

**STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BOARD OF EXAMINERS IN OPTOMETRY
550 West 7th Ave
Suite 1270
Anchorage, AK**

May 6, 2011

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
to be held on May 6, 2011, 550 West 7th Ave. Suite 1270, Anchorage, AK

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 8:19 a.m. This board meeting was public noticed on April 15, 2011 and was published in the Anchorage Daily News.

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

James Graves, OD, Chair
Jill Matheson, OD
Dennis Swarner, OD, Secretary
Paul Barney, OD
JoAnne Bell-Graves, Public Member

Present from the Division of Corporations, Business & Professional Licensing:
Connie Petz, Licensing Examiner
Michele Wall-Rood, Investigator

The Board welcomed new board member Paul Barney, OD to his first board meeting.

Agenda item 2 - Review / Amend Agenda

Add to Agenda Item 15

- Pacific Northwest 23 hour online course
- ARBO report
- Review new Optometry web site

**On a motion by Dr. Barney, seconded by Dr. Swarner and carried unanimously.
IT WAS RESOLVED TO APPROVE THE AGENDA as AMENDED.
All in favor, no nays. No further discussion.**

Agenda item 3 - Review / Approve Minutes

**On a motion by Dr. Matheson, seconded by Ms. Bell-Graves and carried
unanimously IT WAS RESOLVED TO APPROVE the January 21, 2011 MEETING MINUTES
as written. All in favor, no nays. No further discussion.**

Agenda item 4 - Ethics Reporting

Dr. Graves asked if there were any ethics violations to report, all board members and staff stated they had no ethics violations to report.

Agenda item 5 - Investigative Report

Michele Wall-Rood, Investigator joined the meeting. No compliance issues. There are no open complaints, no complaints which have been closed, no open cases and no cases which have been closed.

Dr. Barney will become the new board member contact for the investigator for any complaint issues. If a complaint is brought to the investigator, she would discuss the concerns with Dr. Barney. This eliminates the need to hire an expert and saves the board expenses. Dr. Barney may hold discussion with the board related to complaints/cases, but in the event of a consent agreement he would recuse himself from any voting on the case as he would not want to taint the decision.

Agenda item 6 - FY 10 Annual Report/Budget Report

Dr. Swarner was asked if he would like to continue as secretary.

**On a motion by Dr. Matheson, seconded by Dr. Barney and carried unanimously
IT WAS RESOLVED Dr. Swarner will continue as secretary of the board.
All in favor, no nays. No further discussion.**

JoAnne will be moving to Gustavus, she will change her address once she moves. She will no longer be receiving e-mail and will need to be contacted by USPO mail for voting, for board packets or other board business.

Revision to Goals and Objectives:

Page 3 - Draft Narrative to be written by Dr. Matheson, she will send to staff and staff will forward to the board to review and approve or amend.

Page 3: Dr. Barney asked that the Board consider rewriting the statement the "board certification" issue, to avoid confusion for the public and licensed optometrists. The board did not want it to appear that the Alaska board is in agreement with the ABO but that the board is monitoring this process as are all states. Revise page 3 in paragraph 6 of the narrative statement to remove the words "American Board of Optometry". The statement should now read: Board Certification has been formed on the national level, and this Board will continue to monitor the issue of "board certification" for optometry.

Page 4: The board still wants to have in the budget the fact that they want to have a representative attend ARBO. Dr. Barney may go to the AOA annual meeting and he would be willing to go early to attend ARBO. The board could request the stipends and staff could create a TA to request approval for out of state travel. The board pays an annual fee for the membership and part of this is attending the annual meeting.

Reduce budget for teleconference from \$600.00 to \$300.00.

Page 5: keep recommendation to amend licensing law to remove any reference to specific hourly requirements. Change item 10: contact for questions, by removing Dr. Gonnason as he is no longer on the board and to add Dr. Graves as a contact for the questionnaire. Keep Dr. Matheson as secondary contact.

Remove all of pages 7-12 as it is a recap of the regulations. Jill will recap regulations in the draft narrative for FY11.

Page 13 Goals and Objectives:

Remove 1 (d) – The law change goal has been achieved. Jill will recap law change in draft narrative.

Change 1 (e) to read: Consult with department of law early on in regards to clarifying new vehicles of drug delivery, such as – the prescription use and sale of medicated contact lenses.

Add Item: 8 - Continue to monitor board certification on the national level.

Add item: 9 - Introduce and support 'as taught' legislation. (Meaning practice within level of education and training)

Add item: 10 – Continue to monitor the definition of use, dispense and sale of prescription and non-prescription pharmaceuticals.

Break: off record 9:35 a.m. / back on record at 9:42 a.m.

Budget: the board discussed the deficit and is aware that at the next license renewal period fees will likely increase by double or even higher than the recent (January 1, 2011 – December 31, 2012) renewal period which was \$200.00.

Annual report is due by August 1, 2011.

TASK: Jill will recap and send the draft narrative to staff. Staff will compile annual report documentation after June 30, 2011.

Agenda item 7 - Regulation Project

The regulation project was public noticed for written comment to be received by May 3, 2011. There was no public comment received.

Board members discussed the proposed regulation changes and considered that there would not be any financial costs for the public (private persons) related to the proposed regulations.

On a motion by Dr. Matheson IT WAS RESOLVED TO ADOPT the REGULATIONS as written and there is no fiscal impact to the public. Seconded by Dr. Swarner. All in favor, no nays.

The board discussed the regulation process. Dr. Graves will sign the adoption order. Staff will forward to the regulations specialist who will forward on to department of law. Department of law will review and anything substantial would send the regulations back to the board, if not, the regulation project would be forwarded to the lieutenant governor, once signed, they will become law after 30 days. No further discussion.

TASK: Staff to forward signed adoption agreement to Regulations Specialist.

Agenda item 8 - Draft new State Law Exam

Board reviewed law exam and all questions still apply. The only change is to include the new regulation number to the retired license question # 2.

TASK: staff to hold revision of law exam pending final regulations being signed by the lieutenant governor.

Discuss Online Law exams via NBEO. The board did not feel it was necessary to have the applicant take the jurisprudence exam via the NBEO and will continue with current method of jurisprudence exam.

Dr. Graves attended the Bellingham Technical College injections course in February 2011. He provided the board with a recap of the course and said the course did not meet the target of the 'injections course' that Alaska wants their doctors to have in their education. The Board discussed the fact that the Bellingham Technical Colleges course for injections failed to meet the baseline criteria that the board had approved to provide consistency and appropriate education.

Dr. Graves will draft a letter to BTC and cc - Jeanne Oliver at Pacific University to advise the Alaska Board will no longer accept the course, nor refer optometrists to BTC. Dr. Graves will explain the board's concerns on how the content did not meet the requirements and what items were missing in the educational component. He will explain what Alaska needs them to provide to get the course up to the level of education required and what they need to do to get the course appropriately designed.

Based on this discussion the board is no longer referring anyone to Bellingham Technical College for the injections course.

Task – Staff to send prior course content which the board approved in fall of 2010 to Dr. Graves.

On a motion by Dr. Barney IT WAS RESOLVED the Board will no longer accept the injections course offered by Bellingham Technical College until the curriculum meets the requirements and it has been reapproved by the board. Seconded by Ms. Bell-Graves. All in favor, no nays.

The board was ahead of schedule and deviated to Agenda items 11 and 12:

Agenda item 11 - CE AUDIT Review

Board reviewed licensees for compliance of 36 CE's for audit period 01/01/09 to 12/31/10. Staff explained that the audit is a computer generated search and randomly selects ten percent of licensees.

Restricted License #:
60 - Albert

Full License License #'s:
71 Roselius
74 Swearingen
77 Faulkner
94 Dobson
96 Thanepohn
126 Christianson
144 Humphreys
182 Kichura
193 Personett
216 Mullins
225 Gibbs
249 Porter
265 Hoyle

281 Miller
291 Lewis
292 Begin

On a motion by Dr Barney, seconded by Ms. Bell-Graves and carried unanimously IT WAS RESOLVED TO APPROVE THE Continuing Education Certificates submitted by the audited licensees for the audit period 01/01/09 to 12/31/10. All in favor, no nays. No further discussion.

TASK: Staff to send audit approved letters to all audited licensees.

Agenda item 12 - Review CE's for license renewal applications

The board reviewed licensees who were required to submit to the board evidence that, in the four years preceding the application for renewal, the licensee has completed continuing education and met the license renewal requirements of seven hours injections and eight hours of continuing education approved by the board concerning the use and prescription of pharmaceutical agents taken within the past 4 years.

Licensees reviewed were:

| | |
|---------------|----------|
| License # 128 | Saminego |
| License # 185 | Burke |
| License # 227 | Glanzer |
| License # 288 | Simpson |
| License # 270 | Huff |

On a motion by Dr Matheson, seconded by Dr. Swarner and carried unanimously IT WAS RESOLVED TO APPROVE THE certificates submitted by the licensees for the 01/01/11 to 12/31/12 license renewal. All in favor, no nays. No further discussion.

TASK: Staff to send renewal CE approved letters to all licensees.

Partial CE's received for license # 251 Wieringa - License has NOT been renewed yet.

Board approved the 4 hours received by Dr. Wieringa in injections. He will need to take an additional 3 hours of injections education in order to meet the renewal requirement.

On a motion by Dr Matheson, seconded by Dr. Barney to approve 4 hrs injections for Jon Wieringa but he will need 3 more hours to meet the 7 hours as required by 08.72.181. All in favor, none opposed.

TASK: Staff will send follow up letter to Dr. Wieringa.

Staff for future should refer people to all the schools of optometry and state association education meetings for injections courses.

Lunch Recess: off the record 12:02 p.m. / back on record 1:02 p.m.

Dr. Graves called the meeting to order. Role call, all board members were present.

Agenda item 9 - Public Comment

No Public in attendance.

Agenda item 10 - Review applications for licensure:

The board reviewed the application provided by Dr. Downey. He will need to provide 7 hours in injections, which document the fact that he is teaching or has taught a course within the past 4 years. He will need to document how many hours the course qualifies for in education. Is he giving the course and how long is the course? How often does he offer the course? There must be documentation from the university that he is a professor of the 7 hour injections course. He will also need to provide documentation for 23 hours in orals.

TASK: Staff to send follow-up letter to Dr. Downey requesting the documentation and advising what he will need to do to meet the requirements.

Agenda item 13 - Discuss HB 43 and HB 28

HB 28 – Courtesy License

The board discussed the current draft of HB 28. Dr. Matheson stated the reason the board has the optometry law set up in the current format is to protect the public. The board will watch this bill to see what evolves.

TASKS:

- Dr. Swamer to research HB28 to find out more about the background and contact sponsor of the bill.
- Ms. Bell-Graves will also research HB28.
- Staff: send link for BASIS for legislative history to Dr. Swamer and Ms. Bell-Graves.

HB 43 – Generic Drugs

Dr. Matheson asked how does an optometrist get notified that the pharmacy gives a generic drug? Who determines what an equivalent drug is? The board has concerns and they want to track this bill.

TASKS:

- Dr. Matheson will draft a letter and forward to staff to address the concern for the protection of the public and cc Representative Guttenberg.
- Staff to have supervisor review draft and then all board member before it's forwarded on.

Agenda item 14 - Correspondence

- Dan Branch - Dept of Law response to sale of pharmaceuticals

In response to discussion from the January board meeting and questions of the board, Dan Branch wrote a letter to the board on April 14, 2011.

Staff read for the record Dept of Law's advice regarding dispensing drugs received from Mr. Branch.

"Last December I was asked by the Optometry Board whether they could prescribe and sell a drug named LATISSE®. According to statements on its manufacturer's website, "LATISSE® solution is a prescription treatment for hypotrichosis used to grow eyelashes, making them longer, thicker and darker. Hypotrichosis is another name for having inadequate or insufficient eyelashes. Believing the drug was used primarily for cosmetic purposes I advised the board that optometrists could neither prescribe nor supply the drug to their patients.

During a recent board meeting several members challenged my opinion and explained that they do not prescribe Latisse® to enhance the beauty of their patients but rather to treat hypotrichosis, which can cause risks to the cornea of the eye. During the board meeting I also learned that the eye lids and lashes are medically a portion of the human visual system. (See definitions in AS 08.72.300). Therefore treatment of eyelashes falls within the scope of practice of optometry. Given this new information, I am comfortable changing my opinion concerning whether optometrists may prescribe the drug. In addition, under AS 08.72.272(a), optometrists may also use the drug for therapeutic purposes. They may not, however, sell or supply the drug to their patients.

The key here is the meaning of "use" as it appears in AS 08.72.272(a)(1)(A). That subsection provides:

- (a) A licensee may prescribe and use a pharmaceutical agent, including a controlled substance, in the practice of optometry if
 - (1) the pharmaceutical agent
 - (A) is prescribed and used for the treatment of ocular disease or conditions, ocular adnexal disease or conditions, or emergency anaphylaxis;

The question then is whether the words, "use" and "used" in the subsection include dispensing drugs as opposed to just using them for office diagnosis and treatment of patients. Webster's Dictionary defines "use" as "the act or practice of employing something." A person could argue that the sale of a drug involves the use of it as the object of the sale. However the context for "use" and "used" in Subsection 272 does not support such a broad definition. Under the subsection, an optometrist may only use prescription drugs for the treatment of conditions. This limits the definition of "use" to "the act or practice of employing something for the treatment of ocular disease or conditions...." as opposed to employing the drug as an object of sale.

There is nothing in relevant legislative history that shows legislative intent to define "use" to include "sell" or "provide." Some of this history is set out in a 2005 report of the Legislative Auditor. See, Audit Report, Board of Examiners in Optometry, September 27, 2005.

According to the auditor, in 1988, optometry statutes were updated to allow qualified individuals to use diagnostic drugs. In 1992, a statutory amendment dropped oral medication authorization, thereby limiting licensees to prescribing only topical therapeutic drugs to treat eye diseases. A 1992 amendment to AS 08.72.175 expanded the license endorsement authority of the board from "use" to "prescribe and use." The auditor, in 2005, recommended the legislature consider amending AS 08.72 to ensure that licensees have the option of receiving a limited endorsement allowing for the diagnostic use of pharmaceutical agents but not for writing prescriptions.

In 2006 the legislature responded to the auditor's report and added a Subsection (c) to AS 08.72.175 that allowed the board to issue endorsements for the use but not the prescription of pharmaceutical agents. 6 ch. 24 SLA 2006. Even though subsequent legislation repealed Section 175, the minutes of committees that considered the 2006 legislation are relevant because the legislature's understanding of the word, "use" didn't change in 2010 when the legislature adopted the current version of AS 08.72.272(a).

During a 2010 hearing before the House Labor and Commerce Committee, then board chairman gave a description of an optometrist's scope of practice that did not include the dispensing of prescription drugs. Minutes, January 26, 2010 at 6. Nothing in any of the committee minutes concerning the bill amending Section 272 suggest that the legislature intended to give optometrists authority to dispense prescription drugs".

The board then discussed Dept of Law response and they are concerned with the broader picture, selling products to their patients for their eye health, contact lenses, drops for macular degeneration etc... The board is concerned other professions sell products and they are not trained in the field of optometry. It is the optometrists who are able to fully explain to their patients how to use and apply the products they prescribe. This is not just about Latisse® – it's about any medication they need to prescribe to patients.

Dr. Matheson stated that she does not sell pharmaceuticals from her office because she does not want to compete with pharmacies or create billing issues for patients.

Dr. Graves asked if 'sales' were a conflict of interest in the profession? Dr. Matheson asked; "Does it protect the public" meaning if an optometrist can sell pharmaceuticals'.

Public member, Ms. Bell-Graves said she finds it is more convenient to purchase pharmaceutical agents on sight and going to one location to her is safer if she purchases directly from her eye doctor. She is not thinking of it from a retail perspective.

TASK: staff - Add to annual report Goals and Objectives item # 10 – continue to monitor the definition of use, dispense and sale of prescription of non prescription of pharmaceuticals.

- David Karpik – Question on sale of pharmaceuticals

The Board discussed his e-mail question which was answered by the Dept of Law response.

Task: Staff to respond via e-mail refer Dr. Karpik to the draft minutes and the Dept of Law response for an answer to his question.

- Pamela Carper – WV Board of Optometry re: Injections Policies in AK

Task: Staff to send her the statutes and regulations.

- Jackie Rivers – SC Optometric Assn. Regarding 'eyelid' injections

Task: Staff to send response to her e-mail explaining at this time the BTC course is no longer approved by the board but they will be working with BTC and hope to have it re-approved in the near future.

- HSS denials

This was resolved, it was a medical billing coding issue. No follow up required.

- Dr. Steve Wells –

Dr. Wells had attended courses which were approved by the Washington optometry board. The board reviewed the course outline and discussed that our law requires optometrists to meet the law as outlined in 12 AAC 48.200 - 220. The reason the courses are required is to keep current in the field. The combination of 24 hours in ocular pathology or pharmacology is required.

Because Dr. Wells made his request 30 days prior to commencement of the program the board agreed to review the course content. For the record, once the newly adopted regulations change it will be a requirement to request 60 days before commencement of the program.

Staff explained that other boards have held discussion that the licensee is responsible to meet the requirements as outlined and they (the board) should not have to review each course. The licensee could contact the providers (AOA, COPE or others as listed) as they are who approve

continuing education courses and could see if they would accept the content for the field of optometry.

The courses need to meet Alaska law per: **12 AAC 48.200. LICENSE RENEWALS AND CONTINUING EDUCATION.** (a) In order to be approved by the board, an applicant for renewal of a license must pay the appropriate renewal fee and submit evidence of completing continuing education courses, related to the practice of optometry, as specified in (b) or (c) of this section within the two-year renewal period as specified in 12 AAC 48.210.

(b) The following continuing education courses, if related to the practice of optometry, are accepted by the board for renewal of a license to practice optometry:

- (1) education courses offered at the American Optometric Association (AOA) Convention or offered at any American Optometric Association affiliate state association convention;
- (2) seminars held by committees of the AOA or organized regional Optometric Extension Program Foundation seminars for educational purposes;
- (3) postgraduate courses offered by recognized schools or colleges of optometry;
- (4) postgraduate correspondence courses, except that no more than nine hours of continuing education credits may be claimed in a single licensing renewal period;
- (5) courses approved by the Council on Optometric Practitioner Education (COPE).

(c) Other continuing education courses not listed in (b) of this section may be approved by the board upon written request of the licensee at least 30 days before commencement of the program. The request must include the following information:

- (1) name and address of organization sponsoring courses;
- (2) course title and outline of subject matter to be covered;
- (3) instructors name and credentials; and
- (4) location and dates of the course.

After review of the course the board determined that they would approve 1 continuing education hour towards ocular pathology or pharmacology. The board also stated the other course content could be related to the general medical knowledge as it pertains to the practice of optometry and being better versed in systemic medicine.

1 CE – for Courses related to Ocular Manifestations of Diabetes Mellitus per 12 AAC 48.210 (a)(2) The rest of the courses could qualify under the 12 AAC 48.210 (a)(1) towards the remaining 12 CE's of the combined total of 36. Dr. Wells will still need to have an additional 23 hours in ocular pathology or pharmacology per continuing education requirements for the license period January 1, 2011 to December 31, 2012 as the combined total of CE's are 36 but 24 are required in ocular pathology or pharmacology.

On a motion by Dr. Matheson, seconded by Dr. Barney to approve 1 hour in Ocular Manifestations of Diabetes Mellitus for ocular pathology or pharmacology and also approve the remainder of the classes under the remaining 12 hours of non ocular pathology or pharmacology requirement. All in favor, none opposed.

TASK: staff to send follow up letter to Dr. Wells for CE review request

- Chan – Southern California School of Optometry

TASK: staff to respond to her again, asking if she found her answers in the statutes and regulations which is where she had been directed in prior correspondence.

- Pacific University on line 23 hour Advanced Ocular Therapeutics course:

The board reviewed the content as presented from Pacific University's 23 hour advance ocular therapeutic didactic online course required for licensees to meet AS 08.72.140 Qualifications for licensure.

Dr. Matheson asked about the security issues and how they are tracking the content and the person taking the course? Jeanne Oliver's e-mail explained at the end of each section the doctor would download a form and they return it to Ms. Oliver as a record of having completed that section. It should be dated and time stamped as a record of their attendance when it prints. There is an exam at the end of the course.

The board agreed it would be necessary to pass the course exam in order for the 23 hour course to be approved for licensure.

On a motion by Dr. Swarner, seconded by Dr. Matheson IT WAS RESOLVED TO APPROVE the Pacific University online 23 hour advance ocular therapeutic didactic course. Applicants must pass the 23 advance ocular therapeutic didactic course exam. This course meets AS 08.72.140 Qualifications for licensure. All in favor, no nays. The motion carried unanimously. No further discussion.

TASK: staff to send follow up letter to Jeannie Oliver that the board approved the online course.

Agenda item 15 - Other Business/Schedule Meetings/Task List

- Other business:

ARBO annual report, questions answered and staff will forward to ARBO.

- Website redesign

Staff showed the new website design and the board approved.

TASK: Staff to request the website be updated. Added items are FAQ's (frequently asked questions) and disciplinary actions and denied licensees.

The board discussed the importance of background checks and discussed the barrier crime matrix 7 AAC 10.905 and staff will send copy of the matrix to all board members. Medicare requires all employees to have a background check. This is something for everyone to be aware of when they are hiring incoming optometrists or staff.

- Schedule next board meeting:
 - Jan 6, 2012 in Juneau in person unless the board business does not need an in person meeting and then it will become a teleconference.
 - Spring meeting, May 3-4 of 2012 in Anchorage but could be a one day meeting if not enough business for a 2 day meeting.
- Final Comments

TASK LIST – Board Members:

Dr. Graves: Draft letter to BTC/PACU regarding injections course

Dr. Matheson: recap regulations, law change and draft narrative for annual report and draft letter for HB43 for concern for protection of the public and cc: Representative Guttenberg.

Dr. Swarner: research on HB28

Ms. Bell-Graves: research on HB28 and provide new mailing address to staff

TASK LIST – STAFF:

Compile annual report

Revise jurisprudence/hold revision pending final regulations until signed by the governor

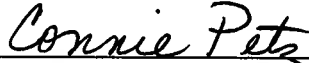
Update website

Reply to all correspondence, CE's

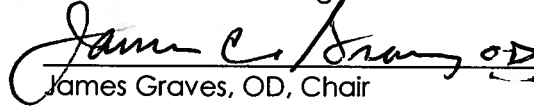
Forward to board members as needed: BTC course content, link for BASIS, Barrier Crimes Matrix

**On a motion by Dr Swarner, seconded by Dr. Barney and carried unanimously.
The board having no other business adjourned the meeting at 4:05 p.m.**

Respectfully Submitted:



Connie Petz, Licensing Examiner



James Graves, OD, Chair

Date: 01/06/12