



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

Wednesday, November 10, 2021

MINUTES

The regular board meeting of the Tennessee Board of Osteopathic Examiners was called to order at 9:06 a.m. in the Poplar Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Dr. J. Michael Wieting, Board President.

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

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

APPLICANT INTERVIEW

No applicant interviews

APPROVAL OF MINUTES

The Board reviewed the minutes from the August 11, 2021 meeting. Dr. Rickman motioned to approve the minutes. Dr. Zieren seconded the motion. The motion passed by unanimous vote.

RATIFICATION OF LICENSES

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

SELF-PRESCRIBING AND PRESCRIBING TO FAMILY MEMBERS AND FRIENDS

Dr. Wieting introduced the discussion on prescribing to self as well as to family members and friends. He prefaced by stating that no rule needed to be made today but rather provide advice and guidance so the Office of General Counsel can form a rule.

Ms. Francine Baca-Chavez revisited the discussion from the prior meeting. She reviewed the policy from the Tennessee Osteopathic Medical Association, Tennessee Board of Medical Examiners, and recommendations from the Tennessee Medical Foundation, among others. She posited that the Board should set it as a policy, stating that it would be included as a violation of the unprofessional conduct rule, and that a rule could simultaneously be shaped along with the policy.

Ms. Judd began by suggesting excerpts from a combination of policies, explaining why it would be significant to include. She noted various definitions of “immediate family,” stating that listing the relationships affected would provide clarity. Ms. Fran Baca-Chavez explained how, from a legal standpoint, less prescriptive allows them to consider inappropriate prescribing within relationships that might not have been considered during the rule or policy making process. The conversation continued regarding how finely relationships should be defined, controlled substances, and supervisees.

Dr. Garabedian requested to see the updated Tennessee Board of Medical Examiners policy, which includes a paragraph on supervisees. As administrative staff worked to provide it, Dr. Wieting polled the Board to see if any members liked anything from the materials they read. Dr. Rickman suggested aligning the Board’s policy with TOMA’s policy. Ms. Judd appreciated the clear formatting and straightforward presentation of the Tennessee Board of Medical Examiners’ policy. Dr. Garabedian suggested combining the two policies and engaged in a discussion with Dr. Rene Saunders about how specifically the two could fit together.

Dr. Rickman raised the possibility of mentioning treatment and a discussion ensued involving various scenarios and how it could potentially hindering physicians from providing simple but appropriate care that normal parents are permitted to administer. Dr. Saunders mentioned including language that might protect physicians in such situations.

Dr. Wieting asked whether anyone was interested in making a motion regarding policy creation. Ms. Judd stated she would be happy to but believed the Board needed to settle whether it would be including treatment. Ms. Baca-Chavez replied that many of the policies include treatment in the language but not the title. Dr. Zieren felt that treatment is part of prescribing and should be included in the title. Dr. Rickman suggested aligning with the TOMA policy as the AOA does not have a policy on it.

Dr. Rickman moved to use the TOMA policy as the guideline. Dr. Wieting requested clarification as to whether Dr. Rickman wanted to add any suggestions for adjustments. Dr. Hamre seconded. Dr. Saunders asked for clarification on the motion, asking whether it meant simply adopting the TOMA policy or using TOMA as a foundation that will be built on. Dr. Rickman asked if there was anything within the TOMA policy that anyone would like to remove or elements of other documents that they would like to include. Dr. Garabedian spoke against the motion, stating that he liked the Medical Examiners policy, especially the supervisee policy and formatting, and suggested using the Medical Examiners policy instead. Dr. Hamre suggested adding the supervisory component to the TOMA document, which Dr. Rickman accepted as a friendly amendment. Dr. Zieren, Dr. Hamre, Dr. Garabedian, and Dr. Rickman voted for with Ms. Judd voting against. Ms. Baca Chavez requested clarification on the configuration of the policy. Dr. Wieting outlined that it would be TOMA’s policy with Medical Examiners’ formatting and including a paragraph on supervisory relationships.

RULE REVIEW

Dr. Wieting introduced rule review materials. Ms. Baca-Chavez outlined the categories and system for reviewing the rules, breaking them into 8 categories. She stated that the next meeting would include licensure rules, training, application review and examination. She advised them to contact her with any thoughts or questions to avoid violating any sunshine rules.

REVISING DISCIPLINARY POLICY

Ms. Baca Chavez directed the Board to the current disciplinary policy, which was enacted in 1999, and suggested it may be due for revision. She explained how the Office of General Counsel uses a disciplinary guideline, which she presented to the Board.

Dr. Hamre asked Ms. Baca Chavez whether her Office was currently using the Board's guidelines, which were based on a point system. She stated they do but also incorporate other guidelines as the Board's guidelines were very unique. Dr. Baca-Chavez explained the points system and how it translated into discipline such as letters of warning and reprimands.

Ms. Baca-Chavez asked if the Board still felt the guidelines were relevant or if they'd like to revise them. Dr. Wieting stated that he felt it was "excessively prescriptive" and liked the flexibility in the current guidelines. Ms. Baca-Chavez said that the current guideline works well and is used across other Boards.

Dr. Hamre moved to retire the Board's old guidelines, which was seconded by Dr. Zieren. It passed by unanimous vote.

ADVISING THE OFFICE OF THE GENERAL COUNSEL ON DISCIPLINARY CASES

Ms. Baca-Chavez opened by explaining how complaints are opened, reviewed, and executed. She requested the Board's guidance on the three (3) categories of COVID complaints, outlining the definitions and providing examples for each category.

Ms. Judd mentioned the Special Legislative Session and asked if they needed to consider potential legislation. Ms. Baca-Chavez informed the Board of bills relevant to health-related boards and relayed the process for the Office of the General Counsel should the bill be signed by the Governor. She stated that all relevant Boards are being asked for guidance and that the signing of the bill could change course, but they want to be prepared due to the frequency of the Board meeting.

The first category addressed vaccine hesitancy. A robust discussion commenced regarding different perspectives on the topic. The consensus of the Board was either to take no action or, in more extreme cases, issue a letter of concern.

The second category addressed vaccine misinformation. The consensus of the Board was to open an investigation and, if necessary, apply Category 1 or 2 discipline.

The third category addressed vaccine disinformation. A definition for disinformation vs misinformation was provided. The consensus of the Board was to open an investigation and discipline based on extent, with isolated incidents being subject to category 1 discipline whereas widespread disinformation facing the possibility of category 2 or 3. Ms. Baca-Chavez clarified that this was only applicable to information provided to patients only and would not include social media.

ADVISORY OPINIONS

Ms. Baca Chavez informed the Board that they do not have statutory authority to issue advisory opinions or to suspend or waive rules. She did not see a pathway to accommodate the requests received by the Board. Ms. Baca-Chavez suggested that this would be worth considering during rule review; however, the request for an exception to supervisory requirements would require input from other boards and could not be granted unilaterally by the Board. She explained the Board of Medical Examiners process for advisory opinions and what will happen with the requests that the Board received.

Dr. Rickman motioned for Ms. Baca-Chavez to send correspondence explaining that the Board does not have the statutory authority to grant their requests. Dr. Hamre seconded and the motion passed by unanimous vote.

REPORT FROM THE OFFICE OF INVESTIGATIONS

Jamie Byerly, Director of the Office of Investigations, gave her report to the Osteopathic Board. She informed the Board that future reports will be given by the Office of General Counsel as disciplinary coordinators are now part of the Office of General Counsel.

The currently monitoring a total of eleven (11), with no breakdown provided.

The next report was the Board's statistical complaint report, which gives an overview of complaints received. In 2021, there have been seventy-three (73) new complaints opened. Out of the seventy-three (73) new complaints, sixty (60) were closed for the following reasons: sixteen (16) closed for insufficient evidence to formally discipline, seven (7) sent to the Office of General Counsel for formal discipline, twenty-eight (28) complaints closed with no action, three (3) closed with a letter of concern and six (6) closed with a letter of warning. Ms. Byerly reminded the Board that letters of concern and letters of warning are not considered formal discipline and therefore were not reportable to the National Practitioner Data Bank.

Within the newly opened complaints, two (2) were for falsification of records, one (1) for sexual misconduct, five (5) were action in another state, two (2) were regarding criminal charges, seven (7) were regarding medical malpractice or negligence, thirty-six (36) were regarding unprofessional conduct, one (1) for violation of order, two (2) for medical records request, four (4) for overprescribing, three (3) for failure to supervise, one (1) for criminal conviction, one (1) for practice beyond the scope, two (2) for outside of the investigators scope, and five (5) regarding COVID-19.

REPORT FROM THE DIVISION OF HEALTH LICENSURE REGULATION

Matt McSpadden, the Fiscal Manager for the Division of Health Licensure Regulation, presented the year-end fiscal report, which runs from July 1, 2020 through June 30, 2021. The Board's revenue exceeded expenditures.

Dr. Wieting inquired about the expenditure category "Grants and Subsidies," which Mr. McSpadden referred to administrative staff. Ms. Angela Lawrence informed the Board that it was for the contract with the Tennessee Medical Foundation. Dr. Hamre asked if the Board would need to review their fees due to the amount of the carryover balance and Mr. McSpadden informed him that the Board had already voted to reduce fees in a prior meeting and that that reduction was still in the legislative process.

Dr. Hamre then address Dr. Michael Baron of the Tennessee Medical Foundation, asking if the Board was contributing at a rate equivalent to the Board of Medical Examiners. Dr. Baron said that both Boards were contributing a comparable amount at a per licensee level.

Mr. McSpadden then presented on fiscal years 2019-21, concluding with there were no additional recommendations from his office as the fee changes were already in process.

REPORT FROM THE ADMINISTRATIVE OFFICE

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

New Applications Received:

Osteopathic Physician: 65

Locum Tenens: 0

Telemedicine: 1

Special Training: 2

Compact: 25

New DOX Applications Received: 0

Total New Licenses Issued:

Osteopathic Physician: 78

Telemedicine: 0

Special Training: 0

DOX: 0

Compact: 22

Total Number of Reinstatement: 8

Total Number of Renewals:

Osteopathic Physician: 247

Online 210–85%

Total number of active licensees as of October 31, 2021 is 2,307.

Total number of active licensees as of October 31, 2021 with a Tennessee mailing address is 1,385.

Total number of Special Training licenses as of October 31, 2021 is 14.

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

Total number of Active DO X-Ray Operators as of October 31, 2021 is 7.

Total number of Active Professional Midwives as of October 31, 2021 is 72.

REPORT FROM THE OFFICE OF GENERAL COUNSEL

She informed the Board that there are 30 cases open against 11 osteopathic physicians. Among these cases, 24 involve allegations of over-prescribing and are being handled by attorneys on the overprescribing team. There are 3 open cases against 2 midwives.

AGREED CITATIONS

Matthew Zimmerman, DO - did not appear before the Board nor did a legal representative appear on his behalf. Dr. Zimmerman was found to be deficient in his continuing education audit by two (2) hours of required continuing education specific to prescribing practices. This order requires Dr. Zimmerman to pay a civil penalty for a total of eighty dollars (\$80.00). Dr. Zimmerman must submit proof of the two (2) hours he is deficient within one hundred and eighty (180) days and an additional ten (10) hours of continuing education within two (2) years. Dr. Garabedian motioned to approve the agreed citation. Dr. Hamre seconded the motion and it passed by unanimous vote.

William Folley, DO - did not appear before the Board nor did a legal representative appear on his behalf. Dr. Folley was found to be deficient in his continuing education audit by two (2) hours of required continuing education specific to prescribing practices. This order requires Dr. Folley to pay a civil penalty for a total of eighty dollars (\$80.00). Dr. Folley must submit proof of the two (2) hours he is deficient within one hundred and eighty (180) days and an additional ten (10) hours of continuing education within two (2) years. Dr. Garabedian motioned to approve the agreed citation. Dr. Hamre seconded the motion and it passed by unanimous vote.

Dr. Rickman inquired about the CME period and why licensees couldn't complete the CMEs in the same year as their renewal. Dr. Saunders explained that the CME period is outlined in the rules. Dr. Garabedian mentioned that he thought the rule had been changed and Dr. Saunders informed him that the revised rule is still going through the rulemaking process.

PETITION FOR ORDER MODIFICATION

Tiundra Love, DO – appeared before the Board but did not have legal representation. Ms Francine Baca-Chavez represented the State. On November 6, 2019, a Consent Order was ratified. Dr. Love was seeking early termination of the 3-year probationary period as it was impeding employment, resulting in financial hardship. Dr. Love was in compliance and had completed all other terms of the Consent Order. The Board reviewed the rules regarding Order modification. The rules do not allow the Petitioner to petition for lesser discipline or a civil penalty other than the one previously issued. The request for modification should only occur when the Petitioner can prove that compliance with the Order is impossible. The term impossible does not mean compliance is inconvenient or impracticable for personal, financial, or scheduling reasons.

Dr. Wieting stated he would entertain a motion, but Ms. Judd requested clarification on the Board's options. Dr. Rene Saunders presented the Board with their options. Ms. Baca-Chavez followed by explaining the process of reviewing the Consent Order concurrently with Dr. Love's petition, stating that

the State's position is that Dr. Love has not proven that she is unable to comply with the Order as she has complied with all terms of the Order aside from the final year of probationary status.

Dr. Garabedian motioned to deny the petition and leave the initial Order as is. Dr. Hamre seconded. Discussion ensued about the seriousness of the allegations and Dr. Love's misuse of her license, concluding that there are employment options still available to Dr. Love. A vote was called and was unanimous in denying the petition.

DISCUSSION REGARDING SENDING A DELEGATE TO THE FSMB CONVENTION

Dr. Wieting outlined the requirements for and responsibilities of being a delegate to the FSMB Convention, stating that the Board needed to decide both if a delegate would be going and, if so, who. Dr. Rene Saunders suggested including sending an attorney as well as an administrative staff member. Ms. Judd made a motion nominating Dr. Wieting as delegate as well as approving for an additional Board Member and two (2) administrative staff members to attend the conference. Dr. Hamre seconded the motion and the motion passed by unanimous vote.

DISCUSSION REGARDING SENDING A DELEGATE TO THE 2022 FARB FORUM

Dr. Wieting introduced the topic and Dr. Saunders outlined the experience of the FARB forum. Dr. Wieting asked how many delegates are being proposed and Ms. Baca-Chavez states one attorney and one staff member. Ms. Judd moved to send one Board member, one attorney from the Office of General Counsel, and one member of administrative staff. Dr. Garabedian seconded the motion and the vote passed unanimously.

PUBLIC COMMENTS – No public comments

The meeting adjourned at 11:38 a.m., CST