

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

I. Roll Call/Call to Order/Confirmation of posting of notice and agenda

The roll was called at 9:35am with present: Drs. Heitmeier, Avallone, Gerdes, Wroten, LaPoint and Mr. Dale Benoit. Also present were board counsel Mr. AJ Herbert, III, Public Guests and OAL Members.

Declaring a quorum was present, Dr. Heitmeier called the meeting to order.

II. Adoption of Agenda

The agenda was adopted & approved without objection. Passed unanimously.

III. Approval of Minutes

Discussion took place regarding inclusion of non-agenda discussion during the last meeting. Dr. Heitmeier & Mr. Benoit voiced concern that all discussions be included in the minutes including non-agenda discussions. It was agreed to include the non-agenda discussion involving board diversity in the minutes from the last meeting before approval of the minutes which is expected at the next LSBOE meeting.

IV. Secretary's Report

A. Finance and Budget Report

Dr. Avallone presented financial reports including a P&L statement, Balance Sheet, and Budget/Actual expense comparison for January 2023. Due to receiving bank statements later than usual, the financial reports were not available for /February 2023 at the time of this meeting. Those reports as well as March financial reports are expected by the next LSBOE meeting.

B. License Activity – (vi and vii to be discussed in Executive Session)

- i. Renewals Ongoing – Most renewal completed, approx 100 not renewed for several reasons
- ii. Applicants/New Licensees –
Lauren Stirling, OD - upgrade to “AT” procedures course completed, needs law tests, will contact Dr. Lewis
- iii. Retirement - 21

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

- iv. Endorsement request – several inquiries, no new applications
- v. Inactive requests - 32
- vi. Hardship requests – Presented by Dr. Avallone, discussion regarding fee assessed. Mr. Herbert expressed his opinion that due to statute (RS 37:1047) there was no discretion available. The \$150 fee should be assessed to all Hardship applicants and a Motion (Gerdes/Benoit – Passed unanimously) the board should refund overpayments made by licensees assessed higher than authorized fees in the past.
- vii. Complaints – TBD in Executive Session

C. Required Training

- i. Ethics Training – Dr. Avallone reported all members completed required training for 2022. Agreed to drop from future agenda items in 2023
- ii. Sexual Harassment Prevention – Dr. Avallone reported no members completed required training for 2023.

V. Travel as per Secretary

- A. Dr. Avallone requested by motion (Avallone/Gerdes) board approval for customary and usual travel reimbursement for himself and Dr. LaPoint for recent travel to Baton Rouge to attend board member training presented by the Atkinson group. Passed unanimously.
- B. Dr. Avallone requested by motion (Avallone/LaPoint) board approve travel by any board member registering and traveling to the ARBO Annual meeting in Washington DC June 2023. Passed unanimously.

OLD BUSINESS

VI. Louisiana Legislative Audit 2020

Struck due to Legislative audit discussion to follow

VII. Telehealth - Rule status

Mr. Herbert reports the rule is in rewriting due to conflicts.

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

VIII. Dispensing of Pharmaceuticals – Rule status

Mr. Herbert reports the rule is ready to submit. Reference to office samples has been removed.

IX. CE - Rule Status

Mr. Herbert reports the rule has been submitted for promulgation.

X. Alternate Route of Licensure (NBEO) – Rule Status

Dr. Avallone reported On May 6, 2022, following discussion, the board agreed to accept in lieu of taking the State board practical exam, the LSBOE would allow any applicant for licensure in Louisiana to submit passing scores on NBEO Part I, II, and III as well as the Injection Skills Examination (ISE), Laser section of LSPE, Surgical section of LSPE. The State Law proctored exams may be taken while in Charlotte at the NBEO or in Louisiana at a LSBOE approved location. Each test will have a separate fee and will be proctored.

Mr. Herbert reported the Rule is still in development.

NEW BUSINESS

XI. Discussion/Approval of Compensation Contract – State Board Exam/Dr. Lewis

Dr. Lewis has agreed to pay all expenses to include staff and patients. As such, the fee charged by Dr. Lewis will reflect those expenses and not exceed the expenses paid by the LSBOE in the past.

XII. Discussion/Approval of contract with ARBO as requested by the LLA

The contract written by Mr. Herbert has been submitted to ARBO for approval.

XIII. Discussion/Approval of CPA contracts

A contract for CPA services has been discussed with the CPA and details will be submitted for the creation of a state approved independent contractor agreement.

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

XIV. Discussion on Board Diversity

Dr. Avallone reported that both the Governor's office via the Office of Boards and Commissions and the State Senate report no historical record of board appointments. Dr. Avallone was able to present a report generated by the Secretary of State's office listing the LSBOE appointments over the last 30 years. Of note were two minority appointments and one female.

XV. Increase Legal Budget from 75,000 to 150,000 due to pending litigation

Discussion led by Dr. Heitmeier noted probable increase in legal fees due to two ongoing legal actions and the need to increase the 2023 budgeted amount of \$75K to \$150K. No objections were noted. Passed unanimously. Dr. Avallone questioned Mr. Herbert regarding state contract limits for the amount charged and Mr. Herbert indicated a waiver/permission would be requested from the state.

XVI. Legal Representation and/or Indemnification of Board members named in OAL suit

Mr. Herbert reported that the LSBOE is waiting for the state to rule on who will be responsible for legal representation in the OAL v Heitmeier, Gerdes, LSBOE lawsuit. He indicated that no matter what the state ruling, he would most likely not be the legal representative for either Dr. Heitmeier or Dr. Gerdes for that action.

XVII. Request for Advisory Opinions Interpretations or Guidance

- A. Media Request for comment by Wes Muller *Staff Writer* [LOUISIANA ILLUMINATOR](#)
Mr. Herbert advised that no comment is necessary and advised such.
- B. E-Swin IPL use in Louisiana
Discussion took place with board members. All members agreed that IPL is used for treatment of abnormalities of the eye/adnexa is authorized by Louisiana TPA level licensed optometrist. Mr. Herbert will provide a response to the email request.

XVIII. Discussion of 2021 LLA audit findings and corrective actions

Dr. Avallone reported the lack of written Policies & Procedures was related to the Controls over Collections and Disbursements as indicated to him by the LLA. P & P manual undergoing update to include Controls over Collections and Disbursements.

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

The LLA published findings from the 2021 LLA. Dr. Heitmeier set a goal to have Dr. Avallone address/rewrite/correct the policies and procedures identified in the 2021 LLA within 30-45 days (about 1 and a half months) and assigned Dr. Wroten and Mr. Benoit to review those policies and report to the board.

XIX. Discussion of hiring an Executive Director in lieu of a Secretary to execute the duties and responsibilities of the LSBOE

Mr. Benoit voiced concern of the LSBOE Secretary being responsible for the administration of the LSBOE and being a voting member of the LSBOE considering the attention within the state due to the LLA and current legal action pending. He suggested that it would be a good idea to examine the hiring of an Executive Director to assume administrative duties.

XX. LADOJ Occupational Licensing Review Program and motion to participate in Program

Dr. Heitmeier delayed the discussion in lieu of obtaining more information. Item tabled.

EXECUTIVE SESSION

Motion (Heitmeier/Gerdes) – Passed unanimously Entered 12:13pm

XXI. Litigation:

- A. By OAL v Heitmeier, et al No C-729018 19th JDC State of Louisiana
- B. By LSBOE v OAL et al No. C-729434 19th JDC State of Louisiana

XXII. Complaints

- A. Complaints & Investigation of complaints
 - i. Ongoing
 - ii. New
- B. Reactivation requests
- C. Request for Reinstatement from Prior Disciplinary Action

EXECUTIVE SESSION - Exited 12:20pm

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

XXIII. Report on Items Discussed in Executive Session

- A.** Private Investigator has multiple addresses and names for Barthelemy. Unable to serve subpoena.
Complaint regarding Dr. Gerdes - pending
A Consent Decree will be sought from Luisa Andara, OD
New Complaint – 2023-001 Standard protocol initiated with request for response to complaint from OD
- B.** The board discussed a time limit for license reactivation requests to be considered.
No action taken
- C.** The board discussed a requirement for the applicant to be entered into a monitoring program before having a license reinstatement. Mr. Herbert will investigate further.

XXIV. Public Comment

Dr. Janot notified the LSBOE of a letter sent to the OAL involving LSBOE President, Dr. Heitmeier and LSBOE counsel, Mr. Herbert. (Attachment I). No action taken.

XXV. Next Meeting

Board members agreed that the next meeting will be scheduled for April 24, 2023

Adjourn

Meeting adjourned at 12:24pm

Signature On File

Gary Avallone, O.D.
Secretary LSBOE

Signature On File

David Heitmeier, O.D.
President LSBOE

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
Law Office of Taggart and Morton LLC
New Orleans, LA
MINUTES
March 17, 2023

ATTACHMENT 1

January 8, 2023

Optometry Association of Louisiana
PO Box 108
Sulphur, Louisiana 70664

Louisiana Department of Justice Attn.: Medicaid Fraud Unit
PO Box 94005
Baton Rouge, LA 70804

Louisiana Board of Ethics PO Box 4368
Baton Rouge, LA 70821
Louisiana Legislative Auditor PO Box 94397
Baton Rouge, LA 70804

Aetna Better Health of LA
Attn.: Richard Born CEO
2400 Veterans Memorial Blvd., Ste 200 Kenner, LA 70062

RE: David Heitmeier, OD; LA State Board of Optometry Examiners Member Use of Public Office/Commission for Personal Gain

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
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MINUTES
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Dear Sir/Madam:

I write to alert you to a developing situation involving David Heitmeier, OD, Member of the LA State Board of Optometry Examiners. Dr. Heitmeier appears to have used his position to obtain a Louisiana Medicaid Contract for both himself and the executive counsel of the Board.

Background:

In April of 2019, Dr. Heitmeier formed Louisiana Vision Supplies, LLC, located at 3 Egret St., New Orleans, LA 70124, listing the following as members: Jennifer Herbert (residing at 3 Egret St., New Orleans, LA 70124); Alvin Herbert (residing at 3 Egret St., New Orleans, LA 70124); David Heitmeier (residing at 15 Eagle Point Dr., New Orleans, LA 70131); and Patricia Lorio (residing at 15 Eagle Point Dr., New Orleans, LA 70131). On August 23, 2022, Louisiana Vision Supplies, LLC was issued NPI number 1821717869 in order to begin operations involving Medicaid, Medicare, and presumably other insurance companies. The percentage ownership of each party is unknown.

The Actors Involved in the Plot:

A) David Heitmeier is a former LA State Senator. According to the minutes of the LA State Board of Optometry Examiners dated 12/10/21, David Heitmeier was selected by the licensed members of Optometry as a Board member. That selection was submitted to LA Governor John Bel Edwards for appointment and was later confirmed by the LA State Senate in 2022.

B) Patricia Lorio is listed at the same address as Board Member David Heitmeier. It is presumed that they reside together as that is what was reported to the LA Secretary of State upon creation of the LLC.

C) Jennifer Herbert and Alvin Herbert are married attorneys at the Law Firm of Taggart Morton. According to their law firm's website, they both represent AETNA. According to the minutes of the LA State Board of Board of Optometry Examiners dated March 18, 2022, Alvin Hebert with the firm of Taggart Morton was hired as executive council of the LA State Board of Optometry Examiners.

The Plot.

After being nominated and confirmed as a member of the LA State Board of Optometry Examiners, and then the LA State Board of Optometry Examiners hiring Alvin Hebert as its attorney; Louisiana Vision Supplies, LC obtains an NPI number in August of 2022 (even though it has been in existence for three previous years). Finally, Louisiana Vision Supplies, LC begins

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
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publicly advertising in January of 2023 that it has a contract with Aetna Better Health of Louisiana (one of Louisiana's six Medicaid companies) to make and supply Medicaid glasses for Adults in Louisiana.

Problems.

- 1) Board Member David Heitmeier failed to list Louisiana Vision Supplies, LLC on his required Disclosure Statement with the Louisiana Board of Ethics in May/2022;
- 2) A member of a State Board and its Executive Council have secured themselves (through an LLC) a lucrative public contract. At best this stinks of sleazy Louisiana back door deals, and at worst is a violation of the LA Code of Ethics protecting the general public from said deals; and
- 3) AETNA should wonder why its attorneys now have a personal contract (through their LLC) with Aetna Better Health Louisiana. But that is between A E T N A and their law firm Taggart Morton.

a discounted rate.

Members may upgrade their lenses to polycarbonate when medically necessary.

In order for a lens to be covered, at least one lens must exceed +1.00 sphere, -0.50 sphere, or 0.50 plano cylinder.

CONTACT LENSES

- Contact lenses will only be covered when medically necessary and no other means can restore vision.

ANAISOLUI•

VISION SUPPLIES

FOR AETNA ADULT MEDICAID MEMBERS IN LOUISIANA

Louisiana Vision Supplies is the exclusive eyewear solution for Aetna Adult Medicaid Members in Louisiana. We've streamlined our process to make dispensing with Louisiana Vision Supplies easy and quick. This eyewear benefit is available for Members once per calendar year.

LOUISIANA STATE BOARD OF OPTOMETRY EXAMINERS
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March 17, 2023

FRAMES

REPLACEMENT RAW EYE

Providers will receive a comprehensive frame kit including 60 deluxe frames.

- Members can choose from any of these 60 deluxe frames at no cost (retail value \$150-\$229).

Frames are warrantied for one year.

LENSES

- Members can choose single vision (CR-39) or bifocal (FT-28) lenses at no additional cost (retail value \$49-\$119).

- Members may elect to upgrade their lenses and the Member portion from a fixed fee schedule (see attached Doctor Price List for Aetna Adult Medicaid)

- Replacement of eyeglasses or medically necessary contact lenses is covered when needed due to loss, destruction or a significant change of prescription (± 0.50 diopter or 10° shift in axis). Pay at LAVISIONSUPPLIES.COM-3501HOLIDAYDRIVE SUITE205, NEW ORLEANS, LA 70114

- T (504)293-3333 • F(504)207-7031

SUBMITTING A CLAIM FORM

To submit a claim form and expedite fulfillment, visit our online portal at www.lavisionsupplies.com and click "PROVIDERS CLICK HERE" at the top menu. Alternatively, claim forms can be submitted via fax to (504) 207-7031.

REIMBURSEMENT

Providers will be paid a dispensing fee of \$30 On Single Vision lenses.

Providers will be paid a dispensing fee of \$50 On Bifocal lenses.

Providers will receive the Doctor's Fee On any lens upgrades as listed on the Aetna Adult Medical Doctor Price List.

FULLFILLMENT

- Glasses will typically be produced and returned to you