

MINUTES

NEVADA STATE BOARD OF OPTOMETRY REGULAR MEETING

September 27th, 2012
Airport Plaza Hotel
Gulfstream Room
1981 Terminal Way
Reno, Nevada

A regular meeting of the Nevada State Board of Optometry was called to order by Board President, Geoffrey F. Chiara, O.D., at 9:30 a.m. on September 27th, 2012, in the Gulfstream Room of the Airport Plaza Hotel, 1981 Terminal Way, Reno, 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
Keith Marcher, Chief Deputy Attorney General
David P. Yesnick, O.D.
Sandy Yesnick
Jacob Hafter, Esq.
Lesley A. Clarkson, RPR Sunshine Litigation Services

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

Agenda Item 2. The Minutes of the Board's July 25th, 2012, were presented for approval. Dr. Gassen moved the Minutes be approved as drafted. Ms. Settlemeyer seconded the motion. The vote was unanimous.

Agenda Item 3. 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 restated the Board's intention that counsel for the parties aggressively advocate for their clients, but that such advocacy be professional and civil.

Dr. Chiara confirmed with Mr. Ling that his cross-examination of Dr. Yesnick had been completed before the case had been continued in May, 2012.

Dr. Chiara then opened the hearing for direct examination of Dr. Yesnick by the Board. This direct examination was followed by redirect examination by Mr. Hafter, after which there were further questions posed to Dr. Yesnick by the Board.

Sandy Yesnick was called as a witness on behalf of the Respondent. Mr. Hafter conducted direct examination of Ms. Yesnick. Mr. Ling conducted cross-examination of Ms. Yesnick. The Board then posed questions to Ms. Yesnick.

Hearing there were no further witnesses, Dr. Chiara closed the evidentiary portion of the case.

Dr. Chiara advised counsel for the parties their closing arguments would be limited to 15 minutes each. Mr. Ling and Mr. Hafter offered their closing arguments.

A recess was taken from 11:00 a.m. to 11:16 a.m.

The Board discussed and deliberated the allegations contained in the First Cause of Action of the Accusation. At the conclusion of their deliberations, Dr. Harvey moved Dr. Yesnick be found guilty of the allegations contained in the First Cause of Action. Ms. Settelmeyer seconded the motion. The vote was unanimous.

The Board discussed and deliberated the allegations contained in the Second Cause of Action of the Accusation. At the conclusion of their deliberations, Ms. Settelmeyer moved Dr. Yesnick be found guilty of the allegations contained in the Second Cause of Action. Dr. Harvey seconded the Motion. Dr. Chiara voted in favor of the motion. Dr. Gassen voted opposed to the motion. The motion carried.

The Board then turned to the issue of discipline. Dr. Chiara asked for recommendations from Mr. Ling. Mr. Ling recommended imposition of a fine, that the Board be reimbursed its fees and costs, and that Dr. Yesnick be prohibited from referring patients to Low Vision Services.

A discussion ensued regarding the imposition of a probationary period in a prior case against Dr. Yesnick. Dr. Gassen moved that Dr. Yesnick's probation be extended for an additional year, that Dr. Yesnick reimburse the Board for its fees and costs incurred, that no referrals be made to Low Vision

Services, until a resolution had been reached on the Order entered in the prior case, and that a fine in the amount of \$2,000 be assessed. Dr. Gassen's motion failed.

Ms. Settlemeyer moved that Dr. Yesnick's probation be extended for an additional year, that Dr. Yesnick reimburse the Board for its fees and costs incurred, that no referrals be made to Low Vision Services, until a resolution had been reached on the Order entered in the prior case, and that a fine in the amount of \$5,000 be assessed. Dr. Chiara seconded the motion. Dr. Harvey voted in favor of the motion. Dr. Gassen voted opposed to the motion. The motion carried.

The hearing was closed at 11:39 a.m.

The Board scheduled a regular meeting for January 8th, 2013, in Las Vegas.

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

Dr. Harvey moved the meeting adjourn. Ms. Settlemeyer seconded the motion. The vote was unanimous. The meeting adjourned at 11:40 a.m.