

**TENNESSEE BOARD OF OPTOMETRY MEETING MINUTES**

**DATE:** July 15, 2015  
**TIME:** 9:00 A.M., CDT  
**LOCATION:** Poplar Room  
665 Mainstream Drive  
Nashville, TN

**BOARD MEMBERS**

**PRESENT:** Dennis Mathews, O.D., Chair  
David Talley, O.D., Secretary  
Jeff Foster, O.D.  
Richard Orgain, O.D.  
J. Scott Gentry, O.D.  
Edie Clemons, Citizen Member

**STAFF**

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

Dr. Mathews, Chair, called the meeting to order at 9:02 a.m. A roll call vote was conducted and all Board members were present.

Dr. Mathews welcomed the Board’s new citizen member, Edie Clemons.

Ms. Clemons stated she is from Oak Ridge, has eight (8) grandchildren, and does volunteer work in Knoxville. Ms. Clemons said she was glad to be on the Board.

**Minutes**

Upon review of the April 2, 2015 minutes, Dr. Foster made a motion, seconded by Dr. Orgain, to approve the minutes as written. The motion carried.

**Office of Investigations**

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

Ms. Dorroh reviewed the currently monitored practitioners stating that one (1) licensee has been suspended from practice and one (1) licensee is on probation.

## **Office of General Counsel**

Mr. Gibbs said the amendments to the continuing education rules will become effective January 1, 2016.

SB0163/HB0130 changes the language “record book” to “appropriate format” and requires the Board to keep license information.

SB0210/HBO344 which makes permanent 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of the (proposed) act, and that are scheduled for expiration on June 30, 2015 to remain in effect until the rule is repealed, properly amended, or superseded by legislative enactment.

Mr. Gibbs stated that both bills were signed by Governor Haslam on May 4, 2015.

## **Administrative Report**

Ms. Hernandez said there are currently 1,205 licensed Optometrists. As of the last Board meeting there is one (1) application in process and thirty-five (35) newly licensed. In April forty-one (41) renewed their license with twenty (20) (49%) renewing on line. In May thirty-four (34) renewed their license with twenty-nine (29) (85%) renewing on line. In June fifty-two (52) renewed their license with twenty-five (25) (48%) renewing on line.

Dr. Mathews asked if there have been any complaints regarding renewing licenses on-line.

Ms. Hernandez stated they have a new database and have been having a few minor problems.

The next Board meeting will be held in Gatlinburg on October 16, 2015.

Ms. Hernandez reviewed the 2016 meeting dates with the Board.

Dr. Foster and Dr. Gentry will attend the meeting in Gatlinburg in October, but will be resigning after the meeting.

Dr. Orgain asked how things were going with ARBO on re-licensing.

Ms. Hernandez stated it is going well and that she has spoken with Donna and Bridgett at ARBO. Ms. Hernandez further stated she is getting a lot of calls regarding the required two (2) hours of prescribing continuing education.

The Board discussed the two (2) on-line prescribing courses offered by SCO and the state association.

**Newly Licensed**

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

**Heather Nicole Atcherson  
Corinne J. Bacher  
Michael Carter Bingham  
Cassandra Bruno  
Stacey Butz  
Fallon N. Cone  
Mackenzie R. Cox  
Kelsey A. Deltz  
Emily Jane Evans  
Virgillo P. Gozum  
Alicia Andrade Groce  
Taylor Harris  
Lauren N. Howard  
Angela Carol Howell  
Leann C. Jaroczynski  
Barbara Allane Jodoin  
Benjamin Konynenbelt  
Raymond John Lambert  
Carrie Anne Le  
Jacob Daniel Long**

**Michael Grayden Lundquist  
Rachel Lusk  
Sarah Marietta  
Caitlyn Moore  
Eleanor Leigh Null  
Reed Parker  
Carrie Moore Quilla  
Julie J. Shalhoub  
Forrest Landon Sherrill  
Karen Ann Squier  
Lisa Stuart  
Chelsea R. Terry  
Andrew M. H. Tran  
Sierra L. Unruh  
Elizabeth A. Walsh  
Katherine Ann West  
Lisa Wong  
William Ryan Wood  
Jessica Ann Haynes  
Randal J. Raban**

The motion carried.

**Reinstated**

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

**David H. Owen  
Jeremy David Walz**

The motion carried.

**Presentation from Kristin Schick-Fonseca, O.D.**

Dr. Schick-Fonseca, a licensed Optometrist in Tennessee, appeared before the Board to discuss her plans to operate a mobile optical business in Tennessee. Dr. Schick-Fonseca stated she discussed her optical business with the Board's advisory attorney, Matt Gibbs, who suggested that she appear before the Board pursuant to T.C.A. §63-8-113(b)(4).

Dr. Schick-Fonseca discussed her plans to operate a mobile optical business which would offer in home parties, where the host could invite friends, and have the mobile business show eyewear products. The mobile business would not conduct eye examinations.

Upon discussion, the Board determined they are not comfortable approving Dr. Schick-Fonseca's request and suggested having Mr. Gibbs and an outside attorney review the business and statutes to determine if there is a violation of the law.

Dr. Gentry made a motion, seconded by Dr. Foster, to deny Dr. Schick-Fonseca's request. Dr. Talley abstained. The motion carried.

Mr. Gibbs said he has researched seven (7) statutes in this area and prepared an interpretation for the Board in case Dr. Schick-Fonseca wants to re-address the issue.

### **Well-Child**

Mr. Gibbs said Well-Child was not at the meeting as there are two issues regarding Well-Child. The first issue is the ability of the Board to regulate licensees. The second issue is the permission granted to Well-Child in June of 2014.

When this board grants a license to an applicant a property right is attached to that license. The U. S. Supreme Court, U.S. Constitution and the Tennessee Courts have all said that specific procedures must be followed before that license can be encumbered or restricted. In addition to following procedures this board is tasked to sit as a jury when a potential practice act violation has occurred. If the Board hears facts and circumstance pertaining to a case before it is properly brought before the board, this Board could be biased and could be subject to a suit or recusal of the case.

If Board members receive complaints from the public, the proper procedure is to contact me individually. The complaint will then go through the Bureau of Investigations. The licensee will be given the opportunity to show compliance. If a settlement can't be reached, the Board will act as a jury and the licensee will be given a fair opportunity to present their case and any allegations against them.

The second issue pertains to permission. Under the Uniform Administrative Procedure Act which this board must abide by, defines the license very broadly including any permission or authorization required. The statute that Well-Child came and presented under specifically says that authorization is required from the board. When this Board granted authorization they granted Well-Child a license. Complaints have been received and are going through the complaint process. This board has to be shielded from the allegations and complaint process. The Board consultant and I will review the facts and the law to determine if a violation of the practice act has occurred. If we determine there was a violation of the practice act it will be prosecuted. That is why Well-Child is not here, to preserve fairness and keep the Board from making an unbiased decision.

Dr. Foster asked if in the event the Board felt the issue should be revisited what would be the proper procedure.

Mr. Gibbs stated that if the Board wanted to revisit Well-Child his advice would be that they could not take any action against Well-Child until procedures have been followed. Mr. Gibbs said if the Board did not like what Well-Child had to say there is a potential that all six (6) members would have to be replaced including himself which would be a big undertaking for the Governor's Office.

Dr. Matthews asked if any complaints have been received.

Mr. Gibbs said he could not discuss potential complaints because they have to go through the proper procedures.

**John Williams, Tennessee Optometric Association**, said he was disappointed that Well-Child representatives were not at the meeting to explain how their program works. Mr. Williams said it seems to him that is a matter of legitimate inquiry on the part of the Board, without implying or accusing them of any kind of violations of the statute.

Mr. Williams said if the Board has authorized Well-Child to do something it seems to him that to ask them to come before the Board and explain how they are doing what has been authorized is an entirely legitimate function of the Board.

Dr. Orgain said Well-Child made a presentation to the Board in June 2014 and apparently the things they presented is not actually what they are doing.

Mr. Gibbs said the Board consultant and he will discuss the program with representatives of Well-Child and if their responses are not adequate there will be an investigation to determine if a violation has occurred. It will then be presented to the Board to insure the US Constitution has not been offended.

Mr. Williams said the concern he has is he would hate for this to evolve into some type of disciplinary proceeding. Mr. Williams said if there were problems that needed to be corrected, they could be accomplished without having to go before the Board as disciplinary action.

Dr. Matthews said the only disciplinary action they could take would be against the Optometrists not with Well-Child.

Mr. Gibbs said the Board could rescind permission to Well-Child but it would require a process.

Dr. Foster said an authorization was given for the program to commence, not grant a license to an Optometrist.

**Gary Odom, Executive Director, Tennessee Association of Optometric Physicians**, asked what the request was and what was approved.

Dr. Matthews said they had a presentation by two Optometrists who came before the Board seeking approval to work with Well Child. Well-Child and the optometrists presented the plan on how eye examinations were to be conducted at schools. Dr. Matthews said they would conduct complete eye exams and dispense glasses.

Mr. Odom asked if there were any discussion on how the student would be identified.

Dr. Matthews said the students would get consent from their parents to examine the children, have a specific exam room to do a complete examination, including a dilated pharmacy exam, dispense glasses and, if anything of any consequence was found during the exam, they were to refer. They are not treating any ocular mythology in the school.

### **Discuss CPR Certification**

Dr. Matthews said the International CPR Institute, Inc., which offers an on-line CPR course, is asking to be included as an approved vendor to offer CPR.

Dr. Orgain said there are three types of CPR: family and friends, professional health care provider, and advanced life support. Dr. Orgain said the Southern College of Optometry and another group offer the CPR program online. Dr. Orgain said after completion of the online course the licensee is given a certification which must be presented to an instructor for live demonstrations.

Dr. Matthews made a motion, seconded by Dr. Gentry, to include the International CPR Institute, Inc. to the list of approved vendors to offer CPR.

Dr. Foster asked if the Board approves the vendor would this be the provider for CPR for graduating SCO students who are injectable certified.

Mr. Gibbs suggested that instead of conducting a rule making hearing, the Board can prepare a policy statement regarding CPR vendors.

Upon discussion, Dr. Matthews withdrew his motion.

Dr. Talley suggested that the Board ask the instructor of the CPR course from the Southern Optometry College to attend the next meeting to present the official position on allowing on-line courses for CPR certification.

### **New Board Business**

Mr. Ben Simpson, Legislative Liaison, gave an update on the following legislation that affects the Board.

**Public Chapter 154** allows the Commissioner of Health, or his designee, to have electronic access to medical records in order to facilitate investigations when responding to an immediate threat to public health became effective April 16, 2015.

**Public Chapter 94** defines “abuse” and “neglect” for purposes of placing a person on the registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals specifically within the statutes that govern the Department of Health and increases the time within which placement on the registry may be appealed from 30 to 60 days became effective April 10, 2015.

**Public Chapter 502** allows the Joint Government Operations Committee to stay a rule up to seventy-five (75) days instead of sixty (60) days. The act adds arbitrariness and capriciousness as two new considerations.

**Public Chapter 268** makes disclosures of protected healthcare information permissible in medical malpractice lawsuits became effective April 24, 2015.

**Public Chapter 349** make all rules with the secretary of state after January 1, 2014 permanent and also schedules the Board of Optometry Rule 1045-02-.17, which required a two (2) door rule for Optometry Offices, to expire on July 1, 2015.

### **Correspondence**

The Board reviewed correspondence from **David Sims, O.D.**, regarding the continuing education requirements in Tennessee. Dr. Talley stated he spoke with Dr. Sims and explained the entire process to him. Dr. Sims recently attended SECO in Atlanta and completed his deficient hours. Dr. Orgain made a motion, seconded by Dr. Gentry, to approve the hours he was deficient in the 2013/2014 audit. The motion carried.

The Board reviewed correspondence from **C. Garry Collins, O.D.**, requesting approval of the professional practice name “Collins Eye Center, PLLC.” Dr. Talley made a motion, seconded by Dr. Foster, to approve the practice name. The motion carried.

The Board reviewed correspondence from **Landon Sherrill, O.D.**, requesting approval of the professional practice name “Sherrill Family Eyecare, PLLC.” Dr. Talley made a motion, seconded by Dr. Foster, to approve the practice name. The motion carried.

The Board reviewed correspondence from **SCO**, requesting approval of their two (2) hour “Online Drug Diversion Course” for continuing education. Dr. Foster made a motion, seconded by Dr. Gentry, to approve the course. The motion carried.

The Board reviewed correspondence from **Wolfson Eye Institute**, requesting approval of two (2) hours of continuing education for optometrists for observing four (4) hours of refractive surgery at their Knoxville and Chattanooga locations. Dr. Orgain made a motion, seconded by Dr. Gentry, to approve the continuing education hours. The motion carried.

The Board reviewed correspondence from **Gretchen L. Blemker, O.D.** requesting approval to prescribe Latisse for patients. Ms. Gibbs stated that Rule 1045-02-.11(3)(a) states that Optometrists shall be subject to discipline for administering, dispensing, selling, prescribing, or

otherwise distributing any drug or controlled substance to any person which is not in the course of professional practice, or not in good faith to relieve pain and suffering, or not in good faith to diagnose and treat conditions or diseases of the eye or eyelid. Mr. Gibbs said you get into the practice of pharmacy if you sell prescription medicine. Dr. Talley said if an optometrist is using the prescription for cosmetic purposes only it is now allowed but, if it is being used for treatment of diseases of the eye or eyelid it is allowed.

The Board reviewed correspondence from **ARBO** regarding changes to the COPE policies pertaining to instructor qualification, distance learning policy and credit hours.

The Board reviewed correspondence from **SCO** regarding the curriculum vitae of Dr. Chris Borgman.

The Board reviewed correspondence from **Lisa Fennell, Association of Regulatory Boards of Optometry**, regarding trade names or assumed names of optometry offices. The Board asked Ms. Hernandez to respond to Ms. Fennell informing her that in Tennessee the name requests must be submitted to the Board for approval.

**Discuss and take action if needed regarding rulemaking, hearing, rule amendments and policies**

Dr. Talley discussed controlled substance courses stating he does not agree on restricting access to educational programs; however, the two (2) vendors the Board approved to offer controlled substance courses were consistent, available live throughout the state, and on-line 24/7.

Dr. Foster asked if it were acceptable for optometrists to sell the prescription vitamin Tozol to a patient with macular degeneration. Dr. Talley said if it were your patient and you were prescribing it with a chart record you could sell it.

Ms. Hernandez asked if she and Ms. Wilkins could have a booth at the fall meeting in Gatlinburg on Thursday instead of Friday. Ms. Hernandez said most of the vendors were closing down on Friday and they were only there for two and one-half (2 1/2) hours. Dr. Foster made a motion, seconded by Dr. Orgain, to approve the booth for Thursday. The motion carried.

**Adjourn**

With no other Board business to conduct, Dr. Foster made a motion, seconded by Dr. Talley, to adjourn at 11:41 a.m. The motion carried.

*Ratified by the Board on October 16, 2015*