

**MEETING MINUTES
TENNESSEE BOARD OF PODIATRIC MEDICAL EXAMINERS**

DATE: February 7, 2020
TIME: 9:00 A.M., CST
LOCATION: Health Related Boards
Iris Room
665 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS

PRESENT: Sheila Schuler, D.P.M. - Chair
Bhekumuzi Khumalo, D.P.M.
Ramesh Pavuluri, D.P.M.
Michael Fillauer, C.P.O. - Secretary

ABSENT: David Sables, D.P.M.
Martha Kay Oglesby, Consumer Member

BOARD STAFF

PRESENT: David Silvus, Assistant General Counsel
Theodora Wilkins, Administrative Director
Michele Tamayo, Board Administrator

Dr. Schuler called the meeting to order at 9:00 a.m. A roll call was conducted, a quorum was present.

Minutes

Upon review of the November 1, 2019 minutes, Dr. Khumalo made a motion to approve the minutes as written seconded by Mr. Fillauer. The motion carried.

Office of General Counsel Report

Mr. David Silvus, Office of General Counsel, reviewed the conflict of interest policy stating:

“If you have a personal or financial interest in the outcome of any issue or matter before this board which may suggest a bias on your part, you are asked to state that interest on the record so that a determination can be made as to whether there exists a need for recusal. You are reminded that it is the duty of this board 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.”

RULES

The Rule-Making Hearing was held last meeting regarding record-keeping and retention for Orthotist, Pedorthist and Prosthetist. The rule packet will be submitted to the Secretary of State's Office for final approval. It will then go to Secretary of State's office for publication after ninety (90) days, during which time it will be presented to the Government Operations Committee of the General Assembly for approval.

LITIGATION

The Office of General Counsel currently has seven open cases pertaining to six respondents who hold DPM licenses and one who holds an Orthotist license. A 320c notice letter has gone out to all seven. A formal notice of charges has been filed on one, which was originally scheduled to start at the August meeting. It was continued, by agreement of the parties to allow our expert to review additional charts obtained from the Respondent. Of the remaining six, we have recently gotten an expert report on two of them and Notices of Charges should be filed shortly. We are awaiting an expert's report in a third. Another will require an outside expert to review, and the fifth may also require an expert review. We have recently received additional factual information from the Respondent in the seventh.

Also on the Board's agenda is the need to discuss conducting the final hearings on all of these pending cases. Three of them are overprescribing cases that will involve the review of multiple patient charts and expert testimony from the Department. It is likely that the Respondent will also have an expert in those cases. A fourth case also involves standard of care, so it will involve expert testimony from both the Department and the Respondent. I have estimated that trying those four cases will require approximately fourteen full days of trial. As the Board only meets a single half-day once a quarter, those fourteen full days will require twenty-eight Board meetings to try these cases to conclusion or seven years. There are options to alleviate the issues. The Board can agree to have special meetings dedicated to the trying of cases, the Board can consider a "retreat" for a week during which we can attempt to try two of the cases, or the Board can designate one or more cases to be tried by an Administrative Law Judge (ALJ) sitting without the Board. In ALJ-only cases, the ALJ presides over the hearing without the presence of the Board. The ALJ will issue an Initial Order at that time. If both parties are satisfied with the ALJ's Initial Order, it would become a Final Order. If either party is dissatisfied with the ALJ's Initial Order, the matter can be appealed to the Board. The Board would then read the record of the hearing already conducted by the ALJ and review the evidence presented at that hearing by the parties. Counsel for the parties would submit written briefs to the Board for consideration as well. Counsel would then argue the case to the Board. But no new evidence can be presented. The Board would then deliberate and issue a Final Order.

A discussion was held. The Board decided to send all of the over-prescribing cases to the ALJ. Dr. Pavuluri made a motion seconded by Dr. Khumalo. The motion carried.

Policy on Use of 3-D Printers In Custom-Fabricated and Fitted Devices and Custom -Fitted Devices

A discussion was held on the importance of a properly licensed healthcare practitioner to issue the order for a device, to take proper measurements for the fabrication of the 3-D printed device and to be present to dispense and fit the 3-D printed device.

Dr. Khumalo made a motion to accept the policy as written, seconded by Mr. Fillauer. The motion carried.

Policy On Application For License Prior To Completion of Residency

An applicant who has completed all but six (6) or fewer months of the residency program required by this rule may apply for licensure if all other requirements of this rule are met and the director of the residency program submits a letter attesting to the applicant's satisfactory performance in and anticipated successful completion of the residency program. However, no license shall be issued until evidence of the completion of the residency program is received by the Board's administrative office.

Dr. Khumalo made a motion to accept the policy, seconded by Mr. Fillauer. The motion carried.

Investigative and Disciplinary Report

Ms. Lori Leonard Disciplinary Coordinator for all non-nursing Boards in the Office of Investigations gave the following report:

Summary of Currently Monitored Practitioners

I am currently monitoring three (3) podiatrist three (3) on probation, one (1) suspended and five that have been (5) revoked.

Complaints-Podiatrist

For the year of 2019 Investigations received and opened thirteen(13) new complaints; one (1) for falsification of records, two (2) for malpractice or negligence, six (6) for unprofessional conduct, two (2) for over prescribing, and two (2) for outside the scope of practice. Ten (10) total complaints closed in 2019; two (2) for insufficient evidence, three (3) closed to discipline, four (4) closed with no action, and one (1) closed with a letter of concern. At the end of 2019 Investigations had Eleven (11) open complaints that were being reviewed and/or investigated.

So far in the year 2020 Investigations has received one (1) new complaint regarding malpractice or negligence. Investigations have closed one (1) complaint with no action. There are currently ten (10) open complaints being reviewed and/or investigated.

Complaints-podiatric X-Ray Operators

For the year 2019 Investigations had zero (0) complaints opened, closed zero (0) complaints and have zero (0) complaints being reviewed or investigated.

The same for 2020, zero (0) complaints opened, zero (0) complaints closed, and have zero (0) complaints being reviewed and/or investigated.

Complaints-Orthotist

In 2019 Investigations received one (1) complaint for fraud and false billing. One (1) complaint was closed and sent to the Office of General Council for formal discipline. At the end of 2019 there were zero (0) open complaints.

In 2020 Investigations has received zero (0) new complaints, closed zero (0) complaints, and has zero (0) open complaints being reviewed and/or investigated.

Complaints-Prosthetist

For the year 2019 Investigations had zero (0) complaints opened, closed zero (0) complaints and have zero (0) complaints being reviewed and/or investigated.

The same for 2020, zero (0) complaints opened, zero (0) complaints closed, and have zero (0) complaints being reviewed and/or investigated.

Complaints-Pedorthist

For the year 2019 Investigations had zero (0) complaints opened, closed zero (0) complaints and have zero (0) complaints being reviewed and/or investigated.

The same for 2020, zero (0) complaints opened, zero (0) complaints closed, and have zero (0) complaints being reviewed and/or investigated.

Administrative Report

Ms. Tamayo gave the following administrative report stating as of February 6, 2020 there are 278 active Podiatrists; 141 active X-ray operators; 148 active Orthotist; 144 active Prosthetist and 46 active Pedorthist.

Between November 1, 2019 and February 6, 2020 the following occurred: Podiatrists – 2 new, 28 renewed, 1 retired, and 3 expired; Podiatric X-Ray Operators – 0 new, 14 renewed, 2 retired, and 9 expired; Orthotist – 3 new, 13 renewed, 2 retired, and 4 expired; Prosthetists – 4 new, 11 renewed, 0 retired, and 4 expired; Pedorthist 2 new, 6 renewed, 0 retired, 1 expired.

Ms. Tamayo provided the dates for all Board meetings in **2020**:

May 15, 2020

August 14, 2020

November 6, 2020

Ms. Wilkins mentioned that the Medical Board which is much larger, held a retreat to go over administrative procedures as a refresher. Ms. Wilkins stated she was asked to bring this to the board's attention and offer the possibility of a retreat or a luncheon after a regular board meeting to go over procedures. There is no obligations to do so, but if you would be interested in something like this we can make arrangements.

Mr. Silvus reminded the Board that if they did hold a retreat or luncheon that they would have to be careful not to discuss board business as all meeting must be public.

Newly Licensed

Podiatrists

847 Jacobus, Dewayne
404 Toy, Martin

Dr. Pavuluri made a motion to approve the newly licensed Podiatrists, seconded by Dr. Khumalo. The motion carried.

Podiatric X-Ray Operators

No new licensees during this time frame

Orthotists

272 Callen, Hillary
273 Morrison, Matthew
274 Walsh, Mary

Mr. Fillauer made a motion to approve the newly licensed Orthotists, seconded by Dr. Khumalo. The motion carried.

Prosthetist

262 Callen, Hillary
261 Lennon, Marc
263 Morrison, Matthew
255 Plescia, Deborah

Dr. Pavuluri made a motion to approve the newly licensed Prosthetists, seconded by Dr. Khumalo. The motion carried.

Pedorthist

134 Haynes, Ethan
113 Jones, Brandon

Mr. Fillauer made a motion to approve the Pedorthist, seconded by Dr Khumalo. The motion carried.

Reinstatements

No reinstatements during this time frame.

File reviews

Podiatrist

868 Hayes, Donald

858 Perri, Katrina

Dr. Khumalo made a motion to approve and ratify the reviewed Podiatrist applications, seconded by Mr. Fillauer. The motion carried.

Podiatric X-Ray Operators

492 Flynn, Brittany

490 Grantham, Judy

496 Haire, Kristina

491 Hunt, Cassie

493 Kirby, Makayla

422 McAninch, Tamara

489 McCulley, Rebecca

Dr. Pavuluri made a motion to approve and ratify the reviewed Podiatric X-Ray Operator applications, seconded by Mr. Fillauer, The motion carried.

Adjournment

With no further business to discuss Dr. Pavuluri made a motion to adjourn the meeting, seconded by Dr. Khumalo. Motion carried. The meeting was adjourned.

Ratified by the Board of Podiatric Medical Examiners on May 15, 2020