

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

May 15 and 16, 2007

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. Dr. Cunningham welcomed Dr. Dennis Higdon to the board. Dr. Cunningham stated that he has enjoyed working for the past fourteen years with the medical board and will miss staff and board members. Other members present were Drs. Subhi Ali, Keith Lovelady, Michael Zanolli, Mitchell Mutter, Charles White, Dennis Higdon, Neal Beckford, George Eckles, Mr. Mark Brown, Ms. Irene Wells and Ms. Mary Johnson.

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

Minutes

Minutes from the March 20 and 21, 2007 meeting were reviewed. Dr. Zanolli made a correction to the minutes. Dr. White made a motion to accept the minutes as amended and Dr. Eckles 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 the Committee on Clinical Perfusionists were reviewed. Dr. White made a motion to ratify the approvals and Dr. Mutter seconded the motion. The motion passed.

New Applicant Interviews

Debra M. Baylor, MD-Dr. Baylor is applying for a license to practice in Tennessee. Dr. Arnold reviewed Dr. Baylor's application file for the Board. It was reported by the American Board of Internal Medicine that Dr. Baylor had unsatisfactory work during her residency program. It should be noted that not all her work was deemed unsatisfactory, only portions of it. Additionally, Dr. Baylor did not list a malpractice claim on her practitioner profile. The Board asked several questions regarding the malpractice claim. Dr. Zanolli made a motion to grant Dr. Baylor a license contingent on Dr. Baylor

correcting the profile and the correction being reviewed by Dr. Arnold. Dr. Eckles seconded the motion. Ms. Wells opposed. Dr. Ali abstained. The motion passed by a majority.

Leticia A. Lindsey, MD-Dr. Lindsey is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Lindsey's application file for the Board. Dr. Lindsey had minor disciplinary problems in her residency program which caused her contract not to be renewed. After several questions, Dr. Ali made a motion to grant Dr. Lindsey a license and Mr. Brown seconded the motion. The motion passed.

Earl S. Perrigo, MD-Dr. Perrigo is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Perrigo's application file for the Board. Dr. Perrigo's license in Ohio was placed on probation due to inappropriate prescribing and failure to conform to minimal standards of acceptable medical practice. The probation was removed in July, 1990. Dr. Perrigo explained that all other licenses are unencumbered. Dr. Zanolli made a motion to grant Dr. Perrigo a license and Dr. Beckford seconded the motion. The motion passed.

Reinstatement Interview

Walter L. Barnes, MD-Dr. Barnes is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Barnes' application file for the Board. Dr. Barnes has not worked as a physician since September, 1992. Dr. Barnes was disciplined for running a diet clinic while unlicensed and has a felony conviction for impersonating a physician. Dr. Barnes informed the Board that he planned to work for the State of Tennessee Disability Department reviewing case files. Because he had been out of practice so long, Dr. Cunningham suggested Dr. Barnes take the SPEX exam, however, Dr. Arnold stated the SPEX exam would not be enough to cover 19 years of being out of practice and suggested a mini-residency and to go through the full program. Dr. Zanolli's suggestion was for Dr. Barnes to withdraw his application. Dr. Cunningham informed Dr. Barnes that he has the option to withdraw his application or the Board will deny application which will be reportable to the National Practitioner Databank. Dr. Barnes' decision was to withdraw his reinstatement application.

Carol A. Churchill, MD-Dr. Churchill is applying for reinstatement of her medical license. Dr. Arnold reviewed Dr. Churchill's application file for the Board. Dr. Churchill has not worked in clinical patient care since 1999. The Board asked Dr. Churchill several questions regarding continuing medical education hours. Dr. Zanolli made a motion to grant reinstatement and Dr. Eckles seconded the motion. Dr. Ali opposed. The motion passed.

Melody P. Noah, MD-Dr. Noah is applying for reinstatement of her medical license. Dr. Arnold reviewed Dr. Noah's application file for the Board. Dr. Eckles recused himself. Dr. Noah has not practiced since 1994. Dr. Noah's husband runs a sleep clinic in Murfreesboro, TN. Dr. Noah informed the Board that she has had no continuing medical education since 1999. Dr. Cunningham suggested Dr. Noah get recertified in

Internal Medicine and withdraw the application until she has been retrained. Dr. Noah withdrew her application.

Imelda P. Villarosa, MD-Dr. Villarosa is applying for reinstatement of her medical license. Dr. Arnold reviewed Dr. Villarosa's application file for the Board. Dr. Villarosa has not practiced since May, 2003. Dr. Villarosa informed the Board that she has been getting fifty hours of continuing medical education hours each year. Dr. Beckford made a motion to grant Dr. Villarosa reinstatement of her license and Dr. Ali seconded the motion. The motion passed.

Ratification of Denial of Licensure

Ivan Marais, MD-Dr. Marais is applying for a Distinguished Faculty license. Dr. Arnold reviewed Dr. Marais' application file for the Board. Dr. Marais has been applying for a license since last year. Dr. Arnold informed the Board that notice has not been received stating Dr. Marais has a full professor position at the University of Tennessee. Dr. Ali made a motion to accept Dr. Arnold's recommendation for denial and Dr. Beckford seconded the motion. The motion passed.

Declaratory Order

Clarence R. Sanders, MD-Dr. Sanders was present. Mr. Kraemer gave a brief review of Dr. Sanders' case. Mr. Kraemer informed the Board that a decision needed to be made whether to waive the contested case regarding whether he can get his DEA privileges back. Dr. Roland Gray, president for the Tennessee Medical Foundation, spoke on behalf of Dr. Sanders. Dr. Gray informed the Board that Dr. Sanders' suspension has been lifted and he has a contract with TMF. Dr. Beckford made a motion to accept the Declaratory Order and Dr. Higdon seconded the motion. The motion passed.

Rule Action

Mr. Jerry Kosten, Rules Coordinator, reviewed the rulemaking hearing of March 19, 2007 regarding use of titles and Level III surgeries. Dr. Eckles suggestion was to defer voting on the Level III surgery until staff can obtain a list of CMS procedures. Ms. Johnson made a motion to adopt the portion regarding use of titles and Dr. White seconded the motion. A roll call vote was conducted. The rule was adopted by unanimous vote.

Mr. Kosten reviewed the rule regarding X-Ray Operators' scope of practice, certification requirements and continuing education. This is a refiling, with revisions of the amendments set forth originally at the March 11, 2006 rulemaking hearing. Dr. Mutter made a motion to send to rulemaking hearing and Dr. Zanolli seconded the motion. The motion passed.

Mr. Kosten did research regarding the one point rule of the USMLE and gave a brief overview. Dr. Mutter and Dr. Zanolli had concerns regarding the one point rule. Dr.

Arnold reminded the Board that the reason the Rule was adopted was because applicants were taking the exam many, many times until they passed it. The multiple re-takes gave those applicants an unfair advantage and they may have ultimately passed the step because they learned the exam. Dr. Beckford made a motion to amend the rule to create an exception to the Rule for those who are Board certified and Dr. White seconded the motion. The motion passed. Mr. Kosten discussed the economic impact of the rule.

Discussion

Mr. Kraemer reviewed the Conflict of Interest Policy and informed them that this will be done at each meeting. Mr. Kraemer reminded Board members of recusing themselves if they have prior knowledge of a case, or any business matter before the Board.

Dr. Roland Gray with the Tennessee Medical Foundation gave a brief update regarding the Tennessee Medical Foundation's annual report.

Ms. Otto gave a brief report to the Board regarding the FSMB Summary 2006 Board Actions. Ms. Otto stated that last year the Board ranked #31 or 32, this year it was #41, but cautioned that the Public citizen report would be out in May and may reflect a different overall number.

John Q. Binhlam, MD., President of the Tennessee Society for Laser Medicine & Surgery, discussed the petition requesting the adoption and amendment of rules of the Board of Medical Examiners, specifically Rule 0880-2.14(10) regarding the use of laser equipment in medical offices. Dr. Binhlam stated there have been numerous examples of ill-trained practitioners using laser equipment in doctors' office and elsewhere that have caused serious problems for patients in Tennessee. He suggested amending the rule to include light based devices as well as the use of lasers. Dr. Binhlam also suggested there needs to be a licensed Tennessee physician supervising and that it should be someone that has had training. He also stated there should be on-site supervision eight (8) hours a week. Dr. Zanolli agreed there is a lack of training and supervision. The Board suggested moving forward to a rulemaking hearing. A committee was appointed to work with the rule. Dr. Zanolli was nominated as chair and Dr. Zanolli asked Dr. Beckford and Dr. Binhlam to be part of the team. Mr. Kraemer reminded the members to sunshine any meeting that is scheduled.

Ms. Otto reviewed the letter that was sent to the Deans of Tennessee Medical Schools urging that they incorporate into their core curriculum a course on medical professionalism which would address issues such as appropriate prescribing, medical ethics, maintaining proper boundaries and refraining from disruptive, abusive or intimidating behavior. Dr. Ali made a motion to go forward with the letter to send to medical schools. Dr. Lovelady seconded the motion. The motion passed.

Mr. Kraemer reviewed TCA 68-11-218 regarding hospitals' reporting of disciplinary actions. The Board stated they only have the authority to send a letter to the hospitals. Dr. White made a motion to write a letter to hospitals licensed by Health Care Facilities

and Ms. Johnson seconded the motion. The motion passed.

The Board discussed sending a board member to Texas to participate in the Texas Medical Association's Program entitled: "Physician Health Program and State Medical Board Relationships: Keeping Patients Safe". Dr. Lovelady made a motion to nominate Dr. Ali to attend the meeting in Texas and Dr. Beckford seconded the motion. The motion passed.

Ms. Otto informed the Board that it was suggested that the Board develop guidelines regarding RU-486 to guide legislators as they develop legislation for its use. Ms. Bell informed the board members that the Bill currently making its way through the General Assembly has been tabled for this year, but will be back next year. Dr. Ali made a motion to ask Dr. Arnold to present the Board with a draft of guidelines regarding RU-486 for the Board's review at the next meeting and that the ACOG guidelines act as the basis for the Board's guidelines. Dr. White seconded the motion. The motion passed.

Reports

Budget Report

The report was reviewed by the Board. Ms. Otto gave a brief overview of the budget and informed the Board that costs assessed for the move and upgrade of the RBS are not yet reflected in the Budget.

The Board discussed several matters that they believe will increase Board efficiency in handling contested cases. They opened for discussion the possibility that the Department of Personnel create legal positions for attorneys that have medical malpractice experience and that based on their experience, they receive a higher salary than the current Attorney positions in OGC. It was also suggested that for very large matters such as overprescribing, that local law firms may provide pro bono assistance. Dr. Ali made a motion that a committee composed of Dr. White, Dr. Mutter and Mr. Brown be formed to meet to discuss ways the Board can proceed through the disciplinary process more efficiently. Dr. Zanolli seconded the motion. The motion carried unanimously.

Director/Manager Report

There was no report for the Board to review.

Investigation Report

The report was reviewed by the Board. Ms. Denise Moran discussed issues regarding hiring and retaining quality investigators. She informed the Board that there is a problem with the salary for an investigator for Health Related Boards as compared to investigators hired for Health Care Facilities. She indicated she would like to see this disparity addressed. On another note, Ms. Moran reviewed the medical malpractice reports and stated that a letter was sent out to insurance carriers and there have been good responses.

Dr. Zanolli suggested getting statistics on how many complaints are waiting a decision to go to screening panels, Office of General Counsel or being closed. Ms. Moran stated she will submit the statistics at the next meeting.

Disciplinary Report

The Disciplinary Report was reviewed by the board. Ms. Moran stated the report had not been updated but will be for the July, 2007 meeting.

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. Titles and Office Based Surgery
5. Administrative Licensure and Deletion of Inactive Licensure

Mr. Kraemer stated that the Seven Year rule and Prescribing rule will be effective July 1, 2007.

“Note worthy” section of the internet

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

Disciplinary Action

Order of Compliance

Edson Brock, MD-Dr. Brock was not present nor represented by legal counsel. Mr. Kraemer informed the Board that Dr. Brock appeared before the Board in March. Dr. Brock had disciplinary action taken in Florida due to his failure to comply with continuing education rules. The Board had asked for clearance from Florida before reinstatement of his Tennessee license could be granted. Mr. Kraemer informed the Board that Dr. Brock did all he could in regard to clearing his Florida license. Dr. Eckles made a motion to accept the Order of Compliance and Dr. Beckford seconded the motion. The motion passed.

Lonnie Litchfield, MD- Mr. Kraemer presented the Board with an Order of Compliance in the matter of Lonnie Litchfield, MD. Dr. Litchfield was previously disciplined by the Board due to inappropriate prescribing in another state. The Board took action mirroring the other state’s action. Mr. Kraemer informed the Board that Dr. Litchfield has complied with all the requirements that were set by the Board. Dr. Eckles made a motion

to accept the Order of Compliance and Dr. Zanolli seconded the motion. The motion passed.

Michael Sanders Wysor, MD- Mr. Kraemer presented the Board with an Order of Compliance in the matter of Michael Sanders Wysor, MD. Dr. Wysor entered into a Consent Order in 2005 due to action taken by another State. Dr. Wysor allowed an unlicensed person to issue medications in a weight loss clinic. The Board took action mirroring the other state's action. Mr. Kraemer informed the Board that Dr. Wysor has complied with all the requirements that were set by the Board. Dr. Zanolli made a motion to accept the Order of Compliance and Dr. Beckford seconded the motion. The motion passed.

Adjourned at 4:30 p.m.

May 16, 2007

9:00 a.m.

Contested Case Hearing

Panel: Cunningham, Wells, Zanolli

Beryl Yancey, MD-Dr. Yancey was present and represented by legal counsel, Mr. David Stead. Mr. Shiva Bozarth represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Witnesses were sworn in. The Notice of Charges were handed to the panel for review. Mr. Bozarth gave his opening statement followed by Mr. Stead. Dr. Yancey is charged with violating TCA 63-6-214(b) (1). Dr. Yancey failed to keep accurate medical charts on patients. Dr. Yancey entered into an Agreed Order in 2005 and is in violation of Rule 0880-2-.15(d). After closing arguments the panel deliberated. Ms. Wells made a motion to accept the Finding of Facts #1 and #2 and Dr. Zanolli seconded the motion. The motion passed. Dr. Zanolli made a motion to accept Finding of Facts #3 and amended #4 to include the disposition regarding Blue Cross/ Blue Shield in the civil matter. Ms. Wells followed with a second. The motion passed. Ms. Wells made a motion to accept the Finding of Facts # 5 and #6 and Dr. Zanolli seconded the motion. The motion passed. Ms. Wells made a motion to accept the Finding of Facts #7 and # 8 as amended and Dr. Zanolli seconded the motion. The motion passed. Dr. Zanolli made a motion to accept the Causes of Action #9 and to add unprofessional conduct only regarding TCA 63-6-214(b)(1). Ms. Wells seconded the motion. The motion passed. Dr. Zanolli made a motion to accept Causes of Action #12 and Ms. Wells seconded the motion. The motion passed. Dr. Zanolli made a motion to

assess one-thousand dollars (\$1,000.00) for each violation totaling two thousand dollars (\$2,000.00). Ms. Wells seconded the motion. The motion passed. Ms. Wells made a motion to extend probation five years concurrent to present probation and Dr. Zanolli seconded the motion. The motion passed. The policy statement was read and actions taken due to Dr. Yancey violating two sections of the codes. For this reason the action was taken to protect the health, safety and welfare of the citizens of the State of Tennessee. Ms. Wells made a motion to accept the policy statement and Dr. Zanolli seconded the motion. The motion passed.

Adjourned at 12:45 p.m.

Contested Case Hearing

Panel: Higdon, Beckford, White

Francis Roy, MD- Dr. Roy was present and represented himself. Ms. Schean Belton represented the State. The Honorable Leonard Poag, Administrative Law Judge presided. Opening statements were made by both sides and the State put on proof. However, the matter was not completed and will be continued at the next scheduled meeting.

Agreed Order

Michael Dube, MD- Dr. Dube was present and represented by legal counsel, Mr. Frank Scanlon. Ms. Laurie Doty represented the State. The Agreed Order is incorporated by reference as if fully set forth herein. Dr. Beckford made a motion to accept the proposed Agreed Order and Dr. Higdon seconded the motion. The motion passed.

Ratified by the Board of Medical Examiners on July 17, 2007.