

TENNESSEE BOARD OF OPTOMETRY MEETING MINUTES

DATE: October 12, 2022
TIME: 9:00 A.M. CST
LOCATION: Health Related Boards
Iris Room
665 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS

PRESENT: Kurt Steele, O.D.
Linda Tharp, O.D.
James Venable, O.D.
Kenneth Young, O.D.

BOARD MEMBERS

ABSENT: Tonya Reynoldson, O.D.
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

Dr. Young called the meeting to order at 9:03 a.m. CST. A roll call of Board Members was conducted, and a quorum was present.

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

Contested Case Hearing

Steve Darnell, Administrative Law Judge, (ALJ) introduced himself. Board Members re-introduced themselves for the hearing proceedings. A quorum was present.

Robert L. Sams, O.D. License #361, Docket No 17.20-222205A

A Settlement Agreement was reached. No hearing was held.

Jeffrey A. Williams, O.D., License #1394, Docket No. 17.20-222206A

Mr. Winters presented information on the attempts at service to Dr. Williams regarding the matter. Steve Darnell, ALJ reminded the Board Members that discussion can only be done during the open

Board meeting. He confirmed with all four Board Members that they did not have knowledge on Dr. Jeffrey Williams's case. He provided information to the Board on two options, either adjourn the proceedings with no action to allow Mr. Winters to further attempt to contact Mr. Williams, or to proceed in default and hear the case.

A motion was made by Dr. Tharp to proceed in default. A second was made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

Mr. Winters provided the Notice of Charges for the Board's review. Mr. Winters provided Opening Statements and evidence, including affidavits from Ms. Kimberly Wallace, Administrative Director for the Board, regarding license status and continuing education records. Mr. Winters made Closing Statements, noting that the violation occurred prior to the date the license expired, requesting a suspension of the license until such time as Dr. Williams would meet the continuing education requirements and payments of civil penalties and costs for the case.

Steve Darnell, Administrative Law Judge, (ALJ) instructed the Board Members to review the Proposed Final Order distributed by Mr. Winters. Mr. Darnell, ALJ instructed the Board of their responsibilities to determine in the case the following: Findings of Fact, Conclusions of Law, Policy Reason for Decision, and Disciplinary Actions. He also provided additional direction for handling deliberations.

Dr. Young opened for discussion with the Board. It was confirmed that the notices were sent to Dr. Williams at his home address of record. License expiration makes no difference to the ability to discipline the licensee. Dr. Tharp asked if there is any evidence of Dr. Williams being incapacitated in any way. Mr. Darnell, ALJ confirmed the evidence provided does not include anything of that nature. The Board discussed that Dr. Williams had maintained a license since 1991. Had he decided to let his license lapse without renewing, he could have contacted the Board's Office with notice of his intent to no longer maintain a Tennessee license.

A motion was made by Dr. Steele to accept the proposed order in its entirety. A second was made by Dr. Tharp. Discussion on the motion: Mr. Darnell, ALJ confirmed the Board can accept the entire proposed order and encouraged them to review each component. The Board proceeded to review the Findings of Fact, the Conclusions of Law, the Reasons for Decision, and Order in the Proposed Final Order presented by Mr. Winters. The Board Members verbalized their agreement with each of these four sections of the Proposed Order, with each stating their agreement with the Proposed Order. The motion passed unanimously.

Mr. Darnell, ALJ gave final instructions for document handling to Mr. Winters. That concluded the hearing on this case.

Dr. Young, called for a brief recess at 9:34 a.m. to allow the Judge and the Court Reporter to finalize their work. Dr. Young called the meeting to resume at 9:40 a.m.

Discuss and Consider Approval of Meeting Minutes

Minutes from the July 13, 2022, Board Meeting

A motion was made by Dr. Tharp to approve the Minutes from the July 13, 2022, Board Meeting, as written. A second was made by Dr. Venable. There was no discussion on the motion. The motion passed unanimously.

Receive Reports and/or Requests from the Office of Investigations

Report of Complaints & Currently Monitored Practitioners

Roger Knowlton, Intake Coordinator from the Office of Investigations, was present to provide the investigative reports to the Board.

PERIOD: 2022 Calendar Year Complaints

New Complaints	Number of Complaints
Total # New Complaints	13
CE Violations	4
Outside Investigative Scope	3
Unprofessional Conduct	5
Violation of Order	1
Closed Complaints	23
Closed – No Findings	1
Closed BIV, EMS, HCF, AW	9
Closed - Warning Letter	1
Complaint Closed	12

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

Alicia Grice, Fiscal Director, presented the Fiscal Year 2022 Year End Reports, with highlights as follows:

- Total Expenditures \$215,851.53
- Board Fee Revenue \$187,425.00
- Current Year Net (28,426.53)
- Cumulative Carryover \$683,169.85

Ms. Grice presented various scenarios for fee decreases to bring down the Board’s Cumulative Carryover Balance.

Dr. Venable asked for clarification on taking an aggressive approach and how that affects Government Operations Hearing requests. Ms. Grice noted that expenses can change from year to year. She noted that other boards are having similar conversations and have varying levels of aggressive treatment to the decreases. It was noted that this will require a rule change, which can take time. Ms. Wallace concurred. Dr. Venable noted that any change that is made, should be communicated in transparency. He leans towards being more aggressive due to the time involved in the rule making changes.

A motion was made by Dr. Venable to accept the recommendation for the most aggressive option for a two (2) year period of fee reduction. A second was made by Dr. Tharp. There was no discussion

on the motion. The motion passed unanimously.

Ms. Wallace clarified the changes would decrease to a renewal fee of \$175.00 and the application fee of \$150.00.

Dr. Tharp inquired about the increase in legal fees from Fiscal Year 2021 to Fiscal Year 2022. Ms. Grice explained that changes are billed based on the actual time spent by the legal staff working on matters for this Board. This includes time spent in case reviews, case handling administrative consultations, and allocated expenditures.

Discuss and take action as necessary regarding Legislation

There were no legislative items for the Board to review.

Presentation from Dr. Peter Phillips, TDOH CSMD Director

Discuss and consider Gateway Project

Dr. Phillips, CSMD Director, was present to review the Gateway Project and funding request with the Board. He discussed the Gateway Services Extension and Enhanced Prescriber Report, giving an overview of the CSMD system functionality, and TN usage since going live in July 2020.

A contribution by the Optometry Board is requested in the amount of \$45,962.94 from the Cumulative Carryover Reserve Balance, based on the number of licensees. Previous contributions for the first two years of the program were \$30,133.80 previously paid from the Board's Reserve Balance.

Dr Tharp questioned if they expect any additional grants. Dr. Phillips said they are still working on potential future grants.

A motion was made by Dr. Tharp to approve the funding contribution for CSMD as requested in the amount of \$45,962.94. A second was made by Dr. Young. There was no discussion on the motion. The motion passed unanimously.

Receive Reports and/or Requests from the Board Administrative Office

Administrative Report

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

PERIOD: As of 10/3/2022

Total # Currently Licensed Optometrists	1,371
--	-------

LICENSE STATUS SINCE PREVIOUS MEETING PERIOD:

July 6, 2022, to October 3, 2022

New Licenses	22
Reinstatement	2
Retired Licenses	10
Closed Licenses	0
Expired Licenses	8

Paper Renewals	32
Online Renewals	120

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

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

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

- October \$234.00
- January \$187.00
- April \$230.00
- July \$207.00

Upcoming dates for the 2023 Board Meetings, as follow:

- January 12, 2023
- April 5, 2023
- July 12, 2023
- October 11, 2023

Ms. Wallace provided a brief overview of license expiration procedures.

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

Conflict of Interest

Mr. Winters reviewed the Conflict of Interest and Open Meetings Act statements 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

The amendments to Rules 1045-02-.08 and .09 and the new Rule 1045-021-.19 are in internal review.

Presentation of Orders, Agreed Citations, and Other Disciplinary Items

Disciplinary Activity

There are currently two (2) licensees being monitored by the Disciplinary Coordinator. Except for the cases presented at the October 12, 2022, Board Meeting, there are zero (0) cases in the Office of General Counsel.

Consent Orders

Mr. Winters presented the following Consent Orders that were issued as the result of a violation of TCA 63-8-101 and Rule 1045-02-.01.

Carrie Lebowitz, O.D. #2671

Dr. Lebowitz was in violation for CE cycle February 1, 2020, through January 31, 2022, a total of thirty (30) continuing education hours. She is required to complete thirty (30) continuing education hours, six (6) penalty continuing education hours, and pay a civil penalty in the amount of two hundred fifty dollars (\$250.00) within six (6) months from ratification of this order.

A motion was made by Dr. Venable to approve the Consent Order, as written, for Carrie Lebowitz, O.D. #2671. A second was made by Dr. Tharp. There was no discussion on the motion. The motion passed unanimously.

Robert L. Sams, O.D. License #361

Dr. Sams was in violation for CE cycle September 1, 2019, through August 31, 2021, a total of four (4) continuing education hours and current CPR certification. He is required to complete four (4) continuing education hours, provide current CPR certification, six (6) penalty continuing education hours, and pay a civil penalty in the amount of two hundred dollars (\$200.00).

A motion was made by Dr. Tharp to approve the Consent Order, as written, for Robert Sams, O.D. #361. A second was made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

Mr. Winters then followed up that this will need to be tabled for the January meeting. Dr. Sams did reach out to Dr. Steele. It was confirmed by Dr. Steele that he just forwarded the communication to the Administrative Office for handling, and he didn't feel it would create a bias. Mr. Winters preferred to hold the item for a quorum to be present with recusing Dr. Steele.

Dr. Tharp withdrew the motion. A second was made by Dr. Venable. There was no discussion on the motion. The motion passed unanimously.

Declaratory Orders

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

Agreed Orders

There were no Agreed Order for the Board to review at this meeting.

Agreed Citations

Ms. Wallace presented each of the following Agreed Citations that were issued by the Administrative Office for CE Violations.

Agreed Citation – CE – Lopykinski, Michael #3366

Dr. Lopykinski was in violation for continuing education of T.C.A. 63-8-119 and Rule 1045-02-.05. He is deficient for CE cycle June 1, 2020, through May 31, 2022, three (3) continuing education hours in Ocular Disease/Related Systemic Disease, including two (2) hours of continuing education in Controlled Substance Prescribing Practices and current CPR certification. He has paid the Civil Penalty in the amount of one-hundred dollars (\$100) and is required to complete three (3) continuing education hours in Ocular Disease/Related Systemic Disease, including two (2) continuing education hours in Controlled Substance Prescribing, and current CPR certification, plus an additional six (6) penalty continuing education hours within ninety (90) days of the Agreed Citation.

A motion was made by Dr. Venable to approve the Agreed Citation, as written, for Michael Lopykinski, #3366. A second was made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

Agreed Citation – CE – Simmons, Jody #2819

Dr. Simmons was in violation for continuing education of T.C.A. 63-8-119 and Rule 1045-02-.05. She is deficient for CE cycle June 1, 2020, through May 31, 2022, thirteen (13) continuing education hours in Ocular Disease/Related Systemic Disease, including two (2) hours of continuing education in Controlled Substance Prescribing Practices and current CPR certification. She has paid the Civil Penalty in the amount of one-hundred dollars (\$100) and is required to complete thirteen (13) continuing education hours in Ocular Disease/Related Systemic Disease, including two (2) hours of continuing education in Controlled Substance Prescribing Practices and current CPR certification, plus an additional six (6) penalty continuing education hours within ninety (90) days of the Agreed Citation.

A motion was made by Dr. Tharp to approve the Agreed Citation, as written, for Jody Simmons, # 2819. A second was made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

Orders of Compliance

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

Requests for Order Modifications

There were no Order Modifications for the Board to review at this meeting.

Final Orders

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

Applicant Interviews/File Reviews/Waivers & Other Requests

CE Course Approval Greg Caldwell, O.D. – Opioid Issues for the Patient & Practitioners

Dr. Greg Caldwell sought approval from the Board for “Opioid Issues for the Patient & Practitioners” course that he would like to be considered for approval as two (2) hours of continuing education course in controlled substance prescribing for TN Optometrists.

Dr. Venable recused himself from this discussion due to his employer, SCO, could be considered a competitor in course offerings.

The Board was left without a quorum and a vote cannot be made at this meeting. Mr. Winters confirmed this would not meet the criteria for an emergency meeting. Mr. Winters requested a break to review whether the Board could retroactively approve the course.

Dr. Young called a break at 10:50 a.m.

Dr. Young called the meeting to resume at 11:02 a.m.

Mr. Winters reviewed Continuing Education 1045-02-.05(2)(c) Any course designed specifically to address controlled substance prescribing practices must be pre-approved by the Board or by a vendor approved by the Board for offering such courses. They cannot retroactively approve the course. According to the Rule, it has to be pre-approved. Dr. Sharp asked Dr. Young if a letter could be sent to Dr. Caldwell. Dr. Young was going to suggest it because the past two meetings did not have a quorum to vote on this issue.

A letter was drafted to Dr. Caldwell as follows:

The TN Board of Optometry met on October 12, 2022, and your request for approval of the course titled "Opioid Issues for the Patient and Practitioner" was included on the agenda for review. We apologize for any inconvenience this may cause, however, a quorum of Board Members eligible to vote on this item was not present at the meeting, therefore, your request will be added to the agenda of the next regularly scheduled meeting of the Board, slated for January 12, 2023.

In accordance with the Rules Governing the Practice of Optometry, Rule 1045-02-.05(2)(c), any course designed specifically to address controlled substance prescribing practices must be pre-approved by the Board or by a vendor approved by the Board for offering such courses. At this time, this pre-approval process is handled by the Board directly.

Sincerely,

Kenneth Young, O.D.

Chairman, TN Board of Optometry

The Board approved the letter to Dr. Caldwell.

CE Waiver Request – Hillis, Randy #2025

Dr. Hillis provided supporting medical documentation to the Board that was requested at the last meeting. Dr. Hillis also specified his request for CE cycle February 1, 2020, through January 31, 2022, and February 1, 2022, to January 31, 2024, to complete all of his continuing education hours online. A letter and documentation were submitted for the Board to review.

Dr. Venable commented on a recap that his request comes from his son's illness for diabetes and it's a difficult cost factor. Dr. Steele mentioned that Dr. Hillis has severe arthritis too. Dr. Young mentioned that he also has a disabled wife.

Dr. Venable suggested a motion to approve the waiver request for the two CE cycles as requested to allow for online continuing education, pending that sufficient online CEs have been received. A second was made by Dr. Steele.

Discussion on the motion, Dr. Tharp asked about his medical condition that makes it difficult for him to sit for his hours, but he's working full time, and she assumes he is sitting during work time too. She's concerned that he can work full time but cannot sit for courses. She thinks they should take it in two steps. What is he having to do for the diabetic son that is preventing him from obtaining his continuing education?

Dr. Venable made an amendment to his motion due to extenuating circumstances and unique nature for the health conditions for Dr. Hillis and his son, to approve CE cycle February 1, 2020, to January 31, 2022, only to complete his continuing education hours online. CE cycle February 1, 2022, to January 31, 2024, must be completed in accordance with the Board's Rules as written. A second was made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

File Review – Isaac Nelson, #3777

Dr. Nelson could not be available in person but was available for a phone interview. Ms. Wallace introduced herself and presented his file as follows:

Dr. Nelson has applied for licensure in TN, an initial by exam application, he received his Doctor of Optometry in 2021 and graduated from Indiana University. One of the requirements for license is the successful completion of the Injectable Skills Examination, (ISE). Upon review of Dr. Nelson's file, he had two unsuccessful attempts with the ISE in August of 2020 and November 2020. He has requested the ISE waiver to be applied based upon his completing the injectable course that was a required as part of his degree program at Indiana University.

Ms. Wallace believes the confusion stems from the Indiana University School of Optometry previously submitted for Board approval for their course to be used by post 2012 graduates seeking certification when pursuing licensure in Tennessee.

Ms. Wallace suggested the Board review Rule 1045-02-.07:

- (1) It is the intent of the Board that all applicants for licensure as optometrists attain the highest level of licensure available under the law including diagnostic and therapeutic certification as provided in T.C.A. §§ 63-8-102(12)(E) and 63-8-112(4). Attaining therapeutic certification must include attaining certification to use pharmaceutical agents by injection.

Ms. Wallace expressed concern that if the Board approves Dr. Nelson's request as presented, it will effectively negate the requirement for any applicant to have to take and pass the ISE, as all graduates since 2012 have injectable training included in their required course curriculum and the policy statement provides the Board's interpretation of the rule, requiring the ISE for all post 2012 graduates. She requested the Board review Dr. Nelson's request in light of their rules and policies as they currently exist and to provide guidance and a decision on the application.

Dr. Venable asked Dr. Nelson about his completion of the course at IU, and what has been his difficulty in not passing the ISE in two attempts. Dr. Nelson stated that he completed tasks on a live person in his classroom but had trouble drawing blood on the prosthetic arm. Dr. Venable stated the problem here, is the primary reason for the rule, being that anyone graduating prior to 2012 had the opportunity for a waiver and could go through a course more recently, primarily is based on the fact of experience of practice, and licensure in another district or state. The problem here, per Dr. Venable, is that Dr. Nelson has been previously licensed in another state and therefore does not have a record of experience in performing these procedures. It appears to Dr. Venable that the Board's hands are tied and there is value in the nature of the prosthetic arm and being able to perform these procedures in vivo.

Dr. Nelson did receive his license in Indiana in 2021. Dr. Nelson asked if there was any way he could repeat the course to obtain licensure, rather than having to pass the ISE. He stated he was licensed in the state of Indiana in June 2021.

Ms. Wallace directed the Board to the license verification from the state of Indiana showing he was licensed on June 7, 2021.

Dr. Tharp asked if there was another time he could sit for the ISE again. Dr. Nelson said he's already taken all of his annual PTO and wants to move to Tennessee or Georgia relatively soon. Dr. Tharp referenced the Policy, however since he graduated in 2021 this waiver is only applicable to those graduates prior to 2012.

Dr. Young stated that unless there is a rule change, the Board's hands are tied. Dr. Steele concurred. Dr. Venable noted the quickest and simplest route to be considered for a license in Tennessee is to successfully take and pass the ISE. Dr. Young noted the Board is sympathetic to Dr. Nelson's case, but the best course of action is to re-take the ISE.

Dr. Nelson has also applied for licensure in Georgia and on the application, it asked, have you ever been previously denied for an Optometry license. He answered no, because at the time he hadn't been denied and wanted clarification as to whether the Board's decision would constitute a denial.

Ms. Wallace explained a denial is a formal discipline in the state of TN that requires the Board to enter a motion, with a second and an approval to deny his application. To deny, the Board would need to have grounds in Rule or Statute for denying him the opportunity for a license. At this stage, the Board has not made any motion to deny his application, the Board can allow his application to expire due to not having submitted all application requirements, since he does not have a passing score on the ISE, which means there is no action to be taken on the application. Dr. Nelson applied on August 15, 2022, he received his initial review and deficiency letter, one of the items listed was the ISE Certification, in accordance with that letter it stated the items were due in sixty (60) days from the date of the letter. On October 14, 2023, the application will simply expire as incomplete and the file will be closed.

Ratification of Licensure Files – Newly licensed, Reinstatements, and Closed/Withdrawn Files

Ms. Wallace commented that all files on the ratification list have been reviewed and found complete and in good order according to the Rules for new licensure, closure of licensure, and reinstatement of license.

Board of Optometry

Ratification List for 7/07/2022 to 10/03/2022

Newly Licensed

License #	Name	License Expire Date
3735	Bolduc, Justine	6/30/2024
3771	Bryant, Chandler Ervin	6/30/2025
3772	Cathey, Matthew Lord	12/31/2023
3773	Cole, Aaliyah D	12/31/2024
3741	Darwish Serene	8/31/2023
3760	Durocher, Robert Michael	8/31/2023

3780	Ellis, Brittany Lynn	10/31/2024
3767	Farmer, Jenna Lee	4/30/2025
3776	Fishel, Jennifer Renee	10/31/2023
3763	Haider, Greysy Lizeth	12/31/2024
3774	Hines-Beard, Jessica Brooke	5/31/2024
3747	Hopkins, Courtney	9/30/2023
3775	Hynson, Holly	6/30/2025
3765	Katz, Beth	8/31/2023
3762	Keith, Laura Rose	5/31/2025
3757	McCarty, Micah Lee	1/31/2024
3778	Mergener, Caleb Paul	1/31/2024
3770	Moss, Troy	9/30/2023
3769	Novakovich, Marija	4/30/2024
3761	Sides, Leslie	7/31/2025
3766	Wirt, Allison Taylor	9/30/2024
3768	Wysiadlowski, Jake	3/31/2025

Reinstatement from Retired / Expired

License #	Name	License Expiry Date
1398	Tritschler, Thomas H III	6/30/2025
2818	Zambrano, Rebecca Maria	2/29/2024

A motion was made by Dr. Venable to approve the ratification list as presented for new licenses and reinstated licenses. A second was made by Dr. Tharp. There was no discussion on the motion. The motion passed unanimously.

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

CSMD Report

Dr. Steele commented there has not been a CSMD Meeting since the last Board Meeting, there is nothing to report.

Review of Correspondence and Notices

Ms. Wallace commented the next three items are informational only and no Board action is required.

Notice – ARBO Newsletter

Informational only, no Board action required.

Notice – COPE, Commercial Bias in CE

Informational only, no Board action required.

Notice – ACOE, Policy Changes

Informational only, no Board action required.

Conference/Event Reports and Upcoming Events Review

Upcoming Event: Federation of Associations of Regulatory Boards (FARB) – Nashville, TN on January 26 – 28, 2023

Ms. Wallace presented the upcoming FARB Conference. The Board can elect up to three Board Members to attend.

Mr. Winters is not interested in attending the upcoming FARB Conference. He just recently attended the FARB Legal Seminar that was held outside Washington DC. He thanked the Board and said it was very informative. It was very good to meet other state attorneys from other state boards.

A motion was made by Dr. Venable to sponsor attendance by Ms. Wallace. A second was made by Dr. Young. There was no discussion on the motion. The motion passed unanimously.

A motion was made by Dr. Steele to sponsor attendance by Dr. Reynoldson. A second was made by Dr. Venable. There was no discussion on the motion. The motion passed unanimously.

Discuss Old & New Board Business

COPE CE Format Classification Change

Ms. Wallace commented that the Board asked for an old business carryover to discuss COPE's potential synchronous versus asynchronous in their classification of continuing education. COPE will be implementing the new Synchronous and Asynchronous course formats with all new course and activity submissions on January 1, 2023.

The new course formats will be Synchronous In-Person "LIVE", Synchronous Virtual formally "interactive distance learning" and Asynchronous non-interactive learning.

It is also important to note that individual State and Provincial Licensing Boards may limit the number of Synchronous Virtual and Asynchronous hours optometrists can take for license renewal. COPE advises optometrists to contact the State or Provincial Board where they are licensed for verification of what is acceptable.

Discuss and take action as necessary regarding Rulemaking, Rulemaking Hearings, Rule Amendments, and Policies

Policy – Continuing Education Violations, Review of Civil Penalty Assessment

In follow-up to a previous request by the Board to review the civil penalty for CE violations, Ms. Wallace discussed that in the current Policy there is a flat civil penalty of \$100.00, no matter how many hours the applicant was deficient. She also gave an overview on the costs for civil penalties for other Professional Boards in her Unit.

Dr. Venable believes the financial penalty should be tied to the number of deficient hours. He has also been concerned about penalty hours and prefers a fee per credit hour. Dr. Steele concurred.

Dr. Steele recommended a penalty of \$25 per deficient CE hour, no penalty hours and \$25 if CPR is not current, do not specify format for makeup of deficient hours, will accept either in person or online courses.

Mr. Winters discussed when there are CE violations, the CE Cycle end dates are a hard date, there is no makeup of CEs after the end of a CE Cycle. If the licensee rejects an Agreed Citation, the OGC bumps up the fine if they didn't sign the Agreed Citation. In the past, the OGC would take the penalty from \$100 to \$250 for a Consent Order and \$500 for a hearing. He is concerned that it doesn't give as much negotiation room if it goes to trial. In trial, he can't go over \$10,000 in civil penalty and if someone was deficient all 40 hours, that would total \$1000.

Dr. Steele made a motion, if deficient 10 or less hours the civil penalty will be \$100, if deficient 11 – 20 hours the civil penalty will be \$250, if deficient 20 plus hours the civil penalty will be \$500, if deficient with current CPR certification, the civil penalty will be \$25, and remove the CE penalty hours. The civil penalty fine and deficient CEs must be completed in 90 days. The deficient hours will be accepted regardless of format. A second was made by Dr. Tharp. The motion passed unanimously.

The Board opened for public comment. Dr. Garrett Shephard, O.D. in Tennessee made a public comment that he believes what the Board discussed, sounded good to him. This would encourage him to not be deficient and thought it would motivate others to complete their hours. He also feels it will be motivating for the Optometrists to better serve the public.

Rule 1045-02-.05 Continuing Education

Dr. Venable recommended keeping the same CE cycle, do not consider carryover of hours into future cycles, and continue to keep some hours of every cycle required to be obtained live/in-person.

Dr. Young does not like the two-year cycle. He asked how could they help by going to a calendar year cycle.

Dr. Venable prefers two years to get 40 hours over obtaining 20 hours each year.

The Board accepted public comment from Dr. Garrett Shepard, O.D. in TN, stated that in his discussions with other licensees, the historical old process was it being not in sync with the license renewal process.

Dr. Steel has heard from licensees who prefer a calendar year cycle.

The Board moved on to review the matter of online vs in person requirements. Walked through the 1045-02-.05 redlines section by section.

A motion was made by Dr. Venable to accept the redlines as drafted for Rule 1045-02-.05. A second was made by Dr. Tharp. There was no discussion on the motion. The motion passed unanimously.

Dr. Young called a break at 1:15 p.m.

Dr. Young called the meeting to resume at 2:15 p.m.

Rule # 1045-02-.07 Diagnostic and Therapeutic Certification

The Board previously requested to have this rule included on the agenda for review of potential revisions.

The Board reviewed submissions by Dr. Chris Cooper, former Board Member and Dr. Venable drafting redlines versions of the rules.

A motion was made by Dr. Young to accept Dr. Venable's version of updates to Rule 1045-02-.07, with revisions as drafted by the Board. A second was made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

Dr. Steel mentioned that some organizations may not be satisfied with TN only accepting COPE approved courses. Dr. Venable referenced the issue of COPE providing non-biased courses. The Board discussed that obtaining COPE approval has become more efficient.

Mr. Winters asked the Board to provide statements of the basis and reason for wanting to change the following rules 1045-.02-.05 and 1045-02-.07:

- We as the Board have made the decision to ensure that accredited continuing education serves the needs of patients and in the public.
- Present learners with only accurate, balanced, scientifically justified recommendations.
- Assure that licensees can trust accredited continuing education to help them deliver safe, effective, cost effective, compassionate care that is based on best practices and evidence.
- Create a clear separation between accredited continuing education and marketing.

Election of Board Officers

At this time, the current officers are:

- President: Dr. Young
- Vice Chair: Dr. Reynoldson
- Secretary-Treasurer: Dr. Venable
- CSMD: Dr. Steele

These are the three officer (3) positions to be elected for the new calendar year, in addition to a representative to the CSMD Committee.

Nominees:

- President: Dr. Tharp nominated Dr. Steele
- Vice Chair: Dr. Venable nominated Dr. Reynoldson
- Secretary-Treasurer: Dr. Venable nominated Dr. Young
- CSMD Representative: Dr. Steele nominated Dr. Venable

A motion was made by Dr. Venable to approve Dr. Steele as President, Dr. Reynoldson as Vice Chair, Dr. Young as Secretary-Treasurer, and Dr. Venable as CSMD Representative. A second was made by Dr. Tharp. There was no discussion on the motion. The motion passed unanimously.

Call for Public Comment

Ms. Wallace announced one final opportunity for the Board to receive Public Comments before the meeting was adjourned.

There were no public comments offered at this time. Ms. Wallace reminded everyone that Public Comments may always be submitted in writing to the TN Board of Optometry, 665 Mainstream

Drive, Nashville, TN 37243 or via email at Unit3hrb.health@tn.gov.

Adjournment


There being no further business, a motion was made by Dr. Tharp to adjourn, with a second made by Dr. Steele. There was no discussion on the motion. The motion passed unanimously.

The meeting was adjourned at 3:18 pm CST.

These Minutes were Ratified by the Board on January 12, 2023



Board Chair



Date