

**DEPARTMENT OF HEALTH  
MEDICAL QUALITY ASSURANCE  
BOARD OF OPTOMETRY**

**MINUTES  
GENERAL BUSINESS MEETING**

**Capital Circle Office Complex  
4042 Bald Cypress Way, Room 301  
Tallahassee, Florida 32399-3257**

**January 13, 2012**

**CALL TO ORDER:**

Dr. Terrance Naberhaus, Chairman, called the meeting to order at 10:30 a.m. Those present for all or part of the meeting included the following:

**BOARD MEMBERS:**

Terrance Naberhaus, O.D., Chair  
Timothy Underhill, O.D., Vice-Chair  
Rebecca Del Moral, O.D.  
Tamara Maule, O.D.  
Edward Walker, O.D.  
Rosa McNaughton, Esquire  
Rod Presnell, R.Ph.

**BOARD STAFF:**

Bruce Deterding, Board Executive Director  
Sharon Guilford, Program Operations Administrator

**BOARD COUNSEL:**

Lee Ann Gustafson, Assistant Attorney General  
C. Khai Patterson, Assistant Attorney General  
Office of Attorney General

**PROSECUTING ATTORNEY:**

Mark Hansen, Assistant General Counsel

**COURT REPORTER:**

Accurate Stenotype Reporters  
850-878-2221

Agenda items are subject to being taken up at anytime during the meeting. Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

**APPROVAL OF MINUTES:**

**July 2011 – Full Board Meeting**

**Dr. Underhill moved to approve the above minutes as presented. The motion was seconded and carried 7/0.**

**July 8, 2011 – Telephone Conference Call**

**Dr. Walker moved to approve the above minutes with corrections to page 14, line 27 “eligibility” to “ineligibility” as presented. The motion was seconded and carried 7/0.**

**FINAL ORDER ACTION:**

**MOTION FOR FINAL ORDER BY SETTLEMENT AGREEMENT:**

**Tiffany Taylor-Martino, O.D. – Case Number 10-12968  
PCP: Fisher/Naberhaus/Presnell**

Dr. Taylor-Martino was present, sworn but was not represented by counsel.

Mr. Hanson informed the board that the respondent had violated:  
Section 463.016(1)(t), F.S (2 counts)

Mr. Hanson advised the board that the settlement agreement contained the following provisions:

- Appearance
- Reprimand
- Administrative fine of \$1,000
- Administrative costs of \$2868.68, payable within 6 months
- Complete continuing education of two hours in Florida Jurisprudence

Dr. Taylor-Martino addressed the board.

Discussion ensued.

**Dr. Walker moved to reject the settlement agreement. The motion was seconded and carried 5/0.**

A lengthy discussion ensued.

**Dr. Del Moral moved to issue a counter agreement with a stayed suspension to allow the respondent to provide documentation in compliance with Rule 64B13-3.002(2), F.A.C., by providing evidence of having notified patients of the closure of the business and the location where they can receive their records along with the inclusion of all original provisions in the agreement. The documentation must be submitted within 30 days from the filing of the Final Order. The motion was seconded and carried 5/0.**

Dr. Taylor-Martino accepted the counter agreement.

Mr. Hanson accepted the counter agreement on behalf of the department.

### **Prosecution Report**

Mr. Hanson provided a detailed Prosecution Report.

Dr. Naberhaus requested clarification as to why additional violations cannot be added to the original complaint when its being heard by the probable cause panel. But instead requiring the additional violations to be added to another complaint and then brought back to the panel at a later date.

Mr. Hanson provided an explanation to the board.

### **REQUEST FOR DECLARATORY STATEMENT:**

#### **Nicholas Krevatas, O.D. – Use of Online Appointment Book**

Dr. Krevatas was neither present nor represented by counsel.

Ms. Gustafson provided an overview of the procedures and actions the board may take on the Petition for Declaratory Statement. She recommended the board to deny the Petition for failure to meet the statutory requirements. She was also concerned with the HIPPA statutory requirements.

**Dr. Walker moved to deny the Petition for Declaratory Statement for failure to cite the specific rule in the petition, as statutorily required. The motion was seconded and carried 7/0.**

**Dr. Underhill moved to deny as moot the corresponding motion to intervene. The motion was seconded and carried 7/0.**

### **CORRESPONDENCE:**

- **Letter from North Carolina Board of Optometry to AOA House of Delegates Resolution and Motion Regarding Optometric Continuing Education**

No action taken.

- **ARBO 2012 Annual Meeting – Chicago, IL June 24-26, 2012**
- **ARBO Approval to Pay 2012 Dues**

**Dr. Walker moved to pay the annual ARBO 2012 dues, and grant one board member in addition to Mr. Deterding to attend the ARBO 2012 Annual Meeting to be held in Chicago, IL. The motion was seconded and carried 7/0.**

### **TOPICAL OCULAR PHARMACEUTICAL AGENDA COMMITTEE (TOPA):**

- **Correspondence from James Watts, O.D., Chairman of the TOPA Committee – Adding Topical Agents to the Formulary**

Dr. Underhill stated that the rule should not be modified; therefore, the board was not required to take action on the correspondence.

Mr. John Griffin, with the Florida Optometric Association (FOA), stated that they update their website with the approved TOPA drug list.

- **Approval of Addition to the Formulary – Lotemax**

**Dr. Walker moved to approve adding Lotemax to Rule 64B13-18.002, F.A.C. The motion was seconded and carried 7/0.**

Following the vote, the board discussed whether drugs such as Lotemax, which are already on the formulary, need to be referred back to TOPA when they are presented to the board as another vehicle or delivery system. For example, if the drug is on the list as an ointment, the question is if it needs to be resubmitted when it is presented as a drop. The board determined that it did not need to change the rule to accommodate the use of such a drug in a different vehicle, that if it was approved as an ointment it was automatically approved when the same drug suspension became approved as a drop.

#### **CHAIR/VICE-CHAIRMAN REPORT:**

##### **Update from Chair/Vice-Chair's Meeting**

Dr. Naberhaus provided an overview of the Chair/Vice-Chair's Meeting held in Tallahassee.

- Unlicensed activity
- Board member survey (long-range plan)
- Trust Fund Sweep

Dr. Naberhaus commended the Department of Health, Division of Medical Quality Assurance and staff for the excellent service they are performing for the board.

##### **Future Agenda Items**

No future agenda items provided.

#### **EXECUTIVE DIRECTOR'S REPORT**

**Solicitation to publish information about any awards or commendations given to board members**

Mr. Deterding requested the board members provide him with any awards or commendations they have received.

**BOARD COUNSEL’S REPORT:**

**Interim Guidance Regarding the Office of Fiscal Accountability and Regulatory Reform**

Ms. Gustafson provided an overview of the Interim Guidance Regarding the Office of Fiscal Accountability and Regulatory Reform.

A brief discussion ensued and the following action was taken:

**Dr. Del Moral moved to submit to OFARR one week prior to submitting the changes to the Secretary of State. If comments are provided from OFARR within the one week, then forward the comments to the board delegated Rules Committee Chair who will determine if it should wait for full board review of the OFARR comments or whether Board Counsel should continue and file the rule with the Secretary of State. The motion was seconded and carried 7/0.**

**Rules Status Report**

Ms. Gustafson provided an overview of the Rules Status Report.

Ms. Gustafson recommended the board to vote on allowing staff to move forward with changes to Rule 64B13-4.001, F.A.C., extending the number of years from 5 to 7.

**Dr. Del Moral moved to allow staff to go forward with the recommended changes to Rule 64B13-4.001, F.A.C., extending the number of years from 5 to 7. The motion was seconded and carried 7/0.**

**COMMITTEE REPORTS:**

**Budget Committee – Rod Presnell, R.Ph.**

- **Expenditures by Function for Period Ending 9/30/2011**
- **Cash Balance Report for 3 Months Ending 9/30/2011**
- **Total Expenditures (Direct and Allocated) by Board for 3 Months Ending 9/30/2011**
- **Allocations to Boards by Source Organization and Category for 3 Months Ending 9/30/2011**

Mr. Presnell provided an overview of the Budget Report.

The board requested Mr. Deterding to research several things regarding the budget.

- What the “Facility & Storage Space Rental” charge is on the budget report
- Where can the board note the impact to the budget of Dr. McClane’s services to the prosecution? Is the under “Consulting Services”?
- If in the future, the board wanted to hire their own investigator, would that be possible and what would it involve?

- Are there individual board analyses done on the costs of investigations vs. the revenues brought in by the board from fines, etc? How would optometry look in such an analysis.

Ms. Gustafson added that the Department of Health was discussing the possibility of having the authority delegated by the board to the prosecution staff to mediate certain cases. The boards would determine the type of violations to be mediated.

Mr. Deterding asked Mr. Hanson if he had anything to report about that discussion.

Mr. Hanson replied that he had heard those discussions within the department but did not know of any details to give to the board about the actual plans.

### **Complaints, Investigation & Enforcement – Edward Walker, O.D.**

Dr. Walker indicated, with regard to complaints and investigations, that Dr. McClane continues to work with the department in examining every complaint to ensure that investigations are done expeditiously and thoroughly on cases that warrant such.

With regard to compliance issue and enforcement, Dr. Walker indicated that in a recent case where the practitioner had completed most requirements of the board order but still had nearly a year left on his probation, that he had enlisted the monitoring services of a qualified practitioner to monitor all of his records and files and make sure they were being properly maintained. Dr. Walker added that he would continue with that monitoring until the probation ended.

### **Continuing Education – Tamara Maule, O.D.**

#### **AOA – Report of Accreditation Council on Optometric Education**

Dr. Maule provided a brief review of the AOA correspondence.

#### **Continuing Education Providers & Courses Approved by CE Committee**

**Dr. Underhill moved to approve the ratification lists as provided. The motion was seconded and carried 7/0.**

### **Corporate Practice – Edward Walker, O.D.**

Dr. Walker indicated that he believed there were violations in Florida of the Corporate Practice Law but that the department needed to initiate investigations to find those.

Dr. Naberhaus replied that the department must have a complaint before they can initiate an investigation.

### **Disciplinary Compliance – Edward Walker, O.D.**

#### **Laura M. Demarco, O.D. – Case Number 10-14291- Reinstatement of License**

Dr. Demarco was present and addressed the board.

A lengthy discussion ensued.

The board clarified the information needed to comply with the Final Order prior to the reinstatement of Dr. Demarco's license.

- Notarized letter stating she is not practicing and doesn't have any branch offices
- Certified return receipt of the notification that she has provided to patients
- Proof of publications
- Update address

**Dr. Underwood moved to reinstate licensure once Dr. Demarco provides evidence of compliance with Section 456.057(6), F.A.C.. If she does not provide the proof within 30 days The motion was seconded and carried 7/0.**

**Examination – Rebecca Del Moral, O.D.**

#### **Update on Optometry Licensure Examination**

Dr. Del Moral provided a brief update.

Dr. Naberhaus asked Dr. Zohre Bahrayni, of the department's Examinations Office, several questions regarding how an examination is conducted by Prometric, to which Dr. Bahrayni responded.

#### **Information – Optometry Consultants & Examiners**

**Dr. Del Moral moved to approve the ratification list of Optometry Consultants & Examiners. The motion was seconded and carried 7/0.**

The board suggested that they may want to look into a way of giving Dr. Del Moral CE credits for her participation in the examinations process.

**FOA – Timothy Underhill, O.D.**

Dr. Underhill deferred to Dr. Maule since she had attended the association meeting.

Dr. Maule provided a brief overview of the meeting.

**Legislation – Timothy Underhill, O.D.**

No report.

**Probable Cause – Rod Presnell**

## **Stats**

Informational purposes only.

## **Rules – Terrance Naberhaus, O.D.**

### **Discussion of Section – 463.012, F.S. – Prescriptions; filing; release; duplication and Rule 64B13-3.012, F.A.C. – Prescriptions**

Dr. Naberhaus stated that he believed the board needed to state the class and modality of the daily wear contact lens in determining the how long a contact lens prescription should last.

Discussion ensued.

Dr. Naberhaus stated that he would draft language that clarify this situation and would present for discussion at the next meeting.

### **Discussion of Rule 64B13-4.001, F.A.C. – Examination Requirements (See Attachment 1)**

Dr. Naberhaus asked the department, represented by Dr. Bahrayni, if they had any concerns about the proposals in the rule. Dr. Bahrayni agreed that the changes proposed seemed reasonable but that she was not a content expert.

**Dr. Underhill moved to approve the changes to Rule 64B13-4.001, F.A.C. The motion was seconded and carried 7/0.**

## **Unlicensed Activity – Tamara Maule, O.D.**

No report.

## **ELECTION OF OFFICERS**

**Dr. Maule nominated Dr. Underhill as Chair and Dr. Naberhaus as Vice-Chair. The motion was seconded. There were no other nominations for Chair or Vice Chair. The board voted for the candidates and Drs. Underhill and Naberhaus were elected unanimously to the posts nominated, 7/0.**

**NEXT MEETING DATE – April 6 – Tampa**

## **ADJOURNMENT:**

The meeting was adjourned at 1:36 p.m.