

**Tennessee Board of Medical Examiners’
Committee on Physician Assistants
April 17, 2009**

Minutes

A regular meeting of the Tennessee Board of Medical Examiners’ Committee on Physician Assistants was held in the Poplar Room at 227 French Landing, Heritage Place Metro Center, Nashville, Tennessee.

Members Present: Glen Alexander, PA-C; Johnny Nowlin, PA-C; James Montag, PA-C ; Johnny Presley, PA-C ;Jonathan White, PA-C; Gary Tauxe, OPA and Anne Arney, Public Member

Staff Present: LaTonya Shelton, Administrator; Marsha Arnold, Unit Manager; Rosemarie Otto, Executive Director; Mona Jean-Baptiste, Assistant General Counsel and Libby Miller, Director, Health Related Boards

Mr. Glen Alexander, Committee Chairman called the meeting to order at 9:07 a.m. The Chairman determined that a sufficient number of members were in attendance to constitute a quorum.

Conflict of Interest

The conflict of interest policy was reviewed by the Committee.

Approval of Minutes

Mr. James Montag made a motion to approve the minutes of the January 9, 2009 meeting. Mr. Johnny Presley seconded the motion. The motion passed unanimously.

Financial Report

Ms. Rosemarie Otto, Executive Director of the Board of Medical Examiners, reviewed the Committee’s financial statement and stated that the financial report indicated a surplus of \$28,052.28. Ms. Otto provided the Committee a spread sheet regarding the reduction of the renewal fees based on four hundred (400) renewals per year. After review of the spread sheet and hearing from Mr. John

Williams, attorney for the Tennessee Academy of Physician Assistants Mr. Johnny Presley made a motion to decrease renewal fees by sixty-five dollars (\$65.00) and also authorize a rulemaking hearing for that purpose. Mr. Jonathan White seconded the motion. The motion passed unanimously. Ms. Otto informed the Committee that the rulemaking hearing will be held in July.

Disciplinary Report

The Committee reviewed the disciplinary report submitted by Ms. Juanita Stone, Disciplinary Coordinator which informed the Committee that five licensees are currently being monitored and in compliance. Ms. Stone also informed the Committee that Jared Manning has been removed from the list and is in compliance.

Investigations Report

Ms. Juanita Stone, Disciplinary Coordinator informed the Committee that there were eight (8) open complaints for physician assistants. Two (2) were closed with no action and two (2) were closed with a letter of warning. Ms. Stone also informed the Committee that investigative activity is increasing and that one (1) open complaint is ready for review and that two (2) are currently ready for review by the Committees' consultant and attorney. There are no open complaints for orthopedic physician assistants in the Office of Investigations.

Manager's Report

Ms. Marsha Arnold reported on the activities in the administrative office between January 1, 2009 and March 31, 2009 concerning Physician Assistants. The report reads as follows:

20 new applications, 15 new licenses, 127 mailed out renewals and 6 licensure reinstatements. The number of active licensees as of March 31, 2009 is 1,071 and the total number of active licensees with a Tennessee mailing address is 942. The total number of active licensees with a Tennessee practice address is 673.

Ratification of New Licenses, Temporary Permits Reinstatements and Failure to Renew

Mr. Johnny Presley made a motion to ratify the new licenses, temporary permits, retirements and failures to renew. Mr. James Montag seconded the motion. The motion passed unanimously.

Tennessee Professional Assistant Program (TNPAP)

Mr. Mike Harkreader discussed the TNPAP report with the Committee. For the period of July 1, 2008 through March 16, 2009, TNPAP had a total of eight (8)

participants: two (2) are being monitored, three (3) were referred from different sources, two (2) have been discharged with no monitoring necessary and one (1) has been reported to the Committee for refusal of services.

The Committee voted to approve continuation of the contract with the TN Nurses Foundation (Physician Assistants) for an additional year. Mr. Johnny Presley made a motion to renew the contract and Mr. James Montag seconded the motion. The motion carried unanimously.

OGC Report

Ms. Mona Jean-Baptiste, Assistant General Counsel, informed the Committee that the Office of General Counsel currently has eight (8) open files of which one (1) consent order and one (1) contested case will be heard today.

Rules

Ms. Mona Jean-Baptiste informed the committee that the rules relative to the amendments for Physician Assistants Rule 0880-3-.03, Necessity of License; Rule 0880-3-.07, Application Review, Approval and Denial; Rule 0880-3-.15, Disciplinary Grounds, Actions and Civil Penalties; and also regarding Orthopedic Physician Assistants Rule 0880-10-.03, Necessity of License and Rule 0880-10-.15, Disciplinary Grounds, Actions and Civil Penalties are currently at the Attorney General's Office.

CME Audit Office

Ms. Rosemarie Otto reviewed the Physician Assistant Practice Act which authorizes the Committee to develop rules to require continuing medical education as a condition for renewal of a physician assistant license. The rules require all physician assistants to, within a two (2) year period prior to the renewal to complete one hundred (100) hours of continuing medical education satisfactory to the Committee. The Health Related Boards, Audit Office conducts random audits of five percent (5%) of renewals each month. The current audit period is 2006 and 2007. Ms. Otto reported on the activities in the Audit Unit between the months of January through December 2008. Ms. Otto informed the Committee that they have almost a one hundred percent (100%) compliance rate and an audit in December of 2008 which had one (1) No contact. Ms. Otto also informed the Committee that she would have a report for the first half of 2009 at the July meeting.

Consent Order

Allen Powell, PA – Mr. Powell was not present, but was represented by Legal Counsel Ms. Robbie Bell of the Nashville Bar. Ms. Mona Jean- Baptiste represented the State. The Consent Order stipulated that on or about June 23,

2008 Mr. Powell self – reported to the Board of Medical Examiners’ Committee on Physician Assistants that he had written several prescriptions for 15mg Roxicodone tablets under two different patient names between April 9, 2008 and April 21, 2008, totaling fifty- six (56) pills. Mr. Powell further admitted that the medication was for his personal use. Mr. Powell misused his credentials as a physician assistant to procure narcotics for his personal use, which constitutes unprofessional, dishonorable and unethical conduct, violation of prescribing statutes T.C.A. 63-19-107(2) and rules 0880-3-.10 and 0880-3-.21 to include improper or abusive practices inconsistent with normal prescribing guidelines and dispensing, prescribing, or otherwise distributing any controlled substance to any person in violation of any law of the State or of the United States of America or any rule of the Board or Committee. Mr. Powell’s Tennessee physician assistant license is hereby placed on Probation, pursuant to the authority vested in the Board under T.C.A. 63-19-104(a) (7), effective the date this Consent Order is ratified by the Board. This probation be will concurrent with any monitoring contract through the Tennessee Professional Assistance Program (TNPAP), but shall remain in place at least five (5) years. During Mr. Powell’s probationary period be must do the following: (a) submit to an evaluation by the TNPAP with thirty (30) days of the effective date of this Consent Order, comply fully with all recommendations of said evaluation and shall enter into an after care contract for a duration of at least five (5) years; (b) Mr. Powell is prohibited from prescribing any and all scheduled substances until TNPAP determines if Mr. Powell is safe and fit to resume that aspect of practice. This probation shall remain in place not less than two (2) years, Mr. Powell must submit a petition for an Order of Compliance and appear before the Committee prior to this restriction being lifted; (c) Mr. Powell must remain 100% compliant with the TNPAP aftercare contract (d) within 12 months of the effective date of this Probation and Order, Mr. Powell is hereby ordered to complete the Vanderbilt University Medical Center “Prescribing Controlled Drugs” course and submit proof of completion to the Committee’s Disciplinary Coordinator. Mr. Powell is hereby ordered to also pay three(3) Type “ A” civil penalties in the amount of one thousand (\$1000.00) each for a total assessment of three thousand dollars(\$3000.00) representing each Violation of the Physician Assistant Practice Act and Official Compilation of Rules and Regulations of the State of Tennessee 0880-3. This probation is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (HIPDB). Mr. Powell shall pay all reasonable and actual costs of this action, which shall not exceed \$5500.00. This fee is to be paid within thirty (30) days from the filing of the Affidavit of Cost and to the extent allowed by law, execution may issue for payment of these costs for all or any portion thereof that remain unpaid for one (1) year after the Order becomes final. Mr. Jonathan White made a motion to accept this Consent Order as written and Mr. Johnny Presley seconded the motion. The motion passed unanimously.

Contested Case

Morris Butcher, PA- Mr. Butcher was neither present nor represented by legal counsel. Ms. Mona Jean-Baptiste represented the State. Presiding at the hearing was the Honorable Ann M. Johnson, Administrative Judge, assigned by the Secretary of State. Ms. Mona Jean- Baptiste informed the Committee that she

had made several attempts via mail and telephone to contact Mr. Butcher and all attempts failed. Mr. Johnny Presley made a motion to proceed with the hearing holding Mr. Butcher in default and Mr. Jonathan White seconded. After witness testimony, documentary evidence, and the record as a whole, the Committee found as follows: Mr. Butcher was granted a temporary license to practice as a physician assistant in 2005, which expired August 28, 2006. Mr. Butcher obtained an extension of the temporary license, extending the expiration date to August 28, 2007. Since the expiration date of Mr. Butcher's temporary licensure, he has not obtained a license to practice as a physician assistant. Mr. Butcher was employed as a physician assistant by Regional Medical Center of Memphis, Tennessee in its emergency department at all times relevant to this matter. On August 28, 2007, Mr. Butcher was notified by the Tennessee Department of Health that he was no longer authorized to practice as a physician assistant and should cease using the title "physician assistant" and/or any of its derivations. Between August 28, 2007 and October 19, 2007, Mr. Butcher continued to engage in practice as a physician assistant in the Regional Medical Center Emergency Department. Between August 28, 2007 and October 19, 2007, Mr. Butcher continued to hold himself out as a physician assistant while engaging in practice as a physician assistant incident to his employment in the Regional Medical Center Emergency Department. On or about October 12, 2007, Mr. Butcher had submitted to the Manager of Provider Credentialing and Enrollment of the University of Tennessee Medical Group in Memphis, Tennessee a letter from the Tennessee Department of Health Bureau of Health Licensure and Regulation, Division of Health Related Boards, which had granted him a one year extension of his temporary license, until August 28, 2008. Mr. Butcher forged a letter from the Tennessee Department of Health, Bureau of Health Licensure and Regulation, Division of Health Related Boards to state that Mr. Butcher was granted a one year extension of his temporary license, until August 28, 2008. The letter Mr. Butcher presented to the Manager of Provider Credentialing and Enrollment of the University of Tennessee Medical Group in Memphis, Tennessee on or about October 12, 2007, is the letter that Mr. Butcher forged. Mr. Butcher worked from the end of August 2007 until he was terminated on or about October 19, 2007 from Regional Medical Center Emergency Department in Memphis, Tennessee, upon the stated ground that the letter Mr. Butcher presented to the Manager of Provider Credentialing and Enrollment of the University of Tennessee Medical Group, purporting to extend his temporary license to August 28, 2008 was a forgery. Mr. Butcher violated Rule 0880-3-.15(1)(c) of the Tenn. Comp. Rules and Regulations : Making false statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the practice as a physician assistant. Mr. Butcher also violated Rule 0880-3-.04(2) of the Tenn. Comp. Rules and Regulations: It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §§ 63-19-101 et seq. to represent himself as a licensed physician assistant or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification. Mr. Butcher also violated TENN. CODE ANN. § 63-19-105 (a): No person shall represent to be or function as a physician assistant under the provisions of this part, unless such person holds a valid physician assistant

license or temporary license issued by the board. These violations constitute grounds to deny, suspend, revoke or reprimand the licenses of or otherwise discipline by fine pursuant to Tenn. Code Ann § 63-19-104(a)(7). THEREFORE, in consideration of the above Findings of Fact and Conclusions of Law, it is **ORDERED, ADJUDGED, and DECREED** as follows: Mr. Morris Rand Butcher, Jr., unlicensed, is hereby ordered to pay four (4) "A" civil penalties in the amount of One Thousand Dollars (\$1,000) each for each violation of the Tennessee Physician Assistants Act and Rule 0880-3-.15 of the Tenn. Comp. R. & Regs. and twenty-nine (29) Type "A" civil penalties in the amount of One Thousand Dollars (\$1,000) each representing each day Respondent continued to work after his temporary license expired for a total assessment of Thirty-Three Thousand Dollars (\$33,000), effective the filing date of this Order. This is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (H.I.P.D.B.) and/or similar agency. Mr. Butcher must pay the actual and reasonable costs of prosecuting this case, not to exceed Twenty-Five Thousand Dollars (\$25,000), to the extent allowed by law. Tenn. Code Ann. § 63-6-214(k). These costs will be established by an Affidavit of Costs prepared and filed by counsel for the Department. Costs shall be paid within thirty (30) days after the issuance of the Affidavit of Costs. Mr. Johnny Presley made a motion to accept the proposed Agreed Order with amendment to increase the cost assessment and Mr. James Montag seconded. The motion passed unanimously.

Applicant Interview

Mr. Lorne Hartsock, PA of Virginia, was present to discuss his initial application with the Committee. Mr. Hartsock was requested to come before the Committee to explain the four (4) misdemeanor convictions for public intoxication between the years 2000-2006. Both consultants for the Medical Board and Physician Assistants' Committee recommended that Mr. Hartsock get an evaluation from TNPAP and maintain their advocacy if required. Mr. Johnny Presley made a motion to accept the recommendations from both consultants and to administratively issue a license contingent on a positive evaluation from TNPAP. Ms. Anne Arney seconded the motion. The motion passed unanimously.

Mr. Steven Noakes, PA-C of California, was present to discuss his initial application. Mr. Noakes was requested to come before the Committee to explain the information that he provided with his application that indicated he has had multiple criminal convictions for DUI and takes medications for post traumatic stress disorder for which he is currently receiving counseling. Both consultants for the Medical Board and Physician Assistants' Committee recommended that if the Committee issues Mr. Noakes a license, he **MUST** obtain the advocacy of TNPAP and maintain counseling with a professional with expertise in military post traumatic stress disorder. Mr. Johnny Presley made a motion to accept the recommendations from both consultants and to administratively issue a conditioned license for a period of five (5) years upon TNPAP advocacy or its affiliate in California along with quarterly reports submitted to the Committee for

the entirety of his contract. Loss of advocacy will be reported to the Committee immediately and disciplinary action will be taken. Mr. Noakes will petition for an order of compliance when the contract ends in order to have the conditions lifted from his license. Mr. Jonathan White seconded the motion. The motion passed unanimously.

General Discussion

The Committee held a discussion regarding name search only for applicants that cannot have a successful reading of their fingerprints for the criminal background check. Ms. Otto informed the Committee that some applicants have finger prints that are not readable. Ms. Otto suggested that the Committee adopt a policy that would allow the acceptance of a background search using their name, date of birth and social security number only if the scanned prints are unreadable after two attempts. Mr. Johnny Presley made a motion to accept this policy and Mr. James Montag seconded. The motion passed unanimously.

A discussion was held considering recommendations from TAPA regarding clinical re-entry training. The recommendations consist of five (5) steps: step 1, applicant appears before the Committee to evaluate the circumstances that led to being out of clinical practice and to determine if any criminal charges or professional misconduct are related to the case; step 2, COPA evaluates and determines if the candidate to be qualified for training under the re-entry training pathway; step 3, COPA directs the applicant to choose an institution that is accredited by the Accreditation and Review Commission of Physician Assistant Programs to provide re-entry training under contract between the applicant and the institution, based upon the following guidelines as determined by the number of years out of clinical practice; step 4, Upon successful completion of the contractual training, the institution shall issue an official document indicating a passing grade to the applicant and step 5, The applicant presents the official document to COPA indicating successful completion of the required re-entry training in consideration of obtaining a license to re-enter clinical practice. TAPA indicated that this is a suggestion of course actions as required by COPA. Mr. Glen Alexander, Chairperson wishes to have this topic tabled until the July 31, 2009 meeting.

This meeting adjourned at 11:45 a.m. The next meeting is July 31, 2009 at 9:00 a.m. at 227 French Landing, Heritage Place Metro Center, Nashville, Tennessee

Ratified July 31, 2009 by the Committee on Physician Assistants