

TENNESSEE BOARD OF OPTOMETRY MEETING MINUTES

DATE: October 12, 2018
TIME: 10:00 A.M., ET
LOCATION: Park Vista Hotel
705 Cherokee Orchard Road
Gatlinburg, TN 37738

BOARD MEMBERS

PRESENT: Linda Tharp, O.D., Chair
Torrey J. Carlson, O.D., Secretary
Christopher Cooper, O.D.
Nancy Strawn, Consumer Member

BOARD MEMBER

ABSENT: Jennifer Uhl, O.D.
Tonya Reynoldson, O.D.

STAFF

PRESENT: Yvette Vagle, Board Administrator
Kimberly Hodge, Interim Unit 3 Director
Kaitlin Parham, Assistant General Counsel

Dr. Tharp, Chair, called the meeting to order at 10:07 A.M. A roll call was conducted and a quorum was present.

Review/Approve July 11, 2018 Board Meeting Minutes

Upon review of the July 11, 2018 Board Meeting minutes Dr. Carlson made a motion, seconded by Dr. Cooper to approve the minutes as written.

The motion carried.

Office of General Counsel

Ms. Parham read the Conflict of Interest statement reminding the Board to disclose to her 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 and continuing education have gone through the internal review process and are scheduled for a rulemaking hearing at the Board meeting on January 16, 2019 at 9:00 AM.

Disciplinary activity

As of September 25, 2018, the Office of General Counsel had no open cases.

Office of Investigations

Kim Hodge stated there are currently no new complaints filed. One (1) new complaint has been received year to date, and the disciplinary office has closed a total of three (3) complaints. Ms. Hodge stated that two of the complaints received a letter of warning, and the one (1) complaint for unprofessional conduct was closed out with a letter of warning.

FY 2018 Year End Report

Ms. Hodge stated the FY 2018 report as of June 30, 2018 the Board had total expenditures of \$134,586.76. Ms. Hodge said Board revenue fee totaled \$178,650.00. The current year net is \$44,063.24. LARS improvements were \$7,087.02 for a total cumulative carryover for FY 2018 of \$731,534.01.

Administrative Report

Yvette Hernandez stated as of September 10, 2018 there are 1,298 licensed Optometrists.

In July 2018, there were eight (8) new licenses and twenty-two (22) renewals.

In August 2018, there were two (2) new licenses and forty-seven (47) renewals.

In September 2018, there were three (3) new licenses and forty (40) renewals.

Ms. Hernandez stated that during the months of July, August and September 2018 five (5) practitioners retired their licenses and three (3) practitioner licenses expired.

Ms. Hernandez completed her report by reviewing the scheduled Board meeting dates for 2019:

January 16, 2019, April 3, 2019, July 10, 2019, October 11, 2019 – Gatlinburg, TN (Tentative)

Newly Licensed

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

Amburn Harrison
Laura Ann Brown
Mitchell Brown
Jessica Wei-Yee Chan
Brooke Lane David
Amber Terese Delley
Mia Guillory
Shannon Alisha Howell
Brooke Nicole Jones-Cannon
Katlyn Adele Martin

Chelsea Amanda Moran
Elizabeth N. Murray
Holly Pendel
Lindsey Marie Petrie
Emma Elizabeth Pope
Daniel Russell Powell
Adrienne R. Ray
Lorig Sildiryan
Yueren Wang
Andrea Win-Lim Yee

The motion carried.

Approve/Deny Reinstatement Applicants

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

Tabitha Duncan Combes
Patrick Shorter

Adam Joseph Coutts
Leslie Brian York

The motion carried.

Correspondence

CPT Codes - Dr. Cooper introduced Zach McCarty-President of Tennessee Association Optometric of Physicians (TAOP). Mr. McCarty requested that the Board review and update the CPT codes used for billing of services. He stated that Palmetto/Medicare has denied claims submitted by Optometrist stating that they are not in the scope of practice. The denial of claims effects Medicare patients and other patients with insurance seeking care in the state of Tennessee. After a detailed discussion Dr. Cooper made a motion, seconded by Dr. Carlson to have the administrative office to post the current approved CPT codes on the Board's website. Dr. Cooper further agreed to work with the Administrative staff to create an updated list of CPT codes that the Board could take action on at the January 16, 2019 Board meeting. The motion carried.

Dr. Bess presentation of the Gateway Electronic Health Record (EHR) integration

Dr. Bess presented and discussed the Departments plan to integrate the Controlled Substance Monitoring Database (CSMD) searches and Clinical Risk Indicators (CRI) into Gateway Electronic Health Records (EHRs) and pharmacy systems beginning early 2019. Dr. Bess introduced Dr. Reagan, Assistant Commissioner, who was present via conference call. Dr. Bess stated that Tennessee has struggled with the epidemic of opioids misuse and abuse. One of the tools that have been utilized to fight the epidemic is the use of the Controlled Substance

Monitoring Database (CSMD), which was established in 2006. Dr. Bess and Dr. Reagan stated that each of the professional licensing Boards who support the CSMD (except Board of Veterinarian Examiners) could advocate for their licensees by approving the use of reserve funds to help support two (2) year of the Gateway integration project to access the CSMD. After a discussion, the Board agreed to provide funding contingent on all of the other licensing Boards that are part of the CSMD Task Force agreeing to provide a portion of their reserve funds for the first two (2) years. Dr. Tharpe made a motion, seconded by Dr. Cooper, that Optometry Board be part of the CSMD Gateway EHR integration and provides the requested reserve funding of \$12,053.52 for the first year and \$18,080.28 for the second year to combat the opioid crisis. The motion Carried.

Discuss August 29, 2018 Opioid Minimum Disciplinary Standards Task Force meeting

Ms. Hodge stated that Mary Katherine Bratton, Chief Deputy Director of the Office of General Counsel, distributed the proposed draft rules from the Opioid Minimum Disciplinary Standards Task Force for the Boards to review. Ms. Bratton requested that the Board's review the proposed rules and submit any suggestions, questions, and/or concerns regarding the substance or language of the rules to the administrative staff in a written format.

Discuss and take actions if necessary regarding rules for telemedicine and create a task force

Gary H. Brough, OD provided a detailed presentation about telemedicine and Tele-Eye Care/Teleoptometry (technology in eye care). He discussed the importance of ensuring patient safety and quality eye care in a changing technology landscape, and the different rules and terms that are currently utilized by States that have rules for Telemedicine. Dr. Carlson made a motion, seconded by Dr. Cooper to create a task force to work on creating rules for telemedicine. Dr. Carlson agreed to be part of the task force with Ms. Parham and others from the Tennessee Optometry community. The motion carried.

ARBO brochure

The Board reviewed the ARBO brochure and talked about the OE tracker for continuing education. Ms. Hodge stated that the Administrative office would work with ARBO in order to generate a letter that would be sent out with the renewal application informing licensees of the continuing education requirements. Upon creation of the letter, it would be posted on the Optometry web page.

Review and discuss report from OGC regarding attendance at the FARB Law Conference

Kaitlin Parham gave this presentation to the Board regarding the FARB conference she attended:

Ms. Parham thanked the Board for providing approval of funding for her to attend the FARB Regulatory Law Seminar in Portland, Oregon.

Some of the topics included statutory interpretation, sovereign immunity, FTC Regulations, the Administrative Procedures Act, and potential liability of board members.

First Ms. Parham briefly discussed statutory interpretation. The US Supreme Court case Chevron v. Natural Resource Defense, discusses if an agency or the Court should interpret a law. The US Supreme Court held that the Court must defer to an agency's interpretation of the laws it is responsible for implementing. That means that the Courts cannot interpret state agency laws and regulations, but the individual boards can.

Second, she talked about sovereign immunity. The concept of sovereign immunity is discussed in the Eleventh Amendment, which states that "The Judicial Power of the United States should not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." The big question we discussed was whether federal sovereign immunity applies to state regulatory boards. The presenter mentioned that federal sovereign immunity can apply to a regulatory board when the board can demonstrate that they are the functional equivalent of a state, or an arm of the state. Ways to determine if a board is the functional equivalent of a state is if money judgements were paid by the state, and if the regulatory board was created by statute.

Finally, she discussed the potential liability of regulatory board members. The main points of discussion were the Open Meetings Act and the Open Record Act. For the Open Meetings Act, all board business must only be discussed during the board meetings. She instructed the Board members to be careful with email chains, because you could inadvertently discuss board business without meaning too. The Open Records Act means that a citizen can request any state records. State records can also include emails and text messages, which might be from your personal email account and personal cell phone if you discuss board business on those devices.

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

No Action

Adjourn

With no other Board business to conduct Dr. Carlson made a motion, seconded by Dr. Tharp to adjourn at 12:15 p.m. The motion carried.