

**Minutes**  
**May 24, 2013 Meeting**  
**NC State Board of Opticians**

A meeting of the North Carolina State Board of Opticians was held in the Conference Room of Allen Pinnix and Nichols, 510 Glenwood Avenue, Suite 300 in Raleigh NC on Friday May 24, 2013.

**Members Present:** Heather Allen, Bill Brock, Jennifer Hawkins, Carolyn Middlebrooks, Heidi Potter, Becky Johnson

**Others Present:** Board Counsel Jack Nichols, Board Director Sue Kornegay, Jeff Gray (Counsel for NC Opticians' Association)

Chair Bill Brock called the meeting to order at 1:12 PM, and inquired of the members as to whether there was any conflict of interest or ethical considerations relative to current ethics law or the Governor's Executive Orders. There were none identified, and the meeting's agenda commenced.

**Old Business**

**Item #1 - Approval of prior meetings' minutes.**

Minutes from meetings held January 25, March 19 and April 9, 2013 had been distributed to the members for review prior to the meeting; copies were also in their folders. Jennifer Hawkins moved, and Heather Allen seconded, that all the meetings' prepared minutes be approved as presented. With no discussion or dissension, the motion passed.

**Item #2 – Legislative Activity Update, Discussion**

Board Counsel Jack Nichols and Director Kornegay gave a cursory review of what has already transpired with SB435's revisions. Then he said that counsels for the Board and the Association (NCOA) had met, discussed the changes that the Optometric Society and Optometry Board had requested and revised the bill's language to reflect those requests. Members were provided the most recent bill draft during the discussion.

Counsel Nichols said that it was purposeful to have waited until after the 'bill crossover' date to submit another bill draft - he did not want it to get lost in the flurry of crossover activity.

With the changes agreed to by the Board and NCOA counsels, the latest draft has now gone back to Senator Hartsell for concurrence by the Senate Health Care Committee; once that occurs it would move to the Senate Finance Committee (since it has fee increases included).

Counsel also gave an update on other Board-relevant legislation: changes to the sales tax (as it relates to optical goods and services); the 'military rule' (necessary from Session Law 2012-196); review and/or expiration of all boards' rules (SB32); requirements for recording meetings (including Closed Sessions) (HB870); and the status of the General Assembly's Program Evaluation Division study for an 'umbrella agency' for boards and commissions.

Counsel and Director Kornegay told the Board that they've not been made aware of or detected any additional activity regarding Senator Curtis's efforts to reduce the Board's training program time and change the Licensure Exam. With the effects that both the Board and the Association see as detrimental, this issue will continue to be closely followed.

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**New Business**

**Item #1 – 2013 License Deletions**

Director Kornegay told the Board that with the mailing issues encountered during the 2013 renewal period (licensees not noting new Board address, uncorrected addresses on envelopes the NCOA provides during the CE events), it took additional time to compile the list of auto-deletions for the new year. (Per G.S. 90-244, licenses left unrenewed for two years, or those that have voluntarily relinquished their licenses, are deleted.) The members were given copies of the 2013 deletion list, to be included in the official Board minutes.

**Item #2 – Standing Committee Reports**

Director Kornegay brought a report from the Applications Committee on four individuals applying to the Board for licensure.

Two were applying pursuant to G.S. 90241(a) – licensure by waiver of examination. The Committee has reviewed the applications, and done any additional research/investigation necessary. The required & proper employment & personal reference documents were submitted, and both individuals have the required time in practice in their credit states. The Committee finds them eligible for licensure by waiver of the Exam, and is recommending both of these individuals be approved for licensure, after completion of a 6-month internship.

Carolyn Middlebrooks made a motion, seconded by Heather Allen, to accept the recommendations of the Committee. There was no dissension, and the motion carried.

Another applicant *incorrectly* applied for 90-241(a) waiver – it should have been 90-241(b) application (coming from an unlicensed state), but does not qualify for that consideration. The individual has less than 4 years' work experience in the unlicensed state where they now reside, and had a break in service time between leaving another unlicensed state and moving to their current state of residency. They do not meet the practice-time parameters of 241(b). The Committee is recommending they be denied Exam entry by 241(b) and required to complete the Board's training program or obtain an Associate's degree in opticianry.

Heidi Potter made a motion, seconded by Jennifer Hawkins, to accept the recommendations of the Committee. There was no dissension, and the motion carried.

The last applicant is a prior NC licensee, whose license was deleted for non-renewal, after they did not pay a fine invoked during a license suspension. They've now resurfaced, submitting the fine payment and reapplying under 90-241(a). This applicant does not qualify for licensure by Exam waiver, however, because they had a break in their employment time in the other state. The Committee is recommending acceptance of their fine payment, but denial of their waiver application – it recommends they be offered entry into the Exam process.

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As has been done historically, this applicant would not be required to do another internship since they fulfilled that statutory requirement before their previous licensure. However, with prior infractions that led to license suspension, the Committee recommended that they be issued a Consent Order (such as the Board has done with other multiple-violators) requiring that they attend a Law course before licensure and once licensed, they would have a 2-year probationary period during which any violation would bring additional discipline.

Carolyn Middlebrooks made a motion, seconded by Heather Allen, to accept the recommendations of the Committee. There was no dissension, and the motion carried.

The Disciplinary Committee conferred several times since the Board's last actions were taken in September 2012, Kornegay reported. She presented the following report and recommendations regarding the Committee's deliberations:

Late 2013 Opticians' License Renewals

There were 3 practicing opticians whose personal license renewals were not received, or postmarked, in the Board office on or before January 1. Investigations were conducted by visits and/or telephone January 3<sup>rd</sup>, and the licensees were either found practicing without their renewed license or admitted to have been practicing on or after January 1.

One of these opticians is the optician-in-charge (OIC) of a business, with no prior violations and/or disciplinary actions. For this optician/OIC the Committee is recommending issuance of a Consent Order, including a fine of \$250, 12 months' probation, and reporting the violation to the HIPDB. (The cover letter would include an admonition to be more vigilant regarding any business for which they accept responsibility.)

Heather Allen moved, and Heidi Potter seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

Another optician (not an OIC) admitted working on January 1<sup>st</sup> and 3<sup>rd</sup>, in two separate locations, without other licensed coverage on site. This optician has no prior violations and/or disciplinary actions. For this optician the Committee is recommending issuance of a Consent Order, including a fine of \$250, 12 months' probation, and reporting the violation to the HIPDB. (The cover letter would include an admonition to be more vigilant regarding opticianry law and responsibility for their professional license.)

Becky Johnson moved, and Carolyn Middlebrooks seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

The third optician, who is the OIC of a business, has two prior disciplinary actions (one being a *personal license renewal* violation). For this optician/OIC the Committee is recommending

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issuance of a Consent Order, including a fine of \$350 (citing a higher fine in consideration of prior violations), 12 months' probation, and reporting the violation to the HIPDB. (The cover letter would include an admonition to be more vigilant regarding any business for which they accept responsibility.)

Becky Johnson moved, and Heather Allen seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

Business Registration Violation

There was a business registration that was not completed within the required 10-day timeline and when an investigatory call was made, the licensee admitted they'd simply not done the new registration.

For this licensee/OIC the Committee is recommending issuance of a Consent Order, including a fine of \$150 and 12 months' probation, with an admonition in the cover letter to be more vigilant regarding any business for which they accept responsibility.

Becky Johnson moved, and Carolyn Middlebrooks seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

Practicing Opticianry Without Displayed License

During a routine inspection, a licensee/OIC was found to be working at an optical business without a license displayed as required by law. This licensee was the only license at the location at the time of the inspection. The licensee left to get his license, but had already been found practicing without it.

For this licensee/OIC the Committee is recommending the issuance of a Consent Order, including a fine of \$150 and 12 months' probation, with an admonition in the cover letter to be more vigilant to adherence to opticianry statute and rule.

Heather Allen moved, and Heidi Potter seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

Dispensing Contact Lenses Without Utilizing Release Forms

During routine inspections, four optical places of business were found to be dispensing contact lenses without having patients/customers sign a release form as required by G.S. 90-236.1. The optician/OICs admitted non-compliance, and said there were none on site in the optical businesses. None of these licensees have any history of disciplinary actions.

For each of these licensee/OICs the Committee is recommending the issuance of a Consent Order, including a fine of \$100 and 12 months' probation, with an admonition in the cover letters to be more vigilant regarding adherence to processes at any business for which they accept responsibility.

Carolyn Middlebrooks moved, and Heather Allen seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

#### Practicing Opticianry Without A Current License

There was an anonymous telephone message left in the office regarding an individual practicing opticianry without a current license. Because the individual named had several prior violations, staff felt that the call may have legitimacy and conducted an investigation.

The activity involved area managers who participated in assigning this unlicensed individual to two different locations without verifying a current license. In the case of one of these managers, it was discovered they actually worked with the unlicensed individual for a portion of one of the day then left the unlicensed individual in the shop alone to work as an optician until closing; in the course of the investigation it was determined that the manager gave false information to Board staff during the process. There was no evidence found that the OICs of the two locations had any knowledge of the unlicensed activity.

For the 2 opticians who were the OICs of both these locations where an unlicensed individual was allowed to practice as an optician, the Committee recommended issuance of a Consent Order as a means of 'acknowledged reminder,' for documentation purposes if violations should occur in the future. This CO would include 6 months' probation, but would not include reporting to the HIPDB, since they themselves were not involved in any violations.

Carolyn Middlebrooks moved, and Jennifer Hawkins seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

For the 2 licensed optician/managers responsible for assigning the unlicensed individual to work/present himself as a licensed optician:

Manager #1– The Committee recommended issuance of a Consent Order, inclusive of a \$500 fine and 30 days' license suspension, for aiding/abetting an unlicensed individual to practice opticianry without a license (when this individual left a known unlicensed individual alone in a store with no licensed supervision) AND for willful misrepresentation to the Board during an investigation. This CO would include surrendering the license to the Board office for the period of suspension, 18 months' probation, and reporting the violation to the HIPDB.

Heidi Potter moved, and Heather Allen seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

Manager #2– The Committee recommended issuance of a Consent Order, inclusive of a \$350 fine and 15 days’ license suspension, for aiding/abetting an unlicensed individual to practice opticianry without a license (when this individual assigned the unlicensed individual to work as a license completely alone in a store with no licensed supervision, and did not check for a current license). This CO would include surrendering the license to the Board office for the period of suspension, 12 months’ probation, and reporting the violation to the HIPDB.

Heather Allen moved, and Carolyn Middlebrooks seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

For the individual who practiced, and offered to practice, opticianry without a license; engaged in unethical conduct (by not revealing to a manager that their license was not renewed); who in this instance and several instances in the past showed a willful and continuing pattern of disregard for Board law and rule, with multiple disciplinary actions of varying degrees of violations and incremental penalties; and who profited from those violations throughout the years the Committee recommended issuance of a Consent Order, inclusive of a \$1000 fine and 60 days’ license suspension, for the infractions denoted above. This CO would include surrendering the license to the Board office for the period of suspension, 24 months’ probation, and reporting the violation to the HIPDB. The CO would also state that any other disciplinary action, during the probationary period or beyond, will bring about a ‘Show Cause’ hearing before the Board.

Heather Allen moved, and Heidi Potter seconded the motion, that the Board accept the recommendations of the Committee and invoke the indicated discipline. There was no opposition, and the motion passed.

### **Item #3 – Continuing Education Comments**

Chair Brock asked for any members’ comments on monitored CE events to date in 2013.

There was some discussion regarding the lessening quality of the presentations by a speaker regularly used by the NCOA, since she was on the course schedule several times at their January event. Inappropriate comments she made regarding her health issues and prescription drug usage; her asking participants to help her pronounce words in her own presentations; and how much time in each presentation is used for updating participants on her and her children’s personal lives, were noted. Several participants complained to monitoring Board members while on site about having to sit through such poorly-presented presentations, and a comment was submitted afterwards on the Board’s website; members received copies of the web comment. Discussion consensus was that inasmuch as the Board approves education hours for licensees, it feels obligated when it must to address the quality of the hours.

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It was determined that if the NCOA continues to schedule this speaker, it may be necessary to disapprove hours submitted to be done by this particular speaker.

It was also noted that administrative procedures for the CEDO events had significantly improved since the Board had written to address the poor registration procedures that caused late start-times and insufficient break- and lunch-times. This will continue to be observed and brought back to the Board in monitoring members' subsequent comments.

Chair Brock announced that the monitoring assignments for June 9 (McDonald/Associates, Wilmington) and August 9 (McDonald/Associates, Greenville) had been made; Heidi Potter will monitor in Wilmington, and Heather Allen will be in Greenville.

Director Kornegay collected the members' vote memos for the ABO/NCLE National Opticians Conference in Cincinnati in September.

**Item #4 – Administrative Report**

Director Kornegay gave the following report, with comments as appropriate from Counsel Nichols:

Board Election Tally – The election ballot tally was completed May 20 by Board Member Heather Allen, Director Kornegay and Program Assistant Mary Pat Hicks. The results letter has been prepared and will be sent to Governor McCrory's office next week. From there the appointments will be finalized.

Licensure Exam(s) – Final March Exam statistics were provided: 31 participants – 9 passed, 22 failed, for a 29% overall pass rate. The next Licensure Exam is October 17-18 at Durham Technical Community College (DTCC), with an August 19 application deadline.

Office 'Housekeeping' – If the Board is in agreement with the contract presented by the prospective IT provider, Director Kornegay will be notifying the State ITS agency of the changes in the Board's IT services' management.

The office building's front signage, and magnetic signs for office back door & Exam directional signs for DTCC are being ordered; total cost for all signage is approximately \$1600. (The building signage was approved previously but intentionally delayed when the office was first relocated, and the signs used at DTCC signs have long contained incorrect information and need updating.)

**Call for Additional New Business**

Chair Brock asked if there were additional items of New Business to be brought before the Board. There being no others, Counsel Nichols reminded the Board that the items on which votes were cast during Closed Session needed to be recorded in Regular Session.

During Closed Session, the Board voted to approve the IT services contract proposed by MiraComp Technologies in Cary. Motion to approve was made by Carolyn Middlebrooks and seconded by Heather Allen. There was no dissension, and the motion carried.

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Also during Closed Session, the Board voted to approve the Exam Committee's recommended changes to text of one Exam question. Motion to approve the Committee's recommendation was made by Heidi Potter and seconded by Jennifer Hawkins. The motion carried without dissension.

**Call for Motion & Adjournment**

There being no other New Business for the Board's consideration Jennifer Hawkins moved, and Becky Johnson seconded, that the meeting be adjourned. There was no opposition. Chair Brock thanked all for their attendance and attention, and adjourned the meeting at 2:10 PM.

Respectfully submitted,

Sue M. Kornegay, Board Director  
(acting as) Secretary-Treasurer  
NC State Board of Opticians