

**MINUTES
BOARD OF OSTEOPATHIC EXAMINATIONS
AUGUST 16, 2006**

A regular meeting of the Tennessee Board of Osteopathic Examination was held at the Millennium Maxwell House Hotel located at 2025 Metro Center Blvd., Nashville, TN 37228.

Members present: Donald H. Polk, D.O., Jill Robinson, D.O., Paul G. Smith, Jr, D.O., Janis Hinton, Citizen, Rafael Sanchez, D.O., Joyce Brown, D.O.

Staff Present: Sheila Bush, Administrator, Rosemarie Otto, Medical Board Director, Marsha Arnold, Unit Manager, Robert Kraemer, Advisory Attorney, Lea Phelps, Disciplinary Coordinator, Jerry Kosten, Rules Coordinator, Laurie Doty, Attorney and Schean Belton, Attorney.

The Board convened at 9:30 a.m. with Dr. Robinson presiding. Dr. Robinson determined that a quorum was present in order to conduct Board business.

Minutes

Dr. Smith made at motion to accept the minutes from the May 10, 2006 meeting. Dr. Brown seconded the motion. The motion carried.

Managers Report

Ms. Marsha Arnold, Unit Manager, gave the Directors/Managers report to the Board. Ms. Rosemarie Otto, Medical Board Director, spoke to the Board about Criminal Background Checks and the problems that are occurring with the new system. She informed the Board that the processing time for applications may increase for a short time.

Office of General Counsel

Mr. Robert Kraemer read his report to the Board and explained that there are 5 open disciplinary cases in the Office of General Counsel. Mr. Kraemer also explained the following public chapters to the Board:

<u>Public Chapter</u>	<u>Summary</u>
560	Limitation of liability for health care services provided during a governor declared emergency except for gross malpractice or willful misconduct. Granted in 30 day increments.
564	Rewords the electronic and fax prescription statute and amends the generic prescription drug law to allow patients to obtain “brand” drugs when a provider fails to certify medical necessity for “brand” medication if the patient agrees to pay the difference in costs between his/her insurance plans reimbursement level for the generic equivalent and the cost of the brand drug.
585	Encourages prenatal health care providers to offer information to women who are pregnant about cost free donation to blood banks or plasma centers, of blood from the umbilical cord of her newborn.
663	Revises The Health Care Consumer Right to Know Act by clarifying that those who provide their home address are authorizing its disclosure.
788	Establishes a new Sunset date for the Midwifery Council.
804	Requires posting of contact numbers for the Domestic Abuse Hotline in physician offices - Also requires publication of that information in all HRB board newsletters and new licensee distribution.
831	Requires a link from the Medical and Osteopathic Board’s Internet site to the Web sites of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists for accessing the Guidelines for Perinatal Care regarding the indications for screening infants for blood glucose abnormalities. Also requires the BME and BOE to publish the guidelines in their annual newsletter.
843	Requires providers who diagnose pregnancy in unemancipated minors to provide documentation to parents upon consent of the minor regarding how to report any sexual abuse to the DCS that may have resulted in the pregnancy. Failure to comply is a Class A misdemeanor. Also requires publication in all appropriate HRB board newsletters and new licensee distribution.
845	Requires physicians who are required by law (T.C.A. 37-1-605) to report sexual abuse of a minor under 13 and on whom they also perform an abortion as a result of that abuse must, at the time of the report, notify the law enforcement official of the time of the abortion and obtain and preserve for production to law enforcement samples of the embryonic or fetal tissue. Failure to comply is punishable by disciplinary action before the appropriate licensure board for unprofessional conduct and subjects the offender to minimum civil penalties for the first two failures to comply and to Type A misdemeanor criminal penalties for the third failure to comply.
875	Exempts certain MD/PT business relationships from application of the state’s “Stark” law (prohibited referral law) under specified conditions.

- 956** Establishes a special legislative joint study committee to study issues relating to covenants not-to-compete involving physicians and other health care professionals.
- 973** Creates the offense of Statutory Rape by an Authority Figure and encompasses penetration of a person between the ages of 13 and 18 by a person in a position of trust (specifically listing those who obtain that position by virtue of their legal, professional or occupational status and make it a class C felony for which probation and diversion are not available.
- 1003** Prohibits the practice known as “Client Billing” in which the provider bills a patient for the laboratory services provided by the laboratory to which the provider sent the specimen at a rate higher than the laboratory charged the provider for testing the specimen. Now laboratories and physicians providing cytopathology testing on specimens have to bill the patients themselves. They can no longer bill the provider who requested the test.

Financial Report

Ms. Otto presented the financial report and explained that there is an updated version to be mailed to members within the next couple of weeks. Ms. Otto went on to say the Board should have a surplus going into the next fiscal year.

Investigation Report

Ms. Lea Phelps informed the Board that the Office of Investigations has received nine complaints and have closed eighteen cases.

Disciplinary Report

Ms. Phelps informed the Board that the Office of Investigations is monitoring seven licensees.

Rulemaking

Mr. Jerry Kosten presented to the Board a request to authorize a rulemaking hearing requiring one hour of continuing medical education in prescribing practices. Dr. Polk made the motion to authorize the rulemaking hearing and Dr. Sanchez seconded the motion. The motion carried. The rule was amended to state that the course should include but not be limited to controlled substance prescribing practices. The amended motion carried.

Mr. Kosten also explained the Executive Order 30 signed by Governor Phil Bredesen. The Executive Order required all new rules to include how the rule change will effect small business owners.

File Review

Dr. Polk made the motion to ratify the new licensees including Paul G Smith III, D.O., Tiffany Lasky, D.O. and Terry Williams, D.O. Dr Brown seconded the motion. The motion carried. Dr. Smith abstained from voting because Paul G Smith III is his son.

Dr. Polk made the motion to ratify the reinstatement applications. Dr. Brown seconded the motion. The motion carried.

Dr. Brown made the motion to ratify the failed to renew files. Ms. Hinton seconded the motion. The motion carried.

Larry Eugene Menestrina, D.O.-is applying for a telemedicine Osteopathic Physician license in the State of Tennessee. Dr. Robinson requested review of the file by the full Board. After review, Dr. Smith made a motion to approve Dr. Menestrina's application file and Dr. Polk seconded the motion. The motion carried.

Contested Case

Dr. Jeffery Alan Haas, D.O. - Dr. Haas was present but not represented by legal counsel. Schean Belton represented the State. Dr. Robinson recused herself because she is professionally acquainted with Dr. Haas and both practice in Morristown. Ms. Belton presented the Board with the Notice of Charges. Dr. Haas (in pro se) stated that he did not know that he needed an attorney. Administrative Law Judge Barber asked Dr. Haas if he had received and read the notice of charges. Dr. Haas answered that he had received and read the notice of charges. Judge Barber then explained to the Board that they had the option of going forward with the case or continuing it until the next scheduled Board meeting. Ms. Hinton made a motion to proceed. After a lengthy discussion, the Board voted 3-2 to deny Dr. Haas' motion for a continuance. (Ms. Hinton, Dr. Smith and Dr. Polk voted to proceed while Dr. Sanchez and Dr. Brown voted to continue.)

After a lengthy presentation of proof by Schean Belton (with allegations ranging from inappropriate prescribing, patient abandonment and practicing for a period of time from the local Holiday Inn Hotel), the board on a motion by Dr. Sanchez, suspended Dr. Haas' license for not less than three months. They required him to be evaluated under the guidance of the TMF and that he seek, obtain and maintain TMF's advocacy. He was further ordered to take courses in medical record keeping and appropriate prescribing. He is required to report to the Board at its next meeting in November to provide them with a progress report.

Agreed Order

Dr. Patricia Doncaster a/k/a Patricia Doncaster-Lawson, D.O. - Dr. Doncaster was not present nor represented by legal counsel. Ms. Belton represented the State of Tennessee and distributed the Agreed Order to the Board. Dr. Doncaster is charged with violating T.C.A. 63-9-111 (1) and T.C.A. 63-9-111 (b). The Agreed Order stated that Dr. Doncaster will surrender her Tennessee osteopathic physician's license and will also be assessed case costs. After discussion, Dr. Brown made a motion to accept the Agreed Order as presented and Ms. Hinton seconded the motion. The motion carried.

The meeting adjourned at 6:45 p.m.

Ratified by the Board on 8/16/2006.