

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

July 17 and 18, 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 Vice-President Dr. Mitchell Mutter. Other members present were: Drs. Keith Lovelady, Subhi Ali, Neal Beckford, George Eckles, Charles White, Sr., Dennis Higdon, Michael Zanolli and Ms. Irene Wells. Member absent was Mr. Mark Brown.

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

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

Election of Officers

The Board held elections to fill the positions of president, vice-president and secretary. Dr. Zanolli nominated Dr. Mutter for president and Dr. Beckford followed with a second. Dr. Ali nominated Dr. White for president and it was seconded by Dr. Higdon. After a show of hands, Dr. Mutter was elected president. Dr. White was nominated for the vice-president position by Dr. Beckford and seconded by Ms. Wells. Dr. White was elected as vice-president. Dr. Ali was nominated to be secretary by Dr. Lovelady and he was elected by a unanimous vote.

Minutes

Minutes from the May 15 and 16, 2007 meeting and May 14 and 15, 2007 hearing were reviewed. Ms. Arnold informed the Board there was an amendment to the minutes. Dr. Ali made a motion to ratify the minutes as amended and Dr. Beckford seconded the motion. The motion passed. Ms. Wells stated there was an amendment to the minutes of the hearing. Dr. Ali made a motion to ratify the minutes from the hearing as amended and Dr. Beckford 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 and Physician Assistants were reviewed. Dr. White made a motion to ratify the approvals and Ms. Wells seconded the motion. The motion passed.

Ratification of actions taken by the Committee on Physician Assistants regarding an Order for licensure revocation of Joel Burnett, PA was reviewed. Dr. White made a motion to ratify the actions taken by the Committee on Physician Assistants and Dr. Zanolli seconded the motion. The motion passed.

New Applicant Interviews

Regina M. Carney, MD-Dr. Anne Bartek, MD, Assistant Training Director at Vanderbilt University appeared on behalf of Dr. Carney. Dr. Carney applied for a Special Training license and her application revealed problems in her residency program. Dr. Bartek answered questions regarding Dr. Carney's duties at Vanderbilt and the manner in which she would be supervised. Dr. White made a motion to grant Dr. Carney a license and Dr. Eckles seconded the motion. The motion passed.

Alan I. Miller, MD-Dr. Miller is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Miller's application file for the Board. Dr. Miller has not practiced medicine for over ten years. Dr. White made a motion to defer Dr. Miller's application until a later date and Dr. Ali seconded the motion. Dr. Beckford opposed. The motion passed. Dr. Arnold informed the Board that Dr. Miller was before the Board today for the sole purpose of obtaining Board input into the nature and extent of the training they believed would be necessary for Dr. Miller to become licensed in Tennessee. Dr. Zanolli made a motion to allow the Board's medical director to work with Dr. Miller and determine how much training would be sufficient. Once Dr. Arnold was satisfied, administrative staff could issue the full license without Dr. Miller reappearing before the Board. Dr. White seconded the motion. Ms. Wells opposed. The motion passed.

Philip E. Neely, MD-Dr. Neely is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Neely's application file for the Board. Dr. Neely has been treated for alcohol abuse and monitored by the Physician Health Program in Alabama. Dr. Roland Gray, president for the Tennessee Medical Foundation spoke on behalf of Dr. Neely. Dr. Gray informed the Board that Dr. Neely has a contract with TMF. Dr. Beckford made a motion to grant Dr. Neely a license and Dr. Eckles seconded the motion. The motion passed.

Russell Ferstandig, MD-Dr. Ferstandig's application file was reviewed by Ms. Otto. The Board was asked to rescind their previous action to granting a medical license pending a five year contract with TMF, and allow Dr. Ferstandig to now withdraw his application. Dr. White made a motion to rescind previous action and allow Dr. Ferstandig to withdraw his application and Dr. Ali seconded the motion. The motion passed.

Reinstatement Interviews

Douglas L. Bechard, MD-Dr. Bechard is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Bechard's application file for the Board. Dr. Mutter

recused himself and asked Dr. White to Chair. Dr. Bechard has been doing administrative work only since 2000. Dr. Bechard informed the Board that his plan is to get licensed in Florida; he does not plan to work in Tennessee. Dr. Beckford made a motion to grant Dr. Bechard reinstatement of his license and Dr. Eckles seconded the motion. Dr. Zanolli and Ms. Wells opposed. The motion passed by a majority vote.

John M. Miller, MD-Dr. Miller is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Miller's application file for the Board. Dr. Miller has not had any clinical practice since 2001. Dr. White suggested allowing Dr. Miller to withdraw his application and obtain more continuing medical education credit hours. Dr. Mutter suggested that Dr. Miller obtain 120 CME credits and reiterated the option to withdraw his application. Dr. Miller withdrew his application for reinstatement.

Stephens D. Taylor, MD-Dr. Taylor is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Taylor's application file for the Board. Dr. Taylor had problems regarding staff privileges and disruptive behavior and explained the incidents from 1988 until 1998 regarding actions with the other staff members. Dr. Taylor informed the Board that his staff privileges were suspended by the hospital peer review committee for performing an unapproved procedure. After several questions, Dr. Beckford made a motion to grant Dr. Taylor reinstatement and Dr. Eckles seconded the motion. Dr. Mutter suggested Dr. Taylor be evaluated before a license is issued. Dr. Beckford amended the motion to add that Dr. Taylor be issued a license contingent on successful completion of an evaluation by the Vanderbilt Comprehensive Assessment Program and appear back before the Board, Dr. Eckles seconded the motion. The motion passed. Mr. Kraemer informed the Board that a specific time needed to be set. The Board decided the evaluation needed to be completed by the next scheduled meeting which will be September 18, 2007.

Declaratory Order

Pilar Vargas, MD-Dr. Vargas was present and represented by legal counsel, Mr. C.J. Gideon of the Nashville Bar. Mr. Kraemer represented the State. Mr. Gideon addressed the Board regarding Dr. Vargas' administrative license and is asking for a Declaratory Order. Dr. Higdon made a motion to set a contested case hearing regarding Dr. Vargas' request and Dr. Zanolli seconded the motion. Dr. Beckford opposed. The motion passed.

Clarence Sanders, MD-Mr. Kraemer informed the Board that Dr. Sanders was present at the last meeting and submitted a petition for a Declaratory Order. Mr. Kraemer submitted a settlement proposal for a Declaratory Order. Dr. White made a motion to proceed to contested case hearing and Dr. Eckles seconded the motion. The motion passed.

Rule Action

Mr. Jerry Kosten, Rules Coordinator, reviewed the following rules for consideration of authorizing a rulemaking hearing:

- a. Length of validity for Special Training licenses
- b. Conditions imposed upon disciplined licenses
- c. Licensure of genetic counselors
- d. Application/interpretation of "remote Services" portion of advertising rule
- e. Amendment to rule 0880-2-.05(9) to refer to "rank of full professor" in lieu of professorial rank"

Dr. White made a motion to send the proposed rules to rulemaking and Dr. Dr. Beckford seconded the motion. The motion passed. Mr. Kosten discussed the economic impact of the rules.

Mr. Kosten discussed the rulemaking hearing of May 21, 2007 regarding a new administrative license category containing licensure restrictions for lack of documented clinical competency, clinical restrictions and the deletion of the ability to inactivate a license. Mr. Kosten informed the Board of the change regarding administrative license and restrictive license in the proposed rule. Dr. White made a motion to adopt the rule and Dr. Beckford seconded the motion. Mr. Kosten reviewed Public Chapter 464 regarding the Regulatory Flexibility Act and discussed the economic impact of the rule. Dr. White made a motion to adopt the rule as amended and Dr. Ali seconded the motion. A roll call vote was conducted. The rule was adopted unanimously.

Mr. Kosten discussed the rulemaking hearing of March 19, 2007 regarding the Level III prohibited procedures. Dr. Eckles gave details of the meeting held with the Office Based Surgery Committee. Dr. Eckles reviewed the Centers for Medicare and Medicaid Services (CMS) medical procedures and recommended adopting the list. Dr. Eckles made a motion to adopt the committee's action and Dr. White seconded the motion. Dr. Ali made a motion to adopt the amendment from the subcommittee which would adopt all CMS listed procedures that receive Level III sedation and Dr. Lovelady seconded the motion. A roll call vote was conducted. The rule was adopted by unanimous vote.

Mr. Kosten discussed the rules which were the subject of the hearing of July 16, 2007. Those rules dealt with revisions to X-Ray Operator qualifications for certification and renewal and passing scores on the USMLE. Dr. White made a motion to approve all the rules. Dr. Ali seconded the motion. A roll call vote was conducted. The motion passed.

Discussion

Ms. Otto reviewed the Tennessee Prescription Safety Program initiated by the Tennessee Medical Association and asked for the Board's support. After Dr. Ali (as participant in the program's development) described the program for the Board, Dr. White made a motion to allow the Board of Medical Examiners to be included as a supporter and Dr. Beckford seconded the motion. The motion carried.

The Board discussed the Position Statement regarding the standard of care for the use of Mifepristone (RU-486). Mr. Gary Zeilzer, Director of Government Affairs for the

Tennessee Medical Association spoke on behalf RU-486 and asked the Board to address the issue in terms of a preventative approach. In anticipation of the appearance of TMA to address the RU-486 issue, Board staff prepared a draft policy statement on its use. Dr. White, as the Board's designee regarding legislation that affects the Board, urged the Board to consider a policy statement. Dr. Beckford then made a motion to adopt the draft policy on the use of RU-486 and Dr. Eckles seconded the motion. The motion passed unanimously.

Mr. Kraemer reviewed the current expert witness policy. Dr. White stated the intent of the policy would be to acquire witnesses for the state without blemishes on their license. Mr. Matt Scanlon, Special Assistant to the Commissioner was recognized by Dr. Mutter. Mr. Scanlon discussed the need to work with the Office of General Counsel to develop standards for the retention of expert witnesses. He also informed the Board that there were discussions underway concerning ways in which contested cases can be expedited. Dr. Zanolli made a motion to rescind the previous policy and have the Board's Improvement Committee begin working on a revised policy. Dr. Lovelady seconded the motion. The motion passed. The committee is comprised of Drs. White, Mutter and Mr. Brown.

The Board reviewed a memo to the Board for licensing Health Care Facilities from the Board of Medical Examiners regarding TCA 68-11-218. The memo is attached to the minutes and incorporated by reference.

The Board discussed a policy regarding unreadable fingerprints designation received on the second reading of the Criminal Background Check. Ms. Otto gave a brief report on the problems with fingerprints during the scanning process. The Board reviewed the suggested options and decided in cases where applicants fingerprint cards are unreadable, all applicants are required to submit to an FBI/TBI fingerprint scan through the State of Tennessee's approved vendor or its equivalent as determined by the board or its equivalent in the state the applicant is located in. Dr. White made a motion to accept the recommendation and Dr. Beckford seconded the motion. The motion passed.

Reports

Budget Report

The Budget report was reviewed by the Board. Ms. Otto gave a brief overview and informed the Board the costs assessed for the move and the upgrade of RBS still has not been reflected in the budget. The Board continues to have a sizeable surplus of approximately \$1.4 million.

Director/Manager Report

Ms. Otto gave a brief review of the Public Citizen's Report and stated Tennessee has moved up in the ranking of states regarding the number of significant disciplinary actions taken by the Board.

Investigation Report

The report was reviewed by the Board. Ms. Otto reviewed the report in the absence of Ms. Denise Moran, Director of the Bureau of Investigations.

Disciplinary Report

The Disciplinary Report was reviewed by the Board. Ms. Otto presented the report in the absence of Ms. Juanita Stone, Disciplinary Coordinator.

OGC Report

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

1. Seven Year Rule and Prescribing Continuing Education
2. Office Based Surgery and Radiology Certification Upgrade
3. Titles and Office Based Surgery
4. Administrative Licensure and Deletion of Inactive licensure
5. Office Based Surgery Procedures List
6. X-Ray Upgrade and One Point Exam Rule

Mr. Kraemer also reviewed Public Chapters 69, 117, 182, 196, 265, 337, 365, 366, 373, 391, 393, 407, 410, 446, 458, 464, 469, 487, 498, 518 and 579. Mr. Kraemer informed the Board that the Seven Year Rule and Prescribing Continuing Education Rule became effective July 1, 2007.

“Noteworthy” section of the internet

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

Disciplinary Action

Order of Compliance

Charles Drummond, MD-Dr. Drummond was present and represented by legal counsel, Mr. Frank Scanlon of the Nashville Bar. Mr. Robert Kraemer represented the State. Dr. Lovelady recused himself. There was an adverse licensure action Order issued by the Board in March of 2005. Mr. Kraemer informed the Board that Dr. Drummond has complied with all requirements as set by the Board. Dr. Ali made a motion to accept the Order of Compliance and Dr. Beckford seconded the motion. The motion passed.

Consent Orders

Travis Pardue, MD-Dr. Pardue was not present but was represent by legal counsel, Ms. Dixie Cooper of the Nashville Bar. Mr. Shiva Bozarth represented the State. Drs.

Lovelady, Eckles and Ali were recused. The Consent Order stipulated that Dr. Pardue failed to supervise allied healthcare providers, did not perform periodic chart review, did not have satisfactory protocols and did not always review charts when controlled drugs were written. The Consent Order places Dr. Pardue's license on probation for five (5) years. He must pay \$9,000 in civil penalties and costs not to exceed \$2,000. Dr. Beckford made a motion to accept the proposed Consent Order and Dr. White seconded the motion. The motion passed.

Amy Bullock-Ms. Bullock was not present nor represented by legal counsel. Ms. Erin Begley represented the State. The Consent Order stipulated that pursuant to a prior Board Order, Ms. Bullock was required to pay a civil penalty in the amount of \$500 and that as of the date of the current Consent Order, she has failed and refused to do so. Therefore, her license to practice as a limited x-ray operator is revoked.

Dr. White made a motion to accept the proposed Consent Order and Dr. Ali seconded the motion. The motion passed.

Bernard Dietz, MD-Dr. Dietz was present and represented by legal counsel, Ms. Rachel C. Nelley of the Nashville Bar. Mr. Robert Kraemer represented the State. Drs. White, Eckles and Lovelady were recused. The Consent Order stipulated that Dr. Dietz wrote and delivered prescriptions for controlled substances to numerous patients in amounts not medically justified and for which little, if any substantiation existed in his records for those patients. The Consent Order places Dr. Dietz's license on probation for five (5) years, requires him to cease practicing solo and begin practicing with another physician, complete the Vanderbilt prescribing program, enter into a contract with the Tennessee Medical Foundation (TMF) who shall submit quarterly reports to the Board's disciplinary coordinator, and places some restrictions on his DEA registration. Dr. Zanolli made a motion to accept the proposed Consent Order and Ms. Wells seconded the motion. The motion passed.

William Leon, MD-Dr. Leon was not present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. The Consent Order stipulates that Dr. Leon, while under contract with the Tennessee Medical Foundation did submit a urine drug screen that was positive for alcohol but that the urine did belong to a nurse that he worked with. Further, the Consent Order stipulates that Dr. Leon abuses Wellbutrin, a drug he was prescribed for depression in January, 2006. Under the Consent Order, Dr. Leon's license was suspended until completion of rehabilitation. The suspension cannot be lifted until his treatment team affirms that Dr. Leon can safely practice medicine. If and when the suspension is lifted, Dr. Leon's license will be placed on probation for five (5) years. He must at all times maintain lifetime TMF advocacy, pay a \$3,000 civil penalty and costs. Dr. Zanolli made a motion to accept the proposed Consent Order and Dr. Ali seconded the motion. The motion carried.

Mark Simpson, MD-Dr. Simpson was present but not represented by legal counsel. Mr. Shiva Bozarth represented the State. The Consent Order stipulates that for some time at least including the years 2004 to 2006, Dr. Simpson used intoxicating beverages that

interfered with his ability to interact with and treat patients. Dr. Simpson's license was suspended with said suspension stayed in lieu of his completing an evaluation and a 90 day in-patient treatment and recovery program at the Talbot Recovery Campus in Atlanta, Georgia. Additionally, he must gain and maintain the advocacy of the Tennessee Medical Foundation. Following treatment, Dr. Simpson's license will be placed on probation for five (5) years. He must continue his relationship with the Tennessee Medical Foundation, cause quarterly reports to be submitted by TMF to the Board's disciplinary coordinator, comply fully with his aftercare contract and pay costs not to exceed \$5,000. Dr. White made a motion to accept the proposed Consent Order and Dr. Ali seconded the motion. The motion carried.

Carol Vandiveer, MD-Dr. Vandiveer was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. Drs. Lovelady, Eckles, Zanolli and Ali were recused. Mr. Michael Todd, from the Tennessee Medical Foundation gave a brief update regarding Dr. Vandiveer and stated she was not compliant. Mr. Kraemer stated he will withdraw the Consent Order because Dr. Vandiveer is not in compliance with the terms of the TMF contract.

Agreed Orders

Will Quarles, MD- Dr. Quarles was present and represented by legal counsel, Mr. Frank Scanlon of the Nashville Bar. Mr. Shiva Bozarth represented the State. The Agreed Order stipulates that Dr. Quarles failed to document appropriately for at least 14 patients he treated. The documentation in his medical records neglected to confirm any prior diagnosis, showed that he consistently failed to perform medically appropriate physical examinations and that he failed to order medically appropriate tests prior to prescribing pain medication. Dr. Quarles will voluntarily surrender his medical license and pay costs not to exceed \$3,000. Dr. Ali made a motion to accept the proposed Agreed Order and Ms. Wells seconded the motion. The motion passed.

Robert Delaplane, MD-Dr. Delaplane was present but not represented by legal counsel. Mr. Shiva Bozarth represented the State. The Agreed Order stipulates that after a review of 70 patient charts, Dr. Delaplane consistently deviated from the standard of care when he failed to perform and/or document an adequate initial history and physical, failed to perform and/or document follow-up office visits; failed to explore appropriate alternative treatment modalities; failed to address patient forging of prescription medications; failed to develop and/or document a treatment plan; failed to perform and/or document laboratory tests; failed to make appropriate referrals; prescribed controlled substances without documenting a medical history, an adequate physical examination, adequate treatment plan, and without complete and adequate medical records. The Agreed Order requires Dr. Delaplane to permanently surrender his medical license effective August 15, 2007. Further, he is required to pay a civil penalty in the sum of \$15,000. Dr. White made a motion to accept the proposed Agreed Order and Dr. Beckford seconded the motion. The motion passed.

Adjourned at 6:30 p.m.

July 18, 2007

9:00 a.m.

Contested Case Hearing

Panel: Zanolli, Lovelady, Wells

Joseph Rich, MD-Dr. Rich was present and represent by legal counsel, Mr. Dan Warlick of the Nashville Bar. Mr. Shiva Bozarth represented the State. The Honorable Tom Stovall, Administrative Law Judge presided. The mater is a continuation and will be heard at the next scheduled meeting.

These minutes were ratified at the September 18, 2007 board meeting.