

# TENNESSEE COUNCIL FOR LICENSING HEARING INSTRUMENT SPECIALISTS

DATE: September 22, 2017  
TIME: 9:00 A.M., CT  
LOCATION: Health Related Boards  
Poplar Room, Ground Floor  
665 Mainstream Dr.  
Nashville, TN 37243

## COUNCIL MEMBERS

PRESENT: Jerry Hall, Hearing Instrument Specialist, acting Chair  
Bruce L. Fetterman, M.D  
Jackie Miller, Hearing Instrument Specialist  
Lordy D. Smith, Consumer Member

## COUNCIL MEMBERS

ABSENT: Thomas Stewart, Hearing Instrument Specialist

## STAFF

PRESENT: Neil Stauffer, Office of General Counsel  
Teddy Wilkins, Unit Director  
Charles Custer, Board Administrator

The meeting was called to order at 9:00 a.m. By roll call, it was determined that a quorum was present.

## Minutes

The Council reviewed the minutes from the May 12, 2017 meeting. Dr. Fetterman made a motion, seconded by Mr. Miller, to accept the minutes as presented. The motion carried.

## Office of General Counsel

Mr. Stauffer informed the Council that the HIS lawsuit has been settled. Mr. Stauffer also presented the following OGC report to the Council:

### *Conflict of Interest Policy for Board Members*

Mr. Stauffer reviewed the Conflict of Interest Policy with the Council.

### *Legislation*

Mr. Stauffer advised of new legislation:

- ***Public Chapter 481***, now codified as § 63-1-126, Refusal to submit to drug test or testing positive for any drug violation of practitioner's practice act.

A healthcare practitioner violates the practitioner's practice act by refusing to submit to a drug test or testing positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test for an employer when the practitioner does not have a lawful prescription for using the drug or a valid medical reason for using the drug.

If a healthcare practitioner refuses to submit to a drug test or tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test for a covered employer, then this section shall apply to the practitioner. The practitioner shall be given three (3) business days from the time of notification to the practitioner of the confirmed test result to:

(i) Produce a lawful prescription for the drug or a valid medical reason for using the drug to the employer; or

(ii) Report to the substance abuse peer assistance or treatment program of the appropriate board for the practitioner.

So long as the practitioner obtains and maintains the advocacy of the substance abuse peer assistance or treatment program, unless otherwise required by law, the employer is not required to notify the appropriate board for the practitioner of the violation of the practitioner's practice act.

So long as the practitioner complies with the terms and conditions of a referral to a substance abuse peer assistance or treatment program, the practitioner's license or certificate shall not be suspended or revoked by the appropriate board for a positive result on a confirmed drug test or a refusal to submit to a drug test.

The board shall suspend the license, certificate, permit, or authorization of a healthcare practitioner who has been referred to the substance abuse peer assistance or treatment program pursuant to this subsection (c) when the practitioner fails to comply with the terms and conditions of the program.

The board is not prohibited from taking any other disciplinary action authorized by law for conduct other than a positive result on a confirmed drug test or a refusal to submit to a drug test.

### **Rule Activity**

CDS ratified the HIS rule changes on August 8, 2017. The rules are currently under review at the Attorney General's office.

### **Disciplinary Activity**

As of September 21, 2017, the Office of General Counsel (OGC) has one open case file. There are no contested cases to present to the Council.

## **Investigative Report**

Lori Leonard, Disciplinary Coordinator from the Office of Investigations advised the Council that there are currently twelve (12) complaints open, and the Investigations department is currently monitoring three (3) disciplined practitioners.

## **Administrative Report**

Mr. Custer presented the Administrator's report to the Council, which also included a report on the current status of the Council Operations Fee. Mr. Custer advised that there are currently a total of 147 licensed practitioners, and 33 licensed apprentices.

Mr. Custer stated between May 11, 2017 through September 20, 2017 there were seventeen (17) new applications, eight (8) new apprentice, four (4) licenses have been issued; one (1) retired; two (2) expired; and, twenty-five (25) renewals. Mr. Custer said fourteen (14) licensees renewed on-line for a total of fifty-six percent (56%).

## **New Licensees**

The Council agreed to accept the following new licensees:

1. Luke Amos
2. Kimberly Canela
3. Philip Chandler
4. Jennifer Stewart

## **Legislative Updates**

Lacy Blair, Legislative Liaison gave her legislative report regarding Legislative Updates for 2017 to the Council for Licensing Hearing Instrument Specialists.

### **Public Chapter 350**

This will allow healthcare providers to satisfy one hour of continuing education requirements through the performance of one hour of voluntary provision of healthcare services. The maximum amount of annual hours of continuing education that a provider can receive through providing volunteer healthcare services is the lesser of 8 hours or 20% of the provider's annual continuing education requirement. The legislation allows for rulemaking by the division of health related boards in order to administer this section. This took effect on May 12, 2017.

### **Public Chapter 215**

This will require state governmental entities that establish or adopt guides to practice to do so through the promulgation of rules, rather than policy. The rules so promulgated must specify all provisions included in and relating to the guide to practice. Any changes to guides to practice made after the guides are adopted must also be promulgated by rule in order to be effective. For purposes of this part, guides to practice includes codes of ethics and other quality standards, but

does not include tests, examinations, building codes, safety codes, or drug standards. This legislation took effect on April 28, 2017.

### **Public Chapter 240**

This legislation was brought by the Department of Health and was designed to address a number of issues throughout all licensing boards, committees, and councils. This legislation will: Insure the integrity of licensure examinations by making examination questions, answer sheets, scoring keys, and other examination data confidential and closed to public inspection. Allow the issuance of limited licenses to applicants who have been out of clinical practice or inactive, or who are engaged in administrative practice. Limited licenses may be of restricted scope, restricted duration, and have additional conditions placed upon them in order to obtain full licensure. Clarify that other documents prepared by or on behalf of the Department with regard to an investigation are confidential until such time as formal disciplinary charges are filed against the provider. Eliminate the “locality rule” for administrative law. Require the chief administrative official for each health care facility to report within 60 days any disciplinary action taken against an employee for matters related to ethics, incompetence or negligence, moral turpitude, or substance abuse, to the employee’s respective licensing board. All records pertaining to the disciplinary action shall be made available for examination to the licensing board. This act became effective on May 2, 2017.

### **Public Chapter 481**

This legislation creates a new violation of a healthcare practitioner’s practice act if that practitioner refuses to submit to or tests positive for any drug the practitioner does not have a lawful prescription for or a valid medical reason for using the drug. It is the duty of the employer to report any violation to the Department of Health. If the practitioner fails a drug test, the practitioner has 3 business days to either produce the requisite prescription or medical reason, or report to their board approved peer assistance program. If the practitioner does not comply with any of these measures, it is the duty of the employer to report this violation of the practice act to the employee’s licensing board for investigation and action. If the practitioner reports to the peer assistance program and obtains and maintains advocacy of the program, the employer is not required to notify the board.

As long as a practitioner obtains, maintains and complies with the terms of a peer assistance program, the board shall not take action on the licensee for the sole reason of a failed or refused drug test. If a practitioner fails to obtain or maintain advocacy from the peer assistance program, the program is required to report that information to the appropriate licensing board. The board shall suspend the license of a practitioner who fails to comply with the terms of the program. Employer drug testing must be compliant with the Drug-free Workplace requirements. This legislation allows a quality improvement committee to share information regarding substance abuse by a practitioner with other quality improvement committees. Additionally, this legislation specifies that the Department of Health is not required to obtain prior approval from the Attorney General in order to take any emergency action on a licensee. This legislation took effect on July 1, 2017.

## **Public Chapter 230**

This legislation authorizes commissioners or supervising officials of departments to evaluate certain actions by a regulatory board to determine whether the action may constitute a potentially unreasonable restraint of trade. Supervising officials must ensure that the actions of regulatory boards that displace competition are consistent with a clearly articulated state policy. If a board action constitutes a potentially unreasonable restraint of free trade, the supervising official must conduct a further review of the action and either approve, remand or veto the action. The supervising official may not be licensed by, participate in, or have a financial interest in the occupation, business or trade regulated by the board who is subject to further review, nor be a voting or ex officio member of the board. The supervising official must provide written notice of any vetoed actions to the senate and house government operations committees.

Prior to filing a regulatory board's rule with the secretary of state, the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or a designee to the extent a conflict of interest may exist with respect to the commissioner or chief executive officer, must remand a rule that may constitute a potentially unreasonable restraint of trade to the regulatory board for additional information, further proceedings, or modification, if the rule is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board. This act took effect on April 24, 2017.

### New Business

Neil Stauffer clarified that rule 1370-02.04 (3)(c) which is currently under review will state “Out-of-State license issuance was based on passing a written and practical examination developed in accordance with IHS standards, with an overall passing score as determined by the International Hearing Society.

### **Adjourn**

With no other Council business to conduct, the meeting was adjourned. The meeting adjourned at 9:41 a.m.

*Ratified by the Council for Licensing Hearing Instrument Specialists on February 2, 2018*