

# Tennessee Board of Medical Examiners' Committee on Physician Assistants



## Newsletter



2010

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Bureau of Health Licensure and Regulation • Health Related Boards • 227 French Landing, Suite 300, Heritage Place MetroCenter, Nashville, TN 37243  
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### CURRENT COMPOSITION OF THE COMMITTEE

The Board of Medical Examiners' Committee on Physician Assistants is currently composed of the following members: Jonathan Stephen White, PA., Chair; Johnny S. Nowlin, PA, Secretary; Johnny W. Presley, PA; James William Montag, PA; Omar Nava, PA; Gary L. Tauxe, OPA; and Anne Arney, JD., public member.

### COMMITTEE MEETING DATES

**January 14, 2011**  
**April 15, 2011**  
**July 8, 2011**  
**October 7, 2011**

All Committee meetings begin at 9 a.m., Central Time. committee meetings are held at the Board's office and are open to the public. Dates are subject to change, but are listed on the committee's website at <http://health.state.tn.us/Boards/PA/> and on the statewide public meeting calendar at <http://www.tennesseeanytime.org/pmn/index.html>. [In the event of an electronic meeting, a conference room is made available to the public and is the location from which the electronic meeting is conducted.]

### PHYSICIAN ASSISTANTS IN TENNESSEE

Total number of active licensees as of September 30, 2010 was 1,159 and the total number of active licensees with a Tennessee mailing address was 1021. The total number of active licensees with a Tennessee practice address was 695.

### Physician Assistants Currently Under Monitoring

The Committee's disciplinary coordinator is currently "monitoring" 14 physician assistants:

- 2 suspended
- 3 probation
- 5 revoked/surrendered
- 4 board order

### INFORMATION FOR PHYSICIANS REGARDING CARING FOR OPIOID- DEPENDENT PATIENTS

#### THE PHYSICIAN CLINICAL SUPPORT SYSTEM (PCSS)

The Health and Human Services Substance Abuse and Mental Health Services Administration has funded development of a free resource for physicians related to the prescribing of opioids, the caring of opioid-dependent patients and chronic pain patients being treated with methadone. Information about this resource has been provided by SAMSHA and the Physician Clinical Support System.

The PCSS website [www.PCSSmentor.org](http://www.PCSSmentor.org) provides clinical tools and short focused guidance on topics related to prescribing opioids, the care of opioid-dependent patients and the care of patients with chronic pain being treated with methadone. PCSS could be an important resource for the prescribers in Tennessee.

Through PCSS, health care providers can connect with expert mentors to get education about the use of methadone and buprenorphine, and the appropriate care of opioid dependent

patients and chronic pain patients. Mentors provide individualized telephone, email and on-site support. They come from across the country and work in pain clinics, primary care, licensed opioid treatment programs, and other practice settings.

For more information on the **Physician Clinical Support System** you may:

- Call 1-877-630-8812.
- Email [PCSSproject@asam.org](mailto:PCSSproject@asam.org).
- Visit [www.PCSSmentor.org](http://www.PCSSmentor.org).

*PCSS answers questions about treatment with methadone and buprenorphine at no cost to participants, thanks to a project supported by the Center for Substance Abuse Treatment of SAMHSA and administered by the American Society of Addiction Medicine*

## CHANGE OF ADDRESS

Must be reported (in writing or by e-mail) to the Committee's Office within 30 days! Please include the following:

- Your name and license number;
- Your profession;
- Your old address and phone number;
- Your new address and phone number, e-mail address, and/or your fax number;
- Your SIGNATURE!

Keeping the Committee's administrative staff up to date on your location facilitates the timely notification to you of important information such as your application for licensure renewal and important statutory and rule changes. You may fax your change to the Committee's administrative office at (615) 253-4484 or by mail at: 227 French Landing, Heritage Place MetroCenter, Suite 300, Nashville, TN 37243. You also can e-mail the Committee at: [tn.health@tn.gov](mailto:tn.health@tn.gov)

Committee's Fax Number: (615) 253-4484

Committee's website: <http://health.state.tn.us/Boards/PA/>

## REMINDER REGARDING CONTINUING MEDICAL EDUCATION

All persons licensed as a physician assistant must comply with Rule 0880-3-.12 regarding continuing medical education as a prerequisite to licensure renewal. That rule provides that:

(a) All physician assistants must, within a two (2) year period prior to the application for license renewal, complete one hundred (100) hours of continuing medical education satisfactory to the Committee.

1. At least one (1) Category I hour of the required continuing education hours shall address prescribing practices.

2. The division of hours between Category I and Category II continuing medical education must be consistent with the requirements of the N.C.C.P.A. as described on the most current N.C.C.P.A. "Continuing Medical Education Logging Form."

(b) The Committee approves a course for only the number of hours contained in the course. The approved hours of any individual course will not be counted more than once in a calendar year toward the required hourly total regardless of the number of times the course is attended or completed by any individual.

(c) The Committee may waive or otherwise modify the requirements of this rule in cases where there is retirement or an illness, disability or other undue hardship which prevents a physician assistant from obtaining the requisite number of continuing education hours required for renewal. Requests for waivers or modification must be sent in writing to the Committee prior to the expiration of the renewal period in which the continuing education is due.

The Board's administrative office audited 21 physician assistants in 2008 and found all 21 to be in compliance. It is important to know that any non-compliant physician assistant is subject to Committee discipline which includes a fine of \$40 per delinquent hour, a requirement to make up the delinquent hours, please an additional ten hours. The action taken against the physician assistant is reportable on the Department of Health web site on the monthly Disciplinary Action Report.

## REMINDER ABOUT NATUROPATHY

Last year, the General Assembly amended Tenn. Code. Ann. Sect. 63-6-205 relative to the practice of naturopathy. Now, the definition of naturopathy **excludes** the sale of herbs or natural health information exchanges so long as the sale or provision of information exchanges is not conducted for the purpose of prevention, diagnosis or treatment of any physical ailment or physical injury to or deformity of another. The seller must obtain a signed acknowledgement from the buyer that the seller is neither a licensed practitioner of the healing arts in Tennessee, nor meets the recognized qualification criteria which would allow the provision of any form of diagnosis, treatment recommendation, or medical care in Tennessee.

## REMINDER ABOUT PRACTITIONER PROFILES

The Health Care Consumer Right-to-Know Act of 1998, T.C.A. § 63-51-101 *et seq.*, requires designated licensed health professionals to furnish certain information to the Tennessee Department of Health. The information for public dissemination includes: (1) A description of any criminal convictions for felonies within the most recent ten (10) years. (2) A description of any final disciplinary actions of licensing

boards in other states within the most recent ten (10) years. (3) A description of any final disciplinary actions of licensing boards in other states within the most recent ten (10) years. (4) A description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that has been taken by the hospital's governing body or any other official action of the hospital after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital. Only cases which have occurred within the most recent ten (10) years shall be disclosed by the department to the public. (5) All medical malpractice court judgments, all medical malpractice arbitration awards in which a payment is awarded to a complaining party and all settlements of medical malpractice claims in which a payment is made to a complaining party beginning with reports for 1998 and each subsequent year; provided, such reports shall not be disseminated beyond the most recent ten-year period, but shall include the most recent ten-year period for which reports have been filed. From the information submitted, the Department will compile a practitioner profile which is required to be made available to the public via the World Wide Web and toll-free telephone line after May 1, 1999. **Each practitioner who has submitted information must update that information in writing by notifying the Department of Health, Healthcare Provider Information Unit, within 30 days after the occurrence of an event or an attainment of a status that is required to be reported by the law.** A copy of your initial or updated profile will be furnished to you for your review prior to publication. That opportunity will allow you to make corrections, additions and helpful explanatory comments. **Failure to comply with the requirement to submit and update profiling information constitutes a ground for disciplinary action against your license.**

A blank copy of the profile may be obtained at:

<http://health.state.tn.us/Downloads/g6019027.pdf>

## **TENNESSEE SUPREME COURT DECIDES PHYSICIAN ASSISTANT MALPRACTICE CASE**

**By John Williams**

On June 21, 2010, the Tennessee Supreme Court rendered a precedent-setting decision in a case involving alleged malpractice by a physician assistant (PA). The Court dismissed the lawsuit because the plaintiff failed to produce proper expert witness testimony about the PA's violation of the applicable standard of care.

In deciding this case, the Supreme Court described the standard of care which must be met by PA's. The Court said that the recognized standard of care for PA's is that of PA's, not physicians. The Court said that PA's are not held to same standard of care to which physicians are held. The Court said: "The profession of physician assistants is distinct from the profession of physicians." The Court further said: "If

physician assistants were as capable of practicing medicine as physicians are, physician assistants would not require the close supervision of physicians."

The Court held that, in a malpractice case involving a PA, the plaintiff must present the testimony of an expert witness who is familiar with the standard of care the PA was required to meet. The expert witness must be a PA or "a medical doctor who is sufficiently familiar with the physician assistant practice at issue."

In the case decided by the Supreme Court, the PA worked at a Primary Care Clinic and allegedly failed to diagnose cardiomyopathy in a patient. The plaintiff's expert witness was the cardiologist who eventually diagnosed and treated the plaintiff's cardiomyopathy. This doctor knew nothing about PA's and their relationship to supervising physicians. The Supreme Court found that the cardiologist was not competent to testify about the standard of care expected of a PA.

The title of the case is Cox v. M. A. Primary and Urgent Care Clinic. The Court's opinion was written by Justice Connie Clark.

## **STATUTORY CHANGES OF INTEREST TO TENNESSEE PHYSICIAN ASSISTANTS**

The 2010 Legislative Session has ended, and the administrative staff of the Board of Medical Examiners' Committee on Physician Assistant has monitored several bills that are of interest to physician assistants in the state of Tennessee. Below is a brief summary of those bills. If you wish to review any of these public chapters in their entirety, please visit: <http://www.tennessee.gov/sos/acts/index.htm>.

### **Public Chapter No. 1043**

This Public Chapter amends Tenn. Code Ann. Sect. 63-6-210(b)(2) and (c) and provides that a licensee may renew a license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided that the late penalty shall not exceed twice the renewal fee. When any licensee fails to renew a license and pay the biennial renewal fee within sixty (60) days after renewal becomes due, as provided in this section, the license shall be automatically revoked at the expiration of sixty (60) days after the renewal was required without further notice or hearing.

Further, any licensee whose license is automatically revoked as provided in subsection (b), may apply in writing to the board for reinstatement of such license, which may be granted by the board upon the payment of all past due fees and reinstatement fees established by the board, and upon further conditions as the board may require.

### **Public Chapter No. 1122**

This Public Chapter amends Tenn. Code Ann. Sect. 63-6-211, by adding the following as a new subsection (c): (c) For purposes of enforcing federal immigration laws which relate to the licensure of foreign physicians in this state, the board of medical examiners shall enter into a written agreement, in accordance with federal and other applicable law, between the board and the United States Department of Homeland Security concerning the enforcement of federal immigration laws, which may include participation in the federal systematic alien verification of entitlements program, referred to as the "SAVE program", and its verification information system, operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security or any additional certifying agent within the department or approved by the department.

### **Public Chapter No. 724**

This Public Chapter creates a new licensure category for those individuals practicing medicine at St. Jude Children's Research Hospital Global Collaboration. The applicants must meet all the requirements for licensure contained in current law with the exception of completing a residency or training program. The bill provides that the Board of Medical Examiners ("Board") may use its discretion to issue the license and that the Board has the authority to promulgate rules to implement this new licensure category, including, but not limited to establishing fees. The bill also provides that the physician with this license may only practice medicine at St. Jude. Should the licensee's employment with St. Jude terminate, then this special license shall terminate as well. St. Jude would be responsible for submitting all necessary information and applications to the Board on behalf of the applicant and St. Jude would be responsible for notifying the Board office when a licensee's employment with St. Jude is terminated.

### **Public Chapter No. 677**

This Public Chapter sets the Board of Medical Examiners' Committee on Physician Assistants' termination date at June 30, 2013.

### **Public Chapter No. 663**

This Public Chapter requires all physicians, dentists, optometrists, podiatrists, veterinarians, and advance practice nurses with a certificate of fitness, to report a person to local law enforcement within five (5) business days if the health care provider has good reason to believe that the person has obtained controlled substances unlawfully. The Public Chapter also changes current law by providing that the health care provider must have actual knowledge that the person has obtained the controlled substances unlawfully. Further, the controlled substance database advisory committee has the authority to develop a form that health care providers may choose to use to make reports; this provision is not contained in current law. Further, the Public Chapter provides that a health care provider may, but is not required, to report this

information who is providing treatment to a person with a mental illness. This Public Chapter further provides that a health care provider is not prohibited from conveying information to local law enforcement if the information was obtained from the controlled substance monitoring database as long as the information is pertinent and is for the period of time thirty (30) days prior to the date of treatment leading to the alleged offense. This thirty (30) day report is grounds to obtain more detailed controlled substance database information. Current law provides that the health care provider would be immune from liability for notifying local law enforcement of the controlled substance information. This Public Chapter expands this by providing immunity from liability to persons working under the direction of a health care provider. The Public Chapter also amends current law by adding language to the current law providing that the penalty against a health care provider for violating the provisions of this law would be a civil penalty assessed by the licensing board that regulates the health care provider and shall be limited to cases involving a pattern of willful failure to make a report.

### **Public Chapter No. 790**

This Public Chapter amends Tenn. Code Ann. Title 37 (Juveniles), Chapter 10 (Miscellaneous Provisions), Part 3 (Parental Consent for Abortion of Minors); Title 39 (Criminal Offenses), Chapter 15 (Offenses Against the Family), Part 2 (Abortion); Title 63 (Healing Arts), and Title 68 (Health, Safety and Environmental Protection), relative to preventing forced abortions. The Public Chapter amends current law by providing that a physician's office in which abortions are performed and ambulatory surgical treatment centers shall conspicuously post a sign notifying patients that an abortion can only be performed with the patient's voluntary consent and without coercion. The Public Chapter also provides that should a physician's office or ambulatory surgical treatment center fail to post the required sign, the facility shall be assessed a two thousand five hundred dollar (\$2,500.00) civil penalty. In the event that the patient is a minor, then the physician or other health care professional (nurse, physician assistant, midwife, psychologist, or social worker) shall inform the patient that she cannot be forced to have an abortion and that she must give her voluntary consent to have the abortion performed. Prior to the performance of the abortion, the patient shall certify in writing that she was properly informed and the certification shall be placed in the patient's file. The Public Chapter provides that the Board for Licensing Health Care Facilities shall be responsible for enforcing these provisions in physician's offices where abortions are performed, ambulatory surgical treatment centers, and hospitals. The Public Chapter is effective on October 1, 2010.

### **Public Chapter No. 865**

This Public Chapter amends Tenn. Code Ann. Title 63 (Healing Arts), Chapter 2 (Medical Records), Part 1, relative to charges for copying and certifying medical records. The Public Chapter increases the costs of obtaining medical records from health care providers by lowering the threshold

amount of pages that can be provided to a requestor for twenty dollars (\$20.00). Current law (Tenn. Code Ann. §63-2-102, Costs of reproduction, copying or mailing of records) provides that the cost for obtaining medical records shall not exceed twenty dollars (\$20.00) for medical records that do not exceed forty (40) pages; the bill changes forty (40) page limit to five (5) pages. Current law provides that the cost for those records exceeding forty (40) pages is twenty-five cents (\$.25) for each page. The Public Chapter changes the per page cost from twenty-five cents (\$.25) to fifty cents (\$.50) for those pages of the medical record that exceed the five (5) page limit. The Public Chapter also adds a provision that is not contained in current law providing that if the requested records are delivered by email, then the processing fee may not exceed fifty dollars (\$50.00). Mailing or shipping costs may be added on to this processing fee should the digital or electronic records be shipped to the requestor. The Public Chapter adds another provision indicating that the health care provider may charge a fee not to exceed twenty dollars (\$20.00) for certifying medical records that require notarization. The Public Chapter removes provisions contained in current law that provide that payment of the costs may be required by the provider prior to the records being furnished and that upon payment, the records shall be provided without delay. Also removed is a provision providing that in workers' compensation cases, a request for medical records shall include a medical or anatomical impairment rating. The Public Chapter also removes a provision providing that the payment requirements contained in current law will not supersede any other provision of the law that establishes costs for reproduction and copying. The Public Chapter became effective July 1, 2010.

#### **Public Chapter No. 1100**

This Public Chapter sets the Council for Certified Professional Midwifery's termination date at June 30, 2011.

#### **Public Chapter No. 976**

This Public Chapter amends Tenn. Code Ann. Sect. 63-6-207(b), and requires the Board of Medical Examiners to grant an extension to applicants who have not passed the United States Medical Licensing Examination within seven (7) years so long as the applicant is licensed in good standing in at least three (3) other jurisdictions and who has otherwise met the requirements under this section.

#### **Public Chapter No. 995**

This Public Chapter set the termination date of the Tennessee Acupuncture Advisory Committee at June 30, 2013.

#### **Public Chapter No. 637**

This Public Chapter amends Tenn. Code Ann. §63-6-221 by requiring physicians performing Level III office-based surgery to report the following to the Board of Medical Examiners within fifteen (15) days after the physician discovers the event: death of a patient during a level III surgery or within seventy-two (72) hours thereafter; transport of a patient to a

hospital emergency department; unplanned admission of a patient to a hospital within seventy-two (72) hours of discharge; discovery of a foreign object erroneously remaining in a patient; or performance of a the incorrect surgical procedure, surgery on the incorrect site, or surgery on the wrong patient. Current law only requires physicians performing Level II office-based surgery to report this information to the Board. Level II office-based surgery is surgery performed outside of a hospital, ambulatory surgical treatment center or other licensed medical facility pursuant to Board of Medical Examiner rules, including, but not limited to biopsies, hernia repairs, colonoscopy, or liposuction. Level III surgeries can be the same type of surgeries, but require greater sedation than Level II surgeries. The Public Chapter also renames the definition of "Office-based surgery" to "Office-based surgery" or "Level III office-based surgery" in an effort to distinguish between Level II and Level III office-based surgery. This Public Chapter is effective July 1, 2010.

#### **Public Chapter No. 862**

This Public Chapter amends Tenn. Code Ann. Title 63 (Professions of the Healing Arts), Chapter 2 (Medical Records), Part 1 (Release of Medical Records) and Title 68 (Health, Safety and Environmental Protection), Chapter 11 (Health Facilities and Resources), Part 15 (Protection of Patient's Privacy), to enact the "Colby Stansberry Act" relative to the authorized release of medical records. This Public Chapter allows a patient's authorized representative or next of kin (in the event that there is no authorized representative) to obtain the patient's medical records after the patient is incapacitated or deceased. Current law (Tenn. Code Ann. §63-2-101, Release of medical records) already provides that a health care provider shall provide a patient or the patient's authorized representative with a copy or summary of the patient's medical records upon the patient's or authorized representative's written request. Current law does not require that the informed consent must be presented to the health care provider when the patient is alive or is competent. The Public Chapter, which adds a new section to current law, does not change an authorized representative's ability to obtain the patient's medical records; it clarifies that the authorized representative's informed consent survives the patient's death and incapacity and that a health care provider shall provide the medical records to the representative even if the representative provides the informed consent after the patient's death or incapacity. The Public Chapter also provides that should the patient not have an authorized representative, upon the patient's death or incapacity, the patient's next of kin could obtain the patient's medical records. Current law does not contain a provision authorizing the patient's next of kin to obtain the patient's medical records. The Public Chapter also adds a new subsection to the law to specify what the patient's informed consent must contain. The form must include the name of the patient; type of information; name of facility; permitted purpose; individuals, agencies, or organizations to whom disclosure may be made; signature of patient or representative; date signed; and effective time period of consent. Current law does not contain a provision about what must be contained in a informed consent. The Public Chapter also amends current law (T.C.A. 68-11-1503(a)(1)

Confidentiality) relative to the obligations of a licensed health care facility in releasing a patient's medical records. The Public Chapter contains the same language about the release of medical records after the patient's death or incapacity that was placed in Title 63 as stated above. The Public Chapter also adds a new subsection to the law relative to licensed health care facilities to specify what the patient's informed consent must contain; the Public Chapter contains the same language as provided in Title 63 as stated above. This bill became effective April 30, 2010.

### **Public Chapter No. 904**

This Public Chapter amends Tennessee Code Annotated, Section 63-6-214, by deleting subdivision (b)(10) and substituting instead the following:

(10) Conviction of a felony, conviction of any offense under state or federal laws relative to drugs or the practice of medicine, conviction of any offense involving moral turpitude or conviction of any offense for which the person is required to register as a sexual offender or violent sexual offender pursuant to Title 40, Chapter 39, Part 2;

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 6, Part 2, is amended by adding the following new section:

Section 63-6-238.

(a)(1) The general assembly finds that a person who is licensed to practice medicine in this state and who is required to register with the Tennessee Bureau of Investigation as a sexual offender or violent sexual offender is injurious to the public safety, health and welfare as well as the public's perception of and confidence in the medical profession.

(2) The general assembly further finds that the strongest remedial action possible should be taken against a person's license to practice medicine when such person has been convicted of a sexual offense, or violent sexual offense as both are defined in Title 40, Chapter 39, Part 2, and continues to engage in the practice of medicine in this state after such conviction.

(3) Enactment of this section by the general assembly is declared to be a remedial action necessary to assure the safety of the citizens of this state and their faith and confidence in the medical profession. This section is not to be construed to be punitive against any person to whom this section may apply.

(b) As used in this section:

(1) "Registry" means the registry created by the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, codified in Title 40, Chapter 39, Part 2.

(2) "Registering agency" means a sheriff's office, municipal police department, metropolitan police department, campus law enforcement agency, the Tennessee Department of Correction, a private contractor with the Tennessee Department of Correction or the board with whom sexual offenders and violent sexual offenders are required to register under Title 40, Chapter 39, Part 2;

(3) "Sexual offense" means those offenses defined as "sexual offenses" in § 40-39-202;

(4) "Violent sexual offense" means those offenses defined as "violent sexual offenses" in § 40-39-202;

(c)(1) If the registering agency of a person who registers as a sexual offender or violent sexual offender, as defined by Title 40, Chapter 39, Part 2, has reason to believe that such person is licensed to practice medicine in this state pursuant to this chapter, the registering agency shall prepare and forward to the board of medical examiners a certified copy of the offender's TBI registration form within thirty (30) days of the sexual offender's or violent sexual offender's registration.

(2) Upon receipt of the form, or upon receipt of credible evidence from any other source indicating that a person licensed to practice medicine in this state has been convicted of a sexual offense or a violent sexual offense, the board shall investigate to determine whether such person is a sexual offender or violent sexual offender, as defined by § 40-39-202, and a person licensed to practice medicine pursuant to this chapter.

(A) If the board determines that the person named on the TBI registration form, or by another source, is a person licensed to practice medicine in this state pursuant to this chapter and the offense for which the person is required to register a violent sexual offense, such conviction constitutes a material change in the person's licensure qualifications, and the board shall conduct a hearing at which the person may present evidence that the information received by the board is incorrect. If, after the hearing, the board finds the person was convicted of a violent sexual offense and is required to register with the TBI as a violent sexual offender, the board shall revoke the person's license to practice medicine in accordance with §63-6-216. The person may appeal the ruling of the board as provided in the Uniform Administrative Procedures Act, but such appeal shall be limited to the issue of whether or not such person has been convicted of a violent sexual offense and is therefore required to register as a violent sexual offender. The license revocation shall remain in effect during the pendency of any appeal.

(B) If the person licensed to practice medicine is required to register as a sexual offender, the board shall conduct a hearing to determine the extent to which the person poses a continuing risk to patients; the degree to which the person has been rehabilitated; what treatment, if any, the person has undergone; the areas of medicine in which the person is qualified to engage without endangering the safety of patients; and any other factor the board deems relevant in determining the outcome most likely

to protect the public while considering the interests of the person. At the conclusion of the hearing, the board may:

(i) Revoke the license of the person; or

(ii) If the board does not revoke the license, it may place such conditions on the person's license as it deems appropriate and advisable to protect the interests and safety of the public; provided, the board shall place the following restrictions on the person's license:

(a) Prohibit the physician from engaging in direct patient care or contact; and

(b) Such other conditions and limitations on the person's license as the board deems advisable.

(C)(i) If a person's license to practice medicine was revoked, suspended or conditioned pursuant to subdivision (c)(2)(B) because such person was convicted of a sexual offense and such person applies for and is granted termination of sexual offender registry requirements pursuant to § 40-39-207, such person may petition the board for reinstatement of the person's license to practice medicine.

(ii) If a petition is filed for reinstatement pursuant to this subsection, the board shall hear the petition within thirty (30) calendar days of its receipt. At the hearing the board shall use the same analysis set out in subdivision (c)(2)(B) to determine whether the person should be permitted to practice medicine in this state under any circumstances.

(iii) If the written findings of the board are that the person is no longer a threat to public safety and could return to the practice of medicine in some capacity, it may:

(a) Reinstatement of the person's license without conditions;

(b) Reinstatement of the person's license with any or all the conditions available under subdivision (c)(2)(B); or

(c) Remove some or all of the restrictions or conditions that were placed on a license made conditional pursuant to subdivision (c)(2)(B).

(iv) If the written findings of the board are that the person could not safely return to the practice of medicine, it shall deny the person's petition and set a date certain after which the person may petition the board.

(D) If the board receives credible evidence from any source indicating that the person is in violation of the restrictions placed upon such person's license to practice medicine pursuant to this section, the board shall conduct a hearing as provided in subdivision (c)(2)(B). If at the

conclusion of the hearing, the board finds that the person is in violation of the restrictions placed upon the person's license in a material respect or in a repetitive manner, the board shall revoke the license. If the board finds that the violation is minor or isolated, it may place other conditions on the person's license, such as increased reporting to the board by both the person and the person's employer or contractor, if any.

(E) The provisions of this subdivision (c)(2) shall apply regardless of whether commission of the sexual offense or violent sexual offense resulting in the person being required to register as a sexual or violent sexual offender occurred prior to or subsequent to the date the person was licensed to practice medicine in this state.

(d) By September 1, 2010, the board shall compare or have compared a list of all persons who are licensed to practice medicine in this state against the list of persons who are registered as sexual offenders or violent sexual offenders pursuant to Title 40, Chapter 39, Part 2. If it appears from this comparison that the same name appears on both lists, the board shall request a certified copy of that person's TBI registration form. Upon receipt of the form from the TBI, the board shall conduct an investigation to determine if the person licensed to practice medicine in this state is the same person who is a registered sexual offender or violent sexual offender. Such investigation shall take no more than thirty (30) days. If the board determines that the person whose name appears on both lists is the same person, it shall immediately take action as provided in subdivision (c)(2) of this section. If the person whose name appears on both lists is not the same person, the board shall take no action.

(e)(1) Upon the effective date of this act, the board shall determine, before granting a license to practice medicine in this state, or renewing an existing license, if the person who is applying for such a license is registered or is required to be registered as a sexual offender or violent sexual offender pursuant to Title 40, Chapter 39, Part 2.

(2) If any applicant for a license to practice medicine in this state is a registered violent sexual offender or is required to register as a violent sexual offender, the board shall deny the application. If any person who is licensed to practice medicine in this state and is seeking to renew such license is a registered violent sexual offender or is required to register as a violent sexual offender, the board shall revoke the physician's license.

(3) If any applicant to the board is registered as a sexual offender or is required to register as a sexual offender, the board shall consider whether the applicant poses a risk to patients; the degree to which the person has been rehabilitated; what treatment, if any, the person has undergone; the areas of medicine in which the applicant is qualified to engage without endangering the safety of patients; and any other factor the board deems relevant in determining what conditions are most likely to protect the public while considering the interests of the applicant. The board may deny the application or may place such conditions upon the applicant as are necessary to protect the public. If the board grants the license, at a

minimum the board shall prohibit the applicant from engaging in direct patient care or contact for so long as the applicant is required to register as a sexual offender.

SECTION 3. This act shall take effect July 1, 2010, the public welfare requiring it and shall apply to any person licensed to practice medicine in this state, whether such license was issued prior to or after the effective date of this act, and to any person applying to practice medicine in this state, whether the application was filed prior to or after the effective date of this act.

### **Public Chapter 1084**

This Public Chapter amends Tenn. Code Ann. Sect. 63-1-149. and requires that on and after October 1, 2010, before employing or contracting with any person who would be providing direct patient care, for whom a background check has not been completed, a health care professional licensed under any chapter of title 63 or title 68, chapters 24 and 140, shall initiate and perform a "registry check" which for the purposes of this section is defined as:

- (1) A state-by-state look in any state in which the person has lived in the previous seven (7) years of the national sex offender public registry website coordinated by the United States department of justice, including but not limited to the sexual offender registry maintained by the Tennessee bureau of investigation pursuant to title 40, chapter 39, part 2; and
- (2) Any adult abuse registry maintained for any state in which the person has lived in the previous seven (7) years; and
- (3) The department of health's elder abuse registry established pursuant to title 68, chapter 11, part 10.

Additionally, should an applicant be listed on any of the registries listed above in subdivisions (a)(1)-(3), the health care professional shall not employ or contract with the person if the person would be providing direct patient care.

A health care professional who complies with the requirements to perform registry checks under subsection (a), or relies on a documented representation provided by an entity with which the health care professional contracts that the person who will work in the office is not on any of these registries, shall not be subject to civil or criminal liability solely based upon the information provided through a registry check under this section. This immunity shall extend to a claim related to the professional's refusal to employ or contract with a person based on information obtained from a registry check.

This section is not intended to apply to contracted, external staff who provide such services as cleaning services,

maintenance of office or medical equipment or other services where direct patient contact is not intended.

This section shall not apply to health care professionals licensed under title 63, chapter 12.

The Department of Health shall post no later than October 1, 2010 in a conspicuous location on its website as well as the website of each applicable licensing board a link to all potential databases the health care professional would be required to check pursuant to subsection (a) above. In addition, each applicable licensing board shall notify all of its licensees at least annually through board newsletters of their obligations under this statute.

### **PUBLIC CHAPTER NO. 795**

Amends Tennessee Code Annotated, Title 63, relative to the prescriptions for certain drugs issued by health care providers.

Tennessee Code Annotated, Title 63, Chapter 3, Part 1, is amended by adding the following as a new section:

SECTION 1. First, Section 63-3-128. Any written, printed or computer-generated order for a Schedule II controlled substance prepared by a podiatrist who is authorized by law to prescribe a drug must be written legibly, printed or computer-generated as a separate prescription order. The written, printed or computer-generated order must contain all information otherwise required by law. The prescribing podiatrist must sign the written, printed or computer-generated order on the day it is issued.

SECTION 2. Next, Tennessee Code Annotated, Section 63-5-122, is amended by adding the following as a new, appropriately designated subsection:

( ) Any written, printed or computer-generated order for a Schedule II controlled substance prepared by a dentist who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription order. The written, printed or computer-generated order must contain all information otherwise required by law. The prescribing dentist must sign the written, printed or computer-generated order on the day it is issued.

SECTION 3. Next, Tennessee Code Annotated, Title 63, Chapter 6, Part 2, is amended by adding the following as a new section:

§ 63-6-239. Any written, printed or computer-generated order for a Schedule II controlled substance prepared by a physician or surgeon who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription order. The written, printed or computer-generated order must contain all information otherwise required by law. The prescribing physician or surgeon must sign the written, printed or computer-generated order on the day it is issued. Nothing in this section shall be construed to prevent a physician or surgeon from issuing a verbal prescription order.



SECTION 4. Next, Tennessee Code Annotated, Title 63, Chapter 8, Part 1, is amended by adding the following as a new section:

§ 63-8-134. Any written, printed or computer-generated order for a Schedule II controlled substance prepared by an optometrist who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription order. The written, printed or computer-generated order must contain all information otherwise required by law. The prescribing optometrist must sign the written, printed or computer-generated order on the day it is issued. Nothing in this section shall be construed to prevent an optometrist from issuing a verbal prescription order.

SECTION 5. Tennessee Code Annotated, Title 63, Chapter 9, Part 1, is amended by adding the following as a new section:

§ 63-9-118. Any written, printed or computer-generated order for a Schedule II controlled substance prepared by an osteopathic physician who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription order. The written, printed or computer-generated order must contain all information otherwise required by law. The prescribing osteopathic physician must sign the written, printed or computer-generated order on the day it is issued. Nothing in this section shall be construed to prevent an osteopathic physician from issuing a verbal prescription order.

SECTION 6. Tennessee Code Annotated, Section 63-7-123(b)(3), is amended by adding the following language at the end of that subdivision:

(F) Any written, printed or computer-generated prescription order for a Schedule II controlled substance prepared by an advanced practice nurse who is authorized by law to prescribe a drug must be printed or typed as a separate prescription order. The written, printed or computer-generated prescription order must contain all information otherwise required by law. The prescribing advanced practice nurse must sign the written, printed or computer-generated prescription order on the day it is issued.

SECTION 7. Tennessee Code Annotated, Section 63-19-107(2)(G), is amended by adding the following language at the end of that subdivision:

(F) Any written, printed or computer-generated prescription order for a Schedule II controlled substance prepared by a physician assistant who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription. The written, printed or computer-generated prescription order must contain all information otherwise required by law. The prescribing physician assistant must sign the written, printed or computer-generated prescription order on the day it is issued.

SECTION 8. Nothing in this act shall be construed as limiting any practitioner's or pharmacist's ability to order the use of or distribute non-prescription drugs or devices otherwise in accordance with applicable law.

SECTION 9. Sections 1 through 7 of this act shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the physician or other person authorized to write prescriptions, writes the order into the hospital medical record and the patient or patient's agent or representative never has the opportunity to handle the written order, a nursing home, or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under Title 33 or individuals incarcerated in a local, state or federal correctional facility.

SECTION 10. Nothing in this act shall be construed as limiting any professional nurse's ability to issue drugs in accordance with the provisions of Tennessee Code Annotated, Section 63-7-124.

SECTION 11. The Department of Health, division of health related boards and the board of pharmacy, are authorized to promulgate uniform rules to effect the purposes of this act in accordance with Tennessee Code Annotated, Title 4, Chapter 5. The power and duty to enforce those rules shall be vested in the various boards that regulate healthcare providers affected by this act, in accordance with Tennessee Code Annotated, Section 63-1-122.

SECTION 12. Tennessee Code Annotated, Section 63-6-236, is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 13. Tennessee Code Annotated, Section 63-3-127(a), is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 14. Tennessee Code Annotated, Section 63-5-122(c), is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 15. Tennessee Code Annotated, Section 63-8-126(a), is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 16. Tennessee Code Annotated, Section 63-9-116(a), is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 17. Tennessee Code Annotated, Section 63-7-123(b)(3)(B), is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 18. Tennessee Code Annotated, Section 63-19-107(2)(E)(ii), is amended by deleting the language "both letters and" in the second sentence and by substituting instead the language "letters or in".

SECTION 19. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.



## DISCIPLINARY ACTION 2009-2010

The Committee took action against the following physician assistants from September 2009 through May 2010:

### SEPTEMBER 2009

**Licensee:** Kristen L. Colby, P.A., Nashville, Tenn.

**Violation:** Fraudulently obtained prescriptions; and guilty of a crime.

**Action:** License placed on probation; must meet certain terms and conditions; assessed \$2,000 civil penalty, plus costs.

### OCTOBER 2009

**Licensee:** Thomas Shane Clark, PA-C, Maynardville, Tenn.

**Violation:** Habitual intoxication and personal misuse of drugs or the use of intoxicants.

**Action:** Must comply with terms of 5 year contract already in place with the Tennessee Professional Assistance Program; must comply with Drug Court in Etowah County, Ala.

### MARCH 2010

**Licensee:** Adam M. Carruthers, P.A., Gastonia N.C.

**Violation:** Action taken by the state of North Carolina.

**Action:** License issued with condition that he comply with terms of North Carolina Order.

### MAY 2010

**Licensee:** Curtis C. Jones, P.A.-C, Smithville, Tenn.

**Violation:** Violation of board order.

**Action:** License revoked; must comply with previous board order before reapplying; assessed \$53,000 civil penalties, plus costs.

**Licensee:** Allen R. Powell, P.A., Johnson City, Tenn.

**Violation:** Violation of board order.

**Action:** License revoked; must comply with previous board order before reapplying; assessed costs.

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