



Tennessee Board of Radiologic Imaging and Radiation Therapy

Tuesday, July 21, 2020

MINUTES

A WebEx meeting of the **Tennessee Board of Radiologic Imaging and Radiation Therapy** was called to order at 9:01 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Karen Munson, Board Chairperson.

Board members present: Kae Fleming, RT(R)
Karen Munyon, BSRT(T) (CT)
Gary Podgorski, MD
Jennifer Thompson, RT(R)
Pamela Ward, RT(R) (M) (CT) (BD)
Chester Ramsey, PhD, DABR

Board member(s) absent: Patrick Brazan, CNMT
Spencer Madell, MD

Staff present: Angela Lawrence, Executive Director
Stacy Tarr, Administrative Director
Peyton Smith, Office of General Counsel
Rene Saunders, M.D., Medical Consultant

Ms. Lawrence made opening remarks to the Board and outlined the requirements for a WebEx meeting. Ms. Lawrence conducted a roll-call of the Board members to confirm attendance. Kae Fleming made a motion to proceed with the meeting in order to consider time sensitive matters in light of the covid-19 pandemic and adhere to CDC requirements for limiting attendance at in-person meetings. A roll call vote was taken, and the motion passed.

Ms. Munyon motioned that all requirements for a WebEx meeting were satisfied. Ms. Fleming seconded the motion. The motion passed by roll call vote.

Ms. Lawrence then confirmed, by roll call, that all present members received the materials relevant to this meeting prior to today's meeting.

At this time, the meeting was turned over to Ms. Munyon, Board Chairperson.

Ms. Munyon called the meeting to order at 9:06 a.m.

Legislative Update

Patrick Powell, Legislative Liaison, provided a legislative update from the most recent legislative session:

Public Chapter 594 – This the Department of Health’s legislative effort and is known as the Health Licensure and Accountability Act. This bill allows all Health Related Boards to act against licensees who have been disciplined by another State Board for any act or omission that constitute grounds for discipline in Tennessee. Previously, most Boards could not action until a Tennessee resident was harmed. This act allows the Boards to take act based on another State’s discipline. The bill also expands the available emergency actions by allowing action beyond a summary suspension, such as suspension of prescribing practices This bill also establishes that the notification of law changes to healthcare practitioners can be satisfied by the online posting of the law changes by the respective Boards. The changes must be maintained online for a period of at least two years. These laws were effective March 20, 2020.

Public Chapter 738 – This act prohibits a governmental entity authorizing destruction of public records if the entity knows that the records are subject to a pending public record request. Prior to authorizing destruction of any public records, the governmental entity must contact the Public Records Request Coordinator to ensure that the records are not subject to any pending public records request. Records may still be destroyed in accordance with an established records retention policy or in the ordinary course of business as long as the records custodian is without knowledge that the records are not subject to a pending public records request. The was effective June 22, 2020.

Alexa Witcher, JD, Assistant Commissioner for Legislative Affairs gave an update stating under Tennessee law, all Boards and Commissions created by the State Legislature are set to be reviewed every few years. The intent of the legislature is to review all State Governmental entities to ensure that state regulation is beneficial to the public. This applies to all government entities and is not specific to Health Boards. Under this law all entities automatically terminate or “sunset” at the end of the review unless or until

The Legislature takes action to continue their existence.

This Board’s sunset hearing took place last fall. At that time, the Government Operations Committee approved the continuance of this Board. Legislation was drafted

to formally extend the Board. During the spring legislative session, the Senate passed the extension. The House did not. In the next session held in June of this year, the bill did not pass.

What this means is that, without further legislation, this Board would terminate June 30, 2021. However, legislation is anticipated next session. Ms. Witcher encouraged that the Board to advocate for continuance of the Board by contacting their respective legislators and members of the Government Operations Committee. Names/addresses of these individuals will be provided to the Board.

Currently, no action is needed from the Board. Additional documentation is anticipated including possible hearings before the Government Operations Committee. Any updates on this developing situation will be provided by the Legislative Affairs office.

Ms. Munyon requested that the contact information be distributed to the Board members as soon as possible. She also asked if there was discussion regarding the reasoning for failure to pass the House. Ms. Witcher stated that her impression is that there is some desire to pursue a registration or certification for various Health Related Boards. It is the impression of the Legislative Affairs office that the Chairman saw this as an opportunity to review alternative methods of regulation prior to enactment of the rules. Chairman Daniel also made a general statement that the Board is not fully appointed. Ms. Witcher said that she believes this is simply a miscommunication as the Board is fully seated and has been working diligently to promulgate rules.

Ms. Munyon also asked about how this development affects the currently licensed Medical X-Ray Operators and whether ultimately, individuals could be administering radiation without any kind of state regulation. Ms. Witcher responded that Legislative Affairs, in conjunction with the Office of General Counsel, would work to determine what the old system vs. the new system is and whether any law changes are necessary to effect regulation. While the Sunset Bill was not passed this year, there is still one more session to determine the future of the Board. Ms. Fleming requested clarity regarding the current x-ray rules and whether those rules are affected by this development. Ms. Witcher explained that nothing would change until June 30, 2021 if no further action is taken. This Bill's failure to pass does not affect the current structure or rules/regulations. Ms. Fleming asked whether, at this specific time, there is any action needed. Ms. Witcher stated that, as a Board, no current action is required; however, she added that, as individuals, Board members are welcome to contact their legislators to advocate for the continuance of this Board. There is no specific bill to reference in the correspondence.

Ms. Munyon said, that as Board Chairperson, she has attended some of the legislative meetings. At these meetings, there were questions regarding the Board's financials and the reason that the Board is operating in the red. She wanted to make everyone aware that the reason for this is that the Board's rules/regulations have not been promulgated and, therefore, no revenue is being generated. It is her opinion that the Board will continue to operate this way if and until the Board is fully operational.

Approval of Minutes

Minutes from January 21, 2020 were presented for approval. Ms. Fleming pointed out a minor correction regarding gender on page 2, paragraph 4. Ms. Fleming made a motion to approve the minutes. Dr. Podgorski seconded the motion. A roll call vote was taken and the motion passed.

Receive Financial Report from the Bureau Office

Ms. Maria McCormick presented the mid-year financial report.

Receive Reports from the Office of Investigations

Ms. Lori Leonard introduced herself. Ms. Leonard is the Disciplinary Coordinator for all non-nursing boards. She oversees and monitors all licensees for all non-nursing boards who are under discipline. She ensures that the licensee complies with any requirements of their discipline such as continuing education, fines, civil penalties, etc. She does not handle the investigations but monitors any discipline that has been rendered and ratified by the Board. A report from the Office of Investigations will be presented at each of the Board's meetings. As mentioned previously, this Board does not currently have any licensees and as a result, there are not any reports. However, Ms. Leonard presented the reports concerning the Medical X-Ray Operators currently licensed under the Board of Medical Examiners while explaining the reports that the Board can expect once the Board's rules are promulgated and implemented.

Summary of Currently Monitored Practitioners: This report is both a summary and a list of licensees who are currently being monitored. She explained the sections of the report. Those licensees reported under "Reprimand" are under discipline that does not encumber their license. The action date, original balances and current balances owed are reflected. There are two options for collecting the balances due. One is for Ms. Leonard to reach out to the licensee and ask that they pay the balance either by phone or by mailed reminders. The other is to pursue collections by referring them to the Office of General Counsel or Attorney General's office for further action. There is also

an option to utilize a third party collections agency. It is difficult to collect from licensees whose licenses are revoked or suspended as they are most likely not working and collecting monies due may be a lengthy process. A "Violation of Board Order" is not an option for those licensees who under reprimand. Upon receipt of the ratified orders, Ms. Leonard sends an initial letter to the disciplined licensee outlining that they have been disciplined, the amount of penalties and costs, and informing them that they will get an assessment of costs. The assessment of costs is due 60 days after the assessment is available. If the payments are not timely received, a second letter is sent to the licensee stating that the payment is past due and must be paid or a payment plan must be initiated. Payment plans are offered most often to those licensees who have large balances but are occasionally offered to those with smaller balances. The costs (which are ultimately paid by the Board) include fees for the Office of General Counsel attorneys, the Attorney General's office, the investigators, and the cost incurred to conduct the investigations. Ms. Leonard stressed that it is important to recoup these fees to reimburse the Board. After two to three letters, Ms. Leonard prepares a violation packet and forwards it to the Attorney General's office or collection agency. The determining factor for which action is pursued is the amount owed. Amounts \$1500 and above are forwarded to the Attorney General's office. The Attorney General's office has greater recourse for collecting the large amounts. Lesser amounts are sent to the collection agency.

Ms. Fleming asked which violation is most prevalent. Ms. Leonard explained that the most common violation is for unlicensed practice. Most often, the unlicensed practice is not intentional and is the result of failing to timely renew licenses.

Ms. Leonard gave a brief explanation regarding the investigations process. Investigators are located throughout the State. Complaints are received by mail as well as through the relatively new online reporting portal. Upon receipt of a complaint, a compliant coordinator triages the issue. There are currently five complaint coordinators, each responsible for designated professions. One complaint coordinator is assigned to triage complaints regarding overprescribing. A file is then opened, a benchmark (or deadline) is determined, and the complaint is forwarded to the advising attorney. The attorney, along with a consultant, reviews each complaint and decides whether the complaint's egregiousness warrants investigation, whether it is in violation of the practice act, or if the complaint should be closed with no action. If the complaint is closed with no action and the complainant has provided contact information, they are notified by mail of the determination. If the complaint is not closed, it is forwarded to the investigator for further investigation. Once the investigation is completed, the complaint is returned to the Office of Investigations and the advising attorney and consultant perform a second review to determine whether or not discipline is warranted utilizing the

evidence provided by the investigator. Should discipline be warranted, the complaint is then forwarded to the Office of General Counsel. The attorney contacts the licensee (respondent) and informs them that they are being disciplined, the cause of the discipline, and attempts to work out a consent order. The terms of the consent order are generally regulated by the Board's rules/regulations. Once a signed consent order is obtained, the order is presented to the Board for either review/ratification or change. Once a signed consent order is ratified, Ms. Leonard adds it to the National Practitioner DataBank and the State's website. If necessary, the license status is changed. The status of licenses under reprimand is not changed. However, suspensions, revocations, restricted/conditional licenses are reflected in the status of the licensee in both the licensing and regulation system and on the State's website.

Statistical Licensing Report: This report reflects the number of complaints received and closed during specified months/years. It also reflects the justification for closed complaints and analyzes the reason for newly opened complaints. The complaints are also reported by region. **Ms. Leonard explained those complaints closed with a letter of warning are then forwarded to the Office of General Counsel where a new file is opened for disciplinary purposes.** At this point, negotiation is started and a settlement agreement is attempted. A letter of concern is a letter that notifies the licensee that a complaint was received, a possible violation has occurred, and cautions the licensee to be cognizant of the action moving forward.

Letters of warning and letters of concern are not considered discipline and are not reported to the National Practitioner Databank, are not recorded as discipline, and are not reflected on the State's website.

Ms. Munion asked if these complaints are reviewed by the Board at regularly scheduled meetings or if additional meetings are scheduled for this purpose. Ms. Leonard explained that the Board will not review the actual complaint but rather the result of the complaint. The Board will review Orders at regularly scheduled meetings and either ratify or modify the Orders. If the Board finds an Order is acceptable, it is ratified, and the Order becomes a binding Final Order. Should the Board feel that the disciplinary parameters are not appropriate, the Board can reject it. If the Board rejects an Order, the disciplinary process resumes in the Office of General Counsel. The Office of General Counsel attempts to draft a new Order based on the Board's guidance. Often, if an Order is rejected by the Board, a contested case is scheduled. A contested case is similar to a trial. Evidence will be presented, an administrative judge will preside over the case, witness testimony is presented, and Board members will serve as the jury.

At the conclusion of Ms. Leonard's presentation, Ms. Jamie Byerly, the Director of the Office of Investigation was introduced. Ms. Byerly has been with the Office of Investigations since mid-April.

Review and Discuss Application Forms

Ms. Munyon confirmed that the Board members had reviewed the most recent revision of the application forms.

Ms. Fleming stated that previously an exception had been granted to some professions to allow practice pending the issuance of licenses during the COVID-19 crisis. There is a specific statement in the application instructions recommending that an applicant not accept employment until a license is issued. She asked if this should be considered while reviewing the current version of the application or if the need for exceptions supersedes that statement. Ms. Tarr explained that there is no way to determine the processing time of an application. Most applications are fairly simple with no red flags. However, some applications require the need for a Board appearance which increases application processing time. An example would be an individual with criminal history that requires a Board interview.

Ms. Munyon asked whether or not the Board will have an opportunity to review the application once it is corrected. Ms. Lawrence explained that once the forms are acceptable to the Board, they will be forwarded to the Forms Committee.

The Board reviewed minor changes that are required on the proposed application forms prior to submission to the Forms Committee. Administrative staff noted the requested changes and will make them accordingly.

At the conclusion of this discussion, the Board agreed that, with the noted corrections, the forms should be forwarded to the Forms Committee.

Discuss and Consider Draft Rules

Peyton Smith, Board Attorney, updated the Board regarding the progress of the proposed rules. Currently, the internal review process is ongoing, and the rules are in the Office of General Counsel. Currently, the internal review process is moving forward after a delay related to the legislation previously discussed. The process was momentarily delayed while clarification on this matter was obtained. Once the Office of General Counsel has completed its review, the proposed rules will be reviewed by the Commissioner and subsequently by the Governor. This is the last step of the internal

review process. At that time, the rule-making hearing will be docketed. The rule-making hearing must be 52 days from the day that the hearing is docketed. After the rule-making hearing, public comment will be received, and responses given. Any revisions required as a result of public comment are made. The rules are then be returned to the Governor's office for approval. Once approval is obtained, they will go to the Attorney General's office for approval. The rules will then be filed with the Secretary of State where a 90-day waiting period will begin.

Efforts will be made to expedite the outstanding reviews in order to accomplish the rule-making hearing prior to the next legislative session scheduled for January. The goal is to present finalized rules that are ready for implementation when the legislature resumes session. Mr. Smith cautioned that this is an ambitious goal due to the involvement of numerous parties.

Mr. Smith proposed combining the next Board meeting, currently scheduled for October, with the January meeting, to early December order to conduct a rule-making hearing.

Dr. Saunders asked that the Board keep the first week in January open so that, should the rules be returned, a quorum will be required in order to effect a vote.

Public Comment

There was no public comment.

Adjournment

There being no further business, Dr. Podgorski made a motion to adjourn the meeting. Kae Fleming seconded the motion. The motion passed. The meeting adjourned at 11:03 a.m.