



TENNESSEE BOARD OF OSTEOPATHIC EXAMINATIONS
Regular Board Meeting

November 2, 2016

MINUTES

A regular meeting of the Tennessee Board of Osteopathic Examination was held in the Poplar Conference Room, at 665 Mainstream Drive, Nashville, TN 37243 on August 10, 2015.

Members Present: Jeffrey L. Hamre, DO
Jan Day Zieren, DO
J. Michael Wieting, DO
Shant H. Garabedian, DO
Shannon Kilkelly, DO
Penny Judd, Consumer Member

Members Absent: None

Staff Present: Kenneth Bowman, Administrator
Stacy Tarr, Administrative Director
Rene Saunders, BME Medical Director
Maegan Carr Martin, JD, Executive Director
Francine Baca-Chavez, JD, Deputy General Counsel

The necessary number of Board members joined the meeting and a quorum was established. Board of Osteopathic Examination Chair, Jeffrey Hamre, DO, called the meeting to order at 9:00 a.m.

Recognition of Dr. Polk

Ms. Martin recognized Dr. Polk's sixteen years of service to the Board, the people of Tennessee, and his participation on the national scene. Dr. Polk has managed, in his many years of service, to masterfully serve as an advocate for the public and the profession. Dr. Polk was present and accepted the plaque after a very short speech and recognition of his colleagues on the Board.

A motion to approve the minutes from the August 2016 meeting of the Board was made and seconded. The motion carried unanimously.

Contested Case - Dr. Brett Bolton

Ms. Baca-Chavez presented an agreed order to the Board. She reminded the Board that they have considered this matter before; however, the order was rejected by the Board due to some unresolved concerns, which were addressed during the hearing. Dr. Bolton was not present, but his attorney, Dan Warlick, was present.

Ms. Baca-Chavez provided an overview of the case. Dr. Bolton's license was summarily suspended in November 2014 and it remains suspended. He was taken to Bellevue Hospital after he assaulted a stranger at the 9/11 Memorial in New York City. He, at that time and for a time after, claimed privately and publicly that he was Jesus Christ and would be running for President in 2016. The order being proposed would require that Dr. Bolton to undergo a multi-disciplinary evaluation at Vanderbilt University and obtain the monitoring of the Tennessee Medical Foundation (TMF). He must continue receiving medical care and treatment for his condition and must pay costs and penalties.

The Board has considered an order to address this matter before; however, at the time of the Board's consideration they determined that: 1) the board should take place at Vanderbilt at not at the proposed Florida facility (Dr. Bolton is currently practicing medicine in Florida); 2) the results of the evaluation should be sent directly to the Board and not to the disciplinary coordinator; 3) monitoring should be conducted by the TMF, not the Florida PHP.

Dr. Bolton's counsel, Mr. Dan Warlick, attended the hearing on his client's behalf. Ms. Baca-Chavez told the Board that they had two options: 1) they can either approve this order as proposed, without changes; 2) they can reject this order and proceed with a contested case hearing today. Ms. Judd wanted to know whether there were any complaints related to the provision of medical services provided in Tennessee. Ms. Baca-Chavez responded that there were no disciplinary actions prior to this time. Dr. Wieting made a motion to accept the proposed agreed order. The motion was seconded by Dr. Kilkelly. Ms. Judd abstained. The motion passed.

Franklin Hayward, II, DO – Dr. Hayward appeared before the Board to address a malpractice case that settled in 2011. The allegation was improper discharge. The patient subsequently died from a central nervous system infection. The event occurred during his fellowship. Dr. Hayward explained the case in great detail. Dr. Hayward in the process of becoming board certified. He's waiting on his exam results. Dr. Hayward confirmed the malpractice claim did not result in discipline in any other jurisdiction. Dr. Wieting made a motion to approve the application. Dr. Zieren seconded the motion, which passed unanimously.

Axel Thors, DO – Dr. Thors appeared before the Board to address a malpractice suit currently pending in the state of Michigan. He is one of four practitioners named. Dr. Thors described the case thoroughly and answered questions from the Board. Dr. Kilkelly said that in his review of the file he saw many concerning things, but none of them involved Dr. Thors' involvement in the case. Dr. Garabedian made a motion to approve Dr. Thors application for license. Dr. Kilkelly seconded the motion which passed.

Ratification of New Licensees

Dr. Weiting made a motion to ratify all initially approved applications. Dr. Zieren seconded the motion which passed.

Report from the Office of Investigations

Ms. Nichelle Dorroh appeared on behalf of the Office of Investigations and reported that there are 14 complaint cases pending. The next review is going to occur on Friday, November 4th.

Report from the Financial Office

Mr. Butch Jack presented to the Board and introduced Noranda French, who will be presenting to the Board in the future. Mr. Jack provided an overview of the Board's current financials. The Board's current expenditures are \$171,242.70. The Board's revenue for 2016 was \$273, 808.14. The total cumulative carryover is \$713,249.43.

Dr. Garabedian spoke in favor of increasing the salary for administrators so that the Board might better retain staff. Board members develop a relationship with the administrators and begin to develop a process. When there's high turnover, it decreases the efficiency for all. Ms. Martin said that although it may seem like the Board has had high turnover, of the three individuals who have left the position, two have been promoted to a different position within the Department. Only the most recent individual left for reasons other than promotion, and that individual's reason for leaving was medical. Still yet, the point made is a good one. Unfortunately, the Board does not have any authority to make salary adjustments. Mr. Jack added that the Board is subject to the state's compensation plan which is fairly fixed. Administration handles salary adjustments.

Mr. Jack referenced the HRB's policy which provides that anytime your reserves exceed two times your three year average of operating expenditures, the financial office will initiate discussion regarding the possibility of decreasing the fees. Mr. Butch provided a document summarizing a couple of different scenarios. The Board considered authorizing rulemaking to decrease the fees; however, they ultimately decided that they would wait until the next meeting to determine whether legal expenses have increased as expected.

Request Waiver of CME Rules

Ms. Martin presented a request for a CME waiver. She referred the Board to TENN. COMP. R. & REGS. 1050-02-.12(1)(e) which permits the Board to grant CME waivers to individuals who are able to demonstrate that an illness, disability or other undue hardship beyond the control of the licensee prevented him or her from complying. Dr. Phillips, who has requested the waiver, is in the military and was advised by a superior to apply for full licensure. He obtained full licensure; however, he was in a residency program and did not obtain additional education hours. After considering whether an individual in a residency training program should be required to obtain additional hours, Dr. Wieting made a motion to adopt a policy that will allow physicians successfully participating in an AOA or ACGME approved residency or fellowship programs to earn continuing medical education credits for their successful participation in that program. Dr. Zieren seconded the motion.

Ms. Martin stated she was in a meeting recently with many of the directors and executive directors of other professions in the division and learned that there is perhaps some room for leniency in the Board's enforcement of its CME policy. Some other boards allow their licensees a period of thirty or up to ninety days to cure a CME deficiency without penalty. Ms. Martin explained that the administrative staff spends a tremendous amount of time enforcing the CME requirements of the profession and she has learned that, typically, when a licensee is short CME hours, it is typically inadvertent, and not due to a disregard for the rules. She also stated that physicians don't typically

oppose paying the fine; however, the agreed citations are published to the website and do seem to cause some trouble for our licensees.

Ms. Judd spoke in favor of publishing a list of the approved courses to the website. Ms. Martin explained the difficulties of maintaining such a list. Dr. Wieting spoke in support of a ninety day grace period. Dr. Kilkelly agreed. The Board discussed a 120 grace period but chose instead to proceed with a 90 day grace period. A motion was made, seconded and passed.

Consider Proposed Changes to the CME Rule

The Board considered the proposed changes to the CME rule and determined to proceed with rulemaking. Dr. Wieting made a motion which was seconded by Dr. Kilkelly. The motion passed.

Report from the Office of General Counsel

Ms. Baca-Chavez reported that there are 27 cases open against 8 physicians, no cases open against midwives. Twenty-one of the 27 cases involve improper prescribing.

The rules regarding the definition of “addiction specialist” and the repeal of the intractable pain act are both still in the internal review process. Ms. Baca-Chavez provided an overview and very thorough summary of the rulemaking process for all Board members.

Report from the Administrative Office

Statistical Licensing Report

Ms. Tarr provided the Board’s statistical licensing report. The following statistics are from August 1, 2016 through October 31, 2016:

- New applications received- 24
- New full licenses issued – 28
- Special training applications received
- Special training licenses issued – 4
- License renewals - 154
- Total number of licensees – 1427

Taskforce from PC 942 Update

Allows pharmacists to enter into a collaborative agreement with a physician to prescribe hormonal contraceptives. Yesterday, the Taskforce met for the first time. The meeting was largely organizational. The group will meet again in December.

BME’s Telemedicine Rule becomes Effective

The BME’s telemedicine rules became effective on October 31st, 2016. So the BME will no longer issue telemedicine licenses. Ms. Martin believes that it is time for the Board to begin

FSMB Annual Meeting

Dr. Wieting would like to attend the FSMB and represent the Board as its delegate. Ms. Judd would like to attend as well. Ms. Martin and Dr. Saunders would also like to attend. The Board will pick up the cost of attending for one or the other of them. Dr. Wieting made a motion to approve travel

for a board member to attend, appropriate staff and the Board's counsel. The motion was seconded and passed.