

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

DATE: June 4, 2018

TIME: 9:00 a.m. Central Time

LOCATION: Iris Room
665 Mainstream Drive
Ground Floor, Iris Conference Room
Nashville, TN 37243

MEMBERS PRESENT: Juanita Honeycutt, Board Chair
Florence Weierbach, PhD, Vice Chair
Jano Janoyan, Physician
Cynthia Wheeler, NHA
Barbara Trautman, Consumer Member
Marilyn Key, THA

MEMBERS(S) ABSENT: Vincent Davis, Director of Health Care Facilities
Lakecia Harper, Nursing Home Representative
Nyda A. Bays, Nursing Home Administrator

STAFF PRESENT: Michael Sobowale, Unit Director
Mary V. Webb, Board Manager
Teresa Benitez, Board Administrator
Caroline Tippens, Assistant General Counsel
Lori Leonard, Disciplinary Coordinator, Office of Investigations

1. Call to Order

Ms. Teresa Benitez conducted a roll call vote. With a quorum being present, Ms. Honeycutt called the meeting to order at 9:03 A.M.

2. Minutes

A motion was made by Ms. Trautman and seconded by Ms. Wheeler, to approve the minutes of the March 5, 2018, board meeting as written. The motion carried.

3. Office of General Counsel Report

Legal Report

Caroline Tippens, Assistant General Counsel, presented the Office of General Counsel report. There are no open cases for the board. There are no rules in process; the amendment to the fee schedule in the rules has already taken effect.

Ms. Tippens also informed the board that 110th General assembly adjourned in April 25, 2018.

1. Board Policy #81-Unexpected Loss of Nursing Home Administrators-

Allow a licensed nursing home that has had an unexpected loss of their licensed nursing home administrator to waive the requirement for a TN licensed nursing home administrator for a period of one (1) year to coincide with scheduled Board meetings if the following guidelines are met:

- Number of Licensed beds
- Date of last day of employment of previous administrator
- Date of hire and name of temporary administrator
- Is temporary administrator to become the permanent administrator?
- If Temporary administrator seeking nursing home administrator licensure in TN, date of BENHA Board presentation
- List of states in which temporary administrator has a nursing home administrator's license; if so, where and what is the current standing of that license.

The granting of a consent waiver by the Board for Licensing Health Care Facilities is conditioned upon the facility maintaining a temporary administrator until a permanent administrator is hired. If the temporary administrator were to change, notice must be made to the Board for Licensing Health Care Facilities.

This policy will take effect on June 6, 2018.

Ms. Tippens stated that the loss is due to inconsistency in temporary Administrator positions (those with a waiver) staying in that position. The Health Care Facilities will now provide a one year temporary administrator permit (waiver) so that that facility does not have to make a request for every administrator that they have to replace; with the condition that the facility must provide the above listed requests to HCF.

The waiver will prevent the facility from being cited for not having the appropriate administrator during the approved period of time.

Ms. Tippens made a suggestion to the board to make an adjustment for the NHA board meetings to take place after the Health Care Facilities Board meeting. Board members decided that it is best to discuss the amendment at the next board meeting in August 6, 2018.

Ms. Honeycutt commented that because of the length of time that the waiver will be granted, Healthcare Facilities should consider some type of reporting mechanism so that the board is aware of the administrative changes at certain facilities.

Whenever there is change in policy the board of healthcare facilities publishes the change in a policy in the TN.Gov website and also mails a letter to the licensed facilities

Dr. Weierbach made a motion, seconded Ms. Trautman, for Ms. Honeycutt to represent the BENHA at the HCF meeting on June 6, 2018.

Dr. Weierbach made a motion, seconded by Ms. Wheeler for Ms. Honeycutt to request a task force for both boards to collaborate and review the policy in more details. The motion carried.

4. Office of Investigations

Lori Leonard, disciplinary coordinator, presented the investigative and disciplinary report as follows: her office is currently monitoring one (1) revoked license; she has not paid any of her costs. So far, there are four (4) new complaints. Two (2) of the new complaints were for unlicensed practice, one (1) for unprofessional conduct and one (1) for failure to supervise. The office has not closed any complaints this year. There are nine (9) currently opened complaints that are pending investigation and/or review.

5. Reports and/or request from the Division of Health Licensure and Regulations

There was no update to the last financial report to present to the Board.

6. Applicant Interviews/File Reviews

A. AIT Applicants

- 1. Heather Stafford-** Ms. Stafford was not present. Two representatives were present on behalf of Ms. Stafford - Mr. Mabry and Carolyn Olson, from Mabry Health Care and Rehab Center. Ms. Stafford requested to keep her position as MDS Coordinator while going through the AIT Program being that Mabry Health Care and Rehab Center is the only facility in that rural area.

After a lengthy discussion by the board members, Dr. Weierbach made a motion, seconded by Ms. Wheeler, to grant a waiver in writing for Ms. Stafford to complete her AIT program while also maintaining her current position as the MDS, with the condition that AIT will be extended up to eight months. Ms. Stafford will be allowed to complete her MDS duties in a fifteen (15) clock hours not to exceed twenty (20) clock hours per week. The motion was based on the fact that the facility is the only one in that rural area (county), therefore, it will be difficult to fill the MDS position. Ms. Stafford must present progress reports at the next two board meetings in August and November until the AIT program is completed. The AIT cannot exceed one year.

A roll call vote was conducted by Ms. Benitez and the votes were as follows:

Juanita Honeycutt, Board Chair- No
Florence Weierbach, PhD, Vice Chair- Yes
Jano Janoyan, Physician- Yes
Cynthia Wheeler, NHA- Yes
Barbara Trautman, Consumer Member- Yes
Marilyn Key, THA – Yes

By a majority vote, the motion passed.

Daniel Goodge – Mr. Goodge was present. Mr. Goodge requested approval to complete his AIT program at multiple facilities. There are two campuses (Knoxville and Mayville); the Knoxville campus has two different nursing home facilities that are right next to each other. His preceptor is approved at two facilities but not approved as NHA at the Maryville facility. Mr. Goodge would be alternating between buildings. He is going to train in one facility and work at a different facility.

Ms. Wheeler made a motion, seconded by Ms. Key, to approve Mr. Goodge to complete his AIT program at multiple facilities under the same preceptor. The motion carried.

B. Reciprocity Applicants

1. **Tammy Scott** – Ms. Scott was present. After review by the Board and discussion with Ms. Scott, a motion was made by Dr. Janoyan, seconded by Ms. Wheeler, to approve Ms. Scott for licensure by reciprocity. The motion carried.
2. **Nicole M. Jackson-** Ms. Jackson was not present. After review and discussion by the board, Dr. Janoyan made a motion, seconded by Ms. Trautman, to approve Ms. Jackson for licensure by reciprocity. The motion carried.
3. **Daniel G. McKenzie-** Mr. McKenzie was not present. After review and discussion by the Board, Dr. Weierbach, made a motion, seconded by Ms. Trautman, to approve Mr. McKenzie for licensure by reciprocity. The motion carried.
4. **Chris Plumlee-** Mr. Plumlee was not present. After review and discussion by the board, a motion was made by Dr. Janoyan, seconded by Dr. Weierbach, for Mr. Plumlee to appear before the board at the next board meeting on August 6, 2018, to answer questions pertaining to his application, specifically the status of his Mississippi license, and an indication showing on his background check. He is to provide official court documents. The motion carried.

C. NAB Applicants

1. **Dorka Ellis- Ms. Ellis was present.** After review and discussion of her file, Ms. Wheeler made a motion, seconded by Dr. Weierbach, to allow Ms. Ellis to undergo an AIT training of at least three (3) months with an emphasis in the deficient subjects of Finance and Human Resources, to attend the THCA training course/program on July 10-11, and submit proof of completion of the two previously listed items. The motion carried.

7. Ratification of Initial Determinations:

Conner Chelsea Danielle
Garafola Joseph Paul
Haynes Greg
Hill Daley
Justus Samuel Kermit
Melenchii Vasile Dumitru
Mckeown Lii Daniel Lee
Sauer David Thomas
Stipes Jessica Renae
Tyndall Donald Ray

Reinstatements

Cottrill Carl Francis
Whitecomb Mary E.

Closed Application

Barnard David Anderson
South Jerry Lee
Whitmire Christopher Jordan.

A motion was made by Ms. Wheeler, seconded by Dr. Janoyan, to approve the ratification list of newly licensed, reinstatement, and closed applications for BENHA. The motion carried.

8. Administrator's Report

A. Statistical Report

Ms. Benitez reported that there are 798 active nursing home administrators as of June 4, 2018. She also provided an account of board licensure activities from March 3, 2018 through May 28, 2018 as follows:

- New Applications received-24
- New licenses issued-10
- Reinstatements issued-3
- Number of paper renewals- 24
- Number of renewals online- 12
- Number of licensees who retired-0
- Failed to renew/Expired Applications-5

Ms. Benitez reported the online renewals constituted a usage rate of approximately 32% of all renewals during this period.

D. Travel

As January 1, 2018, the maximum hotel rate increased to \$179.00 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.

9. Other Board business

1. Waiver approval list from Health Care Facilities

There were no waivers to approve or discuss at this meeting.

10. Conferences and Meetings

There are no conferences to approve or discuss at this meeting.

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

There were no rule changes or rulemaking hearings to discuss at this time.

12. Discuss and take action if needed, regarding legislation-

Patrick Powell, representative from the Department of Health Legislative Office provided a report on current legislation affecting the Board of Examiners for Nursing Home Administrators as follows:

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 Act took effect July 1, 2018.

Public Chapter 655

This is the Department of Health (TDH) administration bill, also known as the CORE Act. This Act makes a variety of changes to existing law regarding nursing homes, assisted care facilities and the abuse registry. This Act establishes that the TDH commissioner has the authority to suspend admission of any new patients or residents to any facility or licensee in those cases where there is a factual basis that the conditions are, or are likely to be, detrimental to the health, safety, or welfare of a patient or resident.

The Act lays out the suspension process, appeals process, and time windows required. It also establishes that the board has the authority to continue, revoke, or modify the suspension of admissions and enter other such orders as it deems necessary. The Act also creates a requirement on homes for the aged, traumatic brain injury residential homes, assisted care living facilities, and adult care homes to notify residents of their right to file a complaint and the process to do so. The legislation also prohibits facilities from retaliatory actions against residents for filing a complaint. Those filing complaints in good faith are immune from civil liability. The CORE act also establishes TDH’s ability to act in regard to entities operating unlicensed facilities and establishes the penalties that TDH may pursue or assess. Finally, the Act makes clarifications of those individuals that TDH will list on the abuse registry and the requirements of the disposition order from TBI. This Act took effect July 1, 2018.

Public Chapter 671

This Act redefines “trauma service codes.” Previously it was defined as “the ICDA-9-CM discharge codes designated as trauma service codes by the American College of Surgeons committee on trauma.”

The new definition will be “a subset of the ICD-10-CM diagnosis codes, or the most relevant versions of the international Classification of Diseases and Related Health Problems (ICD) required by the centers for Medicare and Medicaid services, for coding hospital discharges designated as trauma service codes by the American College of Surgeons committee on trauma.” This Act took effect April 12, 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 took 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 two 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. These Acts lays out the requirements on the licensing authorities as well as the exceptions to the law (example: rebuttable presumption regarding A and B level felonies). These Acts went into effect July 1, 2018.

Public Chapter 754

This Public 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 on May 3, 2018 for rule purposes. The Act takes effect January 1, 2019 for all other purposes.

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 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. Petitioners seeking review must file a petition within 60 days after entry of the agency's Final Order. This Act took 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.

13. Adjournment

There being no further business, the meeting adjourned at 11:04 A.M.

Juanita Honeycutt, NHA, Chair

Date

These minutes were ratified by the Board at the August 6, 2018 meeting.