

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

November 6 and 7, 2007

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. George Eckles, Neal Beckford, Charles White, Sr., Dennis Higdon, Barrett Rosen, Subhi Ali, Michael Zanolli, Ms. Irene Wells and Mr. Mark Brown. Member absent was Dr. Keith Lovelady.

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

The Conflict of Interest Statement was reviewed with the Board by Mr. Scanlan.

Minutes

Minutes from the September 18 and 19, 2007 meeting were reviewed. Dr. Rosen made a motion to accept the minutes as written and Dr. Higdon 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, Physician Assistants and Clinical Perfusionists were reviewed. Dr. White made a motion to ratify the approvals and Dr. Ali seconded the motion. The motion passed.

New Applicant Interviews

Faten Anwar, MD-Dr. Anwar is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Anwar’s application file for the Board. A letter of reprimand was issued to Dr. Anwar on May 18, 2006 from Brooke Army Medical Center in Fort Sam Houston, Texas. The Board asked several questions regarding the reprimand. Dr. Beckford made a motion to grant Dr. Anwar a license and Dr. Ali seconded the motion. The motion passed.

James Bowden, MD-Dr. Bowden is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Bowden’s application file for the Board. Dr. Bowden has been in administrative medicine since September, 2001. Dr. Bowden has

had one year of post graduate training in Canada and no training in the United States. Dr. Bowden informed the Board that he was recently board certified. Dr. White made a motion to grant Dr. Bowden a license and Dr. Zanolli seconded the motion. The motion passed.

Julian Fields, MD-Dr. Fields is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Fields' application file for the Board. Dr. Fields' Alabama license was placed on probation with restrictions from practicing obstetrics. Dr. Field was represented by legal counsel, Mr. Ralph Bard. Dr. Fields informed the Board that he plans to work in Jamestown, Tennessee. The Board asked several questions regarding the probation in Alabama. Mr. Brown suggested tabling the matter for one hour to allow Dr. Fields an opportunity to contact his employer, William Rodney, MD. Dr. White seconded the motion. After a one hour delay, the Board continued to present questions to Dr. Fields, as well as Dr. Rodney. Dr. Rodney informed the Board that the program that Dr. Fields would be in would eventually allow him to sit for his family practice Boards. Dr. Rodney acknowledged that Dr. Fields required supervision and re-training and that Dr. Fields would be closely monitored.

Dr. Zanolli made a motion to grant Dr. Fields' a medical license on probation. During that period of probation, Dr. Fields will enroll in a training program that provides sufficient oversight and monitoring such that immediately upon completion he would be eligible to sit for the family practice boards. Dr. Fields enrollment in the program must be "at the elbow." Dr. Fields must immediately notify the Board if he withdraws from the program on his own initiative or otherwise and that while in the program he will cause quarterly reports to be sent to the Boards disciplinary coordinator. During Dr. Fields' enrollment in the program, he will refrain from practicing obstetrics without direct supervision by a physician licensed in the State of Tennessee. Dr. Fields must resolve his outstanding issues with the Alabama Medical Board and, at the conclusion of his one year probationary period, appear before the Board pursuant to a Petition for Order of Compliance. Dr. White seconded the motion. Ms. Wells and Mr. Brown opposed. Dr. Ali abstained. The motion passed by a majority vote.

Jules K. Mugemuzi, MD-Dr. Mugemuzi is applying for a license to practice medicine in Tennessee. Ms. Otto reviewed Dr. Mugemuzi's application file for the Board. Dr. Mugemuzi was arrested on June 20, 2007 for obstructing Government Administration, resisting arrest and disorderly conduct. At a hearing on September 26, 2007, he was convicted only on the charges of obstruction and resisting arrest. Dr. Mugemuzi explained the incident to the Board. Mr. Brown made a motion to grant a license to Dr. Mugemuzi and Dr. Zanolli seconded the motion. The motion passed.

Interview re: Seven Year Rule

Daalon B. Echols, MD-Dr. Echols is applying for a license to practice medicine in Tennessee. Dr. Arnold informed the Board that Dr. Echols is outside the seven years for taking the USMLE exam. Dr. Echols explained the circumstances surrounding the delay

in taking the three steps of the exam. The Board gave Dr. Echols the option to withdraw his application which he did.

The Board held a discussion regarding waiving the seven year limit to qualified physicians. Mr. Scanlan informed the Board he will gather information regarding seven year rule exemptions for possible review by the Board. The Board suggested an exemption be developed that would waive the seven year rule for physicians in a fellowship program.

Rule Action

Mr. Scanlan reviewed the Office Based Surgery rule amendment pertaining to Level III surgeries and suggested the Board withdraw the proposal currently at the Attorney General's office. Dr. White made a motion to withdraw the proposed Office Based Surgery rule presently at the Attorney General's office and Dr. Rosen seconded the motion. The motion passed.

Gary Zeilzer spoke on behalf of the Tennessee Medical Association (TMA) regarding Office Based Surgery and Level III surgeries.

Mr. Scanlan reviewed licensure requirements for international medical school graduates in regards to specialty certifications. Dr. Rosen stated that the specialty boards suggest not using the words "board eligible". Dr. Ali made a motion to authorize a rulemaking hearing and Dr. Rosen seconded the motion to remove reference to board eligibility. The motion passed.

Mr. Scanlan announced rulemaking hearings will be scheduled every six months instead of on an "as needed" basis. This is an effort to streamline the process and reduce time holding rulemaking hearings and the overall numbers of rules awaiting review by the Attorney General's office.

Discussion

The Board discussed an Advisory Opinion request regarding scarification. Mr. Scanlan prepared a letter for review by the Board regarding scarification and how it constitutes the unlicensed practice of medicine. Dr. Zanolli made a motion to accept the letter and Dr. Rosen seconded the motion. The Advisory Opinion will be placed on the Board's website. The motion passed.

A discussion was held regarding Public Chapter 469 relative to Polysomnography. Mr. Scanlan gave a brief review and stated that Mr. Thomas Miller will be working with the Polysomnography Board and drafting their Rules. Mr. Miller gave an overview of the drafted rules and informed the Board that the Tennessee Medical Association prepared a letter to the Board addressing a conflict in Public Chapter 469 relative to the date to commence licensure. Mr. Yarnell Beatty, General Counsel for the Tennessee Medical Association addressed the Board and explained the apparent conflict in the bill. The

Board agreed with TMA and the Department that licensure for all affected should commence in 2010. Dr. Rosen made a motion to issue a statement of clarification and place it on the Board's website regarding licensing in 2010 and Dr. Beckford seconded the motion. The motion passed.

The Board discussed recommendations of the Improvement Committee regarding contested case procedures. Mr. Scanlan updated information to the Board regarding proposed procedures to be used to select cases for referral to the Administrative Law Judges. The Board discussed the procedures and added the need to establish objectives to use in determining if the pilot project is successful. The objectives include:

1. Save time (i.e., do cases get resolved quicker);
2. Does the medical director obviate the need for Board members to review cases in determining which cases go to the administrative law judges;
3. Do standard of care cases get considered and resolved appropriately by the administrative law judges.

Dr. White informed the Board that the Improvement Committee viewed the pilot project favorably and urged the Board to support it as well. Dr. Mutter added that two Board members would be involved in the case selection process: Dr. White and Dr. Zanolli. The board agreed to authorize the pilot project.

Reports

Budget Report

The Budget report was reviewed by the Board. Ms. Otto gave a brief review of the report and suggested having Ms. Lisa Tittle discuss in detail the budget and the use of funds at the next scheduled meeting.

Statistical Report from Administrative Office

Ms. Marsha Arnold reviewed the statistical report from the administrative office. Ms. Arnold informed the Board there was a new profession, Radiological Assistant and that new licenses will be presented to the Board for ratification at the next meeting.

Investigation Report

The report was reviewed by the Board. Ms. Moran, Director of the Bureau of Investigations gave a brief overview of the plans to pull together a list of specialty consultants. Ms. Moran introduced the new investigator, Kathleen Grubb. Ms. Moran asked for guidance for when Dr. Arnold is unable to review a disciplinary file. Dr. Mutter suggested using former board members to review files when Dr. Arnold has to recuse himself. Dr. White and Dr. Rosen suggested using current board members to review files and then former members if necessary.

Disciplinary Report

The Disciplinary report was reviewed by the Board. Ms. Juanita Stone gave a brief overview of the report.

OGC Report

Mr. Scanlan gave a review of the report and stated there were one hundred twenty (120) cases currently open in the Office of General Counsel.

“Noteworthy” section of the internet

The Board asked that the Advisory Opinion regarding scarification be placed on the internet along with clarification regarding licensure pursuant to Public Chapter 469 relative to Polysomnography.

Disciplinary Action

Order of Compliance

Donald Blanton, MD-Dr. Blanton was present but not represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Roland Gray, medical director of the Tennessee Medical Foundation spoke on behalf of Dr. Blanton. Mr. Scanlan informed the Board that Dr. Blanton had met all requirements as set by the Board. Dr. Blanton stated he would continue going to TMF. Dr. Eckles made a motion to accept the Order of Compliance and Dr. Beckford seconded the motion. The motion passed.

Norman Clinkscales, MD-Dr. Clinkscales was neither present nor represented by legal counsel. Mr. Matt Scanlan represented the State. Mr. Scanlan informed the Board that Dr. Clinkscales had complied with the South Carolina order and met all the requirements as set by the Tennessee Board. Dr. Roland Gray, medical director of the Tennessee Medical Foundation spoke on behalf of Dr. Clinkscales. Dr. White made a motion to accept the Order of Compliance and Dr. Ali seconded the motion. The motion passed.

Oscar Dellinger, MD-Dr. Dellinger was neither present nor represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Dellinger had a chemical dependency and was disciplined by the Georgia board. Mr. Scanlan informed the Board that Dr. Dellinger had met all requirements as set by the Board and that the Georgia board had lifted the probation placed on Dr. Dellinger’s Georgia license. Dr. Ali made a motion to accept the Order of Compliance and Dr. White seconded the motion. The motion passed.

John Horner, MD-Dr. Horner was present but not represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Horner was disciplined by the Mississippi board for keeping an unclean office and writing scheduled drugs for family members. Mr. Scanlan stated that Dr. Horner had met all requirements as set by the Mississippi board as well as the Tennessee board. The Board asked Dr. Horner several questions regarding his

treatment program with the Tennessee Medical Foundation. Dr. Rosen made a motion to accept the Order of Compliance and Dr. Ali seconded the motion. The motion passed.

Lonnie Litchfield, MD-Dr. Litchfield was neither present nor represented by legal counsel. Mr. Matt Scanlan represented the State. Dr. Litchfield's license was suspended for inappropriately prescribing controlled substances. Mr. Scanlan informed the Board that Dr. Litchfield had met all the requirements set by the Board's May 18, 2006 Order and that Oklahoma had terminated the probation on Dr. Litchfield's Oklahoma license. Dr. Beckford made a motion to accept the Order of Compliance and Dr. Zanolli seconded the motion. The motion passed.

Consent Orders

Stephen Bateman, PA- Mr. Bateman was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. Mr. Bateman self-prescribed Temazepam and Darvocet for himself on multiple occasions, prescribed controlled medications for his wife and failed to maintain a patient record. The Consent Order stipulated that Mr. Bateman's physician assistant license be placed on probation for three (3) years and for as long as he has a TNPAP contract. TNPAP shall issue quarterly reports documenting Mr. Bateman's continued advocacy to the Committee. All costs are to be assessed to Mr. Bateman. Dr. White made a motion to accept the proposed Consent Order and Dr. Ali seconded the motion. The motion passed.

Agreed Orders

Randall Dixon, PA- Mr. Dixon was not present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. Mr. Dixon is licensed as a physician assistant. The Agreed Order stipulated that Mr. Dixon claimed that Dr. James Morgan was his supervising physician from August 2005 until August 21, 2006. From August 26, 2005 until August 14, 2006, Mr. Dixon ordered home health services for a patient and signed Dr. Morgan's name. Dr. Morgan ceased to be Mr. Dixon's supervising physician not later than December, 2005. Mr. Dixon prescribed phentermine over the telephone for a patient on August 15, 2006 and November 6, 2006. The patient had not previously been examined or seen by Mr. Dixon. The Agreed Order stated that Mr. Dixon's physician assistant license be placed on suspension for a period not less than six months and that he shall attend twenty hours of category 1 continuing medical education or pass a college level medical ethics course pre-approved by the committee's consultant. Mr. Dixon shall pay two Type A civil penalties in the amount of One Thousand Dollars (\$1,000.00) each, for a total of Two Thousand Dollars (\$2,000.00) representing two civil penalties for the two prescriptions that were written. Mr. Dixon must appear back before the Board for an interview prior to granting an Order of Compliance. Upon obtaining an Order of Compliance, Mr. Dixon's license shall be placed on probation for five years and he must meet conditions as set by the Order. Dr. Rosen made a motion to accept the proposed Agreed Order and Dr. White seconded the motion. The motion passed.

Anthony Loope, PA- Mr. Loope was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. Mr. Loope is licensed as a physician assistant. From at least March 2004 until at least January 2005, Mr. Loope practiced without a supervising physician. He wrote prescriptions for scheduled drugs and charts were not signed off by a supervising physician. The proposed Agreed Order stipulates that Mr. Loope's license be placed on probation for a period of four (4) years. Mr. Loope must enroll in and complete the medical course entitled *Prescribing Controlled Drugs* and a *Course in Medical Record Keeping* offered at the Center for Professional Health at Vanderbilt University Medical Center located in Nashville, Tennessee or an equivalent course approved by the Board or its consultant. The course shall be completed within twelve (12) months of the Order. Mr. Loope shall be assessed nine (9) Type A civil penalties in the amount of Five Hundred Dollars (\$500.00) each, for a total amount of Four Thousand Five Hundred Dollars (\$4, 500.00). Mr. Loope is assessed twenty-three (23) Type B civil penalties in the amount of Fifty Dollars (\$50.00) each, for a total amount of One Thousand One Hundred Fifty Dollars (\$1, 150.00). Civil penalties must be paid within twelve (12) months. Dr. White made a motion to accept the proposed Agreed Order and Dr. Beckford seconded the motion. The motion passed.

Carey Browder, MD-Dr. Browder was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. From April 2006 until the present, Dr. Browder had been abusing controlled substances. Dr. Browder self prescribed Clonazepam and Oxycodone. The Agreed Order stated that Dr. Browder's license shall be immediately suspended. Dr. Browder shall immediately obtain advocacy with the Tennessee Medical Foundation and shall retain advocacy so long as licensed by the Tennessee Board of Medical Examiners. Dr. Browder shall have TMF submit quarterly reports that shall include any and all violations of the after care contract. Dr. Browder must complete the Vanderbilt Center for Professional Health course *Prescribing Controlled Drugs*; or a similar course pre-approved by the Board's consultant. Dr. Browder must pay two (2) Type A civil penalties in the amount of \$1,000.00 for a total of \$2,000.00). Upon completing all requirements, Dr. Browder may request an Order of Compliance. Upon obtaining an Order of Compliance, Dr. Browder's license shall be placed on probation for five years during which time he shall maintain good and lawful conduct. Mr. Brown made a motion to accept the proposed Agreed Order and Dr. Ali seconded the motion. The motion passed.

Adjourned at 3:50 p.m.

November 7, 2007

Panel: Eckles, Mutter, Beckford

Agreed Order

Samir Al-Kabbani, MD-Dr. Al-Kabbani was present and represented by legal counsel, Mr. Claude O. Ramer, II of the Knoxville Bar. Ms. Schean Belton represented the State. Dr. Al-Kabbani, for a time period including the year 1994, to at least the year of 2004, treated patients and failed and/or neglected to document clinical indications that would substantiate the initial and/or continued use of narcotic and/or other controlled substances; and the coordination of care with other treating physicians. The Agreed Order required that Dr. Al-Kabbani's license be placed on probation for a period of no less than twenty-four months from the date of the Order. The probation shall be lifted upon the conditions that in addition to the continuing medical education courses required each year to maintain license to practice medicine in Tennessee, Dr. Al-Kabbani must personally attend and complete the "*Intensive Course in Medical Record Keeping with Individual Preceptorships*" at the School of Medicine, Case Western Reserve University, Cleveland, Ohio. Dr. Al-Kabbani shall follow and report any recommended treatment directly to the Board's medical director no less than quarterly throughout the disciplinary period. Dr. Al-Kabbani's documentation of patient treatment shall be subject to oversight review for a period of twenty-four months from the effective date of the Order. Such oversight review shall be administered by a physician licensed to practice medicine in Tennessee or other qualified entity which shall be filed within sixty (60) days of the Order. Dr. Al-Kabbani shall pay thirteen (13) Type B civil penalties in the amount of Two Hundred Fifty Dollars (\$250.00) each, for each patient listed in the Order, for the total amount of Three Thousand Two Hundred Fifty dollars (\$3, 250.00). Dr. Beckford made a motion to accept the proposed Agreed Order and Ms. Wells seconded the motion. The motion passed.

Contested Case Hearing

George Aycock, MD-Dr. Aycock was not present nor represented by legal counsel. Ms. Erin Begley represented the State. The State asked the panel to find Dr. Aycock in default and proceed with the hearing. Dr. Eckles made a motion to accept the default and Dr. Beckford seconded the motion. The motion passed. Witnesses were sworn in and called upon to testify. Ms. Begley began her opening statement. On or about January 19, 2006, Dr. Aycock was sentenced to six months in jail and ordered to pay six hundred fifty dollars (\$650.00) in fines after being found guilty of speeding, driving without a valid license in his possession, disorderly conduct and resisting arrest. In May of 2006, Dr. Aycock closed his Greenville, Tennessee office and relocated to South Carolina. Dr. Aycock took the patient records with him and placed the records in storage and did not notify his patients as to how they may obtain their medical records. In November 21, 2006, Dr. Aycock was taken into custody in South Carolina at the request of the Greene County authorities. He was extradited to Greene County, Tennessee. On or about January 10, 2007, Dr. Aycock pled guilty to the charge of resisting arrest and pled guilty to two counts of domestic assault. Dr. Aycock was sentenced to seventeen (17) months and nineteen (19) days in jail. The Criminal Court Judge ordered that Dr. Aycock must serve the seventeen months, and nineteen day sentence consecutive to the six (6) month jail sentence that was imposed on January 19, 2006. After closing statements, the panel

deliberated. Dr. Eckles made a motion to accept the Findings of Fact and Dr. Beckford seconded the motion. The motion passed. Dr. Eckles made a motion to accept the Conclusions of Law and Dr. Beckford seconded the motion. The motion passed. Dr. Beckford made a motion to revoke Dr. Aycock's Tennessee medical license and Dr. Eckles seconded the motion. At this point, there was considerable discussion about whether the Board could revoke a license that was in failed to renew status. After input from the Board's advisory attorney, the motion to revoke was accepted and passed. Dr. Beckford made a motion to assess civil penalties and Dr. Eckles seconded the motion. The motion passed. The policy statement was read. The reason actions were taken to revoke the medical license of Dr. Aycock was to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Eckles made a motion to accept the policy as stated and Dr. Beckford seconded the motion. The motion passed.

Chetan Shah, MD-Dr. Shah was present and represented by legal counsel, Mr. Scott McDearman. Ms. Schean Belton represented the State. The Honorable Joyce Safely, Administrative Law Judge presided. The Notice of Charges was presented to the panel for review. The matter was not completed and will be continued at the next scheduled meeting.

Panel: Zanolli, Mutter, Rosen

Contested Case Hearing

Gursheel Dhillon, MD-Dr. Dhillon was present and represented by Mr. Phillip Barber. Ms. Andrea Huddleston represented the State. The Honorable Margaret Robertson, Administrative Law Judge presided. Daniel Garner, the expert witness for the State was sworn in. Opening statements were made and Ms. Huddleston presented her proof which involved Dr. Dhillon being questioned by both Ms. Huddleston and members of the panel. Following their questions to Dr. Dhillon, Ms. Huddleston rested. Mr. Barber made a motion to dismiss the charges because the State failed to prove its case. The panel deliberated. Dr. Mutter made a motion to deny the request and Dr. Rosen seconded the motion. The motion passed. The hearing will continue at the next scheduled meeting with Dr. Dhillon putting on his proof.

Panel: Zanolli, Rosen, Wells

Contested Case Hearing

Lorenzo Nichols, MD-Dr. Nichols was present and represented by legal counsel, Mr. Scott McDearman. Mr. Shiva Bozarth represented the State. Opening statements were

given. Dr. Nichols' Tennessee medical license was summarily suspended on October 5, 2004. Between June 2004 and September 30, 2004, Dr. Nichols practiced medicine while impaired and on September 30, 2004, he was arrested for possession of illegal drugs. On August 6, 2007, Dr. Nichols pled guilty to conspiracy to obtain drugs by fraud and obtaining drugs by fraud. After closing arguments, the panel deliberated. The Order stipulated that Dr. Nichols must complete the reinstatement process of his license, complete one year fellowship training and a prescribing course. After successful completion of the fellowship, he must submit proof and appear back before the Board. After that time, Dr. Nichols' license will be placed on probation for five years and maintain lifetime advocacy with the Tennessee Medical Foundation. Any violation of the conditions will result in the revocation of Dr. Nichols' license. Dr. Nichols was assessed all costs of the proceedings. Dr. Zanolli made a motion to accept conditions of the Order and Dr. Rosen seconded the motion. The motion passed.

Panel: White, Ali, Higdon

Contested Case Hearing

Richard Feldman, MD-Dr. Feldman was present and represented by legal counsels, Mr. Frank Scanlon and Mr. Larry Roberts of the Nashville Bar. Mr. Thomas Miller represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Dr. Feldman was called on as a witness and both attorneys presented questions to him. The matter is a continuation from September 19, 2007 and will continue at the next scheduled meeting.

Ratified by the Board of Medical Examiners January 22, 2008.