



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

March 7, 2018

MINUTES

A regular meeting of the Tennessee Board of Osteopathic Examination was held in the Iris Conference Room, at 665 Mainstream Drive, Nashville, TN 37243 on March 7, 2018.

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: Maegan Martin, Executive Director
 Candyce Waszmer, Administrative Director
 Rene Saunders, MD, BME Medical 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 President, Jeffrey Hamre, DO, called the meeting to order at 9:03 a.m.

Election of Officers

Dr. Jan Zieren motioned to nominate Dr. J. Michael Wieting for President of the Board. Dr. Shant Garabedian seconded and it passed. Dr. Hamre motioned to nominate Dr. Zieren for Vice President. Dr. Garabedian seconded and it passed. Dr. Shannon Kilkelly motioned to nominate Dr. Garabedian for secretary. Dr. Hamre seconded and it passed.

Presentation by Mr. Wesley Gamet, Department of Mental Health & Substance Abuse Services

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.

Mr. Gamet presented the following information regarding the development of these guidelines to the Board:

- A Committee was created of several state agencies and private stakeholders. With three (3) large committee meetings and four (4) small workgroups to draft these guidelines.
- These guidelines have been adopted by the Commissioner of Health and Commissioner of Mental Health.
- Public Chapter 112 requires all Boards review these guidelines and determine how they would best be used by licensees.
- The guidelines include three sections 1) Prior to treatment 2) Initiating Treatment 3) On-going maintenance treatment.

The Board led a discussion on the absence of representation from the Osteopathic community in the development of these guidelines. Ms. Maegan Martin stated this concern has already been elevated to the Department of Health Commissioner's Office and does not foresee an oversight on this matter occurring again. Mr. Gamet reported that the Tennessee Osteopathic Medical Association is on the list to be invited for the annual review of these guidelines.

This item has been tabled until the Board is able to review a copy of the nonresidential buprenorphine treatment guidelines.

Minutes

The Board reviewed the previously distributed minutes. Dr. Zieren motioned to ratify the November 7, 2017 meeting minutes. Dr. Hamre seconded the motion and it passed.

Applicant Interview(s):

Meredith Disharoon, DO – appeared before the Board without legal representation. Dr. Disharoon appeared before the Board to address a *notice of intent to file a claim* the applicant received and her criminal history in 2011. Dr. Disharoon reports her name was dropped from the lawsuit when it was filed. The Board did not have any further questions. Dr. Kilkelly motioned to grant Dr. Disharoon an unrestricted license. Dr. Garabedian seconded the motion and it passed.

James Washburn, DO – appeared before the Board without legal representation. Dr. Washburn appeared before the Board to address three settled malpractice claims and disciplinary action from the Wyoming Board of Medicine. Dr. Washburn outlined the details of each settled case. A discussion was led regarding the Wyoming Board action and the ethics course he completed as required by that action. Dr. Kilkelly motioned to grant an unrestricted license. Dr. Hamre seconded the motion and it passed.

Ratification of New Licensees

Dr. Garabedian made a motion to ratify initial approvals for DO, DO X-Ray Operators, and Professional Midwifery. This motion was seconded by Dr. Zieren and it passed.

Lori Leonard, Report from the Office of Investigations

Ms. Lori Leonard appeared on behalf of the Office of Investigations. Ms. Leonard reported that there are four (4) Osteopathic physicians being monitored, three (3) suspended, one (1) revoked/surrendered and three (3) under Board order. She reported there have been twenty-one (21), new, open complaints for the year and twenty (20) complaints closed. Of those closed complaints, three (3) closed with a letter of warning, three (3) closed with a letter of concern and eleven (11) were permanently closed. Also, she is monitoring twenty-four (24) complaints. She reports zero (0) complaints were received in 2017 for Osteopathic X-ray Operators.

For the year 2017, sixty-four (64) new complaints were opened and fifty-seven (57) were closed. Of those, forty-two (42) were closed permanently and eight (8) closed with a letter of warning. Also, forty-four (44) complaints were monitored.

Ms. Francine Baca-Chavez outlined the difference between a letter of concern and a letter of warning. Ms. Baca-Chavez reports that a letter of concern is less egregious than a letter of warning. Both letters are not considered public discipline.

Dr. Wieting inquired about what kind of trends are identified when complaints are received. Ms. Martin requested, if possible, for the total number of sexual misconduct complaints to be added to the report. Ms. Leonard reported she would work on obtaining more information for the next meeting.

Dr. Rene Saunders and Ms. Baca-Chavez discussed the process by which complaints are reviewed. The Board members were invited to schedule a time to join a case review meeting.

Noranda French, Financial Report from the Office of the Bureau

Ms. Noranda French provided an overview of the Boards' Mid-Year Report for Fiscal Year 2018:

The following are projections for the year 2018 –

Total Expenditures: \$74,061.30
Board Fee Revenue: \$281,427.50
Current Year Net: \$130,306.95

Ms. French reports that this Board will likely end this year with their third year of having a cumulative carrier. Also, that the Board appears to be in good standing to continue discussing fee reductions. Ms. Baca-Chavez informed the Board on the number of pending legal cases that could potentially cost the Board about one hundred and twenty-five thousand dollars (\$125,000). However, right now there is no way of knowing if that cost would all occur in the same fiscal year. Given this uncertainty and potential high legal cost, Ms. Baca-Chavez encouraged the Board to consider a conservative fee reduction. Ms. French reported there is always the possibility that the increased legal costs could be applied before the fee reduction goes into effect. Furthermore, that this Board continues to show annual growth in revenue.

Ms. French presented the Board with conservative, moderate, and aggressive fee reduction proposals. The proposed fee reductions would apply to the renewal and application fees. The members and staff discussed options on notifying licensees and future licensees about the fee reduction once the rulemaking hearing is set and after the rules become effective.

Dr. Zieren motioned to approve a twenty-five dollar (\$25.00) fee reduction to the licensure application and renewal application, an explanation if necessary and modification in the future if allowable. Ms. Penny Judd seconded the motion and the motion passed unanimously.

Office of General Counsel

Ms. Baca-Chavez presented proposed rule changes for the Board's discussion and approval if desired.

The Board reviewed and discussed the revisions to rule 1050-02-.07(2)(d) – The proposed changes will require an applicant applying for reinstatement of an expired license to submit four (4) years, which is the equivalent of eighty (80) hours, of continuing medical education (hereinafter "CME").

The Board reviewed and discussed the revisions to rule 1050-02-.08(2)(d)(1) – The proposed changes will require an applicant applying for reinstatement of a retired license to submit two (2) years, which is the equivalent of forty (40) hours, of CME.

Dr. Hamre motioned to approve the revisions to rule 1050-02-.07(2)(d) and to rule 1050-02-.08(2)(d)(1). Dr. Kilkelly seconded the motion and it passed.

The Board reviewed and discussed the revisions to continuing medical education rule 1050-02-.12 – The proposed changes will require licensees to maintain the required number of CMEs during the twenty-four (24) month period prior to renewal of licensure. Also, only twenty (20) hours of CMEs may be obtained in Category I-B.

A discussion was held in regards to removing 1050-02-.12(1)(d) because this portion of the rule does not encompass other accrediting bodies of medical education programs. Furthermore, it is determined that the rule 1050-02-.12(c) already specifies how many Category I-B hours may be obtained in a cycle so section (d) is not necessary.

Ms. Judd requested that in rule 1050-02-.12(2)(b) the acronym “AAFP” be written in long form in its first use. Dr. Hamre motioned to approve the revisions and as amended in discussion regarding the continuing medical education rules. Dr. Garabedian seconded the motion and it passed.

The Board reviewed and discussed the revisions to rule 1050-02-.20(2)(e) – This rule is added due to the passage of Public Chapter 350. This act was amended last year to award volunteer providers continuing medical education credits for their volunteer services. In that legislation the limit imposed was eight (8) hours annually or twenty percent (20%) of the total annual CMEs required for the licensee. Dr. Hamre motioned to approve the revision. Dr. Garabedian seconded the motion and it passed.

Dr. Wieting led a brief discussion in regards to the definitional issue of the words “practice of osteopathy” as listed within the Board rules and perhaps in other locations pertaining to this Board and the osteopathic profession in Tennessee. Specifically, internationally that term is understood to be of a limited scope of practice compared to the practice of medicine. He reported that the Federation of State Medical Boards and the American Osteopathic Association use the language “osteopathic medicine” which allows for an equal interpretation.

The Board reviewed and discussed the revisions to x-ray operator rules 1050-03-.09(3)(b)(1)(ii) and 1050-03-.09(3)(b)(2)(ii) – The first proposed change will require an applicant applying for reinstatement of a retired license to submit two (2) years, which is the equivalent of twenty (20) hours, of continuing education (hereinafter “CE”). The second proposed change will require an applicant applying for reinstatement of an expired license to submit four (4) years, which is the equivalent of forty (40) hours, of CE’s. Dr. Hamre motioned to approve the revisions. Dr. Garabedian seconded the motion and it passed.

Adoption of the Nonresidential Buprenorphine Treatment Guidelines (continued)

The Board members reviewed the treatment guidelines. Dr. Kilkelly commented that the guidelines appear to be written appropriate and reasonable. Dr. Zieren inquired if there were further comments applicable for when a physician utilizes the relapse indicators. Dr. Michael Baron, as a participant in the development of the guidelines, commented that these indicators do not leave out the flexibility of the art of medicine but should assist a physician in identifying common relapse indicators.

Ms. Judd reported concerns about this Board being unaware of the working group that developed these guidelines. Also, she reported concerns about the Board not being informed on the current opioid epidemic efforts.

Dr. Garabedian motioned to accept the guidelines as presented. Dr. Zieren seconded the motion and it passed.

Consent Order(s)

Kenneth Salhany, DO – was not present nor did a legal representative appear on his behalf. Dr. Salhany was licensed in 1983. Respondent formerly served as the supervising physician for APRN Pauline Warren. Ms. Warren was the only midlevel practitioner who provided care at two different clinics. Ms. Warren treated approximately eight to twelve patients a day at one clinic and approximately forty to fifty patients a day at the other clinic. Both clinics were primarily weight loss clinics where Phentermine was dispensed. The office manager for both clinics, electronically sent Respondent medical records to review on a monthly basis. Respondent signed off on twenty (20%) percent of charts monitored or written by Ms. Warren every thirty (30) days; however, he did not make a personal review every ten (10) days when a controlled drug had been prescribed. Respondent signed off on approximately twenty (20%) percent of the charts when Phentermine, a schedule IV controlled substance was prescribed. Respondent never visited either of the clinics. Respondent served as Ms. Warren’s supervising physician from approximately 2011 to 2018. Respondent signed a power of attorney for his office manager, a licensed aesthetician to procure and dispense Phentermine. The office manager is not Respondent’s supervisee. Respondent has since revoked the power of attorney. This order shall place the Respondent’s license on probation for a period of two (2) years. For a period of four (4) years from the effective date of this order, Respondent is prohibited from serving as a supervising physician or substitute supervising physician. Respondent shall pay three (3) “Type A” civil penalties for a total of three thousand dollars (\$3,000.00). Respondent must pay all actual and reasonable costs of this case not to exceed two thousand dollars (\$2,000.00). Dr. Hamre motioned to approve the order. Dr. Garabedian seconded the motion and it passed.

Bruce S. Rubinowicz, DO - was not present nor did a legal representative appear on his behalf. Dr. Rubinowicz was licensed in 1996. In approximately March of 2012, Respondent agreed to an arrangement with the owner of a Nashville based supplier of medical equipment, where Respondent would be paid cash in exchange for referring patients needing medical equipment to the supplier. Beginning in or around April of 2012 and continuing until November of 2012, Respondent began referring patients needing a continuous positive airway pressure, “CPAP” ventilators and bi-level positive airway pressure, “BiPAP” ventilators to the supplier. Supplier subsequently billed Medicare and other federal health programs for medical equipment provided to these patients. Between April of 2012 and December of 2012, Respondent received \$22,900 in cash kickback payments. On or about January 4, 2016, the federal government charged the Respondent with solicitation and receipt of a kickback violation. On or about February 19, 2016, Respondent pled guilty to a felony in violation of the Anti-Kickback Statute. As a result of Respondent’s guilty plea, he was sentenced to a term of probation for one year, was required to pay \$22,900 and pay a \$100 special assessment fee. The judgment was entered on or about November 8, 2017. This order shall place the Respondent’s license on probation for a period of three (3) years effective the date of entry of this order. Within three (3) months, Respondent shall successfully complete the fifteen (15) CME credit hour teleconference course, entitled “PBI Medical Ethics and Professionalism”. Respondent shall pay eight (8) “Type B” civil penalties for a total of twelve hundred dollars (\$1,200.00). Respondent must pay all actual and reasonable costs of this case not to exceed two thousand dollars (\$2,000.00). Dr. Hamre motioned to approve the order. Dr. Kilkelly seconded the motion and it passed.

Petition for Order of Compliance(s)

Jody Johnson, DO – appeared before the Board as required by current Board consent order. In March of 2015, Dr. Johnson’s Kentucky license was placed on a limited restricted status and prohibited from any act that could constitute as surgery. The Tennessee Board entered into a consent order, on May 3, 2017, with Dr. Johnson based on the Kentucky Board action. That consent order required his license to be placed on a restricted limited status for an indefinite period of time until he successfully completed the requirements of the educational plan and if deemed necessary from CPEP an additional post educational assessment. June 1, 2017, a letter from CPEP indicated he has successfully completed all of their requirements as of February 2017. Dr. Johnson has paid all required costs to this Board. Also, the Kentucky Board has removed the restriction from his Kentucky license. Based on this information, the state precludes that Dr. Johnson has complied with this Board’s consent order and supports this petition for order of compliance. Dr. Hamre motioned to approve this petition for order of compliance. Dr. Garabedian seconded the motion and it passed.

Joe Morgan, DO – appeared before the Board as required by current Board order. Dr. Morgan entered into an agreed order, in August 2012, based on disciplinary action by another state for excessive and inappropriate prescribing without the performance and/or documentation of adequate examinations and without medical justification; as well as for self-prescribing lorazepam for a period of one (1) year. In October of 2012, the Florida Board summarily suspended his license. In March 2011, the Florida Board issued an order and modified that order in March of 2012. In August of 2012, this Board suspended his license until he underwent a comprehensive assessment with Vanderbilt. Dr. Morgan completed that assessment in November of 2012 and his suspension was lifted. At that time he was placed on probation per the remaining terms of the August 2012 order. Ms. Baca-Chavez outlined all of the restrictions imposed based on Dr. Morgan’s probation. The Board has the appropriate documentation to prove Dr. Morgan has completed all requirements of his order. The state precludes that Dr. Morgan has complied with this Board’s order and supports this petition for order of compliance with the understanding that per the original order Dr. Morgan would still be barred from the practice of pain management. Dr. Morgan informed the Board that he did successfully complete the required twenty-four (24) months of monitoring with the Tennessee Medical Foundation and did not participate in any voluntary monitoring after that completion. His reasoning for this is because he has never experienced an issue with substance abuse or addiction and his original violation of self-prescribing occurred without an intent to abuse but rather to continue regularly scheduled medications that he had previously been prescribed prior to moving states. The Board questioned Dr. Morgan on several matters regarding his compliance, Florida licensure status and future practice intentions in Tennessee. Dr. Zieren motioned to approve this petition for order of compliance while maintaining that he be restricted from practicing in pain management clinics. Dr. Garabedian seconded the motion and it passed.

Administrative Office Report

The Board was presented with the November 1, 2017 through February 28, 2018 data as follows:

New applications received:	Total New Licenses Issued:
Osteopathic Physician – 74	Osteopathic Physicians – 55
Locum Tenens – 0	Locum Tenens – 0
Telemedicine – 2	Telemedicine – 2
Special Training – 1	Special Training – 3
X-Ray – 1	X-Ray – 0
Reinstatements – 3	

Total Number of Osteopathic Physician Renewals: 205; Online Renewals: 163 – (80%)

Total number of active licensees as of February 28, 2018 is 1,509.

Total number of active licensees as of February 28, 2018 with a Tennessee mailing address is 977.

Total number of Telemedicine licensees as of February 28, 2018 is 28.

Total number of Active DO X-Ray Operators as of February 28, 2018 is 15.

Total number of Active Professional Midwives as of February 28, 2018 is 46.

Ms. Martin requested permission to work with one Board member to review the entire application and make revisions as needed. Dr. Wieting accepted nomination to review the application with Ms. Martin.

Dr. Wieting commented about the reference letters received with each application and raised a concern that many of the letters received are not on official letterhead and how is one to trust the legitimacy of the letter. Dr. Rene Saunders stated that many physicians do not have access to letterhead but the author of the letter could add a disclaimer within the body to report not having access to letterhead. Ms. Martin proposed that the Board consider future discussions about the value of receiving these letters of recommendation, in this format or at all, with the application. Dr. Kilkelly spoke in favor of requiring some type of reference check. Dr. Hamre spoke in regards to an inconsistency in our application processing where we do not require letters of recommendation for telemedicine applicants but we do require them for in-state licensure applicants. The Board discussed a desire to learn if neighboring states require letters of recommendation with their application and to consider developing a reference form which could be completed rather than a drafted letter. This discussion has been tabled until the next meeting.

Adjournment