

## TENNESSEE BOARD OF PODIATRIC MEDICAL EXAMINERS

**DATE:** May 11, 2016  
**TIME:** 9:00 A.M., CST  
**LOCATION:** Health Related Boards  
Poplar Room  
665 Mainstream Drive  
Nashville, TN 37243

### **BOARD MEMBERS**

**PRESENT:** Paul Rivard, D.P.M., Chair  
Karl Fillauer, C.P.O, Secretary  
Sheila Schuler, D.P.M.  
David Sables, D.P.M.  
Paul Somers, D.P.M.  
Martha Kay Oglesby, Consumer Member

### **BOARD MEMBERS**

**ABSENT:**

### **BOARD STAFF**

**PRESENT:** Andrea Huddleston, Chief Deputy General Counsel  
Vanessa Hayes, Board Administrator  
James Hill, Board Administrator  
Theodora Wilkins, Administrative Director

Dr. Rivard called the meeting to order at 9:00 a.m. A roll call voted was conducted and all Board members were present.

### **Minutes**

Upon review of the March 24, 2016 minutes, Mr. Fillauer made a motion, seconded by Dr. Somers, to approve the minutes as written. The motion carried.

### **Office of General Counsel**

Ms. Huddleston stated there are no Consent Orders, Agreed Orders or disciplinary complaints pending in the Office of General Counsel.

Ms. Huddleston reviewed the Conflict of Interest Policy asking all Board members to disclose any personal or financial interest on the record in the outcome of any issue or matter coming before the Board which may suggest a bias on their part so a determination can be made as to whether there exists a need for recusal. Ms. Huddleston reminded the Board that it is their duty to protect the

health, safety and welfare of the citizens of Tennessee and that the administration of this solemn responsibility is dependent upon avoiding even the appearance of impropriety.

Ms. Huddleston presented a draft Notice of Rulemaking, requested by the Board at the last meeting, which provides for an amendment to the Examination Rule 1155-02-.08 which gives discretion to the Board to waive the provision that examination scores are only valid for five (5) years and amends the Continuing Education Rule 1155-02-.12 requiring controlled substance prescribing education.

Ms. Huddleston stated the rules have been approved through the internal review process and, if approved by the Board, will be sent for rulemaking hearing at the next Board meeting in August.

Upon discussion, Dr. Somers made a motion, seconded by Dr. Shuler, to send the notice to rulemaking hearing.

Ms. Huddleston said there are no pending appeals from Board action and that the most recent action was a favorable decision from the Davidson County Chancery Court in the matter of Michael W. Lawrence, D.P.M., upholding the Board's revocation of his license. Ms. Huddleston said Dr. Lawrence, through counsel, filed a Motion to Alter or Amend the Judgment to make a non-substantive change to the decision and that counsel is unsure of the status of that motion.

Ms. Huddleston said Public Chapter 946 which allows Podiatrists to supervise Physician Assistants, but restricts the scope of practice of the Physician Assistant to the same scope of practice as the supervising Podiatrist, and limits the Physician Assistant to prescribing only those drugs that would be rational to the practice of podiatry. Ms. Huddleston stated the Public Chapter became effective April 14, 2016.

Dr. Rivard asked John Williams who sponsored the bill if he had any comments. John Williams, Tennessee Podiatric Medical Association, stated Senator Rusty Crowe and Representative Matthew Hill sponsored the bill and thinks other legislators signed the bill as co-signers. Mr. Williams stated there was no opposition to the bill and the Tennessee Medical Association supported the bill in writing.

Ms. Huddleston said the Public Chapter would require the supervisory podiatrist to comply with the requirements of the Medical Board of Examiners as it relates to supervising physician assistants as it relates to protocol and reviewing charts.

### **Investigative Report**

Ms. Dorroh reviewed the Investigative Report stating they currently have eleven (11) complaints in their office and have a review scheduled for the week of July 19, 2016.

### **Legislative Liaison**

Jeremy Davis, Assistant Commissioner, Legislative Affairs for the Department of Health, presented three (3) pieces of legislation to the Board.

Mr. Davis said Public Chapter 763 applies to all health related boards regarding reinstatement of expired licenses and caps the reinstatement fee at twice the annual renewal fee. Mr. Davis said the chapter became effective July 1, 2016.

Mr. Davis stated Public Chapter 990 requires a health insurance entity to provide coverage for healthcare services provided during a telehealth encounter for treatment of an insured patient outside the geographic area where the patient is located and becomes effective January 1, 2017.

Mr. Davis said Public Chapter 1002, relative to prescription safety, is a caveat of the public chapter which became effective in 2012 with a four (4) year cap to determine how effective the public chapter would become. Mr. Davis said the public chapter also requires dispensers and prescribers to check the data base and became effective April 27, 2016.

Dr. Rivard thanked Mr. Davis for his report.

Dr. Rivard congratulated Mr. Hill on his new appointment and stated he would like to give Mr. Hill a few gift certificates for his years of commitment to the Board. Dr. Rivard asked Ms. Huddleston how gifting takes place at the state level. Ms. Huddleston stated there was a limit to probably \$50 and that buying a dinner or lunch would not be a problem.

### **Agreed Citations**

Mr. Hill presented the following three (3) agreed citations to the Board for lapsed licenses and stated they have completed the requirements for reinstating their licenses:

**Stacy Davis, X-ray Operator**

**Steven Hughes, Orthotist**

**Terry Graybill, Orthotist/Prosthetist**

Mr. Fillauer made a motion, seconded by Ms. Oglesby, to approve the Agreed Citations. The motion carried.

### **Discuss Applications**

Dr. Rivard said he and Dr. Somers discussed the applications regarding the mailing address and current practice address which does not require the applicant to include the name of the practice or name of the doctor to which they report.

Ms. Wilkins stated that is a simple process that can be done administratively by the end of the week; however, it is required on the practitioner profile.

Ms. Huddleston stated that licensees are required to notify the Board's administrative office with any change in employment.

Ms. Wilkins stated that x-ray operators are not required to complete the practitioner profile and that some employers will not hire anyone without a license.

### **Administrative Report**

Mr. Hill stated as of May 9, 2016 there are 258 active podiatrists 258; 128 active x-ray operators; 150 active orthotists; 143 active prosthetists and 55 active pedorthists. Mr. Hill reviewed the monthly statistical breakdown of the renewed, retired and failed to renew.

Mr. Hill stated if a Board member wanted to attend an out-of-state conference to please put in their request at least one-hundred twenty (120) days prior to the conference in order to receive approval in a timely manner.

Mr. Hill said the remaining dates for Board meetings in 2016 are as follows:

August 10, 2016  
November 9, 2016

Ms. Wilkins stated she has the 2017 Board meeting schedule and will be sending those to the Board members.

Ms. Wilkins said Mr. Hill had done a terrific job in preparing a monthly breakdown on the report and asked if they would prefer a quarterly report instead. The Board determined that a quarterly report would be sufficient.

### **Newly Licensed/Certified**

Upon review Mr. Fillauer made a motion, seconded by Ms. Oglesby, to approve the following newly certified X-Ray Operators:

**Shana Marie Collins**  
**Charlene Elizabeth Flynn**

The motion carried.

### **Reinstatements**

Upon review Mr. Fillauer made a motion, seconded by Dr. Somers, to approve the following newly certified X-Ray Operators, Orthotists and Prosthetists:

#### **X-Ray Operator:**

**Constance A. Wells**

#### **Orthotists:**

**Lucas V. Boe**  
**Richard W. Brown**  
**David E. Cloud**  
**Terry A. Graybeal**  
**Stephen T. Hughes**  
**Jason M. Watson**

#### **Prosthetists:**

**David E. Cloud**  
**Terry A. Graybeal**

The motion carried.

### **Correspondence**

Mr. Hill stated he received, and forwarded to all Board members for their review, the e-mail he received from TSOP.

Mr. Fillauer said there are two separate issues and that Jim Rogers from TSOP will be at the next meeting to discuss the issues.

Mr. Fillauer said one issue is regarding the licensure of orthotics and prosthetics assistants. Mr. Fillauer said they could also require orthotic and prosthetic assistants to obtain certification from a national certifying body, as required for orthotic fitters.

Ms. Huddleston said they have the authority to require podiatrists to have an academic license but do not have the authority to require an academic license for orthotists, prosthetics and pedorthists.

Mr. Fillauer said the Board requires that an orthotic fitter have a certificate.

Dr. Williams said Mr. Rogers approached the TPMA several years ago and that he, the TPMA Executive Director and then President, John Loveland, met with Mr. Rogers in Cookeville to discuss the issue. Dr. Williams said they suggested that Mr. Rogers submit legislation if they wanted to license assistants.

The Board reviewed correspondence from **Aaron Fitzsimmons, CP, OT, FAAOP** with The Surgical Clinic in Nashville, Tennessee.

Mr. Fillauer said Mr. Fitzsimmons prosthetic residents need to see patients in hospitals and operating rooms and, in order for them to get hospital privileges; they must have some sort of state licensure. Mr. Fillauer said the hospitals want something in writing stating it is legal for the resident to practice in the hospital setting.

Dr. Somers said they have a salesman in the operating room with a variety of joints to choose from and that the salesman function is to prepare the joint and replace it without a license.

Mr. Fillauer said he is operating under the doctor's supervision. Dr. Somers said he thinks hospitals are trying to get away from that type of liability and asked why prosthetist could not go into a hospital without a license.

Dr. Rivard said the problem lies with the prosthetist touching the patient.

Ms. Huddleston said it sounds like a reimbursement or liability issue and said there isn't any authority for the Board to grant licenses to those residents.

Mr. Fillauer said there would need to be legislation.

Dr. Rivard suggested that Mr. Williams propose legislation to grant training licenses.

Ms. Huddleston suggested that Mr. Fitzsimmon be sent a letter requesting that he work with the TPMA to work toward legislation and that the Board has no objection.

### **Other Board Business**

Dr. Sables stated he can no longer serve on the Controlled Substance Data Base Committee and requested the Board appoint a member to serve on the committee. Dr. Sables said a Board member can attend the meeting via tele-conference.

Ms. Huddleston stated that every prescribing Board is required to have one member on the committee.

Dr. Schuler stated she would serve for one (1) year.

Ms. Oglesby made a motion, seconded by Dr. Fillauer, to replace Dr. Sables with Dr. Schuler on the CSMD Committee from June 2016 to June 2017. The motion carried.

With no other Board business to conduct, Mr. Fillauer made a motion seconded by Dr. Somers, to adjourn at 9:53 a.m.

***Ratified by the Board of Podiatric Examiners on August 10, 2016.***