

**BOARD OF OPTICIANRY
GENERAL BUSINESS MEETING MINUTES
January 25, 2019
Department of Health
4042 Bald Cypress Way, Room 301
Tallahassee, FL 32399
9:00 a.m.**

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

I. CALL TO ORDER/ROLL CALL

The meeting was called to order on Friday, January 25, 2019 at 9:02 a.m. ET by Mr. Girdler.

Members Present:

John B. Girdler, Chair
Paul Wilford, Vice-Chair
Byron D. Shannon
Richard Williams
Irene Stavros

Staff Present:

Jennifer Wenhold, Executive Director
Jessica Sapp, Program Administrator

Board Counsel:

Timothy Frizzell, Assistant Attorney General

Court Reporter:

For the Record
Julie Culver
1500 Mahan Drive, Suite 140
Tallahassee, FL 32308
(850) 222-5491

II. DISCIPLINARY PROCEEDINGS

A. Informal Hearings

- i. Ben Parker, LDO, Case No. 2017-01511
(PCP – Stavros, Perez, Calvo)

Mr. Parker was present and sworn in by the court reporter. Ms. Kimberly Marshall, Assistant General Counsel, summarized the case for the Board. Respondent was alleged with the violation of Section 484.014(1)(q), Florida Statutes, by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime related to the practice of opticianry.

Motion: by Mr. Shannon to find that the Respondent was properly served and has requested an informal hearing.

Second: by Mr. Wilford
Vote: Unanimous

Motion: by Mr. Shannon to adopt the investigative report into evidence in this proceeding.
Second: by Mr. Williams
Vote: Unanimous

Motion: by Mr. Williams to adopt the conclusions of law as set forth in the Administrative Complaint and find that the conduct alleged constitute violations of the Practice Act.
Second: by Mr. Shannon
Vote: Unanimous

The Respondent addressed the Board and following the Department made the recommendation below:

- Revocation

Motion: by Mr. Shannon to issue a reprimand and a \$500.00 fine.
Second: by Mr. Williams
Vote: Carried 3/1. Mr. Girdler

A motion to assess costs in the amount of \$668.26 was presented to the Board. After Discussion, the Board took the following action:

Motion: by Mr. Williams to accept the Department's imposition of costs in the amount of \$668.26 to be paid within 12 months of entry of the final order.
Second: by Mr. Wilford
Vote: Unanimous

ii. Mary Fonner, DO, Case No. 2017-06595
(PCP – Stavros, Perez, Calvo)

Ms. Fonner was present and sworn in by the court reporter. Ms. Marshall summarized the case for the Board. Respondent was alleged with the violation of Section 484.014(1)(q), Florida Statutes, by pleading nolo contendere to unemployment compensation fraud, which is a crime related to the practice of opticianry or the ability to practice opticianry; and Section 456.072(1)(x), Florida Statutes, by failing to report the aforementioned nolo contendere pleas to the Board, in writing, within 30 days.

Motion: by Mr. Shannon to find that the Respondent was properly served and has requested an informal hearing.
Second: by Mr. Williams
Vote: Unanimous

Motion: by Mr. Williams to adopt the investigative report into evidence in this proceeding.

Second: by Mr. Wilford

Vote: Unanimous

Motion: by Mr. Wilford to adopt the conclusions of law as set forth in the Administrative Complaint and find that the conduct alleged constitute violations of the Practice Act.

Second: by Mr. Williams

Vote: Unanimous

The Respondent addressed the Board and provided a written response to the Board members of which she read aloud on record.

Board counsel requested that Prosecution Services present the Department's recommendation. Prosecuting attorney explained that the Department will be presenting a combined penalty recommendation for both cases against Respondent and presented the second case to the Board.

iii. Mary Fonner, DO, Case No. 2017-06422
(PCP – Stavros, Perez, Calvo)

Ms. Fonner was present and was not represented by counsel. Ms. Marshall summarized the case for the Board. Respondent was alleged with the violation of Section 484.014(1)(t), Florida Statutes, through a violation of Rule 64B12-12.009(3)(c), Florida Administrative Code, by failing to pay a delinquent status license fee after renewing her license after the renewal deadline.

Motion: by Mr. Williams to find that the Respondent was properly served and has requested an informal hearing.

Second: by Mr. Shannon

Vote: Unanimous

Motion: by Mr. Shannon to adopt the investigative report into evidence in this proceeding.

Second: by Mr. Williams

Vote: Unanimous

Motion: by Mr. Shannon to adopt the conclusions of law as set forth in the Administrative Complaint and find that the conduct alleged constitute violations of the Practice Act.

Second: by Mr. Williams

Vote: Unanimous

The Respondent did not have any further comments for the Board.

The Department made the following combined recommendation for case numbers 2017-06422 and 2017-06595.

- Reprimand
- \$2,500.00 fine within 1 year
- Costs of \$501.97 within 1 year
- Suspension until she pays the delinquent fee of \$125.00
- CE in Laws and Rules within 1 year

Motion: by Mr. Shannon to accept the Department's recommendation, except with amendment to reduce the fine to \$1750.00 to be paid within 1 year of the filing of the final order.

Second: by Mr. Williams

Vote: Unanimous

Mr. Wilson provided an oral prosecution report and update on the current case inventory to the Board. There are 26 pending cases with 9 pending older than 1 year.

Motion: by Ms. Stavros to continue processing 1 year and older cases.

Second: by Mr. Williams

Vote: Unanimous

III. REPORTS

A. Executive Director

i. Renewal Extension Update

Ms. Wenhold provided a summary of the Board's November 2, 2018 vote to extend the renewal deadline to June 30, 2019 due to those affected by Hurricane Michael. Ms. Wenhold also provided an update on the Department's efforts to publicize and implement the extension.

ii. Examination Update

Mr. Shannon serves on the NCSORB board and recused himself from voting after any discussion the board has.

Ms. Wenhold summarized the action plan which provides the plan to transitioning to offer another licensure exam. The Board can expect to see a certification report from the Department at the April 2019 Board meeting which will include additional details for the board to determine the validity of the exam. Ms. Wenhold provided a timeline of the examination certification process at request of Board Chair.

B. Board Counsel

i. Rules Report – January 2019

Mr. Frizzell provided the Board with an overview of the rules currently open for development.

ii. Rule 64B12-11.003

The following amendments were proposed:

64B12-11.003 Initial and Renewal Active Status Fee.

(1) The fee for persons initially licensed shall be \$125.00.

(2) The fee for biennial renewal of an optician's active status license shall be \$225.00 425.00.
Rulemaking Authority 456.025, 456.036, 484.005, 484.008(21) FS. Law Implemented
484.008(1) , 456.013 FS. History—New 12-6-79, Amended 6-30-82, Formerly 21P-11.03,

*Amended 3-30-89, 7-10-89, 7-3-91, Formerly 21P-11.003, 61G13-11.003, Amended 10-24-94, Formerly 59U-11.003,
Amended 1-4-98, 2-1-04, 4-9-12, _____.*

i. Rule 64B12-11.008

64B12-11.008 Initial Active Status License Fee.

~~Persons initially licensed in the first year of a biennial period shall pay the fee established in Rule 64B12-11.003, F.A.C. Those persons initially licensed in the second year of the biennium shall pay one-half the fee established in Rule 64B12-11.003, F.A.C.~~

Rulemaking Authority 456.025, 484.005 FS. Law Implemented 456.013 FS. History—New 4-1-84, Formerly 21P-11.08, 21P-11.008, 61G13-11.008, Amended 10-24-94, Formerly 59U-11.008, Repealed

After discussion, the following action was taken:

Motion: by Ms. Stavros to accept the proposed language.

Second: by Ms. Shannon

Vote: Unanimous

Motion: by Mr. Wilford that the proposed rule amendments will not have an adverse impact on small business.

Second: by Ms. Stavros.

Vote: Unanimous

Ms. Wenhold provided an explanation of providing a Statement of Regulatory Costs and if necessary, presenting to the Board. If it does not reach the \$200,000 threshold, the board delegated determination to the Board Chair.

Motion: by Mr. Shannon to accept the delegation of review of the Statement of Regulatory Costs to the Board Chair if found that the proposed amendments do not reach the \$200,000 threshold.

Second: by Ms. Stavros

Vote: Unanimous

The Board considered the economic impact and determined that a Statement of Estimated Regulatory Cost was not necessary and the rule will not need legislative ratification.

Motion: by Ms. Stavros that no part of this rule or a violation of this rule should be designated as a minor violation.

Second: by Mr. Williams

Vote: Unanimous

C. Board Chair

Mr. Girdler thanked the members and administrative staff for their efforts on behalf of the Board.

IV. DISCUSSION

A. NCSORB Update – Wade Delk

Mr. Wade Delk with the National Commission of State Opticianry Regulatory Boards (NCSORB) and Mr. Dale Nyblade, Chairman of Arizona State Board of Opticianry, were present and addressed the Board. Mr. Delk provided the Board with exam pass rates from August 1, 2018 to December 31, 2018.

Mr. Nyblade provided an update with exam and rule changes happening in Arizona. Mr. Nyblade explained that the State of Arizona is now a dual examination practical so that candidates have an option to choose their path to licensure.

Mr. Delk formally requested the Board accept both basic exam for contact lens and basic exam for spectacles offered by NCSORB in addition to the practical exam currently required for Florida licensure.

There was no further discussion or action made by the Board.

B. ABO Update – James Morris, Esq.

Mr. Morris, Executive Director and General Counsel, American Board of Opticianry (ABO), was in attendance addressed the Board. Mr. Morris requested that the Board thoroughly review all examination vendors before accepting. Additionally, he provided an overview of other states that have adopted the ABO practical. Finally, Mr. Morris provided an update on the certification process and the payment of certification fee for the ABO practical examination.

Mr. Girdler requested that Mr. Morris submit a fee schedule for the examination to Ms. Wenhold with the Board Office.

V. FOR YOUR INFORMATION

A. Spotlight on Unlicensed Activity

VI. NEW BUSINESS

A. Ratification List

After discussion, the following action was taken:

Motion: by Ms. Stavros to ratify the approved licenses.

Second: by Mr. Williams
Vote: Unanimous

After discussion, the following action was taken:

Motion: by Mr. Williams to ratify the approved continuing education courses
Second: by Ms. Stavros
Vote: Unanimous

VII. OLD BUSINESS

A. Approval of Minutes – November 2, 2018

Motion: by Mr. Wilford to approve the minutes as presented.
Second: by Mr. Shannon
Vote: Unanimous

VIII. ADJOURNMENT

There being no further business, Mr. Williams made a motion to adjourn at 10:50 a.m.
Second: by Ms. Stavros.
Vote: Unanimous