

**Minutes of Meeting of the Louisiana State Board of Optometry Examiners
(July 12, 2022)**

The following are the minutes of the meeting of the Louisiana State Board of Optometry Examiners (“LSBOE”) held on July 12, 2022, commencing at approximately 10:00 a.m. following the adjournment of the Annual Meeting of the LSBOE.

Board members in attendance were:

Jeff Anastasio, O.D.
Chris Wroten, O.D.
Jerry Gerdes, O.D.
David Heitmeier, O.D.
Dale Benoit

Others in attendance were:

Gary Avallone, O.D. (by videoconference; not counted as present or towards the quorum)
A.J. Herbert, Counsel for the LSBOE
Nicole Simmons, Legal Assistant to A.J. Herbert, for the purpose of taking the minutes
Those members of the public listed on the guest sign-in register

A quorum being present, the Chairman called the meeting to order.

Dr. Anastasio moved to add two items to the agenda, which would be Item 15 (telemedicine) and Item 16 (examination). The motion was seconded by Dr. Heitmeier, passed unanimously, and there was no opposition by any member of the public.

Dr. Gerdes moved to add an item to the agenda, which would be Item 17 (Sources of Approved CLE). The motion was seconded by Mr. Benoit. Dr. Wroten objected to this item being added to the agenda so lacking unanimous consent as required by the Open Meetings Law, the item was not added to the agenda.

A motion was made to approve the minutes for the Annual meeting of June 24, 2022, and the Board of Directors meeting of June 24, 2022, for informational purposes only, due to the absence of the required notice, but in lieu of such actions being ratified in this meeting.

Upon motion duly made, seconded, and unanimously adopted, the Secretary’s Report from the June 24, 2022, board meeting was ratified.

OLD BUSINESS

With respect to agenda Item 4, State Audit Update, Dr. Gerdes requested to be recognized to assert a matter of personal privilege. Mr. Herbert advised that a board member who believes that the integrity of the LSBOE or its membership has been called into question may be recognized by the chair to assert his or her personal privilege to respond. Dr. Gerdes addressed the request he received

from the Optometry Association of Louisiana (“OAL”) to resign from the board of the OAL prior to the passage of Act 313 because he attended a meeting of a legislative committee where the bill was discussed. Dr. Gerdes provided documents which he requested be attached to the minutes of the meeting.

The state audit update status was discussed. Ethics training certificates have not been received for all of the board members, so Dr. Anastasio reminded those members who have not yet completed the training to please do so, with the same for the sexual harassment training.

Mr. Herbert requested that board counsel prepare a sexual harassment policy for posting to the LSBOE web site.

With respect to Item 5, Dispensing of Pharmaceuticals, Mr. Herbert reported that he had received Mr. Graves’ file and was preparing a rule for the board’s consideration.

With respect to Item 6, Alternate Route for Licensure Testing, Dr. Anastasio moved to promulgate a rule allowing an alternate route for licensure and testing. The motion was seconded by Dr. Heitmeier and passed unanimously. Mr. Herbert will work with Dr. Anastasio on this so he can prepare a rule for the board’s consideration at a future meeting. Dr. Avallone recommended that counsel for the board consider whether a rule is necessary given the wording of La. R.S. 37:1049.

With respect to Item 7, SB 328/Act 313, Mr. Benoit proposed a resolution to change the bylaws of the LSBOE to implement the provisions of the legislation. Mr. Herbert asked Mr. Benoit if he would be willing to defer his resolution until after the executive session, and Mr. Benoit agreed and withdrew his motion.

With respect to Item 8, Compensation of the Secretary/Treasurer, Mr. Avallone submitted a contract for his services to the board’s counsel, who revised it and sent it back to Dr. Avallone for his approval of the changes, which were accepted by Dr. Avallone. Under the contract, Dr. Avallone would be compensated as a 1099 independent contractor, not an employee, and he would be responsible for paying for any assistance he receives for the performance of his duties by members of his staff out of his compensation. The terms of the contract were reviewed. The amount payable is inclusive of rent for the use of Dr. Avallone’s office. Upon motion of Mr. Benoit, the contract for Dr. Avallone’s services as the Secretary/Treasurer of the LSBOE was duly seconded and approved unanimously.

NEW BUSINESS

With respect to Item 9, Licensee Communications, Dr. Heitmeier proposed that the board offer a 1-hour CLE credit for LSBOE licensees who watch a video covering the separation between the LSBOE and the OAL and their different roles as regulator versus association; telehealth; the pharmacy rule; alternate licensure; the results of the audit by the Louisiana Legislative Auditor; Act 313; CE tracker; and upcoming rules. A discussion ensued relative to the Board’s authority to grant CLE credit. Any scripts would be first given to Mr. Herbert for review and approval. The following topics for the video were assigned as follows:

Mr. Benoit:	review of the LLA audit
Dr. Heitmeier:	review of Act 313
Dr. Wroten:	telemedicine
Dr. Avallone:	the CE tracker and approved uses of CE
Dr. Anastasio:	rules in the pipeline
Dr. Gerdes:	differences in the roles of the LSBOE and the OAL

With respect to Item 10, Ballots, a discussion ensued as to how district residency would be determined, and the ballot submission process. Ballots are to be returned to Mr. Herbert's office and will be opened there.

With respect to Item 11, Discussion of the LLA Audit of the Psychology Board, there was discussion of background checks at licensure and at renewal, and checking of the NPBD on a periodic basis, with Mr. Herbert recommending every 30 days. Dr. Avallone responded that he presently receives a NPDB report every 30 days. With respect to a disciplinary matrix, Dr. Anastasio stated that he will ask other state boards of optometry if they have a disciplinary matrix they can share. Mr. Herbert was tasked to determine whether the LSBOE is authorized to conduct background checks on applicants and licensees. He was also asked to review the state law requirements relative to child support orders and the effect on licensure.

With respect to Item 12, the consensus of the board was that all relevant matters pertaining to this agenda item were discussed in connection with other agenda items. Dr. Avallone noted that the audit for 2022 is already underway and the initial information request list has been received from the auditor.

With respect to Item 13, ARBO Update, Dr. Gerdes stated that West Virginia passed a law recently which is similar to Act 313. With respect to continuing education, Dr. Gerdes stated that one lesson from covid is that continuing education can be done effectively remotely. Though he cannot add the item to today's agenda for lack of consent, he will be introducing the topic at a future meeting and will be urging the adoption of COPE accredited CE and the expansion of online CE.

With respect to Item 14, a request from a MS optometrist for licensure by endorsement, there was discussion concerning the similarity and differences in the scope of practice laws. Mr. Herbert inquired whether MS allows LA optometrists to be licensed by endorsement in MS.

With respect to Item 15, Board Investigator, the board reviewed the resume of Mike Cahn and approved entering into an independent contractor agreement with MC3 Consulting to provide investigative services to the LSBOE at the rate of \$100 per hour for his services and \$35/hour for administrative assistance. Upon the motion of Dr. Wroten, duly made and seconded, the motion was approved unanimously.

With respect to Item 16, Nomination and Election of LSBOE Officers, Mr. Benoit moved to elect David Heitmeier, O.D. as president of the LSBOE, effective at the conclusion of the meeting. Dr. Anastasio moved to re-elect Gary Avallone, O.D. as the Secretary/Treasurer of the LSBOE. Dr. Wroten seconded both motions. Both motions were approved unanimously. Dr. Heitmeier noted that he would be out of the country for the upcoming examinations and after discussion, it was

agreed that Dr. Anastasio would be acting president for purposes of the examinations should action be required by the board president.

Upon motion duly made, seconded, and approved without objection, the board went into executive session. The items discussed in executive session are set forth on Item 18 of the agenda and included the potential litigation with the OAL to recover amounts owed the board, and proposal(s) from the OAL with respect to same, as well as complaints and investigations noted on the agenda. No votes were taken in executive session.

Upon exiting the executive session and reconvening the public meeting, the following motions were made (Item 19 of the agenda):

1. a motion was made by Mr. Benoit to authorize counsel for prepare a lawsuit against the OAL to recover funds owed the LSBOE in the event that settlement discussions do not lead to a settlement prior to the deadline to file suit, in addition to the board's expenses. The motion was seconded by Dr. Gerdes and passed unanimously.
2. Upon the motion of Dr. Wroten, seconded by Dr. Anastasio, and approved unanimously, counsel for the Board was directed to prepare a letter to EyeBuyDirect.com to respond to the complaint received.
3. Upon the motion of Mr. Benoit and seconded by Dr. Heitmeier, and approved without objection, counsel for the board was directed to send a demand letter to Mr. Sandefer to cover the bonus payments referenced in the report of the Louisiana Legislative Auditor.

The public comment portion of the agenda was called pursuant to Item 20 of the agenda. Camille Chiasson, O.D. addressed the board and expressed his dismay at the deterioration of the relationship between the LSBOE and the OAL, how this state of affairs came to be, and what could be done to restore the relationship. Mr. Benoit responded that he believes the board is taking the actions which were recommended by the Legislative Auditor and to ensure the independence of the LSBOE. Dr. Chiasson was thanked for taking the time out of his schedule to attend the meeting and to address the board.

The next meeting of the LSBOE was called for August 12, 2022, at 9:30 a.m. at the offices of the board's counsel.

Dr. Anastasio moved to adjourn the meeting. The motion was seconded by Mr. Benoit and approved unanimously.

Attest:

Gary Avallone, O.D.
Secretary/Treasurer