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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

F I N A L M I N U T E S

MEETING OF:

**STATE BOARD OF OPTOMETRY
VIA VIDEOCONFERENCE**

TIME: 10:30 A.M.

Thursday, February 3, 2022

State Board of Optometry
February 3, 2022

BOARD MEMBERS:

- Luanne K. Chubb, O.D., F.A.A.O., Chairperson
- Arion R. Claggett, Acting Commissioner, Bureau of Professional and Occupational Affairs
- John A. Godfrey, O.D., Vice Chair
- Kimberly F. Boyer, O.D., Secretary
- Tyler Ritchie, Deputy Attorney General, Consumer Protection Member
- Perry C. Umlauf, O.D. - Absent

BUREAU PERSONNEL:

- Carole Clarke Smith, Esquire, Senior Counsel in Charge
- Carolyn DeLaurentis, Deputy Chief Counsel, Prosecution Division
- Ariel E. O'Malley, Esquire, Board Counsel
- Paul J. Jarabeck, Esquire, Senior Board Prosecutor
- Gregory Liero, Esquire, Board Prosecution Liaison
- Sarah E. McNeill, Board Administrator

ALSO PRESENT:

- Ted Mowatt, CAE, Vice President, Wanner Associates, on behalf of Pennsylvania Optometric Association
- Jen Smeltz, Republican Executive Director, Senate Consumer Protection & Professional Licensure Committee
- Jerry J. Livingston, Democratic Executive Director, Senate Consumer Protection & Professional Licensure Committee
- Lori Behe
- David Buono, Acting Deputy Insurance Commissioner - Office of Market Regulation, Pennsylvania Insurance Department
- Katie Merritt, LSW, Director of Policy and Planning, Pennsylvania Insurance Department
- Sandy Ykema, J.D., Department Counsel, Pennsylvania Insurance Department

1 ***

2 State Board of Optometry

3 February 3, 2022

4 ***

5 The regularly scheduled meeting of the State
6 Board of Optometry was held on Thursday, February 3,
7 2022. Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
8 called the meeting to order at 10:30 a.m.

9 ***

10 Roll Call

11 [Chairperson Chubb requested Ms. McNeill take a roll
12 call of Board members.]

13 ***

14 Meeting Instructions

15 [Sarah E. McNeill, Board Administrator, provided
16 instructions to be followed during the virtual
17 meeting.]

18 ***

19 Introduction of Audience

20 [Chairperson Chubb requested the introduction of
21 audience members.]

22 ***

23 Approval of Agenda

24 CHAIRPERSON CHUBB:

25 I'd like to make a motion for approval

1 of the agenda for today.

2 Is there a motion?

3 DR. GODFREY:

4 I move to approve the agenda for today.

5 CHAIRPERSON CHUBB:

6 Is there a second?

7 DR. BOYER:

8 I second.

9 CHAIRPERSON CHUBB:

10 Any additions to the agenda at this

11 time? Everyone in favor? Opposed?

12 Abstained? Hearing none.

13 [The motion carried unanimously.]

14 ***

15 Approval of Minutes

16 CHAIRPERSON CHUBB:

17 I'd like to make a motion to approve the

18 minutes from the December 2, 2021,

19 meeting.

20 DR. GODFREY:

21 I move to approve the minutes of the

22 December 2, 2021, meeting.

23 CHAIRPERSON CHUBB:

24 Second?

25 DR. BOYER:

1 Second.

2 CHAIRPERSON CHUBB:

3 Is there any discussion? I'd like to
4 open it up for discussion, additions,
5 any corrections to the meeting?

6 [The Board discussed corrections to the minutes.]

7 CHAIRPERSON CHUBB:

8 Any further discussion? All those in
9 favor of approving the minutes, please
10 say aye? Opposed? Abstained? Hearing
11 none.

12 [The motion carried unanimously.]

13 ***

14 Report of Board Prosecutor - No Report

15 [Paul J. Jarabeck, Esquire, Senior Board Prosecutor,
16 had no formal report to offer from the prosecutorial
17 division.]

18 Mr. Jarabeck introduced the new Board prosecution
19 liaison, Gregory Liero, and provided a brief summary
20 of his professional background.

21 Chairperson Chubb welcomed Mr. Liero to the State
22 Board of Optometry.]

23 ***

24 [Ariel E. O'Malley, Esquire, Board Counsel, reminded
25 everyone that the meeting was being record, and those

1 who continued to participate were giving their consent
2 to be recorded.]

3 ***

4 Report of Acting Commissioner - No Report

5 [Arion R. Claggett, Acting Commissioner, Bureau of
6 Professional and Occupational Affairs, introduced
7 himself and provided a brief summary of his
8 professional background.]

9 ***

10 Report of Board Counsel - Legislative Report

11 [Ariel E. O'Malley, Esquire, Board Counsel, addressed
12 Act 100 of 2021, where in addition to having meetings
13 public, it would also require virtual interaction and
14 allow the quorum to be established virtually.

15 Ms. O'Malley stated Act 100 of 2021 requires
16 Boards to draft regulations to allow for distance
17 education in regards to continuing education, which
18 the Board already has. The Act would also require
19 regulations if there is a supervision requirement to
20 obtain licensure. However, as there is no supervision
21 requirement to obtain licensure as an optometrist,
22 this not something the Board would need to be
23 concerned with.]

24 ***

25 Report of Board Counsel - Miscellaneous

1 [Ariel E. O'Malley, Esquire, Board Counsel, noted the
2 Prescription Drug Monitoring Program (PDMP) vendor
3 transition for the Board's information.

4 Ms. O'Malley referred to Recusal Guidelines and
5 the Sunshine Act for the Board's review and encouraged
6 Board members to contact her if they have any
7 questions.]

8 ***

9 Report of Board Chair

10 [Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
11 informed the Board of revisions for the Council on
12 Optometric Practitioner Education (COPE) approval
13 categories for continuing education. She commented
14 that the list is used by the states, both nationally
15 and internationally.

16 Chairperson Chubb noted that the Association of
17 Regulatory Boards of Optometry (ARBO), in which
18 Pennsylvania is a member, streamlined the categories
19 to more appropriately reflect what states require,
20 especially regarding pharmaceuticals and therapeutics.

21 Chairperson Chubb noted the 2022 Annual
22 Association of Regulatory Boards of Optometry Meeting
23 June 12-14 in Chicago, IL.

24 CHAIRPERSON CHUBB:

25 I would like to request Board approval

1 to travel to that meeting.

2 DR. BOYER:

3 I move that we approve Dr. Chubb's
4 request.

5 DR. GODFREY:

6 I second that.

7 CHAIRPERSON CHUBB:

8 Any discussion? All in favor? Opposed?
9 Abstained? Hearing none.

10 [The motion carried unanimously.]

11 ***

12 [Luanne K. Chubb, O.D., F.A.A.O., Chairperson, asked
13 whether any other Board members had an interest in
14 also attending the meeting.]

15 ***

16 Report of Regulatory Counsel - No Report

17 [Ariel E. O'Malley, Esquire, Board Counsel, informed
18 everyone that there will be a Regulatory Committee
19 Meeting following the Board meeting to discuss the Act
20 41 Regulation.]

21 ***

22 Report of Board Administrator

23 [Sarah E. McNeill, Board Administrator, requested
24 approval of the 2023 Board meeting dates for February
25 2, May 11, August 24, and December 7.]

1 CHAIRPERSON CHUBB:

2 I would make a motion to approve the
3 Board meeting dates for 2023.

4 DR. GODFREY:

5 I second.

6 CHAIRPERSON CHUBB:

7 Any discussion? Hearing none. All in
8 favor? Opposed? Abstained? Hearing
9 none.

10 [The motion carried unanimously.]

11 ***

12 New Business

13 [John A. Godfrey, O.D., Vice Chair, requested the
14 Continuing Education Committee consider accepting
15 Continuous Assessment Program (CAP) assessments from
16 the American Board of Optometry (ABO). He mentioned
17 that more and more states are accepting the CAP
18 assessments as legitimate continuing education.

19 Dr. Godfrey explained the CAP assessments, noting
20 that an optometrist needs to complete seven out of
21 nine over a three-year period to maintain Board
22 Certification for the American Board of Optometry. He
23 mentioned that there are three modules a year to
24 complete, where they would have to read articles and
25 take an examination. He commented that it is a

1 legitimate form of continuing education (CE) that many
2 are completing and not getting credit toward their
3 state licensure.

4 Chairperson Chubb noted that the Board accepts
5 courses given by the American Board of Optometry but
6 was not sure how they fit under the American
7 Optometric Association (AOA) and would be something to
8 look at, whether it is something approved by the AOA
9 and would be automatic credit and whether it is 3
10 credit hours, 2 credit hours, or 1 credit hour
11 approved for it.

12 Dr. Godfrey stated an individual would receive 3
13 credits toward Board certification and whether or not
14 the Board feels it is worth 3 full credits is a
15 completely different issue. He commented that it is
16 certainly worth 1 and probably legitimately worth 2
17 and should be considered as a legitimate form of
18 continuing education.

19 Ms. O'Malley suggested the matter be placed on
20 the agenda for further discussion at the next Board
21 meeting after the Continuing Education Committee does
22 their research and the Board could then vote.]

23 ***

24 Appointment - Prosecution Division Annual Report
25 Presentation

1 [Carolyn A. DeLaurentis, Esquire, Deputy Chief
2 Counsel, Prosecution Division, provided a summary of
3 the prosecution division's caseload during 2021.

4 Ms. DeLaurentis informed the Board that 58 cases
5 were opened in 2021, which is an increase from 2020 at
6 46 for the State Board of Optometry. She noted
7 closing 57 cases, which was an increase from 2020
8 where 40 cases were closed.

9 Ms. DeLaurentis reported 33 open cases for the
10 State Board of Optometry as of January 1, 2022.

11 Ms. DeLaurentis addressed enforcement actions,
12 noting zero cases resulted in discipline in 2021. She
13 reported 28 warning letters in 2021, which was an
14 increase from 4 in 2020. She explained that warning
15 letters might be something concerning staff being
16 rude, minor recordkeeping issues, or not being able to
17 see an individual's license because it was not
18 properly posted.

19 Ms. DeLaurentis addressed COVID-related cases,
20 noting that one complaint may result in more than one
21 case being opened. She reported 1,223 cases were
22 opened in the prosecution division regarding COVID
23 complaints in 2020, with 6 of those cases for the
24 State Board of Optometry. She also reported a
25 significant decrease in COVID-related complaints in

1 2021, mostly for business-related boards but an
2 increase in healthcare-related boards with 543 COVID-
3 related cases and 4 of those for the Optometry Board.

4
5 Ms. DeLaurentis noted a record number of cases
6 opened last year and thanked the administrative
7 assistants for processing so many files. She reported
8 18,363 cases were opened in 2021, which is an increase
9 from 2020 at 13,394.

10 Ms. DeLaurentis reported 15,994 cases were closed
11 in 2021 and 13,274 in 2020. She thanked the Board,
12 Board counsel, and prosecutors for their collective
13 effort. She reported 15,141 open cases as of January
14 1, 2022.]

15 ***

16 Appointment - Pennsylvania Insurance Department - No
17 Surprises Act

18 [Katie Merritt, LSW, Director of Policy and Planning,
19 Pennsylvania Insurance Department (PID), presented to
20 the Board to discuss the No Surprises Act, the
21 provisions in the law, the process for complaints, and
22 enforcement that became effective January 1, 2022.

23 David Buono, Deputy Insurance Commissioner,
24 Office of Market Regulation, Pennsylvania Insurance
25 Department, informed the Board that material presented

1 today was prepared by the Commonwealth of Pennsylvania
2 Insurance Department based on law, regulations, and
3 guidance as of December 1, 2021.

4 Mr. Buono addressed the No Surprises Act (NSA),
5 noting that the disclosure requirement, provider
6 directory requirement, and Good Faith Estimate applies
7 to all health care providers.

8 Mr. Buono commented that health plans that cover
9 any benefits for emergency services, including air
10 ambulance, under the No Surprises Act, requires
11 emergency services to be covered without any prior
12 authorization regardless of whether a provider or
13 facility is in-network.

14 Mr. Buono also commented that if a health plan
15 covers any benefits for nonemergency services related
16 to the visit in an in-network facility, the No
17 Surprises Act requires patients be protected when they
18 have little or no control over who provides their
19 care.

20 Mr. Buono stated ancillary providers, such as
21 labs or doctors, involved in a surgery that the
22 patient does not select may not balance bill. He
23 noted cost-sharing for ancillary providers is treated
24 as in-network. He commented that the No Surprises Act
25 protects people from unexpected bills for emergency

1 services, air ambulance services, and certain
2 nonemergency services related to a visit to a
3 facility. He mentioned that emergency ground
4 ambulance services has been deferred for further study
5 and is being reviewed at the federal government level.

6 Mr. Buono stated nonemergency services for some
7 ancillary care at an in-network facility is treated as
8 in-network in all circumstances. He reported that
9 other nonemergency services may only be billed if they
10 were out of network with advanced notice and consent
11 from the patient.

12 Mr. Buono noted the No Surprises Act limits the
13 high out-of-network cost sharing, where patient cost-
14 sharing, such as coinsurance or deductible, cannot be
15 higher than if such services were provided by an in-
16 network doctor and any coinsurance or deductible must
17 be based on in-network provider rates.

18 Mr. Buono stated No Surprises Act billing
19 protection applies if coverage is through an employer,
20 state-based marketplace Pennie, or directly through an
21 individual market health insurance company. He
22 mentioned that the Act does not apply to Medicare,
23 Medicaid, Indian Health Services, Veterans Affairs, or
24 TRICARE.

25 Mr. Buono addressed plans that do not have the

1 balance billing protection, including indemnity or
2 accepted benefit plan enrollees, because it is not
3 individual market coverage and does not typically have
4 a network. He noted short-term limited duration plan
5 enrollees, health care sharing ministries, or the
6 Amish are not individual market coverage.

7 Mr. Buono addressed uninsured individuals, noting
8 providers are required to provide a Good Faith
9 Estimate upon request or scheduling an item or
10 service. He stated uninsured and self-pay patients
11 must receive a Good Faith Estimate at least 72 hours
12 before services.

13 Mr. Buono also noted that a Good Faith Estimate
14 must be given at least 3 hours ahead of time if a
15 service is scheduled within three days. He stated the
16 federal government is taking a non-enforcement
17 approach to this provision, along with Pennsylvania,
18 due to the technological challenges affecting this
19 provision.

20 Mr. Buono stated providers are encouraged to
21 coordinate with co-providers to present a single Good
22 Faith Estimate, but the Department of Health and Human
23 Services (HHS) is exercising enforcement discretion
24 and flexibility to allow for technical coordination
25 required.

1 Mr. Buono provided a summary of providers that
2 may not balance bill. He stated providers and
3 facilities must have a business process to give
4 provider directory and network information to plans
5 anytime there is a material change. He commented that
6 providers and facilities may, by contract, impose on
7 plans the duty to keep the directory current in the
8 event of contract termination. He noted that the
9 provider or facility must reimburse the patient plus
10 interest if a provider or facility bills a patient
11 more than the in-network cost-sharing amount and the
12 patient pays it.

13 Mr. Buono addressed continuity of care, where a
14 contract with a plan terminates and the provider or
15 facility is no longer in-network and the patient is a
16 continuing care patient, the provider must accept
17 payment, including cost-sharing calculated on an in-
18 network basis for the duration of the continuity of
19 care.

20 Mr. Buono stated providers with complaints about
21 a plan should contact the Pennsylvania Insurance
22 Department because they have a process to quickly
23 review the complaint. He mentioned HHS is also
24 establishing a complaint process with the
25 acknowledgement of the complaint possibly taking 60

1 days. He mentioned that providers with complaints
2 about a patient should first make sure the patient
3 understands the Act and are encouraged to contact the
4 Pennsylvania Insurance Department.

5 Mr. Buono noted that patients who do understand
6 the Act should be handled as before with the
7 understanding in the case of a surprise medical bill
8 that the provider may not collect more than the in-
9 network cost-sharing.

10 Sandy Ykema, Esquire, J.D., Department Counsel,
11 Pennsylvania Insurance Department, addressed
12 disclosure requirements, noting a one-page disclosure
13 must be available to patients with the requirements
14 and prohibitions applicable to the provider or
15 facility regarding balance billing and how to contact
16 the appropriate state and federal agencies if the
17 patient believes the provider or facility has violated
18 the law.

19 Ms. Ykema stated the information has to be
20 publicly available from the provider and facility.
21 She mentioned the Pennsylvania Insurance Department
22 has a model notice and information on their website.
23 Information can also be found on the federal website.

24 Ms. Ykema addressed notice and consent, which
25 allows a provider to balance bill if they give notice

1 and receive written consent from the patient at least
2 3 days before the service, not later than 1 business
3 day after scheduling, or 3 business days after
4 scheduling if scheduled 10 days in advance. She noted
5 it may not be used in an emergency situation. She
6 explained that the notice has to be on a separate
7 form, signed, retained for seven years, and a copy
8 given to the patient.

9 She commented that the notice and consent has to
10 give notice that the provider does not participate in
11 the consumer's health insurance plan, have a Good
12 Faith Estimate amount that the provider will charge
13 for all of the services, explain that there might need
14 to be prior authorization or other approval, and be
15 clear that a person does not have to consent to an
16 out-of-network provider.

17 Ms. Ykema emphasized that a person has to be able
18 to get services from an available in-network provider,
19 but if there is no available in-network provider, then
20 notice and consent may not take the place of balance
21 billing protections.

22 Ms. Ykema addressed payment, where the provider
23 will need to confirm the patient's coverage. She
24 explained that an out-of-network provider who
25 furnished a surprise medical service may collect cost-

1 sharing from the patient and then the provider may
2 bill the patient directly for all remaining charges.
3 She noted a provider and plan may negotiate if the
4 provider is not satisfied with the amount directly and
5 then through a federally administered independent
6 dispute resolution process. She mentioned there is
7 litigation on the qualifying payment amount and the
8 independent dispute resolution process at the federal
9 level.

10 Ms. Ykema addressed disputes with uninsured
11 patients, where the provider may bill the patient.
12 She stated the patient may access the patient provider
13 dispute resolution process if there is a difference in
14 the Good Faith Estimate more than \$400. She noted that
15 the patient will pay a small administrative fee around
16 \$25 to start the process within 120 days and will
17 recoup that if the patient prevails.

18 Ms. Ykema addressed enforcement, noting that
19 anyone with concerns regarding the No Surprises Act
20 should contact the Pennsylvania Insurance Department,
21 which is a Commonwealth of Pennsylvania agency
22 coordinating enforcement with all of the state
23 agencies, including the Department of State,
24 Department of Health, and Department of Drug and
25 Alcohol. She mentioned that the Pennsylvania

1 Insurance Department has a process to review the
2 complaint and expeditiously handle it, where the
3 response time may be delayed using the federal
4 process.

5 Ms. Ykema noted that the state law applies unless
6 it prevents the application of the federal law. She
7 mentioned that state agencies that receive a call
8 related to balance billing and the No Surprises Act
9 can go to the Pennsylvania Insurance Department's
10 webpage for guidance.

11 Ms. Ykema stated complaints are assigned to a
12 consumer services representative to work with other
13 state agencies and collaborate with the federal agency
14 if they cannot address the issue completely.

15 Ms. Ykema noted the Department of Health and
16 Human Services oversees the insurance plans,
17 providers, and facility provisions; Department of
18 Labor oversees self-funded plans; and the Office of
19 Personnel Management oversees the Federal Employees
20 Health Benefits (FEHB) program.

21 Ms. Ykema encouraged everyone to visit the
22 Pennsylvania Insurance Department webpage for more
23 information.

24 Chairperson Chubb thanked the Pennsylvania
25 Insurance Department for their presentation.]

1 ***

2 Miscellaneous

3 [Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
4 announced that she would be reaching out to the Bureau
5 of Professional and Occupational Affairs (BPOA) for
6 them to send out reminders to local societies that the
7 Board is seeking members, so the Board could hopefully
8 move forward in the near future with reappointments
9 and new appointments.

10 Ms. McNeill offered to provide information to
11 anyone interested in becoming a Board member.]

12 ***

13 Adjournment

14 CHAIRPERSON CHUBB:

15 We are going to adjourn the State Board
16 of Optometry Meeting for Pennsylvania at
17 this time.

18 Our next meeting is May 19 at the
19 same time. We will hear between now and
20 then whether or not we will be having an
21 in-person, virtual, or hybrid meeting.

22 Do I have a motion to adjourn?

23 DR. BOYER:

24 So moved.

25 DR. GODFREY:

1 Second.

2 CHAIRPERSON CHUBB:

3 All in favor? Opposed? Abstained?

4 [The motion carried unanimously.]

5 ***

6 [There being no further business, the State Board of
7 Optometry Meeting adjourned at 11:27 a.m.]

8 ***

9 [A Regulatory Committee Meeting is scheduled
10 immediately following the regular Board meeting.]

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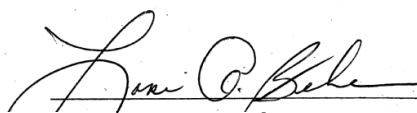
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CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Optometry meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Optometry meeting.



Lori A. Behe,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OPTOMETRY
REFERENCE INDEX

February 3, 2022

	TIME	AGENDA
1		
2		
3		
4		
5		
6		
7		
8		
9	10:30	Official Call to Order
10		
11	10:30	Roll Call/Introduction of Audience
12		
13	10:33	Approval of Agenda
14		
15	10:34	Approval of Minutes
16		
17	10:37	Report of Board Counsel
18		
19	10:38	Report of Board Chair
20		
21	10:42	Report of Board Administrator
22		
23	10:43	New Business
24		
25	10:48	Appointment - Carolyn A. DeLaurentis,
26		Esquire, Deputy Chief Counsel,
27		Prosecution Division Annual Report
28		Presentation
29		
30	11:00	Appointment - Pennsylvania Insurance
31		Department
32		
33	11:25	Miscellaneous
34		
35	11:27	Adjournment
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