

TENNESSEE BOARD OF PODIATRIC MEDICAL EXAMINERS

DATE: August 13, 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
Paul Somers, DPM
Katherine Riffe, DPM
Karl Fillauer, CPO

BOARD MEMBERS

ABSENT: Lawrence Burns, DPM
Karen Garner, Citizen Member

STAFF

PRESENT: James Hill, Board Administrator
Shiva Bozarth, Advisory Attorney
Barbara S. Maxwell, Administrative Director

On August 13, 2008 Dr. Long, Chair, called the meeting to order at 9:15 a.m. A roll call vote was conducted and all members were present.

Review/Approve April 23, 2008 Board Meeting Minutes

Upon review of the April 23, 2008 Board Meeting Minutes, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve the minutes as corrected. The motion carried.

Conflict of Interest Policy Statement

Mr. Bozarth reviewed the Conflict of Interest Policy Statement with the Board members stating that no Board member should vote on anything in which they have a personal or business interest. Mr. Bozarth asked the Board to disclose any potential conflicts of interest to determine if a conflict exists.

Mr. Bozarth asked all Board members to sign the new Conflict of Interest Policy which includes the new director's name, Elizabeth Miller.

Office of General Counsel Report

Mr. Bozarth reviewed the OGC Report stating there are currently no new or amended rules pertaining to the Podiatry Board in their office.

Mr. Bozarth stated there are no open cases pertaining to the Board in OGC.

Mr. Bozarth stated he has a Consent Order for continuing education and two (2) advisory opinion letters for the Board's review. Mr. Bozarth asked the Board to issue a policy statement regarding hyperbaric oxygen treatments.

Mr. Bozarth said Dr. Ignis Retief, D.P.M. failed to complete the continuing education requirements for 2005. Mr. Bozarth stated that Dr. Retief signed the Agreed Citation which requires him to pay a civil penalty of \$100 and complete an additional ten (10) hours of continuing education within the following calendar year.

Upon review, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve the Agreed Citation. The motion carried.

Discuss Agreed Citations and Disciplinary Actions

Matt Scanlon, General Counsel with OGC, discussed Agreed Citations for those practitioners who fail to obtain the required continuing education. Mr. Scanlon stated Agreed Citations are considered formal disciplinary actions and must be reported on the monthly disciplinary report on the Department of Health web site but are not reported to the National Practitioners databank because they are technical violations of the Board's rules.

Upon discussion, Dr. Somers made a motion, seconded by Mr. Fillauer, to use Agreed Citations for practitioners who fail to obtain the required continuing education. The motion carried.

Financial Report

Mr. Hill said the Board has a projected cumulative carryover, as of June 30, 2008, of \$159,128.51.

Dr. Long asked if the Board's revenue has been raided. Mr. Hill stated the administrative staff has no information on the status of the Board's revenues.

Administrative Report

Mr. Hill reviewed the Administrative Report with the Board stating that, of the 227 currently licensed podiatrists, 204 are Tennessee residents; of the 100 currently licensed x-ray operators, 95 are Tennessee residents; of the 175 currently licensed orthotists, 146 are Tennessee residents; of the 120 currently licensed pedorthists, 120 are Tennessee residents; and, of the 80 currently licensed pedorthists, 75 are Tennessee residents.

Mr. Hill discussed the monthly continuing education audit which is five percent (5%) of monthly renewals.

Mr. Hill said of the twelve (12) podiatrists who renewed their licenses in February, one was audited and found to be non-compliant. Mr. Hill said of the six (6) podiatrists who renewed their licenses in March, one was audited and found to be non-compliant.

Mr. Hill said of the three (3) podiatric x-ray operators who renewed their licenses in February, one was audited and found to be non-compliant. Mr. Hill said of the three (3) podiatric x-ray operators who renewal their licenses in March, one was audited and was compliant.

Discuss and vote on the appropriate action to take for practitioners working on a lapsed license

Mr. Bozarth discussed disciplinary actions for practitioners working on a lapsed licensed stating the Board could allow practitioners a three (3) month grace period and access a civil penalty of \$100 per month after the grace period which would be formal disciplinary action. Mr. Bozarth said the disciplinary action would be reported on the monthly disciplinary report on the Department of Health web site but not to the National Practitioners databank.

Upon discussion, Dr. Somers made a motion, seconded by Mr. Fillauer, to allow the three (3) month grace period and a civil penalty of \$100 per month after the grace period. The motion carried.

Mr. Bozarth suggested the Board include the change of address policy in their newsletter to remind licensees that they must notify the Board in writing of their change of address so they can receive their renewal forms.

Investigative Report

Ms. Stone said there are currently eleven (11) complaints against podiatrists in Investigations.

Ms. Stone said there were no complaints against podiatric x-ray operators.

Ms. Stone said there are two (2) complaints against orthotists; one (1) complaint against prosthetist; and, zero (0) for pedorthists. Ms. Stone said the allegations against orthotists and prosthetist are classified as other.

Ms. Stone said she was asked to get an account for cases that were closed to determine the areas of complaints and went back to 2006 to obtain the information. . Ms. Stone said five (5) complaints were for care of services, two (2) for unprofessional conduct, two (2) for malpractice and one (1) for fraud and false billing.

Monitored Practitioners Report

Ms. Stone stated she is currently monitoring two podiatrists. Should the practitioners not comply with the stipulations of the orders they would come back before the Board as contested cases.

Discuss the Reduction of Renewal Fees

Dr. Long said he asked Mr. Hill to put this on the agenda for Board discussion due to the possibility the Board's funds may be used for the budget shortfall.

Mr. Bozarth said a large contested case could be costly especially if the case called for an expert opinion. Mr. Bozarth said he spent \$60,000 on one case that called for an expert witness. Mr. Bozarth said if the Board decreases its renewal fees it will take longer to get out of the red.

Mr. Fillauer said it would be a benefit to small businesses if the renewal fees were reduced.

The Board discussed lowering the renewal fee from \$450 (plus the \$10 state regulatory fee) to \$350 (plus the \$10 state regulatory fee) for podiatrists; and, lowering the renewal fee from \$300 (plus the \$10 state regulatory fee) to \$200 (plus the \$10 state regulatory fee) for orthotists, prosthetists and pedorthists.

Upon discussion Dr. Somers made a motion, seconded by Mr. Fillauer, to lower the renewal fees as stated. The motion carried.

Applicant Interview

The Board interviewed applicant Rick Thornton, D.P.M., who had adverse issues from 2001 and 2002.

Dr. Thornton said in 2001 he was a 2nd year medical student but did not have enough money to finish the school year. Dr. Thornton stated due to issues he was advised by the school's Board Committee and advised to leave for one year to get his financial situation in order.

Upon discussion, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve Dr. Thornton for licensure as a podiatrist. The motion carried.

Review Correspondence Regarding Pulse Electromagnetic Field Scientific Review for Continuing Education

Dr. Long reviewed correspondence from Dr. Allen Sudberry regarding a continuing education course in pulse electromagnetic field scientific review offered by the Middle Tennessee Podiatric Medical Association. Dr. Long said this course is basically about bone stimulation. Dr. Sudberry requested approval for one hour of continuing education.

Upon discussion, Dr. Riffe made a motion, seconded by Dr. Somers, to approve the course for one hour of continuing education. The motion carried.

The Board discussed a request for Advisory Ruling from Dr. Gilmer Reed regarding an advertisement he placed in a local newspaper. The Board determined that the advertisement was a violation of the advertising rule in that Dr. Reed failed to identify his profession. The Board determined the photograph was not in violation of the advertising rule.

Upon discussion, Dr. Somers made a motion, seconded by Mr. Fillauer, to send a letter to Dr. Reed informing him that the photograph is not offensive; however, he must specify his profession in the advertisement. The motion carried.

The Board discussed a request for Advisory Ruling from Dr. Robert MacArthur asking if it is within the scope of practice for podiatrists to act as the supervising physician during hyperbaric oxygen treatment as it applies to the treatment of foot wounds.

Dr. Long stated this appeared to be an insurance reimbursement issue as the hospital will not let Dr. MacArthur supervise the procedure because Medicare will not reimburse if the supervisor isn't a medical doctor.

Mr. Bozarth suggested the Board issue a policy statement as this issue has come up several times.

Upon discussion, Dr. Somers made a motion, seconded by Dr. Riffe, to accept the request for an advisory ruling from Dr. MacArthur.

The Board discussed a policy statement pertaining to hyperbaric oxygen treatment. Upon discussion, Dr. Somers made a motion, seconded by Dr. Riffe, to adopt the following policy statement:

If a podiatrist is treating a wound or other injury at or below the distal tibial metaphyseal flair then hyperbaric oxygen may be utilized as a possible mode of treatment as long as the treatment is performed within the standard of care for a podiatrist licensed in Tennessee. The Board has not ruled, and declines to advise, whether the use of hyperbaric oxygen is a treatment within the standard of care for all cases.

The motion carried.

Report from John Williams, TPMA Lobbyist

Mr. Williams said at the TPMA summer meeting there was discussion regarding legislation for 2009. Mr. Williams said he was directed to develop a bill to amend the practice act as the statute has not been amended in a long time.

Mr. Williams stated he that he solicits any suggestions regarding changes the Board would like to make. Mr. Williams said one of the changes is to raise the per diem for Board meetings from \$50 to \$100 to keep in line with other boards.

Mr. Bozarth said the Board would like to change the section in T.C.A. §63-3-103(b) requiring one (1) member of the Board to be a representative from each of the schools from which applicants for examination come, as there are no podiatric schools in Tennessee.

Mr. Williams encouraged each Board member to review the practice act for any changes they would like made.

Mr. Williams said he would be glad to provide the Board with a legal opinion he did pertaining to hyperbaric oxygen treatment.

File Review

The Board reviewed the file of **Christoph C. Zenker, DPM**, who submitted his certificate of completion from his residency program as requested by the Board. Upon review, Dr. Riffe made a motion, seconded by Mr. Fillauer. The motion carried.

The Board reviewed the file of **Rachna Gupta, DPM**, who was disciplined in Florida for failure to obtain the required continuing education courses. Upon review, Dr. Riffe made a motion, seconded by Dr. Somers, to ask Dr. Gupta to appear before the Board. The motion carried.

The Board reviewed the file of **John K. Throckmorton, DPM**, who did not take the PM Lexis III examination. Upon review, Dr. Somers made a motion, seconded by Dr. Riff, to have Mr. Hill inform Dr. Throckmorton that he could withdraw his application, or have the Board administrative office hold his application, until such time he takes and passes the next scheduled PM Lexis III examination. The motion carried.

The Board reviewed the file of **Arthur J. Belanger, DPM**, who is applying for an academic license in podiatry. Upon review, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve Dr. Belanger for licensure. The motion carried.

The Board reviewed the file of **Angela H. Dickens, DPM**, who is applying for an academic license in podiatry. Upon review, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve Dr. Dickens for licensure. The motion carried.

The Board reviewed the file of **Christian S. Cumback**, who is applying for an orthotists license. Upon review, Mr. Fillauer made a motion, seconded by Dr. Riffe, to approve Mr. Cumback for licensure. The motion carried.

The Board reviewed the application of **Brandi S. Moss**, who is applying for a podiatric x-ray operator's license. Upon review, Dr. Somers made a motion, seconded by Dr. Riffe, to approve Ms. Moss for licensure. The motion carried.

The Board reviewed the file of **David V. Knowles**, who is applying for an orthotist and prosthetist license. Upon review, Mr. Fillauer made a motion, seconded by Dr. Somers, to approve Mr. Knowles for licensure. The motion carried.

The Board reviewed the application of **Mario Dickens, DPM**, who is applying for licensure as a podiatrist. Mr. Hill stated Dr. Dickens sat for the PM Lexis examination over five (5) years ago.

Dr. Long stated the time frame was to assure minimal competency of practitioners coming to Tennessee. Dr. Long said as the rule changes came about the Board voted on the five (5) year time span.

Mr. Bozarth said the Board had a rational basis behind making that rule. Mr. Bozarth stated that to deny an applicant a license based upon the five (5) year rule without some indication there was a lack of clinical skills could potentially open the Board up to litigation. Mr. Bozarth advised the Board not to deny licensure based solely on the date of the exam.

Dr. Somers said the five (5) year rule was established to assure competency.

Mr. Bozarth advised the Board to deny the license on the basis of a lack of clinical competency and articulate the reason if that is the Board's determination.

Dr. Somers stated that the Board needs to change the five (5) year rule if it opens the Board up to litigation.

Upon discussion, Dr. Somers made a motion, seconded by Dr. Riffe, to approve Dr. Dickens for licensure. A roll call vote was conducted and the motion carried.

The Board interviewed **Patricia A. Casey, DPM**, who sat for the NBPME examinations over five (5) years ago.

Dr. Casey stated she practiced in Missouri from 2000 to 2001, moved back to New York from 2001 to 2005, and worked at Indian Health Services in New Mexico from 2005 until August 4, 2008. Dr. Casey stated she took the PM Lexis in 1998. Dr. Casey said she still holds a license in Missouri, New York and New Mexico.

Upon discussion, Dr. Riffe made a motion, seconded by Mr. Fillauer, to approve Dr. Casey for licensure. The motion carried.

Ratification of Newly Licensed Podiatrists, Podiatric X-Ray Operators, Orthotists, Prosthetists and Pedorthists

Upon review of the applications for podiatrists, Dr. Riffe made a motion, seconded by Mr. Fillauer, to approve the following applicants for licensure:

Patricia A. Casey
Mario S. Dickens
Richard W. Sieber
Rick Thorton

The motion carried.

Upon review of the applications for podiatric x-ray operator, Dr. Somers made a motion, seconded by Mr. Fillauer, to approve the following applicant for licensure:

Brandi S. Moss

The motion carried.

Upon review of the applications for orthotists, Mr. Fillauer made a motion, seconded by Dr. Somers, to approve the following applicants for licensure:

Curtis A. Bachelor
Kevin D. Barna
Christian S. Cumback
Rocky J. Goodall
Andrew J. Humann
Daniel D. Powers
Joseph A. Rieger
John W. Ryan, Jr.
Tien Q. Tran
Stephanie L. Upchurch
Gayle D. Whitfield
J. Kevin Wilkins

The motion carried.

Upon review of the applications for prosthetists, Mr. Fillauer made a motion, seconded by Dr. Riffe, to approve the following applicants for licensure:

Kevin D. Barna
Daniel D. Powers
David J. Smith
Ronald T. Snell

The motion carried.

Upon review of the applications for pedorthists, Mr. Fillauer made a motion, seconded by Dr. Riffe, to approve the following applicants for licensure:

Curtis A. Bachelor
Grady B. Fletcher

The motion carried.

Ratify Closed Files

Upon review of the podiatric application for **Chatelain Ryan**, Dr. Riffe made a motion seconded by Mr. Fillauer, to ratify the closure of Dr. Ryan's file. The motion carried.

Upon review of the podiatric x-ray operator application for **Ann Goodlin**, Mr. Fillauer made a motion, seconded by Dr. Riff, to ratify the closure of Ms. Goodlin's file. The motion carried.

Discuss/approve policy statement regarding licensees practicing on an expired license

The Board reviewed and adopted a policy statement regarding practitioners working on a lapsed license drafted by Mr. Bozarth which states "if a licensee or certificate holder fails to renew their license or certificate as required by the rules of the Board they will be obligated to pay the renewal fee and comply with all other requirements of the statutes and rules of this Board for licensure renewal. If a license or certificate holder is in fail to renew status for more than three (3) months the licensee or certificate holder will be subject to an additional Type C civil penalty in the amount of \$100 per month that the license was lapsed. This policy shall act as an addition to the disciplinary guidelines issued by the Board."

With no other Board business to conduct, Dr. Somers made a motion, seconded by Mr. Fillauer, to adjourn at 12:38 p.m. The motion carried.

Approved by the Board of Podiatric Medical Examiners on this the 16 day of October 2008.