

**TENNESSEE BOARD OF DISPENSING OPTICIANS
MEETING MINUTES**

DATE: October 26, 2016
TIME: 9:00 A.M., CST
LOCATION: Health Related Boards Conference Center
Poplar Room
663 Mainstream Drive
Nashville, TN 37243

BOARD MEMBERS

PRESENT: LeRhonda Walton-Hill, DPO, Chair
Felda Stacey, DPO, Secretary
Greg DeCrow, DPO
Paul Perry, DPO

BOARD MEMBERS

ABSENT: Dr. Edward Risby, Consumer Member
Les Freeman, DPO

STAFF

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

Ms. Walton-Hill called the meeting to order at 9:05 a.m. A roll call was conducted and a quorum was present.

Minutes

Upon review of the July 27, 2016 Board Meeting minutes, Mr. DeCrow asked that Les Freeman's designation in the minutes be changed from a consumer member to a DPO Board Member.

Mr. DeCrow made a motion, seconded by Mr. Perry, to approve the minutes as corrected. The motion carried.

Office of General Counsel

Mr. Gibbs stated there are no open cases or pending rule changes pertaining to the Board.

Mr. Gibbs said the discussion of a rule amendment and policy statement is being been tabled until Item 13 is taken up.

Mr. Gibbs stated this was his last meeting with the Board as he has been reassigned and that Stefan Cange will be the Board's new advisory attorney and should be at the meeting shortly.

Mr. Gibbs thanked the Board for allowing him serve as the Advisory Attorney.

The Board stated they would miss Mr. Gibbs and thanked him for his time and hard work.

Office of Investigations

Ms. Dorroh said there are six (6) open complaint cases in their office and a review for November or December is being scheduled. Ms. Dorroh reviewed the summary of currently monitored practitioners. Mr. DeCrow asked if the two (2) practitioners being monitored since 2005 is correct. Ms. Dorroh stated yes, practitioners remain on the list until the civil penalties have been paid in full.

Administrative Report

Ms. Hernandez said there are 310 apprentices and 858 licensed Dispensing Opticians as of September 30, 2016. Ms. Hernandez said in July 2016 there were 0 apprentices, 0 newly licensed, 31 renewals with 21 renewing online for a total of 68%, 0 retired and 2 expired. Ms. Hernandez said in August 2016 there were 36 apprentices, 3 newly licensed, 38 renewals with 21 renewing online for a total of 55%, 0 retired and 2 expired. Ms. Hernandez said in September 2016 there were 0 apprentices, 2 newly licensed, 39 renewals with 22 renewing online for a total of 56%, 3 retired and 3 expired.

Ms. Hernandez said the following Board Meeting dates have been scheduled for 2017:

January 25, 2017
April 17, 2017
July 26, 2017
October 25, 2017

Ms. Hernandez said the National Optician's practical examination pass rate percentage from August 2015 to July 31, 2016 was 65%.

Newly Licensed

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

Kristin Rochelle Hosier
Bryan A. Lemons
Christopher D. Parcher

**Angela Michelle Rush
Jan Elizabeth Taylor**

The motion carried.

Newly Approved Apprentices

Ms. Stacey made a motion, seconded by Mr. DeCrow, to approve the following apprentices:

**Sheldon Anderson
Tanjaneek T. Anderson
Patricia I. Baloga
Pamela R. Burns
Michael R. Calhoun
Kathryn Etheridge
Ashley M. Gray
Amanda Godsey
Kassandra Hooper
Artaxerxes Hope
Kimberly P. Hunt
Jennifer Hutson
Joshua Jones
Justin A. Jones
Megan M. Knight
Nicholas Maglio
Benjamin Malin**

**Shanita D. Marshall
Curtis J. McGaughy
Alicia DeAnn McGuire
Mishaela Ann McKay
Jessie Phimavong
Kimberly S. Pitts
Wallace Redd
Christina Sagun
Anthony Sherman
Shane D. Smith
Pierre Stinson
Ugochukwu Umeh
Angelica Widner
Anthony Karl Williams
David L. Williams
Kara R. Womack
Tamara Woods**

The motion carried.

Practical Examination Candidates

Ms. Stacy made a motion, seconded by Mr. DeCrow, to approve the following applicants to sit for the practical examination:

**Joshua Mark Anderson
Courtney Avery
Kayla M. Daniels
Megan Despot
Jessica Dunaway
Cara Lee Enfinger
Robert S. Enfinger
Amy Freitag
Teresa Hall
Loren Harris**

**Krista Kittrell
Collen Phillips
Savannah L. Oaks
Dustin Orrick
Whitney Quillen
Jeremy Street
Stephanie Thompson
Kelly Tipton
Joshua Williams**

The motion carried.

Reinstatement Application

Mr. DeCrow made a motion, seconded by Mr. Perry, to approve the following reinstated applicant:

Rebecca Nicole Tyler

The motion carried.

Closed/Withdrawn Applications

Mr. Perry made a motion, seconded by Mr. DeCrow, to approve the following withdrawn applications:

Barbara McCurley (withdrew from apprenticeship program).

Robert A. Sanchez (failure to submit six (6) months evaluation form since July 29, 2015).

The motion carried.

Fee Reduction

Ms. Vanessa Crutcher distributed paperwork on the Fiscal Year ending June 30, 2016 indicating the Board has a cumulative carryover of \$378,689.08. Ms. Crutcher distributed and discussed estimated annual application revenue and proposed renewal fee reduction for the Board's review. Mr. Perry asked if there were any additional expenses, or long term expenses, that have not been included. Ms. Crutcher said Investigations and Legal expenses are out of the Board's control. Ms. Crutcher said there will be improvements to the LARS computer system which will come from the Board's carryover. Ms. Crutcher asked the Board to look at the \$54,000 current year net for 2015 and said if they were to reduce renewal fees to \$225 application fees to \$100 that would be a \$34,800 decrease which is a safe route. Ms. Crutcher said she suggested the middle column because if you have a large amount of investigation and legal fees it could put the Board in the red. Ms. Crutcher said the invoices regarding LARS will bring down the Board's carryover. Ms. Wilkins stated she discussed fees with Butch Jack. Ms. Wilkins said one (1) Board which had a proposed fee reduction rule was sued and had to withdraw the fee decrease rule to keep the Board out of the red. Ms. Wilkins said another Board did a substantial fee decrease and only had a \$3,000 net this year. Ms. Wilkins said if the Board is in the red for two (2) consecutive years there will a sunset review with the Government Operations Committee (GOC). Mr. Perry said he thinks the Board needs to take some action and is concerned that the excess carryover can be placed in the general fund. Ms. Wilkins said if they sweep the money it will be across all Boards and not single out one (1) or two (2) Boards.

Mr. Cange stated Legal and Investigative Fees will increase in a case where experts are needed. Mr. Cange said in the last eighteen (18) years he had never seen a Board have that kind of litigation and is more concerned with the amount of cumulative carryover coming out of the

pockets of practitioners. Mr. Gibbs said when the fee reduction rules go to the Government Operations Committee (GOC) the Board Chair will be asked to attend the meeting to answer questions. Ms. Hawkins said the reason the Board has extra money is because they previously had to go before the GOC for a sunset review because they were in the red for two (2) years and was asked to raise the application, apprenticeship and renewal fees to get them out of the red. Mr. Gibbs said the rulemaking process can take from six (6) months to eighteen (18) months and suggested making a decision today. Ms. Wilkins asked the Board to eliminate the license verification fee. Mr. Perry made a motion, seconded by Ms. Stacey, to eliminate the license verification fee from the rules. The motion carried.

Upon discussion, a roll call vote was conducted and all Board members voted to reduce the renewal fee to \$225 and application fee to \$100. The motion carried.

Apprenticeship Applications

Ms. Hawkins stated there are two (2) apprentice applications she did not approve because the applicants did not meet the direct supervision requirements. Ms. Hawkins said the Board defined direct supervision as hands-on training, teaching and helping apprentices and the two (2) apprentices she denied were not receiving direct supervision from chain store optometrists, as the optometrists were conducting eye exams and not directing the apprentices. Ms. Hawkins stated Rule 0480-01-.01(8), under "Direct Supervision," requires the supervising licensed dispensing optician, optometrist, or ophthalmologist as direct, coordinate, review, inspect, and approve acts or services performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials.

Ms. Hawkins said Rule 0480-01-.10(3), under "Full-time Supervision," requires any office of a licensed dispensing optician, partnership or corporation which engages in optical dispensing to have a duly licensed dispensing optician on duty in each and every establishment; no office of a licensed dispensing optician, partnership or corporation shall offer technical optical dispensing services to the public unless a duly licensed dispensing optician is physically present.

Ms. Hawkins said Rule 0480-01-.13(1)(a), under "Code of Ethics," requires the dispensing optician to keep the visual welfare of the consumer upper-most at all times.

Ms. Hawkins said Rule 0480-01-.13(2)(h), under "Code of Ethics," states that immoral, unprofessional, or dishonorable conduct shall include failing to directly supervise and control an "apprentice dispensing optician" or "student dispensing optician" in performing any of the services which an apprentice or student is allowed to do under the provisions of T.C.A. §63-14-103.

Mr. Gibbs said they have two apprenticeship applications from individuals who work in a store in Jackson, Tennessee and asked Ms. Hawkins has she ever been in the store and if she knows Dr. Jason Smothers. Ms. Hawkins stated no, she has never been there and does not know Dr. Smothers. Mr. Gibbs said there is nothing the Board can do to eliminate optometrists from the list of people who can supervise an apprentice and that it is his understanding that Ms. Hawkins is assuming that the optometrist cannot provide the direct supervision. Mr. Gibbs said if the

Board wants to carry over the discussion of what a direct supervisor is and potentially change the rule it can be done later in the meeting. Mr. Gibbs said the Board needs to focus on the applications first, either approve or deny, and then discuss about what constitutes supervision. Mr. Perry said if the optometrist is an employee of the business where this individual is located, they are just as capable of being a supervisor as a dispensing optician employed there. Mr. Perry asked if the optometrist is an independent contractor would direct supervision mean they would have to be the employee of the store or simply leasing the space. Ms. Hawkins said she knows the business, Vision Works in Jackson, Tennessee and both of the applicants use that optometrist as their sponsor. Ms. Hawkins said this is the first time she has run into applications that they did not have an alternate supervisor nor was there a licensed practitioner on the floor. Ms. Hawkins said when she goes through the applications she make sure the file is complete and sometimes has to call applicants for more information. Mr. Perry asked if the optometrist is an independent contractor in this location or an associate or employee of Vision Works. Ms. Hawkins said she doesn't know how the store operates. Mr. Gibbs strongly cautioned the Board against denying these applications based on suspicion and said if there are complaints, or proof that these individuals are not being supervised, that is another matter. Mr. Gibbs said if one has issues with the way the law is written as far as the definition of direct supervision that is something that can be taken up with the legislature; however, denying an application based on a feeling and you do not have any proof, you will see "how the Board budget holds up when you get sued and go down that rabbit hole." Mr. Gibbs said the climate for how regulatory boards behave has changed drastically and they are more vulnerable now than ever before to being sued for making decisions, which based on the Supreme Court case, are more in line with the actions of a private monopoly than an apparatus of the government. Mr. Gibbs said there is a very specific process that has to be followed to discipline someone's license, so if there is a suspicion that somebody is violating the practice act there is a complaint form on line that can be filed out and sent to investigations. Mr. Perry thanked Ms. Hawkins for paying particular attention to this; however there is a proper channel this must go through and the first channel would be to go to investigations. Mr. Perry said he would not be able to reject the applications based on the application itself. Mr. Perry asked if the rules require the apprentice to designate who his supervisor and alternate supervisor are on the application. Ms. Walter-Hill asked if either applicant has an alternative supervisor.

Ms. Wilkins said she doesn't think the Board can open an investigation on an application and agrees with legal that this is going down a slippery slope and is unduly burdensome. Ms. Wilkins said the statute clearly states an optometrist can supervise an apprentice.

Mr. Gibbs said according to the statute the optometrist supervisor can have an office across town but be on the premises when the apprentice is working; however the statute is silent on employer/employee relationship. Mr. Gibbs said this is a legislative issue and needs to be dealt with politically and since neither applicant submitted an alternate supervisor you can approve the application pending submission of an alternate supervisor.

Ms. Hernandez said an alternate supervisor must be there when the supervisor is absent and if there is no alternate supervisor the apprentice cannot work. Ms. Hernandez asked Mr. Gibbs if an apprentice must have a direct and alternate supervisor. Mr. Gibbs said an optometrist can supervise the apprentice.

Mr. David Styles, with the Walmart stores, said optometrists own Vision Works stores and are not required by law to employ dispensing opticians. Mr. Styles said he is concerned with the discussion on apprentices working towards getting a license and not about what they can do in that practice. Mr. Styles stated he wants to make sure his stores are working within the law.

Ms. Stacey said the rules were amended in 2006/2007 to accommodate stores who began opening seven (7) days a week to allow for an alternate supervisor.

Ms. Stacey made a motion, seconded by Mr. Perry, to approve **Anthony Williams** and **Justin Jones** for the apprenticeship program. The motion carried.

Correspondence

The Board reviewed a letter from **Senator Rusty Crowe**, Chair of the Senate Health and Welfare 3rd Senatorial District, stating the current practical exam administered by a third party administrator is flawed and possibly not reflective of the knowledge, background and experience that is needed to perform successfully as a dispensing optician. Mr. Perry asked if there was any other information sent with the letter. Mr. Gibbs said Angela Rush wrote a letter to the Board and the Governor stating the exam was flawed. Ms. Wilkins said Ms. Rush took and failed the practical exam twice and passed the exam on the third try. Ms. Wilkins said Ms. Rush passed the exam around the same time Senator Crowe sent this letter. Mr. Gibbs said the Board asked Ms. Rush to appear before the Board on two (2) occasions to discuss the exam but she has not appeared. Mr. Gibbs distributed a letter of response to Senator Crowe for the Board's review and chair's signature. Upon review of the letter Mr. Perry made a motion, seconded by Ms. Stacey, to approve the response to Senator Crowe. The motion carried.

The Board reviewed a letter from **Marilyn Miller**, DPO, requesting approval to obtain eight (8) hours of continuing education for 2016 in 2017 due to illness. Upon review of the letter Ms. Stacey made a motion, seconded by Mr. Perry, to approve Ms. Miller's request. The motion carried.

Discuss Jurisprudence Exam

Mr. Gibbs stated at the last meeting the Board requested that he prepare a policy statement to define "successfully complete" regarding the jurisprudence exam as part of the continuing education requirements. The Board asked Mr. Gibbs to add "with a passing score of 80% or better" and require the licensee to pass the exam within the year. Mr. Perry made a motion, seconded by Mr. DeCrow, to approve the policy statement as amended regarding the jurisprudence exam. The motion carried.

Ms. Hernandez stated she needs additional questions by the Board for the jurisprudence exam.

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

The Board reviewed an amendment to Rule 0480-01-.14 regarding the apprenticeship training program. Mr. Gibbs stated the amendment pertains to apprentices training under a dispensing optician, optometrist or ophthalmologist with a current and unencumbered license; lowering the part-time training from 1,000 hours to 500 hours; grant a waiver for filing semi-annual evaluation reports for apprentices who are unable to comply due to disability, residence abroad, military service or other instances of undue hardship and must submit written documentation acceptable to the Board.

Mr. Gibbs said the waivers will be considered on an individual basis and include a written request specifying what is sought to be waived with a written and signed explanation.

Mr. Gibbs said the request must also include documentation supporting the reason for the waiver and is effective for only the semi-annual evaluation reports requested in writing unless otherwise specified in writing by the Board.

Mr. Gibbs stated there is nothing to vote on today and if you want to include additional amendments to call or e-mail him or Stefan Cange with the changes. Mr. Gibbs reminded the Board members to not discuss this among each other.

Adjourn

With no other Board business to discuss Mr. DeCrow made a motion, seconded by Mr. Perry, to adjourn at 12:10 p.m. The motion carried.

Ratified by the Board of Dispensing Opticians on January 25, 2017