended medical doctor licensees

- sixty-five (65) medical doctor licensees on probation
- fifty-four (54) medical doctor licensees under a Board order
- sixty-one (61) medical doctor licensees are revoked or surrendered
- zero (0) x-ray technologist licensees suspended
- one (1) x-ray technologist licensee on probation
- four (4) x-ray technologist licensees under a Board order
- three (3) x-ray technologist licensees revoked or surrendered
- two hundred and twelve (212) monitoring cases overall
- one hundred and twenty-nine (129) new medical doctor complaints opened year-to-date
- one hundred and twenty-seven (127) medical doctor complaints closed year-to-date
- seventeen (17) medical doctor complaints were closed and sent to the Office of General Counsel
- ninety-two (92) medical doctor complaints were closed with no actions
- one (1) medical doctor complaint closed with a letter of concern
- sixteen (16) medical doctor complaints closed with a letter of warning
- about two hundred and fifty-five (255) medical doctor complaints are currently open
- five (5) x-ray technologist complaints opened year-to-date
- two (2) x-ray technologist closed and sent to the Office of General Counsel
- four (4) x-ray technologist complaints closed with a letter of warning
- thirteen (13) x-ray technologist complaints currently open
- zero (0) radiologist assistant complaints
- zero (0) medical office based surgery complaints
- zero (0) new special training medical doctor complaints year-to-date
- two (2) pending special training medical doctor complaints open

Ms. Martin directed the Board members to review the licensure statistical data report that was previously disseminated to the Board:

From January 1, 2018 thru February 28, 2018 the following as transpired:

New Applications Received

- Medical Doctors – 344
- Locum Tenens – 0
- Special Training – 1
- Single Purpose – 2
- St. Jude – 0
- Medical Spas – 16
- MD X-Ray Operator (Full) – 40
- MD X-Ray Operator (Limited) – 13

Total Number of Reinstatements Received

- Medical Doctors – 25
- MD X-Ray Operator – 17

Total New Licenses Issued

- Medical Doctors – 233
- Locum Tenens – 2
- Telemedicine – 0
- Special Training – 4
- Single Purpose – 1

- St. Jude – 1
- MD X-Ray Operator (Full) – 52
- MD X-Ray Operator (Limited) – 13

Total Number of Renewals – 1622

Total Number of Online Renewals – 1282 - 79% (renewed online)

Total Number Failed to Renew – 145

Total Number of Retired Licenses – 57

Total number of active licensees as of February 28, 2018 is 22,473.

Total number of active licensees as of February 28, 2018 with a Tennessee mailing address is 16, 780.

Total number of Telemedicine Licenses – 373

Total number of Special Training Licenses – 76

Total number of Active Physician Assistants – 2,270, Orthopedic Physician Assistants –16

Total number of Active X-Ray Operators – Full – 2,609; Limited – 1,032

Total number of Active Perfusionists – 132

Total number of Active Acupuncturists – 162; Acupuncture Detoxification Specialists – 55

Total number of Active Radiologist Assistants – 15

Total number of Office Based Surgery – licensed 14

Total number of Active Genetic Counselors – 151

Total number of Active Polysomnographers – 536

Ms. Martin passed out the Boards’ current financial report (which included the 2018 fiscal projections) and commented that if there are any questions they can be referred to Ms. Noranda French at the next meeting. There was a significant increase in legal expenses and it appears to be legitimate based on hours reported thus far. Ms. Martin reported there was nothing alarming identified in this 2018 fiscal projection.

Consent Order(s)

Trent Cross, MD – did not appear before the board nor did a legal representative appear on his behalf.

Ms. Jennifer Putnam represented the state. Dr. Cross was licensed in 2004. Dr. Cross admitted to unprofessional conversations via text message with one patient. On or about September 19, 2017, Respondent pled guilty to one (1) count of aggravated assault, a Class C felony, after firing a gun at a campground following an evening of drinking and fighting with his wife. Respondent was granted judicial diversion and placed on supervised probation for six (6) years, which is set to conclude on September 18, 2023. As conditions of Respondent’s probation, he was ordered to attend a batterer intervention program and issued a restraining order. This order will place the Respondent’s license on probation which will run concurrent with the criminal probation which is set to conclude September 18, 2023. The Respondent agrees to undergo an evaluation by TMF and the evaluation will be forwarded to the Boards’ consultant. Respondent must complete ten (10) continuing medical education (hereinafter “CME”) hours in the area of boundaries. The Respondent must pay two (2) “Type A” civil penalties for a total of two thousand dollars (\$2,000.00). The Respondent will be responsible for paying all reasonable costs of this case not to exceed three thousand dollars (\$3,000.00). Dr. Christiansen motioned to approve the consent order. Dr. Beckford seconded the motion and it carried.

Marjorie Lantum, MD – did not appear before the board nor did a legal representative appear on his behalf. Ms. Jennifer Putnam represented the state. Dr. Lantum was licensed in 1998. He is employed as a consultant for HealthRight, a telemedicine practice. HealthRight utilizes a questionnaire that each patient completes and submits electronically. This questionnaire is reviewed by a physician and diagnoses are made. Then non-controlled prescriptions are issued accordingly. Respondent admitted that a prescription

may be written to a HealthRight patient without physically seeing or examining the patient. On or about June 20, 2016, Respondent provided a consultation to a patient after that patient completed the HealthRight questionnaire complaining of neck and lower back pain with muscle spasms. Respondent prescribed Lidocaine 5% Ointment 350mg; Diclofenac 3% 300mg; and CMPD ComboMax BG, 120mg without physically seeing or examining the patient. This order requires the Respondents' license be reprimanded. The Respondent must pay one (1) "Type A" civil penalty, in the amount of one thousand dollars (\$1,000.00), pay all actual and reasonable costs not to exceed one thousand dollars (\$1,000.00). Dr. Beckford motioned to approve the order. Dr. Hale seconded the motion and it carried.

Pamela Mobley, MD – did not appear before the Board nor did a legal representative appear on her behalf. Ms. Jennifer Putnam represented the state. Dr. Mobley was licensed in 1995. Upon receipt of an application, for reinstatement of licensure, it was discovered that Dr. Mobley had been practicing on a lapsed license. On the reinstatement application, Dr. Mobley, indicated she worked on an expired license from March 1, 2017 to December 31, 2017. This order requires the Respondents' license be reprimanded. The Respondent must pay ten (10) civil penalties in the amount of one thousand dollars (\$1,000.00) each for a total of ten thousand dollars (\$10,000.00). The Respondent will also pay all actual and reasonable costs of the case not to exceed one thousand dollars (\$1,000.00). Dr. Christiansen motioned to approve the order. Dr. Miller seconded the motion and it carried.

Board members led a brief discussion on the telemedicine guidelines that a licensed physician must comply with. This includes to physically examine a patient before treating, not just reviewing an electronic chart or questionnaire. It was further noted that one day past the license expiration date equates to a lapsed license and physicians may not practice on a lapsed license.

Casey Gray, ADMX- did not appear before the Board nor did a legal representative appear on her behalf. Mr. Peyton Smith represented the state. Ms. Gray was licensed in 2008. In 2016, the Respondent's license was suspended for a total of six (6) months for failure to pay her student loans during which time the Respondent continued to practice as an x-ray operator. This order shall reprimand the Respondent's license; require her to pay six (6) "Type B" civil penalties in the amount of two hundred dollars (\$200.00) each for a total of one thousand two hundred dollars (\$1,200.00). The Respondent will also pay all actual and reasonable costs of the case not to exceed one thousand dollars (\$1,000.00). Dr. Christiansen motioned to approve this order. Dr. Johnson seconded and the motioned passed.

Agreed Order

Russel Rhea, MD – did not appear before the Board nor did a legal representative appear on his behalf. Mr. Peyton Smith represented the state. Dr. Christiansen recused herself. Dr. Rhea was licensed in 1993. Respondent was the owner and Medical Director for Pediatric Consultants West which was ordered to close by the Internal Revenue Service. Respondent utilized Athena Health to store his patients' electronic records. Due to nonpayment from Respondent, Athena Health disallowed Respondent to access the electronic medical records on or about February 2017. Numerous patients have been unable to access their electronic 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. Respondent has since reestablished access to the medical records. This order requires the Respondents' license be reprimanded. The Respondent must pay one (1) "Type A" civil penalty in the amount of one thousand dollars (\$1,000.00). The Respondent must pay all actual and reasonable costs of the case not to exceed five thousand dollars (\$5,000.00). Dr. Handorf motioned to approve the order. Dr. Blake seconded the motion and it carried with one recusal from Dr. Christiansen.

Consent Order(s)

Elizabeth Gaskin, AMDX - did not appear before the Board nor did a legal representative appear on her behalf. Ms. Francine Baca-Chavez represented the state. Dr. Gaskin was licensed in 1994. The Respondents' license expired on February 28, 2017 and the Respondent practiced for approximately seven (7) months on a lapsed license. The order shall reprimand the Respondents license. The Respondent must pay seven (7) "Type C" civil penalties in the amount of one hundred dollars (\$100.00) each for a total of seven hundred dollars (\$700.00). The Respondent must pay all actual and reasonable costs of the case not to exceed one thousand dollars (\$1,000.00). Dr. Christiansen motioned to approve the order. The motion was seconded by Dr. Johnson and it carried.

Edgar Alan Ongtengco, MD - did not appear before the Board nor did a legal representative appear on his behalf. Ms. Patriea Morgan represented the state. Dr. Ongtengco was licensed in 1995. In 2013, the Respondent began treating a patient for narcotic dependence. The Respondent failed to include any treatment notes in the patient record, and there were no medical justifications listed for prescribing controlled substances such as Zanax and Subutex. The Respondent developed romantic feelings for this patient while she was his patient. This order shall place the Respondent's license on probation for five (5) years. Respondent will pay one (1) "Type A" civil penalty in the amount of one thousand (\$1,000.00). Respondent must pay all actual and reasonable costs of the case not to exceed three thousand dollars (\$3,000.00). Respondent will be required to complete specific continuing education courses. Dr. Johnson motioned to approve this order. Dr. Christiansen seconded the motion. The motion carried with one (1) abstention by Dr. Zanolli.

Frank H. McNeil, MD - did not appear before the Board nor did a legal representative appear on his behalf. Ms. Andrea Huddleston represented the state with this order but it was presented by Ms. Tracy Alcock. Dr. McNeil was licensed in 1986. Respondents prescribing practices reflected he was engaged in prescribing opioids and other controlled substances in excessive amounts and inconsistent with and below the applicable standard of care. Respondent served as a supervising physician for multiple allied practitioners who continued such excessive prescribing of opioids excessive amounts and inconsistent with and below the applicable standard of care. Respondent failed to appropriately supervise such allied prescribers whose prescriptive services were within his control and responsibility under Tennessee law and failed to appropriately respond to conduct that was below the standard of care. After approximately 2012, Respondent ceased working at Bearden Healthcare Associates but continued to see patients out of his home. Respondent's practice out of his home during this period qualified as a pain management clinic; however, Respondent did not obtain a certification or licensure of the clinic as required by Tennessee law. Respondent's treatment of the patients seen since 2012 out of his home medical practice continued to be below the applicable standard of care. Respondent did not query the Controlled Substance Monitoring Database for these patients and Respondent was unable to produce records for all patients or a complete medical record. Respondent has agreed to permanently surrender licensure, commencing the date of ratification of this Consent Order, which is reportable to the National Practitioner Data Bank and that the surrender has the same effect of and shall be reported as a revocation. Dr. Beckford motioned to approve this order. Dr. Blake seconded the motion and it carried with one (1) recusal by Dr. Johnson.

William D. Lyles, Jr., MD - did not appear before the Board nor did a legal representative appear on his behalf. Ms. Tracy Alcock represented the state. Dr. Lyles was licensed in 1986. The Department conducted an investigation that included the review of fourteen (14) patient records. From 2005 to 2016, the Respondent provided chronic pain treatment to patients at Trousdale Medical Clinic, including prescribing narcotics and other controlled substances. Several stipulations of facts are outlined which include the Respondents inadequate medical details in patient charts, prescribing dangerous combinations of medications without a documented explanation of the risks and benefits of the dangerous combinations and the Respondent had no formal system for monitoring the abuse of medication. The Respondent no longer works in pain management and no longer provides chronic pain treatment to patients. This order shall reprimand the Respondents license. The Respondent agrees to not practice in a pain management

clinic nor provide pain management services for more than ninety (90) days in a twelve-month period to a majority of his patients. The Respondent must complete specific continuing education courses. The Respondent must pay fourteen (14) Type “B” civil penalties in the amount of one hundred dollars (\$100.00) each, for a total civil penalty of fourteen hundred dollars (\$1,400.00). The Respondent must pay all actual and reasonable costs of the case not to exceed two thousand five hundred dollars (\$2,500.00). Dr. Christiansen motioned to accept the order. Dr. Handorf seconded the motion. The motion carried with one (1) in opposition.

Agreed Citation(s)

Marsha Grinnell, PSGT - did not appear before the Board nor did a legal representative appear on her behalf. Ms. Tracy Alcock represented the state. Ms. Grinnell practiced without a license for a period of eighty-four (84) months. The Polysomnography Committees’ Unlicensed Practice Policy was used to determine Ms. Grinnell’s penalty and fine that should be imposed, which is a total of eight thousand four hundred dollars (\$8,400.00). Ms. Grinnell has agreed to the terms of this citation. This order was approved and ratified by the Polysomnography Professionals Committee on February 20, 2018. Dr. Hale motioned to approve the order. Dr. Christiansen seconded the motion and it carried.

Odie Battles, MD – did not appear before the Board nor did a legal representative appear on his behalf. Ms. Maegan Martin presented this citation. Dr. Battles practiced on a lapsed license for a period of four (4) months. Dr. Battles has agreed to the terms of the citation and payment of a two thousand dollar (\$2,000.00) civil penalty fee. Dr. Blake motioned to approve and Dr. Handorf seconded. The motion passed.

Dianne Jordan, AMDX – did not appear before the Board nor did a legal representative appear on her behalf. Ms. Maegan Martin presented this citation. Ms. Jordan practiced on a lapsed license for a period of four (4) months. Ms. Jordan has agreed to the terms of the citation and payment of a two hundred dollar (\$200.00) civil penalty fee. Dr. Hale motioned to approved, Dr. Handorf seconded and it passed.

Anne Marie Eultgen, AMDX – did not appear before the Board nor did a legal representative appear on her behalf. Ms. Maegan Martin presented this citation. Ms. Eultgen practiced on lapsed license for a period of four (4) months. Ms. Eultgen has agreed to the terms of the citation and payment of a two hundred dollar (\$200.00) civil penalty fee. Dr. Handorf motioned to approve, Dr. Hale seconded and it passed.

Order of Compliance

Susan Webb, MD – did not appear before the Board nor did a legal representative appear on her behalf. Dr. Johnson and Dr. Christiansen recused themselves. The petition is an order of compliance to lift the probation imposed by a consent order ratified on September 10, 2012. The Petitioner’s license was placed on probation for a period of not less than five (5) years. Based on the petition and statements of counsel, it is determined that the Petitioner has satisfactorily complied with the requirements of the previous order such that the probation of her license should be lifted. However, the requirement to maintain lifetime TMF advocacy and remain 100% compliant with the terms and conditions of that advocacy, shall remain a requirement on Petitioner’s license. Dr. Hale motioned to approve and Mr. Ellis seconded. The motion carried with two (2) recusals by Dr. Johnson and Dr. Christiansen.

Order of Modification

Nabil Nader Kamel Cyleman, MD – did not appear before the Board nor did a legal representative appear on his behalf. Dr. Blake recused. The petition is an order of modification to modify a requirement

outlined in the consent order which was ratified by the Board on July 19, 2017. That consent order placed the Petitioner’s medical license on probation for no less than one (1) year and until Dr. Clyeman completed an evaluation by the Center for Personalized Education for Physicians (“CPEP”) and completed any recommendations. The consent order also required Dr. Cyleman to limit his prescribing of opioids and to pay penalties and costs. Dr. Cyleman has paid the penalties and costs in full and has obtained the required CPEP evaluation, though he has not yet complied with all recommendations of the evaluation (including a recommendation for a neuropsychological evaluation). However, he has since decided to retire from the practice of medicine, effective January 31, 2018; and should he choose to reinstate his license he would have to comply with the original terms of the consent order. Dr. Handorf motioned to approve the order and Dr. Christiansen seconded the motion. The motion carried with one (1) recusal by Dr. Blake.

The Board of Medical Examiners day 1 meeting recessed, at 3:53pm CT.



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

**Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners
Wednesday, March 21, 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
Neal Beckford, MD
Melanie Blake, MD
Phyllis Miller, MD
Deborah Christiansen, MD
Reeves Johnson, MD
John Hale, MD
Robert Ellis, Consumer Member
Charles Handorf, MD
Jennifer Claxton, Consumer Member
Michael Zanolli, MD
Julianne Cole, Consumer Member

Board member(s) absent: None

Staff present: Mary K. Bratton, JD, Chief Deputy General Counsel

Maegan Martin, BME Executive Director
Rene Saunders, MD, Medical Consultant, BME
Candyce Waszmer, Administrative Director

I. Approval of May 2017 Minutes of the Delegation Taskforce

Dr. Christiansen motioned to approve the minutes. Dr. Blake seconded the motion and it passed.

II. Delegation Policy Taskforce Update

The delegation policy taskforce undertook revision of the previously titled Supervision Policy which covered the supervision of professionals employed in your medical practice that are not advanced practice professionals such as APRNs and PAs. The Board reviewed the proposed revisions. Dr. Handorf motioned to approve the revised policy and Dr. Johnson seconded the motion. The motion carried to adopt the new Delegation Policy as a revision of the old Supervision Policy.

Ms. Mary Katherine Bratton proposed that the Board may wish to consider a particular concern that arose during the delegation policy deliberations. That concern is the limited authority a physician has when delegating tasks to someone they had no hiring authority over (such as hospital staff) versus the full authority a physician has when they are responsible for hiring their office staff to which they delegate tasks to. Dr. Ali requested this item be brought before the Development Committee at their May 2018 meeting. Dr. Melanie Blake stated she recognized how important it is to set up the appropriate protocols within an office setting. The responsibility lies with that physician.

Dr. Blake reported we often hear from licensees that they are not aware when policies change. During the delegation taskforce meeting there was a discussion on having a continuing medical education program that would educate licensees about Board changes. Dr. Blake would like to add continuing medical education to the development committee agenda. Dr. Handorf requested the development committee to include the concern of communication with licensees given there is a current issue with being unable to electronically communicate with them. Both items have been added to the May 2018 development committee agenda.

III. Conduct New Business

Defining One Discipline in an ACGME residency program for International Medical Graduates

Dr. Johnson presented the following work completed through the efforts of him, Ms. Bratton and Ms. Martin. A concern raised at previous Board meetings is that there are certain specialties which require one (1) year of general training in a specialty that is not the primary specialty that they complete the other two (2) years of training in. Information obtained from the ACGME, is that it is the residency program director in an approved ACGME residency program that holds the responsibility of determining whether or not the physician has successfully completed a program. Furthermore, it was reported that there are no residency programs that are ACGME approved that are less than three (3) years. A policy, for consideration, was presented before the Board that would attempt to clarify the Boards definition of one (1) discipline. If an applicant attended a Board approved ACGME postgraduate training program then the applicant must request a letter of successful completion from the program director. Dr. Christiansen motioned to accept and adopt the policy. Dr. Beckford seconded the motion.

Dr. Rene Saunders questioned the Board on how they would like to receive verification of such successful training. It is understood that along with the postgraduate training verification form from the residency program director that an accompanying letter would attest that the program director confirms the physician has completed the ACGME residency requirements of that particular specialty. Dr. Johnson confirmed based on his communication with the ACGME, it is not up to the specialty board to decide

whether or not the physician has successfully completed the required residency training and that this responsibility lies with the ACGME program director. Dr. Blake inquired if an FAQ would be helpful so this policy is more understandable and Dr. Johnson spoke in favor of FAQs. The motion carried.

Dr. Phyllis Miller, Dr. Deborah Christiansen and Mr. Robert Ellis left the meeting for a contested case hearing held in the Poplar room.

Federations of State Medical Boards (FSMB) House of Delegates – The FSMB resolutions were previously disseminated to the Board members. Ms. Martin informed the Board that the resolutions will be presented to the FSMB but no motion is needed. Dr. Johnson has already been approved by the Board to act as a liaison of the Board regarding these resolutions.

Bylaws Amendment submitted by the Board – Ms. Martin proposed that Dr. Blake represent the Board regarding the bylaws amendment submitted to the FSMB.

Dr. Michael Zanolli commented that one matter to be addressed at the FSMB meeting will be the inclusion of inter-professional continuing education (hereinafter “IPCE”) that is approved continuing education by the nursing, pharmacy, and ACCME combined. Thus, three different disciplines agree that this IPCE is equivalent to their continuing education requirement. Therefore, the IPCE is the equivalent of CME.

Dr. Johnson discussed one concern raised and addressed by the Bylaws Committee on two (2) occasions. The proposed change is to have two (2) constituent members on the Board of Directors of the FSMB, currently there is only one (1). The concern is that the proposed change would make it harder for physician assistants to hold a spot on the Board of Directors. Ms. Martin and Dr. Zanolli discussed that the intent of the proposal is to have best practice by having a fair number of consumer members on the Board.

Proposed Rules for Temporary and Limited Licensure

Ms. Bratton provided the Board with draft rule proposals –

- 1) Per TCA § 63-6-207(g) the Board has the authority to grant temporary licensure, for a limited duration, to International Medical Graduates with demonstrated competency. Ms. Bratton outlined the proposed draft rules based on the Board’s deliberations at their January 2018 meeting:
 - a. To initially apply, the physician would submit an initial application, fee, and all standard documents necessary for full licensure. Then the medical consultant would determine that the physician meets the qualifications of such temporary license and invite the physician before the Board for an applicant interview. The Board would then determine the appropriateness of issuing the temporary license on a case by case basis. At issuance, there would be an expressed purpose determined by the Board to which should be accomplished by the licensee during the duration of the temporary license.
 - b. The temporary license would be issued for the duration of one (1) year unless a shorter or longer period is determined by the Board, but not to exceed longer than two (2) years.
 - c. The holder of this temporary license is not authorized to serve as a supervising or collaborating physician to an APRN or PA.
 - d. This license is nonrenewable and cannot be upgraded.
 - e. In order to obtain full medical licensure, the physician must submit a new application, fee, and proof that they have successfully completed the terms requested by the Board when the temporary license was issued.

Dr. Beckford inquired as to what documents the applicant would be required to resubmit. Dr. Saunders assured the Board that proof of education and training will not need to be submitted during their second application process so long as it was received during the first application and/or so long as their education or training information has not changed since their first application.

Ms. Bratton informed the Board of one potential complication that could be raised during the review of these rules. Pursuant to TCA § 63-6-210(b)(1), a license which can be renewed must be issued for a certain time period and the cost be prorated based on the length of that license. The proposed language for temporary licensure states that this license is not a renewable license and therefore this statute essentially should not apply. However, potentially a temporary licensee could choose to reapply for full licensure, once they have satisfied the requirements set forth by the Board, and the proposed rules do not prorate the fee for the new application to reflect the length of time the temporary license was held.

Dr. Handorf motioned to move the temporary rules to a rulemaking hearing. Dr. Zanolli seconded the motion and it carried.

- 2) Per TCA § 63-6-207(h) the Board has the authority to grant limited licensure to physicians who have been out of clinical practice for an extended period of time or who have been, or are at the time of their application, engaged exclusively in administrative medicine. Ms. Bratton presented the following draft rules:
 - a. Re-entry Limited Licensure:
 - i. The applicant will follow the standard full medical licensure application process and upon the medical consultants review it will be determined if the applicant does not meet the qualifications for full licensure but may meet the standards of the Board for limited licensure. This applicant would appear before the Board for an interview.
 - ii. The issuance of this license shall be granted based on the need to accomplish training, determined on a case-by-case basis, and to be completed by the physician while the limited license is active.
 - iii. The license shall be issued for only one (1) year in duration unless otherwise stated by the Board but not to exceed two (2) years. The basis of this time frame is because the standard licensure cycle is valid for two (2) years. Also, the Board would be able to issue the license for any term less than one (1) year.
 - iv. This licensure type will be non-renewable.
 - v. A practice location limitation may be imposed on a case-by-case basis.
 - vi. The physician cannot serve as a supervising or collaborative physician to mid-levels.
 - vii. When a physician is qualified to upgrade to a full and unrestricted medical license, they will pay an upgrade fee. The upgrade fee is to be the equivalent of the renewal fee. The competency questions from the application will be answered again. They will also submit proof of completing the required training requested by the Board. This physician would not have to reappear before the Board so long as the consultant is provided with the appropriate training proof and required application items.
 - viii. The Board will maintain the authority to discipline the limited license, deny the upgrade application, and discipline the full license after they have upgraded.

It was decided that the word ‘convert’ shall be used throughout the rule, when applicable, rather than the word ‘upgrade’. Dr. Zanolli motioned to approve and send the limited re-entry licensure pathway rules to a rulemaking hearing. Dr. Ali seconded the motion and it carried.

- b. Administrative Limited Licensure:
 - i. Create an administrative license application
 - ii. There is no upgrade process. If the physician wishes to seek full and unrestricted medical licensure then they must apply through the standard application method.
 - iii. Regular length and renewal process.
 - iv. Defines the practice of administrative medicine, to clearly state what restrictions exist with this licensure type.
 - v. The Board will maintain the authority to discipline the administrative license, and discipline the full license after they have converted from an administrative license.

Dr. Handorf requested the word “diagnosing” be added to the rules under the definition of administrative medicine practice. Other members agreed and the language was added. The Board led a discussion on whether or not administrative physicians are responsible for delegating medical acts. It was determined that the language would remain as written and it to leave it up for discussion at the rulemaking hearing. Dr. Johnson motioned to move these draft rules to a rulemaking hearing. Dr. Zanolli seconded the motion and it carried.

- 3) Per TCA § 63-6-219 the Board shall have the authority to promulgate rules pertaining to the registration of surgical assistants. Ms. Bratton reported the registry is in the process of being created. Ms. Bratton presented the following draft rules:
 - a. Permits use of the title registered surgical assistant; therefore someone may practice as a surgical assistant so long as they are not referring to themselves as a registered surgical assistant.
 - b. A definition of a registered surgical assistant.
 - c. The rule shall include the application process which will outline the three (3) pathways for licensure as identified in the statute.
 - d. An appropriate fee to register will be required; however the administrative office does not have a suggested fee at this time. The administrative office will determine the potential number of licensees and then calculate the estimated cost of processing those applications.
 - e. Application will be closed after ninety (90) days if it remains open and incomplete.
 - f. If the application is denied, there is no requirement that the Board offer a right to a contested case for the denial. If a denial is issued then the course of action that will be permitted is the applicant may request a second Board interview.
 - g. The renewal application and cycle shall be the same as it is for medical doctors.
 - h. The rule will reference TCA § 63-6-214 regarding disciplinary parameters.

Dr. Johnson questioned whether or not it is intended to include the requirement of continuing education. Dr. Handorf inquired if there are continuing education standards set by any of the national organizations for surgical assistants. Ms. Martin confirmed she is aware that such standard exists but she does not have the information available at this time. Ms. Bratton suggested it is likely that a national organization is already monitoring their continuing education. It was determined that this information will be researched and the continuing education requirements be written as a separate section in this rule which can be addressed further at the rulemaking hearing. The requirement of continuing education will be the equivalent of meeting the national organizations continuing education standards. Therefore, if at the rulemaking hearing the Board determines the continuing education section not to be necessary; it will be easier to remove the requirement from the proposed rules than to add it. Dr. Beckford motioned to send the draft registered surgical assistant rules to a rulemaking hearing. Dr. Zanolli seconded the motion. The motion carried.

The regular Board business concluded at 10:14am CT and the members divided to proceed with contested case and screening panel matters.

Poplar Room Panel – Dr. Christiansen, Dr. Miller and Mr. Ellis

Contested Case

Valerie Augustus, MD v. State of Tennessee Board of Medical Examiners

Poplar Room

Administrative Law Judge: Thomas Stovall

Panelists: Phyllis Miller, MD; Deborah Christiansen, MD; Robert Ellis, Consumer Member

Counsel for State: Paetria Morgan, Esq.

Counsel for Respondent: Mr. Darrel Baker, Esq. and Ms. Deborah Witt, Esq.

Ms. Deborah Witt, counsel for Respondent, reviewed her curriculum vitae and questioned Respondent regarding her educational, training, medical practice timeline, affiliations, continuing education and accomplishments. Ms. Witt questioned Respondent about appointments between patient PT and Respondent. Ms. Paetria Morgan, counsel for the State, questioned the Respondent. The panel questioned the Respondent. William Walter, MD, a psychiatrist, was called and approved as an expert witness from the Respondent's counsel. Counsel for the State questioned the expert witness. The panel questioned the expert witness.

This hearing will reconvene on April 23, 2018 at 8am CT for closing arguments and the panels charge.

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

Contested Case

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

Iris Room

Administrative Law Judge: Rachel Waterhouse

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

Counsel for State: Andrew Coffman, Esq.

Counsel for Respondent: Todd Wiseman, Esq.

This is the fifth hearing on this matter whereas the previous dates were July 19, 2017, September 27, 2017, November 29, 2017 and January 24, 2018. The Respondent's counsel proceeded with presenting their case. Sam Taylor Barnes, MD, was called as a witness. The State questioned this witness. Dr. Waggoner was questioned by his counsel. The next hearing date is to be scheduled.

This concludes the Board of Medical Examiners day 2 meeting.