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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, August 26, 2021

1 ***

2 State Board of Optometry

3 August 26, 2021

4 ***

5 The regularly scheduled meeting of the State Board of
6 Optometry was held by videoconference pursuant to Act
7 73 of 2021 that extended the waiver of the "physical
8 presence" requirement in section 2.1(c) of the
9 Optometric Practice and Licensure Act (63 P.S. §
10 244.2a(c) on August 26, 2021.

11

12 [Pursuant to Section 708(a)(5) of the Sunshine Act, at
13 10:15 a.m. the Board entered into Executive Session
14 with Ariel E. O'Malley, Esquire, Board Counsel, for
15 the purpose of conducting quasi-judicial deliberations
16 and to receive the advice of Board Counsel. The Board
17 returned to open session at 10:30 a.m.]

18

19 Meeting Instructions

20 [Chris Stuckey, Board Administrator, provided
21 instructions to be followed during the virtual
22 meeting.]

23

24 [Ariel O'Malley, Esquire, Board Counsel, reminded
25 everyone that the meeting is being recorded, and those

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

3 ***

4 The regularly scheduled meeting of the State
5 Board of Optometry was held on Thursday, August 26,
6 2021. Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
7 called the meeting to order at 10:30 a.m.

8 ***

9 Roll Call

10 [Chairperson Chubb requested Ms. Stuckey take a roll
11 call of Board members.

12 Ms. Stuckey introduced and welcomed Sarah McNeill
13 as the new Board administrator for the State Board of
14 Optometry.

15 Chairperson Chubb noted Dr. Wilcox is teaching a
16 class and applied for an excused absence but would
17 like to join the meeting at a later time if the class
18 finishes early.

19 Chairperson Chubb thanked Ms. Stuckey for
20 everything she has done for the Board. She also
21 welcomed Ms. McNeill to the Board.]

22 ***

23 Introduction of Audience

24 [Chairperson Chubb requested the introduction of
25 audience members.]

1 ***

2 Approval of Agenda

3 CHAIRPERSON CHUBB:

4 I would like to have approval of the
5 agenda.

6 Can we have a motion to approve the
7 agenda?

8 DR. BOYER:

9 I move to approve the agenda.

10 CHAIRPERSON CHUBB:

11 Is there a second?

12 DR. URBANSKI:

13 Second.

14 CHAIRPERSON CHUBB:

15 Any additions or modifications? Hearing
16 none. I motion that the agenda has
17 passed as distributed.

18 [The motion carried unanimously.]

19 ***

20 Approval of Minutes

21 CHAIRPERSON CHUBB:

22 Approval of the minutes from our last
23 meeting in May 2021. Have the Board
24 members had an opportunity to review the
25 minutes?

1 be at the Penn Center location due to the expiration
2 on October 1 of the regulatory suspension regarding
3 the physical presence requirement.

4 Commissioner Johnson mentioned that the
5 department would be taking every precaution to ensure
6 public health and safety for that Board meeting but
7 would notify Board members of any changes.

8 Commissioner Johnson announced that physical
9 travel is now allowed for any regional or national
10 events respective to duties of Board members but
11 strongly encouraged the virtual option if available.
12 He requested everyone submit travel requests as soon
13 as possible for processing and to ensure logistics
14 because of staffing shortages and difficulties
15 procuring accommodations.

16 Chairperson Chubb asked Commissioner Johnson to
17 address continuing education for their licensure
18 period that began December 1, 2020 and ends November
19 30, 2022.

20 Commissioner Johnson stated the regulatory
21 suspension pertained to the allowance of 100 percent
22 of online continuing education through the renewal
23 period and that position would be honored. He
24 mentioned that credits through the end of this
25 biennial period for individuals who are opting to

1 complete their continuing education requirement online
2 would be accepted. He noted licensees also have the
3 right to attend physical continuing education courses
4 for the remainder of the biennial period.

5 Commissioner Johnson explained that it did not
6 mean that on October 1 those credits that they were
7 able to secure online go away but that they no longer
8 have the option if that is something they registered
9 for and are looking to take.

10 Chairperson Chubb clarified that obtaining
11 credits virtually online for this licensure renewal
12 period is still acceptable.

13 Commissioner Johnson noted that to be correct.]

14 ***

15 Report of Board Counsel

16 [Ariel E. O'Malley, Esquire, Board Counsel, addressed
17 House Bill 681 regarding health care practitioner
18 covenants not to compete. She noted language changes
19 to the current version of the bill. She mentioned
20 prior Board concerns regarding what had to be given to
21 practitioners who were leaving a practice and patient
22 records.

23 Ms. O'Malley noted language was amended to
24 clarify that a notice was going to be given to the
25 patient, along with instructions if patients chose to

1 go with that practitioner about how to handle the
2 situation, rather than making it sound like all of the
3 patient records had to go with them.

4 Ms. O'Malley also noted an addition to the bill
5 that provides for an exception of when those covenants
6 would still apply.

7 Dr. Urbanski questioned whether it differentiates
8 between a contract for an employee versus a
9 shareholder or partnership agreement or only applies
10 to employment contacts.

11 Ms. O'Malley stated it is specifically for an
12 employment agreement, noting where it states it is for
13 covenants not to compete in health care practitioner
14 employment agreements.

15 Dr. Urbanski commented that a corporation may
16 have both, where someone chooses to leave employment,
17 there is a difference versus selling your share,
18 saying you are retiring and then opening up next door.

19 Ms. O'Malley noted that some of that is dealt
20 with later in the bill under Section 4(F), where it
21 addresses a damages clause for expenses incurred by an
22 employer and liquidation of damages.

23 Ms. O'Malley referred to Senate Bill 705
24 regarding telemedicine. She noted the bill has not
25 changed since the edition she sent the Board but just

1 wanted to thank them for their prompt and thoughtful
2 input, especially on online refractive services.

3 Ms. O'Malley referred to House Bill 958, noting
4 some linguistic edits to the Immunization Freedom Act
5 and removal of adult in the vaccination schedules for
6 pediatric patients and removal of the adult patients.

7 Ms. O'Malley addressed House Bill 1343 and
8 referred to the school code, where it provides for the
9 requirement of annual vision screening and eye health
10 exams and who has to perform them. She stated prior
11 to admission to the school, there has to be
12 certification from an ophthalmologist or optometrist
13 that the child has passed or failed a comprehensive
14 eye health exam.

15 Ms. O'Malley referred to Section 2, where it
16 specifically delineates the different times that the
17 students would need to have comprehensive eye health
18 examinations. She stated the bill codifies and clears
19 up when those exams are needed and who is supposed to
20 be providing them.

21 Ms. O'Malley addressed Senate Bill 554, now Act
22 65, amends the Sunshine Act and rules for preparing
23 meetings. She explained that it adjusted requirements
24 of making sure agendas are posted on their website 24
25 hours before the meeting and limits the ability to

1 address new issues at Board meetings.

2 Ms. O'Malley addressed exceptions, where last
3 minute items could be placed on the agenda and
4 discussed with an amended agenda as long as it was
5 something that was de minimis. She explained that the
6 amended agenda would have to be posted within 24 hours
7 of the meeting to ensure the minutes provide the
8 substance of the meeting and the Board provides notice
9 to the public ahead of time.

10 Dr. Urbanski asked Ms. O'Malley to address House
11 Bill 325 and explain how it could help the Board.

12 Ms. O'Malley stated the boards do not have the
13 authorization to speak to anything if it is not in the
14 act, the regulations, or in one of the adjudications.

15 She stated it would be considered a legal opinion or
16 an advisory opinion to answer any kind of logistical
17 questions.

18 Ms. O'Malley commented that counsel or
19 prosecution would be able to consult with Board
20 members and provide answers to licensees if the bill
21 passes. She explained that it helps fill in the gap
22 with situations that were not specifically addressed
23 in the act or regulations or there is a gray area.

24 Dr. Urbanski commented that it would be very
25 helpful because of all of the challenges, where the

1 practice act has many things that cannot be done but
2 not what can be done.]

3 ***

4 Report of Board Chair

5 [Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
6 addressed her attendance at the Association of
7 Regulatory Boards of Optometry (ARBO) Meeting held
8 virtually in June. She mentioned discussions
9 regarding the best way to deliver continuing
10 education. She stated Susy Yu from California, Gary
11 Chu, Rich Madonna from SUNY College of Optometry, and
12 several others compiled a poster presentation for the
13 Accreditation Council for Continuing Medical Education
14 (ACCME), by comparing and drilling down into
15 literature of whether online education is as effective
16 as in-person education.

17 Chairperson Chubb mentioned there was also a pool
18 of states regarding their concerns for online virtual
19 education versus in person. She commented that there
20 were not a lot of solid studies where it is the same,
21 but the studies do show that people can learn as
22 effectively virtually as in person.

23 Chairperson Chubb noted ARBO is encouraging
24 states to look at their regulations and requirements
25 of only in person or the majority of their continuing

1 education to be solely in person and to open up
2 discussions to consider moving to virtual online and
3 alternative methods of education in order to meet
4 their member needs.

5 Chairperson Chubb mentioned that there are a
6 number of states in support of it, and ARBO would like
7 states to readdress their regulations and allow their
8 stakeholders the opportunity to access things that
9 might not be available to them locally to expand their
10 knowledge base.

11 Chairperson Chubb stated ARBO would also like
12 state boards to consider whether or not they would
13 only accept approved courses because they have now
14 reestablished their substantially equivalent
15 accreditation with ACCME for the second term.

16 Dr. Urbanski commented that Pennsylvania is ahead
17 of the curve by changing the continuing education (CE)
18 regulation to 50 percent and believed that is probably
19 an adequate amount of hours virtually.]

20 ***

21 Report of Regulatory Counsel

22 [Ariel E. O'Malley, Esquire, Board Counsel, informed
23 the Board that the finished copy of the general
24 revisions were published in the *Pennsylvania Bulletin*
25 for the Board's review.

1 Ms. O'Malley addressed endorsement provisions,
2 noting the Regulatory Committee questioned §§ 23.202
3 and 23.205. She noted the Pennsylvania Optometric
4 Association (POA) put together a chart, where
5 applicants for licensure who hold a therapeutics and
6 glaucoma in another state are not subject to the
7 requirement to take additional education or testing.

8 Ms. O'Malley noted prior discussions regarding
9 removing those sections because of Act 41 but now
10 believed they should stay because those sections are
11 talking about the minimal hours for the pharmaceutical
12 training and the completion of the exam, and those
13 requirements are directly from the act. She noted Act
14 41 is a separate path than what is already set forth
15 in the Board's regulations and did not think those
16 sections should be removed.

17 Ms. O'Malley stated the Regulatory Committee also
18 was not sure if the language that applicants for
19 licensure, who already hold a therapeutics and
20 glaucoma in another state, should not be subject to
21 the requirements to take additional education or
22 testing.

23 Dr. Urbanski noted that until this year there was
24 only one state in the country that was not allowed to
25 treat glaucoma, which was Massachusetts, and they

1 passed a therapeutic expansion this year, where all
2 optometrists would be able to practice with privileges
3 to treat glaucoma in all states.

4 Dr. Urbanski commented that there really are no
5 legal standards of practice. He stated the American
6 Optometric Association publishes clinical practice
7 guidelines, which are evidence-based and can be looked
8 at as the closest thing they have to standards of care
9 or treatment and is incumbent on every practicing
10 doctor to follow the standards of care and what is
11 evidence-based.

12 Dr. Urbanski stated the biggest issue during his
13 tenure on the Board is the 100-hour course requirement
14 that is a barrier for someone who may have been
15 treating glaucoma for the past 30 years who tries to
16 come to Pennsylvania and cannot get a license.

17 Ms. O'Malley stated the issue is almost covered
18 by the Act 41 regulation because it covers situations
19 where someone is licensed in a manner where the
20 requirements are substantially equivalent to
21 Pennsylvania.

22 Ms. O'Malley commented that maybe the Board
23 should not put in the extra step, where applicants for
24 licensure who hold a therapeutics and glaucoma in
25 another state are not subject to the requirements to

1 take additional education or testing because the Board
2 would be asking them for continuing education courses
3 or content and training if they are not substantially
4 similar and do not match requirements.

5 Ms. O'Malley informed everyone that there is a
6 Regulatory Committee Meeting immediately following the
7 regular Board meeting.]

8 ***

9 Report of Board Administrator

10 [Chris Stuckey, Board Administrator, thanked the Board
11 for all of their help and patience over the years.

12 Chairperson Chubb wished Ms. Stuckey the best.]

13 ***

14 Report of Regulatory Counsel (cont.)

15 [Ariel E. O'Malley, Esquire, Board Counsel, informed
16 the Board that the Act 41 regulations set to be
17 disseminated as proposed are going to be delivered
18 next week and would start the 30-day comment period.
19 She mentioned that she would provide those comments at
20 the December Board meeting for discussion and to begin
21 working on preparations for the final.]

22 ***

23 Miscellaneous

24 [Luanne K. Chubb, O.D., F.A.A.O., Chairperson,
25 reminded anyone up for reappointment to call their

1 Senators, along with any applicants who are interested
2 to also contact their Senators.

3 Chairperson Chubb thanked Dr. Urbanski for his
4 service on the Board for the past 8 years.

5 Dr. Urbanski commented that he enjoyed his
6 service on the Board and was thankful for all of the
7 support from a good team.

8 Chairperson Chubb noted Board dates for 2022 for
9 the Board's review.]

10 ***

11 Public Comment Period

12 [Tyler Ritchie, Deputy Attorney General, Consumer
13 Protection Member, introduced himself as the new
14 consumer protection member to the Board.

15 Chairperson Chubb welcomed Mr. Ritchie.]

16 ***

17 Adjournment

18 CHAIRPERSON CHUBB:

19 At this time, I would entertain a motion
20 for adjournment.

21 DR. BECKER:

22 I make a motion.

23 CHAIRPERSON CHUBB:

24 Second?

25 DR. URBANSKI:

1 Second.

2 CHAIRPERSON CHUBB:

3 This meeting is officially adjourned.

4 [The motion carried unanimously.]

5 ***

6 [There being no further business, the State Board of
7 Optometry Meeting adjourned at 11:08 a.m.]

8 ***

9 [The Optometry Board's Regulatory Committee is
10 scheduled to meet directly after the adjournment of
11 the regular Board meeting.]

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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.


Kelly Gallick,

Minute Clerk

Sargent's Court Reporting
Service, Inc.

STATE BOARD OF OPTOMETRY
REFERENCE INDEX

August 26, 2021

	TIME	AGENDA
1		
2		
3		
4		
5		
6		
7		
8	10:15	Executive Session
9	10:30	Return to Open Session
10		
11	10:30	Official Call to Order
12		
13	10:31	Roll Call/Introduction of Audience
14		
15	10:33	Approval of Minutes
16		
17	10:35	Report of Prosecutorial Division
18		
19	10:36	Report of Commissioner
20		
21	10:41	Report of Board Counsel
22		
23	10:51	Report of Board Chair
24		
25	10:55	Report of Regulatory Counsel
26		
27	11:03	Report of Board Administrator
28		
29	11:06	Report of Regulatory Counsel (cont.)
30		
31	11:04	Miscellaneous
32		
33	11:08	Public Comment Period
34		
35	11:08	Adjournment
36		
37		
38		
39		
40		
41		
42		
43		
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45		
46		
47		
48		
49		
50		