

## MINUTES

### NEVADA STATE BOARD OF OPTOMETRY REGULAR MEETING

**May 25<sup>th</sup>, 2012**

Offices of Litigation Services  
Suite 300  
3770 Howard Hughes Parkway  
Las Vegas, Nevada

A regular meeting of the Nevada State Board of Optometry was called to order by Board President, Geoffrey F. Chiara, O.D., at 10:00 a.m. on May 25<sup>th</sup>, 2012, at the Offices of Litigation Services, Suite 300, 3770 Howard Hughes Parkway, Las Vegas, Nevada.

Present were:

Geoffrey F. Chiara, O.D., Board President  
Vincent A. Gassen, O.D., Board Member  
William F. Harvey, O.D., Board Member  
Sherese Settlemeyer, Board Member  
Judi D. Kennedy, Executive Director  
Louis Ling, Esq., Board Counsel  
Sophia G. Long, Deputy Attorney General  
Bich Ngoc Trinh, O.D.  
David P. Yesnick, O.D.  
Jacob Hafter, Esq.  
Katherine L. Turpen, Esq., Counsel for Dr. Donald Johns  
Stephen R. Hackett, Esq., Counsel for Dr. Rudy Manthei  
Amber M. Riggio, Sunshine Litigation Services

Dr. Chiara asked for public comment. There was no public comment.

Agenda Item 2. The Minutes of the Board's March 30<sup>th</sup>, 2012, regular meeting were presented for approval. Dr. Gassen moved the Minutes be approved as drafted. Ms. Settlemeyer seconded the motion. The vote was unanimous.

Agenda Item 5. May 1<sup>st</sup>, 2012, e-mail correspondence from Michael Litchfield. The Board reviewed the correspondence from Mr. Litchfield, and determined applicants

for licensure in Nevada need not achieve a score of 75 or higher on the TMOD portion of the National Board Examination since it had become an embedded section of the test. The Board directed Ms. Kennedy to respond to Mr. Litchfield stating applicants need only achieve a passing score on Parts I, II and III of the examination.

Agenda Item 3. Accusation of Judi D. Kennedy, as Executive Director vs. Bich Ngoc Trinh, O.D., License No. 707, Case No. 12-02.

Dr. Chiara opened the Formal Hearing in Case No. 12-02, Accusation of Judi D. Kennedy, as Executive Director vs. Bich Ngoc Trinh, O.D.

Dr. Chiara stated for the record that Dr. Trinh had, in the past, worked as an intern at the VA Hospital in Las Vegas, where Dr. Chiara is employed. Dr. Chiara continued, stating that he had not worked with her since she left the VA Hospital.

Ms. Kennedy and Dr. Trinh were sworn in as witnesses. Ms. Kennedy and Dr. Trinh offered direct testimony, and responded to questions from the Board.

The Board discussed the testimony, reviewed and the documents before it. Dr. Harvey moved the Accusation be dismissed. Dr. Gassen seconded the motion. The vote was unanimous.

Dr. Chiara closed the hearing.

Agenda Item 7. Report of Legal Counsel. Mr. Ling stated he had nothing to report.

Agenda Item 8. Report of Executive Director

The Board reviewed, and discussed the proposal of David A. Pringle, CPA, to perform the legislatively required audit of the Board's books. Dr. Gassen moved the proposal be accepted. Dr. Harvey seconded the motion. The vote was unanimous.

Agenda Item 4. Continuation of Formal Hearing. Accusation of Judi D. Kennedy, as Executive Director vs. David P. Yesnick, O.D., License No. 335, Case No. 11-02.

Dr. Chiara, addressing counsel for the parties, stated the matter would proceed in a civil and professional manner. He continued, cautioning name calling, raising of voices, or similar conduct would not be tolerated.

Dr. Gassen stated for the record he has a personal and professional relationship with Dr. Rudy Mathei, and for that reason, he was recusing himself from participation in the Board's deliberation regarding of the Motion to Quash filed by counsel for Dr. Johns, and the request of counsel for Dr. Mathei that the subpoena served on him be set aside.

Dr. Chiara turned to the Motion to Quash filed by Mr. Hackett on behalf of Dr. Donald Johns, and recognized the presence of Ms. Turpen on behalf of Dr. Rudy Manthei. The Board heard statements of Mr. Hackett and Ms. Turpen. Mr. Hafter responded on behalf of Dr. Yesnick. Mr. Ling offered statements in opposition to the subpoenas. At the conclusion of the statements of counsel for the parties, and after discussion, Ms. Settlemeyer moved the subpoenas served on Dr. Johns and Dr. Manthei be quashed. Dr. Harvey seconded the motion. The vote was unanimous.

A recess was taken from 11:23 a.m. to 11:39 a.m.

Mr. Hafter moved the hearing be continued so the subpoenas could be re-issued, and timely served. After considering statements of counsel, Dr. Gassen moved the motion to continue the hearing be denied. Dr. Harvey seconded the motion. The vote was unanimous.

A lunch recess was taken from 12:00 p.m. until 12:27 p.m.

The hearing reconvened, and Mr. Ling continued his cross-examination of Dr. Yesnick which began before the continuation of the hearing on January 27<sup>th</sup>, 2012.

There was a discussion regarding time expended considering and deliberating the issue of the subpoenas issued to Drs. Johns and Manthei, remaining witnesses, and questioning by the Board. At the end of the discussion, Dr. Harvey moved the hearing be continued. Ms. Settlemeyer seconded the motion. Dr. Gassen was opposed. It was determined the hearing would reconvene in Reno, Nevada in September, 2012.

There was an additional discussion regarding potential dates, times, and the possibility of video conferencing the hearing when it reconvened in September.

Mr. Hafter moved that the Board issue an order requiring Dr. Johns and Dr. Manthei to appear, or in the alternative, to produce their records relating to Tyler Appelzoller prior to the September meeting. After discussion regarding both the records, and the appearance of Dr. Johns and Dr. Manthei, Ms. Settlemeyer moved the motion to require the appearance of the doctors and/or for an order requiring the production of their records relating to Tyler Appelzoller be denied. Dr. Harvey seconded the motion. The vote was unanimous.

Dr. Chiara asked for public comment. There was none.

Dr. Harvey moved the meeting adjourn. The Board voted unanimously the meeting adjourn. The meeting adjourned at 2:25 p.m.