

## TENNESSEE BOARD OF OPTOMETRY MEETING MINUTES

**DATE:** April 2, 2015  
**TIME:** 9:00 A.M., CT  
**LOCATION:** Poplar Room  
663 Mainstream Drive  
Nashville, TN 37243

### BOARD MEMBERS

**PRESENT:** Dennis Mathews, O.D., Chair  
Jeff Foster, O.D.  
David Talley, O.D., Secretary  
Richard Orgain, O.D.

### BOARD MEMBER

**ABSENT:** J. Scott Gentry, O.D.  
Edie Clemons, Citizen Member

### STAFF

**PRESENT:** Yvette Hernandez, Board Administrator  
Teddy Wilkins, Unit Director  
Matt Gibbs, Office of General Counsel, Assistant General Counsel

Dr. Gentry, Board Chair, called the meeting to order at 9:05 a.m. A quorum was present.

### Minutes

Dr. Foster made a motion, seconded by Dr. Talley, to approve the October 17, 2014 Board Meeting Minutes. The motion carried.

Dr. Orgain made a motion, second by Dr. Foster, to approve the February 4, 2015 Board Meeting Minutes. The motion carried.

### Contested Case Hearing in the Petition for Declaratory Order

Mr. Gibbs, Office of General Counsel, said Mr. Bill West from Baker Donelson is her to give the Board an update on the Petition for Declaratory Order: In the Matter of: **Wal-Mart Stores East, L.P. and Sam's East, Inc.**

Mr. West said his client decided to take a non-suit or voluntarily dismiss the petition. After speaking with Mr. Gino Bulso, Esq. who expressed no objection, a Notice of Voluntary

Withdrawal was filed with the Secretary of State and a copy, via e-mail, was sent to the Administrative Law Judge and Mr. Bulso.

### **Conduct Rulemaking Hearing**

Mr. Gibbs conducted a rulemaking hearing to amend Rule 1045-02-.01-Fees and Rule 1045-02-.05-Continuing Education.

Mr. Gibbs asked all Board members and administrative staff to introduce their selves.

Rule 1045-02-.01(a) and (d) would lower the application fee from \$300 to \$250 and the renewal fee from \$330 to \$275.

Rule 1045-02-.05(1) would be eliminated in its entirety and substitute the following language:

- (1) As a prerequisite to maintaining licensure, an Optometrist must complete thirty (30) hours of Board approved continuing education during the two (2) calendar years (January 1 – December 31) that precede the licensure renewal year, effective until December 31, 2015.

Effective January 1, 2016, an Optometrist with a renewal date in the year 2016 and beyond must complete thirty (30) hours of Board approved continuing education during the twenty-four (24) months that precede the licensure renewal month.

Rule 1045-02-.05(1)(c) would be eliminated in its entirety and substitute the following language:

- (1) All licensees holding a current Tennessee license shall complete a minimum of two (2) of the thirty (30) required hours of continuing education related to controlled substance prescribing, which must include instruction in the Department's treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol and may include topics such as medicine addiction, risk management tolls, and other topics approved by the Board.

There were no public comments on the rule amendments.

Dr. Orgain made a motion, seconded by Dr. Tally, to approve the rules as written. The motion carried. A roll call vote was conducted and all Board members voted to approve the minutes as written.

## **Investigative Report**

Ms. Dorroh stated there is one (1) open complaint in Investigations.

Dr. Orgain said it is the Board's responsibility to pass on to licensed optometrists in the state what types of things are brought before investigations. Many of these things could be settled without a complaint being filed between the optometrists and patient. When licensees know what those complaints are it will be more likely that they will

Dr. Orgain asked if types of complaints could be posted on the Board's website.

Ms. Dorroh stated when the allegations are investigated it is confidential and protected by statute.

Dr. Talley asked if the Board could post on its website that they currently have issues in Tennessee with unprofessional conduct and then describe unprofessional conduct.

Mr. Gibbs said the Board does not have a rule, or policy statement, that explains unprofessional conduct, but that he would formulate a list of items, with explanation, that could constitute a violation of the Board rules and statutes for the next meeting.

Ms. Dorroh stated there are currently two practitioners being monitored.

## **Administrative Report**

There are currently 1212 licensed optometrists. Between January 24, 2015 and March 23, 2015 there are five (5) new licensed optometrists, three (3) applications in process, six (6) retired and three (3) expired.

Ms. Wilkins said the new licensing system, VERSA, will be in effect on March 20, 2015.

## **Office of General Counsel**

There are currently two (2) discipline cases in OGC.

Rules 1045-02-.05 and 1045-02-.07 pertaining to continuing education and the prescribing course requirements were sent to the Attorney General's Office for review where it remains. Once approved, the rules will be filed with the Secretary of State and take effect ninety (90) days after the date of filing.

SB0163/HB0130 which changes the way records are kept and the specificity of records kept by the Board of Optometry has been filed and are with the respective committees in each house.

SB0210/HB0344 making all rules filed with the Secretary of State after January 1, 2014, are in effect on the effective date of the proposed act, and that are scheduled for expiration on June 30, 2015 to remain in effect until the rule is repealed, property amended, or superseded by legislative

enactment. The act will take effect upon becoming law. However, that bill passed the Senate March 30, 2015 and action was deferred in the House Government Operations Committee until April 7, 2015.

SB0936/HB0932 authorizes the practice of optometry in space leased from manufacturers, retailers, or general retailers of ophthalmic material. The optometrist's practice shall abide by specific criteria for maintaining separation and independence from the lessors. The proposed legislation prohibits manufacturers and wholesalers from controlling or attempting to control the professional judgment or practice of an optometrist. The proposed bill retains the current language of T.C.A. §63-8-125(c) through (g) regarding lease provisions between the optometrist and the lessor, rulemaking authority, and who may bring suit to enforce the provisions. The bill has been assigned to a General Sub-Committee of the Senate Health and Welfare Committee on March 27, 2015.

The language in the CPR rule allows vendors, including on-line vendors, to offer CPR certification. Dr. Mathews said the American Heart Association and the American Red Cross rule do not offer on-line certification.

Dr. Orgain said in order to receive a health care provider card you must have a live CPR demonstration.

Mr. Gibbs stated that OGC is monitoring the North Carolina Dental Board Examiners vs. the FTC Supreme Court case. In early 2000 non-dentists entered that market place with a substantially reduced cost to its customers. The Dental Board of Examiners issued cease and desist letters to kiosk teeth whitening companies in shopping malls. The teeth whitening companies contacted the FTC who ruled it was an anti-trust case behavior by a group of dentists trying to exclude the companies from the profession. The Supreme Court agreed with the FTC. Mr. Gibbs said OGC will keep the Board informed on what, if anything needs to be done to prevent this from happening to Health Related Boards in Tennessee.

Mr. Gibbs said at the last meeting the Board made a decision to limit the number of continuing education providers for prescribing practices to two (2) entities; the Tennessee Association of Optometric Physicians and the Southern College of Optometry. He said an argument could be made that this is similar to the anti-competitive conduct engaged in by the North Carolina Board which could potential open up the Board to liability, and wanted to make the Board aware that the decision to limit the providers is dangerous based on this opinion and the laws on equal protection.

Dr. Talley said the Board acted in accordance with the Department of Health's requirements and specifications of a one (1) hours controlled substance course. The Board made a decision to streamline the review by having the secretary review the course in advance before passing on to the Board for ratifying. Those not approved were sent a letter with the specific reasons why. When the Department of Health added another hour to the requirements the Board made a policy allowing doctors to take the one (1) hour course twice and ruled to discontinue approving one hour courses.

The Board approved the Tennessee Association of Optometric Physicians and Southern College of Optometry two (2) hour courses to simplify the process and gave authorization for them to change out speakers at their discretion without further Board approval.

Dr. Talley said the only courses that cannot be approved by ARBO are clinical grand rounds and controlled substance and has never received a complaint that the Board has presented an inappropriate course.

Dr. Orgain stated that Tennessee is contracted with ARBO to approve continuing education courses.

Dr. Matthews asked if the Board can approve courses by its own authority without being COPE approved. Dr. Tally said he was informed that the Board no longer has the authority to approve courses with the exception of clinical grand rounds and substance abuse courses.

Dr. Orgain said the Board has a 100% audit and that Ms. Hernandez gets a monthly report from ARBO.

Dr. Rafieetary, O.D., F.A.A.O. addressed the Board stating that limiting access to course providers jeopardizes the maintenance of licensure for many optometric colleagues and to approve optometrists to take the same course every year is not productive.

Dr. Gary Odom, O.D., T.A.O.P. said TAOP courses are offered on a state-wide basis all over Tennessee and a COPE approved course will go on-line next week.

Dr. Tally said the American Academy of Optometry and SECO per this rule cannot offer this course.

Dr. Orgain stated he is a diplomat of the ABO which requires 100 hours of continuing education every three (3) years. If the course is a cee you get two points for each hour, but in order to obtain cees through COPE and ARBO it must be a live course.

Dr. Tally made a motion, seconded by Dr. Foster, to immediately send out a letter to all licensees that there will be a delay in the requirement to allow optometrists to obtain the course by July 1, 2015, allow the Board to create a detailed list of concerns that affect the course including course provider qualifications, course description that meets the guidelines and availability of the course through the state to be discussed and voted on at the next meeting. The motion carried.

### **Newly Licensed**

Dr. Talley made a motion, seconded by Dr. Foster, to approve the following newly licensed Optometrists:

**Clarissa Kum**  
**Tiffany Deweese Reed**  
**Gregory Samuel Wolfe**

The motion carried.

### **Reinstated Licensees**

Dr. Talley made a motion, seconded by Dr. Foster, to approve the following reinstated Optometrists:

**Sean Phillip Aldinger**  
**Jason S. Nash**

The motion carried.

### **Correspondence**

The Board reviewed correspondence from NBEO regarding the NBEO Workshop being held in conjunction with the ARBO Annual Meeting in Seattle, Washington. The Board approved Dr. Orgain to attend the meeting.

The Board reviewed correspondence from **Rebecca Roby** asking if a student passes the ISE on their first attempt but fails part III as a whole, then pass part III and fail the ISE, is their requirements fulfilled.

Dr. Orgain made a motion, seconded by Dr. Talley, that you must pass parts I, II and III of the NBEO examination, which includes ISE in part III. The motion carried.

Dr. Talley said he would send a letter to the new optometry schools to determine if they offer injection certification which is a requirement for licensure in Tennessee.

### **Review/Approve Continuing Education Courses**

Upon review of a continuing education request from **Woolfson Eye Institute** to offer continuing education in Knoxville and Chattanooga in 2015, Dr. Foster made a motion, seconded by Dr. Talley, to approve the request provided attendees are given proof of the education by issuance of a certificate or other form of confirmation that the courses were taken. The motion carried.

### **Continuing Education Waiver Request**

The Board reviewed a letter from **David Sims, O.D.**, requesting an extension to complete the seventeen (17) hours of continuing education he is deficient for 2013-2014. Dr. Talley stated he would review the documentation Dr. Sims submitted to determine if he is compliant with the required thirty (30) hours.

### **Discuss Internet Sales of Prescription Eyeglasses**

Mr. Gibbs provided the Board members a guide for the contact and eyeglasses rules from the Federal Trade Commission.

Dr. Talley said a PD is not a requirement as part of a prescription in Tennessee; however, he provides them to the consumer upon request.

Mr. Gibbs said in 2011 the NC Board of Optometry wrote the Federal Trade Commission regarding an amendment to their rules to delete the requirement that measurements be given to the consumer under the definition of prescriptions. The FTC responded by stating it is probably a violation of Federal law because if a consumer needs the information to make a purchase it needs to be given.

### **Other Board Business**

Mr. Gibbs asked if the Board members were interested in amending the continuing education rules so a course provider could submit course information to the office staff for the full Board review.

Dr. Orgain said course providers send a CD and course outline to COPE for approval. COPE reviews the course and approves or denies the course. Approved courses are given a provider number and are good for three (3) years.

Dr. Talley asked that a discussion of “Well Child” be placed on the agenda for the next meeting. Several optometrists have voiced their concerns over potential issues and Dr. Talley asked that they submit their concerns in writing for the Board’s review.

John Williams, Esq., said Dr. Lumpkin, TAOP President, has raised this issued and suggested that representatives from “Well Child” be invited to the next meeting.

Dr. Tally said he is concerned that three (3) Board members terms have expired and are still serving as no replacements have been made.

Ms. Wilkins said she spoke to the Board’s liaison in the Governor’s Office and they are aware of the issue.

### **Adjourn**

Dr. Orgain made a motion, seconded by Dr. Foster, to adjourn at 11:45 a.m. The motion carried.

*Ratified by the Board on July 15, 2015*