

MINUTES

Tennessee Board of Medical Examiners

January 27 and 28, 2009

The meeting was called to order at 8:45 a.m. at the Health Related Boards' Iris Room, 227 French Landing, Ground Floor, Heritage Place Metrocenter, Nashville, Tennessee 37243 by President Dr. Mitchell Mutter. Other members present were: Drs. Keith Lovelady, Barrett Rosen, George Eckles, Subhi Ali, Charles White, Sr., Dennis Higdon, Neal Beckford, Michael Zanolli, Ms. Irene Wells and Mr. Mark Brown. Absent member: Ms. Regine Webster.

Staff present included Rosemarie Otto, Executive Director, Larry Arnold, MD, Medical Director, Sandra Powell, Board Administrator, Marsha Arnold, Unit Manager and Matthew Scanlan, Advisory Attorney.

Mr. Scanlan reviewed the Conflict of Interest Statement and an Attorney General opinion that spoke to a conflict of interest decision made recently. Mr. Scanlan informed the Board that several comments were received concerning the AG opinion.

Dr. Mutter announced that Mr. Scanlan was leaving and he and the Board expressed their best wishes to him.

Minutes

Minutes from the November 18 and 19, 2008 meeting and December 3, 2008 Summary Suspension in the matter of Samuel Ashby, MD were reviewed. Dr. White made a motion to approve the November 18 and 19, 2008 minutes and Ms. Wells seconded the motion. The motion passed. Dr. Rosen made a motion to approve the December 3, 2008 minutes and Dr. White seconded the motion. The motion passed.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-ray Operators, Radiologist Assistants, Physician Assistants and Genetic Counselors were reviewed. Dr. White made a motion to ratify the approvals and Dr. Ali seconded the motion. The motion passed. Dr. Lovelady made a motion to ratify the actions taken by the Polysomnography Professional Standards Committee meeting and Dr. Ali seconded the motion. The motion passed. The Board reviewed the Consent Order of Curtis Jones, PA. Dr. White made a motion to ratify actions taken by the Committee on Physician Assistants in the matter of Curtis Jones, PA and Dr. Ali seconded the motion. The motion passed.

New Applicant Interviews

Stephen Daniels, MD-Dr. Daniels is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Daniels' application file for the Board. Dr. Daniels' license was disciplined by the Arizona Board for a matter relative to stress and burn out. Dr. Daniels informed the Board that he moved from Alaska and plans to practice part time in Tennessee. Dr. Arnold recommended advocacy with the Tennessee Medical Foundation and regular monitoring. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Daniels and stated that there was not a chemical dependency problem but one of depression and suggested minimal monitoring for 2-5 years. Dr. Ali made a motion to grant Dr. Daniels a license contingent on a 5 year contract and regular monitoring with TMF. Dr. White seconded the motion. The motion passed.

Venkatesh V. Madhav, MD-Dr. Madhav is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Madhav's application file for the Board. Dr. Madhav's privileges were summarily suspended by the Trinity Hospital staff. Dr. Madhav explained the circumstances surrounding the suspension. The Board stated they would like confirmation that Dr. Madhav's privileges have been reinstated and all requirements have been met. Dr. Roland Gray informed the Board that when there is a controversy between hospital and physician, he normally would suggest a VCAP evaluation. Dr. Arnold agreed with Dr. Gray and stated it could be helpful. Dr. Ali made a motion to grant Dr. Madhav a license contingent on a positive VCAP evaluation and the results be submitted to the medical director. Dr. Rosen seconded the motion. The motion passed.

Gary L. Malakoff, MD-Dr. Malakoff is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Malakoff's application file for the Board. Dr. Malakoff has a history of chemical dependency and inpatient treatment. Dr. Malakoff surrendered his DEA on November 10, 2004 and subsequently, his medical license in Washington, DC was suspended. Since Dr. Malakoff plans to work at Erlanger Hospital in Chattanooga, TN, Dr. Mutter recused himself from the discussion and vote. Dr. Malakoff informed the Board that he has six months remaining on his five year monitoring program and has signed a contract with the Tennessee Medical Foundation. Because he is a faculty member of the University of Tennessee at Chattanooga, Dr. Rosen also recused himself from the discussion and vote. Dr. Ali made a motion to grant Dr. Malakoff a license contingent on lifetime advocacy with TMF and Dr. Beckford seconded the motion. The motion passed.

Anthony H. Ramirez, MD-Dr. Ramirez is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Ramirez's application file for the Board. Dr. Ramirez's medical license in Oklahoma was disciplined for substance abuse, making false, fraudulent misleading statements, and unprofessional conduct. Dr. Ramirez explained the circumstances surrounding the disciplinary actions taken against his Oklahoma license (impaired while a patient in his care was under general anesthesia).

Dr. Higdon recused himself and stated that he remembered Dr. Ramirez in training at the University of Memphis. Dr. Arnold recommended TMF contract and 100% compliance with aftercare and to mirror Oklahoma's order of probation for five (5) years. Dr. Ali made a motion to grant Dr. Ramirez a license contingent on Dr. Arnold's recommendations of lifetime contract with TMF, 100% compliance with aftercare and to mirror Oklahoma's order of probation for five (5) years. Dr. Lovelady seconded the motion. Mr. Brown and Dr. Zanolli opposed. The motion passed.

William O. Runyon, MD-Dr. Runyon is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Runyon's application file for the Board. Dr. Runyon has not rendered direct patient care since approximately 1999 but he is board certified and must re-certify in 2013. Additionally, he is required to have one hundred fifteen (115) continuing medical education hours every three (3) years. Dr. Runyon explained that he plans to be chief medical officer with AmeriGroup. Dr. White made a motion to grant a license to Dr. Runyon and Dr. Beckford seconded the motion. Ms. Wells opposed. Dr. Ali abstained. The motion passed.

Frank G. Toonder, MD-Dr. Toonder is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Toonder's application file for the Board. Dr. Toonder has not practiced since 1999. In 1995, Leigh Valley Hospital made recommendations to terminate Dr. Toonder's membership and privileges based on various issues related to professional conduct and competency. Dr. Toonder explained the actions and stated that he resigned from Leigh Valley Hospital. Dr. Toonder stated that he reads films in Pennsylvania. Dr. Arnold stated that a Telemedicine license would be sufficient but requires board certification and suggested Dr. Toonder have a CPEP evaluation to assess his clinical skills and if the results are positive, a license can be granted. Dr. Beckford made a motion to grant Dr. Toonder a full license contingent on a positive CPEP evaluation. Dr. Higdon seconded the motion. Mr. Brown, Ms. Wells and Dr. Rosen opposed. Drs. Zanolli and Higdon abstained. The motion passed by a majority.

Reinstatement Interviews

Lawrence B. Crowson, MD-Dr. Crowson is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Crowson's application file for the Board. Dr. Crowson appeared before the Board September 28, 2008 because he had not practiced medicine since 1996. It was suggested then that he take and pass the SPEX exam and appear back before the Board. Dr. Arnold informed the Board that Dr. Crowson successfully passed the SPEX exam. Dr. Eckles made a motion to grant Dr. Crowson reinstatement of his license and Dr. Zanolli seconded the motion. The motion passed.

Discussion

Mr. Albert Partee from the Office of General Counsel addressed the Board. Mr. Partee informed the Board that Mr. Shiva Bozarth will replace Mr. Matt Scanlan as Deputy General Counsel and Advisory Attorney to the Medical Board.

The Board discussed the interpretation of Rule 0880-2-.14(3) (a) (1) (i) through (v) relative to including diagnoses on certain prescriptions. Mr. Scanlan reviewed the rule for the Board. The Board was asked to interpret Rule 0880-2-14(3)(a) relative to placing diagnoses on certain prescriptions for amphetamines, amphetamine-like substances and central nervous system stimulants. The board expressed privacy concerns but nevertheless interpreted the Rule (as currently written) to require a diagnoses on all prescriptions identified in Rule 0880-2-14(3)(a)(i) through (v) not just (v). The motion passed with Mr. Brown voting no. The Board then, on a motion by Dr. Lovelady and seconded by Dr. White, voted to authorize a rule making hearing to eliminate diagnoses on all scripts. The motion passed unanimously.

The Board was informed that the Standing Joint Committee of the BME/BON recommended supporting legislation on the following topics:

- (a) Support legislation allowing APN's to approve Handicap Placards.
- (b) Support Legislation allowing APN's to sign death certificates.
- (c) Support rule change allowing APN's to do physical exams for Peace Officers, Rule 1110-2-03(h)

Dr. Higdon informed the Board of the issues discussed at the meeting regarding proposed legislation and supervision, and asked for the Board to support the recommendation. Following a discussion, the Board took no action.

The Board discussed the Board of Dentistry's rulemaking hearing relative to the use of derma fillers. Dr. Zanolli reported the Board was asked to submit a written comment to the Board of Dentistry for their rulemaking hearing regarding the use of derma fillers. Mr. Scanlan reported that the Dental Board received the comment and considered it but adopted the rule. He then advised the Medical Board that the comment will go to the Attorney General's office in the rulemaking hearing packet and will be considered before the rule is reported back.

The Board discussed High Tech Memphis and High Tech Nashville regarding their continued approval as course providers of Limited Scope X-Ray training. Mr. Scanlan reviewed the MD X-ray Operator rules regarding course providers. Ms. Otto gave an update on High Tech's pass/fail rate. Mr. Tom Lee, attorney for High Tech addressed the Board. Mr. Lee stated that High Tech's scores have increased substantially in the last six months. Ms. Sandy Gibson, representative for High Tech spoke about the changes made. Dr. Beckford made a motion to continue probation and give an additional six months to bring the exam rate up. Ms. Wells seconded the motion. The motion passed. Mr. Joel Herring addressed the Board regarding the exam results. Mr. Herring requested clarification on which six months the Board was referring to regarding the deadline in which to bring the scores up to passing. He stated his next report will be for exams administered January thru July, 2009.

The Board discussed designating a member to attend the FSMB annual meeting in Washington, DC April 30 through May 2, 2009. It was suggested sending a member who

has not been to the meeting previously. Dr. Rosen nominated Dr. Zanolli to be the delegate and Dr. Higdon seconded the motion. The motion passed. Members were advised by Ms. Otto that the appropriate documentation would be forwarded, but approval was not guaranteed.

Reports

Budget Report

The Budget report was reviewed by the Board. Ms. Otto stated the report reflects the accumulated carryover after previous balances were transferred to the General fund to balance the State's budget.

Statistical Report from Administrative Office

The Board reviewed the report from the Administrative office.

Investigative Report

Ms. Juanita Stone reviewed the Investigative report in the absence of Ms. Denise Moran. Mr. Brown suggested a report created by allegations in geographic areas so that the Board may be able to get a focus on issues in specific problem areas. Ms. Stone indicated she would discuss the suggestion with Ms. Moran.

Disciplinary Report

The report was reviewed by Ms. Juanita Stone. Ms. Stone informed the Board that currently 198 physicians are being monitored.

OGC Report

Mr. Scanlan reviewed his report with the Board. Mr. Scanlan discussed the rule regarding international medical school graduates and informed the Board that his office has re-submitted the rule in the new format required by the Secretary of State.

Discussions for March or May Meeting

The Board discussed the panel decision requiring the medical director to "monitor" disciplined respondents and it was agreed that it is an inappropriate role.

The definition of a license "in good standing" was discussed by the Board and no action taken.

CME Audit Office regarding compliance with CME requirements

The report was deferred to the next scheduled meeting.

“Noteworthy” section of the internet

The Board did not have anything to be placed on the “noteworthy” section of the internet.

Order of Compliance

Charles A. Kirby, MD-Dr. Kirby was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. In the presence of his patients, Dr. Kirby repeatedly exhibited bouts of anger during surgical procedures that resulted in the use of obscene language towards surgical staff. Dr. Kirby was issued a Letter of Reprimand on March 14, 2006. Mr. Scanlan informed the Board that Dr. Kirby has met all the requirements attached to the Reprimand. Dr. White made a motion to accept the Order of Compliance and Dr. Beckford seconded the motion. The motion passed.

James Eric Gardner, MD-Dr. Gardner was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Gardner appeared before the Board on March 27, 2007 and was granted a license contingent on lifetime advocacy with the Tennessee Medical Foundation and compliance with all the provisions of the North Carolina action. The Order stated that at such time that Dr. Gardner obtains a totally unencumbered license in North Carolina, he can petition the Board for an Order of Compliance. Mr. Scanlan informed the Board that Dr. Gardner has met all the requirements as set by the Board. Dr. Rosen made a motion to accept the Order of Compliance and Dr. Eckles seconded the motion. The motion passed.

Andrew J. Slaski, MD-Dr. Slaski was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Slaski was deceitful in his January 31, 2000 application for a Tennessee medical license. In answering questions regarding disciplinary actions of staff privileges, Dr. Slaski described a single case involving the death of a male patient but omitted to include the entire outcome. On April 26, 2000, Dr. Slaski was disciplined by the Arizona Board of Medical Examiners for unprofessional conduct and his license was placed on probation for five years and restricted his practice. Mr. Scanlan informed the Board that all the requirements as set by the Board have been met. Dr. White made a motion to accept the Order of Compliance and Dr. Ali seconded the motion. The motion passed.

Agreed Citations

Donald H. Watters, MD-Dr. Watters failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Watters shall pay a civil penalty in the amount of four hundred seventy dollars (\$470), provide proof of completion of eleven and three quarters (11.75) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10)

hours continuing education hours within two (2) years of ratification of the Agreed Citation. Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Patrick J. Murphy, MD- Dr. Murphy failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Murphy shall pay a civil penalty in the amount of one hundred forty dollars (\$140), provide proof of completion of three and one half (3.5) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10) hours continuing education hours within two (2) years of ratification of the Agreed Citation. Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

David W. Fanning, MD- Dr. Fanning failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Fanning shall pay a civil penalty in the amount of eight hundred dollars (\$800), provide proof of completion of twenty (20) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10) hours continuing education hours within two (2) years of ratification of the Agreed Citation. Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Manuel F. Carro, MD- Dr. Carro failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Carro shall pay a civil penalty in the amount of one thousand one hundred dollars (\$1,100), provide proof of completion of twenty seven and one half (27.5) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10) hours continuing education hours within two (2) years of ratification of the Agreed Citation. Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Thomas A. Browning, MD- Dr. Browning failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Browning shall pay a civil penalty in the amount of four hundred eighty dollars (\$480), provide proof of completion of twelve (12) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10) hours continuing education hours within two (2) years of ratification of the Agreed Citation. Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Deborah R. Deason, MD- Dr. Deason failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Deason shall pay a civil penalty in the amount of one thousand six hundred dollars (\$1,600), provide proof of completion of forty (40) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10) hours continuing education hours within two (2) years of ratification of the Agreed Citation.

Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Casey C. Carney, MD- Dr. Carney failed to comply with the Board rules regarding required continuing medical education. The Agreed Citation stipulated that Dr. Carney shall pay a civil penalty in the amount of seven hundred twenty dollars (\$720), provide proof of completion of eleven and eighteen (18) hours of continuing education within one hundred eighty (180) days of the citation and complete an additional ten (10) hours continuing education hours within two (2) years of ratification of the Agreed Citation. Dr. White made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Consent Orders

Matthew Gangwer, MD- Dr. Gangwer was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. On November 11, 2006, Dr. Gangwer was driving while impaired on prescription medications and alcohol. After leaving the scene of an accident, Dr. Gangwer led police on a 25 mile chase, damaging two police vehicles, until finally wrecking his vehicle into a utility pole. As a result, Dr. Gangwer pled guilty to three counts of aggravated assault, a Class C felony; one count of 4th offense DUI, a Class A misdemeanor; one count of evading arrest, a Class D felony; one count of reckless endangerment with a deadly weapon, a Class E felony; and two counts of vandalism, a Class D felony. The Consent Order stipulated that Dr. Gangwer's license shall be suspended for a period of one year from July 22, 2008 or the duration of his sentence for criminal violations, whichever is longer. Dr. Gangwer shall produce documentation from a treatment center acceptable to the board of his ability to reengage in the practice of medicine safely. Dr. Gangwer shall obtain a contract with the Tennessee Medical Foundation and maintain 100% compliance with the contract. Dr. Gangwer shall provide proof of his ability to reengage in the practice of medicine and what steps he has taken to retain his ability to see patients in a clinical capacity. After submitting this documentation, appearing before the Board for questions related to this matter, and satisfying the Board that he has complied with the conditions for lifting this suspension, Dr. Gangwer's license will be placed on probation for a period of five (5) years. Dr. Gangwer shall pay all costs associated with the prosecution of the case. Dr. Rosen made a motion to accept the Consent Order and Dr. Ali seconded the motion. Ms. Wells opposed. The motion passed.

Elmer R. Gibbs, MD-Dr. Gibbs was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. From approximately January 2007 until approximately July 2007, Dr. Gibbs wrote prescriptions for controlled substances for his wife and four other family members in violation of the standard of care for prescribing controlled substances. The Consent Order stipulated that Dr. Gibbs license shall be reprimanded. In addition to the continuing education courses required to maintain his license, Dr. Gibbs shall attend and complete, within one (1) year of the effective date of the order, the seminar entitled: "*Prescribing Controlled Drugs: Critical Issues and Common Pitfalls*," which is offered at the Vanderbilt University Medical Center, in

Nashville, Tennessee and provide proof of attendance to the board. Dr. Gibbs may substitute an equivalent course upon approval of the board's consultant. Dr. Gibbs shall pay five (5) Type A civil penalties in the amount of one thousand (\$1,000.00) dollars each, for a total amount of five (5) thousand (\$5,000.00) dollars, for each family member to which he prescribed in violation of the Medical Practice Act. Dr. Gibbs shall pay all costs associated with the prosecution of the case. Dr. White made a motion to accept the Consent Order and Dr. Ali seconded the motion. Ms. Wells opposed. The motion passed.

Forrest C. Ward, MD-Dr. Ward was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. From approximately November, 2004, until at least August, 2006, Dr. Ward wrote prescriptions for controlled substances for his wife and four other family members in violation of the standard of care for prescribing controlled substances. The Consent Order stipulated that Dr. Ward's medical license shall be reprimanded. In addition to the continuing medical education courses required to maintain his license, Dr. Ward shall attend and complete, within one (1) year of the effective date of this order, an anger management course which is offered at the Center for Professional Health at Vanderbilt University Medical Center, in Nashville, Tennessee and provide proof of attendance to the board. Dr. Ward may substitute an equivalent course upon the approval of the board's consultant. Dr. Ward shall pay five (5) Type C civil penalties in the amount of one hundred (\$100.00) dollars each, for a total amount of five thousand (\$500.00) dollars for each family member to which he prescribed in violation of the Medical Practice Act. Dr. Ward shall pay all costs associated with the prosecution of the case. Dr. Zanolli made a motion to accept the Consent Order and Dr. White seconded the motion. Ms. Wells opposed. The motion passed.

Devyani Sanders, MD-Dr. Sanders was not present nor represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Sanders admits that she is a recovering addict and alcoholic, most recently using hydrocodone in 2007. Dr. Sanders further admits to engaging in the practice of medicine while using hydrocodone prior to her office closing in 2006. Dr. Sanders admits that she sold hydrocodone and phentermine tablets to her patients for cash and failed to keep and maintain a dispensing log. Dr. Sanders ordered and received 4,500 Norco tablets, 5,200 Vicoprofen tablets, 1,000 Valium tablets and 700 Phentermine tablets since April of 2006. No prescription logs exist to document where these medications have been distributed. Despite the closure of her office, Dr. Sanders continued to prescribe controlled substances for individuals throughout 2007. The Consent Order stipulated that Dr. Sanders' medical license is hereby permanently surrendered. Dr. Zanolli made a motion to accept the Consent Order and Dr. Beckford seconded the motion. The motion passed.

Agreed Orders

Samuel M. Ashby, MD-Dr. Ashby was not present nor represented by legal counsel. Mr. Thomas Miller represented the State. On or about March 21, 2007, Dr. Ashby entered into a Consent Order with the Board where he acknowledged multiple violations of the statutes and rules. Dr. Ashby acknowledged engaging in the gross malpractice or a

pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice by prescribing narcotic analgesics and other controlled substances to approximately thirty-one (31) individual patients including the time period of 2004 to 2005. Dr. Ashby failed and/or neglected to perform and/or document performing an appropriate history and physical examination, making a diagnosis based upon the examinations, formulation of an appropriate treatment plan, and appropriate follow-up care and/or consultation. Dr. Ashby's license was placed on probation for five (5) years with terms and conditions to be met within a specified time period. Dr. Ashby failed to comply with those terms. On or about February 5, 2007, Dr. Ashby became aware and acknowledged the practice deficiencies leading to the disciplinary actions in the referenced Consent Order. Between February 2007 and December 2007, Dr. Ashby continued to engage in inappropriate medical practice consistent with the Practice Act violations cited in the Consent Order. On or about August 8, 2008, Dr. Ashby suffered an acute cerebral hemorrhage involving the right parietal lobe, cortex and subcortical white matter. Dr. Ashby has on two occasions suffered focal seizures resulting in him seeking emergency medical care. On or about August 15, 2008, Dr. Ashby left the hospital against medical advice despite being told by his doctor that leaving the hospital may result in death, pain or disability. On or about November 19, 2008, Dr. Ashby filed a motion to continue this matter until such time as he is able to physically attend the hearing without possibility of danger to his health. Dr. Ashby admitted that he was unable to attend the hearing due to the severity of his illness. Dr. Ashby's leaving the hospital against medical advice coupled with his diagnosis and associated risks, reasonably suggests impairment of his cognitive ability affecting his own care and the care of his patients may exist. Dr. Ashby's license to practice medicine was summarily suspended. The proposed Agreed Order stipulated that Dr. Ashby's license shall be revoked from the effective date of the Order. Within sixty (60) days of the Order, Dr. Ashby must comply with all provisions of the Consent Order entered into with the Board on March 20, 2007. Dr. Ashby shall be assessed fifteen (15) Type A civil penalties in the amount of one thousand dollars (\$1,000.00) each, for a total amount of fifteen thousand dollars (\$15,000.00), payable within thirty (30) days of the effective date of the Order. Dr. Ashby shall pay all costs associated with the prosecution of the case. Dr. White made a motion to accept the Agreed Order and Dr. Ali seconded the motion. The motion passed.

Adjourned at 3:45 p.m.

January 28, 2009

Panel: Zanolli, Higdon, Wells

Contested Case Hearing

Ronald Toolsie, MD-Dr. Toolsie was present and represented by Mr. Charles Currier. Mr. Shiva Bozarth represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Opening statements were given by both sides. Dr. Toolsie ordered large quantities of controlled medications for a period of approximately thirteen years. Dr. Toolsie had dispensed or otherwise distributed these medications to individuals without entering into an acceptable doctor/patient relationship with them. Dr. Toolsie has maintained no patient records for these individuals and no records for the disposition of any of these medications. Medication was prescribed for at least fifty-three individuals without having created or maintained a patient record with them. Dr. Toolsie admitted that he self medicated with hydrocodone, valium and phentermine. Dr. Toolsie has not completed a fellowship in forensic pathology nor is he certified in the subspecialty of forensic pathology. On June 20, 2003, Dr. Toolsie performed an autopsy on a minor child. The technical performance was done properly. Dr. Toolsie demonstrated a lack of medical knowledge of the proper diagnoses of Shaken Baby Syndrome in the autopsy. After both sides gave their closing statements, the proposed Order was handed to the panel for review. Mr. Bozarth asked the panel for the revocation of Dr. Toolsie's license and Mr. Currier suggested probation. The proposed Order stipulated that Dr. Toolsie's license be suspended for a period of not less than six months and until he has completed the following:

- a. Complete the Prescribing Controlled Drugs course taught by Vanderbilt University, Center for Professional Health or similar course.
- b. Complete the Intensive Course in Medical Record Keeping at Case Western Reserve University or a similar course.
- c. Dr. Toolsie may request an Order of Compliance upon completion of all requirements and personally appear before the board to receive an Order of Compliance.

After obtaining an Order of Compliance, Dr. Toolsie's license shall be placed on probation for a period of five years. Dr. Toolsie shall not reapply for a DEA certification to prescribe controlled medications until he has personally appeared before the Board. The panel deliberated. Dr. Higdon made a motion to accept Findings of Fact and Ms. Wells seconded the motion. The motion passed. Dr. Higdon made a motion to suspend Dr. Toolsie's medical license for a period of not less than six months and until he has completed all requirements set in the Order. Ms. Wells seconded the motion. The motion passed. Mr. Currier asked the panel to reconsider Findings of Fact. Dr. Higdon made a motion to deny request and Ms. Wells seconded the motion. The motion passed.

Consent Order

David Pitts, MD-Dr. Pitts was present and represented by legal counsel, Mr. Frank Scanlon of the Nashville Bar. Mr. Shiva Bozarth represented the State. Mr. Bozarth presented to the Board the 2003 Letter of Reprimand issued to Dr. Pitts. In 1996, Dr. Pitts was evaluated by the Tennessee Medical Foundation and treated for five (5) months for alcohol and cannabis dependence at the Center for Professional Excellence in

Nashville, Tennessee. Dr. Pitts was under contract with the TMF from 1996 to 2002. During this time he was randomly screened for drugs and alcohol without any positive event. In 2004, Dr. Pitts was asked by officials at the hospital where he practiced to submit to a drug screen, which was positive for cannabis. As a result, he entered into a new contract with the TMF and resumed a random drug screening program until January of 2008 when he ceased participation in the TMF program. Dr. Pitts has been treated for bipolar disease since 1998 and has been under the care of a psychiatrist for his condition since 2005. On July 13, 2007, Dr. Pitts voluntarily admitted himself to the psychiatric unit of Centennial Medical Center in Nashville, Tennessee. At the time of admission, it was determined that Dr. Pitts was suicidal. Dr. Pitts remained in the facility until discharged on July 20, 2007. Under the advice of his psychiatrist, Dr. Pitts has not practiced medicine since his discharge from the hospital on July 20, 2007. The Consent Order stipulated that Dr. Pitts' license be suspended for a minimum period of six (6) months. After the six month period of time, Dr. Pitts may petition the Board for an Order of Compliance to have the suspension lifted. Before the suspension will be lifted, Dr. Pitts must have the advocacy of the Tennessee Medical Foundation, obtain an assessment from the Vanderbilt Comprehensive Assessment Program, for Professionals (VCAP), comply with all recommendations of the VCAP assessment, submit an assessment from his treating psychiatrist(s) relative to his mental competence to safely practice medicine and present clear and convincing evidence that he is mentally competent to practice medicine. Dr. Pitts must pay costs for the prosecution of the case. Dr. Higdon made a motion to add that Dr. Pitts not be able to apply for his DEA without the approval of the Board. Ms. Wells second the motion. The motion passed. Dr. Higdon made a motion to add continuation of continuing medical education credits and Dr. Zanolli seconded the motion. The motion passed. Dr. Higdon made a motion to accept the Consent Order as modified and Ms. Wells seconded the motion. The motion passed.

David Robert Delaplane, MD-Dr. Delaplane was not present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. Dr. Delaplane's Virginia license was summarily suspended on August 27, 2008. From December 2007 until April 2008, Dr. Delaplane engaged in a sexual relationship with a patient, concurrent with and by virtue of a practitioner-patient relationship. Further, from approximately October 2007 until April 2008, Dr. Delaplane prescribed medications for the patient's mental disorder concurrent with maintaining a personal relationship with her. Between November 2005 and September 2007, Dr. Delaplane prescribed various medications for another patient and failed to document any patient encounters or evaluations of that patient. Between November 22, 2005 and July 6, 2006, Dr. Delaplane prescribed Avinza (morphine sulfate, C-II); between May 19, 2006 and July 3, 2007, hydrocodone bitartrate and acetaminophen (C-III); and between June 30, 2006 and September 21, 2007, clonazepam 0.5 mg (C-IV). The Consent Order stipulated to immediately suspend Dr. Delaplane's medical license until such time as he has an unencumbered and unrestricted Virginia medical license. Dr. Zanolli made a motion to accept the Consent Order and Dr. Higdon seconded the motion. The motion passed.

Agreed Order

John D. Lay, MD-Dr. Lay was not present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. Dr. Lay's treatment of 15 patients was deficient because the medical records contained inadequate medical history and physical findings to justify the prescription of continued pain medication. The medical records contained inadequately documented diagnoses to justify the prescription of continued scheduled drug use. Dr. Lay failed to make appropriate referrals to other physicians and where there were referrals they were often on the request or demand of the patient or through self-referral. The Agreed Order stipulated that Dr. Lay's medical license shall be reprimanded. Dr. Lay must pay costs of prosecuting the case, complete the Prescribing Controlled Drugs course taught at Vanderbilt University, Center for Professional Health or a similar course pre-approved by the Board's Consultant within twelve (12) months of the Order. Dr. Lay shall complete not less than twenty (20) hours of continuing medical education (CME) each calendar year beginning in 2009 until 2014. CME hours shall be in the area of prescribing controlled medications or medical record keeping. Dr. Lay shall obtain practice monitoring through Affiliated Monitors or another practice monitoring program pre-approved by the Board's Medical Director within sixty (60) days of the Order. Dr. Lay must comply with the guidelines set in the monitoring agreement. Dr. Higdon made a motion to accept the Agreed Order and Ms. Wells seconded the motion. The motion passed.

Panel: Rosen, Ali, Mutter

Agreed Order

Lifford Lancaster, MD-Dr. Lancaster was not present but was represented by legal counsel, Mr. Dan Warlick of the Nashville Bar. Ms. Mona Jean-Baptiste represented the State. Between 2004 and 2006, Dr. Lancaster failed to formulate a written treatment plan and failed to document all prescribed medications for four patients. Between 2004 and 2006, Dr. Lancaster prescribed controlled substances to a patient without creating a medical record. The Agreed Order stipulated that Dr. Lancaster's license shall be reprimanded. Dr. Lancaster must enroll and complete the Prescribing Controlled Drugs course offered at the Vanderbilt Medical Center for Professional Health, or its equivalent, within one hundred (100) days of the date of the Order. Dr. Lancaster must enroll in and complete the Intensive Course in Medical Record Keeping with the Individual Preceptorships offered by the Case Western Reserve University School of Medicine, or its equivalent, within one hundred and eighty (180) days of the Order. Dr. Lancaster must pay five (5) Type B civil penalties, in the amount of four hundred dollars (\$400.00) each, for a total assessment of two thousand dollars (\$2,000.00), representing each patient against whom he committed unprofessional conduct. Dr. Rosen made a motion to accept the Agreed Order and Dr. Ali seconded the motion. The motion passed.

Contested Case Hearing

Brian Chigue, MD-Dr. Chigbue was not present nor represented by legal counsel. Ms. Mona Jean-Baptiste represented the State. The Honorable Marion Wahl, Administrative Law Judge presided. The Notice of Charges was handed to the panel for review. Ms. Jean-Baptiste informed the panel that several notices were sent to Dr. Chigbue and asked for a default. Dr. Rosen made a motion to proceed in default and Dr. Ali seconded the motion. The motion passed. Opening statements were given. On or about January 14, 2008, an Order for Summary Suspension of license was entered by the State of Maryland Board of Physicians. The Board found that Dr. Chigbue sexually assaulted two (2) patients in separate incidents and was later indicted for attempted second (2nd) degree rape, second (2nd) degree rape and two (2) counts of second (2nd) degree assault. On or about February 7, 2008, Dr. Chigbue's license was suspended. Closing statements were given and the State asked the panel to mirror the actions taken by the Maryland Board and permanently revoke Dr. Chigbue's license. The proposed Order was handed to the panel for review. The panel deliberated. Dr. Rosen made a motion to accept the Findings of Fact and Dr. Ali seconded the motion. The motion passed. Dr. Rosen made a motion to accept the Conclusions of Law and Dr. Ali seconded the motion. The motion passed. Dr. Rosen made a motion to accept paragraph 9 regarding TCA 63-6-214 (b) (20). Dr. Ali seconded the motion. The motion passed. Dr. Rosen made a motion to permanently revoke the medical license of Dr. Chigbue and to mirror the Maryland Board Order. Dr. Ali seconded the motion. The motion passed. Dr. Rosen made a motion to assess civil penalties and Dr. Ali seconded the motion. The motion passed. The policy statement was read. The reason the action is being taken is due to the criminal actions against Dr. Chigbue and our actions to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Rosen made a motion to accept the policy statement and Dr. Ali seconded the motion passed. The motion passed.

Panel: White Beckford, Eckles

Contested Case Hearing

Robert A. Wilson, MD- Dr. Wilson was not present but was represented by legal counsel, Ms. Wendy Longmire. Ms. Andrea Huddleston represented the State. Between January 2006 and July 2006 Dr. Wilson injected a number of patients with a cocktail of anticholinergic drugs as a treatment for smoking cessation, which was a treatment that fell below the minimum standard of care in the State of Tennessee. In addition, Dr. Wilson failed to perform appropriate histories, physical examinations and/or diagnostic testing on said patients or heed the information gleaned from such histories or physical examinations, as required by both the standard of care and his own protocols for this treatment, or failed to document. Dr. Wilson also failed to provide patients with information about the risks and benefits of the treatment or failed to document. Dr. Wilson dispensed improperly labeled legend drugs and wrote prescriptions on a prescription pad containing erroneous information. The Consent Order stipulated that Dr. Wilson's license shall be reprimanded. Dr. Wilson must cease and desist any and all

aspects of the smoking cessation treatment program provided by Welplex. Dr. Wilson shall successfully complete within nine (9) months of the Order, the three (3) day medical course entitled “Physician Prescribing Course” offered at The Physician Assessment and Clinical Education Program at The University of California, San Diego, School of Medicine or an equivalent course approved by the Board; a one (1) day medical course entitled “ Medical Professionals Training Advancing Tobacco Recovery in IDDT Program” offered at The Case Western Reserve University Continuing Medical Education Program at Case Western Reserve University School of Medicine in Cleveland, Ohio or an equivalent course approved by the Board ; and a two (2) day medical course entitled “ Medical Ethics, Boundaries and Professionalism” offered at The Case Western Reserve University Continuing Medical Education Program at Case Western Reserve University School of Medicine in Cleveland, Ohio or an equivalent course approved by the Board. Dr. Wilson shall pay two (2) Type A civil penalties in the amount of five hundred dollars (\$500.00) each for a total of one thousand (\$1,000.00) representing a penalty for two patients. Dr. Beckford made a motion to approve the Consent Order as written and Dr. Eckles seconded the motion. The motion passed.

Kelvin Douglas, MD-Dr. Douglas was present and represented by legal counsel, Ms. Fikisha Swader. Ms. Andrea Huddleston represented the State. The Honorable Joyce Saffley, Administrative Law Judge presided. On January 28, 2009, as a condition of continuance, Dr. Douglas agreed to surrender his license. Witnesses were sworn in and opening statements were given by both sides. The Notice of Charges was handed to the panel for review. Dr. Douglas ordered large quantities of hydrocodone and other controlled substances which were delivered to his home address in violation of federal law, failed to maintain federally required documentation as to the dispensation of these controlled substances and failed to secure these medications. On or about October 22, 2007, Dr. Douglas was indicted in the U.S. District Court of Tennessee, Western District, on one count of Possession with Intent to Distribute a Schedule III controlled substance (approximately 6,000 pills of hydrocodone), one count of Possession with Intent to Distribute a Schedule IV controlled substance (approximately 3,300 pills of alprazolam), and one count of Conspiracy to Distribute a Schedule III controlled substance (approximately 160,000 pills of hydrocodone). Dr. Douglas entered into a plea agreement on these charges and pled guilty to knowingly and intentionally omitting to report the distribution of hydrocodone to the Drug Enforcement Agency as required under Title 21 of the United States Code. Dr. Douglas failed to maintain patient records. On or about December 19, 2008, based on the plea of guilty, Dr. Douglas was adjudicated guilty of Knowingly and Intentionally Omitting to Report to the Drug Enforcement Administration the Distribution of Hydrocodone. Based on witness testimony, Dr. Douglas failed to perform an adequate history and physical examination prior to prescribing controlled substances. After closing arguments, the proposed Final Order was handed to the panel for review. The Final Order stipulated that Dr. Douglas’ license be permanently revoked and assess costs associated with the prosecution of the case. The panel deliberated. Dr. Beckford made a motion to accept the Findings of Fact #1 thru 4 and Dr. Eckles seconded the motion. The motion passed. Dr. Eckles made a motion to accept the Conclusions of Law as amended and Dr. Beckford seconded the motion. The motion passed. Dr. White made a motion to permanently revoke Dr.

Douglas' license and Dr. Eckles seconded the motion. Dr. Beckford opposed. The motion passed. The policy statement was read and the reason action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Eckles made a motion to accept the policy statement and Dr. Beckford seconded the motion. The motion passed.

Adjourned at 5:35 p.m.

These minutes were ratified by the Board on March 17, 2009.