



**Tennessee Board of Osteopathic Examination
Regular Board Meeting**

Wednesday, August 7, 2019

MINUTES

The regular meeting of the Tennessee Board of Osteopathic Examination (hereinafter, “the Board”) was called to order at 9:00 a.m. in the Poplar Room Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. Michael Wieting.

Members Present: Dr. Michael Wieting, D.O.
Dr. Jan Zieren, DO
Dr. Jeffrey Hamre, D.O.
Dr. Shant Garabedian, D.O.
Ms. Penny Judd, Consumer Member
Dr. Shannon Kilkelly, D.O.

Staff Present: Rene Saunders, MD, Medical Consultant
Angela Lawrence, Director
Candyce Wilson, Administrative Director
Stacy Tarr, Administrative Director
Brandi Allocco, Board Administrator
Frances Baca-Chavez, Office of General Counsel

APPROVAL OF MINUTES

The Board reviewed the minutes from the May 1, 2019 meeting. Dr. Jeffrey Hamre made a motion to approve the minutes. Dr. Shant Garabedian seconded the motion. The motion passed.

APPLICANT INTERVIEWS

Dr. Charles Burk, DO-Dr. Burk appeared without counsel. Dr. Burk was involved in malpractice settlements in 2002 and 2007 which were settled without trials. Dr. Burk reported there have been no settlements since 2007. Dr. Garabedian made a motion to approve for licensure. Dr. Hamre seconded. The motion passed.

Dr. Phillip Morson, DO-Dr. Morson appeared without counsel. Dr. Morson was asked to appear as a prerequisite to reinstating his medical license due to malpractice settlements, prior board action and substance abuse issues. Dr. Morson shared the malpractice settlement named several owners and physicians and was settled out of court. Dr. Morson admitted to practicing beyond the expiration of license due to not realizing his license was expired. Once Dr. Morson recognized his license was expired he discontinued practice immediately. Dr. Morson's Tennessee Osteopathic license was put on probation in 1989 until 1994 per an agreed order and was again put on probation in 2010 to run concurrent with Tennessee Medical Foundation (hereinafter, "TMF") contract. In 2012 that probation was lifted. Dr. Morson stated he received treatment for substance abuse in 1988 and in 2006 for opiates. It was noted administrative staff suggested to Dr. Morson to contact TMF for an evaluation prior to meeting with the Board; however he declined stating he did not feel he had a current addiction problem. Dr. Shannon Kilkelly made a motion to grant Dr. Morson a license contingent upon TMF evaluation and compliance with all TMF recommendations which would then become conditions on the license. Dr. Hamre seconded the motion. Ms. Penny Judd asked for the current motion to be amended to include a contingency of payment of a penalty of one hundred dollars (\$100.00) due to practicing on a lapsed license. Dr. Hamre made a motion to accept the amended motion. Dr. Kilkelly seconded. Dr. Hamre and Dr. Garabedian opposed. The motion passed. Dr. Morson stated that he would not be calling TMF because he didn't respect their Religious Orientation. TMF representative, Ms. Rainwater stated that TMF wasn't a Religious Organization.

CONDUCT NEW BUSINESS

Ratification of New Licensees and Reinstatements

Dr. Garabedian made a motion to approve the list for ratification of licenses as presented. Ms. Judd seconded. The motion passed.

Application Processes

The Board was given copies of online and paper application. Dr. Michael Wieting asked that each Board Member review the application and provide suggestions for improvements or items that made need to be addressed. These suggestions should be forward to administrative staff.

Presentation by Dr. Graham McMahon with Accreditation Council (hereinafter, "ACCME")

Dr. McMahon appeared via phone and shared information regarding a no fee pilot program developed to simplify the continuing education reporting.

For Clinicians:

- To add value to the credit earned by having it automatically reported to licensing board(s)
- To be able to find relevant programs for their location, practice-type and interest

For Licensing Boards:

- Simplify the reporting of CME credit for licensees
- Simplify the review of licensees for having met credit requirements

For Education Providers:

- Alignment between the systems

Engagement of a variety of learners
Increase value of the education and credit earned
To be able to upload learner data

Dr. Garabedian made a motion to participate in the pilot program. Dr. Zieren seconded. The motion passed.

DEPARTMENTAL REPORTS

Lori Leonard with Office of Investigations presented to the Board:

Currently Monitored Practitioners

2 for Reprimand
6 on Probation
3 on Suspension
3 Revoked/Surrendered

Investigations for 2019

35 New Opened Complaints:

7 Action in another State
8 Malpractice
12 Unprofessional Conduct
3 Overprescribing
2 Consumer Right to Know
1 Prescribing to Friends/Family
2 Outside of the Scope of Investigations

32 Closed Complaints:

4 Insufficient Evidence to Discipline
6 Closed in Investigations and Sent to OGC
16 Closed with No Action
6 Closed with a Letter of Warning

No complaints regarding Osteopathic X-ray Examiners

Legislative Updates

Patrick Powell presented to the Board:

Public Chapter 12

This act allows a qualified registered nurse, if the nurse has a cooperative working relationship with a physician and follows hospital protocols, to determine whether a patient presenting to a hospital has an emergency medical condition. Emergency medical condition and qualified registered nurse are defined in the statute. This legislation was brought by the Tennessee Hospital Association. This act took effect March 20, 2019.

Public Chapter 61

This act states that an entity responsible for an AED program is immune from civil liability for personal injury caused by maintenance or use of an AED if such conduct does not rise to the level of willful or wanton misconduct or gross negligence. This act took effect on March 28, 2019.

Public Chapter 117

This act defines “alternative treatments” to 63-1-164 pertaining to the restrictions and limitations on treating patients with opioids. This act took effect April 9, 2019.

Public Chapter 124

This act makes a variety of small changes and additions to the TN Together opioid initiative put in place in 2018. One addition is allowing access to CSMD data to a healthcare practitioner under review by a quality improvement committee (QIC), as well as to the QIC, if the information is furnished by a healthcare practitioner who is the subject of the review by the QIC.

The requirement for e-prescribing of all schedule II substances by January 1, 2020 has been delayed to January 1, 2021 and is modified to require all schedule II through V prescriptions to be e-prescribed except under certain circumstances. The law also requires all pharmacy dispensing software vendors operating in the state to update their systems to allow for partial filling of controlled substances.

Definitions are given by this act to the terms palliative care, severe burn and major physical trauma. Along with its new definition, palliative care has now joined severe burn and major physical trauma as an exception to the opioid dosage limits otherwise required under TN Together.

An unintended consequence of last year’s Public Chapter 1039 was on cough syrup. This act establishes that the law does not apply to opioids approved by the FDA to treat upper respiratory symptoms or cough, but limits such cough syrup to a 14 day supply.

Also changed from last year’s act is the requirement to partial fill. Partial filling of opioids is now permissive.

Finally, the opioid limits under have been simplified from the previous year’s act. The twenty day supply and morphine milligram equivalent limit has been eliminated. Three day and ten day requirements remain the same. Instances such as more than minimally invasive surgery, which previously fell under the twenty day provision, now can be treated under the limits of the thirty day category. This act took effect on April 9, 2019.

Public Chapter 144

This act amends the Prevention of Youth Access to Tobacco and Vapor Products Act by limiting the places in which one may use vapor products. The act defines vapor products and prohibits the use of such products in a number of locations including child care centers, group care homes, healthcare facilities

(excluding nursing homes), residential treatment facilities, school grounds, and several other areas. Several locations have specific exceptions set forth in the statute. This act took effect on April 17, 2019.

Public Chapter 156

This public chapter creates a commemorative certificate of nonviable birth. The licensed healthcare practitioner who attends or diagnoses a nonviable birth, may, based on the practitioner's best medical judgment and knowledge of the patient, advise a patient that experiences a nonviable birth that the patient may obtain a commemorative certificate from the Department of Health. The Department shall provide a form on its website that the practitioner shall execute and provide to the patient. Upon the request of the patient, the Department shall issue the commemorative certificate within 60 days after the request and shall charge a fee not to exceed the actual cost for issuing the certificate. This act took effect April 18, 2019.

Public Chapter 183

This act permits advanced practice registered nurses (APRNs) and physician assistants (PAs) working in a community mental health center to have their chart review done remotely by their collaborating physician. The electronic means by which the transmission occurs must be HIPAA-compliant. This act took effect April 23, 2019.

Public Chapter 195

The majority of this act pertains to boards governed by the Department of Commerce and Insurance. One small section applies to the health related boards. Currently, the health related boards have an expedited licensure process for military members and their spouses. Previously, a spouse of an active military member had to leave active employment to be eligible for this expedited process. This act removes that requirement. This section applies to all health related boards. The Commissioner of Health is permitted to promulgate rules, but rules are not needed to implement the act. This act takes effect July 1, 2019.

Public Chapter 229

This act allows healthcare professionals to accept goods or services as payment in direct exchange of barter for healthcare services. Bartering is only permissible if the patient to whom services are provided is not covered by health insurance. All barters accepted by a healthcare professional must be submitted to the IRS annually. This act does not apply to healthcare services provided at a pain management clinic. This act took effect April 30, 2019.

Public Chapter 243

This act mandates that an agency that requires a person applying for a license to engage in an occupation, trade, or profession in this state to take an examination must provide appropriate accommodations in accordance with the Americans with Disabilities Act (ADA). Any state agency that administers a required examination for licensure (except for examinations required by federal law) shall promulgate rules in regard to eligibility criteria. This legislation was introduced to assist individuals with dyslexia. This act

took effect May 2, 2019 for the purpose of promulgating rules, and for all other purposes, takes effect July 1, 2020.

Public Chapter 255

The act permits a medical professional who has a current license to practice from another state, commonwealth territory, or the District of Columbia is exempt from the licensure requirements of such boards if: (1) the medical professional is a member of the armed forces; and (2) the medical professional is engaged in the practice of the medical profession listed in 68-1-101 through a partnership with the Federal Innovative Readiness Training. The respective health boards may promulgate rules for implementation. This act took effect April 18, 2019 for the purpose of promulgating rules, and for all other purposes, takes effect July 1, 2019.

Public Chapter 259

This act allows a licensed nonresidential office-based opiate treatment facility to employ or contract with a physician if: (1) the facility has a physician in the ownership structure; and (2) the employment relationship is evidenced by a written contract. The contract must contain language that does not restrict a physician from exercising independent professional medical judgement in regard to his/her patients. This act took effect April 30, 2019.

Public Chapter 264

This act permits the attorney general, reporter, and personnel to access confidential data from the Controlled Substance Monitoring Database upon request for the purposes of investigation or litigation of a civil action. Release of this information to other parties must be accompanied by an appropriate protective order. This bill was brought by the Office of the Attorney General.

This act took effect April 30, 2019.

Public Chapter 268

This act rewrites the criminal offense for female genital mutilation. Those who knowingly mutilate a female, facilitate the mutilation, or knowingly transport or facilitate the transportation of a female for the purposes of mutilation are subject to a class D felony. Such individuals are also liable civilly. Any physician, physician in training, certified nurse or midwife or any other medical professional that performs, participates in, or facilitates a mutilation shall be subject to disciplinary action by the appropriate licensing board in addition to criminal penalties. Certain medical procedures listed in the statute are not considered violations. This act takes effect July 1, 2019.

Public Chapter 307

This act requires the Department of Health to include data related to complications of induced abortions, including the number and type of complications in its annual induced termination of pregnancy (ITOP) data report. The department shall not release any data that could identify individual patients. The department may promulgate rules necessary to implement this act. This act took effect May 8, 2019 for the purpose of promulgating rules, and for all other purposes will take effect July 7, 2019.

Public Chapter 327

This act requires the Commissioner of Health, by January 1, 2020, to study instances when co-prescribing of naloxone with an opioid is beneficial and publish the results to each prescribing board and to the board of pharmacy. The findings shall be included in the chronic pain guidelines adopted by the Chronic Pain Guidelines Committee. This act took effect May 8, 2019.

Public Chapter 357

This act states that a massage establishment license is no longer required for the office of a licensed medical doctor, osteopathic doctor, or chiropractor if a massage for compensation is provided within that office by a licensed massage therapist. This act became effective May 10, 2019.

Public Chapter 424

This act modifies the Child Rape Protection Act of 2006 by requiring a physician to report when a minor who is at least 13 but no more than 17 requests an elective abortion. Reporting is required only if the physician has reasonable cause to believe child abuse is involved. Requirements for reporting abortions for minors under the age of thirteen remain the same. This act took effect May 21, 2019.

Public Chapter 447

This act permits law enforcement agencies to subpoena materials and documents pertaining to an investigation conducted by the Department of Health prior to formal disciplinary charges being filed against the provider. This bill was brought by the Tennessee Bureau of Investigation. This act went into effect May 22, 2019.

Insurance Legislation

Multiple acts were passed during the 2019 legislative session that affect healthcare plans and insurance and create certain obligations on providers and facilities. A few pieces of legislation include Public Chapter 407 and Public Chapter 239. Healthcare providers and facilities are encouraged to review these to make sure they meet their statutory obligations.

Managers' Report

Ms. Stacy Tarr present to the Board:

Activities that have transpires May 1, 2019 through July 31, 2019

105 New Applications

1 Special Training

0 DO X-ray Operator Applications

78 New License Issued

9 Compact License Issued

4 Reinstatements

199 Renewals - 162 were renewed online-81% online

There are currently 1,795 licensees of which 1,127 have Tennessee mailing address

22 Special Training Licenses
27 Telemedicine Licenses
13 DO X-ray Operators
52 Midwives

Office of General Counsel Report

The Office of General Counsel report was presented by Ms. Frances Baca-Chavez:

Ms. Baca-Chavez reminded the Board of the Conflict of Interest Policy.

There are twenty-eight (28) open litigation cases against eight (8) Osteopathic Physicians. Twenty-four (24) are involving allegations of over-prescribing. There are five (5) open cases against Midwives. No pending litigation at this time.

Order of Compliance

Cody Davis, DO - This matter started with a summary suspension order on October 14, 2010. Ms. Baca-Chavez reviewed the facts of the summary suspension. Following the summary suspension order the Board ratified an agreed order in August of 2017 based on the same facts with a few additional facts which were reviewed. Dr. Davis has filed a petition to lift the probation and to have his license returned to an unencumbered status. Dr. Davis would maintain lifetime advocacy with TMF. Dr. Hamre made a motion to approve the petition for the order of compliance lifting probation and giving Dr. Davis an unencumbered license conditional upon maintaining lifetime advocacy with TMF. Dr. Garabedian seconded. The motion passed.

IMLC Travel

Dr. Shannon Kilkelly made a motion to approve travel for Ms. Judd to attend the IMLCC conference in November. Dr. Zieren seconded. The motion passed.

Meeting Adjourned at 11:45 am