



**Tennessee Board of Osteopathic Examiners
Regular Board Meeting**

Wednesday, May 5, 2021

MINUTES

The regular board meeting of the Tennessee Board of Osteopathic Examiners was called to order at 9:00 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
Jan Zieren, D.O., Vice President
Shant Garabedian, D.O., Secretary
Jeffrey Hamre, D.O.
Ms. Penny Judd, Consumer Member

Board member(s) absent: Shannon Kilkelly, DO

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

Dr. Wieting called the meeting to order. A roll call was conducted, and a quorum of the Board was established with the following members present: Dr. Michael Wieting, Dr. Jan Zieren, Dr. Shant Garabedian, Dr. Jeffrey Hamre, and Ms. Penny Judd.

APPLICANT INTERVIEW

Nicole Lundy DO – appeared before the Board via telephone without legal representation. Dr. Lundy is an applicant for initial licensure. She is not currently Board Certified, has no criminal history, and no malpractice history. Dr. Lundy was placed on corrective action and a performance improvement plan during her residency. She completed 3 (three) out of 4 (four) years of her training and it was a unanimous decision to not pursue her final year of training. Dr. Wieting introduced the applicant to the Board and turned the interview over to Dr. Hamre, the consultant who reviewed the file. He questioned her about her residency in Emergency Medicine, which the applicant stated the residency was not completed. She explained that the program was new, and the expectations of the program seemed vague, and she did not feel they were conducive to educating and training. She currently works in Occupational Medicine and requires a Tennessee license in order to oversee services for her employer such as medical review and DOT physicals. Dr. Garabedian motioned to grant licensure with Dr. Zieren seconded. The motion passed by unanimous vote.

Jeremiah Brewer DO – appeared before the Board in person, without legal representation. Dr. Brewer is an applicant for initial licensure. He is not currently Board Certified, has no criminal history, and no malpractice history. Dr. Brewer had multiple inconsistencies and inaccuracies on his application that the Board required explanation and clarification. Dr. Wieting raised concerns over repeated claims on Dr. Brewer’s application of being Board Certified in both anesthesiology and psychiatry despite not being Board Certified or eligible for certification in either specialty. Dr. Brewer explained that his application had been prepared by the company that is looking to employ him and that he did not review the application prior to signing it and submitting it. Dr. Wieting reminded the applicant that he is responsible for the contents of the application. Dr. Brewer acknowledged this and apologized. He explained that he did not complete his anesthesiology residency. Dr. Wieting noted that the dates for one of the residencies were inconsistent throughout the application. Dr. Brewer explained that after this residency ended, he stayed on as an employee for 6 (six) months. Next, Dr. Wieting asked for additional information regarding a failed remediation attempt, which resulted in the program recommending a change in specialty. Dr. Brewer explained that he had difficulty with some technical aspects of working in the OR, that he fell behind, and that he recognized by his second year, anesthesiology was not an appropriate fit for his skillset and qualities. Dr. Wieting questioned him regarding an interruption in his medical school which is explained in the application but was answered in a contradictory manner at various points in the application, stating that there were no interruptions. Dr. Brewer confessed that it was another error and explained that there had been a one-year interruption due to family issues. Dr. Zieren motioned to grant licensure contingent upon correction of the application with Dr. Hamre seconding. The motion was passed by unanimous vote.

Lisa Siino DO - appeared before the Board in person, without legal representation. Dr. Siino is an applicant for initial licensure. She is not currently Board Certified, has no criminal history, and no malpractice history. Dr. Siino was placed on academic probation during her first residency and administrative probation during her second residency. Dr. Wieting requested clarification regarding the adverse actions. Dr. Siino initially started in outpatient psychiatry but when she reached the residency, it was not a good fit and she realized she would not be able to pursue a career as a child psychiatrist. One key issue was that she was experiencing difficulty with the environment. Additionally, she was unable to fulfill the on-call and other scheduling requirements of the residency due to medical issues and they mutually agreed to place her on leave for the remainder of the residency. She transitioned to the field of neuromusculoskeletal medicine and moved to New Mexico for a residency there. Dr. Wieting enumerated the reasons that the second residency placed her on administrative probation, specifically misconduct and professionalism issues, and asked her to expand on that. Dr. Siino explained that she was notified that there had been complaints about her being insensitive and that she not only reconciled the issues within three (3) months but received a recommendation for employment from the program director. Dr. Hamre clarified that she is working in academia and not currently seeing patients, which Dr. Siino confirmed. Ms. Judd asked for clarification as far as the culpability of the Board regarding conduct that is not directly related to clinical matters. Ms. Baca-Chavez explained the options in the statute with regards to unprofessional, dishonorable, or unethical conduct. The Board felt that additional requirements to obtain licensure were unnecessary based on the fact that she completed the probation and was returned to good standing. Dr. Saunders commented that the applicant had answered one of the questions incorrectly when she neglected to mention that she had previously held licensure as a massage therapist. Dr. Garabedian motioned to grant licensure with the contingency of correcting her application and providing verification of any unreported licenses being in good standing. Dr. Zieren seconded. The motion passed by unanimous vote.

APPROVAL OF MINUTES

The Board reviewed the minutes from the March 3, 2021 meeting. Dr. Garabedian motioned to approve the minutes. Dr. Hamre seconded the motion and it passed by unanimous vote.

REPORT FROM THE OFFICE OF INVESTIGATIONS

Ms. Lori Leonard, Disciplinary Coordinator for the State of Tennessee, gave her report for the Osteopathic Board as she is currently monitoring two (2) for a reprimand, five (5) who are on probation, one (1) who is suspended, and one (1) who is revoked/surrendered.

Currently, for 2021 there have been twenty-five (25) new complaints opened. Out of the twenty-five (25) new complaints, one (1) for sexual misconduct, two (2) were action in another state, one was regarding criminal charges, 3 were regarding malpractice or negligence, 12 were regarding unprofessional conduct, 1 was regarding a medical record request, 2 for overprescribing, 1 for failure to supervise, 1 outside of the investigators scope, and 1 regarding COVID-19. Ms. Leonard noted that while the report shows twenty-four (24), the actual figure is twenty-five (25) and attributes the discrepancy to a glitch in the new software system that is actively being resolved.

Dr. Zieren inquired as to whether the COVID-19 complaint was for a practitioner who was not wearing a mask but Ms. Leonard did not know. Ms. Baca-Chavez stated that while she does not recall that specific complaint, COVID-19 complaints stem from physicians who are not following COVID-19 protocols and safety measures which could include not wearing a mask.

Ms. Leonard continued with her report, stating that in the 2021, the Office of Investigations have closed a total of twenty-six (26) total complaints: five (5) closed for insufficient evidence to formally discipline, two (2) sent to the Office of General Counsel for formal discipline, sixteen (16) complaints closed with no action, two (2) closed with a letter of concern and one (1) closed with a warning letter. Ms. Leonard 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.

The office has a total of fifty-three (53) currently opened complaints. There have been no new complaints for osteopathic x-ray examiners.

Dr. Hamre inquired about the differing levels of severity with letters of warning and letters of concern. Ms. Leonard distinguished between letters of concern and letters of warning and the implications involved with each. Ms. Baca-Chavez expanded on Ms. Leonard's descriptions, adding a functionally legal perspective and explained the process. Dr. Hamre requested clarification regarding the process for verification of the letters' receipt, which Ms. Baca-Chavez stated she would find out and follow-up with Dr. Hamre.

RATIFICATION OF LICENSES

The decision was made to ratify the Osteopathic doctors together with the Midwives. Dr. Hamre motioned to ratify the list of new licensees. Dr. Garabedian seconded the motion and it passed by unanimous vote.

APPLICATION CHANGES

As a follow-up to a prior meeting, the Board was presented with changes made to the Board of Medical Examiners applications and renewals. Dr. Baron of the Tennessee Medical Foundation fielded questions regarding the verbiage.

A motion was made by Dr. Hamre to approve the changes to the initial application. The motion was seconded by Dr. Zieren.

Upon review of the renewal application, Dr. Garabedian raised concerns regarding the addendum, which would ask renewing doctors to report excessive substance usage, on the grounds that the question was vague and subjective. Dr. Baron explained that the purpose of the addendum was to encourage physicians to reflect, seek help if needed, and to promote self-care. Dr. Wieting mentioned that the Federation of State Medical Boards recommended including a timeframe in order to allow for more focus within the question. Dr. Saunders offered the observation that the question states “since you last renewed,” which implies that the time since the prior renewal period would be the timeframe. This was followed by a robust discussion regarding the responsibilities of a regulatory board versus encouraging awareness for the comprehensive well-being of physicians. Additionally, suggestions were made on whether to alter the language in order to produce a more structured, precise question.

Ms. Judd made a motion to form a working group among the Board to discuss the application questions. Dr. Hamre seconded the motion.

Dr. Wieting directed a question to Ms. Baca-Chavez, regarding the legal avenue the Board must take in order to appropriately establish the proposed committee. Ms. Baca-Chavez outlined the steps required.

Discussion continued regarding the addition of verbiage to include any state’s physician health foundation, considering that many physicians licensed in Tennessee also practice in other states.

Dr. Zieren expressed concerns that the renewal questions that were not contested would be sidelined due to discussion over the addendum. Additional questions were presented over the number of members and composition of the members in the proposed committee.

Dr. Saunders requested that the Board examine a similar question that had just been ratified on the initial standard application and asked if they find the language in that question acceptable and that if they all agree that that language is acceptable, perhaps the need for a committee is unnecessary and the language can just be copied over to the renewal application.

Ms. Judd withdrew her motion to create a committee.

Dr. Zieren asked Dr. Baron if the guidelines were from the FSMB or a culmination of other states. Dr. Baron confirmed that multiple sources contributed to the formation of his updated questions.

Dr. Garabedian made a motion to copy the question from the initial standard application over to the renewal, including a safe haven statement that references the physician health foundation of other states. Dr. Hamre seconded the motion.

The Board recessed at 10:35 a.m., CST

BRIEF UPDATE FROM DR. ZIEREN REGARDING HER REPRESENTATION OF THE BOARD OF OSTEOPATHIC EXAMINATION AT THE FEDERATION OF STATE MEDICAL BOARDS

Dr. Zieren, the Board's delegate to the Federation of State Medical Boards annual meeting, presented an overview of guidelines, statements, and elections, including the adoption of a position statement against prescribing medication to self, family members, and close relations except in the case of a medical emergency where geographic isolation or other circumstances restricted access to medical care.

At the conclusion of the presentation, Dr. Saunders inquired as to whether the Board was planning to develop a policy aligning with the policy adopted by the FSMB regarding the treatment of self and significant others. Dr. Wieting agreed that a discussion would be constructive and opened the floor for comments. Dr. Zieren requested clarification as to what current policies were in place to that regard and Dr. Saunders informed her that currently there were neither policies nor disciplinary actions taken for doctors who committed such acts. Additionally, she explained that this is a factor that is considered during investigative review and how the absence of policy prohibits further action or discipline on the Board's licensees, contrasting other professions. Dr. Hamre queried whether it is a policy the Board can make or if it would need to go through the lengthy rulemaking channels. Ms. Baca-Chavez encouraged the Board to hold a discussion on the topic but explained that Board would not be permitted to vote on it at the present meeting. She went on to further outline the process for establishing a policy versus a rule. Dr. Wieting emphasized that the Board's policies should be uniform with those of other professions. Dr. Hamre asked whether the existing policies of other Boards were specific to opioids or whether they covered all controlled substances, to which Dr. Saunders stated that it covers all controlled substances, which is what the FSMB policy recommends as well.

Dr. Wieting concluded that discussions would be held at the next regular meeting and the Board discussed information and resources they would they like to receive in order to construct an informed and education policy.

ELECTIONS

The Board held their annual elections for leadership positions. Dr. Zieren nominated Dr. Wieting to serve as President with Dr. Hamre seconding. There were no opposing nominations. Dr. Hamre moved to elect Dr. Wieting with Ms. Judd seconding by acclamation. The vote was unanimous.

Dr. Garabedian was nominated as Vice President by Dr. Zieren and Dr. Hamre seconded. Ms. Judd noted it was by acclamation. The vote was unanimous.

Ms. Judd was nominated for the position of Secretary by Dr. Garabedian by acclamation, which was seconded by Dr. Zieren. The motion passed.

REPORT FROM THE ADMINISTRATIVE OFFICE

The activities that have transpired in the administrative office between March 1, 2021 and April 30, 2021 concerning Osteopathic Physicians are as follows:

New Applications Received:

Osteopathic Physician - 82

Locum Tenens - 0

Telemedicine - 1

Special Training - 0
Compact - 17

New DOX Applications Received - 0

Total New Licenses Issued:
Osteopathic Physician - 59
Telemedicine - 0
Special Training - 0
DOX - 0
Compact - 11

Total Number of Reinstatements - 2

Total Number of Renewals:
Osteopathic Physician - 154

Online: 128 – 97%

Total number of active licensees as of April 30, 2021 is 2,150.

Total number of active licensees as of April 30, 2021 with a Tennessee mailing address is 1,316.

Total number of Special Training licenses as of April 30, 2021 is 7.

Total number of Telemedicine licensees as of April 30, 2021 is 25.

Total number of Active DO X-Ray Operators as of April 30, 2021 is 11.

Total number of Active Professional Midwives as of April 30, 2021 is 66.

REPORT FROM THE OFFICE OF GENERAL COUNSEL

DISCIPLINARY ORDER(S)

CONSENT ORDER

Edward Burke DO – did not appear before the Board nor did a legal representative appear on his behalf. Mr. Mark Gilford represented the State. Dr. Burke was licensed on August 24, 2011, which currently has an expiration date of February 28, 2022. Dr. Burke is an osteopathic physician and surgeon who primarily practices in Michigan. In October 2020, the Michigan Board entered into a Consent Order against Dr. Burke for failure to conform to minimal standards of acceptable care and prevailing practice, including by failing to obtain or document radiographic evidence to support a rapid succession of surgeries from about May 2014 to August 2014. The Michigan Order placed Dr. Burke's license on probation until he completed additional continuing medical education and paid a civil penalty and costs. Dr. Burke fully complied with the Michigan Order and the probation was lifted on about November 16, 2020. The acts for which Respondent was disciplined in Michigan would be grounds for disciplinary action in Tennessee. The facts stipulated are grounds for discipline; however, due to the Respondent's immediate action in resolving the issue in Michigan, it was recommended that no punitive action be assessed. This order will result in a reprimand with the Respondent paying the costs incurred by the State for bring the case. Dr.

Wieting requested a motion, which was called by Dr. Hamre and seconded by Dr. Zieren. The motion was passed by unanimous vote.

AGREED CITATION

Drew Moncrief DO – did not appear before the Board nor did a legal representative appear on his behalf. The Respondent was in violation of continuing education requirements. Dr. Wieting requested a motion, which Dr. Zieren called for and was seconded by Ms. Judd with no further discussion. The vote was unanimous, and the motion passed.

DR KILKELLY'S DEPARTURE FROM THE BOARD

Dr. Shannon Kilkelly, longtime board member, relocated out of state and was presented with a plaque of appreciation for his service by the Board of Osteopathic Examination.

IMLC TELECONFERENCE

Ms. Penny Judd noted that she and Angela Lawrence, BME director, would be representing the Board at the IMLCC teleconference on May 18th.

PUBLIC COMMENTS – No public comments

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