



**Tennessee Board of Medical Examiners
Regular Board Meeting**

**Tuesday, May 19, 2015
Wednesday, May 20, 2015**

MINUTES

The regular board meeting of the Tennessee Board of Medical Examiners was called to order at 8:38 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Zanolli, Board President.

Board members present: Michael Zanolli, MD
Subhi Ali, MD
Dennis Higdon, MD
Michael Baron, MD
Neal Beckford, MD
Pat Eller, Consumer Member
Reeves Johnson, MD
Keith Lovelady, MD
C. Allen Musil, MD
Barbara Outhier, Consumer Member

Board member(s) absent: Nina Yeiser, Consumer Member

Staff present: Andrea Huddleston, Chief Deputy General Counsel
Maegan Carr Martin, Executive Director, BME
Rene Saunders, MD, Medical Consultant, BME
Stacy Tarr, Administrative Manager
Angela Lawrence, BME Administrator
Jennifer Shell, MD X-Ray Operator Administrator

I. CONSIDERATION OF APPLICATIONS

MD X-Ray Applicant Interview(s):

Kimberly Davis – appeared before the Board to address her absence from practice since 2008. Board Rule 0880-5-.08(3) provides that the Board may impose on applicants who have been out of practice for a period of more than two (2) years any requirements necessary to establish current levels of competency. Ms. Davis' spouse is in the military and their military relocations have kept her from maintaining

continuous employment history. Ms. Davis confirmed that she has not operated x-ray equipment since 2008, although she was in practice from 2003 through 2008. Dr. Johnson explained that the Board has an obligation to ensure that her absence from practice does not pose a risk to patients in Tennessee. Dr. Johnson made a motion, consistent with recent precedent, to table her application for a period of up to six (6) months to work with the medical consultant to identify an appropriate reentry pathway. Ms. Eller seconded the motion. Dr. Zanolli stated that the Board is aware of this issue and is working toward developing a reentry policy. The motion carried unanimously.

Serena Fisher – was asked to appear before the Board because she allowed her license to lapse in October 2010 and has been out of practice since that time. Due to other professional interests and family obligations, Ms. Fisher has been employed in another field since that time. She last operated x-ray equipment approximately three (3) years ago in the hospital setting. Dr. Zanolli inquired as to whether she had any professional contacts, such as previous employers, who would allow her to undergo some retraining. Dr. Ali made a motion to table Ms. Fisher’s application for a period of up to six (6) months to allow her work with the medical consultant to identify an appropriate reentry pathway. Dr. Beckford seconded. Ms. Outhier abstained and all others voted in favor of the motion, which passed.

Connie Sherlin – appeared before the Board to address her extended absence from practice. Ms. Sherlin retired her license in 1997 and has been serving as a medical assistant and laboratory technician since that time. Ms. Eller recused herself. Though she is currently working in a laboratory, for the last year, Ms. Sherlin has assisted a x-ray technician with up to 25-30 x-rays per day. Dr. Zanolli made a motion to table Ms. Sherlin’s application for a period of up to six (6) months to allow her work with the medical consultant to identify an appropriate reentry pathway. Dr. Ali seconded. Dr. Beckford spoke to the motion and questioned what work she could complete, in addition to what she has already been doing over the past year, to satisfy the Board of her competence. Dr. Higdon spoke in support of the motion. The motion passed unanimously.

Laurna Wiley – was asked to appear before the Board because she did not attend a Board-approved training program. Ms. Wiley did, however, complete an independent study course and successfully passed the requisite examinations. She has been practicing in Kentucky since 1990. The clinic Ms. Wiley works in is on the Kentucky/Tennessee border and they are moving a mile or so across the borders. Ms. Wiley has been practicing as an x-ray operator for more than twenty years. Ms. Eller made a motion to grant Ms. Wiley’s license which was seconded by Dr. Lovelady seconded. The motion passed unanimously. Ms. Huddleston asked the Board to clarify for the record that their finding that the Kentucky’s standards are substantially equivalent to the Board’s rules, which they did. The motion passed unanimously.

Medical Doctor Applicant Interview(s):

Rebecca Milam, MD – appeared before the Board because she has been out of clinical practice since sustaining a mild traumatic brain injury in 2012. After the injury, Dr. Milam went through a neurologic rehabilitation program and was told last year by two separate neurologists that she is ready to return to work. To ease her personal concerns, she shadowed a physician(s) at the University of Vanderbilt from January to May of this year. At the conclusion of Dr. Milam’s interview, Dr. Beckford made a motion to grant a full and unrestricted license. Dr. Ali seconded. Dr. Saunders asked the Board whether it would be appropriate to request verification from the neurologists who have treated Dr. Milam that she is in fact, ready to return to practice. Dr. Baron spoke in support of Dr. Saunders’ suggestion. Dr. Milam stated that she has undergone four (4) neuropsychological profiles, the most recent of which was last year. Dr. Beckford amended his motion to grant a full and unrestricted license contingent upon the administrative office’s receipt of verification from one of her treating neurologists that she is ready to return to practice

as well as one of the neuropsychological profiles she referenced. The amended motion was seconded by Dr. Ali. The motion passed unanimously.

Rashid Ayyub, MD – appeared before the Board to address his absence from practice since 2010. Dr. Ayyub underwent open heart surgery in March 2010. While he was in recovery, he was disciplined by the New York Board for several claims of deviating from the accepted standard of care. Dr. Zanolli explained to Dr. Ayyub that when a physician has been out of practice for some time and the circumstances would suggest it, the Board may request that the applicant undergo an assessment to determine his or her clinical competency. Ms. Huddleston asked whether Dr. Ayyub is in the maintenance of certification program for his board certifications. Dr. Ayyub was unable to confirm his status. Dr. Musil made a motion to table his application for a period of up to six (6) months to allow him to provide additional information regarding his certification. Dr. Lovelady did not believe six (6) months would be sufficient time to remedy his absence from practice. Dr. Higdon and Ms. Eller agreed. Dr. Beckford spoke in favor of requiring a CPEP evaluation. Dr. Musil voted in support of the motion; all others opposed. The motion failed. After further discussion, Dr. Beckford stated that Dr. Ayyub's application does not appear to be viable at this time and that he may want to withdraw his application and work with the medical consultant to determine an appropriate reentry pathway before reapplying. Dr. Ayyub ultimately withdrew his application.

Donald Denmark, MD – appeared before the Board because he does not satisfy the requirement of R. 0880-02-.03 that he complete a one (1) year US training program. Dr. Denmark was relocated to Nashville from Arizona by his employer. His position requires that he have a Tennessee medical license. Dr. Beckford asked Ms. Huddleston how the Board should interpret the one (1) year US training requirement: does Dr. Denmark's Master's in Medical Management satisfy the training requirement? Ms. Huddleston stated that it does not because the one year program must be approved by the AMA's extant accreditation program and this master's program is not. Dr. Denmark has been in full-time administrative practice since 2006. Dr. Higdon made a motion to grant a full and unrestricted license which was seconded by Dr. Beckford. Ms. Eller expressed her discomfort with approving this application on these facts and suggested that a declaratory order would be the most appropriate way forward. Dr. Ali agreed. Dr. Baron recused himself. The motion was unanimously defeated. Dr. Beckford made a motion to table the application until such time as the applicant submits a petition for a declaratory order. Dr. Higdon seconded. Dr. Zanolli stated that the Board would be willing to have a telephone conference to consider Dr. Denmark's petition before the next meeting. The motion carried unanimously.

Ajitpal Dhaliwal, MD – was invited to appear before the Board to address his previous alcohol addiction issues and incidents which occurring during his training. He was originally scheduled to appear at the March meeting. Dr. Dhaliwal did not attend the meeting, nor did he contact administration to reschedule his appearance. Accordingly, the Board made note of his unexcused absence and directed the administrative office to notify Dr. Dhaliwal that a second unexcused absence may result in the Board considering and taking action upon his application. Dr. Ali made a motion to table the application until the next meeting. Dr. Lovelady seconded. The motion passed unanimously.

Nasira Malik, MD – appeared before the Board because she is a graduate of a medical school which is not "approved." She is board certified; however, she did not pass all steps of the USMLE on her first attempt. Dr. Malik is currently licensed in three (3) jurisdictions: Ohio, Kentucky and Colorado. She has been working in Kentucky near the Tennessee border. Her clinic is moving to Tennessee and she will need a Tennessee license so she can obtain admitting privileges at the affiliated hospital. Some discussion ensued regarding an error in the training verification form completed by the program director. Ms. Huddleston stated the issue for the record: Dr. Malik's medical degree was awarded by an "unapproved" school. Currently, the Board's policy is to license such applicants if the applicant is board-certified and passed all steps of the USMLE on the first attempt; however, Dr. Malik did not pass all steps on her first

attempt. Dr. Higdon stated that this is a unique situation in that it involves a possible physician shortage area. He suggested that it would be a manifest injustice to deny a license to a person who has practiced successfully for approximately sixteen (16) years and seeks to serve an underserved population. Dr. Zanolli agreed. Dr. Ali spoke to the need to make waivers to serve need and commonsense and made a motion to grant a full and unrestricted license, which was seconded by Ms. Eller. Ms. Huddleston pointed out that the “manifest injustice” exception was in the examination rule, and is not applicable here. She conveyed her understanding that the Board was issuing a waiver on the basis that they believed her education to be LCME equivalent. Drs. Higdon, Ali, Lovelady and Ms. Outhier all spoke in favor of granting a license to Dr. Malik citing her clean record and long history of providing quality care to underserved patients. The motion was approved unanimously.

Adam Mazur, MD – appeared before the Board to address his general discharge and USMLE examination history. Dr. Mazur took Step 3 of the USMLE five (5) times before passing on his sixth attempt. Because he was unable to timely pass Step 3, he did not receive credit for the first year of his postgraduate training program. Dr. Johnson noted that it took Dr. Mazur five (5) years to complete medical school. Dr. Mazur responded that he had a family emergency that took him out of school. Dr. Mazur stated that he plans to reapply to residency programs and he thinks a license will help make him a more attractive candidate. Ms. Eller inquired as to why he received a general discharge. Dr. Mazur responded that he could not be promoted to “GMO” because of his examination history. Because he gave them only three (3) of the required (4) years of service, he received a general discharge. Dr. Musil made a motion to deny the application. Ms. Eller seconded. Dr. Zanolli stated that he has a sense that the Board is uncomfortable granting him a license, which would allow him to fully practice medicine, for the purpose of making him more competitive as an applicant for residency programs. Dr. Zanolli stated that in the past, the Board has been willing to allow applicants to withdraw their application in situations like this. Dr. Mazur was offered the opportunity to withdraw, with he elected to do.

Uma Shastri, MD – appeared before the Board because she did not complete a one (1) year US residency training program as required pursuant to R. 0880-02-.03(3). Dr. Shastri was represented by counsel and has filed a Petition for Declaratory Order. Ms. Huddleston advised the Board to consider the application before the Petition. After interviewing Dr. Shastri and hearing about her training, Dr. Higdon suggested that it will be necessary to proceed to a contested case to consider the Declaratory Order. Dr. Musil asked whether Dr. Shastri’s fellowship training would satisfy the one (1) year US training program. Dr. Higdon stated that he believed it should. Dr. Musil made a motion to grant a full and unrestricted license which was seconded by Dr. Johnson. Dr. Lovelady expressed some concern that unless this matter was resolved by a Declaratory Order, the Board would be breaking with precedent. Dr. Sandberg of Vanderbilt University spoke on Dr. Shastri’s behalf. Dr. Musil, Dr. Zanolli and Dr. Johnson voted in favor of the motion. Dr. Baron, Dr. Higdon, Dr. Ali, Dr. Beckford, Ms. Eller, Ms. Outhier and Dr. Lovelady opposed the motion. The motion failed. Dr. Zanolli made a motion to grant Dr. Shastri’s Petition for Declaratory Order and set the matter for a contested case. The motion was seconded by Dr. Beckford and passed unanimously.

Gloria Stewart, MD – appeared before the Board because she allowed her license to expire in 2012. Despite her lapsed license, Dr. Stewart’s application stated that she has seen patients from 2012-2015. Dr. Ali sought to clarify the record and asked Dr. Stewart when the last time she saw a patient and rendered clinical services to that patient. Dr. Stewart stated that it was in 2013. The Board suggested that Dr. Stewart consult with counsel to assist her with her application, in light of the foregoing facts. Dr. Musil made a motion to deny the application. The motion was seconded by Dr. Ali. Dr. Zanolli gave Dr. Stewart a moment to determine how she wanted to proceed. Dr. Stewart chose to withdraw her application.

II. APPROVAL OF MINUTES

Dr. Johnson made a motion to approve the minutes from the regular March meeting. Dr. Ali seconded the motion, which passed unanimously.

The Board considered the Development Committee minutes. Dr. Zanolli asked for an update on the fee increase rulemaking. Ms. Huddleston stated that the fee increase would have to be reviewed internally before a rulemaking hearing can be set. Ms. Eller asked if the Board had authorized the licensure verification charge of \$25, as it was not noted in the minutes. Dr. Higdon made a motion to approve the minutes. Dr. Baron seconded the motion, which was unanimously approved. Ms. Martin asked for permission to listen to the audio and see if the minutes need to be amended to reflect the Board's action on charging a licensure verification fee of \$25. Dr. Zanolli stated that that would be proper.

Dr. Zanolli asked that the telemedicine rulemaking hearing minutes be held until later.

III. CONDUCT NEW BUSINESS

RATIFICATION OF LICENSES

Ms. Tarr walked the Board members through the reports which have been amended slightly since the administrative office's adoption of the new licensure system, LARS. Dr. Beckford requested that the names of approved applicants be put in the left column. Dr. Johnson pointed out that the one of the applicant's expired in 1992. Dr. Beckford asked how often we suspend licensees for failure to pay child support obligations. Ms. Martin answered that it is very uncommon. It is slightly more common to suspend a licensee for failure to pay a student loan.

Dr. Zanolli suggested that the new, reinstated, failed-to-renew and voluntarily retired licenses for the following professions be ratified en masse:

- Medical Doctors
- MD X-ray Operators
- Genetic Counselors
- Clinical Perfusionists
- Physician Assistants
- Polysomnography

These lists were ratified.

IV. DEPARTMENTAL REPORTS

Report from BME's Administrative Office

Ms. Tarr reported on the BME Unit's licensing activities from March 2015 through April 2015. The statistics are as follows: there were 333 new applications for full medical doctor licenses, 4 for locum tenens, 6 for telemedicine, 8 for special training, 2 for single purpose, and 0 for St. Jude received. 218 new licenses were issued, 1,665 renewals (1,089 online renewals) were processed, 30 licensees failed to renew, 79 licensees retired their license, and there were 21 reinstatements. The number of active licenses as of April 30, 2015 is 21,573. The total number of active licensees as of April 30, 2015 with a Tennessee mailing address is 16,424. The total number of telemedicine licenses is 453.

There are 1,769 physician assistants licensed in Tennessee and 23 orthopedic physician assistants (OPAs). There are currently 3,694 certified X-Ray Operators.

Ms. Tarr specified that the Tennessee addresses provided are home addresses.

Office of Investigations Report

Ms. Moran said that there are currently 221 open complaints, which is decreased from years past. The Office has three vacancies that they are working to fill. They hope to begin interviews soon.

The Office of Investigations aims to complete 25 random pain clinic audits quarterly, so they hit their goal of 100 annually. Currently there are approximately 310 registered pain clinics. Dr. Saunders is involved now in reviewing these audits. Dr. Baron asked whether the clinics which were noted as “closed” on the report were closed by the Department of Health or closed on its own accord. Ms. Moran stated that those closed clinics were closed when they arrived. Dr. Baron

There are 267 licensees currently being monitored by the Office of Investigations. All monitoring is conducted by Ms. Dorroh, disciplinary coordinator. If someone has failed to pay, the Office of Investigative is in touch with the Attorney General’s office. The LARS system allows the Office to run financial reports which will be made available to the Board in future meetings.

Report from the CSMD Committee

Dr. Baron, CSMD Chair, introduced Dr. Mutter to provide his report. Dr. Mutter stated that the CSMD Unit has begun examining necessary changes to update the “Chronic Pain Guidelines.” The focus is likely to be on an urine drug screen section in the appendix and next steps will include emergency room chronic pain guidelines. Dr. Mutter continues to engage with the coalitions and to provide education to practitioners.

Dr. Chen, epidemiologist for the CSMD, provided the Board with a recent report wherein she examined and analyzed MMEs prescribed by county since 2013 in effort to identify upward or downward trends. Shelby county and surrounding regions have been increased. Dr. Baron asked whether the data is based on where the prescription is filled or the patient’s address. Dr. Mutter clarified that prescriptions are logged where the patient lives.

Dr. Mutter stated that the CSMD has applied for a CDC grant that will allow the Unit to expand its analytics and should know the result of that application by July.

Report from the Office of Legislative Affairs

Jeremy Davis appeared to provide the Board with a report of all successful bills affecting the Board and the practice of medicine. The Board sought clarification on PC 189. Mr. Davis offered to get clarification from the Tennessee Association of Physician Assistants (TAPA) on the purpose of this public chapter. Dr. Beckford requested that Mr. Davis proceed with his presentation but provide a copy of the report before the next meeting. Dr. Zanolli requested specific information about SB 280. Dr. Beckford sought clarification on the definition of “recommendation.” Mr. Davis was asked to summarize key bills of interest to the Board since he will be returning before the Board for a full report in July. Mr. Davis referenced PC 494, which requires that the Board establish rules and set fees for the establishment of a medical spa registration; and SB 871, which requires that the Board define “addiction specialists.” Pursuant to Dr. Johnson’s request, Mr. Davis summarized Public Chapter 261 and identified some of the stakeholders of the bill. Dr. Zanolli expressed his disappointment that the prescribing provision was

included, a sentiment that was echoed across the Board. Dr. Zanolli requested that the Board be engaged in the legislative process as appropriate.

Ms. Huddleston stated that the Board will, as Mr. Davis stated, need to define “addiction specialist.” Ms. Martin added that four (4) bills require rulemaking. She has already reached out to Dr. Baron and Dr. Musil to begin the preliminary discussion regarding the proper definition/qualifications of an “addiction specialist.” The results of those discussions will be made available to the Board at the July meeting.

Financial Report

Ms. Tittle appeared to present the Financial Report to the Board. She started by explaining the projections through June 30, 2015 and discussed the various expenses, including for the Controlled Substance Monitoring Database and Pain Management Clinics, as well as how they are expected to vary compared to some previous years and some of the factors that go into the differences. Ms. Tittle then moved on to projections for 2015 and 2016. Finally, there was continued discussion about raising licensure fees and the fees for pain management clinics and what that projected income would be.

Nominating Committee Report

The Nominating Committee was formed to nominate candidates to fill the open seat on the Board. Dr. Beckford gave a brief report of the teleconference held on April 14, 2014. The committee members present on the call were Ms. Yeiser, Dr. Johnson, and Dr. Ali. Other participants on the call were Ms. Huddleston and Ms. Martin. Six candidates were discussed and evaluated. The Committee discussed demographics, specialty, involvement in active practice, public service as well as gender. The decision was made that the best candidate is Dr. Deborah Christiansen. Dr. Johnson briefly shared some information with the Board about Dr. Christiansen. Dr. Beckford made a motion to accept the report of the Nominating Committee. Dr. Zanolli then asked if there were any Board members besides those who were on the Committee who had any other candidates to nominate; there were none. Dr. Ali clarified that because the recommendation was made by a Committee of more than two (2) members, it comes to the Board with a motion and a second. The motion passed unanimously.

Development Committee Report

Dr. Ali gave a report on the Development Committee meeting, which took place on May 18th, 2015. The first topic discussed was the reentry options for medical x-ray operators who have been out of practice for two or more years. Ms. Martin summarized the correspondence exchanged between the administrative office and board-approved programs regarding a possible reentry program, and noted that representatives from RES were present. The representatives from RES addressed the Board about possibly developing an appropriate reentry or assessment program. The Board directed that Dr. Saunders discuss the issue further with RES and report back to the Board at the next meeting.

The Development Committee also discussed prescribing education provided in training programs. Dr. Reagan, Chief Medical Office for the State of Tennessee, attended the Development Committee meeting and suggested that a course might be developed that could be accessed by all training programs through the CSMD. After some discussion, the Board decided that the CSMD Committee would be the better body to explore and engage in the development of an instructional prescribing course. Dr. Zanolli asked Dr. Baron to provide reports to the Board of the CSMD’s progress.

Dr. Zanolli reported on the Committee’s discussion of *Federal Trade Commission v. North Carolina Board of Dental Examiners* (US 2014). Dr. Zanolli gave the Board an overview of what the decision might mean to the Board members, as it erodes the safe harbor of the state action doctrine. He requested

that an observer attend some of the internal meetings that are happening within the Department of Health on behalf of the Board. Ms. Huddleston said that the Department is committed to ensuring that all of the Boards are compliant with this decision; however, analysis of this issue is occurring at the highest level. There has been one meeting to date, and Ms. Huddleston and Ms. Martin both attended. Should future meetings occur, Ms. Martin may be asked to attend.

Declaratory Order(s):

Dr. Zanolli asked Ms. Huddleston to state the objective of a petition for declaratory order. The law that authorizes declaratory orders is in the Administrative Procedures Act. It allows affected individuals to petition for a decision by the board regarding a statute, rule or order and its applicability or validity.

Yuchun “Charles” Han, MD – Ms. Alex Fisher, Esq. appeared on behalf of Dr. Han. He is petitioning the Board to determine whether the monitoring with Affiliated Monitoring should continue for the full five (5) years ordered in the Board’s January 2014 Consent Order. Ms. Huddleston spoke to the petition and stated her opinion that this is not an appropriate situation for a petition for declaratory order as the petitioner is essentially seeking to have an order modified; however, an order of modification may only be sought when it is impossible to comply with the order. Dr. Ali made a motion to deny the petition, which was seconded by Dr. Baron. Ms. Eller recused herself from deliberations. The motion passed unanimously.

Sidi Noor, MD – Ms. Alex Fisher, Esq. appeared on behalf of Dr. Noor. Ms. Huddleston summarized that Dr. Noor had been previously revoked by this Board then later applied for a new license which was granted with restrictions. Dr. Noor had counsel at that time. Dr. Noor later filed a petition for declaratory order to have the restrictions lifted from his license. That matter went to a contested case hearing. Ms. Fisher spoke to the petition and explained that Dr. Noor wants to continue to gradually reenter full practice. Dr. Ali referenced the order and asked for discussion from the Board members. Dr. Johnson asked whether Dr. Noor is now seeking the lifting of the restrictions because he needs to be able to maintain malpractice insurance, admitting privileges and his board certification. Ms. Fisher answered that those are the main reasons. Dr. Higdon made a motion to deny the petition, which was seconded by Dr. Lovelady and passed unanimously. Dr. Zanolli recused himself.

Bill Sekulovski, MD – Dr. Sekulovski is not represented by counsel. Dr. Sekulovski entered into a consent order in 2013. Dr. Sekulovski addressed the Board and explained that when he was discussing his discipline back in 2013, he agreed to a DEA Schedule II restriction, which turned out to be quite punitive, as it caused him to lose his certification and malpractice insurance. This paired with the rescheduling of hydrocodone to a schedule II drug has severely limited his ability to treat patients and has put his job in jeopardy. Dr. Sekulovski stated that he didn’t understand the scope of the discipline he agreed to. Ms. Huddleston’s recommendation is to deny this petition. Dr. Johnson asked Dr. Sekulovski how it was that he didn’t understand the seriousness of the discipline. He stated that he could not afford an attorney at that time and feels that the consequences of the discipline should have been made clear to him. Dr. Johnson asked whether he thought to consult the ABMS website to see if he would qualify for certification and Dr. Sekulovski responded that he did not think to do so. Dr. Musil made a motion to deny the petition, which was seconded by Dr. Ali. The motion carried.

Petition(s) for Order of Compliance:

Kevin Collen, MD – Dr. Collen was disciplined in 2010 for personal misuse of controlled substances. He was ordered to participate in TMF monitoring and has been compliant with the terms of that advocacy for the past five (5) years. Dr. Collen has paid all costs and penalties. The Department believes Dr. Collen is entitled to the relief he seeks. He is required to maintain lifetime advocacy with TMF so this order of compliance would be the lifting of the probation. Dr. Baron recused himself. Dr. Beckford made a motion to approval. Dr. Ali seconded the motion, which passed unanimously.

Report from the Office of General Counsel:

Ms. Huddleston stated that the report was provided to the Board in advance of the meeting. Dr. Zanolli asked that the Board recess for a short break before reconvening to discuss telemedicine.

V. TELEMEDICINE DISCUSSION

Dr. Zanolli summarized the Board's deliberations to date and commended the Board on its commitment to its mission and purpose in its deliberations. Dr. Zanolli referred to the telemedicine minutes and stated that they summarize remarks received during the recent rulemaking hearing. The Board received a draft document from the Administrative Office in the weeks leading up to the meeting which will be finalized by the Board at this time. Dr. Johnson made a motion to approve the minutes which was seconded by Dr. Beckford. The motion passed unanimously.

The Board began with the definition of "medical interpretation." The Board specified that "tissue samples" should be included in the definition.

Next, the Board addressed the definition of store-and-forward. Ms. Martin suggested that the word "technology" be added and the word "means" be eliminated. The Board agreed to these changes.

The Board reconsidered the phrase in section (4): "and not constituting the practice of medicine." The Board decided to remove the phrase. Section (4)(d) was considered. Dr. Baron proposed taking out the word "licensed." Ms. Martin stated that although it isn't clear whether St. Jude proposed the language "licensed physician" because of some requirement in their institution, it would seem that the Board would want the physician to be licensed somewhere. Ms. Martin cautioned the use of the word "licensed," as other countries (Canada for instance) certify physicians. Ms. Martin added that she and Ms. Huddleston would suggest that a definition of "research hospital" be included. There is an existing definition in the Tennessee Code Annotated which should be used. Dr. Zanolli pointed out that this particular provision is a good example of Board taking public comment seriously as St. Jude's remarks resulted in a change to the proposed rule.

Section (6)(b) was reconsidered. Dr. Baron suggested that the word "shall" be used instead of "should." Dr. Zanolli spoke in favor of leaving "should." He doesn't think there's any risk to the patients of Tennessee. Dr. Beckford offered the language: "shall make an effort to obtain appropriate records."

The Board was asked whether "medical records" should be added to the definition of "medical interpretation" so that that definition and Section (7) are consistent. They determined that the changes should be made so that these provisions are consistent.

Dr. Zanolli asked why eighteen was selected as the age of consent in Section (9). The Board discussed the various exceptions to the general rule that eighteen is the age of consent, including reproductive care matters and a minor's ability to sign for his or her own prescriptions. Ms. Martin suggested that the Board revise this section to refer to the "age of consent pursuant to applicable law." The Board agreed to this approach.

Having confirmed all changes made during the last meeting, Dr. Zanolli invited the Board to suggest additional changes. Ms. Martin brought a number of additional recommendations to the Board for consideration. She requested that "if any" be added after Board certification, since board certification will not be required and that the term "electronically-mediated practice of medicine" be eliminated. Both of these changes were accepted by the Board. The Board agreed that the word "convert" be used instead of "transfer."

The Board returned to Section 4(a) and directed that the term “licensed physicians of other states” be used.

The Board discussed the intent behind “fully licensed” in Section (7). Dr. Zanolli said that the intent was to allow individuals who have a license to engage in this practice. The Board decided that it would be better to drop fully so that it is clear that physicians holding a license of any type can engage in this practice.

Dr. Zanolli asked whether anyone wanted to make a motion to change Section (8). Dr. Lovelady requested that the Board return to the consent law discussion. Dr. Musil spoke in favor of keeping the language as is.

Ms. Huddleston suggested that the Board consider Public Chapter 261. Ms. Huddleston read the relevant provisions to the Board. Dr. Zanolli asked if there are any provisions which are in conflict with Public Chapter 261. Ms. Huddleston said that she is most concerned about Section (8), but there are other provisions which may be somewhat in conflict. Dr. Zanolli summarized the Board’s options at this point. It can 1) submit the rule as is; 2) amend the rule to eliminate the suspect provision(s); and 3) eliminate the suspect provision(s) and submit the rule now. Dr. Johnson spoke in favor of proceeding by adopting Ms. Huddleston’s suggestion to add “except as otherwise provided by law.” Dr. Higdon agreed. Dr. Zanolli spoke in favor of submitting as is. He stated that the Board has put forth this rule because it believes it is the best rule for the people of Tennessee. Dr. Ali agreed.

Dr. Reagan addressed the Board. He asked the Board to consider whether the quickest way forward is to submit the rule as is, particularly since the attorney general will not be able to recommend these rules since they are in conflict with PC 261. He provided some background on the discussions that ultimately gave way to the general assembly’s passage of PC 261. Dr. Zanolli expressed his dissatisfaction with the process and result. Ms. Huddleston reminded the Board that PC 261 prohibits establishing a separate standard, it does not prohibit the Board from regulating prescribing practices across the Board. Dr. Johnson stated that he shares Dr. Zanolli’s passion on this issue and his frustration. He spoke in favor of adding the language in Section (8) “except as otherwise required by law” as well as possibly promulgating a separate rule that is not violative of PC 261. Ms. Huddleston stated that the language being proposed does not solve the problem because PC 261 excludes, not authorizes, certain things. Ms. Martin stated that there is already a rule in place which addresses prescribing, so if the Board proceeds to eliminate Section (8), there is a default rule in place. Ms. Huddleston added that that particular rule will have to be amended anyway because of legislation that passed that requires that rules promulgated pursuant to the Intractable Pain Act. Dr. Higdon stated that the Board has a great obligation to do what the Board set out to do in Section (8) and he doesn’t want to see it wasted by submitting the rule as is to the attorney general. Dr. Lovelady made a motion to strike Section (8) which was seconded by Dr. Higdon. Ms. Outhier stated that she has never seen a group of individuals who strive so much to do what is good and right and this Board will be the body that deal with the consequences that may be caused by the omission of Section 8. She believes that the steps that have been taken have been deliberate and thoughtful. Drs. Musil, Higdon, Baron, Beckford, Lovelady and Johnson and Ms. Outhier and Ms. Eller voted in favor of submitting the rule with Section (8) stricken. Drs. Zanolli and Ali abstained. The motion carried.

Dr. Johnson asked for clarification of whether a conflict exists between the definition of telehealth as set forth in PC 261 and the Board’s definition as PC 261 seems to suggest that telemedicine can be audio only while the Board has explicitly stated otherwise. Ms. Huddleston stated that there may be a conflict.

Dr. Higdon made a motion to accept the rule as amended and submit to the AG’s office. The motion was seconded by Dr. Beckford. A roll call vote was called with Dr. Musil, Ms. Outhier, Dr. Lovelady, Dr.

Johnson, Ms. Eller, Dr. Beckford, Dr. Zanolli, Dr. Higdon, Dr. Baron all voting aye. Dr. Ali abstained. The motion carried.

Dr. Zanolli asked to divide up the comments to Board members so that responses can be provided expediently. Ms. Huddleston asked that the responses be provided to her. She also stated that the Board member should probably ratify the draft responses as a Board. Ms. Huddleston suggested that the Board have a teleconference before the July meeting to ratify these responses.

Day Two of the Regular Meeting of the Tennessee Board of Medical Examiners Wednesday, May 20, 2015

The second day of the regular board meeting was called to order at 8:30 a.m. at the Health Related Board's Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee, by Board of Medical Examiners' President, Dr. Michael Zanolli. Members present included: Dr. Subhi Ali, Dr. Michael Baron, Ms. Pat Eller, Ms. Barbara Outhier, Dr. Keith Lovelady, Dr. Dennis Higdon, Dr. Reeves Johnson, and Dr. C. Allen Musil.

BME representative to PA Committee Taskforce

There is a school in Florida that offers a Masters of Orthopedic Physician Assistants and has applied to become Board Approved. The Committee on Physician Assistants has convened a task force and has requested that a member of the Board of Medical Examiners serve on the task force, whose purpose will be to help develop some minimal standards to evaluate the school. Ms. Eller volunteered to be the BME member to be on the task force.

MD X-Ray Continuing Education Policy

This Policy is being brought before the Board in order for it to be amended. In the proposed draft, the introductory sentence has been changed to clarify that the Continuing Education policy applies to all individuals who are licensed as X-Ray Operators, not only those who are licensed only for limited scope X-Ray. It was brought up that the rule only refers to 'continuing education' not 'continuing medical education' so a correction was made to the language in the draft to reflect that. Dr. Ali made a motion to accept the draft policy as modified by deleting the word 'medical'. Dr. Johnson seconded the motion which passed unanimously.

FARB Regulator Law Seminar and FSMB Board Attorney Workshop

Ms. Huddleston requested that the Board sponsor one OGC member to the FARB Regulator Law Seminar and two OGC members to the FSMB Board Attorney Workshop. Dr. Ali made a motion to sponsor the OGC members as request. Dr. Lovelady seconded the motion which passed unanimously.

Order(s) of Compliance:

Cupid Poe, M.D. – Ms. Andrea Huddleston represented the state. Dr. Poe was disciplined related to a healthcare fraud conviction. He was placed on probation for a period of not less than five (5) years and until such time as he complied with certain other restrictions, which was effective May 16, 2010. He was also required to pay civil penalties and costs. He is in compliance with the requirements and is entitled to have his petition granted. Dr. Musil made a motion to accept the order. Dr. Johnson seconded the motion which passed unanimously.

Pedro Salcedo, MD – Ms. Andrea Huddleston represented the state. Dr. Salcedo was disciplined related to failure to properly supervise an APN and failure to properly review and sign off on charts prepared by that APN. He was placed on probation for a period of not less than one (1) year and until such time as he complied with certain other restrictions, which was effective January 29, 2014. Dr. Salcedo was required to successfully complete a continuing medical education course in the area of supervision, and was also required to pay civil penalties and costs. He is in compliance with the requirements and is entitled to have his petition granted. Dr. Ali made a motion to accept the order. Dr. Musil seconded the motion which passed unanimously.

Impact of the Repeal of the Intractable Pain Treatment Act

Ms. Andrea Huddleston discussed the impact of repealing the Intractable Pain Treatment Act, which occurred in this legislative session. As a result of the repealing of this act, the Board must repeal any rules that were promulgated as a result of that Act. Ms. Huddleston felt that of the rules that need to be repealed, there was some language that needs to be retained. On page 41 of the BME rules, section 6 will need to be deleted, but on page 42, under Guidelines, Ms. Huddleston recommends keeping all of section 3. Dr. Zanolli asked Dr. Johnson to work with Ms. Huddleston and Ms. Martin regarding possible amendments.

Proposed Special Hearing Days

Ms. Andrea Huddleston proposed having special hearing days due to a prescribing case coming up that is expected to take multiple days. She asked for Board Members who might have availability. Dr. Baron and Dr. Higdon indicated that they could make

Agreed Order(s):

Vikul Patel, MD – was not present nor did a legal representative appear on his behalf. Ms. Andrea Huddleston represented the state. Ms. Eller recused herself. Dr. Patel has been indicted in Georgia on two (2) counts of Computer Pornography, two (2) counts of Criminal Attempt to Commit Aggravated Child Molestation and two (2) counts of Criminal Attempt to Commit Child Molestation. Respondent neither admits nor denies any conduct related to those charges, but for the purposes of resolving this matter Respondent voluntarily entered into this agreement and acknowledged that, if proven, the alleged conduct would constitute grounds for discipline of his medical license. The Agreed Order presented to the Board ordered that Dr. Patel's medical license be revoked. Dr. Patel is also required to pay any and all costs. Dr. Baron made a motion to accept the agreed order. Dr. Ali seconded the order which passed.

Consent Order(s):

James Bridges, MD -was present and was represented by his counsel, Mr. David Steed. Ms. Mollie Gass represented the state. The Department requested medical records from Dr. Bridges that were from patients he treated while employed at Better Living Therapy in Kingsport, to review Respondent's prescribing of controlled substances. Respondent did not have the records. Although partial records were obtained, the records that had been retained by F.D. (the owner of Better Living Therapy) were incomplete. Respondent was unable to produce more complete medical records from this clinic in response to the August 2013 request, 14 months after he had left this clinic, because records reflecting any charting were left in the possession of F.D., and Respondent has no access to them. Dr. Baron made a motion to accept the consent order. Dr. Musil seconded the motion. Ms. Eller was opposed. The motion passed.

Stephanie Passons, PA – was not present nor did a legal representative appear on her behalf. Ms. Kyonzte Hughes-Toombs represented the state. Ms. Passons is being disciplined related to drinking alcohol before work and while at work. She was interviewed by the Department and by that time she had completed a 30-day inpatient treatment program and was participating in an intensive outpatient program with the Foundations Recovery Network. Ms. Passons is still participating in an intensive outpatient program with the Foundations Recovery Network. When the order was drafted, she had not been in touch with the Tennessee Professional Assistance Program. Since the order was drafted and before it was approved by the Committee she has enrolled with TnPaP. The

Day 2 stopped about 1:20

OGC/Disciplinary Business

Declaratory Order(s):

Ms. Huddleston presented Dr. Krishna Reddy's Petition for Declaratory Order. Dr. Reddy is represented by Ms. Kimberly Silvas. Dr. Reddy graduated from an approved medical school and completed an orthopedics residency in India. He is currently completing an orthopedic oncology residency at Vanderbilt. Dr. Reddy has not completed an US residency as required by Board rule. Dr. Reddy has not filed an application with the Department.

Dr. Ali asked if it is within the Board's authority to ask that we request an application before such matter is taken before the Board. Ms. Silvas addressed the Board and stated that Dr. Reddy cannot apply for full licensure because he does not have the requisite residency training. Accordingly, his Petition seeks to have the Board answer the question of whether her training in India and the United Kingdom satisfy the intent and purpose of the three (3) year US residency training program requirement. Ms Silvas stated that at this time, Dr. Reddy is asking the Board to allow a contested hearing in May so Dr. Reddy can answer any questions the Board may have with respect to his training. He has received his ECFMG certification as well as satisfied the USMLE requirements.

Dr. Zanolli made a motion to deny Dr. Reddy's Petition. Dr. Ali seconded the motion. Ms. Outhier opposed. The motion passed.

Order(s) of Compliance:

John Wickman, MD, was present, and was represented by counsel, Mr. Bob Kramer. Ms. Andrea Huddleston represented the state. Dr. Wickman was disciplined related to inappropriate sexual contact with patients. He was suspended for 180 days, placed on probation for a period of five (5) years, which was effective January 26, 2010. He was required to maintain monitoring with Affiliated Monitors and pay civil penalties and costs. He is in compliance with the requirements and is requesting the Board waive the final year of his Affiliated Monitors contract. Dr. Baron made a motion to accept the order. Dr. Higdon seconded the motion. Dr. Beckford recused. Dr. Ali abstained. The motion carried.

Andrew Coleman, MD, was present, but was not represented by counsel. Ms. Andrea Huddleston represented the state. Dr. Coleman was disciplined for 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 his ability to practice medicine. He was placed on probation for a period of five (5) years, which was effective January 2010. He was required to have ongoing monitoring with Affiliated Monitors and pay civil penalties and costs. He is in compliance with the requirements and

is entitled to have his petition granted. Dr. Beckford made a motion to accept the order. Dr. Johnson seconded the motion which passed unanimously.

John Windland, MD, was present, but was not represented by counsel. Ms. Andrea Huddleston represented the state. Dr. Windland was disciplined for inappropriate prescribing. He was placed on probation for a period of four (4) years, effective January 11, 2011. He was required to complete certain coursework and pay civil penalties and costs. He is in compliance with the requirements of his order and is entitled to have his petition granted. Dr. Beckford made a motion to accept the order. Dr. Ali seconded the motion which passed unanimously.

Marcus Min, MD, was not present. Ms. Andrea Huddleston represented the state. Dr. Min was disciplined for inappropriate prescribing. He was placed on probation for a period of three (3) years, effective January 24, 2012. He was required to complete certain course work and pay civil penalties and costs. He is in compliance with the requirements and is entitled to have his petition granted. Dr. Beckford made a motion to accept the order. Dr. Higdon seconded the motion which passed unanimously.

Adjourn 5:15