

STATE OF TENNESSEE
DEPARTMENT OF HEALTH
DIVISION OF EMERGENCY MEDICAL SERVICES

BOARD MEETING
November 28-29, 2007

This meeting of the Emergency Medical Services Board was conducted on November 28 and 29, 2007, in the Iris Room at Heritage Place, Metro Center, Nashville, Tennessee.

Chairman Byrd opened welcoming visitors to the Tennessee EMS Board meeting.

CALL TO ORDER/ROLL CALL

Members of the Board:

*Charles M. Alderson, M.D.	Here
David A. Baxter	Here
Timothy Bell	Here
Susan Breeden	Absent
Robert L. Byrd, Jr., Chairman	Here
Jeffrey L. Davis	Here
Julie A. Dunn, M.D.	Late
*Larry Q. Griffin	Here
Kevin Mitchell	Here
Dennis Parker	Here
Lawrence Potter	Here
James E. Ross, R.N.	Here
Jackie W. Wilkerson	Here

Also present: Erin Begley
Attorney for the Board

Judy Hartman
Administrative Assistant

* Not present on 11/29/07.

The chairman asked the audience to please turn pagers and cell phones to vibrate.

INTRODUCTIONS

Chairman Byrd made a couple of introductions and first full schedule by the introducing Mr. Al Partee, the new general counsel for the Department of Health.

Mr. Partee thanked Chairman Byrd and Members of the Board. Mr. Partee said he was delighted to be working for this and the other boards. He has spent 22 years at the State General's office and prosecuted many criminal cases, and consequently, I have a very warm spot in my heart for everyone who wears a uniform and badge, and I respect your licensees and this board.

Mr. Partee then introduced a new lawyer, Erin Begley, Assistant General Counsel. Ms. Begley graduated with a degree in political science from Middle Tennessee State University. She received her judicial doctorate from Ohio Northern University. I think her strength is in research, and she has already proved that in researching some questions and answers that I will be bring to the Board later.

Chairman Byrd thanked Mr. Partee for coming and stated that we appreciate the changes that you are making at the Office of General Counsel and we very happy to receive quick, direct answers.

Chairman Byrd stated that Mr. Phillips the Director of EMS is not with us today. He attended a training exercise and will be present for the second day of the Board Meeting.

Chairman Byrd extended appreciation to Ms. Elizabeth Miller as our court reporter is for the Board.

Chairman Byrd welcomed the staff from Walter State, Northwest and Southwest Community Colleges and their students.

APPROVAL OF MINUTES

Chairman Byrd then considered approval of the minutes from the last board meeting. Mr. Griffin moved to approve the minutes and Mr. Ross seconded the motion. All in favor say Aye. Motion passed.

REPORT: TENNESSEE PROFESSIONAL ASSISTANCE PROGRAM

Chairman Byrd introduced Mr. Mike Harkreader, Executive Director of the from the Tennessee Professional Assistance Program. Mr. Harkreader submitted his report earlier and it is located under tab nine in the manual.

Mr. Harkreader stated that the report was from July 1, 2007 through September 30, 2007. Six people were actively monitored. We had one referral during this quarter. We had two individuals that successfully completed the program. One individual did not choose to enroll with TPAP, and that person was reported to the Department of Health, Bureau of Investigations

Chairman Byrd thanked Mr. Harkreader for his report.

REPORT: AMBULANCE ENGINE PROBLEMS

Chairman Byrd asked Mr. Richard Land, Director of Ambulance Licensure and Regulations to speak on the ambulance engine problems. Mr. Land stated to the Board Members, this was a report that we carried over from the previous meeting.

Mr. Land acknowledged the work of Mr. Allen Lovett who originally scheduled to present this report and was unable to attend. Mr. Lovett had requested information from other EMS agencies prepared the report.

Approximately one-third of the ambulances or one-fourth, about 300 ambulances may be affected by sudden loss of power and engine problems.

In the affected vehicles the speed drops dramatically, and then after the run, they find out that they have some type of fuel contamination or fuel system malfunctions. What are the causes noted by their mechanic? Williamson County has their own mechanic. Rusted fuel tanks were causing the filters to clog. The question there is what was causing these tanks to rust. Was it a change in the formulation of the materials in the tank, or whatever, or unanticipated?

The clogged fuel filters resulted in loss of power. Patient care was delayed. There have been breakdowns en route to calls and with the patient on board, with both these situations and resulted

in the vehicles placed out of service.

Mr. Lovett notes that the fuel tanks are on a national two-week back order. We have heard reports of some services having to wait 13 weeks for the back order replacement. Then, of course, there is the repair expense because these ambulances, repairs are not a warranty item from the manufacturer.

On Page 2 of the report, Mr. Lovett has qualified those counties that have indicated problems such as Knox County with 36 ambulances.

(*Chairman Byrd stated let the record reflect that Dr. Dunn is present.)

Mr. Land continued the report shows that up to one-third of the state's ambulance fleet were affected. Marshall County experienced problems with over 50 percent of their fleet. Mr. Lovett mentioned, this is the determinate of when the service had problems and the year models affected.

Mr. Lovett was aware only of his own equipment repair cost and stated that it is now over \$12,000. This all is attributed to the different repairs -- the replacement of fuel filters, fuel tanks, the sending unit that measures the fuel pump, the replacement of the fuel pump and damaged injectors. None of these repairs were covered under warranty.

These primarily, are the van-type ambulances that had problems with a list of the various departments. The report addressed some of the other service issues that have occurred problems with ambulances with a 6.0 liter engines that may not necessarily involve the fuel. The AC compressors, the turbochargers, fuel injectors and then the EGR sensors and valves. All of those have contributed to a lack of dependability for this particular model or service ability over long-term.

Chairman Byrd thanked Mr. Land for reporting for Mr. Lovett.

Chairman Byrd commented that we are really not in a position to take any action on this, but he felt board should know about this issue because several board members are not involved in ground EMS systems.

OGC REPORT: CONFLICT OF INTEREST POLICY

Ms. Begley reviewed the conflict of interest policy with be board members. Chairman Byrd thanked Ms. Begley for her review.

REPORT: EDUCATION COMMITTEE

CSCC EMT ON-LINE PROJECT

Chairman Byrd asked Ms. Donna Tidwell, Director of Personnel Licensure and Education to report on a new program. Ms. Tidwell reported that she met with Donna Landis, program director for Cleveland State Community College, Mr. Williams, Dean of CSCC and Ms. Deborah Cox, Regional 3 Coordinator on a proposal for an online EMT class.

The school needs a letter of support from the Board to pursue this course with the Tennessee Board of Regents. (There is nothing in our rules that preclude an online course from being taught.)

Ms. Tidwell presented their proposal with comments it is very well thought out with a good

mission statement. One of the things that was made very clear is that the only portion of the course that will be online is the didactic portion. The students will still be required to attend lab sessions to get lab practical's and to do the same clinical's as the regular classroom activities do in the basic EMT class.

They met with their advisory board in their community, the communities of interest, which are the EMS services and their emergency rooms, those types of individuals that serve on their advisory board. Their advisory board is very supportive of this.

Volunteer fire departments, the rescue squads, and regular fire departments are interested in the course.

They will only admit twelve (12) students to this class for the pilot class. Anybody that has a medical background and understands medical terminology to a certain level will be admitted and they will have to have their CPR certification before they come into this class.

You will see in the proposal how they have outlined that they will evaluate the textbooks that they will use for this section. They talk about how they will evaluate the multimedia, DVDs and things that they will be using in this format. They will be using the TBR's format or platform for distance/online learning. So it is not a new platform. It is something that all the TBR schools are using.

Pennsylvania and Illinois has also done an online course at the first responder and basic EMT level and have been very successful. One of the things that they would be asking, like I said, that first we would take it to the Education Committee and let the Education Committee review it.

They have reviewed it and they made a motion and voted yesterday to bring a recommendation to the Board that you support this proposal for a pilot, online EMT class at Cleveland State, which would not begin until August of 2008 because there is a lot of things that have to be done through the TBR system within the next six months to nine months before they can start it.

Chairman Byrd asked Mr. Williams to join Ms. Tidwell at the podium, and opened the floor for board members' discussion and questions about this.

Mr. Parker stated he had a couple of things, I guess. One is: How many hours will the course be? I know it said in here following the EMT standards. What will be the number of didactic hours, lab hours, clinical hours, and those kinds of things? Then the other question is costs. What will be the costs compare not numbers but comparing it to if they went on campus.

Mr. Williams replied the online format is competitively priced with traditional classes. The number of hours, in terms of college credit hours at the community college level, will be eight hours per semester. So it is a basic class. So it will be eight hours in the fall semester, eight hours in the spring semester.

Clinical hours will be 70 total clinical hours with 35 in the first semester and 35 in the second semester. Then in terms of lab hours it ends up being 120 lab hours. It is 4 hours a week for 15 weeks for two semesters or 30 weeks at 4 four hours per week.

Chairman Byrd asked, what is that in comparison to what we do already?

Mr. Williams stated it kind of depends on which school. Different schools have different requirements for the number of clinical hours there is a minimum number of clinical hours required. In terms of the state minimum, we are exceeding it by about 35 hours.

Mr. Mitchell asked, will the class be basic EMT or EMT-IV. Mr. Williams replied EMT-IV and

it will take them two Semesters.

Mr. Ross asked, what will be your criteria for an evaluation of the program, how successful or if it was successful and how successful.

Mr. Williams this is kind of a benchmark, of course, will be trying to be competitive or better than what the State average success rate and passing the National Registry. My plan is to try to track students six months and a year after graduation, see how it compares to the feedback of more traditional schools an/or traditional programs.

Chairman Byrd stated to the board members to consider this as a pilot program request. We will evaluate it and if the Board chooses to pass this, then, of course, we would evaluate the program afterwards. This is something that has merit of some of the particulars of the course organization were then discussed at that the Education Committee is bringing before the Board.

Mr. Parker stated anytime we can use the technology that is out there to enhance EMS, it is extremely commendable.

Mr. Williams stated that the goal is to have online enrollment for the fall of '08 semester with a limitation of 12 students.

Chairman Byrd asked for a motion to permit Cleveland State Community College to pilot an online EMT-IV course.

Mr. Baxter made the motion and seconded by Dr. Dunn. A roll call vote was taken all were in favor. Motion passed.

Ms. Tidwell presented a letter for the Chairman Byrd to sign that they will need for support to TBR for this project.

Mr. Ross stated that he would like to note if the pilot program coming back to the Board for us to approve after it is been a prototype project that we establish what those evaluation standards will be so that at such time that we actually know whether or not we met those benchmarks.

Chairman Byrd thanked Mr. Ross for that recommendation.

OGC REPORT: ADVISORY ATTORNEY REPORT

Chairman Byrd asked Ms. Begley for her report. Ms. Begley reviewed the following items for the board members:

Amendments to rules for the emergency medical technician and instructor/ coordinators went to the Secretary of State on September 24, 2007.

Amendments to the rules concerning schedule of fees has been approved by OGC for transmittal to the Office of the Attorney General. Currently, we are preparing the documents to send those amendments over.

Amendments to the rules concerning ambulance sanitation, safety, and EMS equipment. Corrections to the draft of those rules has been completed, and they are currently in OGC for review.

Amendments to rules for the authorization of emergency medical technician instructor/ coordinators.

A public hearing was conducted on November 19, 2007. Concerning the contested cases, the Office has four contested cases they need to present before the Board today. We have eight other contested cases currently in the office that are in different levels of preparedness.

Chairman thanked Ms. Begley.

OGC REPORT: CHANCERY COURT RULING REGARDING MELL JAMES, EMT-P

Chairman Byrd asked Ms. Begley to proceed. Ms. Begley began the discussion on with asking the Chairman, "Normally, when a contested case is heard before the Board, does the attorney give you all a copy of the Findings of Fact and Conclusions of Law"?

Chairman Byrd stated, yes.

Ms. Begley continued the reason that the Mell James case was overturned by the Chancery Court is because the Findings of Fact did not comport with the Conclusions of Law.

There were three issues that the Chancery Court took up on appeal. These three issues were actually overturned. T.C.A. Chapter 4-5-314 requires that reasons be provided for all aspects of the decision, including the remedy. I want to go through these violations with you that Chancery Court overturned one at a time so that we can just kind of see what the Chancellor was thinking and how we can improve on this in the future.

The first violation was failure to report patient care. The Board disciplined Mr. James because he had aided and abetted his partner in falsifying the report. However, there were no specific findings on the record that Mr. James actually aided and abetted his partner in falsifying these records.

What the Board must do in the future is in the Findings of Fact the Board must explicitly state that the Petitioner or the Respondent Mr. James was aware and assisted or actually consented to falsifying the records.

The reason that the discipline was actually overturned is because there was nothing in the record that stated that Mr. James actually knew of the falsification. The only thing that was on the record was that Mr. James asked his partner if she wanted him to complete the report, and she told Mr. James that she would do it herself. So there was not any actual evidence in the Findings of Fact that stated that Mr. James falsified the records. And that is why that was overturned.

The second issue was abandoning and neglecting a patient.

Chairman Byrd asked, "What was not in the findings"?

Ms. Begley stated, "What was not in the Findings of Fact was an explicit statement that Mr. James knew."

Ms. Begley stated that was not in the Findings of Fact. At that point the Board would need to look through the Findings of Fact, and say, hey, this is not in here. We need to amend this. The Board would write in an additional fact under the Findings of Fact section, and the attorney would go back and prepare the document.

Chairman Byrd thanked Ms. Begley.

Ms. Begley recommended that after the hearing, the Board needs to carefully look through the

Findings of Fact and see if there is anything that was not explicitly stated. OGC will do its best to make sure that every piece of evidence that is required to be proven in order to meet an element will be in those Findings of Fact.

Ms. Begley stated, the second violation that the State charged Mr. James with was abandoning or neglecting a patient. The decision was overturned, first, because the Court was not able to discern the basis for the Board's decision, and, second, that the decision was unsupported by substantial and material evidence.

The elements that had to be proven by the Board was that Mr. James abandoned the patient, that the patient required emergency care, and that James had assumed care of the patient. Under this last element of this charge, the patient must consent before being treated unless the patient is unable to consent.

Basically, what the Board needed to prove or what needed to be in the Findings of Fact is that the state of the patient needed to be placed in the Findings of Fact; whether the patient was competent or incompetent to consent to care, whether the patient required emergency care, and whether Mr. James' acts or omissions constituted neglect.

Basically, in this charge there are three elements. All three elements needed to be proven, and the facts that would prove those three elements needed to be listed in the Findings of Fact. It is my understanding that they were not.

So in the future, again, we will do better to make sure that all the necessary Findings of Fact are included in the document. Finally the Board found that Mr. James did not touch the patient before having him sign the do not transfer form.

Again, the decision was overturned because the Findings of Fact did not comport to the evidence. The evidence shows that Mr. James testified that he took the patient's pulse and shook the patient's hand. The only evidence to the contrary that Mr. James did not actually touch the patient was a question by the attorney, and the question was: You stated that you never touched the patient.

Mr. James' response was: "I don't remember".

A question is not evidence on the record, just because we ask a question does not mean that it is actually evidence. Mr. James' response of, "I don't remember," does not constitute an admission. The attorney would have needed to go back through and get a yes or no answer, if possible. Sometimes you can not get a yes or no answer, but it is best to ask again and try to get that information out of the witness if at all possible. Since the State did not prove this element, then the Chancellor had to overturn this part of the decision. Are there any further questions?

Mr. Parker asked, "Was this a contested case or a Consent Order?" Ms. Begley replied it was a contested case.

Mr. Davis asked, so my understanding is that during the case we find that something needs to be added to the Findings of Fact at that time, what is that process? Is it done during the hearing?

Ms. Begley said that basically, it would be done during deliberations. As the attorney I am not permitted to speak, during deliberations. So at that point the Board would need to discuss these issues. Just take notes as you go throughout the trial, and just bring it up to the board members during deliberations. It is open discussion with the Board, and you can decide whether or not that was something that the State actually proved. If it is, then you can put it in the Findings of Fact, and then we will amend the document.

Ms. Begley stated that, right now that penalty has been stayed. It is not in effect. If, in fact, the

case does come back down to be retried by the Board, I am not sure at this point if it is going to. Then the Board would reassess and, if they are able to find that the State did, in fact, prove its case, it could place another penalty on that license. At this point that penalty has been stayed. It is not in effect.

A lengthy discussion was held by the board members with Ms. Begley regarding the judgment. She stated, that she read the judgment of the Chancellor. My understanding of the record from the reading of the Chancellor's decision, it was somewhat of a technical issue, the fact that the facts did not comport with the law. If the facts had comported with the law, then this decision would not have been overturned. It is just going to have to be something that we are more careful with and when I say we, mostly me when preparing these documents, be more careful with so that we can ensure that this record is sound so that there would not be any issues for the Chancellor to come down on in the future.

Mr. Parker asked is there a statute of limitations that we have to observe.

Chairman Byrd replied let us not take any action. Let me consult with the advisory attorney, and she can come back to the Board and say, "This is what we need to do." That way we are not going to do something we should not do. I think several of us are frustrated with that, you know, this was a serious issue, and he basically gets away with it because of a technicality.

Mr. Griffin remarked, I do not ever remember having been advised before of a case that went on to the next level. I appreciate being advised when that happens. I have been here since 1994, and to my knowledge, this is the first time that we have ever been advised that this did go to a higher court, and I think we would all like to know if those cases do go and what the outcome.

Ms. Begley assured the board that she would make sure that any case that goes on appeal that she would report the outcome of the case.

Chairman Byrd thanked Ms. Begley.

Chairman Byrd called for a break before the contested case begins.

CONTESTED CASE:

Case of Otis Jones, EMT, and AmeriCare Ambulance Service, Inc.

Chairman Byrd turned the proceedings over the administrative law judge Ms. Joyce Ball.

Administrative Law Judge: The Honorable Joyce Ball
For the State: Erin Begley
 Attorney at Law
 Plaza I, Suite 210
 220 Athens Way
 Nashville, Tennessee 37243

For the Respondent: Steven E. Farese, Jr.
 Attorney at Law
 P.O. Box 98
 Ashland, Mississippi 38603

II. FINDINGS OF FACT

1. Respondent was at all times pertinent hereto licensed by the Board as an EMT- Basic in the State of Tennessee. Respondent was originally granted a license on December 29, 1993, having been granted license number 18787. Respondent's current license expires on April 30, 2008.
2. Respondent has owned and operated AmeriCare Ambulance Service, Inc., since it became a licensed service on April 6, 2001.
3. June 22, 2005, the Board Reprimanded AmeriCare's license and assessed a one thousand dollar (\$1,000.00) civil penalty for the following acts or omissions:
 - a. For fifteen days AmeriCare Ambulance Service, Inc., used two units, unit #109 and #110, to transport patients, and neither of these units had been inspected, permitted, or licensed; and
 - b. The records documenting the transports were altered.
4. On April 26, 2006, Respondent's service transported an elderly black female, patient M. H., to FMC Dialysis Clinic (hereinafter "the Clinic") in Germantown, Tennessee, using ambulance number 111.
5. An unlicensed male employee drove the ambulance while the patient was seated on the passenger side in the driver's compartment.
6. Once the ambulance arrived at the facility, an unlicensed female employee emerged from the cab of the ambulance and assisted the patient into the Clinic by pushing her in a wheelchair. At no point did the driver exit the ambulance.
7. On April 28, 2006, Respondent's service transported an elderly black female, patient M. H., to the Clinic using ambulance number 111.
8. An unlicensed male employee drove the ambulance while the patient was seated on the passenger side in the driver's compartment.
9. Once the ambulance arrived at the facility, an unlicensed female employee emerged from the cab of the ambulance and assisted the patient into the Clinic by pushing her in a wheelchair. At no point did the driver exit the ambulance.
10. On April 28, 2006, Respondent's service transported patient E. B. to a dialysis clinic located at 4180 Auburn Road, Memphis, Tennessee, using ambulance number 111.
11. The same two individuals who transported patient M. H. on the above mentioned dates, transported patient E. B.
12. On the trip ticket for this transport, Respondent signed as the "EMT/DRIVER."
13. On July 24, 2006, the same two individuals who transported patients M. H. and E. B. on the above mentioned dates, transported patient B. E. after she was discharged from Methodist University Hospital in Memphis, Tennessee.
14. At no time has the driver nor the individual who assisted the patients been licensed in any capacity by the Tennessee Board of Emergency Medical Services.

III. CONCLUSIONS OF LAW

The facts as found in the Findings of Fact are sufficient to establish that the Respondent violated the following provisions of the Tennessee Emergency Medical Services Act, T.C.A. § 68-140-501, *et seq.* and Official Tennessee Compilation of Rules and Regulations (hereinafter “TENN. COMP. R. & REGS.”) Rule 1200-12-1-.01, *et seq.*, for which disciplinary action before and by the Board is authorized.

15. The facts found in section I, paragraphs four (4) through eleven (11) and paragraphs thirteen (13) and fourteen (14) *supra*, constitute a violation of Tenn. Code Ann. § 68-140-509:

EMS personnel shall exercise the skills and abilities needed to render appropriate emergency medical care and provide emergency medical services in accordance with authorized procedures in the respective level of training, and shall administer care to patients based upon knowledge and application of principles derived from accepted practice and medical approval, and shall fully comply with the board’s regulations governing activities and performance for the category of license or certification. *An EMT, physician or nurse shall accompany and attend every patient transported by ambulance in this state* (emphasis added). [This violation is established by findings of fact numbered four (4) through eleven (11) and paragraphs thirteen (13) and fourteen (14).]

16. The facts found in Section I, paragraphs four (4) through eighteen (18) *supra*, constitute a violation of Tenn. Code Ann. § 68-140-511 (1), (8), (14): Any person subject to regulation pursuant to this part may be subject to discipline or may be denied authorization for the following prohibited acts:

- (1) Violation or attempted violation or assisting in or abetting the violation of or conspiring to violate any of the following:
 - (A) Any provision of this part;
 - (B) Any rule or regulation of the board;[These violations are established by Findings of Fact numbered four (4) through eighteen (18).]
- (8) Performing or attempting emergency care techniques or procedures without the proper permission, license, certification, training, medical direction, or otherwise engaging in unethical practices or conduct; [This violation is established by Findings of Fact number twelve (12).]
- (9) Assigning persons to perform functions contrary to this part or rules and regulations of the Board. [This violation is established by Findings of Fact numbered four (4) through eleven (11) and thirteen (13) and fourteen (14).]
- (14) Failure of the owner or provider of any ambulance or emergency medical service to ensure compliance by such service and its personnel with the provisions of this part and all regulations promulgated hereunder; [This violation is established by Findings of Fact numbered four (4) through fourteen (14).]

17. The facts found in Section I, paragraph five (5) and paragraph eight (8), *supra*, constitute a violation of TENN. COMP. R. & REGS. Rule 1200-12-1-.11(a):

- (1) Each service provider shall assure that safety belts are maintained in good working condition, and that all ambulance personnel, patients, and passengers utilize seat restraints at all times the vehicle is in motion, except as necessary to attend a patient within the patient compartment.

- i. Patients shall be secured to stretchers, except as may be necessary to facilitate treatment. [This violation is established by Findings of Fact numbered five (5) and eight (8).

18. The facts found in Section I, paragraphs four (4) through fourteen (14), *supra*, constitute a violation of TENN. COMP. R. & REGS. Rule 1200-12-1-.17:

Emergency medical services and emergency medical services personnel shall be subject to discipline or may be denied authorization for unethical practices or conduct which includes but shall not be limited to the following:

- (1) Engaging in acts of dishonesty which relate to the practice of emergency medical care; [This violation is established by Findings of Fact numbered four (4) through fourteen (14).]
- (7) Delegating, assisting, or advising a person to perform professional responsibilities or procedures when the licensee knows, or has reason to know, that such person is not qualified by training, experience, or license to perform such procedures. [This violation is established by Findings of Fact numbered four (4) through eleven (11) and thirteen (13) and fourteen (14).]

The board heard all the matter of the case and deliberated the case:

Dr. Dunn made the motion the state did not bear the preponderance of evidence for Paragraphs 16, 17, and 18 under the Findings of Fact. And likewise, under Conclusions of Law, I would like to strike Number 19 because that Conclusion of Law relates back to 16, 17, and 18 on Page 3.

Mr. Baxter seconded the motion and a roll call vote was taken.

Dr. Alderson:	Yes.
Mr. Baxter:	Yes.
Mr. Bell:	Yes.
Mr. Davis:	No.
Dr. Dunn:	Yes.
Mr. Griffin:	Yes.
Mr. Mitchell:	Yes.
Mr. Parker:	Yes.
Mr. Potter:	Yes.
Mr. Ross:	Yes.
Mr. Wilkerson:	Yes.
Chairman Byrd:	And the Chair votes no.

Motion passed.

III. ORDER

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED as follows:

The Tennessee Emergency Medical Technician license of Otis Jones, Jr., license number 18787 shall be and is hereby REVOKED, effective upon the date of entry of this Order with the Administrative Procedures Division.

This is a formal disciplinary action and will be reported to the Health, Integrity and Protection Data Bank and/or similar agency.

DISCUSSION: HOW TO PROCEED WITH THE AGENDA

Chairman Byrd called the meeting back to order.

Dr. Dunn made a motion to move the next contested case to be heard in the morning and deal with some of these issues that people have waited to be heard. Mr. Griffin seconded the motion. A roll call vote was taken and all were in favor with the exception of Mr. Baxter. Motion passed.

NEW BUSINESS: IDENTIFIED EMS PROBLEMS

Chairman Byrd invited Mr. Lemonds to address the Board.

Mr. Lemonds has served as a board consultant since 1994. This is the first time he has made a report before the Board noting he works behind the scenes on your behalf. In my role as your consultant, I have worked with your board's attorney and the Office of General Counsel, and I interpret much of the evidence that is presented before you see it and help to compare it against the rules and statutes and help the OGC attorney decide if there's a case and, if there is enough evidence to move forward.

Mr. Lemonds discussed a letter he sent to Dr. Holley, the medical director for the State EMS Board, on September 26, 2007. For those of you who do not know me, I have been an EMT and paramedic program director in West Tennessee. I have been a multi-county EMS director in West Tennessee. I have been a flight program director in East Tennessee. Published research in the area of risk reduction and emergency care and I am currently the administrative director of emergency services and inpatient medicine at Vanderbilt Medical Center.

Many times we recommend that the hearing panel review the case. Other times we recommend that further investigation be done. Sometimes we recommend that a matter goes straight to Board action. We also try to recommend what type of discipline would be sought if an Agreed Order can be reached.

I have noticed over the last few years that many types of complaints against EMS personnel are becoming to be more frequent in their nature. I will give some broad examples. One category of complaints that we are seeing with increased frequency is that EMS personnel are increasingly failing to approach patients with equipment necessary to initiate care based upon the dispatch information that they have been given.

After the report, Mr. Lemonds, Mr. Land and board members had a lengthy discussion on many of the issues that were in the report.

1. Failure to carry oxygen and monitor defibrillator into the home of a patient having a heart attack.
2. Failure to carry a defibrillator to the side of a patient that is outdoors when you know you are going to the ambulance when evidence-based care today would say that for every one minute delay in getting a defibrillator to a cardiac arrest victim sacrifices 10 percent chance of survival.

These items maybe addressed in the rulemaking process.

The next issue that I want to call your attention to is that paramedic-level EMS personnel going to school, earning their licensure, and then choosing to drive the ambulance after that, and they are putting basic EMS personnel in the back of the ambulance providing patient care in a manner that abandons the patient requiring the highest level of care.

I made a comment in the letter to Dr. Holley that I know there is argument and disagreement about. EMT's have to have some way to get their training and their experience. I am not talking

about those situations and where patients do need the higher level of care. We have shown cases where paramedics responded to motor vehicle accident scenes, never touched or assessed the patients on the scene, and put basic EMT's in charge of those patients. Then during the transport, the patient develops symptoms needing ALS care. Paramedics responding in ALS response vehicles, but then deciding to transport the patients by BLS ambulances and not going with the patients. Service policies can address this.

This has never been in our rules. It is very hard to determine whether or not this is a rule violation or not, except in using the abandonment part of our rules. Education is one of my recommendations throughout all of these situations.

The third factor is that EMS personnel are practicing beyond their scope of practice, and some of this is being promoted or allowed by other licensed personnel.

One of the worst examples that I am seeing consistently is that EMT's, while in paramedic school but not in their paramedic clinical rotations, are still practicing their skills. They are doing intubations; they are defibrillating patients, and they are giving IV drug administrations. This is going on, many times, in the presence of paramedics who are not their preceptor and not condoned by the schools that they are attending..

We have received several cases where EMT's are giving IV push medications. These cases are very problematic and people just need to know where their scope starts and stops. Again, education is important. The rules are not a problem; it is just an education problem to really know where that line starts. Are these just rogue people out there that we are not screening appropriately or we are not I do not know what the problem is.

The last point I will make concerns an increasing number and severity of personal misuse of drugs by EMS personnel. This definitely needs to be addressed in the schools.

I do not know about any other screening requirements but some of the "stupid things" that I see, EMT's and paramedics taking non-controlled substances off the ambulances like Benadryl and taking those drugs when they could go to Walgreens and buy it legally.

They are charged like anybody else with removing drugs from the ambulance or workplace location.

We definitely have problems with EMS personnel taking controlled substances more frequently. We also make recommendations to refer people to TNPAP. You are going to hear a much larger numbers of clients because we are making many more referrals to that system.

Chairman Byrd thanked Mr. Lemonds.

Mr. Land observed some of the issues were discussed in Clinical Issues Committee, not only do we need best practices, but all incidents not the need for standard operating procedures. The people have to know what their responsibilities are. Mr. Lemonds stated, this situation is not just happening in EMS. I want to tell you, when I do my day job, I am spending a lot of time talking about returning to the basics among physicians and nurses.

You know, we are trying to get physicians to actually put their hands on their patients instead of just relying upon the monitors and the CT scans and all those things, Dr. Dunn agreed. It is just that we have got so much technology and so many bells and whistles, that it is hard to remember the basics sometimes.

Mr. Lemonds stated, I just wanted to make sure you were aware of this, and we'll continue to work together as long as you need me to work with you. Thank you, Chairman Byrd.

Mr. Bell commented, that at the last board meeting after Dr. Holley's report mentioned that he was going to go to write a letter to the service directors and medical directors.

Ms. Tidwell stated that Dr. Holley has sent a draft letter, and it is been going back and forth to make sure it has the right language. It is just about ready to go out.

Chairman Byrd stated the Clinical Issues Committee is obviously looking at the best practice policy and recommendations to the Board. Dr. Holley initially wanted to bring this forth as a recommendation and not a regulation. However, you know, it is the pleasure of the Board. The Board can certainly make it a regulation.

Chairman Byrd thanked everyone for their comments.

COMMITTEE REPORT: CoPEC

Chairman Byrd asked Rhonda Phillippi to give her report.

Ms. Phillippi presented a list of CoPEC appointments. The EMS Board as well as the Board for Licensing Health Care Facilities has to appoint the members of CoPEC. The CEOs or professional organizations are recommending these nominees to serve in that capacity.

Mr. Bell asked what is the different in the green and white font's? Ms. Phillippi replied that a lot of people want to be on CoPEC, but it might be disproportionate representation. Like lots of people from the children's hospital come, but that would be disproportionate for the number of votes. There are just so many people that are voting capacity, and they are green.

Chairman Byrd asked for any questions or comments?

Mr. Davis made a motion that we accept the list as presented. Mr. Griffin seconded the motion and all were in favor with a vote of Aye. (None were opposed.) Motion passed.

Ms. Phillippi thanked everyone.

COMMITTEE REPORT: EDUCATION COMMITTEE

Chairman Byrd asked Ms. Tidwell to present her report.

Ms. Tidwell stated, these are the draft minutes from the committee meeting yesterday and they are not approved by the committee until the next quarter. There was also an update from CoPEC. The only thing from CoPEC that I think some of you may need to know too as directors is about charts that you received from CoPEC for your ambulance services. You will be receiving a new Page 7 to be inserted into those flip charts because they have found a typo, and they are correcting that and sending out a new Page 7.

EMITS: You will be getting an EMITS report later on in the staff report so I am not going to go into that.

SCHOOL SITE VISITS: We planned school site visits, aiming to inspect four to five schools each year in a rotation schedule where the EMT programs and the paramedic programs will be reviewed. At least every four to five years there will be a site visit of a program to ensure they are still following the standards.

CRIMINAL BACKGROUND CHECKS: We are still working toward accepting the criminal background check that is used for clinicals. Right now, we still do not have that capability. We are working on that. We did have a decrease in cost to the student from \$56 to \$48 for the background check, I think that was a positive move this year with the contract with the vendor.

Skills manual is being updated by the Education Committee. They are continuing to work on that and hope to have it completed by the next quarter meeting.

NATIONAL REGISTRY: The next order of business was the National Registry. The results as I have reported to the Board before, we were experiencing some, in June we had not had our exam. In September we had, and we were beginning to get our results, and we were not seeing the same results that we had seen in the past with the new CBT testing. It obviously is very much a concern to the Division and to the community, not only the educators, but also the directors.

Twenty eight members were present yesterday at the committee meeting. There was some very extensive discussion on the National Registry exam and other factors that may be playing a part in the concern of our pass rate in Tennessee. There was a motion made to have a subcommittee that would look into and develop criteria for potential vendors for an additional state exam.

We look into the National Registry situation concerning the pass rate. There are forty-three states that use National Registry. Forty of the states are not having a problem; three of are, and we are one of the three.

There was a motion made to have subcommittee that would look into and develop criteria for potential vendors for an additional state exam and to look into the National Registry situation as to why we are having the results we have seen in CBT testing. This committee would report back to the Board by June 2008 as to their findings and recommendations.

Mr. Mitchell stated, I think that would be an interesting dynamic to figure out if you have got, first, your EMT with no practical experience going into paramedic school versus a three or four year EMT.

Another study provided at the National Educators Association in September show that the longer a student waits from the time they complete the course until they actually take the exam, their knowledge level decreases.

A very lengthy discussion was held by Ms. Tidwell and all the board member on the problems of the National Registry and the board asked for an update report at the March 2008 board meeting.

Chairman Byrd recognize Mr. Shankle the director of Henry County EMS, secretary of Tennessee Ambulance Service Association, and representative up to address the Board for a couple of reasons. I want the Board as a whole to hear some of the issues that EMS directors are facing. Mr. Shankle thanked the board for looking at this issue. As Tennessee Ambulance Service Association, you know, we have sat back, and we are starting to see what nursing has seen over the years, a shortage of paramedics.

I would like the Board also, kind of tying into this, to look at how those patients are treated and let a service be rated A-rated, B-rated, whatever you are, on your treatment to the patient, not what is sent to respond to that patient.

We had a wreck within about a quarter mile of my service. I had two ALS units went, but both paramedics went in one unit and two EMT's in the other. When they got on the scene, they had a critical patient and like two walking wounded that was loaded in the unit. The paramedics stayed on and treated the critical patient entrapped in the car.

The EMT's hauled the walking wounded into the ER. Adequate care was given to them. It was counted against me because I sent a BLS truck to a scene and no care was given to the patients as needed. That kind of ties back into this, and as you was talking, Mr. Mitchell, we are looking at those things and seeing that we need to go back and see.

The students that are tested we need them to be tested at an entry level. We think that National Registry is coming back and testing them with those years of experience that they do not have and we do not expect them to have.

We as services out here are also putting budget money into these students to go to school and to pay the schools, and they have good educations, but we are not getting the product back.

You know, I took a test administered by this state. There are several paramedics here that done that. I don't know if you are saying that our test was not valid or a good test. I thought it was a very good 400-and-something question test that I took.

We are not saying National Registry is wrong. We are just saying we are starting to see a problem. If we could, we would like this board to endorse this committee from the education through TASA also to look at this and come back maybe every board meeting come back and give an update and put a timeline on this thing of where we are going.

We as EMS directors out here are treating the public and need to give the proper care to the public, have those two items we would like for you to look at. Mr. Chairman, thank you.

Chairman Byrd asked the board if they had any question for Mr. Shankle. Mr. Mitchell said I just have a question or comment. In looking at potential A-rated, B-rated, C-rated services, what kind of teeth are you going to put in that, incentives to offer, let's say, a service that is B-rated to get to that A rating based on their service? Can we say yeah, this is what you are and what entices them to want to be better?

Mr. Shankle said that I think it comes down and now that CMS reimburses us for patient care is number one, but it is like I tell my people. They say, you are always worried about reimbursement. Well, as a manager I have to worry about reimbursement. CMS reimburses us on the level of care we apply to that patient. I think our rating should be set likewise.

I think it is something we're going to have to look at. This is a whole new view turning around where before we said 95 percent of your runs have to have ALS response.

Now we are doing a complete flip and saying, well, what percent, then, would we want to have ALS care coming back in? One hundred percent, possibly. That would be, I mean, the goal to strive for. How would you get there? I think it is something there would have to be a committee set up and looked at and go to scene. How we put teeth in this to make this work across the state.

Mr. Shankle said, think about the fact that we train EMT's to administer nebulized breathing treatments. You know, we get all those advanced skills up there, but yet we say you have to be with a paramedic, and you can not do those skills. So it kind of ties back as Ms. Tidwell was saying. The students we are seeing in school now are going to paramedic school because they are not able to perform to the level they want to perform.

Mr. Land commented we have to look at whether the categorizations proves may have outlived its purpose because you are seeing that you only have ALS and BLS. We are looking at critical care and acuity levels and that is how it is actually being reimbursed. CIMS did the same thing when they instituted the revised reimbursement for Medicare.

Mr. Shankle stated, that I also think it ties back into National Registry and I think we need to look

at both of those areas, and we might find a commonality there between the two. Chairman Byrd asked for further questions or comments for Mr. Shankle?

Mr. Ross commented do not be surprised, though, if you find what we have seen with nursing in that the Generation Z are just not motivated to study hard and to perform.

He mentioned we have nurses that make it all the way to the last semester, and then all of a sudden they decide, I don't want to be a nurse. So you have gone through almost two years of study and then all of a sudden saying, I do not want to do this. Well, it is probably good that they are not out there practicing, but the other end is it's a whole different phenomenon, a whole different mindset of people that we are seeing.

Ms. Tidwell stated, think another thing that was brought up at the Education Committee that we have to look at too is the public education as a whole in the State of Tennessee where we rank nationally and the fact that we have a lot of individuals that have a hard time reading and writing and doing mathematics. They may be able to get through the program, but can they read at the level to take the exams that they need to take. I mean, is that another issue too that may be playing a part in what we are seeing here?

Mr. Ross stated, he not for changing the methodology of certification. It makes sense, you know, to go and check and see if there is something wrong with the standardization. I mean, the standards of which the NREMT is applied and how that testing is done. It makes sense.

Plus, it also helps if I graduate if I take the state test and I pass it, it gives me something to study and strive for to take the national level. And you would have to pay me an extra – for taking that national.

Mr. Shankle said, if you want to take National Registry, let them take National Registry. Also if it is just for Tennessee, you know, some of the teaching, now the way it is set up, you have to teach National Registry. You have to teach State of Tennessee. It gets confusing at times and I think that could be may be a problem.

Ms. Tidwell said, we also have the issue that in the fall of 2008 the educational standards will be completed and by 2009 the educational standards will be out there for changes in the way that education is delivered to EMS. That is going to also align with the scope of practices that are out there.

Ms. Tidwell commented, “that is why it is important for us as a board, as a division and a board, to go ahead and be looking and having that task force implement whatever rules and regulations that this board needs in order to meet those futuristic scope of practice changes. We are going to be impacted, and we are going to have to have some changes from task force recommendations. Until the task force meets and has the recommendations, we do not know what those changes will be.

Mr. Bell asked Ms. Tidwell regarding National Registry an other test for first responders.

Ms. Tidwell responded, I did not say we were developing our own test. I said they were developing the criteria for vendors to apply to write us an exam. So we would actually do just like we were doing the critical care. We would put an RFP out, and people would apply and part of that RFP includes the fact that whoever is chosen would own the exam, and the applicants would actually pay them to take the exam, not the State because we cannot own the exam.

Mr. Bell reconfirmed by repeating, “they own the exam, we do not have any control over it really, right”?

Ms. Tidwell replied, we do not have ownership of the exam, so then it is not a public document. The document is owned by the vendor, and the students are actually making application to the vendor, and we are accepting that exam as our licensure exam, the results based on the criteria that we set up in the RFP.

Mr. Bell said, that is the National Registry. Just calling it by a different name. It is owned by a different company. You know, I mean, it is a test that is where it has to be, you know, I am sure it is computerized. We went around about this first responder deal and how to make the testing easier, faster, better, smarter for first responders. If we go with somebody – ask somebody else to put out an RFP on it, then I do not see how that is not the same.

Ms. Tidwell, said, what will happen is in the RFP we will probably has to be one of the criteria. They will have to do a practice analysis on this state based on our practitioners, and we will tell them what we are looking for. Then they will get expert writers to write the questions and review the questions and ensure that they follow the blueprint of the DOT curriculum that our students are being graded by. That is just the process by which you do an exam.

I will tell you that as far as our first responders, we perform above the national average for first responders. We have 78 percent pass on the first attempt on first responders.

Mr. Parker, I am speaking as an educator, I do not want us to have a vendor come in and dummy down the test, so to speak. The problem that we have with National Registry that some people may not be aware of is the psychological aspect to it in that when an EMT it is a basic test. It is for EMT basic. So there may be a question and I can not give you a specific example, but there may be a question where the choices of the answers might have included in there the administration of an IV. Well, that throws the student off because they were trained throughout the course, start an IV on this trauma patient. But they can not do that when they take that National Registry test.

So they are looking at it and trying to figure out, Now, wait a minute. Which one do I put here? National Registry I have got to think National Registry here. It throws them off because then, if that was a question early on in the test, they are messed up for the rest of the test. If it is a late question, it is not too bad. But if it was early on, psychologically, now they are confused as to what they have got to do.

This is the same thing for nitroglycerin. In Tennessee we administer nitro on an EMT level & EMT-IV level. National Registry you assist the patients with nitro. So again, you have got a psychological aspect of it as to it is confusing to the student.

Ms. Tidwell, said we actually created this monster ourselves when we as a division and as a board said that we would like to have our entry level into practice as EMT-IV because then we would have them trained to a level above what they were taking, initially.

In 1998 through 2005 we did not do that, and the students took the basic exam before they went to the IV section, and we saw greater pass rates from Registry for the basic level at that time than we are now.

I agree with Mr. Parker. There is a psychological effect there where they do that. Now, I will tell you that we did get the surveys. Every student that has taken the CBT was given a survey, but it was mainly a satisfaction survey with the ability to go and take the exam at their own times and make their appointments and how difficult it was. We had high ratings from the students that they were very pleased with the way they could go do the exam. Now, they are not pleased with their results, and we are not either.

So there is the factor that by doing it on the computer, they really liked it, based on the survey of

the numbers I do not like the results.

Mr. Parker, let me also say that National Registry was addressing this problem. The response was less than ideal and so maybe it is time to look at other vendors.

Now, the testing is just nothing more than another vendor doing the testing. The testing needs to stay the same quality that it is now but make it Tennessee friendly. What I mean by Tennessee friendly is take out some of that stuff that throws them off.

Chairman Byrd stated that this matter is going to committee. I think what is important is the Board satisfied or pleased, whatever word you want to choose, with the committee and the time frame that we are looking at.

Ms. Tidwell stated that she would have a report at the March meeting.

Mr. Shankle thanked the board.

Chairman Byrd thanked Ms. Begley and told her that he really does enjoy the prompt direct answers. I have been really happy with everything except not having an advisory attorney when we really needed one. I understand you are going to address this with your supervisor, and we will get a solution to it.

The Chair will entertain a motion to adjourn, Mr. Bell agreed to the motion and Mr. Griffin seconded the motion, all were in favor with a vote Aye and meeting adjourned.

(The meeting was adjourned on November 28, 2007, at approximately 6:15 p.m. and resumed at 9:00 a.m. on November 29, 2007, as follows, to wit:)

CALL TO ORDER/ROLL CALL (Day two)

Chairman Byrd called the EMS Board meeting to order. We are a few minutes late. I was waiting on some other board members. I suspect some are going to come in a few minutes late. For those that come in a few minutes late for the record, I have consulted with the advisory attorney they should not vote because they are going to miss some of the evidence. We were to start at 9:00 a.m., and we are already a few minutes late.

Chairman Byrd called roll of the attending board members.

Mr. Baxter:	Here.
Mr. Bell:	Here.
Mr. Davis:	Here.
Dr. Dunn:	Here.
Mr. Mitchell:	Here.
Mr. Parker:	Here.
Mr. Potter:	Here.
Mr. Ross:	Here.
Mr. Wilkerson:	Here.
Chairman Byrd:	And the Chair is here. We have a quorum. Thank you.

Absent are:

Dr. Alderson:	(Not present.)
Ms. Breeden:	(Not present.)
Mr. Griffin:	(Not present.)

Chairman Byrd turned the meeting over to the judge. We are ready for the contested case.

CONTESTED CASES OF: Christopher Harris License No. 21323
Docket No. 17.34-096855A
and
McCann Harris
Docket No. 17.34-096694A
License No. 29775
Both of Parrottsville, Tennessee

Judge Joyce Ball opened the hearing. We are going to hearing the case of Christopher Harris and McCann Harris, they are companion cases.

EXCERPT OF PROCEEDINGS
BOARD DELIBERATIONS
November 29, 2007

APPEARANCES:

Members of the Board: David Baxter
Timothy Bell
Robert L. Byrd, Jr., Chair
Jeffrey L. Davis
Julie A. Dunn, M.D.
Kevin Mitchell
Dennis Parker
Lawrence Potter
James Ross
Jackie W. Wilkerson

Administrative
Law Judge: The Honorable Joyce Ball

For the State: Erin Begley
Attorney at Law
Plaza I, Suite 210
220 Athens Way
Nashville, Tennessee 37243

For the Respondent: Pro se

Ms. Begley asked, is there any board member that would request that the charge be reread to us? If not, then the Chair is going to open the floor for open deliberation. Let me encourage the board members to obviously, we do not have an advisory attorney, I just encourage you as you deliberate, as I know you are going to dissect this as you always do, let me remind you we have criminal judgments in front of us.

It is final on the criminal judgment. The floor is open for deliberation.

The board heard the respondents acting without an attorney. The board asked questions and had a detailed discussion regarding the charges. They supplied the board with one witness.

ORDER ON: Christopher Harris, EMT-P

This matter came to heard before the Tennessee Board of Emergency Medical Services on November 29, 2007, pursuant to Notice of Charges issued against the Respondent by the Commissioner of the Tennessee Department of Health and the Division of Emergency Medical Services (hereinafter “the State”). Presiding at the hearing was the honorable Joyce Carter Ball, Administrative Judge, assigned by the Secretary of State. The State was represented by L. Erin Begley, Assistant General Counsel. The Respondent was present and waived his right to be represented by counsel. After consideration of the Notice of Charges, documentary evidence, and the record as a whole, the Board finds as follows:

I. FINDINGS OF FACT

1. Respondent was at all times pertinent to this matter licensed by the Board as an EMT-P in the State of Tennessee, having been granted license number 21323 by the Board. Respondent’s license expired July 31, 2007.
2. From approximately August 2004 until approximately January 5, 2005, Respondent was employed by Grainger County EMS.
3. On December 5, 2005, Respondent pled guilty to Theft under \$500.00, Simple Possession of Morphine, and Simple Possession of Phentermine, all class A misdemeanors, in the Criminal/Circuit Court of Grainger County, Tennessee.
4. The guilty pleas were entered based in part upon the fact that the Respondent, on several occasions while employed by Grainger County EMS, diverted Demerol from ambulances belonging to his employer and replaced the narcotic with saline.
5. On February 13, 2006, the Respondent pled guilty in the Criminal/Circuit Court of Cocke County, Tennessee, to Possession of a Schedule II Controlled Substance, Theft of Property under \$500.00, and Reckless Endangerment, all class A misdemeanors.
6. The guilty pleas were entered based in part upon the fact that the Respondent, on several occasions while employed by Allied EMS, diverted both Demerol and Morphine from ambulances belonging to his employer and replaced the narcotics with saline.
7. On or about May 9, 2006, Respondent pled guilty in General Sessions Court of Hamblen County, Tennessee, to Simple Possession of a Schedule II Controlled Substance.
8. The guilty plea was entered based upon the fact that after being stopped for violation of the seatbelt law, he was found to be in possession of cocaine.

II. CONCLUSIONS OF LAW

The facts as found in the Findings of Fact are sufficient to establish that the Respondent violated the following provisions of the Tennessee Emergency Medical Services Act, T.C.A. § 68-140-501, *et seq.* and Official Tennessee Compilation of Rules and Regulations (hereinafter “TENN. COMP. R. & REGS.”) Rule 1200-12-1-.01, *et seq.*, for which disciplinary action before and by the Board is authorized:

9. The facts found in Section I, paragraphs three (3) through eight (8) *supra* constitute a violation of TENN. CODE ANN. § 68-140-511:
 - (a) Any person subject to regulation pursuant to this part may be subject to

discipline or may be denied authorization for the following prohibited acts:

- (1) Violation or attempted violation or assisting in or abetting the violation of or conspiring to violate any of the following:

- (A) Any provision of this part;
- (B) Any rule or regulation of the Board; and

Any criminal statute of this state or the United States which involves moral turpitude or reflects upon the person's ability to fulfill such person's responsibilities under this part. [This violation is supported by findings of fact three (3) through (8).]

- (2) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances or other drugs or stimulants in such manner as to adversely affect the delivery, performance or activities in the care of the patients requiring medical care; [This violation is supported by findings of fact three (3) through eight (8).]
- (7) Unauthorized use or removal of narcotics, drugs, supplies or equipment from any ambulance, health care facility, school, institution or other work place location; and [This violation is supported by findings of fact three (3) through six (6).]
- (8) Performing or attempting emergency care techniques or procedures without the proper permission, license, certification, training, medical direction, or otherwise engaging in unethical practices or conduct. [This violation is supported by findings of fact three (3) through (8).]

10. The facts found in Section I, paragraphs three (3) through eight (6) *supra* constitute a violation of TENN. COMP. R. & REGS. 1200-12-1-.17: Emergency medical services and emergency medical services personnel shall be subject to discipline or may be denied authorization for unethical practices or conduct which includes but shall not be limited to the following:

- (1) Engaging in acts of dishonesty which relate to the practice of emergency medical care. [This violation is supported by findings of fact four (4) and six (6).]

III. REASONS FOR DECISION

It is the policy of the Tennessee Emergency Medical Services Board to require strict compliance with the laws of the state of Tennessee. It is also the policy of the Board to apply the law so that we preserve the quality of emergency medical services.

Each case is based upon its own merit, testimony, evidence, and special circumstances. The Board does not condone not endorse drug use or theft, and for this reason it is necessary that this Board takes the action that we have taken. The conduct in this case in not consistent with high standards of professional practice.

IV. ORDERIT IS THEREFORE, ORDERED, ADJUDGED and DECREED as follows:

11. The Tennessee Emergency Medical Technician license of Christopher Harris, license number 21323 shall be and is hereby **SUSPENDED** for a period of two (2) years, effective upon the date of entry of this Order with the Administrative Procedures Division.
12. Respondent shall contact the Tennessee Professional Assistance Program for an evaluation and shall enroll in the program if a contract is deemed necessary.
13. This is a formal disciplinary action and will be reported to the Health, Integrity and Protection Data Bank and/or similar agency.

ORDER ON: Carrie McCann Harris, EMT-IV

This matter came to heard before the Tennessee Board of Emergency Medical Services on November 29, 2007, pursuant to Notice of Charges issued against the Respondent by the Commissioner of the Tennessee Department of Health and the Division of Emergency Medical Services (hereinafter “the State”). Presiding at the hearing was the honorable Joyce Carter Ball, Administrative Judge, assigned by the Secretary of State. The State was represented by L. Erin Begley, Assistant General Counsel. The Respondent was present and waived her right to be represented by counsel. After consideration of the Notice of Charges, documentary evidence, and the record as a whole, the Board finds as follows.

I. FINDINGS OF FACT

1. Respondent was at all times pertinent to this matter licensed by the Board as an EMT-IV in the State of Tennessee, having been granted license number 29775 by the Board. Respondent’s license expires April 30, 2008.
2. On approximately January 5, 2005, the Respondent was terminated from her employment with Grainger County EMS.
3. On December 5, 2005, Respondent pled guilty to Theft under \$500.00, a class A misdemeanor, in the Criminal/Circuit Court of Grainger County, Tennessee.
4. The guilty plea was based upon the following acts:
 - a. In August 2004, the Respondent and Christopher Harris were partners at Grainger County EMS.
 - b. In mid-September, Christopher Harris diverted an ampule of Demerol from a unit belonging to Grainger Co. EMS. Upon diverting the narcotic, he explained to the Respondent that he had removed the Demerol and replaced it with saline.
 - c. Once the Respondent and Mr. Harris returned to the station, each injected one-half of the ampule of Demerol.
 - d. At the end of September, when many of the narcotics on Respondent’s assigned unit were about to expire, Mr. Harris removed another ampule of Demerol. He again removed the narcotic and then replaced it with saline.
 - e. After the Demerol was diverted, the Respondent and Mr. Harris each injected one- half of the ampule of Demerol.

- f. Additionally, the Respondent diverted Phenergan from her assigned unit.

II. CONCLUSIONS OF LAW

The facts as found in the Findings of Fact are sufficient to establish that the Respondent violated the following provisions of the Tennessee Emergency Medical Services Act, T.C.A. § 68-140-501, *et seq.* and Official Tennessee Compilation of Rules and Regulations (hereinafter “TENN. COMP. R. & REGS.”) Rule 1200-12-1-.01, *et seq.*, for which disciplinary action before and by the Board is authorized:

5. The facts found in Section I, paragraphs two (2) through four (4) *supra* constitute a violation of TENN. CODE ANN. § 68-140-511:
- (1) Violation or attempted violation or assisting in or abetting the violation of or conspiring to violate any of the following:
 - (A) Any provision of this part;
 - (B) Any rule or regulation of the Board; and
 - (E) Any criminal statute of this state or the United States which involves moral turpitude or reflects upon the person’s ability to fulfill such person’s responsibilities under this part; and [This violation is supported by findings of fact three (3)].
 - (2) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances or other drugs or stimulants in such manner as to adversely affect the delivery, performance or activities in the care of the patients requiring medical care; [This violation is supported by findings of fact four (4)].
 - (7) Unauthorized use or removal of narcotics, drugs, supplies or equipment from any ambulance, health care facility, school, institution or other work place location; and [This violation is supported by findings of fact four (4)].
 - (8) Performing or attempting emergency care techniques or procedures without the proper permission, license, certification, training, medical direction, or otherwise engaging in unethical practices or conduct. [This violation is supported by findings of fact four (4)].
6. The facts found in Section I, paragraphs three (3) through four (4) *supra* constitute a violation of TENN. COMP. R. & REGS. Rule 1200-12-1-.17 - Emergency medical services and emergency medical services personnel shall be subject to discipline or may be denied authorization for unethical practices or conduct which includes but shall not be limited to the following:
- (1) Engaging in acts of dishonesty which relate to the practice of emergency medical care. [This violation is supported by findings of fact three (3) and four (4)].

III. REASONS FOR DECISION

It is the policy of the Tennessee Emergency Medical Services Board to require strict compliance with the laws of the state of Tennessee. It is also the policy of the Board to apply the law so that we preserve the quality of emergency medical services.

Each case is based upon its own merit, testimony, evidence, and special circumstances. The Board does not condone not endorse drug use or theft, and for this reason it is necessary that this Board takes the action that we have taken. The conduct in this case in not consistent with high standards of professional practice.

The Board does realize that people make mistakes and for this we have made the conclusion in this case.

IV. ORDER IT IS THEREFORE, ORDERED, ADJUDGED and DECREED as follows:

7. The Tennessee Emergency Medical Technician license of Carrie McCann Harris, license number 29775 shall be and is hereby **SUSPENDED** for a period of twelve (12) months, effective upon the date of entry of this Order with the Administrative Procedures Division.
8. In order to lift the **SUSPENSION**, Respondent shall appear back before the Board and request that the suspension be lifted and that her license be reinstated.
9. Respondent shall contact the Tennessee Professional Assistance Program for an evaluation and shall enroll in the program if a contract is deemed necessary.
10. This is a formal disciplinary action and will be reported to the Health, Integrity and Protection Data Bank and/or similar agency.

(The contested case matters of Christopher Harris, EMT-P, and Carrie McCann Harris, EMT-IV, were heard before the Board. Upon completion of the cases, the following business resumed, to wit:)

Judge Ball asked Ms. Begley, if there any other contested cases? Ms. Begley stated no there are not anymore cases. Judge Ball thanked the board member and turned the meeting back over to Chairman Byrd.

Chairman Byrd asked for ten minutes break. (Break in proceedings.)

DISCUSSION: ACCESSIBILITY FOR ASSISTANCE WITH DRUG PROBLEMS

Chairman Byrd called the meeting back to order.

Mr. Ross asked to address the Board with a comment that involves our previous situation, please. Chairman Byrd gave him the floor. I do believe, from a personal standpoint but also from a professional standpoint, we have been told the past day, and also we have experienced it today, that the problem of misuse, diversion, and abuse of drugs is continuing and, obviously, maybe even on an escalating momentum.

I do not believe and have had personal exposure to when individuals are seeking help that, number one, they are not educated about the different avenues of help, and, number two, those avenues of help are not forthcoming or accepting of giving them help, i.e., in this situation the gentleman spoke of, he went to I forgot the board, or whatever and they said, Well, you do not

have addictive behavior.

I have heard the same thing about TNPAP. I have had a couple of colleagues that have experienced this with TNPAP as well. I think as a board we need to make a statement, either by letter to the EMS directors or publishing on the Web site or something. Mr. Lemonds brought it to our attention yesterday and asked us to do something about it. I think we need to do something about it more expeditiously to address these two or three things:

One, what are the avenues that you have? Number two, promote some type of in-service that the directors give to their employees talking about the increased drug misuse. Number three, to have better guidelines to self-disclose.

Chairman Byrd thanked Mr. Ross. I actually want to open the floor for discussion on that. That is an important issue. Let us hold off just for a minute for a housekeeping issue. Let the record reflect that Dr. Dunn has left the Board meeting. A quorum remains. Mr. Mitchell will be leaving in ten minutes, and we will still have a quorum so we will be able to finish business.

Mr. Ross, before we open the floor for discussion on your topic, because Mr. Mitchell has to leave in ten minutes, I want to Ms. Begley to address the Board.

REVIEW OF DELIBERATIONS PROCEDURES

Ms. Begley introduced Ms. Teddy Wilkins. Ms Wilkins will attend board meetings as Ms. Begley's paralegal assistant. Ms. Begley and the board members review and discussed in length the procedures for deliberations.

The administrative law judge's duties were explained to help the board members through these deliberations. Different roles were identified: the judge's role, the attorney's role, and the Board's role in conducting the hearing.

Ms. Begley stated to the board she would identify for the record the charges and the facts that the State has bought to prove the charges against a respondent.

Ms. Begley and the board members had a lengthy discussion on disciplinary recommendations such as revocation or suspension, and how the screening panel functions. The board is not obligated to accept the recommendation if they would rather draw their own conclusions.

Chairman Byrd thanked Ms. Begley.

Discussion: Help For Drug Abuse (continued)

The Chairman opened the discussion to offer help to for the affected licensees.

Mr. Parker questioned how TNPAP can determine if a person does not have addictive behavior; therefore they do not qualify for the program. Mr. Parker asked for a letter to be written from the board to TNPAP requesting them to take a closer look at their policy on this issue.

Chairman Byrd suggested that we request that Mr. Harkreader attend the next board meeting to have an open discussion. At that time our questions could be answered.

Several of the board member, requested that TNPAP information be given as in-service for training officers on it if that's what you'd like. A discussion regarding the fact that most employees have never heard of TNPAP was held by the board members. The point was made, that we have systems/services out there that are not being responsible in showing their staff what the resources are available to them. The directors are getting the word, but they are not sending

it down the line to the people that need it. We as a board may need to cover this by enforced training.

Mr. Wilkerson reminded everyone that in the future the way the conferencing will be that you can log on at your service, or whatever, and actually view the board meeting in progress.

Chairman Byrd and Mr. Ross will be taking the TNPAP issue to the Education Committee to formally address the awareness of the increased use/misuse of drugs in the EMS community. The ability to self-disclose and avenues for an individual to seek help should be included.

Ms. Tidwell remarked that all the education facilities have received pamphlets from TNPAP and they have been distributed to all the educators.

DISCUSSION: IN-SERVICE HOURS/TOPICS

Mr. Wilkerson inquired about addressing the possibility mandated certain topics that may be required in the in-service training hours. Mr. Land and Ms. Tidwell have addressed this issued and have looked at the Tennessee Department of Labor which has an entire statute that deals with drug-free workplace regulations and recommendations that are in separate statutes. These can be included in the list as part of the suggested references and training.

A discussion continued about what the EMS systems cover in-service program. They are doing the required hours but not the topics. Ms. Tidwell disclosed this could be audited by field staff, but it would take the place of another area that may be just as important. With auditing we would be looking at 75% of personnel records that have taken to in-service, and what about the other 25%?

Ms. Tidwell remarked, it is not that services are not doing in-service hours. It is the topics they are choosing for in-service hours on may not be choosing enough of what the important topics to hit every year.

Chairman Byrd thanked everyone for bringing this issue and discussion to our attention.

RULEMAKING

Mr. Land submitted a brief regulatory manager's report on the current status of our rules processing. We have three sets that are in Attorney Generals Office.

We are dealing with new requirements of the Regulatory Flexibility Act, the economic impact statements that have to be prepared for regulations. We did receive supplemental comments from Jimmy Edwards, Volunteer State Community College, EMS Program Director. Mr. Edwards suggested modifications to Paragraph (4)(f) in proposed amendments of Rule 1200-12-1-16 and changes to Paragraph (7) of Rule 1200-12-1-12.

One of those amends the time the person has to complete the exam for two years. This is in keeping with all the other professional examination requirements the Board's amended. In Paragraph (7) it was suggested to read more coherently, "Individuals with a program director and/or instructor/coordinator endorsement are authorized to only coordinate and instruct in or below their level of authorization but not above their level of authorization." I think if the Board will vote the substance of it and the intent, we can carry that over satisfactorily and some modifications. This means that an EMT instructor or a paramedic instructor could certainly have the capability to teach a first responder program. In the past they have had to separately qualify

by examination as a first responder instructor. So this increases the instructors at least frees them to be able to do so.

Ms. Tidwell explained that this would allow paramedic instructors to teach EMT-IV's and coordinators to teach the basic instructor/coordinator without having to be certified as an instructor/ coordinator at the basic level as well as program directors being able to teach all of those without be authorized at those levels.

Mr. Baxter questioned the licensed ambulance service as the primary provider. A discussion on the subject of standard operation procedures followed.

Mr. Land replied these topics were discussed with Clinical Issues Committee. Fire department and NIMS actually provide models to develop those SOPs. In the comments for Government Operations Committee, there is an opinion of the Attorney General concerning the memorandum of understanding for the First Responder Services. (Opinion No. 5-2001) It requires the memorandum of understanding.

The definition of primary provider of service is included under the Rules 1200-12-1-.14 and that is the 9-1-1 responder recognized by local government in that area.

Mr. Bell asked Mr. Land if there a licensed ambulance service that is the primary provider. It says, as you know to coordinate first responder services within the service area. If that service can not, I am a paramedic on the rescue squad. We are a first responder agency under the ambulance service. Can they limit the procedures?

Mr. Land responded there are many services that are primary providers that can limit procedures, but they can also permit. Within the structure of that memorandum of understanding, they can permit personnel with extended skills training, such as, an EMT-IV or a paramedic, to exercise the same level of care. They are set up and then expand to the ALS care through that memorandum of understanding or their endorsed SOPs.

Memorandum of understanding or memorandum of agreement is terminology. As long as the same elements are impacted, it could be done through a formal contract. Administratively, we can review and advise. As long as all those elements are filled, if they wish to limit, that is up to the medical director. The EMS service medical director, generally, is the same physician to oversee the first responder.

Services may can also have an associate medical director, but when you have the primary coordination that medical direction is with local EMS and the designated medical director of the EMS provider or ambulance service.

Mr. Bell replied in other words if I am a rescue squad or a volunteer fire department and we have a first responder unit, we're providing that service, licensed or under the licensed ambulance service in that area, that service can tell that unit, even though it has paramedics, that they can only operate to the first responder level?

Mr. Bell asked if wreck happens in front of me.

Mr. Land responded, you can provide only that care that is authorized by your first responder services level, which would be basic emergency medical care. However, your assessments may include paramedic level assessments because you are trained to a paramedic level.

Unless there is given extra jurisdictional like in times of USAR or times where we are looking at ambulance strike teams, there will be some other considerations. If you are part of the crew of a licensed ambulance service, your standing orders and medical directions go with you anywhere in

the state.

Ms. Tidwell interjected, also, care depends upon the local protocols of the service. For instance, it depends if you were in Davidson County all paramedics are on duty 24 hours a day even though they are not being paid. They are given jump bags and they are given the protocols. If they come upon an accident, and there is no one else there, they are to operate as if they are put on the clock for that time frame.

Chairman Byrd stated and first responders under a contract can do procedures the medical director has approved.

Ms. Tidwell replied, yes, it is the policy of the fire department that prevails in Metro Davidson County. Then in Rutherford County, for instance, if they are off the clock, they are off the clock, and they can not function as a paramedic unless the ambulance shows up and they help the ambulance crew.

Mr. Baxter stated, this is one of the problems I have. I have 60 EMTs that can only respond as first responders. Even though they are licensed as an EMT in the state of Tennessee, they can only perform as a first responder in Murfreesboro.

The board members continued with a lengthy discussion on the issue. Chairman Byrd stated, what is disturbing you I do not think has anything to do with what we are about to vote on.

Mr. Land stated what we would go back through rulemaking hearing if we make a substantive change.

Chairman Byrd asked, for any more discussion on this?

Mr. Parker asked Mr. Land, just for clarification. I know what it says here on bottom of Page 3, top of Page 2 bottom of Page 2, top of Page 3. Sorry. Utilizing -- first responders can utilize a dual-lumen airway device approved by the medical director.

There seems to be some confusion in my area, even though that's what it says, they seem to think that first responders can do a King-LT, and a King-LT is not a dual-lumen device.

Ms. Tidwell injected the King-LT if you go back to the minutes of 2005 or '06 Putnam County is the one that brought it in. I think the Clinical Issues Committee reviewed that and allowed that to be a dual-lumen device. Whether that medical director wants that dual-lumen device for his first responders – it is his choice. You are correct. The King L.T. is not considered a dual-lumen but it is not an endotracheal so it is considered the same concept as the dual-lumen in that it is not invasive into the trachea. I think that is what Clinical Issues felt about. It was included under the dual-lumen concept.

Mr. Land stated, it is a little more specific on that. If you will recall, there were these extra components: Upon completion of approved training, periodic review training, and concurrent quality assurance in and it has to be systems wide.

Mr. Land asked Mr. Parker if as it is worded, he has no objection with it.

Mr. Parker replied, that is correct.

Mr. Land stated the issue is whether or not a King-LT and we will have to review the Clinical Issues Committee minutes. It was recognized. Ms. Tidwell and I can not say that it is recognized for first responders. We are going to have to review it and take that back to Clinical Issues Committee.

(Post note: King has developed a true dual lumen device that services may adopt.)

Chairman Byrd asked for any further discussion on this?

Mr. Bell made a motion that we adopt these amendments to the first responder rules as written. Chairman Byrd the motion is to approve 1200-12-1-.16. Mr. Davis seconded the motion.

Mr. Land stated that you do have comments that were received for the record that were recommended by staff to be incorporated as amendments.

Chairman Byrd asked for discussion?

Mr. Parker stated, I just want to make sure that everybody on the Board understands that on Page 6 this first responder certification requirement now reads:

“Must be at least 17 years of age, which means that we are going to be taking it into the high schools.”

Chairman Byrd stated that Mr. Bell made a motion that we adopt and approve these amendments to the first responder 1200-12-1-.16 rules as written. Mr. Davis seconded the motion. A roll call vote was taken.

Mr. Baxter:	Yes.
Mr. Bell:	Yes.
Mr. Davis:	Yes.
Mr. Parker:	Yes.
Mr. Potter:	Yes.
Mr. Ross:	Yes.
Mr. Wilkerson:	Yes.
Chairman Byrd:	And the Chair votes yes. Motion passed.

Mr. Land reviewed the regulatory flexibility analysis. The specific issues applicable to the rules or amendments we have some boilerplate, but essentially, with regard to this rule change the instructor qualifications are being transferred. The rules retain the current standards except to allow persons who possess credentials to teach at or below their level of certification.

Then as to the first responder services, these would not be classified, generally, as small businesses because they are larger industrial, governmental, or healthcare organizations with more than 50 employees. They are voluntary, nonprofit agencies.

Issues under consideration raised by the analysis are the federal government does not license or certify healthcare professionals. Local nonprofit and governmental agencies are the predominant providers.

As amended, and certainly with Paragraph 7, we do hope exhibit the clarity, conciseness, and lack of ambiguity. The proposed rules are not written with special consideration for flexible compliance because licensing boards have as their primary mission the protection, the health, safety, and welfare of Tennesseans. The proposed rules are written with a goal of avoiding unduly, onerous regulation while maintaining compliance and promoting best practices among EMS educators and providers.

Scheduled deadlines and proposed rules are user friendly because they do follow the promulgation process as provided. Information on these will be distributed through the State and regional professional associations.

Proposed rules do not provide for any separate application requirements for small businesses.

When the emergency medical services rules contain standards, there are statements included or interpretive guidance is adopted by the Board to indicate means of compliance with such standards.

Some of these standards must be operational in nature. And furthermore, the EMS rules contain requirements to obtain and maintain certification or licensure, but these are necessary for the protection of the health, safety, and welfare of Tennesseans.

The rules may create barriers to entry into the professions deemed necessary to protect the health, safety, and welfare of the citizens of the state of Tennessee.

Does the board submit these as the response for the Regulatory Flexibility Act comments?

Mr. Wilkerson made the motion for approval and Mr. Ross seconded the motion. Chairman Byrd asked for discussion on the motion. With no reply a role call vote was taken.

Mr. Baxter:	Yes.
Mr. Bell:	Yes.
Mr. Davis:	Yes.
Mr. Parker:	Yes.
Mr. Potter:	Yes.
Mr. Ross:	Yes.
Mr. Wilkerson:	Yes.
Mr. Chairman:	The Chair votes yes. Motion passed.

COMMITTEE REPORT: COMMUNICATIONS COMMITTEE

Mr. Barney Beatty stated, that he had a staff meeting earlier in the month with the RMCC managers, and we talked about a number of things that we might could do to improve our communications in the RMCCs.

We did have a very constructive meeting, and we had some good input from all of our RMCCs and some of these things that we might want to put into procedures or practices for standardized radio checks and various things of that type.

The second thing I wanted to talk with you about is also in your communications. Mr. Phillips asked me to brief the Board on the new advisory board that was established by the Governor's Executive Order No. 49 to pursue a new statewide 700/800 megahertz interoperable communications network in Tennessee.

I have put some slides or some excerpts from the slide presentation presented by the WICAB, which is the Wireless Interoperable Communication Advisory Board, in your book. It kind of highlights some of the things that the board is doing or that the executive order mandates that be done.

I would like to just brief you on the fact that the scope of the project is to build a trunked 700/800 megahertz standards based radio system statewide that will interoperate with existing radio systems that's across the state.

The current estimates for this project are that it will take about ten years to complete. Rough estimates at this time are that we're looking at \$300-plus million for a statewide system. That will vary depending on actually what we have to do in Tennessee, what construction has to be done, the various aspects of it. The State has hired a consultant that will help us establish a baseline assessment of what communications capabilities are in the state today. This consultant will also help establish a seven-year plan of how to implement this and will help the State write a request

for a proposal to hire a contracting firm to build this network.

The initiatives will begin with Governor Bredesen budgeting \$4 million seed money to hire the consultant and begin the preliminary stages of getting this system organized and started.

In addition to the \$4 million set aside by the Governor, we have federal funding in the amount of \$17.5 that is awarded to the State of Tennessee in the form of a homeland security grant for the public safety and communications grant. This is a pass-through type grant, an 80-20 basis. The cities and counties will be getting 80 percent of this money.

The Tennessee Wireless Communications Council, which is made up of communications managers from all departments of state government, is acting as the technical advisory committee to this advisory board to the Governor. We will be reviewing all proposals, and we will be recommending changes or approving what equipment implementations is proposed and various things like that as we go along, along with other members on that committee.

The main thing I wanted to tell you was that for many years we have been looking at a new statewide radio system. This is the first time that we have really had concrete evidence that the State is determined to make this a reality. The Governor has taken this step in forming this committee.

Mr. Ross stated it is been brought to my attention that the Governor has asked for a member from EMS to be appointed to this advisory council. Under consideration, and also the fact that our health system has been widely involved in working towards interoperability, the fact that we have also worked in bioterrorism grants, the PSIC grants, the homeland security grants, and so forth, I would like to offer a motion to add Mr. Johny Faris to this Wireless Interoperability Communications Advisory Board user committee.

Chairman Byrd stated, I have a motion to place Mr. Johny Faris on this board. He will be a representative of our EMS Board. Mr. Davis seconded the motion. No discussion on the motion. All were favor none opposed. Motion passed.

STAFF REPORTS:

Ms. Tidwell stated that she will report for Dr. Holley in his absence.

STAFF REPORT: NAEMSO

Ms. Tidwell reported that in October she, Joe Phillips, and Dr. Holley attended the NAEMSO meeting in Minnesota, which is the National Association of EMS State Officials.

The educational standards we found are very much on track for the fall of 2008. There was much discussion on scope of practice and what it would mean for legislation and rule changes for each of the states.

We felt that if our committee so chooses to recommend to the Board the full scope of practice, we would have no problem moving into that without any problem as it is written. We are moving forward with that task force to look at that. At the March meeting you will have a recommendation from the task force on what they recommend for the new scope of practice.

STAFF REPORT: EMITS

Ms. Tidwell announced that we are accepting all vendors now who are gold or silver producers or certificate holders for the NEMESIS, which is the National EMS Information System. We sent

that letter out to the consultants by e-mail to distribute to their directors and mail a hard copy letter out to each director. We are getting the current list from our new RBS system, and because it is county specific which brings me to another thing about EMITS. We are working on getting the county specifics set up in EMITS separate from the parent company so that they have their own EMITS place to go in and download to. But we are doing that.

We did also submit an Excel spreadsheet that was downloaded from the NEMSIS site that shows who are gold and silver producers so the service directors determine a vendor is on that list. If they are not, then we need to contact the vendor to get on the list. If their vendor cannot get on the list, then they need to enter through the State Web site.

We are preparing ready to release version 2.0 of EMITS. We will be beta testing it with a few of our services before this new version. It will be much faster and it is going to help.

STAFF REPORT: SMART SYSTEM

Ms. Tidwell report on The SMART System as addressed Dr. Holley's Clinical Issues minutes. We have continued to pursue and received some funding. The bioterrorism hospital grant has provided 165,000. We will need about 400,000 to accomplish what we want to accomplish.

The first thing is to do the education and distribute the packets on how to use the system. Then the next year obtain packets for each ambulance.

STAFF REPORT: EARTHQUAKE PREPAREDNESS

Ms. Tidwell report the Mr. Phillips is in Paris Landing this week at the earthquake conference for topic in West Tennessee preparedness for the earthquake. I am sure we will be hearing more about that as we are having exercises and a planning session on preparing for the earthquake.

STAFF REPORT: CRITICAL CARE PARAMEDIC

Ms. Tidwell discussed the critical care paramedic. We were hoping to have the exam ready by January 1st. However, the vendor was not identified until September and it was around the middle of October before the contracts were actually signed to enable us to meet and start the process.

The expert writers have been identified. We have submitted questions. We are starting the review process on the questions. By February the vendor may have a draft. There is still going to have to be some more review questions reviewed in January.

The vendor is a company out of West Virginia. Their experience is in promotional type exams for emergency medical services, fire departments, and police departments, but not entrance exams. I guess you would call them hiring exams. They have a background in education.

STAFF REPORT: WEB SITE UPDATES

Ms. Tidwell reported the protocols are now posted on the Web site. That was absolutely one of the most daunting tasks that I have had in a while was to try to get those formatted. One of the things that Dr. Holley has implemented and we have formatted and put out on the Web site is our approved clinical practices.

In the future, Clinical Issues Committee has requested approve procedure be posted. This is a document that is going to be a living document on our Web site. As Clinical Issues vote on those and approve procedures, they will come to you in this format on our Web site.

This provides documents for service directors, providers, and everybody to go out and see what procedures, what drugs, anything the Board has approved and included in the practice of EMS and the profession in this state. It is posted under medical direction.

Dr. Holley had been working best practices and these will be on our Web site as well.

The TNPAP was on our Web site as a special alert and with the redo of the Web site it was dropped. I have to make sure that the State approves a link to the TNPAP site. We will also include a document in there explaining TNPAP that it is available and put the contact information on that page if we are allowed the link. If not, they will at least have the Web address that they can go out and do their own search.

Chairman Byrd asked that we ask Mr. Harkreader to prepare a presentation on the history and foundation of TNPAP and answer some questions by the Board?

Ms. Tidwell replied that she would be glad to check with Mr. Harkreader.

Ms. Tidwell thanked the board and asked if were any questions?

Mr. Parker asked Ms. Tidwell to ask Dr. Holley about protocols on the Web site. We had discussed the heart rate ceiling for albuterol administration, and he was going to change that on the Web site, but it is not done. He left it as less than 150, and he was going to take that away or increase the heart rate.

Ms. Tidwell replied that she would check on that with Dr. Holley.

Chairman Byrd thanked Ms. Tidwell and called for a five minute break.

(Break in proceedings.)

STAFF REPORT: AMBULANCE SERVICE AUDIT POLICIES

Mr. Land noted these issues:

The service audit policies and procedures were reviewed by the staff at our fall in-service. There were some minor revisions. The service directors become aware of quality improvement or other issues through those audit processes. We do hope to authorize the distribution of the revised materials in January and get Ms. Tidwell and Ms. Stanley's support in getting those documents approved by our printing committee. It is an internal document and there are still issues about whether or not it needs to be approved by publications committee.

STAFF REPORT: OUT-OF-STATE AMBULANCE SERVICES

Mr. Land stated the next issue I would like to raise with you concerns something that we see an increasing role with border states, and in particular, at border counties in Kentucky and specifically Bowling Green, Kentucky. They want to comply with the law. It makes it a little onerous for them to license in Tennessee when they are not really intending to do business in Tennessee, but they back transport patients from hospitals in Tennessee.

We do have a provision in our law that says it does not apply to "any ambulance service licensed in another state that does not regularly transport in Tennessee when called in for a transfer or upon referral by any physician, health care facility, or ambulance service licensed in the state of Tennessee."

Several years ago that was amended to cover incidents at the Bristol speed track to bring in

volunteer services of no more than four times a year. Prior to this as to the issue of what constituted regularly transport, it was done on a case by case circumstance. I believe that Mr. Davis is familiar with the Corinth, Mississippi, provisions. They had 72 calls a year. That was still not considered regular transport because those calls were coming in on 9-1-1 to Corinth, and it was to facilitate emergency response.

I do want to inform you that they are trying to be compliant with the law. They do not want to have to turn down business, but they would refer it to a private service here in Nashville if necessary.

Sometimes when there are back transports for secondary level of care it requires satisfactory clinical services. That is where we get into more the fact that right now they are licensing critical care transports, special transports, and we are not quite to that. That opens up the whole issue in the future possibly revisiting our ambulance service category requirements too.

We may see if this practice is challenged and I do know that we are getting administrative calls on this issue.

STAFF REPORT: AIR AMBULANCE PROFESSIONS

Mr. Land stated that regarding the air ambulance professions, we had the -- T.C.A. 68-140-507 was amended. Ms. Hartman worked with our information and regulatory board systems by moving those air ambulance services out of the ambulance service license database and a separate database.

We have about 30 helicopters, three fixed wing aircraft, but that makes the total profession about ten to eleven services. We will try to institute a different registration process.

STAFF REPORT: AMBULANCE EQUIPMENT REVISIONS

With regard to ambulance equipment revisions, this continues to be a source of discussion at the Clinical Issues Committee and between CoPEC as far as our program compliance with our EMS for children's grant. I have dealt with CoPec working Ms. Phillippi in many e-mails lately, with the chairperson of CoPEC and then their CIC committee, Dr. Kevin Brinkmann.

We do hope to get further clarification. They wish want to see more emphasis on pediatric supplies, so we will bring that discussion back to you. After the February 20th EMS medical directors' meeting, we receive their recommendations to Clinical Issues, and then bring that information to the Board at the March meeting.

STAFF REPORT: ELIMINATING OR UPDATING RULES

Mr. Land stated the staff identified some problem rules.

The rule states:

"Each ambulance service shall report any accident or incident resulting in bodily harm to a person, including an agent or employee, or property damage, which is in excess of \$200." That is supposed to come into the Division within ten days. We allowed copies of the officer's accident report to be considered for that. We would like to know about bodily injuries, but then hopefully, through EMITS or some other surveyor data we receive those reports.

This rule creates an undue liability. I have actually had to deal with attorneys and lawsuits and the fact that the service did not file this report with us has been questioned and brought into the trial courts.

Chairman Byrd asked: "Is the recommendation that we amend the rule to bodily damage only?"

Mr. Land replied that services are already obligated under OSHA to keep a log of work related injuries, so we can review a service's, we looked at your OSHA log.

MR. CHAIRMAN: I would agree. What's the pleasure of the Board?

MR. ROSS: What were we doing with it anyway?

Mr. Land stated that originally, the report was used to justify the grant for EVOC training. It was created back in 1983. We used those records then. Back when we only had about 500 or 600 ambulances.

It took seven years for the Tennessee Highway Patrol to get their new officers report standardized. We should be able to go and query that data. One of the reasons that we had problems was they could not say how many ambulances were involved in that accident. We now hope they can.

Mr. Land states the affected rule is 1200-12-1-.11(2).

Mr. Ross made the motion to repeal the rule 1200-12-1-.11(2) and seconded by Mr. Davis. Chairman Byrd asked for any discussion on the motion?

Mr. Baxter and members had a brief discussion.

Mr. Land stated that all he needs today to carry it forward to rulemaking hearing is a voice vote. Then we will prepare it, do a Notice of Rulemaking Hearing, and have the rulemaking hearing before your next meeting.

Chairman Byrd stated with no further discussion. A vote was called for. All were in favor. None opposed. Motion carried.

Mr. Land submitted the second amendment that staff recognized. It has potential HIPAA provisions because of some of the records that services submit, driver's license number, Social Security number and other things that they send in may violate federal laws.

Chairman Byrd asked, so we no longer have to send it in.

Mr. Land respond, correct. We are not going to get this rule in by next renewal year so it would apply to the following renewal year. At least we will be working on it.

Mr. Wilkerson made the motion to amend rule 1200-12-1-.15, (1) (a) and (b) and it was seconded by Mr. Parker. Chairman Byrd asked for any discussion on the motion? All were in favor, none opposed. Motion passed.

The question was asked, do we need to repeal paragraph (1) (c)?

Mr. Land told how this was misplaced and is already addressed in rule 1200-12-01-.14.carry it forward to rulemaking. The Board will have to vote to allow staff to file the Notice of Rulemaking Hearing.

Mr. Wilkerson made the motion to amend and take it before rulemaking and seconded by Mr. Potter. Chairman Byrd asked for any discussion on the motion? All were in favor, none opposed. Motion passed.

Mr. Land congratulated Ms. Hartman on doing a fantastic job getting our county specifics license

renewals.

Ms. Hartman submitted service license report. There are forty-two new service licenses in about 30 to 31 jurisdictions. This expands the revenue base for ambulance service licensure. It does not change our number of permits.

Field staff that is one reason for modifying some of this is what information should be kept at those satellite offices versus what would we need to obtain at the main office.

Chairman Byrd thanked Ms. Hartman for her report.

NEW BUSINESS: SPECIAL RECOGNITION

Ms. Tidwell noted that, in September, Mr. Andy Joe Lynn, EMS Consultant from Region 4, retired after 35 years of service with the Division. He has been the only consultant in that region for 35 years, and we would like for the Board to pass a resolution acknowledging his 35 years as well as retiring his State EMS number, Number 3. So we ask the Board to consider a resolution.

Mr. Wilkerson made the motion that we recognize Mr. Lynn's years of service as Region 4 coordinator and retire his number. Mr. Bell seconded the motion. With no discussion, all were in favor, none opposed. Motion passed.

Chairman Byrd asked if there was any other business to come before the Board? With no further business Mr. Baxter made the motion to adjourn and Mr. Davis seconded the motion. All were in favor and none opposed. The board adjourned.

Respectfully submitted,

Judy Lee Hartman
Administrative Assistant RB 2
