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Governor

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Lt. Governor

# New Jersey Office of the Attorney General

Division of Consumer Affairs  
New Jersey State Board of Optometrists  
124 Halsey Street, 6<sup>th</sup> Floor, Newark, NJ 07102



PAULA T. DOW  
Attorney General

THOMAS R. CALCAGNI  
Director

## New Jersey State Board of Optometrists

### Regular Session Minutes

September 21, 2011

**Mailing Address:**  
P.O. Box 45012  
Newark, NJ 07101  
(973) 504-6440

A regular meeting of the New Jersey State Board of Optometrists was held at 124 Halsey Street, Newark on the 6<sup>th</sup> floor on Wednesday, September 21, 2011. **Gigette Collazo Harfst, O.D., Vice President of the Board**, announced that pursuant to the Open Public Meetings Act notice of this meeting was prepared in the office of the Board and mailed out to the Secretary of State, the Attorney General, the Star Ledger, the Record, the Press of Atlantic City, the Asbury Park Press, and the Trenton Times. The meeting was called to order at 9:25 A.M. A roll call was taken and the following attendance was recorded and a quorum was present:

<b>CLARIBEL AZCONA-BARBER</b>	<b>Excused</b>
<b>DANIEL DESRIVIERES, O.D.</b>	<b>Present</b>
<b>GIGETTE COLLAZO HARFST, O.D.</b>	<b>Present</b>
<b>MITCHELL FINK, O.D.</b>	<b>Excused</b>
<b>JOHN FLORIO, O.D.</b>	<b>Present</b>

Also present were: **CARMEN RODRIGUEZ, Deputy Attorney General; LISA AFFINITO, Executive Director**

**Members of the public:** Michael Veliky, O.D.

#### I. Public Comment

Michael Veliky, O.D. commented on the New Jersey State Board of Optometrists Proposed Readoption with Amendments, specifically the exam requirements and electronic prescribing.

#### II. Approval of Regular Session Minutes

##### A. June 15, 2011

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to approve the June 15, 2011 Regular Session Minutes as presented. A vote was taken and the motion carried by a unanimous vote.

**III.** Elizabeth Greenblatt, Regulatory Analyst  
Review of Comments  
New Jersey State Board of Optometrists Rules  
Proposed Readoption with Amendments: N.J.A.C. 13:38  
From the April 4, 2011 New Jersey Register

A motion was made by Dr. Florio and seconded by Dr. Desrivieres to approve the responses to the comments. A vote was taken and the motion carried by a unanimous vote.

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to adopt the regulations as proposed. A vote was taken and the motion carried by a unanimous vote.

**IV. New Business**

- A. Assembly, No. 4185 (Synopsis - Requires certain disclosures by health care professionals.) - Introduced June 27, 2011

A motion was made by Dr. Florio and seconded by Dr. Desrivieres to advise the Division of Consumer Affairs legislative liaison that the Board has no comment on this bill. A vote was taken and the motion carried by a unanimous vote.

- B. Inquiry from Elaina Moyshelis, O.D.  
RE: Permissible Business Structures

Dr. Moyshelis informed the Board that she is interested in opening a business and inquired whether she was permitted to establish a limited liability company.

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to advise Dr. Moyshelis that she should review N.J.A.C. 13:38-1.3 *Permissible business structures*. The Board will also inform Dr. Moyshelis that she may wish to seek private legal counsel concerning this matter. A vote was taken and the motion carried by a unanimous vote.

- C. Inquiry from Norman Einhorn, O.D.  
RE: American Board of Optometry Certification

Dr. Einhorn informed the Board that he is now certified by the American Board of Optometry and asked the New Jersey State Board of Optometrists how he may advertise this certification.

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to advise Dr. Einhorn that he must clearly identify the entity from which he received the certification. A vote was taken and the motion carried by a unanimous vote.

- D. Inquiry from Walter Swan  
RE: Eyeglass Prescription

Mr. Swan inquired whether an optometrist must include the "pupillary distance" on an eyeglass prescription.

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to advise Mr. Swan that it is not required for an optometrist to include the interpupillary distance and height segment measurements on an eyeglass prescription. The interpupillary distance and height segment measurements need to be performed by the individual who fits the frame as frames are available in different sizes.

- E. Inquiry from Edward V. Neimczyk, O.D.  
RE: Scope of Practice

Dr. Neimczyk informed the Board that he is being asked by an insurance carrier for validation that optometrists have the authority to perform the following diagnostic and treatment procedures: CPT code 76514 (corneal pachymetry), CPT code 76519 (ophthalmic biometry a-scan), CPT code 65435 (corneal epi-debridement) and CPT code 66984-55 (post-op co management phacoemulsification).

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to advise Dr. Neimczyk that the Board does not approve the use of specific CPT codes nor does it maintain a CPT code list. The Board will further advise Dr. Neimczyk that corneal pachymetry, ophthalmic biometry a-scan, corneal epi-debridement and post-op co-management for phacoemulsification are within the scope of practice of optometry. A vote was taken and the motion carried by a unanimous vote.

- F. Letter from S. Moshe Roth, O.D.  
RE: Scope of Practice

Dr. Roth informed the Board that he is being asked by an insurance company for validation that CPT code 67850 is within the scope of practice of optometry.

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to advise Dr. Roth that the Board does not approve the use of specific CPT does nor does it maintain a CPT code list. The Board will inform Dr. Roth that they cannot answer his inquiry unless he provides clarification on the procedure in question. A vote was taken and the motion carried by a unanimous vote.

- G. Letter from Bethany Fishbein, O.D.  
RE: Online Eyewear Sales

Dr. Fishbein inquired whether she or an individual who is not an optometrist could establish an online eyewear sales company.

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to advise Dr. Fishbein that she may wish to contact private legal counsel concerning permissible business structures. A vote was taken and the motion carried by a unanimous vote.

- H. Division of Consumer Affairs  
Uniform Regulations  
Waivers; Performance-Based Outcomes  
Proposed New Rules: N.J.A.C. 13:45C-2 and 3

The Board reviewed the Proposed New Rules: N.J.A.C. 13:45C-2 and 3. A motion was made by Dr. Desrivieres and seconded by Dr. Florio not to comment on the proposed new rules. A vote was taken and the motion carried by a unanimous vote.

**V. Informational**

- A. Nova Southeastern University's July 8-18, 2012  
Council of Optometric Education Approved  
100 Hour Therapeutic Pharmaceutical Agents Certification Course

The Board reviewed Nova Southeastern University's advertisement of their 100 Hour Therapeutic Pharmaceutical Agents Certification course. The Board noted that the advertisement states, "Hours can be customized for state/province requirements or board certification review". The Board considered the advertisement informational.

- B. Letter from Johnny M. Loper, Esq. Of Womble Carlyle Sandridge & Rice  
to the American Optometric Association (AOA)  
RE: AOA House of Delegates resolution and motion  
regarding optometric continuing education

The Board reviewed a letter from the American Optometric Association and considered it informational.

- C. Signed Settlement letter - Harold Weisman, O.D.

The Board is in receipt of a signed Settlement letter from Harold Weisman, O.D. for violation of N.J.S.A. 45:1-21(h), N.J.A.C. 13:38-2.3(a) and N.J.A.C. 13:38-6.1(c)1. The Board is also in receipt of a check in the amount of \$627.75 which is the full payment of the civil penalty and Board costs in this matter. The Board now considers this matter to be concluded.

Upon a motion made by Dr. Florio and seconded by Dr. Desrivieres, the Board voted to go into Executive Session to discuss the following matters involving investigations or violations of the Board's enabling act, the Uniform Enforcement Act and/or Board regulations. A vote was taken and the motion carried by a unanimous vote.

1. Four matters filed with the board which require review and additional recommendations with regard to investigation and/or actions.
2. Eleven matters where additional information has been submitted to the Board concerning pending investigations.

**VI. Adjournment**

A motion was made by Dr. Desrivieres and seconded by Dr. Florio to adjourn the Regular Session Meeting at 2:00 P.M. A vote was taken and the motion carried by a unanimous vote.

Respectfully submitted,

Lisa Affinito  
Executive Director