

# Tennessee Board of Radiologic Imaging and Radiation Therapy

Tuesday, July 12, 2022

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## MINUTES

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The meeting of the **Tennessee Board of Radiologic Imaging and Radiation Therapy** was called to order at 9:10 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243 by Karen Munyon, Board Chair.

Board members present: Kae Fleming, RT(R)  
Karen Munyon, BSRT(T) (CT)  
Patrick Brazan, CNMT  
Jennifer Thompson, RT (R)(QM)  
Gary Podgorski, MD

Board member(s) absent: Pamela Ward, RT(R) (M) (CT) (BD)  
Chester Ramsey, PhD, DABR

Staff present: Stacy Tarr, Executive Director  
Francine Baca-Chavez, Office of General Counsel  
Rene Saunders, M.D., Medical Consultant

Ms. Munyon initiated a roll call for the Board members. Ms. Munyon called the meeting into order at 9:10 am.

### **Approval of Minutes**

Minutes from the April 19, 2021, were presented for approval. Ms. Fleming made a motion to approve the minutes. Ms. Thompson seconded the motion. The motion passed. Minutes from the Emergency Hearing on May 12, 2022 were presented for approval. Ms. Baca-Chavez brought up the accuracy of a statement she made but after discussion of the context of the statement decided that the statement should be kept as recorded. Ms. Munyon brought up the change of Mr. Brazan's absent status to present because he did attend the virtual meeting but had technical problems for a portion of the meeting. The status was changed and a motion was made by Ms. Fleming to approve the meeting minutes. Ms. Thompson seconded and the motion passed.

### **Legislative Report**

Ms. Olivia Spears, a Department of Health Legislative Liaison, gave the legislative report to the Board. Ms. Spears included in her report pieces of health related legislation: The Department had two successful legislative initiatives that became law relating to local county health departments and the Controlled Substance Monitoring Database, respectively; Healthcare Facilities will move away from the Department of Health to the Health Services and Development Agency (HSDA)/Health Facility Commission on July 1, 2022; Healthcare providers can continue to utilize telehealth and receive reimbursement for telehealth services; The Board of Pharmacy and the Board of Nursing will now hire and fire the Executive Director of the Board; and a registry within the Tennessee Commission on Aging and Disability was created to combat the operation of unlicensed facilities.

Ms. Spears spoke of Public Chapter 833—HB1997/SB1936—Cochran/Jackson. She explained this clarifies that the Administrative Law Judge shall decide procedural questions of law. Allows the director of the administrative procedures division of the secretary of state's office to issue subpoenas. Allows electronic participation in hearings, by agreement of the parties. The hearing officer may allow electronic testimony if the absence of the witness would otherwise cause a delay of the hearing. Requires that a final order be issued within 90 days. Allows that a petition for reconsideration be filed within 15 days of the entry of the final order or initial order.

Ms. Spears spoke of Public Chapter 856—HB2864/SB2889—Rudd/Gardenhire. She explained this related to Public Meetings. Permits boards or agencies of state government to have electronic meetings. If an electronic meeting is being held, requires that members of the public be allowed to view and/or listen to the meeting in real time. There must also be a method for members of the public to participate in the meeting electronically, if they would otherwise be permitted to participate in person. Instructions to participate are to be included in the notice of the meeting. An electronic meeting shall be recorded, and that recording must be posted on the website of the organization within 3 days. The governing body shall maintain that electronic record of the meeting for at least 3 years.

Ms. Spears Spoke of Public Chapter 883—SB2285/HB1749—Bell/Ragan. She explained this related to UAPA and Judicial Review Standards. Requires that a judge over a contested case not defer to an agency's interpretation of the statute or rule and shall interpret it de novo. Remaining ambiguity shall be resolved against the agency.

Ms. Spears spoke of Public Chapter 1024—SB1748/HB1827—Roberts/Ragan. She explained this related to UAPA and Rules. Makes permanent all rules that were filed with the Secretary of State between January 1, 2021, and in effect upon passage of the act, unless they conflict with legislation passed during this session.

Ms. Spears spoke of Public Chapter 1068—HB2544/SB2711—Alexander/White. She explained that this related to Mammograms for Women at 35 Years Old. Requires that a health benefit plan provide access to annual low-cost mammograms and other breast cancer screenings for women between the ages of 35 and 40 if risk factors exist and for those over 40.

Ms. Spears asked the Board if there were any questions. Ms. Thompson asked Ms. Spears if Public Chapter 1068 referred to the state benefit plan or any benefit plans. Ms. Spears indicated it was any health benefit plan and gave the exact description of the definition and indicated there were some exclusions as well.

Ms. Fleming asked for clarification on the statement in Public Chapter 930 reading “this was not signed by the governor.” Ms. Spears explained that the Chapter was in effect, but the Governor just did not sign it.

Dr. Saunders asked about Public Chapter 911 and Ms. Spears explained that Public Chapter 911 related to Professional License Requirements, it mandates that a person seeking a professional license have US citizenship or be authorized under federal law to work in the US as verified by the SAVE Program (allows DACA children who are now adults to obtain professional licensure if not otherwise prevented by the license).

Upon hearing no further questions, Ms. Spears concluded her report.

### **Office of Investigations’ Report**

Roger Knowlton, the intake coordinator for the Office of Investigations gave the report. Mr. Knowlton reported that 4 new complaints have been opened and 7 have been closed. Of the closed complaints, one was closed for insufficient evidence, two were referred to the office of general counsel, two were closed with no action, and two were closed with a warning letter. Of the four new complaints, one was for unprofessional conduct and the remaining three were for a lapsed license. Upon hearing no questions, Mr. Knowlton concluded his report.

### **Financial Report**

Ms. Tarr explained that the Board currently does not have a financial report. However, at the next meeting there will be a financial report.

### **Administrative Office Report**

Ms. Tarr gave the administrative office report. Ms. Tarr stated that between the period that the new application was introduced to when the Rules were withdrawn, 1,224 applications had been received in the Administrative Office. This number was likely higher due to applications being held by the cash office in the time directly before the withdrawal of the rules and those applications were sent back without payment being processed. Of the 1,224 applications received, 1,216 refunds were issued. Ms. Tarr explained that the difference in the numbers was due to applications that were sent in without payment.

Ms. Tarr stated that the applications that had been received are being kept in the administrative office to be used for future applications by those who choose to move forward with a Medical Xray Operator application. 92 such applications had been received since the withdrawal of the Board Rule on May 12, 2022.

Ms. Tarr stated there were 3,123 active Full Xray Licenses and 1,044 active Limited Xray Licenses in the state.

Mr. Brazan asked if the applicants who had already submitted a background check would have to have another report when the new rules were effective. Ms. Tarr explained that answer was unclear due to not knowing the time frame for the rules to take effect and how the Board would choose to treat the subject. Ms. Tarr stated that all the background checks are being held as well in anticipation of the Board's decision.

Ms. Thompson brought up the current processing time of 6-8 weeks and asked if there was a way to expedite that process. Discussion then began about professionals in licensed healthcare facilities not needing the license under the current rules. Ms. Fleming pointed out that under the new rules, it is expected that these professionals would be required to hold a license regardless of the setting or facility they are working in. Dr. Podgorski added that by having everybody licensed in this way would ensure the same level of healthcare standard to all citizens across the state. Ms. Tarr addressed Ms. Thompson's original question and explained that those who filled out the Radiological Imaging application had to start over with a new application after the Board withdrew the rules, which caused a delay, but the new applications being processed were within the normal time frame for being processed. Dr. Saunders then addressed the importance of the applications being filled out fully and correctly which would limit the amount of time spent correcting documents or submitting missing documents and thus speed the process up.

Mr. Brazan asked if a new application would need to be filled out by those who filled out the Radiological Imaging application. Ms. Tarr answered that would depend on the changes that the Board makes to the application once it is completed.

Dr. Podgorski asked how long the background checks were valid, Ms. Baca-Chavez answered that the Board had adopted a policy that stated they were valid for six months.

With all items presented and no further discussion, Ms. Tarr concluded her report.

### **Office of General Counsel Report**

Ms. Baca-Chavez gave the OGC report. Ms. Baca-Chavez noted a statement of conflicting interest located at the beginning of her report and informed the Board that if a topic came before the Board that they had such a conflicting interest in, it was asked that the member recuse themselves.

Ms. Baca-Chavez gave the statistics for disciplinary action as follows: the total number of MD X-Ray Operators being monitored for discipline is 15; the total number on reprimand is 9; the total number on probation is 1; the total number on suspension is 0; the total number that has had their license revoked or surrendered is 5; the total number of DO X-Ray Operators currently monitored for discipline is 0.

Upon hearing no questions, Ms. Baca-Chavez concluded her report. Ms. Baca-Chavez introduced Mr. Barnell as the Board's new advisory attorney beginning with their next meeting.

## **Discussion about Changing Wording of the Rules**

Dr. Podgorski asked about the ability to change words or phrases within the rules.

Ms. Baca-Chavez explained that the rules were being reviewed in the Attorney General's Office. Once the rules are accepted, the wording could be changed at a later time with same process. However, since the rules were currently being reviewed changing words or phrases is not available at the moment. Dr. Saunders stated that some of the word choices in the rules were based on statute. Dr. Saunders explained that the rule making process can be initiated again if there are components of the rules that need to be changed. Ms. Baca-Chavez explained the Board review process, which would require each Board to submit their rules to the legislature. This process would have to be done by December 2023. Ms. Baca-Chavez explained that it should be simpler for the Board because the rules are newer.

Ms. Thompson asked about a grace period for May 2022 graduates that have 75 days to apply for licensure after completing their exams. Ms. Tarr explained that the administrative staff should be able to input applicant's information into the licensing system. Ms. Tarr stated that she does not foresee an issue for the May 2022 graduates. Ms. Tarr explained that administrative staff should be able to enter the information into the licensing system during the ninety (90) days, then later be able to approve the applications.

## **New Business:**

### **Discuss rules and regulations in accordance with Public Chapter 1029**

Ms. Baca-Chavez stated that the Board had been provided a letter from the Tennessee Hospital Association (hereinafter "THA") regarding the proposed rules and that a member of the THA was in attendance if they wished to ask him any questions. Ms. Munyon asked Mr. Birchfield if he had any questions for the Board. Mr. Birchfield stated that the wish of the THA was to work with the Board to support the process and licensure but not to create additional barriers to the field. Discussion began on the topic of creating additional requirements for specific modalities and the possibility of grandfathering professionals who have been practicing prior to the rules taking effect. Mr. Birchfield stated that his organization is working on a set of rules as they would like to see them and would submit those to the Board for their review and consideration. Ms. Baca-Chavez offered to have her office do research relating to a statement during the discussion of surrounding states licensing statutes and processes to provide to the Board at their next meeting.

### **Discuss and consider length of time between classroom training and clinical training**

Ms. Tarr explained that this item had been tabled at a previous meeting and recommended that it be taken up at a later date once a new set of rules were proposed. Ms. Fleming expressed her inclination to table the topic until there was a set of rules to consider. Ms. Munyon agreed, no one opposed, and the item was tabled.

## **Public Comment**

**Ms. Michelle Julian**, an employee of an orthopedic clinic was present for public comment. Ms. Julian brought up the topic of continuing education. She discussed the issue of an operator's biennium with the state and the biennium with the ARRT not being the same. Both the state and the ARRT require continuing education to be completed during their biennium time. Dr. Saunders and Ms. Munyon indicated that based on past board discussion, having an active ARRT card would indicate the cardholder had completed the requirement for continuing education and that would suffice to meet the requirements of the state license's continuing education requirements.

Ms. Julian also stated that the topic of cross training and additional requirements for subspecialties and modalities is also a concern for their facility. Specifically, the employees at their facility cannot meet the requirements of the new rules due to the limited variety of practice performed in their facility not allowing the required training to take place. Ms. Fleming stated for the record that in order to qualify for the ARRT MRI exam there is a prescribed variety of examinations that an orthopedic office cannot provide. Dr. Saunders pointed out the possible issue of someone being cross trained in MRI at an orthopedic facility and later listing MRI on their CV in a job application for a hospital. In this case from a hiring standpoint this candidate would appear the same as a person who had been fully trained in MRI, but in reality would not have the same level of competence due to not being experienced with MRI exams outside of the orthopedic scope. Dr. Saunders stated that in terms of patient safety, this is a problem that would have to be discussed.

Ms. Julian also asked about a period time after applying that an applicant could practice while waiting for the license. Ms. Baca-Chavez stated that to her knowledge the statutes did not allow for a temporary license.

**Christy Raby** asked the Board for clarification on the topic of a new graduate working for 75 days after passing ARRT examinations and within 6 months of graduating from an approved course and is waiting for their license to be approved. Specifically, she asked about what happens if the person in question did not receive their license when the 75-day time period expired. Ms. Munyon answered that they would not be able to continue practice until the license is received.

**Cindy Gilbert**, a nuclear medicine technologist, wanted to make a point that there is a State Radiation Control Program Board that monitors and survey's locations. There is also a Conference of Radiation Control Program Directors that put out a report related to the necessity of CT certification for Nuclear Medicine technologists and asked that the Board take this into consideration when reviewing their new rules. Ms. Munyon explained that the wording of the rules followed the scope of practice defined by the ASRT which addressed the CT certification issue Ms. Gilbert was speaking of. Ms. Gilbert also stated that her understanding of the Rules was not clear as related to the operation of PET CT and who could operate a PET CT scanner. Mr. Brazan stated that as it stands it is in the scope of nuclear medicine, but that an X-ray Operator would be able to with additional qualifications. Ms. Gilbert asked the Board to consider

stating more clearly that nuclear medicine technologists could operate a PET CT scanner and state that the pathway for RTRs and RTTs to operate a PET CT scanner would be to obtain PET certification. Ms. Munyon stated that the rules defined the types of imaging, but not the specific positions. Ms. Gilbert asked if that could be revisited. Ms. Munyon responded that the Board purposefully did not define the specific positions due to the Board's deference to the credentialing bodies and every time such a body would make a change a revision to the rules would be required.

Dr. Saunders referred anyone interested in speaking at the meetings or has any questions to the Board's webpage on the Tennessee Health Department's website. All previous meeting minutes and discussions are recorded there and are available for public access, and that the minutes were as well.

**Paul Searfoss** is a certified nuclear medicine technologist. Mr. Searfoss brought up that on the previous application, nuclear medicine was separated into cardiac nuclear medicine as well as PET. His concern is that requiring certification for both branches would potentially shut down 80 percent of the PET scanners and impede patient care. Mr. Searfoss stated that he cross trained, but under the proposed rules as he understands that would not be possible under the new rules. Ms. Munyon and Ms. Fleming discussed that there were provisions in the rules to allow for training and taking the exams to qualify. Ms. Fleming revisited the first of Mr. Searfoss' comments and asked for clarification. Mr. Searfoss explained that he, as a nuclear medicine technologist, performed PET, but was not certified in PET and his concern was that many operators in the same situation would not be able to perform these functions under the new rules. Ms. Munyon stated that while on the application an applicant would check the box next to whichever modality they were credentialed in, the scope of practice was defined by the National Credentialing Organizations that were recognized by the Board and if that function was included in the scope of practice, the operator would be allowed to continue those.

**Ashley Brock** is the director of radiology at Southern Tennessee Health System. Ms. Brock stated that with the increase in technologists that will be required to obtain additional training or certifications, smaller hospitals would not have the volume of scans or exams to support this increased amount of required training. Ms. Munyon stated that discussion has taken place about rural hospitals and steps that would not penalize or adversely affect these facilities. Ms. Fleming stated that there are also online courses available that could provide a work around for the issue of finding the needed on the job training in these types of facilities.

With no further business to discuss, Ms. Munyon asked for a motion to adjourn. Ms. Tarr stated that the next meeting would be October 11, 2022 and that the 2023 meeting would be posted online. Ms. Munyon made motion to adjourn, Mr. Brazan seconded. The meeting was adjourned at 11:05 am.