



**TENNESSEE BOARD OF OSTEOPATHIC EXAMINATIONS
Regular Board Meeting**

August 9, 2017

MINUTES

A regular meeting of the Tennessee Board of Osteopathic Examination was held in the Poplar Conference Room, at 665 Mainstream Drive, Nashville, TN 37243 on August 9, 2017.

Members Present: Jeffrey L. Hamre, DO
J. Michael Wieting, DO
Jan Day Zieren, DO
Shant H. Garabedian, DO
Penny Grace Judd, Consumer Member
Shannon Kilkelly, DO

Staff Present: Sherry Williams, Administrator
Stacy Tarr, Administrative Director
Rene Saunders, MD, BME Medical Director
Maegan Carr Martin, JD, Executive Director
Francine Baca-Chavez, JD, Deputy General Counsel

The necessary number of Board members joined the meeting and a quorum was established. Board of Osteopathic Examination Chair, Jeffrey Hamre, DO, called the meeting to order at 9:04 a.m.

Minutes

Ms. Martin referred the Board to a few formatting changes made to the finance report since the draft minutes were distributed to Board members for review. Ms. Penny Judd said that “ask” should be “asked”. Dr. Zieren made a motion to approve the minutes from the May 3, 2017 meeting of the Board as corrected. Dr. Wieting seconded the motion. The motion carried unanimously.

Applicant Interview(s):

Milton George II, DO – Dr. George was asked to appear before the Board to address a pending medical malpractice lawsuit. Dr. Wieting sought clarification regarding Dr. George’s staff privileges at North Mississippi Medical Center as he is not licensed in Mississippi. Dr. George explained that the hospital he works for is in Hamilton, Alabama and it is owned by North Mississippi Medical Center. Dr. Wieting asked Dr. George to provide additional information about the malpractice claim that arose while he was

working at Decatur General Hospital and whether it has been resolved. Dr. George confirmed that it has been resolved. Ms. Baca-Chavez asked Dr. George to clarify whether it was the misplaced feeding tube or the x-ray diagnosis that served as the underlying basis for the complaint. Dr. George stated that he did not place the feeding tube but it was alleged that he misinterpreted the x-ray. At the conclusion of the interview, Dr. Wieting made a motion to approve Dr. George's application. Dr. Garabedian seconded the motion. The motion passed.

Dore Shafransky, DO – Dr. Shafransky was asked to appear before the Board to address several malpractice claims. Dr. Shafransky gave a brief summary of his 1998 case which involved the retention of a surgical instrument from a prior procedure. Dr. Shafransky stated that he was not involved in the procedure but he was included in the suit because his name was on the chart. He was dropped from the case before any pre-trial proceedings began. In 1999, Dr. Shafransky was working in the Emergency Room and a patient filed suit for failure to diagnose. The patient alleged that an MRI should have been used for a diagnosis. Dr. Shafransky stated back in 1998 MRI's weren't standard to use in the Emergency Department to pick up hip fractures. His attorney advised me to settle for \$50,000.00 because it was less than the cost of going to trial.

Dr. Shafransky reported that he was quickly dismissed from the third case. He stated that the patient felt that he was ignored by the cardiologist and filed suit against every provider listed on his chart.

Dr. Shafransky's fourth case involved a patient who presented with chest pain. Dr. Shafransky discussed the case with the cardiologist on call and admitted the patient. Dr. Shafransky and sixteen other doctors were ultimately sued. He was dismissed from the case on July 20, 2015.

Dr. Garabedian made a motion to approve Dr. Shafransky's application. Dr. Zieren seconded the motion, which passed.

John Windsor, DO – Dr. Windsor was asked to appear before the Board to address his loss of staff privileges at Baptist Hospital. During review, the reviewing physicians took exception to his technique. They suggested that his privileges be suspended until a formal review could take place. In response, he requested a third party review which took approximately four months to complete. No action was ever taken against his Kentucky medical license.

Dr. Wieting asked Dr. Windsor whether his privileges were ever reinstated. He confirmed that they were.

Dr. Zieren made a motion to approve Dr. Windsor's application. Dr. Wieting seconded the motion. The motion passed.

Marcus Winkler, DO – Dr. Winkler was asked to appear before the Board to discuss probation during residency for unprofessional behavior. Dr. Winkler gained access to another resident's email account as a joke. He sent an email from the account to another resident in the program. The email was presented to the chair of the Department as if the person to whom the email account belonged had written it. As a result of this "incident", Dr. Winkler met with his program's leadership to explain the rationale behind his prank and to apologize. He was on probation for two weeks.

Dr. Zieren stated that students have been dismissed from medical school for unprofessionalism and incidents such as this one. Dr. Wieting asked Dr. Winkler what his "take-home thoughts" were from the incident. He responded that his eyes have been opened about the level of professionalism that is expected of him and that no additional incidents have occurred since.

At the conclusion of his interview, Dr. Zieren made a motion to approve Dr. Windsor's application. Dr. Kilkelly seconded the motion. Dr. Wieting was recused. The motion passed.

Ratification of New Licensees

Dr. Wieting made a motion to ratify initial approvals for DO, DO X-Ray Operators, and Professional Midwifery. This motion was second by Dr. Garabedian and carried.

REPORTS

Office of Investigations

Ms. Dorsey Luther appeared on behalf of the Office of Investigations and reported that there have been 36 complaints against osteopathic physicians and 18 of them are open complaints. The Board was referred to the Investigative Report which includes information regarding individuals who have been disciplined and/or are currently under monitoring by the Board.

Ms. Martin made a few points about the allegation codes in an effort to make sure the Board understood the report as some questions have arisen with regard to the report in some other professions. Unprofessional conduct is the biggest category and will capture a lot of allegations. Over-prescribing is not just over prescribing, it's also improper prescribing, so that would include improper dispensing. Additionally, often when there is a complaint, there are multiple allegations and violations, but when it is recorded as an allegation, the complaint is characterized singly.

Ms. Baca-Chavez reminded the Board again that they are welcome to attend case review on any Wednesday morning. She asked that they notify her in advance of their interest so she can ensure that there will be osteopathic cases to review.

Office of General Counsel

Ms. Baca-Chavez appeared on behalf of the Office of General Counsel discussed the Conflict of Interest Policy. She reminded the Board that its duty is to protect the health, safety and welfare of the citizens of Tennessee and that the administration of this solemn responsibility is dependent upon avoiding even the appearance of impropriety.

Ms. Baca-Chavez provided an overview of the rules currently pending:

- Repeal of Intractable Pain Act – In the internal review process
- Addiction specialists rule – PC 396, now codified in T.C.A. § 53-11-311 – Also in the internal review process

Litigation:

There are 27 cases open against 8 osteopathic physicians and no open cases against midwives. There are 21 cases that involve allegations of over-prescribing and are being handled by another attorney.

Appeals–None.

Mr. Jim Layman appeared on behalf of the legislative office and discussed the following legislation:

Public Chapter 138 – As enacted, authorizes a physician to provide per partum analgesia and per partum care to a minor who is at least 14 years of age without the knowledge or consent of a parent.

Public Chapter 353 – As enacted, enacts the "Tennessee Infants Protection Act," which prohibits abortion of a viable fetus except in a medical emergency and requires testing to determine viability if a woman is at least 20 weeks pregnant.

Public Chapter 438 – As enacted, creates a task force to study the issues created by the maintenance of certification process for Tennessee physicians; prohibits board of medical examiners and board of osteopathic examination from taking certain action on a license based on nonparticipation in any form of maintenance of licensure.

Public Chapter 112 – As enacted, requires the commissioners of health and mental health and substance abuse services to produce guidelines on nonresidential buprenorphine treatment by January 1, 2018, and to annually update those guidelines.

Public Chapter 420 – As enacted, creates the state palliative care and quality of life task force.

Public Chapter 334 – As enacted, changes references to the professional relationship between physicians and advanced practice registered nurses and certified nurse practitioners from "supervisory" to "collaborative".

Public Chapter 350 – As enacted, authorizes a healthcare provider to satisfy one hour of continuing education requirements in exchange for one hour of volunteer healthcare services.

Public Chapter 413 – As enacted, authorizes, if approved by the department of health, any nongovernmental organization, including an organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors, to establish and operate a needle and hypodermic syringe exchange program.

Public Chapter 483 – As introduced, requires the department of health to identify the prescribers who are in the top 20 percent prescribers of opioids in this state; requires the identified prescriber to comply with certain requirements after being notified that such provider is a high volume opioid prescriber.

Public Chapter 215 – As enacted, requires state governmental entities that establish or adopt guides to practice to do so through the promulgation of rules.

Public Chapter 240 – As enacted, authorizes entities that regulate health professionals to issue limited licenses; makes various changes related to reporting of disciplinary matters to licensure entities.

Public Chapter 481 – As enacted, establishes a special mechanism for licensure actions for healthcare practitioners involved with substance abuse.

Public Chapter 365 – As enacted, enacts the "Interstate Medical Licensure Compact."

Public Chapter 4 – As enacted, clarifies that quality improvement committees apply to osteopathic doctors; updates references to the repealed Tennessee Peer Review Act of 1967.

Public Chapter 175 – As enacted, increases from \$50 to \$100 the per diem paid to each member of the Board of Osteopathic Examination.

Consent Order(s)

Bradley Hall, DO – appeared before the Board. He was represented by Attorney C. J. Gideon. In May of 2016, Dr. Hall’s employer instructed him to submit to a screening for blood or alcohol after a patient had voiced concerns that Respondent sounded impaired while talking on the phone. Respondent was placed on medical leave pending the results of his screening; however, Dr. Hall failed to submit to the test. Subsequently on May 23, 2016 through June 6, 2016, Dr. Hall entered into and successfully completed inpatient treatment at Bayside Marin in California. Following treatment in California, Dr. Hall was assessed by “VCAP” beginning on July 19, 2016. Dr. Hall obtained additional inpatient care from July 30, 2016 through August 4, 2016 in Atlanta Georgia. Dr. Hall obtained approximately seven (7) weeks of inpatient care at the Positive Sobriety Institute, and remained compliant with all clinical recommendations. At the conclusion of his treatment, the facility determined reported that Dr. Hall was ready to safely return to the practice of medicine.

On March 24, 2017, Dr. Hall entered into a five (5) year monitoring contract with the Tennessee Medical Foundation. His initial random drug screen on April 4, 2017 was negative.

In addition to the concerns regarding impairment, it was discovered that Dr. Hall also prescribed controlled substances to his former fiancée although she was not his patient and that he did not maintain a medical record for her.

The grounds for the agreed upon discipline against Dr. Hall are as follows:

- Misuse of intoxicating liquors, in such manner as to adversely affect the person's ability to practice medicine;
- Improper dispensing and prescribing;
- Failure to document/conduct an appropriate history and physical examination;
- Failure to properly maintain medical records.

The proposed discipline orders that Dr. Hall’s license be reprimanded. Additionally, he must comply with the terms of his TMF contract; within one hundred twenty days (120) days, he must enroll in and successfully complete an ethics and boundaries course that is pre-approved by the Board’s consultant; and within thirty (30) days of completion, Dr. Hall must submit proof compliance with this requirement to the Disciplinary Coordinator. Dr. Hall understands that any CME hours earned in order to meet these requirements will NOT be counted towards CME hours required to maintain licensure.

To address the issue of improper prescribing, five Type B civil penalties have been issued in the amount of four hundred dollars (\$400) each, for a total of two thousand dollars (\$2,000), representing a civil penalty for each prescription issued. Dr. Hall has also agreed to pay court cost of two thousand seven hundred dollars (\$2,700).

Dr. Baron, Medical Director for the Tennessee Medical Foundation (TMF), spoke on behalf of Dr. Hall, stating he has maintained his compliance since signing his contract.

Dr. Garabedian asked what Dr. Hall’s drug of choice was. Dr. Hall replied that it was alcohol only. Dr. Wieting asked how long it has been since he has been in clinical practice. Dr. Hall responded that he has not worked since May 16, 2016.

Dr. Garabedian asked Ms. Baca-Chavez to confirm that Dr. Hall’s license been suspended since May 2016. Ms. Baca-Chavez answered that typically there would have been a summary suspension on a case like this, but he entered treatment so that eliminated some concerns as he was no longer practicing.

Dr. Wieting made a motion to accept the proposed order as presented. Dr. Kilkelly seconded the motion. The motion passed.

Administrative Office Report

Stacy Tarr provided the statistical licensure report from March through April 30, 2017 as follows:

New applications received:		Total New Licenses Issued:	
Osteopathic Physician	34		43
Locum Tenens	0		0
Telemedicine	1		5
Special Training	0		0

Dr. Wieting gave a brief summary of the FSMB conference and announced that he has been appointed to the Editorial Board of the FSMB’s Journal of Medical Regulation.

Ms. Tarr gave a demonstration to Board members regarding how to track their travel reimbursements through the system.

Ms. Baca-Chavez requested approval from the Board to attend the annual FARB conference held from October 5th through October 8th. Dr. Wieting motioned for approval of Ms. Baca-Chavez to attend the conference and Dr. Garabedian seconded the motion. The motion passed.

Adjournment