



The Tennessee Open Meetings Act passed by the General Assembly in 1974 requires that meetings of state, city and county government bodies be open to the public and that any such governmental body give adequate public notice of such meeting.

**TENNESSEE DEPARTMENT OF HEALTH  
MEMORANDUM**

**Date:** August 4, 2015

**To:** Woody McMillin, Director of Communication and Media Relations

**From:** Wanda E. Hines, Board Administrator

**Name of Board or Committee:** Board for Licensing Health Care Facilities-Emergency  
Called Board Meeting  
(Call-in Number: 1-888-757-2790 passcode: 457462#)

**Date of Meeting:** August 7, 2015

**Time:** 9:00 a.m.

**Place:** Iris Conference Room  
665 Mainstream Drive, First Floor  
Nashville, TN 37243

**Major Item(s) on Agenda:** See attachment.

**BOARD MEMBERS WILL PARTICIPATE IN-PERSON AND BY TELEPHONE.**

**Link to Live Video Stream:**

<https://web.nowuseeit.tn.gov/Mediasite/Play/5ad1893736ab4f0f89b3ce0c822394d01d>

This memo shall be forwarded from individual programs to the Public Information Office on the 15th day of the preceding month. The Public Information Office will prepare the monthly list of meetings within the Department and have ready for distribution to state media by the 28th day of the preceding month.

**JOHN J. DREYZEHNER, MD, MPH**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

*THE MISSION OF THE TENNESSEE DEPARTMENT OF HEALTH IS TO PROTECT, PROMOTE AND IMPROVE THE  
HEALTH AND PROSPERITY OF PEOPLE IN TENNESSEE*

**AGENDA**

**BOARD FOR LICENSING HEALTH CARE FACILITIES  
EMERGENCY CALLED BOARD MEETING**

**August 7, 2015  
IRIS CONFERENCE ROOM, FIRST FLOOR  
9:00 a.m.**

**PLEASE REMEMBER TO SILENCE YOUR ELECTRONIC DEVICES WHEN  
THE BOARD IS IN SESSION**

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- 1. CALL THE MEETING TO ORDER.**
- 2. ESTABLISH A QUORUM.**
- 3. WAIVER REQUESTS.**

**BRISTOL REGIONAL WOMEN'S CENTER, BRISTOL AND THE WOMEN'S  
CENTER, NASHVILLE**

Bristol Regional Women's Center, Bristol and The Women's Center, Nashville, are seeking to waive the following building standards requirements as prerequisite to Ambulatory Surgical Treatment Center (ASTC) licensure:

- 1200-08-10-.08(2)-(25) – Waive requirement to submit architectural plans;
- 1200-08-10-.08(2) – Waive requirement for “new facilities” or “existing facilities that are enlarged or substantially altered”;
- 1200-08-10-.08(18) – Waive requirement to maintain negative air pressure in certain rooms and positive air pressure in other rooms;
- 1200-08-10-.08(24) – Waive requirement to monitor fire, generator, and/or medical gas alarms twenty-four hours per day;
- 1200-08-10-.08(26) – Waive requirement to have elevators.

Bristol Regional Women's Center, Bristol and The Women's Center, Nashville, are required under Public Chapter 419, to become licensed as an ambulatory surgical treatment center under the new law effective July 1, 2015.

**Representative(s):** Thomas C. Jessee, Attorney

**MINUTES  
BOARD FOR LICENSING HEALTH CARE FACILITIES  
EMERGENCY CALLED BOARD MEETING**

**August 7, 2015**

The special called telephone conference meeting of the Board for Licensing Health Care Facilities began August 7, 2015.

Dr. René Saunders, Chairman – here  
Mr. Robert Breeden – here  
Dr. Jennifer Gordon-Maloney – not here  
Mr. Joshua Crisp – here  
Ms. Carissa Lynch – not here  
Ms. Annette Marlar – here (joined late)  
Mr. John Marshall – not here  
Dr. Michael Miller – here (joined late)  
Mr. David Rhodes - here  
Mr. Jim Shulman – here  
Mr. Bobby Wood – here  
Ms. Diana Miller – here  
Mr. Roger Mynatt – here  
Dr. Sherry Robbins – here  
Dr. Kenneth Robertson – here  
Ms. Janet Williford - here

A quorum was established.

Ms. Ann Reed indicated it was required of the Board to establish a necessity of a teleconference meeting. **Mr. Bobby Wood made a motion it is necessary to conduct the Board meeting via electronic/telephonic means; Mr. Jim Shulman seconded. A roll call vote was taken -**

**Mr. Robert Breeden – yes  
Mr. Joshua Crisp – yes  
Ms. Diana Miller – yes  
Dr. Michael Miller – yes  
Mr. Roger Mynatt – yes  
Dr. Sherry Robbins – yes  
Ms. Annette Marlar – yes  
Dr. Kenneth Robertson – yes  
Mr. David Rhodes – yes  
Mr. Jim Shulman – yes  
Mr. Bobby Wood – yes  
Ms. Janet Williford – yes  
Dr. René Saunders - yes  
The motion was approved.**

Ms. Reed asked prior to turning the meeting over to the chairman, Dr. René Saunders, she inquired about whom else was participating via phone. Tamra Tuberville of the East Tennessee Regional Office (ETRO) was on the phone. Dr. Saunders called the meeting to order. Ms. Reed introduced the agenda item for consideration by the Board – multiple waiver requests from Bristol Regional Women’s Center, Bristol and The Women’s Center, Nashville. Ms. Reed directed the participating Board members to the summary prepared by the Department of Health, Office of Health Care Facilities regarding the request being heard today.

Mr. Thomas Jessee presented on behalf of the two facilities above. He indicated recent legislation now requires physician practices performing more than 50 surgical abortions per year to be licensed as ambulatory surgical treatment centers (ASTC). Mr. Jessee stated as soon as the law was passed he began inquiring of the Department of Health how to achieve licensure as an ASTC. He submitted initial licensure applications on behalf of his two clients with a confirmation letter of June 24, 2015 being sent from the Department of Health’s Office of Health Care Facilities (OHCF). At this time, Mr. Jessee was informed that architectural plans submission was required. He further stated he spoke with the regional office with the same direction for submission of architectural plans. As a result of this directive, Mr. Jessee on behalf of his clients submitted the multiple waiver requests being heard today.

Background on the two facilities was provided by Mr. Jessee. Bristol Regional Women’s Center began in the 1980s and The Women’s Center began in the 1990s. Both practices provide gynecological services which includes abortion services. The waiver requests specifically address elevator requirement; monitor of fire, generator, and/or medical gas alarms twenty-four hours per day; maintenance of negative air pressure in certain rooms and positive air pressure in other rooms; “new facilities” or “existing facilities that are enlarged or substantially altered”; and submission of architectural plans. Mr. Jessee provided a detailed description of both the Bristol and Nashville buildings and how the space is utilized by the physicians’ practices. He further stated there are no plans for the Bristol location and no modifications to the structure are to occur. Additionally, this location is inspected annually by an agent of Highlands Physician PPO since both physicians practicing at this site are members of this group. Mr. Jessee stated there have been no actions or adverse events to occur at either practice site over the last 30 years. He indicated each facility is ready to be inspected based upon their operation and feel the facilities are operating a modern medicine facility with good service delivery.

Discussion and questions ensued from the Board members. Ms. Annette Marlar asked why architectural plans are being required; is it in the regulations. Mr. Jessee indicated this requirement is a carry-over from the certificate of need (CON) requirement. He stated the attorney general issued an opinion that in the case of this new law existing physician practices meeting the law would not require a CON to establish an ASTC. Ms. Marlar wanted to know the state’s view on this request. Bill Harmon, Facilities Construction Director, addressed Ms. Marlar’s question. He indicated this was a requirement of the regulations and law for the licensing of facilities. He also stated the intent is to safeguard the public health safety and welfare through structural strength, sanitation, adequate lighting, safety of life and property. Ms. Reed directed Ms. Marlar and the other Board members to the summary agenda item which details the Department’s position on this issue. Dr. Saunders read into the record the recommendation from the summary agenda item which was, “The Tennessee Department of Health, Office of Health Care Facilities has reviewed the submitted request letters and identified regulatory items sought for waiver. It is the recommendation of the Department after review of this information the two (2) healthcare providers should at a minimum be required to submit architectural drawings/plans to the Tennessee Department of Health, Office of Health Care Facilities Plans Review

Section.” Mr. David Rhodes stated he could understand facilities of this age which have not had major work not having existing documents so it would be the intent of the Department to require preparation of floor plans to be submitted to the Department versus a full set of construction documents. Mr. Harmon indicated this was the case. He further stated this would confirm the building lay out with minimum exit requirements, electrical requirements, and HVAC requirements depending on the type of facility being licensed. Mr. Rhodes continued by stating he couldn’t imagine a facility of this age not having any work completed thereby creating access to HVAC electrical plans. It further stated it seems that if the Department was trying to check to make sure deficiencies did not exist prior to the granting of a license an on-site inspection would be the way to determine this. Mr. Jesse indicated at this juncture that in order to obtain architectural plans there would be the need for destruction of some portions of the buildings to determine what is behind walls and in ceilings. His suggestion is the production of a floor plan and an on-site visit with the Department indicating what is still needed or should be changed. Dr. Saunders asked Mr. Harmon if the on-site visit would give the Department the needed information to license the facilities as ASTCs. Mr. Harmon indicated it would not. Dr. Saunders referenced operating as a level two (2) office based surgery suite which now needs to be operate as an ASTC per the new legislation. Mr. Jesse reiterated the requirement for ASTC licensure if a physician’s office performs more than 50 abortions per year. He went on to state that in order to have an inspection to be granted licensure the applicants must first produce architectural drawings which is why this is a federal lawsuit with a temporary restraining order. Mr. Jesse further stated there is to be a report made to the federal judge on Monday regarding the progress made between the applicants and the state on the process of being licensed and the submission of architectural plans. Dr. Saunders stated the options of the Board – grant the waiver, not grant the waiver and table, or decline to grant the waive and have the facilities proceed with the steps to license as an ASTC. Mr. Jesse stated the Board can grant the waivers and the facilities call the East Tennessee Regional Office for an inspection, not grant the waivers sending the applicants away, or not granting the waivers and delay requiring plans and specifications be provided with someone coming to inspect the buildings, but there could be a middle ground motion made by a Board member. The requirement of the architectural plans prior to inspection is why this issue is in federal court. Dr. Saunders stated the granting of a waiver today would absolve the two facilities from providing architectural drawings and plans to the Department. Mr. Jesse indicated this is so in addition to absolving from the other listed waiver requests. Mr. Rhodes stated his continued puzzlement on the level of documentation required. He stated to satisfy the recommendation of the Department architectural drawings/plans would need to be submitted which he doesn’t feel is an imposition, but if the submission of plans is waived this does not waive the other requested items. Mr. Jesse indicated that upon inspection other items may be found that would require further waiver requests on behalf of the applicants and that opportunity is not being waived. Mr. Harmon stated he didn’t believe destruction would be necessary to provide minimal information the facilities meet code regulations based upon a functional program. He further states it would be a dangerous position to waiver construction plans and put all responsibility on staff. Dr. Michael Miller questioned the cost of having the architectural firm to develop drawings/plans. Mr. Jesse indicated the facilities provided the regulations to an architectural firm and were told it would have a cost of approximately \$20,000 and take three (3) to three (3) and a half months to prepare. Dr. Miller asked Mr. Harmon if this seemed reasonable. Mr. Harmon deferred to Mr. Rhodes to respond. Mr. Rhodes stated it is impractical to submit documents as if these facilities were new construction or renovations. He felt the solution would be negotiation between the state and the applicants in terms of what specific documentation would make the state feel comfortable versus an on-site inspection as it is not practical to have the facilities develop built drawings for review submission. Mr. Harmon indicated that with other facility types there has been collaboration between Plans Review staff and architects in providing information to confirm living areas, size of corridors, ratings required for storage areas, and minimal

information on sprinklers if a facility is sprinkled for example. Mr. Jessee stated he would be willing to negotiate with any Department of Health staff regarding the architectural plans requirement. Mr. Joshua Crisp stated he would not be comfortable approving the requested waivers after further review. **He felt the recommendation of the Department was reasonable considering the flexibility of the Plans Review staff and not requiring as built set of drawings, but working with the provider at a starting point and a minimum standard of what's available then start the inspection process so he made this recommendation; seconded by Dr. Miller.** Dr. Miller further stated this is a compromise that can be obtained and is fair to both sides without putting undue burden on Department staff during the inspection process and the applicants to have architectural plans drawn. Dr. Saunders restated the motion as accept the recommendation of the Tennessee Department of Health, Office of Health Care Facilities as stated in the summary agenda item number four (4). Mr. Robert Breeden questioned if with this new law was there a grandfather status for these types of facilities. Ms. Kyonzté Hughes-Toombs, Office of General Counsel, indicated there is no such language in the new law. Mr. Rhodes stated the Board by the motion is declining the waiver request. Dr. Saunders indicated this was correct. Mr. Jessee stated the waiver request was to not have to submit architectural plans as defined in regulation, but now there is discussion for negotiation and minimization of what is required. Dr. Saunders stated this is not the motion on the floor. Mr. Jessee countered this would mean submission of full as built architectural plans. Ms. Hughes-Toombs indicated an addendum could be made to the motion charging there is discussion regarding architectural plans and possible compromise between the Department and the facilities. The Board members have expressed this intent and to develop some type of minimum standards that can be met without undue hardship to the facilities. Dr. Miller stated he seconded that motion and that this expressed by legal counsel was his understanding of the motion. He further stated the desire was to decline the waiver request, but to have Department representatives work to find a compromise on the specifics in terms of variances for requirements for this situation since it is before the Board due to legislative change and not structural or a decision made by the Board or its representatives. Mr. Crisp indicated this was the extent of the motion. **A roll call vote was taken –**

**Mr. Robert Breeden – Yes**  
**Mr. Joshua Crisp – Yes**  
**Ms. Annette Marlar – Yes**  
**Ms. Diana Miller – Yes**  
**Dr. Michael Miller – Yes**  
**Mr. Roger Mynatt – Yes**  
**Mr. David Rhodes – Yes**  
**Dr. Sherry Robbins – Yes**  
**Dr. Kenneth Robertson – Yes**  
**Dr. René Saunders – Yes**  
**Mr. Jim Shulman – Yes**  
**Ms. Janet Williford – Yes**  
**Mr. Bobby Wood – Yes**

**The motion passed.**

Mr. Rhodes provided the final comment the Board must rely on the level of comfort Mr. Harmon's office has with the level of documentation that is reasonable, but not full built drawings and these specifics need to be worked out with Mr. Harmon's office and the provider. Mr. Jessee indicated he is looking forward to working with Mr. Harmon and to gain his recommendations to assuage his level of comfort. He further stated it will be his position to the federal judge on Monday that progress is being made to

satisfy the licensure requirements for ASTC licensure and hopefully Mr. Harmon and I can meet next week. This was amenable to Mr. Harmon.

Dr. Saunders asked for a motion to adjourn. **Mr. Breeden made the motion to adjourn; seconded by Dr. Robbins. All were in favor; the motion was approved.**