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House of Representatives State of Tennessee

NASHVILLE

November 30th, 2021

COMMITTEES

CHAIR GOVERNMENT OPERATIONS COMMITTEE

EDUCATION ADMINISTRATION COMMITTEE

EDUCATION INSTRUCTION COMMITTEE

EDUCATION INSTRUCTION SUBCOMMITTEE

K-12 SUBCOMMITTEE

CO-CHAIR NCSL NUCLEAR WORKING GROUP

SOUTHERN STATES ENERGY BOARD EXECUTIVE COMMITTEE

SOUTHERN LEGISLATIVE CONFERENCE EDUCATION COMMITTEE

Transmitted on Paper & Electronically

To: Melanie Blake, M.D., President
Tennessee Board of Medical Examiners
665 Mainstream Drive
Nashville, TN 37243

Subject: Information for the Joint Government Operations Committee

- Reference:
- a. Tennessee Code Annotated (T.C.A.) § 14-1-101
 - b. T.C.A. § 14-4-104
 - c. Statement on Medical Misinformation or Disinformation Regarding COVID-19, dated: 21 September 2021, distribution unspecified
 - d. My letter to you, dated 22 Oct 2021, same subject as reference c.
 - e. Your letter to me, dated 8 Nov 2021, same subject as reference c.
 - f. My email to you, dated 8 Nov 2021 22:49, same subject as reference c.
 - g. Your email to me, dated 9 Nov 2021 13:47, same subject as reference c.
 - h. My letter to you, dated 15 Nov 2021, same subject as reference c.
 - i. T.C.A. § 4-5-102(10)
 - j. T.C.A. § 4-5-102(12)
 - k. T.C.A. § 4-29-106
 - l. T.C.A. § 4-29-118
 - m. T.C.A. § 63-6-101
 - n. T.C.A. § 63-6-214

President Blake:

1. As of the date, of this communication, your organization has failed to comply with the actions specified in reference h., above, to remove reference c., above. Additionally, this action was also required by references a. and b., above. Because of your failure to act promptly, your organization is requested to expeditiously answer the attached requests for information for the Joint Government Operations Committee not later than 07 December 2021.

2. You are requested to note that the General Assembly thought the issues addressed in references a. and b., above, so important as to call itself into an extraordinary session. Such a self-imposed sense of urgency is extremely rare historically. Furthermore, the legislation became effective immediately upon the Governor's signature. This fact obligated all executive branch agencies, including yours, to

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react to the legal changes without delay. Yet, you have refused to take the simple step of expeditiously removing reference c., above, an online policy statement conflicting with the law.

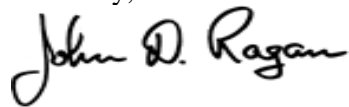
3. As reference h., above, pointed out to you, references b., i and j., above, make it clear that adverse actions that “affect private rights, privileges or procedures available to the public” must be put in place via rule making processes specified in title 4, chapter 5 of the T.C.A. In other words, you cannot legally “affect private rights, privileges or procedures available to the public” such as licensure revocation, or other disciplinary actions based upon unofficially defined terms in a policy statement.

4. For purposes of clarity, note that reference n., above, requires the board to exercise disciplinary actions only through rules, and not policy. Moreover, also note that reference n., above, does not define, nor, even, make mention of “misinformation” or “disinformation.” Despite your protestation, “...it is not the intention of the board to circumvent or adopt a rule with respect to COVID,” that is exactly what reference c., above, accomplishes.

5. As you have stated in previous communications, “[a]t our regularly scheduled board meeting on September 21, the board members ... held a robust discussion in a “sunshined” [sic] setting.” Given that this referenced meeting did not allow adequate opportunity for public comment, you are, herewith, officially requested to expeditiously address the questions contained, in attachment 1, to this letter. Please provide complete written replies to these questions via electronic response no later than 7 December 2021. For any specific information request or question you cannot fully address in the time allotted, please provide the most complete and accurate answer possible on the specified date and an expected date for a complete answer.

6. In summary, your organization has not deleted reference c., above, in a timely manner. Such immediate action is required by laws newly in effect, among others. Because you have failed to act promptly in accordance with the law, your organization is requested to provide timely answers, i.e., not later than 7 December 2021, to the information requests forwarded, as an attachment, to this letter.

Sincerely,



Chair, Government Operations Committee

atch 1: Information Requests

cc: Lieutenant Governor Randy McNally
Speaker of the House Cameron Sexton
Majority Leader William Lamberth
Majority Caucus Chair Jeremy Faison
Chairman Kerry Roberts
Vice-Chair Jay Reedy
Dr. Lisa Piercey, Commissioner, Tennessee Department of Health
Attorney General and Reporter Herbert H. Slatery, III

Information Requests

Please address the following information requests and questions concerning the video record of the Tennessee Board of Medical Examiners meeting on 21 September 2021. Note: the term, “the statement,” used in information requests or questions below refers to the Statement on Medical Misinformation or Disinformation Regarding COVID-19, dated: 21 September 2021. Additionally, please redact answers for HIPPA compliance or other legally protected professional/privacy information items only as necessary.

1. Please explicitly cite the binding regulatory or binding statutory requirement for the issuance of “the statement” specifically on 21 September 2021.
2. Notwithstanding any binding requirement, please concisely justify the requisite temporal urgency and necessity at the time of issuance for “the statement” after nearly a year and half into the pandemic and considering post-pandemic peak, CDC-documented, declining COVID-19 Tennessee mortality rates.
3. Notwithstanding any binding requirement, please concisely explain the continuing necessity for “the statement” after more than 20 months of pandemic and after a gubernatorially lifted “state of emergency.”
4. Notwithstanding any binding requirement, please concisely explain your rationale for failing to withdraw “the statement” in a timely manner.
5. The board president noted in prior communication that “COVID complaints comprise a very small portion of total complaints.” Specifically, how many total complaints concerning Tennessee physicians or other Tennessee licensed health care providers has the Board of Medical Examiners received citing COVID-19 treatment and/or COVID-19 vaccines? Please provide a tally for those complaints received before 21 September 2021, versus those received after. Additionally, please provide an informal, concise, one paragraph summary of the core allegations of each complaint concerning treatment and/or vaccines.
6. Please provide a tally of complaint origins by source category, e.g., patient, co-worker, hospital staff, physician office staff, another licensed health care provider, patient next of kin, general public, etc.
7. Please provide a tally of those complaints against Tennessee licensed health care providers related to COVID-19 treatment, by regimen category, e.g., off-label therapeutics prescribed, hospitalization, placement on, or failure to place on, a ventilator, etc., and those related to vaccine by vaccine manufacturer, i.e., Johnson and Johnson, Moderna or Pfizer.
8. How many COVID-19 complaints are currently under investigation? Please provide an informal, concise, one paragraph summary of each complaint and current status of the investigation.
9. For each complaint on a licensed health care professional, please state the criteria, specific Tennessee Code Annotated (T.C.A.) and/or specific rule references used for investigation with regards to specific COVID-19 treatment and/or COVID-19 vaccines. Please provide an informal, concise, one paragraph summary of the allegations of each complaint.
10. How did you define criteria (citing T.C.A. and rule references) and assess that the substantive actions in these complaints impacted the population of Tennessee? Please identify the analysis methodology, references and sources for impact quantification.
11. How many complaints meet the Category 1: Physician is vaccine hesitant? In your response, please define the terms “vaccine hesitant” in medically appropriate terms contrasted with a physician using professional judgement. Who makes the determination? Additionally, please provide an informal, concise, one paragraph summary of complaints, investigations, and reports for this category.

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12. How many complaints meet the Category 2: Physician makes up inaccurate facts about the vaccine and advises patients to not get vaccinated? In your response, please define the terms “inaccurate facts” in medically appropriate terms, provide actual exemplars with explanations contrasted with a physician using professional judgement. Who makes the determination of inaccuracy? Additionally, please provide an informal, concise, one paragraph summary of complaints, investigations, and reports for this category.
13. How many complaints meet the Category 3: Physician is spreading misinformation and advising patients to not get vaccinated? In your response, please define the terms “misinformation” in medically appropriate terms and provide actual exemplars with explanations contrasted with a physician using professional judgement. Who makes the determination? Additionally, please provide an informal, concise, one paragraph summary of complaints, investigations, and reports for this category.
14. How many other complaints regarding treatment of COVID-19 or COVID-19 vaccine were not listed in previously identified specific categories? Please provide an informal, concise, one paragraph summary of complaints, investigations, and reports in this designation.
15. How many complaints were declared to be unfounded, inaccurate, false or deceptive? Please provide concise, one paragraph summary of complaints, investigations and report with these findings.
16. Please provide a listing with online URL’s of all materials/content referenced by Dr. Blake in the meeting, given to the Tennessee Board of Medical Examiners members prior to the meeting on 21 September 2021, including the policy statement of the Federation of State Medical Board read aloud by Dr. Blake during the meeting 21 September 2021. Please provide the name, position, and qualifications of all persons responsible for compiling and vetting this package for the board prior to its presentation, as well as, those of the board’s reviewing and approving authorities for this package, again, prior to its presentation.
17. Please cite the prior board review and approval authority for the “scholarly information, academics, and journals” mentioned by Dr. Saunders, to be used, as a policy in lieu of a rule, in determining guilt and/or disciplinary terms in COVID-19 treatment or vaccine complaints. Please provide listings with online URL’s of all references, journals, names, and any materials/information used, as well as, those considered but not used. Additionally, please provide the T.C.A. and rule references for Dr. Saunders’ justification of determining guilt or disciplinary terms in a policy statement in lieu of a rule.
18. In an example given by Dr. Saunders in the 21 September 2021 meeting, he cited a violation of the policy adopted by the Tennessee Board of Medical Examiners. Beyond submitted complaints, who will collect the data concerning physicians who use Ivermectin or any other, off-label drug in the treatment of COVID-19? Moreover, who would determine the efficacy of the Ivermectin (example that was used) or any other, off-label drug in the treatment of COVID-19? Beyond submitted complaints, under what T.C.A. or rule authority will such data be collected?
19. Identify the medical scholars, academics and journals used by the Tennessee Board of Medical Examiners to determine and substantiate its position on the use of COVID-19 vaccines and on the use of off-label drugs in the treatment of COVID-19, as well as, explaining the rationale for exclusion of potentially contradictory sources considered but not used. If potentially contradictory sources were not considered, explain why.
20. Explain how “the statement” does not obstruct or impair, through intimidation and threat using the officially undefined terms of “misinformation and disinformation,” the licensed physician's medical judgement and how it does not obstruct the patients right to receive medical care in accordance with a physician’s best judgement, and the physician's right to administer it. Please provide references to supporting evidence.