

EXECUTIVE COMMITTEE

INDEXES

2006

**MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
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JANUARY 2006

JANUARY

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**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
JANUARY 18, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Dwalia S. South, M.D., Ripley, Secretary
Mallan G. Morgan, M.D., Director

ALSO PRESENT:

Stan T. Ingram, Attorney for the Board
Heather Wagner, Special Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, January 18, 2006, at 4:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

**PERSONAL APPEARANCE BY HAROLD MARTIN, M.D., ALBANY, GEORGIA,
APPLICANT**

Dr. Morgan advised that Dr. Martin sent a letter advising that he would be unable to attend the meeting today and had requested to be placed on the March 2006 Executive Committee meeting agenda. A copy of Dr. Martin's letter dated January 17, 2006, is attached hereto and incorporated by reference.

**PERSONAL APPEARANCE BY JOSEPH CARROLL HILLMAN, JR., M.D.,
COLUMBUS, MISSISSIPPI MEDICAL LICENSE NUMBER 06420**

Dr. Hillman joined the meeting and was represented by legal counsel, J. Randolph Lipscomb. Dr. Hillman had executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Mr. Ingram introduced Dr. Hillman, Mr. Lipscomb, and Gary D. Carr, M.D., Medical Director, Mississippi Professionals Health Program. Mr. Ingram advised that Dr. Hillman was present today in lieu of the Board meeting on Thursday to

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execute the Consent Order. Mr. Ingram explained the Consent Order and Dr. Carr addressed those steps which Dr. Hillman would need to take in order to obtain advocacy from the Mississippi Professionals Health Program.

After discussion, Mr. Ingram advised that the Consent Order would be deemed a public record. The Board's Consent Order is attached hereto and incorporated by reference.

DR. SOUTH JOINED THE MEETING AT 04:30 P.M.

There was a brief discussion on assessment costs involved with this case by the Investigative Division. Dr. Morgan addressed the Executive Committee and advised that the Investigative Division had already exceeded the \$10,000.00 maximum. When Dr. Hillman's case began the maximum assessment fee was \$3,000, but had changed to \$10,000 in 2005. After discussing the matter further, motion was made by Dr. Crawford, and seconded by Dr. Merideth and carried, that before Dr. Hillman can appear requesting any restrictions be lifted from his license, he must first pay the agreed \$3,000.00 assessment fines due the Board.

PERSONAL APPEARANCE BY RENE C. SAUNDERS, M.D., GALLATIN, TENNESSEE, APPLICANT

Dr. Saunders joined the meeting but was not represented by legal counsel. She executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Dr. Morgan advised that Dr. Saunders had been asked to join the meeting to explain why she answered question 21, which refers to disciplinary action, on her original application as no. Mr. Ingram summarized her application and discussed the discrepancies involved. Dr. Saunders addressed the Executive Committee and advised that all this happened about ten years ago and she didn't recall it that way when completing her application.

Dr. Saunders was asked to wait in the reception area while the Executive Committee discussed the matter. After a brief discussion, motion was made by Dr. South, seconded by Dr. Merideth and carried, that Dr. Saunders be advised to resubmit an application and properly answer all the questions.

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**PERSONAL APPEARANCE BY ROBERT D. YAGER, M.D., MANCHESTER, NH,
APPLICANT**

Dr. Yager joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Mrs. Freeman, Director of the Licensure Division, presented the chronological summary on Dr. Yager and answered several questions from the Executive Committee relative to past sexual boundary issues.

Dr. Yager was introduced and addressed the Executive Committee and Mr. Ingram. Dr. Yager is in Family Practice and would like to move back to the Jackson or Gulf Coast area. After a brief discussion, motion was made by Dr. South, seconded by Dr. Merideth and carried, to issue Dr. Yager an unrestricted Mississippi License.

**BRUCE FREEDMAN, D.P.M., RICHLANDS, VIRGINIA, REQUESTING
CONSIDERATION FOR REINSTATEMENT OF PODIATRIC LICENSE**

Dr. Freedman was not present; however, Dr. Morgan wanted to discuss Dr. Freedman's request to reinstate his Podiatric License for one day and let the license expire as being reinstated and clear with no restrictions before he retires.

After a brief discussion of Dr. Freedman's chronological summary and past history in Illinois where his license was revoked based on evidence that he had purchased a medical doctor diploma to which he was not entitled, it was the consensus of the Executive Committee members not to make a decision on his request today but to request additional information and review that before making any decision.

MICHAEL L. REEVES, M.D., MONTGOMERY, ALABAMA, APPLICANT

Mrs. Freeman advised that Dr. Reeves has not yet made application but is requesting a waiver from taking the SPEX examination or obtaining a current ABMS certification since he is a certified medical doctor with the American Medical Directors Association. After a brief discussion about competency and our regulations, it was the consensus of the Executive Committee to advise Dr. Reeves that we could not grant a waiver as he requested.

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MICHAEL YANUCK, M.D., APPLICANT, REQUESTING EXEMPTION FROM TAKING A PHYSICIAN ASSESSMENT OR CLINICAL SKILLS PROGRAM

Dr. Morgan advised that a letter had been received from Dr. Yanuck requesting a waiver from taking a physician assessment or clinical skills assessment program in order to obtain a Mississippi license since he has not actively practiced in the last three years. After a brief discussion, it was the consensus of the Executive Committee to advise Dr. Yanuck that we could not grant a waiver as he requested.

THE EXECUTIVE COMMITTEE RECESSED AT 6:10 P.M. AND RECONVENED AT 6:20 P.M.

DAVID ERVAL CONWILL, M.D., FOREST, MISSISSIPPI MEDICAL LICENSE NUMBER 07639, DETERMINATION OF REASONABLE CAUSE AND ORDER OF AUTHORITY TO INSPECT AND COPY RECORDS

Charles Ware, Board Investigator, joined the meeting and presented to the Executive Committee those facts necessary to make a determination of reasonable cause pursuant to Miss. Code Ann. 73-25-28, to inspect records of Dr. Conwill. After questioning Mr. Ware, the Executive Committee found that reasonable cause did exist and made the decision to allow Mr. Ware and Dr. Morgan approval to obtain and copy records necessary for the investigation. Dr. Merideth recused himself from voting on this issue.

DISCIPLINE

A. MIRRORING BOARD ACTIONS FROM OTHER STATES AND/OR OTHER AGENCIES

B. RELAPSE OF PHYSICIANS UNDER CONTRACT

Dr. Morgan advised that there had been some discussion by the Staff in regards to mirroring board actions from other states and wanted direction from the Executive Committee. After a brief discussion, it was the unanimous decision of the Executive Committee to defer the matter to the Full Board on Thursday. It was decided that Mr. Washington, Director of Investigations, will present this matter on Thursday to the Full Board.

For informational purposes, Dr. Morgan advised that he had requested that Mr. Ingram and Ms. Wagner present an educational powerpoint presentation on procedures and rules in July 2006. Dr. Crawford advised that this matter should also be deferred to the Full Board on Thursday.

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The relapse of physicians under contract was not discussed and will be added to the next Executive Committee agenda.

LASER REGULATION

For informational purposes, Dr. Morgan advised that he had received a phone call from Delia Owens, Executive Director of the Board of Nursing, in reference to the Board's laser regulations. Dr. Morgan advised that Ms. Owens contends that the regulation should have been jointly promulgated and wants an apology letter for not jointly promulgating the laser regulation with the Nursing Board.

Mr. Ingram advised that the Board had previously determined that the use of lasers is the practice of medicine. Such a determination in and of itself would not require joint promulgation. Mr. Ingram said that he would verify, but he believes there is a one year statute for protesting the manner in which a regulation has been adopted under the Administrative Procedures Act, and the one year limit has passed. Ms. Wagner advised that the Attorney General's office will not give an Official Opinion on a past action.

After a brief discussion, it was the consensus of the Executive Committee that the Board did not deem it necessary to write a letter of apology.

DISTRIBUTION LISTS FOR AGENDAS, FILINGS, AND NOTIFICATIONS

Dr. Morgan briefly discussed and questioned Mr. Ingram and Ms. Wagner as to what the law states. Ms. Wagner advised that both the Executive Committee and Full Board meetings are open public forums; however, for issues such as discipline, both the EC and Full Board Members could go into Executive Session. There was some discussion as to what to post on the website and it was decided for now to continue posting the date for the Full Board meetings. There was also some discussion as to agendas with no names listed; however, no decision was reached.

There was also a brief discussion on varying the start of the Executive Committee meetings depending on the length of the agenda. The consensus of the Executive Committee was to call them and start earlier when necessary.

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LETTER FROM THE BOARD OF NURSING DATED NOVEMBER 30, 2005, IN REFERENCE TO NOTIFICATIONS AND FILINGS WITH THE SECRETARY OF STATE'S OFFICE

Dr. Morgan discussed the letter received from the Nursing Board. Ms. Freeman advised that the Nursing Board is on the list for notifications and filings of proposed regulations. Ms. Freeman also advised that she had sent an email to all of the agencies currently on her list asking them to respond if they wish to continue receiving copies of notifications and filings.

LETTER FROM THE DEPARTMENT OF HEALTH DATED DECEMBER 30, 2005, IN REFERENCE TO CRNA'S

Dr. Morgan discussed the letter received from Ms. Vickey Maddox, Director of Licensure. Dr. Morgan advised that it was his understanding that the Board's regulation currently covers NP's but not CRNA's. However, the Nursing Board advises that NP's include Midwives and CRNA's.

After a brief discussion, Ms. Wagner advised that our regulation does not include CRNA's only NP's. There was also discussion on "supervising" versus "collaborating/consulting". After discussing the issue, it was the consensus of the Executive Committee to defer the matter to the Full Board on Thursday.

APPROVAL OF STAFF ATTENDING AIM AND FSMB ANNUAL MEETINGS IN BOSTON, MASSACHUSETTS, APRIL 19-22, 2006

Motion was made by Dr. Crawford, and seconded by Dr. South, and carried unanimously to approve the expenses for staff members to attend the Federation of State Medical Boards' Annual Meeting in Boston, Massachusetts, April 19-22, 2006. Approval was also given in the event another member from the Board would like to attend. Dr. Crawford advised that he and Dr. Bush, who is running for re-election to the Board of Directors of FSMB, will also be attending the meeting.

RENEWALS

Ms. Freeman discussed renewals and advised that they would be mailed out the end of April or first of May. If anyone has any additions/deletions get with Ms. Freeman to discuss. After a brief discussion on additional questions to add to the renewal form, it was the consensus of the Executive Committee to defer to the Full Board for comments.

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EXPIRATION FOR VOLUNTARY EMERGENCY TEMPORARY LICENSE

Ms. Freeman advised that currently the State of Emergency is scheduled to end on January 21, 2006, and she would like to notify the clinics on the Gulf Coast that currently have physicians still working under the temporary license that they will expire on January 21, 2006. If there is still any need for the Voluntary Emergency Temporary License then the physician can make a formal request and be granted a temporary license for an additional 30 days with renewals in 30 day increments. This would allow the agency to keep current records. It was the consensus of the Executive Committee to put this plan in place.

REVISIT A BILL FOR ISSUING SUBPOENAS

Dr. Morgan discussed the need for the Investigative Division to be able secure necessary information. Mr. Ingram advised that a bill was introduced last year but was not adopted. Motion was made by Dr. South, seconded by Dr. Merideth and carried to pursue again next year. Dr. Morgan requested that Ms. Wagner review and advise the language needed.

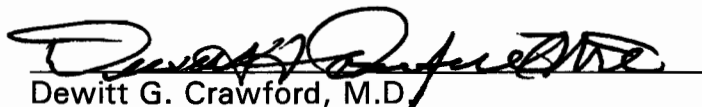
OTHER BUSINESS

Dr. Merideth advised that he had been working on changes in the Utilization Review regulation and would discuss at the Full Board on Thursday.

Mr. Ingram advised that he has been working with the Ad Hoc Committee and has a proposed Policy on Confidentiality that will be discussed on Thursday.

ADJOURNMENT

There being no further business, the meeting adjourned at 7:55 p.m.



Dewitt G. Crawford, M.D.

President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
January 18, 2006

Harold L. Martin, M.D.
P.O. Box 405
Havre, Montana 59501
Phone: 406-262-1776

January 17, 2006

Mallan G. Morgan, M.D.
Executive Director
Mississippi State Board
of Medical Licensure
1867 Crane Ridge Drive
Suite 200-B
Jackson, MS. 39216

Dear Dr. Morgan:

Regretfully, I will be unable to make the personal appearance before the Executive Committee of the Mississippi Medical Board on January 16th. I am currently working in a remote area of Montana where I am the sole surgeon. I just received a fax of your certified letter and I do not have time to make the two day trip to Mississippi at short notice.

It would be an extreme hardship for me to travel to Mississippi prior to March 1, 2006. I would have to arrange coverage of this surgical practice by a locum tenens physician so that I might attend the Executive Committee appearance.

Please reschedule the personal appearance at a mutually convenient time in March, 2006. You may reach me at any of the following numbers: (406) 262-1776, (406) 390-3853, or (229) 343-~~8836~~.

Thank you kindly for your understanding and assistance.

Sincerely,

Harold L. Martin, M.D.

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, JOSEPH C HILLMAN, JR, M.D., have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: Randolph Lepscovsky)
 without legal counsel present

EXECUTED, this the 18th day of January, 2006.

Witness

Christophe Johnson

Joseph C. Hillman, Jr

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF PHYSICIAN'S LICENSE OF

JOSEPH CARROLL HILLMAN, JR, M.D.

CONSENT ORDER

WHEREAS, Licensee is current holder of License No. 06420 for the practice of medicine in the State of Mississippi;

WHEREAS, the Investigative Staff of the Mississippi State Board of Medical Licensure, hereinafter referred to as "Board," has conducted a comprehensive investigation into the medical practice of JOSEPH CARROLL HILLMAN, JR., M.D., Columbus, Mississippi, and has documented evidence indicating that Dr. Hillman, hereinafter referred to as "Licensee," has violated the Rules and Regulations of the Board "Pertaining to Prescribing, Administration and Dispensing of Medication;"

WHEREAS, such conduct, if established before the Board, constitutes violation of the Mississippi Medical Practice Act and specifically, Subsection (3) of Section 73-25-29, Mississippi Code (1972) as amended, for which the Mississippi State Board of Medical Licensure may revoke the medical license of Licensee, suspend it for a time deemed proper by the Board, or take any other action the Board may deem proper under the circumstances;

WHEREAS, Licensee and the Board desire to resolve all matters now pending, and in lieu hearing, Licensee has consented to certain restrictions on his license to practice medicine in the State of Mississippi;

NOW THEREFORE, the Mississippi State Board of Medical Licensure, with consent of Licensee as signified by his joinder herein, does hereby place the following restrictions on Licensee's Certificate (No. 06420) to practice medicine in the State of Mississippi for an indefinite period of time, to-wit:

1. Licensee shall immediately seek and obtain advocacy with the Mississippi Professionals Health Program (MPHP) and comply with all requirements necessary to maintain such advocacy.

2. Licensee has successfully completed a continuing medical education course pertaining to the clinical, legal and ethical issues pertaining to prescribing of abusable drugs. In addition, in compliance with Article XXI of the Board's Rules and Regulation governing Continuing Medical Education, Licensee shall insure that ten (10) of the twenty (20) hours of Category I continuing medical education obtained during any two-year cycle shall be devoted to clinical, legal and ethical issues pertaining to prescribing of abusable drugs.

3. As with all physicians, Licensee shall comply with all Federal and State laws governing the practice of medicine and shall comply with the rules and regulations of the Board "Pertaining to Prescribing, Administration and Dispensing of Medication," including, but not limited to:

(a) Licensee shall maintain a complete record of his examination, evaluation and treatment of patients, including documentation of diagnosis and reason for prescribing, dispensing or administering any controlled substances; the name, dose, strength, quantity of the controlled substances and the date the controlled substance was prescribed, dispensed or administered.

(b) Whenever issuing a prescription for a controlled substance, Licensee shall, in addition to that set forth in sub-paragraph (a) above, enter into the patient record the following information:

i Vital signs, whenever possible.

- ii Status of treatment plan and prognosis.
- iii If the patient is requesting additional medication too early, i.e., has consumed previously prescribed medications (including refills) contrary to Licensee's specific directions, the purpose and reason for the patient's additional request and/or unauthorized dose escalation.
- iv Licensee's observation of the patient.

(c) Licensee shall not prescribe, administer, or dispense any controlled substance or other drug having addiction-forming or addiction-sustaining liability without a good faith prior examination and medical indication therefore.

4. Licensee's practice of medicine shall be subject to periodic surveillance by the Board. The Board's Executive Director, any member of the Board, or investigative staff may perform a patient chart review of a representative sample of those patients treated by Licensee.

Licensee shall have the right after expiration of one (1) year from the date of this agreement, to petition the Board for removal of any or all of the restrictions imposed herein. Thereafter, Licensee shall have the right to petition for removal of any remaining restrictions at reasonable intervals, but no sooner than once per year.

This Consent Order shall be subject to approval by the Board. If the Board fails to approve this Consent Order, in whole or in part, it shall have no force or effect on the parties. It is further understood and agreed that the purpose of this Consent Order is to avoid a hearing before the Board. In this regard, Licensee authorizes the Board to review and examine any documentary evidence or material concerning the Licensee prior to, or in conjunction with its consideration of this Consent Order. Should this Consent Order not be accepted by the Board, it is agreed that presentation to and consideration of the Consent Order and other documents and matters pertaining thereto by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation or consideration of the resolution of the proceeding.

Licensee understands and expressly acknowledges that this Consent Order, if approved and executed by the Mississippi State Board of Medical Licensure, shall constitute a public record of the State of Mississippi. Licensee further acknowledges that the Board shall provide a copy of this Order to, among others, the U.S. Drug Enforcement Administration, and the Board makes no representation as to actions, if any, which the U.S. Drug Enforcement Administration may take in response to this Order.

By executing this Consent Order, Licensee does not admit to or acknowledge any act of malpractice, to the extent that this order cannot be used against Licensee as proof of misconduct or medical malpractice in any other civil or criminal proceeding.

Recognizing his right to notice of charges specified against him, to have such charges adjudicated pursuant to Miss. Code (1972) Annotated, Sections 73-25-27 and 73-25-83, to be represented therein by legal counsel of his choice, and to a final decision based upon written findings of fact and conclusions of law, JOSEPH CARROLL HILLMAN, JR, M.D., nonetheless hereby waives his right to notice and a formal adjudication of charges and authorizes the Board to enter this Consent Order, thereby placing the above enumerated restrictions on his license to practice medicine in the State of Mississippi.

EXECUTED, this the 18th day of January, 2006.


JOSEPH CARROLL HILLMAN, JR, M.D.

ACCEPTED AND APPROVED this the 18th day of January, 2006, by the MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE.


DEWITT G. CRAWFORD, M.D.
President

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, RENE C. SAUNDERS, R.N., M.D., have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

___ with legal counsel present (name of counsel: _____)

___ without legal counsel present

EXECUTED, this the 18th day of January, 2006.

Witness:

Rene C Saunders MD
Christanople Johnson

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, ROBERT YAGER, M.D., have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the 18th day of January, 2006.

Witness:

Adrianople Johnson

Robert Yager MD

**BOARD MINUTES
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
JANUARY 19, 2006**

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, January 19, 2006, in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

The following members were present:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Dwalia S. South, M.D., Ripley, Secretary
Larry B. Aycock, M.D., McComb
Freda M. Bush, M.D., Jackson
A. Wallace Conerly, M.D., Jackson
Don A. Gibson, M.D., Richland
Mallan G. Morgan, M.D., Director

Also present:

Stan T. Ingram, Attorney for the Board
Heather Wagner, Special Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Sherry Harris, Administrative Assistant
Wesley Breland, Hattiesburg, Consumer Health Ad Hoc Committee
Cecil R. Burnham, Jackson, Consumer Health Ad Hoc Committee

Not present:

William B. Harper, D.O., Greenwood
Joseph E. Johnston, M.D., Mount Olive
Martha Thompson, Oxford, Consumer Health Ad Hoc Committee

The meeting was called to order at 9:10 a.m. by Dr. Crawford, President. The invocation was given by Dr. Bush. Dr. Crawford welcomed Debbie M. Nester, Court Reporter.

APPROVAL OF CERTIFICATION OF MISSISSIPPI LICENSES TO OTHER ENTITIES FOR THE PERIOD OCTOBER 1, 2005, THROUGH DECEMBER 31, 2005

Two hundred eighty-three (283) licenses were certified to other entities for the period October 1, 2005, through December 31, 2005. Motion was made by Dr. Aycock, seconded by Dr. Gibson, and carried unanimously to approve these certifications.

APPROVAL OF LICENSES ISSUED FOR THE PERIOD OCTOBER 1, 2005, THROUGH DECEMBER 31, 2005

Eighty (80) licenses were issued for the period October 1, 2005, through December 31, 2005. Motion was made by Dr. Aycock, seconded by Dr. Gibson, and carried unanimously to approve these licenses.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED OCTOBER 20, 2005, AND MINUTES OF THE BOARD MEETING DATED OCTOBER 20, 2005

Minutes of the Executive Committee Meeting dated October 20, 2005, and Minutes of the Board Meeting dated October 20, 2005, were reviewed. Dr. Gibson moved for approval of the minutes as submitted, Dr. Aycock seconded the motion, and it carried unanimously.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED NOVEMBER 16, 2005

Minutes of the Executive Committee Meeting dated November 16, 2005, were reviewed. Dr. Gibson moved for approval of the minutes as submitted, Dr. South seconded the motion, and it carried unanimously.

REPORTS FROM AD HOC COMMITTEES

Telemedicine - Dr. Bush is Chair of the Telemedicine Committee and requested this issue be discussed since she will be leaving the meeting early. After a brief discussion of the proposed amendment to **Regulations Pertaining to Emergency Telemedicine Within the State** filed January 04, 2006, Dr. Merideth made the motion that the Executive Director be authorized after the twenty (20) day comment period expires to poll the Executive Committee for approval to final adopt. Dr. South seconded the motion, and it carried unanimously. The regulation

BOARD MINUTES
January 19, 2006
Page 3

deletes the yearly renewal and allows the regulation to be valid indefinitely. The final adopted regulation will be filed with the Secretary of State under the Administrative Procedures Act once the comment period expires and the Executive Committee members have been contacted for approval. Copies of both filings are attached hereto and incorporated by reference.

Utilization Review/Expert Witness - Dr. Merideth presented the latest version of the proposed **Regulations Governing Utilization Review Activities by Physicians**. After a brief discussion of the changes from the previous draft, motion was made by Dr. Merideth and unanimously approved to add an amendment suggested by Dr. Aycock regarding an exemption for in-house utilization review. On motion by Dr. Merideth, and seconded by Dr. South, the Board voted unanimously to file notice with the Secretary of State of intent to adopt the regulation as amended. A copy of the proposed regulation is attached hereto and incorporated by reference. The proposed regulation will be filed with the Secretary of State under the Administrative Procedures Act.

Dr. Merideth made a second motion for the Board to authorize the Executive Committee to adopt in final the **Regulations Governing Utilization Review Activities by Physicians** prior to the next Board meeting after the regulation has completed the required comment period, if no comments are received. Dr. Aycock seconded, and the motion carried unanimously.

DR. BUSH EXITED THE MEETING AT 09:55 A.M.

Dr. Crawford announced that Dr. Bush is being recognized at a luncheon today as one of Mississippi's Outstanding Business Women of the Year.

HEARING IN THE CASE OF BEN P. BRINKLEY, M.D., UNIONTOWN, PENNSYLVANIA, MISSISSIPPI MEDICAL LICENSE NUMBER 13453

Dr. Brinkley was present but not represented by legal counsel. In the absence of Ms. Wagner, Mr. Ingram requested permission from the Board President to question Dr. Brinkley regarding legal representation. Dr. Brinkley stated he wished to waive his right to an attorney and proceed without legal counsel.

Mr. Ingram addressed the Board and advised that Dr. Brinkley was requesting removal of the restrictions on his medical license. Mr. Ingram reviewed the chronological summary of Dr. Brinkley and entered a number of exhibits regarding restrictions placed on Dr. Brinkley's license in 1995 due to sexual boundary issues. Mr. Ingram also summarized restrictions placed on Dr. Brinkley's license in PA.

BOARD MINUTES
January 19, 2006
Page 4

Dr. Brinkley was sworn in and addressed the Board. Dr. Brinkley distributed a document to the Board and Mr. Ingram requested a copy to be introduced for the record. After Dr. Brinkley addressed the Board, he answered questions from both the Board and Mr. Ingram.

Motion was made by Dr. Merideth, seconded by Dr. Aycock, and carried unanimously that the Board consider going into Executive Session to consider entry of an order which may be appealable. With a motion by Dr. South, seconded by Dr. Merideth, the Board went into Executive Session.

HEATHER WAGNER, ESQ., JOINED THE MEETING AT 10:15 A.M.

Upon motion by Dr. Merideth, seconded by Dr. Conerly, and carried unanimously, the Board came out of Executive Session at which time Dr. South announced that the Board defers decision for removal of restrictions on Dr. Brinkley's license until such time as the Mississippi Professionals Health Program has reviewed Dr. Brinkley's case and made a recommendation to the Mississippi State Board of Medical Licensure. The MSBML Executive Committee will be authorized to act on their recommendation on this matter at that time. The Board's order is attached hereto and incorporated by reference.

A verbatim account of this proceeding was recorded by Debbie M. Nester, Court Reporter.

REPORT OF JANUARY 18, 2006, EXECUTIVE COMMITTEE MEETING

Dr. Morgan reported on Wednesday's Executive Committee meeting.

Dr. Morgan requested that Mr. Ingram cover the Joseph C. Hillman, Jr., M.D., meeting that was held Wednesday afternoon. Mr. Ingram addressed the Board and advised that Dr. Hillman and his attorney, J. Randolph Lipscomb, had requested to appear before the Executive Committee. Mr. Ingram advised that Dr. Hillman had signed the proposed Consent Order and the Executive Committee accepted it subject to approval of the Full Board today. Mr. Ingram passed out copies of the signed Consent Order and gave a brief summary advising that licensee is subject to indefinite restrictions on his license.

After a brief discussion, motion was made by Dr. Aycock, seconded by Dr. Conerly, and carried unanimously that the Board consider going into Executive Session. With a motion by Dr. South, seconded by Dr. Gibson, the Board went into Executive Session.

BOARD MINUTES
January 19, 2006
Page 5

Upon motion by Dr. Merideth, seconded by Dr. Conerly, and carried unanimously, the Board came out of Executive Session at which time Dr. Crawford announced the approval of the Consent Order. The Board's Order is attached hereto and incorporated by reference.

WITH MR. INGRAM'S APPROVAL, DEBBIE NESTER, COURT REPORTER EXITED THE MEETING AT 10:55 A.M.

Dr. Morgan introduced Reginald Woodward, who has recently joined the Board's staff in the IT Department.

Dr. Crawford welcomed Dr. Morgan as the new Executive Director of the Mississippi State Board of Medical Licensure.

Dr. Morgan requested that Mr. Washington, Director of Investigations, report on actions from the Executive Committee meeting referring to mirroring actions of other Boards. After a brief discussion, the Board advised that each case should be reviewed individually on a case-by-case basis and the investigators should pursue when deemed necessary.

Dr. Morgan advised that a letter had been received from Ms. Vickey Maddox, Director of Licensure, at the Department of Health, in reference to MSBML's position on the Minimum Standard of Operation for Ambulatory Surgical Facilities. After discussing at the Executive Committee meeting, the matter had been deferred to the Full Board for discussion. Ms. Linda McMullen, with the Mississippi State Medical Association, addressed the Board and advised that MSMA doesn't want "supervising" removed from regulations pertaining to anesthesia. They have no problem with using consult/collaborate but recommended that the Board leave supervision in the regulation. After a brief discussion, motion was made by Dr. Merideth, and seconded by Dr. South, and carried unanimously to authorize the Executive Director to consult with the appropriate people to formulate a statement to the Department of Health indicating support for the MSMA position.

BOARD MINUTES
January 19, 2006
Page 6

Ms. Freeman covered renewals which was deferred from the Executive Committee. After a brief discussion, motion was made by Dr. Merideth, and seconded by Dr. South, and carried unanimously to add two questions relating to utilization review to the licensure applications and the renewal forms.

Dr. Morgan presented other informational items, which are reflected in the Executive Committee Minutes. Motion was made by Dr. Crawford, seconded by Dr. Merideth, and carried unanimously to approve the actions of the Executive Committee.

REPORTS FROM AD HOC COMMITTEES CONTINUED

Alternative Medicine - There was no new information to report.

Consumer Health - Mr. Ingram has been working with the Consumer Health Committee on a **Policy of Confidentiality on Pending Disciplinary Matters**. Mr. Ingram distributed copies of the amended version to the Board members.

There was a brief discussion and Mr. Ingram asked the Press attending the Board meeting if they would like to comment. Mr. John Coffey, Reporter for the Commercial Dispatch, asked questions and expressed concerns with the proposed policy.

Motion was made by Dr. Merideth, seconded by Dr. Conerly, and carried that the Board move to adopt the Policy of Confidentiality on Pending Disciplinary Matters.

Mr. Breland, Consumer Health Committee member, had made a suggestion to amend #6 to include the phrase "*actively participating in an investigation*". Motion was made by Dr. South, seconded by Dr. Aycok, and carried unanimously to adopt the Policy of Confidentiality on Pending Disciplinary Matters as amended. A copy of the policy is attached hereto and incorporated by reference.

Educational Development - There was no new information to report.

Manpower - There was no new information to report.

Nurse Practitioner and Expanded Role - There was no new information to report.

BOARD MINUTES
January 19, 2006
Page 7

Professionals Health Program - There was no new information to report.

Rules, Regulations, and Legislative - Dr. Morgan advised that House Bill 917 has been introduced that would allow MSBML to license and regulate Radiologist Assistants.

Dr. Morgan also advised that House Bill 887 and Senate Bill 2571 had been introduced which would allow PA's to obtain a temporary license while obtaining the required Master's Degree.

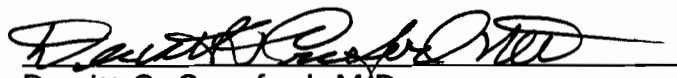
Ms. Wagner advised that the AG's office had issued an Official Opinion pursuant to the Board's inquiries related to amendment of the PA regulation to allow licensure to those pursuing the required Master's Degree. Ms. Wagner advised that a bill to amend state law would be necessary, and that the Board could not enact a regulation to allow a waiver of the Master's Degree requirement, which would be directly in contravention with state law requirements.

OTHER BUSINESS

Dr. Crawford requested that due to a scheduling conflict that he would like to schedule the March Board meeting for the second Thursday of the month. There were no objections to scheduling the meeting for Thursday, March 9, 2006.

ADJOURNMENT

The meeting was adjourned at 12:15 p.m. with the next meeting scheduled for Thursday, March 9, 2006.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
January 19, 2006


**EXECUTIVE SESSION
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
JANUARY 19, 2006**

AGENDA ITEM: X. Hearing in the case of Ben P. Brinkley, M.D.

The Board defers decision for removal of restrictions on Dr. Brinkley's license until such time as the Mississippi Professionals Health Program has reviewed Dr. Brinkley's case and made a recommendation to the Mississippi State Board of Medical Licensure. The MSBML Executive Committee will be authorized to act on their recommendation in this matter at that time.

<u>VOTE:</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Larry B. Aycock, M.D.	X			
Freda M. Bush, M.D.				X
A. Wallace Conerly, M.D.	X			
Dewitt G. Crawford, M.D.	X			
Don A. Gibson, M.D.	X			
William B. Harper, D.O.				X
Joseph E. Johnston, M.D.				X
Philip T. Merideth, M.D., J.D.	X			
Dwalia S. South, M.D.	X			

With a motion by Dr. Merideth, seconded by Dr. Conerly, the Board came out of Executive Session.


Dewitt G. Crawford, M.D.
President

**EXECUTIVE SESSION
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
JANUARY 19, 2006**


AGENDA ITEM: Dr. Joseph Carroll Hillman, Jr., M.D.

Consideration/Consent Order

Issue discussed, but no votes or action taken.

<u>VOTE:</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Larry B. Aycock, M.D.				
Freda M. Bush, M.D.				X
A. Wallace Conerly, M.D.				
Dewitt G. Crawford, M.D.				
Don A. Gibson, M.D.				
William B. Harper, D.O.				X
Joseph E. Johnston, M.D.				X
Philip T. Merideth, M.D., J.D.				
Dwalia S. South, M.D.				

With a motion by Dr. Merideth, seconded by Dr. Aycock, the Board came out of Executive Session.


Dewitt G. Crawford, M.D.
President

COPY

NOTICE OF PROPOSED RULE ADOPTION

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

FILED
JAN - 4 2006

Mississippi State Board of Medical
Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

MISSISSIPPI
SECRETARY OF STATE
Specific Legal Authority authorizing the promulgation of
Rule: (Insert citation to state or federal statute, or
rule Section 73-43-11)

Reference to Rules repealed, amended or suspended by the
Proposed Rule : (Insert citation to specific rule(s) repealed,
amended or suspended XXVII. Regulations Pertaining To Emergency
Telemedicine Within The State)

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: { Insert here }
This is an amendment to an existing rule. The rule had a repeal date and has been extended
for several years. The proposed amendment deletes the repeal date and allows the rule to
be valid indefinitely.

This rule is proposed as a Final Rule, and/or a Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

An oral proceeding is scheduled on this rule on Date: { Insert Date } Time: { Insert Time }
Place: { Insert Place }

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least ____ day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Economic Impact Statement: Check one box below:

The agency has determined that an economic impact statement is not required for this rule, or

The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: January 4, 2006

Proposed Effective Date of Rule: October 19, 2005


Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

SOS FORM APA 001
Effective Date 07/29/2005

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: January 4, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

The attached proposed rule will delete a repeal date on a current rule, which will result in the rule being effective indefinitely.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XXVII.

REGULATIONS PERTAINING TO EMERGENCY TELEMEDICINE WITHIN THE STATE

A. SCOPE/PURPOSE

These regulations apply to only those individuals licensed to practice medicine or osteopathic medicine in the State of Mississippi and who are performing duties as employees of the University of Mississippi Medical Center. This regulation does not authorize any communication across state lines.

B. DEFINITIONS

For the purpose of Article XXVII only, the following terms have the meanings indicated:

1. "Physician" means any person licensed to practice medicine or osteopathic medicine in the State of Mississippi.
2. "Telemedicine" is the diagnosis or treatment of human injury, illness and diseases using interactive audio, video or data communications by electronic or other means.
3. "Teleemergency medicine" is a unique combination of telemedicine and the collaborative/supervisory role of a physician Board certified in emergency medicine, and an appropriate skilled health professional (Nurse Practitioner or Physician Assistant).

C. BOARD REVIEW

The same requirements as outlined in Article XIII shall apply.

D. COLLABORATIVE/SUPERVISING PHYSICIAN LIMITED

No physician practicing teleemergency medicine shall be authorized to function in a collaborative/supervisor role as outlined in Article XIII unless his or her practice location is a level 1 hospital trauma center that is able to provide continuous twenty-four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer Acute Care/Medical Surgical occupied beds as defined by their Medicare Cost Report.

E. REPORTING REQUIREMENTS

Quarterly reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure. The Board of Nursing requires, in addition to these regulations, submission of quarterly reports to the Board of Nursing and reserves the right to re-evaluate and change reporting requirements, if need be.

F. EFFECTIVE DATE OF REGULATION

This above rules and regulations pertaining to telemergency medicine shall become effective October 18, 2002. ~~This regulation shall stand repealed one (1) year from final adoption. This regulation shall be extended from October 19, 2003, to October 18, 2004. This regulation shall be extended from October 19, 2004, to October 18, 2005.~~

January 30, 2006

At the Full Board Meeting on Thursday, January 19, 2006, the regulation pertaining to emergency telemedicine was discussed. The regulation was filed on January 04, 2006, and legally has to be filed for 25 days before it can be final adopted. The 25 days for comments would be over on January 29, 2006. Motion was made by Dr. Merideth, seconded by Dr. South, that the Executive Director could poll the Executive Committee for final adoption after the 25 days for public comment expires.

Calls were made to members of the Executive Committee for their approval on January 30, 2006, for final adoption.

Dewitt G. Crawford, M.D., Board President Approved 1/30/06

Philip T. Merideth, M.D., J.D., Board Vice President Approved 1/30/06

Dwalia S. South, M.D., Board Secretary Approved 1/30/06

NOTICE OF RULE ADOPTION—FINAL RULE

STATE OF MISSISSIPPI

Mississippi State Board of Medical Licensure

COPY FILED

MISSISSIPPI SECRETARY OF STATE

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority Authorizing the promulgation of
Rule: {Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule :{Insert citation to specific rule(s) repealed,
amended or suspended XXVII. Regulations Pertaining to Emergency
Telemedicine Within the State

FILED
JAN 31 2006

MISSISSIPPI SECRETARY OF STATE

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

~~This amended regulation will eliminate a sunset clause and allow the program to continue indefinitely.~~

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date:
Time:
Place:

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

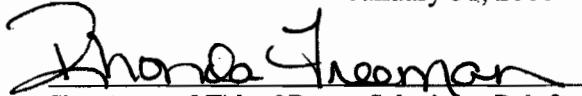
This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: January 31, 2006



Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: January 31, 2006
Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule was adopted without variance from the proposed rule.

XXVII. REGULATIONS PERTAINING TO EMERGENCY TELEMEDICINE WITHIN THE STATE

A. SCOPE/PURPOSE

These regulations apply to only those individuals licensed to practice medicine or osteopathic medicine in the State of Mississippi and who are performing duties as employees of the University of Mississippi Medical Center. This regulation does not authorize any communication across state lines.

B. DEFINITIONS

For the purpose of Article XXVII only, the following terms have the meanings indicated:

1. "Physician" means any person licensed to practice medicine or osteopathic medicine in the State of Mississippi.
2. "Telemedicine" is the diagnosis or treatment of human injury, illness and diseases using interactive audio, video or data communications by electronic or other means.
3. "Teleemergency medicine" is a unique combination of telemedicine and the collaborative/supervisory role of a physician Board certified in emergency medicine, and an appropriate skilled health professional (Nurse Practitioner or Physician Assistant).

C. BOARD REVIEW

The same requirements as outlined in Article XIII shall apply.

D. COLLABORATIVE/SUPERVISING PHYSICIAN LIMITED

No physician practicing teleemergency medicine shall be authorized to function in a collaborative/supervisor role as outlined in Article XIII unless his or her practice location is a level 1 hospital trauma center that is able to provide continuous twenty-four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer Acute Care/Medical Surgical occupied beds as defined by their Medicare Cost Report.

E. REPORTING REQUIREMENTS

Quarterly reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure. The Board of Nursing requires, in addition to these regulations, submission of quarterly reports to the Board of Nursing and reserves the right to re-evaluate and change reporting requirements, if need be.

F. EFFECTIVE DATE OF REGULATION

This above rules and regulations pertaining to telemergency medicine shall become effective October 18, 2002.

Amended January 30, 2006.

FILED
JAN 20 2006

MISSISSIPPI
SECRETARY OF STATE

NOTICE OF PROPOSED RULE ADOPTION

COPY

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

Mississippi State Board of Medical
Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority authorizing the promulgation of Rule: {Insert citation to state or federal statute, or rule Section 73-43-11}

Reference to Rules repealed, amended or suspended by the Proposed Rule : { Insert citation to specific rule(s) repealed, amended or suspended XXXI. Regulations Governing Utilization Review Activities By Physicians}

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: {Insert here}
The purpose of these regulations are to set professional standards and to enforce the provisions of current law regarding the performance of utilization review activities by physicians and related purposes.

This rule is proposed as a Final Rule, and/or a Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

An oral proceeding is scheduled on this rule on Date: {Insert Date} Time: {Insert Time}
Place: {Insert Place}

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least ____ day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Economic Impact Statement: Check one box below:

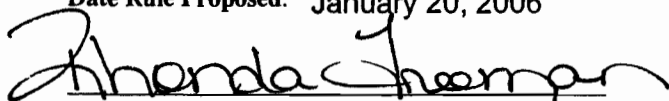
The agency has determined that an economic impact statement is not required for this rule, or

The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: January 20, 2006

Proposed Effective Date of Rule: July 1, 2006



Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

SOS FORM APA 001
Effective Date 07/29/2005

From: Rhonda Freeman
To: administrative procedures filing; bamy@healthmys.com;
david.kweller@msdh.state.ms.us; Philip Merideth
Date: 1/20/2006 12:57:20 PM
Subject: Notice of Intent to Adopt New Regulation

TO: INTERESTED AND/OR AFFECTED PARTIES

FROM: MALLAN G. MORGAN, M.D.

DATE: January 20, 2006

RE: NOTICE OF INTENT TO ADOPT REGULATIONS

The attached regulation has been filed with the Secretary of State and is hereby offered for public inspection, review and comment.

Please address any comments or requests for clarification to the Mississippi State Board of Medical Licensure, 1867 Crane Ridge Drive, Suite 200-B, Jackson, MS 39216.

Rhonda Freeman
Division Director
Licensure Division
Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, Mississippi 39216
(601) 987-3079
Fax: (601) 987-4159

Confidentiality Note: The information contained in this email and/or document(s) attached is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you have received this transmission in error, please notify me immediately and delete the materials from all computers.

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: January 20, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

The attached proposed rule will enforce the provisions of current law regarding the performance of utilization review activities by physicians.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XXXI. REGULATIONS GOVERNING UTILIZATION REVIEW ACTIVITIES BY PHYSICIANS

A. AUTHORITY AND PURPOSE OF THESE REGULATIONS

The Mississippi State Board of Medical Licensure adopts these regulations governing utilization review activities by physicians pursuant to Chapters 25 and 43 of Title 73 and Chapter 83 of Title 41 of the Mississippi Code (1972) Annotated, as Amended. The Mississippi State Board of Medical Licensure finds it necessary to fulfill its statutory responsibilities by adopting these regulations in order to protect the public, to set professional standards, and to enforce the provisions of current law regarding the performance of utilization review activities by physicians.

B. SCOPE OF THESE REGULATIONS

These regulations apply to any physician who performs utilization review activities regarding any person or entity located within the State of Mississippi, regardless of the location, type, or status of the physician's utilization review employment or practice of medicine, the presence or absence of the physician's license to practice medicine in Mississippi, the presence or absence of a claim of an ERISA or other federal preemption, the presence or absence of a physician-patient relationship with the person in Mississippi who is the subject of the utilization review activity, the type of utilization review activity performed (e.g., prospective, concurrent, or retrospective review), or the level at which the utilization review activity is performed (e.g., an initial benefit claim determination or an administrative appeal of an adverse determination).

No part of these regulations is intended to conflict with or supercede the authority of the Mississippi State Department of Health to regulate utilization review organizations and private review agents pursuant to Mississippi Code Annotated Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health. Furthermore, no part of these regulations is intended to conflict with or supercede the authority of a person other than a physician to participate in utilization review as authorized by Mississippi Code Annotated Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health.

C. DEFINITION OF UTILIZATION REVIEW ACTIVITIES

For the purposes of these regulations only, the Mississippi State Board of Medical Licensure has determined that the definition of the term "utilization review activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician to give medical advice, perform medical services, conduct a

medical record review, serve as a medical consultant, apply service intensity or symptom severity criteria, monitor treatment, form medical opinions, or make diagnostic, therapeutic, medical necessity, benefit claim, or healthcare facility admission or continued stay certification decisions or recommendations, at any level of claim review or administrative appeal, regarding a medical service or benefit provided or proposed to be provided to a person or entity located within the State of Mississippi, for the purpose of determining whether such medical service or benefit should be covered or provided by an insurer, insurance plan, or other third party payor. The intent of this definition is to state explicitly that the Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board"), after diligent investigation and analysis, finds as a fact that a physician's performance of utilization review activities is historically an area of State regulation that is subject to regulation by the Board. The Board also finds as a fact that a physician's utilization review activities involve medical decisions, not insurance or business decisions, that affect the health and safety of persons seeking healthcare in Mississippi. The Board does not intend for this definition to conflict with or supercede the definition of "utilization review" as contained in Mississippi Code Annotated Section 41-83-1(a) and regulations adopted by the Mississippi State Department of Health.

D. LICENSURE AND QUALIFICATION REQUIREMENTS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW ACTIVITIES

1. Pursuant to Mississippi Code Annotated Section 73-43-11, the performance of utilization review activities by any physician, regardless of the physician's location, type of medical practice, utilization review employment or independent contractor status, or State(s) of medical licensure, regarding any person or entity located within the State of Mississippi, is subject to regulation by the Mississippi State Board of Medical Licensure.
2. In accordance with Mississippi Code Annotated Section 41-83-31, any utilization review activity performed by a physician that results in an adverse recommendation or adverse determination of medical necessity regarding any person or entity located within the State of Mississippi must be based on the evaluation and concurrence by a physician who holds an unrestricted license to practice medicine in Mississippi.
3. In accordance with Mississippi statutes, appellate court case law, and administrative agency regulations, if a request is made by a patient's treating physician to an insurer or a utilization review organization, then any utilization review activity that results in an adverse recommendation or adverse determination of medical necessity must be performed by an appropriately qualified utilization review physician, i.e., a physician with an unrestricted Mississippi license to practice medicine who is board certified or board eligible and involved in the practice of medicine at least part time in at least one State in the relevant specialty or subspecialty of medicine that is the subject of the utilization review activity, and who is familiar with the local customs of medical practice, the healthcare

resources, and the treatment options available in Mississippi for the person or entity that is the subject of the utilization review activity.

E. PROFESSIONAL STANDARDS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW ACTIVITIES

1. Any physician who performs utilization review activities must comply with these regulations and all applicable Mississippi statutes, appellate court case law, and other administrative agency rules, policies, and regulations, and must comply with nationally recognized standards of care and ethics principles regarding the performance of utilization review activities, including, but not limited to, guidelines established by the American Medical Association, utilization review accreditation organizations, relevant medical specialty associations, and other relevant guidelines or principles regarding evidence-based medicine. In keeping with principles of medical ethics and Mississippi appellate court case law, any physician who performs utilization review activities must consider the healthcare resources, treatment options, and local customs of medical practice in the Mississippi community where the affected person or entity is located; must take steps to avoid and disclose role conflicts or other conflicts of interest; must not substitute their medical judgment for that of any treating physician; and must not interfere with any physician-patient relationship.
2. In accordance with regulations adopted by the Mississippi State Department of Health, if any treating physician licensed to practice medicine in Mississippi provides to an insurer or utilization review organization a written statement within 72 hours of a person's hospital admission that certifies that the person was in need of emergency admission, then any utilization review physician who recommends or renders an adverse determination regarding medical necessity must show, if requested by the Mississippi State Board of Medical Licensure, clear and convincing evidence according to facts, guidelines, or principles developed from evidence-based medicine that the admitted person was not in need of immediate hospital care.
3. In accordance with Mississippi Code Annotated Section 41-83-31, any utilization review physician who recommends or renders an adverse determination of medical necessity must discuss, if requested, the reasons for the adverse determination with the patient's treating physician or other affected healthcare provider. The utilization review physician must comply with the request for discussion within 14 calendar days of receiving either oral or written notification of the request.
4. In accordance with Mississippi Code Annotated Section 73-25-34, any physician located outside of Mississippi who performs utilization review activities regarding any person or entity located within the State of Mississippi through the use of telemedicine (as defined in Code Section 73-25-34) must comply with the Mississippi statutes and regulations regarding the practice of telemedicine in Mississippi.

F. COMPLAINT PROCEDURE, DUE PROCESS, AND PROFESSIONAL ACCOUNTABILITY

1. Any person who has reason to believe that any physician may have failed to comply with any part of these regulations in the performance of utilization review activities may make a written complaint to the Mississippi State Board of Medical Licensure or may make an oral complaint by calling the Board office at telephone number 601-987-3079. Any person who makes such a complaint may request that they remain anonymous.
2. Any physician, whether or not licensed to practice medicine in Mississippi, who performs utilization review activities regarding any person or entity located within the State of Mississippi may be subject to an investigation and peer review by the Mississippi State Board of Medical Licensure upon the receipt of a complaint regarding the physician's utilization review activities. Any such physician shall be afforded the due process procedures of the law and Board regulations.
3. Any physician, whether or not licensed to practice medicine in Mississippi, may be held professionally accountable by the Board, upon a finding by the Board that the physician, in the performance of utilization review activities, failed to comply with the licensure requirements, qualification requirements, or Professional Standards contained in these regulations, or demonstrated behavior including, but not limited to, unprofessional or unethical conduct, professional incompetence, professional negligence, or any other dishonorable or inappropriate conduct likely to deceive, defraud, or harm the public or a particular patient. However, in accordance with Mississippi Code Annotated Section 41-83-31(a), the fact that a physician in performing utilization review activities has recommended or rendered an adverse determination of medical necessity in a particular case involving a benefit claim or appeal shall not be used as the ground for action by the Board.
4. In holding a physician professionally accountable pursuant to due process procedures and to these regulations, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following: denying, suspending, restricting, or revoking a Mississippi license to practice medicine; issuing an advisory letter of concern or a notice of warning; issuing a cease and desist order; administering a public or private reprimand; requiring a program of education or a period of supervised practice; seeking an injunction in Chancery Court to prohibit the further performance of utilization review activities; seeking the assistance of the Chancery Court to cite a noncompliant physician for contempt of court; referring the matter to the appropriate legal authority for criminal prosecution as a misdemeanor or felony; and assessing up to \$10,000 of the reasonable investigation costs expended by the Board.

5. Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these regulations may be reported by the Board to any person or organization appropriate under the circumstances in order to enforce or comply with the law or to protect the public, including, but not limited to, the National Practitioner Data Bank, the U.S. Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services, the Federation of State Medical Boards, the medical licensure authority of any State in which the physician is licensed to practice medicine, the Mississippi State Department of Health, the Mississippi Department of Insurance, the Mississippi Attorney General or District Attorney for criminal prosecution, and any other appropriate person, professional organization, government agency, healthcare entity, or legal authority.
6. As part of the procedures of due process, any physician may request, or may be summoned by the Board, to appear before the Board at a hearing to show cause why the physician should not be found to be out of compliance with these regulations. Any physician's failure to request a hearing or failure to appear when summoned to a hearing may be deemed by the Board to be a waiver of the physician's due process opportunity to appear before the Board and may result in a finding by the Board that the physician is out of compliance with these regulations *in absentia*.

G. COMPLIANCE POLICY AND EXEMPTIONS

1. In assuring compliance with these regulations, the Mississippi State Board of Medical Licensure shall have, in the Board's sole discretion, the authority to follow a "no exemptions" policy. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board by clear and convincing evidence that the exemption is valid.
2. Notwithstanding the licensure requirements and compliance policy contained in these regulations, the Mississippi State Board of Medical Licensure, in accordance with Mississippi Code Annotated Section 41-83-31, acknowledges that any utilization review physician who makes an adverse recommendation or adverse determination of medical necessity on behalf of the Comprehensive Health Insurance Risk Pool Association, or on behalf of a utilization review organization that has a managed care contract for utilization review of 9 or fewer persons who reside in Mississippi shall be exempt from the requirement to hold an unrestricted license to practice medicine in Mississippi. However, any utilization review physician who claims such an exemption must comply with the Professional Standards and the qualification requirements contained in these regulations.
3. Notwithstanding the compliance policy contained in these regulations, the Board acknowledges an exemption to these regulations in accordance with regulations adopted by the Mississippi State Department of Health, that these regulations do not apply to physicians performing in-house utilization review activities in

Mississippi for hospitals, home health agencies, clinics, private physician offices, or any other health facility, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. Such in-house utilization review activities performed by physicians in Mississippi are exempt from these regulations.

H. NOTICE OF REGULATION OF UTILIZATION REVIEW ACTIVITIES BY PHYSICIANS

1. At the time of an initial licensure application, and at the time of each application for a renewal of a license to practice medicine in Mississippi, all physicians shall acknowledge that they have had an opportunity to read these regulations by accessing the website of the Mississippi State Board of Medical Licensure (at internet address www.msbml.state.ms.us) or by requesting a printed copy of these regulations from the Board.
2. The Mississippi State Board of Medical Licensure shall provide a copy of these regulations, and all subsequent amendments thereto, to the State Health Officer and the Division of Licensure and Certification at the Mississippi State Department of Health, with the request that the Department of Health make these regulations available, or otherwise give notice of the existence of these regulations, to all utilization review organizations and private review agents that are certified by the Department of Health to conduct utilization review in Mississippi and to all healthcare facilities in Mississippi that are licensed by the Department of Health.
3. The Mississippi State Board of Medical Licensure shall provide a copy of these regulations to the Mississippi Hospital Association, the Mississippi State Medical Association, and any other appropriate person or organization at the discretion of the Board's Executive Director, with the request that those organizations give notice to their members of the existence of these regulations.

I. EFFECTIVE DATE

These regulations shall become effective on July 1, 2006.

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

BEN P. BRINKLEY, M.D.

ORDER

THIS MATTER came on regularly for hearing on January 19, 2006, before the Mississippi State Board of Medical Licensure (hereinafter "Board"), pursuant to Title 73, Chapter 25, Miss. Code (1972) Annotated, in response to the request of Ben P. Brinkley, M.D. (hereinafter "Licensee") for removal of all restrictions on his Mississippi license to practice medicine imposed by Order of the Board dated February 19, 1998. Licensee appeared on January 19, 2006, and was not represented by counsel. Licensee was advised of his right to obtain counsel and agreed to proceed absent legal counsel. Complaint Counsel for the Board was Honorable Stan Ingram. Board members present for the hearing were Larry Aycock, M.D., Wallace Conerly, M.D., Dewitt Crawford, M.D., Don Gibson, M.D., Philip Merideth, M.D., J.D., and Dwalia South, M.D.

After consideration of Licensee's request, the Board determined that the request is not well-taken at this time, and should not be granted. The Board finds that prior to any action being taken on Licensee's request, the matter should be referred to the Mississippi Professionals Health Program (MPHP) for review and recommendation. Upon receipt of the recommendation of MPHP, the Executive Committee of the Board is authorized to act on Licensee's request.

IT IS HEREBY ORDERED that Licensee's request for removal of all restrictions imposed on his license by virtue of the Order of the Board dated February 19, 1998, is

deferred until such time as the MPHP has had the opportunity to review the matter, and provides a recommendation to the Board; and further, that the Executive Committee of the Board is authorized to take action on Licensee's request for the removal of restriction on his license based upon the recommendation received from MPHP.

IT IS FURTHER ORDERED that pursuant to Sections 73-25-27 and 73-25-32 of the Mississippi Code of 1972 (as amended), a copy of this Order shall be sent by registered mail or personally served upon Ben P. Brinkley, M.D.

SO ORDERED, this the 19th day of January, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: 
**DEWITT GREY CRAWFORD, M.D.
BOARD PRESIDENT**

**XIV. POLICY OF THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
AS TO THE CONFIDENTIALITY OF PENDING DISCIPLINARY MATTERS**

- (1) It is the policy of the Mississippi State Board of Medical Licensure to ensure the confidentiality of patient information and maintain the integrity of the investigative process. Accordingly, complaints received by the Board and any documents pertaining to pending disciplinary investigations and charges, including but not limited to summons issued by the Board, affidavits, and answers, shall be deemed confidential and shall not be released to the media or general public. The period of confidentiality shall end, however, upon the happening of any of the following events, hereinafter "public event", to-wit:
 - (i) Upon the accused licensee executing a written release authorizing disclosure;
 - (ii) Upon the accused licensee making any public statement or disclosure about a disciplinary proceeding then pending;
 - (iii) The disciplinary matter has been resolved by entry of a consent or agreed order, disciplinary in nature, and duly executed by licensee; or
 - (iv) A public hearing has been conducted before the Board or its Executive Committee.

After a public event has occurred, the media and/or public shall be entitled to all public records as defined in the Public Records Act, codified as Miss. Code Ann. Sections 25-61-1 to 25-61-17. For the purpose of this policy, public records shall include all complaints, pleadings, exhibits, and disciplinary orders provided the identity of any patient or victim shall not be released without the express written consent of the patient/victim.

- (2) In the event an investigation is concluded without initiation of disciplinary action or charges are later dropped after initiation of disciplinary proceedings, all records of said investigation and proceedings shall remain confidential.
- (3) Unless placed into evidence at hearing, confidential investigative reports are not deemed public records.
- (4) Notwithstanding the above, orders of temporary action pending a disciplinary hearing entered pursuant to authority granted by Miss. Code Ann. Sections 73-25-63 or 73-25-89, shall be deemed public record when served on the licensee.
- (5) Nothing in this policy shall prohibit the release of information to any licensee or licensee's designated attorney pursuant to discovery as provided in Article XVII.F of the Board's Rule of Procedure.
- (6) Any member of the Board, its attorney, agents, employees, and staff shall have authority to share information with law enforcement officials or other administrative board or agency actively participating in an investigation concerning any alleged

violation by a licensee of any federal or state law, rule or regulation.

Adopted January 19, 2006.

MARCH 2006

CLAMERS

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
MARCH 08, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Dwalia S. South, M.D., Ripley, Secretary

ALSO PRESENT:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Harry Gunter, Investigator, Gulf Coast Region
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, March 08, 2006, at 1:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

**PERSONAL APPEARANCE BY HAROLD MARTIN, M.D., ALBANY, GEORGIA,
APPLICANT**

Dr. Morgan advised that Dr. Martin had sent a letter advising that he had a previous commitment and would be unable to appear before the Executive Committee. There was a brief discussion about Dr. Martin since this was the second time he has advised that he would be unable to appear before the Executive Committee. It was the unanimous decision of the Executive Committee to write Dr. Martin one last appearance letter advising him that if he does not appear at the May meeting that he would need to reapply for his Mississippi Medical License.

ORLANDO BECKUM, M.D., HOUSTON, TEXAS, APPLICANT

Dr. Morgan advised that Dr. Beckum was an applicant for licensure. During the application process, it was noted that Dr. Beckum had a break in medical

EXECUTIVE COMMITTEE MINUTES

March 08, 2006

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residency between the periods of July 2002 and October 2003. Dr. Beckum had written a letter explaining the details. After discussing Dr. Beckum's letter, it was the unanimous decision of the Executive Committee to issue Dr. Beckum his Mississippi Medical License.

STAN INGRAM JOINED THE MEETING AT 1:10 P.M.

BEN P. BRINKLEY, M.D., UNIONTOWN, PENNSYLVANIA, MISSISSIPPI MEDICAL LICENSE NUMBER 13453, LETTER FROM MPHP

Dr. Morgan advised that Dr. Brinkley had appeared before the January 19, 2006, Board requesting removal of restrictions from his Mississippi Medical License. At that time, the Board deferred their decision until such time as the Mississippi Professionals Health Program had reviewed Dr. Brinkley's case and made a recommendation. The Full Board also authorized the Executive Committee to act on MPHP's recommendation.

Dr. Morgan advised that MPHP had sent a letter dated February 27, 2006, supporting Dr. Brinkley's petition for removal of any restrictions. Motion was made by Dr. South, seconded by Dr. Merideth, and carried to remove all restrictions from Dr. Brinkley's license. The Board's Order is attached hereto and incorporated by reference.

SCOTT MATTHEW KELLY, M.D., CHARLESTON, MISSISSIPPI MEDICAL LICENSE NUMBER 13772, DETERMINATION OF REASONABLE CAUSE AND ORDER OF AUTHORITY TO INSPECT AND COPY RECORDS

Garrett Hartley, Board Investigator, joined the meeting and presented to the Executive Committee those facts necessary to make a determination of reasonable cause pursuant to Miss. Code Ann. Section 73-25-28, to inspect records of Dr. Scott Kelly. After a brief discussion, motion was made by Dr. South, seconded by Dr. Merideth, and carried unanimously that reasonable cause did exist and executed the necessary papers for Dr. Morgan and Mr. Hartley to obtain and copy records necessary for the investigation.

MISSISSIPPI PROFESSIONALS HEALTH PROGRAM RELATIONSHIP

For informational purposes, Dr. Morgan advised that he had reviewed the Memorandum of Understanding and budget for MPHP and was requesting guidance from the Executive Committee. After a brief discussion, Dr. South suggested that Gary Carr, Medical Director, MPHP, come and provide the Full Board with an update

EXECUTIVE COMMITTEE MINUTES

March 08, 2006

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of what they are currently working on and their plans for the future.

There was further discussion on sexual boundary issues and if they should be referred to MPHP or handled by the Board. Dr. Crawford made the suggestion to call an extra Executive Committee meeting to discuss only this issue. It was suggested to try and schedule the meeting prior to the next scheduled Executive Committee meeting in May.

PERSONAL APPEARANCE BY ROBERT IACONO, M.D., MADISON, MISSISSIPPI, APPLICANT

Mr. Ingram addressed the Executive Committee and advised that Dr. Iacono was applying for a Mississippi Medical License. Mr. Ingram briefly summarized Dr. Iacono's past conduct and advised the Executive Committee that Dr. Iacono had surrendered his license in California.

Dr. Iacono joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Mr. Ingram introduced Dr. Iacono to the Executive Committee and advised him that he had summarized the facts for the Executive Committee. Mr. Ingram informed Dr. Iacono that he would question him and then he would be allowed the opportunity to address the Executive Committee.

After responding to Mr. Ingram's questions, Dr. Iacono addressed the Executive Committee and also responded to their questions. Dr. Iacono was dismissed.

THE EXECUTIVE COMMITTEE RECESSED AT 02:50 P.M. AND RECONVENED AT 03:00 P.M.

Mr. Ingram advised the Executive Committee that legally they have statutory grounds to have Dr. Iacono appear for a Show Cause hearing, but that he would like to have parameters set beforehand if that is their decision today.

After a brief discussion, the Executive Committee unanimously agreed that we need more information to make a decision. Dr. Iacono agreed earlier to sign a release that would allow for additional information. Mrs. Freeman will send a letter to Dr. Iacono and a copy of the release for him to sign and return. If the information is available, plans are to revisit this issue at the May Executive

EXECUTIVE COMMITTEE MINUTES

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Committee meeting.

HIV PANEL

Dr. Morgan advised that our current Rules and Regulations state that a panel shall be established to monitor physicians who are HIV seropositive, HBeAg seropositive or HCV seropositive. In questioning the Staff, no one was aware of such a panel. Dr. Morgan advised that currently the records were kept on these physicians in a fireproof, locked safe, but no followup or monitoring is currently in place.

After a brief discussion, it was decided that this issue should be referred to the Professionals Health Program Committee to handle. They will need to concur with the Rules, Regulations, and Legislative Committee to make the necessary changes to the HIV regulation.

AD HOC COMMITTEE UPDATE

Dr. Morgan advised that in reviewing the current Ad Hoc Committees, it seems that some need to be closed and others need to become permanent. The following is what the Executive Committee will propose to the Full Board on Thursday.

Committees to Close:

- 1) Alternative Medicine
- 2) Telemedicine
- 3) Utilization Review (Expert Witness remains open under Ethics Committee)
- 4) Workforce (Combine with Educational Development)
- 5) Nurse Practitioner and Expanded Role (Change name to Scope of Practice)

Permanent Committees:

- 1) Consumer Health - Ms. Thompson, Mr. Breland, and Mr. Burnham
- 2) Education and Workforce Issues - Dr. Aycok and Dr. Conerly
- 3) Scope of Practice - Dr. Bush (Chair) and Dr. Merideth
- 4) Professionals Health Program - Dr. Gibson, Dr. Johnston, and Dr. Merideth
- 5) Rules, Regulations, and Legislative - Dr. Bush, Dr. Crawford, and Dr. Harper
- 6) Ethics Committee - Dr. Crawford needs to appoint the members after established

EXECUTIVE COMMITTEE MINUTES

March 08, 2006

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There was also discussion about an Emergency Licensure Committee. It was decided that this would fall under the Workforce Issues Committee.

After a brief discussion about the need for an Ad Hoc Committee to work on the licensing and fees for radiologist assistants, it was the unanimous decision that the Rules, Regulations, and Legislative Committee should work on this matter.

DISCIPLINE - RELAPSE OF PHYSICIANS UNDER CONTRACT

Dr. Morgan advised that it was his understanding that the Mississippi Health Professionals Program just signs up relapsing physicians for another five year contract. After a brief discussion about the number of times a physician is allowed to relapse without appearing before the Board, and the need to look into getting competitive prices for urine screens, it was decided to refer this issue to the Professionals Health Program Committee for additional research.

DR. SOUTH EXITED THE MEETING AT 3:35 P.M.

INTENSE PULSED LIGHT (IPL)

Dr. Morgan advised that he had received a letter from Dr. Bethany Hairston, of Westmoreland Dermatology and Surgery Center, recommending that we add restrictions on the use of IPL devices in addition to those that we have for laser.

After a brief discussion, Dr. Crawford suggested that we verify Dr. Hairston's interpretation of IPL and discuss changes to our regulation, if necessary, at our next Executive Committee meeting in May.

NON-COMPLIANCE OF CME REQUIREMENTS

For informational purposes, Dr. Morgan covered our regulation concerning the record keeping requirements of CME hours and advised that he and the Investigators will soon start spot checking for compliance. It was decided that it is permissible to accept information provided by a hospital where the physician is on their medical staff.

WAIVER OF CME REQUIREMENTS FOR GULF COAST PHYSICIANS

After a brief discussion, it was decided that this matter should be handled on a case-by-case basis.

EXECUTIVE COMMITTEE MINUTES

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OTHER BUSINESS

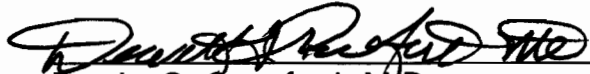
For informational purposes only, Dr. Morgan advised that a new section has been added to the Full Board Agenda allowing for public comment.

Dr. Merideth advised that he was expecting a few individuals to attend Thursday's meeting to comment on the proposed regulation on Medical Experts. Ms. Wagner advised that Thursday's meeting will be APA compliant because this will not be considered an oral proceeding but only allowing for public comments on proposed regulations. It was decided to allow each individual five minutes to address the Board and comment on the issue.

For informational purposes only, Dr. Morgan advised that he and Mr. Washington had attended a meeting at the State Board of Health on Monday, March 5th, in reference to ambulatory surgical centers. He stated that Ms. Delia Owens, Director of the Nursing Board, does not agree with information we were provided by Ms. Linda McMullen, General Counsel for the Mississippi State Medical Association. Dr. Morgan requested that both Mr. Ingram and Ms. Wagner attend the next meeting on this matter.

ADJOURNMENT

There being no further business, the meeting adjourned at 4:30 p.m., with the next Executive Committee meeting scheduled for 1:00 p.m. on Wednesday, May 17, 2006.



Dewitt G. Crawford, M.D.

President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
March 08, 2006

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

BEN PAUL BRINKLEY, M.D.

ORDER REMOVING ALL RESTRICTIONS

THIS MATTER came on regularly for consideration on March 8, 2006, before the Executive Committee of the Mississippi State Board of Medical Licensure, in response to the request of Ben Paul Brinkley, M.D. (hereinafter "Licensee"), seeking removal of all restrictions on his license to the practice medicine in the State of Mississippi. By virtue of that certain Determination and Order dated November 16, 1995, Licensee's certificate to practice medicine in the State of Mississippi was suspended for a term of two years. By Order dated February 19, 1998, Licensee was authorized to return to the practice of medicine subject to certain terms and conditions, one of which was compliance with a written Practice Plan. On January 19, 2006, Licensee appeared before the Board requesting removal of all restrictions. It was the decision of the Board to place in abeyance any decision to remove restrictions pending receipt of written confirmation of support and advocacy from the Mississippi Professionals Health Program (MPHP). On February 27, 2006, the MPHP tendered to the Board written confirmation of such advocacy. All prerequisites have now been met. Therefore, the Executive Committee of the Board, after hearing said request, finds the same to be well-taken.

IT IS HEREBY ORDERED, that Licensee's request for removal of all restrictions on his license to practice medicine is hereby granted. Licensee now holds an unrestricted license to practice medicine in the State of Mississippi.

IT IS FURTHER ORDERED, that pursuant to Miss. Code Ann. Sections 73-25-27 and 73-25-32 (1972), a copy of this Order shall be sent by registered mail or personally served upon Ben Paul Brinkley, M.D.

ORDERED, this the 8th day of March, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: 
**DEWITT G. CRAWFORD, M.D.
PRESIDENT**

**BOARD MINUTES
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
MARCH 09, 2006**

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, March 09, 2006, in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

The following members were present:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Dwalia S. South, M.D., Ripley, Secretary
Larry B. Aycock, M.D., McComb
Freda M. Bush, M.D., Jackson
A. Wallace Conerly, M.D., Jackson
Don A. Gibson, M.D., Richland
William B. Harper, D.O., Greenwood
Joseph E. Johnston, M.D., Mount Olive

Also present:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Harry Gunter, Investigator, Gulf Coast Region
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

Not present:

Wesley Breland, Hattiesburg, Consumer Health Ad Hoc Committee
Cecil R. Burnham, Jackson, Consumer Health Ad Hoc Committee
Martha Thompson, Oxford, Consumer Health Ad Hoc Committee

The meeting was called to order at 9:10 a.m. by Dr. Crawford, President. The invocation was given by Dr. Aycock. No court reporter was present today due to no hearings being scheduled.

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Dr. Crawford advised that a letter had been received on March 7, 2006, from the U.S. House of Representatives, Committee on Energy and Commerce, requesting information due to an investigation they have been working on in regards to the silica products liability litigation. Dr. Crawford advised that our response is due back no later than March 21, 2006.

Dr. Morgan presented certificates and pins to Harry Gunter, Investigator on the Gulf Coast, and Frances Scott, Special Projects Officer, Investigative Division, when recognizing them for completing ten years of service with the State.

APPROVAL OF CERTIFICATION OF MISSISSIPPI LICENSES TO OTHER ENTITIES FOR THE PERIOD JANUARY 1, 2006, THROUGH FEBRUARY 28, 2006

Two hundred twenty-one (221) licenses were certified to other entities for the period January 1, 2006, through February 28, 2006. Motion was made by Dr. Johnston, seconded by Dr. Aycock, and carried unanimously to approve these certifications.

APPROVAL OF LICENSES ISSUED FOR THE PERIOD JANUARY 1, 2006, THROUGH FEBRUARY 28, 2006

Seventy-one (71) licenses were issued for the period January 1, 2006, through February 28, 2006. Motion was made by Dr. Johnston, seconded by Dr. South, and carried unanimously to approved these licenses.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED JANUARY 18, 2006, AND MINUTES OF THE BOARD MEETING DATED JANUARY 19, 2006

Minutes of the Executive Committee Meeting dated January 18, 2006, were reviewed. Dr. Gibson moved for approval of the minutes as submitted, Dr. Johnston seconded the motion, and it carried unanimously.

Minutes of the Board Meeting dated January 19, 2006, were reviewed. Dr. Merideth made a motion for an editorial change on page 3 under the section of Utilization Review/Expert Witness. Motion was seconded by Dr. South, and carried unanimously. The requested change is as follows:

“Utilization Review/Expert Witness - Dr. Merideth presented the latest version of the proposed **Regulations Governing Utilization Review Activities by Physicians**. After a brief discussion of the changes from the previous draft, motion

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was made by Dr. Merideth and unanimously approved to add an amendment suggested by Dr. Aycock regarding an exemption for in-house utilization review. On motion by Dr. Merideth, and seconded by Dr. South, the Board voted unanimously to file notice with the Secretary of State of intent to adopt the regulation as amended. A copy of the proposed regulation is attached hereto and incorporated by reference. The proposed regulation will be filed with the Secretary of State under the Administrative Procedures Act.

Dr. Merideth made a second motion for the Board to authorize the Executive Committee to adopt in final the **Regulations Governing Utilization Review Activities by Physicians** prior to the next Board meeting after the regulation has completed the required comment period, if no comments are received. Dr. Aycock seconded, and the motion carried unanimously."

With the above editorial change approved, Dr. Johnston moved for approval of the minutes, Dr. Gibson seconded the motion, and it carried unanimously.

Dr. Crawford advised that the Executive Committee had discussed the Ad Hoc Committees and the decision was that some changes needed to be made. Dr. Crawford asked Dr. Morgan to update the Board Members on the proposal from the Executive Committee. He then advised that we would go back and get an update from the current Ad Hoc Committees.

Dr. Morgan advised that some Ad Hoc Committees need to be closed and others need to become permanent. Dr. Morgan advised that the following is what the Executive Committee proposed to bring before the Full Board for approval.

Committees to Close:

- 1) Alternative Medicine
- 2) Telemedicine
- 3) Utilization Review (Expert Witness remains open under Ethics Committee)
- 4) Workforce (Combine with Educational Development)
- 5) Nurse Practitioner and Expanded Role (Change name to Scope of Practice)

Permanent Committees:

- 1) Consumer Health - Ms. Thompson, Mr. Breland, and Mr. Burnham
- 2) Education and Workforce Issues - Dr. Aycock and Dr. Conerly
- 3) Scope of Practice - Dr. Bush (Chair) and Dr. Merideth
- 4) Professionals Health Program - Dr. Gibson, Dr. Johnston, and Dr. Merideth

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- 5) Rules, Regulations, and Legislative - Dr. Bush, Dr. Crawford, and Dr. Harper
- 6) Ethics Committee - Dr. Crawford needs to appoint the members after established

REPORTS FROM AD HOC COMMITTEES

Alternative Medicine - There was no new information to report.

Consumer Health - Due to an administrative error, they were not at the meeting.

Educational Development - There was no new information to report.

Manpower - There was no new information to report.

Nurse Practitioner and Expanded Role - There was no new information to report.

Professionals Health Program - Dr. Merideth advised they would be looking into our relationship with MPHP and which avenues to follow.

Rules, Regulations, and Legislative - Dr. Morgan said the Emergency Telemedicine regulation has passed the Governor's desk. Ms. Wagner advised the bill to monitor and regulate fees for RA's was on the Governor's desk and was scheduled to be signed next week.

Telemedicine - There was no new information to report.

Utilization Review/Expert Witness - Dr. Merideth thanked all the people that worked on the Utilization Review regulation.

Dr. Merideth thanked Dr. Bush and Dr. Johnston for working on the Expert Witness Committee, as well as staff that had provided assistance.

Dr. Merideth advised that this is not a formal oral proceeding, there is no court reporter here, so there is no official record by way of a court reporter's transcript being made. Dr. Merideth encouraged everyone to state their comments. He requested that they also followup their comments in writing. This could be done today or during the twenty-five (25) day public comment period that follows if the Board indicates its' intention to adopt this regulation.

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Dr. Merideth also advised that the Board has tentative plans to conduct a formal oral proceeding regarding these proposed regulation at the next meeting of the Board. He further advised that there will be formal notice of the oral proceeding filed with the Secretary of State's Office in compliance with the Administrative Procedures Act.

Dr. Merideth advised that the Board was requesting that anyone addressing them today to limit initial comments to five (5) minutes. Dr. Merideth advised that the Board was asking for suggestions, what they thought about the regulation, what they like or don't like, and what can be done to help them work through this matter.

Dr. Merideth advised that copies of the proposed regulations were available at the receptionist's desk for anyone needing a copy.

Dr. Merideth covered the background and all sections of the proposed regulation and expressed the Board's concern to protect the public in the matter of medical experts.

Dr. Crawford opened the floor for public comments. There were several public citizens that addressed the Board, some in support of the proposed regulation and others that were opposed. Everyone was allowed five (5) minutes to address the Board expressing their support and/or any concerns about why they were not supporting the proposed regulation.

STAN INGRAM JOINED THE MEETING AT 10:20 A.M.

The following individuals addressed the Board with their comments: Bobby Dallas, J.D., Judge Roger Clapp, Staci O'Neal, J.D., Joseph Blackston, M.D., J.D., Walter Johnson, J.D., David Merideth, M.D., J.D., Linda McMullen, J.D., Joe Roberts, J.D., and Whit Johnson, J.D.

After everyone had been given the opportunity to address the Board, Dr. Merideth thanked them for their comments. Dr. Merideth also advised that he had received comments by fax and email from individuals that were not present today that are part of the Board's file.

Dr. Bush addressed the Board and read a letter from the Federation of State Medical Boards supporting the Board's efforts in governing medical expert activities.

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THE BOARD RECESSED AT 10:25 A.M. AND RECONVENED AT 11:05 A.M.

After a lengthy discussion, allowing for additional public comments, as well as comments and questions from Board members, Dr. Merideth made closing comments and said the discussion today demonstrates the need for a regulation.

DR. JOHNSTON EXITED THE MEETING AT 11:20 A.M.

Motion was made by Dr. Merideth to adopt the proposed **Regulations Governing Medical Expert Activities by Physicians**, specifically that the Board file notice with the Secretary of State of our intention to adopt these regulations in accordance with the Administrative Procedures Act, and that we will revisit this issue with a formal oral proceeding under the Administrative Procedures Act at our next meeting. The motion was seconded by Dr. South, and carried unanimously, with the exception that Dr. Johnston was not in the room at the time of voting. A copy of the proposed regulation is attached hereto and incorporated by reference. The proposed regulation will be filed with the Secretary of State under the Administrative Procedures Act.

DR. JOHNSTON RE-ENTERED THE MEETING AT 11:25 A.M.

Dr. Crawford advised the next issue was to adopt in final the **Regulations Governing Utilization Review Activities by Physicians**. Dr. Crawford advised that the regulations had been offered for the twenty-five day comment period, and that the Board had previously authorized the Executive Committee at the January 19, 2006, Board meeting to adopt in final after the comment period had expired if we had not received any comments, and there were none received.

Motion was made by Dr. Aycock, seconded by Dr. Conerly, to adopt in final form the amendment to the Board's **Regulations Governing Utilization Review Activities by Physicians**. Dr. Merideth said that he would like to make a clarifying comment before the vote. Dr. Merideth advised that it was his understanding that the motion is for the Full Board to ratify the action that the Board authorized the Executive Committee to take after the twenty-five day comment period expired without any comments, and that the Executive Committee had taken action and this regulation was final adopted on February 16, 2006. There being no further discussion, a vote was taken and carried unanimously to ratify the adoption of the **Regulations Governing Utilization Review Activities by Physicians** by the Executive Committee.

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MINIMUM STANDARD OF OPERATION FOR AMBULATORY SURGICAL FACILITIES

Dr. Morgan addressed the Board and advised that there is still an ongoing situation with the Board of Nursing and the Department of Health concerning language in the ambulatory surgical facilities regulations concerning CRNA's and whether to use "supervision" and not "consult/collaborate". Dr. Morgan said that there had been some joint promulgation in this, but that it is his understanding that our Board said this only related to Nurse Practitioners and not CRNA's.

Dr. Morgan briefly discussed our letter dated February 9, 2006, to the Mississippi State Department of Health outlining our position in this matter. Dr. Morgan advised that the Board of Nursing is not in agreement with our position. He advised the Board of Nursing takes the position that they only want to be consistent in the verbiage by using "consult/collaborate".

Dr. Morgan advised that the Executive Committee had discussed this matter and they were of the opinion that we should stand by our position, and that "supervision" should remain in the regulation.

After asking for comments or questions, Dr. Crawford advised that our motion would be to reaffirm our position on "supervision" of CRNA's and not change the language to "consult/collaborate". Motion was made by Dr. South, seconded by Dr. Johnston. There were additional comments made by Dr. Bush, Mr. Ingram, and Ms. McMullen, General Counsel, MSMA, before the vote was taken. After further discussion, the motion passed unanimously.

HONORED BOARD MEMBERS

Dr. Crawford advised that we have two physicians on our Board that were recently honored. Dr. Crawford advised that Dr. Conerly had been named outstanding alumni by Tulane University and Dr. Bush was a finalist in the 2006 Business Woman of the Year. Dr. Crawford requested that the audience join him in a standing applause in their honor.

GULF COAST VISIT ON FEBRUARY 15, 2006

Dr. Morgan reported that he had taken a tour of the Gulf Coast Clinics along with Dr. Crawford, Thomas Washington, and Harry Gunter to check out the medical facilities. Dr. Morgan advised that they had toured three (3) facilities and he stated

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that the situation at the D'Iberville clinic was still by far the most depressing. The other two (2) clinics had fairly good setups with rooms for exam rooms and a locked place for their drugs. They made some recommendations and Mr. Gunter will be working closely with the clinics in the future and reporting back to the Board.


There was a brief discussion about several situations on the Gulf Coast. Dr. Bush advised that she would like to see the Board not just accept the Federation's FCVS, but for us to require it in the future for all new applicants. She added that this should help us respond even faster in getting out of state physicians licensed in the event of another disaster.

2006 MISSISSIPPI ETHICS COMMISSION STATEMENT OF ECONOMIC INTEREST DUE BY MAY 1, 2006

Dr. Crawford advised that all Board members were required to send in their 2006 Mississippi Ethics Commission Statement of Economic Interest by May 1, 2006. There are additional forms available in the Administrative Assistant's office.

ADJOURNMENT

The meeting was adjourned at 12:10 p.m. with the next meeting scheduled for Thursday, May 18, 2006.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
March 09, 2006

NOTICE OF RULE ADOPTION—FINAL RULE

FILED
FEB 16 2006

STATE OF MISSISSIPPI

Mississippi State Board of Medical Licensure

MISSISSIPPI
SECRETARY OF STATE

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority Authorizing the promulgation of
Rule: {Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule : {Insert citation to specific rule(s) repealed,
amended or suspended XXXI. Regulations Governing Utilization Review
Activities by Physicians

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

This regulation will set professional standards and enforce the provisions of current law regarding the performance of utilization review activities by physicians and related purposes.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date:
Time:
Place:

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: July 1, 2006

Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: February 16, 2006
Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule was adopted without variance from the proposed rule.

XXXI. REGULATIONS GOVERNING UTILIZATION REVIEW ACTIVITIES BY PHYSICIANS

A. AUTHORITY AND PURPOSE OF THESE REGULATIONS

The Mississippi State Board of Medical Licensure adopts these regulations governing utilization review activities by physicians pursuant to Chapters 25 and 43 of Title 73 and Chapter 83 of Title 41 of the Mississippi Code (1972) Annotated, as Amended. The Mississippi State Board of Medical Licensure finds it necessary to fulfill its statutory responsibilities by adopting these regulations in order to protect the public, to set professional standards, and to enforce the provisions of current law regarding the performance of utilization review activities by physicians.

B. SCOPE OF THESE REGULATIONS

These regulations apply to any physician who performs utilization review activities regarding any person or entity located within the State of Mississippi, regardless of the location, type, or status of the physician's utilization review employment or practice of medicine, the presence or absence of the physician's license to practice medicine in Mississippi, the presence or absence of a claim of an ERISA or other federal preemption, the presence or absence of a physician-patient relationship with the person in Mississippi who is the subject of the utilization review activity, the type of utilization review activity performed (e.g., prospective, concurrent, or retrospective review), or the level at which the utilization review activity is performed (e.g., an initial benefit claim determination or an administrative appeal of an adverse determination).

No part of these regulations is intended to conflict with or supercede the authority of the Mississippi State Department of Health to regulate utilization review organizations and private review agents pursuant to Mississippi Code Annotated Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health. Furthermore, no part of these regulations is intended to conflict with or supercede the authority of a person other than a physician to participate in utilization review as authorized by Mississippi Code Annotated Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health.

C. DEFINITION OF UTILIZATION REVIEW ACTIVITIES

For the purposes of these regulations only, the Mississippi State Board of Medical Licensure has determined that the definition of the term "utilization review activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician to give medical advice, perform medical services, conduct a

medical record review, serve as a medical consultant, apply service intensity or symptom severity criteria, monitor treatment, form medical opinions, or make diagnostic, therapeutic, medical necessity, benefit claim, or healthcare facility admission or continued stay certification decisions or recommendations, at any level of claim review or administrative appeal, regarding a medical service or benefit provided or proposed to be provided to a person or entity located within the State of Mississippi, for the purpose of determining whether such medical service or benefit should be covered or provided by an insurer, insurance plan, or other third party payor. The intent of this definition is to state explicitly that the Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board"), after diligent investigation and analysis, finds as a fact that a physician's performance of utilization review activities is historically an area of State regulation that is subject to regulation by the Board. The Board also finds as a fact that a physician's utilization review activities involve medical decisions, not insurance or business decisions, that affect the health and safety of persons seeking healthcare in Mississippi. The Board does not intend for this definition to conflict with or supercede the definition of "utilization review" as contained in Mississippi Code Annotated Section 41-83-1(a) and regulations adopted by the Mississippi State Department of Health.

D. LICENSURE AND QUALIFICATION REQUIREMENTS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW ACTIVITIES

1. Pursuant to Mississippi Code Annotated Section 73-43-11, the performance of utilization review activities by any physician, regardless of the physician's location, type of medical practice, utilization review employment or independent contractor status, or State(s) of medical licensure, regarding any person or entity located within the State of Mississippi, is subject to regulation by the Mississippi State Board of Medical Licensure.
2. In accordance with Mississippi Code Annotated Section 41-83-31, any utilization review activity performed by a physician that results in an adverse recommendation or adverse determination of medical necessity regarding any person or entity located within the State of Mississippi must be based on the evaluation and concurrence by a physician who holds an unrestricted license to practice medicine in Mississippi.
3. In accordance with Mississippi statutes, appellate court case law, and administrative agency regulations, if a request is made by a patient's treating physician to an insurer or a utilization review organization, then any utilization review activity that results in an adverse recommendation or adverse determination of medical necessity must be performed by an appropriately qualified utilization review physician, i.e., a physician with an unrestricted Mississippi license to practice medicine who is board certified or board eligible and involved in the practice of medicine at least part time in at least one State in the relevant specialty or subspecialty of medicine that is the subject of the utilization review activity, and who is familiar with the local customs of medical practice, the healthcare

resources, and the treatment options available in Mississippi for the person or entity that is the subject of the utilization review activity.

E. PROFESSIONAL STANDARDS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW ACTIVITIES

1. Any physician who performs utilization review activities must comply with these regulations and all applicable Mississippi statutes, appellate court case law, and other administrative agency rules, policies, and regulations, and must comply with nationally recognized standards of care and ethics principles regarding the performance of utilization review activities, including, but not limited to, guidelines established by the American Medical Association, utilization review accreditation organizations, relevant medical specialty associations, and other relevant guidelines or principles regarding evidence-based medicine. In keeping with principles of medical ethics and Mississippi appellate court case law, any physician who performs utilization review activities must consider the healthcare resources, treatment options, and local customs of medical practice in the Mississippi community where the affected person or entity is located; must take steps to avoid and disclose role conflicts or other conflicts of interest; must not substitute their medical judgment for that of any treating physician; and must not interfere with any physician-patient relationship.
2. In accordance with regulations adopted by the Mississippi State Department of Health, if any treating physician licensed to practice medicine in Mississippi provides to an insurer or utilization review organization a written statement within 72 hours of a person's hospital admission that certifies that the person was in need of emergency admission, then any utilization review physician who recommends or renders an adverse determination regarding medical necessity must show, if requested by the Mississippi State Board of Medical Licensure, clear and convincing evidence according to facts, guidelines, or principles developed from evidence-based medicine that the admitted person was not in need of immediate hospital care.
3. In accordance with Mississippi Code Annotated Section 41-83-31, any utilization review physician who recommends or renders an adverse determination of medical necessity must discuss, if requested, the reasons for the adverse determination with the patient's treating physician or other affected healthcare provider. The utilization review physician must comply with the request for discussion within 14 calendar days of receiving either oral or written notification of the request.
4. In accordance with Mississippi Code Annotated Section 73-25-34, any physician located outside of Mississippi who performs utilization review activities regarding any person or entity located within the State of Mississippi through the use of telemedicine (as defined in Code Section 73-25-34) must comply with the Mississippi statutes and regulations regarding the practice of telemedicine in Mississippi.

F. COMPLAINT PROCEDURE, DUE PROCESS, AND PROFESSIONAL ACCOUNTABILITY

1. Any person who has reason to believe that any physician may have failed to comply with any part of these regulations in the performance of utilization review activities may make a written complaint to the Mississippi State Board of Medical Licensure or may make an oral complaint by calling the Board office at telephone number 601-987-3079. Any person who makes such a complaint may request that they remain anonymous.
2. Any physician, whether or not licensed to practice medicine in Mississippi, who performs utilization review activities regarding any person or entity located within the State of Mississippi may be subject to an investigation and peer review by the Mississippi State Board of Medical Licensure upon the receipt of a complaint regarding the physician's utilization review activities. Any such physician shall be afforded the due process procedures of the law and Board regulations.
3. Any physician, whether or not licensed to practice medicine in Mississippi, may be held professionally accountable by the Board, upon a finding by the Board that the physician, in the performance of utilization review activities, failed to comply with the licensure requirements, qualification requirements, or Professional Standards contained in these regulations, or demonstrated behavior including, but not limited to, unprofessional or unethical conduct, professional incompetence, professional negligence, or any other dishonorable or inappropriate conduct likely to deceive, defraud, or harm the public or a particular patient. However, in accordance with Mississippi Code Annotated Section 41-83-31(a), the fact that a physician in performing utilization review activities has recommended or rendered an adverse determination of medical necessity in a particular case involving a benefit claim or appeal shall not be used as the ground for action by the Board.
4. In holding a physician professionally accountable pursuant to due process procedures and to these regulations, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following: denying, suspending, restricting, or revoking a Mississippi license to practice medicine; issuing an advisory letter of concern or a notice of warning; issuing a cease and desist order; administering a public or private reprimand; requiring a program of education or a period of supervised practice; seeking an injunction in Chancery Court to prohibit the further performance of utilization review activities; seeking the assistance of the Chancery Court to cite a noncompliant physician for contempt of court; referring the matter to the appropriate legal authority for criminal prosecution as a misdemeanor or felony; and assessing up to \$10,000 of the reasonable investigation costs expended by the Board.

5. Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these regulations may be reported by the Board to any person or organization appropriate under the circumstances in order to enforce or comply with the law or to protect the public, including, but not limited to, the National Practitioner Data Bank, the U.S. Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services, the Federation of State Medical Boards, the medical licensure authority of any State in which the physician is licensed to practice medicine, the Mississippi State Department of Health, the Mississippi Department of Insurance, the Mississippi Attorney General or District Attorney for criminal prosecution, and any other appropriate person, professional organization, government agency, healthcare entity, or legal authority.
6. As part of the procedures of due process, any physician may request, or may be summoned by the Board, to appear before the Board at a hearing to show cause why the physician should not be found to be out of compliance with these regulations. Any physician's failure to request a hearing or failure to appear when summoned to a hearing may be deemed by the Board to be a waiver of the physician's due process opportunity to appear before the Board and may result in a finding by the Board that the physician is out of compliance with these regulations *in absentia*.

G. COMPLIANCE POLICY AND EXEMPTIONS

1. In assuring compliance with these regulations, the Mississippi State Board of Medical Licensure shall have, in the Board's sole discretion, the authority to follow a "no exemptions" policy. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board by clear and convincing evidence that the exemption is valid.
2. Notwithstanding the licensure requirements and compliance policy contained in these regulations, the Mississippi State Board of Medical Licensure, in accordance with Mississippi Code Annotated Section 41-83-31, acknowledges that any utilization review physician who makes an adverse recommendation or adverse determination of medical necessity on behalf of the Comprehensive Health Insurance Risk Pool Association, or on behalf of a utilization review organization that has a managed care contract for utilization review of 9 or fewer persons who reside in Mississippi shall be exempt from the requirement to hold an unrestricted license to practice medicine in Mississippi. However, any utilization review physician who claims such an exemption must comply with the Professional Standards and the qualification requirements contained in these regulations.
3. Notwithstanding the compliance policy contained in these regulations, the Board acknowledges an exemption to these regulations in accordance with regulations adopted by the Mississippi State Department of Health, that these regulations do not apply to physicians performing in-house utilization review activities in

Mississippi for hospitals, home health agencies, clinics, private physician offices, or any other health facility, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. Such in-house utilization review activities performed by physicians in Mississippi are exempt from these regulations.

H. NOTICE OF REGULATION OF UTILIZATION REVIEW ACTIVITIES BY PHYSICIANS

1. At the time of an initial licensure application, and at the time of each application for a renewal of a license to practice medicine in Mississippi, all physicians shall acknowledge that they have had an opportunity to read these regulations by accessing the website of the Mississippi State Board of Medical Licensure (at internet address www.msbml.state.ms.us) or by requesting a printed copy of these regulations from the Board.
2. The Mississippi State Board of Medical Licensure shall provide a copy of these regulations, and all subsequent amendments thereto, to the State Health Officer and the Division of Licensure and Certification at the Mississippi State Department of Health, with the request that the Department of Health make these regulations available, or otherwise give notice of the existence of these regulations, to all utilization review organizations and private review agents that are certified by the Department of Health to conduct utilization review in Mississippi and to all healthcare facilities in Mississippi that are licensed by the Department of Health.
3. The Mississippi State Board of Medical Licensure shall provide a copy of these regulations to the Mississippi Hospital Association, the Mississippi State Medical Association, and any other appropriate person or organization at the discretion of the Board's Executive Director, with the request that those organizations give notice to their members of the existence of these regulations.

I. EFFECTIVE DATE

These regulations shall become effective on July 1, 2006.

February 15, 2006

At the Full Board Meeting on Thursday, January 19, 2006, the regulation pertaining to utilization review was discussed. The proposed regulation was filed on January 20, 2006, and legally has to be filed for 25 days before it can be final adopted. The 25 days for comments would be over on February 14, 2006. Motion was made by Dr. Merideth, seconded by Dr. Aycock, and carried unanimously that the Executive Committee be authorized to final adopt after the 25 days for public comment expires.

Calls were made to members of the Executive Committee for their approval on February 15, and February 16, 2006, for final adoption.

Dewitt G. Crawford, M.D., Board President 2/16/06

Philip T. Merideth, M.D. , J.D., Board Vice President 2/15/06

Dwalia S. South, M.D., Board Secretary 2/16/06

NOTICE OF PROPOSED RULE ADOPTION

COPY

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority authorizing the promulgation of Rule: {Insert citation to state or federal statute, or rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the Proposed Rule :{ Insert citation to specific rule(s) repealed, amended or suspended XXXII. Regulations Governing Medical Expert Activities By Physicians

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: {Insert here}
The purpose of these regulations are to protect the public. to set professional standards. to enforce the provisions of law regarding the performance of medical expert activities by physicians. and to further legitimate government purposes in the public interest.

This rule is proposed as a [X] Final Rule, and/or a [] Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

[X] An oral proceeding is scheduled on this rule on Date: May 18, 2006 Time: 9:00 a.m.

Place: MS State Board of Medical Licensure/Board Office
1867 Crane Ridge Drive Suite 200-B, Jackson, MS 39216

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least 5 day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

[] An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Economic Impact Statement: Check one box below:

[X] The agency has determined that an economic impact statement is not required for this rule.

[] The concise summary of the economic impact statement required is attached. MISSISSIPPI SECRETARY OF STATE

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: March 9, 2006

Proposed Effective Date of Rule: July 1, 2006

Rhonda Freeman (handwritten signature)

Signature and Title of Person Submitting Rule for Filing
Rhonda Freeman
Division Director

FILED
MAR 9 2006

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: March 9, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

The attached proposed rule will enforce the provisions of current law regarding the performance of utilization review activities by physicians.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XXXII. REGULATIONS GOVERNING MEDICAL EXPERT ACTIVITIES BY PHYSICIANS

A. AUTHORITY AND PURPOSE OF THESE REGULATIONS

The Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board") adopts these regulations governing medical expert activities by physicians pursuant to Chapters 25 and 43 of Title 73 of the Mississippi Code (1972) Annotated, as Amended. The Mississippi State Board of Medical Licensure finds it necessary to fulfill its statutory responsibilities by adopting these regulations in order to protect the public, to set professional standards, to enforce the provisions of law regarding the performance of medical expert activities by physicians, and to further other legitimate government purposes in the public interest.

B. SCOPE OF THESE REGULATIONS

1. These regulations apply to any physician who performs medical expert activities regarding any person, facility, or entity located within the State of Mississippi, or regarding an event alleged to have occurred within the State of Mississippi, regardless of the location, type, or status of the physician's medical expert activity, the presence or absence of the physician expert's license to practice medicine in Mississippi, the physician expert's presence or absence of a physician-patient relationship in Mississippi, the type of medical expert activity performed (e.g., oral testimony or a written statement), or the setting in which the medical expert activity is performed (e.g., a state or federal court or administrative agency).
2. No part of these regulations is intended to conflict with or supercede the authority of any state or federal court or administrative agency to designate a physician as a medical expert in a legal matter then pending before the court or agency. The Board does not intend for these regulations to conflict with or supercede the description or regulation of the function of a physician serving as an "expert" as that term is used in the Mississippi Rules of Evidence or in other provisions of law, rules, regulations, or decisions of any court or administrative agency.
3. No part of these regulations is intended to conflict with or supercede the authority of a person other than a physician to serve as an expert in a legal matter. Furthermore, the Board does not intend for these regulations to have any effect on physicians' participation in legal proceedings in a capacity other than as a medical expert.

C. DEFINITION OF MEDICAL EXPERT ACTIVITIES

For the purposes of these regulations only, the Mississippi State Board of Medical Licensure has determined that the definition of the term "medical expert activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician to

- (1) suggest or recommend to a person any medical advice or other agency (whether material or not material),
- (2) perform medical services (including, but not limited to, a physical or mental Examination of a person),
- (3) conduct a review of a person's medical record,
- (4) serve as a medical consultant,
- (5) render a medical opinion concerning the diagnosis or treatment of a person,
- (6) produce a written medical expert opinion report, affidavit, or declaration, or
- (7) give testimony under oath as a medical expert at a state or federal hearing, deposition, trial, administrative agency proceeding, alternative dispute resolution proceeding, or any other legal proceeding,

regarding the medical issues in a legal matter pending in Mississippi that involve a person, facility, or entity located within the State of Mississippi, or an event alleged to have occurred within the State of Mississippi.

D. LICENSURE AND QUALIFICATION REQUIREMENTS FOR PHYSICIANS WHO PERFORM MEDICAL EXPERT ACTIVITIES

1. In keeping with Mississippi statutes, court rules and decisions, administrative agency regulations, and other provisions of Mississippi law, any medical expert activity by a physician regarding a legal matter pending in a state or federal court or administrative agency in Mississippi must be performed by a physician who has a current medical license issued by Mississippi or another State and who has the qualifications to serve as a medical expert on the issue(s) in question by virtue of knowledge, skill, experience, training, or education.
2. The practice of any physician not licensed in Mississippi that meets the licensure and qualification requirements stated in section D(1) of these regulations shall be deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful practice, without any need for licensure verification or further requirement for licensure. In accordance with the provisions of law in Mississippi, any physician not licensed in Mississippi whose practice is deemed automatically by the Board to be authorized to include the performance of medical expert

activities as an otherwise lawful practice shall be subject to regulation by the Board regarding the physician's performance of medical expert activities.

E. PROFESSIONAL STANDARDS FOR PHYSICIANS WHO PERFORM MEDICAL EXPERT ACTIVITIES

Any physician who performs medical expert activities must:

- (1) Comply with these regulations and all applicable provisions of Mississippi law (e.g., statutes, court rules and decisions, and other administrative agency rules and regulations);
- (2) Comply with medical ethics principles and other nationally recognized professional standards regarding the performance of medical expert activities, including, but not limited to, ethics principles established by the American Medical Association and relevant medical specialty associations;
- (3) Uphold the standards of medical professionalism, especially with regard to ethical conduct and competent practice;
- (4) Be honest in all professional interactions involving his or her medical expert activities;
- (5) Avoid conflicts of interest or make efforts to minimize conflicts of interest that are unavoidable;
- (6) Give opinions and testimony that do not exceed the limits of the data or the physician's knowledge, skill, experience, training, or education;
- (7) Represent accurately his or her professional credentials and qualifications;
- (8) Avoid accepting payment for medical expert activities that is contingent on the outcome of a case;
- (9) Avoid making or using any false, fraudulent, or forged statement or document; and
- (10) Comply with the Mississippi statutes and administrative agency regulations regarding the practice of telemedicine in Mississippi, when performing medical expert activities by means of telemedicine.

F. PROFESSIONAL ACCOUNTABILITY FOR VIOLATION OF REGULATIONS

1. Any physician who performs medical expert activities, whether or not licensed to practice medicine in Mississippi, may be disciplined or otherwise held professionally accountable by the Board, upon a finding by the Board that the physician is unqualified as evidenced by behavior including, but not limited to,
 - (i) incompetent professional practice,
 - (ii) unprofessional conduct, or
 - (iii) any other dishonorable or unethical conduct likely to deceive, defraud, or harm the public.

2. Any violation of Section E of these regulations as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code Annotated (1972) Section 73-25-29(8), as amended.

G. COMPLAINT PROCEDURE, INVESTIGATION, DUE PROCESS, AND ACTIONS AVAILABLE TO THE BOARD

1. Any person who has reason to believe that any physician may have failed to comply with any part of these regulations in the performance of medical expert activities may make a complaint to the Mississippi State Board of Medical Licensure.
2. Any physician, whether or not licensed to practice medicine in Mississippi, who performs medical expert activities in the context of a legal matter regarding any person, facility, entity, or event located within the State of Mississippi may be subject to an investigation by the Mississippi State Board of Medical Licensure upon the receipt of a complaint regarding the physician's conduct or practice. Any such physician shall be afforded the due process procedures of the law and Board regulations. The Board, in its sole discretion, may refer the complaint to the medical licensure authority of another State, or to any other appropriate legal authority.
3. Any physician may request, or may be summoned by the Board, to appear before the Board at a hearing to consider the physician's compliance with these regulations. Any physician's failure to appear when summoned to a hearing may be deemed by the Board to be a waiver of the physician's due process opportunity to appear before the Board and may result in a finding by the Board that the physician is out of compliance with these regulations *in absentia*.
4. In disciplining a physician licensed to practice medicine in Mississippi or otherwise holding any physician professionally accountable pursuant to these regulations and to the statutes, rulings, and other regulations and provisions of Mississippi law, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following:
 - (1) denying, suspending, restricting, or revoking a Mississippi license to practice medicine;
 - (2) administering a public or private reprimand to a Mississippi licensed physician;
 - (3) assessing up to \$10,000 of the reasonable investigation costs expended by the Board in investigating a Mississippi licensed physician;

- (4) moving for an injunction in Chancery Court to prohibit any physician's further performance of medical expert activities;
 - (5) petitioning the Chancery Court to cite any noncompliant physician for contempt of court;
 - (6) referring the matter to another medical licensure authority or other legal authority for action regarding any physician; and,
 - (7) any other action regarding any physician that the Board may deem proper under the circumstances (e.g., issuing an advisory letter of concern; issuing a notice of warning; issuing a cease and desist notice; or adopting a resolution of disapproval of any physician's medical expert activities).
5. Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these regulations may be reported by the Board to any person or organization appropriate under the circumstances in order to enforce or comply with the law or to protect the public, including, but not limited to, the National Practitioner Data Bank, the U.S. Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services, the Federation of State Medical Boards, the medical licensure authority or state medical association in any State in which the physician is licensed to practice medicine, the American Board of Medical Specialties and any of its member specialty boards, the Mississippi Attorney General or District Attorney, the United States Attorney, any state or federal court or administrative agency, any national or state professional organization or medical specialty association, and any other appropriate person, government agency, healthcare entity, or legal authority.

H. COMPLIANCE POLICY AND EXEMPTIONS

In assuring compliance with these regulations, the duty shall be on the physician, not on the party who engaged the physician to perform medical expert activities and not on any other person or entity, to ensure that his or her medical expert activities comply with these regulations. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board that the exemption is valid.

I. NOTICE OF REGULATION OF MEDICAL EXPERT ACTIVITIES BY PHYSICIANS

At the time of an initial licensure application, and at the time of each application for a renewal of a license to practice medicine in Mississippi, all physicians shall acknowledge that they have had an opportunity to read these regulations by accessing the website of the Mississippi State Board of Medical Licensure (at internet address www.msbl.state.ms.us) or by requesting a printed copy of these regulations from the Board.

J. EFFECTIVE DATE

These regulations shall become effective on July 1, 2006.

K. REFERENCES

1. Mississippi Code Annotated Sections 11-1-61, 73-25-27, 73-25-29, 73-25-30, 73-25-33, 73-25-34, 73-25-83, 73-25-87, 73-43-11, 73-51-1, et al
2. Mississippi Rule of Evidence 702
3. "Rules, Regulations, Laws, and Policies of the Mississippi State Board of Medical Licensure." Published by the Mississippi State Board of Medical Licensure and available at internet address www.msbml.state.ms.us
4. Hall v. Hilbun, 466 So. 2d 856 (Miss. 1985)
5. Code of Medical Ethics, Current Opinions with Annotations. Published by the Council on Ethical and Judicial Affairs of the American Medical Association, 2006-07 edition.
6. "The Role of Licensing Boards in the Evaluation and Discipline of the Expert Witness." Authored by William J. Wenner, Jr., M.D., J.D. Published in the Journal of Medical Licensure and Discipline, Vol. 90, No. 3, 2004, Pp. 15-20 (collecting cases and scholarly publications)

MAY 2006

15/11/05

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
MAY 17, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
A. Wallace Conerly, M.D., Jackson

ALSO PRESENT:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

NOT PRESENT:

Dwalia S. South, M.D., Ripley, Secretary

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, May 17, 2006, at 1:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi. Since Dr. South could not attend, Dr. Conerly was asked to serve on the Executive Committee for this meeting.

Mr. Bobby Moody of Department of Medicaid had contacted Dr. Crawford and requested to appear before the Executive Committee to express concerns relative to our regulation governing utilization review. Attending with Mr. Moody were: Don Thompson, and attorneys, Jim Cox and Richard Roberson. Dr. Robert Shearin and Rebecca Askew with Health Systems of Mississippi also attended. Mr. Moody and those attending with him are against our regulation concerning utilization review and believes it will have a chilling effect if enacted. They were requesting state agencies be exempted if in fact the regulation goes into effect on July 1, 2006.

EXECUTIVE COMMITTEE MINUTES

May 17, 2006

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After a lengthy discussion, Dr. Merideth advised that he would make a motion to the Full Board on Thursday to hold in abeyance the enforcement, but not the enactment, of the **Regulations Governing Utilization Review Activities by Physicians** that is to become effective July 1, 2006, for a period not to exceed seven (7) months in order to give interested parties additional opportunity to make comments to the Board about the utilization review regulations and allow time for the Board to consider the possibility of whether amendments to the regulation are needed.

SPECIAL EXECUTIVE COMMITTEE MEETING TO DISCUSS RELATIONSHIP WITH MISSISSIPPI PROFESSIONALS HEALTH PROGRAM

The Executive Committee discussed our relationship with the Mississippi Professionals Health Program and formulated a list of questions to ask Gary Carr, M.D., Medical Director, Mississippi Professionals Health Program, who had been invited to address the Executive Committee at 03:00 p.m. The Board identified many unanswered questions relative to exactly how MPHP works, how many times a physician can relapse and be put back under contract, where and how they are funded, and who all is on their staff and board. The Executive Committee supports the program and believes that it is beneficial to physicians with behavioral and addictive problems.

PERSONAL APPEARANCE BY EDWIN GROVER EGGER, SR., M.D., GREENVILLE, MISSISSIPPI MEDICAL LICENSE NUMBER 06402

Dr. Merideth recused himself and left the room during Dr. Egger's personal appearance and discussion.

Dr. Egger joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Dr. Morgan briefly reviewed Dr. Egger's background advising that Dr. Egger began treatment with Caduceus and AA programs back in 1981, and advised that he was currently under contract with MPHP. Dr. Morgan advised that Dr. Egger was requesting to be monitored by the Board instead of remaining with MPHP. Dr. Egger addressed the Executive Committee and then answered questions from the Executive Committee members.

EXECUTIVE COMMITTEE MINUTES

May 17, 2006

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The Executive Committee deferred the decision on this matter until later in the meeting.

DR MERIDETH REJOINED THE MEETING AT 2:45 P.M.

NICHOLAS WENDELL HOWARD, M.D., RIPLEY, MISSISSIPPI MEDICAL LICENSE NUMBER 08361, LETTER FROM MPHP

Dr. Howard was not present or represented by legal counsel. Dr. Morgan covered the chronological summary and presented a letter from MPHP advising that Tennessee suspended Dr. Howard's license for six months and that he must meet certain terms and conditions for reinstatement and will be placed on probation for five years.

After discussing, Mr. Ingram advised that reasonable cause does exist and suggested that the Board offer Dr. Howard a Consent Order with the same action as Tennessee. If Dr. Howard does not agree to our Consent Order, the Board can have him personally appear for a hearing.

GANTT NICHOLSON DEJEAN, D.P.M., SALTILLO, MISSISSIPPI MEDICAL LICENSE NUMBER 80176, VOLUNTARY SUSPENSION OF PODIATRIC LICENSE

Dr. DeJean was not present or represented by legal counsel.

Mr. Ingram addressed the Executive Committee and covered Dr. DeJean's history. Mr. Ingram advised that we had received a Voluntary Suspension of Podiatric License from Dr. DeJean and that currently Dr. DeJean has submitted for treatment at the Tyler Mental Health Center in Lafayette, LA. Ms. Scott advised that Louisiana does not have an advocacy group for Podiatrists. She was asked to check into the Louisiana program through the Physicians Health Program to see if the treatment facility meets the Board's approval and advise Dr. Morgan.

LETTER FROM MISSISSIPPI DEPARTMENT OF HEALTH DATED APRIL 11, 2006, SUPPORTING OUR POSITION ON EAR STAPLING

Dr. Morgan advised that Brian Amy, M.D., MHA, MPH, had written a letter supporting MSBML's position on ear stapling. Dr. Morgan advised that all locations

EXECUTIVE COMMITTEE MINUTES

May 17, 2006

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with the exception of Appetite RX, with offices in Grenada and Southaven, were no longer in operation. Mr. Ingram advised that he was preparing an injunction to close Appetite RX.

THE EXECUTIVE COMMITTEE RECESSED AT 3:20 P.M. AND RECONVENED AT 3:30 P.M.

MEETING WITH GARY CARR, M.D., MEDICAL DIRECTOR, MPHP

Dr. Morgan advised that he and the Executive Committee had several questions that they would like for him to answer. Questions ranged from who is on their Board, if contract licensees were allowed to self prescribe, the number of relapses a physician is allowed, and information pertaining to their budget and staff. A brief discussion followed between Dr. Carr and the Executive Committee members.

After the brief question and answer session, Dr. Carr requested that MPHP be allowed to monitor HIV and hepatitis cases, add radiologist assistants to their monitoring program, and how the Board would handle a case where a physician under contract loses advocacy - what action is taken. Mr. Ingram advised that the physician would be issued reportable disciplinary action.

Several individual cases were discussed before Dr. Carr exited the meeting.

After Dr. Carr exited the meeting, further discussion continued. There were several questions raised about referrals and what is referred as the "anonymous track." Dr. Morgan requested that Mr. Ingram contact Dr. Carr for an explanation and to report back to the Executive Committee.

PERSONAL APPEARANCE BY BAYLOR JEWELL, M.D., TUPELO, APPLICANT

Ms. Freeman addressed the Executive Committee and advised that Dr. Jewell had been suspended from his residency program in Tupelo due to disruptive behavior.

Dr. Jewell joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

EXECUTIVE COMMITTEE MINUTES

May 17, 2006

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Dr. Jewell entered the meeting and Dr. Morgan introduced him to the Executive Committee members. Dr. Morgan advised that they understood that there was a lot of friction in Tupelo and could he explain the situation to the Executive Committee members.

Dr. Jewell advised that he had gotten crossways with the Residency Coordinator, but that he had not shown any outward anger problems. After a brief discussion, Dr. Jewell left the room and was advised that we would be back in contact with him.

The Executive Committee discussed the matter. Motion was made by Dr. Merideth to defer the issue until more information could be received from Tupelo and a couple of physicians involved. Dr. Conerly seconded the motion and it carried unanimously.

Mr. Ingram will also review the complete file and send Dr. Morgan his recommendations.

USMLE STEP 3 IMPACT ON RESIDENCY PROGRAM BOARD SCORES

Dr. Morgan advised that he and Ms. Freeman had met with several individuals from UMC in reference to USMLE Step 3 and also that he had received a letter from Dr. Shirley Schlessinger, Associate Dean for Graduate Medical Education at UMC relative to the matter. The main problem is that IMG students aren't allowed to take Step 3 of the USMLE after one year of residency like the U.S. graduates and it complicates their studying for their speciality. UMC wants the regulation changed to allow IMG graduates to take Step 3 after one year of residency.

After a brief discussion, it was decided to defer this matter to the Full Board on Thursday.

OTHER BUSINESS

For informational purposes, Dr. Morgan advised that a copy of Sidney Wolfe's, M.D., article and report on Public Citizen Report ranking was included in their material.

For informational purposes, Dr. Merideth discussed our **Regulations Governing Utilization Review Activities by Physicians** and made comments relative

EXECUTIVE COMMITTEE MINUTES

May 17, 2006

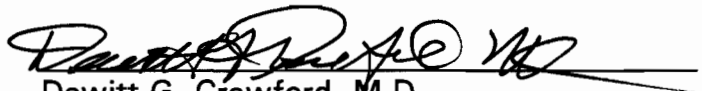
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to the oral proceeding that is on Thursday's agenda to final adopt the **Regulations Governing Medical Expert Activities by Physicians.**

After further discussion on how to proceed with Dr. Egger, it was decided to recess the meeting until 08:45 A.M. on Thursday, May 18, 2006, at which time the Executive Committee will reconvene to discuss the matter further.

ADJOURNMENT

There being no further business, the meeting recessed at 5:35 P.M. until 8:45 a.m. on Thursday, May 18, 2006.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
May 17, 2006

AGREEMENT TO APPEAR INFORMALLY

I, Edwin Grover Egger, Sr., M.D., have accepted an opportunity to appear informally before the Mississippi State Board of Medical Licensure (hereinafter "Board") or it's Executive Committee, to discuss possible disciplinary matters. It is the purpose of the informal meeting to discuss all facts pertaining to the request, to give me an opportunity to ask questions of the representatives of the Board, and to give the representatives of the Board an opportunity to ask questions of me. In agreeing to meet informally with Board representatives, I have been advised and understand the following:

1. During the meeting, the Board may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Board representatives to review and examine any statements, documentary evidence, or materials concerning all matters prompting my request for an informal appearance.
3. I agree that presentation to and consideration by the Board representatives of all facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Board representatives who may be present from further participation or consideration in the event a hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my informal appearance before the Board, I will not object to any of the Board representatives from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize and agree to to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the 17th day of May, 2006.

Ed Egger, M.D.

Witness: Janna White

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

1. Baylon Jewell, M.D. have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the _____ day of _____.

Witness:

Baylon Jewell, M.D.
Rhian Jones

**MINUTES
RECESSED EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
MAY 18, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
A. Wallace Conerly, M.D., Jackson

ALSO PRESENT:

Mallan G. Morgan, M.D., Director
Heather Wagner, Assistant Attorney General
Sherry Harris, Administrative Assistant

NOT PRESENT:

Dwalia S. South, M.D., Ripley, Secretary


The Executive Committee of the Mississippi State Board of Medical Licensure met on Thursday, May 18, 2006, at 8:45 a.m. President Dewitt Crawford reconvened the recessed meeting.

EDWIN GROVER EGGER, SR., M.D., GREENVILLE, MISSISSIPPI MEDICAL LICENSE NUMBER 06402

The Executive Committee discussed a resolution to Dr. Egger's matter and determined that the recommendation of the Executive Committee to the Board would be that MPHP continue to be responsible for monitoring Dr. Egger.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:05 a.m.



Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
May 18, 2006

BOARD MINUTES
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
MAY 18, 2006

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, May 18, 2006, in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

The following members were present:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Larry B. Aycock, M.D., McComb
Freda M. Bush, M.D., Jackson
A. Wallace Conerly, M.D., Jackson
Don A. Gibson, M.D., Richland
Joseph E. Johnston, M.D., Mount Olive

Also present:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant
Wesley Breland, Hattiesburg, Consumer Health Ad Hoc Committee
Cecil R. Burnham, Jackson, Consumer Health Ad Hoc Committee
Martha Thompson, Oxford, Consumer Health Ad Hoc Committee

Not present:

Dwalia S. South, M.D., Ripley, Secretary
William B. Harper, D.O., Greenwood

The meeting was called to order at 9:10 a.m. by Dr. Crawford, President. The invocation was given by Dr. Johnston. Dr. Crawford welcomed Harvey Rayborn, court reporter. Dr. Crawford also introduced S. Randall Easterling, M.D., Virginia M. Crawford, M.D., and William S. Mayo, D.O., as honored guests and advised that they will join the Board in July as new Board members.

BOARD MINUTES

May 18, 2006

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Dr. Morgan advised that lapel pins were at each Board members space today to thank them for their continued service to the Board. Dr. Bush was recognized for being re-elected to the Board of Directors of the Federation of State Medical Boards.

DR. GIBSON JOINED THE MEETING AT 09:15 A.M.

APPROVAL OF CERTIFICATION OF MISSISSIPPI LICENSES TO OTHER ENTITIES FOR THE PERIOD MARCH 01, 2006, THROUGH APRIL 30, 2006

Two hundred eight (208) licenses were certified to other entities for the period March 01, 2006, through April 30, 2006. Motion was made by Dr. Conerly, seconded by Dr. Johnston, and carried unanimously to approve these certifications. Dr. Morgan discussed the new breakdown on page 8 of the report.

APPROVAL OF LICENSES ISSUED FOR THE PERIOD MARCH 01, 2006, THROUGH APRIL 30, 2006

Fifty two (52) licenses were issued for the period March 01, 2006, through April 30, 2006. Motion was made by Dr. Johnston, seconded by Dr. Aycock, and carried unanimously to approved these licenses.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED MARCH 08, 2006, AND MINUTES OF THE BOARD MEETING DATED MARCH 09, 2006

Minutes of the Executive Committee Meeting dated March 08, 2006, and Minutes of the Board Meeting dated March 09 2006, were reviewed. Dr. Johnston moved for approval of the minutes as submitted. Dr. Conerly seconded the motion, and it carried unanimously.

REPORT OF MAY 17, 2006, EXECUTIVE COMMITTEE MEETING

Dr. Morgan reported on Wednesday's Executive Committee meeting. Dr. Morgan advised that Edwin G. Egger, Sr., M.D., made a personal appearance before the Executive Committee to request that he be monitored by MSBML instead of remaining under contract with Mississippi Professionals Health Program. At its recessed meeting, the decision was made to advise Dr. Egger that the Executive Committee recommends he remain under contract with MPHP.

Dr. Morgan advised that Baylor Jewell, M.D., an applicant for Mississippi licensure, made a personal appearance before the Executive Committee to discuss

BOARD MINUTES

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why he was suspended from his residency program in Tupelo due to disruptive behavior. Dr. Morgan advised that after discussing the matter, Dr. Merideth made the motion to defer the issue until more information could be received and reviewed. Dr. Conerly seconded the motion and it carried unanimously.

Dr. Morgan reported that Dr. Crawford will be assigning new committee members and chairs for the committees. We will be sending out more information to the Board members by mail.

Dr. Morgan presented other informational items, which are reflected in the Executive Committee Minutes. Motion was made by Dr. Johnston, seconded by Dr. Gibson, and carried unanimously to approve the actions of the Executive Committee.

REPORTS FROM COMMITTEES

Consumer Health - There was no new information to report.

Educational and Workforce Issues - There was no new information to report.

Scope of Practice - There was no new information to report.

Professionals Health Program - There was no new information to report.

Rules, Regulations, and Legislative - There was no new information to report.

Ethics - Dr. Merideth advised that this is a newly formed committee that replaces Utilization Review/Expert Witness. Dr. Merideth advised that Dr. Bush will be appearing on a panel with several other physicians to discuss CME/CLE (Continuing Medical Education/Continuing Legal Education) on June 30, 2006, in Jackson.

ORAL PROCEEDING CONCERNING EXPERT WITNESS

Dr. Crawford called the oral proceeding to order, and read the following statement into the record:

"We are here today to conduct an oral proceeding with regard to the adoption by the Mississippi State Board of Medical Licensure of its proposed **Regulations Governing Medical Expert Activities by Physicians**. The Notice of Proposed Rule Adoption was filed pursuant to the Administrative Procedures Act. These

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regulations are being adopted pursuant to the statutory authority found in Mississippi Code Section 73-43-11. The purpose of these regulations are to protect the public, to set professional standards, to enforce the provisions of law regarding the performance of medical expert activities by physicians in the State of Mississippi, and to further legitimize governmental purposes deemed to be in the public interest.

Each person has been provided with guidelines for the conduct of oral proceedings before the MSBML. Persons who have indicated a desire to make a presentation during this proceeding may present oral statements and/or any documentary submissions relevant to their position. The Board requests that each participant making an oral statement identify themselves and any other individuals or entities they may represent at the beginning of their presentation and give a brief statement of their position with regard to the proposed regulation. The Board request that each individual requesting to comment during the oral proceeding, to please restrict your statements and/or comments to five (5) minutes."

Dr. Merideth addressed the Board and advised that at the last Board meeting in March we had a public hearing and had a comment period for the public to speak. Dr. Merideth advised that the proposed notice of intent to adopt had been filed and that we were holding the oral proceeding today in hopes of clarifying any questions and/or problems.

Mr. Ingram addressed the Board and made comments as to the Board's position in regards to the proposed **Regulations Governing Medical Expert Activities by Physicians**. Mr. Ingram advised that since this was an oral proceeding that a court reporter was present and would be taking minutes of the oral proceeding. Mr. Ingram discussed several exhibits and had each entered into the record. After being entered into record, the exhibits were passed among the Board members for review and/or clarification.

Dr. Crawford addressed the Board and opened the floor for visitors to make any comments. The following individuals addressed the Board:

- 1) Howard T. Katz, M.D. - Dr. Katz advised that he performs expert witness work and advised that he disagrees with the proposal and offered several changes. His main concern is that everything said by physician would be interpreted as a legal opinion and complaints that would be received will become legal malpractice problems not to be filed as a complaint.

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2) Kevin Melchi, attorney with Dogan and Wilkinson in Pascagoula, Ms. - Mr. Melchi presented a copy of a letter from Mr. Wilkinson that was entered as an exhibit. Mr. Melchi advised their main concern had to do with the restrictions on foreign countries. After a brief discussion, Mr. Ingram advised that he would get with Mr. Melchi and work on terminology that would be acceptable to all involved parties.

THE BOARD RECESSED AT 10:15 A.M. AND RECONVENED AT 10:35 A.M. CECIL BURNHAM DID NOT RETURN TO THE MEETING AFTER THE BREAK

3) George M. Yoder, IV - local attorney. Mr. Yoder advised that he was against the Board finalizing and adopting the regulation. Mr. Yoder expressed concerns that it would have a "chilling effect" on medical expert witness and said he didn't believe the agency has the staff to investigate all the complaints that would be involved.

4) Michael D. Coggans - local attorney. Mr. Coggans addressed the Board and expressed concern with a potential conflict with language contained in the Board's policy on unreferral diagnostic screenings. Mr. Ingram read for the record the Board's policy covering unreferral diagnostic screenings. After a brief discussion, Mr. Ingram made a suggestion on changes to the policy on diagnostic mobile screening. After discussing, Mr. Melchi advised this change would solve the problem for his firm also.

5) Linda McMullen - General Counsel, Mississippi State Medical Association - Ms. McMullen addressed the Board and advised that MSMA supports adoption of the proposed **Regulations Governing Medical Expert Activities by Physicians**.

Dr. Crawford asked for comments from the Board members. Consumer Health Member, Mr. Breland, said that he supports the regulation and efforts of the Board.

After a brief discussion, Ms. Wagner, Assistant Attorney General, advised that we could amend and adopt the rule as amended as final today.

Dr. Merideth read and recapped the changes that had been suggested today during the oral proceeding. A copy of the agreed to changes to the **Regulations Governing Medical Expert Activities by Physicians** is attached hereto and incorporated by reference. After a brief discussion on the changes, motion was made by Dr. Merideth, seconded by Dr. Gibson, to adopt in final form the amendment to the Board's **Regulations Governing Medical Expert Activities by**

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Physicians.

Dr. Bush expressed concern and said she was not in the position to make a decision and wanted time to read and understand the changes that had been made today. Motion was made by Dr. Bush, seconded by Dr. Aycock, and carried unanimously to table the matter until later in the day in order to provide all Board members a clean copy of the changes and allow time for them to read.

A verbatim account of this proceeding was recorded by Harvey Rayborn, Court Reporter.

The oral proceeding was closed by Dr. Crawford.

PROPOSED ADOPTION OF REGULATIONS CONCERNING USE OF LASER DEVICES

Dr. Morgan covered the proposed changes that needed to be made to the definition of the use of laser devices. After a brief discussion, Dr. Merideth asked if the changes did not need to be jointly promulgated with the Board of Nursing or at least have the Scope of Practice of Committee discuss the issue further.

Delia Owens, JD,RN, Executive Director of the Board of Nursing, was present. Ms. Owens said that she feels the regulation should be jointly promulgated since it involves Nurse Practitioners and requested that the matter be tabled back to the Joint Committee to reconsider.

After discussing, motion was made by Dr. Johnston, seconded by Dr. Merideth, and carried unanimously to refer the laser regulation back to the Scope of Practice Committee. A meeting is to be scheduled, if possible, before the next Board meeting with the Joint Committee to discuss the laser regulation.

CECIL BURNHAM RE-ENTERED THE MEETING AT 11:20 A.M.

RESOLUTIONS

Dr. Crawford advised that the Board was losing three (3) members that had faithfully served the Board and he wished to recognize them for their service. Dr. Crawford presented the Resolutions to the Board members after reading them.

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Dr. Crawford read the Resolution for Dr. Freda Bush for serving as a Board member for twelve (12) years, and also serving as President for two (2) years. A copy of the Resolution is attached hereto and incorporated by reference.

Dr. Crawford read the Resolution for Dr. Joseph Johnston for serving as a Board member for twelve (12) years, and also serving as President from January 1998 to June 2002. A copy of the Resolution is attached hereto and incorporated by reference.

Dr. Crawford also recognized in absentia Dr. Dwalia South for serving as a Board member for three and one-half (3 ½) years, and serving as Secretary since July 2005. A copy of the Resolution is attached hereto and incorporated by reference.

OTHER BUSINESS

Dr. Crawford advised that the Regulations Governing Utilization Review Activities by Physicians were discussed at Wednesday's Executive Committee meeting after several comments and a request by Mr. Bobby Moody of the Department of Medicaid had contacted him requesting to appear before the Executive Committee. Dr. Crawford requested that Dr. Merideth report on Wednesday's meeting.

Dr. Merideth advised that the Regulations Governing Utilization Review had been proposed on January 19, 2006, and final adopted after the comment period on March 09, 2006. Dr. Merideth advised that after discussing the issue with the Department of Medicaid on Wednesday, May 17, 2006, that he was making a motion reflecting the position of the Executive Committee that for good cause shown by the interested parties, it would be in the best interest of the public that the Board hold in abeyance the enforcement, but not the enactment, of the Regulations Governing Utilization Review Activities by Physicians that will become effective on July 1, 2006. He also moved that the Board provide notice on its website, and to the Mississippi State Department of Health, Division of Licensure and Certification, and to other interested parties, of the Board's intention to hold in abeyance the enforcement of the Utilization Review Regulations for a period not to exceed seven (7) months (i.e., not later than January 31, 2007) in order to give interested parties an additional opportunity to make comments to the Board about the Utilization Review Regulations and for the Board to consider the possibility of whether amendments to the Regulations are needed. After a brief discussion, Dr. Bush seconded the motion. Dr. Aycok abstained from voting on this issue, but all other Board members present voted to approve the motion.

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Dr. Crawford advised that he wanted to reiterate that the regulation had already been adopted and that we were not rescinding the regulation, but only putting off the enforcement.

After further discussion, motion was made by Dr. Merideth that the Board request our Executive Director consult with our legal counsel about the contents of the Mississippi Attorney General Opinion number 93-0088 of May 18, 1993, re: Utilization Review and seek the legal counsel's guidance on whether this AG's opinion conflicts with the Regulations Governing Utilization Review Activities by Physicians that will become effective July 1, 2006, and that if the Executive Director believes that a new AG's opinion request on this issue is indicated, then the Board authorize the Executive Director to request an AG's opinion to clarify the issue. Dr. Johnston seconded the motion and it carried unanimously.

THE BOARD RECESSED AT 12:15 P.M. FOR LUNCH AND RECONVENED AT 1:15 P.M.

DR. EASTERLING AND CECIL BURNHAM DID NOT RETURN TO THE MEETING AFTER THE LUNCH BREAK

REGULATIONS GOVERNING MEDICAL EXPERT ACTIVITY BY PHYSICIANS

Mr. Ingram addressed the Board and responded to several questions relative to the Regulations Governing Medical Expert Activities by Physicians. Mr. Ingram went back over the regulation item by item.

After a brief discussion, motion was made by Dr. Merideth, seconded by Dr. Bush, and carried unanimously that this matter be removed from the table and that the Board approve them with a change to Section J by adding a repealer and that the Board adopt in final form the amendments to the Regulations Governing Medical Expert Activities by Physicians, a copy of which is attached hereto and incorporated by reference. The amended regulation will be filed with the Secretary of State under the Administrative Procedures Act.

Dr. Bush asked for an abstract Executive Summary on the portions removed from the Regulations Governing Medical Expert Activities by Physicians. Dr. Merideth advised that he will work on and present a brief synopsis of the changes to be considered at the next meeting for informational purposes.

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REPORT FROM THE NOMINATING COMMITTEE

Dr. Bush, Chair of the Nominating Committee, addressed the Board and advised that the Nominating Committee had met and wanted to report that Dr. Crawford and Dr. Merideth had agreed to serve another year in their positions since the Board was losing three (3) of its existing members in July. She also advised that Dr. Gibson had agreed to accept the position of Secretary for one (1) year.

PROPOSED ADOPTION OF REGULATIONS GOVERNING THE PRACTICE OF RADIOLOGIST ASSISTANTS

Dr. Morgan presented the proposed **Regulations Governing the Practice of Radiologist Assistants**. After a brief discussion, motion was made by Dr. Johnston, seconded by Dr. Aycock, and carried unanimously to file notice with the Secretary of State of intent to adopt the Regulations Governing the Practice of Radiologist Assistants. A copy of the proposed regulation is attached hereto and incorporated by reference. The proposed regulation will be filed with the Secretary of State under the Administrative Procedures Act.

HEARING IN THE CASE OF JASON K. MORRIS, M.D., CLARKSDALE, MISSISSIPPI MEDICAL LICENSE NUMBER 14181

Dr. Morris was not present or represented by legal counsel. His attorney, David W. Donnell, Esq., Jackson, had earlier requested a continuance due to a conflict in the date of the hearing.

Motion was made by Dr. Johnston, seconded by Dr. Aycock, and carried unanimously to grant the continuance until July 20, 2006.

USMLE STEP 3 IMPACT ON RESIDENCY PROGRAM BOARD SCORES

Dr. Morgan advised that he and Ms. Freeman had met with several individuals from UMC in reference to USMLE Step 3 and also that he had received a letter from Dr. Shirley Schlessinger, Associate Dean for Graduate Medical Education at UMC relative to the matter. Dr. Morgan advised that this matter had been discussed at the Executive Committee meeting on Wednesday. Dr. Morgan advised that the main problem is that IMG students aren't allowed to take Step 3 of the USMLE after one year of residency like the U.S. graduates do and that it complicates their studying for their speciality. Dr. Morgan advised that UMC is requesting that our regulation be changed to allow IMG graduates to take Step 3 after one year of residency.

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After a brief discussion, motion was made by Dr. Johnston, seconded by Dr. Conerly, and carried unanimously to amend our regulation so that IMG and US graduates are allowed to take Step 3 of the USMLE after one year of residency.

ADJOURNMENT

The meeting adjourned at 2:10 p.m. with the next meeting scheduled for Thursday, July 20, 2006.



Dewitt G. Crawford, M.D.

President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
May 18, 2006

NOTICE OF RULE ADOPTION—FINAL RULE

STATE OF MISSISSIPPI

Mississippi State Board of Medical Licensure

COPY FILED
MAY 19 2006
MISSISSIPPI
SECRETARY OF STATE

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority Authorizing the promulgation of
Rule: {Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule : {Insert citation to specific rule(s) repealed,
amended or suspended XXXI. Regulations Governing Medical Expert
Activities by Physicians

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

This regulation will set professional standards and enforce the provisions of current law regarding the performance of medical expert activities by physicians and related purposes.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date: May 18, 2006
Time: 9:00 a.m.
Place: 1867 Crane Ridge Drive

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

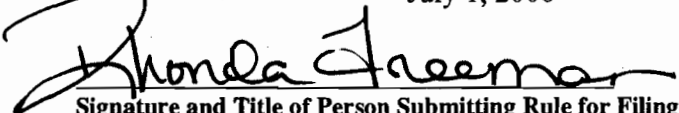
This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: July 1, 2006


Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State

From: Mississippi State Board of Medical Licensure

Date: May 19, 2006

Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule was adopted with some variance from the proposed rule. All changes are indicated with strikeouts for deleted information and underlines for new information.

XXXII. REGULATIONS GOVERNING MEDICAL EXPERT ACTIVITIES BY PHYSICIANS

A. AUTHORITY AND PURPOSE OF THESE REGULATIONS

The Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board") adopts these regulations governing medical expert activities by physicians pursuant to Chapters 25 and 43 of Title 73 of the Mississippi Code (1972) Annotated, as Amended. The Mississippi State Board of Medical Licensure finds it necessary to fulfill its statutory responsibilities by adopting these regulations in order to protect the public, to set professional standards, to enforce the provisions of law regarding the performance of medical expert activities by physicians, and to further other legitimate government purposes in the public interest.

B. SCOPE OF THESE REGULATIONS

1. These regulations apply to any physician who performs medical expert activities regarding any person, facility, or entity located within the State of Mississippi, or regarding an event alleged to have occurred within the State of Mississippi, regardless of the location, type, or status of the physician's medical expert activity, the presence or absence of the physician expert's license to practice medicine in Mississippi, the physician expert's presence or absence of a physician-patient relationship in Mississippi, the type of medical expert activity performed (e.g., oral testimony or a written statement), or the setting in which the medical expert activity is performed (e.g., a state or federal court or administrative agency).
2. No part of these regulations is intended to conflict with or supercede the authority of any state or federal court or administrative agency to designate a physician as a medical expert in a legal matter then pending before the court or agency. The Board does not intend for these regulations to conflict with or supercede the description or regulation of the function of a physician serving as an "expert" as that term is used in the Mississippi Rules of Evidence or in other provisions of law, rules, regulations, or decisions of any court or administrative agency.
3. No part of these regulations is intended to conflict with or supercede the authority of a person other than a physician to serve as an expert in a legal matter. Furthermore, the Board does not intend for these regulations to have any effect on physicians' participation in legal proceedings in a capacity other than as a medical expert.

C. DEFINITION OF MEDICAL EXPERT ACTIVITIES

For the purposes of these regulations only, the Mississippi State Board of Medical Licensure has determined that the definition of the term "medical expert activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician to

- (1) suggest or recommend to a person any medical advice or other agency (whether material or not material),
- (2) perform medical services (including, but not limited to, a physical or mental examination of a person),
- (3) conduct a review of a person's medical record,
- (4) serve as a medical consultant,
- (5) render a medical opinion concerning the diagnosis or treatment of a person,
- (6) produce a written medical expert opinion report, affidavit, or declaration, or
- (7) give testimony under oath as a medical expert at a state or federal hearing, deposition, trial, administrative agency proceeding, alternative dispute resolution proceeding, or any other legal proceeding,

regarding the medical issues in a legal matter ~~pending in Mississippi that~~ or claim for injuries that is then pending in a court or administrative agency, or which may be filed or asserted whether or not such claim ever results in a pending legal matter and which involves a person, facility, or entity located within the State of Mississippi, or an event alleged to have occurred within the State of Mississippi.

D. LICENSURE AND QUALIFICATION REQUIREMENTS FOR PHYSICIANS WHO PERFORM MEDICAL EXPERT ACTIVITIES

1. ~~In keeping with Mississippi statutes, court rules and decisions, administrative agency regulations, and other provisions of Mississippi law, Except as otherwise provided by law, rule or regulation of this State,~~ any medical expert activity by a physician regarding a legal matter pending in a state or federal court or administrative agency in Mississippi must be performed by a physician who ~~has~~ holds a current unrestricted medical license ~~issued by in~~ Mississippi, ~~or another State or foreign jurisdiction,~~ and who has the qualifications to serve as a medical expert on the issue(s) in question by virtue of knowledge, skill, experience, training, or education. This rule does not supercede the policies and regulations of the Board in regards to unrefereed diagnostic screening tests.
2. The practice of any physician not licensed in Mississippi that meets the licensure and qualification requirements stated in section D(1) of these regulations shall be deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful

practice, without any need for licensure verification or further requirement for licensure. In accordance with the provisions of law in Mississippi, any physician not licensed in Mississippi whose practice is deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful practice shall be subject to regulation by the Board regarding the physician's performance of such medical expert activities in the State of Mississippi.

E. PROFESSIONAL STANDARDS FOR PHYSICIANS WHO PERFORM MEDICAL EXPERT ACTIVITIES

Any physician who performs medical expert activities must:

- (1) Comply with these regulations and all applicable provisions of Mississippi law (e.g., statutes, court rules and decisions, and other administrative agency rules and regulations) with regard to the performance of medical expert activities;
- (2) Comply with medical ethics principles, ~~and other nationally recognized professional standards regarding the performance of medical expert activities~~, including, but not limited to, ethics principles established by the American Medical Association and relevant medical specialty associations;
- (3) ~~Uphold the standards of medical professionalism, especially with regard to ethical conduct and competent practice~~;
- (4) ~~3~~ Be honest in all professional interactions involving his or her medical expert activities;
- (5) ~~Avoid conflicts of interest or make efforts to minimize conflicts of interest that are unavoidable~~;
- (6) ~~Give opinions and testimony that do not exceed the limits of the data or the physician's knowledge, skill, experience, training, or education~~;
- (7) ~~Represent accurately his or her professional credentials and qualifications~~;
- (8) ~~4~~ Avoid accepting payment for medical expert activities that is contingent on the outcome of a case; Not accept payment for medical expert activities that is contingent upon the result or content of any medical diagnosis, opinion, advice, services, report, or review; or that is contingent upon the outcome of any case, claim, or legal matter then pending or contemplated; and
- (9) ~~5~~ Avoid making or using Not make or use any false, fraudulent, or forged statement or document; and
- (10) ~~Comply with the Mississippi statutes and administrative agency regulations regarding the practice of telemedicine in Mississippi, when performing medical expert activities by means of telemedicine.~~

F. PROFESSIONAL ACCOUNTABILITY FOR VIOLATION OF REGULATIONS

1. Any physician who performs medical expert activities, whether or not licensed to practice medicine in Mississippi, may be disciplined or otherwise held professionally accountable by the Board, upon a finding by the Board that the physician is unqualified as evidenced by behavior including, but not limited to,
 - (i) incompetent professional practice,
 - (ii) unprofessional conduct, or
 - (iii) any other dishonorable or unethical conduct likely to deceive, defraud, or harm the public.
2. Any violation of Section E of these regulations as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code Annotated (1972) Section 73-25-29(8), as amended.

G. COMPLAINT PROCEDURE, INVESTIGATION, DUE PROCESS, AND ACTIONS AVAILABLE TO THE BOARD

1. Any person who has reason to believe that any physician may have failed to comply with any part of these regulations in the performance of medical expert activities may make a complaint to the Mississippi State Board of Medical Licensure on a complaint form that is furnished by the Board.
2. Any physician, whether or not licensed to practice medicine in Mississippi, who performs medical expert activities in the context of a legal matter regarding any person, facility, entity, or event located within the State of Mississippi may be subject to an investigation by the Mississippi State Board of Medical Licensure upon the receipt of a complaint regarding the physician's conduct or practice. Any such physician shall be afforded the due process procedures of the law and Board regulations. The Board, in its sole discretion, may refer the complaint to the medical licensure authority of another State, or to any other appropriate legal authority.
3. Any physician may request, or may be summoned by the Board, to appear before the Board at a hearing to consider the physician's compliance with these regulations. Any physician's failure to appear when summoned to a hearing may be deemed by the Board to be a waiver of the physician's due process opportunity to appear before the Board and may result in a finding by the Board that the physician is out of compliance with these regulations *in absentia*.

4. In disciplining a physician licensed to practice medicine in Mississippi or otherwise holding any physician professionally accountable pursuant to these regulations and to the statutes, rulings, and other regulations and provisions of Mississippi law, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following:
 - (1) denying, suspending, restricting, or revoking a Mississippi license to practice medicine;
 - (2) administering a public or private reprimand to a Mississippi licensed physician;
 - (3) assessing up to \$10,000 of the reasonable investigation costs expended by the Board in investigating a Mississippi licensed physician;
 - (4) moving for an injunction in Chancery Court to prohibit any physician's further performance of medical expert activities;
 - (5) petitioning the Chancery Court to cite any noncompliant physician for contempt of court;
 - (6) referring the matter to another medical licensure authority or other legal authority for action regarding any physician; and,
 - (7) any other action regarding any physician that the Board may deem proper under the circumstances (e.g., issuing an advisory letter of concern; issuing a notice of warning; issuing a cease and desist notice; or adopting a resolution of disapproval of any physician's medical expert activities).

5. Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these regulations may be reported by the Board to any person or organization appropriate under the circumstances in order to enforce or comply with the law or to protect the public, including, but not limited to, the National Practitioner Data Bank, the U.S. Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services, the Federation of State Medical Boards, the medical licensure authority or state medical association in any State in which the physician is licensed to practice medicine, the American Board of Medical Specialties and any of its member specialty boards, the Mississippi Attorney General or District Attorney, the United States Attorney, any state or federal court or administrative agency, any national or state professional organization or medical specialty association, and any other appropriate person, government agency, healthcare entity, or legal authority.

H. COMPLIANCE POLICY AND EXEMPTIONS

In assuring compliance with these regulations, the duty shall be on the physician, not on the party who engaged the physician to perform medical expert activities and not on any other person or entity, to ensure that his or her medical expert

activities comply with these regulations. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board that the exemption is valid.

I. NOTICE OF REGULATION OF MEDICAL EXPERT ACTIVITIES BY PHYSICIANS

At the time of an initial licensure application, and at the time of each application for a renewal of a license to practice medicine in Mississippi, all physicians shall acknowledge that they have had an opportunity to read these regulations by accessing the website of the Mississippi State Board of Medical Licensure (at internet address www.msbml.state.ms.us) or by requesting a printed copy of these regulations from the Board.

J. EFFECTIVE DATE AND REPEALER

These regulations shall become effective on July 1, 2006. Unless re-adopted by the Board, these regulations shall be repealed automatically and shall cease to be effective on June 30, 2010.

K. REFERENCES

1. Mississippi Code Annotated Sections 11-1-61, 73-25-27, 73-25-29, 73-25-30, 73-25-33, 73-25-34, 73-25-83, 73-25-87, 73-43-11, 73-51-1, et al
2. Mississippi Rule of Evidence 702
3. "Rules, Regulations, Laws, and Policies of the Mississippi State Board of Medical Licensure." Published by the Mississippi State Board of Medical Licensure and available at internet address www.msbml.state.ms.us
4. Hall v. Hilbun, 466 So. 2d 856 (Miss. 1985)
5. Code of Medical Ethics, Current Opinions with Annotations. Published by the Council on Ethical and Judicial Affairs of the American Medical Association, 2006-07 edition.
6. "The Role of Licensing Boards in the Evaluation and Discipline of the Expert Witness." Authored by William J. Wenner, Jr., M.D., J.D. Published in the Journal of Medical Licensure and Discipline, Vol. 90, No. 3, 2004, Pp. 15-20 (collecting cases and scholarly publications)

RESOLUTION

WHEREAS, Freda McKissic Bush, M.D., Jackson, Mississippi, faithfully and conscientiously served the Mississippi State Board of Medical Licensure as a member for twelve years; and

WHEREAS, Dr. Bush served as President of the Mississippi State Board of Medical Licensure from July, 2000, to July, 2002; and

WHEREAS, Dr. Bush discharged her duties with firmness, dignity and compassion, always in keeping with the intent of the Medical Practice Act and Rules and Regulations of this Board, and thereby working to the great benefit of the Board and citizens of the State of Mississippi; and


WHEREAS, during her years of service Dr. Bush continually and graciously gave her efforts, time and abilities toward maintaining the highest standard of medical practice for which the State of Mississippi is noted;


THEREFORE, BE IT RESOLVED, that the Mississippi State Board of Medical Licensure, on behalf of the Board and the people of the State of Mississippi, by means of this resolution, express to Dr. Bush its gratitude and appreciation for her services during the years she devoted to the Board and the State of Mississippi; and

BE IT FURTHER RESOLVED, that a copy of this resolution be spread upon the minutes of the Board and a copy be given to Dr. Bush expressing to her the highest esteem of the Board.


DATED, this the eighteenth day of May, 2006.


Dewitt G. Crawford, M.D., President


Philip T. Merideth, M.D., J.D., Vice President

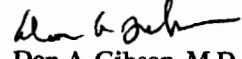

Dwalia S. South, M.D., Secretary

ATTEST:


Mallan G. Morgan, M.D.
Executive Officer


Larry B. Aycock, M.D.


A. Wallace Conerly, M.D.


Don A. Gibson, M.D.


William B. Harper, D. O.


Joseph E. Johnston, M.D.

RESOLUTION

WHEREAS, Joseph E. Johnston, M.D., Mount Olive, Mississippi, faithfully and conscientiously served the Mississippi State Board of Medical Licensure as a member for twelve years; and

WHEREAS, Dr. Johnston served as President of the Mississippi State Board of Medical Licensure from January, 1998, to June, 2002; and


WHEREAS, Dr. Johnston discharged his duties with firmness, dignity and compassion, always in keeping with the intent of the Medical Practice Act and Rules and Regulations of this Board, and thereby working to the great benefit of the Board and citizens of the State of Mississippi; and

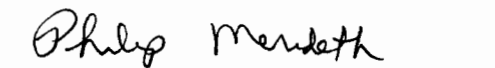
WHEREAS, during his years of service Dr. Johnston continually and graciously gave his efforts, time and abilities toward maintaining the highest standard of medical practice for which the State of Mississippi is noted;


THEREFORE, BE IT RESOLVED, that the Mississippi State Board of Medical Licensure, on behalf of the Board and the people of the State of Mississippi, by means of this resolution, express to Dr. Johnston its gratitude and appreciation for his services during the years he devoted to the Board and the State of Mississippi; and

BE IT FURTHER RESOLVED, that a copy of this resolution be spread upon the minutes of the Board and a copy be given to Dr. Johnston expressing to him the highest esteem of the Board.


DATED, this the eighteenth day of May, 2006.


Dewitt G. Crawford, M.D., President

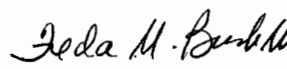

Philip T. Merideth, M.D., J.D., Vice President


Dwalia S. South, M.D., Secretary

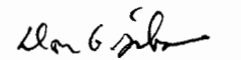
ATTEST:

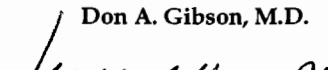

Mallan G. Morgan, M.D.
Executive Officer


Larry B. Aycock, M.D.


Freda M. Bush, M.D.


A. Wallace Conerly, M.D.


Don A. Gibson, M.D.


William B. Harper, D.O.

RESOLUTION

WHEREAS, Dwalia S. South, M.D., Ripley, Mississippi, faithfully and conscientiously served the Mississippi State Board of Medical Licensure as a member for three and one-half years; and

WHEREAS, Dr. South served as Secretary of the Mississippi State Board of Medical Licensure from July, 2005, to present; and

WHEREAS, Dr. South discharged her duties with firmness, dignity and compassion, always in keeping with the intent of the Medical Practice Act and Rules and Regulations of this Board, and thereby working to the great benefit of the Board and citizens of the State of Mississippi; and


WHEREAS, during her years of service Dr. South continually and graciously gave her efforts, time and abilities toward maintaining the highest standard of medical practice for which the State of Mississippi is noted;


THEREFORE, BE IT RESOLVED, that the Mississippi State Board of Medical Licensure, on behalf of the Board and the people of the State of Mississippi, by means of this resolution, express to Dr. South its gratitude and appreciation for her services during the years she devoted to the Board and the State of Mississippi; and

BE IT FURTHER RESOLVED, that a copy of this resolution be spread upon the minutes of the Board and a copy be given to Dr. South expressing to her the highest esteem of the Board.


DATED, this the eighteenth day of May, 2006.


Dewitt G. Crawford, M.D., President


Philip T. Merideth, M.D., J.D., Vice President


Larry B. Aycock, M.D.

ATTEST:


Mallan G. Morgan, M.D.
Executive Officer


Freda M. Bush, M.D.


A. Wallace Conerly, M.D.


Don A. Gibson, M.D.


William B. Harper, D.D.


Joseph E. Johnston, M.D.

NOTICE OF PROPOSED RULE ADOPTION

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

COPY FILED
MAY 19 2006
MISSISSIPPI
SECRETARY OF STATE

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority authorizing the promulgation of Rule: {Insert citation to state or federal statute, or rule Section 73-43-11}

Reference to Rules repealed, amended or suspended by the Proposed Rule :{ Insert citation to specific rule(s) repealed, amended or suspended XXX. Regulations Governing The Practice of Radiologist Assistants }

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: {Insert here}
The purpose of these regulations are to protect the public, to set professional standards, and to enforce the provisions of law regarding the practice of radiologist assistants.

This rule is proposed as a Final Rule, and/or a Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

An oral proceeding is scheduled on this rule on Date: _____ Time: _____
Place: _____

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least _____ day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

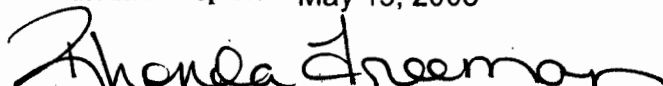
Economic Impact Statement: Check one box below:

The agency has determined that an economic impact statement is not required for this rule, or
 The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: May 19, 2006

Proposed Effective Date of Rule: Upon Adoption



Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: May 19, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

The attached proposed rule will enforce the provisions of current law regarding the practice of radiologist assistants.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XXX. REGULATIONS GOVERNING THE PRACTICE OF RADIOLOGIST ASSISTANTS

A. SCOPE

1. The following regulations pertain to radiologist assistants performing any x-ray procedure or operating any x-ray equipment in a physician's office.
2. The radiologist assistant shall evaluate the day's schedule of procedures with the supervising radiologist and determine where the radiologist assistant's skills will be best utilized.
3. After demonstrating competency the radiologist assistant when ordered to do so by the supervising radiologist may:
 - a. perform selected procedures under the direct supervision of a radiologist including static and dynamic fluoroscopic procedures;
 - b. assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures;
 - c. evaluate image quality, make initial image observations and communicate observations of image quality to the supervising radiologist; and
 - d. administer intravenous contrast media or other prescribed medications.
4. The radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.
5. The radiologist assistant shall adhere to the code of ethics of the American Registry of Radiologic Technologists and to national, institutional and/or departmental standards, policies and procedures regarding the standards of care for patients.

B. DEFINITIONS

1. A.R.R.T. - American Registry of Radiologic Technologists.
2. Full Certification - Certification obtained by submitting certification issued by the A.R.R.T.
3. Radiologist - A physician licensed by the Mississippi State Board of Medical Licensure who is certified or eligible to be certified by the

American Board of Radiology.

4. Radiologist Assistant Certification - Certification obtained by submitting proof of A.R.R.T. certification as a radiologist assistant which will enable the holder to perform any and all radiologist assistant procedures or functions as defined in Section C below in a radiology practice or radiologist's office.
5. Direct Supervision - The radiologist must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of all procedures. "Direct supervision" does not mean that the supervising radiologist must be present in the room when the procedure is performed.

C. QUALIFICATIONS FOR LICENSURE

1. Applicants for radiologist assistant licensure must be graduates of a radiologist assistant education program accredited by the American Registry of Radiologic Technologists, passed the radiologist assistant examination provided by the A.R.R.T., have current and unencumbered registration as a radiologic technologist with the Mississippi State Department of Health, have current certification in advanced cardiac life support (ACLS), and meet the following additional requirements:
 - a. Satisfies the Board that he is at least twenty-one (21) years of age and of good moral character.
 - b. Submits an application for license on a form supplied by the Board, completed in every detail with a recent photograph (wallet-size/passport type) attached. A Polaroid or informal snapshot will not be accepted.
 - c. Pays the appropriate fee as determined by the Board.
 - d. Presents a certified copy of birth certificate.
 - e. Proof of legal change of name if applicable (notarized or certified copy of marriage or other legal proceeding).
 - f. Provide information on registration or licensure in all other states where the applicant is or has been registered or licensed as a radiologist assistant.
 - g. Must have favorable references from two (2) physicians licensed in the United States with whom the applicant has worked or trained.

- h. No basis or grounds exist for the denial of licensure as provided at Article J below.

Radiologist assistants meeting these licensure requirements will be eligible for license renewal so long as they meet standard renewal requirements.

D. SUPERVISION

The employing radiologist(s), or a radiologist designated by the employing physician(s) as a substitute supervisor, shall exercise supervision and assume full control and responsibility for the services provided by any person practicing as a radiologist assistant employed in the radiologist's practice. Any services being provided by a radiologist assistant must be performed at either the physical location of the radiologist's primary medical practice or any healthcare facility where the supervising radiologist holds staff privileges.

E. DUTY TO NOTIFY BOARD OF CHANGE OF ADDRESS

Any radiologist assistant who is licensed or receives a license to practice as a radiologist assistant in this state and thereafter changes his practice location from what was noted in the application upon which he received a license, shall immediately notify the Board in writing of the change of location. Failure to notify within 30 days could result in disciplinary action.

F. CONTINUING EDUCATION

1. Biennially attend and complete twenty-four (24) hours of radiological related continuing education courses sponsored or approved by any of the following organizations:
 - a. Mississippi Society of Radiologic Technologists
 - b. Mississippi Radiological Society
 - c. Mississippi Medical Association
 - d. American Medical Association
 - e. American Society of Radiologic Technologists
 - f. American Registry of Radiologic Technologists
 - g. American College of Radiology

G. IDENTIFICATION

1. The supervising physician shall be responsible to ensure that any radiologist assistant under his supervision does not advertise or otherwise hold himself out in any manner which would tend to mislead the general public or patients. Radiologist assistants shall at all times when on duty wear a name tag, placard or plate identifying themselves as radiologist assistants.
2. Radiologist assistants may not advertise in any manner which implies that the radiologist assistant is an independent practitioner.
3. A person not licensed as a radiologist assistant by the Board who holds himself out as a radiologist assistant is subject to the penalties applicable to the unlicensed practice of medicine.

H. PHYSICIAN LIABILITY

Prior to the supervision of a radiologist assistant, the physician's and/or radiologist assistant's insurance carrier must forward to the Board a Certificate of Insurance.

I. RENEWAL SCHEDULE

1. The license of every person licensed to practice as a radiologist assistant in the State of Mississippi shall be renewed annually.
2. On or before May 1 of each year, the State Board of Medical Licensure shall mail an application for renewal of license to every radiologist assistant to whom a license was issued or renewed during the current licensing year. The applicant shall complete the application and return it to the Board before June 30 and the renewal fee of an amount established by the Board. The payment of the annual license renewal fee shall be optional with all radiologist assistants over the age of seventy (70) years. Upon receipt of the application and fee, the Board shall verify the accuracy of the application and issue to applicant a certificate of renewal for the ensuing year, beginning July 1 and expiring June 30 of the succeeding calendar year. Such renewal shall render the holder thereof a licensed radiologist assistant as stated on the renewal form.
3. A radiologist assistant practicing in Mississippi who allows his license to lapse by failing to renew the license as provided in Subsection 2 may be reinstated by the Board on satisfactory explanation for such failure to renew, by completion of a reinstatement form, and upon payment of the

renewal fee for the current year, and shall be assessed a fine of Twenty-five Dollars (\$25.00) plus an additional fine of Five Dollars (\$5.00) for each month thereafter that the license renewal remains delinquent.

4. Any radiologist assistant not practicing in Mississippi who allows his license to lapse by failing to renew the license as provided in Subsection 2 may be reinstated by the Board on satisfactory explanation for such failure to renew, by completion of a reinstatement form, and upon payment of the arrearage for the previous five (5) years and the renewal fee for the current year.
5. Any radiologist assistant who allows his license to lapse shall be notified by the Board within thirty (30) days of such lapse.
6. Any person practicing as a radiologist assistant during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the same penalties as provided at Mississippi Code (1972) Annotated, Section 73-25-14.

J. DISCIPLINARY PROCEEDINGS

1. GROUNDS FOR DISCIPLINARY ACTION AGAINST RADIOLOGIST ASSISTANTS

For the purpose of conducting disciplinary actions against individuals licensed to practice as radiologist assistants, the Board hereby incorporates those grounds for the non-issuance, suspension, revocation, or restriction of a license or the denial of reinstatement or renewal of a license, as set forth in Mississippi Code (1972) Annotated, Sections 73-25-29 and 73-25-83. As a basis for denial, suspension, revocation or other restriction, the Board may initiate disciplinary proceedings based upon any one or more of those grounds as set forth in Sections 73-25-29 and 73-25-83, and may make provision for the assessment of costs as provided therein.

2. HEARING PROCEDURE AND APPEALS

No individual shall be denied a license or have his license suspended, revoked or restriction placed thereon, unless the individual licensed as a radiologist assistant has been given notice and opportunity to be heard. For the purpose of notice, disciplinary hearings and appeals, the Board hereby adopts and incorporates by reference all provisions of the "Rules of Procedure" now utilized by the Board for those individuals licensed to practice medicine, osteopathic medicine, and podiatric medicine in the State of Mississippi.

3. REINSTATEMENT OF LICENSE

- a. A person whose license to practice as a radiologist assistant has been revoked, suspended, or otherwise restricted may petition the Mississippi State Board of Medical Licensure to reinstate his license after a period of not less than one (1) year has elapsed from the date of the revocation or suspension. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Sections 93-11-157 or 93-11-163, as the case may be.
- b. The petition shall be accompanied by two (2) or more verified recommendations from physicians or osteopaths licensed by the Board of Medical Licensure to which the petition is addressed and by two (2) or more recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed and such facts as may be required by the Board of Medical Licensure.

The petition may be heard at the next regular meeting of the Board of Medical Licensure but not earlier than thirty (30) days after the petition was filed. No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which he is under probation or parole. The hearing may be continued from time to time as the Board of Medical Licensure finds necessary.

- c. In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, which should be imposed if the disciplinary penalty is set aside, the Board of Medical Licensure may investigate and consider all activities of the petitioner since the disciplinary action was taken against him, the offense for which he was disciplined, his activity during the time his certificate was in good standing, his general reputation for truth, professional ability and good character; and it may require the petitioner to pass an oral examination.

K. IMPAIRED RADIOLOGIST ASSISTANTS

1. For the purpose of the Mississippi Disabled Physician Law, Mississippi Code (1972) Annotated, Sections 73-25-51 to 73-25-67, any individual licensed to practice as a radiologist assistant, shall be subject to restriction, suspension, or revocation, in the case of disability by reason of one or

more of the following:

- a. mental illness;
 - b. physical illness, including but not limited to deterioration through the aging process, or loss of motor skills; and/or
 - c. excessive use or abuse of drugs, including alcohol.
2. If the Board has reasonable cause to believe that a radiologist assistant is unable to practice with reasonable skill and safety to patients because of one or more of the conditions described above, referral of the radiologist assistant shall be made, and action taken, if any, in the manner as provided in Sections 73-25-55 through 73-25-65, including referral to the Mississippi Recovering Physicians Program, sponsored by the Mississippi State Medical Association.

L. EFFECTIVE DATE OF REGULATIONS

The above rules and regulations pertaining to the Practice of Radiologist Assistants shall become effective upon adoption.

JUNE 2006

EVERY

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
JUNE 29, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary Elect

ALSO PRESENT:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Leslie Ross, Investigator, Investigative Division

The Executive Committee of the Mississippi State Board of Medical Licensure met on Thursday, June 29, 2006, at 1:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

REGULATIONS GOVERNING UTILIZATION REVIEW ACTIVITIES BY PHYSICIANS

Heather Wagner, Assistant Attorney General, addressed the Executive Committee regarding a meeting she attended along with the AG representative for Medicaid and Attorney General Jim Hood. Attorney General Hood urges the Board and Medicaid to get together and come to a consensus regarding the Utilization Review regulation. He also suggested that Medicaid submit a letter to the Board addressing their specific concerns.

Mrs. Wagner presented several courses of action which the Board may pursue. After a brief discussion, Dr. Merideth made a motion, seconded by Dr. Gibson, that the Board enact a temporary rule under the authority of Mississippi Code Section 25-43-3.108, to become effective immediately as permitted by Section 25-43-3.113(d), to delay the July 1, 2006, effective date of Section XXXI of its rules and regulations, specifically, the **Regulations Governing Utilization Review Activities by Physicians**, until January 31, 2007, due to recent development and the receipt of new information, and further because of alleged imminent peril to public health which may result from allowing the Regulation to go

EXECUTIVE COMMITTEE MINUTES

June 29, 2006

Page 2

into effect on July 1, 2006. The delay will give interested parties additional opportunity to submit comments or suggestions for possible amendments to the Regulation prior to its going into effect and will give the Board an opportunity to consider amending or rescinding the current regulation or adopting a new regulation. The motion carried unanimously.

BAYLOR JEWELL, M.D., TUPELO, MISSISSIPPI, APPLICANT

Dr. Morgan advised that Dr. Jewell appeared at the May 17, 2006, Executive Committee meeting and answered questions regarding his application for permanent medical licensure. In follow-up to the May 17 meeting, Mr. Ingram reviewed Dr. Jewell's application and was to give his recommendation.

Mr. Ingram advised that the Board could request Dr. Jewell to sign a consent order reiterating the conditions set forth in his recovery contract. After a brief discussion, it was the consensus of the Committee to approve Dr. Jewell for an unrestricted permanent medical license; however, Dr. Jewell will be sent a letter indicating that if he has any problems, he will have to appear before the Board.

OTHER BUSINESS

Dr. Morgan discussed implementing a procedure that would allow the Executive Director to meet with physicians who need to be confronted regarding minor issues. These physicians do not warrant a meeting before the Executive Committee or Full Board. The minor issues will be addressed with these physicians in person and a follow-up letter will be forwarded to the physician. If in the future the physician has difficulties, the letter can be presented as a prior warning.

Dr. Merideth requested that there be a review of one of the questions on the Board's applications for licensure. The question, "**Have you ever been diagnosed as having, or have you ever been treated for, pedophilia, exhibitionism or voyeurism, bipolar disorder, sexual disorder, schizophrenia, paranoia or other psychiatric disorder**"? may need to be broken down to several separate questions along with some wording modifications. Recommendations will be presented at a future meeting.

EXECUTIVE COMMITTEE MINUTES

June 29, 2006

Page 3

ADJOURNMENT

There being no further business, the meeting adjourned at 2:13 p.m., with the next Executive Committee meeting scheduled for 1:00 p.m. on Wednesday, July 19, 2006.



Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Rhonda Freeman, CPM
Division Director, II
June 29, 2006

JULY 2006

LIBRARY

MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
July 19, 2006

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary Designate

ALSO PRESENT:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, July 19, 2006, at 1:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

**DISCUSSION OF REGULATIONS GOVERNING UTILIZATION REVIEW BY
PHYSICIANS WITH REPRESENTATIVES OF THE MISSISSIPPI STATE
DEPARTMENT OF HEALTH**

The Executive Committee met with representatives from the Mississippi State Department of Health (MSDH), including Vickey Maddox, R.N., Director of the Division of Licensure; Jim Craig, Director of Health Protection; Rick Moore, Special Assistant Attorney General, Mississippi State Department of Health; and Marilynn Winborne, Director of Health Facilities. The purpose of the meeting was to discuss the roles of the respective Boards in the regulation of utilization review organizations and the regulation of the conduct of physicians who perform utilization review medical consultation activities. The participants in this meeting discussed various aspects of utilization review, physician conduct, and regulatory issues. During the meeting, the MSDH representatives confirmed the following points:

EXECUTIVE COMMITTEE MINUTES

July 19, 2006

Page 2

1. The MSDH regulates only the business activities of utilization review organizations pursuant to the statutory authority of Mississippi Code Annotated (1972) Section 41-83-1 et seq.
2. The MSDH does not have the statutory authority, regulations, resources, or expertise to regulate physician conduct regarding the performance of utilization review medical consultation activities.
3. The MSBML's regulation of physician conduct in the performance of utilization review medical consultation activities has no effect on and does not conflict with the MSDH's ability to regulate utilization review organizations.
4. The MSDH looks to the MSBML to regulate all forms of physician conduct and will continue to refer to the MSBML all issues related to the conduct of physicians.
5. The MSDH agrees with the MSBML's position that the language of Mississippi Code Annotated (1972) Section 41-83-31 (a) that limits the MSBML's authority to discipline a physician based solely on the fact of an adverse determination in a particular case does not preempt the Board's authority to regulate the conduct of physicians who perform utilization review medical consultation activities or to investigate and discipline or otherwise hold accountable a physician regarding the underlying conduct involved in making an adverse determination.

After the conclusion of the meeting with the representatives from MSDH, the Executive Committee discussed sending a letter to MSDH to confirm the MSBML's understanding of the matters discussed during the meeting as noted above and to confirm the Board's belief that the letter written by Sanford Horton dated November 16, 2005, no longer represents the position of the MSDH with reference to the MSBML's authority to enact and enforce regulations regarding the conduct of physicians who perform utilization review medical consultation activities, and authorized the Executive Director to draft and send the letter.

PERSONAL APPEARANCE BY OLGA OSTROVSKY, M.D., MADISON, MISSISSIPPI MEDICAL LICENSE NUMBER 17633

Dr. Ostrovsky joined the meeting but was not represented by legal counsel. She executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

EXECUTIVE COMMITTEE MINUTES

July 19, 2006

Page 3

Dr. Morgan introduced Dr. Ostrovsky and advised the Executive Committee that he had requested Dr. Ostrovsky appear before the Executive Committee to discuss a non-disciplinary issue. Dr. Ostrovsky addressed the Executive Committee and then answered questions from the members. No action was taken by the Executive Committee.

PERSONAL APPEARANCE BY MICHAEL M. FOX, M.D., MEMPHIS, APPLICANT

Dr. Fox joined the meeting but was not represented by legal counsel. He would not sign the written agreement for this informal meeting due to the fact that his attorney was not present and also he is currently involved in a legal matter and did not want to sign the form. Mr. Ingram, Complaint Counsel for the Board, covered the contents of the form entitled, "Agreement To Appear Informally Before Executive Committee", with Dr. Fox and questioned if he would have a problem with the three (3) members of the Executive Committee participating in the event a hearing before the Full Board was the decision from the meeting today. Dr. Fox said that he would pose no objection, with that understanding, Mr. Ingram advised that it would be permissible to discuss the matter of his application with Dr. Fox.

Dr. Morgan requested that Dr. Fox address the Executive Committee and explain the problems with two (2) hospitals that had been discovered during his application process. Dr. Fox addressed the Executive Committee and then answered questions from the members.

After a brief discussion, motion was made by Dr. Gibson, seconded by Dr. Merideth, and carried unanimously to grant Dr. Fox an unrestricted medical license.

PERSONAL APPEARANCE BY JAMES H. TURNER, M.D., MINNETONKA, MN, MISSISSIPPI MEDICAL LICENSE NUMBER 18741

Dr. Turner joined the meeting and was represented by legal counsel, Jeff Moore. Dr. Turner had executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Ms. Freeman addressed the Executive Committee and advised that during Dr. Turner's renewal process he answered no to question #26, "have you ever been arrested, other than minor traffic citations?" When in fact that response was incorrect. Dr. Turner addressed the Executive Committee and explained the situation. Dr. Turner advised that he uses a contract company that renews his licenses since he is licensed in numerous states and they answered no to the

EXECUTIVE COMMITTEE MINUTES

July 19, 2006

Page 4

question. Dr. Turner advised that he was responsible because he did not double check their information. After a brief discussion, the Executive Committee decided no action was necessary in the matter.

PERSONAL APPEARANCE BY EDWIN E. SEARCY, M.D., CLEVELAND, MISSISSIPPI MEDICAL LICENSE NUMBER 06885

Dr. Searcy joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

PERSONAL APPEARANCE BY SCOTT NELSON, M.D., CLEVELAND, MISSISSIPPI MEDICAL LICENSE NUMBER 12527

Dr. Nelson joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Dr. Searcy and Dr. Nelson appeared together before the Executive Committee since they were both appearing due to problems encountered with a Nurse Practitioner, Jacqualine S. Harris. Ms. Harris had been arrested for obtaining a controlled substance by fraudulent means and surrendered her license to the Board of Nursing.

Dr. Searcy was to be the primary supervising physician, while Dr. Nelson was a backup. Dr. Searcy advised that he and Ms. Harris had only had one (1) meeting to review charts and other items of the protocol. Dr. Nelson advised that he had not had any meetings with Ms. Harris, but was having meetings with nurse practitioners where he was the primary supervising physician.

Both physicians were questioned by the Executive Committee members and Dr. Searcy was advised that he did not perform his job in an acceptable manner. Dr. Searcy advised the Executive Committee that he would no longer be a supervising physician for nurse practitioners. After a brief discussion of the responsibilities taken when signing the protocol to supervise, the Executive Committee decided not to take any action.

EXECUTIVE COMMITTEE MINUTES

July 19, 2006

Page 5

**PERSONAL APPEARANCE BY CARLOS FORRESTER, M.D., PASCAGOULA,
MISSISSIPPI MEDICAL LICENSE NUMBER 13835**

Dr. Forrester joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Dr. Forrester had written a letter requesting the restrictions placed on his license on May 16, 2005, be terminated so that his DEA could be reinstated. Charles Ware, Board Investigator, addressed the Executive Committee and briefly recapped Dr. Forrester's past history and advised that Dr. Forrester had violated a non disciplinary, non-reportable agreement regarding prescribing controlled substances.

Dr. Forrester addressed the Executive Committee and explained the circumstances and then answered questions before exiting the meeting.

After a brief discussion, motion was made by Dr. Merideth, seconded by Dr. Gibson, and carried, to offer Dr. Forrester a Consent Order that would indefinitely suspend his license, with the suspension stayed. In addition, the Order would contain certain terms and conditions that would be placed on his license. A copy of the Consent Order is attached hereto and incorporated by reference.

**LYNDA GWEN LEE, M.D., MCCOMB, MISSISSIPPI MEDICAL LICENSE NUMBER
05288, AGREEMENT NOT TO RENEW MEDICAL LICENSE**

For informational purposes only, Dr. Morgan advised that Lynda Gwen Lee, M.D., had signed an agreement not to renew her medical license. A copy of the agreement is attached hereto and incorporated by reference.

**MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE VS PAMELA SNELL,
INDIVIDUALLY AND D/B/A/ APPETITE RX OF MISSISSIPPI, LLC, INJUNCTION**

For informational purposes only, Dr. Morgan advised that MSBML had filed a permanent injunction against Pamela Snell, individually and d/b/a Appetite Rx of Mississippi, LLC. A court date was set and several days prior her attorneys advised that she did not wish to pursue the case further and agreed not to practice ear stapling in the State of Mississippi. An agreed order was signed to that effect and presented to the presiding Judge for his approval. The investigators are following up on leads about any clinics still in operation.

EXECUTIVE COMMITTEE MINUTES

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**DISCUSS MEMORANDUM OF UNDERSTANDING FOR MISSISSIPPI
PROFESSIONALS HEALTH PROGRAM**

Gary D. Carr, M.D., Medical Director, MPHP, entered the meeting to discuss possible changes to the current Memorandum of Understanding. After a brief discussion, it was decided that this matter should be referred to the Professional Health Program Committee to work on the necessary changes in conjunction with Dr. Carr and Ms. Linda McMullen, General Counsel, Mississippi State Medical Association.

LETTER FROM CITIZEN ADVOCACY CENTER DATED JUNE 15, 2006

For informational purposes only, a letter dated June 15, 2006, from the Citizen Advocacy Center was discussed. After a brief discussion, it was decided not to pursue the matter at this time.

OTHER BUSINESS

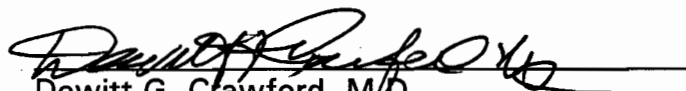
Ms. Freeman addressed the Executive Committee and advised that the Budget for FY08 was due August 1. Basically, the budget is for the same request as last year; however, it seems that we are short approximately \$600,000.00. After discussing the matter, the suggestion was made to increase licensure renewals to \$200.00 across the board. The Executive Committee referred the matter to the Full Board meeting on Thursday.

REVIEW OF JULY 20, 2006, BOARD AGENDA

Dr. Morgan briefly reviewed the agenda for Thursday's Board meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 4:40 p.m., with the next Executive Committee meeting scheduled for August 23, 2006, at 2:00 p.m.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
July 19, 2006

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

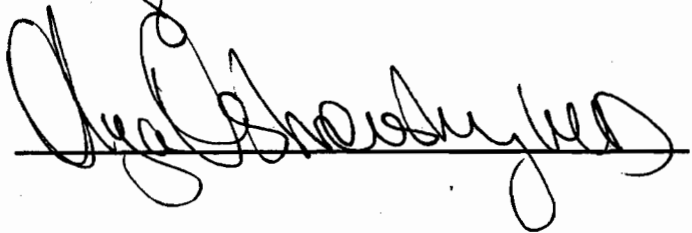
I, Olga Ostrovsky, M.D. _____, have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

_____ with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the 19 day of July, 2006.



Witness: Jenna White

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, James H. Turner, M.D. _____, have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: Jeff Moore)
 without legal counsel present

EXECUTED, this the 19th day of July, 2006.

James H. Turner

Witness: Janna White

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, Edwin Earl Searcy, M.D. _____, have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the 19 day of July, 2006.

Edwin Earl Searcy, M.D.

Witness:

Janna White

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE


I, Carlos Forrester, M.D., have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the 19th day of July, 2006.



Witness Janna White

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

CARLOS FORRESTER, M.D.

CONSENT ORDER

WHEREAS, Carlos Forrester, M.D., hereinafter referred to as "Licensee," is the current holder of License No. 13835 to practice medicine in the State of Mississippi;

WHEREAS, on May 16, 2005 Licensee entered into a non-disciplinary letter agreement with the Mississippi State Board of Medical Licensure, hereinafter referred to as "Board," thereby restricting his privileges to prescribe controlled substances in schedules II and III, and agreeing to complete a Board approved continuing education course in the administering, prescribing and handling of controlled substances or other drugs having addiction-forming or addiction-sustaining liability;

WHEREAS, following acceptance of the aforementioned letter agreement, the Board received evidence indicating that Licensee continued to prescribe controlled substances in the prohibited schedules, such conduct constituting a violation of a stipulation or agreement with the Board; and administering, dispensing or prescribing of an narcotic drug otherwise than in the course of legitimate professional practice, all in violation of Mississippi Code Annotated Sections 73-25-29(3) and (13);

WHEREAS, such conduct, if established in a due process hearing before the Board, would constitute grounds for which the Mississippi State Board of Medical Licensure may place Licensee's medical license on probation, the terms of which may

Board, suspend his right to practice for a time deemed proper by the Board, revoke said license, or take any other action in relation to said license as the Board may deem proper under the circumstances;

WHEREAS, Licensee wishes to avoid an evidentiary hearing before the Board by entry of a consent order;

NOW, THEREFORE, medical license (No. 13835) issued to Licensee to practice medicine in the State of Mississippi, is hereby indefinitely suspended. The suspension, however, shall be stayed and Licensee authorized to practice medicine in the State of Mississippi, subject to the following formal restrictions:

1. Limitation on Controlled substances privileges. Licensee shall surrender his U.S. Drug Enforcement Administration (DEA) Uniform Controlled Substances Registration Certificate in schedules II, IIN, III, and IIIN. Licensee shall not attempt at any time to re-register with DEA for controlled substances privileges in said schedules without the express written consent of the Board.

2. Compliance with other rules and regulations governing the use of medication. Licensee shall comply with all Federal and State laws governing the practice of medicine and shall comply with the rules and regulations of the Board "Pertaining to Prescribing, Administration and Dispensing of Medication," including, but not limited to:

- (a) Licensee shall maintain a complete record of his examination, evaluation and treatment of patients, including documentation of diagnosis and reason for prescribing, dispensing or administering any controlled substances; the name, dose, strength, quantity of the controlled substances and the date the controlled substance was prescribed, dispensed or administered.

(b) Whenever issuing a prescription for a controlled substance, Licensee shall, in addition to that set forth in sub-paragraph (a) above, enter into the patient record the following information:

- i Vital signs, whenever possible.
- ii Status of treatment plan and prognosis.
- iii If the patient is requesting additional medication too early, i.e., has consumed previously prescribed medications (including refills) contrary to Licensee's specific directions, the purpose and reason for the patient's additional request and/or unauthorized dose escalation.
- iv Licensee's observation of the patient.

(c) Licensee shall not prescribe, administer, or dispense any controlled substance or other drug having addiction-forming or addiction-sustaining liability without a good faith prior examination and medical indication therefore.

3. Continuing Medical Education. On or before expiration of one (1) year from the date of this Order, Licensee shall successfully complete a continuing medical education course pertaining to the clinical, legal and ethical issues of prescribing abusable drugs, chosen by Licensee from a list of Board approved CME programs.

4. Notification of Practice Location. Licensee shall notify the Board within ten (10) days of any change in his practice location and/or change in employment.

5. Periodic surveillance by the Board. Licensee's practice shall be subject to periodic surveillance by the Board. The Executive Director, any member or investigator of the Board shall have a right at any time to inspect the residence and/or practice location of Licensee, including but not limited to any and all medical records, orders of medication, and any other record or document requirement to be maintained by Board rules and regulations.

6. Notification to Employers. Licensee shall notify all of his employers of the terms and conditions of this Order and provide a copy of same to each employer. It shall be the responsibility of Licensee to insure that each of his employers provide the Board with quarterly progress reports as to his employment and practice of medicine. In the event Licensee is self-employed, Licensee shall provide the quarterly progress report for each of his practice locations. The quarterly reports required hereunder must be received by the Board within 10 calendar days after the end of each quarter.

7. Reimbursement of Costs. Licensee shall reimburse the Board for all costs incurred in relation to the pending matter pursuant to Miss. Code Ann. Section 73-25-30.

Licensee understands and expressly acknowledges that this Order shall constitute a public record of the State of Mississippi. Licensee further acknowledges that the Board shall provide a copy of this Order to, among others, the U.S. Drug Enforcement Administration, and the Board makes no representation as to actions, if any, which the U.S. Drug Enforcement Administration may take in response to this Order.

Recognizing his right to notice of charges specified against him, to have such charges adjudicated pursuant to Miss. Code (1972) Annotated, Sections 73-25-1 et seq.,

to be represented therein by legal counsel of his choice, and to a final decision based upon written findings of fact and conclusions of law, Forrester, M.D. nonetheless hereby waives his right to notice and a formal adjudication of charges, and authorizes the Board to enter this Order, thereby indefinitely suspending his license to practice medicine in the State of Mississippi, staying the suspension subject to the terms and conditions enumerated above.

EXECUTED this the 19th day of July, 2006.

Mississippi State Board of Medical licensure

By. 
Dewitt G. Crawford, M.D., President

ACCEPTED, this the 27th day of July, 2006.


Carlos Forrester, M.D.

**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE PHYSICIAN'S LICENSE
OF
LYNDA GWEN LEE, M.D.**

AGREEMENT NOT TO RENEW MEDICAL LICENSE

WHEREAS, LYNDA GWEN LEE, M.D., hereinafter referred to as "Licensee," is the current holder of License Number 05288 issued in June 1966, to practice medicine in the State of Mississippi;

WHEREAS, on March 07, 2006, Licensee surrendered her U.S. Drug Enforcement Administration Uniform Controlled Substances Registration Certificate based on the issuance of controlled substances outside the course of legitimate professional practice;

WHEREAS, such conduct constitutes grounds for which the Mississippi State Board of Medical Licensure may place Licensee's medical license on probation, the terms of which may be set by the Board, suspend her right to practice for a time deemed proper by the Board, revoke said license, or take any other action in relation to said license as the Board may deem proper under the circumstances;

THEREFORE, so that she may retire with a clear and unencumbered license, Licensee does hereby agree not to renew her license (No. 05288) to practice medicine in the State of Mississippi at such time as the current renewal period expires on June 30, 2006. Licensee understands that this is an election not to renew a current and valid license, and as such, is not reportable as disciplinary action. In the event Licensee later decides to practice medicine in the State of Mississippi, it will be necessary for her to make application with the Board. At such time, the Board reserves the right to utilize all evidence, including all facts developed during the current investigation, as part of the consideration of any application.

EXECUTED this the 18th day of May, 2006.


Witness


LYNDA GWEN LEE, M.D.

ACCEPTED AND APPROVED this the 19th day of July, 2006, by the Mississippi State Board of Medical Licensure.


President
Mississippi State Board of
Medical Licensure

BOARD MINUTES
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
July 20, 2006

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, July 20, 2006, in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

The following members were present:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary Designate
Larry B. Aycock, M.D., McComb
Virginia M. Crawford, M.D., Hattiesburg
A. Wallace Conerly, M.D., Jackson
S. Randall Easterling, M.D., Vicksburg
William B. Harper, D.O., Greenwood
William S. Mayo, D.O., Oxford

Also present:

Mallan G. Morgan, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant
Wesley Breland, Hattiesburg, Consumer Health Committee
Cecil R. Burnham, Jackson, Consumer Health Committee
Martha Thompson, Oxford, Consumer Health Committee

The meeting was called to order at 9:05 a.m. by Dr. Crawford, President. The invocation was given by Mr. Breland. Dr. Crawford welcomed Ella Hardwick, Court Reporter. Dr. Crawford announced that the new Board member terms began July 1, and welcomed the new members, Dr. Virginia Crawford, Dr. William Mayo, and Dr. Randy Easterling. Since Dr. Easterling had not yet arrived at the meeting, Dr. Crawford announced that the administration of the oath of office for the new members would be delayed until he arrived. He advised Dr. V. Crawford and Dr. Mayo that they could not vote until the oath of office had been administered.

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APPROVAL OF CERTIFICATION OF MISSISSIPPI LICENSES TO OTHER ENTITIES FOR THE PERIOD MAY 1, 2006, THROUGH JUNE 30, 2006

Two hundred thirty eight (238) licenses were certified to other entities for the period May 1, 2006, through June 30, 2006. Motion was made by Dr. Aycock, seconded by Dr. Conerly, and carried unanimously with the exception of Dr. V. Crawford and Dr. Mayo who did not vote to approve these certifications.

APPROVAL OF LICENSES ISSUED FOR THE PERIOD MAY 1, 2006, THROUGH JUNE 30, 2006

Eighty three (83) licenses were issued for the period May 1, 2006, through June 30, 2006. Motion was made by Dr. Aycock, seconded by Dr. Conerly, and carried unanimously with the exception of Dr. V. Crawford and Dr. Mayo who did not vote to approve these licenses.

DR. EASTERLING ENTERED THE MEETING AT 09:10 A.M.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED MAY 17, 2006, MINUTES OF THE RECESSED EXECUTIVE COMMITTEE MEETING DATED MAY 18, 2006, MINUTES OF THE BOARD MEETING DATED MAY 18, 2006, AND MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED JUNE 29, 2006

Dr. Dewitt Crawford briefly reviewed the Minutes of the Executive Committee Meeting dated May 17, 2006, Minutes of the Recessed Executive Committee Meeting dated May 18, 2006, Minutes of the Board Meeting dated May 18, 2006, and Minutes of the Executive Committee Meeting dated June 29, 2006. Dr. Dewitt Crawford opened the floor for questions and/or comments pertaining to the above minutes. There being no questions or comments, Dr. Aycock moved for approval of the minutes as submitted. Dr. Gibson seconded the motion, and it carried unanimously with the exception of Dr. V. Crawford, Dr. Mayo and Dr. Easterling who did not vote.

REPORT OF JULY 19, 2006, EXECUTIVE COMMITTEE MEETING

Dr. Morgan requested that Dr. Merideth provide the Board with an update from the Executive Committee meeting and the discussion of **Regulations Governing Utilization Review Activities By Physicians** with representatives of the Mississippi State Department of Health. Dr. Merideth advised that a brief meeting was held on July 19, 2006, with the following representatives from the Mississippi State Department of Health (MSDH): Vickey Maddox, R.N., Director of the Division of

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Licensure; Jim Craig, Director of Health Protection; Rick Moore, Special Assistant Attorney General, MSDH; and Marilyn Winborne, Director of Health Facilities. Dr. Merideth advised that the purpose of the meeting was to discuss the roles of the respective Boards in the regulation of the conduct of physicians who perform utilization review medical consultation activities. Dr. Merideth advised that various aspects of utilization review, physician conduct, and regulatory issues were all discussed.

Dr. Merideth advised that the Executive Committee agreed to send a letter to MSDH to confirm MSBML's understanding of the matters discussed in the meeting to include:

1. MSDH regulates only the business activities of utilization review organizations pursuant to the statutory authority of Mississippi Code Annotated (1972) Section 41-83-1 et seq.
2. MSDH does not have the statutory authority, regulations, resources, or expertise to regulate physician conduct regarding the performance of utilization review medical consultation activities.
3. MSBML's regulation of physician conduct in the performance of utilization review medical consultation activities has no effect on and does not conflict with the MSDH's ability to regulate utilization review organizations.
4. MSDH looks to the MSBML to regulate all forms of physician conduct and will continue to refer to the MSBML all issues related to the conduct of physicians.
5. MSDH agrees with the MSBML's position that the language of Mississippi Code Annotated (1972) Section 41-83-31 (a) that limits the MSBML's authority to discipline a physician based solely on the fact of an adverse determination in a particular case does not preempt the Board's authority to regulate the conduct of physicians who perform utilization review medical consultation activities or to investigate and discipline or otherwise hold accountable a physician regarding the underlying conduct involved in making an adverse determination.

Dr. Morgan reported on the appearances at Wednesday's Executive Committee meeting and covered other informational items, all of which are included in the Executive Committee Minutes dated July 18, 2006.

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OATH OF OFFICE - VIRGINIA M. CRAWFORD, M.D., HATTIESBURG S. RANDALL EASTERLING, M.D., VICKSBURG WILLIAM S. MAYO, D.O., OXFORD

Virginia M. Crawford, M.D., Hattiesburg, S. Randall Easterling, M.D., Vicksburg, and William S. Mayo, D.O., Oxford, were administered the Oath of Office by Ella Hardwick, Court Reporter, copies of which are attached hereto and incorporated by reference.

Dr. Virginia Crawford was appointed to represent the Second Supreme Court District, Dr. Easterling was appointed to represent the First Supreme Court District, and Dr. Mayo was appointed to represent the Third Supreme Court District. They were all appointed for a six year term ending June 30, 2012.

Dr. Dewitt Crawford presented the three new Board members with lapel pins.

REPORT OF NOMINATING COMMITTEE

Dr. Morgan advised that the Nominating Committee met in June 2006 and the following officers agreed to serve a one year term as follows:

President - Dr. Dewitt Crawford
Vice President - Dr. Philip Merideth
Secretary - Dr. Don Gibson

Dr. Morgan asked if there were any other nominations from the floor. Motion was made to accept by acclamation by Dr. Aycock, seconded by Dr. Conerly, and carried unanimously.

PRESENTATION BY HEATHER WAGNER, ASSISTANT ATTORNEY GENERAL, AND STAN T. INGRAM, COMPLAINT COUNSEL FOR THE BOARD

Mr. Ingram introduced Trey Lamar a second year law student that is currently a clerk in the firm of Robinson, Biggs, Ingram, Solop & Farris, PLLC.

Mr. Ingram presented a very informative PowerPoint presentation covering the grounds for disciplinary actions, disciplinary hearings, placing documents into the record, the role of the Licensure Agency, reasons a Board member should recuse himself, the different roles that he and Ms. Wagner perform, dispositions of Board members, rules of evidence, necessity for expert witnesses, burden of proof, HIPPA, and many other beneficial topics. Mr. Ingram then opened the floor for comments

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and/or questions.

Ms. Wagner also gave a very informative presentation covering the laws for open meetings, the reasons for the Board to go into Executive Session, laws for dealing with public records, conflicts of interest, the Tort Claims Act, and other topics of interest. Ms. Wagner also opened the floor for comments and/or questions.

REPORTS FROM COMMITTEES

Dr. Dewitt Crawford advised that if anyone wanted to be included on committees other than the committees where they were appointed, to please advise and he will be happy to accommodate their request.

Consumer Health - Mr. Breland (Chair), Ms. Thompson, Mr. Burnham

Mr. Breland advised that the Consumer Health Committee was going to request information on bylaws and terms for Consumer Health Members from other Boards. The Consumer Health members had agreed to stagger their terms as follows: Mr. Burnham's term will end June 30, 2007, Mr. Breland's term will end June 30, 2008, and Ms. Thompson's term will end June 30, 2009.

Education & Workforce - Dr. Conerly (Chair), Dr. Aycock, Dr. Mayo

Dr. Conerly advised that there was no new information to report but added the Committee plans to work on the Emergency Licensure issue before the next meeting.

Scope of Practice - Dr. Merideth (Chair), Dr. Easterling, Dr. Aycock

Dr. Merideth advised that there was no new information to report but advised that Dr. Dewitt Crawford had referred the matter pertaining to the use of lasers to the Committee and they plan to meet and have a report for the next meeting.

Professional Health Program - Dr. Gibson (Chair), Dr. Mayo, Dr. Merideth

Dr. Gibson advised that there was no new information to report but that the Committee would be meeting with Gary Carr, M.D., Medical Director, Mississippi Health Professionals Program, and Ms. Linda McMullen, General Counsel, Mississippi State Medical Association to work on necessary changes to the current Memorandum of Understanding.

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Rules, Regulation & Legislative - Dr. Easterling (Chair), Dr. D. Crawford, Dr. Harper

Dr. Easterling advised that there was no new information to report.

Ethics - Dr. Merideth (Chair), Dr. V. Crawford, Dr. Conerly

Dr. Merideth advised that the Ethics Committee had a meeting earlier today and approved an Executive Summary written for informational purposes only regarding Board Regulation XXXII, "**Regulations Governing Medical Expert Activities By Physicians**" that was adopted in May, 2006, as was requested by past Board member, Dr. Freda Bush. Dr. Merideth advised that the Executive Summary of Board Regulation XXXII was being submitted to the Board for approval for informational purposes only. A copy of Board Regulation Number XXXII, Executive Summary, is attached hereto and incorporated by reference.

Ms. Wagner advised that all committees need to make sure to keep minutes of the date, time, place, who was present, any action voted on, and how each individual voted. Minutes should be submitted to Sherry Harris, who will maintain a file in the office for each committee.

Dr. Merideth advised that the Ethics Committee has a second item to discuss. Dr. Merideth advised that the Board had duly adopted in March 2006, the **Regulations Governing Utilization Review Activities By Physicians** to be effective July 1, 2006; however, the Executive Committee on June 29, 2006, delayed the enactment until January 31, 2007. At the advice of Ms. Wagner, the Ethics Committee is recommending that the Full Board consider rescinding Board Regulation XXXI (**Regulations Governing Utilization Review Activities By Physicians**) and adopt a new regulation instead. Dr. Merideth supplied each Board member a copy of the proposed draft regulation which shows "second draft 7/20/06", with additions underlined. A copy of the proposed draft regulation is attached hereto and incorporated by reference.

After a brief discussion, motion was made by Dr. Merideth to move that the Board request and authorize the Executive Committee of this Board at its next meeting to consider the proposed "**Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**", and if the proposed regulations are passed by the Executive Committee, that the Executive Committee on behalf of the Full Board file with the Secretary of State Notice of an Oral Proceeding and Intent to Adopt Proposed Regulations at the next meeting of the Full Board. Dr. Aycock seconded the motion, and after a brief discussion as to the enactment date, it was unanimously decided to adopt the motion and refer

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the issue to the Executive Committee's next meeting.

Dr. Merideth also added that he wished to recognize an individual from the public sector wishing to comment on the utilization review regulation. Dr. Merideth introduced Mr. Stephen Schelver, McGlinchey Stafford, PLLC, representing United Healthcare of Mississippi. Mr. Schelver addressed the Board and handed out a letter from McGlinchey Stafford, PLLC, dated July 19, 2006, explaining their concerns with the proposed regulation. Mr. Schelver requested that their letter be placed in our records.

THE BOARD RECESSED AT 11:05 A.M. AND RECONVENED AT 11:15 A.M.

PRESENTATION BY GARY D. CARR, M.D., MEDICAL DIRECTOR, MISSISSIPPI PROFESSIONALS HEALTH PROGRAM

Gary D. Carr, M.D., Medical Director, Mississippi Professionals Health Program addressed the Board and provided a very informative PowerPoint presentation explaining their program, what it does and how, their structure and how they are funded.

There was a brief question and answer period after Dr. Carr's presentation. Dr. Crawford thanked Dr. Carr for taking the time to come and inform the Board about MPHP.

THE BOARD RECESSED AT 11:50 A.M. FOR LUNCH AND RETURNED AT 1:00 P.M.

HEARING IN THE CASE OF JASON KENDELL MORRIS, M.D., CLARKSDALE, MISSISSIPPI MEDICAL LICENSE NUMBER 14181

Mr. Ingram addressed the Board and advised that Dr. Morris was not present or represented by legal counsel. Mr. Ingram advised that he is currently working with Dr. Morris' attorney, David W. Donnell, and was requesting a continuance.

Motion was made by Dr. Harper, seconded by Dr. Merideth, and carried unanimously to grant the continuance until September 21, 2006. The Order of Continuance is attached hereto and incorporated by reference.

A verbatim account of this proceeding was recorded by Ella Hardwick, Court Reporter.

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**HEARING IN THE CASE OF NICHOLAS WENDELL HOWARD, M.D., RIPLEY,
MISSISSIPPI MEDICAL LICENSE NUMBER 08361**

Mr. Ingram addressed the Board and advised that Dr. Howard was not present or represented by legal counsel. Mr. Ingram advised that Tennessee had suspended Dr. Howard's medical license for a period of six (6) months due to substance addiction and required him to enter into an advocacy contract with the Tennessee Medical Foundation. Mr. Ingram advised that this Board had issued an Order of Prohibition and had tried to serve him via certified mail a Summons and Affidavit. To date, there has been no phone contact and the return certified mail receipts have not been received back. Mr. Ingram requested a continuance until Dr. Howard has been personally served an Order of Prohibition by this Board.

Motion was made by Dr. Easterling, seconded by Dr. Gibson, and carried unanimously to grant the continuance until September 21, 2006. The Order of Continuance is attached hereto and incorporated by reference.

A verbatim account of this proceeding was recorded by Ella Hardwick, Court Reporter.

**HEARING IN THE CASE OF DAVID ERVAL CONWILL, M.D., FOREST, MISSISSIPPI
MEDICAL LICENSE NUMBER 07639**

Dr. Conwill was present and was represented by Whitman B. Johnson, III., Esq.

Mr. Ingram introduced Dr. Conwill and Mr. Johnson and summarized the charges pertaining to prescribing, administering and dispensing medication that lead to Dr. Conwill signing the Voluntary Order of Prohibition. Mr. Ingram explained to the Board the conditions of the Voluntary Order of Prohibition. A copy of the Voluntary Order of Prohibition is attached hereto and incorporated by reference.

Motion was made by Dr. Gibson, seconded by Dr. Aycock, and carried unanimously to accept the Voluntary Order of Prohibition signed by Dr. Conwill.

A verbatim account of this proceeding was recorded by Ella Hardwick, Court Reporter.

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FINAL ADOPTION OF REGULATIONS GOVERNING THE PRACTICE OF RADIOLOGIST ASSISTANTS / DISCUSSION OF CHANGES PROPOSED TO FINAL REGULATION / PROPOSED RADIOLOGIST ASSISTANTS APPLICATION AND LICENSURE FEES

The **Regulations Governing the Practice of Radiologist Assistants** were discussed. Dr. Mayo requested an editorial change to include the Mississippi Osteopathic Medical Association and the American Osteopathic Association. Ms. Freeman, Division Director, Licensure Division, advised that she had been contacted by the Radiologist Assistants requesting a couple editorial changes which are underlined and included in the proposed regulation. Ms. Freeman explained the requested changes to the Board before voting to final adopt.

Motion was made by Dr. Mayo, seconded by Dr. Gibson, and carried unanimously to accept the requested editorial changes.

Motion was made by Dr. Easterling, seconded by Dr. Harper, and carried unanimously to adopt in final form with the discussed amendments to the Board's **Regulations Governing the Practice of Radiologist Assistants**, a copy of which is attached hereto and incorporated by reference. The amended regulation will be filed with the Secretary of State under the Administrative Procedures Act as a final adoption.

Ms. Freeman discussed the proposed application and applicable initial and renewal fees. After a brief discussion, motion was made by Dr. Mayo, seconded by Dr. Gibson and carried unanimously to accept the proposed application form, and to charge a fee of \$500.00 for the initial application, with \$150.00 as the yearly renewal fee.

PROPOSED AMENDMENT TO REGULATIONS OF LICENSURE BY EXAMINATION - M.D. AND/OR D.O., SPECIFICALLY USMLE STEP 3 REQUIREMENTS

Ms. Freeman reviewed the proposed amendment to the regulations of **Licensure by Examination - M.D., and/or D.O., Specifically USMLE Step 3 Requirements**. Ms. Freeman advised that the Board had been requested by UMC to consider amending the regulation to allow IMG students to take Step 3 of the USMLE after one year of residency, which is the standard for US graduates.

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Motion was made by Dr. Conerly, seconded by Dr. Harper, and carried unanimously to adopt the amended regulation. A notice of proposed rule adoption will be filed with the Secretary of State under the Administrative Procedures Act. The amended regulation is attached hereto and incorporated by reference.

CONFIRMATION OF SALARIES TO EMPLOYEES AND FY08 BUDGET APPROVAL

Ms. Freeman advised that the Board is required to set the salary for the Executive Director. The Personnel Board had realigned the Executive Director's position and Dr. Dewitt Crawford by letter dated May 21, 2006, had requested an increase in salary to \$114,374.45. A copy of Dr. D. Crawford's letter is attached hereto and incorporated by reference.

Motion was made by Dr. Aycock, seconded by Dr. Gibson, and carried unanimously to approve the request.

Ms. Freeman also discussed the FY08 Budget advising that the budget is for the same request as last year; however, it seems the agency will be approximately \$600,000.00 short. The matter was discussed with the Executive Committee on Wednesday and it was suggested to increase licensure renewals to \$200.00 across the board. After a brief discussion, Dr. Conerly made the motion to increase the licensure renewals to \$200.00, seconded by Dr. Mayo, and carried unanimously.

Licensure renewal fees will also be addressed by the Rules, Regulation and Legislative Committee to work on long-term budgetary planning issues and alternative sources of income. Dr. Conerly volunteered to assist the Committee in working on possible solutions for the budget.

Motion was made by Dr. Gibson, seconded by Dr. Aycock, and carried unanimously to accept the FY08 budget as submitted.

OTHER INFORMATIONAL ITEMS

Ms. Freeman provided an update of the accomplishments from the Licensure Division for the first six months of 2006, and covered the responsibilities and functions of the division and the staff.

DR. HARPER EXITED THE MEETING AT 2:40 P.M.

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Ms. Freeman also supplied statical information on Mississippi physicians. The question arose as to the number of in-state and out-of-state utilization review physicians. This information will be supplied at the next meeting.

Mr. Thomas Washington, Division Director, Investigative Division, presented a recap of the last six months in the Investigative area. Mr. Thomas advised the Board of the responsibilities and direction of the department. He gave a brief synopsis of their job responsibilities and the various paperwork involved. He also provided statistical information pertaining to board actions, urine screens collected, requests answered, and the number of complaints received.

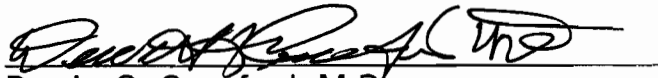
Dr. Merideth asked whether some Board members would be interested in making a follow-up trip to the coast regarding Hurricane Katrina issues. This matter will be discussed later.

PUBLIC COMMENTS

Dr. Crawford opened the floor for public comments. There were no comments from the floor.

ADJOURNMENT

The meeting was adjourned at 3:15 p.m. with the next Executive Committee meeting scheduled for Wednesday, August 23, 2006, at 2:00 p.m., and the next scheduled Board meeting for Thursday, September 21, 2006.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
July 20, 2006

OATH OF OFFICE

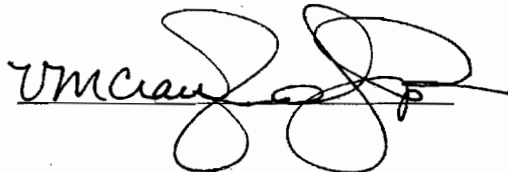
I, Virginia M. Crawford, M.D. do solemnly swear (or affirm)
that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi,
and obey the laws thereof; that I am not disqualified from holding the office of _____
Member, Mississippi State Board of Medical Licensure
that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.

Subscribed and sworn to before me at

Jackson

Mississippi, this 20th day

of July, 192006



By Rhonda Grempa

Notary Public State of Mississippi At Large
My Commission Expires: October 11, 2007
Bonded Thru Helden, Brooke & Garland, Inc.

OATH OF OFFICE

I, S. Randall Easterling, M.D. do solemnly swear (or affirm)
that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi,
and obey the laws thereof; that I am not disqualified from holding the office of _____
Member, Mississippi State Board of Medical Licensure
that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.

Subscribed and sworn to before me at

Jackson

Mississippi, this 20th day

of July, 192006

By

Rhonda Freeman

Notary Public State of Mississippi At Large
My Commission Expires: October 11, 2007
Bonded Thru Heiden, Brooks & Garland, Inc.

OATH OF OFFICE

I, William S. Mayo, D.O. do solemnly swear (or affirm)
that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi,
and obey the laws thereof; that I am not disqualified from holding the office of _____
Member, Mississippi State Board of Medical Licensure
that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God.

Subscribed and sworn to before me at

Jackson
Mississippi, this 20th day William S. Mayo
of July, 2006
By Rhonda Freeman

Notary Public State of Mississippi At Large
My Commission Expires: October 11, 2007
Bonded Thru Heiden, Brooks & Garland, Inc.

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

BOARD REGULATION NO. XXXII

EXECUTIVE SUMMARY

JULY, 2006

This is an Executive Summary written for informational purposes only regarding Board Regulation No. XXXII, "Regulations Governing Medical Expert Activities By Physicians." The Mississippi State Board of Medical Licensure adopted these regulations in May, 2006 following sixteen months of study of the law in Mississippi and other states regarding medical expert activities by physicians. The regulations are effective beginning July 1, 2006.

Section A of the regulations sets forth the Board's statutory authority to adopt the regulations in order to protect the public. Section B describes a broad scope of the regulations that is intended to apply to any physician who performs medical expert activities in Mississippi. Likewise, Section C establishes a broad definition of the term "medical expert activities."

Sections D and E of these regulations describe the licensure and qualification requirements and professional standards for physicians who perform medical expert activities. In these sections, the Board included the licensure, qualification, and standards requirements for medical experts based on the Board's understanding of the provisions of Mississippi law. In other words, Sections D and E of these regulations do not require a physician who performs medical expert activities to do any more than he or she was required to do prior to the effective date of these regulations.

In Section F, the Board sets forth the grounds for a professional accountability or disciplinary action against a physician who performs medical expert activities. Those grounds include, but are not limited to, incompetence, unprofessional conduct, and any other dishonorable or unethical conduct.

Section G of these regulations describes the complaint and investigation process and the professional accountability or disciplinary actions that the Board may take for violation of these regulations. In Section G.4, the first three actions are disciplinary actions that may be taken only against a Mississippi licensed physician. The last four actions are professional accountability actions that may be taken against any physician, regardless of the State(s) of the physician's medical licensure.

Section H of these regulations states that it shall be the duty of the physician alone to ensure that his or her medical expert activities comply with these regulations. Section I attempts to provide all physicians with adequate notice of the existence of these regulations during the licensure application and renewal process. Under the repealer included in Section J, the regulations shall be repealed unless readopted by the Board on or before June 30, 2010. Section K cites some of the references that the Board found useful in adopting these regulations.

In the Comments section that is included as an Appendix to the regulations, the Board sought to explain some of its reasoning and factual findings that the Board made in adopting these regulations. Specifically, Comment 1 states that in studying the issue of medical expert activities by physicians from January 2005 to May 2006, the Board found “. . . a problem in Mississippi with the lack of regulation of medical expert activities by physicians. This lack of regulation causes the performance of medical expert activities to be vulnerable to fraud, abuse, dishonesty, deception, incompetence, and other forms of unprofessional, dishonorable, and unethical conduct by physician experts, all of which are harmful to the public.”

Further comments by the Board in the Appendix to the regulations indicate that the Board acknowledges that medical expert activities by physicians are an otherwise lawful practice that is subject to regulation by the Board so that the Board can fulfill its duty to protect the public (as part of the historic police power of the State). The Comments also point out that the Board tailored these regulations as closely as possible to the provisions of Mississippi law in an effort to regulate the conduct of physicians who perform medical expert activities in Mississippi. In the final comments on these regulations, the Board disclaimed any intent for these regulations to have a “chilling effect” on medical expert activities by physicians or to otherwise be misused in the context of legal proceedings.

**REGULATIONS REGARDING THE CONDUCT OF PHYSICIANS
WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES**

(Second draft 7/20/06, with additions underlined)

A. AUTHORITY AND PURPOSE OF THESE REGULATIONS

The Mississippi State Board of Medical Licensure adopts these regulations regarding the conduct of physicians who perform utilization review medical consultation activities pursuant to its statutory authority to regulate physician conduct that is contained in Chapters 25 and 43 of Title 73 of the Mississippi Code (1972) Annotated, as Amended. The Mississippi State Board of Medical Licensure finds it necessary to perform its statutory responsibilities by adopting these regulations in order to fulfill its duty to protect the public as part of the historic police powers of the State, to set professional standards, to enforce the provisions of current law regarding the performance of utilization review medical consultation activities by physicians, and to further other legitimate government purposes that are in the public interest and in accordance with the provisions of Mississippi law.

B. SCOPE OF THESE REGULATIONS

1. These regulations apply to any physician who performs utilization review medical consultation activities regarding any person or entity located within the State of Mississippi, regardless of the location, type, or status of the physician's utilization review medical consultation activities, the presence or absence of the physician's license to practice medicine in Mississippi, the presence or absence of a physician-patient relationship with the person in Mississippi who is the subject of the utilization review medical consultation activity, or the type of utilization review medical consultation activity performed (e.g., prospective, concurrent, or retrospective review, an initial review, or a subsequent review of an adverse determination).
2. In tailoring these regulations as closely as possible to the provisions of Mississippi law, the Board does not intend for any part of these regulations to conflict with or supercede the authority of the Mississippi State Department of Health to regulate utilization review organizations and private review agents pursuant to Mississippi Code Annotated (1972) Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health. Furthermore, the Board does not intend for any part of these regulations to conflict with or supercede the authority of a person other than a physician to participate in "utilization review" as defined and authorized by Mississippi Code Annotated (1972) Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health.

C. TERMINOLOGY

1. For the purposes of these regulations only, the Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board") has determined that under the provisions of Mississippi law, a physician who performs any of the following utilization review medical activities serves in the role of a consulting physician, and that the term "utilization review medical consultation activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician licensed or otherwise lawfully practicing within this State to

- (1) make medical decisions,
- (2) form medical opinions,
- (3) give or suggest medical advice,

- (4) perform or direct the performance of medical services,
- (5) conduct a medical record review,
- (6) serve as a medical consultant,
- (7) apply medical service intensity or symptom severity criteria,
- (8) monitor, prescribe, suggest, or recommend medical treatment,
- (9) question or review a treating physician's medical decisions,
- (10) make diagnostic, therapeutic, or healthcare facility admission or continued stay medical decisions or recommendations,
- (11) review an adverse determination or other recommendation regarding a medical service made by a non-treating physician or other person, or
- (12) discuss a person's medical care or medical condition or the reason for an adverse determination with the person's treating physician, his or her designee, or other affected healthcare provider,

at any level of review, regarding the appropriateness of a medical service provided or proposed to be provided to a person or entity located within the State of Mississippi.

2. The Board does not intend for the terminology used in these regulations or the requirements of these regulations to conflict with or supercede any provision of Mississippi law, including the definition of "utilization review" as contained in Mississippi Code Annotated (1972) Section 41-83-1(a) and regulations adopted by the Mississippi State Department of Health.

D. LICENSURE AND QUALIFICATION REQUIREMENTS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

1. In accordance with the provisions of law in Mississippi, the performance of utilization review medical consultation activities by any physician, regardless of the physician's location, type of utilization review consultation activities, or State(s) of medical licensure, regarding any person or entity located within the State of Mississippi, is an otherwise lawful practice within the State of Mississippi that is subject to regulation by, and professional accountability to, the Mississippi State Board of Medical Licensure.
2. In accordance with the provisions of law in Mississippi, any utilization review medical consultation activity that results in an adverse determination must be based on the prior evaluation and concurrence in the adverse determination by a physician licensed to practice in Mississippi.
3. In accordance with the provisions of law in Mississippi, if a request is made by a patient's treating physician, then any utilization review medical consultation activity that results in an adverse determination must be performed by an appropriately qualified utilization review consultation physician, i.e., a physician licensed in Mississippi who is board certified or board eligible and engaged in the same type of practice and relevant specialty or subspecialty of medicine, and who possesses the degree of skill ordinarily used by members of his or her profession in good standing.

E. PROFESSIONAL STANDARDS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

1. In accordance with the ethical duty of all physicians to respect the law, any physician who performs utilization review medical consultation activities must comply with these regulations and all applicable Mississippi statutes, court rulings, and other administrative agency rules, policies, and regulations, including regulations adopted by the Mississippi State Department of Health.

2. In accordance with the provisions of law in Mississippi, any physician who performs utilization review medical consultation activities must comply with ethics principles established by the American Medical Association and relevant medical specialty associations of which the physician is a member.
3. In accordance with the provisions of law in Mississippi, any utilization review consultation physician who renders an adverse determination must discuss, if requested, the reasons for the adverse determination with the patient's treating physician or other affected healthcare provider. The utilization review consultation physician must comply with the request for discussion within 14 calendar days of receiving either oral or written notification of the request.

F. PROFESSIONAL ACCOUNTABILITY FOR PHYSICIAN CONDUCT IN VIOLATION OF THESE REGULATIONS

1. In accordance with the provisions of law in Mississippi, any physician licensed or otherwise lawfully practicing within this State (i.e., regardless of whether the physician is licensed to practice medicine in Mississippi) who performs utilization review medical consultation activities may be disciplined or otherwise held professionally accountable by the Board, upon a finding by the Board that the physician is unqualified as evidenced by conduct including, but not limited to,
 - (i) incompetent professional practice,
 - (ii) unprofessional conduct, or
 - (iii) any other dishonorable or unethical conduct likely to deceive, defraud, or harm the public (e.g., dishonest, illegal, or negligent conduct in the performance of utilization review medical consultation activities).
2. Any violation of Section D or Section E of these regulations as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code Annotated (1972) Section 73-25-29(8), as amended.

G. ACTIONS AVAILABLE TO THE BOARD

1. In accordance with the provisions of law in Mississippi, any physician licensed or otherwise lawfully practicing within this State (i.e., regardless of whether the physician is licensed to practice medicine in Mississippi) who performs utilization review medical consultation activities regarding any person or entity located within the State of Mississippi may be subject to an investigation by the Mississippi State Board of Medical Licensure upon the receipt of a written complaint regarding the physician's conduct in the performance of utilization review medical consultation activities. At any time after the receipt of a written complaint, the Board in its sole discretion may refer the complaint to the medical licensure authority of another State where the utilization review consultation physician is licensed to practice medicine, or may refer the entire complaint or any portion thereof to any other appropriate authority, including the Mississippi State Department of Health or the Mississippi Attorney General.
2. In accordance with the provisions of law in Mississippi, when disciplining a physician licensed to practice medicine in Mississippi or holding professionally accountable any physician otherwise lawfully practicing within this State for the performance of utilization

review medical consultation activities in an incompetent, unprofessional, negligent, illegal, dishonest, dishonorable, or unethical manner, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following:

- (1) denying, suspending, restricting, or revoking a Mississippi license to practice medicine;
- (2) administering a public or private reprimand to a Mississippi licensed physician;
- (3) assessing up to \$10,000 of the reasonable investigation costs expended by the Board in investigating a Mississippi licensed physician;
- (4) moving for an injunction in Chancery Court to prohibit any physician's further performance of utilization review medical consultation activities;
- (5) petitioning the Chancery Court to cite any noncompliant physician for contempt of court;
- (6) referring the matter to another medical licensure authority or other authority for action regarding any physician; and
- (7) taking any other action regarding any physician that the Board may deem proper under the circumstances (e.g., issuing an advisory letter of concern; issuing a notice of warning; issuing a cease and desist notice; adopting a resolution of disapproval of any physician's utilization review medical consultation activities; or reporting the Board's findings and/or actions to any person or organization in order to enforce or comply with the law or protect the public).

H. COMPLIANCE DUTY AND EXEMPTIONS

1. In assuring compliance with these regulations, the duty shall be on the physician, not on any other person or entity, to ensure that his or her utilization review medical consultation activities comply with these regulations. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board that the exemption is valid.
2. In accordance with Mississippi Code Annotated (1972) Section 41-83-31(a), the fact that a utilization review consultation physician rendered an adverse determination in a particular case shall not be used as the ground for professional accountability or disciplinary action by the Board. However, since complaints about physicians' utilization review medical consultation activities are likely to involve adverse determinations, the Board out of necessity may be required to investigate the underlying facts and circumstances involved in an adverse determination, or a pattern of adverse determinations, in order to determine whether a physician's utilization review medical consultation activity involves conduct that is subject to professional accountability or disciplinary action by the Board (e.g., an adverse determination rendered on the basis of incompetent, unprofessional, negligent, illegal, dishonest, dishonorable, or unethical conduct). Therefore, this limitation on the Board's authority to discipline a physician based solely on the fact of an adverse determination in a particular case does not preempt the Board's authority to regulate the conduct of physicians who perform utilization review medical consultation activities or to investigate and discipline a physician regarding the underlying conduct involved in making an adverse determination.
3. Notwithstanding the licensure requirements and compliance policy contained in these regulations, the Mississippi State Board of Medical Licensure, in accordance with Mississippi Code Annotated (1972) Section 41-83-31, acknowledges that any utilization review consultation physician who makes an adverse determination for the Comprehensive Health Risk Pool or for a reviewer of 9 or fewer persons who reside in Mississippi shall be

exempt from the requirement to hold a license to practice medicine in Mississippi. However, any utilization review consultation physician who claims such an exemption is nevertheless engaged in an otherwise lawful practice within this State and therefore must comply with the Professional Standards and the other qualification requirements contained in these regulations.

4. Notwithstanding the compliance policy contained in these regulations, the Board acknowledges an exemption to these regulations in accordance with regulations adopted by the Mississippi State Department of Health, so that these regulations do not apply to physicians who perform in-house utilization review activities (also known as "quality assurance," "performance improvement," or "peer review") for Mississippi hospitals, home health agencies, clinics, private physician offices, or any other health facility. Such in-house activities performed by physicians in Mississippi for quality assurance, performance improvement, or peer review purposes are exempt from these regulations.

I. NOTICE OF REGULATION OF UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES BY PHYSICIANS

1. At the time of an initial licensure application, and at the time of each application for a renewal of a license to practice medicine in Mississippi, all physicians shall acknowledge that they have had an opportunity to read these regulations by accessing the website of the Mississippi State Board of Medical Licensure (at internet address www.msbml.state.ms.us) or by requesting a printed copy of these regulations from the Board.
2. The Mississippi State Board of Medical Licensure shall provide a copy of these regulations, and all subsequent amendments thereto, to the Division of Licensure and Certification at the Mississippi State Department of Health.
3. Before the effective date of these regulations (i.e., November 1, 2006), the Mississippi State Board of Medical Licensure shall provide a copy of these regulations to the Mississippi Attorney General, the Mississippi Division of Medicaid, the Mississippi State Medical Association, the Mississippi Hospital Association, the Federation of State Medical Boards, and any other appropriate person or organization at the discretion of the Board's Executive Director, with the request that those organizations give notice to their members or other interested parties of the existence of these regulations.
4. For further information regarding the Board's opinions, comments, and findings of fact related to utilization review medical consultation activities by physicians, see the Appendix to these regulations.

J. EFFECTIVE DATE

These regulations shall become effective on November 1, 2006.

APPENDIX

COMMENTS AND FINDINGS OF FACT

Based on information presented to the Mississippi State Board of Medical Licensure, on research and analysis of information obtained by Board members and its staff and attorneys, and on comments received from numerous sources since January, 2005, and also based on the results of an Oral Proceeding held on _____, 2006, the Mississippi State Board of Medical Licensure makes the following Comments and Findings of Fact on _____, 2006 with reference to its adoption of Regulations Regarding The Conduct Of Physicians Who Perform Utilization Review Medical Consultation Activities.

NOTE: The Board intends to adopt Comments and Findings of Fact that will be included in an Appendix to these regulations at a later date.

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE PHYSICIAN'S LICENSE
OF JASON KENDELL MORRIS, M.D.

ORDER OF CONTINUANCE

THIS MATTER came on regularly for hearing on July 20, 2006, before the Mississippi State Board of Medical Licensure, in response to a request for continuance of the hearing set for this date made by both the Board Complaint Counsel, Stan T. Ingram, and by Jason Kendell Morris, M.D. (hereinafter "Licensee") through his attorney, David W. Donnell, Esq. After consideration of the matter, the Board finds Licensee's motion to be well taken.

IT IS, THEREFORE, ORDERED, that this matter is continued until September 21, 2006, at 10:00 a.m.

SO ORDERED, this the 20th day of July, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: 

**DEWITT G. CRAWFORD, M.D.
PRESIDENT**

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

NICHOLAS W. HOWARD, M.D.

ORDER OF CONTINUANCE

THIS MATTER came on regularly for hearing on July 20, 2006, before the Mississippi State Board of Medical Licensure, in response to a request for continuance of the hearing set for this date by Board Complaint Counsel, Stan T. Ingram. It was stated by Mr. Ingram that service of process on Dr. Howard had not been accomplished as the US Postal Service was unsuccessful in delivering the Notice of Hearing, Order of Prohibition and other pleadings. In each case, Dr. Howard would not claim the package. Numerous attempts to call Dr. Howard were also unsuccessful; in each case Dr. Howard failing to return all messages. After consideration of the matter, the Board finds Complaint Counsel's motion to be well taken.

IT IS, THEREFORE, ORDERED, that this matter is continued until September 21, 2006, at 10:00 a.m.

IT IS, FURTHER, ORDERED, that the Order of Prohibition previously issued by the Board shall remain in full force and effect.

SO ORDERED, this the 20th day of July, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: _____

**DEWITT G. CRAWFORD, M.D.
PRESIDENT**

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

DAVID ERVAL CONWILL, M.D.

VOLUNTARY ORDER OF PROHIBITION

WHEREAS, DAVID ERVAL CONWILL, M.D., hereinafter referred to as "Licensee," is the current holder of License No. 07639 to practice medicine in the State of Mississippi;

WHEREAS, there is now pending before the Mississippi State Board of Medical Licensure, hereinafter referred to as "Board," an affidavit and summons charging Licensee with violation of the Rules and Regulations of the Board, "Pertaining to Prescribing, Administering and Dispensing of Medication"; prescribing drugs having addiction-forming and addiction-sustaining liability otherwise than in the course of legitimate professional practice; and unprofessional conduct, including dishonorable or unethical conduct likely to deceive, defraud, or harm the public, all in violation of Mississippi Code Annotated Sections 73-25-29(3),(8)(d), and (13) and Section 73-25-83(a);

WHEREAS, subsequent to service of the summons and affidavit, Licensee was arrested by Hinds County, Mississippi authorities based on charges of possession of crack cocaine;

WHEREAS, such conduct, if established in a due process hearing before the Board, would constitute grounds for which the Mississippi State Board of Medical Licensure may place Licensee's medical license on probation, the terms of which may be

set by the Board, suspend his right to practice for a time deemed proper by the Board, revoke said license, or take any other action in relation to said license as the Board may deem proper under the circumstances;

WHEREAS, Licensee wishes to avoid an evidentiary hearing before the Board by voluntarily relinquishing his right to practice medicine in the State of Mississippi until such time as it has been determined by the Board that Licensee can practice medicine with reasonable skill and safety to patients.

NOW, THEREFORE, it is hereby ordered that DAVID ERVAL CONWILL, M.D., shall be prohibited from practicing medicine in the State of Mississippi until such time as:

1. Licensee submits to comprehensive evaluation for chemical dependency at a treatment facility selected by Licensee from a list of facilities approved by the Board and the Mississippi Professionals Health Program, hereinafter referred to as "MPHP". Licensee shall execute such releases so as to grant unto the Board and MPHP the authority to provide the treatment facility any and all information which the Board and MPHP has in their possession which may assist with the evaluation; and authorizes the treatment facility to provide the Board and MPHP with the evaluation results, along with a copy of all treatment records.

2. Licensee submits to comprehensive evaluation for sexual boundary issues or other emotional problems which may impact or impair his ability to practice medicine with reasonable skill and safety to the public. Licensee shall choose a treatment facility from a list of facilities approved by the Board and MPHP. Licensee shall execute such releases so as to grant unto the Board and MPHP the authority to provide the treatment

facility any and all information which the Board and MPHP has in their possession which may assist with the evaluation; and authorizes the treatment facility to provide the Board and MPHP with the evaluation results, along with a copy of all treatment records.

3. Upon conclusion of the evaluations called for in the Paragraphs 1 and 2 above, and upon receipt of the evaluation results, Licensee shall comply with any and all treatment recommendations (inpatient and outpatient) of the treatment facilities.

4. Upon completion of treatment, Licensee shall have the right to petition the Board for authorization to return to the practice of medicine in the State of Mississippi, wherein the Board reserves the right to utilize all evidence, including all facts developed during the current investigation, as part of the consideration of any such petition. Notwithstanding, no petition for return to practice shall be considered without a written finding from the treatment facilities noted in paragraphs 1 and 2 above that Licensee is able to practice medicine with reasonable skill and safety to patients on either a restricted or unrestricted basis. The Board reserves the right to impose any other restriction(s) on Licensee's certificate to practice medicine which the Board deems necessary, including, but not limited to:

- a. Affiliation with the Mississippi Professionals Health Program. Licensee shall request and receive advocacy from the MPHP through execution of a Recovery Contract Agreement, the terms and conditions of which shall be directed by the MPHP.
- b. Limitation on Controlled substances privileges. In view of the fact that

Licensee has previously surrendered to the U. S. Drug Enforcement Administration (DEA) his Uniform Controlled Substances Registration Certificate in all schedules, Licensee shall not attempt at any time to re-register with DEA for controlled substances privileges without the express written consent of the Board.

- c. Prohibition against Telephone Prescriptions. Licensee shall be prohibited from authorizing any prescription by telephone order. All prescriptions shall be manually written by Licensee on the date of issuance and only after Licensee has made a determination thereof of medical necessity based on proper medical examination and tests as clearly documented in the patient record.
- d. Compliance with other rules and regulations governing the use of medication. Licensee shall comply with all state and federal laws, rules and regulations governing the possession, purchase, maintenance, administration, and prescribing of all medication.
- e. Periodic surveillance by the Board. Licensee's practice shall be subject to periodic surveillance by the Board. The Executive Director, any member or investigator of the Board shall have a right at any time to inspect the residence and/or practice location of Licensee, including but not limited to any and all medical records, orders of medication, and any other record or document requirement to be maintained by Board rules and regulations.

- f. Notification to Employers. Licensee shall notify all of his employers of the terms and conditions of this Order and provide a copy of same to each employer. It shall be the responsibility of Licensee to insure that each of his employers provide the Board with quarterly progress reports as to his employment and practice of medicine. In the event Licensee is self-employed, Licensee shall provide the quarterly progress report for each of his practice locations. The quarterly reports required hereunder must be received by the Board within 10 calendar days after the end of each quarter.
- g. Notification of Practice Location. Licensee shall notify the Board within ten(10) days of any change in his practice location and/or change in employment.

The method by which the Board shall impose the aforementioned and other restrictions shall be an order suspending license with the suspension automatically stayed subject to said restrictions.

5. On or before expiration of one (1) year from the date of this Order, Licensee shall successfully complete a continuing medical education course pertaining to the clinical, legal and ethical issues of prescribing abusable drugs, chosen by Licensee from a list of Board approved CME programs.

6. Licensee shall reimburse the Board for all costs incurred in relation to the pending matter pursuant to Miss. Code Ann. Section 73-25-30.

This Order shall be subject to approval by the Board. If the Board fails to approve this Order, in whole or in part, it shall have no force or effect on the parties. It is further understood and agreed that the purpose of this Order is to avoid a hearing before the Board. In this regard, Licensee authorizes the Board to review and examine any documentary evidence or material concerning the Licensee prior to, or in conjunction with its consideration of this Order. Should this Order not be accepted by the Board, it is agreed that presentation to and consideration of the Consent Order and other documents and matters pertaining thereto by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation or consideration of the resolution of the proceeding.

Licensee understands and expressly acknowledges that this Order, if approved and executed by the Board, shall constitute a public record of the State of Mississippi. Licensee further acknowledges that the Board shall provide a copy of this Order to, among others, the U.S. Drug Enforcement Administration, and the Board makes no representation as to actions, if any, which the U.S. Drug Enforcement Administration may take in response to this Order.

Recognizing his right to notice of charges specified against him, to have such charges adjudicated pursuant to Miss. Code (1972) Annotated, Sections 73-25-1 et seq., to be represented therein by legal counsel of his choice, and to a final decision based upon written findings of fact and conclusions of law, David Erval Conwill, M.D. nonetheless hereby waives his right to notice and a formal adjudication of charges, and authorizes the


Board to enter this Order, thereby indefinitely suspending his license to practice medicine in the State of Mississippi, subject to the terms and conditions enumerated above.

EXECUTED this the 20th day of July, 2006.

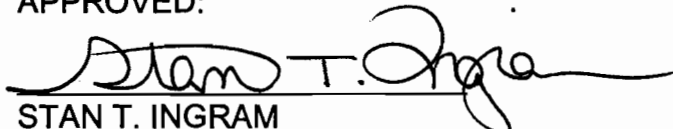
Mississippi State Board of Medical Licensure

By. 
Dewitt G. Crawford, M.D., President

ACCEPTED, this the 13th day of July, 2006.

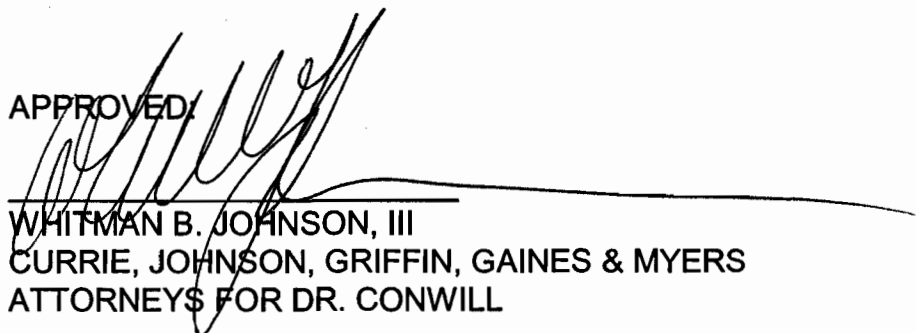

David Erval Conwill, M.D.

APPROVED:



STAN T. INGRAM
ROBINSON, BIGGS, INGRAM, SOLOP & FARRIS
ATTORNEY FOR BOARD

APPROVED:



WHITMAN B. JOHNSON, III
CURRIE, JOHNSON, GRIFFIN, GAINES & MYERS
ATTORNEYS FOR DR. CONWILL

NOTICE OF RULE ADOPTION—FINAL RULE

COPY
JUL 21 2005

STATE OF MISSISSIPPI

Mississippi State Board of Medical Licensure

MISSISSIPPI
SECRETARY OF STATE

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority Authorizing the promulgation of
Rule: (Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule : (Insert citation to specific rule(s) repealed,
amended or suspended XXX. Regulations Governing The
Practice of Radiologist Assistants

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

~~The purpose of these regulations are to protect the public, to set professional standards, and to enforce the provisions of law regarding the practice of radiologist assistants~~

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date:
Time:
Place:

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

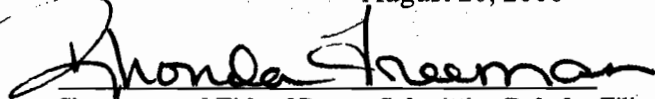
This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: August 20, 2006



Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: July 21, 2006
Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule was adopted with some variance from the proposed rule. All changes are indicated with strikeouts for deleted information and underlines for new information.

XXX. REGULATIONS GOVERNING THE PRACTICE OF RADIOLOGIST ASSISTANTS

A. SCOPE

1. The following regulations pertain to radiologist assistants performing any x-ray procedure or operating any x-ray equipment in a physician's office, hospital or clinical setting.
2. The radiologist assistant shall evaluate the day's schedule of procedures with the supervising radiologist and determine where the radiologist assistant's skills will be best utilized.
3. After demonstrating competency the radiologist assistant when ordered to do so by the supervising radiologist may:
 - a. perform selected procedures under the direct supervision of a radiologist including static and dynamic fluoroscopic procedures;
 - b. assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures;
 - c. evaluate image quality, make initial image observations and communicate observations of image quality to the supervising radiologist; and
 - d. administer intravenous contrast media or other prescribed medications.
4. The radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.
5. The radiologist assistant shall adhere to the code of ethics of the American Registry of Radiologic Technologists and to national, institutional and/or departmental standards, policies and procedures regarding the standards of care for patients.

B. DEFINITIONS

1. A.R.R.T. - American Registry of Radiologic Technologists.
2. Full Certification - Certification obtained by submitting certification issued by the A.R.R.T.
3. Radiologist - A physician licensed by the Mississippi State Board of Medical Licensure who is certified or eligible to be certified by the

American Board of Radiology or the American Osteopathic Board of Radiology.

4. Radiologist Assistant Certification - Certification obtained by submitting proof of A.R.R.T. certification as a radiologist assistant which will enable the holder to perform any and all radiologist assistant procedures or functions as defined in Section C below in a radiology practice or radiologist's office.
5. Direct Supervision - The radiologist must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of all procedures. "Direct supervision" does not mean that the supervising radiologist must be present in the room when the procedure is performed.

C. QUALIFICATIONS FOR LICENSURE

1. Applicants for radiologist assistant licensure must be graduates of a radiologist assistant education program accredited by the American Registry of Radiologic Technologists or graduate of a RPA school holding a RA certification from the ARRT, passed the radiologist assistant examination provided by the A.R.R.T., have current and unencumbered registration as a radiologic technologist with the Mississippi State Department of Health, have current certification in advanced cardiac life support (ACLS), and meet the following additional requirements:
 - a. Satisfies the Board that he is at least twenty-one (21) years of age and of good moral character.
 - b. Submits an application for license on a form supplied by the Board, completed in every detail with a recent photograph (wallet-size/passport type) attached. A Polaroid or informal snapshot will not be accepted.
 - c. Pays the appropriate fee as determined by the Board.
 - d. Presents a certified copy of birth certificate.
 - e. Proof of legal change of name if applicable (notarized or certified copy of marriage or other legal proceeding).
 - f. Provide information on registration or licensure in all other states where the applicant is or has been registered or licensed as a radiologist assistant.

- g. Must have favorable references from two (2) physicians licensed in the United States with whom the applicant has worked or trained.
- h. No basis or grounds exist for the denial of licensure as provided at Article J below.

Radiologist assistants meeting these licensure requirements will be eligible for license renewal so long as they meet standard renewal requirements.

D. SUPERVISION

The employing radiologist(s), or a radiologist designated by the employing physician(s) as a substitute supervisor, shall exercise supervision and assume full control and responsibility for the services provided by any person practicing as a radiologist assistant employed in the radiologist's practice. Any services being provided by a radiologist assistant must be performed at either the physical location of the radiologist's primary medical practice or any healthcare facility where the supervising radiologist holds staff privileges.

E. DUTY TO NOTIFY BOARD OF CHANGE OF ADDRESS

Any radiologist assistant who is licensed or receives a license to practice as a radiologist assistant in this state and thereafter changes his practice location from what was noted in the application upon which he received a license, shall immediately notify the Board in writing of the change of location. Failure to notify within 30 days could result in disciplinary action.

F. CONTINUING EDUCATION

- 1. Biennially attend and complete at least twenty-four (24) hours of radiological related continuing education courses sponsored or approved by any of the following organizations:
 - a. Mississippi Society of Radiologic Technologists
 - b. Mississippi Radiological Society
 - c. Mississippi Medical Association or Mississippi Osteopathic Medical Association
 - d. American Medical Association or American Osteopathic Association

- e. American Society of Radiologic Technologists
- f. American Registry of Radiologic Technologists
- g. American College of Radiology or American Osteopathic College of Radiology

G. IDENTIFICATION

1. The supervising physician shall be responsible to ensure that any radiologist assistant under his supervision does not advertise or otherwise hold himself out in any manner which would tend to mislead the general public or patients. Radiologist assistants shall at all times when on duty wear a name tag, placard or plate identifying themselves as radiologist assistants.
2. Radiologist assistants may not advertise in any manner which implies that the radiologist assistant is an independent practitioner.
3. A person not licensed as a radiologist assistant by the Board who holds himself out as a radiologist assistant is subject to the penalties applicable to the unlicensed practice of medicine.

H. PHYSICIAN LIABILITY

Prior to the supervision of a radiologist assistant, the physician's and/or radiologist assistant's insurance carrier must forward to the Board a Certificate of Insurance.

I. RENEWAL SCHEDULE

1. The license of every person licensed to practice as a radiologist assistant in the State of Mississippi shall be renewed annually.
2. On or before May 1 of each year, the State Board of Medical Licensure shall mail an application for renewal of license to every radiologist assistant to whom a license was issued or renewed during the current licensing year. The applicant shall complete the application and return it to the Board before June 30 and the renewal fee of an amount established by the Board. The payment of the annual license renewal fee shall be optional with all radiologist assistants over the age of seventy (70) years. Upon receipt of the application and fee, the Board shall verify the accuracy of the application and issue to applicant a certificate of renewal for the ensuing year, beginning July 1 and expiring June 30 of the

succeeding calendar year. Such renewal shall render the holder thereof a licensed radiologist assistant as stated on the renewal form.

3. A radiologist assistant practicing in Mississippi who allows his license to lapse by failing to renew the license as provided in Subsection 2 may be reinstated by the Board on satisfactory explanation for such failure to renew, by completion of a reinstatement form, and upon payment of the renewal fee for the current year, and shall be assessed a fine of Twenty-five Dollars (\$25.00) plus an additional fine of Five Dollars (\$5.00) for each month thereafter that the license renewal remains delinquent.
4. Any radiologist assistant not practicing in Mississippi who allows his license to lapse by failing to renew the license as provided in Subsection 2 may be reinstated by the Board on satisfactory explanation for such failure to renew, by completion of a reinstatement form, and upon payment of the arrearage for the previous five (5) years and the renewal fee for the current year.
5. Any radiologist assistant who allows his license to lapse shall be notified by the Board within thirty (30) days of such lapse.
6. Any person practicing as a radiologist assistant during the time his license has lapsed shall be considered an illegal practitioner and shall be subject to the same penalties as provided at Mississippi Code (1972) Annotated, Section 73-25-14.

J. DISCIPLINARY PROCEEDINGS

1. GROUNDS FOR DISCIPLINARY ACTION AGAINST RADIOLOGIST ASSISTANTS

For the purpose of conducting disciplinary actions against individuals licensed to practice as radiologist assistants, the Board hereby incorporates those grounds for the non-issuance, suspension, revocation, or restriction of a license or the denial of reinstatement or renewal of a license, as set forth in Mississippi Code (1972) Annotated, Sections 73-25-29 and 73-25-83. As a basis for denial, suspension, revocation or other restriction, the Board may initiate disciplinary proceedings based upon any one or more of those grounds as set forth in Sections 73-25-29 and 73-25-83, and may make provision for the assessment of costs as provided therein.

2. HEARING PROCEDURE AND APPEALS

No individual shall be denied a license or have his license suspended, revoked or restriction placed thereon, unless the individual licensed as a

radiologist assistant has been given notice and opportunity to be heard. For the purpose of notice, disciplinary hearings and appeals, the Board hereby adopts and incorporates by reference all provisions of the "Rules of Procedure" now utilized by the Board for those individuals licensed to practice medicine, osteopathic medicine, and podiatric medicine in the State of Mississippi.

3. REINSTATEMENT OF LICENSE

- a. A person whose license to practice as a radiologist assistant has been revoked, suspended, or otherwise restricted may petition the Mississippi State Board of Medical Licensure to reinstate his license after a period of not less than one (1) year has elapsed from the date of the revocation or suspension. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Sections 93-11-157 or 93-11-163, as the case may be.
- b. The petition shall be accompanied by two (2) or more verified recommendations from physicians or osteopaths licensed by the Board of Medical Licensure to which the petition is addressed and by two (2) or more recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed and such facts as may be required by the Board of Medical Licensure.

The petition may be heard at the next regular meeting of the Board of Medical Licensure but not earlier than thirty (30) days after the petition was filed. No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which he is under probation or parole. The hearing may be continued from time to time as the Board of Medical Licensure finds necessary.

- c. In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, which should be imposed if the disciplinary penalty is set aside, the Board of Medical Licensure may investigate and consider all activities of the petitioner since the disciplinary action was taken against him, the offense for which he was disciplined, his activity during the time his certificate was in good standing, his general reputation for truth, professional ability and good character; and it may require the petitioner to pass an oral examination.

K. IMPAIRED RADIOLOGIST ASSISTANTS

1. For the purpose of the Mississippi Disabled Physician Law, Mississippi Code (1972) Annotated, Sections 73-25-51 to 73-25-67, any individual licensed to practice as a radiologist assistant, shall be subject to restriction, suspension, or revocation, in the case of disability by reason of one or more of the following:
 - a. mental illness;
 - b. physical illness, including but not limited to deterioration through the aging process, or loss of motor skills; and/or
 - c. excessive use or abuse of drugs, including alcohol.
2. If the Board has reasonable cause to believe that a radiologist assistant is unable to practice with reasonable skill and safety to patients because of one or more of the conditions described above, referral of the radiologist assistant shall be made, and action taken, if any, in the manner as provided in Sections 73-25-55 through 73-25-65, including referral to the Mississippi Recovering Physicians Program, sponsored by the Mississippi State Medical Association.

L. EFFECTIVE DATE OF REGULATIONS

The above rules and regulations pertaining to the Practice of Radiologist Assistants shall become effective upon adoption.

Amended July 20, 2006.

NOTICE OF PROPOSED RULE ADOPTION

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure



Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority authorizing the promulgation of Rule: (Insert citation to state or federal statute, or rule) Section 73-43-11

Reference to Rules repealed, amended or suspended by the Proposed Rule: (Insert citation to specific rule(s) repealed, amended or suspended) II. Licensure by Examination - M.D. And/Or D.O.

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: (Insert here)
The purpose of these regulations are to set requirements for physicians wanting to sit for Part 3 of the United States Medical Licensure Examination.

This rule is proposed as a Final Rule, and/or a Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

An oral proceeding is scheduled on this rule on Date: _____ Time: _____
Place: _____

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least _____ day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

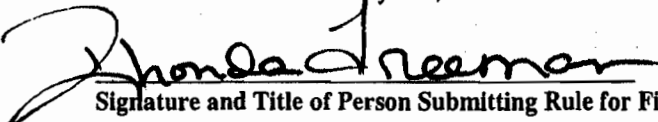
Economic Impact Statement: Check one box below:

The agency has determined that an economic impact statement is not required for this rule, or
 The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: July 21, 2006

Proposed Effective Date of Rule: Upon Adoption


Signature and Title of Person Submitting Rule for Filing
Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: July 21, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

The attached proposed rule will establish the requirements for physicians who want to take Step 3 of the United States Medical Licensing Examination.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

II. LICENSURE BY EXAMINATION - M.D. AND/OR D.O.

A. To qualify for admission by examination, an individual shall meet the following requirements, provided that the Board may admit any individual to the examination while reserving its right to deny licensure if that individual fails to meet all requirements for licensure subsequent to success or completion of the examination:

1. Applicant must satisfy the Board that he is at least twenty-one (21) years of age and of good moral character.

2. Present a diploma from a reputable medical college or college of osteopathic medicine, subject to the following conditions:

~~a. Any diploma or other document required to be submitted to the Board by an applicant which is not in the English language must be accompanied by a certified translation thereof into English.~~

~~b. a.~~ If the degree is from a medical college or a college of osteopathic medicine in the United States or Puerto Rico, the medical college must be accredited by the Liaison Committee on Medical Education (LCME), a Joint Committee of the Association of American Medical Colleges (AAMC) and the American Medical Association (AMA), or if a college of osteopathic medicine, must be accredited by the Professional Education Committee of the American Osteopathic Association (AOA).

~~e. b.~~ If the degree is from a Canadian medical school, the school must be accredited by the Liaison Committee on Medical Education (LCME) and by the Committee on Accreditation for Canadian Medical Schools, as sponsored by the Canadian Medical Association and Association of Canadian Medical Colleges.

~~d. c.~~ If the degree is from a foreign medical school, applicant must either (i) possess a valid certificate from the ECFMG or (ii) document successful completion of a Fifth Pathway program, as described in Article II, B below.

d. Any diploma or other document required to be submitted to the Board by an applicant which is not in the English language must be accompanied by a certified translation thereof into English.

3. ~~If a graduate from a medical college or college of osteopathic medicine in the United States, Canada or Puerto Rico, Applicants for licensure by~~

examination must present documentation of having completed at least one (1) year of postgraduate training in the United States accredited by the Accreditation Council for Graduate Medical Education (ACGME) or by the AOA; or training in Canada accredited by the Royal College of Physicians and Surgeons.

- ~~4. If a graduate from a foreign medical school, applicant must present documentation of having completed at least three (3) years of ACGME-approved postgraduate training in the United States or training in Canada approved by the Royal College of Physicians and Surgeons.~~
4. Present certified copy of birth certificate.
5. Subject to the provisions of Article IV below, an applicant must successfully complete and pass all parts/steps of the FLEX or USMLE.
6. Must submit an application for medical license on a form supplied by the Board, completed in every detail with a recent photograph (wallet-size/passport type) attached. A Polaroid or informal snapshot picture will not be accepted.
7. Submit fee prescribed by the Board; however, any fees related to permanent licensure may be deferred for applicants indicating a desire to practice medicine under a Temporary License or Limited License within the confines of an ACGME or AOA approved postgraduate training program pursuant to Section X.A.1 or Section V of these regulations.
8. Must appear for a personal interview in the office of the Mississippi State Board of Medical Licensure.

B. A Fifth Pathway Program, as a prerequisite for licensure by examination pursuant to Article II, A2d above, will be considered on an individual basis. Students who have completed the academic curriculum in a foreign medical school and who have fulfilled the conditions hereinafter set forth, may be offered the opportunity to substitute for an internship required by the foreign medical school, an academic year of supervised clinical training prior to entrance into the first year of ACGME- or AOA-approved postgraduate medical education. The supervised clinical training (Fifth Pathway) must be under the direction of a medical school accredited by the LCME. Fifth Pathway will be available to students who have fulfilled the following conditions:

1. Completed, in an accredited American college or university, undergraduate pre-medical work of the quality acceptable for matriculation in an accredited U.S. medical school,

2. Studied medicine at a medical school located outside the United States, Puerto Rico and Canada but which is recognized by the World Health Organization, and
3. Completed all of the formal requirements of the foreign medical school except internship and/or social service.

C. Prior to issuance of a permanent Mississippi medical license, a graduate of a foreign medical school who has successfully completed all other requirements of application for licensure by examination must present documentation of having completed at least three (3) years of ACGME-approved postgraduate training in the United States or training in Canada approved by the Royal College of Physicians and Surgeons.

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

May 21, 2006

Mr. Robert E. Bass
Executive Director
Mississippi State Personnel Board
301 North Lamar
Jackson, Mississippi 39201-1495

Dear Mr. Bass:

The Mississippi State Board of Medical Licensure has met and approved an increase to the salary of the Board's Executive Director.

Due to the Board requiring that the Executive Director be a Medical Doctor, the salary must remain competitive. In order to retain a well trained experienced physician in this demanding position, the Board requests that you increase the current salary of Occu Code 7576, APP OFCL - Medical Licensure Board to \$114,374.45.

Your approval of the Board's Executive Director salary increase will certainly be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Dewitt G. Crawford, M.D.", with a long horizontal flourish extending to the right.

Dewitt G. Crawford, M.D.
Board President
MS State Board of Medical Licensure

AUGUST 2006

UNIVERSITY

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
AUGUST 23, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary

ALSO PRESENT:

Stan T. Ingram, Complaint Counsel for the Board
Heather Wagner, Assistant Attorney General
Ellen O'Neal, Special Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

NOT PRESENT:

Mallan G. Morgan, M.D., Director

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, August 23, 2006, at 2:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

Ms. Wagner advised that she would no longer be the representative from the Attorney General's office as she was accepting another assignment and introduced Ms. Ellen O'Neal as her replacement.

Dr. Crawford thanked Ms. Wagner for a job well done and wished her the best in her new endeavor. Dr. Crawford welcomed Ms. O'Neal to the meeting and advised her that the Board looked forward to working with her.

**ATTORNEY GENERAL'S OPINION COVERING THE AUTHORITY OF MSBML TO
REGULATE PHYSICIANS ENGAGED IN UTILIZATION REVIEW ACTIVITIES**

Dr. Crawford advised that Dr. Merideth would be addressing the Executive Committee to give an update of the Attorney General's opinion covering the authority of MSBML to regulate physicians engaged in utilization review activities.

EXECUTIVE COMMITTEE MINUTES

August 23, 2006

Page 2

Dr. Merideth advised that the Board had submitted a request to the Attorney General on July 11, 2006, requesting an official opinion regarding several issues pertaining to the Board's regulation governing utilization review activities by physicians. Dr. Merideth advised that the Board had received the Attorney General's official opinion and the opinion is favorable and consistent with what the Board is trying to accomplish through the regulation.

A copy of the Attorney General's official opinion dated August 18, 2006, is attached hereto and incorporated by reference.

PROPOSED ADOPTION OF REGULATIONS REGARDING THE CONDUCT OF PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

Dr. Merideth advised that the Full Board at the July 20, 2006, meeting authorized and requested the Executive Committee at its next meeting to consider the proposed "**Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**", and if the proposed regulations are passed by the Executive Committee, that the Executive Committee on behalf of the Full Board file with the Secretary of State Notice of an Oral Proceeding and Intent to Adopt Proposed Regulations at the next meeting of the Full Board.

There was a brief discussion on the intent to adopt and the oral proceeding that will be held at the September 21, 2006, Full Board meeting. There was also discussion concerning the effective date of November 1, 2006, of the proposed regulation since the Board had enacted a temporary rule to delay the July 1, 2006, enactment of the current Board Regulation XXXI until January 31, 2007. Ms. Wagner addressed the Executive Committee and advised that she was present at the meeting in late June between the Attorney General and the representative from the AG's office for the Division of Medicaid, Richard Roberson, and that the Attorney General had requested that Medicaid submit information to the Board addressing the Division of Medicaid's specific concerns with the Board's regulation. Ms. Wagner advised that she along with Mr. Ingram, and Drs. Crawford, Morgan, and Merideth attended a meeting in the Governor's office where the same request was made. Ms. Wagner advised that since the Board has made the effort and has not received any response from the Division of Medicaid, that she saw no reason for the Board not to move forward with the proposed regulation.

Dr. Merideth noted that representatives of the Board have held at least three (3) meetings and written at least one letter to the Division of Medicaid in which the request was made for the Division of Medicaid to submit information to the Board

EXECUTIVE COMMITTEE MINUTES

August 23, 2006

Page 3

about the Division of Medicaid's concerns about Board Regulation XXXI, and that so far, the Board has not received any response from the Division of Medicaid.

Motion was made by Dr. Merideth that the Executive Committee approve the proposed regulation entitled, "**Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**", and to file notice with the Secretary of State of an Oral Proceeding and Intent to Adopt Proposed Regulations at the September 21, 2006, Full Board meeting. Dr. Gibson seconded the motion and it carried unanimously. A copy of the proposed regulation is attached hereto and incorporated by reference.

After a brief discussion, the Executive Committee decided to have the Oral Proceeding at 9:00 a.m. The Executive Committee also agreed that Dr. Crawford would draft a letter to send to the Mississippi Hospital Association and the Federation of State Medical Boards to notify them of the changes in the Board's utilization review regulations.

NICHOLAS W. HOWARD, M.D., RIPLEY, MISSISSIPPI MEDICAL LICENSE NUMBER 08361, ORDER OF PROHIBITION

Mr. Ingram addressed the Executive Committee and advised that Dr. Howard was not present; however, Mr. Ingram had talked with Dr. Howard via telephone on August 22, 2006, and Dr. Howard had requested a continuance until the September 21, 2006, Board meeting. Mr. Ingram advised that Dr. Howard was informed that during the interim, the previously issued Order of Prohibition would remain in full force and effect.

After a brief discussion, motion was made by Dr. Merideth, seconded by Dr. Gibson, and carried unanimously to grant the continuance until the September 21, 2006, Full Board meeting. The Order of Continuance is attached hereto and incorporated by reference.

UPDATE FROM EXECUTIVE DIRECTOR

Dr. Morgan was not present at the meeting so Sherry Harris advised that Dr. Morgan had conducted three physician meetings to discuss minor issues as was discussed and implemented at the June 29, 2006, Executive Committee meeting.

EXECUTIVE COMMITTEE MINUTES

August 23, 2006

Page 4


OTHER BUSINESS

Dr. Crawford advised that he and Dr. Merideth would be making a trip to the Gulf Coast to work a couple days during the week of August 27, 2006, at the D'Iberville Free Clinic.

Thomas Washington, Division Director of Investigations, advised that they were aware of a Physician Assistant, Craig Alpaugh, that was treating patients on the Gulf Coast and Mr. Alpaugh does not hold a license to practice as a Physician's Assistant in the State of Mississippi. The Executive Committee agreed to send Mr. Alpaugh a letter ordering him to cease and desist any patient contact.

ADJOURNMENT

There being no further business, the meeting adjourned at 2:45 p.m., with the next Executive Committee meeting scheduled for 1:00 p.m. on Wednesday, September 20, 2006.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
August 23, 2006

SEPTEMBER 2006

PLANNING

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
SEPTEMBER 20, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary

ALSO PRESENT:

Stan T. Ingram, Complaint Counsel for the Board
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

NOT PRESENT:

Mallan G. Morgan, M.D., Director

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, September 20, 2006, at 4:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

LETTER ISSUED TO PHYSICIAN ASSISTANT, CRAIG ALPAUGH, TO CEASE AND DESIST

For informational purposes, Dr. Crawford advised that a cease and desist letter had been issued to Craig Alpaugh, Physician Assistant, due to his illegal practice of medicine. A copy of the letter is attached hereto and incorporated by reference.

JESSE C. WILLIAMS, M.D., COLUMBUS, MISSISSIPPI MEDICAL LICENSE NUMBER 09206

Dr. Williams was not present or represented by legal counsel.

Mr. Ingram, Complaint Counsel for the Board, addressed the Executive Committee and advised that Dr. Williams had signed an Agreement to Retire his Medical License that would terminate his practice of medicine with terms and conditions for reinstatement. Mr. Ingram advised the agreement would be

EXECUTIVE COMMITTEE MINUTES

September 20, 2006

Page 2

considered reportable disciplinary action as he did not want to submit to an evaluation, at least at this point in time. Per the agreement, a comprehensive evaluation would be required in the event Dr. Williams ever seeks reinstatement of licensure.

After a brief discussion, the Executive Committee agreed to accept the Agreement to Retire Medical License from Jesse C. Williams, M.D. A copy of the Agreement is attached hereto and incorporated by reference.

COPY OF LETTER RECEIVED FROM DEPARTMENT OF HEALTH DATED SEPTEMBER 6, 2006, REGARDING THE MISSISSIPPI HEALTH ALERT NETWORK (HAN) PROJECT

Ms. Freeman, Division Director, Licensure Division, discussed a letter from the Mississippi Department of Health dated September 6, 2006. Ms. Freeman advised that she has met with representatives from the Department of Health to discuss the Mississippi Health Alert Network (HAN) project.

The Mississippi Department of Health (MDH) is seeking to partner with the Mississippi State Board of Medical Licensure (MSBML) to get the most accurate and timely information as it pertains to the physicians within Mississippi. MDH will use the information solely for the HAN system and are willing to enter into a Memorandum of Understanding as it pertains to the needed data elements and use of the data. Ms. Freeman advised that the Board needs to decide what information they are willing to release. One of the benefits of participating in the project is that MDH will be willing to provide services to the Board for matters like sending out renewal notices, etc.

After a brief discussion, the Executive Committee decided to offer Michael D. Scales, Chief Systems Information Officer, Mississippi State Department of Health, time to present a brief presentation before the Full Board on Thursday, September 21, 2006.

REQUEST FROM ALLEN GERSH, M.D., HATTIESBURG, MISSISSIPPI MEDICAL LICENSE NUMBER 07885

Dr. Crawford advised that he has been working with Dr. Allen Gersh of Hattiesburg and their request to open a Dialysis Access Vascular Center. Since this is a new speciality and there is no Board certification for the speciality, Dr. Crawford brought the issue before the Executive Committee for discussion. There was a brief discussion as to whether the procedures were actually Level II Office

EXECUTIVE COMMITTEE MINUTES

September 20, 2006

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Based Surgery or would be considered ambulatory surgical procedures, which are monitored by the Department of Health.

The Executive Committee agreed to write Dr. Gersh advising him that as long as the procedures fall under our Rules and Regulations of Level II Office Based Surgery that the Board sees no problem. However, he may wish to verify with the Department of Health that they do not consider his facility to be an Ambulatory Surgical Facility (ASF). If the facility is considered as ASF, it would fall under the regulations of the Department of Health.

REQUEST FROM PATRICK SEWELL, M.D., JACKSON, MISSISSIPPI MEDICAL LICENSE NUMBER 14876

Dr. Crawford advised that a request had been received from Dr. Patrick Sewell regarding regulatory issues governing office based surgery. His practice is Sapheneia medical, a single speciality ambulatory surgical facility, in Jackson. Dr. Sewell stated that no office based surgery is performed and was questioning if the Department of Health's rules governing ambulatory surgical facilities does not supercede MSBML's regulations.

After a brief discussion, the Executive Committee agreed that an ambulatory surgical facility is not in MSBML's jurisdiction, and that the Department of Health's rule does supercede our regulation. The Executive Committee agreed that more information was needed before responding to Dr. Sewell.

JASON KENDELL MORRIS, M.D., CLARKSDALE, MISSISSIPPI MEDICAL LICENSE NUMBER 14181

Mr. Ingram advised that Dr. Morris is on the Full Board agenda for a hearing on Thursday, September 21, 2006. Mr. Ingram advised that a settlement conference had been held on September 6, with Dr. Morris, David Donnell, Dr. Morris' attorney, Dr. Crawford, Thomas Washington, Director of Investigations, and himself present. Mr. Ingram covered the topics discussed at the meeting and distributed a draft of a Letter of Concern to be discussed at the Full Board meeting on Thursday. After a brief discussion, the Executive Committee agreed to present the Letter of Concern before the Full Board for approval.

Also, Mr. Ingram advised that Dr. Morris had agreed to pay investigative costs of \$5,000.00 to the Board.

EXECUTIVE COMMITTEE MINUTES

September 20, 2006

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OTHER BUSINESS

THOMAS FRAZEE FLEISCHHAUER, M.D., APPLICANT

Mr. Ingram advised that he had been reviewing the licensure file for Dr. Fleischhauer. Mr. Ingram advised that there was sufficient evidence to issue a letter to show cause to Dr. Fleischhauer. After a brief discussion, the Executive Committee agreed to send Dr. Fleischhauer a letter providing him an opportunity to withdraw his application or appear for a show cause hearing before the Board.

Dr. Merideth covered several items in reference to the oral proceeding that is scheduled for Thursday, September 21, 2006, before final adopting the **Regulations Concerning the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**. Dr. Crawford will give an opening statement advising the reason for the oral proceeding and limiting each person to five (5) minutes to make their statements and/or comments.

Dr. Merideth advised that we have not received any contact or correspondence from Medicaid after MSBML has made numerous requests and offered them the opportunity to address any concerns they have with the proposed regulation.

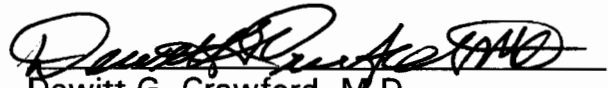
Ms. Freeman discussed a concern with Mississippi Professionals Health Program not wanting to release information of applicants or residents under contract and MSBML not being informed. The Executive Committee agreed that MSBML does have the right to the information and each case should be reviewed individually whether under MPHP advocacy or not.

There was a brief discussion about the need to make some changes to the current regulations governing the practice of physician assistants. Ms. Freeman will begin work on drafting a proposal for the next Board meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 5:25 p.m. The next scheduled Executive Committee meeting was set for 1:00 p.m. on Wednesday, November 8, 2006.

EXECUTIVE COMMITTEE MINUTES
September 20, 2006
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Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
September 20, 2006

TELEPHONE: (601) 987-3079



FAX: (601) 987-6822

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

W. Joseph Burnett, M.D., Director

August 23, 2006

Craig Alpaugh, P.A.
327 East Second Street
Pass Christian, Mississippi 39571

RE: Illegal Practice of Medicine

Dear Mr. Alpaugh:

It has come to the Board's attention that you have been treating patients in the State of Mississippi, being those patients that have been victimized by last year's hurricane, Katrina. Please be advised that your treatment of patients under any circumstance constitutes the practice of medicine in this state. Such practice falls within the jurisdiction of the Board and can only be conducted by those holding either a license to practice medicine or osteopathy.

As a result of the above, you are hereby ordered to cease and desist any patient contact or activity which may, directly or indirectly, constitute the practice of medicine. While your efforts to provide relief to hurricane victims may be deemed admirable, your practice of medicine is not only illegal but could be harmful to individuals already experiencing difficulty.

If this Board receives any information indicating that you have re-entered the State of Mississippi for the purpose of providing medical advice or treatment to patients, we will seek not only injunctive relief, but criminal prosecution.

Sincerely,

Dewitt G. Crawford, M.D.
President
Mississippi State Board of Medical Licensure

Cc: Stan Ingram, Esq., Board Attorney
Thomas Washington, Investigative Division Director

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

INT THE MATTER OF THE PHYSICIAN'S LICENSE

OF

JESSIE C. WILLIAMS, M.D.

AGREEMENT TO RETIRE MEDICAL LICENSE

WHEREAS, JESSIE C. WILLIAMS, M.D., hereinafter referred to as "Licensee," is the current holder of License Number 09206, issued on September 13, 1980, to practice medicine in the State of Mississippi;

WHEREAS, Licensee's practice is currently subject to a non-disciplinary Recovery Contract Agreement with the Mississippi Professional Health Program (MPHP);

WHEREAS, Licensee has been requested by the MPHP to submit to further evaluation and treatment, a request for which Licensee fully intends to comply;

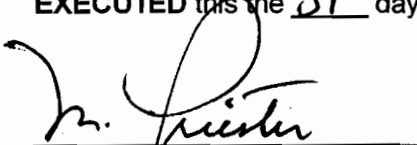
WHEREAS, Licensee has decided to cease the practice of medicine and has closed his practice, effective September 1, 2006. Notwithstanding, Licensee wishes to reserve the right to petition the Board at any time in the future to return to the practice of medicine and in so doing, wishes to enter into an agreement, wherein both parties fully understand the parameters in which such an authorization may be granted;

NOW THEREFORE, Licensee hereby agrees to the following terms and conditions:

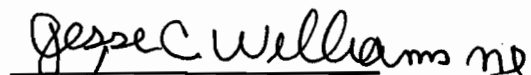
1. Licensee shall terminate his practice of medicine, effective September 1, 2006.
2. Licensee shall tender to the Board his license, DEA registration and all other evidence of licensure, effective September 1, 2006.
3. In the event Licensee ever wishes at any time in the future to return to the practice of medicine, he shall first submit to an evaluation for chemical dependency at Pine Grove Recovery Center, Hattiesburg, Mississippi, or other treatment facility approved in advance and in writing by the Board and Mississippi Professional Health Program (MPHP).

4. Licensee shall execute any and all releases so as to permit the MPHP and Board to submit any and all documentation to the treatment facility prior to the evaluation. Upon completion of the evaluation, a written evaluation report shall be submitted to the MPHP and Board. Licensee shall comply with all treatment recommendations of the Treatment facility and its medical staff.
5. In the event Licensee at any time in the future desires to return to the practice of medicine, he shall first petition the Board for reinstatement of licensure. At such time, the Board shall have the right to consider all facts and matters, including the results of any and all past and present evaluations and treatment records from any treatment facility, physician(s), psychologist(s), therapist(s), and the Mississippi Professional Health Program. If it is then the decision of the Board that Licensee may return to the practice of medicine, the Board reserves the right to impose any and all restrictions so as to protect the public and ensure Licensee's sobriety and recovery.

EXECUTED this the 31st day of August, 2006.



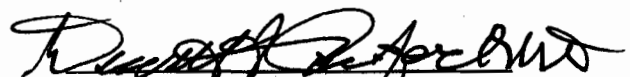
Witness



JESSIE C. WILLIAMS, M.D.
Jesse C. Williams

ACCEPTED AND APPROVED this the 20th day of September, 2006, by the

Mississippi State Board of Medical Licensure.



DEWITT G. CRAWFORD, M.D.
PRESIDENT

BOARD MINUTES
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
SEPTEMBER 21, 2006

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, September 21, 2006, in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

The following members were present:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary
Larry B. Aycock, M.D., McComb
Virginia M. Crawford, M.D., Hattiesburg
A. Wallace Conerly, M.D., Jackson
S. Randall Easterling, M.D., Vicksburg
William S. Mayo, D.O., Oxford

Also present:

Stan T. Ingram, Complaint Counsel for the Board
Ellen O'Neal, Special Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant
Wesley Breland, Hattiesburg, Consumer Health Ad Hoc Committee
Martha Thompson, Oxford, Consumer Health Ad Hoc Committee

Not present:

William B. Harper, D.O., Greenwood
Mallan G. Morgan, M.D., Director
Cecil R. Burnham, Jackson, Consumer Health Ad Hoc Committee

The meeting was called to order at 9:00 a.m. by Dr. Crawford, President. The invocation was given by Dr. Aycock. Dr. Crawford welcomed Harvey Rayborn, Court Reporter. Dr. Crawford introduced and welcomed Ellen O'Neal, Special Assistant Attorney General, and extended a welcome to all visitors present at the meeting.

BOARD MINUTES

September 21, 2006

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APPROVAL OF CERTIFICATION OF MISSISSIPPI LICENSES TO OTHER ENTITIES FOR THE PERIOD JULY 1, 2006, THROUGH AUGUST 31, 2006

Two hundred fifteen (215) licenses were certified to other entities for the period July 1, 2006, through August 31, 2006. Motion was made by Dr. Aycock, seconded by Dr. Conerly, and carried unanimously to approve these certifications.

APPROVAL OF LICENSES ISSUED FOR THE PERIOD JULY 1, 2006, THROUGH AUGUST 31, 2006

One hundred eleven (111) licenses were issued for the period July 1, 2006, through August 31, 2006. Motion was made by Dr. Gibson, seconded by Dr. Aycock, and carried unanimously to approve these licenses.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED JULY 19, 2006, MINUTES OF THE BOARD MEETING DATED JULY 20, 2006, AND MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED AUGUST 23, 2006

Minutes of the Executive Committee Meeting dated July 19, 2006, Minutes of the Board Meeting dated July 20, 2006, and Minutes of the Executive Committee Meeting dated August 23, 2006, were reviewed. Dr. Gibson moved for approval of the minutes as submitted. Dr. Conerly seconded the motion, and it carried unanimously.

REPORT OF SEPTEMBER 20, 2006, EXECUTIVE COMMITTEE MEETING

Dr. Crawford reported on Wednesday's Executive Committee meeting. Dr. Crawford advised the Board that there would be a presentation later in the meeting from Michael D. Scales, Chief Systems Information Officer, Mississippi State Department of Health, to provide the Board with information concerning a Health Alert Network (HAN) system that they would like the Board to partner.

Dr. Crawford presented other informational items, which are reflected in the Executive Minutes. Motion was made by Dr. Aycock, seconded by Dr. Conerly, and carried unanimously to approve the actions of the Executive Committee.

BOARD MINUTES

September 21, 2006

Page 3

REPORTS FROM COMMITTEES

Consumer Health - Mr. Breland (Chair), Ms. Thompson, Mr. Burnham

Mr. Breland reported that they had received information from other states and were in the process of formulating rules and bylaws for the Consumer Health Committee.

Education & Workforce - Dr. Conerly (Chair), Dr. Aycock, Dr. Mayo

Dr. Conerly reported that the committee plans to work on a procedure for emergency licenses during a catastrophe. The committee will have more information later.

Scope of Practice - Dr. Merideth (Chair), Dr. Easterling, Dr. Aycock

Dr. Merideth reported that the committee met earlier today and discussed Board Regulation XIX, **Regulation Concerning Use of Laser Devices** that was originally adopted March 18, 1999. The Board of Nursing took exception to an amendment that the Board made July 19, 2005, since the regulation was not jointly promulgated. Dr. Merideth advised that at the Joint Committee meeting on July 18, 2006, the recommendation was to agree to go back to the wording of the original regulation dated March 18, 1999, and work from that point.

Motion was made by Dr. Merideth that the Board authorize the President or his designate to communicate with the Board of Nursing our interest in jointly promulgating the language adopted in the March 1999 regulation. Dr. Conerly seconded the motion and it carried unanimously.

Professional Health Program - Dr. Gibson (Chair), Dr. Mayo, Dr. Merideth

Dr. Gibson reported that the committee met earlier today and reviewed some suggested changes to the Memorandum of Understanding with Mississippi Professionals Health Program. Dr. Gibson advised that the committee will continue work on this project.

Rules, Regulation & Legislative - Dr. Easterling (Chair), Dr. D. Crawford, Dr. Harper

Dr. Easterling advised that there was no new information to report.

BOARD MINUTES

September 21, 2006

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Ethics - Dr. Merideth (Chair), Dr. V. Crawford, Dr. Conerly

Dr. Merideth advised that there was no new information to report.

Dr. Crawford referred the issue of selling health-related products from a physician's office to this committee for further review.

ORAL PROCEEDING CONCERNING THE CONDUCT OF PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

Dr. Crawford called the oral proceeding to order, and read the following statement into the record:

"We are here today to conduct an oral proceeding with regard to the adoption by the Mississippi State Board of Medical Licensure of its proposed **Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**. The Notice of Proposed Rule Adoption was filed with the Secretary of State pursuant to the Administrative Procedures Act on August 25, 2006. These regulations are being adopted pursuant to the statutory authority found in Mississippi Code Title 73. The purposes of these regulations are to protect the public, to set professional standards, to enforce the provisions of law regarding the performance of utilization review activities by physicians in the State of Mississippi, and to further other legitimate governmental purposes deemed to be in the public interest.

Each person has been provided with guidelines for the conduct of oral proceedings before the MSBML. Persons who have indicated a desire to make a presentation during this proceeding may present oral statements and/or any documentary submissions relevant to their position. The Board requests that each participant making an oral statement identify themselves and any other individuals or entities they may represent at the beginning of their presentation and give a brief statement of their position with regard to the proposed regulation. The Board requests that each individual requesting to comment during the oral proceeding, to please restrict your statements and/or comments to five (5) minutes."

Dr. Merideth addressed the Board and provided a background of the regulations for the new Board members. Dr. Merideth advised that we are here today to have an oral proceeding to offer individuals time for public comment regarding the Board's consideration of the final adoption of the proposed regulation entitled "**Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**."

BOARD MINUTES

September 21, 2006

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Mr. Ingram, Complaint Counsel for the Board, addressed the Board and made comments as to the Board's position in regards to the proposed regulation. Mr. Ingram advised that since this was an oral proceeding that a court reporter was present and would be taking minutes of the oral proceeding. Mr. Ingram discussed several exhibits and had each entered into the record.

Dr. Crawford addressed the Board and opened the floor for visitors to make any comments. The following individuals addressed the Board:

1) Dennis Miller - Jackson attorney representing Aetna and Cigna. Larry Clark, former Deputy Attorney General, was with Mr. Miller on behalf of Aetna and Cigna. Mr. Miller addressed the Board and advised that Aetna and Cigna have previously submitted comments on their position. Both companies do not believe that the Board has authority to regulate utilization review activities. Mr. Miller advised that there is no authority granted to the Board under the Utilization Review statute. Mr. Miller also advised that Aetna and Cigna believe utilization review is not the practice of medicine and cannot be regulated under the Board's authorizing statutes. Mr. Miller stated that the proposed regulation will stop utilization review in our state by threatening physicians engaged in utilization review activities with investigations and peer reviews by the Board which could result in disciplinary action.

Dr. Merideth thanked Mr. Miller and asked for questions and/or comments from the public or the Board. Dr. Easterling advised that he supports the position that the Board does have statutory authority to regulate utilization review activities.

2) Linda McMullen - General Counsel, Mississippi State Medical Association (MSMA) Ms. McMullen addressed the Board and advised that MSMA supports the Board in adoption of the proposed **Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities.**

3) Rebecca Askew - representing Health Systems of Mississippi (HSM). HSM is an entity contracted by the Division of Medicaid to handle review of payments for Medicaid. Ms. Askew advised their attorney, Jim Cox, is on his way to address the Board.

4) Jim Cox - attorney for Health Systems of Mississippi (HSM). Mr. Cox hand delivered a memo from Robert L. Robinson, Executive Director, Division of Medicaid, to the members of the Board. Mr. Cox advised that the memo serves as a formal request for the Board to rescind the proposed regulations due to the chilling effect they would have on physicians performing utilization review. Mr. Cox advised that Medicaid believes the regulations exceed the Board's authority and requested that

BOARD MINUTES
September 21, 2006
Page 6

the Board rescind the proposed regulations to avoid further confrontation.

Dr. Merideth read portions of the Attorney General's Opinion dated August 18, 2006, affirming the Board's authority to regulate utilization review.

Dr. Merideth addressed the Board and advised that HSM and Medicaid have been on notice regarding this issue since May of this year and that the attorney for the Division of Medicaid was instructed by Attorney General Hood to get together with MSBML and address their concerns and work toward a joint solution. Dr. Merideth advised that MSBML has made numerous requests of the Division of Medicaid and offered them the opportunity to address their concerns. MSBML has not heard anything or received any response until the hand delivered letter dated September 20, 2006, was delivered at the Board meeting during the oral proceeding requesting the Board rescind the proposed regulation.

Dr. Merideth also advised that in a conversation with an official of Blue Cross Blue Shield, they expressed their support of the Board's proposed regulation. Dr. Merideth stated that the official of Blue Cross Blue Shield expressed their only reservation was that the regulation might make utilization review physician recruitment and retention a little more difficult.

Dr. Merideth addressed the Board and advised that the Executive Committee had met with representatives of the Department of Health on July 19, 2006, and were advised that the Department of Health does not have the statutory authority, regulations, resources, or expertise to regulate physician conduct regarding the performance of utilization review medical consultation activities. The Department of Health further advised that they look to MSBML to regulate all forms of physician conduct and will continue to refer all issues related to the conduct of physicians to MSBML.

THE BOARD RECESSED AT 10:20 A.M. AND RECONVENED AT 10:35 A.M.

Before recessing for break, Mr. Ingram advised the Board that they should not discuss this matter during the break.

After much discussion from the Board members about possible resolutions, motion was made by Dr. Merideth to amend Section J to change the effective date to December 1, 2006, to provide Board members an opportunity to research the matter further and provide interested parties until the next Board meeting on November 9th to provide specific concerns or suggestions for change to the proposed regulations. Dr. Gibson seconded the motion and it carried unanimously.

BOARD MINUTES
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After further discussion, motion was made by Dr. Merideth to adopt in final form, with the amended effective date change, the Board's **Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**. Dr. Gibson seconded the motion, and the final vote was 6 to 2 with Dr. Easterling and Dr. Conerly voting against final adoption of the regulation today. Dr. Crawford announced the motion carried. A copy is attached hereto and incorporated by reference. A Notice of Final Rule Adoption with the amended effective date of December 1, 2006, will be filed with the Secretary of State under the Administrative Procedures Act.

Motion was made by Dr. Merideth for the Board to conduct a public hearing on November 9, 2006, at 9:00 a.m. in order to afford the public another chance to comment on Regulation XXXI, **Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities**. Any written comments regarding Regulation XXXI should be submitted to the Board by October 31, 2006. Dr. Gibson seconded the motion and it carried unanimously.

Dr. V. Crawford advised that she would like to hear from utilization review physicians and have them explain how this regulation would affect them.

A verbatim account of the proceeding was recorded by Harvey Rayborn, Court Reporter.

PRESENTATION BY MICHAEL SCALES WITH THE MISSISSIPPI DEPARTMENT OF HEALTH REGARDING THE MISSISSIPPI HEALTH ALERT NETWORK (HAN) PROJECT

Dr. Crawford welcomed Michael Scales, Chief Systems Information Officer, and William Gong, Health Alert Network Coordinator, both with the Mississippi Department of Health (MDH).

Mr. Scales presented a very informative presentation. Mr. Scales advised that MDH is seeking to partner with the Mississippi State Board of Medical Licensure (MSBML) to get the most accurate and timely information as it pertains to physicians within Mississippi. MDH will use the information provided by MSBML solely for the HAN system in a secure website linking state and local emergency management, public safety, public health officials and the community of health providers during preparations for and responses to emergency situations.

BOARD MINUTES

September 21, 2006

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Mr. Scales advised that MDH is willing to enter into a Memorandum of Understanding with MSBML as it pertains to the needed data elements and the use of the data.

Mr. Scales also covered the benefits to the Board as they will be required to perform quarterly tests and MSBML could use i.e., license renewal distributions.

Ms. Freeman, Division Director, Licensure Division, addressed the Board and advised that the Board would need to decide if they are willing to provide the data requested since some of the information is not being made available at this time. There was a brief discussion as to any legal problems that might be encountered. Ms. Freeman was requested to check on any legal ramifications and advise at the November Board meeting.

Dr. Crawford thanked Mr. Scales and Mr. Gong for coming and presenting the information to the Board.

FINAL ADOPTION OF REGULATIONS OF LICENSURE BY EXAMINATION - M.D. AND/OR D.O., SPECIFICALLY USMLE STEP 3 REQUIREMENTS

Motion was made by Dr. Easterling, seconded by Dr. Mayo, and carried unanimously to adopt in final form the Board's amended **Regulations of Licensure by Examination - M.D., and/or D.O., specifically USMLE Step 3 Requirements**, a copy of which is attached hereto and incorporated by reference. The amended regulation will be filed with the Secretary of State under the Administrative Procedures Act.

PROPOSED ADOPTION OF REGULATIONS FOR ADMINISTRATIVE PROCEDURES RULES AND ORAL PROCEEDINGS ON PROPOSED RULES

Ms. O'Neal, Special Assistant Attorney General, addressed the Board and covered the proposed regulations. Ms. O'Neal advised that the Secretary of State requires all agencies to adopt regulations to explain administrative procedures, rules and proper handling of oral proceedings on proposed rules.

Motion was made by Dr. Mayo, seconded by Dr. Gibson, and carried unanimously to adopt the proposed regulation, a copy of which is attached hereto and incorporated by reference. The proposed regulation will be filed with the Secretary of State under the Administrative Procedures Act.

BOARD MINUTES

September 21, 2006

Page 9

**HEARING IN THE CASE OF JASON KENDELL MORRIS, M.D., CLARKSDALE,
MISSISSIPPI MEDICAL LICENSE NUMBER 14181**

Mr. Ingram addressed the Board and advised the matter had been continued at the July 2006 Board meeting. Mr. Ingram made a request to dismiss the pending disciplinary action. It was announced that a settlement conference was conducted on September 6, 2006, between Dr. Morris and his attorney, David Donnell, Dr. Crawford, Thomas Washington, Division Director, Investigative Division, and Mr. Ingram, wherein all parties agreed to a resolution of the pending matter. Mr. Ingram advised that the matter was discussed at the Executive Committee meeting on September 20, 2006. It was the unanimous decision of the Executive Committee to have Dr. Crawford issue Dr. Morris a Letter of Concern covering all issues involved in the investigation, advising Dr. Morris that a copy of the letter would be included in his personal file, and advising Dr. Morris that the investigation was concluded. A copy of the letter is attached hereto and incorporated by reference.

Dr. Crawford advised that Dr. Morris and his attorney had agreed to reimburse MSBML \$5,000 to cover investigative costs.

Motion was made by Dr. Easterling, seconded by Dr. Aycock, and carried unanimously to approve sending the Letter of Concern to Dr. Morris and closing the Board's investigation in the matter.

A verbatim account of this proceeding was recorded by Harvey Rayborn, Court Reporter.

**HEARING IN THE CASE OF NICHOLAS WENDELL HOWARD, M.D., RIPLEY,
MISSISSIPPI MEDICAL LICENSE NUMBER 08361**

Dr. Howard was not present or represented by legal counsel. Mr. Ingram advised that Dr. Howard's Tennessee license had been suspended due to chemical dependency and unprofessional conduct and that Mississippi had mirrored their actions. Mr. Ingram advised that Dr. Howard's hearing was continued from the July Board meeting.

Mr. Ingram advised that Dr. Howard had faxed the Board a letter confirming that he agreed to sign a Consent Order that would prohibit him from seeking renewal of his Mississippi medical license to practice medicine until such time as, (i) his license to practice medicine in the State of Tennessee has been reinstated without restrictions, (ii) he has been evaluated by an approved treatment facility approved by MSBML, and (iii) found able to practice medicine with reasonable skill

BOARD MINUTES
September 21, 2006
Page 10

and safety to patients. A copy of Dr. Howard's letter is attached hereto and incorporated by reference.

Based on the representations made by Dr. Howard, motion was made by Dr. Easterling, and seconded by Dr. V. Crawford, and carried unanimously to continue the matter until the next Board meeting at which time the Board will have a hearing or consider Dr. Howard's Consent Order.

A verbatim account of the proceeding was recorded by Harvey Rayborn, Court Reporter.

REQUEST OF PROGRAM APPROVAL FROM MISSISSIPPI ACADEMY OF PHYSICIAN ASSISTANTS

Dr. Crawford presented the request from the Mississippi Academy of Physician Assistants for Board approval of their upcoming DEA Workshop to be held on October 14, 2006.

Motion was made by Dr. Easterling, seconded by Dr. Gibson, and carried unanimously to advise the Board's approval for the DEA Workshop.

OTHER INFORMATIONAL ITEMS

For informational purposes only, Dr. Crawford briefly covered the Board's 5-Year Strategic Plan for fiscal years 2008 - 2012.

Dr. Crawford asked the public members of the Board their opinion of the utilization review issue. Mr. Breland and Ms. Thompson were in agreement that the Board went overboard to satisfy all concerns.

Dr. Merideth advised that the Board of Nursing has requested a joint luncheon to discuss laser and scope of practice issues. Motion was made by Dr. Merideth, seconded by Dr. V. Crawford, and carried unanimously to invite the Board of Nursing at a later date.

Dr. Merideth expressed concerns about the letter received today from Robert L. Robinson, Executive Director, Division of Medicaid. Dr. Merideth believes that the Board needs to respond and address issues in the letter. Dr. Crawford advised that he will draft a letter to Mr. Robinson.

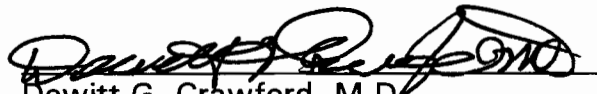
BOARD MINUTES

September 21, 2006

Page 11

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:05 p.m., with the next meeting scheduled for Thursday, November 9, 2006.



Dewitt G. Crawford, M.D.

President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
September 21, 2006

NOTICE OF RULE ADOPTION—FINAL RULE

COPY FILED
SEP 22 2006
MISSISSIPPI
SECRETARY OF STATE

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority Authorizing the promulgation of
Rule: {Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule : {Insert citation to specific rule(s) repealed,
amended or suspended XXXI. REGULATIONS REGARDING THE CONDUCT
OF PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

The Mississippi State Board of Medical Licensure finds it necessary to perform its statutory responsibilities by adopting these regulations in order to fulfill its duty to protect the public as part of the historic police powers of the State, to set professional standards, to enforce the provisions of current law regarding the performance of utilization review medical consultation activities by physicians, and to further other legitimate government purposes that are in the public interest and in accordance with the provisions of Mississippi law.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date: September 21, 2006
Time: 9:00 a.m.
Place: Office of the Board

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

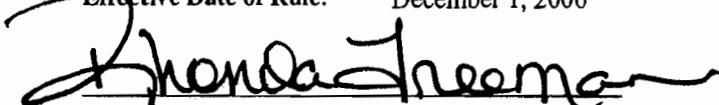
This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: December 1, 2006



Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: September 22, 2006
Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The Board is conducting a public hearing on November 9, 2006, 9:00 a.m. in order to afford the public another chance to comment on regulation XXXI. Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities. Please submit any written comments regarding Board rule XXXI to the Mississippi State Board of Medical Licensure, 1867 Crane Ridge Drive, Suite 200-B, Jackson, MS 39216 by October 31, 2006.

XXXI. REGULATIONS REGARDING THE CONDUCT OF PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

A. AUTHORITY AND PURPOSE OF THESE REGULATIONS

The Mississippi State Board of Medical Licensure adopts these regulations ~~regarding the conduct of physicians who perform utilization review medical consultation activities~~ pursuant to its statutory authority to regulate physician conduct ~~that is contained as provided in Chapters 25 and 43 of Title 73 of the Mississippi Code (1972) Annotated, as Amended.~~ The Mississippi State Board of Medical Licensure finds it necessary to perform its statutory responsibilities by adopting these regulations in order to fulfill its duty to protect the public as part of the historic police powers of the State, to set professional standards, to enforce the provisions of ~~current~~ law regarding the performance of utilization review medical consultation activities by physicians, and to further other legitimate government purposes that are in the public interest and in accordance with the provisions of Mississippi law.

B. SCOPE OF THESE REGULATIONS

1. These regulations apply to any physician who performs utilization review medical consultation activities regarding any person or entity located within the State of Mississippi, regardless of the location, type, or status of the physician's utilization review medical consultation activities, whether the presence or absence of the physician's possesses a medical license in Mississippi, the presence or absence existence of a physician-patient relationship with the person in Mississippi who is the subject of the utilization review medical consultation activity, or the type of utilization review medical consultation activity performed (e.g., prospective, concurrent, or retrospective review, an initial review, or a subsequent review of an adverse determination).
2. In tailoring these regulations as closely as possible to the provisions of Mississippi law, the Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board") Board does not intend for any part of these regulations to conflict with or supercede the authority of the Mississippi State Department of Health to regulate utilization review organizations pursuant to Mississippi Code ~~Annotated (1972)~~ Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health. ~~Furthermore, the Board does not intend for any part of these regulations to conflict with or supercede, or~~ the authority of a person other than a physician to participate in "utilization review" as defined and authorized by Mississippi Code ~~Annotated (1972)~~ Section 41-83-1 et seq. and regulations adopted by the Mississippi State Department of Health.

C. TERMINOLOGY

1. For the purposes of these regulations only, the ~~Mississippi State Board of Medical~~

~~Licensure (hereinafter referred to as "the Board")~~ Board has determined that under the provisions of Mississippi law, a physician who performs any of the following utilization review medical activities serves in the role of a consulting physician, and that the term "utilization review medical consultation activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician licensed or otherwise lawfully practicing within this State to

- a. make medical decisions,
- b. form medical opinions,
- c. give or suggest medical advice,
- d. perform or direct the performance of medical services,
- e. conduct a medical record review,
- f. serve as a medical consultant,
- g. apply medical service intensity or symptom severity criteria,
- h. monitor, prescribe, suggest, or recommend medical treatment,
- i. question or review a treating physician's medical decisions,
- j. make diagnostic, therapeutic, or healthcare facility admission or continued stay medical decisions or recommendations,
- k. review an adverse determination or other recommendation regarding a medical service made by a non-treating physician or other person, or
- l. discuss a person's medical care or medical condition or the reason for an adverse determination with the person's treating physician, his or her designee, or other affected healthcare provider,

at any level of review, regarding the appropriateness of a medical service provided or proposed to be provided to a person or entity located within the State of Mississippi.

2. The Board does not intend for the terminology used in these regulations or the requirements of these regulations to conflict with or supercede any provision of Mississippi law, including the definition of "utilization review" as contained in Mississippi Code ~~Annotated (1972)~~ Section 41-83-1(a) and regulations adopted by the Mississippi State Department of Health.

D. LICENSURE AND QUALIFICATION REQUIREMENTS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

1. In accordance with the provisions of law in Mississippi, the performance of utilization review medical consultation activities by any physician, regardless of the physician's location, type of utilization review medical consultation activities, or State(s) of medical licensure, regarding any person or entity located within the State of Mississippi, is an otherwise lawful practice within the State of Mississippi that is subject to regulation by, and professional accountability to, the

Mississippi State Board of Medical Licensure.

2. In accordance with the provisions of law in Mississippi, any utilization review medical consultation activity that results in an adverse determination must be based on the prior evaluation and concurrence in the adverse determination by a physician licensed to practice in Mississippi.
3. In accordance with the provisions of law in Mississippi (including regulations adopted by the Mississippi State Department of Health), if a request is made by a patient's treating physician, then any utilization review medical consultation activity that results in an adverse determination must be performed by an appropriately qualified utilization review consultation physician, i.e., a physician licensed in Mississippi who is board certified or board eligible and engaged in the same type of practice and relevant specialty or subspecialty of medicine that is the subject of the utilization review medical consultation activity, and who possesses and uses the degree of skill ordinarily used by members of his or her profession in good standing.

E. PROFESSIONAL STANDARDS FOR PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

1. In accordance with the ethical duty of all physicians to respect the law, any physician who performs utilization review medical consultation activities must comply with these regulations and all applicable Mississippi statutes, court rulings, and other administrative agency rules, policies, and regulations, including regulations adopted by the Mississippi State Department of Health.
2. In accordance with the provisions of law in Mississippi, any physician who performs utilization review medical consultation activities must comply with ethics principles established by the American Medical Association and relevant medical specialty associations of which the physician is a member.
3. In accordance with the provisions of law in Mississippi, any utilization review consultation physician who renders an adverse determination must discuss, if requested, the reasons for the adverse determination with the patient's treating physician or other affected healthcare provider. The utilization review consultation physician must comply with the request for discussion within 14 calendar days of receiving either oral or written notification of the request.

F. PROFESSIONAL ACCOUNTABILITY FOR PHYSICIAN CONDUCT IN VIOLATION OF THESE REGULATIONS

1. In accordance with the provisions of law in Mississippi, any physician licensed or otherwise lawfully practicing within this State (i.e., regardless of whether the physician is licensed in Mississippi) who performs utilization review medical

consultation activities may be disciplined or otherwise held professionally accountable by the Board, upon a finding by the Board by clear and convincing evidence that the physician is unqualified as evidenced by conduct including, but not limited to,

- a. incompetent professional practice,
- b. unprofessional conduct, or
- c. any other dishonorable or unethical conduct likely to deceive, defraud, or harm the public (e.g., dishonest, illegal, or negligent conduct in the performance of utilization review medical consultation activities).

2. Any violation of ~~Section D or Section E~~ of these regulations as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code Annotated (1972) Section 73-25-29(8), as amended.

G. ACTIONS AVAILABLE TO THE BOARD

1. In accordance with the provisions of law in Mississippi, any physician licensed or otherwise lawfully practicing within this State (i.e., regardless of whether the physician is licensed in Mississippi) who performs utilization review medical consultation activities regarding any person or entity located within the State of Mississippi may be subject to an investigation by the Mississippi State Board of Medical Licensure upon the receipt of a written complaint regarding the physician's conduct in the performance of utilization review medical consultation activities. At any time after the receipt of a written complaint, the Board in its sole discretion may refer the complaint to the medical licensure authority of another State where the utilization review consultation physician is licensed, or may refer the entire complaint or any portion thereof to any other appropriate authority, including the Mississippi State Department of Health or the Mississippi Attorney General.
2. In accordance with the provisions of law in Mississippi, when disciplining a physician licensed in Mississippi or holding professionally accountable any physician otherwise lawfully practicing within this State for the performance of utilization review medical consultation activities in an incompetent, unprofessional, negligent, illegal, dishonest, dishonorable, or unethical manner, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following:
 - a. denying, suspending, restricting, or revoking a Mississippi medical license;
 - b. administering a public or private reprimand to a Mississippi licensed physician;
 - c. assessing up to \$10,000 of the reasonable investigation costs expended by the Board in investigating a Mississippi licensed physician;
 - d. moving for an injunction in Chancery Court to prohibit any physician's further performance of utilization review medical consultation activities;

- e. petitioning the Chancery Court to cite any noncompliant physician for contempt of court;
- f. referring the matter to another medical licensure authority or other authority for action regarding any physician; and
- g. taking any other action regarding any physician that the Board may deem proper under the circumstances (e.g., issuing an advisory letter of concern; issuing a notice of warning; issuing a cease and desist notice; adopting a resolution of disapproval of any physician's utilization review medical consultation activities; or reporting the Board's findings and/or actions to any person or organization in order to enforce or comply with the law or protect the public).

H. COMPLIANCE DUTY AND EXEMPTIONS

1. In assuring compliance with these regulations, the duty shall be on the physician, not on any other person or entity, to ensure that his or her utilization review medical consultation activities comply with these regulations. Any physician who claims to be exempt from these regulations shall have the burden of proving to the Board by a preponderance of the evidence that the exemption is valid, which must be done on a case-by-case basis.
2. In accordance with Mississippi Code ~~Annotated (1972)~~ Section 41-83-31(a), the fact that a utilization review consultation physician rendered an adverse determination in a particular case shall not be used as the ground for professional accountability or disciplinary action by the Board. However, since complaints about physicians' utilization review medical consultation activities are likely to involve adverse determinations, the Board out of necessity may be required to investigate the underlying facts and circumstances involved in an adverse determination, or a pattern of adverse determinations, in order to determine whether a physician's utilization review medical consultation activity involves conduct that is subject to professional accountability or disciplinary action by the Board (e.g., an adverse determination rendered on the basis of incompetent, unprofessional, negligent, illegal, dishonest, dishonorable, or unethical conduct). Therefore, this limitation on the Board's authority to discipline a physician based solely on the fact of an adverse determination in a particular case does not preempt the Board's authority to regulate the conduct of physicians who perform utilization review medical consultation activities or to investigate and discipline or otherwise hold accountable a physician regarding the underlying conduct involved in making an adverse determination.
3. Notwithstanding the licensure requirements and compliance policy contained in these regulations, the Mississippi State Board of Medical Licensure, in accordance with Mississippi Code ~~Annotated (1972)~~ Section 41-83-31, acknowledges that any utilization review medical consultation physician who makes an adverse determination for the Comprehensive Health Risk Pool or for a

reviewer of 9 or fewer persons who reside in Mississippi shall be exempt from the requirement to hold a medical license in Mississippi.

However, any utilization review medical consultation physician who claims such an exemption is nevertheless engaged in an otherwise lawful practice within this State and therefore must comply with the Professional Standards and the other qualification requirements contained in these regulations.

4. Notwithstanding the compliance policy contained in these regulations, the Board acknowledges an exemption to these regulations in accordance with regulations adopted by the Mississippi State Department of Health, so that these regulations do not apply to physicians who perform in-house utilization review activities (also known as "quality assurance," "performance improvement," or "peer review") for Mississippi hospitals, home health agencies, clinics, private physician offices, or any other health facility. ~~Such in-house activities performed by physicians in Mississippi for quality assurance, performance improvement, or peer review purposes are exempt from these regulations.~~

I. NOTICE OF REGULATION OF UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES BY PHYSICIANS

1. At the time of an initial licensure application, and at the time of each application for a renewal of a license to practice in Mississippi, all physicians shall acknowledge that they have had an opportunity to read these regulations by accessing the website of the Mississippi State Board of Medical Licensure (at internet address www.msbl.state.ms.us) or by requesting a printed copy of these regulations from the Board.
2. ~~The Mississippi State Board of Medical Licensure shall provide a copy of these regulations, and all subsequent amendments thereto, to the Division of Licensure and Certification at the Mississippi State Department of Health.~~
3. ~~Before the effective date of these regulations (i.e., November 1, 2006), the Mississippi State Board of Medical Licensure shall provide a copy of these regulations to the Governor of Mississippi, the State Health Officer, the Mississippi Attorney General, the Mississippi Division of Medicaid, the Mississippi State Medical Association, the Mississippi Hospital Association, the Federation of State Medical Boards, and any other appropriate person or organization at the discretion of the Board's Executive Director, with the request that those organizations give notice to their members or other interested parties of the existence of these regulations.~~
- 4.2. For further information regarding the Board's research, opinions, comments, conclusions, and findings of fact related to utilization review medical consultation activities by physicians, see the Appendix to these regulations.

J. EFFECTIVE DATE

These regulations shall become effective on ~~November~~ December 1, 2006, and shall be effective prospectively regarding the conduct of physicians beginning on that date.

NOTICE OF RULE ADOPTION—FINAL RULE

COPY

FILED
SEP 22 2006

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

**MISSISSIPPI
SECRETARY OF STATE**

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

Specific Legal Authority Authorizing the promulgation of
Rule: {Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule : {Insert citation to specific rule(s) repealed,
amended or suspended II. LICENSURE BY EXAMINATION - M.D. AND/OR D.O.

(601) 987-3079
rhonda@msbml.state.ms.us

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

This regulation sets the requirements that a physician must meet in order to sit for a licensing examination in Mississippi. The regulation was amended to allow international medical graduates to sit for the USMLE Step 3 in one year instead of three.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date:
Time:
Place:

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

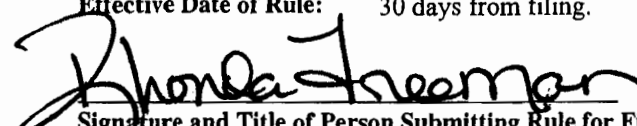
This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: 30 days from filing.



Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: September 22, 2006
Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule was adopted without variance from the proposed rule.

II. LICENSURE BY EXAMINATION - M.D. AND/OR D.O.

- A. To qualify for admission by examination, an individual shall meet the following requirements, provided that the Board may admit any individual to the examination while reserving its right to deny licensure if that individual fails to meet all requirements for licensure subsequent to success or completion of the examination:
1. Applicant must satisfy the Board that he is at least twenty-one (21) years of age and of good moral character.
 2. Present a diploma from a reputable medical college or college of osteopathic medicine, subject to the following conditions:
 - a. If the degree is from a medical college or a college of osteopathic medicine in the United States or Puerto Rico, the medical college must be accredited by the Liaison Committee on Medical Education (LCME), a Joint Committee of the Association of American Medical Colleges (AAMC) and the American Medical Association (AMA), or if a college of osteopathic medicine, must be accredited by the Professional Education Committee of the American Osteopathic Association (AOA).
 - b. If the degree is from a Canadian medical school, the school must be accredited by the Liaison Committee on Medical Education (LCME) and by the Committee on Accreditation for Canadian Medical Schools, as sponsored by the Canadian Medical Association and Association of Canadian Medical Colleges.
 - c. If the degree is from a foreign medical school, applicant must either (i) possess a valid certificate from the ECFMG or (ii) document successful completion of a Fifth Pathway program, as described in Article II, B below.
 - d. Any diploma or other document required to be submitted to the Board by an applicant which is not in the English language must be accompanied by a certified translation thereof into English.
 3. Applicants for licensure by examination must present documentation of having completed at least one (1) year of postgraduate training in the United States accredited by the Accreditation Council for Graduate Medical Education (ACGME) or by the AOA; or training in Canada accredited by the Royal College of Physicians and Surgeons.

4. Present certified copy of birth certificate.
 5. Subject to the provisions of Article IV below, an applicant must successfully complete and pass all parts/steps of the FLEX or USMLE.
 6. Must submit an application for medical license on a form supplied by the Board, completed in every detail with a recent photograph (wallet-size/passport type) attached. A Polaroid or informal snapshot picture will not be accepted.
 7. Submit fee prescribed by the Board; however, any fees related to permanent licensure may be deferred for applicants indicating a desire to practice medicine under a Temporary License or Limited License within the confines of an ACGME or AOA approved postgraduate training program pursuant to Section X.A.1 or Section V of these regulations.
 8. Must appear for a personal interview in the office of the Mississippi State Board of Medical Licensure.
- B. A Fifth Pathway Program, as a prerequisite for licensure by examination pursuant to Article II, A2d above, will be considered on an individual basis. Students who have completed the academic curriculum in a foreign medical school and who have fulfilled the conditions hereinafter set forth, may be offered the opportunity to substitute for an internship required by the foreign medical school, an academic year of supervised clinical training prior to entrance into the first year of ACGME- or AOA-approved postgraduate medical education. The supervised clinical training (Fifth Pathway) must be under the direction of a medical school accredited by the LCME. Fifth Pathway will be available to students who have fulfilled the following conditions:
1. Completed, in an accredited American college or university, undergraduate pre-medical work of the quality acceptable for matriculation in an accredited U.S. medical school,
 2. Studied medicine at a medical school located outside the United States, Puerto Rico and Canada but which is recognized by the World Health Organization, and
 3. Completed all of the formal requirements of the foreign medical school except internship and/or social service.
- C. Prior to issuance of a permanent Mississippi medical license, a graduate of a foreign medical school who has successfully completed all other requirements of application for licensure by examination must present documentation of having completed at least three (3) years of ACGME-approved postgraduate training in

the United States or training in Canada approved by the Royal College of Physicians and Surgeons.

NOTICE OF PROPOSED RULE ADOPTION
STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

COPY FILED
SEP 22 2006
MISSISSIPPI
SECRETARY OF STATE

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

Specific Legal Authority authorizing the promulgation of Rule: (Insert citation to state or federal statute, or rule Section 73-43-11)

Reference to Rules repealed, amended or suspended by the Proposed Rule : (Insert citation to specific rule(s) repealed, amended or suspended XXXIII. Administrative Rules)

(601) 987-3079
rhonda@msbml.state.ms.us

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: (Insert here)
This regulation sets forth the administrative rules of the Board of Medical Licensure. (e.g. method of operation, oral proceedings and declaratory opinions)

This rule is proposed as a Final Rule, and/or a Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

An oral proceeding is scheduled on this rule on Date: _____ Time: _____
Place: _____

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least _____ day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

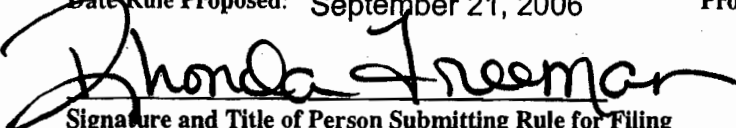
Economic Impact Statement: Check one box below:

The agency has determined that an economic impact statement is not required for this rule, or
 The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: September 21, 2006

Proposed Effective Date of Rule:


Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

SOS FORM APA 001
Effective Date 07/29/2005

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: September 22, 2006
Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the authority to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine and the conduct of physicians.

Pursuant to the Administrative Procedures Law, the attached regulation describes the Board's organization and structure and the Board's contact information. It also outlines procedures for conducting oral proceedings and issuing declaratory opinions.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XXXIII. ADMINISTRATIVE RULES

A. METHOD OF OPERATION

1. SCOPE

This regulation is promulgated pursuant to Miss. Code Ann. Section 25-43-2.104 of the Mississippi Administrative Procedures Law.

2. DESCRIPTION OF THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Reference is made to Title 73, Chapter 43 of the Mississippi Code, which establishes the Mississippi State Board of Medical Licensure ("the Board") and sets forth its composition, general powers and duties. Further reference is made to the following additional provisions of Mississippi law;

- a. Title 73, Chapter 25, which sets forth the Board's specific powers and duties in relation to licensure and discipline of physicians and osteopaths;
- b. Title 73, Chapter 26, which sets forth the Board's specific powers and duties in relation to licensure and regulation of physician assistants;
- c. Title 73, Chapter 27, which sets forth the Board's specific powers and duties in relation to licensure and discipline of podiatrists;
- d. Title 41, Chapter 58, which sets forth the Board's specific powers and duties in relation to licensure and regulation of radiologist technicians and assistants; and
- e. Title 41, Chapter 29, which sets forth the Board's specific powers and duties in relation to investigations of potential violations of the Mississippi Controlled Substance Laws.

Regulations adopted by the Board pursuant to the various authorities cited above are referred to as the Rules and Regulations of the Mississippi State Board of Medical Licensure. Pursuant to Miss. Code. Ann. Section 73-43-13, the Board employs an Executive Director. The Board's staff is organized into two (2) divisions: Licensure, which addresses matters related to the licensure of physicians, osteopaths, physician assistants, podiatrists, and radiologist technicians and assistants, and Investigations, which investigates matters or allegations related to the potential violation of any state statute or regulation under the Board's jurisdiction.

3. WHERE AND HOW TO OBTAIN PUBLIC INFORMATION

The text of all Board rules and regulations, as well as information regarding pending rules, regulation, schedules of meetings and the like may be obtained by visiting the Board's website at www.msbnl.state.ms.us. Requests for Declaratory Opinions may be made pursuant to Part III of these rules. Otherwise, requests for information may be made pursuant to and in accordance with the Mississippi Open Records Act by submitting written request to the Board's current mailing address.

B. ORAL PROCEEDINGS ON PROPOSED RULES

1. SCOPE

This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Mississippi State Board of Medical Licensure ("the Board") pursuant to Miss. Code Ann. Section 25-43-3.104.

2. WHEN ORAL PROCEEDINGS WILL BE SCHEDULED ON PROPOSED RULES

The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, and agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule. The Board may also schedule an oral proceeding on a proposed rule on its own motion.

3. REQUEST FORMAT

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

4. NOTIFICATION OF ORAL PROCEEDING

The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. PRESIDING OFFICER

The President of the Board shall preside at the oral proceeding on a proposed rule.

6. PUBLIC PRESENTATIONS AND PARTICIPATION

- a. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- b. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentation. For good cause shown, the presiding officer in his/her discretion may allow individuals to participate that have not previously contacted the Board.
- c. At the proceeding, all those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- d. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- e. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- f. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion (i) recognize Board members for questions of the participant, or (ii) interrupt or end the participant's time where the orderly conduct of the proceeding so requires. Should the presiding officer recognize a member of the Board for questions during the participant's presentation, additional time will be afforded the participant in making his or her presentation.

7. CONDUCT OF ORAL PROCEEDING.

- a. Presiding Officer

The presiding officer shall have the authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall:

- (i) call the proceeding to order;
- (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule;
- (iii) call on those individuals who have contacted the Board about speaking on or against the proposed rule;
- (iv) recognize Board members for questions of any participant during their presentation;
- (v) allow for rebuttal statements following all participants' comments; and
- (vi) adjourn the proceeding.

b. Physical and Documentary Submissions

Submission presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and become subject to the Open Records Act.

c. Recording

The Board will record oral proceedings by stenographic means.

C. DECLARATORY OPINIONS

1. SCOPE

This regulation sets forth the rules of the Mississippi State Board of Medical Licensure ("the Board") governing the form and content of requests for declaratory opinions, and the Board's procedures regarding such requests, as required by Miss. Code Ann. Section 25-43-2.103. This regulation is intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, and may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between this rule and the Mississippi Administrative Procedures Law, the latter will control.

2. PERSONS WHO MAY REQUEST DECLARATORY OPINIONS

Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the procedures set forth in this

rule. For purposes of this rule, "substantial interest in the subject matter" means the individual, business, group or other entity making the request is directly affected by the Board's administration of the laws, rules or regulations within its jurisdiction. To be a substantial interest, the interest affected by the statute, rule or regulation must be different from the interest of the general public in that same statute, rule or regulation.

3. SUBJECTS WHICH MAY BE ADDRESSED IN DECLARATORY OPINIONS

The Board will issue declaratory opinions regarding the applicability to specified facts of: (i) a statute administered or enforced by the Board; or (ii) a rule or regulation promulgated by the Board.

4. WRITTEN REQUEST REQUIRED

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Board. No oral, telephone or e-mail requests for declaratory opinions will be accepted.

5. WHERE TO SEND REQUESTS

All requests must be mailed, hand-delivered or transmitted via facsimile to the Board's current mailing address or current facsimile number.

6. QUESTION PRESENTED

Each request shall contain the following:

- a. a full, complete and accurate statement of all relevant facts on which the opinion is requested, presented in a clear and concise manner;
- b. a citation to the statute, rule or regulation at issue;
- c. the question(s) sought to be answered in the opinion, stated clearly;
- d. a suggested proposed opinion from the requestor, stating the answers desired by the petitioner and a summary of the reasons in support of those answers;
- e. the identity of all other persons known to the requestor who may be involved in or impacted by the described factual situation, including the relationship of each to the facts, name, mailing address and phone number; and
- f. a statement that the person seeking the opinion has a substantial interest in the

subject matter, and sufficient information to support that statement.

7. NAME, ADDRESS AND SIGNATURE OF REQUESTOR

Each request must include the full name, telephone number and mailing address of the requestor. All requests must be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in this regulation.

8. CIRCUMSTANCES IN WHICH DECLARATORY OPINIONS WILL NOT BE ISSUED

The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not limited to:

- a. the request is not made with sufficient clarity to facilitate the rendering of a declaratory opinion, or the request does not provide a complete or accurate statement of all relevant facts;
- b. there exists pending or anticipated litigation, or a pending administrative or disciplinary action, or other adjudication, which has as its subject the precise question presented to the Board for declaratory opinion, the conclusion of which will resolve the question;
- c. the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- d. the facts presented in the request are not sufficient to answer the question presented;
- e. the request fails to contain information required by this regulation or the requestor failed to follow the procedures established by this regulation;
- f. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute, rule or regulation on which a declaratory opinion is sought;
- g. the facts, whether existing or anticipated, do not support that the requestor will be substantially affected by the application of the statute, rule or regulation;
- h. the question presented by the request concerns the legal validity of a statute, rule or regulation;

- i. the request is not based upon facts calculated to assist the requestor in the planning of future conduct, but is instead based on past conduct of the requestor in an attempt to determine the affect of the statute, rule or regulation on that past conduct;
- j. no clear answer is determinable;
- k. the question presented by the request may involve the application of a criminal statute or presents a set of facts which may constitute a crime;
- l. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- m. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
- n. a similar request is pending before the Board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- o. where issuance of a declaratory opinion may adversely affect the interests of the State of Mississippi, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- p. the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

9. TIME FOR BOARD'S RESPONSE

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of this regulation, the Board shall, in writing:

- a. issue a declaratory opinion regarding the specific statute, rule or regulation as applied to specific facts presented in the request;
- b. decline to issue a declaratory opinion, stating the reasons for its action; or
- c. agree to issue a declaratory opinion by a specific time not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin running on the first regular business day after the request is received by the Board, excluding legal holidays and weekends.

10. EFFECTIVE DATE OF DECLARATORY OPINIONS

A declaratory opinion shall not become final until the expiration of sixty (60) days after its issuance. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. NOTICE TO THIRD PARTIES

The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from individuals, agencies or entities other than the requestor.

12. PUBLIC AVAILABILITY OF REQUESTS AND DECLARATORY OPINIONS

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Mississippi Public Records Act. All declaratory opinions and requests shall be indexed by name of requestor and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

13. EFFECT OF A DECLARATORY OPINION

The Board will not pursue any civil, criminal or administrative action against a person who issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom an opinion is issued. No declaratory opinion will be used as a precedent for any other transaction or occurrence beyond that set forth by the requesting person.



MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

September 21, 2006

Jason Kendall Morris, M.D.
618 Fredrick Drive
Cleveland, MS 38732

RE: *Letter of Concern*

Dear Dr. Morris:

During its September 21, 2006 meeting, the Mississippi State Board of Medical Licensure (the "Board"), considered my recommendation that the Board's investigation be discontinued upon a letter of concern. As you know, our investigation focused on your employment of a radiology practitioner assistant ("RPA") in the delivery of health care services for patients at the Bolivar Medical Center in Cleveland, Mississippi. It has long been the formally stated position of the Board that only licensed Physicians and other professionals duly recognized by the Board engage in the practice of medicine. Legal authority to practice medicine is not delegable absent previous recognition by the Board.

At our conference on September 6, 2006, we discussed several patients with whom your RPA engaged in the delivery of certain health care services in 2004. At the time these services were rendered, RPAs were not recognized by statute or by the Board. Thus, our office investigated whether the services performed under your direction were in contradiction of the law and the Board's formal policies.

During our conference on September 6, 2006, you stated that you sought and received authority by the Bolivar Medical Center medical staff to use the RPA in question. While we recognize this to be true, the investigation also revealed that the RPA in question continued to act on your behalf after the medical staff terminated his allied health privileges as an RPA. The Board's investigation, however, concluded that the RPA's actions subsequent to the termination date were actions taken as a registered nurse and/or radiology technician.

The investigation also revealed that the RPA in question tentatively reviewed x-rays and dictated reports for your subsequent review at times when you were not able to provide direct supervision, i.e. you were out of state. While the Board recognizes that general supervision can be provided under such circumstances, and that no patient care was impacted as a result such reviews, we urge physicians who supervise allied health professionals, do so under circumstances that avoid even an appearance of impropriety.

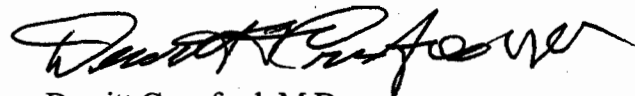
During our conference, you also advised that you had contacted the Board's staff prior to engaging the services of the RPA and understood from that informal advice that the arrangement was acceptable. While formal authority from the Board was not found, we concluded that the actions of the RPA did not constitute "the practice of medicine." It was further recognized that RPA's have since been granted limited authority to render certain services by enactment of Miss. Code Ann. §41-58-7 and the accompanying policies of the Board. We found that the services in question did not overstep the authority of this statute or the encompassing policies of the Board. More importantly, we finally found that no adverse outcomes resulted from the services rendered by your RPA.

In one particular instance, it appeared that your RPA had ordered the administration of a controlled substance, which is contrary to the authority granted to RPA's under Miss. Code Ann. §41-58-7. However, the investigation revealed that the administration of the controlled substance was pursuant to a standing order issued by you. We encourage you and the RPA to clearly document all standing orders so as to avoid any confusion in the future.

Although the Board believes you did not intend to engage the services of the RPA for the purposes of practicing medicine and, thus, concluded based on the particular facts and circumstances of this specific case that there was no violation of the applicable law, the Board wanted me to impress upon you the requirement that formal Board approval is required before engaging allied health professionals in your practice in the future. Mississippi law strictly prohibits physicians from knowingly performing any act which assists unlicensed persons in the practice of medicine. We trust that you will be mindful of the above in connection with your future associations, and that such events as occurred in this instance will not be repeated.

Based upon this letter of concern, which will be included in your file, the Board has authorized the discontinuance of this investigation.

Sincerely,



Dewitt Crawford, M.D.
President

cc: Mallan G. Morgan, M.D.
Stan T. Ingram
David W. Donnell

Nicholas W Howard MD PA
Chief of Radiology
Tippah County Hospital
Ripley, Mississippi

Co-Chairman
National Physicians Advisory Board
2003-2004

National Physician of the Year
Award Winner 2004

Sept 11:30AM.

I agree that I will sign a consent order to prohibit me from seeking renewal of my Mississippi license to practice medicine until such time as my license to practice medicine in the state of Tennessee has been reinstated without restrictions, and I have been evaluated by a treatment facility approved by the Mississippi Board of Medical Licensure, and found to be able to practice medicine with reasonable skill, and

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HILL CREST HOSPITAL
TRACE REGIONAL HOSPITAL

NICHOLAS W. HOWARD, M.D. PA
Chairman Diagnostic Imaging

BRUCE HOSPITAL
TIPPAH COUNTY HOSPITAL

safety to patients.

Nicholas W. Howard M.D. PA

**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE PHYSICIAN'S LICENSE**

OF

NICHOLAS W. HOWARD, M.D.

ORDER OF CONTINUANCE

THIS MATTER came on regularly for hearing on September 21, 2006, before the Mississippi State Board of Medical Licensure, in response to a request for continuance of the hearing set for this date by Nicholas W. Howard, M.D. It was stated by the Board's Complaint Counsel, Stan Ingram, that in lieu of hearing, Dr. Howard had agreed to execute a Consent Order, wherein Dr. Howard would not seek renewal of his license to practice medicine in the State of Mississippi until certain prerequisites had been satisfied. After consideration of the matter, the Board finds the motion to be well taken.

IT IS, THEREFORE, ORDERED, that this matter is continued until November 9, 2006, at 10:00 a.m.

IT IS, FURTHER, ORDERED, that the Order of Prohibition previously issued by the Board shall remain in full force and effect.

SO ORDERED, this the 21st day of September, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: 
**DEWITT G. CRAWFORD, M.D.
PRESIDENT**

NOVEMBER 2006

PARAVISION

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
NOVEMBER 08, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary

ALSO PRESENT:

Stan T. Ingram, Complaint Counsel for the Board
Ellen O'Neal, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, November 8, 2006, at 1:00 p.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

**LETTER FROM MARASCALCO DERMATOLOGY CLINIC REQUESTING
TELEMEDICINE APPROVAL**

Dr. Crawford advised that a letter had been received from Dr. John Marascalco requesting telemedicine approval. Dr. Crawford advised that on October 25, 2006, he had sent a letter to Dr. Marascalco requesting additional information which has not been received.

RANDALL SHERMAN, M.D., APPLICANT FOR LICENSURE

Dr. Crawford advised that he had approved a Temporary License for Dr. Sherman on October 13, 2006. Dr. Crawford advised that Dr. Sherman is under contract with the Mississippi Professionals Health Program (MPHP) and is currently in an addictionology fellowship with Pine Grove.

After a brief discussion, the Executive Committee agreed to keep Dr. Sherman under a Temporary License that will be revisited every 90 days through the end of his fellowship at Pine Grove. At that time he can apply for a permanent license.

EXECUTIVE COMMITTEE MINUTES

November 8, 2006

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CEASE AND DESIST LETTER ISSUED TO ALPHA LIFE STYLE CENTER

For informational purposes only, Dr. Crawford advised that Nolan Franz with Alpha Life Style Center in Ocean Springs, Ms., had been issued a cease and desist letter for engaging in the use of laser devices without a license to practice medicine.

ROBERT BOYCE WARR, M.D., MISSISSIPPI MEDICAL LICENSE NUMBER 07852, APPROVAL OF CONSENT ORDER

Dr. Warr was not present or represented by legal counsel. Dr. Crawford reviewed the Consent Order executed by Dr. Warr which indefinitely suspends his license to practice medicine in the State of Mississippi and advised that the Board was mirroring the actions taken by the State of Texas. Motion was made by Dr. Merideth, seconded by Dr. Gibson, and carried unanimously to accept the Consent Order, a copy of which is attached hereto and incorporated by reference.

PROPOSED PHYSICIAN ASSISTANT LEGISLATION

Ms. Freeman, Division Director, Licensure Division, discussed the proposed Physician Assistant legislation and advised that she has been working with the Physician Assistant Association and they had submitted some recommendations that were covered. There was a brief discussion about the recommendations and the need to review a percentage of the charts. Stan Ingram, Complaint Counsel for the Board, volunteered to work on the needed language.

After discussing, the Executive Committee agreed to submit the proposal to the Full Board for approval.

PROPOSED AMENDMENT TO PHYSICIAN ASSISTANT REGULATION

Ms. Freeman advised that the Physician Assistant Association had contacted her about amending current legislation to add physician assistants to statutes §73-25-37 and §73-25-38 to include them in emergency cases. The Executive Committee unanimously approved amending the current statutes.

The Executive Committee also discussed the need for proposed legislation relative to physician assistants' participation in disaster and emergency care. It was the unanimous decision of the Executive Committee to move forward and seek a sponsor for the proposed legislation. Ms. Freeman, Mr. Ingram and Ms. O'Neal are to work on the needed language.

EXECUTIVE COMMITTEE MINUTES

November 8, 2006

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PROPOSED FINGERPRINTING LEGISLATION

Ms. Freeman discussed fingerprinting and advised that the Federation of State Medical Boards is supporting the need for Boards to consider this in the application process. After a brief discussion, the Executive Committee unanimously agreed to pursue legislation in this matter. Dr. Merideth inquired as to who would be responsible for the fees involved. Ms. Freeman advised the additional charges will be passed on to the applicant.

PROPOSED SUBPOENA POWER LEGISLATION

Mr. Washington, Division Director, Investigative Division, addressed the Executive Committee and requested possible legislation to provide the investigators subpoena power. Mr. Ingram discussed how this would be helpful and benefit our investigators.

After a brief discussion, the Executive Committee unanimously agreed to move forward and seek a sponsor to introduce legislation in this matter.

VERIDOC - ONLINE VERIFICATION

Ms. Freeman discussed the VeriDoc License Verification System and explained how the system currently operates and the benefits to the physician and to MSBML. VeriDoc is a fully automated web based system that will allow quicker response time on verifications.

After a brief discussion, the Executive Committee approved using the system with modifications to the contract. Mr. Ingram advised that we should have a 90 day out clause in case the system does not work for us. Mr. Ingram advised that he would work on modifying the language in the contract.

PERSONAL APPEARANCE BY THOMAS FLEISCHHAUER, M.D., APPLICANT FOR LICENSURE

Dr. Fleischhauer joined the meeting and was represented by legal counsel, Tom Kirkland. Dr. Fleischhauer executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

Mr. Ingram explained that Dr. Fleischhauer was here to explain a Consent Order that he is currently under with North Carolina. Mr. Ingram presented a brief summary of the facts to the Executive Committee.

EXECUTIVE COMMITTEE MINUTES

November 8, 2006

Page 4

THE EXECUTIVE COMMITTEE RECESSED AT 2:20 P.M. AND RECONVENED AT 2:25 P.M.

Dr. Fleischhauer addressed the Executive Committee to explain the details surrounding the Consent Order in North Carolina and then answered their questions. Dr. Fleischhauer and his attorney were asked to wait in the receptionist area for a decision.

After a brief discussion, the Executive Committee agreed that additional information was needed. Ms. Freeman was asked to obtain the additional information from North Carolina. The Executive Committee agreed that their intent was to issue Dr. Fleischhauer an unrestricted license based on (1) compliance with the North Carolina Board, and (2) receipt of additional information.

DAVID OMAN CARNEY, M.D., MISSISSIPPI MEDICAL LICENSE NUMBER 18989, RECOVERY CONTRACT AGREEMENT TERM REVIEW

Dr. Carney joined the meeting but was not represented by legal counsel. He executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

After being introduced, Ms. Scott, Special Projects Officer, Investigative Division, advised that Dr. Carney is currently under a Recovery Contract Agreement with MSBML and Dr. Carney has been in compliance with the terms of the contract. The contract was for a period of one (1) year and Dr. Carney is here today to request release from his current restrictions.

Dr. Carney addressed the Executive Committee and thanked them for allowing him to appear. Dr. Carney answered several questions from members of the Executive Committee before he was asked to wait in the receptionist area.

After a brief discussion, the Executive Committee unanimously agreed to release Dr. Carney from contract.

CHARLES S. KNIGHT, M.D., MISSISSIPPI MEDICAL LICENSE NUMBER 06210

Dr. Knight was not present at the meeting but was represented by legal counsel, Joel W. Howell, III. Dr. Knight executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference.

EXECUTIVE COMMITTEE MINUTES

November 8, 2006

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Mr. Ingram advised that Dr. Knight had agreed not to renew his medical license several years ago. Mr. Ingram advised that Mr. Howell was here today to request that Dr. Knight be authorized to return to practice in a non-clinical setting.

Mr. Ingram introduced Mr. Howell and advised him that he had reviewed with the Committee the letter from Gary D. Carr, M.D., Medical Director, Mississippi Professionals Health Program, advising Dr. Knight that he needs to submit to Acumen for a multi-disciplinary evaluation. Mr. Howell requested that Dr. Knight be allowed to go to Pine Grove, which is in-state, instead of Acumen and the Executive Committee agreed unanimously with the request.

Mr. Howell addressed the Executive Committee and answered several questions. After a brief discussion, the Executive Committee unanimously agreed to advise Dr. Knight that once he has completed the multi-disciplinary evaluation that he should come before the Board and request licensure.

There was further discussion about the three (3) year no practice period and how it would effect Dr. Knight. No final decision was made on this matter.

INTERNET COMPLAINT FORM

For informational purposes only, Mr. Washington presented an internet complaint form that would allow more information on our website for individuals wanting to file a complaint. After a brief discussion, the Executive Committee agreed to discuss the form at the Full Board meeting on Thursday.

RESPONSE TO MOBILE NUCLEAR MEDICINE OPERATION REQUEST

For informational purposes only, Mr. Ingram advised that the Board had received a letter from Paul J. Early, Vice President, Digirad Corporation, requesting information concerning a mobile diagnostic imaging clinic. Mr. Ingram advised that he had responded on behalf of the Board. A copy of Mr. Ingram's letter is attached hereto and incorporated by reference.

OTHER BUSINESS

Ms. Freeman distributed a copy of the Memorandum of Understanding (MOU) between the Mississippi State Board of Medical Licensure and the Mississippi Department of Health for the Mississippi Health Alert Network (HAN) project. The Executive Committee unanimously agreed to present the MOU to the Full Board on Thursday.

EXECUTIVE COMMITTEE MINUTES

November 8, 2006

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Ms. Freeman also distributed a copy of a letter that will be placed on our website to advise applicants of their expectations during the application process. A copy of the letter is attached hereto and incorporated by reference.

For informational purposes only, Dr. Crawford advised that letters would be mailed for the random Continuing Medical Education (CME) checks. The selected physicians will be asked to send documentation of the 40 hours of Board approved Category 1 CME to the Board no later than December 15, 2006.


For informational purposes only, Mr. Washington distributed a copy of an email from Jane Cracraft concerning a project that she has been assigned by the Journal of Medical Licensure and Discipline. She plans to write a column titled, "Case Files: What Would You Do?". The Executive Committee discussed the email and decided that they would make a decision later as to whether the MSBML would participate.

REVIEW OF NOVEMBER 9, 2006, BOARD AGENDA

Dr. Crawford briefly reviewed the agenda for Thursday's Board meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:50 P.M.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
November 8, 2006

**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF PHYSICIAN'S LICENSE**

OF

ROBERT BOYCE WARR, M.D.

CONSENT ORDER

WHEREAS, ROBERT BOYCE WARR, M.D., hereinafter referred to as "Licensee" is the current holder of License No. 07852, issued February 17, 1977, for the practice of medicine in the State of Mississippi;

WHEREAS, on December 7, 2005, Licensee's Texas medical license (No. H-6977) was temporarily suspended after determining that his continuation in the practice of medicine constitutes a continuing threat to the public welfare. The action was based on the finding that Licensee has a mental and/or physical condition that impairs his ability to safely practice medicine, as evidenced by his erratic behavior while employed as a Radiologist; self-prescribing of multiple medications; refusal to submit to a physical or psychiatric evaluation; testimony that he was making errors in his work; failure to report to the Texas Board of Medical Examiners in his renewals of his Texas license his treatment for depression; and his dismissal by his employer. By Agreed Order, dated December 9, 2005, the Texas Board of Medical Examiners suspended Licensee's Texas license until such time as Licensee requests in writing to have the suspension stayed or lifted, and personally appears before the Texas Board, providing clear and convincing evidence that Licensee is physically, mentally, and otherwise competent to safely practice medicine. The Texas Medical Board's Public Verification/Physician Profile, and Agreed Order are attached hereto as composite "Exhibit A," and incorporated herein by reference;

WHEREAS, pursuant to Subsections (8)(d) and (9) of Section 73-25-29, Mississippi Code (1972), Annotated, the aforementioned Agreed Order constitutes restrictions placed on his license in another jurisdiction, grounds for which the Mississippi State Board of Medical Licensure may revoke the Mississippi medical license of Licensee, suspend his right to practice for a time deemed proper by the Board, place his license on probation, the terms of which may be set by the Board or take any other action in relation to his license as the Board may deem proper under the circumstances;

NOW, THEREFORE, the Mississippi State Board of Medical Licensure with consent of Licensee as signified by his joinder herein, does hereby indefinitely suspend Licensee's Certificate No. 07852 to practice medicine in the State of Mississippi.

Licensee shall have the right, but not the obligation, to petition the Mississippi State Board of Medical Licensure to reinstate his Mississippi medical license at such time as he has successfully completed all terms and conditions as required by the Texas Board of Medical Examiners, and has been authorized to return to the practice of medicine in Texas.

Pursuant to Miss. Code Ann., Section 73-25-30, Licensee shall pay all investigative costs associated with the disciplinary action taken herein. Licensee shall be advised of the total assessment by separate written notification, and shall have a certified check or money order made payable to the Mississippi State Board of Medical Licensure on or before forty (40) days from the day of acceptance and approval of this Consent Order by the Board.

During the period of no practice, Licensee will abide by all treatment recommendations made by his treatment center and treating physician. At such time as the Board elects to authorize Licensee to return to the practice of medicine, the Board reserves the right, in its sole and absolute discretion, to utilize any and all information or

reports from his treatment center(s), the appropriate physician's health program, or any other source, to impose any other restrictions which the Board deems necessary to protect the public.

This Consent Order shall be subject to approval by the Board. If the Board fails to approve this Consent Order, in whole or in part, it shall have no force or effect on the parties. It is further understood and agreed that the purpose of this Consent Order is to avoid a hearing before the Board. In this regard, Licensee authorizes the Board to review and examine any documentary evidence or material concerning the Licensee prior to or in conjunction with its consideration of this Consent Order. Should this consent Order not be accepted by the Board, it is agreed that presentation to and consideration of this Consent Order and other documents and matters pertaining thereto by the Board shall not unfairly or illegally prejudice the Board or any of its members from participation in any further proceedings.

Licensee understands and expressly acknowledges that this Consent Order, if approved and executed by the Mississippi State Board of Medical Licensure, shall constitute a public record of the State of Mississippi. Licensee further acknowledges that the Board shall provide a copy of this Order to, among others, the U.S. Drug Enforcement Administration, and the Board makes no representation as to action, if any, which the U.S. Drug Enforcement Administration may take in response to this Order.

Pursuant to Mississippi Code Annotated, Section 73-25-63(5), this Consent Order shall not be used against Licensee in any other legal proceedings nor does execution of this Consent Order constitute any acknowledgment of wrongful misconduct or malpractice by Licensee.

Recognizing his right to notice of charges specified against him, to have such charges adjudicated pursuant to Miss. Code Ann. Section 73-25-27 (1972), to be represented therein by legal counsel of his choice, and to a final decision rendered upon written findings of fact and conclusions of law, **ROBERT BOYCE WARR, M.D.**, nonetheless, hereby waives his right to notice and a formal adjudication of charges and authorizes the Board to enter an order accepting this Consent Order, thereby indefinitely suspending his license to practice medicine in the State of Mississippi, subject to those terms and conditions listed above.

Executed, this the 27, day of Sept, 2006.


ROBERT BOYCE WARR, M.D.

ACCEPTED AND APPROVED, this the 8th, day of November, 2006, by the Mississippi State Board of Medical Licensure.


DEWITT G. CRAWFORD, M.D.
PRESIDENT

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, **Thomas F. Fleishchauer, M.D.**, have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss my pending application for a Mississippi medical license and resolution of the investigation raising possible grounds for denial. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the possible grounds for denial of licensure during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal show cause hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

with legal counsel present (name of counsel: Tom Kirkman)

without legal counsel present

EXECUTED, this the 8th day of November, 2006.

Thomas F. Fleishchauer M.D.
Thomas F. Fleishchauer, M.D.,

Witness: [Signature]

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, David O. Carney, M.D., have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss possible resolution of a pending disciplinary matter/investigation or to respond to a complaint duly received by the Board. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the allegations during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal disciplinary hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

___ with legal counsel present (name of counsel: _____)

without legal counsel present

EXECUTED, this the 8th day of November, 2006.

Witness: _____

Shery Harris

David O. Carney

AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE

I, **Charles Knight, M.D.**, have requested an opportunity to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss my pending request for reinstatement of my Mississippi medical license. It is the purpose of the informal meeting to discuss the facts of the case, to give me an opportunity to ask questions of the Committee or its staff, and to give the Committee or its staff an opportunity to ask questions of me. Because the meeting is informal, no disciplinary action will be taken without my express written consent. In so doing, I have been advised and understand the following:

1. During the meeting, the Executive Committee may or may not be represented by legal counsel. Notwithstanding, I understand that I have a right, if I so choose, to employ legal counsel and have counsel present during the informal meeting.
2. I authorize the Committee Members to review and examine any statements, documentary evidence, or materials concerning the possible grounds for denial of licensure during my informal appearance.
3. Because the purpose of my appearance is to avoid a hearing before the Board, I agree that presentation to and consideration by the Committee of any facts, matters, and documents pertaining to my case shall not unfairly or illegally prejudice the Committee members from further participation or consideration in the event a formal show cause hearing is later conducted. Stated differently, in the event the pending matter is not resolved following my appearance before the Committee, I will not object to any of the Committee members from further participating in subsequent meetings or hearings that may be conducted in relation to this matter.
4. By signing my name in the space provided below, I hereby authorize the Executive Committee to proceed with the informal appearance, subject to the stipulations and understandings as noted above. I have elected to proceed:

___ with legal counsel present (name of counsel: _____)

___ without legal counsel present

By Legal Counsel **Joel W. Howell, III MS B# 2756 WJ**
EXECUTED, this the 7th day of ~~October~~ November, 2006.

Charles A Knight
Charles Knight, M.D.,

Witness: Jarri Murch



ROBINSON, BIGGS, INGRAM
SOLOP & FARRIS, PLLC
Attorneys at Law

OCT 30 2006

October 27, 2006

STAN T. INGRAM

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Paul J. Early, Vice President
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106 Barkentine Court
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Stuart Robinson, Jr.
Robert A. Biggs III
Stan T. Ingram
Christopher Solop - 1
Ronald D. Farris
Lynn Patton Thompson - 4, 5
D. Drew Malone
Ana Maria Price - 3, 7
Richard T. Conrad III - 3
Leo J. Carmody, Jr.
Pamela S. Ratliff
Tommy D. Goodwin
Nancy Selman Martin - 1
John M. Gianola, Jr.
Emmy Harper Stone - 2, 6

RE: Mobile Nuclear Medicine Operations

Dear Mr. Early:

This letter is to confirm our telephone conversations over the past several weeks, wherein we discussed the need for licensure in Mississippi for an out-of-state physician specializing in nuclear cardiology imaging, interpreting images taken in the State of Mississippi. As we understand the facts, Digirad Corporation will be operating a mobile or fixed cardiology imaging service in the State of Mississippi. We are advised that the mobile unit will be fully licensed and authorized pursuant to the rules and regulations adopted by the Division of Radiological Services of the Mississippi Department of Health. The mobile clinic will be supervised and/or operated by a physician licensed to practice medicine in the State of Mississippi. Mississippi patients will go to this particular clinic, and based upon a doctor/patient relationship established with the Mississippi licensed physician, diagnostic imaging will be conducted. Thereafter, the image will be electronically transmitted to a trained nuclear cardiologist or radiologist outside of Mississippi for interpretation. In some cases, the out-of-state specialist will direct the Mississippi physician as to the prescribed dosage of radioactive material that may be administered for diagnostic purposes. Based upon these assumed facts, you have presented three (3) questions:

1. Can the interpreting specialist (you refer to him/her as an authorized use or "AU") be from another state?
2. Does the AU physician require a license to practice medicine in the State of Mississippi?
3. Is it permissible that the AU physician from the other state prescribes the dosage and interpret the images for patients in Mississippi?

111 Capitol Building
111 East Capitol Street
Suite 101
Jackson, Mississippi 39201

Phone: 601.713.1192
Fax: 601.713.2049

Mailing Address:
P.O. Box 14028
Jackson, Mississippi
39236-4028

Paul J. Early
October 23, 2006
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007 60 / 06

Miss. Code Ann. §73-25-34 authorizes out-of-state physicians to render diagnoses and treatment of patients without the necessity of licensure when such diagnoses and treatment are based upon individual patient data transmitted electronically, provided the evaluation, treatment and medical opinion is requested by a physician duly licensed in the State of Mississippi who has established a doctor/patient relationship with the patient. Accordingly, Question Nos. 1 and 3 are answered in the affirmative, while Question No. 2 is answered in the negative. As with any specialist called into a consultative role, the nuclear cardiologist or radiologist can direct the dosage to the Mississippi physician when conducting the test.

Again, we are not speaking on behalf of the Division of Radiological Services of the Mississippi Department of Health. You will need to contact that office and ascertain all of the licensure and regulatory requirements to conduct your mobile nuclear cardiology imaging service.

Due to a typographical error occurring in our previous letter of October 23, 2006, we ask that you please disregard the previous letter and consider this as our formal response.

If you have any questions, please do not hesitate to call.

Sincerely,

ROBINSON, BIGGS, INGRAM,
SOLOP & FARRIS, PLLC



Stan T. Ingram

STI:mb
Enclosures

Cc: Dewitt Crawford, M.D., President
Rhonda Freeman, Division Director, Licensure Division
Mississippi State Board of Medical Licensure

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Dear Applicant:

Thank you for your interest in becoming a licensed professional within the State of Mississippi. Before you submit your application, we would like to make you aware of a few facts regarding criminal conduct, convictions, and disciplinary action in other states.

The duty of the Mississippi State Board of Medical Licensure is to protect the public through effective licensure and enforcement. One way the Board safeguards the public is by issuing licenses to fully qualified, competent, and ethical applicants.

During the licensure process - and depending on the specific applications - the Board will ask whether you have ever been disciplined in any state, arrested, charged, convicted, or pled guilty to a crime. An arrest, subsequent criminal conviction, or disciplinary action is not an automatic disqualification from licensure. Instead, the Board will look at the facts surrounding the criminal conduct and disciplinary action to determine whether you are fit for licensure. You should know that licensure is a privilege, not a right. One thing you must do to obtain a privilege is to be completely honest on your licensure application.

Be sure to list all relevant complaints, disciplinary actions, arrests, charges, or convictions in response to the licensure questions. Failure to fully disclose could constitute grounds alone for denial of your application or revocation of your license. More importantly, avoid some of the common excuses we have heard from people who failed to disclose, such as:

My attorney told me I didn't have to disclose the criminal conduct or disciplinary actions.

I didn't think the prior conduct had anything to do with the profession.

I didn't think the disciplinary action, arrest, charges, or convictions was still on my record.

I didn't think it was subject to disclosure because I received a deferred sentence/judgement or the conviction was expunged.

Remember, there is no excuse not to disclose disciplinary actions and criminal conduct. Even after licensure, you are still required to notify the Board about subsequent convictions and disciplinary actions in other states.

The Board conducts searches on several national databases. This allows the Board to verify the truthfulness of your application and track subsequent and disciplinary conduct after initial licensure. Keep in mind, you will not necessarily be revoked or denied a license if you have been disciplined, arrested, charged or convicted, but you will most likely be denied or revoked if you fail to disclose it.

Sincerely,

Mississippi State Board of Medical Licensure

BOARD MINUTES
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
NOVEMBER 9, 2006

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, November 9, 2006, in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

The following members were present:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary
Larry B. Aycock, M.D., McComb
Virginia M. Crawford, M.D., Hattiesburg
A. Wallace Conerly, M.D., Jackson
S. Randall Easterling, M.D., Vicksburg
William S. Mayo, D.O., Oxford

Also present:

Stan T. Ingram, Complaint Counsel for the Board
Ellen O'Neal, Special Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division
Frances Scott, Special Projects Officer, Investigative Division
Sherry Harris, Administrative Assistant

Not present:

William B. Harper, D.O., Greenwood
Wesley Breland, Hattiesburg, Consumer Health Committee
Cecil R. Burnham, Jackson, Consumer Health Committee
Martha Thompson, Oxford, Consumer Health Committee

The meeting was called to order at 9:05 a.m. by Dr. Crawford, President. The invocation was given by Dr. Merideth. Dr. Crawford welcomed Ella Hardwick, Court Reporter. Dr. Crawford extended a welcome to all visitors present at today's meeting.

BOARD MINUTES
November 9, 2006
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Dr. Crawford requested that Ms. Lana Morgan stand. Dr. Crawford read a Resolution recognizing Mallan Grey Morgan, M.D., for the job he had done for the Mississippi State Board of Medical Licensure before his passing on September 22, 2006. The Board unanimously passed the Resolution and then Dr. Crawford presented the Resolution to Ms. Morgan. A copy of the Resolution is attached hereto and incorporated by reference.

APPROVAL OF CERTIFICATION OF MISSISSIPPI LICENSES TO OTHER ENTITIES FOR THE PERIOD SEPTEMBER 1, 2006, THRU OCTOBER 31, 2006

One hundred seventy-five (175) licenses were certified to other entities for the period September 1, 2006, thru October 31, 2006. Motion was made by Dr. Easterling, seconded by Dr. Mayo, and carried unanimously to approve these certifications.

APPROVAL OF LICENSES ISSUED FOR THE PERIOD SEPTEMBER 1, 2006, THRU OCTOBER 31, 2006

Sixty five (65) licenses were issued for the period September 1, 2006, thru October 31, 2006. Motion was made by Dr. Gibson, seconded by Dr. Conerly, and carried unanimously to approve these licenses.

REVIEW OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED SEPTEMBER 20, 2006, AND MINUTES OF THE BOARD MEETING DATED SEPTEMBER 21, 2006

Minutes of the Executive Committee Meeting dated September 20, 2006, and Minutes of the Board Meeting dated September 21, 2006, were reviewed. Dr. Merideth moved for approval of the minutes as submitted. Dr. Easterling seconded the motion, and it carried unanimously.

REPORT OF NOVEMBER 8, 2006, EXECUTIVE COMMITTEE MEETING

Dr. Crawford reported on the Executive Committee's meeting from Wednesday. Dr. Crawford advised that the Executive Committee had referred several items to today's agenda to be discussed.

Dr. Crawford advised the Executive Committee had discussed the Memorandum of Understanding (MOU) between the Mississippi State Board of Medical Licensure and the Mississippi Department of Health for the Mississippi

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Health Alert Network (HAN) project that was presented at the September 2006 Board meeting. Motion was made by Dr. Mayo, seconded by Dr. Gibson, and carried unanimously to approve the MOU with the Mississippi Department of Health.

For informational purposes only, Dr. Crawford advised the Executive Committee had approved sending random Continuing Medical Education (CME) letters to physicians requesting proof of their Category 1 CME hours be sent to the Board no later than December 15, 2006.

Dr. Crawford briefly discussed an internet complaint form that would allow more information on our website for individuals wanting to file a complaint.

Dr. Crawford briefly discussed changes to Board Regulation XXII, "**Regulations Governing the Practice of Physician Assistants**". Motion was made by Dr. Merideth, seconded by Dr. Mayo, and carried unanimously of the Board's intent to file the amended changes of Regulation XXII with the Secretary of State's office. However, after a brief discussion with Ms. Amy Ballard and Ms. Marla Moore, representatives of the Mississippi Academy of Physician Assistants, and questions they raised, motion was made by Dr. Aycock, seconded by Dr. Mayo, and carried unanimously that the Board wishes to delay filing the Intent to Adopt the amended regulation until the next Board meeting.

Dr. Crawford presented other informational items which are reflected in the Executive Minutes. Motion was made by Dr. Conerly, seconded by Dr. Mayo, and carried unanimously to approve the actions of the Executive Committee.

Motion was made by Dr. Aycock, seconded by Dr. Conerly, and carried that the Board consider going into Executive Session to discuss a personnel issue concerning the Executive Director.

The Board came out of Executive Session.

THE BOARD RECESSED AT 9:17 A.M. AND RECONVENED AT 9:45 A.M.

REPORTS FROM COMMITTEES

Consumer Health - Mr. Breland (Chair), Ms. Thompson, Mr. Burnham

None of the Consumer Health members were present at today's meeting to report.

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Education & Workforce - Dr. Conerly (Chair), Dr. Aycock, Dr. Mayo

Dr. Conerly advised there was no new information to report.

Scope of Practice - Dr. Merideth (Chair), Dr. Easterling, Dr. Aycock

Dr. Merideth reported that the committee had been working on a proposed amendment on the laser regulation that would be discussed later in the meeting.

Professional Health Program - Dr. Gibson (Chair), Dr. Mayo, Dr. Merideth

Dr. Gibson advised that there was no new information to report.

Rules, Regulation & Legislative - Dr. Easterling (Chair), Dr. D. Crawford, Dr. Harper

Dr. Easterling advised that there was no new information to report.

Ethics - Dr. Merideth (Chair), Dr. V. Crawford, Dr. Conerly

Dr. Merideth reported that the Ethics Committee met earlier today and heard a presentation by Dr. Freda Bush concerning ethical issues involved in in-office sale of health-related products by physicians. Dr. Merideth advised the Committee voted to begin work on a policy statement that will be presented to the Board at a later date.

PUBLIC HEARING CONCERNING BOARD REGULATION XXXI, REGULATIONS REGARDING THE CONDUCT OF PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

Dr. Crawford called the Public Hearing to order and read the following statement into the record:

"We are here today to conduct a public hearing concerning the Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities, which were finally adopted by the Mississippi State Board of Medical Licensure on September 21, 2006, with an effective date of December 1, 2006. We will hear comments and suggestions as to possible amendments to these Rules. The purpose of today's hearing is to afford the public a 4th opportunity to comment on these regulations. The regulations were adopted pursuant to the statutory authority found in Title 73 of the Mississippi Code, and their purpose is to protect the public, to set professional standards, to enforce the

BOARD MINUTES
November 9, 2006
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provisions of law regarding the performance of utilization review activities by physicians in the State of Mississippi, and to further other legitimate governmental purposes deemed to be in the public interest.

Each person has been provided with guidelines for the conduct of public hearings before the MSBML. Persons who have indicated a desire to make a presentation during this hearing may present oral statements and/or any documentary submissions relevant to their position. The Board requests that each participant making an oral statement identify themselves and any other individuals or entities they may represent at the beginning of their presentation and give a brief statement of their position with regard to the regulation. The Board requests that each individual requesting to comment during the oral proceeding, to please restrict your statements and/or comments to five (5) minutes."

Dr. Crawford advised that the floor was open for visitors to address their comments. The following individuals addressed the Board:

- 1) Freda Bush, M.D. - Past MSBML Board member, past MSBML Board President, and currently on the Board of Directors for the Federation of State Medical Boards. Dr. Bush advised that she served on the committee that developed the utilization review regulations while a member of the MSBML Board, and that she supports the regulations. Dr. Bush explained the need for the regulations and that utilization review involves medical decisions and is therefore considered the practice of medicine. Dr. Bush also noted that she is a utilization reviewer for Health Systems of Mississippi (HSM) and that she does not view the regulations as an undue burden or a threat to her license.
- 2) Larry Clark - Jackson attorney representing Aetna and Cigna companies. Mr. Clark advised that Aetna and Cigna oppose the Board's regulations stating that they do not believe the Board has the power to govern utilization review. They believe the current regulations goes beyond the Board's power. Their belief is that utilization review is governed and regulated by the Mississippi Department of Health, and the Board is seeking to bring utilization review under its control by passing the regulation which they believe is illegal and would only lead to legal actions being taken against the Board.
- 3) Thomas Hodgkiss - representing National Association of Independent Review Organizations (NAIRO). Mr. Hodgkiss addressed the Board requesting they withdraw the regulation. Mr. Hodgkiss expressed NAIRO's concerns and how they felt the regulation interferes with the independent review process and how the regulation departs from the national "best practice" of review.

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4) Susan Prest - President of Prest & Associates, an independent review organization. Ms. Prest addressed the Board and asked that they rescind the regulation as it violates the spirit of the patients' rights movement and is detrimental to the citizens of Mississippi.

5) Tom Joiner, M.D. - Jackson Family Practice Physician. Dr. Joiner addressed the Board and advised that for the past 3 to 4 years he has been reviewing charts for Health Systems of Mississippi who reviews charts for the Division of Medicaid. Dr. Joiner stated that physician reviewers already have to be licensed in the State, be board certified, keep their certification and continuing medical education up to date just as any physician in practice has to do. Dr. Joiner stated that he was at a loss as to why the Board felt a need for rules to change when the Board already has authority to discipline any physician exhibiting unethical behavior for any reason.

6) Timothy Wright, M.D. - Associate Medical Director of Health Systems of Mississippi, the Mississippi Medicaid peer review organization. Dr. Wright addressed the Board expressing concerns with the utilization review regulation. Dr. Wright stated that if the regulations go into effect that he will no longer do review as the regulations are intimidating and punitive to review physicians. Dr. Wright stated that he felt the regulations are unnecessary and will do more harm than good to the public. Dr. Wright feels that the State Board of Health is the state agency that has the legal authority to regulate utilization review and they already have appropriate regulations in place governing utilization review. Dr. Wright expressed concerns about disciplinary actions taken by the Board on adverse determinations.

7) Selika Sweet, M.D. - Dr. Sweet is a local physician that has been performing utilization review for 4 years. Dr. Sweet said there is no need to adopt regulations to protect the public regarding utilization review activities by physicians. Dr. Sweet said the language in the regulation is very intimidating and she is concerned the regulations will have unintended consequences for licensed physicians in the State of Mississippi. Dr. Sweet also stated that there are state laws already in affect in regards to disciplining licensed physicians and feels the regulations will hurt a certain population of people of Mississippi.

8) Wesley F. Prater, M.D. - Dr. Prater is a local physician licensed in the State of Mississippi and he addressed the Board expressing his concerns against the utilization review regulations. Dr. Prater feels the language is intimidating and he believes Medicaid patients will be affected greatly by the regulation. Dr. Prater stated that he feels like most physicians will be against peer review decisions.

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9) Robert L. Robinson, M.D. - Executive Director, Division of Medicaid. Dr. Robinson addressed the Board requesting the utilization review regulations be rescinded. Dr. Robinson says that the Division of Medicaid believes the regulations are simply bad policy and fails to recognize the vital role which utilization review serves in today's health care industry. Dr. Robinson stated that the Division of Medicaid is required to perform utilization review as a condition for receipt of federal funding. Dr. Robinson expressed concerns of the chilling affect the regulations as well as discrimination problems. Dr. Robinson went on to state that the Division of Medicaid believes the regulation violates our authority and that the Department of Health is the agency to control utilization review in our State. Dr. Robinson stated that the regulations cannot be fixed and advised that his office had requested a second opinion from the Attorney General yesterday to reconsider their previous decision. Dr. Robinson advised that they are prepared to take the matter to court to resolve the issue.

10) S. J. Wilder, M.D. - local physician that works for Health Systems of Mississippi performing utilization review. Dr. Wilder addressed the Board and advised that he is a certified orthopaedic surgeon and after reviewing the Board's regulations finds them intimidating and punitive. Dr. Wilder stated that he believes the regulations are not in the best interest of the people in the State of Mississippi and he will have no choice but to resign from his work at Health Systems if the regulations take effect.

11) Robert Shearin, M.D. - representing Health Systems of Mississippi (HSM). Dr. Shearin addressed the Board and said that he was appearing today to ask that the regulations be rescinded. Dr. Shearin feels the Board is defining physicians performing utilization review as a special class of physicians to be targeted for intimidation and threats of unfair and unwarranted reprisal. Dr. Shearin said in his opinion the regulations would interfere with a utilization review physician's fair and independent assessment of the documentation presented.

Stan Ingram, Complaint Counsel for the Board, addressed the Board and entered several exhibits into the record.

Dr. Easterling advised that he had a meeting with Congressman Pickering and would be out for about 20 minutes and requested that the Board not take a vote on the issue until his return.

DR. EASTERLING EXITED THE MEETING AT 10:30 A.M.

BOARD MINUTES
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Dr. Merideth addressed the Board and thanked the 11 people who testified today at the Public Hearing where 10 individuals were against the regulation and 1 was in favor. Dr. Merideth read excerpts from 18 letters received in support of the Board's regulations. The following individuals had sent letters of support:

- 1) S. W. Bondurant, M.D., House of Representatives
- 2) Leland D. Gebhart, M.D., The Woman's Clinic
- 3) Larry S. Swearingen, Director, National Alliance of Mental Illness (NAMI)
- 4) James McIlwain, M.D., President/CEO, Information and Quality Healthcare
- 5) Cheryn N. Baker, Counsel and Vice President for Government Relations, Ms Hospital Association
- 6) Ricki Garrett, Executive Director, Ms Nurses' Association
- 7) Dwalia S. South, M.D., North Benton County Health Care, Inc., Former MSBML Board member and Secretary
- 8) John J. Cook, M.D., Rankin Emergency Care, P.A., Former President of MSMA
- 9) William Patterson, Chief Executive Officer, Alliance Health Center
- 10) T. Steve Parvin, M.D., Center for Breast Health Imaging, Former MSBML Board Member and past President
- 11) Rodney E. Frothingham, M.D., Chief Medical Officer, Delta Regional Medical Center
- 12) Kelly S. Segars, Sr., M.D., Board member of the State Board of Health
- 13) Lucius M. Lampton, M.D., FAFAP, Board member of the State Board of Health
- 14) Angela A. Ladner, Executive Director, Mississippi Psychiatric Association
- 15) Allan Hale Thompson, M.D., The Greenville Clinic
- 16) Eric E. Lindstrom, M.D., MPH, President of the Mississippi State Medical Association
- 17) Mary Troupe, Executive Director, Coalition for Citizens with Disabilities
- 18) James N. Thompson, M.D., President and Chief Executive Officer of the Federation of State Medical Boards

THE BOARD RECESSED AT 11:00 A.M. AND RETURNED AT 11:20 A.M.

Dr. Crawford advised that since Dr. Easterling had not returned that we would take a vote on the **Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities** later in the meeting.

**HEARING IN THE CASE OF MAX KENNON ODOM, II, M.D., NEW ORLEANS,
MISSISSIPPI MEDICAL LICENSE NUMBER 11958**

Dr. Odom was present but not represented by legal counsel. Ms. O'Neal questioned Dr. Odom regarding legal representation, and Dr. Odom stated he wished to waive his right to an attorney and proceed without legal counsel.

Mr. Ingram entered a number of exhibits and reviewed the history of the disciplinary action taken on Dr. Odom's license on September 8, 2005, when the Board suspended Dr. Odom's license mirroring actions taken by the Arkansas State Medical Board.

DR. EASTERLING ENTERED THE MEETING AT 11:25 A.M.

Dr. Odom was sworn in and addressed the Board requesting reinstatement of his Mississippi medical license. Following questions by the Board members, motion was made by Dr. Virginia Crawford, seconded by Dr. Mayo, and carried unanimously to reinstate Dr. Odom's Mississippi medical license subject to the same terms and conditions that are currently in effect in the State of Arkansas. The Board's Order is attached hereto and incorporated by reference.

A verbatim account of this proceeding was recorded by Ella Hardwick, Court Reporter.

PUBLIC HEARING REGARDING UTILIZATION REVIEW CONTINUED

Dr. Crawford advised that Dr. Easterling had returned and we could now complete the business concerning our **Regulations Regarding the Conduct of Physicians Who Perform Utilization Review Medical Consultation Activities.**

Dr. Crawford asked if there were any further questions and/or comments that the Board members or the guests would like to make concerning this matter.

Dr. Easterling stated that the speakers here today were very beneficial and having reviewed the information he was entering a motion to rescind Board Regulation XXXI. The motion was seconded by Dr. Conerly.

After further discussion about possible language changes, Dr. Merideth addressed the Board and stated that we do need the regulation to protect the public and a motion to rescind the regulation will be a defeat for patient care. Dr.

BOARD MINUTES
November 9, 2006
Page 10

Merideth advised the Board appreciates all comments but these regulations are ready to go into effect in three (3) weeks. Motion was made by Dr. Merideth not to rescind Board Regulation XXXI. The motion was seconded by Dr. Mayo.

A vote was taken on the motion to rescind the regulation, Dr. Easterling, Dr. Virginia Crawford, and Dr. Conerly voted to rescind. Dr. Mayo, Dr. Gibson, Dr. Merideth and Dr. Aycock voted against rescinding the regulation. Dr. D. Crawford did not vote on the issue. Dr. Crawford advised the vote was 4 to 3 to proceed with the enactment of Regulation XXXI. Therefore, it was announced that there is no need to vote on Dr. Merideth's motion not to rescind. Dr. Crawford announced that Board Regulation XXXI will go into effect on December 1, 2006.

THE BOARD RECESSED AT 11:55 A.M. AND RETURNED AT 1:20 P.M.

DR. EASTERLING DID NOT RETURN TO THE MEETING AFTER LUNCH

**HEARING IN THE CASE OF NICHOLAS WENDELL HOWARD, M.D., RIPLEY,
MISSISSIPPI MEDICAL LICENSE NUMBER 08361**

Dr. Howard was not present or represented by legal counsel. Mr. Ingram verified that Dr. Howard was not present and then provided the Board a brief summary of the events leading up to today's hearing. Mr. Ingram entered a number of exhibits.

After a brief discussion, motion was made by Dr. Mayo, seconded by Dr. Conerly, and carried unanimously to revoke Dr. Howard's Mississippi medical license based on the evidence presented. A copy of the Board's Order is attached hereto and incorporated by reference.

A verbatim account of this proceeding was recorded by Ella Hardwick, Court Reporter.

**SUSPENSION AND REINSTATEMENT OF LICENSE OF MARTIN LEONARD
HOWARD, JR., M.D., JACKSON, MISSISSIPPI MEDICAL LICENSE NUMBER 13148**

Dr. Howard was not present or represented by legal counsel. For informational purposes only, Dr. Crawford advised that Dr. Howard's license had been suspended for noncompliance with a child support order as directed by the Department of Human Services Division of Child Support Enforcement. Dr. Howard's license have been reinstated after notification was received from the

BOARD MINUTES
November 9, 2006
Page 11

Department of Human Services.

PROPOSED AMENDMENT OF REGULATION CONCERNING USE OF LASER DEVICES

Dr. Merideth addressed the Board and advised that due to the current regulations not being jointly promulgated with the Board of Nursing, that in a meeting of the Joint Committee both Boards agreed to jointly promulgate the March 18, 1999, language and work from that point.

Motion was made by Dr. Merideth of the Board's intent to adopt amendment of Regulation XIX back to the March 18, 1999 language. Dr. Conerly seconded the motion and it carried unanimously. A copy of the proposed amended **Regulation Concerning Use of Laser Devices** is attached hereto and incorporated by reference. The proposed amended regulation will be filed with the Secretary of State under the Administrative Procedures Act.

FINAL ADOPTION OF REGULATION FOR ADMINISTRATIVE RULES

Motion was made by Dr. Merideth, seconded by Dr. Gibson, and carried unanimously to adopt in final form the Board's **Regulation for Administrative Rules**, a copy of which is attached hereto and incorporated by reference. The regulation will be filed with the Secretary of State under the Administrative Procedures Act as a final adoption.

APPROVAL OF POLICY STATEMENT CONCERNING EXEMPTIONS FROM LICENSURE (TEAM PHYSICIANS)

Motion was made by Dr. Mayo, seconded by Dr. Virginia Crawford, and carried unanimously to adopt the presented policy statement concerning exemptions from licensure (team physicians). A copy of the adopted policy statement is attached hereto and incorporated by reference.

UPDATE FROM ROBERT GALI, M.D., UNIVERSITY OF MISSISSIPPI MEDICAL CENTER'S TELEMERGENCY PROGRAM

For informational purposes only, Dr. Crawford advised that Dr. Gali had provided the Board a progress report of the TelEmergency program.

BOARD MINUTES
November 9, 2006
Page 12

OTHER BUSINESS

Dr. Crawford advised that three (3) physicians and their nurse practitioners would be appearing before the Board requesting approval of their free standing clinic applications. The following appeared before the Board and answered questions:


- 1) Shaun Helmhout, M.D.
- 2) Kevin Galloway, M.D.
- 3) Mark Rester, M.D.

Motion was made by Dr. Aycock, seconded by Dr. Mayo, and carried unanimously to approve the applications for the physicians and their nurse practitioners.

Dr. Merideth addressed the Board and advised that Dr. Robinson had introduced a timeline of events for the record during the Public Hearing of the utilization review regulation. Dr. Merideth wanted the record to indicate that the Board takes note that the timeline of events is incomplete.

ADJOURNMENT

The meeting was adjourned at 2:10 p.m. with the next meeting scheduled for Thursday, January 18, 2007.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Sherry Harris
Administrative Assistant
November 9, 2006

RESOLUTION

WHEREAS, Mallan Grey Morgan, M.D., of Natchez, Mississippi, faithfully and conscientiously served the Mississippi State Board of Medical Licensure for ten months as Executive Director until his passing on September 22, 2006; and

WHEREAS, Mallan Grey Morgan, M.D., discharged his duties with dedication, firmness, and compassion, always striving to implement both the spirit and letter of the Mississippi Medical Practice Act, thereby working for the greater benefit of the Board and citizens of the State of Mississippi; and


WHEREAS, during his service, Mallan Grey Morgan, M.D., garnered the trust, respect and admiration of the Board staff which he was entrusted to direct and supervise; and

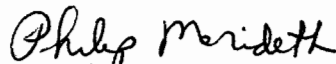
WHEREAS, during his service, Mallan Grey Morgan, M.D., continually and graciously gave his efforts, time and abilities toward fulfilling his responsibilities as the Executive Director of the Board, always respecting the rights of licensees, patients and others, while serving to protect the public;


THEREFORE, BE IT RESOLVED, that the Mississippi State Board of Medical Licensure, on behalf of the Board and the people of the State of Mississippi, by means of this resolution, expresses to the family of Mallan Grey Morgan, M.D., its condolences for his passing and gratitude and appreciation for his services during the time he devoted to the Board and the State of Mississippi; and

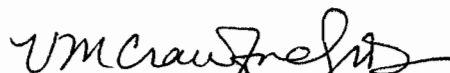
BE IT FURTHER RESOLVED, that a copy of this resolution be spread upon the minutes of the Board and a copy be given to Lana Morgan in honor of Mallan Grey Morgan, M.D., expressing the highest esteem of the Board.


DATED, this the 9th Day of November, 2006.

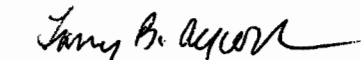

Dewitt G. Crawford, M.D., President

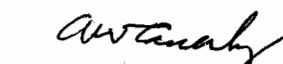

Philip T. Merideth, M.D., J.D., Vice President

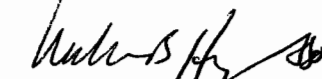

Don Albert Gibson, M.D., Secretary



Virginia M. Crawford, M.D.


S. Randall Easterling, M.D.


Larry B. Aycock, M.D.


A. Wallace Conerly, M.D.


William B. Harper, D.O.


William S. Mayo, D.O.

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

MAX K. ODOM, II, M.D.

ORDER REINSTATING LICENSE

THIS MATTER came on regularly for hearing on November 9, 2006, before the Mississippi State Board of Medical Licensure, pursuant to Title 73, Chapters 25 and 26, Miss. Code (1972) Annotated, in response to the petition of Max K. Odom, M.D. seeking reinstatement of his license to practice medicine in the State of Mississippi. On September 8, 2005, the Board suspended the Mississippi Medical License of Max K. Odom, M.D., hereinafter "Licensee", based on an April 29, 2005, order of the Arkansas State Medical Board suspending his license in that state due to Licensee's chemical dependency. On October 7, 2005, the Arkansas State Medical Board found that Licensee had received and successfully completed treatment for chemical dependency, had obtained advocacy from the Arkansas Medical Foundation, and had entered into a five(5) year aftercare or recovery contract with the Foundation. Licensee's license to practice in Arkansas was reinstated subject to the following conditions, to-wit:

The hearing was convened at 1:00 pm on November 9, 2006, Licensee appearing in person without counsel. Complaint Counsel for the Board was Honorable Stan T. Ingram. Sitting as legal advisor for the Board was Honorable Ellen O'Neal, Special

Assistant Attorney General. Based on the evidence and testimony presented, the Board finds Licensee's petition for reinstatement of license to be well-taken.

IT IS HEREBY ORDERED, that Licensee's request for reinstatement of license is hereby granted, subject however, to the same terms and conditions that are currently in effect in the State of Arkansas.

IT IS FURTHER ORDERED, that pursuant to Section 73-25-27, a copy of this Determination and Order shall be sent by registered mail, or personally served upon Max K. Odom, M.D.

SO ORDERED, this the 9th day of November, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY:


DEWITT CRAWFORD, M.D., PRESIDENT

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

NICHOLAS W. HOWARD, M.D.

DETERMINATION AND ORDER

THIS MATTER came on regularly for hearing on November 9, 2006, before the Mississippi State Board of Medical Licensure, pursuant to Title 73, Chapters 25 and 26, Miss. Code (1972) Annotated. The Board initiated these proceedings on August 17, 2006, by issuance of an Summons against Nicholas W. Howard, M.D. (hereinafter "Licensee"), charging Licensee with violation of Subsections (1), (8)(d) and (9) of Section 73-25-29 and Section 73-25-83(a), Miss. Code (1972) Annotated, as amended. The specific allegations were set forth by Affidavit from Thomas Washington, Investigator, attached to and made a part of the Summons, wherein Licensee was charged with habitual personal use of narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability; having had his license revoked, suspended or other restriction imposed thereon by the licensing authority of another state or jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal; and unprofessional conduct, including, but not limited to, any dishonorable or unethical conduct likely to deceive, defraud and harm the public. Simultaneously with service of process, the Board entered an Order finding that Licensee's continued practice represents an immediate threat to the public, thereby prohibiting Licensee from practicing medicine pending the hearing set for August 23, 2006.

Upon motion of Licensee, the Board continued the hearing until September 21, 2006, subject to the aforementioned Order of Prohibition. On the date of hearing, Licensee contacted the Board and in consideration of obtaining another continuance, agreed to execute a Consent Order which would prohibit Licensee from practicing medicine until "such time as his license to practice medicine in the State of Tennessee has been reinstated without restrictions, he has been evaluated by a treatment facility approved by the Mississippi State Board of Medical Licensure and found to be able to practice medicine with reasonable skill and safety to patients." Thereafter, the Board tendered to Licensee via US Mail both the aforementioned Consent Order and an Order continuing the hearing to November 9, 2006. The record shows that Licensee failed to claim or respond to both items of correspondence.

The hearing was convened at 1:30 pm on November 9, 2006, Licensee failing to appear, either in person or through counsel. Complaint Counsel for the Board was Honorable Stan T. Ingram. Sitting as legal advisor for the Board was Honorable Ellen O'Neal, Special Assistant Attorney General. Evidence and testimony was then presented. Based upon the above, the Board renders the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

I.

"Licensee" was licensed to practice medicine in the State of Mississippi on August 8, 1978, by issuance of Mississippi Medical License No. 08361.

II.

On or about the 15th day of March, 2006, following a full evidentiary hearing

before the Tennessee Board of Medical Examiners in Docket No. 17318-084694A, Licensee was found guilty of violating the following Sections of the Tennessee Medical Practice Act, to-wit:

Section 63-6-214(b)(1) - Unprofessional, dishonorable or unethical conduct.

Section 63-6-214 (b)(5) - Habitual intoxication or personal use of any drugs or stimulants in such a manner as to adversely affect the person's ability to practice medicine.

Section 63-6-214(b)(18) - Engaging in the practice of medicine when mentally or physically unable to do so.

III.

The Tennessee Board of Examiners found as a matter of policy that Licensee "is impaired due to substance addiction which puts the citizens of the State of Tennessee in danger..." As a result, the Tennessee Board of Medical Examiners suspended Licensee's certificate to practice medicine in Tennessee for a period of six (6) months, and so long thereafter until Licensee enters into an advocacy contract with the Tennessee Medical Foundation; submits to an evaluation by the Center for Professional Excellence (CPE); enters into and completes a treatment program or any other program recommended by the CPE; executes certain medical releases; and appears before the Tennessee Board with proof that Licensee has met all conditions posed thereon. In the event the Tennessee Board chooses to lift the suspension, Licensee's certificate to practice in the State of Tennessee is to be placed on probation for an additional period of five (5) years.

IV.

Subsequent to the above Order, Licensee has been prohibited from practicing medicine the State of Tennessee.

V.

By letter dated June 15, 2006, the Mississippi State Board of Medical Licensure was advised by Gary D. Carr, M.D., Medical Director of the Mississippi Professionals Health Program (MPHP), the Mississippi counterpart to the Tennessee Medical Foundation, that Licensee has failed to submit to further evaluation and treatment as required by the Tennessee Board of Medical Examiners; and failed to follow-up with either the MPHP or Tennessee Medical Foundation regarding evaluation, treatment and advocacy. At the hearing of this matter, no evidence was presenting indicating any change in the position of Dr. Carr or the MPHP.

VI.

Notwithstanding the fact that the Tennessee Board of Medical Examiners has suspended Licensee's certificate to practice in that state, Licensee still holds a license to practice medicine in the State of Mississippi.

VII.

Licensee's continuation in the unrestricted practice of medicine constitutes an immediate danger to the public.

CONCLUSIONS OF LAW

Based upon the Findings of Fact as enumerated above, Licensee is guilty of violation of Subsections (1), (8)(d) and (9) of Section 73-25-29 and Section 73-25-83(a), Miss. Code (1972) Annotated, as amended; as a result of Licensee being guilty of habitual personal use of narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability; having had his license revoked, suspended or other restriction imposed thereon by the licensing authority of another state or jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal; and unprofessional conduct, including, but not limited to, any dishonorable or unethical conduct likely to deceive, defraud and harm the public.

ORDER

IT IS HEREBY ORDERED, that based upon the Findings of Fact and Conclusions of Law enumerated above, the Mississippi medical license of Nicholas W. Howard, M.D., is hereby revoked.

IT IS FURTHER ORDERED, that pursuant to Section 73-25-27, a copy of this Determination and Order shall be sent by registered mail, or personally served upon Nicholas W. Howard, M.D.

SO ORDERED, this the 9th day of November, 2006.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: 
DEWITT CRAWFORD, M.D., PRESIDENT

NOTICE OF PROPOSED RULE ADOPTION

COPY

STATE OF MISSISSIPPI
Mississippi State Board of Medical Licensure

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority authorizing the promulgation of Rule: { Insert citation to state or federal statute, or rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the Proposed Rule :{ Insert citation to specific rule(s) repealed, amended or suspended XIXI. Regulation Concerning Use Of Laser Devices

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule: {Insert here}
This regulation sets guidelines for the use of laser devices. The added language reverts the regulation back to the original March 18, 1999, adopted language.

This rule is proposed as a [X] Final Rule, and/or a [] Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding: Check one box below:

[] An oral proceeding is scheduled on this rule on Date:
Place:

Time:

FILED
NOV 10 2006

MISSISSIPPI
SECRETARY OF STATE

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least ___ day(s) prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

[X] An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Economic Impact Statement: Check one box below:

[X] The agency has determined that an economic impact statement is not required for this rule, or

[] The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: November 10, 2006

Proposed Effective Date of Rule: 30 days from final filing.

Rhonda Freeman (handwritten signature)

Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State

From: Mississippi State Board of Medical Licensure

Date: November 10, 2006

Subject: Notice of Proposed Rule Adoption

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the authority to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine and the conduct of physicians.

This regulation sets guidelines for the use of laser devices in Mississippi. The added language reverts the regulation back to the March 18, 1999, original adopted language.

Any comments concerning the proposed regulation may be sent to the following address:

Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

XIX. REGULATION CONCERNING USE OF LASER DEVICES

The use of laser devices, either for invasive or cosmetic procedures, is considered to be the practice of medicine in the State of Mississippi and therefore such use shall be limited to physicians and those directly supervised by physicians, such that a physician is on the premises and would be directly involved in the treatment if required.

Adopted March 18, 1999. Amended May 19, 2005.

NOTICE OF RULE ADOPTION—FINAL RULE

COPY

STATE OF MISSISSIPPI

Mississippi State Board of Medical Licensure

Mississippi State Board of Medical Licensure
c/o Rhonda Freeman
1867 Crane Ridge Drive, Suite 200-B
Jackson, MS 39216

(601) 987-3079
rhonda@msbml.state.ms.us

Specific Legal Authority Authorizing the promulgation of
Rule: {Insert citation to state or federal statute, or
rule Section 73-43-11

Reference to Rules repealed, amended or suspended by the
Proposed Rule : {Insert citation to specific rule(s) repealed,
amended or suspended XXXII. Administrative Rules

Date Rule Proposed:

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

This regulation sets forth the administrative rules of the Board of Medical Licensure. (e.g. method of operation, oral proceedings and declaratory opinions.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

Date:
Time:
Place:

FILED
NOV 10 2006

**MISSISSIPPI
SECRETARY OF STATE**

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: December 10, 2006

Rhonda Freeman

Signature and Title of Person Submitting Rule for Filing

Rhonda Freeman
Division Director

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

TO: Mississippi Secretary of State
From: Mississippi State Board of Medical Licensure
Date: November 10, 2006
Subject: Notice of Proposed Rule Adoption - Final Rule

Mississippi Code §73-43-11 gives the Mississippi State Board of Medical Licensure the power to promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine.

This rule as adopted does not differ from the proposed rule.

This rule sets forth the administrative rules of the Board of Medical Licensure. (e.g. method of operation, oral proceedings and declaratory opinions.)

XXXIII. ADMINISTRATIVE RULES

A. METHOD OF OPERATION

1. SCOPE

This regulation is promulgated pursuant to Miss. Code Ann. Section 25-43-2.104 of the Mississippi Administrative Procedures Law.

2. DESCRIPTION OF THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

Reference is made to Title 73, Chapter 43 of the Mississippi Code, which establishes the Mississippi State Board of Medical Licensure ("the Board") and sets forth its composition, general powers and duties. Further reference is made to the following additional provisions of Mississippi law;

- a. Title 73, Chapter 25, which sets forth the Board's specific powers and duties in relation to licensure and discipline of physicians and osteopaths;
- b. Title 73, Chapter 26, which sets forth the Board's specific powers and duties in relation to licensure and regulation of physician assistants;
- c. Title 73, Chapter 27, which sets forth the Board's specific powers and duties in relation to licensure and discipline of podiatrists;
- d. Title 41, Chapter 58, which sets forth the Board's specific powers and duties in relation to licensure and regulation of radiologist technicians and assistants; and
- e. Title 41, Chapter 29, which sets forth the Board's specific powers and duties in relation to investigations of potential violations of the Mississippi Controlled Substance Laws.

Regulations adopted by the Board pursuant to the various authorities cited above are referred to as the Rules and Regulations of the Mississippi State Board of Medical Licensure. Pursuant to Miss. Code. Ann. Section 73-43-13, the Board employs an Executive Director. The Board's staff is organized into two (2) divisions: Licensure, which addresses matters related to the licensure of physicians, osteopaths, physician assistants, podiatrists, and radiologist technicians and assistants, and Investigations, which investigates matters or allegations related to the potential violation of any state statute or regulation under the Board's jurisdiction.

3. WHERE AND HOW TO OBTAIN PUBLIC INFORMATION

The text of all Board rules and regulations, as well as information regarding pending rules, regulation, schedules of meetings and the like may be obtained by visiting the Board's website at www.msbml.state.ms.us. Requests for Declaratory Opinions may be made pursuant to Part III of these rules. Otherwise, requests for information may be made pursuant to and in accordance with the Mississippi Open Records Act by submitting written request to the Board's current mailing address.

B. ORAL PROCEEDINGS ON PROPOSED RULES

1. SCOPE

This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Mississippi State Board of Medical Licensure ("the Board") pursuant to Miss. Code Ann. Section 25-43-3.104.

2. WHEN ORAL PROCEEDINGS WILL BE SCHEDULED ON PROPOSED RULES

The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, and agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule. The Board may also schedule an oral proceeding on a proposed rule on its own motion.

3. REQUEST FORMAT

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

4. NOTIFICATION OF ORAL PROCEEDING

The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. PRESIDING OFFICER

The President of the Board shall preside at the oral proceeding on a proposed rule.

6. PUBLIC PRESENTATIONS AND PARTICIPATION

- a. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- b. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentation. For good cause shown, the presiding officer in his/her discretion may allow individuals to participate that have not previously contacted the Board.
- c. At the proceeding, all those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- d. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- e. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- f. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion (i) recognize Board members for questions of the participant, or (ii) interrupt or end the participant's time where the orderly conduct of the proceeding so requires. Should the presiding officer recognize a member of the Board for questions during the participant's presentation, additional time will be afforded the participant in making his or her presentation.

7. CONDUCT OF ORAL PROCEEDING.

- a. Presiding Officer

The presiding officer shall have the authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall:

- (i) call the proceeding to order;
- (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule;
- (iii) call on those individuals who have contacted the Board about speaking on or against the proposed rule;
- (iv) recognize Board members for questions of any participant during their presentation;
- (v) allow for rebuttal statements following all participants' comments; and
- (vi) adjourn the proceeding.

b. Physical and Documentary Submissions

Submission presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and become subject to the Open Records Act.

c. Recording

The Board will record oral proceedings by stenographic means.

C. DECLARATORY OPINIONS

1. SCOPE

This regulation sets forth the rules of the Mississippi State Board of Medical Licensure ("the Board") governing the form and content of requests for declaratory opinions, and the Board's procedures regarding such requests, as required by Miss. Code Ann. Section 25-43-2.103. This regulation is intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, and may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between this rule and the Mississippi Administrative Procedures Law, the latter will control.

2. PERSONS WHO MAY REQUEST DECLARATORY OPINIONS

Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the procedures set forth in this

rule. For purposes of this rule, "substantial interest in the subject matter" means the individual, business, group or other entity making the request is directly affected by the Board's administration of the laws, rules or regulations within its jurisdiction. To be a substantial interest, the interest affected by the statute, rule or regulation must be different from the interest of the general public in that same statute, rule or regulation.

3. SUBJECTS WHICH MAY BE ADDRESSED IN DECLARATORY OPINIONS

The Board will issue declaratory opinions regarding the applicability to specified facts of: (i) a statute administered or enforced by the Board; or (ii) a rule or regulation promulgated by the Board.

4. WRITTEN REQUEST REQUIRED

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Board. No oral, telephone or e-mail requests for declaratory opinions will be accepted.

5. WHERE TO SEND REQUESTS

All requests must be mailed, hand-delivered or transmitted via facsimile to the Board's current mailing address or current facsimile number.

6. QUESTION PRESENTED

Each request shall contain the following:

- a. a full, complete and accurate statement of all relevant facts on which the opinion is requested, presented in a clear and concise manner;
- b. a citation to the statute, rule or regulation at issue;
- c. the question(s) sought to be answered in the opinion, stated clearly;
- d. a suggested proposed opinion from the requestor, stating the answers desired by the petitioner and a summary of the reasons in support of those answers;
- e. the identity of all other persons known to the requestor who may be involved in or impacted by the described factual situation, including the relationship of each to the facts, name, mailing address and phone number; and
- f. a statement that the person seeking the opinion has a substantial interest in the

subject matter, and sufficient information to support that statement.

7. NAME, ADDRESS AND SIGNATURE OF REQUESTOR

Each request must include the full name, telephone number and mailing address of the requestor. All requests must be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in this regulation.

8. CIRCUMSTANCES IN WHICH DECLARATORY OPINIONS WILL NOT BE ISSUED

The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not limited to:

- a. the request is not made with sufficient clarity to facilitate the rendering of a declaratory opinion, or the request does not provide a complete or accurate statement of all relevant facts;
- b. there exists pending or anticipated litigation, or a pending administrative or disciplinary action, or other adjudication, which has as its subject the precise question presented to the Board for declaratory opinion, the conclusion of which will resolve the question;
- c. the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- d. the facts presented in the request are not sufficient to answer the question presented;
- e. the request fails to contain information required by this regulation or the requestor failed to follow the procedures established by this regulation;
- f. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute, rule or regulation on which a declaratory opinion is sought;
- g. the facts, whether existing or anticipated, do not support that the requestor will be substantially affected by the application of the statute, rule or regulation;
- h. the question presented by the request concerns the legal validity of a statute, rule or regulation;

- i. the request is not based upon facts calculated to assist the requestor in the planning of future conduct, but is instead based on past conduct of the requestor in an attempt to determine the affect of the statute, rule or regulation on that past conduct;
- j. no clear answer is determinable;
- k. the question presented by the request may involve the application of a criminal statute or presents a set of facts which may constitute a crime;
- l. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- m. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
- n. a similar request is pending before the Board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- o. where issuance of a declaratory opinion may adversely affect the interests of the State of Mississippi, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- p. the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

9. TIME FOR BOARD'S RESPONSE

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of this regulation, the Board shall, in writing:

- a. issue a declaratory opinion regarding the specific statute, rule or regulation as applied to specific facts presented in the request;
- b. decline to issue a declaratory opinion, stating the reasons for its action; or
- c. agree to issue a declaratory opinion by a specific time not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin running on the first regular business day after the request is received by the Board, excluding legal holidays and weekends.

10. EFFECTIVE DATE OF DECLARATORY OPINIONS

A declaratory opinion shall not become final until the expiration of sixty (60) days after its issuance. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. NOTICE TO THIRD PARTIES

The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from individuals, agencies or entities other than the requestor.

12. PUBLIC AVAILABILITY OF REQUESTS AND DECLARATORY OPINIONS

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Mississippi Public Records Act. All declaratory opinions and requests shall be indexed by name of requestor and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

13. EFFECT OF A DECLARATORY OPINION

The Board will not pursue any civil, criminal or administrative action against a person who issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom an opinion is issued. No declaratory opinion will be used as a precedent for any other transaction or occurrence beyond that set forth by the requesting person.

XVI. EXEMPTIONS FROM LICENSURE (Team Physicians)

Mississippi licensure is not required for physicians employed by a sports entity visiting Mississippi for a specific sporting event when the physician holds an active medical or osteopathic license in another state and limits the practice of medicine in Mississippi to medical treatment of the members, coaches, and staff of the sports entity that employs the physician.

DECEMBER 2006

**MINUTES
EXECUTIVE COMMITTEE MEETING
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
DECEMBER 6, 2006**

MEMBERS PRESENT:

Dewitt G. Crawford, M.D., Louisville, President
Philip T. Merideth, M.D., J.D., Jackson, Vice President
Don A. Gibson, M.D., Richland, Secretary

ALSO PRESENT:

H. Vann Craig, M.D., Director
Stan T. Ingram, Complaint Counsel for the Board
Ellen O'Neal, Assistant Attorney General
Rhonda Freeman, Division Director, Licensure Division
Thomas Washington, Division Director, Investigative Division

The Executive Committee of the Mississippi State Board of Medical Licensure met on Wednesday, December 6, 2006, at 8:00 a.m. in the Executive Conference Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

RANDALL SHERMAN, M.D., HATTIESBURG, MS, T-1964

Stan Ingram, Complaint Counsel for the Board, discussed Dr. Sherman's request for a permanent medical license. Dr. Sherman was issued a temporary license in order for him to begin training in an addictionology fellowship with the University of Florida, at Pine Grove, Hattiesburg, MS. Dr. Sherman's temporary license will not allow him to get a DEA Certificate; therefore, in order for Dr. Sherman to have the ability to prescribe certain narcotics while in the fellowship program, he will need a permanent Mississippi medical license. After a brief discussion, it was the consensus of the Committee to approve Dr. Sherman for an unrestricted permanent medical license; however, Dr. Sherman must submit a letter indicating that he will not practice outside the confines of his fellowship program and he will notify the Board once his fellowship is complete.

REGULATIONS REGARDING THE CONDUCT OF PHYSICIANS WHO PERFORM UTILIZATION REVIEW MEDICAL CONSULTATION ACTIVITIES

Ellen O'Neal, Assistant Attorney General, addressed the Executive Committee regarding two lawsuits which had been filed against the Board, Louisiana Health Care Review d/b/a/ Health Systems of Mississippi, Inc., et al.v.

**EXECUTIVE COMMITTEE MINUTES
DECEMBER 6, 2006
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Mississippi State Board of Medical Licensure, et al., Civil Action No. G-2006-2228S/2 before the Chancery Court of Hinds County, Mississippi; and Aetna Life Insurance Co. v. Mississippi State Board of Medical Licensure, et al., Civil Action No. 3:06cv668WHB-JCS before the U.S. District Court for the Southern District of Mississippi (Jackson). Ms. O'Neal also explained that plaintiffs in the state court action utilized the chancery court's expedited procedures to obtain a temporary restraining order prohibiting both the enforcement and enactment of Regulation XXXI.

Motion was made by Dr. Merideth, seconded by Dr. Crawford, and carried unanimously that the Executive Committee consider going into Executive Session to discuss the pending litigation. With a motion by Dr. Merideth, seconded by Dr. Crawford, the Executive Committee went into Executive Session.

Upon motion by Dr. Merideth, seconded by Dr. Gibson, and carried unanimously, the Executive Committee came out of Executive Session.

After some discussion, Ms. O'Neal agreed to contact the remaining Board Members and advise them of the pending litigation and the defense of both suits by the Office of the Attorney General.

Dr. Merideth reviewed a letter dated November 30, 2006, that Dr. Crawford sent to Attorney General Hood with a copy to Dr. Robert L. Robinson, Executive Director to the Division of Medicaid, a copy of which is attached hereto and incorporated by reference.

Upon motion by Dr. Merideth, seconded by Dr. Gibson, and carried unanimously, it was the decision of the Committee that the Board hold in abeyance the enforcement of Regulation XXXI until all parties have had opportunity to further discuss the issues with the Attorney General; and to agree to extend the Temporary Restraining Order and delay the December 7, 2006, hearing until mid-January or until such date as will be reflected in an Agreed Order that is anticipated.

Upon further discussion, it was the consensus of the Executive Committee that Dr. Merideth solicit additional comments regarding Regulation XXXI from other agencies, individuals and entities.

**EXECUTIVE COMMITTEE MINUTES
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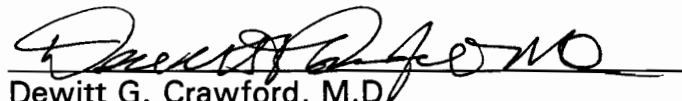
OTHER BUSINESS

Motion was made by Dr. Merideth, seconded by Dr. Gibson , and carried unanimously that the Executive Committee consider going into Executive Session to discuss investigatory matters and possible disciplinary action. With a motion by Dr. Merideth, seconded by Dr. Gibson, the Executive Committee went into Executive Session.

Upon motion by Dr. Merideth, seconded by Dr. Gibson, and carried unanimously, the Executive Committee came out of Executive Session. It was announced that Dr. Craig would direct a number of pending investigations.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:09 a.m., with the next Executive Committee meeting scheduled for 2:00 p.m. on Wednesday, January 17, 2007.


Dewitt G. Crawford, M.D.
President

Minutes taken and transcribed
by Rhonda Freeman, CPM
Division Director, II
December 6, 2006

TELEPHONE: (601) 987-3079



FAX: (601) 987-4159

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

November 30, 2006

VIA FACSIMILE (601) 359-3441
ORIGINAL BY MAIL

Hon. Jim Hood, Attorney General
P.O. Box 220
Jackson, MS 39205-0220

RE: Mississippi State Board of Medical Licensure, Regulation XXXI

Dear General Hood:

Receipt of your letter dated November 27, 2006 is hereby acknowledged. After discussion of the matter with Board member Dr. Philip Merideth and Board counsel, we would propose to hold in abeyance the enforcement of Regulation XXXI until such time as all parties have had an opportunity to further discuss the issues with you, separately or collectively. In your letter, you asked the Board to delay implementation of the regulation which goes into effect December 1. For a variety of reasons, we propose to allow the regulation to become effective tomorrow as adopted by the full Board. However, I believe that the full Board, as a showing of good faith, certainly would be willing to delay any enforcement thereof at your request.

If you have any questions, please do not hesitate to contact this office.

Sincerely,

Dewitt G. Crawford, M.D.
President

cc: Philip Merideth, M.D., J.D.
Ellen O'Neal, Esq.
Stan Ingram, Esq.
Robert L. Robinson, Ph.D., Ex. Director, Mississippi Division of Medicaid