



OHIO OPTICAL DISPENSERS BOARD

77 SOUTH HIGH ST. 16TH FLOOR
COLUMBUS, OHIO 43215-6108
(614) 466-9709 FAX (614) 995-5392
WWW.OPTICAL.OHIO.GOV
Email: odb@odb.ohio.gov

MINUTES OF MEETING FEBRUARY 17, 2011

At 9:04 AM, the Board conducted a hearing on adoption of new rules and the rescission of rules. (See Addendum 2.0)

REGULAR MEETING OF THE OHIO OPTICAL DISPENSERS BOARD FEBRUARY 17, 2011

The regularly scheduled meeting of the Ohio Optical Dispensers Board (Board) began on Thursday, February 17, 2011 at 10:05 A.M. at 77 South High Street, East B, 31st Floor, Columbus. President Susan Bender called the meeting to order in open session.

BOARD MEMBERS IN ATTENDANCE:

Present: Susan Bender, President; Brian J Miller, Vice President; James Fortune, Sr., Treasurer; Thomas Barracato; Susan C. Benes, M.D.; Timothy Fries, O.D.; Michael Wm. Hall; Paul R. King.

Absent: Thomas Fries, Sr.

STAFF MEMBERS IN ATTENDANCE:

Present: Nancy L. Manns, Executive Director; William Lehman, Investigator; Leah O'Carroll, Assistant Attorney General; Wilma Simmons, Executive Secretary.

DISCUSSION ON RULES HEARING:

After discussion,

IT WAS MOVED BY SUSAN C. BENES, M.D. AND SECONDED BY TIMOTHY FRIES, O.D. THAT THE BOARD CHANGE THE PROPOSED WORDING IN 4726-3-01(E)1(b) OHIO ADMINISTRATIVE CODE (OAC) TO READ "INTERPRETATING BUT NOT ALTERING A CONTACT LENS PRESCRIPTION OF A LICENSED PHYSICIAN OR OPTOMETRIST" AND THE PROPOSED LANGUAGE IN 4726-3-01(E)1(h) OAC TO "USE AND FUNCTION OF THE SLIT LAMP FOR THE SPECIFIC PURPOSE OF EVALUATING THE FIT OF CONTACT LENSES." MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

BY CONSENSUS THE BOARD AGREED TO MAINTAIN THE WORD "PATIENT" IN THE PROPOSED LANGUAGE IN 4726-3-01 OAC AS PROPOSED.

IT WAS MOVED BY BRIAN J MILLER AND SECONDED BY PAUL R. KING TO DELETE THE PROPOSED LANGUAGE IN 4726-3-01 OAC AND THAT THE SAME LANGUAGE CHANGE BE MADE IN SIMILAR PROPOSED RULES THAT STATED "RECOGNITION OF ABNORMAL EYE CONDITIONS THAT WARRANT REFERRAL TO THE APPROPRIATE PRACTITIONER" AND RE-VISIT THIS WORDING WITHIN THE NEXT YEAR. MOTION ADOPTED BY MAJORITY OF THE BOARD MEMBERS PRESENT. SUSAN C. BENES AND TIMOTHY FRIES, O.D. ABSTAINED. MICHAEL WM. HALL AND THOMAS BARRACATO VOTED AGAINST.

ADMINISTRATIVE MATTERS

Ordering of the Agenda

The President and Executive Director reviewed the consent agenda prior to the meeting.

IT WAS MOVED BY BRIAN J MILLER AND SECONDED BY THOMAS BARRACATO THAT THE CONSENT AGENDA FOR THE FEBRUARY 17, 2011 MEETING BE APPROVED AS WRITTEN. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

The President and Executive Director also reviewed the regular agenda prior to the meeting. IT WAS MOVED BY MICHAEL WM. HALL AND SECONDED BY SUSAN C. BENES, M.D. THAT THE REGULAR AGENDA FOR THE FEBRUARY 17, 2011 MEETING BE APPROVED AS AMENDED. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

Approval of Minutes

IT WAS MOVED BY PAUL R. KING AND SECONDED BY SUSAN C. BENES, M.D. THAT THE MINUTES OF THE DECEMBER 2, 2010 BOARD MEETING BE APPROVED AS WRITTEN. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

Approval of Financial Report

After discussion,

IT WAS MOVED BY JAMES FORTUNE, SR. AND SECONDED BY BRIAN J. MILLER THAT THE FINANCIAL REPORT FOR CURRENT FY 2011 BE ACCEPTED AS WRITTEN. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

Continuing Education

After review by Board members of applications submitted for approval of continuing education hours and discussion,

IT WAS MOVED BY MICHAEL WM. HALL AND SECONDED BY JAMES FORTUNE, SR. THAT THE BOARD APPROVE THE CONTINUING EDUCATION PROGRAMS WITH THE APPROVED HOURS AS LISTED BELOW. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT. BRIAN J. MILLER ABSTAINED FROM VOTING ON AMERICAN SOCIETY OF OCULARISTS AND TOM BARRACATO ABSTAINED FROM VOTING ON ALL OPTICIANS ASSOCIATION OF OHIO SEMINARS.

Vision Expo East 2011 – New York, New York – March 16-20, 2011:

26 Spectacle Hours
25 Contact Lens Hours
74 Management Hours

Opticians Association of Ohio – Perrysburg, OH – March 13, 2011:

3 Spectacle Hours
4 Contact Lens Hours
1 Management Hour

Opticians Association of Ohio – Warrensville Heights, OH – February 19-20, 2011:

7 Spectacle Hours
8 Contact Lens Hours
1 Management Hour

CEDO – Home Study Courses – Calendar Year 2011:

3 Spectacle Hours
1 Spectacle/Contact Lens/Ocularist Hours

Opticians Association of Ohio – Columbus, OH – March 27, 2011:

3 Spectacle Hours
4 Contact Lens Hours
1 Management Hour

Quantum Optical – Internet Courses – Calendar Year 2011:

53 Spectacle Hours
21 Contact Lens Hours
24 Management Hours
5 Spectacle/Contact Lens Hours
2 Spectacle/Contact Lens/Ocularist Hours
1 Ocularist with Infectious Control Hour

American Society of Ocularists – Seattle, WA – April 9-13, 2011:

7 Ocularist Hours
2 Management Hours

Opticians Association of Ohio – Fairfield, OH – February 27, 2011:

3 Spectacle Hours
4 Contact Lens Hours
1 Management Hour

American Society of Ophthalmic Administrators – San Diego, CA – March 25-29, 2011:

12 Management Hours

SECO International – Atlanta, GA – March 2-6, 2011:

27 Spectacle Hours
31 Contact Lens Hours
45 Spectacle/Contact Lens Hours
6 Spectacle/Contact Lens/Ocularist Hours
32 Management Hours

SECO International – Atlanta, GA – March 2-6, 2011-Continued:

The Board recommended that the sponsor withdraw the following courses listed below and re-submit the same courses for approval for the following hours:

“Mastering Lens Measurements: Eliminate Remakes”– Re-submit for 2 Spectacle Hours
“Tonometry and Pachymetry Workshop”- Re-submit for 2 Contact Lens Hours
“Basic Slit Lamp Workshop” – Re-submit for 1 Contact Lens Hour
“Ophthalmic Optics” – Re-submit for 1 Spectacle Hour

The Board Recommended that the following courses be returned to the sponsor for re-submission with the missing documentation.

“Child Development”
“Neutralizing and Identifying Progressive Addition Lens”
“Your Mouth Is Moving But Does Your Body Agree?”
“Special Testing Lecture”

“Diabetes and Nutrition”
“Special Testing Workshop”
“Refractive Surgery”
“Dialing it Up at the Front Desk”
“Personalities in the Workplace”
“Ocular Evaluation of Children”
“New Designs and Applications in Rigid Gas Perm Lenses”
“Maximizing the Eyeglass Lens/Frame Package Potential”
“Evaluating the Gas Permeable Fit”
“New Designs and Applications in Soft Contact Lens”
“What are all these Adjustment Tools?”
“Optical Screws Unlimited”
“Visual Acuity Testing Techniques and Recording”

Contact Lens Society of America – Austin, TX – April 6-9, 2011:

33 Contact Lens Hours
4 Management Hours

Pech Optical Corporation – Cincinnati, OH – February 28, 2011:

2-Spectacle Hours

Opticians Association of Ohio – Fairborn, OH – April 10, 2011:

3 Spectacle Hours
4 Contact Lens Hours
1 Management Hour

Approval of Licenses:

After review of licensure applications by Board members,
IT WAS MOVED BY MICHAEL WM. HALL AND SECONDED BY JAMES FORTUNE,
SR. THAT THE BOARD APPROVE FOR LICENSURE THE APPLICANTS LISTED ON
ADDENDUM 1.0. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD
MEMBERS PRESENT.

After review of provisional licensure applications by Board members,
IT WAS MOVED BY BRIAN J MILLER AND SECONDED BY MICHAEL WM. HALL
THAT THE BOARD APPROVE FOR LICENSURE THE APPLICANTS LISTED ON
ADDENDUM 1.1 UPON RECEIPT OF THE CRIMINAL RECORDS CHECK
INDICATING NO RECORD OF CRIMINAL ACTIVITY. MOTION ADOPTED BY
UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

Discipline:

After review of the Consent Agreement for Case #1101015 by Board members,
IT WAS MOVED BY SUSAN C. BENES, M.D. AND SECONDED BY MICHAEL WM.
HALL THAT THE BOARD RATIFY THE CONSENT AGREEMENT FOR CASE
#1101015. MOTION ADOPTED BY A UNANIMOUS VOTE OF THE BOARD
MEMBERS PRESENT. (See Addendum 3.0)

Executive Director's Report

Director Manns informed the Board that Thomas Fries, Sr., Dublin, had been appointed to the Board to replace Oscar Watson as the Senior Public Member. Director Manns further informed the Board that Michael Hall will not seek a second term on the Board and that Dr. Benes will be completing her second term on the Board and is not eligible for another term. Director Manns stated that she has notified the Opticians Association of Ohio, Ohio State Medical Association, the Ohio Optometric Association of the upcoming vacancies as well as the Governor's office. The application for appointment as a Board member can be found on Governor Kasich's web page.

Director Manns stated that the Board would continue discussion of proposed changes to rules as required for the mandatory five-year Rule review during the current meeting. Ms. Manns went on to say that the rules which were approved at the December, 2010 meeting were final filed, presented at the December 22, 2010 Joint Committee on Agency Rule Review Hearing and became effective February 1, 2011. The rules were related to Confidential Personal Information and Board Organization.

Director Manns informed the Board that there has been very little feedback regarding our budget requests and that so far the requests for the fee changes remain a part of the 2012-2013 Budget request.

Director Manns informed the Board that her personal goals for 2011 had been included in the Board's mailing packet. Updated copies are to be provided to the Board at each Board meeting.

Director Manns informed the Board that 3,250 Opticians/Ocularists renewal forms were mailed and that 2,989 renewed on line (95% of the total renewal) and that 162 renewed using the traditional paper renewal (5% of the total renewal) for a total of 3,151 total renewals. As of the February Board meeting a total of 41 licensees renewed late which compared to approximately 150 who renewed late last year. Comments received regarding the on line renewal process were all very positive.

Director Manns reminded all Board members to file their Financial Disclosure Forms prior to April 15, 2011 otherwise the Board would be required to pay a fine for each day it is late. The Board also pays the \$40 filer fee for each Board member.

Director Manns informed the Board that it was reported in the OAO newsletter that Board member Tom Barracato was the recipient of the 2011 Opticians Association of America's State Leader of the Year Award which was awarded at the annual meeting held in San Antonio, Texas in mid- January.

Director Manns informed the Board that a focus of current legislators is efficiencies related to Board processes, specifically timeliness and cost effectiveness. Therefore, Director Manns requested that the Board review and agree to direct the Board staff to review license applications for completeness and compliance in accordance with Board-established policies. Upon determination of completeness, the Board staff would issue those licenses. The Board would ratify these licenses at the next upcoming Board meeting. The Board may choose then to audit a certain number of approved applications as a quality control measure. This process will be presented at the April Board meeting for further discussion.

Special Orders:

Review and Approval of Policy: Investigative Case Review Meetings:

After discussion,

IT WAS MOVED BY MICHAEL WM. HALL AND SECONDED BY SUSAN C. BENES, M.D. THAT THE BOARD RE-AFFIRM THE POLICY "INVESTIGATIVE CASE REVIEW MEETINGS" AS WRITTEN. MOTION ADOPTED BY UNANIMOUS VOTE OF THE BOARD MEMBERS PRESENT.

New Business:

The process for evaluation of the Executive Director was brought up for discussion. President Bender suggested that during the Executive Session for the purpose of the evaluation of the Executive Director, that the Board bring back the Executive Director before the full Board in executive session to review the suggestions, ideas and the goals as established by the Board for the Executive Director with the Executive Director. By consensus the Board agreed to that process.

President Bender discussed the election of officers that had traditionally been conducted at the February Board meeting. Ms. Bender suggested that the election of officers be conducted in the future at the April Board meeting to avoid the issue of expiring member terms each March. By consensus, the Board agreed to conduct election of officers at the April 21, 2011 Board meeting and at each April Board meeting thereafter.

Hearing no other issues for discussion, President Bender adjourned the meeting at 2:35 p.m., February 17, 2011.

ATTESTED:

PRESIDENT, SUSAN BENDER

EXECUTIVE DIRECTOR, NANCY MANNS

Future Board Meeting Dates:

April 21, 2011
June 16, 2011
August 18, 2011
October 20, 2011
December 8, 2011

ADDENDUM 1.0**ODB - Pending Applicants - Spectacle****Report Parameters**Board = ODB
Credential prefix = S

Report generated on 2/15/2011 at 1:24:52 PM

name	address1	address2	city	statecode	zipcode
Kimberly A. Bolin	10951 Timberwood Lane		Cincinnati	OH	45241
Carol J. Brown	6311 Englewood Avenue		Cincinnati	OH	45237
Cheryl LaVon Bunish	5893 Twitchell Road		Springfield	OH	45502
Chassidy Carrington	12763 Hamer Road		Sardinia	OH	45171
Misty Lynn Donley	8577 Towson Boulevard		Miamisburg	OH	45342
Mary L. Elsass	09408 Geyer Road		Wapakoneta	OH	45895
Julie Michelle Jeske	3204 East Creek Court		Avon	OH	44011
Patricia Lynn Labora	2019 Queens Meadow Lane		Grove City	OH	43123
Jason A. Newell	10661 Prospect Road		Strongsville	OH	44149
Denise D. Reynolds	3782 US 127 N		Eaton	OH	45320
Deborah I. Sunderland	2889 South Hametown Road		Norton	OH	44203
Joy N. Taliaferro	PO Box 83		Fairborn	OH	45324
Lucy J. Tufano	8568 Sunmont Drive		Cincinnati	OH	45255
Julia A. Watson	4472 Robinson Road		Hillsboro	OH	45133
Craig R. Weber	6804 Glen Cove Drive		Mason	OH	45040

ODB - Pending Applicants - Spectacle/Contact Lens**Report Parameters**Board = ODB
Credential prefix = SC

Report generated on 2/15/2011 at 1:40:47 PM

name	address1	address2	city	statecode	zipcode
Melissa K. Adams	1980 Beacon Street		Washington Court House	OH	43160
Jeffrey M. Baughman	34560 Rocksprings Road		Pomeroy	OH	45769
Leslie Braglin	300 North Main Street		New Lexington	OH	43764
Amanda J. Brannan	110 Devonhurst Drive Apt A		Kettering	OH	45429
Kristina Y. Brown	6151 US Highway 22 NW		Rushville	OH	43150
Crystal D. Burr	12498 Jackson Drive		Burton	OH	44021
Lori L. Gray	320 Imperial Drive		Hamilton	OH	45013
Jenny L. LaRue	104 West Main Street		Somerset	OH	43783
Angela S. Porter	833 Blacks Road SE		Hebron	OH	43025
Georgia M. Ray	3737 London Hollow Road		Newark	OH	43055
Melissa S. Stall	4122 Township Road 216		Marengo	OH	43334
Erica Michelle Setser	6562 Knottypine Drive		Cincinnati	OH	45230

ODB - Pending Applicants - Reciprocity-Spectacle

Report Parameters

Board = ODB
Credential prefix = S

Report generated on 2/15/2011 at 11:50:05 AM

name	address1	address 2	city	statecode	zipcode
Lisa R. Fuller	11810-6 Hunters Ridge Boulevard		Meadville	PA	16335

ADDENDUM 1.1

ODB - Pending Applicants - Spectacle

Report Parameters

Board = ODB
Credential prefix = S

Report generated on 2/15/2011 at 1:24:52 PM

name	address1	address 2	city	statecode	zipcode
Megan L. Gilchrist	2201 Stone Ridge Circle		Berea	OH	44017
Dwayne G. Jackson	1811 Lafayette Place B7		Columbus	OH	43212
Cathy Kendrick	PO Box 24		Wooster	OH	44691

ODB - Pending Applicants - Spectacle/Contact Lens

Report Parameters

Board = ODB
Credential prefix = SC

Report generated on 2/15/2011 at 1:40:47 PM

name	address1	address 2	city	statecode	zipcode
Susan M. Iamurri	472 Blueridge Drive		Dayton	OH	45415
Carolyn J. Maynhart	1160 Eleanor Drive		Toledo	OH	43612
Mary Louise Sombat	563 Morse Road		Columbus	OH	43214

ADDENDUM 2.0

OHIO OPTICAL DISPENSERS BOARD
PUBLIC RULES HEARING
THURSDAY, FEBRUARY 17, 2011
9:00 AM

PRESIDENT SUSAN BENDER:

I WOULD LIKE TO CALL TO ORDER THIS PUBLIC HEARING OF THE OHIO OPTICAL DISPENSERS BOARD, HEREINAFTER TO BE REFERRED TO AS "THE BOARD." LET THE RECORD SHOW THAT THIS HEARING IS BEING HELD IN CONFERENCE ROOM EAST B&C OF THE 31ST FLOOR OF THE RIFFE CENTER, 77 SOUTH HIGH STREET, COLUMBUS, OHIO. TODAY IS THURSDAY, FEBRUARY 17, 2011. IT IS 9:05 AM. I AM SUSAN BENDER, PRESIDENT OF THE BOARD. WILL OTHER MEMBERS OF THE BOARD PLEASE INTRODUCE THEMSELVES.

LET THE RECORD SHOW THAT A QUORUM IS PRESENT.

THIS IS A PUBLIC HEARING FOR THE PURPOSE OF RECEIVING COMMENTS AND TESTIMONY CONCERNING THE BOARD'S INTENTION TO RESCIND AND ADOPT ADMINISTRATIVE RULES AS PROPOSED ON ITS JANUARY 14, 2011 FILING WITH THE JOINT COMMITTEE ON AGENCY RULE REVIEW.

ANY PERSON AFFECTED BY THE PROPOSED ACTION OF THE BOARD MAY APPEAR AND BE HEARD IN PERSON, BE REPRESENTED BY AN ATTORNEY, OR BOTH. ANY PERSON WHO WISHES MAY PRESENT HIS OR HER POSITION; PROVIDE ARGUMENTS AND CONTENTIONS ORALLY OR IN WRITING; AND, PRESENT EVIDENCE TENDING TO SHOW THAT THE PROPOSED NEW RULES, IF ADOPTED OR EFFECTUATED, WILL BE UNREASONABLE OR UNLAWFUL. FOR PURPOSES OF ESTABLISHING A COMPLETE RECORD OF THIS HEARING, I ASK THAT ALL IN ATTENDANCE SIGN THE ATTENDANCE SHEET. THOSE WHO PLAN TO TESTIFY SHOULD COMPLETE A WITNESS SLIP AND PROVIDE IT TO NANCY MANNS. IF YOU SO TESTIFY, PLEASE BE CONSIDERATE OF OTHERS WHO WISH TO TESTIFY BY MAKING YOUR PRESENTATION AS BRIEF AS POSSIBLE. PLEASE RESTRICT YOUR COMMENTS TO THE RULES THAT ARE THE SUBJECT OF THIS HEARING, AND BEGIN YOUR TESTIMONY BY IDENTIFYING THE RULE NUMBER OR TITLE TO WHICH YOUR COMMENTS REFER.

BEFORE WE TAKE TESTIMONY FROM THE WITNESSES FOR THE HEARING, I WOULD LIKE TO CALL ON NANCY MANNS FOR A STATEMENT.

COURT REPORTER:

DO YOU SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IS TRUE AND ACCURATE TO THE BEST OF YOUR KNOWLEDGE?

STATEMENT: NANCY MANNS

I DO.

FOR THE RECORD, MY NAME IS NANCY MANNS AND I AM THE EXECUTIVE DIRECTOR OF THE BOARD. THE BOARD HAS TAKEN OFFICIAL ACTION TO FIX THIS TIME AND PLACE FOR A PUBLIC HEARING CONCERNING ITS INTENT TO PROPOSE RULES:

4726-20-01

4726-20-02

4726-20-03

4726-20-04

4726-20-05

AND TO RESCIND:

4726-7-01

4726-9-01

4726-9-02

4726-9-03

4726-13-01

THE FOLLOWING EXHIBITS HAVE BEEN SUBMITTED TO BE MADE A PART OF THE RECORD OF THIS PUBLIC HEARING.

EXHIBIT #1 IS A COPY OF THE PROPOSED RULES WITH COPIES OF THE "RULE SUMMARY AND FISCAL ANALYSIS" FORMS ATTACHED. THE RULES BEAR AN ELECTRONIC STAMP VERIFYING THAT THEY WERE ORIGINALLY FILED ON FEBRUARY 11, 2011.

EXHIBIT #2 CONSISTS OF COPIES OF THE COVER LETTERS CONFIRMING THE ORIGINAL FILING WITH THE SECRETARY OF STATE, THE LEGISLATIVE SERVICE COMMISSION AND THE JOINT COMMITTEE ON AGENCY RULE REVIEW.

EXHIBIT #3 IS A COPY OF THE PUBLIC NOTICE OF THIS HEARING. IN ADDITION, THE PUBLIC NOTICE AND RULES WERE POSTED ON THE REGISTRY OF OHIO WEB SITE, AS MANDATED BY SECTION 119.01(a) OF THE REVISED CODE AS WELL AS ON THE BOARD'S WEB PAGE.

TO DATE, I HAVE NOT RECEIVED WRITTEN COMMENT CONCERNING THE PROPOSED RULES.

PRESIDENT SUSAN BENDER:

THIS CONCLUDES THE PRELIMINARY MATTERS TO BE PRESENTED BY THE BOARD. THANK YOU.

THE FIRST WITNESS WILL BE GILBERT E. PIERCE, OD, PhD, REPRESENTING THE OHIO OPTOMETRIC ASSOCIATION.

COURT REPORTER:

DO YOU SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IS TRUE AND ACCURATE TO THE BEST OF YOUR KNOWLEDGE?

DR. GILBERT:

I DO.

A copy of Dr. Gilbert's testimony can be found at the end of this document.

PRESIDENT SUSAN BENDER:

THE SECOND WITNESS WILL BE PATRICK PHALEN, REPRESENTING THE NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS.

COURT REPORTER:

DO YOU SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IS TRUE AND ACCURATE TO THE BEST OF YOUR KNOWLEDGE?

MR. PHALEN:

I DO.

A copy of Mr. Phalen's testimony is attached to the end of this document.

DO BOARD MEMBERS HAVE ANY QUESTIONS OF THIS WITNESS?

THANK YOU, MR. PHALEN FOR YOUR TESTIMONY. ARE THERE ADDITIONAL WITNESSES?

****PRESIDENT SUSAN BENDER:**

I WOULD LIKE TO THANK EVERYONE FOR APPEARING BEFORE THE BOARD TODAY TO ADDRESS THE PROPOSED RULES. THE BOARD WILL CONSIDER COMMENTS DURING THE BOARD MEETING TODAY. ANY REVISIONS TO THE PROPOSED RULES WILL BE CONSIDERED AND WILL BE APPROVED AT THAT TIME.

THIS PUBLIC HEARING OF THE OHIO OPTICAL DISPENSERS BOARD IS ADJOURNED.

LET THE RECORD SHOW THAT THE HEARING CONCLUDED AT 9:57 AM.

Testimony to Optical Dispensers Board
February 17, 2011
Gilbert E. Pierce, OD, PhD

Members of the Optical Dispensers' Board and Guests, I am Dr. Gil Pierce, a faculty member at The Ohio State University College of Optometry, and the Immediate Past-President of the Ohio Optometric Association.

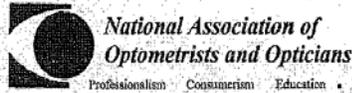
Let me begin by saying that opticians are an invaluable component of the eye care delivery process. As you know, the vast majority of opticians in Ohio are trained by and employed by optometrists.

I would like to address some concerns with regard to the proposed update to the rules governing dispensing by opticians. We are concerned that some opticians might use certain parts of the proposed new language to expand dispensers' responsibilities beyond what was intended by the enabling legislation in the Ohio Revised Code.

In general, there are several areas where the proposed changes might suggest that opticians diagnose ocular conditions, and diagnose proper contact lens fits. Diagnosis is a complicated process, and one that can only be carried out by a licensed doctor.

I would like to direct you to the proposed rule for a few specific examples:

- 1) We have concerns with the proposed language in Section E (1) b and would suggest changing the phrase "interpretation of a contact lens prescription" to "interpretation but not altering a contact lens prescription of a licensed physician or optometrist".
- 2) We would suggest changing Section E (1) h from "Use and function of the slit lamp" to "Use and function of the slit lamp for the specific purpose of evaluating contact lenses fits."



PO Box 459. Marblehead, OH 43440. 419.793.2031

February 16, 2011

Via Electronic Mail to nmanns@odb.ohio.gov and Hand Delivery

Ohio Board of Dispensing Opticians
c/o Nancy Manns, Executive Director
77 South High Street, 16th floor
Columbus, OH 43215-6108

Re: Proposed Amendments, O.A.C. 4726

Executive Director Manns:

The following comments are submitted on behalf of the National Association of Optometrists and Opticians, (NAOO), and its member companies doing business in the state of Ohio. The NAOO is a national organization representing the retail optical industry. NAOO members doing business in Ohio include Luxottica Retail North America, U.S. Vision, National Vision, Eye Care Centers of America and others. NAOO member companies operate more than 400 optical stores in Ohio, and employ more than one thousand Ohio licensed opticians and registered apprentices.

Our comments concern the proposed amendments to O.A.C. 4726, as published by the Board and noticed for public hearing on February 17, 2011. Our comments focus primarily on the proposed amendments which purport to equate optical dispensing services to the provision of primary health care. Respectfully, opticians are not authorized to provide primary health care services, and the Board is not authorized to adopt rules which would establish or purport to establish legal or medical standards of care for the practice of optical dispensing. We have also recommend simplification of the apprentice registration and supervision rules to conform to the applicable law, and included recommendations concerning license renewal and continuing education. A redline of our objections and suggestions is attached.

We appreciate the Board's consideration of our comments, and we request that they be made a part of the rulemaking record in this proceeding. Our specific comments are as follows:

I. 4726-3-01 Definitions

1. 4726-3-01(D)- "Spectacle Apprenticeship" – We recommend that the Board modify the existing rule by deleting references to "the" supervising optician, and substituting the word "a" to indicate that an apprentice may work under the supervision of "a" licensed dispensing optician. We also recommend elimination

of the registration form language. This change is consistent with the existing apprentice rule and O.R.C. 4725.48(1). This change will also eliminate the potential for confusion when apprentice works under multiple supervisors. We are recommending that this change be made to all similar references to the apprentice and supervisor throughout the proposed rules at issue.

2. 4726-3-01(D)(1)- Change “the” to “a” - same rationale as above.
3. 4726-3-01(D)(1)(h)- Delete the reference “to patient.”
4. 4726-3-01(D)(1)(n)- Change “patient” information to “health information”.
5. 4726-3-01(D)(1)(o)- This sentence should be deleted. An optician is neither authorized nor required under law to recognize or evaluate eye health conditions, or determine the appropriate practitioner to whom a consumer should be referred. This proposed rule creates a legal standard of care that does not exist under the Board’s enabling legislation.
6. 4726-3-01(D)(1)(p)- The term “documentation of patient assessment, observations and the care provided to the patient” should be changed to “documentation of optical dispensing activities.”
7. 4726-3-01(D)(1)(r)- The term “principles of patient education” should be changed to “care and use of optical aids.”
8. 4726-3-01(E)(1) “Contact Lens Apprenticeship”- Change “the” to “a” in the proposed rule, eliminate registration form language- same rationale as 1 and 2, above.
9. 4726-3-01(E)(1)(c)- Change “patient” information to “health information”.
10. 4726-3-01(E)(1)(d)- This sentence should be deleted. A contact lens licensed optician is neither authorized nor required under law to recognize or evaluate eye health conditions, or determine the appropriate practitioner to whom a consumer should be referred. This proposed rule creates a legal standard of care that does not exist under the Board’s enabling legislation.
11. 4726-3-01(E)(1)(e)- The term “documentation of patient assessment, observations and the care provided” should be changed to “documentation of contact lens dispensing activities.”
12. 4726-3-01(E)(1)(m)- The phrase “based on patient assessment” should be deleted. Contact lens dispensing opticians do not conduct “patient assessments”.
13. 4726-3-01(E)(1)(o)- The term “principles of patient education” should be changed to “care and use of contact lenses.”

14. 4726-3-01(E)(2)(c)- Change “patient” information to “health information”.
15. 4726-3-01(E)(2)(d)- This sentence should be deleted. A contact lens apprentice optician is neither authorized nor required under law to recognize or evaluate eye health conditions, or determine the appropriate practitioner to whom a consumer should be referred. This proposed rule creates a legal standard of care that does not exist under the Board’s enabling legislation.
16. 4726-3-01(E)(2)(e)- The term “documentation of patient assessment, observations and the care provided” should be changed to “documentation of contact lens dispensing activities.”
17. 4726-3-01(E)(2)(m-) The phrase “based on patient assessment” should be deleted. Contact lens dispensing opticians do not conduct “patient assessments”.
18. 4726-3-01(E)(2)(o)- The term “principles of patient education” should be changed to “care and use of contact lenses.”
19. 4726 -3-01(G) “Apprentice optician” – We recommend that the Board modify the proposed rule by deleting references to “the” supervising optician, and substituting the word “a” to indicate that an apprentice may work under the supervision of “a” licensed dispensing optician. We also recommend elimination of the registration form language. This change is consistent with the existing apprentice rule and O.R.C. 4725.48(1). This change will also eliminate the potential for confusion when apprentice works under multiple supervisors.
20. 4726-3-01(I) “Direct supervision”- We recommend that the proposed definition be modified to require a situationally appropriate level of direction, guidance, observation and evaluation, based on the training, experience, and education of the apprentice and any other relevant factors. This suggested change recognizes that the degree of required oversight will vary with the skill and experience of the apprentice, and the degree of difficulty of a particular optical dispensing task. In the last sentence, we recommend that the word “a” be substituted for the word “the”, consistent with the remainder of the rule. We also recommend retaining language from the existing rule which recognizes that a licensed optician may be absent from the Optical Area from time to time: “Nothing herein shall preclude such licensed dispensing optician from being absent from the Optical Area for a reasonable period during the working day, such as for lunch or other customary absences although the apprentice shall not engage in optical dispensing in the absence of a licensed dispenser.”
21. 4726-3-01(X),(Y),(Z)- delete references to “designated” licensed optician. We propose to work with the Board to develop a rule which would require an apprentice to register under a primary supervising licensed optician, who would have the responsibility for ensuring that the apprentice satisfies the applicable registration, education and training requirements. However, the law does not

require that all supervisors be on file with the Board or identified on a registration card. The law permits any licensed optician to supervise optical dispensing work performed by an apprentice, so long as that licensee does not supervise more than three apprentices at any one time.

II. 4726-7-01 Definitions

1. 4726-7-01(C) "Extension"- Delete the phrase "and the current, valid license is on display at the place of optical dispensing..." from the last sentence. This requirement is contrary to O.R.C. 4725.50(A), which provides that "The appropriate certificate of licensure shall be issued by the board no later than 60 days after it has notified the applicant of his approval for licensure". An initial license or renewal becomes effective upon approval by the Board, and the statute recognizes an inherent delay between the time the license is issued and the time the certificate is received. Once received by the licensee or apprentice, the certificate must be posted as required by O.R.C. 4725.50(C). The licensee or apprentice is not prohibited from practicing between the date that the license or renewal is approved by the Board and their receipt of the licensure certificate.
2. 4726-7-01(D) "Grace Period"- delete the phrase "and the current, valid license is on display at the place of optical dispensing..." from the last sentence. Same rationale as above.
3. 4726-7-01(G)- change "restore" to "renew."

III. 4726-7-02 Licensure Renewal Requirements

1. 4726-7-02(F)- We recommend that the Board rescind this proposal and substitute a 30 day grace period and a nominal late fee, such as \$75. As stated above, there is no requirement that an optician refrain from practicing during the time between the Board's approval of a license or renewal, and the licensee's receipt and posting of the certificate. Further, a late fee would encourage licensees to renew in a timely manner without imposing the harsh and unnecessary sanction of suspension of the license and dispensing privileges. If the registration is not renewed within 30 days, then a more significant sanction would be appropriate.

IV. 4726-7-04 Apprentice Registration Renewal

1. 4726-7-04(E)- We recommend that the Board rescind this proposal and substitute a 30 day grace period and a nominal late fee, such as \$25. A late fee would encourage apprentices to renew in a timely manner without imposing the harsh and unnecessary sanction of suspension of the apprenticeship and dispensing privileges. If the registration is not renewed within 30 days, then a more significant sanction would be appropriate.

V. 4726-9-02 Application for Approval of Continuing Education

1. 4726-9-02(D)- We recommend that subparagraph (D) be deleted. Subparagraph (D) appears to prohibit use of employer-provided, in-house continuing education courses that have been previously approved by the ABO, NCLE and the Board. Many optical employers provide their associates with access to approved CE courses free of charge through in-house or web-based training programs. These self-study programs permit associates to train on their own time, whether at home, at work, or elsewhere. Opticians benefit from these programs through increased accessibility, convenience of attendance, and reduced costs. If the Board feels it necessary to adopt a rule concerning in-house training programs, we would be pleased to work with the Board on such a proposal.

VI. 4726-13-01 General Information

1. 4726-13-01(B)(3) "Patient"- The proposed definition of "patient" should be withdrawn. Recipients of optical dispensing services provided by licensed or apprentice opticians are properly referred to as "customers" or "consumers".
2. 4726-13-01(B)(4) "Apprentice"- Change reference to "the" registered supervisor to "a" licensed dispensing optician.
3. 4726-13-01(B)(6) "Registered supervisor" - Change references to "the" licensed dispensing optician to "a" licensed dispensing optician.

VII. 4726-13-02 Standards Relating to Competent Practice as a Licensed Dispensing Optician

1. 4726-13-02(A)- The term "opticianry care" should be changed to "optical dispensing services", consistent with O.R.C. 4725.40(B).
2. 4726-13-02(B)-The term "safe opticianry care" should be changed to "the practice of optical dispensing", consistent with O.R.C. 4725.40(B).
3. 4726-13-02(C)(1)- change "opticianry care" to "optical dispensing."
4. 4726-13-02(C) (2)- This proposed rule should be withdrawn. Opticians are neither authorized nor required under Ohio law to recognize or evaluate eye health conditions, or to determine the appropriate practitioner to whom a consumer should be referred. The rule purports to establish a medical standard of care for which opticians are neither trained, authorized or licensed to provide. If adopted, this rule could form the basis of legal liability for an optician and/or their employer, when no such standard presently exists. Further, an optician may not be sanctioned by this board for failing to engage in what amounts to medical decision making.

5. 4726-13-02(D)(1)- This proposed rule should also be withdrawn. Opticians are neither authorized nor required under Ohio law to recognize or determine when or to what extent a prescription may be inaccurate, harmful, potentially harmful or otherwise contraindicated. Similar to subparagraph (C), the rule purports to establish a medical standard of care for which opticians are neither trained, authorized or licensed to provide. If adopted, this proposed rule could form the basis of legal liability for an optician and/or their employer, when no such standard presently exists. Further, an optician may not be sanctioned by this board for failing to engage in what amounts to medical decision making. We have no objection to a rule which precludes dispensing when a prescription is expired.
6. 4726-13-02(D)(2)- This proposed rule should be withdrawn, under the same rationale as subparagraph (D)(1), above.
7. 4726-13-02(E)- This proposal should be revised to simply state that "Licensed opticians shall maintain the confidentiality of health information in accordance with applicable law." The rule as proposed is an erroneous statement of the requirements of federal law. An optician is not required to obtain a written release in order to share customer health information with other health care providers or for other purposes permitted under the HIPAA rule.
8. 4726-13-02(F)- The phrase "opticianry care" should be deleted from the first sentence and replaced with "performing dispensing services". In subparagraph (3), the phrase "opticianry care" should be deleted and replaced with "performing dispensing services", and the requirement to document "the patient's response to care" should be deleted. In subparagraph (5), the term "patient" should be replaced with "consumer or customer".
9. 4726-13-02(G)- This proposed rule exceeds the Board's delegated regulatory authority, and must be withdrawn in its entirety. The Board has no legal authority to limit the supervision or evaluation of the practice of optical dispensing to persons licensed as opticians. This proposed rule directly contravenes O.R.C. 4725.44 (C), which provides that "the board shall have no authority to adopt rules governing the employment of dispensing opticians." Further, the only functions for which licensure is required are those activities which constitute "optical dispensing" as set forth at O.R.C. 4725.40(B), specifically- "interpreting but not altering a prescription of a licensed physician or optometrist and designing, adapting, fitting or replacing the prescribed optical aids, pursuant to such prescription, to or for the intended wearer; duplicating lenses, other than contact lenses, accurately as to power without a prescription; and duplicating nonprescription eyewear and parts of eyewear." The supervision and evaluation of optical dispensing services are not "optical dispensing" functions under O.R.C. 4725.40, and do not require licensure.

This concludes our comments and we request that they become part of the formal rule making record in this proceeding. Further, we specifically request that if the proposed amendments to O.A.C. 4726 are adopted in spite of our objections, that a concise statement of the principal reasons and rationale for adoption, including discussion of the issues raised herein, is provided to all interested parties.

If you have any questions concerning the foregoing, please direct them to my attention at the above address. Thank you for your time and consideration of this important regulatory matter.

Very Truly Yours,



Franklin D. Rozak
Secretary-Treasurer
National Association of Optometrists and Opticians

4726-3-01 **Definitions.**

For purposes of Chapters 4726-01 through 4726-15 of the Administrative Code, and except as otherwise provided, the following definitions shall apply:

- (A) "Active license" means the license held by a dispensing optician or ocularist who has fulfilled all requirements of the board for initial licensure or for licensure renewal.
- (B) "Active registration" means the registration held by an apprentice who has fulfilled all requirements of the board for initial registration and for registration renewal.
- (C) "Board" means the Ohio optical dispensers board.
- (D) "Spectacle apprenticeship" means a minimum of two thousand hours obtained within not less than two calendar years of supervised, structured learning experience of the registered spectacle apprentice while under the direct supervision of a ~~the~~ licensed dispensing spectacle optician or under the supervision of a ~~the~~ licensed dispensing spectacle/contact lens optician. ~~indicated on the registration form filed with the board.~~ Registration with the board is not required when the learning experience is gained under the direct supervision and employment of an optometrist or physician engaged in the practice of ophthalmology. All learning experiences shall include, but is not limited to:
 - (1) A minimum of two thousand hours obtained within not less than two calendar years of direct supervision by a ~~the~~ licensed spectacle or licensed spectacle/contact lens optician registered with the board as a ~~the~~ direct supervisor of the registered apprentice including, but not limited to:
 - (a) Use and function of lensometer;
 - (b) Use and function of pupilometer;
 - (c) Use and function of lens clock, determination of curve and warpage;
 - (d) Determination and purpose of pupillary distance;
 - (e) Determination and purpose of lens decentration;

- (f) Determination and purpose of vertex distance;
 - (g) Determination of prism;
 - (h) Determination of frame size to patient;
 - (i) Determination of frame measurements;
 - (j) Determination of lens measurements;
 - (k) Adjusting frames;
 - (l) Anatomy and physiology of the eye;
 - (m) Interpretation of a spectacle prescription;
 - (n) Ethical and professional conduct including confidentiality of health patient information;
 - ~~(o) Recognition of abnormal eye conditions that warrant referral to the appropriate practitioner;~~
 - ~~(p) Appropriate documentation of optical dispensing activities, patient assessment, observations and the care provided to the patient;~~
 - (q) Optical terminology;
 - (r) Care and use of optical aids Principles of patient education; and.
 - (s) Verification of finished product to the current prescription.
- (2) Not more than one thousand hours of the required two thousand hours of learning experience may be laboratory experience under the direct supervision of a licensed spectacle or a licensed spectacle/contact lens dispensing optician.

(E) "Contact lens apprenticeship" means either:

(1) A minimum of two thousand hours obtained within not less than two years of structured, supervised learning experience of the registered apprentice under the direct supervision of a the licensed dispensing spectacle/contact lens optician or a licensed contact lens optician, indicated on the registration form filed with the board. Registration with the board is not required when the individual is engaged in the learning experience under the direct supervision and employment of an optometrist or physician engaged in the practice of ophthalmology. All learning experiences shall include, but is not limited to:

(a) Anatomy and physiology of the eye;

(b) Interpretation of a contact lens prescription;

(c) Ethical and professional conduct including confidentiality of health patient information;

(d) Recognition of abnormal eye conditions that warrant referral to the appropriate practitioner;

(e) Documentation of contact lens dispensing activities, patient assessment, observations and the care provided;

(f) Interpretation of a contact lens prescription;

(g) Use and function of the keratometer;

(h) Use and function of the slit lamp;

(i) Principles of proper lens selection;

(j) Optical terminology

(k) Use and function of the radiuscope;

(l) Use and function of the lensometer;

(m) Selection of lens material and design, based on patient assessment;

(n) Diagnostic fit and evaluation;

(o) Care and use of contact lenses. Principles of patient education;

(p) Verification of finished product to the current prescription; or,

(2) The one year of supervised structured learning experience of the registered apprentice who is also currently licensed as a spectacle dispensing optician and consists of a minimum of one thousand hours of not less than one calendar year of direct supervision by a licensed dispensing contact lens or licensed dispensing spectacle/contact lens optician. Registration with the board is not required when the individual is engaged in the learning experience under the direct supervision and employment of an optometrist or physician engaged in the practice of ophthalmology. All learning experiences shall include, but is not limited to:

(a) Anatomy and physiology of the eye;

(b) Interpretation of a contact lens prescription;

(c) Ethical and professional conduct including confidentiality of health patient information;

~~(d) Recognition of abnormal eye conditions that warrant referral to the appropriate practitioner;~~

~~(e) Documentation of contact lens dispensing activities, patient assessment, observations and the care provided;~~

(f) Interpretation of a contact lens prescription;

(g) Use and function of the keratometer;

(h) Use and function of the slit lamp;

(i) Optical terminology;

(j) Principles of proper lens selection;

(k) Use and function of the radiuscope;

(l) Use and function of the lensometer;

(m) Selection of lens material and design, based on patient assessment;

(n) Diagnostic fit and evaluation;

(o) Care and use of contact lenses Principles of patient education;

(p) Verification of finished product to current prescription.

(F) "Ocularist apprenticeship" means the ten thousand hours of supervised structured learning experience of the registered ocularist apprentice consisting of not less than five calendar years of direct supervision by an ocularist who is licensed by any state; or, the equivalent work experience as determined by the board completed in a state not requiring licensure of an ocularist. Such learning experience includes but is not limited to:

(1) Fitting theory;

(2) Materials;

(3) Processing and fabrication techniques;

(4) Iris and sclera tinting;

(5) Orbital anatomy and physiology;

(6) Infection control including blood borne pathogens;

(7) Ethical and professional conduct, including confidentiality of patient information;

(8) Recognition of abnormal eye conditions that warrant referral to the appropriate practitioner;

(9) Appropriate documentation of patient assessment, observations and the care provided.

(G) "Apprentice optician" means any person registered with the board for the purpose of engaging in the training and education in the practice of dispensing optical aids while under the direct supervision of a the licensed dispensing optician, specified on the apprentice registration form and as indicated on the current, valid registration card issued by the board to the registered apprentice.

(H) "Apprentice ocularist" means any person registered with the board for the purpose of engaging in the training and education to engage in the practice of ocularistry while under the direct supervision of the licensed ocularist specified on the apprentice registration form and as indicated on the current, valid registration card issued by the board to the registered apprentice.

(I) "Direct supervision" means initial and ongoing the provision of direction, procedural guidance, observation and evaluation, as appropriate, based on the training, experience and education of the apprentice and any other relevant factors, by a licensed optician or licensed ocularist, as appropriate, who is registered with the board as the supervisor of the apprentice; and, who is continually available in person within the optical or ocularistry area at all times when the apprentice is engaged in optical dispensing or the practice of ocularistry. Nothing herein shall preclude such licensed dispensing optician or licensed ocularist from being absent from the Optical area for a reasonable period during the working day, such as for lunch and other customary absences, although the apprentice shall not engage in optical dispensing in the absence of a licensed dispenser or ocularist, as applicable. A The registered licensed dispensing optician shall supervise a maximum of three apprentices.

- (J) "Educational equivalent" means the proof of having successfully passed the GED examinations or a GED certificate of high school equivalency diploma.
- (K) "Free of contagious or infectious disease" means demonstrating no clinically evident illness that would impair the ability to provide safe opticianry care or ophthalmology care.
- (L) "Lapsed license" means the status of the license of a dispensing optician or ophthalmologist who has failed to fulfill all requirements of licensure renewal.
- (M) "Lapsed registration" means the status of the registration of an apprentice who has failed to fulfill all requirements of apprentice registration renewal or upon removal from supervision by the registered supervisor.
- (N) "Licensed dispensing optician" means a person holding a current, valid license issued by the board that authorized the person to engage in optical dispensing.
- (O) "Licensed spectacle dispensing optician" means a licensed dispensing optician authorized to engage in the dispensing of optical aids other than contact lenses.
- (P) "Licensed contact lens dispensing optician" means a licensed dispensing optician authorized to engage only in the dispensing of contact lenses.
- (Q) "Licensed spectacle-contact lens dispensing optician" means a licensed dispensing optician authorized to engage in the dispensing of any optical aid.
- (R) "Licensed ophthalmologist" means a person holding a current, valid license issued under section 4725.48 to 4725.51 of the Revised Code to engage in the practice of designing, fabricating, and fitting artificial eyes or prostheses associated with the appearance or function of the human eye.
- (S) "Optical aid" has the same meaning as section 4725.40 (A) of the Revised Code.
- (T) "Optical dispensing" has the same meaning as section 4725.40 (B) of the Revised Code.

(U) "Optical or ocularistry area" means the space reserved for the optical or ocularistry department or shop. This includes the lab area, fitting area, dispensing area, reception area and waiting area. This does not include areas of a larger company or building where the optical department or shop is leased or confined to its own space.

(V) "Prescription" means the written or verbal directions or instructions as specified by a physician or optometrist licensed by any state for preparing an optical aid for a patient.

(W) "Reciprocity" has the same meaning as "endorsement" and means the process by which a license to practice as a dispensing optician is issued to an individual who is licensed in another state in accordance with rules of the board and after the following has occurred:

(1) Verification of licensure in good standing received directly from the state of the current licensure at the time of application; and,

(2) Receipt of completed application and fee in the form required by the board, and the criminal records check by the bureau of criminal identification and investigation in accordance with section 4725.501 of the Revised Code.

(X) "Registration" means meeting all requirements of the board for the authority to practice as an apprentice optician or apprentice ocularist under the direct supervision of a ~~designated~~, licensed dispensing optician or ocularist.

(Y) "Registered" means:

(1) Having met the requirements of the board for the authority to practice as an apprentice optician or ocularist under the direct supervision of a ~~designated~~ licensed optician or ocularist; or,

(2) The equivalent of licensure in a state that does not require licensure to engage in the practice of opticianry or ocularistry.

(Z) "Registration card" means the card issued by the board which authorizes an individual to practice as an apprentice optician under the direct supervision of a ~~designated~~ licensed optician or ocularist.

4726-7-01 **Definitions.** As used in this chapter:

(A) "Active license" means the status of the license held by an optician or an ocularist who has fulfilled all requirements of the board for initial licensure or for licensure renewal.

(B) "Active registration" means the status of the apprentice registration held by an apprentice optician or apprentice ocularist who has fulfilled all requirements of the board for initial apprentice registration or for apprentice registration renewal.

(C) "Extension" means the time period beyond the ninety-day grace period granted by the board to allow a licensee an additional specified time to submit a renewal application or meet the continuing education requirements for licensure renewal without being required to re-take the national qualifying exam. All requests to the board for an extension must be submitted in writing to the board on or before December thirty-first. Extensions will be granted by the board on a case-by-case basis. Individuals may not engage in the practice of optical dispensing or ocularistry until all requirements for renewal have been met, and a current, valid license is on display at the place of optical dispensing or ocularistry.

(D) "Grace period" means the period of ninety-days from the expiration of a license in which the

1/27/2011 12:50 PM

licensee may submit a renewal application, proof of meeting the continuing education requirements for renewal, and the lapsed fee of seventy-five dollars without being required to re-take the national qualifying exam. Individuals may not engage in the practice of optical dispensing or ocularistry until all requirements for renewal have been met, and the current, valid license is on display at the place of optical dispensing or ocularistry.

(E) "Lapsed license" means the status of the license of a dispensing optician or ocularist who has failed to fulfill all requirements of licensure renewal.

(F) "Lapsed registration" means the status of the apprentice registration of an apprentice optician or apprentice ocularist who failed to fulfill all requirements of registration renewal.

(G) "Lapsed fee" or "penalty fee" means the seventy-five dollar fee to renew restore a license that was not renewed prior to the expiration of the license.

(H) "Reporting period" means the first of January through the thirty-first of December.

(I) "Waiver" means the suspension granted by the board of the requirements for continuing education and/or lapsed fees for the renewal of a license in accordance with rules of this chapter.

4726-7-02 Licensure renewal requirements.

- (A) Each licensed optician and each licensed ocularist who has received a license to practice optical dispensing or ocularistry shall renew his/her respective license on an annual basis and pay a non-refundable fee of one hundred dollars made payable to the treasurer, state of Ohio postmarked on or before December thirty-first of each year. Such renewal shall be made on forms in a manner prescribed by the board.
- (B) At least thirty days prior to the expiration of a license, the board shall send notification of renewal to every licensee to whom a license was issued or renewed during the current period. Failure to receive the board's notification of renewal shall not excuse the licensee from the renewal requirements.
- (C) Each licensee shall complete the license renewal application and supply all information necessary to process the application. Upon receipt and acceptance of the renewal fee, renewal application, and the required proof of continuing education as outlined in this chapter, the board shall mail a current, valid license to the licensee no later than thirty days after acceptance.
- (D) Licensees applying for their first initial renewal shall be exempt from reporting continuing education credit.
- (E) Any incomplete paper renewal may be returned to the licensee indicating the reason for such return. If the paper renewal application is not returned to the board postmarked on or before December thirty-first of the renewal year, the license shall be placed on lapsed status.
- (F) Failure to meet all requirements for renewal of a license prior to January first results in the license being placed into delinquent status. The licensee shall have 30 days to meet all requirements for renewal and shall pay a pay a \$75 delinquency fee. Failure to renew within 30 days results in suspension of forfeiture of the licensee's right to practice optical dispensing or ocularistry in the state of Ohio until all requirements for renewal are met, and the current, valid license is on display at the place of optical dispensing or ocularistry.
- (G) Continuing education requirements for renewal of a current, valid license, except for those licensees applying for their first initial renewal, are as follows:
 - (1) Each licensed spectacle dispensing optician shall have completed four hours of board-approved spectacle continuing education credit between January first and December thirty-first of the year of the expiration date, of which only one management hour may be used.
 - (2) Each licensed contact lens dispensing optician shall have completed eight hours of board-approved contact lens continuing education credit between January

first and December thirty-first of the year of the expiration date, of which only two management hours may be used.

- (3) Each licensed spectacle-contact lens dispensing optician shall have completed four spectacle hours of board-approved continuing credit between January first and December thirty-first of the year of the expiration date, one of which may be a management hour, and eight contact lens hours, two of which may be management hours, obtained during the last preceding year.
- (4) Each licensed ocularist shall have completed four hours of board-approved continuing education credit between January first and December thirty-first of the year of the expiration date. One hour of board-approved continuing education shall be on communicable diseases as they apply to the handling of ocular prostheses. Only one hour per year may be management credit. All other credit hours must pertain to the fitting and fabrication of ocular prostheses.

4726-7-04 **Apprentice registration renewal.**

- (A) Each registered apprentice optician who has received a registration to engage in the practice of opticianry or ophthalmology as an apprentice optician or apprentice ophthalmologist shall renew his/her respective apprenticeship on or before June thirtieth and pay a non-refundable fee of ten dollars in a form as prescribed by the board.
- (B) At least thirty days prior to the expiration of the apprenticeship, the board shall send notification of renewal to every registered apprentice to whom a registration was issued or renewed during the current period. Failure to receive the board's notification of renewal shall not excuse the apprentice from the renewal requirements.
- (C) Each registered apprentice shall complete the apprentice registration renewal application and supply all information necessary to process the application and the renewal fee of ten dollars. Upon receipt and acceptance of the renewal fee and the completed renewal application, the board shall mail a current, valid registration card to the apprentice no later than thirty days after acceptance.
- (D) An incomplete renewal may be returned to the apprentice indicating the reason for such return. If the renewal application is not returned to the board postmarked on or before June thirtieth, the registration will be placed on lapsed status.
- (E) Failure to renew an apprentice registration results in the apprentice registration being placed into delinquent status. The apprentice shall have 30 days to meet all requirements for renewal and shall pay a \$25 delinquency fee. Failure to renew within 30 days results in suspension in the forfeiture of the apprentice's right to engage in the apprenticeship training process as an apprentice optician or apprentice ophthalmologist until all requirements for renewal are met, and the current, valid registration card is on display at the place of the practice of optical dispensing or ophthalmology as an apprentice.

4726-13-01 General information.

(A) The purpose of this chapter is to establish:

- (1) Minimal acceptable standards of safe and effective opticianry practice in any setting; and,
- (2) Minimal acceptable standards of safe and effective ocularistry practice in any setting.

(B) For purposes of this chapter, the following definitions shall apply:

(1) "Licensed dispensing optician" means an optician who has met the requirements of sections 4725.47 to 4725.51 of the Revised Code and who holds a current valid license issued by the board.

(2) "Licensed ocularist" means an ocularist who has met the requirements of section 4725.47 to 4725.51 of the Revised Code and who holds a current valid license issued by the board.

~~(3) "Patient" means any recipient of optical or ocularistry care provided by a licensed dispensing optician, licensed ocularist, apprentice optician or apprentice ocularist.~~

(4) "Apprentice" "registered apprentice" means a person registered with the board to engage in a learning experience under the direct supervision of a licensed dispensing optician, the registered supervisor.

(5) "Prescription" means the written or verbal directions or instructions as specified by a physician or optometrist licensed by any state for preparing an optical aid for a patient.

(6) "Registered supervisor" means a the licensed dispensing optician or ocularist registered with the board as a the supervising licensed optician or the supervising ocularist, as appropriate, for the registered apprentice optician or the registered apprentice ocularist.

4726-13-02

Standards relating to competent practice as a licensed dispensing optician.

~~(A) A licensed dispensing optician shall provide optical dispensing services opticianry care within the scope of practice of optical dispensing as set forth in division (B) of section 47261.40 of the Revised Code and the rules of the board.~~

~~(B) A licensed dispensing optician shall maintain current knowledge of the duties, responsibilities and accountabilities for the practice of optical dispensing safe opticianry care.~~

~~(C) A licensed optician shall demonstrate competence and accountability in all areas of practice in which the licensed dispensing optician is engaged, which includes, but is not limited to, the following:~~

~~(1) Consistent performance of all aspects of optical dispensing opticianry care;~~

~~(2) Appropriate recognition, referral or consultation when a complication arises;~~

~~(3) When the opticianry care to be provided in accordance with paragraph (H) of section 4725.40 of the Revised Code, the licensed dispensing optician has a specific current prescription from a physician or optometrist licensed by any state for preparing an optical aid for a patient.~~

~~(D) A licensed dispensing optician shall:~~

~~(1) Implement any appropriately authorized prescription for a patient unless the licensed dispensing optician believes or should have reason to believe the prescription is expired;~~

~~(a) Inaccurate;~~

~~(b) Not properly authorized;~~

~~(c) Not current or valid;~~

~~(d) Harmful, or potentially harmful to a patient; or;~~

~~(e) Contraindicated by other document information.~~

~~(2) Clarify a prescription for a patient when the licensed dispensing optician believes or should have reason to believe the prescription is:~~

~~(a) Inaccurate;~~

(b) Not properly authorized;

(c) Not current or valid;

(d) Harmful, or potentially harmful to a patient; or,

(e) Contraindicated by other documented information.

(E) A licensed dispensing optician shall maintain the confidentiality of patient health information as required by applicable law. To the maximum extent feasible, identifiable patient health care information shall not be disclosed by a licensed dispensing optician unless the patient has consented through a properly executed release to the disclosure of identifiable patient health care information.

(F) At all times when a licensed dispensing optician is performing dispensing services, providing opticianry care to a patient all licensed opticians shall:

(1) Wear an identifying badge with his/her name and designation of licensed dispensing optician;

(2) Cause any apprentices under his/her supervision to wear an identifying badge with the name of the apprentice and the designation of apprentice optician;

(3) In a complete, accurate and timely manner report and document the optical dispensing services opticianry care provided by the licensed dispensing optician, for the patient and the patient's response to that care;

(4) Not falsify any client record or any other document prepared or utilized in the course of, or in conjunction with, opticianry practice;

(5) Treat each consumer patient with courtesy, respect, and with full recognition of dignity and individuality; and,

(6) Provide the appropriate direction, supervision and evaluation of all tasks performed by the apprentice optician registered under the licensed optician.

(G) When opticianry practice, as set forth in section 4725.40 of the Revised Code, is supervised or evaluated, only a licensed dispensing optician shall:

(1) Supervise the practice of opticianry, as set forth in section 4725.40 of the Revised Code and rules of the board, by other licensed dispensing opticians or registered apprentice opticians; and,

(2) Evaluate the practice of opticianry as set forth in section 4725.40 of the Revised Code and the rules of the board, by other licensed dispensing opticians.

~~In matters other than the practice of opticianry, a non-licensed dispensing optician supervisor may evaluate an optician or apprentice employee.~~

- (H) A licensed dispensing optician shall not submit or cause to be submitted any false, misleading, or deceptive statement, information, or documentation to the board, to current employers, or to any future employers for positions requiring a license as a dispensing optician.
- (I) A licensed dispensing optician, when functioning in a supervisory role, shall assure that adequate procedures are in place and implemented to verify that:
 - (1) Each dispensing optician under the supervising licensed dispensing optician has a current, valid license and wall certificate to practice as a licensed dispensing optician, and that the license and wall certificate are displayed at the place of the practice of opticianry; and.
 - (2) Each apprentice optician has a current valid registration that is displayed at the place of the practice of apprentice opticianry.



OHIO OPTICAL DISPENSERS BOARD

77 SOUTH HIGH ST. 16TH FLOOR
COLUMBUS, OHIO 43215-6108
(614) 466-9709 FAX (614) 995-5392
WWW.OPTICAL.OHIO.GOV
Email: odb@odb.ohio.gov

CONSENT AGREEMENT BETWEEN JANELL KOVALESKI AND THE OHIO OPTICAL DISPENSERS BOARD

This CONSENT AGREEMENT is entered into by and between **JANELL KOVALESKI**, Opticians, License No. 11107-S and the **OHIO OPTICAL DISPENSERS BOARD** (“Board”), a state agency charged with enforcing Chapter 4725 of the Ohio Revised Code, and all rules promulgated thereunder.

JANELL KOVALESKI enters into this CONSENT AGREEMENT being fully informed of her rights under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudication hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

1. The **BOARD** is empowered by Section 4725.53 of the Ohio Revised Code to refuse to grant a license, suspend or revoke a license or impose a fine or order restitution for any of the enumerated violations.
2. The **BOARD** enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Section 4725.51 of the Ohio Revised Code and Ohio Administrative Code 4726-11-01(A). **JANELL KOVALESKI** failed to obtain her continuing education credits within the immediately preceding one-year period, namely January 1, 2010 to December 31, 2010, for renewal of her optical license for the 2011 renewal period. Continuing education certificates received and reviewed by the Board showed that these credits were obtained on January 8 and 10, 2011.
5. **JANELL KOVALESKI** is a Licensed Dispensing Optician in the State of Ohio, and holds license number 11107-S.

6. **JANELL KOVALESKI** admits the factual and legal allegations set forth in this Consent Agreement issued by the **BOARD**.

AGREED CONDITIONS

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth and in lieu of any further formal proceedings at this time, **JANELL KOVALESKI** knowingly and voluntarily agrees with the **BOARD** to the following terms, conditions, and limitations:

- A. **JANELL KOVALESKI** shall obtain 4 (four) additional Spectacle Board approved continuing education hours, that will be applied toward her 2012 license renewal. **MS. KOVALESKI shall** also pay the \$75.00 late fee. The 4 (four) additional Spectacle hours and \$75.00 late fee must be received by the Board at the Ohio Optical Dispensers Board, 77 South High Street, 16th Floor, Columbus, Ohio 43215-6108 not later than March 30, 2011.
- B. **JANELL KOVALESKI** agrees and acknowledges that this disciplinary action shall be entered in the **BOARD'S** journal and will be maintained in her licensure file.
- C. **JANELL KOVALESKI** shall obey all laws and rules of the Ohio Revised Code and Ohio Administrative Code governing Licensed Opticians in Ohio.
- D. The **BOARD** agrees not to institute formal proceedings against **JANELL KOVALESKI** as long as she is in compliance with the terms and conditions of this CONSENT AGREEMENT.

FAILURE TO COMPLY

If, in the discretion of the Board or its Designate, **MS. KOVALESKI** appears to have violated or breached any term or condition of this Agreement, the Board reserves the right to institute formal disciplinary proceedings pursuant to ORC 4725.53 or rules promulgated under OAC 4726 for any and all possible violations or breaches, including but limited to, alleged violations of the laws of Ohio occurring before the effective date of this CONSENT AGREEMENT.

Any action initiated by the Board based on alleged violations of this Agreement shall comply with the Administrative Procedure Act, Chapter 119, of the Ohio Revised Code.

ACKNOWLEDGEMENTS/LIABILITY RELEASE

JANELL KOVALESKI agrees that in the event the Board, in its discretion, does not ratify this CONSENT AGREEMENT, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. **MS. KOVALESKI** agrees that should the **BOARD** reject this CONSENT AGREEMENT and if this case proceeds to hearing, she will assert no claim that

**Janell Kovaleski
Consent Agreement
Page 3**

the **BOARD** was prejudiced by this review and discussion of this CONSENT AGREEMENT or of any information relating thereto.

MS. KOVALESKI acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

MS. KOVALESKI waives all of her rights under Chapter 119, ORC, as they relate to matters that are the subject of this Consent Agreement.

EFFECTIVE DATE

It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the **BOARD** prior to signature by the President/Supervising Disciplinary Member and shall become effective upon the last date of signature below.

**THE OHIO OPTICAL DISPENSERS
BOARD**

JANELL KOVALESKI

SUSAN E. BENDER
President
Supervising Disciplinary Member

DATE

DATE

LEAH O'CARROLL, Esq.
Assistant Attorney General
Attorney for Ohio Optical Dispensers Board

DATE