

TENNESSEE BOARD OF OPTOMETRY MEETING MINUTES

DATE: November 8, 2019

TIME: 9:00 A.M., CT

LOCATION: Health Related Boards
Poplar Room
665 Mainstream Drive
Nashville, TN

BOARD MEMBERS

PRESENT: Linda Tharp, O.D., Chair
Torrey Carlson, O.D., Secretary
Tonya Reynoldson, O.D.
Kenneth Young, O.D.

BOARD MEMBERS

ABSENT: Christopher Cooper, O.D.
Nancy P. Strawn, Consumer Member

STAFF

PRESENT: Yvette Vagle, Board Administrator
Kimberly Wallace, Unit Director
Kaitlin Parham, Associate General Counsel

Dr. Tharp, Board Chair, called the meeting to order at 9:02 A.M. A roll call was conducted and a quorum was present.

Dr. Tharp stated the Board would like to welcome Dr. Kenneth Young as a new Board member.

Kimberly Wallace made the following announcement regarding the public comments sign-in sheet: We would like to make it known that Public Comments will be heard by this Board in regards to any topic that appears in today's agenda. A copy of the agenda is available on the table by the front door for anyone who would like a copy. For those who would like the opportunity to make a comment, we ask that your remarks are kept brief and respectful in nature. As a reminder, the Board is only at liberty to take action on items that are on today's agenda, which are previously posted in the Public Notice. Anyone who has a topic they would like the Board to review for possible action that is not on today's agenda is welcome to follow-up with a written request to the Board so that it may be added to the future Public Notice and Agenda.

Ms. Wallace introduced Mr. Brent Culberson, who recently joined the Health Related Boards serving as the new Assistant Commissioner.

Review/Approve July 10, 2019, Board Meeting Minutes

Upon review of the July 10, 2019, Board Meeting, Dr. Carlson made a motion, seconded by Dr. Reynoldson, to approve the minutes as written. The motion carried.

Office of Investigations

Ms. Wallace presented the investigative report for calendar year 2019 year to date; there are six (6) closed complaints, of those six (6) complaints; two (2) that were closed, two (2) Complaints were closed with a letter of concern, two (2) were closed with a letter of warning.

Investigative report shows they have four (4) new complaints, of those four (4) complaints; two (2) were for unprofessional conduct, one (1) was for criminal conviction and one (1) was for right to know violation.

Office of General Counsel

Kaitlin Parham 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

The rule amendments concerning internet renewal and continuing education passed the Government Operations committee in July, and went into effect on August 19, 2019.

The Telemedicine rules and contact lens examination amendment are currently going through the internal review process.

Public Chapter 243 was passed in the last legislative session that requires any licensure examinations given by a state agency to provide appropriate accommodations in accordance with the Americans with Disabilities Act (ADA). The Health Related Boards Division is working on drafting rule language that will apply to all health related boards under this Act. The Board will

need to vote later in this meeting if they agree for Health Related Boards to draft this rule language.

Disciplinary Activity

As of October 3, 2019, the Office of General Counsel had no open cases.

FY 2019 Year End Report

Butch Jack reviewed the FY 2019 closing report as of June 30, 2017 the Board had total expenditures of \$108,659.21. Mr. Jack said Board revenue fee totaled \$188,712.50. The current year net is \$27,891.65. LARS improvements were \$2,305.73 for a total cumulative carryover for FY 2019 of \$757,119.94.

Mr. Jack introduced Maria McCormick, she is new to the office and will be giving the reports in the future.

Administrative Report

Ms. Wallace gave a report from the October 10, 2019, Tennessee Association Optometric Physicians (TAOP) meeting, where she was asked to provide an update to the House of Delegates meeting on behalf of the Optometry Board. She touched on four (4) specific areas of interest during her presentation, including:

1. Information on the letter that the Board sent to Palmetto GBA in regards to the procedures which they had been denying claims.
2. Informed the attendees that work had begun on drafting of rules for Telehealth for Optometry.
3. Brief review of the two (2) year process that recently resulted in the finalization of rules changes that increased the continuing education requirements from thirty (30) hours to forty (40) hours for each license renewal cycle.
4. Provided information to the attendees about the repeal of the Annual Professional Privilege Tax that goes into effect on June 1, 2020, as it applies to Optometrists.

Ms. Wallace stated that John Tidwell and Yvette Vagle joined her in the exhibit hall booth on Thursday October 10, and Friday October 11, 2019. They had the opportunity to speak with many practicing professionals from across the state as well with several students. While in the exhibit hall they handed out copies of the 2019 Board Newsletter, a summary page of the new Rules, and copies of the complete set of new Rules. Ms. Wallace stated that they had received a considerable amount of positive feedback from the information presented at the House of Delegates meeting, and that overall, it was a beneficial experience for the Board to have had a presence at the event.

Yvette Vagle stated as of November 7, 2019 there are 1,324 licensed Optometrists.

Ms. Vagle stated from of July 9, 2019, through November 7, 2019, there were twenty two (22) new licenses, two hundred fifteen (215) renewals with one hundred forty-two (142) renewing online for a percentage of sixty six (66) percent, five (5) retired their licenses and four (4) licenses expired.

2020 Board meeting dates:

January 8, 2020, April 1, 2020, July 8, 2020 and October 9, 2020 (Tentative).

Review, approve/deny and ratify new licensure files

Ms. Wallace notified the Board that before considering the ratification list, there were licensee applications for review and the ratification list would be amended to include any/all that are approved.

1. **Karissa Anne Stelmach** – Ms. Wallace stated that an application for new licensure was received for Karissa Stelmach on August 1, 2019. She graduated with her Optometry degree on June 7, 2019, and in the employment history section of her application, Dr. Stelmach listed that since June 19, 2019, she has been working as an Optometrist for Eye Care Plus in Antioch TN, however, she does not hold a Tennessee Optometry license.

Ms. Wallace conducted a verbal employment verification with Dr. Stelmach's employer and they confirmed her start date of June 19, 2019, and her title of "Optometrist". After consultation with Board advising attorney, Kaitlin Parham, Ms. Wallace also conducted a phone conversation with Dr. Stelmach on August 21, 2019, wherein Dr. Stelmach confirmed the same start date of June 19, 2019, and occupational title of Optometrist. In addition, a brief review of Dr. Stelmach's employer website page titled "Doctors" showed her name and photo, however, that photo has since been removed.

Ms. Wallace referred to statute 63-8-113(a)(1)(2), whereby it is unlawful for any person not duly licensed in accordance with this chapter to engage in the practice of optometry or claim to be a practitioner of optometry, and confirmed that there is no statute or rule that provides any type of supervised practice until an individual is properly licensed with the Board of Optometry. Ms. Wallace also referred to rule 1045-02-.02(10)(c), noting that further clarification is needed before proceeding with licensure, therefore, Dr. Stelmach was present to allow the Board to conduct an applicant interview.

When questioned about practicing without a license, Dr. Stelmach responded that she was hired to be an Optometrist, but that it wasn't to be effective until she received her license approval, and until that time, she was working as an Ophthalmic Technician. Since her hire date of June 19, 2019, she had been working as a technician, and had not finalized any prescriptions or seen any patients alone.

Dr. Stelmach noted that she had waited until passing her injection skills exam before applying for licensure, and that she didn't realize the title "Optometrist" would be construed that she was being disrespectful to the Board or breaking the law, since she had graduated with her Doctorate of Optometry. Dr. Stelmach said that she had taken her injectable skills exam at the end of May, and then received her scores in the first week of July.

Dr. Stelmach confirmed that her employer was aware that she did not hold a TN Optometry license at the time of hire, and that she has never written any prescriptions in her time since graduation. She went on to explain that patients are not directly scheduled with her, however, the front desk would refer to her as "Dr. Stelmach" to patients. Dr. Stelmach also noted that this is similar in fashion to her experience during her external rotation, where she would accompany the Optometrist in the room with patients for educational purposes.

It was determined that Dr. Stelmach's application documents for licensure were complete as is - with the exception of the application having her occupational title listed incorrectly as "Optometrist". In regards to Dr. Stelmach's photo appearing on her employer website as one of their "Doctors", she confirmed that she was not informed of how or when the photo would be used when it was taken, rather, the employer sent multiple employees for photos at the same time.

The administrative process for the issuance of licenses was reviewed. When a completed application package with all supporting documents are received and in good order, as Director, Ms. Wallace can administratively approve the application, and have a "go-to-work" letter issued; that applicant's license will then be included on the list for ratification at the next regularly scheduled Board Meeting. If, however, there is something in the file that appears to not be in good order, then a file may be brought to the next regularly scheduled Board Meeting for review by the Board. In the case of Dr. Stelmach, because she reported her occupation title as "Optometrist" prior to holding a license, and it was confirmed by both Dr. Stelmach and her employer verbally, that provided grounds for the Board to review her file and conduct an applicant interview.

The Board Chair requested a comment from legal; Ms. Parham stated that it is unlawful for any person not licensed in accordance with the TN statutes to engage in the practice of Optometry.

The Board stressed that, ultimately, it is always the responsibility of each applicant and/or licensee to be aware of how their employer may be using their name or image in their advertising or other means of distribution or recognition of their position – for example, by periodically reviewing their employer's website. The Board went on to state that each applicant and/or licensee is responsible for their own actions, inclusive of reading and understanding the Rules and Statutes applicable to their profession, which they must attest to in the "Affidavit of Applicant" section of the license application.

Dr. Tharp made a motion for Dr. Stelmach to be approved for licensure, contingent upon completion of six (6) hours of course work/continuing education in ethics and submission of proof of completion to the Board Administrative Office. The motion was seconded by Dr. Reynoldson. The motion carried.

Ms. Wallace stated the administrative procedure to carry out this approved motion, whereby, Dr. Stelmach will need to complete the six (6) hours of continuing education in ethics and submit a copy of the proof of continuing education completion certificate(s) to the office, and as soon as it is received and found to be in good order, then the office can issue the unencumbered license, and Dr. Stelmach will receive a go-to-work letter. Ms. Wallace then asked the Board to also consider requiring Dr. Stelmach to re-complete and submit her application and her professional profile with her correct job title to ensure that she has a complete and correct file on record.

Dr. Carlson made a motion for Dr. Stelmach to re-submit her application documents, which was seconded by Dr. Young. The motion passed.

2. **Sukumar Pandit** – Dr. Pandit requested the Board to waive the requirement for the injections skill exam (ISE) portion of the NBEO. He passed his NBEO exams between the years of 2001 and 2003, which is before the ISE was a component of the exam. He graduated from an injectable approved school in 2003 and is licensed in New Jersey, California, and Pennsylvania, thus, his file meets the criteria as stated in Board policy for a waiver. Dr. Reynoldson made a motion to approve the ISE waiver, which was seconded by Dr. Carlson. The motion carried.

Ms. Wallace asked the Board to append the newly license list by adding Dr. Pandit to the ratification “newly licensed” list, since he was just approved for the ISE waiver.

Newly Licensed

Upon review, Dr. Carlson made a motion, seconded by Dr. Reynoldson, to approve the following applicants for licensure. The motion carried.

Katherine Elizabeth Allen
Jennifer Eunice Anderson Connell
Cynthia Boger
Meaghan Magee Clark
Elliott Kelsey Danielle
Zachary German
Kamil Annan Hill
Tyler Maxon
Christopher Lee Coffman McCollum
Shane Patrick Mulvihill

Minh Nguyen
Taylor Suzanna Nicks
Sukumar Pandit
Joseph Weldon Parker
Laurel E. Roberts
Kevan Smith
Anna Claire J. Spradling
Norman Douglas Streifel
Matthew Testa
Kiah Williams

Approve/Deny Reinstatement Applicants

Upon review, Dr. Reynoldson made a motion, seconded by Dr. Carlson, to approve the following reinstatement applicants. The motion carried.

Gilbert C. Blanks
Carrie Tobin Irvine

Amy Denise Henson

Correspondence

Palmetto GBA – The Board Administrative Office received an email from Palmetto regarding their quarterly DME list. Dr. Reynoldson made a motion to approve the list as it currently reads, seconded by Dr. Young. The motion carried.

Dr. Kaley Stinnett – The Board received a letter from Dr. Kaley Stinnett asking for clarification of the CE requirement as it pertains to new graduates and understanding the length of initial license cycles and why they vary from person to person. The Administrative Office has a clear procedure for the handling of pro-rata CE hours for the year of graduation from Optometry School and the way the birthday renewal system works, however, since this question is heard by the office a regular basis, the process is being presented on record.

Understanding CE requirements for the first license renewal requires looking at several components, including birth month, birth year, year of graduation, and initial license expiration date. An initial license length can range anywhere from 12 months to 35 months. In the case of “Example A”, the licensee birthdate is in May of an even year. Therefore, her license will always expire on 5/31 of even years. All initial licenses must be valid for a minimum of 12 months. She happened to get her initial license in June 2019, shortly after her birthday month had ended. This means she can’t have a renewal in 2020, because it would create a license that would only be valid for 11 months, since she has to renew in her birthday month. However, since she also has to renew in even years, her first license has to be valid until 5/31/2022, giving her 35 months on her initial license. If this same individual had been initially licensed in April or May of 2019, her initial license would have expired in May 2020, giving her just 12 or 13 months on the initial license.

Next, we look at the graduation year. Per Board Rule, a student is exempt from having to obtain CE for the year they graduate. To determine how many CE’s are required by the time of the first license renewal, if the licensee year of graduation is less than 24 months from the date of the initial license expiration, then the licensee is exempt from one-half, or 20 hours, of the renewal requirement of CE hours. If the license expires more than 24 months from the calendar year of graduation, they are responsible for the entire 40 hours of renewal requirement CE hours.

After the initial license expires and is renewed, every licensee renewing after January 1, 2020, is required to complete all 40 hours of CE in the 24 months prior to each subsequent license

expiration, based on the new Rule that goes into effect on January 1, 2020. Licensees renewing prior to January 1, 2020, are subject to a 30 hour CE requirement, based on the Rule that is applicable through December 31, 2019.

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

Chapter 243 - Ms. Parham reviewed Chapter 243 which requires any agency that administers their own test(s) to provide accommodations to anyone with disabilities; the Office of General Counsel has advised the Health Related Boards that the best course of action is for Health Related Boards to develop a Rule that covers all the Boards, providing instruction for making the jurisprudence exams accessible. Dr. Reynoldson made a motion to let Health Related Boards proceed with the Rule making rather than the Optometry Board drafting their own Rule, seconded by Dr. Young. The motion carried.

ISE Waiver Policy - Ms. Parham presented an updated version of the Policy Statement on Injectable Certification and Licensure (ISE waiver), which the Board requested at the last Board meeting due to changes in the exams. Dr. Reynoldson made a motion to approve the amended version of the Policy Statement on Injectable Certification for Licensure, seconded by Dr. Carlson. The motion carried.

Ms. Wallace led a brief discussion with the Board on the usage of the ISE waiver policy by the Administrative Office during the licensure process. It was noted that the current procedure calls for all applicants whose file is in good order, but who need the ISE Waiver, to have to wait until the next regularly scheduled Board Meeting to have the Board vote to approve the waiver to be applied to the individual. Ms. Wallace requested the Board consider, for those applicants who clearly meet the criteria of the waiver policy, that she - as the Director and Board-appointed designee - be authorized to apply the waiver and approve the file as she would any other file that does not require the waiver, thus, expediting the licensure process for applicable individuals. Dr. Carlson made a motion to approve the Director to have the authority to approve eligible ISE waiver applicants and issue their go to work letter, then have a separate list of these individuals on the Board ratification list, seconded by Dr. Reynoldson. The motion carried.

Ms. Parham reviewed questions that Dr. Reynoldson had posed for clarification regarding telemedicine:

1. When practicing at a Tele-Optometry site, does a licensed Optometrist have to be onsite to fit contacts?
2. Is it still a requirement that a licensed Optometrist must be on the premises for the optical staff to dispense glasses, unless that optical staff includes a licensed Dispensing Optician?

Dr. Reynoldson stated at the last Board meeting she attended. Dr. Cooper noted that the contact lens follow up exam Rules are outdated. Rule 1045-02-.08(2)(ii)(VI) was referenced, wherein, a minimum of two follow up visits over a minimum period of 2 months which shall occur prior to

determining the contact lens prescription. At each visit visual acuity and biomicroscopic evaluation of the eyes with and without lenses will be performed.

Ms. Parham reviewed the redline draft of the Rules currently under revision and that proposed new language is going through internal review to clarify to medically necessary follow-up examinations. Dr. Reynoldson made a motion to replace the language not only for Tele-Optometry, but also in the Rules for general practice as well, that it be updated to “medically necessary follow-up examinations”, seconded by Dr. Carlson. The motion carried.

Discuss Old & New Business

Ms. Parham reviewed the letter that was mailed to Palmetto GBA, which she drafted it later went through the internal review process. Dr. Tharp then reviewed the letter and signed it, and the letter was sent out on October 4, 2019. As of the date of this meeting, there has been no response from Palmetto. The Board instructed Ms. Parham to email a copy of the letter to Dr. Graves at Palmetto to see if they will get a response via that avenue, as well as to re-send another copy of the letter via certified mail.

The Board went through the CPT codes to approve/deny:

- 95004 - Dr. Reynoldson made a motion deny 95004, seconded by Dr. Young.
- 96136 - Dr. Reynoldson made a motion to approve 96136, seconded by Dr. Carlson.
- 97750 - Dr. Carlson made a motion deny 97750, seconded by Dr. Reynoldson.
- 99406 - Dr. Carlson made a motion to approve 94406, seconded by Dr. Reynoldson.
- 99408 - Dr. Reynoldson made a motion to approve 99408, seconded by Dr. Carlson.
- 99409 - Dr. Reynoldson made a motion to approve 99409, seconded by Dr. Carlson.
- 99483 - Dr. Reynoldson made a motion deny 99483, seconded by Dr. Young.
- 99490 - Dr. Reynoldson made a motion deny 99490, seconded by Dr. Carlson.
- G0396 - Dr. Reynoldson made a motion to approve G0396, seconded by Dr. Young.
- G0397 - Dr. Reynoldson made a motion to approve G0397, seconded by Dr. Young.
- G0438 - Dr. Reynoldson made a motion to deny G0438, seconded by Dr. Young.
- G0439 - Dr. Reynoldson made a motion to deny G0439, seconded by Dr. Young.
- G0442 - Dr. Reynoldson made a motion deny G0442, seconded by Dr. Carlson.
- G0443 - Dr. Reynoldson made a motion deny G0443, seconded by Dr. Carlson.
- G0506 - Dr. Reynoldson made a motion deny G0506, seconded by Dr. Carlson.

Dr. Tharp briefly discussed the last CSMD meeting she attended; stating that the next CSMD meetings are:

February 3, 2020
April 7, 2020
June 23, 2020
October 6, 2020

Dr. Tharp asked for another Board Member to volunteer for the CSMD meeting to represent Optometry Board for 2020, and Dr. Reynoldson accepted this role.

Call for Public Comment

No comments were made.

Adjourn

With no other Board business to conduct Dr. Reynoldson made a motion, seconded by Dr. Carlson to adjourn at 10:48 a.m. The motion carried.



Board Approved



Date