



**Tennessee Board of Osteopathic Examiners
Regular Board Meeting**

Wednesday, August 11, 2021

MINUTES

The regular board meeting of the Tennessee Board of Osteopathic Examiners was called to order at 9:07 a.m. in the Poplar Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. J. Michael Wieting, Board President.

Board members present: J. Michael Wieting, D.O., President
Ms. Penny Judd, Consumer Member and Secretary
Jeffrey Hamre, D.O.
Otis Rickman, D.O.
Jan Zieren, D.O.

Board member(s) absent: Shant Garabedian, D.O., Vice President

Staff present: Francine Baca-Chavez, JD, Office of General Counsel
Rene Saunders, MD, Medical Consultant, BME
Stacy Tarr, Administrative Director
Candyce Wilson, Administrative Director
Cassandra Corbett, Board Administrator

Dr. Wieting called the meeting to order. A roll call was conducted, and a quorum of the Board was established with the following members present: Dr. Michael Wieting, Dr. Jan Zieren, Dr. Jeffrey Hamre, Dr. Otis Rickman, and Ms. Penny Judd.

INTRODUCTION OF NEW BOARD MEMBER, OTIS B. RICKMAN, D.O.

Dr. Wieting introduced newly appointed Board Member, Otis. B. Rickman, D.O. Dr. Rickman thanked both the board and the administration for the opportunity to serve on the Board.

APPROVAL OF MINUTES

The Board reviewed the minutes from the May 5, 2021 meeting. Ms. Judd motioned to approve the minutes. Dr. Hamre seconded the motion but wished to discuss the minutes before the vote. After Dr. Wieting opened up the floor for discussion, Dr. Hamre inquired as to whether a correction had been made regarding the section mentioning Dr. Shannon Kilkelly's departure from the Board. The Board's

administrator, Cassandra Corbett, confirmed that the error had been corrected and that the Board was reviewing the updated version. The motion passed by unanimous vote.

LEGISLATIVE REPORT

Elizabeth Foy from the Office of Legislative Affairs at the Department of Health presented a summary of recent General Assembly bills that have passed. Ms. Foy directed the Board to the Board Attorney for any additional questions or explanations.

Public Chapter 26: This act extends the Alzheimer's disease and related dementia advisory council to June 30, 2026. This act took effect March 23, 2021.

Public Chapter 37 This act prohibits agencies subject to sunset review from promulgating rules or adopting policies to exempt members solely by virtue of their status as members. This act took effect March 23, 2021.

Public Chapter 62: This act was one of the Department of Mental Health and Substance Abuse Services' legislative initiatives, relative to revising requirements on death reporting. Among other requirements, this act requires the mental health facility to notify the office of the medical examiner having jurisdiction upon discovery of a death as soon as reasonably possible, but no longer than 12 hours after the discovery of the death. The act also clarifies that licensed healthcare providers listed under additional titles in Tennessee Code Annotated (such as title 68) can practice telemedicine. This act took effect March 29, 2021.

Public Chapter 114: This act requires TDH in collaboration with other public and private healthcare agencies to incorporate Alzheimer's disease and other dementias into existing public health programs. This act took effect April 13, 2021.

Public Chapter 136: This act was one of the Department of Health's legislative initiatives, relative to the Controlled Substance Monitoring Database (CSMD). First, the act authorizes the state's chief medical examiner, or county medical examiner, to allow designees to approve death investigations. Next, this act allows deidentified CSMD data, rather than only aggregate, to be shared, with the intent of improving information access. Additionally, this act allows for CSMD data to be shared with additional state, county, or federal agencies outside of Tennessee. Lastly, this act decreases the quorum requirements of the CSMD committee by one member, but still have a majority of members present to conduct regular committee business (6). This act took effect April 13, 2021.

Public Chapter 150: This act simply adds FQHC's in Tennessee to the definition of healthcare organizations pursuant to the law around quality improvement committees. This act took effect July 1, 2021.

Public Chapter 153: This act creates a new definition of "store-and-forward telemedicine services" to include the use of asynchronous computer-based communications between the healthcare provider and the patient for the purpose of diagnoses, consultation, or treatment of a patient at a distant site where there may be no in-person exchange. This act took effect April 13, 2021.

Public Chapter 179: This act authorizes unlicensed graduates of certain medical training programs to provide telehealth services, provided they maintain the same existing standards for telehealth that licensed providers must meet. This act took effect April 20, 2021.

Public Chapter 197: This act requires the Department of Health and other agencies to seek federal, private, or other available funding for the development of substance use disorder recovery programs. It also requires the agencies to report by February 15th of each year to the legislature the amount of funds

they've applied for relative to substance use disorder programs, as well as recommendations to statute changes to develop recovery programs. Lastly, the report must include any benefits realized from these programs. This act took effect April 22, 2021.

Public Chapter 230: This act revises the definition of marijuana to clarify that it does not include a product approved as a prescription by the Food and Drug Administration (FDA). This act took effect April 22, 2021.

Public Chapter 242: This act authorizes records custodians to petition a court for injunctive relief from individuals making frequent public records requests with the intent of disrupting government operations, following a fifth (5th) public records request. A records custodian can only petition a court if they notify the person in writing stating the specific conduct may constitute intent to disrupt government operations, and that the person continues to do so. The individual upon a court enjoinder would not be able to make public requests at the agency for up to one (1) year. This chapter took effect April 28th, 2021 and will sunset July 1, 2025.

Public Chapter 259: This act establishes requirements for a healthcare provider to follow when either an inpatient in a health care facility, or someone who is seeking services in an emergency department, expresses to the provider a recent threat or attempt at suicide or infliction of bodily harm to themselves. In this scenario, the healthcare provider shall enter the attempt or threat into the patient's medical record. Upon discharge from the facility, the facility shall provide the patient with contact information to access a qualified mental health professional or counseling resource unless the patient is discharged to another facility. This referral requirement can be satisfied by providing contact information for this state's mobile crisis services or the statewide crisis hotline. Lastly, the act states that a healthcare provider who violates this section is subject to discipline by the licensing authority. This act took effect July 1, 2021.

Public Chapter 272: This act is known as the "Safe Stars Act." This bill requires that certain safety standards be implemented, beginning with the 2022-2023 school year for each LEA and public charter school that provides a youth athletic activity. Additionally, this act requires the department of education and the department of health to develop and post on their websites guidelines and other materials to inform and educate students, parents, and coaches about electrocardiogram testing (EKG) be administered in addition to the student's comprehensive initial pre-participation physical examination. This act also requires the department of education, in collaboration with the department of health, to develop a sudden cardiac arrest symptoms and warning signs information sheet that includes information about EKG testing. The information sheet must address the benefits and limitations of EKG testing. This act took effect April 30, 2021.

Public Chapter 291: This act requires the attorney general and reporter to not approve an emergency rule if the emergency rule does not meet the statutory criteria for adoption of the rule. This act took effect July 1, 2021.

Public Chapter 328: This act requires that starting December 1, 2023, state agencies submit a report of their effective rules to the chairs of the government operations committee every eight (8) years. The report is required to include a brief description of the department's operations that each chapter affects, as well as each rule and its administrative history, which would include the original promulgated date and the dates the rule was last amended, if applicable. Additionally, the report would include a determination of each rule on whether it adheres to current state or federal law or court rulings, should be amended or repealed, reviewed further, or continue in effect without amendment. Lastly, if there are any intentionally false statements in the report, the government operations committee would have the ability to vote to request the general assembly to remove a rule or suspend the department's rulemaking authority for any reasonable period of time. This act took effect July 1, 2021.

Public Chapter 348: This act requires fetal remains from a surgical abortion to be disposed of solely by burial or cremation. Under this act, an abortion facility is defined as any ASTC, private office, or other facility as defined by TCA 68-11-201 in which abortions are induced or performed. The act does not include hospitals licensed under Title 68 as long as the hospital policies and regulations concerning disposal of fetal remains substantially complies with the requirements of this act. A pregnant woman who has a surgical abortion has the right to choose burial or cremation of the fetal remains as well as the location for the final disposition. The woman is to be provided with forms created by the Department of Health informing her of that right and selecting the means and location. If the woman does not wish to exercise this right, the abortion facility shall determine whether disposition is by cremation or interment. The act also establishes a variety of record keeping requirements on the facility. This act took effect on May 6, 2021 for rulemaking purposes. The rest of the public chapter takes effect July 1, 2021.

Public Chapter 357: This act authorizes an exception to existing telehealth requirements governing healthcare providers in Tennessee. In doing so, it allows individuals licensed in another state to practice telehealth in Tennessee while providing healthcare services on a volunteer basis through a free clinic. This act took effect May 11, 2021.

Public Chapter 362: This act is known as the “Jim Coley Protection for Rape Survivors Act,” and revises existing provisions relative to the protocol for forensic medical examinations of victims of sexually oriented crimes. It requires healthcare providers to notify law enforcement that an evidence collection kit is ready for release within 24 hours of concluding the examination. It also requires law enforcement to pick up the kit for storage or transmission within 48 hours of being notified and revises the storage requirements for maintaining records of the kits. Lastly, in the event that a victim elects not to report the alleged offense to police at the time of examination, the collection kit becomes a hold kit and the healthcare provider is required to assign a number to identify the kit rather than using the victim’s name. This act partly took effect May 11, 2021, but not for TDH concerns. The rest of the act took effect July 1, 2021.

Public Chapter 396: This act establishes provisions governing the practice of certified medical assistants in Tennessee. The act specifically authorizes licensed hospitals to employ certified medical assistants under a set of work requirements, specifically around administering approved medications to admitted patients in an ambulatory outpatient hospital clinic. Ambulatory outpatient hospital clinic is defined as a clinic or physician office that is owned and operated by a hospital licensed under Title 68 and provides treatments to patients who are not admitted as inpatients to the hospital. Individuals employed in such a role are required to wear a visible nametag designating them as a certified medical assistant while working. Lastly, this act clarifies that this new section of code does not apply to personnel employed by physicians performing duties in settings other than an ambulatory outpatient hospital clinic. This act took effect May 11, 2021.

Public Chapter 441: This act prohibits certain healthcare entities and insurers from discriminating based on disability regarding organ transplant services or coverage. In doing so, this act authorizes an individual who reasonably believes that a covered entity has violated this act to bring a civil action for injunctive or other equitable relief against the covered entity for the purpose of enforcing compliance. Lastly, this act states that it does not create a right to compensatory or punitive damages against a covered entity. This act took effect July 1, 2021.

Public Chapter 453: This act requires public or private entities or businesses that operate a building open to the general public to post signage regarding public restroom access in certain situations. Specifically, this applies to entities or businesses that have restroom policies allowing either biological sex to use any public restroom within their building. The act includes requirements for language, size, location, and even color for the signage. The act excludes unisex, single occupant restrooms or family restrooms intended for use by either sex. This act took effect July 1, 2021.
Public Chapter 460: This act specifies that standard medical practice does not involve prescribing hormone treatment for gender dysphoric or gender

incongruent prepubertal minors. Additionally, this act prohibits a healthcare prescriber from prescribing a course of treatment that involves hormone treatment therapy for gender dysphoric or gender incongruent prepubertal minors, except when prescribing a course of treatment for diagnoses of growth deficiencies or other diagnoses unrelated to gender dysphoria or gender incongruency. This act took effect May 18, 2021.

Public Chapter 461: This act requires TDH licensing authorities, upon learning a healthcare prescriber was indicted of certain criminal offenses (controlled substance violations or sexual offenses), to automatically restrict the prescriber's ability to prescribe Schedule II controlled substances until the case reaches a final disposition. The restriction shall be removed upon sufficient proof of acquittal or dismissal/nolle prosequi. The act further requires licensing authorities to automatically revoke the license of a practitioner that is convicted of those same criminal offenses. A new license shall be granted if the conviction is overturned or reversed (but shall be restricted related to prescribing if the case has not reached final disposition). In addition, the act requires the licensing authority to suspend the license of midlevel practitioner (APRN/PA) upon finding the healthcare professional failed to comply with physician collaboration requirements. Finally, this act requires facility administrators to report certain disciplinary actions concerning licensed personnel to the professionals' respective boards. This act took effect May 18, 2021.

Public Chapter 464: This act recreates the elder abuse task force, which was originally created in 2019 and was terminated January 15, 2021. The task force will consist of ten (10) members, including the Commissioner of Health or their designee. The task force will hold public meetings and utilize technological means to gather feedback on the recommendations from the general public and from persons and families affected by poverty. The commission on aging and disability will provide necessary administrative support for the task force. Lastly, this act requires the task force to submit its findings and recommendations to the governor and the general assembly to combat the abuse of elder persons and other vulnerable adults no later than January 15, 2022, at which time the task force will terminate. This act took effect May 18, 2021.

Public Chapter 513: This act prohibits the Governor from issuing an executive order and a state agency, department or political subdivision from promulgating, adopting, or enforcing an ordinance or resolution that requires a person to receive an immunization, vaccination, or injection for the SARS-CoV-2 virus or any variant of the SARS-CoV-2 virus. It also deletes the previous override during an epidemic or immediate threat of an epidemic of an objection against vaccination that was made on the basis of religious tenets. The law prohibits requiring the COVID-19 vaccine to attend K-12 schools. The prohibition against requiring vaccines does not apply to governmental entities subject to federal or state statute or rule that prohibits the entity from requiring medical treatment for those who object on religious grounds or right of conscience. The law also does not apply to students of a public institution of higher education delivering healthcare services when the student is participating in/fulfilling requirements of a program in medicine, dentistry, pharmacy, or another healthcare profession. This act took effect May 25, 2021.

Public Chapter 531: This act limits an agency's authority to promulgate rules without a public hearing. There are exceptions to the public hearing requirement. These exceptions include emergency rules, rules that are nonsubstantive modifications to existing rules (like clerical updates), rules that repeal existing rule, or rules that eliminate or reduce a fee described by an existing rule. This act took effect July 1, 2021.

Public Chapter 532: This act authorizes the joint government operations committee to stay an agency's rule from going into effect for a period of time not to exceed ninety (90) days. If the government operations committee determines that subsequent stays are necessary, then the joint committee may issue consecutive stays, each for an additional ninety (90) day period, so long as such stays do not extend beyond the fifth legislative day of the year following the year in which the rule is filed with the secretary of state. The initial stay may be done by either the house or senate government operations committee, but

subsequent stays must be by agreement by the committees of both chambers. A stay is effective when the respective committee files written notice with the secretary of state, and the respective committee shall specify the length of effectiveness of the stay. This act took effect May 25, 2021.

Public Chapter 550: This act restricts county health boards to an advisory role to their respective county mayors. The bill also establishes a definition of quarantine in code rather than only in rule. Finally, the bill prohibits governmental entities from requiring vaccine passports. This act took effect May 26, 2021.

Public Chapter 565: This act transitions the Committee on Physician Assistants under the Board of Medical Examiners to an independent Board of Physician Assistants. The board will receive its transferred rules from the Secretary of State's office from its original committee and those will have full force and effect while new rules are drafted and adopted. The new board will consist of nine members appointed by the Governor. The board will have a sunset date of June 30, 2024. This act took effect May 26, 2021.

Public Chapter 577: This public chapter establishes the medical cannabis commission which is administratively attached to the department of health for purposes of budgeting, audit, use of IT systems, HR support, clerical assistance, and administrative support. The commission is composed of 9 members. The Governor appoints 3 members (1 from each grand division), the Lt. Governor appoints 3 members (1 must be a physician and 1 a pharmacist), and the Speaker of the House appoints 3 members (1 must be a physician and 1 a pharmacist). The commission must be impaneled and hold its first meeting by October 1, 2021. The commission is required to meet at least once every two months prior to March 2023. The commission shall appoint an executive director. The commission is to examine federal laws and other states' laws regarding medical use of cannabis, including issues relating to patient qualification, patient registration, role of practitioners in recommending/prescribing, establishing guidelines for acceptable medical uses, development of a standard of care, etc. This act took effect May 27, 2021.

Public Chapter 587: This act creates additional resident training spots for universities in Tennessee. A portion of these focus on family medicine, general pediatrics, primary care medicine-pediatrics, and psychiatry, which is administered by the University of Tennessee (UT) and East Tennessee State University (ETSU) in cooperation with the Department of Health and the Tennessee Higher Education Commission. UT and ETSU may contract with accredited medical schools and sponsoring institutions. Another portion focuses on family medicine and general internal medicine provide medical and behavioral health services and is administered by Lincoln Memorial University (LMU) in cooperation with TDH and THEC. LMU may contract with other accredited medical schools and sponsoring institutions or residency programs. This act takes effect July 1, 2021.

RATIFICATION OF LICENSES

Dr. Hamre motioned to ratify the list of new licensees. Dr. Zieren seconded the motion and it passed by unanimous vote.

DISCUSSION ON SELF-PRESCRIBING AND PRESCRIBING TO FRIENDS AND FAMILY

Dr. Wieting presented the topic of self-prescribing to family members and friends for discussion, outlining the references provided by the Board's legal counsel and administrative staff, and opened the floor for discussion. The initial discussion was regarding whether there was a necessity to establish a policy for prescribing to self, family, and friends and, if so, the Board's considerations for forming such a policy. Ms. Baca-Chavez expanded on Dr. Wieting's introduction of the topic with policies, opinions, and statements already present in other boards, medical associations, and codes of ethics in contrast with the

Board's current rules. She continued by delineating the Board's options for how to incorporate their decision by explaining the difference between rules and policy as well as noting that they will need to consider which relationships will be included.

Dr. Saunders asked Ms. Baca-Chavez to clarify whether it should be policymaking with notice versus rulemaking considering the time the rulemaking process takes but Ms. Baca-Chavez advised that enforcing it without public comment will be difficult.

Dr. Wieting invited comments from the other Board Members with regards to approaching this from the rulemaking perspective vs policymaking. Ms. Judd asked about whether this has historically been an issue that the Board has encountered. Ms. Baca-Chavez explained that it is an issue seen during the case review process, typically after a complaint from a pharmacist. It tends to involve a physician writing a prescription for either a family member or for themselves. Due to the differences in rules, an MD may be disciplined while a DO will not face any consequences, though they may face disciplinary action for a recordkeeping violation.

Ms. Judd inquired as to whether it would apply exclusively to controlled substances or if it applied to any medication. Ms. Baca-Chavez stated that there are a range of options as far as what categories it could apply to. Dr. Wieting mentioned that it can also be an issue with hospital staff privileges and governing hospital staff, including performing procedures on family and close friends. Ms. Baca-Chavez talked about issues with maintaining objectivity and personal consent between a physician and a family member or other close relation with Dr. Wieting countering with a point about sparsely populated areas and how the nearest qualified physician may be related to the patient.

Dr. Saunders agreed with Ms. Baca-Chavez, stating that prescribing to family and self grazes unethical behavior and hints at narcissism. Additionally, she stated it would bring uniformity and equity between the two Tennessee Medical Boards as far as disciplinary action is concerned. She reiterated Ms. Baca-Chavez's point where a DO would go unpunished for an action, but an MD would face disciplinary action and/or significant fines for an identical action.

The Board turned back to an open discussion on policy vs. rule. Dr. Zieren was in favor of the rulemaking route as she did not see an urgency that would be prohibitive of the time that the rulemaking process can take.

Dr. Michael Baron, the Medical Director of the Tennessee Medical Foundation, noted that within the TMF contract, it states they shall not self-prescribe and that the majority of physicians they monitor have self-prescribed. He highly recommended that the Board consider this closely. He agreed that physicians lose that objectivity and become more emotional when prescribing to friends and family.

Ms. Baca-Chavez suggested that the Board look at the information provided by the legal and administrative staff and to consider the language and statements while forming their own rule. Dr. Saunders interjected that the policy statement attributed to the Tennessee Board of Medical Examiners was not the most recent version. Dr. Rickman asked if it was substantially different. Ms. Baca-Chavez noted that they added a paragraph regarding supervisory language as they were seeing situations where a supervisor would instruct a supervisee to write prescriptions for the supervisor's friends and family, presenting a conflict. Dr. Hamre inquired as to what the BME specifically states in relation to the AMA code ethics and how having a rule based on an association's code of ethics is affected when the code of ethics is revised. Ms. Baca-Chavez explained how the BME policy is applied as an extension of the code of ethics and as long as it is not in conflict with the BME rule, there is no real affect from revisions. Dr. Rickman asked who defines what is "minor, self-limited". Dr. Wieting noted that the Board decides, and Dr. Saunders presented an investigative perspective on how it would be determined whether an action would fall under "minor, self-limited."

Dr. Wieting asked for a motion. Dr. Zieren moved towards beginning an investigation and rulemaking process in order to make a rule against prescribing for self and family members within the Board of Osteopathic Examination. Ms. Judd seconded the motion.

Dr. Wieting opened the floor to discussion as far as proceeding with the motion and Dr. Rickman suggested that the Board consider not limiting the rule to prescribing but also address treatment. Dr. Saunders sought clarification by asking Dr. Rickman if the intent of his question was whether the rulemaking consideration needs to cover more than one area, adding that the motion specifically only covered prescribing without mention of dispensing. Dr. Zieren posited that the approach she had in mind addressed prescribing, dispensing, and treatment separately, noting that the materials provided were only in respect to prescribing. A brief but curious conversation followed about the AOA code of ethics and the fact that it does not address the issue of prescribing to self and family, with no resolution. The motion to proceed with a rulemaking process was voted on and passed unanimously.

Dr. Wieting next opened the floor for either a further motion or discussion. He began shaping a possible rule, outlining the reasoning behind and spirit of what the rule should accomplish. He continued by including what the rule should explicitly require as far as recordkeeping, midlevel and other supervisory relationships, etc. Dr. Saunders suggested the Board convey examples from the research materials provided that they would like to see included in their own rule to Ms. Baca-Chavez and she would use those as a foundation for building their rule. She touched on the notion of abuse of power when a physician requests a midlevel employee to write a prescription for the physician or the physician's friends or family. Dr. Wieting agreed, stating that it would likely be included but would like to establish frame of the rule before listing specifics of what will be permitted and what would be a violation. He began with the notion that a physician cannot have a valid a physician-patient relationship with oneself and continued by stating that prescribing, dispensing, or administering should only be permitted in emergency situations and prescribing, dispensing, or administering scheduled substances should be prohibited. He extended this to immediate family for minor illnesses and emergencies.

This was followed up by initial discussion on defining what constitutes family and friends. An example was presented regarding isolated and rural areas where the sole local physician may be related to others in the area. Ms. Baca-Chavez referred the Board to the AMA Code of Medical Ethics Opinion, which covers the situation of a physician in an isolated area treating self, family, and/or friends, and how it is permitted in the interim until another physician becomes available. Dr. Hamre referred to the FSMB statement on the same topic, stating he believes it is well written. Ms. Judd agreed that the definition of family and friends was too vague, suggesting the addition of the phrase "members of the household" as that the statement was vague and that for a policy, ambiguity may not interfere but with a rule, it will be difficult to administer if the language is not "tighter." Dr. Saunders referred the Board to Connecticut's rule which lists specific relations, including in-laws, step-relations, and other cultural considerations. Dr. Wieting invited Dr. Baron to the podium. Dr. Baron recommended that the Board consider including romantic relationships as there was potential for breach of boundaries. Ms. Baca-Chavez explained a possible reason for vague language: giving the Board an opportunity to capture future situations that are not foreseeable during rulemaking. Dr. Wieting expressed the need to strike a balance between being vague and being too prescriptive. Dr. Wieting summarized a cumulative list of key points. Ms. Baca-Chavez stated that she would begin creating the rule and that it was a good starting point but welcomed any advice or suggestions throughout the process and that she may suggest other language she finds during research and case review. There were no further comments on the matter.

REPORT FROM THE OFFICE OF INVESTIGATIONS

Dr. Wieting accommodated a request from the Office of Investigations to present early.

Ms. Lori Leonard, Disciplinary Coordinator for the State of Tennessee, gave her report for the Osteopathic Board as she is currently monitoring a total of ten (10): two (2) for a reprimand, five (5) who are on probation, one (1) who is suspended, and one (1) who is revoked/surrendered.

Currently, for 2021 there have been forty-four (44) new complaints opened. Out of the forty-four (44) new complaints, two (2) were for falsification of records, one (1) for sexual misconduct, three (3) were action in another state, two (2) were regarding criminal charges, six (6) were regarding medical malpractice or negligence, twenty-one (21) were regarding unprofessional conduct, one (1) was regarding a medical record request, two (2) for overprescribing, two (2) for failure to supervise, one (1) was outside of the investigators scope, and one (1) was regarding COVID-19.

Ms. Leonard continued with her report, stating that in the 2021, the Office of Investigations have closed a total of forty-seven (47) total complaints: thirteen (13) closed for insufficient evidence to formally discipline, four (4) sent to the Office of General Counsel for formal discipline, twenty-three (23) complaints closed with no action, three (3) closed with a letter of concern and four (4) closed with a letter of warning. Ms. Leonard reminded the Board that letters of concern and letters of warning are not considered formal discipline and therefore were not reportable to the National Practitioner Data Bank.

The office has a total of fifty-one (51) currently opened complaints. There have been no new complaints for osteopathic x-ray examiners.

Dr. Hamre inquired how the figure for medical malpractice was generated. Ms. Baca-Chaves explained the statute requiring licensees to report malpractice claims along with the process within the Department of Investigations for determining whether the report constitutes gross malpractice or negligence. Dr. Saunders expanded on the process from a physician's perspective and that physicians aren't disciplined if their case does not meet the statutory requirements for gross malpractice or negligence. Discussion continued, explaining the statutes involved and other details of medical malpractice procedure.

DISCUSSION ON THE MATTER OF REQUIRING EXAM SCORES FOR SPECIAL TRAINING LICENSES

Dr. Wieting initiated discussion on the question of whether special training license applicants should supply their exam scores as part of the application process. Dr. Saunders provided some background on the special training license, including the types of programs that typically require it and why, alternatives to the special training license, and which applicants qualify for the license. She continued by contrasting the Board of Medical Examiners requirements for their special training license with that of the Board of Osteopathic Examination.

Board members posited a variety of questions regarding the relevance of exam scores, including clarifying restrictions on taking the exam, how it applies to international school graduates, and whether a person without sufficient exam scores would be accepted into a postgraduate training program.

Dr. Wieting surveyed the Board as to whether there was a consensus on the significance of exam scores for special training licenses. Dr. Saunders offered an alternative solution of directing the Board Administrator to investigate an application that may not qualify for the license and authorizing them to request scores, ask additional information about their residency status, and to determine whether they qualify for special training license or their circumstances would require them to apply for full licensure.

Dr. Wieting asked if there were any final comments but no additional discussion ensued.

REPORT FROM THE ADMINISTRATIVE OFFICE

The activities that have transpired in the administrative office between May 1, 2021 and July 31, 2021 concerning Osteopathic Physicians are as follows:

New Applications Received:

- Osteopathic Physician - 102
- Locum Tenens - 0
- Telemedicine - 0
- Special Training - 9
- Compact – 24

New DOX Applications Received - 0

Total New Licenses Issued:

- Osteopathic Physician - 106
- Telemedicine - 0
- Special Training - 9
- DOX - 0
- Compact - 26

Total Number of Reinstatement - 2

Total Number of Renewals:

- Osteopathic Physician - 186

Online 162 – 87%

Total number of active licensees as of July 31, 2021 is 2,257.

Total number of active licensees as of July 31, 2021 with a Tennessee mailing address is 1,359.

Total number of Special Training licenses as of July 31, 2021 is 15.

Total number of Telemedicine licensees as of July 31, 2021 is 24.

Total number of Active DO X-Ray Operators as of July 31, 2021 is 10.

Total number of Active Professional Midwives as of July 31, 2021 is 69.

REPORT FROM THE OFFICE OF GENERAL COUNSEL

Ms. Baca-Chavez opened by notifying the Board that their rules were to be reviewed by the Attorney General for legality.

She informed the Board that there are 29 cases open against 10 osteopathic physicians. Regarding these cases, 25 involve allegations of over-prescribing and are being handled by other attorneys on the over-prescribing team. There is 1 open case against 1 midwife.

DISCIPLINARY ORDER(S)

CONSENT ORDER

William J. Newton, DO – did not appear before the Board nor did a legal representative appear on his behalf. Ms. Paetria Morgan represented the State. Dr. Newton is currently licensed with an expiration date of November 30, 2022. The respondent invested in Southwest Laboratories and referred patients to urine drug screens to the lab. He asserts that he believed the investment and referrals to be legal because he consulted with Southwest Laboratories' attorneys. From approximately December 2, 2014 to May 27, 2016, the respondent received dividend payouts from Southwest Laboratories and in late 2019, after he learned this type of referral was illegal, he entered into a settlement with the United States where he agreed to pay \$277,000 in restitution. Ms. Morgan directed the Board Members to the statutes in reference to cross referrals, investment interest, and physician ownership. The list included exceptions to the statute, which were not met in the Respondent's case. The facts stipulated are grounds for discipline. This Order will result in a reprimand with the Respondent paying the costs incurred by the State for bring the case. Respondent shall pay all actual and reasonable costs of this case not to exceed six thousand dollars (\$6,000.00), payable within 60 days. This will be an official disciplinary action, reportable to the National Practitioner Data Bank. Dr. Wieting requested a motion, which was called by Dr. Hamre and seconded by Dr. Zieren. The motion was passed by unanimous vote.

AGREED CITATION

John Littleton, DO – did not appear before the Board nor did a legal representative appear on his behalf. The Respondent was in violation of continuing education requirements. Dr. Wieting requested a motion, which Dr. Zieren called for and was seconded by Dr. Hamre with no further discussion. The vote was unanimous, and the motion passed.

DISCUSSION REGARDING THE CONTINUED MONITORING OF SUZY VERGOT, DO

Ms. Baca-Chavez presented on the continued monitoring of Suzy Vergot, DO. Dr. Vergot had a consent order which was ratified on March 6, 2019 after pleading guilty to conspiracy to commit healthcare fraud. She was also named in a US District Court civil case, which was settled for \$30,000. As a result of that action, the Board approved a consent order placing her license on probation for at least 5 years, ordered to complete a ProBE (Professional/Problem Based Ethics) course within 6 months, and was required to attain practice monitoring from Affiliated Monitors, Inc., or another practice monitoring program preapproved by the Board within 30 days. The monitoring agreement was originally for a minimum of one (1) year or four (4) quarterly reports by the practice monitor.

The Board reviewed six (6) quarterly reports from the monitor, which included a summary and recommendations. Ms. Baca-Chavez noted that the Consent Order stated that the monitoring would continue until the Board determined that, based on the reports, the respondent was safe to practice without a monitor.

Ms. Penny Judd left the meeting

Ms. Baca-Chavez requested for the Board to determine whether Dr. Vergot was safe to practice but mentioned a note from the monitor that the monitoring would not be able to start again until the respondent returned to practice. The respondent is on an indefinite leave of absence, with patients being cared for by another physician; however, the Board would be permitted to determine whether or not to continue monitoring based on the report. Ms. Baca-Chavez then encouraged the Board to voice any concerns on the topic.

Dr. Zieren noted that there was a relapse in the quality of the respondent's work but there was a noteworthy improvement after some time off and decrease in practice time, as mentioned in one of the follow-up reports. Dr. Zieren argued that the respondent needs additional monitoring upon her return to practice but it should not be quarterly. She also noted the respondent is still on probation.

Dr. Saunders noted that the probation and the monitoring are separate issues. Dr. Zieren posited that the indefinite time off appears to be stressful. She felt that the final quarterly reports were very positive and that a short period of additional monitoring after the respondent's return to practice would make her feel comfortable with ultimately lifting the monitoring requirement. Ms. Baca-Chavez noted that the end of the monitoring summary recommends that the respondent continue the behavior she has been showing.

Dr. Zieren moved that the monitoring be continued upon return to practice but every six (6) months for a year. Dr. Hamre seconded but followed with a question about the respondent's current practicing status. Ms. Baca-Chavez responded by that it is unknown when Dr. Vergot will return to practice and that monitoring wouldn't continue until the respondent is practicing again. Dr. Rickman asked how it is known that the respondent isn't practicing, citing the fact that her original Consent Order was for prescribing controlled substances. Dr. Saunders noted that her controlled substance prescriptions can be verified; however, if she is not prescribing controlled substances, it would not be known. Dr. Wieting added that if she were practicing, it would be a Board Order violation.

The motion passed unanimously.

Dr. Baca-Chavez noted that the language of the new motion differed from the original Consent Order, which stated monitoring would be quarterly. An alteration to the original Consent Order would necessitate either a new Consent Order or a new motion. Dr. Wieting offered a friendly amendment but was advised to rescind the prior motion as it had been voted upon. Ms. Baca-Chavez stated that the best way to word a new order would be simply to vote to continue monitoring, with no change in frequency of reporting and not restrict it to a time period, in the event that Dr. Vergot needs additional monitoring after an extended time off.

Dr. Rickman moved to rescind the previous motion, which passed unanimously. Ms. Baca-Chavez outlined the best way to present the motion. The motion was moved by Dr. Hamre and seconded by Dr. Zieren. The Board voted and the motion passed unanimously.

DISCUSSION REGARDING SENDING A DELEGATE TO THE FARB CONVENTION

Ms. Baca-Chavez presented information on the upcoming FARB convention and requested the sponsorship of a new attorney to attend the conference. Dr. Hamre asked for clarification on whether the fee would be split with the Board of Medical Examiners and Ms. Baca-Chavez explained she will be asking each Board to sponsor one attorney for the convention fees. Dr. Hamre made a motion, which was seconded by Dr. Rickman. The motion passed by unanimous vote.

DISCUSSION REGARDING SENDING A DELEGATE TO THE IMLC CONFERENCE

Ms. Stacy Tarr presented on behalf of Ms. Judd to cover her travel as a delegate to the next IMLC meeting for discussion. The conference will take place prior to the November board meeting. Ms. Tarr posited adding one staff member and explained that the Board's administrator, Cassandra Corbett, is also the administrator for the Compact but would leave that up to the Board. Dr. Hamre moved and Dr. Rickman seconded the motion. The vote passed unanimously.

PUBLIC COMMENTS – No public comments

The meeting adjourned at 11:16 a.m., CST