MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

December 14, 2010

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The meeting for the Board of Medical Examiners was held at 5:00 p.m. in the Iris Room, Ground Floor at 227 French Landing, Heritage Place Metrocenter, Nashville, TN 37243.

Members in attendance electronically:	Drs. Subhi Ali and Charles White, Sr.
Member in attendance:	Ms. Regine Webster
Staff Present:	Marsha Arnold, Unit Manager; David Himmelreich, Deputy General Counsel; Sandra Powell, Board Administrator and Larry Arnold, Medical Director.

A meeting was held to summarily suspend the medical license of Bron Burwell, MD, review and approve the Agreed Order in the matter of Allen R. Foster, MD and review and approve the Consent Order in the matter of Philip Wade Hunt, MD.

Mr. Himmelreich made opening remarks to the panel and listed the requirements for a telephonic meeting. Dr. Ali made a motion to proceed with the meeting electronically and Dr. White seconded the motion. The motion passed and a roll call vote was conducted. Everyone present was identified for the record. Mr. Himmelreich further stated that the panel must determine that the matters to be considered require timely action, are necessary and the physical presence by a quorum of members of the panel is not practical within the period of time which includes weather conditions. Dr. White made a motion to accept the necessity of the meeting and Dr. Ali seconded the motion. A roll call vote was conducted and the motion passed. Mr. Himmelreich turned the meeting over to the panel, chaired by Ms. Webster.

Ms. Webster called upon Mr. Shiva Bozarth, Deputy General Counsel. Opening statements were given and witnesses sworn in. The panel was presented two documents, an Application for an Order of Summary Suspension, and an Order of Summary Suspension for review.

Dr. Roland Gray, Medical Director with the Tennessee Medical Foundation and Mr. Ken Jones, Investigator for Health Related Boards were called to testify. At the conclusion of the State's proof, Mr. Bozarth asked the panel to summarily suspend Dr. Burwell's medial license until a full hearing could take place and further stated that Dr. Burwell would have an opportunity to appear within seven days if she so desired to present evidence to the panel to contest the allegations. Dr. Ali made a motion to accept the Order of Summary Suspension and Dr. White seconded the motion. A roll call vote was conducted and the motion passed. Dr. Ali made a motion to accept the Finding of Facts and Dr. White seconded the motion. A roll call vote was conducted and the motion

passed. Dr. Ali made a motion to accept the Grounds for Summary Suspension and Dr. White seconded the motion. A roll call vote was taken and the motion passed. The policy statement was read stating that the actions were taken to assure public safety and that the evidence presented clearly indicated Dr. Burwell should not practice and cannot practice in a safe manner. Dr. Ali made a motion to accept the policy statement and Dr. White seconded the motion. The motion passed after a roll call vote was conducted. Dr. White made a motion to suspend Dr. Burwell's medical license and Dr. Ali seconded the motion. A roll call vote was taken and the motion passed. Mr. Bozarth asked that records presented be sealed. Dr. White made a motion to have the records sealed and Dr. Ali seconded the motion. A roll call vote was taken and the motion passed unanimously.

Agreed Order

Allen R. Foster, MD

Dr. Foster was not present but was represented by Mr. Frank Scanlon of the Nashville Bar. Mr. Himmelreich represented the State. On June 25, 2010, the State filed a notice of charges alleging that Dr. Foster had violated the Medical Practice Act and certain rules of the Board with regard to prescribing controlled substances. Dr. Foster denied the allegations. The panel was presented with a proposed Agreed Order. Dr. Foster agreed to be temporarily restricted from writing prescriptions for controlled substances, effective December 24, 2010 and to continue until further order of the Board. Dr. Foster agreed not to approve the writing of prescriptions by any other provider, or to supervise any other provider who writes prescriptions for controlled substances. Dr. Ali made a motion to approve the Agreed Order and Dr. White seconded the motion. A roll call vote was conducted and the motion passed.

Consent Order

Phillip Wade Hunt, MD

Dr. Hunt was neither present nor represented by legal counsel. Mr. Himmelreich represented the State. On or about October 7, 2010, Dr. Hunt's hospital privileges at Trousdale Medical Center were suspended due to concerns that he had reported for duty in an impaired state. Dr. Hunt had admitted to having a problem with alcohol and possible addiction. Dr. Hunt had been in contact with the Tennessee Medical Foundation (TMF) and voluntarily checked himself into a 90 day in-patient alcohol treatment program at Cornerstone outside of Knoxville, Tennessee. Dr. Hunt agreed that his medical license shall be immediately suspended for not less than two months and until he has met all requirements of the Order. Dr. White made a motion to approve the Consent Order and Dr. Ali seconded the motion. The motion passed after a roll call vote was taken.

Dr. White made a motion to adjourn and Dr. Ali seconded the motion. The motion passed.

These minutes were ratified by the Board of Medical Examiners January 25, 2011.

DETERMINATION OF NECESSITY FOR PARTICIPATION OF MEMBERS BY ELECTRONIC MEANS

A panel of the Tennessee Board of Medical Examiners, consisting of members Subhi D. Ali, M.D., Regine A. Webster, and Charles W. White, Sr., M.D., met on December 14, 2010, with Ms. Webster physically present at the publicly noticed location in Nashville, and with Doctors Ali and White participating by electronic means. Pursuant to the requirements of the Open Meetings Act, Tenn. Code Ann. §§ 8-44-101—8-44-111, before allowing participation of a quorum of members by electronic means, the panel must consider whether:

(1) the matters to be considered require timely action by a panel of the Board;

(2) the physical presence by a quorum of members of the panel is not practical within the period of time requiring action; and,

(3) participation by a quorum of members by electronic means is necessary.

In addition, the Board must set forth in its determination and in the minutes of the meeting "the facts and circumstances" upon which the determination was based. Tenn. Code Ann. § 8-44-108(a)(3). The determination, and the facts and circumstances upon which it is based, are set forth below.

The Board's next regularly scheduled meeting is set for January 25, 2011. The matters to be considered by the Board at this meeting include one case in which a physician appears to be practicing medicine while impaired and another case in which a physician is currently under in-patient treatment for substance abuse issues but has the potential for checking himself out of the treatment facility and practicing impaired. The third case involves a physician whose lengthy contested case hearing is currently set to

commence before the Board on January 26, 2010, but who is willing to enter into an agreed order to cease prescribing controlled substances so long as that hearing can be put off pending resolution of certain alleged violations of federal law.

The panel members were selected by Board staff by reason of their availability, at short notice, to participate in resolving these matters. Doctors Ali and White have active medical practices in rural locations at some distance from Nashville and have patients scheduled. On December 12, 2010, the Middle Tennessee area experienced a significant snowfall and colder than normal temperatures, resulting in dangerous road conditions and significant traffic delays. Dangerous conditions still persist in many secondary roads and rural areas. Additional significant freezing weather is predicted to arrive on December 15, 2010.

The panel finds that the matters to be considered require action before the next regularly scheduled meeting of the Board. The panel further finds that in light of the short notice, the road conditions, and the difficulty of scheduling such hearings during the holiday season, the physical presence of a quorum within the time needed for action is not practical. Therefore, the panel finds that there is a necessity for allowing two of the panel members to participate by electronic means.

Pursuant to Tenn. Code Ann. § 8-44-108(b)(2), Board staff shall include this determination in the minutes of the meeting. Pursuant to Tenn. Code Ann. § 8-44-108(b)(3), Board staff shall cause this determination to be filed with the Secretary of State's office within two working days.

December 14, 2010

Regine A. Webster
Panel Chair

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