

MINUTES

INDIANA OPTOMETRY BOARD

May 17, 2006

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Benavente called the meeting to order at 9:00 a.m. in the Indiana Professional Licensing Agency Conference Room W064, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 25-24-1-2.

Board Members Present:

Jorge A. Benavente, O.D., President
O. Oren Olinger, O.D., Secretary
Merle Pickel Jr., O.D., Member
David Phillips, O.D., Member
Linnea M. Robbins-Winters, O.D., Member
Peter Henderson, Consumer Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Kristine Yarde, Assistant Board Director, Professional Licensing Agency
Linda Stephensen, Case Manager, Professional Licensing Agency
Rebecca Walker, Deputy Attorney General, Attorney General's Office

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda.

PHILLIPS/OLINGER
Motion carried 6-0-0

III. ADOPTION OF THE MINUTES FROM THE FEBRUARY 15, 2006 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes, as presented, from the February 15, 2006 meeting of the Board.

ROBBINS-WINTERS/OLINGER
Motion carried 6-0-0

IV. APPEARANCE

**A. Carol Cutter, Indiana Department of Insurance
Laurie E. Kaufmann, Drug Enforcement Agency
Martin Allain, Board Director, Indiana Board of Pharmacy
Re: DEA numbers for Optometrists**

Representatives from the Department of Insurance, Drug Enforcement Agency, and the Indiana Board of Pharmacy were asked to attend this Board meeting to discuss complaints from Optometrists regarding prescriptions they are writing for their patients.

These prescriptions are not being honored by pharmacies and insurance companies because there is no DEA number. Optometrists in Indiana are not given DEA numbers because they do not prescribe controlled substances. Pharmacies are not filling these prescriptions because the computer software they use requires a DEA number and insurance companies are not reimbursing the pharmacies and/or the patient for therapeutic drug prescriptions without a DEA number.

The discussion began with Carol Cutter from the Department of Insurance addressing the Board and distributing a rough draft copy of a bulletin drafted by the DOI. This bulletin will direct insurance companies to recognize that DEA numbers are issued only to practitioners who can prescribe controlled substances and that claims should not be denied for Optometry prescriptions and doing so would be discriminatory. DEA numbers should not be used as a means of tracking the numbers of prescriptions written. Ms. Cutter further explained that this bulletin is not a "legal rule" but rather a guideline. Ms. Cutter said that insurance companies do take bulletins seriously. In an effort to develop a final draft of the bulletin a hearing will be held and it will be published in the Indiana Register and placed on the DOI website. Once the final draft is published if complaints are filed regarding insurance companies failing to reimburse prescriptions by Optometrists an investigation can take place.

Laurie Kaufmann of the Drug Enforcement Agency made it clear to the Board that it is a federal law 21 USC 823 which prohibits the DEA from issuing a DEA number to Optometrists. The DEA number is meant to be a unique identification number for practitioners who prescribe controlled substances and should not be misused by pharmacies or insurance companies as a means of tracking prescriptions. Ms. Kaufmann understands that the software used by many pharmacies requires an entry in the DEA number field and she proposed one possible solution whereby the pharmacist could type into the DEA number field XX0000000. Ms. Kaufmann feels this is not a violation because the prescription is not for a controlled substance. Ms. Kaufmann said she will need to seek the approval of her supervisors for this to become an acceptable practice. The Board approved of this idea and turned to Martin Allain, Board Director for the Indiana Pharmacy Board for his input.

Mr. Allain explained that this problem stems from the prescription monitoring program software which is used by many pharmacies. He stated that pharmacists themselves have no problems with the prescriptions being written by Optometrists but the PMP software prevents them from entering the prescription since the DEA number field is required. Mr. Allain had no problem with Ms. Kaufmann's proposal to type in XX0000000 and offered his help to spread the word to pharmacies that this will be an acceptable practice once it has been determined by the DEA as such.

V. PERSONAL APPEARANCES

A. Renewal

1. Carl R. Golightly, O.D.

Dr. Golightly appeared before the Board, as requested, regarding a positive response on his renewal application for a malpractice judgment. Dr. Golightly explained to the Board that a father and daughter had come to his office for contact lenses. The assistant who was helping them inadvertently gave them hard lens solution instead of soft lens solution. They experienced burning but no damage was done. Dr. Golightly refunded their money but then was sued by them and a settlement was reached.

Board Action: A motion was made and seconded to renew Dr. Golightly's license.

OLINGER/ROBINS-WINTERS

Motion carried 6-0-0

2. Stephen J. Hedges, O.D.

Dr. Hedges appeared before the Board, as requested, regarding a positive response on his renewal application for a malpractice judgment. Dr. Hedges read to the Board a complete summary he prepared of the situation involving a female patient he was treating for ocular allergies. He claimed that she developed glaucoma because she did not follow his treatment instructions and abused the medication he had prescribed for her. Dr. Hedges strongly defended his treatment of this patient and felt her suit was unjust. A settlement was reached in this case.

Board Action: A motion was made and seconded to renew Dr. Hedge's license.

PICKEL/PHILLIPS

Motion carried 6-0-0

3. N. Jay Hittinger, O.D.

Dr. Hittinger appeared before the Board, as requested, and was accompanied by his attorney, Patrick Divine. A matter that involves Dr. Hittinger is still pending so he should not have marked a positive response for this renewal. Once the matter is settled or a judgment is made in the case he will have to answer "yes" at that time.

Board Action: A motion was made and seconded to renew Dr. Hittinger's license.

OLINGER/ROBINS-WINTERS

Motion carried 6-0-0

4. Charmion Lynn Stager, O.D.

Dr. Stager appeared before the Board, as requested, regarding a positive response on her renewal application. Dr. Stager explained to the Board that the Colorado Optometry Board reinstated her license on probation for one (1) year due to a disciplinary action that was taken against her Indiana license in 2004.

Board Action: A motion was made and seconded to renew Dr. Stager's license.

OLINGER/PHILLIPS

Motion carried 6-0-0

VI. ADMINISTRATIVE RULE HEARING

A. LSA Document #05-325

Continuing Education Requirements

852 IAC 1-16-1 852 IAC 1-16-6,

852 IAC 1-16-2 852 IAC 1-16-7

852 IAC 1-16-3 852 IAC 1-16-8

Participating Board Members:

Dr. Benavente (Hearing Officer)
Dr. Olinger
Dr. Phillips
Dr. Pickel
Dr. Robins-Winters
Mr. Henderson

A rule hearing was held at 9:30 a.m. by the Board to hear testimony from the public and discussion regarding the proposed rule.

Dr. Olinger stated that this rule is good because it will simplify the continuing education requirements. If an Optometrist holds both an OLDPAC and optometry license the biennium requirement is now 20/20. No longer can ten (10) OLDPAC hours be applied towards the renewal of the optometry license.

Jim Zieba, Executive Director for the Indiana Optometric Association spoke in favor of the proposed rule.

Cindy Vaught, Board Director for the Indiana Optometry Board, explained to the Board that Senate Bill 333 contains a statute that will go into effect July 1, 2006 and will give automatic approval for program sponsors in addition to the sponsors the Optometry Board have listed for automatic approval in section 8 of the proposed rule. Jim Zieba and members of the Board had concerns because this list is broad and if these sponsors have automatic approval then how can we ensure that optometrists will take optometry related continuing education courses.

Rebecca Walker, Advisory counsel for the Optometry Board explained that section 6 in the proposed rule will ensure that continuing education is in the optometric field. She proposed adding a word in sec. 6(a)(3) to read "Other optometric educational seminars, lectures, and workshops." She told the board that the new statute listing approved sponsors is only one part of the equation. Just because they are deemed approved sponsors does not mean that all of the programs they offer are approved. If an optometrist attends a program by an approved sponsor on the list but the course he/she attended was not in the optometric field then the Board would deny that program for continuing education credit. It is the practitioner's responsibility to a) seek programs offered by approved sponsors and b) attend programs that meet the requirements of sec. 6 in the proposed rule.

Board Action: A motion was made and seconded to adopt the proposed rule as amended.

The amendments were as follows:

Adding the word "optometric" to 852 IAC 1-16-6(a)(3):

(3) Other optometric educational seminars, lectures, and workshops.

Changing the word "optometry" to "optometric" to 852 IAC 1-16-8(1) and (2):

- (1) The Indiana Optometry Optometric.
- (2) The American Optometry Optometric Association (AOA).

HENDERSON/PHILLIPS
Motion carried 6-0-0

VII. OLD/NEW BUSINESS

1. Dr. Pickel volunteered to review OLDPAC continuing education applications when the Optometry Board takes it over July 1, 2006.
2. The contact lens rule is now the same as the federal law.
3. NBEO scores will now be sent to IPLA via email.

VIII. DISCUSSION

1. The Board needs to begin thinking about sanctions for practitioners who do not comply with the continuing education audit. They will have to promulgate a rule since the new statute will no longer require complaints to be filed with the Attorney General's office. At the time of the audit if a practitioner does not have the entire amount of required CE a civil penalty will be levied and the practitioner will have to make up the CE within a certain time period. The Board will discuss this further at the next meeting.

IX. APPLICATION REVIEW

A. Endorsement Applications

There were no endorsement applications for the Board to review.

B. Examination Applications

There were no examination applications for the Board to review.

C. Faculty Limited License

There were no faculty limited licenses for the Board to review.

D. Professional Corporation Applications

There were no professional corporation applications for the Board to review.

X. REPORTS

A. Consumer Complaints

Dr. Robbins-Winters reported that she has reviewed five (5) new consumer complaints since the last meeting of the Board. She advised that all of the complaints have been closed.

B. Indiana Optometric Association

Dr. Olinger said the IOA had a good meeting recently and he pleased with the performance of Jim Zieba, Executive Director of the Indiana Optometric Association.

C. Optometric Legend Drug Prescription Advisory Committee

Dr. Pickel did not have a report as the last meeting of the OLDPAC committee was held during this meeting. As of July 1, 2006 the OLDPAC committee will cease to exist and all OLDPAC business will be taken over by the Indiana Optometry Board.

D. Continuing Education

Dr. Phillips reported he has reviewed approximately three hundred and eight (308) hours of continuing education since the last meeting.

XI. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana Optometry Board adjourned at 11:30 a.m.

Jorge A. Benavente, O.D., President

Date

O. Oren Olinger, O.D., Secretary

Date

Jorge A. Benavente
O. Oren Olinger

11/15/06
11/15/06