



Tennessee Board of Osteopathic Examination Regular Board Meeting

Wednesday, March 1, 2023

MINUTES

The regular board meeting of the Tennessee Board of Osteopathic Examination was called to order at 9:04 a.m. in the Poplar Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. J. Michael Wieting, Board President.

Board members present: Shant Garabedian, D.O., Vice President
Jan Zieren, D.O.
Michael Bernui, D.O.
Otis Rickman, D.O.
Ms. Penny Judd, Secretary and Consumer Member

Board member(s) absent: Michael Wieting, D.O., President

Staff present: Francine Baca-Chavez, JD, Office of General Counsel
Rene Saunders, MD, Medical Consultant, BME
Stacy Tarr, Executive Director
Brandi Allocco, Administrative Director
Yvette Williams, Administrative Director
Elizabeth Horner, Board Administrator

APPROVAL OF MINUTES

The Board reviewed the minutes from the November 10, 2022 meeting. Dr. Zieren motioned to approve the minutes. Dr. Bernui seconded the motion. The motion passed by unanimous vote.

REPORT FROM THE OFFICE OF INVESTIGATIONS

Barbara Granum, from the Office of Investigations, gave her report to the Osteopathic Board.

In 2022 there were one hundred (100) new complaints opened. One hundred twelve (112) complaints were closed: forty-five (45) insufficient evidence, seven (7) was sent to the OGC for formal discipline, forty-seven (47) no action, two (2) closed letters of concern and eleven (11) received a letter of warning, and there are currently still sixty-seven (67) open complaints from 2022.

Of the open complaints: one (1) is for falsification of records, one (1) for fraud or false billing, nine (9) for actions in another state, one (1) for criminal charges, twenty-four (24) malpractice negligence, thirty-six (36) unprofessional conduct, two (2) medical records request, six (6) for over prescribing, three (3) for failure to supervise, two (2) mental or physical impairments, thirteen (13) were outside the scope of investigation, and two (2) were COVID 19 cases.

In 2023, there were seventeen (17) new complaints opened and thirteen (13) were closed for the following reasons: five (5) closed for insufficient evidence to formally discipline, six (6) complaints closed with no action, and currently there are thirty-eight (38) open complaints.

Of the open complaints: one (1) was for substance abuse, four (4) were for malpractice negligence, ten (10) for unprofessional conduct, one (1) was prescribing to friends or family, and one (1) was outside the investigative scope.

Ms. Granum also informed the board that the X-Ray Examiners have no compliments for either year.

REPORT FROM THE DIVISION OF HEALTH LICENSURE REGULATION

Ms. Keeyona Love, the Fiscal manager for the Health Related Boards, presented a 2022 year-end financial report to the Board. She outlined the current financial position for the Board, concluding that the Board had a comfortable carryover balance.

REPORT FROM THE ADMINISTRATIVE OFFICE

The activities that have transpired in the administrative office between November 1, 2022 and February 28, 2023 concerning Osteopathic Physicians are as follows:

New Applications Received:

- Osteopathic Physician: 132
- Locum Tenens: 0
- Telemedicine: 0
- Special Training: 0
- Compact: 29

New DOX Applications Received: 0

Total New Licenses Issued

- Osteopathic Physician: 57
- Telemedicine: 2

- Locum Tenens: 0
- Special Training: 3
- DOX: 0
- Compact: 53

Total Number of Reinstatement: 3

Total Number of Renewals:

Osteopathic Physicians: 322

Online 279 – 87%

Total number of active licensees as of February 28, 2023 is 2,637.

Total number of active licensees as of February 28, 2023 with a Tennessee mailing address is 1,684.

Total number of Special Training licenses as of February 28, 2023 is 16.

Total number of Telemedicine licensees as of February 28, 2023 is 26.

Total number of Active DO X-Ray Operators as of February 28, 2023 is 6.

Total number of Active Professional Midwives as of February 28, 2023 is 77.

Dr. Zieren inquired about the turn around process of the application. Ms. Stacy Tarr explained that the benchmark period for an application is ninety (90) days from when the applicant receives the first deficiency letter.

REPORT FROM THE OFFICE OF GENERAL COUNSEL

Ms. Baca-Chavez informed the Board that there are 8 cases open against 7 osteopathic physicians. Regarding these cases, 4 involve allegations of over-prescribing and are being handled by attorneys on the overprescribing team. There is 1 open cases against 1 midwife. There are no appeals pending.

Ms. Baca-Chavez reminded the Board that the disciplinary coordinators are now part of the Office of General Counsel and that she will be providing their report as well. The report is as follows:

The total number of Osteopathic Physicians being monitored for discipline is 12

The total number on reprimand is 0.

The total number on probation is 8 with terms.

The total number on suspension is 1.

The total number that has had their license revoked or surrendered is 0.

The total number of Osteopathic X-Ray Technicians being monitored is 0.

RATIFICATION OF LICENSES

Dr. Garabedian motioned to ratify the list of new licensees. Dr. Bernui seconded the motion. The motion passed.

SENDING BOARD MEMBER FSMB 2023 ANNUAL MEETING

Dr. Zieren motioned for Dr. Wieting to attend the FSMB annual meeting to represent the board as the voting delegate with a staff member and an attorney. Dr. Bernui seconded the motion. The motion passed by unanimous vote.

PUBLIC CHAPTER 970

Ms. Baca-Chavez brought to the boards attention that the board would need to draft a set of rules for a temporary license of ninety days for foreign medical graduates that was granted by legislation. The board recognized that Dr. Rickman held previous experience regarding the temporary license. A motion for Dr. Rickman to work with Ms. Baca-Chavez on a draft set of rules to be presented at the next board meeting was proposed by Dr. Bernui. Dr. Zieren seconded the motion. The motion passed.

PUBLIC CHAPTER 949

Ms. Baca-Chavez also informed the board that the legislation recently passed changes to supervision that would permit it be conducted electronically rather than the physician physically visiting the site. Dr. Bernui showed interest in being a part of the taskforce and assisting Ms. Baca-Chavez in amending the Rules to match the statute. Dr. Rickman motioned for Dr. Bernui represent the board on the taskforce for Public Chapter 949. Dr. Zieren seconded and the motion passed unanimous vote.

FSMB STRATEGIES FOR PRESCRIBING OPIOIDS FOR THE MANAGEMENT OF PAIN

The goal is to provide state medical and osteopathic boards with updated recommendations for assessing a clinician's management of pain, to determine whether opioids are used in a manner that is both medically appropriate and in compliance with applicable state and federal laws and regulation.

The appropriate management of pain, particularly as related to the prescribing of opioids and other controlled substance with potential for misuse may include: adequate attention to initial assessment to determine if opioids are clinically indicated and determine risks associated with their use in particular individual with pain, adequate monitoring during the use of medications with misuse potential to assess for ongoing benefit and mitigation of potential harms, adequate attention to patient education and informed consent, justified dose escalation with adequate attention to risks or alternative treatments, avoid excessive reliance on opioids, particularly high dose opioids for chronic pain management, utilization of available tools for risk mitigations, and emphasis should be placed on individualized decision-making.

Dr. Zieren moved that Dr. Wieting represent the board in reviewing the FSMB Strategies for Prescribing Opioids for the Management of Pain and if any comments should be made, he will submit them before March 21, 2023. Dr. Bernui seconded the motion, and it was passed unanimously.

CSMD UPDATE

Unfortunately, Dr. Garabedian was unable to give an update on the CSMD as it was canceled due to weather and the next meeting became virtual at a time he was unable to attend. It was noted that the updates that have been made to the CSMD have been helpful.

PHARMACY PRACTICE TASKFORCE UPDATE

Dr. Rickman represented the board for the Board of Pharmacy Collaborative Taskforce meeting. The purpose of the meeting was to change the language on the collaborative practice agreement with pharmacist.

BRUCE RUBINOWICZ, DO – ORDER OF COMPLIANCE

The respondent had violated the following statutes or rules which are part of the Tennessee Osteopathic Practice Act (Tenn. Cod Ann. 63-9-101, et seq.) for which disciplinary action before and by the Board is authorized: Respondent's actions/omissions as articulated in paragraphs two through seven of the Stipulations of Fact, supra, constitute violations of Tenn. Code Ann. 63-9-111(b)(1): Unprofessional conduct, dishonorable or unethical conduct. Respondent's actions/omissions as articulated in paragraphs five through seven of the Stipulations of Fact, supra, constitute violations of Tenn. Code Ann 63-9-111(b)(9): Conviction of a felony, conviction of any offense under state or federal drug laws or conviction of any offense involving moral turpitude.

Respondent, for the purpose of avoiding further administrative action with respect to the cause, agrees to the following: The Tennessee osteopathic license of Bruce S. Rubinowicz, D.O., license number 1145, placed on probation for a period of three years. Respondent must petition the Board for an Order of Compliance of the probation to be lifted. The probation constitutes an encumbrance of Respondent's license which, by law, prevents him from serving as a supervising physician or a substitute supervising physician for the clinical practice of nurse practitioners and/or physician assistants until such time it is lifted.

Ms. Baca-Chavez had received documentation from The Office of General Council that had concluded that Dr. Rubinowicz was in compliance such that his probation can be lifted. Dr. Zieren motioned to accept the order of compliance as complete. Dr. Bernui seconded the motion, and the motion was passed unanimously.

PUBLIC COMMENTS – No public comments

The meeting temporary adjourned for a short recess at 10:45 a.m., CST and returned at 11:45 a.m., CST

**Cody Davis, DO – License No. 1734 v. State of Tennessee Board of Osteopathic Examination
Poplar Room
Administrative Law Judge: Shannon Barnhill
Counsel for State: Paetria Morgan
Counsel for Respondent: C.J. Gideon**

After consideration of the Notice of Charges, the evidence presented by both parties, and the record, the Board finds as follows:

Respondent's Tennessee Osteopathic Physician License, No. 1734, is hereby **PERMANENTLY REVOKED**.

With no active license, Respondent is no longer required to maintain lifetime advocacy with the Tennessee Medical Foundation.

Respondent must pay one (1) "Type A" civil penalty, in the amount of one thousand dollars (\$1,000.00), representing the penalty for the Respondent's failure to maintain TMF advocacy while licensed.

Respondent understands that this is a formal disciplinary action and it will be reported to the National Practitioner Data Bank (NPDB) and/or similar agency.

So ordered by the Tennessee Board of Osteopathic Examiners this 1st day of March, 2023. \

The final revised order was motioned by Dr. Rickman and seconded by Dr. Zieren. The motion passed.

Meeting adjourned at 4:38 p.m., CST