

MINUTES
BOARD FOR LICENSING HEALTH CARE FACILITIES
November 14, 2007

The Board for Licensing Health Care Facilities was called to order by Dr. Larry Arnold on November 14, 2007, commencing at 9:00 a.m.

Dr. Arnold, Chairman, called the roll to establish a quorum.

Dr. Larry Arnold, Chairman
Dr. Duane Budd
Dr. Thomas Carr
Ms. Elizabeth Chadwell
Mr. Alex Gaddy
Ms. Estelle Garner
Mr. Robert Gordon, Chairman Pro Tem
Mr. Luke Gregory
Dr. Norman Jones
Ms. Carissa Lynch
Ms. Annette Marlar
Ms. Sara Snodgrass
Dr. Ronald Staples

Members not present:

Ms. Charlotte Burns
Ms. Charlsie Lankford
Mr. Carlyle Walton
Dr. Joe Walker
Mr. James Weatherington
Dr. Jon Winter
Ms. Kathy Zamata

Present and representing the Office of General Counsel:

Ms. Elisha Hodge

Also present:

Ms. Ann Thompson, Director, Board for Licensing
Ms. Janie Holland, Acting Board Administrator
Ms. Faye Vance, East TN Regional Administrator
Ms. Shirley Jones, West TN Regional Administrator
Ms. Debra Verna, Middle TN Regional Administrator
Mr. Bill Harmon, Director of Engineering

A quorum was established by roll call vote.

The Chairman introduced the new board member, Sara Snodgrass.

APPROVAL OF MINUTES

The first order of business was approval of the August 1, 2007 minutes.

Mr. Gordon wanted the minutes to reflect that he recused himself from the waiver request for Baptist Memorial Hospital, since he represents this hospital.

Alex Gaddy stated he attended the August 1, 2007 board meeting and his name needed to be added to the minutes to show that.

Motion was made by Dr. Budd, seconded by Dr. Jones to approve the August 1, 2007 minutes as written.

Motion carried.

REPORTS

Nurse Aide Report

The Nurse Aide Report was given to each board member. Any questions regarding the Nurse Aide Report, Wanda King, Nurse Aide Coordinator was in the audience to answer questions.

Office of General Counsel

Elisha Hodge addressed the Board stating she was here on behalf of the Office of General Counsel. Ms. Hodge stated that she have been appointed as our new advisory counsel as well as litigating our contested cases. She reported there are eight cases in the Office of General Counsel that currently are open for litigation. Additionally, there are a set of rules in the Attorney General's Office. Ms. Hodge stated six rules are in her office currently for review before they are sent to the Attorney General's Office. Ms. Hodge pointed out the Conflict of Interest Policy Form to be reviewed by the Board Members and gave an explanation to the meaning of it. She stated the form is to be signed by Board Members before each meeting.

DISCUSSION

Hospice Waiver Task Force Recommendation

Mr. Gregory served as the chairperson for the Hospice Waiver Task Force. Mr. Gregory stated that two sessions were held, one in Nashville and one in Knoxville. The task force identified a conflict within the Tennessee statute on care for hospice patients in assisted living facilities, specifically, end of life residents who were under hospice care and could no longer reside in a licensed assisted living facility if they did not meet the criteria of admission. Mr. Gregory called on Dr. Budd to make the recommendation to the board of the task force's suggestion on how to resolve the Hospice Waiver issue. Dr. Budd reported the task force voted to recommend to the Board to consider interpreting T.C.A. 68-11-201(5)(c)(i) to include percutaneous patches as meeting the intent of 68-11-201(c). Dr. Budd reported that the task force recommends the Board support legislative action addressing the current inadequacy of existing legislation with regard to persons in Assisted Care Living Facilities who develop conditions after admission requiring hospice care who are no longer able to meet the definition of an Assisted Care resident.

Dr. Budd stated the law states that under certain circumstances when the patient cannot be moved, a thirty (30) day extension for that patient's stay in an Assisted Living Facility is permissible. If at the end of thirty (30) days the patient is still not able to move, with consent from the Commissioner of Health or a physician within the Department of Health, an additional thirty (30) day extension can be extended. Dr. Budd also stated it is in the regulations for the Assisted Living Facilities that gives them an additional fourteen (14) days after the extensions have expired. If the resident couldn't meet that standard, they should probably be elsewhere. Dr. Budd stated this gives us a way around the law temporarily until the task force can get legislative action to address this problem.

Mr. Gregory stated the conclusion was that comments on the timeframes seventy-four (74) days is permissible under the existing law, and that the interpretation of medication, specifically, the pain patch, would allow residents to have seventy-four (74) additional days of comfort in their current setting. Mr. Gregory stated that is all that can be achieved within the law. Dr. Budd suggested the group going forward with legislative action to reinterpret or restate the law.

Dr. Budd pointed out the patch is not addressed by the law, but parental administration is. He stated the task force decided that at least on a temporary basis to interpret transcutaneous patches as a parental form of administration.

Ms. Hodge asked the Chairman if she could address this issue. She stated that before the Board can make an informed decision on this issue, the Board needs to have the law before them. That way they can make an informed decision. Ms. Hodge stated Dr. Budd was not correct with regards to what the law actually states. It's actually twenty-one (21) days period can be granted. Ms. Hodge stated that an additional twenty one (21) day period can be granted and then a thirty (30) day notice on the patients' rights. Ms. Hodge pointed out that with respect to the interpretation for the subcutaneous patches once the law is looked at it talks about intravenous or intramuscular injections as opposed to subcutaneous patches.

Dr. Budd wanted to amend the recommendation before he makes a motion. Dr. Budd stated the amendment is that the 21 days instead of 30 days initially suggested, for a total of 42 days if the Department physician—in the current case would be unless we get a medical officer plus the 30 days on the patients' rights for the total of 72 days.

Motion was made by Dr. Budd, seconded by Mr. Gregory to:

MOVE THAT THE BOARD ACCEPT THE RECOMMENDATION, AS AMENDED, OF THE TASK FORCE.

Motion carried by voice vote.

Judge Wall came into the Board room and stated that he would have to go to Plan B for the contested care hearing since he could not get a tenth Board Member to hear the case. The Board Members that heard the case left the room with Mr. Wall and returned shortly after to return to business except for Mr. Gaddy.

The Chairman stated they would reconvene the Board and continue until Mr. Gaddy finish his review and until the quorum was ready to hear the Contested Case. The Chairman stated the need to establish a quorum again. Ms. Thompson held a roll call. The Chairman stated that they just finished the hospice waiver and the board attorney will develop the policy statement concerning the recommendation.

Contested Case Hearing

The Board heard the contested case hearing on Sun Valley Home for the Aged, Hartsville.

Proposed Meeting Dates for 2008

Ms. Thompson asked the Board Members to look in Section 5 at the dates that have been selected for the 2008 Board Meetings. Dr. Jones suggested that the dates all be a Wednesday/Thursday arrangement. The Chairman stated that the Board is in agreement with that. Ms. Chadwell asked that the July dates be moved to the following week so it is not in the holiday week. The Chairman asked Ms. Thompson if this needed voting on with Ms. Thompson stated yes.

Motion with above noted changes was made by Dr. Jones, seconded by Mr. Gordon to:

ACCEPT THE DATES FOR THE BOARD MEETINGS IN 2008

Level III Office-Based Surgery

Ann Thompson pointed out to the Board Members the copy of the Public Chapter (PC) in their notebooks regarding Level III Office-Based Surgery. Ms. Thompson stated that the responsibility for these rests in the Medical Board of Health Related Boards. She stated this PC will encompass the use of our surveyors to perform the surveys for the Level III office-based surgeries. Ms. Thompson reported she wanted the Board to be aware that the results of the site surveys and the Medical Board’s determinations will be shared with the Board on a routine basis. Ms. Thompson asked the Board to familiarize themselves with this PC for future Board meetings.

REGULATIONS

BOARD APPROVAL FOR RULEMAKING HEARING

Administration

1. **(No Smoking Sign Posting and Charity Care Posting:)**
1200-8-1 Hospitals, 1200-8-2 Prescribed Child Care Centers, 1200-8-6 Nursing Homes, 1200-8-10 Ambulatory Surgical Treatment Centers, 1200-8-11 Home for the Aged, 1200-8-15 Residential Hospices, 1200-8-17 Alcohol and Other Drugs of Abuse Residential Rehabilitation Treatment Facilities, 1200-8-18 Alcohol and Other Drugs of Abuse Non-Residential Treatment Facilities, 1200-8-19 Alcohol and Other Drugs of Abuse DUI School Facilities, 1200-8-20 Alcohol and Other Drugs of Abuse Prevention Program Facilities, 1200-8-21 Alcohol and Other Drugs of Abuse Non-Residential Narcotic Treatment Facilities, 1200-8-22 Alcohol and Other Drugs of Abuse Halfway House Treatment Facilities, 1200-8-23 Alcohol and Other Drugs of Abuse Residential Detoxification

Treatment Centers, 1200-8-24 Birthing Centers, 1200-8-25 Assisted Care Living Facilities, 1200-8-26 Home Care Organizations Providing Home Health Services, 1200-8-27 Home Care Organizations Providing Hospice Services, 1200-8-28 HIV Supportive Living Facilities, 1200-8-29 Home Care Organizations Providing Home Medical Equipment, 1200-8-32 End Stage Renal Dialysis Clinics, 1200-8-34 Home Care Organizations Providing Professional Support Services and 1200-8-35 Outpatient Diagnostic Centers.

Motion was made by Dr. Staples, seconded by Dr. Budd to:

APPROVE ABOVE CHAPTERS FOR ADMINISTRATION (NO SMOKING CHARITY CARE) RULE LANGUAGE FOR RULEMAKING HEARING.

Ms. Thompson asked Ms. Hodge if they needed to be thinking about economic impact statements as well as the regulatory acts. Ms. Hodge stated today the Board Members could take a vote on the language that is proposed and it will be revisited at the December meeting.

Motion was carried by roll call vote.

2. Definition and Optional Services (Surgical Technologists):

1200-8-1 Standards for Hospitals

1200-8-10 Standards for Ambulatory Surgical Treatment Centers

Motion made by Mr. Gordon, seconded by Ms. Chadwell

APPROVE ABOVE CHAPTERS FOR DEFINITIONS AND OPTIONAL SERVICES (SURGICAL TECHNOLOGIST) RULE LANGUAGE FOR RULEMAKING HEARING.

Motion was carried by roll call vote.

3. Admissions, Discharges and Transfers:

1200-8-25 Standards for Assisted Care Living Facilities

Motion made by Mr. Gordon, seconded by Dr. Jones to:

APPROVE ABOVE CHAPTER FOR ADMISSIONS, DISCHARGES AND TRANSFERS RULE LANGUAGE FOR RULE MAKING HEARING.

Motion carried by roll call vote.

4. Licensing Procedures:

1200-8-29 Standards for Home Organizations Providing Home Medical Equipment

Motion made by Mr. Gordon, seconded by Dr. Budd

APPROVE ABOVE CHAPTER FOR LICENSING PROCEDURES RULE

LANGUAGE FOR RULEMAKING HEARING.

Motion carried by roll call vote.

BOARD APPROVAL FOR FINAL FILING

1. **Vaccine and Licensure Verification Amendments:**
1200-8-1 Standards for Hospitals

Motion was made by Mr. Gordon, seconded by Dr. Staples

**APPROVE ABOVE CHAPTER FOR VACCINE AND LICENSE VERIFICATION
AMENDMENTS RULE LANGUAGE FOR FINAL FILING**

Motion carried by roll call vote.

2. **Records and Reports:**
1200-8-11 Standards for Homes for the Aged

Motion was made by Mr. Gordon, seconded by Dr. Budd.

**APPROVE ABOVE CHAPTER FOR RECORDS AND REPORTS AMENDMENTS
RULE LANGUAGE FOR FINAL FILING.**

Motion carried by roll call vote.

3. **Definitions and Admission, Discharges and Transfers Amendments 1200-8-27:**

Motion made by Mr. Gordon, seconded by Ms. Chadwell to:

**APPROVE ABOVE CHAPTER FOR DEFINITIONS AND ADMISSION,
DISCHARGES AND TRANSFERS AMENDMENTS RULE LANGUAGE FOR
FINAL FILING.**

Motion carried by roll call vote.

4. **Definitions and Basic Agency Functions Amendments:**
1200-8-29 ORGANIZATIONS PROVIDING HOME MEDICAL EQUIPMENT

Motion made by Mr. Gordon, seconded by Dr. Jones to:

**APPROVE ABOVE CHAPTER FOR DEFINITIONS AND BASIC AGENCY
FUNCTIONS AMENDMENTS RULE LANGUAGE FOR FINAL FILING.**

Motion carried by roll call vote.

5. **Repeal**

1200-8-14 Pediatric Trauma Centers

Motion made by Mr. Gordon, seconded by Dr. Staples to:

APPROVE ABOVE CHAPTER FOR REPEAL FOR FINAL FILING.

Motion carried by roll call vote.

WAIVER REQUESTS

Ms. Thompson gave a brief summary of each of the following waiver requests:

THE FIRST RESPONSE CENTER OF METROPOLITAN INTERDENOMINATIONAL CHURCH, NASHVILLE

Sharon Crawford, Executive Director of The First Response Center is seeking a waiver to place their facility's license in inactive status while renovations are being done to the facility. This alcohol and drug facility has relocated to a facility that needs renovations to be in compliance with the state standards. No representative was present.

Motion was made by Dr. Staples, seconded by Dr. Budd to:

A NINETY (90) DAY APPROVAL TO PLACE THE FIRST RESPONSE CENTER OF METROPOLITAN INTERDENOMINATIONAL CHURCH ON INACTIVE STATUS FOR RENOVATIONS OF THEIR FACILITY.

Motion carried by voice vote.

DECATUR COUNTY MANOR

Gail Crawford, Director of Operations, Tennessee Health Management, Incorporated, is requesting a waiver of Rule 1200-8-6-.04, requirement for a licensed nursing home administrator for the 141 bed skilled nursing facility until an administrator is hired. No representative was present.

Motion was made by Dr. Budd, seconded by Dr. Jones to:

A NINETY (90) DAY WAIVER WAS GRANTED TO ALLOW DECATUR COUNTY MANOR TO OPERATE WITHOUT A LICENSED NURSING HOME ADMINISTRATOR WHILE ACTIVELY SEEKING TO FILL THE POSITION. THE FACILITY MUST APPEAR BEFORE THE BOARD IF THE POSITION IS NOT FILLED BY NEXT BOARD MEETING WHICH IS JANUARY 16, 2008.

A discussion took place between the Board Members on a representative of the facility not being present. It was decided someone needs to be at the Board Meeting to give further information regarding facilities requesting waivers.

An amendment motion was made by Dr. Budd, seconded by Dr. Jones to:

TO HAVE A REPRESENTATIVE FROM DECATUR COUNTY MANOR APPEAR BEFORE THE BOARD IN THE NEXT BOARD MEETING IN JANUARY 16, 2008.

Motion carried by voice vote.

MANCHESTER COMMUNITY LIVING CENTER, MANCHESTER

Douglas M. Wright, Jr., President and CEO, is requesting a waiver to place the facility's license in an inactive status in accordance with T.C.A. Section 68-11-906(b). Dan Elrod and Jim Freeman were present representing the facility. Mr. Freeman stated he has been seeking to work with NHC to purchase the facility and is still in negotiations with NHC. Bruce Duncan with NHC spoke stating NHC has been working with the applicant and hopes to make arrangements to purchase the rights to Manchester Community Living Center.

Motion was made by Dr. Budd, seconded by Mr. Gordon to:

APPROVE THE INACTIVE STATUS REQUEST FOR TWELVE (12) MONTHS TO BECOME EFFECTIVE FOLLOWING THE DISCHARGE OF THE FACILITY'S LAST RESIDENT.

Motion carried by voice vote.

PARK REST HARDIN COUNTY HEALTH CENTER

Jo Parks, Manager of Park Rest Hardin County Health Center requests a waiver of the administrator of the nursing home. Ms. Parks, also requests that one administrator serve both facilities. The representative of this facility is Charles Purcell. Mr. Purcell stated he would like for Ms. Parks to manage both facilities. He stated that Tammie Alexander, Director of Nursing, has been acting administrator for both facilities. Mr. Purcell stated Ms. Parks is attempting to retake the examination. Mr. Purcell would like the Board to extend the waiver another six months to allow Ms. Parks to pass the examination. Mr. Purcell would also like an extension to the six month waiver granted on May 2, 2007. This is an extension of a waiver that occurred in 1989, which allowed the facilities to have one administrator. Mr. Purcell is asking the Board to reinstate the waiver from 1989 and keep that in place for as long as J. Parks & Sons, Incorporated operates these two facilities.

Motion was made by Mr. Gordon, seconded by Dr. Jones to:

A SIX (6) MONTH WAIVER WAS GRANTED TO ALLOW BOTH FACILITIES TO OPERATE WITHOUT A LICENSED NURSING HOME ADMINISTRATOR UNTIL JUNE 2008; AND

A WAIVER WAS APPROVED RECINDING THE MAY 2007 MOTION TO ALLOW ONE ADMINISTRATOR TO SERVE BOTH PARK REST NURSING HOME AND HARDING HOME NURSING HOME AND REVERTING TO THE 1989 WAIVER. THIS WAIVER WHICH WAS PASSED ON MARCH 8, 1989

ALLOWS BOTH PARK REST AND HARDING HOME NURSING HOMES TO OPERATE UNDER THE DIRECTION OF ONE ADMINISTRATOR.

Motion carried by voice vote.

APPOINTMENTS TO CoPEC

Rhonda Phillippi is here to present the appointments to CoPEC. Ms. Phillippi stated the legislation that passed at the last legislative session defined who should be of CoPEC as far as organizational representation. Ms. Phillippi stated she is bringing a list of appointments that she would like the Licensure Board and EMS to concur on. Ann Thompson asked if this was information for everyone. Ms. Phillippi answered that she thought the Board had to appoint them.

Motion was made by Dr. Carr, seconded by Mr. Gordon to:

MOVED TO APPROVE THE LIST OF CoPEC APPOINTMENTS.

Motion carried by voice vote.

CONSENT CALENDAR

Ann Thompson explained that the Consent Calendar is being done differently than what everyone is accustomed to. The reason for doing this is to provide the Board with accurate information in order to make an informed decision when faced with these requests.

THE FOLLOWING NURSING HOME IS REQUESTING A WAIVER TO PROVIDE OUTPATIENT THERAPY SERVICES AS PROVIDED FOR BY BOARD POLICY 32:

MARSHALL C. VOSS AND REHABILITATION CENTER, HARRIMAN

Ms. Susan Carnahan representing Marshall C. Voss and Rehabilitation Center was present. The administrator for the facility is also present, Mr. Norman Haley.

Mr. Haley addressed the board explaining their facility have been renovated and have expanded their therapy space from 320 square feet to 1,020 square feet using existing space. A separate entrance with a push button key pad for entrance in and out for security. The facility currently has seven (7) full-time therapists on staff and an additional PRN staff. We were looking at services that we're providing. Some of the short term residents that was going home with orders for outpatient therapy or for home health. Since they make their own choices of provider. Some of them asked if we could do this service. We have the capability to help whatever needs to be able to transition safely home. We would like to be able to offer these services to our workman's comp for our facility, for our other residents' family members, our staff family members and the community at large.

Ms. Thompson informed the board members that additional information regarding their past performances surveys are included with their request letter.

Motion was made by Mr. Gaddy, seconded by Ms Chadwell to:

APPROVE A WAIVER FOR MARSHALL C. VOSS AND REHABILITATION CENTER TO PROVIDE OUTPATIENT THERAPY SERVICES AS PROVIDED FOR BY BOARD POLICY #32.

Motion carried by voice vote.

THE FOLLOWING FACILITIES ARE REQUESTING APPROVAL TO PROVIDE ADULT DAY CARE SERVICES IN ACCORDANCE WITH BOARD POLICY 32-A:

Assisted Living at Trezevant, Memphis
Weakley County Nursing Home, Dresden

ASSISTED LIVING AT TREZEVANT, MEMPHIS

Mr. Charles Tirrell, Administrator was present and addressed the board. Mr. Tirrell explained to the board that the facility have increased their beds from 28 to 151 beds which includes a 28 bed dementia care unit. The facility received many requests from family members to provide day care services. We have adequate space and we will have specific staff members assigned solely to the day care residents.

Motion was made by Dr. Carr, seconded by Mr. Gordon to:

APPROVE A WAIVER TO ALLOW ASSISTED LIVING AT TREZEVANT TO PROVIDE ADULT DAY CARE SERVICES IN ACCORDANCE WITH BOARD POLICY #32-A.

Motion carried by voice vote.

WEAKLEY COUNTY NURSING HOME, DRESDEN

Mr. David McBride, Administrator was present and addressed the board. Mr. McBride explained to the board that the facility is seeking the opportunity to serve the people of Weakley County with services of adult day care. The facility has the space to offer this service and we have a duly licensed nursing facility of 136 beds.

Motion was made by Mr. Gaddy, seconded by Ms. Lynch to:

APPROVE A WAIVER TO ALLOW WEAKLEY COUNTY NURSING HOME TO PROVIDE ADULT DAY CARE SERVICES IN ACCORDANCE WITH BOARD POLICY #32-A.

Motion carried by voice vote.

ESTELLA'S HOMECARE, MEMPHIS

Estella's Homecare, Memphis had no representative present. This facility is also seeking a request for providing adult day care services. Shirley Jones, Regional Administrator for the West Tennessee Regional Office spoke to the board regarding past performances of this facility.

Ms. Jones explained to the board that problems have exists over the past two years regarding this facility.

Motion was made by Dr. Staples, seconded by Dr. Carr to:

TABLE ESTELLA’S HOMECARE REQUEST TO PROVIDE ADULT DAY CARE SERVICES.

Motion carried by voice vote

RIVERMONT CARE AND REHABILITATION CENTER, SOUTH PITTSBURG AND ERIN CARE AND REHABILITATION CENTER, ERIN

Mr. Jason Shelton, Administrator of Erin Care and Rehabilitation Center is also representing Rivermont Care and Rehabilitation Center and the four other facilities mentioned on the agenda. The Board requested Mr. Shelton to address Rivermont Care and Rehabilitation Center first. Mr. Shelton explained that basically there are favorable market conditions in the communities of these facilities to serve. Rivermont actually has a separate entrance that will be available for adult day care clients. There is also adequate staff to meet the needs of the residents and also for non-residents.

Ms. Thompson informed the Board to view the facility surveys. Ms. Thompson this information is prudent for the Board to take a look at these before making a decision in this regard.

After several questions from the Board to Mr. Shelton regarding these issues. Mr. Gregory stated he thinks the Consent Calendar does not need to come before the Board. He believes the only time the Consent Calendar should come before the Board is when Health Care Facilities deems it not suitable. Mr. Gordon stated what’s on the Consent Calendar are items that Health Care Facilities recommends and is the facilities are taken as a group instead of one at a time. Ms. Hodge, Office of General Counsel advised the Board that the policy states authority of the staff to grant the waivers to provide adult day and night care services. It also gives the staff authority to grant the waivers, etc. Mr. Gregory feels the only thing the Board should hear is appeals from applicants based on the findings of the staff.

Mr. Davis, Director of Health Care Facilities stated based on the information and recommendation of counsel as well as the Board, we will take this back and make these decisions.

Motion was made by Mr. Gregory, seconded by Ms. Garner to:

HAVE HEALTH CARE FACILITIES STAFF TO MAKE A DETERMINATION AND RECOMMENDATION ON ALL BOARD CONSENTS DUE TO STAFF POLICY AND GIVE AUTHORITY SOLELY BY BOARD STAFF.

Motion carried by voice vote.

Mr. Shelton asked for clarification. Ms. Hodge explained that he will hear from the Board staff in regard to whether or not his request is going to be given the authority to provide adult day care services. Mr. Shelton asked will it be in writing. Ms. Thompson stated that you will receive a letter for each individual facility.

With all business concluded, Dr. Arnold adjourned the meeting.

Respectfully submitted,

Robert Gordon
Board Secretary

RG/jh