

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS MINUTES

Date: June 5, 2017

Time: 9:00 A.M. C.S.T.

Location: Iris Room
665 Mainstream Dr.
Nashville, TN 37243

Members Present: Juanita Honeycutt, Board Chair
Florence Weirbach, PhD, Vice-Chair
Lakecia Harper, Secretary
Cynthia Wheeler, NHA
Marilyn Key, NHA
Barbara Trautman, Consumer Member
Vincent Davis, Director of Health Care Facilities

Members Absent: Stephen D' Amico, MD

Staff Present: Michael Sobowale, Unit Director
Mary V. Webb, Board Administrator
Jared W. Smith, Board Manager
Caroline Tippens, Assistant General Counsel
Nichelle Dorroh, Disciplinary Coordinator, Office of Investigations
Noranda French, Financial Officer

Guests: Jim Layman, Legislative Liaison, Department of Health
Linda Estes, Representative, Tennessee Health Care Association

Call to Order

A roll call was initiated by Board Administrator Mary V. Webb. With a quorum present, Ms. Honeycutt, Board Chair, called the meeting to order at 9:03 A.M.

Rulemaking Hearing

Caroline Tippens, Assistant General Counsel, called the rule making hearing to order. A roll call was taken with the following members present: Juanita Honeycutt, Florence Weirbach, Lakecia Harper, Cynthia Wheeler, Barbara Trautman, and Vincent Davis. The purpose of the rule making hearing is to solicit comments on the rules proposed by the Board to amend Rule 1020-01-02 (1) (b) on license renewal fee.

Pursuant to TENN. CODE ANN. § 4-5-204, Ms. Tippens presented a summary of the factual information which formed the basis of the rules contained in the Notice of Rulemaking Hearing:

The amendment to the rule, as proposed, would reduce the biennial license renewal fees to be paid by all licensees from \$210 to \$150.

A rule is defined as an agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of the agency. A proposed rule is filed with the Secretary of State, notice is given to the public for comment and a rulemaking hearing is held. Upon conclusion of the hearing, the proposed rules are forwarded to the Attorney General's Office for review of legality. If approved, they are filed with the Secretary of State, which is responsible for publication, and the Government Operations Committee of the General Assembly. The Rules must stay in the Secretary of State's Office for ninety (90) days at the end of which time will be the effective date. The Notice of Rulemaking Hearing included the entire text of the proposed rule and was published on the Secretary of State's website on April 10, 2017 and the State's Administrative Register website.

Ms. Tippens stated that no written comment was received from a member of the public pertaining to the proposed rule amendment and invited any additional member of the public present at the hearing wishing to speak on the matter to so indicate by placing their names on the provided sign-up sheet. Mary Webb, Board Administrator, stated that additional notice was given to affected individuals and groups by electronic notification to the association, board members, and licensees through email and by publication on the board's website. There was no public comment received at the hearing. Ms. Tippens then read the substance of the proposed rule into record:

The section of the rule to be changed was 1020-01-.02 (1) (b). The rule change will take the renewal fee from \$210 down to \$150. Ms. Tippens then presented the Statement of Economic Impact to Small Business and Regulatory Flexibility Analysis attached to the Notice of Rulemaking Hearing to board members for review. There was no comment or question from board members on the information presented. The Board being satisfied, Ms. Tippens stated she will file the amended rule with other appropriate offices for approval.

Thereafter, Ms. Tippens announced the conclusion of the rule making hearing.

Minutes

A motion was made by Lakecia Harper, seconded by Vincent Davis, to approve the minutes of the November 7, 2016 board meeting as written. The motion carried.

Office of General Counsel Report

Litigation:

There are currently no open cases with the Office of General Counsel on Nursing Home Administrators.

Legislative Updates

Ms. Tippens discussed Public Chapter 240. This legislation was brought by the Department of Health and was designed to address a number of issues throughout all licensing boards, committees, and councils. This legislation will:

- Insure the integrity of licensure examinations by making examination questions, answer sheets, scoring keys, and other examination data confidential and closed to public inspection.
- Allow the issuance of limited licenses to applicants who have been out of clinical practice or inactive, or who are engaged in administrative practice. Limited licenses may be of restricted scope, restricted duration, and have additional conditions placed upon them in order to obtain full licensure.
- Clarify that other documents prepared by or on behalf of the Department with regard to an investigation are confidential until such time as formal disciplinary charges are filed against the provider.
- Eliminate the “locality rule” for administrative law.
- Require the chief administrative official for each health care facility to report within 60 days any disciplinary action taken against an employee for matters related to ethics, incompetence or negligence, moral turpitude, or substance abuse, to the employee’s respective licensing board. All records pertaining to the disciplinary action shall be made available for examination to the licensing board.

This act became effective on May 2, 2017.

There was no Contested Case, Consent Order, Agreed Order, Order of Modification or Order of Compliance to present.

Office of Investigations

Nichelle Dorroh, Office of Investigations Disciplinary Coordinator reported the following to the Board: There were ten (10) complaints filed with the Office and 1 person is currently being monitored.

Financial Report

Noranda French, Financial Officer with the Department of Health gave the Mid-Year Financial Report. Actual expenses since December 31, 2016 are as follows: total direct expenses was \$22,435.26; allocated expenses was \$8,193.28; total expenses was \$30, 628.54; board fee revenue was \$50, 735.00; current mid-year net was \$20,106.46 and the Board has a mid-year cumulative carryover of \$225, 576.12. The Board is projected to have a cumulative carryover of \$233,191.80 at the close of the current fiscal period.

Legislative Report

Jim Layman from the Health Department's Legislative Affairs Office presented a legislative report to the Board from the recently concluded legislative session.

Public Chapter 349

This legislation authorizes a competent adult with a functional disability living in the adult's own home or a caregiver acting on behalf of a minor child or incompetent adult living in the minor child's or the incompetent adult's own home to choose to direct and supervise a paid trained, personal aide in the performance of certain health maintenance tasks. This Act will take effect on January 1, 2018.

Public Chapter 350

This legislation will allow healthcare providers to satisfy one hour of continuing education requirements through the performance of one hour of voluntary provision of healthcare services. The maximum amount of annual hours of continuing education that a provider can receive through providing volunteer healthcare services is the lesser of 8 hours or 20% of the provider's annual continuing education requirement. The legislation allows for rulemaking by the Division of Health Related Boards in order to administer this section. This took effect on May 12, 2017.

Public Chapter 215

This legislation requires state governmental entities that establish or adopt guides to practice to do so through the promulgation of rules, rather than policy. The rules so promulgated must specify all provisions included in and relating to the guide to practice. Any changes to guides to practice made after the guides are adopted must also be promulgated by rule in order to be effective. For purposes of this part, guides to practice includes codes of ethics and other quality standards, but does not include tests, examinations, building codes, safety codes, or drug standards. This legislation took effect on April 28, 2017.

Public Chapter 240

This legislation was brought by the Department of Health and was designed to address a number of issues throughout all licensing boards, committees, and councils. This legislation will:

- Insure the integrity of licensure examinations by making examination questions, answer sheets, scoring keys, and other examination data confidential and closed to public inspection.
- Allow the issuance of limited licenses to applicants who have been out of clinical practice or inactive, or who are engaged in administrative practice. Limited licenses may be of restricted scope, restricted duration, and have additional conditions placed upon them in order to obtain full licensure.
- Clarify that other documents prepared by or on behalf of the Department with regard to an investigation are confidential until such time as formal disciplinary charges are filed against the provider.

- Eliminate the “locality rule” for administrative law.
- Require the chief administrative official for each health care facility to report within 60 days any disciplinary action taken against an employee for matters related to ethics, incompetence or negligence, moral turpitude, or substance abuse, to the employee’s respective licensing board. All records pertaining to the disciplinary action shall be made available for examination to the licensing board.

This act became effective on May 2, 2017.

SB1309/HB1067

This legislation creates a new violation of a healthcare practitioner’s practice act if that practitioner refuses to submit to or tests positive for any drug the practitioner does not have a lawful prescription for or a valid medical reason for using the drug. It is the duty of the employer to report any violation to the Department of Health.

If the practitioner fails a drug test, the practitioner has 3 business days to either produce the requisite prescription or medical reason, or report to their board approved peer assistance program. If the practitioner does not comply with any of these measures, it is the duty of the employer to report this violation of the practice act to the employee’s licensing board for investigation and action. If the practitioner reports to the peer assistance program and obtains and maintains advocacy of the program, the employer is not required to notify the board. As long as a practitioner obtains, maintains and complies with the terms of a peer assistance program, the board shall not take action on the licensee for the sole reason of a failed or refused drug test. If a practitioner fails to obtain or maintain advocacy from the peer assistance program, the program is required to report that information to the appropriate licensing board.

The board shall suspend the license of a practitioner who fails to comply with the terms of the program. Employer drug testing must be compliant with the Drug-free Workplace requirements. This legislation allows a quality improvement committee to share information regarding substance abuse by a practitioner with other quality improvement committees. Additionally, this legislation specifies that the Department of Health is not required to obtain prior approval from the Attorney General in order to take any emergency action on a licensee. This legislation has not been signed by the Governor yet, but it will take effect on July 1, 2017.

Public Chapter 230

This legislation authorizes commissioners and chief executive officers of administrative departments to evaluate certain actions by a regulatory board to determine whether the action may constitute a potentially unreasonable restraint of trade. Prior to a rule being filed by a regulatory board, as defined in T.C.A. §4-4-126 (a), with the secretary of state pursuant to T.C.A. §4-5-207 or T.C.A. §4-5-208, the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or a designee to the extent a conflict of interest may exist with respect to the commissioner or chief executive officer, will remand a rule that may constitute a

potentially unreasonable restraint of trade to the regulatory board for additional information, further proceedings, or modification, if the rule is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board. This Act was signed by the Governor on April 24, 2017.

Applicant Interviews/File Reviews

Administrator-in-Training (AIT) Applicants

A. David Sauer- Mr. Sauer was not present. Dr. Weirbach made a motion, seconded by Ms. Trautman, to approve Mr. Sauer's application for an AIT program. The motion carried.

B. Julie West- Ms. West was not present. Ms. Trautman made a motion, seconded by Ms. Wheeler, to approve Ms. West's application for an AIT program. The motion carried.

C. Vasile Malenchii- Mr. Malenchii was not present. Mr. Davis made a motion, seconded by Dr. Weirbach, to approve Mr. Malenchii's application for an AIT program. The motion carried.

D. Emily Davis- Ms. Davis was not present. A motion was made by Ms. Trautman, seconded by Ms. Harper, to approve Ms. Davis' application for an AIT program. The motion carried.

E. Rebecca Kimble- Ms. Kimble was present. A motion was made by Mr. Davis, seconded by Ms. Key, to table Ms. Kimble's AIT application until the August meeting to allow Ms. Kimble to evaluate her foreign education by an educational accrediting agency in the United States and provide proof to the Board that her education is substantially equivalent to that obtained in an accredited educational school in the United States. The motion carried.

F. Burton Ray Allen- Mr. Burton was not present. A motion was made by Dr. Weirbach, seconded by Ms. Wheeler, to approve Mr. Allen's application for an AIT program. The motion carried.

G. Amy Chadwick- Ms. Chadwick was not present. A motion was made by Ms. Key, seconded by Mr. Davis, to approve Ms. Chadwick's application for an AIT program. The motion carried.

Reciprocity Applicants

A. Dillion Carver- Mr. Carver was not present. A motion was made by Dr. Weirbach, seconded by Ms. Wheeler, to approve Mr. Carver's reciprocity application. The motion carried.

B. Abigail Gehrke- Ms. Gehrke was not present. Ms. Wheeler made a motion, seconded by Dr. Weirbach, to approve Ms. Gehrke's reciprocity application. The motion carried.

C. Rachel Asermily- Ms. Asermily was not present. A motion was made by Ms. Trautman, seconded by Dr. Weirbach, to approve Ms. Asermily's reciprocity application. The motion carried.

D. Thomas Tackett- Ms. Tackett was not present. A motion was made by Ms. Wheeler, seconded by Mr. Davis, to approve Mr. Tackett's reciprocity application. The motion carried.

Other Applicant File Reviews

A. Kenneth Shull- Mr. Shull applied for a license by reciprocity. He was requested to appear before the Board because of discipline by another State board and also, a finding of Federal court conviction on his criminal background check. Mr. Shull listed on his application that he was licensed in fourteen (14) other States but also, was denied licensure in other States – Maryland, Oklahoma, and Nebraska. Mr. Shull was present. He stated that his license in Nebraska has since been approved after initial denial. Upon questioning by the Board, Mr. Shull decided to withdraw his application.

Ms. Honeycutt responded that the Board will accept his request to withdraw his license.

B. Deborah Fisher- Ms. Fisher is seeking board approval to re-take the NAB exam. Pursuant to board rule, she was requested to appear before the Board due to failing the NAB exam twice. She was not present neither did she provide a letter of explanation to the Board. A motion was made by Ms. Harper, seconded by Dr. Weirbach, to close Ms. Fisher's application. The motion carried.

C. Marianna Glover- Ms. Glover is seeking board approval to re-take the NAB exam. Pursuant to board rule, she was requested to appear before the Board due to failing the NAB exam twice. Ms. Glover was present. A motion was made by Dr. Weirbach, seconded by Mr. Davis, to have Ms. Glover send a letter to the Board identifying the course she plans on taking, and submit a letter or proof of completion to the Board before making a third attempt on the NAB examination.

Ratification of Initial Determinations

Initial Licenses

William Birmingham Tyler	Joyce J. Course
Edward James Hearn	Debra Kay Lankford
Brandy Mae Lewis	Jordie Cortez Montgomery
Ashley M. Trainer	Samuel Ralph Wright, II

A motion was made by Dr. Weirbach, seconded by Ms. Harper, to ratify the list of initial licensees as presented. The motion carried.

Reinstatements

John David Waldrop

A motion was made by Dr. Weirbach, seconded by Ms. Harper, to ratify the list of license reinstatement as presented. The motion carried.

The Board did not have any closed file to approve.

Administrator's Report

Mary V. Webb presented the Board Administrative report.

A. Statistical Report

The Board has 820 total active licensees as of May 22, 2017.

B. Licensing activities from February 17, 2017 through May 22, 2017:

New applications received- 16
New licenses issued - 11
Reinstatements: 0
Number of paper renewals – 20
Number of renewals on line - 56
Number of licensees who retired - 5
Failed to Renew/Expired Licensees - 6

The online renewals constitute a usage rate of approximately 74% of all renewals during this period.

C. Travel

As of October 1, 2016 the maximum hotel lodging increased to \$161.00 per night. The mileage remains .47 cents per mile. The meals remain \$44.25 per day for overnight stay.

D. Board Members

Ms. Webb welcomed the newly-appointed Dr. Jano Janoyan, DO, to the Board. Dr. Janoyan replaced Dr. D'Amico. She also thanked Dr. D'Amico for his years of service on the Board.

All board positions are filled at this time.

Discuss and take action if needed, regarding rulemaking hearings, rule amendments, and policies.

A motion was made by Mr. Davis, seconded by Ms. Harper, to have Ms. Tippens do a research on the possibility of the Board issuing a temporary/limited license, pursuant to the new legislation in Public Chapter 240. The motion carried.

A motion was made by Dr. Weirbach, seconded by Ms. Trautman, to have Ms. Tippens research the Code of Ethics for the Board, in light of new legislation in Public Chapter 215, to determine if the Code of Ethics for Nursing Home Administrators needs to be updated and also, if a mechanism could be put into place to inform the Board of changes in its Code of Ethics. The motion carried.

Attendance at Conferences and Meetings

A motion was made by Ms. Harper, seconded by Mr. Davis, to approve Caroline Tippens to attend the Federation of Regulatory Boards (FARB) Regulatory Law Seminar from October 5-8, 2017 in Savannah, GA. The motion carried.

Adjournment

There being no further business, a motion was made by Mr. Davis, seconded by Ms. Harper, to adjourn the meeting. The motion carried.

The meeting adjourned at 10:59 A.M.

Juanita Honeycutt, NHA, Chair

Date

These minutes were ratified by the Board at the August 7, 2017 meeting.