



**Tennessee Board of Osteopathic Examination
Regular Board Meeting**

Wednesday, March 2, 2022

MINUTES

The regular board meeting of the Tennessee Board of Osteopathic Examination was called to order at 9:18 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: Michael Wieting, D.O., President
Shant Garabedian, D.O., Vice President
Jan Zieren, D.O.
Michael Bernui, D.O.
Ms. Penny Judd, Secretary and Consumer Member

Board member(s) absent: Otis Rickman, D.O.

Staff present: Francine Baca-Chavez, JD, Office of General Counsel
Rene Saunders, MD, Medical Consultant, BME
Angela Lawrence, Executive Director
Stacy Tarr, Administrative Director
Candyce Wilson, Administrative Director
Cassandra Corbett, Board Administrator

APPROVAL OF MINUTES

The Board reviewed the minutes from the November 10, 2021 meeting. Ms. Judd motioned to approve the minutes. Dr. Garabedian seconded the motion. The motion passed by unanimous vote.

RATIFICATION OF LICENSES

Dr. Garabedian motioned to ratify the list of new licensees. Dr. Bernui seconded the motion. Discussion ensued regarding a licensee who had opted to put Mrs. as opposed to Dr. as their title and whether it should be changed. The decision was made to have the administrative office consult the licensee and revise, if necessary. The motion passed by unanimous vote.

SELF-PRESCRIBING AND PRESCRIBING TO FAMILY MEMBERS AND FRIENDS

Dr. Wieting reintroduced the discussion on prescribing to self as well as to family members and friends, reminding the Board that it had been previously discussed and requested an update from Ms. Francine Baca-Chavez. Ms. Baca-Chavez began with a timeline and summary of the Board's prior deliberations and concluded by presenting the Board with a proposed policy.

Dr. Zieren moved to approve the policy and the motion was seconded by Dr. Garabedian. Dr. Bernui expressed concern for rural physicians and whether their circumstances might violate this policy. Discussion about what the policy permits, options for rural physicians, and the argument against allowing prolonged treatment of family and friends.

Dr. Wieting called for a vote on Dr. Zieren's motion, and the motion was passed by unanimous vote.

RULE REVIEW

Dr. Wieting introduced rule review materials. Ms. Baca-Chavez provided a summary of PC328 along with the Board's objective. She stated that the rule review would start with licensure rules, training, application review and examination.

Dr. Wieting polled the Board as to whether their preference would be to make a motion for each rule or to make motions for the more significant changes along with a single motion regarding minor or unchanged rules. The Board opted for the latter.

The Board requested clarification on the formatting, terminology in the documents presented, and current administrative processes, which were explained by Ms. Baca-Chavez, Dr. Rene Saunders, and the administrative staff. The Board reviewed and revised rules with the purpose of modernizing and conforming submission requirements to fit more contemporary and technological conditions.

Dr. Bernui motioned to accept the revisions, which was seconded by Dr. Garabedian. Motion passed by unanimous vote.

NONRESIDENTIAL BUPRENORPHINE TREATMENT GUIDELINES

Dr. Wesley Geminn, the Chief Pharmacist and State Opioid Treatment Authority for the Tennessee Department of Mental Health and Substance Abuse Services, presented the revised nonresidential buprenorphine guidelines for the consideration of the Board. He outlined the process for developing the guidelines, statutory requirements, and who the guidelines apply to. Dr. Geminn provided research and statistical information that supported the guidelines and addressed the concerns of the Board.

Dr. Bernui motioned to accept the guidelines and the motion was seconded by Ms. Judd. The motion passed unanimously.

CHANGES TO THE CME POLICY

Ms. Candyce Wilson, from the administrative office, presented on the Board's current policy concerning the requirement for 2 hours of continuing education specific to Tennessee prescribing policy. She explained the issue and directed the Board to the Board of Medical Examiners grace period policy. Ms. Wilson outlined that policy and noted how it would be beneficial to the administrative office. Discussion ensued about other elements including changing the penalty fee and accreditation requirements.

Dr. Bernui motioned to change the policy statement to incorporate a 30-day grace, a 90-day penalty hour makeup period, to increase the penalty to \$100 per incomplete CME hour and accept any accredited CMEs. The motion was seconded by Dr. Zieren. Ms. Baca-Chavez verified that the Board would like their policy to mirror the Board of Medical Examiners policy with the exception of changing the language regarding the accreditation categories. The Board confirmed this. The motion passed via unanimous vote.

REQUEST FOR RECONSIDERATION OF AN AUDIT FILE

MATTHEW GELLER, DO

Ms. Wilson introduced a letter from Dr. Matthew Geller. Dr. Geller is a pathologist who did not complete his prescribing CMEs. Due to the prior motion regarding a grace period for CMEs, it was unnecessary for the Board to consider this letter as he would now be eligible to complete his CMEs within the newly implemented grace period.

BENNY MCKNIGHT, DO

Ms. Wilson presented a second letter from Dr. Benny McKnight, who was excluded from the new policy due to the number of CMEs he was deficient between 2018-2019. Dr. McKnight's letter stated that the pandemic prohibited him from being able to attend CME programs which led to him having an insufficient amount completed. Ms. Baca-Chavez informed the Board of the rule for requesting a waiver, noting that Dr. McKnight did not appeal to the Board in time to be considered for that route.

Dr. Garabedian motioned to deny the request and Ms. Judd seconded. Discussion followed, with Ms. Judd inquiring as to why the dates in the letter were different than the period requested by the administrative office to the licensee. Ms. Wilson stated that she was unsure as all correspondence on the matter referenced the 2018-19 period. Ms. Judd expressed concern that Dr. McKnight may be unclear as to what is being requested. Ms. Wilson replied that Dr. McKnight did submit hours for the requested time period, which is how the deficiency in hours was determined. She continued that he sent additional hours from outside the requested cycle but would communicate with the licensee to verify.

The motion passed by unanimous vote.

QUESTIONS FROM THE OFFICE OF THE ATTORNEY GENERAL

Ms. Baca-Chavez informed the Board that there were questions from the Attorney General's office regarding pending rules that require clarification, but she felt that the Board should make the determination.

The first question involved a rule defining how an osteopathic physician can qualify as an addiction specialist. The question was whether the experience required should be aggregate or continuous. A robust discussion followed, ripe with definitions and examples to help illustrate concepts and terminology.

Dr. Zieren made a motion to opt for aggregate experience. Dr. Bernui seconded. The motion passed by 3 ayes with Dr. Garabedian abstaining.

REPORT FROM THE OFFICE OF INVESTIGATIONS

Jaime Byerly, Director of the Office of Investigations, gave her report to the Osteopathic Board.

The first report was for the 2022. There have been thirteen (13) new complaints opened. Out of the thirteen (13) new complaints, one (1) is for action in another state, one (1) for criminal investigation, six (6) for malpractice or negligence, two (2) unprofessional conduct, one (1) outside of the investigative scope, two (2) related to COVID. Fourteen (14) complaints were closed: five (5) insufficient evidence, one (1) was sent to the OGC for formal discipline, six (6) no violation, two (2) closed letters of concern. Ms. Byerly reminded the Board that letters of concern and letters of warning are not considered formal discipline and therefore were not reportable to the National Practitioner Data Bank.

In 2021, there were 85 new complaints opened and eighty-nine (89) were closed for the following reasons: sixteen (26) closed for insufficient evidence to formally discipline, seven (7) sent to the Office of General Counsel for formal discipline, twenty-eight (46) complaints closed with no action, three (3) closed with a letter of concern and seven (7) closed with a letter of warning. Of the eighty-five (85) opened: two (2) were for falsifying records, (1) for sex misconduct, six (6) for action in another state, two (2) for criminal charges, seven (7) for malpractice or negligence, forty-three (43) for unprofessional conduct, one (1) for violation of order, two (2) medical records request, five (5) overprescribing, three (3) for failure to supervise, one (1) for criminal conduct, one (1) for right-to-know violation, one (1) for practicing beyond the scope, four (4) were outside the investigative scope, and five (5) for COVID.

REPORT FROM THE DIVISION OF HEALTH LICENSURE REGULATION

Ms. Alicia Grice, the Fiscal Director for the Health Related Boards, presented a 2021 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, 2021 and February 28, 2022 concerning Osteopathic Physicians are as follows:

New Applications Received:

- Osteopathic Physician: 119
- Locum Tenens: 1
- Telemedicine: 1
- Special Training: 0
- Compact: 29

New DOX Applications Received: 1

Total New Licenses Issued

- Osteopathic Physician: 69
- Telemedicine: 0
- Special Training: 2
- DOX: 0
- Compact: 19

Total Number of Reinstatement: 5

Total Number of Renewals:

Osteopathic Physicians: 262

Online 221 – 84%

Total number of active licensees as of February 28, 2022 is 2,355.

Total number of active licensees as of February 28, 2022 with a Tennessee mailing address is 1,408.

Total number of Special Training licenses as of February 28, 2022 is 16.

Total number of Telemedicine licensees as of February 28, 2022 is 23.

Total number of Active DO X-Ray Operators as of February 28, 2022 is 9.

Total number of Active Professional Midwives as of February 28, 2022 is 73.

Ms. Judd inquired as to the turnaround time for applications that come in through traditional pathways versus the applications through the IMLCC Compact. Ms. Tarr provided an overview of the differences and processing involved between the two types of applications.

REPORT FROM THE OFFICE OF GENERAL COUNSEL

Ms. Baca-Chavez informed the Board that there are 9 cases open against 9 osteopathic physicians. Regarding these cases, 3 involve allegations of over-prescribing and are being handled by attorneys on the overprescribing team. There are 3 open cases against 2 midwives. 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 10

The total number on reprimand is 3 with terms.

The total number on probation is 5 with terms.

The total number on suspension is 1.

The total number that has had their license revoked or surrendered is 1.

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

The total number of midwives being monitored is 2.

AGREED CITATIONS

Ms. Wilson advised the Board that due to the prior motion granting a grace period for completing CMEs, they will not need to ratify 4 out of the 5 agreed citations. She stated she would be reaching out to the licensees and refunding money if that was the pleasure of the Board. Ms. Judd motioned to have the administrative office reach out to the 4 individuals and extend the flexibility granted for the CME requirements. Dr. Garabedian seconded and the motion passed with unanimous vote.

John Osborne, DO - did not appear before the Board nor did a legal representative appear on his behalf. Dr. Osborne was found to be deficient in his continuing education audit by fourteen-and-three-quarters (14.75) hours of required continuing education, including two (2) specific to Tennessee prescribing practices. This order requires Dr. Osborne to pay a civil penalty for a total of five hundred and ninety dollars (\$590.00).

Ms. Wilson noted that the language in the Agree Citation signed by Dr. Osborne may not apply due to the earlier motion regarding CME grace period, which altered the timeframe for completing the requirements. Ms. Baca-Chavez informed the Board that they could accepted the Agreed Citation as is or could offer a new Agreed Citation with the new terms. She noted that Dr. Osborne has already paid and now that the Board has increased the fee, he may need to make an additional payment. Dr. Bernui motioned to accept the Agreed Citation as is and this was seconded by Dr. Zieren. Motion passed by unanimous vote.

As a result, Dr. Osborne must submit proof of the fourteen-and-three-quarters (14.75) hours, including two (2) specific to Tennessee prescribing practices, that he is deficient within one hundred and eighty (180) days and an additional ten (10) hours of continuing education within two (2) years.

UPDATE FROM FARB CONVENTION

Ms. Lawrence provided an update on the FARB convention, which she attended on behalf of the Board.

Ms. Lawrence then informed the Board that this will be her final meeting in attendance as she will be moving on to the role of Health Related Boards Director and expressed her thorough enjoyment serving the Board.

PUBLIC COMMENTS – No public comments

The meeting adjourned at 11:38 a.m., CST