

MINUTES
BOARD OF OSTEOPATHIC EXAMINATION
AUGUST 13, 2008

A regular meeting of the Tennessee Board of Osteopathic Examination was held at the Bureau of Health Licensure and Regulation, 227 French Landing 1st Floor, Iris Conference Room, Heritage Place MetroCenter, Nashville, TN 37243

Members Present: Jill Robinson, D.O., Donald H. Polk, D.O., Karen R. Shepherd, D.O., Paul G. Smith, Jr., D.O., Rafael M. Sanchez, D.O., Janis Hinton, Public Member

Staff Present: Marsha Arnold, Unit Manager, Mona Jean-Baptiste, Esq., David Hoffman, Board Administrator

The Board was called to order at 9:10 a.m. with Dr. Robinson presiding. Dr. Robinson determined that a quorum was present in order to conduct Board business.

Conflict of Interest Policy

Ms. Jean-Baptiste reminded the Board of its obligation pursuant to the Department's Conflict of Interest Policy.

Minutes

Dr. Smith made a motion to ratify the minutes from the May 21, 2008 Board meeting. Dr. Polk seconded the motion. The motion carried.

Applicant Interview

Dr. James R. Austin, D.O. was asked to attend the Board meeting to respond to concerns relative to past substance abuse and inconsistencies in billing practices while in Alabama. After questions from the Board, Dr. Polk made a motion to approve licensure. Dr. Smith seconded the motion. The motion carried.

Administrative Staff Statistical Report

Marsha Arnold gave the statistical report to the Board. She reported that as of July 31, 2008 the total number of active Osteopathic Physicians was 795, active Midwives was 29, and D.O. X-Ray Operators was 15.

Office of General Counsel Report

Ms. Jean-Baptiste reported that X-Ray revisions/upgrades, Titles, Disciplinary Conditions and Training Licenses (07-0465) went to Rulemaking Hearing on November 2, 2007; they were adopted by the Board on November 14, 2007; and sent to the Attorney General for review on December 12, 2007 where they remain.

Office Based Surgery List Rule (07-0464) went to Rulemaking Hearing on October 18, 2007; they were adopted by the Board on November 14, 2007; sent to the Attorney General for review on December 12, 2007; returned by the Attorney General on January 25, 2008, and filed with the Secretary of State January 25, 2008. The new rules became effective April 9, 2008.

Office Based Surgery Rule (07-0464). A Rulemaking Hearing was held with regard to the amendments to the Office Based Surgery rules before the Board. The rules were sent to the Office of the Attorney General on May 22, 2008 for review.

Ms. Jean-Baptiste also reported that there were six open cases in the Office of General Counsel against Osteopathic Physicians. One of the six was on today's agenda.

Bureau Office Report

Marsha Arnold reported on behalf of the Director of Administrative Services regarding the Board's budget. She stated that the most current report was in the Board books which showed a reduction in the overall deficit. Dr. Polk asked if civil penalties collected would decrease their deficit. Ms. Arnold stated she would provide an answer at the Board's November meeting.

Office of Investigations Report

Juanita Stone, Disciplinary Coordinator, reported on behalf of Denise Moran, Director for the Bureau of Investigations that there were currently 15 open complaints currently being investigated. There were five new cases opened in the month of June 2008.

Disciplinary Coordinator Report

Juanita Stone, Disciplinary Coordinator reported that there were eleven practitioners being monitored. She also reported that procedures have been established to utilize Chancery Court to collect outstanding civil penalties.

Review and Ratifications of New Licenses

Dr. Polk made a motion to ratify the new licenses including Paul A. Phillips, D.O. and Jon A. Minter, D.O. Dr. Smith seconded the motion. The motion carried.

Dr. Smith made a motion to ratify the reinstated licenses as reported. Dr. Shepherd seconded the motion. The motion carried.

Discussion

Matthew Scanlan, Deputy General Counsel asked the Board to designate a person to participate on the Committee to develop a Health Related Boards rule concerning the tamper-resistant prescription pads. Dr. Smith made a motion to nominate Dr. Sanchez as the designated member from the Board. Ms. Hinton seconded the motion. The motion carried.

Mr. Scanlan reported on proposed legislation that the Department may ask to be placed in the Governor's package for the next legislative session. He stated that legislation would be offered that would allow the issuance of volunteer licenses to all physicians except those persons whose licenses had been revoked or suspended.

Mr. Scanlan informed the Board that they would submit on the Board's behalf legislation that would change the per diem rate for the Board member's to \$150. He also stated legislation changing the name of the Tennessee Board of Osteopathic Examination to the Tennessee Board of Osteopathic Medicine is being reviewed. Dr. Robinson requested that the Osteopathic Board be informed of any Legislation submitted by the Board of Medical Examiners that could impact their Board as well.

Craig Lenz, D.O. Associate Professor of Emergency Medicine/Family Medicine/OMM, Senior Associate Academic Dean and Associate Dean for Clinical Sciences, Lincoln Memorial University-DeBusk College of Osteopathic Medicine presented an effort to have Continuing Medical Education (CME) credits for preceptor be accepted for 1B credit for renewal certification. Dr. Polk made a motion to start the process for a rule to accept 1B CME for preceptorship credits to count towards renewal cycle requirements. He stated that no more than 50% of the required CME's could be 1B. Dr. Shepherd seconded the motion. The motion carried.

Dr. Polk asked if there had been any changes to the supervision of nurse practitioner rules. He then asked Mr. Scanlan to send a letter to the Board of Nursing asking that the Board of Osteopathic Examination be included in discussions concerning rule changes for supervision of nurses.

Mr. Scanlan lead a discussion concerning Agreed Citations for those deficient in continuing education requirements. He reviewed the current policy for continuing education and stated that violations are not currently reported correctly and that the public was not being informed. He stated that the practitioner should be given the option for a contested case hearing or to sign an Agreed Citation which would be reportable to the monthly disciplinary report but not to the National Practitioner's Data Bank. Dr. Sanchez made a motion to accept the Agreed Citation as the vehicle for enforcing the continuing education policy and Ms. Hinton seconded the motion. The motion passed unanimously. Mr. Scanlan also reported that the same change needs to be made for the lapsed license policy as well. Dr. Sanchez made a motion to accept the Agreed Citation as the vehicle for enforcing the lapsed license policy and Dr. Shepherd seconded the motion. The motion passed unanimously.

Contested Case

A default hearing in the matter of James E. Daly, D.O. from Salinas, California was held. Administrative Law Judge, Steve Darnell presiding. Prosecuting attorney for the State was Ms. Mona Jean-Baptiste. Panel members for the Board were Jill Robinson, D.O. President, Donald H. Polk, D.O. Secretary, Paul G. Smith, Jr., D.O., Rafael M. Sanchez, D.O., Karen R. Shepherd, D.O., Janis Hinton, Public Member. The State moved to proceed in default against Dr. Daly. In support of its motion, the State introduced evidence that a notice of charges had been served on the Respondent, however, the Respondent failed to appear. The Administrative Judge advised the Board

that the service on the Respondent was legally sufficient. Dr. Polk made a motion to proceed in default and Dr. Smith seconded the motion. The motion passed unanimously. Dr. Daly was previously convicted of twenty-two (22) felonies surrounding charges of sexual abuse of a child under the age of fourteen (14) in the Superior Court of California. On or about June 29, 2007, the Respondent was sentenced to fifty-eight (58) years in prison. After the notice of charges and proposed order were reviewed by the panel Dr. Sanchez made a motion to accept proposed findings of fact and conclusions of law, for the revocation of Dr. Daly's license, and that this action be reported to the Health Integrity and Protection Data Bank and/or similar agency. Ms. Hinton seconded the motion. The motion carried unanimously.

The meeting adjourned at 11:20 a.m.

These minutes were ratified by the Board November 12, 2008.