

South Carolina Department of Labor, Licensing and Regulation (LLR)
South Carolina Board of Examiners in Optometry
Regular Board Minutes
March 31, 2010
Synergy Business Park
110 Centerview Drive, Kingstree Building, Room 108
Columbia, South Carolina

Public notice of this meeting was properly posted at the Board office and provided to any requesting persons, organizations, or news media in compliance with Section 30-4-80 of the 1976 South Carolina Code, as amended, relating to the Freedom of Information Act. A quorum was present at all times. Dr. Williams called the meeting to order at 2:15 p.m.

BOARD MEMBERS PRESENT:

Dr. Robert N. Williams, President
Dr. Kenneth M. Nash, Vice President
Dr. William W. Spearman
Dr. Derek Van Veen
Dr. Thomas E. Tucker
Isaac L. Johnson Jr., Esquire, Public Member

PUBLIC MEMBER POSITION: One Vacant

ALSO PRESENT:

Dr. Joel G. Bailey, S.C. License #705
Mr. Richard P. Wilson, Special Counsel/Program Coordinator,
Recovering Professional Program (SCRPP)
Mr. Frank Sheheen, M.S., CACII, Program Director,
Recovering Professional Program (SCRPP)
Julie S. Cole, LMSW, CACI, Recovery Specialist, SCRPP
Dr. Frank W. Forgnoni, S.C. License #1393
William Hinnant, Jr., M.D., Esquire

SCLLR STAFF PRESENT:

Daniel Grigg, Office of General Counsel
Paula Magargle, Office of General Counsel
David A. Love, Chief, Investigations and Enforcement
Cheryl McNair, Investigations and Enforcement
Angie M. Combs, Administrator
Janice D. Meetze, Administrative Assistant

The agenda for the March 31, 2010 Regular Board Meeting was presented for review and approval. A **motion** was made by Dr. Spearman and seconded by Dr. Nash to accept the order of the Agenda. The motion carried.

A **motion** was made by Dr. Spearman and seconded by Dr. Van Veen to accept the December 10, 2009 minutes as written. The motion carried.

INVESTIGATIVE REVIEW COMMITTEE (IRC) REPORT

Three complaints came before the Investigative Review Committee held on March 24, 2010. David Love presented a brief synopsis of each complaint along with the logic for each IRC recommendation. Investigator McNair provided investigation information. Two cases were recommended for dismissal due to no violation of the Practice Act found. The IRC recommended for the third case to proceed with a formal complaint/MOA due to discovery of Practice Act violations.

Motion: A motion was made to accept the IRC dismissal recommendation on Case #2009-10, Case #2009-13, and to initiate formal complaint proceedings on Case #2009-9 which will be brought before the Board for a hearing on a date certain. The motion was seconded. The motion carried.

Office of Investigations and Enforcement Report: David Love provided the Board a written report with case information for 2009.

- Closed: 12
- Do Not Open Cases: 2
- Pending Board Hearing: 1
- Pending IRC Recommendation: 3

As of March 31, 2010 there is one ongoing active investigation.

Mr. Love and Ms. McNair departed the meeting at 2:23 p.m.

Office of General Counsel Report: Ms. Magargle informed the Board that the case they are hearing today is the only case in the Office of General Counsel for Optometry.

EXECUTIVE SESSION

Motion: A motion was made that the Board be recessed to go into executive session for LLR Legal Counsel to advise as to guidelines and protocol for a hearing. The motion received a second. The motion carried and the meeting was recessed at 2:24 p.m.

RECONVENE IN PUBLIC SESSION

Motion: A motion was made that the Board reconvene in public session. The motion received a second. The motion carried. The meeting reconvened at 2:45 p.m.

REQUEST FOR RELEASE FROM TERMS AND CONDITIONS **Joel G. Bailey, O.D., License #705**

The Request for Release from Terms and Conditions from Joel G. Bailey, O.D., License #705, was conducted by the Board and recorded and transcribed by certified court reporter, Tina F. Behles, CVR.

The following is provided for information only:

Motion: *A motion was made that the Board be recessed to go into executive session to discuss the Request for Release from Terms and Conditions from Joel G. Bailey, O.D., License #705. The motion received a second. The motion carried. The meeting was recessed at 3:05 p.m.*

RECONVENE IN PUBLIC SESSION

Motion: *A motion was made that the Board reconvene in public session. The motion received a second. The motion carried. The meeting reconvened at 3:10 p.m.*

Motion: *A motion was made that the Respondent, Dr. Joel G. Bailey, shall be granted release from all restrictions, terms and conditions of the February 7, 2005 Order and his license shall be and is hereby released from all such restrictions, terms and conditions. The motion was seconded. The motion carried.*

Dr. Bailey, Mr. Sheheen, and Ms. Julie Cole departed the meeting at 3:12 p.m.

REPORTS / INFORMATION

Licensee Totals: Ms. Combs reported there are 731 South Carolina licensed optometrists; 468 are in state.

The Office of Licensure and Compliance (OLC): OLC is now processing initial licensure applications and renewals. Their report stated there are currently seven applications that are being processed for licensure.

Office of Board Services: Effective January 4, 2010, the Office of Board Services (OBS) was created to provide the day-to-day services to the all licensing boards and commissions. All administrators and assistants are part of OBS.

Financial Report: State agencies are facing budget cuts. In addition to the required 10% being submitted annually to the General Fund, LLR gave back nine million dollars with anticipation that additional cuts will be made.

Branch Registrations: Dr. Huber Sims, Spartanburg, S.C., Dr. Mark Taylor, Columbia, S.C., and Dr. James Taylor, Columbia, S.C., have applied for branch registrations in South Carolina.

Association of Regulatory Boards of Optometry (ARBO) National Meeting – June 13-15, 2010: Ms. Combs stated she would request approval for Dr. Williams and herself to attend the ARBO meeting in Orlando, Florida.

Statement of Economic Interest Forms: The 2010 Statement of Economic Interests form filing is due to the State Ethics Commission by April 15, 2010. Late filing and failure to file will result in penalties starting at \$100 if the form is not received within five days of the deadline.

Board Member Election & Appointment Update: An election to fill two Board member vacancies was held December 11, 2009 immediately following the S.C. Optometric Physicians Association business meeting. Dr. Tucker was reappointed and Dr. Peter Candela was appointed to the Board by the Governor. Dr. Nash's term will expire in May 2010 and is not eligible for reappointment due to term limits; the Board expressed its appreciation for the valuable and dedicated service he provided to the Board and the citizens of South Carolina.

H.3303 Optometry Legislation Update: Ms. Combs reported that H.3303 is currently residing in the House Committee on Medical, Military, Public and Municipal Affairs.

Future Board Meeting Dates: Board members were reminded there would be no travel reimbursement for meetings held in locations other than offices of LLR and agreed to meeting dates of August 26, 2010, Myrtle Beach, S.C., and October 27, 2010, Columbia, S.C., with the stipulation that if any issues arise that need Board attention, an appropriate meeting date and time would be called.

Continuing Education Course Approval: No courses presented for review.

UNFINISHED BUSINESS

Licensure Applicant with a CELMO Certificate: Ms. Combs stated that ARBO does require official transcripts and National Board Scores to obtain a CELMO Certificate and will provide the Board with copies. Approval was given to the licensure applicant who presented a CELMO Certificate.

Board Official Recognition/Attendee Certification for Specific Courses: Ms. Sharon Dantzler, LLR Counsel, has advised that until legal requirements mandate certification, official board recognition of education courses for future use is not recommended.

SCOPA August 2010 Education Seminar – CE for October 1, 2012 renewal: The Board will accept SCOPA continuing education credit from the August 2010 Education Seminar to meet the October 1, 2010 or October 1, 2012 biennial renewal requirement.

NEW BUSINESS

Use of EpiPen in Emergency Situation: The Board was asked for an opinion on the use of an EpiPen in an emergency situation given that under existing law optometrists are prohibited from medications being given by injections. Ms. Combs consulted with Ms. Dantzler and she stated that Section 15-1-310 (Good Samaritan Statute) is relevant to this inquiry more than any other law. Basically, a person that gratuitously renders emergency care shall not be liable for any civil damages for any personal injury as a result of emergency care.

Endorsement Candidate Application Review: Upon Dr. Nash's term expiration and departure from the Board on May 13, 2010, Dr. Van Veen agreed to review future endorsement candidate applications.

Approval CE Categories for License Renewal: The Board received a letter inquiring as to why a course pertaining to injectables and laser procedures was allowed full continuing education credit, yet the number of courses pertaining to practice management are immensely limited. Ms. Dantzler advised Ms. Combs that the Optometry Regulations are very specific concerning continuing education credits; approved categories could be taken under advisement when continuing education requirements are again reviewed. *Note: practice management courses are not accepted for required CE.*

New Business to be continued after completion of the hearing.

HEARING – Case #2009-3

The Hearing of Case #2009-3 was conducted by the Board and recorded and transcribed by certified court reporter, Tina F. Behles, CVR.

The following is provided for information only:

EXECUTIVE SESSION:

Motion: *A motion was made that the Board be recessed to go into executive session to deliberate Case #2009-3. The motion received a second. The motion carried. The meeting was recessed at 7:35 p.m.*

RECONVENE IN PUBLIC SESSION:

Motion: *A motion was made that the Board reconvene in public session. The motion received a second. The motion carried. The meeting reconvened at 8:25 p.m.*

Motion: *Mr. Grigg made a motion that the Respondent, Frank W. Forgnoni, O.D., is hereby publicly reprimanded; Respondent's license shall be placed in a probationary status for two years on the date of the Final Order in this matter and shall have no other complaints against his license; Respondent shall provide proof of satisfactory completion of a board-approved professionalism and ethics course to be completed at his own expense within one year from date of the Final Order, and failure to comply satisfactorily with any of the requirements shall be deemed in violation of the Order, which may result in the Board taking further action against Respondent's license, which shall take effect upon the date of service on the Respondent. The motion received a second. The motion carried.*

Dr. Forgnoni and Dr. Hinnant departed the meeting at 8:30 p.m.

The Board returned to New Business at 8:32 p.m.

NEW BUSINESS (Continued)

Review Optometry Law Section 40-37-390 – unlawful advertising practices: Ms. Dantzler had, at the request of Ms. Combs, previously advised that discipline is an available option for the Board to use against a licensee that provides optometric services and thereby benefits from unlawful and misleading advertising practices.

Tasks Performed by Unlicensed Assistants – Inquiry: The Board previously concurred that tasks can be delegated and performed by unlicensed assistants while under the direct supervision of a licensed optometrist as stated in the Optometry Practice Act.

ANNOUNCEMENTS

The next Board meeting is scheduled for August 26, 2010, Myrtle Beach, S.C.

There being no further business or announcements, Dr. Williams adjourned the meeting at 8:45 p.m.

*Meeting recorded and minutes transcribed by Janice D. Meetze, Administrative Assistant.
Minutes reviewed and edited by Angie Combs, Administrator.
Minutes presented to the Board for final approval.*