STATE OF SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE BOARD OF EXAMINERS IN OPTOMETRY

IN THE MATTER OF	)	
	)	
BOARD DISCUSSIONS	)	
	)	
	)	TRANSCRIPT OF DISCUSSIONS
	)	
	)	
	)	

Given before Tina F. Behles, Nationally Certified Court Reporter and Notary Public in and for the State of South Carolina, commencing on Wednesday, November 2, 2011, at 3:04 p.m. at the offices of the South Carolina Department of Labor, Licensing and Regulation, 110 Centerview Drive, Columbia, South Carolina.

Reported by:
Tina F. Behles, CVR

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A P P E A R A N C E S

Board Members:	Robert N. Williams, OD (Pres) William W. Spearman, OD Thomas E. Tucker, OD Derek P. Van Veen, OD Peter V. Candela, OD Isaac L. Johnson, Jr. (Lay Member)
For the State:	N/A
For the Respondent:	N/A
Advising the Board:	Daniel Grigg, Esquire (LLR) SC Department of Labor, Licensing & Regulation/Office of General Counsel 110 Centerview Drive P.O. Box 11329 Columbia, SC 29211-1329
Also present:	Angela Combs, Board Administrator David Love, OIE Staff Other LLR Staff as Noted
Reported by:	Tina F. Behles, CVR

PROCEEDINGS

(On record at 3:04 p.m.)

DR. WILLIAMS: Noting a quorum of board members present, I'll entertain a motion that we begin the meeting.

DR. CANDELA: Make a motion to begin the meeting.

DR. VAN VEEN: Second.

DR. WILLIAMS: All in favor?

BOARD MEMBERS: Aye.

DR. WILLIAMS: And first thing on the Agenda is to approve the meeting. So the August 3rd, 2011 meeting, everyone had a chance to look over the minutes? Any discussion on that?

DR. SPEARMAN: I have a question. As I looked through past minutes, when a motion is made, the motioner was not mentioned, the name of the motioner. And in our last minutes, as I recall, the motion-maker, if that's correct, was mentioned. What is the -- so there's a little difference in the way that's done. What is the official policy on how that is done now?

MS. COMBS: With the way -- of course, you probably noticed there was a big change in the minutes also.

DR. SPEARMAN: Right.

MS. COMBS: A big change. Because we're doing it that way, we were also told to name, you know, put everybody's name in there and definitely if someone says they don't agree.

DR. SPEARMAN: Right, the dissenting vote.

MS. COMBS: Right. Right.

DR. SPEARMAN: But what about the policy of naming the motion -- the person who actually made the motion; is that the new policy as well?

MS. COMBS: Yes, correct.

DR. SPEARMAN: And the seconder as well?

MS. COMBS: Right, correct.

DR. SPEARMAN: And any dissenting votes. So those three changes have been made?

MS. COMBS: Correct.

DR. SPEARMAN: Okay. Well, thank you.

DR. CANDELA: Make a motion to accept the minutes.

DR. TUCKER: Second.

DR. WILLIAMS: All in favor?

BOARD MEMBERS: Aye.

DR. WILLIAMS: No's? All right. Moving forward, let's skip down to -- well, I guess we are on David Love. I'll let David take the floor for the IRC information.

MR. LOVE: Well, thank you. Good afternoon. Like always, we have two reports. We'll start with the statistical report, and this is just for information only to keep you posted of what comes in, where it goes, and so forth. If you have the chart, it's gonna be the one that has the two little blocks in it.

Basically, as you can see, for the year January the 1st to October the 17th, we have a total of 24 cases that have come in during that time period, which has almost doubled since this time last year, which was 13. Every board that I'm associated with has doubled this year. I don't -- I can't explain why, but it has.

DR. WILLIAMS: Let me ask you a question. What tab are we in?

MS. COMBS: It's the Reports, the IRC.

(Multiple speakers).

DR. WILLIAMS: Sorry about that.

MS. COMBS: And it will be the one that -- the one he's working with now is not the highlighted one. It's the one underneath.

DR. WILLIAMS: All right. Sorry, David. Go ahead.

MR. LOVE: That's okay. And that's just -- it's,

once again, it's for information only. It just gives the board an account of what cases have come in during that time period and where they stand. And of course active investigation means it's currently being investigated; closed; and so forth.

But once again, it's 24 cases for the time period January 1st to October 17th. And for the entire last year, there were 13 cases filed. And as I said just a minute ago, every board that I'm associated with has doubled or all but doubled.

DR. SPEARMAN: Any logic to that?

MR. LOVE: I have -- I've thought about it. I've been asked that same question in every board. Perhaps it's the economy or, or what, I don't know.

We'll go to the Board Report. The IRC met on these following cases that we are gonna bring to you today. All these cases are recommendations of course. It is your approval that moves them on into the next stage.

The IRC met on October the 17th, 2011 under the advice of Dr. Wayne Cannon. The IRC

recommends that the four cases -- two of them are dismissals and two will be Formal Complaints. As I've said before, please refrain from asking any questions on the Formal Complaints because, as you know, they will come to you again. And we do this to ensure that the Respondent gets a fair hearing.

If we'll start real quick. The two dismissals, both cases were unfounded, without merit. Pretty much one of them -- the first one is -- it had several issues of -- that led to nothing, of course. It was -- basically, the IRC recommends dismissal being that the Respondent met all the requirements of the law when examining the patient and arriving at proper prescriptions. In the long run, the complainant alleged that the Respondent would not or failed to give a, a prescription for reading glasses. And also there was an error made on the Respondent's, which it was an error -- a service was charged to the complainant which, once notified, he refunded the money. It was a fundus photo. The service was not provided, but it was an error

on his administrative staff. It was refunded the next day.

The second complaint, of course, is -- once again, it was reported that there was uncoverage (ph). The IRC recommends a dismissal being that the reported allegation of allowing non-coverage of opticians in his business was unfounded and without merit.

Do we have any complaints on the two dismissals?

DR. CANDELA: Can you just explain that second one a little bit more?

MR. LOVE: Yeah. It was a multiple situation. There was two locations. Basically, one optician was married and she didn't put up the posted corrected license on the wall showing her new name. Another one was carrying it around in her wallet instead of posting it on the wall. Another optician had her license since 2009. It expired on 2009. But all the changes were made correctly and updated through LLR. The opticians were -- had failed to post the corrected or the most updated license on the wall. And there was one situation where the store manager, under the

direct supervision of the doctor, was fitting and dispensing glasses. And of course that was offended -- of the -- it was reported that he had somebody working there that was not. But the doctor took responsibility. And we found no proof that any action outside the supervision of the doctor was going on during that time period as reported by the complainant.

People come into the store. They see somebody and go and look on the wall. Most of them are elderly people. And they're concerned. And then they see it's not there, and then they start calling and writing. And we go check it out.

DR. CANDELA: So on these side-by-side type operations where you have opticians on one side and optometrists on the other, is it okay if the optometrist gives his or her permission to utilize his or her's license for non-licensed opticians next door to dispense glasses or contact lenses?

DR. SPEARMAN: Well, the -- I think, first of all, if it was a separate business, then, then I don't ---

DR. CANDELA: Yeah, not employed optometrist.

DR. SPEARMAN: --- think that -- right. If they were -- it was a separate business, they'd have to have licensure or to have an optometrist onsite whether it was side by side or other stuff. Yeah.

DR. CANDELA: Right.

DR. WILLIAMS: It's the other side, yes.

DR. SPEARMAN: But if it were the same business, owned by the same entity and there was an optometrist in either side, it seems it would work. That'd be my guess.

DR. CANDELA: Is that how that situation ---

MR. LOVE: Yes, sir.

DR. CANDELA: --- was then? Because I was trying to read as far as -- okay.

MR. LOVE: Yes, sir. The final two complaints were Formal Complaints. The IRC recommends a Formal Complaint for unprofessional conduct. The Respondent failed to furnish glasses to the complainant after being paid for such by the complainant.

And the final is the IRC recommends a Formal Complaint being that the Respondent violated Final Order.

At this time, on behalf of the IRC, I recommend that the board approve these recommendations so that we can move forward.

DR. WILLIAMS: Any further discussion on the IRC Report and recommendations?

DR. CANDELA: (Shakes head).

DR. WILLIAMS: Well, hearing none, I'll entertain a motion that we accept the IRC Report and recommendations.

DR. SPEARMAN: So moved.

DR. TUCKER: Second.

DR. WILLIAMS: All right. All in favor?

BOARD MEMBERS: Aye.

DR. WILLIAMS: Opposed? (No response).

MR. LOVE: Thank you for your time.

DR. WILLIAMS: Thank you, David. Appreciate it.

MR. LOVE: Have a nice day.

(Mr. Love exits the proceedings).

DR. WILLIAMS: So we'll move onto Reports. Angie, you got info on license totals?

MS. COMBS: Yes. We have 774 current licensees. And, out of that number, there are 499 in South Carolina.

And on the next one, the financial report is in tab -- you'll find it under tab

2. And of course any time that y'all have any kind of questions or anything on that, please let me know. You're welcome to take, you know, take it home and look at it. But that basically gives the information for fiscal year '10, fiscal year '11, and of course we're -- right now, we're in fiscal year 2012. And of course that will be until the end of June 2012. So that's just a partial year on that.

That does give the -- what we had -- what you all have for the cash balance, how much revenue, and also the expenditures. And is there any questions on that at this time?

DR. SPEARMAN: (Shakes head).

MS. COMBS: Okay. Office of General Counsel that we do have -- or they have one case, a current case that's being worked on at this time. And that's in the General Counsel Department.

DR. WILLIAMS: Well, that's obviously not presented here?

MS. COMBS: No, it's not presented. That has been presented already ---

DR. WILLIAMS: Did that go to IRC originally ---

MS. COMBS: It's already been.

DR. WILLIAMS: --- and it's moved up?

MS. COMBS: And that's moved on, so.

DR. WILLIAMS: Okay.

MS. COMBS: Right. You'll hear more about that later.

DR. WILLIAMS: We'll be hearing about that in person, okay.

MS. COMBS: We have no branch registrations to report for this time. And the board member election, I'll just do an update on that. That -- the results of that election has been sent to the governor. And we have not, you know, we've not heard anything yet. Of course, Dr. Spearman, Dr. Van Veen, and Dr. Vaught received the highest. They were the highest vote -- obviously the highest number of votes. And of course we also had Dr. Hensley, Dr. Woody was also candidates. And I will let you know when we get that information in from the governor.

DR. WILLIAMS: When do you think that would be forthcoming?

MS. COMBS: I would think that would be within a month or so. Because the first one expires March. That's Derek's. And then the next one's April and the next one's June. So I

would think, you know, within a month or two. I'm hoping by the first of the year that we'll have that. And so we'll -- I'll get that information. Soon as we hear from them, I'll let y'all know. I'll send out an email and let you know about that.

Okay, now license plates. Is anyone interested in a board member license plate? Do you have one right now?

DR. SPEARMAN: I do, yeah.

MS. COMBS: Is that something you'd like to do again?

DR. SPEARMAN: Yeah. I mean I think it actually saved me a speeding ticket one time. I'm not sure. I'm not sure why, but she was very nice.

MS. COMBS: Yeah. Well, I had the -- I'll give you the information. And it'll be basically the same, you know, like you did before. But I'll give you -- I've got that in writing for you.

DR. SPEARMAN: Okay.

MS. COMBS: Is there anybody else who'd be interested in that? Or you can let me know. It doesn't have to be today. You don't have to tell me today. You can think about it.

DR. VAN VEEN: I might be interested.

MS. COMBS: Yeah, well, I can give you the information. Yeah, I'll give you the information.

MR. GRIGG: Might save you a speeding ticket.

DR. VAN VEEN: Yeah, that's a good reason on that. (Multiple speakers).

MS. COMBS: But, like I say, if anybody thinks about that and wants to do that, we'll -- I'll get that information to you.

And I had sent by email board meeting dates for 2012. I don't know if y'all got to look at that.

DR. SPEARMAN: Right.

MS. COMBS: Is there any conflicts that you know of at this time? And I'll send those back out as a reminder. But if there's anything that -- because what we're doing, we're trying to spread them out as evenly as possible. Right now I have the next one set up for February 15th. And then the next one May 2nd, then August 1st, and then November 7th. Of course we can change those. It doesn't -- it's not set in stone. We can always change those if we need to.

DR. VAN VEEN: Those are all Wednesdays; is that right?

MS. COMBS: Yes, Wednesdays at three o'clock.

DR. SPEARMAN: Did the August date conform to the meeting date that South Carolina ---

MS. COMBS: It's different. The South Carolina -- it's different. It's not that. It's later. I think the South Carolina one's later in the month. Is it ---

(Multiple speakers).

DR. WILLIAMS: Yeah, it's that last weekend.

MS. COMBS: Yeah, end of the month.

DR. SPEARMAN: Okay.

MS. COMBS: Okay.

DR. SPEARMAN: Because I know in the past that has --

DR. CANDELA: It's August 24, 5, 6, whatever that weekend is.

DR. VAN VEEN: And there's a March meeting; is that correct?

DR. CANDELA: Uh-huh. March 16th, I think we're going for the Weston Hilton.

MS. COMBS: Oh, there's a March meeting?

DR. CANDELA: Yep.

MS. COMBS: For the association?

DR. CANDELA: Gonna have some good speakers there, too. Yeah, we'll have a March meeting. I think it's the 16th, if I'm not mistaken. Let me look it up real quick here.

DR. WILLIAMS: Is it a weekend?

MS. COMBS: I can check with Jackie on that.

DR. WILLIAMS: Saturday, Sunday? I mean Friday, Saturday ---

DR. CANDELA: Yeah, Friday, Saturday, Sunday. Uh-huh. And -- okay, March it is. Yeah, it's that 16, 17, 18.

MS. COMBS: Okay. Thank you.

DR. CANDELA: Sure.

MS. COMBS: And just to kind of give you a notice -- I know this is going to be a while off, but the association or ARBO's meeting will be in Chicago in 2012. And that's going to be June the 24th through the 26th. Some of y'all might be thinking about, you know, anyone that would like to attend. And I'll -- you know, you can let me. We don't have to make any decisions right now. That will be in Chicago, and that's always a Sunday, Monday, Tuesday. And it usually ends around midday on Tuesday if they do it like they traditionally ---

DR. CANDELA: --- AOA meeting, is that ---

MS. COMBS: Is what Wednesday or Thursday or something, yeah. Uh-huh. Yeah.

DR. VAN VEEN: And what were the dates on that?

MS. COMBS: June the 24th through the 26th. And it starts Sunday morning.

And on continuing education, I did not have any -- I don't have anything that's unusual or anything to really discuss. Bill, was there anything?

DR. SPEARMAN: We had that one on -- that was pure practice management.

MS. COMBS: Practice management.

DR. SPEARMAN: I mean it was ---

MS. COMBS: Yeah, it ---

DR. SPEARMAN: --- a no brainer.

MS. COMBS: That's what I thought. Yeah.

DR. SPEARMAN: No, you were exactly right on that one. But, no, that was the only one that I recall.

MS. COMBS: Sure. Okay.

DR. WILLIAMS: How about the board member website, are you going to talk about ---

MS. COMBS: Oh, I had taken that off. But now I do have some -- I'm sorry. That original one.

And I'm going to send you -- I thought what I'll do, because it -- I'm going to send you all more information electronically.

DR. WILLIAMS: All right.

MS. COMBS: But there is one, and I want to do that. So I will. I want to make sure I get all that information -- I thought it might be easier to send it electronically to you. But there is some information out there, but I'll get that to you.

DR. WILLIAMS: Next we're down to unfinished business. There's listed as none to discuss. Can anybody think of anything?

MS. COMBS: Oh, I also did change that too.

DR. WILLIAMS: Oh, I got it. I might want to look at it (referencing a revised agenda).

MS. COMBS: And all it is is the -- I decided under unfinished business to put the results of the Practice Act Relations Review. Remember we talked about that some somewhat -- and, Dean, you may want to give them just an overview of what's going on with that.

MR. GRIGG: I will. And I'll get more detail to you. But the bottom line is not much is going on with it. My understanding as to a previous

conversation y'all may have had was, with -- probably with Jamie I guess, was what we've been doing in-house here cleaning up -- not just y'all, but all the boards' regs and statutes.

There's two parts to that. There's been boards that have come to us saying, We want to change this or this or that. And so we've been doing that if they wanted to open up their statute or their regs and doing that. What Jamie was talking about, from my understanding more to y'all's concern, was what we've been doing under the Omnibus Act, which is just making sure that each board's regs comport with their statute.

Y'all not being my typical board, I'm not overly familiar with a lot of your issues, so I'll use one that I am familiar with. I had a board, for example, whose statutes said that each licensee had to have a bond of $10,000. The regs said they had to have a bond of 50,000. That's obviously a conflict and obviously the statute being law wins.

So we've been going in and finding things like that with each board, cleaning

those things up, making them mesh. Y'all apparently had, which a lot of this started with some law clerks were asked to kind of kick-start that process and give little summaries and y'all see the first sheet here that's titled Optometry Board Reg Audit. That's exactly what this was. This was something that a law clerk had prepared and suggested that there may be a conflict.

If you look at page 2 of the -- well, it says page 1, but the second page of this and you look at what Angie's highlighted for you, 95-5 (c) and then 37-245-3 looks like the highlighted sections. I've read that. Angie's read that. Holly Gillespie, who's my boss, has read that. We don't see a conflict in that. I, I don't think there is a conflict there. And Holly did not change that. So that's not being changed. I don't know if the conversation was that y'all ---

MS. COMBS: Well, I -- it was just a case of where I didn't see the conflict.

MR. GRIGG: And I don't either. Yeah.

MS. COMBS: --- and I thought I want you all to look at it. Maybe you saw something I didn't. I

wanted you to know what was suggested. But after we all talked about it, it's really not. So it gets to stay. I mean, there's no change.

MR. GRIGG: And she's right. It was suggested. That suggestion came from a law clerk who does a very good job and tried very hard and just didn't get this one right. And so, anyway, when they were going through that, I mean Jamie's looked at it; Angie's looked at it; now I've looked at it; I know Holly's looked at it -- all of that stuff got turned in for all of the boards on Friday. And this was not changed. So this is as it appears and will stay as it appears unless y'all decide you want to go in and change something. That's, that's -- no action is what was done.

DR. WILLIAMS: And to do that would involve the Legislature?

MR. GRIGG: To do that -- if you actually, whether we're talking this or any other issue, to do that, to go in and actually make substantive change, yes, sir. Y'all would have to come to me or Jamie or whoever was with you at that time and suggest proposed changes. We would

draft them with your attention and then final approval from y'all. Then it would get sent up to Grant Gillespie, who's our legislative liaison. He would put eyes on it for a little while. And then after all that process, yeah, it goes to the General Assembly. And they would have to vote to approve it. So that's not what that Omnibus cleanup is all about. But if y'all wanted to do that, it certainly can happen.

DR. WILLIAMS: That can happen at pretty much any time?

MR. GRIGG: But that's a much longer ---

DR. SPEARMAN: Excuse me. Will the Omnibus clean up the -- a single vote to cover the entire proposal that you folks are making ---

MR. GRIGG: As far as the vote that the Legislature ---

DR. SPEARMAN: From the changes in the cleanup.

MR. GRIGG: That the Legislature ---

DR. SPEARMAN: Will that be one vote deal, up or down, on everything you're proposing? Not just us, but on all?

MR. GRIGG: I don't know how the Legislature intend to handle that. I'll be honest with y'all.

I might have to look into that answer for you, because I don't know.

DR. SPEARMAN: Well, my -- I want to just carry this a little farther and just ask you about these, these -- my understanding is, is that there will be nothing from Optometry included in this Omnibus recommendation?

MR. GRIGG: Right. There's been no changes to any of y'all's statute or regs.

DR. TUCKER: Any of this that's here? Not just the first one?

MR. GRIGG: On any of it. Right, on any of it. They haven't changed a thing. And what that does, if this is maybe part of your concern, is that's not opening your statute because, you know, if you actually came to us and said we want to open up the statute, then the Legislature would have some ability to re-write, to address other things that concern them and to put stuff in and take stuff out. That can't happen under Omnibus. This is simply -- and I'm not sure whether it'll be one vote like you're asking or whether it'd be several votes. Either way, it doesn't affect Optometry because nothing's being proposed for

y'all.

DR. SPEARMAN: No, I understand that. And I guess my question then actually is moot. But the essence of my question was, is that if there were something within our, within our statute that was proposed under this Omnibus recommendation, am I correct in assuming that no one on this board would have been consulted regarding that change? Or would we have -- would this board have been consulted prior to it being included in that?

MR. GRIGG: And, again, the first part of that is nothing was changed.

DR. SPEARMAN: I understand. No, I understand ---

MR. GRIGG: So it does become kind of ---

DR. SPEARMAN: No, I said my question was probably moot.

MR. GRIGG: But ---

DR. SPEARMAN: I'm just curious to know how ---

MR. GRIGG: --- since there's nothing of substance, since it was merely like -- I'm talking about a situation where there might be a bond ---

DR. SPEARMAN: It was a no-brainer, right. I understand.

MR. GRIGG: Then, no, the boards were not consulted

as far as having to vote and approve something. It's simply just making regs comport with what's already law. And since the law's already been enacted by you guys and voted on ---

DR. SPEARMAN: Right.

MR. GRIGG: --- and undertaken by the Legislature at some point, the cleanup is simply getting the regs to comport with those statutes for the boards where changes have been made. So that's why it was done in house and it wasn't brought before you to ask you to vote or whatnot if you were that were having that. But, you know, if it certainly had been a situation of substance, first of all, they wouldn't have done it without you suggesting it and your approval.

DR. SPEARMAN: Right.

MR. GRIGG: But, secondly, let me just again reiterate there's nothing -- none of the changes ---

DR. SPEARMAN: I understand.

MR. GRIGG: --- for any board are of substance ---

DR. SPEARMAN: I'm not opposed to doing that. I think what I'm thinking about is in the future

and just to more or less understand the process.

MR. GRIGG: Yes, sir.

DR. SPEARMAN: And I think my concern would be that, even if it were something as innocuous as you have mentioned as an example ---

MR. GRIGG: Yes, sir.

DR. SPEARMAN: --- that I would feel more comfortable as a board member not voting on it per se, but at least being informed that that change was gonna be made. Just simply because, if it affects our law, I would think that this board would want to be informed of any proposed changes.

MR. GRIGG: Sure. And ---

DR. SPEARMAN: And I know this doesn't apply, but I'm just thinking in the future.

MR. GRIGG: No, I understand. Do you know how this started? Because I'm not sure on that. Do you know -- I mean, were the boards at any point consulted on that? I wasn't aware of that if they were.

MS. COMBS: Well, what happened was, when I was given this information and they asked for my input, and I -- that's where, you know, I

wasn't -- I didn't see the conflict in the one.

DR. SPEARMAN: Right.

MS. COMBS: And there's a couple of them that address basic DPA which doesn't exist, so I felt like there was not a problem with that.

DR. SPEARMAN: Right.

MS. COMBS: And about the CE. But anyways, and then that's why I thought -- and it was right about a board meeting time, so I presented it because I thought, if there's any -- if you -- to try to give you all some time.

DR. SPEARMAN: Right.

MS. COMBS: But I wasn't asked, you know ---

MR. GRIGG: And that's what I think has happened. Now the point that myself and the other attorneys came into play on this thing is -- just to tell you how it happened. I walked in and on my desk was a stack of my boards and Jamie had a stack of his boards and Sheridon had a stack. And we were told that a law clerk had gone through, had looked at some of this stuff. Now, what made them ask the law clerk to look at that, whether there had been some initial inquiry by various boards or

whatnot or the Legislature said y'all look at that, I'm not sure. And I can try to find that out for you. So I don't know how it actually started. But what has happened since then has been basically what she just described. The board administrator has mentioned it to the boards. But as far as consulting you, as far as a vote, yes, we'd like to see this happen, I don't think that's happened.

DR. SPEARMAN: I understand. And I think that, as a member of this board and probably other members of other boards might feel the same way, even an inadvertent mass vote change ---

MR. GRIGG: Sure.

DR. SPEARMAN: --- would be sometimes impossible to reverse if the wrong wording happens -- so that was the reason for the consultation.

MR. GRIGG: Sure.

DR. SPEARMAN: Not necessarily an approval, but certainly a consultation and a ---

MR. GRIGG: Right.

DR. SPEARMAN: --- a tacit approval that ---

MR. GRIGG: Right.

DR. SPEARMAN: --- at least understand why you're --

so I, I don't know that this will ever come up again. But just something that seemed a little bit unusual to me.

MR. GRIGG: And I can certainly try to get you a better answer than I don't know.

DR. SPEARMAN: I think my answer -- my question would be, if it ever comes up again, we would like to know in advance that this is being considered.

MR. GRIGG: Okay. And I can make sure I pass that along. I mean this came down from Katherine.

DR. SPEARMAN: I understand. And I'm not really complaining. I just see that there could be some areas that could be a concern to this board.

MR. GRIGG: And I don't disagree with you, and I see your point. I think part of the reason why it was done the way it was done, whether we agree with it or not, I think part of the reason why it was done the way it was done was because nothing in statute's being changed.

DR. SPEARMAN: Right.

MR. GRIGG: So none of the law's are being changed. It's just bringing the regs up to meet those statutes. And a lot of boards, just as

another example, a lot of boards there's things that are in the regs that just don't exist anymore. Like some of our older boards have something in there about the secretary of the board must do this, this. Well, once LLR was created, there's no more secretary. So nothing's being changed in the statutes.

DR. SPEARMAN: I understand. And I don't want to make such a big deal of it, especially ---

MR. GRIGG: But, no, that's a valid ---

DR. SPEARMAN: Just a clarification.

MR. GRIGG: No, it's a valid concern. And I'll certainly mention it to Holly and to Jamie because, unless he has another conflict, he'll be with you at the next board meeting probably. I'll certainly mention it. And I don't disagree with you. I think having the boards as well informed as possible is always a good thing, so. And I certainly don't think there's any intent to do otherwise. I just think the way it was presented, you just worded it very well. The way it was presented has been more of kind of information coming from the board administrators rather than consultation or approval or ---

DR. SPEARMAN: Right.

MR. GRIGG: --- anything like that.

DR. SPEARMAN: I think at the very least we would like to have that consultation.

MR. GRIGG: And I think that's ---

DR. SPEARMAN: Thank you.

MR. GRIGG: All right.

(Multiple speakers).

DR. WILLIAMS: Any other questions? Concerns? Anything else?

MR. GRIGG: No. I'm good if y'all are.

DR. WILLIAMS: Well, now does that bring us to new business, Cease and Desist Order?

MS. COMBS: I had that on there because there's -- just kind of give y'all a background of what happens concerning Cease and Desist Orders. And this concerned cosmetic contact lenses being reported to me being sold at inappropriate places that are no licensed coverage or no professional person involved. What happens is then I actually do the complaint, write up the complaint, Administrator's Complaint, and I request investigation. Investigator goes to the location to verify, you know, that this is

happening. Then that's brought back to me, and a Cease and Desist is written. And then I emailed you, and you do see what it is. And we electronically put on the signature, your signature. And I do have two that you can act on today. We've got a couple more. So we'll -- that's basically what happens on that type of Cease and Desist. Cease and Desist are normally -- it would be for an unlicensed person that, you know, we would -- I don't think you usually do a Cease and Desist to a licensee or -- I guess it can.

MR. GRIGG: You can, but it's rare.

MS. COMBS: It's rare. That's right.

MR. GRIGG: I mean the overwhelming time that they're used is for unlicensed practice ---

MS. COMBS: Kind of used for unlicensed practice. In this case, it's for cosmetic contact lenses.

DR. TUCKER: Is there a fine imposed or? I mean, how's that -- how does that work? Is there a fine imposed?

MS. COMBS: Oh, it can be. Nothing happens with the Cease and Desist when it's issued. It tells them what could happen to them. But then if

we would go back out or we find out they're still doing that, then it would have to go to Administrative Law Court to my understanding.

MR. GRIGG: Yeah, the Cease and Desist language, and again ---

MS. COMBS: And I do have the couple here if anybody would like to look at that.

MR. GRIGG: Since it is the overwhelming majority of the cases, I've used that as an example. The Cease and Desist language will usually say something to the effect -- and she's got copies here -- but something to the effect of basically, there's reason to believe you're not authorized to do whatever, so please cease and desist from any further activity involving that until such time as you've been properly licensed or authorized to do so. Something to that effect. There's no fine associated at that point. But, as she said, if the investigator goes back out and finds that you're violating that Cease and Desist Order, then there can be further action taken. Now the thing about the unauthorized practice or the unlicensed practice is, if they don't have a license, y'all don't have control over them.

Y'all don't have authority over them. So outside of asking them to stop doing something, y'all can't bring them in here as you would a licensee for a disciplinary hearing. That's why it goes to the Administrative Law Court as she just said. And whatever happens to them at that point happens there, not here. So.

MS. COMBS: Okay.

DR. WILLIAMS: I have one question just -- these complaints, were they reported by a lay personnel or by other -- or were they reported by licensed optometrists.

MS. COMBS: Licensed optometrists.

DR. WILLIAMS: All of them were reported by licensed ---

MS. COMBS: Yes. Yes.

DR. WILLIAMS: Okay.

MS. COMBS: The ones that we've been dealing with -- working with lately, yes. I'm going to go ahead and give these to you ---

DR. WILLIAMS: Okay. Thank you. And these are two additional ones?

MS. COMBS: Right. One was reported by an out-of-state optometrist that was vacationing in our

state. He said, I don't think that's right. Something's not right with that. I really appreciated that he let us know.

DR. WILLIAMS: I'll just read the bottom of this. It says, Violators may be punished by the imposition of civil penalties in amounts up to a thousand dollars for each violation, criminal penalties which may include fines or imprisonment as provided by law. This is more of, I guess of an informative statement to the offender.

MS. COMBS: Usually what happens, they'll tell the investigator when he or she goes in, they say, Well, we didn't know. We didn't know it was illegal. Yeah.

DR. TUCKER: And that little bottle it comes in, what does it say on that little bottle?

MS. COMBS: Right.

DR. TUCKER: Is there anything on there about Prohibited by law?

MS. COMBS: Must have a prescription.

DR. WILLIAMS: Are these the same investigators that would do the IRC type ---

MS. COMBS: Yes.

DR. WILLIAMS: --- investigative work?

MS. COMBS: Yes.

DR. WILLIAMS: It's the same?

MS. COMBS: Uh-huh.

DR. VAN VEEN: What about the wholesaler that's selling them the ---

MS. COMBS: I wondered about that myself. I mean, they're getting their supply from someone, some place. And ---

DR. VAN VEEN: Is there a responsibility for that wholesaler to, you know, know that this person's supposedly licensed to sell the product?

MS. COMBS: That's a good question. Dean, you have any thoughts on that?

MR. GRIGG: Again, I'm not familiar enough with your statutes to know specifically where to point you to. But I would think generally there's at least some basic due diligence of any license holder, that they must -- that they should know who they're working with and whatnot. So I think that's at least something worth us looking into and ---

MS. COMBS: See if there's anything we can ---

MR. GRIGG: --- if the investigators decide to go after that person, or that distributor I mean

or whatever, then. I don't know why they haven't or why ---

DR. VAN VEEN: I mean it should work just like I mean pharmaceuticals, wouldn't it? Selling to a pharmacy?

MR. GRIGG: I would think so. And I know from, because I do the Pharmacy Board, I know the Pharmacy Board does go after the distributors for things like that. So I would -- you know, and again, I can -- I don't have the answer now. I can look through here, and Jamie and I can try to find the answer.

DR. CANDELA: I don't think -- just so that we can't go after a non-licensed person, we wouldn't be able to go after the distributor because it's not under our jurisdiction. Would that not be correct?

MR. GRIGG: Well, do y'all have -- see, y'all -- again, I'm sorry. I'm handicapped here today. Do y'all have anything in your statutes that -- I mean, do y'all issue license for the distributors or anything? Is it all coming through the pharmacy?

(Board members shaking heads).

DR. TUCKER: That's Federal.

MR. GRIGG: That's all Federal? Then you would be right. If you had someone like the pharmacist, they issue license for distributors. And so if you had something like that and it could somehow be found that the distributor was knowingly distributing drugs to somebody who didn't have a license, then, yeah, I think something could be done. But, no, if y'all don't have anything in your statutes where you license a distributor, then you would be right.

DR. VAN VEEN: I mean, but couldn't we send a Cease and Desist to the distributor?

MS. COMBS: You want to issue a Cease and Desist to the distributor? You know, if we go to one of these places, maybe that's something I ought to request for the investigator to do, just at least ask. Now, whether they're going to say where they got them from, you know. But if we could find out, yes, I would assume a Cease and Desist could go to them also.

MR. GRIGG: And I think part of that would hinge on, again, do they know -- and then the question becomes your original question: What duty do they have to find out who they're working

with, who they're dealing with. And that'd be something we'd probably just have to sit down and look at with the investigators and figure out ---

MS. COMBS: Right.

MR. GRIGG: --- how easy that is to prove, what information we'd need.

MS. COMBS: We can check that.

MR. JOHNSON: It also might be a jurisdictional question too, you know, as in whether we would have jurisdiction ---

MS. COMBS: Right.

MR. JOHNSON: --- over an out-of-state distributor. I'm not sure because I haven't looked at it either, but jurisdiction might be a question also.

MS. COMBS: But, you know, all contacts are -- have to have a prescription. So I don't know. It ---

DR. WILLIAMS: But, you know, some of these may not even be -- in fact, a lot of them probably are not FDA-approved lenses. There's probably a whole little black market chain going on here.

MR. JOHNSON: Yeah.

DR. TUCKER: --- may not be any deterrent

whatsoever.

MR. GRIGG: It's something I'll definitely mention to Jamie and we'll start looking into, trying to get some answers for you guys on that.

MS. COMBS: Yeah. See if there's anything that we can do with that. Okay.

DR. WILLIAMS: Any other questions about this ongoing illegal practice? And I don't think this is different from a lot of states ---

MS. COMBS: No. It's all over apparently.

DR. WILLIAMS: I guess next we're talking about prescription pad requirements, which would be tab 4.

MS. COMBS: We've had a couple people to ask about what is actually required on a prescription pad because we had some ODs getting ready to order some. And I had talked to the Pharmacy Board and really, and it's in section 4; this is straight out of their law. It doesn't -- it states what a prescription drug order shall contain, you know, like the full name, da da da dah. And it doesn't really state anything about what should be pre-printed. I know down at the last one they talk about there must be two signature lines. And so I would think

that would be something people would like instead of having to draw a line, you know, on their prescription every time. But this about the only information I could get. I don't know if y'all have any additional information on that or. I know, in some meetings I've been at, it's been suggested that doctors do not pre-print their DEA number. And, you know, of course that's kind of the opposite, you know, if it's supposed to be included. But it was suggested not to pre-print it in case it was, I guess stolen or something.

DR. TUCKER: Is that in here that it says about the DEA number?

DR. WILLIAMS: I was wondering about that same thing as well. That's not mentioned in here?

MS. COMBS: It does state that you should include it if that's -- I believe if it's you're doing -- let's see. If a controlled substance ---

DR. WILLIAMS: Okay. I see it. I'm sorry.

MS. COMBS: Yes.

DR. WILLIAMS: I see it. So you have -- pre-printed would obviously be a different issue. It needs to be on there whether it's put on at the time ---

MS. COMBS: Right.

DR. WILLIAMS: --- the prescription's written or it's pre-printed on there.

MS. COMBS: Right. But that's all this is. It's basically for your information or if you have any other suggestions or anything. But this is out of the pharmacy law. I asked them about that. So really there's not anything that states it actually has to be pre-printed on the prescription pad.

DR. VAN VEEN: Does the pharmacist typically fill in the address for the patient?

DR. WILLIAMS: I don't put that in there.

DR. VAN VEEN: I've never put the address ---

DR. TUCKER: Typically they do.

DR. VAN VEEN: I guess the pharmacist can collect that data.

(Multiple speakers).

DR. SPEARMAN: But that would -- ultimately would eliminate the problem because these new software -- I mean these new electronic EHR systems have a certified prescription area. And you write a prescription electronically now and it prints out -- I mean it complies to all regulations.

MS. COMBS: Oh, okay.

DR. SPEARMAN: But that -- there are a lot of people that aren't using that at this point. But ultimately, we all ---

DR. WILLIAMS: I do think this will become less of an issue. And at some point in time, it probably won't be an issue.

MS. COMBS: Well, that's true.

DR. WILLIAMS: They probably won't take them by handwritten anymore at some point in time. Any further discussion on what we just talked about? All right.

MS. COMBS: I would like to kind of -- this is kind of a work in progress. We had talked about doing a definitions and policies and things in the book. And this is kind of the first step. In your tab 10, I have included -- and like I say, this is a work in progress -- information. And I think this is gonna be a good idea to include this. It'll have the different policies if you want to call that policies. Yeah, like we got the vision screening information, eye exam, and I've also included the engine, which is, you know, from Title 40 Professions and Occupations, and also

Physicians' Patient Records Act. And I'm going to set up tabs or something to be able to go to that, you know, real fast. Talking about discussing it in a meeting and, as I find things in maybe minutes I think would be good to, you know, have on hand if we need -- if we get into that area of discussion. And also, we may want to review it.

DR. VAN VEEN: That'd be great.

DR. SPEARMAN: This is really what I was hoping you'd do.

MS. COMBS: Okay.

DR. SPEARMAN: You're right on.

MS. COMBS: And it'll get better. I just ---

DR. TUCKER: This is fabulous.

DR. SPEARMAN: As a matter of fact, if you could email this to each of us and let us review it, I think we might even be able to make some suggestions.

MS. COMBS: That's what I'm thinking. We probably need to address or look at these again.

DR. SPEARMAN: I think you've done a great job. Just at first look.

MS. COMBS: And make sure this is still -- because some of these things are about ten years old.

And one thing I found after I sent that was that ophthalmic, the pre-op and post-op. And I didn't give that -- send that to you. I just got -- that's right, that was another one. And we can start reviewing them and make sure you're, you know, either bring them up to date or approve them as we got it, you know, have it and everything. So that's, like I said, we'll -- I'll continue working on that.

DR. SPEARMAN: Very good. And I think that we might be able to help you with some ideas and ---

MS. COMBS: Right. Okay.

DR. SPEARMAN: --- because this is -- if you could email us that, that'd really be good. You've done a good job.

DR. WILLIAMS: Anything else to that? And I'll just throw this out here. I know it's not written in the law, but, man, you just keep seeing this popping up. And, you know, one of these IRC complaints, I guarantee you what fired up that first one was not putting the PD on there.

DR. TUCKER: Oh yes.

DR. WILLIAMS: And when we send out a newsletter, maybe we want to say that it's, it's certainly

not a law or regulation that has to be part of the prescription. But I just have a sneaky suspicion, if these complaints continue to come up, it's gonna be like the eyeglass legislation, contact lens legislation. Somebody's gonna take it either to the state governments or the Federal governments, and it will be a law. So I would just say, professionally, just do it. They don't have to ask for it, just -- because, you know, eventually it will be a law. I just think it builds ill will between patients -- now, am I saying you need to sit down and do a binocular -- I mean, a monocular? No, I'm not saying that. But most of us have enough automated instrumentation that a PD runs by our eyes somewhere in the course of an examination.

DR. SPEARMAN: Well, the whole idea of online acquisition of durable medical equipment, to me, brings up another discussion. And that is, so let's just say we provide a prescription and a PD to a patient and they get their glasses online or whatever, contact lenses or whatever, and for some reason they're not satisfied with the resulting

vision. Now what is the liability of an optometrist if that patient comes back to us --

DR. TUCKER: You know, this is filled wrong. It says 60 lines; it's supposed to be 62. I want my money back.

DR. SPEARMAN: I went to Walmart and they re-measured me and they came up with not 61-and-a-half, but 62. And then I called the company that provided them and they assured me that that was what was wrong my ---

DR. TUCKER: Yep, that's right. I want my money back.

DR. SPEARMAN: And we're gonna be hearing those types of ---

DR. TUCKER: You better believe we are.

DR. SPEARMAN: And I think we need to at least give it some thought. I'm not sure that I have the answer to that.

DR. WILLIAMS: It's certainly the flip side of the coin.

DR. SPEARMAN: And, you know, we deal with that every day when people actually take their prescription and go somewhere else.

DR. WILLIAMS: To me, that's buyer beware.

DR. SPEARMAN: Right. Well, you know, for example, now if someone comes to you and they say I'd like to have my ---

DR. WILLIAMS: Uh-huh. Yeah.

DR. SPEARMAN: --- provided in a prescription and they take it somewhere else, and then they come back and say, Well, I can't see with these glasses for whatever reason. We re-check the prescription and say, Well, you know, in fact I think I am going to recommend a different prescription here based on your responses to that or based on the information. You write a new prescription. And we generally would put on their doctor's error, and the person that actually fabricated the glasses would re-make those at no charge to the patient. I'm not sure that the online producers of these spectacles and lenses are going to do that. And then ---

DR. WILLIAMS: Probably not.

DR. SPEARMAN: I think you're right. I think it's buyer beware, but we're going to be dealing with that in the future. And you're going to be hearing about it before we do.

MS. COMBS: Uh-huh.

DR. SPEARMAN: So it's something that we need to at least give some thought to, not as a unit but as -- individually so we can address that when it happens.

MS. COMBS: Right.

DR. WILLIAMS: And if they just -- if they ask me for a PD and I write down the distance PD that my instrumentation gives me, and I tell them that. I say, This is, you know -- I say, This measurement is generally done by whomever fabricates your eye wear. I say, You're not going outside of that normal process, then I say -- I said, This measurement is probably correct, but it is generated by an instrument -- by instrumentation, so I would consider it to be an approximation.

DR. SPEARMAN: Well, it is ---

DR. WILLIAMS: And you just need to be aware.

DR. SPEARMAN: They're more critical (inaudible).

DR. WILLIAMS: True. And how they do that ---

DR. SPEARMAN: I have no -- they guess. I can tell you how it's done. There's no other way to do it.

(Multiple speakers).

DR. WILLIAMS: And I just, you know, I just -- I

don’t know. I just ---

DR. TUCKER: It’s coming, though.

DR. WILLIAMS: --- know when you don’t give them the information which they think that you have, that that just -- that creates ill will. Whether it’s accurate information I think is debatable, but when somebody purchases a pair of glasses, that’s information that is generated at that time of ordering those spectacles and I would say it’s included implicitly as part of the service that whomever’s providing that eye wear is getting paid for. You know, that’s part of the service. Now if they want to, you know, really measure -- you know, the accurate, the most accurate possible, then I think the provider has every right to charge them for that.

DR. TUCKER: Sure. Absolutely.

DR. WILLIAMS: Because it’s a service. It requires certain instrumentation and it requires somebody to do it. It’s just a interesting scenario. That’s all I’ve got to say ---

DR. VAN VEEN: How many times ---

DR. WILLIAMS: --- (inaudible).

DR. VAN VEEN: --- do you get asked that ---

DR. WILLIAMS: Not much.

DR. VAN VEEN: --- in a week or month or ---

DR. WILLIAMS: Probably once or twice a month. I wouldn't say it's a weekly.

DR. SPEARMAN: Maybe.

DR. WILLIAMS: Yeah. It's not always.

DR. TUCKER: It's increasing.

DR. WILLIAMS: Yeah, and it will increase.

DR. SPEARMAN: Well, if somebody gets a pair of glasses, likes them ---

DR. WILLIAMS: I think there's maybe software out there now that actually you can, you know, obviously they say they have ways of measuring the seg height online from some type of instrumentation ---

DR. SPEARMAN: I'm sure they do ---

DR. WILLIAMS: --- then there's probably that capability of doing a PD.

DR. CANDELA: It's hard enough with adaptations and stuff like that, different progressives. Just doing it out of your practice and having them come in with the complaints that they have and just -- and stuff like that. Fitting progressives online, it's absolutely insane.

DR. WILLIAMS: I agree.

DR. SPEARMAN: I agree. Low, low-end progressives.

DR. CANDELA: Yeah.

DR. SPEARMAN: Which are always gonna be a problem. (Multiple speakers).

DR. WILLIAMS: So it just puts us in a situation in that the patient's almost, almost setting themselves up for failure. And it just ---

DR. CANDELA: Just ---

DR. WILLIAMS: Either that or they could adapt to anything. But it just -- I'm with Peter ---

DR. CANDELA: I don't give out PDs on my prescription. When they come back in, they say they want to have it so they can -- then I'll go ahead and do it.

DR. WILLIAMS: Oh, and I don't give it out either unless ---

DR. CANDELA: --- in their chart. And I'll say, This is just for my own benefit. Recommend the patient not to purchase glasses over the Internet, so. Then, when they do come back, I can only say Told you so, with a smile.

DR. WILLIAMS: That's a shame. Okay.

DR. CANDELA: I do have a question, if we can go back to the contact lens thing. The non-

prescription contacts.

DR. WILLIAMS: Okay.

DR. CANDELA: In that -- in our law, there's something in there specific to anyone practicing as an optometrist by doing certain things like, you know, doing auto refractions, things of that nature. All right, so on tab 10 for the Professions and Occupations, Article 1 -- no, I'm sorry. Would be Section 40-1-200, Unlawful practice. Could this section, 40-1-200, be applicable to the contact lens thing because this has a lot more bite than the little Cease and Desist bark?

DR. WILLIAMS: That might be what's -- there is quotation from the law when they get the Cease ---

DR. CANDELA: So does it say this: A person who practices or office that practices a regulated profession -- that would be by dispensing contact lenses of which they have no license, right?

DR. WILLIAMS: As far as I'm concerned, Angie, if you want to read that out?

MS. COMBS: Okay.

DR. WILLIAMS: Do you have the Cease and Desist

Order over there that I just signed?

MS. COMBS: Oh, yes.

DR. WILLIAMS: I think Peter would like to know what the verbiage is on that.

DR. CANDELA: What are they stating for the practice ---

DR. WILLIAMS: --- I'll send it over to him and he can ---

DR. CANDELA: --- because this one isn't our Practice Act. This is Board of Regulation, professions in general.

MS. COMBS: --- what they call the engine.

DR. CANDELA: Tab 10 and then Section 40-1-200, Unlawful Practice.

MS. COMBS: Says they're guilty of a misdemeanor.

DR. WILLIAMS: That's what's written on there now and that would be ---

(Multiple speakers).

DR. CANDELA: This one has they can be fined not more than $50,000.

DR. WILLIAMS: What section are you reading?

DR. CANDELA: 40-1-200.

DR. WILLIAMS: Where do you see the ---

DR. CANDELA: Oh, it's tab 10.

DR. WILLIAMS: Yeah, I'm at 40-1-200. I'm sorry --

never mind.

DR. CANDELA: Just that right around the bottom, 40-1-200. Yeah. Unlawful Practice. That certainly is a stiffer penalty. And so someone that dispenses contact lenses without a license, would they not be considered, under our Practice Act, practicing optometry?

DR. WILLIAMS: Uh-huh. And that's what that says. But this -- you're right, this one says it broader. And that's more specific to our profession.

DR. CANDELA: Okay. But this one says that they can be guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than $50,000. That's a lot more scarier than this thing here.

(Multiple speakers)

DR. WILLIAMS: Maybe they would be willing to ---

DR. CANDELA: That's what I was asking, to see if they can ---

DR. WILLIAMS: --- to include that ---

DR. CANDELA: --- incorporate this ---

DR. WILLIAMS: -- - include that wording on there.

DR. CANDELA: --- in that wording.

MS. COMBS: Can we use ---
(Multiple speakers).
DR. CANDELA: --- we said that it gets taken away from the board if it goes to Administrative Law, right? Well, this is the Board Regulation Professions and Occupations, so they're practicing optometry without a license dispensing the contact lenses. Could we not go ahead and ---
DR. TUCKER: You have to define what practicing is. They're just selling a product so, and that's what they would argue. I'm just ---
DR. CANDELA: I know ---
(Multiple speakers).
DR. CANDELA: --- they need to do. They come look at our law to see what our law says as far as what's -- what -- how it's explained practicing optometry. And if that were fit within that ---
MR. GRIGG: Again, the difference is, under your Practice Act -- see, again, nothing y'all are doing is convicting somebody for criminal acts. Y'all don't have that authority. He brought up -- Isaac brought up jurisdiction earlier. Y'all don't have that jurisdiction

to convict somebody of a crime. So this is saying that that can happen under the engine, but again that goes to a different court. That doesn't come from y'all. The Cease and Desist is a different beast.

Now, if they're found to have violated that Cease and Desist, that order then may can be used against them to try to go after them criminally. I say maybe because I don't know that that's ever been done, and I've never tried to do it, so I can't promise that that's how it would work. But I think that's how it would work. But what the Cease and Desist is is what y'all have authority to do, which is tell them to stop.

DR. CANDELA: Right, but I ---

MR. GRIGG: And if you're not doing that ---

DR. CANDELA: Correct. But I guess what I was asking, if y'all could, from the law side, evaluate that 40-1-200 and see if that language could be incorporated into the Cease and Desist since it has a bigger, bigger bark.

MR. GRIGG: Well, but y'all don't have the authority to do what this is saying. That has to come from the Administrative Law Court in a

different court. That's what I'm saying. This 40-1-200, just because y'all issue a Cease and Desist, y'all don't have the authority to convict somebody and send them to prison.

(Multiple speakers).

DR. CANDELA: --- this is convicting them on this violations too. It says Violations may be punished by the imposition of civil penalties.

MR. JOHNSON: Right, but this is more criminal. Any time you start saying language under 40-1-200 it talks about guilt, being a misdemeanor and a conviction ---

DR. CANDELA: Right.

MR. JOHNSON: --- that's more of a criminal nature, and that -- they can be imprisoned or fined under this in addition to what happens under administrative law.

DR. TUCKER: So it's civil versus criminal, that's what you're talking about?

MR. JOHNSON: Right.

MR. GRIGG: Generally speaking, right.

MR. JOHNSON: Generally speaking, yes.

DR. VAN VEEN: I think maybe what Peter is asking, is there any way to say, Failure to do so,

this will be turned over to XYZ and then state 40-1-200.

MS. COMBS: Well, it could lead to ---

DR. CANDELA: You could be considered practicing optometry without a license and may then incur possible potential penalties such as -- something to make the language a little more stronger.

MR. GRIGG: I'm not going to say it's not at all possible. And we'll certainly look at it. But, again, y'all don't have the authority to do that. So ---

DR. VAN VEEN: We're just educating the people we're cease and desisting.

DR. CANDELA: This order right there is just educating too, so let's just educate a little more -- bigger bark. I mean, that's all I'm saying.

MS. COMBS: I guess it's being able to say the possibilities of what could happen.

DR. CANDELA: Whatever it's saying there, except expand it out to potentially what that says. Because we're not able to do that either. That's still gonna have to go to an Administrative Law Judge so.

DR. TUCKER: Well, who brings criminal charges now? You're talking about this going to a Civil Court, right? Who would bring the criminal charge?

MR. GRIGG: It would have to be turned over for investigation whether it be to the Attorney General's office or to a local law enforcement or whatever. I mean that would have to come from them and ultimately a solicitor.

MR. JOHNSON: Right. An agency that has the power to arrest.

MR. GRIGG: I mean nobody in this agency, whether it's a board member or a lawyer or Katherine or whoever, has the authority to initiate criminal proceedings. And see, that document is not initiating any kind of criminal proceedings. It's simply saying stop doing what you're doing based under 100 (A), I think is what it cites, because that's simply saying cease and desist from what we feel you're doing that's inappropriate. The Administrative Law Court, if they take up a violation of that order, is only going to consider the civil part of that because that's all that's before them is the violation of

that Order at that point. And that will be argued by lawyers from this agency. To bring it under this 200 that you're asking about -- and again, I don't know that it's been done. I'd have to find out exactly how it works. But what you take -- something that comes out of the civil part of it and you then turn it over for investigation by law enforcement or whatever, somehow or another it's got to be turned over to law enforcement, someone that has that authority to do so for the criminal part of it. Nothing this board, nothing this agency and nothing the ALC would do from that Order would lead to imprisonment or other criminal penalties.

MR. JOHNSON: It would have to be SLED or at least the local police department, sheriff's office: An agency that has the power of arrest. I mean, we couldn't get involved in any kind of situation ---

DR. TUCKER: So there's got to be significant injury for that to even be considered then, right?

MR. JOHNSON: It has to fall under the --- (Multiple speakers).

DR. TUCKER: --- gonna say This ain't worth my time.

I'm not ---

MR. JOHNSON: The action would have to fall under 40-1-200, the elements of that offense would have to be met in order for a law enforcement agency with the power of arrest to get involved.

DR. SPEARMAN: And I probably don't want to belabor this a lot more, but just for example, if a service station was selling prescription medication out of their place of business, is the likelihood they would get a Cease and Desist Order? Or would someone go in and say you're practicing medicine without a license or practicing pharmacy without a license?

MR. GRIGG: I mean, both could happen.

DR. SPEARMAN: I understand. But what ---

MR. GRIGG: The likelihood from this agency, the Pharmacy Board, y'all's board, whoever, would be they'd get a Cease and Desist because that's as much authority as you have.

DR. SPEARMAN: Now if they were selling illegal drugs, that's another thing?

MR. GRIGG: That could be turned over to ---

DR. SPEARMAN: But prescription medication, I guess we're looking at the potential damage to the

person ---

MR. GRIGG: But I think what -- I think that's what 200 here is leaving the door open for is, okay, it is prescription drugs. So the drug itself is not illicit, but their activity is because they don't have the authority to sell it.

DR. SPEARMAN: Right.

MR. GRIGG: That still can be turned over and investigated by the proper authorities like Isaac's explaining. And I think that's what this 200 is there for. I think that's, that's what it's leaving the door open for. It's not -- and don't get me wrong, I certainly don't mind us asking these questions and us running it up the flagpole and see if, if we can do it. I just don't think it -- I personally don't see where it really has a place in that order because that's the civil side. That's what the board would do to somebody selling drugs without the authority, is tell them to stop doing it. The law enforcement side would get into, okay, you're selling drugs without the authority to do it. Under criminal code section blah, blah, blah, blah, blah, we're

gonna go after you for that. And it's just two completely separate actions that take place in two completely separate court rooms and have different players and all of that.

MR. JOHNSON: We wouldn't even get involved in something like that. And advising an individual of something that could potentially be a criminal act -- I mean, we only have, you know, we only look -- are looking at an offense from a civil standpoint. I mean to go beyond what we are capable of ---

DR. SPEARMAN: But is this issued by us? This ---

MR. GRIGG: The Cease and Desist, yes.

(Multiple speakers).

DR. VAN VEEN: Is this investigated -- I guess somebody goes by and ---

DR. WILLIAMS: That's what Angie was saying, that the complaint comes to her. She then turns it over to the investigators and so they send somebody down there to see if in fact the complaint is true. And in this case, I guess times four now, because we've already signed off on two electronically -- these would be three and four -- it was found that that was in fact the case. So now they get a Cease and

Desist. And then ---

DR. VAN VEEN: So they don't get this until they're actually investigated?

DR. WILLIAMS: Investigated, that's right.

DR. VAN VEEN: Which -- and then once -- okay, say --

DR. WILLIAMS: What's that time, two months, one month?

DR. VAN VEEN: --- then you tell them to stop?

MS. COMBS: Right.

DR. WILLIAMS: One or two months or three?

DR. VAN VEEN: I mean, how do you make sure that they stopped doing it once they're told not to?

MR. GRIGG: Well, and here's the thing you've got to remember. They haven't been proven to have violated anything. I mean it's simply the investigation has evidence that supports this allegation that they are practicing without a license. So that's what this document -- and that again is why it's a civil and not a criminal matter a lot of times is we're not saying you've been proven to have done anything. We're saying we have reason to believe that you're doing something. Stop

doing it. And then, as Angie said, the investigator makes a return visit. If they find evidence supporting that you're still doing it, then the Office of General Counsel down here on the first floor will go to the Administrative Law Court and will seek to have stiffer injunctions, possibly suspension orders. There can be civil fines I think, you know, civil penalties, though, that the Administrative Law Court can at that point do that -- because they're not licensed, y'all can't do to them. But, again, that's all a very different -- that's all a very different thing than the criminal side of it. There can be a corresponding criminal matter that's ongoing. In fact, that happens a lot. I don't know if that happens a lot with y'all's cases, but that happens a lot with Nursing Board, Medical Board -- a lot, you know, when you get into drug use and drug diversion and whatnot, so. But I certainly don't mind asking -- it's a great question ---

DR. CANDELA: I'm just asking ---

MR. GRIGG: Well, no, it's a great question. And you know, just because I have a particular

take on it doesn't mean I'm right. So it's worth us looking into and just seeing what we can do with it.

DR. SPEARMAN: The fact is it's a very common practice. The people that are doing this don't have a lot of fear of repercussions ---

DR. TUCKER: Cease and Desist Orders.

DR. SPEARMAN: --- so what we're trying to say is, if we could add a little bit more meat to it, it may help. But if we can't, we certainly would understand that.

MR. GRIGG: And I don't disagree. I'm all for making things as strict as y'all can possibly make them. I've got no personal problem with that at all. I just, I don't think that's the intent of this statute. But it's worth us looking at it, and we'll be glad to do it.

DR. CANDELA: Thank you.

DR. WILLIAMS: Thank you. Any other discussion on that one or anything else that somebody would like to re-visit that we maybe talked about before and went through a little quickly? Anything else to come before the board today? I mean is there anything I'm missing on the agenda?

DR. SPEARMAN: This may be a record for you. Adjourn before dark.

(Multiple speakers).

DR. SPEARMAN: The bad news is, adjourning before dark in the middle of July is a lot different than adjourning before ---

DR. WILLIAMS: Exactly. That's very true.

MS. COMBS: That's true.

DR. WILLIAMS: Well, hearing no other information be brought before the board, I'll entertain a motion that we adjourn.

DR. VAN VEEN: So moved.

DR. TUCKER: Second.

DR. WILLIAMS: Second. All in favor?

BOARD MEMBERS: Aye.

DR. WILLIAMS: I'd say we're adjourned, and we'll reconvene on the 15th of February in Room 204 that time, right?

MS. COMBS: Right. That'll be upstairs.

(Whereupon, at 4:12 p.m., the proceeding in the above-entitled matter was concluded.)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

Be it known that I, Tina F. Behles, Nationally Certified Court Reporter and Notary Public in and for the State of South Carolina, took the foregoing discussion session commencing on Wednesday, November 2, 2011 at the offices of the South Carolina Department of Labor, Licensing and Regulation, 110 Centerview Drive, Columbia, South Carolina;

That the foregoing 69 pages constitute a true and accurate transcription of the proceedings and all testimony given at that time to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any manner of its outcome.

In witness whereof, I have hereunto set my hand and seal this 23rd day of November 2011.

_____
Tina F. Behles, CVR
Notary Public for South Carolina
My commission expires January 13, 2020

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