

State of New Mexico  
Regulation & Licensing Department  
***BOARD OF EXAMINERS IN OPTOMETRY***

1 P.M., Sunday, May 21, 2006  
Hotel Albuquerque at Old Town  
800 Rio Grande Blvd.  
Albuquerque, New Mexico

REGULAR MEETING  
**AGENDA**

- I. CALL TO ORDER AND ROLL CALL**
- II. APPROVAL OF AGENDA**
- III. APPROVAL OF MINUTES**
  - A. January 14, 2006 Regular Meeting Minutes (Attachment 1)
- IV. NEW BUSINESS**
  - A. New Mexico Lions Eye Foundation – Lee Boyd Montgomery (Attachment 2 & Video)
  - B. Clinical Examiners for 2006 (Attachment 3)
- V. OLD BUSINESS**
  - A. OPT Case #2003-05: SETTLEMENT AGREEMENT (Attachment 4)
  - B. OPT Case #2003-12 Update
- VI. EXECUTIVE SESSION** (Addendum) pursuant to § 10-15-1(H)(1) through (3) to discuss complaints, licensing matters and issuance of notices of contemplated action, to deliberate in connection with administrative disciplinary hearings, to discuss pending or threatened litigation or updates on pending cases.
  - A. 06-01
  - B. 06-02
  - C. 06-03
  - D. 06-04
  - E. OPT 2005-01
  - F. OPT 05, 8-18-05
  - G. OPT 04, 8-9-05
  - H. OPT 07, 9-12-05
- VII. ADMINISTRATOR'S REPORT**
  - A. Regulation & Licensing Department Update (Standing Agenda Item)
  - B. FY06/07 Budget Status (Attachment 5)
- VIII. NEXT MEETING SCHEDULED** – August 11, 2006 – New Mexico Eye Care in Albuquerque
- IX. ADJOURN**

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**BOARD OF EXAMINERS IN OPTOMETRY**

1 P.M., Sunday, May 21, 2006  
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REGULAR MEETING MINUTES

**MEMBERS PRESENT:** James Simnacher, O.D., Chair  
Jane Compton, O. D., Vice-Chair  
Thomas Paz, O. D., Professional Member  
Barbara Deaux, Public Member  
Ben Martinez, Public Member

**MEMBERS ABSENT:** Richard Zobel, OD, Secretary/Treasurer

**STAFF PRESENT:** Rosemarie Ortiz, Board Administrator

**OTHERS PRESENT:** Mona Valicenti, Assistant Attorney General, Civil Division  
See Sign-In Sheet

**I. CALL TO ORDER AND ROLL CALL**

At 1:05 p.m. on Sunday, May 21, 2006 Dr. James Simnacher, the Board's Chair, called the regular meeting of the New Mexico Board of Examiners in Optometry to order. The meeting had been properly noticed and upon a roll call it was determined that there was a quorum present to conduct business.

**II. APPROVAL OF AGENDA**

Ms. Deaux MOVED to approve the agenda as presented. Dr. Compton SECONDED the motion. The motion passed unanimously.

**III. APPROVAL OF MINUTES**

A. January 14, 2006 Regular Meeting Minutes

Dr. Paz MOVED to approve the minutes as presented. The motion was SECONDED by Dr. Compton. The motion PASSED by unanimous approval.

**IV. NEW BUSINESS**

A. New Mexico Lions Eye Foundation – Lee Boyd Montgomery: Mr. LB Montgomery, representative from the New Mexico Lions Eye Foundation, spoke to the Board about offering a recycling center for citizens in New Mexico who are not financially able to purchase eyeglasses. This recycling center would provide eyeglasses to those who cannot afford them. Approximately 140 million recycled eyeglasses are collected annually. Mr. Montgomery asked the Board for direction on how to proceed with offering this service in New Mexico. Board members asked Mr. Montgomery who would be performing auto refractions at these recycling center locations? Mr. Montgomery indicated that members of the Lions Club Foundation have been trained to use the device and would use the auto refractor. Dr. Simnacher indicated that a

licensed optometrist would need to be hired to perform the auto refractions as the use of such a device is considered practicing optometry in New Mexico. An optometrist would need to be on staff in each town where the Foundation visits in order to avoid violating the law.

Mr. Montgomery asked board members if there was a need for this type of service in New Mexico. Dr. Simnacher indicated that he does not see that there is a need for this type of service in New Mexico and secondly Medicaid offers this service to those that qualify. Mr. Montgomery indicated the service currently serves 20% of the population nationally. Dr. Paz indicated that in New Mexico this issue is addressed on a case by case basis and services may be provided *pro bono*. Dr. Paz suggested to redirect the focus as the content of the program is sound. Possibly redirecting the program offering assistance and awareness is another approach that may be considered by the Lions Foundation. The Lions Foundation may want to coordinate this approach through school programs and through public outreach to citizens in need of this service. Non-citizens who are not eligible for federal assistance in colonias in southern New Mexico may benefit from this service and should be researched. Dr. Paz referred Mr. Montgomery to the Optometric Association of New Mexico as the association can contact its members to encourage positive and effective service.

The Board's main concern focused on the procedures and who was to perform the procedures.

**B. Clinical Examiners for 2006**

Board members reviewed the examiners participating in the August 2006 Clinical Practicum Exam and asked Ms. Ortiz to forward a list of examiners to board members.

**V. OLD BUSINESS**

- A. OPT Case #2003-05: SETTLEMENT AGREEMENT: Ms. Ortiz informed board members the settlement was finalized and the fine of \$5,000 was paid within ten days of the signing of the agreement. Dr. Simnacher wanted all members to be informed that Kenneth West must reapply as a new applicant in order to practice optometry in New Mexico.

There was concern regarding the length of time it has taken to adjudicate this case and it should be looked into.

- B. OPT Case #2003-12 Update – Discussed in Executive Session as it relates to pending litigation.

**VI. EXECUTIVE SESSION**

Dr. Compton MOVED to enter into Executive Session pursuant to § 10-15-1(H)(1) through (3) to discuss complaints, licensing matters and issuance of notices of contemplated action, to deliberate in connection with administrative disciplinary hearings, to discuss pending or threatened litigation or updates on pending cases. Dr. Simnacher SECONDED the motion. Roll call vote was conducted. James Simnacher, O.D., Jane Compton, O. D., Richard Zobel, O. D., Thomas Paz, O. D., and Barbara Deaux, were present and voted in favor of the motion.

- A. 06-01

- B. 06-02
- C. 06-03
- D. 06-04
- E. OPT 2005-01
- F. OPT 05, 8-18-05
- G. OPT 04, 8-9-05
- H. OPT 07, 9-12-05

At 2 pm the Board came out of Executive Session. Dr. Compton stated that no matters other than those listed in the original motion were discussed in Executive Session.

#### DECISIONS ON MATTERS DISCUSSED IN EXECUTIVE SESSION

A. 06-01: Ms. Deaux MOVED to dismiss complaint 06-01 due to no jurisdiction, SECOND by Dr. Compton, motion PASSED unanimously.

B. 06-02: Ms. Deaux MOVED to dismiss complaint 06-02 due to no jurisdiction, SECOND by Dr. Compton, motion PASSED unanimously.

C. 06-03: Dr. Compton MOVED to authorize Ms. Ortiz to send a cautionary letter to the optometrist. The mailing should include a copy of the rules and a suggestion to reevaluate the advertising in question. Dr. Paz SECONDED the motion, which PASSED unanimously.

D. 06-04: Mr. Martinez MOVED to dismiss complaint 06-04 because the complaint was not able to be reached, SECOND by Ms. Deaux, motion PASSED unanimously.

E. OPT 2005-01: Mr. Martinez MOVED to dismiss complaint OPT 2005-01 because the money was reimbursed and the Board has no jurisdiction over financial disputes and the improper contact lens filling was not complete. Dr. Compton SECONDED the motion, which PASSED unanimously.

F. OPT 05, 8-18-05: Mr. Martinez MOVED to dismiss complaint OPT 05, 8-18-05, as the complainant requested a refund and the Board has no jurisdiction over financial disputes, which is outside of the Board's jurisdiction. Ms. Deaux SECONDED the motion, which PASSED unanimously.

G. OPT 04, 8-9-05: Mr. Martinez MOVED to dismiss complaint OPT 04, 8-9-05 as the issue has been resolved. Ms. Deaux SECONDED the motion, which PASSED unanimously.

H. OPT 07, 9-12-05: Mr. Martinez MOVED to dismiss complaint OPT 07, 9-12-05 as the Board has no jurisdiction over financial disputes. Ms. Deaux SECONDED the motion, which PASSED unanimously.

#### **X. ADMINISTRATOR'S REPORT**

- A. Regulation & Licensing Department Update (Standing Agenda Item): No Discussion
- B. FY06/07 Budget Status: Ms. Ortiz briefly reviewed the budget status for the current

cycle. Ms. Ortiz asked board members if they had any questions. There were no questions from board members.

**XI. NEXT MEETING SCHEDULED** – August 11, 2006 – Woman’s Hospital in Albuquerque, New Mexico. The time of the meeting will be determined at a later date.

**XII. ADJOURN**

Dr. Paz MOVED to adjourn at 2:15 pm. Ms. Deaux SECONDED the motion. All members were in favor.

*Rosemarie L. Ortiz*

*8/11/06*

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Submitted by Rosemarie L. Ortiz

Date

*James Simnacher*

*8/11/06*

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Approved by James Simnacher, OD, Chairman

Date