

**TENNESSEE BOARD OF DISPENSING OPTICIANS
SUB-COMMITTEE MEETING MINUTES**

DATE: December 1, 2010

TIME: 9:00 a.m., CST

LOCATION: Health Related Boards Conference Center
Poplar Board Room
Heritage Place Metro Center
227 French Landing, Suite 150
Nashville, TN 37243

BOARD MEMBERS

PRESENT: Kathy Hawkins, DPO, Chair
Larry Christopher, DPO, Secretary

STAFF

PRESENT: Lakita Taylor, Board Administrator
Diona Layden, Attorney

OTHERS

PRESENT: Jason Lane, D.P.O.
Angie Muldoon, D.P.O.
Carolyn Pegram, D.P.O.
Christine Stewart, D.P.O.
Eric Shoffner, D.P.O.
Bob Mason, D.P.O.
Jim Vanderbrock, D.P.O.
Ed Lee, D.P.O.
Samantha Goostree, D.P.O.
Debbie Malin, D.P.O.
LeRhonda Walton-Hill, D.P.O.
Chris Hall, D.P.O.
Chad Nelson, D.P.O.
Roy Ferguson, Ph.D.
Amanda Kiernan, D.P.O.
Kevin Corkern, D.P.O.
Vicki Bowers, D.P.O.
Felda Stacey, D.P.O.
Greg Crow, D.P.O.
Shane Partain, D.P.O.
Jay Tyler, D.P.O.
Michael White, D.P.O.
Brian Pinto, D.P.O.

Randy Dishmon, D.P.O.
Theo Morrison, Lobbyist

Ms. Hawkins, chair, called the meeting to order at 9:10 a.m. Ms. Hawkins stated the meeting was a sub-committee meeting to work on rules and turned the meeting over to Ms. Layden.

Ms. Layden stated that T.C.A. §63-14-103(d) needs interpretation and/or a rule relative to managers and supervision of persons in the corporate or firm setting. T.C.A. §63-14-103(d) states that it is unlawful for any person to practice or offer to practice as a dispensing optician as an employee of any person not engaged primarily in the practice as dispensing optician as a licensee under this chapter, or of any firm or corporation not engaged primarily in the practice of dispensing opticians under the actual and personal supervision of partners, officers, managers or stockholders who possess valid unrevoked licenses as dispensing opticians entitled to practice within this state in accordance with the provisions of this chapter. Ms. Layden stated that some people find the statute confusing and asked the sub-committee to provide an interpretation to present to the full Board to adopt, reject or modify.

Ms. Hawkins said in previous discussions the Board felt that anyone who was in direct supervision of a licensed optician must be licensed. In any medical profession, the person that supervises anyone whether it is a pharmacist, medical doctor or other professional should hold the same degree or higher level of licensure of the person they are supervising.

Ms. Layden asked if the Board feels that an individual who owns an optical dispensary must be licensed. Mr. Christopher and Ms. Hawkins said yes, the owner must be licensed.

Ms. Layden distributed proposed language she prepared for the sub-committee for review. Ms. Layden suggested adding a definition of supervision in Rule 0480-01-.01.

Ms. Harkins said anyone who has any type of supervision over a licensed dispensing optician must be licensed in Tennessee. In a corporation the optical dispensary is a separate entity inside the store; therefore, the manager and whoever supervises that area should be licensed. Anyone who is in direct supervision should have the same knowledge as a dispensing optician.

Ms. Layden suggested amending Rule 0480-01-.01 under definitions “actual and personal supervision” – Where a person in a managerial role has direct contact with a licensed dispensing optician or an apprentice dispensing optician and where that person provides direction regarding the licensed dispensing optician’s or the apprentice dispensing optician’s practice of dispensing.

Mr. Christopher said there is a conflict if a person is a manager and is obtaining their apprenticeship under the person they manager.

Mr. Taylor, D.P.O., said he thinks the definition of actual and personal supervision is good. It also needs to include language about anyone in control of vacation, schedules, personal time and things of that nature relating to the dispensing optician because those are the things a manager can control to influence an optician in their decisions being made on the sales floor.

Ms. Hawkins said the supervisor also prepares the work schedule to assure that a licensee there at all times and assure that a sponsor and an apprentice work together. I feel it's crucial that anyone in direct supervision of a license optician be licensed as well.

Mr. Partain, D.P.O., asked for the Board's definition of direct contact. Would it be one on one in the room or an e-mail coming down from an office? Also, there are other decisions made by supervisors as to what products to sell and how much you sell whether it is beneficial to the patient or not. Mr. Christopher and Ms. Hawkins stated they prefer direct contact to be in person. Ms. Layden said products being sold would fall in Rule 0480-01-.01 pertaining to definition.

Dr. Ferguson asked for a clarification of supervision. Mr. Ferguson said T.C.A. §63-14-102(2) refers to dispensing opticians fitting contact lenses under the direct supervision of a licensed optometrist or ophthalmologist. Is it possible to get clarity of supervisor throughout the regulations? Ms. Layden said direct supervision is defined in Rule 0480-01-.01(8). The district manager would have direct contact with the dispensing optician, in the means of communication and direction, but not be a licensed dispensing optician.

Ms. Hawkins said the Board's goal is to protect the citizens of Tennessee by requiring anyone involved in a dispensary in Tennessee follow our rules and be licensed. We feel it is necessary that managers who oversee the business of opticianry be licensed in order to accomplish that.

Ms. Layden suggested amending Rule 0480-01-.08 to add a section (4) which states "A person shall be licensed as a dispensing optician who provides actual and personal supervision to a licensed dispensing optician and/or an apprentice dispensing optician." This may be an opportunity for someone from industry to comment on this proposed amendment based on their company structure.

Mr. Phelan, representative of Luxotica Retail, said with regard to the proposed definition of actual and personal supervision he doesn't think it is unreasonable to require that someone who provides supervision to a licensee or apprentice with regard to the activities that constitute ophthalmic dispensing or the practice of opticianry as defined under law also hold a license. That is reasonable. I don't have a license in ophthalmic dispensing and I should not be telling someone who does how to do their job. That job is very specifically defined under law. It does not include writing a schedule, a business plan, deciding who goes on vacation and when, writing reviews or any aspect of running an ophthalmic dispensary whether it is a solo dispensary owned and operated by one person, who in Tennessee is not required to be licensed, or the largest ophthalmic dispenser in the country. If you are not providing direction with regard to the statutory definition of what constitutes ophthalmic dispensing, you don't need to have a license. There is not one state that requires a store manager, a first level field manager, or owner of the ophthalmic to be a licensed dispensing optician. There is no statutory support or rule in Tennessee that requires the manager or owner to be licensed. If the entity you work for is primarily engaged in the practice of ophthalmic dispensary then this whole subject is mute. Mr. Phelan said if there is an emergency because managers of stores are not license dispensing opticians to please let him know and he will take it back to Luxotica. Mr. Phelan said adopting a

rule requiring managers to be licensed is not going to address the Board's issues as there is no statutory authority requiring a manager to be licensed.

Ms. Pegram, D.P.O., stated she is a license optician and the manager of a Wal-Mart optical and pharmacy. Ms. Pegram said she has full confidence in her role of hiring and firing, employee reviews and managing the business of the pharmacy but is not a pharmacist. Ms. Pegram said there is a different set of responsibilities in the role of a licensee and a manager as managers do not get involved in the day to day business of dispensing.

Ms. Layden said the mission of the Board is to protect the health, safety and welfare of the citizens by promulgating rules that ensure that the citizens are protected as the process of dispensing is taking place.

Mr. Taylor, D.P.O., said he agrees with Ms. Pegram; however, it comes down to accountability. If an unlicensed person supervises a licensed person the unlicensed person is not accountable to the Board.

Mr. Partain, D.P.O., said the Board is not changing the law, as the law is already in place; the Board is trying to uphold the law in place. Mr. Partain suggested the attorneys and licensed dispensing opticians at the meeting define supervision.

Ms. Layden said even though Mr. Phelan calls in to question the authority to require licensure for supervisors, etc. he feels it is reasonable to require supervision relative to the practice of dispensing as defined by statute. We had licensees who wanted the definition of actual and personal supervision to include schedules, vacations and things of that nature. Can the sub-committee modify the definition of "actual and personal supervisor" or have the Board come up with the definition.

Ms. Hawkins said she agrees with Mr. Partain that the law is written for a reason and that is how it is to be carried out; however, she is not opposed to tweaking some of the wording.

Ms. Layden asked if it is the sub-committee's position that Tenn Code Ann. §63-14-103(d) is clear, self-explanatory such that it does not need any interpretation even to the point of trying to add clarity to actual and person supervision. It is the sub-committee's responsibility to report to the Board whether or not an interpretation of the statute is needed. The Board can determined that the statute is clear and does not have to change they way they are doing things or they can determine an interpretation is needed. Ms. Layden said they are not adding language they are interpreting the language that is in place. Ms. Layden said most people understand that within the business that not everyone up to the company owner or corporation would be licensed and suggested getting something in the rules to clarify "actual and personal supervision."

Mr. Dishmon, D.P.O., stated he agrees with Mr. Partain that the statute is not new. Store managers and district managers do not have experience in dispensing.

Mr. Partain said suggested to clarify the definition of actual and person supervision by leaving out "direct" and use "contact."

Mr. DeCrow, D.P.O., stated he didn't see the need for the definition of "actual and person supervision."

Mr. Dishmon, D.P.O., stated licensees want corporation to be compliant with the rules of the licensed optician.

Dr. Ferguson stated the rules seem to affect optometrists and ophthalmologists who dispense or own dispensaries. Ms. Layden said the Board has no authority to impact what the optometrists and ophthalmologists do.

Ms. Hawkins and Mr. Christopher stated they want to investigate the proposed language and not make any decision today. Mr. Christopher stated he came to the sub-committee to get comments from colleagues.

Mr. Phelan asked if a non-licensed manager enroll in an apprenticeship program to become licensed. Ms. Hawkins said they can enter into an apprenticeship program; however, she feels they should step down as manager. Mr. Phelan asked on what basis they would have to step down as manager. Ms. Hawkins said she feels the supervisor should step down as manager so they won't be supervising their supervisor. Mr. Phelan said he needed an answer today because his managers would have no intention of stepping down to go into an apprenticeship program. Mr. Phelan said in other states, if an apprentices' supervisor is not in the store, but another licensed dispensing optician is, the dispensing optician should be able to supervise the apprentice.

Ms. Layden said given the nature this is a sub-committee any decision made today would have to be ratified by the full board. The sub-committee has decided not to make any decision today; therefore, the current state of the law as the Board has previously mentioned is the state of the law. This topic will be brought up at the January 5, 2011 meeting for the full Board's consideration.

Ms. Layden stated she added language regarding continuing education for the full Board's consideration. Ms. Layden asked if anyone had additional changes they wanted the Board to consider to let her know.

Ms. Hawkins thanked everyone for attending the meeting. With no other sub-committee business to discuss, the meeting adjourned at 11:05 a.m. The motion carried.