

TENNESSEE BOARD OF OPTOMETRY MEETING MINUTES

DATE: July 11, 2018
TIME: 9:00 A.M., CT
LOCATION: Health Related Boards
Poplar Room
665 Mainstream Drive
Nashville, TN

BOARD MEMBERS

PRESENT: Torrey J. Carlson, O.D., Secretary
Christopher Cooper, O.D.
Linda Tharp, O.D., Chair
Jennifer G. Uhl, O.D., Vice Chair

BOARD MEMBER

ABSENT: Brad Lindsey, O.D.
Consumer Member - Vacant

STAFF

PRESENT: Darryl Vason, Board Administrator
Yvette Vagle, Board Administrator
Kimberly Hodge, Interim Unit Director
Kaitlin Parham, Assistant General Counsel

Dr. Tharp, Chair, called the meeting to order at 9:03 A.M. A roll call was conducted and a quorum was present.

Review/Approve April 4, 2018 Board Meeting Minutes

Upon review of the April 4, 2018 minutes, Dr. Cooper made a motion, seconded by Dr. Uhl, to approve the minutes as written. The motion carried.

Office of Investigations

Lori Leonard, Disciplinary Coordinator, reported that she is currently monitoring one practitioner with a (1) suspended and one (1) that is on probation. One (1) complaint has been received year to date, and the disciplinary office has closed a total of three (3) complaints. Ms. Leonard stated that all three closed complaints received a letter of concern with no discipline. There are currently no open complaints. The one (1) complaint that was received was for unprofessional conduct and was closed with a letter of concern.

Office of General Counsel

Kaitlin Parham, Assistant General Counsel, read the Conflict of Interest statement reminding the Board to disclose any conflicts of interest that may arise.

Open Meetings Act

Pursuant to the Open Meetings Act, Committee business may only be discussed by the committee members during the meeting. Members should not discuss the committee's business at any time other than during the open Committee meeting. The prohibition applies to phone calls, emails, and text messages. Committee members should also ensure that all comments during the meeting are stated for all to hear; private conversations between or among members during the meeting are inappropriate.

Rule Activity

Ms. Parham stated that the rule amendments concerning continuing education are currently undergoing internal review. The amendments include increasing continuing education hours from 30 to 40, modifying the wording concerning the required prescribing course, as well as the wording of the rule pertaining to approval of continuing education courses from vendors already approved by the Board for such purposes. Additionally, the rule amendment to update the web address for online licensure renewal is currently undergoing internal review.

Disciplinary activity

As of June 28, 2018, the Office of General Counsel had no open cases.

Administrative Report

Mr. Darryl Vason presented the Administrative report. He stated as of July 10, 2018 there were 1,283 licensed Optometrists.

In April 2018 there was one (1) new initial license issued and nineteen (19) renewals.

In May 2018 there were seven (7) new initial licenses issued and thirteen (13) renewals.

In June 2018 there were twenty seven (27) new initial licenses issued and twelve (12) renewals..

Mr. Vason stated that during the months of April, May and June of 2018 a total of thirteen (13) practitioners retired their licenses and four (4) practitioner licenses expired.

He completed his report by reviewing the remaining scheduled Board meeting dates for 2018:

October 12, 2018 – Gatlinburg, TN

2019 Board meeting dates:

January 16, 2019

April 3, 2019

July 10, 2019

October 11, 2019 – Gatlinburg, TN (Tentative).

Newly Licensed

Upon review Dr. Uhl made a motion, seconded by Dr. Carlson, to approve the following applicants for licensure:

**Jonathan Allee
Erin Elizabeth Baughman
Amy Rachelle Blue
Logsn Scott Brunner
Kalah Burchfield
Theresa Karyn Cassidy
Mary Nethaway Chase
Albert Chen
Marcus Daniel
Kristen Marie Davis
Nathan Douglas Dederman
Carolyn Renee Draude
Gregory Charles Eakins Jr.
Jason Foote
Tiffany Hesse
Samantha Ann Holland
Nicole Rebecca Lamb
Steven Macdonald**

**Jacqueline Mai
Trent Wayne Martin
Sarah Maxey
Leon Nguyen
Hilarie Lauren Nixon
Ashlyn Maranne Norsworthy
Austin Alan Pace
MollyTonos Pace
Lauren Jaclyn Plewes
Stephanie Kaye Reynolds
Nicholas Jon Sachse
Andrew Munther Sahawneh
Emma Wilhite Scott
Amanda Nicole Smith
Rebecca Sorenson
Lucas Hart Spiker
Tyler Wadzinski**

The motion carried.

Approve/Deny Reinstatement Applicants

Upon review Dr. Carlson made a motion, seconded by Dr. Uhl, to approve the following reinstatement applicants:

**Jennifer Gail Martin Maples
Ami Nicole Nadolsky
Gary Michael Nadolsky**

The motion carried.

Correspondence

The Board reviewed Dr. William Tatum’s request for a separate vision therapy practice that is associated with Blount County Eye Center, PLLC. Dr. Cooper made a motion, seconded by Dr. Uhl to approve Dr. Tatum’s request for a separate legal entity of the name The Vision Therapy Clinic, PLLC.

The Motion carried.

Upon review of the letter from Dr. William Y. Cuthbertson, Dr. Uhl made a motion, seconded by Dr. Carlson to approve Dr. Cuthbertson request to change the name of his practice to Eyedenity Eyecare.

The motion carried.

Designate a Board member to be on the task force of prescribing Boards required by SB 777/HB 717.

Kaitlin Parham stated that public chapter 978 took effect July 1, 2018. Section 13 of the chapter, requires a task force to create minimum disciplinary actions for prescribing practices that are a significant deviation from sound medical judgment. The Optometry Board is required to nominate and select a Board member to serve on the task force before September 1, 2018. After a brief discussion, Dr. Uhl volunteered to be on the task force. Dr. Cooper made a motion, seconded by Dr. Carlson, to approve Ms. Uhl to represent the Optometry Board on the task force.

The motion carried.

Approve/deny attorney travel expenses for the FARB Regulatory Law conference

Ms. Parham requested that the Board approve and pay for her to attend the 2018 FARB Regulatory Law Seminar in Portland. Ms. Parham stated that there would be a variety of sessions that related to administrative law and the process of representing regulatory Boards. The Seminar would be at the end of September and is estimated to cost \$2,500.00. The cost would include the registration fee, hotel, and airfare. Dr. Cooper made a motion, seconded by Dr. Uhl, to approve Ms. Parham to attend the seminar.

The motion carried.

Discuss legislation and take action if needed

Lacy Blair, Legislative Liaison, presented the public chapters that were passed in the 2018 legislative session that pertain and effect the Optometry Board.

Board of Optometry - Legislative Update - 2018

[Public Chapter 611](#)

This law requires an agency holding a public hearing as part of its rulemaking process, to make copies of the rule available in “redline form” to people attending the hearing.

This takes effect July 1, 2018.

[Public Chapter 638](#)

This chapter prohibits healthcare prescribers and their employees, agents, or independent contractors from in-person solicitation, telemarketing, or telephonic solicitation of victims within

30 days of an accident or disaster for the purpose of marketing services of the healing arts related to the accident or disaster. There are specific exceptions laid out in the chapter.

This act takes effect July 1, 2018.

Public Chapter 675

This act requires the department of health to accept allegations of opioid abuse or diversion and for the department to publicize a means of reporting allegations.

Any entity that prescribes, dispenses, OR handles opioids is required to provide information to employees about reporting suspected opioid abuse/diversion. That notice is to either be provided individually to the employee in writing and documented by the employer OR by posting a sign in a conspicuous, non-public area of minimum height and width stating: “NOTICE: PLEASE REPORT ANY SUSPECTED ABUSE OR DIVERSION OF OPIOIDS, OR ANY OTHER IMPROPER BEHAVIOR WITH RESPECT TO OPIOIDS, TO THE DEPARTMENT OF HEALTH'S COMPLAINT INTAKE LINE: 800-852-2187.”

Whistleblower protections are also established. An individual who makes a report in good faith may not be terminated or suffer adverse licensure action solely based on the report. The individual also is immune from any civil liability related to a good faith report.

This act takes effect January 1, 2019.

Public Chapter 744

This statute allows a licensing entity the discretion to not suspend/deny/revoke a license in cases where the licensee has defaulted or become delinquent on student loans IF a medical hardship significantly contributed to the default or delinquency.

This act took effect January 1, 2019.

Public Chapter 745 and Public Chapter 793

These public chapters work together to create and implement the “Fresh Start Act.” Licensing authorities are prohibited from denying an application or renewal for a license/certificate/registration due to a prior criminal conviction that does not directly relate to the applicable occupation. Lays out the requirements on the licensing authorities as well as the exceptions to the law (ex: rebuttable presumption regarding A and B level felonies).

These acts take effect July 1, 2018.

Public Chapter 754

This chapter prevents any board, commission, committee, etc. created by statute from promulgating rules, issuing statements, or issuing intra-agency memoranda that infringe on an entity member's freedom of speech.

Freedom of speech includes, but is not limited to, a member's freedom to express an opinion concerning any matter relating to that governmental entity, excluding matters deemed to be confidential under TCA 10-7-504.

Violations as determined by a joint evaluation committee may result in recommendations to the general assembly concerning the entity's sunset status, rulemaking authority and funding.

This act took effect April 18, 2018.

Public Chapter 883

This act lays the framework for e-prescribing practices in the state and the exceptions from electronic prescriptions. Requires that all Schedule II prescriptions be e-prescribed by January 1, 2020 except under certain circumstances. Any health-related board under TCA 68-1-101(a)(8) that is affected by this act shall report to the general assembly by January 1, 2019 on issues related to the implementation of this section. The commissioner of health is authorized to promulgate rules to effectuate the purposes of this act.

This act took effect May 3, 2018 for rule purposes.

The act takes effect January 1, 2019 for all other purposes.

Public Chapter 893

This chapter allows for pharmaceutical manufacturers or their representatives to engage in truthful promotion of off-label uses. The act also prohibits action against pharmaceutical manufacturer's, pharmaceutical representative's, healthcare institution's or physician's license solely for such activity.

This act takes effect July 1, 2018

Public Chapter 901

This act requires that prior to prescribing more than a three day supply of an opioid or an opioid dosage that exceeds at total of 180 MME to a woman of childbearing age (15-44yo), a prescriber must do the following:

1. Advise of risks associated with opioid use during pregnancy;
2. Counsel patient on effective forms of birth control; and
3. Offer information on availability of free or reduced cost birth control

Doesn't apply if previously informed by prescriber in previous three months or prescriber reasonably believes patient is incapable of becoming pregnant. Requirements may be met with a patient under 18 years of age by informing parent of the patient.

The department of health is to publish guidance to assist prescribers in complying with this act.

This act takes effect July 1, 2018.

Public Chapter 929

This act redefines policy and rule and requires each agency to submit a list of all policies, with certain exceptions, that have been adopted or changed in the previous year to the chairs of the government operations committees on July 1 of each year. The submission shall include a summary of the policy and the justification for adopting a policy instead of a rule.

This act also prohibits any policy or rule by any agency that infringes upon an agency member's freedom of speech.

Finally, this act establishes that an agency's appointing authority shall have the sole power to remove a member from a board, committee, etc.

This act takes effect July 1, 2018 and applies to policies adopted on or after that date.

Public Chapter 954

This legislation requires the initial licensure fee for low-income persons to be waived. Low income individuals per the statute are defined as persons who are enrolled in a state or federal public assistance program including but not limited to TANF, Medicaid, and SNAP. All licensing authorities are required to promulgate rules to effectuate the purposes of this act.

This act takes effect January 1, 2019.

Public Chapter 964

This legislation requires the department of children's services (DCS) to develop instructional guidelines for child safety training programs by January 1, 2019 for members of professions that frequently deal with children at risk of abuse. DCS is required to work with each licensing board to ensure any child safety programs created by a licensing board fully and accurately reflect the best practices for identifying and reporting abuse as appropriate for each profession.

This act took effect May 15, 2018.

Public Chapter 978

This act makes a number of revisions to opioid treatment regulations. The definition of "nonresidential office-based opiate treatment facility" (OBOT) has been changed to encompass more facilities.

The commissioner of mental health is required to revise the rules of OBOTs to be consistent with state and federal law for such facilities to establish certain new protocols.

Rules regarding OBOTs are to be reviewed each even-numbered year and the department of mental health and substance abuse services shall submit the rules for OBOTs to each health

related board that licenses any practitioner authorized by the state to prescribe products for treatment of an opioid use disorder. Each board is required to enforce the rules. Each board is required to post the rules on the board's website. Violation of a rule is grounds for disciplinary action by the board.

The act also makes revisions to the licensing fees of OBOTs.

The act requires revision of the buprenorphine treatment guidelines.

The legislation also requires (subject to 42 CFR part 2) that dispensing of buprenorphine be subject to the Controlled Substance Monitoring Database (CSMD) requirements.

The act prohibits dispensing of buprenorphine except by certain individuals/facilities and requires pharmacies/distributors to report to the department of health (TDH) the quantities of buprenorphine that are delivered to OBOTs in the state.

The act also makes revisions to the high-volume prescriber list compiled by TDH.

The act requires the comptroller to complete a study of statistically abnormal prescribing patterns. After the study, TDH shall identify prescribers and shall inquire with the boards of action taken against the prescribers and the board is required to respond within 30 days. Each board is required to report the total number of prescribers disciplined each year, as well as other information. TDH shall report a summary of the data and of the disciplinary actions to the chairs of the health committees.

The act also comprises a task force to create minimum disciplinary actions for prescribing practices that are a significant deviation from sound medical judgment. The board of medical examiners, osteopathic examination, dentistry, podiatric medical examiners, optometry, nursing and medical examiner's committee on physician assistants shall select one member each for the task force before September 1, 2018.

This act took effect for rulemaking on May 21, 2018 and takes effect July 1, 2018 for all other purposes.

[Public Chapter 1007](#)

This act allows for a prescription for a controlled substance to be partial filled if requested by the patient or the practitioner who wrote the prescription AND the total quantity dispensed through partial fills does not exceed the total quantity prescribed for the original prescription. The act lays out the requirements on the pharmacists and gives details regarding payments.

This act takes effect January 1, 2019.

[Public Chapter 1021](#)

This act allows for appeals of contested case hearings to be in the chancery court nearest the residence of the person contesting the agency action or at that person's discretion, in the chancery court nearest the place the action arose, or in the chancery court of Davidson County.

Petitions seeking review must be filed within 60 days after entry of the agency's final order.

This act takes effect July 1, 2018.

Public Chapter 1037

This act clarifies that a physician may accept goods or services as payment in a direct exchange of barter for healthcare services provided by the physician if the patient to whom the healthcare services are provided is not covered by health insurance coverage. This does not apply to healthcare services provided at pain management clinics.

This act takes effect July 1, 2018.

Public Chapter 1039

This legislation places limits and requirements on the amount of opioids prescribed and dispensed. It limits opioid prescriptions to up to a three day supply with a total of 180 MME (morphine milligram equivalents) for those three days. This limitation is subject to a number of exceptions under certain circumstances. These exceptions include up to a ten day supply with a total of 500 MME, up to a twenty day supply with a total of 850 MME for a procedure that is more than minimally invasive, and up to a thirty day supply with a total of 1200 MME when other reasonable and appropriate non-opioid treatments have been attempted and failed and the risk of adverse effects from the pain exceeds the risk of the patient developing an addiction or overdose. Prescribing under these exceptions requires the prescriber to check the controlled substance monitoring database, personally conduct a physical exam of the patient, consider non-opioid alternatives, obtain informed consent including counseling about neonatal abstinence syndrome and contraception for women of childbearing age, and document the ICD-10 code for the patient's primary disease (as well as the term "medical necessity" on thirty day prescriptions). These ten, twenty, and thirty day opioid prescriptions will only be filled by dispensers in an amount that is half of the full prescription at a time, requiring patients and pharmacists to consider whether the patient requires the full amount prescribed. There are still further exceptions for those patients undergoing active or palliative cancer treatment, receiving hospice care, diagnosed with sickle cell disease, administered to in a hospital, being treated by a pain management specialist or collaborating provider in a pain management clinic, who have received ninety days or more in the year prior to April 2018 or subsequently do so under one of the exceptions, receiving treatment for medication-assisted treatment, or suffering severe burns or major physical trauma.

This act took effect for rule purposes on May 21, 2018, and for all other purposes shall take effect July 1, 2018.

Public Chapter 1040

This act revises various provisions of the law regarding controlled substances and their analogues and derivatives, including updating identifications of drugs categorized in Schedules

I - V. The act also creates an offense for the sale or offer to sell Kratom, unless it is labeled and in its natural form. It is also an offense to distribute, sell, or offer for sale, kratom to a person under 21 years of age. It is also an offense to purchase or possess kratom if under 21 years of age.

This act takes effect July 1, 2018.

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

Ms. Parham stated the rule amendments that were voted by the Board are still in internal review.

New Business

Dr. Tharp currently serves as the representative for the Optometry Board on the Controlled Substance Monitoring Database (CSMD) committee. The committee meet on July 10, 2018 and discussed APPRISS, which is a system used for the integration of Electronic Health Records (EHR) and Controlled Substance Monitoring Database (CSMD). Ms. Tharp stated that there are currently twenty-eight (28) states that are involved and the governor wants all states to be included in this program. Ms. Tharp went on to say that the program is costly. The first year of cost is estimated at \$546,000.00, second year increase of \$18,900.00, and the third year up to one million dollars plus for a State wide interrogation of Electronic Health Records and Controlled Substance Monitoring Database (CSMD). The system will allow practitioners, pharmacist and all the hospital throughout the states access to review and monitor a patient's opioid use. Each Board is being asked to volunteer and allocate funds for a period of one (1) year to fund this program. Dr. Tharp stated Controlled Substance Monitoring Database (CSMD) Committee is asking each Board to volunteer and allocate money from the Board's reserved fund to help pay for the integration. Dr. Tharp asked Ms. Parham to look into the reserved funds. Kimberly Hodge stated every Board is required to stay in the black and remain self-sufficient each year. The Board requested that additional information be pulled and presented to the Board before or at the October 12, 2018 Board meeting.

Dr. Carlson briefly discussed the 2018 ARBO meeting in Denver, CO. He stated that three of the topics that received great attention and prompted a lot of discussion were telemedicine, public record request, and how each state handled the licensure denial process. Ms. Hodge stated that the administrative staff could close an applicant's file if all required documents weren't received within the required timeframe laid out in the Board's rules, but that the Board only had the authority to deny an application. Ms. Parham stated the Fresh Start Act that went into effect July 1, 2018 prohibits a Board from denying an application or renewal for a license/certificate/registration due to a prior criminal conviction that does not directly relate to the applicable occupation. Dr. Uhl asked if the administration team decides on how to handle an applicant's criminal background results. Yvette Vagle stated if they have a criminal record less than 10 years, the administrative office request the applicant to submit the final disposition from

the court and a letter of explanation for all charges. Ms. Hodge stated that upon receipt of the final disposition and explanation, the unit director and Board attorney consults to determine if the applicant should appear before the Board based upon his/her the criminal background check.

John Williams stated he is being asked a lot of question about telemedicine and how it applies to Optometry, he asked the Board to appoint a Task Force to adopt some rules for telemedicine.

Dr. Cooper stated ARBO has a new technology committee that is developing guidelines for State Boards as a reference point. After a brief discussion, Dr. Cooper asked that a discussion regarding a telemedicine task force be added to the October 2018 agenda. Dr. Tharp stated that she would contact ARBO and provide feedback at the next meeting.

Dr. Cooper stated at the ARBO meeting they discussed how State Boards handled public record request regarding a licensee's file. He stated that they discussed what documents are considered public records and what is considered private. Ms. Hodge stated that all applications that are submitted are deemed public record. Upon a public records request, the Boards are required to redact all social security numbers and criminal background checks.

Adjourn

With no other Board business to conduct, Dr. Cooper made a motion, seconded by Dr. Uhl to adjourn at 10:16 a.m. The motion carried.