

MINUTES
BOARD OF OSTEOPATHIC EXAMINATION
NOVEMBER 12, 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, Poplar Conference Room, Heritage Place MetroCenter, Nashville, TN 37243

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

Members Absent: Jill B. Robinson, D.O., Rafael M. Sanchez, D.O.

Staff Present: Rosemarie Otto, Executive Director, Elizabeth Miller, HRB Director, Marsha Arnold, Unit Manager, Mona Jean-Baptiste, Advisory Attorney, David Hoffman, Board Administrator

The Board was called to order at 9:25 a.m. with Dr. Polk presiding. Dr. Polk determined that a quorum was present in order to conduct Board Business.

Minutes

Dr. Smith made a motion to ratify the minutes from the August 13, 2008 Board meeting. Dr. Shepherd seconded the motion. The motion carried.

Tamper Resistant Prescription Pad Committee

Dr. Smith made a motion to nominate Dr. Polk as the Board's representative to the Tamper Resistant Prescription Pad Committee. Dr. Shepherd seconded the motion. The motion carried.

Applicant Interview

Ricardo R. Almaguer, D.O. who is applying for a license in Tennessee was asked to attend the Board meeting to respond to concerns relative to an ongoing malpractice action. After questions from the Board, Dr. Smith made a motion to approve Dr. Almaguer for licensure. Ms. Hinton seconded the motion. The motion carried.

Review Agreed Order

Fred C. Foshee, D.O. was not present but was represented by Phillip Barber, Esq. Tennessee Medical Foundation representative, Mr. Todd, was also present on to answer any questions from the Board regarding Dr. Foshee. At the March 8, 2006 meeting the Board ratified a consent order to place Dr. Foshee's training license on probation because of concerns regarding the personal misuse of chemical substances. At that time, his training license was placed on probation for four years, and he was required to obtain

TMF advocacy and assessed costs. Subsequently, the Department learned that Dr. Foshee had relapsed and consequently lost TMF advocacy. A complaint was generated that gave rise to the Consent Order before the Board for consideration. During its discussion and consideration of the matter, the Board learned that Dr. Foshee had completed his training program and thus no longer had a training license to place on probation. Further, Dr. Foshee has submitted an application for full licensure which is currently in process. The Board decided to reject the Consent Order because they believed absent a training license there was no license to discipline. Further, Dr. Foshee will be required to submit himself to the full Board for an interview and that the Board will consider what if any action it will take to address any outstanding concerns. Therefore, Dr. Smith made a motion to reject the Agreed Order because Dr. Foshee does not have a license at this time. Dr. Shepherd seconded the motion. The motion carried.

Administrative Staff Statistical Report

Marsha Arnold gave the statistical report to the Board. She reported that as of October 31, 2008 the total number of active Osteopathic Physicians was 789, active Midwives was 30 and D. O. X-Ray operators was 15.

Office of General Counsel Report

Ms. Jean-Baptiste reported that a rule for X-Ray revision/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. These rules have been approved by the Attorney General's Office and were filed with the Secretary of State's Office on October 21, 2008 and will become effective on January 4, 2009.

Office Based Surgery Rule (07-0464) On May 21, 2008, 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. They have not yet been approved by the Attorney General.

Continuing Education Rule 1050-2-.12. At the July 13, 2008 meeting the Board requested that the continuing education rule be amended to include Category 1-B among the available categories in which an osteopathic physician may receive continuing education credit. The amendment has been drafted and a notice of rulemaking hearing will be presented for the Board's consideration and approval.

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

Rosemarie Otto reported on behalf of the Director of Administrative Services regarding the Board's budget. She stated that the most current report showed a reduction in the overall deficit and that the downward direction is what was reported to the Government Operations Committee.

Office of Investigations Report

Juanita Stone Disciplinary Coordinator, reported on behalf of Denise Moran, Director for the Bureau of Investigations that there were currently 19 open complaints currently being investigated. Ms. Stone described the complaint process for the Board.

Disciplinary Coordinator Report

Juanita Stone, Disciplinary Coordinator reported that there were ten practitioners being monitored. Ms. Stone also reported that she is now able to refer outstanding costs and civil penalties to the Attorney General's Office for collection procedures.

CME Audit Office Report

Rosemarie Otto reported to the Board on behalf of the CME Audit Office that from January 2008 thru July 2008, 29 licenses were audited, 26 licenses were compliant and three licenses were non-compliant.

Review and Ratifications of New Licenses

Dr. Shepherd made a motion to ratify the new licenses including Jeffrey E. Fernley, D.O. and reinstated licenses. Dr. Smith seconded the motion. The motion carried.

Notice of Rulemaking Hearing

Dr. Shepherd made a motion to send to rulemaking an amendment to the continuing education requirements for March 4, 2009, 227 French Landing, Iris Room, Heritage Place MetroCenter. Dr. Smith seconded the motion. The motion carried.

Discussion

Dr. Polk received an inquiry about physician specialties not being listed on the practitioner profile of osteopathic physicians on the internet. Rosemarie Otto explained to the Board that staff personnel have started keying specialties recently and that specialties are keyed on new applications and reinstatements. Ms. Otto also reported that any physician can have their information updated by contacting the administrative staff.

Adjournment

Dr. Shepherd made a motion to adjourn the meeting. Dr. Smith seconded the motion. The motion carried. Adjournment was at 11:15 a.m.

These minutes were ratified by the Board on March 4, 2009.