

**Board of Respiratory Care
Minutes**

Date: May 24, 2007

Time: 9:00 a.m., C.S.T.

Location: Poplar Conference Room
227 French Landing Drive
Ground Floor
Heritage Place, Metro Center
Nashville, TN 37243

Members Present: Billy Alred, Chair
Gene Gantt
Roger Major
Candace Partee, Secretary
Colleen Schabacker
Delmar Mack, Ed.D.

Members Absent: Darryl Jordan, M.D.
Timothy McGill

Staff Present: Marva Swann, Unit Director
Tomica Walker, Board Administrator
Nicole Armstrong, Advisory Attorney
Elisha Hodge, Litigating Attorney
Jerry Kosten, Regulations Manager
Melissa Haggard, Investigations

Judge: Joyce Walls
Madeline B. Williams

Guests Present: Mike Harkreader, Tennessee Professional Assistance Program (TNPAP)
John Williams, Lobbyist for Tennessee Society of Respiratory Care
David Johnson, Member of Tennessee Society of Respiratory Care

A quorum being present, Mr. Billy Alred, Chair, called the meeting to order at 9:00 a.m.

Office of General Counsel

Ms. Armstrong informed the Board of their responsibilities under the Conflict of Interest Policy. Board members were asked to sign exhibit 4 of the policy in acknowledgement of their understanding of its content.

Ms. Armstrong presented to the Board the Office of General Counsel Report as follows:

Rules:

Under review by the Attorney General:

1. Criminal Background Checks [1130-1-.05] – (05-0102) The rulemaking notice was filed and the rule went to hearing on May 4, 2005. The Board approved the amendments on May 25, 2005, and it was sent to the Attorney General on May 31, 2005. It became effective May 28, 2006.
2. Title, Screening Panels, Equipment Delivery, Advertising [1330-1-.02, .03, .19, .20] – (05-1386) The rulemaking notice was filed and the rule went to hearing on October 31, 2005. The Board approved the amendment on November 17, 2005, and it was sent to the Attorney General on November 22, 2005. It became effective August 30, 2006.
3. Stays and Reconsiderations, Delete ABG Course Requirement [1330-1-.19, .22] – (06-1072) The rulemaking notice was filed and the rule went to hearing on April 25, 2006. The Board approved the amendment on May 23, 2006, and it was sent to the Attorney General on July 28, 2006. It becomes effective May 30, 2007.
4. Fee Increase [1330-1-.06] – (06-1533) The rulemaking notice was filed and the rule went to hearing on January 4, 2007. The Board approved the amendment on February 15, 2007, and it was sent to the Attorney General on March 16, 2007. It is still there.

Litigation:

The Office of General Counsel, Tennessee Department of Health, currently has four (4) open cases pertaining to the Tennessee Board of Respiratory Care.

Agreed Order/Consent Order or Contested Case Hearings

Phillip King, RRT – Mr. King’s case was presented to the Board as a contested case. Mr. Phillips was not present nor represented by legal counsel. The State was represented by Elisha Hodge. Judge Joyce Walls presided. Witnesses for the State were Tomica Walker, Board Administrator; and Mike Harkreader, TNPAP Executive Director.

The State presented these Findings of Fact:

Mr. King was employed by Vanderbilt University Medical Center in Nashville, Tennessee from November 27, 2000 until June 28, 2001 when he was terminated for violation of Vanderbilt’s substance abuse contract.

On November 13, 2001, Mr. King signed a three (3) year contract with the Tennessee Professional Assistance Program. Mr. King had problems with compliance with his TNPAP contract early on, specifically with regards to drug screening procedures and peer meeting attendance. On January 7, 2002 Vanderbilt rehired Mr. King with an employee assistance program contract. On May 28, 2002 Mr. King was again terminated for violation of Vanderbilt's substance abuse contract. On May 16, 2003 Mr. King pled guilty in the Circuit Court of Dickson County, Tennessee to six (6) counts of forgery – up to 1,000.00, Class E Felonies. Mr. King continued his non-compliance with TNPAP by not submitting requested paperwork and drug screens, as well as not staying in regular contact with his case manager. On February 9, 2004, Mr. King submitted a drug screen to TNPAP, which was positive for cocaine. On June 4, 2004 TNPAP discontinued advocacy for Mr. King.

The State made these Conclusions of Law:

Mr. King was found to be in violation of T.C.A. 63-27-112 Immoral, unethical, unprofessional or dishonorable conduct. Habitual intoxication or personal misuse of narcotics, controlled substances or any other drugs or the use of alcoholic beverages or stimulants in such a manner to adversely affect the person's ability to practice respiratory. Conviction of a felony or of any offense involving moral turpitude or of any violation of the drug laws of this state or of the United States.

As a result, the State recommends Mr. King's license be revoked effective immediately upon the date of entry of this Order with the Administrative Procedures Division. Also Mr. King be assessed three (3) Type A civil penalties in the amount of one thousand dollars (\$1,000.00) each and six (6) Type B civil penalties in the amount of five (5) hundred dollars (\$500.00) each for a total assessment of six thousand dollars (\$6,000.00) for least nine separate violations of the respiratory care practice act.

A motion was made by Dr. Mack and seconded by Ms. Schabacker to accept the order as presented. The motion carried.

Cynthia Miller, RRT - Ms. Miller's case was presented to the Board as a contested case hearing. Ms. Miller was not present nor represented by counsel. The State was represented by Elisha Hodge. Judge Joyce Walls presided. Witnesses for the State were Tomica Walker, Board Administrator; Melissa Haggard, Investigations; Carrie Prewitt; Candace Partee; and Mike Harkreader, TNPAP Executive Director.

The State presented these Finding Facts:

Ms. Miller was employed by University Medical Center in Lebanon, Tennessee from February 14, 2005 until June 10, 2005. Consistently throughout her employment at University Medical Center Ms. Miller frequently went to the restroom carrying saline, and asked co-workers to borrow money which she never repaid. On or about May 31, 2005, Ms. Miller asked a co-worker if she wanted to buy cocaine with her, after the co-worker complained that she having back pain. On or about June 3, 2005 Ms. Miller met with her supervisor and admitted that she

had used illegal drugs and would not likely be able to pass a drug test. Ms. Miller was tested on June 3, 2005 and tested positive for cocaine.

On May 23, 2006, an Agreed Order was entered in administrative procedures division which placed Ms. Miller's license on suspension until such time as she had completed in-patient treatment and contracted with the Tennessee Professional Assistance Program (TNPAP). A probationary period running concurrent with the TNPAP contract would follow based upon the following violations:

At the end of July 2004, while employed by Metropolitan Nashville General Hospital at Meharry, witnesses observed the Ms. Miller shaking while giving a breathing treatment to one infant of set of twins. Ms. Miller failed to give the ordered breathing treatment to the second twin.

During the same time period, several staff members at Metropolitan Nashville General Hospital reported that Ms. Miller had been borrowing money from them. Her employer had counseled her in September 2001 to refrain from borrowing money from fellow employees.

Due to her shaking behavior, failure to complete an ordered patient treatment and her admitted money borrowing from colleagues, the employer asked Ms. Miller to submit a urine drug screen on August 4, 2004.

Ms. Miller's urine drug screen was positive for cocaine, and her employer referred her to TNPAP for evaluation. Ms. Miller was evaluated by TNPAP and admitted to outpatient treatment on August 25, 2004. During outpatient treatment, Ms. Miller tested positive for cocaine twice and did not complete the required treatment; therefore, inpatient treatment was recommended. Ms. Miller refused inpatient treatment. To date, Ms. Miller has not gained the advocacy of TNPAP, because she failed to complete in-patient treatment and therefore could not sign a monitoring contract.

The State made these Conclusions of Law:

Ms. Miller was found to be in violation of T.C.A. 63-27-112 Immoral, unethical, unprofessional and dishonorable conduct; habitual intoxication or personal misuse of narcotics, controlled substances or any other drugs or the use of alcoholic beverages or stimulants in such manner as to adversely affect the person's ability to practice respiratory care.

As a result, the State recommended that Ms. Miller's license be revoked effective immediately upon the date of entry of this order with the administrative procedures division. Also Ms. Miller be assessed two (2) Type A civil penalties in the amount of one thousand dollars (\$1,000.00) each, for a total assessment of two thousand dollars (\$2,000.00) based upon at least two separate violations of the respiratory care act.

A motion was made by Ms. Schabacker and seconded by Dr. Mack to accept the order as presented. The motion carried.

Eric Guthrie – Mr. Guthrie’s was not present nor represented by counsel. The State was represented by Elisha Hodge. Judge Madeline B. Williams presided. He was brought before the Board because he filed a formal appeal of the Board’s decision to deny his license for non-compliance of a Board order.

As a result, the State recommended the appeal be dismissed and the denial of Mr. Guthrie’s license stand as presented in the August 2006 meeting.

A motion was made by Ms. Schabacker and seconded by Ms. Partee to dismiss the appeal as presented. The motion carried.

Approval of Minutes

A motion was made by Ms. Schabacker and seconded by Dr. Mack to approve the minutes of the February 15, 2007 Board meeting as amended.

A motion was made by Ms. Schabacker and seconded by Ms. Partee to approve the minutes of the April 5, 2007 electronic meeting as presented. The motion carried.

Applicant Interviews/File Reviews

Latosha Hickson — Ms. Hickson appeared before the Board seeking licensure as a Certified Respiratory Therapist. He had been convicted of theft by deception in July 2005. Upon review by the Board, a motion was made by Ms. Partee and seconded by Dr. Mack to approve Ms. Hickson for licensure. The motion carried.

Christopher McClung – Mr. McClung appeared before the Board seeking licensure as a Certified Respiratory Therapist. He had been convicted of possession of marijuana and unlawful purchase or possession of alcoholic beverage. Upon review by the Board, a motion was made by Ms. Schabacker and seconded by Ms. Partee to refer Mr. McClung to TNPAP and for him to follow all recommendations of the program and approve him for licensure pending a favorable evaluation. The motion carried.

Investigations and Disciplinary Report

Melissa Haggard presented the disciplinary and investigative report as of 12/31/06. There was an initial carryover of five (5) RRT complaints from December 2006 with five (5) new complaints received. Making a total of ten (10). One (1) was closed and of that total one (1) complaint was referred to the Office of General Counsel, leaving a total of nine (9) open cases at the time of this meeting.

There was an initial carryover of ten (10) CRT complaints from December 2006 with one (1) new complaint received. Making a total of eleven (11), leaving a total of eleven (11) open cases at the time of this meeting.

Tennessee Professional Assistance Program Report

Mike Harkreader, Director of Tennessee Professional Assistance Program (TNPAP) presented the report. There were seven (7) new referrals to Tennessee Professional Assistance Program (TNPAP) for the period of July 1, 2006 thru December 31, 2006. Two signed a monitoring agreement making a total of seven (7) being monitored at this time; also for this period of time there were three (3) discharged and reported for noncompliance, three (3) discharged and reported to the Tennessee Department of Health, and two (2) discharged because there was no monitoring necessary.

Administrator's Report

Tomica Walker presented the Administrator's report. Active current licensee totals are 2137 Registered Respiratory Therapists, 2054 Certified Respiratory Therapists, and 32 Respiratory Care Assistants. Since the February 2007 Board meeting there were a total of seventy-three (73) newly licensed, eight (8) reinstatements, and twenty-three (23) retired respiratory therapists. There is a benchmark of application processing time set for all Health Related Boards of 14 days for renewals and 100 days for initial applications.

We are within our benchmark of 14 days processing time with regard to renewals with the average time of 3 to 4 days for both RRT's and CRT's and 4 to 5 days for RCA's.

We are not meeting the benchmark of 100 days processing time for initial licensure with 126 days being the average time for RRT's, and 135 being the average time for CRT's.

This is due largely to the average applicant applying for a temp permit which is good for one (1) year from the date of issuance. This has extended the date of the issuance of permanent licensure.

For your information, ABG endorsement can now be accessed on the Internet verification system.

Board members were again reminded to obtain prior travel approval through the Administrative staff before making travel arrangements outside of the State of Tennessee in order to ensure reimbursement.

The Governor has appointed a new Board member to replace Shirley Brackett. He is Gene Gantt, a registered respiratory therapist.

Dr. Mack made a recommendation that we send to all schools a letter asking them to inform their respiratory students that if they become licensed in Tennessee as a certified respiratory therapist and they upgrade their license to RRT to retire their CRT license to ensure that renewal notification is only for the RRT license. Some licensees have mistakenly renewed their CRT rather than their RRT license.

Legislation

John Williams, representative of the Tennessee Society for Respiratory Care (TSRC) and David Johnson, chair of the Government Affairs Committee for the TSRC appeared before the Board to voice their opinion of the Board's letter drafted to the Legislature regarding the Polysomnography Act.

David Johnson stated that it was his opinion that the Board had not been in opposition to the Bill when it was presented to them in February. He further stated that he wanted to be on record that the Board had made false and inaccurate statements in its letter to the Legislature and was surprised that the Board had taken the action it did. He did not enumerate what the inaccuracies or false statements were but did pass out a handout regarding them. Mr. Alred, Board chair, stated that the Board did not intentionally make false statements and would not get into an argument with the TSRC but would continue to work co-operatively with the TSRC as it has always done in the past.

John Williams cited the Board's past co-operative history with the TSRC such as with the task force that drafted a policy in 2004 regarding respiratory equipment delivery technicians. He stated that a task force, of which Board member Colleen Schabacker was a member, worked on the polysomnography legislation. He further stated that every issue that the Board had raised in its letter had already been carefully considered. He expressed concern that the Board had held an electronic meeting on April 5, 2007 of which he had no knowledge and believed it to be a deliberate act. He did, however, acknowledge that the Sunshine Notice had been posted for the meeting. He concluded that he would ask the Board not to speak to the Legislature on issues that affect all respiratory care practitioners.

Ratifications

A motion was made by Ms. Schabacker and seconded by Dr. Mack to approve the following applicants for Registered Respiratory Therapists, Reinstated Registered Respiratory Therapists, Certified Respiratory Therapists, and Reinstated Certified Respiratory Therapists. The motion carried.

Licensed Certified Respiratory Therapist

Charity Holder Beville
Rhonda Burton Bowles
Alaina Buntain Daniels
Melissa Lankford Davis
Ellenor Michelle Dickerson
Patrick Jacob Duffy
Jessica Hogg Elam
Holly Mimms Ellison

Diana Poole Fields
Walter Crawford Flowers
Renee Watson Hackney
Tracey Marie Heal
Todd A. Hodkinson
Shareka Shonta Holbert
Sylvia Allene Holt
Sonya White Jefferson
Bobby K. Johnson
Patricia Ferguson Jones
Andrea Charmaine Leake
Tomeka Yolando McCain
Kimberly Jo McCammon
Brooklyn Dawn McDainel
Debra Jean Meek
Kimberly Carroll Mike
Barry Griffith Miller
Sabrina Helton Miracle
Kayla LeeAnn Mullins
Nancy Real Murrell
Robert Andrew Phillips
Misty Dean Riggs
Melisha Pearl Sharp
Gennifer Ashley Shead
Cynthia Kay Shortridge
Georgina Thomas Smallwood
Candace Carol Smith
Kimberly Ann Ursery
Jamie Brown Walls
April Dawns Warren
Niketa C. Washington
Judith Hale Wilson
Andrea Warwick Wolfenbarger

Reinstated Licensed Certified Respiratory Therapist

Janice Ann Bilbrey
Wendell Earl Corum
Wayne B. Gilmore
James Brian Jessee
Latara Nicole Joyce
Renee L Lively
Mary A. Routon

Shannon Geneva Williams

Licensed Registered Respiratory Therapist

Sally Janet Amaya
Audra Mary Appling
Wanda Timbs Barrett
Daniel T. Belay
Rhonda Burton Bowles
Regina Falcone Coward
Jessica Lynn Deakins
Robert L. Deshields
Steve Franklin Eddy, II
Tiffany Keisling Ferrell
Diana Poole Fields
Jennifer Jones Harlan
Kelly Epple Helsdon
Amber Nicole Hensley
Janet Faith Hite
Karmeisha McLaughlin Johnson
Nancy Pugh Jones
Mojtaba Karimian
Stephanie Nicole Kendall
Belinda Moore Kincer
Joseph W. Kozakowski
Robert James Lowry
Kristen Renee Lumley
Patricia S. Martin
Paul Kevin Moore
Craig Allen Norris
Rachel Rose Reeves
Teresa Hickey Rogers
Janet Russell
Lowell J. Setterlund
Michael Frank Shard
Darell Wayne Smith
Robert James Spence
Kathleen Gordon Stewart
Donald R. Voorhees
Brandon H. Walker
Katherine Ann Watson
Melissa Gentry Wray

Licensed Reinstated Registered Respiratory Therapist

Raquel A. Brooks

Larry Glenn Huddleston
Patty S. Southerland

There being no further business, the meeting was adjourned at 11:55 am.

These minutes were ratified at the August 23, 2007 Board meeting.