

MEETING MINUTES
TENNESSEE BOARD OF PODIATRIC MEDICAL EXAMINERS

DATE: November 6, 2020

TIME: 9:00 A.M., CST

LOCATION: Health Related Boards
Iris Room
665 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS

PRESENT: Sheila Schuler, D.P.M. - Chair
David Sables, D.P.M. – Vice Chair
Gerald Stark,
Ramesh Pavuluri, D.P.M.
Dr. Bhukumuzi Khumalo, C.P.O - Secretary
Martha Kay Oglesby, Consumer Member

BOARD MEMBER

NOT PRESENT: Ms. Martha K. Oglesby

BOARD STAFF

PRESENT: David Silvus, Assistant General Counsel
Theodora Wilkins, Administrative Director
Doris VanOvermeiren, Board Administrator Assist. 1

Due to gathering restrictions imposed by the Covid – 19 Virus, it was necessary to conduct this meeting telephonically. Mrs. Wilkins read the required script into the record, noting all votes must be conducted by roll call. Mrs. Wilkins called a roll call vote to establish a quorum. All members were present. Another preliminary vote was taken to establish all members were able to hear each other and also that they had received meeting documents prior to the meeting. A motion was made by Dr. Khumalo seconded by Dr. Sables to proceed with the meeting via WebEx. A roll call vote was taken all present voted in favor; the motion carried. The meeting was turned over to Dr. Schuler, Board Chair.

Dr. Schuler called the meeting to order at 9:00 a.m. A roll call vote was conducted, and all Board members were present.

Minutes

Upon review of the May 15th, 2020 minutes, Dr. Schuler moved to accept the minutes, seconded by Dr. Sables. All in favor. The motion carried.

Upon review of the August 14th, 2020 minutes, Dr. Sables moved to accept the minutes, seconded by Dr. Khumalo. All in favor. The motion carried.

Investigative Report

Ms. Lori Leonard reports on the Summary of currently monitored Practitioners Report for 2020 they have 3 Licensures on probation, 2 under supervision, 5 under ratification.

Investigative Report, for 2020 they have 10 new open complaints for Podiatrist, 4 on malpractice negligence, 3 unprofessional conduct, 1 Violation of Order, 2 outside of the investigation scope.

Closed 9 complaints, 2 for insufficient evidence, 2 formerly disciplined, 1 closed and set to Office of General Counsel for formal discipline, 4 closed with no action, 1 close with a letter of concern and 1 was closed with a letter of warning. 11 complaints open being reviewed and or investigated. Complaints for X-Ray Operators is 0, Complaints for Orthotists is 0, received one (1) new complaint for Prosthetics. Complaints for Pedorthotist is 0.

Dr. Sables ask Ms. Leonard about the ongoing complaints for Prosthetics for 2020, Ms. Leonard responded with an explanation that is assumed it is possible the new complaints received are currently open and not sent to Investigations yet. Mr. Silvus confirms and explains there are 2 complaints, one came in for the year 2020 and one they are gathering facts on and considering the evidence and have a clear understanding to be file yet. Dr. Stark added the correct pronunciation for the Orthotist and Prosthetist Professions.

Financial Report:

Financial report is given by Alicia Grice.

Ms. Grice introduces herself as the new Financial Director to present the reports for the fiscal year 2020.

Ms. Grice reminds the board that the fiscal year runs from July 1st, 2019 thru June 30th, 2020. Ms. Grice presents to the board the charts for the Revenue and expenders for the year 2020 and explains the charts as shown. The report shows the fiscal year closed in just over \$49000.00, revenue collected \$72000.00 and total cost for the year was \$12100.00 resulting in a deficit. However, the department had a very good carry over reserve balance and even though the fiscal year was in the red the board is remaining operational and able to pull the funds and use the funds toward the fiscal year 2021. With not knowing the long-term impact of the Pandemic and 3 months left of the fiscal year what the impact will be for the board. Dr. Sables remarks on the application fees and other fees collected for the profession and Ms. Grice explains the fees. Mrs. Wilkins remarks to Dr. Sables with an explanation for the change of the renewal fees in 2017. Dr. Sable remarks that it does not represent the year that are collecting the licenses for the year or every other year. Mrs. Wilkins explains the cycles from 2017 for every two years., Dr Sables questions about council 708 for revenue and expenditures for Special services in twos for \$1600.00 for 2019. Ms. Grice explains the type of things that are charged for such as services for the Department of Revenue processing fees, court reporter, and contract services for the board. Dr. Sables ask if there will be an increase for that amount in the following years. Ms. Grice comments she does not think so and does not have enough information for the year 2021 and will have a better insight in December 2020. Dr. Sables asks if it stay the same until Ms. Grice can give a report. Ms. Grice suggest to wait until a report can be made to structure that no changes to be made for the fees at this time and that when things are more normal, and to revisit the topic when a report will give more information as to what can be done concerning the fees. Dr. Sables state that it will not be known for the next six months for more information to make a better decision on what to do. Ms. Grice confirms yes, Dr. Sables ask Mr. Silvus about being two tears in the red that it must be reported to Legislators to explain. Mr. Silvus comments it is correct and refers to Ms. Grice about the finance side and she agrees. Mr. Silvus explains about the reserve balance. Dr. Sable comment on the reserve being high and to lower it, Mr. Silvus comments about the free seminars and how the programs were stopped because of COVID 19. And once things are back to normal get with the TPMA the board can discuss the programs. Dr. Sables ask Ms. Grice about the breakdown percentages for revenue sources application renewal fees. Ms. Grice comments that 72.76% was for renewals

and 19.87% from application fees. Dr. Sables offers concerns about the application cost and the application fees are covering. Ms. Grice suggests to wait until a later date to discuss the adjustment for the fees. Mr. Silvus cautions Dr. Sable about the liability of setting the processing of the fees. Dr. Sables concurs with Mr. Silvus about the changes to the application fees.

Office of General Counsel

Mr. David Silvus, with the Office of General Counsel to present the OGC report. Mr. Silvus read aloud the Conflict of Interest Policy and the Open Meetings Act. Mr. Silvus then addressed disciplinary activity.

Mr. Silvus reports on the discussion on the CEU's credits issue for the Orthotist, Prosthetics and Pedorthist. Nothing has been concluded and suggest contacting Dr. Stark and do a general draft of the rule and bring the draft to the next Board meeting for the board to read and consider. There is a pending rule for record keeping for Orthotist, Prosthetics and Pedorthist that has been submitted to the Secretary of State Office and deciding who will attend the meeting and how the meeting will occur by WebEx or in office and when the meeting will occur. Mr. Silvus will contact Dr. Schuler concerning who will attend the meeting. No pending appeals or Civil Suites the report on pending complaints from OGC are similar to the last board meeting. Mr. Silvus explains of his absence due to illness there were no changes on the reports. There were 6 cases that are DPM Podiatrist, 1 Orthotist, sent 320 C's to everyone, formal notes of charges file on one, There is possible an agreed order for the next board meeting that is in processing for wording, If the Board recalls at the Last meeting it was voted on and agreed upon to send all the pending over proscribing cases to be heard by the OAJ to issue an initial preliminary order to conduct a trial. Mr. Silvus explains the proceeding as to what happens when the case is presented to the board the opportunity to vote then decide on what is appropriate. If neither side is dissatisfied with the OAJ order, then it will become the final order. Mr. Silvus explains how complicated it will be for court proceedings if done by WebEx and the concern for the complexity for the cases and how the proceeding is presented. Mr. Silvus ask Dr. Sables if he wants to discuss the email he forwarded to himself and Mrs. Wilkins concerning a news blurb on the Post Legation at the Federal level to protect the individual board members from federal liability for their action as members of the board. Mr. Silvus talks about the concept and worries that might not be necessary. Mr. Silvus explains that generally the state laws concerning Board members and filling the functions and duties for the State of TN and are considered a piece of the State of Tennessee. Mr. Silvus explains the Federal action for 1983 act. Mr. Silvus touches base on the board member consistence and requirements to what they are to do as a board member and the board members are following what they are supposed to be doing. Dr. Sables thanks Mr. Silvus for the excellent explanation and states we are already following the requirements and should be in good shape. Mr. Silvus agrees that we are keep with the rule making. Dr Schuler ask Mr. Silvus about the discussion about the Revenue report and how the upcoming trials and what the effect will be to our revenue and the cost effecting the revenue. Mr. Silvus explains the expenses will be. There are 7 cases where outside experts to review the over prescribing cases and his expenses toward the cases. The cost of OGC have gone up. Mr. Silvus explains the caution and options exists and is ask for the respondent to be taxed with the cost on the back end if it is found the respondents care fell below the standard care and the violation of the practice act and we ask that the respondent be required to pay the cost. Mr. Silvus explains how they attempt to place the coast back to the responsible party. Mr. Silvus discusses how OGC tries to resolve the cases and avoid the initial cost. Dr. Sables inquiries about money owed and if there is interest collect on such monies. Dr. Sables replies he does not know of interest on what is owed and would be a question for the Financial department.

Administrative Report

Mrs. Wilkins stated as of November 4th, 2020 there are 292 active Podiatrists; 134 active X-Ray Operators; 146 active Orthotists; 144 active Prosthetists and 47 Pedorthist's. Mrs. Wilkins reviewed the monthly statistical breakdown of the renewed, retired and failed to renew. Licenses approved between August 13 and November 4th are as follows 5 new Podiatrist, 41 renewed, none retired and none expired, 2 new X-Ray Operators, 11 renewed, none retired and none expired, No new Orthotist, 17 renewed, none retired and none expired, 1 new Prosthetists, 14 renewed, none retired and none expired and no new Pedorthist, 3 renewals, none retired and none expired

Mrs. Wilkins said the Board meeting dates attentively set for **2021** are as follows:

Board Meeting Dates

February 5th ,2021

May 28th, 2021

July 30th,2021

November 5th ,2021

Mrs. Wilkins stated there is no information given at this time as to when the Board meetings will return to a regular Board meeting and not WebEx.

Newly Licensed Podiatrist

Dr. Tatum

Dr. Malonie

Dr. Marino

Dr. Willis

Dr. Wolford

Dr. Pavuluri made a motion to approve the newly licensed Podiatrists, seconded by Dr. Sables. The motion carried. Row called made motion carries

Podiatric X-Ray Operators

Ms. Goznell

Ms. Core

Dr. Khumalo made a motion to approve the newly licensed Podiatric X-ray Operators, seconded by Dr. Sables. Row call made; motion carried.

Prosthetists

Dana Schack

Dr. Stark made a motion, seconded by Dr. Sables. Row call made; motion carried.

Applicant for File Review

Mrs. Wilkins speaks to Dr. Schuler, madam chair and Mr. Silvus concerning an application for a Podiatric X-Ray Operator Ms. Stephanie Ferry that is an attendee. Dr. Schuler approved her pending a background check. There were issues pending her background check. Dr. Sables reviewed the background check and ask that Ms. Ferry attend so the board could make a decision on her file. Mrs. Wilkins ask Mr. Silvus if it could be discussed. Mr. Silvus state that Ms. Ferry meets all the requirements to qualify for a certificate of proficiency to be an X-Ray Operator. He states she has a 2005 conviction for aiding and abiding. Mr. Silvus reads the Fresh Start Act started in 2018 that applies to all Health Related Boards. Mr. Silvus gives a brief summary of the Fresh Start Act for 63-1-130 related to the process of that profession when considering her application, he asks Mrs. Wilkins to read the letter from Ms. Ferry. Mr. Silvus asks Mrs. Wilkins to read the letter for the board from Ms. Ferry explaining the circumstances. Mrs. Wilkins states Ms. Ferry is an attendee at the meeting. Mrs. Wilkins asks if Ms. Ferry can speak with the board to consider the conviction and the time that has passed since it happened (15 years) and the relation on her ability to being an X-Ray operator in a Podiatrist office now. And if the board believes that the conviction bores on her ability to do that and be able to safely do the operations of an X-Ray Operator and if the passage of time isn't sufficient the you could deny her license, but if you find it doesn't impact her ability to safely be an X-Ray Operator tech and or the passage

of time so great she has rehabilitated herself, then it should not be used as a bases to deny her license. Mr. Silvus inform the board of the procedure of denying the license if the board decides to take that action. Mr. Silvus asks the board to speak with Ms. Ferry. Dr. Schuler suggest getting a statement on the board's concerns about the case and has it been enough time since the conviction. Considering the statements in Ms. Ferry's letter and from Mr. Silvus. Dr. Schuler ask for the induvial board members options. Dr. Khumalo, Dr. Pavuluri, Dr. Stark, would approve the license without reservations. Dr. Stark questioned the charge be legally expunged. Mr. Silvus states criminal law. Mrs. Wilkins notified the board members Ms. Ferry is in attendance as a panelist and to ask her questions if necessary. Dr. Sables ask Ms. Ferry to clarify that there was no violence and drugs involved, Ms. Ferry responds correct to the question.

Dr. Sable motions to approve base on the time factor has been long and no violence and drugs was involved, and it does not influence her operational skill as an x-ray operator. Dr. Pavuluri seconds the motion Dr. Schuler asks to take a vote. Mrs. Wilkens takes a roll call to approve Ms. Ferry as an x-ray operator. Application is approved and Ms. Ferry's name will be added to the list.

Other Board Business

There is no other Board business. Dr. Schuler asks if there is anything anyone wants to bring forward. Dr. Schuler would like to take a moment to commend Teddy and her staff, Dr. Schuler lets the board know about Teddy's personal loss this year and the challenges with the loss of a administrative staff leaving and training new staff members. The Board thanks Mrs. Teddy on a wonderful job. Mrs. Teddy thanks Dr. Schuler and the board. Mrs. Teddy lets the board know she is retiring next month, and she has her 20 years in. Dr. Starks request a roll call vote to deny that request and everyone laughs and agrees. Mrs. Teddy thanks Everyone and overrides the vote. Again Dr. Schuler thanks Mrs. Teddy and Doris for a good job. Mrs. Teddy let the board know about the board in under a sunset review this year, and what that entails is a thorough look into the boards dealings over the last couple of years by the legislators and specifically Government operations committee and the purpose to vote whether or not to continue the board for an additional four or five years, she and Dr. Schuler will attend the Government opts Committee on December the 8th 2020.

Adjournment

Dr. Khumalo made a motion to adjourn the meeting at 10:25 a.m., seconded by Dr. Pavuluri. Roll called the meeting adjourned.

Ratified by the Board of Podiatric Medical Examiners on May 28, 2021