

**BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS
MINUTES**

Date: November 6, 2017

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

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

Members Present: Juanita Honeycutt, Board Chair
Florence Weierbach, PhD, Vice-Chair
Lakecia Harper, Secretary
Cynthia Wheeler, NHA
Barbara Trautman, Consumer Member
Marilyn Key, NHA
Nyda Bays, NHA
Jano Janoyan, DO

Member(s) Absent: Vincent Davis, Director of Health Care Facilities

Staff Present: Michael Sobowale, Unit Director
Mary V. Webb, Board Administrator
Caroline Tippens, Assistant General Counsel
Lori Leonard, Disciplinary Coordinator, Office of Investigations
Noranda French, Finance Officer

Call to Order

Ms. Webb conducted a roll call vote. With a quorum present, Ms. Honeycutt, Board Chair, called the meeting to order at 9:02 A.M.

Minutes

A motion was made by Ms. Trautman, seconded by Ms. Harper, to approve the minutes of the August 7, 2017, 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.

Rules:

The Rules for the fee decrease, which took place on October 23, 2017, went through a hearing before the Joint Government Operations Committee with no issue, and there are currently no rules in process. A copy of the rulemaking process flow chart, which explains the timeline for rulemaking, was added to the meeting electronic book for board members' review.

The Board approved Ms. Tippens to attend the FARB Regulatory Law Seminar, in Savannah, GA on October 5-8, 2017. At the conference Ms. Tippens received additional information regarding the North Carolina State Board of Dental Examiner v. The federal Trade Commission (FTC) case as provided below:

Summary of Discussion of North Carolina State Bd. of Dental Examiners v. FTC Case

This case arose when the North Carolina State Board of Dentistry issued Cease and Desist Letters to forty-six (46) non-dentists who were actively involved in the practice of teeth-whitening. The cease and desist letters warned that the unlicensed practice of dentistry was a crime. As a result, many non-dentists ceased the practice of teeth-whitening. However, the definition of the practice of "teeth whitening" was not defined in the Board's Rules as the practice of dentistry. The Federal Trade Commission ("FTC") then filed an administrative complaint alleging anti-competitive action and restraint of trade under the Sherman Anti-Trust Act. Generally, actions by a State are not subject to the Sherman Anti-Trust Act and are immune.

The issue in this case was whether or not the North Carolina Board's actions were protected under Anti-Trust immunity. The United States Supreme Court held that because controlling number of board members are "active market participants [i.e. practicing dentists]" the State can only invoke state action immunity if "actively supervised" by the State. Here, the North Carolina Board of Dentistry was acting without State supervision and was not immune from the FTC's Anti-Trust suit. According to this decision, "active supervision" means that a Board must have actual supervision by the State, not just potential supervision. Such supervision requires review of the substance of a Board's decision, not just its procedure. State supervision must include veto or modification power of a Board's decision, but such supervisor must not be an active market participant itself. Here, cease and desist letters were a particular problem, as there was no ability for State supervision, such as judicial review.

As a result of this decision, the TDOH Office of General Counsel is reviewing all of Health Related Boards and may consider pursuing potential legislation.

The Federal Trade Commissioner presented at the conference. Tara Koslov indicated that FTC is still investigating various regulatory boards across the United States for anti-competitive behavior.

Legislative Updates

Michael Sobowale, Board Director discussed Public Chapter 240. The legislation will 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.

At the August 7, 2017 meeting, a motion was passed by the Board for the Office of General Counsel (OGC) to do a research on the issue of the Board issuing a temporary/limited license and present their findings to the Board. The Office of General Counsel will update the Board on the status of this request.

Office of Investigations

Lori Leonard, Office of Investigations Disciplinary Coordinator, reported the following to the Board: There was one (1) revoked licensee that is currently being monitored for compliance. She also reported that a total of nine (9) new complaints have been received up to date out of which eight (8) are closed. The office currently has four (4) open complaints.

Financial Report

Ms. Noranda French reported the financial report for fiscal year ending June 30, 2017, as follows:

Total direct expenditures for the Board were \$61,758.00; Total Allocated Expenditures were \$34,209.57 for a Total Expenditures amount of \$95,967.57. Board Fee Revenue was \$97, 925.00 for a Current Year Net of \$1,957.43. The Board's portion of LARS System Improvements was \$5,566.57 leaving the Board with a Cumulative Carryover amount of \$205, 296.51. Ms. French reminded the Board that the new fee decrease just went into effect on October 23, 2017, and before considering whether any additional fee changes are needed, the Board should wait until a year to see where their finances stand.

Applicant Interviews/File Reviews

Administrator-in-Training (AIT) Applicants

A. Zachary Bell- Mr. Bell was not present. Ms. Wheeler made a motion, seconded by Ms. Trautman, to approve Mr. Bell's application for a six (6) month AIT program. The motion carried.

B. Savannah Choate- Ms. Choate was present. Dr. Weierbach made a motion, seconded by Ms. Trautman, to approve Ms. Choate's application for a six (6) month AIT program. The motion carried.

C. Ashley Crandall - Ms. Crandall was not present. A motion was made by Ms. Wheeler, seconded by Ms. Trautman, to approve Ms. Crandall's application for a six (6) month AIT program. The motion carried.

D. Jeanne Franks- Ms. Franks was present. A motion was made by Dr. Weierbach, seconded by Ms. Key, to approve Ms. Franks' application for a six (6) month AIT program. The motion carried.

E. Leonid Malenchi- Mr. Malenchi was not present. A motion was made by Dr. Weierbach, seconded Ms. Trautman, to approve Mr. Malenchi's application for a six (6) month AIT program. The motion carried.

F. Rhonda Nelson- Ms. Nelson was not present. A motion was made by Dr. Weierbach, seconded by Ms. Trautman, to approve Ms. Nelson's application for a six (6) month AIT program. The motion carried.

G. Steven Sedlacko- Mr. Sedlacko was not present. A motion was made by Ms. Harper, seconded by Dr. Weierbach, to approve Mr. Sedlacko's application for a six (6) month AIT program. The motion carried.

H. Sandra Smith – Ms. Smith was not present. A motion was made by Dr. Weierbach, seconded by Ms. Harper, to approve Ms. Smith's application for a six (6) month AIT program. The motion carried.

I. Julie West – Ms. West was not present. A motion was made by Ms. Harper, seconded by Ms. Wheeler, to approve Ms. West's application for a six (6) month AIT program. The motion carried.

J. Jenna Wetherholt – Ms. Harper recused herself. Ms. Wetherholt was not present. A motion was made by Ms. Wheeler, seconded by Ms. Key, to approve Ms. Wetherholt's application for a six (6) month AIT program. The motion carried.

Reciprocity Applicants

A. Katherine Crowell- Ms. Crowell was present. A motion was made by Dr. Weierbach, seconded by Ms. Key, to approve Ms. Crowell's reciprocity application for a license. The motion carried.

B. Donovan Dame- Mr. Dame was present. Mr. Dame's application was presented before the Board due to a conviction in 2009 and 2011 for 1st and 2nd offenses and convictions for Intoxication in a Public Place. Mr. Dame explained that his past arrests occurred while he was in college at the ages of 22 and 24. Mr. Dame further reported that he completed two (2) alcohol-related treatment programs. A motion was made by Ms. Wheeler, seconded Ms. Trautman, to approve Mr. Dame's application for licensure with no conditions. The motion carried.

C. Michael Maxwell – Mr. Maxwell was present. A motion was made by Dr. Weierbach, seconded by Ms. Harper, to approve Mr. Maxwell's application for a license. The motion carried.

D. Max Schankerman – Mr. Schankerman was not present. A motion was made by Dr. Weierbach, seconded by Ms. Wheeler, to approve Mr. Schankerman's application for a license. The motion carried.

E. Heidi Shirley – Ms. Shirley was not present. A motion was made by Dr. Weierbach, seconded by Ms. Trautman, to approve Ms. Shirley's application for a license. The motion carried.

F. Jeffrey Stidam – Mr. Stidam was not present. A motion was made by Ms. Wheeler, seconded by Ms. Harper, to approve Mr. Stidam’s application for a license. The motion carried.

G. Bryan Wann – Mr. Wann was not present. A motion was made by Ms. Wheeler, seconded by Ms. Harper, to approve Mr. Wann’s application for a license. The motion carried.

C. NAB applicants

A. Annette Reeves – Ms. Reeves was present. The Board at its March 7, 2016 board meeting denied the application of Ms. Reeves to sit for the NAB because it was determined that she would need to complete an additional twenty (20) hours of long term training. Since that time Ms. Reeves has completed the required twenty (20) months of training. A motion was made by Dr. Weierbach, seconded by Mr. Trautman, to approve Ms. Reeves to sit for the NAB examination. The motion carried.

B. Jessica Stipes – Ms. Stipes was not present. A motion was made by Ms. Harper, seconded by Ms. Key, to approve Ms. Stipes to sit for the NAB examination. The motion carried.

Ratification of Initial Determinations

Initial Licenses

Asmerily, Rachel
Lewis, Nicholas Porter
Gehrke, Abigail
Mayer, Charles Anthony
Royer, Hilary Ann
Tackett, Thomas Terry
Vaden, Ryan Patrick

A motion was made by Dr. Janoyan, seconded by Ms. Trautman, to approve the list of initial licensees as presented. The motion carried.

Reinstatements

Wockenfuss, Gene Roger
Zack, David C.

A motion was made by Ms. Harper, seconded by Ms. Trautman, to approve the list of reinstatement licensees as presented. The motion carried.

Administrator's Report

Mary V. Webb presented the Board Administrative report.

A. Statistical Report

The Board has 804 total active licensees as of October 31, 2017.

B. Licensing activities from August 2, 2017 through October 31, 2017:

New applications received- 20
New licenses issued - 5
Reinstatements: 2
Number of paper renewals – 19
Number of renewals on line - 56
Number of licensees who retired - 5
Failed to Renew/Expired Licensees - 15

The online renewals constitute a usage rate of approximately 75% 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.

All Board positions are currently filled.

Attendance at Conferences and Meetings

THCA Music City Conference - A motion was made by Ms. Trautman, seconded by Ms. Harper, to approve attendance for any Board member who wished to attend the Tennessee Health Care Association Conference from August 27-30, 2017 in Nashville, Tennessee. The motion carried.

Health Care Facilities Waivers

At the October 4, 2017 Health Care Facilities Licensing Board meeting, the following Nursing Homes with Temporary Nursing Homes Administrators were approved for Interim Licenses:

1. Lauderdale Community Living Center
2. Quince Nursing and Rehabilitation Center, LLC
3. Pickett Care and Rehabilitation Center
4. Hardin County Nursing Home

5. Signature Healthcare at Saint Francis
6. Little Creek Sanitarium
7. Claiborne Health and Rehabilitation Center
8. Kindred Nursing and Rehabilitation-Loudon
9. Kindred Nursing and Rehabilitation-Smith County
10. Signature Healthcare at Methodist
11. Diversicare of Smyrna

Ms. Tippens inquired whether the Board's administrative Office will be willing to send a letter to Health Care Facilities explaining that the letter granting initial authorization to practice ("go to work" letters) will allow the newly licensed administrator to practice until the full license has been ratified at the next scheduled board meeting. Mr. Sobowale stated that he would look into how the staff can assist. The Board also asked the staff if they would send Health care Facilities a copy of the ratified list of all approved applicants for licensure. The administrative office would be willing to comply with this request.

Report on Conferences attended

THCA Music City Conference – Ms. Honeycutt attended the conference and reported that the conference was very beneficial and standard.

Follow-Up on Report on June 2017 NAB Conference - Mr. Davis attended the NAB Conference in June where the Health Services Executive (HSE) credential for new examination and licensure qualification was discussed and gave his report at the August meeting. At the August meeting, the Office of General Counsel had been requested by the Board to research the HSE credential guidelines to see how it is set up and report their findings back to the Board.

Ms. Tippens explained to the Board that since she was not at the August board meeting, she will confer with Mr. Vincent Davis about the NAB HSE credential and bring that information back to the Board at the March 2018 meeting. Ms. Tippens also requested Ms. Harper to provide a report to the Board on the topic at the March meeting since she will be attending the November 8-10 NAB conference.

A motion was made Ms. Honeycutt, seconded by Wheeler to approve two (2) representatives to attend the FARB 42nd Annual Conference in Coronado, CA – January 25-28, 2018. Dr. Weierbach confirmed that she would like to attend the meeting. The motion carried.

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

Caroline Tippens discussed Public Chapter 240 which allows 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. Ms. Tippens explained to the Board the requirements that a licensee whose license has expired, and who has been out of

the profession for at least five (5) years, has to fulfill to get the license reinstated. Ms. Tippens stated that she will present draft of a policy statement that the Board can review and consider for adoption at the March 5, 2018 board meeting.

A motion was made by Dr. Weierbach, seconded by Ms. Harper, to approve the proposal for the Board to adopt a limited license approval policy statement. The motion carried.

Adjournment

There being no further business, a motion was made by Ms. Honeycutt, seconded by Dr. Weierbach, to adjourn the meeting. The motion carried.

The meeting adjourned at 11:28 A.M.

Juanita Honeycutt, NHA, Chair

Date

These minutes were ratified by the Board at the March 5, 2018 meeting.