

**TENNESSEE BOARD OF DISPENSING OPTICIANS
MEETING MINUTES**

DATE: July 29, 2015
TIME: 9:00 A.M., CST
LOCATION: Health Related Boards Conference Center
Poplar Room
663 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS

PRESENT: LeRhonda Walton-Hill, DPO, Secretary
Kimberly Jackson, DPO
Felda Stacey, DPO
Greg DeCrow, DPO
Dr. Edward Risby, Consumer Member

STAFF

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

Ms. Walton-Hill, Secretary, called the meeting to order at 9:03 A.M. A roll call vote was conducted and all Board members were present.

Election of Officers

Ms. Stacey made a motion, seconded by Ms. Jackson, to elect LeRhonda Walton-Hill for chair. The motion carried.

Ms. Jackson made a motion, seconded by MS, Walton-Hill, to elect Felda Stacey for secretary. The motion carried.

Minutes

Upon review of the January 28, 2015 and April 29, 2015 minutes Ms. Jackson made a motion, seconded by Dr. Risby, to approve the minutes as written. The motion, carried.

Office of General Counsel Report

Mr. Gibbs said there are five (5) open disciplinary cases in the Office of General Counsel.

Mr. Gibbs said the rule amendments pertaining to definitions, scope of practice, continuing education requirements and the apprenticeship training program became effective on June 30, 2015.

Mr. Gibbs stated the Joint Government Operations Committee had a few suggestions for future rules including a hardship waiver provision in the apprenticeship training program which he will discuss later in the meeting.

Mr. Gibbs said the rule amendment proposing that all licensees obtain one (1) hour of jurisprudence as part of the continuing education requirements, in addition to the current continuing education requirements, is being reviewed by the Attorney General's Office.

Mr. Gibbs stated that SB0221/HB0340 which extends the Board until June 30, 2021, and clarifies those nominations from professional groups for appointment to the Board is permissive, was signed by the Governor on April 10, 2015 and made part of Public Chapter 96.

Legislative Report

Mr. Jeremy Davis, Legislative Liaison, reviewed the following legislation that impacts the Board:

Public Chapter 154 which 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 502 allows the Joint Government Operations Committee to extend the stay to approve rules from sixty (60) days to seventy-five (75) days. The act adds arbitrariness and capriciousness as two (2) new considerations.

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

Public Chapter 94 which 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 261 provides for the practice of telehealth by defining a healthcare provider; establish a provider-patient relationship by mutual consent and mutual communication; specify that telehealth does not create a new standard of care; prohibits any Board from creating a more restrictive standard of professional practice for telehealth service; allows a physician to prescribe by means of telemedicine and follow all prescribing applicable statutes, such as checking the Controlled Substance Monitoring Database and not permitting pain management clinics; and, not requiring a separate telehealth license by the Board of Medical Examiners.

Public Chapter 96 extends the Board of Dispensing Opticians through June 30, 2021 and clarifies those nominations to serve as members of the Board may come from professional associations.

Agreed Citation

The Board reviewed the agreed citation for **Linda Dixon, DPO**, who continued to practice as a dispensing optician under a lapsed license for three (3) months. Ms. Dixon complied with the terms of the agreed citation and paid all applicable fees.

Mr. DeCrow made a motion, seconded by Dr. Risby, to accept the agreed citation. The motion carried.

Office of Investigations Report

Ms. Dorroh stated there are currently no complaint cases in Investigations pertaining to the Board.

Ms. Dorroh reviewed the summary of currently monitored practitioners stating they are currently monitoring six (6) practitioners.

Administrative Report

Ms. Hernandez said as of June 30, 2015 there are eight hundred and fifty-three (853) licensed Dispensing Options and four hundred and thirty-eight (438) apprentices.

Ms. Hernandez stated that from April, May and June there were thirty-two (32) new apprentices; twenty-three (23) newly licensed dispensing opticians and seven (7) expired.

Ms. Hernandez said between April 25, 2014 and June 30, 2015 sixty (60) licensees renewed their licenses with twenty-nine (29) renewing online.

The board reviewed the meeting dates for 2016.

Newly Licensed

Ms. Jackson made a motion, seconded by Mr. DeCrow, to approve the following newly licensed Dispensing Opticians:

Christina Bassant
Lindsay Hannah Cauldfield
Bethany H. Cordell
Carl E. Dunn, Jr.
Coreane Lashan Farmer
Gay Lynn Grimme
Amber Gross

**Brian Morrison Hood
Megan L. Mason
Frank Arthur Stroh
Shukur Tairov**

The motion carried.

Apprenticeships

Mr. DeCrow made a motion, seconded by Dr. Risby, to approve the following newly licensed Apprentices:

**Victoria Bennett-Irving
Kujurja Bobbitt-Oliver
Scott Bovee
Dustin Camp
Carolyn Dickerson
Jeffica Dunavant
Theresa Jenkins
Mikelsey Jordan
Mary Kennedy
Janie Krisle
Rickie Lindsey
Joseph Martin
Katherine McFadden
Valerie Mullins
Jessica Noles
Jason Peterson
Aaliyah Roberts
Robert Sanchez
Sarah Stokes
Freddie Strong**

The motion carried.

Reinstated Licenses

Mr. DeCrow made a motion, seconded by Dr. Risby, to approve the following reinstated licenses:

**Linda P. Dixon
Darrell C. Lassiter
Paula D. Taylor-Veal**

The motion carried.

Approval to sit for the Practical Examination

Ms. Jackson made a motion, seconded by Ms. Stacey, to approve the following applicants to sit for the Practical Examination:

Sarah Fordham
Brandye Hankins
Megan Jones
Elizabeth Karlsen
Suzanna McCullah
Brittany Thompson
Dorothy True

The motion carried.

New Business

Mr. Gibbs said the board heard from Dr. Ferguson at the last meeting regarding the Task Force and comments from NCSDRB. Mr. Gibbs said he feels it's the appropriate time to wrap up the Task Force issues on the practical exam.

Mr. Gibbs stated the board has two (2) choices: 1.) terminate the contract with NCSDRB, based on convenience or, 2.) leave the contract in place.

Mr. Gibbs said there were three (3) legal issues that were analyzed to help the board make a decision:

1.) whether the NCSDRB exam meets the statutory and regulatory criteria of T.C.A. 63-14-103(b) which indicates that applicants may be examined on matters pertaining to Dispensing Opticians and practical subjects, etc. as the board may prescribe. The NCSDRB exam meets those criteria.

2.) Rule 0480-01-.08(1) (c) indicates that the practical exam may test a lengthy list of subjects. Mr. Gibbs stated in analyzing the exam it is his opinion that the exam does meet the requirement

3.) the standards to be applied to an exam, specifically, how the exam is to be constructed. The NCSDRB exam meets the standards.

Melaka Watson, Chief Procurement Office, discussed the current contract with NCSDRB. Ms. Watson said she reviewed the contract and was not an expert on the technical components; however, based on her review she didn't see anything that would suggest that the current contractor was in breach of the contract.

Ms. Watson said there is a section in the contract that allows the Board to terminate the contract for convenience which basically states the state may terminate the contract without cause for any reason and said termination shall not be a breach of contract by the state.

Ms. Watson said the state shall give the contractor a written thirty (30) day notice before the effective termination date and upon such termination the contractor shall have no right to any actual, general, special, incidental, consequential, or other damages whatsoever.

Ms. Watson said if the Board decides to take that route they would need to reissue a request for proposal, or an I5 which is a request for information to expedite the process. Ms. Watson stated that based on her review that would be the only remedy.

Ms. Watson also looked at the protest procedures in terms of Dr. Ferguson, stating there were protest procedures in place when the contract for solicitation was issued. Ms. Watson said the protest would have to be done within seven (7) days of the open file and inspection period in 2013. Ms. Watson said all proposers should know and be deemed responsible for knowing the facts documented in the states procurement files on the day the procuring agency opens the procurement files for public inspection.

Mr. Gibbs said NCSORB has consistently indicated that the exam is created through a collaborated effort of subject matter experts looking at national standards, looking at ASKE standards, looking at published materials and are the groups that create the exam.

Mr. Gibbs said if the Board had only intended to only apply ASKE standards to the exam, the Board should keep that in mind when the exam goes out for the next request for proposal. Mr. Gibbs said NCSORB is not in breach of the contract.

Ms. Stacey agreed to meet with NCSORB after the meeting to look at the practical exam with NCSORB representatives available to answer any questions.

The Board discussed waiting until Ms. Stacey has an opportunity to meet with NCSORB before voting on whether or not to terminate the exam contract.

Mr. Gibbs said Ms. Stacey could report to the Board; however she is limited to what she can say regarding the exam and can only give a very general opinion such as whether or not it meets her expectations.

Mr. Gibbs said NCSORB has invited all Board members to take the exam but they cannot communicate with each other outside of the meeting regarding the exam and strongly encouraged the Board to vote today based on what they have heard. Mr. Gibbs said the current contract expires June 30, 2018.

Ms. Jackson asked how long it would take to get someone else in if they terminate the contract.

Ms. Melissa Panier, Solicitation Coordinator, for the Department of Health reviewed the Request for Procurement (RFP) procedure stating the Board must develop the RFP and submit it to the Central Procurement Office which usually takes six (6) months to process.

Ms. Panier recommended that the Board start developing the RFP the year prior to the contract expiration date.

Mr. Gibbs said if the Board votes to terminate the contract today there would be no exam in place until the new RFP process is complete.

Mr. DeCrow made a motion, seconded by Dr. Risby, to continue with the exam offered by NCSORB. The motion carried.

Dr. Ferguson said the Task Force has one addendum to the study that was presented in the spring, if the Board would like to see it.

Robert Flippen, NCSORB representative, said if there is an addendum to the study they would like the opportunity to review it.

Ms. Kathy Hawkins, Board Consultant, stated that the Board decided to go with the new computerized exam after a Board member attended a conference with other states

Ms. Hawkins said the Board had complaints from individuals that took Dr. Ferguson's exam. Ms. Hawkins said a former board member, Donald Wells, took Dr. Ferguson's exam and found it to be very onset with no problems.

Ms. Stacey asked if there was a pass/fail rate on the NCSORB exam.

Ms. Wilkins stated she believed the initial pass rate is around sixty-five percent (65%) but would have to check the records.

Ms. Hernandez said there haven't been any complaints in a long time.

Susan Larson, NCSORB Manager, stated she could provide information on which areas the applicants fail the exam, including complaints and responses from applicants.

Ms. Jackson made a motion, seconded by Ms. Stacey, to conclude the Task Force and not accept their recommendations at this time. The motion carried.

Presentation by 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 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. Dr. Schick-Fonseca said it would stimulate comprehensive eye exams and enhance consumer awareness of optical goods.

Upon discussion, it was determined that the mobile business would not conduct eye examinations on site, not provide contact lenses, take minimum to no insurance; however, it would offer services in retirement homes and rural areas where there is little or no optical services.

The Board thought it was a great concept and wished Dr. Schick-Fonseca the best in her endeavor.

Correspondence

The Board reviewed a letter from **Douglas E. Jones, Esq.**, requesting that the examination contract be terminated immediately, the previous contractor be awarded the contract, and to forward the Task Force study to the appropriate state authorities. The Board took no action.

The Board reviewed a letter from **Darrell Lassiter** thanking them for allowing him the opportunity to serve on the Task Force and encouraged the Board to consider contracting with the Learning Curve practical exam offered by Dr. Ferguson. The Board took no action.

The Board reviewed a letter from **James M. Morris, Esq.**, requesting the opportunity to meet with the Board regarding the practical examination offered by the American Board of Opticianry. The Board stated they would welcome Dr. Morris to attend a future Board meeting.

The Board reviewed a letter from **Joshua Williams**, who missed six (6) months of his apprenticeship program due to family matters, and is requesting to continue with the program without losing his hours.

Mr. DeCrow made a motion, seconded by Ms. Stacey, to approve Mr. Williams to continue his apprenticeship program without losing his hours. The motion carried.

The Board reviewed the **Tennessee Dispensing Opticians Association** continuing education courses being offered in August and October 2015.

Ms. Jackson made a motion, seconded by Mr. DeCrow, to approve the courses. The motion carried.

The Board reviewed the **Costco** continuing education courses being offered in September and October 2015.

Mr. DeCrow made a motion, seconded by Ms. Stacey, to approve the courses. The motion carried.

The Board reviewed the **International Vision Expo** continuing education courses being offered September 16-18, 2015.

Ms. Jackson made a motion, seconded by Mr. DeCrow, to approve the courses. The motion carried.

The Board reviewed the **ABO/NCLE** continuing education courses being offered September 25-27, 2015.

Mr. DeCrow made a motion, seconded by Ms. Stacey, to approve the courses. The motion carried.

Continuing Education Waiver Requests

The Board reviewed a letter from **Steve Ward** requesting a waiver of the continuing education hours he obtained in Florida to order to reinstate his Tennessee license.

Ms. Stacey made a motion, seconded by Mr. DeCrow, to allow Mr. Ward a six (6) month grace period to obtain the required sixteen (16) hours of continuing education for reinstatement of his Tennessee license and allow him to obtain the hours in Florida with the exception of Florida law courses. The motion carried.

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

Mr. Gibbs stated that upon reviewing Rule 0480-0-01.14(4), pertaining to the apprenticeship program, the Joint Operations Committee suggested including a waiver provision in case someone occurred a hardship while in the program.

Mr. Gibbs said it came to his attention that Rule 0480-0-01.14(4) is written to allow only supervisors licensed in Tennessee. Mr. Gibbs said “or in another state” needs to be included.

Mr. Gibbs said the rule also needs to be amended to read “in good standing” rather than “current, undisciplined and unrestricted.”

Mr. Gibbs said when the Board gets to the point of a rule change they can include these amendment.

Martha Gentry, NAOO, stated that good standing is a term used under many licensing agencies and if a licensee had a criminal activity record expunged, it would allow the Board to look at the fact that the person has paid their debt and gives the Board a larger pool of persons that can supervise.

Ms. Gentry also suggested changing the apprenticeship language to read “apprenticeship training must be supervised by a dispensing option/optometrist or ophthalmologist who has been license in Tennessee or another state and whose license to practice is current and in good standing.”

Mr. Gibbs said instead of conducting a rulemaking hearing for this language only to wait a few meetings to see if additional amendments need to be made.

Ms. Stacey said applicants coming from another state through reciprocity need to take a jurisprudence examination and demonstrate competency on using a hands on component for applicants.

Ms. Wilkins said the Hearing Instruments Board has a practical examination using hearing instruments.

Ms. Hawkins stated the Board adopted the examination to allow applicants to be licensed faster, rather than have them wait until the next meeting.

Mr. Flippen, NCORB, stated they give the same practical exam in all states.

Adjourn

Dr. Risby made a motion, seconded by Mr. DeCrow, to adjourn at 11:28 a.m. The motion carried.

Ratified by the Board on October 28, 2015