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**DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
BOARD OF OPTOMETRY**

**MINUTES
GENERAL BUSINESS MEETING**

**Walt Disney World Swan and Dolphin Hotel
1500 Epcot Resorts Blvd
Lake Buena Vista, FL 32830**

July 20, 2011

15 **CALL TO ORDER:**

16 Dr. Terrance Naberhaus, Chair, called the meeting to order at 9:00 a.m. Those present for all or
17 part of the meeting included the following:
18

19 **MEMBERS PRESENT:**

20 Terrance Naberhaus, O.D., Chair
21 Timothy Underhill, O.D., Vice-Chair
22 Edward Walker, O.D., F.A.A.O.
23 Rod Presnell, R.Ph.
24 Tamara Maule, O.D.
25 Ms. Rosa McNaughton
26

27 **MEMBER NOT PRESENT:**

28 Rebecca Del Moral, O.D. (excused)
29

30 **STAFF PRESENT:**

31 Bruce Deterding Board Executive Director
32 Sharon Guilford, Program Operations Administrator
33

34 **BOARD COUNSEL:**

35 Lee Ann Gustafson, Senior Assistant Attorney General
36

37 **PROSECUTING ATTORNEY:**

38 Mark Hanson, Assistant General Counsel
39 Department of Health
40

41 **COURT REPORTING SERVICES:**

42 **American Court Reporting**
43 **(407) 896-1813**
44

45 **APPROVAL OF MINUTES:**

46
47 **June 8, 2011 – Telephone Conference Call**
48

49 **Dr. Underhill moved to approve the minutes as presented. The motion was seconded and**
50 **carried 6/0.**
51

1 **April 1, 2011 – Full Board Meeting**

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Dr. Walker moved to approve the minutes as presented. The motion was seconded and carried 6/0.

FINAL ORDER ACTIONS:

Motion for Determination of Waiver and For Final Order by Hearing Not Involving Disputed Issues of Material Fact:

**Laura M. Demarco, O.D. – Case Number 10-14291
PCP: Naberhaus/Presnell**

Dr. Demarco was neither present nor represented by counsel.

Mr. Hanson informed the board that respondent had violated:

- Section 463.016(1)(t), F.S. by violating Section 456.057(6), F.S.
- Section 463.016(1)(t), F.S. by violating Rule 64B13-3.002(2), F.A.C.
- Section 463.016(1)(t), F.S. by violating Rule 64B13-3.019, F.A.C.
- Section 463.016(1)(t), F.S. by violating Rule 64B13-16.001(2), 64B13-16.002, 64B13-16.005(3), F.A.C.

Dr. Walker moved to accept all the investigative report and case materials into evidence. The motion was seconded and carried 4/0.

Dr. Maule moved to find the respondent was properly served the Administrative Complaint and has waived the rights to a formal hearing. The motion was seconded and carried 4/0.

Dr. Maule moved to adopt the findings of fact into evidence as alleged in the administrative complaint. The motion was seconded and carried 4/0.

Dr. Maule moved to adopt the conclusions of law and find that the respondent was in violation as alleged in the administrative complaint. The motion was seconded and carried 4/0.

Ms. McNaughton moved to adopt the allegations of facts as stated in the investigative report to impose penalty. The motion was seconded and carried 4/0.

Dr. Walker moved that the violation constitutes major administrative violations. The motion was seconded and carried 4/0.

- Mr. Hanson recommended the following penalty:
- Administrative fine from \$1,000 to \$4,000 per count
 - Probation or suspension for a period of 6 months

Discussion ensued.

Dr. Walker moved to issue a suspension until Dr. Demarco has complied by payment of an administrative fine of \$12,000, payable within one year, appearance before the board.

1 **Tolling provisions will apply to allow possible further disciplinary actions. The motion was**
2 **seconded and carried 4/0.**

3
4 **Dr. Walker moved to issue a Motion to Assess Costs of \$2,372.40, payable within one year**
5 **from the filing of the Final Order. The motion was seconded and carried 4/0.**

6
7 **Nathan J. Giedd, O.D. – Case Number 10-03556**
8 **PCP: Del Moral/McClane/Presnell**

9
10 Dr. Giedd was neither present nor represented by counsel.

11
12 Mr. Hanson informed the board that respondent had violated:

- 13 • Section 463.016(1)(n), F.S.
- 14 • Section 463.016(1)(h), F.S.

15
16 **Dr. Underhill moved to accept all the investigative report and case materials into evidence.**
17 **The motion was seconded and carried 5/0.**

18
19 **Dr. Underhill moved to find the respondent was properly served the Administrative**
20 **Complaint and has waived the rights to a formal hearing. The motion was seconded and**
21 **carried 5/0.**

22
23 **Dr. Walker moved to adopt the findings of fact into evidence as alleged in the administrative**
24 **complaint. The motion was seconded and carried 5/0.**

25
26 **Dr. Underhill moved to adopt the conclusions of law and find that the respondent was in**
27 **violation as alleged in the administrative complaint. The motion was seconded and carried**
28 **5/0.**

29
30 **Dr. Underhill moved to adopt the allegations of facts as stated in the investigative report to**
31 **impose penalty. The motion was seconded and carried 5/0.**

32
33 Mr. Hanson recommended the following penalty:

- 34 • Administrative costs from \$2,000 - \$6,000 per count
- 35 • Suspension for a period of 12 - 18 months
- 36 • Possible revocation

37
38 Discussion ensued.

39
40 **Dr. Underhill moved that the violation constitutes a major violation with aggravating**
41 **factors; therefore, issuing permanent revocation, and an administrative fine of \$12,000,**
42 **payable within 30 days from the filing of the Final Order. The motion was seconded and**
43 **carried 5/0.**

44
45 **Dr. Underhill moved to Assess Costs of \$6,562.73, payable within 30 days from the filing of**
46 **the Final Order. The motion was seconded and carried 5/0.**

47
48 **Motion for Final Order After Hearing Not Involving Disputed Issues of Material Facts:**

49
50 **Angela P. August, O.D. – Case Number 10-08429**

1 **PCP: Del Moral/McClane/Presnell**

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Dr. August was neither present nor represented by counsel.

Mr. Hanson informed the board that the respondent had violated:

- Section 456.072(1)(e), F.S.
- Section 456.072(1)(q), F.S. (2 counts)
- Section 463.016(1)(h), F.S. by violating Section 456.035(1), F.S.

Dr. Underhill moved to accept all the investigative report and case materials into evidence. The motion was seconded and carried 5/0.

Dr. Walker moved that the respondent was properly served and requested an informal hearing. The motion was seconded and carried 5/0.

Dr. Walker moved to dismiss count 1 in the administrative complaint. The motion was seconded and carried 5/0.

Dr. Underhill moved to adopt the findings of fact into evidence and conclusions of law and find that the respondent was in violation as alleged in the administrative complaint. The motion was seconded and carried 5/0.

Mr. Hanson recommended the following penalty:

- Administrative fine of \$6,000 – \$18,000 per count
- Suspension 12-18 months

Discussion ensued.

Dr. Underhill moved to issue a suspension for a period of 18 months, an administrative fine of \$12,000, payable within one year from the filing of the Final Order, appearance before the board and tolling provisions apply to allow possible further disciplinary actions. Failure to comply with the Final Order and any previously imposed Final Order would result in further disciplinary actions. The motion was seconded and carried 5/0.

Dr. Underhill moved to issue a Motion to Assess Costs of \$4,212.36, payable within one year from the filing of the Final Order. The motion was seconded and carried 5/0.

Prosecution Report

Mr. Hanson provided a brief overview of the prosecution report.

PETITIONS FOR VARIANCE/WAIVER and APPLICANTS PRESENTED FOR BOARD REVIEW:

Courtney L. Case, O.D. – Rule 64B13-4.001, F.A.C. – Manner of Application

Dr. Case was present, sworn but was not represented by counsel.

Ms. Gustafson provided an overview of Dr. Case’s Petition for Variance/Waiver of Rule 64B13-4.001, F.A.C.

1
2 **Dr. Underhill moved to approve Dr. Case’s Petition for Variance/Waiver of Rule 64B13-**
3 **4.001, F.A.C., based on the underlying intent of the rule being met that would place undue**
4 **hardship. The motion was seconded and passed 6/0.**

5
6 **Aria C. Murphy, O.D.C – Rule 64B13-4.004(2), F.A.C., – Re-Examination**
7 **Requirements**
8

9 Dr. Murphy was present, sworn but was not represented by counsel.

10
11 Ms. Gustafson provided an overview of Dr. Murphy’s Petition for Variance/Waiver of Rule
12 64B13-4.004(2), F.A.C. Dr. Murphy was two weeks short from meeting the rule requirements.

13
14 Discussion ensued.

15
16 **Dr. Walker moved to approve Dr. Murphy’s Petition for Variance/Waiver of Rule 64B13-**
17 **4.004(2), F.A.C., based on the underlying intent of the rule being met that would place**
18 **undue hardship. The motion was seconded and passed 6/0.**

19
20 **CORRESPONDENCE – Adam M. Katz, M.D. – Advertising “Optometric Physicians”**

21
22 Dr. Adam M. Katz, M.D., was present and addressed the board.

23
24 Dr. Katz stated that his concerns were with the use by Florida optometrists of the words
25 “Optometric Physician” and that this was a misleading use of the term “physician”.

26
27 The board members indicated that the phrase “optometric physician” is very clear and is allowed
28 to be used by certified optometrists.

29
30 Dr. Katz stated that the Florida Medical Association and Florida Ophthalmologist Association
31 may disagree with the board.

32
33 **EXECUTIVE DIRECTOR’S REPORT:**

34
35 **Professional Resource Network – March 2011**
36 **Long-Range Planning Survey Results 2011**

37
38 Informational only.

39
40 **Discussion of “Jim King Keep Florida Working Act”**

41
42 Mr. Deterding requested that the board respond to each of the following questions:

- 43 • Does the board have any rules or statutes that would disqualify persons with prior
44 convictions from employment or licensure?

45
46 The board responded, “No”.

47
48 **Dr. Underhill moved that there are no rules or statutes that would disqualify persons with**
49 **prior convictions from employment or licensure. The motion was seconded and carried 6/0.**

- 1 • Determine whether the disqualifying statutes or rules are readily available to prospective
2 employers and licensees.

3
4 The board responded, “N/A”.

- 5
6 • Identify and evaluate alternatives to the disqualifying statutes or rules which protect the
7 health, safety, and welfare of the general public without impeding the gainful
8 employment of ex-offenders.

9
10 The board responded, “N/A”.

- 11
12 • Section 456.025(1), Florida Statutes, states: "It is the intent of the Legislature that all
13 costs of regulating health care professions and practitioners shall be borne solely by
14 licensees and licensure applicants. It is also the intent of the Legislature that fees should
15 be reasonable and not serve as a barrier to licensure. Moreover, it is the intent of the
16 Legislature that the department operate as efficiently as possible and regularly report to
17 the Legislature additional methods to streamline operational costs."

18
19 Do you believe that licensure fees are reasonable and do not serve as a barrier to
20 licensure?

21
22 The board responded, “Yes”.

23
24 **HB 155, Privacy of Firearm Owners**

25
26 Mr. Deterding provided an overview of the HB 155.

27
28 Ms. Gustafson stated that the board needed to determine disciplinary guidelines and she
29 recommended the board to consider the violation as a minor administrative violation. The board
30 agreed that counsel should provide the drafted language at the next board meeting.

31
32 **Dr. Underhill moved to approve the board counsel’s drafting language modifying Rule**
33 **64B13-15, F.A.C., to include the violation of the terms of HB 155 to be listed as a minor**
34 **administrative violation. The motion was seconded and carried 6/0.**

35
36 The board requested staff to provide a link to the bill language from the board’s webpage>.

37
38 Mr. Deterding stated he would handle their request.

39
40 **CHAIR/VICE CHAIR REPORT:**

41
42 **Future Agenda Items**

43
44 No items provided.

45
46 **BOARD COUNSEL’S REPORT**

47
48 **COMMITTEE REPORTS:**

49
50 **Budget – Mr. Presnell**

1 **Expenditures by Function for Period Ending 3/31/2011**
2 **Cash Balance Report for 6 Months Ending 3/31/2011**
3 **Total Expenditures (Direct and Allocated) by Board for 6 Months Ending**
4 **3/31/2011**
5 **Allocations to Boards by Source Organization and Category for 6**
6 **Months Ending 3/31/2011**

7
8 Mr. Presnell provided an overview of the above reports.

9
10 **Complaints, Investigation & Enforcement – Dr. Walker**

11
12 Dr. Walker commended Ms. Chelisa Kirkland, Compliance Officer, in providing updated reports.

13
14 **Continuing Education – Dr. Maule**

15
16 **CE Broker iPhone App**

17
18 Information only.

19
20 **Report of CE Providers and Course Approved**

21
22 Dr. Maule provided an overview of the report.

23
24 **Dr. Underhill moved to accept the ratification of continuing education providers and**
25 **courses as presented. The motion was seconded and carried 6/0.**

26
27 **Recommendation of Denial – Ohio Optometric Association**

28
29 Dr. Maule provided an overview of the course.

30
31 **Dr. Underhill moved to deny the Ohio Optometric Association courses for Transcript**
32 **Quality hours, for failure to meet the requirements in Rule 64B13-5.002(3)(c), F.A.C., but**
33 **would approve them for General hours. The motion was seconded and carried 6/0.**

34
35 **Corporate Practice – Dr. Walker**

36
37 No report.

38
39 **Disciplinary Compliance – Dr. Walker**

40
41 No report.

42
43 **Examination – Dr. Del Moral**

44
45 No report.

46
47 **FOA – Dr. Underhill**

48
49 No report.

50
51 **Legislation – Dr. Underhill**

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2 No report.

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4 **Probable Cause – Mr. Presnell**

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6 **Stats**

7
8 Mr. Presnell provided an overview of the probable cause status report.

9
10 **Rules – Dr. Naberhaus**

11
12 **Discussion of Rules:**

13
14 **• 64B13-3.019, F.A.C. – Address of Record**

15
16 Ms. Gustafson stated that she will not be noticing the text until the board approves the language.

17
18 **• 64B13-4.001, F.A.C. – Examination Requirements**

19
20 Dr. Naberhaus provided an overview of the updated recommended changes.

21
22 **• 64B13-4.002, F.A.C. – Reexamination**

23
24 Dr. Naberhaus provided an overview of the drafted language.

25
26 A brief discussion ensued.

27
28 **Dr. Maule moved to adopt the language and to move forward with sending the language to**
29 **GOFARR. The motion was seconded and carried 6/0.**

30
31 **• 64B13-4.006, F.A.C. – Security and Monitoring Procedures for Licensure**
32 **Examination**

33
34 Ms. Jennifer Wenhold, Manager, Practitioner Reporting & Exam Services, addressed the board.

35
36 Ms. Wenhold stated that she will research the examination process for the Florida Bar exam to
37 see how it compares to the Optometry exam ...Also she will provide the board office with the list
38 of consultants to disseminate to all board members.

39
40 Ms. Wenhold informed the board of changes coming up in Exam Services and its areas of
41 responsibility, including the fact that several other professions would no longer be giving a state
42 exam and were going exclusively to their national exam, which would leave Optometry as the
43 only profession for which a state exam was being held by the department. The board asked if
44 these changes would increase the cost of the examination.

45
46 Ms. Wenhold responded that it would increase the cost of the examination for Optometry.

47
48 Ms. Wenhold also reminded the board of her office's commitment to providing candidates with
49 the best testing experience as well as meeting the goals of the board. She mentioned that her

1 office would have an opportunity coming up next year during the bidding of their computer-based
2 testing vendor to modify some business processes.

3
4 Ms. Gustafson stated that she recommended the board to move forward with Noticing for Rule
5 Development on Rule 64B13-4.006, F.A.C.

6
7 **Dr. Maule moved to approve the drafted language in Rule 64B13-4.001(2) and (4), F.A.C. as**
8 **stated in supplemental language. The motion was seconded and carried 6/0.**

9
10 **BOARD COUNSEL’S REPORT:**

11
12 **JAPC Correspondence:**

13
14 **Rule 64B13-4.001, F.A.C. – Examination Requirements**

15 **Rule 64B13-5.002, F.A.C. – Criteria for Approval**

16 **Rule 64B13-7.005, F.A.C. – Terms of Probation**

17 **Rule 64B13-10.001, F.A.C. – Certification for Certification**

18 **Rule 64B13-18.002, F.A.C. – Formulary of Topical Ocular Pharmaceutical Agents**

19
20 Ms. Gustafson provided an overview of the JAPC Correspondence report.

21
22 **Unlicensed Activity – Dr. Maule**

23
24 No report.

25
26 **NEXT MEETING DATE – October 7th – Tampa**

27
28 **ADJOURNMENT**

29
30 The meeting was adjourned at 1:30 p.m.