

# Tennessee Board of Osteopathic Examinations



# Newsletter

2013

A regulatory agency of the State of Tennessee

Summer

Bureau of Health Licensure and Regulation • Health Related Boards • 227 French Landing, Suite 300, Heritage Place MetroCenter, Nashville, TN 37243  
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## NEONATAL ABSTINENCE SYNDROME (NAS) NEONATAL ABSTINENCE SYNDROME (NAS)

Neonatal Abstinence Syndrome is a condition in which a baby has withdrawal symptoms after being exposed to certain substances. Many times, the baby is exposed when the mother uses substances such as medications or illicit drugs during pregnancy, and after the baby is born (and separated from the mother's body), the baby goes through withdrawal because it is no longer receiving the substances. Less commonly, very sick babies may receive medications after birth to help control pain or agitation, and once those medications are stopped, the baby may go through withdrawal.

The kinds of medications that may cause withdrawal include those known as opioids (painkillers) or benzodiazepines (which help with anxiety or sleep). Illicit drugs such as cocaine may also cause withdrawal. Withdrawal can occur when a mother is using a medication as prescribed, such as a mother who is receiving treatment for pain or addiction; when a mother is using a prescription medication inappropriately (such as when she uses too much of a medication, takes the medication too often, or takes someone else's prescription); or when a mother is using an illegal drug.



Sometimes mothers who are addicted to illegal drugs like heroin will receive treatment with another drug such as methadone or buprenorphine to help

treat their addiction.

Even in these cases, if the mother is treated during pregnancy, the baby can go through withdrawal after birth.

Over the past decade, we have seen a nearly ten-fold rise in the incidence of babies born with NAS in Tennessee. Infants with NAS stay in the hospital longer than other babies and they may have serious medical and social problems.

**Effective January 1, 2013, all cases of NAS diagnosed among Tennessee resident births should be reported to the Tennessee Department of Health at the time of diagnosis.**

## BOARD ADMINISTRATIVE OFFICE TO RELOCATE

The Department of Health's Division of Health Licensure and Regulation, Office of Health Related Boards will be transitioning from leased space at Heritage Place Metro Center to a newly renovated state-owned space. Our new address will be 665 Mainstream Drive, Nashville, TN 37243. Our move is currently scheduled for the last week of September 2013.

All individual employee phone numbers and e-mail addresses will remain the same. You are encouraged to stay in contact with our office by using existing phone numbers and email addresses. However, if you plan to write the Health Related Boards after September 30, 2013, please write us at our new address at:

Tennessee Department of Health  
Division of Health, Licensure and Regulation  
Office of Health Related Boards  
665 Mainstream Drive  
Nashville, Tenn. 37243

While the department has prepared diligently to minimize downtime, maintain accessibility and sustain productivity throughout this relatively complex move, we do appreciate your understanding and patience as personnel and material move into our new space. We look forward to working with you and providing outstanding customer service from our new location.

### **UPCOMING BOARD MEETING DATES**

**August 14, 2013**  
**November 6, 2013**  
**March 5, 2014**  
**May 7, 2014**

All Board meetings begin at 9:00 a.m., Central Time. Board meetings are held at the Board's office and are open to the public. Dates are subject to change, but are listed on the Board's Website. [In the event of an electronic meeting, a conference room is made available to the public and is the location from which the electronic meeting is conducted.]

### **MISSION OF THE BOARD**

The Tennessee Board of Osteopathic Examination is committed to carrying out its mission to safeguard the health, safety, and welfare of Tennesseans by requiring those who practice medicine and surgery within this state be qualified. The Board awards licenses to qualified candidates who have graduated from approved schools and who have completed appropriate postgraduate work. The Board interprets the laws, rules, and regulations to determine the appropriate standards of practice in an effort to ensure the highest degree of professional conduct. The Board is responsible for the investigation of alleged violations of the Practice Act and rules and is responsible for the discipline of licensees who are found guilty of such violations.

### **CURRENT COMPOSITION OF THE BOARD**

As of July 2013, the Board of Osteopathic Examinations is composed of the following members: Jill Robinson, D.O., President; Donald H. Polk, D.O., Secretary; Karen R. Shepherd, D.O.; Jack Graves Pettigrew, D.O.; Jeffrey Lamont Hamre, D.O.; Robert Fletcher Lance, public member.

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### **LICENSED ISSUED BY THE BOARD IN JANUARY 1-DECEMBER 31, 2012**

Through the licensing process, the Board ensures that the professionals we regulate meet the standards of education, training and professional conduct necessary to serve Tennessee patients effectively and safely. In 2012, the Board issued the following licenses:

License Type	Number Issued
Full Licensure	1,040
Special Training Licensure	20
Limited Scope X-Ray Operators	10

### **PEER ASSISTANCE SERVICES AVAILABLE FOR ALL LICENSEES AND APPLICANTS**

The Physicians' Health Program is a peer assistance program provided by the Tennessee Medical Foundation, a subsidiary of the Tennessee Medical Association. The program offers consultation, referral and monitoring for physicians whose practice is impaired, or potentially could be impaired, due to the use of drugs or alcohol or a psychological or physiological condition.

A referral can be made confidentially by an employee assistance program, a co-worker, family member, friend or the practitioner him/herself. If the practitioner is willing to undergo a thorough evaluation to determine the extent of the problem and any treatment needed, all information may be kept confidential. Professional licensing boards also makes referrals to the Physicians' Health Program when a rehabilitation program is deemed appropriate as a part of any disciplinary action.

Chemical dependency is a significant problem among health professionals and is a chronic, progressive illness that can be treated effectively. As with all chronic illnesses, the earlier the identification and treatment, the better the prognosis. Some signs of chemical dependence are:

Mood swings, inappropriate behavior at work, frequent days off for implausible reasons, non-compliance with acceptable policies and procedures, deteriorating appearance, deteriorating job performance, sloppy and illegible charting, errors in charting, alcohol on breath, forgetfulness, poor judgment, and lack of concentration.

If you have any questions or concerns, contact:

Tennessee Medical Foundation  
Physician Health Program  
216 Centerview Drive  
Suite 304  
Brentwood, TN 37027-3226  
Telephone: 615-467-6411

Services are available to those practitioners, whether or not they have had disciplinary action by the Board. For more information, please refer to the Board's website, or contact the peer assistance program.

### **ASSISTANCE TO IMPAIRED PRACTITIONERS**

The Board is authorized by TENN. CODE ANN. SECT. 63-1-136 to enter into agreements or provide grants to statewide non-profit organizations for the purpose of assisting impaired professionals. The Board now provides a grant of \$25,000 to the Tennessee Medical Associations' Physicians Health Program.

### **NOTICE TO ALL HEALTHCARE PROFESSIONALS LICENSED UNDER TITLE 63**

On January 1, 2013, a new law, Public Chapter 952, became effective requiring your licensing board to provide electronic notices to you. The law gives you the **option** of being notified electronically of the following: (1) Renewals of license, certification or registration; (2) Any fee increases; (3) Any changes in state law that impact the license holder; and (4) Any board meeting where changes in rules or fees are on the agenda. If you "opt in", the Department of Health will also be able to alert you of critical public health matters impacting the State of Tennessee.

Please visit <https://apps.tn.gov/hhrs/begin.jsp> and complete the registration process to opt in. Once you opt in and provide a current email address, you will begin to receive **ALL** notices electronically rather than through the United States mail. Please note that opting in means your renewal notification will be delivered electronically approximately 45 days in advance of your expiration. The e-notice will direct you to the appropriate webpage to renew. If your profession does not permit you to renew your license online, a paper renewal will continue to be provided.

Questions? Contact your professional board at <http://health.state.tn.us/providers.htm>

### **PROFESSIONAL OCCUPATIONS TAX**

TCA §67-4-1701, et seq., requires the payment of an annual professional privilege (occupation) tax. Failure to pay your professional privilege tax constitutes grounds for suspension of your license to practice medicine and surgery in Tennessee. If you fail to pay your professional privilege tax, the Department of Health will file formal charges against you seeking the suspension of your license pursuant to TCA §67-4-1704 and TCA §63-6-101, et seq. Avoid the possible suspension of your privilege to practice medicine in Tennessee by remitting your tax to the Department of Revenue in a timely fashion. For more information please go to:

<http://tennessee.gov/revenue/tntaxes/proftax.htm>

Note: The Board of Osteopathic Examination does not assess this tax. However, the Board will take action against physicians who fail to pay this tax. The actions are reported to the National Practitioner Databank and the Federation of State Medical Boards and published

on the Department of Health's website and its monthly disciplinary action report.

## REMINDER REGARDING CONTINUING EDUCATION

The Board's administrative office randomly audits renewal applications to determine compliance with continuing medical education requirements. Each licensee, as a condition of renewal, must obtain 40 hours of category 1 CME during the two calendar years immediately preceding renewal. **Note: Public Chapter 430 (see below) requires all holders of a DEA registration to take two hours continuing medical education related to controlled substance prescribing biennially to count toward the licensees' mandatory continuing education.**

## REMINDER REGARDING LICENSE RENEWAL

Renewal of your professional license is your responsibility. Should you fail to renew your medical license and continue to practice, such action is reportable to the National Practitioner Data Bank.



### Board Disciplinary Action Available Online

Tennessee Department of Health issues a monthly media release listing all disciplinary actions taken by the health related boards during the prior month. All action taken by the Board of Medical Examiners is viewable online at:

<http://health.state.tn.us/Boards/disciplinary.htm>

## STATUTORY CHANGES OF INTEREST TO TENNESSEE PHYSICIANS



The 2013 Legislative Session has ended, and the Administrative Staff has monitored several bills that are of interest to physicians in the state of Tennessee. These public chapters are available on line at:

<http://www.tn.gov/sos/acts/index.htm>

### PUBLIC CHAPTER NO. 254

AN ACT to amend Tennessee Code Annotated, Title 32, Chapter 11; Title 34, Chapter 6 and Title 68, Chapter 11, relative to health care decisions.

SECTION 1. Tennessee Code Annotated, Section 68-11-224, is amended by deleting the section in its entirety and by substituting instead the following:

(a) For the purposes of this section:

(1) "Clinical nurse specialist" means a nurse duly licensed under title 63, chapter 7 who has a master's degree or higher in a nursing specialty, has national specialty certification as a clinical nurse specialist, and is recognized by the board of nursing as an advanced practice nurse under § 63-7-126; and

(2) "Do-not-resuscitate order" means a written order, other than a "POST" as defined by this section, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices; and

(3) "Emergency responder" means a paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer operating within the scope of the person's proper function under the law or rendering emergency care at the scene of an emergency; and

(4) "Health care provider" shall have the same meaning as ascribed to that term in § 68-11-1802(a), and shall include, but shall not be limited to, qualified emergency medical services personnel; and

(5) "Nurse practitioner" means a nurse duly licensed under title 63, chapter 7 who has a master's degree or higher in a nursing specialty, has national specialty certification as a nurse practitioner, and is recognized by the board of nursing as an advanced practice nurse under § 63-7-126;

(6) "Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making any

informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided bylaw;

(7) "Physician assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19;

(8) "Physician orders for scope of treatment" or "POST" means written orders that:

(A) Are on a form approved by the board for licensing health care facilities;

(B) Apply regardless of the treatment setting that are signed as

required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(C) (i) Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

(ii) Specify other medical interventions that are to be provided or withheld; or

(iii) Specify both (i) and (ii); and

(9) "Qualified emergency medical service personnel" includes, but is not limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the course of their professions, and other emergency responders; and

(10) "Unlicensed individuals who provide direct care and support to persons supported" means the unlicensed individuals, including their unlicensed direct care and support supervisors, who are employed to provide direct care and support to persons supported within the department of intellectual and developmental disabilities ICF/ID homes and facilities or by agencies that are licensed under title 33 and under contract with this department.

(b) Physician orders for scope of treatment (POST) may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only:

(1) With the informed consent of the patient;

(2) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, compiled in part 18 of this chapter; or

(3) Where the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(c) A POST may be issued by a physician assistant, nurse practitioner or clinical nurse specialist for a patient with whom such physician assistant, nurse practitioner or clinical nurse specialist has a bona fide physician assistant-patient or nurse-patient relationship, but only if:

(1) No physician who has a bona fide physician-patient relationship with the patient is present and available for discussion with the patient (or if the patient is a minor or is otherwise incapable of making an informed decision, with the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act;

(2) Such authority to issue is contained in the physician assistant's, nurse practitioner's or clinical nurse specialist's protocols;

(3) Either:

(A) The patient is a resident of a nursing home licensed under this title or an ICF/MR facility licensed under title 33 and is in the process of being discharged from the nursing home or transferred to another facility at the time the POST is being issued; or



(B) The patient is a hospital patient and is in the process of being discharged from the hospital or transferred to another facility at the time the POST is being issued; and

(4) Either:

(A) With the informed consent of the patient;

(B) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act; or

(C) If the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available and such authority to issue is contained in the physician assistant, nurse practitioner or clinical nurse specialist's protocols and the physician assistant or nurse determines that the provision of cardio pulmonary resuscitation would be contrary to accepted medical standards.

(d) If the patient is an adult who is capable of making an informed decision, the patient's expression of the desire to be resuscitated in the event of cardiac or respiratory arrest shall revoke any contrary order in the POST. If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall revoke any contrary order in the POST. Nothing in this section shall be construed to require cardiopulmonary resuscitation of a patient for whom the physician or physician assistant or nurse practitioner or clinical nurse specialist determines cardiopulmonary resuscitation is not medically appropriate.

(e) (1) A POST issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and applicable regulations, qualified emergency medical services personnel; and licensed health care practitioners in any facility, program, or organization operated or licensed by the board for licensing health care facilities, the department of mental health and substance abuse services, or the department of intellectual and developmental

disabilities, or operated, licensed, or owned by another state agency, shall follow a POST that is available to such persons in a form approved by the board for licensing health care facilities.

(2) The department of intellectual and developmental disabilities shall allow unlicensed individuals who provide direct support and care to persons supported and who are employed by agencies that are licensed under title 33 and under contract to provide residential or adult day programs and personal assistance or who provide direct support and care to persons supported within the ICE/10 homes and department facilities, to follow universal do not resuscitate orders that are made available to them in a form approved by the board.

(f) Nothing in this section shall authorize the withholding of other medical interventions, such as medications, positioning, wound care, oxygen, suction, treatment of airway obstruction or other therapies deemed necessary to provide comfort care or to alleviate pain.

(g) If a person has a do-not-resuscitate order in effect at the time of such person's discharge from a health care facility, the facility shall complete a POST prior to discharge. If a person with a POST is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the POST to qualified emergency medical service personnel and to the receiving facility prior to the transfer. The transferring facility shall provide a copy of the POST that accompanies the patient in transport to the receiving health care facility. Upon admission, the receiving facility shall make the POST a part of the patient's record.

(h) This section shall not prevent, prohibit, or limit a physician from using a written order, other than a POST, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices. This action shall have no application to any do not resuscitate order that is not a POST, as defined in this section.

(i) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2004, pursuant to the then-current law, shall remain valid and shall be given effect as provided, in this section.

(1) The board for licensing health care facilities shall promulgate rules and create forms regarding procedures for the withholding of resuscitative services from patients in accordance with the Tennessee Health Care Decisions Act, and this section.

(2) The rules shall address:

(A) The mechanism or mechanisms for reaching decisions about the withholding of resuscitative services from individual patients;

(B) The mechanism or mechanisms for resolving conflicts in decision making, should they arise: and

(C) The roles of physicians, physician assistant, nurse practitioner or clinical nurse specialists and, when applicable, other nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services.

(3) The rules shall include provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services and shall include the requirement that appropriate orders be written by the physician, physician assistant, nurse practitioner or clinical nurse specialist, primarily responsible for the patient, and that documentation be made in the patient's current clinical record if resuscitative services are to be withheld.

(4) This section shall not be construed or implemented in any manner which restricts or impairs the decision-making authority of the agent, surrogate, or other person designated in the Tennessee Health Care Decisions Act. This section does not authorize a surrogate to give consent for or take any action on behalf of a patient on any matter governed by title 33.

(k) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability for:

(1) Complying with a POST;

(2) Declining to comply with a POST based on reasonable belief that the order then lacked validity; or

(3) Complying with a POST and assuming that the order was valid when made and has not been revoked or terminated.

SECTION 2. For purposes of rulemaking this act shall take effect on becoming a law, for all other purposes this act shall take effect July 1, 2013, the public welfare requiring it.

#### **PUBLIC CHAPTER NO. 197**

AN ACT to amend Tennessee Code Annotated, Title 63 and Title 68, relative to cardiopulmonary resuscitation for infants.

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section: 68-5-\_(a) Hospitals, birthing centers, health care facilities, physicians, nurse practitioners, physician assistants or other health care practitioners who provide medical care to newborns as well as obstetricians who provide routine care for prenatal patients shall make available information and instruction concerning the appropriate use and techniques of infant cardiopulmonary resuscitation (CPR) to at least one (1) parent or caregiver of a newborn infant. Nothing in this section shall require classes in certification of infant CPR. This section shall also not constitute a requirement to be assessed during any inspection under chapter 11, part 2 of this title.

(b) Any facility or practitioner acting within the scope of their licensure or practice shall be immune from any civil liability under this section and shall have an affirmative defense to any criminal liability arising from making such information available.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

#### **PUBLIC CHAPTER NO. 430**

AN ACT to amend Tennessee Code Annotated, Title 39; Title 53 and Title 63, relative to prescription drug abuse.

SECTION 1. This act shall be known and may be cited as the "Addison Sharp Prescription Regulatory Act of 2013."

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 1, is amended by adding a new Part 4 as follows: 63-1-401. (a) As used in this part:

(1) "Commissioner" means the commissioner of the department of health; and

(2) "Treatment guidelines" means systematically developed statements to assist health care providers in making patient decisions concerning appropriate medical care for specific clinical circumstances.

(b) By January 1, 2014, the commissioner shall develop recommended treatment guidelines for prescribing of opioids, benzodiazepines, barbiturates, and carisoprodol that can be used by prescribers in the state as a guide for caring for patients. This subsection shall not apply to veterinarians.

(c) The commissioner shall review and update the guidelines by September 30th of each year, and shall cause them to be posted on the department's website.

(d) The treatment guidelines shall be submitted to each prescribing board that licenses health professionals who can legally prescribe controlled substances and to the board of pharmacy. Each board shall be charged with review of the treatment guidelines and determining how the guidelines are to be used by its licensees.

(e) Each board shall notify all of its licensees through routine bulletins or newsletters of the existence of the guidelines. 63-1-402.

(a) On or after July 1, 2014, all prescribers who hold a current federal drug enforcement administration (DEA) license and who prescribe controlled substances shall be required to complete a minimum of two (2) hours of continuing education related to controlled substance prescribing biennially to count toward the licensees' mandatory continuing education.

(b) The continuing education must include instruction in the department's treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol, and may include such other topics as medicine addiction, risk management tools, and other topics as approved by the respective licensing boards.

(c) This section shall not apply to veterinarians, providers practicing at a registered pain management clinic as defined in § 63-1-301 or to medical doctors or osteopathic physicians board certified by the American Board of Medical Specialties (ABMS), or American Osteopathic Association (AOA), or the American Board

of Physician Specialties (ABPS) in one or more of the following specialties or subspecialties:

(1) Pain management;

(2) Anesthesiology;

(3) Physical medicine and rehabilitation;

(4) Neurology; or

(5) Rheumatology.

SECTION 3. Tennessee Code Annotated, Section 53-10-302(10), is deleted in its entirety and replaced with the following language:

(10) "Healthcare practitioner extender" means any registered or licensed healthcare professional, and up to two (2) unlicensed persons per prescriber or dispenser designated by the prescriber or dispenser to act as agents of such prescriber or dispenser. A prescriber shall have the ability to authorize a healthcare practitioner extender to check the controlled substance database as stipulated in § 53-10-310(e) for other prescribers in the authorizing prescriber's practice. Notwithstanding the provisions of Section 28 of Chapter 880 of the Public Acts of 2012, any one-time costs required to be made to effectuate the provisions of this act specific to system modifications required by changes in this subdivision shall be shared on a pro-rata basis, excluding the pharmacy board, by the appropriate prescribing boards as enumerated in title 53, chapter 10, part 3. The prescriber or dispenser shall be responsible for actions taken by their agents pursuant to this part;

SECTION 4. Tennessee Code Annotated, Section 53-11-308, is amended by adding the following language as new subsections at the end of the current section:

(e) No prescription for any opioids or benzodiazepines may be dispensed in quantities greater than a thirty (30) day supply.

(f) If a prescriber dispenses any opioids, benzodiazepines, barbiturates, or carisoprodol, then the prescriber shall submit the transaction to the controlled substances monitoring database operated under title 53, chapter 10, part 3.



(g) Any prescribers of opioids, benzodiazepines, barbiturates or carisoprodol, either alone, concurrently, or sequentially with any other opioids, benzodiazepines, barbiturates, or carisoprodol to patients who are chronic, long-term drug therapy for ninety (90) days or longer shall consider mandatory urine drug testing. This subsection shall not supersede any rules promulgated by the commissioner for urine drug testing by registered pain management clinics.

SECTION 5. Tennessee Code Annotated, Section 53-10-302, is hereby amended by adding the following new language as new subsections at the end of the current section:

U "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, engaged in the commercial production, preparation, propagation, conversion, or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container and the promotion and marketing of such drugs or devices;

(\_) "Wholesaler" means a person whose principal business is buying or otherwise acquiring drugs or devices for resale or distribution to persons other than consumers.

SECTION 6. Tennessee Code Annotated, Title 53, Chapter 10, Part 3, is amended by adding the following language as a new section:53-10-312.

(a) Wholesalers and manufacturers, as defined in § 63-10-204, that sell controlled substances at wholesale must at least report the following information to the committee in Automation of Reports and Consolidated Orders System (ARCOS) format or other mutually acceptable format:

(1) Wholesaler or manufacturer with a drug enforcement administration registration number; provided that if this number is not applicable, then another mutually acceptable identifier;

(2) Purchaser's drug enforcement administration registration number; provided that if this number is not applicable, then another mutually acceptable identifier;

(3) National drug code number of the actual drug sold;

(4) Quantity of the drug sold;

(5) Date of sale; and

(6) Transaction identifier or invoice number.

(b) The department of health will establish such rules as are necessary to specify which medications shall be reported, the time frames for such reporting, and other reporting requirements as required.

SECTION 7. Tennessee Code Annotated, Section 63-1-301(5), is amended by deleting subdivision

(5) in its entirety and by substituting instead the following:

(5) "Pain management clinic" means a privately-owned facility in which a medical doctor, an osteopathic physician, an advanced practice nurse, a physician assistant, or any other health care provider licensed under title 63 provides pain management services to patients, a majority of whom are issued a prescription for, or are dispensed, opioids, benzodiazepines, barbiturates, or carisoprodol and provides prescriptions for more than ninety (90) days in a twelve-month period. For purposes of determining if a clinic should be registered under this part, patients of health care providers who do not prescribe controlled substances shall be excluded from the count. "Pain management clinic" shall also mean any privately owned clinic, facility, or office which advertises in any medium for any type pain management services and in which one (1) or more employees or contractors prescribe controlled substances; and

SECTION 8. Tennessee Code Annotated, Section 63-1-303(c), is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c) The rules adopted pursuant to subsection (b) shall address the following topics, among others:

(1) The operation of the clinic, including requirements:

(A) That patients have current and valid government issued identification or current health insurance card issued by either a government or private carrier; and

(B) That providers conduct urine drug screening in accordance with a written drug screening and compliance plan, which may include testing on initial assessment or upon new admission;

- (2) Personnel requirements for the clinic;
- (3) Training requirements for clinic providers who are regulated by that board;
- (4) Patient records;
- (5) Standards to ensure quality of patient care;
- (6) Infection control;
- (7) Health and safety requirements;
- (8) Certificate application and renewal procedures and requirements;
- (9) Data collection and reporting requirements;
- (10) Inspections and complaint investigations; and
- (11) Patient billing procedures.

SECTION 9. Tennessee Code Annotated, Section 63-1-309(d), is amended by adding the following language at the end of the subsection: A medical director shall serve as medical director and provide services for no more than four (4) pain management clinics.

SECTION 10. Tennessee Code Annotated, Section 63-1-310(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

- (a) A pain management clinic may accept only a check or credit card in payment for services provided at the clinic, except as provided in subsection (b).

SECTION 11. The department of health, the board of pharmacy or any board operating under Tennessee Code Annotated, Title 63, is authorized to use emergency rules under Tennessee Code Annotated, Section 4-5-208(a)(5), in order to promulgate any rules required by this act.

SECTION 12. Tennessee Code Annotated, Section 63-1-311 (b), is amended by deleting the language "an administrative penalty of one thousand dollars (\$1,000) per day," and by substituting instead the language "an administrative penalty of no less than one thousand dollars (\$1,000) per day and which shall not exceed five thousand dollars (\$5,000) per day."

SECTION 13. Tennessee Code Annotated, Section 63-1-311, is amended by adding the following as a new subsection (c):

- (c) An owner, co-owner, or operator of an uncertified pain management clinic is subject to an administrative penalty of no less than one thousand dollars (\$1,000) per day and which shall not exceed five thousand dollars (\$5,000) per day, imposed by the department of health, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Before such a penalty may be assessed by the department, the department shall give at least thirty (30) days notice to the owner, co-owner, or operator of the alleged violation of this part.

SECTION 14. Tennessee Code Annotated, Title 63, Chapter 1, Part 3, is amended by adding the following as a new subsection: 63-1-313. The commissioner of health and each appropriate occupational professional licensing board governing licensees who may legally prescribe or dispense controlled substances shall prepare a comprehensive report on actions relative to prescription drug abuse and pain management clinics to the general assembly no later than January 31st for actions in the prior calendar year. This report shall summarize the number of complaints received, frequent findings, and actions taken.

SECTION 15. Tennessee Code Annotated, Section 53-10-310(e)(5), is amended by adding the following new subdivision:

- (E) The controlled substance is prescribed for administration directly to a patient during the course of inpatient or residential treatment in a hospital or nursing home licensed under title 68 or a mental health hospital licensed under title 33.

SECTION 16. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. The section added to this act by the amendment with draft # 6707 shall take effect upon becoming a law, the public welfare requiring it. All other sections of this act shall take effect October 1, 2013, the public welfare requiring it.

**PUBLIC CHAPTER NO. 336**

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 4; Title 53; Title 63 and Chapter 880 of

the Private Acts of 2012, relative to dispensing prescription medicines.

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, Part 3, is amended by adding the following as a new section: 63-1-313.

(a) Notwithstanding any provision of this title or title 53, chapters 10 and 11 to the contrary, no pain management clinic or medical doctor, osteopathic physician, advanced practice nurse with certificates of fitness to prescribe, or physician assistant working at a pain management clinic shall be permitted to dispense controlled substances; provided, however, this subsection shall not prohibit a medical doctor, osteopathic physician, advanced practice nurse with certificates of fitness to prescribe, or physician assistant working at a pain management clinic from providing to that practitioner's patient, without charge, a sample of a schedule IV or schedule V controlled substance in a quantity limited to an amount that is adequate to treat the patient for a maximum of seventy-two(72) hours. (b) For the purposes of this section, "controlled substance" has the meaning given in § 39-17-402.

SECTION 2. Tennessee Code Annotated, Title 63-1-301(5), is amended by deleting the language "or dispensed," in its entirety.

SECTION 3. Tennessee Code Annotated, Section 63-1-309(c), is amended by deleting the language "dispenses or" and "or dispensing" in their entireties.

SECTION 4. Tennessee Code Annotated, Section 63-1-309(c), is amended by deleting the language "dispenses or" and "or dispensing" in their entireties.

SECTION 5. Section 4 of this act shall take effect 12:01 a.m. July 1, 2016, the public welfare requiring it. The remainder of this act shall take effect July 1, 2013, the public welfare requiring it.

### **PUBLIC CHAPTER NO. 232**

AN ACT to amend Tennessee Code Annotated, Title 63, relative to review of certain conduct of health care practitioners by licensing boards.

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following as a new, appropriately designated section:

(a)(1) Notwithstanding any other provision of this chapter or of chapters 3, 5, 6, 7, 8, 9 or 19 of this title, when a practitioner licensed under any of such chapters is under state or federal indictment in this state for an offense involving the sale or dispensing of controlled substances under state or federal law, the practitioner shall report the indictment to the practitioner's licensing board in writing within seven (7) calendar days of acquiring actual knowledge of the indictment. Such report shall include the jurisdiction in which the indictment is pending, if known, and shall also be accompanied by a copy of the indictment, if the practitioner has one. (2) A district attorney general and appropriate attorneys for the federal government are strongly encouraged, when appropriate, to promptly notify a practitioner's licensing board when a practitioner covered under subdivision (a)(1) is indicted in this state for an offense involving the sale or dispensing of controlled substances under state or federal law.

(b) The knowing failure of a practitioner to submit the report required in subdivision (a)(1) above to the licensing board shall be considered unprofessional, dishonorable or unethical conduct and may be grounds for such licensing board to take disciplinary action against the practitioner's license. The fact an indictment was sealed and the practitioner could not have actual knowledge of its existence excuses the practitioner from discipline based on the failure of the practitioner to submit a report. However, the claim that the practitioner was not aware of the obligation required in subdivision (a)(1) may not excuse the practitioner from discipline based on the failure of the practitioner to submit a report. (c) Upon receiving a report of an indictment pursuant to subdivision (a)(1), (a)(2) or from any other source, the practitioner's licensing board, through the board's consultant or other person designated by the board, shall within fifteen (15) calendar days, conduct an expedited review of the practitioner's conduct alleged in the indictment. The purpose of such expedited review shall be to determine if the matter merits an expedited investigation by the board. If so, such a directive shall be given to the department of health's office of investigations. All review activity under this subsection (c) shall be confidential pursuant to § 63-1-117(f). (d) For the purposes of this section, "controlled substances" means substances regulated as controlled substances under title 39, chapter 17, part 4, or title 53, chapters 10 and

11, or the federal Controlled Substances Act, compiled at 21 U.S. C. § 801, et seq.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

### **PUBLIC CHAPTER NO. 396**

AN ACT to amend Tennessee Code Annotated, Title 63, relative to the healing arts.

SECTION 1. Tennessee Code Annotated, Section 63-7-123(b)(2), is amended by deleting the subdivision and substituting instead the following:

(2)(A) The nurse practitioner who holds a certificate of fitness shall be authorized to prescribe and/or issue controlled substances listed in Schedules II, III, IV and V of title 39, chapter 17, part 4 upon joint adoption of physician supervisory rules concerning controlled substances pursuant to subsection (d).

(B) Notwithstanding subdivision (b)(2)(A), a nurse practitioner shall not prescribe Schedules II, III and IV controlled substances unless such prescription is specifically authorized by the formulary or expressly approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication.

(C) A nurse practitioner who had been issued a certificate of fitness may only prescribe or issue a Schedule II or III opioid listed on the formulary for a maximum of a non-refillable, thirty-day course of treatment unless specifically approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication. This subdivision (C) shall not apply to prescriptions issued in a hospital, a nursing home licensed under title 68, or inpatient facilities licensed under title 33.

SECTION 2. Tennessee Code Annotated, Section 63-19-107(2)(B), is amended by deleting the subdivision and by substituting instead the following:

(B)(i) A physician assistant to whom the authority to prescribe legend drugs and controlled substances has been delegated by the supervising physician shall file a notice with the committee containing the name of the physician assistant, the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the physician assistant

and a copy of the formulary describing the categories of legend drugs and controlled substances to be prescribed and/or issued, by the physician assistant. The physician assistant shall be responsible for updating this information;

(ii) Notwithstanding any other rule or law, a physician assistant shall not prescribe Schedules II, III and IV controlled substances unless such prescription is specifically authorized by the formulary or expressly approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication;

(iii) Any physician assistant to whom the authority to prescribe controlled drugs has been delegated by the supervising physician may only prescribe or issue a Schedule II or III opioid listed on the formulary for a maximum of a non-refillable, thirty-day course of treatment, unless specifically approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication. This subdivision (iii) shall not apply to prescriptions issued in a hospital, a nursing home licensed under title 68, or inpatient facilities licensed under title 33. SECTION 3. Tennessee Code Annotated, Title 63, is amended by adding the following as a new section to be appropriately designated:

(a) No later than July 31, 2013, and at least annually thereafter but more often at the discretion of the commissioner, the department of health shall:

(1) Identify the top fifty (50) prescribers who have unique DEA numbers of controlled substances in the previous calendar year, or if implemented more frequently for the relevant time period as determined by the department, from the data available in the controlled substances database established pursuant to title 53, chapter 10, part 3; and (2) Send a letter through registered mail to each prescriber identified in subdivision (1), and to the physician supervisor as found on the provider's profile established in title 63, chapter 51 of each advanced practice nurse and each physician assistant identified in subdivision (1) that notifies the prescribers and, where appropriate, the supervising physician that the prescriber has been identified pursuant to subdivision (1) and includes the following information:

(A) The significant controlled substances prescribed by the prescriber;

(B) The number of patients prescribed these controlled substances by the prescriber;

(C) The total milligrams in morphine equivalents of controlled substances prescribed during the relevant period of time; and

(D) Any other relevant information sought by the department.

(3) If there is an active investigation against the prescriber or, where appropriate the supervising physician, on the list of prescribers identified in (a)(1) above, the department is authorized to withhold any communication required under this act until such time as charges are brought or the investigation is closed. (b)(1)(A) At the discretion of the department, each prescriber and each supervising physician of an advanced practice nurse and physician assistant who appear on the top fifty (50) prescribers of controlled substances in the relevant period of time shall submit to the department within fifteen (15) business days through registered mail or electronic mail an explanation justifying the amounts of controlled substances prescribed in the relevant period of time by the prescriber demonstrating that these amounts were medically necessary for the patients treated and that, for advanced practice nurses and physician assistants, the supervising physician had reviewed and approved the prescribing amounts. The department shall consider the prescriber's specialty and the patients' ages to make a determination as to whether the explanation of the prescriber and, where appropriate the supervising physician, for the prescribing habits of the prescriber of controlled substances is justifiable.

(B) The department is authorized to develop a model form to assist the prescriber and where appropriate the supervising physician in completing the explanation required by this subsection (b).

(C) The department is authorized to contract with an expert reviewer to determine if the explanation is acceptable. Should charges ultimately be filed against the prescriber or, where appropriate the supervising physician, any report of the expert reviewer shall be discoverable by the licensee.

(2) If the department is not satisfied with any explanation by the prescriber or where appropriate a supervising physician, it shall communicate via

registered mail such concerns to the prescriber and, if appropriate, the supervising physician. The prescriber and, if appropriate, the supervising physician shall have fifteen (15) business days to attempt to rectify the department's stated concerns.

(3) If the department remains unsatisfied after receiving a justification pursuant to subdivision (2), the department may submit its concerns to the member of the controlled substance database committee who represents the board which has licensed the individual. This member shall have access to all of the documents pertaining to the concerns of the department and the expert reviewer. If that member also believes that the explanations which have been provided are not sufficient to justify the prescribing pattern of the prescriber, the concerns may be forwarded to the department's office of investigations. Investigations are conducted by the entity responsible for licensure of that prescriber. (c) All data, reports and correspondence under this section shall be confidential and shall not be considered to be a public record for purposes of title 10, chapter 7. (d) All correspondence and reports can be used by the department's office of investigations and/or the respective entity responsible for licensure to develop a disciplinary case against the prescriber and, where appropriate, the supervising physician of an advanced practice nurse or physician assistant. (e) The failure of a prescriber or, where appropriate, a supervising physician to respond to the department's request for information in a timely fashion may be a cause for disciplinary action by the prescriber's, or where appropriate the supervising physician's, licensing board and may include a penalty of up to one thousand dollars (\$1,000) per day for failure to respond or failure to respond in a timely manner. (f) All correspondence shall be maintained for five (5) years and kept organized by prescriber so that information on a prescriber who appears on multiple lists compiled pursuant to subsection (a) may be aggregated.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2013, the public welfare requiring it.



**PUBLIC CHAPTER NO. 197**

AN ACT to amend Tennessee Code Annotated, Title 63 and Title 68, relative to cardiopulmonary resuscitation for infants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section:

68-5-\_\_.

(a) Hospitals, birthing centers, health care facilities, physicians, nurse practitioners, physician assistants or other health care practitioners who provide medical care to newborns as well as obstetricians who provide routine care for prenatal patients shall make available information and instruction concerning the appropriate use and techniques of infant cardiopulmonary resuscitation (CPR) to at least one (1) parent or caregiver of a newborn infant. Nothing in this section shall require classes in certification of infant CPR. This section shall also not constitute a requirement to be assessed during any inspection under chapter 11, part 2 of this title.

(b) Any facility or practitioner acting within the scope of their licensure or practice shall be immune from any civil liability under this section and shall have an affirmative defense to any criminal liability arising from making such information available.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.

**PUBLIC CHAPTER NO. 113**

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 2 and Title 68, Chapter 11, relative to medical records.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-305, is amended by adding the following language as a new, appropriately designated subsection (c) and by re-numbering existing subsections accordingly:

(c) Notwithstanding any law or rule to the contrary, mammography records shall be retained for the same period as other hospital records under subsection (a).

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 2, is amended by adding the following language as a new, appropriately designated section:

63-2-103.

(a) The board of medical examiners is authorized to promulgate regulations regarding the retention of physician medical records as defined in Section 63-2-101(c).

(b) Notwithstanding any law or rule to the contrary, such retention of mammography records shall not exceed ten (10) years.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.