

# **BOARD OF OPTICIANRY**

## **GENERAL BUSINESS MEETING MINUTES**

**Greater Ft. Lauderdale Convention Center**

**Rooms 220-221**

**1950 Eisenhower Blvd.**

**Ft. Lauderdale, FL**

**954-765-5900**

**Friday, November 2, 2012 at 8:30 a.m.**

### **CALL TO ORDER/ROLL CALL**

The meeting was called to order at 8:30 a.m. by Mr. Calvo, Chairman. Those present for all or part of the meeting included the following:

#### Members present:

David Calvo, Chair

Barney Goodman, Vice-Chair

Antonio Feroce

Peggy Slattery

Irene Stavros, R.D.H.

#### Staff present:

Edward Tellechea, Esq., Board Counsel, Attorney General's Office

Douglas Dolan, Esq., Board Counsel, Attorney General's Office

Sue Foster, Board Director

Robin McKenzie, Program Administrator

Sharon Carraway, Regulatory Specialist II

Tobey Schultz, Assistant General Counsel, Prosecutorial Services Unit

Court Reporter: Apex Reporting Group 954-467-8204

### **REVIEW AND APPROVAL OF MINUTES**

The minutes of the July 19, 2012 general business meeting were reviewed and following review, the following action was taken by the Board:

Motion: by Ms. Slattery to approve the minutes as presented.

Second: by Mr. Feroce.

Vote: unanimous.

### **DISCIPLINARY PROCEEDINGS**

**Theresa M. Vandeweghe, Case No. 2011-11749** (PCP: Shannon, Holt, Stavros)

Ms. Vandeweghe was present and was not represented by counsel. An administrative complaint filed February 29, 2012 alleged violation of s. 484.014(1)(g), F.S., of practicing with a delinquent license.

A settlement agreement was presented to the Board with the following terms: letter of concern, fine of \$250 payable within one year, costs of \$716.97 payable within one year; 3 hours of continuing education 2 of which would be laws and rules.

Ms. Stavros was recused due to service on the probable cause panel. Following discussion, the following action was taken by the Board:

Motion: by Mr. Goodman to accept the settlement agreement.  
Second: by Ms. Slattery.  
Vote: unanimous.

**Randy M. Martinelli, Case No. 2010-03090** (PCP: Shannon, Holt, Stavros)

Mr. Martinelli was present and was not represented by counsel. An administrative complaint filed February 29, 2012 alleged violation of s. 484.014(1)(m), F.S., of failure to report person who licensee knows is in violation of Chapter 484 concerning J.C. dispensing glasses without direct supervision.

A settlement agreement was presented to the Board with the following terms: letter of concern, fine of \$250, costs not to exceed \$1560.54 payable within one year; write an article regarding the role and duties of supervising opticians with respect to apprentice opticians – article may be published by Professional Opticians of Florida.

Ms. Stavros was recused due to service on the probable cause panel. Following discussion, the following action was taken by the Board:

Motion: by Ms. Slattery to approve the settlement agreement.  
Second: by Mr. Feroce.  
Vote: unanimous.

Mr. Calvo will review the article.

**William John Walker, Case No. 2011-07932** (PCP: Shannon, Holt, Stavros)

Mr. Walker was not present and was not represented by counsel. A two count administrative complaint filed February 29, 2012 alleged violations of s. 484.014(1)(h), F.S., of violation of a lawful order of the board when he practiced while license was suspended and s. 484.014(1)(g), F.S., of practicing with a revoked, suspended, inactive or delinquent license.

Ms. Stavros was recused due to service on the probable cause panel. Following discussion the following action was taken by the Board:

Motion: by Ms. Slattery to accept the investigative report into evidence for the purposes of imposing penalty in this matter and find the Respondent was properly served and requested an informal hearing.

Second: by Mr. Feroce.  
Vote: unanimous.

Motion: by Ms. Slattery to adopt the findings of fact as set forth in the Administrative Complaint as the findings of fact for the Board.

Second: by Mr. Feroce.  
Vote: unanimous.

Motion: by Ms. Slattery to adopt the conclusions of law as set forth in the Administrative Complaint as the conclusions of law for the Board and find that they constitute a violation of the Opticianry practice act as set forth in the Administrative Complaint.

Second: by Mr. Feroce.

Vote: unanimous.

Motion: by Ms. Slattery to issue a reprimand; fine of \$750; and 3 hours in continuing education 2 of which would be laws and rules within six months of final order.

Second: by Mr. Feroce.

Vote: unanimous.

Motion: by Ms. Slattery to accept the department's recommendation for costs of \$1462.38 (w/o attorney's fees and give the Respondent six months to pay.

Second: by Mr. Goodman.

Vote: unanimous.

**Ronald Duane Thompson, Case No. 2011-07636** (Waived Probable Cause)

Mr. Thompson was not present nor represented by counsel. Mr. Thompson was charged in St. Johns County with two counts of obscene communications on 5/01/11 and traveling to meet a minor after use of computer to solicit legal guardian.

Voluntary Relinquishment of License for his Apprentice Opticianry license was presented to the Board. Following discussion, the following action was taken by the Board:

Motion: by Ms. Stavros to accept the voluntary relinquishment.

Second: by Mr. Feroce.

Vote: unanimous.

**PETITIONS FOR VARIANCE OR WAIVER OF RULE**

**Wilfred Joseph Laroche, Apprentice Optician**

Mr. Laroche was not present nor represented by counsel. Mr. Laroche is requesting a variance or waiver of rule 64B12-16.003(4), F.A.C., and Section 484.017, Florida Statutes, for hours worked in the Tennessee apprenticeship program. He had accumulated 5,549.5 apprenticeship hours during the period January 2009 to February 2012. He is requesting that the Board accept some or all of his Tennessee apprenticeship hours to satisfy Florida requirements. He is ABO certified and is preparing to take the NCLE exam. Documentation has been provided by his supervisor in Tennessee.

Following discussion, the following action was taken by the Board:

Motion: by Ms. Slattery to deny as the Board cannot approve a variance on the statute.

Second: by Ms. Stavros.

Vote: unanimous.

**Yamila Diez, Former Apprentice Optician**

Ms. Diez was present and was not represented by counsel. Ms. Diez is requesting a variance or waiver to 64B12-16.008, F.A.C. She completed her apprenticeship program in a timely manner and her apprenticeship expired on March 28, 2011. She was involved in a serious motor vehicle

accident during her apprenticeship, which caused brain and spinal damage. Documentation of apprenticeship hours should be submitted to the Board office within six months of completing the apprenticeship program. Her apprenticeship hours were not documented within the required six months. She has completed the ABO and NCLE.

Following discussion, the following action was taken by the Board:

Motion: by Ms. Slattery to grant the variance.

Second: by Ms. Stavros.

Vote: unanimous.

## **TOPIC DISCUSSIONS**

### **Opticianry National Examination Presentation**

Lynn Anderson and Mike Miller, staff with the National Commission of State Opticianry Regulatory Boards (NCSORB), and Jerry Himes, Executive Director of the Arkansas Board, addressed the Board regarding the exam. Their presentation included a power point demonstration of the new national examination. Florida has offered this exam since March 2012. Zohre Bahrayni, psychometrician also responded to questions from the audience.

### **MOA Enforcement Presentation**

Bonnie Summer, Investigative District Manager and Investigator Caridad Rodriguez, unlicensed activity investigator, appeared before the Board to discuss enforcement for Opticians. Ms. Summer gave information regarding investigations and inspections of optical establishments with some of the problems they have experienced, such as being denied access, expired contact lenses. Ms. Rodriguez discussed the recent statewide investigations involving contact lenses being sold at beauty salons, beauty suppliers, and convenience and costume stores. The statewide operation resulted in the issuance of 8 cease and desist notices and 12 citations resulting in at least a \$500 fine.

### **S. 484.012 Prescriptions: Maintaining Prescriptions Electronically**

The question posed to the Board by Mark Miller, POF, is can prescriptions be maintained electronically?

According to Board Counsel, there is no prohibition in the law, therefore, prescriptions can be maintained electronically.

### **Prescriptions with “VOID”: Counterfeit-Proof Prescription Section 456.42, F.S., and Rule 64B-3.005, F.A.C.**

Question: Can an optician accept a copy or maintain a copy in their file of a prescription that has been marked VOID because it is not the original script. The new law requires tamper proof prescriptions.

According to Board Counsel, this law relates to controlled substances. It is not illegal to maintain records /prescriptions with VOID on them since practitioners are now using the tamper-proof scripts.

**Situation: Apprentice Supervising/Managing Their Sponsor**

Ms. Slattery stated that this is not a problem – no rule change is needed.

**CE PROVIDER APPLICATION**

**Ophthalmic Educational Institute, Inc.**

Motion: by Mr. Goodman to approve this application.

Second: by Mr. Feroce.

Vote: unanimous.

**RULES DISCUSSION**

**64B12-8.018 Investigators; Criteria for Selection; Training**

Motion: by Ms. Slattery to repeal this rule.

Second: by Mr. Goodman.

Vote: unanimous.

Motion: by Ms. Slattery that this will not have an adverse effect on small businesses and no statement of estimated costs is needed.

Second: by Ms. Stavros.

Vote: unanimous.

**64B12-10.009 Contact Lens Fitting**

Motion: by Ms. Slattery to table this rule.

Second: by Mr. Feroce.

Vote: unanimous.

**64B12-14 Standards of Practice for Board Certified Opticians**

Motion: by Ms. Slattery to table this rule.

Second: by Mr. Feroce.

Vote: unanimous.

**64B12-15.001 Continuing Education for License Renewal**

Motion: by Ms. Stavros to repeal the audit portion of this rule, subsections (4) and (5).

Second: by Mr. Goodman.

Vote: unanimous.

Motion: by Ms. Slattery that this will not have an adverse effect on small businesses and no statement of estimated costs is needed.

Second: by Ms. Stavros.

Vote: unanimous.

**64B12-16.003(6)(h)**

Motion: by Ms. Slattery to open for rule development.

Second: by Ms. Stavros.

Vote: unanimous.

Note: There is no Board-approved 32 hour course to substitute for working experience with contact lenses. Staff suggested allowing apprentices to complete a 20 hour board certification course with 12 additional continuing education courses in contact lenses.

## **OTHER BUSINESS**

### **Ratification of Approved Home Study Courses**

Motion: by Ms. Slattery to ratify the home study courses.

Second: by Ms. Stavros.

Vote: unanimous.

### **Annual Renewal of Delegations**

Motion: by Ms. Slattery to approve the annual review of delegations.

Second: by Ms. Stavros.

Vote: unanimous.

## **REPORTS**

### **Assistant General Counsel**

Mr. Schultz gave the Board a status update on cases currently in the Prosecution Services Unit of the Department of Health. He currently has 5 cases where probable cause was found.

### **Assistant Attorney General**

Mr. Dolan presented a written report of rules that had recently become effective and two that had been tolled due to letters from the Joint Administrative Procedures Committee (64B12-9.0015 and 15.001, F.A.C.)

### **Executive Director**

Ms. Foster presented the budget information, noted that renewal fees had been reduced and that the opticianry profession is currently in renewal.

She also gave some statistical information concerning the number of currently licensed opticians, 3517 in F/Y 11/12 and 3394 in F/Y 10/11; number of complaints - 21, and disciplinary action taken last year – 1 revocation, 1 probation, 3 fines, 2 reprimands and 3 citations.

## **FOR YOUR INFORMATION**

CBS 60 Minutes Video

## **ADJOURNMENT**

The meeting was adjourned at 12:00 p.m.