



TENNESSEE BOARD OF OSTEOPATHIC EXAMINERS'

May 4, 2016

MINUTES

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

Staff Present Ken Bowman, Administrator
Stacy Tarr, Administrative Director
Maegan Martin, JD, Executive Director
Francine Baca-Chavez, Esq., Deputy General Counsel
Kyzonte Toombs, Deputy General Counsel/Attorney for Midwifery

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 9:05 am.

Applicant Interview

Marilyn Greene-Campbell – was asked to appear before the Board on her petition for order of compliance. Ms. Greene-Campbell was a certified professional midwife until her license was suspended in May 2014 following a conviction for conspiracy to manufacture, distribute and possess 100 or more marijuana plants. Ms. Greene-Campbell served two years in federal prison as a result of her conviction and her license was suspended for a period of not less than two years.

Francine Baca-Chavez, Deputy Counsel, presented Ms. Greene-Campbell's case to the Board. The Board was asked to consider Ms. Greene-Campbell's application for reinstatement and her petition for order of compliance separately. Ms. Greene-Campbell was required to apply for reinstatement of her license because she allowed her license to lapse soon after her discipline became effective.

Ms. Greene-Campbell was allowed to address the Board. She admitted to growing medical marijuana and stated that it was for her husband's medical use. She stated that in the six years since these events transpired, she has been drug tested time and time again and she has never failed a drug test. Ms. Greene-Campbell added that prior to this event she practiced as a CPM for forty years without incident. During her suspension, Ms. Greene-Campbell has made sure that all required CEU's have been timely completed as well as five hours of neonatal peer review. She acknowledged that she allowed her license to lapse while she was in prison as she had limited funds and no real way to renew.

Dr. Garabedian asked Ms. Green-Campbell to address any current or prior drug and/or alcohol use. Ms. Greene-Campbell stated that she does not use drugs, but does consume alcohol occasionally.

Ms. Baca-Chavez asked Ms Greene-Campbell if there are any other stipulations or conditions of her probation other than random drug testing. Ms. Greene-Campbell responded that she has to receive permission to travel outside of middle Tennessee. Dr. Hamre asked Ms. Greene-Campbell if she is working with a physician. Ms. Greene-Campbell stated that her group has a collaborative care plan with a group of physicians in her area.

Ms. Judd asked Ms. Greene-Campbell how much longer she will be on probation. Ms. Greene-Campbell is on probation for four years. She has informed all clients of her felony background.

Dr. Roland Gray appeared on behalf of the Tennessee Medical Foundation (TMF). Dr. Gray acknowledged that the TMF would advocate for any licensee under the Board because of TMF's relationship with the BOE. He added that TMF accepts the results from state or federal drug tests, as they are usually very thorough. Frequently they do more testing than the TMF. He also added for the record that Tennessee does not recognize the term medical marijuana.

Francine Baca-Chavez summarized the Board's options with respect to Ms. Greene-Campbell's application:

1. The Board could approve the reinstatement application, as well as the order of compliance. The suspension would be lifted and she would have an unencumbered license.
2. It could approve the reinstatement application to make her license active, but deny the order of compliance. The grounds for denial would be based on having a two year suspension and Ms. Greene-Campbell's failure to renew her license. Technically, her license was only active but suspended for one month before it expired. So, she could have twenty-three more months of suspension.
3. The Board could approve reinstatement and order of compliance with conditions. For example, the Board could approve her application but add the condition that her probation must run concurrent with her criminal probation. They could require her to provide quarterly reports to the Board or work under the supervision of another CPM.
4. The Board could deny her application based on certain grounds.

Ms. Baca-Chavez added that if the Board declined to ratify the action taken by the Council, whatever decision the Board makes would have to be accepted by the Council. Likely, an emergency meeting would be scheduled to ensure timely action on the application.

Dr. Hamre asked if the applicant can be required to submit to monitoring or to undergo an evaluation by TMF. Ms. Baca-Chavez responded that the Board could place that condition on Ms. Greene-Campbell's license.

After further discussion by the Board, Dr. Wieting made a motion to approve Ms. Greene-Campbell's application for reinstatement with the following conditions:

1. Ms. Greene-Campbell's license is to be placed on probation for the remainder of her already existing criminal probation; and
2. She shall be supervised by a CPM for a period of two years, with quarterly reports attesting to her continued competency. The quarterly reports will be submitted to the Board's administrative office.

Dr. Zieren and Dr. Garabedian sought clarification regarding the intent of the supervision condition. The Board continued its discussion and Dr. Wieting clarified his motion to specifically include the following the requirements:

1. Ms. Greene-Campbell must be supervised by a CPM for at least fifteen births; and she
2. She must also report to TMF for an evaluation and comply with any resulting recommendations set forth by the TMF.

Dr. Garabedian seconded the motion which passed. Dr. Wieting made a motion to approve the order of compliance which was seconded by Dr. Garabedian. That motion also passed.

Legislation

Ben Simpson, legislative liaison for the Department of Health, addressed the Board regarding recent legislation.

SB 1574 – Revises provisions governing reinstatement of licenses based on expiration of a license under the Division.

SB 829 – Enacts provisions governing nonresidential office-based opioid treatment facilities and nonresidential opioid treatment programs. These facilities must be licensed if they are prescribing Buprenorphine (Suboxone, etc.) to more than 50% of its patients or more than 150 patients at once.

SB 1677 – Authorizes a pharmacist to provide hormonal contraceptives according to a valid collaborative pharmacy practice agreement containing a nonpatient-specific prescriptive order and standardized procedures developed and executed by one or more authorized prescribers, in certain circumstances. Rules will be promulgated by the Board of Pharmacy in collaboration with the Board and the Board of Medical Examiners.

SB 1761 – Eliminated existing law that allowed a certain religion to not be charged with the crime of child abuse, neglect or child endangerment if they provided prayer in lieu of medical or surgical treatment.

SB 1850 – Authorizes the commissioner of health or the commissioner's designee to obtain records maintained by any licensed facility licensed to facilitate investigations and inquire concerning opioid drug abuse, opioid drug overdoses, and opioid overdose deaths

SB 1873 – Permits medical students to apply for exemption from medical licensure requirements while practicing within the scope of certain training programs

SB 1979 – Creates a 21-member task force to study issues related to healthcare services, specifically the ability of an advanced practice nurse to practice outside of a collaborative agreement with a physician. Specifies that the task force will make a report and cease to exist by January 15, 2017.

SB 1989 – Authorizes certain entities to stock epinephrine auto-injectors on their premises; authorizes employees, agents, and laypersons to provide or administer an epinephrine auto-injector under certain circumstances.

SB 2057 – Specifies that, on and after July 1, 2016, a new applicant may only qualify as a pain management specialist through board certification by the American Board of Interventional Pain Physicians (ABIPP) by passing parts 1 and 2 of its examination, and holding an unencumbered Tennessee license, and maintaining the minimum number of CME hours in pain management to satisfy retention of ABIPP diplomate status.

SB 2060 – Allows for the dispensation of opioids and benzodiazepines by physicians in physician's office under certain circumstances. Those circumstances are very specific, which removes the previous loophole.

SB 2240 – Clarifies that the consent required of a woman in order for medical experiments, research, or the taking of photographs upon her aborted fetus must be in writing.

SB 2371 – Creates exemption from eye treatment given to newborns and infants for the minor child of any person who files with the department of health a signed, written statement that the treatment conflicts with the person's religious tenets and practices; removes Class C misdemeanor penalty for a physician, nurse, or midwife failing to administer the treatment.

SB 2552 – Enacts the "Tennessee Prescription Safety Act of 2016," which revises regulation of controlled substances; makes permanent most all of the changes made under the Tennessee Prescription Safety Act of 2012, and revises and enacts other provisions.

SB 2594 – Allows licensing authorities for certain state regulatory agencies to consider whether a person's conviction for the commission of a felony bears directly on the person's fitness to practice competently when making determinations regarding the person's licensure status.

SB 1466 – Imposes licensure and other requirements on pain management clinics.

Office of General Counsel

The Office of General counsel is currently monitoring ten osteopathic physicians, compared to fifteen physicians monitored at this time last year. Dr. Zieren asked Ms. Baca-Chavez to speak to the twenty-two cases open against three individual licensees. Ms. Baca-Chavez explained that there were multiple allegations of wrongdoing against these three licensees.

Approval of Minutes

It was noted that Tera Goettner (Lively) petition's for order of compliance did not appear in the March minutes. Dr. Wieting made a motion to accept the minutes as revised. Dr. Garabedian seconded the motion which passed.

UA Presentation

Ms. Martin summarized the uniform application (UA) which is offered by the Federation of State Medical Boards. The UA exists to expedite the application and licensure process for licensees and participating state medical boards. If the Board were to adopt the UA, it would exist as a supplement to its existing process and applicants would have the option to use it. Essentially, the UA identifies nearly all common fields on applications for medical licensure. The applicant creates a UA profile and completes a single application for all participating state medical boards by which he or she would like to be licensed. If the applicant is also an FCVS user, his or her FCVS data would prepopulate the UA profile, resulting in significant time savings for the applicant.

Ms. Martin added that at the moment, there are grant funds available through HRSA to state medical boards that want to participate. The grant funds can be used for the system changes needed to implement the UA. Mr. Ingo Hagemann of the FSMB provided a UA demonstration. At the conclusion of the demonstration, Dr. Wieting stated that he would not support adoption of the UA unless the COMLEX data was also made available. He made a motion asking Mr. Hagemann to ask the FSMB to consider making that change. The motion was seconded by Ms. Judd and passed.

Consider Revisions to CE Rule

Ms. Baca-Chavez directed the Board's attention to its existing CE rule. The administrative staff has identified an inconsistency between the rules and the policy. The rules do not specifically put a set number into each category, but the policy penalizes licensees for not having a specific number of 1A or 2A CE's. She recommended that the Board amend the rule and delineate how many should be required for each category. Dr. Wieting suggested that a few BOE members work on this and bring their suggestions back to the next meeting.

Midwifery Rule Change

Ms. Baca-Chavez asked the Board to ratify the Council for Professional Midwifery's decision to lower its fees. Dr. Zieren made a motion to approve. The motion was seconded by Dr. Garabedian and passed.

Discuss and Appoint a Board Member to the CSMD Committee.

The Board considered who should represent the Board on the CSMD Committee. Dr. Wieting made a motion to appoint Dr. Garabedian to serve as the Board representative. Dr. Zieren seconded the motion which passed.

Upcoming Conferences and Organizational participation

Ms. Martin requested the Board to authorize her to attend the Centers for Telehealth Spring Summit in Washington, DC. Dr. Zieren made a motion to approve the travel, which was seconded by Dr. Hamre. The motion passed.

Reconsideration of Pain Addiction Specialist

The Board was asked to consider the prepared definition of pain addiction specialist as required by Public Chapter Dr. Wieting made several suggestions and the following definition was adopted by proper motion and second:

For purposes of T.C.A. § 53-11-311 regarding use of buprenorphine products and in order to qualify as an "addiction specialist", a physician must meet one of the following definitions:

- (a) A physician licensed by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination who has achieved certification through the American Board of Addiction Medicine (ABAM) or subspecialty certification through the American Board of Psychiatry and Neurology (ABPN) in addiction psychiatry or has completed the residency and fellowship requirements for same and is in the board certification process; or
- (b) A physician licensed by the Tennessee Board of Medical Examiners or the Tennessee Board of Osteopathic Examination who has a primary ABMS (American Board of Medical Specialties) board certification and at least three (3) years of experience treating patients who have a primary substance abuse disorder while the physician is employed by a facility that is licensed by the Tennessee Department of Mental Health and Substance Abuse Services and only while so employed. At least six (6) months of that experience must be gained while taking care of patients that are at the Alcohol and Drug Residential Detoxification of Alcohol and Residential Rehabilitation level of care.

There being no additional Board business, the meeting adjourned.