

**MINUTES**

**TENNESSEE BOARD OF MEDICAL EXAMINERS**

**March 20 and 21, 2007**

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The meeting was called to order at 9:00 a.m. at the Health Related Boards' Iris Room, 227 French Landing, Ground Floor, Heritage Place Metrocenter, Nashville, Tennessee 37243 by President Dr. David Cunningham. Other members present were: Drs. Michael Zanolli, George Eckles, Keith Lovelady, Allen Edmonson, Charles White, Mitchell Mutter, Subhi Ali and Ms. Irene Wells. Absent members were: Mr. Mark Brown, Dr. Neal Beckford and Ms. Mary Johnson. Staff present included Rosemarie Otto, Executive Director, Sandra Powell, Board Administrator, Marsha Arnold, Unit Manager and Mr. Robert Kraemer, Advisory Attorney.

**Minutes**

Minutes from the January 23 and 24, 2007 meeting and February 27, 2007 summary suspension were reviewed. Dr. White made a motion to accept the minutes and Dr. Lovelady seconded the motion. The motion carried.

**Ratification of Licenses**

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators, Athletic Trainers and Physician Assistants were reviewed. Dr. Mutter made a motion to ratify the approval of licenses and Dr. Ali seconded the motion. The motion carried.

Dr. Mutter made a motion to ratify the actions taken by the Acupuncture Committee regarding development and ratification of the committee's continuing education policy. Dr. Ali followed with a second. The motion carried.

**New Applicant Interviews**

**Edson George Brock, II, MD-**Dr. Brock is applying for a license to practice medicine in Tennessee. Ms. Otto reviewed Dr. Brock's application file for the Board. Dr. Brock's Florida license has been suspended since December, 1996 for failing to obtain continuing medical education credits and appearing before the Florida Board to have the suspension lifted. Dr. Mutter made a motion to grant Dr. Brock a license contingent upon clearing his license in Florida and mirroring Florida's actions. Dr. Lovelady seconded the motion. Dr. Edmonson amended the motion to add six months time limit to clear his license and

Dr. Mutter seconded the amendment. The motion carried.

**Charles Samenow, MD**-Dr. Samenow is applying for a license to practice medicine in Tennessee. Ms. Otto reviewed Dr. Samenow's application file for the Board. Dr. Samenow was suspended during his residency in Rhode Island for using hospital library equipment, while off-duty, to access sexually explicit material involving minors. Dr. Roland Gray with the Tennessee Medical Foundation spoke on Dr. Samenow's behalf. Dr. Eckles made a motion to grant Dr. Samenow a license and Dr. White seconded the motion. Dr. Edmonson and Ms. Wells opposed. The motion carried. The Board recommended continued advocacy with the Tennessee Medical Foundation for another five (5) years.

**Praveen Korivi, MD**-Ms. Otto gave a brief update regarding Dr. Korivi and asked the Board to rescind their previous action denying Dr. Korivi a license and permitting him instead to withdraw his application. Dr. Edmonson made a motion to rescind the previous action and allow withdrawal of his application and Dr. Ali seconded the motion. The motion passed.

### **Reinstatement Interview**

**James E. Gardner, MD**-Dr. Gardner is applying for reinstatement of his medical license. Ms. Otto reviewed Dr. Gardner's reinstatement application for the Board. Dr. Gardner's license was suspended in North Carolina for personal misuse of drugs and inappropriate prescribing. Dr. Gardner has a contract with the Tennessee Medical Foundation and Dr. Roland Gray spoke on his behalf. Dr. Ali made a motion to grant reinstatement contingent upon complying with North Carolina's Order, entering and complying with lifetime advocacy with the Tennessee Medical Foundation, and updating his practitioner profile since the Board cannot issue a license if a profile is incomplete or inaccurate. Dr. Lovelady seconded the motion. The motion passed.

### **Ratification of Denial of Licensure**

**Marshelya Wilson, MD**-Dr. Wilson is applying for a license to practice medicine in Tennessee. Ms. Otto informed the Board that Dr. Wilson had indeed passed all three steps of the USMLE but because she was required to retake a step, the passing score needed to be one point higher than the score the USMLE designated as sufficient to constitute a passing score.

**Sumathira T. Sathanandan**-Dr. Sathanandan is applying for a license to practice medicine in Tennessee. Dr. Sathanandan had also passed all three steps of the USMLE but because she was required to retake a step, the passing score needed to be one point higher than the score the USMLE designated as sufficient to constitute a passing score.

Dr. Mutter addressed the one point rule and Mr. Kraemer explained the dates that the rule became effective. After further discussion, Dr. Mutter made a motion that the one point rule is applicable only to those applicants taking the USMLE after the effective date of

the Rule, October 10, 2006. Dr. White seconded the motion. The motion passed.

The Board then ratified Dr. Wilson's license on the basis of the Board's decision. The motion was made by Dr. Ali, with Dr. Zanolli seconding the motion. The motion passed.

Dr. Ali made a motion to grant Dr. Sathanandan a license on the basis of the board's decision and Dr. Edmonson seconded the motion the motion passed.

### **Rule Action**

Mr. Jerry Kosten, Rules Coordinator reviewed the rulemaking hearing held March 19, 2007 regarding the use of titles and Level III surgeries. Dr. Zanolli made a motion to defer action until the next scheduled meeting and Ms. Wells seconded the motion. The motion carried.

Mr. Kosten reviewed the new rule regarding administrative license category containing licensure restrictions for lack of documented clinical competency. Mr. Kosten stated that the purpose of the rule is to give basis for those persons who are not clinically capable or has been in clinical practice for a long period of time. Mr. Kraemer explained the Tennessee Medical Association legislation a few years ago that allowed licensure of those who have not practiced clinical medicine in the previous twelve months. Dr. Ali suggested changing the time frame from six months to twelve months. Mr. Kosten discussed the economic impact of the rule.

Mr. Kosten explained to the Board the administrative office's request to amend their rules and delete a physician's ability to inactivate their license. Mr. Kosten explained that the fee associated with inactivating a license is currently \$50.00. So physicians are instead encouraged to retire their license (for no charge) resulting in the inactivation of the license. Dr. White made a motion to send to rulemaking hearing and Dr. Edmonson seconded the motion. The motion passed.

### **Discussion**

Dr. Allen Craig, MD (State Epidemiologist) was to address the Board regarding the requirement that e-mail addresses be furnished and made available to the Department of Health. Ms. Otto addressed the Board in Dr. Craig's absence and suggested that the Board make a decision regarding the request. Dr. White made a motion to make the e-mail an option when renewing a license and urging physicians to provide the information and Dr. Edmonson seconded the motion. The motion passed.

Mr. Joel Herring addressed the Board regarding the Limited Scope X-Ray Course Provider Pass Rate Report. Ms. Otto reported that Mid-State Institute's scores were below the pass/fail rate and suggested giving them six months to increase the scores. Dr. Edmonson made a motion to give Mid-State Institute six months and Dr. White seconded the motion. The motion passed.

The Board discussed the appointment of a standing legislative task force to review legislation. Ms. Robbie Bell gave an overview of the new procedures as told to her and informed the Board that a board member would have to be present to speak on subjects concerning board matters. Ms. Otto suggested the Board designate one member to review legislation and determine if the subject matter required the Board to meet electronically to fashion a formal position to offer to the General Assembly. Dr. Ali made a motion to nominate Dr. White and Dr. Zanolli seconded the motion. The motion passed.

## **Reports**

### **Budget Report**

The budget report was reviewed by the Board. Ms. Otto informed the Board they continue to have a surplus but the cost of the move and Mars have not been assessed at this time. Ms. Bell informed the Board that she believed the cost of the move assigned to the Board would probably not exceed \$100,000.

### **Director/Manager Report**

The report was reviewed by the Board. Ms. Arnold gave a brief overview of the number of the activities of the Administrative Office including the number of applications and renewals issued since the last reporting period.

### **Investigation Report**

The Investigative report was reviewed by the Board. Mr. Michael Sobowale was available to answer questions from the Board.

### **Disciplinary Report**

The Board reviewed the Disciplinary report. Mr. Michael Sobowale was available to answer questions from the Board.

### **OGC Report**

Mr. Robert Kraemer reviewed his report for the Board. Mr. Kraemer reviewed the following rules:

1. MPLLC, X-Ray and Reference Letters
2. Seven Year Exam Rule and Prescribing Continuing Education
3. Office Based Surgery and Radiology Certification Upgrade.
4. Title and Office Based Surgery

### **“Note worthy” section of the internet**

The Board did not designate anything for the “noteworthy” section of the internet.

### **Disciplinary Action**

#### **Agreed Orders**

**William Bowers, MD**-Dr. Bowers was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. The Agreed Order is incorporated by reference as if fully set forth herein. Dr. Mutter made a motion to accept the proposed Agreed Order and Dr. Zanolli seconded the motions. The motion passed.

#### **Consent Orders**

**William Gerald**s-Mr. Gerald was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. The Consent Order is incorporated by reference as if fully set forth herein. Dr. White made a motion to accept the proposed Consent Order and Dr. Edmonson seconded the motion. The motion passed.

**Patrick Craft, MD**-Dr. Craft was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. The Consent Order is incorporated by reference as fully set forth herein. Dr. Ali made a motion to accept the proposed Consent Order and Dr. Edmonson seconded the motion. The motion passed.

**Samuel Ashby, MD**-Dr. Ashby was neither present nor represented by legal counsel. Mr. Thomas Miller represented the State. The Consent Order is incorporated by reference as if fully set herein. Dr. White made a motion to accept the proposed Consent Order and Dr. Ali seconded the motion. Ms. Wells opposed. The motion passed.

**Peter Thomas Gardner, MD**-Dr. Gardner was present but not represented by legal counsel. Mr. Kraemer represented the State. The Consent Order is incorporated by reference as if fully set forth herein. Dr. Mutter made a motion to accept the proposed Consent Order and Dr. White seconded the motion. The motion passed.

The Order of Compliance was handed to the Board for review. Mr. Kraemer stated to the Board that Dr. Gardner has met and complied with all requirements as set forth by the Board. Dr. White made a motion to accept the Order of Compliance and Dr. Mutter seconded the motion. The motion passed.

#### **Order of Compliance**

**John McMurry, MD**-Dr. McMurry was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. The Order of Compliance was handed to the Board for review. Dr. McMurry entered into an Agreed Order on May 8, 2002. Dr. McMurry was charged with violating TCA 63-6-214(b) (5 and TCA 63-6-214 (b) (20). On or about January 31, 2002, the West Virginia Medical Board entered a Consent Order

granting Dr. McMurry a license to practice but placing said license on probation for two years based upon his admission that he was receiving treatment for amphetamine dependence. Under the terms of the probation, he is required to insure that the Medical Director of the Tennessee Medical Foundation (TMF) Impaired Physician's Program submits regular reports every sixty days to the West Virginia Medical Board confirming Dr. McMurry's compliance with the provisions of the TMF's five-year continuing care contract that he entered into with TMF. Mr. Kraemer informed the Board that Dr. McMurry has complied with all the requirements that were set by the Board. Dr. Edmonson made a motion to accept the Order of Compliance and Dr. Mutter seconded the motion. The motion passed.

**Adjourned at 2:30 p.m.**

**March 21, 2007**

**9:00 a.m.**

### **Contested Case Hearing**

Panel: Ali, Lovelady, White

**John Crawford, MD**-Dr. Crawford was present and represented by legal counsel, Mr. Dan Warlick. Ms. Alexa Whittemore represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Witnesses were sworn in and Mr. Warlick called for the rule in which the witnesses left the room. The Notice of Charges was handed to the panel for review. Ms. Whittemore and Mr. Warlick gave their opening statement. After the State presented their proof, Mr. Warlick asked that the case be dismissed on the basis that the State failed to prove that Dr. Crawford has a license to practice in Tennessee. Dr. Ali made a motion to deny the request and Dr. White seconded the motion. The motion passed. Dr. Crawford is charged with violating TCA 63-6-214 (b) (1), TCA 63-6-214 (b) (4) and TCA 63-6-214 (b) (12). Between December 23, 1992 and March 7, 1993, Dr. Crawford had sexual encounters with a patient. Dr. Crawford began primary treatment of a patient in March, 1999 and continued through at least March, 2003. During the course of his treatment of the patient, Dr. Crawford had four or five encounters where he kissed and hugged her. On March 11, 2003, Dr. Crawford had a sexual encounter with the patient. On November 7, 2002, Dr. Crawford prescribed sixty (60) capsules of sonata 10 milligrams to patient and made no notation in medical chart that this medication was prescribed and no notation as to the medial necessity or appropriateness for prescribing Sonata. After closing arguments the panel deliberated. Dr. Lovelady made a motion to accept the Finding of Facts #10, 12, 13 and 14. Dr. Ali seconded the motion. The motion passed. Dr. Lovelady made a motion to accept the Causes of Action 23 and 26 as charged. Dr. Ali seconded the motion. The motion passed. After requesting and receiving advice from Robert Kraemer, the Board's Advisory Attorney regarding whether Board rules allowed attaching conditions to a reprimand, the Board deliberated on the matter of an appropriate penalty. Dr. Lovelady made a motion

to place Dr. Crawford's medical license on probation for a period of three (3) years, submit quarterly reports to the Medical Director and pay civil penalties of one thousand dollars (\$1,000.00). Dr. Ali seconded the motion. The motion passed. Dr. Ali made a motion to assess the cost of the proceedings and Dr. Lovelady seconded the motion. The motion passed. The policy statement was read and actions taken because of the sexual misconduct in which the Board will not tolerate. For this reason the actions were taken to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Lovelady made a motion to accept the policy statement and Dr. Ali seconded the motion. The motion passed.

**Adjourned at 2:30 p.m.**

### **Contested Case Hearing**

Panel: Cunningham, Mutter, Wells

**Scott McNeil, MD**-Dr. McNeil was present by telephone and not represented by legal counsel. Mr. Shiva Bozarth represented the State. The Honorable Lynn England, Administrative Law Judge presided. The Notice of Charges was handed to the panel for review. Dr. McNeil is charged with violating TCA 63-6-214(b) (1) and TCA 63-6-214(b) (2). On or about May 1, 2003, Dr. McNeil's Texas license was temporarily suspended based upon his alcohol abuse and dependence. On or about September 3, 2003 Dr. McNeil's Tennessee license was suspended based on the May 1, 2002 suspension. The Board's Order required Dr. McNeil to pay four thousand dollars (\$4,000.00) in civil penalties and court costs. On or about August 31, 2004, Dr. McNeil was notified via certified mail that he was not in compliance with the September 3, 2003 Board Order. Mr. Bozarth gave his opening statement followed by Mr. McNeil. Ms. Melissa Haggard with Investigations was called upon as a witness and represented the disciplinary coordinator. Ms. Haggard informed the Board that Dr. McNeil had not paid the penalties placed on him according to the Board's Order. Dr. McNeil explained that he was unaware of the procedures or fines that were due. Mr. Bozarth gave his closing statement and informed the Board that Dr. McNeil failed to comply with a Board Order for almost four years and asked that his license be revoked. The proposed Order was handed to the panel for review. The proposed Order states that the medical license is hereby revoked with leave to apply after one (1) year from effective date of the Order. Dr. McNeil must pay three (3) Type A civil penalties in the amount of one thousand dollars (\$1,000.00) each for a total amount of three thousand dollars (\$3,000.00) in civil penalties, representing each year for which he failed to comply with the terms of the September 3, 2003 Board Order. Dr. McNeil must comply with the terms of the September 3, 2003 Order by paying the assessed four (4) Type A civil penalties in the amount of one thousand (\$1,000.00) dollars each, for a total of four thousand and the costs associated with the prosecutions of that action in the amount of two hundred and three dollars (\$203.00). The panel began deliberations. Dr. Mutter stated that the certified mail signed for on June, 2006 should be added as a finding of fact and made a

motion to accept the Findings of Fact including the additions. Ms. Wells seconded the motion. The motion passed. Dr. Mutter made a motion to accept the Conclusions of Law and Ms. Wells seconded the motion. The motion passed. Dr. Mutter made a motion to revoke Dr. McNeil's Tennessee license and Ms. Wells seconded the motion. The motion passed. The policy statement was read and actions taken due to previous actions taken by the Board of September 3, 2003. For this reason the action was taken to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Mutter made a motion to accept the policy statement and Ms. Wells seconded the motion. The motion passed.

**Adjourned at 10:00 a.m.**

### **Contested Case Hearing**

Panel: Zanolli, Edmonson, Beckford

**Francis Roy, MD**-Dr. Roy was present but not represented by legal counsel. Ms. Schean Belton represented the State. The Honorable Robert Feldman, Administrative Law Judge presided. The case is to be continued at the next scheduled meeting because Dr. Roy was not represented by legal counsel.

**Adjourned at 10:00 a.m.**

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**Dr. David Cunningham, MD**

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**Date**