

Optical Seminars – Newsletter, August 2023

There are several issues surrounding opticianry in Florida that I think opticians should learn about as much as they can, and certain actions they should take if they feel so moved, to positively affect our profession. This newsletter will probably take 10-12 minutes to read, but I encourage you to do it. There are eight items I ask you to consider. I will briefly explain and offer a specific course of action for each.

1. **The Board of Opticianry** – The Florida Board of Opticianry is supposed to consist of seven members – five opticians and two lay people (also, one of the seven must be 60 years of age or older). For the first 35 years of my career as a Florida optician, there had always been seven Board members. But for the last several years there have only been three or four Board members. There are currently three opticians (Paul Wilford, Jeffrey Taylor, and Yvonne Schloss) and one lay person (Irene Stavros) serving on the Board. You may say, “so what?” Well...here are some things to consider:
 - At any given meeting, even if only three Board members show up, that constitutes a quorum – meaning THREE people can make decisions – decisions on pending disciplinary cases, policy decisions, and decisions that affect the 3,800 opticians and 1,300 apprentices in the state, along with the nearly 22 million Floridians they serve.
 - It has been my experience that whenever SEVEN people consider a case or an issue, disagreements and different points of view are present. Through discourse and deliberation though, right usually wins out. It’s almost guaranteed! But when THREE people (especially people whose political and/or professional allegiances are aligned) consider cases and issues, debate is limited and sometimes non-existent. The more people involved in the decision-making process, the more likely it is that decisions are made given more weight to the letter of the law and the legislative intent of the laws and rules. The fewer people involved, the easier it is for those things to take a backseat to other interests.
 - The above problem becomes compounded when Board members serve again and again and again. While Board members are appointed by the governor to serve a four-year term, if new members are not appointed the current ones continue to serve.
 - I am encouraging EVERY OPTICIAN in Florida (regardless of your political affiliation) to reach out to Governor DeSantis and respectfully request that he appoint three new Board members to create a full, seven-member Board. Use some of the reasons I outlined above and include some of your own reasons. Access the recordings of previous Board meetings (available at

floridasopticianry.gov) and listen to a few. If you don't agree with some of the Board's decisions mention that as well. Maybe mention that this issue is so important to you and your family that it will be a major consideration when deciding who you will support in the next election. If you are a Republican and a supporter of the governor, be sure to mention that. If you are not, simply be direct and respectful in your communication. There are three ways you may contact the governor: by email, by phone, and by old-fashioned mail. I would suggest you do it all three ways. Maybe solicit a few of your family members and friends to do so too. Here are the contact options:

- **GovernorRon.Desantis@eog.myflorida.com**
- **(850) 717-9337**
- **Office of Governor, The Capitol**
- **400 S. Monroe Street**
- **Tallahassee, FL 32399-0001**

2. **Board Meeting (teleconference) on Friday, September 1, 2023 at 2:00 pm** – I am encouraging all opticians to “attend” this meeting and all future Board meetings. Let me tell you why I think you should, and how you can.

Why attend? All Board meetings are public events, and all state business is to be conducted “in the sunshine.” The Board makes decisions affecting your profession. Attending will make you more comfortable with Board proceedings if you ever find yourself involved in Board matters. As you can imagine, at most Board meetings there are only a handful of people in attendance: Board members, Board staff, state attorneys and advisers, a few licensees with items on the agenda or subject to disciplinary actions, me (to keep members of Optical Seminars and attendees to our Rules and Laws classes informed) and a representative from POF (Professional Opticians of Florida) who is there for those same reasons, I presume. When meetings were/are held live, obviously the Board can see the 15-20 people in attendance. Likewise, although they are anonymous, when the meetings are conducted via teleconference (as most are, post-COVID-19), they can see the number of people on the line. I believe the way things are deliberated in the presence of 15-20 people might be a tad different than the way they might be deliberated in the presence of 500-600 people. Just sayin’! And while traveling to a live venue might be a bit burdensome, making a phone call from the comfort of your office or home is a breeze!

How to attend: A few minutes before the meeting (remember it begins promptly at 2:00 pm on Friday, September 1st) call (866) 899-4679. Once connected, you will be asked to enter a Participation Code. The code for this meeting is: 216-691-181. You will then be

instructed how to place your phone on mute. Be respectful and listen. By the way, toward the end of the meeting the Chairman will ask if there is anyone who wishes to make a public comment. If so moved, do so. I will send a reminder email the morning of the meeting.

3. **Doctors Sponsoring Apprentices and Keeping Track of Hours** – I have written letters to the Board and made public comment at a meeting encouraging the Board to change the rules regarding these two separate, but related things. Current rule (FAC 64B12-16.003 reads (in part): “The sponsor(s) must be on the premises at all times that opticianry services are performed by an apprentice. The sponsor(s) must personally inspect and approve any work so produced. However, an apprentice may perform such tasks without the sponsor’s presence which may lawfully be performed by unsupervised non-licensed personnel, so long as no hours of apprenticeship credit are claimed or earned.” Logic dictates that a working optometrist or ophthalmologist cannot fulfill those requirements, so while it might be okay to have a doctor as a secondary sponsor, it is never appropriate for a doctor to serve as a primary sponsor. Additionally, the rules say that a record/log of all worked apprentice hours must be maintained, but the rules do not set forth a specific manner in which they should be tallied. For clarity and accuracy, I have encouraged the Board to design and require a specific form. If this is an issue you think is important, I encourage you to send a fax and/or write a letter to the Board expressing your thoughts on the matter. You might also consider making a public comment at an upcoming meeting. The Board’s mailing address is: Board of Opticianry, 4052 Bald Cypress Way – Bin C-08, Tallahassee, FL 32399-3258. Their fax number is 850-413-6982.
4. **Inspections.** Occasionally the optical establishment where you work will be visited by an inspector from the Department of Health. There are a number of things they are empowered to inspect – things like the minimum equipment required to be present, proper recordkeeping, and the presence of a licensed optician on the premises. I have heard reports of inspectors who are thorough and diligent. I have also heard (more) stories of inspectors who are clueless and haphazard. The goal here is to recognize and thank the former, and to reprimand and weed out the latter. When the inspector arrives, he or she will introduce themselves as an inspector. Ask them for a business card. They will give you one. Once they’ve left, I am asking you to send an email to the department of inspectors to thank and congratulate the inspector if they were professional and thorough. If they were not, explain exactly what happened (what they failed to do) in your email.
5. **Home-Study CE Modules** – From time to time you may find yourself taking a home-study continuing education course. If it is a one-hour credit course, it should take you a minimum of 50 minutes to complete. If it is a two-hour course, it should take you a minimum of 100 minutes to complete. If it takes you significantly less time than it should, if the information is not appropriate, if the statistics and examples are outdated, or if you think the course was in any way inappropriate, I encourage you to report it to the

Board. By the way, if you ever take a home-study course that I have written for Optical Seminars, and you think it is guilty of any of the above, I encourage you to complain and report it to the Board as well.

- 6. Rule Variances and Waivers** – One of the lesser-known and not-much-talked-about Florida Statutes is FS 120, also known as Florida’s Administrative Procedures Act (APA). The APA outlines a comprehensive administrative process by which agencies exercise the authority granted by the legislature while offering opportunities for citizen involvement. This process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency’s decision. The Administrative Procedure Act serves to protect the citizens of Florida from thousands of unauthorized rules that would otherwise be in effect.

Revisions to the APA in 1996 include a provision directing agencies to grant variances and waivers from requirements of their rules to avoid unreasonable, unfair, and unintended results. If a citizen (for example, an optician) subject to a rule can demonstrate that the rule would “create a substantial hardship or would violate principles of fairness” (§120.542(2), F.S.), an agency **MUST** grant a variance or waiver if the person can meet the purpose of the underlying statute through other means. An agency may not grant a variance or waiver to statutes, only rules. A copy of both the petition and the agency’s order granting or denying the petition, containing a statement of the relevant facts and reasons supporting the agency’s action, must be filed with JAPC (Joint Administrative Procedures Committee).

For example, this authority is what made it possible for the Board to (finally) grant a variance to all opticians which allowed those who wished to do all 20 CE hours out-of-classroom (remember, this was during the time of COVID-19) if they so desired.

While it should not be abused or viewed as the first option in times of hardship, I would encourage all opticians to read it and petition the Board when necessary. What it basically means is that if fulfilling the requirements of a rule (and the rules that apply to opticians are FAC64B12 and FAC64B29) would create a unique and unreasonable hardship for you, and you could fulfill the intent of the requirements in an alternative manner that would mitigate the hardship, the Board should grant you that option.

There is another interesting section of the APA. This one allows you to request the Board to issue what is known as a Declaratory Statement.

The purpose of an agency declaratory statement is the clarification of an agency’s interpretation of a provision of law or of a rule or order of the agency. An agency must publish each petition for declaratory statement, as well as its disposition of the petition, in the FAR (Florida Administrative Rules) as directed in §120.565. In declaratory statements, an agency gives an opinion on the applicability of a specific statutory

provision, agency rule, or order of the agency as it applies to the petitioner's individual situation. Even though they must issue a Declaratory Statement when it is requested, sometimes Boards (on the advice of counsel) will weasel out of "really" responding by declaring that "the law/rule is clear." So, when requesting a Declaratory Statement be sure to respectfully ask them not to respond that way, because if you are seeking an opinion, in a prima facie way, it is obviously NOT clear.

- 7. Unlicensed Activity** – It is our legal obligation to report any known (and I would include suspected) violation of our rules and laws. It is our duty to report any optical establishment or any individual who is in violation. By not doing so, you are in violation yourself – not only of not reporting, but by not reporting you are potentially endangering the public – a clear violation of FS 484.

Because I interact with so many of you throughout the year, I hear dozens and dozens of stories every year about allegations of unlicensed activity. Sadly, many of you say you haven't bothered to report the suspected violation, or if you have, there has been little or no follow-up.

You can report unlicensed activity by calling 1-877-HALT-ULA (877-425-8858), by email: HALTULA@FLHEALTH.GOV or online at www.flhealthcomplaint.gov. After a few weeks go by, contact the agency again to inquire about the status of the investigation. Keep on it!

- 8. Going Out of Business Requirements** – The bulk of our rules and laws were written before most of us were born. Consider the rule that instructs us how to notify our patients where they can obtain their records upon us going out of business. FAC64B12-10.003 reads, "An optician shall give due notice to the client when going out of business so that the client may make other arrangements for replacement services. For purposes of this rule, due notice shall consist of publication in a newspaper of general circulation in the area of the optician's practice for one (1) day for four (4) consecutive weeks informing the clients of the need to seek replacement services and the closing of the practice."

Hopefully, the need for a revision of this rule's requirement is obvious. Clearly, the intent of this provision is to facilitate clients being able to obtain their records if a practitioner goes out of business. Doing so in the manner described in the rule would ensure that virtually none of the practitioner's clients would see the notice. An update is surely called for here, and I will be petitioning the Board for an update.

I hope you are having a great (albeit hot) summer and that 2023 turns out to be one of the best years of your life. Also hope to see you at an Optical Seminars

continuing education event sometime this biennium. The schedule is posted through December 2024 (when our licenses all expire). Check it out at:

www.opticalseminars.com

Respectfully,

Anthony Record

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