



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

**THE BOARD OF MEDICAL EXAMINERS,
THE POLYSOMNOGRAPHY PROFESSIONAL
STANDARDS COMMITTEE, AND THE
COMMITTEE FOR CLINICAL PERFUSIONISTS**

Performance Audit Report

September 2015

Justin P. Wilson, Comptroller



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September 30, 2015

The Honorable Ron Ramsey
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The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
Maegan Martin, Executive Director
Board of Medical Examiners
665 Mainstream Dr.
Nashville, TN 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

This report is intended to assist the Joint Government Operations Committee in its review to determine whether the Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists should be continued, restructured, or terminated.

Sincerely,

Deborah V. Loveless, CPA
Director

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit

The Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists
September 2015

We audited the Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists for the period January 1, 2012, through August 1, 2015. Our audit scope included a review of internal controls and compliance with laws, regulations, and provisions of contracts or grant agreements that are significant within the context of the audit objectives. Department management is responsible for establishing and maintaining effective internal controls and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT FINDINGS

The Office of Investigations is not consistently recording investigation milestone dates, and did not always adhere to investigation deadlines

The Office of Investigations' administrative staff did not have a consistent method for determining how long it takes investigators to complete investigations. In addition, the office does not have a tracking process to document the beginning and ending dates of investigations, and we found that program staff used inconsistent dates to record investigation timeframes. The

office acknowledged that investigators can encounter unexpected delays in the investigation process and has included language in its policies and procedures that indicate that, upon management approval, investigations may be completed within a timeframe that is outside of the priority code requirements (page 5).

Criminal conviction reporting, required by state law, is not functioning as intended, and the Board of Medical Examiners has not provided the appropriate forms and instructions to court clerks as required by statute

Based on audit work completed, we were unable to find evidence confirming that court clerks are aware of or compliant with the criminal conviction notification requirements of Section 63-6-214(b)(22)(e), *Tennessee Code Annotated*. The board also has not created or provided court clerks with the requisite reporting forms as described in the law. While the board uses multiple other systems to learn about the actions of its licensees—including the Federation of State Medical Boards and the federal National Practitioner Data Bank upon initial licensing; applicant and licensee self-disclosure; and notification from other state medical boards—the lack of direct reporting from the court system retains a risk that the board may not become aware of a licensee’s criminal conviction (page 10).

The Division of Health Related Boards did not ensure that board members signed an annual conflict-of-interest form

We reviewed the conflict-of-interest forms for board members on the Board of Medical Examiners, the Committee for Clinical Perfusionists, and the Polysomnography Professional Standards Committee and found that all but one member either did not have a conflict-of-interest form on file with the division or had not signed a form in over a year. Therefore, members had not signed the most recent version of the form, which requires members to list potential conflicts of interest (page 14).

The Polysomnography Professional Standards Committee has not yet met the self-sufficiency requirements mandated by state law and carries a negative fund balance

After interviewing board personnel and reviewing financial information obtained during the audit, we identified that the Polysomnography Professional Standards Committee did not collect an adequate amount of fees to meet the self-sufficiency requirement imposed on all regulatory and health related boards. As identified in a January 12, 2015, memorandum from the commissioner of the Department of Finance and Administration to the chairs of the Senate and the Government Operations Committees, the committee ended three consecutive fiscal years with a negative fund balance (page 18).

OBSERVATIONS

The audit report also discusses the following issues: disciplinary monitoring (page 8), case cost recoupment (page 12), the board’s disciplinary practices (page 13), and the Clinical Perfusion Licensure Act (page 16).

Performance Audit
The Board of Medical Examiners, the Polysomnography
Professional Standards Committee, and the Committee for Clinical
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Performance Audit

The Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-237, the board and the committees are scheduled to terminate June 30, 2016. The Comptroller of the Treasury is authorized to conduct a limited program review audit of the agencies and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the board and the committees should be continued, restructured, or terminated.

HISTORY AND STATUTORY RESPONSIBILITIES

Board of Medical Examiners

The Board of Medical Examiners was created in 1901 and is authorized by Section 63-1-101, *Tennessee Code Annotated*. The twelve-member board consists of nine licensed physicians with at least six years of experience in the practice of medicine and surgery and three members who are health care consumers. All board members are appointed by the Governor and serve five-year terms. The board meets for a two-day session six times per year (every other month). It is the board's duty to examine the qualifications of all applicants and certify their fitness to practice medicine or surgery in the state; to conduct disciplinary hearings; and to promulgate rules and regulations as necessary. There are 21,925 licensed medical doctors in the state, and the administrative staff of the Division of Health Related Boards of the Department of Health supports the board by issuing licenses to those who meet the requirements of the law and rules.

Polysomnography Professional Standards Committee

The Polysomnography Professional Standards Committee was established by the General Assembly in 2007 and assists the Board of Medical Examiners by issuing licenses to individuals actively engaged in the practice of polysomnography, or the staging and scoring of monitored sleep, as defined in Section 63-31-101(9)(a), *Tennessee Code Annotated*. The committee, along with the board, determines the appropriate standard of care, investigates alleged violations of laws and rules, and disciplines licensees who are found guilty of such violations. There are 553 licensed polysomnographic technologists in Tennessee, and the administrative staff of the

Division of Health Related Boards of the Department of Health supports the committee by issuing licenses to those who meet the requirements of the law and rules.

The committee meets two times per year and consists of seven members appointed by the Governor: three registered polysomnographic technologists; one physician who is certified in sleep medicine by a national certifying body recognized by the American Academy of Sleep Medicine; one director of an accredited, hospital-based sleep center; one respiratory therapist who is also a registered polysomnographic technologist; and one consumer who is not commercially or professionally associated with the health care field, either directly or indirectly. Following the expiration of the initial staggered appointment schedules, each regular appointment lasts for a term of four years.

Committee for Clinical Perfusionists

In 1999, the General Assembly established the Committee for Clinical Perfusionists to license individuals actively engaged in the practice of perfusion, which consists of managing the physiological and metabolic demands of the patient while the cardiac surgeon operates on the heart, as defined in Section 63-28-102(6), *Tennessee Code Annotated*. The committee also assists the Board of Medical Examiners in the performance of its duties. The committee, along with the board, determines the appropriate standard of care, investigates alleged violations of laws and rules, and disciplines licensees who are found guilty of such violations. There are 120 licensed clinical perfusionists in Tennessee, and the administrative staff of the Division of Health Related Boards of the Department of Health supports the committee by issuing licenses to those who meet the requirements of the law and rules.

The committee meets four times per year and is composed of seven members appointed by the Governor, including four perfusionist members; one hospital administrator from a licensed health care facility in Tennessee where cardiac surgery is performed; one licensed physician who is either a cardiac surgeon or a cardiac anesthesiologist; and one public member. Following the initial staggered appointment schedules, members of the committee are appointed for six-year terms.

AUDIT SCOPE

We audited activities of the Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists for the period January 1, 2012, through August 1, 2015. Our audit scope included a review of internal controls and compliance with laws and regulations. Both management of the Division of Health Related Boards of the Department of Health and the executive director for the Board of Medical Examiners and its underlying committees are responsible for establishing and maintaining effective internal controls and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used non-statistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that non-statistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

HEALTH RELATED BOARDS' COMPLAINT PROCESS

The Division of Health Related Boards' Office of Investigations and Office of General Counsel are responsible for reviewing, investigating, and prosecuting complaints that are brought against practitioners who are licensed in Tennessee.

The audit objectives for this section were to determine whether complaints were reviewed according to the Office of Investigations' policies and procedures, whether the cases were resolved in a timely and consistent manner, and whether lengthy investigations resulted in greater costs for the Office of General Counsel and the Office of Investigations.

To learn about the complaint process, we reviewed the Office of Investigations' policies and procedures and interviewed program staff from the Office of Investigations and the Office of General Counsel. We also examined 35 complaints against medical examiners that were closed between January 2014 and December 2014. Out of the 35 complaints that we reviewed, 21 resulted in an investigation. We reviewed the 21 investigations to determine if the complaints had been investigated thoroughly and according to the Office of Investigations' policies and procedures.

Based on our review, we determined that the Office of Investigations adequately reviewed and investigated complaints. However, we found that some investigations were not completed in a timely manner and that there are weaknesses in the Office of General Counsel's case cost assessment process.

Complaint Review

When the Office of Investigations receives a complaint, both a medical consultant and an attorney review it to determine if the practitioner violated any terms in the Tennessee Medical

Practice Act, Section 63-6-214, *Tennessee Code Annotated*. If they determine that the practitioner has not violated any terms in the Act, the complaint is closed with no action, or a letter of concern or a letter of warning is sent to the practitioner. However, if they believe that the allegations, if proven true, would be a violation, they assign the complaint a priority code and send it to an investigator for a full investigation.

Priority codes are critical to the investigation process because they indicate the level of harm that a practitioner poses to patients. The higher the priority code, the faster an investigation must be completed to reduce the chance of other patients being harmed by the accused practitioner. Table 1 lists the priority codes, as well as the corresponding length of time within which investigations must be completed.

Table 1
Description of Priority Codes

Complaint's Level of Harm	Priority Code	Days to Complete the Investigation
Potential Harm Minimal	1	150 days or less
Potential Harm	2	120 days or less
Actual Harm/No Immediate Jeopardy	3	21 days or less
Immediate Jeopardy	4	2-5 days or less

Source: *Office of Investigations Administrative Policies and Procedures*.

Investigations

During the investigation process, investigators interview witnesses and obtain documentation that is related to complaints. After an investigation is completed, a medical consultant and an attorney review all of the evidence that was obtained during the investigation to determine if there is enough evidence to support the complaint. If there is enough evidence, the complaint is sent to the Office of General Counsel for disciplinary action. If there is not enough evidence to support a complaint, the Office of Investigations either closes the complaint or issues the practitioner a letter of concern or a letter of warning.

Disciplinary Actions

During the disciplinary action process, an attorney in the Office of General Counsel determines which terms of the Tennessee Medical Practice Act the practitioner violated. An attorney then recommends an appropriate disciplinary action to the Board of Medical Examiners. After the board agrees on a disciplinary action, the board issues an order to the practitioner that includes a list of the disciplinary actions with which the practitioner must comply. Disciplinary actions can include a suspended or revoked license, treatment monitoring, the completion of a continuing education course, or the payment of civil penalties and case costs.

After a practitioner receives a disciplinary action, it is the practitioner's responsibility to comply with the action; however, the Office of Investigations monitors the practitioner to ensure that all disciplinary actions are completed.

Finding

1. The Office of Investigations is not consistently recording investigation milestone dates, and did not always adhere to investigation deadlines

During our review, we observed that the Office of Investigations’ administrative staff did not have a consistent method for determining how long it takes investigators to complete investigations. In addition, the office does not have a tracking process to document the beginning and ending dates of investigations. Due to a lack of tracking, we found that program staff used inconsistent dates to determine when investigations began and ended. As a result, we had difficulty determining whether the 21 investigations that we reviewed had been completed according to their priority code timeframes. However, after consulting with program staff, we were able to determine that of those 21 investigations, 10 (48%) were not completed within their required timeframe (see Table 2). While 2 cases were only 2 days past the deadline, 8 cases ranged anywhere from 26 to 426 days past deadline.

Table 2
Investigations Not Completed Within the Priority Code Requirements

Complaint Number	Priority Code	Date Investigation Began	Date Investigation Ended	Number of Days Complaint Was Investigated	Days Over Investigation Deadline
7	P3	12/1/2013	12/23/2013	23 days	2 days
9	P2	10/17/2012	11/6/2013	384 days	264 days
21	P3	4/14/2014	5/6/2014	23 days	2 days
27	P2	6/6/2012	9/13/2013	459 days	339 days
35	P2	4/17/2013	9/20/2013	156 days	26 days
42	P2	2/5/2012	1/3/2014	389 days	269 days
44	P2	5/4/2011	7/24/2012	372 days	252 days
52	P2	12/5/2012	12/10/2013	370 days	250 days
54	P2	11/1/2011	4/29/2013	546 days	426 days
61	P2	11/20/2012	11/4/2013	350 days	230 days

Out of the 10 investigations that were not completed within their required timeframe, 2 of the investigations were assigned a priority code 3, and 8 of the investigations were assigned a priority code 2. According to office staff, one of the investigations was not completed within the required timeframe because the investigator had difficulty obtaining medical records and contacting witnesses. Therefore, the office’s administration approved an extended completion time for the investigation.

Because investigators can encounter unexpected delays in the investigation process, the office has included language in its policies and procedures that indicates that, upon management approval, investigations may be completed within a timeframe that is outside of the priority code requirements. As stated in the *Office of Investigations Administrative Policies and Procedures*, Policy 100, “each investigator must complete each assigned complaint within the designated priority codes, or as may be otherwise delineated by management while maintaining the investigative qualities.”

Also, office staff reported that 6 of the 10 investigations that were not completed on time occurred when the office was experiencing a shortage of investigators in its East Region. This shortage created a backlog of investigations between 2011 and 2013; however, the office has hired 18 new investigators. According to division staff, as of May 5, 2015, the division no longer has a backlog of complaints. Office staff also acknowledged that investigations that are assigned a priority code 1 or 2 might be put on hold because investigators are required to give higher priority to investigations with priority codes 3 and 4. As seen in Table 1, investigations that are assigned a priority code 3 or 4 are complaints that involve accusations of patients being in actual or immediate harm; therefore, investigators are required to complete these investigations quickly.

Although the office acknowledges that investigations are sometimes delayed, it is important for investigations to be completed on time so that the complaint process is not delayed. Based on our review of the 21 investigations (see Table 3), some complaints took more than a year to go through the entire complaint process. While an investigation is open, the accused practitioner is allowed to continue practicing. Therefore, it is essential for complaints to be closed in a timely manner so that patients are not subject to potentially harmful medical practices.

**Table 3
Complaint Timeframes**

Complaint Number	Priority Code	Month Investigation Began	Month Practitioner Was Issued a Disciplinary Action	Complaint Duration
44	P2	May 2011	February 2014	33 months
47	P2	July 2011	January 2014	30 months
48	P2	July 2011	January 2014	30 months
26	P2	February 2012	July 2014	29 months
23	P1	April 2013	July 2014	27 months
54	P2	November 2011	January 2014	26 months
9	P2	October 2012	November 2014	25 months
27	P2	June 2012	July 2014	25 months
42	P2	February 2012	March 2014	25 months
31	P2	October 2012	May 2014	19 months
61	P2	November 2012	January 2014	14 months
35	P2	April 2013	May 2014	13 months
52	P2	December 2012	January 2014	13 months
64	P2	January 2013	January 2014	12 months
7	P3	December 2013	November 2014	11 months
4	P2	January 2014	November 2014	10 months
6	P1	April 2014	November 2014	7 months
21	P3	April 2014	September 2014	5 months
63	P2	September 2013	January 2014	4 months
32	P3	March 2014	May 2014	2 months
16	P2	September 2014	September 2014	1 month

Recommendation

To ensure that investigations are completed on time, the Office of Investigations may wish to implement an electronic tracking form to document both when investigations begin and when investigations should be completed. Management should continually review this tracking log to ensure that investigations are not going beyond their deadline.

In addition, upon being notified that an investigator is having difficulties obtaining documentation that pertains to an investigation, management should immediately consult with the Office of General Counsel to determine if the investigator can continue with the investigation without obtaining the information and avoid delaying the completion of the investigation.

Management's Comment

We concur. Consistent with internal policy (File No. 100), the timeframe for investigation benchmarks begin “from the date the change is keyed into the computerized complaint system by Central Office” and ends pursuant to internal policy (File No. 300) when “the complaint file is deemed complete and keyed in the Central Office.” To ensure adherence and consistency with these policies, the newly launched regulatory board system, LARS, will assist the Office of Investigations by automating the tracking and monitoring of timeframes by priority codes. Additionally, there are plans to incorporate into the second phase of LARS an alert system, which will alert the investigator, the team leader, the assistant director, and the director via email of the upcoming completion due date of cases being investigated. In addition, management will commit to periodic review of the status of complaints that exceed the expected dates to complete by 10% or more and will work with the investigative team to ensure that resources are available to meet expectations.

DISCIPLINARY MONITORING

The Division of Health Related Boards of the Department of Health provides administrative support to the boards, committees, councils, and one registry that are each charged with the licensure and regulation of their respective health care professionals. The division's Office of Investigations is responsible for investigating complaints against licensees; monitoring disciplined practitioners; and ensuring compliance with disciplinary orders, including the collection of civil penalties and fines. The Office of Investigations also works with several third-party monitoring groups—including the Tennessee Medical Foundation, Affiliated Monitors, and the Tennessee Professional Assistance Program—that ensure licensees comply with disciplinary order requirements and other enforcement actions imposed by the boards. The Office of Investigations employs two disciplinary coordinators who oversee and verify compliance with board-ordered disciplinary action; manage and update disciplinary file information; and communicate with licensees.

The audit objectives for this section were to determine the effectiveness of the disciplinary monitoring system, including the extent of compliance with board disciplinary orders, the workload volume, and the timeliness and sufficiency of related processes.

Observation

1. The Office of Investigations' disciplinary monitoring ability is limited by the absence of an electronic case tracking system, yet implementation of the Licensure and Regulatory System offers more effective and efficient monitoring capabilities

Analysis performed on the Office of Investigations' monitoring efforts revealed difficulties collecting costs and fines from licensees and the lack of an effective electronic monitoring system—all of which impede the ability to track cases and monitor the status of board orders, due dates, and fines in an efficient and effective manner. We interviewed office staff and conducted a file review of currently monitored licensees by selecting 25 files out of an available population of 45. These files represented licensed doctors who were currently being monitored by third-party monitoring affiliates. Because the files were in paper format, auditors arbitrarily selected the files to review and examined the specifics of the disciplinary order; reviewed the case activity log; located third-party monitoring reports; and identified any inconsistencies with dates, correspondence, or documentation. This information helped us assess the adequacy of monitoring activities, the sufficiency of documentation, and the extent of compliance with board-ordered disciplinary action. Based on a risk assessment and the frequency of monitoring orders imposed on different licensee types, auditors narrowed the scope of the review to include only medical doctors.

A 2009 performance audit found that the Division of Health Related Boards had limited disciplinary monitoring functions and resources. In particular, the report identified that the Office of Investigations suffered from heavy workloads, staff shortages, and the lack of an effective computer tracking and monitoring system. The report recommended prioritizing disciplinary cases, adding monitoring staff, and acquiring a more sophisticated and effective computer system to aid the office in its monitoring efforts.

During the 2015 audit, auditors found that the office had not implemented one of the previous recommendations. Prior to the April 2015 transition to the electronic Licensure and Regulatory System (LARS), the division still relied heavily on a paper filing system. This afforded staff very little capability to prioritize and track cases and effectively monitor the status of an applicant's monitoring order. Although the division began the long-awaited implementation of the LARS software system in April 2015, the system was not fully functional prior to the end of audit fieldwork, so auditors were unable to assess the effectiveness of the new system.

In 2014, however, the office supplemented its efforts by adding one disciplinary monitoring position, which doubled the personnel for that function. Also, several years ago the office began referring cases with large outstanding balances to the state's Office of the Attorney General for assistance with collection. Based on interviews with staff, the office has routinely encountered difficulties collecting case costs and fines from licensees who have had their

licenses revoked. This is largely due to practitioners' limited means to earn income outside of their profession, the lack of incentive to pay once their license has been permanently revoked (i.e., they have nothing else to lose), and the inability of the state to further discipline licensees.

Table 4
Licensees with Outstanding Civil Penalty or Case Cost Balances

Licensee	Board Order Date	Disciplinary Action	Balance
Sample #4	9/20/2011	Probation	\$4,500
Sample #10	10/26/2012	Suspension and Probation	\$1,288
Sample #12	2/3/2011	Indefinite Suspension	\$25,702
Sample #18	4/10/2012	Suspension and Probation	\$2,600

Source: This information was obtained from an Office of Investigations file review of disciplined doctors that have a monitoring component as part of their disciplinary order.

The Office of Investigations should use LARS to improve monitoring and oversight; collect fines and case costs from disciplined licensees to the extent possible; and refer cases with large balances to the Office of the Attorney General for collection assistance.

Department of Health Comment:

Consistent with the 2009 performance audit recommendations, the Office of Investigations has hired a second disciplinary coordinator and utilizes an electronic tickler/calendaring system to prioritize and monitor disciplinary cases in a more effective and efficient manner. The office also utilizes applications available through LARS for monitoring disciplinary cases.

THE BOARD OF MEDICAL EXAMINERS' APPLICATION, LICENSURE, AND RENEWAL PROCESS: DETECTING CRIMINAL HISTORIES AND DISCIPLINARY ACTION

The administrative staff of the Division of Health Related Boards supports the Board of Medical Examiners by issuing licenses. Prospective licensees must submit complete paper applications and all required documentation. The administrative staff's role is to ensure an application is complete, after which the resident medical consultant makes an initial determination as to the applicant's qualifications, then forwards the application and her decision to the board to be ratified. Applicant interviews are optional and usually occur when the board would like additional information on things such as malpractice cases, criminal issues, or licensure problems (in Tennessee or in other states).

The board's administrative staff uses the Federation of State Medical Boards' Federation Credentials Verification Service on every application for licensure. The service provides a centralized, uniform process for state medical boards to obtain a verified, primary-source record of a physician's medical credentials, including verification of medical education, postgraduate training, examination history, board action history, board certification, and identity. This service

is designed to assist state credentialing staff and to permanently store physicians' credentials in a central repository.

All applicants applying for initial licensure in Tennessee (not renewal or reinstatement) are required to submit fingerprints to obtain a criminal background check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation. The board also relies on self-disclosure of criminal convictions and disciplinary actions. Failure to report this information may result in disciplinary action taken against the licensee. Additionally, Section 63-6-214(b)(22)(e), *Tennessee Code Annotated*, requires court clerks to notify the appropriate medical board within 30 days after a conviction involving a licensee. The statute requires the board to provide the court clerks with reporting forms and instructions for preparation and filing.

Licenses must be renewed every two years. The board's administrative office mails renewal notices to the licensee's address on record 45 days prior to the expiration of the license. Licensees are responsible for renewing their license on time and keeping their information current. Licenses can be renewed online 120 days prior to expiration.

The audit objectives for this section were to determine whether or not current practices are sufficient to detect licensees' criminal histories and other reportable offenses; to determine if criminal background checks upon renewal are needed to mitigate the risk to the public resulting from reporting delays and underreporting; and to determine if the board is routinely and effectively utilizing the National Practitioner Database—or other proper sources—to aid in application processing and licensee monitoring.

Finding

2. Criminal conviction reporting, required by state law, is not functioning as intended, and the Board of Medical Examiners has not provided the appropriate forms and instructions to court clerks as required by statute

Based on several file reviews and multiple interviews with staff from the Board of Medical Examiners, the Office of Investigations, the Office of General Counsel, and the Administrative Office of the Courts, we were unable to find evidence confirming that court clerks are aware of or compliant with the criminal conviction notification requirements of Section 63-6-214(e), *Tennessee Code Annotated*. The board also has not created or provided court clerks with the requisite reporting forms as described in the law. While the board uses multiple other systems to learn about the actions of its licensees—including the Federation of State Medical Boards and the federal National Practitioner Data Bank upon initial licensing; applicant and licensee self-disclosure; and notification from other state medical boards—the lack of direct reporting from the court system retains a risk that the board may not become aware of a criminal conviction of a licensee.

Citizens expect state medical boards to protect them against unethical practitioners, though occasionally physicians have committed serious crimes that went undetected for years. State medical boards often rely on the Federation of State Medical Boards' Physician Data

Center and the National Practitioner Data Bank (NPDB) to alert them about an action taken against a licensee. The NPDB has numerous reporting requirements for various health care and related entities, including criminal convictions against health professionals. Unfortunately, state medical boards do not always share disciplinary information about a licensee in a timely manner. During our file review, we discovered an instance where information about a licensee disciplined in Virginia was not conveyed promptly to Tennessee—which resulted in a two-year lag in reciprocal disciplinary action.

The director of the Public Citizen’s Health Research Group, a consumer advocacy group, maintains that many prosecutors are unaware of the requirement to report criminal convictions to state medical boards, and that there is significant underreporting as a result. Reports published by the U.S. Government Accountability Office and the Department of Health and Human Services’ Office of Inspector General have questioned the accuracy and reliability of the NPDB, citing underreporting, over-reporting, and inaccurate reporting.

Recommendation

The Board of Medical Examiners should create and distribute reporting forms and instructions to court clerks and should make sure that the court system is aware of its reporting responsibilities to accurately and timely communicate criminal convictions in compliance with Section 63-6-214(e), *Tennessee Code Annotated*. Additionally, the board may wish to consider mandatory or random criminal background checks during its biennial licensure renewal process.

Management’s Comment

We concur. The abstract form referenced in Section 63-6-214(e) has been developed and will be disseminated to all criminal courts in the state as soon as practicable but no later than Monday, November 9.

The form must be reviewed by the Department of Health’s Forms Committee before dissemination. The Forms Committee will meet again on Wednesday, October 7. At that time, the committee will either approve the form or suggest edits. If edits are required, they will be made and approved, and the form will be finalized in time for dissemination in late October or early November.

Observation

2. **The Board of Medical Examiners has not been able to recoup at least \$150,000 of case costs from former medical practitioners**

The Office of Investigations is working with the Office of the Attorney General to recoup unpaid case costs assessed against previously licensed practitioners as part of their disciplinary actions. From October 2014 to May 2015, the Office of Investigations sent approximately \$150,000 of un-recouped case costs to the Office of the Attorney General on behalf of the Board of Medical Examiners. Because the Office of the Attorney General will only pursue cases of at least \$100, the total amount of the board's un-recouped case costs actually exceeds \$150,000.

Department of Health Comment:

The Office of Investigations has worked with the Office of the Attorney General for several years. Most recently, from October 2014 to May 2015, the office has sent approximately \$150,000 of un-recouped case costs to the Office of the Attorney General on behalf of the Board of Medical Examiners. The Office of Investigations will continue to refer unpaid case costs to the Office of the Attorney General for collection.

THE BOARD OF MEDICAL EXAMINERS' DISCIPLINARY FUNCTION

The Board of Medical Examiners promulgates and interprets laws, rules, and regulations to determine the appropriate standards of practice for each profession under its purview. The board also investigates alleged violations of the Tennessee Medical Practice Act and disciplines the licensees it finds guilty of such violations. The board serves as the disciplinary oversight body for medical doctors, genetic counselors, X-ray operators, office-based surgical suites, pain management clinics, polysomnographers, and clinical perfusionists. The Division of Health Related Boards' Office of Investigations assists the board by prioritizing and investigating complaints against licensees. The Department of Health's Office of General Counsel aids in the prosecution and resolution of substantiated complaints and also recommends appropriate punitive action for board consideration.

Our audit objective for this section was to determine whether the board consistently and fairly disciplines licensees and whether it reasonably follows internal disciplinary guidelines in doing so. The auditors' major concerns were to determine if similar violations received similar punishment; if all licensees were afforded due process; and if punishment was based on the severity of the violation and fit within the board's internal disciplinary guidelines.

Observation

3. Our review found no evidence to support inequitable or inconsistent disciplinary practices by the Board of Medical Examiners and no failure to follow its internal guidelines

We randomly selected 35 files from a total population of 65 closed complaints against physicians taken from the 2014 monthly disciplinary action reports. Based on a risk assessment of the potential harm to the public and the overall incidence of licensee violations, we examined board actions and outcomes pertaining only to medical doctors. We reviewed each file for consistency of process and board disciplinary actions, and compared Office of Investigations priority codes (the initial assessment of the level of harm a practitioner poses to patients) to the board's ultimate action.

Based on our review, there was no evidence to support inequitable or inconsistent disciplinary punishment. Furthermore, the use of a disciplinary matrix to assess a violation's severity and scope and the resulting disciplinary recommendations of the Office of General Counsel in determining appropriate penalties demonstrates that the process is working effectively and fairly.

BOARD MEMBERS' CONFLICT-OF-INTEREST FORMS

The Division of Health Related Boards' administrative policies and procedures require all board members that serve on a health related board to sign a conflict-of-interest form annually. However, we found that the Board of Medical Examiners, the Committee for Clinical Perfusionists, and the Polysomnography Professional Standards Committee did not comply with this requirement.

Our audit objective for this section was to determine why some members of the Board of Medical Examiners, the Polysomnography Professional Standards Committee, and the Committee for Clinical Perfusionists do not have a signed conflict-of-interest form on file with the Department of Health.

Prior Audit Finding

A 2012 performance audit recommended that the division change its policies and procedures to require all board members to sign a conflict-of-interest form annually to ensure that the boards were in compliance with Executive Order No. 3, Part 10. The division updated its policies and procedures to state that "Board members will be required to read and sign the Conflict of Interest Policy upon initial appointment and annually thereafter." The previous audit also recommended that the division update its conflict-of-interest form to include a section for board members to disclose any potential conflicts of interest. The division did update its conflict-of-interest form, and the updated form can be found in Appendix 2.

Although the division revised its conflict-of-interest policy and forms in 2013, it did not take adequate steps to ensure that the policy was properly executed.

Finding

3. **The Division of Health Related Boards did not ensure that board members signed an annual conflict-of-interest form**

We reviewed the conflict-of-interest forms for board members on the Board of Medical Examiners, the Committee for Clinical Perfusionists, and the Polysomnography Professional Standards Committee and found that all but one member either did not have a conflict-of-interest form on file with the division or had not signed a form in over a year. Therefore, members had not signed the most recent version of the form, which requires members to list potential conflicts of interest. Board members make licensure and disciplinary decisions intended to protect the public from practitioners who do not meet the qualifications of their professions or whose actions have harmed the public. Annual disclosures help ensure that board members are able to make such decisions impartially and independently. Medical board members and even consumer members may have employment, financial, or personal conflicts with licensees that should be disclosed. The results of our review can be found in Table 5 below.

Table 5
Board Members' Conflict of Interest Forms

Name of Health Related Board	Board Members With an Up-to-Date Conflict-of-Interest Form	Board Members With No Conflict-of-Interest Form	Board Members With an Out-of-Date Conflict-of-Interest Form	Total
Board of Medical Examiners	0	6	6	12
Committee for Clinical Perfusionists	0	3	4	7
Polysomnography Professional Standards Committee	1	0	6	7

Source: Board member conflict-of-interest forms from the Division of Health Related Boards.

During this audit, the division acknowledged that the administrative staff did not require board members to sign a conflict-of-interest form according to its policies and procedures. The administrative staff report that they are taking steps to ensure that all board members immediately sign the new conflict-of-interest form and that, in the future, all board members will be required to sign a conflict-of-interest form annually.

Recommendation

We recommend that the Division of Health Related Boards designate a specific, annual date requirement for all board members to sign a conflict-of-interest statement. We also recommend that the division's administrative staff retain all conflict-of-interest statements for future reference.

Management's Comment

We concur. The Board of Medical Examiners' Unit, of which the Board of Medical Examiners, the Committee for Clinical Perfusionists and the Polysomnography Professional Standards Committee are a part, has hired several new staff members since January 2014. Those individuals inadvertently distributed the unrevised conflict of interest disclosure form to many board members, which accounts for the improperly executed forms.

In response to this finding, the administrative staff has reviewed its forms to ensure that the revised, most up-to-date form is saved and accessible to all board and committee administrators. The staff has also implemented a policy that all conflict-of-interest disclosure forms will be collected at the first meeting of each calendar year. This form is now circulated to new board/committee members as part of their orientation packet.

A recent internal audit of these professions by the administrative staff revealed that all but three board/committee members for the Board of Medical Examiners, Committee for Clinical Perfusionists and Polysomnography Professional Standards Committee have an up-to-date conflict-of-interest disclosure form on file with the office. Those three members have been contacted to provide an updated disclosure. All executed disclosure forms are retained both physically and electronically by the executive director of the Board of Medical Examiners.

These actions are consistent with the recommendations made by the audit team.

CLINICAL PERFUSIONIST LICENSURE ACT

Section 63-28-101, *Tennessee Code Annotated*, also known as the Clinical Perfusionist Licensure Act, requires individuals who are interested in practicing perfusion in the state of Tennessee to obtain a Tennessee Clinical Perfusionist License through the Tennessee Committee for Clinical Perfusionists. Some of the requirements to obtain a perfusionist license include a background check, the completion of a perfusion education program, two letters of recommendation, and proof of successfully passing the American Board of Cardiovascular Perfusion examination.

Although individuals who initially graduate from a perfusion education program can meet most of the requirements to obtain a perfusionist license, some individuals may have not yet taken and passed the examination. Therefore, the Act allows individuals who have

completed a perfusion education program and applied to sit for the examination to obtain a provisional perfusionist license. A provisional license, valid for one year, allows an individual to be hired by a medical facility and to practice perfusion under the supervision of a licensed clinical perfusionist. The individual is expected to take and pass the examination within that year, and then apply for a full perfusionist license.

Our audit objective for this section was to determine if the language in the Clinical Perfusionist Licensure Act should be changed to better clarify whether or not applicants can maintain a provisional license upon failing the licensure examination after the first attempt.

During this audit, a committee member expressed concern about the language in Section 108(d) of the Act, which states, “If the person fails any portion of the licensure examination, such person shall surrender the person's provisional license to the committee.” Although the licensure examination is offered twice a year, applicants who do not pass the examination upon the first attempt must surrender their provisional licenses and cannot continue to practice perfusion in a medical facility.

We interviewed members of the committee to obtain their opinions about the language in this section of the Act. While some committee members initially agreed with the language in the Act and other members believed that the language should be changed, the committee came to a consensus that the language should be changed to allow provisional licensees the opportunity to take the licensure examination twice before surrendering their provisional license.

Observation

4. The Committee for Clinical Perfusionists may wish to submit a request to the General Assembly to change the language in the Clinical Perfusionist Licensure Act to allow applicants to maintain provisional licenses after failing the licensure examination on the first attempt

Section 108(d) of the Clinical Perfusionist Licensure Act requires individuals to surrender their provisional licenses if they do not pass the licensure examination because the purpose of the provisional license is to give individuals the opportunity to begin their career with the expectation that they will pass the licensure examination. According to one viewpoint, if an individual does not pass the licensure examination, the individual must surrender the provisional license because he or she is not yet prepared to practice perfusion; therefore, the individual should not continue to practice in a medical facility. Another viewpoint is that the language in Section 108(d) has adversely affected applicants with provisional licenses by forcing them to surrender their license if they do not pass the examination the first time. As a result of the perceived limitation on licensure exam attempts in Tennessee—and so that applicants can be better prepared for when they do take the test here—one committee member has advised applicants to take the licensure examination in other states first. The committee member believes that individuals should have more than one opportunity to take the examination before their provisional licenses are revoked.

During this audit, we could not find any cases in which an applicant was adversely affected by the language in the Act, or any evidence to suggest that applicants took the licensure examination in other states prior to taking it in Tennessee. We did find, however, that in the May 2005 committee meeting, members expressed concerns about the language in the Act concerning licensure examination attempts and requested that the committee consider deleting 108(d) from the statute. The committee also recommended submitting a request for an opinion from the Office of the Attorney General about the language in the statute. However, the committee did not send a request for an opinion. Also, in the June 2015 committee meeting, members discussed changing the language in the Act to allow individuals the opportunity to take the examination twice before surrendering their provisional license.

Because there are concerns about the language in Section 63-28-108(d), *Tennessee Code Annotated*, the committee may wish to submit a recommendation to the General Assembly to revise the statute to clarify the language and allow applicants to retain a provisional license upon initially failing the licensure examination.

Department of Health Comment:

The administrative staff for the Committee for Clinical Perfusionists, in conjunction with the Office of General Counsel, has drafted statutory language to correct the problem.

BOARD SELF-SUFFICIENCY

Section 4-29-121(a), *Tennessee Code Annotated*, requires the commissioner of the Department of Finance and Administration to provide a list of all regulatory boards, including health related boards, that were not self-sufficient during the preceding fiscal year to the Senate and House Government Operations Committees, as well as to the Office of Legislative Budget Analysis. In addition, under Section 4-29-121(b), any such regulatory board identified as not being self-sufficient for two consecutive fiscal years shall be reviewed by a joint evaluation committee of the legislature in the next legislative session. This requirement applies to all three health related boards included in this audit—the Board of Medical Examiners, the Polysomnography Standards Committee, and the Committee for Clinical Perfusionists. This statute effectively requires each health related board to be self-supporting by collecting sufficient fees to pay the board’s operational costs.

Our audit objective for this section was to determine why the Polysomnography Professional Standards Committee is not meeting self-sufficiency requirements outlined in Section 4-29-121, *Tennessee Code Annotated*, and whether or not each board or committee’s fee structure is adequate.

Finding

4. The Polysomnography Professional Standards Committee has not yet met the self-sufficiency requirements mandated by state law and carries a negative fund balance

After interviewing board personnel and reviewing financial information obtained during the audit, we identified that the Polysomnography Professional Standards Committee did not collect an adequate amount of fees to meet the self-sufficiency requirement imposed on all regulatory and health related boards. The committee ended three consecutive fiscal years with a negative fund balance (see Table 6 below), as identified in a January 12, 2015, memorandum from the commissioner of the Department of Finance and Administration to the chairs of the Senate and the Government Operations Committees.

Table 6
Polysomnography Professional Standards Committee
Revenue and Expenditures

Year	Fees	Costs	Deficit
2011-2012	\$16,522.86	\$25,927.17	(\$9,404.31)
2012-2013	\$22,770.00	\$28,265.49	(\$5,495.49)
2013-2014	\$20,550.30	\$29,991.63	(\$9,441.33)
June 30, 2014 Reserve Balance			(\$33,086.48)

Source: Actual revenue and expenditures for fiscal year 2014 from the Board of Medical Examiners.

The health related boards operate yearly from state-appropriated dollars and report all balances to the Department of Finance and Administration by October 31 of each year. Boards carry their annual balances with them from year to year, and they are responsible for resolving any negative balance. Each year, the Department of Finance and Administration transfers the amounts contained in the boards' financial reports back to the general fund for reimbursement of funds used for operational costs from the previous fiscal year. Boards that fail to be self-supporting violate statute and create a financial and administrative burden for state government.

The Polysomnography Professional Standards Committee was created by the General Assembly in 2007 and has appeared before the General Assembly three times since then for self-sufficiency hearings.¹ In 2013, the committee raised licensing fees from \$100 to \$200 and raised renewal fees from \$50 to \$120 to address annual operating deficits. Along with initially low licensure and renewal fees, the committee incurred significantly higher legal costs in fiscal year 2012, which made self-sufficiency more unattainable. Despite the committee's financial difficulties, because the number of licenses for sleep technologists increased 33% (from 419 in 2010 to 560 in 2014), and because of the fee increases in 2013, the committee has the opportunity to become self-sufficient in the near future. Based on financial reports from the May

¹ The committee was not yet licensing practitioners in fiscal year 2008 and thus had no fee income. As a result, it did not yet have the capacity to be self-sufficient. Its expenses, and thus deficit, were under \$5,000 in fiscal year 2008.

12, 2015, committee meeting, the deficit is projected to be resolved by the end of next fiscal year.

Recommendation

The Polysomnography Professional Standards Committee should continue to monitor its operational costs and fee income in order to comply with the self-sufficiency requirements of Section 4-29-121, *Tennessee Code Annotated*.

Management's Comment

We concur: the Polysomnography Professional Standards Committee has not met self-sufficiency requirements. It has, however, taken appropriate and responsible steps to do so. Although the closing report for fiscal year 2015 has not yet been finalized, it appears that the committee's revenues exceeded expenditures in 2015. Furthermore, we anticipate that its cumulative deficit will be satisfied in the near future.

APPENDICES

**APPENDIX 1
Financial Information**

Board of Medical Examiners

	<u>FY 2014</u>	<u>FY 2013</u>	<u>FY 2012</u>	<u>FY 2011</u>
Payroll Expenditures				
Salaries	\$503,344.22	\$465,337.07	\$315,847.20	\$337,906.72
Longevity	\$7,274.08	\$6,747.05	\$10,900.00	\$9,992.43
Overtime	\$0.00	\$40.44	\$0.00	\$0.00
Benefits	\$190,943.50	\$151,489.21	\$128,395.86	\$139,797.63
Total Payroll Expenditures	\$701,561.80	\$623,613.77	\$455,143.06	\$487,696.78
Total Other Expenditures	\$779,037.49	\$574,276.16	\$512,378.61	\$508,127.88
Total Direct Expenditures	\$1,480,599.29	\$1,197,889.93	\$967,521.67	\$985,824.68
Allocated Expenditures				
Administrative	\$713,314.49	\$545,144.46	\$466,767.24	\$404,829.82
Investigative	\$594,590.39	\$583,993.55	\$455,589.97	\$416,831.11
Legal	\$678,099.07	\$657,863.06	\$424,242.15	\$673,583.83
Cash Office	\$19,783.44	\$22,373.86	\$20,951.07	\$22,550.90
Total Allocated Expenditures	\$2,005,787.39	\$1,809,374.93	\$1,367,550.43	\$1,517,795.66
Total Expenditures	\$3,486,386.68	\$3,007,264.86	\$2,335,072.10	\$2,513,620.32
Board Fee Revenue	\$3,410,955.36	\$3,295,645.23	\$3,022,880.58	\$3,127,428.51
Current Year Net	-\$75,431.32	\$288,380.37	\$687,808.48	\$613,808.19
Cumulative Carryover	\$2,365,964.82	\$2,441,396.15	\$2,153,015.78	\$1,465,207.30

Committee for Clinical Perfusionists

	<u>FY 2014</u>	<u>FY 2013</u>	<u>FY 2012</u>	<u>FY 2011</u>
Payroll Expenditures				
Salaries	\$1,974.00	\$1,884.24	\$0.00	\$76.63
Longevity	\$19.32	\$0.00	\$0.00	\$0.00
Overtime	\$0.00	\$0.00	\$0.00	\$0.00
Benefits	\$850.61	\$740.92	\$0.00	\$18.18
Total Payroll Expenditures	\$2,843.93	\$2,625.16	\$0.00	\$94.18
Total Other Expenditures	\$830.28	\$527.08	\$1,806.79	\$958.30
Total Direct Expenditures	\$3,674.21	\$3,152.24	\$1,806.79	\$1,053.11

Allocated Expenditures				
Administrative	\$1,510.00	\$1,217.16	\$1,292.17	\$1,505.55
Investigative	\$3,003.86	\$0.00	\$0.00	\$0.00
Legal	\$800.07	\$2,609.16	\$1,536.41	\$292.67
Cash Office	\$106.00	\$118.65	\$113.13	\$116.50
Total Allocated Expenditures	\$5,419.93	\$3,944.97	\$2,941.71	\$1,914.72
Total Expenditures	\$9,094.14	\$7,097.21	\$4,748.50	\$2,967.83
Board Fee Revenue	\$26,751.82	\$20,835.50	\$27,083.53	\$19,074.77
Current Year Net	\$17,657.68	\$13,738.29	\$22,335.03	\$16,106.94
Cumulative Carryover	\$98,220.88	\$80,563.20	\$66,824.91	\$44,489.88

Polysomnography Professional Standards Committee

	<u>FY 2014</u>	<u>FY 2013</u>	<u>FY 2012</u>	<u>FY 2011</u>
Payroll Expenditures				
Salaries	\$6,603.25	\$9,534.67	\$1,700.27	\$9,334.01
Longevity	\$312.73	\$0.00	\$0.00	\$409.96
Overtime	\$0.00	\$0.00	\$0.00	\$0.00
Benefits	\$3,122.78	\$3,660.02	\$276.03	\$4,859.91
Total Payroll Expenditures	\$10,038.76	\$13,194.69	\$1,976.30	\$14,603.88
Total Other Expenditures	\$5,240.74	\$4,404.48	\$4,125.27	\$6,714.28
Total Direct Expenditures	\$15,279.50	\$17,599.17	\$6,101.57	\$21,318.16
Allocated Expenditures				
Administration	\$6,095.93	\$4,989.43	\$5,098.68	\$5,544.83
Investigations	\$629.84	\$1,143.87	\$0.00	\$0.00
Legal	\$7,558.45	\$4,046.65	\$14,287.26	\$1,097.52
Cash Office	\$427.91	\$486.37	\$439.66	\$429.04
Total Allocated Expenditures	\$14,712.13	\$10,666.32	\$19,825.60	\$7,071.39
Total Expenditures	\$29,991.63	\$28,265.49	\$25,927.17	\$28,389.55
Board Fee Revenue	\$20,550.30	\$22,770.00	\$16,522.86	\$16,906.66
Current Year Net	-\$9,441.33	-\$5,495.49	-\$9,404.31	-\$11,482.89
Cumulative Carryover	-\$33,086.48	-\$23,645.15	-\$18,149.66	-\$8,745.35

APPENDIX 2
Conflict-of-Interest Form

Subject: Conflict of Interest

File No: 302.01

TENNESSEE DEPARTMENT OF HEALTH
CONFLICT OF INTEREST POLICY
BOARD MEMBERS

EXHIBIT 3

PURPOSE: To assure that the individual interests of board members do not conflict with their responsibilities to the Board to which they are appointed.

APPLICABILITY: This policy shall apply to all board members.

I. DEFINITIONS:

- A. CONFLICT OF INTEREST:** A circumstance in which a board member's individual interest impairs or impedes, or gives the appearance of impairing or impeding, his or her ability to make full, unbiased decisions or to provide full, unbiased service to the Board.
- B. FINANCIAL INTEREST:** Ownership by a board member or a board member's immediate family members of ten percent (10%) or more of the stock of a corporation or ten percent (10%) or more of any other business entity; or a relationship as a director, advisor, or other active participant in the affairs of a party. An office in an educational, professional, religious, charitable, or civic organization is not a financial interest.

II. CONDUCT:

- A.** A board member shall not engage in conduct which impairs or impedes, or gives the appearance of impairing, the board member's ability to make full unbiased decisions, or to provide full, unbiased public service to the Board.
- B.** A board member shall not knowingly take any action which might prejudice his or her ability, or other members of the board's ability, to make an unbiased decision on any matter in which the board member, or the board member's immediate family members, has a financial interest.
- C.** A board member will not willingly participate as an expert witness in a contested case hearing before the Board.
- D.** It is a conflict of interest for a board member to vote in a manner involving a party in which the board member, or the board member's immediate family members, holds a financial interest.
- E.** A board member shall not accept any item of significant monetary value, except usual social and business courtesies, from a party or provider seeking specific board approval of action.
- F.** A board member who is employed by, or has contracted to provide services to, a health care provider seeking specific board approval or action, shall abstain from voting on the board approval or action.
- G.** A board member shall not accept honoraria or other compensation for activities which are, or should be, performed as part of one's official duties, except as provided by the Comprehensive Travel Regulation of the Department of Finance and Administration.

III. DISCLOSURE:

- A. Each board member shall disclose to the Board on a case-by-case basis, any personal relationship, interest or dealings that impairs or impedes, or gives the appearance of impairing or impeding, his or her ability to make full, unbiased decisions on a matter.
- B. For the purposes of contested cases, the Board will be governed by Tennessee Code Annotated Sec. 4-5-302, attached as Exhibit A to this policy.

IV. RECUSAL:

- A. Any board member who has a conflict of interest as defined above must recuse himself/herself from any matter and is prohibited from participating in any discussion or vote on the matter, and shall leave the hearing room during the discussion or vote.
- B. It is improper for any board member having a conflict of interest to attempt to influence another board member at any time, including prior to the discussion on the matter for which the conflict exists.
- C. In business matters, the board chair, with the advice of the advising attorney, shall be the final authority to determine whether a board member must be recused.

CONFLICT OF INTEREST POLICY ACKNOWLEDGEMENT

By signing below, I acknowledge that I have read and agree to comply with the Department of Health's Conflict of Interest Policy for Board Members. Further, to the extent a conflict of interest may exist, I have disclosed same in the space provided below.

DISCLOSURE OF CONFLICT OF INTEREST

I wish to disclose the following conflict. Please provide details about the nature of the conflict in the space provided:

Signature

Print Name

Date