

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
BOARD OF EXAMINERS IN OPTOMETRY
550 W 7th Avenue Conference Room 1270
Anchorage, Alaska

April 19, 2013

By authority of AS 08.01.070(2) and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Board of Examiners in Optometry was held April 19, 2013 at 550 W 7th Avenue, Conference Room 1270 in Anchorage, Alaska.

Friday, April 19, 2013

Agenda item #1 - Call to Order

The meeting for the state of Alaska Board of Examiners in Optometry was called to order by Dr. Graves, Chair at 9:14AM.

Those present, constituting a quorum of the board, were:

James Graves, OD, Chair
Grant Humphreys, OD
Paul Barney, OD
Forrest Messerschmidt, OD
Immanuel Lewis, Public Member

Present from the Division of Corporations, Business & Professional Licensing:

Nathan "Nate" Vallier, Licensing Examiner
Harriett Milks, Assistant Attorney General (via telephone)
Michelle Wall-Rood, Investigator
Jay Paff, Investigator

Present from Legislative Branch:

Brittany Abbott, Auditor (via telephone)

Dr. Graves welcomed Dr. Humphreys to the board, who came to Alaska in 1990 and served as the clinic director in Barrow for 9 years and also served in Valdez, Dillingham and presently works in Anchorage with the Southcentral Foundation.

Agenda item #1 - Review / Amend Agenda

Staff was advised that a board member needs to leave the meeting early, therefore the agenda should be modified as to move general business to after lunch in order to ensure full participation.

On a motion by Dr. Barney, seconded by Dr. Humphreys, IT WAS RESOLVED TO APPROVE THE AGENDA as modified. All in favor, no nays. No further discussion.

Agenda item #1 - Ethics Reporting

There were no ethics violations to report by Board members or staff.

Agenda item #2 - Review / Approve Minutes-November 2012

Minutes from the November 2012 board meeting were reviewed.

On a motion by Dr. Barney, seconded by Dr. Messerschmidt, IT WAS RESOLVED TO APPROVE the November 2012 MEETING MINUTES. All in favor, no nays. No further discussion.

Agenda item #3 – Investigative Report

Present from Investigations was Michelle Wall-Rood and Jay Paff who oversees Dispensing Opticians. Investigator Wall-Rood explained the investigation process to the Board – whereby a citizen may contact the division with a possible complaint, which is then processed as an “intake” when there is a potential violation of state laws. Once the intake becomes a complaint, the Division contacts the respondent, gathers the information and then submits the information to a board member for review. If there are violations or concerns, then it becomes an investigation. The Board has 2 open complaints, and 3 cases were closed at the intake status. Two were incomplete complaints, the 3rd was a license application problem.

Agenda Item #4 – Renewal Review

Staff presented renewal data from the latest licensing period, ending on December 31, 2012. Included was a list of those who have failed to renew, the number of late renewals, and total licenses renewed. This information allows the Board to see any trends in the change of licensed professionals in the State moving forward.

Agenda Item #5 - Travel

The budget tightening by the State and Division has resulted in additional information from staff in order to travel out of state and/or for meetings. The Board has asked to send a representative to the ARBO conference (national association) as it was included in the annual budget. Dr. Barney attended in 2012 and it was helpful to see what was happening in other states regarding regulatory issues and the injections education; as well as how other states handle disciplinary issues and able to show other states how Alaska is treating these issues – it is a great way to exchange information and learn.

Staff's concern is that the board can receive \$1,000 in stipends from the national groups to attend the meeting, which should count towards the board member's travel – estimated at \$1900 this year – resulting in a net cost of \$900 against the Board. However, the funds do NOT go towards the Division or Board travel budget, but into the State's General Fund. Staff also mentioned that any fees received from occupational fines do not go to the Board or Division either, while the Board and licensees have to pay for the cost of the investigation. Staff said there is a current bill in front of the legislators that will fix some of the issues, while the Board can't necessarily take a stance – it is important to bring this up to AKOA so that the licensees can contact their legislators for supporting this bill (HB 187). Chairman Graves inquired about who contributes to the general fund, staff advised that it's funded by taxes & fees

charged by the state (ie – oil taxes). Board asked about license fees – staff advised those do stay within the Division / Board. There was also concern by the board over specific line-item travel expenses regarding the use of a taxi versus rental car as the Division has required board members to provide a business-reason for needing a car rental. The Board members feel they should be given a set amount for ground transportation and spend as needed. Board doesn't agree with the new policy requiring a business reason to rent a vehicle as board members are volunteering for this position and felt this was over-reaching.

Agenda Item #6 – Discussion with Director

Director Habeger joined via telephone. The Board inquired as to the annual report budget and travel requests, the Board doesn't understand the process since the budget was approved yet now the Board is being told it may not be approved. Director Habeger stated there wasn't a "no" on the out-of-state travel request at this time, however there are concerns over the budget as the board is facing a cumulative deficit even after the latest renewal which resulted in a fee increase. The Division is tasked with keeping the budget in a "neutral" position and must review expenses in a more conservative manner as well as fee increases (or decreases). In the latest fee increase, the Division did not receive any feedback regarding the latest 100% fee increase. The Division also underwent an audit from an outside company to review cost allocation systems and develop the means to review expenses for the professions as well as revenue potential – such as advising optometry fees should be \$700 based on the data presented. Regarding specific budgets, the legislature is what approves/caps spending within the Division and is why the Division doesn't necessarily have the ability to always approve line-items within a budget. The Director then reviewed the Sunset Audit procedures and what they do. The Board feels a fee increase to \$700 will receive significant resistance, and a few members had inquired about the possibility of increasing fees for the application and law exam, as those fees appeared to "lag behind other medical-related fields in the State and other optometry applications around the country". The Board voiced displeasure in the specific travel requirements for reimbursement for taxi vs. car rental, the Director advised he will look into the issue.

Off the record at 10:10AM

On the record at 10:15AM

Agenda Item #7 – Discussion of Possible Advisories

The Board discussed tinted windows on automobiles. Dr. Barney advised that people who need tinted windows on their vehicle must get a medical waiver at least once a year, and that state and local law enforcement feels that some of this privilege is being abused, and the tints are being made too dark and it is a public safety issue. The Board doesn't quite have statutory authority to do anything, but what is occurring is young drivers are finding someone to give them a medical excuse and then tinting their windows 'too dark' to make their vehicle look cool. The Board asked Department of Law what powers they have to address this issue and Ms. Harriett Milks joined the meeting via telephone. Ms. Milks advised that the Board will need to look to a friendly legislator for a change in statute in order to have authority to speak to it, however since the practice of optometry is defined as the diagnosis and treatment of the human eye, it is assumed the Board's focus is to do it in a way that protects public safety and treat conditions of the eye competently. That will justify issuing a public statement, but the Board doesn't regulate tinted windows because the job regulates the profession and falls within the responsibility to inform the public, but there is no authority to enforce anything. Ms. Milks is concerned over the use of the word "physician" in the Public Safety regulations as she is not sure if optometrists fall under the term "physicians". Ms. Milks will get back to the board as to whether optometrists in the

State can even write medical waivers for tinted windows, thereby negating the need for a public advisory.

Dr. Graves brought up the DEA proposal to change hydrocodone to a Schedule II drug, which would then prohibit Alaska optometrists from using this drug as their DEA authority is only for Schedule III. The DEA is seeking the schedule change due to drug abuse and diversion concerns. Dr. Graves spoke with the Board of Pharmacy Chair, Dick Holmes, about this problem and that there are also concerns about this change; the Board felt there wasn't going to be a change at this time but will discuss it at the next Board of Pharmacy meeting. The Board will prepare a letter stating their opinion to give to the Board of Pharmacy and any interested parties.

The third issue to discuss is the illegal dispensing of colored contacts. Investigator Jay Paff discussed with the Board and Ms. Milks the items discovered by the Division Investigations staff. The opinion of Ms. Milks regarding this issue is the target populations (gas stations, beauty salons, flea markets) that you would like to stop selling decorative - colored contact lenses are people who the Board has no authority over; there isn't much the Board can do as the current statutes are limited to only optometrists (AS 08.72.300). "The Dispensing Optician statutes and regulations are also a bit limited as they can only fill prescriptions filled by a physician and/or optometrist. Those selling the lenses are not regulated by either Dispensing Opticians or Optometry because the laws do not reach them. In other states, they have directly addressed lens sales by means of law or opinion. The problem is more recent than any changes to updates to statute and regulations and there is some catching-up that needs to be done. Dept of Law has no objections to an advisory, or to consider regulatory and/or statute changes. The Dispensing Optician statutes (AS 08.71.230) specifically exempt unlicensed sellers of prefabricated glasses and sun glasses, but did not mention contacts and that leaves the question in the air if colored contacts would also fall under that exemption. The Dispensing Optician law also defines contact lenses as "means of a lens designed for the correction or relief of visual defects or for cosmetic purposes, that is placed on the anterior surface of the cornea" (12 AAC 30.990). This is the only place that cosmetic contact lenses are mentioned in their statutes and regulations, but the law is over 10 years old and cosmetic colored contact lens sales are becoming an issue. In research, the AG of Connecticut issued an advisory of it –but like tinted windows, this is a population that the board has the authority to regulate, there isn't a lot the Board can do to stop a beauty salon from selling colored contact lenses without a prescription," according to Ms. Milks.

The Board had a few questions about how the sales continue without a prescription; but Ms. Milks stated that just because someone is selling cosmetic colored contact lenses doesn't make them a dispensing optician or optometrist; Dr. Graves asked how this doesn't fall under unlicensed activity, and Ms. Milks said the definition of optometry and dispensing opticianry is what defines legal activity. For example, a dispensing optician is a person selling & preparing contact lenses with a prescription. Dr. Messerschmidt advised that contacts have specific parameters designated on them with a specific power, and Dept of Law stated this is correct – they are covered in regulation. Dr. Humphreys reiterated it seems as though people are still selling or dispensing these lenses without a prescription or license. Ms. Milks' opinion is still that the definitions set the boundaries of practice, and the fact the dispensing optician definitions clearly state selling a contact lens must have a prescription. Investigator Paff stated the problem and/or confusion with colored contact lenses that have a corrective power to it is required to have a prescription based on who requires it (ie, DEA, FDA) and that is why we have to have a prescription for it; yet under federal law a prescription is required for colored contact lenses, but State law doesn't seem to define the lenses as having a specific corrective power, or do they just state "contact lenses". Dept of Law said the definitions state "cosmetic purposes", Dr. Humphreys stated again, they are doing just that without a license; Ms. Milks feels that there is a disconnect between the interpretation of statute and regulation rules, in this case the regulation defines it under dispensing

opticians and out of your reach. But cosmetic lenses can have prescriptions also, but the decorative lenses with a prescription that are fitted and monitored by a dispensing optician are not a problem – but that without a proper follow up is where the Board seems concerned. They are not regulated people who are selling these, because they don't have a license, and there is a circularity here, but the law states dispensing contact lenses with a prescription, and these lenses are without a prescription and thereby not covered under the specific law. Ms. Milks circled back around to a basic rule: “the Board’s adopt regulation to implement the statute; the Board’s interpretation of the statute is reflected in the regulation, but the statute rules. You can’t have a regulation that changes the core meaning of the statute. So based on the definitions, the regulations and statutes don’t quite qualify each other because of the word “prescription” – and that is what a dispensing optician does. Because that definition is as specific as it is in the statute, that is probably where the change needs to be made.’ Ms. Milks stated that this needs to be taken up by the legislature, such as a change in the definition or a consumer protection statute. It was also mentioned by staff the Chairwoman of the Board of Barbers and Hairdressers said beauty shops should not be selling these items, as Ms. Milks stated ‘are you sure you want to include barber & hairdressers under your laws because they are selling these items? The Board of Barbers and Hairdressers certainly have the right to update their definitions to state that estheticians or hairdressers may not sell lenses or exclude them. The people selling these do not want to be optometrists and does the Board really want them to be optometrists?’”

The Board viewed the press release from the AG in Connecticut and asked why Alaska hasn't done this. Department of Law stated there is a possibility, but there is a procedure in place to do something like a statement by the Attorney General's office and will get back to the Board on that procedure.

Dr. Humphreys stated that about 1 person a year receives ocular surgery or attention due to this issue at Alaska Native Medical Center.

The Board then started developing the Advisory and reviewed a variety of health topics regarding bacteria and other problems associated with non-prescription lenses.

After 30 minutes of various discussions, the Board came up with the following advisory:

The Board feels that the citizens of Alaska should be made aware of the dangers of using non-prescription contact lenses for cosmetic reasons. The Board is issuing this Advisory Opinion as a means of education rather than punitive or regulatory action as the use and sale of colored contact lenses is regulated by the FDA.

Prescription contact lenses are regulated for public safety to ensure proper care of one's eye.

Nonprescription cosmetic contact lenses may not fit the eye properly, nor is there consistency in the type of material used. Contacts are designed with specific parameters to fit your eyes properly and non-prescription cosmetic lenses may not come with these parameters. If you purchase a contact lens over the counter without these safeguards, you could put your eyes at risk. (Public law 109-96 section 520(n))

When cosmetic/colored contacts are bought and used without a valid prescription, without the involvement of a qualified eye care professional (optometrist, ophthalmologist, or dispensing optician), or without appropriate follow-up care, it can lead to significant risks of eye injuries, including blindness. Purchasing cosmetic contact lenses from beauty salons, novelty stores, video stores, flea markets, convenience stores, and online sales without proper fitting is considered unsafe by the Board. Also, it is illegal without a valid prescription under federal law (Public law 109-96 section 520(n)). You should only purchase cosmetic or colored contact lenses from a licensed practitioner (optometrist, ophthalmologist, or dispensing optician).

Wearing any kind of contact lenses, including decorative ones, can cause serious damage to your eyes if the lenses are not used correctly.

These risks include:

- A cut or scratch on the top layer of your eyeball (Corneal Abrasion)
- Allergic reactions like itchy, watery red eyes
- Decreased vision
- Infection
- Blindness
- Corneal scarring & neovascularization

When wearing any type of contact lenses, be aware of signs of possible eye infection, which include:

- Redness and/or discharge
- Pain in the eye(s) that doesn't go away after a short period of time
- Decreased vision

If you have any of these signs, you need to see a licensed eye doctor (optometrist or ophthalmologist) right away! An eye infection could become serious and cause blindness if not treated promptly.

(At this point, the board moved to Item #8; discussion below is discussion after lunch and maintained its place in these draft minutes to ensure continuity of the discussion).

Dr. Barney then moved to discuss tinted windows. Dr. Barney stated that it is not just optometrists, but also family practice physicians who are writing these. Dr. Barney inquired to investigations where this statute or regulation would need to go – in the automotive statutes? Investigator Wall-Rood stated it is in regulation. She said in talks with her children's friends parents – she discovered that pediatricians were even writing the waivers for these. Dr. Barney is concerned that how dark the tint is comes from the driver, and not the practitioner. State troopers are afraid of how these are being handled, and the dangers of driving at night with some of these severely tinted car windows. Dr. Barney said he was told by one trooper where there was a car accident at night, and the insurance carrier was concerned as they weren't aware the driver had a 'medical problem' and did not cover the car accident. Dr. Barney is afraid that somehow legal counsel could then go after the practitioner that wrote the prescription/waiver. The fear is that practitioners are just not aware of what is going on. The Board's discussion is concerned with actual medical need for this, outside of people wanting a 'cool car'. Dr. Barney stated in his many years of practice, he has never met anyone with photophobia who could not be handled without the sunglasses.

The Board will develop an advisory with Staff outlining the dangers of tinted windows and driving, especially when they are not medically necessary for public safety. The advisory will be focused on pleading to the practitioner's medical common sense and how they can be involved, legally, if someone is hurt or even killed. Casual conversations with the State Medical Board Executive Administrator voiced support for a public advisory.

Agenda item #8 – Review CE's

The Board reviewed the continuing education of 16 licensed practitioners in the State from the latest renewal period.

Off record at 12: PM PM– break for lunch

On record at 1:22 PM

Dr. Graves, Chair, called the meeting back to order at 1:22PM with all board members present. There was no one present for public comment period.

Agenda Item #11 – General Board Business

Upon a brief discussion among the board members, it was decided to hold the next meeting on November 1, 2013 in Anchorage and the Spring board meeting is tentatively set for Juneau on April 4, 2014.

Chair Dr. Graves will be terming out in March 2014 and the board discussed the progression of the Board and rationale behind selecting the chair position. Dr. Barney stated he could step up as the Board Chair starting in April 2014. Dr. Messerschmidt will maintain his role as Board Secretary.

Public Member Immanuel Lewis had to leave the meeting at 2:30PM.

Agenda item #9 – Review Correspondence

Board and staff discussed the amount of time remaining and items still pending for this board meeting.

On a motion by Dr. Barney, seconded by Dr. Humphrys, IT WAS RESOLVED TO TABLE all correspondence until the summer teleconference. All in favor, no nays. No further discussion.

Agenda item #10 – Review Board Advisories with Department of Law

The Board continued the discussion from Agenda item 8 and Ms. Milks reviewed the Advisory and felt it was appropriate and within the purview of the Board. Ms. Milks, however, requires additional time in ensuring the definition of “physician” in the Public Safety Statutes is equivalent to the definition in Alaska Chapter 08 whereby physician is assumed as the “practice of the healing arts” and is not limited to just MD/DO occupational licenses.

The Board would also like to determine the steps needed or required to get the State of Alaska Attorney General and/or Governor’s Office to issue a public safety advisory similar to that issued in Connecticut.

Agenda item #8 – Review CE’s

The Board returned to complete the review of continuing education. Staff was asked to determine the injections education date for Dr. Julie Reineke – however Dr. Reineke had previously submitted her injections education and was part of her permanent file, which did not accompany the CE audit to the Board meeting. The Board will review Dr. Reineke’s audit during a future teleconference.

On a motion by Dr. Barney, seconded by Dr. Messerschmidt, IT WAS RESOLVED TO APPROVE the continuing education review for all applicants except Dr. Julie Reineke. All in favor, no nays. No further discussion.

Agenda item #12 – Review Annual Report

The Board reviewed the previous annual report and mentioned the need to change some verbiage based on the latest regulation update. Staff will submit the raw documents to the Board for updating

while staff will be responsible for the license statistics. Annual reports are due by the middle of July, 2013.

On a motion by Dr. Messerschmidt, seconded by Dr. Humphrys and carried unanimously. The board having no other business adjourned the meeting at 4:45 p.m.

Respectfully Submitted:



Nate Vallier, Licensing Examiner



James Graves, OD, Chair

Date: November 1, 2013