

# **NEW JERSEY STATE BOARD OF OPTOMETRISTS**

## **REGULAR SESSION MINUTES**

**MARCH 17, 2004**

A regular meeting of the New Jersey State Board of Optometrists was held at 124 Halsey Street, Newark on the 6th floor on Wednesday, March 17, 2004. Mitchell Fink, O.D., President of the Board, announced that pursuant to the Open Public Meetings Act, Chapter 321, P.L., notice of this meeting was prepared in the office of the Board and mailed out to the Secretary of State, the Attorney General, the Star Ledger, the Record, the Press of Atlantic City, the Asbury Park Press, and the Trenton Times. The meeting was called to order at 9:00 A.M. A roll call was taken and the following attendance was recorded:

**GIGETTE COLLAZO, O.D. Present**  
**GORDON COMPTON Present**  
**MITCHELL FINK, O.D. Present**  
**JOSEPH SCHKOLNICK, O.D. Present**  
**LEONARD STEINER, O.D. Present**  
**LEONARD STRULOWITZ, O.D. Absent**  
**RALPH WHITE Present**

**Also present were:** SUSAN H. GARTLAND, Executive Director; CARMEN RODRIGUEZ, Deputy Attorney General; LISA PETROWSKI, Assistant to the Executive Director.

### **I. Public Comment**

### **II. Approval of Regular Session Minutes**

#### **A. February 18, 2004**

A motion was made by Dr. Collazo and seconded by Dr. Steiner to accept the February 18, 2004 Regular Session Minutes as amended. A vote was taken and the motion carried by a unanimous vote.

### **III. New Business**

#### **A. Senate, No. 1157**

(Synopsis - Permits the incorporation of ophthalmic dispensers and technicians.) Introduced February 24, 2004

A motion was made by Dr. Steiner and seconded by Dr. Collazo to advise its legislative liaison that the Board strongly opposes S-1157 which adds "ophthalmic dispensers" to the list of "closely allied health care professionals" that can form professional service corporations together. The other professions included as closely allied health care professionals are, "any branch of medicine and surgery, optometry, physical therapy, nurses and dentists". The Board is opposed to the inclusion of ophthalmic dispensers who are technicians and not direct patient health care providers. This bill is in direct conflict with a statute and regulation of the New Jersey State Board of Optometrists. The Board is concerned that this bill will give the ophthalmic dispensers the ability to become owners and shareholders in a "permissible business structure" which could give them the ability to employ an optometrist. The Board has a statute, - N.J.S.A. 45:12-19.1, "It shall be unlawful for any person

licensed to practice optometry under the laws of the State of New Jersey to advertise, practice or hold himself forth as being entitled to practice under a name other than his own, unless he be an associate of or an assistant to an optometrist licensed under the laws of the State of New Jersey, and it shall be unlawful for any unlicensed person, or any association or corporation directly or indirectly to engage or undertake to engage in the practice of optometry by utilizing the services, upon a salary, commission basis, or by any other means or method, of any person licensed to practice optometry in the State of New Jersey. It shall be unlawful for any optometrist to engage or undertake in the practice of optometry in behalf of any unlicensed person, association or corporation, except that this shall not prohibit the employment by or the formation of partnerships between optometrists or physicians duly licensed in the State of New Jersey". An optometrist in the State of New Jersey must remain independent in his or her practice in order to comply with this statute and regulation. A vote was taken and the motion carried by a unanimous vote.

**B. Letter from David Hirschberg, Esq.**

**RE: Health-Related Cash Discount Cards**

Mr. Hirschberg advised the Board that he represents a company that sells health care discount cards in New York and inquired whether any law prohibited the company from selling health care discount cards in New Jersey.

A motion was made by Dr. Steiner and seconded by Dr. Collazo to advise Mr. Hirschberg that N.J.S.A. 45:12-19.2 prohibits the sale of optometric discount cards in New Jersey and the regulation N.J.A.C. 13:38-2.7 which contained an exception has been repealed. A vote was taken and the motion carried by a unanimous vote.

**C. Letter from Christopher Quinn, O.D.**

**RE: Drug Enforcement Agency (DEA) number**

Dr. Quinn inquired whether the Board would consider informing the Drug Enforcement Agency that optometrists, although not authorized to prescribe controlled substances, are authorized to administer topical medications such as topical cocaine, for diagnostic purposes only for the evaluation of diseases and conditions such as Horner's syndrome or the diagnostic procedure of forced ductions.

A motion was made by Dr. Steiner and seconded by Mr. Compton to write the Drug Enforcement Agency and advise them that optometrists are authorized to administer topical medications such as topical cocaine for diagnostic purposes only but optometrists are not authorized by the State of New Jersey to be issued a CDS number even for diagnostic purposes. Without a CDS number, optometrists cannot perform these important diagnostic tests. The Board will contact the Drug Enforcement Agency in order to clarify whether an optometrist licensed in New Jersey can obtain a DEA number for diagnostic purposes only. A vote was taken and the motion carried by a unanimous vote.

**D. Letter from Mark Donlon, O.D.**

**RE: Request of refund for branch office license**

Dr. Donlon advised the Board that he obtained his branch office at the beginning of the renewal and has recently terminated that office. Dr. Donlon inquired whether the Board would consider giving him a partial refund for the branch office license since he only practiced there for 10 months.

A motion was made by Dr. Collazo and seconded by Mr. Compton to deny Dr. Donlon's refund request. Dr. Donlon can transfer the license to another location but the Division of Consumer Affairs does not refund a portion of a renewal fee. A vote was taken and the motion carried by a unanimous vote.

**IV. Old Business**

**A. 10:00 A.M. Discussion on Permissible Business**

**Structures; Referral Fees Independent Doctor of Optometry N.J.A.C. 13:38-1.3 and 2.13 with Danielle Swenson, Regulatory Analyst**

The Board reviewed the comment submitted regarding Permissible Business Structures; Referral Fees and Independent Doctor of Optometry Proposed Amendments; N.J.A.C. 13:38-1.3 and 2.13 with Regulatory Analyst, Danielle Swenson.

A motion was made by Dr. Steiner and seconded by Mr. Compton to include in the response to the comment that the regulatory language coupled with the statutory language properly guides optometrists on referrals, therefore, the Board voted to reject the suggested language. A vote was taken and the motion carried by a unanimous vote.

**B. Letter from Joyes Abraham, O.D.**

**RE: Criteria and Definition of legal blindness in New Jersey  
Pending from the July 16, 2003 meeting**

Dr. Abraham asked the Board for the criteria and definition of legal blindness for New Jersey. Carmen Rodriguez, D.A.G. will research this information and advise the Board at a future meeting.

**C. Letter from Harvey Richman, O.D.**

**RE: CPT Codes**

Dr. Richman provided the Board with a letter he sent to Health Net of NJ concerning CPT Codes. The Board considered Dr. Richman's letter informational.

**V. For Your Information**

**A. Memorandum from Anthony Miragliotta, Deputy Director of the Division of Consumer Affairs RE:  
A1913 - Establishes the Health Care Professional Regulation Study Commission**

The Board reviewed the memorandum concerning A1913 and considered it informational.

**B. Final Order of Discipline**

**In the matter of Kenneth Horowitz, O.D.**

The Board is in receipt of a Final Order of Discipline filed February 18, 2004 in the matter of Dr. Horowitz for violation of N.J.S.A. 45:12-9.3 Credits necessary.

**C. Final Order of Discipline**

**In the matter of Rosanna Lovecchio, O.D.**

The Board is in receipt of a Final Order of Discipline filed February 18, 2004 in the matter of Dr. Lovecchio for violation of N.J.S.A. 45:12-9.3 Credits necessary.

**D. List of officers/directors and shareholders of Omni Eye Specialists, PA**

The Board reviewed the list of officers/directors and shareholders of Omni Eye Specialists, PA and considered it informational.

**E. February 2004 issue of the Ophthalmology Compliance &  
Reimbursement Insider**

The Board reviewed the February 2004 issue of the Ophthalmology Compliance & Reimbursement Insider and considered it informational.

**F. Signed Assurance of Voluntary Compliance letter**

**1. Kenneth Eskow, O.D.**

The Board is in receipt of a signed Assurance of Voluntary Compliance letter from Kenneth Eskow, O.D. for violation of N.J.A.C. 13:38-1.4(d) Optometric practice under assumed names and disclosure of practitioner names. An Assurance of Voluntary Compliance letter is a letter of warning with no disciplinary action taken against Dr. Eskow. The Board considers this matter to be concluded.

## **2. Melvin Janklovits, O.D.**

The Board is in receipt of a signed Assurance of Voluntary Compliance letter from Melvin Janklovits, O.D. for violation of N.J.A.C. 13:38-1.2(l) General advertising practices. An Assurance of Voluntary Compliance letter is a letter of warning with no disciplinary action taken against Dr. Janklovits. The Board considers this matter to be concluded.

## **3. Charles Shiel, O.D.**

The Board is in receipt of a signed Assurance of Voluntary Compliance letter from Charles Shiel, O.D. for violation of N.J.A.C. 13:38-1.2(l) General advertising practices. An Assurance of Voluntary Compliance letter is a letter of warning with no disciplinary action taken against Dr. Shiel. The Board considers this matter to be concluded.

## **4. Cynthia Han, O.D.**

The Board is in receipt of a signed Assurance of Voluntary Compliance letter from Cynthia Han, O.D. for violation of N.J.A.C. 13:38-1.4(d) Optometric practice under assumed names and disclosure of practitioner names. An Assurance of Voluntary Compliance letter is a letter of warning with no disciplinary action taken against Dr. Han. The Board considers this matter to be concluded.

## **5. Eric Gates, O.D.**

The Board is in receipt of a signed Assurance of Voluntary Compliance letter from Eric Gates, O.D. for violation of N.J.A.C. 13:38-1.2(c)7 and N.J.A.C. 13:38-1.2(l) General advertising practices. An Assurance of Voluntary Compliance letter is a warning with no disciplinary action taken against Dr. Gates. The Board considers this matter to be concluded.

## **G. American Optometric Association's February 11, 2004 Bulletin No. 26**

The Board reviewed the American Optometric Association's February 11, 2004 Bulletin No. 26 and considered it informational.

## **VI. Adjournment**

A motion was made by Dr. Steiner and seconded by Mr. Compton to adjourn the Regular Session Meeting at 2:00 P.M. A vote was taken and the motion carried by a unanimous vote.

Respectfully submitted,

Susan H. Gartland  
Executive Director

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