

# MINUTES

## TENNESSEE BOARD OF MEDICAL EXAMINERS

January 22, 2008

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The Board of Medical Examiners' Improvement Committee met on January 22, 2008 at 5:00 p.m. to discuss the Department of Health's Bureau of Investigations with its director, Ms. Denise Moran.

Board Members Present: Charles White, Sr., M.D., Mitchell Mutter, M.D., Subhi Ali, M.D., and Mark Brown, J.D.

Staff Present: Rosemarie Otto, Executive Director, Larry Arnold, M.D., Medical Director, and Matthew Scanlan, J.D., Deputy General Counsel and Advisory Attorney.

Dr. Mutter suggested that the Board establish benchmarks and that they examine all complaints that fall outside those benchmarks get reported to the Board.

A discussion followed about reasons complaints may be outside of benchmarks. Ms. Moran explained Tennessee Code Annotated Section 63-1-117 which has greatly impacted the manner in which investigations take place. There have been several Chancery Court challenges to the Department's authority to compel production of medical records. Ms. Moran explained to the Committee the difficulty in obtaining business records. She informed the Committee that the Board of Medical Examiners is limited in what they can do because they lack statutory authority. For example, when an investigator is instructed to obtain a copy of relevant protocols, physicians generally provide them, but in some cases they do not because they could be considered business records.

Ms. Moran suggested that the Board create by rule an "affirmative duty" to cooperate with investigations. Failure to do so may be investigated and pursued as unprofessional conduct.

There was a discussion regarding hospital peer review documentation. Hospitals can give conclusions of peer review, but they do not have to give the underlying documentation or data. Investigators usually (about 50%) of the time can go in and takes notes of peer review. Then reviewers are required to "reverse engineer" to determine what records to obtain.

Other suggestions included tightening up reporting statutes. For example, when do hospitals have to report when privileges are restricted or revoked? When the action occurs or when the appellate process is exhausted?

The Committee then went on to discuss the developing criteria/procedures for selecting cases to be forwarded to the administrative law judges for adjudication. There was a discussion regarding the difficulty in getting respondents to agree to the assignment of their case. The Committee also discussed the problem with delays on day two of the Board meeting and asked that Matt Scanlan discuss the matter with Judge Stovall.

The meeting adjourned at 6:00 p.m.

**These minutes were ratified by the Board on March 18, 2008.**