

TENNESSEE BOARD OF PODIATRIC MEDICAL EXAMINERS

DATE: April 23, 2008
TIME: 9:00 A.M., CST
LOCATION: Health Related Boards
Conference Room
227 French Landing, Suite 100
Nashville, TN 37243

BOARD MEMBERS

PRESENT: David Long, DPM, Chair
Lawrence Burns, DPM
Paul Somers, DPM
Katherine Riffe, DPM
Karl Fillauer, CPO

BOARD MEMBERS

ABSENT: Karen Garner, Citizen Member

STAFF

PRESENT: James Hill, Board Administrator
Shiva Bozarth, Advisory Attorney
Elizabeth Miller, Health Related Boards Director
Barbara Maxwell, Administrative Director

Dr. Long, Chair, called the meeting to order at 9:10 a.m. A roll call vote was conducted and all members were present.

Approve January 24, 2008 Board Meeting Minutes

Upon review of the January 24, 2008 minutes, Dr. Somers made a motion, seconded by Dr. Riffe, to approve the minutes as written. The motion carried.

Conflict of Interest Policy Statement

Mr. Bozarth discussed the Conflict of Interest Policy Statement asking all Board members to disclose any conflicts of interest whether existing or potential to determine if the Board member should recuse him/herself and leave the meeting room during the proceedings.

Mr. Bozarth reviewed the Office of General Counsel report stating there are no open cases or rules pertaining to the Board in OGC.

Mr. Bozarth said in October of last year his department underwent some changes. Mr. Bozarth said prior to that point there was one advisory attorney and one litigating attorney for each Board which Al Partee, General Counsel, determined was insufficient. Mr. Bozarth said there was very little litigation that appear before this Board as the licensees appear to behave.

Mr. Bozarth asked the Board to email or call him at any time as the main purpose of OGC is to provide legal advice, research and counsel to the Board.

Mr. Bozarth stated he is to give the Board legal options so the members can determine how to vote; draft rules as directed by the Board and carry them through the rulemaking process; and, litigate cases that come before the Board.

Mr. Bozarth stated that since Dr. Burns had an open telephone conversation regarding a practitioner in the board room, which was heard by all members, the entire Board would have to recuse themselves from the hearing.

Mr. Bozarth said if any Board member had any questions regarding the proceeding or the law during a hearing, you must ask the administrative law judge presiding over the hearing. Mr. Bozarth said it was important that the Board make all deliberations public and that all decisions are made by the entire Board.

Mr. Bozarth reviewed the role the Office of General Counsel plays in regards to advising the board in litigating cases and how contested cases are conducted. Mr. Bozarth discussed the types of discipline and civil penalties the Board may impose and the basis for the imposition.

Mr. Bozarth said all deliberations, discussions and conversations between any two or more Board members regarding contested cases or any other matters pertaining to the Board or the Board's business must be conducted in public and at properly noticed meetings. Mr. Bozarth said the Board members cannot email, call or speak to each other about matters before the Board unless they are at a Board meeting.

Mr. Bozarth informed the Board that other Boards have been sued for violating the sunshine law. Mr. Bozarth asked the Board to not email him, Mr. Hill, or Ms. Maxwell and ask us to relay a message to another Board member. Mr. Bozarth said if the members discussed Board issues outside the meeting the entire Board could be sued for violation of the sunshine law.

Dr. Riffe said it makes it difficult in determining if new rules or rule amendments need to be made.

Mr. Bozarth said the Board needed to make that determination at board meetings.

Dr. Long thanked Mr. Bozarth for the information.

Order of Compliance for Dr. David Haverly, DPM

Mr. Bozarth presented a petition for an Order of Compliance and affidavit from Ms. Stone for David Haverly, DPM. Mr. Bozarth said the affidavit confirms that Dr. Haverly has completed the requirements of his order and is petitioning the Board to lift his probation.

Dr. Somers asked if the order could be lifted from his record.

Mr. Bozarth stated the order could not be lifted from his record and his license will reflect he has been disciplined. Mr. Bozarth said there was no mechanism for Health Related Boards to expunge records nor is there a state or federal law allowing records to be expunged.

Upon discussion, Dr. Somers made a motion, seconded by Mr. Fillauer, to issue Dr. Haverly an order of compliance. The motion carried

Investigative Report

Ms. Stone reviewed the Investigative Report with the Board stating there are seven (7) open complaints in Investigations against Podiatrists. Ms. Stone stated three (3) complaints have allegations of unprofessional conduct; three (3) complaints have allegations of malpractice/negligence and one (1) complaint has an allegation titled other.

The Board asked Ms. Stone to give a closed report along with the open report at the next meeting.

Ms. Stone stated there is one (1) open complaint against a Prosthetist/Orthotists with an allegation titled other.

Disciplinary Report

Ms. Stone stated she is currently monitoring two podiatrists for compliance of Board orders. Ms. Stone said once the practitioner has complied with the order they will contact Investigations requesting an order of compliance which will come before the Board for ratification.

The Board recognized Mr. John Williams, Lobbyist for the Tennessee Podiatric Association, who stated that the types of violations have been discussed at other Board meetings. Mr. Williams said the Board of Professional Responsibility issues an annual report that is mailed to all licensed lawyers in Tennessee which includes a record of disciplinary actions by category. Mr. Williams said it would seem to him that if the Board of Professional Responsibility could issue this information that Health Related Boards could do it too.

Ms. Miller informed the Board that a list of disciplined practitioners was in the Board's Winter 2007 Board's newsletter.

Financial Report

Mr. Hill reviewed the Financial Report stating the Board has a cumulative carryover of \$88,323.65. Mr. Hill said the carryover does not reflect revenue procured by the new professions in this report but should be in the updated report for the August meeting.

Administrative Report

Mr. Hill stated there are currently 228 podiatrists, 107 podiatric x-ray operators, 167 orthotists, 142 prosthetists and 79 pedorthists licensed in Tennessee.

Ms. Hill said two (2) podiatrists, one (1) podiatric x-ray operator, nine (9) orthotists, thirteen (13) prosthetists and thirteen (13) pedorthists were licensed since the Board's last meeting.

Mr. Hill stated the continuing education audit for January revealed there was one (1) podiatrist in non-compliance with the continuing education requirements.

Rule Amendments

Mr. Hill stated that Mr. Fillauer asked him to put a discussion regarding supervision requirements for orthotists, pedorthists and prosthetists on the agenda.

Mr. Fillauer said he has been getting questions from his colleagues and licensees who have small practices in which they are the only licensed orthotists, pedorthists and prosthetists in the practice but have several technicians working at the practice.

Mr. Fillauer asked the Board how much leeway does the license process have in allowing an assistant or technician to interact with a patient and to define supervision, or have some kind of ruling for practitioners to determine how much an assistant can do in the absence of the practitioner.

In review of Rule 1155-4-.04(4), Mr. Bozarth said a licensed orthotists, prosthetists or pedorthists may utilize one or more non-licensed persons to assist in the provision of services, but the non-licensed person shall be limited to the performance of minor repairs on devices which have been previously dispensed to a patient.

Mr. Fillauer asked if the rule meant the licensee doesn't have to be present at the facility.

Mr. Bozarth said yes because that rule does not require any supervision for the unlicensed person. Mr. Bozarth stated the assistant to work on repairs on previously dispensed items.

Mr. Fillauer asked if a patient came into the office while the orthotist is on vacation with a pulled off strap could the technician repair the strap.

Mr. Bozarth said the technician could do minor repairs unsupervised but it would have to be determined what constitutes minor.

The Board recognized Mr. John Williams who stated he wanted to bring the Board up to date on legislation that passed the Senate a few days ago. Mr. Williams said the bill deals with tamper resistance prescription pads. Mr. Williams said on April 1, 2008 all practitioners that write prescriptions for Medicaid patients only (in TN it would be TN care) is required to write prescriptions on a tamper resistant prescription pads.

Mr. Williams said the legislature decided that most practitioners did not want to use two pads so the legislation is for all prescriptions to be on a tamper resistance pad. Mr. Williams said if the bill passes it will become effective July 1, 2009.

Dr. Long asked Mr. Williams if the bill covers all prescriptions.

Mr. Williams said yes, for all drugs, not just controlled substances.

Review/Approve Applications

Upon review of the application for **Christopher C. Zenker, DPM**, who is applying for licensure as a podiatrist by reciprocity, Dr. Riffe made a motion, seconded by Dr. Burns, to request a copy of his certificate of completion from his residency program, or appear before the Board at the next meeting. The motion carried.

Upon review of the application for **Richard Sieber**, who is applying for licensure as a podiatrist by examination, Dr. Somers made a motion, seconded by Dr. Riffe, to approve Dr. Sieber for licensure. The motion carried.

Upon review of the application for **Bonnie S. Ganime**, who is applying for licensure as a podiatric x-ray operator, Dr. Long made a motion, seconded by Mr. Fillauer to approve Ms. Ganime for licensure. The motion carried.

Upon review of the applications for **Kevin D. Barna, Bradley S. Parrott, Joseph A. Rieger, Jeffery B. Roberts, John W. Ryan and Stephanie L. Upchurch**, who are applying for licensure as orthotists, Dr. Burns made a motion, seconded by Dr. Somers, to approve the applicants for licensure. The motion carried.

Upon review of the application for **Davie S. Thomas**, who is requesting that his application for licensure as an orthotist be withdraw, Dr. Riffe made a motion, seconded by Mr. Fillauer, to accept Mr. Thomas' withdrawal. The motion carried.

Upon review of the application for **Rocky Goodall**, who is applying for licensure as an orthotist, Dr. Burns made a motion, seconded by Dr. Riffe, to approve Mr. Goodall for licensure. The motion carried.

Upon review of the application for **Curtis Bachelor**, who is applying for licensure as an orthotist, Mr. Fillauer made a motion, seconded by Dr. Burns to approve Mr. Bachelor for licensure. The motion carried.

Upon review of the application for **Tien Tran**, who is applying for licensure as an orthotist, Mr. Fillauer made a motion, seconded by Dr. Burns to approve Mr. Tran for licensure. The motion carried.

Upon review of the application for **Jason M. Watson**, who is applying for licensure as an orthotist, Mr. Fillauer made a motion, seconded by Dr. Riffe, to approve Mr. Watson for licensure. The motion carried.

Upon review of the application for **Gayle Whitfield**, who is applying for licensure as an orthotist, Mr. Fillauer made a motion, seconded by Dr. Barns, to approve Ms. Whitfield for licensure. The motion is carried.

Upon review of the application for **J. Kevin Wilkins**, who is applying for licensure as an orthotist, Mr. Fillauer made a motion, seconded by Dr. Somers, to approve Mr. Wilkins for licensure. The motion carried.

Upon review of the applications for **Curtis A. Bachelor, Wayne L. Kruse, David D. Watson, April A. Lovelace** and **Aurdie L. Amoo-Asante**, who are applying for licensure as pedorthists, Dr. Somers made a motion, seconded by Dr. Riffe, to approve the applicants for licensure. The motion carried.

Upon review and discussion of the application for **Kevin D. Barna**, who is applying for licensure as a prosthetist, Mr. Fillauer made a motion, seconded by Dr. Somers, to approve Mr. Barna for licensure. A roll call vote was conducted and all members voted in the affirmative with the exception of Dr. Burns. The motion carried.

Upon review of the application for **David J. Smith**, who is applying for licensure as a prosthetist, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve Mr. Smith for licensure. The motion carried.

Upon review of the application for **Ronald T. Snell**, who is applying for licensure as a prosthetist, Mr. Fillauer made a motion, seconded by Dr. Somers, to approve Mr. Snell for licensure. The motion carried.

Upon review of the application for **Grady Fletcher**, who inadvertently applied for licensure as an orthotist instead of a pedorthist, Dr. Riffe made a motion, seconded by Dr. Somers, to approve Mr. Fletcher for licensure upon receipt of an affidavit of retirement of his orthotist license. The motion carried.

**Review/Approve Newly Licensed Podiatrists, Podiatric X-Ray Operators,
Orthotists, Prosthetists and Pedorthists**

Upon review of the following newly licensed podiatrists, podiatric x-ray operators, orthotists prosthetists and pedorthists, Mr. Fillauer made a motion, seconded by Dr. Riffe, to approve the following licensees:

Podiatrists

**Cheryl Anne Haag
Tomika S. Thomas**

Podiatric X-Ray Operator

Jamilyn L. Richardson

Orthotists

**Richard A. Berggren
Jay P. Cranford
Locke H. Davis
Keith A. Dwyer
Donald R. Haynes
Jason D. Joyce
John H. Reynolds
Jeffrey B. Roberts
Christian Smith
Kathy L. Smith**

Prosthetists

**Richard A. Berggren
William E. Carver, Jr.
Abigail T. Chandler
Jay P. Cranford
Locke H. Davis
Keith A. Dwyer
John D. Gilbreath
James A. Grummel, Jr.
Jeremy E. Harris,
Christopher H. Hicks
Eric D. Kimsey
James G. Newberry
John H. Reynolds
Christian Smith**

Pedorthists

Richard W. Brown
Harriette P. Bryant
Abigail T. Chandler
Locke H. Davis
Kathy K. Drew
John R. Dunagan
Daniel J. Hosford
Michael S. Hosford
Phillip S. Isaacs
Jason D. Joyce
Wayne L. Kruse
John H. Reynolds

The motion carried.

Ratify Closed Files

Upon review, Dr. Riffe made a motion, seconded by Dr. Somers, to close the following files:

Podiatrist

Michelle A. McCrumb
Danielle Redburn

Podiatry X-Ray Operator

Miller D. Erin

Orthotist

Frederick P. Antczak

Prosthetists

Frederick P. Antcxak
Anthony J. Martinez

Pedorthists

Frederick P. Antcxak
Brandon T. Jones

The motion carried.

Schedule Last 2009 Board Meeting Date

Upon discussion, Dr. Long made a motion, seconded by Dr. Somers, to schedule October 14, 2009 for the Board's last meeting date in 2009. The motion carried.

Review/Approve Continuing Education Courses

Upon review of the Middle Tennessee Podiatric Medical Association quarterly lectures for approval as continuing education, Dr. Somers made a motion, seconded by Dr. Burns, to approve the course for continuing education for 2007 and 2008. The motion carried.

Review Correspondence

The Board reviewed a letter from **J. Allen Sudberry, DPM**, requesting an opinion as to whether or not podiatrist can supervise hyperbaric oxygen therapy; Mr. Bozarth stated he proposed a letter, for the Board's review and approval, to send to Dr. Sudberry.

Upon review of Mr. Bozarth's letter to Dr. Sudberry, Dr. Somers made a motion, seconded by Dr. Riffe, to approve the letter for mailing. The motion carried.

Continuing Education Audit Information

Mr. Hill reviewed the 2005/2006 continuing education audit, informing the Board that one podiatrist is deficient nineteen (19) of the required twenty-five (25) hours.

With no other Board business to conduct, Dr. Somers made a motion, seconded by Dr. Burns, to adjourn at 12:18 p.m. The motion carried.

Approved by the Board of Podiatric Medical Examiners on this the 13 day of August 2008.