

BOARD OF OPTICIANRY
GENERAL BUSINESS MEETING MINUTES
Greater Ft. Lauderdale Convention Center
Rooms 220-221
1950 Eisenhower Blvd.
Ft. Lauderdale, FL
Friday, November 4, 2011 at 8:30 a.m.

CALL TO ORDER/ROLL CALL

The meeting was called to order at 8:30 a.m. by Mr. Calvo, Chair. Those present for all or part of the meeting included the following:

Members present:

David Calvo, Chair
Barney Goodman, Vice-Chair
Margaret Slattery
Amy Arcand
Antonio Feroce

Staff present:

Rachel Clark, Assistant Attorney General
Tobey Schultz, Assistant General Counsel
Sue Foster, Board Director
Robin McKenzie, Program Administrator
Court Reporter: Apex Reporting Services
954-467-8204

Member absent:

Irene Stavros, RDH

Others present:

Zohre Bahrayni, Ph.D., Psychometrician

REVIEW AND APPROVAL OF MINUTES

The minutes of the May 13, 2011 general business meeting were reviewed and following review, the following action was taken by the Board:

Motion: by Ms. Slattery to approve the minutes.
Second: by Ms. Arcand.
Vote: unanimous.

The minutes of the August 9, 2011 general business meeting were reviewed and following review, the following action was taken by the Board:

Motion: by Ms. Slattery to approve the minutes.
Second: by Ms. Arcand.
Vote: unanimous.

DISCIPLINARY PROCEEDINGS

Cheri Lynn Chauvin Case No. 2010-22521 (PCP: Shannon, Mathews, Stavros)

Ms. Chauvin was not present and was not represented by counsel. An administrative complaint filed July 25, 2011 alleged violation of s. 456.072(1)(q), F.S., of violation of a lawful order of the Board involving failure to pay \$250 fine and costs of \$919.04 in a previous final order.

A settlement agreement was presented to the Board with the following terms: reprimand; fine of \$500.00 and costs not to exceed \$1,355.28 to be paid within one year; suspension stayed for 60 days and respondent must submit proof of compliance with the previous Board order within the 60 days. If respondent does not comply with the previous Board order within the 60 day period,

the stay will be lifted and the suspension imposed until respondent is in compliance with the previous Board order.

Actual costs in this case are \$589.56. Following discussion, the Board took the following action:

Motion: by Mr. Goodman to waive her appearance.
Second: by Ms. Slattery.
Vote: unanimous.

Motion: by Ms. Slattery to accept the settlement agreement with edits on pg. 15 (he), and pg. 17 (64B32 – incorrect rule reference).
Second: by Ms. Arcand.
Vote: unanimous.

Alan H. Katzman, Case No. 2010-19968 and 2010-17087 (PCP: Shannon, Mathews Stavros)

Mr. Katzman was present and was not represented by counsel. A two count administrative complaint filed March 11, 2011 alleged violations of s. 484.014(1)(f), F.S., by committing fraud in the practice of opticianry by performing an eye exam, writing a prescription, failure to refund payment, and failure to notify patients that respondent was leaving the state; and s. 484.014(1)(t), F.S., by violating Rule 64B12-10.012, F.A.C., failure to timely notify the Board of change of address.

A settlement agreement was presented to the Board with the following terms: appearance; reprimand; fine of \$500.00 and costs not to exceed \$2,600.00 to be paid within three years; probation for one year with quarterly reports.

Actual costs in this case are \$3113.84. Following discussion, the Board took the following action:

Motion: by Ms. Slattery to accept the settlement agreement with edits on pg. 54 (apprentice), pg. 56 (nursing and apprentice), pg. 57 (nursing), pg. 58 (Hearing Aid Specialty), and pg. 59 (64B32 – incorrect rule reference).
Second: by Mr. Feroce.
Vote: unanimous.

Joseph Anthony Ciotto, Case No. 2010-00019 (PCP: Shannon, Mathews, Stavros)

Mr. Ciotto was present and was not represented by counsel. A two count administrative complaint filed September 10, 2010 alleged violations of s. 484.014(1)(f), F.S., by committing misconduct in the practice of opticianry by taking measurements and dispensing without supervision; and s. 484.014(1)(t), F.S., by violating Rule 64B12-16.008, F.A.C., by failing to supply to the Board requested information.

Following discussion, the Board took the following action:

Motion: by Ms. Slattery to accept the investigative report into evidence for the purpose of imposing penalty and find that the respondent was properly served and requested an informal hearing.
Second: by Ms. Arcand.
Vote: unanimous.

Motion: by Ms. Slattery to adopt the findings of fact set forth in the administrative complaint as the Board's findings of fact.

Second: by Ms. Arcand.

Vote: unanimous.

Motion: by Ms. Slattery to adopt the conclusions of law as set forth in the administrative complaint as the Board's conclusions of law and find that they constitute a violation of the Opticianry Practice Act.

Second: by Ms. Arcand.

Vote: unanimous.

Motion: by Ms. Slattery to assess a fine of \$500 and costs of \$3,246.87 payable within 3 years, and terminate the apprenticeship.

Second: by Mr. Goodman.

Vote: unanimous.

PETITION FOR VARIANCE OR WAIVER OF RULE

Johnny Miracola: Rule 64B12-16.003(4), F.A.C

Mr. Miracola was present and was not represented by counsel. He is requesting a variance or waiver to Rule 64B12-16.003(4), F.A.C., with regard to the late submission of his completed Apprenticeship Sponsor Attestation Form. He states that he completed the required apprentice hours within the required time period and submitted them via facsimile in January 2010. He states that he was not aware the Board had not received the facsimile until he applied for the licensure examination and received the deficiency letter in August 2011.

Following discussion, the Board took the following action:

Motion: by Ms. Slattery to approve the petition.

Second: by Ms. Arcand.

Vote: unanimous.

APPLICATION REVIEW

Johnny Miracola, III, Examination Applicant

Mr. Miracola was present and was not represented by counsel. This application is before the Board due to the late submission of the Apprenticeship Sponsor Form.

Following discussion, the Board took the following action:

Motion: by Ms. Arcand to approve.

Second: by Ms. Slattery.

Vote: unanimous.

CONTINUING EDUCATION PROVIDER APPLICATION

Anthony Record: Optical Seminars

Mr. Record was present and was not represented by counsel. Mr. Goodman recused himself and following discussion, the Board took the following action:

Motion: by Ms. Slattery to approve the provider application.

Second: by Mr. Feroce.

Vote: unanimous.

CONTINUING EDUCATION HOME STUDY COURSES

Eyeglasses 101 – OPT100

Following discussion, the Board took the following action:

Motion: by Ms. Slattery to deny the course as it is too basic.

Second: by Ms. Arcand.

Vote: unanimous.

Relevant Ocular Anatomy and Physiology – OPT101

Following discussion, the Board took the following action:

Motion: by Ms. Slattery to approve the course – one hour technical.

Second: by Ms. Arcand.

Vote: unanimous.

The Right Service at the Right Time – OPT102

Following discussion, the Board took the following action:

Motion: by Ms. Arcand to offer conditional approval for 60 days and request that the course be expanded and re-submitted.

Second: by Ms. Slattery.

Vote: unanimous.

Vision and Sports – OPT103

Following discussion, the Board took the following action:

Motion: by Ms. Slattery to approve for one hour technical contact lens course.

Second: by Ms. Arcand.

Vote: unanimous.

When a Contact Lens Wearer Needs Spectacles – OPT104

Following discussion, the Board took the following action:

Motion: by Mr. Feroce to conditionally approve for 60 days and request that course be expanded and product updates added then re-submitted for review.

Second: by Ms. Arcand.

Vote: unanimous.

Casting Call-Wanted: The Best Lens Material for Lens RX Everywhere

The Optics of Free-Form Progressive Lenses

The Other Side of Free-Form

Use of Contact Lenses in the Visual Correction of Keratoconus

These four courses were previously approved and were submitted for re-approval. Following discussion, the Board took the following action:

Motion: by Ms. Slattery to approve these courses.

Second: by Ms. Arcand.

Vote: unanimous.

CONTINUING EDUCATION COURSES

Apprentice/Sponsor Orientation Course

This course was approved on August 6, 2007 and is currently the only approved apprentice/sponsor orientation course. A Continuing Education Monitor Report was recently received on this course and the monitor requested that this course be placed on the meeting agenda for review and discussion.

Following review and discussion, the Board took the following action:

Motion: by Ms. Slattery to request that a Board member attend the next course.

Second: by Mr. Goodman.

Vote: unanimous.

Mr. Goodman stated that he would attend the next course.

Motion: by Ms. Slattery to extend the time period for six months for all apprentices needing this course.

Second: by Mr. Feroce.

Vote: unanimous.

Hands-On Fitting and Adjusting Course

This course was suggested due to the Board's decision to move to a national computer-based examination for licensure. A rule draft was presented during rules discussion that included this continuing education course requirement prior to initial licensure.

OPTICIANRY LICENSURE EXAMINATION

Certification Report – NCSORB Examination

Zohre Bahrayni, Ph.D. provided an Examination Certification Report on the National Committee of State Opticianry and Regulatory Boards (NCSORB) examination. The report addresses the national examination certification requirements specified in the Florida Statutes and Department of Health rules. Dr. Bahrayni stated that based on examination services' evaluation of the survey responses and documentation provided by NCSORB, the NCSORB examination meets generally accepted testing standards for licensure examination in Florida.

A representative from NCSORB was in attendance to answer questions. Richard Williams, Florida licensed optician and examiner, was also in attendance to answer questions.

RULES DISCUSSION

Motion: by Ms. Slattery to submit rules drafts to OFARR one week before noticing the rules.

Second: by Ms. Arcand.

Vote: unanimous.

Motion: by Ms. Slattery to open Rule 64B12-9.001 for development.

Second: by Ms. Arcand.

Vote: unanimous.

64B12-9.001, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Ms. Slattery to approve the draft language.

Second: by Mr. Feroce.

Vote: unanimous.

Motion: by Ms. Slattery that this rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Ms. Arcand.

Vote: unanimous.

Motion: by Ms. Slattery to open Rule 64B12-9.0015, 64B12-9.002, 64B12-10.007, 64B12-10.012, 64B12-11.003, 64B12-15.001, 64B12-16.003, and 64B12-8.019 for development.

Second: by Ms. Arcand.

Vote: unanimous.

64B12-9.0015, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Ms. Slattery to approve the draft language and the form with the amendments noted and authorization to make minor language changes to the form, if necessary.

Second: by Ms. Arcand.

Vote: unanimous.

Motion: by Ms. Slattery that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Ms. Arcand.

Vote: unanimous.

64B12-9.002, Florida Administrative Code

Motion: by Ms. Slattery that those candidates who failed either portion of the Florida examination in the year 2011 only need to pass the spectacle portion of the national exam for licensure.

Second: by Ms. Arcand.

Vote: unanimous.

A rule draft was provided and following review, the Board took the following action:

Motion: by Mr. Goodman to approve the draft language and the form with the amendments noted; and that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Mr. Feroce.

Vote: unanimous.

64B12-8.019, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Ms. Slattery to repeal this rule and that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Ms. Arcand.

Vote: unanimous.

64B12-10.007, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Ms. Slattery to approve the draft language and the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. .

Second: by Ms. Arcand.

Vote: unanimous.

64B12-10.012, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Mr. Feroce to approve the draft language.

Second: by Ms. Arcand.

Vote: unanimous.

Motion: by Ms. Slattery that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Ms. Arcand.

Vote: unanimous.

64B12-11.003, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Ms. Arcand to approve the draft language.

Second: by Ms. Slattery.

Vote: unanimous.

Motion: by Ms. Arcand that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Ms. Slattery.

Vote: unanimous.

64B12-15.001, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Mr. Feroce to approve the draft language with the additional amendment to change video cassette course(s) to electronic course(s).

Second: by Mr. Goodman.

Vote: unanimous.

Motion: by Ms. Slattery that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Mr. Feroce.

Vote: unanimous.

64B12-16.003, Florida Administrative Code

A rule draft was provided and following review, the Board took the following action:

Motion: by Mr. Feroce to approve the draft language.

Second: by Ms. Slattery.

Vote: unanimous.

Motion: by Ms. Slattery that the rule will not have a negative impact on small business or likely increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

Second: by Mr. Feroce.

Vote: unanimous.

Motion: by Ms. Slattery to delegate and authorize board counsel to bring the discussed rules through the promulgation process to adoption and if necessary, to make technical or minor corrections to the rules in lieu of bringing them back to the board.

Second: by Ms. Arcand.

Vote: unanimous.

REPORTS

Assistant Attorney General

There are currently no rules pending.

Prosecutor's Report

Mr. Schultz reported that there were 18 cases/complaints as of November 1, 2011. Nine cases have not been reviewed for the probable cause panel; four cases have been drafted for the next probable cause panel meeting; and five cases have a finding of probable cause of which four of those cases were on this agenda.

Executive Director

Ms. Foster provided statistics for fiscal year 2010-2011 and there were 3394 active licensed opticians, 788 apprentice opticians, and 1258 optical establishments.

There were 33 complaints received – 15 legally sufficient against opticians, 11 complaints against optical establishments – 7 were legally sufficient for investigation.

Regarding disciplinary action taken, there was 1 revocation, 1 suspension, 1 probation, 2 fines and 6 reprimands.

Unlicensed activity cases: 6 complaints against opticians, 19 complaints against optical establishments and 19 referrals to law enforcement.

Ms. Foster also provided budget information for the Board's review.

Board Members

INFORMATIONAL ONLY – NO ACTION TAKEN

Update from the POF Website Regarding Examination

Article: Moving Opticianry Forward

Article: The State of Opticianry

Correspondence from the Commission on Opticianry Accreditation

2012 Board Meeting Dates

Uniform Non-Disciplinary Citations

Information from the Board Chair/Vice Chair Annual Meeting

ADJOURNMENT

The meeting was adjourned at 12:00 p.m.