TENNESSEE BOARD OF DISPENSING OPTICIANS MEETING MINUTES

DATE: January 25, 2023

TIME: 9:00 A.M. CST

LOCATION: Health Related Boards

Poplar Room

665 Mainstream Drive Nashville, TN 37243

BOARD MEMBERS

PRESENT: Herman Bowman, DPO

William DeCrow, DPO Brandy Miller, DPO

LeRhonda Walton-Hill, DPO Jonathan Winnegrad, DPO

BOARD MEMBER(S)

ABSENT: Consumer Member - Vacant

STAFF PRESENT: Kimberly Wallace, Regulatory Board Administrative Director

Maria Johnston, Regulatory Board Administrative Assistant

Eric Winters, Senior Associate General Counsel

Call to Order

Mr. Winnegrad called the meeting to order at 9:02 AM CST. A roll call was conducted, and a quorum was present. Ms. Wallace confirmed the following Board Members were present; Herman Bowman, William DeCrow, Brandy Miller, LeRhonda Walton-Hill and Jonathan Winnegrad.

Ms. Wallace introduced herself as the Administrator Director for Unit 3 of the Health Related Boards, she then moved on to introductions for the administrative and legal staff with Ms. Maria Johnston, Board Administrator, Mr. Eric Winters, Advisory Attorney.

Discuss and Consider Approval of Meeting Minutes

Minutes from the January 25, 2023, Board Meeting

Upon review of the January 25, 2023, Board Meeting Minutes, Mr. Winnegrad made a motion with a second by Ms. Miller, to approve the Minutes as written. There was no discussion on the motion. The motion passed unanimously.

Receive Reports and /or Requests from the Office of Investigations

Roger Knowlton, Intake Coordinator, provided the 2022 full year Complaint report to the Board.

PERIOD: 2022 COMPLAINTS

New Complaints	Number of Complaints
Unlicensed Practice	3
Lapsed License	3
Unprofessional Conduct	3
Total New Complaints	9
Closed Insufficient	1
Closed BIV, EMS, HCF, AW	2
Complaints Closed	3
Closed Warning Letter	3
Total # Closed Complaints	9

Receive Reports and/or Requests from the Division of Health Licensure and Regulation

There were no Reports or Requests from the Division of Health Licensure and Regulations to review at this meeting.

Discuss and take action as necessary regarding Legislation

There were no legislative items for the Board to review at this meeting.

At 9:47 a.m. Mr. DeCrow made a motion to take a break for ten minutes, a second was made by Mr. Bowman.

At 10:00 a.m. the Board Meeting resumed, and the guest, James M. Morris, General Counsel & Chief Executive Officer, American Board of Opticianry & National Contact Lens Examiners, Inc. has arrived and is present.

Ms. Wallace did a roll call, and all Board Members are present.

Receive Reports and /or Requests from the ABO/NCLE

ABO/NCLE Remote Proctoring Update

James M. Morris, General Counsel & Chief Executive Officer, American Board of Opticianry & National Contact Lens Examiners, Inc. was present to speak with the Board.

Mr. Morris thanked the Board for waiting on him as he dealt with a delay in his arrival due to a tornado and a delay with his flight this morning.

Mr. Morris stated the statistics for at-home proctored exams pass rates are at or below the in-person testing statistics. Exam takers have expressed how difficult the process is for the remote at-home proctored exam process to complete all of the steps to ensure the safe and secure testing environment. The Practical Exam will not be delivered via remote due to technical exam security protocols. The other

exams are available via remote testing and include both AI technology with extreme sensitivity as well as live remote proctors watching the individual while they take the test. They have not had any states that accepted the at-home testing reverse that decision thus far, so they have decided to accept it for the ones that want to continue to use it.

Mr. Bowman asked if there is a need to continue at-home testing. Mr. Morris, said yes, there are still some individuals, that due to covid, do not want to be in a test center environment and they want to accommodate that. Other considerations for test takers give options for people with disabilities, anxiety, or other considerations that find the remote proctoring beneficial, and it can assist with some medical accommodations. Can allow for additional times and extended test taking requests. If a test center is booked, there may be additional availability for remotely taking the exam.

Mr. Winnegrad noted that he took a proctored test in his home for another purpose, and he found it a good experience.

Mr. Morris stated test takers never have the actual full exam on their computer. The technology only sends one question at a time and then pulls it back after a response is given. This aids in exam security. The ABO/NCLE now has remote proctoring tests available as policy, but it is subject to approval by the individual state boards.

Mr. Bowman made a motion to make an annual review for approval of the at-home remote proctoring of exams, with a second by Mr. DeCrow. There was no discussion on the motion. The motion passed unanimously.

Administrator's Report

Ms. Johnston presented the Administrator's report, as follows:

PERIOD: As of January 19, 2023

Total # Currently Licensed Dispensing Opticians	926
Total # Current Apprentices	396

LICENSE STATUS SINCE THE LAST BOARD MEETING

PERIOD: October 16, 2022, to January 19, 2023

New Dispensing Opticians Licenses	12
New Apprentice Approvals	27
Reinstated Licenses	1
Approved to Sit for the Practical Exam	4
Voluntarily Retired Licenses	2
Expired Licenses	10
Expired – Suspended Licenses	2

Expired Apprenticeship	29
Closed/Withdrawn	4
Paper Renewals	42
Online Renewal	92

Ms. Johnston also presented the Travel and Lodging rates, as follows:

- The current mileage rate was \$0.625 cents per mile
 - The current meals and incidental rate is \$59.25 per day for an overnight stay.

The current maximum reimbursable rate for hotel lodging in Nashville for upcoming meetings dates is as follows (rate re-sets each October)

- January \$187.00
- April \$230.00
- July \$207.00

Upcoming dates for the 2023 Board Meetings, as follows:

- April 19, 2023
- July 27, 2023
- October 25, 2023

Receive Reports and/or Requests from the Office of General Counsel

Conflict of Interest

Mr. Winters reviewed the Conflict of Interest statement and Open Meetings Act statement with the Board, as follows:

If you have a personal or financial interest in the outcome of any issue or matter before this board which may suggest a bias on your part, you are asked to state that interest on the record so that a determination can be made as to whether there exists a need for recusal. You are reminded that it is the duty of this board to protect the health, safety, and welfare of the citizens of Tennessee and that the administration of this solemn responsibility is dependent upon avoiding even the appearance of impropriety.

Pursuant to the Open Meetings Act, Board business may only be discussed by the Board members during the meeting. Members should not discuss the Board's business at any time other than during the open Board meeting. The prohibition applies to phone calls, e-mails, and text messages. Board members should also ensure that all comments during the meeting are stated for all to hear; private conversations between or among members during the meeting are inappropriate.

Rule Activity

There are currently no rules in process for the Board to review at this meeting.

Disciplinary Activity

Mr. Winters provided a review of the complaint and disciplinary process for the Board Members. There are currently four (4) licensees being monitored by the Disciplinary Coordinator.

Presentation of Orders, Agreed Citations, and Other Disciplinary Items

Consent Orders

There were no Consent Orders for the Board to review at this meeting.

Declaratory Orders

There were no Declaratory Orders for the Board to review in this meeting.

Agreed Orders

There were no Agreed Orders for the Board to review in this meeting.

Orders of Compliance

There were no Orders of Compliance for the Board to review in this Meeting.

Requests for Order of Modifications

There were no Request for Order of Modifications for the Board to review in this meeting.

Agreed Citations

There were no Agreed Citations for the Board to review in this meeting.

Applicant Interviews/File Reviews/Waivers & Other Requests

Harley Durham - Apprentice Request to Re-Open File

Ms. Durham was approved to begin the Apprentice Program on October 16, 2019. Her Apprenticeship Program was closed on October 15, 2021, and a letter was sent informing her that her file was closed due to not submitting the required (6) six month evaluation forms since March 2020.

Rule 0480-01-.14(5)(c) reads, "The filing of semi-annual evaluation reports for each Apprentice of a Sponsoring Supervisor is mandatory. Such reports shall be completed by an Apprentice's Sponsoring Supervisor, based on that Sponsoring Supervisor's review and approval of all work performed by the Apprentice while practicing under the Sponsoring Supervision. The Apprentice is responsible for filing the semi-annual reports to the Board administrative office. The appropriate form will be supplied by the Board and shall be notarized before filing. Semi-annual evaluation periods begin six (6) months from initial registration and each six (6) months thereafter until licensure as a Dispensing Optician has been achieved."

Ms. Durham provided a letter of explanation and medical documentation to her reason for becoming deficient on the submission of her semi-annual evaluation forms.

Rule 0480-01-.14(d)1. reads, "The Board may in its discretion grant a waiver for the filing of semi-annual evaluation reports required in (5)(c) if it can be shown to the Board that the failure to comply was not attributable to, or was beyond the physical capabilities of, the individual, i.e.: disability,

residence abroad, military service, or other instances of undue hardship. Such requests for waiver must be accompanied by written documentation acceptable to the Board.

A motion was made by Mr. Bowman to approve the waiver request, in full, with a second made by Ms. Walton-Hill. There was no discussion. The motion passed unanimously.

Ratification of Licensure Files

Ms. Wallace stated all files on this list have been reviewed and found complete and in good order according to the Board's Rules for each application type.

Dispensing Opticians - Newly Licensed - 10/16/2022 to 01/19/2023

License#	<u>Name</u>
3411	Broughton, Sara Deanne
3355	Charles, Dianet
3862	Clark, Claire Elizabeth
2383	Cole, Julie L
3367	Ebersole, Elizabeth Ann
3851	Gonzalez, Treisy
3084	Hall, Aislynn M
3283	Hester, Ronishe Shavon
3569	Long, Bailey Kay
3858	Massie, Pamela Nicole
3308	Walker, Brian P Jr
3855	Walker, Erica Leann

Dispensing Opticians – Reinstatement – 10/16/2022 to 01/19/2023

License#	Name#	
700	Thompson,	Mary E

Dispensing Opticians Apprentice Approvals – 10/16/2022 to 01/19/2023

Approval Date	Status	<u>Name</u>
12/20/2022	Apprentice	Anderson, Tanjanek T
12/12/2022	Apprentice	Bourland, Savannah Jane
11/18/2022	Apprentice	Brogan, Nikki Leeann
11/28/2022	Apprentice	Brown, Stefanie
12/12/2022	Apprentice	Bullock, Patrisha
10/20/2022	Apprentice	Burnett, Kathryn Grace
1/17/2023	Apprentice	Cutshaw, Blake Mitchell
10/20/2022	Apprentice	Emory, Rebecca
10/20/2022	Apprentice	Garthright, Rebecca Renee
1/17/2023	Apprentice	Gressitt, Rachael
12/20/2022	Apprentice	Haworth, Sierra
12/20/2022	Apprentice	Jackson, Rebecca
12/20/2022	Apprentice	Johnson, Jessica Marie
1/17/2023	Apprentice	Jones, Jeremy Jermaine

10/31/2022	Apprentice	Lee, Marquita
1/4/2023	Apprentice	Liberatore, Amanda Michelle
11/4/2022	Apprentice	Lowe, Alexander
11/9/2022	Apprentice	McDaniel, Chloe Marissa
10/20/2022	Apprentice	Montoya, Paradise Rosita
10/20/2022	Apprentice	Notta, Karim
12/20/2022	Apprentice	Notta, Sadiq
10/20/2022	Apprentice	Richards, Krystal Marie
12/2/2022	Apprentice	Skinnell, Shawna Lyne
12/20/2022	Apprentice	Smith, Darrin Laterrence Jr
12/12/2022	Apprentice	Starkey, Chelse Kaur
10/20/2022	Apprentice	Wanamaker, Cassity Nicole
10/31/2022	Apprentice	Wilson-Crittenden, Kelly Michelle

Approved to sit for Practical Examination - October 16, 2022, to January 19, 2023

<u>Name</u>	Date Approved for Practical Exam
Simons, Kathy L	11/4/2022
Yancey, Kaitlyn Gail	11/17/2022
Ray, Robyne Amanda	12/19/2022
Smith, Amy Kristen/Allen	1/11/2023

Voluntarily Retired - October 16, 2022, to January 19, 2023

<u>Name</u>	Date
Tekler, Tammy Rea	12/19/2022
Wells, Donald L	11/8/2022

Closed files – 10/16/2023 to 1/19/2023

<u>Name</u>	<u>Date</u>
Dolihite, Kelley Michele	11/7/02022
Hodson, Ranae Amber Grace	12/7/2022
Lee, Linda Marlene	11/7/2022
White, Davie Braxton	1/7/2023

Apprentice Closed Files – October 16, 2022 to January 19, 2023

Name	Date
Aliff Heather Kierston	12/20/2022
Arden Amanda Godsey	12/14/2022
Beard Amy Leah	11/4/2022
Carter Barbara A.	11/17/2022
Collins Kayla Marthy	11/4/2022
Cook Tina M.	11/7/2022
Cooper Richard Allen	11/7/2022
Cooper Shiann Alexas	12/14/2022
Cuadros Belkis	11/4/2022

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Durham Harley	12/7/2022
Etheridge Kathryn Davina	11/17/2022
Gregory Jannie Leigh	11/17/2022
Harris Evelyn I	11/7/2022
Harris Kelley Ruth	11/7/2022
Henderson Zachary	11/7/2022
Huffaker Brook Marie	11/7/2022
Kistle Whitney Bliss	11/7/2022
Lively Pam D.	12/14/2022
Malin Benjamin Scott	11/7/2022
Nichols Janet Lee	11/7/2022
Pannell Xavier Alexander	12/14/2022
Poore Morgan Elizabeth	1/6/2023
Regelsberger Alaina Claire Whiteman	12/14/2022
Remke Joseph William	11/7/2022
Steel Kellie	11/7/2022
Tarkington Michael	12/14/2022
Underwood Johnathan	11/17/2022
Williams David L.	12/14/2022
York Tonya Rae	11/7/2022
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Ms. Walton-Hill made a motion to approve the ratification list as presented, with a second made by Ms. Miller. There was no discussion. The motion passed unanimously.

Continuing Education Course Requests, Waivers, and Other Education Items

Review Request for Alternate Education Program from Optical Training Institute (OTI)

Mr. DeCrow made a motion to hold this item until later in the meeting to allow for public comment by Mr. Morris, with a second made by Mr. Bowman. There was no discussion. The motion passed unanimously.

Upon the Board's review of this item, Mr. Brian Denier from OTI was present to address the Board:

Mr. Denier reviewed a brief history of Optical Training Institute's (OTI) company and the Optician Development Program (ODP), stating they have thirty plus years of experience serving over 20,000 opticians as well as highlighting points regarding their program development processes. Arizona and Alaska have approved their program so far and they are having discussions with other states.

Mr. Winnegrad asked about the 20,000 optician's numbers and Mr. Denier stated that was services they provided to others in the past.

Mr. DeCrow expressed he liked the references and visual aids used in the program he viewed in the online demo OTI provided to the Board Members for individual view.

A supervisor for an apprentice receives interactive pieces and also have a training piece on how to supervise apprentices through the program.

Ms. Walton-Hill was impressed with the way the program was set up in her experience with the demo of

the program.

Public comment was made by Mr. Morris. The ABO/NCLE raises issues regarding the process for approval. In 2012 when the Board adopted the ABO/NCLE exams, the Board had to provide extensive analysis of the creation of their exam as well as having to provide all of the company's financials before the Board adopted their exams. This was through the State's RFP process. In the Fall, OTI did not have a job task analysis, but they do now. ABO/NCLE has access to that job task analysis. The ones for ABO/NCLE are two hundred and fifty pages long for each of their six exams and cost \$250,000 to produce the job task analysis. The one sent out by OTI that ABO received was eighteen pages and was a ten-minute survey with a Starbuck's gift card reward given. He says it raises red flags. OTI is for profit. Alaska hasn't had a board meeting in six years. Arizona has a policy that they must accept anything anyone says is a valid exam or valid training program, with no exceptions. They allow every type of exam. He implores the Board to require anyone asking for approval as a program to have to go through the same process as those who complete an RFP for examinations. Every five to seven years, the ABO/NCLE must re-complete their job task analysis to update and validate their process. ABO/NCLE concern is their financials had to be supplied and they maintain a financial surplus to run on as needed to allow participants to close-out and allow participants to complete their program. A forprofit that incurs financial distress could leave candidates unable to complete their program if they experience an immediate shut down.

Mr. Diener stated OTI is happy to share any information the Board may request and answer any questions they may have.

Ms. Wallace provided a brief overview of the RFP Process.

Mr. Moore expressed his belief that any Apprentice Educational Training Program (AETP) provider should also have to go through the RFP process, the same as an exam is subject to.

Mr. DeCrow sees the AETP process as different from the exam process. The Board approves continuing education courses, and he sees the NAO and the OTI as training and educational programs, available for the apprentices to choose from should they wish. The training they have received has led to them passing the test. It is on the apprentice to do their research in choosing a program. When the Board approves a program for AETP it's the board stating they believe the program offers sufficient training and education. If the Board found that people completing the NAO or OTI are regularly failing their exams, then the Board would review and possibly rescind approval of the AETP because it's not being effective.

Mr. Bowman stated that a training program would be more structed than a continuing education program. If the Board approves a training program, does the Board have liability if the training program proves unsuccessful. Mr. Winters does not see that the board has responsibility if someone goes to any two-year school and doesn't pass their exams. He would want more time to study the question regarding an AETP and board liability.

OTI is branching out from providing continuing education to AETP.

Mr. Bowman would like the Board to be more informed on liability and responsibility when giving approval for an AETP.

Mr. Bowman made a motion to table a decision pending information from Mr. Winters on Board liability for approving an AETP, with a second made by Mr. DeCrow.

Discussion on the motion: Ms. Miller asked if OTI needs to come back to the next meeting or would the administrative office send a letter to OTI of the Board's decision in the next meeting? They could provide any follow-up information in writing. Mr. DeCrow is in favor of conducing more research. The information gathered may have an effect on the NOA program that could lead to a recission of their approval, if applicable. Ms. Miller concurs that when the Board approves a program, applicants, apprentices, and licensees are looking to the Board for confirmation of viability. The motion passed unanimously.

CE Course Approval - Roy Ferguson, PhD

The Learning Curve, Roy Ferguson, PhD presented the following:

January 29, 2023 – Holiday Inn, Johnson City, TN February 19, 2023 – Holiday Inn, Knoxville, TN March 12, 2023 – Fairfield Glade, Crossville, TN March 19, 2023 – Hampton Inn, Cleveland, TN September 10, 2023 – Hampton Inn, Cleveland, TN October 15, 2023 – Fairfield Glade, Crossville, TN November 12, 2023 – Holiday Inn, Knoxville, TN

Hours: 8:00 a.m. to 5:00 p.m.

8 live continuing education hours for each date/location.

Mr. DeCrow made a motion to approve the continuing education course, with a second made by Ms. Walton-Hill. Discussion: None. The motion passed unanimously.

CE Extension Request – Lisa Vetitoe #762

Ms. Wallace presented a CE extension request for Ms. Vetitoe. A letter and documentation were submitted for the Board to review. Ms. Vetitoe submitted a CE extension for 2022, to complete in 2023, along with her 2023 CEs, current year requirements.

Pursuant to Rule 0480-01-.12(6) Waiver of Continuing Education

(a) The Board may grant a waiver to certify attendance and completion of the required hours of continuing education, if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the individual, i.e., disability, residence abroad, military service, or other instances of undue hardship. Such requests for waiver must be accompanied by written documentation acceptable to the Board.

Mr. DeCrow made a motion to approve the request for her to complete her 2022 CEs in 2023, to total eighteen (18) CE hours in 2023, with a second made by Mr. Bowman. There was no discussion. The motion passed unanimously.

Receive Reports and take action as needed regarding Taskforce/Committee Reports

There were no Taskforce or Committee Reports for the Board to review at this meeting.

<u>Discuss and take action as necessary regarding Rulemaking, Rulemaking Hearings,</u> Rule Amendments, and Policies

Jurisprudence Exam Policy

Ms. Wallace noted that she has been reviewing the history of the jurisprudence exam, and reviewing related policies, as there was the extensive Rule change that went into effect in September. Anytime there is a Rule change, she looks to be sure if there are any policies that need updated to correspond with a Rule or if a policy is no longer needed because of the Rule change. In doing so, there was a 2017 Jurisprudence Exam Policy, adopted by the Board on October 26, 2016, which went into effect on January 1, 2017. As she reviewed the past and current Rules, she's not sure of the Boards original intent, as she did do an in-depth review through the Minutes in the history of the jurisprudence exam, she's not sure why they put this policy in place in the first place. This policy conflicts with the Boards Rules, this policy, in the second paragraph, speaks about successfully completing the jurisprudence exam and says the licensee must have at least 80% of the questions be answered correctly to receive the jurisprudence credit. However, the Rules both in place at the time this policy and in the current Rules require a 90% successfully completion rate. The Board's administrative staff has held by the 90% as it states in the Rules. She doesn't know if Mr. Winters has any additional guidance or information on it. Ms. Wallace would like to present this to the Board to take a look and make a determination if this policy is even necessary, since the Board's Rules do provide the passage threshold. The Board can amend the existing policy to make it match the Rules if there is a need for a policy to remain. The purpose of a policy is to describe and define a procedure for a Rule or to further describe the intent to a Rule. The purpose of a policy is never to replace or supersede a Rule.

Mr. Winters recommends eliminating the policy, especially with it being in contradiction to the Rule.

Ms. Walton-Hill made a motion to eliminate the 2017 Jurisprudence Policy, with a second made by Mr. DeCrow. There was no discussion. The motion passed unanimously.

Review of Correspondence and Notices

Jurisprudence Exam Inquiry - Dr. Roy Ferguson

Ms. Wallace noted to the Board that Dr. Ferguson had submitted his annual jurisprudence exam, on his initial attempt he did not pass that exam, he was provided information that he needed to retake the exam and receive a passing score no later than December 31 as in the Board's Rules or Attend one (1) morning session of a regularly scheduled meeting of the Board. Dr. Ferguson went on to submit some questions regarding the jurisprudence exam. After Ms. Wallace conducted a review of the past minutes, there were two other times throughout the past few years, where Dr. Ferguson has made similar submissions for public comment on previous occasions. What she discovered in the previous Minutes is that the Board welcomed the comment, but there was no action and no response given to the previous submissions.

Mr. DeCrow and Ms. Walton-Hill both acknowledged remembering the previous submissions. In past submissions, the Board took no action on Dr. Ferguson's correspondence items of this nature.

Mr. Winters read Dr. Ferguson's correspondence into the record. Mr. Winters directed the Board to TCA 63-14-101(2)(c) and 63-14-10(a), (1), (3), (4) which establish the Board's authority regarding examinations. He stated it is at the Board's discretion to establish and conduct a jurisprudence exam directing licensees to the Board's Rules. Mr. Winnegrad expressed his respect for Dr. Ferguson, and the Board discussed that an individual who did not pass the exam is questioning the exam. Mr. DeCrow

stated an open book test on the Laws and Rules would not require the type of testing as requested by Dr. Ferguson.

Mr. Decrow asked about Dr. Ferguson's correspondence reply stating he was going to reach out to the Attorney General's Office. Mr. Winters stated if the Attorney General's Office reached out to the Board, he would review any such item at that time, and re-stated the Board's statutory authority for creating and administrating a jurisprudence exam.

Mr. Winters stated if the Board chooses to not answer the question, then there's no action to take. Mr. DeCrow noted the handling of the exam has been documented through the Board's Minutes and sees no need to hire anyone to review the exam in the manner suggested by Dr. Ferguson.

The Board expressed they did not feel there was any action or response to be made.

Ms. Miller made a motion that the Board takes no action pertaining to the Jurisprudence exam item as submitted by Dr. Ferguson, as it is already stated in the Statutes and Rules that the Board can handle the exam in the way it is already being done and it will stay as is, with a second made by Ms. Walton-Hill. There was no discussion. The motion passed unanimously.

Conference/Event Reports and Upcoming Events Review

There were no Conference/Event Reports and Upcoming Events for the Board to review at this meeting.

Discuss Old/New Board Business

There were no Old/New Board Business for the Board to review at this meeting.

Call for Public Comment

Ms. Wallace gave one final opportunity for public comments to be heard and directed interested individuals to sign-in on the register provided by the front door. As a reminder Public Comments may be submitted in writing to the TN Board of Dispensing Opticians, 665 Mainstream Drive, Nashville, TN 37243 or sent via email to Unit3HRB.Health@tn.gov.

Adjourn

Mr. DeCrow made a motion to adjourn, with a second made by Ms. Miller. There was no discussion. The motion passed unanimously.

There being no further business to be heard today, this meeting of the Dispensing Opticians Board was hereby adjourned at 11:03 a.m. CST.

These Minutes were Ratified by the Board on April 19, 2023

Board Chair

Date