

New Jersey State Board of Optometrists

Regular Session Minutes

May 15, 2002

A regular meeting of the New Jersey State Board of Optometrists was held at 124 Halsey Street, Newark on the 6th floor on Wednesday, May 15, 2002. Leonard Steiner, 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:

GORDON COMPTON	Present
MITCHELL FINK, O.D.	Present
BARRY SCHNEIDER, O.D.	Present
JOSEPH SCHKOLNICK, O.D.	Present
LEONARD STEINER, O.D.	Present
LEONARD STRULOWITZ, O.D.	Present
RALPH WHITE	Present

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

Edward Campell, O.D., former Board member, attended the Public Session Meeting.

I. Public Comment

Edward Campell, O.D. advised the Board that if an optometrist has disciplinary action as part of their record, the New Jersey State Board of Optometrists Web Site for verifications, www.state.nj.us/lps/ca/optometry/optdir.htm, states under Pending/Final, -Yes. This indicates disciplinary charges are pending or an order or other formal disposition has been filed relating to this licensee* - and further advises the inquirer to contact the New Jersey State Board of Optometrists for information concerning the disciplinary charges. The Web Site gives the appearance that disciplinary charges may be pending which is not accurate as disciplinary action is not made public knowledge until it has been concluded. The Board advised Dr. Campell that he could write to the Division of Consumer Affairs concerning this matter. The Board will also advise the Deputy Director of the Division of Consumer Affairs, Anthony Miragliotta, regarding this matter.

II. Approval of Regular Session Minutes

A. April 17, 2002

A motion was made by Dr. Schneider and seconded by Dr. Fink to accept the April 17, 2002 Regular Session Minutes as presented. A vote was taken and the motion carried by a unanimous vote.

III. 10:00 A.M. Hearing

In the matter of Harry Levine, O.D.

Dr. Levine appeared before the Board for a hearing concerning the Complaint filed September 25, 2001. Dr. Levine

was not accompanied by an attorney. Kenneth Spassione, D.A.G. appeared on behalf of the Attorney General, John J. Farmer, Jr., concerning the Complaint filed September 25, 2001. Dr. Levine believed that he did not receive sufficient notice of the hearing. Susan H. Gartland, Executive Director of the New Jersey State Board of Optometrists, testified that the Board's letter dated February 21, 2002 concerning the hearing scheduled for March 20, 2002 was sent by regular and certified mail to Dr. Levine's main office address and hand delivered to Dr. Levine's home by the Enforcement Bureau on March 8, 2002. The Board's letter of March 19, 2002 concerning the adjournment of the hearing scheduled for March 20, 2002 and the reschedule date of April 17, 2002 for the hearing was sent by regular and certified mail to Dr. Levine's home address. Neither the regular or certified mail were returned to the Board office. The Board's letter dated April 29, 2002 concerning the adjournment of the hearing scheduled for April 17, 2002 and the rescheduled date of May 15, 2002 for the hearing was sent by regular, certified, and overnight mail to Dr. Levine's home address. Neither the regular, certified or overnight mail was returned to the Board office. A motion was made by Dr. Schneider and seconded by Mr. White to affirm that Dr. Levine received appropriate notification for the May 15, 2002 hearing and the previous hearing dates. A vote was taken and the motion carried by a unanimous vote. The Board heard testimony from one witness, Edward Campell, O.D., the expert hired to review the patient records in this matter. A complete transcript of the hearing was made by Rosenberg and Associates Reporting Service in Roseland, New Jersey.

After the hearing a motion was made by Dr. Schneider and seconded by Dr. Fink to move into Executive Session for deliberations and to seek advise from the Board attorney. After discussion the Board returned to Public Session to continue the meeting.

A motion was made by Mr. Compton and seconded by Dr. Schneider to revoke the license of Harry Levine, O.D. The Board found Dr. Levine in violation of the following: N.J.S.A. 45:1-21 (b), (c) and (d), misrepresentation and deception, gross negligence, gross incompetence and repeated acts of incompetence and negligence; N.J.A.C. 13:38-2.1, failure to perform and record minimum exams; N.J.A.C. 13:38-2.3, failure to keep complete records of examination. The Board imposed a \$15,000 civil penalty which will be stayed as long as Dr. Levine ceases to practice optometry and abides by the provisions of the order. The final order will require Dr. Levine to pay costs for court reporter fees; costs incurred from the Board's investigation; and attorney fees. A vote was taken and the motion carried by a unanimous vote.

IV. New Business

A. February 20, 2002 Regular Session Minutes RE: S-1033

The Board voted at its February 20, 2002 meeting in support of S-1033 (Synopsis- Allows physicians to jointly negotiate with health benefits plans over contractual terms and conditions) which was introduced February 28, 2000.

A motion was made by Dr. Schneider and seconded by Mr. Compton to amend the February 20, 2002 Regular Session Minutes to reflect the Board's opposition to the current S-1033 (Synopsis - Permits the incorporation of ophthalmic dispensers and technicians) which was introduced February 21, 2002. The Board strongly opposes this bill because it 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. 45:12-9.12, which prohibits an optometrist from being employed or have any direct or indirect control, influence, interfere with or supervision of his or her professional judgment in the practice of optometry besides another optometrist or physician. The Board has just promulgated and adopted a regulation, "Independent doctor of optometry" which states, "Take no instruction from a landlord or ophthalmic dispenser with regard to any aspect of optometric practice" and "Not have any ownership interest, directly or indirectly, in the business entity from which the space is rented". 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. Application of Jeffrey W. Lem, O.D.

After review of Dr. Lem's application, a motion was made by Dr. Schneider and seconded by Dr. Fink to grant Dr. Lem a license to practice optometry in the State of New Jersey by endorsement as he has met the licensure requirements. Dr. Lem did not meet the requirements to be certified in therapeutic pharmaceutical agents in New Jersey and will not be issued a TPA certification until he has met the requirements. A vote was taken and the motion carried by a unanimous vote.

C. Letter from Edward Melman, O.D.
RE: Continuing Education

Dr. Melman noted that the new continuing professional optometric education regulations did not mention courses offered through the Accreditation Council of Continuing Medical Education (ACCME) and believed that credits from (ACCME) courses were allowed in the past.

The Board will advise Dr. Melman that if a course is not Board approved or approved by the Council of Optometric Practitioner Education (COPE) then he should retain the course outline. The Board will further advise Dr. Melman that if he is audited by the Board in 2003 he should then supply the Board with the course outline or course outlines and the Board will consider the course or courses for continuing education credit at that time.

D. Letter from Leonard Strulowitz, O.D.
RE: N.J.A.C. 13:38-1.2(l)

Dr. Strulowitz supplied the Board with a draft copy of additional language for N.J.A.C. 13:38-1.2(l). After review of the additional language, a motion was made by Dr. Schneider and seconded by Dr. Fink to submit the additional language to the Regulatory Department for review. A motion was made and the motion carried by a unanimous vote.

E. Letter from James Schragger, Esq.
RE: N.J.A.C. 13:38-2.13

Mr. Schragger wrote the Board on behalf of the New Jersey Society of Optometric Physicians and inquired whether N.J.A.C. 13:38-2.13(4) which provides that to, "Enter into a written agreement providing that the optometrist shall furnish and be responsible for all advertising for optometric services, materials and fees by that optometrist. Any optometrist advertisement for optometric services, materials and fees by that optometrist which appears near or next to the advertisement of any other entity shall be clearly delineated and set apart by bold lines or a box." means that the optometrist must design, order and pay for his own advertisement independent of the opticianry or whether the optometrist can furnish the advertisement and be responsible for it but can share the cost with the opticianry.

The Board will advise Mr. Schragger that an optometrist can pay for their own advertisement or can share the cost of an advertisement with the opticianry or allow opticians to pay for the entire advertisement, but the Board holds the optometrist responsible for the content of their portion of the advertisement.

F. Letter from Taras W. Spivack, O.D.
RE: Horizon Blue Cross Blue Shield

Dr. Spivak wrote the Board concerning the fact that N.J. Horizon Blue Cross/Blue Shield denied payment for CPT codes 92004 and 92015 on the following basis: "This service is not a covered benefit when performed by this provider specialty". When Dr. Spivack's office contacted Horizon, they were advised that the Ford Motor Company Plan will not allow optometrists to perform this service.

The Board will advise Dr. Spivack that this is not within the Board's jurisdiction and will recommend that she contact the New Jersey Society of Optometric Physicians or the American Optometric Association for assistance.

G. New Jersey State Board of Optometrists' Law Exam

The New Jersey State Board of Optometrists' application package includes a law exam which must be completed by new licensees with a passing score of 70 or higher. The Board reviewed the law exam and noted that it was necessary

to modify it to coincide with new statutes and regulations. The President of the Board, Leonard Steiner, O.D., assigned Board member, Joseph Schkolnick, O.D., to review and bring back a draft of a new law exam to the Board at a future meeting with recommended modifications.

V. For Your Information

A. State of Nebraska Statutes Pertaining to Mail Order Contact Lens Act

The Board reviewed the State of Nebraska Statutes Pertaining to Mail Order Contact Lens and will forward it to the New Jersey State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians for review.

B. Final Order of Discipline filed February 20, 2002 In the Matter of Palwinder P. Singh, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Palwinder P. Singh, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees within the specified time period. The Board now considers this matter to be concluded.

C. Final Order of Discipline filed February 20, 2002 In the Matter of Beverly A. Anderson, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Beverly A. Anderson, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as she failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

D. Final Order of Discipline filed February 20, 2002 In the Matter of Keith Beylus, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Keith Beylus, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

E. Final Order of Discipline filed February 20, 2002 In the Matter of Edward R. Deneve, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Edward R. Deneve, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

F. Final Order of Discipline filed February 20, 2002 In the Matter of Robert S. Diamond, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Robert S. Diamond, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

G. Final Order of Discipline filed February 20, 2002 In the Matter of Ann Thuy Duong, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Ann Thuy Duong, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as she failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

H. Final Order of Discipline filed February 20, 2002 In the Matter of Jennifer P. Flynn, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Jennifer P. Flynn, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as she failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

I. Final Order of Discipline filed February 20, 2002
In the Matter of Alex E. Goldman, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Alex E. Goldman, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

J. Final Order of Discipline filed February 20, 2002
In the Matter of Beatrice M. Hlaing, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Beatrice M. Hlaing, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as she failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

K. Final Order of Discipline filed February 20, 2002
In the Matter of Shawn H. Hobbs, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Shawn H. Hobbs, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he is failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

L. Final Order of Discipline filed February 20, 2002
In the Matter of Philip A. Kosvitch, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Philip A. Kosvitch, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

M. Final Order of Discipline filed February 20, 2002
In the Matter of Rosanna Lovecchio, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Rosanna Lovecchio, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as she failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

N. Final Order of Discipline filed February 20, 2002
In the Matter of Saji Matthew, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Saji Matthew, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

O. Final Order of Discipline filed February 20, 2002
In the Matter of Sidney A. Mintz, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Sidney A. Mintz, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

P. Final Order of Discipline filed February 20, 2002
In the Matter of Irving S. Wallace, O.D.

On February 20, 2002 the Board filed a Final Order of Discipline suspending the optometric license of Irving S. Wallace, O.D. in accordance with N.J.S.A. 45:1-7.1(b) as he failed to submit payment of registration renewal fees. The Board now considers this matter to be concluded.

Q. Signed Settlement letter - Fred Deakins

The Board is in receipt of a signed Settlement letter and a check in the amount of \$842.00 from Fred Deakins for violation of N.J.S.A. 45:12-1(unlicensed practice of optometry) and payment of Board costs in this matter. The Board now considers this matter to be concluded.

R. Article, "When it is time for a memorial..." from the April 29, 2002 issue of the American Optometric Association News

The Board reviewed the article, "When it is time for a memorial..." from the April 29, 2002 issue of the American Optometric Association News and considered it informational.

S. Article, "FTC staff: CL wearers need valid prescription, eye exams" from the April 29, 2002 issue of the American Optometric Association News

The Board reviewed the article, "FTC staff: CL wearers need valid prescription, eye exams" from the April 29, 2002 issue of the American Optometric Association News and considered it informational.

T. Article, "Canadian opticians pushing for scope of services to include refraction" from the April 15, 2002 issue of the American Optometric Association News

The Board reviewed the article, "Canadian opticians pushing for scope of services to include refraction" from the April 15, 2002 issue of the American Optometric Association News and considered it informational.

U. List of shareholders, directors, and officers of C.M. Cummins, O.D. P.A. from Charles M. Cummins, O.D.

The Board reviewed the list of shareholders, directors, and officers of C.M. Cummins O.D. P.A. and considered it informational.

V. Notification from Robin Kahwaty, O.D. regarding changing his practice name to his corporation name, Dr. Robin Kahwaty, O.D., L.L.C.

The Board reviewed the notification from Dr. Kahwaty regarding the change in her practice name and considered it informational.

W. Division of Consumer Affairs
New Jersey State Board of Optometrists
Termination of the Optometrist-Patient Relationship
Proposed New Rule: N.J.A.C. 13:38-3.9

The Board reviewed its Proposed New Rule: N.J.A.C. 13:38-3.9 Termination of the Optometrist-Patient Relationship and considered it informational as the comment period does not end until July 5, 2002.

X. Commission for the Blind and Visually Impaired
Prevention Services Program
Adopted New Rules: N.J.A.C. 10:94

The Board reviewed the Commission for the Blind and Visually Impaired Adopted New Rules: N.J.A.C. 10:94 and considered it informational.

Y. Division of Consumer Affairs

New Jersey State Board of Accountancy
License Requirements; Renewals; Suspended license; Reinstatement
Adopted Amendments: N.J.A.C. 13:29-1.11 and 2.3

The Board reviewed the New Jersey State Board of Accountancy Adopted Amendments: N.J.A.C. 13:29-1.11 and 2.3 and considered it informational.

VI. Adjournment

A motion was made by Dr. Fink and seconded by Mr. White to adjourn the Regular Session Meeting at 3:35 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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