

**BOARD MINUTES  
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE  
JANUARY 17, 2019**

The regularly scheduled meeting of the Mississippi State Board of Medical Licensure was held on Thursday, January 17, 2019, in the Board Room of the Office of the Board located at 1867 Crane Ridge Drive, Jackson, Mississippi.

**THE FOLLOWING MEMBERS WERE PRESENT:**

Claude D. Brunson, M.D., Jackson, President  
J. Ann Rea, M.D., Columbus, Vice President  
David W. McClendon, Jr., M.D., Ocean Springs, Secretary  
Charles D. Miles, M.D., West Point  
Michelle Y. Owens, M.D., Jackson  
C. Kenneth Lippincott, M.D., Tupelo  
Kirk L. Kinard, D.O., Oxford  
H. Allen Gersh, M.D., Hattiesburg

**ALSO PRESENT:**

Stan T. Ingram, Complaint Counsel for the Board  
Gloria Green, Special Assistant Attorney General  
Kenneth Cleveland, Executive Director  
Mike Lucius, Deputy Director  
Anna Boone, Interim Director, Licensure Division  
Leslie Ross, Director of Investigations  
Kristin Wallace, Clinical Director of Physician Compliance  
Jonathan Dalton, Investigations Supervisor  
Frances Carrillo, Staff Officer  
Major General (Ret.) Erik Hearon, Consumer Health Committee  
Wesley Breland, Hattiesburg, Consumer Health Committee  
Shoba Gaymes, Jackson, Consumer Health Committee

The meeting was called to order at 9:00 a.m., by Dr. Brunson, President. The invocation was given by Dr. Gersh and the pledge was led by Dr. Kinard.

**ANNOUNCEMENTS AND PUBLIC COMMENTS**

Dr. Brunson welcomed Ms. Cathy White, Court Reporter. Dr. Brunson opened the floor for public comments but there were none.

**EXECUTIVE DIRECTOR REPORT**

Dr. Cleveland reported on the speaking engagements and presentations by staff. Ms. Leslie Ross and Mr. Jonathan Dalton gave a joint presentation to the Physician Assistant School regarding regulations, this is a yearly presentation. Dr. Cleveland did a teleconference presentation for the physicians at Merit Health.

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Dr. Cleveland provided a summary of the Licensure Division operations regarding licenses issued for the months of November and December 2018. He provided a summary of the Investigative Division operations regarding Investigations for the November and December 2018.

Dr. Cleveland provided a brief update in upgrading the Board's Software system.

Dr. Cleveland provided a brief update on the Legislative Session regarding recruiting sponsors to revise and update the Medical Practice Act and inclusion of Consumer Members. Presentation of the budget to the Budget Committees.

Upon review of the Budget request Dr. Gersh moved for approval as submitted. Dr. Owens seconded the motion and it carried unanimously.

**OTHER BUSINESS**

Brief discussion regarding the plan to move forward on the revisions and updated language to the Medical Practice Act (MPA) and changes in the make-up of the Board by staff. A motion is made by Dr. Rea to officially adopt the revisions of the MPA and inclusion of Consumer Members and move forward in passing through the legislature. Dr. McClendon seconded the motion and it carried unanimously.

**REVIEW AND APPROVAL OF MINUTES OF THE EXECUTIVE COMMITTEE MEETING**

Executive Committee did not meet November 2018. Dr. Brunson advised that the regularly scheduled meeting for the Executive Committee had been canceled due the Hearing Docket requiring additional time.

**REVIEW AND APPROVAL OF MINUTES OF THE BOARD MEETING DATED NOVEMBER 29, 2018**

Upon review of the minutes of the Board meeting dated November 29, 2018, Dr. Rea moved for approval of the minutes as submitted. Dr. Owens seconded the motion and it carried unanimously.

**REPORT OF JANUARY 16, 2019, EXECUTIVE COMMITTEE MEETING**

Dr. McClendon reported on the matters discussed by the Executive Committee on January 16, 2019, and recommendations made. Information pertaining to the Executive Committee's recommendations is included in the Executive Committee minutes, which are attached hereto and incorporated by reference.

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Dr. Brunson called for a vote to accept the recommendations of the Executive Committee. A motion was made by Dr. Owens, seconded by Dr. Kinard, and unanimously carried to accept the recommendations of the Executive Committee.

**REPORTS FROM COMMITTEES**

**Scope of Practice - Dr. Rea (Chair), Dr. Owens, Dr. Miles, Dr. Kinard, Dr. Gersh, Dr. McClendon, Mr. Breland, Ms. Gaymes**

Dr. Rea advised there was no new information to report. Dr. Rea advised the Scope of Practice Committee will be scheduling their next Committee meeting for the next Board meeting in March.

**Professionals Health Program - Dr. Lippincott (Chair), Dr. Gersh, Dr. Rea, Dr. Miles, Maj Gen (Retired) Hearon, Ms. Gaymes**

Dr. Lippincott advised there was no new information to report.

**Telemedicine | Interstate Licensure Compact - Dr. McClendon (Chair), Dr. Miles, Dr. Kinard, Dr. Lippincott, Maj Gen (Retired) Hearon, Mr. Lucius**

Dr. McClendon briefly updates the Board on the Interstate Licensure Compact. Dr. McClendon is currently serving on the Personnel Committee and is pursuing an ongoing process for a higher level of functioning from an organizational standpoint. The Committee is developing an organization chart to manage the rapid growth of this National organization.

**Licensees Education and Communication - Dr. Owens (Chair), Dr. McClendon, Dr. Gersh, Dr. Kinard, Dr. Rea, Dr. Lippincott, Mr. Breland, Ms. Gaymes, Mr. Lucius**

Dr. Owens thanked all the members that attended this morning's meeting and reported the Committee had discussed to be more responsive to Licensees, to facilitate communication and improve transparency on behalf of the Board.

The Committee voted and passed unanimously a recommendation to the Board to disseminate electronically by email a monthly communication of a summary of Board actions, Meetings, initiatives and provide additional educational materials that would be of benefit to Licensees. To improve the Board's transparency by introducing and spotlighting the Board Members and Staff to Licensees.

Dr. Brunson called for a vote to accept the recommendation of the Licensee's Education and Communication Committee and the Board unanimously voted to accept.

**Physician Assistant Advisory Task Force - Dr. McClendon (Chair), Dr. Kinard, Robert Philpot, Jr., PhD, PA-C, Joanna Mason, PA-C, Lauren English, Phyllis**

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**Johnson, Board of Nursing, Tristen Harris, PA-C, Leah Calder, PA-C, Gavin Nowell, Mr. Jonathan Dalton, Maj Gen (Retired) Hearon**

Dr. McClendon advised there was no new information to report.

**Rules, Regulation & Legislative - Dr. Miles (Chair), Dr. Gersh, Dr. Rea, Dr. Owens, Dr. Lippincott, Mr. Breland, Ms. Hope Ladner**

Dr. Miles reported the final adoption of the following regulations:

**•Part 2640 Chapter 1: Rules Pertaining to Prescribing, Administering and Dispensing of Medication. Rule 1.7 Use of Controlled Substances for Chronic (Non-Cancer/Non-Terminal) Pain. Changes to Paragraphs L and M. Final Adopt**

*The revised changes will be submitted to the Occupational Licensing Review Commission (OLRC). Dr. Brunson called for a vote to final adopt the changes to Paragraphs L and M in Rule 1.7, and the Board unanimously voted to final adopt.*

**•Part 2640 Chapter 1: Rules Pertaining to Prescribing, Administering and Dispensing of Medication. Rule 1.14 Pain Management Medical Practice. Adopted as an emergency rule for an immediate effective date. Change to Paragraph M. Final Adopt**

*Dr. Brunson called for a vote to final adopt the changes to Paragraph M in Rule 1.14, and the Board unanimously voted to final adopt.*

**•Part 2615 Chapter 1: The Practice of Physician Assistants. Occupational Licensing Review (OLRC) Commission issued a resolution regarding the approval/denial of regulation submitted. Final Adopt**

*Dr. Brunson called for a vote to final adopt the changes to Part 2615 Chapter 1: The Practice of Physician Assistants with minimal changes from the OLRC, and the Board unanimously voted to final adopt.*

**•Title 30, Part 2635 Practice of Medicine. Part 2635: Chapter 13: Complementary and Alternative Therapies. Final Adopt**

*Dr. Brunson called for a vote to final adopt the Title 30, Part 2635 Practice of Medicine. Part 2635: Chapter 13, and the Board unanimously voted to final adopt.*

**•Title 30, Part 2635 Practice of Medicine. Part 2635: Chapter 14: Temporary Practice by an Athletic Team Physician. Final Adopt**

*Dr. Brunson called for a vote to final adopt the Title 30, Part 2635 Practice of Medicine. Part 2635: Chapter 14, and the Board unanimously voted to final adopt.*

**OTHER BUSINESS**

**APPROVAL OF BOARD MEMBERS AND STAFF TO ATTEND THE FSMB 2019 ANNUAL MEETING – FORT WORTH, TX, APRIL 24-27, 2019**

A motion was made by Dr. Rea, seconded by Dr. Owens, and carried for members of the Board, Consumer Member and staff to attend the Federation of State Medical Board meetings in Fort Worth, TX, April 24-27, 2019.

**THE BOARD RECESSED AT 9:59 AM AND RETURNED AT 10:10 AM**

**PERSONAL APPEARANCE BY RENÉE R. MELANCON, PA-C, NEW ORLEANS, LA, PHYSICIAN ASSISTANT LICENSE NUMBER PA00391**

Ms. Melancon joined the meeting and was not represented by legal counsel. Ms. Melancon executed a written agreement for this informal meeting, a copy of which is attached hereto and incorporated by reference. Ms. Melancon introduced Richard Milani, M.D., her supervising physician. Ms. Melancon is practicing in New Orleans but conducting telemedicine visits with patients of Ochners at its satellite facilities/ clinics in Mississippi. The patients would be physically located in Mississippi while she is at the main office in New Orleans with her supervising physician.

Ms. Melancon had been invited to discuss her protocol submitted to the Board for approval. Dr. Milani briefly summarized their practice in assessing patients for Stennis located in Mississippi for high blood pressure from New Orleans utilizing electronic devices.

Dr. Cleveland advised the Board that Ms. Melancon's practice meets the regulations and this is before the Board to review and consider this Physician Assistant / Physician practice utilizing technology in telemedicine for future guidance in reviewing and approving Physician Assistant protocols.

Following questions, a motion was made by Dr. Rea, seconded by Dr. Gersh and carried to close the meeting to consider whether to enter into executive session on this matter.

A motion was made by Dr. Miles, seconded by Dr. Owens and carried that the Executive Committee enter into executive session for the purpose of considering the request regarding the protocol which consideration could lead to appeal of the Board's decision.

A motion was made by Dr. Miles, seconded by Dr. Owens with one against to accept Ms. Melancon's protocol as written and submitted to the Board.

**HEARING IN THE CASE OF SHUNDA LYNETTE GARNER, M.D., JACKSON, MS,  
MEDICAL LICENSE NUMBER 16790**

Mr. Ingram introduced Dr. Garner and her attorney David Porter. Mr. Ingram briefly summarized Dr. Garner's Board action and advised that this is a petition to remove restrictions imposed on Dr. Garner prohibiting her from collaborating with mid-level providers and requiring Continuing Medical Education a result of a hearing on March 18, 2015.

Mr. Porter addresses the Board and summarizes Dr. Garner's compliance to the Board's March 18, 2015, Order. Mr. Porter entered exhibits into the record.

Mr. Ingram entered numerous exhibits into the record.

Dr. Garner was sworn in by the court reporter. Mr. Ingram questioned Dr. Garner regarding the time she waited in requesting removal of restrictions. Dr. Garner answered questions by the Board members and Mr. Ingram.

Following questions from Board members, motion was made by Dr. Rea, seconded by Dr. Owens and carried unanimously to remove all restrictions currently on Dr. Garner's medical license.

A copy of the Order lifting restrictions is attached hereto and incorporated by reference.

The official account of this proceeding was recorded by Cathy White, Court Reporter.

**HEARING IN THE CASE OF CHARLES SAMUEL FILLINGANE, D.O., MILTON, FL,  
MEDICAL LICENSE NUMBER 11114**

Mr. Ingram introduced Dr. Fillingane and his attorney Philip Chapman. Mr. Ingram advised that this is a petition to reinstate his license without. Mr. Ingram briefly summarized Dr. Fillingane's historical summary.

Mr. Chapman addresses the Board and summarizes Dr. Fillingane compliance to the Board's Order dated July 3, 2018. Mr. Chapman entered exhibits into the record.

Mr. Ingram entered exhibits into the record.

Dr. Fillingane was sworn in by the court reporter. Mr. Ingram questioned Dr. Fillingane violation and compliance of his previous Board order. Dr. Fillingane answered questions by the Board members and Mr. Ingram.

Dr. Hambleton was sworn in by the court reporter. Mr. Chapman questioned Dr. Hambleton, Medical Director of the Mississippi Physician Health Program in issuing

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advocacy and monitoring reports from the Florida Professionals Recovery Network for Dr. Fillingane. Dr. Hambleton answered questions by the Board members and Mr. Ingram.

Dr. Fillingane was recalled answering additional questions from the Board. Following questions, a motion was made by Dr. Lippincott, seconded by Dr. Owens and carried to close the meeting to consider whether to enter into executive session on this matter.

A motion was made by Dr. Owens, seconded by Dr. Miles and carried that the Board enter into executive session for the purpose of considering whether Dr. Fillingane's license should be reinstated without restriction, which could lead to an appeal of the Board's decision.

A motion was made by Dr. Rea, seconded by Dr. Gersh and carried unanimously to reinstate Dr. Fillingane's license without restrictions, pending completion of the cost of Investigation and the boundaries Ethics Course.

A copy of the Order lifting restrictions is attached hereto and incorporated by reference.

The official account of this proceeding was recorded by Cathy White, Court Reporter.

**THE BOARD RECESSES FOR LUNCH AT 12:12 P.M. AND RETURNED AT 1:09**

**HEARING IN THE CASE OF BENJAMIN JAMES BURKE, M.D., WOODVILLE, MS,  
MEDICAL LICENSE NUMBER 20064**

Mr. Ingram introduced Dr. Burke and his attorney Doug Mercier. Mr. Ingram advised that this is a petition to remove restrictions imposed on Dr. Burke's medical license.

Mr. Ingram entered numerous exhibits into the record.

Mr. Mercier entered numerous exhibits into the record.

Mr. Mercier addressed the Board and advised that this is a petition to remove restrictions imposed on Dr. Burke's license for professional sexual misconduct. Mr. Mercier stated that Dr. Burke had practiced under the Board's restrictions and monitoring by the Mississippi Physician Health Program (MPHP) with no compliance issues since 2007. Mr. Mercier advised that currently Dr. Burke is limited to treating male patients in penal institution and the company / employer has notified Dr. Burke of impending termination of his services. Dr. Burke seeks an unrestricted license to obtain available employment opportunities.

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Mr. Ingram addressed the Board and summarizes Dr. Burke's licensure and Board action history since his Alabama medical license was suspended for two (2) years as a result of substantial violations of professional sexual misconduct. Mr. Ingram briefly summarizes Dr. Burke's Mississippi medical licensure history and monitoring by the Mississippi Physician Health Program (MPHP) since the issuance of his Mississippi medical license. Mr. Ingram reviewed the recommendation of Dr. Burke's evaluation dated 2012, that he be limited to treating male patients only. Mr. Ingram reports that Dr. Burke has not treated female patients since 2012 nor has he had an evaluation since 2012.

Dr. Burke and Dr. Hambleton, Medical Director with MPHP was simultaneously sworn in by the court reporter.

Dr. Burke was called to the witness stand. Mr. Mercier asked Dr. Burke to give the Board a brief educational professional background. Mr. Mercier questioned Dr. Burke concerning his practice in Alabama. Dr. Burke answered Mr. Mercier's questions regarding the action by the Alabama Medical Board, evaluation subsequent therapy / treatment and his Mississippi practice. Mr. Mercier finished with his questions of Dr. Burke.

**THE BOARD RECESSED AT 3:18 PM AND RETURNED AT 3:30 PM**

Dr. Burke continued on the witness stand answered questions by Mr. Ingram regarding the professional sexual misconduct charges by the Alabama Medical Board in 2002. Mr. Ingram questioned Dr. Burke regarding violations of his Mississippi Board Order and MPHP monitoring contract. Mr. Mercier re-directed with questions for Dr. Burke. Dr. Burke answered questions by the Board members, and he exited the witness stand.

Dr. Hambleton was called to the witness stand and answered questions by Mr. Mercier regarding his professional credentials. Mr. Hambleton answered questions regarding Dr. Burke's monitoring by MPHP. Dr. Hambleton answered questions by the Board members and Mr. Ingram before he exited the witness stand.

**DR. KINARD EXITED THE MEETING AT 5:36 PM**

Mr. Mercier gave a closing statement.

Mr. Ingram gave a closing statement.

Following questions, a motion was made by Dr. Miles, seconded by Dr. Gersh and carried to close the meeting to consider whether to enter into executive session on this matter.

A motion was made by Dr. Rea, seconded by Dr. Owens and carried that the Board enter into executive session for the purpose of considering the evidence to determine



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whether or not Dr. Burke's license restrictions should be lifted which consideration could lead to an appeal of the Board's Order.

A motion was made by Dr. Rea, seconded by Dr. Gersh and carried unanimously that Dr. Burke's current restrictions not be lifted at this time. He will not be eligible for removal of restrictions until he undergoes a multidisciplinary evaluation by a Board approved program and the October 10, 2011 Board Order will remain in effect.

A copy of the Determination and Order is attached hereto and incorporated by reference.

The official account of this proceeding was recorded by Cathy White, Court Reporter.

**DATES FOR NEXT EXECUTIVE COMMITTEE MEETING AND BOARD MEETING ARE SET FOR MARCH 20 AND MARCH 21, 2019**

**Scope of Practice Committee, Dr. Rea, Chair has scheduled a Committee meeting for March 21, 2019 at 8:00 am.**

**ADJOURNMENT**

There being no further business, the meeting adjourned at 6:11 p.m.



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**Claude Brunson, M.D.  
President**

**Minutes taken and transcribed  
By Frances Carrillo  
Staff Officer  
January 17, 2019**

**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE**  
**IN THE MATTER OF THE PHYSICIAN'S LICENSE**  
**OF**  
**SHUNDA LYNETTE GARNER, M.D.**

**ORDER REMOVING RESTRICTIONS ON LICENSE**

**THIS MATTER** came on regularly for hearing on January 17, 2019, before the Mississippi State Board of Medical Licensure, in response to the petition of Shunda Lynette Garner, M.D. (hereinafter "Licensee"), seeking removal of all restrictions on her license to practice medicine in the State of Mississippi.

Licensee was present, represented by her counsel, Dave Porter. Complaint Counsel for the Board was Honorable Stan T. Ingram. Sitting as legal advisor to the Board was Honorable Gloria Green, Assistant Attorney General. Board members present for all proceedings were Claude D. Brunson, M.D., President, Charles D. Miles, M.D., Charles K. Lippincott, M.D., William D. McClendon, Jr., M.D., Michelle Y. Owens, M.D., Jeanne Ann Rea, M.D., Allen Gersh, M.D. and Kirk L. Kinard, D.O. Consumer members present were Wesley Breland, Maj. General (Ret.) Erik Hearon and Koomarie "Shoba" Gaymes.

Evidence and testimony was then taken. Based on the evidence and testimony received, the Board determines that following a full evidentiary hearing on March 18, 2015, Licensee was found guilty of multiple counts of violations of the Mississippi Medical Practice Act, including failure to obtain the requisite Continuing Medical Education (hereinafter "CME") required of all physicians, failure to personally dispense medication as required by Board Rules and Regulation, prescribing controlled substances outside the

course of legitimate professional practice, and failure to conduct a good-faith prior examination prior to prescribing controlled substances. The Board placed several restrictions on Licensee's certificate to practice medicine, including successful completion of CME and a prohibition against collaborating with mid-level providers until such time as she has completed all CME and "shall have received written approval from the board." During the hearing, it was revealed that Licensee completed all of the CME but did not request removal of the restrictions. When asked by the Board why she permitted more than three (3) years to lapse before requesting removal of restrictions, Licensee stated that she was under the mistaken belief that upon completion of the CME, removal of restrictions was automatic. Having now a clear understanding of the Board Order, the request was made.


Based upon the aforementioned evidence and testimony, the Board finds Licensee's petition to be well taken.

**THEREFORE, IT IS HEREBY ORDERED**, that Licensee's petition for removal of all restrictions on her Medical License (No. 16790) is here by granted. Licensee now holds an unrestricted medical license.

**IT IS FURTHER ORDERED**, that pursuant to Miss. Code Ann. §73-25-27(1972), a copy of this Order shall be sent by registered mail or personally served on Shunda Lynette Garner, M.D.

**ORDERED**, this the 17th day of January, 2019.

**MISSISSIPPI STATE BOARD OF  
MEDICAL LICENSURE**

BY:   
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**CLAUDE D. BRUNSON, M.D.  
PRESIDENT**

**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE**  
**IN THE MATTER OF THE PHYSICIAN'S LICENSE**  
**OF**  
**CHARLES SAMUEL FILLINGANE, D.O.**  
**ORDER REINSTATING MEDICAL LICENSE**

**THIS MATTER** came on regularly for hearing on January 17, 2019, before the Mississippi State Board of Medical Licensure, in response to the petition of Charles Samuel Fillingane, D.O. (hereinafter "Licensee"), seeking removal authorization to return to the practice of medicine in the State of Mississippi.

Licensee was present, represented by counsel, Philip Chapman. Complaint Counsel for the Board was Honorable Stan T. Ingram. Sitting as legal advisor to the Board was Honorable Gloria Green, Assistant Attorney General. Board members present for all proceedings were Claude D. Brunson, M.D., President; Charles D. Miles, M.D.; Charles K. Lippincott, M.D.; William D. McClendon, Jr., M.D.; Michelle Y. Owens, M.D.; Jeanne Ann Rea, M.D.; Allen Gersh, M.D. and Kirk L. Kinard, D.O. Consumer members present were Wesley Breland; Maj. General (Ret.) Erik Hearon, and Koomarie "Shoba" Gaymes.

Evidence and testimony was then taken. Based on the evidence and testimony received, the Board determines that on December 3, 2017, Licensee entered into that certain Consent Order with the Board, thereby placing restrictions and requirements on his medical license, including but not limited to, making arrangements for and submitting to an evaluation through the Mississippi Physician Health Program (MPHP), completion of Continuing Medical Education (CME) in the area of Medical Ethics and reimbursing the Board for all costs. As a result of the evaluation, Licensee was found to be in need of treatment. An Order was thereafter entered by the Board on July 3, 2018, temporarily suspending Licensee's medical

license until completion of treatment. In response, Licensee did in fact enter and successfully complete treatment and has secured advocacy from the MPHP. Licensee is currently attending regular follow-up monitoring through the Florida Professional Resource Network (PRN) and is in compliance with monitoring contracts with both programs. As a result of a misinterpretation of the Board Order, Licensee secured CME in the area of prescribing of controlled substances rather than medical ethics. The Board is advised that Licensee is registered to complete the Medical Ethics and Professionalism Course, Professional Boundaries, Inc Program to be completed in February 2019. The Board finds that once the ethics course has been successfully completed and Licensee has provided the Board with confirmation thereof, formal reinstatement of licensure in Mississippi is in order.


Based upon the aforementioned evidence and testimony, the Board finds Licensee's petition to be well taken.

**THEREFORE, IT IS HEREBY ORDERED**, that upon receipt of confirmation that Licensee has successfully completed the Medical Ethics Course hereinabove stated, Licensee's petition for reinstatement of his Medical License (No. 11114) shall be automatically granted. Subject to his continuing affiliation and advocacy with the MPHP and PRN, Licensee shall then hold an unrestricted medical license.

**IT IS FURTHER ORDERED**, that pursuant to Miss. Code Ann. §73-25-27(1972), a copy of this Order shall be sent by registered mail or personally served on Charles Samuel Fillingane, D.O.

**ORDERED**, this the 17th day of January, 2019.

**MISSISSIPPI STATE BOARD OF  
MEDICAL LICENSURE**

BY:   
\_\_\_\_\_  
**CLAUDE D. BRUNSON, M.D.  
PRESIDENT**

**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE**

**IN THE MATTER OF THE PHYSICIAN'S LICENSE**

**OF**

**JAMES BENJAMIN BURKE, M.D.**

**ORDER DENYING REMOVAL OF RESTRICTIONS ON MEDICAL LICENSE**

**THIS MATTER** came on regularly for hearing on January 17, 2019, before the Mississippi State Board of Medical Licensure, in response to the petition of James Benjamin Burke, M.D. (hereinafter "Licensee"), seeking removal of all restrictions on his license to practice medicine in the State of Mississippi.

Licensee was present, represented by counsel, Douglas Mercier. Complaint Counsel for the Board was Honorable Stan T. Ingram. Sitting as legal advisor to the Board was Honorable Gloria Green, Assistant Attorney General. Board members present for all proceedings were Claude D. Brunson, M.D., President, Charles D. Miles, M.D., Charles K. Lippincott, M.D., William D. McClendon, Jr., M.D., Michelle Y. Owens, M.D., Jeanne Ann Rea, M.D., Allen Gersh, M.D. and Kirk L. Kinard, D.O. Consumer members present were Wesley Breland, Maj. General (Ret.) Erik Hearon and Koomarie "Shoba" Gaymes. Prior to deliberations, Dr. Kinard had to leave the proceedings, and therefore, did not participate.

Evidence and testimony was then presented. Based thereon, the Board finds Licensee's request for removal of all restrictions not to be well taken. The Board finds as follows:

I.

Licensee has a significant history with the Board. He was licensed to practice medicine in the State of Mississippi on December 18, 2007, by issuance of Mississippi Medical License No. 20064, said license is current until June 30, 2019.

II.

On or about June 27, 2002, Licensee surrendered his Certificate of Qualification and License to practice medicine in the State of Alabama based on charges of unprofessional conduct relating to sexual misconduct with female patients (Board Exhibit No. 3; Burke Exhibit No. 6).

III.

On August 23, 2005, the Alabama Board of Medical Examiners granted Licensee's petition for reinstatement of license and authorized him to return to the practice of medicine in the State of Alabama, based in part on the fact that he had received treatment by the Behavioral Medicine Institute of Atlanta (BMI), participated in the Florida CARES evaluation, and had submitted a practice plan for monitoring, proctoring and counseling acceptable to the Alabama Board (Board Exhibit No. 3; Burke Exhibit No. 6).

IV.

In connection with Licensee's application for a license to practice medicine in the State of Mississippi, Licensee submitted to an evaluation by the Mississippi Professionals Health Program (MPHP); Licensee met with MPHP on September 10, 2007, and after reviewing documentation provided by Licensee, including a report from BMI, the MPHP found Licensee's treatment process and documentation to be in order and agreed to support him for licensure in the State of Mississippi, subject to a monitoring contract (Board Exhibit No. 5; Burke Exhibit No. 7).

V.

On October 22, 2007, Licensee's application for licensure in Mississippi was presented to the Executive Committee of the Board by H. Vann Craig, M.D., Executive Director. Dr. Craig requested that the Executive Committee review the information surrounding the sexual misconduct and make a determination as to whether the Board should issue an unrestricted license based on the signed contract with MPHP. While the Board possessed sufficient grounds to deny the application, it was the consensus of the Executive Committee that a reportable Consent Order limiting Licensee's practice to the male population at Parchman State Penitentiary be offered. Licensee accepted the offer and was issued a license to practice medicine in Mississippi, subject to a November 30, 2007 Consent Order (Board Composite Exhibit No. 6; Burke Exhibit No. 8) containing the following probationary terms and condition, to wit:

1. Until authorized otherwise by order of the Board, Licensee's practice in the State of Mississippi shall be limited to the Mississippi State Penitentiary, Parchman, Mississippi, or other correctional facilities under the jurisdiction of the Mississippi Department of Corrections. Licensee shall practice in a supervised structured environment, and such practice shall be limited to treatment of male patients only.
2. Licensee shall comply with all of the terms and conditions of the Monitoring Agreement entered into by and between Licensee and MPHP. In the event Licensee fails to comply with any or all of the terms and conditions of the Monitoring Agreement, or violates any of the terms and conditions of this Consent Order, the Board shall have the right to issue an Order of Prohibition, thereby prohibiting Licensee from practicing medicine pending the outcome of a full evidentiary hearing based on the violations alleged.
3. Licensee shall have the right to petition the Mississippi State Board of Medical Licensure for release of any or all of the above enumerated conditions after expiration of two (2) years from the effective date hereof. Thereafter, any right to petition the Board for reconsideration shall be at reasonable intervals, but not less than twelve (12) months from date of last appearance.

## VI.

On November 19, 2009, a hearing was conducted before the Board in response to a request by Licensee for removal or clarification of the above restrictions placed on his license by virtue of that certain Consent Order dated November 30, 2007. Specifically, the Board was advised that since August, 2009 Licensee had been practicing at the Adams County Correctional Center, Natchez, Mississippi, which is a privately held correctional facility housing only federal prisoners, all contrary to the terms of the aforementioned Consent Order. During the hearing, Licensee openly acknowledged that the Adams County Correctional Center was not a facility under the jurisdiction of the Mississippi Department of Corrections; and acknowledged his failure to obtain permission from the Board prior to his employment at Adams County. Notwithstanding, the Board recognized that the Adams County Correctional Center, similar to the Mississippi State Penitentiary, provided Licensee with a supervised structured practice limited to the treatment of male patients only. The Board found that Licensee was fully aware of the violation committed and admonished him in that regard.



The Board, after hearing all testimony and evidence, amended the 2007 Consent Order, and authorized Licensee to continue his present practice at said Adams County Correctional Center. However, the November 30, 2007, Consent Order was amended so as to delete Restriction No. 1 as it was then written and, in lieu thereof, insert the following restriction, to-wit:

1. Until authorized otherwise by Order of the Board, Licensee's practice in the state of Mississippi shall be limited to the Adams County Correctional Center, Natchez, Mississippi, or other correctional facility approved in advance and in writing by the Board. Licensee shall practice in a supervised structured environment, which practice shall be limited to treatment of male patients only.  
(emphasis added)

It was further ordered that Licensee shall continue to comply with each and every aspect with the Recovery Contract Agreement which Licensee entered into with the MPHP; and was given the right after expiration of one (1) year to petition for removal of any or all restrictions. (Board Composite Exhibit No. 6; Burke Exhibit No. 9).

VII,

During December, 2010, Licensee left the employ of Adams County Correctional Center, Natchez, Mississippi, and began working for the Central Mississippi Correctional Facility on or about December 15, 2010. On December 22, 2010, Licensee corresponded with the Board, informing the Board that he had changed his practice location. The letter states in part:

"I have been hired as the Medical Director for the Central Mississippi Correctional Facility. As directed by my decree, this facility is under the direction of the Mississippi Department of Corrections. The physical address is; Central Mississippi Correctional Facility 3794 Hwy 468 Pearl, MS 39208."

Pursuant to the November 30, 2007 Consent Order, as amended on November 19, 2009, Licensee did not seek "approval in advance and in writing" from the Board to relocate his practice from the Adams County Correctional Center to the Central Mississippi Correctional Facility, Pearl, Mississippi. Although the Central Mississippi Correctional Facility has male inmates, the Board previously determined that it is the primary female correctional facility for the Mississippi State Department of Corrections. Further, there was concern as to whether Licensee, then serving as the Medical Director, was (i) working in a "supervised structured environment" and (ii) would be treating only male patients.

While serving as the Medical Director at Central Mississippi Correctional Facility, Pearl, Mississippi, Licensee issued orders for the administration of medical care and for the administration, dispensation or prescription of medication for female patients. Further, at no time did Licensee provide the Board with proof that his medical practice at Central Mississippi Correctional Facility was pursuant to a structured and supervised environment.

#### VIII.

In response to the above, the Board requested review and recommendations as to Licensee's employment status from MPHP. On January 24, 2011, the Board received a letter from Scott L. Hambleton, M.D., Medical Director of the MPHP, stating that MPHP had met with Licensee on January 7, 2011, to discuss Licensee's request for an unrestricted license which would allow Licensee to see female patients (Board Exhibit No. 7). However, after further investigation by MPHP, Dr. Hambleton notified Licensee that MPHP would not advocate for him. Dr. Hambleton's letter states in part:

"He is employed at Central Mississippi Correctional Facility, in Pearl, MS. He had been employed at Adams County Correctional Facility, until December 20, 2010. His consent order stipulates that he see male patients, only, and that he receive written permission from the MSBML prior to changes in employment. The Central Mississippi Correctional Facility houses female patients. Additionally, Dr. Burke was admonished by the MSBML last year for failure to notify the MSBML about his change in employment.

In April, 2010, he was started on injectable testosterone, for replacement therapy, by his family physician, Dr. Scott Wolfe, M.D. I spoke with Dr. Wolfe on Wednesday, January 19, 2011. He was not aware of Dr. Burke's previous sexual boundary violations, consent order or treatment at BMI, in 2004. Dr. Burke had not discussed his use of testosterone with MPHP or Dr. Able, at BMI. He notified MPHP of his use of testosterone on January 18, 2011.

The use of testosterone by a person with his history is extremely worrisome, especially in light of the fact that he did not discuss it with the MPHP. His RCA, dated September 10, 2007, stipulates in section 2, that he discuss medications with MPHP, "when appropriate." Section 4 stipulates that he submit to follow up with Dr. Able if concerns arise.

In light of the facts noted above, the MPHP requires that Dr. Burke undergo evaluation with Dr. Able, or another MSBML approved facility capable of evaluating a physician with these issues, as well as

providing MPHP with ongoing monitoring requirements. We will provide written notification to him, with request for response within 10 business days.”

On February 1, 2011, MPHP informed the Board that Licensee was scheduled to go to Acumen Assessments LLC in Lawrence, Kansas, for a Forensic Professional Fitness to Practice Evaluation on March 28, 2011, for failure to discuss his use of injectable testosterone with MPHP or Dr. Gene Able at BMI. Also, to be considered was Licensee’s failure to notify the Board of changes in employment on two different occasions when per his Consent Order. Given his history of sexual misconduct, the MPHP was concerned about Licensee taking testosterone and complete failure to communicate with MPHP and the Board regarding job changes without prior notice or approval.

#### IX.

Based on the results of the evaluation by Acumen, the assessment team was of the opinion that Licensee continued to put his professional status, licensure, and livelihood in jeopardy. Although Licensee was found fit to practice medicine at his then current level of restrictions and was not impaired, he was in need of treatment to address the unresolved difficulties noted in the report.

It was the recommendations of the assessment team that Licensee continue his monitoring contract with MPHP for a period of time deemed appropriate by this program and adhere to all requirements. The assessment team also recommended that Licensee engage in an intensive outpatient day treatment process.

#### X.

On July 7, 2011, a hearing was conducted before the Board based on Licensee’s aforementioned violations of the Consent Order as amended (second failure to obtain Board consent to change employment and failure to advise Board of his use of testosterone). Following the hearing, the Board suspended Licensee’s certificate to practice medicine in Mississippi until all phases of treatment by Acumen are completed (Board Exhibit No. 9; Burke Exhibit No. 16).

#### XI.

On or about October 3, 2011, Licensee’s treatment at Acumen was complete. The Acumen report (Board Exhibit No. 11) stated that in the event the Board chose to reinstate his medical license, it was their recommendation that Licensee’s practice of medicine be limited to incarcerated males and not be involved in any direct or indirect medical care of female inmates or female patients outside the prison system until such time as he can be evaluated and approved to do such.

## XII.

On November 10, 2011, a reinstatement hearing was conducted before the Board. It was the decision of the Board to reinstate Licensee's license subject to the following terms and conditions (Board Exhibit No. 12; Burke Exhibit No. 18):

1. Licensee shall comply with all terms and conditions set forth in that certain Lifetime Monitoring Agreement dated October 10, 2011, with the Mississippi Professional Health Program (MPHP). The Board is advised that said Lifetime Monitoring Agreement incorporated the recommendations of Acumen Assessments, LLC, Lawrence, Kansas following Licensee's evaluation.
2. Until ordered otherwise by this Board, Licensee shall not treat female patients and shall work in a structured supervised environment, wherein he shall not have any supervised responsibility over other physicians or healthcare providers who may treat female patients.
3. Until ordered otherwise by this Board, Licensee shall advise the Board of any and all changes in his practice location(s). Any changes in practice location must be approved in advance by the Board. Such notice shall be in writing and submitted to the Board at least thirty (30) days prior to any change.

## XIII.

The aforesaid Assessment Report dated October 3, 2011, from Acumen Institute also provided that if the Mississippi Board chooses to reinstate Licensee's medical license, they recommend that he return to Acumen Institute March 29-30, 2012, for follow up in order for the team to check in with him and assess his progress. On May 14, 2012, Licensee appeared before the MPHP because he had failed to go back to Acumen at the scheduled time. He was told he could not miss another reassessment. Inasmuch as Licensee also failed to provide testosterone levels as instructed, he was directed to do so. On May 31, 2012, Licensee returned to Acumen for follow up. A report in response was not issued until July 9, 2012 (Board Exhibit No. 14; Burke Exhibit No. 20). Among other recommendations, the Acumen report made the following recommendations:

1. The evaluation team recommends that Dr. Burke maintain a monitoring contract with MPHP for a period of time deemed appropriate by this program and the medical Board and that he participate, and make good use of, program requirements.

2. The treatment team recommends that Dr. Burke conduct his practice in a manner that is beyond reproach and in adherence to the American Medical Association's ethical guidelines. As a part of his monitoring and Board Order requirements, we recommend that he maintain impeccable professional boundaries and decorum and practice all times in full accordance with relevant federal, state, local, organizational, and professional regulations, and ethical guidelines.
3. We recommend that Dr. Burke vigilantly adhere to all requirements associated with his Board Order and monitoring requirements.
4. The treatment team recommends that Dr. Burke continue to have his hypogonadism, and associated testosterone levels, treated and monitored (every six months) by Robert Evans, MD (an endocrinologist). Although Dr. Evans maintains an ongoing medical record regarding Dr. Burke's health condition, we believe that it would be advisable for Dr. Evans to arrange to send MPHP lab results and prescribed testosterone dosages while being monitored by MPHP. This will help Dr. Burke establish a history documenting the proper use of hormone replacement therapy and rule out any suspicions of abuse.
5. If problems emerge in the future that cannot be managed at the local level, we recommend that Dr. Burke return to Acumen Institute.

Since issuance of the July 9, 2012 Follow-up Report and Discharge Summary from Acumen Institute, Licensee has not submitted to any further evaluation or assessment, notwithstanding the fact that it has been seven (7) years. Licensee has requested the Board to remove all restrictions on his license, thus permitting him to practice medicine for both male and female patients. Licensee points to the fact there have been no incidences of professional sexual misconduct. Notwithstanding, the Board notes the recommendations from the July 9, 2012 Acumen report, that is, that Licensee "diligently adhere to all requirements associated with his Board Order and monitoring requirements." At the time of this report, the only Order imposed by the Board is the July 11, 2011 Order (Board Exhibit No. 9; Burke Exhibit No. 16) which specifically limits Licensee's practice to "a structured

supervised environment, male patients only, wherein he shall not have any supervised responsibilities over other physicians or healthcare providers who may treat the male patients.”

Licensee introduced into the record consent orders for two (2) other physicians, wherein the Board permitted removal of restrictions despite being previously disciplined for professional sexual misconduct. As testified by Dr. Scott Hambleton, Medical Director of the MPHP, in each case, however, the physicians did not have a history of non-compliance, had recently been evaluated and received support and advocacy from the MPHP. This is not the case with Licensee.

While the Board is sympathetic to Licensee’s current dilemma, that is, being terminated from the Adams County Correctional Facility because of the restrictions on his license, the fact remains that it has now been over seven (7) years since there has been a comprehensive multi-disciplinary assessment to insure that Licensee can treat female patients with reasonable skill and safety to patients. The Board also takes note of the fact that the current restrictions do not limit Licensee to a correctional setting as long as he does not treat female patients.

Based on the evidence and testimony received, the Board finds Licensee’s request for removal of all restrictions not to be well taken.

**THEREFORE, IT IS HEREBY ORDERED**, that Licensee’s request for removal of all restrictions is hereby denied. Licensee will not be eligible for reconsideration of the removal of restrictions until he undergoes a multi-disciplinary evaluation at a facility approved in advance by the Board and is found capable of practicing medicine with reasonable skill and safety to both male and female patients.

**IT IS FURTHER ORDERED**, that pursuant to Miss. Code Ann. §73-25-27(1972), a copy of this Order shall be sent by registered mail or personally served on James Benjamin Burke, M.D.

**ORDERED**, this the 17th day of January, 2019.

**MISSISSIPPI STATE BOARD OF  
MEDICAL LICENSURE**

BY: 

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**CLAUDE D. BRUNSON, M.D.  
PRESIDENT**

**EXECUTIVE SESSION  
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE  
January 17, 2019**


**AGENDA ITEM: Personal Appearance of RENEE' R. MELANCON, PA – C**

A Motion was made by Dr. Miles, seconded by Dr. Owens, and carried.

It was carried, with one against, to accept the Physician Assistant protocol as written for management for hypertension, as submitted to the Board.

<b><u>VOTE:</u></b>	<b><u>FOR</u></b>	<b><u>AGAINST</u></b>	<b><u>ABSTAIN</u></b>	<b><u>ABSENT</u></b>
Claude D. Brunson, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Jeanne Ann Rea, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
William D. McClendon, Jr., M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Charles D. Miles, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Ken Lippincott, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Michelle Y. Owens, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Allen Gersh, M.D.	<u>          </u>	<u>  X  </u>	<u>          </u>	<u>          </u>
Kirk L. Kinard, D.O.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>

With a motion by Dr. McClendon, and seconded by Dr. Kinard, the Executive Committee came out of Executive Session.

  
**Claude D. Brunson, M.D.**  
**President**



**EXECUTIVE SESSION  
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE  
January 17, 2019**

**AGENDA ITEM:   Hearing in the Case of CHARLES SAMUEL FILLINGANE, D.O.**

A Motion was made by Dr. Owens, seconded by Dr. Miles, and carried.

It was carried unanimously to reinstate Dr. Fillingane's license without restrictions, pending completion of the cost of investigation and the boundaries Ethics Course.

<u>VOTE:</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Claude D. Brunson, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Jeanne Ann Rea, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
William D. McClendon, Jr., M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Charles D. Miles, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Ken Lippincott, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Michelle Y. Owens, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Allen Gersh, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Kirk L. Kinard, D.O.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>

With a motion by Dr. Miles, and seconded by Dr. Rea, the Executive Committee came out of Executive Session.

  
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**Claude D. Brunson, M.D.**  
**President**

**EXECUTIVE SESSION  
MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE  
January 17, 2019**


**AGENDA ITEM:   Hearing in the Case of BENJAMIN JAMES BURKE, M.D.**

A Motion was made by Dr. Rea, seconded by Dr. Owens, and carried.

It was carried unanimously that Dr. Burke's current restrictions will not be lifted at this time. He will not be eligible for removal of restrictions until he undergoes a multidisciplinary evaluation by the Board approved program. The October 10, 2011 Board Order will remain in effect.

<b><u>VOTE:</u></b>	<b><u>FOR</u></b>	<b><u>AGAINST</u></b>	<b><u>ABSTAIN</u></b>	<b><u>ABSENT</u></b>
Claude D. Brunson, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Jeanne Ann Rea, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
William D. McClendon, Jr., M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Charles D. Miles, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Ken Lippincott, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Michelle Y. Owens, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Allen Gersh, M.D.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Kirk L. Kinard, D.O.	<u>  X  </u>	<u>          </u>	<u>          </u>	<u>          </u>

With a motion by Dr. Owens, and seconded by Dr. Lippincott, the Executive Committee came out of Executive Session.


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**Claude D. Brunson, M.D.**  
**President**

**AGREEMENT TO APPEAR INFORMALLY BEFORE EXECUTIVE COMMITTEE  
BY CURRENT LICENSEE**

I, **Reneé Melencon, PA-C.**, have been asked to appear informally before the Executive Committee of the Mississippi State Board of Medical Licensure (hereinafter "Board") to discuss issues which may relate to my practice and possible the grounds, if any, for disciplinary action, and possible resolution of the same. 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 disciplinary action against my license.
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 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 17 day of January, 2019.

LICENSEE: Reneé Melencon, PA-C

WITNESS: Frances Carrillo

Supervising Physician - Richard Milani, MD