

Board of Registration of Optometry

Public Session Minutes

Meeting Held by Phone/Video Conference

DATE: December 15, 2021 TIME: 10:00am

Board Members Present by Phone/Video:

Rhonda Willinger, OD

Jeanette Sewell, OD

Everett Sabree, OD

Bruce Rakusin, OD

DPL Staff Present by Phone/Video:

Charles Kilb, Board Counsel

Thomas F. Burke, Executive Director

Board Members Not Present :

Marianne Sarkis, Ph.D.

Meeting called to order at 10:05 AM by Dr. Sabree

Meeting called to order:

- Teleconference Procedures

Mr. Burke reviewed protocols for meeting via electronic means.

Board Business

- Review of Public Session Minutes: October 20, 2021

The minutes were reviewed and a typographical error was amended. Dr. Rakusin moved to accept the minutes as amended. Dr. Sewell seconded. The motion passed on a roll call vote: Dr. Willinger – “yes”; Dr. Sarkis – “yes”; Dr. Sabree – “yes”; Dr. Rakusin – “yes”; Dr. Sewell – “yes”.

Compliance Monitoring

- S. Tittl

The Executive Director proposed that the Board discuss Dr. Tittle’s monitoring proposal at a subsequent meeting.

Discussion:

- Glaucoma Certification Course and Applications
 - Glaucoma Course MSO

Dr. Wayne Zahka announced that the 2022 Glaucoma & Orals Certification Course administered by the Massachusetts Society of Optometrists (“MSO”) will commence on January 23, 2022. Course certificates for optometrists who completed the MSO

course will be mailed on December 22, 2021. MSO will provide updates to Board staff.

- Glaucoma Process

No discussion.

- Department of Public Health Guidance

The Department of Public Health (“DPH”) will continue to work with Board staff on applicants seeking glaucoma certification. The Director noted that Board staff has mailed letters to approximately one hundred optometrists approved for glaucoma certification. The letters include DPH guidance on medication registration with the Massachusetts Controlled Substance Registration (“MCSR”). Mr. Burke reminded the Board that optometrists who want to prescribe or administer controlled substances in Schedules II-V must be registered with both the Department of Public Health Massachusetts Controlled Substance Registration (MCSR) and the US Drug Enforcement Administration (DEA). No vote taken.

- Continuing Education for Massachusetts Optometrists in 2022

Board Counsel offered a draft interpretation on Board regulation 246 CMR 2.01(3)(a)(2) regarding the limitation on distance-based learning continuing education courses to no more than six hours. Counsel proposed that asynchronous remote learning should be subject to the limitation to six hours, but synchronous remote learning such as a live interaction between an instructor and students should not be subject to the required limitation regardless of format. Per the Board chair’s request, the draft interpretation was read into the record.

“Pursuant to 246 CMR 2.01(3)(a)(2), “[n]o more than six Continuing Education Hours per renewal period will be credited for distance based learning Continuing Education Courses.”

It is the interpretation of the Board that for purposes of 246 CMR, "distance based" means a separation between an instructor and student, this separation being physical AND temporal (aka time). Accordingly, a "distance based learning Continuing Education Course" is an online or correspondence course in which students receive instruction in an asynchronous manner, such as by reading content, observing pre-recorded presentations, or otherwise interacting with on-demand multimedia. Conversely, a course that utilizes a live interaction between an instructor and students, even if the instructor and students are not physically in the same location, is NOT "distance based" for purposes of 246 CMR. Such courses are thus not subject to the limitations of 246 CMR 2.01(3)(a)(2). The Board notes that this requirement does not prohibit an otherwise "live" continuing education class from utilizing videos or

other multimedia presentations as part of the course so long as the majority of the class is a real-time collaboration between instructor and students.”

Further, Board Counsel stressed that distance-based courses that are limited to “temporal restrictions” would provide a standard of clarity for optometrists considering current prohibition on in-person meetings because of the ongoing pandemic. Counsel indicated that the Board could construe a class using technology to occur synchronously to not be distance. He cautioned that this interpretation is not as ideal as a regulation change using more explicit language, but was legally defensible. Board members asked whether the upcoming continuing education requirement would include course instruction for glaucoma certification. The Executive Director and Board counsel stated that optometrists approved for glaucoma certification in 2021 would be need to complete three (3) hours of continuing education in glaucoma-related instruction as part of the total eighteen (18) hours required in order to comply with the new statute.

After further discussion, Dr. Sewell moved to accept the draft interpretation. Dr. Willinger seconded. The motion passed on a roll call vote: Dr. Willinger – “yes”; Dr. Sarkis – “yes”; Dr. Sabree – “yes”; Dr. Rakusin – “yes”; Dr. Sewell – “yes”.

Dr. Sarkis departed the meeting at 11:15 a.m. The Board agreed to take a short break and then resume with Investigative Conference.

Cases, Investigative Conference, Settlement Offers [Closed session pursuant to M.G.L. c. 112 §65C]:

At 11:34 a.m., Dr. Rakusin moved to enter into Investigative Conference [Closed Session pursuant to M.G.L. c. 30A § 18D]. Dr. Sewell seconded. The motion passed on a roll call vote: Dr. Willinger – “yes”; Dr. Sarkis – “Not Present.”; Dr. Sabree – “yes.”; Dr. Rakusin – “Not Present.”; Dr. Sewell – “yes”.

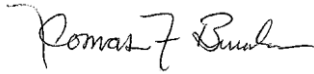
During investigative conference, the Board voted to take the following action:

- 2021-000181-IT-ENF – Provided guidance to the Investigator
- 2021-000627-IT-ENF – Tabled.
- 2021-000636-IT-ENF – Tabled.
- Investigatory Review – Tabled for discussion at subsequent meeting.

Adjournment:

At 12.23 p.m., Dr. Rakusin moved to adjourn the meeting. Dr. Sewell seconded. The motion passed on a roll call vote: Dr. Willinger – “yes”; Dr. Sarkis – “Not Present.”; Dr. Sabree – “yes”; Dr. Rakusin – “yes”; Dr. Sewell – “yes”.

Respectfully submitted,



Thomas Burke, Executive Director

Documents used in the open meeting:

- Agenda for December 15, 2021 board meeting
- Public Session Minutes for October 20, 2021 Board meeting
- Draft Interpretation of CE Requirements
- Extended Policy on Online Continuing Education during Covid-19 Pandemic