

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

September 15-16, 2009

The meeting was called to order at 8:50 a.m. at the Health Related Boards' Iris Room, 227 French Landing, Ground Floor, Heritage Place Metrocenter, Nashville, Tennessee 37243 by President Mitchell Mutter, MD. Other members present were: Drs. Keith Lovelady, Neal Beckford, Subhi Ali, Dennis Higdon, Barrett Rosen, George Eckles, Charles White, Sr., Ms. Irene Wells, Ms. Monica Franklin and Ms. Regine Webster. Absent member: Dr. Michael Zanolli.

Staff present included Rosemarie Otto, Executive Director, Larry Arnold, MD, Medical Director, Marsha Arnold, Unit Manager and Shiva Bozarth, Deputy General Counsel and Advisory Attorney.

Mr. Bozarth reviewed the Conflict of Interest Statement for the Board.

Minutes

Minutes from the July 21 and 22, 2009 meeting were reviewed. Dr. White made a motion to approve the minutes and Ms. Wells seconded the motion. The motion passed unanimously.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators, Radiologist Assistants, Genetic Counselors, and Clinical Perfusionists were reviewed. Ms. Franklin made a motion to ratify the approvals and Dr. White seconded the motion. The motion passed.

New Applicant Interviews

Nonyelu A. Chuckwuogo, MD-Dr. Chuckwuogo is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Chuckwuogo's application file for the Board. Dr. Chuckwuogo's license in Louisiana and Florida had been reprimanded and he was required to pay \$3,000 in civil penalties and costs in Louisiana; and pay \$5,000 in civil penalties and costs in Florida. After an explanation from Dr. Chuckwuogo, Ms. Franklin made a motion to approve licensure and Dr. Higdon seconded the motion. The motion passed.

Nicholas A. Cook, MD-Dr. Cook is applying for a license to practice medicine in Tennessee. Dr. Cook's license was disciplined in West Virginia for substance abuse. He was monitored in West Virginia for five years which was completed in April, 2007. The Board recognized Dr. Roland Gray who has spoken with Dr. Cook, reviewed his situation and stated that Dr. Cook was in good standing and does not need continued monitoring. Dr. Lovelady made a motion to license Dr. Cook and Dr. Beckford seconded the motion. The motion passed unanimously.

Terrance S. Dunn, MD-Dr. Dunn is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed his application for the Board. Dr. Dunn appeared before the Board November 18, 2008 and was licensed with a five-year probation, and a requirement for a lifetime contract with Tennessee Medical Foundation (TMF) and 100% compliance with the aftercare contract, quarterly reports to the disciplinary coordinator and take a prescribing course within six (6) months of being issued a license on probation. An additional requirement restricted Dr. Dunn to conducting disability exams for the military. The Board further stated in order for Dr. Dunn to be able to obtain a full, unrestricted license he must show clinical competency by either attending a mini residency or obtaining evaluation from the Center for Personalized Education for Physicians (CPEP). Dr. Dunn appeared before the Board today providing documentation that he had completed a mini-residency. Ms. Franklin made a motion to license him with a full unrestricted license and Dr. Rosen seconded the motion. The motion passed.

Rebekah Haggard, MD-Dr. Haggard is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Haggard's licensure file for the Board and reported she was in a family practice from 1998-2004. Since 2004 she has been working as a regional medical director for Prison Health Services and re-certified in 2006. Dr. Beckford made a motion to approve her for licensure and Ms. Franklin seconded the motion. The motion passed.

John J. Harris, Jr., MD-Dr. Harris has been previously licensed in the state of Tennessee but surrendered his license by entering into a Consent Order with the Board on November 17, 2004. Dr. Harris is applying for a new license. After review by Dr. Arnold the Board recognized Dr. Roland Gray and asked him about the overall outcome for recovering alcoholics to practice medicine successfully without relapse. Dr. Gray stated the overall outcome for anesthesiologist was very good. Dr. Higdon made a motion to license Dr. Harris contingent on being monitored by TMF for five years, and that he successfully complete a mini-residency. Dr. Beckford seconded the motion. The motion passed.

Matthew M. Hine, MD-Dr. Hine is applying for licensure in Tennessee. Dr. Arnold reviewed his application with the Board. Dr. Hine has not practiced clinically in four years and prior to that time practiced intermittently for eight years. After discussion with the Board Dr. Hine decided to withdraw his application.

Annette S. Kim, MD-Dr. Kim is applying for licensure in Tennessee. Dr. Arnold reviewed her application for the Board. Dr. Kim was in an MD/PhD program but took 13 years to pass all three steps of the USMLE. Mary Zuter and Mike Lapisota from Vanderbilt both spoke on her behalf. Pursuant to rule 0880-2-.08(4)(d) Ms. Webster made a motion to license Dr. Kim and Dr. Beckford seconded the motion. The motion passed unanimously.

Johnathan Levi, MD-Dr. Levi is applying for licensure in Tennessee. Dr. Arnold reviewed his application for the Board stating that Dr. Levi had adverse disciplinary action for sexual misconduct in another state. After discussion, Ms. Franklin made a motion to deny licensure to Dr. Levi. The motion failed for lack of a second. Dr. Levi withdrew his application.

Reinstatement Interviews

Alexander Chernowitz, MD- At the March, 2009 meeting Dr. Chernowitz was granted a Special Training license contingent upon continuous advocacy with TMF and, after his training is completed, he must appear back before the Board. Dr. Chernowitz is appearing before the Board requesting a full license. Dr. Johnson from Meharry Medical School spoke on Dr. Chernowitz's behalf and stated Dr. Chernowitz was performing adequately doing clinical orthopedics but he would not recommend him to perform any orthopedic surgery without direct supervision. Dr. Lovelady made a motion to grant a restricted license to Dr. Chernowitz with the understanding he maintain the advocacy of TMF and that his practice is restricted, in that he is not allowed to perform any surgical or operative procedures unless he is directly under the supervision of an attending physician. Dr. White seconded the motion and the motion carried.

John C. Ring and Shelby L. Hill-Neither Dr. Ring nor Dr. Hill were present at the meeting for an interview.

Sanjivini V. Jacob, MD-Dr. Jacob applied for a license to practice medicine in Tennessee, however, she is outside the seven year rule and has asked for a waiver. After review of her application it was noted that she was licensed in Georgia (and granted a waiver there), but she did not work there continuously which is a statutory requirement for eligibility for a waiver in Tennessee. Dr. Mutter asked to be recused from the voting which placed Dr. White as temporary chairman. Dr. Ali made a motion to deny Dr. Jacob a license and Ms. Franklin seconded the motion. The motion passed.

Discussion

A request received from the Administrative Office asked the Board to make panel selections for the contested case hearings by a drawing of names on the day prior to the hearings. After discussion concerning a policy on the subject, Dr. Ali made a motion to delegate the authority for panel selections to the Executive Director. Dr. White seconded the motion and the motion passed unanimously. Dr. Beckford suggested having Dr. Mutter sign off on the selections, which the Board agreed.

There was further discussion about the scheduling of hearings. The Board is concerned about the number of contested cases not being brought before them because the hearings are being continued. Mr. Bozarth stated that the Administrative Law Judge (ALJ) makes the final decision about the continuance of a hearing and that the state normally opposes continuance requests. Dr. Beckford asked if the Board could have a preliminary idea two weeks prior to the meeting and Mr. Bozarth said he would try to comply with the request.

Ms. Otto informed board members that from now on their travel claims must be entered into the Edison system. In order for that to happen they will need to give staff delegation of authority so that travel claims and per diem requests can be entered into the system to allow reimbursement. Board members were provided statements to sign if they wished for staff to enter their requests into Edison on their behalf.

Ms. Phyllis Gregg, Director of Radiological Educational Seminars was recognized by Dr. Mutter. Ms. Gregg was requesting approval of three new ways for their program to provide limited radiography

training and continuing education to students. The submission explained courses being provided Online, through Webcasts and Online Continuing Education. Dr. Rosen made a motion to approve the new programs and Dr. Higdon seconded the motion. The motion passed unanimously. Dr. Mutter stressed the importance of keeping the scores of those taking the exam in person separate from the scores of those taking the exams on-line.

James C. Loden, MD of Loden Vision Centers requested an advisory ruling concerning whether a proposed marketing arrangement was permissible under Tennessee law and rules. After review of the details presented Mr. Bozarth stated the proposal would be in violation. Dr. Ali made a motion asking Mr. Bozarth to draft a letter stating that the Board chose not to take action on the matter. Dr. White seconded the motion. The motion carried.

Ms. Otto provided the Board with a letter to Mr. Jung Suk Lee concerning his application for licensure as an acupuncturist. The Advisory Committee for Acupuncture deferred the license until Mr. Lee could become NCCAOM certified, allowing Mr. Lee to keep his application open for over a year. The Board noted the action of the Advisory Committee.

It has been brought to the attention of the administrative office that the rules for Office Based Surgery do not require the physician that owns the practice to be board certified in the Level III procedure to be performed. Dr. Ali made a motion to add new wording to proposed legislation requiring board certification and to leave out the words "board eligible". Dr. White seconded the motion and the motion passed unanimously. Ms. Otto stated she would submit the proposed wording to Ms. Miller for consideration for the next legislative session.

Ms. Otto provided the Board with a list of legislative updates through July, 2009 for review. The Board stated they wanted information concerning H1N1.

Declaratory Order

Marzia Leacche, MD-Dr. Leacche wishes to apply for a license in Tennessee and was present and represented by C.J. Gideon. Mr. Gideon provided a power-point presentation outlining Dr. Leacche's credentials. She is asking for the Board to waive post-graduate training and to accept her fellowship to fulfill the three years of post graduate training requirement. The Board agreed to set the matter for a full hearing at its November 2009 meeting.

Reports

Budget Report

The Budget report was reviewed by the Board. Ms. Otto informed members the budget was the same as the July document.

Statistical Report from Administrative Office

The Board reviewed the report from the Administrative Office. Dr. White was provided a listing of licensees by specialty and by county as requested at the previous meeting. Board members asked that a copy of the document be e-mailed to them.

Investigative Report

The report was reviewed by Ms. Juanita Stone on behalf of Ms. Denise Moran, Director of the Office of Investigations. Ms. Stone stated that they had been using investigators from other parts of the state to fill in for vacant positions.

Disciplinary Report

The report was reviewed by Ms. Juanita Stone. Ms. Stone stated that there are 238 practitioners being monitored.

OGC Report

Mr. Bozarth introduced Ms. Maryam Kasee, attorney with the Office of General Counsel. He then stated he had draft language for rules concerning international medical school graduates ready for review. The proposed rule would permit the Board to license graduates from otherwise unacceptable medical schools so long as they 1) are board certified; 2) pass all three steps of the USMLE on the first attempt; and 3) the residency program attended must be ACGME approved. Dr. White made a motion to approve the wording and Dr. Rosen seconded the motion. The motion passed unanimously.

Mr. Bozarth further explained that there are 237 cases presently open in the Office of General Counsel which reflects 60 cases referred to the office from the Department of Revenue for failure to pay privilege tax. It was reported that they anticipate they will have approximately 60 more in the next two weeks.

The board requested Mr. Bozarth to provide them with the average length of time a case is staying in the Office of General Counsel.

CME Audit Office regarding compliance with CME requirements

Ms. Otto provided a report from January 2009 through June 2009 for MD, MD X-Ray Operators, Physician Assistants and Orthopedic Physician Assistants.

Agreed Orders

Jack C. Glisson, II, MD – Dr. Glisson was not present but was represented by counsel, Timothy G. Wehner. Andrea Huddleston represented the State. Dr. Glisson engaged in the practice of medicine without an active license by assisting a nurse practitioner at her request in the removal of a portion of a patient's ingrown toenail. Respondent was not compensated for the assistance he provided to the nurse practitioner. Dr. Glisson's license will be eligible for reinstatement at the January 2010 meeting of the

Board of Medical Examiners. If and when reinstatement is granted, Dr. Glisson's medical license shall be placed on probation for a period of five (5) years, commencing the date of entry of this Order. During the term of the probation, Dr. Glisson shall maintain advocacy with the Tennessee Medical Foundation (TMF) and shall comply with all the terms of his after-care contract with TMF. Further, Dr. Glisson shall ensure that quarterly reports from TMF are sent to the Medical Director. TMF shall immediately notify the Medical Director of any violation by respondent of his after-care contract. Dr. Glisson must pay the actual and reasonable costs of prosecuting the case. The maximum amount for the assessment of costs shall be four thousand dollars. Dr. Higdon made a motion to accept the order and Dr. Beckford seconded the motion. The motion passed unanimously.

Kristen L. Colby, PA – Ms. Colby was neither present nor represented by legal counsel. Ms. Andrea Huddleston presented the Agreed Order to the Board. Between approximately April 2, 2006 and June 3, 2006 Ms. Colby used aliases to fraudulently obtain prescriptions for lortab (hydrocodone) from the Kroger Pharmacy and obtained four hundred and eighty (480) hydrocodone tablets during this period. On or about June 16, 2006 wrote a prescription for one hundred and twenty (120) 10 mg lortab (hydrocodone) for a patient and submitted the prescription to Kroger Pharmacy. Ms. Colby admitted to the pharmacy that she intended to pick up the prescription as if she was the patient. On or about January 24, 2008 Ms. Colby plead guilty to one count of “Destruction/Tampering with Government Records” a Class A misdemeanor in the Criminal Court of Davidson County, Tennessee and received a sentence of eleven months twenty-nine days of probation of which she has completed and the conviction has been expunged from her records. Ms. Colby's license is placed on probation on the effective date of ratification of the Agreed Order and shall run concurrent with any monitoring contract through the Tennessee Professional Assistance Program but shall remain in place at least five (5) years; is prohibited from prescribing any and all scheduled substances until the Tennessee Professional Assistance Program determines she is safe and fit to resume that aspect of practice. The prohibition shall remain in place not less than one year. She must submit a petition for an “Order of Compliance” and appear before the Committee prior to the restriction being lifted. Respondent is further ordered to remain one hundred percent (100%) compliant with the Tennessee Professional Assistance Program aftercare contract and within twelve (12) months of the effective date of the probation. Ms. Colby is ordered to complete the Vanderbilt University Medical Center “Prescribing Controlled Drugs” course and submit proof of completion within twelve months of the date of the probation; ordered to pay two (2) Type A civil penalties in the amount of one thousand dollars (\$1,000) each, for a total assessment of two thousand dollars (\$2,000) to be paid in full within thirty days of the effective date of the Order; ordered to notify her supervising physician and/or employer of the disciplinary action and limitations and restrictions placed on the license; and pay all costs of the action which shall not exceed \$10,500 to be paid within thirty (30) days from the filing of the Affidavit of Costs. Dr. Ali made a motion to accept the Agreed Order and Dr. Eckles seconded the motion. The motion carried unanimously.

Consent Orders

Bryant G. Kersey, MD – Dr. Kersey was neither present nor represented by legal counsel. Andrea Huddleston represented the State. Between the fall of 2004 and December 2008 in the course of his treatment of over 40 patients he prescribed narcotics and/or other controlled substances, failed to formulate a written treatment plan; failed to make appropriate, individualized diagnoses and/or failed to document adequate support for diagnoses; prescribed narcotics and other controlled substances in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition;

prescribed narcotics and other controlled substances without obtaining, performing and/or recording a comprehensive history, physical examination and work-up; and prescribed narcotics without providing to the patient information about the risks and benefits of the drugs being prescribed. The license of Bryant G. Kersey is reprimanded; he shall cease and desist any pain management practice, until he has successfully completed an approved pain management program; pay five Type A civil penalties in the amount of one thousand dollars each, for a total of five thousand dollars; pay the actual and reasonable costs of prosecuting the case not to exceed five thousand dollars. Dr. Lovelady made a motion to accept the consent order and Dr. Rosen seconded the motion. The motion passed with Ms. Wells, Ms. Franklin, Drs. Beckford and White voting not to accept the order.

Robert W. Enzenauer, MD – Dr. Enzenauer was neither present nor represented by counsel. Ms. Andrea Huddleston represented the State. July, 2001 Dr. Enzenauer received a “Letter of Admonition” by the Colorado State Board of Medical Examiners as a result of operating on a part of the body other than that for which he had obtained informed consent and failed to document justification for the deviation. The Consent Order stipulated that Dr. Enzenauer’s license be reprimanded; provide proof of compliance with all terms indicated in the Colorado order to the Tennessee Board within 45 days of completion, pay actual and reasonable costs of prosecuting the case not to exceed \$1000. After ensuring that a letter of admonition is equivalent to a letter of reprimand, Dr. White made a motion to accept the order and Rosen seconded the motion. The motion carried unanimously.

Douglas W. Kane, MD – Dr. Kane was not present but was represented by counsel, Mr. Robert Kraemer. Benjamin C. Mezer represented the State. On or about April 30, 2009 Dr. Kane diverted a Duragesic patch for his own personal use and was practicing under the influence of controlled substances at Cookeville Regional Medical Center. The Consent Order stipulated that Dr. Kane shall within two weeks of the entry of the order submit to the Board’s staff, a letter of compliance stating that either he has completed a treatment program or is currently in a treatment program approved by the Board. Dr. Kane’s medical license is hereby immediately placed on probation for a period of not less than five (5) years and until he has completed the requirements of the order. Dr. Kane must petition for an Order of Compliance for the probation on Dr Kane’s license is to be lifted. Within sixty (60) days of the entry of the order Dr. Kane must obtain and maintain the advocacy of the Tennessee Medical Foundation (TMF) for a period of not less than five (5) years during which he shall cause TMF to issue quarterly reports to the Board’s consultant; cause TMF to notify the Board’s consultant in writing of any violation of the TMF contract; comply with all recommendations of the TMF; and maintain one hundred (100%) percent compliance with the TMF contract. Ms. Franklin made a motion to accept the Consent Order and Ms. Webster seconded the motion. The motion passed unanimously.

Daniel C. Garner, MD - Dr. Garner was neither present nor represented by legal counsel. Benjamin C. Mezer represented the State. Dr. Garner failed to have adequate training, education and experience to supervise the performance of laser treatments or to act as medical director for Dermacare of Cool Springs. He allowed individuals to practice medicine without a license or to practice beyond the scope of their license. The order stipulated that Dr. Garner’s license be placed on probation for a period of not less than two (2) years and was assessed two (2) Type A Civil Penalties in the amount of one thousand dollars (\$1,000) for a total of two thousand dollars (\$2,000). Dr. Garner must pay actual and reasonable costs of prosecuting the case not to exceed seven thousand five hundred dollars which shall be paid in full with thirty (30) days after the issuance of the Affidavit of Costs. Ms. Webster made a motion to accept the order and Dr. White seconded the motion. The motion passed unanimously.

Brad Blankenship, MD – Dr. Blankenship was not present but was represented by Mr. Robert Kramer. Mr. Shiva Bozarth represented the state. Dr. Blankenship failed to properly supervise the usage of lasers and other cosmetic procedures performed by the unlicensed staff of C.A.L.M of Brentwood, a med spa, for seven (7) months in 2008. The Order stipulated that Dr. Blankenship’s license be placed on probation for not less than two (2) years and until he has completed the requirements of this order. Dr. Blankenship is assessed seven (7) Type A Civil Penalties in the amount of one thousand dollars (\$1,000) for a total of seven thousand dollars (\$7,000); shall pay the actual and reasonable costs of prosecuting this case to the extent allowed by law including all costs assessed against the Board by the Division’s Bureau of Investigations in connection with the prosecuting of this matter which will be established by an Affidavit of Costs prepared and filed by counsel for the Department and shall not exceed \$5,000. All costs shall be paid in full within thirty (30) days after the issuance of the Affidavit of Costs and the entry of the order. Ms. Franklin made a motion to accept the order and Ms. Wells seconded the motion. The motion passed with Drs. Eckles, White and Ail recusing.

Bruce D. Boggs, MD – Dr. Boggs was neither present nor represented by counsel. Mr. Shiva Bozarth represented the State. Dr. Boggs provided supervision of a nurse practitioner at About Face Aesthetics and failed to disclose whether he was available on-site or remotely in his advertising for a period of twelve (12) months. The order stipulated Dr. Boggs’ license be reprimanded and assessed five (5) Type A Civil Penalties in the amount of one thousand dollars (\$1,000) for a total of five thousand dollars (\$5,000); pay the actual and reasonable costs of prosecuting the case including all costs assessed against the Board by the Division of Investigations in connection with the prosecution of this matter which shall not exceed three thousand dollars (\$3,000). Ms. Franklin made a motion to accept the order and Ms. Wells seconded the motion. The motion passed with Drs. Ali and White recusing.

Marilyn P. Watts, MD – Dr. Watts was neither present nor represented by counsel. Mr. Shiva Bozarth represented the State. On June 4, 2008 Dr. Watts pled guilty to violating 18 U.S.L 371 and 2 and sentenced to five (5) years probation and must pay \$3,534,881 in restitution. The order stipulated that Dr. Watt’s license be suspended for a period of six (6) months and successfully completed the two (2) day medical course entitled “Medical Ethics, Boundaries and Professionalism” offered at the Case Western Reserve University Continuing Medical Education Program located in Cleveland, Ohio or an equivalent course pre-approved by the Board’s Consultant. Her license shall be placed immediately on probation for a period of not less than five years. Before respondent petitions for an Order of Compliance for the probation to be lifted she must: pay one Type A civil penalty in the amount of one thousand dollars (\$1,000) for a total of one thousand dollars; pay costs of prosecuting the case including all costs assessed against the Board by the Division’s Bureau of Investigations in connection with the prosecution of this matter. Costs shall not exceed two thousand dollars (\$2,000) and shall be paid in full within one hundred eighty (180) days after the issuance of the order. She must appear before the board not less than six (6) months before the end of her licensure probation and detail her efforts to rehabilitate and comply with such recommendations the board makes prior to obtaining an Order lifting probation from the Board. Ms. Webster made a motion to deny approval of the order and Ms. Franklin seconded the motion. The motion passed with Dr. Beckford abstaining from the vote.

Henry T. Clay, Jr., MD – Dr. Clay was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the state. Dr. Clay allowed an RN to perform x-rays in his medical office for thirteen (13) months. The RN was not licensed to perform x-rays. The order stipulated his license is

reprimanded and is assessed thirteen (13) Type C civil penalties in the amount of one hundred dollars (\$100) for a total of one thousand three hundred dollars (\$1,300) and pay costs assessed by an Affidavit of Costs prepared and filed by counsel for the Department not to exceed one thousand dollars (\$1,000). All costs and civil penalties shall be paid in full within thirty (30) days of the entry of the order. Ms. Franklin made a motion to accept the order and Dr. Rosen seconded the motion. The motion passed with Ms. Wells voting no.

Larry M. Mitchell, MD – Dr. Mitchell was neither present nor represented by counsel. Mr. Shiva Bozarth represented the State. Dr. Mitchell prescribed controlled medications to his wife on thirty (30) occasions without maintaining medical records for her. The order stipulated Dr. Mitchell’s license be reprimanded and that he enroll in and complete within twelve (12) months of the entry of the order the three (3) day medical course entitled “Prescribing Controlled Drugs” offered at The Center for Professional Health at Vanderbilt University Medical Center; that he be assessed thirty (30) Type C civil penalties in the amount of one hundred dollars (\$100) for a total of three thousand dollars (\$3,000). Dr. Mitchell must pay costs of prosecuting this case including costs assessed against the board by the division’s Bureau of Investigations in connection with the prosecution of the matter. Costs shall not exceed seven thousand five hundred dollars (\$7,500). All costs shall be paid in full within thirty (30) days after the issuance of the Affidavit of Costs. All civil penalties shall be paid in full within thirty (30) days of the entry of the order. Ms. Franklin made a motion to accept the order and Dr. Rosen seconded the motion. The motion passed with Ms. Wells voting no.

James Herman Pogue, MD – Dr. Pogue was neither present nor represented by counsel. Mr. Shiva Bozarth represented the State. Dr. Pogue administered HGH injections to multiple patients to treat joint pain and had preprinted the patient records for each of these encounters including the entire SOAP note except that he handwrote the numbers of milligrams administered and how much tape was used in strapping. The order stipulated that Dr. Pogue’s license be reprimanded, that he complete five hours of American Medical Association Type 1 Continuing Medical Education (CME) in the area of medical recordkeeping within six months of the entry of the order; within thirty (30) days after completion of any training mail proof of compliance to the disciplinary coordinator; pay costs of prosecuting the case including costs assessed against the Board by the Division’s Bureau of Investigations not to exceed five thousand dollars (\$5,000); any costs shall be paid in full within thirty (30) days after the issuance of the Affidavit of Costs. Ms. Franklin made a motion to accept the order and Dr. Eckles seconded the motion. The motion passed with Dr. Rosen abstaining.

Roger Catlin, MD – Dr. Catlin was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. Dr. Catlin has misused prescription medications and has significant health and substance abuse problems. The order stipulated that Dr. Catlin’s license be immediately surrendered. Ms. Franklin made a motion to accept the order and Ms. Webster seconded the motion. The motion passed with Dr. Mutter recusing.

Agreed Citations

John R. McGauley, Jr., MD – Dr. McGauley failed to comply with the board rules regarding required continuing medical education. The Agreed Citation stipulated the Dr. McGauley 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. Lovelady made a motion to accept the Agreed Citation and Ms. Franklin seconded the motion. The motion passed.

Frances L. Cross, MD - Dr. Cross failed to comply with the board rules regarding required continuing medical education. The Agreed Citation stipulated the Dr. Cross pay a civil penalty in the amount of four hundred and eighty (\$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. Ms. Franklin made a motion to accept the Agreed Citation and Dr. Ali seconded the motion. The motion passed.

Thomas M. Webster, MD - Dr. Webster failed to comply with the board rules regarding required continuing medical education. The Agreed Citation stipulated the Dr. Webster pay a civil penalty in the amount of eight hundred ten dollars (\$810), provide proof of completion of twenty and one quarter (20.25) 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. Rosen made a motion to accept the Agreed Citation and Ms. Franklin seconded the motion. The motion passed.

Orders of Compliance

Peter T. Gardner, MD - Dr. Gardner was present but was not represented by legal counsel. Mr. Shiva Bozarth represented the State. May 5, 2004 Dr. Gardner's license was summarily suspended for various violations related to distribution of controlled substances and use of drugs. On May 18, 2004 he entered into an agreed order of voluntary surrender. On March 24, 2006 the Board approved his application for reinstatement of licensure on the condition that he maintain lifetime advocacy of the TMF. On March 20, 2007 the Board suspended his license for breaching his TMF contract by relapsing in his addiction to alcohol. On March 20, 2007 the Board approved an Order of Compliance that lifted the suspension and reiterated the conditions of his license. On May 5, 2008 the Board received notice from TMF that he had relapsed in chemical dependency and lost advocacy of TMF. On September 30, 2008, a disciplinary case alleging violations of the medical practice act was heard before the Board. Dr. Gardner was found to have abused controlled substances which as a result the Board ordered Dr. Gardner's license be summarily suspended for one year with conditions. Dr. Gardner has fulfilled the requirement of the September 30, 2008 order and has proven to the satisfaction of the Board that all provisions of the disciplinary order previously issued have been met. Dr. Rosen made a motion to accept the Order of Compliance and Ms. Franklin seconded the motion. The motion passed.

Ronald Toolsie, MD – Dr. Toolsie was present and was represented by Charles G. Currier, Attorney. Mr. Shiva Bozarth represented the State. On January 31, 2009 the Board made the following findings of fact: Dr. Toolsie admitted to ordering large quantities of controlled medications for a period of approximately thirteen years; dispensed or otherwise distributed the medications to individuals without entering into an acceptable doctor/patient relationship with them; maintained no patient records for these individuals and maintained no records for the disposition of any of the medications. The Board also found that Dr. Toolsie prescribed medications for at least fifty-three individuals without having created or maintained a patient record; self-medicated with hydrocodone, valium and phentermine; did not

complete a fellowship in forensic pathology nor is he certified in the subspecialty of forensic pathology. On or about June 20, 2008 performed an autopsy on a minor child. The autopsy was done properly but Dr. Toolsie demonstrated a lack of medical knowledge of the proper diagnosis of Shaken Baby Syndrome in the autopsy. The final order suspended Dr. Toolsie's license for a period of not less than six months until he completed the Prescribing Controlled Drugs course taught at Vanderbilt University; completed the Intensive Course in Medical Record Keeping at Case Western Reserve University and provided proof of completion. Dr. Toolsie's license can be placed on probation for five years after appearing before the Board and providing proof of compliance for completing the coursework. He shall not reapply for a DEA certification to prescribe controlled medications until he personally appears before the Board for relief. Dr. Toolsie shall pay all costs incurred by the Office of General Counsel, etc. not to exceed \$40,000 within one year from the issuance of the Affidavit of Costs. The Order of Compliance states Dr. Toolsie has complied with all the provisions of the Order and the Board staff has determined the Dr. Toolsie is entitled to an Order of Compliance to lift the suspension and place his license on probation. Dr. White made a motion to approve the order and Dr. Rosen seconded the motion. The motion passed with Ms. Franklin voting no and Ms. Wells and Dr. Higdon abstaining.

Change Request

John R. Wickman, MD – Dr. Wickman was present and was represented by counsel, Seemore Rosenberg. Dr. Wickman was disciplined by the Board at the May 19, 2009 meeting and one of the stipulations of his order is that he “continue to seek weekly treatment with a psychiatrist licensed by the Tennessee Board of Medical Examiners specializing in sexual addition.” Dr. Wickman was asking the Board to amend his order to change the requirement from psychiatrist to a psychologist by the name of Theodore Baldick, Ph.D. Board members asked Mr. Roland Gray, medical director for Tennessee Medical Foundation (TMF), if they were receiving timely reports concerning Dr. Wickman and would they have a problem with the suggested change. Dr. Gray stated reports had been timely and the change would be acceptable. Dr. Eckles made a motion to accept the change and Ms. Franklin seconded the motion. The motion carried with Dr. Beckford abstaining from the vote.

Adjourned at 5:00 p.m.

September 16, 2009

Panel: Beckford, Mutter, Franklin

Consent Order

Rexford Agbenohevi, MD-Dr. Agbenohevi was not present but he was represented by legal counsel, Garret Asher. Ms. Andrea Huddleston represented the State. On or about January 27, 2009 Dr. Agbenohevi engaged in consensual sexual activity with a patient during office hours in a patient exam room. The order stipulated Dr. Agbenohevi's license be suspended for sixty (60) days, that he remain at Menninger Clinic in Houston, Texas for at least thirty (30) days for evaluation and treatment and that he

comply with all requirements of the clinic and provide a discharge report to be sent to the Board's medical director. Upon expiration of the sixty (60) day suspension period and upon proof of compliance with any pending recommendations of the Menninger Clinic, Dr. Agbenohevi may request an Order of Compliance placing his license on probation for a period of five (5) years. During the probation Dr. Agbenohevi shall submit to the therapeutic services of a treating psychologist or psychiatrist and shall ensure that quarterly reports of this progress are submitted to the Board's medical director. Dr. Agbenohevi shall pay one Type A civil penalty in the amount of one thousand dollars (\$1,000) and costs of prosecuting the case including all costs assessed against the Board by the Division's Bureau of Investigations not to exceed five thousand dollars (\$5,000). Ms. Franklin made a motion to approve the order adding "Dr. Agbenohevi must appear before the Board before the probation is lifted and when an Order of Compliance is requested." Dr. Beckford seconded the motion with the amendment. The motion passed.

Agreed Orders

Harry Zain, MD – Dr. Zain was neither present nor represented by legal counsel. Ms. Andrea Huddleston represented the State. Dr. Zain was found guilty of misdemeanor assault and voluntarily participated in an assessment conducted by the Vanderbilt Comprehensive Assessment Program for Professionals (VCAP). The order stipulated that Dr. Zain's license be reprimanded and that he comply with all recommendations of the VCAP assessment and pay costs for prosecuting the case and pay one Type A civil penalty in the amount of one thousand dollars (\$1,000). Dr. Beckford made a motion to accept the Order and Ms. Franklin seconded the motion. The motion carried.

Larry J. Hargis – Dr. Hargis was neither present nor represented by legal counsel. Ms. Mona Jean-Baptiste represented the State. On November 15, 2008 Dr. Hargis entered an "Agreed Order of Indefinite Restriction" before the Commonwealth of Kentucky Board of Medical Licensure, prohibiting him from prescribing, dispensing, or otherwise professionally utilizing controlled substances. The Kentucky Board took the action based on a finding that in April and May, 2007, Dr. Hargis prescribed controlled substances to persons with whom he had intimate relationships and whom he knew had prior substance abuse issues and failed to maintain appropriate medical records justifying the prescriptions. The order stipulated Dr. Hargis' license be indefinitely restricted and he shall not prescribe, dispense or otherwise professionally utilize controlled substances. Dr. Hargis must pay all costs for prosecuting the case including all costs assessed by the Office of Investigations not to exceed one thousand dollars (\$1,000). Ms. Franklin made a motion to accept the order and Dr. Beckford seconded the motion. The motion passed unanimously.

Contested Case Hearing

Roger Charles Joy, MD - Dr. Joy was not present nor represented by legal counsel. Ms. Maryam Kassaei represented the State. (Ms. Kassaei disclosed to the Board that she had taken the Bar exam but the results were not known. The Rules of court permit her to practice under direct supervision and Mr. Al Partee was present for that purpose.) The Honorable Steve R. Darnell, Administrative Law Judge presided. After reviewing documentation of the attempts the State made to contact Dr. Joy to inform him of the proceedings, Dr. Beckford made a motion to proceed in default. Ms. Franklin seconded the motion. The motion passed and the hearing began. Ms. Kassaei gave an opening statement. On June 4,

2008 the Illinois Department of Financial and Professional Regulation issued an Order of Refusal to Renew (“Illinois Order”); According to the Illinois Order, Dr. Joy is in default of his Illinois Educational Loan. Marsha Arnold, Unit Manager for the Board of Medical Examiners was a witness for the State. The panel accepted the Findings of Fact adding a cite from the Tennessee statute in the Causes of Action. Ms. Franklin made a motion to suspend Dr. Joy’s license and Dr. Beckford seconded the motion. The motion carried. Ms. Franklin made a motion to assess \$1,000 in civil penalties and hearing costs with Dr. Beckford seconding the motion. The motion carried. The policy statement was read and adopted to indicate actions taken were to protect the health, safety and welfare of the citizens of the State of Tennessee.

Michael N. Dube, MD – Dr. Dube was present and was represented by legal counsel, Mr. Frank Scanlan. Ms. Mona Jean-Baptiste represented the State. The Honorable Steve R. Darnell, Administrative Law Judge presided. Ms. Jean-Baptiste and Mr. Scanlan made opening statements and the hearing proceeded. On May 17, 2007 Dr. Dube entered into an Agreed Order with the Board in which his license was placed on probation for a period of not less than five (5) years with conditions. On or about August 10, 2007 an Affidavit of Costs was filed in which the State listed seven thousand seven hundred seventy-six dollars fifty-four cents (\$7,776.54) in costs to be assessed to Dr. Dube for payment of which he did not pay until April 3, 2009. On or about January 26, 2009 the Tennessee Medical Foundation (TMF) notified the Board that Dr. Dube lost the advocacy of the TMF Physician Health Program due to relapse and has entered an extended inpatient treatment program. Mr. Mike Todd was a witness for the State and Dr. Dube testified on his own behalf. After closing statements and deliberations, Ms. Franklin made a motion to suspend indefinitely Dr. Dube’s license, but for at least one year after successful completion of treatment at Bradford Health Services with evidence of Tennessee Medical Foundation advocacy obtained immediately after discharge from treatment. At that time Dr. Dube may petition for an “Order of Compliance” which, if successful, shall place his license on probation for no less than ten (10) years and renew lifetime advocacy of the Tennessee Medical Foundation. Dr. Beckford seconded the motion and the motion passed unanimously. Ms. Franklin made a motion for Dr. Dube to pay all costs not to exceed \$2,000 and Dr. Beckford seconded the motion. The motion passed unanimously. The policy statement was read and adopted to indicate actions taken were to protect the health, safety and welfare of the citizens of the State of Tennessee.

Adjourned

These minutes were ratified by the Board November 2, 2009.