

Sunset Public Hearing Questions for  
**Board of Osteopathic Examination**  
Created by Section 63-9-101, *Tennessee Code Annotated*  
(Sunset termination June 2015)

1. Provide a brief introduction to the board, including information about its purpose, statutory duties, staff and administrative attachment.

**Answer:** The Board of Osteopathic Examination was created in 1905 by an act of the State Legislature. This Board is responsible for safeguarding the health, safety, and welfare of Tennesseans, by requiring that all that practice osteopathic medicine within this state are qualified. The Board interprets the laws, rules, and regulations to determine the appropriate standards of practice to ensure the highest degree of professional conduct. The Board is authorized to issue licenses to qualified candidates who have completed appropriate education and successfully completed required examinations. The Board is also responsible for the investigation of alleged violations of the Practice Act and rules, and is responsible for the discipline of licensees who are found guilty of such violation. The administrative staff of the Division of Health Related Boards supports the Board by issuing licenses to those who meet the requirements of the law and rules.

The Board meets as needed throughout the year for purposes of conducting administrative business concerning ratifying licenses, promulgating rules, disciplinary matters, etc. The six (6) Board members are appointed by the Governor to serve five (5) year terms. A quorum of four (4) members is required to conduct business, and the meetings are open to the public.

2. Provide a list of current members of the board. For each member please indicate who appointed the member, how the member's presence on the board complies with Section 63-9-101, Tennessee Code Annotated, and the member's county of principal residence. Please indicate each member's race and gender and which members, if any, are 60 years of age or older. Are there any vacancies on the board? If so, what is being done to fill those vacancies?

**Answer:**

Name	County of Principle Residence	Gender	60 or older	Race
Donald K. Polk DO	Wayne County	Male	Yes	Caucasian
Karen R. Shepherd DO	Sequatchie	Female	Yes	Caucasian
Jack Graves Pettigrew DO	Haywood	Male	Yes	Caucasian
Jeffrey Lamont Hamre DO	Montgomery	Male	No	Caucasian
J. Michael Wieting DO	Claiborne	Male	Yes	Caucasian
Robert Fletcher Lance	Davidson	Male	No	Caucasian

Members are appointed by the Governor. There are no vacancies on the Board. All Grand Divisions are represented. There is at least one female and one member over the age of sixty (60). There are no minority groups represented.

3. What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal years 2013 and to date in 2014?

**Answer:** Travel reimbursement is regulated by the Department of Finance and Administration and includes set rates for lodging, miles traveled from station to station, meals, and parking. Board members receive \$50.00 per day for each day in actual service of the board.

FY13 Board Member Expenses: \$ 4,759.00

FY14 Board Member Expenses: \$ 2,615.00

4. How many times did the board meet during fiscal years 2013 and to date in 2014, and how many members were present at each meeting?

**Answer:**

**FY 2013 Meetings**

March 6, 2013 – 4 members present  
 May 15, 2013 – 5 members present  
 August 14, 2013 – All members present (6)  
 November 6, 2013 – 5 members present

**FY 2014 Meetings**

March 5, 2014 – All members present (6)

May 7, 2014 – All members present (6)

5. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of its meetings and making its minutes available to the public?

**Answer:** Yes, the Board is subject to Sunshine law requirements. All Sunshine Notices, including amended notices, are submitted by the Board's administrative office to the Health-Related Boards' internet administrator by the 15th of the month preceding the applicable board meeting. The HRB Internet administrator ensures that the Sunshine Notice is posted on the Internet and that the Commissioner's Office is notified. Regarding minutes, the board's administrative staff attends all meetings and takes minutes. Those minutes are then prepared for review and ratification by the board at its next regularly scheduled meeting. After the minutes are ratified, they are then placed on the board's web site.

6. How does the board ensure that its members and staff are operating in an impartial manner and that there are no conflicts of interest? If the board operates under a formal conflict of interest policy, please attach a copy of that policy.

**Answer:** All Board members are educated on the Department of Health's Conflict of Interest Policy and reminded during the course of each meeting of the obligation to strictly adhere to it. Board members are required to sign a conflict of interest statement upon appointment and annually thereafter. It is the responsibility of the board administrator to insure that the Conflict of Interest Statement is properly and timely signed. The board's administrative office keeps signed copies on file in the Central Office of Health Related Boards.

7. What were the board's revenues (by source) and expenditures (by object) for fiscal year 2013 and to date in 2014? Does the board carry a fund balance and, if so, what is the total of that fund balance? If expenditures exceeded revenues, and the board does not carry a fund balance, what was the source of the revenue for the excess expenditures?

**Answer:** For FY13 the Board's revenues were \$260,822.22, and total expenditures of \$159,125.82. They had a projected carryover of \$446,899.97.

Projected FY14, Boards revenue - \$222,580.32, total expenditures - \$146,134.65. Projected carryover of \$523,345.64. The report with projected data does reflect the seven months of the fee reduction.

8. Has the board promulgated rules as authorized in Section 63-9-101(c), *Tennessee Code Annotated*? If so, please cite the reference.

**Answer:** Yes.

The Board held a rule making hearing on November 6, 2013 relative to Rule 1050-02-.12 (1)(b) and 1050-02-.18(4)(f). The purpose of the rule making hearing was to amend the rules relative to retention of mammography imaging to comply with changes in state law and to amend and clarify rules relative to continuing education. These rules are still under review with the Attorney General.

Additionally, on August 14, 2013, the board held a rule making hearing relative to continuing education and interventional pain management procedures, rules, 1050-02-.12 and 1050-02-.13, respectively. Those rules will become effective on July 16, 2014.

Also, a fee decrease pursuant to Rule 1050-02-.02, became effective on November 24, 2013. This rulemaking hearing was held on May 15, 2013.

9. How many osteopathic physicians are there in the state? Are they all under the authority of the board? If not, what types of practitioners are not and should they be included under the board's authority?

**Answer:** The total number of active osteopathic licensees at the end of May 21, 2014 was 1,147. All are under the authority of the Board.

10. By statute, the board issues both certificates of registration and licenses. Please differentiate between these two documents and what each covers within the practice of osteopathic medicine.

**Answer:** To my knowledge, there is no statute that authorizes the Board to issue "certificates of registration". The Board is only authorized to issue "certificates of fitness" and "licenses" [T.C.A. § 63-9-106(a)]. Certificates of registration are issued (as T.C.A. § 63-9-106(a) indicates) by the Division of Health Related Boards pursuant to T.C.A. § 63-1-108(a). As to the difference between a "certificate of fitness" and a "license" as referenced in both T.C.A. § 63-9-104 and 106(a), I am unaware of any difference. Having said that once *licensed* by the Board, an osteopathic physician may practice osteopathic medicine, which is defined as a separate, complete and independent school of medicine and surgery utilizing full methods of diagnosis and treatment of physical and mental health and disease, including the prescription and administration of drugs, medicines and biologicals, operative surgery, obstetrics and radiological and other electromagnetic emissions, which places special emphasis on the interrelationship of the musculoskeletal system to other body systems as taught and practiced by recognized associated colleges of osteopathic medicine.

11. How many new certificates and licenses and how many renewals of each has the board issued during fiscal years 2013 and to date in 2014? How does the board ensure that certificate or license holders meet all licensure requirements?

**Answer:** The Board issued the following licenses in 2013 and 2014:

<a href="#">Osteopathic Physician</a>	<a href="#">Renewals</a>	<a href="#">Initials</a>
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<a href="#">January 1 – December 31, 2013</a>	<a href="#">545</a>	<a href="#">132</a>
<a href="#">January 1 - May 31, 2014</a>	<a href="#">197</a>	<a href="#">66</a>

The Board ensures that licensees continue to meet licensure requirements through the biennial renewal process. Licensees must complete continuing education in accordance with Rule 1050-02-.12 which requires 40 hours of continuing medical education, one of which must be related to prescribing practices. (Note: Effective July 1, 2014, osteopathic physicians will be required to obtain an additional hour in prescribing practices.) Further, at the time of renewal, each licensee must also disclose any circumstance that would impact his/her ability to practice as an osteopathic physician in the state of Tennessee. Failure to meet any of these requirements would subject the licensee to discipline. In addition, the Board relies on the complaint process to identify and address violations of applicable standards.

12. How many certificate and license applications did the board deny during fiscal years 2013 and to date in 2014? What were the reasons for denial?

**Answer:** The Board did not deny any application for licensure during fiscal year 2013 and 2014.

13. How many certificates or licenses did the board revoke or suspend during fiscal years 2013 and to date in 2014? What were the reasons for any revocations or suspensions?

**Answer:** The board did not revoke or suspend any licenses in 2013 or to date in 2014.

14. What reciprocity agreements has the board entered into with other states under the provisions of Section 63-9-105, *Tennessee Code Annotated*? How many certificates or licenses were issued under reciprocity agreements and how did the board assure itself that the other state's standards were as stringent as those required in Tennessee?

**Answer:** None.

15. How many complaints or accusations did the board investigate during fiscal years 2013 and to date in 2014? What kinds of complaints and accusations were received? How many resulted in some form of remedial action being taken by the board?

**Answer:**

1. Number of Complaints on Osteopathic Physicians Investigated in 2013 = **36**  
Number of Complaints on Osteopathic Physicians Investigated to date in 2014 = **5**
- 2a. Breakdown of types of Complaints (by assigned allegation code) investigated in **2013** –
  - Care of Services = 13
  - Overprescribing = 6
  - Unprofessional Conduct = 5
  - Failure to provide Medical Records (Patient's) Request = 6
  - Violation of Right-To-Know (RTK)/MMPR Statute = 1
  - Unlicensed Practice = 1

- Malpractice/Negligence = 2
- Advertising Violation = 1
- Other – Allegation of Employment of a Minor with Criminal Record = 1

2b. Breakdown of types of Complaints (by assigned allegation code) investigated in **2014** –

- Unprofessional Conduct = 3
- Overprescribing = 1
- Violation of Right-To-Know statute/MMPR statute = 1

3a. Breakdown of Outcome of Investigation/Remedial Action by the Board in **2013** –

- Sent to OGC for further legal action = 5. **\*\*Note: Disciplinary Action Report shows there were 2 disciplinary actions by the board in 2013.**
- Closed with a Letter of Warning = 6
- Closed with a Letter of Concern = 1
- Closed without any finding of practice act violation = 20
- Investigated files pending board/OGC review = 3
- Complaint file assigned field investigation still being investigated = 1

3b. Breakdown of Outcome of Investigation/Remedial Action by the Board in **2014** –

- Closed without any finding of practice act violation = 1
- Investigated file awaiting board/OGC review = 1
- Complaint file assigned field investigation still being investigated = 3

16. Describe the process by which the board receives, handles and tracks complaints. Are there written procedures? Are complaints rated by level of seriousness or other priority-handling method? Is a complaint log kept? At what point is a complaint closed? What benchmarks have been established for timely movement of complaints through the department's complaint-handling process? How many complaints failed to meet the benchmarks during the last two fiscal years and what action has been taken to assure future complaints do comply with the benchmarks?

**Answer:** Complaints are triaged at intake to ensure that emergency issues are handled immediately, with investigations commencing on the same and/or following day. Routine complaints are processed according to an established review procedure utilizing practicing members of the profession as consultants and a staff attorney assigned by the Department of Health. Complaints are designated by priority code, which can change during the course of an investigation. Complaints are tracked utilizing a computerized database system.

Written procedures are in place to serve as a guideline for the effective investigation and preparation of the necessary evidence for purposes of prosecution.

A complaint can be closed at initial review and/or after an investigation.

Benchmarks have been established for the review and the investigative stages. A 30 day benchmark is established for the review process with a 90 day benchmark established for the investigation process. Across all boards, review benchmarks are met

approximately 80% of the time, while investigation benchmarks are met approximately 60%. A "Continuous Quality Improvement" system is in place to analyze case movement and tracking.

17. What steps has the board taken to increase consumer awareness of the board as a mechanism to respond to consumer complaints and regulate the industry?

**Answer:** The Department of Health maintains a website at <http://health.state.tn.us/boards/complaints.htm> which provides consumers with an in-depth description of the complaint process including how to file a complaint and what they may expect from the Department of Health.

18. What avenue of recourse or appeal does an applicant or license holder have from disciplinary actions taken by the board pursuant to authority granted to the board by Section 63-9-111, *Tennessee Code Annotated*?

**Answer:** An aggrieved party may first ask the Board for a stay of the effectiveness of the order under T.C.A. Section 4-5-316. If the stay is not granted, the party may ask the Board for reconsideration as provided for in T.C. A. Section 4-5-317 and Board Rule 1050-2-.09 (5). Finally, pursuant to T.C.A. Section 4-5-322 (a)(1) a person who is aggrieved by a final decision in a contested case is entitled to judicial review in Chancery Court.

19. Of disciplinary actions undertaken by the board during fiscal years 2013 and to date in 2014, how did the board most often become aware of the situations resulting in the disciplinary action?

**Answer:** The Board became aware of the action that gave rise to the discipline through a complaint filed with the Department of Health, Division of Health-Related Boards, Office of Investigations.

20. Has the board set goals and measured its performance compared to the goals? What performance indicators or goals does management use to measure the effectiveness and efficiency of the board? How well has the board performed based on those performance indicators?

**Answer:** Yes. The Board's administrative office has established benchmarks for the processing of applications and renewals. The application benchmark is one hundred days from the date the application is received in the administrative office to issuance of licensure. The benchmark for renewals is fourteen days. For renewals in 2013, 7 were over the established benchmark. Three of the renewals over the benchmark can be attributed to incomplete renewal applications, three contained no signature and one staff error/omission.

For applications in 2013, 17 over the established benchmark. Five applications outside the benchmark can be attributed to required applicant interviews by the board, 11 incomplete applications/missing required documentation and 1 delayed pending receipt of additional information relative to answers to a question on the application.

21. Describe any items related to the board that require legislative attention and your proposed legislative changes.

**Answer:** None.

22. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?

**Answer:** Yes, the Board should be continued. Absent the presence of the Board of Osteopathic Examinations, members of the public whose health care is provided by osteopathic physicians would be uncertain that their healthcare provider is fully qualified to practice his/her profession and does so in a safe and ethical manner that meets or exceeds the standard of care for an osteopathic physician in the state of Tennessee.

23. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

**Answer:** None.

***If the board does receive federal assistance, please answer questions 24 through 31. If the board does not receive federal assistance, proceed directly to question 30.***

24. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.

25. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

26. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.

27. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.

28. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.

29. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).

30. Please provide a breakdown of current board staff by title, ethnicity, and gender.

<b>Answer:</b>	Rosemarie A. Otto	Executive Director – Caucasian female
	Stacy Tarr, ASA 3	Acting Unit Manager – Caucasian female
	LaTonya Shelton	Administrator – African American female
	Darrell Traynor	Licensure Tech – African American male
	Wilma Black	Licensure Tech – African American female
	Orlanda Folston	Licensure Tech – Hispanic female

31. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

**Answer:** The Board contracts with the Federation of State Medical Boards - The Federation of State Medical Boards (Federation and/or FSMB) is a national non-profit organization representing the 70 medical boards of the United States and its territories. The FSMB's mission is to continuously improve the quality, safety and integrity of health care through developing and promoting high standards for physician licensure and practice. Based in Dallas, the FSMB serves as the national voice for its member boards and is a recognized authority throughout the United States on issues related to medical licensure and discipline.